



A Change in Plans: First Civil Party Called Early Due to Nuon Chea's Health

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Following an early end to Monday's proceedings due to the health of elderly accused Nuon Chea, the second day of evidentiary hearings in Trial 002 in the ECCC saw still more changes to the trial's schedule. By the beginning of the morning session, the Trial Chamber had already accommodated Nuon Chea's request for more longer breaks by putting a civil party in the witness dock early but were forced to reschedule again just after the morning break. These scheduling changes and delays created a tense atmosphere in the courtroom, reflected in the terse and often irritated manner in which the judges interacted with all of the parties throughout the day's proceedings.

Scheduling Changes

After calling the court to order this morning, President Nonn reminded everyone that, due to Nuon Chea's health, specifically his hypertension, the Trial Chamber adjourned early on Monday to allow him to rest and to prepare to answer further questions today. He reported that medical personnel had reported that Nuon Chea's blood pressure is unusually high and that his health is not good. To accommodate these health issues, the Trial Chamber has decided to continue the questioning of Nuon Chea only for the morning session. In the afternoon session, the court will call the first civil party scheduled to testify to fill the time while Nuon Chea rests. President Nonn stated that the court would also reserve its right to change the schedule in the future as required by the accused's age and health.

Nuon Chea's lawyer, Michiel Pestman, then asked if it would be possible to reevaluate his client's medical condition after the morning break. Additionally, he advised the court that Nuon Chea would waive his right to be in the court and to participate during the afternoon session so that he may rest outside of the courtroom.

President Nonn responded that the Trial Chamber had already made the decision regarding the schedule for the morning session based on the medical report from the doctor on duty. He then indicated that the questioning would continue and recognized Nuon Chea, who requested that the questions posed by the judges be made shorter because he does not wish to misunderstand and respond inappropriately.

Judge's Examination of Nuon Chea Continues

After suggesting to his colleagues to limit the length of their questions, President Nonn turned over the proceedings to Judge Cartwright to continue her examination of Nuon Chea. Judge Cartwright returned to the matter of Nuon Chea's role within the Communist Party of Kampuchea and its predecessors.

Reiterating again that he was not part of the military command, Nuon Chea reported that he was only in charge of education within the Standing Committee. After the judge probed further into the matter, Nuon Chea also admitted to having responsibility for party propaganda ever since he returned from Thailand in the 1950s. He stated that, although he had no role in establishing the Revolutionary Flag magazine, he was in charge of educating the cadres both orally and in written media about the party and the strategic line. He traveled around the country and among the public as he was allowed and completed this task at all levels, except at the commune level, where education was completed by the zone committees.

Turning then to the question of his whereabouts and activities during the period of 1951 to 1975, Judge Cartwright asked Nuon Chea about his residence after he returned from Thailand. Nuon Chea responded that he was not able to stay in one place for a long time due to safety and security reasons. From 1951 to 1953, as he stated on Monday, he moved to Vietnam to complete political training and did not visit Cambodia at any time during this period. When he returned to Cambodia in 1953, his transient lifestyle continued. A "time of guerrilla war" forced him, as well as others in the country, to move frequently. At some point after the Geneva Conference of 1954, at which Cambodia's independence from France was recognized, he moved permanently to Phnom Penh.

During the time he was in Phnom Penh, he claimed his occupation "changed over time to suit [his] needs." He listed a number of jobs he held, including working as a teacher, a vendor, and a clerk for an import/export company. Nuon Chea reported that he never held these positions for long, however, as he had to complete other tasks (presumably within his role in the Communist Party).

Judge Cartwright then asked about the time in 1963, after Saloth Sar (alias Pol Pot) and Ieng Sary allegedly fled underground into the jungle. She questioned how he was able to keep his strong connections to the Communist Party secret so that he could live safely in Phnom Penh. Nuon Chea lamented that hiding himself in Phnom Penh and working secretly was very difficult. He complained that he did not have a proper place to live because he was unable to blend easily into any community. He also said that he never had enough sleep because he needed to be able to escape from spies, who came looking for people as early as three a.m.

Nuon Chea also reported that this secret lifestyle required him to travel into the jungle to the area along the Vietnam-Cambodia border to meet and communicate with Pol Pot, as messages could not safely be transmitted to and from Phnom Penh. He recalled taking a truck from Phnom Penh to meet a messenger, who took him into the jungle to Office 100, where Pol Pot resided. During these trips, Nuon Chea would disguise himself, sometimes as an officer or a businessman, in

order to avoid detection from spies. He reported that he continued this work of bringing reports from Phnom Penh to Pol Pot in the jungle even after Lon Nol's coup against Prince Sihanouk, and he never took refuge himself within the jungle.

Judge Cartwright then asked Nuon Chea whether he was engaged in the discussions and planning of the Communist Party's strategic and tactical policy during the 1950s, which he had discussed on 22 November during his response to the co-prosecutors' opening statement. Although this appeared to be a simple yes-or-no question, the inquiry gave Nuon Chea an opening to launch into a 30-minute monologue, in which he repeated, almost verbatim, much of what he had covered during his opening remarks two weeks ago. Despite the amount of time he consumed recounting his version of the revolution story, none of the judges or parties made any move to stop him. One international observer in the public gallery later noted, "It seemed as if the judges do not dare to interrupt him."

Referring frequently to the blue binder of documents and notes sitting on the table before him, Nuon Chea told the court "a very long story", spanning a decade of political and strategic planning within the Communist Party. Starting in 1951, he recounted, Tou Samouth had been organizing an operational structure in Phnom Penh that would allow the Cambodian Communist movement to rid themselves of the dominance and control of Vietnam. He invited Nuon Chea and Pol Pot to join him in these discussions, and charged them with devising the strategic and tactical lines for this independent Communist Party. Following these instructions, Pol Pot and Nuon Chea set out in 1955 to 1959 to study the situation of the Cambodian people, both in Phnom Penh and in the rural areas. Due to his connections with officials in Phnom Penh, Pol Pot was given responsibility for investigating the situation there, while Nuon Chea was tasked with contacting cadres specifically in the northwest and southwest of the country.

After they completed their analysis, Nuon Chea recounted, they discovered that "some 80 percent of the population were poor peasants." These poor peasants were distinct from landlords and rich peasants, who could afford to hire others to do their work. This situation was reflected in the city as well, he claimed, in which "capitalists" and "officers" exploited the people "at the grassroots level." These observations led Nuon Chea and Pol Pot to determine that Cambodia was stuck in a state of "mid-feudalism", in which the rich control the money and use it, specifically through high-interest loans, to oppress and exploit poor farmers.

Having determined the mid-feudalist state of Cambodia, Nuon Chea stated, the party could now determine what state the revolution would take. Determining that the real enemies were the remnants of the foreign-owned regime, they decided that the revolution would be "national", combatting this foreign influence and those who wielded power through it. The "revolutionary forces" would consist of the poor and lower-middle-class peasants, as well as anyone with nationalist tendencies who could be integrated into the forces, even if they were middle class. The revolution would start in the rural areas and move to the cities and would encompass political, economic and cultural aspects. Though they never rejected the idea of an armed revolution, they agreed that it should only be used "in special circumstances." The leaders of this revolution, Nuon Chea declared, "was only the Communist Party of Kampuchea alone" and its leaders.

After relating this story of the development of the strategic line of the Communist Party, Nuon Chea faltered for a moment, wiping his brow and announcing that he was exhausted. But he rallied and continued his speech, recounting how the party solicited opinions on the strategy from the cadres and then educated and trained the people on this new policy. The strategic policy was adopted officially by the Party at its Congress in 1960, and then the party set about implementing the policy, educating and training the people, and seeking to foment revolution.

With a note of pride in his voice, Nuon Chea announced, “We battled against these ... imperialists, but, on 17 April 1975, we won the war.” Turning to his now-familiar enemy, he scoffed that Vietnam had said it could not be done and that Cambodia would not be able to liberate its city. Noting that Vietnam had not approved the new Communist Party strategy, Nuon Chea declared, “We determined the fate of our country ourselves.”

After a moment’s pause at the end of the speech, Judge Cartwright thanked Nuon Chea for his “very interesting and detailed” account. She then asked him one last question before the morning break, regarding the development of the CPK statute in 1960. Nuon Chea reported that he did not remember the details of when it was adopted, but he did know that it was composed of thirty articles. But, he stated, he could not remember the specifics of these articles, much to the relief of a number of visitors in the public gallery, who suddenly appeared fearful that the morning break would be further delayed by another lecture on the Communist Party ideology.

Nuon Chea’s Health Ends Examination Early

After returning from the morning break, Nuon Chea reported that he was not strong enough to remain seated in the witness dock, and he requested to be returned to the detention facility. The judges conferred for quite a while on the request, after which Judge Cartwright asked Nuon Chea if he would be able to continue for 30 minutes more.

Michiel Pestman, Nuon Chea’s lawyer, stood to respond, but he was rejected by Judge Cartwright, who admonished, “I asked Nuon Chea.” Mr. Pestman stated that he believed his client has a right to consult with his legal counsel. The judge stated that Nuon Chea would be able to consult with his lawyers after he has responded to the questions. Nuon Chea then answered that he did not think he could continue today due to his high blood pressure. “I believe my response cannot be as accurate as when I am healthy,” he stated and then cleared his throat loudly into the microphone, prompting loud laughter throughout the public gallery.

The judges deliberated and then ruled that Nuon Chea would be allowed to rest in the holding cell downstairs, where he would be able to view the trial and participate through the audiovisual equipment installed there. Nuon Chea asked instead to be excused completely from the court, and returned to the detention facility, where he felt he could rest more comfortably. In support of this request, his lawyer reiterated that Nuon Chea had already waived his right to participate in the hearings at all. Stating that the ruling had already been made clearly, President Nonn ordered that Nuon Chea be removed from the courtroom to the holding cell for the duration of the morning session.

Questioning of Civil Parties Begins

President Nonn then turned the court's attention to certain issues related to the two civil parties who will be heard during this phase of the trial. Regarding the first civil party, who would be examined today, the president reported that the party is not a native speaker of Khmer. However, after a linguistic analysis by the Interpretation and Translation Unit, it was determined that he will be able to take questions and respond to Khmer and will be assisted by an interpreter in the courtroom as needed to understand the questions. President Nonn reminded the parties to keep their questions short and clear.

Regarding the second civil party, the president reported that he is old and frail and lives in a remote, rural area. Due to these challenges, the civil party will be heard by video link. Due to the challenges of establishing this link in the particular area where the party resides, the Trial Chamber informed the party that it will hear the witness as soon as he is well enough to testify and the video link is secured, even if this causes a departure from the hearing schedule.

After completing these preliminary matters, President Nonn called the first civil party to the witness dock for questioning by the parties. This testimony continued through the rest of the day and was interrupted by frequent objections, as the parties took the opportunity to feel out the boundaries that had been set out for witness questioning by the severance of the trial issues.

As the parties worked to stay within these parameters, both the English and French interpreters strained to keep up with the translations, obviously struggling with the civil party's heavily-accented Khmer and the fact that he often spoke before the microphone had activated. The confusion was also evident in the public gallery, where a number of the attendees appeared frustrated, Khmer visitors due to their inability to understand the civil party's accent and international observers by the lack of complete translation.

Despite all of these issues, the civil party, now revealed as 65-year-old Klan Fit, spent the remainder of the day's proceedings articulating his role within the Khmer Rouge both before and after the evacuation of Phnom Penh in 1975. His testimony began with a few biographical details in answer to questions posed by President Nonn. He stated that he was of the Kachak minority, the members of which reside in only five villages within Cambodia. He was born in a small village and has remained there his entire life; he works as a farmer in the village. He and his current wife have no children. (He noted that his previous wife had been executed.)

At the completion of these biographical questions, the first interruption took place, with Nuon Chea's lawyer, Michiel Pestman, standing and asking if he may raise a point of order. President Nonn rejected the request, but Mr. Pestman remained standing. The president finally relented and, with obvious annoyance, asked Mr. Pestman, "What do you want?"

Mr. Pestman then inquired as to whether Mr. Fit had been put under oath, as he was unfamiliar with whether the administration of the oath occurs in court or outside. President Nonn responded that both the Cambodian Criminal Procedure Code and the ECCC Internal Rules do not require a testifying civil party to take an oath. Mr. Pestman then questioned the value of this testimony,

asking whether Mr. Fit will speak only to damages or also to the facts of the case. The Civil Party Co-Lead Lawyer Pich Ang interrupted, arguing that this question is inappropriate at this time and that a previous memorandum of the court regarding this matter had made clear that civil parties may testify to facts in the trial.

After deliberating with the other judges, Judge Lavergne responded to Mr. Pestman that the provision regarding testimony of civil parties in Cambodian law is similar to that in French civil law. As civil parties are parties to the proceeding, they can testify about facts, damages or other matters without being placed under oath. “There will be a time to assess the value of these facts” at a later date, the judge concluded.

The national lawyer for Khieu Samphan then took the slight lull in the proceedings to raise his own concern. He stated that Article 144 of the Cambodian Penal Code requires that interpreters who translate testimony must take an oath. President Nonn quickly ended this objection by explaining the interpreter who is assisting Mr. Fit is not translating testimony but rather facilitating the civil party’s understanding of the questions posed to him. He is only there to assist, not testify for the civil party, President Nonn stated.

With these preliminary objections out of the way, President Nonn then passed the proceedings to the civil party co-lawyers, who had been granted their request to take the lead in this party’s examination. The civil party lawyer began the examination by asking Mr. Fit questions related to his membership and role in the Khmer Rouge. Mr. Fit said that he could not remember the exact date when he joined the Khmer Rouge, because he is unable to read or write, but that he joined “at the beginning.” He recounted that he was compelled to join because he was told that the country needed to be protected from its enemies and that, if he did not join, he would not survive.

Mr. Fit testified that, within the Khmer Rouge, he completed a number of tasks, including working as a messenger, attending meetings, educating others, building houses, and “dealing with economics.” He also reported that, before 1970, he had been appointed the village chief for his village. In this role, he was in charge of agricultural cultivation within his village and education of the villagers on farming. He was informed by higher Khmer Rouge officers that agricultural production was necessary to help the revolution.

When asked if he had been contacted by any senior Khmer Rouge leaders about his work, he stated that he had met Ieng Sary at two separate meetings in his district, after the Lon Nol coup d’état. At these meetings, Ieng Sary had told them that they must educate people at the commune level of the need to keep a firm position against their enemies. He stated that he did not meet with any other senior leaders, but he “saw their faces,” mentioning Pol Pot, Nuon Chea, and Khieu Samphan, in addition to others.

The civil party lawyer then specifically asked Mr. Fit if the houses he was tasked with building were for Ieng Sary and Pol Pot, reading from a previous statement provided by Mr. Fit in 2009. Mr. Fit responded yes.

Ieng Sary’s lawyer, Michael Karnavas, objected to the question as leading, since the lawyer was reading directly from the witness’s previous statement. President Nonn sustained the objection

and reminded the civil party lawyer that she must avoid leading questions. He advised that she rephrase the question when the examination continues after the lunch break.

Procedural Questions from the Parties

After returning from the lunch break, the civil party co-lead lawyer, Elisabeth Simonneau Fort, began the afternoon session with a question on the memorandum from the Trial Chamber regarding the scope of questioning that would be allowed at the first phase of the trial. She requested the court to ask the parties whether they will seek to go beyond the scope of the matters designated for the first phase of the trial, so that the civil parties can be prepared to respond.

President Nonn responded that the parties had already been informed on this issue and that the court is now focusing only on the issues relevant to the paragraphs from the Closing Order read by the greffiers during Monday's proceedings. Therefore, during this examination of the civil party, he advised, parties must limit their questions to these matters.

Ms. Simonneau Fort then asked whether the court would be willing to grant leave for an exception on a party's request. President Nonn responded that, as the parties should be well informed on this issue already, such requests "will most likely be rejected by the chamber." The co-prosecutor then joined the discussion, asking the court to clarify what they meant in the previously mentioned memorandum by "exceptional reasons" for departing from the defined scope for the examinations.

While the judges conferred on this issue, Mr. Karnavas stated that he believed these questions had already been answered at the informal trial management meetings and therefore the court should not have to take the time to deal with this issue. As those who asked the questions were not present at the meetings, he stated, he would be happy to provide the minutes his team took at the meetings.

President Nonn thanked Mr. Karnavas for his suggestion but stated that the court would like to clarify their response today. He informed the parties that, if they wish to go beyond the defined scope, they must request leave in advance with their reasons.

In response, Ms. Simonneau Fort then stated that it was her understanding that none of the parties wish to raise questions beyond those at issue because none have asked sufficiently in advance for this departure to be allowed. Seeking to bring an end to this tangent, President Nonn stated that the court wishes to avoid any further disruption and requested the civil party lawyer to continue the examination.

This forward motion was cut short, though, by another interruption. In response to Judge Lavergne's earlier comments on how civil parties may testify not under oath, Nuon Chea's international lawyer read into the record Article 312 of the Cambodian Criminal Procedure Code into the record, stating, "A civil party shall never be heard as a witness."

Judge Lavergne responded that this provision means simply that a civil party does not take the oath as a witness but will rather testify as a civil party. Mr. Ianuzzi stated that he was merely reading the provision “so we could refer to it down the line when it is time to make legal submissions.”

Civil Party Examination Continues

With these matters out of the way, the civil party lawyer continued her examination of Mr. Klan Fit. When asked what role he held when he was tasked with building the houses for Ieng Sary and Pol Pot, he stated that he had been appointed the commune chief of his commune that consisted of six villages. In this role, he reported, he served as the chief of education in the villages and was tasked with protecting their location from the Vietnamese.

The lawyer then asked a specific question regarding the “Khmer Rouge policy” of keeping the Vietnamese out of the commune, which prompted an objection from Mr. Karnavas. Arguing that this was “classic leading the witness,” he objected that the question assumed facts not in evidence, by asking Mr. Fit about the “policy”, a term he did not use. After a short argument between the parties, President Nonn stated that, since the questions are part of the facts put before the co-investigating judges, the civil party lawyer will be allowed to proceed.

After a few more questions in which Mr. Fit reported that he had been appointed commune chief by the district chief and members of the zone committee, the examination was interrupted again by Khieu Samphan’s international lawyer. Referring back to President Nonn’s statement regarding the facts put before the co-investigating judges, he asked, “If the Closing Order sets out the facts, why are we here today?” Conceding that the confusion may be related to a translation issue, he still sought clarification from the court on the issue, as the answer “crucial for the way forward.”

Admonishing the lawyer for “taking [the court] by surprise,” President Nonn responded, “Your observation lacks substance. I do not see your question. It is a mere disruption to proceeding.” He then returned the floor to the civil parties.

Turning to the time after the liberation of Phnom Penh in 1975, the civil lawyer asked whether Mr. Fit had been invited to come to the city to take political training classes. Mr. Fit acknowledged that he went to Phnom Penh twice to take classes, at which Nuon Chea was the trainer.

Michiel Pestman then took his turn to object, stating that these questions were “leaving the scope of the first trial segment.” As the question related closely to the history of the CPK, in the court’s estimation, Mr. Pestman’s objection was quickly overruled.

Returning to the training in Phnom Penh, Mr. Fit stated in answer to further questions that the zone committee had also been invited to the training, which had lasted for five days. He was not aware of the main subjects of the training and did not take any documents because, as he stated, he was illiterate. He did report that he had been told that the attendees had been given documents

that related to the party statute. “We were told that the revolution would be a long-term activity, so we needed to be familiar with the statute,” he said.

Mr. Fit then testified that he was appointed deputy secretary of District 21 in 1976 by the zone committee. Although he did not feel he could hold this position because he was illiterate, he said those who appointed him insisted that he take on this role. The civil party lawyer then asked a number of questions regarding the identity of other leaders in the neighboring districts, eventually straying from this line of questioning to ask about the fate of the secretary of District 22, who, Mr. Fit claimed, was arrested for bartering with the Vietnamese for chickens and cows.

Mr. Pestman once again objected to this final question, stating that it is not relevant to the history or the structure of the party. The court sustained this objection, and President Nonn reminded the civil party lawyer to refine her questions so that they fit into the first segment of the trial.

Thanking the president for reminder, the civil party lawyer explained that her question had related to the structure of the Northeast Zone, and that it relates to statements in case file made by others. President Nonn cautioned the lawyer that just because a fact is in the case file does not mean that it can be raised at this time.

The civil party again asked the civil party who appointed him as deputy secretary of District 21, prompting the judges to stop her questioning and to deliberate. President Nonn then reminded the lawyers to avoid repetitious questions and to confine their questions to the first segment of trial. In order to keep the objections to a minimum, the court reminded the lawyers that, if they ask questions related to the time period of 1975-1979, then the questions will likely be out of the scope of the first trial, which involves the first phase of evacuation from the Central Zone to the Northern Zone and Eastern Zone.

The civil party lawyer responded that, since the first segment of the trial also includes the administrative structure of Democratic Kampuchea from 1975 to 1979, the civil parties feel that any question that addresses this issue is appropriate. President Nonn agreed that the lawyer would be allowed to continue with this line of questioning but warned her to confine her questions solely to this issue.

During the next period of questioning, a number of answers were not translated, as the civil party did not activate his microphone correctly. Overall, though, the party detailed a stressful and worrisome life as the deputy district chief. He stated that he was in charge of educating people on how to farm and that he shouldering a lot of tasks, including ensuring that the district made the most of the land and that no land went unused. He stated that his life became very difficult and at times he considered suicide. While he did not like the fact that people were relocated, he felt he could do nothing because he was intimidated and scared.

The court ended the testimony at this time to take the afternoon break.

After the break and before proceeding to the continued testimony, President Nonn noted that the civil party counsel had not wisely used her time for questioning and asked how much longer

would be needed. Pich Ang replied that there were only two remaining points and would need only ten more minutes. President Nonn allowed them to proceed.

Continuing with his time as deputy district secretary, Mr. Fit testified that he had to meet with the commune chiefs under him twice a month and that after each meeting he had to report to the sector leaders above him. Specifically, after he was accused of being engaged in the alliance movement with Vietnam, he was required to report more regularly and in detail. "If I failed, I would also be implicated in taking people to the Vietnamese," he claimed.

The civil party lawyer then asked if Mr. Fit had anything he would like to tell court about the harms he suffered under the Khmer Rouge. He responded, "I had a lot of difficulty being engaged in the revolution. I know that many members of the zone were killed. I have no idea why certain person was killed, and that is why I had bad feelings about it."

The court then turned the floor over to the co-prosecutors to continue the examination of the civil party, Klan Fit. Many of the co-prosecutor's questions this afternoon sought to clarify the chronology and details of events to which Mr. Fit had already testified. Mr. Fit's answers, however, were often not responsive to the question that was asked, perhaps due to issues with translation. He appeared to become frustrated at being asked the same or similar questions that he did not understand numerous times by the co-prosecutor, and he often became animated, punctuating his answers with pointed, and at times wild, hand gestures.

Stating that the Khmer Rouge movement during the 1960s was about educating the people about farming and not being associated with enemies, Mr. Fit recounted that the leadership sought to recruit ethnic minorities, such as himself, because "[t]hey took advantage of the people who were ignorant and could be easily indoctrinated and educated."

Returning to the houses that he helped build for Ieng Sary and Pol Pot, he reported that the area where the houses were built was known as K5. These "houses," which Mr. Fit described as underground bunkers with wooden slat roofs, were put up before the coup, and the workers were told the place was built to hide the leaders from enemy attacks. They were warned that they had to be very careful not to expose this secret location.

The co-prosecutor then brought his questioning for the day to a close with a number of questions to clarify Mr. Fit's prior testimony. Specifically, regarding the structure of the districts, he stated that there were zones, sectors, districts, communes, villages, and groups, but that he could not remember the years when this structure was organized. Also, regarding the meetings with Ieng Sary to which he had referred previously, he noted that these meetings occurred before the Lon Nol coup.

Despite the difficulties with the interpretation and the many interruptions, one theme of this party's testimony came through clearly today: Mr. Fit and his neighbors lived in fear of the all-consuming Khmer Rouge. "We had to follow the orders or we would be killed. Whenever we spoke we had to refer to the communist party. No one can contest or oppose it; we were afraid," he recounted. "We had to obey *Angkar*, nothing was bigger than *Angkar*. We could never escape."

Before the court adjourned for the day, Nuon Chea's lawyers asked for clarification on whether their client would be testifying during the following days' proceedings. As the other defense counsel could not set a time limit for their examination of Mr. Fit, the court said it could not give a definitive answer and that Nuon Chea would be heard as soon as Mr. Fit's testimony was completed.

The court was then adjourned for the day and will resume on Wednesday, 7 December 2011, with the continuation of the examination of the civil party Klan Fit.