

I. Confession

INTERROGATION

Comrade Duch's Abecedarian

Apology.

Black ink.

Confession. Conversion. Christianity.

Duch. Eldest son. Star student. Loner. Math teacher. Meticulous. Khmer Rouge Revolutionary. Patriot. Party Member. Dutiful. Prison commandant. Brute. Eyes and ears of the Party. Obedient. Gave orders. Stoic. Fanatic. Torturer. Father. Cog in the machine. Believer. Mass murderer. Prisoner imprisoned. The Accused. Defendant. Criminal. Convict.

Enemies. Attacking from without. Burrowing from within.

First, extract their information. Next, assemble many points for pressuring them so they cannot move. 3. Propagandize and pressure them politically. 4. Pressure and interrogate by cursing. 5. Torture. 6. Examine and analyze the responses for further interrogation. 7. Examine and analyze the responses to make the document. 8. Guard them closely, prevent them from dying. Don't let them hear one another. 9. Maintain Secrecy.

Ghosts. Suspended between lives. Watching. Awaiting justice. Karma. An offering to the dead. Merit. Rebirth.

Cannot hesitate and have ideological doubts that hinder our task, even if that person is our brother or sister or someone whom we trusted.

Interrogation note to Duch: The Situation of Interrogating Ke Kim Huot alias Sot. On the morning of July 21, 1977, we pounded him another round. Electrical wire and feces [“shit”]. This time he cursed those who hit him very much, [and said] Go ahead and beat me to death. Had him eat two or three spoonfuls of feces [“shit”]. . . . by nightfall, we went at him again with electric wires, this time pretty seriously. He became delirious. He was all right. Later he confessed a bit as reported above. . . . Sot said he had nothing to answer to send to Angkar, and since he did not, he did not know what to say, that now he just waits for death, and he can close his eyes and die easily because he has sacrificed and was loyal to the party. . . . My operative line is to continue torture with mastery, because the enemy is breaking emotionally and is at a dead end. Along with this, I ask for opinion and guidance from Angkar in carrying out this task.

Joined the revolution to liberate the country.

Ke Kim Huot alias Sot. Duch’s teacher, mentor, comrade, prisoner. Deum Sareaun. Ke Kim Huot’s wife. Also a teacher. Interrogated. Tortured. Sexually abused.

The Line. Party line determining politics, ideology, organization, arrest, imprisonment, interrogation, torture, execution. “The crimes came from the Party line of the Communist Party of Kampuchea.” Anyone considered an enemy was to be smashed.

Man or Monster? Mathematical calculation. “Make them think of their wives and children.” Mastery.

Numbers. The S-21 Statistics list. 90 percent of the people are strong and firmly believe in the Party, the collective, and defend the party. 10 percent are weak. 1 percent very weak. 1 percent are enemies. Therefore . . . screen out the enemies no matter what.

The Objective of torturing is to get their answers. It is not done for fun. Therefore we must make them feel pain so that they will respond quickly. Another objective is to make them afraid. It is not done by individual anger to let off steam. Therefore, beat them to make them scared, but absolutely not to let them die. When torturing, it is imperative to check their health in

advance and to inspect the whip. Do not get greedy and want to be quick; that leads to death and loss of a document.

Psychological functioning: obsessive, low self-esteem, depression, traumatic organization, disempathy, splitting, willing participant, need for mentors and strong belief, avoidance, narcissistic self-depreciation, negation, projection, repression, displacement, inhibited dream activity, reaction formation, somatization, avoidance, rationalization, denial.

Qualifications for joining the Party. 18 years or older. Already tested. Follows Party line, ideological and organizational stances of the Party. Good class pedigree. Clean morals and politics. Never involved with enemy. Clean personal history.

Revolution. Return. Revenge.

Smash. To crush or reduce to nothing. A Scream. Silence.

Torture by hand, rod, club, whip, electrical current, waterboarding, suffocation by plastic bag, pliers pulling out toe- and thumbnails, pouring salty water on wounds, eating feces, drinking urine, rape, exposure, poisonous insects, paying homage to the image of a dog.

Ugly habits. Talking to other groups. Not maintaining typewriters. Must be vigilant. It is careless, taking a pregnant woman to put in a new house. She cuts her belly open. When we get sleepy, put the enemy back.

Voice. Victim. Voiceless.

Wheel of History. Samsara. Wheel of Life.

No eXit. Hostage and Actor. Caught in the gears of the revolutionary machine.

You must be vigilant: First, Rough work—careless work → Conflict with the collective. Second, Morality with females.

Zero. Empty. No enemies. Unmarked.

Source: Most of this text is taken or adapted from ECCC documents from Duch's trial, including notes from Duch's interrogation lectures, a memo about the interrogation of a prisoner, and a psychological report on Duch.

Man

(OPENING ARGUMENTS)

“I wish to apologize.”

Standing straight while reading a prepared statement held at eye level, Duch offered the first public apology by a high-ranking Khmer Rouge. “I do not ask that you forgive me here and now,” he continued, glancing periodically at a dozen victims staring at him from across the courtroom. “I know that the crimes I committed against the lives of those people, including women and children, are intolerably and unforgivably serious crimes. My plea is that you leave the door open to me to seek forgiveness.”¹

Duch made this apology on March 31, 2009, the second day of his trial, while standing in the court’s horseshoe-shaped dock. As he spoke, he pressed the tips of the four fingers on his left hand, mangled in a hunting rifle accident in the early 1980s, against the dock’s small table for balance. Sitting behind him, a security officer watched Duch with half-closed eyes, Buddha-like. The apology was part of a 20-minute statement Duch made after the prosecution had completed its opening arguments.

In the 500-seat spectator gallery, located behind the court’s tall, curving glass back wall, the audience listened intently. The room was packed with a range of people: ECCC officials, Cambodian students wearing blue shirts, Muslim Chams, NGO staffers, students from abroad, and Cambodians from different walks of life who wanted to get a firsthand look at this man who had

run what had become the symbolic center of the Cambodian genocide.² A large contingent of domestic and international media was also covering the story.

Duch was separated from the people sitting in the front row of the gallery by just half a dozen meters and the protective glass wall. Everyone in the gallery gazed at Duch as he staked his claim to humanity, the former watcher now watched.

Day 1, March 30, 2009

BACKDROP

Duch's trial had opened the previous day to the flash of cameras as three photographers rapidly moved about the courtroom taking shots of him from different angles. Sitting in the gallery, I thought of how Duch's prisoners had their mug shots taken on arrival at S-21. But, as observers sometimes pointed out, those victims never had a trial. There were no courts during DK. The fact of arrest implied guilt, since the Party supposedly did not make mistakes. Wearing a long-sleeved dress shirt, Duch gazed back, unsmiling, at the photographers, his brown eyes lit by flashes of light.

Then Duch's trial began, as Judge Nil Nonn intoned: "In the name of the Cambodian people, and the United Nations, and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea . . ."

The trial was to begin and end in controversy. Judge Nil, whose black hair was often disheveled, was himself involved. From the very beginning of negotiations between the United Nations and Cambodia over the creation of the trial, various parties had raised concerns about the corruption and politicization of the country's judiciary.

Judge Nil, who would efficiently lead the proceedings, had been appointed president of the Trial Chamber. His official court biography notes that he had been president of Cambodian courts in Battambang and Siem Reap province prior to joining the ECCC. A professor of law, he obtained his degree at Ho Chi Minh City University, receiving additional training in international law and human rights from organizations such as the United Nations Development Programme (UNDP).³

In 2002, a PBS documentary filmmaker had interviewed Judge Nil, who complained about criticism of the Cambodian judiciary even as he admitted taking bribes while serving on the Battambang court, "but only after a case is

over.” The filmmaker explains: “After all, he earns only \$30 a month, not nearly enough to provide for his family. What else, he asks with that toothy grin, is he supposed to do?”⁴

While Judge Nil later denied having made these statements, he acknowledged in another interview that Cambodia’s judiciary suffers from a range of problems, including lack of independence, government interference, and fair trial rights violations—even if such problems are also linked to insufficient resources, training, and experience.⁵ He noted his determination to help fix these problems.

It was precisely because of such issues that the UN had initially advocated for an international tribunal. In the same 1997 resolution that requested that the UN secretary-general respond to any Cambodian appeal for assistance in holding a tribunal, the UN Commission on Human Rights expressed “serious concern” about a recent report of its special representative that was highly critical of the “continuing problem of impunity,” including the Cambodian judiciary’s lack of “independence,” “impartiality,” and proper “due process.”⁶ Such concerns about “international standards of justice” were echoed in the “Group of Experts” report, by diplomats, in subsequent UN statements, and in human rights and NGO reports and press releases.⁷

In early 2007, the Open Society Justice Initiative sparked a major controversy by revealing that the UNDP, which oversees donor funding for the ECCC, was carrying out an audit of the tribunal’s finances, in part because of allegations that the Cambodian judges at the ECCC were sending kickbacks to their political patrons, charges the Cambodian government declined to investigate.⁸ While an independent investigation found that as a result of a number of reforms undertaken during the following year, the ECCC had adequately addressed the issues raised in the UNDP report, corruption allegations continued to surface.⁹ These issues were part of the backdrop of the Duch trial.

| | |

All institutions have performative rituals through which they assert their legitimacy, and the Duch trial was no exception. Thus, in the first few moments of the hearing, Judge Nil quickly asserted the court’s legitimacy by noting its foundation on international and Cambodian law and its jurisdictional mandate, which empowered him and his fellow jurists, whom he named, to oversee the proceedings.



Duch at an initial hearing, ECCC courtroom, February 17, 2009. Photo courtesy of the ECCC, by ECCC/Pool/Adrees Latif.

The domestic and international composition of the judges and the use of both international and Cambodian law were just two of many signs of the hybridity of the ECCC, a point also highlighted by Judge Nil's opening remarks. At a long table to Duch's front right sat Duch's defense lawyers, while to his far front left were the co-prosecutors. Immediately to Duch's left sat the civil parties, who were participating fully in the proceedings, something never before allowed at an international or hybrid tribunal.¹⁰ Two long tables were positioned across the wall facing Duch. Eight court clerks and functionaries were stationed at the first table. Above them on an elevated platform sat the five judges of the Trial Chamber, all of whom, like Judge Nil, wore flowing red gowns and long white kerchiefs.

Three emblems hung on the high wall behind the judges. The flags of the UN and Cambodia were affixed to the left and right sides of the wall, respectively. Between them hung a larger white flag with the ECCC logo, a blue ink drawing of a wreath of olive branches—the symbol of the UN—partly encircling an Angkorean-era Cambodian judge sitting cross-legged on a dais and grasping with his right hand an upright sword.¹¹ On an outside band, the ECCC flag listed the court's official name, in Khmer, and abbreviations, in English and French; these were the three official languages of the tribunal. All

of the judges wore this emblem, signifying the court's hybridity, on circular patches affixed on the left sides of their robes.

The hybridity of the court was also evident from the composition of the court personnel. Three of the five judges were Cambodian; the other two, sitting to the immediate right and far left of Judge Nil, who sat at the center of the table, were from New Zealand (Silvia Cartwright) and France (Lavergne). Cambodian judge Sokhan Ya sat to Judge Nil's left and Ottara You to his far right. Similarly, the prosecution, defense, and civil parties were a mix of Cambodian and international lawyers.



This hybrid structure was the outcome of a long process of negotiation that began when, following the April 1997 UN resolution offering international assistance,¹² the co-prime ministers of Cambodia, Hun Sen and Norodom Ranariddh, sent a June 21, 1997, letter to Kofi Annan asking for UN assistance in “bringing to justice” those responsible for the Khmer Rouge genocide.¹³

In response, Kofi Annan appointed a “Group of Experts for Cambodia” to explore the feasibility of holding a tribunal. On February 19, 1999, this group issued their report, which recommended establishing in a nearby country an ad hoc international tribunal, modeled after the international criminal tribunals in the former Yugoslavia and Rwanda to try former Khmer Rouge leaders “for crimes against humanity and genocide committed from April 17, 1975 to January 7, 1979.”¹⁴

By the time the report was issued, however, the political situation in Cambodia had changed with the death of Pol Pot on April 15, 1998, amid the mass defection of his former followers. Ieng Sary defected with a host of Khmer Rouge soldiers in 1996. As part of a deal, he was given an amnesty and pardon.

Two other senior Khmer Rouge, Nuon Chea and DK head of state Khieu Samphan, both of whom would be tried in Case 002, defected to the government in December 1998. The last Khmer Rouge holdout, General Ta Mok, was arrested the following year, an event that signaled the end of the Khmer Rouge. Ta Mok joined Duch in prison, where he died, untried, on July 21, 2006.

In the name of reconciliation, the Cambodian government backtracked, alternatively suggesting that the country hold a truth and reconciliation commission, a domestic trial of just Ta Mok, and a predominantly national tribunal.¹⁵ The negotiations that ensued between the UN and the Cambodian government were characterized by stops and starts as the two parties worked

to create a new type of transitional justice mechanism, a “mixed” or “hybrid” tribunal, a model that would be used in East Timor, Sierra Leone, and Kosovo before the ECCC finally commenced.

The two sides signed a June 6, 2003, agreement establishing a hybrid tribunal that would be a special chamber within the Cambodian court system and use a combination of domestic and international law.¹⁶ In addition to the five-judge Trial Chamber overseeing Duch’s hearing, the ECCC has a five-person Pre-Trial Chamber and a seven-person Supreme Court Chamber (SCC), each of which has a majority of Cambodian judges but requires for a decision a supermajority that includes the vote of at least one international judge. In addition, there are Cambodian and international co-investigative judges, and civil parties and defendants may select Cambodian and, if they wish, international lawyers. The ECCC, consisting of seventeen Cambodian and twelve international judges and lawyers, began operation on July 3, 2006. It took almost three more years for Case 001, Duch’s trial, to start.

| | |

After completing his prefatory remarks, Judge Nil asked Duch to stand. With a court officer on each side, Duch walked to the dock, refusing at one point to take the arm of a guard. Judge Nil, speaking in Khmer, began to ask him a series of informational questions, to which Duch responded in a low voice:¹⁷

QUESTION: What is your name?

DUCH: My name is Kaing Guek Eav alias Duch. . . .

QUESTION: What [was] your occupation before you were arrested?

DUCH: I was a teacher. . . .

QUESTION: Do you have a wife?

DUCH: I have a wife. We got married on the twentieth of December 1975
but she died on the eleventh of November 1995.

QUESTION: How many children do you have?

DUCH: Four.

Like him, his children were teachers.

After finishing his background questioning, Judge Nil informed Duch of his right to be defended by a lawyer, to remain silent, to avoid self-incrimination, and to be informed of the charges. The irony was not lost on the observing survivors, who would complain about how well Duch was being treated in contrast to his victims.

Judge Nil next asked two court clerks to read excerpts from the “closing order,” a document outlining the findings of the Office of the Co-Investigating Judges (OCIJ) and the charges against Duch. The closing order was the product of a long investigatory process that had begun almost immediately after the establishment of the court in 2006 and followed given procedural guidelines.

Like all courts, the ECCC is governed by specific statutes. In the case of the ECCC, three key documents delineate the court’s mandate, jurisdiction, composition, and applicable laws. The June 6, 2003, agreement between Cambodia and the UN establishing the court laid out the broad parameters of the ECCC. The following year, these principles were codified in Cambodian law. On June 12, 2007, the court published a seventy-one-page set of “Internal Rules” that detailed how the principles were to be put into practice.¹⁸ It took court officials almost an entire year to finalize this document, which, by the end of the Duch trial, had been revised eight times.

While blending in elements of the common law tradition, these three documents are premised on the assumption that, in accordance with Cambodian legal tradition and its French colonial influence, the ECCC would largely operate in accordance with the civil law tradition. In contrast to the common law tradition, which is found in Great Britain and many Anglophone countries, including the United States, civil law predominates in continental Europe and many of its former colonies, including Cambodia.

If the common law tradition is often characterized by the importance of evidentiary oral testimony, case-based legal precedent, and trial by jury, the civil law tradition emphasizes written texts, abstract law, and judicial inquisition. To put it another way, whereas in the common law tradition the jury evaluates the facts of a case and the judge arbitrates in terms of the law, in civil law courts judges usually do both. Along these lines, the proceedings at the ECCC are largely driven by the judges, and the role of the prosecutor is, if important, emphasized less than in common law practice.

The ECCC internal rules stipulate that the Office of the Co-Prosecutors (OCP) is entitled to conduct preliminary investigations. The case is handed over to the OCIJ once the OCP has gathered sufficient evidence to make an “introductory submission.” At this time, the OCP transfers its “case file” of evidentiary material to the OCIJ.

The OCIJ conducts further investigations and continues to build the case file. Once the OCIJ investigation is complete, the OCP is invited to make a “final submission.” The investigative process concludes with the OCIJ’s “closing order,” which calls for dismissal or indictment. If the case proceeds, the OCIJ transfers the case file to the Trial Chamber, which will commence the proceedings, pending any appeals.

As opposed to focusing on the evidence introduced during a trial as in common law systems, a civil law court, such as the ECCC Trial Chamber, will have the bulk of the relevant evidentiary material in hand by the start of the trial. The Trial Chamber judges then take the lead in structuring the proceedings, deciding what testimony and evidence will be introduced, questioning witnesses, apportioning time, and rendering a verdict.

Thus, in the Duch case, the OCP began its investigation on July 10, 2006, almost immediately after the court began operation.¹⁹ A year later, on July 18, 2007, the OCP made its introductory submission to the co-investigating judges, Cambodian jurist You Bunleng and his French counterpart, Judge Marcel Lemonde. They detained Duch less than two weeks later, eventually charging him with “crimes against humanity” and “grave breaches of the 1949 Geneva Conventions.” After the OCP made its final submission on July 18, 2008, the OCIJ issued the closing order indicting Duch on August 8, 2008, and transferred the case to the Trial Chamber. The closing order provided a rough outline of the facts that had emerged during the case, including information about the origins, structure, and functioning of S-21. At this point, the case file included twenty-one pretrial interviews with Duch.²⁰

| | |

The victims proved to be a strong presence at Duch’s trial. But they would have to wait before having their chance to speak. On the first morning of the trial, perhaps a dozen civil parties sat inside the courtroom behind their lawyers, on the opposite side of the room from Duch. Because there were not enough seats, the civil parties took turns, rotating between the courtroom and the gallery.

They listened intently as the closing order was read, tracing out Duch’s path to S-21 and the brutalities that took place there. At several points the closing order referenced their experiences. Duch rarely looked up, his head bent, perhaps reading along.

At the end of the lunch break, I saw Chum Mey, who, along with Vann Nath, was one of a handful of prisoners who survived S-21. Chum Mey had been spared because he was a mechanic and could fix generators on the compound. Despite his age, Chum Mey remained agile and sharp, his mouth set in a determined line. He almost always carried a small notebook and wore a short-sleeved dress shirt, with a pen clip protruding from the pocket. He had been waiting years for this trial to begin.

During a break, I asked him what he thought of the proceedings. Smiling, Chum Mey told me that he was very happy with the way things were going. Then he paused, his smile fading, as he continued, “I cried and cried when they read the part [of the closing order] about how I was tortured with electrical shocks.”

Chum Mey would return to the court almost every day until Duch was judged.

Day 2, March 31, 2009

JUSTICE AND HUMANITY (CHEA LEANG,
NATIONAL CO-PROSECUTOR)

“For 30 years, one and a half million victims of the Khmer Rouge have been demanding justice for their suffering,” Cambodian co-prosecutor Chea Leang began her opening remarks at the start of the second day.²¹ Her Canadian counterpart, Robert Petit, sat next to her, reading glasses pushed down on his nose toward his goatee.

“For 30 years the survivors of Democratic Kampuchea have been waiting for accountability,” she continued, glancing up occasionally from her text on a podium. “For 30 years a whole generation of Cambodians have been struggling to get answers about their families’ fate. Well today, in this Courtroom, before the Cambodian people and the world, at long last this process begins and Justice will be done.”

It was a justice whose meaning would be contested.

| | |

Chea Leang, her round face framed by short black hair, stated that while the Cambodian government had struggled with the legacy of DK, the international community had “long failed the people of Cambodia,” even if it now had “finally recognized that justice must prevail and that there cannot be impunity for the worst of crimes. Even after 30 years.”

Her remarks reflected those of Prime Minister Hun Sen and other CPP party members, who had noted the hypocrisy of the international community, which they alleged had long ignored their calls for justice. Chea Leang, who had received an MA in law from a German university,²² was closely linked to the CPP, in part through her relation to her uncle, Deputy Prime Minister Sok An, a close Hun Sen ally, who had been the point person for the Cambodian side during the tribunal negotiations.

Suggestions that her choice as national co-prosecutor had been political were heightened when it was revealed that her office was effectively supporting the position publicly taken by Hun Sen opposing trials beyond Case 002 because of “Cambodia’s past instability and the continued need for national reconciliation.”²³ Later in 2009, she would be appointed prosecutor general of the Supreme Court of Cambodia even as she continued her duties at the ECCC.

Continuing, Chea Leang highlighted another tension in the meaning of justice. While Duch had to be judged from his crimes, she called on the judges to “determine before all how and why this man was allowed to commit those crimes. . . . History demands it.”²⁴ More broadly, she noted, “it is the purpose of courts such as this one, to establish the truth, unflinchingly . . . so that mankind may learn and history may not be repeated.” Throughout the opening arguments that day, the prosecution, defense, and even Duch himself would invoke these two senses of justice as law and as truth. Linked to these two notions of justice were different conceptions of humanity.

| | |

During their two hours of remarks that morning, the co-prosecutors would foreground the origins, structure, and operation of S-21, Duch’s degree of autonomy and criminal responsibility, and the profound dehumanization of his victims. Chea Leang began with a brief discussion of the rise of the Khmer Rouge and their attempt to create a pure new revolutionary society. From the start, the DK regime had sought to eliminate “perceived enemies and placed little value in human rights or life itself. As one of these infamous slogans so chillingly foretold ‘To keep you is no gain, to destroy you is no loss.’”²⁵

To quickly implement its radical program of social engineering, she argued, the Khmer Rouge established a system of control in which authority ran from the top down. This hierarchical system enabled the regime to eliminate its many perceived “hidden enemies burrowing from within.” Security centers, where prisoners were detained and executed, were established all over the

country. S-21 stood above the rest, serving as the site where the most important prisoners were sent and operating in coordination with the DK leadership.

Duch therefore ran the most important prison in Cambodia, Chea Leang went on. At least 12,380 people were killed there, she said, citing the low-end estimation based on evidence that was almost certainly lower than the real total, since documentation had been lost, and some prisoners were killed without being registered.²⁶ Over three-quarters of the victims were Khmer Rouge officers and soldiers who had been swept up in political purges. Most (70 percent) were male, though female cadre and the wives (4 percent) and children of inmates were also detained and executed there. The inmates were relatively young, averaging twenty-nine years of age, and most were incarcerated there for an average of sixty-one days before execution. As war with Vietnam escalated, increasing numbers of Vietnamese were arrested, making 3 percent of the S-21 population. At least 190 staff at S-21 came under suspicion and were arrested and killed there, as were a handful of foreigners.

These inmates, Chea Leang emphasized, were thoroughly dehumanized. The starving prisoners were shackled in cells and seldom given medical care or allowed to bathe. They had to request permission even to relieve themselves. At the end of her remarks, she displayed a self-portrait painted by Vann Nath. It depicts an emaciated prisoner wearing only shorts and sitting shackled by the leg in a tiny brick cell. He stares into space, forlorn and without hope.

In the gallery, Vann Nath was watching.

CRIMES AGAINST HUMANITY (ROBERT PETIT, INTERNATIONAL CO-PROSECUTOR)

After a break, International Co-Prosecutor Robert Petit picked up on the theme of dehumanization even as he shifted to a more explicit discussion of Duch's culpability. Like many of this court's international personnel, Petit had extensive experience in international justice, having worked in the prosecutor's office at the International Criminal Tribunal for Rwanda before moving on to work at the hybrid courts established in Kosovo, East Timor, and Sierra Leone. His appointment as a co-prosecutor at the ECCC was the culmination of his hard work.²⁷

He had begun working at the ECCC from the start, assuming his post in 2006. He jointly oversaw the indictments of Duch and the senior leaders in Case 002 but later diverged from Chea Leang regarding the controversy about whether there should be additional trials; he was in favor of more.²⁸ In an interview, he stated that he hated bullies and had become a prosecutor because

he “profoundly dislike[s] criminals and people who think they’re above the law.”²⁹ He seemed to regard Duch in this light. He spoke in a polite yet slightly clipped manner, alternating between fluent English and French, and pausing at times to let the translators catch up.

If Chea Leang’s remarks outlined the broad textures of Cambodian life under the Khmer Rouge and the horrors of S-21, Petit used a more juridical frame that emphasized crimes against humanity, making periodic references to the Holocaust. “I would now like to continue to address the crimes committed at S-21,” he began, glasses now off and bending slightly to read from the podium. “As the accused himself admits and as the mountain of documentary evidence clearly proves, torture was extensively practiced at S-21.”³⁰

He did not spare any details. “Victims were beaten with rattan sticks and whips, electrocuted, had toenails and fingernails pulled out, were suffocated with plastic bags forcibly held over their heads, and were stripped naked and had their genitals electrocuted,” he explained.³¹ I thought of Chum Mey, whose experience Petit again used as an illustration. Not only did Duch oversee the torture, he taught the interrogators how to do it.³²

Duch left behind a huge amount of incriminating evidence, including 120 documents bearing his annotations.³³ Like the Nazis, Petit noted, Duch and his staff kept “meticulous records.” The deaths of the prisoners were noted in hundreds of execution logs. Some died on site due to the harsh life conditions or torture. Most were executed with a blow to the back of the head and buried in mass graves, their throats slit. Even young children were not spared.

S-21 was a massive compound, encompassing numerous buildings in Phnom Penh as well as the Choeung Ek execution center, located seven miles south of Phnom Penh, and S-24, or Pray Sar, a “reeducation camp” based around the grounds of a prerevolutionary prison. An unknown number of cadre were “tempered” there. Over 500 of them, including children, were transferred to S-21.³⁴

Duch, Petit continued, was directly responsible for these atrocities.³⁵ Duch, he stated, reported directly to Son Sen and later Nuon Chea, two of the highest ranking DK leaders. Duch’s own deputies, in turn, reported directly to him. To illustrate, Petit displayed a chart showing Duch’s connection to his superiors on the CPK standing committee and his subordinates heading different sections of S-21.³⁶

Duch, he warned the court, was trying to assert that he was a “Chairman in theory,” a cog in the machine who transmitted orders from his superiors to his subordinates. Duch’s claim to have done little more than annotate confessions

while largely delegating authority, Petit argued, was “simply not believable.”³⁷ If anything, he continued, Duch “spent endless hours micro-managing S-21” as part of a “joint criminal enterprise,” a legal categorization that made him responsible for the crimes committed by his subordinates “even if he himself never got his hands dirty.”³⁸

Ultimately, Petit suggested, Duch made voluntary and self-aware choices along a “pathway that brought him to the commission of the crime.”³⁹ In running S-21, he was “devoted and merciless.”⁴⁰ And after DK he remained a committed revolutionary for almost 20 years. This long history cast doubt on his cooperation with the court which may well have been a calculated move to get a reduction in his sentence in the face of overwhelming evidence.

To render justice for Duch’s victims, Petit concluded, the court needed to “apply the law to the facts” as they sought the truth,⁴¹ which resided in the “personal stories of each one of the victims of the Accused.” Displaying a series of S-21 prisoner mug shots, Petit emphasized that the reality behind the lists and statistics consisted of these “people who had names, families, memories, hopes. They all deserve to be heard, to have their day in court and to have their stories told and remembered.” By considering these stories, the court would not just “acknowledge the humanity of [Duch’s] victims” and restore some of the dignity and voice they lost at S-21 but also “give back to us a bit of the humanity that we all lose [in] the face of such horrors.”⁴²

PENITENT (THE ACCUSED)

After breaking for lunch, Judge Nil gave the floor to the defense. Duch’s international co-counsel, François Roux, requested that Duch be allowed to make a statement, particularly because “the victims have been waiting for a long time for the accused to speak.” Duch, dressed in a white short-sleeved shirt, had spent the morning sitting in the dock. While listening to Chea Leang and Robert Petit describe the horrors of S-21, Duch had frequently looked down, sometimes slumping in his chair. Now it was his turn to speak.

Duch the teacher rose from his seat, ready with a reprimand. Gazing toward the prosecutors, as if lecturing students who had gotten the facts wrong, he said that he would like to start by “clarifying” their depiction of Cambodian history. It was, he stressed, Lon Nol who had first begun butchering peasants in 1966. After the coup d’état of March 18, 1970, both sides “competed in the race to kill Cambodian people.” It was only after April 17, 1975, when the Khmer Rouge came to power, that they alone bore responsibility for the killing. Robert Petit stared back at Duch.

Outside, the skies thundered, and it began to rain.

Putting on his glasses, Duch began reading from a prepared statement. He started with evidence. The 1976 Party Statutes, he noted, clearly stated that the Party had “an absolute monopoly of leadership in all domains.”⁴³ Nevertheless, as a member of the CPK, Duch had to accept “moral responsibility” for the crimes committed, including the deaths of over one million people. His voice quivered slightly as he said this number. Then he paused and glanced over at the civil parties before expressing “my regret and my deepest sorrow” for these crimes.⁴⁴

After taking a deep breath, Duch acknowledged his “legal responsibility” for the crimes committed at S-21, ranging from torture to executions. He also wanted to apologize. While he realized that the crimes seemed unforgivable, he hoped that the victims would “consider my intentions” and “leave the door open for me to seek forgiveness.”⁴⁵ As he spoke, his voice had become increasingly soft, his arms barely moving.

Whenever he thought about S-21, Duch said, he was “terrified and appalled” by “the activities which I was ordered to carry out, and the orders I gave to others” that led to the death and suffering of so many, including “women and children.” Though he had been “a hostage, a mere puppet,” he understood that people regarded him as “a cowardly and inhumane person.” He had failed to find an alternative in this “life and death [situation] for me and my family.” And so he continued to have “the deepest sorrow and regret, and I feel ashamed.”

In light of his crimes, Duch declared he would do what he could to help facilitate the proceedings. He would cooperate with the court, since this was “the only way for me to help bring [relief] and condolences” to the victims. He also could confirm the reality of S-21, which Khmer Rouge leaders had denied. Finally, Duch said, he would answer the questions of the judges, prosecutors, and even the civil parties.⁴⁶

Having completed his statement, Duch set down his glasses and clasped his hands. Glancing alternatively between the judges and the civil parties, he said that he wanted to express “the remorse that I have felt all my life. I was not satisfied with my work.”⁴⁷ His voice sounding more confident, like the teacher who had at first chided the prosecutors, Duch explained that at several points he had tried to avoid working at S-21. He had been shocked and terrified by the spiraling arrests, thinking “My days are numbered.”

On a personal level, Duch said, the revolution had also been costly. “I lost everyone around me,” he pointed out, including two siblings and six nephews

and nieces. In the year after the end of DK, he came to understand that in light of all those who had died during DK, “my own life meant nothing. . . . So for a whole year I could not do any work. I just lay in bed.”⁴⁸ In the end, he realized the only thing he could do would be to make “offerings and pray for forgiveness from the victims, and from my parents who gave birth to me and wanted me to grow up as a good child.” Despite his desire to “follow the good path,” Duch lamented, “I fell onto the wrong path.”

His contrition was supposedly so deep that, on his birthday each year, he would do something “to commemorate my remorse. This year I made a painting.”⁴⁹ He offered the picture to the judges, who asked that it be displayed. The black-and-white, hand-drawn image with annotations could barely be made out. It depicted the end of DK, he explained. At the top stood the communist sickle. Below were three torsos set on a raised dais, like Buddhas. Pol Pot, Duch said, was in the middle on the highest dais. To his right and left sat Nuon Chea and Ta Mok. Below them, in neatly drawn stacks, were four piles of skulls representing their many victims. Duch had also created a legend explicating the meaning of each image. The one-page sheet resembled a lesson plan, though it was difficult to read the small, precise script. Like Duch, the text was slightly blurred, just out of focus.

Which Duch was authentic, many observers wondered. The math teacher who had scolded the prosecution? The contrite Duch who at times seemed on the verge of tears as he read his prepared statement and acknowledged his responsibility? Or Duch the unwilling executioner who was ultimately powerless and victimized by the regime but still felt remorse and sought atonement? And then there was the Duch suggested by the prosecution, the ruthless, calculating man only cooperating to get a reduced sentence.

FALL GUY (KAR SAVUTH, NATIONAL DEFENSE CO-LAWYER)

Duch’s national defense lawyer, Kar Savuth, did not bring clarity.

International co–defense lawyer François Roux had praised Kar Savuth for defending a former Khmer Rouge despite himself having been imprisoned by the group. “He is a credit to the profession,” Roux told the court. “Could he possibly imagine that one day he would find himself as a lawyer defending, representing the director of S-21[?]”⁵⁰

Kar Savuth, who had started defending Duch shortly after he was arrested in 1999, always spoke before Roux during the trial. At times, Kar Savuth’s lack of international legal training became apparent. Perhaps to compensate, he spoke in a booming voice, gesticulating with his right hand or tapping the podium for

emphasis. He often listed his points numerically, reading them one by one. His straight-forward style seemed to play well to some Cambodians. Kar Savuth was also somewhat controversial, having served as an advisor to Hun Sen.⁵¹

Duch, Kar Savuth stated, was a scapegoat. “What is the purpose of prosecuting the leaders of the Khmer Rouge regime?” Kar Savuth asked rhetorically.⁵² It was meant, he said, to bring justice, prevent the return of the Khmer Rouge, uphold the sovereignty of Cambodia, and satisfy the victims and the souls of the dead.

The UN-Cambodia agreement, however, had restricted the jurisdiction of the court to “senior leaders” and “those most responsible.” If someone other than a senior leader or a person most responsible were to be tried, it would be unjust and unacceptable to the victims, living and dead. Duch did not fit these jurisdictional categories. Accordingly, Kar Savuth asked the court to terminate the proceedings.⁵³ Petit gazed across at him, hands clasped in front of his mouth as if to hold back a sharp reply. Several civil party lawyers were intently taking notes.

To support his argument, Kar Savuth asserted there were at least 196 Khmer Rouge prisons, each of which was led by someone like Duch who was required to interrogate and torture prisoners.⁵⁴ Either the heads of all of the prisons had to be tried, Kar Savuth suggested, or Duch should be released. Not to do so would be to treat Duch unfairly, he noted, something that would violate Article 31 of the Cambodian Constitution, which guaranteed equal rights. This violation, combined with the court’s lack of personal jurisdiction, constituted a violation of Cambodia’s sovereignty.

Kar Savuth concluded by returning to the prosecutor’s assertion that the trial was not only for the Cambodian people but for all of humanity. What lessons are being learned, he asked, when the court tries someone who is outside its jurisdiction? “Please consider this fact,” Kar Savuth asked the judges, “before Duch is prosecuted as a scapegoat.”⁵⁵

If Kar Savuth’s larger point might ring true for some, the court had long ago decided the issue of jurisdiction. Petit would directly challenge Kar Savuth on this point and on Kar Savuth’s claim that the court violated Cambodian sovereignty. When Judge Nil asked Kar Savuth to clarify his position the following day, Kar Savuth backtracked,⁵⁶ even as he reiterated his argument that Duch was neither a “senior leader” nor one of “those most responsible.”

REPAIR (FRANÇOIS ROUX, INTERNATIONAL CO-DEFENSE LAWYER)

François Roux took a different path.

A longtime human rights activist with a history of defending conscientious objectors and others engaged in civil disobedience,⁵⁷ Roux seemed an

unlikely candidate to defend Duch. Over time, however, he developed an interest in international law that led him to defend four accused Rwandan perpetrators as well as participate in the defense of 9/11 suspect Zacarias Moussaoi. With boyish hair, parted on the left, Roux's lips were often pressed and slightly upturned, almost in a patient smile. He liked to invoke philosophy or poetry to highlight a point.⁵⁸

While Kar Savuth had argued for Duch's release, Roux sought a lighter sentence. His comments echoed much of Duch's written statement, including his passing remark that, while accepting responsibility, Duch was ultimately "a hostage, a mere puppet in the criminal regime."⁵⁹

Roux noted that the defense and prosecution agreed on many of the facts in the case. The key issue, which Petit had touched on, was the sincerity of his apology and of his claim about his lack of autonomy. The co-prosecutors, Roux continued, had failed to discuss "the twin pillars of terror and secrecy. It was because of the terror that every link in the chain of command acted zealously to please superiors who were the ones who issued orders."⁶⁰ Since Duch took responsibility for giving orders, the court needed to acknowledge that he himself received orders, which he then transmitted.

Although obedience did not excuse Duch's acts, Roux claimed, it should be considered a mitigating factor. How many people in Cambodia, Roux asked, had acknowledged such a role in the killings? To do so in public and before the victims, as Duch had done, was not easy.

From the time that Roux had first met him in 2007, Duch had said that he recognized his responsibility and wanted to talk about what had happened. When asked if he would like to participate in a "reenactment," a civil law proceeding in which the accused returns to the scene of the crime, Duch responded affirmatively, asking only that he be left alone for a while at Tuol Sleng and that he be allowed to speak to some of his former prisoners and guards. When he did so, Duch wept. How could anyone doubt Duch's sincerity, Roux asked? "What other than justice . . . could have organized this meeting between Duch and his former victims."⁶¹

There is no doubt, Roux continued, that the prosecution's description of the tragic events at S-21 "arouses all our compassion for the innocent victims." But everyone also needed to think about "the one that today is confronting his past," an act that took "a certain amount of courage."⁶² By allowing Duch to seek forgiveness, address his victims, and provide answers, the court would help restore his humanity. Duch would at times fall short, since he "remains a

human being” and, like all of us, has “a bit of trouble admitting certain things that are extremely painful.”⁶³

Toward the end of his remarks, Roux told the civil parties: “You have your full place in these hearings. You will be able to ask Duch the questions that you wish to ask him.”⁶⁴ Then he issued a warning. Duch might not be able to answer all of their questions, including their main question: why? “I’m not sure that Duch on his own has the answer to this tragic question,” Roux explained. “Why these scenes? The unthinkable scenes, these unbearable scenes at S-21? Why these scenes that de-humanize the victims?”⁶⁵

Roux concluded by noting that perpetrators like Duch also had been de-humanized by the atrocities. “Will we,” he asked, “be able at the end of these hearings . . . to return to the victims all of the humanity? But to also be able to allow those or the one [who] had exited humanity to return to humanity? This is the stake for our court.”⁶⁶

Duch had become a tragic character, almost a victim. The trial was his path to redemption.

Day 3, April 1, 2009

VOICE (SILKE STUDZINSKY, INTERNATIONAL
CIVIL PARTY CO-LAWYER)

“What is the meaning of ‘participation?’”

At the start of the next day, International Civil Party Co-Lawyer Silke Studzinsky posed this question after being given the floor.⁶⁷ Due to a Trial Chamber ruling, the civil parties had not been able to make an opening statement. When Duch apologized, they had to remain silent. When Roux addressed them at the close of his remarks, they were unable to reply. Now they had the opportunity to be heard on the issues of the day, beginning with the legality of Duch’s detention.

Studzinsky, dressed in an oversized black robe, was a German lawyer who had a background in criminal defense and civil party representation in Germany and other European courts.⁶⁸ Since early 2008 she had been working with civil parties in Cambodia as part of her work with the German Civil Peace Service. She had a long-standing interest in gender-based violence and would later push to have alleged forced marriage and sexual crimes investigated in Case 002. Only one such alleged crime, a rape during interrogation, had appeared in the Case 001 indictment. At many points in the trial, Studzinsky would give Duch a piercing look, her dark eyes sharpened by eyeliner.

Shuffling through her notes, Studzinsky pointed out that the civil parties had only learned on the first day of the trial that Duch would be afforded an opportunity to speak. Participation, she stated, was closely linked to “the right to be heard,” including the right to “respond to the accused and to express their concerns and views.” This was basic to their fair trial rights.

International jurisprudence supported this argument, she claimed. In a case at the International Criminal Court the Pre-Trial Chamber had afforded civil parties an opportunity to make opening and closing remarks. If Duch had the right to make opening remarks, then so did they. “Bringing justice to the victims,” she concluded, meant allowing them to “express their view on what [they] thought about the apologies that the accused expressed yesterday, and on what he said, that he is a victim.”⁶⁹

| | |

Studzinsky’s comments reflected the perception of many civil parties and their representatives that their status had been under attack from the start, despite their having been empowered with unprecedented rights at the ECCC.⁷⁰ Her remarks also raised a complex issue. As opposed to splitting civil and criminal cases, as is often done in common law courts, the two may be conjoined in civil law. Victims thus may be a party to the court proceedings. This right is explicitly given in the Cambodian Code of Criminal Procedure, one of the key sources of inspiration for Article 23 of the ECCC’s Internal Rules, which states that civil parties may “participate in the criminal proceedings” by “supporting the prosecution” and seeking “collective and moral reparations.”⁷¹ To become a civil party, a person had to have suffered “physical, material or psychological” injury related to one of the crimes in question.

This empowerment of civil parties, which dovetailed with recent trends in international law, was often cited as one of the original contributions of the ECCC, even a historic one, since civil parties had for the first time been given unprecedented procedural rights.⁷² Almost immediately, however, questions emerged about how far civil party rights could be taken.

What exactly, as Studzinsky had asked, does “participation” mean and entail? If, as a Victims Unit statement noted, the “rights of Civil Parties are comparable to those of the accused, including the right to participate in the investigation, to be represented by a lawyer, to call witnesses and question the accused at trial, and to claim reparations for the harm they suffered,” then

how might these civil party rights impact the rights of the accused? The defense lawyers repeatedly highlighted this issue.

THE CIVIL PARTIES

By the start of the Duch trial, ninety-three people had brought suit as civil parties, most of whom were family members of people who had been killed at S-21. They were represented by fifteen lawyers and, in accordance with the recent rule changes, divided into four groups, roughly organized in terms of the intermediary organization with whom they were affiliated.

Thirty-eight of the civil parties were in Group 1, composed largely of civil parties being assisted by DC-Cam, which had arranged for their representation by Cambodian lawyer Ty Srinna and two international lawyers, Karim Khan (UK) and Alain Werner (Switzerland).⁷³ They were working pro bono. Despite empowering civil parties with full participatory rights and emphasizing fair trial rights, the ECCC failed to provide any compensation for the civil party lawyers. This was part of what some considered a larger pattern of neglect of the civil parties.

Although Internal Rule 4 explicitly called for the creation of a Victims Unit as part of the court's efforts to empower civil parties, the ECCC Victims Unit was barely operational by early 2008 and remained understaffed and underfunded for much of the next year. It eventually received a needed infusion of funding support from the German government, which contributed 1.5 million euros to it on November 6, 2008.⁷⁴

Forty-four civil parties attended the first day of Duch's trial.⁷⁵ Artist-survivor Bou Meng was there. So was Chum Mey. Vann Nath, and an S-21 child survivor, Norng Chanphal, would testify as witnesses. Bou Meng and Chum Mey were both in Civil Party Group 2, which was in part organized by the umbrella human rights coalition Cambodian Human Rights Action Committee and was represented, among others, by Studzinsky and Cambodian lawyer Hong Kimsuon. Unlike other international civil party lawyers, Studzinsky had salary support that enabled her to live and work full-time at the tribunal.⁷⁶ The lawyers in Civil Party Groups 3 and 4, in turn, received some assistance from the foreign intermediary organizations around which the groups were formed, *Avocats Sans Frontières* and the Paris Bar Association.⁷⁷

During the first two days of the Duch trial, the civil parties quietly watched and waited. I had spoken with Bou Meng and Chum Mey a few times. The contrast between them was striking. Despite being ten years younger than Chum Mey, Bou Meng looked much older. Perhaps this aging was in part

because of the years Bou Meng spent in the sun as a farmer, while Chum Mey worked as a mechanic in the city. But Bou Meng’s toothless grin and poor hearing were no doubt also linked to the beatings he endured at S-21.

From the start, it was clear that there were tensions with Duch. On entering the court on the first day, Duch had greeted the civil parties, palms pressed at chest level, along with the rest of the court. Later I noticed Duch waving at or giving a small salute to Bou Meng and Chum Mey, as if they were comrades. Chum Mey halfheartedly saluted back; Bou Meng waved his hand slightly.

Bou Meng just shook his head when I asked if he was okay with Duch’s greeting. “We don’t know each other” (*at squal knea*), he told me, invoking a Khmer term that can mean one has met or is acquainted with another person but can also signify having a friendly relationship with that person. Chum Mey, in turn, later told me, “I saluted back because it would be rude not to do so. . . . But I have joined in a petition to the court requesting that he stop greeting the civil parties.” He was referring to a March 26 request Studzinsky had made on behalf of twenty-three civil parties from Group 2 asking that Duch cease from making gestures toward the civil parties that might be interpreted as seeking their forgiveness or sympathy.⁷⁸

Perhaps that was why Duch had saluted Bou Meng and Chum Mey. Maybe he hadn’t heard. Or maybe he didn’t care. In the days that followed, however, Duch stopped trying to greet the civil parties.

RESPONSIBILITY AND REMORSE

The contestation over civil party rights continued on Day 3, focusing on a motion for Duch’s release. He had first been detained, Roux noted, on May 10, 1999. In 2007 he had been transferred to the ECCC. Now it was 2009. This meant that Duch had been under arrest for roughly ten years. This violated both Cambodian and international law forbidding prolonged detention without trial. Accordingly, the defense requested that he be released and credited for time served and illegal detainment if sentenced.

Roux noted the irony of this request in light of Duch’s apology.⁷⁹ It didn’t matter. In the end, the law had to be applied, even if it was difficult for the civil parties or the public to understand. “Dura lex sed lex,” he said; “The law is hard but it is the law.”⁸⁰ Moreover, it was also difficult to imagine, he added, that a person could be detained for almost ten years without trial. The law required Duch’s release. Roux emphasized: “Nothing less than the integrity of the Tribunal is at stake.”⁸¹

Speaking for the OCP, Chea Leang noted that the ECCC was independent and therefore that the illegality of Duch's prior arrest was out of its jurisdiction. A Pre-Trial Chamber decision had affirmed this point. Moreover, to free Duch would risk not just his flight but his safety, since Cambodian victims were angry "and [might] take revenge on him."⁸² Duch, who had been carefully listening, his face impassive, glanced at the audience in the gallery.

When Chea Leang finished, the civil party lawyers rose to speak. Roux interjected, invoking Internal Rule 82, which stated that if an accused made a request for release, the "Chamber shall decide after hearing the Co-Prosecutors, the Accused and his or her lawyers."⁸³ Since no mention was made of the civil parties, Roux concluded, "the civil parties do not have a place, a role to play in such a discussion."⁸⁴ Later he would address them directly, saying: "We will hear you. We will hear what you have to express to us but, please, do not venture onto areas which are not yours."⁸⁵

After conferring, the Trial Chamber allowed the civil parties to comment on the scope of Rule 82. Studzinsky asked the judges to recall the Pre-Trial Chamber's decision of March 20, 2009, affirming the right of the civil parties not just to be physically present but to "participate in detention appeal hearings," since they impacted their right to reparation. Swaying slightly as she spoke, Studzinsky asked the Trial Chamber to "be consistent" with this decision.⁸⁶ Even if civil parties were not explicitly mentioned in Rule 82, the judges needed to consider "the spirit of civil party participation," since "one of the fundamental rights of participation is the right to be heard."⁸⁷

FACT

While Studzinsky was speaking, the French international lawyer for Group 3, Martine Jacquin, had been patiently standing. With short blond hair and square-framed glasses, Jacquin headed the *Avocats Sans Frontières* office in Cambodia and, in addition to representing civil parties at the ECCC, had been working to develop a grassroots network of pro bono lawyers to assist Cambodia's poor.⁸⁸ She wore a black sash over her shoulder. It was "surreal," she noted, that the day after "Mr. Duch expressed remorse and regret and a request for forgiveness . . . he applies for release" based on legal arguments.⁸⁹ There should be "a minimum of recognition of the suffering of civil parties which is due here. In that light, Mr. Duch's application is unconscionable."⁹⁰

She noted that the previous day the prosecution and defense had discussed how to present to the court the list of facts on which they had agreed. This list, largely drawn from the closing order, included 351 factual allegations.

According to Petit, the defense had agreed to 157 of these facts and not disputed 81 others, meaning that 238 of the 351 allegations were uncontested.⁹¹ Of the remaining 112 facts, the defense had disagreed with 21 of them and either partly agreed or commented on the others. Petit had stated that it was important to explicitly note these facts “to indicate where the debate lay between the parties. It will come as no surprise . . . that most of the disputed facts rest with the part of the indictment dealing with the responsibility of the Accused.”⁹²

The initial plan had been to submit this list through written submissions. Jacquin insisted, “we should read out the factual analysis one-by-one.” This would provide a sort of response to Duch’s opening remarks and also highlight the points of agreement and disagreement. She concluded, “I think it is important for Mr. Duch to realize the gravity of the events that have brought him here today and these facts are of particular [importance] to the civil parties who [lost] their loved ones and whose lives were destroyed.”⁹³

The civil parties would win on this particular issue. The next day, however, the court ruled against their request to make opening remarks or to comment on Duch’s motion for release. While the court noted Pre-Trial Chamber decisions “with interest,” Internal Rule 82.3 was a “conscious decision by the ECCC plenary shaping civil parties’ participation” that took into account the “balancing of the rights of civil parties with the need [for] a fair and expeditious trial.”⁹⁴

However, for the remainder of the third day, Duch had to listen as parts of the closing order detailing his alleged crimes were stated in public. Standing before a podium, Petit began reading the agreed facts from a list sorted into topics like “Establishment and Structure of DK,” “The Policy of Smashing Enemies,” “Conditions of Detention at S-21,” “Systematic Use of Torture during Interrogation,” and “Executions at Choeng Ek.”

“Paragraph 3. S-21 was chaired for most of its existence by Kaing Guek Eav alias Duch. Agreed. . . .”⁹⁵

“Paragraph 30. Duch was feared by everyone at S-21 [not contested] . . .”⁹⁶

“Paragraph 168. S-21 personnel performed medical experimentations on prisoners. Agreed. . . .”⁹⁷

“Paragraph 235. Over 12,380 detainees were executed at S-21 [not contested] . . .”⁹⁸

“Agreed Paragraph 254A. [O]n one prisoners list Duch handwrote, ‘To the attention of Uncle Peng. Kill them all. 30 May 1978. . . .’”⁹⁹

“Paragraph 260. Children of S-21 prisoners were taken away from their parents, killed within the S-21 compound and buried north of the prison [not contested]. . . .”¹⁰⁰

The process took two hours. Duch sat with his reading glasses on, following along on a paper copy, with the pages neatly stacked on the table before him. At times he licked the tip of his finger and flipped a page. Yellow marker in hand, he was annotating.

After the final factual allegation was read, Roux stood and informed the court that “Duch acknowledges the facts that have been read out concerning the executions.” However, Duch was requesting “that we use the term ‘S-21’ and not the term ‘Tuol Sleng’ that he does not recognize because it’s a term that was only given after the fact.” What concerned Duch, Roux explained, was that he had been the head of S-21, whereas “Tuol Sleng is a word that was given after the arrival of the Vietnamese troops.”¹⁰¹ The defense said nothing about the other facts.

But another Duch was starting to emerge: Duch the mathematician, the model defendant, meticulous and always ready with a comment or clarification.

| | |

The stage is set. The protagonists are ready. And the structure of the drama is taking shape. At the center stands Duch: tragic hero in search of redemption, evil villain without remorse, something in between, or all of the above?

In the gallery, the audience waits for answers. Who is Duch? What did he do and why? Was his apology sincere? Can he be forgiven? And might justice and humanity somehow be found?

For this performance, the marquee is flashing red: “Duch: Man or Monster?”