



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber  
Chambre de première instance

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): ..... 26 / 05 / 2016 .....
ម៉ោង (Time/heure): ..... 15:05 .....
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: ..... SANN RMA .....

**WRITTEN RECORD OF PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

19 April 2016

Substantive Hearing on evidence 002/02 - Day 399

Prepared by:

Ms. Sivhoang CHEA and Mr. Roger PHILLIPS

<b>Attendance Record</b>
<b>Before:</b> Judge NIL Nonn (President); Judge YA Sokhan; Judge YOU Ottara; Judge Jean-Marc LAVERGNE ; Judge Claudia FENZ
<b>Reserve Judges:</b> Judge Martin KAROPKIN; Judge THOU Mony
<b>Greffiers:</b> Ms. Sivhoang CHEA; Mr. Roger PHILLIPS
<b>OCP:</b> Ms. SONG Chorvoin; Mr. Vincent de Wilde D'ESTMAEL; Mr. Dale LYSAK
<b>Accused:</b> Mr. NUON Chea (from the holding cell); Mr. KHIEU Samphan.
<b>Defence for the Accused NUON Chea:</b> Mr. Victor KOPPE; Mr. SON Arun
<b>Defence for the Accused KHIEU Samphan:</b> Ms. Anta GUISSÉ; Mr. KONG Sam Onn
<b>Appointed Standby Counsel for KHIEU Samphan:</b> Ms. TOUCH Voleak; Mr. Calvin SAUNDERS
<b>Civil Parties:</b> Mr. PICH Ang; Ms. Marie GUIRAUD; Ms. SIN Soworn; Mr. HONG Kimsuon; Mr. VEN Pov; Mr. LOR Chunthy; Mr. SAM Sokong; Ms. TY Srinna
<b>Civil party:</b> Mr. CHUM Mei (2-TCCP-243)
<b>Witness:</b> Mr. NHEM En (2-TCW-919)
<b>Others:</b> Mr. UCH Arun (Court Officer), Ms. SOUR Sotheavy (Associate Court Officer); Mr. LONH Nget (Transcriber); Ms. SREY Nak; Mr. NOU Monoroath (Transcriber); Ms. Hannah KIM (Legal Intern).

<u>General court times</u>		
Day	Start time: 9:02	Finish time: 16:03
Recess am	Start time: 10:13	Finish time: 10:33
Recess	Start time: 11:35	Finish time: 13:33
Recess pm	Start time: 14:49	Finish time: 15:14
	Total Court Time:	4 hr 16 min

<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	9:02	9:04
NUON Chea Defence Requests to follow the proceedings from the holding cell	NUON Chea Defence	9:04	9:06
Observations on the NUON Chea Defence's use of E3/93.2	Co-Prosecutor	9:07	9:16
	NUON Chea Defence	9:16	9:24
	Lead Co-Lawyer	9:24	9:25
	Trial Chamber	9:28	9:30
Hearing of civil party Mr. CHUM Mei (2-TCCP-243)	NUON Chea Defence	9:37	10:13
		10:38	11:12
Oral submissions on NUON Chea Defence request	Trial Chamber	13:33	13:35
	NUON Chea Defence	13:35	13:42
		13:53	13:57
	Co-Prosecutor	13:42	13:51
	Lead Co-Lawyer	13:51	13:53
	KHIEU Samphan Defence	13:53	13:53
Oral submissions on Prosecution's request	Trial Chamber	15:14	15:17
	Co-Prosecutor	13:58	13:58
	Lead Co-Lawyer	13:58	14:01
	KHIEU Samphan Defence	14:02	14:02
Hearing of witness Mr. NHEM En (2-TCW-919)	NUON Chea Defence	14:06	14:06
		14:31	14:42
		14:42	14:49
		15:17	16:02

### 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.

#### Hearing of civil party Mr. CHUM Mei (2-TCCP-243)

The Trial Chamber and NUON Chea Defence posed questions to civil party Mr. CHUM Mei (2-

TCCP-243).

**Observations on NUON Chea Defence use of E393.2**

The Parties provided their observations on the NUON Chea Defence's use of a revised version of document E393.2 whilst questioning the witness, Mr. CHUM Mey, in the previous day's hearings. The President requested Victor KOPPE hand in a copy of the document containing their list to the bench, and so that copies could be made available to the parties. The Chamber concluded that the dates referred to by Victor KOPPE in the previous day's testimony to cross-examine the witness did not correspond to the dates in document E393.2.

The Co-Prosecutors observed that the NUON Chea Defence had not place their revised version before the Chamber nor did they seek to admit it as evidence. The Co-Prosecutors then compared the list of names of prisoners from S-21 in E393.2 and the list of names in the Prosecution's document E342 submitting that counsel for NUON Chea had made incorrect references to E393.2, such as prisoners' times of arrest, to question the witness. Thus the Chamber was asked to urge the Defence not to use false information as a premise to its questions as it intimidated and destabilised the civil party.

In response to the Co-Prosecutors' arguments, Counsel for NUON Chea submitted that such serious allegations should be considered to be directed at the International Co-Investigator; the information used by Counsel to confront the witness on the previous day had been directly extracted from E393.2, which was prepared by the OCIJ. Furthermore, it was also observed that the Prosecution was also citing from their own revised prisoner list, thus the Defence strongly objected to the argument that the Defence was using false information to question the witness.

The Lead Co-Lawyers also cross-checked the dates in the prisoner lists in E393.2 and the dates referenced by Counsel for NUON Chea on the previous day and identified several disparities.

**Oral submissions on NUON Chea Defence's Rule 87(4) request**

The Chamber heard oral submissions from the Parties regarding the NUON Chea Defence's Rule 87(4) request to admit eight documents related to witness 2-TCW-919, as well as a book authored by the witness, to be used during his questioning.

The Defence provided a brief summary of the eight documents in the request and submitted that the documents, as well as the book, should be admitted in the interests of justice. Counsel also informed the Trial Chamber that the Defence was unable to have a copy of the witness' book.

Though questioning the probative value of some of the eight documents in the request, the Co-Prosecutors had no objections to seven documents, as well as the book, being admitted as evidence pursuant to Rule 87(4). The Co-Prosecutor raised objections to the 'Cambodia Daily', published on 6 March 2015, identifying that this article was not a matter that affected the credibility of the witness.

The Lead Co-Lawyer objected to only one of the documents. The Lead Co-Lawyer submitted that no parties have seen the book and requested that the issue be re-examined when all parties become apprised of the book. No objections were made by the KHIEU Samphan Defence to the request.

The Trial Chamber decided on the NUON Chea Defence's request to admit eight documents related to the questioning of witness 2-TCW-919. Seven of the documents were admitted as evidence, with the article from the 'Cambodia Daily' being rejected. The Parties were reminded that the Chamber would make a separate ruling on the book authored by Nhem En.

Oral submissions on Co-Prosecutors' request related to potential Conflict of Interest of National Counsel for KHIEU Samphan

The Chamber heard oral submissions from the Parties regarding the Co-Prosecutors' request relating to National Counsel for KHIEU Samphan, Kong Sam Onn's, prior representation of trial witnesses in Case 001, and an alleged conflict of interest between himself and KHIEU Samphan in light of this.

The Co-Prosecutor submitted that a waiver or agreement should also be obtained from KHIEU Samphan himself, regarding his right to raise the issue of a possible conflict of interest on appeal. The Co-Prosecutor re-iterated that KONG Sam Onn should not be questioning the witnesses.

The Lead Co-Lawyers did not have any responses to the Prosecution's request. Counsel for NUON Chea submitted that there were no conflicts of interest in the current situation.

International Counsel for KHIEU Samphan agreed that the solution by the Trial Chamber, that KONG Sam Onn should not question the witnesses, was a sufficient and proper mechanism. Judge Fenz asked the Defence whether KHIEU Samphan would mind immediately putting on the record a waiver of his right to raise the issue of a possible conflict of interest arising from his counsel's representation. In response, Counsel for KHIEU Samphan stated that it was very difficult to immediately discuss this request with KHIEU Samphan given his hearing problem, and requested that the Chamber provide them five minutes to discuss the matter with him.

The Parties were notified that the Chamber would defer the decision on the Prosecution's request regarding the possible conflict of interest of Kong Sam Onn.

Hearing of witness (2-TCW-919)

The Trial Chamber and NUON Chea defence posed questions to witness (2-TCW-919).

## New E3s

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/9838	D108/3/15.1	00162872- 00162874; 00162872- 00162874; 00162872- 00162874	Photographs of NHEM En	P	-	00162874	-

## Reclassified

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/7468	D288/4.57.1	00360437- 00360537; 00360157- 00360289; 00360290- 00360436	Transcript of Proceedings - "Duch" Trial - 04 August 2009	P	-	-	-
E3/9214	E305/13.23.66	00993310- 00993366	New DC-Cam Photographs of S-21 Prisoners	P	-	-	-
E3/2186	D108/26.152	00086993- 00086995; 00181716- 00181717; -	Annex 152: S-21 Prisoner List containing names of prisoners from the Public Works Section	P	-	-	-
E3/5163	D108/30	00176400- 00176403; 00176404- 00176406; 00176407- 00176409	Written Record of Interview Civil Party CHUM Mey	P	00176401	00176405	00176408
E3/5769	D86/19	00166588- 00166599; 00166561- 00166570; 00166571- 00166580	Written Record of Confrontation on 29-02-2008	P	00166590	00166563	00166573

E3/5765	D86/16	00181328- 00181346; 00197998- 00198008; 00181347- 00181356	Report of Crime Scene Reenactment at TUOL Sleng on 27 February 2008	P	-	-	-
E3/7451	D288/4.40.1	00347916- 00347995; 00346456- 00346552; 00346553- 00346655	Transcript of Proceedings - "Duch" Trial - 30 June 2009	P	-	-	-
E3/5794	D288/4.17.1	00325768- 00325847; 00325546- 00325651; 00325652- 00325767	[Corrected 1] Transcript of Proceedings - "Duch" Trial - 28 April 2009	P	-	-	-
E3/2117	D108/50/1.4.20	00192933- 00193063; 00081277- 00081488; 00762103- 00762110	Book by HUY Vannak entitled: "The Khmer Rouge Division 703: From Victory to Self-destruction"	P	00192958- 00192959	00081318	-

## Other documents (No Change)

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E393.2		01222328- 01222936	Annex 2: OCIJ S-21 Prisoners List 31 March 2016	C			
E3/42	D167	00327200- 00327211; 00327212- 00327221; 00327222- 00327230	Written Record of Interview of witness SUONG Sikoeun by CIJ on 06 May 2009	P	-	-	-
E3/68	D108/3/15	00162833- 00162851; 00401814- 00401833; 00195653- 00195672	Written Record of Interview of NHEM En	P	00162837	00401819	00195658

**Oral Orders/Decisions:**

- Order authorizing 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 (9:06).
- Oral decision to admit seven out of eight documents requested by the NUON Chea Defence (15:15).
- Oral decision to defer decision on Prosecution's request regarding potential conflict of interest of National Counsel for KHIEU Sampan, Kong Sam Onn (15:16).
- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on Wednesday, 20 April 2016 (16:03).

**Order for Adjournment of Hearing**

The hearing will resume on Wednesday, 20 April 2016 at 9:00am.

Phnom Penh, 19 April 2016

Greffier

Ms. Sivhoang CHEA



Greffier

Mr. Roger PHILLIPS