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លេខ (N°) (Case File No): 09 / 40

មន្ត្រីទទួលបន្ទុក (Case File Officer/L'agent chargé): SANN PADA

E1/52

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

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 March 2012

Substantive Hearing on evidence – Day 40

Prepared by:
SE Kolvuthy and Roger PHILLIPS

Attendance Record
Before: Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge YA Sokhan, Judge Jean-Marc LAVERGNE, Judge YOU Ottara.
Reserve Judges: Judge THOU Mony, Judge Claudia FENZ.
Greffiers: Ms. SE Kolvuthy, Mr. Roger PHILLIPS, Mr. DUCH Phary.
OCP: Mr. William SMITH, Mr. SENG Bunkheang, Mr. PICH Sambath, Mr. Dale LYSAK, Ms. Golriz GHAHRAMAN.
Accused: Mr. KHIEU Samphan, Mr. NUON Chea, Mr. IENG Sary.
Defence for the Accused: Mr. SON Arun, Mr. Michiel PESTMAN, Mr. Jasper PAUW, Mr. KONG Sam Onn, Ms. Anta GUISSSE, Mr. ANG Udom, Mr. Michael G. KARNAVAS, Ms. Diana ELLIS.
Civil Parties: Mr. PICH Ang, Ms. Elisabeth SIMONNEAU-FORT, Mr. LOR Chunthy, Ms. MOCH Sovannary, Ms. CHET Vanly, Ms. TY Srinna, Mr. Barnabé NEKUIE, Ms. Lyma NGUYEN.
Witness: KAING Guek Eav alias DUCH
Others: Ms Zuzana KOVALOVA.

<u>General court times</u>		
Day	Start time: 9:10	Finish time: 16:00
Recess am	Start time: 10:40	Finish time: 11:10
Recess	Start time: 12:05	Finish time: 13:35
Recess pm	Start time: 14:40	Finish time: 15:00
	Total Court Time:	4 hours 30 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Issues concerning medical examinations of the Accused	NUON Chea Defence	9:10	9:30
	Trial Chamber	10:35	10:40
	Co-Prosecutors	11:10	11:15
	Civil-Party Lead Co-Lawyers IENG Sary Defence		
Observation of KHIEU Samphan Defence	KHIEU Samphan Defence Trial Chamber	9:20	9:35
Testimony of KAING Guek Eav	Co-Prosecutors	9:35	16:00
Trial Chamber's reminder to the Parties	Trial Chamber	9:55	10:00
Waiver of the Accused's right to be present in the courtroom	IENG Sary Defence NUON Chea Defence	10:30	10:40
Clarification concerning the manner of presenting documents	IENG Sary Defence	11:35	11:45
	Trial Chamber	13:35	13:50

Summary of Proceedings

Issues concerning medical examinations of the Accused

The Counsel for NUON Chea explained that he had not attempted to interfere with the medical examination of Mr. NUON Chea the day before. The Co-Prosecutors, the Civil Party Lead Co-Lawyers and the IENG Sary Defence expressed their comments. The Trial Chamber ruled that the Counsel were not allowed to directly request a doctor to examine their clients. Such a request could only be made through a *greffier*. The Counsel were further not allowed to personally attend medical examinations of the Accused.

Observation of KHIEU Samphan Defence

Following the request of the Counsel for KHIEU Samphan, the Trial Chamber advised the Parties and the Witness to pause between the questions and the answers in order to facilitate the interpretation. The Witness should also avoid drawing any conclusions.

Testimony of KAING Guek Eav

The Co-Prosecutors continued to put questions to the Witness.

2/4

Trial Chamber's reminder to the Parties

The Trial Chamber reminded the Parties to ask only those questions which are relevant to the first segment of the trial; that is questions which concern the relevant paragraphs of the Closing Order as determined by the Trial Chamber.

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

The Accused IENG Sary and NUON Chea waived their right to be present in the courtroom.

Clarification concerning the manner of presenting documents

The Trial Chamber reiterated that Parties should identify documents when presenting them before the Chamber. It ruled that if a witness is not familiar with a document, the document has to be removed from him or her as well as from the screen. However, any Party can put questions to the witness based on the subject-matter in the document.

Record of Rule 87(3) Proceedings

TC Ref Number	OCIJ Ref Number	Name/Description	Party/TC	Remarks (ERN)
E124/7.2		Annex: List of paragraphs and portions of the closing order relevant to Trial One in Case 002, amended further to the Trial Chamber's decision on IENG Thirith's fitness to stand Trial (E138)	OCP	paras 6, 156-159
	D366/7.1.330	DK Ministry of Commerce document entitled "Report on the meeting of Commerce Ministry"	OCP	
E3/153		DK Ministry of Commerce document entitled "Additional comments to the report on the Ministry Conference, 25-26 July 1976".	OCP	
E3/130		The CPK statute	OCP	00053007-38 (KH) 00184022-47 (EN) 00292914-34 (FR)

Oral Orders/Decisions:

- Order to bring the Accused IENG Sary and NUON Chea (10:40) to the holding cell (waivers of the Accused are attached to this written record).
- Ruling that counsel is not allowed to make a direct request to a medical doctor to examine his client's health concern, or to go to the medical room where the accused person is being medically examined during the course of the proceedings.

20
3/4

- Ruling clarifying that if the witness to whom a document is given cannot identify it or says he has never seen it before, the document must be removed from him and from the screen in front of him. Notwithstanding that, any party may put questions to the witness based on the subject matter in the document.
- Order to return Witness KANG Guek Eav to the detention facility and to bring him to the courtroom for the hearing on 26 March 2012.
- Order to bring the three Accused to the detention facility and to return them to the courtroom for the hearing on 26 March 2012.

Orders for Adjournment of Hearing

The hearing will resume on 26 March 2012 at 9:00am. *AS*

Phnom Penh, 21 March 2012

Greffier  Greffier

SE Kolvuth  Roger PHILLIPS 