



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 King ជាតិសាសនាព្រះមហាក្សត្រ
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 13 / 12 / 2012
ម៉ោង (Time/Heure) : 11h : 50
មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé du dossier: SANN PRADA

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

18 October 2012

Substantive Hearing on evidence – Day 121

Prepared by:

Roger PHILLIPS and DUCH Phary

<u>Attendance Record</u>
Before: Judge NIL Nonn (President), Judge Jean-Marc LAVERGNE, Judge YA Sokhan, Judge YOU Ottara, Judge Silvia CARTWRIGHT.
Reserve Judges: Judge THOU Mony, Judge Claudia FENZ.
Greffiers: Ms. SE Kovuthy, Mr. DUCH Phary, Mr. Roger PHILLIPS
OCP: Mr. CHAN Dararasmey, Ms. SONG Chorvoïn, Mr. Vincent DE WILDE D'ESTMAEL, Mr. Keith RAYNOR.
Accused: Mr. KHIEU Samphan, Mr. NUON Chea.
Defence for the Accused: Mr. SON Arun, Mr. Andrew IANUZZI, Mr. KONG Sam Onn, Mr. Arthur VERCKEN, Mr. ANG Udom.
Civil Parties: Ms. Elisabeth SIMONNEAU-FORT, Mr. PICH Ang, Mr. SAM Sokong, Mr. VEN Pov.
Witness: n/a
Others: Ms. Eleanor DOYLE-MARKWICK.

<u>General court times</u>		
Day	Start time: 9:02	Finish time: 16:07

Recess am	Start time: 10:41	Finish time: 11:01
Recess	Start time: 12:05	Finish time: 13:36
Recess pm	Start time: 14:41	Finish time: 15:11
	Total Court Time:	4 hours 40 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
NUON Chea Defence request to remark on the death of the former King of Cambodia NORODOM Sihanouk	NC Defence	9:03	9:04
NUON Chea Defence request for clarification of evidentiary weight afforded comments by the Accused	NC Defence	9:04 15:14	9:08 15:16
NUON Chea Defence request to refer to newspaper article	NC Defence	9:08 12:01	9:11 12:03
Presentation of documents related to the administrative and communication structures during the DK period	OCP	9:11 13:36	12:01 14:00
	CPLCL	15:16	16:06
Waiver of the Accused's right to be present in the courtroom	NC Defence	12:03	12:05
Challenge to relevance of evidence on cooperatives	KS Defence	15:55	15:58

Summary of Proceedings

NUON Chea Defence request to remark on the death of the former King of Cambodia NORODOM Sihanouk

The NUON Chea Defence requested permission to comment on the death of the former King of Cambodia, NORODOM Sihanouk, on behalf of the Accused. The Chamber rejected the request.

NUON Chea Defence request for clarification of evidentiary weight afforded comments by the Accused

The NUON Chea Defence asked the Chamber to clarify the evidentiary weight it will give to comments the Accused makes on the proposed documents if the Accused does not submit to questioning and does not waive his right to remain silent.

The Chamber reiterated its previous stance that instructions from an Accused cannot be given much weight unless the Accused chooses not to exercise his right to remain silent and makes himself available for questioning on a particular topic. However, the probative

value of comments made by an Accused person will be assessed in the light of the Internal Rules, as is the case with all evidence presented during the trial.

NUON Chea Defence request to refer to a newspaper article

The NUON Chea Defence sought to refer to an article by Glenys Kinnock published in the International Herald Tribune. The Chamber refused permission to refer to the article, on the basis that it was irrelevant. The NUON Chea Defence sought clarification on whether all judges on the bench had read the article. The Chamber told the NUON Chea Defence that, if they wanted to discuss the article, they should follow the procedure to admit new evidence outlined in internal Rules 87(4) and 87(3).

Presentation of documents related to the administrative and communication structures during the DK period

The OCP concluded their presentation of documents they consider most relevant to the administrative and communication structures of the DK regime. The CPLCL began presenting their proposed documents on the same subject.

Waiver of the Accused's right to be present in the courtroom

The Accused NUON Chea waived his right to be present in the courtroom for the afternoon session.

Challenges to documents proposed by CPLCL

The IENG Sary Defence requested that the Chamber not allow the CPLCL to present documents five through fifteen on their list of proposed documents dated 11 October 2012. The IENG Sary Defence argued that these documents violated the Chamber's prior ruling that written statements presented in lieu of oral testimony are not admissible if they go to the acts and conduct of the Accused.

The CPLCL noted that the IENG Sary Defence was referring to an outdated list of documents, and that a new list had been provided to the parties today. The CPLCL also offered to withdraw two documents from the list, being the records of interview with two civil parties, which might pose problems for the Chamber.

The Chamber stated that it would only refer to the CPLCL document list of 11 October, not the list of 18 October, as only the former provided proper notice to the parties. However, the Chamber will withdraw the two documents that do not appear on the second list. In addition, the Chamber will withdraw the two written records of witness interviews belonging to the civil parties. Regarding the IENG Sary Defence's challenge to the documents, the Chamber stated that it was not in a position to rule on this matter today but would do so subsequently.

Challenge to relevance of evidence on cooperatives

The KHIEU Samphan Defence challenged the documents proposed by the CPLCL on the basis that evidence about cooperatives was not relevant to the communication structures of the DK regime. The Chamber advised the parties not to discuss cooperatives in detail but allowed the CPLCL to continue presenting their documents.

Record of Rule 87(3) Proceedings				
TC Ref Number	OCIJ Ref Number	Name/Description	Party/TC	Remarks (ERN)
E3/1568		Interviews with CHEA Sim and HENG Samrin, Phnom Penh, December 1991	NC Defence	
E3/781		CPK document entitled "governing and carrying out policy and restoring all fields of the country"	NC Defence	
E3/488		Foreign broadcast information service collection of reports for February 1975	NC Defence	
	D366/7.1.351	Meeting minutes entitled "report to KHIEU Samphan on 7 January 1978 meeting with Chinese Trade Delegation"	OCP	00188509-10(KH); 00548785-86(FR); 00574558 (EN)
	D366/7.1.487	Report about paddy and rice from 1-7/3/77	OCP	
	IS18.68	"Statistics regarding imports and exports for the year 1978 for January to September"	OCP	
E3/1159		DK ministry of commerce meeting minutes entitled "report of commerce ministry's conference"	OCP	00188204-05(KH); 00665460-61(FR); 00701587(EN)
E3/522		Diary of the Khmer Rouge Foreign Ministry 1976-79	OCP	
E3/808		DK Government Meeting Minutes by Ministry of Social Affairs entitled "minutes of joint meeting of offices dated 31 May 1978 and minutes of joint meeting of the whole of 17	OCP	

		April Hospital dated 1 June 1978"		
E3/153		DK Ministry of Commerce document entitled "additional comments to the report on the Ministry Conference, 25-26 July 1976"	OCP	
E3/962		Decision of the Committee of the Ministry of Commerce 17 October 1976	OCP	00333254(EN); 00068577(KH); 00771815(FR)
E3/174		Decision of the Ministry of Commerce dated 17 October 1976	OCP	
E3/846		Ten-Day Report about situations of enemy, crowd and internal issues	OCP	
	IS16.52/ IS16.53 (same document)	List of S-21 prisoners entitled "The People at 14 Commerce Arrested From the Early Stage of 26 March, 1977"	OCP	
E3/1641		S-21 Confession of TAN Tri alias Chhoeun dated 4 October 1977	OCP	
E3/235		Decision of permanent committee in the meeting on 19, 20, 21 April 1976	OCP	
E3/153		DK Ministry of commerce document entitled "additional comments to the report on the Ministry Conference, 25-26 July 1976"	OCP	

	IS16.50	List of S-21 prisoners	OCP	
	D82/II-Annex 42	Annex 42: T1 Colour Copy Excerpts from Confession of Tit Son alias Nhem	OCP	
E3/226		Minutes of meeting on health and social affairs dated 10/6/1976	OCP	0017154-55(KH); 00296163(FR); 00183368-69(EN)
E3/808		DK Government meeting minutes by ministry of social affairs entitled "minutes of joint meeting of offices dated 31 May 1978 and minutes of joint meeting of the whole of 17 April Hospital dated 1 June 1978"	OCP	0000534(KH); 00811290(FR); 00197599(EN); 0000549(KH); 00811297(FR); 00197614 (EN)
E3/231		Minutes of meeting on information affairs dated 8/3/76	OCP	
E3/225		Minutes of meeting on information affairs dated 1/6/76	OCP	
E3/182		Minutes of meeting of the Standing Committee 9 October 1975	OCP	00019108-19(KH); 00183393-402(EN); 00292868-79(FR)
E3/232		Record of meeting on local affairs dated 8 March 1976	OCP	
E3/216		Record of meeting of Standing Committee in North West Zone August 1975	OCP	
E3/200		Speech by KHIEU Samphan at anniversary	OCP	00292805(KH); 00004165(EN) (no French

		meeting of 15 of April 1977		provided)
E3/166		Revolutionary Flag February / March 1976	OCP	00063210(KH); 00517830(EN); 00492773(FR)
E3/12		Decision of 13 March 1976 of Standing Committee	OCP	0003139(KH); 00182812(EN); 00224365(FR)
E3/160		Instruction by Office of 870 with regard to arrangement of independence celebrations	OCP	
E3/727		Revolutionary Flag May- June 1978	OCP	
E3/1150		Telegram to Comrade Ya dated 11/11/1977	OCP	
E3/241		Telegram 52 sent from the New North Zone to Office 870	OCP	00020908(KH); 00183627(EN); 00335192(FR)
E3/1091		Telegram from secretary of Zone 801	OCP	
E3/1144		Telegram 60 addressed to the Chief of 870 from Sector 801 dated 5 September 1977	OCP	
E3/1073		Telegram from the secretary of 801 addressed to the Office 870 Committee	OCP	00293359(EN); 00630816- 17(FR) (no Khmer ERN provided)
E3/801		Minutes of a meeting on production work, 30 September 1976	OCP	00017183(KH) (no other ERNs provided)
E3/1122		Telegram from the North East Zone secretary to the party centre dated 17 January 1978	OCP	
E3/319		[The description of the	OCP	

		document does not correspond to the indicated E3 number]		
E3/943		Telegram 9 to respected brother about the situation of the enemy on the boarder surrounding road 19	OCP	
E3/1191		Telegram 00 to Comrade Doeun 12 October 1976	OCP	
E3/1192		Telegram 02 to Brother Nuon 12 October 1976	OCP	
E3/257		Telegram from sector 505 to the party centre dated 1 may 1977	OCP	
E3/879		Telegram dated 11 November 1975 from Sao Phim East Zone Secretary to Brother Pol	OCP	
E3/871		Telegram 21 to Brother Pol 21 March 1976	OCP	
E3/892		Telegram from East Zone Secretary reporting to Office 870	OCP	
E3/769		Report from South West Zone to Angkar	OCP	0005285-86(KH)
E3/1094		Report dated 4 August 1978 from the West Zone sent to Angkar	OCP	0014360-61(KH); 00143607-10(KH); 0014369-12(KH); 00593526-30, 32(FR); 00315371, 0031537-74, 76(EN)

E3/1092		Report from West Zone to Angkar dated 16 July 1978	OCP	00143577-78(KH); 0011447-48(FR) 00289922(EN)
E3/1179		Report from the North West Zone dated 24 May 1977 - 4 June 1977	OCP	00214271(KH)
E3/951		Telegram from Ross Nin the Zone secretary to Angkar 870	OCP	00021043(KH); 00296221(FR); 00185216(EN)
E3/1096		Telegram dated 29 March 1978 from zone secretary Pauk to Committee 870	OCP	
E3/511		Telegram to Brother Pol from the North Zone	OCP	
E3/239		Telegram to Chief of 870 regarding the situation in Otdor Meanchey Province	OCP	
E3/1679		Telegram from Chonn to Comrade Brother Pol regarding the movement of people from East to North	OCP	
E3/956		Telegram to Angkar regarding security situation in Kampong Chhnang	OCP	
E3/501		Telegram to Office 870 from Sector 505 regarding security and agricultural issues	OCP	
E3/178		Weekly sector report	OCP	00275588-89(KH); 00623326(FR); 00342710(EN); 00275587(KH); 00623305-06(FR); 00342709 (EN)

E3/180		Monthly report from the Northwest Zone dated the 29th of May 1977 regarding the enemy situation	OCP	
E3/1019		Report dated 20 February 1976 from Sector 23 to the Standing Committee of the East Zone	OCP	
E3/1120		Telegram from North West Zone secretary	OCP	
	IS18.52	Communication from a cooperative (Trapeang Thom Cheung Sub District Cooperative) to a district (Angkar at Tram Kak District)	OCP	00079106(KH); 00712134(FR); 00276574(EN)
	IS18.44	Report from a sub-district to a district (to the Tram Kak District base from the Kabok Trabek Sub District)	OCP	(No French ERN) 00276590(EN); 00082729-30(KH)
	D157.47	Report from a commune to a district with instructions and coming back from the district to the commune	OCP	
	D157.95	Report from a district to a district security office dated 14 December 1977	OCP	
	IS18.26	Report from a commune to a district security office	OCP	
	D232/78.2	Letter dated 1 August 1977 ordering the arrest of two enemies	OCP	
E3/859		Letter headed "Confidential Phone Conversation", dated April	OCP	

		15 April 1978		
E3/1082		Document from Comrade Mut headed "Report Dated 12 August 1977 via Secret Telephone"	OCP	
E3/1289		Broadcast of confessions	OCP	00224163(KH); 00324920(FR); 00169190(EN)
E3/1362		Confessions of captured Vietnamese soldiers	OCP	00701795(KH); 00701785(FR); 00169986(EN)
E96/7		Decision on Co-Prosecutors' Rule 92 Submission	IS Defence	
	D368/2	Written record of interview of Civil Party CHAO Khim	CPLCL	
	D199/14	Written record of interview of LEFEUVRE Martine	CPLCL	
	D194	NUON Chea Defence request for investigative action	IS Defence	
	D363	Indication on legal representation on investigative request	IS Defence	
	D22/289	Civil Party application of CHAU Khim	IS Defence	
	D368/2	Written Record of interview with Civil Party CHAU Khim	IS Defence	
	D22/289.21	Newspaper article - Interview with CHAU Seng	IS Defence	
	D22/289.11	Letter from CHAU Seng to his wife in Paris	IS Defence	

	D22/289.14	Annex 14: List of the repatriats from foreign countries between 1975 to 1976	IS Defence	
	D22/44	Civil Party Application of LEFEUVRE Martine	IS Defence	
	D199/14	Written Record of Interview with LEFEUVRE Martine	IS Defence	
	D22/44.11	Letter from Khmer Embassy in Beijing requesting return of OUK Ket	IS Defence	
	D22/44.13	List of prisoners destroyed on 9 December 1977	IS Defence	
E3/1713		Book by ONG Thong Hoeng entitled "I believed in the Khmer Rouge"	KS Defence	
	D22/289.17	List of Khmers living abroad	CPLCL	
E186.1R		Enemies of the People	CPLCL	
	IS9.1	Statute of the Communist Party of Kampuchea	CPLCL	
E101/2.3 R		Video entitled "To Continue 15 to Survive of the Heart of the Khmer Rouge Madness"	CPLCL	
E3/123		Thesis of KHIEU Samphan	CPLCL	00767387(KH); 002023575 (FR); (EN ERN number incomplete) 00767441(KH); 00750636(EN); 00236643(FR); 00767296(KH);

				00750555(EN); 00236473(FR)
D368/2		Written record of interview of Civil Party CHAO Kim	CPLCL	
D199/14		Written record of interview of LEFEUVRE Martine	CPLCL	

Oral Orders/Decisions:


- Order allowing the Accused NUON Chea to participate from his holding cell (waiver of the Accused is attached to this written record).
- Order to bring the Accused NUON Chea and KHIEU Samphan back to the detention facility and to return them to the courtroom for the hearing on 19 October 2012.
- Decision that the Chamber will only refer to the CPLCL document list of 11 October, not the list of 18 October, as only the former provided proper notice to the parties.

Orders for Adjournment of Hearing

The hearing will resume on 19 October 2012 at 9:00 a.m.

Phnom Penh, 18 October 2012

Greffier



Roger PHILLIPS DUCH Phary