



**REASONABLENESS PREVAILS ALLOWING EXPERT TESTIMONY TO
CONTINUE IN THE DUCH TRIAL**

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By Laura MacDonald, Member of the New York Bar and Consultant to the Center for International Human Rights, Northwestern University School of Law

Reasonable Resolution of Procedural Dispute

The Trial Chamber announced it would conduct an in camera trial management session to address the heated procedural dispute that ended the session yesterday, specifically whether international co-prosecutor Alex Bates would be allowed to read out summaries of 148 documents referenced in Dr. Craig Etcheson’s expert report in order for them to be “put before the Chamber” within the meaning of Internal Rule 87. Notably, the Civil Parties were excluded from the closed session while The Accused, Kaing Guek Eav (Duch), was allowed to participate.

Hours later, the Chamber returned a very reasonable ruling. After declaring yesterday that Dr. Etcheson was a mouthpiece of the prosecution, during the closed session the defense had apparently acknowledged the expertise of Dr. Etcheson and accepted his expert report. The defense further acknowledged that the expert report *and its annexes* were “put before the Chamber” subject to its right to challenge any documents or parts thereof. The Chamber considered the annexes and all documents mentioned therein integral parts of the report. As a practical matter, this ruling saved many hours if not days of reading document summaries. The Chamber did not appear to declare a general procedural rule, but rather made references to this expert report and its annexes specifically.

Giving the audience a glimpse into the negotiations that had gone on behind closed doors, international defense counsel Francois Roux then drew a distinction between pre-July 2007, when Dr. Etcheson’s expert report was submitted, and post-July 2007. Prior to July 2007, Roux argued that although Dr. Etcheson had ties to the prosecution, Duch had not yet been indicted, so the expert report was generic rather than biased. Roux insisted the expert must not rely on elements in the case file which came about post-July 2007 after the submission of his expert report.

After nearly two days of procedural roadblocks, the co-prosecutors were finally able to put questions to Dr. Etcheson.

Expert Testimony of Dr. Etcheson

In response to questions from the co-prosecutors, Dr. Etcheson explained the “extremely arbitrary” discipline during the Khmer Rouge period. Under Article 10 of the Constitution of Democratic Kampuchea, dangerous activities in opposition to the state were to be condemned to the highest degree. Given that “opposition to the state” was interpreted broadly and no legal system existed, the death penalty was applied to a wide variety of offenses.

Dr. Etcheson walked the prosecution through the Communist Party of Kampuchea’s (CPK) fundamental principle of “independence mastery.” He explained that the CPK viewed its communist revolution as unique and therefore did not seek guidance from previous revolutions. Moreover, the CPK believed other revolutions failed because oppressor classes were not adequately wiped out, so the CPK was intent on eliminating the oppressor classes entirely – meaning people in those classes would be killed or transformed into peasants.

Dr. Etcheson described another fundamental CPK principle: purity. By statute, CPK members were supposed to be “good and clean” in their morals and their politics. Evidence suggests Duch traveled to an impoverished district to recruit young boys to become staff at S-21, also known as Toul Sleng prison, because they were “blank slates” unlikely to have been influenced by other sources.

Dr. Etcheson also provided great detail about communications within the CPK hierarchy. Lower level cadre learned the party “line” or policies from many sources, including rallies, party training school, party journals, and re-education camps. Communications were strictly vertical. As a result, two districts, for example, could not communicate directly. Rather, all units were forced to report weekly to the unit immediately superior to it so that all information made its way to the party center. Communication outside the vertical line was considered treason, particularly within the military structure.

On May 25th and 26th, the Chamber is scheduled to hear testimony on armed conflict from another expert witness, Nayan Chanda. Dr. Etcheson will be summoned back at a later date to finish his testimony.