



**“What Have the Defense Lawyers Been Doing?”
Investigative Phase Examined during Witness Testimony**
By Mary Kozlovski

On Thursday, September 6, 2012, trial proceedings in Case 002 involving the accused Nuon Chea, Ieng Sary, and Khieu Samphan resumed at the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The testimony of witness Norng Sophang concluded with the cross-examination by defense teams for Nuon Chea and Ieng Sary. Throughout the day, debates over the investigative phase of Case 002 and whether counsel could raise questions on this arose, leading to frequent deliberation between the judges.

Ieng Sary monitored proceedings from a holding cell, while Khieu Samphan was present in the courtroom. Nuon Chea was in court for the morning session, after which he retired to the holding cell due to health issues.

Nuon Chea Defense Responds to Trial Chamber Ruling

After the court had been called to order and the Nuon Chea defense given the floor, International Co-Lawyer for Nuon Chea Andrew Ianuzzi informed the chamber that he had reviewed Internal Rule 76(7)¹ and noted that issues the Nuon Chea defense had raised related to fundamental fair trial rights and spoke to witness credibility, and could not reasonably be described as “procedural defects.” Mr. Ianuzzi provided a hypothetical example of a civil law trial during which it is

¹ ECCC Internal Rule 76(7) reads: ‘Subject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation. No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber.’ The ECCC Internal Rules (Rev.8) can be found at: <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>

revealed that an investigator paid certain witnesses to provide testimony. No judge would consider such a discovery to be a procedural defect, Mr. Ianuzzi asserted.

Trial Chamber Judge Nil Nonn interjected, stating that he had given the floor to the Nuon Chea defense to question the witness, not to make speeches, and the chamber had already ruled on the issue. President Nonn reminded Mr. Ianuzzi to consider Internal Rule 76(7) and that he could make further written submissions to the chamber. “I’m well aware of the limitations on freedom of speech in this courtroom,” Mr. Ianuzzi stated, noting that he was responding to the chamber’s suggestion on Wednesday to consider that internal rule. Again President Nonn interrupted, stating that Mr. Ianuzzi should consider relevant documents and rules if he intended to make a written submission.

Defense for Nuon Chea Resumes Questioning Witness

Mr. Ianuzzi noted for the record that Nuon Chea had never denied being head of the People’s Representative Assembly and was not ashamed of it. Mr. Ianuzzi asked Mr. Sophang if he recalled responding to a question by civil party lawyers on September 4, 2012, about what he meant when he told investigators from the Office of the Co-Investigating Judges (OCIJ) that Nuon Chea was in charge of “the sector relating to people.” Mr. Ianuzzi cited Mr. Sophang’s testimony that as chair of the assembly – which was publicly announced – Nuon Chea would know matters “relevant to the people” because he represented them. Mr. Sophang concurred that he learned such information through a public announcement but noted that he did not know about the internal “affairs” or “arrangements” concerning Nuon Chea. The witness said he understood that Nuon Chea’s role in the assembly meant he “represented” and would “defend” the people in whatever happened at the bases that may impact on them, noting that this was his “personal opinion.”²

Asked what the public announcement said, Mr. Sophang responded that he listened to Democratic Kampuchea (DK) radio broadcasts while working and there was a meeting of the assembly – their first session which he believed was in 1976 – during which appointees to specific positions were announced, including Nuon Chea as head of the People’s Representative Assembly, Kang Chab as head of the court, and Khieu Samphan as president of the State Presidium. In response to Mr. Ianuzzi, Mr. Sophang said he could not recall if the broadcast said anything else when announcing that Nuon Chea was chairman of the People’s Representative Assembly.

Mr. Ianuzzi cited a telegram numbered “54” that dealt with, among other issues, an alleged immoral act with a woman by someone named Soth, which Mr. Sophang said he recalled discussing in court. Mr. Ianuzzi cited an exchange from the September 3, 2012, transcript during which prosecutors inquired about a comment in Mr. Sophang’s OCIJ interview. When investigators asked Mr. Sophang why such a telegram would have been sent to Nuon Chea, he responded that Nuon Chea had to be contacted about matters involving “the internal situation and the violation of moral codes” as he was “in charge of the people.” Mr. Ianuzzi read that Mr. Sophang testified in response to the prosecution that his “analysis” was that the message had to be sent to Nuon Chea because he was in charge of social affairs and culture, though he could not know at the time. Mr. Ianuzzi inquired if Mr. Sophang’s “analysis” occurred well after the DK

² Mr. Sophang’s response was unclear in the English translation.



period. Mr. Sophang agreed, noting that he saw the annotation “Uncle Nuon” and told investigators his opinion that the telegram was sent to Nuon Chea because it involved “morality issues,” which the People’s Representative Assembly also had to know about. Mr. Sophang said if the chamber felt his personal analysis could not be considered evidence, it should be dismissed. Mr. Ianuzzi sought confirmation that Mr. Sophang’s assumption was based on Nuon Chea’s title and the fact that “Uncle Nuon” was written on the document. Mr. Sophang confirmed this summary.

When Mr. Ianuzzi inquired if the witness recalled Trial Chamber Judge Jean-Marc Lavergne presenting him with a range of telegrams on September 5, 2012, Mr. Sophang noted that he was not well and requested that he be asked direct questions. When Mr. Sophang asked Mr. Ianuzzi if he was referring to a Cambodian or foreign judge, Mr. Ianuzzi pointed to Judge Lavergne as the “very tall gentleman” wearing glasses two spaces to the right of President Nonn, eliciting a smile from Judge Lavergne. Mr. Sophang said he could recall the exercise but in little detail, and suggested it may be helpful to prepare documents for him. President Nonn told the witness that if he could not recall something, he could say so.

Mr. Ianuzzi inquired if Mr. Sophang recalled Judge Lavergne mentioning that Nuon Chea, among others, was copied into the aforementioned telegrams. Mr. Sophang said that almost every document was copied to Uncle and Uncle Nuon, who would be the first to follow after Pol Pot, or Brother Number One, followed by Uncle Van.³ The witness explained that the order was Uncle, Uncle Nuon, Uncle Van, Uncle Vorn and Uncle Khieu – “Uncle Van” would not be named before “Uncle Nuon,” or “Uncle Nuon” before Pol Pot – followed by “Documentation” and “Archive.” In response to a query from Mr. Ianuzzi about the limits of his knowledge, Mr. Sophang said at his level he was only supposed to know general information and did not understand the internal workings of the standing committee.

Mr. Ianuzzi sought confirmation from Mr. Sophang about his prior testimony that during his time coding telegrams he only dealt with a single message from Nuon Chea, a 1977 invitation to a People’s Representative Assembly meeting. Mr. Sophang confirmed this detail but noted another instance – for which he could not recall the date – when people were suffering from “drought or flood” and the upper authority issued a directive for his group to prepare telegrams to instruct people on addressing food shortages, which included Uncle Nuon’s signature. After an additional question from Mr. Ianuzzi, Mr. Sophang explained further that flooding had destroyed crops in one location and Nuon Chea provided recommendations in the aftermath, such as encouraging people to plant crops and urging cadres to encourage the people. Mr. Ianuzzi returned briefly to “Telegram no. 54” and sought clarification that it was the only telegram Mr. Sophang observed that dealt with “moral offenses.” Mr. Sophang verified this information.

Mr. Ianuzzi read an excerpt from a written record of Mr. Sophang’s second interview with OCIJ investigators dated March 28, 2009:

³ “Van” was Ieng Sary’s alias.

I did not know whether or not each location had made reasonable reports in accordance with the actual situations, because some telegrams reported that the living standards of the people have become better, but actually they did not know that the people ate porridge. I did not know. I heard from my friends after they had gone home and returned that they were very sorry to see the base was poor and deficient; that their parents did not have enough food to eat. But when one listened to the radio it was broadcast that our country had plenty and was joyful in the great leap forward. In the Democratic Kampuchea time, I also listened to the broadcasts while working. I was so very happy to hear that the people had better living, there were canals linking with each other, but the fact was different from what the radio broadcast. Sometimes someone wanted to have good face for himself, he just reported “very good, very good,” but some places had made true reports as well.

Mr. Sophang confirmed to Mr. Ianuzzi that he stood by the statement. Mr. Ianuzzi inquired if it was the case that Mr. Sophang did not know what was happening at the bases partly because reports from those areas were incorrect. Mr. Sophang said he was unsure about the situation at the bases, but colleagues who visited their homes said some bases had good leaders and enough food to eat while others had poor leaders and people had to eat porridge. Mr. Ianuzzi asked about the meaning of someone wanting to “have good face for himself.” Mr. Sophang explained that some people with “greed” wanted to claim credit and be promoted from, for example, the sector committee to the zone committee, or central or standing committees. Citing his “analysis,” Mr. Sophang said he had looked at reports that noted rice yields were up to three, five, or even ten tons per hectare in certain areas and wondered why people were starving if that was the case. The witness said people wanted to claim credit by under-reporting the situation or stating that people were happy and making progress, when in reality people found it difficult to eat and did not have proper clothes. Mr. Sophang said sometimes Angkar distributed clothes and materials – ordered and distributed by Khieu Samphan – but, as an example, the center would occasionally send a broken sewing machine that could not be put to good use. “It reflected the miserable life condition of the people, and it also reflected the incompetence of the local authority in leading their own location,” Mr. Sophang testified.

Mr. Ianuzzi quoted Mr. Sophang as saying in response to a question from OCIJ investigators that “in imposing sanction and investigation,” Angkar instructed that no harm be done, but artillery fire sometimes scattered and caused death and injury. When Mr. Ianuzzi inquired if people were harmed accidentally through possibly legitimate military activity, International Senior Assistant Co-Prosecutor Tarik Abdulhak objected, arguing that Mr. Ianuzzi had to “lay a foundation” to ensure the witness had direct knowledge of such events, given he had indicated that he did not go to the bases or observe military operations. Mr. Ianuzzi concurred and asked Mr. Sophang on what knowledge the above comments were based. Mr. Sophang said the comments were an assumption and should be invalidated, as he did not know “the truth” at the bases or whether there was artillery fire that killed civilians.

Noting that Mr. Sophang had mentioned in passing during his testimony that he would willingly come back to the court to testify about “foreign perpetrators” of crimes in Cambodia, Mr. Ianuzzi inquired to whom Mr. Sophang was referring. Mr. Abdulhak objected that the question was irrelevant and not within the scope of the trial. Mr. Ianuzzi argued that it is relevant if Mr. Sophang had personal knowledge of crimes committed during the DK period by foreign perpetrators, and repeated his question. President Nonn informed the witness that he did not need to answer, as the question was irrelevant to the facts before the chamber.



Next, Mr. Ianuzzi asked the witness if he was familiar with “Operation K-5” or the “K-5” shortly after the demise of the DK regime, prompting another objection from Mr. Abdulhak that events that occurred after the end of the DK period were not relevant unless there was a direct link with the evidence. Mr. Ianuzzi noted that the defense team had raised the “relevant” issue of whether deaths on a “massive scale” during the 1980s were wrongfully attributed to the Khmer Rouge and the question was legitimate. Again, President Nonn ruled that the question was irrelevant and the witness need not answer. Mr. Ianuzzi asked the witness for his insight into the meaning of the phrase “the dogs bark, the caravan passes” – which he had been told was a “kind of secret code” used by certain powerful individuals to exert influence – particularly when used by a person such as Khieu Kanharith.⁴

Mr. Abdulhak again objected, asserting that the witness’ comments about what people may have said outside of the DK context were irrelevant. Mr. Ianuzzi noted before concluding his questioning that their position was that public statements - “explicit, implicit or otherwise” – by officials which “may or may not be attempts to influence” the proceedings were relevant. President Nonn sustained the objection.

Ieng Sary Defense Probes Investigative Process

International Co-Lawyer for Ieng Sary Michael Karnavas began his questioning by noting Mr. Sophang’s first interview with OCIJ investigators starting on February 18, 2009, with a Cambodian and foreign investigator. In response to queries from Mr. Karnavas, Mr. Sophang said he recalled the interview, was told that an audio or video recording would be made, and he took an oath and was informed of his right against self-incrimination. When Mr. Karnavas inquired about Mr. Sophang ticking a box on the statement declaring that he could not read or write foreign languages, Mr. Sophang said that he just understood languages “a little” but not to use officially. Mr. Karnavas noted that Mr. Sophang indicated later in his interview that he taught children French and English and sought clarification on whether this knowledge was not sufficient for the purposes of the interview. Mr. Sophang said he was teaching basic knowledge of Latin characters – such as “a” and “b” – and it was not a “proper language class.” Mr. Sophang said he recalled the statement being read back to him, noted its consistency with what he said, and signed it.

After Mr. Karnavas sought confirmation from the witness on the date of signature of March 27, 2009, President Nonn inquired if Mr. Karnavas’ questions related to the charges against his client. Mr. Karnavas said the witness had testified and provided evidence the chamber would be relying upon, the prosecution had said that this was the time to explore issues with statements, and his questions were relevant to the case. President Nonn asked Mr. Karnavas if he had read the statements during the investigative phase. In response, Mr. Karnavas said he had read the statements – “there were thousands of them” – but he did not have time to go over all transcripts and tapes. “The better question is: did the entire bench have the opportunity to read everything? And the answer to that would be ‘no.’ It’s physically and humanly impossible,” Mr. Karnavas

⁴ Khieu Kanharith is the Cambodia’s current Minister of Information.

asserted. Mr. Karnavas argued that it was a question of whether the witness' testimony was based on his memory of the period or events that occurred during the recording of his testimony where he was shown documents.

President Nonn interjected, noting Internal Rule 76 regarding "nullification" and "procedural defects,"⁵ which could not be raised before the Trial Chamber or Supreme Court Chamber. President Nonn reminded Mr. Karnavas to put questions to the witness that related to the charges against the accused.

Mr. Karnavas said the chamber appeared to be taking away the right to challenge witness testimony and noted that he was not seeking nullification of the process. Mr. Karnavas said part of a tape he wished to play showed that the witness spoke with investigators the day before his interview, and noted that one of the national investigators was related to one of the national prosecutors. Mr. Karnavas asserted that he especially wished to explore the events of the day before the witness' interview, whether he was shown documents and why it was not recorded. "What's the purpose of having a dress rehearsal?" Mr. Karnavas inquired. President Nonn interrupted Mr. Karnavas, and the judges deliberated.

After the judges had completed their deliberation, Judge Lavergne said investigative acts were put on the case file during the course of the judicial investigation that were accessible to defense teams and accused persons, and Mr. Karnavas' questions put forward to date related to written records of witness statements that were available to the defense. He stated that the chamber was not discussing the investigation at this point. He noted that audio recordings were in Khmer, without written transcripts in French or English, but defense teams included Cambodian lawyers who could listen to them. Judge Lavergne said:

What have the defense lawyers been doing over the course of the many years of the judicial investigation? That is my question. We are here to study and examine issues of substance. Issues relating to the judicial investigation must not be subject to redundant and repetitive questions.

Judge Lavergne said the chamber would respond to written submissions on the issue in due course. In a lengthy response, Mr. Karnavas said he felt Judge Lavergne's remarks went to the investigative phase, whereas he was discussing the witness' testimony, noting that there was perhaps a divide stemming from their different legal traditions. Mr. Karnavas said he would like to play "Tape 1, Play 4" – where the court would hear words to the effect of "as you briefed me yesterday" – which indicates that the day before the witness was advised of his rights and questioned on tape, "there was an interview." Mr. Karnavas asserted that there appeared to be "disinterest" on the part of the Trial Chamber in getting to the truth, and he was entitled to ask such questions, which were essential in determining weight given to the witness' testimony in court. Mr. Karnavas said the witness "disavows" some of his comments despite having agreed with the content of the statement, which the defense was also entitled to explore. In response to the query about what defense teams had been doing, Mr. Karnavas responded, "Let me remind the Trial Chamber that this was the very first case of this kind in Cambodia and there were all

⁵ In the English translation, President Nonn cited 'sub-rule 12' of Internal Rule 76, which does not appear to exist in the ECCC Internal Rules (Rev.8). Thus it is unclear which sub-rule President Nonn referred to. The rules can be found at: <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>

sorts of legal issues that had to be addressed.” He also seemed to be commenting on a discrepancy in size between the defense and the prosecution, by referring to the latter as an “armada” and a “Roman legion.” Mr. Karnavas stated that he was not attacking the OCIJ and noted that he inquired about the process used in interviews in his third investigative request and never received an answer. Mr. Karnavas said he believed the tape would assist the witness in discussing the day prior to the recorded interview.

In response, Mr. Abdulhak firstly noted that there were 943 written records of interview filed over a three-year period – “not an insurmountable workload for a team of lawyers and support” – and that the resources of the prosecution were roughly equal to that of the defense teams. Mr. Abdulhak said the statement in question was filed on September 15, 2009, several months before the closure of the investigation and of those 900-plus written records a smaller number related to “the acts and conduct of the accused,” Mr. Abdulhak argued:

Having not raised any of these issues or inconsistencies with the co-investigating judges, having failed to request follow-up investigative action, that would have been appropriate had the defense reconsidered there to be any inconsistencies. They now come before you some three years after the interview to raise these issues. They do not come before you in good faith.

Mr. Abdulhak said the prosecution agreed with defense counsel that where there are “significant inconsistencies” and a legitimate question as to the witness’ credibility, some latitude should be given to explore prior statements and transcripts. However, he argued, the witness has been at pains to qualify responses that he felt “verged on speculation.” Mr. Abdulhak contended that this



particular attempt to “falsely create a sense of controversy” should not be entertained. “We propose that our learned friend should now be directed to turn to alleged inconsistencies in the statements and test the witness’ evidence in that manner,” Mr. Abdulhak concluded.

Following a short recess, Trial Chamber Judge Silvia Cartwright addressed the parties, firstly noting the “understandable” discomfort of those coming from different legal systems. She stated, however, that under the court’s procedure, there was general legal presumption of the integrity of the investigation and concerns about methodology or subject matter in the investigation must be explored at the investigative stage. Judge Cartwright said that at trial:

The investigation is treated as the starting point and can be rebutted only in exceptional instances. Any such rebuttal must relate not to technical issues, but to substance, and in raising an exception you must satisfy the Trial Chamber that you have well-grounded concerns about the reliability of any part of the investigation. To use a well-known common law term, you cannot embark on fishing expedition.

Judge Cartwright said it seemed that concerns about witness’ statements during the investigation and their present testimony could be dealt with by asking the witness. “For these reasons the Trial Chamber is yet to be convinced that the playing of a tape or a portion of a tape will assist in

any way. You need to satisfy the Trial Chamber that there is a well-grounded reason for going back inside the investigation and investigating it,” Judge Cartwright said.

Mr. Karnavas said he understood the court’s position, and noted that his colleague had told him that his mention of a national investigator being related to one of the national prosecutors was “improperly translated.” Mr. Karnavas said the investigator was the younger brother of one of the prosecutors and the same investigator involved a matter over which the defense team had filed an application in relation to another witness. Judge Cartwright stated that suggestions of impropriety were “themselves improper”; implying that someone was related was asking the chamber to “draw an inference of impropriety” and was not acceptable in court. Mr. Karnavas apologized, stating that the team was endeavouring to be professional.

Counsel for Ieng Sary Question Witness about Interview Process

Mr. Karnavas asked Mr. Sophang if he met with court investigators the day before he was interviewed on tape. Mr. Sophang said a team came to meet him a day prior to his interview at the primary school where he worked. When Mr. Karnavas asked Mr. Sophang if he discussed “Pang” the day before he went on tape, Mr. Sophang said he could not recall. Mr. Karnavas inquired if Mr. Sophang was questioned prior to his interview on the day he was tape-recorded. Mr. Sophang said he chatted with the team briefly, but could not recall the substance of the conversation. He testified he had a roughly hour-long conversation with the team the day before his recorded interview.

In response to a query from Mr. Karnavas about indications that he sometimes “speculated” when giving answers in his statement, Mr. Sophang said there were phrases like “perhaps,” “maybe,” and “it is possible that” because OCIJ investigators did not inform him that he could not use such terms in court. Mr. Karnavas asked if Mr. Sophang’s use of the phrase “as I understand it” meant that he was speculating in his answer. Mr. Sophang said the investigative team requested his explanations, which were based on his understanding and “analysis,” not on fact, and could be referred to as “speculation.” Mr. Karnavas then inquired if Mr. Sophang’s use of “according to my analysis” – particularly when investigators were showing him documents – meant that he was speculating on documents and the events described in them. The witness said he responded to the question put to him based on his level of knowledge.⁶

Mr. Karnavas quoted a response the witness gave in his September 5, 2012, testimony when Judge Lavergne asked him if it was “possible that it was So Phim” and Mr. Sophang replied that it was “possible.” Mr. Karnavas asked the witness if he was also speculating when asked such questions. Mr. Abdulhak objected to this characterization of the witness’ description of his responses, noting that he described “analysis” based on his understanding. “There is significant difference between one speculating without any knowledge of the fact and one who had more than eight years experience – based on this witness’ testimony – in the procedures of communicating and in the systems that were employed,” Mr. Abdulhak argued, stating that such analysis was not speculation. Mr. Karnavas said it was “rich” for the prosecutor to give a closing argument while telegraphing to the witness what he should be saying, while accusing the defense of the same conduct. Mr. Karnavas said the prosecution would have ample time to clarify the witness’ definition of “analysis” and asserted that the objection was belated.

⁶ The English translation was unclear in this part of the testimony.

After a discussion among the judges, Judge Cartwright said the chamber allowed the prosecution's objection and noted that Mr. Karnavas' question was based on a presumption that Judge Lavergne posed a question inviting a speculative answer, which was incorrect. Judge Cartwright explained that "speculation" in English means to "guess," or have no factual basis for making a statement. The witness' testimony has been translated as "analysis," which is a statement based on facts the witness knows, Judge Cartwright said, requesting that Mr. Karnavas discard the word "speculation" when questioning the witness and employ more neutral terms.



Mr. Karnavas referred to a prior comment by Mr. Sophang that Ieng Sary had "personal telegram translators"⁷ and inquired if this was Mr. Sophang's statement or investigators included it, based on their understanding of what Mr. Sophang told them. Mr. Sophang said he made the statement and investigators did not add it. When Mr. Karnavas asked if Mr. Sophang knew this for a fact at the time, the witness said he was not certain who the translators were, but Ieng Sary had to send telegrams overseas and must have had his own means of sending them. Mr. Sophang said foreign communications were initially sent to his unit and had Yem's⁸ signature and he had trained staff at the Ministry of Foreign Affairs (MFA) at the former prime minister's in decoding telegrams, though he later had no contact with the ministry.

Mr. Sophang confirmed to Mr. Karnavas that he stood by his statement that he did not know where Ieng Sary would send a message to be translated. After Mr. Karnavas noted that Mr. Sophang said "maybe" when asked if the radio communication unit at the old American embassy was used when a telegram had to be sent overseas, Mr. Sophang confirmed that he did not know for a fact. Mr. Karnavas cited Mr. Sophang's September 3, 2012, testimony in which when he responded to questions from the prosecution by saying he was unsure if there was a telegram translation unit at the MFA. In response to Mr. Karnavas, Mr. Sophang said he was telling the truth when he gave the answer.

Mr. Karnavas read an exchange from Mr. Sophang's September 4, 2012, testimony in which the witness responded to questions from civil party lawyers by stating that he could not fully "grasp" overseas telegrams and was not in a position to comment, the MFA did not have telegram communication with his team, and he did not know how the MFA and Committee 870 communicated. Mr. Sophang verified his statement and explained that he once went to the MFA, or B-1, to provide half a day of training on decoding telegrams to a man named Buon⁹ - who had a "firm foundation" and learned quickly - who was later sent to the Cambodian embassy in Bangkok. In response to further questions from Mr. Karnavas, Mr. Sophang said the training was

⁷ This appeared to have been read from one of Mr. Sophang's interviews with OCIJ investigators.

⁸ Spelling of this name was unclear in the English translation.

⁹ Spelling of this name was unclear in the English translation.

complicated and usually took about four hours to grasp the basics for those with the “educational bar.”¹⁰

Mr. Karnavas cited a section in Mr. Sophang’s first interview with investigators – that is apparently recorded on tape but not included in the investigators’ summary – where he indicated that he only knew about “technical matters.” Mr. Sophang confirmed he knew of “technical aspects” but not “political aspects.” Mr. Karnavas inquired how Mr. Sophang was analyzing documents and giving opinions on them if he did not know about political matters. Mr. Abdulhak asserted that the question was vague and unfair to the witness and defense counsel should cite specific examples.

Ieng Sary Defense Quizzes Witness on K-1

Mr. Karnavas sought confirmation on whether Mr. Sophang gave decoded messages to a messenger. Mr. Sophang confirmed this information and explained that the messengers – who were not authorized to enter the K-1 premises – would deliver the messages to the guard post in front of K-1. In response to questions from Mr. Karnavas about K-1, Mr. Sophang testified that he was only authorized to enter K-1 when summoned by Ponn¹¹ to a meeting and, in some such instances, brought messages to Ponn himself. Mr. Sophang confirmed he could not submit messages to any one else but Ponn, his direct supervisor. The witness said there were two multi-story buildings and Ponn’s office was on the second floor at the far end of the building “opposite the sun.”

When Mr. Karnavas asked about the procedures for delivering messages, Mr. Sophang explained that when K-1 wanted a short message decoded by his unit they would relay it through the telephone, but longer messages would be sent through messengers and there were times when Ponn brought them in person. Mr. Sophang said less urgent messages would be couriered through messengers from K-1 to his unit but if they were urgent they would bring them to the unit themselves. His group was told to put the code letter “D” on urgent documents and their authors would come to the unit to give additional instructions, Mr. Sophang said.

Next, Mr. Karnavas questioned Mr. Sophang on whether Ponn divulged his activities at K-1. Mr. Sophang said Ponn did not disclose his duties or responsibilities and there was a principle of “utmost secrecy” among those who worked with confidential messages and documents. Mr. Sophang testified:

We had to adhere to three principles of secrecy. Whatever we were not supposed to speak out, we must not speak out. Whatever we must not ask questions, we had to keep silent. So we did not know, we did not hear, we did not see, and we did not speak for the matters that were considered of utmost secrecy.

¹⁰ It was unclear in the English translation what this phrase meant, though he seemed to suggest that they were people who had attended university

¹¹ During the hearing, pronunciation and translation of the names of two people – “Pang” and “Ponn” – were unclear and may have been mistaken for each other. The names are spelled phonetically according to the live English translation. Those who wish to verify the official spelling of any name should consult the official ECCC transcripts. Transcripts of Case 002 proceedings can be found at: <http://www.eccc.gov.kh/en/case/topic/2>.

Mr. Karnavas asked if Ponn and The abided by those principles. Mr. Sopahng said that he¹² led by example and did not talk about who reported or spoke to about the internal work of K-1. When Mr. Karnavas asked if Ponn was the same person Mr. Sopahng worked with at B-20 prior to 1975, Mr. Sopahng said he worked with Ponn in 1973 but was separated from him in late 1974, when Ponn went to a location west of Phnom Penh and Mr. Sopahng moved from the maquis jungle to B-20. In response to a query from Mr. Karnavas, Mr. Sopahng that at B-20 the units were separate and did not contact each other or see each others' faces – in order to “preserve the principle of secrecy” – and when his telegram unit received information from the battlefield or the front they would prepare it for broadcast.

Before a midday recess, Mr. Ianuzzi quoted from a Pre-Trial Chamber decision dismissing an appeal by the Nuon Chea defense related to the recalling of witnesses,¹³ noting that it was based on a decision from the OCIJ – both of which are operating within the civil law system in place at the ECCC. Mr. Ianuzzi said the defense team believed they were able to explore such issues with witnesses on the stand. In response to the question about what the defense was doing during the investigative stage, Mr. Ianuzzi said the Nuon Chea defense was filing 25 requests for investigative actions, without mentioning all requests by the other defense teams. Additionally, Mr. Ianuzzi commented that he understood the word “speculate” in English to encompass a conclusion based on “little or insufficient evidence.”

Defense for Ieng Sary Delves into K-1

After returning from recess, Mr. Karnavas sought confirmation that Ponn and The had exclusive authority to copy people into documents that being decoded to be sent to K-1. Mr. Sopahng confirmed this summary. Citing the witness' prior testimony and first statement, Mr. Karnavas inquired if it was correct to say that Pang did not have that authority, which Mr. Sopahng also confirmed. Mr. Sopahng said he based this on his experience in the jungle where Pang never oversaw or interfered with his work, either technically or by verifying telegrams. Mr. Karnavas sought clarification that Pang¹⁴ could not override the authority of Ponn, who was in a subordinate position. Mr. Sopahng confirmed this summary.¹⁵ In response to Mr. Karnavas, Mr. Sopahng confirmed that Ponn had the discretion to copy people into telegrams that were being sent to K-1 but he did not know if such messages reached their intended recipient as this was arranged by the internal team. Mr. Sopahng agreed with Mr. Karnavas that Ponn had the authority to include and exclude recipients, but he did not have authority to override Pol Pot.

Mr. Karnavas queried whether Mr. Sopahng could say with certainty what Ponn's activities within K-1, given that Ponn adhered to principles of secrecy. Mr. Sopahng said Ponn would not reveal “internal secrecy” to the outside. In response to a question from Mr. Karnavas, Mr.

¹² Mr. Sopahng was believed to be referring to “Ponn.”

¹³ Mr. Ianuzzi quoted from the decision as follows: “This statement by the co-investigating judges, means that if they properly exercise their discretion to refuse a request for investigative action, such as to interview or re-interview a witness, the trial stage affords the defense ‘every opportunity to contest the evidence’ including the possibility to ‘request the Trial Chamber to summon any of the witnesses the co-investigating judges have decided not to interview or re-interview’ ... The point made by the co-investigating judges with which the Pre-Trial Chamber agrees is that the trial stage is an additional and alternate forum for the defense to contest the reliability of evidence.”

¹⁴ Mr. Karnavas referred to Pang as “in charge” or “chairman of 870.”

¹⁵ Spelling of this name was unclear in the English translation.

Sophang said he was not making assumptions about what happened to documents once they were received by Ponn, stating that it was factual and based on his experience through years of communication and contact with Ponn.

Citing Mr. Sophang's September 3, 2012, testimony Mr Karnavas quoted the witness as saying that Ponn and The were secretaries and worked directly with Pol Pot and that instructions he received came from above or through notes taken in standing committee meetings. Mr. Sophang responded to a query from Mr. Karnavas by stating that he had never attended standing committee meetings. Mr. Karnavas asked if Ponn told Mr. Sophang that he attended standing committee meetings where he acted in a secretarial capacity. The witness replied that he was not told this, but instructions from Pol Pot for Mr. Sophang to decode came by telegram in Ponn's handwriting and most of the messages Ponn received from the upper echelon were in his handwriting.¹⁶ When Mr. Karnavas repeated his question, President Nonn remarked that it had already been asked and answered.

Mr. Karnavas cited the passage that referred to Ponn and The as working directly with Pol Pot as secretaries, inquiring about the source of that knowledge if Ponn never told Mr. Sophang about his activities in K-1. Mr. Sophang testified that Ponn only spoke about work, including the technical aspects of encryption, and never told him he was a secretary, but when Ponn received instructions or took notes of Pol Pot's words he acted as his personal secretary. In response to Mr. Karnavas, Mr. Sophang confirmed that he was assuming based on notes of Pol Pot's instructions in Ponn's handwriting that Ponn was present at standing committee meetings. "That [was] also the practice while we were still in the jungle. When Pol Pot had a message to deliver he would call Ponn to go and see him," Mr. Sophang testified.



*Pol Pot gives a speech during the DK period.
(Source: Documentation Center of Cambodia)*

¹⁶ The English translation was unclear in this part of the testimony.

Confusion Arises over Names during Testimony

Mr. Karnavas noted that on June 13, 2012, Oeun Tan¹⁷ – whom Mr. Sophang said he did not know – testified before the chamber. Mr. Karnavas noted that Mr. Tan had testified to being a guard from 1970 onwards, who was assigned by Pang to perform those tasks. After Mr. Karnavas quoted from an extract of Mr. Tan’s testimony relating to the transmission of telegrams, which mentioned the names Ponn and Pang, Mr. Abdulhak intervened. Mr. Abdulhak noted that he had not pronounced the names as such while questioning Mr. Tan. Confusion arose at this point in the hearing over the identities of people named Pang, Ponn, and Phang and their respective roles.¹⁸

Mr. Karnavas said Mr. Tan’s testimony suggested that he was the one who physically delivered all telegrams to Pol Pot – with nothing said about Ponn – and inquired of Mr. Sophang if that was the procedure. Mr. Abdulhak stated that this misrepresented the evidence, which included nothing that could be reasonably read as indicating that Mr. Tan said he was the only person who ever carried the letters. Mr. Karnavas asked if Mr. Sophang was aware that telegrams were given to Mr. Tan to hand deliver to Pol Pot, to which Mr. Sophang responded he was not aware, noting that Ponn was in charge of the telegram office until sometime in mid-1978.¹⁹ In response to queries from Mr. Karnavas, Mr. Sophang said he never saw Ponn deliver a message he prepared to Pol Pot and he did not know what Ponn did with the messages. Mr. Sophang agreed with Mr. Karnavas that he was not in a position to disagree with Mr. Tan because he was on the outside of K-1, and testified that he did not know if Mr. Tan had the authority to deliver messages directly to Pol Pot. Mr. Sophang made an “assumption” that Mr. Tan took Ponn’s place after his disappearance and delivered messages directly.²⁰

Citing a comment in Mr. Sophang’s August 29 testimony, Mr. Karnavas inquired if he stood by his statement that Pol Pot “oversaw every sector and every field” and “had the right to say anything concerning anyone.” Mr. Sophang confirmed this comment, noting that Pol Pot had the say in all aspects of management regardless of the field, including politics and the economy. Mr. Karnavas cited a partial transcript of audio from Mr. Sophang’s interview, quoting Mr. Sophang as saying that “all affairs rested with Uncle Pol Pot, Uncle Number One.” When Mr. Karnavas asked if the witness confirmed this statement, Mr. Abdulhak said the defense was seeking to ask the witness about the affairs of senior leaders and their powers. The prosecution had refrained from asking such questions because it became clear that the witness did not know much about the internal workings of the leadership, and defense counsel should be directed to follow the same approach, Mr. Abdulhak asserted. Mr. Karnavas said the point was that the witness had said he did not know the internal workings of the party but stated that “all affairs” rested with Pol Pot, and the parties could have answer as to whether he was speaking from knowledge or speculating. President Nonn instructed Mr. Sophang to respond. Mr. Sophang said he based his statement on the content of telegrams, as all messages and telegrams were addressed to “Uncle

¹⁷ Oeun Tan testified as a witness at the ECCC in June 2012.

¹⁸ In a comment, Mr. Sophang identified himself as “Phang”; however, the English translation was unclear in this section of the hearing on the exact roles, spelling and pronunciation of “Pang,” “Ponn,” and “Phang,” all of which differed at numerous points. The names are spelled phonetically according to the live English translation. Those who wish to verify the official spelling of any name should consult the official ECCC transcripts. Transcripts of Case 002 proceedings can be found at: <http://www.eccc.gov.kh/en/case/topic/2>

¹⁹ Mr. Sophang’s response was unclear in the English translation.

²⁰ The English translation was unclear in this part of the testimony.

Number One” and everything must therefore be within his knowledge. Mr. Sophang said he did not know the scope of Pol Pot’s power and authority.

Ieng Sary Defense Delves into “870”

Mr. Karnavas quoted two extracts from Mr. Sophang’s statement to investigators in which he referred to both the central and standing committees as “Committee 870,” and inquired if Mr. Sophang was guessing when he made such statements or if they were based on his knowledge. Mr. Sophang said most of the telegrams he had seen were addressed to Committee 870 and some to “Angkar 870.”²¹ Mr. Karnavas repeated the question twice more, at which point Mr. Abdulhak noted that defense counsel kept interrupting the witness while he was speaking and invited the chamber to direct him to “lower his tone,” treat the witness with respect, and stop interrupting him. President Nonn advised Mr. Karnavas not to interrupt the witness.

When Mr. Karnavas again posed the question, Mr. Sophang said there was a difference between the central and standing committees. Mr. Sophang agreed with Mr. Karnavas that his indication that the Committee 870 was both the central and standing committee was an “overnight.” In a somewhat confusing response, the witness noted that messages did not distinguish between the two and were addressed to Committee 870 – copied to Uncle, Uncle Nuon, Uncle Van and Brother Khieu – and he concluded that, because they did not refer to all central committee members, Committee 870 referred to the standing committee.²² Mr. Sophang confirmed to Mr. Karnavas that Committee 870 referred to the standing committee.

Mr. Karnavas noted that Mr. Sophang testified that certain terms were used interchangeably – Committee 870; Office 870; 870 – and read an excerpt from his September 4 testimony in which he said the various and interchangeable terms made it difficult to discern “which is which.” Mr. Sophang confirmed this statement. Mr. Karnavas quoted Mr. Sophang as saying in a September 3, 2009,²³ statement that “870 was similar to Office 870” and referred to the central committee, and agreeing that various designations including Angkar, 870, and M-870 referred to the central committee. In response to a question from Mr. Karnavas, Mr. Sophang said that if it bears the code number 870, it refers to the “center.” Mr. Karnavas asked if Mr. Sophang was distinguishing between 870 and Committee 870, to which Mr. Sophang replied that he was unsure about the distinction between the committee and Angkar, but he was sure 870 referred to the center. When asked by Mr. Karnavas if he did not actually know whether Committee 870 is the central or standing committee, Mr. Sophang said he was “not sure.”

Mr. Karnavas cited Professor David Chandler’s July 24, 2012, testimony in which the professor stated that he believed 870 was a code name for Pol Pot, asking Mr. Sophang about his opinion on Prof. Chandler’s analysis. Mr. Abdulhak argued that it was not appropriate for the witness to be asked to opine on the opinions of expert witnesses. Mr. Karnavas asked Mr. Sophang if Pol Pot was referred to or known as 870. The witness said that, according to his knowledge, Pol Pot was never addressed as Brother 870 and 870 never referred to a particular individual – he was

²¹ Mr. Sophang’s response was unclear in the English translation.

²² Mr. Sophang’s response was unclear in the English translation.

²³ While the date of this exchange was listed as September 3, 2009, Mr. Karnavas referred to the “prosecutor” posing a question.

addressed by the name “Brother Pol” or “Brother Number One.” Mr Sophang said that 870 was a code name for an entity, not a person.

Briefly returning to telegrams, Mr. Karnavas cited an exchange in Mr. Sophang’s statement in which he responded to questions about “Telegram No. 15” by stating that Pol Pot was able to solve certain problems immediately, but for some problems he would call a meeting of the standing committee in order to make a decision. Mr. Karnavas asked how Mr. Sophang knew this information. Mr. Sophang said he had encountered a circumstance when Pol Pot responded immediately, noting as an example an emergency request from the battlefield for a decision from the upper authority. Shortly after receiving the message Pol Pot sent a message back, Mr. Sophang said, but for more complicated issues, he may have called a meeting to reach a decision. Mr. Sophang again stated that he had proposed to the court that parts of his statement where he used words suggesting an assumption should be removed. When Mr. Karnavas inquired if Mr. Sophang was suggesting the chamber remove the part of his statement that said Pol Pot would convene a standing committee meeting to make a decision because it was a presumption on his part, Mr. Sophang concurred.



Pol Pot greets fellow Cambodians as he arrives at the Pochentong Airport (present-day Phnom Penh International Airport) (Source: Documentation Center of Cambodia)

Next, Mr. Karnavas cited Mr. Sophang’s statement in which he responded to a question about “Direction of 870” dated January 3, 1978, by saying that he recognized the handwriting of Pol Pot because he had the right to make corrections. Mr. Karnavas asked the witness if he actually recognized the handwriting, or he assumed it because he assumed Pol Pot could make corrections. Mr. Sophang said he had previously seen Pol Pot’s handwriting and the correction was in Pol Pot’s handwriting. Mr. Karnavas further quoted Mr. Sophang as saying that the document “may” have belonged to Committee 870, inquiring if he was also making assumptions about the document based on his own analysis. Mr. Sophang agreed, as he was not advised to be cautious in his use of words and said “maybe” a lot because he was unsure. Mr. Karnavas referred back to Mr. Sophang’s statement in which he is shown a document entitled “Standing Committee Meeting October 9, 1975.” Mr. Karnavas quoted the witness as saying:

According to my own analysis, some did not take and execute the standing committee instructions completely because they used their power as senior. I just saw one last document saying that they had not asked for the comments of the standing committee but already shot forty people to death, then reported afterwards, and in some cases no report was made.

In response to Mr. Karnavas, Mr. Sophang said he made it clear that the answer was his own analysis after the document was presented to him by the OCIJ, and not his personal experience at the bases. Mr. Karnavas inquired of the witness if, when he was asked to provide analysis, he was making assumptions because in many cases he did not have first-hand knowledge of the events. Mr. Sophang concurred.

Finally, Mr. Karnavas inquired if Mr. Sophang was telling the chamber to be careful with accepting the content of his statements where he made assumptions, presumptions, conclusions or analyses. Mr. Abdulhak objected that the question was both a compound and a leading question; it was improper to be asking the witness how the chamber should assess his evidence and the chamber was capable of doing so itself. Mr. Karnavas said that when presented with certain segments of his statements, the witness had indicated repeatedly that he made some assumptions, speculated, and provided analyses that were not based on personal knowledge. Mr. Karnavas said the witness had also indicated that the chamber should disregard those portions of his testimony, and therefore he was simply asking if Mr. Sophang wished the chamber to be cautious in accepting information in his statements. Judge Cartwright upheld the objection and stated that the chamber would take into account the various issues raised during examination of this witness and the judges were “quite capable” of coming to this conclusion.

The Ieng Sary defense team concluded questioning of Norng Sophang, whose testimony at the ECCC came to an end. President Nonn adjourned the day’s proceedings, which are set to resume on Wednesday, September 12, 2012, at 9 a.m.