



DETAILS ABOUT DUCH’S ROLE AT S-21 EXPLORED, WHILE DETAILS ABOUT CIVIL PARTIES’ ROLE IN TRIAL AVOIDED

June 22, 2009

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

Operations at Duch’s “Execution Chamber”

Following intense questioning last week from all five Trial Chamber judges on the operations of Tuol Sleng prison (S-21) and the killing fields at Choeung Ek, Kaing Guek Eav (alias Duch) was on the dock this morning to answer lingering questions from the prosecution and civil parties on the same topic.

The Cambodian Co-Prosecutor announced his questions were intended to show Duch’s participation in the arrest, interrogation, torture, and killing of S-21 prisoners. In contrast to the detailed but general questions from the judges last week, the prosecution presented Duch with a series of specific documents, mainly prisoner confessions Duch had annotated by hand, and some very interesting testimony emerged. While Duch received orders from the upper echelon of the Communist Party of Kampuchea (CPK) regarding how to interrogate and torture high-ranking or important prisoners, he admits he had the responsibility and authority for ordering torture of ordinary prisoners. Annotations show Duch gave specific interrogation instructions regarding what questions should be asked and what level of torture should be used. For example, Duch instructed an interrogator to beat a female prisoner until she admitted that she traveled to Vietnam not for medical treatment but for treacherous activities.

The prosecution also presented a hand-written letter from Duch to an interrogator giving the interrogator authority to torture a certain high-ranking prisoner to death. Duch explained that this letter was “a trickery” later shown to the prisoner to entice him to cooperate and confess. Duch has maintained that he prohibited interrogators from torturing prisoners to death, although he admits those who violated this rule went unpunished.

For the first time today, Duch admitted that torture was sometimes used to reprimand prisoners for bad behavior, rather than solely to extract confessions. Describing the one time Duch admits to beating a prisoner, he said he slapped the prisoner to punish him for lying.

Responding to questions on the popular topic of food for prisoners, Duch tried to justify the extremely scant rations by explaining that S-21 was not like a regular law enforcement prison, rather it was a “depository for people to be killed” or “an execution chamber.” Duch said he does not deny his crimes against humanity regarding food rations.

When asked how Duch looked at his family at night after putting children to death during the day, Duch explained that his child’s survival was dependent on his survival and that he had to follow orders to protect his wife, six siblings, and parents.

Duch’s Line Drawing

Over the course of the last week, it has become clear that Duch makes strict distinctions among practices that are not logically separate. For instance, last week and again today, Duch explained how he secretly sabotaged a medical experiment of high-ranking CPK member Nuon Chea by swapping powder in capsules that he suspected to be poisonous with a safe powder before administering the capsules to prisoners. He passionately explained that he did not want to kill those prisoners with his own hands, but showed no emotion when he described ordering that those same prisoners be “smashed” shortly thereafter. Is ordering that a blindfolded prisoner be stabbed in the neck so different than giving them a poisonous capsule? While Duch admits that his role makes him more responsible for killing prisoners than those who carried out their executions, Duch still seems to equate direct physical contact with direct responsibility at an emotional level.

Duch also draws curious distinctions among various forms of torture. While Duch admits to authorizing beatings, suffocation, dropping water in nostrils, and electrocution to male genitals, he was adamantly opposed to pulling out fingernails and toenails. He describes this form of torture as a “criminal act” that he prohibited immediately after becoming aware of it. While at times he seems opposed to a form of torture merely because it was unauthorized, such as the forced eating of excrement, he also admits to allowing interrogators to continue using the unauthorized psychological torture of forcing prisoners to pay homage to a dog because of the effectiveness of the practice. Duch also appears extremely disgusted by the sexual abuse of at least one female that occurred.

While there are undoubtedly explanations one could give for such distinctions, Duch does not offer any. He acts as though such distinctions are a matter of common sense.

Did Duch Do More at Lunch Than Eat?

In a series of narrow questions, International Co-Prosecutor William Smith probed Duch’s working habits at length with particular focus on his lunch and dinner breaks. Duch described 12-hour working days in which he had two meals at a communal dining hall and spent the rest of his time secluded in his office with daily visits from his deputy, Comrade Hor, and assistance from his three communications clerks. Smith worked hard to establish that Duch ate two meals a day in a room surrounded by guards, interrogators, and all other staff from S-21. Duch claims he did not speak to anyone except his regular

tablemates, such as Comrade Hor, and that he ate quickly so he could rest and return to work. Given that Duch claims he visited S-21 rarely and had limited knowledge of day-to-day operations, one can only presume Smith will later seek to establish through witness testimony that Duch gave orders or had some sort of meaningful interaction during his dining breaks.

Given that Duch claims he followed CPK upper echelon orders out of fear, Smith also asked a series of questions aimed at demonstrating Duch, in fact, was not very fearful. Duch agreed that his superiors did not complain about his work and trusted him because of his loyalty and honesty. However, Duch described living in constant fear, which escalated when his former superior, Von Vet, was arrested. Duch claims at that point he could not eat or work because he was “waiting for death.” Smith, however, presented a document with Duch’s annotations from that time period, which confirmed he had in fact continued working.

The Ongoing Debate on the Role of the Civil Parties

No one in the courtroom dares to deny the importance of the civil parties, but no one has been able to articulate clearly what their role is.

On June 16, after the Chamber allocated time to the parties for questioning Duch on S-21 operations, International Defense Counsel Francois Roux started up a debate over the role of the civil parties when he lumped them together with the prosecution. Roux insisted that the time imbalance – six hours to the “super prosecution” and only four hours to the defense – could be the subject of an appeal at a later stage. That day, the prosecution clearly articulated its unique role, while the civil parties explained they were not a duplication of the prosecution, but rather sought to voice the victims’ point of view. The Chamber cut off the debate without comment and moved on.

Today, a similar debate arose in a different context. While one of the civil party lawyers was questioning Duch on the medical experiment he sabotaged, Roux objected that the civil parties were not directly affected by the issue at hand since no civil parties were injured. Roux said their questions should express the viewpoint of the victims and not repeat the work of the prosecution.

Civil party lawyer Silke Studzinsky sought guidance from the Chamber on how to respond to such a fundamental attack on the role of the civil parties, while civil party lawyer Alain Werner seemed to give Roux the benefit of the doubt, opining that Roux was not attacking the role the civil parties had been playing the entire trial, but merely asking them not to be repetitive.

Roux was, in fact, making the broader challenge. Roux responded that while he was not seeking to restrict the role of the civil parties, he wanted their role to be “completely distinct” from the prosecution. Roux read aloud from a treatise which described victims as playing a “secondary role.” He said their questions should relate to the suffering of the victims only and parties must stick to their roles to ensure an equitable trial.

After further heated comments from the civil parties, the Chamber intervened. In brief remarks, President Nil Nonn cited ECCC Internal Rule 23.1 and said that the Chamber will allow civil party questions to support the prosecution. He provided some reminders to parties about keeping questions short and relevant, but provided no further clarification on the role of the civil parties. Without further Chamber comments on the matter, one can assume this will not be the last time the role of the civil parties is debated.

Internal Rule 23.1 states that “[t]he purpose of Civil Party action before the ECCC is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by *supporting the prosecution*” (emphasis added). Also somewhat on point, Rule 90 states that after the judges question the Accused, “the Co-Prosecutors and all the other parties and their lawyers shall have the right to question the Accused.” There is no mention of substantive limits on the civil parties.

Managing Time Sometimes Wastes Time

Since the closed trial management meeting on June 11, the Chamber has had an increased focus on time management and has implemented new limits on the parties. Today was the first time such time limits have been imposed. After its three-hour window expired for questioning Duch, the prosecution petitioned for a 20-minute extension to cover “core” topics. After a 10-minute debate in which the defense argued the prosecution should better manage its time and matters of such importance should have been prioritized, the Chamber sought clarification as to what the prosecution wished to achieve with its questions and allowed them to proceed.