



ឯកសារដើម
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ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
du dossier: SANN RAPA

E1/70

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

ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម

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អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de Première instance

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

..... 02 / 10 / 2009

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé

du dossier: Ratanak

WRITTEN RECORD OF PROCEEDINGS - "DUCH" TRIAL

PUBLIC

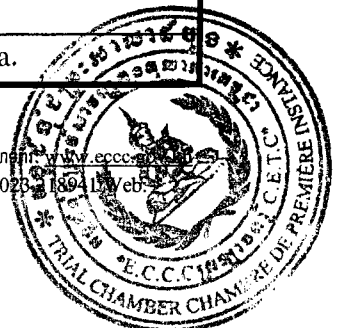
Case File N° 001/18-07-2007-ECCC/TC

27 August 2009

Substantive Hearing - Day 65

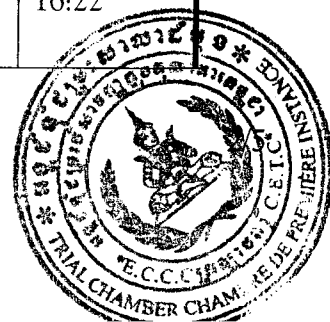
Prepared by: Se Kolvuthy and Natacha WEXELS-RISER

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, Mrs. Franziska Eckelmans.
OCP: Mr. Seng Bunkheang, Mr. Vincent De Wilde D'Estmael, Mr. Anees Ahmed (afternoon), Mr. Zachery Lampell, Mr. Pak Chanlino, Mr. Ty Monin, Mr. Huot Vichet, Mr. Mam Chanvannak.
Accused: Mr. Kaing Guek Eav alias Duch.
Defence for the Accused: Mr. Kar Savuth, Mr. François Roux, Mr. Chan Ravuth, Mrs. Héleyn Uñac, Mr. Alexandre Prezanti (afternoon).
Lawyers for the Civil Parties: Mr. Hong Kimsuon, Mrs. Fabienne Trusses-Naprous, Mr. Kim Mengkhy, Mr. Alain Werner, Ms. Ty Srinna.
Courtroom Officer/CMS: Mr. Uch Arun.
Others: Mr. Scott Bywater, Mrs. Julie Massé, Mr. San Kiri, Mrs. Pich Chariya.



<u>General court times</u>		
Day	Start time: 9:10	Finish time: 16:35
Recess am	Start time: 10:40	Finish time: 11:05
Recess	Start time: 12:05	Finish time: 13:35
Recess pm	Start time: 14:00	Finish time: 15:00
	Total Court Time:	4 hours and 30 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Information and direction to the parties	TC	9:10	9:24
Examination of specific Civil party applications	Defence Civil Parties	9:25	10:26
Request relating to Civil Party E2/32	Civil Party Group 2	10:27	11:18
Oral Decision and Direction for the hearing of 27 August 2009	TC	11:18	11:22
Observations on the question whether the Civil Parties are allowed to question the Accused and witnesses called on the topic of character of the Accused	Co-Prosecutors	11:23	11:34
Observations on the question whether the Civil Parties are allowed to question the Accused and witnesses called on the topic of character of the Accused	Civil Party Group 2/4 (11:35 to 11:42), Group 3 (11:43 to 11:52), Group 1 (11:52 to 12:05)	11:35	12:05
Observations on the question whether the Civil Parties are allowed to question the Accused and witnesses called on the topic of character of the Accused	Defence	13:35	14:01
Reading of paragraphs 162 to 170 of the Closing Order	TC	15:01	15:25
Questioning of the Accused on his character	TC	15:25	16:22



Summary of Proceedings:**Information and direction to the parties**

The Chamber provided information and directions to the Civil Parties on the filing of evidentiary material (see below).

Examination of challenged Civil Party applications

The Defence continued the presentation of its challenges, and challenged the Civil Party applications of E2/83, E2/49, E2/69, E2/73, E2/74 and E2/75.

The Civil Parties were provided an opportunity to respond to each of these challenges.

Civil Party Group 2 withdrew Civil Party application E2/77.

Civil Party Group 1 withdrew Civil Party application E2/49.

Request relating to Civil Party E2/32

Civil Party Group 2 requested to file a written statement by Civil Party E2/32 containing new information.

Oral Decision and Direction for the hearing of 27 August 2009

The Chamber pronounced its decision on the Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submission on Sentencing (see below) and invited the parties to make observations on the question whether the Civil Parties have a right to question the Accused and witnesses called on the topic of character of the Accused.

Observations on the question whether the Civil Parties are allowed to question the Accused and witnesses called on the topic of character of the Accused

The Co-Prosecutors supported the Civil Parties' right to question the Accused and witnesses on the character of the Accused.

The Civil parties pleaded in favour of their right to question the Accused and the witnesses on character.

The Defence argued that they should not be given the right to question the Accused and witnesses on character.

Decision on the right of Civil Parties to question the Accused and witnesses on character

The Chamber issued its decision on the right of Civil Parties to question the Accused and witnesses on character (see below).

Reading of paragraphs 162 to 170 of the Closing Order relating to the Character of the Accused

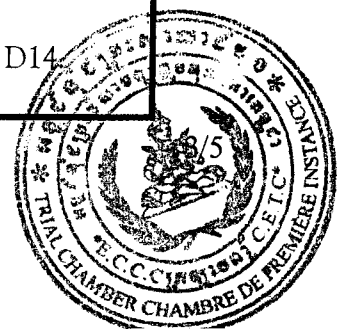
At the request of the Defence, the Chamber read paragraphs 162 to 170 of the Indictment.

Questioning of the Accused on his character

The Chamber questioned the Accused on his character.

Withdrawal by the Defence of its request to hear D14

The Defence informed the Chamber that it withdrew its request to hear witness D14.



Record of Rule 87.3 Proceedings				
TC Ref Number	OCIJ Ref Number	Name/Description	Class. (S, C or P)	Remarks
E160.1	IS 4.12 (partial)	Book: The Lost Executioner, Nic Dunlop	P	00369932-00370270, 00370271-00370539

Oral Orders/Decisions:

- **Direction to Civil Parties on filing of evidentiary material**

In order for the Chamber to have sufficient grounds for its examination and decision referring to the challenged civil party applications, and in order to ensure an expeditious and fair trial, the Chamber issues the following direction:

- Civil parties whose applications have been challenged shall submit additional evidentiary material to the Chamber to show the relevancy between the civil parties and the victims in Case file 001.
- If possible, civil parties shall submit those evidentiary materials to the Trial Chamber by the latest Thursday, 3rd September 2009 at 4.30 pm.

- **Oral Decision and Direction for the Hearing On 27 August 2009**

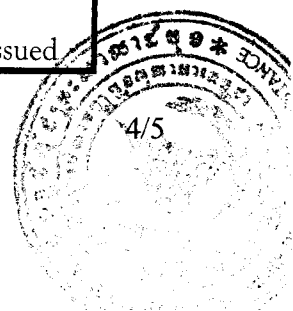
To start with, the Trial Chamber hereby pronounces orally the operative part of its decision on the following request: "Groups 1 and 2 - Civil Parties' Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submission on Sentencing" (Document E72), filed on 9 June 2009.

The operative part of the decision taken in accordance with article 14 (1) (a) new of the ECCC Law is the following:

The Trial Chamber by majority, Judge Lavergne partly dissenting, issues the following decision:

1. The Joint Request by the Civil Party Co-Lawyers of Groups 1 and 2 is rejected.
2. The Civil Parties are directed not to make submissions relevant to sentencing, including
 - a) submissions on a sentence to be imposed,
 - b) legal submissions relevant to sentencing and
 - c) submissions on or an evaluation of factors underlying a decision on sentencing. They are permitted to refer to such factors only when they also refer to the guilt or innocence of the accused or a claim of the Civil Party in question for reparations.

The written decision including the reasons of the majority and the minority will be issued



in due course.

Secondly, bearing in mind the decision just pronounced, the Trial Chamber hereby directs the Parties to provide arguments in response to the following question:

Are Civil Parties allowed to question the accused and the witnesses called to testify at the part of the hearing that is entitled, according to the scheduling order of the Trial Chamber of 14 August 2009, "Questioning the witnesses and experts on the issues relating to the character of the accused"?

Such arguments of the Civil Parties, the Co-Prosecutors and the Defence will be heard today after hearing the Defence and the Civil Party lawyers on the Civil Party claims.

- **Decision on the right of Civil Parties to question the Accused and witnesses on character**

After having heard the Parties on the question raised this morning, which was:

Are Civil Parties allowed to question the accused and the witnesses called to testify at the part of the hearing that is entitled - according to the scheduling order of the Trial Chamber of 14 August 2009- "Questioning the witnesses and experts on the issues relating to the character of the accused"?

The Chamber decides by majority, Judge Lavergne dissenting, as follows:

Civil Parties are not allowed to ask questions to the Accused relevant to character and to the following witnesses appearing under the following pseudonyms or names: KW-34 and Françoise Sironi-Guilbaud, D1, D2, D3, D4, D5, D6, Christopher Lapel, D8 and D14. The written decision including the reasons of the majority and the minority will be issued in due course.

The time allocation for the Co-Prosecutors and the Defence to question the Accused on his character will be 1 hour and 15 minutes each.

The parties will be informed of the time allocation for specific witnesses next week.


- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on 31 August 2009.

Orders for Adjournment of Hearing

The hearing will resume on Monday 31 August 2009 at 9:00. *SKV Nure*.

Phnom Penh,
27 August 2009

Se Kolvuthy
Greffier
Se Kolvuthy



Natacha WEXELS-RISER
Greffier
Natacha WEXELS-RISER