

VICTIM PARTICIPATION PROJECT

**A REPORT ON ATTENDANCE OF CASE 001 CIVIL PARTIES IN DUCH APPEALS HEARINGS
28 – 30 MARCH 2011**

PURPOSE OF CIVIL PARTY ATTENDANCE AND ACTIVITIES

From 27 to 31 March 2011, the Victim Participation Project at the Documentation Center of Cambodia (DC-Cam), together with Living Documents Project and Cambodian Tribunal Monitor, had invited all 37 civil parties in Case 001 as well as 23 community representatives from all over the country to attend the appeals hearings held from 28 to 30 March 2011 in the case against Kaing Guek Eav alias Duch, chairman of secret security prison S-21. For different reasons, some civil parties could not attend the hearings and 21 out of 37 civil parties were available and had participated throughout the three-day hearings at the Extraordinary Chambers in the Courts of Cambodia (ECCC). Amongst these participants were 7 civil party applicants whose civil party status was stripped off in the 26-July judgment against Kaing Guek Eav. In fact, 9 out of 37 civil party applicants assisted by the Victim Participation Project had been rejected by the Trial Chamber in its judgment. Two rejected applicants are citizens of the United States, currently residing in the US, but could not attend the appeals hearings. According to their lawyers, the last minute revocation has caused them great distress and disappointment. And for this very reason, the lawyers appealed the revocation of their status before the Supreme Court Chamber.



Civil parties meet with civil party lawyers on 27 March 2011.

Civil Parties and community representatives arrived in Phnom Penh on 27 March 2011. For community representatives, Terith Chy, team leader of the Victim Participation Project, in the afternoon of the same day briefly explained to them as to the arguments to be raised by all the parties, Co-Prosecutors, Defense and Civil Party Lawyers. These included the Co-Prosecutors' request for increase of sentence from 35 years to life terms, which should be reduced to 45 years imprisonment after reduction Duch's illegal detention, Defense's argument for release of Duch for the fact that Duch was neither a senior leader nor one of those most responsible for the crimes committed during the regime of Democratic Kampuchea, and finally the appeals of civil parties' status and reparations. A lot of the participants were strongly reacting to denial of responsibility by Duch. A new documentary produced by DC-Cam entitled "Mass Grave Near Pagoda" was also shown to participants. This short documentary exposes the reality of daily struggle by both victims and perpetrators and, most importantly, shows that reconciliation is very personal and different people have different ways of coping with this difficult-to-comprehend concept. Just as what was

featuring in the documentary, reactions from participants were mixed. While some was able to let loose of their anger, others simply cannot.

In the afternoon of 27 March 2011, there was a meeting between civil parties in Case 001 and their civil party lawyers. In this case, Case 001 civil parties assisted by DC-Cam were brought to Silaka, where the meeting was held, to meet with their civil party lawyer, Ty Srinna, and other civil party lawyers. At the meeting, they discussed what to expect from the three-day appeals hearings. Civil party lawyers tried to simplify the legal process and clarify doubts and questions from civil parties. The meeting was revolved around the arguments of Co-prosecutor and defense, and the rejected civil parties and reparation. At the end of the meeting, staff members from Transcultural Psychosocial Organization (TPO) also provided emotional support and brief instruction on how to prepare and get ready for the hearings day. Again in the morning of 31 March 2011, civil parties were again brought to post-hearing meeting, where they were explained by civil party lawyers issues raised during the three-day appeals hearings. The meeting was helpful to many civil parties as it helped them clarify many of the questions and confusion they had from the complicated hearings.

Both civil parties and community representatives watched a theater performance "Breaking the Silence" staged at Tirka Panhao pagoda located a few kilometers away from the premises of the ECCC. Please see below for reactions from some civil parties as to the issues raised during the hearings.

PREPARATION FOR THE APPEALS HEARINGS

In preparation for the appeals hearings, the Supreme Court Chamber instructed lawyers to submit, if any, new evidences in support of their claims. For this, Civil Party Lawyer Group 1 (CPG1) contacted the Victim Participation Project and requested assistance in looking for new evidences in support of their clients' appeals. CPG1 appealed the revoking of civil party status from nine civil parties assisted by the Project. After an examination into the applications of rejected civil parties, reasons for their rejection and a discussion with individual rejected civil parties, the Victim Participation Project felt the need to obtain additional statements from friends and relatives in support of three rejected civil parties namely Him Mom, Ly Hor and Norng Sarath. Their lawyers agreed. As a result, the Project made two field trips to Takeo and Svay Rieng in order to obtain additional statements from relatives and friends of two applicants, Him Mom and Norng Sarath. Through the Project, CPG1 asked Ly Hor to ascertain his identity and address with local authority. Three motions had been filed by CPG1 in support of these three individuals. The Project had then provided translation assistance to CPG1. All motions and statements collected had been translated into English before submitting to Supreme Court Chamber.

MATTERS ON APPEALS

Duch

Lawyers for Duch centered their arguments on the fact that Article 2 of the ECCC Law and Article 2 of between the United Nations and the Cambodian Government limit the ECCC's mandate to prosecute only senior leaders and those most responsible for the crimes committed during the period of Democratic Kampuchea. They argued that Duch was neither a senior leaders nor one of those most responsible for the crimes committed during the period of Democratic Kampuchea. Therefore, Duch did not fall within the personal jurisdiction of the ECCC and shall be released. The lawyers argued that Duch had only followed orders. In

addition, Duch was not a member of the Standing Committee. The lawyers further argued that Duch was only a "puppet" who followed orders to given to him and that he was only head of a prison whose number of prisoners were even smaller than that of other prisons. The lawyers pointed out that there were other 195 security centers during the Khmer Rouge period and, yet, Duch was the only prison chief being prosecuted.

Co-Prosecutors

Co-Prosecutors argued that Duch should be imprisoned for life and his sentence should be reduced to 45 years without parole, taking into account Duch's illegal detention at Cambodia's military tribunal. Co-Prosecutors relied their arguments heavily on international laws, while the defense countered that the ECCC is located within the domestic courts and , therefore, domestic laws apply. The biggest question in relation to the issue of sentencing was whether or not the 2009 Cambodian Penal Code applies. Article 95 of this Penal Code provides that, with mitigating circumstances, the judge "may" reduce the sentence from life to period of imprisonment of between 15 and 30 years. However, in the same 2009 Cambodian Penal Code, Article 668 states that this Penal Code does not apply if it conflicts with other "special criminal legislation." The Co-Prosecutors were arguing that the ECCC Law is a special criminal legislation and, therefore, the Penal Code of 2009 does not apply. They added that, instead, judges before the ECCC are bound by Article 39 of the ECCC Law which offers them broad discretion of sentence between 5 years and life imprisonment.

Civil Parties

Civil party lawyers appealed reparations awarded by Trial Chamber and the revocation of their clients' civil party status in the judgment. Civil party lawyers argued that nothing in the Internal Rules justifies the Trial Chamber's two-tiered review and that the standard of proof was unnecessarily high when deciding on the status of civil party applicants. Civil Party Group 2 and Group 3 appealed the reparations awarded by the Trial Chamber and have provided a number of suggestions which include construction of memorials, naming public buildings with names of victims, paid visits to memorial sites, dissemination of apologetic statements by Duch and so on.

REACTIONS OF CASE 001 CIVIL PARTIES

Man Saut, 76, from Kampong Thom: "I had a son, named Sim. He joined the Khmer Rouge since when he was 16 or 17 years old. He was later arrested and executed at Tuol Sleng. Now I am a civil party in this case. In the Trial Chamber judgment, Duch was, after all reduction, sentenced to approximately 18 years in prison. In fact, I was happy with the judgment. However, in these hearings before the Supreme Court Chamber, I was upset by the arguments raised by the defense counsels, who had argued for Duch's release. I did not believe what Duch said during the hearings because he simply placed all the blames on those who had already died."

Hav Sophea, 35, from Kampong Thom: "I am a civil party in Case 001 because my dad was a victim of S-21. I have participated directly in the proceedings and witnessed Duch being prosecuted. This process has brought me relief. As for Duch's statement during the hearings, I think this was his attempts to get an acquittal, which would finally be decided by the judges. I did not believe such statement. At trial stage, he said he was responsible for all crimes perpetrated at Tuol Sleng and now he said differently that he was pressured to do what he did. I think those arguments raised by the defense team, despite my difficulty to understand those legal arguments, were meant to get an acquittal for their client. Looking from the outset, it



Lon, 69, an observer of the Duch appeal hearing from Kampong Cham province, said, "This is the first time I attended a trial hearing, I don't want to take revenge, I want the court to find justice for me."

was true that Duch had actually followed orders. Having said that, if we look at his character, photos from the Documentation Center of Cambodia, and documents and photos from Tuol Sleng, we can see that he was happy with his actions. Talking about 'following orders,' it is true that when one is under a government, one has to follow orders given and it is true even with today's government. One has to follow superior orders. However, the crimes he had perpetrated were so atrocious that he has to be prosecuted. As for the fact that there is no prosecution for other 195 prison chiefs, I think that those prisons have fallen outside of this scope of investigation and these will be dealt with in Case 002 because Case 002 deals with crimes perpetrated all over the country. Therefore, those killed in other 195 prisons will also receive justice. I was so happy with Trial Chamber judgment because I was recognized as a civil party and a daughter of a victim [at S-21]. The death of my father was not in vain because the tribunal has sought justice for his death and had done it in public so that the world knows about what happened to victims of that prison. This is meaningful to people all over the country. I don't agree with the defense's argument that Duch fall outside of the ECCC's personal jurisdiction.

He should have raised this argument before the Trial Chamber."

Um Piseth, 60, from Svay Rieng: "I lost a sister-in-law at Tuol Sleng, according to document given by the Documentation Center of Cambodia (DC-Cam). From my point of view, I think Duch is the most responsible person at Tuol Sleng. When in power, he had complete control and assigned all kinds of tasks in Tuol Sleng. I attended the hearings when the Trial Chamber judges announced the verdict. At that time, we were formally informed that the verdict was 35-year imprisonment for his crimes. I accepted the verdict because it was a decision made by the judges, although I feel personally that the sentence should have been more serious. I want him to serve 35 years in prison with no reduction. I was not happy with the arguments raised by Duch's defense, who argued that Duch was not a senior leader and also not those most responsible. Duch did not always follow orders. He managed and controlled the works and the number of victims was 14000. Therefore, I was not happy with the arguments."

Kae Khon, 51, from Kampong Thom: "My older brother was Kae Kengsy. I do not know how old he was when he disappeared in 1977. I knew that [Ke Khengsy died at Tuol Sleng] from the Documentation Center of Cambodia (DC-Cam) staff. Duch was a chief of Tuol Sleng and the killing took place there. [I learned of such information] from what Duch said, starting from the initial hearing. I knew that the 35-year imprisonment was reduced to 19 years and I was not satisfied with the judgment. I want life imprisonment like what the Co-Prosecutors have asked for. But this is about applying laws and so it can mitigate [the punishment] according to what the court can do. From today's hearings, my feeling was better because I think he would receive at least from 30 to 40 years of imprisonment. Now, speaking of vengeance, it has been subsided gradually. I heard Duch say a few words. I could not hear him speak clearly because people around me talked a lot. I was a bit angry on the

first day after I heard the arguments put forward by the defense arguing for Duch's release. My expectation is that Duch would be found guilty. As for the issue with other 195 prison chiefs, to me, if those 195 prison chiefs are brought to stand trials, I am worried that what prime Hun Sen said about civil war might be true."

Him Mom, 53, from Takeo: "I was upset because my civil party application was rejected. The death of my brother was real and I was rejected. I found a photo of my brother there [at Tuol Sleng]. I was not happy with defense counsels for Duch. I was so angry that my blood pressure ran high. I cannot accept it if I would be rejected again. There was a photo of my brother. I am not happy."

Lim Yon, from Kampong Thom: "My civil party application was rejected because I did not have evidence. I am not angry at the court for its rejection because I did have any evidence. My lawyers tried to help me but could not find any evidence to support. I would still like to participate in the process of the tribunal even if my application would still be rejected. I believe that my brother died there."

Norng Sarath, 54, from Siem Reap: "I would like Duch to be imprisoned for more than 40 years, even if not life terms. I did not believe that Duch had revealed the whole truth. Duch received direct order from Son Sen and Nuon Chea, all of whom were senior leaders. This was a special character and he cannot be compared to other prison chiefs. He can arrest any persons within the party, zones, provinces and districts. The final decision rests with the court. But if I were the court, Duch would receive at least 40 years. Today, if you kill one person, you could be imprisoned for life and here we are talking about tens of thousands of lives. This court was established to seek justice for millions of lives lost, millions of tear drops shed and, if Duch is released, the whole thing is just meaningless. My civil party application was rejected and I am not sure if I would be recognized this time. I would feel very hurt if I will not be recognized. Documents at Tuol Sleng were not complete with some lost. It was reported that some documents were found wrapping fried banana. Some photos were left behind, but these were without names. It is difficult to remember persons after 40 years. I was rejected at the end of the process, in the judgment. Had I been informed since the beginning, I would not be so upset. There would be no justice at all if I would be rejected again this time."

Ly Hor, 57, from Banteay Meanchey: "Duch was a chairman of S-21 and at the time he severely tortured prisoners. I knew everything going on at the place because I was also in that prison. Duch never personally mistreated me but he assigned others to mistreat prisoners at Tuol Sleng. I was starved and beaten and sleep, eat and relieve waste at the same place. I did not agree with the judgment offering Duch mitigating circumstances because he tortured me and other people from all over the country. My civil party application was rejected because of confusion. I changed my family name after the Khmer Rouge regime. I hope that Duch would recognize me at the end. Even if the court does not recognize me, that's fine too because I have participated throughout and personally witnessed [the process]. And I would still support the court. I personally want Duch to be imprisoned for life. I was not happy with arguments raised by Duch's lawyers, but I also understood that they acted in accordance with the law."

END.