



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber  
Chambre de Première instance

**ឯកសារដើម**

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):  
..... 17 / 06 ..... / 2009 .....

ម៉ោង (Time/Heure) : ..... 10:00 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... C.A. Juy .....

WRITTEN RECORD OF PROCEEDINGS - "DUCH TRIAL"

PUBLIC

Case File N° 001/18-07-2007-ECCC/CPTC **CERTIFIED COPY/COPIE CERTIFIÉE CONFORME**

20 May 2009

Substantive Hearing - Day 18

**ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម**

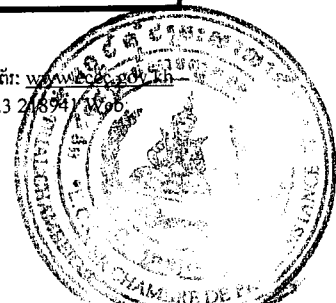
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ ថតចម្លង (Certified Date /Date de certification):  
..... 18 / 05 ..... / 2009 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... C.A. Juy .....

Prepared by: SE Kolvuthy and Natacha WEXELS-RISER

<b>Attendance Record</b>
Before: Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge YA Sokhan, Judge Jean-Marc LAVERGNE, Judge THOU Mony.
Reserve Judges: Judge YOU Ottara (Reserve) and Judge Claudia FENZ (Reserve)
Greffier/s: Mr. Matteo Crippa, Mr. Duch Phary, Mrs. Se Kolvuthy, Ms. Natacha Wexels-Riser.
OCP: Mr. Tan Senarong, Mr. Alexander Bates, Mr. Pich Sambath, Mr. Stuart Ford; Mr. Pak Chanlino.
Accused: Mr. Kaing Guek Eav alias Duch.
Defence for the Accused: Mr. Kar Savuth, Mr. François Roux, Mrs. Héleyn Uñac, Mr. Chan Ravuth, Ms. Lucille Nattiez, Ms. Virginie Charpentier.
Lawyers for the Civil Parties: Ms. Silke Studzinsky, Mr. Kong Pisey, Mr. Kim Mengkhy, Mrs. Elisabeth Rabesandratana, Ms. Ty Srinna, Mr. Alain Werner, Mr. Hong Kim Suon, Yung Panith.
Courtroom Officer/CMS: Kauv Keoratanak
Others: Mrs. Julie Massé, Mrs. Maryvonne Maniacky, Mr. Khem Lindarita

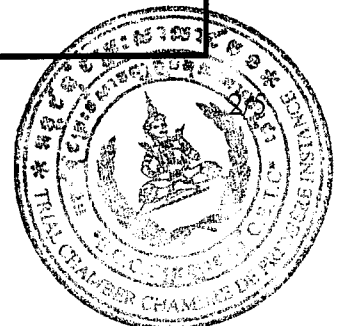


<u>General court times</u>		
Day	Start time: 10:55	Finish time: 16:45
Recess	Start time: 11:00	Finish time: 13:50
Recess pm	Start time: 15:05	Finish time: 15:20
	Total Court Time:	2 hours 45 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Decisions of the Chamber on pending issues	TC	13:50	14:05
Questioning of Expert Craig Etcheson	TC	14:05	14:53
Questioning of Expert Craig Etcheson	OCP	15:25	

<u>Summary of Proceedings:</u>
<p><b>Oral Decision on Admissibility of Material on the Case File as Evidence</b> The Chamber issued a decision on the admissibility of material on the case file as evidence (see below).</p> <p><b>Decision on Request by the Co-Prosecutors for Guidance by the Trial Chamber</b> The Chamber issued a decision on the request of the Co-Prosecutors for guidance (see below).</p> <p><b>Questioning of Expert Craig Etcheson by the Chamber</b> The Expert summarised those parts of the report D2.15/66 which had not yet been discussed in court.</p> <p><b>Other issues</b> The Chamber informed the parties that Expert Nayan Chanda would provide testimony on 25 and 26 May on the issue of armed conflict.</p> <p><b>Questioning of Expert Craig Etcheson by the Co-Prosecutors</b> The Co-Prosecutors questioned Expert Craig Etcheson.</p>

<u>Record of Rule 87.3 Proceedings</u>				
TC Ref Number	OCIJ Ref Number	Name/Description	Class. (S, C or P)	Remarks
E3/45	IS 2.1	Submission from the Government of the United States of America to the	P	00087610-00087627



		United Nations Economic and Social Council under Commission of Human Rights Decision 9 (XXXIV)		
E3/46	IS 2.3	Submission from the Government of the Norway to the United Nations Economic and Social Council under Commission of Human Rights Decision 9 (XXXIV)	P	00087537-00087571,

### Oral Orders/Decisions:

#### **I. Oral Decision on Admissibility of Material on the Case File as Evidence**

The Trial Chamber is currently seized of requests from the Co-Prosecutors to use three documents in evidence before the Chamber. These requests, which are opposed by the Defence, refer to the following documents:

- a. Statements of two deceased witnesses taken by representatives of the Non-Governmental Organization Documentation Center of Cambodia, placed on the case file as Documents D59/4 and D59/12;
- b. A statement of the Accused taken in May 1999 by a representative of the United Nations High Commissioner for Human Rights (UNHCHR), placed on the case file as Document D9.

It is also seized of a further request by the Co-Prosecutors for authorization to use Document No. 19/25 (the so-called Chheun Sothy report) before the Chamber. A detailed written decision with reasons on these matters has been finalised by the Chamber and will be issued as soon as the necessary translations are available. This is expected shortly.

In the meantime, the Chamber announces its oral decision in relation to these specific documents as follows:

The Trial Chamber:

GRANTS the Defence request in relation to the deceased witness statements, the DC-Cam article and the UNHCHR interview and excludes these documents as evidence in the present trial pursuant to Rule 87(3) of the Internal Rules;

GRANTS the Office of the Co-Prosecutor's request in relation to the Chheun Sothy report and permits it to be put before the Chamber and subjected to examination in accordance with Rule 87(2) of the Internal Rules;

ORDERS the Office of the Co-Prosecutor to provide the Defence with the original translation of the Chheun Sothy report.

#### **II. Decision on Request by the Co-Prosecutors for Guidance by the Trial Chamber**



The Office of the Co-Prosecutor has sought guidance concerning the method by which documents relating to the testimony of expert Dr. Craig Etcheson should be put before the court. OCP has notified a list of 148 documents under document E55.1. It seeks to put those documents before the court. That list sets out full identifying data of each document, including the state of translation, the original language and a summary of each individual document or excerpt, (for example item 4). The Trial Chamber appreciates the efforts made by the Office of the Co-Prosecutors to assist it and the parties in managing the extensive material on the case file and encourages it to continue to produce such consolidated material in the future.

In response to the Office of the Co-Prosecutors requests, the Trial Chamber now sets out its guidance in relation to this notification:

1) Rule 87 is fundamental to the conduct of a fair trial. Documents which any party or the Trial Chamber intends to use to support the decision of the chamber must be put before the Trial Chamber and read out in full or summarized. Only those documents or parts of documents which have been put before the trial chamber in this way and have been subjected to examination are considered formally put before the court. The requirement of rule 87(2) to subject a document to examination is fulfilled if a party makes no comment. Only those parts of documents which have been summarized are considered put before the court. For instance, if only one chapter of a book is summarized, only this part is considered put before the court. However, if discussion of the document extends beyond the initial summary the entire discussion is available for the Trial Chamber decision. When a document is to be put before the court, the party introducing it should specify whether it seeks consideration of the entire document or not. If the party seeks to introduce only part of the document, it should specify which part is relevant. When a document is put before the court, any party has the right to object to its admissibility for any valid reason. Parties also have the right to seek further information or clarification concerning a document that any party seeks to be put before the court.

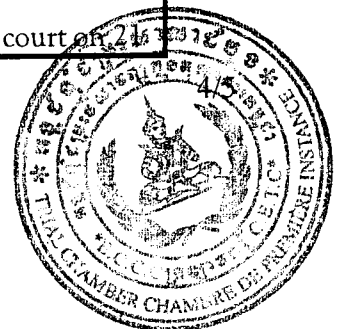
In summary, the filing of the consolidated list attached to E55, does not comply with Rule 87. Each document must be read out or summarized in order to give the parties and the Chamber the opportunity to assess the document.

2) In principle, summarized documents should be in Khmer as the official language of the court and the language of the accused.

3) The parties are reminded of article 15 of the Torture Convention which says:

*Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*

III. Order to take the Accused to the Detention Facility and bring him back to court on 21/05/2009



May 2009.

**Orders for Adjournment of Hearing**

Adjournment of Hearing:

The morning hearing was adjourned until 13:30.

The hearing will resume on Thursday, 21 May 2009 at 9:00.



Phnom Penh,  
20 May 2009



   
Greffier SE Kolvuthy      Greffier Natacha WEXELS-RISER