



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême



សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before:

- Judge KONG Srim, President**
- Judge Chandra Nihal JAYASINGHE**
- Judge SOM Sereyvuth**
- Judge Agnieszka KLONOWIECKA-MILART**
- Judge MONG Monichariya**
- Judge Florence Ndepele MWACHANDE-MUMBA**
- Judge YA Narin**

Date:

1 July 2015

Language(s):

Khmer/English

Classification:

PUBLIC

DECISION ON OBJECTIONS TO DOCUMENT LISTS
SUMMARY

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for NUON Chea

SON Arun
Victor KOPPE

Accused

KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Civil Party Lead Co-Lawyers

PICH Ang
Marie GUIRAUD

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “Chamber”, and “ECCC”, respectively);

BEING SEIZED of the Co-Prosecutors’ Response to Witness Document Lists for SCW-3, SCW-4 and SCW-5,¹ NUON Chea’s Objections to the Lists of Material to be Used by the Co-Prosecutors and Lead Co-Lawyers for the Civil Parties During Questioning of SCW-3, SCW-4 and SCW-5,² and the *Oppositions de la Défense de M. KHIEU Samphân à l’utilisation de certains documents pendant la déposition des témoins SCW-3, SCW-4 et SCW-5*³ (“Co-Prosecutors’ Objections”, “NUON Chea’s Objections” and “KHIEU Samphân’s Objections”, respectively);

RECALLING that, further to a request by NUON Chea,⁴ the Supreme Court Chamber decided, on 29 May 2015, to hear witnesses SCW-3, SCW-4 and SCW-5 on appeal⁵ and that the hearing of those witnesses is to take place from 2 July to 7 July 2015, as needed;⁶

RECALLING that, on 17 June 2015, the Supreme Court Chamber issued directions on the conduct of the hearing⁷ (“Directions”), *inter alia* directing the parties to submit, “no later than Wednesday, 24 June 2015, and via e-mail addressed to the Greffiers of the Supreme Court Chamber as well as to all other parties in Case 002/01, a list of the materials [they intend] to use during the witnesses’ questioning”;⁸

NOTING that, on 24 June 2015, the Defence for KHIEU Samphân, the Defence for NUON Chea and the Civil Party Lead Co-Lawyers sent e-mails to the Greffiers of the Supreme Court Chamber,⁹ which were copied to the other parties, attaching their respective lists of

¹ 29 June 2015, F26/7.

² 29 June 2015, F26/8.

³ 29 June 2015, F26/9.

⁴ Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01, 25 November 2014, F2/4.

⁵ Decision on Part of NUON Chea’s Request to Call Witnesses on Appeal, F2/5.

⁶ Order Scheduling a Hearing, 2 June 2015, F24.

⁷ Directions on the Conduct of the Hearing, F26.

⁸ Directions, operative paragraph 3 a).

⁹ E-mail by Legal Consultant for KHIEU Samphân to Greffiers of the Supreme Court Chamber, “liste de documents en vue de la déposition de SCW-4, SCW-3 et SCW-5”, 24 June 2015; e-mail by Senior Legal Consultant for NUON Chea to Greffiers of the Supreme Court Chamber, “Lists of Material for Questioning of SCW-3, SCW-4 and SCW-5”, 24 June 2015, 16h00; e-mail by Civil Party Lead Co-Lawyer to Greffiers of the Supreme Court Chamber Greffiers and the parties, “List of documents / SCW-3, SCW-4, SCW-5”, 24 June 2015, 16h15.

documents intended to be used during the questioning of the witnesses (“KHIEU Samphân’s Document List”, “NUON Chea’s Document List” and “Civil Parties’ Document List”, respectively) and that a staff member of the Office of the Co-Prosecutors sent an e-mail at 16h42 to the Greffiers of the Supreme Court Chamber,¹⁰ copying the other parties and attaching the Co-Prosecutors’ document list (“Co-Prosecutors’ Document List”);

NOTING that, on 29 June 2015, the Co-Prosecutors, NUON Chea and KHIEU Samphân filed the Co-Prosecutors’ Objections, NUON Chea’s Objections and KHIEU Samphân’s Objections, respectively;

CONSIDERING that it is necessary to rule on the issues raised in the Co-Prosecutors’ Objections, NUON Chea’s Objections and KHIEU Samphân’s Objections prior to the commencement of the hearing, and that full reasons for the present decision will follow in due course;

HEREBY DECIDES:

- 1) The request of NUON Chea and KHIEU Samphân to reject the Civil Parties’ Document List and the Co-Prosecutors’ Document List because of their late filing is rejected;
- 2) The Co-Prosecutors may not use document E3/1539 in the examination of the witnesses as it was not included in the Co-Prosecutors’ Document List and no compelling reason for its subsequent inclusion was presented;
- 3) The Co-Prosecutors may not use any of the following documents in the examination of the witnesses because, although they are longer than 30 pages long, the Prosecutor failed to comply with the Directions to provide ERN numbers for those documents in the Co-Prosecutors’ Document List:

D313.2.25/D366/7.1.108, E3/3989, E3/531, E3/342, E305/13.23.375, E319.1.27, E3/1805, E3/4590, E3/62, E1/14.1, E1/216.1, E1/140.1, E1/144.1, E1/138.1, E1/218.1, E1/191.1, E305/13.23.405, E3/89, E3/387,

¹⁰ E-mail by Assistant Co-Prosecutor to Greffier of the Supreme Court Chamber, “List of documents from the Office of the Co-Prosecutors to be used during questioning of SCW-3, SCW-4 and SCW-5”, 24 June 2015, 16h42.

E319/19.3.125, E3/5649, E319.1.21, E1/278.1, E1/279.1, E3/4627, E1/298.1, E1/299.1, E1/290.1, E1/291.1, E1/215.1, E1/256.1, E1/258.1, E1/255.1, E1/269.1, E3/3232, E3/5637, E1/296.1, E3/2120, D313/1.2.16, E3/1682, E3/2792, E3/3857, E3/3973, E1/249.1, E1/252.1, E1/253.1, E1/263.1, E1/264.1, E1/265.1, E1/281.1, E1/283.1, E1/287.1, E1/289.1, E1/257.1, E1/300.1, E1/222.1, E305/13.23.451;

- 4) NUON Chea, KHIEU Samphân and the Co-Prosecutors may not use any of the following documents contained in their respective document lists because they are not part of the evidentiary record of Case 002/01 nor the subject of a pending request for additional evidence on appeal:

E319.1.18 (CF004 D118/259), E3/9118 (E305/13.23.405), E3/5838, Draft-Transcript of the Hearing of Sem Hoeun, 22 June 2015, Draft-Transcript of the Hearing of Sem Hoeun, 23 June 2015, Nayan Chanda, “The Timetable for a Takeover: Hanoi’s Decision to Take Kampuchea was Reached After Months of Careful Planning”, *Far Eastern Economic Review*, Unknown Author, “That Was No F-111; That Was a MiG!”, *Asiaweek*, Anthony Paul, “Plot Details Filter Through”, *Far Eastern Economic Review*, D312.1.59-E3/8707, E319/12.3.10, E319/12.3.10/Corr-1, E319/19.3.125, E319/12.3.2, E319.1.21, E1/278.1, E1/279.1, E319.1.2, E319/23.3.42, E319/21.3.51, E1/298.1, E1/299.1, E1/290.1, E1/291.1, E1/256.1, E1/258.1, E1/255.1, E1/269.1, E1/296.1, E1/249.1, E1/252.1, E1/253.1, E1/263.1, E1/264.1, E1/265.1, E1/281.1, E1/283.1, E1/287.1, E1/289.1, E1/257.1, E1/300.1, E319.1.8, E319.1.23, E319/8.2.4, E319/12.3.8, IS 19.161, D312.2.25, D366/7.1.108, E305/13.23.375, D288/6.68.50, D166/173, D25/17, D25/19, D166/174, E319.1.32, D224.90, D313/1.2.16, E305/13.23.451, D40/20, D22/88, D25/24, D40/21;

- 5) The parties may not use D312.2.25-D366/7.1.1.8, E3/1682, E3/1855, E3/2792, E3/3857, E3/3989, E3/4202 because they are likely statements obtained through the use of torture;
- 6) KHIEU Samphân’s request that the Co-Prosecutors and the Civil Party Lead Co-Lawyers shall not be allowed to use documents E1/197.1, E1/198.1,

E1/199.1, E1/200.1, E1/287.1 and E3/4719 in the examination of the witnesses because the issue of whether statements of Civil Parties may be relied upon for determining the guilt of the Accused is a live issue in the appeal against the trial judgment in Case 002/01 is rejected.

Phnom Penh, 1 July 2015

President of the Supreme Court Chamber



KONG Srim