



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 reception): 29 07 2016
ម៉ោង (Time/Heure): 14 : 30
មន្ត្រីទទួលខុសត្រូវឯកសារ/Case File Officer/L'agent chargé du dossier: SARUN RADA

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

2 May 2016

Substantive Hearing on evidence 002/02 -Day 406

Prepared by:

Ms. Sivhoang CHEA and Mr. Roger PHILLIPS

<u>Attendance Record</u>
Before: Judge NIL Nonn (President); Judge Jean-Marc LAVERGNE; Judge YA Sokhan; Judge Claudia FENZ; Judge YOU Ottara
Reserve Judges: Judge THOU Mony (Reserve); Judge Martin KAROPKIN (Reserve)
Greffiers: Ms. Sivhaong CHEA; Mr. Roger PHILLIPS
OCP: Mr. Vincent DE WILDE D'ESTMAEL; Ms. SONG Chorvoin; Mr. Dale LYSAK
Accused: Mr. NUON Chea (from the holding cell); Mr. KHIEU Samphan
Defence for the Accused NUON Chea: Mr. SON Arun; Mr. Victor KOPPE; Mr. LIV Sovanna
Defence for the Accused KHIEU Samphan: Ms. Anta GUISSÉ; Mr. KONG Sam Onn
Standby Counsel for the Accused KHIEU Samphan: Ms. TOUCH Voleak; Mr. Calvin SAUNDERS
Civil Parties: Mr. PICH Ang; Ms. Marie GUIRAUD; Ms. TY Srinna; Mr. VEN Pov
Witnesses: Mr. PRAK Khan (2-TCW-931); Mr. MAKK Sithim (2-TCW-808)
Others: Mr. UCH Arun (Court Officer); Ms. SOUR Sotheavy (Associate Court Officer); Ms. SOK Sopheakmonica (Transcriber); Ms. PICH Chariya (Transcriber); Mr. VAT Somao; Ms. YUOS Sereiroth (Transcriber); Natalie GUNARIDIS (Trial Chamber Intern), Dararacksmey Soun(Trial Chamber Intern)

<u>General court times</u>		
Day	Start time: 9:02	Finish time: 15:59
Recess a.m.	Start time: 10:06	Finish time: 10:28
Recess	Start time: 11:32	Finish time: 13:30
Recess p.m.	Start time: 14:18	Finish time: 14:38
	Total Court Time:	4 hours 17 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	9:02	9:03
NUON Chea Defence request to follow the proceedings from the holding cell	NUON Chea Defence	9:04	9:06
Hearing of witness PRAK Khan (2-TCW-931)	NUON Chea Defence	9:07	9:34
		11:15	11:31
	Trial Chamber KHIEU Samphan Defence	9:43 10:31	10:01 11:12
NUON Chea Defence motion to use the confession of Chhon to question witness 2-TCW-931	NUON Chea Defence	9:34	9:36
	Co-Prosecutors	9:36	9:39
	Civil Parties	9:39	9:40
	NUON Chea Defence	9:40	9:43
Oral responses to NUON Chea Defence request to adjourn trial proceedings for 4 weeks in relation to the updated list of S-21 prisoners as provided by the OCIJ	Trial Chamber	13:30	13:32
	Co-Prosecutors	13:32	13:46
		14:11	14:14
	Civil Parties	13:46	13:50
	KHIEU Samphan Defence	13:51	13:58
		14:16	14:17
	NUON Chea Defence	13:58 14:15	14:11 14:16
Hearing of witness MAKK Sithim (2-TCW-808)	Trial Chamber	14:41	14:51
	Co-Prosecutors	14:51	15:57

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 NUON Chea Defence and the KHIEU Samphan Defence questioned witness PRAK Khan.

NUON Chea Defence motion to use the confession of Chhon to question witness 2-TCW-931

The Defence for NUON Chea submit that the confession of S-21 prisoner Chhon was not obtained by conduct amounting to torture and should therefore be available for use by the Defence in questioning the witness. The beating described by the witness might amount to inhuman and degrading treatment, but even that is unclear.

The Co-Prosecutors submit that there is a presumption of torture in relation to confessions obtained from S-21 prisoners according to the SCC ruling to that effect. In addition they argued that the treatment of the prisoners even before they had been interrogated amounted to torture, and that torture was not limited to the physical pain inflicted on a prisoner, but included the psychological and mental torture that they experienced as a result of the conditions of their imprisonment.

The Lead Co-Lawyers agree with the arguments made by the Co-Prosecutors. They submit that the NUON Chea Defence had not shown that torture had not been used to obtain Chhon's confession. The Lead Co-Lawyers state that pursuant to the SCC decision on the use of S-21 confessions, the prisoners were exposed to a climate of fear which affected their confessions.

The NUON Chea Defence replied that the criteria for the definition of torture as set out in the Convention had not been met in this case (in the treatment of Chhon). It submits that the definition of torture used by both the Co-Prosecutors and the Lead Co-Lawyers is too broad and exceeded the limitations of the definition provided in the Convention itself.

The Chamber decides that the parties were forbidden from using the confession of Chhon in their questioning of witnesses. If following a review of the parties' submissions and of the document itself, the Chamber decides to permit the use of the confession, it will recall the appropriate witness.

Oral Responses to NUON Chea Defence Request to Adjourn Proceedings for 4 Weeks

The Co-Prosecutors oppose the request by the NUON Chea Defence to adjourn proceedings for 4 weeks. They submit that the documents that were used by the OCIJ as the basis for the new S-21 prisoner list have been available for a long time, having been on the case file and at DC-Cam for years. The Co-Prosecutors acknowledge the fair trial rights of the Accused, but submit that the rights of Civil Parties and the public interest in moving forward and concluding proceedings should not be ignored.

Alternatively, the Co-Prosecutors propose that of the three remaining witnesses to be questioned for the S-21 segment, witness 2-TCW-906 should still be questioned as scheduled as he is not particularly connected to the new list, but is testifying on general events mainly at Cheung Ek. They propose that less complicated witnesses from the Internal Purges segment (2-TCCP-236, 2-TCW-917, 2-TCW-812, and 2-TCW-976) could then be moved forward to allow the Defence teams time to prepare for the remaining two witnesses in the S-21 segment: 2-TCW-816 and 2-TCW-916.

The Lead Co-Lawyers state that they would rely on the wisdom of the Chamber in deciding on the matter of whether or not to adjourn proceedings and for how long that adjournment, if granted would be. They also note the interests of the Civil Parties in an expeditious trial but recognize that this could not come at the expense of rights of the

accused and the defence.

The KHIEU Samphan Defence support the NUON Chea Defence application for a 4-week adjournment. It submits that there is inequality in terms of resources available to the defence in comparison with the prosecution and the civil party lawyers, in particular to the respective parties' capacity to prepare for witnesses. Because the defence lawyers must sit in court every day to question witnesses, the suggestion by the prosecution to move forward internal purges witnesses would not assist the defence in any way. If the Chamber does not grant the adjournment, then it should at least allow the prosecution and the Civil Party lawyers to question the remaining witnesses now, with the defence to follow after the judicial recess.

The NUON Chea Defence agree with the KHIEU Samphan Defence that the defence does not have enough time and resources to deal with the new information and documents that arose from the updated list. It also submits that a four week adjournment is very reasonable when put into perspective with the length of the trial; it being 8 years and 7 months since NUON Chea's arrest.

No parties objected to the admission of the new documents which made the basis for the updated OCIJ S-21 prisoner list. All parties supported the inclusion of the documents into evidence.

The Chamber stated that it would render a decision on this matter in due course.

Reclassified

TC No.	OCIJ No.	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/8368		00007445-00007513; 00182945-00182974, 00225379-0022541; 00278744-00278776	Statistique list of Santibal S-21	P	00007458; 00007465	00225388; 00225391	00278752;00278756
E3/7464		00356192-00356276; 00355961-00356075; 00356076-00356191	Transcript of Proceedings - "Duch" Trial - 22 July 2009	P	/	00356036-00356038	00356151-00356153
E3/9431		00181395-00181448; 00198028-00198081; 00181449-00181502	Annex 1: Report of Crime Scene Reenactment at TUOL Sleng on 27 February 2008	P	00181396	00198029	00181450

E3/3680	00174575- 00174578; 00225270- 00225270 00771351- 00771354; 00267875- 00267875 00766969- 00766971	Annex 69: 618bbkhh Colour copy Excerpt of Confession of Eng Meng Heang alias Chhon	P	/	/	/
E3/4280	00294991- 00294992	S-21 Confession of ENG Meng Heang alias CHHON (summary of confessions)	P	/	/	/
E3/8386	00002637- 00002640; 00521631- 00521634; 00532733- 00532736	S-21 (K-8): Circulations	P	00002637	00521631	00532733
E3/7315	S 01137156- 01137173; S 00013209- 00013216	"SWB, Far Eastern Relations, October 25, 1978"	P	S01137156	S00013209	/ .
E3/5800	00342749- 00342828; 00341955- 00342058; 00342059- 00342169	Transcript of Proceedings - "Duch" Trial - 16 June 2009	P	/	00342034- 00342035	00342145
E3/7673	00163709- 00163713; 00401868- 00401874; 00305209- 00305215	[Corrected 1] Written Record of Interview of Mak Sithim	P	00163711; 00163713	00401871; 00401872	00305212; 00705214

Other documents (No Change)

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/833		0007761- 00078056; 00282468- 00282547	[Partial T.] S-21 Livre de Mam Nai alias Chan	P	0077729	/	00282536
E3/79		00146593-		P	00146594	00161554	001647587

	00146612; 00146593- 00146612; 00164583- 00164607	Written Record of Interview of Prak Khan				
E3/1549	00174392- 00174434; 00769683- 00769715; 00965737- 00965779	555bbkkh Colour copy Excerpt of Confession of Eng Meng Heang alias Chhon	P	/	/	/
E402	01239059- 01239075; 01236719- 01236730	Nuon Chea's urgent request for additional time to prepare for the examination of the remaining 21 witnesses in order to safeguard his fundamental fair trial rights	P	/	01236730	/

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 (9:10)
- Order prohibiting the use of Chhon's confession by parties in questioning witnesses (10:02).
- Order to take the Accused to the Detention Facility and bring them back to court for the hearing on Tuesday, 3 May 2016 (16:25).

Order for Adjournment of Hearing

The hearing will resume on Tuesday 3 May 2016 at 9:00 a.m.

Phnom Penh, 2 May 2016

Greffier

Greffier

Mrs. CHEA Siv

Roger PHILLIPS

