



### **Prosecution Witness Pean Khean Takes the Stand**

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On Wednesday, May 2, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary, and Khieu Samphan. After Khieu Samphan's defense team concluded the examination of Saloth Ban, who is both Pol Pot's nephew and the former Secretary General for the Ministry of Foreign Affairs for Democratic Kampuchea, the Chamber adjourned for an *in camera* (private) session to determine whether proposed Prosecution witness Pean Khean, a close acquaintance of Koy Thuon, risked self-incrimination if he testified before the Chamber. In the afternoon, the Prosecution was permitted to examine the witness, in the presence of his counsel, but he was unable to provide answers to the vast majority of their questions.

### ***Nuon Chea's Defense Team Accuses Judge Cartwright of Offensive Gesturing***

Andrew Ianuzzi, co-lawyer for Nuon Chea, began the day by raising a concern that Judge Silvia Cartwright harbored disdain for the Nuon Chea defense team. He informed the court that he personally observed her shake her head and mouth the words "blah, blah, blah, blah" when his co-counsel, Michiel Pestman, questioned Saloth Ban about the possibility of political interference on Monday afternoon. He sought clarification whether this was her usual manifestation of disdain for the Nuon Chea defense counsel or whether she was trying to convey a different sentiment. He also requested assurance that the proceedings were being heard by an impartial bench.

Noting that he could not find international jurisprudence on the matter, Mr. Ianuzzi quoted what he considered the next best thing – lyrics from rap star Dr. Dre: “Some musicians cuss at home but are afraid to use profanity before the microphone.” He requested that going forward Judge Cartwright verbalize her disdain for the Nuon Chea team into the microphone, so that it can be including as part of the official record.



Senior Assistant Co-Prosecutor Vincent de Wilde d’Estmael took the floor to assert that the remark was “inappropriate.” He raised doubt about the existence of a legal basis for the assertion, suggesting it was a strategy to insinuate that Nuon Chea was repeatedly victimized by the Court. He suggested Mr. Ianuzzi be sanctioned for “incessantly raising such inappropriate comments.”

Mr. Ianuzzi responded that the application was based on the fact that judges must be impartial and insisted that Judge Cartwright has repeatedly made non-verbal gestures from the Bench to show her disdain for Nuon Chea’s defense counsel. He requested that the Bench require her to refrain from “such gestures” in the future.

Trial Chamber President Nil Nonn declared Mr. Ianuzzi’s comment to be groundless and a “public allegation” against a judge. He formally rejected the “assertion.”

### ***Khieu Samphan’s Defense Team Resumes Questioning Saloth Ban***

With this matter concluded, Kong Sam Onn, co-lawyer for Khieu Samphan, resumed his examination of Saloth Ban by inquiring into the “Secretary Committee.” The witness said the Secretary Committee was comprised of zone chiefs and a few deputies. He clarified that zone chiefs were responsible for all aspects of running the zone, including directing military involvement.

The witness was asked how he knew the Vietnamese attack was near in April 1975. He responded that it was because the revolutionary army attacked the Mekong River in order to cut the transport of goods from the “American Imperialists.”

Mr. Kong next inquired where exactly meetings were convened within the headquarters. The witness responded that it was in the “meeting hut.” He commented further that about ten villagers and cooks were responsible for guarding the meeting hut and two or three of them were armed. The guards often hid in the bushes and had to be positioned at least 15 meters away from the meeting hut.

Saloth Ban was asked about his repeated assertions that he only minded his own business. The witness confirmed that the study session instructed people to keep secret, recalling that there was a slogan in the study sessions that “disclosing secrecy will lead to death; keeping secrecy will

earn us 80 percent of the victory.” He also confirmed that the principle of keeping secret was one of the twelve moral principles.

Mr. Kong then informed the Chamber that he had no further questions. The witness was thanked for his testimony and given permission to leave.

***Evidence that the “Professor of Professors” was at S-21***

The floor was then given to Mr. de Wilde, who drew the Chamber’s attention to the fact that the records contains a list of prisoners at S-21 that includes the “professor of professors,” who was frequently referred to during the course of the witness’s testimony.

***Does the Next Witness Run the Risk of Self-Incrimination?***

Moving to the next topic, Mr. Ianuzzi reminded the Chamber that the Nuon Chea defense team sent an email to the senior legal officer voicing their concern that the next witness had a high risk for self-incrimination. He urged the Chamber to move to an *in camera* (private) session so that the matter could be discussed in depth.

Tarik Abdulhak, Senior Assistant Prosecutor, replied that he did not think there was a reason for a hearing because, based on the witness’s testimony before the Co-Investigating Judges, there is no reason for concern. He also asserted that the witness’s access to legal advice should eliminate any potential problem.

Elisabeth Simonneau Fort, international Civil Party lead co-lawyer, took the floor to support Mr. Abdulhak’s position, adding that the witness had been informed of his rights. She also reminded the Chamber that the proceedings should remain transparent to the greatest extent possible.

Mr. Ianuzzi explained his motion, stating that there are several documents in the case file that suggest a potential for self-incrimination. He offered to explain his reasons publically but cautioned he was not sure whether doing so was proper.

The judges gathered to deliberate, but Mr. Ianuzzi interrupted to say that he may use the documents he just referenced during his examination. He proposed, in the interest of time, that he send an email with the numbers of the documents that might lead to self-incrimination.

The President requested Mr. Ianuzzi provide the Chamber with the list of documents he wished to raise during the examination of the witness. Mr. Ianuzzi informed the President that this was already done, reiterating his belief that there was a very real risk of self-incrimination. The President thanked him for this information, and decided an *in camera* hearing would be conducted after the break.

***Can an Unverified Summary Be Admitted into Evidence?***

Michael Karnavas, co-lawyer for Ieng Sary, then took the floor to remind the Chamber that he had previously inquired about the admissibility of several documents that appear to be only summaries of interviews with the witness, not the actual transcript. He suggested that, when possible, the Prosecution provide tape recordings of the actual interview in order to verify the summary. Mr. Kong added his support for Mr. Karnavas’ request and emphasized that there was



no proof that the summaries were obtained from the witness or through proper procedures. Mr. Ianuzzi suggested that the professor who authored the summaries be called as a witness, adding that his team had made the same application in the past because this professor was the author of several potentially relevant documents.

Mr. Abdulhak put forward that he did not believe that Mr. Karnavas provided a legal basis as to why the summaries could not be used. He informed the court that the summaries were not contrary to its own jurisprudence and also presented two prior rulings from the International Criminal Tribunal for the Former Yugoslavia (ICTY) that held that summaries prepared by non-parties are admissible. He asserted

that it is only “appropriate” that all prior statements by a witness be made available for his/her examination.

Ms. Simonneau Fort then took the floor to point out that this was yet another question regarding admissibility and probative value. She noted that rejecting this document would be “absurd” because it would require all documents pertaining to the witness to be “dismissed.”

Mr. Karnavas replied that something appeared to have been “lost in translation,” clarifying that no one was suggesting that the documents not be admitted. He acknowledged that he thought summaries of interviews are “inappropriate” but asserted they still could be admitted into evidence if there is a means to verify their accuracy and reliability, such as recordings of the actual interviews. He noted that “those that had practiced for a while and conducted investigations,” are aware that it is easy to “coax” someone into a testimony by “suggesting” the answer. He summarized that uncovering the truth requires an understanding of how questions were posed and what materials were used to refresh the witness’s memory.

Going further, the defense counsel expressed his concern over categorizing the professor who prepared the summaries as “just a non-party.” He contended that this professor is actually a “committed advocate” who has already assigned guilt in this case. He supported this statement by noting that the professor has worked with the prosecution and published a book that assigns guilt to specific individuals.

Mr. Karnavas also noted it was “curious” that the prosecution was allowed to refer to the ICTY despite the fact he was previously reprimanded when making a similar argument. He mentioned that there are major difference between the procedure in this Court and the ICTY, such as the ability to ask leading questions on cross-examination, and cautioned the Bench against adopting ICTY procedures without considering the full context of the Court.

He concluded by stating that in instances where there is no tape recording for a summary, which, he asserted, is true in at least one instance currently before the Chamber, the defense will need

time to ask the witness about how the statement was generated, what documents were shown to the witness, and whether anything critical had been omitted from the statement. He asked the Court to allow the defense additional time to examine the witness in order to attend to such inquiries.

### ***Public Hearing Pauses for Three Hours***

Following this submission, the court adjourned for a forty-five minute morning break, after which it engaged in an *in camera* hearing and then the lunch recess. Ang Udom, defense counsel for Ieng Sary, made his usual request that the accused be permitted to waive his right to be present in the courtroom and retire to his holding cell to observe the remainder of the day's proceedings via audio-visual link due to his health concerns. As usual, the President granted the request, requiring a waiver be submitted with the defendant's signature or thumbprint.

### ***The Chamber Summarizes Closed Proceedings***

When the public hearing resumed for the afternoon session, the President informed the public that it had heard arguments from Nuon Chea's defense counsel concerning both the potential for self-incrimination by the next witness and the admissibility of a specific document. The Chamber ruled that the concerned document is admissible but did not mention whether safeguards would be employed to reduce the risk of self-incrimination.

### ***Examination of Witness Pean Khean Begins***

The next witness, Pean Khean, a 62-year-old carpenter and farmer, then began his testimony. The witness testified that he is from a tribal ethnic minority group but assured the Chamber that he can and read and write some Khmer. The witness confirmed that he took an oath before appearing in court.

The President informed Pean Khean of his right to refrain from answering any questions that may lead to self-incrimination. The witness informed the President that he had already been informed of this right. The President told the witness that the Chamber may provide him with a duty counsel to assist him with questions that might lead to self-incrimination and asked the witness if he "required" one. The witness requested a duty counsel.

Finally, the President told the witness that he was obliged to provide testimony based on his personal knowledge and must answer all questions posed to him unless they would lead to self-incrimination.

### ***The Prosecution Questions Pean Khean***

After a duty counsel was appointed to the witness, the President gave the floor to the Prosecution. Veng Huot, Senior Assistant Prosecutor, began his examination of Pean Khean by asking him when he joined the revolution. Before the witness could answer, Mr. Ianuzzi interjected because it appeared that the witness was reading a document, and he wanted to know whether Pean Khean was reading a prepared statement. The



President instructed the clerk only to permit the witness to read documents when instructed to do so by the Chamber and then returned the floor to Mr. Veng.

Pean Khean responded to the previous question, noting that he joined the revolution in 1967. He was asked to detail the procedure for joining the revolution, and the witness responded that he joined the revolution at the age of 16 after being told by Pang and the Chairman of the Office of the Messengers that his assistance was needed to liberate the nation from Capitalists and Feudalists. The witness recalled that when he joined the revolution he was required to write a biography that included his place of birth, the names of his parents, and his class. He was also required to attend self-criticism meetings every evening.

The witness testified that his assigned duty was to deliver letters between two bases for Angkar. This answer prompted Mr. Veng to ask the witness to name the people he believed to be Angkar, but the witness admitted that he only knew what others told him. When asked what names the others told him, the witness confessed he never learned the names of the leaders.

Mr. Veng next asked Pean Khean whether he knew anything about the content of the messages he delivered. The witness asserted that he knew nothing about the content, recalling that they were placed in a bamboo tube that could only be opened by the intended recipients. He was then asked how he sent the letters if he did not know the intended recipients, and the witness responded that he placed them at set delivery points.

The prosecutor inquired whether the witness knew Koy Thuon. The witness responded that they used to live together. When asked if he ever delivered food to Koy Thuon, he replied that he once brought Koy Thuon a chicken from Pang. The witness then clarified that he was talking about Koy Khoun, not Koy Thuon, causing some confusion for public observers. Mr. Veng, however, chose to move on to another topic.<sup>1</sup>

The witness next testified that in 1966 he worked as the bodyguard for “Koy Khoun.” The witness was asked if he also knew Pol Pot, Ieng Sary, Nuon Chea, or Khieu Samphan before 1975. The witness said he only heard of Pol Pot at that time. The witness was then asked if he ever heard of Office 100 or 102. The witness responded that he had not heard of either.

Next, Mr. Veng inquired whether Pean Khean knew Lin, and the witness responded that he got to know Lin well after the liberation of Phnom Penh. When asked if he knew Pang before 1975, the witness said that Pang was the person he “knew first” and Pang was the supervisor of the messengers.

The prosecutor asked about the witness’s knowledge of a number of offices. While the witness stated that he knew Offices K-1, K-3, and K-7, he contended that he did not know of K-5 and admitted that “remember much about” Office K-71.

The witness was requested to discuss the living conditions of people from 1966-1975. He declined to respond because he was in the jungle during this time period. Mr. Veng inquired

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<sup>1</sup> Some Khmer observers speculated that the witness was in fact referring to Koy Thuon, but the court did not want to correct him because the witness speaks a village dialect.

whether Pean Khean visited his family while he was in the jungle, and the witness said he was confined to his duty area and thought he would have been punished if he visited home.

Mr. Veng asked if people could follow their religious beliefs. The witness said that at first everyone could practice his or her own religion. He remembered that after Phnom Penh fell, however, there were no longer monks in the pagodas.

The witness was then asked how the Khmer Rouge (KR) treated members of the Lon Nol regime. The witness responded that they were treated as enemies of the revolution, meaning they would be smashed upon arrest.

Mr. Veng asked the witness what Angkar taught him after he joined the Communist Party of Kampuchea (CPK), and he responded that he attended daily meetings, led by Pang, on how to liberate the peasants from the oppressors. The witness also testified that Pang introduced him to “Koy Khoun.”

Mr. Veng then reminded the President that it was time for the break. The President said it was his job to determine when breaks would be held but then adjourned the court for a twenty-minute recess.

#### ***Veng Huot Continues his Examination***

Upon returning from the recess and surveying the parties about how much time was required to examine the witness, the President returned to Mr. Veng. The prosecutor resumed his examination by asking Pean Khean whether he was aware of the CPK’s policy to evacuate Phnom Penh. The witness responded that he did not know anything about it but recalled seeing people moving from the city.

Mr. Veng ended his examination by asking the witness who was responsible at K-1. Pean Khean responded it was Pang and Lin.

#### ***Tarik Abdulhak Takes Over the Examination of Pean Khean***

Mr. Abdulhak began his examination by asking the witness if he became a member of the CPK when he joined the revolution in 1966, and Pean Khean responded that he had not. He said that he was a member of the Revolutionary Youth League, however.

The witness next testified that he started working with “Koy Khoun” in 1968 or 1969 and lived with him and/or his wife until “Koy Khoun’s” arrest.

The witness was asked whether he saw any meetings with senior leaders during this time. He responded that the senior leaders did not meet during this time, explaining that the messenger service was necessary because the leaders were in different locations.

The prosecutor inquired whether the leaders had any forces under their command. Pean Khean responded that there were no armed forces at this time, only bodyguards. When asked whether he was aware of any fighting between the KR and Lon Nol regime, he replied that he knew about the fighting but clarified that he was not engaged in it. The witness was then asked whether he knew of any incidents where the Lon Nol soldiers were smashed. He responded that they were

“life and death enemies.” The witness stated that the people left the city so that the enemies, meaning the Lon Nol soldiers, could be “cleansed.” He was unable to recall, however, seeing any Lon Nol soldiers being detained.

Pean Khean then testified that after he came to Phnom Penh on April 17, 1975, at 5 p.m. he cooked for “Koy Khoun.” He mentioned that he was always with “Koy Khoun” after arriving, prompting Mr. Abdulhak to ask whether he saw other leaders as well. He responded that he did not see them until July of that year.



*Koy Thuon (right) appears with a Khmer Rouge dance troupe in this undated photograph.  
(Source: Documentation Center of Cambodia)*

Mr. Abdulhak asked whether Koy Thuon was still the Chief of Zone 304 at this time, and the witness confirmed that he was, noting that Koy Thuon later became “Chair” of the Ministry of Commerce. The witness asserted that he did not know who arrested Koy Thuon.

The witness was asked who Angkar was, and he responded that the term referred to the leaders of the Revolutionary Kampuchea.

With the conclusion of this question, the President adjourned the court for the day, telling the witness he was expected to return when court resumed tomorrow, Thursday, May 3<sup>rd</sup>.