



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

TRANSCRIPT OF TRIAL PROCEEDINGS

CONFIDENTIAL - CLOSED SESSION

Case File N° 002/19-09-2007-ECCC/TC

18 April 2012

Trial Day 51

ឯកសារដើម

ORIGINAL/ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Apr-2012, 12:50

CMS/CFO: Kaur Keoratanak

Before the Judges:

NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Claudia FENZ (Reserve)

The Accused:

NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Jasper PAUW
Andrew IANUZZI
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Natacha WEXELS-RISER
DUCH Phary

For the Office of the Co-Prosecutors:

SENG Bunkheang
Dale LYSAK
Vincent DE WILDE D'ESTMAEL

Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
LOR Chunthy
Barnabé NEKUIE
TY Srinna
MOCH Sovannary
VEN Pov
HONG Kimsuon
SAM Sokong
Elisabeth RABESANDRATANA

For Court Management Section:

UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. IANUZZI	English
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PAUW	English
MR. PICH ANG	Khmer

Closed Session

1

1 P R O C E E D I N G S

2 (Court resumes in closed session at 1118H)

3 MR. PRESIDENT:

4 Due to the problem interpreters may encounter if the curtain is
5 drawn as it is now, the Chamber--

6 (Short pause)

7 [11.19.42]

8 We note that we seem to have experienced a lot of problems
9 concerning the technical issues with regard to the interpreting
10 for the whole morning.

11 Again, due to the fact that interpreters could have encountered
12 problem rendering when the curtain is drawn closed like this, due
13 to technical problems concerning the interpreting service -- or,
14 to put it simply, if the curtain is drawn closed like this, the
15 interpreters will be put at a disadvantage, so court officer is
16 now instructed to draw open the curtain after the last member of
17 the public has left the room.

18 We note that counsel for Nuon Chea was on his feet. You may now
19 proceed.

20 MR. IANUZZI:

21 Your Honours, I haven't heard a word--

22 (Short pause)

23 [11.21.48]

24 MR. PRESIDENT:

25 International Co-Prosecutor, you may now proceed.

Closed Session

2

1 MR. LYSAK:

2 I just wanted to let others know that channel 2 wasn't working,
3 but when I switched to channel 8, I was getting an English
4 translation on that. I'm not sure why – why that is, but if you
5 switch to the higher channels, for some reason, the translation
6 is coming through.

7 JUDGE LAVERGNE:

8 Perhaps you should try channel 9 for French.

9 Can you hear what is happening on the ninth channel? Are all
10 parties able to listen to the interpretation now?

11 MR. PRESIDENT:

12 Counsel for Nuon Chea, could you advise the Chamber whether you
13 can receive -- or can you hear? Because; when we were making oral
14 decision, you were on your feet. You may now proceed.

15 [11.23.07]

16 MR. IANUZZI:

17 Thank you, Your Honour. I can hear you now on channel 8, but only
18 just now. So I didn't get anything earlier; I missed your--

19 MR. PRESIDENT:

20 (No interpretation)

21 JUDGE CARTWRIGHT:

22 For your information, channel 8 always has the English
23 interpretation, but this is the channel, apparently, for English
24 when the session is closed -- channels 7, 8, and 9. But if you
25 want to tune to channel 8, you will always hear the English

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1 translation.

2 MR. IANUZZI:

3 Thank you.

4 (Judges deliberate)

5 [11.24.22]

6 MR. PRESIDENT:

7 Counsel for Nuon Chea, would you wish to advise the Chamber
8 whether you have any other unresolved issues before you now?

9 MR. IANUZZI:

10 Technical issues or-You're referring to the substance of the
11 closed session, or are you referring to technical issues? I've
12 got plenty of issues.

13 MR. PRESIDENT:

14 Just now, during the time when I was reading the oral decision
15 concerning the right to remain silent, I also ruled on the second
16 issue concerning the deference of hearing the testimony of the
17 witness because the Chamber had to go into in-camera session to
18 resolve the issues pending concerning Rule 28, subrules 8 and 9,
19 as raised by the party. And the Chamber indicated that only after
20 these matters have been properly resolved, then the Chamber would
21 proceed to hear the testimony of Mr. Saut Toeung, in the
22 afternoon session.

23 [11.25.48]

24 And this matter has to be resolved because we need to be prepared
25 for the future proceedings concerning testimonies of other

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1 witnesses.

2 And while rendering this decision, we noted that you were on your
3 feet, and we did not really hand the floor over to you because we
4 were in the midst of something. And we, indeed, respect your
5 right to have the floor, but only after we rendered our decision.
6 So have you already got the rendition on the oral decision, or
7 would you wish it to be repeated?

8 MR. IANUZZI:

9 I did get most of it, Your Honour. My colleague was on his feet
10 simply to advise you that Nuon Chea would be waiving his right to
11 be present for the afternoon session, when it was not yet clear
12 that we were going into closed session. So that's why Mr. Pauw
13 was on his feet. Then - then, after the curtains closed, you made
14 some remarks, Your Honour, Mr. President; I didn't get any of
15 those. So I don't know what you said there.

16 [11.27.02]

17 I've heard what you've just repeated; I heard that the first
18 time. Then you closed the curtains and you said something else,
19 and I didn't get any of that. That's when I was one channel 2. So
20 I don't know what you said.

21 Did you ask me to stand up and make submissions? Shall I sit
22 down?

23 MR. PRESIDENT:

24 You may be seated, indeed.

25 The Chamber would like to proceed to Judge Lavergne to raise some

1 questions or to address some pending issues concerning Rule 28,
2 subparagraphs 8 and 9.

3 We shall endeavour to resolve this as soon as possible before we
4 can hear the witness, in the afternoon session, and other
5 witnesses.

6 Judge Lavergne, you may now proceed.

7 [11.28.19]

8 JUDGE LAVERGNE:

9 Yes. Thank you, Mr. President. Indeed, before the parties are
10 given the floor, the Chamber would like to clarify a few issues.
11 We have availed ourselves of the break to contact the Witness and
12 Expert Support Unit, which has told us that the witness we have
13 heard this morning was contacted and that a staff member from
14 that unit met him on the 20th of December and informed him of any
15 issues that may arise regarding the witness's rights and the
16 right not to incriminate himself, and that the witness stated
17 that he did not wish to be given a lawyer.

18 And the Chamber would like to remind all parties of the practice
19 in force in Case 001. And that practice consisted in putting in
20 place a team of lawyers available to witnesses called to testify
21 before the Chamber when problems of self-incrimination are likely
22 to arise. The Chamber recalls that that team includes lawyers who
23 have been trained. And the -- both the Defence and the
24 Prosecution have participated in such training. In any case, when
25 this practice was in force in Case 001, that was the case.

1 [11.30.14]

2 The Chamber would like to express its surprise regarding the
3 application made by Nuon Chea's defence team this morning,
4 because--

5 We would like to remind all parties of Rule 28, subparagraph 8.
6 That rule, substantively, provides that, where a party is aware
7 that the testimony of any witness may incriminate its author, it
8 has to inform the Chamber to that effect. But the rule specifies
9 that, if possible, it should be in advance. Unless I am wrong,
10 the Chamber notes that the parties were informed of the witnesses
11 who are to testify in this trial segment several months ago.
12 In my opinion, there are two matters arising: either we are
13 talking of lack of preparation, which is such that Nuon Chea's
14 defence team only realized that such a problem could arise during
15 proceedings, or it is a deliberate ploy on the part of Nuon
16 Chea's team. And we note that this behaviour can be aimed at
17 giving the witness a certain impression, unless Nuon Chea's team
18 has other explanations to give. As I said, it could be due to
19 lack of preparation. Otherwise, we would think that the defence
20 for Nuon Chea is trying to give the witness certain impressions.

21 [11.32.15]

22 And if such a problem is to arise in future, the defence team
23 should make it clear well in advance -- should inform the Chamber
24 well in advance.

25 I don't know whether the other Judges have anything to add.

1 In any case, I believe that, regarding the testimony of this
2 witness who is - who has just appeared, that witness will appear
3 this afternoon, and we will endeavour to make sure the witness is
4 afforded the services of a lawyer when it is possible.

5 MR. PRESIDENT:

6 I now hand over to Judge Silvia Cartwright.

7 JUDGE CARTWRIGHT:

8 Thank you, President. This-- I have only one matter to add to
9 what Judge Lavergne--

10 No - no interpretation?

11 MR. PRESIDENT:

12 I think I heard French in Khmer channel now.

13 (Technical problem)

14 [11.34.05]

15 Yes, Judge, you may proceed.

16 JUDGE CARTWRIGHT:

17 Thank you, President. Is the translation-- No translation?

18 MR. PRESIDENT:

19 (No interpretation)

20 (Technical problem)

21 [11.35.03]

22 Is it alright now?

23 Again, I would like to hand over to Judge Silvia Cartwright.

24 JUDGE CARTWRIGHT:

25 We'll try again. Is there interpretation now, President?

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1 MR. PRESIDENT:

2 (No interpretation)

3 JUDGE CARTWRIGHT:

4 Thank you.

5 Yes, I have just one matter to add to what Judge Lavergne said,
6 with your permission, President.

7 It is not foreseen by the Chamber that in future such an
8 application be made in Open Court and in the presence of the
9 witness -- that is, an application that the Chamber reminds a
10 witness of his rights concerning self-incrimination. And I
11 emphasize that any such applications should be made in advance.

12 [11.36.20]

13 But if, by reason of something unusual occurring or lack of
14 preparation, a party becomes aware only when that witness is
15 giving evidence, the proper approach to take is to seek an
16 in-camera hearing, pursuant to Rule 28.8, without any further
17 comments being made which could lead the Chamber to infer lack of
18 preparation or a deliberate attempt to influence a witness.

19 So there is no need for a lot of detail to be indicated; it is
20 sufficient to make an application pursuant to Rule 28.8 for an
21 in-camera hearing. Thank you, President.

22 MR. IANUZZI:

23 May I respond, Your Honour? Thank you.

24 I'd just like to make it very clear that it's not a lack of
25 preparation. It's not a deliberate ploy.

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1 The issue arose this morning - this morning -- when the witness
2 made it very clear that his right -- that he was unclear of the
3 full extent of his right. That's when the issue arose. The
4 witness said this morning, in response to the preliminary
5 questions by the President, that he was not completely clear.

6 [11.37.45]

7 Our position is that the warning, the Rule 38 -- excuse me, the
8 Rule 28 caution needs to be much more comprehensive.

9 I made that request immediately, pursuant to Rule 28.8 - quote --
10 "in advance of the testimony of the witness". That's what Rule
11 28.8 says. The President went through the preliminaries. As the
12 prosecutor rose to his feet and asked his first question at the
13 beginning of the testimony, I rose to my feet and made the - made
14 the remark. So I think I was well within the terms of Rule 28.8:
15 I made the application in advance of the testimony of the
16 witness.

17 As I said earlier today, I didn't reveal anything about the
18 substance of the witness's testimony, which that in-camera aspect
19 of this rule is designed to protect. I didn't suggest that the
20 witness had done anything, I didn't read from his testimony. I
21 didn't give anyone the impression that the witness had
22 specifically done anything. I raised the issue that there may be
23 an issue with respect to self-incrimination.

24 [11.38.46]

25 And everybody has that obligation. Everybody in this courtroom

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1 has that obligation, not just us -- not just us.

2 And I should note that the International Co-Prosecutor's comments
3 with respect to Duch's potential liability with respect to M-13
4 arose well after this briefing with WESU. So I would suggest that
5 that is something, clearly, that the witness could not have been
6 apprised of, that -- the Prosecution's firm position that future
7 prosecutions are always a possibility. That needs to be put to
8 the witness. The witness needs to understand that. He was not
9 apprised of that at this WESU briefing, I'm sure, because that
10 was nobody's position at the time.

11 So that would be all I have to say about that. Thank you.

12 MR. PRESIDENT:

13 The International Co-Prosecutor, you may proceed.

14 MR. LYSAK:

15 Thank you, Mr. President. A couple of points.

16 [11.39.44]

17 First, I do think it's important for the Trial Chamber to make
18 very clear that these types of applications and issues need to be
19 done in advance and outside the presence of the witness. I think
20 it's highly dubious to interpret the words "in advance of the
21 testimony of the witness" to allow you to do it as a witness is
22 about to answer a question. Clearly, this isn't -- is a matter
23 that needs to be done in advance and outside the presence of the
24 witness because to raise these issues in front of a witness
25 raises a risk, a risk that, I think, we are now well-facing with

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1 the current witness, that they will be intimidated, that there
2 will - there will be a chilling effect, and that they will be
3 concerned to testify.

4 And it was not just at the outset of the question where this
5 tactic was engaged in. Literally, when the question was put to
6 the witness, "Were you the bodyguard of Nuon Chea", the same
7 issue was raised. There is no possible way in which an answer to
8 that question would incriminate the witness. It is very clear
9 that the incrimination that counsel were worried about were of
10 their own client.

11 [11.41.07]

12 Now, there will be -- as a general matter, there will be
13 witnesses in these proceedings who have given testimony and will
14 be called upon to give testimony in which they will acknowledge
15 participation in crimes, and in those situations, we do have to
16 prepare and understand and have a clear procedure. This witness,
17 however, has given no testimony that implicates himself in the
18 commission of crimes. And that is why we were very troubled by
19 what happened in Court this morning.

20 In addition, we -- I think we have an issue now with this
21 particular witness. Some-- I'm not sure whether everyone is
22 familiar with the entire history of this witness, so let me just
23 briefly summarize.

24 This witness was interviewed initially back in 2007, at which
25 time he denied that he was the bodyguard of Nuon Chea.

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1 Two years later, he was brought to the ECCC offices and
2 participated in a confrontation with Duch in which Duch
3 identified him as a messenger of Nuon Chea who came and received
4 confessions from him. At that -- during the confrontation, the
5 witness continued to deny his role.

6 [11.42.40]

7 However, the next day, he came back and gave a detailed statement
8 for two days, in which he acknowledged that he was Nuon Chea's
9 bodyguard, and gave lengthy evidence regarding the activities.
10 Now, these activities related to Nuon Chea's role in going to the
11 provinces, meeting with leaders there, and the issue of
12 confessions or documents being delivered between Duch and Nuon
13 Chea, but there was no testimony, certainly, that incriminated
14 the witness.

15 But now we have a witness who, once again, seems to be concerned
16 and is retreating in his testimony. And - and I -- there's no way
17 for us to know for sure whether it was due to conduct of counsel,
18 but we do have a problem here.

19 So it is very important that we avoid any possibility of this in
20 the future.

21 With regard to this witness, obviously we can confront him with
22 his statements. I would submit, perhaps we will be able to deal
23 with the problem that way; perhaps we may be -- need to make a
24 submission to the Court that a confrontation with Duch needs to
25 happen again in Court, where Duch is asked in Open Court what -

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1 to again identify whether this person was the messenger and
2 bodyguard of Nuon Chea.

3 [11.44.17]

4 However, before we get to that, we will endeavour to pursue
5 through examination of the witness, reference to his prior
6 statements -- and we will try that first.

7 But I do think there's a problem going on with this witness.

8 While his testimony does not incriminate him in any - in any
9 crimes from the period of Democratic Kampuchea, I wasn't sure
10 whether - whether he's being appointed a lawyer, but if, for no
11 other reason, because of his testimony having changed once and
12 now the testimony he's giving in Court, he may well be served to
13 have a lawyer to advise him on those issues, if nothing else. It
14 was not clear to me 100 per cent as to whether the Court had
15 indicated that he was being provided a lawyer, but I think that
16 that would be appropriate at this time.

17 But our -- so our concerns are: one, that this not happen with
18 future witnesses; and, two, just that the Court understand that,
19 because of what has happened here, we're going to have to make
20 some effort to confront this witness with his prior statements.
21 Those are my comments on the matter.

22 [11.45.40]

23 MR. PRESIDENT:

24 The National Lead Co-Lawyer for the civil parties, you may
25 proceed.

1 MR. PICH ANG:

2 Good morning, Mr. President. Good morning, Your Honours. What was
3 raised by the defence counsel for Nuon Chea -- that a concern
4 that this particular witness is not aware of his rights enshrined
5 in Rule 28.8, on this particular point, I think the counsel may
6 be mistaken because this was not the only time when the Chamber
7 informed this witness concerning the right not to self --
8 incriminate himself, but actually the investigator of the Office
9 of Co-Investigating Judges must have informed the witness
10 concerning his right not to - not to incriminate himself,
11 particularly document E3/103 and document D234/103. So it is
12 abundantly clear, here, that the witness is aware of his right.
13 [11.47.29]

14 And, in addition, the President has just - the Defence - the
15 lawyer - [corrects] Judge Lavergne also mentioned in this Court
16 that this particular witness does not request any duty counsel
17 with him. So I am of the opinion that this witness is well aware
18 of his right.

19 But since the defence counsel repeat his -- again and again, then
20 I'm afraid that the witness may not understand due to the
21 translation of what he has -- what the defence counsel has
22 raised, so I think the issue raised by the defence counsel is
23 thus repetitious and improper, even though there is a ruling from
24 the Chamber already. So we are of the opinion that this is an
25 issue that is absurd, and it adversely affects the witness to

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1 tell the truth to the Court.

2 And if the defence counsel wishes to raise this issue, then that
3 application should be made in advance and outside the presence of
4 the witness. And if the witness is actually before the Chamber
5 and then this matter is raised, then it will adversely affect the
6 feeling of the witness in testifying before the Chamber,
7 particularly when they respond to the question put by the
8 Prosecution, and we could observe the apparent hesitation of this
9 particular witness to respond to the question put by the
10 Prosecution.

11 [11.49.45]

12 And I believe that such application is highly improper.

13 And I would like to support the Prosecution's assertion that, if
14 it is warranted, then there might be an opportunity for
15 cross-examination -- confrontation again with Duch.

16 MR. PRESIDENT:

17 The Defence Counsel for Ieng Sary, you may proceed.

18 MR. KARNAVAS:

19 Thank you, Mr. President. I won't be - I won't be long.

20 First of all, I believe there was a ruling from the Bench that
21 was very clear and quite eloquent as far as how to proceed
22 henceforth with these situations, so I don't think we need to
23 belabour the point as was just done. That's number one.

24 Number 2, it's my understanding that the witness had indicated
25 that he didn't understand, today, as he was being advised, hence

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1 the reaction from the Defence.

2 So I don't -- from my perspective, I don't see any ill attempt by
3 the Nuon Chea team to do anything improper.

4 [11.51.07]

5 I do wish to take the opportunity, however, to raise an issue
6 related to this.

7 Last week, in Duch, I reacted several times to the Prosecution
8 doing the same thing that they're complaining today. They used
9 the word "chilling effect". Last week, we had a very clever
10 witness who spent years and years with lawyers, which you cannot
11 compare that witness with this particular witness, and yet Bill
12 Smith was standing up and giving long speeches, telegraphing to
13 the witness, and the witness was therefore -- thereafter
14 reacting.

15 And that's why I think that there needs to be a mechanism in
16 place where, if we're going to be making sensitive arguments that
17 may influence the testimony or the behaviour of the witness, the
18 better practice would be to simply ask the Court to deal with the
19 matter outside the presence of the witness, just like this very
20 sensitive issues.

21 I agree with the Prosecution, it does have a chilling effect and
22 it could influence a particular witness, how he or she will
23 behave on the stand, which is why need to do that, but we need to
24 do this with other matters as well.

25 [11.52.31]

1 And I -- that's why I objected last week, strenuously, when there
2 were matters being talked about in front of Duch, which obviously
3 gave a very clever witness an opportunity to react. Thank you.

4 MR. IANUZZI:

5 If I may reply very briefly? I think what's perhaps getting lost,
6 in this discussion, is the crux of the matter, the thrust of Rule
7 28; it's to protect the witness -- it's to protect the witness.
8 And the witness needs to be informed in a way that makes any
9 waiver that he may give an informed waiver, a knowing waiver, a
10 willing waiver, one that's backed by a firm understanding of what
11 it is he's waiving, the consequences of that waiver, etc., etc.,
12 etc. And that's every obvious, I think, from the -- from the terms
13 of Rule 28.

14 So I just want to make it clear, in response to what the
15 Prosecution said: this was in no way an attempt to protect Nuon
16 Chea; this was an attempt to protect the witness, to make sure
17 that the witness is aware -- fully aware, in a comprehensive
18 manner -- of his rights.

19 [11.53.42]

20 Now, some -- I'm getting rolling eyes from the Bench, there, but
21 that's what I'm talking about, that's what Rule 28 says.

22 And it's the Prosecution's duty to do this; it's the Bench's duty
23 to do this. So that's all I'll say about that.

24 I would make a -- a reference was made by the lawyers for the
25 civil parties to previous warnings that were given to the

1 witness. And now, if you look at those previous warnings -- if
2 you look at those previous warnings -- and I'll just quote from
3 one of them: "The Co-Prosecutors wish to impress upon him that
4 they have absolutely no intention of prosecuting him for anything
5 he may have done during the Khmer Rouge era."

6 OCIJ: "You will not be prosecuted for events that occurred in
7 Democratic Kampuchea." This is the OCP, the OCIJ, as I've said
8 earlier, of the ECCC.

9 [11.54.24]

10 Our position, the Prosecution's position, is that there's no
11 telling what the Royal Government of Cambodia will do. That's the
12 point that I'm trying to make; that's the important point. If,
13 according to the Prosecution, Duch may be prosecuted at some
14 future time for events at M-13 -- clearly not by this tribunal,
15 it must be by somebody else in this country, the Royal Government
16 -- then the Royal Government could very likely -- well, not
17 likely, it's a possibility, as the Prosecution has said, it's a
18 possibility that they may prosecute people.

19 And I should say that the Prosecution's suggestion that this
20 witness -- that, actually, no real concerns of liability arise
21 here, well, there's all kinds of modes of liability, and the
22 jurisdictional requirements that apply to this Court do not
23 necessarily apply to any future national prosecutions. Aiding and
24 abetting is a very well-established mode of liability. So I think
25 it's unfair to say that this witness -- that it's impossible that

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1 he would incur liability. It's clear that there's an issue of
2 self-incrimination here, and I think it needs to be dealt with in
3 an informed way.

4 And I've spoken too long. Thank you, very much.

5 (Judges deliberate)

6 [11.57.30]

7 MR. PRESIDENT:

8 The Chamber notes the opinions raised by the parties concerning
9 the application of Rule 28.8 and 28.9 concerning the testimony of
10 one of the witnesses.

11 Through our deliberation, the Chamber believes that this issue
12 will not occur again in the future testimony of witnesses, and we
13 hope that parties will abide by the Rule 28.8. And this rule is
14 expressly clear that, in the hearing of -- testimony of any
15 future witness, then, if any moving party request that the
16 hearing be conducted in camera, then the session may be closed
17 from the public, or otherwise this application be made in advance
18 or outside of the presence of the witness. And the Chamber, on
19 the case-by-case basis, will rule whether or not we grant the
20 application or not.

21 [11.59.16]

22 And, in addition, the Chamber also gets the opinions from the
23 Expert and Witness Support Unit concerning the information of the
24 right to -- not to incriminate himself in -- pursuant to Rule
25 28.9. And Judge Lavergne has already made it clear on this

1 particular matter concerning what the Witness Support Unit has
2 done concerning the testimony of the witness. And to be precise
3 on that matter, the Chamber will advise the Support -- Witness
4 Support Section concerning the necessary information to be made
5 known to the witness in application of Rule 28.8.
6 And as for other rules, for example 28.9, the Chamber will decide
7 on this application of the rule when the matter arises.
8 Actually, this issue arose in Case 001 as well. When we were
9 hearing the testimony of witnesses concerning facts relating to
10 S-21, there was a request for designation of a duty counsel, but
11 that instances were very few. And the discussion, this morning,
12 among parties, the Chamber will have the basis for its conduct of
13 the hearing of the testimony of the witness in the future.
14 [12.01.23]
15 If there is no -- any other matters--
16 MR. IANUZZI:
17 Thank you, Your Honour. Just one brief matter before we adjourn
18 for lunch.
19 Will the witness -- will our request that the witness be given a
20 new briefing on this issue, will that -- has that been granted?
21 Will we have a ruling on that? Given what he said this morning,
22 given the fact that he's unclear, will he be given a new --
23 sorry, will he be given a new briefing by WESU, pursuant to the
24 terms that we've suggested, before he resumes his testimony
25 today? And could we please have a ruling on that before he

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1 resumes his testimony today? Thank you.

2 MR. PRESIDENT:

3 Thank you. The Chamber has already contacted the WESU unit to
4 ensure that witness is informed of his rights and so that any
5 witness that comes forward would be well informed of his rights
6 when he be notified of his presence before the Chamber.

7 [12.02.45]

8 And Judge Lavergne already indicated that witness, perhaps, be
9 worried after having heard what counsel raises, and for that
10 reason, duty counsel is assigned to accompany him during his
11 testimony in the afternoon session.

12 MR. IANUZZI:

13 Thank you for that--

14 JUDGE LAVERGNE:

15 No, no, no. Please--

16 MR. IANUZZI:

17 --clarification, Your Honour.

18 JUDGE LAVERGNE:

19 Yes, Counsel Ianuzzi, there's one thing that's absolutely
20 certain, that it's not up to the defence counsel to warn the - to
21 inform the witnesses of their rights; you have already enough on
22 your plate defending your client. And the warnings that must be
23 given to the witnesses will be given by the President and by
24 WESU. And I hope this is sufficiently clear. Everyone must play
25 his or her role, and your role is not to provide counsel to the

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1 witness.

2 [12.04.01]

3 And furthermore I would like to specify, regarding today's
4 witness, one lawyer has already been contacted and he will decide
5 whether or not he intends to work with him or not.

6 MR. IANUZZI:

7 Thank you, Judge Lavergne. One point is not clear to me. Rule
8 28-8 refers to the duty of party, any party -- "where a party is
9 aware", etc. etc. Are you saying that - that we need to disregard
10 the terms of that rule, that we don't have that duty, that we
11 "shall not" request an in-camera hearing, instead of "shall
12 request"?

13 JUDGE LAVERGNE:

14 Counsel, did you hear the President inform the witness of his
15 rights?

16 MR. IANUZZI:

17 I did indeed hear that, and then I heard the witness say that he
18 was unclear.

19 JUDGE LAVERGNE:

20 So, I also told you during the break that the witness had been
21 informed of his rights by WESU?

22 [12.05.18]

23 MR. IANUZZI:

24 In December 2011, before the position of the Prosecution was made
25 plain. That's the point I've been trying to make; perhaps I'm

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1 just doing a very bad job of making it. That's the point I'm
2 trying to make, that this – this waiver, this notice, this
3 briefing that is given to witness needs to be comprehensive, it
4 needs to be – it needs to reflect the positions of the Court--

5 JUDGE LAVERGNE:

6 So you mean to say that the President wasn't completely clear
7 this morning? Do you want to criticize the way that the President
8 has informed the witness of his rights? Do you consider that it's
9 up to you to inform the witness?

10 [12.05.58]

11 MR. IANUZZI:

12 Well, with respect, Your Honour, that's exactly what I'm doing,
13 I'm criticizing, I'm taking issue with – I'm not -- it's not a
14 personal attack; I'm criticizing the manner in which the briefing
15 was given. I'm saying -- we're saying that it wasn't
16 comprehensive, that it doesn't reflect all of the consequences
17 for this witness. I'm not criticizing anyone personally.

18 JUDGE LAVERGNE:

19 Well, I think, then, therefore, the Chamber will appreciate this.

20 MR. PRESIDENT:

21 Lead Co-Lawyer for the civil parties, you may proceed.

22 MR. PICH ANG:

23 Thank you, Mr. President. I think this is another issue. I would
24 like to inform the Chamber that counsels Ty Srinna and Élisabeth
25 Simonneau-Fort will be putting questions to the witness.

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1 [12.07.02]

2 MR. PRESIDENT:

3 We hope that the issues concerning subrule 8 of Rule 28 have been
4 resolved.

5 Counsel for Nuon Chea, you may now proceed.

6 MR. PAUW:

7 Thank you, Mr. President. I'll be very brief.

8 I just want to announce that Nuon Chea would like to follow the
9 rest of the proceedings from the holding cell -- and we have the
10 waiver here for you to look at -- for the usual reasons. I thank
11 you.

12 MR. PRESIDENT:

13 The Chamber has noted request of Nuon Chea through his counsel;
14 he has asked that he be excused from this courtroom and be
15 allowed to observe the proceeding from his holding cell for the
16 remainder of the day session. The Chamber grants the request, and
17 that he is allowed to be excused from this courtroom and observe
18 the proceedings from his holding cell.

19 [12.08.24]

20 Nuon Chea has made it clear he has waived his right to
21 participate in person in this courtroom. The Chamber, therefore,
22 asks that counsels for Nuon Chea produce the waiver signed or
23 given thumbprint by Nuon Chea immediately.

24 And that AV booth officer is instructed to ensure that the
25 video-link - audio/video-link is connected to his holding cell so

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1 that the Accused can observe the proceeding from his room.

2 Security personnels are now instructed to bring Nuon Chea to his
3 holding cell and bring Khieu Samphan to his holding cell and have
4 him returned to the courtroom by 1.30.

5 Court officer and the security personnels are also instructed to
6 bring the witness to the courtroom by 1.30.

7 The Court is adjourned.

8 (End of closed session. Court recesses at 1209H)

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