



**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

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ..... 07 06 2016 .....
ម៉ោង (Time/Heure) : ..... 14:40 .....
មន្ត្រីទទួលបន្ទុកសំណុំរឿង : Case File Officer/L'agent chargé du dossier: <b>SANN DADA</b>

**WRITTEN RECORD OF PROCEEDINGS**

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

28 April 2016

Substantive Hearing on evidence 002/02 -Day 405

Prepared by:

SE Kolvuthy and Evelyn CAMPOS SANCHEZ

<b>Attendance Record</b>
<b>Before:</b> Judge NIL Nonn (President); Judge Jean-Marc LAVERGNE; Judge YA Sokhan; Judge Claudia FENZ; Judge YOU Ottara
<b>Reserve Judges:</b> Judge THOU Mony (Reserve); Judge Martin KAROPKIN (Reserve)
<b>Greffiers:</b> Mrs. SE Kolvuthy; Ms. Evelyn CAMPOS SANCHEZ
<b>OCP:</b> Ms. SONG Chorvoine; Mr. Vincent DE WILDE D'ESTMAEL
<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. LIV Sovanna; Mrs. Doreen CHEN
<b>Defence for the Accused KHIEU Samphan:</b> Ms. Anta GUISSÉ; Mr. KONG Sam Onn
<b>Standby Counsel for the Accused KHIEU Samphan:</b> Ms. TOUCH Voleak; Mr. Calvin SAUNDERS
<b>Civil Parties:</b> Mr. PICH Ang; Ms. Marie GUIRAUD, Mrs. CHET Vanly; Mr. LOR Chunthy; Ms. TY Srinna; Mr. VEN Pov; Mr. HONG Kimsuon
<b>Witnesses:</b> Mr. PRAK Khan (2-TCW-931) with Duty Counsel MAM Rithea
<b>Others:</b> Mr. UCH Arun (Court Officer); Ms. SOUR Sotheavy (Associate Court Officer); Mrs. PICH Chariya (Transcriber); Mrs. SAM Makara (Transcriber); Mr. VAT Somao (Transcriber); Ms. YUOS Sereiroth (Transcriber); Ms. Natalie GUNARIDIS (Trial

Chamber Intern); Mr. Vath KEO

<u>General court times</u>		
Day	Start time: 8:59	Finish time: 16:07
Recess a.m.	Start time: 10.13	Finish time: 10:30
Recess	Start time: 11:30	Finish time: 13:31
Recess p.m.	Start time: 14:40	Finish time: 14:59
	Total Court Time:	4 hours and 31 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Opening of substantial hearing and report on attendance of the Parties	Trial Chamber, Greffier	08:59	09:01
NUON Chea Defence request to follow the proceedings from the holding cell	NUON Chea Defence	09:01	09:02
Hearing of witness PRAK Khan (2-TCW-931)	Co-Prosecutors	09:02	09:25
		09:25	09:59
		10:00	10:12
		10:30	10:36
	NUON Chea Defence	15:16	15:20
		15:57	16:02
		10:47	11:28
		13:31	14:40
		15:00	15:54
Oral ruling on OCP objection to questions asked to the witness regarding the content of S-21 confessions, which are presumed to have been obtained through torture	Co-Prosecutors	15:08	15:09
		15:13	15:14
		15:20	15:21
	NUON Chea Defence	15:09	15:12
		15:14	15:14
		15:21	15:24
	Trial Chamber	15:14	15:20
		15:24	15:25
		15:29	15:29

### 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, with the Accused NUON Chea present in the holding cell.

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

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

#### Hearing of witness PRAK Khan (2-TCW-931)

The Co-Prosecutors, Civil Party Lead Co-Lawyers and NUON Chea Defence questioned witness PRAK Khan.

**Oral ruling on OCP objection to questions asked to the witness regarding the content of S-21 confessions, which are presumed to have been obtained through torture**

The OCP contended that there is presumption that all S-21 confessions by detainees were obtained through torture, whether they were beaten or not, insofar as they were detained under inhumane conditions that deprived them of their freedom and treated them as less than human beings. They had to endure the screams of other detainees being interrogated, they were threatened and tricks were used to coerce them into saying things. All these conditions would lead, the Co-Prosecutors argued, to their treatment falling under the definition of torture as set out in the Convention against Torture. The OCP therefore argued that any evidence coming from confessions made by prisoners at S-21 is not admissible regardless of whether or not they had been physically tortured during their interrogations.

The NUON Chea Defence attempted to differentiate statements made by the S-21 prisoner Chhon in his confession before and after he had been tortured by the witness, PRAK Khan (2-TCW-931) during his interrogation. The witness had previously testified that day that he had beaten Chhon with a tree branch after he had given an incomplete confession by Chhon. The Defence asked the witness whether or not a certain statement the Defence was seeking to use was made before he had beaten Chhon, and therefore not obtained through the use of torture. The Defence was relying on this statement to support their argument that the imprisonment of Chhon and other detainees was lawful as they were part of an attempted coup d'état against the legitimate government, which would have been a crime in any country. The Defence maintained that establishing this was central to their case, also in light of the fact that in the Duch judgment rulings were made to the effect that arrests and detentions as such were unlawful which the Defence argues is not the case.

The Trial Chamber (Judge Fenz) ruled that the use of statements made by Chhon was in this case forbidden as they were tied to confessions tainted by the use of torture, with reference to the majority decision issued by the Chamber on the use of torture-tainted evidence.

**Reclassified**

TC No.	OCIJ No.	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/2117		00192933-00193063; 00081277-00081488; 00762103-00762110	Book concerning the history of Khmer Rouge Division 703, a military unit comprised of soldiers from Sector 25 who were considered to be among the elite forces of the DK military	P	/	/	0008130
E3/965		00068840-00068843;	Brief Story of people who	P	00068840	00316312	00324630

	00316312- 00316318; 00324630- 00324636	set free				
E3/8778	00989308- 00989329	DC-Cam PA Field Reports	P	/	/	/
E3/2007	00039568- 00039573; 00233755- 00233765; 00863798- 00863807	List of prisoners from ministry and devers zones interrogated by Chewing Group and Documentation Group	P	00039568	00233755	00863798
E3/7540	00053774- 00053774, 00055071- 0005508; 00184133- 00184135, 00337707- 0033772; 00364268- 00364284	DC-Cam Statement of THACH Siek	P	00055078- 00055079	00337712	00364274
E3/834	00077442- 00077660; 00184483- 00184529; 00235437- 00235439	Pon's uncatalogued 21-page document in DC-Cam's archive dated 7-12 December 1976	P	00077476	/	/
E3/3365	00656306- 00656308; 00445199- 00445200; 00664005- 00664006	LA Times article, "MILLIONS SENT TO RETRAINING ZONES; Red Forces Purifying Cambodia"	P	/	/	/
E3/9749	00963839- 00964053; 00898209- 00898330; 00955348- 00955474	Booked by Sydney SCHANBERG entitled: "Cambodia Diary 1975 - A journalist's day-by-day notes on the fall of Cambodia to the Khmer Rouge"	P	/	/	00955412- 00955414
E3/3939R	/ V 00172512- 00172512; V 00172512- 00172512	Video excerpt entitled "Pol Pot et Les Khmer Rouges"	P	/	/	/

### Other documents (No Change)

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/832		00068914-00068964	The Execution Order	P	00068920	00068921	/
E3/7639		00162706-00162717; 00162729-00162741; 00338071-00338084	Written Record of Interview of NIM Kim Sreang	P	00162713; 00162710	00162736; 00162733	00338079; 00338076
E3/833		00077661-00078056; 00184579-00184579; 00282468-00282547	S-21 Notebook by MAM Nai alias Chan	P	0007729; 00077740; 00077826; 00077946	00184591; 00184614	00282536; 00282547
E3/13		00053402-00052416; 00940336-00940358; 00334972-00334984	Note of Secretary meeting, vice secretary, and regiment about Situation to defense the country and the measure to defense the country	P	00052414	00940354-00940355	00334983
E3/1549		00174392-00174434; 00769683-00769715; 00965737-00965779	555bbkkh Colour copy Excerpt of Confession of Eng Meng Heang alias Chhon	P	00174428	00769710	/
E3/4260		00257986-00258112; 00782970-00782984; 00803385-00803396	S-21 Confession of EM Min alias SEN	P	00257995	00782984	/
E3/1570		00154220-00154233; 00154220-00154233; 00154204-00154219	Written Record of Interview of Duch by CIJ on 29-11-2007	P	/	00154192	/
E3/1822		00338995-00339006; 00078437-00078604; 00758327-00758335	OUKOUBAH, By Ysa OSMAN	P	/	00078508	/

**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. (9:02)
- Order prohibiting the use by the Defence of statements made in the confession of Chhon during an interrogation by witness 2-TCW-931 PRAK Khan, as the statements may have been obtained through the use of torture. (15:28)
- Order to take the Accused to the Detention Facility and bring him back to court for the hearing on Monday, 2 May 2016. (16:07)

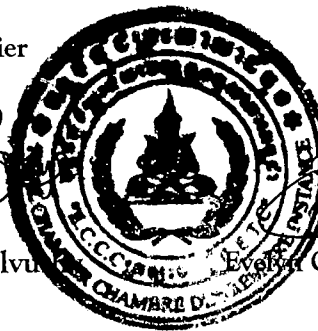
**Order for Adjournment of Hearing**


The hearing will resume on Monday 2 May 2016 at 9:00 a.m.

Phnom Penh, 28 April 2016

Greffier

Greffier



SE Kolvut  CAMPOS SANCHEZ 