



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): 25-May-2012, 15:00
CMS/CFO: Uch Arun

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 May 2012
Trial Day 62

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
Michiel PESTMAN
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

DUCH Phary
Matteo CRIPPA

Lawyers for the Civil Parties:

For the Office of the Co-Prosecutors:

CHAN Dararasmey
William SMITH
Vincent DE WILDE D'ESTMAEL

PICH Ang
Élisabeth SIMONNEAU-FORT
LOR Chunthy
Pascal AUBOIN
Barnabé NEKUIE
TY Srinna
SIN Soworn
Laure DESFORGES

For Court Management Section:

UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MS. GUISSÉ	French
MR. KARNAVAS	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. SON ARUN	Khmer

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

2 (Court opens at 0926H)

3 MR. PRESIDENT:

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

5 As we scheduled, today we will start hearing the witness TCW-487,

6 and we planned to hear this witness for four days this week.

7 [09.27.56]

8 Greffier, could you report about the attendance of the parties.

9 THE GREFFIER:

10 Good morning, Mr. President. The attendance is as follows: For

11 the Prosecution, all is present; for the Lead Co-Lawyers, they

12 are all present; and there are also - there is also one civil

13 party lawyer, Ms. Laure Desforges, who has not yet been

14 recognized before this Chamber.

15 As for Nuon Chea's defence, all present; Khieu Samphan's defence,

16 all present; Ieng Sary defence, all present. The accused Nuon

17 Chea is present, the accused Khieu Samphan is present, and the

18 accused Ieng Sary is absent.

19 The witness, TCW-487, who is summons by the Chamber, is present

20 and waiting to be called into the courtroom by the Chamber. The

21 witness has already taken an oath. Thank you.

22 [09.29.30]

23 MR. PRESIDENT:

24 I notice the Lead Co-lawyer-

25 MR. PICH ANG:

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1 Mr. President, there are two points that I would like to raise to
2 your attention; first, it is in regard to the witness TCW-487 -
3 the Lead Co-Lawyer would delegate the task of questioning this
4 witness to Barnabé Nekuie and Lor Chunthy.

5 [09.30.08]

6 And the second point, as stated by the greffier, we have a civil
7 party lawyer who is new and we would like to seek recognition
8 from the Chamber. The name is Laure Desforges, is from France and
9 from ASF, and who has been recognized by the Bar already. The
10 lawyer already took an oath before the Court of Appeal in 2010.
11 We would be pleased for the Chamber to recognize this lawyer so
12 that she can represent her clients before the Chamber.

13 I am grateful, Your Honour.

14 MR. PRESIDENT:

15 Thank you.

16 Ms. Laure Desforges, please stand.

17 Ms. Laure Desforges, you are hereby recognized by the Trial
18 Chamber as a civil party lawyer for the purpose of the proceeding
19 before this Chamber. Pursuant to this recognition, you have the
20 same rights and privileges as other civil party lawyers.

21 Please be seated.

22 [09.31.50]

23 During today's proceedings, Mr. Ieng Sary is absent due to his
24 health reason, and in order to clarify this matter, the Chamber
25 appoints the greffier, Duch Phary, to read the report of the

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1 doctor who is treating Mr. Ieng Sary, and for the consideration
2 of the parties.

3 THE GREFFIER:

4 "To the President of the Trial Chamber of the ECCC, through the
5 Office of Administration of the Russian Cambodian Hospital
6 through the Office of Administration of the ECCC concerning the
7 health of Mr. Ieng Sary.

8 On the morning of 20th May 2012, Mr. Ieng Sary was sent to the
9 hospital for emergency due to the fact that he regularly coughed,
10 and it was difficult for him to breathe. Through examination, Mr.
11 Ieng Sary has been diagnosed with his respiratory system and his
12 blood veins. His health conditions have been better through
13 treatment and he will be discharged from the hospital on the
14 morning of Tuesday, 22nd of May 2012.

15 [09.34.17]

16 After the release of this Accused, Mr. Ieng Sary will have to
17 take a rest for two days due to the condition of his health.

18 For the above reasons, I would like to inform accordingly, to the
19 president of the Chamber.

20 Phnom Penh, 20th May 2010 (sic).

21 President of the emergency doctors."

22 MR. PRESIDENT:

23 Thank you, Duch Phary.

24 After having heard the report concerning the conditions of Mr.

25 Ieng Sary, the Chamber would like to seek for consideration from

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1 the parties concerning the situations we have at hand here.

2 Should any party wish to take the floor, you may proceed now.

3 [09.35.27]

4 Yes. Counsel Michael Karnavas, you may proceed now.

5 MR. KARNAVAS:

6 Good morning, Mr. President. Good morning, Your Honours, and good
7 morning to everyone in and around the courtroom.

8 It's regrettable that Mr. Ieng Sary is ill. He does not waive his
9 presence, he does not waive his right to participate in the
10 proceedings, and therefore it is our position that the
11 proceedings cannot go forward until Mr. Ieng Sary is either well
12 or he provides us with a waiver.

13 It's regrettable, but these are the international standards that
14 the international donors have agreed to with respect to this
15 particular tribunal. We have to abide by those standards. Mr.
16 Ieng Sary is entitled to assist in his own defence. I cannot get
17 instructions - or, we cannot get instructions from Mr. Ieng Sary,
18 if he is not present or at least following the proceedings by
19 video-link. Therefore, it is our position that we will have to
20 wait until Mr. Ieng Sary's health is better.

21 [09.36.56]

22 MR. PRESIDENT:

23 Yes, International Co-Prosecutor, you may proceed.

24 MR. DE WILDE D'ESTMAEL:

25 Thank you, Mr. President. That's - it is, indeed, a new situation

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1 that we are facing now. I believe our last hearing was on
2 Thursday and Ieng Sary left the courtroom and he agreed then that
3 the proceedings would continue and that the questioning of the
4 witness would also continue. This is not the case now. Rule 81.1
5 obviously states that the Accused person has to be judged in his
6 presence, but there have been amendments in this rule, in
7 particular Rule 81.5.

8 The problem here is, apparently Ieng Sary has not been able to
9 consent - he is still in hospital, so under these conditions, I
10 believe that the Defence should decide whether or not the client
11 has consented to fully participate in these proceedings, and this
12 does not seem to be the case.

13 The question that is going to arise now is: When will Mr. Ieng
14 Sary be able to be present again? Will he come back tomorrow? And
15 if so is the case, we believe that whenever possible we should
16 continue with the hearing and we hope therefore that tomorrow Mr.
17 Ieng Sary would be among us and will be able to participate in
18 this hearing, even if it is remotely. This is our position, Mr.
19 President.

20 [09.38.56]

21 MR. PRESIDENT.

22 Thank you.

23 Yes, the Lead Co-Lawyer for civil party, you may proceed.

24 MR. PICH ANG:

25 Good morning, Mr. President.

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1 Concerning the absence of the Accused, due to his health reason,
2 the Lead Co-Lawyers do not oppose to what has been raised by the
3 Defence counsel, as well as by the Prosecutor. We respect his
4 right as stipulated in Internal Rule 81 of the ECCC. We do not
5 push forward the hearing without the presence of the Accused. So
6 this is our position, Mr. President.

7 [09.40.12]

8 MR. PRESIDENT:

9 Yes, Defence Counsel for Nuon Chea, you may proceed.

10 MR. SON ARUN:

11 On behalf of the accused Nuon Chea, I would like to support the
12 call for a halt of the proceeding by defence counsel for Mr. Ieng
13 Sary. This is because the accused Ieng Sary is closely related to
14 the testimonies to be heard by this witness today. So, given the
15 absence of Mr. Ieng Sary which cannot provide the advice to his
16 counsel, I again support the position by defence counsel for Ieng
17 Sary.

18 MR. PRESIDENT:

19 Thank you, Counsel.

20 [09.41.13]

21 Yes, International Counsel for Khieu Samphan, you may proceed.

22 MS. GUISSÉ:

23 Good morning, Mr. President. Good morning to all of the parties.

24 Good morning to all of you.

25 It is obvious that we entirely support Ieng Sary's defence team's

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1 position. One of the fundamental rights of an accused person is
2 to be present during his trial. So it is therefore important that
3 this principle be abided by and therefore it is something that we
4 also follow.

5 MR. PRESIDENT:

6 Thank you.

7 (Judges deliberate)

8 [09.43.34]

9 Yes, Madam Judge, you may proceed.

10 JUDGE CARTWRIGHT:

11 Thank you, President.

12 Counsel for Ieng Sary, there are two minor matters that I wish to
13 seek your views on before the President makes his ruling on the
14 primary point. The first is: the question about the provision of
15 full medical information concerning your client to the public. I
16 don't imagine that you have much objection to the medical
17 information that's been disclosed today, but for the future it
18 would be helpful to know if you have any objection to full
19 medical information being disseminated. That's my first question.

20 [09.44.24]

21 The second is: We are anxious to ensure that you have - and this
22 would apply to any other party as well, of course -- that you
23 have no difficulties in having contact with your client when he
24 is hospitalised. Thank you.

25 MR. KARNAVAS:

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1 As to the first question, to start with, it would be great if the
2 lawyers were informed about the medical condition. Normally, we
3 are not; for some odd reason, there are -- we are left in the
4 dark. I would have to consult with Mr. Ieng Sary about - in order
5 to provide a - an informed answer as to the first question. I
6 suspect he would not object to that. I think it is important for
7 transparency purposes.

8 As to the second question, normally we don't have access to the
9 client. Now there is a different provider - health provider. We
10 are told today - we were told that we may be able to visit him.
11 In the past, we were not. I had attempted to with the previous
12 hospital and on all occasions, we were blocked. So, we are going
13 to - we will be making efforts to go visit him today. So that's -
14 I hope I've answered your questions.

15 [09.45.44]

16 JUDGE CARTWRIGHT:

17 Of course, we will have to leave it to the medical authorities to
18 decide if it was inappropriate medically for you to visit. But
19 other than that, I think you can leave that matter with the
20 Chamber to try and resolve, Mr. Karnavas.

21 MR. PRESIDENT:

22 Thank you.

23 Having seen and having read the report of the Cambodian Soviet
24 Friendship Hospital concerning the treatment of the accused Ieng
25 Sary, which clearly indicates that Ieng Sary cannot be discharged

1 from the hospital until tomorrow morning -- as a matter of fact,
2 Mr. Ieng Sary has been receiving emergency treatment since the
3 17th of May 2012; having heard the position by the defence
4 counsel for Mr. Ieng Sary, who expressed that the proceeding
5 should not go on with the absence of his client, pursuant to the
6 international standards, and that he has not been consulting with
7 his client, and having heard that other parties also joined the
8 call pursuant to Internal Rule 81.5 and Internal Rule 81
9 generally, the Chamber now decides that today and tomorrow's
10 proceedings cannot go on. The Chamber will adjourn the
11 proceedings and will resume the proceeding on Wednesday, on the
12 23rd of May 2012.

13 [09.48.24]

14 The Chamber would like to inform the public, as well, that, on
15 Wednesday's proceedings, we would have two sections - two
16 separate sections.

17 The first section will deal with the opinion of the doctors, who
18 have been treating Mr. Ieng Sary. The Chamber would like to hear
19 recommendations from the doctors concerning how the Chamber
20 should conduct its proceedings, that is, whether Mr. Ieng Sary
21 can continue to be present in the courtroom and, if so, how Mr.
22 Ieng Sary can proceed - can participate in proceedings. Is Mr.
23 Ieng Sary going to participate in person or is he going to
24 participate through audio-visual means? After the Chamber
25 receives sufficient recommendation, the Chamber would decide

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1 accordingly.

2 In the – in the event that we have received negative
3 recommendation from the doctor, then the Chamber will decide
4 accordingly, as well.

5 Besides, given the present situation, the Chamber will – or may
6 consider whether we are going to have any proceeding on Friday so
7 that we can expedite our proceedings.

8 [09.50.25]

9 So the Chamber now announce the adjournment of today's
10 proceedings, and we will resume on Wednesday, the 23rd of May
11 2012, as indicated just now.

12 As for witness TCW-487, the court officer is now instructed to
13 coordinate with WESU to return witness to his residence and to
14 ensure his presence on the morning of Wednesday, 23rd of May
15 2012, to await for call from the Chamber in case we have positive
16 recommendation from the doctors.

17 Security guards are now instructed to take the accused persons
18 Nuon Chea and Khieu Samphan back to the detention facility and to
19 return them to this courtroom on the morning of Wednesday, 23rd
20 of May 2012.

21 As for Mr. Ieng Sary, the Chamber has not yet decided whether he
22 is to be brought to this courtroom on the day or not. We will
23 await the recommendation from the doctors first. The Chamber will
24 then decide accordingly.

25 The Court is now adjourned.

1 (Court adjourns at 0952H)

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