



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
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ០៣ / ០៥ / ២០១២
ម៉ោង (Time/Heure) : ០៨ : ៤៥
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: SANN RADA

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

18 April 2012

Substantive Hearing on evidence – Day 51

Prepared by:

DUCH Phary and Natacha WEXELS-RISER

<u>Attendance Record</u>
Before: Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge Jean-Marc LAVERGNE, Judge YA Sokhan, Judge YOU Ottara.
Reserve Judges: Judge THOU Mony, Judge Claudia FENZ.
Greffiers: Ms. SE Kolvuthy, Ms. Natacha WEXELS-RISER, Mr. Duch PHARY
OCP: Mr. SENG Bunkheang, Mr. Vincent DE WILDE D'ESTMAEL, Mr. DALE Lysak,
Accused: Mr. KHIEU Samphan, Mr. NUON Chea, Mr. IENG Sary.
Defence for the Accused: Mr. SON Arun, Mr. Jasper PAUW, Mr. IANUZZI, Mr. KONG Sam Onn, Ms. Anta GUISSSE, Mr. ANG Udom, Mr. Michael G. KARNAVAS.
Civil Parties: Mr. PICH Ang, Ms. Elisabeth SIMONNEAU-FORT, Mr. SAM Sokong, Mr. LOR Chunthy, Mr. MOCH Sovannary Mr. HONG Kimsuon, Mr. VEN Pov, Ms. TY Srinna, Mr. Barnabé NEKUIE, Ms. Elisabeth RABESANDRATANA.
Witness: SAUT Toeung
Others: Mr. UCH Arun, Mr. LIM Bunheng (counsel for the witness); Mr. Philippe GOUT, Mr. Sheriffo JAMMEH, Ms. Seynabou DIOP, Mr. Laurent SOULARD.
<u>General court times</u>

Day	Start time: 09:05	Finish time: 16:15
Recess am	Start time: 10:40	Finish time: 11:10
Recess	Start time: 12:10	Finish time: 13:35
Recess pm	Start time: 14:40	Finish time: 15:00
	Total Court Time:	4 hours, 55 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
NUON Chea's statement concerning testimony of witness Duch	NUON Chea Defence	09:13	09:22
Discussion on the accused's right to remain silent	OCP, NUON Chea Defence	09:22	09:33
Questioning of witness SAUT Toeung and observations by the Chamber	Trial Chamber	9:36	9:43
Applications under Rule 28 - right against self-incrimination and responses	NUON Chea Defence OCP Civil Parties.	09:44 10:27	9:56 10:37
Questioning of witness SAUT Toeung	OCP	9:57	10:27
Waiver of the Accused's right to be present in the courtroom	IENG Sary Defence NUON Chea Defence	10:35 12:05	10:35 12:05
Decision of the Trial Chamber on the right to remain silent	Trial Chamber	11:14	11:16
In camera session pursuant to Rule 28	Trial Chamber	11:15	12:10
Questioning of Witness SAUT Toeung	OCP	13:42	16:06

Summary of Proceedings

NUON Chea's statement concerning Duch's testimony:

NUON Chea rejected Duch's testimony. He invoked his right to remain silent.

Discussion on the accused's right to remain silent:

The parties made submissions on the issue of the accused's right to remain silent.

Questioning of witness SAUT Toeung (TCW617):

The OCP started questioning the witness.

Defence Request under Rule 28 - right against self-incrimination:

Counsel for NUON Chea made two applications under Rule 28(8) and 28(9) and the other parties responded. The Trial Chamber rejected the first request and accepted the second.

Trial Chamber's Oral Decision concerning Right to Remain Silent:

The Chamber issued a decision the right to remain silent (see below)

In camera session on Rule 28(8) and 28(9):

The Chamber held a closed session to discuss the application of the Defence under Rule 28(8) and (9).

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.

Questioning of witness SAUT Toeung (TCW617):

The OCP continued questioning the witness.

Record of Rule 87(3) Proceedings

TC No	OCIJ No	ERN	Title	Class	Note in Khmer	Note in English	Note in French
E3/423	D234/23	00408429 - 00408453 00414587 - 00414611 00434806 - 00434831	កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី សូត្រ ឡឿង SOUTR Toeung Written Record of Interview of SOUTR Toeung សូត្រ ឡឿង Procès verbal d'audition de témoin SAUT/SOUTR Toeung សូត្រ ឡឿង	P			
E3/103	D91/4	00204013 - 00204017 00204018 - 00204022 00490622 - 00490626	[លិខិតបញ្ជាក់ការជំនួសឯកសារ] កំណត់ហេតុនៃការស្តាប់ចម្លើយសាក្សី សូត្រ ឡឿង ថ្ងៃទី០៤ ១២ ២០០៧ [Surrogate Sheet] Written Record of Interview of SAUT Toeung [Feuille remplacée] Procès verbal d'audition de SAUT Toeung	P	00204014	00204020	00490624

E3/146	D175 /6.2	00283389 - 00283423 00538732 - 00538757 00611795 - 00611824	[លិខិតបញ្ជាក់ការជំនួសឯកសារ] ទស្សនាវដ្តី យុវជន-យុវនារី បដិវត្តន៍ លេខពិសេស ឆ្នាំ ១៩៧៤ [Surrogate Sheet] Revolutionary Youth Review Number Special year 1974 [Feuille remplacée] Revolutionary Youth Review Number Special year 1974	P			
E3/729	11.3	00063397 - 00063434 00357900 - 00357930 , 00184230 - 00184245 00364222 - 00364251	យុវជន និង យុវនារី បដិវត្ត លេខ១០ ខែតុលា ឆ្នាំ១៩៧៥ Revolutionary Youth No. 10 Oct., 1975 [Corrigée 1] Revolutionary Youth No. 10 Oct., 1975	P			
E3/76	D262 .45	00701871 - 00701889 , 00728971 - 00728971 00170338 - 00170455 00701861 - 00701870 , 00743745 - 00743745	[លិខិតបញ្ជាក់ការជំនួសឯកសារ] [Partial T.] ឧបសម្ព័ន្ធ ០០០៤៥៖ អៀង សារី រៀបចំព័ត៌មានបំប្លែងអាហារថ្ងៃត្រង់ [Surrogate Sheet] Annex 00045: Foreign Broadcast Information Service collection of reports for September 1978 [Feuille remplacée] [Partial T.] Annex 00045: Un déjeuner avec IENG Sary	P	0070187 1- 0070187 2	0017034 0	00701861

Oral Orders/Decisions:

- Order to bring the Accused IENG Sary (10:37) and NUON Chea (12:07) to the holding cell (waivers of the Accused are attached to this written record).

- **Trial Chamber's Oral Decision concerning Right to Remain Silent (11:14):**

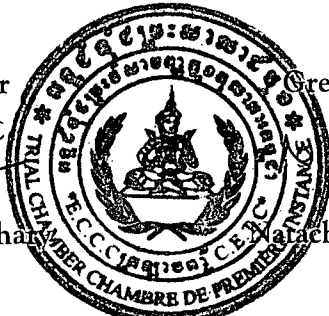
The Trial Chamber notes the motions involving IENG Sary and KHIEU Samphan's right to remain silent (E164 and E174). It further notes that NUON Chea, after having made statements allegedly relevant to the first segment of the trial, has also indicated that he might exercise his right to remain silent. Pursuant to Article 35 new (g) of the ECCC Law, an Accused shall not be compelled to testify against himself or to confess guilt. Therefore, an Accused cannot be compelled to answer questions put to him. However, in assessing the guilt or innocence of the Accused in its verdict, the Chamber shall consider all of the evidence that has been put before it and subject to examination, including the testimony of the Accused (and the manner in which he testifies). In this regard, and where the Accused elects to alternate between silence and giving testimony, this may be noted by the Chamber when assessing his credibility. The relevant international jurisprudence indicates that adverse inferences from selective decisions to remain silent may be drawn. In any case the Chamber shall not base a finding of guilt exclusively on an adverse inference drawn from silence.


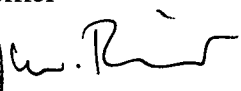
- Order to bring the three Accused to the detention facility and to return them to the courtroom for the hearing on 19 April 2012.

Orders for Adjournment of Hearing

The hearing will resume on 19 April 2012 at 9:00am.

Phnom Penh, 18 April 2012

Greffier  Greffier

DUCH Phas Natacha WEXELS-RISER