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Duch Pre-Trial Hearing: Commune and Village Chiefs' Participation in the ECCC Under the Living Documents Project

By Thea Clay*

After years of preparation and public anticipation, the first public hearing of the Extraordinary Chambers in the Courts of Cambodia (ECCC), otherwise known as the Khmer Rouge Tribunal, was held on November 20, 2007 in Phnom Penh. The Documentation Center of Cambodia (DC-Cam) used this opportunity to begin Phase 2 of its Living Documents Project by inviting 40 victims of Democratic Kampuchea to witness and participate in the proceedings. This event was facilitated by members of the DC-Cam staff and was recorded by the Film Team; their film of the hearing has been posted on the Cambodia Tribunal Monitor website (www.cambodiatribunalmonitor.org).

The 40 participants consisted of 5 commune chiefs, 22 village chiefs (6 female), 10 Cham Muslim community leaders (5 female), 1 US Embassy employee, and 2 Tuol Sleng Genocide Museum employees.

Introductory Sessions and Filing of Complaints

On Monday, November 19th, the participants met in DC-Cam's Public Information Room. They were greeted by Team Leader Sok-Kheang Ly, who summarized the Living Documents Project for them. The Center's Deputy Director Dara Peou Vanthan then welcomed the group and briefly described the schedule of events for the coming days. He also updated the participants on the case against Noun Chea and the recent arrests of Ieng Sary, Ieng Thirith, and Khieu Samphan. The guests were then urged to tell their communities what they learned at the hearing. Mr. Ly then explained the second phase of the project, which will include DC-Cam staff visiting communities and facilitating meetings where participants will talk about their trip to the ECCC and answer questions about the Tribunal. The Team's first trip will take place on December 1; they will visit the northeast region of Cambodia.

Following a short break, DC-Cam Legal Associate Sarah Thomas presented a brief biography of former S-21 Prison Chief Kaing Guek Eav, alias Duch, and detailed the structure and make-up of the court, the nature of the charges against Duch, and the essence of the arguments that would be presented. She also explained the legal issues surrounding the provisional detention order, the difference between the domestic and

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international charges, and the sequence of events they would witness. To ensure that all of the participants had enough historical background to evaluate the pre-trial hearing, the DC-Cam-produced documentary film *Behind the Walls of S-21* was shown. Ms. Thomas and Mr. Ly then walked the participants through the complaint form and explained the three ways in which a person can participate in the Tribunal (as a criminal complainant, a civil party, or witness). After lunch, the group was invited to complete complaint forms, which DC-Cam staff would then deliver to the ECCC's Office of the Co-Prosecutors on their behalf.

Before the participants were paired with DC-Cam staff members to complete the complaint forms, they were reminded of the important role these forms play; not only will they aid in the prosecution of senior officials and those most responsible for the genocide during the Democratic Kampuchea era, they will also help create an accurate historical record that will allow future generations to understand the actions of the Khmer Rouge regime. Issues of confidentiality and the functions of DC-Cam in the context of the ECCC were also explicated. Thirty three of the forty village and commune chiefs completed the complaint forms.

The participants responded warmly to the information presented to them. There was intense interest in the specifics of the arguments that would be presented the following day. Most of the discussion during the question-and-answer portion of the presentation focused on the provisional detention order and what a successful appeal on the part of the defense would mean. The participants also expressed concern for the safety of Duch, should he be released from custody. Many stated that the greater Cambodian community still harbors animosity towards Duch for the crimes he committed while head of Tuol Sleng Prison. They feared someone might take justice into their own hands. The great majority also felt that the Tribunal was the appropriate place for justice to be determined.

Attending the Public Hearing

On November 20th, DC-Cam staff accompanied the participants to the ECCC to take part in the Tribunal's first public hearing. The DC-Cam group drew attention immediately and was the focus of a majority of the pre-hearing photo opportunities. Mr. Ly coordinated the largest group attending the hearing – over 50 people – through check-in, security, and seating. Eight members of the DC-Cam group were selected to view the court proceedings in person. The rest were seated in the auxiliary room and viewed the hearing via a live feed.

Attendance at the morning segment of the hearing was high, although the room was not filled to capacity. It is important to note that, other than a small group of high school students, DC-Cam was the only organization to bring ordinary citizens to the hearing. The rest of the audience was dominated by press, the NGO community, and ECCC and diplomatic staff. The participants conducted themselves with dignity and patience in the face of a barrage of cameras and microphones.



The hearing began with the entrance of the judges, co-prosecutors, and co-defenders. The press rushed forward when Duch was brought into the courtroom. After a few minutes of photo opportunities, the judges had to repeatedly order the press to return to their seats. When these orders were ignored, the judges threatened to clear the courtroom and order was quickly restored. Duch

was told to stand and was informed of his rights and the charges against him. He gave a brief autobiography and identified his attorneys. He stood with his hands pressed together as a sign of greeting to the court and answered all questions addressed to him quickly; he clearly understood the nature of the proceedings and was in complete control of his mental faculties. He did, however, appear visibly nervous; his breathing was heavy and he avoided the gaze of the public, choosing instead to look at either his defense team or the judges. His facial expression remained fixed throughout the morning portion of the hearing.

The legal contents of this portion of the hearing centered on the reading of the charges, an explanation of the problematic nature of the provisional detention order, and a summation of the six amicus briefs (one of which was written by DC-Cam legal advisor Anne Heindel) submitted to the Courts. DC-Cam's monograph, *Victims and Perpetrators*, was referenced by the co-prosecutor, as were additional interviews conducted by the Center and members of the press. DC-Cam was also named as the primary source of documentation and research surrounding the activities of the regime. The co-prosecutors, Robert Petit and Chea Leang, appeared exceptionally confident, although the Living Documents Project participants commented that they were perhaps not aggressive enough.

The defense drew open laughter and scoffing from the press and NGO community when they claimed that Duch's prior detention by the military court was a violation of his rights. The defense attorney, François Roux, referenced DC-Cam's archives and collection of witness and victim testimony, and stated, "As I said many times, following the tragedy that Cambodia has lived, there was the time for journalists -- there was the time for historians to try to understand and the time for NGOs to attempt to try to rebuild. Now, today is the time for justice." The defense team was initially much more aggressive in its delivery and argumentation. They rebutted the co-prosecutor's claims regarding the legality of the provisional detention order, and contradicted their

assertions about the safety of Duch and possible witnesses, the risk that Duch would flee, and the danger that documents could be destroyed. Mr. Roux stated that documents and witness testimony are preserved by Tuol Sleng Genocide Museum, DC-Cam and the ECCC. Mr. Roux also clarified statements Duch had made to DC-Cam about fearing for his personal safety, saying that Duch actually said he feared Ta Mok's forces, not retribution by the public. Now that Ta Mok is dead and his forces have been incorporated into the current government, he no longer has any reason to fear for his well-being.

The hearing broke for lunch late and the press flocked to the DC-Cam group and a few heads of other NGOs for interviews. DC-Cam's group was interviewed repeatedly. The participants and DC-Cam staff then had lunch at City Cats, a nearby restaurant. During lunch, many in the group expressed dissatisfaction at the co-prosecutor's rather passive delivery of his initial statements and dismay at the more aggressive, and seemingly more competent, representation by Duch's defense team. They obviously understood the purpose of the hearing and had an excellent grasp of the finer legal issues.

After lunch, the group returned to the ECCC for the remainder of the proceedings. Attendance during the second half of the day markedly declined. Absent were representatives from the diplomatic community and many from the press and other NGOs. As the arguments continued, Duch appeared much more relaxed and confident. The participants listened intently the entire time; many took detailed notes and quietly discussed the arguments being presented. The court recessed for the day around 5:00 p.m. and the DC-Cam group again gave numerous interviews to the press. They then left the ECCC and discussed the day's events at dinner. The group expressed general satisfaction with the workings of the Tribunal and felt that they had witnessed a sufficient display of transparency and competence for justice to be carried out.

That night local television stations devoted a modest amount of coverage to the Tribunal. Unfortunately, a majority of the coverage was presented in French (the predominant language used in CTN's evening news broadcast) and English. This included portions of the hearing that were conducted in Khmer; the dubbing prevented people who speak only Khmer from being fully informed about the arguments and details surrounding the hearing. Radio coverage of the hearing and other Tribunal-related events was substantial. Voice of America devoted a large portion of their programming to the pre-trial hearing, as did ABC News and other FM stations. Despite the problems with translation services, the following morning all of Cambodia's daily periodicals featured front-page coverage of the hearing. One commune chief, who stated that some of his constituents did not fully believe the Tribunal would actually occur, divulged that he received an excited phone call from some of his villagers, who said they had seen him on TV.

November 21st was the final portion of the pre-trial hearing. Security was noticeably heightened and rules were more strictly enforced. Again, members of the DC-Cam

group were selected to view the hearing in person. Attendance was drastically reduced; the viewing room contained one-third the number present on the previous day. Foreign press and the NGO community were almost entirely absent from the viewing room, although many appeared after the hearing to give TV interviews. The DC-Cam participants again appeared completely engrossed in the proceedings. They took detailed notes and listened more intently than most other people in the viewing room. The arguments continued throughout the morning. Duch appeared more relaxed than the previous day and often glanced around the courtroom. He seemed pleased with the efforts of his attorneys thus far.

The co-prosecutors presented much more passionate arguments and frequently cited previous legal precedents. They directly challenged the defense's arguments. In a statement to the press, Duch's attorney expressed his client's satisfaction with the Tribunal, but resignation about the probable outcome of his appeal.

After the court broke for lunch and interviews were given, DC-Cam staff and the participants discussed the hearing. The mood of the group was upbeat and optimistic. Exit interviews were conducted with the village and commune leaders during lunch and on the bus returning from the ECCC. All expressed immense satisfaction with the Tribunal and repeatedly stated that they wished that they were able to return to the ECCC to view additional hearings. Over the course of the three-day event, their demeanor and perception changed from initial skepticism to confidence and optimism that the ECCC would finally bring justice to Cambodia. Everyone questioned felt that the DC-Cam introduction prior to the hearing greatly aided their understanding of the Tribunal and issues it seeks to address. They communicated that they would return to their communities and inform the public of what they had seen and learned.

Sin Kha, who lives in Phnom Penh and was one of the eight members of the group to personally witness the hearing, stated that she would describe the hearing in a two-fold manner. First, she said she would tell her community that she felt justice could be carried out in this court. She demonstrated a sophisticated understanding of the provisional detention order and was able to clearly and concisely summarize the issues and arguments given in court. The second issue she mentioned, and spoke at some length about, was the physical appearance of Duch. She said that before she attended the hearing, she felt nothing but anger towards him but, once she saw him, some of her anger was replaced with pity. She felt confident that he was no longer capable of physically harming people and looked sad and frail. Many other members of the group also reported that they felt better once they saw Duch in person; it seemed as if seeing him humanized the man and allowed some measure of consolation and victim empowerment. Sin Kha also mentioned that there were numerous problems with the translation into Khmer from both English and French during the proceedings; especially problematic was the translation of the defense's arguments. Translation difficulties necessitated that all parties speak unnaturally slowly, which also made the proceedings unnaturally lengthy.

Ali Osman from Takeo province spoke at length about the difference between the national and international charges against Duch and had an excellent understanding of the jurisdictional issues caused by the military court that had detained Duch, and the ECCC, which was now prosecuting him. He stated that he felt the Tribunal was functioning in a manner that respected the national culture of Cambodia and was happy with the level of international involvement. He appreciated the prosecution's efforts to define the scope of the ECCC and then provided an in-depth explanation of the arguments presented in court by each side. He was eager to return to his village and inform his constituents of what he had seen and learned.

Recommendations and Evaluation

Generally, all group members interviewed expressed a much more sophisticated understanding of the legal process the court is bound by. In the future, it may greatly benefit DC-Cam's Legal Response Team to conduct thorough entrance and exit interviews, and spend more time with the village and commune chiefs. This direct contact would allow them to better tailor their presentations to the needs of the groups and facilitate more two-way communication. It could also be beneficial for DC-Cam to conduct an informal survey to verify and quantify absorption and understanding of the Tribunal thus far to better focus the public outreach and education efforts.

Thanks to the tireless efforts of Ly Sok-Kheang and other DC-Cam staff, the event was an overwhelming success. The group left with an improved understanding and appreciation of the actions of the ECCC; they will return to their communities and effectively communicate what they witnessed, and provide an accurate description of the legal issues. They are grateful to DC-Cam for making their involvement in the Tribunal possible and look forward to a continuing partnership with this organization to preserve the memory of and find justice for the people of Cambodia.

End.