



Nuon Chea's national counsel Son Arun leads off the cross-examination of witness Ny Kan at the ECCC on Wednesday.

Tension and Drama between the Defense and the Bench Mark Wednesday's Hearings at the ECCC

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In a day filled with tension and heated debate, defense counsel for the accused Nuon Chea, Ieng Sary, and Khieu Samphan had their turn to examine witness Ny Kan in his third day of testimony, Wednesday, May 30, 2012 in the trial of Case 002 at the Extraordinary Chambers of the Courts of Cambodia ("ECCC").

Two buses of villagers from the Kandal Stung district of the Kandal province were present for the proceedings, along with a significant number of Western visitors. The villagers showed noticeably greater interest than the school students from previous days that week. When the curtains opened a few minutes past 9:00 a.m., revealing the Chamber and the various parties within it, the villagers leaned forward in their chairs, to take in the scene before them.

Before resuming the third day of witness Ny Kan's testimony, Trial Chamber President Nil Nonn requested an update on accused Ieng Sary. Like the previous two days, the court officer announced that Ieng Sary was in his holding cell and would be following proceedings remotely,

having waived his right to be present in the Chamber. President Nonn added that Ieng Sary would be able to assist his counsel within the Chamber through audio-visual means.

Before handing the floor over to defense counsel for examination, President Nonn asked if any of his fellow judges would like to put forth questions to the witness. Judge Jean-Marc Lavergne stated that he had a few comments and questions for the witness.

Judge Lavergne Questions Witness Ny Kan

Before proceeding with questioning, Judge Lavergne wished to make a clarification about two documents put forward by defense counsel for Ieng Sary, Michael Karnavas, the previous day. The two documents were telegrams received on March 12 and 15, 1978, recounting the visit of Yugoslav journalists. Judge Lavergne stated he wished to “emphasize” that the telegrams contained lists of recipients, including Hom, Hom Non, Bong Van, and Bong Vong; copies were also transmitted to the office and the public archives. Judge Lavergne proclaimed, “It is crucial that the public and the witness be advised of that.”



Beginning his examination of the witness, Judge Lavergne asked Mr. Kan if he ever had any contact with accused Khieu Samphan during the witness’s work at the Ministry of Foreign Affairs (“Ministry”). Mr. Kan replied, “We had to obey people according to the hierarchical order, and at that time the person in charge of the Ministry was Ta Ieng Sary. At that time I had no contact with Khieu Samphan.”

Judge Lavergne asked whether he came in contact with Khieu Samphan when he accompanied foreign tourists. Mr. Kan responded, “The majority of foreign visitors I received were of the lower level, including journalists. As far as I know I never had the opportunity to meet Khieu Samphan.”

Not giving up, Judge Lavergne, asked the witness if he ever ran into Khieu Samphan in the “hallways” of the Ministry. The witness simply replied, “No.”

Judge Lavergne moved on, asking the witness who replaced Ieng Sary within the Ministry when he was “absent.” Starting off with a familiar refrain, Mr. Kan said, “It was a long time ago. I don’t remember everything. However, according to the hierarchy,” he continued, “it was Hong who would replace him when he was absent. Another person would be Chiem.”

Judge Lavergne asked Mr. Kan if the man he called Hong was the same person as Saloth Ban. The witness was not certain. “People went by other names at that time,” he added. He also denied knowing that Hong – or Saloth Ban – was the brother of Pol Pot, telling the Judge, “At that time, people’s biographies were not open.”

Returning to yesterday's discussion of Mr. Kan's work with the Propaganda Committee of the Western Zone, Judge Lavergne asked the witness if he knew of Yun Yat. "I believe Yat must have been the wife of Mr. Son Sen,," the witness replied. He could not provide the Court with information about her role within Democratic Kampuchea ("DK"), however. The witness concluded, "The work of the upper echelon and the lower echelon was not connected."

Judge Lavergne concluded his questioning by asking the witness how he came to hear about his brothers' deaths. "I learned about this through other people; however I do not know the cause of their deaths or who killed them." Regarding how he heard about the death of his brother's family, Mr. Kan said, "When the war was nearing the end, I was attached to the south location and my brother's family was attached to the west wing. They were of the higher level, so I did not know anything about them. However, I heard from other people that they were dead."

Co-Lawyer for Nuon Chea, Son Arun, Makes Headway with the Witness

Launching into the witness examination for the defense, Son Arun, co-lawyer for Nuon Chea, proved somewhat more successful than his predecessors in extracting new information from the witness.

Mr. Arun began by questioning the witness about foreign and military affairs before 1970. On the subject of whether he knew or had heard party members discuss foreigners causing problems and creating insecurity within the country, Mr. Kan said he did not because he only worked "informally" within the movement during that time. Mr. Arun asked the witness if he had heard of foreigners coming in and settling at all, to which Mr. Kan responded, "When I worked as a school teacher and was engaged in propaganda, I had no knowledge of foreign settlers coming to settle in Cambodia as of yet."

Moving on to a statement the witness had made in previous testimony that he had joined the revolution "by the appeal from the front to go to the Marquee," Mr. Arun asked him what his "understanding" was of the Marquee Forest. Mr. Kan could not recall specific details, but he stated that the purpose of the appeal was "to make people united together to fight the American Imperialists and Lon Nol's people who engaged in the corruption that toppled down King Norodom Sihanouk."

Whether he believed all people in the front were supporters of King Sihanouk, the witness replied, "I saw people from all walks of life, from every movement to come and join the movement. I cannot say what groups they came from because as a lower-level cadre I cannot understand the details."

The Witness Repeats Familiar Patterns

Mr. Arun, changing topics, attempted to extract information from the witness about the Western Zone purges in a series of similarly phrased questions that failed to produce anything more than "I heard it through the grapevine."

Accepting his loss, Mr. Arun proceeded to ask the witness about the *Revolutionary Flag* magazine issue presented to him the day before. Asking the witness whether he knew of *Revolutionary Flag* or had seen that particular issue, Mr. Kan replied, "I have already answered

that question, but I can answer it again. I did not see it. The substance in the training sessions were merely excerpts.” Regarding whether he had ever seen an issue of *Revolutionary Flag* at all, the witness stated, “Back then the *Revolutionary Flag* document was not widely disseminated. What I only got was the excerpt form the magazine.”

Mr. Arun inquired about the substance of the excerpts. Mr. Kan replied, “The fundamental substance was that we had to be constantly on the offensive in order to be self-reliant.... Besides the constant issue of producing rice, we had to focus on the livelihood of the people, the promotion of health care, and the solidarity and unity of the base people and the new people.”

Thanking him for his “detailed response,” Mr. Arun concluded his questions by requesting that the witness describe the structure in which reports were passed between sectors and upper-level members of Democratic Kampuchea (DK). Just in case Mr. Arun had not understood the witness over the past couple days, Mr. Kan repeated, “We had to communicate through the hierarchical structure, whether it be from the bottom up or from the upper authority down.”

Defense Counsel Michiel Pestman Evokes the Judge’s Wrath

Picking up the questioning where his colleague had left off, Michiel Pestman launched into a line of questioning that has become predictable for the Nuon Chea defense team – whether the witness actually believed he was under oath.

From the very first question put forward by Mr. Pestman – whether the witness gave an oath before coming into court, however, President Nonn continued to interrupt the examination. Each time the President interjected, Mr. Pestman simply moved down the adverbial list of when, where, why, and how, prompting what was unquestionably the most dramatic exchange of dialogue within the Chamber in the past two weeks. The heated discussion caused a stir among the villagers in the public gallery who, already absorbed in the proceedings, were provided even more excitement by the controversial colloquy.

Trying the President’s patience, Mr. Pestman informed President Nonn, “Usually the witness is sworn in in the presence of the parties.” Exemplifying the ECCC’s truly unique and international composition, President Nonn informed Mr. Pestman, “Followers of other religions are allowed to take oaths differently. If they are Buddhists they take oaths according to the Law of Cambodia and according to their capacity of a Buddhist.”

Mr. Pestman told the President he was aware of the Cambodian procedure for taking oaths. He merely wanted to determine, he explained, whether Mr. Kan believed his statements before the “Lord of the Iron Staff” were “mere superstition.”

Perhaps attempting to break the tension, Mr. Pestman, stated, “I think it is better for all of us to break now.” Nothing Mr. Pestman could say would please the president by that point, however. Taking apparent offense at Mr. Pestman’s suggestion for a break, President Nonn reprimanded the defense counsel. “The decision to continue proceedings or not is up to the Chamber,” he stated firmly.

With his suggestion of a break effectively rebuffed, Mr. Pestman continued his examination. Before the witness was able to respond to the first question, Mr. de Wilde raised an objection, calling Mr. Pestman's question "manifestly repetitive." President Nonn summarily announced to the Court that the objection was sustained.

Noticeably perturbed by the President's action, Mr. Pestman responded to the announcement, "I would have liked to reply before your ruling on the issue.... Is it not part of normal cross examination technique to ask repetitive questions?"

President Nonn Forbids Talk of "Morality Issues with Women"

Mr. Pestman's last attempt to put questions to the witness met with similar misfortune. Attempting to question Mr. Kan about the reasons for his transfer from Sector 32 to the Ministry, Mr. Pestman asked whether he had "problems" or "morality issues" with the women in Sector 32. "Wasn't that the real reason for your transfer?" Mr. Pestman queried.

Perturbed by the content of Mr. Pestman's question, President Nonn interrupted again, saying the question was "irrelevant" and "not mentioned in any paragraph of the Closing Order." Mr. Pestman quickly retorted, "Whether it was mentioned in the Closing Order or not is irrelevant."

President Nonn interrupted Mr. Pestman once again, instructing him not to continue with that subject. If he continued, President Nonn informed him, the Chamber would assume he had ceded control of the floor.

"I still have the floor, and I don't intend to cede it!" Mr. Pestman exclaimed, outraged.

President Nonn informed the Court it was time for a short break. Before the President stopped speaking, Mr. Pestman yanked off his headset, refusing to listen to the interpretation of the remainder of President Nonn's statement.

Mr. Pestman Did Not Go Down without a Fight

After the morning break, President Nonn reopened the proceedings but issued a pointed comment to Mr. Pestman before handing him control of the floor. Referring to Mr. Pestman's behavior prior to the break, President Nonn announced to Chamber, "Defense Counsel showed signs of stubbornness, and he should be informed that the questions should be relevant to the facts at issue.... He should refrain from behaving like he did this morning."

Exhibiting no sign of intimidation, Mr. Pestman promptly stood and addressed the President. "For the record," Mr. Pestman protested, "I would like you to know that before the break, you prevented me from asking questions intended to challenge the credibility of the witness. That is a clear violation of my client's right to confront the witness before him." In a personal aside, Mr. Pestman commented on President Nonn's opinion that he had



exhibited “stubbornness.” “I take that as a compliment,” Mr. Pestman told the President directly, “I don’t think that is necessarily a bad characteristic for a defense lawyer.”

President Nonn interrupted Mr. Pestman yet again, something he now appeared to enjoy, and told the defense counsel, “Indeed you are not allowed to make any further statements on this.” The President then advised Mr. Pestman that if he continues along such a path, the Chamber “will take it as if he has no other questions.”

Withholding any further personal commentary, Mr. Pestman continued his examination by showing the witness a document titled, “Ministry of Foreign Affairs, Alias B-1.” The document displayed a chart outlining the hierarchical structure of authority within the Ministry.

Mr. Pestman proceeded to ask Mr. Kan about a number of individuals mentioned in the chart. Although the witness admitted he knew some of them, Mr. Pestman received no more information than the usual “I do not recollect”; “That concerned the upper echelon and was not my business”; or “I do not know because of the secrecy.”

When asked about a man named Hao Narmhang and whether he knew what Mr. Narmhang’s role was at Kampong Trabek camp, the witness replied, “I do not know Mr. Narmhang, and since I do not know him, I do not know what he did.”

Desperate – or simply frustrated – by this point, Mr. Pestman continued asking the witness about Mr. Narmhang. President Nonn, ever the watchful warden, did not let Mr. Pestman get far. Interrupting again with great speed, President Nonn informed Mr. Pestman that the witness stated he did not know Mr. Narmhang and could therefore answer no more questions about him.

Referring to the question President Nonn had interrupted, Mr. Pestman replied, “The fact that the client didn’t know who this person is doesn’t mean the witness doesn’t know where he lived.” Exactly what logic supported such a statement, he did not say.

Continuing, Mr. Pestman attempted to put another document before the Chamber. Before granting him permission, President Nonn asked if the document had been properly submitted to be used in witness examination before the Chamber. Mr. Pestman responded that he was not sure if the document was included on the lists submitted by the other parties; however, he continued, the document was on the “interface.”

Unwilling to accept this explanation, President Nonn announced, “This document is instructed to be removed from the screen for now. The Chamber would like to inform counsel for Nuon Chea... that a document is not considered significant if merely put on the interface.”

In response to President Nonn’s judgment, Mr. Pestman explained, “We did file a submission on Monday, which included a request to allow us to use this particular document including all the other documents on the interface.” Why Mr. Pestman did not inform the President of this fact initially, he did not say. By this point, however, it appeared too much damage had been done.

President Nonn replied, “Time and again Counsel still behaves in the same way. If Counsel is not happy with this, Counsel may file an appeal to the Supreme Court Chamber.... We already informed you that if you try to obstruct the proceedings, the Chamber will proceed to other parties.”

Continuing “stubbornly,” Mr. Pestman replied, “I do not understand your decision. We did file a submission.”

President Nonn responded that the Chamber had already ruled upon the issue, that Mr. Pestman had not followed proper procedure, and that the Chamber’s decision was final.



Mr. Pestman retorted with amazing resiliency, “Mr. President, I’m puzzled and I don’t want to give up yet.”

Apparently insisting that the counsel indeed give up, President Nonn concluded, “The Chamber takes it that you have no further questions.” Members of both the Chamber and the public gallery sent each other glances of amusement and astonishment, and many seemed too shocked for words.

And yet, pushing both the Chamber’s and the public gallery’s belief, Mr. Pestman’s still responded, “Mr. President, I have not finished with my questions.”

In a final vituperation, President Nonn proclaimed, “We have already ruled that you have no other questions! Your time has run out! The floor is handed over to Counsel for Ieng Sary. You must be seated!”

Though his microphone had been turned off at this point, Mr. Pestman could still be heard through the glass of the public gallery firing objections at President Nonn, proving that he would not go down without a fight.

More Struggles with the Witness

Once President Nonn had adequately convinced Mr. Pestman his opportunity to examine the witness was over, he handed the floor to Ang Udom, co-lawyer for Ieng Sary.

Learning from the errors of his predecessors, Mr. Udom told to the Court he had “new questions” regarding the organizational structure of the Ministry. Receiving permission to put the Ministry’s hierarchical chart before the witness for the third time that day, Mr. Udom began his questioning asking for further clarification of Mr. Kan’s relationship with Mr. Chiem, whom the witness had previously stated was the “chief of protocol.”

Mr. Kan responded, “I am an individual who was in charge of a small section of protocol.... Mr. Chiem was the head of a department. I was instructed by Mr. Chiem.” Upon his return from accompanying visitors, the witness added, he would report directly to Mr. Chiem.

In response, Mr. Udom directed Mr. Kan’s attention to the chart before him. Pointing out that his name was placed “parallel” to Mr. Chiem’s name, Mr. Udom told the witness that one would generally assume this meant Mr. Kan’s authority was equal to that of Mr. Chiem’s. Why though, Mr. Udom inquired, did he state the opposite?

Giving Mr. Udom no preferential treatment, the witness responded in his familiar way: “I have repeated in my answer...and you may not have followed my answer. I said that I was part of the Protocol Department.... I was transferred, and I was placed under the immediate supervision of Chiem.... I do not accept this document because my level was far lower.” Continuing with an unusually long response, he explained, “I could not even go along with Mr. Chiem to other meetings. I normally stayed outside of the meeting rooms, and I listened to Mr. Chiem, so my role was in no way equal to Mr. Chiem’s.”

Belaboring the point, Mr. Udom followed up by asking the witness if his answer implied that he believed the chart was incorrect. Mr. Kan replied, “As I said earlier, I only saw this structure when the Office of the Co-Investigating Judges presented it to me. And I repeated in my testimony that if you wanted to know about my role in the Ministry or want to now if my position was parallel to Mr. Chiem, I categorically deny that that is accurate.”

Getting the point, Mr. Udom moved to another document – the transcript from Mr. Kan’s interview with the Court’s co-investigating judges. After reciting from the transcript the names of a large number of party diplomats and senior leaders, including the accused, Mr. Udom asked the witness if he had ever been in meetings with any of them. Impressively consistent, Mr. Kan replied, “Your question is relevant to the previous questions that I have answered over the past few days. I was a member of the lower level. I did not have the authority to attend such meetings, because it was a meeting of the leadership.”

Attempting to uncover any information regarding the upper-level meetings, Mr. Udom asked the witness if he was involved even peripherally with the meetings among party leaders. Mr. Kan responded, “Obviously this question is beyond my knowledge.”

Not giving up yet, Mr. Udom asked if the witness had ever learned of the meetings from others – perhaps his brother, Mr. Udom suggested. And yet again, Mr. Kan replied, “I consider this a good opportunity to state... which I have mentioned over the past few days, that there was a principle of secrecy – even close or immediate family members could not share the content of their work with each other.”

Perhaps wishing the witness to provide the Court with something a bit more concrete, Mr. Udom then asked, “Is it correct then to say that it was only your mere speculation that the arrests and removal of diplomats were ordered by the senior leaders?”

Before the witness could answer, President Nonn interrupted and informed Mr. Udom the question was leading. Mr. Udom’s attempt to rephrase the question was of no success; President Nonn intervened again to inform the counsel that the rephrased version was still leading. Trying



yet again, Mr. Udom asked the witness, “Was your assertion that the removal of the foreign diplomats was the decision of the senior leaders based on any reliable information?” Mr. Kan first replied, “No,” but then continued, “I based my answer on reality.” Since people of his level, could not make any decisions, Mr. Kan explained, only senior leaders would have had the authority to order arrests or to order removal of other party members.

Mr. Udom spent the remainder of his examination struggling with a series of questions that seemed to be rephrased versions of those already put forth to the witness. President Nonn, exhibiting a rather amusing fondness for his powers to control the Court, interrupted Mr. Udom a few more times to inform him the question was either repetitive or needed to be rephrased. Following in President Nonn’s footsteps, the

witness also took it upon himself to put counsel in his place. In response to one of Mr. Udom’s questions, the witness looked at President Nonn and stated, “Mr. President, I feel that the question is somehow repetitive.”

Perhaps realizing he should have tempered his intervention, President Nonn quickly announced it was time to adjourn for lunch.

Before proceedings concluded, Co-Lawyer for Nuon Chea, Mr. Son Arun, requested the Court allow his client to observe further proceedings from his holding cell. Noting Nuon Chea’s health concerns and that his counsel had properly submitted a waiver of his right to be present, President Nonn granted Nuon Chea’s request.

Parties Continue To Struggle with the Witness, as well as with President Nonn

After a much needed lunch break but before President Nonn could get comfortable in his seat, Mr. Pestman asked for “two minutes” of the President’s time. In no mood to waste the Chamber’s time entertaining Mr. Pestman’s “stubborn” disposition, President Nonn stated curtly, “No, you are not allowed.” Addressing the defense party generally, he stated, “Counsel for Nuon Chea, if you would like to be heard, you are asked to submit an application in writing to the Chamber.”

Mr. Pestman’s microphone was then turned off, but his voice could still be heard objecting in the background as President Nonn proceeded to return the floor to Mr. Udom.

Mr. Udom continued his examination, asking the witness what kind of he had obtained to make him “genuinely believe” the senior leaders ordered the arrests and removals of officials in the West Zone. In a simple statement, Mr. Kan responded that he had never received any actual information on the subject.

Referring to the senior leaders more generally, Mr. Udom asked the witness how the upper echelon communicated with one another. As expected, the witness replied that he was not privileged to such information.

When Mr. Udom continued questioning the witness about his knowledge of senior leaders' activity, President Nonn made his first interjection of the afternoon. After Mr. Udom asked the witness about the "agenda" of the meetings between the senior leadings, President Nonn interrupted the examination and instructed the witness not to answer. In a condescending manner, President Nonn commented rhetorically, "How could he understand the items on the agenda of the meetings if he was not present at the meeting or knowledgeable of those who attended the meetings?"

Accepting his defeat gracefully, Mr. Udom thanked the witness and informed the Court he had no further questions.

Another One Down, Two To Go: Counsel for Khieu Samphan Fares Better Than Peers

Testimony by witness Ny Kan concluded with final examinations by counsel for accused Khieu Samphan. Whether possessing superior trial skills or having learned from their peers' previous blunders, both defense counsel co-lawyers Kong Sam Onn and Anta Guisse fared noticeably better than the preceding parties. Mr. Sam Onn in particular displayed a strategic acumen in his examination of the witness.

Assuming the floor after Mr. Udom, Mr. Sam Onn greeted the witness and told him, "I have a few questions to put to you concerning your testimony in this chamber."

Beginning his examination, Mr. Sam Onn asked the witness if he had gone by any other names during his time in Democratic Kampuchea, a question that had surprisingly not yet been asked. Mr. Kan replied that he had three names: "Kan," "Kin," and "Sath." However, the witness added, he went by "Kan" and "Kin" more frequently. Whether people knew him by the name of "Sath," the witness said only "a few" people called him by that name. Mr. Sam Onn then asked if the witness had signed documents under those names while working for Democratic Kampuchea. Mr. Kan replied that he had only signed documents using the name "Kan."

Switching subjects, Mr. Sam Onn asked the witness what were reasons he was for maintaining the "secrecy" to which he had frequently referred throughout his testimony. Appearing a bit confused initially, Mr. Kan informed the counsel that the concept of secrecy was a fundamental tenant of indoctrination. Stating that there were "several slogans" about the subject – most of which he could not recall – the witness was able to remember one "very well." Mr. Kan announced the slogan firmly and without pause: "We Only Mind Our Own Business." The slogan still seemed to be working more than 30 years later.

Appearing more knowledgeable on the concept, Mr. Sam Onn continued, asking Mr. Kan what would happen if a person "failed to maintain the secrecy." The witness said the people engaged in "criticism and self-criticism sessions." He elaborated, "People had to criticize themselves to see if they could maintain the secrecy." If they could not, he continued, they would be "refashioned – or advised –how to do so."

Regarding whether he “maintained the secrecy,” the witness stated, “I followed instruction. I was self-conscious. I understood what would be the right things and what would be the wrong things.”



Having had relative success with the witness, Mr. Sam Onn pressed his luck and requested permission to present a document to the witness. After receiving permission (and overcoming some technical difficulties), Mr. Sam Onn read a quote given by the witness in his interview with the Court’s co-investigating judges: “I know Ieng Sary, clearly; as for Khieu Samphan and Ieng Thirith, I know them too, as they are the upper echelon.” Mr. Sam-Onn then asked what Mr. Kan meant by “upper echelon.”

The witness responded that the upper echelon is “the spoken language.” He continued, “In the spoken language we say ‘upper echelon’; at other points we say ‘upper level.’ They are the senior leaders.” Whether the witness knew Khieu Samphan personally, Mr. Kan responded, “I did not know him personally, but I knew him in the capacity that he was the leader who attended ceremonies or events that I also went to.” He stated that he had never received any “direct orders” or “tasks” from Khieu Samphan, because, he reminded Mr. Sam Onn, the hierarchy meant he received instruction from the superior directly above him.

Moving on, Mr. Sam Onn asked the witness to read to the Court a segment from the interview where he discussed the removal of officers from the West Zone. The quote, which Mr. Kan proceeded to read aloud, stated that authority to remove officials was vested in the “upper echelon,” which was composed of members such as Pol Pot, Nuon Chea, Khieu Samphan, etc., whom he did not know personally.

Mr. Sam Onn then proceeded to ask the witness on what basis he made that statement if he did not know the members of the upper echelon. The witness replied, “It was based on the common practice.” Mr. Sam Onn’s relative success in ferreting out any new information from the witness came to an end, however, when he continued to press the witness on this subject. Mr. de Wilde began objecting to his questions, objections that President Nonn, still ready to rein in the other members of the Chamber, continued to sustain.

Realizing his luck had run dry, Mr. Sam Onn bowed out gracefully and concluded his examination.

Defense Counsel Anta Guisse Concludes an Exhausting Three-Day Examination

Co-lawyer for Khieu Samphan, Anta Guisse, had the privilege of concluding the examination of witness Ny Kan, an event to which all the parties were clearly looking forward. Before commencing the examination, Ms. Guisse reminded the witness that her questions were being translated. If he became confused or did not understand something, she instructed, he should interrupt her so she could repeat or rephrase the question.

Ms. Guisse began asking the witness a series of questions about his family. The witness informed the Court that his parents had been farmers, that they were “middle-class peasants,” and that they owned “two pairs of cattle” and some of their own land. After leaving his parents’ home, Mr. Kan continued, he went to live with his brother, Ny Chhum, who was a teacher.

Proving to be no exception, Ms. Guisse was soon interrupted during her questioning of the witness on his background. President Nonn, telling Ms. Guisse that her question was “not relevant,” advised her to move to another topic.

Ms. Guisse responded politely, “Mr. President, with all due respect, the question is relevant.... In a cross-examination, I must establish a foundation.” Abiding no further argument, President Nonn responded, “The Chamber has already announced its decision.” Continuing to direct Counsel in her examination technique, he told Ms. Guisse to avoid “irrelevant, repetitive questions or questions that elicit assumptive or subjective answers.”

Understanding further responses would be futile, Ms. Guisse changed topics and asked the witness a series of questions regarding the military bombardments occurring around the time of Lon Nol’s coup d’état. Mr. Kan informed the Court that immediately after the coup d’état, in 1970, there was no bombardment in the countryside. However, the witness continued, when the war first broke out, there were bombardments from Kampong Thom province to Siem Reap; the bombardments normally targeted bridges. He concluded, “The bombardments killed people, destroyed people’s property.... This bombardment encouraged people to join the popular movement.”

Successful with the previous topic, Ms. Guisse asked the witness about his propaganda education on agricultural farming. She was particularly interested in the people’s response to receiving such education. When she mentioned that the witness had stated the propaganda was used to promote “national unity,” however, the witness corrected her, “I did not say ‘national unity’ in my testimony. I said we had to come together to support self-sufficiency.” Continuing with his explanation, Mr. Kan informed her that the agricultural education was meant to increase production. He then admitted that the propaganda was unsuccessful because “the yield was not sufficient.”

Ms. Guisse asked the witness why the yield was not sufficient. The witness responded, “The harvest yield was not actually calculated. There was no sufficient figure attached to it. It is based upon what I saw, that the harvest was not sufficient to feed the people.”

Clarifying her question, Ms. Guisse told Mr. Kan that she wanted to know the exact reasons for the low harvest. “Was it because of the infertility of the land or were there other reasons?” she asked. Mr. Kan responded, “Of course it resulted from the conditions of the land.” The witness then mentioned a few other factors that contributed to the low harvest; he said that many farmers did not know appropriate



agricultural techniques and that there was a “disproportional division of the harvest.” Explaining what he meant by “disproportional division of the harvest,” Mr. Kan stated, “On the one hand they had to feed themselves; on the other hand they had to supply food to the soldiers.” He believed the disproportional division was the main reason for the food insufficiency. When asked if the basis of the food insufficiency was, therefore, the state of war, the witness simply responded, “We had to supply those who went into war.”

Moving to the witness’s time in the Marquee Forest between 1970 and 1975, when he recalled moving around a lot for “security” reasons, Ms. Guisse asked the witness what he meant by “security reasons.” Mr. Kan stated:

The term ‘security’ I refer to is rather broad. Perhaps I talked about it too briefly in too narrow a sense. Security at that time related to the aerial bombardments and to the people who could be perceived to be spies. So people had to be very careful not to remain in one place for very long, otherwise they would be attacked or spied on.

Attempting to determine the identity of the bombardiers, Ms. Guisse asked the witness if the Lon Nol troops had their own air force. “Lon Nol was backed by Americans,” the witness stated, but he could not confirm to whom specifically the planes belonged.

Having approached the final subject of her examination, Ms. Guisse asked the witness if he ever worked in a “communication service” during his service in Democratic Kampuchea. Mr. de Wilde objected to the question, telling the Court that Ms. Guisse was not being “clear” and requesting her to clarify what she meant by “communication service.”

Realizing she was treading on dangerous ground, Ms. Guisse proceeded carefully. She asked how telegrams were sent in the Ministry. Mr. Kan replied, “The question you put to me concerns geography and practical concerns of people at the Ministry. Normally telegrams were sent only to people who lived at a long distance.” The witness claimed, however, that he was not tasked with sending telegrams.

Ms. Guisse thanked the witness and concluded her examination, ending witness Ny Kan’s testimony in its entirety.

Before adjourning the Court for an afternoon break, President Nonn asked the court officer to inform the court on the status of the reserve witness. The court officer announced that witness TCW583 was ready to be called. President Nonn thanked Mr. Kan for his time and announced that the Court would continue the day’s proceedings by hearing the testimony of TCW583.

The Court’s Reserve Witness Proves To Be Refreshingly Cooperative

The Court’s reserve witness entered the Chamber shortly after afternoon break. He was meticulously groomed and clothed in a tailored black suit and proceeded to the witness chair with almost regal bearing. His spectacles resting delicately upon his nose, the witness resembled a learned scholar.

After greeting the witness, giving him procedural instructions, and informing him of his legal rights within the Chamber, President Nonn asked a series of preliminary background questions.

The witness informed the Court that his name was Sar Kimlamut, and he was born in 1931. Whether he went by other names, particularly between the years 1975 and 1979, he said people called him “My.” Mr. Kimlamut confirmed he had taken an oath on May 21, 2012.

Senior Assistant Prosecutor, Veng Hout, took control of the floor, informing the witness that he would begin the prosecution’s examination with questions pertaining to Mr. Kimlamut’s experience prior to 1975. Mr. Hout began by asking the witness how he came to know of the Khmer Rouge movement. The witness responded, “I was introduced to the movement through my friends. We would gather in meetings before we joined the movement.” Mr. Kimlamut added that he was told about the movement secretly. He could not remember where these meetings with his friends occurred.

Mr. Hout asked the witness what reasons those in the movement presented to convince him to join. Mr. Kimlamut responded that he was told that people were needed “to help improve the society, to eradicate corruption, for example.” When asked about self-criticism sessions, the witness said he believed they were not yet in existence at the time [pre-1975].



When asked what kind of monetary “assistance” he gave the movement, the witness responded, “I did not contribute much to the revolution.” The contributions he did give, he continued, began in the 1950s, when he began working at a bank. Elaborating, Mr. Kimlamut informed that Court that he was sent to France to work at a bank for a few months. When he returned, the witness explained, he was appointed as the head of the credit unit, the bank division that gave out loans. His immediate supervisor in the unit was a man named Mr. Chao Sao who had been sent from the National Bank of Cambodia. Explaining the extent of his authority within the unit, Mr. Kimlamut said he did not have the authority to approve any loans; approval, he continued, came from his superiors.

Providing additional information about his occupational history, the witness said he worked as a professor and at a train station before working at the bank.

Witness Discusses the Ideological Policy of Democratic Kampuchea Before 1975

After a few minutes of technical difficulties with the witness’s microphone, Mr. Hout proceeded to ask the witness about his interaction with Khmer Rouge leaders before 1975.

Asked if he knew any of the accused, particularly Khieu Samphan, or the titles they held within the Communist Party of Kampuchea (CPK), Mr. Kimlamut stated, “I knew them, but I cannot confirm what I heard was correct. There was no formal introduction as to what formal name

Khieu Samphan bore at that time.... In addition, at that time I was at the lower level of the structure.” Asked how he heard their names, the witness could not recall anything specific.

Moving on to the subject of general CPK policy before 1975, Mr. Hout asked the witness if he knew who DK considered to be its “enemies.” Mr. Kimlamut could not provide a “clear” answer about DK’s enemies at that particular time, but he said all he ever heard about were Lon Nol’s forces. Mr. Hout asked if other groups were considered “enemies” by the party when they defeated Lon Nol’s forces in 1975. The witness responded, “When they came to power, those who were considered against the regime were considered enemies. Therefore, Lon Nol’s soldiers were considered dissidents.” Whether others beside Lon Nol’s forces were considered dissidents at the time, he could not say.

Mr. Hout moved on to the educational policy on CPK ideology before 1975, asking the witness what was the content of DK indoctrination. Mr. Kimlamut replied, “At that time the CPK indoctrinated people with the Marxist-Leninist Ideology through a presentation or lecture.” He could not recall the trainer who had indoctrinated him personally, however, neither could he recall seeing nor hearing about either *Revolutionary Flag* or *Revolutionary Youth* magazines.

Mr. Hout asked the witness if he had heard of the phrase or the policy of “elimination of private property or ownership.” Mr. Kimlamut replied that he had not but that he did have an understanding that “private ownership” referred to items that belonged to an individual person. Prior to 1975, he explained, there was not much formal instruction. However, he did see “people giving their own property to collectives to utilize the property more effectively.”

When asked if he had ever heard or been advised with phrases such as, for example, “Don’t steal even a chili,” Mr. Kimlamut said he had not. Explaining, the witness stated that at the time he was considered an “intellectual,” so he was not advised of minor issues. Later on, however, he heard of such instructions though he never received them personally.

Asked what duties children performed, Mr. Kimlamut said that in his cooperative a group of children would be put to work, but he could not verify if that occurred elsewhere. “Everyone had to work,” he added, “but children would be put together separately from the adults. Young kids would be allowed to stay with their parents at night, but during the day time they would have to go to work all together.”

Stopping Mr. Hout’s examination, President Nonn informed the Court it was time for adjournment. Those inside the Chamber and in the public gallery appeared happy to hear it.

The President announced that the Court would continue with Mr. Hout’s examination of Mr. Kimlamut the following morning, Thursday, May 31, 2012.