



## “DUCH WAS A WILLING PARTNER”

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*Cambodian Co-Prosecutor Chea Leang delivers her closing arguments*

Today the co-prosecutors delivered their closing arguments in the trial of Kaing Guek Eav (alias Duch) and will conclude their statements tomorrow. The only drama in the courtroom was the fainting of one court official, which caused a short delay in the proceedings, and an audio failure mid way through the afternoon which caused an early adjournment. The court official was back in her seat working a short time later. The Cambodian and international co-prosecutors read from prepared statements which were summaries of their 160-page written submission to the court. So it was a monotone day of prepared statements mixing detailed expositions of the crimes and law with accusatory insights into the character and motivations of Duch as an alleged war criminal.

The courtroom was packed throughout the day, mostly with large groups of secondary school children in their school uniforms, Buddhists and Cham Muslims, and a sizable group of victims (including civil parties). I looked across the sea of young faces and wondered what they would remember of this day and how many could relate the horrors that had swept through their families three decades ago. When the work of the Extraordinary Chambers in the Courts of

Cambodia is concluded, it may well have achieved the largest participation of the victim population of any war crimes tribunal. The credit for that in no small measure goes to the Documentation Center of Cambodia under the leadership of Youk Chhang.

### **Cambodian Co-Prosecutor Chea Leang**

Chea Leang, the Cambodian co-prosecutor, launched into several hours of closing arguments by first acknowledging the statements of civil party lawyers on November 23rd. "They reminded us," she said, "of the never-ending impact of the accused's actions on the victims. It is like a knife that continues to turn inside each one of them for the rest of their lives. They have aching hearts that will never rest." Leang said the co-prosecutors have not been moved by calls for revenge or to forgive and forget. Their task is to prove their case beyond a reasonable doubt and ask that the law be applied fairly based on international standards of justice.

The victims, Leang said, were arbitrarily deemed to be enemies of the Khmer Rouge. They were threatened, intimidated, beaten, executed, forcibly drowned, force fed their own excrement, and subjected to other unspeakable cruelties. They met anonymous deaths in the darkness of the killing fields at Choeung Ek—a humiliating death at the hands of Cambodians killing fellow Cambodians. Leang noted that the victims of S-21 would fill the auditorium of the courtroom 24 times over.

Leang called for nothing less than a lengthy sentence of imprisonment for Duch despite his expressions of responsibility for the crimes, remorse, and respect for the victims. Furthermore, there was nothing remotely democratic about Democratic Kampuchea, she said, and Duch was a key part of that regime. Under it, 1.7 million Cambodians were massacred. The regime enforced a radical ideology that involved ruthless violence. The target of the violence was any non-conformist or anyone who would not submit to the authority of the state.

She described the term "smashed" to mean "executed and crushed to bits--obliterated." It was meant systematically to dehumanize the victims. While the Duch trial only focuses on one prison--S-21--it was no ordinary jail. Tuol Sleng was the model political prison in the entire country.

The Communist Party of Kampuchea (CPK) trusted Duch to discover plots against the revolution. Leang told the court he was totally indifferent to the suffering of the victims. Duch was the perfect candidate to run S-21. "He's always been treated fairly and with dignity by the court and he is represented by experienced counsel," said Leang.

There are so many crimes of such serious character consuming so many victims—crimes that shock the conscience of humankind, that Leang found the only answer in a lengthy prison sentence. It does not matter that others do not admit guilt (which none of the charged individuals in case 2 have done). She called for the ultimate sanction, presumably meaning a life sentence.

## **Jurisdiction**

Leang recited the fundamental elements of personal jurisdiction of the ECCC (in other words, "...senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia..." Art. 1, ECCC Law) In identifying the relevant individuals, Leang said the government itself was a sham source of power. The real power lay with the CPK, or "the Party." The Party was headed by the Central Committee and under that the Standing Committee really determined regime policies. The guiding force of "Angka" fed a culture of secrecy and evasion of accountability.

Since the ECCC Law does not provide statutory guidance on senior leaders, the co-prosecutors looked to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia. Leang explained that they needed to examine the gravity of the crimes, their temporal scope, territorial scope, and the manner in which the crimes were committed. She said they were not limited only to policy leaders. A number of subordinates also fell into the jurisdictional reach of the court. They found in Duch personal jurisdiction both at the senior leader level (his personal oversight of Tuol Sleng) and as a "most responsible" individual (he was permanent secretary of S-21 and intervened daily with the Standing Committee, and thus was responsible for S-21 crimes on multiple levels). As for "serious" crimes, the crimes at S-21 were among the worst of atrocities. More than 12,000 individuals were executed there and that qualified on the scale of "serious."

Leang raised the defense plea that Duch was being made a scapegoat. She emphatically rejected the scapegoat defense. S-21 was at the apex of the security offices of Democratic Kampuchea. Duch had unique access to and relationship with the leaders of the regime. S-21 was unique as it received prisoners from across the country. It also was unique because senior officials in the CPK and the government, as well as purged chiefs of other districts, arrived there for detainment and execution. The confessions at S-21 were sent to leaders of the CPK, so they were instrumental in advising senior leaders who next to arrest. No other prison chairman had more influence over the CPK leadership than did Duch.

## **Criminal Intent**

Leang opened this portion of her closing argument by examining the issue of Duch's criminal intent. She said he had not agreed that he committed crimes willingly. Rather, he claims to have acted under orders and duress (with the threat of death for non-compliance). His denial of intent bears upon the facts surrounding the crimes, she said.

Leang developed a line of reasoning that rests on what existed in Cambodia during the Pol Pot era: How could the facts of that reality be interpreted in any way other than to point to Duch's criminal intent to commit heinous crimes? The overwhelming horror of the facts must co-exist with criminal intent, she seemed to argue. She described Cambodia in stark terms:

The CPK constituted political persecution on a national scale. By 1976, there was no private property and the cities had been abandoned. The CPK began to target their own kind. The policy was to “smash” enemies inside and outside the ranks of the CPK. There were purges, including among the Central Committee. Thousands were arrested and executed.

On August 15, 1975, Son Sen convened a meeting, with Duch participating, at which the creation of S-21 was approved. In October 1975, S-21 became operational. About 1,500 prisoners were detained at any one time at S-21, which was a systematic torture and execution center. It existed to extract confessions prior to execution. Three groups of interrogators were formed to accomplish the task: the “cool” group, the “hot” group, and the “chewing” group. The co-prosecutors found that many of the surviving guards at S-21 were not keen to talk about their work there, perhaps out of fear of being arrested. But they were tools of the senior cadre and were both shaped and used by Duch and by the Central Committee. The objective of “smashing” enemies was continually enforced at S-21, with the CPK propaganda radio blaring all the time.

S-21 was a place from which no one escaped. During the trial the court heard from three prisoners whose talents as artists spared them from execution. In addition to the torments they described, there was the forcible extraction of blood and live surgeries. Blood would often be extracted until the prisoner gasped and died, completely drained of his or her own blood. Leang argued that to Duch, the practice of bloodletting meant nothing. In red ink, he would annotate next to the victim’s name, “smashed blood.”

Duch’s cruelty towards prisoners knew no limits, Leang contended. The interrogators had free rein to use their imagination and to ensure no premature death during torture sessions. High-ranking detainees were told that if they did not confess, the locations of their families were known and would be acted upon.

The arrest of an individual condemned him or her before arrival at S-21. Since no wrongful arrests could be made, elimination followed. At S-21 the cries of victims and stench of rotting corpses must have been ever present from the earliest days. Execution was a certainty for everyone. Each must have imagined death a 1,000 times over during their torture and detainment. Two witnesses before the court survived the killing fields at Choeung Ek to describe the fate of the victims. But no one can adequately explain the fear and anguish of victims other than that they knew, as they kneeled, that they would be executed. Every corpse was checked for signs of life. Throats were slit and stomachs opened with a knife before burial. Duch was the only prison official with authority to report all of this to senior leaders.

### **Crimes Against Humanity**

Leang proceeded to explain, as a summary of the co-prosecutors’ written submission, the crimes proven by these facts. The first category of crimes she described were crimes against humanity. The co-prosecutors argue that seven out of the nine crimes against humanity set forth in Article 5 of the ECCC Law were committed at S-21. The threshold requirement is that the commission of the crimes at S-21 had to be part of a widespread or systematic attack against a civilian

population. The crimes at S-21 indeed constituted a part of the wider commission of crimes against humanity throughout the country. Even if viewed in isolation, Leang said, the crimes at S-21 were widespread. The victims arrived from all over Cambodia to face torture and execution at the prison. The victims numbering more than 12,200 met the test for “widespread.”

What occurred at S-21 also must be described as “systematic” crimes, organized and orchestrated by the Party and that instructors of the Party implemented methodically and carefully. The tens or hundreds of thousands of individual attacks at S-21 constituted an Article 5 attack. The targets of the attack were predominantly civilians detained at S-21.

The definition for crimes against humanity in Article 5 of the ECCC Law has an additional requirement: that it be done, among other categories, on political, religious, or ethnic grounds. In fact, the attacks at S-21 were driven by political ideology and political persecution resulted. The attacks included ethnic discrimination against the Vietnamese prisoners. No religion, including Islam, Christianity, or even Buddhism, was tolerated. A perpetrator of crimes against humanity must have knowledge of the attack on the civilian population. Duch knew the crimes committed at S-21 were part of a widespread attack on civilians. He was in regular contact with the hierarchy of the CPK. Those meetings informed him of conditions elsewhere in Cambodia. By reading the extensive records of interrogations at S-21, Duch became fully aware of the context of the attack on the civilian population.

Leang then examined seven separate offenses of crimes against humanity at S-21: imprisonment, other inhumane acts, enslavement, rape, torture, murder, extermination, and persecution on political, racial, and religious grounds. She said that the figure of 12,273 prisoners at S-21 was compiled from documents recording names, but many who arrived at S-21 and died thereafter were never recorded, so the figure is likely considerably larger. There was no legal codification of the basis for arrests by the regime, so there was no legal system to oversee the operation. The plethora of barbaric acts at S-21 easily triggered the category of “other inhumane acts.” Duch issued direct orders to intimidate prisoners and accomplish these acts. The conditions at S-21 constituted enslavement, with Duch intending to exercise ownership and control over the detainees. He was criminally responsible for superior responsibility over acts of rape in the camp. Torture was indisputably part of S-21’ culture and was clearly systematic. It was the principal tool for interrogations and confessions. Duch, Leang claimed, personally mistreated prisoners. The killing of prisoners on such a vast scale constituted the crime against humanity of murder. Everyone detained had to be executed. The court had heard much testimony to this effect. The death occurred on a massive scale and thus triggered the crime against humanity of extermination. Discrimination occurred on political, religious, and ethnic grounds.

### **War Crimes**

Leang next turned her attention to charges of war crimes against Duch. Why is not charging Duch with crimes against humanity enough? Leang answered that question by stating that the rule of law requires that the co-prosecutors enforce the law, and that includes the Geneva Conventions of 1949 pursuant to Article 6 of the ECCC Law. It is important, she said, to see that grave breaches of the Geneva Conventions are punished, because that would have a deterrent

effect on future armed conflicts. The absence of war crimes charges would not tell the whole story about Duch, particularly in connection with the innocent Vietnamese who arrived at S-21.

Leang argued that five of the eight grave breaches described in Article 6 of the ECCC Law occurred at S-21: unlawful confinement, depriving a prisoner of war or civilian the rights of fair and regular trial, wilfully causing great suffering, torture or inhumane treatment, and wilful killing. She said it was beyond doubt that an international armed conflict began in April 1975 and lasted until January 1979. Duch was fully aware of the circumstances of the international armed conflict at least as early as when the first Vietnamese soldier arrived at S-21. In fact, Duch documented the arrival of the Vietnamese soldiers, who were supposed to be protected by the Geneva Conventions, in his own handwriting. They were entitled to prisoner of war status under the Third Geneva Convention. Duch was aware of the protected status of Vietnamese soldiers captured on the battlefield and Vietnamese civilians captured on Vietnamese territory during the war.

Leang stressed that Vietnamese suffered no less than Cambodians at S-21 and that Duch's criminal intent towards the Vietnamese was no different than towards the Vietnamese prisoners. Leang described the elements of torture as a war crime to be identical to those of torture as a crime against humanity. While she admitted the prosecution had no specific evidence of torture of Vietnamese detainees, she believed such torture could be reasonably inferred for the common use of torture at S-21.

Leang concluded by describing the applicability of Article 3new of the ECCC Law, which brings certain crimes under the 1956 Penal Code of Cambodia within the jurisdiction of the court. She said these were no less worthy of enforcement by the court. "This is a court for the Cambodian people and it is important to see national laws being enforced and used to protect them." The Penal Code, in her view, clearly defined Duch's actions as criminal, particularly murder and torture. Leang described the barbarity that existed in the prison as being projected by the crime of torture.

### **International Co-Prosecutor William Smith**

International Co-Prosecutor William Smith rose to direct his closing arguments directly at Duch's culpability for the crimes charged. He began with a series of rhetorical questions about justice, among them: What is justice for the 12,200 people killed so cruelly at S-21? What is justice for the families and friends of the victims? The judgment of the court will not bring the victims back to life. The victims will not see their children play; perished adolescents will not fall into love; the slaughtered parents will not look proudly at what they left behind. The prosecution's job is to achieve a sense of justice. Justice will be done by applying the ECCC Law, by conducting a fair trial, and by proving facts beyond a reasonable doubt. The sentence must be in accordance with international standards of fairness. The court's mission is retribution and deterrence. The people of Cambodia are worth protecting and their lives are worth respecting. "S-21 should never have happened and it should never happen again," Smith pronounced.

What, then, is justice? Smith said it can be discovered by factoring in the gravity of the crimes, the impact of the crimes on victims, and Duch's role in the commission of the crimes. Duch claimed during the trial that the crimes at S-21 occurred against his will, under threat of death, and with no chance of escape. He paints himself as a victim of the system. Smith described Duch as neither a prisoner, nor a hostage, nor a victim. Rather, he was an idealist, a CPK revolutionary, and a crusader prepared to sacrifice everything for the cause. This, Smith claimed, is the significant difference between the prosecution and the defense in this case.

Smith claimed it was no coincidence that Duch led a comfortable family life during the Khmer Rouge years. He attained a senior position. He maneuvered to the chairmanship of S-21 with hard work and attention to detail. He wanted to eliminate enemies of the Party. He developed one-on-one relationships with senior leaders of the CPK. He continued to work with them for 15 years *after* Democratic Kampuchea collapsed. Duch was one of only two officials invited to meet with Son Sen on August 15, 1975, to create S-21. The number 21 was picked by Duch for personal reasons. He hand-picked his most trusted people as interrogators and torturers. He wanted to supervise at S-21 but not do the dirty work himself. He taught interrogation techniques, vigorously pursued his enemies, and ordered torture of detainees.

Duch, Smith claimed, fed the regime's paranoia with his interrogation reports. His close relationships with senior leaders suited Duch well; he constantly needed to be mentioned by them, to please them, and be praised for his work. Duch spoke fondly of Son Sen during the trial. He described him as being his biggest influence. When Nuon Chea replaced Son Sen in 1977, Duch retained his position at S-21 and reported to Nuon Chea.

The extent of Duch's authority at S-21 was total. He was meticulous, logical, and bordered on the obsessive. Duch has a selective and brilliant memory. In his world at S-21, rules must always be obeyed and order maintained at all times. His staff numbered 2,000 and he carefully selected and trained them. He ruthlessly enforced the rules and instilled constant fear in his staff. 155 executed detainees were former S-21 staff and Duch initiated or approved their executions. He chose not to use less extreme forms of punishment. For Duch, the principal role in life was to ensure that the political ideology of the CPK was strictly enforced. As a trained teacher, skilled interrogator, and firm believer in the cause, he was perfectly suited to the role he assumed at S-21.

Smith described Duch's role in training sessions at S-21 and stressed Duch's understanding that dehumanization was essential in the training. Duch was an excellent manager of the torture center at S-21. He took a hands-on role regarding every aspect of the work. Indeed, he could not have made it work any more effectively. Whenever a decision needed to be made at S-21, Duch was the one to make it.

Smith continued to explain Duch's involvement in the core activities of S-21. He was an active investigator. He took a pro-active role in arrests of individuals who were brought to S-21. He personally initiated hundreds if not thousands of arrests. He developed the "strings of traitors" theory that compelled interrogations under torture followed by new waves of arrests. The arrests usually were made under subterfuge to lure the individuals to S-21. Duch actively

participated in a massive purge of the CPK. Only he confirmed when an interrogation was complete. He particularly enjoyed interrogating high-level prisoners.

But, Smith said, Duch could not succumb to one of the most human of impulses—to alleviate the pain of others. His attitude was so hardened and absolute that there was no room for friends and close associates. Two friends of his were horribly tortured at S-21. One, a woman, was raped with a stick up her vagina. The second was forced to eat his own excrement. Duch's denials, Smith argued, lacked any credibility given his own annotations regarding these two individuals, and there were hundreds of other annotated interrogations. He demonstrated a complete lack of mercy for the prisoners of S-21.

Smith described how Duch personally participated in torture at M-13 prior to his move to S-21. Indeed, over a period of 7.5 years, Duch beat and tortured prisoners. Why would he commit such crimes over such a long period of time if he was not ordered to do so? Because, Smith answered, Duch had an ardent belief in doing it. "The infliction of pain was not something he hated, but something he found necessary and perversely gratifying," Smith said.

In Duch's reports to his superiors, the attention to detail was "astonishing," according to Smith. Ninety percent of the prisoners at S-21 presented no danger to the CPK. For the vast majority of prisoners, Smith applied his own techniques of torture. He synthesized the interrogations reports for the benefit of his superiors. He has an almost photographic memory for details.

In annotations, Duch simply wrote, "Kill them all." "Interrogate four, kill the rest." "Smash." His personal participation in most interrogations and torture would not have been the best use of his time. Whether orders of senior leaders were required or not, Duch's orders to kill went ahead. All executions required his approval at S-21. The senior leaders trust Duch to kill everyone at the right time. He was the willing participant in the plans. So did he hate doing it all and act only in fear? Smith questioned the plausibility of how Duch could take such an innovative and activist role in running Tuol Sleng and the treatment of its prisoners and simply do it all out of fear.

Duch was a strong believer in Communist ideals. That belief system gave him the resolve to develop and prove himself in the revolution. Though he claims being trapped after 1971, all of the evidence disproves his claim. While defense counsel claimed that no one dreams of becoming a mass murderer, Duch prepared to do anything to further the cause of the CPK. He was a leading crusader of the Party.

Duch expressed such admiration for Son Sen that Smith wondered what that really meant. Duch claimed that Son Sen threatened Duch with his life if he did not do his duty. But then he holds Son Sen in the highest regard. How, Smith wondered, did Duch have such faith in a man who forced him to bring such pain and agony into the lives of so many? The answer can be found, Smith said, in the fact that there actually were no threats by Son Sen; the two men were soldiers in the same crusade.



Smith remarked that the prolonged length of the trial allowed Duch to talk freely and the more he did so, the more the truth slipped out into the courtroom. “The more he speaks, the more he reveals the truth.” Duch had a “good feeling” about meeting Pol Pot in 1978, even though Pol Pot was the mastermind of the atrocities. In fact, Duch was proud to represent S-21 as the chief ideologue. How could someone be so proud of his superiors who wanted him to commit such crimes? How could someone be so proud to indoctrinate his staff to torture and kill? It was because Duch believed in the Party and he was so content in his work that the Party believed in him.

Smith then ventured into Duch’s personal life to seek out more explanations. Duch married at the end of 1975, after he already had taken part in his first torture and killing exercises at S-21’s initial location in Phnom Penh. That fact did not prevent him from starting a family. He fathered two children while he was arresting and killing children at S-21. “What a horrid disconnect to the humanity around him,” Smith lamented. “While feeding his own children, Duch was starving and killing other children.” Smith believed the explanation lies in the consequence of a need for something to believe in. Duch saw himself as protector of Party central. He could not be a revolutionary and have any feelings. Smith placed significant weight on expert David Chandler’s trial testimony. According to Chandler, Duch firmly believed in interrogations. It was part of the Party line Duch had no trouble accepting.

If Duch now admits that he implemented CPK policy and believed in doing so, rather than claiming he hated his work, lived in fear, and had no chance of escape, such an admission will come very late. The victims will have lived with his lies for years.

Smith summed up his view of Duch as a perpetrator of crimes against humanity and war crimes in Pol Pot’s Cambodia: “Duch was a willing partner, not because he was ordered to commit the crimes, but because he believed in their legitimacy. He was extremely efficient in carrying out the crimes at S-21. He was no prisoner of the regime. Duch was nothing less than a willing participant in the crimes.”

Throughout Smith’s closing argument, Duch gazed to his right, away from Smith. His eyes wandered up to the ceiling, to his defense counsel, and to his console. But he refused to make eye contact with Smith. At times Duch appeared gaunt, sad, and lonely.

Due to audio problems mid-afternoon, Smith was unable to finish his closing arguments. He will resume on Wednesday, November 26, and then be followed by the defense.