



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): 29-Mar-2013, 13:14
Uch Arun
CMS/CFO:.....

TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

29 March 2013
Trial Day 163

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

The Accused: KHIEU Samphan

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SE Kolvuthy
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For the Office of the Co-Prosecutors:

SENG Bunkheang
William SMITH
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For Court Management Section:

SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 During this morning's session, the Chamber proceeds the Case 002
6 while pronouncing the oral decision and another decision. The
7 purpose of today's hearing is indeed for the Trial Chamber to
8 announce its disposition of its decision on the accused Nuon
9 Chea's fitness to stand trial, after the Chamber has conducted
10 the hearing to hear the testimonies of two experts, Professor
11 John Campbell and Seena Fazel, on the 25th of March 2013. The two
12 experts have been reappointed to assess or review the health and
13 fitness to stand trial of Mr. Nuon Chea.

14 And another issue here is of the severance of the proceedings in
15 light - in the light of the Supreme Court Chamber's Decision of
16 the 8th of February 2013.

17 [09.03.00]

18 The Chamber today also announces the resumption of the
19 proceedings in Case 002 in order to safeguard the right of all
20 Accused to a fair, expeditious trial, and the interests of
21 justice in reaching a timely verdict in this trial.

22 Court officer is now instructed to report to the Chamber the
23 current status of the parties to the proceedings - rather, the
24 greffier is now instructed to report on this.

25 THE GREFFIER:

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1 Mr. President and Your Honours, all parties to the proceedings
2 are present, except Mr. Nuon Chea, who is absent due to his
3 health concerns. Mr. Nuon Chea has waived his right to be present
4 in today's hearing.

5 Mr. Jacques Vergès, counsel for Mr. Khieu Samphan, is absent due
6 to his personal commitment.

7 MR. PRESIDENT:

8 Thank you, Ms. Se Kolvuthy.

9 Next, the Chamber would like to announce its disposition of its
10 decision as follows.

11 [09.04.36]

12 Notwithstanding the advanced age and frailty of the accused Nuon
13 Chea and the Accused's precarious physical health, the recent
14 report and testimony of the court-appointed medical experts
15 clearly indicate that the Accused remains capable of meaningful
16 participation in his own defence. On the basis of the conclusions
17 of the medical experts, the Trial Chamber, therefore, affirms its
18 earlier finding that the accused Nuon Chea is fit to stand trial.
19 The Trial Chamber's written decision in this regard will follow
20 as soon as possible.

21 Trial Chamber now issues its disposition of its "Decision on
22 Severance of Case 002/01 following Supreme Court Chamber Decision
23 of 8 February 2013". The Chamber's reasoned, written decision on
24 this matter will also follow as soon as possible.

25 [09.06.27]

1 On the 8th of February 2013, the Supreme Court Chamber rendered
2 its Decision on the Co-Prosecutors' Immediate Appeal of the Trial
3 Chamber's Decision concerning the Scope of Case 002/01. In its
4 Severance Order of the 22nd of September 2011, the Trial Chamber,
5 in the interests of achieving a timely verdict in Case 002, had
6 limited the scope of the first trial in Case 002 principally to
7 forced evacuations, later extending it also to executions carried
8 out at Tuol Po Chrey. The Supreme Court Chamber Decision annulled
9 the Trial Chamber's Severance Order and related decisions.

10 Although the Supreme Court Chamber Decision envisaged the
11 possibility of a fresh severance of Case 002, the immediate
12 consequence of the Supreme Court Chamber Decision was that Case
13 002 was no longer confined in scope and the Trial Chamber, unable
14 to proceed to any verdict in this case until all factual
15 allegations and charges contained in the Case 002 Closing Order
16 are adjudicated.

17 [09.08.37]

18 In annulling the severance of Case 002, the Supreme Court Chamber
19 considered the Trial Chamber to have erred in its interpretation
20 of the scope of its discretion to order severance pursuant to
21 Internal Rule 89ter, in failing to hear the parties prior to the
22 issuance of its Severance Order, and for having, among other
23 factors, given inadequate consideration to the need to ensure
24 that the charges retained in Case File 002/01 are sufficiently
25 representative.

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1 In order to minimize further delay to proceedings in Case 002, on
2 the 12th of February 2013 the Trial Chamber scheduled hearings on
3 the issue of severance, outlining a number of issues for the
4 parties to address in the light of the Supreme Court Chamber
5 Decision. Following these hearings on the 18th, 20th, and 21st of
6 February 2013, in-court examination of the court-appointed
7 medical experts who reassessed the fitness to stand trial of the
8 accused Nuon Chea on the 25th of March 2013, and having weighed
9 the factors identified in the Supreme Court Chamber Decision and
10 the impact of the death of Ieng Sary, the Chamber issues its
11 present decision.

12 [09.11.10]

13 For the reasons that will be outlined in its written decision,
14 the Trial Chamber decides to sever Case 002, pursuant to Internal
15 Rule 89ter, by confining the scope of Case 002/01 to the charges
16 related to forced movement of population phases 1 and 2 and
17 executions at Tuol Po Chrey.

18 These are the brief oral decisions by the Trial Chamber. The
19 Chamber has no other issue to raise during this morning. The
20 Chamber will adjourn this hearing as of now and the proceedings
21 regarding Case File 002 will be resumed on Monday next week -
22 rather, on the 8th of April 2013.

23 During the week commencing 8th of April 2013, the Trial Chamber
24 intends to conclude the testimony of TCW-100, followed by the
25 examination of TCW-536.

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1 The Co-Prosecutors have already been given the time to put
2 questions to one of the witnesses, and it is now time for the
3 Lead Co-Lawyers to proceed with the questioning of the parties -
4 of the witness, and Lead-Co-Lawyers will have one session for
5 that, which is equivalent to one fourth of the given time for
6 putting the questions to the witness.

7 [09.14.00]

8 Regarding TCW-100, his testimony was partly heard during the
9 session on January 2013. His next testimony was scheduled on the
10 14th of January 2013. Nonetheless, due to the medical condition
11 of Mr. Nuon Chea, who had to be admitted to the hospital on that
12 occasion, the Chamber could not hear the complete testimony of
13 TCW-100. So, the questions were put by the prosecutors to the
14 witness, but other parties were not yet given the opportunity to
15 do so, due to the outlined condition.

16 And after TCW-100, there will be the examination of TCW-536.

17 Schedule to hear the testimony of this witness was set, but due
18 to the health concerns of the Accused, the Chamber could not hear
19 his - this witness's testimony. The Chamber now plans to hear the
20 testimony of TCW-536 before the Khmer New Year. The Trial Chamber
21 will hear this witness for two days and a half, questions
22 continued - questions to be put by the Judges of the Bench, then
23 followed by parties to the proceedings.

24 [09.16.23]

25 The Chamber wishes to inform the parties to the proceedings that

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1 the Chamber will do its best to make sure that the proceedings
2 are conducted in Case 002/01 as scheduled, and the following
3 hearings, unless the Chamber is faced by other challenges,
4 including the availability of essential Cambodian staff, who may
5 not show up at work, or perhaps due to budget shortfalls or other
6 relevant issues. The Chamber will notify the parties, as well,
7 concerning the scheduling of the hearing, by the first week of
8 April.

9 I now would like to hand over to Judge Silvia Cartwright to
10 continue informing the public and the parties to the proceedings
11 if she would wish to do so.

12 JUDGE CARTWRIGHT:

13 Yes. Thank you, President.

14 The Trial Chamber has scheduled the resumption of hearing of the
15 evidence for the 8th of April, given that, as of last night, it
16 was very unclear whether essential Cambodian staff would be
17 available next week.

18 [09.18.10]

19 The Coordinator of UNAKRT has, just this morning, informed the
20 International Judges that funding for the national staff has been
21 secured through to the end of April and that ongoing discussions
22 are under way to stabilize funding from that point on. It is
23 unfortunately too late for us to schedule any witnesses for next
24 week, for a variety of reasons, and we therefore prefer to stay
25 with the schedule indicated to the parties yesterday, which is

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1 8th of April, as the President has indicated.

2 And, President, I think you wanted to say some other comments
3 about schedules of witnesses and experts from the parties. Or
4 would you prefer me to mention that, as you-

5 Yes. The final matter that the Trial Chamber wanted to
6 communicate to the parties is this. The Chamber will seek further
7 submissions from the parties concerning witnesses and experts to
8 be heard in the weeks following the 8th of April should it
9 consider this is required to enable it to discharge its trial
10 management functions. Pending any such request by the Trial
11 Chamber, the parties should not file further suggested witness
12 and expert lists or proposed schedules for the ongoing hearing in
13 Case 002/01.

14 President, I think that covers all the issues that were required
15 for this morning.

16 [09.20.30]

17 MR. PRESIDENT:

18 Thank you.

19 Judge Lavergne, you may now proceed.

20 JUDGE LAVERGNE:

21 I just want to make a little clarification for French speakers.
22 The Chamber is asking the parties not to make any submissions
23 regarding expert witnesses. It will do so if it deems it
24 necessary subsequently.

25 MR. PRESIDENT:

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1 Thank you, Judge Lavergne.

2 The Chamber would like to adjourn the hearing now, and the next
3 session will be resumed on Monday the 8th of April 2013,
4 commencing at 9 a.m.

5 Security personnel are now instructed to bring Mr. Khieu Samphan
6 back to the detention facility and have both accused persons
7 returned to the courtroom by Monday the 8th of April 2013, before
8 9 a.m.

9 The Court is adjourned.

10 (Court adjourns at 0921H)

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