



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

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):

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ម៉ោង (Time/Heure): 16:00

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

23 July 2013

Substantive Hearing on evidence - Day 214

Prepared by:

Roger PHILLIPS and SE Kolvuthy

<u>Attendance Record</u>
Before: Judge NIL Nonn (President), Judge Silvia CARTWRIGHT, Judge YA Sokhan, Judge Jean-Marc LAVERGNE, Judge YOU Ottara
Reserve Judge: Judge THOU Mony, Judge Claudia FENZ
Greffiers: Ms. SE Kolvuthy, Mr. Roger PHILLIPS, Ms. Faiza ZOUAKRI
OCP: Mr. William SMITH, Mr. Dale LYSAK, Mr. SENG Bunkheang
Accused: Mr. KHIEU Samphan, Mr. NUON Chea (participating from the holding cell)
Defence for the Accused: Mr. SON Arun, Mr. Victor KOPPE, Mr. KONG Sam Onn, Ms. Anta GUISSÉ
Civil Parties: Mr. PICH Ang, Ms. Elisabeth SIMONNEAU-FORT, Mr. HONG Kimsuon, Mr. VEN Pov, Ms. Beini YE, Ms. CHET Vanly, Ms. SIN Soworn
Witnesses: Mr. SAR Sarin (TCCP-186)
Others: Mr. UCH Arun, Ms. SOUR Sotheavy, Ms. Chhun Danin, Ms. Paola ROBOTTI, Mr. Matthew CAMERON

<u>General court times</u>		
Day	Start time: 09:05	Finish time: 15:25
Recess am	Start time: 10:45	Finish time: 11:10
Recess	Start time: 12:00	Finish time: 15:05
Recess pm	Start time: N/A	Finish time: N/A
	Total Court Time:	2 hours 50 minutes

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Outline of Proceedings	TC	09:05	09:10
Co-Prosecutors' Request That the Trial Chamber Hear Additional Tuol Po Chrey Witnesses (E292/3) and NUON Chea's Oral Submissions Regarding Additional Witnesses	OCP	09:10 09:19	09:10 09:22
	LCLCP	09:11	09:11
	NC Defence	09:12	09:17
	KS Defence	09:17	09:19
	TC	15:09	15:10
Co-Prosecutors' Request to Reconsider Decision not to Recall Civil Party SAR Sarin (E293/1)	LCLCP	09:24	09:44
		09:55	09:56
		10:21	10:24
		11:12	11:13
	NC Defence	09:44	09:46
		10:13	10:14
	KS Defence	09:46	09:54
		10:09	10:11
	OCP	09:56	10:09
		10:11	10:12
		10:16	10:18
	TC	10:18	10:21
		10:24	10:27
10:33		10:42	
11:11		11:12	
15:10		15:11	
Co-Prosecutors' Request With Respect to the Drawing of Adverse Inferences from the	OCP	11:14	11:16
	LCLCP	11:18	11:19

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Accuseds' Failure to Testify	NC Defence	11:22	11:25
	KS Defence	11:25	11:27
	TC	15:15	15:16
Co-Prosecutor's Request for Issuing of Rulings on the Admission of Documents Prior to the Close of Evidentiary Hearings	OCP	11:16	11:18
	LCLCP	11:19	11:20
	NC Defence	11:20	11:22
	KS Defence	11:27	11:29
	TC	15:17 15:21	15:18 15:22
NUON Chea Defence Request to Summons Witnesses in Respect of the Alleged Policy of Targeting Khmer Republic Officials	NC Defence	11:31 11:46	11:37 11:48
	OCP	11:37	11:44
	LCLCP	11:44	11:46
	TC	15:11	15:13
KHIEU Samphan Defence Request for Information Regarding NOU Mouk	OCP	11:52	11:54
	LCLCP	11:54	11:55
	KS Defence	11:55	11:59
	TC	15:13	15:15
NUON Chea Defence Request to Admit New Documents, Summons Rob Lemkin and Initiate an Investigation	TC	15:16	15:17
Scheduling of Submission of Closing Briefs and Presentation of Closing Statements	TC	15:18	15:23
Page Limits for Closing Briefs in Light of any Additional Evidence Put Before The Chamber in Final Evidentiary Decisions	TC	15:22	15:23

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

The Accused NUON Chea was present in the holding cell pursuant to Internal Rule 81(5). See Second Decision on Accused NUON Chea's Fitness to Stand Trial, E256/5, 2 April 2013.

Outline of Proceedings

The Chamber informed the parties of the matters that would be the subject of discussion during the course of the day. The Chamber also informed the parties that the NUON Chea Defence's Sixth & Final Request to Summons TCW-223, filed on Monday 22 July 2013, being a renewal of a pending motion, would not be the subject of oral submissions and would be addressed in the Chamber's final decision on witnesses.

Co-Prosecutors' Request That the Trial Chamber Hear Additional Tuol Po Chrey Witnesses (E292/3) and NUON Chea's Oral Submissions Regarding Additional Witnesses

On 19 July 2013, the Co-Prosecutors requested the Chamber hear the testimony of two additional witnesses relating to Tuol Pol Chrey, namely TCW-644 and a new civil party in Case 004. The NUON Chea Defence further requested the Chamber summons TCW-802, TCW-803 and Mr. Rob LEMKIN (TCW-382). The Co-Prosecutors, Lead Co-Lawyers, NUON Chea Defence and KHIEU Samphan Defence presented oral submissions. The Chamber denied the requests (see Oral Orders/Decisions below).

Co-Prosecutors' Request to Reconsider Decision not to Recall Civil Party SAR Sarin (E293/1)

The Lead Co-Lawyers and the Co-Prosecutors presented oral submissions in relation to the Co-Prosecutors' request that the Chamber reconsider its decision not to recall Civil Party SAR Sarin (TCCP-186). During the debate, the Chamber called SAR Sarin and questioned him in relation to his refusal to testify in the absence of protective measures that could not be provided by the Chamber. SAR Sarin confirmed that he was unwilling to testify in the absence of the aforementioned protective measures. The Chamber denied the request (see Oral Orders/Decisions below).

Co-Prosecutors' Request With Respect to the Drawing of Adverse Inferences from the Accused's Failure to Testify

The Co-Prosecutors, Lead Co-Lawyers, NUON Chea Defence and KHIEU Samphan defence presented oral submissions in relation to the issuing of a warning regarding the drawing of adverse inferences from the Accused's failure to testify, and the Co-Prosecutors' request to state topics and questions in the presence of the Accused, which would have been directed to the Accused had they decided to testify. The Chamber denied the requests (see Oral Orders/Decisions below).

Co-Prosecutors' Request for Issuing of Rulings on the Admission of Documents Prior to the Close of Evidentiary Hearings

The Co-Prosecutors, Lead Co-Lawyers, NUON Chea Defence and KHIEU Samphan

defence presented oral submissions in relation to the Co-Prosecutors' request that the Chamber issue rulings on the admission of documents prior to the close of evidentiary hearings.

The Chamber informed the parties that it would issue its Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers and its Third Decision on Objections to Documents proposed for Admission before the Chamber in the near future, that both of these decisions will contain annexes, and that all documents that are admitted as a result of these decisions will be accorded an E3 number.

The Chamber also notified the parties that, as the outcome of the appeal by the Co-Prosecutors and NUON Chea Defence against the Chamber's second decision on severance of Case 002 (E284) was still pending, the Chamber would include its Final Decision on Witnesses, Experts and Civil Parties to be heard in case 002/01 in its verdict rather than issue the decision separately ahead of time. The Chamber noted that the parties had already been provided courtesy copies of the Annexes to that decision, and that the information contained in those annexes had not changed.

NUON Chea Defence Request to Summons Witnesses in Respect of the Alleged Policy of Targeting Khmer Republic Officials

The NUON Chea Defence, Co-Prosecutors and Lead Co-Lawyers presented oral submissions in relation to the NUON Chea Defence request that the Chamber summons more than 100 new witnesses who made statements concerning the targeting of Khmer Republic officials. The Chamber denied the request (see Oral Orders/Decisions below).

KHIEU Samphan Defence Request for Information Regarding NOU Mouk

The Co-Prosecutors, Lead Co-Lawyers and KHIEU Samphan Defence presented oral submissions in relation to the KHIEU Samphan Defence request for information regarding NOU Mouk. The Chamber denied the request, but directed WESU to provide information in a formal report to the Chamber within two weeks (see Oral Orders/Decisions below).

NUON Chea Defence Request to Admit New Documents, Summons Rob Lemkin and Initiate an Investigation

The Chamber informed the parties that it would file its decision in respect of this application on either Tuesday 23 July 2013 or Wednesday 24 July 2013 rejecting the application in its entirety, for reasons set out therein.

Scheduling of Submission of Closing Briefs and Presentation of Closing Statements

The Chamber informed the parties that it would not announce that the hearing on evidence in Case 002/01 is formally concluded until the delivery of the decision of the Supreme Court Chamber in relation to the appeal by the Co-Prosecutors and NUON Chea Defence against the Chamber's second decision on severance of Case 002 (E284). However, the Chamber announced that its tentative schedule, which will be formally confirmed or amended following the delivery of the aforementioned decision of the

Supreme Court Chamber (see Oral Orders/Decisions below).

Page Limits for Closing Briefs in Light of Any Additional Evidence Put Before The Chamber in Final Evidentiary Decisions

The Chamber notified the parties that they would each be afforded additional pages in their Closing Briefs to respond to any additional evidence or documents put before the Trial Chamber pursuant to the Chamber's final evidentiary decisions (see Oral Orders/Decisions below).

Record of Rule 87(3) Proceedings

Oral Orders/Decisions:

- Co-Prosecutors' Request That the Trial Chamber Hear Additional Tuol Po Chrey Witnesses (E292/3), and NUON Chea's Oral Submissions Regarding Additional Witnesses:

"On 19 July 2013, the Co-Prosecutors requested the Chamber hear the testimony of two additional witnesses relating to Tuol Po Chrey, namely TCW-644 and a new civil party in Case 004. The NUON Chea Defence do not object to the OCP request and further request the Chamber to summons TCW-802, TCW-803, and Rob LEMKIN. The Chamber considers that the evidence of TCW-644, TCW-802, TCW-803, and the new Civil Party would be repetitive of other evidence and not conducive to ascertaining the truth. These requests are therefore denied. The Request to summons Rob LEMKIN is addressed in a separated decision which will be issued very shortly."

- Co-Prosecutors' Request to Reconsider Decision not to Recall Civil Party SAR Sarin (E293/1):

"Even if considered a fresh application, the Co-Prosecutors do not allege any new circumstances, nor is the Trial Chamber satisfied that the provisions of Internal Rule 35 have been met. The OCP Request (E293/1) is therefore rejected."

- Co-Prosecutors' Requests With Respect to the Drawing of Adverse Inferences from the Accused's Failure to Testify:

"The Chamber considers that the warnings made to all Accused on 18 April 2012 and reaffirmed on 16 July 2013 adequately address the underlying substance of the Co-Prosecutors' requests. The 18 April 2012 warning expressed that the relevant international jurisprudence indicates that adverse inferences from selective decisions to remain silent may be drawn. The Trial Chamber thus considers that these requests have been answered already. The Co-Prosecutors additionally request to state in court, in the presence of the Accused, topics and facts on which they would have questioned them. The Chamber does not consider that this will be necessary. The Co-Prosecutors will have the opportunity to indicate as part of their Closing Briefs those points on which they are requesting the Chamber to draw adverse inferences."

- NUON Chea Defence Request to Summons Witnesses in Respect of the Alleged Policy of Targeting Khmer Republic Officials:

“The NUON Chea Defence requests the Chamber to summons more than 100 new witnesses who made statements concerning the targeting of Khmer Republic officials. It repeats and elaborates upon previous submissions concerning the admission, absent the opportunity for confrontation, of statements going to important or central issues in the Prosecution case. The Chamber considers that the Defence fails to satisfy the requirements of reasonable diligence in discovering and proposing the new witnesses pursuant to Internal Rule 87(4). Further, with respect to the OCP request to respond to this motion, the Chamber considers that issues regarding to the admissibility and probative value of witness statements have been thoroughly briefed and it will shortly issue a decision on this topic. Any future motions on these issues will be considered repetitive and not be accepted for filing. The oral request is rejected, with more detailed reasons to follow in writing.”

- KHIEU Samphan Defence Request for Information Regarding NOU Mouk:

“The Chamber first notes that the Witness and Expert Support Unit is presumed to exercise its functions scrupulously and impartially. The parties had an opportunity to explore issues regarding contacts with WESU during the questioning of the witness. In addition, the Trial Chamber has informally received the relevant information from WESU, and it therefore concludes that an investigation in accordance with Rule 35 is not warranted. The Chamber nonetheless directs WESU to provide this information in a formal report to the Chamber within two weeks.”

- Closing Briefs Deadline and Closing Statements Schedule:

The Chamber ordered: Closing Briefs are to be submitted by 12 September, in the first instance in any of the ECCC languages, with translations to follow. Closing Statements will be held starting 9 October and concluding 22 October, including Fridays. The Chamber notes that 15 October is a holiday and that there will be no hearings on that day. The Trial Chamber has chosen 9 October as the start date in view of scheduling challenges during a month containing many holidays.

- Page Limits for Closing Briefs in Light of Any Additional Evidence Put Before The Chamber in Final Evidentiary Decisions:

“Finally, with respect to the Closing Briefs, the Chamber is according each party an additional 25 pages to respond to any additional evidence or documents put before the Trial Chamber pursuant to the Chamber’s final evidentiary decisions. The Co-Prosecutors therefore now have 225 pages for their Closing Brief, the Accused each have a limit of 125 pages and the Civil Parties have 105 pages (excluding submissions on reparations).”

- The Chamber instructed the security guards to return the Accused KHIEU Samphan and the Accused NUON Chea to the detention facility. (15.25).

Orders for Adjournment of Hearing
Court is adjourned and will resume at 09:00 on Wednesday 9 October 2013 (15:24). *JS*

Phnom Penh, 23 July 2013

Greffier

Greffier



Roger PHILIPPS

SE Kolvuthy

