



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ឯកសារបញ្ជាក់ថាជាកម្រងច្បាប់
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ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification):

22/07/2009

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé

SANN RADA

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

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

22/07/2009

ម៉ោង (Time/Heure): 11:20

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: SANN RADA

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de Première instance

WRITTEN RECORD OF PROCEEDINGS - "DUCH" TRIAL

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

29 June 2009

Substantive Hearing - Day 34

Prepared by: DUCH Phary and Natacha WEXELS-RISER

<u>Attendance Record</u>
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. Robert Petit, Mr. Yet Chakriya, Mr. Pich Sambath, Mr. Zachery Lampell, Mr. Pak Chanlino.
Accused: Mr. Kaing Guek Eav alias Duch.
Defence for the Accused: Mr. Kar Savuth, Mr. François Roux (absent); Mrs. Marie Paule Canizares, Mrs. Héleyn Uñac, Mr. Chan Ravuth, M. Alexandre Prezanti.
Lawyers for the Civil Parties: Ms. Silke Studzinsky, Mr. Kong Pisey, Mr. Kim Mengkhy, Ms. Moch Sovannary, Ms. Ty Srinna, Mr. Alain Werner, Mr. Hong Kimsuon.
Courtroom Officer/CMS: Mr. Kouv Keoratanak;
Others: Mrs. Julie Massé, Mr. Scott Bywater, Mrs. Maryvonne Maniacky, Mr. Pierre Cozette.



General court times		
Day	Start time: 9:00	Finish time: 15:50
Recess am	Start time: 10:40	Finish time: 11:00
Recess	Start time: 12:05	Finish time: 13:30
Recess pm	Start time: 14:45	Finish time: 15:00
	Total Court Time:	4 hours and 50 minutes

Proceedings			
Type of Issue	Raised By	Start time	Finish time
Oral decision on removal of witnesses from the witness list	TC	9:03	9:24
Notice concerning the issue of JCE	TC	9:25	9:27
Questioning of witness Vann Nath on the functioning of S-21	TC	9:29	13:53
Questioning of witness Vann Nath on the functioning of S-21	Co-Prosecutors	13:53	14:21
Request to show 2 segments of a Vietnamese video-footage and rejection	Co-Prosecutors	14:22	14:26
Request for the totality of the remaining time to be allocated for questioning by the Civil Parties and the Defence	Civil Party Group 2	14:27	14:31
Questioning of witness Vann Nath on the functioning of S-21	Civil Party Group 4 (14:31 to 14:43), Group 3 (15:00 to 15:09), Group 2 (15:09 to 15:20), Group 1 (15:20 to 15:29)	14:31	15:29
Questioning of witness Vann Nath on the functioning of S-21	Defence	15:30	15:44
Questioning of witness Vann Nath on the functioning of S-21	TC	15:44	15:47
Request for additional time and rejection	Civil Party Group 2 and TC	15:47	15:48

Summary of Proceedings:**Oral decision on removal of witnesses from the witness list**

The Chamber issued a decision removing certain witnesses from the list of those



be heard in court (See below).

Notice concerning the issue of JCE

The Trial Chamber notes the filing of the Co-Prosecutors dated 8 June 2009, in which they request that the Trial Chamber: first, declare that the legal notion of “joint criminal enterprise” in its three forms is applicable before the Extraordinary Chambers; and second, apply this notion in its judgment as regards the commission of the crimes charged against the Accused and his responsibility as a participant in a joint criminal enterprise.

The Trial Chamber recalls that the Co-Prosecutors indicated their intention to rely on the notion of joint criminal enterprise during the Initial Hearing. The Trial Chamber recalls that, pursuant to the provisions of Internal Rule 98(2), it may “change the legal characterisation of the crime as set out in the Indictment, as long as no new constitutive elements are introduced.”

The Trial Chamber thus considers that the issue of the mode of responsibility of the Accused, including as a participant in a joint criminal enterprise, is currently before it and invites the parties to make submissions on the filing of the Co-Prosecutors, in accordance with the practice directives and following notification in the languages they require.

Finally, the Trial Chamber specifies that, at this stage, it is considering rendering its decision on the matter at the same time as the judgment on the merits.

Questioning of witness Vann Nath on the functioning of S-21 by the Chamber and the parties

The Chamber established the identity of the witness and informed him of his rights and obligations as a witness. The Chamber questioned the witness on the functioning of S-21. The Co-Prosecutors, the Civil Parties and the Defence questioned the witness 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
E3/384	D28/9	Written Record of Interview of VANN Nath, in particular sketches by Vann Nath	P. Redacted.	00163735-00163755, 00163714-00163734, in particular 00163721 to 00163734. Redact personal information
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.
E3/250	D69- An A-P0143	Painting of S-21 prisoner Vann Nath, self portrait, in a	P	P 00000026-00000026. Already in E3 folder.



		prison cell		
E3/251	D69- An A-P0142	Painting of S-21 prisoner Vann Nath showing cadres taking a baby from its mother	P	P 00000022-00000022. Already in E3 folder.
E3/252	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting prisoner being tortured by water-boarding	P	P 00000031-00000031. Already in E3 folder.
E3/253	D69- An A-P0143	Painting of S-21 prisoner Vann Nath representing prisoner being tortured in water tank	P	P 00000032-00000032. Already in E3 folder.
E3/254	D69- An A-P0143	Painting of S-21 prisoner Vann Nath showing prisoners being tortured by simulated drowning	P	P 00000033-00000033. Already in E3 folder.
E3/255	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting prisoner being tortured with pliers and insects	P	P 00000030-00000030. Already in E3 folder.
E3/256	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting prisoner being tortured with pliers	P	P 00000025-00000025. Already in E3 folder.
E3/257	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting prisoner being whipped	P	P 00000023-00000023. Already in E3 folder.
E3/258	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting prisoner being tortured or murdered	P	P 00000028-00000028. Already in E3 folder.
E3/260	D69- An A-P0143	Painting of S-21 prisoner Vann Nath depicting torture in the yard of Office S-21	P	P 00000029-00000029. Already in E3 folder.
E3/261	D69- An A-P0143	Painting of S-21 prisoner Vann Nath representing prisoner being carried by two cadre tied to a stick	P	P 00000024-00000024. Already in E3 folder.
E3/232	D45/1/2	Photo album containing photos used in presentation by Zoran Lesic	C	00195373-00195377, 00189128-00189130, 00360015-00360100. Already in E3 folder
E3/385	D2-11	Written Record of Interview of Vann Nath	P. Redacted	00146810-00146812 Redact personal information



E3/386	IS 4.45	Book by VANN Nath entitled "A Cambodian Prison Portrait"	P	00323452-00323472, 00106023-00106055
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Oral Orders/Decisions:

• **Oral decision on removal of witnesses from the witness list**

The Chamber wishes to inform the parties and the public about issues discussed at the Trial Management Meeting on the afternoon of Tuesday 23 June 2009, and subsequent decisions. In order to ensure the conduct of a fair and expeditious trial, the Chamber reviewed the list of witnesses with a view to reducing the number called to testify in person.

At the Trial Management Meeting the Trial Chamber after reviewing the progress in the trial to date, proposed removing a number of witnesses from the witness list, clarifying that it will put before the court the statements of those witnesses who were heard before the ECCC during the investigative phase. The Chamber sought the views of the parties on this proposal and enquired whether they wished any of these witnesses to be heard in person.

The Co-Prosecutors did not comment on individual witnesses, but suggested that a reserve list of witnesses be retained for consideration at a later stage.

Civil Party Groups 1, 3 and 4 supported the Co-Prosecutors' position.

Civil Party Group 4 asked to hear witnesses KW-12, KW-13, KW-14, KW-18, KW-19 and KW-28 in person but failed to give reasons for the request.

Civil Party Group 2 requested to hear witnesses KW-13, KW-18, KW-25, CP2/6, KW-28, CP2/4 and CP2/1.

The Defence agreed with the Chamber's proposal, with the exception of the suggestion to remove Raoul Marc Jennar from the list. The Chamber notes that the Defence did not seek the presence of any of these witnesses for the purpose of confrontation.

In summary, reasons given by the parties are:

KW-13 was in the special unit and made arrests in which Chinese were involved. The Accused has contested that this unit made arrests.

KW-18 would testify that the Accused conducted interrogations personally in particular on foreigners and important prisoners. This is contested by the Accused.

KW-25 would testify about meetings between the Accused and the upper echelon, asserting that this is contested by the Accused.

CP2/6 would testify about visits of the Accused to Choeng Ek. Again the suggestion is that this is contested by the Accused.

KW-28 would testify that the Accused ordered arrests and torture after 1979, which would demonstrate that his claim that he hated this work and was fearful for his fate is not credible.

CP2/4 would testify about the conditions of staff and forced marriages at S-24.

CP2/1 would testify about the direct communication between the Accused and Division 2 and give evidence about the time after the collapse of the Khmer Rouge regime.

Raoul Marc Jennar is a researcher of the crimes during the Democratic Kampuchea period.



period, and has visited 196 prisons. He would therefore be in a position to compare them with S-21. In addition, it would be unfair not to let the Defence call an expert to give testimony.

Decision:

1. The Chamber notes that during the Trial Management Meeting, no party objected to the removal from the witness list of the following witnesses and to their written statements made before the ECCC during the investigating phase being put before the court pursuant to Rule 87(3). In the absence of any objection from the parties, the Chamber considers that the parties do not request the personal appearance of any of the following witnesses in court:

KW-16

KW-17

CP2/7

Nic Dunlop

KW-27

KW-06

CP2/10

Are there any objections that the Chamber has not already heard concerning these witnesses ? The Chamber hereby removes these witnesses from the witness list.

2. The Chamber notes that Civil Party Group 2 has withdrawn its request to hear witnesses CP2/2 and CP2/3. The Chamber decides not to call these witnesses.

3. The Chamber rejects the request of:

- Civil Party Group 2 to hear witnesses KW-13, KW-18, KW-25, CP2/6, CP2/4 and CP2/1;
- Civil Party Group 4 to hear witnesses KW-12, KW-13, KW-14, KW-18 and KW-19.

Reasons:

The Chamber has considered the list of witnesses and finds that a number would give similar testimony on relevant facts. The Chamber has therefore selected a group of witnesses who are likely to give the most relevant testimony in person. The parties should bear in mind that all statements made before the ECCC during the investigative phase will be put before the Chamber at the relevant time. The Chamber therefore removes witnesses KW-12, KW-13, KW-14, KW-18, KW-19, KW-25, CP2/6 and CP2/4 from the list of those who are to be heard in court.

The Chamber wishes to inform the parties that after further consideration, it has decided to keep witness KW-28 on the list, because the witness can testify to relevant facts concerning Prey Sar.

The Chamber considers it unnecessary to retain a reserve list of witnesses who may



called to give evidence orally.

4. On Thursday 25 June, the Chamber informed the parties that it wished to remove an additional witness from the list, namely KW-24, and informed the parties that they would have an opportunity to comment on this proposal today.

Are there any comments on the proposal to remove KW-24 from the witness list?

The Co-Prosecutors requested the opportunity to discuss this in camera or provide written comments.

The Chamber allowed the Co-Prosecutors to make written submissions by Tuesday 30 June at 4.30 PM.

The Defence indicated that it had no objection to the proposal.

5. In addition, the Chamber wishes to inform the parties of the following technical details:

The Chamber will hear:

- KW-10 for 1,5 day
- David Chandler for 1 day
- KW-23 for ½ day
- CP2/5 for ½ day
- KW-34 and Françoise Sironi-Guilbaud jointly for 1,5 day

The Chamber will hear Françoise Sironi-Guilbaud in person. It will hear Richard J. Goldstone and Stéphane Hessel through video-conference.

The Chamber does not accept the suggestion of the Defence to provide it and the Co-Prosecutors with the opportunity to be next to witnesses testifying by video-conference.

The Chamber takes this opportunity to inform the parties that Charles Figley has declined the invitation to testify and the Chamber does not plan to compel him to appear.

- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on 30 June 2009.

Orders for Adjournment of Hearing

Adjournment of Hearing: The hearing will resume on Tuesday, 30 June 2009 at 9:00. *NW*

Phnom Penh,
29 June 2009

Greffier
DUCH Phary

Greffier
Natacha WEXELS-RISER

