



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the  
Courts of Cambodia

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

កំណត់ហេតុនៃការសួរចម្លើយ

Written Record of Interview of  
Charged Person

Procès-verbal d'interrogatoire

On the 18th of December, two thousand and nine at 09:10 a.m.,

We, **You Bunleng** ឬ **ប៊ុនហ្ស៊ង** and **Marcel Lemonde**, Co-Investigating Judges of the  
Extraordinary Chambers in the Courts of Cambodia,

With Mr **Ham Hel** ហាម ហែល and Mr **Ly Chantola** លី ច័ន្ទតុលា as Greffiers,

Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of  
Cambodia, dated 27 October 2004 (the "ECCC law"),

Noting Rules 55 and 58 of the Internal Rules of the Extraordinary Chambers,

With M. **OUCH Channora** (អ៊ូច ចាន់ណូរ៉ា) and **Bell Sak Pheakdey** (បែល សក្កិភក្តី), as  
sworn interpreters of the Extraordinary Chambers,

Interviewed the Charged Person identified below:

Name **Khieu Samphan** ខៀវ សំផន, male, born on 27 July 1931,

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 ECCC Law,

The original of this record is written in the Khmer language.

**ឯកសារទទួល**  
DOCUMENT RECEIVED/DOCUMENT REÇU

ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/Date de réception):  
..... 22 / 12 / 2009 .....

ម៉ោង (Time/Heure):  
..... 11 : 30 .....

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

**ឯកសារច្បាប់ដ៏ត្រឹមត្រូវតាមច្បាប់ដើម**  
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification):  
..... 23 / 12 / 2009 .....

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

The Co-Prosecutors of the Extraordinary Chambers, Mr Andrew Cayley and Mrs Chea Leang ជា ណាង, were duly notified of this interview by Notification Letter, dated 26 November 2009:

- Mrs Chea Leang ជា ណាង is represented by Mr PICH Sambath ពេជ្រ សម្បត្តិ, Assistant Prosecutor
- M. Andrew Cayley is represented by Tarik Abdulhak, Assistant Prosecutor

Mr SA Sovan ស សុវណ្ណ and Mr Verges, Co-Lawyers for the Charged Person were duly informed of this interview by Summons, dated 26 November 2009, and were able to examine the case file from that date. Mr SA Sovan ស សុវណ្ណ is present. Mr Verges is absent.

## Interview

### Statement of the Co-investigating judges:

1. On 20 November 2009, pursuant to a request of the Co-prosecutors<sup>1</sup>, we issued an Order<sup>2</sup> in which we endeavored to clarify the interpretation of the provisions of the Internal Rules with respect to charging. In particular, we outlined that, during the “charging process”, the notification of the “charges” includes specifying the legal characterization of the facts, bearing in mind that legal characterizations are always provisional at the judicial investigation stage. We also indicated that we have the obligation to make a decision, in the Closing Order, with respect to each of the facts of which we have been validly seized, either by issuing an indictment or by dismissing the case<sup>3</sup>.
2. This interview has been organized in application of these principles and, as the investigation is coming to an end, with a view to notifying you of the charges for which you may be indicted, bearing in mind that, “*whereas the Co-Investigating Judges may not indict a person for facts in relation to which he or she has not first been charged, the fact that charges have been laid does not affect the discretion of the Co-Investigating Judges to issue an indictment or dismiss the case at the Closing Order stage*”<sup>4</sup>.
3. Pursuant to the Introductory Submission and subsequent Supplementary Submissions we are in the final stages of our investigation into the facts of which we have been seized and your responsibility for any crimes that may have been identified at this stage.
4. Following a review of the evidence of the co-operatives and worksites, security centers and execution sites, the incidents of displacement of persons and the treatment

<sup>1</sup> Co-Prosecutors' Request for clarification of charges, 4 September 2009, D198.

<sup>2</sup> Co-Investigating Judges Order on Clarification of Charges, 20 November 2009, D198/1.

<sup>3</sup> *Ibid* par. 10.

<sup>4</sup> *Ibid* par. 10.

of specific groups including Chams, Vietnamese, Buddhists and other targeted groups, we consider that there is clear and consistent evidence that acts constituting crimes against humanity, grave breaches of the 1949 Geneva Conventions, crimes of genocide, and national crimes were committed.

5. At this stage of the investigation, we also consider there is clear and consistent evidence that, between 17 April 1975 and 6 January 1979 you, under the name KHIEU Samphan or various aliases including Brother Hem or Haem, were a senior leader of Democratic Kampuchea or a person most responsible for the crimes within the jurisdiction of the ECCC.
6. In your role as Head of State and a member of the CPK Central Committee, a member or regular participant in the CPK Standing Committee, and in your role within Office 870 and within the State Presidium, you took part in the creation, implementation or coordination of CPK policies. These policies led to the displacement of persons; the establishment and operation of cooperatives and worksites; the establishment and operation of security centers and execution sites; the arrest and mistreatment of staff of Office 870 and other people; and the mistreatment of civilians including Chams, Vietnamese and Buddhists and other targeted groups. Further, in these or other roles you would meet and associate with other senior political or military leaders of the CPK; visit various worksites, organisational units of the Centre, and other places around Cambodia; and receive telegrams, reports and/or other communications. In this way, you were kept apprised of the situation in Phnom Penh and throughout Cambodia and in particular along its borders including the way in which CPK policy was being created, disseminated and implemented.
7. You took part in the promotion and dissemination of CPK policy both nationally and internationally. In particular, you promoted and disseminated CPK policy and ideology by being involved in and conducting numerous political education and study sessions. You further contributed to crimes being committed by making public statements endorsing and promoting the CPK policy and ideology at meetings, assemblies, rallies and conferences. The content of confessions and the need to eliminate enemies, among other issues, were communicated at these meetings, assemblies and conferences.
8. You participated in the creation, implementation, coordination or dissemination of CPK policy related to the international armed conflict with Vietnam, which involved acts constituting grave breaches of the 1949 Geneva Conventions.
9. In light of the above, we confirm the charges that you were notified of at your initial appearance and, following a review of the evidence, we now consider that additional charges are warranted. Accordingly, you are charged, through your acts or omissions, for:
  - planning;
  - instigating;
  - ordering;

- committing;
- aiding and abetting;
- conspiring;
- participating;
- attempting;
- in accordance with the provisions of our order on “Joint Criminal Enterprise”<sup>5</sup>, being one of a plurality of persons who contributed to a common plan which involved or amounted to the commission of one or more crimes; or
- being responsible by virtue of superior responsibility

for the following crimes:

#### **10. CRIMES AGAINST HUMANITY**

- Murder
- Extermination
- Imprisonment
- Enslavement
- Deportation
- Torture
- Rape
- Persecutions on political, racial or religious grounds
- Other Inhumane Acts

Offences defined and punishable under Articles 5, 29 (New) and 39 (New) of the ECCC Law.

#### **11. GRAVE BREACHES OF THE GENEVA CONVENTIONS OF 12 AUGUST 1949**

- Wilful killing
- Torture or inhumane treatment
- Wilfully causing great suffering or serious injury to body or health
- Destruction and serious damage to property, not justified by military necessity and carried out unlawfully and wantonly
- Wilfully depriving a prisoner of war or civilian the rights of fair and regular trial
- Unlawful deportation or transfer or confinement of a civilian

Offences defined and punishable under Articles 6, 29 (New) and 39 (New) of the ECCC Law.

---

<sup>5</sup> Order on the application at the ECCC of the Form of Liability Known as Joint Criminal Enterprise  
8 December 2009, D97/13

12. **GENOCIDE** of Chams and Vietnamese.

Offences defined and punishable under Articles 4, 29 (New) and 39 (New) of the ECCC Law.

13. Furthermore, taking into account the findings of the Pre-Trial Chamber in the Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav alias "Duch"<sup>6</sup> and pending the decision of the Trial Chamber on these matters, we notify you that you are also charged with the following crimes:

**NATIONAL CRIMES**

- Homicide
- Torture
- Religious persecution

Offences defined and punishable under Articles 3 (New), 29 (New) and 39 (New) of the ECCC Law and articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 *Penal Code*.

In view of these notifications do you wish to make any observations or do prefer to remain your right to keep silent?

**The Charged Person:**

I wish to state to you the following things.

The international Co-Investigating Judge had asked an investigator to amass exclusively inculpatory evidence. He then said that the statement was only a joke. One should not make jokes about such a serious matter. I note that the Cambodian Co-Investigating Judge was not invited to take part in the joke. One must not make jokes in a graveyard.

**Comment by the Co-Investigating Judge:**

We have asked you if you have any observations on the notification that has been issued this morning. What you are raising right now has triggered numerous parallel procedures and is not the subject of the current hearing.

**The Charged Person:**

Before making my observations I would like to explain my reasons. That is my first reason.

Second, you travelled to Pailin and to other provinces in order to instigate complaints yet your job is to wait for those complaints to be lodged and not to go out and collect them. This rejoins my first comment. You are only looking for inculpatory evidence.

---

<sup>6</sup> Decision on Appeal Against Closing Order Indicting Kaing Guek Eav alias Duch D99/3/42, Case File 001/18-07-2007, pars. 55-88.

Thirdly in reply to a motion by IENG Sary អៀង សំណី you requested a prorogation of the timeline in order to obtain French translations on the grounds that you do not understand English. My counsel Mr Jacques Verges finds himself in the same situation as you and yet you denied him the French translation of the documents.

**Mr SA Sovan សំ ស្យំណីន:**

Maybe Mr Verges knew that the current statement would not be simultaneously be translated into French. That's why he did not come to attend this interview.

**The Charged person:**

Fourthly, the tribunal has been accused of corruption and you in your capacity as international Co-Investigating Judge took absolutely no measures to resolve the issue; therefore there remains lingering doubt concerning the allegations: I do not know who the corrupt judges are and who are not corrupt.

Fifthly, Joint Criminal Enterprise: this mode of liability does not exist in the various bodies of domestic law. It comes down to a mode of collective liability. This is not at all consistent with the spirit of democracy. For example the minister of commerce cannot be held responsible for the actions of the minister of security. This reminds me of the fable by Jean de la Fontaine: The wolf and the lamb: *"If it is not you it must be your brother..."* At the Nuremburg trial, this form of liability was not applied and one of Hitler's finance ministers Mr. Schacht was acquitted.

In view of these five reasons, it is not at all in my interest to say anything today. I note that the international Co-Investigating Judge is partial: is prejudiced against me, therefore I prefer to exercise my right to remain silent.

The original of the audio-visual recording was sealed before the Charged Person and [his/her] Lawyers and was signed by us, the Greffiers, the Charged Person, and [his/her] Lawyers.

A copy of the original audio-visual recording was provided to the Charged Person.

At 10:30 a.m., we asked the Greffiers to read out this Written Record of Interview of Charged Person as recorded on the basis of the Khmer and French transcripts.

After the Written Record was read out to the Charged Person, the Charged Person stated that he had no objections and agreed to sign it.

|                       |                                  |                       |                     |                   |                                |
|-----------------------|----------------------------------|-----------------------|---------------------|-------------------|--------------------------------|
| <b>ជនគ្រោះថ្នាក់</b>  | <b>មេធាវី</b>                    | <b>សហព្រះនាថវន្ត</b>  | <b>អ្នកបកប្រែ</b>   | <b>ក្រឡាបញ្ជី</b> | <b>សហចៅក្រម</b>                |
| <b>Charged person</b> | <b>ជនគ្រោះថ្នាក់</b>             | <b>Co-Prosecutors</b> | <b>Interpreters</b> | <b>Greffiers</b>  | <b>ស៊ើបអង្កេត</b>              |
|                       | <b>Lawyer for Charged person</b> |                       |                     |                   | <b>Co-Investigating Judges</b> |