

S-21 chief's detention 'unlawful'

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The Trial Chamber of the Khmer Rouge tribunal ruled Monday that Tuol Sleng prison chief Kaing Guek Eav, alias Duch, was unlawfully detained by the Cambodian Military Court prior to his arrest by the UN-backed court and could be entitled to a reduction of any sentence resulting from his ongoing trial for crimes against humanity and grave breaches of the Geneva Conventions.

In the 15-page ruling, the chamber sided with the defence in finding that Duch's eight-year detention at the court - from 1999 to 2007, when he was transferred to the custody of the Khmer Rouge tribunal - was "an error of application of procedural law" and "a violation of his rights."

But the chamber denied the defence lawyers' request to suspend Duch's provisional detention, ruling that he should remain in jail for the duration of his trial.

Duch was arrested and detained by the Military Court on May 10, 1999, on charges that Monday's filing describes as "broadly similar" to the ones he currently faces, which relate to the deaths of some 16,000 prisoners from Tuol Sleng during the Khmer Rouge years. The chamber found that, under the Law on Duration of Pre-Trial Detention, adopted by the Cambodian government in 1999, provisional detention for genocide, war crimes and crimes against humanity charges could last for only three years.

Francois Roux, Duch's international co-lawyer, declined to comment on the court's decision to continue his client's pretrial detention.

"But I notice, with pleasure, that the court ruled with us on the other point that we raised about Duch's detention by the Military Court, which is that it was unlawful," he said. "So he can demand compensation when the judges discuss his sentence."

In addition to arguing for his continued detention, the co-prosecutors had argued that "any alleged violation" of Duch's rights "is irrelevant" before the tribunal because they had not requested that Duch be detained by the Military Court, according to the filing.

Unanswered question

Though the chamber ruled that Duch would receive credit for the eight years he spent at the Military Court, parties and observers said Monday that the more pressing question

was whether any sentence would be reduced even further due the fact that his rights were violated.

"Of course everybody knew the 10 years he spent in jail ... should be subtracted at the end," said civil party lawyer Alain Werner, referring to the amount of time for which Duch has been detained so far.

"The big question is whether they're going to consider whether more time should be subtracted because it was unlawful," Werner said.

The chamber put off answering that question until sentencing, assuming Duch is convicted.

Youk Chhang, director of the Documentation Centre of Cambodia, also said he was eager to see whether the court would reduce a sentence on account of the unlawful detention.

"It is only then that we will decide whether we will be happy ... or whether we have to find other means to fulfil our wishes for justice," he said.

Duch faces a maximum sentence of life in prison. The tribunal does not have the power to impose the death penalty.

Administrative meeting

Also Monday, Trial Chamber Judge Silvia Cartwright noted that there were "wide variations in parties' estimates of the time needed to complete the evidence" that has yet to be presented at the trial.

"These range from August to December of 2009," she said.

She said the chamber would begin "assigning speaking times" to various parties as an attempt to speed up the process.

Civil parties, for instance, will generally be allotted 40 minutes for each witness, she said.