



DUCH AND EXPERT AGREE ON KHMER ROUGE COMMUNICATION STRUCTURE, BUT DISAGREE REGARDING RESPONSIBILITY

May 27, 2009

By Laura MacDonald, Member of the New York Bar and Consultant to the Center for International Human Rights, Northwestern University School of Law

Duch: Scapegoat?

Without revisiting the debate over the impartiality of expert witness Craig Etcheson that ended yesterday's session, President Nil Nonn turned over the floor to international co-prosecutor Alex Bates to question The Accused Person, Kaing Guek Eav (Duch), regarding nine letters from Division 502 (air force) Secretary Sou Met to Duch. Spanning dates ranging from April to October 1977, the letters mainly discuss the confessions and arrests of Khmer Rouge "enemies" within the military ranks and their transfer to Tuol Sleng prison, also known as S-21.

With regard to the correspondence that took place between Duch and Sou Met, Duch emphasized and insisted repeatedly throughout his testimony that he had no right to horizontal communications with people such as Sou Met or units like Division 502 and that he would be killed if such horizontal communication took place. Thus, all communications were accomplished through the vertical reporting process whereby Duch had daily contact with Son Sen, the Deputy Prime Minister for National Defense and Chief of the General Staff of the Revolutionary Army of Kampuchea (RAK). Duch testified that each letter from Sou Met, while addressed directly to Duch, was hand-delivered to Duch by Son Sen. Some letters bore hand-written notes suggesting the letters had in fact gone through Son Sen while others did not. Duch explained that the Khmer Rouge had a policy of concealing the names of high-ranking party members as a sign of respect and also to maintain secrecy. He said he would not dare reveal the name of Son Sen or Nuon Chea in a letter. In brief, a letter from mid-level party member A to mid-level party member B goes through high-ranking party official C, but there is generally no mention of C in the letter.

Duch testified that he compiled lists of traitors named from the confessions of S-21 prisoners and forwarded the lists to Son Sen. Son Sen then reviewed and approved the lists before ordering the relevant organizational head, such as Sou Met, to arrest the listed individuals and transfer them to S-21. While on the face of the letters it appears Duch was directly involved in selecting people to be delivered to S-21, Duch testified that he had no decision-making power, whereas Son Sen had the authority to order that enemies

be “smashed” and Sou Met had the authority to arrest such individuals. Duch argued his only role was to interrogate and extract confessions. While Duch did acknowledge that his reports had influence on his superiors given that they trusted him, he argued that he only answered questions and followed orders implying responsibility rests with his superiors.

The defense did not put any questions to Duch, but rather shared some observations. Cambodian defense counsel Kar Savuth put forth an argument that has been made time and again by the defense: the investigation phase of the case is not being respected because the parties are questioning witnesses and Duch about matters fully explored by the co-investigating judges. International defense counsel Francois Roux further opined that Sou Met should have been called by the prosecution during the investigation phase to discuss the letters that he – not Duch – wrote. Roux posed the question: is Duch not being used as a scapegoat here?

Etcheson: Vertical Communication with Shared Responsibility

After lunch, the prosecution and the civil party lawyers put questions to Khmer Rouge expert Craig Etcheson. Alluding to his testimony last week, Dr. Etcheson confirmed Duch’s testimony regarding the vertical communication structure strictly imposed by the Khmer Rouge explaining the Party Center maintained a monopoly on information.

Dr. Etcheson described S-21’s unique position and role among Khmer Rouge security offices. S-21 was the only security office with authority to smash high-ranking party members suspected to be enemies and to detain, torture, and execute individuals from the entire country. Dr. Etcheson noted that S-21 at one point had 2327 staff, whereas other security offices had 50 staff at most. Structurally, Dr. Etcheson explained that S-21 fell under the military’s General Staff, but that with regard to policy S-21 was a subordinate unit of the Central Committee.

Striking at the heart of the responsibility issue, Dr. Etcheson said at one level purges within the ranks were driven by paranoia of the Central Committee, but on another level, purges were the result of the methodologies employed by Duch. Further, Dr. Etcheson expressed great doubt that Son Sen would approve each individual name to be smashed as Duch maintained in the morning session. Dr. Etcheson said Son Sen would likely take an interest in high-ranking or important people to be purged, but given Son Sen’s seniority and busy schedule, it was highly unlikely he made decisions to smash lay individuals. This statement implies that for the majority of enemies who were not particularly “important,” Duch decided who would be purged on the basis of S-21 confessions.

Dr. Etcheson will return tomorrow to be questioned by one remaining civil party group and the defense.

Co-Investigating Judges Speak at Press Conference

The ECCC Public Affairs Section convened a well-attended press conference this afternoon during which co-investigating judges You Bunleng and Marcel Lemonde discussed their progress on Case 002 regarding Nuon Chea, Deputy Secretary of the Communist Party of Kampuchea. Noting the complexity of the case file, they expressed their “very ambitious” goal of wrapping up the initial investigation by the end of 2009. After the initial investigation is complete, parties to the proceedings may ask for further investigative actions and, if such requests are denied, parties can appeal to the Pre-Trial Chamber. The judges stated that such delays after the investigation are not their responsibility.

The judges reported that 453 witnesses have been interviewed as of May 20, 2009, including some foreign nationals. As part of the investigation, the lawyers for the four other charged persons have been contacted, but all parties are exercising their right to remain silent. The judges explained that this investigation is not really separate from the others and eventually there may be a decision to join cases. The judges declined to comment on whether the mode of liability of Joint Criminal Enterprise (JCE) would be considered in the event cases are joined.