



Duch Continues Testimony Amidst Objections by Defense Teams

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On Tuesday, March 20, 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. Scheduled for the day was the continuation of the testimony of Kaing Guek Eav, *alias* Duch, the convicted accused from ECCC Case 001. Interest in this key testimony however, was overshadowed at the Court by the unexpected and abrupt resignation of ECCC International Reserve Co-Investigating Judge Laurent Kasper-Ansmert the previous evening. The courtroom audience members were chatting among themselves throughout the day on the topic of this resignation, with little discussion of Duch's testimony.

Prosecution Resumes Questioning of Duch

After Chamber President Nil Nonn opened proceedings, Duch was brought to the witness stand. Unlike the previous day, when Duch was wearing a standard issue blue Cambodian prison outfit, on this day Duch was wearing the white jacket that had become his trademark during his own trial. Prior to beginning his testimony Duch made a request to the Chamber that he be permitted to "sit back" against the back of his chair because he had experienced difficulty in leaning forward to answer questions the previous day. The President granted this request and turned the floor to the prosecution.

Prosecution counsel Seng Bunkheang then resumed his questioning from the previous day by asking about what types of people were labeled enemies and sent to office "M-13." Duch answered by discussing the case of Francois Bizot, Duch's French prisoner at M-13, who was a researcher at the Angkor Wat temples. He stated that Bizot was pardoned by Pol Pot, but Bizot's two compatriots were later executed. Duch then testified concerning the types of people sent to M-13 and the office's location, which moved three times. Duch also testified that Vorn Vet lived in the area and was the local authority figure at the time. Next, Duch noted that at one point he had to cycle approximately 20 kilometers to work each day at the prison.

Duch also testified that he attended regular monthly meetings of the Communist Party of Kampuchea (CPK). He also stated that he had to meet Vorn Vet in the “middle of the night” following the jailbreak incident at M-13 that Duch had discussed previously during his testimony. He also discussed his early entrance into the CPK and appointment to chief of M-13. During this portion of his testimony, Duch stated that he met Son Sen when he was still studying at Sisowath High School after being “tricked” into meeting Son Sen by a classmate. He stated that he had tried to avoid the meeting because he had wanted to finish his schooling before making contacts with revolutionary movements. Duch then stated that Son Sen became his direct supervisor in either late 1973 or early 1974. As for Vorn Vet, Duch stated that he became Duch’s direct supervisor in May 1971 and retained this position until Son Sen replaced him.

The prosecution then displayed a document purporting to be a statement made by Nuon Chea at a rally for the Revolutionary Army of Kampuchea (RAK) and asked Duch to identify the statement. Duch stated that he had not attended this rally, but he did believe such rallies took place. Upon further questioning, Duch also testified that during the early Democratic Kampuchea (DK) period, he heard on the radio that Nuon Chea had been named acting head of state for a time.

Seng Bunkheang then presented a second document to Duch, which he identified as a *Revolutionary Flag* booklet. He stated that *Revolutionary Flag* was a CPK monthly publication that was required reading for all party members. Duch was then asked to explain the phrase “seize the people.” Duch responded that to “seize the people from the enemy” was a phrase that replaced the phrase “evacuate the people,” which meant to take people away from the enemy.

Upon further questioning about references to the evacuation of Vietnamese people, Duch stated that the CPK took the people, including Vietnamese people, away from the enemy in order to keep them insulated from enemy forces. Duch then noted that a specific ECCC witness, using the witness’s court-assigned pseudonym, had also been evacuated from Udong to the countryside when the Khmer Rouge took control of the area.

Nuon Chea defense counsel Michiel Pestman then interjected and asked for clarification of the identity of the witness referred to by Duch. Prosecution counsel William Smith responded that the reference was to the witness pseudonym of a witness who testified in Case 001. The Chamber President then informed Mr. Pestman that he could find out the identity of the witness by doing some “research” into the Case 001 file.

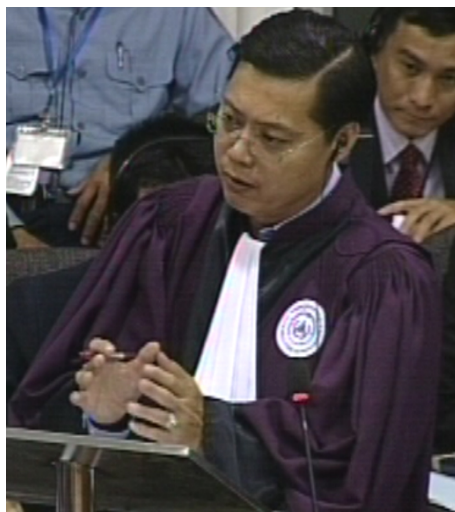
Duch was then asked where he was when the Khmer Rouge took power on April 17, 1975. Duch responded that he was not in Phnom Penh at this time but was called to a training session led by Son Sen in Phnom Penh in June of 1975. When he arrived in Phnom Penh, Duch stated that he lived in a guesthouse within the compound of the city’s railway station.

Following this training, Duch stated that he was transferred to the office of the former chief of staff for the Lon Nol government. He testified that he was then assigned to search the houses of some former Lon Nol officials for documents before being assigned to be the deputy chief of S-21 prison. After his superior, Nath, was dismissed, Duch became the chief of S-21.

Duch then testified about S-21, which he stated was mandated to take confessions. He affirmed that torture was the “common practice from as far back as the Issarak times” and S-21 “followed these same procedures of interrogation.” Duch then stated that everyone who

was arrested and sent to S-21 had to be smashed. As for the classifications of detainees at S-21, Duch stated that during Nath's time in charge, "intellectuals" would be arrested. The next group consisted of people from a paper factory who were arrested after a fire broke out at the factory. The third group was approximately 300 Thai fishermen. The fourth group consisted of Muslim people who had raised cows.

When asked about any senior CPK officials sent to S-21, Duch stated that in late 1975 three senior people, including Seoun and Koy Thuon, were arrested and sent to S-21. Duch stated that following a grenade attack at the Royal Palace, more groups of CPK officials were purged. He mentioned that Koy Thuon's confession, which took place at the end of 1976, led to "large-scale" internal purges of the North Zone.



Seng Bunkheang then asked how many people were arrested and smashed at S-21, Duch responded that he did not know the precise number, but according to the list compiled by the prosecution, more than 12,000 people died there. He also noted that he has never disputed this list.

Duch then testified about his roles and responsibilities at S-21, stating that the prison was an "independent regiment" of the CPK Center and that he was in charge of day-to-day activities and reported directly to Son Sen until April 15, 1978, when Son Sen was relocated. At this point, Duch stated that he "met second brother Nuon Chea" to whom he reported "on a regular basis."

Next, Duch stated that he read and summarized confessions and thereafter reported on the confessions to his superior, Nuon Chea. He also stated that S-21 staff member Hor was in charge of sending people to Cheoung Ek to be executed, and after a mistake by Hor, regular monitoring of the prisoners and execution lists was conducted by Duch, who had to be consulted "every time" executions took place.

Aside from assigned tasks, Duch stated that he became a "focal person" to educate his staff on CPK policy. Duch also testified that he obtained permission from Ta Mok to get married but was allowed to choose his wife freely. Afterwards, Duch stated that he had two children before the Vietnamese attacked at the end of 1978.

Duch next testified that after the Vietnamese invaded, he traveled to the Northwest of Cambodia, where he asked Khmer Rouge leaders for rice to eat. At this time, Duch stated, there were no more meetings and he did not run any prisons. He stated also that from 1986-

1988, he was sent to Beijing, China on the orders of Pol Pot to teach Chinese students. When he returned, Duch was tasked with writing textbooks for primary education, still under the command of the CPK.

Seng Bunkheang then asked Duch about where he lived later in the post-DK period. Duch responded that he eventually moved to Samlot when driven out of his previous home by fighting. He became a teacher in Samlot and remained there until May of 1999, when he was arrested by the Cambodian government.

Ieng Sary Retires to the Holding Cell at His Usual Hour

At this point, the Chamber prepared to take its usual morning break, at which time defense counsel Ang Udom requested that Ieng Sary be permitted to retire to the Court's holding cell to view the proceedings via audio-visual link for the remainder of the day due to health problems. As per usual, this request was granted by the Chamber President, who reminded the defense to submit a signed waiver form.



Scope of Questioning Debated

Following the break, Chamber President Nil Nonn addressed the scope of questioning thus far, observing that much of the information elicited from Duch fell outside the scope of the current inquiry. He asked the parties to refrain from asking repetitive questions and to focus on questions pertinent to the pursuit of the truth.

Nuon Chea defense counsel Michiel Pestman then rose and observed that he had not “heard much” that was relevant to Case 002, Trial 1, and asked to add his support to the comments of the President. He also noted that the witness to whom Duch had referred via pseudonym was identified publicly in Case 001 and had no protective measures in force currently. Thus, he requested that Duch refrain from using pseudonyms when unnecessary because this would lead to confusion.

Finally, Mr. Pestman noted that the Chamber had commented on his behavior the previous day and stated that it would consider appropriate action as a result.¹ He then stated that he is currently a member of both the Cambodian and Amsterdam bar associations and has an obligation to provide the Chamber with information on how to lodge a complaint against him to these organizations. Indeed, Mr. Pestman stated that he wished to “encourage the Trial Chamber to do so” so that an appropriate “expert” could consider the situation and his conduct.

¹ For more information, see CTM Blog, Monday March 19, 2012, available at: <http://www.cambodiatribunal.org/blog/2012/03/case-002-continues-nuon-chea-places-conditions-providing-testimony-and-duch-begins>.

International prosecution counsel William Smith then responded to the comments on Duch's testimony thus far, arguing that the four hours of testimony elicited from him had been relevant because the prosecution was seeking to establish that Duch has the knowledge necessary to answer questions about the CPK structure and ideology. He also noted that the prosecution had sought the use of witness pseudonyms out of an abundance of caution. The Chamber President then instructed parties to continue using pseudonyms for all witnesses and turned the floor over to prosecution counsel Seng Bunkheang to continue the prosecution's questioning of Duch.

Prosecution Resumes Questioning of Duch

Seng Bunkheang then asked Duch about CPK ideology; Duch explained that it generally relied on the principle of "dialectical materialism," which teaches people how to change from one regime to another. In CPK ideology documents, Duch stated, the "first stance" was to categorize people into three categories: first, to convince forces to join the revolution; second, to neutralize undecided forces; and third, to isolate and smash oppositional forces. Duch stated that he was unsure how this theory could be implemented in "actual reality." He stated that the CPK had ordered party members to clearly divide themselves from the enemies, who did not live in the "liberated" zones (areas controlled by the Khmer Rouge prior to April 17, 1975). Duch stated that party members were instructed on "morality principles" including to "love the people always," to "serve the people to the best," and only to serve "workers and peasants." He also stated that party members were instructed to "have vengeance" and "harbor anger" against traitors, even former CPK leaders accused of being traitors, such as So Phim, the prominent Eastern Zone Secretary who committed suicide to avoid arrest in 1977.

Duch stated that the CPK sought to "gradually" educate the population while sharing among the population because the country was very poor. He stated that even the military special forces received only two cans of rice per meal and that no one could protest such living conditions but had to simply "follow suit." As for economic issues, Duch testified that the CPK "tried to create currency" but this did not really work and everyone had to "share rice." He also testified that for family and marriage policies, the CPK created a song that stated that, although parents "created you, *Angkar* [*i.e.*, the party] is the only one who can control, or own you."

Regarding farming practices and policies, Duch stated that experimental cooperatives were established in 1972 and in 1973, and high-level cooperatives were set up on the liberated areas. He further testified that on May 20, 1975, a document was issued by the CPK that commanded the creation of cooperatives throughout Cambodia. He also stated that religion was banned and head monks from all areas were subsequently smashed. Duch then described how Muslim Cambodians were "scattered" throughout Cambodia in order to prevent them from practicing their religion. He also stated that "all forms of production were owned by the party" and the food ration was two cans per day of rice nationally.



Defense Objects to Duch’s Testimony on His “Research”

At this point, Ieng Sary defense counsel Michael Karnavas interjected and observed that Duch had presented his latest testimony as being based on his “research.” He stated that for a clear record, it is important to focus on what Duch knew at the time and not what he has learned since the end of the DK period through his own personal research.

Mr. Smith responded for the prosecution by asserting that the extent to which Duch is relying on his “research” can be elicited through cross-examination. He further argued that the prosecution had already established that Duch taught CPK policy and in doing so he studied various documents during the DK period, as well as participating in the implementation of certain CPK policies. Mr. Smith further asserted that Mr. Karnavas can use his questioning time to make the source of Duch’s knowledge clear, calling it “part of the questioning process” to address such issues to “get to the truth.”

Seng Bunkheang then asked Duch to explain the source of his knowledge. Duch responded that certain general policies, such as the official ration of two cans of rice per day, were known generally throughout Cambodia. He went on to say that he has learned about other policies subsequently and claimed that if he is limited to stating what he knew during the DK period itself, he cannot really share much information with the world because his knowledge was limited to S-21. Duch went on to say that he has done his own research, based on ECCC investigations, to corroborate and add to the information he knows personally from the DK period.

In response, Mr. Karnavas again interjected and asserted that Duch had just admitted that during the DK period, he knew “precious little” and has learned much since then. He then argued that it is essential for the Chamber to explore the source of Duch’s knowledge and claimed that Duch was essentially being used as an expert, rather than factual witness. Mr. Karnavas stated that it is “incumbent” on the Chamber to therefore explore the source of Duch’s knowledge.

This request was then joined by the Nuon Chea defense and counsel Michiel Pestman, who noted that he is “not interested” in what Duch read after the DK period.



Mr. Smith responded for the prosecution again and asserted that there had been some “misstatements” made by Mr. Karnavas during his objection, such as that Duch cannot explain what he learned at the time during the DK period. He also stated that the prosecution has not labeled Duch as an “expert witness.” Finally, he called it “unfair” to aver that Duch would be unable to discuss any matters outside of S-21 if confined to discussing his contemporaneous knowledge during the DK period. Mr. Smith stated that during the DK period, Duch was taught CPK policy by senior Khmer Rouge leaders, who also assigned him to teach party ideology and policy to others. Thus, Mr. Smith argued that the issue of the scope of Duch’s knowledge was not as “simple” as averred by the defense teams and stated that the prosecution would ask Duch for the source of his knowledge, which could be cross-examined by the defense teams.

The Chamber judges then conferred briefly before Judge Sylvia Cartwright announced that the Chamber had decided that the emphasis of questioning should be placed on Duch’s contemporaneous knowledge. She continued that the Chamber would later consider the weight of Duch’s testimony, following his examination by all parties. The Chamber then allowed the prosecution to proceed.

Prior to the resumption of Duch’s testimony, Duch asked to make a comment and said that some people have claimed that the CPK had a “policy to starve the people.” He began to continue by stating that his knowledge was only that rations were limited and began to cite a policy document as a source when the Chamber President cut him off. The President instructed Duch to respond directly to questioning, answering only “yes” or “no” for certain questions and requested that Duch refrain from providing his “subjective analysis.” He then explained again the topics that Duch should be questioned on during the current portion of the trial.



Nuon Chea Attacks Duch's Credibility

The floor was then given back to the prosecution to continue questioning and counsel Seng Bunkheang asked Duch how he learned of CPK policies during the DK period.

At this point, Nuon Chea abruptly interjected and referred to Duch as a type of “rotten wood” that Cambodian people do not use to create statues of Buddha, which are revered sources of the truth. According to Khmer speakers present in the courtroom, Nuon Chea was using this metaphor to accuse Duch of being an untruthful and improper witness who should not be relied upon or trusted.

The civil parties then objected to this statement, arguing that it is improper for a defendant or the defense teams to attack the credibility of a witness until cross-examination. The Chamber President then noted that the Chamber is the body that called Duch as a witness and not any party and turned the floor back to the prosecution to continue.

Prosecution Resumes Questioning of Duch Again

Seng Bunkheang then asked Duch what sources informed his knowledge of CPK policy during the DK period. Duch stated that he learned policy from both CPK official documents, such as *Revolutionary Flag* booklets and other, secret documents. He continued by stating that the *Revolutionary Flag* booklets were very important sources of information because they were written by the highest-level officials of the CPK and contained party policy. Duch stated that he read “every single issue of the magazine” to ensure that he had a clear understanding of party policy.

Following this response the Chamber announced its regular lunch break and adjourned the morning session.

Prosecution Continues Questioning

Following the lunch break, Seng Bunkheang continued questioning Duch regarding his sources of knowledge of CPK policy during the DK period. Duch first stated that the training sessions he attended each lasted approximately two weeks. He then stated that he worked primarily on “police” issues and so was not that involved with the formulation of general policies. Regarding the “secret” party documents he referenced earlier, Duch stated that even *Revolutionary Flag* booklets were considered “secret” documents, because they were limited to party members. He also noted that other documents considered secret were distributed only to select individuals. Duch then provided an overview of the trainings he conducted for S-21 staff, during which he instructed attendees on party policy and interrogation techniques.

When asked about the “main” purpose and ideology of the CPK, Duch responded that before 1970, the notion was that “people would be liberated” by fighting against the “reactionaries and capitalists.” After 1975, two new party lines were added: to protect the country and to “build it.” As for the use of violence to gain an objective, Duch responded that he believes the

use of force to gain objectives is a standard practice throughout the world and was used by the CPK.

Seng Bunkheang then asked Duch about the CPK policy to evacuate Cambodia's cities. Duch responded by stating that he was "educated" at the time that "people shall be evacuated when the enemy attack[s]." He stated that the goal of this policy was to remove support to enemies by taking away the local population. Duch then stated that he has no knowledge of what happened to people who resisted evacuation. He did state that in April 1975 he observed the evacuation of people from cities but was unsure if this movement was voluntary or not. He realized later that this evacuation had been complete when he arrived in Phnom Penh and found the city empty.

As for his direct knowledge of the evacuation, Duch stated that the CPK had forcibly evacuated people and he was informed that people were told that they had to be evacuated to avoid American bombing of the cities. He stated that people who refused to evacuate were told they would be shot. Duch then stated that no one dared to answer him when he asked about the fates of people who refused to evacuate. As for his own thoughts, Duch stated that he never personally "considered" why the evacuation was ordered, even after 1979. He also denied any knowledge of the "real reasons" why the evacuations were ordered, explaining that CPK documents only stated that the evacuation was part of the plan to achieve victory and to move towards socialism.

Regarding other evacuations in Cambodia, Duch stated that he only had seen a document during Case 001 that was sent from Sao Phim to Pol Pot discussing the evacuation of people along the river. Duch also stated that at the time he had sought information concerning one of his former professors, whom he held "sentiment for" and who he learned had been evacuated and died.

Ieng Sary Defense Objects Again

At this point, Ieng Sary defense counsel Michael Karnavas objected again and alleged that the prosecution was conducting questioning improperly, by leading Duch with statements that feed him information. He stated that this is an improper method and was being used because Duch had already indicated that he did not know much at all about evacuations during the DK period.

In response, Seng Bunkheang rephrased his questioning and asked Duch if he could describe people being moved to "all places." Duch responded that he observed that people were evacuated and purged where he was in 1975. He stated that purged people were smashed, while evacuees were sent to be under the control of the "old people." He also stated that evacuees were called "17 April people." He noted that when he asked about the evacuation, a CPK officer told Duch that people taken in cars would be smashed, while those walking would be spared.

When asked about work conditions in cooperatives during the DK period, Duch stated that the CPK created a "pilot program" in Preah Vihear to teach farming and participants in the program were then sent to the liberated zones to farm. He noted that all people across the country did work, including farming. Duch also testified that in each cooperative there was a "party secretary" who led local work projects. He stated that a party member would oversee work assignments and reiterated that a national ration of two cans of rice per day was established. Duch stated that at Prey Sar work camp (which he oversaw), people were petty peasants who had to farm and were treated like "other evacuees" because of the stance of the CPK regarding class issues, which stood "against capitalists and the feudal class."

Duch next testified that peasants were promoted to hold official positions in the government and military in DK in order to effectuate the CPK policy of peasant leadership. He stated that this policy of promoting peasants to become leaders was “no mystery” and was enshrined in the DK constitution, which stated that the country “belong[ed] to peasants and workers.” Duch stated that both “new” and “old” people were assigned to work units but that to become an official party member, an individual had to be a peasant or member of a CPK youth group.

Next, Duch stated that Prey Sar worksite was created by Son Sen to house individuals who had committed petty transgressions and served as a re-education site where people could “rebuild themselves.” At Prey Sar, Duch stated that the goal was to “refashion” people so that they could rejoin the military, but he noted the site was not very “successful” in doing so.

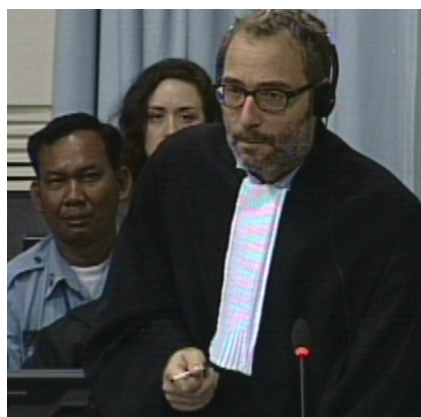
At this juncture, Chamber President Nil Nonn interjected and announced the afternoon break.

Nuon Chea Requests an Early Adjournment of Proceedings

Following the break, the Chamber gave the floor to Nuon Chea, who requested to be excused from the courtroom, claiming to be exhausted and in need of rest. The Chamber granted this request and instructed Nuon Chea’s defense team to provide the Chamber with a written waiver form signed by Nuon Chea. Nuon Chea was then taken to the Court holding cell to view the proceedings via audio-visual link.

At this point, Nuon Chea’s defense counsel Michiel Pestman informed the Chamber that Nuon Chea had not intended to waive his right to be present in the courtroom but was unable to continue sitting in the courtroom. Therefore, Mr. Pestman stated that Nuon Chea wished to request that the Chamber adjourn proceedings for the day with the hope that he would be capable of resuming active participation the following morning.

The Chamber judges then conferred briefly before the Chamber President “noted” the request of Nuon Chea’s counsel and stated that the request by Mr. Pestman was “not relevant” to the initial request made by Nuon Chea. Thus, the Chamber instructed Court medical personnel to examine Nuon Chea and immediately determine whether he was fit to proceed or not.



Chamber Adjourns Following “Interference” by Defense Counsel with Medical Exam

The Court doctors then left the courtroom to examine Nuon Chea and were quickly followed by Mr. Pestman who apparently tried to join them in the courtroom holding cell. At this point, Judge Cartwright and the President appeared to speak briefly with one another. The President then instructed a Chamber greffier to immediately retrieve Mr. Pestman so that the medical team could independently assess Nuon Chea. While the greffier was going to retrieve Mr. Pestman, the President announced to the Court, and apparently Mr. Pestman who was in the

holding cell equipped with an audio-visual link to the courtroom, that if Mr. Pestman “interferes” with the medical assessment of Nuon Chea, then he “will be in trouble.”

Mr. Pestman then returned to the courtroom, and the judges conferred once again while the doctors were apparently examining Nuon Chea. The Chamber President then stated that the Chamber considered Mr. Pestman’s action “interference” with the work of the Court medical staff. Noting this interference, the President stated that the Chamber had no choice but to adjourn the proceedings. He then informed the parties that the hearing of Duch’s testimony would continue the following morning and there would be no more hearings for the week following Wednesday, March 21. At this point Mr. Pestman stood and began to talk, but his microphone was not on. The Chamber judges appeared to ignore him and simply adjourned proceedings for the day.