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‘Shocking and heinous’ crimes Cheang Sokha & James O’Toole July 27, 2010

Tuol Sleng prison chief Kaing Guek Eav was sentenced to 30 years in prison at Cambodia’s war crimes tribunal yesterday. The verdict marks the first time a Khmer Rouge leader has been held to account in a court of law.

Taking into consideration time already served since his 1999 arrest, the accused – better known as Duch – faces roughly 19 years in prison.

Trial Chamber President Nil Nonn told hundreds of observers, court officials and victims that the “shocking and heinous” offences committed by Duch while he served as an administrator of Tuol Sleng, or S-21, had earned him a conviction for crimes against humanity and grave breaches of the Geneva Conventions.

“The accused trained his interrogators to use physical and psychological violence,” Nil Nonn said. “Individuals detained at S-21 were destined for execution.”

In explaining the decision not to hand down the maximum punishment, a life sentence, Nil Nonn said a number of mitigating factors had been considered, including Duch’s “cooperation with the chamber, admission of responsibility, limited expressions of remorse, the coercive environment in Democratic Kampuchea and the potential for rehabilitation”. The judges thus settled on a 35-year sentence, from which they deducted an additional five years due to the period of unlawful detention Duch served at a Cambodian military court between his arrest in 1999 and his handover to the Extraordinary Chambers in the Courts of Cambodia in 2007.

Prisoners in the Cambodian penal system are eligible for release after having served two-thirds of their sentences, though United Nations court spokesman Lars Olsen declined to comment on whether this could be an issue in Duch’s case. Duch will remain at the ECCC detention facility pending negotiations to find “a suitable prison for anyone

convicted at the ECCC”, Olsen said.

As with many other victims, 79-year-old former Tuol Sleng prisoner Chum Mey said he was angry that Duch had not received the maximum sentence.

“Duch’s cruel attitude remains, and I cannot accept this,” said Chum Mey, one of the few to survive a facility that claimed as many as 16,000 lives.

In a press release issued yesterday afternoon, the Cambodian Centre for Human Rights acknowledged that the sentence “may appear to be a light one”, but praised the judges for recognising the fact that “rights are for all, even those individuals who are viewed by so many as reprehensible”.

“It may be hard for some victims and observers to reconcile the findings of the court with the sentence handed down,” CCHR president Ou Virak said in the statement. “However, problems persist in Cambodia with detention practices, and the reduction in sentence as a result of Duch’s previous illegal detention offers a good example to our domestic courts.”

Vann Nath, another Tuol Sleng survivor, offered a more prosaic take.

“It is like a life sentence for him because Duch is 68 years old already,” Vann Nath said.

The sentence was determined by a supermajority of the Trial Chamber, with French judge Jean-Marc Lavergne dissenting on the grounds that Cambodian law did not provide for non-life sentences of greater than 30 years. The judges were also divided on whether the statute of limitations on crimes set forth in the 1956 Cambodian Penal Code had expired by the time investigations began in Duch’s case, and thus ruled only on the basis of international law.

The verdict came after six months of testimony last year in which 55 witnesses – experts, survivors and former Khmer Rouge cadres – appeared before the court. Duch himself was a vocal participant throughout the trial, but was not given the chance to speak during yesterday’s hearing.

Dressed in a blue button-down shirt and slacks, Duch appeared to be listening attentively as Nil Nonn read out the summary of the judgment. Save for a glance at Bou Meng as Nil Nonn recalled the Tuol Sleng survivor’s testimony before the court, Duch stared

emotionlessly at the judges throughout the hearing, and bowed briefly to them as he exited.

Cambodian co-prosecutor Chea Leang said the proceedings yesterday represented “a historic day for the ECCC” and for “the entire Cambodian people”. She also said, however, that the prosecution would consider appealing against the length of Duch’s prison term after “reviewing the basis of this sentence over the coming days”. Prosecutors had requested that Duch be given a 40-year prison term.

A number of civil party lawyers, though not empowered to challenge the sentence, expressed surprise at its brevity. Civil Party Group 2 lawyer Silke Studzinsky expressed doubts about Duch’s apologies and remorse, saying they had been left “without any value” following his surprise request for acquittal during closing arguments.

Defence attorneys were unavailable for comment, though observers said Duch’s dismissal of international co-lawyer Francois Roux earlier this month indicated that the accused likely planned to appeal in the event of a guilty verdict.

In the meantime, tribunal officials will continue their efforts to raise awareness about the court, particularly among young Cambodians with limited knowledge of the Khmer Rouge period. Court spokesman Reach Sambath said at a press conference following the hearing that 17,000 copies of yesterday’s verdict would be distributed at schools and villages throughout the Kingdom.

Standing under a cloudy sky outside the court afterwards, Reach Sambath said he had worked with his 14-year-old daughter the previous evening in composing his remarks, showing off her handwritten comments in the margins of his notes.

“I’m very, very proud, that the younger generation like my daughter had a chance to learn about the history, especially the dark history that affected the lives of their parents and grandparents,” he said.