



*Witness Prak Yut continues her testimony at the ECCC.*

**Trial Chamber Resumes Hearing Case 002 Substantive Evidence:  
Continued Testimony of Witness Prak Yut**

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*“I did not dare to inform him”*

- Witness Prak Yut referring to her knowledge of her husband’s imminent arrest

After six and a half days of hearing on evidentiary admissibility issues, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) resumed hearing substantive evidence for Case 002 on Thursday, January 26, 2012. The entire day’s proceeding was dedicated to the continued testimony of witness Prak Yut, who had begun providing testimony the previous afternoon.

***Disagreement Concerning the Scope of Questioning***

The Chamber started the day’s proceedings by inquiring whether any party had preliminary matters to raise. Ieng Sary’s international defense counsel Michael Karnavas then rose and made a submission to the Chamber. Mr. Karnavas objected to the scope of questioning conducted by the prosecution the previous day, which, he argued, strayed well outside the topics covered in the first Case 002 trial. He noted that the Chamber had previously indicated that topics extraneous to

the first trial might be explored during questioning but argued that the prosecution must make an application to the Chamber before moving to such topics and that the Chamber had previously stated that such applications would only “rarely be granted.”

Mr. Karnavas further argued that the Chamber had been “crystal clear” concerning its expectations for topics to be covered during questioning and that the prosecution had strayed from the instructions of the Chamber during the previous day’s questioning of witness Prak Yut. Mr. Karnavas then provided the example of a questions about dam construction projects undertaken during the Democratic Kampuchea (DK) period by the Communist Party of Kampuchea (CPK). He further noted that the prosecution may be trying to explore additional topics not scheduled for the first Case 002 trial and that, if the defense is forced to object repeatedly, this would create the false appearance that the defense teams are trying to slow or obstruct the trial. This argument was then extended to “leading questions” posed by the prosecution, to which Mr. Karnavas also objected generally.

Mr. Karnavas summed up by requesting that the Chamber instruct the prosecution to stay within the bounds of the first Case 002 trial and asking for an explanation from the prosecution.

International prosecution counsel Dale Lysak then responded by submitting that, if Mr. Karnavas had read the paragraphs of the Closing Order cited by the prosecution relevant to witness Prak Yut, it would be clear that the witness’ testimony is central to the topic of channels of communication and administrative structures of the CPK during the DK period.

Mr. Lysak argued that the witness had been called because she held the role of district secretary during the DK period and her testimony would assist in proving facts related to the administrative structures and flow of information up and down the echelons of authority within the CPK. As for dam work sites as a topic specifically, Mr. Lysak stated that Prak Yut’s testimony was elicited on this topic because the prosecution wanted to demonstrate how information on living conditions had been disseminated throughout the CPK government.

He further noted that the prosecution did not plan on getting into details of the purge of the Central Zone in DK, which was originally the second major subject that the prosecution sought to elicit testimony on from Prak Yut.

Civil party counsel Elisabeth Simonneau Fort then rose and submitted that, although she agrees with the defense counsel that the rules must be applied equally to all parties, it was the position of the civil parties that the prosecution did not exceed the bounds of the first Case 002 trial during the questioning of Prak Yut.

Mr. Karnavas then responded by stating that the prosecution had submitted a “clever” argument in stating that it was only seeking to elicit information concerning the channels of communication in DK. In doing so, he contended, the prosecution actually meant to induce the defense into discussing topics such as food rations and living conditions and that this strategy is improper. He further noted that the Ieng Sary defense reserved its rights to object to each question considered to be outside the bounds of the first Case 002 trial.

International defense counsel for Nuon Chea, Michiel Pestmen, then rose and voiced his support for the arguments of the Ieng Sary defense.

At this point Judge Sylvia Cartwright interjected and sought to “clarify the procedure” for future submissions, stating that the initial party making a submission should be provided the final reply but only after each party is afforded an opportunity to state its position. In the future, she stated, each defense team should voice its opinion on the submission of other defense teams prior to the final reply by the original defense team.

The Chamber judges then conferred for a brief period before Chamber President Nil Nonn stated the Chamber’s opinion. After reminding the parties that the Chamber had previously provided guidance to all parties regarding questioning, President Nil Nonn stated that the “parameters have been set very clear” regarding the topics of questioning and advised the parties to remain focused on these topics, utilizing simple and clear questions. He continued by stating that the Chamber takes into account every question asked and will make an effort to monitor the topics of questioning.

To make this clearer for the international counsel present, Judge Cartwright then elaborated, stating that the Chamber considers that the questions put to Prak Yut concerning issues not strictly within the historical segment of the trial may be asked, so long as such questions relate to the communication and administrative structures of the CPK. However, Judge Cartwright also instructed the parties not to delve into the substance of issues outside the Case 002 first trial and not to use leading questions or open-ended questions that will encourage the witness to veer off into extraneous matters. She then instructed all parties to refrain from “stray[ing] beyond the parameters of this [first Case 002] trial.”



*Judge Sylvia Cartwright addresses objections on the proper scope of questioning in the first trial of Case 002.*

### ***Continued Questioning of Witness Prak Yut by the Prosecution***

Following this instruction from the bench, witness Prak Yut resumed her testimony. The prosecution continued questioning by asking where Prak Yut lived and what she did prior to

April 17, 1975. Prak Yut responded that she does not remember where she was living at this time because it was so long ago.

Upon further questioning, Prak Yut stated that she “did not notice” if there was an influx of “new people”<sup>1</sup> into her area following April 17, 1975. She did not “see any new faces” and further noted that people in her neighborhood “lived as normal.” As for the label “17 April people,” Prak Yut claimed that she “did not pay attention” and thus did not know about this term. She did admit that she “had heard of the 17 April people” but that she did not hear this term until sometime around 1976. She also heard that people had been evacuated from the cities and observed that there were evacuees, but she “was not interested” in this subject.

The prosecution then asked Prak Yut whether orders to evacuate the cities came from the “upper echelons” of the CPK. This question prompted an objection from the Ieng Sary defense, which argued that the term “upper echelon” was being improperly fed to the witness. The Chamber overruled this objection, and directed the witness to answer the question.

Prak Yut, however, did not appear very interested in discussing the topic of evacuations, stating simply that she did not concern herself with the decisions of the higher levels. She only saw evacuees on foot who were “filling the road” but did not know much else and claimed that she was being fully truthful but simply “did not know what happened at the upper echelon level.”

When asked about the condition of the evacuees she witnessed, Prak Yut stated that she thinks this group of people “experienced some hardship.” When asked to elaborate, the witness stated that it was “difficult” for people “walking in the sun with children” but could not comment further.

Upon further questioning, Prak Yut claimed that she did not know at the time whether there were any armed soldiers guarding or herding the evacuees because she was “not interested” in this subject and “had another fish to fry,” such as “doing farming.” The prosecution then asked Prak Yut for her opinion on whether the evacuees appeared to be willingly evacuated, triggering another objection by the Ieng Sary defense, which argued that the questions called for improper speculation by the witness. This objection was sustained, and the prosecution was asked to rephrase or move on.

In response, the prosecution turned to Prak Yut’s time in Kampot province and evacuation issues there. Prak Yut claimed that she worked there but only to help the district secretary with his “daily work”; therefore, she had no exposure to evacuation issues or procedures in the area. She did affirm that people were evacuated to Kampot province and that cooperatives were established there, though she claimed not to remember when this happened or who ordered the creation of cooperatives.

At this point, international prosecution counsel Dale Lysak took over the prosecution’s questioning and began exploring the previous statements provided by Prak Yut to investigators

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<sup>1</sup> “New people” or “17 April people” were terms allegedly used by the CPK to refer to people who did not live in Khmer Rouge controlled areas when the group achieved total victory on April 17, 1975. The forced evacuation of “new people” from Cambodia’s cities is one of the topics scheduled to be addressed in the first Case 002 trial.

from the Office of the Co-Investigating Judges (OCIJ). Prak Yut testified that her previous four statements were all truthful and that she had confirmed this fact after her previous statements were read aloud to her.

Mr. Lysak then turned back to the issue of Prak Yut's initial entry into the Khmer Rouge movement in 1970. Prak Yut explained that at this time she worked in Kampot and Takeo provinces. She then testified that she was transferred to the Central Zone in 1977. When asked about Ta Mok,<sup>2</sup> Prak Yut stated that she had heard of him but did not know him personally when she joined the revolution.

Next, Mr. Lysak reminded Prak Yut that she had previously stated that her cousin had induced her to join the revolution. After being reminded, Prak Yut apologized for forgetting this fact and affirmed that it was true but claimed to have been very young at the time and thus unable to understand the details of joining the Khmer Rouge. Mr. Lysak then responded that he was confused because, according to his calculations, Prak Yut was approximately 23 years old in 1970 when she joined the Khmer Rouge. Prak Yut held firm, however, and testified that she cannot remember how old she was or any other details about when she joined the revolution.

Mr. Lysak then shifted his questioning to the topic of Khmer Rouge religious policies, asking Prak Yut about a booklet she had claimed in her previous statements to have received outlining a CPK policy to close pagodas. Prak Yut affirmed that she had received this booklet but added that she personally had no opinion on whether closing pagodas was a good or bad thing, stating that "if it was enshrined in the policies" then she would have obeyed without question.

At this point, just prior to the morning break, the Ieng Sary defense objected to the prosecution's use of the word "testimony" to refer to previous "statements" provided by the witness to OCIJ investigators. The prosecution responded by correcting the assertion made by the defense that the witness was not under oath, stating that an oath had indeed been administered prior to the taking of such statements. Mr. Lysak argued that therefore the disagreement on terminology between the parties was "only a matter of semantics." The defense responded by admitting the witness was under oath but that this oversight does not render the statement "testimony."

The Chamber did not respond to these arguments at this point and simply announced the morning break.

### ***Nuon Chea and Ieng Sary Retire to the Holding Cell at their Usual Time***

Before the Chamber could adjourn, both the Nuon Chea and Ieng Sary defense teams interjected and informed the Chamber that their clients both wished to waive their right to be present and retire to the holding cell for the day to participate via audio-visual link. Nuon Chea claimed to be very tired and Ieng Sary claimed to have "severe back pains." These now-routine requests were both granted by the Chamber provisionally upon receipt of a written waiver. The Chamber then took its regular morning break.

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<sup>2</sup> Ta Mok was allegedly a member of the CPK Standing Committee and held the position of Secretary of DK's Southwest Zone. Ta Mok is alleged to have personally conducted CPK purges and to have been known by the nickname "the one-legged butcher." Ta Mok died while in the custody of the Cambodian government in 2006.





*International prosecutor Dale Lysak continues the examination of witness Prak Yut.*

### ***Continued Testimony of Prak Yut***

Following the break, the Chamber ruled that statements made under oath are considered “testimony” and overruled the objection of the Ieng Sary defense. Judge Cartwright clarified that due to the specialized legal setting of the ECCC, statements made under oath to OCIJ investigators are considered “testimony” and are properly utilized during questioning.

Mr. Lysak then turned back to the topic of the alleged CPK religious policy booklet discussed prior to the break. Prak Yut, however, claimed that she did not remember when this booklet was given to her and that she did not wish to “speculate” about dates of events, asking the Chamber for direction. Chamber President Nil Non then instructed Prak Yut simply to respond that she does not remember when she is unclear on any dates.

Mr. Lysak then turned to the CPK publication *Revolutionary Flag*. Prak Yut responded that she did not really keep or understand publications of the CPK because she is mostly illiterate. Upon further questioning, she did affirm that she saw *Revolutionary Flag* booklets but did not read them.

Prak Yut then testified that she was transferred to Kampong Cham province in 1977 and later to Battambang province in the Northwest Zone in 1978. She testified that, when she arrived in the Northwest Zone, she was assigned to a cotton plantation to do manual labor, explaining that, after her husband was arrested, Ta Mok relieved her of all official duties because she was “no longer trusted.” Prak Yut then testified that she worked at the cotton plantation for two months but that work there stopped when the area came under aerial bombardment.

Mr. Lysak thanked Prak Yut for this testimony and asked her to elaborate on the period when she was “reeducated” prior to her transfer to Kampong Cham. Prak Yut testified that this “education” process was merely a two-hour meeting with Prak Yut’s superior, Kong Chhap, during which she

was informed that she would be transferred. She further stated that Kong Chhap did not provide any explanation as to why Prak Yut was being transferred.

The next topic covered by the prosecution was the day-to-day administration of the areas where Prak Yut lived and worked while in the Khmer Rouge. This questioning concerned the nature and frequency of meetings of the sector committee in Prak Yut's area.

When asked who had authority to decide "what to do with people that had made mistakes," Prak Yut responded that the district committee had to ask for "opinions" of the sector committee and had no independent authority to decide whether anyone would be reeducated or not. She further testified that written reports were provided to sector secretaries, rather than simple oral reports.

To create such reports, Prak Yut stated that nobody had the power at the district level to report individually but that the district committee had to reach a consensus prior to reporting. She also stated that these reports were delivered by messengers and not by telegram.

Upon further questioning, Prak Yut denied that she was involved in the decision to "execute" anyone, using this term without prompting from the prosecution. She claimed that as the "sixth member" of the sector committee, she had no authority to participate in decisions concerning executions. Prak Yut also testified that the district committee meetings she attended concerned mostly topics such as building dams and dikes and that these meetings were convened every three months and whenever else the situation demanded.

Prak Yut was then asked about subjects of reports authored by her district committee. She testified that, as for reporting violations of CPK policy, "we did not really want people to be executed" but the committee had to report to the sector about violations. She also stated that the district authorities had to report to the sector about other topics, such as agricultural production.

At this point, Chamber President Nil Nonn interrupted the questioning and announced the lunch adjournment.

Following the lunch break, the prosecution resumed its questioning of Prak Yut, returning to the subject of reporting practices during the DK period. Prak Yut stated that the district authorities were tasked with informing the sector authorities with reports on all aspects of local issues.

When asked specifically whether such reports included discussions of the lack of sufficient food and starvation, Prak Yut affirmed that the reports did sometimes discuss such issues and that her district committee requested help in dealing with food shortages from the higher authorities. Prak Yut also affirmed upon questioning that her committee reported the number of deaths and number of sick people in her district to the "upper echelons" of the CPK.

The prosecution then asked whether district officials were informed prior to the arrest of local Khmer Rouge cadres. Prak Yut stated that she was not informed about arrests, further stating that she was only informed personally about her husband's arrest by Ta Mok and a few other senior cadres just three days before he was arrested. She stated that she had no idea about the circumstances of her husband's arrest and "could not do anything" about it.

Prak Yut then stated that her husband was only a simple clerk when he was arrested. Despite her prior knowledge, she “did not dare to inform” her husband of his impending arrest, as Ta Mok warned her that she would also be in trouble if she did so. Prak Yut further explained that she “would be in big trouble” if she informed her husband about his imminent arrest and he fled.

Regarding meetings with local and zone authorities, Prak Yut stated that the topics covered were “all types of problems” such as living conditions and work assignments. She noted that zone authorities were informed of such problems and then it was up to them to address such issues.

When asked about any instances of voting or elections during 1976 in Kampot, Prak Yut stated that she did not know about that topic. She then affirmed that she did not vote in the election of the “People’s Assembly” in the area. Mr. Lysak then asked how Prak Yut herself became aware that she had been named to the Assembly. She responded that she was simply informed of this decision, which she did not question.

The prosecution then explained that accused Nuon Chea has claimed that he was unaware of many issues during the DK period because he was busy working on “legislative matters” as Chairman of the People’s Assembly of Kampuchea. Following this statement, Mr. Lysak asked Prak Yut if she ever worked on any legislative matters with Nuon Chea at any time during the DK period. Prak Yut responded simply, “No, I did not.” The prosecution then moved on to an alleged meeting of the Assembly in 1976, asking Prak Yut if she was present at the meeting. She responded that she does not remember being there. When Mr. Lysak attempted to refresh her memory by showing her a photograph purportedly taken at the meeting, Prak Yut insisted that she did not remember, stating that, if the prosecution insists she was there, she would not refute it, but she simply cannot remember any such meeting.

Mr. Lysak pressed on, asking Prak Yut if she ever attended a meeting where the resignation of King Norodom Sihanouk was discussed. She responded that she never attended such a meeting and does not know about this subject.

When asked again about conditions, Prak Yut claimed that in Kampot there were never any extreme shortages of food and that people could remedy any shortages by sharing. Regarding the decision to evacuate Kampot city, Prak Yut stated that she saw this event but did not know who made the decision to evacuate. She further testified that she did not receive any instructions on the evacuation.

Next, when asked what was to be done with soldiers or officials of the toppled Lon Nol government, Prak Yut claimed to be confused by the question. In response, Mr. Lysak read out a portion of Prak Yut’s statement to OCIJ investigators, wherein she stated that she was ordered to arrest former Lon Nol officials to be reeducated but did not know where such individuals were sent thereafter. Prak Yut stood by her statement to the OCIJ and explained that she was instructed by her sector secretary to round up former Lon Nol officials. At this point the Chamber announced the afternoon break.



### ***Oral Decision on General Rule 87 Evidentiary Issues***

Following the break, the Trial Chamber issued an oral decision regarding the issues raised over the previous week of proceedings on challenges to documents submitted to the Chamber for admission into evidence. Chamber President Nil Nonn read out ECCC Internal Rule 87(3) and noted that the Rule requires that documents put before the Chamber appear *prima facie* authentic, reliable and relevant.

The President then noted that the Co-Investigating Judges had already examined all documents cited in the Closing Order. Such documents are thus afforded a “presumption of admissibility” by the Chamber and have been given an “E” number by the Chamber, thereby placing them in the case file. Conversely, other submitted documents not cited in the Closing Order are not afforded such a presumption but must be scrutinized more closely.

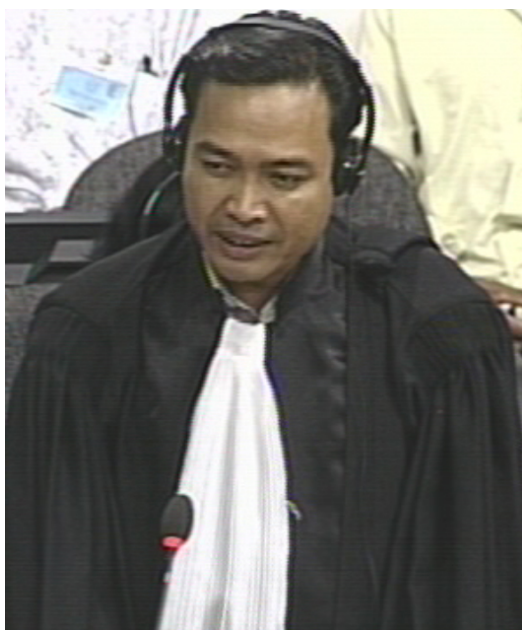
Next, the President noted that no category of documents, such as books or articles, would be excluded as a whole by the Chamber. He further noted that, while original documents are preferred, copies can be admitted but may be found less probative. He also advised that documents should be submitted for inclusion in the case file in a timely fashion but that some flexibility was possible based on practical considerations. Finally, the Chamber noted that evidence obtained through torture would be viewed with skepticism and assumed inadmissible.

The Chamber then announced that decisions on objections to specific documents would be rendered at a later date.

### ***Testimony of Youk Chhang and another Witness Scheduled***

President Nil Nonn next announced that, in the following two weeks, Documentation Center of Cambodia (DC-Cam) director Youk Chhang will testify, along with another, unnamed expert witness. The Chamber then instructed all parties to submit their requests for time allowances to question Mr. Chhang and the other witness.

After the Nuon Chea defense team asked for clarification, Chamber President Nil Nonn explained that during the upcoming week, morning sessions would be dedicated to hearing testimony from Nuon Chea, while afternoon sessions would be dedicated to hearing additional testimony from witness Prak Yut, along with Youk Chhang and expert witness “TCE 80.”



*Counsel for the civil parties questions witness Prak Yut.*

### ***Civil Party Questioning of Prak Yut***

At this point, the floor was turned over to the civil parties to put questions to Prak Yut. Civil party counsel then asked Prak Yut about when she joined the revolution. Confusingly, Prak Yut claimed to have been 13 years old when she first joined the revolution, although the prosecution had purported earlier in the day that she had been approximately 23 years old at the time.

Upon questioning about her role in the revolution prior to 1975, Prak Yut stated that she worked making clothes for Khmer Rouge soldiers in a factory. She then testified again about witnessing the evacuation of Kampot city and reiterated that she did not see whether soldiers were accompanying people as they were evacuated.

Next, civil party counsel asked about authority over the Mobile Unit led by Prak Yut. In response, she explained that she ran the Unit jointly with others and reported to the district regarding any issues in the Unit. She then explained that district authorities reported to sector authorities.

Following some additional questioning, Prak Yut testified that she had a role in “inputting” ideas to implement plans but that final decisions were made by local officials. She also restated that she is unsure whether there were any security centers in Kampot, continuing her pattern of evasiveness whenever asked about prisons or security centers. Counsel then put some additional questions to Prak Yut, mostly covering the same topics addressed during the extensive questioning conducted by the prosecution.

The civil parties then sought to clarify some earlier conflicting statements made by Prak Yut. Counsel asked why there was such confusion regarding Prak Yut’s age when she joined the revolution, with estimates ranging from 15 years to 23 years old. Prak Yut simply responded that

she was “young” when she joined the revolution but could not remember anything else about her age.

Prak Yut then denied that she ever officially went by any alias during the DK period. When asked again, however, she stated that people may have used nicknames to refer to her, but she has always gone by Prak Yut.

Counsel then turned to CPK authority figures and structures, asking whether Prak Yut had ever heard of the Standing or Central Committees of the CPK or knew the names of any of their members. Prak Yut responded that she had not heard of these Committees or their members. When questioned about the Case 002 accused in particular, Prak Yut responded, following an extended pause, that at the time she joined the revolution she had heard the names Khieu Samphan, Nuon Chea and Ieng Sary. Prak Yut denied, however, that she knew what these people “did back then.”

Counsel then asked some questions about DK period administrative structures, which prompted an objection from the Ieng Sary defense team, which argued that the questioning was repetitive and called for the Chamber to forbid the asking of questions Prak Yut had already indicated she could not answer. The Chamber overruled this objection, but Prak Yut did not provide any new insights on the issues raised, responding that she had already stated what she knew earlier.

The civil parties then sought to read out a statement provided to OCIJ investigators by another witness to help Prak Yut with her memory. The Nuon Chea defense team immediately objected to this course of action, arguing that the Chamber had already ruled during the questioning of DC-Cam deputy director Peoudara Vanthan that statements made by other witnesses cannot be used during testimony.

The Chamber upheld this object and reminded civil party counsel of its previous ruling on the issue, which had come up several times in recent days. Immediately after issuing this ruling, Chamber President Nil Nonn stated that the civil parties had used up their allotted questioning time and announced that the Court would adjourn for the day and resume proceedings on Monday, January 30.