



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

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

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

9 October 2012  
Trial Day 117

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  
KHIEU Samphan

Lawyers for the Accused:

SON Arun  
Andrew Ianuzzi  
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Michael G. KARNAVAS  
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For Witness and Expert Support Unit:

SENG Rethy

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MS. GUISSÉ	French
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
JUDGE LAVERGNE	French
MR. MEAS VOEUN (TCW-428)	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. SON ARUN	Khmer

1 (Judges deliberate)

2 [10.11.00]

3 MR. PRESIDENT:

4 I'd like to give the floor to Judge Cartwright to rule on the  
5 matter in relation to the question that is put to the witness by  
6 the international counsel for Nuon Chea and as objected by the  
7 Prosecution.

8 You may proceed, Judge Cartwright.

9 JUDGE CARTWRIGHT:

10 Thank you, President.

11 The Chamber is agreed that a question that is not based on some  
12 material or Witness Statement in this Court, that cannot be  
13 tested by the Court, is not admissible. Ideas, as you expressed  
14 them are insufficient. The Court can operate only on evidence.  
15 Consequently, if there is a prior Witness Statement that has been  
16 heard and examined in this Court, or a document that has been put  
17 before the Chamber, these are all viable basis' for putting a  
18 question to a witness.

19 [10.12.28]

20 Instructions from an accused cannot be given much weight unless  
21 the accused chooses not to exercise his right to remain silent  
22 and makes himself available for questioning on that topic.

23 Consequently, any other questions are based on, in effect,  
24 hypothesis which are unable to be appropriately tested and relied  
25 upon in reaching a verdict. So Mr. Ianuzzi, if you wish to found

1 your question on some such material, then it can be put to the  
2 witness. Otherwise, please move on.

3 MR. IANUZZI:

4 Thank you, Judge Cartwright.

5 [10.13.25]

6 I haven't been a lawyer for very long, but that certainly,  
7 certainly sounds to me like an absolutely incorrect statement of  
8 what's--

9 JUDGE CARTWRIGHT:

10 Mr. Ianuzzi, you have been told before--

11 MR. IANUZZI:

12 This is a live trial.

13 JUDGE CARTWRIGHT:

14 Mr. Ianuzzi--

15 MR. IANUZZI:

16 This is a live trial.

17 JUDGE CARTWRIGHT:

18 You have been told before you do not comment--

19 MR. IANUZZI:

20 We might as well have this trial on paper. We might as well have  
21 it on paper. Where on earth, Judge Cartwright, did you find the  
22 legal support for the ruling--

23 MR. PRESIDENT:

24 Counsel, you may move on with your questions if you have any, and  
25 if you don't have any further questions the floor will be given

1 to another defence team.

2 MR. IANUZZI:

3 Thank you, Mr. President. I obviously am being forced to abandon  
4 my next five questions and I would like to note that for the  
5 record. I am being forced by the Trial Chamber to abandon five  
6 relevant questions that--

7 MR. PRESIDENT:

8 If you have no further questions, please be seated so that the  
9 floor can be given to another defence team.

10 BY MR. IANUZZI:

11 Thank you, Mr. President. I have approximately three pages of  
12 questions left. I'll do my very best to finish before the coffee  
13 break.

14 Q. Perhaps let me start, Mr. Witness, given the last ruling, with  
15 a document. Now, Mr. Witness, you mentioned earlier that you had  
16 indeed visited the city of Battambang. Let me put something to  
17 you from a document regarding events said to have taken place in  
18 that city, and then let me ask you a question or two. And I'm  
19 referring now to a document, it has a document number E5 -- and  
20 let me just quote this:

21 [10.15.50]

22 "We talk with Judge Nil who says that he's upset by peoples' lack  
23 of faith in the justice system. He laments that he often has to  
24 defend his profession to friends. He admits that, yes, he does  
25 take bribes, of course, but only after a case is over."

1 MR. PRESIDENT:

2 The Chamber already ruled on that matter and you also appealed  
3 that decision. So let me repeat, once the matter has been ruled  
4 by the Chamber you cannot raise that matter again. You are not  
5 allowed to proceed in that fashion. We have heard a number of  
6 your questions that you have put to this witness and they are  
7 irrelevant to the facts alleged against your client. We are here  
8 attempting to hear clearly the ideas you put in your questions,  
9 but in the end, you are relevant -- your questions are not  
10 relevant to the facts.

11 [10.17.35]

12 Please proceed with questions substantially relevant to your  
13 client.

14 MR. IANUZZI:

15 Thank you, Mr. President. Just for the record, we did not appeal  
16 that decision. That was another party who appealed that.

17 MR. PRESIDENT:

18 Once again, Counsel, you are not allowed to raise this issue. You  
19 may put questions to this witness relevant to the facts  
20 determined by the Trial Chamber concerning case 002/1, and other  
21 facts known to this witness.

22 BY MR. IANUZZI:

23 Thank you, Mr. President. Then in that case I will move on to  
24 another area.

25 Q. Mr. Witness, are you familiar with an individual by the name

1 of Ta Cheam?

2 MR. MEAS VOEUN:

3 A. Yes, I am familiar. Ta Cheam did not have any significant role  
4 to play, that's the Ta Cheam that I know. I'm not sure if you are  
5 referring to that person or not.

6 Q. Well, before I move on let's clarify that point. Who are you  
7 referring to? Who is the Ta Cheam that you are referring to?

8 A. You need to tell me first which Ta Cheam you refer to, or  
9 where he worked, because there are a number of people by the name  
10 of Cheam.

11 [10.19.45]

12 Q. Thank you, Mr. Witness. The individual that I have in mind  
13 also goes by the name Phy Phoun or Rochoem Ton. Do you know that  
14 individual or is it another Ta Cheam that you know?

15 A. I know another person by the name of Ta Cheam. He is alive,  
16 but I'm afraid that you refer to another Ta Cheam.

17 Q. Thank you, Mr. Witness. In that case, I have no further  
18 questions on that point. One last question before I sit down, Mr.  
19 Witness, are you aware, is it within your sphere of knowledge  
20 that one of the reasons for the recent treatment given to Mr. Mam  
21 Sonando by the Phnom Penh Municipal Court is the fact, the fact,  
22 that his radio station had the courage to publicize news  
23 regarding a complaint lodged against Hun Sen at the---

24 [10.21.07]

25 MR. PRESIDENT:



1 This question is not relevant at all to the facts before us.  
2 Witness, you are not -- you are instructed not to respond to this  
3 kind of question.

4 MR. IANUZZI:

5 Thank you, Mr. President. Just to finish that sentence, the  
6 International Criminal Court accused of crimes against--

7 MR. PRESIDENT:

8 We have told you repeatedly that you are not allowed to be on  
9 your feet and to make deliberate comments on anything. The floor  
10 is given to you to put questions relevant to the facts determined  
11 by this Trial Chamber to this witness. That is, within the  
12 framework of Case 002/01, except a number of witnesses where  
13 questions can be put regarding all of the facts within case 002.

14 [10.22.19]

15 MR. IANUZZI:

16 Thank you, Mr. President. That was indeed my last question, and  
17 perhaps I could just end by registering my agreement with Mr.  
18 Richard Rogers, and I'm referring to the famous musician, not the  
19 famous lawyer, "There's nothing like a dame." Thank you, Mr.  
20 Witness.

21 MR. PRESIDENT:

22 The floor is now given to Ieng Sary's defence to put questions to  
23 this witness.

24 QUESTIONING BY MR. KARNAVAS:

25 Thank you, Mr. President. Good morning, Your Honours. Good

1 Prosecutors. Counsel for Mr. Nuon Chea you may not proceed.  
2 [12.06.00]  
3 MR. IANUZZI:  
4 Thank you Mr. President. I've got four short points. You've  
5 actually touched on - on one of them. I was going to ask what  
6 we're going to do later this afternoon. I would ask for 5 minutes  
7 to consult - well why I don't just put it this way. I will  
8 consult - we will consult with our client after the lunch break  
9 and discuss with him during the lunch break - discuss with him  
10 whether or not he's willing to waive his presence for the reading  
11 of those indictment portions. This of course relates to one of  
12 the applications I have this morning. I am informed that Nuon  
13 Chea is sufferings from a head ache, a back ache, and general  
14 lack of concentration and for those reasons he would like to  
15 retire to the holding cell this afternoon. So given what you've  
16 just said we will discuss with him at the lunch break whether or  
17 not he wants to waive his presence this afternoon for that  
18 reading. And perhaps that reading could be done at another  
19 juncture. Two other quick points. One just to clarify I misspoke  
20 this morning the correct reference was Oscar Hammerstein not  
21 Richard Rogers who panned those words. And of course this is from  
22 south pacific 1949. And finally Nuon Chea - there's a pending  
23 request that -  
24 [12.07.21]  
25 MR. PRESIDENT:

**NOT OFFICIAL; NOT CHECKED**

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1 I think we have resolved this issue already and we heard your  
2 case this morning. It is now time for lunch adjournment. Please  
3 tell the Chamber what else would you need to address the Chamber.  
4 However, for the time being you are not allowed to make any other  
5 application other than the request relevant to your client.  
6 Because we are now listening or hearing your request on Nuon Chea  
7 health condition. And this is the issue before us now.

8 MR. IANUZZI:

9 Thank you Mr. President, this one is very much connected to my  
10 client - to our client excuse me. We have a pending request that  
11 Nuon Chea be permitted to make a short comment on the portions of  
12 the incitement that were read out last week. I believe that was  
13 your Honour indicated that you would afford some time one morning  
14 this week. We've already gotten - I don't want to interrupt -  
15 [12.08.27]

16 MR. PRESIDENT:

17 The Chamber has already ruled upon this and tomorrow's session  
18 the Chamber will hand over the floor to Mr. Nuon Chea to respond  
19 the paragraphs that read out by the Greffier. Indeed this right  
20 in enshrined in the Internal Rules and that the accused person  
21 can enjoy it. For that reason the Chamber wishes to make sure  
22 that the relevant facts and relevant paragraphs will be read out  
23 so that the accused is ready to be prepared indeed to respond to  
24 all the relevant paragraphs concerning the first segment of the  
25 Trial.

**NOT OFFICIAL; NOT CHECKED**

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1 Nol, Sirik Matak, Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret  
2 and Sosthene Fernandez" should be killed. Out of the seven named  
3 individuals only Long Boret and Sirik Matak remained in the  
4 country. Sirik Matak attempted to take refuge in the French  
5 embassy but was later handed over to the CPK. They were both  
6 executed by the CPK, as confirmed by Ieng Sary. Khieu Samphan  
7 made several additional public statements about the "traitorous  
8 Lon Nol clique".

9 MR. PRESIDENT:

10 Thank you, Ms. Se Kolvuthy.

11 The Chamber also wishes to inform the parties to the proceedings  
12 that the facts, as laid out in the paragraphs relevant to the  
13 execution of the former Lon Nol soldiers and officials at Tuol Po  
14 Chrey, have already been read out by the greffier of the Trial  
15 Chamber and these paragraphs have been decided to be included  
16 into a portion of the fact to be included in segment 3 of Case  
17 File 002. By doing so, the Chamber is of the opinion that parties  
18 to the proceeding will have some time to prepare for the future  
19 arrangement.

20 [16.09.37]

21 Since it is now appropriate time for the adjournment, the Chamber  
22 will adjourn momentarily. Before this, the Chamber will have to  
23 rule on the -- the behaviour of counsel Ianuzzi and now address  
24 repeated insolent comments criticizing my rulings, those of the  
25 Chamber, as well as the personal remarks made this morning by Mr.

1 Ianuzzi; one of Nuon Chea's international lawyers.  
2 The personal remarks apparently quoting an American musical by  
3 Rodgers and Hammerstein were expanded upon immediately before the  
4 lunch adjournment and were personally insulting. Those comments  
5 and the persistent questioning of the Chamber's rulings fall well  
6 below the professional standards expected of any lawyer in this  
7 or any other court. The Chamber has previously warned Mr. Ianuzzi  
8 of this unacceptable behaviour. It will forward this complaint to  
9 the Bar Association of which he is a member and will invite their  
10 association to consider it together with the earlier complaint  
11 made against him.

12 [16.11.39]

13 The trial proceedings today have now come to a conclusion. The  
14 Chamber will adjourn and the next session will be resumed by  
15 tomorrow morning at 9 a.m.

16 For tomorrow's sessions, the Chamber will give the floor to Mr.  
17 Nuon Chea to be able to respond to any of the paragraphs in the  
18 Closing Order as indicated relevant to portion of segment 3 of  
19 Case File 002, the facts that are relevant to the execution of  
20 the former Lon Nol soldiers and officials and those that are  
21 relevant to Tuol Po Chrey area. And then we proceed to the  
22 document hearings. Please be informed.

23 Security personnel are now instructed to bring Mr. Nuon Chea and  
24 Khieu Samphan to the detention facility and have them returned to  
25 the courtroom before 9 a.m. tomorrow.