

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):

23 / 07 / 2009

ពេលវេលា (Time/Heure): 16:00



មន្ត្រីទទួលបន្ទុកឯកសារ/Case File Officer/L'agent chargé du dossier: S.A.N.N. R.A.D.A.

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de Première instance

WRITTEN RECORD OF PROCEEDINGS - "DUCH" TRIAL

ឯកសារបញ្ជាក់ថាជាកម្រិតច្បាប់តាមច្បាប់

CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ បញ្ជាក់ (Certified Date/Date de certification):

23 / 07 / 2009

មន្ត្រីទទួលបន្ទុកឯកសារ/Case File Officer/L'agent chargé du dossier: Ratanak

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

27 July 2009

Substantive Hearing – Day 49

Prepared by: DUCH Phary and Natacha WEXELS-RISER

Attendance Record

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, Mrs. Se Kolvuthy, Ms. Natacha Wexels-Riser, Mr. Duch Phary

OCP: Mr. Tan Senarong, Mr. Anees Ahmed, Mr. Zachery Lampell, Mr. Pak Chanlino, Mr. Keng Somarith, Ms. Alicja Nilsson, Ms. Welch Kirsty, Mr Chee Virak.

Accused: Mr. Kaing Guek Eav alias Duch.

Defence for the Accused: Mr. Kar Savuth, Mr. François Roux (absent), Mrs. Héleyn Uñac, Mr. Chan Ravuth, Ms. Lucile Nattiez.

Lawyers for the Civil Parties: Ms. Silke Studzinsky, Ms. Moch Sovannary, Mr. Alain Werner, Ms. Ty Srinna, Mr. Hong Kimsuon, Mr. Kong Pisey, Mr. Kim Mengkhy.

Courtroom Officer/CMS: Mr. Uch Arun.

Others: Mr. San Kiri, Mr. Pierre Cozette, Mr. Khem Lindarita Mr. Scott Bywater, Mr. Kong Sam Onn.



<u>General court times</u>		
Day	Start time: 9:05	Finish time: 16:20
Recess am	Start time: 10:30	Finish time: 10:50
Recess	Start time: 12:00	Finish time: 13:30
Recess pm	Start time: 14:45	Finish time: 15:00
	Total Court Time:	5 hours and 10 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Questioning of Witness Kok Sros (KW-11)	Trial Chamber	9:08	10:29
Observations on practice of questioning the Accused during witness testimony, and decision concerning Defence request for additional time to question witnesses	Trial Chamber	10:50	10:59
Questioning of Witness Kok Sros (KW-11)	Co-Prosecutors	11:00	11:14
Questioning of Witness Kok Sros (KW-11)	Civil Party Group 2	11:15	11:36
Questioning of Witness Kok Sros (KW-11)	Defence	11:36	11:42
Observations of the Accused and questions to the Accused	Trial Chamber	11:43	11:57
Questioning of Witness Suos Thy (KW-07)	Trial Chamber	13:34	16:20

<u>Summary of Proceedings:</u>
<p>Questioning of Witness Kok Sros by the Chamber The Trial Chamber continued the questioning of witness Kok Sros on the functioning of S-21.</p> <p>Observations on practice of questioning the Accused during witness testimony, and decision concerning Defence request for additional time to question witnesses The Chamber issued a decision concerning the questioning of the Accused during the testimony of a witness and concerning the request of the Defence for additional time to question witnesses (see below).</p> <p>Questioning of Witness Kok Sros by the parties The Co-Prosecutors, Civil Party Group 2 and the Defence questioned witness Suos Thy on the functioning of S-21.</p>



Observations of the Accused and questions to the Accused

The Accused expressed doubt that the witness actually worked as a guard at S-21.

Questioning of Witness Suos Thy (KW-07) by the Chamber

The Chamber questioned witness Suos Thy on the functioning of S-21.

Record of Rule 87.3 Proceedings				
TC Ref Number	OCIJ Ref Number	Name/Description	Class. (S, C or P)	Remarks
E3/427	D91/I-Annex 4.6	Voices from S-21 - Terror and History in Pol Pot's Secret Prison, David Chandler	P	00191816-00192089; 00192667-00192932, in particular 00192712, 00192716, 00192775, 00192821, 00192832, 00192845; 00357247-00357451
E3/428	D78/10	Written Record of Interview KORK Srās [Kok Sros]	P. Redacted	00195395-00195401, 00186795-00186801, 00191045-00191051. Redact personal information.
E3/245	D48/2-Annex 1	Annex 1: Report of Crime Scene Reenactment at TUOL Sleng on 27 February 2008, Photograph of "S-21, Internal Rules"	C	00198028-00198081, 00181395-00181448, in particular 00181448 (KH), 00198081 (ENG). Already in E3 folder.
E3/16	D45/1/8	Aerial Photo showing a close-up of the S21 area	P	00189137-00189137. Already in E3 folder.
E3/250	D69-An A-P0143	Painting of S-21 prisoner Vann Nath, self portrait, in a prison cell	P	P 00000026-00000026. Already in E3 folder.
E3/249	D69-An A-P0143	Painting of S-21 prisoner Vann Nath depicting a prisoner holding room "sardine-style"	P	P 00000027-00000027. Already in E3 folder.
E3/429	D59, Annex 15	Annex 15: Interview with Kok Sros by David Chandler	P. Redacted	00164577-00164582, in particular 00164564 and 00164580; 00338085-00338094; 00280347-00280353. Redact response of the witness to the question "How did he come where you come from?"



E/430	D59, Annex 16	Annex 16: interview with Kok Sros by Doug Niven	P	from?" on the first page. 00164562-00164576, in particular 00164572; 00241947-00241971, 00280354-00280368
E3/431	IS 6.1	Circular of Office S-21 concerning on the Discipline in Defending against enemies	P	00008086-00008114, in particular 00008091

Oral Orders/Decisions:

• Observations on practice of questioning the Accused during witness testimony

On 22 July the Co-Prosecutors raised an issue concerning the questioning of the accused during the testimony of a witness, noting that the practice might be intimidating for the witness.

Civil Party Group 3 also suggested that if a Civil Party group wishes to question the accused during the testimony of a witness, then extra time should be allocated for this purpose.

The Trial Chamber wishes to give guidance to the parties concerning these matters:

1. There is no prohibition on parties questioning the accused at any relevant stage during the testimony of a witness. The Trial Chamber will decide whether to permit such questioning on a case by case basis.
2. Civil Parties may use time allocated to them for questioning a witness, to put relevant questions to the accused. However, no additional time will be allocated for this purpose.

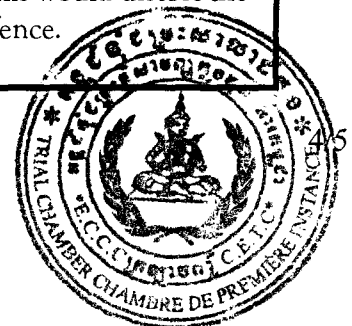
Civil Party Group 2 made an application to put remaining questions to a witness or to the accused that it had been unable to complete in the time allocated through the Chamber.

The Co-Prosecutors supported the application but observed that if the Chamber adopted this practice, then questions should be outlined orally to save the time that would be required for translation of written questions into three languages.

The Defence opposed the application on the grounds that this was simply a way to gain additional time for the Civil Parties to put questions.

Decision:

The Trial Chamber has a duty to ensure that the trial is both fair and expeditious. There is a constant need to review the time given to parties to put questions, while ensuring that the Defence also has adequate time. The Trial Chamber will not introduce a practice that effectively extends the time for questioning allocated to any party, as this would distort the careful balancing of the time allocated to each party including the Defence.



- Decision on the request by the Defence for a period of time equal to the time allocated to the Co-Prosecutors and the Civil Parties together for putting questions to the witnesses:

The Chamber has noted the Defence application to be granted, after each witness testifies, a period of time equal to the total questioning time granted to the Co-Prosecutors and Civil Party lawyers. Bearing in mind that the civil parties are allowed to put their questions with a view to supporting the prosecution, the Chamber is aware that in order to preserve the rights of the Defence particularly the right to a fair trial that guarantees equality of arms, it may become necessary to accord more time to the Defence than is set aside for it in the scheduling of the hearing. This notwithstanding, the Chamber must also ensure that the trial of the accused is conducted within a reasonable time, which justifies the view that for the proper administration of justice a limited time should be allocated to each of the parties to take the floor during the proceedings and that repetitive or irrelevant questions should be prohibited.

The Chamber notes that in point of fact the Defence has so far not requested additional time, nor has the Defence registered any particular concerns upon the conclusion of a testimony. On the contrary, the Defence has most often signified that it has no further questions, even when the time allocated for it to put questions still runs.

Accordingly, the Chamber is of the opinion that in order to allow for realistic scheduling consistent with expeditious trial requirements, it is appropriate to maintain the time allocated for each party to take the floor; it being clear that should the Chamber consider it necessary, in light of the questions already put, the Defence may apply to the Chamber for a further period of time to enable it to put all the questions it may consider necessary to ensure that its rights are preserved. In such case the Chamber will rule on a case-by-case basis.

The Chamber decides to maintain the period of time currently allocated to the Defence; it being clear that the Defence may on a case-by-case basis and, in light of what transpires in the proceedings, request a further period of time to put the questions that it considers necessary for the preservation of its rights.

- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on 28 July 2009.

Orders for Adjournment of Hearing

The hearing will resume on Tuesday, 28 July 2009 at 9:00. *NUN*.

Phnom Penh 28 July 2009
 Greffier  Greffier
[Signature]
 DUCH Phary *Natacha WEXELS-RISER*