

A JUDGE IN FRONT OF THE KHMER ROUGE¹

*“The issue is rather to understand how they ended up there.”
- Jacques Sémelin, Purifier et Détruire.*

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After a year-long judicial investigation, Extraordinary Chambers in the Courts of Cambodia (ECCC) Co-Investigating Judges Marcel Lemonde and You Bunleng sent Kaing Guek Eav alias “Duch” to trial on charges related to the deaths of at least 12,272 men, women, and children at the Khmer Rouge’s S-21 security center.³ In this excerpt from Judge Lemonde’s memoir of his four years at the ECCC, he recounts his evolving impressions of Duch as he investigated the nature of Duch’s responsibility for the crimes that took place at S-21 and associated facilities.

CHAPTER 19

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Suos Nov, *alias* “Chhouk,” seems to have been a moderate — and even brave

1 Author approved excerpt translated by Tiphaine Ferry and Anne Heindel from UN JUGE FACE AUX KHMERS ROUGES (Paris, Seuil 2013).

2 French magistrate Marcel Lemonde was the first international Co-Investigating Judge of the Extraordinary Chambers in the Courts of Cambodia (2006-2010), during which time his office issued two closing orders indicting five former Khmer Rouge for international crimes. To date, they remain the only persons charged by the ECCC. Lawyer Jean Reynaud is co-author of a documentary entitled KHMER ROUGE, A SIMPLE QUESTION OF JUSTICE.

3 See generally Case No. 001/18-07-2007-ECCC-OCIJ, Closing Order (Aug. 8, 2008).

— member of the Khmer Rouge. At the beginning of the [Democratic Kampuchea] regime, he in fact opposed the systematic execution of supporters of the [deposed] Lon Nol regime. Not long after, when he was secretary of the Eastern Zone — a zone particularly targeted for purges — Chhouk was arrested and taken to S-21 [security center]. [S-21 Chief] Duch followed the interrogation closely. [The ECCC Office of the Co-Investigating Judges] found a letter Duch addressed to Chhouk during his detention. It refers to a “committee” that would order Chhouk’s execution if he did not confess his crimes.

When we showed this document to Duch and asked him to explain who was on this “committee,” he burst out laughing. His eyes sparkled with amusement: “It was only a stratagem to terrify the prisoner,” he said. There was neither a committee, nor a real threat of execution, nor any ultimatum. The S-21 chief invented everything in order to persuade the prisoner to sign a confession. When we interrogated Duch, he appeared to be delighted still with the subterfuge.

Chhouk confessed like all the others. And, like all the others, he was executed.

With a distant gaze, Duch very slowly gives us an account of Chhouk’s execution, at five in the morning, at a crossroad not far from the detention center, by stabbing to the carotid with a blade. He had witnessed it from a distance, terrified.

When we interrogate him, Duch gives the impression of reliving the events he describes. He has an absent look and his eyes are misting up. For a moment, he leaves us.

In the course of our interviews, the relationship we establish with Duch is quite special. I feel a sort of “Lima syndrome.”^[4] Progressively, I no longer feel that I have a torturer in front of me, but simply an ordinary prisoner. Although it is impossible to forget the crimes he committed, I can no longer see him only as a criminal. Sometimes I find myself facing a man, with qualities and defects, a friendly side, and an annoying habit of precision. Lately he does not seem terrifying anymore, and this is precisely what terrifies me. We get along well. He is polite and always smiling: the opposite of a monster.

Clearly he committed appalling acts. There are moments when there is still something terrifying about him, like his way of showing his teeth when he laughs. But he remains a man. It is precisely because he is a man that he can be put on trial. Even in matters of crimes against humanity — especially in matters of crimes against humanity — it is essential not to label the accused as a “monster.” I explained this in detail in an interview with the weekly magazine *Paris Match*.⁵ Quite unsuccessfully, I must admit, since the article was published under the title *Thirty Years*

After, the Monster Is Finally Tried!

Obviously, there is a considerable political dimension to the Duch trial, but a regime can only function through individuals. It is not possible to ignore the human element without abandoning part of the problem. For that reason, we hired two experts in psychological examination: Françoise Sironi, a specialist in helping victims of torture and mass atrocities, and Ka Sunbaunat, one of the only Cambodian psychiatrists.

The report they gave us a few months later, based on fifty hours of interviews with the prisoner, highlighted a number of Duch’s personality traits. Duch suffers from a fundamental insecurity, for which he constantly strives to compensate by joining groups he perceives to be dominant. What better for him to do now, he seems to think, than place himself under the protection of two most powerful institutions: international justice (which currently holds him in its grasp) and Christianity (which, according to his analysis, defeated communism in Poland).

Nothing is more important for Duch than being well considered by his superiors. He probably sincerely regrets the crimes he committed, but at the same time he is proud that he was able to successfully carry out his policing responsibilities. He remains very much influenced by Khmer Rouge ideology. His relationship to authority shows that clearly. By choosing to cooperate with us, and by being very conscientious in his manner of answering our questions, he reproduces the arrangement he had as S-21 chief: leaders are of the greatest importance to him. At the time of Democratic Kampuchea, these were Son Sen and then Nuon Chea; today, they are the investigating judges. Just as thirty years earlier he was a model police chief, with us too he is always standing at attention and contemplating how to be a model accused.

Regarding the question of whether or not Duch suffers from major psychological disorders such as neuroses, psychoses or perversion, the experts declared without ambiguity that this was not the case. Having seen Duch regularly for months, I never had much doubt on the matter. It is true that the former S-21 chief shows an obvious lack of empathy and emotion, but this is insufficient to substantiate the existence of pathological traits.

However, one incidental anecdote we learned threw light on the question of sadism, as it suggested that he took pleasure in his duties. Duch liked to go to the ground floor of the central [S-21] building, where two or three painters and sculptors were producing works of art glorifying Pol Pot and the regime. He would sit there and watch them work. One day, he gave a pack of cigarettes to one of them, Bou Meng, and asked him for no reason to beat up Iem Chan, a sculptor working at his side. In front of Duch, Bou Meng and Iem Chan started fighting each other

4 “Lima syndrome” describes the sympathetic feeling that detainees can develop for their detainees.

5 *Paris Match*, Nov. 20, 2008.

with plastic pipes. Asked why he did this, Duch answered that he did not know, then added that he would prefer to discuss the incident first with a priest.

The former S-2I chief also has patently obsessive traits. He is exceedingly careful, and his concern for accuracy is limitless: he asks for corrections on witness statements regarding details that are of no interest to anyone else. He cares obsessively about truth, or at least precision.

Despite this, the system he set up was based on the opposite of truth. By making prisoners confess when he knew very well that the torture would make them say anything, he elaborated a paranoid system involving enemy networks, conspirators, and murder attempts through many absurd confessions in which even he did not believe. But this is what the leaders required.

How could Duch, so obsessed with exactitude, adapt to this undertaking? In an interview during which he was particularly open, I asked him: “Today, you admit that you knew since the beginning that these confessions did not reflect the truth. Is this not recognition that you deliberately sent thousands of people to their deaths, knowing they had done nothing wrong? Did you not have the opportunity, like others, to flee, considering your rank?”

He did not directly answer the first part of the question, but limited himself to saying: “I did not have the right to withdraw. Superiors monitored. The only cadres who could flee were those who fought the Vietnamese at the border. . . .”

Anyway, it is incontestable that Duch sent to death people he knew were innocent. He does not contest this himself.

The way Duch worked can not help but bring to mind Eichmann.^[6] Without a doubt, there are differences between their personalities (to begin with, Eichmann was probably more mediocre and careerist than Duch). However, in the role of accused, the similarities are striking. We can identify the same reactions, sometimes the same phrasing, and in both cases, the absence of any mental disorder.

Duch no doubt was drafted into a position [of security center chief] he did not particularly like, and then given the command of S-2I because of his previous experience at M-13.^[7] He explains that he was reluctant to be appointed to the

position, claiming that he tried to have someone else selected in his place. This can be compared to Eichmann, who declared himself “radically hostile to any form of violence against Jews,” and supporter of Zionism.⁸ But their senses of duty prevented either one of them from refusing. Like Eichmann before him, Duch said: “I was under the impression that, although I hated police work and interrogations, if I did it, I would do it better than Nat [his predecessor at S-2I]. I had to do it; it was unavoidable; it was an order; I had to do it.”

Both cared about pleasing their superiors, showing respect to authority above all. As soon as these superiors trusted them to complete a task, it was necessary to do it well because the superiors embodied legality. During the reconstitution at Choeung Ek, Duch told us in substance: “At that time we would call it a task; today, considering the spirit of the laws of the [ECCC] Tribunal, it is considered as a criminal act.” Eichmann employed nearly the same wording: “What he did was only a crime retrospectively; he always had been a citizen obeying the law because the orders of Hitler, which he did his best to execute, had the force of law during the Third Reich.”⁹

But as soon as the context changes, both are ready to condemn, in the harshest terms, the criminal character of their acts: Eichmann declared that “the annihilation of the Jews is one of the biggest crimes in the history of humanity.”¹⁰ Similarly Duch, speaking of Democratic Kampuchea in almost identical words, first during his initial appearance and then again at the opening of his trial, says: “Concerning these revelations that I want the world to hear about S-2I, [...] it’s a long story; I would like to summarize. The crimes committed at the S-2I were serious, well organized and systematic. This is a summary.”

Both men are similar in their strategic trial-and-error: we know that during the entire trial Duch demonstrated constant repentance — before asking for acquittal on the last day. As for Eichmann, he explained repeatedly that the worst for him would be to flee from his true responsibilities — before he submitted a document appealing for leniency.¹¹

Both seemed to undergo depressive episodes: Duch declared that in the past, he had stayed prostrate all day, waiting for his turn [to be purged] to arrive. Similarly, regarding his horrifying discovery of the real meaning of the “Final Solution,” Eichmann said, “I sat for hours next to my driver without exchanging even a word. At this moment, I had had enough. I was finished off.”¹²

6 Adolph Eichmann was the head of the Nazi Central Office for Jewish Emigration during World War II and “played [a] central role in the deportation of over 1.5 million Jews from all over Europe to killing centers and killing sites in occupied Poland and in parts of the occupied Soviet Union.” He was put on trial in Israel for crimes against humanity and sentenced to death. United State Holocaust Memorial Museum, *Holocaust Encyclopedia*, at www.ushmm.org/wlc/en/article.php?ModuleId=10007412.

7 From 1971-75, Duch was chief of the Khmer Rouge M-13 security center where he was responsible for “interrogating individuals suspected of being spies or enemies of the [Communist Party of Kampuchea] CPK.” Case No. 001/18-07-2007-ECCC/TC, Judgment, ¶ 115 (July 26, 2010). Similar to S-2I, many—though not all—of the detainees were tortured and executed after their interrogations. See *id.* ¶¶ 116-117.

8 HANNAH ARENDT, EICHMANN IN JERUSALEM 130, 174 (French edition: Folio-Histoire).

9 *Id.* at 78.

10 *Id.* at 75.

11 *Id.* at 127.

12 *Id.* at 181.

A notable difference between the two is that Duch was closer to the place where the crimes were committed. This raises the question of whether or not he directly participated. Duch is always much more at ease declaring in a general manner, “I am responsible for everything that happened at S-2I,” than responding precisely to our questions about his own actions.

He still denies practicing torture himself, admitting reluctantly that he might have “given some slaps.” This is contradicted by some of his subordinates. One of them, for example, affirms that Duch tortured a woman between nine at night and three in the morning by giving her electric shocks until she passed out. Duch denies this categorically.

Regarding his implication in the acts of torture committed by his subordinates, Duch does not contest it, but always introduces complicated nuances. Interrogated about a document containing his handwriting, regarding a certain Oum Soeun, he studied the document carefully before answering that he had indeed written on it: “Has not yet confessed. Torture.” Other papers are presented to him. They concern a woman called Danh Siyane. Within them it is written: “Interrogate meticulously, and torture seriously but moderately in order to find the networks. Hit her until she stops saying she went to Vietnam with her grand-father for cancer treatment and menstruation problems.”

Duch confirms that he personally wrote these instructions. But there is an explanation for it, and he wants us to hear it:

This document is dated from January 8, 1976, at the time when Nat was supervising everything; me, I just carried out the orders and he corrected my reports before sending them to Son Sen. [...] When I was appointed chief of S-2I, this changed [...]. As for employing torture, the situation was this: for ordinary combatants, Hor was in charge and could order torture; for important prisoners such as Ya, Son Sen gave me orders and decided on the use of torture.

In other words, he was too high-ranking to be implicated in the torture of some prisoners, and not high-ranking enough to order the physical abuse of others.

Likewise, even though he was the chief of camp dedicated to the systematic execution of prisoners, he never made the decision to kill anyone. When we show him confessions on which the order of execution is written in his hand, he again he has an explanation indicating that his role was merely to conform to external demands. Thus, one day he tells us:

It must be remembered that the general principle, in the security centers and especially at S-2I, was that every arrested person should be executed [...]. The only decision to take concerned the time of the execution. The person in charge of these executions was Hor [...]. Before all executions, I had to confirm that the interrogations were over. Hor would present me with the list of the people to be executed and I would confirm that their interrogations were over, sign the list, and Hor carried out the decision to execute.

A few days before the fall of the regime, on the January 2 or 3th of 1979, Nuon Chea summoned him and gave him an “absolute” order to kill all the remaining prisoners at S-2I. Interrogated about what happened next, he replied: “On this question, I was terrorized. I spoke about the order with [my subordinate] Hor.”

[Co-Investigating Judge] You Bunleng insists:

- You “informed” him or you “ordered” him?

- Informed. After telling Hor, I went to sleep because I had lost all hope. I would like to specify clearly that even before receiving this order I was a desperate man.

So Duch did not give orders but “informed” his subordinates about orders from above. It is almost as if he had worked at a press agency, transmitting information from above and confessions from below.

During an important interrogation in August 2007, I confront him with his contradictions:

- To summarize, you were a chief who had no power and never made decisions by himself; your role was only to transmit orders, and by the end (from late 1978 to 1979), you knew nothing about what was going on at S-2I, nobody transmitted any information to you about what was happening there?

- I had power to report communications from above and to disseminate them, nothing more, nothing less. When S-2I was created, my role was to read the confessions and report on them by phone to Son Sen every day.

When Son Sen left, I transmitted this information to Nuon Chea once every three, four or five days. As for my power, it was to report communications from above and spread them at the lower level [...]. I was merely a “nominal head.”

A nominal head? Duch would not speak differently if he were adopting a defense strategy similar to that of Khieu Samphan’s — pretending he had power only on paper but not in fact. But contrary to Khieu Samphan, Duch does not try to escape sanction, recognizing his overall responsibility for the crimes committed at S-21.

In reality, Duch is probably just having a hard time facing his past. He was incontestably in an all-powerful position at S-21, where he alone reigned (and at least 64 S-21 staff were executed at Choeung Ek and others were likely executed at Tuol Sleng). In such a context, no one has been seen restraining his actions. The theory of a “nominal head,” in his case, seems unacceptable.

When Duch says he is responsible for the crimes committed in S-21, he is probably speaking the truth. When he adds that he never killed anyone, it is far less credible but does not necessarily taint his sincerity or his overall responsibility. There are many defendants who acknowledge a crime yet refuse to explain the details. It is a very human inclination: admitting to having not been irreproachable in one’s life is not difficult; confessing to a precise wrong action is more painful. . .

As highlighted by the experts, the question of whether or not Duch is sincere when he expresses remorse probably leads to a dead end. The truth, in a case like his, lies beyond. He himself, overwhelmed by his own destiny, cannot find it. He must live with what he did, and this may exceed human capacity.