



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
03/11/2016

ម៉ោង (Time/Heure) : 15:20

ឧត្តិករឯកសារករណី/Case File Officer/L'agent chargé
SANN RAY

002/19-09-2007-ECCC/TC
E1/429

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

WRITTEN RECORD OF PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 May 2016
Substantive Hearing on Evidence 002/02 – Day 410

Prepared by:

Mr. EM Hoy and Mr. Roger PHILLIPS

| Attendance Record |
|---|
| Before: Judge NIL Nonn (President); Judge Jean-Marc LAVERGNE; Judge YOU Ottara; Judge Claudia FENZ; Judge YA Sokhan |
| Reserve Judges: Judge Martin KAROPKIN; Judge THOU Mony |
| Greffiers: Mr. EM Hoy; Mr. Roger PHILLIPS |
| OCP: Mr. Nicolas KOUMJIAN; Mr. SENG Leang; Mr. Vincent DE WILDE d'ESTMAEL; Mr. Dale LYSAK |
| Accused: Mr. NUON Chea (from the holding cell); Mr. KHIEU Samphan |
| Defence for the Accused Nuon Chea: Mr. Victor KOPPE, Mr. SON Arun; Mr. LIV Sovanna |
| Defence for the Accused Khieu Samphan: Mr. KONG Sam Onn |
| Appointed Standby Counsel for KHIEU Samphan: Ms. TOUCH Voleak; Mr. Calvin SAUNDERS |
| Lawyers for the Civil Parties: Mr. PICH Ang; Ms. Marie GUIRAUD; Mr. VEN Pov |

Witness: 2-TCW-816 with duty counsel Mr. MOEURN Sovann

Others: Mr. UCH Arun (Court Officer); Ms. SOUR Sotheavy (Associate Court Officer); Ms. YUOS Sereiroth (Transcriber); Mrs. SAM Makara (Transcriber); Ms. Hannah KIM (Legal Intern); Mr. Keo Vath (Support Staff).

| General court times | | | |
|---|--------------------------|--------------------|-------------|
| Day | Start time: 9:08 | Finish time: 13:40 | |
| Recess | Start time: 10:50 | Finish time: 13:37 | |
| | Total Court Time: | 1 hr 45 min | |
| Summary of Proceedings | | | |
| Proceedings | | | |
| Type of Issue | Raised By | Start time | Finish time |
| Opening of hearing and report on attendance of the Parties | Trial Chamber, Greffier | 9:08 | 9:10 |
| NUON Chea Defence Request to follow the proceedings from the holding cell | NUON Chea Defence | 9:10 | 9:12 |
| Partial oral ruling on the Prosecution's request (E319/36) | Trial Chamber, President | 9:12 | 9:14 |
| Oral submissions on NUON Chea Defence request to admit documents | NUON Chea Defence | 9:16 | 9:17 |
| | Co-Prosecutor | 9:23 | 9:25 |
| | Lead Co-Lawyer | 9:41 | 9:41 |
| | KHIEU Samphan Defence | 9:46 | 9:46 |
| Oral submissions on NUON Chea Defence request to reconsider request for adjournment | NUON Chea Defence | 9:16 | 9:23 |
| | Co-Prosecutor | 9:25 | 9:40 |
| | Lead Co-Lawyer | 9:41 | 9:46 |
| | KHIEU Samphan Defence | 9:46 | 9:52 |
| Oral submissions on the Prosecution's request to admit documents | Trial Chamber | 10:10 | 10:12 |
| | Lead Co-Lawyer | 10:12 | 10:13 |
| | NUON Chea Defence | 10:13 | 10:13 |
| | KHIEU Samphan Defence | 10:13 | 10:34 |
| | | 10:46 | 10:48 |
| | Co-Prosecutor | 10:34 | 10:46 |
| Oral ruling on the NUON Chea Defence request for additional time | Trial Chamber, President | 13:36 | 13:39 |

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, with the exception of Anta GUISSÉ due to personal reasons. The Accused NUON Chea was present in the holding cell.

NUON Chea Defence request to follow the proceedings from the holding cell

The Trial Chamber granted the request of NUON Chea to waive his right to be present in the courtroom and to follow the proceedings from the holding cell.

Partial oral ruling on the Prosecution's request (E319/36)

The Trial Chamber made a partial oral ruling on the International Co-Prosecutor's request to admit 95 additional Written Records of Interview (E319/36) by admitting documents E319/23.55 and E319/23.3.56 into evidence and assigning them document numbers E3/9815 and E3/9816 respectively.

Oral submissions on NUON Chea request to admit documents

The Trial Chamber heard oral responses from the Parties regarding the NUON Chea Defence's Rule 87(4) request to admit two documents into evidence.

The NUON Chea Defence Counsel described the first document - a military court statement of the upcoming witness 2-TCW-816 - and the second - a compilation of S-21 documents that the witness had been confronted with during his interview by the OCIJ - as both being relevant to this hearing.

The Co-Prosecutor did not have objections to the first document. Regarding the compilation of documents, it was argued that there was no relevance in admitting all the documents insofar as all they had already been individually placed on the Case File. Counsel for NUON Chea Defence agreed with this argument and confirmed that the request would be withdrawn in this respect.

The Lead Co-Lawyer for Civil Parties and the KHIEU Samphan Defence Counsel did not have objections to the request.

Oral submissions on NUON Chea request to reconsider request for adjournment

The Trial Chamber heard oral responses from the Parties regarding the NUON Chea Defence's request for the Chamber to reconsider the Defence's earlier request to adjourn the proceedings.

The NUON Chea Defence Counsel argued that 724 of the 871 documents which formed the basis of the newly made OCIJ list of people who were allegedly detained at S-21 had not been admitted into evidence. Though most of these documents were available on Zylab, it was argued that it was, in practice, very difficult to access them. Moreover, it was argued that the Defence did not have enough time to prepare for witnesses 2-TCW-816 and Duch in relation to these newly admitted documents. Counsel proposed that the Prosecution examine both witnesses this week, and then the Defence should commence their examination after spending three additional weeks to process the documents. The Co-Prosecutor opposed the Defence Counsel's proposed scheduling of questioning as it would be disadvantageous to them. It was argued that the Prosecution had also not been exposed to the documents in the new list, and it was erroneous for the Defence to argue that there was an issue of resources for them. Moreover, it was argued that the proposed three week adjournment period was too long, especially considering the Defence has already questioned Duch in Case 002/01. The Co-

Prosecutor proposed that the Chamber continue with the schedule for the witness' hearings, breaking up the nine consecutive days of Duch's hearing into five days starting Thursday, and then four days which would be delayed until the end of the internal purges segment.

The Lead Co-Lawyer also raised the issue of the inaccessibility of the documents on Zylab. It was argued that the new list was extremely important to the Civil Parties and therefore the Chamber was requested to solve this issue. Regarding the Defence's proposed schedule, the Lead Co-Lawyer stated that they would rely on the Chamber's wisdom.

Counsel for the KHIEU Samphan Defence also argued that they did not have sufficient time to process the documents, and that the Defence's proposed three weeks of adjournment was very appropriate.

Oral submissions on the Prosecution's request to admit documents

The Trial Chamber heard oral responses from the Parties regarding the Prosecution's Rule 87(4) request to admit written records of interviews and documents into evidence proposed in E319/47.

The Lead Co-Lawyer submitted that they would rely on the Chamber's discretion on the request. Counsel for the NUON Chea Defence had no observations.

Defence Counsel for KHIEU Samphan objected to the admission of the 40 documents which were not prior statements of testifying witnesses. It was pointed out that the Prosecution had not provided any explanation for making the request until now when they were aware of the documents since last year. Counsel identified that those documents were also not conducive to the ascertainment of the truth as they were being admitted in lieu of the witness' live testimonies.

In reply, the Co-Prosecutor clarified that the Chamber was unable to hear all relevant witnesses and therefore this was why they were seeking to admit the witness' written records of interview in lieu of their testimony. Finally in response to the argument regarding the timing of the motion, the Co-Prosecutor pointed out that the witness interviews had been previously disclosed to the Parties. He concluded that the Prosecution did not have to include the written records of interview in the request; parties themselves could simply make a Rule 87(4) request to admit them when relevant.

Oral ruling on the NUON Chea Defence request to reconsider early adjournment

Following the NUON Chea Defence's request to re-arrange the Trial Chamber's schedule to allow for additional time to prepare for the questioning of witnesses 2-TCW-816 and Duch, the Chamber decided to adjourn the hearings until 2 June 2016. The Parties were informed that a revised schedule would be emailed to them and that the Chamber rejected their alternative proposals for scheduling the hearings.

New E3s

| TC No | OCIJ No | ERN (KH, ENG, FR) | Title | Class | Note in Khmer | Note in English | Note in French |
|-------|---------|----------------------|-------|-------|------------------|--------------------|-------------------|
|-------|---------|----------------------|-------|-------|------------------|--------------------|-------------------|

| | | | | | | | |
|---------|--------------|---|---|---|---|---|---|
| E3/9815 | E319/23.3.55 | 01065124- 01065134; 01079243- 01079252; / | Written Record of Interview witness SUOS Thy | C | / | / | / |
| E3/9816 | E319/23.3.56 | 01065135- 01065146; 01079243- 01079252 / | Written Record of Interview witness SUOS Thy | C | / | / | / |

Oral Orders/Decisions:

- Order authorising the Accused NUON Chea to follow the proceedings from the holding cell and instructing the AV Unit to connect the AV link to the proceedings (9:10).
- Partial oral ruling to admit documents E319/23.4.55 and E319/23.4.56 and assign them E3 numbers, E3/9815 and E3/9816, respectively (9:14).
- Oral decision to adjourn the hearings until 2 June 2016 (13:39).
- Order to take the Accused NUON Chea and KHIEU Samphan to the Detention Facility and bring them back to court for the hearing on 2 June 2016 (13:40).

Order for Adjournment of Hearing

The hearing will resume on Tuesday, 2 June 2016 at 9:00 a.m.

Phnom Penh, 23 May 2016

Greffier



Mr. EM Hoy



Greffier



Roger PHILLIPS