

Survivors' participation in Ieng Thirith Pre-Trial Hearing of the Extraordinary Chambers in the Courts of Cambodia May 21st, 2008

By Savina Sirik

The public hearing on Ieng Thirith's appeal against the Order of Provisional Detention of the Extraordinary Chamber in the Courts of Cambodia (ECCC), held on May 21, 2008, marked another landmark step in providing justice to Khmer Rouge victims. Two previous public hearings have been held on the detention of Kaing Guek Eav, alias Duch, the former S-21 prison chief, and Nuon Chea, former deputy secretary and head of the national assembly during the Democratic Kampuchea (DK) regime. These were followed by a partially confidential — and ultimately adjourned — hearing on the detention of Khieu Samphan, the DK head of state.

The Duch hearing, held on November 20 and 21, 2007, provided the first opportunity for public participation in the proceedings. Now the co-investigating judges of the ECCC are working to close his case file. They are expecting to issue a formal closing order in July 2008 and to commence his trial at the beginning of October 2008 (ECCC Court Report May 2008). This upcoming event will increase the public's confidence in the Court, especially victims who directly suffered from the Khmer Rouge and expect the hybrid court to bring justice both to survivors and to those persons who lost their lives during the regime. The subsequent public pre-trial hearings of Nuon Chea in February 2008 and Khieu Samphan in April 2008 also generated a great deal of public interest. They were important events paving the path to justice for the victims of the Khmer Rouge.

Like these previous public hearings, the fourth public hearing addressing Ieng Thirith's appeal regarding her provisional detention received a great deal of public attention. Local and international media filmed, photographed and recorded the hearing and conducted interviews with participants. As with past events, the Documentation Center of Cambodia (DC-Cam) Film Team was there to record the event and to post it to Khmer Rouge Tribunal Monitor website (www.cambodiatribunal.org).

As it had for the hearings of Kaing Guek Eav alias Duch and Nuon Chea, DC-Cam's Living Documents Project invited 50 villagers from three provinces to participate in the Ieng Thirith hearing, 10 of whom were women. Twenty villagers came from Kampong Cham, 20 from Preah Vihear (8 women), and 10 Cham Muslims (2 women) came from Preah Vihear, Kampong Cham and Kampong Thom. All of the attendees traveled to the Center the afternoon of Monday May 19th and were accompanied by the Center's staff members to a hotel already reserved by the DC-Cam staff. Due to the large number of participants and the limited time for the Victim Participation Project (VPA) Team members to help the villagers fill out complaints, before leaving for the hotel the project's team leader, Terith Chy, took the opportunity to complete complaint forms with attendees from Preah Vihear. He explained to villagers about the project, their right to participate, and the significance of filing complaints. The villagers were then assisted by the project team in filling out the complaint forms. Seven of the Preah Vihear group filed complaints with the VPA team.

Preparatory session and Filing complaints

On the next day, Tuesday, May 20th, after breakfast at the hotel the participants were bused to the Center to meet with and listen to DC-Cam representatives. The Living Document Project's team leader, Sok-Kheang Ly, waited in the Center's Public Information Room to greet the villagers. Mr. Ly warmly welcomed the group and briefed them about the trip schedule. He then summarized the history and work of the Living Documents Project and read a brief biography of Ieng Thirith, alias Phea, including both her personal background and her work experiences in the DK. Ieng Thirith was known to be born in the fifth quarter of Phnom Penh and had three siblings. Her sister, Khieu Ponnary, was the wife of Pol Pot, the Prime Minister and known as "brother number one" of DK. Ieng Sary, former minister of Foreign Affairs, is Ieng Thirith's husband. They have four children including a son who used to be a deputy governor of Pailin town. Ieng Thirith was appointed a minister of social affairs in the DK government in 1976.

Mr. Ly moved from Ieng Thirith's biography to the story of her arrest and an update on recent appeals by the other four charged persons. He then explained the reasons for the co-investigating judges' provisional detention order and Ieng Thirith's appeal brief. He went through the arguments that would be presented at the hearing by the defense lawyers and prosecutors. In addition, he explained the legal issues surrounding provisional detention and the structure of the Court. Legal terminology and case procedure were simplified to make the presentation more understandable to villagers. The participants showed strong interest in the presentation, especially the biography, by writing what they learned in their notebooks. Those who did not bring notebooks asked us for blank paper and pens to take notes. After the presentation, there was a momentary silence in the room. Then one member of the audience began to recall his experiences under the regime, and others suddenly joined him, equally eager to share their stories. Some participants asked common questions, such as why the Khmer Rouge leaders killed their own people, how they could not have known about the killing, and whether Ieng Thirith will take responsibility for her actions under the regime.



Participants listened to DC-Cam's representatives

Following a short break, the Center's deputy director, Peou Dara Vanthan, spoke on three main points. First, he provided an overview of the Court's structure, detailing potential criminal charges, the time frame of the trial, and the persons who could be brought to trial. Second, he presented the Court's legal procedure in understandable language so that the participants could easily follow and evaluate the pre-trial hearing. Mr. Vanthan explained the detainee's rights to legal representation and the roles of defense lawyers. He also explained the limited nature of the pre-trial hearing in order to manage the participants' expectations. Finally, he drew a picture of the courtroom on a white board to show what the participants should expect to see and outlined the position and roles of the officials who were going to be present in the courtroom. While explaining the legal process of the tribunal and the pre-trial hearing, Mr. Vanthan repeatedly reminded the audience to share the information they learned from the trip with their community back home.

Before the lunch break, the Film Team screened two documentary films. The first film, “Behind the Walls of S-21,” is a thirty-minute documentary describing the life stories of one former Tuol Sleng prison guard, Him Huy, and two ex-prisoners who lived, worked, and suffered in the prison. It was followed by a sixteen-minute film, “Preparing for Justice,” recently produced by DC-Cam’s Film Team. The later film reflects on survivors’ participation in the process of Khmer Rouge tribunal through tours organized by the Living Document Project. The tours brought participants to the two main notorious sites in the DK, S-21 prison Tuol Sleng and the killing field Cheung Ek, as well as the ECCC courtroom.

The whole afternoon was devoted to a summary of the Victim Participation Project and an explanation of how to file a complaint with the Court. Mr. Chy again talked to the group of about 50 people, reminding them of the significant role of complaints in the Court process. In addition to providing evidence to the prosecution, the complaints are an important way to preserve accurate historical records for the younger generation. Following a brief talk, each participant was handed a copy of *Searching for the Truth* magazine, a complaint form, and the Victim Participation Information Sheet which clearly explains the purposes of complaints and three ways of participating in the Court proceedings. The project leader then invited the participants to voluntarily complete the forms with the VPA team members’ assistance. Sixteen of the participants completed the form on that day, in addition to the seven people who filled it out on the previous day.



Mr. Chy explains to villagers their rights to participate in ECCC’s proceedings

Attending the Pre-trial Hearing

The following day the tour began at 7:30 in the morning when the bus filled with participants and a DC-Cam coordinator departed for the ECCC court building located behind the compound of the National Army headquarters on the national road number four. Mr. Ly led the group to the ECCC registration office, where he received entry cards and distributed them to the attendees.

As with previous public hearings, media representatives from a variety of outlets waited in front of the entrance capturing pictures of participants while their colleagues were inside the Court’s media room preparing their cameras and recorders to record the event. Queuing right outside the entrance, the DC-Cam group made up the largest number of visitors. The group took turns with the media passing through the security check point into the court building. When the time to open the hearing approached, some media persons were waiting at the path to the ECCC



Villagers queue up in front of the gate of ECCC

building in the hopes of taking photos of Ieng Thirith as she was brought by car from the detention facility.

In the trial courtroom, a pair of screens was placed on a stage with chairs already arranged for the upcoming trials. Visitors were directed by ECCC staff to seats where paper signs reading “Public” were hanging. While seated, four members of DC-Cam group were invited to view the hearing from the actual pre-trial courtroom. The others remained seated in the public viewing room and watched the proceedings on the screens.



Villagers queue up in front of the gate of ECCC

The number of attendees in the morning session was larger than that in the afternoon session, although it was smaller compared with the prior public hearings. The audience included the DC-Cam group, NGO representatives, high school and university students, ECCC staff, and the press. Each seat was equipped with a headset for listening to the hearing on the visitor’s preferred language channel. Three languages were used in the hearing: Khmer, English, and French.

At exactly nine o’clock Ieng Thirith, escorted by a female security guard and her co-lawyers, entered the pre-trial courtroom. A few minutes of photo opportunities were provided to the press, who quickly focused their cameras on faces of the accused and people in the room. Once the judges entered, the press was instructed to leave the room and the hearing began.

After the courtroom became silent, a pre-trial judge read out a report illustrating the court's components and a biography of the charged person. Ieng Thirith was then requested to stand up and answer judge's questions about her personal information. She slowly read answers from a piece of paper while a guard held her to prevent her from falling down. Her voice appeared broken and she occasionally paused, asking herself questions as if someone else would be able to answer on her behalf. Her body appeared fragile although her facial expression remained tough. The judge continued reading the report on the reasons for the provisional detention order and asked the charged person to either speak for herself or to have her co-lawyers speak on her behalf.

Ieng Thirith’s co-lawyer’s written statement concentrated on the legality of the provisional detention order, the risk of her fleeing to foreign countries, the likelihood of victims' vengeance, concerns about Ieng Thirith's safety, and possible pressures or threats to witnesses. Cambodian defense attorney Phat Poeu Sieng presented five reasons for releasing Ieng Thirith from provisional detention. He argued that the order was illegitimate and that possible danger to the personal safety of the charged person and



Ieng Thirith stands in the dock

witnesses were not sufficient reasons to keep Ieng Thirith in detention. Moreover, the risk of fleeing the country was also not a sufficient reason, as her travels back and forth to neighboring countries like Thailand for medical checkups at a time when she knew she might be arrested proved that she had no intention to escape. Finally, the attorney explained Ieng Thirith's fragile medical condition, which needed special care from physicians that could best be provided by house arrest. The lawyer's slow reading of his arguments created boredom in the audience, particularly among those in the viewing room.

International defense co-lawyer Diana Ellis repeated her colleague's arguments and also requested a twenty-minute confidential hearing to discuss non-public evidence. The co-prosecutors and civil party attorneys wanted the defense team to present the information at the end of the hearing, but the judges approved the request for *in camera* proceedings. After judges' decision, the audience expressed disappointment in missing part of the hearing and also their curiosity about the final decision.

During the lunch break, the press asked members of crowd outside the courtroom for interviews, including several people from DC-Cam's group. When asked for their opinions on the hearing, most of those interviewed showed their confidence in the Court but could not provide comments on the content of the hearing. They complained that the complexity of legal terminology and the procedure made the hearing hard for them to follow. A woman from Kampong Cham who had a chance sit in the actual pre-trial hearing room said with excitement, "The hearing was real; I could see it with my own eyes. I will go back and share with my community what I witness. Ieng Thirith looked old and weak. She couldn't even walk on her own, I feel pity for her."

After lunch, the DC-Cam group returned to the courtroom to attend the afternoon session. The number of people in the audience had decreased markedly. As the session continued, the prosecutors defended the provisional detention order and addressed the risks of setting the charged person free: possible pressure on witnesses, destruction of evidence, questions about the safety of accused, danger to the public order, and the need to guarantee the accused's presence.

When deputy prosecutor Paul Coffey stood up to continue, the judge reminded him to keep his statement short and precise and to avoid repeating his colleague's arguments. Mr. Coffey emphasized the risk of allowing Ieng Thirith to leave the Court's detention facility due to the possibility that she might attempt to organize pressure on witnesses through her close relationship with influential persons in the country. He also highlighted Ieng Thirith's attack on DC-Cam Director Youk Chhang in 1999 in the English-language newspaper *The Cambodia Daily*¹ as a demonstration of her potential willingness to threaten witnesses.

¹ See "Ieng Thirith Says She Only Wanted to Serve Her People," Letter to the Editor, *The Cambodia Daily* (Feb. 12, 1999). Ieng Thirith's letter was written in response to a *Daily* article that quoted her husband Ieng Sary as saying that any attempt to bring KR leaders to trial would threaten peace and reconciliation in Cambodia and might encourage civil unrest, especially among his followers. Kay Johnson & Ham Samnang, "Ieng Sary Warns of New Unrest Over KR Trial," *Cambodia Daily* (Feb 5, 1999). In the article, Youk Chhang is quoted as saying that documents at the Center show Ieng Sary's awareness of torture and execution during the regime, and that Ieng's warning indicates that he fears punishment for his crimes. In her response letter, Ieng Thirith identified herself a "simple member" of the communist party and attacked Mr. Chhang as "an incompetent and mean man [who] should be fired" as DC-Cam Director, claiming that his findings were "lies and defamations." In a response letter from Mr. Chhang published on the same day, he identified evidence showing that Ieng Thirith had been in fact an important member of the regime and emphasized that any statements he makes about the DR leaders are based on KR documents. He then requested a meeting with Ieng Thirith to discuss the workings of the KR regime and to hear her estimate of the number of people it killed. The following day, Khmer language paper *Rasmei Kampuchea* published a lengthy article describing both letters. This exchange of letters was not the first communication between Mr. Chhang and the Iengs. In 1997 Mr. Chhang was bumped from his hotel room in Sihanoukville to make room for Ieng Sary, who was

The co-prosecutor then suggested that the judges continue the hearing *in camera* to discuss undisclosed evidence. After half an hour during which the civil party attorneys discussed their concerns, the judges closed the public hearing. As she sat in the designated area next to her defense lawyers, Ieng Thirith occasionally changed her facial expression and bowed her head to the front of her seat to carefully listen to the co-prosecutors' report as if doubting the accuracy of their assertions. Nevertheless, she stayed silent awaiting the judges' instructions.

The break for a confidential hearing again appeared to disappoint the audience. Hout Savorn from Batheay district, Kampong Cham, said she did not want to see Ieng Thirith released from detention, although Ieng looked unhealthy and she pitied her. She said that although Ieng Thirith's name was not known to her before the trip, she felt that the preparation session at the Center had clearly demonstrated her role in the regime and her responsibility for Cambodian deaths.

Participants' Reactions

Following the hearing and dinner at City Cat restaurant, some exit interviews were conducted with commune leaders and villagers. The group expressed general satisfaction with the tribunal proceedings and its progress in delivering justice to victims. Several persons who had joined previous ECCC visits remarked on the Court's progress. Duong Long of Rorveang district, Preah Vihear, noted, "During my last trip with DC-Cam I saw the Court in the process of being established. Now the ECCC is holding its fourth public hearing. That is a remarkable development." He also remarked on the challenges of fully understanding the hearing due to the use of legal terminology, but felt that the introductory session at DC-Cam had been of great assistance in preparing him to participate in the hearing.

Kroch Sovann, a Hun Sen Tuol Samphy middle high school teacher, O Raing Oeu district, Kampong Cham, emphasized the lack of Khmer Rouge history in high school curriculum. On returning home she wished to share what she had learned with both her students and her community. She complained that the younger generation would not be able to fully understand the Khmer Rouge regime if its history were not added to the educational program.

Huot Savorn of Kampong Cham, Duong Long from Preah Vihear, and Kop Ai Sas from Kampong Thom, who had been selected to witness the proceedings from the actual hearing room, described how Ieng Thirith looked and their feelings toward her. They said that Ieng Thirith was old and sick and could hardly walk to her designed seat in the courtroom without help from a security guard. After seeing Ieng Thirith in person their anger toward her had been tempered by their sympathy for her fragile physical appearance; however, they agreed that she should not be released from provisional detention because she had held one of the highest positions in the DK and must take responsibility for her crimes. They were eager to share this historic event with their communities, where access to information was difficult. The participants expressed deep gratitude to DC-Cam for using this important occasion to organize the trip and providing them the opportunity to directly receive and bring back information to members of their communities.

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there for discussions with the government. At that time Mr. Chhang requested a meeting with Ieng to discuss DK security documents, which subsequently took place in Pailin. See "...While in Sihanoukville," Letter to the Editor, *The Cambodia Daily* (Nov. 3, 1997).