



A DAY ONLY A LAWYER COULD LOVE

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A large group of Cambodians arrived by bus this morning. They took group photographs outside the court and appeared excited to take in the Duch trial. They observed nearly a full day of procedural disputes, so I doubt they will be back.

In the morning session, the Trial Chamber continued to question expert witness Craig Etcheson, an American scholar who has studied Democratic Kampuchea for three decades. In response to questions from Judge Cartwright, Dr. Etcheson reported that indeed there were widespread "purges" throughout the Revolutionary Army of Kampuchea (RAK) across the divisions. As illustrative examples, he noted that 855 military personnel were purged from Division 310 starting in December 1976 and continuing throughout 1977 and at least 406 military personnel were purged from Division 703 in 1977 and 1978. Dr. Etcheson testified that while some of the military personnel were executed within their own units or sent to forced labor camps, many were sent to S-21. He cited a Division 502 Secretary report to Son Sen that mentioned more than fifty "no-goods" had been sent to S-21 as evidence that division commanders were aware of S-21 operations and actively sent people there. Dr. Etcheson testified that it was common practice for detainees sent to S-21 to be accompanied by a letter from a division secretary stating that they had been implicated as co-conspirators in confessions. Dr. Etcheson further reported that there were widespread arrests within government ministries and cited a report by a government minister that his day-to-day operations were made difficult by the fifteen-percent reduction in his staff.

Substantive proceedings then came to an abrupt halt due to an objection from defense counsel, Francois Roux. In response to a question from Judge Cartwright regarding other sources from which S-21 received prisoners, Dr. Etcheson provided some detailed analysis of S-21 and referred to documents in the case file that were not cited in his 2007 expert report, "Overview of the Hierarchy of Democratic Kampuchea." Referring to a Chamber order, Roux argued that Dr. Etcheson was slated to discuss, among other topics, the organization and operations of Democratic Kampuchea – not S-21. In order to adequately prepare for this session, Roux argued that the defense should have been informed that the expert would testify specifically regarding S-21 and provided with a supplemental expert report containing Dr. Etcheson's analysis of the subject matter. Roux also objected to the use of two documents for which no French translation was

immediately available. After roughly an hour of clarifying questions from Judge Cartwright and comments from the co-prosecutors and the civil parties as well as a "half hour" recess lasting more than forty-five minutes, the Chamber announced it would adjourn for an extended lunch-break to deliberate.

After lunch, President Nonn announced that the Chamber is not bound by the scope of the expert report and as such judges and parties have a right to ask the expert all relevant questions. Likewise, the expert is not bound by his previous written statements or reports. Further, as a general rule, all documents should be available in all three of the court's working languages (Khmer, French, and English), but the Chamber will accept documents in Khmer and one other working language if necessary due to the limited translation services available and given the Internal Rule 21 duty to conduct the trial within a reasonable time. The Chamber gave the defense until tomorrow morning to review the documents unavailable in French and agreed that the parties would not refer to the substance of those documents until then.

Judge Cartwright resumed questioning Dr. Etcheson. Before allowing the expert to complete one answer, Roux again voiced frustration – this time, because the expert was using charts, not included in the case file, to illustrate his answer regarding the high concentration of district cadre sent to S-21 in 1977 and 1978. Dr. Etcheson testified that S-21 was the only security office with authority to detain people from the whole country and to interrogate members of the Standing Committee and Central Committee. S-21 was also unique in that it received the highest ranking or most important prisoners, including leading cadre from zone, sector, and district echelons as well as government leaders.

Dr. Etcheson testified that during the time period before Duch became Chairman of S-21 it was not uncommon for prisoners to be released; whereas, when Duch was Chairman, releases were very rare. The expert mentioned that new documents received from the Documentation Center of Cambodia indicate some releases occurred. He said that while these documents were not yet in the case file, he imagined the defense would be comfortable with his reference to them given their exculpatory nature. Civil Party Lawyer Elisabeth-Joelle Rabesandratana later objected passionately to this statement arguing that the victims' rights were not being respected and inquiring as to how she could object to evidence not explicitly introduced. In response to a clarifying question from Judge Lavergne, the expert clarified that if one includes S-24 under the heading "S-21" given that S-24 was under the authority of Duch, then prisoner releases were much more common at "S-21." S-24, a re-education camp, categorized detainees as follows: (1) light offense prisoners; (2) serious offense prisoners; and (3) intermediate category prisoners for which it was necessary to determine if their offense was light or serious. Dr. Etcheson explained that due to harsh conditions many died at S-24, but often light offense prisoners were deemed "reformed through labor" and released.

Finally, Dr. Etcheson explained that most S-21 detainees were transferred there after first being detained within their own unit of organization. Less common scenarios included off-site arrests made by S-21 personnel and on-site arrests of senior party leaders lured to Duch's office under false pretenses.

When the President turned the floor over to the co-prosecutors to question the expert, a major procedural issue again halted the proceedings. Under ECCC Internal Rule 87, the Chamber must base decisions only on evidence from the case file that is “put before the Chamber,” which requires that evidence be “summarized or read out in court.” Co-prosecutor Alex Bates asked for guidance on how best to put the 148 documents cited in Dr. Etcheson’s expert report before the court as reading them out or summarizing them could take days or even weeks, depending on the method. He suggested summarizing the documents by type and listing them individually in index form. To ensure a fair trial, objections could then be made to individual documents. Given the opportunity to respond, defense counsel Roux got really fired up and accused the co-prosecutors of flooding the tribunal with “totally useless” documents that could lead to “unconscionable delay” in the proceedings. Roux suggested that the court apply Internal Rule 85 which gives the President authority to “exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth.” Roux insisted that the co-prosecutors be forced to select important documents. To this, Bates responded that the expert had selected these 148 important documents from thousands. The judges, looking a bit flustered, conferred briefly and then called for a late start tomorrow to give them time to deal with this major procedural issue.

All parties today demonstrated genuine interest in the fair resolution of procedural issues – both minor and not so minor. However, the debate over procedural issues predictably slowed down the proceedings.