



“ONE ALWAYS HAS CHOICES IN LIFE”

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Today, nearly thirty civil parties were in attendance to observe the trial of Kaing Guek Eav (Duch), about ten of whom sat in the courtroom while the others sat in the public gallery next to me. With the exception of the three civil parties who sit patiently behind the four groups of civil party lawyers every day, the rest of the civil parties apparently come to the trial periodically to meet with their attorneys and observe the trial, which may result in the award of collective and moral reparations if Duch is found guilty. On days like today when neatly-dressed Cambodians with informational pamphlets outnumber T-shirt-clad Western legal interns with notebooks, the trial feels more like a historically significant event to be experienced than a legal experiment to be analyzed. The civil parties put faces on decades-old atrocities involving millions that are often discussed in a matter of fact, history-book manner. In short, they bring the trial to life.

Before this interested audience, Khmer Rouge expert Craig Etcheson continued his testimony. Dr. Etcheson explained that while all security offices used beating, whipping, suffocation, and electrocution on prisoners, Tuol Sleng prison (S-21) employed a broader range of torture techniques including burning body parts, ripping off fingernails, pouring salty water on open wounds, tormenting prisoners with poisonous insects, dislocating shoulders, and various forms of water torture. Dr. Etcheson also described the “starvation rations” that were given to prisoners as a “low-impact method of execution.” Dr. Etcheson explained how torture techniques were generally passed down orally among party officials and described Duch as the principle trainer in torture techniques at S-21.

Dr. Etcheson explained that torture practices evolved over time at S-21 in conjunction with methodologies for extracting confessions. While all security offices obtained confessions of enemies, S-21 employed a more elaborate and vigorous confession-producing process resulting in extremely detailed and lengthy confessions, in some cases exceeding one-thousand pages. Dr. Etcheson reasoned that because high-level cadre and party members were interrogated at S-21, such individuals had more topics to discuss of interest to interrogators.

Dr. Etcheson credited Duch with developing the practice of co-conspirator list development during interrogation – one type of list was written by a prisoner and another type was created by interrogators through a process of analyzing confessions. These lists

of enemies were so helpful to Duch's superiors that they promoted him to be Chairman of S-21. Duch had a habit of making handwritten notes on confessions, which Dr. Etcheson opined was a work practice Duch developed during his previous career as a school teacher. Some annotations, for example, instructed interrogators to employ torture or seek particular content for confessions, such as affiliation with the CIA or KGB.

With regard to confessions, an evidentiary issue arose, which is sure to come up repeatedly until an official ruling is made. President Nil Nonn reminded the parties that the Trial Chamber is bound by Article 15 of the Convention Against Torture. As such, statements made as a result of torture cannot be invoked as evidence except against a person accused of torture as evidence that the statement was made. This means that the fact that a confession was made as a result of torture is an admissible fact, but the contents of such confessions cannot be accepted for their truthfulness. Judge Cartwright clarified that at least for now the Trial Chamber will handle confessions on a case-by-case basis; if a party wishes to discuss the contents of a confession, the Trial Chamber will examine the conditions under which the confession was made to determine whether the contents can be entered as evidence. Judge Cartwright commented that the Trial Chamber is not prepared to make a definitive ruling on this matter since it is currently before the Office of Co-Investigating Judges.

Seeking to soften the blow of the morning's testimony, international defense counsel Francois Roux asked several hours of questions aimed at exposing the Khmer Rouge as a "regime of terror" in which Duch was an uninformed, run-of-the-mill cadre with no choice but to follow orders and implement the party line emanating from the party center. Revisiting his testimony from yesterday about the Khmer Rouge's policy of extreme secrecy and tight control over information, Dr. Etcheson clarified that Duch represented an exception among party cadre because he had frequent personal contact with Son Sen and Nuon Chea of the upper echelon and would have had access to confidential information through his interrogations of high-ranking party members at S-21. Dr. Etcheson confirmed his testimony from yesterday that Duch's confession methodology led to widespread purges. According to Dr. Etcheson, Duch developed and institutionalized techniques for the extraction of confessions whereby prisoners were forced to name nearly everyone they knew over the course of weeks or months; those lists of names were used to round up new traitors to which the same process was applied. As such, Duch was responsible for "exponential growth" in victims. Dr. Etcheson argued it was the zeal with which Duch pursued this methodology in combination with the party center's paranoia that resulted in disaster.

Roux pushed Dr. Etcheson, "Did [Duch] have a choice?" Dr. Etcheson opined that "one always has choices in life." Roux then pointed out that Duch is still alive, apparently implying this would not be the case if Duch had been disobedient. The session came to a close with Roux passionately repeating a comment he made yesterday: "I don't like and I never have liked scapegoats."

On Monday, June 8, the Duch trial will resume with Duch answering questions about the implementation of Khmer Rouge policy at S-21 and the armed conflict between Vietnam and Cambodia. The Pre-Trial Chamber may conduct proceedings next week, but there has not been an official announcement by the ECCC as yet.