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45 years sought for Duch James O'Toole & Cheang Sokha October 19, 2010

Prosecutors at the Khmer Rouge tribunal are seeking a 45-year prison term without parole for former Tuol Sleng prison chief Kaing Guek Eav, saying that the 30-year sentence he received in July is “plainly unjust”, according to an appeal made public Tuesday.

In their 66-page appeal, the prosecutors asked that the former jailer, better known as Duch, receive a life sentence that would then be commuted to 45 years due to his unlawful pretrial detention.

They also requested that “a further reduction be made as appropriate for the very limited mitigating circumstances” in the case, a reduction that international co-prosecutor Andrew Cayley said should be five years “at an absolute maximum”.

The prosecutors said the gravity of the crimes committed had led them to “an unmistakable conclusion that the Trial Chamber failed to exercise its sentencing discretion properly”.

“The facts are stubborn. They will not go away,” the prosecutors wrote in their appeal.

“There comes a point where the crimes committed are sufficiently grave and the offender sufficiently notorious, or in such a position of authority, that the highest sentence must be imposed. That point was reached and passed here.”

Duch became the first person sentenced at the tribunal in July when he was found guilty of crimes against humanity and grave breaches of the Geneva Conventions for his role as head of the Khmer Rouge secret police and his leadership of Tuol Sleng, a facility in which nearly all of the perhaps 14,000 prisoners who passed through were eventually killed.

The Trial Chamber judges initially settled on a 35-year sentence, rather than a maximum life term, because of mitigating circumstances including Duch’s cooperation with the court and his “limited” expressions of remorse.

They deducted an additional five years because of the period of unlawful detention Duch served at a military court following his arrest in 1999.

With credit for time served, Duch stands to be released in roughly 19 years, a sentence that a number of victims charged was unacceptably short.

Cayley said the decision to appeal had been driven both by legal analysis and public opinion.

“We certainly listened to the public in making this decision, and certainly to the victims, which we have an obligation to do, but I also think we examined the judgment very carefully and we felt that too much consideration was given to the mitigating circumstances,” Cayley said.

During closing arguments last year, the prosecution requested that Duch receive a 40-year prison term.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said that in view of international precedent, the nature of Duch’s offences could augur an increased term.

“The average seems to go up when you’ve committed crimes over an extended period,” Heindel said. “I do think that that is an important factor that should weigh in.”

Duch’s defence lawyers have also announced plans to appeal against the judgment, charging that their client does not fall within the tribunal’s mandate to investigate “senior leaders and those most responsible” for crimes committed under Democratic Kampuchea.

The prosecution has requested that appeal hearings be held publicly, and Cayley guessed that they would begin “towards end of this year or the beginning of next year”.

Tuol Sleng survivor Chum Mey said the appeal was in accordance with victims’ wishes.

“I think if the court sentences [Duch] to 45 years in prison, we would accept it because we consider that the same as a life sentence,” Chum Mey said.