



Deputy Co-Prosecutor William Smith continues the questioning of Duch at the ECCC.

Prosecution Continues Questioning of Duch

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On Monday, March 26, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued trial proceedings in Case 002 against accused Nuon Chea, Ieng Sary and Khieu Samphan. Scheduled for the day was the continued testimony of convicted Case 001 accused Kaing Guek Eav, *alias* Duch, who had begun his testimony the previous week.

Prosecution Resumes Questioning of Duch

Prosecution counsel William Smith began the questioning of Duch for the day with a brief summary of the topics covered at the close of Duch's testimony the previous week. He then explained that he planned on concluding questioning regarding the Communist Party of

Kampuchea (CPK) statute and would then discuss membership criteria to join the party, along with duties of party members. Mr. Smith's first question was whether records were kept regularly of "livelihood" meetings in Democratic Kampuchea (DK). Duch responded that no regular records were kept of such meetings and that he believes available records pertinent to such meetings were already collected by the ECCC.

Next, Duch testified about the term "confusion" appearing in the CPK statute, stating that the term referred to mistakes that might occur, such as an instance where Duch's subordinate prematurely executed a prisoner at S-21 prison. Regarding the terms "independence" and "mastery" appearing in the CPK statute, Duch stated that these terms meant that the CPK was not beholden to the policies of any other nation and instead adopted independent policies based on the actual situation in Cambodia at the time. Mr. Smith then asked Duch to explain the term "self-determination of fate" appearing in the CPK statute.

This question prompted an objection from Nuon Chea defense counsel Michiel Pestman, who argued that the witness was being asked for his opinion on the document and not factual evidence. Mr. Pestman also argued that the statute in question dated back to well before the DK period and thus may not even be relevant to Case 002, Trial 1. He maintained that the prosecution should explain why the statute is relevant to policies in place in 1975.

Mr. Smith responded to the objection by first arguing that Duch taught the principles in the CPK statute to other party members and thus, he is in a position to explain the statute. He also argued that the statute was the guiding document for many CPK policies throughout the DK period and each version of the CPK statute did not vary substantially from one another.

Mr. Pestman responded by asserting that Duch had only stated he had taught the party principles, and not specifically the statute, to other party members.

The Chamber overruled the objection and instructed Duch to respond. He responded that "independence self-mastery" referred to how the CPK remained independent from Vietnam, China and the Soviet Union, while integrating Marxist-Leninist principles into DK policies.

The prosecution then asked Duch to explain the term "revolutionizing one self by one self." After some clarification on the question, Duch responded that the term had to be read in context with the terms "self-reliance" and "self-determination" and stated that it meant that no other influence would be permitted in DK and that each person had to commit to the revolution.

Mr. Smith then read out an excerpt from the CPK statute and asked Duch whether CPK members had a "heavy duty" to assist and promote the goals of the CPK. Duch responded that everyone had a duty to commit themselves to the party goals. Next, Mr. Smith asked Duch whether the "general principles" of the 1976 CPK statute were substantially similar to the principles contained in the previous party statute. Duch responded that the 1966 and 1971 statutes were different from the 1976 statute, but the differences were "slight" and related to military issues, such as the role of the army.

Upon further questioning, Duch stated that he was unsure when the CPK "youth league" was formed but stated that the league was created to identify revolutionary candidates to fashion into

party members eventually. He also testified that the other route to party membership was the “pillars” program, which was for individuals older than 18 who had a specific skill or occupation. Duch then testified that, when he was a member of the CPK “pillars” organization, it, along with the youth league, were the “arms” of the party. Duch himself joined the pillars in 1969, and he explained that, to subsequently be admitted into the CPK, members of the pillars had to contribute to party work. He then explained that the requirement of a good “class pedigree” for CPK members was that candidates for admission into the party had to come from a good revolutionary background, such as farmers, peasants and industrial workers.

Mr. Smith then asked additional questions related to admission into the CPK. During this questioning Duch stated that candidate members had to evince “good morals” by not consuming alcohol or womanizing. Candidates also had to be “clean” politically, meaning that they never opposed the revolution and could not be blood relations of known enemies. Duch testified that after 1975, it became difficult to identify enemies in DK. He also explained that the requirement of a “clear personal history” for candidate party members, stating that prior to admitting a person to the party the candidate’s background had to be researched to ensure that their claims about their autobiography was accurate.

Duch also testified that during the “preparatory period,” existing party members had to discuss the qualifications of each candidate for admission into the CPK. One consideration was whether the candidate had served the revolution in the “hot” movement or not, referring to whether the person had participated in military actions or worked at party worksites, which were “hot” rather than having performed other “cold” tasks.

Upon further questioning, Duch affirmed that in reality cooperatives or unions would submit applications for party membership. He explained that at the base level, four levels of the CPK hierarchy would be involved in decision-making, while for the army, five levels would be involved during membership considerations. Duch stated that “candidate” or “alternate” CPK members had no specific right to be appointed as a member and remained under the “supervision” of other party members until becoming full-rights party members.

To qualify for a party leadership position, Duch first stated that a candidate had to have a good “stance” which was not too “rightist” or too “leftist.” He explained that those who were too far left were those who saw enemies everywhere. Upon further questioning, Duch stated that the requirement that CPK members show an “audacious stance” of endurance of difficulties and to build socialism and protect the nation meant that each member of the party should not be “discouraged” but should work hard to achieve the party’s goal and conduct class struggle. Party members also had to resist materialism. Duch then stated that people who were “aggressive” and “judgmental” were “not wanted” by the CPK, which had to “get rid” of such people. As for people who were not performing properly, Duch stated that the CPK would seek to refashion such individuals and would impose sanctions on them.

Ieng Sary Retires at Usual Hour

At this point, Chamber President Nil Nonn announced the morning break. Prior to the break, counsel Ang Udom for Ieng Sary made his now-customary request that Ieng Sary be permitted to waive his right to be present in the courtroom and retire to the courtroom holding cell to view the proceedings via audio-visual link. The President granted this request and reminded the defense of the need to provide the Court with a written waiver signed by Ieng Sary.

Continued Questioning of Duch by Prosecution

Following the break, the prosecution resumed its questioning of Duch. During this portion, Duch continued to opine on the criteria on CPK admission, stating that party members were expected to work hard and to “maintain secrecy” as a “core aspect” of all work in DK. He stated that everyone just “minded their own business” to maintain secrecy and that, for party members, the “less [they] knew about” the work of their superiors, “the better.”

For secrecy of S-21 documents specifically, Duch testified that these documents were addressed clearly to specific recipients, such as Nuon Chea, and that everyone else was forbade from reading the documents.

Duch then returned to the topic of the creation of “personal histories” in DK and stated that all party members were expected to be honest in the creation of these histories and such histories were transmitted to the upper echelons of the CPK. He then testified that each member of the party had to fulfill their duties well in order to be considered for advancement to leadership positions. Duch noted that people were expected to “build” themselves as party members to serve the revolution and advance up the ranks of the party.

When asked about the “duties” of party members, Duch stated that the requirement that party members “proselytize to the popular masses” meant that such members were supposed to convert local people to believing in CPK ideology and political lines. He further testified that party members were expected to remain in close contact with local people in their areas.

Duch then testified that the term “agitate the masses” meant that CPK party members were expected to encourage people to work hard for the revolution, even when they were tired from long periods of work.



When asked by Mr. Smith about the “fundamental” criteria for party members in the CPK statute, Duch responded that these ten criteria, along with other duties, were the requirements for party members to be “good” and be selected for membership in the upper levels of the party.

Mr. Smith then turned to CPK party discipline, asking Duch what the requirement to “absolutely respect party discipline” meant in the CPK statute. Duch responded that party discipline was a “must” for party members, who had to abide by any discipline put out by the CPK command. He further testified that the lowest level of sanction was criticism, which occurred during livelihood meetings, which were sometimes secretly held in

addition to public sessions. For more serious mistakes, party members would be sanctioned in a “more severe nature.” Duch then matter-of-factly explained how in one case, a subordinate made repeated mistakes that Duch reported to his superiors and resulted in the subordinate’s arrest and execution. He further explained that for serious mistakes, party members could have their membership revoked and this process could result in arrest and execution. Regarding the process of revoking membership and meting out punishment, Duch affirmed that there was no judicial activity in DK and arrests were summary. Duch could not recall any case in which a member of the party was removed but not subsequently executed.

Nuon Chea Retires to the Holding Cell

At this point, the Chamber began to announce the lunch break and Nuon Chea interjected to personally request that he be permitted to retire to the courtroom holding cell to participate via audio-visual link for the remainder of the day’s proceedings. The President granted this request, specifically noting that Nuon Chea explicitly waived his right to be present in the courtroom.

Nuon Chea Defense Requests Investigation based on Recent Revelations

Following the lunch break, Nuon Chea defense counsel rose and stated that he felt “forced to raise” the issue of the “note” issued by outgoing International Reserve Co-Investigating Judge Laurent Kasper-Ansmert.¹ Mr. Pestman stated that he had a strong feeling of “déjà vu” when reading the note and argued that the “dysfunction” within the Office of the Co-Investigating Judges (OCIJ) described by Judge Kasper-Ansmert was “patently dubious and possibly even criminal” and characterized the Judge’s note as an “indictment” of the ECCC as a “patently dysfunctional institution.”



Mr. Pestman then recalled previous submissions made by the Nuon Chea defense requesting investigations into government interference related to Case 002. He stated that the note established that Cambodian ECCC officials have gone to serious lengths to avoid any outcome that would be unfavorable to the Cambodian government. Mr. Pestman named some of the individuals listed in the note and argued that the conduct described in the note by these people amounts to the crime of interference with the administration of justice under Cambodian law. He stated that no office of the ECCC can be considered free from interference, including the Trial Chamber, noting that the Nuon Chea defense team has “very little confidence left” in the Court as an institution. He then announced that the defense would file a motion, calling again for an investigation of likely

¹ Judge Kasper-Ansmert tendered his resignation last week and filed a scathing document outlining what he perceived to be the intentional and illegal stymieing of his ability to carry out his investigative duties. This document, as well as the press statement issued in response by National Co-Investigating Judge You Bunleng, are available on the ECCC website at <http://www.eccc.gov.kh/en>.

political interference into Case 002 and requesting a stay of proceedings pending the outcome of such investigation. He stated that although the Nuon Chea defense would file its motion, the defense team believes that such a motion is destined to fail because of the partiality of the national judges of the Trial Chamber, who would block any move to investigate by the international members of the bench.

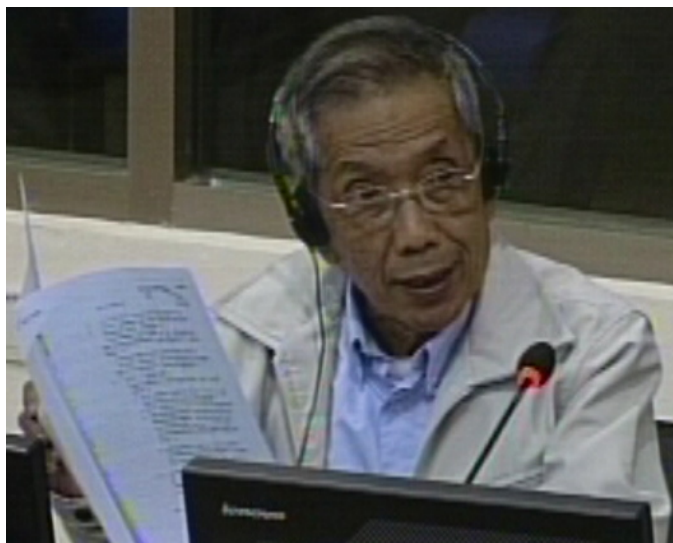
Mr. Pestman then appealed to international Trial Chamber Judges Jean-Marc Lavergne and Sylvia Cartwright to file a dissent that called for an investigation. He concluded his submission by asking the two judges to consider whether their national colleagues would ever issue a decision that contravened the wishes of the Cambodian government.

Mr. Smith responded for the prosecution by arguing that the submission of the Nuon Chea defense was improper because it relates solely to Cases 003 and 004. He further submitted that the accused have been afforded a fair and proper procedure thus far in Case 002 and requested that the judges simply continue presiding over the case as they have done in the past.

Civil party co-lead lawyer Elisabeth Simmoneau-Fort then stated that any “systematic” disagreements between the national and international staffs at the ECCC is regrettable but that the civil parties continue to hope that the Trial Chamber judges will issue a fair judgment in Case 002.

Counsel Arthur Vercken for Khieu Samphan rose and argued that the facts uncovered by Judge Kasper-Ansmert are new facts, not known to the Chamber when it ruled against an investigation previously. He thus requested a new investigation, stating that the “damage” of the revelations by Judge Kasper-Ansmert cannot and will not, be limited solely to Cases 003 and 004. Mr. Vercken also added his support to the request of the Nuon Chea defense for a stay of proceedings pending an investigation.

Following the submission of the Khieu Samphan defense, the Chamber President turned the floor back over to the prosecution, without providing any commentary on the submission by the Nuon Chea defense.



Prosecution Resumes Questioning of Duch

Mr. Smith then resumed the prosecution’s questioning of Duch, first delving into the “climate of fear” in DK. He provided Duch with a document, which Duch identified as a life history of one of his subordinates created at S-21, explaining that he ordered his subordinates to create their life histories each year.

Concerning the use of revolutionary aliases, Duch testified that especially early during the Khmer Rouge movement,

people were assigned aliases, which they used along with actual names. He also noted that he created a more thorough personal history questionnaire than was generally used throughout DK to use at S-21.

Mr. Smith then asked Duch why four specific individuals were investigated at S-21 beyond the normal personal biography collection procedures. Duch explained that these men were discovered to have lied about their personal histories and so came under his scrutiny. He stated that he was unsure, however, if the arrests of these individuals ever materialized. Next, Duch stated that the four individuals were not party members but had been civil servants in the Lon Nol government and were considered to harbor “reactionary” attitudes towards the CPK. Duch stated that his superior at the time if this inquiry, Nath, ordered the investigation.

Duch testified that during his investigation of the four individuals, he discovered that the men had ties to the Lon Nol government. When it came to his report summarizing his investigation, Duch stated that the decision whether to arrest the suspects was up to Nath, as Duch had indicated in his notation on the report itself. He also continued to claim that he was unaware if any of the men were actually arrested. Nonetheless, Duch did admit that he had requested permission to arrest at least three of the four men at the time.

Prosecution Requests Direction from Chamber on Time Allocation

At this point, just prior to the afternoon break, Mr. Smith made a brief submission to the Chamber in which he observed that the prosecution had used approximately 12.5 hours of questioning time to ask Duch questions and provided the Chamber with an overview of the other topics the prosecution planned to discuss moving forward. He stated that the prosecution sought to continue questioning Duch until “at least” midday on Thursday, March 29, and sought information from the Chamber regarding whether this would be permitted for planning purposes.



Civil Parties Requests More Time than Anticipated to Question Duch

Civil party counsel Lyma Nguyen then rose and informed the Chamber that the civil parties wished to request additional questioning time beyond the three hours they had previously requested. She stated that the civil parties had decided to seek more time to question Duch based on his deep knowledge and articulate manner as a witness. When asked for a precise figure by the Chamber President, Ms. Nguyen indicated that the civil parties sought one full day of questioning. The Chamber then took its regular afternoon break.

Chamber Grants Time Requests

Following the break, Chamber President Nil Nonn announced that the Chamber had decided to grant the requests for questioning time allocation made by both the prosecution and civil parties and turned the floor back over to the prosecution to continue its questioning.

Prosecution Questioning Continues

Mr. Smith resumed questioning Duch by asking him what the term “echelon” referred to in the CPK statute, within the context of the duty to report to the upper echelons. Duch responded that the term simply referred to “level,” meaning that party members each had a duty to report to their immediate superiors.

Next, Mr. Smith asked Duch about the duty to report on “the situation” and “the work done.” Duch responded that the situation meant the conditions at a place, such as the number of prisoners sent to S-21 at a given time. Meanwhile, Duch stated that “work done” referred to the completion of assigned tasks and production, such as the numbers of confessions created and prisoners executed at S-21. He stated that he reported to his superiors every three days and that, when supervised by Nuon Chea, he reported at least every five days. For important confessions, Duch stated that he had a duty to report directly to Son Sen over the telephone before Son Sen was replaced by Nuon Chea.

Mr. Smith then sought to turn to the subject of the flow of information throughout S-21 and thereafter to the upper levels of the CPK outside S-21.

Defense Teams Object again to Scope of Questioning

At this point, Nuon Chea defense counsel Michiel Pestman objected to this line of questioning. He noted that the prosecution had sought to include S-21 as part of Case 002, Trial 1 in the past and argued that it was now seeking to do so through questioning.

Mr. Smith responded that the prosecution was seeking solely to elicit testimony relevant to general communication structures in DK. He argued that the communication structures in place at S-21 can be viewed as an example of how information flowed generally in DK.

Ieng Sary counsel Michael Karnavas added his voice to the objection made by the Nuon Chea defense. He stated that Duch had already explained how information flowed out of S-21 and alleged that the prosecution was seeking to treat Duch as an expert witness who can explain all of the communications structures in DK. Mr. Karnavas argued that it does not “translate” that the communications practices at S-21 were duplicated throughout DK.

Mr. Smith maintained that Duch is likely to be among the best witnesses who will testify in Case 002. He argued that the structure of DK generally can be seen reflected in S-21 and quoted Khmer Rouge researcher David Chandler as stating that S-21 was reflective of what was happening throughout DK. During this submission, Mr. Karnavas began to interrupt as soon as Mr. Smith began to quote Mr. Chandler but was cut off by the Chamber President.

Mr. Karnavas then responded, stating that his “primary objection” was that Duch was being fed information to answer questions put to him by the prosecution. He argued that Mr. Smith had been “telegraphing” to Duch what he wanted the witness to testify by quoting Mr. Chandler. He stated that he finds it “offensive” that the prosecution had argued that Duch is a “fountain of information” and that Mr. Smith had cited Mr. Chandler. Mr. Karnavas denied that the defense

was attempting to “muzzle” Duch, stating that instead the defense was seeking to obtain proper limitations on Duch’s testimony.

The Chamber judges then conferred briefly before the Chamber overruled both objections and instructed Duch to respond to the prosecution’s questioning.

Prosecution Concludes Questioning of Duch for the Day

Mr. Smith then asked Duch what types of information were collected at S-21. Duch responded that there were two types of information: internal information, which was summarized and reported to Duch, and also confession information, which was reported to Duch upon completion of extracting each confession. Duch stated that he would annotate the confessions and thereafter transmit them to the upper echelons of the CPK.

Regarding prisoner lists at S-21, Duch stated that these lists were meticulously kept and reported to him. Upon further questioning, Duch stated that the list included each detainee’s name, gender, title and place of arrest. He then described the process of collecting information from detainees and organizing them for interrogation sessions. During this portion of his questioning, Duch explained that detainees would typically be asked to write down information about their background, specifically their alleged wrongdoing. Those whose biographies were unsatisfactory in some way would then be interrogated.

At this point, the Chamber adjourned proceedings for the day, to resume the following morning with Duch’s continued testimony.