

# *The* CAMBODIA DAILY

## **Duch Stuns Trial With Request To Be Released**

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Kaing Guek Eav, alias Duch, asked judges at the Khmer Rouge tribunal on Friday to acquit him and release him from detention.

“I would ask the chamber to release me. Thank you very much,” Duch told the court in his final words on the 77<sup>th</sup> and last day of his war crimes trial.

The request to be freed, which stunned onlookers, was the climax of several days of increasingly fractured closing arguments from Duch’s defense team, which appeared to be in a state of disarray by the trial’s close.

Duch’s Cambodian lawyer, Kar Savuth, unexpectedly argued on Wednesday afternoon that Duch was not guilty, that the Khmer Rouge tribunal had no jurisdiction to prosecute him, and that the court should drop all charges and immediately release his client.

This was an abrupt departure from the defense’s strategy over the past nine months, which has acknowledged Duch’s guilt and responsibility for crimes committed under his chairmanship of S-21 prison while emphasizing his remorse and cooperation with the tribunal.

In court on Thursday, Duch’s international defense lawyer Francois Roux admitted to “disagreements” within the defense team and implied that he had been forced to explain to his co-counsel, Mr Savuth, some basic points of international law. He then recommenced arguing for a mitigation of his client’s sentence, and not an acquittal as Mr Savuth had sought.

In August Duch told the court that he would accept any punishment, even ritual stoning, for his crimes. But on Friday, despite acknowledging the suffering of his victims, Duch cited his cooperation with the court and the “10 years, six months and 18 days” he has already spent in pre-trial detention as grounds for his immediate release.

Duch also echoed his Cambodian lawyer’s argument that the court has no jurisdiction over him because he was not a senior Khmer Rouge leader.

The Khmer Rouge tribunal is mandated to prosecute the senior leaders of Democratic Kampuchea and “those most responsible” for crimes committed during the Khmer Rouge era.

In a belated attempt to challenge the very premise of the trial, Mr Savuth and Duch argued on Friday that the accused did not fall into either of those categories.

“He was not the senior leader of Democratic Kampuchea, and he is not among those who were most responsible for the crimes,” Mr Savuth concluded. “He only obeyed the CPK [Communist Party of Kampuchea], so the CPK was the criminal behind all the crimes. That’s why my client asked to be released.”

“Do I infer from your last comments that the accused is seeking an acquittal?” Judge Silvia Cartwright asked.

“I did say that,” Mr Savuth responded, “because release means acquittal.”

Just 20 minutes prior to this exchange between Mr Savuth and Judge Cartwright, Mr Roux had told the court that the defense was not requesting an acquittal for Duch.

“Both defense lawyers asked that the accused’s sentence, if he is to be found guilty, be mitigated, and that he should be freed as soon as possible,” Mr Roux said, adding, “This is not an acquittal.”

Mr Roux said in a telephone interview yesterday afternoon that he was “extremely concerned” and “very saddened” by the schism that had opened between himself and his co-counsel in the closing remarks.

He said he had not known of Mr Savuth’s surprising final pleadings ahead of time, but that it was evident that Duch in the end preferred the counsel of his Cambodian lawyer, whose strategy offered the accused an opportunity to avoid a longer prison term.

“It was surely a mistake in this tribunal to have two co-lawyers,” Mr Roux added, noting that a system with a lead counsel would have worked better—“a bit similar to a plane, where there is a pilot and a co-pilot and the pilot always leads.”

“I profoundly regret the manner in which this trial has concluded,” Mr Roux said, “I hope it will neither bring discredit upon my client nor harm the civil parties or national reconciliation.”

Lawyers representing 90 of Duch’s victims said that the reversal had shocked their clients, casting doubt on Duch’s prior expressions of remorse and possibly closing the door to reconciliation between the prison chief and his victims.

Martine Jacquin, a civil party lawyer, called Duch’s reversal “totally unacceptable,” saying that he had tried to admit responsibility for crimes committed at S-21 while absolving himself of guilt.

“He has missed his date with history, and he has missed his date with the people of Cambodia,” she said.

Co-Prosecutors William Smith and Chea Leang were also taken by surprise by Duch's abrupt change of position, they said at a post-trial press conference.

"I think we were surprised this week, as was everyone that was watching from the gallery," Mr Smith said.

"The position of the defense seems to be rather mixed," Ms Leang added.

But despite the confusion, both prosecutors said they were convinced Duch's lawyers had ably and accurately represented his wishes in court, and there would be no basis for an appeal on grounds of poor legal representation.

"The change of plea, or that request for acquittal, reflected the accused's view of how he wanted to be perceived in this trial," Mr Smith said.

Several lawyers and observers pointed out yesterday that the legal basis for Mr Savuth's last-minute jurisdictional argument was shaky at best.

"The internal rules require that preliminary objections be raised within 30 days of the closing order being made final, and those 30 days expired many moons ago," said civil party lawyer Karim AA Khan.

"This purported defense will not stand up to scrutiny," he added. "It's a very poor argument, legally speaking."

Law professor and former US Ambassador-at-Large for War Crimes David Scheffer agreed yesterday that Mr Savuth had offered the court a tardy argument. It is highly irregular to raise questions of jurisdiction at the end of a trial, he said.

"Kar Savuth has grossly distorted how a court is supposed to function in a trial of this character," he said. "He comes in at the last minute and seeks to force the court to go back to square one."

"I cannot for a minute believe that was a highly calculated move on the part of the defense," he added. "This is a strategy that evolved chaotically and illogically to a moment of astonishment in the court today."

Mr Scheffer, who was involved in negotiations for the creation of the Khmer Rouge tribunal in the 1990s, also expressed puzzlement with Mr Savuth's tactic of denying that Duch was "most responsible" for crimes committed during the Khmer Rouge era.

When framing the ECCC's rules, he said, "We would often speculate on who's an obvious candidate for most responsible, who first comes to mind, who is the no-brainer candidate for most responsible. And it was Duch."

“To hear now that somehow he’s not most responsible contradicts the most basic commonsensical instincts of what was intended with that term,” Mr Scheffer added.

*(Additional reporting by Douglas Gillison)*