



Khieu Samphan (right) was the focus of much of Duch's testimony on Wednesday at the ECCC.

The Prosecution Explores the Depths of Duch's Knowledge

By: Randle DeFalco
J.D. Rutgers School of Law – Newark
Legal Advisor, Documentation Center of Cambodia

On Wednesday, March 28, 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

International Deputy Co-Prosecutor William Smith began the day's questioning by seeking to clarify a few issues left unclear during Duch's previous testimony. He first asked when S-21 prison began operations. Duch responded that he believes S-21 began operation immediately after the Khmer Rouge victory on April 17, 1975, although the prison may not have been code-named "S-21" when it first opened. Upon further questioning, Duch testified that it was "difficult to say" when S-21 actually closed, but he stated Nuon Chea ordered the facility closed at 9 a.m. on January 3, 1979.

Mr. Smith then provided Duch with a copy of an S-21 master prisoner list containing over 12,000 names of S-21 victims, which Duch announced was an accurate document. Mr. Smith then asked Duch whether approximately more prisoners were killed before or after March 30, 1976. Duch's response was somewhat unclear, but he did suggest that the majority of killings at S-21 took place after March 30, 1976.

Next, Mr. Smith turned back to a document discussed the previous day that listed decisions on a number of issues made by the Central Committee of the Communist Party of Kampuchea (CPK). He asked Duch to read out a paragraph discussing the "right to smash inside and outside the

ranks” of the party. Duch read out the extract, which justified “smashing” as a means of strengthening the CPK’s authority and control.

While Duch was reading out the document, Khieu Samphan defense counsel Arthur Vercken objected, stating that it was “too serious” for him to remain silent. He argued that the Chamber was allowing the prosecution to question a witness using a contested document that had not been verified. Mr. Vercken argued that because the document was still under dispute, it was improper for the prosecution to discuss it in a manner that suggested the document had already been verified. National Khieu Samphan defense counsel Kong Sam Onn then added his voice to the objection, stating that it is improper to question the witness by having the witness explain a challenged document. This objection was then joined by the Nuon Chea defense.



Mr. Smith responded that the objection of the defense was precluded by the rulings made the previous day by the Trial Chamber. He then submitted that if the defense continues raising repetitive objections, it will significantly delay proceedings and noted that the prosecution would be seeking 1.5 hours of additional questioning time for Duch, based on the delays caused already by defense objections. Mr. Smith then maintained that the document was already shown to Duch by the ECCC Co-Investigating Judges (CIJs).

Civil party counsel Lyma Nguyen added the support of the civil parties to the prosecution’s position and stated that in the view of the civil parties, the ruling the previous day explained by Judge Sylvia Cartwright had been very clear.

Chamber President Nil Nonn overruled the objection and instructed the prosecution to proceed, stating that the ruling had already been made. The President did, however, ask the prosecution to refrain from asking Duch to express his “personal opinion” on the document.

Mr. Smith then asked Duch what the term “competent” meant in relation to smashing. Duch responded that only certain CPK members were considered “competent” to order others to be smashed. He then testified that the CPK Standing Committee was based in Phnom Penh and that Democratic Kampuchea (DK) was divided into a number of Zones. Duch listed the various Zones in DK, noting that in 1977 a new North Zone was created, named Zone 801. As for the purpose of dividing DK into Zones, Duch testified that the Zones were considered a temporary division at the time with the long-term plan to eliminate the Zone structure once the central command gained sufficient capability to directly govern. He also testified that each Zone had its own Standing Committee with a Zone Secretary in overall charge of the Zone. Similarly, each Zone was divided into Sectors, which in turn had their own governing Committees in charge of local administration. Duch testified that below the Sector level, Districts and Communes (later called “Cooperatives”) were also formed, with their own local administrative committees headed by a Secretary. He noted that everyone in each committee had to be a CPK member.

Duch then testified that at every level (Commune, Sector and Zone) each committee had an obligation to report to the next echelon up the chain of command, all the way to the top authority. He stated that this was because the CPK statute was the only document that applied to every level and mandated this reporting process.

This process of questioning prompted an objection from the Nuon Chea defense. Counsel Michiel Pestman argued that the prosecution was unclear about the time period they were questioning Duch about and secondly, Duch was only the chairman of S-21 and did not have personal knowledge of the actual process of reporting in DK.

Mr. Smith responded that the prosecution was asking Duch to explain his knowledge based on studying the CPK statute and was not suggesting that Duch had direct knowledge of how the chain of command in DK actually operated.

Mr. Pestman then requested that the prosecution rephrase the question because as is, he argued, Mr. Smith's line of questioning invited speculation from Duch.

The objection was overruled by the Chamber President, but Mr. Smith did carefully instruct Duch to answer about the chain of command based solely on his studies of the CPK statute.

Duch then explained the remainder of the DK chain of command. Overall through his testimony Duch stated that the chain of command dictated by the CPK statute operated in the following manner, beginning with the lowest-level:

Mobile/Work Unit Leader → Commune/Cooperative Committee → District Committee → Sector Committee → Zone Committee → Central Committee.

Moreover, within the Central Committee, the smaller Standing Committee had the most authority, as Duch had testified the previous day.

Mr. Smith then asked Duch about the opposite practice, of reporting down the chain of command. Duch testified that the process of issuing instructions down the chain of command mirrored that of the process of reporting up the chain of command. He also testified that in his experience, this process operated in actuality as well as theoretically in the CPK statute.

Regarding the right to smash individuals, Duch stated that the respective Zone Standing Committee had the authority to order executions within the geographic bounds of each Zone. He also testified that the "independent sectors" referred to in the Central Committee document were areas or divisions within the CPK hierarchy that did not have to report through normal channels but reported directly to the CPK Secretary or Deputy Secretary. He surmised that these special areas, such as one located in Siem Reap, reported directly to the highest levels because they were considered especially important. In fact, Duch testified that S-21 was itself an "independent regiment" within the DK military structure.

Mr. Smith then turned to the CPK military. During this questioning, Duch stated that Son Sen was the head of the general staff of the Revolutionary Army of Kampuchea (RAK). He further testified that the two other former general staff members were later arrested and executed at S-21. Mr. Smith then asked Duch about the organization of the RAK throughout the country prior to April 17, 1975. Duch responded that at that time, the army was concentrated and under the direct authority of each Zone committee, while under the general overall direction of Pol Pot and Nuon Chea. He stated that in July of 1975, the military was reorganized, with some troops taken from each Zone military force and combined to form a central military force under the direct control of the RAK general staff in Phnom Penh.

Prosecution Requests Additional Time and Ieng Sary Retires at Customary Hour

At this point, just prior to the morning break, Mr. Smith made a formal application to continue the prosecution's questioning until the end of Thursday, March 29, rather than midway through that day. He argued that much of the prosecution's questioning time had been consumed by the numerous objections raised by the defense teams over the previous days of questioning.

Nuon Chea defense counsel Michiel Pestman then rose and stated that the defense had no objection to the prosecution being given additional time and submitted that all parties should be given whatever time is necessary to question witnesses.

Ieng Sary defense counsel Ang Udom then rose and made his 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 remainder of the day's proceedings via audio-visual link. The President granted this request and announced the morning break.

Following the morning break, the Chamber granted the prosecution's request for extended questioning time.

Defense Renews Challenges to Central Committee Document

Nuon Chea counsel Michiel Pestman then rose and made a submission regarding the challenged document titled "Decisions of the Central Committee." He stated that it was unfortunate that the document had been shown to Duch because the authenticity of the document remained unresolved. Mr. Pestman noted that Nuon Chea strongly challenged the authenticity of this particular document and recalled that Documentation Center of Cambodia (DC-Cam) director Youk Chhang had testified previously that the Center does not hold the original of this document and had suggested that perhaps the original is held by Khmer Rouge researcher David Chandler. He then requested that the Chamber decide on previous challenges to documents as soon as possible to provide clarity on the use of documents moving forward.

Khieu Samphan defense counsel Arthur Vercken then rose and pointed out that the defense had already made a request to the Chamber for clarification of what effect the attribution of an "E code" to a document has. He noted that the prosecution had argued in the past that documents having such code have some additional weight or status and requested a ruling to avoid "endless sterile debate" on the issue.



Civil party co-lead lawyer Elisabeth Simmoneau-Fort then weighed in and stated her dismay at what she viewed as repetitive debates of issues the Chamber had already decided. She requested that the Chamber preempt such arguments to expedite proceedings.

The Chamber President responded to the objections by citing the one million pages of documents in the Case 002 file. He noted that DC-Cam had provided parties with over 500,000 pages of documents. Due to this “huge” case file, the President noted that parties had submitted numerous motions related to evidence. He stated that the Chamber has been “doing its best” to process and adjudicate the issues raised in the motions but stated that some pending issues could not be ruled upon immediately. He recalled that the Chamber had even cancelled proceedings the previous Thursday in order to work on pending issues and observed that none of the parties desired for their submissions to be taken lightly. Thus, the President called for patience from the parties and requested that no party waste further time in the proceedings, as the Chamber was “fully aware” of all applications.

Prosecution Resumes Questioning of Duch

Mr. Smith then continued questioning Duch about the division of authority within the RAK. During this portion of his testimony, Duch named various military divisions and provided details on certain members of the RAK general staff. By the end of the DK period, Duch testified that all members of the RAK general staff had been smashed except for Son Sen and the heads of certain divisions, along with the deputy chairman of the RAK. As for independent units within the RAK, Duch stated that each of these seven units had a specific task, including S-21 and a medical unit.

Upon further questioning, Duch stated that he did not recollect how many members of the RAK were smashed at S-21 but testified that he agreed with the summary of recorded, which indicated that approximately 5,000 RAK members were executed at the prison. Duch explained that many enemies were perceived within the RAK, which is why so many army members were purged. Duch also testified that the RAK general staff reported to Pol Pot and Nuon Chea.

Duch then testified about the “Cambodian People’s Revolutionary Armed Forces” (CPRAF), stating that he was unfamiliar with this term but was aware of the “National United Front” (NUF) army in 1975, because he heard about it on the radio. Duch stated that according to the 1971 CPK statute, the army was the “closest sibling of the party” and therefore the army was under the control of the Secretary (Pol Pot) and Deputy Secretary (Nuon Chea) of the CPK.

Duch also testified that prior to 1975, he had heard of Khieu Samphan. He explained that he first heard the name of Khieu Samphan in 1958, when he was asked to join a demonstration. At this time, Khieu Samphan became popular as a “progressive” person. He also noted that Khieu Samphan disappeared in 1967. During the DK period, Duch testified, Pol Pot assigned Khieu Samphan to be the head of the CPK central office. Duch claimed, however, that Khieu

Samphan's role as head of state in DK was "honorary" only, because he had no authority over the military at all.

Mr. Smith asked Duch to elaborate on his initial knowledge of Khieu Samphan. Duch stated that he heard of Khieu Samphan's newspaper "*L'Observateur*" in 1958. Duch stated that around this time Khieu Samphan was publicly beaten by the state intelligence service. He further stated that he and other members of the "petty bourgeoisie" paid great attention to Khieu Samphan, who was seen as a progressive and clean individual. Duch later learned, from one of his old friends who was arrested and sent to S-21, that Khieu Samphan, known as "brother Hem" had been a student of Saloth Sar, aka Pol Pot, from 1970 onwards.

Duch also testified that he heard that Khieu Samphan was the commander-in-chief of the revolutionary forces in Cambodia from 1970-1975. He learned, however, that this title was completely "honorific" and truly "meant nothing." According to Duch, the true purpose of this title was to use Khieu Samphan as a figurehead to introduce the Khmer Rouge movement to the international community because Khieu Samphan was considered a trustworthy, "clean" person, both in Cambodia and internationally.

Ieng Sary defense counsel Michael Karnavas then objected, arguing that throughout the morning the prosecution had been utilizing improper leading questions. He stated that this process was "unhelpful" to the Chamber because the prosecution was "feeding" the witness information.

Mr. Smith responded the prefaces to his questions were merely summaries of what Duch had already testified and thus the prosecution was not feeding any information to Duch improperly but merely seeking to expedite the process.

The Chamber judges then conferred briefly before sustaining the objection. The President reminded the parties that leading questions are improper and instructed all counsel to appropriately phrase questions.

Mr. Smith then asked Duch how he knew that Khieu Samphan's role was to introduce the Khmer Rouge to the international community. Duch responded that he and others liked Khieu Samphan and so he was a natural choice to serve as the face of the revolution internationally. Duch stated that everyone believed the RAK was led by "someone who was trustworthy [and] clean." Later, but still before 1975, Duch explained, he saw that Khieu Samphan was made head of the central office of the CPK under the authority of Pol Pot and observed that Pol Pot was the true leader of the Khmer Rouge movement.

Mr. Smith then turned to Duch's knowledge of Ieng Sary. Duch testified that he first heard of Ieng Sary in 1962, when he visited his former teacher who told him that Ieng Sary was a "respectable politician."

Nuon Chea Retires at Customary Hour

At this point, the Chamber prepared to break for lunch and Nuon Chea defense counsel Michiel Pestman informed the Chamber that Nuon Chea wished to waive his right to be present in the

courtroom and to be excused to observe the remainder of the day's proceedings from the holding cell via audio-visual link. The President granted this request, as per usual.

Prosecution Resumes Questioning

Following the lunch break, Mr. Smith continued questioning Duch concerning his knowledge of Ieng Sary's activities. During this portion of his testimony, Duch stated that in 1972 or 1973, he heard on the radio that Ieng Sary had been named a "special envoy" to Beijing. Upon further questioning, Duch testified that in 1971 he reached the office of the special zone, where he learned about "brother Nuon" and met some of Nuon Chea's relatives.



Duch then testified that Son Sen told him that the upper lever CPK leaders lived, ate and worked together in Phnom Penh. He stated that generally the CPK ordered communal meals to avoid "jealousy" among people because everyone would receive the same rations.

Mr. Smith then showed Duch a document, which Duch identified as the minutes from a CPK meeting he had attended. He stated that he was unsure if he had seen the document during the proceedings in his own Case (001), but he affirmed he had attended the meeting. Duch then identified certain codes on the document. Duch explained that the meeting was chaired by Son Sen and concerned the alleged publication in DK of anti-CPK leaflets. Duch then testified that he reported at the meeting on the group that supposedly published such leaflets but denied having ever actually seen the leaflets in question.

Next, Duch testified about CPK "central office S-71," which he described as the central committee office. He testified that comrade Pang, who was in charge of S-71, also had authority over S-21 and he could access any area of S-21 at any time. Pang, however, was under the direct orders of Pol Pot. Based on the list of S-21 prisoners, Duch surmised that at least 13 individuals were under Pang's direct authority at S-71.

Mr. Smith then provided Duch with another document purporting to be the minutes of a CPK meeting. Duch identified the document as the minutes of a meeting concerning production work from September of 1976. He stated that he did not attend the meeting as one of his subordinates, named "Huy," attended the meeting in his stead. Duch did confirm that many leaders of other CPK divisions were present and that the main subjects discussed were "enemies" of the revolution and the statistics of rice growing. He also testified that the reference to "seek[ing] advice from *Angkar* ["organization"]" regarding a group of 30 people who apparently could not be successfully re-educated. Duch stated that in this context, *Angkar* referred to Pol Pot. Upon further questioning, Duch stated that the purpose of these types of meetings was to seek advice and decisions from *Angkar* regarding perceived enemies and to discuss rice production issues.

Following this discussion, Mr. Smith returned to the "Decisions of the Central Committee" document and asked Duch how many groups were given the right to smash people inside and

outside the party ranks. Duch responded that the right to smash was divided among each unit. At the base level, Duch testified that the Secretary of the Zone had the right to smash.

Before Duch could continue, Khieu Samphan defense counsel Arthur Vercken objected again, arguing that it was improper for witnesses to be asked to read out documents. Mr. Smith responded by reading out the document himself, stating that the right to smash was conferred upon the Central Office Committee, Standing Committee and General Staff [of the RAK]. This prompted a second objection, this time from Mr. Pestman for the Nuon Chea defense, who argued that the prosecution should phrase its questions to ask Duch about his personal experiences during the DK period. Mr. Smith obliged by asking Duch what he observed about the Central Office Committee.

Duch responded that the “Central Office Committee” referred solely to the chairman of the Committee, who was Khieu Samphan. When asked about the work relationship between Khieu Samphan and comrade Pang, Duch responded that he was unaware of any relationship, as Pang only brought Duch messages that came directly from Pol Pot himself. He further testified that he had little information on what Khieu Samphan was doing during the DK period because he was not in contact with him.

Mr. Smith then asked Duch for a general description of the work of the Central Office Committee. This led to another objection from Mr. Vercken, who argued that the prosecution was repeating its question in another form and was doing so because Duch had already indicated that he had no knowledge of Khieu Samphan’s activities.

Mr. Karnavas then weighed in and noted that Duch had prefaced his previous answer by saying that he could only provide the same answer he had given to the Office of the Co-Investigating Judges (OCIJ). He explained that Duch had been asked various questions by the OCIJ, which he had taken months to answer and, therefore, such answers could easily have been drawn from Duch’s personal research, rather than direct experiences during the DK period. Mr. Karnavas argued that it was improper for Duch to provide the Chamber with his personal research.

Mr. Smith responded that he would continue his questioning by asking questions to uncover the sources of Duch’s knowledge and to seek information at a more general level.

Mr. Vercken replied that a preferable course of action would be to instruct Duch to explain what parts of his testimony were being drawn from his personal experiences as opposed to his own research. He argued that it is very important to make clear what the source of Duch’s knowledge is for every answer he provides.

The Chamber President then overruled the objections but provided a lengthy instruction to the parties and to Duch himself. He told Duch that he should clearly explain his sources of knowledge and informed him that the information he gave to the OCIJ was private information, while the current proceedings are public.

Mr. Smith then asked Duch, from his knowledge during the DK period, what the duties and functions were of the Office of the Central Committee. Duch responded that during a meeting

where it was decided to arrest a party member named Chou Chet, a subordinate of Vorn Vet, Pol Pot invited Khieu Samphan, rather than Vorn Vet, to participate. He further testified that he has subsequently seen CPK documents that asked for permission to buy goods and were addressed to “brother Hem” (Khieu Samphan). Duch then testified that Pang had informed him that Khieu Samphan used the alias “Kong,” which Khieu Samphan had also signed to travel documents in DK. Thus, Duch stated, he had concluded Khieu Samphan was in charge of the commerce committee and also an electricity factory.

At this point the Chamber took its afternoon break. Following the break, Mr. Smith followed up on Duch’s long answer regarding the roles of Khieu Samphan in DK. First, Duch testified that the “travel documents” he had referred to previously were necessary documents for any CPK cadre to move around in Phnom Penh and that such passes were valid for six months. He further testified that his own pass was renewed by Son Sen any time it expired. As for the reasons why certain individuals in the CPK had more than one alias, Duch testified that Son Sen had many aliases, including his general pseudonym of “Khiev” but he signed travel passes with the alias “Kim.” Duch then testified that Pang later collected all old travel passes and provided new passes bearing the name “Kang.” When Duch asked Pang who “Kang” was, Pang told him that Kang was “brother Hem,” the alias of Khieu Samphan. Duch also testified that he compared the handwriting on the travel pass and he believed it matched Khieu Samphan’s handwriting.



Duch then described a meeting he had at office “K-7” where he observed that letters sent from all Zones were collected to be sent to the Central Office. He also stated that K-7 was used as a location to receive guests in DK. Although he was unsure of the number of staff working at K-7, Duch did testify that he was introduced to a cadre named “Key” by Son Sen, who was the head of the messenger office. Upon further questioning, Duch stated that he was only aware of K-7 bearing the code name “K.”

Mr. Smith then returned to Duch’s interactions with Pang and Duch testified that he met Pang “very often” whenever Son Sen was away and later, when Nuon Chea took charge. As for Pang’s eventual arrest, Duch confirmed that Pang was arrested and sent to S-21, where he was tortured just like every other prisoner at S-21, except Koy Thuon.

Duch then testified about the arrest of Chou Chet, stating that he believed Ta Mok had a grievance against Chou Chet and Vorn Vet, who did not intervene in order to maintain his neutrality despite his close times to Chou Chet. He reiterated his previous testimony that Khieu Samphan was invited to the meeting of the CPK command rather than Vorn Vet where the decision to arrest Chou Chet was made.

Next, Duch testified about the arrest of the head of an electricity factory in DK whom Duch had met in prison prior to the DK period. When this person was arrested, he implicated Khieu Samphan as an enemy in his confession. Duch explained that this is what led him to believe that Khieu Samphan had some authority over the electricity factory. He then described another

meeting on January 6, 1979, at a Phnom Penh high school where the state warehouse was discussed and Khieu Samphan was in attendance and presented the “overall situation at the time.” This led Duch to conclude that Khieu Samphan also had authority over the state warehouse, because the man Duch knew as the head of the state warehouse was present and appeared to be under the authority of Khieu Samphan.

At this point, Mr. Smith asked Duch about Khieu Samphan’s role as Chairman of the Central Office Committee, following the arrest of Doeun, who had held the post previously. Duch testified that when Doeun was in charge, he was only in charge of maintaining documents, but when Khieu Samphan took over, he was granted additional duties, such as oversight of the electricity factory. Nonetheless, Duch testified that there was “no significant change” in Khieu Samphan’s role. Mr. Smith then asked Duch about the right to order people smashed and references to “office 870” in the “Decisions of the Central Committee” document. Duch responded that office 870 referred to the Central Office, but he denied that any document from office 870 was from Khieu Samphan. Instead, such documents were from Pol Pot, Son Sen or Nuon Chea. Thus, Duch testified that “office 870” was not a term used to refer to Khieu Samphan, but instead referred to Pol Pot.

Mr. Smith then provided Duch with another document entitled “Guidance of the Central Committee” regarding “mistaken” traitors. Duch stated that he had received the document and noted that the document was also published in an issue of *Revolutionary Flag*. He then testified that he was “very pleased” when he first read the document, because it contained a “favorable” policy towards people who made mistakes, seeking to reintegrate them into the party once they confessed their mistakes. Nonetheless, Duch stated that at the time, the CPK was still conducting purges and so he believed the document was used to appease people and make them happy with the party leadership, rather than being reflective of true policy. Upon further questioning, Duch stated that the document was issued in 1978 and coincided with the purge of the East Zone and therefore was used to appease people during the purge process. He then denied that the policy had any effect on the operations at S-21.

To conclude the day’s questioning, Mr. Smith asked Duch about the DK “people’s representative assembly” chaired by Nuon Chea and also containing Sao Phim and Ta Mok. Duch testified that at the first session of this assembly, he only witnessed two attendees, who were none of the three top officials. Duch also testified that “comrade Nhim” was Nhim Ros, Secretary of the Northwest Zone who was purged. He concluded his testimony for the day by stating that in reality in DK Pol Pot was the Secretary of the CPK and administrative affairs were handled by Nuon Chea, Son Sen, Vorn Vet and Ieng Sary, suggesting that these men held all meaningful power at the national level.

The prosecution is scheduled to complete its questioning of Duch on Thursday, March 28, when proceedings will resume at 9 a.m.

