



“We Were Poor and Desperate”: Trial Chamber Resumes Case 002 Trial Hearings

By: Randle DeFalco, J.D., Rutgers School of Law—Newark

On January 10, 2012, the Extraordinary Chambers in the Courts of Cambodia (ECCC) resumed trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary, and Khieu Samphan following the Christmas and New Year holiday recess. With the courtroom three-quarters full when the proceedings commenced, the Trial Chamber resumed hearing the testimony of accused Nuon Chea, who had already testified at length during the initial portion of the trial, which commenced on November 21, 2011.

The first day of trial proceedings in 2012 was thematically similar to previous hearings, as it was marked by defense allegations of political interference, foggy witness memories and Nuon Chea’s ongoing refusal to discuss any copied documents. The questioning for the morning again focused on the topic of the historical background of the Khmer Rouge movement.

Nuon Chea Defense Requests Trial Chamber Condemnation of Statements by Cambodian Prime Minister Hun Sen

Prior to the commencement of testimony for the day, Nuon Chea’s defense team made a formal request to the Trial Chamber to respond to recent statements concerning Nuon Chea made by Cambodian Prime Minister Hun Sen. According to a Vietnamese news article, Prime Minister Hun Sen recently stated at a public meeting with Vietnamese delegates that “Nuon Chea’s statements had been deceitful” thus far at the ECCC and also that Nuon Chea was “a killer” and “perpetrator of genocide.” Defense counsel argued that these comments violated Nuon Chea’s right to a fair trial, specifically his right to the presumption of innocence, citing jurisprudence on the issue from the European Court of Human Rights. According to the defense, Prime Minister Hun Sen’s remarks could improperly prejudice the public against Nuon Chea and pressure the ECCC judges to enter a conviction. The defense also noted that such comments must be taken especially seriously in Cambodia, due to the country’s lack of an independent judiciary. In summation, the Nuon Chea defense argued that the Trial Chamber is obliged to “officially condemn” the statement in order to “protect the integrity of the Court, at least what is left of it.”

The Trial Chamber did not react to the Nuon Chea defense request directly but instead addressed a previous objection by the defense teams regarding the use of copied and digitized documents in the case file during trial proceedings. The Chamber ruled that under ECCC Internal Rule 87(1),

the Chamber has wide discretion to admit documents and that it had decided to exercise this right and allow the use of copied documents because they are both relevant and verifiable. The Chamber noted that the probative value of such documents would be determined at a later date by the judges and the current ruling related solely to the issue of admissibility.

Testimony of Nuon Chea

Following these initial matters, Nuon Chea requested that he be required to testify only during the morning session, due to his ill health, claiming that his “head and heart” would not permit him to continue beyond the morning session. The Chamber noted this request and turned the floor to the prosecution, which continued its examination of Nuon Chea by focusing on the Khmer Rouge publications *Revolutionary Flag*, *Red Flag* and *Revolutionary Youth*. Throughout the testimony, Nuon Chea often appeared agitated and frustrated with the questions put to him. He also repeatedly claimed not to remember basic facts or to be able to identify key Khmer Rouge members in old photographs. It appeared that much of Nuon Chea’s apparent frustrations centered on his continuing demands to be able to view original, rather than copied documents, as discussed below.

The prosecution questioned Nuon Chea first on the topic of the origins of the *Revolutionary Flag* booklets produced by the Khmer Rouge. Nuon Chea stated that *Revolutionary Flag* was originally a hand-written booklet first produced after the 1954 Geneva Agreement, which provided Laos, Cambodia and Vietnam independence from France. He stated that *Revolutionary Flag* was distributed to “build confidence among nationalists and revolutionaries” in an effort to unite various factional groups during the “chaos” that followed the Agreement. Nuon Chea also testified that the handwritten copies of the booklets were eventually typed out and approximately 20 copies were distributed to spread the Khmer Rouge party line.

According to Nuon Chea, after the Khmer Rouge seized power in 1975, *Revolutionary Flag* was replaced by *Red Flag* booklets, which were produced in a typed format at a printing house operated in Phnom Penh.

After these limited statements regarding the *Revolutionary Flag* and *Red Flag* periodicals, Nuon Chea became uncooperative and at times combative with the prosecution during questioning. He claimed to have no knowledge of the *Revolutionary Youth* periodical allegedly produced by the Khmer Rouge and refused to accept or even read any copies of any documents, despite the Trial Chamber’s earlier ruling that such documents were admissible in lieu of originals. Instead, Nuon Chea pointed out that the copies were in a different format (photocopied pages rather than in booklet form) than the original publications, the copies did not have a red cover like the original booklets and the font was smaller. Due to these discrepancies, Nuon Chea refused to accept any copies.

Ieng Sary Excused from the Courtroom

Shortly prior to the regular 10:30 a.m. morning break, Ieng Sary's defense team interrupted questioning of Nuon Chea and informed the Chamber that Ieng Sary was feeling unwell and requested that he be examined by the Court's medical staff. The Chamber granted this request, and Ieng Sary left the courtroom barely one hour into the day's proceedings. Later, following his examination, Ieng Sary formally waived his right to be present during proceedings and retired to the Court's holding cell to participate via audiovisual link. Ieng Sary's waiver of his right to be present followed a recent pattern of Ieng Sary leaving the courtroom, raising concerns that his fragile health may be deteriorating.

Questioning of Nuon Chea Continues

Following the morning break, the prosecution turned to questioning concerning the 1960 Congress which officially established the Communist Party of Kampuchea (CPK). Nuon Chea appeared annoyed at revisiting the Congress, which he had discussed previously. Returning to his recurring theme of the Khmer Rouge as the only alternative to Vietnamese domination of Cambodia, Nuon Chea stated that the 1960 Congress resulted from a decision by Tou Samouth, Mey Mann, Pol Pot and himself to "defect" from the Indochinese Communist Party, which was dominated by Vietnam and also included Laos. Nuon Chea affirmed that at the three-day Congress, Tou Samouth was named CPK Secretary, Nuon Chea was named Deputy Secretary in charge of rural areas, and Pol Pot was named to the Standing Committee and put in charge of urban areas. He also mentioned that Mey Mann quit the party because he was married and was therefore unable to meet his obligations.

The prosecution continued to question Nuon Chea about other attendees of the 1960 Congress and their roles. Nuon Chea, however, proved impatient and forgetful during this portion of the questioning. After a series of questions, Nuon Chea eventually affirmed that Ieng Sary was named a member of the Standing Committee along with Son Sen and that Sao Phim, Vorn Vet and Ta Mok were named to the Central Committee at this time. Nuon Chea stated that Keo Meas was originally named to the Central Committee also but that he was expelled the Committee in 1961 because he was "too open."

The prosecution then displayed a photograph on the Court monitors allegedly taken at the 1960 Congress and asked Nuon Chea to identify some of the individuals appearing therein. Nuon Chea however, was uncooperative and claimed to be unable to identify anyone in the photograph, including Pol Pot and even himself. Instead he claimed that the man the prosecution suggested was him was in fact a professor who only bore a resemblance to Nuon Chea. Strangely enough, despite being unable to identify his fellow revolutionaries, whom he worked with for decades, Nuon Chea did identify the portraits of Marx, Engels, Lenin and Stalin that adorned the wall in the background of the photograph.

Following Nuon Chea's identification difficulties, the prosecution turned to some of the issues allegedly discussed during the 1960 Congress based on summaries contained in a *Revolutionary*

Flag article. The prosecution asked Nuon Chea to elaborate on the topic entitled “Analysis of the True Nature of Kampuchean Society and How to Eliminate Feudalism.” Specifically, the prosecution requested that Nuon Chea discuss the difference between what the Khmer Rouge perceived as “internal” contradictions and “antagonistic” or “life or death” contradictions.

This line of questioning prompted another refusal by Nuon Chea to refer to any copied documents. His response prompted audible groans in the courtroom gallery from attendees who appeared frustrated with Nuon Chea’s repeated refusals.

But Nuon Chea insisted, stating:

The terms [‘internal,’ ‘antagonistic’ and ‘life or death’ contradictions] were part of your interpretation, and I keep insisting that the original documents be brought to me so I can assure they are really the genuine documents . . . [O]therwise I cannot respond to the terms you emphasized, which to me [are] the terms which you used . . . I am afraid that they are really subjective.

After the question was rephrased several times in more general terms, Nuon Chea eventually clarified that “antagonistic” contradictions were the conflicts between external aggressor nations and Cambodia and between the landowner “henchmen” and the exploited peasants. These conflicts could not be resolved and were therefore “life or death” conflicts. Conversely, “internal” contradictions, according to Nuon Chea, were simply small disagreements about the best policies to pursue and could be solved through study sessions and negotiation.

During this discussion, Nuon Chea compared the plight of Cambodian peasants in the 1960s and 1970s to current land disputes in Cambodia, stating that, for “antagonistic” contradictions, the Khmer Rouge leaders had to examine the problem to see its size and suggested that, for an example of such a situation, the Chamber judges should “look at the land conflicts we are having this day [in Cambodia]; as you can see many people have committed suicide by jumping into the river, maybe you can reflect on the present situation.”

When questioned further, Nuon Chea stopped short of directly stating what the CPK’s response was to perceived “antagonistic” contradictions in Cambodia, as the prosecution was clearly pushing for Nuon Chea to state the party policy on what happened to those who caused such contradictions. Instead of answering this line of questioning, Nuon Chea returned to his demand for original documents, stating, “I insist again and again – I cannot answer this question. Ten people may have their own opinions but must use the original documents as basis for discussion.”

The prosecution did not push the issue further and moved to the CPK’s strategic policy to build its networks in Cambodia’s rural areas. Nuon Chea again appeared frustrated and stated, “It is repetitious, so I will not talk about that, the strategic and tactical lines; it is a waste of time for me to answer your question.”

When pushed, however, Nuon Chea stated that the Khmer Rouge started from the countryside first because people in the urban areas had “enough to live, but rural people were very, very poor” and therefore ripe for indoctrination into the party. They did not even have “clothes to cover their body” so the CPK began “educating those people.”

He stated that the Khmer Rouge movement had “no enemies in rural areas; enemies could not go there, only peasants, so the work could be done smoothly, and secondly the people were poor and we would provide the opportunity for them to have enough food and clothes. And so we began from there. People in urban areas already had enough to eat.”

The prosecution’s specific questions about the party line, however, again ran up against Nuon Chea’s adamant refusal to discuss any information derived from non-original documents, prompting more groans from the audience. Nuon Chea’s defense team clarified that Nuon Chea was simply reiterating his previous objections to the authenticity of certain documents and argued that he had indeed pointed to specific inconsistencies in the copies, such as font, color and format. Ieng Sary’s defense team added that, at other internationalized tribunals, a specific custodian of documents must verify the authenticity of any copy placed before the court and requested that the Trial Chamber create a similar mechanism.

The prosecution noted that a hearing on evidentiary issues was already scheduled for the following week but responded that the Trial Chamber’s earlier ruling was dispositive at this time. The civil party lawyers noted that the copies had been on the case file for months or even years and that if the defense teams had any objections as to their authenticity, they should have raised them during the pre-trial phase and not at this late juncture.

The Chamber noted the positions of the various parties and then recessed for lunch.

Testimony of Romam Yun

Following the lunch break, the Trial Chamber switched gears to continue the testimony of civil parties Romam Yun and Klan Fit who had begun their testimony prior to the holiday recess.

Each of the defense teams was given an opportunity to put questions to Romam Yun, who had already been questioned by civil party lawyers. Nuon Chea’s defense team opted not to put any questions to Romam Yun and argued that his testimony must be restricted to the topic of the damages he allegedly suffered as he is a civil party, not a witness. As such, Nuon Chea’s defense team claimed that the entire testimony of Romam Yun thus far was wholly irrelevant to the proceedings.

This prompted a response by the civil party lawyers, who argued that, as full parties to the proceedings, testifying civil parties have the right to speak to the facts relevant to the case before the Chamber.

The defense for Khieu Samphan then stood and concurred with the argument put forth by Nuon Chea's defense team, adding that the Chamber had "wasted" much time by allowing civil parties to testify beyond the proper scope of their role. He requested that the Chamber "disregard all the testimony given by civil parties . . . because it is not the role of the civil parties to give the facts."

The civil party lawyers "strongly object[ed]" to the arguments put forward by the Khieu Samphan defense team, arguing that civil parties are entitled to testify concerning the facts surrounding Cases 001 and 002, as long as they have personal knowledge of these facts.

The prosecution in turn simply stated that it is not up to the defense to decide whether it is a waste of time to hear any witness or to determine the capacity in which civil parties are allowed to testify, as such powers are reserved exclusively to the Trial Chamber judges.

Trial Chamber President Nil Nonn reminded the defense parties that this was their only opportunity to question civil party Romam Yun and asked whether they wished to actually pose any questions.

Only the Ieng Sary defense team took this opportunity to question Romam Yun, inquiring into the specifics of certain statements he had previously made. Through this questioning it became clear, and indeed was openly admitted by Romam Yun, that his memory is failing and he often needs prompting to jog his memory about specific dates and events.

The civil party lawyers objected several times to the defense's line of questioning, claiming that the defense was going into extraneous matters simply to "take advantage" of the elderly Romam Yun's failing memory. The civil party legal team stated that the Ieng Sary defense should be required to adopt another line of questioning related to the specific topics of the initial trial in Case 002.

The Trial Chamber overruled these objections, noting that the civil parties testifying were selected by the civil party lawyers themselves and must therefore answer all questions put to them.

After Romam Yun's failing memory was exposed through questioning by the Ieng Sary defense team, Judge Jean-Marc Lavergne posed several additional questions in an attempt to ascertain the extent of Romam Yun's memory loss.

Judge Lavergne asked if the date of 17 April 1975 has any specific meaning to Romam Yun, who replied that he did not know what happened then, because it was a long time ago and that, without being reminded, "these things would not come up in [his] mind." Similarly, Romam Yun could not recall the current date and asked for help from the ECCC witness support representative seated next to him when asked what it was. Romam Yun did state that he had heard of the capture of Phnom Penh by the Khmer Rouge but he could not remember the exact date of the event. He stated that all he remembered specifically was limited to what happened in

the local area where he resided when the Khmer Rouge captured Phnom Penh. He explained that, as he was born to a low-status family, he had never been in a senior position.

While at first it appeared that Romam Yun did not recall much information relevant to Case 002, he began to provide at the end of his testimony a narrative of his own experience during the Khmer Rouge period, which included insights into Khmer Rouge agricultural and social policies. Romam Yun claimed that, as a district leader, he had done his best to lead the people under his supervision to be effective farmers but he was reprimanded several times for not producing sufficient crops. He noted that he could only encourage people to work hard and he had to argue several times with his superiors to convince *Angkar* (commonly, the “organization” or CPK in abstracted form) that “we did our best with sweat and blood but that the production was not at the expected level.” He then stated that “if we did what *Angkar* expected us to do, we would never be able to shoulder this burden” because it was impossible to attain the quota assigned by *Angkar*. He also testified that *Angkar* told him he had to do better to “educate” people to “improve their revolutionary stance,” but he did not know what to do because the people under him already “worked from the bottom of their heart.” Nonetheless, the community was still blamed for not being “efficient” enough.

Romam Yun was also instructed to “fight” the oppressive class, but he did not know how to perform the task, admitting that he thought about committing suicide by hanging himself to avoid the hardships placed on him. He was warned that he could be considered an “enemy” by *Angkar* when he failed to lead his community to achieve agricultural quotas set by the Party. Yet he did not know how to attain the quotas when “even the piglets lacked food, let alone the human beings.”

He stated that, because of lack of food and harsh living conditions, some people hung themselves because they could not stand the situation. He also claimed that officials at the sector, zone and provincial levels only pretended that the people in their communities were leading decent lives and had enough food to eat when, in reality, “we could not produce enough food, grow enough crops to feed the villagers. And yet the commune chief was blamed because he was not a better man who could lead the people.”

Summing up, Romam Yun simply stated, “We were poor and desperate.” The Chamber then thanked him for his testimony and excused him as a witness before taking its scheduled afternoon recess.

Testimony of Klan Fit

Following the afternoon break, the Chamber turned to the prosecution’s questioning of Civil Party Klan Fit. In answer to the prosecutor’s questions, Klan Fit stated that he was taken to “attend a meeting” on orders of Ieng Sary in 1975. At this meeting he was asked by Ieng Sary

whether he wanted to “do revolution” to which Klan Fit remained silent because of his fear of *Angkar*, stating, “Everyone was afraid of *Angkar*; I am still afraid of *Angkar*.”

In 1976, Klan Fit was appointed as a district chief; everything was collectivized, and communal eating was enforced. Conditions became very difficult, and, like Romam Yum, he testified that he considered, and even attempted, to commit suicide by hanging himself.

Following Klan Fit’s emotional responses to the first few questions, the prosecution gently attempted to focus his testimony on the period preceding 1975 and the takeover of the Khmer Rouge. In response to this line of questioning, Klan Fit eventually stated that he had attended two meetings presided over by Ieng Sary in Cambodia prior to 1975.

Klan Fit also testified that he saw Nuon Chea lead two meetings after the 1975 victory and that these meetings were attended by 500-600 people in Phnom Penh. He stated that, although he did not know Nuon Chea at the time, his name was announced at the beginning of the meetings. Klan Fit went on to state that these meetings lasted about three days each and consisted of instruction on the CPK party line. People from various provinces attended; at first Klan Fit did not understand what the CPK was and was relieved to find other attendees similarly confused. When asked, he also confirmed that discipline was discussed at these meetings but could not recall what was stated in this regard, though some documents on the topic had been distributed. He did note that, after the CPK assumed power, each commune was instructed to create a 20-person armed local militia to defend the villages and communes.

When asked about Khieu Samphan, Klan Fit stated that he had never met Khieu Samphan and has no knowledge of him personally whatsoever. Klan Fit did know that meetings were held in the jungle prior to 1975 and that senior people would attend these meetings, but he did not know who specifically attended.

When asked about how the orders to evacuate Phnom Penh were issued, Klan Fit stated that “only the senior people,” such as Ieng Sary, issued large orders such as the evacuations. He also observed that the people who were evacuated were “living a very difficult life.”

At 4 p.m. the Chamber adjourned the proceedings for the day. It is expected that, on Wednesday, the Chamber will continue hearing testimony from Nuon Chea in the morning, followed by the conclusion of Klan Fit’s testimony in the afternoon.