

KRT TRIAL MONITOR

Case 002 ■ Issue No. 21 ■ Hearing on Evidence Week 16 ■ 30 April, 2-3 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

*Disclosing secrecy will lead to death.
Keeping secrecy will earn us 80% of victory.*

- Witness Saloth Ban

I. OVERVIEW

This week, it was the Defense Teams' turn to question Mr. Saloth Ban, Pol Pot's nephew, who served as Secretary General of the Ministry of Foreign Affairs (**MFA**) during the DK Regime. Saloth Ban was quite responsive to the Defense Counsels' questions, all the while maintaining that Pol Pot was merely one of the "needles in the ocean," which meant that Pol Pot did not make decisions on his own. Saloth Ban also explained about the concept "democratic centralism," and gave insight into the Communist Party of Indochina and Angkar. He provided information on the roles of two senior Khmer Rouge officials, Chhim Sam Aok alias "Comrade Pang," and a certain Cheam¹ who worked at the MFA.

Upon the conclusion of Saloth Ban's testimony, another insider witness and former aide of Koy Thuon,² Mr. Pean Khean, was called to the stand. The OCP, led by Mr. Tarik Abdulhak and Mr. Vincent de Wilde d'Estmael, examined the Witness on the administrative and communication structures of his security unit and the roles of the three Accused. Pean Khean, a member of the ethnic minority known as "Kavet," described his experience as a security guard, messenger and food procurer in the CPK. The Witness recounted what he knew of the roles and functions of K-1 and K-3. His proximity to the Khmer Rouge's Minister of Commerce Koy Thuon alias "Thuch" and high-level cadre Pang allowed him to shed some light on the regime's structure.

Due to the Witness' ill health, the Chamber was forced to declare an early judicial recess by the second session on Thursday. The Witness will return to the courtroom to conclude his testimony on 17 May 2012.

II. SUMMARY OF WITNESS TESTIMONIES

Saloth Ban continued his testimony this week, answering questions posed by the three Defense Teams on Monday, 30 April 2012, and during the first session of Wednesday, 2 May 2012. The examination by the defense sought to test the veracity of the statements the witness made last week.

The Chamber called the next witness, Pean Khean, to take the stand after a closed session to discuss his risk of self-incrimination. He testified for the remainder of the day on 2 May 2012 about his recruitment, early years in the CPK, and service under Koy Thuon and Koy Thoun's wife. He also revealed that he arrived in Phnom Penh on 17 April 1975, the very day of the evacuation. The next day, the Witness answered questions during the first session relating to his experiences after the liberation of Phnom Penh and Koy Thuon's arrest.

A. Continuation of Saloth Ban's Testimony

Picking up from Saloth Ban's testimony last week, the Defense Teams posed questions alternately designed to clarify the Witness' statements, emphasize those that supported their respective positions, and discredit information that may prove detrimental to their clients.

The Ieng Sary Defense attempted to cast doubt on Saloth Ban's statement that Pol Pot was but "a needle in the ocean," and at the same time, portray Ieng Sary as a person who was ruled by fear during the DK regime. The Nuon Chea Defense, on the other hand, inquired about what the Witness knew of Nuon Chea's personality, CPK policies, and allegation of political interference in Case 002. From the limited accounts of the Witness on Khieu Samphan, national counsel Kong Sam Onn focused his questions on the physical lay-out of the CPK Headquarters in the jungle, Khieu Samphan's alleged lack of power, and the principle of secrecy that pervaded the CPK.

1. "Angkar" and Decision-Making in the CPK

For Saloth Ban, "Angkar is the combination of inputs from people of all walks of life." It did not refer solely to his uncle, Pol Pot, despite suggestions of Ieng Sary's international counsel, Mr. Michael Karnavas, to the contrary. The Witness insisted that Pol Pot did not make decisions for the CPK on his own, in accordance with the principle of democratic centralism, where the minority respected the opinion of the majority. He explained that he learned of this principle and the term "Angkar" only in study sessions. The Witness admitted that he never personally attended any Standing Committee meetings. Nevertheless, he insisted that there was a collective decision-making process during the regime, reiterating, "Pol Pot was a needle in the ocean, I am also a drop in the ocean."

2. The Ministry of Foreign Affairs

Saloth Ban was the Secretary General of the MFA. Although this position was only titular, as he claimed, he had numerous interactions with his superiors Pang and Ieng Sary. A certain Cheam, who was ostensibly under him in the MFA, was under Pang's direct supervision in security matters. It was Cheam who reportedly transported the individuals Pang took away from the Ministry. These arrests in the MFA, Saloth Ban claimed, were effected without his knowledge, and put fear in his heart, for himself and his family. He recalled:

My feeling at that time was that I thought about my family, who were in danger just like others. My family members included my parents as well, that was my feeling at that time and I was also worried about myself, I said several times, I was worried. And my talk with Chimm, as I said, was done very cautiously. If I was spotted talking to Chimm or be close to Chimm when he was executing orders from Pang, I could be in danger, so people around me might have (the) feeling that I had something to do with Pang, and people think I was connected that people was taken out by Chimm, I thought about these things and I was worried.

His close relation with Pol Pot did not blunt this fear, for he was sure “Pol Pot had no family affection; he had no sense of nepotism” that would shield even his own nephew from being arrested next.

The Ieng Sary Defense extrapolated on this testimony of fear to show that Ieng Sary was also fearful. They quoted Saloth Ban’s previous statements that Ieng Sary “himself was afraid,” and cited the example of the death of Khieu Thirath, Ieng Thirith’s sister, to show that no one was safe in the regime. Saloth Ban said that, from seeing Ieng Sary’s face at that time, he could tell that his superior was saddened by the events in the MFA.

When asked to elaborate on Ieng Sary’s reading of Koy Thuon’s confessions in MFA sessions, the Witness confirmed his statement from last week that “(a)fter he read the confession, both Ieng Sary and I, and everyone became afraid.” However, Saloth Ban expressed that he also felt confusion after he heard the confession, because it seemed like the confession was made by a different person; the contents did not comport with what he knew of Koy Thuon.

Mr. Keat Chhon and Mr. Hor Namhong. For most of Saloth Ban’s examination, Mr. Michiel Pestman, Nuon Chea’s international counsel, asked about two former officials in the MFA who are now prominent members of the incumbent administration: Messrs. Keat Chhon and Hor Namhong. Pestman asked about Keat Chhon’s role and importance in the MFA, followed by an inquiry as to whether the witness knew that Keat Chhon accompanied King Sihanouk to New York in 1975. The Chamber deemed this latter line of questioning irrelevant, and instructed the Witness not to answer. Moving on, Counsel referred to a chart prepared by the OCP, which showed that Hor Namhong held two positions during the regime: Ambassador to Cuba and Head of Boeng Trabek. The Witness denied seeing the chart before. Asked why Hor Namhong was given a house near the Independence Monument, Saloth Ban replied rather incoherently that the Vietnamese were nearing, and he did not know if Pang already disappeared by then, so the MFA asked Hor Namhong to live in the villa.

Pestman proceeded to ask the Witness if he had communications with Keat Chhon and Hor Namhong, and if he knew that the two were called to testify. Pestman asked the witness if he knew why the two refused to testify before the OCIJ (whether out of fear, or because of instructions from the Cambodian People’s Party or Prime Minister Hun Sen). The Chamber again instructed the witness not to answer, ruling that these questions were irrelevant to the proceedings.

3. CPK Headquarters before 1975

Khieu Samphan’s national counsel, Mr. Kong Sam Onn inquired about the CPK’s headquarters before the fall of Phnom Penh in 1975. Saloth Ban confirmed that the headquarters transferred two or three times before 1975. It was apparently last relocated sometime in 1973 or 1974. These offices were established in the jungle to keep their location secret, the Witness explained. Specific descriptions on the structures and location of the huts in the headquarters followed, along with the number of guards in the camp. The Witness confirmed that meetings between the leaders could not be overheard by the guards or other people outside.

4. CPK Policies and their Implementation during the DK Regime

Nuon Chea's national counsel, Mr. Son Arun, focused his questions on the CPK policies and Saloth Ban's experiences relating to the implementation of these policies in DK. Additionally, Kong Sam Onn examined the Witness regarding the implementation of the principle of secrecy in Democratic Kampuchea.

a. Cooperatives

When asked about allegations of lack of food in the cooperatives, the Witness maintained that the people's poor conditions were caused by bad elements, which sabotaged the CPK leadership's good intentions. He explained that, in the upper echelon instruction, there must be a dessert once a week. However, this was reportedly not implemented. Instead, rice was transported to different places or burned. He also stated that his superiors sent garments for people to use but these were also burned. Saloth Ban lamented that he came to know these things when it was already too late. He blamed bad elements out to "overcook Angkar," those who hated Angkar and wanted to destroy it, but he refused to elaborate on who these elements were.

b. Evacuation of Phnom Penh

As regards the CPK's policy on the evacuation of Phnom Penh, the Witness said he heard from soldiers that the reason behind the evacuation was the presence of American imperialist spies in the city. He also heard that the capital was evacuated because America had "the defeat planned," which he later learned to mean that there was a plan to bomb Phnom Penh. Moreover, Saloth Ban said he did not know the plans for the evacuation of Phnom Penh, although he believed that the leaders had met to plan this in the huts reserved for meetings in the CPK Headquarters.

c. Policy on Minorities

The Witness confirmed his earlier testimony that everyone had to unite to fight the American imperialists, regardless of membership to any minority group. He maintained that the Cham people were not mistreated.

d. Principle of Secrecy

In response to queries regarding the principle of secrecy that pervaded the CPK and DK, Saloth Ban indicated that members knew only of their own business and were not knowledgeable of matters above their level. "We have a slogan," the Witness recounted, "(d)isclosing secrecy will lead to death. Keeping secrecy will earn us 80% of victory."

5. Interactions with Nuon Chea and Khieu Samphan

While Saloth Ban had close interactions with Ieng Sary for the most part of his involvement in the CPK, he also had the occasion to meet Nuon Chea in Rattanakiri. He did not work with Nuon Chea, but the latter was "good" to him. Nuon Chea reportedly advised the members to love each other and educated them in the interest of furthering the revolution. His interactions with Khieu Samphan appeared to be more limited. In response to Kong Sam Onn's questions, the Witness affirmed his previous statement that the former President of the State Presidium "had no power."

6. Interactions with Pol Pot after January 1979

Saloth Ban testified that when the Vietnamese invaded Phnom Penh, he was tasked to keep around 1,000 people from the MFA out of harm's way. They fled to the West towards the Thai border. He saw his uncle Pol Pot a year after, but they subsequently parted ways and stayed in different locations. When Pol Pot fell ill, he reportedly gathered the people and told them that the situation was not good. He asked Saloth Ban to stay away and hide, and to come only when he is called. According to the Witness, he never saw his uncle alive again; he only made visits to the KR leader's grave.

7. Demeanor and Credibility

The Witness appeared earnest in his answers, and at times even closed his eyes during his answers, as if concentrating or recalling the events in his mind. However, he continued to answer some questions in a philosophical or superstitious sounding manner. Serious inconsistencies between his testimony and independent evidence in the Case File have also placed some doubt in the reliability of his answers.

For example, the Witness continuously stated that he saw Pang working in the MFA until right before the Vietnamese invasion in January 1979. However, Judge Jean-Marc Lavergne pointed out that according to S-21 records, Pang's first confession was dated 28 May 1978 while his last was reported on 22 July 1978, months earlier than what Saloth Ban stated. In another instance, de Wilde noted that S-21 records reflect that the intellectual Khoun David entered S-21 on 21 December 1976. It may cast doubt on the veracity of Saloth Ban's testimony that he noticed Khoun David in 1978, and was not able to report to his Uncle about his disappearance because of the imminence of the Vietnamese invasion. These interesting pieces of information appear to be in conflict with the chronology and reasoning to key events recounted by the Witness, and have brought a new texture to the seemingly forthright testimony of the Witness based on his recollection.

B. Pean Khean's Testimony

Before calling Mr. Pean Khean to the stand, the Trial Chamber conducted an *in camera* session to discuss this Witness' risk of incriminating himself during his examination. Upon resumption of the public proceedings, the Trial Chamber appointed a duty counsel to assist Pean Khean.

The Witness is a 62-year old carpenter and farmer of Kavet ethnicity, currently residing in Roman Village, Angtron Commune, Samrong District, Takeo Province. He was a former combatant who also served as a messenger and bodyguard for Koy Thuon (known to him as "Koy Khuon"), and later for K-1. He testified on: (i) his recruitment and responsibilities before the CPK came into power; (ii) his involvement in the CPK during the DK regime; and (iii) the evacuation of Phnom Penh and other CPK policies.

1. Recruitment and Responsibilities before the CPK Came into Power

National Co-Prosecutor Mr. Veng Hout began his examination with questions on Pean Khean's recruitment to the CPK. The Witness recalled that he joined the revolutionary movement in 1966 at Malik Commune, Andoung Meas District, Rattanakiri Province, when he was only 16 years old. At that time, Pang and Thoat, the heads of the messenger office in the Northeast Zone, introduced him to the revolution, telling him that it aimed to liberate the nation from capitalists and feudalists and end their oppression of farmers. He was asked to write a biography to relate his background, his family, and his education.

Messenger for Angkar. After his membership in the Youth League, Pean Khean became a messenger for “Angkar.” At that time, he reportedly did not know any of the senior leaders, as he received orders only from his immediate superiors. “I was told about Angkar but I didn’t ask them further what Angkar was,” Pean Khean recalled. He delivered letters placed on bamboo tubes from Andoung Meas District to Veun Sai District and vice versa. According to the Witness, he did not know what was inside these letters as “no one was allowed to open them.” He remembered that he was not allowed to visit his parents, and explained that members his age were punished if they went home without permission.

Koy Thuon’s Bodyguard. Sometime between 1968 and 1969,³ the Witness started to serve as Koy Thuon’s bodyguard and messenger, and later, for the latter’s wife, Madame Yun. Koy Thuon was then the Secretary of Zone 304, otherwise known as the North Zone,⁴ while his wife was the chief of a sector. The Witness said that in 1973 or 1974, he stayed with Madame Yun when she moved to Son Dan District. Between 1973 and 1974, Koy Thuon reportedly moved to Chamkar Leu District, Kampong Cham Province. He served as a messenger between the couple during this period.

In late 1974, Koy Khoun left Chamkar Leu for the battlefield to begin the attack on Phnom Penh. The Witness went with Koy Thuon and they stayed at Dom Nak Sdach in Udong before the final assault on Phnom Penh. On the day the KR leadership referred to as the “liberation” of Phnom Penh, he followed his superior and also entered the city.

2. Life in the CPK During the DK Regime

According to Pean Khean, Koy Thuon was appointed as Minister of Commerce after the Khmer Rouge entered Phnom Penh. Pean Khean continued to serve as Koy Thuon’s messenger and cook for the latter’s house in Chraing Chamres⁵ until the latter’s arrest in late 1975 or early 1976. He became aware of his superior’s arrest from a radio broadcast reporting that Koy Khoun was arrested on orders of Angkar, and was accused of being a traitor affiliated with the CIA.

Koy Thuon was detained in a place that looked like a hotel surrounded by walls located about 300m south of Pol Pot’s house, the Witness averred. On Pang’s behest, he brought Koy Thuon chicken on one occasion. However, apart from exchanging a few pleasantries, he and Koy Thuon did not speak at length during his visit. Curiously, the Witness was unable to recognize Koy Thuon when presented with a picture of his former superior taken in S-21. When asked if he knew of other arrests from the North Zone or the Ministry of Commerce, he replied in the negative but narrated that he heard of the dismantling of the North Zone and the establishment of a new one, which to him meant the arrest of subordinates. He did not elaborate further on this point.

Asked on who “Angkar” was, Pean Khean answered that the word referred to the leaders of the revolution. He said that he only knew Pol Pot before April 1975. At the time of Koy Thuon’s arrest, he considered the senior leaders to include Nuon Chea, Ieng Sary, and Son Sen, the people addressed as “Om” or “Uncle” in K-3.

Transfer to K-1. Two months after Koy Khoun’s arrest, Pang brought the Witness to K-1, Pol Pot’s residence. K-1 consisted of two houses facing to the east, surrounded by gates and walls. Pean Khean recalled that while he was at K-1, he was in-charge of looking for vegetables for the cook of “Om Pol.” He lived there for about half a year, and reportedly saw Pol Pot and Pang there regularly. Nuon Chea, on the other hand, went there only once.

Pean Khean said the he was subsequently transferred to a place called “Svay Meas.” He recalled that Pang already disappeared before he was relocated. He only learned later that Angkar had Pang arrested.

3. CPK Offices

The Witness also discussed K-3 and K-7 during his examination. He described K-3 as the joint office between Pol Pot, Hem (Khieu Samphan), Ieng Sary, and Son Sen. He could not provide information about K-7 apart from its location at the riverfront, as he claimed that he did not know its function.

Additionally, Pean Khean described Office 870 as the headquarters of the CPK’s “central framework.” He corroborated other witnesses’ testimony, stating that Pang was the person in charge of this office, as well as of K-1, K-3 and K-7. Despite Pang’s rank, however, Pean Khean described Pang not as a senior leader but only as an assistant who reported directly to Pol Pot. A certain Lin took over his Pang’s position after the latter’s arrest and disappearance.

4. CPK Policies

In the course of his testimony, the Witness revealed that he was one of the combatants who entered Phnom Penh on the very day of its “liberation” on 17 April 1975. The Witness reportedly arrived at Wat Phnom on his bicycle at around 5:00 p.m., after his superior, Koy Thuon, had entered the city a few hours earlier. Approaching the city from Udong, the Witness recalled seeing a very long line of people leaving the city; some had vehicles but most of them were on foot. In contrast, he recalled that Wat Phnom area was already empty when he arrived. He said he did not know it was an evacuation initially because, at that time, he was told the Khmer Rouge wanted to clean the city of enemies.

Abolition of Religion. The Witness explained that, before 1975, everyone, including ethnic minorities, was free to practice their religion. Religious activities were regularly conducted in pagodas and people paid homage to monks, as was customary. However, after 1975, pagodas were closed down, and he heard that monks were defrocked.

Enemies of Angkar. The OCP sought clarification on who the CPK regarded as its enemies. According to the Witness, enemies referred to Lon Nol, government officers, and soldiers, describing them as “life and death enemies.” He added that the CPK also considered the monarchy, spies from the CIA, KGB, and “Yuong” (derogatory term for Vietnamese) as enemies. These adversaries were arrested and smashed.

III. LEGAL AND PROCEDURAL ISSUES

The abbreviated proceedings this week were not devoid of legal and procedural issues. The Nuon Chea Defense moved for a closed session to discuss Pean Khean’s risk of self-incrimination while giving testimony. The Ieng Sary Defense, meanwhile, raised their concern on the admissibility of a summary of an out-of-court interview. Equally serious was the Nuon Chea Defense’ allegation that Judge Silvia Cartwright displayed inappropriate behavior in the proceedings and their request for a corresponding sanction. Lastly, the propriety of the use of confessions obtained through torture also reemerged this week.

A. Right of a Witness to Protection Against Self-Incrimination

Reminiscent of events two weeks ago with the witness Mr. Saut Toeung,⁶ Noun Chea's international counsel, Mr. Andrew Ianuzzi, again raised the issue of self-incrimination, this time with respect to the new witness, Pean Khean. Ianuzzi requested an *in camera* session to discuss the matter. He alleged that he noticed several documents from the Case File that may incriminate the Witness, and he is willing to elaborate why in a closed session.

Conversely, the Prosecution saw no need to have an *in camera* session to discuss this matter. Counsel for the Prosecution argued that the statement of this Witness in 2007 had already been disclosed in its entirety to all Parties. International Co-Prosecutor Mr. Tarik Abdulhak suggested the Chamber to confirm that the Witness has been apprised of his rights and that he has sufficient access to legal advice. Abdulhak reminded the other Parties that Judge Cartwright had made it clear last week that applications of this kind should be made in advance. International CPLCL Ms. Elizabeth Simmoneau-Fort expressed support for the OCP's position and urged the Chamber to maintain the transparency of the proceedings.

After hearing the arguments, the Trial Chamber decided to hold a closed session to discuss the concern raised by the Noun Chea Defense. After the *in camera* session, the public hearing resumed for the reception of the Witness' testimony. A duty counsel assisted Pean Khean during the latter's examination in accordance with Internal Rule 28(9).

B. Admissibility of Summaries of Documentary Evidence

leng Sary's international counsel Mr. Michael Karnavas objected to the admissibility of a summary of an interview purportedly given by the witness Pean Khean to Dr. Steve Heder. It is inadmissible, Karnavas argued, because the absence of a tape recording of the full interview prevents the Parties from verifying the accuracy of the summary. Khieu Samphan's national counsel Kong Sam Onn, supporting the objection, added that the summary cannot be used to verify or impeach the Witness' testimony, because there was no proof that it was obtained from the Witness and there is no source to verify it. Kong Sam Onn advocated that instead of referring to the summary, Parties should examine the Witness directly, since the purpose of his appearance is to give testimony. Ianuzzi, on the other hand, argued that the best course was to summon Steve Heder in court.

The OCP countered that Karnavas' application had no legal basis, as there is no provision in the Internal Rules that prohibits the use of summaries as evidence. He cited the cases of *Prosecutor v. Milotunovic*⁷ (1 September 2006) and *Prosecutor v. Gotovina*⁸ (11 April 2011), which held that, summaries prepared by non-parties were admissible provided they bear the minimum indicia for reliability. He argued that it was important that that all prior statements of a witness be put before the Chamber. He reminded the Defense Teams that they will have the opportunity to question the Witness on these statements. Simonneau-Fort supported the OCP, and pointed out the confusion between admissibility and probative value: a document cannot be rendered inadmissible just because they are summaries.

Karnavas, in response, explained that his objection was based on the fact that there was no tape recording of the actual interview to verify how the summary was obtained. He argued that practicing lawyers know how easy it was to coach a witness or suggest an answer through the manner by which a question was asked. Further, he emphasized the importance of determining whether a witness was showed a document to refresh his memory, and if there were conversations made in advance of the interview. In this instance, the summary was taken by Steve Heder, who Karnavas averred, was a committed advocate of having the Accused prosecuted and found guilty. Moreover, he challenged the OCP's reference to ICTY cases to buttress their position, pointing out that when he had based his arguments on

ICTY jurisprudence, the Chamber reminded him that they were not at the ICTY. However, when the OCP cites ICTY cases, its is “embraced.” He also highlighted what he considered as a basic procedural distinction between the two tribunals: in ICTY, the defense is permitted to cross-examine witnesses and pose leading questions but in the ECCC, the defense is not allowed to do so.

As the Chamber moved into a closed session, further arguments on this matter and on the content of the contested summary was not deliberated in public. When the Chamber resumed the public session, it announced that the summary was admissible.

C. Allegations of Judge’s Inappropriate Behavior

Ianuzzi jumpstarted Wednesday’s proceedings with an oral motion, asking the Chamber to sanction Judge Cartwright for her allegedly inappropriate behavior in the courtroom. He alleged that on Monday, while his co-defense counsel Mr. Michiel Pestman was examining Mr. Saloth Ban on the issue of political interference, he saw Judge Cartwright shake her head and mouth the words “blah blah blah.” He argued that Judge Cartwright’s obvious expression of disapproval of the Nuon Chea Defense is “problematic at best,” as they expect to plead before a dispassionate court. Failing to find international jurisprudence to support his motion, and perhaps deliberately seeking to garner attention with an absurd reference, Ianuzzi turned to rap music lyrics to emphasize his point. “Some musicians cuss at home, but scared to use profanity when up on the microphone,” he quoted the song *Express Yourself* by the group N.W.A. He asked if “Judge Cartwright could be advised, and again I’m quoting Dr. Dre, ‘to express her full capabilities,’ that is to say, perhaps she can verbalize her personal or judicial position to our Team, as the case maybe, if nothing else, for the sake of the judicial record,” and “that the Chamber advise Judge Cartwright, to the extent that she is able, to refrain from making those expressions in the future.”

International Co-Prosecutor Mr. Vincent de Wilde d’Estmael denounced Ianuzzi’s remarks as entirely inappropriate. He declared that the Noun Chea Defense was conveying a consistent strategy to discredit Judge Cartwright and to project itself as a victim of the Chamber. He urged the Chamber to consider imposing a sanction to the Noun Chea Defense for their unnecessary comments.

After deliberations that excluded Judge Cartwright, the Trial Chamber denied the motion, stating that, “(t)he position by counsel for Nuon Chea concerning Judge Silvia Cartwright is groundless. It is a public allegation against a Judge of the Bench and for that reason, the Chamber hereby rejects such allegations.”

D. The Use of Documents Obtained Under Conditions of Torture

In the course of his examination of Witness Saloth Ban on Monday, Karnavas asked a series of questions about Koy Thuon’s S-21 confessions. As the Chamber has already ruled that confessions obtained from torture cannot be used as evidence in this case, President Nil Nonn reminded Counsel that he may only base questions on confessions to ask about dates or the time of arrest. While Karnavas acceded to the reminder, he proceeded with his line of questioning and inquired about matters to which Koy Thuon allegedly confessed. This prompted the Chamber to instruct the Witness not to answer.

In contrast, Judge Lavergne referred to Pang’s S-21 confessions by using the dates of the confessions to draw attention to the fact that there seemed to be some contradiction between Saloth Ban’s recollection of events and the dates in these documents. This limited use of confessions was in accordance with the Chamber’s ruling.

E. Parties' Documents Lists

During the two days of hearing this week, the Nuon Chea Defense challenged the Chamber's ruling requiring Parties to include documentary evidence they will use in court in their documents lists and to put these documents before the Chamber. Despite the Chamber's repeated reminders to Parties about this procedure, Pestman attempted to examine Saloth Ban regarding documents that are not in their list. The Chamber disallowed Pestman from proceeding. Pestman argued that it was not necessary to include the documents in question in the list. He contended that he was not putting the documents before the Chamber as evidence and merely using them to test the credibility of the Witness. Pestman then submitted that they will file a motion to address this issue. Notably, Pestman had also raised this matter a few weeks ago.⁹

IV. TRIAL MANAGEMENT

It was a challenging week for the Chamber as this week's proceedings featured interesting developments and schedule adjustments. Foremost in matters of trial management relating to courtroom etiquette was the citation by the Nuon Chea Defense of rap music in the face of reported dearth in jurisprudence that supports their position. While the bold reference to pop culture may be novel, and even refreshing in some respects, it had also tested the Chamber's patience and the boundaries within which unconventional courtroom behavior is allowed.

A. Time Management

This week, the Trial Chamber endeavored to fairly allocate sufficient time within which the Parties may conduct their examination of the Witnesses. It exercised flexibility in the face of the coming holidays and unavoidable exigencies that arose during the proceedings, including the holding of a closed session to deliberate on Pean Khean's risk of self-incrimination.

President Nil Nonn attempted to expedite the proceedings by reminding the Khieu Samphan Defense to use their time efficiently and ask questions relevant to the issue, in reference to Kong Sam Onn's inquiries regarding the type and locations of huts in the CPK headquarters that do not appear to have material weight.

As regards the examination of the second witness, Pean Khean, the Chamber initially granted the OCP three-quarters of a day to ask questions. However, the Witness' testimony on Wednesday ostensibly revealed more than what the Witness had previously divulged to the OCIJ, particularly on his relationship with Koy Thuon and Pang, and the evacuation of Phnom Penh. Consequently, Abdulhak requested an extension of the OCP's time (i.e. the entire morning the next day) to ask questions. The Chamber granted the request, gave the OCP until lunchtime to conduct its questioning, and announced that the Chamber would look into the possibility of holding another session on Friday. However, this changed when the Witness appeared to have been unwell. While the Witness acquiesced to continuing his testimony during the first session, he was too ill to testify in the second session. As a result, the Chamber was forced to declare a recess earlier than anticipated. Trial will resume at the end of the judicial recess on 17 May 2012.

B. Attendance

As has been the case for the past weeks, all three Accused were present at the start of the proceedings. At the end of each first session, Ieng Sary requested the Chamber's permission to participate in the proceedings remotely from the holding cell, due to his health. At the end of the second session last Monday, Nuon Chea asked to go to the holding cell for

the afternoon. He was also absent from the courtroom on Wednesday afternoon. Only Khieu Samphan remained in the courtroom throughout the proceedings this week, whose international counsels were notably absent. Only his national counsel, Kong Sam Onn, represented him in court.

Attendance by the Public. Approximately 800 students and an equal number of people from the province attended this week's proceedings. Around 500 people from Kampong Cham Province observed the morning session of 30 April 2012, while 200 pre-high school students from Hun Sen Bun Rany Arunvotey were present in the afternoon. On the second day, 300 residents from Borset District, Kampong Speu Province attended the morning session, and 300 students from Thnol Toteung High School, Kandal Province were in the afternoon session. On the third day, around 300 students from Samdech Decho Hun Sen Suong, Kampong Cham Province attended the morning session.

C. Time Table

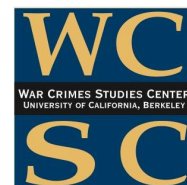
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 30/04/12	9.01	10.48-11.05	12.02-13.30	14.34-15.03	16.02	4 hours and 47 minutes
Wednesday 02/05/12	9.07	10.29-Closed session	13.33-Closed session	14.40-15.01	16.03	3 hours and 32 minutes
Thursday 03/05/12	9.01	10.32-11.12	-	-	11.18	1 hour and 37 minutes
Average number of hours in session:				3 hours and 19 minutes		
Total number of hours this week:				9 hours and 56 minutes		
Total number of hours, days, and weeks at trial:				254 hours and 15 minutes		
59 TRIAL DAYS OVER 17 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 Extraordinary Chambers in the Courts of Cambodia;
- 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)
CIA	Central Intelligence Agency
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



* This issue of KRT Trial Monitor was authored by Mary Kristerie A. Baleva, Kounila Keo, Vidjia Phun, Princess B. Principe, Sovanna Sek and Penelope Van Tuyl as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor reports on Case 002 are available at <www.krtmonitor.org>, <<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/>> and <<http://socrates.berkeley.edu/~warcrime/>>. AIJI is a collaborative project between the East-West Center, in Honolulu, and the University of California, Berkeley War Crimes Studies Center. 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.

¹ The spelling of the name “Cheam” is unclear. It is spelled phonetically for purposes of these Reports.

² Despite requests for clarification and confirmation that “Koy Thuon” and the person her refers to as “Koy Khuon” is the same person, the witness, Pean Khean, insisted that he served as messenger for “Koy Khuon” alias “Thuch,” and not “Koy Thuon.” However, the Witness affirmed that “Koy Khuon” was the Chief of Zone 304 and later became the Minister of Commerce, positions both held by Koy Thuon whose alias was also “Thuch.” Likewise, the Closing Order has cited that one of Koy Thuon’s aliases was “Khuon.” Thus, for purposes of this Report, the superior referred to by the witness Pean Khean will be uniformly referred to as Koy Thuon.

³ While the Witness provided that he started living with Koy Thuon from 1967, 1968 or 1969, he also stated that he moved from Rattanakiri to Kampong Thom in 1970.

⁴ See Office of the Co-Investigating Judges. "Closing Order" (15 September 2010). D427. Endnotes 676, 678. 479.

⁵ See CASE 002 KRT TRIAL MONITOR, Issue No. 19, Hearing on Evidence Week 14 (18-20 April 2012).

⁶ See CASE 002 KRT TRIAL MONITOR, Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012).

⁷ *Prosecutor v. Milutinovic et al.* Case No. IT-05-87-T. ICTY Trial Chamber. "Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams" (1 September 2006). par. 16. 7-8. In this case, the ICTY Trial Chamber held that, "(t)he admission of summaries and reports created by non-parties is not affected by the rule against admitting summaries prepared by parties of statements given by potential witnesses, so such materials may be admitted pursuant to Rule 89 (C). These documents, however, are hearsay in nature, and thus would have to possess the necessary indicia of reliability in order to be admissible."

⁸ *Prosecutor v. Gotovina et al.* Case No. IT-06-90-T. ICTY Trial Chamber I. "Judgement" (15 April 2011). par. 45. 27-28. In this case, the ICTY Trial Chamber ruled that official notes, "out-of-court statements prepared by non-parties and not taken for the purpose of the tribunal's proceedings," are probative and admitted them into evidence" (with the exception of the official notes of the two Accused that were excluded on the basis of the need to ensure fair trial rights).. "In evaluating the evidence, the Trial Chamber determined the weight to accord to each official note on a case-by-case basis." However, "(A)s a rule, the Trial Chamber accorded the official notes little weight and did not rely on them except to the extent that they were corroborated by other evidence."

⁹ See CASE 002 KRT TRIAL MONITOR, Issue No. 17, Hearing on Evidence Week 12 (2-5 April 2012).



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