



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ទទួល ឯកសារ (Date of receipt/date de reception): ០៤ / ១០ / ២០១២
ម៉ោង (Time/Heure) : ១៤ : ០០
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: WCH ARUN

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

20 September 2012

Substantive Hearing on evidence - Day 111

Prepared by:

Roger PHILLIPS and DUCH Phary

<u>Attendance Record</u>
Before: Judge NIL Nonn (President), Judge Jean-Marc LAVERGNE, Judge YA Sokhan, Judge YOU Ottara, Judge Silvia CARTWRIGHT.
Reserve Judges: Judge THOU Mony, Judge Claudia FENZ.
Greffiers: Mr. Roger PHILLIPS, Ms. SE Kolvuthy, Mr. DUCH Phary.
OCP: Mr. VENG Huot, Mr. CHAN Dararasmey, Mr Keith RAYNOR.
Accused: Mr. KHIEU Samphan, Mr. NUON Chea.
Defence for the Accused: Mr. SON Arun, Mr. Andrew IANUZZI, Mr. Michiel PESTMAN, Mr. KONG Sam Onn, Mr. ANG Udom, Mr. Michael G. KARNAVAS.
Civil Parties: Ms. Elisabeth SIMONNEAU-FORT, Mr. PICH Ang, Mr. LOR Chunthy, Mr. SAM Sokong, Ms. Françoise GAUTRY, Mr. VEN Pov, Ms. CHET Vanly, Ms. Beini YE.
Witness: Mr. CHEA Say (TCW-91).
Others: Ms. Sonia MESSAOUDI, Ms. Anne-Elise JOLICARD, Mr. RETHY Seng (duty counsel).

<u>General court times</u>		
Day	Start time: 9:00	Finish time: 14:35
Recess am	Start time: 10:30	Finish time: 10:50

Recess	Start time: 12:05	Finish time: 13:30
	Total Court Time:	3 hours and 50 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Waiver of the Accused's right to be present in the courtroom for 20 September 2012	IENG Sary Defence	9:03	9:04
	NUON Chea Defence	12:00	12:05
Recognition of the international civil party lawyer Francoise GAUTRY	TC	9:04	9:07
Waiver of the IENG Sary's presence for the testimony of witness TCW-175	IENG Sary Defence	9:10	9:13
Response by the Chamber to NUON Chea defence's request for clarification : biography of President NIL Nonn	TC	9:14	9:22
Testimony of Witness CHEA Say (TCW-91)	TC	9:23	9:32
	OCP	9:33	11:22
	CPLCL	11:23	11:48
	TC	11:49	11:59
	NC Defence	13:32	13:38
	IS Defence	13:39	13:48
	KS Defence	13:49	14:16
Oral ruling on IENG Sary objection?	TC	9:55	9:57
Oral ruling on NUON Chea request concerning SCC Decision on NUON Chea's appeal against the Trial Chamber's decision on Rule 35 Application for Summary Action	TC	12:01	12:04
Announcement of waiver of the Accused's right to be present in the courtroom for 21 September 2012	NUON Chea Defence	14:29	14:30
	KHIEU Samphan Defence	14:31	14:31

Summary of Proceedings

Waiver of the Accused's right to be present in the courtroom the 20 September 2012

The Accused IENG Sary waived his right to be present in the courtroom for the whole day due to health issue. The accused NUON Chea also waived his right to be present in the courtroom for the afternoon session.

Recognition of the international civil party lawyer Francoise GAUTRY

The Trial Chamber recognized Mrs. Françoise Gautry as a Lawyer for Civil Parties for the purpose of the proceedings before this Chamber.

Waiver of IENG Sary's right presence for the testimony of TCW-175

IENG Sary waived his right to be present for the testimony of the witness TCW-175.

Response by the Chamber to the NUON Chea Defence request for clarification re: the biography of President NIL Nonn

NUON Chea defence requests clarification as to why the biography of the President on the ECCC website was amended by removing reference to his publications in the field of criminal law.

The President stated the reference was removed because, upon consultation with others, it was understood that this could create confusion based upon standards for publishing at the international level. His publications regarding the rules for the Administration of the Domestic Courts do not mean he was the sole author, but means that he has experience in these areas.

Testimony of Witness Mr. CHEA Say (TCW-91)

The Chamber started questioning the Witness, followed by the Co-prosecutors, the Civil Party Lead Co-lawyers and finally the three Defence teams.

Oral ruling on IENG Sary request for clarity in Witness' answers

IENG Sary counsel asked the Chamber to advise the Witness to be more precise when giving testimony because by doing so it can save some objections from defence counsel.

The Chamber ruled if the Witness gives testimony that is not clear, the Chamber will so decide. But it is up to counsel to put questions that are straightforward and clear. It is difficult to direct the witness to be more precise than that, because it is not written in the Criminal Code of Procedure.

Oral ruling on NUON Chea request re: Decision on NUON Chea's appeal against the Trial Chamber's decision on Rule 35 Application for Summary Action

As the Supreme Court Chamber stated in the decision E176/2/1/4 that the repeated applications of NUON Chea defence counsel were not a pattern of professional misconduct but were justified given the trial Chamber's lack of clarity, the Nuon Chea Defence asked whether the Trial Chamber will forward this information to the respective bar associations.

The Trial Chamber answered it did not forward the decision to the concerned Bar Associations. However, counsel may do so if they think it is to their advantage.

Waiver of the Accused's right to be present in the courtroom the 21 September 2012

The Accused NUON Chea and KHIEU Samphan waived their right to be present for the whole day of 21 September as it did not involve evidentiary matters.




Record of Rule 87(3) Proceedings							
TC No	OCIJ No	ERN	Title	Class	Note in Khmer	Note in English	Note in French
N/A	E229	00847787- 00847788 00847786- 00847786	ពាក្យសុំលះបង់សិទ្ធិមានវត្តមានដោយមាន ដែនកំណត់ក្នុងកិច្ចដំណើរការសវនាការរបស់ ជនជាប់ចោទ អៀង សារី The accused IENG Sary's limited waiver of rights to be present during court proceedings	P			
E3/69	D91/ 12	00204083- 00204087 00233149- 00233154 00524340- 00524345	[លិខិតបញ្ជាក់ការជំនួសឯកសារ] កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី ជា សាយ ថ្ងៃទី១១ ១២ ២០០៧ [Surrogate Sheet] [Corrected 1] Written Record of Interview of CHEA Say [Feuille remplacée] [Corrigé 1] Procès verbal d'audition de CHEA Say	P	00204083- 85, 00204084	00766337	00524341- 43, 00524344

Oral Orders/Decisions:

- Order to bring the Accused NUON Chea and IENG Sary to the holding cell (waivers of the Accused IENG Sary (full day) and NUON Chea (afternoon) are attached to this written record).
- Order to arrange for Witness TCW-91 to return to his residence.
- Order to bring the Accused back to the detention facility and to return the Accused NUON Chea and KHIEU Samphan to the courtroom for the hearing on Friday 25 September 2012.

Orders for Adjournment of Hearing
The hearing will resume on 21 September 2012 at 9:00 a.m.

Phnom Penh, 20 September 2012

Greffier  Greffier 

 Roger PHILLIPS DUCH Phary