



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

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 29-May-2012, 09:29
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 May 2012

Trial Day 63

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

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KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. DE WILDE D'ESTMAEL	French
MR. IANUZZI	English
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. LIM SIVUTHA	Khmer
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer

1

1 P R O C E E D I N G S

2 (Court opens at 0902H)

3 MR. PRESIDENT:

4 You may be seated. The Court is now in session.

5 For this morning schedule, we have - we will have two separate
6 hearings - the first is to hear the opinion of the doctor who has
7 been treating Ieng Sary, who was hospitalized from the 17th to
8 the 22nd May 2012. It is in relation to the health condition of
9 this particular accused as whether he is able to participate in
10 today's proceedings and the other two days during this week. And
11 after that, we shall hear the testimony of the witness TCW-487,
12 who was summons to testify since Monday, but he could not provide
13 his testimony due to the health condition of the accused Ieng
14 Sary.

15 [09.04.20]

16 Also, the Chamber would like to clarify that for this later
17 hearing of this witness, depending on the opinion of the treating
18 doctor that, if the opinion is positive, meaning that, if Ieng
19 Sary's health does not prevent him from participating in today
20 and the next two days hearing, we will proceed with the second
21 hearing of the witness.

22 If the opinion of the doctor - of the treating doctor is one that
23 Ieng Sary cannot participate, then the Chamber will decide
24 accordingly.

25 Greffier, could you report the attendance of the parties to the

1 proceeding.

2 THE GREFFIER:

3 Mr. President, all parties to the case are present, except the
4 accused Ieng Sary, who is now resting at the detention facility
5 awaiting the instruction from the Chamber.

6 The doctor who has been invited by the Chamber is present and he
7 is waiting in the waiting room.

8 The witness, TCW-487, is present, awaiting to be called by the
9 Chamber.

10 Thank you, Mr. President.

11 [09.06.22]

12 MR. PRESIDENT:

13 Thank you, Mr. Duch Phary.

14 Ieng Sary's Defence, do you have any request to be made regarding
15 the first part of today's hearing, as this is in relation to the
16 health condition of the accused, who is your client? You may
17 proceed if you wish to do so.

18 MR. KARNAVAS:

19 Good morning, Mr. President. Good morning, Your Honours, and good
20 morning to everyone in and around the courtroom. This morning, we
21 met with our client Mr. Ieng Sary and we had approximately 15
22 minutes conversation, during which time we had asked him about
23 his health and also discussed again about these particular
24 proceedings. He's indicated the following: one, he waives his
25 presence during these parts of the proceedings, that is, wherein

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1 his medical status is being discussed; two, he has no objections
2 to his medical status being discussed in public in a public
3 hearing; three, he does not -- and I underscore "does not" --
4 waive his presence for the following two witnesses that are
5 scheduled because both touch upon him either directly or
6 indirectly or go into acts and conducts which are alleged against
7 him in the Closing Order.

8 [09.08.00]

9 He does and is willing to waive his presence to other witnesses
10 which may not directly touch upon him since he does not wish to
11 hold up the proceedings.

12 We are in the process of finalizing a limited waiver so that all
13 of this can be provided to Your Honours in writing with his
14 signature.

15 As far as his medical condition is concerned - and we are not --
16 I'm not a medical doctor, myself, nor do I pretend to be one, but
17 he - he informed us - and I would tend to value his assertions --
18 that, more than five minutes or so, he begins to feel dizziness,
19 and so he is unable to physically be here. And as far as mentally
20 is concerned, he's indicated to us that he doesn't feel beyond a
21 five minutes time span he is able to concentrate without getting
22 dizzy.

23 [09.09.15]

24 It is his particular request that there be no proceedings; at
25 least if these are the two witnesses that are scheduled for the

4

1 remainder of the week. Were the Trial Chamber to call upon other
2 witnesses; that would be something else depending on who they may
3 be. If they don't touch upon him, then certainly he is willing to
4 waive. But it is his request that -- at least today and perhaps
5 tomorrow, that he definitely not even come to the Court. He does
6 wish to be present for the following witness, especially for the
7 following witness, given the witness's position in what is
8 expected to be the line of questioning from the various parties.
9 So that's my status report to the Trial Chamber. And if there are
10 any questions then I'll be seated.

11 MR. PRESIDENT:

12 Thank you.

13 The Prosecution, you may proceed.

14 MR. LYSAK:

15 Thank you, Mr. President. I won't respond now regarding the
16 medical conditions; we will wait to hear from the doctors.

17 [09.10.35]

18 I just want to clarify one matter Mr. Karnavas referred to -- his
19 client not being willing to waive for the next two witnesses.

20 Obviously, we understand that one of those witnesses is witness
21 487, and I just wanted to clarify with counsel as to who is the
22 other witness that he was referring to? Because I do -- we did
23 propose yesterday that the Court - that we look at whether there
24 are other witnesses that the Ieng Sary team would be willing to
25 waive his presence for. So I wanted to just clarify with counsel

5

1 as to which was the second witness that he is unwilling to waive
2 for.

3 [09.11.29]

4 MR. KARNAVAS:

5 To clarify matters, Your Honours, it was our understanding that
6 the next witness was going to be 583 - TCW-583.

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 Now we receive the initial information regarding the hearing of
10 the opinion of the treating doctor. The Chamber will therefore
11 decide to hold this hearing in public based on the opinion from
12 the concerned parties.

13 Court Officer, could you invite the witness into the courtroom --
14 the doctor?

15 (Witness enters courtroom)

16 [09.13.08]

17 QUESTIONING BY THE PRESIDENT:

18 Good morning, doctor. This morning, you are invited by the
19 Chamber to give your opinion in relation to the health condition
20 of Ieng Sary regarding his hospitalization for the last couple of
21 days and his following discharge. The Chamber will consider your
22 opinion in regard to the health condition of the Accused whether
23 he is able to participate in the proceedings before this Chamber.
24 Before we put some questions to you, we would like to give you
25 some instructions.

6

1 First, please wait until you see the red light on the microphone
2 before you speak, so then there is enough time for the
3 interpreters to interpret your response. We use three languages
4 in this courtroom.

5 Q. I would like to ask some personal background of yours.

6 What is your name, doctor?

7 MR. LIM SIVUTHA:

8 A. My name is Dr. Lim Sivutha.

9 Q. Thank you. Can you tell the Chamber your date of birth?

10 A. I was born on the 15th of August 1966, and my place of birth
11 is Kandal province.

12 [09.15.19]

13 Q. Where is your current address?

14 A. My current address is at - is at No. 41, Street 336, in Psar
15 Dang Kor.

16 Q. Are you related by blood or by law to the accused Ieng Sary or
17 to any of the civil parties?

18 A. No, I am not related to any of the parties to the proceeding.

19 Q. What is your religion?

20 A. I follow Buddhism.

21 Q. As the greffier reported that, you have taken an oath already
22 - have you taken an oath already before you entered this
23 courtroom?

24 A. That is correct.

25 Q. Can you inform the Chamber regarding your education and

1 professional career?

2 A. In 1987, I was an assistant doctor at the faculty of medicine;
3 and in 1998, I became a doctor in that faculty; and in 2003, I
4 completed my education at the same faculty of medicine, receiving
5 my diploma degree.

6 [09.17.41]

7 In 2004, I completed my specialize skill in heart disease at
8 Versailles University in France in Paris. And currently I am a
9 doctor at the Khmer-Soviet Friendship Hospital.

10 Q. Thank you. How long have you been working at the emergency
11 section at the Khmer-Soviet Friendship Hospital?

12 A. I have been working in that hospital at the emergency section
13 since I completed my
14 medical study in 2004.

15 Q. Thank you.

16 We will now have some questions for you regarding the report from
17 the Khmer-Soviet Friendship Hospital, document 301 MMKS, dated
18 20th May 2012, which was sent to the Trial Chamber.

19 [09.19.08]

20 Court Officer, could you present this report to the doctor for
21 his review. Also, please project the document on screen -- that
22 is, document E11/70/2; that is the medical report.

23 Doctor, the report in front of you, is it your own report?

24 A. Yes, it is.

25 Q. Did you, yourself, examine and treat Mr. Ieng Sary when he was

8

1 admitted to the hospital from the 17th May to the 22nd May 2012?

2 A. I am one of the doctors who treated him. There were some of my
3 colleagues and specialists who treated Mr. Ieng Sary.

4 Q. Thank you. Before that, had you ever treated the medical
5 condition of Mr. Ieng Sary?

6 A. After I was transferred from the Calmette Hospital - rather,
7 after he was transferred to be treated from the Calmette
8 Hospital, I have been treating Mr. Ieng Sary.

9 [09.21.32]

10 Q. Thank you.

11 Can you inform the Chamber the medical condition of Mr. Ieng Sary
12 during the time that he was sent from the ECCC - by the ECCC
13 doctor on the 17th April, and the subsequent treatment by you?

14 A. I would like to provide a brief detail. On the morning of 17th
15 when he was sent by the doctor from ECCC, at that time he had a
16 symptom of frequent coughing and breathing difficulty and
17 dizziness. After he was sent to the hospital, he was treated at
18 the emergency section and we conducted a new diagnosis. It was
19 related to his bronchitis condition, and after the completion of
20 the diagnosis, it did not have any impact on his existing heart
21 disease. He only had a flu and the bronchitis.

22 On the first day of his hospitalization, he became a little bit
23 better, and on the second and the third day it became even more
24 -- better. We then invited a specialist doctor, who was also
25 working here at the ECCC to diagnose his bronchitis condition.

1 [09.23.36]

2 The only serious condition of his hospitalization is bronchitis,
3 and after the treatment, we held a meeting to consider whether he
4 would be able to be discharged from the hospital, and after the
5 evaluation and the diagnosis condition – and of his improvement,
6 then we decided to discharge him on the morning of the 22nd of
7 May 2012. However, due to the condition that he had been
8 hospitalized for a number of days and due to his established
9 heart condition, upon the discharge from the hospital, we, our
10 group, recommended that he should have a brief period of rest to
11 improve his health condition.

12 And also, during the meetings, my other doctors our supervisor;
13 we agree that we should also have a constant monitor of his
14 health condition after the two-day period of rest by the ECCC
15 doctor. And we also made a recommendation that due to his health
16 condition, if the Court permits, that he should attend the
17 proceeding only in the Court in the waiting room downstairs,
18 which is closer to the medical unit and it's easier for the
19 doctor to monitor his health condition -- that is, after the
20 two-day rest.

21 [09.25.27]

22 And we will monitor his health condition on a daily basis and we
23 would report to you accordingly.

24 Q. Thank you. So it means that you also visited the detention
25 facility and the waiting room downstairs, which is linked to the

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1 audio-visual from the courtroom; is that correct? Because based
2 on what you just said, you seem to be familiar with the setting
3 in this ECCC compound, also with the waiting room downstairs so
4 that the Accused could participate remotely from the room
5 downstairs. Maybe this has come to your knowledge upon the
6 agreement for the treatment of the Accused between the ECCC and
7 Khmer-Soviet Friendship Hospital; is that correct?

8 A. Amongst the doctors who have been treating Ieng Sary here at
9 the ECCC, I am one of them, so every fifth day I come and inspect
10 his health condition. So I am familiar with the waiting room
11 downstairs and the medical unit downstairs.

12 [09.26.59]

13 Q. According to your report -- that is the last point -- that the
14 patient should take a two-day rest following his release from the
15 hospital depending on his health condition; we would like to
16 clarify with you the two-day period.

17 Does it start from the day that he discharge -- that is, do we
18 count the day from today? That is because he was discharged
19 yesterday. Can you enlighten us on this point?

20 A. The two-day rest period is to be counted from the day that he
21 is discharged from the hospital that is from today.

22 Q. If we would like him to participate remotely; for example, for
23 today or tomorrow proceeding, what would be the condition?

24 A. After he was discharged from the hospital, my group, including
25 the specialized doctor and the supervisor, we decided that he

11

1 should have a two-day rest after he is discharged. And one week
2 after the two days resting, he should be able to participate
3 remotely to the trial proceeding before the ECCC because it's
4 better for him to participate from the waiting room downstairs,
5 which is close to the medical unit.

6 Q. Thank you.

7 [09.29.17]

8 Judges of the Bench, do you have any questions to be put to this
9 doctor?

10 The defence team for Ieng Sary, do you have any questions to be
11 put to this doctor?

12 QUESTIONING BY MR. KARNAVAS:

13 Good morning, Mr. President. Good morning, Your Honours. I do
14 have a few questions.

15 Q. Doctor, I understand that you are not a psychiatrist or a
16 psychologist; is that correct?

17 MR. LIM SIVUTHA:

18 A. Correct.

19 Q. Do you know during the last few days whether Mr. Ieng Sary has
20 undergone any testing to see whether he is capable of following
21 the proceedings in light of this current medical condition?

22 THE INTERPRETER:

23 Could he have the question again, please?

24 BY MR. KARNAVAS:

25 Q. Yes. You indicated that you and the specialist have concluded

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1 that a minimum of two-days rest would be required. And my
2 question is: Whether any specific testing was done to see about
3 Mr. Ieng Sary's capacity to follow, to concentrate, to comprehend
4 and to participate in proceedings of this nature?

5 [09.31.16]

6 A. Generally, before we came to the conclusion that he has to
7 have a two-day rest, we did not decide on ourselves. We discussed
8 among our specialist who works at the hospital and we came up
9 with the recommendation that is a two-day rest.

10 Q. Now, when you say "specialist", could you please tell us what
11 are the specialties of these doctors that are part of the team
12 along with you, that are monitoring Mr. Ieng Sary's health?

13 A. Within our group, we have major doctors - medical doctors who
14 are specialized in the heart, the disease and also in the
15 psychological matters.

16 [09.32.33]

17 Q. Now, I met with Mr. Ieng Sary this morning and he indicated to
18 me that, after several moments of sitting up or trying to
19 concentrate, he becomes dizzy. Is that something that you would
20 find unusual or would this be normal for someone with his
21 condition, considering his age, considering his heart problems,
22 considering the bronchitis that he is currently suffering from?

23 A. On the basis of his poor health condition, which does not
24 allow him to stand for a long time, and if it is traced back to
25 the history of his health condition, you can see that he suffer

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1 from chronic health issue that dates back to 1992. Even though he
2 has stable heart condition from our last few days examinations,
3 we found that there is a tendency that his heart condition is
4 moving back - back -- which means it's deteriorating. That is why
5 we recommended that he should not come to sit in the courtroom,
6 but instead be allowed to follow the proceedings from the holding
7 cell downstairs. We discussed amongst our medical specialist and
8 we diagnosed him and we found out that his health condition could
9 not be improved, that is, he can be stabilized and his health
10 condition can only deteriorate.

11 [09.34.34]

12 Q. Thank you.

13 But I want to go back to my question, which was-- He's indicated
14 that after several moments of sitting up in this current
15 condition, he tends to feel dizzy. Is that something that would
16 be normal, given his condition, what he is suffering from and his
17 current medical condition - and his pre-existing medical
18 condition, I should say.

19 A. We are not 100 per cent sure whether he feel dizzy because of
20 his physical strength, but after our treatment and examination,
21 we found that his present condition is not very different from
22 his condition six months ago, and given his age, we cannot come
23 up with a 100 per cent sure; we need to examine him over a period
24 of time - that is, to continue to examine him today, tomorrow,
25 and the day after to see whether the conditions will change. We

14

1 have to see whether, after he suffered from a flu and after he
2 has suffered from other conditions, whether he continues to
3 suffer this, so we need to examine him at least over a period of
4 one week and we need to closely examine his health condition so
5 that we can determine this for sure.

6 [09.36.31]

7 MR. KARNAVAS:

8 Thank you, Doctor.

9 I have no further questions, Your Honours.

10 MR. PRESIDENT:

11 Thank you.

12 (Judges deliberate)

13 [09.37.36]

14 How about the Prosecution? Do you wish to put questions to the
15 doctor? And that applies to the Lead Co-Lawyers as well, whether
16 you have any questions to put to this medical doctor.

17 QUESTIONING BY MR. LYSAK:

18 Thank you, Mr. President. I just have one question for the
19 doctor.

20 Thank you, Mr. President. Good morning, Doctor.

21 Q. The one question I just wanted to clarify is: Your
22 recommendation that Mr. Ieng Sary have two days to rest, does
23 that mean two days in which he does not participate in the
24 proceedings, even from his holding cell, or did you mean two days
25 in which he could participate from the holding cell? That is the

15

1 one - the one matter I just wanted to clarify from you.

2 MR. LIM SIVUTHA:

3 A. The two-day rest is for him to rest completely without
4 participating in the proceedings, not even remotely.

5 [09.39.14]

6 MR. LYSAK:

7 Thank you very much, Doctor. That's - that's the only question we
8 have.

9 MR. PRESIDENT:

10 Thank you.

11 Yes, National Lead Co-Lawyer, you may proceed.

12 QUESTIONING BY MR. PICH ANG:

13 Good morning, Mr. President. Good morning, Your Honours. Good
14 morning, Doctor. I have a few questions for you, especially
15 concerning the dizziness that Mr. Ieng Sary experienced.

16 Q. First of all, I would like to know that, when Mr. Ieng Sary
17 was hospitalized, during which you had contact with him, did Mr.
18 Ieng Sary raise this issue of this dizziness with you personally
19 or among your colleagues?

20 [09.40.05]

21 MR. LIM SIVUTHA:

22 A. This issue is also one of - one among the other issues that we
23 examined, that he experienced breathing difficulties and he
24 begins to feel dizzy.

25 Q. Did you observe any factors that cause this dizziness?

16

1 A. After he was admitted to the hospital, we observed that the
2 enzyme in his blood became very weak and that made it even worse
3 for his flu condition, and so this caused his dizziness. For a
4 normal person, it wouldn't be a problem, but for him who suffers
5 from health condition, health matters, it is very difficult for
6 him.

7 Q. This is my last question: Concerning this dizziness, how long
8 will he suffer from this dizziness?

9 A. Given his health condition, it depends entirely on his
10 physical strength, but we cannot come up with a 100 per cent
11 conclusion as to how long he will suffer from this. But if he is
12 to sit for a long time, he will experience this dizziness. If he
13 is to sit for only a short time, it won't be a big problem for
14 him. He is suffering from flu and also heart disease, so he's not
15 a person who has a good health condition, so he will experience
16 frequently this dizziness, given his age as well.

17 [09.42.46]

18 MR. PICH ANG:

19 Thank you, Doctor. Thank you, Mr. President.

20 MR. PRESIDENT:

21 Thank you.

22 (Judges deliberate)

23 [09.46.34]

24 Counsel Michael Karnavas, could you indicate again the pseudonyms
25 of the witnesses that you said that your client will not waive

17

1 his presence in the courtroom, among the witnesses that the
2 Chamber has already determined to be heard in the near future?

3 MR. KARNAVAS:

4 Thank you, Mr. President. We understand there are about --
5 approximately five witnesses that were listed for the near
6 future. Of those five, there are two in particular: one is
7 TCW-487 and TCW-583. Those are the two witnesses, Your Honours.

8 [09.47.34]

9 MR. PRESIDENT:

10 Thank you.

11 Thank you, Doctor, for your valuable time to be here and give
12 information concerning the health condition of the accused Ieng
13 Sary - that is, whether he is able to participate in the
14 courtroom during the remainders of this week.

15 Now, the hearing on hearing the information from you is now
16 concluded, and you can be excused.

17 It is now appropriate for us to take a break. We will have a
18 30-minute break so that the Chamber can deliberate on this issue,
19 to see whether we need to move on or we need to adjourn for the
20 day.

21 The Court is now in recess.

22 THE GREFFIER:

23 All rise.

24 (Court recesses from 0948H to 1045H)

25 MR. PRESIDENT:

1 Please be seated. The Court is now back in session.

2 The Chamber informs the parties and the public that, after having
3 heard the opinions of the medical doctor who has been treating
4 Mr. Ieng Sary – that is Mr. Ieng Sary's health conditions
5 presently cannot afford him to be present in the courtroom, not
6 even through remote means, and that during the following week Mr.
7 Ieng Sary is able to participate in the proceeding only through
8 audio-visual means.

9 Besides, through his counsel, Mr. Ieng Sary has indicated his
10 position that he will not waive to be present in the courtroom
11 relating to the hearing of testimony of witness TCW-487, and
12 TCW-583, and also TCW-323.

13 As a result, the Chamber will not be able to hear the testimony
14 of TCW-487 as scheduled.

15 As scheduled, TC plans to hear TCW-487 and TCW-604, who will not
16 be able to present at the end of this week either.

17 [10.48.39]

18 As a result, the Chamber will adjourn the hearings of testimonies
19 of TC-487.

20 The Chamber will resume on Monday 28th of May 2012 beginning at 9
21 o'clock.

22 The hearing will hear testimony of witness TCW-487. In the event
23 that the hearing cannot proceed as planned, the hearing will hear
24 instead TCW-88 – rather TCW-488.

25 This is the oral decision of the Trial Chamber concerning the

19

1 substance with regards to the testimony of the witnesses who have
2 been planned to be heard this week.

3 Court officer is now instructed to coordinate with WESU so that
4 TCW-487 can be returned to his home and to return this witness to
5 the courtroom next Monday on the 28th of May 2012.

6 Next, given the fact that we have some residual matters regarding
7 the documents that witness - rather, that parties intends to
8 raise during the hearing and given the fact that we still have
9 some time, we will address the three document-related issues as
10 raised by parties. We will strive to address this issue before we
11 hear testimonies of witnesses in the following weeks.

12 Touching upon this issue, I would like to hand the floor to Judge
13 Lavergne to address these three documents related issues that
14 parties raised the other day. Judge Lavergne, you may proceed.

15 [10.51.22]

16 JUDGE LAVERGNE:

17 Yes. Thank you, Mr. President. We, on the Bench, we have noted
18 that among the documents listed on the document list in the
19 interface of the Chamber, the documents --that is to say the
20 documents that the parties wish to use for the questioning of the
21 witnesses, there are three documents that are problematic.

22 One document that the Prosecution intends to use and this is
23 document D366/7.1.188, and these are the Statutes of the Youth
24 League of the Communist Party of Kampuchea, and there are also
25 two documents that Nuon Chea's defence also intend to use,

1 D366/7.1.473 as well as another document which is a report,
2 D366/67, and this is the interview of a witness. And I note that,
3 regarding the document that the Prosecution intends to use --
4 that this document is not included in the lists that were filed
5 in April and in July. It appears to me that this document was
6 filed in November, and this list should have been constituted on
7 the base of documents that were already included in the previous
8 lists.

9 [10.53.37]

10 So, if this information is accurate, the Chamber wishes to
11 consider that this is a request to put before the Chamber a new
12 document.

13 So the Chamber is requesting the Prosecution to take into account
14 these issues and eventually to file a written request in order to
15 be allowed to put before the Chamber new documents, and of course
16 it will have to abide by the conditions listed in the Internal
17 Rules, and in particular in Rule 87.4.

18 [10.54.29]

19 Now, regarding the documents that Nuon Chea's defence intends to
20 use, the Chamber noted that these documents are included in no
21 list and the Chamber has already specified that the fact that
22 these documents are used in order to impeach the witness, does
23 not change the applicable rules and a decision, in fact, will
24 soon be handed down regarding this. So the same rules are applied
25 for all documents put before the Chamber no matter the aim of

1 this.

2 So, here, again, if Nuon Chea's defence intends to use this
3 document, it is requested to take into account the observations
4 that were made now, and to file a written request in order to be
5 allowed to put before the Chamber new documents, which of course
6 will have to abide by the conditions in Rule 87.4.

7 These observations were made today during today's hearing because
8 we have the time for this and the Chamber wishes to indicate that
9 in the future -- that when it will note on the lists in the
10 interface that some documents pose an issue, it will directly
11 advise the parties before the hearing, but we hope that the
12 proceedings will not be hampered by these kinds of problems.

13 [10.56.15]

14 I hope I have been clear. I don't know if any of the parties have
15 any observations to make in reaction to what I have just said.

16 MR. DE WILDE D'ESTMAEL:

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

18 Regarding the document that we included in the interface -- that
19 is to say D366/7.1.188, that is to say the Statutes of the Youth
20 League of the CPK -- after verifying the elements, we saw that it
21 is indeed included in Annex 2 of our document that we sent in
22 April 2011, which is indexed E9/31.2. And in Annex 2, this
23 document appears listed as number 24. It's the 24th in the annex.
24 So I believe there's a mistake here in that we had indeed already
25 produced - included this document in the list that was sent to

1 you in April last year.

2 [10.57.39]

3 MR. IANUZZI:

4 Good morning, everyone. Thank you, Your Honours.

5 First of all, in response to what you have just said about a
6 ruling, could we be advised when to expect that ruling? When will
7 that ruling be issued? Because we will, of course, need to object
8 to that, possibly appeal it. I understand from what Judge
9 Lavergne has said so far, it's against the position that we've
10 put forward so we would like to know when that decision will come
11 out.

12 Also, we would request that going forward, if we're going to be
13 required to make Rule 87.4 applications with respect to what is
14 obviously impeachment material, and what we say falls outside of
15 the scope of that Rule, we would like to make those requests
16 orally. Not in writing. We would like to make them orally at the
17 Chamber, have the debate publically in Court and have the Chamber
18 -- as it should be able to decide very quickly on those requests.
19 And I do have two other points - two other points of order that I
20 wanted to raise today since we have the time. So, if I may - I
21 think that'll take only about five minutes, I can do that now,
22 unless anyone else has further comments on this issue

23 (Judges deliberate)

24 [10.59.12]

25 MR. PRESIDENT:

23

1 Defence Counsel for Nuon Chea, what are the points that you would
2 like to raise before the Chamber? We already adjourned the
3 discussion regarding the hearing of the testimony of those
4 witnesses as rescheduled.

5 And, secondly, the floor is only open for the three contesting
6 documents, as clarified by Judge Lavergne.

7 [11.01.06]

8 Please state the subject matter that you wish to raise before the
9 Chamber.

10 MR. IANUZZI:

11 Well, Your Honour, there are two points of order: One point is a
12 request - a very simple request for clarification and a second
13 request for information.

14 I was not aware that the floor wasn't always open for any issue.

15 If there's some kind of a script I am meant to be following, then
16 maybe Your Honours would like to circulate that.

17 This is a courtroom; there are many issues that come up. Closing
18 the floor - I just don't understand that.

19 I have two issues I'd like to raise.

20 MR. PRESIDENT:

21 You may stop. Please be seated, Counsel.

22 (Judges deliberate)

23 [11.02.32]

24 MR. PRESIDENT:

25 I would like to clarify that, for a new document submission, all

24

1 parties are instructed to make it in writing pursuant to Rule
2 87.4. The Chamber will not accept and decide on any requests
3 which are not in writing regarding this matter.

4 I don't think there is any other point for you to raise, Counsel.
5 The hearing today has come to an end.

6 MR. IANUZZI:

7 I have two points to make, Your Honour, nothing to do with
8 documents, nothing to do with the witnesses; two completely
9 separate points.

10 MR. PRESIDENT:

11 We actually asked you what are the subject matters that you'd
12 like to raise. If you don't say so, how can I manage this
13 courtroom? You cannot just stand on your feet and raise other
14 points which are not part of the agenda of the scheduling of the
15 hearing.

16 Clearly state the subject matters that you'd like to raise, what
17 is number one and what is number two; state it clearly so that
18 then we can decide whether we allow the floor to you.

19 [11.04.05]

20 MR. IANUZZI:

21 Thank you, Your Honour. That's my fault for not being clear, as
22 usual.

23 I did state that I had a request for a clarification with respect
24 to -- with the Chamber's decision of 2nd May on my oral
25 application regarding Judge Cartwright's gesticulations, as I

1 believe I referred to them.

2 My second point – my second point is simply a request for
3 information -- it's a follow up, in fact, on a request that has
4 already been made and that seems to have been lost in the shuffle
5 of things. So we would like to make a request for clarification
6 of a ruling of the Bench and we would like to make a request for
7 information from the Bench. And I might add we would like to know
8 when we will be informed of the precise witness order for next
9 week. When will we be told that for sure whose appearing on
10 Monday?

11 Thank you.

12 [11.04.58]

13 MR. PRESIDENT:

14 The Chamber already informed the party and the public that, due
15 to the issues of certain witnesses, those who are listed on the
16 list, and due to the inability of the accused Ieng Sary and the
17 Chamber already ruled that for next week the Chamber will hear
18 one of the two witnesses for next week. If one is unable to
19 testify, then we will hear the testimony of another witness --
20 that is TCW-488 -- as well as the alternative, TCW-487. So it is
21 clear for next week hearing.

22 And for the remainder of the witnesses, the Chamber always
23 notifies the party if there is any change to the Scheduling Order
24 of hearing the witnesses beforehand, so that the parties are able
25 to prepare their questions for those witnesses, and not to delay

1 the time.

2 [11.06.34]

3 MR. IANUZZI:

4 Thank you. So that's very clear to me now. 488 is the primary
5 witness. I understand. Thank you for the clarification.

6 May I make my two other points?

7 MR. PRESIDENT:

8 No, you are not allowed.

9 The Court will adjourn now.

10 Security guards, you are instructed to bring the two accused back
11 to the detention facility and bring the three accused, including
12 Ieng Sary, to the courtroom on the morning of Monday, 28th May
13 2012, before 9 a.m.

14 As for Mr. Ieng Sary, if he will show clearly his status
15 regarding the waiver of his presence, then he will be instructed
16 to be brought only to the waiting room downstairs. I repeat, this
17 is only for Ieng Sary.

18 The Court is now adjourned.

19 (Court adjourns at 1107H)

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