

No: D258



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the
Courts of Cambodia

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges
Bureau des Co-juges d'instruction

សំណុំរឿងព្រហ្មទណ្ឌ

Criminal Case File /Dossier pénal

លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Investigation/Instruction

លេខ/No: 002/19-09-2007-ECCC-OCIJ

The Second of December, two thousand and nine, at 9:15 a.m.

We, You Bunleng យូ ប៊ុនឡេង and Marcel Lemonde, Co-Investigating Judges of the Extraordinary Chambers,

with Mr. Ham Hel ហាម ហ៊ែល and Mr. Ly Chantola លី ច័ន្ទតុលា as Greffiers

Noting the Law on the establishment of the Extraordinary Chambers, dated 27 October 2004

Noting Rule 58 of the Internal Rules of the Extraordinary Chambers,

With Ouch Channora អ៊ូច ចាន់ណូរ៉ា and Bell Sak Pheakdey (បែល សក្កិភក្តី), sworn interpreters of the Extraordinary Chambers,

The Charged Person identified below has appeared before us:

Kaing Guek-Eav កាំង ហ្គេកអ៊ាវ alias Duch ឌុច, male, born on 17 November 1942,

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religions ព្រះមហាក្សត្រ

DOCUMENT RECEIVED/DOCUMENT REÇU

ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/date de reception):

11 / DEC / 2009

ម៉ោង (Time/Heure): 15:30

មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé
du dossier: C.A. 24

កំណត់ហេតុនៃការតប្រជុំ

Written Record of Confrontation

Procès-verbal de confrontation

ឯកសារត្រឹមត្រូវតាមច្បាប់

CERTIFIED COPY/COPIE CERTIFIÉE CONFORME

ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date /Date de certification):

14 / 12 / 2009

មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé
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Charged with **Crimes against humanity** and **Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 5, 6, 29 (New) and 39 (New) of the Law on the establishment of the Extraordinary Chambers, dated 27 October 2004.

The Co-Prosecutors of the Extraordinary Chambers, Mr. William Smith – Acting International Co-Prosecutor and Mrs. Chea Leang ជា លាង were duly notified of this interview by Notification Letter dated 23 November 2009:

- Mrs Chea Leang ជា លាង was represented by Mr Pich Sambath ពេជ្រសម្បត្តិ, Senior Assistant Co-Prosecutor,
- Mr William Smith was represented by Mr Vincent de Wilde d'Estmael, Senior Assistant Co-Prosecutor.

Kar Savuth កាវ សាវុត្ត and François Roux, Co-Lawyers for the Charged Person, who were duly informed of this interview by summons dated 23 November 2009, have been able to examine the case file since that time. Mr Kar Savuth was present and Mr. François Roux was absent.

The witnesses, SAUT Toeung ស្មូត ទៀង, Male, born in 1950 at Lae Village, Ta Lao subdistrict, Andaung Meas District, Ratanakiri Province, currently domiciled at Au Chheu Krâm Village, Steung Kach subdistrict, Sala Krao District, Pailin City, who was summoned by order requesting the judicial police to compel the witness to appear ("ordre de comparaître") and sworn in pursuant to Rule 24 of the Internal Rules of the Extraordinary Chambers, is present.

The original of this record is written in the Khmer language.

Confrontation

Question from the Co-Investigating Judges to the Charged Person: Your lawyer, François Roux is absent. Do you wish to make any comments in that respect?

Charged Person's Response: No.

Question from the Co-Investigating Judges to the Charged Person: Do you know the witness who is present here? We want to point out for the record that we have not given you his identity.

Charged Person's Response: I wish to say that the person who is present today is Toeung ទៀង, Uncle Nuon's ឆ្មា ឈួន messenger.

Question from the Co-Investigating Judges to the Charged Person: Can you please tell us how many times you met him, under what circumstances, and what role he played?

Charged Person's Response: He delivered files, that is S-21 confessions, to Uncle Nuon ឆ្មី; to do so he would come to my office, which was located on Street 348, just across from the photographers' house, East of Street 105 (the wastewater canal). Toeung ទៀង was NUON Chea's ឆ្មី ជា messenger from 15 August 1977 until Nuon Chea's ឆ្មី ជា trip to China. I presume Toeung ទៀង was NUON Chea's ឆ្មី ជា messenger before that, however I really have no idea. He only came to my house after 15 August 1977. I would add that from time-to-time I gave Toeung ទៀង coconuts for NUON Chea ឆ្មី ជា.

Witnesses Response: I don't know what he is talking about.

Charged Person's Response: I would like to react to what was just said: in fact, he said "*I do not understand what Duch ឌុច is saying*".

I am not able to give you an exact date for the trip to China, but I do know that it was after Pol Pot's ប៉ុល ពត trip to China. Pol Pot ប៉ុល ពត was accompanied by a party and governmental delegation. Traveling with him were Ieng Sary អៀង សារី, Vorn Vét វ៉ែត វ៉េត, Chuon Choeun ជួន ជឿន and others whom I do not know. I was able to identify Pâng ប៉ង when I saw the film of that trip. With respect to the delegation that accompanied NUON Chea ឆ្មី ជា, I was not aware of its composition and I never saw any film of that National Assembly delegation. Toeung ទៀង was the messenger who came to see me most frequently. CHIV ជីវ alias Sot សុត came less frequently and Sin ស៊ីន came to see me even more rarely. Toeung ទៀង would come every 3-5 days approximately to collect the confessions. When NUON Chea ឆ្មី ជា wanted to see me, he would ask me to leave S-21 and then his messenger Toeung ទៀង would telephone me. There was a secret code: if the appointment was to meet at the Sports Complex, then he would use the term "*loe tuol*" (on the plateau); if we were to meet at the Buddhist Institute, then the term "*nov moat teuk*" (on the waterfront) would be used. When Toeung ទៀង accompanied NUON Chea ឆ្មី ជា on the trip to China, he was replaced as messenger by either

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Lin លីន or Pâng ប៉ង់. You have asked me who the confessions were given to in NUON Chea's ឆ្លើយ ជា absence: I wasn't told, but I surmise that they were given to Pol Pot ប៉ុល ពត. I became aware that Toeung ទៀង had accompanied NUON Chea ឆ្លើយ ជា on his trip to China when Lin លីន came in his place: he indicated to me that Toeung ទៀង was "at international". I did not see Chiv ជីវ or Toeung ទៀង again after the trip to China. I continued to deal with either Lin លីន or Pâng ប៉ង់.

Question from the Co-Investigating Judges to the Witness: You have just heard what the Charged Person has declared. You have sworn to tell the whole truth and you were informed that you have the right not to incriminate yourself. What do you have to say?

Statement by the International Co-Prosecutor Vincent De Wilde d'Estmael: Before giving the floor to the witness, the Co-Prosecutors wish to impress upon him that they have absolutely no intention of prosecuting him for anything he may have done during the Khmer Rouge era and that he should have absolutely no concerns on that matter.

Witnesses Response: I do not clearly understand what has been said.

Statement by Co-Investigating Judge, You Bunleng, to the Witness: We are explaining to you that you will not be prosecuted for events that occurred in Democratic Kampuchea and that you have the right not to incriminate yourself, although you also have the duty to speak the truth. Therefore, you have no need to be concerned because you are being interviewed here as a witness. The Charged Person states clearly that you were NUON Chea's ឆ្លើយ ជា messenger; other witnesses have also explained that they knew you, what do you have to say in response?

Witness's Response: I don't know much. I have already told of my experiences. I do not know Duch ឌុច well. You are asking me whether he is telling the truth or if he is lying. I think he is mistaken. I only saw him once at the Sports Complex. I have never entertained the relations with him that he is describing now. I must have come across him in the street, perhaps in 1975. I did not even know his name, only his face.

Question from the Co-Investigating Judges to the Witness: Can you provide clarification regarding your family and your offspring?

Witness's Response: I have many children, 9 sons. At your request, I am writing down on a piece of paper the names of the eldest and second eldest: Penh ពេញ (born in 1981) and Ti ទី (born in 1984). I add that I got married at the end of 1979. When I joined the revolution, I was still single.

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Charged Person's Response: When Toeung ទៀង came to see me at the end of 1977, or early 1979, I asked him if he was married and if he had children. I recall the discussion very clearly. He told me that he had a son and that his son's name was "Fron ហ្រង់". I know that Toeung ទៀង was a member of an ethnic minority because his accent was not Khmer at all.

Witnesses Response: I do not have a son called "Fron ហ្រង់" and what Duch ឌុច is saying is not true. As I explained when I was interviewed by the investigators, I am Tumpoun Laotian.

Charged Person's Response: I can also add that when Toeung ទៀង came to see me, he rode a blue CL series Honda motorbike.

Witnesses Response: Within my unit, there were two CL motorbikes: one was blue and was red. I would sometimes use these motorbikes with the permission of my superior Kham Mi ខាំ មី.

Question from the Co-Investigating Judges to the Witness: When interviewed by the investigators, you explained that between 1975-79, you were a team leader at Yo-10, a protection team unit responsible for guarding the outside boundaries of K-1 and K-3. You specified that you were solely responsible for the general protection of the whole office. Under such conditions, why did you need to use the motorbikes that belonged to the service?

Witnesses Response: I used them to ensure communication with the staff.

Question from the Co-Investigating Judges to the Witness: Numerous witnesses interviewed by the OCIJ investigators during the judicial investigation have identified you as being the personal bodyguard of NUON Chea ឆ្មោះ ជ័រ, as well as being his messenger: this was the case for DENG Chiv ជីវ (D200/7), OEUN Tan អឿន តាន (D200/8), THA Sot ថា សុត (D92/8), SÀ Vi ស វី (D91/9), etc. How can you explain the fact that all of this testimony is consistent with Duch's ឌុច statement?

Witness's Response: All of those witnesses are not speaking the truth. They are most certainly afraid following what happened during the Khmer Rouge regime. I do not know those people.

Question from the Co-Investigating Judges to Witness: But they seem to know who you are.

Witness's Response: I would like to clarify that there are two people called Toeung ទឿង. One called SAUT Toeung ស្មៅ ទឿង (myself) and KHAM Toeung ខាំ ទឿង, who has disappeared. I do not know where he is. So perhaps the witnesses are confused.

Question from the Co-Investigating Judges to Charged Person: We are showing you a document entitled "List of people working in K1 and K3" (IS doc. No. 18.56, 00021153-00021161). Toeung ទឿង is listed as "*defending brother number two*". This document is from the S-21 archives. Have you ever seen this document before? Do you have any comments to make?

Charged Person's Response: I never saw this document before the confrontation you organized on 20 October 2009 with DENG Chiv ដឹង ជីវ. I confirmed what I said at that time with regard to this document, on which I can identify two names: Toeung ទឿង, present, and CHIV ជីវ alias Sot សុត.

Witnesses Response: I have never seen this document, on which is written under the title K-3 (*1. Toeung ទឿង, guard of Brother number two, from the Northeast, Tumpoun ethnic group*). I do not agree. I maintain that I was not NUON Chea's នួន ជា bodyguard and I repeat that there are two people named Toeung ទឿង.

Question from the Co-Investigating Judges to the Charged Person: When did you last see Toeung ទឿង?

Charged Person's Response: I have not see him again between the time he left for China and today. All I noted in 1983 was that NUON Chea នួន ជា had changed his bodyguard. When I asked for news of Toeung ទឿង from several people, in particular OEUN Tan អឿន តាន, in Samlot, he answered that Toeung ទឿង was now a peasant in Pailin ប៉ៃលិន.

Question from the Co-Investigating Judges to the Charged Person: You have not seen Toeung ទឿង for about 32 years now. This witness challenges your version. Last time you were mistaken, when you were in the presence of DENG Chiv ដឹង ជីវ, you thought you recognized Toeung ទឿង. Today, are you certain that you recognize Toeung ទឿង and what makes you categorical in your assertion?

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Charged Person's Response: Today, I am categorical. I recognize his face, specifically his nose, his mouth and his ears and the back of his head—although, his hair has changed a great deal.

Witnesses Response: I maintain that there is confusion between the two Toeungs ទៀង because we are similar in appearance.

Question from the Co-Investigating Judges to the Witness: Do you smoke?

Witnesses Response: Yes, I began to smoke during the liberation of Phnom Penh in April 1975 and I have not stopped since. During the Democratic Kampuchea era, I smoked Ara and Bastos brand cigarettes.

Charged Person's Response: I'd like to point out that at the time, there was only one brand of cigarettes: Ara (Bastos were no longer available in Cambodia many years prior to that, possibly since LON Nol's លន់ នល់ coup d'Etat). Furthermore, I'd like to add that Toeung ទៀង never asked me for cigarettes when he came to my home, so I cannot say whether he smoked or not.

Witnesses Response: I'll say it again, I never knew Duch's ឌុច house.

Question of the Co-Prosecutor Vincent De Wilde d'Estmael: Does the witness know another person called Toeung who resides in the village of Au Chheu Krâm in Pailin?

Witnesses Response: I am the one who lives at that address.

Question by the Co-Prosecutor Vincent De Wilde d'Estmael: SÀ Vi ស វី alias Song សុង, a witness, stated during an interview on 5 December 2007 (D91/9), commenting the document that was presented earlier, that the "Toeung ទៀង" mentioned and identified as the bodyguard of Uncle No. 2 resided in Au Chheu Krâm អូឈើក្រម. Therefore, it must be the witness present here today.

Witnesses Response: I know SÀ Vi ស វី; he is my village chief.

Question from the Co-Investigating Judges to the Witness: Why did you say earlier that you did not know him?

Witnesses Response: The name was not pronounced properly and I did not understand that you were talking about SÀ Vi ស វី. I met him in 1979. I know him well, but I would point out that I am in a

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conflict with him and that he has undoubtedly sought to do me harm because we are currently competing with one another to be village chief.

Question by the Co-Prosecutor Vincent De Wilde d'Estmael: Was the witness a member of the communist party during the time of Democratic Kampuchea?

Witnesses Response: I was a member of the Youth League.

Question from the Co-Investigating Judges to the Witness: Therefore, overall, everything seems to indicate that you were indeed the former bodyguard of NUON Chea ឡាន ជ័រ. You maintain that this is untrue?

Witness's Response: I maintain that this is untrue. I was only responsible for security of the outside boundaries.

Question by the Co-Prosecutor Vincent De Wilde d'Estmael: If the witness was responsible only for the security of the outer boundaries at K-1 and K-3, how is it possible that he only met SÀ Vi ស៊ី វី in 1979, since that witness was also responsible for protection.

Witnesses Response: SÀ Vi ស៊ី វី was too young. I only met him in 1979.

Question from Co-Investigating Judges to the Witness: How many groups were responsible for protecting K-1 and K-3?

Witnesses Response: There was one group assigned to the interior and one group assigned to the exterior. My unit was composed of approximately 10 people. You have asked me for the names, but the events occurred more than thirty years ago and I cannot accurately recall everything. I do remember that there were Yang យ៉ាង, Pèn ប៉ែន, Loeun លៀន, Lin លីន and Rèt រ៉េត. I don't remember the others, there was a rotation every 2-3 months.

Statement by the international Co-Prosecutor, Vincent De Wilde d'Estmael, to the witness: the Co-Investigating Judges believe that the witness has lied and leave them to decide whether Internal Rules 35 and 36 relating to false testimony should be applied.

☒ The original of the audio-visual recording was sealed before the Charged Person and his lawyers and was signed by us, the Greffiers, the Charged Person, and his lawyers.

☒ A copy of the original audio-visual recording was provided to the Charged Person. The witnesses was given a copy of the Written Record.

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Chambres extraordinaires au sein des tribunaux cambodgiens, Route nationale 4, Choam Chao, Dangkoa, Phnom Penh

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At 13.10 p.m., we asked the Greffier to read out this Written Record of Confrontation as recorded.

☒ After the Written Record was read out to the Charged Person, the Charged Person stated that he had no objections and agreed to sign it.

ជនត្រូវចោទ	មេធាវីជនត្រូវចោទ	សហព្រះនាជំនួយ	អ្នកបកប្រែ	ក្រឡាបញ្ជី	សហចៅក្រមស៊ើបអង្កេត
Charged person	Lawyer of Charged person	Co-Prosecutors	Interpreter	Greffiers	Co-Investigating Judge
Personne mise en examen	Avocat de la Personne mise en examen	Co-procureurs	Interprète		Co-juges d’instruction

សាក្សី
Witnesses
Témoins