

Duch's Initial Hearing February 17-18, 2009 Participation of Khmer Rouge Survivors

By Savina Sirik

After a long wait for the start of trial of senior Khmer Rouge leaders and the most responsible for serious crimes during the Democratic Kampuchea (DK era), the first public hearing before the Trial Chamber of the Extraordinary Chambers in the Court of Cambodia (ECCC) was held February 17-18, 2009. The initial hearing of Kaing Guek Eav, *alias* Duch, the infamous head of torture center S-21, was held in the presence of media and NGO representatives, groups of villagers, students, monks, nuns, and others. Among these, a group of 65 village representatives and Cham-Muslims from the provinces of Takeo, Kampot, Kampong Thom, Kandal, Prey Veng, Preah Vihear, and Kampong Cham were invited to attend by the Documentation Center of Cambodia (DC-Cam)'s Living Documents Project. The day was an historic event for Cambodian people who were victimized by the Khmer Rouge regime both directly and indirectly. The public hearing addressed topics such as protection measures for victims, admissibility of civil party applications, and parties' lists of witnesses and experts. Most discussion was centered on the lists proposed by the civil party legal teams.

February 16, Introductory Session: Legal training and documentary show at DC-Cam

An introductory session for the DC-Cam participants was held at the Center the morning of February 16. This was followed by an afternoon documentary film screening and ECCC complaint filing information session. Several program participants from Takeo had been waiting to the opportunity to file complaints with the Court. With assistance from the Victim Participation Team, four participants filed forms with the Court to become complainants.

The group of villagers – a majority of whom were from Stung district, Kampong Thom, where Duch was born and raised – was welcomed by the Living Documents Team at the DC-Cam's Public Information Room. The group attended a full morning of legal training divided into two parts. In Part I, attendees were introduced to the Center's activities, its objectives and the reasons for participation. Villagers also heard about Duch's biography learned how a few communes from which they were selected are



Participants listen to the presentation on Duch's biography

located near his birthplace, while others are located near killing fields, mass graves, and memorials. The team then explained to the villagers about the materials distributed to them, including ECCC's trial's schedule, the report of examination of Duch, survey questionnaires and the textbook "The History of the Democratic Kampuchea," written by DC-Cam staff member Dy Khamboly. The audience was very interested in the textbook and asked for more copies. They were also enthusiastic to receive information on Duch's background. A few among the group had heard of Duch and recognized his birthplace. Other villagers were

eager to know where this former Tuol Sleng prison chief was from. One of the audience members raised his hand to tell the group what he knew about Duch. He claimed that Duch was born and raised in a small floating village by a Khmer-Chinese middle-class family. Others in the audience nodded their heads in agreement.

In Part II of the session, Legal Response Team leader Dara Vanthan explained what they were going to see in the courtroom the next day. Mr. Vanthan introduced villagers to the ECCC. He then addressed key issues that would be raised at the hearing, including applications by the civil parties, witnesses and experts, and protective measures sought by them. Mr. Vanthan noted that during the hearing any preliminary or procedural issues that might have an impact on the conduct of the substance hearing would also be discussed, such as the newly discovered child survivors of S-21 prison. In the last 15 minutes of his presentation, Mr. Vanthan explained what the courtroom looked like and the roles of all the parties, and drew a picture showing where all parties in the hearing were expected to sit.

After nearly an hour of presentations, villagers were provided an opportunity to ask questions. Some questions were: 1) If this Court is not ordinary, are the crimes to be convicted different from ones applied in the local court system 2) Why can't all the victims participate in this trial? 3) Why do you use term "genocide" to define the Khmer Rouge regime? I think this word is much less serious than the term "Khmer killed their own nation." 4) Will there be justice? 5) Is there still corruption at the Court? 6) Why are there lawyers to defend the accused? 7) If the Court keeps being delayed, how will it deal with the aging KR leaders currently in custody?

That afternoon, participants watched the documentary film "Behind the Walls of S-21: Oral Histories from Tuol Sleng Prison." The film documents the true stories of two former prisoners and one former guard describing how they arrived at the prison, endured torture, and survived. There was complete silence during the screening. When the film ended, the Team discussed the stories in the film with the audience and asked if they could follow the narration. Most said that they could. For them, the film brought back vivid memories from the Khmer Rouge regime. Mrs. Sam Han from Takeo was shocked by their experiences in Tuol Sleng and was surprised by their courage to speak of their stories to the camera and to the public. She then talked about Kraing Ta Chan prison in Tram Kak district where some thousand victims were imprisoned and killed.

After the film screening, four participants who had requested assistance in filing complaints were helped in doing so by the Victim Participation Team. Among the four, only one had brought an identification card, which is necessary to complete the form. The others promised to give their ID number to the team after they returned to their village. The complaint preparation lasted about one hour and a half. The four complainants had heard on the radio about the tribunal and the opportunity to file complaints, but hadn't known how to go about filing. Only after the participants had participated in the program and received information about the availability of DC-Cam assistance in submitting the application were they able to file a complaint with the Court. Mrs. Yim Mayany, 54 years old, who was waiting for her turn to receive assistance in filling out the complaint form, said, "I wanted to file a complaint because I want this court to find justice for me and other victims." Mrs. Yim explained, "Justice means a lot of different things to me. It can mean a fair trial or transparent tribunal, or simply mean the unbiased participation of victims in the proceedings." Mrs. Yim filed a complaint in the hopes that her neighbors and other victims would be able to be informed about the proceedings and information related its progress.

February 17, Duch Initial Hearing

On the second day of the program, the group of villagers traveled by bus to the ECCC's Courtroom located 16 km from the city to attend the opening of the initial trial hearing. We observed that the Court received a significant numbers of attendees including numerous media groups, varied groups of villagers, students, NGOs, and individuals from all walks of life. The DC-Cam group queued in the long lines for a security check before entering in the Court area. After about half an hour waiting in the queue the group entered the viewing room, whose seats were already more than half full.



Visitors and media representatives wait for entering in the Courtroom.



DC-Cam group queues in the lines in front of the Courtroom.

The room was well equipped with two viewing screens in the middle front of the seating area, allowing the audience in the middle row to view the hearing close-up. This hearing, similar to the last one held in December 2008, was also equipped with new audio equipment. Audience members who preferred Khmer language could listen to the hearing through this new audio equipment without having to wear headset. But those who needed English or French translation still had to use the headphone equipment. The auditorium's seats were labeled with notes reserving them for groups, media, and NGOs, and were filled by the time the hearing began.

Before the hearing commenced, a limited number of photographers and video cameraman were allowed to take photos of the accused on the stage where the hearing was held. Duch, with his new glasses, had a much healthier look than his last public appearance. He sat in a designated area behind his co-defense, Ka Savuth and Francois Roux. He occasionally spoke to his lawyers without caring about the media representatives pointing their cameras in his face. The photographers were then instructed by the Trial Chambers to leave the room, and soon after the hearing commenced.



Duch sits in the Courtroom behind his co-defense

The President Judge, Nil Nonn, began by asking all parties present to make preliminary remarks. Each party was asked by the Chambers to raise concerns about any legal issues

that were likely to be discussed before or during the substantive hearing.

International Co-Prosecutor Robert Petit was the first to speak. He said that he intended to again raise the concept of Joint-Criminal Enterprise, a mode of liability with which he wants to charge Duch. The Co-Prosecutor's previous request to include JCE in the Closing Order against Duch was earlier rejected by the Pre-Trial Chamber. Next, the defendant's international co-defense lawyer Francois Roux said that he intended to raise Duch's provisional detention in the Cambodian military prison during the substantive trial hearing. He stated that his client has been imprisoned for 9 years without trial, which he considered unacceptable. The Defense also submitted its objection to the national crimes for murder and torture included in the Closing Order due to the expiration of the statute of limitations for those crimes.

Following some discussion of preliminary issues, the rest of the day was devoted to victim participation, the list of civil parties, protection measures, and the parties' witness and expert lists. After a break, the hearing reconvened, but was closed to broadcast recording because of the discussion of confidential information about civil parties and witness. Nevertheless, the audience in the public seating area was still allowed to watch and listen to the proceedings.

The civil parties were divided into four groups represented Cambodian and international lawyers. About sixty civil parties were allowed to attend the initial hearing, and six of these were allowed to sit in the courtroom. The others sat in the public seating area. According to a report read by the Judge, 28 civil parties applications had been accepted in the case, 45 were recognized provisionally, and other 21 applications were awaiting a decision. Regarding protective measures, a majority of witnesses requested measures to protect their identity from the public. However, only 7 civil parties requested such protection. Each civil party and witness who made a protection request was identified by a nickname or number to protect their real identity.

The discussion during the rest of the morning centered on two main issues, the request of the husband of a civil party who had passed away to participate on her behalf, and the late civil party application of S-21 child survivor Norng Chan Phal. Civil party lawyer Karim Khan requested to the Chamber to allow the husband to participate and to accept Norng Chan Phal's application to become a civil party although he had filed his application two days later than the deadline. There was a strong objection from the Defense Francois Roux arguing that acceptance of the late application would be a violation of the rights of the defendant. Mr. Roux noted that Duch had repeatedly acknowledged his guilt and argued that he should not be confronted with new evidence and testimony at this late date. Both submissions were noted by the Chamber, which will render a decision on these matters before the start of the substantive hearing.

The audience and all parties then broke for lunch. The team had an opportunity to conduct a short interview. Ie Sovanna, a 19 year-old student, who had requested the Living Documents team to bring him to the initial hearing, said he hoped to find out from this hearing why Khmer killed Khmer. Ie had not yet learned the answer to this question. As he told the Team, "I have always wanted to hear the truth from Duch directly, although I had heard that he acknowledged his guilt through the media." Ie lives with his parents in Phnom Penh and studies at the National University of Management and the Institute for Foreign Languages. He believes that many victims of his parents' generation are still trying to come

to term with the past. He himself learned the history of the period 1975-1979 from books and radio programs. He was concerned that this history remained unclear for victims as well as members of the younger generation like him. He said that if he had a chance to observe the substantive trial hearing, he hoped that it would shed some light on this dark history. He told us, "This tribunal is for me, my generation, and our future."



View of the Courtroom

After an hour and a half lunch break, the participants again returned to the public viewing area to continue observing the proceedings. There were significantly less people in the public viewing gallery. The session continued with a discussion of the list of witnesses and experts. The Co-Prosecutors presented a list of 35 witnesses and experts to the Chamber. Roux objected to the inclusion of three witnesses who were connected to prison M13. He argued that the prison was out of the court's temporal jurisdiction because the prison no longer existed in 1975 and therefore requested that the three to be removed from the list. Mr. Roux also asked that two psychiatric experts who examine Duch a year ago and who would be called to testify before the Court see Duch again before the hearing.

One after another, the other parties were asked to submit their witness and expert lists. Civil party lawyers presented 15 names and the defense submitted 13 names. Co-Prosecutor Robert Petit challenged the list of experts submitted by the Defense. The Defense argued that their experts would be able to explain Duch's character.

At the end of the first day of the initial hearing, the DC-Cam's group left the courtroom with various emotions. One man in the group told the team that what he wanted to see the most at the hearing was evidence collection. He stressed the importance of collecting evidence and witness testimony in bringing charges against the defendant. Nevertheless, he was not sure if justice could be done even if all necessary documents and evidence was collected. He wanted each party in the courtroom to play their roles effectively to assure transparency of the trial.

Some other participants thought the Defendants' actions during the regime were done from fear from threats by his superiors. For example, when asked about Duch, a woman from Kampong Thom expressed her sympathy, blaming all his mistakes on his superiors. She said, "If Duch did not follow orders, he and his family would be executed as well."

Ai Sah, a 50 year old Cham Muslim woman from Baray district, Kampong Thom, lost her sister and 9 family members to the regime because her family was labeled as "new people." Her sister's family was evacuated to live in Kampong Cham with base peoples' families. The Khmer Rouge made her raise pigs for about four months, during which they made her eat dog meat, threatening her that otherwise she would be sent to a "new land." She had no idea where it was. When asked what she wanted from this tribunal, she said "I want communal compensation. I wanted them to build a Mosque, wells, and any other public symbolic things dedicated to those who lost their lives to the regime."

February 18, Second day of Duch Initial Hearing

The group of villagers returned to the courtroom on Wednesday morning to continue observing the proceedings. The session was closed for about half an hour after which a debate was held to establish the rules for substantive hearing. The Defense first challenged the right of civil parties to address sentencing. This was opposed by both the civil party lawyers and the prosecution. Civil party lawyer Hong Kim Suon requested that the civil parties should be allowed to speak before the court on this issue.

The session also addressed new evidence submitted by the prosecution, including ten-minutes of footage filmed at S-21 by the Vietnamese in January 1979, a few days after the liberation of Phnom Penh. Cambodian Prosecutor Chea Leang deemed the film as crucially important because it showed the situation at S-21, the child survivor, and the cameraman was still alive. The film was donated to DC-Cam by the Vietnamese government on December 28, 2008, but, as stressed by Chea Leang, the prosecution was not aware of it until one week after the deadline for evidence submission. Cambodian Defense lawyer Ka Savuth objected to the prosecution's submission, claiming it was a propaganda film and questioning supposed inconsistencies in the film. He expressed surprise that 15 survivors from S-21, including a couple who were now civil parties, were not shown in the movie. Also, the child in the footage did not appear unhealthy after having gone without food for several days. Lastly, he doubted the child survivor's memories of what happened in S-21. International defense counsel Francois Roux was surprised that 52 new pieces of evidence were supplied late to the court, and argued that their acceptance would slow down the proceedings. His argument was opposed by the international prosecutor, who emphasized that the evidence was important for establishing the truth.

The hearing ended around the midday, with the Trial Chamber's decisions on the arguments raised that day to be issued during the substantive hearing.

Ai Sah, who experienced the hardship during the Khmer Rouge and was aware of punishment her relatives had suffered, followed the full session of the hearing. She was interested the many different issues raised during the hearing and was pleased that the process was moving forward. The debates on evidence and witnesses attracted her the most, although the hearing did not provide her the opportunity she expected see the witnesses. She found the process time-consuming. Ai Sah said she was glad to see the tribunal working its best for Cambodian people and that she would bring this news to her community.

Nuon Mom from Takeo experienced torture by the KR, as she was too hungry and stole food. She is now a member of her commune working to serve people in her community. She hoped that participating in the proceedings would help her to cope with her experiences under the KR. This was the second time Mrs. Nuon joined the program. She was eager to see the process moving because it helps lessen her anger toward the KR. She trusted in the ECCC's judicial proceedings, although it doesn't respond to her desire to have the process done quickly. She emphasized that she wanted to see results from the trial proceeding soon so that she can be relieved.

Sen You Soh, a 48 year-old man from Kampong Thom, was only 18 years old in the KR regime. He was evacuated with his family to live in a village of Baray district. His mother died after delivering a baby for two months because of malnutrition and overwork.

You-Soh continued that his family was one among other middle class families that was able to survive by food exchange. He told the Team in the interview that his family had left some valuable things to change for rice with base people. He then expressed his opinion on the tribunal that results from this court would not be able to repay what he had lost to the regime. Nevertheless, it was what the court can do, serving justice for Cambodian victims. As he told the team, “I wanted to see how the court does their work to help appease victims’ anger.” Previously, Soh could only follow the news about KR tribunal through radio program. But now he was glad to have an opportunity to sit in the Courtroom and view the proceedings. This would help him to share information with and explain to his villagers about what was going on at the court. “This valuable information should be reached by all victims of the KR,” he noted. When asked how he felt when he saw Duch’s face, Soh responded without hesitation that Duch’s public appearance did not cause him anger, but, torturing and execution taken place at S-21 was not something that Duch could be forgiven. Finally, he addressed that the hearing was perhaps one way of healing process for genocide survivors.

Several days after the initial hearing, the Trial Chamber released a schedule for the substantive hearing. It will start on March 30 and continue for a period of three months. Hearings are scheduled every week from Monday to Thursday. It is hoped that publication of this information will draw more public attention to ECCC proceedings increase the engagement and confidence of all Cambodians in the ECCC.