



Kaing Guek Eav, alias Duch, testified at the ECCC on Monday

**Case 002 Continues:
Nuon Chea Places Conditions on Providing Testimony and Duch Begins Testifying**

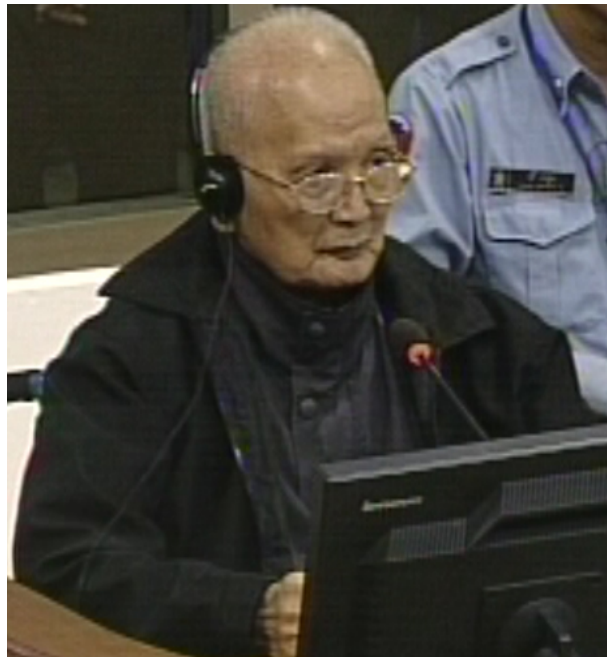
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On Monday, March 19, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) resumed trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary and Khieu Samphan. The day's proceedings were dedicated to hearing additional testimony from accused Nuon Chea on the topics of the administrative and communication structures of the Democratic Kampuchea (DK) government and the roles of the accused persons related to these two structures, as identified in relevant paragraphs of the Case 002 Closing Order.¹

Prior to the beginning of testimony, the Chamber announced that there would be a small change in the order of topics to be explored, stating that the administrative structures would be discussed first and thereafter the roles and responsibilities of all three accused would be discussed. The Chamber would then turn to the topic of communication structures.

¹ During the previous week's proceedings the Chamber appeared to announce that Case 001 accused Kaing Guek Eav, alias Duch, would testify on March 19; however, the schedule was changed to hear Nuon Chea's testimony prior to Duch's.

While Nuon Chea was being escorted to the witness dock, his counsel Michiel Pestman made a request that Nuon Chea be allowed to make a short, prepared oral submission to the Court prior to answering questions posed by the prosecution. The Chamber judges deliberated briefly before granting the request.



Nuon Chea delivers his statement

Statement by Nuon Chea

Nuon Chea then delivered his statement, beginning by asserting that although the proceedings are designed to search for the truth, the Chamber was not examining a wide enough scope of historical events to obtain a full picture of the past. He then reiterated his analogy used previously, stating that the Chamber has been examining only the “head of the crocodile” but not the whole body. Nuon Chea also asked rhetorically how the Chamber could examine his activities during the DK period without considering the situation leading up to the DK period, which he said was marred by chaos, corruption, hunger, violence, death and other strife. He further stated that the American bombardment of Cambodia also needed to be examined, as the bombing destroyed Cambodia’s infrastructure and food production capacity. Nuon Chea stated that these events, along with the civil war of 1970-1975 preceding the DK period, rendered Cambodia “already destroyed” when the Khmer Rouge took power. He also returned to his common theme of blaming Vietnam, which he has stated had some responsibility for causing problems in DK.

Through this submission, Nuon Chea clearly attempted to shift the blame commonly ascribed to the Khmer Rouge for the destruction of Cambodia’s infrastructure, spread of disease and starvation and other maladies, to other actors, primarily the United States (U.S.) and Vietnam. He then asked the Chamber to hear additional witnesses proposed by the Nuon Chea defense team, stating that only these witnesses, such as American military officials, would be able to inform the Chamber of the true amount of destruction caused by aerial bombardments of Cambodia.

He asked specifically for the Chamber to examine 5 topics:

1. the American bombing of Cambodia from 1965-1973 and the resulting death toll and destruction of infrastructure;
2. the food situation in Cambodia before 1975 and related starvation and refugee issues;

3. the amount of rice available in Phnom Penh before 1975;
4. the health care sector situation during the civil war (1970-1975) and related American humanitarian aid during this time; and
5. the relationship between Vietnam and the CPK.

Nuon Chea then accused the Office of the Co-Investigating Judges (OCIJ) of searching only for inculpatory evidence in Case 002. He argued that the Closing Order issued by the OCIJ simply mirrored the Initial Submission of the prosecution and did not look sufficiently into other matters, noting that the defense is forbidden under ECCC law from conducting its own investigation.

Prosecution Objects to Scope of Nuon Chea's Statement

At this point prosecution counsel Dale Lysak objected, arguing that nothing in Nuon Chea's statement was responsive to the topics at hand. He instead accused Nuon Chea of asserting repetitive arguments already made by Nuon Chea's counsel during previous hearings. Mr. Lysak further argued that the defense had not raised sufficiently these issues, such as through submission of documents, during the portion of the trial dedicated to the historical background of the DK period and thus should not now claim they had not been given a chance to return to the issue. Finally, he argued that the submissions of Nuon Chea were "simply absurd" and should be stopped unless he turns to a more relevant topic.

Mr. Pestman responded for the defense by arguing that Nuon Chea's submission was related to the current segment of the Case 002 trial and noted that Nuon Chea was nearly finished his submission before requesting that his client be allowed to finish.

The Chamber sustained the objection and instructed Nuon Chea to pause his submission, noting that he had been discussing extraneous matters unrelated to the day's topics. The Chamber then gave the floor over to Judge Sylvia Cartwright to put questions to Nuon Chea.

Mr. Pestman interjected however and requested five minutes of time to discuss the consequences of the Chamber's ruling with Nuon Chea. This request was denied by the Chamber President, who stated that counsel and the accused had sufficient time to discuss the schedule previously.



Judge Sylvia Cartwright attempts to question Nuon Chea

Judge Cartwright Unsuccessfully Attempts to Question Nuon Chea

Judge Cartwright then attempted to question Nuon Chea, returning to the issue of the Communist Party of Kampuchea's (CPK's) political lines and ideology discussed during the previous portion of proceedings and contained in the original CPK statute. She noted that the Chamber currently wished to examine the CPK statute in force as of 1975, noting that Nuon Chea is in a "unique position" to assist the Court in understanding the statute.

Nuon Chea responded that he wished to exercise his right to remain silent until he had an opportunity to talk to his counsel.

Judge Cartwright then asked Nuon Chea if he wished to discuss this line of questioning or other matters with his counsel. This prompted an immediate interjection from Mr. Pestman, who tried to make an argument that the question was improper. This interjection was not recognized at first by the court, however. Nonetheless, Mr. Pestman insisted and continued to talk into the Court microphone despite being instructed not to. He stated that it was improper for a judge to ask any questions to an accused concerning the nature of his discussions with his counsel, and he advised Nuon Chea not to answer Judge Cartwright's question.

This argument led to an impasse, and the Chamber Judges gathered to discuss the matter. When the judges began to confer, the Court microphones picked up Judge Cartwright stating, "I think he should have been allowed to talk to his lawyer before" to her fellow judges, apparently referencing the previous request made by the Nuon Chea defense to discuss the Chamber's ruling to end Nuon Chea's oral submission. After conferring, the Chamber granted Nuon Chea's request, and he was given a brief opportunity to talk with his counsel.

Nuon Chea Demands to Conclude His Submission as a Prerequisite to Testifying

Following their discussion, Mr. Pestman informed the Chamber that Nuon Chea requested to be permitted to complete his submission, as it included a formal request to the Chamber. He also informed the Chamber that if this request was denied, Nuon Chea would exercise his right to remain silent and would not answer any further questions during the day's proceedings.

After hearing this statement, the judges again conferred for several minutes before announcing that Nuon Chea would be granted leave to complete his statement but reminded him to limit the statement only to facts relevant to the second phase of Case 002, Trial 1. The Chamber President also stated that the Chamber wished to note the “behavior” of Nuon Chea’s counsel (Mr. Pestman) during the proceedings.

Nuon Chea Completes His Submission

Nuon Chea then resumed his submission, returning to his observations on the OCIJ and the fact that the defense had no opportunities to conduct its own investigation. He stated that, as the OCIJ refused the defense’s investigative requests, Nuon Chea had to come to the Court with “bare hands.” He then requested that the judges “exercise [their] full discretion to search for the truth.” He then “earnestly” requested that the Chamber:

1. continue its examination of the historical context prior to 1975;
2. listen to the testimony of additional witnesses requested by the Nuon Chea defense; and
3. allow his defense to put additional documents before the Chamber until the conclusion of the trial.

Nuon Chea then asked whether the Chamber had yet reached a conclusion regarding his requests made on February 16, 2012,² and informed the Chamber that if the defense was not allowed to delve further into the issue of the historical background of the DK period, he would exercise his right to remain silent moving forward.

Civil Parties Voice Disapproval of Nuon Chea’s Position

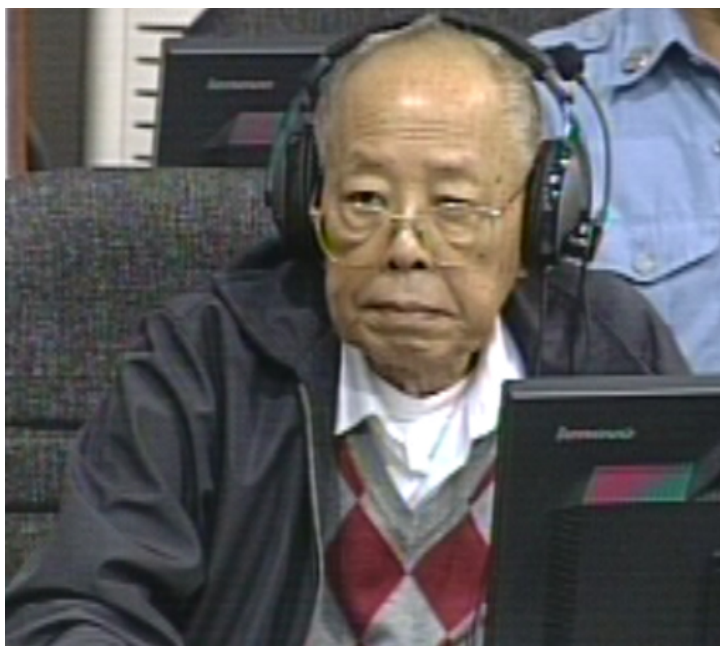
Following this submission, civil party co-lead lawyer Elisabeth Simmoneau-Fort rose and voiced the “exasperation” civil parties felt regarding the position adopted by the defense, which she argued amounted to a form of “bribery.” She submitted that the trial was not set up solely for Nuon Chea but for all parties, including civil parties, and requested that the Chamber inform Nuon Chea that he will not be permitted to dictate the course of proceedings.

Prosecution Reminds Court of Scope of Questioning for Non-Party Witnesses

The prosecution then also responded, beginning with its support for the position adopted by the civil parties. Mr. Lysak also noted that only the testimony of the accused during the trial would be divided into segments and, therefore, future witnesses could be questioned on all subjects, including the historical background of the DK period. He then stated that the prosecution would wait for the Chamber to issue its ruling on this issue.

The Chamber then announced that it would deliberate for nearly one hour to consider the new developments related to Nuon Chea’s testimony.

² On February 16, Nuon Chea and his defense counsel requested that the Chamber direct the Documentation Center of Cambodia (DC-Cam) to provide the defense with additional information related to the chain of custody and authenticity of certain documents and to discuss additional issues related to the historical background of the DK period beyond what the Chamber had explored during the first phase of Case 002, Trial 1. For more information, see <http://www.cambodiatribunal.org/sites/default/files/CTM%20Blog%202-16-12.pdf>.



Ieng Sary in the courtroom on Monday

Ieng Sary Retires to Holding Cell at Usual Hour

At this point, Ieng Sary defense counsel Ang Udom rose and made the Ieng Sary defense's usual request that Ieng Sary be permitted to waive his right to be present in the courtroom and retire to the courtroom holding cell to observe the proceedings via audio-visual link for the remainder of the day. As usual, this request was granted by the Chamber, and the President reminded Ang Udom to submit the necessary waiver paperwork, signed by Ieng Sary.

Chamber Refuses to Placate Nuon Chea

Following the break, the Chamber announced that it had "examined" the request of Nuon Chea submitted during the morning's session. Chamber President Nil Nonn stated that the requests were "old requests" raised previously. He noted that some requests had already been decided upon, while decisions on others were still pending. The President then asked Nuon Chea whether he was ready to respond to questions put to him by the bench concerning the current topics at issue.

Nuon Chea Declines to Testify

Nuon Chea responded by thanking the Chamber for the opportunity to consult with his counsel and finish presenting his request. He noted that the Chamber was currently proceeding to the next phase in proceedings and therefore he would exercise his right to remain silent for the time being. He then stated that the evacuation of Cambodia's cities was "done on the necessary base [*sic*]" and in accordance with international standards.

Chamber Decides to Hear Duch's Testimony and Breaks until the Afternoon

In response, the Chamber announced that the schedule for the day would be altered and the Chamber would hear the testimony of Kaing Guek Eav, *alias* Duch, beginning at 2 p.m. rather than the following day.

At this point, prosecution counsel Dale Lysak reminded the Chamber that the prosecution had made a previous submission related to the process of accused Khieu Samphan making statements to the Chamber and subsequently refusing to testify.³ He informed the Chamber

³ Khieu Samphan has repeatedly exercised his right to remain silent. Nonetheless, Khieu Samphan has delivered a number of prepared statements to the Chamber.

that the arguments in the submission now appear to apply to the situation of Nuon Chea and left it up to the Chamber to decide whether a hearing will be necessary to hear oral arguments on the issue or whether additional briefing relevant specifically to Nuon Chea should be submitted.

The President thanked the prosecution for its observations and informed the parties that the Chamber is in the process of deliberating on the issue and will render a decision relevant to all accused in due course. The President then adjourned proceedings for nearly three hours, until 2 p.m.

Information on Unresolved Issues from the Morning Session

Following the extended break, the Chamber resumed proceedings by making some observations related to the events of the morning. Chamber President Nil Nonn gave the floor to Judge Jean-Marc Lavergne, who first reminded the parties and counsel that the subject of the day's hearing had been communicated to the parties well in advance. He noted that the Chamber planned on examining certain parts of the Closing Order consisting of these topics (outlined above). For this reason, the Chamber President had asked Nuon Chea's counsel Michiel Pestman to confirm that the subject matter of the requested statement was related to the topics currently at hand.

Judge Lavergne then stated that despite having made assurances to the Chamber that the submission of Nuon Chea would fall within the scope of current topics, Mr. Pestman had "encouraged" Nuon Chea to make a submission that fell completely outside the scope of the day's topics. He continued by stating that the Chamber had allowed Nuon Chea to complete his statement following the objection by the prosecution, yet Nuon Chea's submissions still all fell outside the range of appropriate topics. Thus, Judge Lavergne explained, the Chamber was of the opinion that Mr. Pestman had improperly attempted to force the Trial Chamber to alter its course of proceedings and inquiry. He concluded, "This conduct on the part of [Mr. Pestman] raises serious ethical questions" and informed the parties that the Chamber would consider what appropriate action to take as a result. Following this announcement, the Chamber instructed court officers to bring Duch to the witness stand.



Prosecution counsel Seng Bunkheang questions Duch

Questioning of Duch by Prosecution

Duch, the convicted accused in Case 001, then took the requisite witness oath and began his much-anticipated⁴ testimony with prosecution questioning first. Prosecution counsel Seng Bunkheang first provided an outline of the prosecution’s planned line of questioning before greeting Duch and reminding him that he was present as a witness and not an accused.

The prosecution began its questioning by asking Duch about his personal and educational background. During this segment of questioning, Duch provided an overview of his teaching career and introduction to communism. He stated that he first became exposed to communism through hearing about Mao Tse Tung’s statements concerning famine in China, where Duch had family members living at the time. Later, Duch joined the revolution because he did not want to sit idly by following the Lon Nol coup. He also stated that he was indoctrinated into the CPK by Son Sen, who was his first superior and whom he had known previously. Duch stated that in 1964 he bought some “progressive books” to study socialism and then went to the jungle to study secretly in 1967. He also discussed being jailed in 1968 due to his affiliations and traveling to join the Khmer Rouge in the “liberated zone” following his release from prison.

When asked about the Khmer Rouge leaders, Duch stated that he never heard of Pol Pot during the early period of his time in the Khmer Rouge but that at the time he had heard of Ieng Sary and “held some sentiment” for Khieu Samphan. During the pre-DK period, Duch also studied the party “lines” and other propaganda documents. He especially enjoyed reading books about the theories of Mao Tse Tung. Upon further questioning, Duch stated that he read leaflets discussing the Lon Nol coup d’état, heard about John F. Kennedy’s assassination and the assassination of a Vietnamese leader, along with other events, which all shaped his worldview.

Duch then testified that these and other world and local events roused “nationalists” to understand and rally for their cause. He provided an animated summary of the events leading

⁴ Much of this anticipation stems from recent submissions made by Nuon Chea to the Court, requesting that he be segregated from Duch and claiming that he feared for his life.

up to the Lon Nol coup in 1970, the Samlot rebellion and the formation of Khmer Rouge militia bases.

Upon further questioning concerning his role at DK security centers, Duch responded that he was first assigned to work as the chief of security office 13 for the newly formed “Special Zone” in the liberated areas. He further testified that the office changed locations several times, naming most of the villages located near the various locations of office 13.

Duch stated that he was “obliged” as a party member to accept any “offer” made by the CPK to assume a certain position. He also stated that the office was tasked with interrogating and “smashing” perceived enemies of the CPK. Duch claimed that he was reticent to execute all prisoners and managed to spare 30 lives, but he stated this leniency led to a jailbreak at one point. Following the jailbreak, according to Duch, Ta Mok warned him to be careful when handling enemies sent to the prison. At this point, the Chamber took its afternoon break.

Following the break, the prosecution resumed by asking about Duch’s actions in what was known as “Sector 25.” Duch stated that this area was originally liberated by the Vietnamese, who called it “Sector 62.” He stated that Vietnam controlled this area, which was rich and provided the Vietnamese a large taxation income. Only in 1970 was this area handed over to Cambodian authorities. Duch stated that initially he had no work to do in Sector 25 but was later called to teach certain documents he had previously studied on topics such as conducting the “people’s war” and guerilla tactics. He stated that following this brief task, he was transferred to the Southwest Zone and assigned to be chairperson of office 13. Duch stated that he is unsure precisely why he was given this assignment but did state that Ta Mok had “mistreated” the “petit bourgeoisie people” in the Southwest Zone. Duch stated that Ta Mok stated at the time that “if we farm, we eat rice and if we read books, we eat paper.” Ta Mok also purportedly stated, “Our farmers were like grass; they grow everywhere.” Duch then stated that Francois Bizot had discussed this issue in his book but had mistranslated the Khmer word for “sacrifice” as meaning “labor.”⁵

At this point, Michael Karnavas, defense counsel for Ieng Sary, interjected and claimed that Duch’s long-winded answers were not directly answering the questions and argued that this would lead to excessively long proceedings and confusion. He requested that the Chamber instruct Duch to limit his answers according to the questions asked.

The Chamber agreed with Mr. Karnavas and instructed Duch to answer more precisely before instructing the prosecution to move on to another question.

Seng Bunkheang then asked Duch why he accepted the position of head of Office 13. Duch responded that he had been attempting to explain the “context” of the situation in the Southwest Zone that “intellectuals were forced to do work” during his long previous answer. He stated that at the time, he was forced to work in the police, which led him to become head of office 13.

Next, Seng Bunkheang asked Duch to describe people labeled as “spies” by the CPK. Duch responded that people accused as spies could be rich or poor and were sent to office 13 to be smashed. He again claimed to have spared some of the prisoners but stated that all prisoners sent to the office were already considered guilty and had to be smashed.

⁵ Mr. Bizot was imprisoned at Office 13 and was released after Duch was convinced that he was not an enemy spy. He subsequently wrote a book about his experience as Duch’s prisoner entitled *The Gate*.

Upon further questioning, Duch affirmed that prisoners at Office 13 were tortured before execution. As for the official CPK policy regarding tortures and execution, Duch stated that Vorn Vet himself told Duch how to torture people and the use of plastic bags to asphyxiate prisoners was his favored method. Vorn Vet also allegedly told Duch that people whose necks vibrated strongly during asphyxiation torture were guilty enemies to be smashed. Duch then testified that approximately 200 people were killed at Office 13.

Duch next testified that he was supervised by Office 105 when in charge of Office 13. He also stated that Vorn Vet and Son Sen were in overall charge of the office as Central Committee Members. Next, Duch stated that he visited the offices of Vorn Vet and Son Sen and the two men attended a yearly study session to receive instruction from Pol Pot. Following this study session, Committee members would return and instruct local officials on party policy for approximately two weeks. Thus, each year, local officials received a two-week training session where they were updated concerning CPK policies, the situation of enemies and events at battlefields. Duch stated that during these sessions, local officials were also educated concerning morality and organizational issues. He also specifically stated that CPK members received copies of *Revolutionary Flag* booklets, which they had to study to understand updated party policies.

When Office 13 was closed, Duch stated that some prisoners were released, some transferred and others smashed. Duch also stated that he educated his subordinates at Office 13 on party policy because all CPK party members were obligated to educate their subordinates.

Duch then testified that he taught his Office 13 staff how to interrogate and torture prisoners. When asked where he learned techniques of torture and interrogation himself, Duch reminded the prosecution that he had been imprisoned in 1968 and stated that he learned how to interrogate and torture when he was interrogated and that he later refined his techniques “on the job.”

Next, Duch stated that at Office 13 the word “smash” was not used but instead the word “resolve” was used to refer to executions. However, he opined that both terms were interchangeable and meant simply to execute.

As for the modeling of security offices, Duch claimed that the security office organizational pattern of the Khmer Rouge was a “classic practice” left over from the Khmer Issarak (anti-colonial) movement, and that all offices were organized in this way. He also noted that in DK, none of the 196 security offices were allowed to contact one another. At Office 13, Duch stated that the staff was authorized to beat, water-board, suffocate and electrocute prisoners as methods of torture.



Prosecution counsel William Smith requests to provide Duch with his previous statements

Duch Excused and Prosecution Seeks to Provide Him Previous Statements

At this point, the Chamber prepared to adjourn for the day and Chamber President Nil Nonn instructed court officers to change the dress of the “accused” the following day, clearly referring to Duch, who was actually appearing as a witness. The President noted that Duch was appearing as a witness and should not wear ECCC detention facility clothes in Court.

Prosecution counsel William Smith then rose and thanked the Ieng Sary defense for requesting that Duch’s testimony be reined in, voicing his agreement with this position. He also informed the Chamber that the prosecution had prepared a list of previous statements made by the “accused” (apparently also referring to Duch) and asked for direction on providing the documents to Duch.

In response, Nuon Chea defense counsel Michiel Pestman rose to object to the prosecution’s request but requested that the witness be removed from the courtroom before he made his arguments.

Following the Chamber excusing Duch from the witness stand and removing him from the courtroom, Michiel Pestman responded to Mr. Smith’s request to provide Duch with his previous statements and a list of documents to be referenced during questioning. Mr. Pestman reminded the Chamber of the defense’s previous objections to the practice of providing witnesses with their previous statements and especially to the use of this practice in the case of Duch. He argued that doing so tends to create false memories for witnesses and should be disfavored.

Defense counsel Michael Karnavas then provided the Ieng Sary defense’s position, which uncharacteristically appeared to disagree with the Nuon Chea defense position. He stated that at international courts, it is standard for witnesses to receive their previous statements but noted that he is not particularly enthusiastic about the practice of doing so.

The civil parties next voiced their support for the prosecution’s request.

Mr. Smith then apologized for bringing up this legal point at the end of the day and continued by explaining that the ECCC Senior Legal Officer and the Chamber had previously approved of this practice. He noted that the prosecution hoped to save time during testimony by providing Duch with the documents in advance because of the sheer amount of information contained in them and noted that the prosecution had sought five days of proceedings to question Duch, making it important to expedite this key testimony.

The Chamber granted the prosecution's request, noting that it had already ruled on the issue previously. President Nil Nonn again instructed the head of the ECCC detention center to change Duch's attire the following day. The Chamber then adjourned proceedings for the day.