

GROUNDWORK LAID FOR PROSECUTION OF ADDITIONAL KHMER ROUGE LEADERS DESPITE NATIONAL CO-PROSECUTOR'S OBJECTIONS

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Today's proceedings in the trial of Kaing Guek Eav (alias Duch) were overshadowed by a very important decision from the pre-trial chamber regarding the disagreement between the national and international co-prosecutors about whether to prosecute additional Khmer Rouge leaders. Pursuant to the ECCC's constitutional documents and the Internal Rules, the dispute was submitted to the pre-trial chamber where a super-majority of four out of five judges is required to reach a binding decision. The pre-trial chamber was unable to resolve the disagreement between the co-prosecutors with a super-majority decision. In cases where the pre-trial chamber cannot resolve such a disagreement with a super-majority, the Agreement between the United Nations and the Royal Government of Cambodia, the ECCC Law, and the Internal Rules specify that the investigation of additional suspects for prosecutions shall proceed.

The Office of the Co-Prosecutors first informed the public about this disagreement in December 2008. The international co-prosecutor, Robert Petit, asserted that additional prosecutions are necessary to fulfill the mandate of the ECCC, which is to bring to justice senior leaders and those most responsible for the crimes that were committed in Democratic Kampuchea between 1975 and 1979. The national co-prosecutor, Chea Leang, disputed the fact that the suspects identified in the new Introductory Submissions were senior leaders of the Khmer Rouge. Furthermore, she asserted that additional prosecutions would have a detrimental impact on the peace, stability, and national reconciliation in Cambodia. Finally, she argued that existing trials would be put in jeopardy because additional prosecutions would strain the budget and resources of the court.

The disagreement between the co-prosecutors received media attention due to allegations of inappropriate political tampering by the government of Cambodia. These allegations suggested that the national co-prosecutor's position was based on political considerations rather than independent judicial concerns. The pre-trial decision further exacerbates the divide between the international parties and the national parties, as the three Cambodian judges sided with the national co-prosecutor and the two international judges sided with the international co-prosecutor.

The pre-trial chamber's decision lays the groundwork for additional judicial investigations, but it is still too early to speculate on whether such investigations will materialize into additional prosecutions. Before commencement of additional investigations, the new international prosecutor will have to decide to move forward with the Introductory Submissions. (The former international co-prosecutor Robert Petit resigned this week, explaining that his departure was due to family reasons and in no way

related to his disagreement with his national counter-part on this matter. William Smith is acting as the international co-prosecutor until a permanent replacement to Robert Petit is appointed.) Thereafter, the co-investigating judges must determine that their investigation of the facts warrants charges against suspects named in the Introductory Submissions. Further developments relating to the potential prosecution of additional leaders of the Khmer Rouge will be closely monitored as they will have wide-ranging implications for the ECCC and the Government of Cambodia.

Duch resumes testimony

During the substantive portion of the proceedings, two of Duch's former colleagues, Hun Smien and Peng Poan, echoed many of the same sentiments as Duch's former students and classmates. Specifically, they described Duch as a gentle and quiet teacher who was well-liked by students and staff. Based on their interactions with Duch, they never suspected him of having been a senior leader of the Khmer Rouge. They learned about Duch's background only after his arrest in 1999. Even today, Smien explained, he finds it extremely hard to comprehend how Duch was involved in such serious crimes.

The trial chamber then recalled Duch to the stand to question him on issues of his character. He was asked to give his opinion on policies of the Khmer Rouge generally, and of Toul Sleng prison (S-21) specifically. For example, he was asked how he felt about the use of children guards at S-21 and the Khmer Rouge policy that eliminated educational institutions in Cambodia. He rarely answered these questions directly. Instead, he responded that his personal opinions were irrelevant because he had to be loyal to the Khmer Rouge whose policies had to be followed unconditionally.

In response to a lengthy line of questioning, Duch told the chamber that he became aware of the criminal nature of the Khmer Rouge regime only after he joined the revolution. At that point, he explained, it was too late to leave. He described several attempts to be re-assigned to different positions within the party. He asked to be re-assigned to the ministry of culture and the ministry of energy but his superiors denied his requests. He also told the chamber that he asked to be demoted from his position at the M-13 prison after a prisoner escape occurred under his watch. He described a feeling of apprehension when he was appointed as chairman of S-21 but explained that he was not permitted to refuse the post.

Duch explained that he remained under constant surveillance even after the fall of the Khmer Rouge. He considered himself a prisoner of the regime and told the court that he feared for his life. He asserted that Khmer Rouge cadres were responsible for an apparent robbery in November 1995 in which he was injured and his wife was killed. He learned of the re-integration of Ieng Sary and many other former Khmer Rouge leaders in 1996. Duch explained that he wanted to contact Ieng Sary in an attempt to be reintegrated into the government but he was not able to do so before his eventual arrest. (Ieng Sary was convicted *in absentia* of the crime of genocide by an ad-hoc Cambodian tribunal in 1979. In 1996 he was granted a pardon by King Sihanouk and was

reintegrated in the government. However, he has recently been arrested and charged with crimes within the jurisdiction of the ECCC.)