



## **TO DELEGATE AUTHORITY, ONE MUST HAVE AUTHORITY**

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Today, Kaing Guek Eav (alias Duch) continued his testimony regarding operations at Prey Sar (S-24), another secret detention facility under his authority. Due to short time limits imposed by the Trial Chamber, the prosecution, all civil party lawyers, and the defense questioned Duch on the topic in less than three hours.

### **What Was the Point of S-24?**

As became clear yesterday, S-24 held itself out as a “re-education camp,” but in fact was a slave labor camp where there was no possibility of successful re-education resulting in release. All detainees, called “elements” at S-24, were eventually sent to Tuol Sleng prison (S-21) for interrogation and torture or sent directly to the killing fields at Choeng Ek to be executed. There is one documented exception to this rule whereby thirty re-educated combatants were sent back to the military as a group.

Duch did contradict himself on this point today, however. On one hand, he agreed that release was impossible, but on the other hand, he said S-24 differed from S-21 in that if people worked hard and respected the party discipline, they had some possibility of survival. People at S-24 were not smashed without reason, he said.

The main reason detainees were sent to S-21 or Choeng Ek was suspicion that they planned to rebel or escape. Perhaps, it was so easy to find a “reason” to send someone to be smashed that everyone eventually qualified. After being forced to do hard labor in the hot Cambodian sun for 13 hours with little or no food day after day, anyone would make negative comments and any negative comment was overheard by S-24 staff spying on detainees without their knowledge.

Given that all detainees sent to be re-educated were eventually killed and the party ran plenty of cooperative farms where the same rice production was done, civil party lawyer Silke Studzinsky asked why the interim step of S-24 was necessary at all. Duch either does not understand the logic and purpose behind S-24 or cannot clearly articulate it. Unfortunately, time did not permit Studzinsky to ask a follow-up question.

## **Duch's Authority and Responsibility for S-24**

In the most poignant questioning of the day, international co-prosecutor William Smith sought to pin down the details on authority and decision-making at S-24 because Duch's comments yesterday were apparently inconsistent with his testimony before the co-investigating judges. Duch confirmed that he had authority to decide which detainees to send to S-21 or Choeng Ek for interrogation, torture, and execution, and that he delegated this authority to his deputy in charge of daily operations at S-24. Duch admitted he gave what Smith called a "standing killing order" and only learned that detainees were sent to S-21 or Choeng Ek after the fact. "Authority was given only once," he said. He admitted his authority over S-24 was complete, he knew of the killings resulting from S-24 over the course of three-plus years, and he did nothing to stop it.

Duch's testimony on his authority over S-24 differs in a subtle but significant manner from his testimony on his authority over S-21. At S-21, Duch maintains all operations were closely monitored and cleared through his superior, Son Sen in the beginning and Nuon Chea later on. With regard to S-21, he always claims he was implementing orders from above, even regarding the interrogations of unimportant prisoners. With S-24, he admits he alone had the authority over the detainees because they were considered "half enemies" as it was unclear if elements were friend or foe. Duch admits he only had to report to the upper echelon regarding the very few important detainees that came through S-24 whom he wished to move to S-21 or Choeng Ek.

Duch openly admitted his responsibility for the crimes at S-24 several times throughout the day. At least once, Smith was trying to elicit details about operations and authority but Duch just glossed over the details and started admitting his responsibility. Smith pushed back, saying while everyone appreciates his admissions of responsibility, he needed to answer the question. Duch mentioned several times that at the time of the crimes, he took comfort in fact that he was just a policeman and the government would be responsible "before the eyes of history." He blames Pol Pot for inventing a bad party line, but acknowledges that he was among thousands who implemented it. "I acknowledge I am a criminal among those criminals."

As usual, the defense was brief, particularly today since international defense counsel Francois Roux was absent and no one took his place. In what appeared to be a new strategy, Cambodian defense counsel Kar Savuth sought to paint Duch as a victim of some sort of party re-education himself. Duch described how he wanted to become a communist, but all of a sudden became a new person, transforming from math teacher Kaing Guek Eav to prison chief Duch. Duch said, now "I bow myself before the Cambodian people." He asked the Trial Chamber, "Do you see me as a new person?"

## **Time (Mis)management?**

As reported earlier this week, the new trial management measures instituted by the Trial Chamber are cause for concern. On the major topic of S-24, the prosecution was given one hour for questions and the civil parties were given an hour to share, effectively giving each party fifteen minutes. The time limit for the defense was not announced, but Kar Savuth took less than an hour by choice.

While this might sound like a significant amount of time to an outside observer, in the courtroom it proves otherwise. Due to the contemporaneous translation that takes place, parties must speak slowly and often need to repeat themselves. One question often needs to be asked in a few different ways in order for Duch to understand and respond. When a party puts a document or video evidence before the court, the party must ask that it be done, the President must approve, and then technical problems and delays often follow.

Today, Smith was pressing Duch to clarify inconsistent statements on the reporting regime at S-24, which goes to the important issue of Duch's knowledge of operations there. Duch admitted his recollection on the issue was vague and asked Smith if he could produce documents to aid his memory. Noting he only had ten minutes left, Smith said he did not have enough time. While the prosecution usually puts several documents before the Chamber to support its questions, today it did not. The civil parties did not put any documents before the Chamber either. If an effect of the new trial management strategy is to greatly limit evidence put before the court, this presents a serious problem. Per ECCC Internal Rule 87.2, "Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination" – as opposed to all evidence in the case file.

Oddly, while the Chamber has made its time in the courtroom more efficient, the trial itself seems to be moving along at the same pace. The proceedings the last three days concluded hours early, but nothing on the calendar was moved up.

At the end of today's proceedings, President Nil Nonn announced proudly that S-24 questioning was completed ahead of schedule. I imagine that the prosecution and the civil parties did not go home with such pride today, but rather spent the ride back to Phnom Penh kicking themselves for questions they did not get to chance to ask.