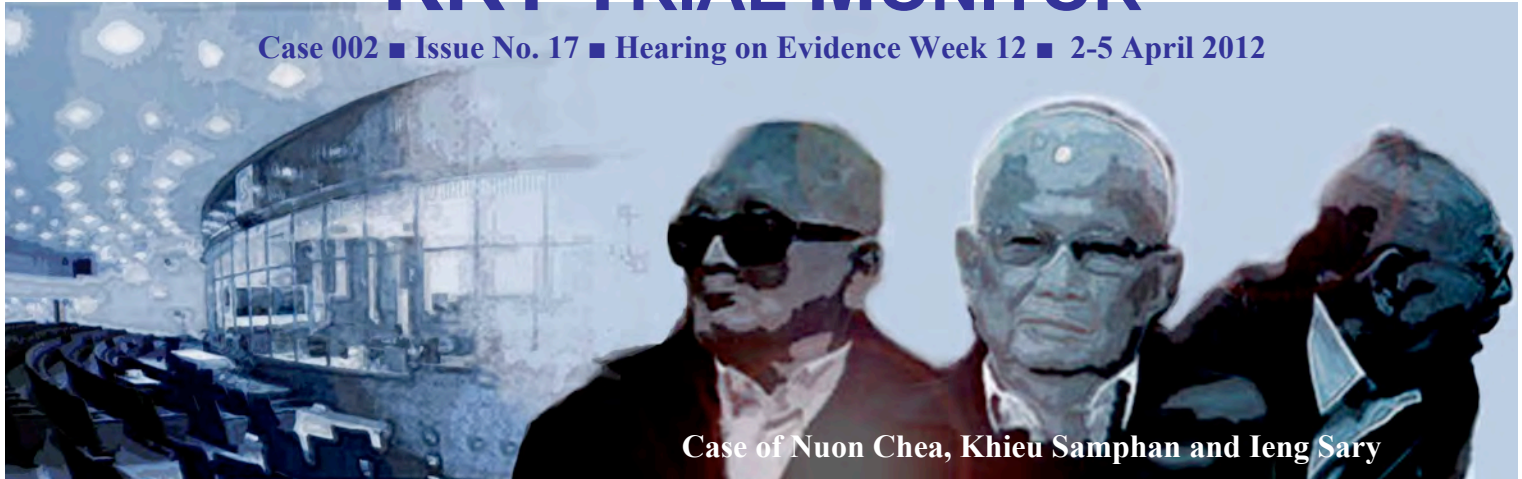


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 17 ■ Hearing on Evidence Week 12 ■ 2-5 April 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

*I put it to you, to use your own words, Duch,  
that you are dishonest and that you are blaming  
Nuon Chea for crimes you committed  
and only you are responsible for.*

- Michiel Pestman (Nuon Chea counsel), addressing Duch

## I. OVERVIEW

Kaing Guek Eav, alias “Duch,” returned to the witness stand this week to continue his testimony, fielding questions from the Prosecution, Civil Party lawyers, Judges, and the Nuon Chea Defense. The OCP concluded its examination on Monday’s first session and the Civil Parties used the remainder of the day and the first session on Tuesday to ask Duch additional questions in support of the OCP’s examination, delve into Ieng Sary’s involvement in the arrest of intellectuals, and inquire on specific victims.

The Bench, through Judge Jean Marc Lavergne and President Nil Nonn, also directed several questions to Duch before giving the floor to the Nuon Chea Defense, who asked questions aimed to impeach Duch’s credibility. The Witness refused to answer several questions from Nuon Chea’s international counsel Mr. Michiel Pestman, repeatedly invoking his right against self-incrimination to questions related to the events before the DK regime. Interspersed with Duch giving testimony was the re-emergence of disputes on the procedure for presenting documents to a witness and which documents are considered to have been put before the Chamber.

Hearings will resume next week with the Ieng Sary and Khieu Samphan Defense Teams, each allotted a day to complete their respective examinations of the Witness.

## II. SUMMARY OF TESTIMONY

The Chamber and the Parties continued to examine Duch on the communication structures from the upper echelon to S-21, and the roles the Accused played in the smashing of the CPK’s perceived enemies, including intellectuals, Vietnamese (disparagingly called “Yvon”), and CIA and KGB agents.

## **A. Conclusion of Duch's Examination by the OCP**

Using the additional hour from the Civil Parties' time allotment,<sup>1</sup> international Co-Prosecutor Mr. William Smith first focused on the reported attendance of CPK leaders in rallies and meetings, as well as Duch's participation in these activities. The Witness confirmed that he joined various rallies and meetings conducted between 17 April 1976 and 1978. Duch said he saw Pol Pot and Nuon Chea on stage in those rallies and meetings. He could not recall if Khieu Samphan and Ieng Sary participated in a rally held on 17 April 1978 because there were a number of other leaders in attendance.

Thereafter, Smith inquired about the concept of "contradictions directly inside Kampuchean society" as defined and analyzed during the party's first congress, and published in the *Revolutionary Flag*. Duch read the enumeration of societal classes in Cambodia: the working class, the peasants, the feudalists, the capitalists and landowners. He further listed the various contradictions referred to in *Revolutionary Flag*: contradictions between workers and capitalists, the petty bourgeoisie and the capitalists, peasants and the landowners, and capitalists and peasants, among others. "Contradictions," Duch stated, were explained in dialectical materialism. As he elaborated, "[t]he contradiction between us and our enemy is the life and death contradiction which means that for one to prosper, the other one must die." The CPK, the Witness went on to testify, found that the peasant class represented the highest percentage of the country's population (85%) and was considered the most exploited by all other classes especially by landowners. As such, the party characterized the contradiction between the peasants and landowners as one that is life and death, an antagonistic contradiction.<sup>2</sup>

### **1. The Heads of the Central Office Committee: Khieu Samphan and Sua Vasi alias "Comrade Doeun"**

The OCP followed-up on Duch's answers during last week's hearing regarding the Central Office Committee and Khieu Samphan's role therein vis-à-vis Doeun's. Previously, Duch stated that the Central Office Committee referred to "Office 870."<sup>3</sup> This week, when asked if the Central Office Committee was the same as Office 870, Duch clarified that that the latter "was the location where people worked" and listed five of the seven members of the "Central Standing Committee" who worked regularly in that office: Pol Pot, Nuon Chea, Ieng Sary (whom he called "Brother Van"), Vorn Vet and Son Sen.<sup>4</sup> As such, it appears that Office 870 did not refer to the unit within the administrative structure of DK that is the Central (Office) Committee but to the physical location – a place where the leadership regularly worked.

Turning to the positions and tasks of Khieu Samphan and Doeun, last week, the Witness stated that both occupied the position of Chairperson or Head of the Central Office Committee.<sup>5</sup> Unlike Khieu Samphan who also supervised other units, such as the power station at Chak Angrae,<sup>6</sup> Doeun was only in charge of documentation.<sup>7</sup> This week, Duch reiterated that Khieu Samphan had supervised several other units apart from Office 870 and identified the Accused as a full-rights member of the "Central Office" (which, based on Duch's previous testimony, also refers to the Central Committee of the CPK). Doeun, on the other hand, did not share this position with Khieu Samphan, as he was only a candidate member. Moreover, the Witness surmised that Doeun, who was younger than Khieu Samphan, may have been "inferior" to the latter.<sup>8</sup> He also reiterated that Khieu Samphan retained his position as head of Office 870 after Doeun was transferred to the Ministry of Commerce<sup>9</sup> and thereafter arrested and smashed. It remained unclear from Duch's testimony however, if Khieu Samphan and Doeun were both the heads Central Office Committee at the same time or if they held different positions, considering Khieu Samphan's higher rank and greater supervisory authority. Whether Khieu Samphan had succeeded Doeun as the chairperson after the latter's transfer and arrest was also ambiguous. It was

clear from Duch's admissions however, that he did not know who took over Doeun's tasks in the Central Office after the latter's transfer to the Ministry of Commerce.

## **2. Policy against Officials of the Government of the National Union of Kampuchea**

Duch confirmed that there was a policy against GRUNK officials, particularly those who were not members of the CPK. These officials, including its appointed diplomats and ambassadors, were first sent to re-education centers. As the Central Committee found them to have been "bad elements," they were released from the re-education sites, only to be transferred to S-21. "...[W]hether how bad they were, it was beyond my understanding, but we at S-21, were tasked with just interrogating any people sent in," Duch recounted. He said Mr. Huot Sambath, ambassador to then Yugoslavia and Romania, and one of Cambodia's representatives to the UN<sup>10</sup> was among those sent to S-21.

## **3. S-21 Documents**

According to the Witness, he obeyed Nuon Chea's order to smash over 500 prisoners remaining in Tuol Sleng before the Vietnamese troops arrived on 7 January 1979. However, Nuon Chea did not give him instructions on what to do with the documents in the Security Center. Duch recalled that later, in 1983 or 1984, he and Nuon Chea met in Samlaut where he told his former superior that that he did not dispose of the S-21 documents. The Witness admitted that, although he could not exactly remember Nuon Chea's reprimand, its meaning was clear to him: he was "very bad" for failing to destroy the documents. Nuon Chea reportedly told him that, "on my side, we destroyed them all." Duch further described Nuon Chea's disposition as "his usual mood as I used to work with him. ...He did not accept his weaknesses. He liked to dominate others."

Finally, when asked if he had told the truth during the six days of his testimony, Duch replied: "I said the other day that I upheld everything I said before the Co-Investigating Judges, and everything I said during the Case 001 Trial. Sometimes I talked in principles...sometimes I went into details about what I hear and I understand."

## **B. Summary of Duch's Examination by Civil Party Lawyers from CP**

National Civil Party lawyer Mr. Hong Kimsuon focused his questions on Ieng Sary's alleged involvement in the arrest and execution of officials from the Ministry of Foreign Affairs and intellectuals. Moreover, he asked questions specific to S-21 victims Chau Seng, Ouk Ket and Ros Sarin, to determine if Ieng Sary would have or could have known and prevented their arrests and executions, in an effort to prove the claims of his clients against the Accused.

International Civil Party lawyer Ms. Lyma Nguyen, on the other hand, focused her examination on the communication structures and CPK policies, specifically on orders and pressure from the upper echelon to identify spies for arrest and interrogation.

### **1. Ieng Sary and the Arrest of Intellectuals**

Duch confirmed that repatriated officials from the Ministry of Foreign Affairs, including ambassadors and intellectuals, were sent to S-21. He named Meak Touch, Chau Seng and Van Piny as some of those whose smashing in S-21 was relevant to this line of questioning. He stated that, "the decision to arrest was made by the Central Committee in a broader sense, but in a more practical sense, it was Brother Pol who made the decision and, in some cases, Brother Nuon was the one who made such decisions." Duch answered in the

affirmative when he was asked whether the chief of the unit in the East Zone had influence in the arrest of persons (i.e. that a chief may reject the order or request that people be spared).

Corollary to the authority of chiefs of units, Hong Kimsuon asked Duch if Ieng Sary corresponded with him when he was in S-21. Duch indicated he did not receive letters from Ieng Sary and reiterated that he had only seen Ieng Sary from a distance twice. In principle, however, Duch explained, “before arrests at the Ministry of Foreign Affairs could be made, the decision from Ieng Sary was necessary.” Duch believed that in principle, this protocol – requiring the agreement from the Ministry of Foreign Affairs before arrest and imprisonment at S-21 – “particularly applies to Ouk Ket.”<sup>11</sup> Duch qualified that he only learned about Ouk Ket in Case 001 because the latter’s wife and daughter were Civil Parties to his case. He further stated that since Ouk Ket was sent to S-21 before he became its Secretary, he concluded that Ouk Ket was a GRUNK-appointed diplomat. He made the same conclusion about a certain Ros Sarin when asked by Hong Kimsuon.<sup>12</sup>

According to Duch, the only exception to this protocol was the arrest of Chau Seng, a popular figure who had fought against Lon Nol and established a training institution for teachers. The Witness said Chau Seng worked at the Ministry of Foreign Affairs and was arrested under a false name. Ieng Sary reportedly did not know of Chau Seng’s arrest because he was not at the MFA when this occurred.

## **2. Enemies of the Revolution**

Confronted with a *Revolutionary Flag* article on the forces opposing their revolution, Duch affirmed that the CPK Secretary determined the “life and death enemies” of the party: the “Yuong,” the CIA and the KGB. The policy was to smash all these enemies. He further explained that “CIA” referred to Khmers who had received appointments from America. The “Yuong,” “the most noxious and acute,” were Khmers who lived in the territory who had Vietnamese “tendencies,” and were against the party’s policies.

## **3. Role of S-21**

Duch said every member of the party was well-trained to detect spies. He reiterated several times that the duty of S-21 was counter-espionage and its ultimate goal was to extract confessions from prisoners. He admitted that he did not look into the veracity of confessions obtained in S-21; instead he merely compiled and sent them to the Standing Committee for its decision. Duch told the Chamber that “it was like there was tremendous pressure from Son Sen when we did not find any CIA spies and when Nuon Chea came to supervise S-21, it was clear that we had to follow the party policy.”

**Use of Confessions.** According to Duch, the Standing Committee decided what to do with confessions from prisoners. Ultimately, these prisoners were smashed, either at S-21 or Choeung Ek (the “Killing Fields”). Duch testified that Nuon Chea instructed him to take photos of the remains of some prisoners as proof that they were killed. Some confessions, such as those of Pich Chhorn alias “Saom,” Pang, chief of Hospital 98, Men San alias “Ya,” and Koy Thuon, were read out to the masses, as part of the party’s propaganda.

**Discrimination against Vietnamese and Cham Minorities.** Duch related that the discrimination against the Vietnamese and the Cham minorities began after 17 April 1975. He recalled that Pol Pot ordered the expulsion of Vietnamese expatriates. The evacuation however, was not broadcast on the radio and he could not remember the exact number of “Yuong” who were forcibly transferred. According to the Witness, on 8 January 1978, Nuon Chea instructed him to interrogate Vietnamese prisoners of war. These interviews and

confessions, he stated, were tape-recorded. However, Duch was not responsive to questions if these confessions were broadcast over the radio.

As regards the Cham, the Witness indicated that the party treated members of this group as minorities. They were reportedly part of the revolution prior to the fall of Phnom Penh but were isolated by the party after 1975. Duch explained that Muslims were evacuated to the North and Northwest Zones to have them “tempered” and to make sure they abandoned their religion. He maintained, however, that the CPK did not consider Islam a reactionary religion; only Catholicism and Protestantism were considered reactionary.

**Arrest of Foreigners off the Coast of Cambodia.** Duch clarified that the arrest of foreigners by Division 164, the naval division of DK reportedly headed by Meas Muth, were made under the direction of Son Sen and not the Ministry of Foreign Affairs. Duch denied Nguyen’s assertion that two Australians, one Briton, one New Zealander, and three Americans were captured. He countered that only four Westerners were sent to S-21. These four prisoners were regarded as spies and considered as “special prisoners.” Duch described that they were detained in special rooms, assigned experienced interrogators and had interpreters for their confessions. In the end, however, they suffered the same grim fate: execution. Duch further averred that Nuon Chea ordered the burning of the bodies of two Westerners in order to leave no trace of their execution behind. In contrast, Thai fishermen were not considered special and were reportedly summarily executed.

**Communications between Angkar and S-21.** According to the Witness, “Angkar” referred to Pol Pot and Nuon Chea. He explained that “Angkar” sent messages to S-21 through its own messengers. When Son Sen was Duch’s superior, Comrades Pahn and Noeun reportedly served as messengers between Angkar and S-21. When Nuon Chea took over Son Sen’s position on 15 August 1977, he used Comrades Toeung<sup>13</sup> and Sot, alias “Chiv” as messengers. Duch recalled that Comrade Lin subsequently replaced Comrades Toeung and Chiv, and he did not see the two former messengers again. It appears that Comrade Lin brought the messages to him from Nuon Chea, while Comrade Ky, the Chairman of K-7, delivered letters from Pol Pot. Duch also mentioned that Nuon Chea introduced him to Pang,<sup>14</sup> a person who has figured prominently in Duch’s testimony.

### **C. Summary of Duch’s Examination by the Trial Chamber**

The Chamber, through Judge Jean-Marc Lavergne, proceeded to examine Duch, particularly about the CPK’s three categories of enemies and the policies on enemies that were adopted in the 1960s. Duch explained that the first category was comprised of those who could be convinced to join the revolutionary forces; the second were forces that needed to be neutralized, that is, people who were hesitant to join; and the third were “diehard enemies” who needed to be isolated. The categorization of enemies remained theoretical however, and after the CPK had liberated zones in 1971, it did not implement the open door policy of reaching out to people. Contrary to the policy, there was no open door policy to convince enemies to join the revolutionary force, even for those who crossed borders between occupied and liberated zones. Moreover, after the arrest of the “seven super traitors,” the CPK, through the FUNK and GRUNK, announced a policy of national unity that sought to embrace everyone, “without distinction as to social class, political leanings, religious beliefs and without taking into account the past of each person, with the exception of the seven super traitors.” This policy, Duch said, was never implemented.

As regards the evacuation of people from Oudong, Phnom Penh and Kampong Thom, Duch admitted that he did not witness the arrival of the trucks and the subsequent forcible movement of people. He was merely informed about them by third persons, including one of his brothers-in-law, as well as through study sessions he attended.



Additionally, the Witness commented on the writings of former S-21 personnel Mam Nai, regarding abandonment of personal property and ownership, bonds of love and affection and familial ties in favor of commitment to the party. “Gratitude toward parents was not regarded as important. We were asked to pay gratitude to the Party, treating the Party higher,” said Duch. To highlight this matter, Judge Lavergne asked Duch about his arrest and execution of his own brother-in-law, as well as the party’s decision to arrest and execute Nuon Chea’s nieces and nephews-in-law. Duch said that in principle, only Pol Pot and Nuon Chea ordered these arrests.

When the discussion turned to Khieu Samphan, Duch described the Accused as close to Pol Pot. He further said that Khieu Samphan was the “secretariat of Pol Pot, of the Central Committee. He was in charge of the office of the secretariat of Pol Pot.” According to Duch, this meant that the Accused was in charge of documents and that he was aware of important issues and Pol Pot’s decisions. While Khieu Samphan’s specific role in Office 870 remained ambiguous even after Judge Lavergne’s examination, it was clear from Duch’s testimony that the Accused had access to important information sent to this office.

President Nil Nonn also examined Duch, who confirmed that the head of State was the prime minister, Pol Pot. Three deputy prime ministers assisted Pol Pot: the first deputy prime minister, Ieng Sary, who was responsible for foreign affairs; Son Sen, who was head of national defense and the police; and Vorn Vet, who was in charge of the economy. Moreover, State organizations were of two categories: (i) ministries responsible for the entire country; and (ii) committees at the level of departments or offices responsible for particular geographical areas or tasks. S-21, as Duch stated, was of the same level as a district committee. Moreover, while referring to a document, the President asked Duch who in the Central Committee had the authority to decide the execution of persons inside and outside the party. Duch, appearing to read a passage from the same document, said, “‘surrounding the Centre Office to be decided by the Central Office Committee,’ here, it refers to Khieu Samphan, who made such a decision as set forth in this paragraph.” Thus, despite earlier pronouncements that Khieu Samphan was responsible only for documents and supervision of some units, Duch had ostensibly testified that Khieu Samphan decided executions for the Central Committee.

#### **D. Summary of Duch’s Examination by the Nuon Chea Defense Team**

For two days, three of Nuon Chea’s counsels, Messrs. Michiel Pestman, Jasper Pauw, and Son Arun examined Duch on a number of topics, challenged the veracity of his prior answers, and attempted to impeach his credibility as a witness.

##### **1. American Bombings and M-13**

Duch recalled that during the American bombings, staff and prisoners at M-13 had to hide in trenches for their own safety. The CPK did not report casualties because Pol Pot did not want to scare people. Answering questions only upon the Chamber’s instructions, Duch admitted that while he did not know the number of casualties, he knew that these bombings resulted in the increased influx of prisoners in M-13 as more people entered the liberated zones.

##### **2. Duch’s Role in Interrogating Prisoners**

Duch’s role as the head of the notorious security centers M-13 and S-21 have been well-established. While he has been found guilty crimes committed in S-21, he has not been prosecuted for crimes allegedly perpetrated in M-13. To show that, contrary to Duch’s assertions that he had never personally committed torture, Pestman unearthed statements

by Duch and former prisoners about the reported interrogations, beatings, and torture at M-13. Duch refused to answer Pestman's questions about M-13 and repeatedly invoked his right against self-incrimination. Asked on a statement by Francois Bizot in his book, Duch reasoned that since the book was written as a novel, many details that were presented as facts were mere fabrications.

As to his acts in S-21 for which he has already been convicted by the ECCC, Duch admitted that he once slapped a prisoner two or three times on the face, but denied torturing or killing any prisoner. He was occupied with reviewing papers, he maintained, so he never oversaw the torture of prisoners. Contradicting a witness in Case 001 who stated that Duch personally interrogated and kicked one of four foreign prisoners, he asserted that he was too busy even to kick a prisoner. He further explained that he was present during the interrogation of a foreign prisoner only to check the quality of the translation. Duch maintained that he personally interrogated only one prisoner: Koy Thoun. When confronted by a statement he made to the Military Court in 1999 about interrogating a certain Seat Chhae, he said he may have forgotten about this since he only interrogated this prisoner briefly. He explained that he merely delivered a letter from Son Sen to the prisoner to urge the latter to confess.

Asked why he told the OCIJ he had not heard of the terms "hot group, cold group, and chewing group" until he saw a film by Rithy Panh,<sup>15</sup> Duch justified that he did not easily recall these matters because the OCIJ interviewed 30 years after their occurrence. He further said that he had tried to forget the bitter memories of his past. However, Duch acknowledged that he taught these interrogation techniques to his subordinates at S-21, which prompted Pestman to ask why he Duch lied to the OCIJ. He eventually answered that he was confused because it has been a long time.

### **3. Annotations of Confessions by Superiors**

Duch said that annotations made after 15 August 1977 belonged to Nuon Chea because that was when the latter took over Son Sen's duties as Duch's superior. He said that he did not rely solely on date to identify annotations but also the handwriting and the annotation, "already read," which he observed was Nuon Chea's usual comment when he saw confessions in 1989 or 1990. Duch disclosed however, that he did not receive any training on handwriting analysis. Pestman further tested the Witness' recognition of annotations on these bases using several confessions. Counsel also confronted Duch with inconsistencies in his testimony and statements he gave the OCIJ. The Witness admitted that while he may have been confused on some occasions, he insisted that he had identified the annotations on the basis of his knowledge of the handwriting of his superiors and the dates of the documents. Duch agreed that confessions sent to his superiors were never sent back to S-21. He also conceded that he saw his superiors' annotations only when the OCIJ presented him with confessions in April 1999.

### **4. The Fall of Phnom Penh**

Duch testified that Pol Pot and Nuon Chea had ultimate control over the "liberation" of Phnom Penh. At field level, the secretary of zones exercised control, but none of them are still alive. Later, he corrected himself, stating that one is still alive: Mr. Heng Samrin.<sup>16</sup> Duch testified that there was restricted movement between liberated zones.

## 5. Impeaching the Witness

Throughout the Nuon Chea Defense's examination of Duch, they attempted to cast doubt on Duch's credibility by testing his knowledge of annotations on confession and Nuon Chea's handwriting. Pestman sought to establish that Duch merely guessed the author of the annotations based on the date of confessions. Other questions delved on Duch's interviews with journalists Christophe Peschoux,<sup>17</sup> Nick Dunlop and Nate Thayer, attempting to point out inconsistencies in Duch's statements. Duch appeared less cooperative, refusing to answer a number of questions on various grounds, foremost of which was his right to be protected against self-incrimination. While the Trial Chamber instructed Duch to respond on some occasions, there were nevertheless instances when the Chamber concurred with him and advised him not to answer because the question was irrelevant, or to avoid possible self-incrimination.

The examination proceeded to challenge Duch's contemporaneous knowledge of the work of the Standing and Central Committees. Pauw attempted to show that Duch's access to the Case File, as well as his own research and reliance on books, films and other materials, were the bases of his testimony, instead of basing it on his personal experience during the DK regime. Duch admitted that his knowledge on the Standing and Central Committees was based "on principle." He also admitted having read some books, seeing two movies by filmmaker Rithy Phan, and hearing testimonies of some experts in Case 001. He agreed with a previous statement before the OCIJ that he had "better knowledge of the situation today compared to last August or last December," in reference to facts about S-71.

### III. LEGAL & PROCEDURAL ISSUES

This week's proceedings were faced with a number of substantive and procedural issues. Rights between Parties clashed and the intricacies of the use of documents permeated the hearings. The right of the Accused to confront a witness and to test his credibility inevitably became tangled with the other pervading issues in the courtroom. The boundaries of this right vis-à-vis the witness' substantive right against self-incrimination, the rule prohibiting the use of documents not contained in the Case File, statements made by third persons and on matters not part of the Severance Order were explored, highlighting the legal complexities each Party contends with in this trial.

#### A. Right against Self-incrimination

Under Internal Rule 28(1) –

A witness may object to making any statement that might tend to incriminate him or her. The right against self-incrimination applies to all stages of the proceedings [...]

The issue of self-incrimination repeatedly arose in connection with Duch's activities at M-13. As noted above, it became the subject of debate when Pestman asked Duch if he had personally tortured a prisoner at M-13. When Duch refused to answer, Pestman insisted that as a witness, Duch was duty-bound to respond to the question. Counsel argued further that Duch was no longer entitled to the right against self-incrimination since his case had already been adjudicated with an irrevocable sentence. Ieng Sary's international counsel, Mr. Michael Karnavas, supported Pestman by citing the ICTY case of *Prosecutor v. Blagojević and Jokić*, which ruled that a witness whose conviction was final was no longer entitled to the right against self-incrimination because he was already protected by the principle of *ne bis in idem* or double jeopardy. International Co-Prosecutor Mr. William Smith countered that, since Duch had not been convicted of crimes allegedly committed in M-13, *ne bis in idem* did



not apply. In reply, Pestman asserted it was unlikely that Duch would ever be charged for M-13 crimes. Smith, on the other hand, indicated that the question was not the possibility of indictment or conviction, but whether or not the Witness would be incriminated and if there is a possibility of prosecution.

The Chamber ruled in the OCP's favor and indicated that Duch was entitled to exercise his right against self-incrimination relative to matters that have not been adjudicated. Despite this ruling, the issue came up again at least twice. The President disallowed questions relating to reported criminal activities in M-13 that have not been adjudicated, on the grounds that the Witness might incriminate himself and that they are irrelevant to the case at bar. "Just for the record, I think that only answers can be self-incriminating, not the questions," Pestman asserted.

Under the rubric of the ECCC, Duch is not subject to prosecution for crimes he allegedly committed in M-13 because these are outside the temporal jurisdiction of the Court. Thus, the Trial Chamber has not only been careful to remind the Witness of his right against self-incrimination but has also been vigilant in protecting Duch's exercise thereof because the ECCC cannot guarantee that Duch will not be prosecuted before domestic courts, regardless of the unlikelihood that this will happen.

## **B. Putting One's Case Before a Witness**

Controversy over the style of examination employed by defense counsels continued this week in court. Specifically, there was a dispute this week over what evidence Counsel may refer to when "putting one's case before the witness," "Putting one's case before a witness" is a cross-examination technique, practiced in many jurisdictions where an individual is confronted in court with contradictory evidence relied upon (and intended to be adduced) during the cross-examination, and then given the opportunity to explain.<sup>18</sup> This rule on evidentiary fairness traces its origin from the seminal British case of *Browne vs. Dunn*,<sup>19</sup> which Karnavas cited to support cross-examination techniques. The Nuon Chea Defense attempted to challenge Duch's credibility by using this method. Addressing the Witness, Pestman stated,

... you're unable to recognize Nuon Chea's handwriting, but that you look at the date on the document or the date of the annotation and, if it isn't Son Sen's handwriting or your own handwriting, you simply assume it's Nuon Chea's handwriting.

This prompted CPLCL Ms. Elisabeth Simonneau-Fort to object, arguing that the Nuon Chea Defense's statement was inappropriate because it was a "conclusion that my colleague wishes to draw from the questions he asked before." Notably, the OCP supported the use of this technique in questioning the Witness, along with the Ieng Sary and Khieu Samphan Defense Teams, who asserted that this method is followed in the ICTY, the ICTR and the ICC. According to Karnavas, this is –

... a procedure that is used at the ICTY and elsewhere. In fact, it is in the (ICTY) rules that counsel must put his case to the witness; it is absolutely necessary. This was something that was injected into the rules at the ICTY by the former Judge May who passed away during the Milosevic Trial. There is nothing wrong with the question; it gives the – the witness an opportunity to explain. It is an open-ended question, and the witness can accept or deny it.

After deliberations, the Trial Chamber overruled the objection and allowed Pestman to continue examining Duch. However, President Nil Nonn reminded the Parties that the ECCC does not practice adversarial proceedings as in the ICTR or ICTY. Mindful of the complexity of the question posed earlier, the President also instructed Pestman to keep his questions short and simple. Nevertheless, counsel proceeded to ask a number of elaborate questions that spurred objections from the other Parties. As a consequence, the Trial Chamber directed Duch not to respond to several of these questions.

### **C. Procedure on Presenting Documents to a Witness**

The proper procedure for using documents in examining a witness took up a considerable time in this week's proceedings. On several occasions, Trial Chamber had to remind the Parties of the procedure established over the past weeks. In the course of the Parties' examinations, the Chamber also ruled on new issues relating to the presentation of documents.

#### **1. Introduction of a Document to the Witness**

The Trial Chamber has continuously reminded the counsels of the following procedure on the presentation of documentary evidence:

- (i) Each Party must read out the document and Evidence Reference Number (**ERN**)<sup>20</sup> of materials in Khmer, English and French to enable the Chamber and all the other Parties to view the document that would be presented to the Witness.
- (ii) The document must then be projected on the screen and a hard copy given to the witness to read.
- (iii) The Party conducting the examination must ask whether or not the witness recognizes the document.
- (iv) If the witness had seen it before, then he may be asked regarding the document. According to the Chamber, a witness is considered to have "seen" the document if the witness had encountered it after the DK period of 1975-1979 or if he or she accessed it only during the OCIJ investigation.
- (v) If the witness had not seen the document prior to his appearance before the Chamber, the document must be retrieved from the witness and should no longer be shown on the screen. The witness cannot be asked specific questions on the contents of the documents. However, Parties may still ask general questions relating to the document.

Despite repeated reminders from the Chamber, there were a number of occasions when the Parties did not adhere to these procedures.

#### **2. Requirements for Use of Documents**

The Trial Chamber has ruled that documents presented in court must be in the Case File and included in the Parties' Documents Lists that identify documentary evidence they intend to use in the course of the proceedings. In his examination on Wednesday, Pestman attempted to introduce a part of a statement Duch made during his trial in Case 001, which were not included in the Nuon Chea Defense's Documents List. Pestman argued that he did not want to tender the document as evidence before the Chamber because he was only using it to confront Duch with specific statements contained in the document in question.

The OCP, while agreeing that the Defense has the right to test the reliability and credibility of witnesses, maintained that the Chamber's rules on the use of documents must consistently apply to all Parties. Smith explained that, based on the Parties' discussion with the

Chamber's Senior Legal Officer during a trial management meeting, the use by a Party of documents intended to challenge the credibility of a witness requires notice to the other Parties. He further emphasized that Parties need notice of at least 24 hours before the use of documents in court, particularly since the Defense Teams would have been aware of the documents they would use to impeach a witness in advance.

The Chamber, albeit recognizing the right of the Defense to test the credibility of a witness, ruled that –

the rights shall be guided by the rules in the Internal Rules concerning the questionings to the witness. And the documents you wish to put before the Chamber shall be the documents that (are) already placed in Case File 002. And thirdly, the documents you wish to put before the Chamber shall be done in accordance with the guidance of the Chamber. The documents shall be informed to the Chamber at least no later than 24 hours before it is put before the Chamber.

Pestman accepted this ruling and gave an assurance that they will provide the Trial Chamber and the Parties with a list the next time they examine a witness. He stressed however, that they maintain that they should be allowed to use documents that are not in the Case File but are nevertheless relevant to establish the truth. These documents, he explained, could be placed in the Case File after the examination.

However, the same issue cropped up again when Pestman tried to present a sequence from *Duch, Master of the Forges of Hell*,<sup>21</sup> a recent documentary film by Rithy Panh. The Prosecution objected that the Nuon Chea Defense did not place the film in the list of documents they intended to present that day. Smith further argued that, since the film was not in the Case File, the Prosecution was objecting to the introduction of the movie until the Defense can establish its admissibility as new evidence under Rule 87.4. "These trials are large trials. If Parties just produce documents by complete surprise, it won't lead to the good, efficient management of proceedings," Smith exhorted. Reminiscent of yesterday's argument, Pestman maintained that he did not intend to put the document in the Case File; instead, he only wanted to use it to impeach the Witness.

The Trial Chamber sustained the objection and disallowed the showing of the film. Judge Cartwright further clarified that if the Defense Counsel wanted the film shown, he would need to make an application for the admission of a new document under Rule 87.4.

### **3. Witness must be Presented with the Entire Document**

Pestman attempted to challenge Duch's ability to recognize a document without annotations, by covering an annotation purportedly made on a confession executed in S-21 (after Duch had submitted it to the upper echelon). Both the OCP and the Civil Party lawyers objected on the ground that the Defense Counsel should show the Witness the entire document. The Trial Chamber sustained the objection and directed Pestman to show Duch the document in full.

### **4. Witness Cannot be Asked to Comment on Statements by other Witnesses**

In previous sessions, the Chamber ruled that asking a witness to comment on a statement made by another witness was not allowed.

During this week's hearings, Pestman attempted to confront Duch with statements about him made by a certain Prak Khan, an interrogator at S-21. The Prosecution objected, citing the Chamber's rulings on the matter. Pestman argued that Duch was familiar with Prak Khan's

statement because it was presented in Case 001 and maintained that they should have the right to confront Duch with other persons' statements that contradict Duch's testimony. He added that since Prak Khan is not on the Case 002 Witness list, the Chamber would not be able to question him on this issue.

The Trial Chamber reiterated its relevant ruling but indicated that, "Counsel may pose questions by citing the general – the summary of the statement of other witnesses before putting question(s) to this Witness." Consistent with its previous rulings, the Chamber explained that in examining a witness, disallowed references to statements made by other witnesses.

Pestman then asked for further guidance if this rule applies to every witness (i.e. even those will not testify before the Chamber), or if it is relevant only if the potential witness would appear in court. The Trial Chamber, however, did not respond to Pestman's request, and the legitimate points he raised remained unanswered.

#### **5. Witness Cannot be Asked to Comment on Interviews by Third Parties**

Pestman attempted to present Duch with a copy of an interview reportedly given by Mr. Heng Samrin to Ben Kiernan in 1991, detailing his role in the liberation of the city in 1975. Based on previous rulings of the Chamber, the OCP objected to the presentation of this document to the Witness after the latter indicated that he was not familiar with its contents. Smith suggested that, alternatively, Pestman ask about the subject in general. The Chamber sustained the objection, instructing Pestman to ask only general questions and not to refer to particular portions of the interview. In the course of Pestman's examination however, he still continued to refer to Mr. Heng Samrin's interview, prompting the OCP to raise objections twice. The Trial Chamber reminded the Defense Counsel to try his best to follow the Chamber's direction.

#### **6. Witness Cannot be Asked to Comment on the Chamber's Decision**

In order to cast doubt on Duch's credibility once again, Pestman asked Duch to comment on a Trial Chamber statement in the Case 001 Judgment. In the Statement, the Trial Chamber opined that Duch "lacks credibility" when he claimed that certain letters were given to him by Son Sen personally.<sup>22</sup> The Prosecutor argued that it was inappropriate for Duch to comment on the Trial Chamber's Judgment. Karnavas disagreed, saying that this is the opportunity for the Witness to comment on where he was found to be less than honest, since he himself qualified that while he was 100% truthful, he might have gotten things mixed up on some occasions.

After listening to the Parties, the Chamber sustained the OCP's objection and directed the Witness not to respond. "There is nothing to be gained by asking for his views on the Chamber's decision," Justice Cartwright added.

#### **D. All Documents Attached to Records of Interviews of Witnesses Considered Put Before the Chamber**

During discussions on the time allocations for each Defense Team on Monday, Khieu Samphan's international counsel, Mr. Arthur Vercken, asked the Chamber whether, in its deliberations, the Court will consider only documents and testimony put before it during the trial or all pieces of evidence in the investigation stage of Case 002. According to Vercken, this will determine the time they would need to conduct their examination, considering that Duch gave around 65 interviews to the OCIJ. In response, the Prosecution, supported by the CPLCL, took the position that all prior statements and prior testimony made by a witness

should be taken into account in the Chamber's deliberations. Smith stated that in accordance with international criminal law practice, all the prior testimony and statements of a witness should be taken into consideration.

In response, the President and Judge Lavergne referred the Parties to Internal Rule 87.3, which provides that the Chamber will consider all evidence placed before it. Judge Lavergne stated –

We cannot make do with parts of documents read out. When a document is tendered into evidence, it is the entire document which is used by the Chamber as the case may apply. I think we have already clarified this matter and stated that when a witness is testifying all prior testimonies, all prior declarations have to be tendered into evidence, which means that the parties have the opportunity if they so wish to rely on those documents to ask questions, and that is part of adversarial proceedings.

The next day, Smith asked for clarification on how this ruling affects Memorandum No. E172/5, paragraph 4 of which provides:

All documents attached to the written record of interviews of witnesses or Civil Parties who have testified to date, and those witnesses, Civil Parties and experts identified in memorandum E172 for the next trial session, will be considered as having been put before the Chamber with the testimony of that individual, unless objected to by the parties during this testimony.<sup>23</sup>

Smith likewise asked for clarification on documents not included in the oral arguments held on 12-15 March 2012: Annex A12, pertaining to written statements of a witness, and Annex A13, the complaints, in reference to paragraph 7 of the Memorandum, which states that further directions on documents contained in Annex A12 and A13, shall follow in due course after the issuance of a decision in these areas. The other Parties expressed support for the OCP's request for clarification. Simonneau-Fort, remarked that, "it is very important for the Chamber to clearly make the distinction between those records of interviews (of witnesses and Civil Parties obtained by the OCIJ during judicial investigations) and other written statements that may have been made by other persons, and the other statements not having the legal weight of transcripts of hearings." It is then up to the Chamber to assess the probative value of these documents.

After deliberations, the Trial Chamber announced that it will issue its decision on the objections in due course. As regards documents relating to Duch, however, it declared that all written records of his interviews with the OCIJ in Case 001 and Case 002 are considered placed before the Chamber in their entirety, regardless of whether or not these interviews are discussed in court. It also allowed the use of Case 001 transcripts, holding that, "the Parties may put before the Chamber relevant portions of transcripts but must clearly identify those portions that they intend to use as the basis for questions." Moreover, it upheld *in toto*, paragraph 4 of its Memorandum (E172/5).

#### **E. Admissibility v. Authenticity of a Document: The Right of a Witness to Challenge Documents**

Pestman presented Duch with the record of his interview with journalist Christophe Peschoux, which is cited (in a footnote) in the Closing Order and thus deemed put before the Chamber. Instead of reading the document to the Chamber as Pestman requested, Duch manifested that he had rejected this document from the very beginning. He also indicated



that he is questioning its authenticity because the original document was never submitted to the Chamber and the tape of the interview was confusing.

Judge Cartwright clarified that the Trial Chamber did not rule on the authenticity and probative value of the record of Duch's interview in Case 001. She added that while Counsel may ask questions based on the document, Duch is nevertheless allowed to challenge the document in any way that he thinks is appropriate. Thereafter, Duch once again refused to comply with Pestman's request for him to read the document, saying, "I am here to listen to the Judges, not you."<sup>24</sup> Intervening, Judge Cartwright informed Duch that he may challenge the document's authenticity and give his comments before counsel asks him questions. Pestman argued however, that it was the Parties' role to challenge the authenticity of a document and not the Witness'.

Upon the resumption of the session on the afternoon, the Chamber ruled that, since the document has been admitted into evidence (as a footnote in the Closing Order), the Court will assess its probative value at a later stage.

#### **F. Balancing of Rights**

On the third day of this week's proceedings, Pestman asked the Chamber to allow Nuon Chea to make a five-minute statement in response to Duch's testimony. The OCP did not object but indicated that Nuon Chea must answer the Parties' questions after giving his statement. Further, the OCP requested the Chamber to attach little weight to Nuon Chea's statement if he refuses to answer questions. Similarly, Civil Party lawyer Mr. Barnabe Nekuie was of the opinion that Nuon Chea's statement should be treated as a testimony and thus, the Parties must be allowed to question him on his statement. He moreover invoked the need for the Trial Chamber to balance the right of the Accused right to remain silent with the rights of other Parties, in accordance with the principles of fair trials under Internal Rule 21. He went on to say that there is no rule allowing accused persons "to sometimes step out of their silence to make statements and then return to their silence." The Chamber did not comment on the manifestations of Smith and Nekuie. Instead, it ruled that while it was not the appropriate time for Nuon Chea to give his statement, he may do so at later time.

### **IV. TRIAL MANAGEMENT**

The Chamber faced extra challenges in managing the trial this week, primarily because of time constraints. First, there was a need to provide the Parties sufficient time to examine Duch. Second, each Party needed the opportunity to argue their positions on the legal and procedural issues that arose in the course of the proceedings. Third, the Chamber itself required time to deliberate on these issues and clearly communicate the resolution thereof to the Parties

#### **A. Court Schedule**

The Chamber adjusted the schedule in an effort to ensure parity among the Parties and to respond to the various exigencies of the trial.

Traffic jams caused by the ASEAN Summit in Phnom Penh delayed the hearing on Monday. After lunch, Nguyen asked the Chamber to clarify how much time the Civil Party lawyers had left to examine Duch and requested for additional time. The Chamber did not grant the Civil Party lawyer's request for additional time but a lengthy discussion on various issues between the Parties took up most of the afternoon's last session and preempted the Civil Party lawyers' examination. Consequently, Chamber ordered the extension of the last session to

make up for the late start of the hearing and granted the Civil Parties an additional hour the next day to make up for the time spent discussing the schedule.

In response to Pestman's query regarding the schedule, the Trial Chamber confirmed that the Defense Teams were to allocate three days among themselves. Each Defense Team expressed that they needed more time to examine Duch. Pestman pointed out that since the OCP and the Civil Parties had almost seven days to examine the Witness, the Defense should be also allowed seven days to conduct their examination.

The Chamber did not issue a ruling on the schedule but it allowed the Nuon Chea Defense to examine Duch for two days, and granted them an additional session after Pestman indicated that their time was insufficient. Notwithstanding this extra time, Son Arun was unable to complete his questions at the end of Thursday, and asked for an additional hour. Before ruling on the Nuon Chea Defense's request for more time, the Chamber asked the other Defense Teams' respective time requirements. Both Karnavas and Vercken asked for at least a day for their teams. As the Chamber will only sit for two days next week because of an approaching national holiday, the Judges ruled that the two teams will proceed with their examination on Monday and Tuesday. They indicated that Son Arun may use the remainder of the time allocated for the Defense if the two other teams do not use all their time.

## **B. Courtroom Etiquette**

The charged atmosphere in the courtroom produced a number of concerns in decorum this week. During the heated debate on the scope of the evidence that the Chamber will consider in deciding the Case, Karnavas attempted to stand and speak for the second time, an act the Chamber considered out of turn. "You are not permitted to take the floor counsel, you cannot just stand up and talk," the President admonished, reiterating the need to seek leave from the Chamber before taking the floor as it did last week.<sup>25</sup>

The proper manner in addressing witnesses also emerged, as tensions rose between the witness Duch and Nuon Chea counsel Pestman. Duch obstinately refused to answer several questions on various grounds. Pestman, used words like "lie" and "dishonest" in his questions, not only to impeach Duch's credibility but ostensibly, to provoke him as well.<sup>26</sup> The Trial Chamber admonished Counsel, and instructed the Witness not to respond to the question, as the term "dishonest" seemed to be used "to disgrace the honor of the Witness." Pestman replied that he was not the first to use the word "dishonest;" he noted that Duch referred to the counsel as "dishonest" earlier. Moreover, Karnavas pointed out, in the opening statements the Prosecution had called the Accused "killers" without any reaction from the Bench, which Counsel insisted was inappropriate. He further argued that the Parties should be able to directly confront a witness when he had apparently been dishonest. After this discussion, the Chamber did not issue a new ruling on this matter; the Bench simply indicated that its earlier ruling stands.

## **C. Attendance**

Before the start on Thursday, the President announced that Judge Lavergne was unable to attend the hearing due to some health issues. He was temporarily replaced by Reserve Judge Claudia Fenz.

All the three Accused were present at the start of the four days of hearing but only Khieu Samphan remained in the courtroom throughout the proceedings. As has been the usual case, at the end of each first session, Ang Udom requested permission for leng Sary to participate in the proceedings remotely from the holding cell, as he was suffering from lumbago and back pain. Before lunch break, Nuon Chea requested to go to the holding cell

through his international counsel. Each of the Accused was represented by his national and international counsels.

**Public Attendance.** The first to third sessions of each hearing day were fairly well-attended but there were significantly fewer people in the main gallery on the fourth session, as the bulk of the visitors usually left by this time to go back to their hometowns. Approximately 400 people observed the proceedings each day, including students from Phnom Chiso High School, Svay Rieng High School and Takao High School, and villagers from Takeo Province. More than 20 Civil Parties in the courtroom and the public gallery participated in this week's four hearing days.

**D. Time Table**

DATE	START	BREAK	LUNCH	BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 02/04/12	9.31	10.39-11.00	12.00-13.33	14.56-15.14	16.19	4 hours and 36 minutes
Tuesday 03/04/12	9.08	10.34-11.16	12.04-13.37	14.31-14.54	16.01	4 hours and 15 minutes
Wednesday 04/04/12	9.06	10.36-11.01	12.02-13.38	14.48-15.09	16.00	4 hours and 32 minutes
Thursday 05/04/12	9.05	10.55-11.20	12.14-13.33	14.37-15.00	16.12	5 hours
<b>Average number of hours in session:</b> 4 hours and 36 minutes <b>Total number of hours this week:</b> 18 hours and 23 minutes <b>Total number of hours, days, and weeks at trial:</b> 205 hours 55 minutes 47 TRIAL DAYS OVER 13 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 ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings; and
- 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)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
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, Nora Fuchs, Vidjia Phun, Princess B. Principe, Noyel Ry 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://www.krtmonitor.org)>, <<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/>> and <<http://socrates.berkeley.edu/~warcrime/>>. AIJI is a collaborative project between 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.

<sup>1</sup> The OCP requested for additional time for the third time during last week’s proceedings. Following objections from the Defense Teams, the Civil Party lawyers offered one hour of their allotted time to examine Duch to the OCP. The Trial Chamber denied the OCP’s request but allowed them to use the additional hour from the Civil parties. See KRT Trial Monitor Issue No. 16, Week 11 of the Hearing on Evidence (26-29 March 2012).

<sup>2</sup> In contrast, Nuon Chea described the contradiction between peasants and landowners as an “internal contradiction” that may be resolved through study sessions, discussions and other procedures. For more information on Nuon Chea’s testimony on contradictions, please refer to Asian International Justice Initiative.

KRT TRIAL MONITOR [hereinafter **CASE 002 KRT TRIAL MONITOR**]. Issue No. 8, Hearing on Evidence Week 3 (10-12 January 2012).

<sup>3</sup> Ibid. at lines 14-15. 100.

<sup>4</sup> The two other members of the Standing Committee, So Phim, Secretary of the East Zone and Ung Choeun alias "Mok," Secretary of Southwest Zone, worked outside of Phnom Penh.

<sup>5</sup> Trial Chamber. Transcript of Hearing (28 March 2012). Line 3, 50; lines 4-5. 98.

<sup>6</sup> Ibid. at lines 16-18. 99.

<sup>7</sup> Ibid. at lines 25; 1. 98-99.

<sup>8</sup> According to Duch, he and Seua Vasi were contemporaries.

<sup>9</sup> Duch identified Doeun as the Chairman of Political Office 870, later State Commerce Department. See Case 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012).

<sup>10</sup> See Kamm, Henry. *Cambodia: Report from a Stricken Land*. New York: Arcade Publishing (1998). 145.

<sup>11</sup> Mr. Ouk Ket was an engineer and diplomat, as well as Third Secretary at the Cambodian Embassy in Senegal. In 1977, he was recalled by the Foreign Ministry of Cambodia and instructed to return to Phnom Penh. He was arrested and sent to Toul Sleng, where he was executed on 9 December 1977. His wife, Martine Lefevre and their daughter, Ouk Neary, were Civil Parties in Case 001. See Case 001. Trial Chamber. Transcript of Proceedings (17 August 2009). E1/63.1. Lines 22-25; 1-6. 14-15. See also, Case 001. Trial Chamber. "Judgement" (26 July 2010). E188. Para. 650. 233.

<sup>12</sup> In its Judgment in Case 001, the Trial Chamber recognized Ms. Ros Chuor Siy Mr. Ros Sarin as a Civil Party for the loss of her husband Ros Sarin. See Case 001. Trial Chamber. "Judgement" (26 July 2010). E188. Para. 650. 231.

<sup>13</sup> It is interesting to note that Comrade Toeung, mentioned here by Duch, was called next to testify before the Trial Chamber and corroborated Duch's testimony that he served as a messenger between the S-21 Chief and Nuon Chea. See Case 002 KRT TRIAL MONITOR. Issue No. 19, Hearing on Evidence Week 14 (18-20 April 2012).

<sup>14</sup> According to Duch, Pang's real name is Chhim Sam Aok. Duch identified Pang as the head of the Government Office. See Case 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 4.

<sup>15</sup> See Rithy Panh, Director. *S-21: The Khmer Rouge Killing Machine* (2007).

<sup>16</sup> Mr. Heng Samrin has been the President of the National Assembly of Cambodia since 2006.

<sup>17</sup> Later, Mr. Peschoux served as the Representative of the UN High Commissioner for Human Rights in Cambodia for four years.

<sup>18</sup> Mohamed Faizal Mohamed Abdul Kadir. The Rule in *Browne v. Dunn* in Cross Examination: A Singapore Perspective. [www.lawgazette.com.sg/2011-07/155.htm](http://www.lawgazette.com.sg/2011-07/155.htm).

<sup>19</sup> *Browne v. Dunn*. 6 R. 67. H.L. (01 January 1894) provides in part:

...it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions have been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is still in the box, to give him an opportunity of making any explanation which is open to him.

<sup>20</sup> Each page of documentary evidence in the Case File has a unique ERN.

<sup>21</sup> See Rithy Panh, Director. *Duch, Master of the Forges of Hell* (2011).

<sup>22</sup> Case 001. Trial Chamber. "Judgement" (26 July 2010). 170. 62.

<sup>23</sup> Trial Chamber. "Memorandum, ( Updated Memorandum for next document hearing (12-19 March 2012))" (2 March 2012). E172/5. para. 4. 2.

<sup>24</sup> According to Duch, he was rejecting the interview on the following grounds: (i) it was not given to him in the original form; (ii) the date of the document was different from the date of the interview with Mr. Peschoux; (iii) it contained some inconsistencies, (iv) there were alleged inaccuracies in the tape of the interview.

<sup>25</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 13.

<sup>26</sup> On Wednesday morning, Pestman asked Duch: "I put it to you that the dishonest person is not me but is you. Why did you lie to Investigating Judges?" on his knowledge of the three terms used in S-21 "hot group, cold group and chewing group." On Thursday, he confronted Duch: "I put to you that you are dishonest and that you are blaming Nuon Chea for crimes you committed."





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