



Music, Sighs, and Bathroom Breaks

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The delays and difficulties that have plagued the proceedings of Trial 002 at the ECCC continued into the third day of evidentiary hearings, with no end in sight. During Wednesday's proceedings, the court dealt with problems ranging from health issues of a civil party to funeral music that threatened to drown out and derail a videoconference with the prosecution's first witness. The frustration and tension that has been evident in this trial since it began two weeks ago show no signs of abating.

Another Change in Plans

After beginning the proceedings on time for every day of the trial so far, the judges entered the courtroom fifteen minutes late this morning. Immediately after calling the court to order, President Nonn made the reason for the delay known, informing the parties that there would be another change in plans. Klan Fit, the civil party who was expected to continue testimony today, would not be able to testify this morning due to his health, forcing the court to postpone and reschedule the hearing of his testimony to a later date. The court had arranged for the second civil party who is scheduled to testify during this first phase of the trial to be available for examination in the court this morning.¹

The president also reported that the court had been able to establish the video link that it had mentioned during Tuesday's proceedings in the remote area where prosecution witness TCW395 lives and that the witness was feeling well enough today. Due to these developments, the Trial Chamber had rearranged its schedule to allow this witness's examination to begin this afternoon, pushing the continuation of Nuon Chea's examination to an unspecified later date.

¹ The CTM blog post for Tuesday, 6 December, 2011, incorrectly identified the witness who would testify by video link as the second civil party, TCCP123, Romam Yun. It was clarified during today's hearing that it is actually prosecution witness TCW395, Long Norin, who would testify by video link.

Preliminary Matters

President Nonn then called Romam Yun, the second civil party scheduled to testify, to the witness dock. As the civil party was being taken to the dock, Ieng Sary's lawyer, Michael Karnavas, asked for the court's attention. He reported that, after Tuesday's proceedings adjourned, the civil party Klan Fit "began mingling with others," and these others "were cheering him on and patting him on the back." Mr. Karnavas argued that the court should adopt a standard practice for any person giving testimony, whether a witness or a civil party, of not allowing contact with any other witnesses or civil parties until after his or her testimony has been completed.

President Nonn replied that the court had already advised the civil parties on this matter and had coordinated with the Witness and Expert Support Unit (WESU) to ensure there is compliance with this provision. Reiterating that this case is very complicated, the president stated that at times the court would not be able to control every interaction, but he requested that the WESU make further efforts to ensure these rules are followed.

The Co-Prosecutors also took the opportunity of the pause in the proceedings to inform the court that they would like to interrogate the witness who would be heard in the afternoon session on all relevant facts in the indictment, rather than only on those matters that are designated for the first phase of the trial. The co-prosecutor stated that this request was based on the "exceptional reason" of the witness's health status. As the Trial Chamber had stated at the beginning of the day, the witness's condition is deteriorating on a daily basis.

Mr. Karnavas objected to the timing of the request, stating that these requests need to be made well in advance in writing directly to the court and not in a public hearing and to permit the other parties time to respond. Accusing the prosecutors of "lobbying for the public," he declared that he felt "sabotaged and ambushed" with these last minute requests. "We should be hearing the evidence not dealing with procedural issues," he concluded.

President Nonn quickly ended the arguments, stating, "We should not continue this exchange," and quickly turning to the examination of the civil party in the witness dock.

The Second Civil Party Testifies

The testimony of 70-year-old Romam Yun lasted only for the morning session, with a tight control on the new time limits put in place by the judges, seemingly imposed in response to meandering questions posed to Klan Fit on Tuesday. The examination of the civil party progressed haltingly, as Mr. Yun seemed confused throughout the questioning, often consulting with and speaking directly to the interpreter who was assisting him. Although the court's Khmer-English interpreter attempted to create cohesive statements from Mr. Yun's responses, several Khmer observers in the public gallery noted that the civil party's actual responses were muddled and usually non-responsive to the question actually asked. While the civil party lawyer and the two co-prosecutors who completed the morning's examination were able to elicit some information from Mr. Yun, it is unclear how valuable, if at all, this evidence will be in the case before the court.

Mr. Yun's testimony began with a few biographical details in answer to questions posed by President Nonn. He stated that he was born in a small village in the northeast of the country and has remained there his entire life; he works as a farmer in the village. He and his wife have four children.

The civil party lawyer then began his questioning of the party, asking him about his situation prior to 1975. In response, Mr. Yun instead conveyed to the court his feelings on the Khmer Rouge's policy and activities. "I cannot say my work with the Khmer Rouge is right or wrong, but the political line was not proper," he said. "The Khmer Rouge were too extreme, and they violated human rights. They used community force unwisely.... If we did not work, we were given nothing to eat. This political line was too radical." Comparing the Khmer Rouge to parents of the people, he stated, "They were supposed to educate us and treat us well, but instead they imprisoned us."

Before Mr. Yun could launch into a much longer speech, President Nonn interrupted him and asked that he listen closely to the question put to him. He also told the civil party lawyer to rephrase the question, so that it is shorter and clearer and will elicit the appropriate response.

After this early hiccup in the examination, Mr. Yun was able to answer a number of the civil party lawyer's questions, though perhaps not as fully as the counsel would have liked. Mr. Yun reported that "at the beginning of the Pol Pot regime," at some point before 1975, he worked as a messenger, carrying mail to senior cadre. In this position, he would carry mail from and to the villages and to people in the communes. At times, he went all the way to the Vietnam-Cambodia border to carry these messages. He also reported that he would bring letters to Van at the Northeast Zone. When asked if Van had another name, he stated, "I only knew him as Van, but I just learned now that he has another name." (Although the party did not state it, Van is known to be the alias of Ieng Sary.) Mr. Yun stated that he did not know the content of the messages he delivered to Van because they were confidential and "none of my business."

At some point, Mr. Yun reported, he became village chief and was tasked with managing the farming in the village, solving local problems and improving the "solidarity" of the people within the village. When he showed an ability to manage the village well, he was eventually installed as the commune chief as well, managing both the village and the commune at the same time. As part of his tasks in this combined role, he was told to follow the plan to "sweep clean" the village and commune, which he was told meant to get rid of the people who were "bad." (When asked later what a "sweep clean" operation was, however, Mr. Yun replied that it meant to clear the village of grass.)

While he served in this official capacity, he was often called to attend meetings, where they discussed farming, "proper conduct," and plans for the communes. These meetings were led by Van. When asked again who Van was, Mr. Yun replied, "He was Cambodian, but his appearance was more like a Westerner, a *barang*."

When questioned on the consequences of deviating from the plans set out by the leaders, Mr. Yun stated that people who could or would not complete their work would be "written up or

taken out.” Sometimes, these people were imprisoned or detained and accused of being enemies against the revolution, he said, and sometimes they were taken out into the forest and might have been killed.

When asked if he had any final statements for the court, Mr. Yun ended this part of his testimony as he began, with a summation of his feelings about the Khmer Rouge. “When I first joined the revolution, we cultivated the crops and other plantings and the plants grew very well,” he stated, “but this was fruitless. By analogy, the policy was very good but it did nothing good for people.... The tree trunk was very healthy, but it bore no fruit.”

At the completion of the civil party lawyer’s questioning of Mr. Yun, Pich Ang requested that the court allow the witness to take a five-minute break before continuing the questioning, as Mr. Yun appeared tired from the morning’s examination. The court determined it was an appropriate time for a recess and took the morning break.

Defining the Scope of Civil Parties’ Rights

As soon as the court returned from the morning recess, Mr. Karnavas rose to make a further objection related to his earlier complaint. He stated that he had observed the civil party Mr. Yun talking to the civil party lawyer during the break. Stating that this behavior is not permissible in the courts where he regularly practices, Mr. Karnavas argued that the civil parties should refrain from consulting with their lawyers while they are on the stand, as the lawyers can influence the testimony of the party.

Deputy Co-Prosecutor William Smith responded that the prosecution agrees with the defense counsel. While witnesses are giving evidence, they should not be given the opportunity to be coached by their lawyers. But he argued that the same standard should be set in place for the accused, in that there should not be any discussion with their counsel on the subject on which they are testifying at that time.

Civil Party Co-Lead Lawyer Elisabeth Simonneau Fort then replied that a civil party is not a witness, and therefore the civil party lawyers should be allowed to talk to their clients. Stating that this is set out as a rule in the ECCC, she concluded, “I do not think we need to be bringing this up every day.”

Asserting that he was not implying that the civil party lawyers were coaching the witnesses, Mr. Karnavas argued further that allowing the civil parties to consult with their lawyers while they are still testifying “gives the appearance that something improper is occurring.” He maintained that the best practice in this situation is for the court to forbid this consultation for all sides.

Civil Party Co-Lead Lawyer Pich Ang continued the arguments by stating that any rule that abridges a civil party’s right to consult with his lawyer at all times “is discriminatory against our clients,” and “equality of arms [would be] violated.”

A national civil party lawyer maintained that forbidding the civil party to consult with his lawyer “is completely against the national law.” Civil parties have a right to protect their interests, so

any communications between the lawyers and their clients should be respected, as should the right of the accused to consult with their counsel, he stated.

President Nonn brought the arguments to an end, stating that, according to the national practice and provisions and to the ECCC Internal Rules, a civil party is a party to the proceedings and therefore are entitled to consult with his or her counsel at all stages of the proceedings. Reading once more the provisions in Internal Rule 88(2), he pointed out that this rule clearly refers only to the accused, witnesses and experts, and not to civil parties, and therefore, civil parties will continue to have the right to consult with their counsel at all times.

The president then advised the parties that the court will hear the testimony of prosecution witness TCW395 via video link this afternoon and during the proceedings on Thursday. Due to the age and health of the witness, the president then told the counsel that they may put questions on the facts as already defined, although he did not clarify what facts he meant. He also requested the parties to notify the court as soon as possible if other witnesses are suffering from ill health so that the parties can be informed and prepared well in advance of the testimony.

Examination of Second Civil Party Continues

President Nonn then turned the proceedings over to the co-prosecutors, informing them that they would only have thirty minutes to complete their questioning. In response, the co-prosecutor requested that the court be flexible with this timeframe, given the difficulty the civil party had shown throughout the morning in understanding the questions in Khmer and given the fact that the burden of proof is on the prosecution.

The questioning by the first co-prosecutor did not coax much additional information out of the civil party due to Mr. Yun's issues with understanding the questions and the language. The form of the co-prosecutor's questions did not help the matter either, in that, despite being warned a number of times by the court to keep the questions short and clear, the co-prosecutor persisted in asking detailed, compound questions that only served to confuse the witness further.

Returning to his role within the Khmer Rouge movement, Mr. Yun reported that he was eventually promoted to the level of district chief. His appointment came from the zone level, though he could not recall who was in charge of the zone at the time. He stated that, although he was never promoted to the sector chief level, which was just above the district level, he was tasked to work with those at the sector level as well.

Regarding the structure of the Northeast Zone, Mr. Yun stated that he remembered there were villages, communes, and districts; later, he recalled that there were also sectors under the zone. He reported that there was a military structure or division of the army in the Northeast Zone, but he could not recall the number of any of these divisions.

After a little more than thirty minutes of this slow and somewhat unproductive questioning, President Nonn stopped the co-prosecutor, as his allocated time had been used up. It appeared that the court would not allow any questioning by the national deputy co-prosecutor, who had also planned to examine Mr. Yun.

Deputy Co-Prosecutor William Smith then raised a general point regarding time allocations. He reminded President Nonn of his statements on Monday in which he had indicated that the court would not set time limits for witness examination. He also mentioned the trial management meeting in which the co-prosecutors were given the impression that they would receive a third of the two and a half hours allocated for this civil party and noted that the time given today was slightly less. Stating that not knowing the time limits in advance makes it difficult for the parties to prepare and prioritize their questions, Mr. Smith requested the court to advise the parties now on how much time they would each be allocated for the witness who would be testifying in the afternoon.

Clearly exasperated by this interruption in the flow of the proceedings, President Nonn declared that the court imposed the time limits because Tuesday's examinations had included questions that were "irrelevant, repeated and ... an unwise use of time."

President Nonn then conferred with the other judges. With a heavy sigh and a lament that "Time flies; it never waits," the president turned back to the courtroom and asked the civil party lawyers whether Mr. Yun would be able to return for future hearings. Pich Ang replied that Mr. Yun would be available if Trial Chamber decided to recall this witness at a later date. With this information, the court decided to grant fifteen more minutes to the co-prosecutors to complete their questioning.

In answer to the co-prosecutor's question regarding the evacuation of the population from Phnom Penh, Mr. Yun reported that he heard that people were evacuated, but he did not witness it himself. He stated that he saw no actual evidence that the relocation took place, and only knew what he had learned from informal conversations.

When asked about marriages, Mr. Yun reported that people did not get married "during the Pol Pot time." Rather, couples "loved one another and lived together without being married." Marriages had taken place before the Pol Pot regime, however.

Without eliciting much information at all, the co-prosecutor ended his questioning. The court asked the defense counsel whether they would like to question the witness. After hearing that every defense team had questions for the witness, the court decided to dismiss the witness for the day, to be recalled at a later date.

Tension in the Courtroom

Before the court recessed for lunch, William Smith requested that the co-prosecutor be allowed one and a half hours for its questioning of the witness scheduled to testify in the afternoon session, as the prosecution is tasked with taking the lead in this witness's examination. He also asked the court to clarify whether it expected to call any other witness on Wednesday or on Thursday.

While his response in translation was not very clear, President Nonn seemed to say it is expected that only TCW395 will testify today, all day tomorrow and even possibly on Friday. Reminding

the parties once again that this witness is of frail health and that there may be technology issues with the video link, he implored the parties to remain flexible and to be prepared “to resort to Plan B.”

Mr. Smith then asked whether the court had made a decision on his colleague’s earlier request to allow the parties to question this upcoming witness on all of the facts in the indictment of which he has knowledge.

Before the president could answer, Andrew Ianuzzi, Nuon Chea’s lawyer, interrupted and asked the court to explain what its “Plan B” would be.

Answering for the court, Judge Cartwright answered curtly that there is no specific Plan B, but rather that the president was only using that term to make clear that the court and the parties would have to remain flexible with the schedule.

In response to the co-prosecutor’s question, President Nonn also answered curtly, stating that he had already informed them earlier in the day that they may refer to the whole indictment. “If this is not clear, you may refer to the transcript,” he announced.

Grumbling, “[i]t appears that we have a lot of problems,” President Nonn requested the Mr. Yun remain at the courthouse in case the technical equipment fails in the afternoon and the video link cannot be established. Then, with another sigh, he adjourned the proceedings for the lunch recess.

First Prosecution Witness Testifies by Video Conference

As soon as the court was called to order for the afternoon session, the court connected to the first prosecution witness, Long Norin, via video link. Mr. Norin appeared on television screens throughout the courtroom and in the public gallery, sitting on a seat in his home next to an ECCC staff member from the Witness and Expert Support Unit. Although the video feed never seemed to falter, the court experienced a number of difficulties with the audio link, including substantially loud background noise and the inability of the witness to hear the questions clearly. These issues caused the examination to plod along slowly, creating frustration and annoyance that persisted for the rest of the day among the judges, parties and even the outside observers.

Ensuring that at least the video was established before continuing, President Nonn began the afternoon by reiterating the circumstances of the witness and the many potential problems that could arise with this particular examination. He also informed the parties that interpretation for Mr. Norin would take place consecutively, rather than simultaneously, and advised them to allow time for questions and answers to be properly interpreted before continuing.

Establishing the audio connection did take a few minutes, with President Nonn repeating a number of times, “Long Norin, can you hear me?” But soon enough both video and audio were working, and the examination began. As with the civil parties, Long Norin’s testimony started with a series of biographical questions, many of which needed to be repeated to the witness by the WESU representative seated next to him. Mr. Norin reported that he was born in 1938 and

that he currently resides in Malai District in Banteay Meanchey Province. He reported that he currently works as a farmer, explaining, “I am a peasant indeed.” He is married and has five children.

Dispensing with a few formalities of witness testimony, President Nonn asked Mr. Norin to verify that he is not related by birth or marriage to any of the civil parties and that he had already taken an oath, both of which he confirmed. The president then informed Mr. Norin of his rights as a witness, including the right to refuse to answer any questions and the right against self-incrimination.

In response to President Nonn’s inquiry as to whether he understood these rights, Mr. Norin replied, “I would like to go to the bathroom.” The court then allowed him to take a moment to go to the bathroom.

While waiting for Mr. Norin to return, Ieng Sary’s lawyer Ang Udom requested that the court ask the witness again whether he has taken an oath. Stating that the word for oath is very similar to the word for a letter in Khmer, Mr. Udom said that it seemed Mr. Norin was confused and may have thought the president was asking whether he had received a letter from the ECCC.

Co-Prosecutor William Smith also took advantage of the delay to request that the court grant the prosecution team until the end of the day for questioning this witness, as the consecutive interpretation would require twice as much time. He also asked that the prosecution be allowed to give an assessment at the end of the day regarding how much additional time they may need on Thursday to complete their questioning.

With these matters out of the way, the court waited a few more minutes for Mr. Norin to come back from the bathroom. Upon his return, President Nonn reported that the witness also has the right, due to his health and age, to go to the bathroom whenever he wishes. The president also asked again whether Mr. Norin had taken an oath, to which the witness replied that he had done this “just now.”

The co-prosecutor then took the lead on the examination of the witness, but was immediately thwarted by overpowering background noise coming through the speakers. After a few minutes, President Nonn reported that a ceremony was taking place outside of the witness’s home and that loud music was being blasted through loudspeakers. A WESU representative had gone to ask the organizer to turn the speakers away from the home, which reduced the noise significantly, allowing the co-prosecutor to continue after another few minutes.

Although the background noise had greatly diminished, it still took a number of tries before Mr. Norin finally acknowledged that someone was speaking to him. When the witness responded that he could hear the questions, the co-prosecutor asked if he could explain his educational background. This question, however, elicited no response from Mr. Norin. The co-prosecutor asked the question again a number of times, but still received no acknowledgement that the men on the other side had heard him. Finally, President Nonn asked the WESU representative if he had heard the question; the representative affirmed that he had. So the question was put to the witness one more time.

After a long pause, in which the WESU representative looked at the witness but did not speak to him, Mr. Norin finally answered that, when he was young, he went to Czechoslovakia from 1960 to 1971 to study gymnastics.

He then reported that, in 1971, he left Prague and went to Beijing because King Sihanouk had appealed for Cambodian people living overseas to join the resistance movement then and “work for the country.” He remained in Beijing for six months until the Royal Government of National Union of Kampuchea (GRUNK), which was the government in exile for Cambodia after Lon Nol’s coup against the King, returned to Cambodia.

The co-prosecutor then asked what role the witness played while he was in Beijing. Mr. Norin did not answer, but instead continued to stare forward at the video camera, showing no sign that he had heard the question. President Nonn again asked the WESU representative if he had heard the question, and, when he was told yes, the president requested that the representative assist the witness by repeating the question if he hears it and the witness does not.

After the representative repeated the question, Mr. Norin replied that he worked at the Ministry of Foreign Affairs while he was in Beijing. In this position, he was tasked mostly with writing letters establishing diplomatic links between different groups.

While he was in Beijing, Mr. Norin recounted, he met with Ieng Sary when Mr. Sary returned from France. He reported that, while in Beijing, Ieng Sary was the special envoy in charge of foreign affairs for the National Government of Kampuchea. He recalled meeting Mr. Sary previously in Phnom Penh years before, but he did not have any contact with him while Mr. Norin was in Czechoslovakia.

Mr. Norin reported joining the Communist Party at some point after Cambodia had “conquered the war against the Americans.” He stated that all of the members at the Ministry of Foreign Affairs (MFA) voluntarily joined the party. “We joined the party subconsciously,” he stated. “We joined the party because at that time the country was violated.”

After about six months in Beijing, Mr. Norin left to return to Cambodia. His travel route took him through Hanoi, where he met with Ieng Thirith, who was the minister of social affairs under the Khmer Rouge regime and Ieng Sary’s wife. (The ECCC Trial Chamber ruled Ieng Thirith, who was the fourth defendant in Trial 002, unfit to stand trial on 17 November 2001.) Mrs. Thirith was in charge of the radio station of the United Front of Kampuchea, which was broadcasting out of Hanoi. Recalling a recommendation by Ieng Sary that he should join the radio station as it “served the resistance process,” Mr. Norin decided to stop in Hanoi and work at the radio station for six months.

The witness reported that the purpose of this radio station was to broadcast the resistance movement and educational programs to Cambodians working overseas and to Cambodia. Mr. Norin worked as a translator and decoder there, translating Khmer text into Latin and decoding broadcasts. He also stated that he was in charge of broadcasting educational programs to Cambodian people studying in Hanoi.

At this point, Mr. Norin requested leave to go to the restroom again, so the court decided to take its afternoon recess.

After afternoon break, the court excused the two civil parties, Klan Fit and Romam Yun, to return to their homes. The court informed the parties that these two men would be recalled at a later date, but it will likely not be until January 2012.

Before resuming his questioning of the witness, the co-prosecutor asked the court if they may be granted leave to continue the examination of Mr. Norin on Thursday morning, referencing the difficulties that they had been experiencing throughout the afternoon with the video link. President Nonn did not respond out loud but appeared to nod his head in agreement with the request.

Returning to the topic they had started before break, the co-prosecutor asked the witness a number of questions to elaborate on the functioning and purpose of the radio station in Hanoi in which Mr. Norin worked after he left Beijing. Mr. Norin recounted that instructions for the station and the material to be broadcast came from within Cambodia. He explained that the broadcasts were written in Cambodia, sent to Hanoi, and then broadcast back to Cambodia, as well as to other countries.

The co-prosecutor then posed questions about when the witness returned to Cambodia. Mr. Norin reported that, after six months in Hanoi, he came back to Cambodia and went to Phnom Penh, where he worked at B1, or the Ministry of Foreign Affairs.

At some point “when Cambodia was at peace already,” Mr. Norin recounted, he also went to work in Stung Treng, at two locations – B20 and B15. At both of these locations, he said, he engaged in farming and planted various crops.

After providing this short amount of information, Mr. Norin took a short bathroom break.

When the proceedings resumed, President Nonn admonished the WESU representative for “sit[ting] idle” instead of helping when Mr. Norin did not hear a question. He requested that the representative assist the witness more actively to move the testimony along more quickly.

Turning back to the witness’s work under the Khmer Rouge regime, the co-prosecutor asked whether he had ever worked in Preah Vihear Province. Mr. Norin acknowledged that, before the liberation of Phnom Penh, he had been sent to Preah Vihear in order to “study the people,” and he reported that the persons who had told him what he was expected to do there were Nuon Chea and Khieu Samphan, whom he knew to be leaders, though he was not sure what they led. He stated that he had met Nuon Chea and Khieu Samphan for the first time at B20, where they told him where to go and what to do while he was in the province.

When he was sent to Preah Vihear, he was told not to return to Phnom Penh. Rather, he had to stay in the province until he heard otherwise from the leaders. In April 1975, he recalled, the

chief of the village where he was staying gave him a telegram that ordered him and others back to Phnom Penh.

When he arrived in Phnom Penh on 20 April 1975, he saw people walking out of the city, but he did not know where they were going. He claimed that he was not aware that these people were being evacuated, and he never asked why the evacuation of Phnom Penh took place.

In response to questions about his role from April 1975 to 1979, Mr. Norin reported that he worked at B1, or the Ministry of Foreign Affairs for that entire time. In this position, he “typed,” though he does not remember what he typed. Appearing exasperated, he declared, ““It has been 30 years. How can I remember all these things?” Mr. Norin also reported that he helped prepare passports for people going to work abroad. He had no responsibility for foreign diplomats visiting Cambodia. Mr. Norin stated that he does not remember anyone from the ministry disappearing or seeing anyone arrested and taken away.

The co-prosecutor then asked the witness whether he was ever asked to prepare his own biography while working at the Ministry of Foreign Affairs. He stated that he was asked to do so, and it took him one year to complete the detailed document. He was never told why he needed to complete his biography. But he did recall Ieng Sary asking him directly when he joined CIA. Mr. Norin denied joining the CIA, but he did admit to Mr. Sary that he was close to a man named Tach Chea, whom Mr. Sary “knew was CIA.”

After asking this series of questions regarding the biography, the co-prosecutor informed the court that he had a document that the prosecution believes to be Long Norin’s biography or a portion thereof. Stating that the prosecution would like to show the document to the witness, the co-prosecutor requested the court to assist in figuring out the logistics to make this happen.

Sounding a bit tired from the day, President Nonn responded that it was now an appropriate time for the adjournment of the day. The proceedings will continue on Thursday morning with the production of the document to the witness, Long Norin.