



**DUCH’S 8-YEAR DETENTION RULED UNLAWFUL
(BUT THOSE DETAINED AT S-21 WERE TREATED “LIKE DEAD PEOPLE”
AND “REGARDED AS ANIMALS”)**

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Provisional Release Denied, But Previous Detention Violated Duch’s Rights

In a long-awaited decision, the Trial Chamber announced today that the detention of Kaing Guek Eav (alias Duch) by a Cambodian Military Court lasting over eight years was unlawful and a violation of his rights. The detention violated the three-year ceiling for provisional detention imposed by Cambodian law, at the time, and the prosecutor appeared at times to single-handedly extend Duch’s detention without sufficient investigation or legal reasoning. Accordingly, if Duch is acquitted by the ECCC, he may seek appropriate remedies for his detention in the domestic legal system. If Duch is convicted by the ECCC, he is entitled to “credit” for the time he was wrongfully detained, specifically from May 10, 1999 to July 31, 2007 when he was transferred to the custody of the ECCC pursuant to an arrest warrant issued by the Office of Co-Investigating Judges. The Chamber refrained from commenting on the nature or extent of remedies to which Duch may be entitled for other related violations of his rights.

In the same decision, the Chamber denied Duch’s request for provisional release, noting “the need to ensure [Duch’s] presence” at trial and “the gravity of the crimes for which he is accused.” Consequently, he will continue to be detained at the facility adjacent to the ECCC until the conclusion of the trial proceedings.

The Chamber also announced some of the results of the in camera trial management meeting that halted the proceedings last Thursday. Noting that the parties’ estimates about the conclusion of the trial range from August to December 2009, the Chamber has decided to limit time for questioning witnesses, other than Duch, allocating thirty minutes to the prosecution, forty minutes to all civil party groups combined, and forty minutes to the defense. Civil parties cut down their requested time for civil party testimony from sixty to thirty-seven hours and estimate they will call twenty-one witnesses, excluding survivors. The Chamber noted that during the meeting the civil parties raised concerns regarding their lack of financial support, poor working conditions, and the unavailability of some counsel after August 2009. The Chamber explained that the first two concerns, while outside the Chamber’s jurisdiction, are being considered by ECCC administrative

officials and the availability issue will be addressed by the ECCC Victims Unit. The Chamber also announced it will be sitting one less day each month in order to alleviate its heavy work-flow and vowed to have an updated schedule issued as soon as possible.

Duch’s Avoidance of the Sights, Sounds, and Smells of S-21 “Beyond Cowardice”

Hundreds of high-school students and Cham villagers crowded the public gallery today to hear Duch’s testimony on the operations of Tuol Sleng prison (S-21). I hope the visiting villagers did not make exciting lunch plans for their day in Phnom Penh. After hours of graphic details about the disturbing treatment of prisoners at S-21, none of my usual lunch partners had much of an appetite. It was a very dark day in the courtroom.

Under questions from the Chamber, Duch explained how blindfolded, hand-cuffed male prisoners were stripped down to their underwear upon arrival at S-21 before being photographed and taken to cells where they remained shackled twenty-four hours a day. “Less important” prisoners were taken to common rooms, rather than individual cells, and shackled in a row with other prisoners. They were unable to sit up or communicate without permission. There were no bathroom facilities, so prisoners were forced to defecate on the spot. Prisoners were never allowed to change clothes and “bathing” involved spraying by a hose – the main purpose of which was to clean the floor rather than the prisoners themselves. No comforts were provided for sleeping, such as pillows, mats, or mosquito nets. Duch said the beds shown in some photographs of S-21 must have been added for prisoners after 1979. Prisoners were never allowed outside unless they were selected to do some sort of manual labor. Prisoners were not unshackled or released if they fell ill; rather, they were given medical attention only if staff needed to keep them alive to undergo interrogation. Gradually, all of the medical staff were determined to be enemies and detained at S-21, so Duch himself had to turn to detainees for health advice.

Duch explained that S-21 was a place where people were detained before they were executed, so there were no safeguards to protect rights. Prisoners were treated “like dead people” and “regarded as animals.” Duch said he was aware at the time that many prisoners died of starvation because inadequate rations were provided. Duch opined that no one in Cambodia had enough food and that he only weighed forty-nine kilograms during that period.

“Special” or “important” prisoners had slightly better conditions, including individual cells and “more polite” treatment, because Duch’s superiors were very interested in their confessions, which could implicate many others within the Communist Party of Kampuchea ranks. While there was some disagreement on numbers, Duch made clear that the few Westerners were given better treatment as well.

Women and children made up a little over twenty-three percent of the victims at S-21 and they, too, were treated a bit differently. Women were generally allowed to wear clothes and were allowed outside their cells at times. There were some female interrogators, but

no female guards. At least half of the female prisoners were only at S-21 due to their relationship with a male prisoner and were not alleged to have committed any offense. Women were separated from their children, sometimes as young as one-year old, so the women could be interrogated and the children “smashed.” There was a strict policy not to allow any communication among family members at S-21.

Aside from the horrific details about S-21’s conditions, the most striking aspect of the testimony today was Duch’s real or perceived distance from S-21’s daily operations, despite the fact that his office was nearby and he served as the chairman. Duch claims he never visited the main detention facility and only on a few occasions visited the facility where “special” prisoners were kept. Duch was unable to answer many simple questions, such as whether women had a bathroom and what was done with all the prisoners’ clothes. He could not say whether there was loud screaming or terrible odors. On several occasions, Duch instructed the judges to direct detailed questions on S-21 operations to upcoming witnesses, such as Comrade Hor, his deputy.

After seeing Duch take such an active role in his defense, it is extremely difficult to imagine Duch being so hands-off in his management of the S-21 facility. At trial, Duch is well-prepared and detail-oriented. He recites eight-digit electronic reference numbers for various documents from memory. He corrects world-class interpreters on their French translations. He strives to get all the facts straight for the record, both big and small. Thankfully, at the end of the day, Judge Lavergne pushed Duch on his claim that he never visited S-21 and Duch finally poured out his heart and made the judges understand. Duch explained it was not the stench that kept him from S-21; rather, he could not bear to witness the suffering of those under his authority and allow those friends he had betrayed to see his face. Duch said he had to avoid S-21 altogether because whenever he would get close he would become emotional. Duch said, “I closed my eyes, closed my ears. I did not want to see the real situation.” Judge Lavergne asked if this should be considered “cowardice” to which Duch replied, “I think it was beyond cowardice.”