



ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
10 / 02 / 2012

ម៉ោង (Time/Heure) : 15:30

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: Ratanak

E1/34

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

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

26 January 2012

Substantive Hearing on evidence - Day 22

Prepared by:

DUCH Phary and Natacha WEXELS-RISER

Attendance Record
Before: Judge NIL Nonn (President), Judge YA Sokhan, Judge Silvia CARTWRIGHT, Judge Jean-Marc LAVERGNE, Judge YOU Ottara.
Reserve Judges: Judge THOU Mony (Reserve) and Judge Claudia FENZ (Reserve).
Greffier/s: Mr. DUCH Phary, Ms. Natacha WEXELS-RISER.
OCP: Mr. Chan DARASMEY, Mr. SENG Bunkheang, Mr. PHANN Sochea, TOCH Vannarith, BOU Chanthan, Mr. PICH Sambath (Afternoon), Mr. Dale LYSAK.
Accused: Mr. NUON Chea, Mr. IENG Sary, Mr KHIEU Samphan.
Defence for the Accused: Mr. SON Arun, Mr. Michiel PESTMAN, Mr. Jacques VERGES, Mr. KONG Sam Onn, Mr. ANG Udom, Mr. Michael G. KARNAVAS.
Civil Parties: Mr. PICH Ang, Ms. Elisabeth SIMONNEAU-FORT, Mr. LOR Chunthy, Mr. VEN Pov, Ms. SIN Soworn, Mr. HONG Kimsuon, Mr. SAM Sokong, Ms. Chet Vanly, Ms. Philippine SULTZ.
Witness: Mrs. PRAK Yut (TCW-542).
Others: Courtroom officer, transcribers, Ms. Alexandra PRASSOLOFF.

<u>General court times</u>		
Day	Start time: 09:10	Finish time: 16:15
Recess am	Start time: 10:40	Finish time: 11:10
Recess	Start time: 12:05	Finish time: 13:35
Recess pm	Start time: 14:45	Finish time: 15:05
	Total Court Time:	4 hours, 45 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Scope of questioning	IENG Sary Defence Co-Prosecutors Civil Party Lead Co-lawyers Trial Chamber	09:11	09:50
Questioning of Witness PRAK Yut (TCW-542)	Co-prosecutors	09:53	14:45
Waiver of NUON Chea and IENG Sary's right to be present in the courtroom	NUON Chea Defence IENG Sary Defence Trial chamber	10:39	10:41
Oral decision providing guidelines on the applicability of Rule 87(3)	Trial Chamber	15:05	15:17
Schedule for next week's hearings	Trial Chamber	15:17	15:22
Questioning of Witness PRAK Yut (TCW-542)	Civil Party Lead Co-lawyers	15:22	16:14

Summary of Proceedings

Request from IENG Sary defence regarding the scope of questioning of witnesses

IENG Sary Defence requested clarification on the permitted scope of questioning of witnesses.

The Trial Chamber reminded all parties to ensure that their questions to witnesses are straightforward and within the parameters of Case 002/01.

Questioning of Witness PRAK Yut (TCW-542) (Cont.)

The Co-Prosecutors continued questioning Witness PRAK Yut.

Waiver of NUON Chea and IENG Sary's right to be present in the courtroom

The Accused waived their right to be present in the courtroom after 10:40 (the written waivers are attached to this written record).

Oral decision of the Trial Chamber on the general application of Rule 87(3)

The Trial Chamber issued its decision on the general application of Internal Rule 87(3) (see below).

TC No	OCIJ No	ERN	Title	Class	Note in Khmer	Note in English	Note in French
E3/163	D234/4	00357505- 00357516 00364077- 00364086 00403121- 00403129	កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី ប្រាក់ យុត្ត PRAK Yut ថ្ងៃទី ២១-០៧-២០០៩ [Corrected 1] Written Record of Interview of PRAK Yut ប្រាក់ យុត្ត dated 21 July 2009 [Corrigée 2] Procès verbal d'audition de témoin PRAK Yut ប្រាក់ យុត្ត en date du 21-07-2009	P	00357514, 00357508, 00357509	00364084, 00364079, 00364080	00403127, 00403123, 00403124
E3/164	D234/1 5	00404640- 00404647 00407795- 00407801 00434761- 00434768	កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី ប្រាក់ យុត្ត PRAK Yut ថ្ងៃទី ១៨ វិច្ឆិកា ២០០៩ Written Record of Interview of PRAK Yut ប្រាក់ យុត្ត Dated 18-11-2009 Procès verbal d'audition de témoin PRAK Yut ប្រាក់ យុត្ត en date du 18-11-2009	P			
E3/165	13.13	00053603- 00053645 00184048- 00184078 00301334- 00301362	សន្និបាតលើកទី១ សម័យកាលទី ១ របស់សភាតំណាងប្រជាជនរដ្ឋ ១១-១៣ មេសា ៧៦ General Assembly first session of representative assembly of Kampuchea People 11-13/4/76 L'assemblée des représentants du Peuple du Kampuchéa 11-13/4/76	P	00184063- 00184064	00053607, 00053628- 00053629	003013350

Oral Orders/Decisions:

- Order to bring the Accused NUON Chea (10:41) and IENG Sary (10:39) to the holding cell (Accused waivers are attached to this written record).
- Oral decision of the Trial Chamber on the general application of Rule 87(3):

The Chamber recalled that during last week's hearing, the parties raised questions as to the proper application of Internal Rule 87. The Trial Chamber provided the following guidelines regarding the applicability of Internal Rule 87 insofar as it concerned relevance and reliability (including authenticity) of documents intended to be put before the Chamber.

Internal Rule 87(3)(a) requires that a document be relevant. A document that clearly lacks reliability, including authenticity, may be considered by the Chamber to be unsuitable to prove the facts it purports to prove. Internal Rule 87(3) therefore requires documents intended to be put before the Chamber to satisfy *prima facie* standards of relevance, reliability and authenticity. Where, for example, a document does not appear to be a forgery, or unrepresentative of the original, the Chamber shall consider the document to have been put before it. Objections of this type must be raised at the time it is proposed to put a document or other evidence before the Chamber. Any further submissions as to the document's reliability shall go instead to

the weight to be accorded to it by the Chamber.

Internal Rule 67(3) requires the Co-Investigating Judges to review and evaluate documents to determine whether as a whole there is sufficient evidence to support the charges against the Accused. It follows that, during the judicial investigation, the Co-Investigating Judges assessed all documents placed on the case file for relevance, and accorded some probative value to the evidence cited in the Closing Order. The Closing Order was subject to appeal to the Pre-Trial Chamber. For these reasons, the Trial Chamber has accorded the documents cited in the Closing Order a presumption of relevance and reliability, including authenticity, and has given them an E3 number. Documents that are on the Case File but are not found in the Closing Order have not been accorded this presumption.

Original documents are a preferred method of proof and will be accorded more weight than photocopies of documents. The fact that certain words within a document are illegible does not preclude putting it before the Chamber. Such issues are a matter of weight and shall not be considered when evaluating the requirements of Internal Rule 87(3).

Material such as analytical reports, books, documentary films, and media articles may be relevant and will not be excluded as a category. Its probative value, however, shall be determined by the Chamber in due course.

The ICTY and other international tribunals have adopted a practice that permits judges to exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial. This is not reflected in the ECCC legal framework and is in any event unnecessary because professional judges have the ability to disregard unduly prejudicial evidence.

There is no procedural requirement, before the ECCC, to call witnesses with personal knowledge to authenticate documents on the case file. Nonetheless, testimony as to chain of custody and provenance will assist the Chamber in assessing the weight to be attributed to particular documents.

The Trial Chamber has previously indicated that parties seeking the introduction of documents at trial bear the burden of ensuring their timely availability in all three official languages. Please see Document E131/1. Some latitude will be granted by the Chamber where parties are precluded from doing so due to workload constraints of the ITU and when the relevant portions of the documents the parties intend to put before the Chamber and to use as the basis to question a witness or an Accused are available in at least one language that the Accused or the witness can understand. Alternatively, and where the relevant portion of the document in question is brief and can be easily translated in court, the Chamber may allow that portion of a document to be put to an accused or witness.

The Trial Chamber further reiterated that evidence obtained through torture has limited uses. The Chamber reminded the parties of its memorandum E74 in Case 002 and its oral decisions in Case 001 of 20 and 28 May 2009.

- Order to bring the three Accused to the detention facility and to return them to the courtroom for the hearing on 30 January 2012.

Orders for Adjournment of Hearing
The hearing will resume on 30 January 2012 at 09:00.

Phnom Penh, 26 January 2012

Greffier

Greffier



DUCH Phary

Natacha WEXELS-RISER