



**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

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): ..... 10 / 02 / 2012 .....
ម៉ោង (Time/Heure):..... 15:20 .....
ប្រតិបត្តិការករណី/ករណី/Case File Officer/L'agent chargé du dossier: ..... <i>Sam Rada</i> .....

**WRITTEN RECORD OF PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

7 December 2016

Substantive Hearing on evidence – Day 489

Prepared by:

Mr. EM Hoy and Mr. Harshan ATHURELIYA

<b>Attendance Record</b>
<b>Before:</b> Judge NIL Nonn (President); Judge YA Sokhan; Judge YOU Ottara; Judge Jean-Marc LAVERGNE; Judge Claudia FENZ
<b>Reserve Judges:</b> Judge THOU Mony; Judge Martin KAROPKIN
<b>Greffier/s:</b> Mr. EM Hoy; Mr. Harshan ATHURELIYA
<b>OCP:</b> Mr. SENG Leang; Mr. Dale LYSAK
<b>Accused:</b> Mr. NUON Chea (from the holding cell); Mr. KHIEU Samphan
<b>Defence for the Accused Noun Chea:</b> Mr. SON Arun; Mr. Victor KOPPE
<b>Defence for the Accused Khieu Samphan:</b> Mr. KONG Sam Onn; Ms. Anta GUISSÉ
<b>Standby Counsel for the Accused Khieu Samphan:</b> Ms. TOUCH Voleak; Mr. Calvin SAUNDERS
<b>Civil Parties:</b> Mr. PICH Ang; Ms. Marie GUIRAUD; Mr. HONG Kimsuon; Ms. SIN Soworn
<b>Witness:</b> Witness 2-TCW-1060 (Mr. NUON Trech alias TES Trech)
<b>Others:</b> Mr. SOUR Sotheavy (Associate Court Officer); Mr. VAT Somao; (Transcriber); Ms. Elodie KANCEL (Trial Chamber Intern)

<u>General court times</u>		
Day	Start time: 09:03	Finish time: 11: 08
Recess am	Start time:	Finish time:
Recess	Start time:	Finish time:
Recess pm	Start time:	Finish time:
Total Court Time:		2 hours 5 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Opening of Substantial Hearing	Trial Chamber , Greffier	09:03	09:04
NUON Chea request to follow the proceedings from the holding cell	Trial Chamber	09:04	09:06
Hearing of witness 2-TCW-1060 (Mr. TES Trech)	Co-Prosecutor	09:06	09:23
	Lead Co-Lawyer for the Civil Parties	09:23	09:47
	KHIEU Samphan Defence	09:48	10:07
Oral submissions on the Internal Rule 87-4 request to admit documents relating to 2-TCE-1062	Co-Prosecutor	10:11	10:14
	Lead Co-Lawyer for the Civil Parties	10:14	10:14
	NUON Chea Defence	10:14	10:15
	KHIEU Samphan Defence	10:15	10:16
	Trial Chamber	11:02	11:02
Oral submissions on the testimony of 2-TCCP-237 (Mr. SAR Sarin)	NUON Chea Defence	10:17	10:30
	KHIEU Samphan Defence	10:31	10:37
	Co-Prosecutor	10:37	10:43
	Lead Co-Lawyer for the Civil Parties	10:43	10:48
	Trial Chamber	10:53	10:55
	KHIEU Samphan Defence	10:58	11:02
	Trial Chamber	11:05	11:07

### Summary of Proceedings

#### Opening of the Substantive Hearing

The President NIL opened the proceedings and the Greffier informed the Chamber that all parties were present. NUON Chea was present in the holding cell.

#### NUON Chea request to follow the proceedings from the holding cell

The Trial Chamber granted NUON Chea's request to waive his right to be present in the courtroom and to follow the proceedings from the holding cell.

#### Hearing of witness 2-TCW-1060 (Mr. TES Trech)

The Co-Prosecutor, the Lead Co-Lawyer for the Civil Parties and the KHIEU Samphan

Defence questioned witness 2-TCW-1060.

**Oral submissions on the Internal Rule 87-4 request to admit documents relating to 2-TCE-1062**

The Trial Chamber heard submissions on the Co-Prosecutors' request to admit three documents relating to the testimony of 2-TCE-1062. The Co-Prosecutor stated that the first two documents contain additional information relating to the study of the remains at Choeung Ek and will be of use to examine the expert. The Co-Prosecutor also sought the admission of an interview conducted with HIM Huy (2-TCW-906), an S-21 witness who has testified before the Trial Chamber. The NUON Chea Defence and Lead Co-Lawyer for the Civil Parties had no objections to the request. The KHIEU Samphan Defence had no objection but highlighted the superfluous nature of HIM Huy (2-TCW-906)'s statements. The Trial Chamber indicated that it would issue a ruling on the request.

**Oral submissions on the testimony of 2-TCCP-237 (Mr. SAR Sarin)**

The Trial Chamber heard submissions on the NUON Chea Defence request relating to the use of inculpatory evidence contained in the testimony of SAR Sarin (2-TCCP-237), who did not complete his testimony before the Chamber. The NUON Chea Defence requested the Chamber to summons SAR Sarin (2-TCCP-237) to the courtroom to complete his testimony or, in the alternative, for the evidence given by him to be deleted or deemed unusable, given that the Defence were not given an opportunity to cross-examine him. The KHIEU Samphan Defence also submitted that the Chamber should not take into account the testimony of SAR Sarin (2-TCCP-237).

The Co-Prosecutor noted that the submissions on the use of SAR Sarin (2-TCCP-237)'s evidence should be the subject of written submissions. The Co-Prosecutor submitted that if the Defence did not have the opportunity to cross-examine SAR Sarin (2-TCCP-237), his previous testimony and DC-Cam interview should be treated as out-of-court statements.

The Lead Co-Lawyer for the Civil Parties submitted that it was impossible to force a Civil Party to testify before the Chamber or to erase SAR Sarin (2-TCCP-237)'s testimony. The Lead Co-Lawyer for the Civil Parties further submitted that the Defence would have an opportunity to appeal if they believe that the use of the evidence has been unduly or excessively used. Judge Lavergne commented that the question of whether SAR Sarin (2-TCCP-237) intends to maintain his status as a Civil Party should be clarified.

The President of the Trial Chamber requested the parties to file written submissions on the use of the evidence (particularly the inculpatory evidence) provided by SAR Sarin (2-TCCP-237).

**Reclassified**

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/7537	-	00019638- 00019658; 00251247- 00251264; 00290995- 00291017	DC-Cam: Interview with Tel Ol aka Pheak or Tes Trich	P	00019644; 00019645; 00019648; 00019649	00251252; 00251253; 00251256	00291001; 00291002; 00291006; 00291007
E3/7877.1	D231/24R	01357613; - 01358654	Transcript of Interview of TES Trech	P	01357613	-	01358654

**Oral Orders/Decisions:**

- Order authorising the Accused NUON Chea to follow the proceedings from the holding cell and instructing the AV Unit to connect the AV link to the proceedings (09:06).
- Oral ruling on the submissions relating to the evidence given by SAR Sarin (2-TCCP-237) on 8 November 2016 (11:03).
- Order to take the Accused to the Detention Facility and bring him back to court for the Hearing on 9 December 2016 (11:08).

**Orders for Adjournment of Hearing**

The hearing will resume on Friday 9 December 2016 at 9:00am.

Phnom Penh, 7 December 2016

Greffier

Greffier

Mr. EM Hoy

Mr. Harshan ATHURELIYA

