



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

អង្គជំនុំជម្រះសាលាដំបូង
 Trial Chamber
 Chambre de première instance

ប្រទេស/ក្រុង ORIGINAL DOCUMENT/DOCUMENT ORIGINAL ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 25 / 10 / 2012 ម៉ោង (Time/Heure) : 14 : 00 មន្ត្រីទទួលបន្ទុកករណី/Case File Officer/L'agent chargé ឈ្មោះ/Name: JANNY BARRA
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WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

02 October 2012

Substantive Hearing on evidence - Day 115

Prepared by:

Roger PHILLIPS and SE Kolvuthy

Attendance Record
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: Ms. SE Kolvuthy, Roger PHILLIPS, Mr DAV Ansan, Mr. DUCH Phary.
OCP: Mr. William SMITH, Ms. SONG Chorvoin, Mr. VENG Huot, Mr. Dale LYSAK
Accused: Mr. KHIEU Samphan, Mr. NUON Chea
Defence for the Accused: Mr. SON Arun, Mr. Jasper PAUW, Mr. KONG Sam Onn, Ms. Anta Guisse, Mr. ANG Udom, Mr. Michael G. KARNAVAS.
Civil Parties: Ms. Elisabeth SIMONNEAU-FORT, Mr. PICH Ang, Mr. LOR Chunthy, Ms. Beini YE, Ms. SIN Soworn, Mr. VEN Pov.
Witness: Mr. KHIEV En (TCW-320).
Others: Mr. UCH Arun, Ms. SOUR Sotheavy, Ms. Eleanor DOYLE-MARKWICK.

General court times		
Day	Start time: 9:02	Finish time: 16:07
Recess am	Start time: 10:33	Finish time: 10:53
Recess	Start time: 12:05	Finish time: 13:30
Recess pm	Start time: 14:25	Finish time: 15:00
	Total Court Time:	4 hours 45 minutes

Proceedings			
Type of Issue	Raised By	Start time	Finish time
Waiver of the Accused's right to be present for the hearing of Witness TCW-320 and Witness TCW-428	IENG Sary Defence	9:03	9:03
Waiver of the Accused's right to be present in the courtroom	NUON Chea Defence	12:03	12:04
Testimony of Witness KHIEV En (TCW-320)	NUON Chea Defence	9:04	14:19
Ruling on whether NUON Chea Defence can pose questions about contact between witnesses	Trial Chamber	9:52	10:00
Ruling on whether NUON Chea Defence can pose questions regarding events outside the temporal jurisdiction of the ECCC	Trial Chamber	14:14	14:17
Trial management during period of IENG Sary's illness and absence from court	IENG Sary Defence	15:08	15:12
	KHIEU Samphan Defence	15:12	15:15
	NUON Chea Defence	15:15	15:15
	OCP	15:16	15:27
	CPLCL	15:27	15:31
	Trial Chamber	15:31	15:42
Greffiers read out relevant portion of Closing Order		15:46	16:07

Summary of Proceedings

Waiver of the Accused to be directly present for the hearing of Witness TCW-320 and Witness TCW-428

The Accused IENG Sary waived his right to be present in the courtroom for the whole day pursuant to Internal Rule 81.5 for the questioning of Witness KHIEV En (TCW-320) and

Witness MEAS Voeun (TCW-428).

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

The Accused NUON Chea waived his right to be present in the courtroom for the afternoon session.

Testimony of Witness KHIEV En (TCW-320)

The NUON Chea Defence concluded their questioning of the Witness.

Ruling on whether NUON Chea Defence can pose questions about contact between witnesses

The NUON Chea Defence sought to question the Witness (TCW-320) regarding his interactions and relationship with Witness KIM Vun (TCW-338), who also testified about the Ministry of Propaganda. The President told counsel that this line of questioning was impermissible, to the extent counsel was seeking to nullify the investigation or explore investigative procedures. Counsel sought a ruling from the entire Chamber on the issue. The Chamber confirmed that this line of questioning was irrelevant and instructed counsel to move to substantive topics of questioning.

Ruling on whether NUON Chea Defence can pose questions regarding events outside the temporal jurisdiction of the ECCC

The NUON Chea Defence sought to question the Witness regarding the role of Yun Yat in the propaganda business after January 1979. The President ruled that the question was impermissible as it was beyond the scope of the alleged facts in the Closing Order.

Trial management during period of IENG Sary's illness and absence from court

The Chamber sought oral submissions from the parties regarding how to proceed with the trial while awaiting a definitive diagnosis and prognosis for the Accused IENG Sary. The Chamber emphasised that the Chamber itself will ultimately determine the order of witnesses.

The IENG Sary Defence anticipated no delays in proceedings in the immediate future. IENG Sary has waived his right to be present at the court for approximately 20 witnesses. If one of those witnesses were to unexpectedly discuss IENG Sary, the OCP has agreed that the witness could be called back to deal with that discreet issue. IENG Sary also authorises his counsel to proceed with the upcoming document hearing in his absence.

The KHIEU Samphan and NUON Chea Defence supported the submissions of the IENG

Sary Defence.

The OCP agreed with the IENG Sary Defence that the trial could likely proceed without delay at least until Christmas 2012. The witnesses in relation to whom IENG Sary has provided a waiver will testify about the crime of transfer of population and not in relation to the conduct of the particular Accused. Therefore, the OCP thought it unlikely any waivers would need to be revoked. The OCP does not anticipate any delay arising from IENG Sary's illness. The only change will be that forced transfer witnesses will be heard sooner than planned.

The CPLCL concurred that the Chamber should proceed to hear witnesses on the issue of forced transfer.

The Chamber asked the IENG Sary Defence to clarify whether their waivers were conditional. Counsel stated that if a witness unexpectedly testifies about IENG Sary, the OCP has agreed to allow counsel to explore the issue later after discussions with their client, rather than disrupt proceedings.

The Chamber asked the IENG Sary Defence to clarify the scope of the waiver for Witness TCW-428. Counsel stated that the waiver covers all matters relevant to Case 002/01, not just questions on military structure.

Greffiers read out relevant portion of Closing Order

The Greffiers read out the paragraphs of the Closing Order relevant to the upcoming segment of the trial, as instructed by the Chamber.

Record of Rule 87(3) Proceedings

TC No	OCIJ No	ERN	Title	Class	Note in Khmer	Note in English	Note in French
		00373429- 00373438	កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី ខៀវ អេន KHIEV Ēn				
E3/438	D279 /4	00375870- 00375877 00426427- 00426435	Written Record of Interview of KHIEV Ēn ខៀវ អេន Procès verbal d'audition de témoin KHIEV Ēn ខៀវ អេន	P	00373434	00375874	

Oral Orders/Decisions:

- Order allowing the Accused IENG Sary to waive his direct presence in the hearing of this Witness pursuant to Rule 81.5 of the ECCC Internal Rules.
- Order allowing the Accused NUON Chea to participate from his holding cell (waiver of the Accused are attached to this written record).
- Order to bring the Accused NUON Chea and KHIEU Samphan back to the detention facility and to return them to the courtroom for the hearing on 03 October 2012.
- Order to court officer to facilitate the return of Witness KHIEV En (TCW-320) to his home.
- SE Kolvuthy instructed to read out paragraphs of the Closing Order relevant to the upcoming segment of the trial.
- On 03 October the Greffiers will continue to read out the relevant paragraphs of the Closing Order, followed by the testimony of Witness TCW-428.

Orders for Adjournment of Hearing

The hearing will resume on 03 October 2012 at 9:00 a.m. *SD*

Phnom Penh, 02 October 2012

Greffier

Roger Phillips
Roger PHILLIPS



Greffier

SE Kolvuthy
SE Kolvuthy