



**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

**TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"**

**CONFIDENTIAL - CLOSED SESSION**

Case File N° 001/18-07-2007-ECCC/TC

20 July 2009, 1520H

Trial Day 47

Before the Judges:

NIL Nonn, Presiding  
Silvia CARTWRIGHT  
YA Sokhan  
Jean-Marc LAVERGNE  
THOU Mony  
YOU Ottara (Reserve)  
Claudia FENZ (Reserve)

Lawyers for the Civil Parties:

KIM Mengkhy  
TY Srinna  
HONG Kimsuon  
KONG Pisey  
Martine JACQUIN  
Silke STUDZINSKY  
Alain WERNER

Trial Chamber Greffiers/Legal Officers:

DUCH Phary  
SE Kolvuthy  
Natacha WEXELS-RISER  
Matteo CRIPPA

For Court Management Section:

UCH Arun

For the Office of the Co-Prosecutors:

SENG Bunkheang  
William SMITH  
TAN Senarong  
PICH Sambath  
Zachery LAMPEL

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth  
François ROUX  
Heleyn UÑAC

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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MS. JACQUIN	French
JUDGE LAVERGNE	French
MR. ROUX	French
MR. SMITH	English
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	English

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1 P R O C E E D I N G S I N C A M E R A

2 (Judges enter courtroom)

3 MR. PRESIDENT:

4 Please be seated. The Chamber is now proceeding with the  
5 in-camera hearing as requested by the international Co-Prosecutor  
6 this morning, and the main theme of the discussion is related to  
7 the Internal Rule 28(8).

8 In order to make it clear, I would like the international  
9 Co-Prosecutor to restate your request and the grounds for your  
10 request for this in-camera hearing. So I now give the floor to  
11 the international Co-Prosecutor to restate your request.

12 [15.26.30]

13 MR. SMITH:

14 Thank you, Mr. President. This is a request pursuant to Rule  
15 28(8), asking that a motion that the defence have filed before  
16 this Chamber -- and I believe it hasn't been notified to all the  
17 other parties at this stage -- that that motion be classified  
18 confidential and not public, which is being asked for by the  
19 defence.

20 The reason why we would ask that it be classified confidential  
21 and not public is because Rule 28(8) states that any discussions  
22 relating to advice that should be given to a witness on  
23 self-incrimination, that should be done in advance of the  
24 witness's testimony and also in camera; and that, Your Honours,  
25 it matters not under the Rules whether you file on paper or

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1 whether you discuss in Court; that Rule still applies.

2 And particularly for the civil parties who may not have got a  
3 copy of this motion, perhaps -- do Your Honours have a copy of  
4 it? Well, perhaps I'll read out the motion, which I appreciate  
5 the defence for providing. They told me they would file it last  
6 Wednesday. I'm not sure where it is at the moment. I believe  
7 they attempted to file it and this is the substance of the  
8 motion. It's basically a request dated the 15th of July and it  
9 states:

10 "In view of the Co-Prosecutor's request to apply the theory of  
11 joint criminal enterprise to Duch and his subordinate in S-21, in  
12 view of the Co-Prosecutor's written answer to the defence's  
13 preliminary exception linked to the applicability of the 1956  
14 Cambodian Penal Code and especially the paragraph 21 showing that  
15 Cambodia has undertaken to respect the compulsory obligation to  
16 prosecute every person allegedly responsible for torture acts..."  
17 [15.29.04]

18 And the third paragraph is:

19 "Prior to the answers that the defence will introduce  
20 subsequently to respond to the Co-Prosecutor's argument, the  
21 defence request from the Trial Chamber add to the prescriptions  
22 of Article 28 of the Internal Rules to inform the witness, former  
23 members of S-21 of the risk to be possibly prosecuted and to  
24 assign them a lawyer who will undertake to explain them the  
25 consequences of the Co-Prosecutor's requests related to the

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1 statements they would do before the Court."

2 And that's the end of the motion.

3 Your Honour, that's a request under Rule 28(8), raising issues in  
4 relation to self-incrimination, and the rule explicitly states  
5 that must be held in camera. And the reason for that rule, Your  
6 Honour, I submit is that it's not for the parties to provide  
7 witness's advice as to the risks and possibilities of prosecution  
8 under Rule 28. It's up to the Trial Chamber, as Your Honours  
9 have stated and, if necessary, the lawyer that's assigned to the  
10 particular witness.

11 [15.30.37]

12 The fact that it's on paper and the fact that it would be filed  
13 publicly, what it will automatically mean -- and Your Honours  
14 would have seen so last week -- is that the motion will become  
15 stories in the newspapers.

16 Last week, as you know, because of the public discussion relating  
17 to self-incrimination they became stories in the Cambodia Daily,  
18 at the very least, and I assume other Cambodian papers, state  
19 talking about the risks of witnesses testifying before this  
20 Court. The problem in relation to that is that witnesses,  
21 potential witnesses -- and they will be the ones coming in the  
22 next two or three weeks -- they will read those papers and they  
23 will take probably for granted what they read in relation to the  
24 alarm raised by the defence.

25 The two points that the defence have made, which perhaps

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1 highlight the purpose of the rule, that inaccurate advice or not  
2 balanced advice should be given to the witness is that, firstly,  
3 the first premise is that because the prosecution have asked Your  
4 Honours to examine the theory of joint criminal enterprise in  
5 relation to this accused culpability, somehow or another that  
6 will mean that witnesses before this Court are more likely to be  
7 prosecuted before Cambodian national courts.

8 And Your Honours, as respectfully submitted, that's not correct.  
9 And the second alarm that would be raised by this being printed  
10 in the paper is that Cambodia:

11 "... has undertook to respect the compulsory obligation to  
12 prosecute every person allegedly responsible for torture acts."  
13 [15.32.31]

14 That will give any witness that was a guard at S-21 or a staff  
15 member at S-21, that will give them grave concerns that the  
16 national government here will prosecute or is likely to prosecute  
17 or has the potential of prosecuting these witnesses in the  
18 national courts.

19 Now, although that might be a theoretical possibility, it's  
20 absolutely not the intent from what we see by the very statute of  
21 the ECCC, that the only people that would be prosecuted would be  
22 senior leaders and most responsible, but this will raise alarm  
23 that witnesses, in fact, will be prosecuted or are likely to be  
24 prosecuted in national courts.

25 Certainly, if I was a witness, Your Honour, I would not want to

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1 come to this Court and testify. And, secondly, if I did you  
2 would assume that they would not say too much.

3 I think those two reasons taken together illustrate the purpose  
4 of the rule, namely, that advice about self-incrimination, which  
5 is a very delicate matter, shouldn't be coming from either the  
6 prosecution or the defence or civil parties. It should only be  
7 coming from the Chamber or the lawyer that represents the  
8 witness. The reason for that, of course, is that advice has the  
9 potential of being biased.

10 For example, it might be seen to be in the defence's interest to  
11 have less witnesses attending this trial because that would  
12 amount to more evidence that would have to be taken into account  
13 or defended.

14 On the other side of the coin, it may well be the case that if  
15 the prosecution was seen to be giving advice, that they may try  
16 and encourage more witnesses to come to say the risk was less  
17 than it was.

18 [15.34.32]

19 So, Your Honour, my submission in closing is that this advice  
20 going into the newspapers is likely to be read by witnesses  
21 coming to this Court and is likely to scare witnesses off from  
22 testifying. And that has a serious repercussion for this trial.  
23 And I would submit -- not that the defence shouldn't be able to  
24 put this point forward; of course they should; and, similarly,  
25 the prosecution would respond to it. But if that discussion is

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1 going to play out in the newspapers, which you know does because  
2 of the close focus on this Court, that will have the intent or  
3 the effect of scaring witnesses off.

4 And so, Your Honours, the legal reason of course is Rule 28(8)  
5 applies and it states that these types of discussions should be  
6 in camera or, if it's on paper, the logical conclusion is that it  
7 should be done confidentially and, secondly, the practical effect  
8 is that it is likely to scare witnesses off from testifying  
9 before this Court.

10 Everything that needs to be said by the defence and the  
11 prosecution, the civil parties, can be said confidentially and it  
12 will ensure that whatever advice the witness is given, either  
13 from this Chamber or from the lawyer representing the witness, is  
14 balanced advice, not advice given by one party to the process  
15 which many may argue -- and certainly the prosecution does -- is  
16 not balanced advice and it has the effect of deterring witnesses  
17 from attending this Trial.

18 So we would ask that, in short, that the motion just simply  
19 classified as confidential, not public. Thank you.

20 [15.36.29]

21 (Deliberation between Judges)

22 MR. PRESIDENT:

23 I notice the presence of the civil party lawyer group 3. You may  
24 proceed.

25 MS. JACQUIN:

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1 Thank you, Mr. President.

2 I would like to tell you that the civil party group number 3  
3 wishes to support the request that has been made by the  
4 Co-Prosecutors. We are of the view -- we took into account what  
5 was said by the defence before the first witness testified and we  
6 felt that it was a disguised threat whereby he was encouraged to  
7 not speak. And the manner in which this information was  
8 distributed goes to support what the Co-Prosecutor has said.

9 I am of the view that it is extremely important that the  
10 witnesses receive support from a lawyer, so that a lawyer will be  
11 able to give them specific information based on the law so that  
12 the person will know clearly what their position should be.

13 Thank you, Mr. President.

14 MR. PRESIDENT:

15 Mr. Francois Roux, you take the floor.

16 [15.00.39]

17 MR. ROUX:

18 Thank you, Mr. President.

19 I am extremely astonished at the position that has been adopted  
20 by the Co-Prosecutor and by what has just been said that the  
21 defence would have sought to bring pressure on the witnesses.  
22 The Office of Co-Prosecutors has filed a public motion and I  
23 would like to weigh my words carefully. This motion was filed  
24 publicly to request that a joint criminal enterprise be applied.  
25 And now you are saying that we should not speak publicly of this

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1 motion and of its consequences. What does that mean?

2 I am very astonished that the Office of Co-Prosecutors should  
3 seek to so confuse by trying to make us believe that we are  
4 engaging in a debate about Rule 28. That is not what is being  
5 discussed. Rule 28 has never provided for the circumstances in  
6 which we currently find ourselves. And what are the  
7 circumstances in which we find ourselves?

8 [15.41.09]

9 The Co-Prosecutors after their pre-Trial Chamber has informed  
10 them that they were wrong. They have sought to continue with the  
11 concept -- continue to pursue the concept of joint criminal  
12 enterprise and by so doing they have written that Duch was a  
13 member of a joint criminal enterprise which includes his  
14 subordinates in S-21.

15 And now you think that we should not officially and publicly  
16 inform the witnesses of this state of affairs and the Office of  
17 Co-Prosecutors would like to ask you to question people here  
18 without warning them of this. Is that what your understanding is  
19 of justice? Well, that is not my understanding.

20 Mr. President, Your Honours, I would like to ask you to imagine a  
21 situation in which by you render a decision in which you accede  
22 to the motion that has been made by the Co-Prosecutors. Imagine  
23 where you were to issue a decision in which you state that Duch  
24 and all of his subordinates were part of a joint criminal  
25 enterprise. Can you imagine what witnesses are going to feel if

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1 they have not been warned of this? I am not prepared to bear  
2 that responsibility.

3 The Trial Chamber has asked us to file a motion, and we did. And  
4 after that I think it is to each and every party to assume his or  
5 her own responsibility. I do not see how it can be possible not  
6 to inform the witness of this new situation and I do not see how  
7 it would be possible not to discuss this matter publicly because  
8 if we do not discuss this publicly then that will indeed  
9 encourage rumours to flourish. We must work in a transparent  
10 system.

11 And I will tell my learned friend that it is true that the Office  
12 of Co-Prosecutors took on a huge risk, seeking to imply the  
13 concept of joint criminal enterprise to Duch and his subordinates  
14 and, at the same time, to bring as witnesses those subordinates.  
15 I am sorry but that is a huge risk that you took. That was your  
16 choice. That was your decision and you must take responsibility  
17 for that choice and this until the end.

18 I have no other suggestions to make at this time except to say  
19 that if you maintain the concept of joint criminal enterprise  
20 then we should discuss the matter, and we should discuss the  
21 matter publicly.

22 In the transcript of these hearings it will state clearly that  
23 the defence brought this matter to everyone's attention and what  
24 their views of this was; that is, disloyal manner in dealing with  
25 witnesses who have come to testify and the defence cannot

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1 participate in disloyal proceedings.

2 MR. PRESIDENT:

3 The International Co-Prosecutor, you take the floor.

4 MR. SMITH:

5 Your Honour, if I can just respond very briefly?

6 Firstly, the prosecution are not saying the defence are  
7 intentionally trying to scare off witnesses in this trial. But  
8 what we are saying is that publicly putting this information,  
9 making this information available publicly will have the  
10 practical effect of scaring off witnesses from coming to this  
11 trial, firstly.

12 Secondly, it is not the prosecutor's position that they don't  
13 want witnesses warned in relation to all relevant matters that  
14 should be considered when deciding whether to answer questions or  
15 not. We do want witnesses to be warned in that regard.

16 [15.46.10]

17 But what we do want is that witnesses to be warned in a balanced  
18 way either from this Chamber whose responsibility it is or,  
19 alternatively, the lawyer for the witness. The fact that the  
20 motion would be filed confidentially as opposed to publicly, that  
21 does not -- will have not any -- that will not rob any witness  
22 the chance of any advice on all matters that they -- that witness  
23 should consider because obviously the lawyer would be able to  
24 pass on any relevant matters to the witness.

25 So we are not saying that we don't want witnesses warned, of

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1 course not. And we are not saying the defence are doing this  
2 intentionally but it's the practical effect of the public  
3 discussion in relation to this self-incrimination which will have  
4 negative consequences for this trial.

5 JUDGE CARTWRIGHT:

6 Thank you, Mr. President.

7 May I assume that the Co-Prosecutors' arguments are anticipatory  
8 given that the Trial Chamber has the responsibility to classify  
9 documents into one of three particular categories under the  
10 Practice Direction 004 of 2009 and you are simply asking us to  
11 make a confidential but not strictly confidential classification?  
12 Is that the intention of this motion -- of this application?

13 [15.48.09]

14 MR. SMITH:

15 That's correct, Your Honour.

16 JUDGE CARTWRIGHT:

17 And if I may, Mr. President?

18 So far as the defence is concerned; it has been very noticeable  
19 over the last week or so that the defence has been very anxious  
20 about this matter. Of course it has the responsibility of  
21 representing the accused fully, but can the defence explain to me  
22 why it takes responsibility for witnesses called by the Chambers  
23 as well?

24 MR. ROUX:

25 I'm not sure what the situation is in countries other than mine,

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1 but what I can say is that in my country it is said that counsel  
2 are auxiliaries of justice and I am of a view that as an  
3 auxiliary of justice, if I see something that is disloyal with  
4 respect to someone who has been summoned, then I have an  
5 obligation to speak out.

6 I would like to say that the Office of the Co-Prosecutors are on  
7 the opposite side of the room and I'm of the view that they are  
8 responsible for the situation that has arisen and I am therefore  
9 of the view that it is up to him to resolve this matter.

10 MR. PRESIDENT:

11 Judge Lavergne, you take the floor.

12 JUDGE LAVERGNE:

13 I would like to seek the Co-Prosecutor's view of Rule 28(8).

14 What is the purpose? Yes, Rule 28(8) provides that an in-camera  
15 hearing should be held when a party is aware that the testimony  
16 of any witness may raise issues with respect to  
17 self-incrimination or where the witness him or herself raises the  
18 matter.

19 [15.51.28]

20 But what is the purpose of this in-camera hearing? Because the  
21 right against self-incrimination is clear and I think that it is  
22 only in certain circumstances that the Trial Chamber can seek  
23 assurances that the witness would be able to testimony (sic) in  
24 conditions that are satisfactory. It seems to me, and I may be  
25 mistaken. but I thought that that was the purpose of this

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1 in-camera hearing.

2 It seems to me that the purpose of today's discussion is, what is  
3 the extent of the advice that should be given to the witness? So  
4 are we really in the same framework?

5 MR. SMITH:

6 I don't think so, Your Honour. The prosecutor's position of the  
7 purpose of today's hearing was just to ensure that the motion  
8 would be classified confidential so that we wouldn't have  
9 witnesses acting on unbalanced or inaccurate advice.

10 As far as Rule 28(8), it seems to be that's the only real entry  
11 point for a party to give advice on issues in relation to  
12 self-incrimination, either whether the assurances should be given  
13 or what those assurances or advice should be. And other than  
14 that, it's not for a party to raise these issues publicly, for  
15 the reasons that I mentioned; that it's not for the parties to  
16 advise the witness on particular matters.

17 That's our view of the Rule, and so as far as what advice should  
18 be given, that's a little more complicated because, as we've said  
19 before, the whole issue of joint criminal enterprise -- whether  
20 that's being charged or Your Honours are being asked to consider  
21 that at this hearing, that really has very little or nothing to  
22 do with any increased potential for a witness coming before this  
23 Court to be prosecuted in a national Court.

24 [15.54.02]

25 If joint criminal enterprise wasn't charged or wasn't put

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1 forward, there are still many modes of liability under which  
2 witnesses could be prosecuted potentially in national Courts, and  
3 one is just complicity, aiding and abetting and other forms,  
4 which in fact is a lesser form than joint criminal enterprise in  
5 any event.

6 As far as the advice that should be given, I mean obviously it's  
7 in Your Honour's hands and it's in the hands of the lawyer, but  
8 what this motion does; it gives the parties at least an  
9 opportunity to state what advice should be given, and the defence  
10 have taken up that opportunity and we would respond to it. But  
11 in the meantime it would be up to Your Honours and the lawyer to  
12 decide on what advice that should be. Of course it could be  
13 expedited and we could have a short hearing on what that advice  
14 would be, but obviously time is running out.

15 I mean this issue has been on the table for quite a long while,  
16 you know. Right since the opening of the prosecution case the  
17 prosecution have said we would like Your Honours to consider  
18 joint criminal enterprise. It's very, very unfortunate that this  
19 issue was raised in front of a witness publicly only a few days  
20 ago. They had months and months and months to raise it in the  
21 appropriate manner, but it has created a larger issue than  
22 perhaps it would have otherwise been.

23 [15.55.38]

24 So, Your Honours, we're prepared to obviously provide what advice  
25 we think should be given to the witness, as much as the defence

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1 have, but in no means is the witness prejudiced by the fact that  
2 this filing would be confidential, and it would ensure that the  
3 advice they get would be not from the newspaper via the defence  
4 but from Your Honours or the witness's lawyer in a balanced way.  
5 And I think what must be also understood is the defence support  
6 services and the prosecution in fact got together months and  
7 months ago to put together some ideas that perhaps could be  
8 considered by the Chamber, and those ideas that are reflected in  
9 part in the defence's motion were in that advice, and it was up  
10 to obviously the Chamber or the lawyer for the witness to take  
11 that into account.  
12 But there was a concerted attempt to make sure that anything that  
13 went to the witness was balanced and unfortunately, by doing it  
14 in this manner, we don't get a balanced advice being given to  
15 witnesses as they pick up the papers. Thank you.

16 MR. PRESIDENT:

17 Mr. François Roux, you take the floor.

18 MR. ROUX:

19 Yes, thank you, Mr. President. I would still like to respond.  
20 This is just the aim that the Co-Prosecutors' Office on the 8th  
21 of June filed its motion for the applicability of JCE. So I  
22 could not react before you filed your motion, and I'd like to  
23 specify that we still have not the French translation. For the  
24 moment this document is only in English. If you had waited  
25 several months after the beginning of the trial to file your

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1 motion, you cannot hold this against the defence. That's my  
2 first answer.

3 [15.58.15]

4 My second answer. I do not know what a witness can really risk,  
5 a witness appearing before the Chamber, if your Chamber retains  
6 at the end the JCE. But I know that if you retain this, this  
7 will imply that you state that the subordinates are guilty. Is  
8 it at all possible for you not to warn the witnesses that they  
9 risk being considered guilty?

10 I do not know what would be the consequences before the Cambodian  
11 Courts but I know that your decision would mean that you, as a  
12 subordinate -- you are guilty of the same crimes as those that  
13 were committed by Duch. And you do not want this debate to be  
14 open and public?

15 This is not at all my understanding of justice.

16 (Deliberation between Judges)

17 MR. PRESIDENT:

18 Judge Lavergne, you take the floor.

19 JUDGE LAVERGNE:

20 In order to clarify for the Chamber the legal points that it is  
21 seized of, we initially were seized of a motion by the  
22 Co-Prosecutors so that the motion that was filed by the defence  
23 be classified as confidential, but it seems that it transpires  
24 here that there is another issue which the Chamber could be  
25 seized of -- is the issue of knowing whether it is possible to

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1 discuss publicly what must be the extent of the warning that must  
2 be given to a witness regarding the right to not  
3 self-incriminate.

4 [16.04.29]

5 Did I understand correctly or, therefore, according to the  
6 Co-Prosecutors, is there one or two issues at hand?

7 MR. SMITH:

8 Your Honour, only one; that the motion be classified  
9 confidential.

10 If we agreed with the second issue, that would be completely  
11 undermining what we're trying to do here, namely, not raise alarm  
12 with the public that everyone that worked at S-21 is going to be  
13 prosecuted by the Cambodian Government. And that would be bad  
14 for the press for that type of thing to come out in the types of  
15 debates that, certainly, the position that's been put forward by  
16 the defence.

17 So it's only one motion. We just ask it be classified  
18 confidential. Any public discussion on this issue will defeat  
19 the purpose of Rule 28(8) and it will have the direct effect of  
20 scaring witnesses from coming to this trial. So just one motion,  
21 Your Honour.

22 MR. PRESIDENT:

23 Counsel for the civil party Group 3, you may proceed.

24 MS. JACQUIN:

25 Thank you, Mr. President.

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1 [16.06.04]

2 Mr. President, I believe that there's a confusion here that has  
3 no reason for being. On one side, there's the notion of joint  
4 criminal enterprise which is something that exists before  
5 international courts, but here the other idea is also that this  
6 Court is only addressed to the senior leaders of -- and there's  
7 another aspect, which is the risk of appearing before the  
8 Cambodian courts but, as far as I know, the notion of JCE does  
9 not exist in the Cambodian Criminal Code so, therefore, there is  
10 a confusion here between the fact that witness could be  
11 prosecuted, "because of being associated with joint criminal  
12 enterprise before the Cambodian courts".  
13 And this seems to me to be something completely unimaginable. On  
14 one side, the JCE is applied before international courts and that  
15 it is only addressed to the senior leaders and, on the other  
16 side, prosecutions based on the Cambodian courts and that can  
17 therefore cannot address the notion of joint criminal enterprise  
18 which does not exist within the Cambodian courts.

19 MR. PRESIDENT:

20 François Roux, you take the floor.

21 MR. ROUX:

22 Mr. President, my colleague backtracked a bit in the proceedings,  
23 but I don't believe that she clearly heard when I said that the  
24 problem was not only to know if witnesses risked being prosecuted  
25 before the Cambodian courts; the problem arose as long as -- as

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1 soon as the Chamber would retain joint criminal enterprise in --  
2 regarding Duch and his subordinates. This would mean that the  
3 witnesses are also declared guilty by the Chamber, but this was  
4 not the point at hand.

5 [16.08.27]

6 The point was -- the debate was centreing on a point that was  
7 brought up by Judge Lavergne, and I'd like to remind you that the  
8 prosecutor's motion concerning joint criminal enterprise is a  
9 public motion and I have it here before me.

10 So, therefore, the public is aware of paragraph 9 of your motion  
11 and I cannot read English very well, but up until here, I  
12 understand that the prosecutors advanced that Duch has full  
13 liability in joint criminal enterprise which includes his  
14 subordinates at S-21. This is written and it is a public  
15 document, so please explain to us why you filed this public  
16 motion and today you refuse to speak about this publicly?

17 MR. SMITH:

18 I don't want to go around in circles, Your Honour, but the issue  
19 of joint criminal enterprise and that being publicly discussed,  
20 there is no problem with that whatsoever.

21 This issue is about the advice the witness should be getting  
22 under Rule 28 for self-incrimination, and that should be balanced  
23 and it shouldn't be coming from a party. It should be coming  
24 from the Chamber or the lawyer that is the witness's lawyer.

25 So we have no problem with joint criminal enterprise being

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1 discussed in public or any matters being discussed in public. We  
2 do have a problem with witnesses being scared off from coming to  
3 this Trial when it can be done in another way that's more  
4 balanced.

5 And I really don't understand why the defence are pursuing this  
6 matter to go public when the risks are high in terms of the  
7 witnesses coming here when they can get that exact same advice,  
8 whatever it be, through their lawyer or through this Chamber.

9 [16.11.02]

10 MR. PRESIDENT:

11 Thank you, the international Co-Prosecutor and the defence  
12 counsel for your comments. Also, I would like to thank the civil  
13 party group 3 counsel for your comment on this issue. The issue  
14 is complicated and it needs to be discussed in detail.

15 The Chamber has a view that if we continue the discussion now, we  
16 would not obtain a satisfactory result. The Chamber will need to  
17 consult relevant documents and discuss amongst ourselves, and we  
18 will make a decision in due course.

19 The Chamber would like now to adjourn this in camera hearing and  
20 we will continue our hearing of testimony of a new witness  
21 tomorrow.

22 Alain Werner, you take the floor.

23 MR. WERNER:

24 Your Honour, may I be allowed to make another request, nothing to  
25 do with that. Just half a minute, just half a minute, Your

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21

1 Honours.

2 MR. PRESIDENT:

3 You may proceed.

4 MR. WERNER:

5 Thank you, Your Honours.

6 [16.12.45]

7 I think that I do have the support of some of my colleagues. As  
8 Your Honours know, with your Order 7 July 2009 for this week, and  
9 you indicated earlier as well that KW-10, the next witness, will  
10 be a day-and-a-half. And on -- at least our group was always  
11 very supportive of all your efforts to expedite this Trial and we  
12 believe that you took significant steps to do that.

13 But in view of how KW-08 and KW-09 went last week and today, we  
14 do believe that for KW-10 it will be necessary to have two days  
15 instead of a day-and-a-half. And I can tell you in advance that  
16 I will not be making the same request for KW-11 or KW-07 coming  
17 next, but because we have been working and reviewing the material  
18 and because of the answers given by KW-08 or the non-answer given  
19 by KW-08 and KW-09 in different views and instances, we really do  
20 believe that two days will be necessary for KW-10 instead of a  
21 day-and-a-half.

22 Anyway, I thought that it will be just useful for you to know  
23 that you are aware of our position and to do that now. Thank  
24 you.

25 MR. PRESIDENT:

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22

1 Do we need to discuss on another matter because I just said that  
2 the Chamber is going to adjourn.

3 The international Co-Prosecutor, do you have something else to  
4 say?

5 MR. SMITH:

6 Your Honour, we would just support that request. We also agree  
7 the trial management practices have been very good for this case.

8 [16.14.43]

9 This witness has substantive information compared to a number of  
10 others on the list and, as my friend has said, in light of the  
11 previous two witnesses, I think it's a very, very important  
12 opportunity to get significant material from this witness.

13 And we would ask that perhaps if Your Honours took tomorrow to  
14 question the witness, that the questioning by the parties start  
15 on Wednesday morning, so we can fully review your transcript and  
16 be as effective as possible. And if it needs to go a little bit  
17 into the afternoon, we would ask -- we would support that because  
18 of the content of the statements of this witness.

19 MR. PRESIDENT:

20 Mr. Francois Roux, you take the floor.

21 MR. ROUX:

22 Mr. President, the defence does not support this submission at  
23 all. The defence believes that if a witness should have more  
24 time, it should be Mr. Chandler, who is an outside and objective  
25 witness, but not the witness who has to appear before the Court

Closed Session



23

1 tomorrow.

2 I believe one day-and-a-half is largely enough for this witness.

3 (Deliberation between Judges)

4 [16.16.53]

5 MR. PRESIDENT:

6 Thank you for all the consent parties for raising a new matter,

7 and I hope all the parties would not raise a new matter again.

8 If you have any matters relevant to the proceedings, I would

9 remind you to raise all those matters beforehand, before the

10 Chamber declares the adjournment of the proceedings.

11 I am a Cambodian person and usually when the President declares

12 the closure or the adjournment of the proceedings, then all the

13 parties should abide by it, and if you have issues to be raised,

14 you should raise the issues at the start of the proceedings.

15 The Chamber is now adjourned and it will resume tomorrow. The

16 Chamber will notify to the concerned parties regarding the

17 request today before we start our hearing on the testimony of the

18 witness KW-10. However, I strongly have a view that the Chamber

19 will maintain our schedule in order to expedite our proceedings

20 and to minimize the time.

21 And requests for additional times might not be likely permitted.

22 Anyway, we would notify all the parties tomorrow.

23 Security guards, take the accused back to the detention

24 facilities and bring him up tomorrow.

25 The hearing is adjourned.

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- 1 (Judges exit courtroom)
- 2 (Court adjourns at 1618H)
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