



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 11 / 02 / 2016
ម៉ោង (Time/Heure):..... 10:35
អ្នកទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: BANAN RADA

WRITTEN RECORD OF PROCEEDINGS

PUBLIC/CLOSED SESSION

Case File N° 002/11-01-2016-ECCC/TC

14 January 2016

Substantive Hearing on Evidence 002/02 – Day 357

Prepared by:

HOY Em and Matthew J. McCARTHY

Attendance Record
Before: Judge NIL Nonn (President); Judge Jean-Marc LAVERGNE; Judge YA Sokhan; Judge Claudia FENZ Judge YOU Ottara
Reserve Judge: Judge Martin KAROPKIN; Judge THOU Mony
Greffiers: Mr. HOY Em; Mr. Matthew J. McCARTHY
OCP: Mr. Mr. Dale LYSAK; Ms SONG Chorvoin; Mr. Travis FARR
Accused: Mr. NUON Chea; Mr. KHIEU Samphan
Defence for the Accused Nuon Chea: Mr. Victor KOPPE; Mr. SON Arun
Defence for the Accused Khieu Samphan: Mr. KONG Sam Onn; Ms. Anta GUISSSE
Standby Counsel for the Accused Khieu Samphan: Ms. TOUCH Voleak; Mr. Calvin SAUNDERS
Civil Parties: Ms. Marie GUIRAUD; Mr. PICH Ang; Mr. LOR Chunthy
Witness: 2-TCW-894, Duty Council: Mr. Moeurn Sovann.
Others: Mr. UCH Arun (Court Officer); Ms. SOUR Sotheavy (Associate Court Officer); Ms. SOK Sopheakmonica (Transcriber); Mrs. PICH Chariya (Transcriber); Mr. VAT Somao (Transcriber); Mr. LOEUNG Sopheak (Transcriber); Ms. Hannah KIM (Trial Chamber Intern); Mr. Keo Vath (Support Staff)

<u>General court times</u>		
Day	Start time: 9:16	Finish time: 16:09
Recess am	Start time: 9:21	Finish time: 10:21
Recess	Start time: 11:23	Finish time: 13:34
Recess pm	Start time: 14:35	Finish time: 15:05
	Total Court Time:	3 hr 12 min

<u>Proceedings</u>			
Type of Issue	Raised By	Start time	Finish time
Opening of hearing and report on attendance of Parties	Trial Chamber, Greffier	9:16	9:17
NUON Chea request to follow the proceedings from the holding cell	NUON Chea Defence	9:17	9:18
Adjournment of proceedings for sufficient preparation for parties on oral submissions	Office of the Co-Prosecutors	9:21	10:21
Oral submissions in response to ICIJ's confidential memorandum	Office of the Co-Prosecutors	10:23	10:34
		10:55	11:00
	Lead Co-lawyers for Civil Parties	10:34	10:37
	NUON Chea Defence	10:37	10:46
	KHIEU Samphan Defence	10:46	10:55
	Trial Chamber	11:01	11:16
Oral submissions in response to E372/1	Trial Chamber	11:22	11:23
Instructions to the AV unit	Trial Chamber	13:37	13:48
Closed session hearing of witness 2-TCW-894	Office of the Co-Prosecutors	13:48	15:52
	Lead Co-lawyers for Civil Parties	15:53	16:02

Summary of Proceedings

Opening of hearing and report on attendance of the Parties

The President opened the proceedings and the Greffier informed the Trial Chamber that all Parties were present. The Accused 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.

Recess to allow parties to prepare oral responses

On 13 January 2016, the KHIEU Samphan Defence filed a motion urgently requesting admission of E319/39.3.1, a document it argues is pertinent to the testimony of the next scheduled witness 2-TCW-938 (E372/1). On 14 January 2016, International Co-Prosecutor filed a request (E384) to make oral submissions related to a confidential memorandum submitted to the Trial Chamber by the International Co-Investigating Judge ("ICIJ") concerning closed session hearings for witnesses 2-TCW-894 and 2-TCW-938. The

Chamber sought the parties' oral responses and sent to these motions and recessed until 10 a.m. in order to allow the parties time to prepare.

Oral responses to the International Co-Prosecutor's motion (E384)

In closed session, the Chamber heard arguments from the International Co-Prosecutor and heard the parties' responses to E384. The International Co-Prosecutor argued that, in his confidential memo to the Trial Chamber, the ICIJ provided no reasoning justifying hearing 2-TCW-894 and 2-TCW-938 in closed session, a measure which should only be used exceptionally.

The Lead Co-Lawyers for Civil Parties argued that it was unable to comment on the ICIJ's reasons for requiring closed session since they did not have access to the Case File of the current investigation. The Lead Co-Lawyers also stated that closed session hearing should be exceptional.

The NUON Chea Defence argued that the disclosure of a large number of documents from the ongoing Case 003 and Case 004 investigations fundamentally violates NUON Chea's right to a fair trial but that it does not object to hearing 2-TCW-894 and 2-TCW-938 in closed session.

The KHIEU Samphan Defence argued that the Chamber should not hear 2-TCW-894 and 2-TCW-938 in closed session as a matter of transparency and that the Trial Chamber had the independent authority to deny the ICIJ's request for closed session. The KHIEU Samphan Defence argued that the Chamber should at least hold only partial closed session hearings for 2-TCW-894 and 2-TCW-938.

Oral responses to KHIEU Samphan Defence Motion (E372/1)

The Trial Chamber heard oral responses to the KHIEU Samphan Defence motion to admit document E319/39.3.1 pursuant to Internal Rule 87(4). The Co-Prosecutors, Lead Co-Lawyers for Civil Parties and NUON Chea Defence each stated that they did not object to the motion. The Chamber granted the motion orally.

Closed session hearing of witness 2-TCW-894

The Co-Prosecutors and Lead Co-lawyers for Civil Parties questioned 2-TCW-894 in closed session.

New E3s

TC No	OCIJ No	ERN (KH, ENG, FR)	Title	Class	Note in Khmer	Note in English	Note in French
E3/9500	D117/31	00964450- 00964458; 00966985-	Written Record of Interview of [REDACTED]	C	00964453 00964452 00964456	00966988 00966987 0096691	00965592 00965591 00965595

		00966993; 00965589- 00965596					
E3/9507	D219/138	01056037- 01056066; 01059269- 01059302; 01123901- 01123925	Written Record of Interview of [REDACTED]	C	01056057 01056074 01056066 01056055 01056067 01056058 01056060 01056061 01056062 01056053	01059289 01059306 01059298 01059287 01059299 01059290 01059292 01059294 01059295 01059282	01123921 01123938 01123930 01123919 01123931 01123922 01123924 01123926 01123927 01123914
E3/9677	D219	01151266 01136628	Written Record of Interview of [REDACTED]	C	01151273 01151281	01136635 01136643	/

Oral Orders/Decisions:

- Order authorising the Accused NUON Chea to follow the proceedings from the holding cell. (09:18)
- Order instructing the AV unit to disconnect video and audio feeds to the public in regards to the questioning of Witness 2-TCW-894. (13:37)

Orders for Adjournment of Hearing

The hearing will resume on 18 January 2016 at 9 a.m.

Phnom Penh, 14 January 2016

Greffier

EM H

EM H



Greffier

[Signature]
McCARTHY