



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

ឯកសារដើម

ORIGINAL/ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ (Date): 06-Jun-2017, 10:22

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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

7 October 2015

Trial Day 336

Before the Judges: NIL Nonn, Presiding
Claudia FENZ
Jean-Marc LAVERGNE
YA Sokhan
YOU Ottara
Martin KAROPKIN (Reserve)
THOU Mony (Reserve)

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
LIV Sovanna
Anta GUISSSE
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:
CHEA Sivhoang
Maddalena GHEZZI

Lawyers for the Civil Parties:
Marie GUIRAUD
PICH Ang
VEN Pov

For the Office of the Co-Prosecutors:
Travis FARR
Nicholas KOUMJIAN
SONG Chorvoin

For Court Management Section:
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer
Ms. SONG Chorvoin	Khmer

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1 PROCEEDINGS

2 (Court opens at 0920H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session.

5 As scheduled, today the Chamber continues to hear testimony of
6 the witness Sos Romly. And we also have a reserve witness, that
7 is, 2-TCW-996, in relation to Trapeang Thma Dam worksite.

8 However, late yesterday afternoon, Defence Counsel for Nuon Chea,
9 that is Counsel Koppe, made an observation in relation to the
10 conflict of interest of the duty counsel and witness, that such
11 an issue may arise in this particular instance. The Chamber
12 actually deliberated on this matter since yesterday. And so far,
13 we haven't reached a conclusion and made a ruling yet.

14 [09.23.25]

15 And secondly, out of the three duty counsels, none is available
16 to replace Counsel Duch Phary. That is based on the confirmation
17 by WESU. And arising from this issue there was another issue in
18 relation to the disclosure of documents from Cases 003 and 004
19 into Case 002. And that raised some concerns in relation to the
20 procedural matters. For that reason, the Chamber cannot hear the
21 testimony of the current witness, that is, Sos Romly<, today>.
22 Likewise, the hearing of witness 2-TCW-996 who is in a similar
23 situation comparing to witness Sos Romly, as he has the same duty
24 counsel, that is Counsel Duch Phary, and which is the core of the
25 deliberation of the Bench, as there could be consequences from

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1 this matter. This is compounded with the disclosure of documents
2 by the International Co-Prosecutor from Cases 003 and 004. And
3 that attracted submissions from other Parties. So, for that
4 reason, the Chamber cannot hear the testimony of the witness
5 2-TCW-996 tomorrow. For that reason, the hearing of the two
6 witnesses, that is, Sos Romly and 2-TCW-996, will be deferred to
7 a later date, that is, after the Pchum Ben break. The Chamber
8 will take active consultation with WESU concerning their
9 availability after the Pchum Ben festival. So this is to inform
10 the Parties that the Chamber will not hear the testimony of
11 witness Sos Romly and 2-TCW-996.

12 And court officer please, in collaboration with WESU, make
13 necessary transportation arrangement to send the two witnesses
14 back to their residence.

15 I noticed that the Defence Counsel for Khieu Samphan wants to
16 take a floor. And in fact, the Chamber has not yet made a ruling
17 in regards to the submission by Nuon Chea's defence. Khieu
18 Samphan's counsel, if you have something on your mind, please
19 take the floor.

20 [09.27.55]

21 MS. GUISSÉ:

22 <Pardon me, Mr President. I have not understood whether you would
23 like to first address the issue of Nuon Chea's presence at the
24 hearing before addressing -- to make my motion-->

25 MR. PRESIDENT:

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1 Since we will not hear testimony of witnesses, then the Chamber
2 will give you the floor to make your points. And I don't think it
3 will take that much time. Is there any interpretation issue, as
4 the English channel didn't go through before?

5 To the Chamber's view, there will be no hearing of testimonies
6 today. And we will not make a ruling yet on Nuon Chea's
7 submission. However, we will give the floor to the Parties, in
8 particular, to the defence teams who may take the floor briefly
9 in response to the issues, so that the Chamber will have the
10 ground to deliberate on these issues. If you have any points
11 related to these issues, you may take the floor, Counsel.

12 [09.29.29]

13 MS. GUISSÉ:

14 Thank you, Mr. President. I am <following up on> the observations
15 <I> already made a few days ago in relation to the necessary
16 preparation of the defence teams <, in any case,> for the
17 <hearings of> final submissions. Yesterday, at the end of the
18 afternoon, we received new elements from the Supreme Court <as we
19 have been informed> that the final submissions are, <a priori,
20 scheduled for> 16 to 18 November. Those are for the final
21 submissions <per se. It should be pointed out that> there is
22 <still> the possibility that witnesses would be heard before the
23 Supreme Court before that date. <Under> these conditions, I'd
24 like to <reiterate> my request that was considered premature a
25 few days ago; that is to say, <to have> the possibility of not

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1 having any hearings during the time when we will prepare <these
2 extremely important> final submissions <for the Khieu Samphan
3 defence>. Ideally, <at the outset,> we were asking for five weeks
4 of preparation <time> before these final submission <hearings>
5 with <> this unknown factor of possibly <scheduling> witnesses
6 <who need to be prepared for their appearance before the Supreme
7 Court Chamber> .

8 [09.30.53]

9 But, in any case, this <would> mean that we are requesting <that>
10 the Trial Chamber <refrain from> <scheduling new witnesses
11 immediately> after Pchum Ben <>, and that the Chamber wait until
12 the end of the final submissions, that is to say, after the 18th
13 of November, to continue with the hearing of witnesses in this
14 Case 002/02. For the moment, this is all I can say based on the
15 elements that I have received. It's clear that this preparation
16 time is not going to be a vacation. It's going to be a <time for>
17 very important <> work <> because the stakes are very high.
18 <I believe that> all Parties, including the Chamber, <would be in
19 the position to take advantage of> this time to work on the other
20 elements that are important in <> Case 002/02, which might allow
21 us to resume, <less hindered,> with the hearings <further down
22 the line.>.

23 So, <to sum up,> our request is that there be no hearings
24 programmed after Pchum Ben and, <essentially,> before 18
25 November, that is to say, when we will be done with our final

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1 submissions before the Supreme Court. <>

2 [09.32.19]

3 MR. PRESIDENT:

4 Any other observations to <be> made by other Parties? Counsel

5 Koppe, you have the floor.

6 MR. KOPPE:

7 Thank you, Mr. President. Good morning, Your Honours. We concur

8 with the request of the Khieu Samphan team, but with the

9 exception that because also of the relevance of the appeal -- of

10 the testimony for the appeal of Witness 996, we would request

11 that this particular witness who is now not coming tomorrow would

12 at some point be heard before those hearings. I don't think the

13 Khieu Samphan team would be very happy, but for us it's very

14 important that 996 will be heard before the hearings the Supreme

15 Court Chamber. So but we concur with the period of time except

16 for one particular witness.

17 [09.33.26]

18 MR. PRESIDENT:

19 And the International Co-Prosecutor, you have the floor.

20 [09.33.37]

21 MR. KOUMJIAN:

22 Yes. Good afternoon -- good morning, Your Honours and Counsel.

23 This is -- when this matter was raised previously, we did

24 indicate that it was premature as a schedule had not been given.

25 But now we have an indication of dates and the time that the

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1 Supreme Court will devote to the oral hearings, which are three
2 days. We certainly think it's important for all Parties to be
3 prepared. But the briefing on the appeal has taken place sometime
4 ago. I think our response was filed in March or April of this
5 year. It's our view that we also would appreciate some time to
6 prepare; one week at least to prepare for the appeal hearings.
7 Assuming that there is no witness called by the Supreme Court
8 Chamber, and I'm not sure whether there will be or not, and I'm
9 not sure that that would affect what I'm about to say, but if the
10 Chamber did not have any witnesses from the 8th of -- excuse me,
11 I'm looking at the calendar for November, if the hearings on this
12 trial concluded at least by the 12th of -- excuse me -- the 5th
13 of November, then all Parties would have 11 days to prepare for
14 the appeal hearings, not counting the current period where
15 apparently we will sitting dark because of the problems with
16 witnesses that Your Honours just mentioned. We do think that
17 seven weeks would be excessive. And that in effect is what the
18 Defence is asking for if we stop, as I understand it, now hearing
19 witnesses. Or even if we stop after the holiday, six weeks would
20 be excessive. Considering that with three days of hearings, I
21 presume the time would be divided equitably by the Supreme Court
22 so that the defence teams together will have about a day and a
23 half to present their oral arguments. So about less than a day
24 for each. We think a week or 11 days would be sufficient time.
25 It's up to Your Honours to decide that, but at least we suggest

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1 that six -- five weeks would be excessive amount of time to
2 prepare given all the other demands on this Court. And I think
3 also this is the first opportunity for Chea Leang to react
4 through her National Counsel. And I think she also has a position
5 on this. And I'm available to answer any questions that Your
6 Honours have. I would make one final other observation. The
7 Prosecution will have to respond to both appeals. So while each
8 of the defence teams has their separate grounds, the possibly 227
9 for Nuon Chea, and people have made various estimates of what the
10 grounds are for the Khieu Samphan team, but certainly more than a
11 hundred. The Prosecution will be preparing for both. We think
12 that 11 days would be sufficient for us to do that.

13 [09.36.58]

14 MR. PRESIDENT:

15 The <> National <Deputy> Co-Prosecutor, you have the floor.

16 MR. SONG CHORVOIN:

17 Thank you, Mr. President. And good morning, Your Honours. The
18 National Co-Prosecutor concurs with what has been raised by the
19 International Co-Prosecutor. And we wish to resume the hearing of
20 evidence in Case 002/02 as soon as possible, as the time allotted
21 for the preparation of the appeal hearing, that is, inclusive of
22 the Pchum Ben break, <until 16th of November>, is a bit too long.
23 And it is in our opinion that one week preparation for the appeal
24 hearings should be sufficient for this three-day hearing set
25 forth by the Supreme Court Chamber.

1 [09.38.11]

2 MR. PRESIDENT:

3 Thank you for the observation. And the International Lead
4 Co-Lawyer for civil parties, you have the floor.

5 MS. GUIRAUD:

6 Thank you, Mr. President. Good morning to all of you. A few short
7 observations for the <group of> civil parties so that you can
8 understand how important it is to balance the rights of all
9 Parties when you will rule on the Khieu Samphan defence's
10 request. We simply wish to remind <> the Chamber <of> Rule 109,
11 which governs appeal hearings, in which the Defence will have to
12 make a brief presentation of its <grounds of> appeal.
13 So, <this> simply <entails choosing> the grounds <of appeal> that
14 are already contained in the final written submissions, and
15 <presenting them> orally. The point is not <to find> new grounds
16 <or> to develop new strategies, but simply to identify in the
17 written submissions the points that will <have to be developed>
18 orally. The term 'brief' is mentioned three times in this Article
19 109 which governs appeal hearings. The Defence therefore must
20 present brief oral submissions <in response based> on <the filed>
21 written submissions<. We> will have the possibility of making
22 brief observations in response. And finally, the Defence will
23 have the right to present <brief> final <> observations. Once
24 again, the point here is to follow a written procedure before the
25 Supreme Court essentially, and the Defence will not have the

1 possibility of developing new grounds <for appeal>, new
2 arguments, or new strategies. And therefore, I am questioning
3 myself about how sound <our learned colleague Koppe's request> is
4 to hear witness 2-TCW-996, who, <as Mr. Koppe informs us,> is a
5 witness from Case 002/02 in the appeal of 002/01. Apparently,
6 these are two different cases, so it will be therefore <totally>
7 impossible for the Nuon Chea defence to use the <testimony> of
8 2-TCW-996 to modify, <embellish,> and to improve <their grounds
9 of> appeal <> that were already developed by our colleague.
10 [09.40.48]
11 <> I <simply> would like to <also> raise <> the issue of the
12 dates. The Co-Prosecutor, responded to the Defence submission on
13 24 April. We responded on 25 May. And the document was translated
14 into Khmer on the 16th of July. So the Defence is perfectly aware
15 of the answers that were provided by us and by the Co-Prosecutors
16 to their appeal brief. And therefore, I'm going to ask you to
17 take these elements into account when you will rule on the Khieu
18 Samphan defence's request, which is now being supported today by
19 the Nuon Chea defence. The interest of the civil parties, as we
20 have said since the start, is that Case 002/02 can move ahead <as
21 smoothly as> possible. And this allows me to react now to the
22 last observation by our colleague from the Khieu Samphan defence.
23 Either we take a break to allow the Parties to prepare the appeal
24 hearing, or the Chamber <> also <uses> this opportunity so that
25 the Parties may become aware of the documents that will be

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1 disclosed and that will be necessary for the future segments.

2 [09.42.13]

3 If that is the case, well then, of course, we also would like
4 time to be given to the Parties, so that we can become aware of
5 the documents that may be relevant for the future segments. And
6 for this to happen, it would be useful <I believe> for all
7 Parties to be fully informed of the new disclosures to come that
8 may have an impact on the segment involving the Vietnamese and
9 <possibly> S-21, so that the Chamber may have all of these
10 elements in mind in order to rule on a possible <> stay of the
11 proceedings in Case 002/02, which might have a double objective.
12 First, to give the Parties time to prepare the oral hearings
13 before the Supreme Court and also an opportunity for the Parties
14 to become aware of the documents that may be relevant for the
15 future segments in Case 002/02.

16 [09.43.25]

17 MS. GUISSÉ:

18 Mr. President, a few brief observations here.

19 JUDGE LAVERGNE:

20 Yes, thank you, Mr. President. Let me please take the floor
21 before I give the floor to Counsel Anta Guisse, because I,
22 <incidentally,> have a question <to ask her>. Counsel Anta
23 Guisse, <some time> ago, you did <already> ask for five weeks of
24 preparation. And if I remember well, <at that point in time,> you
25 indicated then that you were considering a bracket of about 10

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1 days for the appeal hearings. But what we know now is that these
2 appeal hearings are scheduled over three days. So did you take
3 into account this modification? And how can you justify these
4 five weeks of preparation? Because I <admit that -- I> think that
5 we're facing <> a bit of a difference <here>.

6 [09.44.29]

7 MS. GUISSÉ:

8 <In> answer <to> your question, Judge Lavergne, I was speaking
9 here about <> practical organization<, bearing in mind that I
10 told you> -- we are <still> facing an unknown <factor>, which is,
11 are we going to be hearing witnesses before the Supreme Court or
12 not? That's an unknown <that I> have to take <> into
13 consideration when I make my request. But if there are new
14 elements, maybe I will be able to amend my request. But now, for
15 the moment, I'm asking for what I really need in order not to be
16 cornered if modifications come into play. So my request given --
17 well, today for example, I did not know that there was not going
18 to be any witnesses this week. So I was taking into account the
19 totality of time remaining between the end of the witness
20 testimonies this week and the <time when we are> likely <to hold
21 the appeal hearings> before the Supreme Court <which potentially
22 include witness hearings too. So that is the first point of
23 clarification in response to your question.> Now to answer the
24 Co-Prosecutor and also my colleague <of> the civil parties, I
25 note that in this courtroom on the side of the Defence, when we

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1 prepare witnesses, it's always <more or less> the same lawyers
2 that <are involved>. I'm not <considering> the distinction
3 between Arthur Vercken and myself <for> as you know <-- for as
4 the Chamber knows, we> share the one single position <of
5 International Co-Counsel, meaning that> whether it be to prepare
6 the hearings or to prepare the submissions, we're always speaking
7 about the same lawyers. <When I notice --> when I look at the
8 other side of the room, I see of course the Lead Co-Lawyers who
9 always come to the hearings but it's not always they who examine
10 the witnesses. In the same way, <even if I hear well, just as the
11 Co-Prosecutors always say --> that they have -- that they have
12 other tasks, but they rely <on various prosecutors when preparing
13 their witnesses and when questioning their witnesses>. Under
14 these conditions, <it can be taken as a given that> we are not in
15 the same situation in terms of preparation, whether it be for
16 Case 002 or for the preparation of the appeal.

17 [09.46.48]

18 Now, regarding the fact that we're going to make brief
19 submissions before the Supreme Court, <there is no problem with
20 that>. Brief submissions, choice of arguments, no problem. But
21 <everybody knows that> if we have to make choices, this means
22 that we have to make determinations. And therefore, we have to
23 look at the different written submissions <again> to see what is
24 going to be the most relevant when we're going to assist our
25 clients when we speak before the Supreme Court. And that would

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1 take time. So it's true that not everyone is aware of <what the
2 work entails, of the> fact that there is so much work to be done
3 before we come to the courtroom<, whether we are talking of the
4 work on this side or the other side, the lawyers and legal
5 officers>.

6 [09.47.35]

7 But given the stakes for Khieu Samphan and given the impact that
8 the Supreme Court's decision will have<, including> on Case
9 002/02 as well, you understand that we need to be perfectly
10 prepared whether it be for the observations that we're going to
11 make or whether it be to answer the possible questions that the
12 Judges <deem worthy of posing before the Supreme Court>.
13 <The fact that the Parties -- so,> whether the civil parties or
14 the Co-Prosecutors feel that they don't need that much time
15 because they're organized in their own way and because they have
16 the resources, that's their choice. But I'm speaking on behalf of
17 the Khieu Samphan defence team and on behalf of the defence that
18 we're going to have to provide to our client before the Supreme
19 Court. And we are telling you that the 11 days such as
20 recommended by the Co-Prosecutors are not sufficient. It might be
21 sufficient for the others, so much the better, but I don't want
22 to take that risk. I don't want to just toe the line <just so as
23 to appear as the good student> and make everyone happy, and to
24 explain that I'm going to make the effort necessary to work less
25 <and to not put the effort in for my client> because I have less

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1 time. <> I'm asking for what I think is the time necessary <to
2 duly fulfil my role,> so that I can defend my client properly and
3 in proper conditions. So, I stand by my request despite
4 everyone's observations.

5 [09.49.12]

6 MR. KOPPE:

7 Thank you, Mr. President. A few brief observations. We think it
8 is quite likely that the Supreme Court Chamber will indeed summon
9 witnesses. We have presently 13 outstanding witness requests.
10 Considering the investigations that have been done already on
11 behalf of the Supreme Court Chamber, we find it highly likely
12 that in the week of 9 or 10 November, so before the submissions,
13 indeed witnesses will be heard. My second point is, I indeed
14 concur with my colleague from the Khieu Samphan team as to the
15 way the division of labour is in fact working at this tribunal.
16 I'm here every day by myself together with my national colleague.
17 And I think I've counted once, the Prosecution has about seven
18 different lawyers coming in every day. So it's quite easy to say
19 well we have all the time. We have only a week, that is enough
20 for us. It's very easy to say if you have so many counsel sitting
21 in the Bench -- different counsel. And the last remark, there are
22 not 227 grounds of appeal but 223 grounds of appeal, but it is
23 indeed our appeal. And if you have filed only one ground of
24 appeal yourself, it's also quite easy to say that a week
25 preparation time should be enough. So, I'd rather had seen that

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1 the Prosecution would be a little -- what's the word? I cannot
2 find the English word presently -- should be a little --
3 sometimes the English is difficult.

4 [09.51.19]

5 JUDGE FENZ:

6 Understanding?

7 MR. KOPPE:

8 Thank you. For instance, yes. Thank you, Judge Fenz.

9 (Judges deliberate)

10 [09.52.30]

11 MR. PRESIDENT:

12 Thank you for all the observations made by Parties, in
13 particular, what was raised by the defence teams, that is, to
14 defer the hearing during the present state so that they can
15 prepare themselves for the appeal hearing before the Supreme
16 Court Chamber. We will take into account all the points raised by
17 the Parties. We will deliberate those points, and our senior
18 legal officer will email you and the Parties our ruling as well
19 as the rescheduling of hearing testimonies of witnesses and civil
20 parties. That will be part of the email and it shall be done
21 before the Pchum Ben break.

22 And we will adjourn the hearing today since we cannot adhere to
23 our scheduling. And we will set the -- we will reschedule the
24 hearing again after the Pchum Ben festival.

25 Security personnel, you are instructed to take the two Accused

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1 back to the detention facility, and we will issue another
2 instruction when the Court resume for them to appear in the
3 courtroom.

4 The Court is now adjourned.

5 (Court adjourns at 0954H)

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