



Khieu Samphan's international counsel, Arthur Vercken, took the floor on Tuesday to challenge the witness on apparent contradictions in Duch's testimony.

Duch Confronted with Contradictions in His Testimony

By: Heather N. Goldsmith, J.D., Northwestern University School of Law

On Tuesday, April 10, 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. As scheduled, the day was devoted to the examination of prosecution witness Kaing Guek Eav, *alias* Duch, by Arthur Vercken, international counsel for Khieu Samphan. Mr. Vercken, who focused his examination on contradictions that appeared in Duch's testimony, finished an hour ahead of schedule, which the Court allowed Nuon Chea's defense team to use to complete the examination they began last week.

Khieu Samphan's Defense Team Questions Duch

Mr. Vercken began the day by informing Duch that he was planning on restricting his questions to information Duch claimed to know during the relevant time period. He noted that no one can "reproach" Duch for studying the period of Democratic Kampuchea (DK) but because the witness was neither "expert nor historian," Duch should not call upon documents of which he was not aware during the DK period nor cover issues that he did not personally witness.

Mr. Vercken first asked a few general questions, to which Duch responded that before the party meeting on January 6, 1979, Duch did not have any contact with Khieu Samphan. Duch confirmed that due to the party's principle that subordinates may only meet with their direct supervisor, he was not allowed to meet Khieu Samphan. He also verified that Son Sen never talked to him about Khieu Samphan.

Next, Mr. Vercken reminded the witness that in court yesterday Duch said he did not know what happened to the S-21 confessions he sent to his superiors. He requested that Duch confirm he

told the Co-Investigating Judges in 2008 that “nothing allows one to suppose that Khieu Samphan himself read the confessions.” Duch asked Mr. Vercken to repeat the statement. Before the counsel could do so, the Chamber reminded Mr. Vercken that he needed to have documents prepared in advance to give to the witness. After receiving the document, Duch affirmed both (a) he did not know what his superior did with the documents and (b) Khieu Samphan did not read the documents before they were given to Son Sen.

What Actually Transpired Between Duch and Pang?

Moving to a specific line of questioning, Mr. Vercken inquired about a time Pang allegedly told Duch that Khieu Samphan was going to replace Vorn Vet at a Standing Committee meeting. After it was established that he remembered the conversation, Duch was asked if Pang attended the Standing Committee meetings. Duch did not want to respond without the document of his testimony before him, but the President insisted he answer the question because it was general. Duch responded that Pang organized the Standing Committee meetings, but “in principle” he believed that Pang did not have the right to attend the meetings. Mr. Vercken asked if that meant Pang was not able to tell him whether Khieu Samphan attended a particular meeting. Duch said that Pang invited Khieu Samphan on orders from Pol Pot. Mr. Vercken clarified that it was Duch’s testimony that the only specifics of the information Pang shared was that Pang had been asked to invite Khieu Samphan, rather than Vorn Vet, to the Standing Committee meeting. In response, Duch testified that Pang told him Vorn Vet was difficult to work with because he was neither “happy” nor “active” at any meeting.

Duch also clarified that Pang was no longer alive; he had been arrested and sent to S-21. The witness asserted that he never spoke to Pang while he was at S-21, prompting Mr. Vercken to ask him to explain why he had told the United Nations High Commissioner for Refugees (UNHCR) that Pang told him about the change in invitations after he had written his confession. Mr. Vercken was asked to repeat the question for Duch, and Duch noted that he had said, “After Pang finished his responses, I was informally chatting with him, and Pang told me that Vorn Vet was never invited to the meeting.” Mr. Vercken asked Duch to reconcile the apparent discrepancy between his statement in court today and his statement to the UNHCR. Duch requested Mr. Vercken to remember that Duch had objected to the document just read to him.

In response, Mr. Vercken stated Duch did not understand the question and asked him to address the change in testimony. He reminded the witness that in 1999 Duch had said he spoke to Pang after he confessed under torture, but now Duch was saying that he did not speak to Pang when he was at S-21. Duch asserted that his statement in court was the truth; Pang had relayed the information when he was in power.

Duch also testified that he did not remember when Pang was arrested but recalled that Chou Cheat was arrested in April 1978 and Pang was arrested about two months after that. Duch could not recollect whether Chou Cheat incriminated Pang during his interrogation and confession at S-21.

Mr. Vercken inquired whether Pang had been implicated in other confessions before Chou Cheat’s arrest. The President instructed Duch that he did not have to answer the question because it was based on a confession extracted under torture. Mr. Vercken asked the Chamber to

reconsider, arguing that he was not asking the witness to consider the confession as true, but rather, given that “people were commonly arrested after being implicated by someone else,” he only wanted to know if there had been confessions that implicated Pang before Chou Cheat’s arrest. After taking a moment to deliberate, the Chamber ruled that the defense counsel may put a general question before the witness but cannot make the confession of a prisoner who was smashed the basis of a question.

Mr. Vercken reformulated his question and asked whether Duch witnessed Pang being observed by the Khmer Rouge regime prior to Chou Cheat’s arrest. Duch said that Son Sen allowed prisoners to implicate Pang and he knew Pang was implicated before Chou Cheat’s arrest because Son Sen departed before Chou Cheat arrived at S-21.

Duch was asked whether Son Sen wanted to have Pang implicated in confessions. He responded that there were two phases, and in the second phase, Son Sen asked Duch why a prisoner sent to S-21 for confession did not implicate Pang. Duch testified that he had told Son Sen that Duch had been “mocked” and “laughed at” when he had previously shared the accusations from Pang. According to Duch, Son Sen then admitted that it was his mistake and asked to hear about the confessions that had implicated Pang. Mr. Vercken followed this answer by inquiring whether Son Sen’s request for Pang to be implicated implied Pang was being monitored. Duch confirmed that it did; he also verified that this was the last meeting he had with Son Sen.

Mr. Vercken reminded Duch that yesterday the witness had described the fear he felt while the Communist Party of Kampuchea (CPK) was in power. Mr. Vercken wondered whether it was “prudent” of Duch to be asking Pang details about the operation of the Standing Committee, especially considering that Pang was being monitored. Duch responded, “This is how we worked,” further explaining that each secret affair was classified based on its level of sensitivity.

Mr. Vercken tried to explain his question to Duch, emphasizing that Duch asked questions about the Standing Committee to a person he knew was being monitored and noting that this seemed “odd behavior” for someone who was cautious about his security. Duch again testified that “they” continued to work as normal. Mr. Vercken interrupted and instructed him to answer the question about himself, not others. Duch asserted that he understood the question but wanted to answer it in stages. He stated that as long as the Standing Committee did not say that Pang should be arrested, Pang remained in authority. Further, he continued, if S-21 leaked secret information, it would be held responsible. Duch then stated that he would answer the question but produced only an unclear statement.

Mr. Vercken expressed that he did not understand the witness’s answer to the question, so Duch summarized his answer, “For the implication of a prisoner against Pang, it was the responsibility of S-21 to ensure that this secret thing would not leak and Pang would not learn that; it was not the leak to the outsider, but the mere leak to Pang himself.”



Mr. Vercken responded, “Okay, fine” and reminded the witness that Duch had previously testified to talking to Pang while Pang was being monitored. He inquired again whether Duch was taking a risk that Pang, if arrested, would incriminate him for trying to find out secret information from the Standing Committee. Duch responded that this was “virtually impossible,” stating with bravado, “How could the interrogator at S-21 let Pang implicate me?” He then questioned, in a sarcastic tone, “If Pang implicated me, would the Standing Committee believe his implication?”

Mr. Vercken attempted to clarify that although Duch’s successor was in fact killed at S-21, Duch felt that his position offered him safety and security. Duch responded that the implication against his successor did not initiate at S-21 but came directly from Pol Pot. Mr. Vercken established that Duch told the Co-Investigating Judge that Vorn Vet had implicated him in a confession. He asserted this implied that Duch was not insulated from being incriminated through the confessions of others. Duch confirmed this was correct and went on to note Vorn Vet’s interrogator had told Duch about Vorn Vet’s implication. Duch showed the confession to Nuon Chea because he thought, “If he wants to arrest me, let him do it.” Upon further questioning, Duch affirmed that his position today is that he was not at all worried about the questions he asked Pang about the Standing Committee in April 1978.

Mr. Vercken next turned Duch’s attention back to the transcripts from the UNHCR interview where Duch was recorded as saying Pang shared information about the Standing Committee after he finished writing his confession. International Co-Prosecutor William Smith interjected to request that the written transcript of the interview be put specifically to Duch. Mr. Vercken responded, “Let’s make things simpler” and asked Duch instead about his testimony before the military tribunal in 1999 where Duch stated that he had conversations with people who had been interrogated, including Pang. Duch responded that he questioned these people, under Son Sen’s orders, to learn more about the lives of the higher-ups.

Mr. Vercken pointed out that the witness’s statement is counter to Duch’s testimony from this morning, and he asked Duch to explain. Duch said the record from the military tribunal was in summary form, claiming that several events were added together with the use of a single adverb or adjective. He then began a monologue about the different people with whom he spoke, causing the counsel to interrupt him. The Chamber reminded Mr. Vercken that the witness had the right to complete his response before he could be asked to move to the next question. Mr. Vercken argued that Duch was taking a “diversion” and should be “focused.”

With the Court’s allowance, Duch continued his lengthy, unorganized, and detailed response for a few minutes before being interrupted again by Counsel, who declared that it would be difficult for him to question the witness if he is not allowed to “contain” him when he “whacks his lyrical like this.” He asked to be authorized to instruct the witness to answer the question directly and warned that if he could not, it would be difficult for him to stay within the allotted time. The President denied the request, emphasizing that Duch should be able to respond without constraint. Counsel was then instructed to put his question in short form.

Mr. Vercken expressed his agreement with the Chamber’s decision and passed the blame to the multi-lingual translation. Moving on, he clarified for Duch that he was only interested in Pang

and wanted to know how Duch explained the difference in the two statements. Duch retorted that if Counsel wants to only ask about Pang, he should remove the document placed before the witness because it mentions several people. Mr. Vercken asked whether Duch contested the contents of the testimony before the military courts. Duch simply told him again to remove the document. The President then instructed Mr. Vercken to remove the document and ask only general questions.

Michael Karnavas, defense attorney for Ieng Sary, then voiced his opinion that “the rest of us are going to be stuck with this ruling for the rest of the trial,” noting, with “all humility,” that the “ruling is not correct.” He asserted that it does not matter that the document contains other names because the defense counsel was using it to perform “classic confrontation” to demonstrate a “witness is lying.” He argued that the witness should not be able to tell the judges how to run the trial, remarking, “He is not here to interrogate; he is here to be interrogated.”

Judge Jean-Marc Lavergne was then given the floor to note that there “had been a few hitches” and that he wanted to “get to the basics.” He then turned to the witness and asked Duch to



confirm that he testified this morning that he never met with or spoke to Pang at S-21. Duch agreed. Asking the defense counsel to correct him if he was mistaken, Judge Lavergne reminded Duch that Mr. Vercken had presented lots of documents this morning, specifically the interview from UNHCR and the transcripts from the investigation at the military court, that contain statements by Duch asserting he met with and spoke to Pang at S-21. Judge Lavergne remarked that these were “apparent contradictions. He requested that Duch comment on whether the documents presented were correct, and if so, explain why there was a difference.

Duch responded that the defense counsel gave him a document from the military court that contained information about several individuals in addition to Pang. He asserted that in his answer to the military court he gave a different response for each person but the military courts “summarized all of them with the same verb, adjective, and adverb.” Duch requested that he now either be permitted to distinguish between the four individuals or have the military transcript before him removed.

Court Takes Morning Recess

At this point, the Chamber adjourned for a twenty-minute morning break. Ang Udom, counsel for Ieng Sary, made his usual request that his client be permitted to waive his right to be present in the courtroom and retire to the holding cell to observe the remainder of the day’s proceedings via audio-visual link, due to health concerns. As usual, the President granted the request, requiring that a waiver be submitted to the court with the defendant’s signature or thumbprint.

Mr. Smith Chastises Mr. Karnavas

At the beginning of the next session, the floor was turned over to Mr. Smith to raise a concern over the conduct of the other parties. He reminded the Chamber that parties were obliged to

behave respectfully but felt that the “tone, manner, and accusations” Mr. Karnavas used this morning were in “contravention” to the requisite professional behavior. He asked the President to remind all parties to abide by general standards of fair conduct during the proceeding. He noted that if all parties had “outbursts” like the one witnessed before the break, it would take away from the credibility of the proceedings. He further expressed his concern that the public would believe that those kinds of outbursts were appropriate.

Further Clarity on the Truth Sought from Duch

Without comment on Mr. Smith’s concerns, Judge Lavergne continued with his line of questioning to the witness. He again reminded Duch that this morning the witness testified that he had conversations with Pang, before Pang’s arrest, about the Standing Committee and that Mr. Vercken had confronted him with one of the statements that Duch made before the military court. For example, he was asked, “Did you ever personally interrogate prisoners?” to which Duch responded, “At times I went to converse with people who had been interrogated” and then specified that this happened with Pang and three others. He further reminded Duch that they were specifically talking about conversations with people after they had arrived at S-21. He asked Duch either to explain the discrepancy or state that he felt that there was no contradiction.

Duch admitted there appeared to be a contradiction but then asserted, “In fact, there is none.” He stated that he had already informed the Chamber that the statement from the military court was in a summarized form and that, in actuality, the stories behind the four individuals were distinct.

Judge Lavergne read the sentence from the military court again and asked Duch to reply with a simple response. Duch said that his statement was “not based on the recollection, but it is the truth.” Duch again asserted that he met Pang before his arrest, and once Pang was arrested, Duch “did not want to touch on that matter.”

Allowed to continue his examination of the witness, Mr. Vercken next asked for a clarification on Duch’s statement that Pang incriminated Duch in his confession. Duch responded that Pang himself was implicated before August 15, 1977. Duch was asked to turn to the last page of the Military Court Summary from 1999, where Duch had put his thumbprint and Duch, his lawyer, the Co-Investigating Judge, and the registrar had all certified that the summary was correct. Mr. Vercken then asked whether Duch, an “expert when it comes to interrogating people,” is actually now saying that he let an incorrect statement that was mentioned multiple times “pass through his fingers” without correcting it.

Duch responded that the statement was a summary, and “of course it is acceptable for ordinary people” to “understand” and “accept.” He also mentioned that he did not think the summary was something that would incriminate him and therefore had provided his thumbprint.

Mr. Vercken inquired whether Duch understood that the contents of these military tribunal minutes acquire a “crude importance” when they are examined in conjunction with the testimony given to UNHCR that same year. Duch responded that neither he nor the Investigating Military Judge had the record from the interview with the UNHCR at the time he was questioned and noted he already rejected “that record.”

Mr. Vercken then stated, with noticeable restraint, “Witness, I understand this morning you told the Chamber that at the time when you had your talk with Pang you were not afraid of being arrested.” Duch was asked to confirm this statement, but he gave a nonsensical answer.

Mr. Vercken reminded the witness that in 2008 Duch was questioned before an ECCC Co-Investigating Judge, noting that Duch had been assisted by a lawyer at the time. Mr. Vercken focused on Duch’s testimony during that examination that some names were omitted from confessions at S-21 so that they could be added later if the need arose. He then asked whether Duch ever feared that his time had come while he was at S-21. The witness responded that each time he was summoned by his superiors he was “terrified.” Mr. Vercken put to him that this was contradictory to his testimony this morning when he stated that he was not afraid during his time at S-21. Duch asserted that there was no contradiction; he stated that he had to be open and honest at the meetings with his superior but in general, there were several events that made him fearful.

The defense counsel next asked Duch whether Ta Mok implicated Chou Cheat, and Duch responded that in his opinion, Ta Mok did not like Chou Cheat. Duch was then referred to a 2008 statement he made to the Co-Investigating Judges in which he claimed that before Chou Cheat’s arrest, all of Chou Cheat’s subordinates were arrested in accordance with the “Ho Chi Minh doctrine” – “Before cutting the bamboos you have to shave off the thorns.” Duch affirmed that he remembered this response and continues to stand by it.

Mr. Vercken asked Duch if this statement showed that Chou Cheat’s arrest appeared to be a plan that had been considered for a while. Duch responded that he stands behind the statement and asked to clarify that he only told the Co-Investigating Judges the truth.

The next question addressed whether Duch told the Co-Investigating Judges that Khieu Samphan participated in the decision to arrest Chou Cheat. Duch responded that this was the same issue he learned from Pang – that Khieu Samphan was invited by Pol Pot to participate in a Standing Committee meeting to discuss Chou Cheat’s arrest. Duch said he remembered hearing that Khieu Samphan was sent instead of Vorn Vet only to be “informed” of the “purging procedures.”

Mr. Vercken showed the witness the transcript of the Co-Investigating Judges’ interview to refresh his memory. Duch protested that the specific portion to which the counsel was referring had not been highlighted. Mr. Vercken pointed out that the portion had been highlighted. Duch insisted that the defense counsel link the highlighted section to the proceeding passage so that it could be viewed by the public at large. Mr. Vercken protested that he only gave Duch this document because Duch claimed he did not remember. The counsel stated that he preferred to move on.

The President interjected that there might be confusion because in Khmer only part of the paragraph was highlighted and asked that the entire paragraph be highlighted. Duch then read the entire passage, which stated: “In my opinion if Khieu Samphan was invited to attend the meeting during which the arrest of



Chou Cheat was decided, it was not to participate in the decision but to be informed of the purge process.” Duch followed up this reading by clarifying that the expression “according to me” meant it was his opinion at the time.

Mr. Vercken asked if Pang explained to Duch why Vorn Vet had been excluded from the meeting. Duch conveyed that Pang told him Vorn Vet was “cast aside” because he was a difficult person to work with: on several occasions he prevented the party from identifying the enemy.

Mr. Vercken attempted to return to the question of whether talking to Pang put Duch in a “touchy position.” Duch insisted that the translation of his previous response was bad and asked the defense counsel to wait while he clarified his answer. Duch then stated that, according to Pang, Vorn Vet had been excluded from the meeting on Chou Cheat’s arrest because he was a difficult person to work with. Mr. Vercken tried to clarify that not being invited to the meeting amounted to a sanction, but Duch responded that he “dare not make any conclusion out of this, but simply wanted to mention that this was an extraordinary situation which surprised me.”

Duch was next asked whether he remembered the last time he saw Vorn Vet, to which he replied that it was on November 3, 1978. Duch asserted that before Vorn Vet was arrested, Vorn Vet had come to S-21 at the time Pang was arrested. According to the witness, when Pang was arrested, Nuon Chea sent a letter to Duch assigning Vorn Vet to work with him at S-21. Mr. Vercken attempted to have Duch agree that Pang gave him extraordinary information, but Duch instead launched into a long-winded response about the importance of the lower echelon supporting the upper echelon.

Court Breaks for Lunch

At this point, the Chamber adjourned for the lunch break. Mr. Pestman, counsel for Nuon Chea, made his usual request that his client be permitted to waive his right to be present in the courtroom and retire to the holding cell to observe the remainder of the day’s proceedings via audio-visual link. As usual, the President granted the request.

The Defense Continues

Mr. Vercken resumed his examination after the lunch recess by reminding Duch that the witness had testified a few days ago that Khieu Samphan had a storage plant under his control. He asked how Duch obtained this information. Duch responded that the chairman of the plant was arrested and taken to S-21 where he confessed that Khieu Samphan taught him to become a CIA agent. Mr. Vercken asked whether this meant the information came from an S-21 confession. Duch confirmed that it had.

The examination next turned to testimony that Duch gave on March 28, 2012, where he maintained that on January 6, 1979, on the eve of the Vietnamese invasion of Phnom Penh, he attended a meeting with Khieu Samphan. Duch had testified that at the meeting he saw a person he knew was in charge of the state storage facility and realized Khieu Samphan must have been his supervisor. Mr. Vercken asked if the subject of this meeting was the state storage companies. Duch stated that the meeting concerned the Vietnamese soldiers arriving in Cambodian territory. Duch recalled that Khieu Samphan had instructed at the meeting, “Don’t be surprised; just carry on with your work.”

Mr. Vercken pointed out that Duch had concluded that it “might be possible” that Khieu Samphan also controlled the state warehouse. The counsel asserted that this was an “assumption,” but Duch corrected that it was a “conclusion.” Mr. Vercken then challenged Duch to substantiate this “conclusion.” The witness responded that the chair of the meeting is usually the superior of those attending. Mr. Vercken pointed out that Duch was at the meeting, and Khieu Samphan had not been his direct supervisor. Duch told him to “look a bit further up” and asserted that he was hesitant to go because Khieu Samphan was not his supervisor, but Comrade Lin told him to get inside. He entered because he knew Comrade Lin would only order him to attend if Duch was authorized.

Mr. Vercken thanked him for his testimony but noted “that the anecdote had nothing to do with the question of whether Khieu Samphan was responsible for the state warehouses.” Duch contended that his conclusion was on his own reason and he has reasons to maintain his conclusion as it is. He recollected that when he entered all of the seats but one were occupied, and one of the comrades asked him to sit in that chair.

Mr. Vercken questioned whether there was anything else that made Duch believe Khieu Samphan was really in charge of the warehouse. Duch responded that it was just based on the people at the meeting. He also complained that when he was at the meeting Khieu Samphan did not speak to him or even give him a smile.

Duch was asked if it was possible that he might have deduced information that Khieu Samphan was in charge of the state warehouses based on a confession received under torture at S-21. Duch responded that he did not talk about the content of the confessions. Mr. Vercken acknowledged this was true but stated he was asking the question anyway. Duch requested that he repeat the question because only half of the statement was repeated on the interpretation channel on which Duch was listening. Mr. Vercken asked him what channel that would be, Duch responded French, prompting observers to laugh out loud.

After the question was asked again, Duch said his understanding was based on the meeting that Khieu Samphan led. He also admitted that through the confession of Khieu Samphan’s subordinate, he learned that Khieu Samphan was allegedly a CIA agent but insisted he did not “touch the confession of that comrade.” Mr. Vercken summarized that the information that led Duch to believe that Khieu Samphan had a warehouse under his command as (a) he was forced to go into a meeting; (b) the meeting was chaired by Khieu Samphan; and (c) at least one confession in S-21 connected Khieu Samphan to someone in charge of that facility. Duch told him the summary was correct.

Mr. Vercken drew Duch’s attention to the fact that today he said “Lin” called him into the meeting, but during the investigation stage he would sometimes refer to another person. Duch commented that he might have been confused because both of the people he mentioned had the right to make work-related phone calls to him.

Duch next testified to his mental state when he was told to “destroy” all remaining prisoners at S-21. He said he was so “terrified” he could not sleep and stayed at home and that he had a

problem with his blood pressure. He claimed that he slept all the time and only woke up to eat. He also asserted that he did not go to his “normal” places and that no one saw him going out of his house. Mr. Vercken asked whether he made an exception about going out in order to attend a meeting where he was instructed “not to worry, everything is fine.” Duch said this was correct.

Mr. Vercken revisited a statement made by Duch in 2002 before the military tribunal, where Duch asserted that he had yet to meet Khieu Samphan. He asked Duch to explain the discrepancy between this statement and what the witness testified today under oath. Duch said that he told the military court that he was not under the control of Ieng Sary or Khieu Samphan, but he emphasized again that the court had made a summary. It was then clarified that Duch was asserting that when he told the military tribunal that he never met Khieu Samphan he actually meant to say that he was not his subordinate.

The questions next turned to a transport pass that Duch was supposedly given by Khieu Samphan. After much confusion, it was proposed that Duch’s testimony was that on the basis of a piece of handwriting seen by Duch a few years before, the witness was able to conclude that a few initials scribbled on a piece of paper were written by the same person. Duch corrected this proposition, claiming instead that Khieu Samphan had written the entire pass.

As had been inquired by other defense counsel, Mr. Vercken asked what qualifies Duch to analyze handwriting. Duch insisted that Pang, who delivered the pass, had no reason to lie, and he confirmed that this was the same Pang who was arrested, tortured, and executed at S-21. It was maintained that the pass would allow Duch freedom of movement. There was then considerable confusion about who had the right to sign a pass. Duch finally told Counsel, “We are on two different sides now; we do not understand each other.” It appeared that the two never did get on the same side of this matter, however.

Duch testified that he did not know where the pass was today. He mentioned that he told the Co-Prosecutors to look for it at S-21 because he dropped it there when he ran away.

Returning to who could sign a pass, Mr. Vercken asked why Nuon Chea did not sign it. Duch responded that Nuon Chea was too high on the hierarchy. It was clarified that Duch was asserting that Khieu Samphan was not as high as Pol Pot or Nuon Chea, but, Duch claimed, Khieu Samphan was still high enough to sign the pass.

Duch was asked if he was aware of any documentary evidence that would confirm his statements about the pass. Duch responded derisively that the year is currently 2012, which means it has been 34 years since he had the pass. He noted that many people have died and he did not know how it would now be possible for him to find any information on this matter.

Mr. Vercken decided to change the subject and asked who in the Foreign Ministry was responsible for taking prisoners to S-21. Duch refused to answer the question but he said that in general it was Comrade Lin who sent them. He then asked if counsel wanted to “dig” into anything else.

Mr. Vercken next drew Duch's attention to a statement Duch made before the Co-Investigating Judges in 2008 where he asserted that a person named "Cheam" brought the prisoners to S-21. Duch replied that he stood by all his statements made to the ECCC Co-Investigating Judges. He further declared that although he does not reject the statement, he does not wish to respond to Counsel's question. The Chamber then adjourned for the afternoon recess.

Upon returning the President acknowledged that Duch was getting tired, and expressed his desire for the witness to continue for another hour. He also reminded the witness that he was obligated to respond to questions.

Mr. Vercken returned to the question the witness refused to answer before the break: Who at the Ministry of Foreign Affairs was in charge of bringing the prisoners to S-21? Duch repeated that in general it was "Comrade Lin." He added that he stood by his prior testimony because "Comrade Cheam" once brought a prisoner to S-21.

Mr. Vercken next tried to clarify how Duch knew the man he believed to be Khieu Samphan's subordinate was working in the state warehouses. Duch testified that he met him during the "April 17th ceremony" and knew he worked in the South Zone.

After Duch's response, Mr. Vercken informed the Chamber that neither he nor anyone else from Khieu Samphan's defense team had any further questions for the witness.

Time Granted to the Nuon Chea Defense

As promised last week, the floor was then given to Son Arun, national lawyer for Nuon Chea. He started with two questions at once: the first regarded whether Duch still had the letters that were signed by Nuon Chea and the second inquired whether the order for Vorn Vet to come to S-21 came from Nuon Chea.

Duch responded that the letter that assigned Vorn Vet to work in S-21 contained a "secret name" for Nuon Chea. He also testified that he did not keep this letter. He did claim to keep other letters from Nuon Chea but admitted that they were lost when he ran away from S-21. He stated he was not sure whether the office of the Co-Prosecutor ever recovered the letters. He then turned to the second question and responded that in principle Pol Pot decided and Nuon Chea monitored orders. He therefore concluded that Pol Pot made the decision for Vorn Vet to come to S-21.

Mr. Arun then contended that the witness, as the head of S-21, had the rank equal to the chief of the district. He asked how Duch could know more than those who were chiefs of the district. Duch said he lived with the Communist Party of Kampuchea since 1971 and had studied for years, so he knew a lot about the party. He also said he gained knowledge from a book he read on the revolution in China.

Mr. Arun then repeated his question, asking Duch directly, "How could you know that much about the party? Were you told or did you read documents?" Duch responded that in the party's



statutes it says that the subordinates obey their superiors, claiming he was also told this when he went to M-13.

Mr. Arun then demanded evidence from Duch that if Pol Pot was absent Nuon Chea would decide, and if Pol Pot decided, Nuon Chea would monitor. In response, Duch referred to a document from 1975.

It was then established that when Son Sen went to the East Zone on his mission on August 15, 1977, Duch did not know where he had gone until his younger sibling told him that he was at Neak Leung. Duch testified that he saw Son Sen again on June 25, 1986, and they maintained monthly phone conversations from that point on.

Counsel responded that he thought that Son Sen was not in the East for long and asked Duch if Son Sen returned to his position of Ministry of Security. Mr. Smith objected to the question on the grounds that Counsel admitted that it was based on his own intuition. The President sustained the objection and warned Mr. Arun to avoid his “subjective conclusions.”

In response to further questioning, Duch confirmed that his testimony was that Nuon Chea told him in person in 1979 to smash all the prisoners. Duch asserted that he asked several clarification questions to Nuon Chea but was repeatedly told everyone should be smashed. He also stated an assumption that Son Sen was likely engaged in the battlefield at this time.

Mr. Arun inquired whether there was an official document that informed Duch that Nuon Chea would take over Son Sen’s responsibilities as his supervisor. Duch declared, “I did not just make it up,” but he admitted there was nothing official.

Next, Mr. Arun repeated a question from last week that never received an answer. Recalling that Duch had told the prosecutors that the *Revolutionary Flag* magazine could be copied, he asked how Duch knew a) that the copies were authentic and b) where the original copies of the magazines are kept. Duch responded that he read issues of the magazine since 1971 or 1972 and that he acknowledges that there were photocopies. He admitted that he did not personally see the copies being made but asserted that he believes the copies were from the originals. He also testified that he thinks some of the originals might be at S-21.

The defense counsel then concluded his examination with a confusing question on the strategy behind Vietnam support or assistance. Duch asserted that he could not answer this question because no one ever explained the strategy to him.

The Day Concludes

The President noted it was time to adjourn and asked the defense team whether their clients were planning on confronting the witness. Michiel Pestman, international counsel for Nuon Chea, reminded the Chamber that his client had previously requested to read a statement. The President clarified that this time was exclusively for the client to confront the witness, not for the counsel to ask more questions. Mr. Udom then stated that Ieng Sary will maintain his right to remain silent. Mr. Kong Sam Onn also declined, on behalf of Khieu Samphan, to question the witness.

Mr. Pestman then put the Chamber on notice that he planned to raise two issues next week dealing with procedural issues that he believed are violating his right to examine witnesses effectively.

The President informed Nuon Chea's defense that if their client wished to make a remark about the proceedings it should be submitted to the Chamber in writing. He also told all parties that they had the right to respond to this submission in writing. He then thanked Duch for responding to the questions with "patience" and his "best effort" and dismissed the witness.

Elisabeth Simonneau Fort, international civil party lead co-lawyer, then asked for the floor, prompting the President to scold her for waiting for the last minute to raise an issue. She voiced her concern over whether a statement by Nuon Chea would mean that he waived his right to silence. She asserted that she thought that this issue had already been resolved in the affirmative last week.

Without response, the President then adjourned the proceedings for the week. The trial is set to resume on Wednesday, April 18, at 9 a.m., after a recess for Khmer New Year celebrations.