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 ក្រុមបញ្ជី/ Greffier ...CHEA...Kosal.....

Declassified to Public
27 June 2019



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the
Courts of Cambodia

ORIGINAL DOCUMENT
RECEIVED on 22. Nov. 2007
AT 14 #15
BY Kosal CHEA
K. Kosal
ACTING ASE FILE OFFICER

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des Co-juges d'instruction
សំណុំរឿងព្រហ្មទណ្ឌ
Criminal Case File /Dossier pénal
លេខ/No: 002/14-08-2006
លេខស៊ើបអង្កេត/Investigation/Instruction
លេខ/No: 002/19-09-2007-ECCC/OCIJ

កំណត់ហេតុនៃកិច្ចពិភាក្សាដេញដោល
Written Record of Adversarial Hearing
Procès-verbal de débat contradictoire

The year two thousand and seven, the nineteenth of November at four forty-five pm.

Before Us, **You Bunleng** and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia, being in our office, assisted by Ham Hel ហាម ហែល and Ly Chantola លី ច័ន្ទគុណា, greffiers.

Noting the law on the establishment of the Extraordinary Chambers dated 27 October 2004,
Noting Rule 63 of the Internal Rules of the Extraordinary Chambers,

In the presence of Ouch Channora អ៊ូច ចាន់ណូរ៉ា and Tanheang Davann តាន់ហ៊ាង ដាវ៉ាន់, sworn interpreters of the Extraordinary Chambers,

Appeared :

Last Name : **KHIEU**
First Name : **Samphan**
Alias **Hem**
Sex: male,
Born on 27 July 1931, at Commune of Rom Chek, District of Rom Duol, Province of Svay Rieng, Cambodia

Nationality: Cambodian;
 Name of father: Khieu Long (deceased)
 Name of mother: Por Kong (deceased)
 Name of wife: So Socheat (living). Having four biological children
 Present address is: Village of Kon Khtong, Quarter of O Tavao, District of Pailin, Pailin Town.
 Criminal record: none

Charged with **Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 5, 6, 29 (new) and 39 (new) of the Law on the Establishment of the Extraordinary Chambers, dated 27 October 2004;

The original written record is written in Khmer

In the presence of the Co-Prosecutors of the Extraordinary Chambers,

We inform the Charged Person that the adversarial hearing will be audio and video recorded.

We advise the Charged Person that we contemplate his placement in provisional detention, which decision may be made only after an adversarial hearing has taken place.

We advise the Charged Person of his right to be assisted by a lawyer of his choice or a lawyer included on the list provided under Rule 11(2)(d) of the Internal Rules of the Extraordinary Chambers.

The person declares :

I designate Mr Say Bory and Mr Jacques Verges present at this adversarial hearing. Mr Verges is not as yet officially accredited by the Cambodian bar. Therefore, he is present as the legal assistant of Mr Say Bory.

Mr Say Bory and Jacques Verges, lawyers for Charged Person, were able to examine the file placed at their disposal and freely consult with their client.

ADVERSARIAL HEARING

The Co-Prosecutors are represented by Mr Yet Charya and Mr William Smith, Deputy Co-Prosecutors made the following submissions:

The Deputy Co-Prosecutor Mr Yet Charya: Mr KHIEU Samphan was a senior leader of Democratic Kampuchea and was very influential. He was Chairman of the State Presidium and leader of the Centre Political Office (Office 870) as well as a member of the Central Committee of the Communist Party of Kampuchea when it was in power between 17 April 1975 and 6 January 1979. We request his provisional detention for the following reasons: In the first place, to guarantee his presenting for trial because there is a danger of flight, as he lives near the Thai border and now faces life imprisonment. Moreover, if KHIEU Samphan remains at liberty, this could anger the victims and the public. Therefore, there would be public order risks and risks of personal acts of revenge that could threaten the personal security of the Charged Person. Finally, most of the witnesses are former subordinates of KHIEU Samphan and they would no longer dare to testify if he remains at liberty.

The Deputy Co-Prosecutor William Smith: as Mr Verges is not accredited and therefore unable to present oral observations, I will not add any more observations.

Mr Say Bory, lawyer, made the following observations : We have been able to quickly examine the Introductory Submission with Mr KHIEU Samphan and we have not found in paragraphs 91 to 97 any element that justifies that Mr KHIEU Samphan committed the alleged crimes in a direct or indirect manner. The Prosecutor has only recalled the functions occupied by Mr KHIEU Samphan. It is moreover indicated in the Introductory Submission that he was Chairman of Office 870, which is false: he was just an ordinary member whose task it was to prepare the prices of goods for the cooperatives. According to Article 29 (new) of the Law on the establishment of the Extraordinary Chambers, the mere position of a person cannot justify the charges. The person has to have effective power. Yet, there is no real evidence of such power as regards Mr KHIEU Samphan. If we examine the Constitution of the Democratic Kampuchea, we note that the role of the Chairman of the Presidium was just a representative one that can be compared to that of the King in the current regime: he occupies a very high function but does not have any power. Given these elements, the conclusions of the Co-Prosecutors do not have any legal basis.

I would also recall the principle of article 203 of the Code of Criminal Procedure: the accused remains at liberty and provisional detention can be ordered in exceptional circumstances only. Likewise, the presumption of innocence must take precedence over the presumption of guilt. The Prosecutors justify the request for provisional detention by the danger of flight. As to the residence located near the border, Mr KHIEU Samphan indicated that in order to make the work of the Tribunal easier, he was ready to move to another residence and to provide an address in Phnom Penh. Mr KHIEU Samphan, who is 77 years of age, and who has never had any intention to escape, is ready to accept any sentence following fair trial. He would even accept a life sentence provided that the law is respected. As to risks to public order, of revenge and to the personal security of Mr KHIEU Samphan, again, no real evidence is presented. Since 1998, when he joined the Government, he lived in several houses in Pailin without any specific protection. He often traveled to Phnom Penh to visit his children that live in a very popular place, and there has never been the slightest sign of any threat. Today, when he left Calmette hospital, no hostile gesture against him was observed. The risk to public order is inexistent. Finally, with regard to the witnesses that were his former subordinates, Mr KHIEU Samphan does not have any contact with former members of the Khmer Rouge. If appropriate investigations are carried out in Pailin, it will be established that Mr KHIEU Samphan lives with his wife, without any servant because he is poor, that those who knew him (in particular Governor Y Chhean) rarely meet him to avoid any complication and no witness fears him.

In conclusion, if Mr KHIEU Samphan remains at liberty, he will appear again before the Court. I give him the floor for additional comments.

The Charged Person, made the following observations, after having had the necessary time to prepare his defense: In the first place, I would like to indicate that all the media presented me as someone who was a leader only by name whereas the Prosecutors present me as a senior leader: I find that surprising. Regarding the alleged dangers of flight, I specify that I lived near the border only for a short period of time, that I do not have a passport and no money to live abroad. Regarding the potential punishment, I am not worried as I have not committed any crime. I never stole a cent when I was the Minister of Commerce of Norodom Sihanouk. All my compatriots know that no one is more concerned by the reconstruction of the nation than I. I hope for an impartial investigation and I believe that the History of Cambodia should be taken into consideration in order to judge correctly. Regarding the anger

towards me, I can only say that, when I recently had problems linked to my hypertension, everyone came to my home to assist me and fifteen persons even stayed overnight at my home.

The charges of the Co-Prosecutors are not justified. Thus, regarding my position as Chairman of the Presidium, I specify that there were three members of the Presidium: myself, Sor Phim and Gnim Ros. There was not even an office to meet. In addition, for instance, the powers held by Sor Phim flowed from his position as secretary of the East Zone and not because of his position as First Vice Chairman. It was the same for Gnim Ros. As to my position as a member of the Central Committee, I specify that all the important decisions were taken by the Standing Committee which was the supreme organ. It was only later that questions were discussed within the Central Committee, which was a subordinate organ. Regarding Office 870, I was in charge of setting up an echelon of prices. I add that even within that organisation, secrecy was compulsory: everyone was only dealing with his/her task and did not know anything about the tasks of the others. Thus, I ignored what Doeurn was doing. For instance, as to the task of the Chairman of helping the Standing Committee to investigate certain cadres, it was only afterwards that I knew, through my readings when I was living in Pailin. I add in conclusion that an intellectual as myself was not suited for such tasks because I was not as close to the grass roots as Doeurn was. He traveled a lot whereas I was confined to my office. Lastly, I was charged with upholding good relations with Prince Sihanouk in order to maintain unity against the American and Vietnamese who had their ambitions. I did not exercise any power. I did not even have the right to give an order to kill a single person. I did not have any power to teach political or ideological classes. Given my social background, I was seen as a patriot intellectual that would never be able to become a revolutionary leader. When I told Pol Pot that the decision to evacuate Phnom Penh and the cities was a serious mistake that was likely to isolate us from the population and the international community, he replied by citing the story of Gorky with Lenin that I was not aware of beforehand.

In summary, this means that I did not have any "subordinates" and that there is no reason to fear that my subordinates do not dare testify against me. However, in the current circumstances, people might prefer to testify against any Khmer Rouge leader in order to take some benefit. That is the atmosphere that I feel.

The Deputy Co-Prosecutor Mr Yet Charya: The Office of the Co-prosecutors has submitted some documents to support its submissions on 18 October 2007 and today, 19 November 2007.

Mention des Co-Investigating Judges: No document has reached the Co-Investigating Judges on this day and therefore will not be taken into account.

Mr Yet Charya: Mr KHIEU Samphan was Head of State in a regime responsible for 1.7 million victims. It is true that he was not a member of the Standing Committee but 14 documents demonstrate that he attended meetings. One of the charged persons indicated that he was present when the decision to eliminate Chou Chet alias Si was taken. He never made any declaration or intervention to prevent the crimes. Regarding the anger of the public, it is enough to point out that at the beginning of the proceedings, two or three complaints were filed whereas today, after the arrests carried out, more than 500 complaints have been filed. Therefore, now that the public is aware of the presentation of KHIEU Samphan before the Co-Investigating Judges, there are real risks if he remains at liberty. Moreover, in 1991, when he came back to Phnom Penh, KHIEU Samphan was the victim of violence and owed his salvation to the intervention of the Government. Finally, regarding the danger of flight, I would point out that KHIEU Samphan recently asked for treatment in Thailand and this has been refused by the authorities. This demonstrates that, even without a passport, he is likely to go abroad.

The Charged Person: I ask the Co-Investigating Judges to examine thoroughly the so-called Written Record indicating that I attended a meeting in which the elimination of Chou Chet was decided. When was this written record found? There has been a precedent of falsification of documents: a document of DC-CAM is entitled the “Twenty-six lessons of brother KHIEU Samphan” (the person responsible for its publication is Mr Craig Etcheson). I can affirm that it is a fake because in the rank of the Khmer Rouge combatants, no one knew me under the name KHIEU Samphan, even the daughter of IENG Thirith, who contacted my lawyer, spoke about me using the name of Hem.

It is true that I attended some broader meetings of the Standing Committee, during which only general issues were dealt with, such as national defense, national reconstruction, Vietnam or the resignation of Norodom Sihanouk. I had to be informed to be able to talk about these issues to diplomats.

The 1991 events, of which I was victim occurred in a specific context, namely the application of the Paris Agreements. Political questions were mixed into this story and it was not an issue of personal hatred. Researchers are very divided on this topic. Finally, concerning the lack of any declaration against the politics of the Khmer Rouge leaders, I insist on saying the following: I replaced Norodom Sihanouk at the head of the State in April 1976; a month later, on 14 May 1976, Vietnam made its ultimatum through the use of maritime boundaries issues (the written record of the meeting of the Standing Committee is published in its entirety in the book of Ben Kiernan “The Pol Pot Regime” p115-118). At that time, Vietnam demanded the revision of the Brevier line. For the CPK, a positive response would have provoked the explosion of the party and a negative one would have led to a perpetual conflict at the border. In such circumstances, as a Khmer, I could not speak out and spread division. I have never acted against the interests of my country.

We advise the Charged Person that, by an order issued today, we place him in provisional detention and issue a Detention Order. We gave him the reasons for the decision orally and informed him that the written decision will be notified tomorrow.

The original or one of the original recordings, signed by us, the greffiers and the Charged Person and his lawyer, is placed under seal in the presence of the Charged Person.

A copy of the recording or one of the original recordings is provided to the Charged Person.

At ten forty pm, we request that the Greffier read aloud the testimony of parties such as they have been transcribed.

Reading carried out, person reaffirms and signs.

ជនគ្រប់គ្រង	មេធាវីជនគ្រប់គ្រង	សហព្រះនាថវណ្ណ	អ្នកបកប្រែ	ក្រុមទុក្ខបញ្ជី	សហចៅក្រមស៊ើបអង្កេត
Charged person	Lawyer of Charged person	Co-Prosecutors	Interpreter	Greffiers	Co- Investigating Judges
Personne mise en examen	Avocat de la Personne mise en examen	Co-procureurs	Interprete		Co-juges d’instruction