



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

Nation Religion King ជាតិ សាសនា ព្រះមហាក្សត្រ
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 04 / 01 / 2013
ម៉ោង (Time/Heure):..... 10 : 00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

4 December 2012

Substantive Hearing on evidence - Day 134

Prepared by:

Roger PHILLIPS and DUCH Phary

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: Mr. Roger PHILLIPS, Mr. DUCH Phary, Ms. SE Kolvuthy.
OCP: Mr. SENG Bunkheang, Ms. SONG Chorvoin, Mr. William SMITH, Mr Dale LYSAK.
Accused: Mr. KHIEU Samphan, Mr. NUON Chea.
Defence for the Accused: Mr. SON Arun, Mr. Andrew IANUZZI, Mr. Jasper PAUW, Mr. KONG Sam Onn, Ms. Anta GUISSSE, Mr. ANG Udom., Mr. Michael KARNAVAS.
Civil Parties: Ms. Elisabeth SIMONNEAU-FORT, Mr. VEN Pov, Mr. SAM Sokon, Mr. HONG Kimsuon, Mr. PICH Ang, Mr. LOR Chunthy, Ms. CHET Vanly, Ms. SIN Soworn.
Civil Party: Ms. TOENG Sokha (TCCP-188).
Others: Ms. Sonia MESSAOUDI.

<u>General court times</u>		
Day	Start time: 9:05	Finish time: 16:05
Recess am	Start time: 09:40	Finish time: 10:25
Recess	Start time: 12:10	Finish time: 13:40
Recess pm	Start time: 14:35	Finish time: 14:55
	Total Court Time:	4 hours 25 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Ruling on IENG Sary Defence request to monitor IENG Sary's participation in the proceedings	TC	9:10	10:54
NUON Chea Defence observations about the expression of suffering of Mr. CHAU Ny (TCCP-187)	NC Defence	10:54	11:06
Testimony of Civil Party Ms. TOENG Sokha (TCCP-188)	TC CPLCL OCP NC Defence IS Defence KS Defence	11:08 11:13 14: 34 15:13 15:44 15:45	11:12 14:33 15:13 15:43 15:44 15:45
Expression of suffering of Civil Party Ms. TOEUNG Sokha (TCCP-188)	TC	15:46	15:56
Waiver of the Accused's right to be present in the courtroom	NC	12:10	12:10

Summary of Proceedings

Ruling on IENG Sary Defence request to monitor IENG Sary's participation in the proceedings

IENG Sary's treating physician said IENG Sary should follow the proceedings from the holding cell downstairs through audio-visual means. IENG SARY indicated he wished to participate directly and not from the holding cell and revoked his prior waivers to participate in the proceedings. He asked that his client be videotaped during the proceedings.

OCP stated the Accused should be monitored by the doctor. CPLCL stated the doctor already gave his recommendations and the Trial Chamber already ruled.

The Trial Chamber denied the request to videotape the Accused IENG Sary while he is in the holding cell (please see decision below).

NUON Chea Defence observations about the expression of suffering of Mr. CHAU Ny (TCCP-187)

International counsel for NUON Chea made observations about the suffering of Civil Party who testified on Friday 23 November 2012. The President clarified there are two different practices used by the Trial Chamber depending on the matter at hand: certain matters are ruled on by the President under his discretion and other matters require a full Bench decision.

Testimony of Ms. TOENG Sokha (TCCP-188)

The Civil Party was questioned by the Chamber followed by the CPLCL, OCP and NUON Chea Defence. IENG Sary and KHIEU Samphan Defence teams did not have any questions to put to this Civil Party.

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 (12:10).

Record of Rule 87(3) Proceedings

Oral Orders/Decisions:

- The Chamber ruled that IENG Sary's fitness to participate in the trial was based on relevant and consistent expert testimony and evidence, and after having granted the parties an opportunity to present submissions. The expert indicated that IENG Sary's physical condition may change from time to time and the Trial Chamber is conscious of that and its responsibility is to keep his physical condition under constant consideration. According to provisions of Rule 81(5), having IENG Sary in the courtroom would reach a level that might cause substantial delay to the trial. It also takes into account that all technical support to facilitate from the holding cells, including a direct telephone line to his counsel. As to an obligation to monitor IENG Sary's fitness, the Trial Chamber will rely on the treating doctor to alert it to any substantial change in his physical condition. The Trial Chamber emphasized that medical monitoring by treating physician is required and not monitoring by the judges or defence counsel personally or by the public. Therefore, The Trial Chamber denied the request to videotape the Accused IENG Sary while he is in the holding cell.
- Order allowing the Accused NUON Chea to participate from his holding cell during the afternoon session (waiver of the Accused is 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 5 December 2012.
- Order to take the Accused IENG Sary to the holding cell downstairs for the hearing on 5 December 2012.
- Order to bring Ms. TOENG Sokha (TCCP-188) back home.

Orders for Adjournment of Hearing

The hearing will resume on 5 December 2012 at 9:00 am.

Phnom Penh, 4 December 2012

Greffier


Roger PHILLIPS


The seal is circular with a central figure of a seated deity. The outer ring contains the text 'CHAMBRE DE PREMIERE INSTANCE' at the bottom and 'ECCC' at the top. The inner ring contains Khmer text.

Greffier


DUCH Phary