



POLITICS-CAMBODIA: Duch Defence Pushes Self-Destruct Button
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"I would ask the chamber to release me. Thank you."

Those were the final words spoken by 67-year-old war crimes defendant, Kaing Guek Eav, better known as 'Comrade Duch', on Friday at the end of his 77-day trial in front of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

To anyone following the trial, his request was staggering—it represented a complete change of defence direction at the last minute. Additionally, the legal reasoning behind the request was fatally flawed.

It stunned the court, the audience and trial observers: Here was a man, whose defence strategy had been built on contrition and accepting responsibility for his role in the deaths of thousands, telling the court in its final hour that international law does not apply and that he should not be on trial in the first place.

Duch's request provided an extraordinary conclusion to the trial of the Khmer Rouge's former chief executioner, the first person to be brought to book in an international court for complicity in the deaths of some two million Cambodians between 1975 and 1979.

Sentence will be handed down early next year, with a maximum term of life imprisonment since there is no death penalty in Cambodia.

Duch's closing words demolished a carefully crafted defence that was built up over nine months. In the face of overwhelming evidence of Duch's guilt, the defence's argument was that Duch accepted responsibility for the deaths of more than 12,000 people at S-21 prison, and in return for showing contrition and cooperation would receive a reduction in jail time.

But if the week started well for the defence, it began to unravel on Wednesday. Duch's final statement on Friday came two days after a rambling and legally flawed argument by his Cambodian defence lawyer, Kar Savuth, that the court had no jurisdiction over his client and that international criminal law did not apply since, among other things, Duch had only been following orders.

Other than the obvious legal flaws in Kar Savuth's arguments, his pleading raised eyebrows, since it ran entirely counter to the nine-months-old argument put forward by Duch's international lawyer, Francois Roux. It revealed a significant split in the defence.

And if the prosecution was understandably outraged by the defence tactic—it accused the defence of "riding two horses"—most other people were confused. As Wednesday closed, few were quite able to work out what was going on. On reflection Kar Savuth's argument led the way for him to undermine the nine months of strategy put together by his defence teammate Roux—that of accepting responsibility, showing contrition and claiming to be following orders for fear of his own life.

Roux was as taken aback by the last-minute change in plea as everyone else. He told the court on Thursday that Kar Savuth's pleading the previous day had necessitated a complete rewriting of Roux's own approach. Roux told the court the two men had "disagreements" over the approach to the case. He went on to say that "of course" Duch was guilty, and that it was clear that international law applied.

Roux's lack of awareness may seem unlikely, but is easily explained by the arrangement of the ECCC. As a joint United Nations-Cambodian body, the court has a dual structure in which every organ has an international component and a Cambodian one.

That is the case for the defence too—Duch has two lead lawyers: Roux on the international side, and Kar Savuth as his Cambodian counsel. Both lawyers have equal standing with the court, a design that has been shown up in the trial's final week.

Roux knew from the start that Duch had no chance of trying to convince the court that he was not guilty, since his signature was on thousands of executions, he had run S-21, and he had admitted responsibility.

It made the task of the defence one of mitigation. In a court that has no death penalty, the most severe sanction would be life in jail. Roux reasoned that an effectively guilty plea, contrition and expressions of remorse were his 67-year-old client's best chance of one day living as a free man.

Throughout the 77 days of tribunal hearings, that was the defence Roux painstakingly assembled. And when the prosecution and lawyers for civil parties—mainly the relatives of those who were murdered on Duch's instruction at S-21—charged that Duch was simply shedding crocodile tears and was not genuinely sorry, Roux railed at them, saying they were not giving his client a chance "to regain his humanity."

As the trial drew to a close this week, the defence was widely seen to have done a good job for its client. The prosecution called for a 45-year sentence, with five years off for time already served and for showing some contrition and limited cooperation with the court.

For Francois Roux, this last defence case of his professional life seemed to be heading to a predictable end: Duch effectively pleads guilty and benefits from a reduction in sentence.

That changed on Wednesday afternoon, when Kar Savuth stood up and with Duch's blessing, told the court that his client should not even be on trial.

Quite why Duch chose to go along with a strategy that could well see him go to jail for the full 40-year term is unclear. After all, Roux's approach offered his best chance that he could get somewhat less than that.

But whatever the reasons—and we may never know what they are—many Cambodians and the civil parties themselves were less surprised. Roux had asked the court to believe that a man—even one such as Duch—has the capacity to change and to return to humanity.

In Duch's case that capacity appears lacking.