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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

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ
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Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

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WRITTEN REASONS FOR DECISION ON NUON CHEA'S RULE 92 MOTION TO USE CERTAIN S-21 STATEMENTS

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NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
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1. INTRODUCTION

1. The Trial Chamber is seised of a request filed on 20 April 2016 by the NUON Chea Defence to be allowed to use certain statements allegedly made by people detained at the S-21 Security Centre (“Statements”) on the basis that there is no real risk that they were obtained under torture.¹ Alternatively, the NUON Chea Defence requests the Trial Chamber to exercise its power under Internal Rule 93 to order investigations into the circumstances in which the Statements were obtained before making any decision on their permissible use.² On 2 May 2016, the Co-Prosecutors and the Civil Party Lead Co-Lawyers filed responses to the Request.³ On 12 May 2016, following authorisation by the Trial Chamber,⁴ the NUON Chea Defence filed a combined reply to the responses.⁵ On 19 May 2016, the Trial Chamber issued a decision rejecting the Request, noting that written reasons for the decision would be issued in due course.⁶ The Chamber hereby provides the written reasons for that decision.

2. SUBMISSIONS

2.1. NUON Chea Defence Request

2. The NUON Chea Defence submit that there is convincing evidence that in the cases of KOY Thuon, YIM Sambath and CHEA Non (alias Suong), their S-21 statements were not obtained through torture and that there is no “real risk” that torture occurred in these cases.⁷ The NUON Chea Defence refers to the evidence of KAING Guek Eav (alias DUCH), that he was ordered to personally interrogate KOY Thuon and that KOY Thuon was not tortured by him or others.⁸ The NUON Chea Defence also refers to the evidence of DUCH that YIM Sambath’s interrogation was conducted without torture.⁹

¹ NUON Chea’s Rule 92 Motion to use certain S-21 Statements, E399, 20 April 2016 (“Request”), paras 1, 31-32. *See also* Request, para. 3 referring to T., 27 April 2015, p. 25.

² Request, paras 30, 32.

³ Co-Prosecutors’ Response to NUON Chea’s Motion to use certain S-21 Statements, E399/2, 2 May 2016 (“OCP Response”); Lead Co-Lawyers’ Response to NUON Chea’s Rule 92 Motion to use certain S-21 Statements, E399/1, 2 May 2016 (“LCL Response”).

⁴ Email from Senior Legal Officer, 5 May 2015.

⁵ NUON Chea’s Combined Reply to Co-Prosecutors’ and Civil Party Lead Co-Lawyers’ Responses to NUON Chea’s Rule 92 Motion to use Certain S-21 Statements, E399/3, 12 May 2016 (“Reply”).

⁶ Decision on NUON Chea’s Rule 92 Motion to Use certain S-21 Statements, E399/4, 19 May 2016.

⁷ Request, paras 15-28, 31.

⁸ *See* Request, paras 16-17 and references cited therein.

⁹ *See* Request, paras 19-20 and references cited therein.

3. With respect to CHEA Non, the NUON Chea Defence submit that there were annotations on his S-21 statements indicating that they were written before he was tortured.¹⁰ The NUON Chea Defence notes that the Trial Chamber had previously prevented it from using CHEA Non's S-21 statements, on the basis that the annotation was of questionable provenance given that the annotation appeared at the top of the English translation of the document and not on the original Khmer.¹¹ The NUON Chea Defence submit that there is in fact an annotation of the first page of the original Khmer version of CHEA Non's S-21 statements, and there is another annotation in another portion of his statements indicating that his statements were written on his own accord after the interrogation had ceased for a while.¹² The NUON Chea Defence conclude that in light of this evidence the Trial Chamber should reconsider its previous decision on the use of CHEA Non's S-21 statements.¹³ In the alternative, if the Trial Chamber is not satisfied with the provenance or authenticity of the annotations, the NUON Chea Defence requests the Trial Chamber to exercise its powers under Internal Rule 93 to order investigations into the issue before deciding on the permissible use of CHEA Non's S-21 statements.¹⁴

2.2. Co-Prosecutors' Response

4. The Co-Prosecutors oppose the use of the Statements, except to the extent that their use falls within the exception stated in Article 15 of the Convention Against Torture ("CAT") or they are used in the limited circumstances already authorised by the Trial Chamber.¹⁵ The Co-Prosecutors also submit that further investigations into the circumstances in which the Statements were made are unnecessary and impractical and would inevitably delay the proceedings.¹⁶ The Co-Prosecutors contend that contrary to the NUON Chea Defence submissions, there remains a "real risk" that the Statements were obtained under mental and/or physical torture within the meaning of Article 1 of the CAT.¹⁷ The Co-Prosecutors submit that even in the absence of physical coercion, the conditions of detention in S-21, the constant fear, the extreme mental coercion, including actual and implied threats of torture if

¹⁰ See Request, paras 22-28 and references cited therein.

¹¹ Request paras 24-25.

¹² Request paras 26-27.

¹³ Request para. 29.

¹⁴ Request, para. 30.

¹⁵ OCP Response, paras 2, 29.

¹⁶ OCP Response, paras 2, 29.

¹⁷ OCP Response, para. 3.

“satisfactory” confessions were not provided, meant that there is a “real risk” that the S-21 confessions were obtained using mental and physical torture.¹⁸

5. With respect to KOY Thuon, the Co-Prosecutors submit that none of the evidence cited by the NUON Chea Defence negate the facts demonstrating that there is a “real risk” that his confessions were elicited through torture.¹⁹ They submit that the circumstances in which KOY Thuon was brought to S-21 and interrogated constituted mental torture.²⁰ In addition, the Co-Prosecutors note that the confessions of KOY Thuon which the NUON Chea Defence seeks to use are “almost certainly not those obtained by Duch”, and thus DUCH’s statements that he did not personally torture him bear little relevance to the assessment of whether there was a “real risk” that these confessions were the result of torture.²¹ The Co-Prosecutors refer to evidence which suggests that KOY Thuon’s confessions were indeed obtained using physical torture.²²

6. The Co-Prosecutors reiterate that even if the confessions of YIM Sambath and CHEA NON were not elicited using physical violence, the circumstances of detention and interrogation at S-21 mean that there is a “real risk” that their confessions were the product of mental and physical torture.²³ In addition, the Co-Prosecutors note that the confessions on which the NUON Chea Defence seek to rely include and summarise the confessions of other S-21 prisoners, which are presumed to have been elicited through torture and thus cannot be used with reference to their contents.²⁴ With respect to CHEA Non, the Co-Prosecutors assert that the NUON Chea Defence fails to recognise that the annotation relates only to the statement he made when he first entered S-21, and does not refer to the remainder of his confession which is presumed to have been elicited through torture.²⁵

2.3. Lead Co-Lawyers’ Response

7. The Lead Co-Lawyers submit that given that the Statements were taken at S-21, it has been established that there was a real risk that they were torture tainted, and the onus is on the

¹⁸ OCP Response, paras 3, 14-19.

¹⁹ OCP Response, para. 20.

²⁰ OCP Response, paras 20-21.

²¹ OCP Response, para. 22.

²² OCP Response, paras 23-25 and references cited therein.

²³ OCP Response, paras 25, 27.

²⁴ OCP Response, para. 26.

²⁵ OCP Response, para. 28. The Co-Prosecutors also note that the passage which the NUON Chea Defence sought to quote appears to come from CHEA Non’s later confessions, and not the initial statement, and thus the request for reconsideration is unfounded.

NUON Chea Defence to “show specific circumstances negating that risk” and that they fail to do so.²⁶ The Lead Co-Lawyers submit that the Request does not demonstrate that there was no real risk that the S-21 statements of KOY Thuon, YIM Sambath or CHEA Non were obtained through torture.²⁷ The Lead Co-Lawyers contend that evidence referred to by the NUON Chea Defence, including the statements by DUCH, cannot negate the real risk that torture was used.²⁸ They also point to other indicators which suggest that the statements of KOY Thuon and YIM Sambath were tainted by torture.²⁹ Similarly, with respect to the statement of CHEA Non, the Lead Co-Lawyers submit that the presence of annotations to the effect that statements were freely given at S-21 does not negate the risk that they were obtained through torture.³⁰

2.4. NUON Chea Defence Reply

8. The NUON Chea Defence submit that contrary to the Co-Prosecutors’ argument, in the absence of severe physical violence, neither the detention conditions at S-21 nor the mental coercion alone or in combination is sufficient to amount to torture or to demonstrate a real risk of torture.³¹ In this regard, the NUON Chea Defence notes that the Trial Chamber in Case 001 found that the alleged detention conditions at S-21 constituted “other inhumane acts” rather than torture.³² The NUON Chea Defence support this argument with submissions as to why the conditions experienced by the detainees at S-21 and the mental coercion did not constitute torture and thus cannot block the use of the Statements.³³

9. The NUON Chea Defence make further submissions as to why the conditions of detention and treatment with respect to KOY Thuon and YIM Sambath did not constitute torture.³⁴ The NUON Chea Defence contests the Co-Prosecutors’ suggestion that other annotations on KOY Thuon’s statements suggest he was tortured.³⁵

²⁶ LCL Response, paras 8, 11.

²⁷ LCL Response, paras 12-24.

²⁸ LCL Response, para. 14.

²⁹ LCL Response, paras 15, 18-19 and references cited therein.

³⁰ LCL Response, para. 22. The Lead Co-Lawyers also submit that the NUON Chea Defence request with respect to CHEA Non’s statements is untimely. LCL Response, para. 21.

³¹ Reply, paras 9-10.

³² Reply, para. 11.

³³ Reply, paras 12-25.

³⁴ Reply, paras 26-41, 49.

³⁵ Reply, paras 45-47.

10. The NUON Chea Defence contests the Lead Co-Lawyers' argument that DUCH's evidence cannot negate the real risk of torture. The NUON Chea Defence acknowledge that when a witness uses the word "torture" it does not equate to the use of "torture" in its legal sense. However, it submits that the ordinary use of the word is "broad enough to include its legal counterpart", and that therefore when DUCH stated that "torture" was not used, this could be evidence that torture in a legal sense was not used.³⁶

11. Finally, with respect to CHEA Non, the NUON Chea defence submits that contrary to the Co-Prosecutors' argument, the annotations on his statements were intended to apply to the whole compilation of his statements, and the annotations suggest that his statements were written before he was tortured.³⁷ With respect to the analysis of the handwriting, the NUON Chea Defence suggests that the Trial Chamber could conduct investigations to locate the original copies of the documents and to order forensic analysis when it deems it necessary to have expert assistance.³⁸

3. APPLICABLE LAW

12. Article 38 of the Cambodian Constitution provides that "[c]onfessions obtained by physical or mental coercion shall not be admissible as evidence of guilt."³⁹ Further, Article 321 of the Cambodian Code of Criminal Procedure (CCCP) provides that a "declaration given under physical or mental coercion shall have no evidentiary value."⁴⁰ While torture is criminalised under Cambodian law, the term is not defined and the Code of Criminal Procedure makes no specific reference to it.⁴¹

13. Pursuant to the ECCC legal framework, where Cambodian procedural law does not deal with a particular matter, or where there is a question regarding the consistency of such a rule with international standards, guidance may be sought in procedural rules established at the

³⁶ Reply, paras 42-44

³⁷ Reply, paras 52-53.

³⁸ Reply, paras 56-57.

³⁹ See Decision on Objections to Document Lists: Full Reasons, Supreme Court Chamber, F26/12, 31 December 2015 ("Supreme Court Decision"), para. 31; Decision on Evidence Obtained through Torture, E350/8, 5 February 2016 ("Torture Decision"), para. 22.

⁴⁰ See Supreme Court Decision, para. 31; Cambodian Code of Criminal Procedure, Article 321, internal translation; Article 321 provides generally that all evidence is admissible unless provided otherwise by law.

⁴¹ See Cambodian Criminal Code (2009), Article 188 (listing torture as a crime against humanity), Article 193 (listing torture as a war crime), Article 210 (criminalising torture as an offence and as an aggravating circumstance of other crimes e.g. murder, rape).

international level.⁴² The Chamber recalls its finding that the prohibition against torture contained in the CAT is recognised as a peremptory norm of international law from which States cannot derogate (*jus cogens*), and that by acceding to the CAT, Cambodia has indicated its intent to be bound by its provisions, including Article 15.⁴³

14. Article 15 of the CAT provides that evidence “which has been established” to be the result of torture shall not be invoked as evidence in any proceedings.⁴⁴ However, the exception to Article 15 states that such evidence may be used “against a person accused of torture as evidence that the statement was made.”⁴⁵ The Trial Chamber has previously held that torture-tainted evidence cannot be used for the truth of its contents.⁴⁶

15. The Trial Chamber relied on the standard adopted by the European Court of Human Rights, that it must be established that there is a “*real risk*” that such evidence was obtained through the use of torture for it be excluded”.⁴⁷ The Chamber needs to consider evidence on a case-by-case basis to determine whether there is a real risk that this evidence was obtained through torture.⁴⁸ After the Chamber has made a preliminary determination that there is a real risk that torture was used to obtain a statement, any party seeking to rely upon such evidence may rebut this preliminary determination in particular upon a showing of specific circumstances negating this risk.⁴⁹ The recent Appeal Judgement in Case 002/01 implicitly affirmed this approach to torture tainted evidence.⁵⁰

16. Pursuant to Internal Rule 93, at any time, a Trial Chamber may order additional investigations where it considers that a new investigation is necessary. This necessity must be justified by the interests of justice. Further, the Chamber’s discretion to order additional

⁴² Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law Of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003 (“ECCC Agreement”), Article 12(1); Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 10 August 2001 with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) (“ECCC Law”), Article 23 new.

⁴³ Torture Decision, para. 25.

⁴⁴ See Torture Decision, para. 32.

⁴⁵ See Torture Decision, para. 71 referring to *Othman (Abu Qatada) v. United Kingdom*, para. 266 (“Indeed, the only exception to the prohibition that Article 15 allows is in proceedings against a person accused of torture.”).

⁴⁶ Torture Decision, paras 20-21.

⁴⁷ Torture Decision, paras 33-34 referring to *Othman (Abu Qatada) v. United Kingdom*, para. 276; *El Haski v. Belgium*, paras 86, 88; UN Special Rapporteur 2014 Report, para. 31.

⁴⁸ Torture Decision, para. 35.

⁴⁹ Torture Decision, paras 36-38.

⁵⁰ Appeal Judgement, F36, 23 November 2016, para. 364, referring to Supreme Court Decision, paras 26-28, 30-47, 60-65, 69.

investigations must be understood in the context of the ECCC legal framework, which guarantees the Accused's right to a fair and expeditious trial and grants the President the discretion to exclude any proceedings that unnecessarily delay the trial.⁵¹ Such additional investigations may include interviewing witnesses, seeking information or conducting searches.⁵²

4. FINDINGS

17. At the outset the Chamber recalls that torture involves the “infliction, by an act or omission, of severe pain or suffering, *whether physical or mental*”.⁵³ The Trial Chamber has previously found that acts which are “sufficiently severe as to constitute torture may arise from conditions imposed upon detention” and concluded that at S-21, interrogation techniques were “applied in an environment of extreme fear where threats were routinely put into practice and caused detainees severe pain and suffering, both physical and mental”.⁵⁴

18. The Trial Chamber further recalls its previous finding that a real risk exists that torture was used at S-21 and other security centres to obtain confessions.⁵⁵ In reaching this conclusion, the Trial Chamber referred to its previous findings in the Case 001 Judgement, confirmed on appeal, that torture was used at S-21 to obtain confessions, that where prisoners did not give satisfactory confessions more torture was ordered, and that much of the information contained in the confessions was fabricated.⁵⁶ The Trial Chamber reiterates that it will not permit the use of such confessions, unless the party proposing to use this evidence “establishes that a real risk does not exist that it was obtained through torture”, or it falls within the exception to Article 15 of the CAT.⁵⁷

⁵¹ Decision on NUON Chea Request to Admit New Documents, to Initiate and Investigation and to Summons Mr. Rob Lemkin, E294/1, 24 July 2013, para. 11.

⁵² See Decision on NUON Chea Request to Admit New Documents, to Initiate and Investigation and to Summons Mr. Rob Lemkin, E294/1, 24 July 2013, para. 11; Request for information concerning summaries prepared by TCE-33, E169, 9 February 2012, p. 1.

⁵³ See Case 001 Trial Judgement, E188, 26 July 2010 (“Case 001 Judgement”), paras 353-355 (emphasis added) and references cited therein.

⁵⁴ Case 001 Judgement, paras.355, 360.

⁵⁵ Torture Decision, para. 79.

⁵⁶ Torture Decision, para. 79 referring to Case 001 Judgement, paras 176, 177, 179.

⁵⁷ Torture Decision, para. 79.

19. Given the different standard of proof, the Trial Chamber's current assessment that there is a real risk that statements obtained from S-21 were tainted by torture, may differ from its final conclusion on the allegations of torture.⁵⁸ As the Trial Chamber has previously held:

the right of the Accused to be presumed innocent precludes a final determination on the Accused's culpability for torture until all evidence is adduced and the Chamber delivers its judgement. The Chamber considers that a preliminary finding that a real risk exists that torture was used, based on a *prima facie* assessment of the evidence at the time of the decision, does not impinge upon this right as it does not pronounce on either the guilt of the Accused or the role they may have played in obtaining the statement at issue. It is a preliminary evidentiary ruling necessary to effectuate the obligatory provisions of the CAT.⁵⁹

20. In this case, therefore, the question is whether the Trial Chamber is satisfied based on the evidence that there is no real risk that the Statements were obtained through torture.

21. When the Supreme Court Chamber ruled on objections raised against the use of S-21 statements in Case 002/01 appeal proceedings, it had regard to the findings in Case 001 including with respect to physical mistreatment and psychological suffering and also found that "in the absence of substantiated indications to the contrary" it was satisfied that there was a real risk that statements from S-21 were obtained through torture.⁶⁰ Similarly the Trial Chamber in the instant case had regard to the constant and extreme psychological pressure imposed on detainees leading up to their interrogation and confessions at S-21. The Trial Chamber finds that the treatment of detainees combined with the circumstances and conditions of detention at S-21 could have resulted in severe mental pain or suffering and thus amount to torture. It follows that there remains a real risk that the Statements were obtained through torture, even if certain individuals were not subjected to physical torture.

22. Additionally the Chamber will address the arguments which suggest that there was no physical torture of the individuals in question. The NUON Chea Defence points to the evidence of DUCH that he was ordered to personally interrogate KOY Thuon and that KOY Thuon was not tortured by him or others.⁶¹ Similarly, the NUON Chea Defence also relies on the evidence of DUCH who suggested that YIM Sambath's interrogation was conducted without torture.⁶²

⁵⁸ Torture Decision, para. 39.

⁵⁹ Torture Decision, para. 40.

⁶⁰ Supreme Court Decision, paras 56-57.

⁶¹ See Request, paras 16-17 and references cited therein.

⁶² See Request, paras 19-20 and references cited therein.

23. The Chamber notes that DUCH stated that KOY Thuon had already been under house arrest for several months prior to his transfer to S-21, after which he was detained and shackled in a separate building, questioned repeatedly using “cold methods” of interrogation in order to obtain a satisfactory confession and placed under constant surveillance given the risk of suicide.⁶³ Furthermore, DUCH stated that there was an order not to use torture on KOY Thuon or YIM Sambath, and claimed that neither he nor anyone else “tortured” these individuals.⁶⁴ However, the answers of DUCH also suggest that the confession of KOY Thuon took time, that the latter was subjected to conditions and treatment which forced him to confess, and that in general whether a prisoner was tortured or not depended on the interrogator.⁶⁵ In another interview, DUCH provided a contradictory version of events in which he stated that KOY Thuon was subjected to torture and “hot methods” because he “reacted”.⁶⁶ Even if DUCH’s evidence on this issue is truthful, his answers are not conclusive and leave open the real risk that while he may not have personally tortured KOY Thuon or YIM Sambath, others at S-21 may have inflicted physical torture upon them before they confessed.

24. Having weighed these circumstances, the Chamber is not satisfied that the evidence negates the real risk that at some point during their detention at S-21, and prior to their confessions and subsequent execution, KOY Thuon and YIM Sambath had been subjected to physical or mental torture.

25. Furthermore, the Chamber finds that there are other factors including annotations which indicate that the statements of KOY Thuon and YIM Sambath were tainted by torture. For example, in one of the confessions of KOY Thuon there is an annotation which reads “[o]nly after [we] had made a hole in one side did he answer”.⁶⁷ While the NUON Chea Defence provides an alternative interpretation of this annotation, it is not sufficient to negate the real

⁶³ See Written Record of Interview of DUCH by CIJ, E3/355, 19 November 2008, ERN 00242874, 00242878; Transcript of Proceedings Case 001, E3/5810, 25 November 2009, ERN 00406696; Transcript of Proceedings Case 001, E3/5800, 16 June 2009, ERN 00341984; Suspect Statement of KAING Guek Eav *alias* DUCH, E3/347, 4 April 2012, ERN 00185008-00185009; Written Record of Interview of DUCH by CIJ, E3/1570, 29 November 2007, ERN 00154195.

⁶⁴ See Written Record of Interview of witness KAING Guek Eav *alias* DUCH, E319/42.3.1, 1 February 2016 (“DUCH Interview”), ERN 01213411; Written Record of Interview of DUCH by CIJ, E3/65, 7 August 2007, ERN 00147519; Written Record of Interview of DUCH by CIJ, E3/5772, 6 May 2008, ERN 00209177; Answers of DUCH to the 13 written questions of the CIJ, E3/15, 21 October 2008, ERN 00251389; Written Record of Interview of DUCH by CIJ, E3/356, 25 November 2008, ERN 00242900.

⁶⁵ DUCH Interview, ERN 01213412; Answers of DUCH to the 13 written questions of the CIJ, E3/15, 21 October 2008, ERN 00251389.

⁶⁶ Suspect Statement of KAING Guek Eav *alias* DUCH, E3/347, 4 April 2012, ERN 00185024-00185025.

⁶⁷ S-21 Confession of KOY Thuon, E3/1604, ERN 00769831.

risk that he was subjected to torture, whether physical or mental. With respect to YIM Sambath, DUCH himself testified that his “superior actually asked me not to torture this person [...] but later on, I learned that he was also tortured”.⁶⁸ In addition there is some doubt about whether the colloquial use of the word “torture” by DUCH would cover all situations envisaged by the legal definition of the term.

26. With respect to CHEA Non, the Trial Chamber notes that the annotations referred to by NUON Chea suggest that the former’s S-21 confessions were written before he was tortured.⁶⁹ However, there is some ambiguity and uncertainty as to whether these annotations relate only to the statement CHEA Non made when he first entered S-21 or to the entirety of his S-21 statements. The Chamber has had regard to the submissions of the parties in light of the wording and context of these annotations. The Chamber also noted the uncertainty surrounding the provenance and source of these annotations. Having weighed these factors, the Chamber is not satisfied that the content of the annotations can negate the real risk that CHEA Non’s S-21 statements were made under torture.

27. The Chamber is therefore not satisfied that the evidence before it demonstrates the existence of specific circumstances sufficient to rebut the preliminary determination that there is a real risk that torture was used to obtain statements made by detainees at S-21. The Chamber therefore will not allow, at this stage of proceedings, the NUON Chea defence to use the Statements for the truth of their contents.

28. Finally, the Chamber turns to the NUON Chea Defence request for further investigative action pursuant to Internal Rule 93 to ascertain the provenance and authenticity of the annotations found on the Statements. The Chamber does not consider that conducting further investigative action would be in the interests of justice given that seeking evidence on the authenticity and provenance of the annotations would be impossible to obtain within a reasonable time and would unnecessarily delay the trial. In any event, the Chamber is not satisfied that the NUON Chea Defence has demonstrated that even if the authenticity of the annotations were to be established by a forensic expert, it would be an unequivocal factor sufficient to rebut its preliminary determination that there is a real risk that either mental or physical torture was used to obtain the Statements made by these detainees at S-21. The

⁶⁸ Transcript of hearing on the substance in Case 002/01, E1/54.1, 27 March 2012, ERN 00795577.

⁶⁹ See S-21 Confession of CHEA Non alias Suong, E3/1892, 20 February 1977, ERN 00096949.

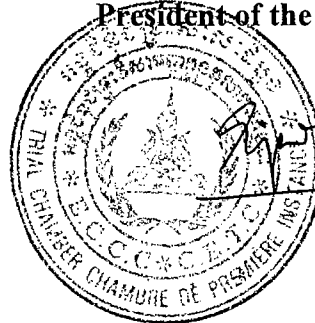
Chamber therefore does not consider that a new investigation is necessary and thus the request for further investigative action is dismissed.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

DENIES the Request to allow the use of the Statements, except within the limited circumstances authorised by the Chamber in the Torture Decision; and

DENIES the Request to conduct further investigations under Internal Rule 93.

Phnom Penh, 26 January 2017
President of the Trial Chamber



[Handwritten signature]
Nil Nonn