



Documents in Dispute: Debates Over Evidence Delay Witness Testimony

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The hearings in Trial 002 at the ECCC ended for the year with a heated session with continuous debates over documentary evidence. These arguments frequently interrupted the examinations of both prosecution witness Long Norin and accused Nuon Chea, eventually ceasing any progress in the testimony of the latter.

For this final day of the hearing, the public gallery remained filled during both sessions, with villagers in the morning and students in the afternoon. The tension in the courtroom kept the audience engaged throughout the proceedings, giving the security guards in the gallery a break from their daily task of spotting and waking napping students.

Nuon Chea's Team Continues Examination of Long Norin

President Nil Nonn called the court to order shortly after 9 a.m. and informed the parties that the testimony of prosecution witness Long Norin would continue and conclude this morning. He then turned the proceedings over to the defense team for Nuon Chea to continue the questioning which had been interrupted at the end of the previous day's proceedings, granting them ten minutes to complete their questioning.

Nuon Chea's international lawyer, Michiel Pestman picked up where he left off yesterday, questioning the witness on a 1977 Ministry of Foreign Affairs meeting in which Ieng Sary allegedly said he would not allow arrests while he was not in the country. He asked Long Norin again, "Who told you about this meeting?" Mr. Norin responded that the message was delivered at a ministerial meeting. "Everybody knew that," he stated. He also clarified, "The word 'arrest' was not used, but he [Ieng Sary] said no one should be 'taken out' when he is not in."

As Mr. Norin had not responded directly to the question Mr. Pestman had asked, Mr. Pestman drew his attention to the summary of the 2007 interview of Mr. Norin by staff from the ECCC Office of the Co-Investigating Judges (OCIJ). He then noted that, in that interview, Mr. Norin had specified a colleague named Keat Chhon as having told him about this meeting.

Before Mr. Norin answered, Assistant Co-Prosecutor Dale Lysak objected to the question, stating that the defense counsel had “misstated the prior testimony.” He argued that Mr. Pestman should read the actual statement to the witness, as it provided a much broader range of names with regard to who had actually told Mr. Norin about the meeting.

Without waiting for a ruling by the judges, Mr. Pestman moved onto a different question, though of the same vein. Noting that, during the 2007 interview Mr. Norin had mentioned Keat Chhon five times but that he had not referenced that name even once during his current testimony, Mr. Pestman inquired, “Do you feel free to testify?” Mr. Norin replied, “No, I am not pressured by anybody.” Questioned further on this matter, Mr. Norin also denied that anyone approached him after 2007 regarding his testimony at the ECCC.

When asked if he knew Keat Chhon’s present position, the witness stated that he did not and that he had not seen Mr. Chhon for a long time. After stating that Mr. Chhon is currently the Minister of Finance and Deputy Prime Minister of the Kingdom of Cambodia, Mr. Pestman then inquired whether Mr. Norin knew why Mr. Chhon had refused to testify before the ECCC Co-Investigating Judges.

Co-Prosecutor Lysak stood to make an objection, but before he could speak, President Nonn told the witness not to answer the question because it pertained to matters outside the scope of this first trial. He admonished all the lawyers not to ask questions that “create assumptions” for the witnesses and reminded them to use their examination time wisely.

Mr. Pestman then indicated that he had no further questions, so the president handed the examination of the witness over to the defense counsel for Ieng Sary.

Ieng Sary’s Defense Counsel Challenges Evidence, Questions Witness

Ieng Sary’s national lawyer, Ang Udom, began his examination not with questions for the witness but with “some observations.” Stating that Mr. Sary’s defense team had listened to the entire recording of Mr. Norin’s interview by the OCIJ and compared the recording to the actual transcript, he informed the court that they would be using this transcript as the reference for their questions to the witness. He did observe, though, that the transcript had not been translated into English or French. The defense counsel had also compared the transcript to the interview summary completed by the OCIJ, to which the co-prosecutors had referred throughout their examination of the witness; the purpose of this comparison, Mr. Udom asserted, was to identify any inconsistencies between the two and to determine whether any exculpatory evidence had been excluded from the statement.

After detailing this review procedure, Mr. Udom informed the court that some errors had been discovered in the written summary but that these mistakes are “not fundamental.” The real concern that arose from their review of these documents, he stated, is that the interpreter at the interview not only interpreted during the session but also asked and answered questions and “wrote text” for the interviewer. Throughout the 98-page transcript, Mr. Udom maintained, this participation by the interviewer was recorded on almost every page and often more than once. After providing a specific example, Mr. Udom tied this objection to previous motions by Ieng

Sary's team against the investigation process in Trial 002 as a whole. Stating that this process, allegedly typified by the transcript of Mr. Norin's interview, impacts his client's fundamental right to a fair trial, he called on the Trial Chamber to hold a hearing on the actions of the co-investigating judges in this case and appealed to the court to grant Mr. Sary's previous request for "a third investigative action."

At this point, Mr. Lysak objected to Mr. Udom's observations, arguing, "this is not the time to make motions or speeches." Stating that the discussion of legal issues, such as the one raised by Mr. Udom, will take place at another time, President Nonn advised the defense counsel that he should ask any questions he has for the witness now or the court would move on to the next defense team.

Mr. Udom responded that all of the questions Ieng Sary's team has relate to the three interview documents – the tape recording, the transcript, and the summary from the OCIJ – and that they felt it was important to bring these discrepancies to the chamber's attention before posing their questions to the witness. If they are not allowed to raise this issue, he stated, "there will be a gap."

President Nonn informed Mr. Udom that he was not allowed to continue in this vein and that he should move ahead to his examination of the witness.

Ieng Sary's international lawyer Michael Karnavas then took over from Mr. Udom to begin the examination of the witness. Before he asked any questions, however, he revisited the previous issue briefly, commenting that he and his colleague concur with the prosecution that all of the transcript of Mr. Norin's interview needs to be translated into all three of the court's official languages so that all of the judges will have access to the complete file. Moving on to his questions for the witness, Mr. Karnavas then asked Mr. Norin a series of questions regarding the witness' access to the tape recording and transcript of his 2007 interview. Mr. Norin confirmed that he had not been given an opportunity to listen to the tape recording and had not read the full 98-page transcript nor compared it to the summary completed by the OCIJ.

When asked if he had read anything or talked to anyone since 1979 about the period of 1975-79, Mr. Norin at first responded that he had not read anything or had any conversations about this topic. But, when pressed on the issue, he responded that he did not remember. Mr. Karnavas then inquired, "Would it be fair to say there are a lot of things you do not remember?" Mr. Norin's response was simply, "I do not remember." But, when Mr. Karnavas asked if there is a possibility the witness might be confused about some of the facts, Mr. Norin seemed to reject this idea, stating, "I do not know what kind of confusion that could be."

Turning from this topic, Mr. Karnavas returned to the time the witness had been abroad, asking if Mr. Norin remembered the time when he left Prague and went to Beijing. The witness did not answer, even after the question was posed again by the counsel, prompting Mr. Karnavas to request that the examination be ended for the day. The counsel observed that the witness seemed to be having difficulty answering even simple questions today, perhaps due to fatigue, that he had no problems answering on Wednesday. He repeated his application that Mr. Norin be heard again at another time.

Co-Prosecutor Lysak objected to Mr. Karnavas's application, contending that it was inappropriate for the defense counsel to make these types of statements. In response, the defense counsel suggested that President Nonn ask the witness whether he can continue.

Turning to the witness, the president asked him if he had understood the question. Mr. Norin replied that he had not. Advising the witness that his testimony would likely be completed this morning, President Nonn inquired whether he would be able to pay attention to the questions and continue now. Mr. Norin responded, "I have a headache, pain in my neck."

Despite the witness' answer, the president decided that the examination would proceed and requested that the staff of the ECCC Witness/Expert Support Unit (WESU) who was present with Mr. Norin move the microphone and speaker so that it was closer to the witness. He also reminded the lawyers to keep their questions short.

Continuing his examination, Mr. Karnavas asked whether Mr. Norin recalled leaving Prague for Beijing in 1971. Mr. Norin's response told the story of his time abroad again but did not directly answer the question. President Nonn then admonished the witness to listen to the question and answer only the question that is asked.

Moving on to Mr. Norin's time in Beijing, Mr. Karnavas inquired whether the witness had contact with Prince Sihanouk at the time. Mr. Norin confirmed that he had. But when asked if he witnessed and participated in "lavish banquets" that the prince held for his "entourage," Mr. Norin stated that he did not remember. He also could not recall whether the prince called him "all hours of the day and night to play sports," specifically football.

Mr. Karnavas then asked whether the witness remembered speaking to an author named Philip Short; he and the WESU representative had to repeat the name numerous times before Mr. Norin understood. Mr. Norin stated that he did not remember speaking to this author. He also did not remember speaking with Mr. Short about the locations B15 and B20, which was the location about which he had testified throughout these hearings. However, Mr. Norin insisted that he was not confused between the two locations.

Turning to Mr. Norin's time with the Ministry of Foreign Affairs, Mr. Karnavas had the witness confirm that he was "merely a typist" at the ministry. Although Mr. Norin did not understand a couple of the following questions regarding his access to information at the ministry, he did respond that he had to attend meetings where policy issues were discussed.

Mr. Karnavas then asked, "Were there others who worked at the Ministry of Foreign Affairs who might have more accurate and more complete information than you?" The co-prosecutor objected, arguing that it was inappropriate to ask the witness to speculate.

Rephrasing the question, Mr. Karnavas asked how many levels there were between Mr. Norin and Ieng Sary in the ministry. The witness named his immediate supervisor, but stated that he was not sure if there was any superior above him. "Perhaps we will need to ask him," he

responded. When asked if Pol Pot's nephew worked at the Ministry of Foreign Affairs, Mr. Norin explained that "his name was there, but we did not see him come and work at the ministry."

For his final question, Mr. Karnavas inquired, "Can you allow for the possibility that too many years have gone by and you are simply confused by many of the facts?" Mr. Norin replied, "There may be some confusion."

As Ieng Sary's team had completed its examination, President Nonn called for the morning recess to allow the witness to rest. Before the judges could leave the courtroom, however, Khieu Samphan's international lawyer Arthur Vercken indicated that his team had "no intention to prolong the witness' suffering," calling on the court to allow the witness to rest. As the confusion caused by his statement was apparent among the judges, Mr. Vercken explained that he had meant that Khieu Samphan's counsel did not have any questions to put to the witness. Thanking Mr. Vercken for the clarification, President Nonn responded that he "believe[d] counsel should make things clear."

Questions from the Bench Prompt Debate over Interview Summary

After conferring with the other judges, President Nonn informed the witness that the bench had a few questions before he could be released. Judge Jean-Marc Lavergne then asked the witness to confirm that the summary of his 2007 interview had been read aloud to him and that he had received a copy of the written statements. When Mr. Norin indicated that he did not remember the 2007 interview, the judge asked the WESU representative if they had a hard copy of the statement available now.

As the WESU representative looked for the document, Mr. Karnavas attempted to interrupt, noting that this statement was not in the 98-page transcript. Judge Lavergne stopped the lawyer mid-sentence, admonishing, "If you had listened, that is not what I am talking about."

With Long Norin peering over his shoulder at the document, the WESU representative signaled to the court that the hard copy was available. Judge Lavergne asked if the witness recognized his signature on the last page. After looking closely at the page, Mr. Norin confirmed that the signature and thumbprint were his, that he was aware that he was signing off on his own statements, and that he was not forced to sign the document. But he confirmed that he could not recall if the record had been read aloud to him at the end of the interview. He was hesitant to answer whether the statement was a "faithful and accurate statement" of what he had told the investigators, though, as he could not remember giving the actual interview.

Based on Judge Lavergne's questions, Mr. Karnavas stood and expressed his concern that the record might reflect that Mr. Norin was able to review the whole transcript of his interview, which was not the case. "I am troubled," he stated, because it appears that the court is relying on summaries of interviews that constitute "highly unreliable" evidence, especially when the witnesses cannot recall much of their previous statements. He requested leave to ask further questions to the witness in order to clarify the issue.

In response, the co-prosecutor contended that the record is clear that this witness was not able to review and compare the transcript to the summary of the interview, and therefore, there was no need for Mr. Karnavas to ask additional questions. Stating that the prosecution had no objection to the request that the transcripts be provided in all of the languages of the Court, Mr. Lysak maintained that the parties should not be having this debate in front of the witness. Completing summaries of interviews for evidence is “the standard process in the civil law system,” he concluded.

Mr. Karnavas continued the debate, returning to the issue that had been raised by his co-counsel at the beginning of the day. “What is worrying,” he stated, “is the investigator feeding answers and manipulating witnesses, and then we pretend that the summary is an accurate reflection...” Apologizing for “becoming agitated,” Mr. Karnavas emphasized that his team’s concern was that many in the court were working from summaries “prepared by God-knows-who” and without the opportunity to review all of the evidence in their own language.

President Nonn sustained the objection of the co-prosecutor and ended the debate on this matter. Thanking the witness for his testimony, the president released Mr. Norin and recessed the hearings for the morning break.

Prosecution Resumes Questioning of Accused Nuon Chea

After the morning recess, President Nonn called the court to order and turned the hearing over to the co-prosecutors to continue their questioning of the accused Nuon Chea. Before proceeding, the co-prosecutor, Mr. Lysak, sought to submit a copy of the transcript of Long Norin’s 2007 interview before the court.

Mr. Karnavas then stood and began to object, only to be reprimanded by President Nonn for not asking permission before speaking. “You have to be polite,” the president admonished. Mr. Karnavas renewed his request for translations of the transcript before it is entered and took his seat, allowing the prosecution to resume its examination of the accused.

The prosecution first questioned Nuon Chea on the subject of biographies. Mr. Lysak inquired whether the accused, while he was deputy secretary of the communist party, had received biographies from cadres and interrogated them about their political tendencies, as he had questioned Long Norin during Wednesday’s proceedings. Mr. Chea responded that interrogations had not been part of his job as he was in “legislation” and not within “administration,” which had been tasked with completing interrogations. He explained that those who joined the party were required to write biographies so that the members’ “characters,” “tendencies,” and “stance” could be known and “to assist the party to give education in accordance with [the member’s] character.” This requirement began even before the 1960s, Mr. Chea maintained.

When asked if the biographies were used to determine if a party member had the “proper class background,” Mr. Chea stated that class was only one of the criteria for joining the Communist Party of Kampuchea (CPK), clarifying that this did not mean “classism” but rather “the vision and the stance of non-capitalism.” He also expounded that party members were expected to put

aside personal gain for “collective gain” and not to participate in “wine, womanizing and other bad behaviors.” If the biographies included any connections to bad elements of the party, he stated, “we would remind them to abandon that idea and embrace the revolutionary class.”

Turning to the topic of the CPK Statute, which Judge Cartwright had put before the court on Tuesday, Mr. Lysak asked the accused about the principle of “democratic centralism,” which Article 6 of the Statute called “the central principle” of the CPK. Mr. Chea explained that this principle referred to the “collection of ideas and vision and knowledge” from all party members. When asked if the principle of collective decision-making, required by Article 6.2 of the statute, was part of democratic centralism, the accused stated that all decisions of the party “must not be made individually.” He stated further that this principle was adopted and implemented at every meeting of the CPK, including those of the Central Committee and Standing Committee. “The Party held onto that principle strongly,” he maintained, calling it the “universal principle at all times.”

Mr. Chea then described the process of collective decision-making, explaining how party members participated in meetings to express ideas and then the Secretary of the party would consolidate the ideas. If any of the members disagreed with the consolidation, the process would be repeated until there was “complete agreement.” Then a decision would become official, Mr. Chea stated.

The prosecution then asked Mr. Chea about his time in Vietnam from 1951-1953. The accused confirmed that he went to Vietnam in 1951 but that he did not begin his studies there until 1953. While in that country, he did not study in a school but “in the forest,” and he was taught by Vietnamese cadres who had returned from studying in China. These studies included sessions in which the students would need to admit issues from their personal lives, including any drinking of alcohol, “womanizing,” “failing to implement the party line,” or “meeting with the enemy.”

When asked if he studied guerilla warfare while he was in Vietnam, Mr. Chea replied that he did not understand what was meant by that term. Rephrasing the question, the prosecutor asked whether the accused had told the filmmaker Thet Sambath that he had engaged in the study of warfare while in Vietnam. Mr. Chea corrected the prosecutor, stating that he had studied *militia* warfare, not *guerilla* warfare, but clarified that, while he did not personally attend any sessions on this topic, he did listen to others who had attended lessons. Militia warfare, Mr. Chea explained, consists of using small forces to attack large forces, or “us[ing] quality to attack quantity.” The concept was to attack rapidly, collect “the spoils” quickly, and then retreat.

Son Arun, Nuon Chea’s national lawyer, interrupted at this point, objecting to the co-prosecutor’s use of Thet Sambath’s book that had sparked much debate during Wednesday’s proceedings. The book is available only in English, he argued, and there is no information about where the co-prosecutor found this book.

The court sustained the objection, reminding the prosecution that Judge Cartwright had already informed that they could use the book only to establish the relationship between Mr. Chea and Mr. Sambath but that it could not be used for its contents as the court was still deciding on its admissibility.

Stating that he would not use the book again until it was accepted by the court, Mr. Lysak informed the defense counsel that he had found the book in the court's library and then returned to his questioning of the accused.

Returning to his courses in Vietnam, the prosecutor asked Mr. Chea if the instruction was completed in Vietnamese. The accused explained that they were mostly taught in Khmer; when they were taught in Vietnamese, all of the discussions would still be held in Khmer. Acknowledging that he knew some Vietnamese, Mr. Chea recounted that he had spent time learning Vietnamese when he joined the revolution in 1951, when Cambodians and Vietnamese, working together, would take one hour every morning to learn the other language.

Mr. Lysak then moved to questioning the accused on when he returned to Cambodia after the Geneva Accords, when Cambodia's independence from France was recognized. When he asked Mr. Chea if he was appointed the secretary of the Phnom Penh committee of the Khmer People's Revolutionary Party at that time, Mr. Chea became frustrated, stating that he had already told the court that at this time he and Saloth Sar were assisting Tou Samouth. "There is no need for me to say this again," he stated, referring to such questions as "repetitious" and "a waste of time."

Asked whether Ieng Sary ever joined him and Saloth Sar in the Phnom Penh city branch of the Khmer People's Revolutionary Party, the accused stated that he did not know Ieng Sary at that time. "I only heard of the name but did not know him or meet him in person," he asserted. Under further questioning, however, he explained that he only met Ieng Sary after the party restructuring in 1959.

Mr. Lysak then referred to a document the prosecution had introduced on Wednesday that purportedly contains the notes of Mr. Chea's conversations with Khem Ngun in 1998. As the prosecutor attempted to give the document identification numbers, the accused interrupted, stating, "I never knew Khem Ngun." After a few seconds' pause, Mr. Lysak continued, and the Khmer version of the document was put on the screen. Before the prosecutor could ask any questions, however, Mr. Chea repeated his accusations from the previous day – that Mr. Ngun was a spy working for the current prime minister, Hun Sen. He also contended that, as he had told Mr. Ngun that their conversations were "unofficial," notes of this conversation cannot be used as an "official" document.

Paying little attention to Mr. Chea's protests, Mr. Lysak read a statement from the document, in which Mr. Chea is allegedly quoted as stating, that Ieng Sary "was what they called a leftist, what they called unruly, and had gone way off to the left." He then asked what Mr. Chea had meant by the term "leftist."

Mr. Chea's lawyer, Michiel Pestman, then objected to quotes from this document being used, stating that it cannot be known at this point whether these notes are an accurate reflection of what his client said. The co-prosecutor responded that he was asking these questions so that they can establish whether the notes are accurate, and the objection was overruled.

Mr. Lysak asked the question again, and Mr. Chea responded that the party members were a mix of rightist, leftist and neutral, “myself included.” He stated that he never considered Mr. Sary a leftist, as he was a party member. “If there was a time he was leftist,” Mr. Chea stated, emphasizing the *if*, “we would have tried to bring him back.”

When asked if he ever considered Mr. Sary “stubborn or unruly,” the accused stated that party members were not supposed to talk about “internal affairs” of the party or criticize each other.

Mr. Chea’s lawyer, Son Arun, then objected to the question, contending that the co-prosecutor was trying to encourage the accused to point fingers at each other. Denying that this was his intention, Mr. Lysak responded that he was only asking questions about what was contained in the document. This objection was also overruled.

Turning back to the Khem Ngun document, the prosecution then asked Mr. Chea why he said, as quoted in the document, “Tou Samouth was not useful because he was old and not knowledgeable. So it was only Saloth Sar and me.”

Before his client answered, Mr. Pestman objected again, arguing that the question presupposes that Mr. Chea made this statement. He advised that the prosecutor ask Mr. Chea if he actually said what was written in the document. Mr. Lysak then rephrased the question to ask if Mr. Chea had made this statement. Mr. Chea denied making the statement, stating that he respected Tou Samouth. Rather, the situation was that Mr. Samouth was staying in South Vietnam at the time and therefore did not fully grasp the situation in Phnom Penh.

Asked then about his work for Tou Samouth, Mr. Chea explained that he and Saloth Sar had contacted senior people “who were good people” and began to build small associations from which they could rebuild the party bases in other regions. He reminded the court of his previous statements that this was a slow process as these were “chaotic times.”

President Nonn then adjourned the proceedings for the lunch break.

Questions on Evidence Procedures Raised

At the start of the afternoon session, the president informed the parties that hearings for this trial would not continue on Friday, 16 December, as originally planned, as the judges require the time to plan the hearing schedule for when the trial resumes in 2012.

Before the court could pass the proceedings back to the prosecution, Khieu Samphan’s lawyer Arthur Vercken stood and sought clarification on issues that had arisen over the submission of evidence. Referring back to the Thet Sambath book that had been the matter of some debate over the last two days, he stated that Judge Cartwright had said the court would hand down a decision on the admissibility of the book. Mr. Vercken’s question was whether the matter was settled or would there be a time for debate on the issue.

Deputy Co-Prosecutor William Smith responded for the prosecution, explaining that it was their understanding that arguments on the admissibility of evidence would be separated from witness questioning in order to keep the questioning of witnesses from being interrupted.

Mr. Vercken then maintained that he raised this issue because defense counsel “may feel duty-bound” to challenge the admissibility of a document that is handed to a witness without the matter being determined beforehand. He requested that the issue be settled as soon as possible, insisting that it would help all of the parties “a great deal” to know what the position of the Trial Chamber is on this matter.

After the judges conferred briefly, Judge Lavergne was handed the floor in order to help clarify the issue. Explaining that the court had received a great number of documents and notes contesting their admissibility, he informed the parties that the Chamber had planned to hold a specific hearing next year devoted solely to documents and evidence. During these hearings, parties will be allowed to present arguments regarding these issues. He reminded the parties, however, that it is important to distinguish between the admissibility of a certain document and the assessment of the value of the evidence in probative terms.

Continuing his inquiry, Mr. Vercken contended that the matter has been “a little bit hazy” about whether certain documents are automatically considered put before the court, but it is now clear that the parties will be able to discuss their admissibility in the future. Judge Lavergne interrupted the counsel, as it appeared that there was still confusion. He reiterated the court’s previous statements that the documents contained in the footnotes of the Closing Order are indeed assumed to be admissible unless one of the parties has objected.

Mr. Vercken then indicated that he finally understood, as this was precisely the issue he was trying to raise. He explained that his concern was that a number of these documents referenced in the Closing Order had not been translated into all three languages of the court, and therefore he had encountered some difficulty in deciding whether to object to their admissibility. He asked whether this problem would be part of the upcoming discussion.

President Nonn then attempted to bring a close to this discussion by stating that there are two issues here: (1) the issue of what documents have been put before the Trial Chamber, which has been resolved; and (2) the issue of translation, which is still being determined. Stating that the first issue has been raised numerous times before, he referred the parties to the Trial Chamber memorandum that discussed this matter.

Not satisfied with this answer, Mr. Vercken again spoke up. Stating that his understanding is that the memorandum puts the onus on the parties to complete translations of documents they wish to use, he declared that the parties are being shouldered with an obligation that should rightfully be assumed by the co-investigating judges for documents contained in the Closing Order. “When I hear that the issue is settled, I do not agree,” he contended, arguing that the matter needs to be heard in front of the public so that they will know the difficulties the parties are facing in this trial.

Obviously angered by the continued interruptions, President Nonn forcefully responded that he had said that there were two issues and that only one of them was settled. The issue of translation is still being discussed, he stated.

At this point, Mr. Vercken attempted to turn on his microphone, but it refused to stay on. In response, President Nonn announced loudly, “You are not allowed to take the floor!”

Attempting to defuse the tension, Judge Lavergne interrupted, saying, “Let’s take things calmly.” He then informed Mr. Vercken that the Trial Chamber had issued a number of memorandums on this issue before he came on as Khieu Samphan’s lawyer, and he advised that the counsel review these statements before he raises the issue again.

Nuon Chea’s Testimony and Evidence Debates Continue

With the matter on evidence resolved for the time being, Mr. Lysak resumed his questioning of Nuon Chea. He turned to the topic of “honorary red flags,” which he claimed had been awarded to three “model districts” in 1976. After the accused stated that he could not recall these events, the prosecutor presented a document entitled “Letter Presenting Honorary Red Flags of Democratic Kampuchea” and a copy was handed to Mr. Chea. The accused stated that he could not read the document, as the letters are too small and the document is too dark. But, he acknowledged, if the districts were “operational,” they could have been presented honorary red flags. When asked what the significance of this award was, he explained that they were given to party branches who accomplished “living standard prongs for the people” or for “doing good for the party.” They would also be presented based on requests by the zones, but they were only given “in good faith,” meaning that the branch had to actually do something to earn the award.

Moving on to the topic of political education, Mr. Lysak inquired as to when the accused became responsible for the political education of the party. Mr. Chea replied that, after the Geneva Accords, he was tasked with only one job – education. After the Accords, when the army was dissolved (as the armed struggle had ended for the time being), it was “difficult for everyone to get along,” he explained. The soldiers had to integrate into a “corrupt and womanizing society,” which created conflict. He had to provide education, he maintained, so that “we would not give into that society.” It was a difficult job, he stated, especially since “the wives of the cadres tried to persuade them to be bad and do bad jobs.” Mr. Chea recounted that, in this society, only two party branches remained strong, and the rest were corrupted. This “battlefield required close engagement,” he declared, “We did whatever it took.”

The co-prosecutor then asked about the *Revolutionary Flag* magazine and whether it was ever used for education. Mr. Chea answered that it was not given to everyone, and that some people were “lazy and d[id] not want to educate themselves... [and] want[ed] to stay who they [were].” He explained that the publication was distributed to the zone committees who would then determine what party members would receive the magazine. He also acknowledged that *Revolutionary Flag* was used as part of political training sessions along with many other documents. Mr. Chea then stated that the Standing Committee “made” the magazine, and that he and Pol Pot “especially wrote it.”

Referring to the September 1977 issue of the *Revolutionary Flag* magazine, which Judge Cartwright had put before the Trial Chamber on Tuesday, Mr. Lysak read a portion of a speech by Pol Pot that had been reproduced in the publication and mentioned the “spiritual leaders of the exploiting classes.” When asked if this meant Buddhist leaders, Mr. Chea asked if he could first read the document. The court officials then handed the accused a photocopy of the document, prompting a strong objection from the accused that would then occupy much of the rest of the day.

Upon receiving the document, Mr. Chea exclaimed, “The *Revolutionary Flag* was not in this format. It was a book!” Requesting the original issue, the accused contended, “Anyone could have made this copy.”

Attempting to quash this objection, Mr. Lysak stated that the copy is a reproduction of a well-known speech delivered by Pol Pot at the 17th anniversary of the Communist Party of Kampuchea. He then urged Mr. Chea to look at it more closely.

Not to be appeased, the accused responded indignantly, “I insist that the document I request be provided.” His counsel, Mr. Arun, backed up his objection and also requested that the original be provided for his client.

In response, the co-prosecutor reminded Mr. Chea and Mr. Arun that Judge Cartwright had put this document before the court on Tuesday, 13 December, and that no one had objected at that time. Turning to the president, he stated that he wished to continue his questioning and requested that the witness be instructed to answer the question.

Trying to bring some closure to this issue, President Nonn then explained to the accused how, in general, the documents presented before the court had been digitized and put into a software program so that the very large number of documents – up to half a million – could be made more manageable. Agreeing with the prosecution, he also cited the fact that none of the parties had objected when Judge Cartwright originally presented this document.

With the matter obviously not settled for him, Mr. Arun became animated and interrupted the president, “It is fine for you to say so, but this is very important.” Questioning whether the document is authentic or “a falsification,” Mr. Arun demanded that the original be presented “so that my client can trust it.

Also becoming agitated and frowning at Mr. Arun, President Nonn insisted that Mr. Chea should have raised the issue when the Closing Order was handed down.

Nuon Chea then rejoined the debate, persisting in his demand that the original magazine be provided. Only when he has received the original, he contended, could it be said that the court “is really seeking truth and justice and is not a false court.” He ended his statement by loudly declaring, “If you cannot give the original to me, I do not accept this document. I reject it!”

After Mr. Chea’s outburst, the judges conferred for a moment, while the students in the public gallery murmured to each other. President Nonn again informed the party that the document has

been placed in the case file and has been referred to at every stage of the proceedings. He explained that once a document is in the case file, it is valid.

Hitting the desk in front of him with his finger, Nuon Chea interrupted again, proclaiming, “This document is not the *Revolutionary Flag* document!”

In support of his client, Michiel Pestman also joined the argument, stating that the question currently at issue is not whether the document has been put before the court previously but rather, whether it is authentic. Noting that his client is not willing to authenticate the copy placed before him, Mr. Pestman insisted that it is “more than reasonable” for Mr. Chea to ask to see the original. “It must be somewhere!” he declared.

In another attempt to resolve this issue, the president then instructed the court officer to scroll slowly through the entire document on the computer monitor, so that the accused could see the entire copy. The co-prosecutor interjected at this point, requesting that he be allowed to ask some general questions before returning to the document. The court allowed Mr. Lysak to proceed.

Returning to the question of religion, Mr. Lysak noted that the accused has repeatedly greeted the “venerable monks” at the beginning of his testimony each day. But, he claimed, in none of the speeches that he gave during the CPK period, did Mr. Chea do the same. He then asked why this was the case.

Responding that “a speech could be political,” the accused asserted that he had not wanted to mix politics and religion. “If you mix a monk with a demonstration,” he stated, “then it is confusing.” Going on, he then insisted that this separation did not mean the CPK had rejected the monks. “Those who say we destroyed religion do not understand what the real nature of Buddhism is,” he declared. Mr. Chea then proceeded to give a brief lecture on the tenets of Buddhism, principles to which he claimed he also followed, eliciting sounds of surprise from the audience, including the few monks who were present.

At the end of this speech, President Nonn then adjourned the court for the afternoon break.

Objections to Photocopied Evidence Occupy the Final Session

As soon as the court was called to order for the final session of the day, Khieu Samphan’s lawyer Arthur Vercken raised again the issue of the photocopied evidence, as this matter is a “concern for all of us.” He brought the court’s attention to a 26 May 2009 Trial Chamber decision from the Duch hearings (Trial 001), and he argued that what he had understood the court had stated during the previous session -- that documents that are not contested prior to the Closing Order being finalized are considered accepted – was contrary to what it had held in this 2009 decision. He then requested that the court clarify its position.

Also, in response to the discussion regarding translation of documents, Mr. Vercken pointed out a 26 October 2011 memorandum from the court in which it was “clearly written” that parties who wish to use a document that was referred to in the Closing Order are “duty-bound” to

request it be translated. If they do not, he asserted, their ability to use the documents during the hearings “will be reduced.” He again objected to the placing of this burden on the parties.

Deputy Co-Prosecutor William Smith responded to Mr. Vercken’s comments by reminding him that the rules on document presentation had been amended by the ECCC since the 2009 decision had been written and that parties are now required to present and contest documents in written pleadings.

With regard to the photocopy issue overall, he argued that the parties must have more grounds for their objection than just simply rejecting it because it is a copy. He informed the court that using copies of documents is the accepted practice for all of the international courts, due to the large number of documents with which these tribunals must work. Insisting that the defense has been given many opportunities to dispute the particular document at issue, he concluded, “If they have a serious objection, they should raise it only at hearings for this purpose.”

Michiel Pestman stood to respond but was admonished by the president for not asking permission first. “How can I ask for permission without standing up and pushing the button?” he inquired, “It’s a serious question.” President Nonn, looking irritable, did not respond to the question but told Mr. Pestman he could speak. The defense counsel then stated that Nuon Chea’s team would request that a procedure be established to deal with the authenticity of documents, and that they had raised this objection a number of times generally, in addition to the specific objection made by their client today. He also gave his support for the prosecutor’s suggestion for “a week of hearings” on evidentiary matters.

President Nonn concluded the debate, stating that the chamber will consider all of these issue and deliberate “in due course.” He then told the co-prosecutor that he may continue with his questioning of Nuon Chea, but only if he has questions not related to the *Revolutionary Flag* magazine that was the subject of the debates that had taken up much of the afternoon. Mr. Lysak indicated that he did have additional questions and resumed his examination of the accused.

Continuing with the questions on religion, Mr. Lysak asked Mr. Chea if it was correct that the party had banned Buddhism and defrocked all the monks. Mr. Chea responded, “The party did not have any measure to ban Buddhism.” When asked how the party handled principles of Buddhism, such as karma, that were “inconsistent” with the party line, Mr. Chea insisted that karma was not inconsistent with Communist principles, and he asserted again that the party had not done anything against religion.

The co-prosecutor then demanded Mr. Chea give his response to the “thousands of witnesses” whose statements are in the case file, who “all” say that the party closed the pagodas, defrocked the monks, and banned Buddhism. Mr. Pestman objected to this question, stating that he is “not familiar with these thousands of witnesses” and the relevance of this question to this first trial is not clear.

Mr. Lysak argued that it is clear in the case file that the decision to ban Buddhism was made prior to 1975. He further asserted that the “point [of the question] is to confront the witness with the truth.”

Mr. Karnavas then requested permission to speak and joined the discussion. “I do not share the truth that the co-prosecutor presents,” he stated, insisting that the prosecution needs to present specific statements for the witness to respond to and not make these sweeping statements about the “truth.” Noting that the prosecution has gone well beyond the scope of the first phase of the trial through much of its questioning, Mr. Karnavas argued that it would be much better to try the whole case in its entirety if they plan to keep doing this, rather than compartmentalizing the issues. “We have no objection as long as we know what the parameters are,” he maintained, but the prosecution’s response that they are trying to get to the truth is not an answer to the question of how it is relevant in the first place.

After hearing the arguments, the president sustained the objection, as religious persecution is not a part of the first phase of the trial. After admonishing the co-prosecutor to keep his questions within the relevant time period and topics, he told the prosecution to continue with the examination.

Not willing to let the issue drop, however, Mr. Lysak averred that the question was indeed relevant, in that the statements referred to came from a speech Pol Pot had made about the analysis of Cambodian society in 1960 and what parts of society were considered enemies, including Buddhists. Mr. Karnavas quickly objected again, stating that the co-prosecutor was “testifying” and “attempting to taint the evidence with his thoughts.” In response, President Nonn angrily scolded the prosecution, “This issue has been ruled on. This is not within the trial phase!”

With one last comment that he just wanted to make sure the prosecution’s position had been made for the record, Mr. Lysak then returned to questioning the accused, asking him if he remembered Pol Pot’s speech in 1977 in which he announced the founding of the CPK. Mr. Chea responded, seeming a bit annoyed, “If you have the document, please show it to me. Do you have the document?”

Mr. Lysak informed Mr. Chea that this was the same document that they had been discussing most of the afternoon and he read the description of the speech and provided the document identification number for the court. As the court official put the document onto the court’s computer screens, Mr. Lysak asked once again if the accused recalled Pol Pot making this speech. Distracted by the document that was now back on the screen, Mr. Chea retorted, “This is also the *Revolutionary Flag* document I already rejected. In *Revolutionary Flag* there was no content about religion and now you give me the same document!”

The co-prosecutor asked one more time, “Do you remember the speech?” The accused replied that he did not remember the speech. Mr. Lysak then countered, “If you do not remember the speech, then how can you say this is not a copy of it?” Mr. Chea only answered that he did not understand the question.

As the issue of the magazine had again arisen, President Nonn ordered the court officer to scroll through the entire document slowly, so that Mr. Chea could examine it closely. After this had been completed once, the president requested it be repeated more slowly.

The co-prosecutor then suggested that he move on to another line of questioning so that the photocopy evidentiary issue could be dealt with over the court's long recess. With frustration evident in his voice, President Nonn snapped that he had told the prosecution to move on but "you come up with the same question and the problem persists." Therefore, the court had decided to show the entire document to the accused.

At this point, Nuon Chea raised his hand and was recognized by the court. "Again I do not accept this Revolutionary Flag document," he declared, "Even if it is shown to me, I will not accept it. How can I accept it? I know nothing about it."

Thanking the accused for making his objection clear, President Nonn stated that it was now time to end the proceedings for the day. Before he could adjourn the court, however, Nuon Chea's lawyer Andrew Ianuzzi stood and asked to make a final statement. He stated that he wanted to make "very clear" for the record that Nuon Chea's team objects to the court's ruling earlier in the day to their questioning Long Norin on the subject of the current Minister of Finance Keat Chhon. In their opinion, "political interference is always relevant," he asserted.

Attempting to end on a lighter note but seemingly causing further tension instead, Mr. Ianuzzi thanked the defense counsel for the other accused for the "support" of his client throughout the day and offered to buy them a drink tonight. Judge Cartwright quickly responded to the last comments, chiding the counsel that these comments were inappropriate for the courtroom. "That is a social matter, and you can deal with it out of court," she admonished.

With these matters concluded, the court was adjourned for the day. Hearings in Trial 002 will continue on Tuesday, 10 January 2012.