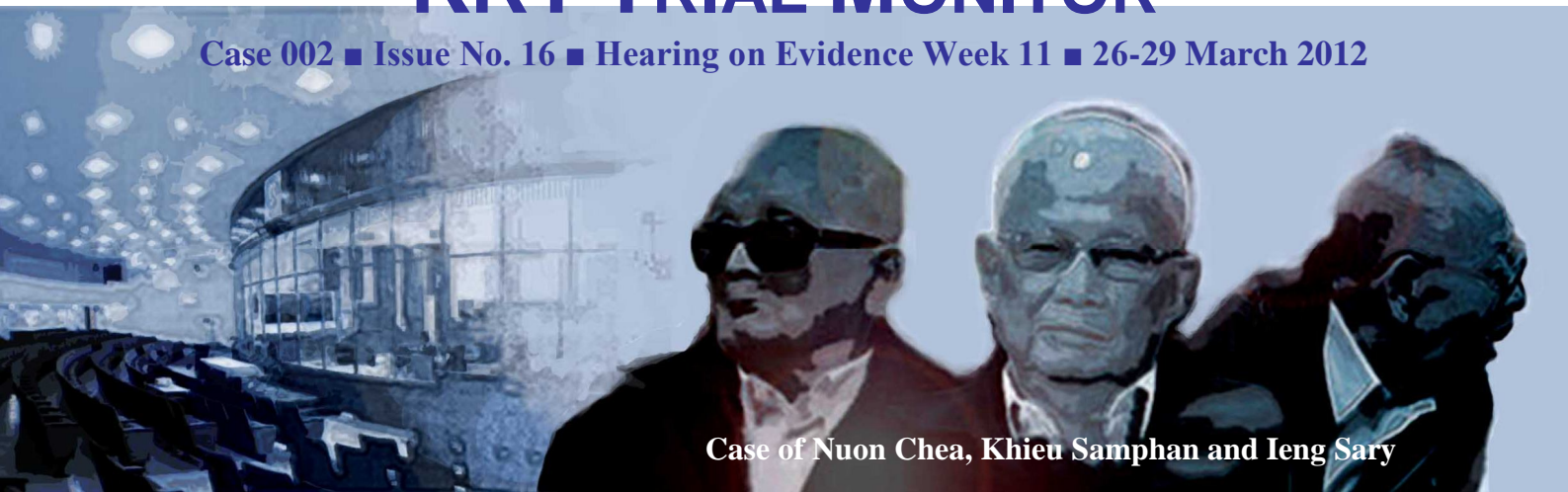


KRT TRIAL MONITOR

Case 002 ■ Issue No. 16 ■ Hearing on Evidence Week 11 ■ 26-29 March 2012



Case of Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

“Angkar” referred to Pol Pot.

- Kaing Guek Eav, alias “Duch”

I. OVERVIEW

This week, the Co-Prosecutors, led by Mr. William Smith, proceeded with the examination of Kaing Guek Eav, alias “Duch,” on the administrative and communication structures of the CPK and the DK regime, as well as the roles of the three Accused. Duch was the chairperson of S-21, a security center where over 12,200 persons were imprisoned, tortured and executed. He was the first to have been charged before the ECCC, and was found guilty of crimes against humanity and war crimes. On appeal, the Supreme Court Chamber sentenced him to life imprisonment.

Appearing before the Trial Chamber not as an accused but as a witness, Duch was generally responsive to the OCP’s questions and described how S-21 operated in relation to the other organs of DK. He recounted specific instances when he had alleged encounters with Nuon Chea, who, according to him, replaced Son Sen in August 1977, and thus became his immediate supervisor. He also provided some information regarding Ieng Sary and Khieu Samphan, but admitted that he only saw the former twice, and the latter only once.

Throughout the week, the Ieng Sary and Nuon Chea Defense reiterated their objections against what they deemed leading questions from the OCP. Another recurring point of contention was the Defense Teams’ submission that Duch was testifying to information he obtained after the fall of DK, instead of recounting what he personally experienced during the regime. According to Defense lawyers, Duch was, in effect, testifying as an expert witness and not as an ordinary witness.

II. SUMMARY OF DUCH'S TESTIMONY

This section provides a summary of the continuation of Duch's examination by the OCP.

A. Structure of the CPK

To provide the Chamber with a better picture of the administrative structure of the CPK, Duch detailed the composition of the Central Committee, the Standing Committee, and the three main branches of government according to the DK Constitution and its actual functions in practice. He also expounded upon the government ministries and their heads, the administrative structures in the lower levels and the military structure during the DK period.

1. Central Committee

"The Central Committee was the supreme organ of the party," Duch recounted. He said it was divided into four levels: the first level consisted of assistants who were allowed to attend training, but not allowed to speak; the second level was composed of candidate members who were allowed to attend training (and presumably allowed to speak) but not allowed to vote; the third level was composed of full-rights members; and the fourth and highest level was the Standing Committee. Although Duch was not certain about the number of members of the Central Committee, he provided that secretaries of all zones were members of the Central Committee and they were under the orders of Pol Pot as the Party Secretary and Nuon Chea as Deputy Secretary.

2. Standing Committee

According to Duch, there were seven members of the Standing Committee: Pol Pot as Secretary; Nuon Chea (1st Secretary); Sao Phim (2nd Secretary); Ta Mok and Ieng Sary (full-rights members), and Vorn Vet and Son Sen (candidate-members). Since 1960, the Standing Committee usually convened an annual meeting in June or July.

Duch explained that confessions at S-21 were sent to the Standing Committee, which in turn, sent some documents to various ministries for the arrest of those implicated in the S-21 confessions.

3. The Three Main Branches of Government

As Duch explained, the DK Constitution (which was adopted without any election) provided for three main branches of government: legislative, judiciary, and executive branches. Duch emphasized, however, that the CPK had absolute control and monopoly over everything, both politically and economically, and these three branches of government were only symbolic.

The legislative branch, named the Kampuchean People's Representative Assembly (**KPRA**), was merely symbolic and had no activities. Duch described that there was only one polling station in Phnom Penh during the supposed election of members of the KPRA. According to the Witness, Nuon Chea presided over the one meeting the

KPRA ever conducted. This meeting was held after the adoption of the Constitution. All representatives remained in their units. Duch explained that Article 9 of the DK Constitution provided for the establishment of the People's Court as the judiciary branch of the regime. However, this provision did not come into force. Instead, cooperatives and communes were vested with judicial and executive power. Duch stated that Koy Thuon and Kong Chap were in charge of the Supreme Judiciary, but their functions were only nominal. Finally, the executive branch was called the "State Presidium." Witness indicated that this, too, was merely a symbolic institution that did not have any office or activities.

4. Administrative Divisions

Duch confirmed the existence of government ministries, although he said that many were not operational. Smith presented a list of 13 ministries and Duch affirmed the persons in charge, as follows:

	NAME	POSITION/RESPONSIBILITY
1	<i>Pol Pot</i>	Comrade Secretary
2	<i>Nuon Chea</i>	Deputy Secretary in charge of Party Affairs and Social Action, Culture, Propaganda and Education
3	<i>Ieng Sary, alias "Comrade Van"</i>	Ministry of Foreign Affairs (both Party and State)
4	<i>Khieu Samphan, alias "Comrade Hem"</i>	Deputy Prime Minister of the Royal Government of the National Union of Kampuchea (GRUNK), Head of the Central Office Committee (which Duch also referred to as "Political Office 870"), Commander-in-Chief of the Armies of the National United Front; also responsible for Commerce for Accounting and Pricing
5	<i>Koy Thuon, alias "Comrade Thuch"</i>	Domestic and International Commerce
6	<i>Son Sen, alias "Comrade Khieu"</i>	General Staff and Security
7	<i>Vorn Vet, alias "Comrade Vorn"</i>	Industry, Railroads and Fisheries
8	<i>Seua Vasi alias "Comrade Doeun"</i>	Chairman of Political Office 870, later transferred to the Ministry of Commerce
9	<i>Ieng Thirith "Comrade Phea"</i>	Culture, Social Action and Foreign Affairs
10	<i>Yun Yat alias "Comrade At"</i>	Internal and External Propaganda and Reeducation

	NAME	POSITION/RESPONSIBILITY
11	<i>Non Suon alias "Comrade Chey"</i>	Agriculture
12	<i>Sim Son alias "Comrade Yem"</i>	Bureau 870
13	<i>Chhim Sam Aok alias "Comrade Pang"</i>	Government Office

In addition to this list, Duch also mentioned committees of working groups such as the state warehouses and transportation committee.

Geographical Hierarchy. The CPK geographical hierarchy was divided into zone, sector, district, commune and cooperative. Below the Standing Committee were six Zones: Northeast Zone, East Zone, North Zone, West Zone, Southwest Zone, and Northwest Zone. There were two zone secretaries in the Standing Committee, Sao Phim and Ung Choeun alias "Mok," while the other secretaries were full-rights members of the Central Committee. The Witness testified that in mid-1977, a new North Zone, or Zone 801, was created. Each zone was divided into sectors, which were further subdivided into districts. A district was then subdivided into communes, later on known as cooperatives. A committee, headed by a secretary, supervised each level. According to the Witness, the CPK intended the establishment of zones as a temporary arrangement that was supposed to be eliminated once administration at the state level was organized.

Duch further indicated that outside this hierarchical structure were three groups: the Central Office Committee, which was responsible for radio operations and messengers; the Center Office, which provided support for the Secretary and Deputy Secretary; and the independent sectors, Sector 106 in Siem Reap and Sector 505 in Kratie, which directly reported to the Central and Standing Committees and were established due to the importance of their locations.

Military Structure. According to Duch, prior to 17 April 1975, the Standing Committee, headed by the Secretary (Pol Pot) and Deputy Secretary (Nuon Chea), exercised absolute control over the army throughout the entire country. Zone leaders directly supervised the contingencies of the army within their respective geographical areas. Each zone had the duty to build its army, and then form as a division. Later on, some divisions from the zones combined forces and formed the Central Army. After reorganization in July 1975, there were eight divisions: Divisions 170 and 290 from the east, Divisions 310, 450 and 920 from the north, and Divisions 164, 502 and 801 164 from the southwest. The Witness explained that initially, there had been a Division 603 but this was subsequently dissolved and integrated into the inventory unit and air force. Duch testified that a division head could only meet with his or her superior upon the latter's initiative.

In addition, Duch indicated that the army had three categories: the regiment, sector and militia. All three were under the direct control of zone and division. Outside the military hierarchy were the General Staff and the following independent regiments: the tank unit, the arsenal or artillery unit, the navy at Chroy Changvar, the military communication unit, the sewing unit and the medical unit. The General Staff was in charge of military uniforms and weapons and was tasked with making people do

farming during peacetime. Duch said that when he was the chief of S-21, he attended military meetings with other heads of independent regiments.

B. CPK Policy

Smith continued to question Duch in order to establish CPK policies and be clarified on provisions and terms contained in the CPK Statute.

Fundamental principles. Duch explained that the 8th principle in the Preamble of the Statute, which contains terms such as “independence,” “self reliance,” “self-determination of fate” and “revolutionizing one’s self by one self,” meant that the CPK utilized Marxist–Leninist principles on its own, adopted its own policies, and did not depend on Vietnam, China or the Soviet Union. Moreover, Duch confirmed that the 9th principle on members’ duties, requiring members to build solidarity and unity in all domains, was the supreme duty of each member of the party.

Criteria for CPK membership. According to Duch, membership to either the Youth League or Pillars Organization was a pre-condition for application under Article 1 of the CPK Statute. He explained that the Youth League was an “alliance of the Communist Party of Kampuchea youth, composed of young (17 years old or younger) revolutionaries who are tasked with certain responsibilities, the fulfillment of which would allow them to be inducted to the party. Pillars, on the other hand, admitted those from the petty bourgeoisie who had professions or occupations and were 18 years and older. Duch said he and Nat joined Pillars because they were too old to join the Youth League. He joined Pillars some time in 1965 and was promoted as a candidate party member on 25 December 1967. His “probationary period” began on 20 July 1969.

A candidate or alternate member must fulfill two sets of requirements before admission to the Party. The first set of requirements had five criteria that had to be satisfied based on the social context in which the member operated: (i) engaging in “combative activities,” which meant constantly pushing the Party lines by, among others, expanding network lines, or instilling party morale among the youth; (ii) having a “good class pedigree,” or coming from the appropriate social class (e.g. being a farmer, lower middle-class peasant or industrial worker); (iii) exhibiting “good and clean life morals” by not consuming alcohol or womanizing, and being “good and clean politically” by not being involved, and having no biological relationship with enemies; (iv) being examined on “the opinion of the popular masses,” where a check will be made on the track record of a candidate; and (v) having a “clear personal history,” which similarly requires an acceptable personal history and background. The second requirement was an examination of the candidate’s application through various levels of committee review to ensure that no enemy element had infiltrated the party.

Criteria for Selection to Party Leadership Organizations. To be promoted to the higher levels of the Party, members must fulfill 10 criteria under Article 5 of the CPK Statute, as well as other duties. Duch, through questions from the OCP, detailed some of the criteria a member must possess for promotion, including: (i) a “firm political stance,” which prohibited a member from being rightist or leftist; (ii) an “audacious stance of active combat and endurance of difficulties,” which required a member to struggle and endure to achieve the goals of socialism, and to protect the

nation; (iii) "a strong stance on internal party solidarity and unity," which exhorted the head of a unit to care for his subordinates; (iv) "vigilance towards stances, character, spirit and activity," which mandated every member to perform his tasks properly and to refashion himself; and (v) "strong party revolutionary stance on revolutionary vigilance, maintaining secrecy, and defending revolutionary forces," which demanded observance of the "principle of secrecy" on the core aspects of a member's work.

It appears that the OCP did not read the sixth criterion to the Witness, so it was not discussed. In any case, Duch's testimony on the three remaining criteria that a member seeking a higher position must possess continued: (vii) "strong revolutionary stance in making and examining personal histories and revolutionary life views," which expected a member to provide his full personal history for the review of the Party; (viii) "strong revolutionary stance and class," which had been discussed during Duch's testimony on criteria for membership (ix) "strong revolutionary stance on clear life morals, and politically clean;" which Smith indicated had also been explained earlier in Duch's testimony; and (x) "the capability to build oneself and be receptive to future leadership," which expected proper performance of duties to gain the trust of the upper echelon.

Duties of party members. Article 2 of the Statute divided duties of members into two parts, namely: (i) duties among the masses; and (ii) internal duties inside the Party. The first duty, Duch explained, related to the requirement that members interact with the people in their area of supervision, convert them to the Party's political lines, and encourage them to be more committed in the performance of their tasks. As for the second part, this included the duty to criticize and self-criticize members of the party.

Party discipline. Duch testified that members must absolutely respect and abide by the discipline imposed by the party; otherwise, they would face disciplinary sanctions. The sanctions depended on the severity of the offense and ranged from criticism (either in livelihood meetings or in secret) to removal, arrest, and execution.

Policy to smash enemies. Duch testified that smashing enemies was a classic CPK policy. Those who were considered enemies included CIA and KGB agents, staff who were no longer trusted (and were transferred to the Ministry of Foreign Affairs Diplomat Section), implicated people from ministries, staff who had connections with the United Nations Office of the High Commissioner for Human Rights, as well as former soldiers and cadres of FUNK. Duch opined that the policy to soften the party's approach towards enemies issued in 1978ⁱ and a radio broadcast stating that except for the seven super traitors, other people would be pardoned, were merely a ruse. He claimed these were issued so that people would not rebel against the Party. In reality, the Party still conducted internal purges.

C. Communication Lines

Duch testified that the reporting principle embodied in Article 6(5) of the CPK Statute reflected a universal principle: the lower echelon reported on "the situation and the work done" to the immediate upper echelon, while the latter instructed down the chain of command. In the general structure, the flow of communication is through each level, from the mobile unit leader, cooperative/commune committee, district committee, sector committee, zone committee, Central Committee, and finally, to the

Standing Committee. In the military, communication originates from the company, battalion, the regiment, and then to the division to the Chief-of-Staff.

Reporting within and without of S-21. By presenting Duch with different S-21 documents, the OCP sought to establish the nature of the information recorded in S-21, and understand how this information was transmitted to the upper echelon.ⁱⁱ The Witness explained that internal information and confessions were the two main types of information collected in S-21. The examination also covered specific communications within S-21 between Duch and his cadres, and communications outside of S-21 between Duch and his superiors.

Documents from the lower to the upper levels. According to the Witness, he received information after Comrade Hor had summarized the report from lower echelons. Duch then transmitted the information to the upper echelon. As regards confessions, S-21 staff submitted confessions and the names of implicated persons to Duch, who summarized confessions and annotated the documents before transmitting it to the Standing Committee through Son Sen or, as he claimed, Nuon Chea after 15 August 1977. The Standing Committee decided on the persons to be arrested and sent these persons' files to their respective unit heads to (i) inform the unit head of enemy activities and (ii) allow the unit head to contemplate the arrest of implicated persons. The OCP endeavored to establish whether the unit had the authority to decide the arrest of implicated people but Duch's answer was unclear on this matter. The Witness further stated that communications were confidential.

Documents from the upper to the lower levels. Duch stated that, in practice, the upper echelon informed the lower echelon of the general situation to encourage them to be more active. As for S-21, it also received some documents and *Revolutionary Flag* magazines from the Central Committee. The Witness described *Revolutionary Flag* as focused on the policies and organizational stance of the Party. Each member, Duch said, was supposed to receive a copy of the magazine.

Meetings with Superiors. Duch testified that he also had regular discussions with his immediate superior, Son Sen, and later, Nuon Chea, through phone calls or one-on-one meetings. As in the case of division heads and their superiors, Duch was unauthorized to call a meeting with his superiors. Only Son Sen and Nuon Chea were empowered to convene meetings and set the agenda. While the frequency of the meetings varied, Duch stated that he often had 10 to 30-minutes discussions with his superiors every three to five days. The purpose of the conversations was for Duch to give information concerning the overall situation in S-21 and the confessions of prisoners, especially those they identified as important ones, while the superior also provided direction instructions to Duch.

Independent sectors. Duch explained that an independent sector's reporting process differed from that of other cells, as it did not need to report to the immediate upper level but can report directly to Pol Pot or Nuon Chea. Similarly, S-21, which was a special regiment, reported directly to Son Sen or Nuon Chea.

D. Role of Accused

Duch detailed the positions and roles the three Accused played during the DK regime. The Witness said further that he had a close working relationship with Nuon Chea, who he alleged replaced Son Sen and became his immediate superior in S-21 until the fall of the regime. In contrast, Duch was only able to provide general comments on the other two Accused. Based on his testimony, it appeared that he never had personal dealings with Ieng Sary and Khieu Samphan that would provide concrete basis for him to assess their roles in that period.

1. Nuon Chea's Role

Duch repeatedly indicated that as the Deputy Secretary of both the Central and Standing Committees, Nuon Chea worked very closely with Pol Pot and exercised broad powers and control over politics, economics, education and military affairs in Democratic Kampuchea. Duch claimed that Nuon Chea was named as Acting Secretary of the CPK when Pol Pot went on leave in 1976. The Witness then proceeded to provide more specific and detailed testimony concerning Nuon Chea's role in S-21. According to Duch, before 1977, Son Sen directly supervised S-21 but it was nevertheless under Nuon Chea's control. Duch explained that he reported to Son Sen, who sent S-21 confessions to the Standing Committee, specifically Nuon Chea, for decision on the matter. Nuon Chea replaced Son Sen on 15 August 1977 and became Duch's direct supervisor. After that date, Duch submitted documents to Nuon Chea.

The Witness said Nuon Chea met with him as often as every three to five days, for less than 10 minutes, at the ground floor of the Suramarith Buddhist High School. During the meetings, Nuon Chea asked Duch to report on the general situation of S-21 and the confessions of important prisoners. After reading the confessions, Nuon Chea made some comments, and decided if the implicated persons were to be removed from the list or arrested. The frequency of their meetings reportedly decreased after Nuon Chea returned from China. Additionally, Duch repeatedly confirmed Nuon Chea's handwriting and annotations on the S-21 confessions.

2. Khieu Samphan's Role

Duch described Khieu Samphan as a person who was beyond reproach – “trustworthy,” “clean,” “pure” – and even went as far as saying that people considered him as a prophet of Buddha. It was reportedly Khieu Samphan's sterling reputation that led to his appointment as the Deputy Prime Minister and Commander-in-Chief of GRUNK prior to the establishment of DK because Pol Pot wanted the international community to recognize and have confidence in the CPK. However, both offices were reportedly merely symbolic. Despite the publication of Khieu Samphan's appointment as Commander-in-Chief, Duch said it remained widely known that this was an honorary role because Pol Pot had absolute control of the military. Notwithstanding the symbolic role of the Accused, Duch stated that he knew that Khieu Samphan was very close to Pol Pot.

Based on his testimony, it seems that Duch did not have personal interactions with Khieu Samphan. What he related was that he knew that Khieu Samphan was the Chairperson or Head of the Central Office Committee and that the Accused signed travel papers using the pseudonym “Khang.”

The Witness also said that during the latter part of the regime, Youk Chuong, the head of the electricity factory in Chak Angrea, told him that Khieu Samphan advised Youk Chuong to betray the party. Duch reported this piece information he obtained from Youk Chuong to Nuon Chea, who reprimanded him and asked if he wanted Brother Hem (Khieu Samphan) to be in trouble. Duch further stated that Nuon Chea asked, “would you wish to go to be assigned to work at the embassy?”ⁱⁱⁱ Duch said that he learned that Brother Hem held an office from this exchange with Nuon Chea and from what he had read from historian David Chandler.

3. Ieng Sary’s Role

According to the Witness, Ieng Sary was a full-rights member of both the Central Committee and Standing Committee, like Nuon Chea. Ieng Sary was also in charge of the Ministry of Foreign Affairs and administrative affairs. In 1971 or 1972, Duch said heard a radio broadcast reporting that Ieng Sary was a special envoy on behalf of the Head of State based in Beijing. He admitted that he neither met nor have personal interactions with the Accused and had only seen the latter from a distance twice.

While Duch did not directly implicate Ieng Sary in the arrest and transfer of cadres from the Ministry of Foreign Affairs to S-21, he stated that Ieng Sary was in charge of the “diplomatic section” where cadres under suspicion were moved and then brought to S-21. He explained that the phrase “transferred to the diplomatic section” meant being removed from one’s position and being sent to S-21 to be purged. Nat (Duch’s predecessor as Chief of S-21), for example, was originally involved in the military but was later transferred to the “diplomatic section.” Duch recounted that Nat was transferred to the diplomatic section where he was isolated, and no longer had men under his command because the party no longer trusted him. Soon after being transferred, Nat was arrested and brought to S-21, where he was executed. The Witness mentioned more persons he believed were transferred to the diplomatic section, all of whom were subsequently arrested, imprisoned in S-21, and executed.

III. LEGAL AND PROCEDURAL ISSUES

The main legal and procedural issues that were raised last week continued to permeate the second week of Duch’s questioning. The Trial Chamber continued to grant considerable leeway on the scope and manner of questioning used by the Prosecution, in order to provide the trial with a better and more complete picture of the DK’s structure and the roles the three Accused played in the regime.

A. The Role of a Factual Witness in the proceedings

Defense Teams’ challenges to the basis of Duch’s testimony (i.e., whether it was based on contemporaneous knowledge of DK or his personal research for Case 001) continued to be at the forefront of this week’s proceedings. Corollary to this was the Defense Team’s submission that Duch was testifying as an expert, and not as an

ordinary witness. The defense counsels had raised these issues when Duch first took the stand last week.

Nuon Chea's international counsel, Mr. Michiel Pestman, asserted that it was inappropriate to ask Duch to interpret the CPK Statute, a document that the Witness did not draft. The Prosecution opposed the objection, arguing that while the Witness did not draft the CPK Statute, he nevertheless studied it and taught it, putting him in a good position to provide information, and give an interpretation of its meaning. The next day, Pestman raised a similar objection to questions on the DK Constitution, to which the Prosecution retorted that an expert was not required to interpret this "fairly basic" and "simple" document. International Co-Prosecutor Mr. William Smith explained that, since Duch lived through the period and witnessed relevant political process, he was capable of answering basic questions. The Trial Chamber overruled both objections and allowed the Witness to respond.

Pestman also questioned Duch's reference to an exchange he allegedly had with Nuon Chea and historian David Chandler, when he explained how he learned that Khieu Samphan held an office in DK. Pestman wanted to clarify if Duch's answer was based on what Chandler had written, or based upon a confession from S-21. The Chamber did not address this matter, and instead adjourned for the afternoon break.

Other related objections overruled by the Chamber were those raised by Ieng Sary's international defense counsel, Mr. Michael Karnavas, who averred that the OCP was using Duch as an expert witness. According to Karnavas, the OCP was attempting to show that the communications system in S-21 was the same system that applied in the whole country. The Prosecution deflected the objection by arguing that S-21 was a microcosm of DK society: the manner by which prisons were run reflected the way the entire country was governed, and the way CPK policy was disseminated in S-21 was the system adopted throughout DK. Smith cautioned that the defense was attempting to block Duch's testimony on what happened. The Ieng Sary Defense vehemently denied this claim.

B. Putting Documents Before the Witness

During the entire week, the Defense Teams objected to the OCP's use of documents, which Duch admitted he had not seen contemporaneously during the DK period, but rather during the OCIJ's investigations in Case 001 and the present case. The Chamber overruled these objections, and clarified its ruling that when the Witness has seen a document previously – regardless of whether it was during the DK regime or only during the investigations before the ECCC – he may be examined regarding the document and its contents. However, if the Witness says he has not seen the documents before (that is, if he is seeing the document for the first time) Judge Silvia Cartwright explained that "the document should be removed physically from the Witness because, otherwise, it might be suggested that he is reading answers from the document..." Judge Cartwright further elaborated that, in any case, the Parties may still ask the Witness about the subject matter of the document.

C. Scope of Questions

The issue of limiting questions within the scope of the Case 002/01 according to the Severance Order once again proved to be a challenge for both the Chamber and the Parties. Pestman reiterated objections that the OCP's detailed questions pertaining to S-21 were not relevant to the crimes covered by this segment of the trial. The Prosecution countered that they were seeking clarification regarding the communication structure in S-21 and how it related to the system the CPK implemented in the country.

In another objection to the relevance of the OCP's line of questioning, Pestman argued that discussing the DK structure in 1977 to 1979, which is beyond the first and second phases of evacuation (1975 to 1976), may give the false impression that his client Nuon Chea had different responsibilities than he actually had during the relevant period. He submitted that questions on Nuon Chea's alleged role in S-21, post-1977, were also irrelevant to this stage of the proceedings. The Prosecution countered that it was important to bring Nuon Chea's reported criminal role in Tuol Sleng to light, as this is part of the Prosecution's task of discharging the burden of proof.

On both instances, the Trial Chamber overruled Pestman's objections, and allowed the OCP to proceed. However, the Chamber reminded the Prosecution to focus their questions on matters relevant to the current trial.

D. Leading Questions

According to the Black's Law Dictionary, a leading question is: "[a] question put or framed in such a form as to suggest the answer sought to be obtained by the person interrogating." Although the Trial Chamber has prohibited the use of leading questions, it overruled the Defense Team's objections on this ground and allowed the OCP to proceed more frequently than it sustained them.

E. Speculative Questions

The Defense lodged a number of objections to the OCP's questions, on the ground that they were speculative. Pestman challenged Smith's questions on communication lines between zones, sectors, and districts levels because Duch, a mid-level cadre whose tasks were confined in S-21, was not in a position to comment on this matter. Consequently, any answer from Duch would be conjectural. To buttress its position and substantiate Duch's answers, the Prosecution capitalized on Duch's knowledge and understanding of the CPK Statute. Smith added that the questions sought to elicit information on the flow of communication between the geographical divisions on DK, and not details on what specifically occurred in other areas. The Chamber overruled the objection but did not elaborate on the reason behind its ruling.

More objections against what the Defense Teams considered speculative questions were raised when the OCP asked Duch to comment on annotations on S-21 documents made by third persons outside of S-21, which documents Duch had seen only after the fall of the regime. The objection by Pestman on this ground was overruled, while a similar objection by Karnavas was sustained.

Pestman then made another objection on this ground when Smith asked Duch why the Standing Committee informed ministries of their staff members slated for arrest. Nuon Chea's counsel argued that Duch can only speculate, because, apart from never having attended Standing Committee meetings, he would not have known the motivations behind the Standing Committee's decisions, considering the policy of secrecy in place in DK. Smith countered that the Defense should not direct how the OCP conducts its examination. Moreover, Smith argued that Duch was knowledgeable of this matter because his superiors were members of the Standing Committee. The Trial Chamber ruled in favor of the Defense and instructed the Prosecution to ask the Witness a different question.

F. Alleged Political Interference in the ECCC

On Monday afternoon, Pestman raised Co-Investigating Judge Laurent Kasper-Ansermet's Note, dated 12 March 2012, containing serious allegations of political interference in the ECCC which impeded the OCIJ's investigation of Cases 003 and 004.^{iv} According to Pestman, Judge Kasper-Ansermet's Note was relevant to the present case because it corroborated two assertions by the Nuon Chea Defense: (i) King Sihanouk prevented five witnesses^v from testifying during the judicial investigation; (ii) the integrity of the Case 002 Case File is highly suspect, as OCIJ Judge You Bunleng and Pre-Trial Chamber Judge Prak Kimsan are under the control of the Government. Pestman informed the Court that the Nuon Chea Defense planned to file another motion to ask for an investigation on allegations of political interference in Case 002, and to seek a stay of proceedings, notwithstanding the high likelihood that the three National Judges in the Chamber would vote to deny the motion. Pestman urged the two international judges on the Bench to take action and make a statement against the Cambodian government's interference. He warned that their inaction would allow the trial to "spiral further and further away from the ideals the ECCC was designed to promote." Mr. Arthur Vercken, Khieu Samphan's international lawyer expressed support for the Nuon Chea's Defense's request for re-investigation.

The OCP, through Smith and international CPLCL Elizabeth Simonneau-Fort, opposed this motion. Both Smith and Simonneau-Fort asserted the irrelevance of Judge Kasper-Ansermet's Note to Case 002, and affirmed their belief in the integrity of the proceedings in the case at bar.

The Trial Chamber allowed the Nuon Chea Defense and the other Parties to present their positions on this matter, but it refrained from making a ruling. Instead, it proceeded with the hearing without any comment.

IV. TRIAL MANAGEMENT

In general, the trial proceeded smoothly this week. The numerous objections by the Defense prompted exchanges that took up some of the OCP's time to examine the Witness. To compensate, the Trial Chamber granted additional time in favor of the OCP.

A. Courtroom Etiquette

Concerns on proper court decorum arose again this week, as debates among the Parties heated up, with Karnavas attempting to speak out of turn twice. On Monday, the President turned off Karnavas' microphone, and instructed him to take his seat to allow the Prosecution to proceed. However, Karnavas continued to address the Chamber, even without a microphone. A similar incident happened on Thursday: the President reminded Karnavas to seek leave from the Chamber before getting on his feet and addressing the Chamber in accordance with the Internal Rules. Karnavas apologized, and assured the Bench that he will "refrain from jumping up as quickly" as normally as he could.

The line between legitimate objections and interference with a Party's method of examination also came to the fore this week. The Chamber addressed this by assessing the objections as they arose. As indicated in the previous section, the Chamber ruled on objections as it saw fit. Sometimes, it sustained the objections and directed the OCP either to clarify, simplify, or rephrase their questions, or to change their line of questioning. On some occasions, when the Chamber overruled the objections and allowed the OCP to proceed, the President reminded the objecting Party that the OCP has its own strategy in examining the Witness. An exasperated Karnavas objected and described the OCP's manner of asking questions as "cherry-picking," because Smith was very selective when asking Duch about the statements he made to the OCIJ. The President overruled Karnavas' objection and advised the Parties to avoid interrupting, as they would have the opportunity to examine Duch. At one point, during a debate between Smith and Vercken that was about to escalate into longer exchange, President Nil Nonn exclaimed that "this matter should have never been that serious." He reminded the Parties that each "...person in this courtroom is skillful and has obtained some techniques in putting their own questions."

B. Court Schedule

Originally, the Prosecution had five days to complete Duch's examination. After 12 hours of questioning last week, Smith requested additional time to question the Witness. Civil Party lawyer Ms. Lyma Nguyen asked for a full day to question the Duch instead of the three hours allotted to them. The Chamber granted both submissions.

On Wednesday, Smith asked the Trial Chamber for additional time, citing the numerous objections from the Defense Teams. Pestman expressed his support to the request, stating that all Parties should have sufficient time to question witnesses. The Trial Chamber again granted this request and gave the Prosecution until the end of Thursday to finish their examination.

When the OCP asked for an extension the third time, the Ieng Sary and Khieu Samphan Defense Teams objected. They argued that the Prosecution had failed to use its time efficiently, instead asking irrelevant and improper questions that naturally led to objections from the Defense. The Civil Party lawyers stepped in and offered one hour of their allocated time to the Prosecution. The Trial Chamber denied the OCP's request for an additional 1.5 hours but allowed the Civil Parties to share an hour of their allotted time with the OCP.

C. Attendance

All the Accused were present every morning with their respective national and international counsel. Nuon Chea and Ieng Sary requested to participate remotely from the holding cells through video link at different sessions throughout the week, on account of health conditions. The Chamber acquiesced upon submission of a waiver affixed with the signature or thumbprint of the Accused. Only Khieu Samphan participated in all of the sessions in the courtroom.

Audience attendance. Public attendance remained fairly high this week. On Monday, there were about 300 students from Boeung Trabek High School, Phnom Penh in the public gallery. Tuesday saw 300 people from Kampong Liv District, Prey Veng Province, and around 100 military students. On Wednesday, 300 students from Bak Touk High School, Phnom Penh, attended the hearing. On the last hearing day of the week, the gallery accommodated two different groups: 400 people from Phnom Srot District, Banteay Meanchey Province in the morning sessions and 450 students from Wat Koh High School, Phnom Penh in the afternoon sessions.

D. Translation and Technical Issues

A few translation and technical issues occurred in this week's proceedings, possibly due to some malfunction in the audio system. In at least two instances, there was no Khmer translation available. There were also some occasions when there was no audio feed from the courtroom.

As regards translation errors, dates were mistranslated a number of times. For example, trial monitors noted that 1967 was incorrectly translated into Khmer as 1977, 1979 as 1974 and on another instance, as 1977. None of these errors was noted or corrected during the proceedings. This kind of mistake has been observed every week, leading the authors of this report to conclude that better efforts should be made to accurately translate material information such as dates. A mistranslation on this aspect is not trivial, since it changes the context of questions and testimony.

E. Time Table

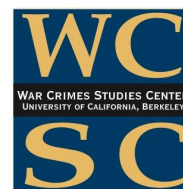
DATE	START	BREAK	LUNCH	BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 26/03/12	9.02	10.33-10.51	12.03-13.33	14.42-15.06	16.00	4 hours and 46 minutes
Tuesday 27/03/12	9.05	10.32-10.53	12.02-13.30	14.41-15.01	15.59	4 hours and 45 minutes
Wednesday 28/03/12	9.00	10.33-10.54	12.02-13.32	14.38-14.59	16.01	4 hours and 49 minutes
Thursday 29/03/12	9.02	10.33-10.51	12.14-13.34	14.39-15.00	16.04	5 hours and 3 minutes
Average number of hours in session:				4 hours and 51 minutes		
Total number of hours this week:				19 hours and 23 minutes		
Total number of hours, days, and weeks at trial:				187 hours and 32 minutes		
43 TRIAL DAYS OVER 12 WEEKS						

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the Extraordinary Chambers in the Courts of Cambodia;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias "Duch"</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or "KRT")
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* This issue of KRT Trial Monitor was authored by Mary Kristerie A. Baleva, Princess B. Principe, Sovanna Sek, Kimsan Soy, Chayanich Thamparipattra and Penelope Van Tuyl as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor reports on Case 002 are available at <www.krtmonitor.org>, <<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/>> and <<http://socrates.berkeley.edu/~warcrime/>>. AIJI is a joint project of the East-West Center, in Honolulu, and the University of California, Berkeley War Crimes Studies Center. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

ⁱ This policy is articulated in "Guidance of the Central Committee of the Communist Party of Kampuchea on the Party's Policy towards Mised Persons who have joined the CIA, served as Yuon Agents or joined the KGB and opposed the Party, Revolution, People and Democratic Kampuchea."

ⁱⁱ The information communicated to the upper echelon included; (i) personal history record of detainees obtained upon their arrival at the security center, (ii) photographs taken before prisoners were transferred to their cells; (iii) names of prisoners in Ministries, (iv) confessions, (v) list of people to be smashed, (vi) list of prisoners who died at S21, and (vii) names of prisoners whose investigations were suspended in cases of confessions that were pending completion.

ⁱⁱⁱ During the Opening Statements, the OCP, through international Prosecutor Mr. Andrew Cayley alleged that Nuon Chea used the expression "to be sent as a diplomat" to signify the arrest and execution of a cadre. See Trial Chamber. Transcript of Trial Day 2 (22 November 2011). E1/14.1. Line 23. 45.

^{iv} Kasper-Ansermet, Laurent. “Note of the International Reserve Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the Proper Conduct of Investigations in Case 003 and 004 (21 March 2012). D38.

^v The five witnesses included former King Sihanouk himself, Mr. Chea Sim, Mr. Heng Samrin, and two others.