

KRT TRIAL MONITOR

Case 002 ■ Issue No. 22 ■ Hearing on Evidence Week 17 ■ 17 May 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

I was saying that I wanted the tribunal to find justice for Cambodian victims. The true justice. And I want that these things would never happen again in the future and I would like Cambodia to be in peace and harmony.

- Witness Pean Khean

I. OVERVIEW

After more than a week's break, the Trial Chamber continued to hear the testimony of Witness Mr. Pean Khean on 17 May 2012.¹ International Co-Prosecutor, Mr. Tarik Abdulhak, wrapped-up the OCP's examination and was followed by CPLCL, Ms. Elisabeth Simmoneau-Fort and Mr. Pich Ang. Thereafter, the Nuon Chea, Ieng Sary, and Khieu Samphan Defense Teams examined the Witness. Today's proceedings marked the conclusion of the Witness' three-day examination.

II. SUMMARY OF TESTIMONY

The proceedings on 17 May 2012 picked up from Pean Khean's testimony on 2-3 May. The OCP focused their question on meetings and political education sessions conducted by the leaders of the CPK. The Civil Party Lawyers, on the other hand, inquired on his roles prior to the liberation of Phnom Penh in 1975, the situation in Phnom Penh upon his arrival in 1975, and his role in Chraing Chmores.

The Nuon Chea Defense asked the Witness about various matters, including the description of the *Revolutionary Flag*, his interactions with Nuon Chea, and the arrival of the Vietnamese in Phnom Penh. International counsel for Nuon Chea, Mr. Andrew Ianuzzi, confronted the Witness about certain inconsistencies in his testimony. The Defense Teams for Ieng Sary and Khieu Samphan sought to establish that the Witness' statements regarding meetings that CPK leaders allegedly attended were based on assumptions, as he never personally attended the same.

A. Kampong Thom Province Before 1975

Before coming to Phnom Penh in 1975, the Witness was assigned as a messenger at the Angdoung Meas District in Rattanakiri Province and thereafter, in Kampong Thom Province. He was one of Koy Thuon's companions from early 1974 to late 1975. According to the Witness, sometime in late 1974 to early 1975, Koy Thuon attended a meeting where the

liberation of Phnom Penh was discussed. He could not remember the meeting's exact location, but knew that it was in Chamkar Leu District in Kampong Thom Province. He did not give details regarding the meeting, but merely said that Koy Thuon normally received instructions from Pol Pot.

Pean Khean stated that, before 17 April 1975, Vietnamese troops were stationed in three separate locations along the river near Santuk in Kampong Thom Province. The Witness testified that he was told that the Vietnamese troops were there to attack the American imperialists but he did not disclose who gave him information. The Witness also stated that, prior to his joining the revolution to liberate Cambodia, his area in Kampong Thom was bombarded with B-52 bombs, which were dropped from the air at all hours of the day and night. The bombing caused tremendous damage to paddy fields and bridges, but the Witness did not hear about any human casualties.

B. After the Liberation of Phnom Penh in 1975

The Witness recalled that on 17 April 1975, he took the national road going to Phnom Penh and noticed people leaving the capital. Some walked, while others traveled by motorcycles, cars or trucks. As far as the Witness could remember, there were no soldiers escorting the evacuees. Nonetheless, Pean Khean said that he could tell from the expression on people's faces that they were not happy. He did not know why people were evacuated and whether they ever returned to Phnom Penh or went to live in other parts of the country. Phnom Penh was quiet when he arrived. He went to meet Koy Thuon and they stayed at a place called the "French House," which was situated half a kilometer from Wat Phnom. He did not hear any gunshots, people screaming, or talking out loud on the road. He had very little information to disclose about Lon Nol forces during the administration, and stated only that he knows that Lon Nol fled to the United States, but did not know what happened to the others. The Witness stated that, during his stay in Phnom Penh from 1975-1977, he could not move around the city freely unless Pang assigned him to do something, such as attend training sessions or transport rice or vegetables.

According to Pean Khean, he was Koy Thoun's messenger and cook² at Chraing Chamres, a small place in Phnom Penh that accommodated around 20 to 30 people. Following Koy Thoun's arrest and denouncement as an internal traitor with ties to the CIA, Pean Khean said he became concerned that he might be implicated as well.³

1. K-1 Office, K-3 Office, and the Leaders of CPK

The Witness was reportedly transferred to K-1 after Koy Thoun's arrest. K-1, he described, consisted of two units, one of which served as Pol Pot's residence. He recalled that he went to the building where Pol Pot lived to oversee the cooking, deliver food and do household chores. He further stated that he worked in the kitchen with Noun Chea's wife. He brought food to Nuon Chea, who he found to have been "friendly." He and Nuon Chea had "chatted" on occasion. Pean Khean also frequented a place called "K-3" to deliver food. K-3 was reportedly larger and more crowded than K-1. Pang was in charge of both the K-1 and K-3 offices. A certain Lin replaced Pang when the latter disappeared.

Pean Khean indicated that senior leaders, including Khieu Samphan, Ieng Sary, and Pol Pot, had met in K-3 around twice or thrice a month. The Witness said he was responsible for preparing food for some of these meetings. However, he claimed he never entered the room where the leaders met, as he only visited the kitchen where the food was prepared. The Witness stated that he was unaware of the purpose, subjects, or outcomes of the meetings.

When asked by the OCP whether he recalled seeing Khieu Samphan attend meetings with people from other "K" offices, Pean Khean first stated that he could not recall such meetings. To refresh his memory Abdulhak read out a portion of the statement he gave researchers from SOAS (most probably the School of Oriental and African Studies) in 2005. In the record of his interview, the Witness stated that Pang organized the meetings, which were chaired by Khieu Samphan. Abdulhak asked the Witness if his previous statement was true. In response, Pean Khean stated that that was his "observation back then." International counsel for Khieu Samphan, Ms. Anta Guisse, revisited this matter and Pean Khean explained that he believed that Khieu Samphan had led the meetings because he received this information from Pang and Lin. The Witness further substantiated his assumption by saying, "above Pang, was Khieu Samphan, therefore it was likely that it was Khieu Samphan chairing the meetings."

According to Pean Khean, the composition of Angkar was not written in any document and was not widely known. He admitted that he only found out that Ieng Sary was a member of Angkar from Pang and Lin.

2. Svay Meas "Tempering" Site

After Pang disappeared,⁴ Pean Khean said that he and his wife were sent to Svay Meas, a small cooperative, the purpose of which was to "refresh people." He explained that people were sent there to be "tempered," which meant "being offered daily work to do." Pean Khean claimed that he did not hold any leadership position in Svay Meas and that he was merely tasked with fishing, growing vegetables, and fixing the looms. To refresh his memory, Abdulhak read to him another passage from his statement from 2005, where he stated he was "in charge" of Svay Meas. The Witness maintained that he did not exercise a leadership role, and explained that his statement meant that he was in charge of overseeing the tempering sessions of the people who were there.

When asked the connection between Svay Meas and S-21, the Witness informed Simonneau-Fort that he did not know whether people from Svea Meas were sent to S-21, and if they were, he was likewise unaware who sent them. Subsequently, Noun Chea's international counsel, Mr. Andrew Iannuzzi, asked Pean Khean if he was aware that people were taken away from Svay Meas to be killed at other locations. The Witness responded that he was not aware of such occurrences. To refute this testimony, Iannuzzi cited Pean Khean's interview in 2005, wherein he stated that people were arrested and taken away from Svay Meas every night. In his 2005 interview Iannuzzi referred to, the Witness mentioned that he saw vehicles with "Office 870" plates, which transported people to locations such as Kampong Som. Pean Khean responded that he was aware that people were transferred, but he maintained that he did not know whether they ended up being executed. Iannuzzi then asked the Witness whether he was responsible for anyone being taken away. Pean Khean did not answer the question directly but reiterated that he himself underwent tempering in Svay Meas and was under surveillance because of his affiliation with Koy Thoun.

3. Political Education at Borei Keila

Pean Khean was asked if he was aware if any of the Accused had provided political education for cadres in Borei Keila between 1975 and 1979.⁵ The Witness claimed that he did not know of such meetings. Abdulhak then sought to refresh his memory by reading to him a statement he gave a SOAS researcher, stating that Noun Chea and Khieu Samphan provided high-level political education for ministry and grassroots cadres at Borei Keila. The Witness admitted that this was indeed what had happened. He was asked to clarify the meaning of the term "high level political education." He explained that these were meetings that were more important than the ones conducted for ordinary people or workers. Those

invited to participate in high-level meetings were reportedly taught how to construct the country, how to establish cooperatives, how to educate the people so that they will not be "overjoyed" (he did not explain what this meant), and how to ensure that the people had enough to eat. He testified that he was invited to attend one such meeting and Pang, Khieu Samphan, and Noun Chea were present.

4. Internal Purges

The OCP, CPLCL, and the Nuon Chea Defense asked the Witness regarding arrests in DK. In response, Pean Khean indicated that he had no knowledge of people disappearing or being sent for re-education centers prior to 1975. When he learned of Koy Thuon's arrest through his friends, he was very concerned. He recalled that when a superior was arrested, the subordinates were often implicated as well, because the latter were believed to be involved in the work of their superiors. Witness expressed that he missed Koy Thuon, having lived together in Phnom Penh. He also said that he did not know what happened to Koy Thuon's wife, Yun. Abdulhak stated for the record that she was listed in the S-21 revised prisoners' list. As regards Pang, the Witness admitted that he knew of the former's disappearance, as people in K-1 and K-3 had noticed Pang's disappearance.

Initially, the Witness stated that, apart from the cases of Koy Thuon and Pang, he was not aware of the disappearances of other colleagues between 1975 and 1979. However, when the OCP confronted him with his 2005 interview with SOAS, he confirmed his previous statement that he lived in fear around that time because everybody kept disappearing and people were whispering that those who disappeared were dead.

5. National Defense, Self-Criticism, and the "Revolutionary Flag"

The Witness testified that, during meetings, he was taught two main points for national defense: stopping the Vietnamese from invading and preventing the American imperialist from returning to the country. In order to discover people who had infiltrated the party, he was reminded to watch over people who violated the political lines, as these people could be viewed as being against the party.

Self-criticism sessions reportedly took place every evening. The Witness stated that people's daily work was checked for shortcomings or mistakes. They were criticized and reminded of how to perform better if they failed to achieve the necessary performance standard. The Witness clarified that no punishments were meted out; instead people were "re-corrected and educated time and again."

6. Arrival of Vietnamese Troops on 7 January 1979

Pean Khean testified that the Vietnamese attacked Cambodia on 7 January 1979. He saw the convoy of tanks, armored vehicles, and soldiers on the road. When specifically asked to whom the tanks belonged, he explained that people said the tanks belonged to Vietnamese and Cambodians; however, the situation was very confusing and he could not be more precise. He elaborated that it was chaotic with people fleeing their homes and running on the streets. He himself fled to the border towards the west.

C. Accuracy of Records of Witness's Interview

Guisse challenged the reliability of the records of the Witness' interview by SOAS researchers, which the OCP relied upon during their examination of the Witness. Pean Khean was reportedly interviewed twice: the first interview was conducted in July 2005 by SOAS researchers, and the second one was by the OCIJ in August 2009. As regards the

first interview, the Witness informed the Chamber that he could not remember the names of the interviewers. He could only recall their sex and race. When Guisse asked him how he got in touch with this group, he explained that someone whose name he could not remember brought the researchers to his house and he was told that they were from the Khmer Rouge Tribunal.⁶ Guisse also inquired if the Witness had an opportunity to review and correct the records of his interview. Pean Khean stated that, after the interview, he neither received any document from the researchers nor did he see the researchers again. Moreover, the researchers did not ask him for any clarifications or corrections on the notes they took during his interview.

III. LEGAL AND PROCEDURAL ISSUES

The main procedural controversy before the Chamber this week concerned the use of interviews purportedly given by a witness to third persons who were neither affiliated with the ECCC nor had given testimony before the Chamber to impeach the credibility of the witness.

In an attempt to challenge Pean Khean's claim that he was not aware that people were being taken away at Svay Meas pagoda, Nuon Chea's international counsel, Mr. Andrew Ianuzzi, presented the record of an interview (Document No. D224.14) to the witness.⁷ In this interview, the Witness reportedly stated that people disappeared every night and that people who caused "trouble" were arrested and taken away. The OCP, through Abdulhak, reminded Ianuzzi that the Chamber has not permitted the use of statements of "other individuals," – records of Pean Khean's interview prepared by a SOAS researcher, a third party not affiliated with the ECCC – in examining the Witnesses. Abdulhak then asked the Chamber to give some direction so that they may "all operate on the same understanding." Ianuzzi responded that he intended to use the statement only for "impeachment purposes" and not to have him testify on the contents of the statement.

The President announced that the Chamber will decide the matter of impeaching the Witness in due course; on the other hand, the Chamber allowed Ianuzzi to use the interview record in question, as it was included in the OCP's document list and had not been challenged by Parties. The Chamber, however, warned that it would give little probative value to the document, as the person who prepared it (i.e., the SOAS researcher) had not been summoned before the Court.

Ianuzzi thus proceeded to examine the Witness using Document No. D224.14. When Ianuzzi expressed that he was going to use another similar document, Simonneau-Fort objected, on the ground that the Witness could not be confronted with a document with which he was not familiar. Ianuzzi countered by reiterating the Nuon Chea Defense Team's position (which he said they had made known in a closed session on 5 May 2012) that any material that could challenge the witness' credibility should be allowed. The President found Simonneau-Fort's objection untimely regarding the first document, as it had already been allowed, and asked her to be precise as regards her objection to the second document. Simonneau insisted that the Witness should have been asked first if he was familiar with the document, in keeping with the Chamber's applicable ruling.

Abdulhak then informed the Chamber that the leng Sary Defense had objected to the use of both documents and that the Parties were awaiting the Chamber's ruling. Upon inquiry by Judge Silvia Cartwright, leng Sary's international counsel, Mr. Michael Karnavas, confirmed that, while they continued to challenge the use of the document, the Chamber had the discretion to determine the weight to attach on these documents. The President subsequently allowed the use of the document "as there is no strong objection to the document."

IV. TRIAL MANAGEMENT

This week, the Trial Chamber and the Parties made considerable efforts to expedite proceedings. When Ieng Sary was evacuated to the hospital because of significant health problems, his counsel, Mr. Ang Udom, indicated that his client had executed a waiver and expressed that Pean Khean's examination may proceed to save time. During discussions on the objection over documents Iannuzzi wished to present, Karnavas urged the Chamber to be efficient with time and simply move on because there was no major objection raised.

A. Trial Schedule

The Chamber allowed Khieu Samphan's Defense Team to examine the Witness beyond the usual time of adjournment (causing the proceedings to run over time by around 50 minutes) so that the Witness would not have to return to court the following day. None of the other parties opposed this adjustment to the schedule.

As the witness had concluded in giving his testimony, the Chamber called off proceedings for the next day, because no other witness had been scheduled to testify. Perhaps it would be helpful to weigh the cost of having another witness on standby (to enable the Chamber to proceed hearing testimony in the event the present witness' examination ends early) against the contribution of such a trial management strategy to the expeditious conduct of the trial.

B. Courtroom Etiquette

During discussions on the use of documents prepared on the basis of rogatory letters by the OCIJ to impeach a witness' credibility as discussed in the preceding section, Judge Cartwright asked Karnavas on their position as regards documents that Iannuzzi wanted to use to challenge Pean Khean's testimony. Karnavas explained that he indeed made a general objection to those documents:

As a matter of principle we do object to all of those reports...suffice to say that when there is an objection, we do not need every time to stand up and remind the chamber that we maintain our objection. ...Suffice to say that there are a lot of documents and difficult to keep track of this.

Iannuzzi retorted, with some apparent sarcasm in his tone:

I apologize for not having indicated, that (I) did not mention whether document was objected. I find it's very hard to remember what I did yesterday or several months ago. Maybe this is why I am such a bad lawyer.

Another difficult incident occurred when Simonneau-Fort sought clarification on the Chamber's ruling on two documents presented by the Nuon Chea Defense. In response, President Nil Nonn remarked that Simonneau-Fort had left the first document unchallenged and that the Chamber could not revisit it. President Nil Nonn remarked that Parties could only contest to new documents being put before the Chamber. He then asked Simonneau-Fort for her comments. Counsel insisted on her position and Judge Jean-Marc Lavergne kindly clarified the President's ruling in French to help resolve the matter. However, Simonneau's dissatisfaction was manifest in her slightly shaking head. Arguably, it was not the first time that President Nil Nonn lengthily rebuked Parties who appeared confused.

C. Attendance

All the Accused were present at the beginning of the proceedings. However, Ieng Sary requested leave to participate remotely from the holding cell after the end of the first session and Nuon Chea asked to do the same after the end of the second session. Khieu Samphan was present throughout the proceedings.

In the middle of the third Session, President Nil Nonn suddenly asked Mr. Ang Udom to check on his client, Ieng Sary. Mr. Ang Udom returned quickly and informed the Chamber that Ieng Sary was having significant health problems. With the assistance of a doctor, Ieng Sary's condition had been stabilized, but he was still under close watch. On the basis of the doctor's advice, Ang Udom requested the Chamber to allow Ieng Sary to be evacuated immediately to the hospital. The Chamber granted the request. At the end of the trial day, the President informed the public that the Chamber had not received an update on the status of Ieng Sary's condition.

Attendance by the Public. Despite rain showers throughout the week that flooded various areas in the country, 729 persons came to witness the proceedings on Thursday. There were more than 400 villagers from Kok Por, Boreycholsa, Takeo Province in the morning and 200 students from Panha Cheat University during the afternoon sessions.

D. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Thursday 17/05/12	9.04	10.37-11.03	12.09-13.30	14.39-15.01	16.48	5 hours and 35 minutes
Average number of hours in session:		5 hours and 35 minutes				
Total number of hours this week:		5 hours and 35 minutes				
Total number of hours, days, and weeks at trial:		259 hours and 50 minutes 60 TRIAL DAYS OVER 18 WEEKS				

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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¹ Witness was questioned by Parties in the following order: international Co-Prosecutor Tarik Abdulhak, international CPLCL Elisabeth Simonneau-Fort, national CPLCL Pich Ang, Nuon Chea counsels Mr. Son Arun and Mr. Andrew Ianuzzi, Ieng Sary's national counsel Mr. Ang Udom, and Khieu Samphan's counsels Ms. Anta Guisse and Mr. Kong Sam Onn.

² As in his previous appearances before the Chamber, the Witness maintained that he served as messenger for “Koy Khuon” alias “Thuch,” and not “Koy Thuon.” For purposes of this Report, however, the superior referred to by the witness Pean Khean will be uniformly referred to as “Koy Thuon”. See Asian International Justice Initiative, CASE 002 KRT TRIAL MONITOR, Issue No. 21, Hearing on Evidence Week 16 (2-3 May 2012). Endnote 2.

³ Shortly after 30 March 1976, Koy Thuon was placed under house arrest and later arrested. Koy Thuon was sent to S-21 on 25 January 1977. OCIJ, “Closing Order”, (15 September 2010). D427 [hereinafter, **CLOSING ORDER**]. Paragraph 936.

⁴ According to the witness Saloth Ban, Pang disappeared shortly before the Vietnamese arrived in January 1979. Case 002 KRT TRIAL MONITOR, Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012). 3.

⁵ The “Closing Order” describes Borei Keila as a meeting place, which was also referred to as K-6. At Borei Keila, Nuon Chea was said to have conducted numerous mass political trainings where he taught the policies of the CPK to Party cadres and workers in Phnom Penh. **CLOSING ORDER**. Paragraphs 59 and 886.

⁶ It is unclear from the examination if the SOAS researchers informed Pean Khean that they were from the ECCC or this account referred during his interview with the OCIJ in 2009.

⁷ Ianuzzi did not identify who conducted the interview. Presumably, it was conducted and recorded in writing by a SOAS researcher.