



Confusion Abounds in Continued Testimony from Former Cadre

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On Thursday June 20, 2013, the Extraordinary Chambers in the Courts of Cambodia continued to hear testimony from former Khmer Rouge cadre, Mr. Nou Mao. Yesterday's testimony had concluded with an early adjournment, as the witness had appeared unwell.

Trial Chamber President Nil Nonn began proceedings by offering the witness a soft drink and informing him that the chamber was mindful of his health concerns. The witness was told that he could request a break if he wished

Counsel for Nuon Chea Examine Mr. Mao

Victor Koppe, International Co-Lawyer for Nuon Chea, began the cross-examination of Mr. Mao by asking him to explain why there had been a revolution in Cambodia. Mr. Mao explained that the purpose of the revolution had been to expel American imperialists, and to promote a people's movement. The witness did not know when the revolution started or when the Communist Party (CPK) was formed, however.

Mr. Koppe asked the witness about the significance of "red," or "Rouge," in the movement's title, reminding the witness that on the prior day he had drawn a parallel to "red blood." "I am of the opinion that the Khmer Rouge was about blood," the witness told the court. He went on to state that the blood belonged to the people who engaged in the resistance movement. Asked if "red" could have signified something different, the witness replied that he did not know.

When Mr. Koppe tried to find out whether the witness was familiar with the Standing Committee of Kampuchea, the witness replied off-topic, asserting that he did not know why the CPK was established.

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

Moving on, the counsel inquired about the publications that were circulated by the Khmer Rouge. The witness initially told the court that he was not aware of any magazine or publication outlining what the revolution was about. However he then testified that while he had not heard of the *Revolutionary Flag* magazine, he had heard of the *Red Flag*. His memory did not, however, allow him to remember what it contained.

Mr. Koppe next asked the witness about Ta Mok, the military leader he had mentioned on the preceding day. The counsel's open-ended questions about what Ta Mok had been like did not receive relevant answers, and so he moved on to a number of closed questions, through which he was able to establish that the witness had never spoken to Ta Mok face to face but had attended meetings with other cadres where Ta Mok had addressed the crowd. The witness confirmed that this meant the only time he had been with Ta Mok was with 150 to 200 other cadres.

In terms of rank, the witness was unable to provide a definitive answer as to whether Ta Mok was superior to Chuo Chet, the political leader who was also discussed during Wednesday's hearing. On the one hand Mr. Mao claimed that Mr. Chet was persuasive and more popular than Ta Mok and had a superior knowledge of politics. However, the witness was not able to provide a clear answer when prompted to tell the court their respective ranks. He speculated that Ta Mok may have been superior in rank as he was a member of the military; however he was not sure. The witness told the court that as person of the commune level, he had not been in a position to know the answer to questions of hierarchy.

In contradiction to his previous testimony on June 19, Mr. Mao also now claimed not to know the cause of a disagreement between Ta Mok and Mr. Chet, which the witness had discussed on the previous day. After Mr. Koppe reminded him that he had testified that the disagreement concerned the evacuation of Phnom Penh, the witness was able to inform the court that the military opinion of those in the Southwest was "firm" that where the Khmer Rouge were victorious, people should be evacuated. From these comments, Mr. Mao said, he had inferred that Ta Mok agreed with this opinion while Mr. Chet did not. The witness was unable to pinpoint exactly when this meeting took place, though he thought it occurred before the liberation of Phnom Penh.

The witness also did not know why Phnom Penh had to be evacuated, which he described as a purely military affair. Ta Mok had said that the Khmer Rouge had to mobilize their forces and conquer Phnom Penh at "any cost," Mr. Mao recalled, but he gave an unclear answer when asked if aerial bombing by B52 bombers was ever discussed. Although he did not state whether it had been discussed at any of the meetings he attended, he did tell the court that bombing had occurred in Vietnam, Laos, and Cambodia, which had resulted in a convoy being sent to discuss the restoration of peace. The witness could not recall whether there was a specific unit about bombing during his training, nor could he remember whether the refugee situation in Phnom Penh was discussed.

Mr. Koppe next inquired if it was possible that Ta Mok and Mr. Chet had never spoken about plans to evacuate the city and that the witness's memory was failing him. At this point, Senior Assistant Prosecutor Keith Raynor objected on the grounds that this question was inviting the witness to speculate and that, as Mr. Koppe himself insisted on Wednesday, Mr. Mao should only be allowed to testify on what he had seen or heard. In response Mr. Koppe told the court that he was merely putting a proposition in a friendly way – in stark contrast, he intimated, to the

way the prosecution had examined Khieu Samphan's wife.² This objection was not sustained, and the witness was allowed to respond.

Mr. Mao told the court that he could not recall the meeting well because he "was merely a member." The plan to evacuate was beyond his knowledge as well. He had attended meetings when he had been invited to, he asserted, but military decisions were seen as being "upper level," which he did not see himself as a member. He also said he had forgotten most of what he had observed.

Inquiries were then made about whether the witness knew an individual called Hu Nim. Mr. Mao testified that he did not. After a brief intervention from Mr. Raynor, the witness was told that in the notes of his interview with a journalist called Ben Kiernan, it was mentioned that Hu Nim was against the evacuation. Despite this, the witness testified that he had only heard of Hu Nim and did not know what his opinion of the evacuation had been. "I did not know Nim personally; I did not meet nor see him. [I] only heard his name from others." He next testified, however, that Hu Yuon had been against the evacuation.³

Subsequently, the 100 Lon Nol soldiers that the witness claimed to have seen evacuated from Phnom Penh were discussed. Mr. Mao was sure that they were soldiers because they had military backpacks with them, and he stated that he was informed by evacuees who were travelling with the soldiers that they had been evacuated from Phnom Penh. The evacuees were asking the local people for rice; however, the witness was told not to bother them, he told the court, as his superiors did not want him to ask these people anything. Mr. Mao said he received the impression from the local people that the soldiers were being sent for further education.

Asked if he personally knew any of the soldiers, Mr. Mao testified he did not. Mr. Koppe then questioned how he could therefore be sure that the soldiers never returned from their education, asking if the witness ever went to Phnom Penh to check whether the soldiers ever returned there. "The reason I know they did not return is none of them had ever returned," Mr. Mao circuitously stated. "I just don't know where they could go for education. I had never ever seen them returned."

After further probing by the defense counsel, the witness explained that he had been working in Cheungras Commune, and during his tenure there, he did not see the soldiers coming back, which allowed him to claim that they never returned. After being accused of speculating, he replied, "You can either say I speculate or I tell you the truth because they never returned."

Continuing his focus on the Lon Nol soldiers, Mr. Koppe asked the witness how he could sustain his claim that the soldiers had been "assigned for death," quoting the prior day's testimony. Mr. Mao said that he had heard from those who brought food to the soldiers that the only thing they said was that *Angkor* was sending them away to be educated. The witness told the court that he had not seen any of the soldiers being killed. "Whether these people were sent for education or execution I don't know," he told the court, backtracking on what he had told the court in his prior

² So Socheat, Khieu Samphan's wife, testified before the Trial Chamber of the ECCC on June 10-12, 2013. Cambodia Tribunal Monitor's accounts of her testimony may be found at <http://www.cambodiatribunal.org/blog/archive/201306>.

³ On June 19, 2013, Mr. Raynor had read the witness interview notes by Mr. Kiernan in which Hu Yuon was stated as the alias for Hu Nim.

testimony. The witness was asked why food was being brought to people who were going to be executed, to which he replied simply that they were being taken farther. It was his belief they would be killed, he stated, and this belief was based on the observation that they never came back.

Counsel for Khieu Samphan Examines Mr. Mao

Beginning cross-examination on behalf of Khieu Samphan's defense team, International Co-Lawyer Anta Guissé again raised the interview Mr. Mao had given to the journalist Mr. Kiernan. She first inquired how Mr. Kiernan had introduced himself to the witness, wanting to know specifically if he had introduced himself as an "international journalist." After repeating her question a couple of times, the witness finally explained that he had first been approached by Mr. Kiernan on the battlefield when he was trying to distribute food to soldiers and move the wounded. The reporter had asked the witness where the Khmer Rouge gathered and where they were able to get food. In reply, Mr. Mao recounted, he had urged Mr. Kiernan to return to the Lon Nol-controlled areas for his own safety; it was then that Mr. Kiernan introduced himself as a journalist who wished to gather information.

It was difficult for counsel to elicit a clear answer from the witness as to which battlefield he was referring to and when this interview occurred. At first Mr. Mao agreed with counsel that it was on the battlefield after 1979, saying that "it was over 30 years ago since it happened; it has been a long time." However, he then clarified that the interview took place during fighting with Lon Nol forces, which implied that it occurred prior to April 1975.



During this part of the testimony the witness wandered in his answers to areas, such as incoming aerial bombardments, outside of the line of questioning. This led President Nonn to firmly remind the witness to listen carefully and respond to the question being asked.

Still pushing for clarification as to the date of the interview, Ms. Guissé asked, if the witness were unable to confirm the date, would he instead be able to confirm that the interview was during a period of fighting with Lon Nol soldiers. At this stage, Mr. Raynor objected, seeking that the defense remain faithful to what was said in previous day's testimony. Specifically, he had put to the witness the date and circumstances of the interview, which Mr. Mao had confirmed to have taken place on August 26, 1981. This objection was not sustained by the president, who allowed Ms. Guissé to proceed.

Ms. Guissé requested that over the short morning adjournment the defense team be provided a copy of the photograph of Mr. Kiernan that the witness had brought into court on the previous day. Subsequently the photo was shown to the witness, who was able to confirm that this was who interviewed him, once on the battlefield and once in Udong Province. Asked who had given him the photo, Mr. Mao explained that he did not remember the person's name; however he or she had come to his house and asked him whether he recognized the photograph. When he had confirmed that it was a reporter who had interviewed him many years ago, he had been allowed

to keep the photo. As counsel continued to ask questions about the origin of the photo, President Nonn interjected to inform her that he was now aware that it was the ECCC Witness and Export Support Unit who had given the witness the photograph. As Ms. Guissé expressed her surprise, Judge Lavergne clarified further, stating, “We were informed by an email sent by an assistant that at the very beginning of the process to contact the witness, the Witness and Expert Support Section showed the witness the photograph to be sure that the person contacted was the person sought by the chamber.”

Continuing with her questions, Ms. Guissé turned to the witness’s second interview with Mr. Kiernan. Mr. Mao explained, as he had on many other occasions, that the journalist arrived at the office in Udong Province, where the interview took place, in a convoy of two cars with several other people. During this interview, he continued, he answered questions posed by Mr. Kiernan, which had been translated for him by an interpreter. At the end of the interview, he concluded, the notes taken by Mr. Kiernan were read back to Mr. Mao. Pressed on this matter, however, Mr. Mao was unable to confirm that the notes had been read out in their entirety.

Before he had come to the tribunal, the witness claimed, he had read a Khmer translation of these notes “time and again”; however, he said he could not remember them as he had a poor memory. Shortly after telling the court this, he also told the court that the document was several pages long, “too much for me to read, too much information to remember.” Mr. Mao stated that the notes had been given to him at the time he was summoned to appear before the chamber.

Moving on, Ms. Guissé enquired as to whether the witness had held a position other than as a member of the village committee and then the commune committee. After he had given three different answers, which were all off-topic, and had the question repeated, the witness eventually said that he had not.

In response, Ms. Guissé asked her national colleague Kong Sam Onn to read the witness part of his prior testimony. In that testimony Mr. Mao had informed the court that he had gotten wounded on a battlefield and so had to go to Phnom Penh to buy medicine. Ms. Guissé asked the witness how he had been wounded on the battlefield given that on the prior day he had said he did not have a rank. After a period of confusion the witness eventually told the court that he had been wounded falling out of a hammock. Asked about the discrepancy between falling out of a hammock and being wounded on the battlefield, Mr. Mao elaborated and explained that he had fallen out of a hammock due to bombing; he had displaced a shoulder and began to cough up blood. This had led to him being withdrawn from the commune committee, he said. Although he could not remember the date when this happened, he believed it to be during the period that cooperatives were being established to hold the people evacuated from Phnom Penh.

As this explanation apparently did not correlate with the notes of Mr. Kiernan, Mr. Sam Onn read to the witness that the notes suggested that Mr. Mao was sick after 1974 and was evacuated in 1975. When asked whether this refreshed his memory, the witness again failed to give a clear answer, instead telling the court that he fell ill the year the cooperatives were established, which was also when the commune stopped treating him as a member.

The subject then moved back to the education sessions the witness had attended with other cadres at a wat. These sessions occurred before he fell ill, Mr. Mao stated, when he was still a member of the commune committee. Going back on his prior testimony, the witness at first

claimed that he had not in fact attended sessions led by Ta Mok and that instead Mr. Chet led his sessions. Asked to clarify, the witness changed his mind again, stating that Mr. Chet had originally led the sessions but then Ta Mok had arrived at the end of the training period. After being asked repeatedly whether or not he had ever attended any other session with Ta Mok, the witness finally told the court that he had not.



Ta Mok in a clip from the French documentary *Le Cambodge: Pol Pot et Les Khmers Rouges* (2011) (As shown in ECCC Trial Chamber on January 30, 2013).

Mr. Mao was next asked about an additional cadre called Hu Yuon, who chaired a gathering. The witness informed the court that Mr. Yuon had not been in favor of the evacuation of Phnom Penh and argued that in general, when the Khmer Rouge won victory, the population should not be evacuated. The witness was then read an extract from the notes of his interview, in which he said he saw Hu Yuon on only one occasion, in 1972. Mr. Mao confirmed that this note was accurate.

Ms. Guissé next read out a portion of the witness's earlier testimony, in which he stated that he did not know whether Hu Nim was in favor of or against the evacuation but that he did know that Khieu Samphan was in favor. Ms. Guissé asked the witness to clarify what Mr. Khieu Samphan's position was, stating that this morning the witness had not known. In stark contrast to his testimony of the prior day, the witness informed the court that he did not know what Khieu Samphan's position was and stated that he had never attended a meeting with Khieu Samphan.

Ms. Guissé asked her colleague Mr. Sam Onn to read a further extract from the transcript of the prior day's testimony in Khmer. "How did you know Khieu Samphan was in favor of the evacuation?" the witness had been asked. "I knew it during the gathering at the Taing Po Pagoda. I never knew Khieu Samphan. I only learned about it when I came to the Taing Po Pagoda," Mr. Mao had replied. Asked again if he knew what Khieu Samphan's position was regarding the evacuation, the witness again testified that he did not know. "As I said I knew the position of Yuon. As for Khieu Samphan and Hu Nim, I did not know them, and when I was attending the gathering, I did not know them either."

At this stage Mr. Raynor objected, inviting the defense to clarify the witness's testimony and claiming that her question was framed to regard Khieu Samphan and Hu Nim, whereas his question on the prior day had just been with regard to Khieu Samphan. In response, Ms. Guissé

told the court she had been attentive to the wording she had used, and there was little room for interpretation in her question.

The prosecutor went on to explain that his concern was that the witness had misunderstood the use of the word “position” and thought he was being asked about Khieu Samphan’s role, rather than his position on the evacuation of Phnom Penh. As the prosecution had no right to reexamine the witness, Mr. Raynor concluded, his request was for the judges to ask for clarification from Mr. Mao on their own.

Reaching the final stage of her questioning, Ms. Guissé asked a couple of questions about Ta Mok. First she established that the witness had not known a previous ECCC witness, Chhouk Rin, who had given evidence to the chamber about Ta Mok on April 23, 2013. Next she quoted from Mr. Rin’s evidence of Mr. Mok, which claimed, “The only thing above Ta Mok is his hat.” In addition Mr. Rin had told the court that if he had not drawn up detailed reports for Ta Mok, then Ta Mok might shoot at him. “There were times when he was good and times when he was very cruel,” Mr. Rin had told the court. When asked whether he had heard of similar instances, Mr. Mao told the court that it had been a long time and he could not recall.

This ended the examination by the defense and also the testimony of Mr. Mao.

Discussion of Mr. Mao’s Evidence

Following the conclusion of Mr. Mao’s evidence and his departure from the courtroom, Trial Chamber Judge Sylvia Cartwright made a brief statement to the court, saying, “The chamber wishes to respond to the prosecutor’s comment a few minutes ago simply to say that it notes the comment and will take it into account when the chamber evaluates this witness’s evidence.”

In reply to this statement, Ms. Guissé rose to her feet to argue that the defense had not had an opportunity to respond to the prosecutor’s comment. As a result an opportunity was handed to the defense to make a submission on this point.

Ms. Guissé explained that if she understood correctly Mr. Raynor’s comment had concerned her use of the word “position.” The witness had been clear in response to her questioning that he did not know Khieu Samphan’s position about the evacuation, she asserted, and the idea that there was some confusion does not relate to the facts before the chamber. There was no lack of clarity, Ms. Guissé concluded.

Mr. Raynor argued that there was a problem when the defense’s questions elicited Mr. Mao’s answer, “I did not know him,” with relation to Khieu Samphan. Mr. Raynor asked that the court have regard to the wording of the transcript,

For her final statement, Ms. Guissé actually agreed with the prosecutor on this last point, urging as well that the court pay careful attention to the transcript once it became available.

The court adjourned for the day and will reconvene on Monday, June 24, 2013, for continued hearings in Case 002.