



## **THE DUCH TRIAL RESUMES**

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### **The Scene**

After a taxi, three flights, another taxi, a tuk-tuk, and a shared ride, I reached the Extraordinary Chambers in the Courts of Cambodia (ECCC) located on the outskirts of Phnom Penh in time for the resumption of the Duch trial. After being searched twice for food, beverages, electronics, and weapons, I found myself in the observation section separated from the proceedings by floor-to-ceiling glass, which reminded me of watching a hockey game or looking into an aquarium. The crowd consisted of approximately 75 observers, about half of whom were Cambodian. At 28, I was among the ten oldest observers in the room. There was a large group of what appeared to be local high school students and there were about 45 Cambodian and Western folks sitting around in groups with notebooks in-hand observing on behalf of some organization or another. I spotted two groups of guidebook-carrying tourists, none of whom made it back after the lunch break.

Everything was user-friendly. Observers are given hand-outs with information about the ECCC, including descriptions of key players in the Duch trial. The proceedings are broadcast over a loud-speaker in Khmer, but observers can listen to the proceedings in French or English with individual headsets that are provided at the entrance. Flat screen televisions are spread throughout the air-conditioned observation area for close-up views of speakers and the supporting documents they present. During breaks, observers can drink cold water, access free internet, and visit the concession stand. Apart from the upsetting subject matter, the laid-back setting makes observing the Duch trial a very comfortable experience.

On the other side of the glass, everything was very formal. The parties exchanged pleasantries while they awaited the arrival of the judges. A bell rang. The audience stood. The judges entered. The judges, clerks, and lawyers all wore heavy robes in red, purple, and black, respectively. Three witnesses, the prosecutors, and all the civil party lawyers sit on one side as if to intimidate the defense counsel and Duch who sits opposite them. The judges face the audience, but never appeared to notice anything beyond the glass. Duch examined the crowd. The trial resumed.

## **The Substance**

### **Implementation of the Communist Party of Kampuchea Policy at S-21**

After taking care of the minor procedural matter of recognizing Ms. Elisabeth-Joelle Rabesandratana, a new lawyer for Civil Party Group 3, President Nil Nonn turned the floor over to Judge Lavergne to continue questioning Duch about the implementation of the Communist Party of Kampuchea (CPK) policy at S-21. Before the recess, with an eye towards expediting the trial, all had agreed to allow a Cambodian ECCC clerk to read aloud paragraphs of the statement of agreed facts, including comments made by Duch, and to allow Duch to add further comments and clarifications. There was some initial confusion and delay as the translators did not have the newest version of the statement of agreed facts, but a little paper shuffling and a lot of running around fixed this problem.

After each series of paragraphs was read, Judge Lavergne asked Duch if he had any comments and sometimes followed up with a clarifying question or two. Regarding the CPK policy of “smashing” enemies, Duch explained that decisions to send enemies to S-21 were made by members of the CPK Central Committee, specifically Son Sen and Nuon Chea, who he believed to be acting on behalf of the Standing Committee.

Duch clarified that by 1976, the CPK had largely eliminated the exploiting classes. Thereafter, most people arrested and sent to S-21 were those from rural areas who had conflicts with the CPK.

On March 30, 1976, the CPK clarified its authority to execute enemies within the regime and sent people in the revolutionary ranks to S-21. This marked the beginning of a new period in which internal purging became predominant. The CPK expanded the list of those within the party empowered to order and implement smashing to include four groups: Zone Standing Committees, the Secretary of the Central Committee, the Standing Committee, and the Secretary of the General Staff.

Duch explained that the political meaning of “smash” was to arrest, detain, interrogate with torture, and execute without the knowledge of one’s family members. When pushed by Judge Lavergne to supply a literal meaning of smash, Duch said that while the term had never been explained to him directly, the term conveyed the meaning to crush or reduce to nothing. Duch noted that with regard to implementation, the term “resolve” had the same effect as the term smash.

Duch agreed with statements that he had taught the party line at S-21, including extrajudicial execution. He further admitted to disseminating the party line by teaching interrogators that S-21 had to aid the class struggle by smashing the oppressor class.

### *Confessions*

In addition to executing prisoners, Duch agreed that a major purpose of S-21 was to extract confessions in order to discover networks of traitors. Duch agreed confessions were used by the CPK to get rid of those who presented obstacles, regardless of whether a confession contained false information. He stated that as a general principle only people

mentioned in several confessions would be arrested; however, in practice – at least for “less important people” – only a couple of mentions could result in arrest. In his role of reading, analyzing, and annotating confessions for his superiors, Duch stated he had no tools to measure their veracity and tried to limit his bias toward any individual.

There was a lot of back and forth between Judge Lavergne and Duch regarding what role Duch played in disseminating partial or complete confessions both written and recorded. Duch explained that he had no authority to propose that a confession be disseminated or broadcast. Rather, he would come across extracts of confessions in *Revolutionary Flag* or *Revolutionary Youth* magazines after the fact. He noted that the only full confessions disseminated were those of Vietnamese detainees. Judge Lavergne showed great interest in the use of confessions as part of the internal CPK power struggle and Duch noted that confessions were used in the power struggle between Pol Pot and Ta Mok.

Judge Lavergne asked if Duch knew of any legal safeguards or tribunals through which citizens could protect their individual liberties if they were implicated in a confession. Duch explained that all power – executive, legislative, and judicial – was concentrated in the Standing Committee. He said there were no individual liberties, no courts, and no law – only party lines and policies.

#### *Translation*

Duch was vigilant about translation and brought up several issues throughout the day. For example, he compared the Khmer and French versions of a statement and pushed for consistency stating that “noticing” and “saw with his own eyes” did not share the same meaning.

#### **Expert Testimony on CPK Structure and Policies**

The day ended with expert testimony from Dr. Craig Etcheson, an American scholar who has studied Democratic Kampuchea for approximately thirty years and currently works as an investigator in the office of the co-prosecutors at the ECCC.

Judge Cartwright asked him a series of specific questions regarding the organization of the CPK, the responsibilities of various CPK organs, and the CPK’s foundational documents before focusing her questions on the relationship between CPK organs, Duch, and S-21. Judge Cartwright sought confirmation of several of Duch’s statements from Dr. Etcheson and in most cases received it. Dr. Etcheson confirmed that under the CPK’s strict hierarchy Duch would be required to follow Son Sen’s orders and that the Standing Committee indeed exercised power over security in the zones. However, Dr. Etcheson disagreed with Duch’s testimony that Son Sen ordered the establishment of S-21 in 1975, arguing that Son Sen would not have the authority to do this alone and was likely acting pursuant to a decision of the Standing Committee.

Dr. Etcheson will be back on the witness stand tomorrow morning to continue his testimony.