



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): 14-Aug-2012, 10:38
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

13 August 2012

Trial Day 94

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
Jasper PAUW
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

DUCH Phary
Matteo CRIPPA
DAV Ansan

Lawyers for the Civil Parties:

For the Office of the Co-Prosecutors:

CHAN Dararasmey
Vincent DE WILDE D'ESTMAEL
VENG Huot
Dale LYSAK

PICH Ang
Élisabeth SIMONNEAU-FORT
SAM Sokong
Ferdinand DJAMMEN NZEPA
SIN Soworn
LOR Chunthy
Beini YE
VEN Pov

For Court Management Section:

UCH Arun

For the Medical Unit:

KEM Samsan

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KARNAVAS	English
MR. KIM SAMSAN	Khmer
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. SON ARUN	Khmer

1

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

2 (Court opens at 0925H)

3 MR. PRESIDENT:

4 You may be seated. The Court is now in session.

5 [09.25.31]

6 As we scheduled, today's proceeding will be the hearing of the

7 Witness Suong Sikoeun and Ong Thong Hoeung, who might be the

8 alternate witness. They will be questioned by the Defence.

9 Before I hand the floor to the Defence, Mr. Duch Phary, could you
10 report the attendance of the parties and individuals to the
11 proceeding?

12 THE GREFFIER:

13 Mr. President, all parties are present, except the accused Ieng
14 Sary, who is present in the holding cell downstairs. The accused
15 Ieng Sary, through his counsel, requests to waive his direct
16 presence in the courtroom for the whole day proceeding. The
17 letter of waiver has been submitted to the greffier.

18 As for the witness, Suong Sikoeun, he is present in the waiting
19 room to be called by the Chamber. Ong Thong Hoeung who -- will be
20 present at the ECCC at 20 past 10.00. Thank you.

21 (Judges deliberate)

22 [09.34.09]

23 MR. PRESIDENT:

24 Judge Cartwright, you may now proceed.

25 JUDGE CARTWRIGHT:

2

1 Thank you, President.

2 Counsel for Ieng Sary, the reason that the Bench has been taking
3 a little while to discuss the request made is that we have
4 received a certificate from the doctor saying that Mr. Ieng Sary
5 is feeling dizzy and unable to concentrate. We just wish to be
6 reassured that you had already been aware of that information
7 before making the application for him to remain in the - in the
8 holding cells. The doctor came to no medical conclusion in the
9 certificate. Thank you.

10 MR. KARNAVAS:

11 Thank you. Good morning, Mr. President. Good morning, Your
12 Honours, and good morning to everyone in and around the
13 courtroom. The - the waiver was filed before we actually met with
14 Mr. Ieng Sary -- at least I met with him for approximately 20, 25
15 minutes. When we submitted the waiver, he appeared to be rather
16 okay, hence why we submitted it.

17 [09.35.21]

18 Then, during our conversations with him, he indicated that he was
19 too dizzy to follow the proceedings and too exhausted. We then
20 brought it to the attention and requested that he be re-examined.
21 So this is now new information, and obviously, with this new
22 information, he is not waiving his - his presence - that is, he
23 wishes to participate, albeit from the holding cell, with these
24 two critical witnesses, to be - to be absolutely clear on that.
25 If it were other witnesses, I'm confident that we would be much,

3

1 much more flexible, and Mr. Ieng Sary would be willing to waive,
2 but given the - in light of the next two witnesses or the
3 witnesses that are on the stand right now, he does not wish to
4 waive his presence, he wishes - and we think that it's best that
5 he's able to concentrate and assist us --because he does assist
6 us, we do consult with him, and he does give us instructions.

7 Thank you.

8 [09.36.41]

9 MR. PRESIDENT:

10 Court officer is - court greffier or officer is now instructed to
11 bring the doctor into the courtroom to clarify the position
12 concerning the health status of Mr. Ieng Sary.

13 (Dr. Kem Samsan is taken to the dock)

14 Good morning, Doctor. Could you please, first of all, tell the
15 Chamber your name and how old you are and your occupation, in
16 particular your function at the State Hospital, and the
17 additional function at the ECCC?

18 MR. KEM SAMSAN:

19 Good morning, Mr. President. Good morning, Your Honours. I am Kem
20 Samsan, a doctor. I am 37 years old.

21 I work at the Cambodian-Soviet Friendship Hospital. I have worked
22 there from 1991 until this date. I am now working in the General
23 Disease Section.

24 And I have additional function to monitor the health status of
25 the accused persons before ECCC.

4

1 [09.38.50]

2 MR. PRESIDENT:

3 Thank you.

4 Could you also tell the Court the update on your medical report
5 concerning the health status of Mr. Ieng Sary - Ieng Sary? Please
6 tell the Chamber as -- in your capacity - monitoring doctor, and
7 what would be your advice concerning the finding on your medical
8 check-up on Mr. Ieng Sary.

9 MR. KEM SAMSAN:

10 I already checked his health status on two occasions, first at
11 8.15 a.m., and there - the condition was stable; he is stable.
12 However, he has to visit the toilet too often than the previous
13 day. At that time, I recommended that he should - or the Chamber
14 should allow him to observe the proceedings from his holding
15 cell.

16 [09.40.09]

17 However, at 9.00 - at 10 past 9 a.m., he developed another
18 problem. When I met him, I noted that he still visited the
19 bathroom very often, and for that he felt dizzy and fatigued. He
20 indicated that his feeling was different from normal, his memory
21 declines, and he thought that he would not be able to attend the
22 proceedings today.

23 And with regard to memory issue, I am not in my capacity to
24 assess this properly, but this is what he told me.

25 MR. PRESIDENT:

5

1 Fellow Judges of the Bench, would you wish to put some questions
2 to the doctor?

3 You may now proceed, Judge Lavergne, first.

4 [09.41.42]

5 JUDGE LAVERGNE:

6 Yes. Thank you, Mr. President.

7 Doctor, from a purely clinical standpoint, can you tell us
8 whereas there are changes between the first examination you did
9 this morning and the second one?

10 In light of remarks made by Mr. Ieng Sary, can you tell us
11 whether those remarks made can be supported theoretically? You
12 have said that there are no changes in blood pressure. Are there
13 any other changes that you would like to tell us about, or there
14 are no clinical signs that would support what Mr. Ieng Sary has
15 said?

16 MR. KEM SAMSAN:

17 The change that we have observed is that he has to visit the
18 toilet too often. And, to me, because he has to get up to walk to
19 the bathroom and due to his health implications, getting up a
20 lot, walking to the toilet often really makes it - his health -
21 or makes him become more tired.

22 [09.43.13]

23 And at 10 past 9.00, he indicated that he was very dizzy and
24 fatigued, and he felt confused, and his memory was poor, that -
25 too poor, that he could not observe the proceedings.

6

1 JUDGE LAVERGNE:

2 If I understood what you said correctly, Doctor, you know that
3 Mr. Ieng Sary said he was feeling dizzy, but you have looked at
4 clinical signs which support the remark that he was feeling
5 dizzy.

6 Do you have any observations that would support what Mr. Ieng
7 Sary has said?

8 And at the end of your examination, what are your conclusions?

9 Are your conclusions that accused person Ieng Sary can or cannot
10 follow proceedings today, whether he can follow them from his
11 holding cell downstairs?

12 MR. KEM SAMSAN:

13 To me, the ability to assess his health status at the beginning,
14 I could say that he was dizzy - feeling dizzy, and I noted that
15 because every time he was walking to the - to the bathroom, he
16 had to hold his bed to keep his balance, and when he came back, I
17 also observed that his breath was shorter and fatigued, and I
18 confirmed that he, indeed, felt dizzy and that happened to him.

19 [09.45.27]

20 But when it comes to his loss of memory, I cannot conclude
21 whether it was the case.

22 JUDGE LAVERGNE:

23 So is your conclusion that the accused person needs to rest
24 today?

25 MR. KEM SAMSAN:

7

1 With regard to his physical fitness, it is appropriate that he
2 lie down in the holding cell to observe proceedings from there.
3 However, whether he understands or he remains focused enough to
4 observe the proceedings or not, it is hard to decide, but it is -
5 indeed, he would like to hear - to fully observe the proceedings
6 to his best capacity.

7 (Judges deliberate)

8 [09.50.27]

9 MR. PRESIDENT:

10 Thank you very much, Doctor. You may now return to your seat.

11 (Dr. Kem Samsan leaves the dock)

12 Today's hearing as scheduled is deferred because Mr. Ieng Sary is
13 not healthy enough.

14 (Judges deliberate)

15 [09.52.25]

16 According to the discussion, the Chamber wishes to adjourn the
17 hearing today due to the fact that Mr. Ieng Sary has some health
18 concerns, as he feels dizzy and he has problem with memory -- he
19 cannot remember things clearly - and he reserves his right to
20 participate in the testimonies of the two witnesses before us who
21 are testifying on the roles of the Ministry of Foreign Affairs.
22 The Chamber wishes to hear from parties - other parties to the
23 proceeding whether they would wish to make - or observe
24 something.

25 Counsel for Mr. Nuon Chea, you may now proceed.

1 MR. SON ARUN:

2 On behalf of Mr. Nuon Chea, I fell that even though an accused
3 person is allowed to observe the proceeding from holding cell,
4 where he or she has no concentration or loses focus on the
5 proceedings, he or she shall be allowed to rest, and there should
6 not be a hearing.

7 MR. PRESIDENT:

8 The hearing today is adjourned. The next session will be resumed
9 by 1.30 p.m., this afternoon.

10 [09.54.17]

11 And during this afternoon's session, the examination will be the
12 same: we will start hearing testimony of Mr. Suong Sikoeun, the
13 questions continued to be put from counsel for Khieu Samphan.

14 Security personnels are now instructed to bring Mr. Nuon Chea and
15 Khieu Samphan to - downstairs and have them brought to the
16 courtroom by 1.30 this afternoon.

17 The Court is adjourned.

18 THE GREFFIER:

19 (No interpretation)

20 (Court recesses from 0955H to 1344H)

21 MR. PRESIDENT:

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

23 We would like to inform the parties and the public in regards to
24 the health of the accused Ieng Sary. This morning the Chamber
25 heard the recommendations by the treating doctor, Kem Samsan, who

1 treated the accused Ieng Sary this morning and said that Ieng
2 Sary had serious dizziness and cannot fully follow the proceeding
3 and that his memory is weak.

4 For that reason the Chamber decided to adjourn the hearing to
5 this afternoon's session, awaiting to see whether the situation
6 of his health improves.

7 At 1.10 p.m. this afternoon, Dr. Kem Samsan examined the accused
8 Ieng Sary again, and he still feels dizzy and fatigued and that
9 he has to use the toilet frequently and that he cannot eat, he
10 cannot sleep, and his mind is poor, and he confirms that his
11 health condition this afternoon is the same as his health this
12 morning, and that -- he recommends Ieng Sary should not attend
13 any proceeding.

14 [13.47.13]

15 And due to the regulations and Rules for the ECCC, the
16 proceedings should be held before the Accused, either directly or
17 through a remote means from the holding cell downstairs. And due
18 to his health issue and due to his poor memory, the proceeding
19 cannot continue.

20 For that reason, the proceeding will adjourn, and we will resume
21 tomorrow morning, starting from 9 a.m. as usual.

22 And tomorrow the Chamber intends to hear the testimony of the
23 Witness Ong Thong Hoeung first if the proceeding can go ahead;
24 this witness needs to return to his residence in Europe as soon
25 as possible, and due to the fact that his ticket - his air ticket

10

1 cannot be extended.

2 As for the Witness Suong Sikoeun, who is also supposed to testify
3 today, however, if it is possible, the Chamber tomorrow will hear
4 the witness Ong Thong Hoeung first.

5 The Chamber now adjourns.

6 [13.49.12]

7 And the Security Officers, you are instructed to take the Accused
8 back to the detention facility and have them returned tomorrow
9 morning, prior to 9 a.m.

10 Court Officer, could you coordinate the two witnesses to return
11 to their residence and have them return tomorrow morning? For Mr.
12 Ong Thong Hoeung, he shall be here by 9 a.m., and the other
13 witness is reserved to continue his testimony after the
14 conclusion of Witness Ong Thong Hoeung.

15 The Court is now adjourned.

16 (Court adjourns at 1350H)

17

18

19

20

21

22

23

24

25