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Key witness delayed at KRT

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A controversial legal doctrine threatens to disrupt proceedings at the Khmer Rouge tribunal after lawyers on Monday moved for a key witness's testimony to be halted until he consults a lawyer.

Francois Roux, co-lawyer for former Tuol Sleng prison chief Kaing Guek Eav, alias Duch, waited until former S-21 prison deputy Mam Nai had been sworn in to question whether his testimony could be used against him under a conspiracy charge being pushed by the prosecution and pending a decision by the chamber.

"Can you state here and now that this witness will not be prosecuted before national courts? Can you guarantee this?" he asked co-prosecutor William Smith.

"If you are unable to do so, I request he be allowed to consult his lawyer immediately," he added.

Joint criminal enterprise, or JCE, is used in trials to charge individuals with crimes they didn't commit directly, but were responsible for as part of a "common criminal plan".

Prosecutors have asked several times that it be applied in the Duch trial, saying it is necessary to "accurately describe the extent of Duch's criminal conduct". But defence lawyers argue it unfairly widens the range of crimes for which Duch could be held accountable.

Mam Nai, former deputy at Tuol Sleng, said from the dock that he hadn't talked to a lawyer about self-incrimination because he "could not afford" one, prompting Presiding Judge Nil Nonn to adjourn the session prematurely.

Mam Nai is the first of a dozen key witnesses scheduled to give testimony over the coming weeks, leaving observers to speculate on the effect the challenge would have on proceedings.

"It's too soon to tell," Heather Ryan, a court monitor for the Open Society Justice Initiative said. "[But] I think the same issue would arise even without the issue of JCE. If these guys admit to things that are crimes under Cambodian or ECCC law, they could potentially be tried."

Lars Olsen, the court's legal communications officer, said there would be "no significant delay" in the trial because of the issue, and that a lawyer would be available for witnesses to consult in the future.

"We can expect the trial to continue as normal tomorrow," he said.

Roux told the Post Monday that his aim was not to delay proceedings, but rather for the prosecution to "reflect" on whether the conspiracy charge was necessary.

"The co-prosecutor should properly reflect and retire the [request for] joint criminal enterprise," he said.

Further testimony rejected

Earlier Monday, Duch rejected testimony from another alleged survivor of the prison, who claimed Monday that she saw Duch execute her two uncles.

Nam Mon, 48, also claimed to have seen "one or two children" bayoneted by soldiers while imprisoned at Prey Sar prison.

"A child was thrown in the air, and they fell on the bayonet," she said.

She told judges last week that she had been installed as a medic at Tuol Sleng prison, and on Monday she added that she had watched Duch beat her uncles to death from the building in which she worked.

"I saw this Brother East use a metal bar about half a metre long to beat [the uncles and other prisoners] under a coconut tree," she said, using a name that has been attributed to Duch by other survivors.

"After they were killed ... I was terrified, I could no longer speak, and I could not concentrate on my work any longer."

When questioned by Nil Nonn as to why she had not included these details in her complaint form or testimony last week, she said she was afraid for her life.

"I was afraid if I mentioned too many names in my complaint I would be killed," she said.

She later begged Duch to tell her who mistreated her siblings and uncles: "I want to ask you, brother, are you going to deny the truth of the facts I have just presented to the court?"

But Duch told judges that even basic aspects of her testimony were flawed.

"The medics at S-21 ... were only male medics, not female," he said. "Yes, I acknowledge that she suffered, but not at S-21."