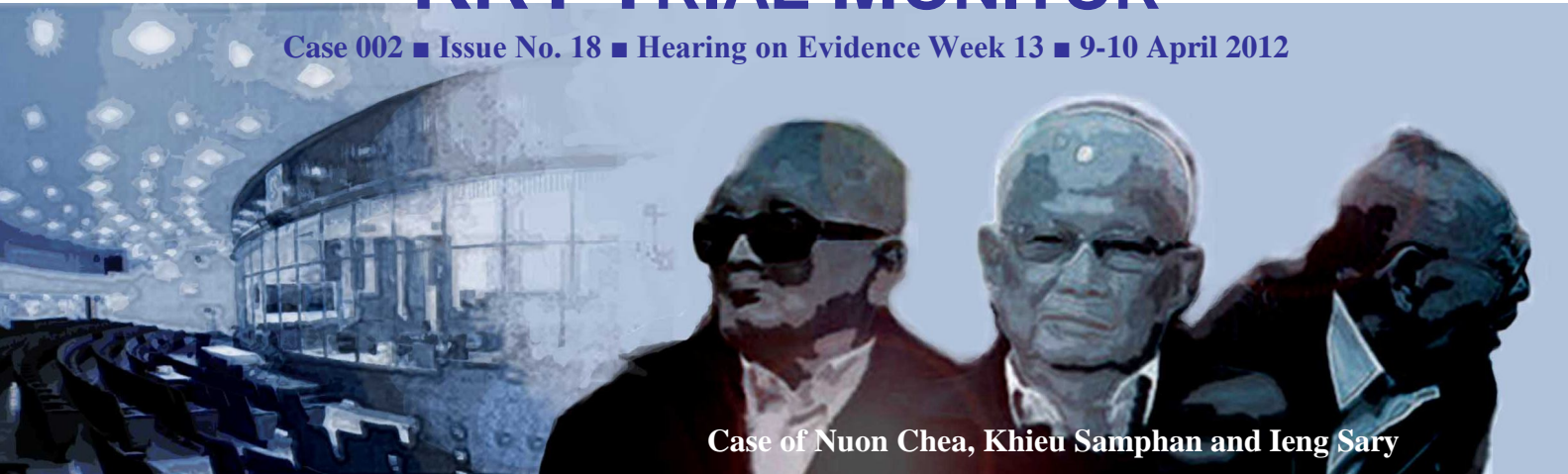


KRT TRIAL MONITOR

Case 002 ■ Issue No. 18 ■ Hearing on Evidence Week 13 ■ 9-10 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

So Brother Nuon issued the order directly through me. And let me recall some of the words in the order, and that I met him in person. He said: For all the remaining prisoners, you need to smash them all, Comrade.¹

- Witness Kaing Guek Eav, alias “Duch”

I. OVERVIEW

This week, the Ieng Sary and Khieu Samphan Defense Teams examined witness Kaing Guek Eav, alias “Duch.”

In a highly-charged inquiry that was fraught with numerous objections and non-responsive answers, Ieng Sary’s international counsel, Mr. Michael Karnavas, questioned Duch on his previous statements. Karnavas sought to prove that the Witness was merely a mid-level cadre who did not personally know how the leaders of Democratic Kampuchea made decisions. Karnavas submitted that Duch gained his knowledge about the regime, not contemporaneously but from his personal research for Case 001. Counsel further averred that Duch never had any interactions with Ieng Sary or the Ministry of Foreign Affairs (*MFA*).

Khieu Samphan’s international counsel, Mr. Arthur Vercken, aimed to show that his client had nothing to do with confessions, and that Duch’s statements relating to Khieu Samphan were either hearsay, mere assumptions, or based on information obtained from inadmissible S-21 confessions. He also pointed out inconsistencies in Duch’s statements. As Vercken finished his examination earlier than anticipated, the Chamber allowed Nuon Chea’s national counsel, Mr. Son Arun, to ask questions and conclude his own examination of the Witness.

Upon the conclusion of Duch’s testimony, the Chamber announced a short recess for the Khmer New Year, with proceedings to resume on 18 April 2012.

II. SUMMARY OF DUCH’S TESTIMONY

After more than six days of questioning by the Prosecutors, a day by the Civil Party lawyers, and more than two days by the Nuon Chea Defense, Ieng Sary’s and Khieu Samphan’s counsels were each given one day to examine the Duch, former Secretary of S-21.² While the Ieng Sary Defense used the entire day allotted to it for its questions, the Khieu Samphan Defense concluded its questioning in less than a day. The Chamber allowed Son Arun to use the remaining time to propound additional questions.

A. Duch's Examination by the Ieng Sary Defense

On Monday, Karnavas took the floor to examine Duch. He sought to discredit the Witness by showing that the latter was providing information he learned from Case 001 rather than testifying about his personal and contemporaneous knowledge and experiences during DK. Karnavas tried to establish that there was no working relationship between Duch and the CPK's upper echelon, and that Duch did not know anything outside the scope of his role at S-21. Karnavas sought to prove that the reason Duch knew so much about the hierarchy and its decision-making process was because Duch had studied materials on the Khmer Rouge for his own case before the ECCC, and had access to lawyers, as well as experts, particularly Mr. Raoul Jennar.³

1. Duch's Role at S-21

Duch admitted that he was a mid-level cadre and that his knowledge and his movements, were limited to matters relating to his position. Duch said he tried his best to adhere to the party lines and follow instructions from his superiors, Son Sen and Noun Chea. When he was at S-21, Duch's main responsibility was to obtain confessions through interrogation and torture techniques designed to force prisoners to reveal their involvement with the CIA, KGB, or Yuon (derogatory reference to the Vietnamese).

According to the Witness, initially, he sent prisoners' confessions to Son Sen. After Son Sen went to the battlefield on 17 August 1977, Duch reportedly submitted S-21 confessions to Son Sen's replacement, Noun Chea. Karnavas asked if he had persons being tortured write their confessions repeatedly, "because a certain truth, which was a lie, was being requested of them."⁴ Duch said there were times when Son Sen or Nuon Chea ordered him to re-interrogate prisoners, not for the purpose of constraining them to lie, but to make the confessions more precise. In the case of Koy Thuon, there was an order from superiors to make him re-write his confessions four times.

2. Interactions with DK Leaders

Duch testified that, apart from his superiors, he had no personal contact with the members of the upper echelon. While he said he had participated in an anniversary celebration led by Pol Pot and Nuon Chea, he had not attended any meeting where they discussed sensitive issues. He also confirmed that he neither visited the Ministry of Foreign Affairs or Office 870, nor received instructions from Ieng Sary, whether directly or through Son Sen.

When Karnavas asked Duch about the working relationship between Ieng Sary and Nuon Chea, Duch admitted that he did not know much about this matter, apart from the party's organizational principles (that may relate to their working relationship). When Karnavas asked Duch to relay information based on his own knowledge and not on principles, the latter replied, "(t)his is a very difficult question. I cannot answer this question."⁵ The Witness admitted not knowing the specific working relationship between Pol Pot and Ieng Sary either, but he said he knew that they were very important superiors. Additionally, he explained that, "in a hierarchical structure, the sector superior would have to listen to the superior in the structure."⁶

3. A Time of Fear and Secrecy

Duch said that he learned about the meeting where the Standing Committee decided the arrest of Suos Nov alias Chhouk from Son Sen. He also recalled asking Pang about the Standing Committee meeting on the arrest of a certain Seat because Pang happened to be nearby at that time. When Karnavas asked the Witness if he was in fear while working at S-

21, the latter confirmed that, beginning 1976, he was careful not to do anything that would cause his arrest. He also said, "(t)he saying goes that mind your business."⁷ Karnavas pointed out that Duch had asked Pang sensitive information that he (Duch) was not entitled to know. Karnavas proceeded to inquire whether Duch was unafraid that Pang would incriminate him for being too inquisitive. Duch answered that, "it was within the framework of [his] affair."⁸ He clarified that he was not trying to destroy the Standing Committee but asked only because he wanted to be aware. In the afternoon, Karnavas asked Duch about the circumstances of Vorn Vet's arrest. Duch recalled that when Vorn Vet was arrested and taken to S-21, he saw Vorn Vet, and asked for forgiveness. The Witness also asked Vorn Vet why the latter was arrested and what kind of person Pol Pot was so that he could protect himself and avoid what happened to Vorn Vet.

4. Confirming Previous Written and Oral Statements

Duch confirmed that his lawyers did not give him documents to review before his meetings with the OCIJ for Case 001. However, his lawyers provided him with materials as the case progressed. Duch related discussing the five stars of the flag of the Republic of China with Mr. Raoul Jennar, who was reportedly on his defense team and later testified as an expert in Case 001. Additionally, Duch said Jennar gave him a book on communism.

Karnavas then presented *Lessons Learned from the Experience of the Elders of Former Generations*, which Duch authored on 9 March 2012. Seeking to determine Duch's sources of information when he prepared the document, Karnavas asked Duch if it was based on what the latter "heard, researched, analyzed and summed up."⁹ Duch confirmed the document was an account of what "[he] personally experienced, heard, and researched."¹⁰

Karnavas proceeded to cite passages from the transcript of the 20 March 2012 proceedings wherein Duch stated –

However, if you really want me to only talk about what I knew back then, I am afraid I might – I may not have anything to tell the world about this because I was confined to S-21 in particular.¹¹

Duch confirmed the truth of this statement. He moreover confirmed the veracity of a number of statements he made during his interviews with the OCIJ:

I must first indicate that I have a better knowledge of the situation today compared to last August or last December. Indeed, as I went through the case file I understood better the organization of the regime.¹²

...

I, myself, did not know other people's work. From that point of view, one could not draw the conclusion that the regime was criminal but simply that crimes were committed at S-21.¹³

...

The reason being that I was waiting for the falling into place of the actual implementation of my request to demand a copy of evidentiary documents to read and consider and refresh my memory. xxx In summary, I need all types of evidence in order to contribute to enlightening the Court about the crimes which occurred at S-21.¹⁴

According to Duch, during the investigative phase of Case 001, the OCIJ provided him with questions that he answered weeks or months later. He confirmed that he gave statements to the OCIJ on his own initiative, one of which said, “(a)t S-21 I evaded work to the maximum. I accepted only the work that was unavoidable. I thus never grasped anything concretely.”¹⁵ Duch also stated that he had read Nic Dunlop’s *The Lost Executioner* and David Chandler’s *Voices from S-21 – Terror and History in Pol Pot’s Secret Prison* and gave his comments on these books to the OCIJ.

Duch also confirmed that during the DK period, there was frequently a person who acted as front or decoy to conceal the identity of an important person. He further reaffirmed that among the seven members of the Standing Committee, three were responsible for security: Pol Pot, Nuon Chea, and Son Sen.

5. Purge at the Ministry of Foreign Affairs

Karnavas asked Duch, if “factually speaking,”¹⁶ Duch knew how arrests at the MFA were conducted. In particular, Karnavas asked Duch if he could point to any evidence that shows Ieng Sary was informed or consulted before arrests were effectuated at the MFA for the purpose of transferring individuals to S-21. In response, Duch began explaining the “principle” of how decisions were made. He said that if Ieng Sary did not attend a Central Committee meeting, Pol Pot made the decision and forwarded it to Ieng Sary. The Witness then started enumerating documents that contained annotations made by Son Sen and Pol Pot, to show that Son Sen sought advice from Pol Pot.

After some effort from Karnavas, the Witness finally gave a responsive answer to Counsel’s question and admitted that he had never received instructions from Ieng Sary to extract information from anyone, instead of just giving examples of the applicable “principle.” The Witness also admitted that, “in practice,”¹⁷ he did not know what communications Ieng Sary had with either Nuon Chea or Son Sen regarding the arrests of persons from the MFA.

6. Ieng Sary’s Reported Role in Ensuring the Safety of Arrested Persons’ Children

Duch testified that Ieng Sary “kept” the children of Touch Kham Doeun, Comrade Nat, and another arrested person, and as a result, these children survived. However, Duch did not explain how Ieng Sary accomplished this feat. Instead, he expressed shame because he did not dare ask Angkar to make a center for orphans; but Ieng Sary nobly did. Duch admitted however, that he was not aware of these events at the time they occurred and that he learned of this information only in 1990. When asked if he had information as to whether or not Ieng Sary was involved in the arrests of the parents of these children, Duch answered that, “in principle,” Ieng Sary must have known. Karnavas pressed on and tried to get Duch to give a more concrete answer. Duch conceded that he had no evidence of Ieng Sary’s knowledge. The Witness maintained, however, that, in principle, Ieng Sary must have known of these arrests since he must have participated in the meeting where these arrests were decided, or that he must have been informed after the arrests were made.

B. Duch’s Examination by the Khieu Samphan Defense

Mr. Arthur Vercken, Khieu Samphan’s international counsel, sought to prove that Duch’s assertions regarding his client’s role in DK were based on assumptions or inadmissible evidence extracted through torture. Moreover, Vercken challenged Duch’s credibility and confronted him with his ostensibly inconsistent statements.

1. Interactions with Khieu Samphan

According to Duch, he had only seen the Accused, Khieu Samphan, from a distance during a commemoration ceremony on 17 April 1978. He admitted that, based on party principles, he did not have the right to meet Khieu Samphan because, at that time, they could only meet and report to their direct superiors. Since Khieu Samphan was not his direct superior, Duch was not allowed to meet him. He further stated that Son Sen never talked about the Accused with him because there was nothing related to the Accused for them to discuss. Vercken asked Duch to affirm whether or not Khieu Samphan read the S-21 confessions. The Witness stated that he did not know what his superiors did with the S-21 confessions, but he knew that nobody, particularly not Khieu Samphan, had read the confessions before Son Sen did.

2. Explaining Inconsistent Statements

Duch testified that Son Sen had “allowed” S-21 prisoners to implicate Pang, who was already being monitored at the time.¹⁸ This prompted Vercken to ask if it was prudent for Duch to have asked Pang about the operations of the Standing Committee, as he had claimed during his testimony to the Ieng Sary Defense Team the day before, knowing that Pang was being monitored. Duch explained that persons Pol Pot and Nuon Chea did not trust were not aware of the implications of their superiors’ mistrust. Thus, Pang would not have been aware of what was going on and they continued to work as they normally did. Duch believed there was no risk of Pang incriminating him in his confession because “(h)ow could the interrogator at S-21, would (*sic*) let Pang implicate me in that context? In addition, if Pang would implicate me, would the Standing Committee believe his implication?”¹⁹ Duch reaffirmed that he was not at all worried of being implicated by Pang. Vercken then confronted him with a prior statement, wherein he alleged that he was terrified. Duch explained that in general, there were several events that made him fearful. He reiterated that he was not afraid of conversing with Pang: he had access to his superiors and reported to them.

Previously, Duch claimed that he neither interrogated nor visited Pang in S-21.²⁰ In records of his interview before the Cambodian Military Tribunal, however, Duch recalled, “(s)ometimes I had conversations with those who had already been interrogated such as Touch Phoeun, Chhim Sam Aok alias Pang.”²¹ He had also mentioned talking to Chou Chet, and Vorn Vet after they were interrogated. Both Vercken and Judge Jean-Marc Lavergne confronted the Witness anent the discrepancies in his statements. Duch explained that there were ostensible inconsistencies in his statements because the records of the Cambodian Military Tribunal were merely summaries of his interview. The records referred to four individuals mentioned in the document without distinction, or as Duch described it, using a “single verb, a single adjective, and a single adverb.”²² Thus, he maintained that he met Touch Phoeun and Chou Chet after they were interrogated; he met Vorn Vet before he was interrogated; and he met Pang before he was arrested.

3. Source of Knowledge on Khieu Samphan’s Roles in DK

Duch said that he believed Khieu Samphan was in charge of at least one unit, particularly the electrical plant at Chak Angraé. He explained that Yuk Chuong, the chairman of the electrical plant who was arrested and brought to S-21, claimed that Khieu Samphan taught him how to be a CIA agent. When Witness disclosed this information to Nuon Chea, the latter did not say anything.²³ He interpreted Nuon Chea’s non-reaction as acknowledgment that the CPK appointed Khieu Samphan to take control over the plant.

The Witness moreover testified that on 6 January 1979 he attended a meeting at Suramarit Buddhist Lycée, which was chaired by the Accused and attended by Comrade Roeung. He concluded that since he knew that Comrade Roeung was the head of the state warehouse, the Accused must have been in charge of the state storage facility. Perhaps to elaborate

more on how he concluded that the Accused was head of the state warehouse, Duch stated that the chair of the meeting was usually the superior of the attendees. Vercken asked if they talked about the state warehouse during the meeting. Duch answered that they only discussed the Vietnamese invasion.²⁴

Moreover, Duch disclosed that he believed Pang when he (Pang) told him that Khieu Samphan signed his travel pass using the pseudonym "Khang." Duch explained that Son Sen, being his superior, usually signed his travel pass. However, when Nuon Chea replaced Son Sen as his superior, he intimated that Nuon Chea (whose position was too high) did not take on the task of signing his pass. This made Duch conclude that it was Khieu Samphan who signed his travel pass instead of Nuon Chea. As if to substantiate this conclusion, Duch recalled that he once saw Khieu Samphan's handwriting on a letter.

C. Duch's Examination by the Nuon Chea Defense

After the Khieu Samphan Defense concluded their examination, the Trial Chamber allowed the Nuon Chea Defense to use the remaining time to propound more questions to the Witness and wrap-up their examination. Mr. Son Arun asked Duch about the documents that Duch claimed proved Nuon Chea's involvement with S-21 and tested his familiarity with how the leaders of DK made decisions.

1. Letters from Nuon Chea

Son Arun followed up on Duch's response to Vercken that Nuon Chea had sent him a letter, instructing him to work with Vorn Vet.²⁵ When asked where Nuon Chea's letter was, Duch said he did not keep this particular letter, and explained that he left other letters from Nuon Chea at S-21 upon the arrival of the Vietnamese. Duch explained that he believed Nuon Chea's instructions were based on an order from Pol Pot. Pol Pot made the decisions and Nuon Chea implemented and monitored them.

2. Decision-Making in DK

Son Arun expressed incredulity at how Duch seemingly knew too much information, considering that he was only the Secretary of S-21. In reply, Duch explained that he started learning the party line and the statute of the CPK in 1967. He had also read about China's revolution. Pursuant to the communist party line, he stated, subordinates had to follow their superiors' orders; the deputy secretary had to listen to the secretary. The Witness also asserted that he had learned the Party Statute and was determined to respect the party. When he came to M-13, he was told to obey the decision of the Central Party.

Duch further indicated that Nuon Chea made decisions whenever Pol Pot was not present. He explained that at the time Pol Pot was sick, he reported a certain Kung Kien's S-21 confession to Son Sen, and "it was likely that Son Sen would deliver it directly to Brother Nuon -- that is, the evidence showing that, in the absence of Pol -- of Brother Pol, Brother Nuon would decide."²⁶ Duch further maintained that Nuon Chea personally gave him the order to smash the prisoners in S-21 on 1 January 1979. Nuon Chea reportedly said, "(f)or all the remaining prisoners, you need to smash them all, Comrade."²⁷ Pursuant to this alleged order, Duch had all the remaining prisoners smashed on 3 January 1979.

According to the Witness, when Comrade Lin or Nat asked him to attend a meeting on 15 August 1977, he was surprised to meet Nuon Chea instead of Son Sen. He said there was no official document transferring authority or appointing Nuon Chea to replace Son Sen as Duch's superior. However, Duch said Nuon Chea informed him that he was there to lead on Son Sen's behalf.

D. Demeanor and Credibility

Duch continued to appear confident during his testimony. He neither refused to answer questions nor hesitated to request to see documents before answering questions. Moreover, when presented with records of his previous statements, he often confirmed his statements or provided explanations if his present testimony seemed to be incongruent with answers he gave the OCIJ.

Nevertheless, Duch also has the tendency to be non-responsive to questions, and to discuss matters not explicitly raised in the questions at great length. For instance, when Duch was explaining discrepancies between his testimony before the Chamber and the Cambodian Military Tribunal at Vercken's behest, counsel had to interrupt to explain that the inconsistent statements he wanted Duch to clarify related to Pang and not the other persons referred to in the records. The President told Vercken that he had quoted a paragraph concerning several persons and as such, he should have been more precise. Vercken argued that he wanted Duch to explain the inconsistent statements that he had pointed out.

At this point, the Chamber (upon Duch's suggestion), instructed Vercken to remove the document if he wanted to only talk about Pang, because the document referred to several individuals. Interestingly, President Nil Nonn seconded Duch's reasoning, and said Vercken needed to remove the document. Karnavas opposed this ruling and argued that Vercken was doing a classic confrontation to prove Duch was lying. To deny this of the Defense was improper, Counsel argued. Karnavas insisted that Duch should answer the question, and should not be allowed to dictate how the Chamber controls the proceedings.

On several occasions, Duch tried to direct the discussion away from the question on hand, or failed to directly respond to the questions put on him. At one point, after Karnavas had posed a question, Duch informed the Chamber that he wanted to go back to a previous question. When the Chamber told Duch that he may proceed, Karnavas interrupted the Witness in his statement and said the Witness cannot "willy-nilly, just go to documents and talk on whatever matter he wishes."²⁸ Thus, President Nil Nonn told Duch to put away the documents he wanted to discuss and respond to the questions put to him.

From his examination this week, it appears that there were a number of instances when his testimony referred to facts he learned only during the investigation before the OCIJ or during his trial. However, the line between what he learned through his readings and what he knew and experienced contemporaneously during the regime are often indistinct.

III. LEGAL AND PROCEDURAL ISSUES

The Parties raised the issue of leading questions throughout the week. The Chamber clearly ruled that leading questions were not allowed. Additionally, the Chamber addressed the issue of "cherry-picking" select passages in documents, particularly the Closing Order. Another recurring issue that required resolution was the prohibition against the use of information obtained through torture contained in confessions.

A. Leading and Misleading Questions

During Duch's examination by the Ieng Sary Defense at the start of this week's proceedings, Karnavas interrupted Duch and firmly instructed him to limit his answers to either "yes" or "no." Judge Cartwright intervened and indicated that Parties "cannot restrict a witness to answering yes or no."²⁹ Parties may ask categorical questions that may be answered by "yes" or "no" but a witness was not obliged to answer in that manner. Judge Cartwright further reminded Parties that leading questions were not permitted. Karnavas took issue with

this, in light of a previous discussion with the Trial Chamber's Senior Legal Officer:

Well, with all due respect, we had a meeting with Susan Lamb, the senior legal officer, and this issue came up specifically. She informed us that the party who was confronting the witness, not the party leading the witness, would be entitled to ask leading questions; that's was -- that was what we were told.³⁰

He assured the Chamber that he would abide by its ruling. He pointed out, however that, he initially requested for two days to examine the Witness but was only granted one day. Already, he was trying to condense his examination and asking open-ended questions may be problematic because of time constraints. Judge Cartwright reminded Karnavas that the ECCC follows a different system and he was not conducting a cross-examination.

Soon thereafter, international Co-Prosecutor Mr. William Smith objected to Karnavas' questions and said,

...in light of Judge Cartwright's decision that leading questions shouldn't be asked, I think it would be easier and a more open question if counsel ask: Did you ever visit where he lived, rather than: You never visited where he lived?³¹

Smith subsequently raised a series of objections on the grounds that the questions were leading, misleading, speculative or confusing. Due to his limited time allocation, Karnavas frequently rephrased his questions without waiting for the Chamber to decide on OCP's objection. Karnavas said, "I move on. My time is precious."³² Karnavas, however, gave "fair warning",³³

Very well, Your Honour. My time is precious. I get the point and I do understand, and I hope that we're clear that I intend to be as disruptive as the Prosecution is being disruptive today.³⁴

B. Requiring Witness to Draw Conclusions and Selective Use of Statements in Documents

When Karnavas showed Duch a portion of the Closing Order stating that he could only be certain of the hierarchy directly above him, but did not know the details of the decision-making process for arrests, Smith objected on two grounds: (i) the Witness was being required to give an opinion on whether he believes the OCIJ's opinion is correct or not;³⁵ and (ii) Karnavas had cherry-picked parts of the document. Smith pointed out that this portion was only half of the proposition. A subsequent sentence stated that through Duch's experience at S-21, "Duch was able to observe that the framework contained in this Central Committee decision regarding the right to smash inside and outside the ranks, was implemented in practice."³⁶ Smith argued that Karnavas should have showed Duch the entire paragraph, because citing only half of the proposition could mislead the Witness.

The Chamber sustained the OCP's objection on the ground that the opposing counsel had not cited the entire passage. It further ruled that questions should not require the Witness to draw conclusions on the Closing Order.

C. Confession Obtained Under Torture

The issue of using documents obtained by torture was discussed again in Tuesday's proceedings. The Khieu Samphan Defense asked the Witness if there were any confessions that implicated Pang. Immediately, the Trial Chamber intervened and instructed counsel to refrain from asking questions concerning confessions obtained by torture. Vercken clarified

that he was not trying to use information obtained by torture, he merely wanted to know if there were confessions incriminating Pang. The Chamber then allowed Vercken to proceed with his line of questioning, but cautioned him to not base questions on statements of prisoners who were smashed in S-21.

IV. TRIAL MANAGEMENT

Proceedings this week went according to the Chamber's schedule, despite some outbursts from the lawyers and the Witness. Karnavas described the proceedings on 9 April as "rather combative."³⁷ Moreover, substantial translation issues marred the hearings. To the Chamber's credit, it remained generally patient throughout these challenges and brought the proceedings to order.

A. Courtroom Etiquette

After the President informed Vercken to remove a document from the Cambodian Military Tribunal if he only wished to ask Duch about Pang, Karnavas made an impassioned statement on how the President's ruling was incorrect and that the Witness should not get to control the proceedings. In response, the OCP stated that Internal Rule 22.4 requires lawyers to promote fair and effective conduct of the hearings. The OCP argued that he understood the frustration of counsel, however, "if all parties had outbursts like we saw from the Ieng Sary Defence team, this hearing would result in a real disarray and would take away from the integrity of the proceedings."³⁸

B. Time Management

Karnavas conducted his examination of Duch efficiently, with documents to be shown to the Witness already compiled and provided to the Greffier beforehand. Karnavas covered quite a lot of ground, considering the myriad objections and the non-responsive answers he had to deal with. However, when called to task for propounding leading questions, Karnavas said he was constrained to do so because of the limited timeframe given to his Team. He pointed out the ostensible inequality in time allotments between the Parties. The Prosecution was given more than six days to conduct their questioning and the Civil Parties one day, while the three Defense Teams had to contend with only four days among them.

The Khieu Samphan Defense, on the other hand, finished their examination in less than a day. With the extra time left in the fourth session, the Chamber allowed the Nuon Chea Defense to ask additional questions.

C. Attendance

All the Accused were present throughout the week. However, Ieng Sary requested to participate remotely from the holding cell after the end of the first session each day. Nuon Chea made the same request after the end of every second session. Khieu Samphan was present for all hearings of the week.

Early into this week's proceedings, the Trial Chamber announced that Judge Lavergne was back in good health after feeling unwell last week.

Attendance by the Public. On Monday, approximately some 300 visitors from Chhouk District, Kampot Province followed the proceedings. On Tuesday, students occupied most the seats in the public gallery, as 500 students from Preah Vihear Province observed the proceedings in court.

D. Translation and Technical Issues

Several times this week, the Judges noticed and called attention to inaccuracies in translation and technical difficulties with the audio system. On Monday, Karnavas said, "Okay. I'm told that we don't have translation in French, so let me repeat the question, and hopefully we can get the translation going because this is slowing us up."³⁹ President Nil Nonn later took the floor and commented on the translation error and technical issue when Karnavas put more questions to Duch. The Witness, showing annoyance, complained that the French translation was unsatisfactory. Karnavas opted to rephrase his question.

In Tuesday's hearing, Duch again mentioned there was an inaccuracy in the French translation, which was his preferred language during his appearance in court. Duch said that the Khieu Samphan Defense should not base the next question on the faulty translation. Moreover, while questioning Duch, Vercken stated that he could not hear the French translation of the Witness' response. President Nil Nonn also pointed out another mistranslation, and asked the Vercken to make the question clear in order to avoid confusion. Towards the end of the proceedings on the same day, the President instructed the Parties to wait for the translation to finish before proceeding with their questions and submissions. On some occasions during the week, the Trial Chamber had to ask the Witness or the lawyer conducting the examination to repeat what they said because there was no translation heard on the Cambodian channel of the devices.

E. Time Table

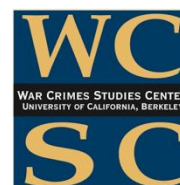
DATE	START	BREAK	LUNCH	BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 09/04/12	9.01	10.38-10.58	12.07-13.31	14.38-14.58	16.17	5 hours and 12 minutes
Tuesday 10/04/12	9.00	10.39-11.02	12.09-13.31	14.39-15.01	16.16	5 hours and 9 minutes
Average number of hours in session:				5 hours and 11 minutes		
Total number of hours this week:				10 hours and 21 minutes		
Total number of hours, days, and weeks at trial:				216 hours 16 minutes 49 TRIAL DAYS OVER 14 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; 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
OCF	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. 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.

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¹ Trial Chamber. Transcript of Trial Day 50 (10 April 2012), Case No. 002/19-09-2007. E1/62.1. [hereinafter, **10 APRIL TRANSCRIPT**]. Lines 24-25; 1-4. 89-90.

² The Supreme Court Chamber sentenced Duch to life imprisonment for having committed the following crimes: (i) crimes against humanity of persecution on political grounds, extermination (encompassing murder), enslavement imprisonment, torture and other inhumane acts; and (ii) Grave breaches of the Geneva Conventions of 1949, particularly, willful killing, torture and inhumane treatment, willfully causing great suffering or serious

injury to body or health, willfully depriving a prisoner of war or civilian of the rights of fair and regular trial, and unlawful confinement of a civilian.

³ Mr. Raoul Marc Jennar appeared in Case 001 as an expert witness. See AIJI Case 001 KRT Trial Monitor. Issue No. 21 (week ending 20 September 2009). See also Annex A to Issue No. 21. Available at <<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/>>

an <http://socrates.berkeley.edu/~warcrime/documents/KRT_monitoring_report_NO_21_week_20.pdf>, last accessed on 21 May 2012.

⁴ Trial Chamber. Transcript of Trial Day 49 (9 April 2012), Case No. 002/19-09-2007. E1/61.1. [hereinafter, **9 APRIL TRANSCRIPT**]. Lines 10-11. 7.

⁵ 9 APRIL TRANSCRIPT. Lines 15-16. 14.

⁶ Ibid at lines 21-23. 14.

⁷ Ibid at line 13. 24.

⁸ Ibid at lines 12-13. 28.

⁹ Ibid at lines 7-8. 44.

¹⁰ Ibid at lines 7-8. 45.

¹¹ Ibid at lines 23-25; 1-3. 45-46.

¹² Karnavas indicated that this statement was from the written record of Duch's interview before the OCIJ on 25 June 2008. 9 APRIL TRANSCRIPT. Lines 8-11. 48.

¹³ Karnavas indicated that this statement was from the written record of Duch's interview before the OCIJ on 5 May 2008. 9 APRIL TRANSCRIPT. Lines 19-21. 49.

¹⁴ Karnavas indicated that this statement was from the written record of Duch's interview before the OCIJ on 29 November 2007. 9 APRIL TRANSCRIPT. Lines 18-23. 62.

¹⁵ 9 APRIL TRANSCRIPT. Lines 2-3. 72.

¹⁶ Ibid at lines 6-7. 94.

¹⁷ Ibid at line 11. 104.

¹⁸ Trial Chamber. Transcript of Trial Day 50 (10 April 2012). E1/62.1. [hereinafter, **10 APRIL TRANSCRIPT**]. Line 5.

¹⁹ 14.

²⁰ 10 APRIL TRANSCRIPT. Lines 7-10. 18.

²¹ Duch said, "When Pang was detained at S-21, I did not interrogate him. I even -- I did not even go and meet him." 9 APRIL TRANSCRIPT. Lines 12-13. 8.

²² 10 APRIL TRANSCRIPT. Lines 20-21. 20.

²³ Ibid at lines 23-24. 35.

²⁴ Note however that, in his previous testimony before the Chamber, Duch said Nuon Chea reprimanded him and asked if he wanted Kheiu Samphan to get into trouble. Duch also intimated that Nuon Chea made a veiled threat by asking, "would you wish to go to be assigned to work at the embassy?" Working at the embassy or "beng sent as a diplomat" are alleged euphemisms for arrest and execution. See CASE 002 KRT TRIAL MONITOR Issue No. 16, Hearing on Evidence Week 11 (26-29). 9.

²⁵ Interestingly, Duch was neither asked nor did he explain why he attended a meeting chaired by Khieu Samphan when, being the Secretary of S-21, his superior at the time was Nuon Chea.

²⁶ Duch said, "When Pang was arrested, Brother Nuon asked Brother Vorn to meet me and he sent along with him a letter designating him to work with me." 10 APRIL TRANSCRIPT. Lines 17-19. 51.

²⁷ 10 APRIL TRANSCRIPT. Lines 16-19. 83.

²⁸ Ibid at lines 3-4. 90.

²⁹ 9 APRIL TRANSCRIPT. Lines 4-5. 37.

³⁰ Ibid at lines 3-4. 10.

³¹ Ibid at lines 25; 1-4. 10-11.

³² Ibid at lines 12-16. 13.

³³ Ibid at line 5. 25.

³⁴ Ibid at line 4. 25.

³⁵ Ibid at line 5-7. 25.

³⁶ This objection was sustained and the Trial Chamber directed Mr. Karnavas to rephrase the question so as Witness will not be required to give a subjective answer. The Trial Chamber reiterated this pronouncement when it ruled on the OCP's objection that counsel Karnavas had "cherry-picked" statements in the Closing Order.

³⁷ 9 APRIL TRANSCRIPT. Lines 9-12. 55.

³⁸ Ibid at line 11-12. 118.

³⁹ Ibid at lines 13-16. 33.

⁴⁰ Ibid at lines 10-12. 2.