

BEFORE THE TRIAL CHAMBER
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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SUBMISSIONS OF THE CO-LAWYERS FOR KAING GUEK EAV ALIAS DUCH CONCERNING
THE TWO SEQUENCES OF FILM FOOTAGE PRESENTED
BY THE CO-PROSECUTORS

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MAY IT PLEASE THE TRIAL CHAMBER

1. In a decision dated 10 March 2009,¹ the Trial Chamber directed KAING Guek Eav alias Duch, through his lawyers, to file no later than 24 March 2009, written submissions concerning the two sequences of film footage that the Co-Prosecutors seek to introduce.
2. The Defence is hereby filing the following submissions with the Trial Chamber in response to the Motion of the Co-Prosecutors of 28 January 2009 concerning the two sequences of film footage.²
3. The two sequences of film footage were given to the Co-Prosecutors by the Documentation Centre of Cambodia (DC-Cam) on 8 January 2009. After careful review, the Co-Prosecutors determined that the sequences of film footage are relevant to Case File 1, in that they contain picture images of S-21 taken in the immediate aftermath of its discovery by the Vietnamese forces.
4. However, after having carefully reviewed these films, the Defence considers that they are neither admissible nor relevant, for the following reasons:
5. *First*, the films are political in nature and present a distorted view of reality. In concrete terms, the *Radio France Internationale* (RFI) report, which was aired in Khmer on 4 February 2009 (at 1342 UTC) quoted François Ponchaud as saying: “*the films made by the Vietnamese are political*.”³
6. *Second*, the entrance to S-21 is situated to the east along Street 113, but in the film sequences, it is situated to the west, along Street 131.

¹ See *Decision on the Admissibility of New Materials and Direction to the Parties* Trial Chamber, 10 March 2009 (E5/10/2).

² See *Motion of Co-Prosecutors to Submit New Evidence*, 28 January 2009 (E5/10).

³ See Annex A: Interview of François Ponchaud by RFI, 4 February 2009 (on CD).

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7. Moreover, the films sequences feature a sign which reads: “*école primaire de Tuol Slèng*” (situated to the west). Now, at S-21 (whose entrance was situated to the east) there was no such sign above the front gate. This is therefore a misrepresentation.
8. *Third*, on 2 or 3 January 1979, NUON Chea ordered S-21 to transfer all the detainees to Cheung Ek.
9. Duch asked to keep the detainees from Unit Yor-8 (៣-៨) for interrogation; these were four young combatants. The interrogators killed all four of them before leaving Office S-21, on 7 January 1979. This proves that there were no other corpses besides the four that the S-21 staff was not able to bury before they fled.
10. According to Duch, on 7 or 15 June 2007, Japanese or Italian television showed him a photo of a dead soldier lying on a bed. The corpse was clothed and was not yet decomposed or bloated. Duch recognised the corpse as being that of one of the four individuals from Unit Yor-8, who had been killed at S-21 on the last day and left on a bed.
11. However, the films sequences show more than four corpses and not those of the combatants from Unit Yor-8. Therefore, according to Duch, this is fabricated.
12. *Fourth*, all the victims who were at S-21 were all executed on 2 or 3 January 1979. Moreover, no one was taken there after 3 January 1979. So this only goes to show that there were no children by the time the Vietnamese forces arrived.
13. Further, the films feature a building with hammocks for children. The building in question was the S-21 workshop, where one would normally expect to see items scattered about after the hasty departure of the S-21 staff. This must have been staged for the film, because the building looks neat and tidy, whereas the workshop bustled with activity daily; moreover, no hammocks were ever installed there for children or infants. It was not the policy of Office S-21 to provide nylon hammocks for children.

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14. Lastly, victims, both children and adults, were detained under harsh conditions at S-21, and were deprived of food, among other things. And yet, the children and infants featured in the films appear to be in good health. Therefore, it is doubtful whether these children and infants were actually in detention at S-21. Also, if indeed these children were left on their own at S-21, they could not have survived any longer than a few days.
15. *Finally*, by the time KAING Guek Eav alias Duch left S-21, on 7 January 1979 at 2 p.m., there were nine victims left there, former S-21 prisoners, some of whom are still alive; the latter include VANN Nath, BOU Meng and CHUM Mey. These nine individuals should have been featured in the films, in order to present a true picture of what went on at S-21.
16. In view of the foregoing submissions, the Co-Lawyers consider the two sequences of film footage to be a political montage.
17. In conclusion, the Defence requests the Trial Chamber not to allow these materials to be placed into Case File 1.

WITH ALL PROPER RESERVES

Kar Savuth	Phnom Penh	
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Name	Place	Signature