



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



TRANSCRIPT OF PROCEEDINGS
PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

17 November 2014
Trial Day 226

Before the Judges: NIL Nonn, Presiding
Claudia FENZ
Jean-Marc LAVERGNE
YA Sokhan YOU Ottara
Martin KAROPKIN (Reserve)
THOU Mony (Reserve)

Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
SON Arun

Trial Chamber Greffiers/Legal Officers:
Russell HOPKINS
Sophie MAURICE
SE Kolvuthy

Lawyers for the Civil Parties:
Marie GUIRAUD
HONG Kimsuon
Yiqiang LIU
LOR Chunthy
PICH Ang
SIN Soworn
VEN Pov

For the Office of the Co-Prosecutors:
Joseph Andrew BOYLE
Nicholas KOUMJIAN
Dale LYSAK
SENG Leang
SREA Rattanak

For Court Management Section:
SOUR Sotheavy
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. KHIEU Samphan	Khmer
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn, Presiding)	Khmer
Mr. PICH Ang	Khmer

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1 PROCEEDINGS

2 (Court opens at 0915H)

3 MR. PRESIDENT:

4 Please be seated.

5 Today the Trial Chamber of the Extraordinary Chambers in the
6 Court of Cambodia, with me Nil Nonn as the President; Judge
7 Lavergne; Judge Ya Sokhan; Judge Claudia Fenz; Judge You Ottara;
8 and two Reserve Judges: Judge Thou Mony, National Judge; and
9 Judge Martin Karopkin, an International Reserve Judge; I declare
10 the hearing to be opened on the substantive hearing in Case
11 002/02.

12 [09.17.26]

13 The Chamber would like to inform the public that the Trial
14 Chamber will commence the hearing in Case 002/02 in relation to
15 the facts at the Tram Kak cooperative and the <acts committed
16 against the> Buddhists <> in Krang Ta Chan and <four> witnesses
17 <and civil parties> to be called -- that is, 2-TCW-936,
18 2-TCCP-296, 2-TCCP-954 and 2-TCW-834. Other witnesses<, civil
19 parties> and experts will be announced in due course for the
20 Parties.

21 For today's hearing, we will hear the testimony of the witness
22 2-TCW-936 as scheduled.

23 [09.18.55]

24 The Greffier, <Ms. Se Kolvuthy,> could you report the attendance
25 of the Parties and individuals to today's proceedings <in Case

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1 002/02>, as well as the taking oath of the witness <and his
2 relation or affiliation with any parties in the case. The first
3 witness> who is supposed to be testifying today -- that is,
4 2-TCW-936.

5 GREFFIER:

6 Mr. President, for today's proceeding, it is noted that all
7 parties are present except the defence counsels for Khieu
8 Samphan, as they continue to boycott the proceedings per their
9 letter dated 13 November 2014.

10 The witness to be testifying today -- that is, 2-TCW-936, is
11 ready to be called in and now awaiting in the room.

12 [09.20.08]

13 The Witness declares that to their knowledge, the witness has no
14 relationship or affiliation with any of the two Accused -- that
15 is Nuon Chea and Khieu Samphan, or to any of the civil parties
16 recognised before the Trial Chamber in Case 002. The witness
17 already took an oath before the Iron Statute this morning. Thank
18 you.

19 MR. PRESIDENT:

20 Thank you.

21 The Chamber regrets that the defence counsel for Khieu Samphan
22 continues the boycott in the proceedings before this Trial
23 Chamber. We would like to enquire from Khieu Samphan whether <you
24 know> about the absence of your counsel this morning and can you
25 inform the Chamber of the whereabouts of your counsel?

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1 [09.21.20]

2 MR. KHIEU SAMPHAN:

3 Thank you, Mr. President.

4 First of all, good morning to all the Judges, and to everyone in
5 and around the courtroom, as well as my Cambodian compatriots and
6 venerable monks.

7 First of all, I would like to inform the Trial Chamber that I am
8 here today before Your Honours as I am compelled. In fact, I am
9 still busy with my drafting of the Appeal.

10 And secondly, my defence counsels, as Your Honours are aware,
11 based on my instruction, they are not present here. And this does
12 not mean that they are boycotting the proceedings. No, they are
13 not. But they follow my instruction and they are working hard on
14 my Appeal brief. As Your Honours know, my Appeal brief is very
15 important to me and I informed Your Honours already about that.

16 [09.22.59]

17 And thirdly, I, myself, do not disengage my counsels' service,
18 but based on my instruction, they are working on my brief Appeal.

19 Thank you.

20 MR. PRESIDENT:

21 Can you tell the Chamber, have you made any discussion directly
22 or personally with your counsel? And if so, when is the last
23 time?

24 [09.23.30]

25 MR. KHIEU SAMPHAN:

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1 I had a direct discussion with my national counsel, Kong Sam Onn
2 -- that is on last Friday.

3 MR. PRESIDENT:

4 Did you have any discussion with your international counsel? And
5 if so, when was the last time? Was your international counsel
6 present during your communication with your national counsel
7 <last Friday>?

8 MR. KHIEU SAMPHAN:

9 Only my national lawyer, Kong Sam Onn, was present <last Friday>
10 and my International Counsel was in Paris, but he -- but my
11 international counsel has regular communication with my defence
12 team.

13 [09.24.23]

14 MR. PRESIDENT:

15 Thank you, Mr. Khieu Samphan.

16 Any Judges of the Bench would like to ask the accused Khieu
17 Samphan?

18 Judge Lavergne, you may proceed.

19 JUDGE LAVERGNE:

20 Mr. Khieu Samphan, can I clarify something? You said that you had
21 been speaking in person on Friday with your Cambodian counsel.

22 Can you tell us precisely when you spoke personally and directly
23 with your international counsels? Thank you.

24 MR. KHIEU SAMPHAN:

25 I met with my international counsel, that is, before she returned

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1 to Paris, so I met her during our last hearing. But I -- let me
2 stress again, my international counsel has a regular
3 communication with my defence team in my Appeal brief
4 preparation. Thank you.

5 [09.25.44]

6 JUDGE LAVERGNE:

7 Now, if I've understood correctly what you've just told us,
8 today<,> none of your international counsels are present here in
9 Phnom Penh, and as far as you're aware, both of them are in
10 Paris; is that right?

11 MR. KHIEU SAMPHAN:

12 Yes, she is in Paris.

13 MR. PRESIDENT:

14 The Prosecution, you may proceed.

15 [09.26.34]

16 MR. KOUMJIAN:

17 Good morning. Thank you, Mr. President, Your Honours.

18 I would just like to take this opportunity to briefly describe
19 again our proposal, which we filed some time ago. We filed, I
20 believe on the 22nd of October, for an amicus curiae and I would
21 like to do that because our proposal has been consistently
22 misrepresented by the Defence to the public. So, now that we have
23 the public present here, I would like to explain to them briefly
24 what we are proposing.

25 [09.27.08]

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1 As we heard this morning very clearly, Mr. Khieu Samphan has a
2 team of lawyers. This is a team of lawyers that the Court has
3 invested millions of dollars in, in their preparation and
4 representation of Khieu Samphan. They are not here today on the
5 express instructions of Khieu Samphan.

6 He has lawyers who are very familiar with the case, who he is
7 happy with, who are paid for by the Court. He has chosen to
8 instruct them, not to come to Court and only to work on the
9 Appeal. So, his right to counsel has been respected by the Court.
10 The Court has provided him with counsel, he is happy with them,
11 they're fully resourced. He's chosen that instead of having some
12 of the team working on the Appeal today and some being here in
13 Court, as the other parties have divided their teams, to instruct
14 them not to come.

15 [09.28.30]

16 The Prosecution proposal in response to the defence teams'
17 boycott that began in October is not to replace the defence
18 counsels, which both Accused persons indicated they were happy
19 with. It was, rather simply, not to give the defendants control
20 over the courtroom. In any court system around the world, accused
21 persons cannot bring proceedings to a halt by saying, "I don't
22 want my lawyer to come to court".

23 [09.28.45]

24 The proceedings must go on. And we proposed that, in order to
25 safeguard the integrity of these proceedings, that an independent

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1 counsel be appointed to represent the interests of the Accused --
2 that is, an amicus curiae. It has been done in many other
3 international courts, particularly in cases where the accused are
4 representing themselves. Where the court appoints an independent
5 counsel, to advise the court, to represent his interests, to make
6 sure that the evidence is tested, that the prosecution doesn't
7 get away with something they shouldn't -- we shouldn't get away
8 with.

9 [09.29.29]

10 And I just want to reiterate again, it is not to replace counsel
11 but we do think that even now, even if counsel showed up this
12 morning or this afternoon, it would be a good idea to appoint an
13 amicus to prevent further delays in the proceedings in the
14 future. Thank you.

15 MR. PRESIDENT:

16 How about the Lead Co-Lawyer for the civil parties, do you have
17 any observations to make?

18 [09.30.03]

19 MR. PICH ANG:

20 Good morning, Mr. President. Good morning, Your Honours.

21 As a matter of fact, what has been raised by the prosecutor we
22 fully concur what he has said. We would also join him to request
23 the Court that amicus curiae be appointed to represent the
24 Accused, <Khieu Samphan>.

25 We would also like to inform Your Chamber that we have been

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1 prepared to participate in this evidentiary hearing, and we have
2 also informed our clients and they are very happy to hear that
3 the proceeding is now starting. And they hope that the Court will
4 hear the cases that they have brought forward.

5 [09.30.02]

6 But now there has been distraction, which unnecessarily obstructs
7 the proceeding from moving forward. And this is the position of
8 the civil parties whom we have consulted and they have been
9 unhappy when hearing that there is uncertainty concerning the
10 proceeding to be moved forward. And these adversely affect the
11 interests of the civil parties and it indeed affects the
12 interests of the Accused as well, given their advancing age at
13 the moment <and their health problems>.

14 [09.31.46]

15 However, the civil parties themselves are also at advancing age
16 at the moment, and they have been waiting for justice and they
17 have been waiting to have their cases heard. So, their rights are
18 being infringed upon, particularly by seeing the judgement in due
19 course. The delay of this proceeding in any manner, I believe
20 that some civil parties may die without having even seen the
21 justice done for them. So that will affect the rights of the
22 civil parties. For that reason, the Chamber should find ways in
23 order to move this proceeding forward while respecting the rights
24 of all parties. Thank you.

25 [09.32.41]

1 MR. PRESIDENT:

2 Mr. Khieu Samphan, you may proceed.

3 MR. KHIEU SAMPHAN:

4 Thank you, Mr. President.

5 I would like to assert once again that both my counsels and
6 myself do not have any intention to obstruct the proceeding in
7 any way. Nonetheless, my counsels and I do not have the resources
8 and -- to do this simultaneously. On the one hand, we have to
9 handle the Appeal; and on the other hand, we have to attend this
10 proceeding. And because we cannot make it for the two important
11 events, so we discussed with each other and we tried to balance
12 the situation. And we have come to an agreement that we have to
13 focus on the Appeal.

14 [09.33.52]

15 And unless the Supreme Court Chamber reverses your decision in
16 your judgment, sentencing me to life imprisonment, then it would
17 be a different thing. That's why I am trying to defend or
18 safeguard my interest. We have to try our level best to prepare
19 our defence first. And I believe that this is more effective in
20 safeguarding my interest. I am trying to show to the Supreme
21 Court Chamber that your judgment was not right and I hope that
22 they will reverse your judgment. So, it is not our intention to
23 obstruct your proceedings, because our counsels have already made
24 requests to the Chamber in light of these reasons.

25 [09.34.53]

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1 MR. PRESIDENT:

2 Thank you, Parties and Mr. Khieu Samphan.

3 Before the commencement of today's evidentiary hearing, the

4 Chamber notes that the defence team for Khieu Samphan continues

5 not to attend the proceeding following the order of the Chamber,

6 but instead they choose to follow the instruction of <their

7 client, Khieu Samphan>, and for that reason, they are absent from

8 the proceedings today and so they are not here to represent Mr.

9 Khieu Samphan.

10 [09.35.29]

11 The Chamber will take necessary action against this issue and

12 then the Chamber announces the adjournment of this hearing and

13 then will resume this afternoon at 1.30.

14 Court officer and the Witness Support Section, please facilitate

15 the witness <2-TCW-936> to rest somewhere in this ECCC compound

16 and please bring him back to this courtroom <> this afternoon.

17 Security guards are now instructed to bring Mr. Khieu Samphan and

18 Mr. Nuon Chea to the detention facility and have them back in

19 this courtroom this afternoon before 1.30.

20 The Court is now <in recess>.

21 (Court recesses from 0936H to 1341H)

22 MR. PRESIDENT:

23 Please be seated.

24 The Chamber notes that counsels for Nuon Chea are present in

25 Court after a period of time, having refused to participate in

11

1 the proceedings without valid justification.

2 The Chamber further takes note, with concern, that defence
3 counsels for Khieu Samphan are not in Court, in violation of an
4 Order of this Chamber.

5 It notes that the last time Mr. Khieu Samphan saw one of his
6 international counsel was at a Trial Management Meeting conducted
7 by the Chamber several weeks ago and that since international
8 counsel have been and are now in Paris, in spite of a Directive
9 that they be here today. The following advisement is therefore
10 directed to Mr. Khieu Samphan.

11 [13.43.30]

12 Mr. Khieu Samphan, in your submissions to this Chamber, either
13 personally or through your respective defence counsel, during the
14 opening statement and the Trial Management Meeting, you have
15 indicated to this Chamber that you have instructed your defence
16 counsel not to attend proceedings.

17 You have also indicated that these defence counsels are the
18 counsels of your choice and that you want them to represent you
19 throughout these proceedings.

20 [13.44.15]

21 The Chamber would like to remind you that while indeed, you have
22 the right to be assisted by a lawyer of your own choice, that
23 right is not absolute. Rather, it is necessarily subject to
24 certain limitations where the interest of justice so require. You
25 are advised that should you now or at any time in the future,

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1 instruct counsel not to attend substantive hearings or otherwise
2 participate in proceedings in Case 002/02, the Chamber may decide
3 to appoint counsel not of your choosing in order to ensure the
4 interest of justice through fair and expeditious proceedings.

5 [13.45.14]

6 This may include:

7 1) The reappointment of your present counsel <>;

8 2) The appointment of court-appointed counsel not of your
9 choosing;

10 3) Both; or,

11 4) Any other action the Chamber may deem appropriate.

12 Court-appointed counsel must participate fully in Case 002/02,
13 including by attending all Court hearings. There is no legal
14 basis for them to follow your instructions not to participate.

15 Mr. Khieu Samphan, have you understood this advice?

16 [13.46.20]

17 MR. KHIEU SAMPHAN:

18 Mr. President, Your Honours, and everyone in and around the
19 courtroom, I would like to make my comment.

20 One, on the measure to appoint new or additional counsel for my
21 defence, I do not see that this will assist me in defending my
22 rights. On the contrary, it might interfere with the defence of
23 my rights. And why do I say so? Allow me to give you an example.
24 Maybe counsel is on his feet to defend me but that counsel does
25 not know my case file thoroughly and does not know my defence

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1 strategy and that counsel may speak on the contrary. And for that
2 reason it might have a negative impact on my defence. For that
3 reason, there is no -- no justice. And here is the point that I
4 would like to talk about, the lawyer or the counsel that you are
5 about to appoint without my consent.

6 [13.48.03]

7 And on the issue that my international counsel, after having met
8 me last time during our last hearing, of course my counsel had
9 been to Paris, although they have been there but we have constant
10 communication. And last week when I met with my national counsel,
11 Kong Sam Onn, he brought along a letter from my international
12 counsel, Anta Guissé. So, for that reason, you can see the
13 constant communication with my international counsel.

14 [13.48.46]

15 So, let me reiterate the point: We have constant communication
16 via email, via telephone call and via Skype. So, the distance is
17 not really an issue anymore. Although my counsel is in Paris, the
18 communication is constant. And why do I have to allow them to
19 work -- or to put their best effort in the drafting of the
20 Appeal. Because in my point, they cannot do these two important
21 tasks simultaneously; they simply cannot do it. And that's on one
22 side, and on the other side, I, personally, cannot do it
23 simultaneously.

24 For instance, if a witness appears before this Court, my counsel
25 needs to be here to hear the evidence of that witness and upon

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1 hearing the evidence or the facts, they would have to consult
2 with me. Then I would have to spend my time discussing that
3 matter with them and that is going to affect the time that I
4 spent on my Appeal brief. And that affects my right -- my rights
5 to fair trial.

6 [13.50.42]

7 And on the issue of having impacted the right of the civil
8 parties, allow me to clearly state that I have to defend my right
9 as well. And how do I do that? I have to work thoroughly on my
10 Appeal brief preparation. Because Your Honours of the Trial
11 Chamber finds that I committed these mistakes and whether your
12 findings are thorough. And for that I have to study them
13 carefully and to make my responses thoroughly. And for that
14 reason, I cannot delay these preparations for the brief or for my
15 trial, because I have been in prison and there is no need for me
16 to intend to delay the proceedings. <If I were outside the
17 prison, it would be okay and it would benefit me if the
18 proceedings were delayed. Now I am in prison and> in your
19 judgment <>, you sentenced me to life imprisonment. There is no
20 need for me to delay any proceedings. I have to work hard on this
21 issue, on the Appeal brief. For that reason, I believe my reasons
22 are clear to Your Honour, and I have nothing else to add.
23 Thank you.
24 MR. PRESIDENT:
25 Judge Lavergne, you may take the floor.

15

1 [13.52.32]

2 JUDGE LAVERGNE:

3 Thank you.

4 Mr. President, I will not take up much of your time.

5 We have heard what the accused, Khieu Samphan, has said. But what
6 the Chamber was trying to <say to him and to> get him to
7 understand was that he has rights, quite clearly, including the
8 right to select his own counsel but that those rights are not
9 absolute. I hope this is now clear and that he has heard what has
10 been said to him. If he does not change his position, then the
11 Chamber will have to draw the necessary consequences and appoint
12 either <> its own lawyers <as> court-appointed counsels, or other
13 lawyers or take any other measures it may consider necessary.

14 Thank you.

15 [13.53.45]

16 MR. PRESIDENT:

17 Mr. Khieu Samphan, you may speak.

18 MR. KHIEU SAMPHAN:

19 Mr. President, I would like to respond to Judge Lavergne's
20 remark. Of course I never say my right to a chosen counsel is
21 obsolete -- absolute, rather, and I never intend to interfere
22 with the proceeding. Here I speak about my right to a fair trial.
23 And as I have just stated, even if the Court appoint a friend of
24 the court or counsel, they are not familiar with my case, they
25 are not familiar with my defence strategy and if that is the

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1 case, then it is going to have negative impact on my defence
2 right and my right to a fair trial. Thank you, Mr. President.

3 [13.54.58]

4 MR. PRESIDENT:

5 The Trial Chamber ordered Mr. Khieu Samphan to inform the Chamber
6 through the Defence Support Section, by Tuesday, 18 November
7 2014, by 4.30 p.m., whether you have withdrawn your instruction
8 to counsel not to participate in proceedings in Case 002/02. And
9 upon hearing your response, the Chamber will take further steps
10 it considers necessary to secure the fair and expeditious
11 proceedings in Case 002/02. The misconduct of counsel will be the
12 subject of a separate order.

13 [13.56.04]

14 The Chamber adjourns the proceedings until -- rather the Chamber
15 adjourns the proceedings so that Mr. Khieu Samphan will have time
16 to consider this matter and the proceedings will resume on
17 Monday, 24 November 2014, at 9 a.m. And the Chamber would like to
18 inform all the parties to attend the hearing as scheduled.

19 And we also would like to thank the witnesses and civil parties
20 for attending today's proceedings. And due to the early
21 adjournment, we would like to instruct the Witness and Expert
22 Support Section to coordinate the travelling of the witnesses to
23 their respective residence until further notice.

24 Security guards, you are instructed to take the Accused back to
25 the detention facility and bring them back on Monday, 24 November

1 2014, before 9 a.m.
2 The Court is now adjourned.
3 (Court adjourned at 1357H)
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