



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

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de réception): ២៣ / ០៥ / ២០១៦
ម៉ោង (Time/Heure) : ១៤:៣០
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: Sann R. d. S.

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 March 2016

Substantive Hearing on evidence – Day 388

Prepared by:

Mr. EM Hoy and Mr. Niccolo PONS

Attendance Record
Before: Judge NIL Nonn (President); Judge YA Sokhan; Judge Jean-Marc LAVERGNE; Judge YOU Ottara; Judge Claudia FENZ.
Reserve Judges: Judge THOU Mony; Judge Martin KAROPKIN (Reserve).
Greffier/s: Ms. Sivhoang CHEA; Mr. Niccolo PONS.
OCP: Mr. Nicolas KOUMJIAN; Mr. SENG Leang.
Accused: Mr. NUON Chea; Mr. KHIEU Samphan.
Defence for the Accused Noun Chea: Mr. SON Arun; Mr. Victor KOPPE; Mr. Liv SOVANNA;
Defence for the Accused Khieu Samphan: Mr. KONG Sam Onn and Ms. Anta GUISSÉ
Standby Counsel for the Accused Khieu Samphan: Ms. TOUCH Voleak; Mr. Calvin SAUNDERS.
Civil Parties: Mr. PICH Ang; Ms. Marie GUIRAUD; Mr. Hong Kimsuon; Mr. Lor Chunthy; Mr. Ven Pov; Mr. Ty Srinna.
Expert: 2-TCE-95, Mr. Ysa Osman with OCIJ Associate Legal Officer Ms. Julie BARDECHE.

Others: Mr. UCH Arun (Court Officer); Ms. SOUR Sotheavy; Mrs. Sam Makara, Mr. Meach SOVANNA, Ms. SOK Sopheakmonica, Ms. PICH Charkya (Transcribers); Mr. Lachlan Slattery (Trial Chamber Intern).

<u>General court times</u>		
Day	Start time: 9:04	Finish time: 16:09
Recess am	Start time: 10:17	Finish time: 10:39
Recess	Start time: 11:39	Finish time: 13:34
Recess pm	Start time: 14:46	Finish time: 15:07
	Total Court Time:	4 hours 33 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Opening of hearing and report on attendance of the parties	Trial Chamber, Greffier	9:04	9:06
NUON Chea Defence Request to follow the proceedings from the holding cell	NUON Chea Defence	9:06	9:07
Oral responses to NUON Chea Defence IR 87(4) request to hear an additional witness in relation to Phnom Kraol security centre and to admit that witness's DC-Cam interview	Trial Chamber	9:07	9:26
	NUON Chea Defence	9:09	9:23
	Co-Prosecutors	9:18	9:19
	Lead Co-Lawyers for Civil Parties	9:20	9:20
	KHIEU Samphan Defence	9:20	9:27
Hearing of expert Mr. YSA Osman (2-TCE-95)	Trial Chamber	9:27	14:06
	NUON Chea Defence	9:27	14:46
	Co-Prosecutors	9:30	14:10
	Lead Co-Lawyer for Civil Parties	10:06	14:44
	KHIEU Samphan Defence	13:35	16:09
Oral ruling on permissibility of questions founded upon information obtained in confessions under torture	International Co-Prosecutor	14:13	14:14
	NUON Chea Defence	14:14	14:24
	Trial Chamber	14:15	14:31
	Lead Co-Lawyer for Civil Parties	14:20	14:21

Request by the NUON Chea Defence, KHIEU Samphan Defence and Co-Prosecutors for additional time for questioning Mr. YSA Osman (2-TCE-95); request by the NUON Chea Defence and KHIEU Samphan Defence for closed session to question Mr. YSA Osman (2-TCE-95)	Trial Chamber	15:09	15:27
	NUON Chea Defence	15:10	15:12
	KHIEU Samphan Defence	15:12	15:17
	International Co-Prosecutor	15:17	15:17
	Lead Co-Lawyers for Civil-Parties	15:17	15:18

Summary of Proceedings

Opening of hearing and report on attendance of the Parties

The President opened the proceedings and the Greffier informed the Trial Chamber that all Parties were present. The Accused NUON Chea was present in the holding cell.

NUON Chea Defence request to follow the proceedings from the holding cell

The Trial Chamber granted the request of NUON Chea to waive his right to be present in the courtroom and to follow the proceedings from the holding cell.

Oral responses to NUON Chea Defence IR 87(4) request to hear an additional witness in relation to Phnom Kraol security centre and to admit that witness's DC-Cam interview

The NUON Chea Defence requested to hear an additional witness in relation to Phnom Kraol Security centre and to admit that witness's DC-Cam interview from 23 March 2007 in response to the Co-Prosecutors' request to hear two additional witnesses for Phnom Kraol security centre in lieu of those witnesses who are now deceased. [Note that there was some confusion as to whether the witness statement was from 2007 or 2001.] The NUON Chea defence submitted that this witness is relevant to events in Mondulkiri and the whole Northeast Zone between 1975 and 1979. The NUON Chea Defence further submitted that the extract of the witness's DC-Cam interview (E3/7960) may not be accurate, and therefore the original DC-Cam record of interview dated 23 March 2007 should be placed on the case file.

The Co-Prosecutors did not object to NUON Chea's requests.

The KHIEU Samphan Defence did not object to the requests by the NUON Chea Defence.

Hearing of Mr. YSA Osman (2-TCE-95)

The NUON Chea Defence and KHIEU Samphan Defence posed questions to Mr. YSA Osman (2-TCE-95).

Oral ruling on use of questions founded upon information obtained in confessions under torture

The Co-Prosecutors objected to the NUON Chea Defence questioning in respect of confessions obtained at Krouch Chhmar Security Centre on the basis that the NUON Chea Defence had not met the burden of establishing whether the evidence was obtained from torture or not.

The Lead Co-Lawyers for Civil Parties submitted that Decision E350/8 states that “Sessions from S-21 and other security centres carry a real risk that they were obtained by torture” and accordingly, all security centres are covered by the *prima facie* assessment.

Judge Lavergne made an oral ruling that if the aim of the question to the expert is to question him on whether or not torture was practised at Krouch Chmar, this is allowed. However, if the question itself uses information that is liable to have been obtained under torture, such questions are not authorised.

Request by all parties for additional time to question Mr. YSA Osman (2-TCE-95)

The NUON Chea Defence, KHIEU Samphan Defence and Co-Prosecutors submitted that additional time should be granted to each party for the questioning of Mr. YSA Osman (2-TCE-95). The Trial Chamber granted the Co-Prosecutors one additional session and the two defence teams combined to have an additional half-day.

Request by the NUON Chea Defence and KHIEU Samphan Defence for closed sessions to question Mr. YSA Osman (2-TCE-95)

The NUON Chea Defence and KHIEU Samphan Defence requested closed sessions for questioning Mr. YSA Osman (2-TCE-95) in the afternoon of 24 March 2016. The Trial Chamber granted this request, which was later withdrawn by the Defence teams.

Reclassified

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/9720	/	01206272-01206332	Attachment 8: Compilation of 21 kurzbiographies produced by the German Democratic Republic Ministry of State Security Stasi	C	/	01206330, 01206360	/
E3/511	D175/6.20	00000766-00000767, 00182658-00182660, 00350762-00350763	Telegram # 94 to brother Pol: Report to Brother about enemy, people and production situation in north region.	C	/	/	/

Other documents (No Change)

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/1822	/	00338995- 00339006, 00078437- 00078604, 00758327- 00758335	YSA Osman entitled: "OUKOUBAH - Justice for the Cham Muslims under the Democratic Kampuchea Regime"	P	/	00078599	/
E3/2653	D196.2	00904196- 00904430, 00219050- 00219245, 00943973- 00943985	YSA Osman, "The Cham Rebellion: Survivors' Stories from the Village", DC-Cam, 2006	P	002044459? 9:48 am	00274703	00224113
E3/7675	D125/100.1	00221852- 00221855, 00293924- 00293927, 00221856- 00221860	Annex 1: Interview of MAN Sen (Zain) in "The Cham Rebellion, Survivors' Stories from the Villages", YSA Osman Documentation Series No. 9, DC- Cam 2006	P	00221853	0022181859	00293925
E3/5261	D166/58	00250940- 00250950, 00274333- 00274341, 00285326- 00285337	Written record of Interview of SAU Seimech	P	00250947	00274336	00285329
E3/387	D248/2.2	00379481- 00379518, 00350200- 00350231, 00441411- 00441453	Transcript of interview between Ouk Bunchhoeun conducted by Steve Heder	P	00379487	00350206	00441418- 19
E3/1822	/	00338995- 00339006, 00078437- 00078604, 00758327- 00758335	OUKOUBAH, By YSA Osman	P	00339045	00078597- 599, 0000784	
E3/7525	/	00089586- 00089632, 00324153- 00324154, 00630809- 00630809	Interviewed of brother Chann Kea, Chann Sok (IO9493)DC- Cam	P	/	/	/
E3/2649	D196.11	00660583- 00660620,	Annex B 0010: Henri LOCARD, "Report: Kampong Cham: West	P	/	/	/

		00208385- 00208410, 00614102- 00614124	Bank of the Mekong (Old North Region), 2007				
E3/9333	D125/75.1	00204448- 00204450, 00204451- 00204453, 00224115- 00224116	Annex 1: Interview of NO Satas in "The Cham Rebellion, Survivors' Stories from the Villages", Ysa Osman, Documentation series No. 9, DC-Cam, 2006	P	00204448- 49	00204453	00224115

Oral Orders/Decisions:

- Order authorising the Accused NUON Chea to follow the proceedings from the holding cell and instructing the AV Unit to connect the AV link to the proceedings (9:07 a.m.).
- Oral ruling on use of questions founded upon information obtained in confessions under torture (2:21 p.m.).
- Order granting additional time for the parties to question YSA Osman (2-TCE-95) (3:26 p.m.).
- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on Thursday 24 March 2015 (4:09 p.m.).

Orders for Adjournment of Hearing

The hearing will resume on Thursday 24 March 2015 at 9:00 a.m.

Phnom Penh, 23 March 2016

Greffier

Greffier

Mr. EM H

Niccolo Pons

