

លេខ/ល: ១ 194

BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 002/19-09-2007-ECCC/OCIJ  
Filing Party: Nuon Chea Defence Team  
Filed to: OCIJ  
Original language: English  
Date of document: 14 August 2009

CLASSIFICATION

Classification Suggested by Filing Party: PUBLIC  
Classification of OCIJ:  
Classification Status:  
Review of Interim Classification:  
Records Officer Name:  
Signature:

សាធារណៈ  
CONFIDENTIAL  
CONFIDENTIAL  
17/08/2009  
សាធារណៈ  
PUBLIC  
06/11/2009

FOURTEENTH REQUEST FOR INVESTIGATIVE ACTION

**ឯកសារដើម**  
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL  
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):  
..... 14 / 08 / 2009 .....

ម៉ោង (Time/Heure): ..... 11.5.05 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... S.A.N.N. RADA .....

**ឯកសារបានតម្កល់ត្រឹមត្រូវតាមច្បាប់ដើម**  
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME  
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date /Date de certification):  
..... 18 / 08 / 2009 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
du dossier: ..... C.A. My .....

Filed by

Counsel for Nuon Chea:  
SON Arun  
Michiel PESTMAN  
Victor KOPPE  
PRUM Phalla  
Andrew IANUZZI  
Annie O'REILLY (Intern)

Distribution

Co-Prosecutors:  
CHEA Leang  
Robert PETIT  
  
All Defence Teams  
  
All Civil Parties

## I. INTRODUCTION

1. Pursuant to Rule 55(10) of the ECCC Internal Rules (the 'Rules'), counsel for Charged Person Nuon Chea (the 'Defence') submit this request for investigative action to the Office of the Co-Investigating Judges (the 'OCIJ').

## II. ALLEGATIONS

2. According to the Office of the Co-Prosecutors (the 'OCP'):
  - a. 'Nuon Chea [...] as well as some other senior CPK cadre [...] decided matters of internal and external security.'<sup>1</sup> 'He also became Vice Chairman of the CPK Centre Military Committee which directed internal [...] security. Regarding internal security, he supervised all security matters as the coordinator between S-21 and the zones.'<sup>2</sup>
  - b. 'Between 1975 and 1978, CPK officials executed up to 12,000 people at a security and detention facility at Kraing Ta Chan (('KTC')) in Kus Commune, Tram Kok District, Takeo Province, Southwest Zone.'<sup>3</sup>
  - c. Mr Nuon (i) 'commanded, directed, and otherwise exercised effective control over the various [CPK/DK] organisational structures [...] which were involved in the perpetration of [these and other alleged] crimes';<sup>4</sup> 'promoted, instigated, facilitated, encouraged, and/or condoned the perpetration of [these and other alleged] crimes';<sup>5</sup> and 'planned, directed, co-ordinated, and ordered the unlawful killing of various groups within the population of Democratic Kampuchea [...].'<sup>6</sup>

For his part, Mr Nuon denies these allegations.

1 [Redacted]  
2  
3  
4  
5  
6

## III. INFORMATION ON THE CASE-FILE

3. A recently filed OCP request for investigative action suggests: 'There is [...] evidence that Ta Mok and Nuon Chea visited and had knowledge of KTC's operation.'<sup>7</sup> Yet, this assertion is both misleading and, largely, unsubstantiated. Of the five statements cited in support, none indicates—in any way—that Mr Nuon 'had knowledge of KTC's operation'. And only [Redacted] second statement arguably links Mr Nuon with KTC itself. (The other four statements refer *only* to Ta Mok.) As discussed in detail below, [Redacted] account is problematic for a variety of reasons.
4. On 29 October 2007, [Redacted] was interviewed by delegated OCIJ investigator [Redacted] pursuant to a rogatory mission instigated by the Co-Investigating Judges (the 'CIJs'). In discussing, *inter alia*, events which took place in and around KTC from 1972 through 1979, the witness noted that '[a]side from Ta Mok' (whom he knew 'very well'), he never met or saw any 'other senior people'.<sup>8</sup> According to the written record of the interview, the witness did not mention Mr Nuon by name or otherwise. However, as noted in the investigators' subsequent report to the CIJs, the witness had made additional comments 'off record':<sup>9</sup>

the witness revealed additional information regarding [a] meeting in 1976 or 1977 he had with Nuon Chea at the house of Baray sub-district chief Sao where Nuon reportedly told the sub-district chief Sao and District 105 chief Chhim not to kill him, following advice from Ta Mok. The witness also alleges he met Nuon Chea near his house in Tram Kok on 20 April 1975 where at that time thousands of evacuees arrived at Wat Champa, located in front of his house.<sup>10</sup>

According to the report, [Redacted] indicated that he was willing to be re-interviewed at a later date and 'put on record at the ECCC'.<sup>11</sup>

5. Nearly five months later, on 12 March 2008, the [Redacted] was interviewed again, this time by delegated OCIJ investigators [Redacted] and [Redacted] pursuant to a

7  
8  
9  
10  
11

[Redacted]

subsequent rogatory mission. The witness noted that he wished 'to add to the responses [he] gave on 29 October 2007 in order to clarify [his] responses'.<sup>12</sup>

Q: After you left Kraing Ta Chan prison in 75, you were at Baray until January 79, correct?

A: Yes, that is correct. [...]

Q: During 1970 until 1975, did you meet any others in high-level leadership of the Khmer Rouge.

A: *I never met anyone other than Ta Mok.* [...]

Q: From April 75 until January 1979, you were in District 108, correct?

A: That is indeed true. District 108 was called Baray Subdistrict during the Pol Pot era. [...]

Q: From 1975 until 1979, you say you met Ta Mok frequently, and you say you saw Nuon Chea twice, is that correct?

A: I saw Tak Mok frequently. [...] *I saw Nuon Chea once at Kraing Ta Chan, that is, in the Kraing Ta Chan Office compound, not inside the prison. I recognized him because Khmer Rouge cadres who were imprisoned with me told me.*

Q: Did you meet Nuon Chea again after that?

A: I met Nuon Chea once in late 1976 when I went to watch a movie and Chinese circus in Takeo Province, where Nuon Chea read an approximately ten minute long speech at the opening ceremony. [...] Nuon Chea, in his speech, said that we were farmers, we would transform our country into an agricultural industry.'

Q: Did you ever speak with Nuon Chea when you saw him those two times?

A: I never did. I heard [Redacted] who was a driver with me, say that Nuon Chea told [Redacted] [Redacted] not to kill me, to help reeducate and instruct me. [Redacted] [Redacted] is dead now. I don't know where [Redacted] is. He disappeared in 1979.<sup>13</sup>

[...]

Q: Did you see the prison chief Ta Chhen communicate with Nuon Chea?

A: I saw Ta Mok enter the Kraing Ta Chan prison compound, but I don't know about Nuon Chea.<sup>14</sup>

The investigators' subsequent report to the CIJs noted that [Redacted] 'is able to give further evidence of seeing Nuon Chea on two occasions: First, in 1974 whilst a prisoner detained within Kran Tachan Security Office, he saw him (Nuon Chea) visiting the senior cadres of the prison. Second, in 1976 when he attended a large political meeting in Takeo at which Nuon Chea was a speaker.'<sup>15</sup>

6. As noted above, [Redacted]'s account raises a number of issues:

12 [Redacted]  
13 [Redacted]  
14 [Redacted]  
15 [Redacted]

- a. The alleged sighting of Mr Nuon at KTC does not appear to have been mentioned to the first investigator, even in [Redacted] 'off record' remarks.
- b. It appears that the alleged sighting occurred while the witness was imprisoned at KTC—that is, prior to 17 April 1975 (the beginning of this tribunal's temporal jurisdiction). The second investigators' report to the CIJs puts the event at some point in 1974.
- c. According to the witness, Mr Nuon was not allegedly seen 'inside the prison', but rather in the KTC 'office compound'. And the witness doesn't know whether Mr Nuon ever entered the 'prison compound' or communicated with KTC chief [Redacted].
- d. The witness—who had not met any 'high-level' Khmer Rouge leaders between 1970 and 1975 apart from Ta Mok—did not recognize Mr Nuon himself at KTC. Rather, [Redacted] was allegedly informed of Mr Nuon's identity by his fellow inmates.

In sum, all the witness actually appears to know regarding Mr Nuon's alleged ties to KTC is that, at some point prior to 17 April 1975, a man who was identified by others as Mr Nuon was seen at the security center's office compound.

7. Finally, potentially exculpatory information—that Mr Nuon allegedly told the [Redacted] [Redacted] not to kill the witness, but to help reeducate and instruct him<sup>16</sup>—was excluded from a report to the CIJs.<sup>17</sup>

#### IV. RELEVANT LAW

8. The Defence adopts by reference the submissions contained in its previously filed requests for investigative action. Moreover, given the CIJs' responsibility to 'conduct their investigation impartially'<sup>18</sup>, the Defence presumes that the OCIJ is attempting to

16 [Redacted]  
 17 [Redacted]  
 18 [Redacted]

uncover any material that may suggest the innocence or mitigate the guilt of Mr Nuon or affect the credibility of the collected evidence.<sup>19</sup> Finally, the Rules permit reference to the recordings of witness interviews 'in case of contestation of the veracity of the written record of interview'.<sup>20</sup>

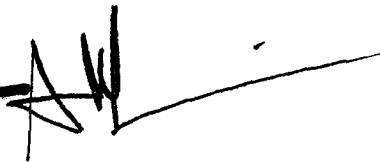
#### V. REQUEST

9. Given the various issues raised by [Redacted]'s account (and the OCP's clear intention to rely thereon in attempting to ultimately prove its case), it is necessary for the Defence to be informed *precisely* of the potential evidence provided to the delegated OCIJ investigators. In this regard, it is unclear whether the current format of [Redacted]'s statements represents an accurate account of what was said by the witness and his OCIJ interlocutors. Accordingly, the Defence hereby requests the OCIJ to order the verbatim transcription (and translation into English) of the audio tapes of both of [Redacted]'s interviews.

CO-LAWYERS FOR NUON CHEA



SON Arun



Michiel PESTMAN & Victor KOPPE

<sup>19</sup> See, e.g., Rule 53(4) (where the Rules provide a workable definition of exculpatory material).

<sup>20</sup> Rule 25(1)(g).