

THE DUCH VERDICT:

KHMER ROUGE TRIBUNAL CASE 001

Is Justice Being Served for the 14,000 Prisoners at S-21
(Tuol Sleng prison)?



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Searching for the Truth: Memory & Justice

មជ្ឈមណ្ឌលឯកសារកម្ពុជា

Documentation Center of Cambodia (DC-Cam)

P.O. Box 1110

66 Sihanouk Boulevard

Phnom Penh, CAMBODIA

Telephone: +855 (23) 211-875

Fax: +855 (23) 210-358

Email: dccam@online.com.kh

Website: www.dccam.org

www.cambodiatribunal.org

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IS JUSTICE BEING SERVED FOR THE 14,000 PRISONERS AT S-21 (TUOL SLENG PRISON)?

“The Duch verdict is not incorrect. Frustration with the sentence was bound to run high. Had the sentence been a bit longer, it would perhaps have provided greater satisfaction to the majority of the survivors, but nothing would have satisfied them completely. You could sentence him to more than 14,000 years, for each life, and even that wouldn’t make it fair. By recognizing the illegality of Duch’s pre-trial detention and reducing his sentence accordingly, the verdict benefits all survivors immediately. It provides a model for fair trials in Cambodia, for example in cases of detention related to land grabbing. And, finally, there’s official accountability. This is the most important Court legacy: a final judgment recognizing the crimes committed by the Khmer Rouge. Now it is necessary to conduct meaningful outreach about the verdict to increase support for the Court in advance of Case 002, the next and most important trial.”

Youk Chhang, Director of the Documentation Center of Cambodia



DUCH BIOGRAPHY

Kaing Guek Eav, *alias* Duch, was born on November 17, 1942, in Poev Veuy village, Peam Bang commune, Stong district, Kampong Thom province, the only son of five siblings born to a Chinese Khmer family. He became interested in communism while studying at the lycée and for his teaching certificate. He was arrested by Prince Sihanouk's government in 1968 for pro-Khmer Rouge activities and held in custody for nearly two years at Prey Sar prison. In 1970 he was freed by Prime Minister Lon Nol as part of a general amnesty of political prisoners after the overthrow of Prince Sihanouk. When Duch left prison, he rejoined the Khmer Rouge. Within the next few years he had set up and was running two Khmer Rouge prisons in Kampong Speu—M13 and M99—and had begun perfecting his interrogation techniques.

The S-21 detention center in Phnom Penh was established in 1975 and was run by In Lon, called Nath, whose walkie-talkie was numbered 21, with Duch acting as his deputy. In 1976 Duch took over as chief, a position he held until Phnom Penh was captured by the Vietnamese in January 1979.

After the fall of Democratic Kampuchea, Duch lived among the senior Khmer Rouge leaders in Thai border refugee camps until 1984 when he was sent to China to teach. After he returned he changed his name to Hang Pin and again became a teacher. In 1995 his house in Svay Chek village, Banteay Meanchey province, was attacked and his wife was killed in either a robbery attempt or a revenge attack. He moved to live with his youngest sister Hang Kim Hong (a nurse and a subordinate of Duch's wife during the KR), who was working as a midwife in Samlot district, Battambang province. Around this time he sought solace in Christianity, to which he eventually converted. He was identified and arrested in Samlot in 1999, then held for over eight years without trial in a Cambodian military prison. In 2007 he was charged by and transferred to the custody of the Extraordinary Chambers in the Courts of Cambodia (ECCC)—the special tribunal established by the Cambodian government and the United Nations to judge the accountability of senior Khmer Rouge leaders and those persons “most responsible” for crimes that took place 1975-1979.



TRIAL CHAMBER JUDGMENT

Evidence about Duch's role at the S-21 detention center was heard by the ECCC Trial Chamber from February to November 2009. In its July 26, 2010 judgment, the Trial Chamber found that as chief of S-21 Duch was in charge of not only S-21, but also the S-24 (Prey Sar) work camp and the infamous Choeung Ek killing fields. He implemented and refined S-21's interrogation/torture techniques, authorized executions, and personally oversaw the interrogation of the most important prisoners.

The first prisoners to arrive at S-21 were officials and soldiers connected to the overthrown Lon Nol regime, but later they comprised primarily Khmer Rouge cadre and their families, some foreigners such as Vietnamese prisoners of war, and S-21 staff. Among the last prisoners brought to S-21 were eight-year-old Norng Chan Phal, his younger brother and mother, who arrived on January 1, 1979. Nearly all prisoners were tortured until they confessed to anti-revolutionary crimes and named their "accomplices," who would then be arrested and tortured to confess in turn. Duch admitted his awareness that the confessions and names of co-conspirators he passed along to his superiors were fabricated. He also admitted that every individual who was detained at S-21 was destined for execution. Of the no fewer than 12,272 prisoners who were held at S-21 during Democratic Kampuchea, only a handful survived, including Chan Phal,¹ his brother and three baby girls under age four.²

For his role in the crimes committed at the S-21 detention center, the ECCC Trial Chamber found Duch guilty of direct and superior responsibility for crimes against humanity and war crimes (grave breaches of the Geneva Conventions of 1949).

Left: Duch shortly before his arrest by the Cambodian military, 1999. Photo by Stuart Isett. Source: Stuart Isett/DC-Cam Archives.

¹ At trial, Duch at first denied that Chan Phal had been held at Tuol Sleng due to his belief that all child prisoners had been killed and the lack of documentation proving that Chan Phal's mother had been held there. After the prosecution submitted her Tuol Sleng biography into evidence, Duch said, "[T]hrough this Court I would like to seek forgiveness from Mr. Norng Chan Phal because [before] I did not have the document and I would not accept it, but now I would accept it entirely." Prosecutors v. Kaing Guek Eav "Duch," Case File N° 001/18-07-2007-ECCC/TC, Transcript of Trial Proceedings at 5 (Trial Chamber, July 8, 2009).

² One of the girls died of exhaustion a few hours after being found by the Vietnamese soldiers.





Top left: New Zealander Robert Hamill holding a bouquet of lotus flowers at the Tuol Sleng Genocide Museum. A Buddhist ceremony was held that day at the museum to honor the more than 14,000 victims of the Tuol Sleng prison. Hamill's older brother, Kerry Hamill, was imprisoned and killed at the prison in 1978. July 25, 2010. Photo by: Dacil Q. Keo. *Source: DC-Cam Archives.* **Top right:** Norng Chanphal, 40 years old, and his seven-year old daughter, Norng Chen Ammara, burning incense at the Tuol Sleng Genocide Museum on July 25, 2010. Norng Chanphal was among five child survivors of the Tuol Sleng prison, code named S-21 under Democratic Kampuchea. Of the 14,000 prisoners who were sent there, less than a handful made it out alive. Norng remained silent about his imprisonment there until 2008. In 2009, he came forward and registered as a civil party applicant with the Khmer Rouge tribunal but was rejected by the tribunal. Photo by: Dacil Q. Keo. *Source: DC-Cam Archives.* **Bottom:** Alain Werner (middle), DC-Cam civil party lawyer for the Khmer Rouge tribunal. *Source: DC-Cam Archives.*

LIVING DOCUMENTS' PROGRAM

The Living Documents' Program, led by Sirik Savina, seeks to increase the participation of ordinary Cambodians in the work of the ECCC, help them better understand DK history and the Court's legal processes, and provide them with an opportunity to see Court proceedings and to speak to Court officials. Since ECCC proceedings began in 2007, the Program has brought around 10,000 people, including 1500 commune chiefs and nearly 400 Cham Muslim religious leaders, to Phnom Penh to receive legal training, observe ECCC proceedings, and participate in discussions about what they have seen. In addition, the Program holds forums about the ECCC. Most recently, it has hosted live and replayed screenings of the Duch verdict pronouncement in eight provinces to collect participants' reactions and encourage discussion about its meaning in advance of the 2011 trial of Nuon Chea, Khieu Samphan, Ieng Sary, and Ieng Thirith—the four most senior living Khmer Rouge leaders.

For more information, please contact:

Sirik Savina at truthsavina.s@dccam.org

Tel: 012 68 80 46



Left: Sirik Savina speaking to villagers about the Duch verdict at Wat Kaong Kang, Pailin. August 16, 2010. *Source: DC-Cam Archives.* **Right:** An elderly man poses a question to Director Youk Chhang at the forum on Duch's verdict at the Samlot Cambodian Christian Church in Samlot, Battambang, August 18, 2010. Photo by: Dacil Q. Keo. *Source: DC-Cam Archives.*



Top left: DC-Cam staff members Kim Sovannandany, Em Chat, and Sok Vannak displaying a sign mounted in Preah Neth Preah district, Banteay Meanchey province. The sign reads “The Pronouncement of Kaing Geuk Eav (alias Duch) will be begin at 10:00am on Monday, July 2010.” Photo by Vanthan P. Dara *Source: DC-Cam Archives.* **Middle Left:** Boys leafing through DC-Cam’s “Genocide: Who are the Khmer Rouge Leaders to be Judged?, the Importance of Case 002” booklet and *Searching For the Truth* magazine at Wat Kaong Kang, Pailin, August 16, 2010. Photo by: Dacil Q. Keo. *Source: DC-Cam Archives.* **Bottom Left:** DC-Cam Director Youk Chhang asking a female participant to read verses of the Bible after he read Genesis 9:6, “If anyone sheds the blood of man, by man shall his blood be shed; for in the image of God has man been made” inside the Samlot Cambodian Christian Church, August 18, 2010. Photo by Dacil Q. Keo. *Source: DC-Cam Archives.* **Right images (top to bottom):** DC-Cam civil party applicants: Ms. Hav Sopheha, Mr. Man Saut, Ms. Sin Sinet. *Source: DC-Cam Archives.*

TRIAL CHAMBER SENTENCE

Finding Duch guilty, the ECCC Trial Chamber followed international precedent in considering both “aggravating” and “mitigating” factors to determine the appropriate number of years he should be imprisoned. As aggravating factors—factors requiring a longer sentence—the Chamber noted the shocking and heinous character of the crimes and the way they were carried out, the defenselessness of the victims (including children), Duch’s abuse of power and his superior responsibility for the crimes committed by his subordinates.

The Chamber also recognized some mitigating factors requiring it to impose a sentence short of the maximum penalty—life imprisonment. These include: Duch’s general cooperation with the Court, admission of responsibility, expressions of remorse, and the potential impact of these factors on national reconciliation, as well as the coercive environment of Democratic Kampuchea and Duch’s potential for rehabilitation.

In considering the weight of these factors, the Chamber emphasized that Duch’s expressions of remorse were “limited.” On the second day of his trial, Duch said, “I would like to emphasize that I am responsible for the crimes committed at S-21, especially the tortures and execution of the people there.” He also apologized to the victims of S-21 and their families, asking them “to please leave an open window for me to seek forgiveness.”³ Due to his general cooperation and admission of documented facts, Duch was believed to be offering an informal “guilty” plea, while seeking to reduce his punishment. However, during closing arguments, Duch’s national co-lawyer Kar Savuth, apparently without the agreement of his international counterpart, argued that the charges against Duch should be dropped and that he should be acquitted and released because he was not a senior Khmer Rouge leader. Duch adopted this position and asked the Chamber to release him. Kar Savuth affirmed that “[r]elease means acquittal.”⁴ In its judgment, the Trial Chamber stated:

The Accused repeatedly made public apologies and expressed remorse for his crimes when given the opportunity. The Chamber finds, however, that the mitigating impact of his remorse is undermined by his failure to offer a full and unequivocal admission of his responsibility. In particular, the Accused’s request during the closing statements for acquittal, despite earlier apparent admissions of responsibility, diminishes the extent to which his remorse would otherwise mitigate his sentence.⁵

Taking all these factors into account, the Chamber sentenced Duch to 35 years in prison. It then reduced his sentence by five years in order to remedy his provisional detention by the Cambodian Military Court for more than eight years in violation of national law. Taking into account the 11 years Duch has already spent in detention, he has less than 19 years left to serve of his 30-year sentence.

Left: Duch wearing his familiar Polo shirt during his trial hearing at the Khmer Rouge Tribunal, 2009. *Source: ECCC Archives.*

³ Prosecutors v. Kaing Guek Eav “Duch,” Case File N° 001/18-07-2007-ECCC/TC, Transcript of Trial Proceedings at 67-68 (Trial Chamber, March 31, 2009).

⁴ Prosecutors v. Kaing Guek Eav “Duch,” Case File N° 001/18-07-2007-ECCC/TC, Transcript of Trial Proceedings at 62 (Trial Chamber, November 27, 2009).

⁵ Prosecutors v. Kaing Guek Eav “Duch,” Case File N° 001/18-07-2007-ECCC/TC, Judgment, ¶ 606 (Trial Chamber, July 26, 2010).



Top left: Sarah Thomas (far left), consultant of DC-Cam's Victim Participation project, with DC-Cam civil party applicants and DC-Cam civil party lawyer Karim Khan (middle in suit). *Source: DC-Cam Archives.* **Middle left:** Monks and villagers watching the Duch verdict pronouncement screening in Wat Kaong Kang, Pailin. August 16, 2010. *Source: DC-Cam Archives.* **Bottom left:** Villagers at a forum held at the Samlot Cambodian Christian Church in Sguot village, Tasagn commune, Samlot district, Battambang province. The forum was held after the screening of the Duch verdict pronouncement. August 18, 2010. *Source: DC-Cam Archives.* **Right top:** A young monk reading the booklet "Genocide: Who are the Khmer Rouge Leaders to be Judged?, the Importance of Case 002" in Wat Kaong Kang, Pailin, August 16, 2010. Photo by: Dacil Q. Keo. *Source: DC-Cam Archives.* **Right bottom:** The Samlot Cambodian Christian Church in Samlot district, Battambang province. The church is where Duch converted to Christianity. *Source: DC-Cam Archives.*

APPEAL

Immediately after the verdict was pronounced, Duch's lawyer Kar Savuth announced that he would appeal the sentence to the Khmer Rouge tribunal's Supreme Court Chamber. His primary argument is that in light of his official functions, Duch was neither a "senior leader" nor "most responsible" for crimes committed during the Democratic Kampuchea era and thus does not fall within the category of persons it was established to try.

The Prosecution is also appealing the length of Duch's sentence because it believes that the Trial Chamber judgment "gives insufficient weight to the gravity of Duch's crimes and his role and willing participation in those crimes." It also believes that the Chamber placed undue weight on mitigating factors. Finally, the Prosecution is appealing the Chamber's characterization of the crimes because it believes that "it fails to reflect the full extent of Duch's criminal conduct."

The ECCC Supreme Court Chamber will consider these arguments and is expected to pronounce its judgment sometime during the first half of 2011. According to the Court's rules, the Chamber has the power to acquit Duch, or to shorten or lengthen his sentence, depending on its legal and factual findings.

DC-CAM ASSISTED CIVIL PARTIES CASE 001

Recognized Civil Parties before the ECCC

NO	NAME	SEX	RELATION TO THE VICTIM AT S-21	CURRENT OCCUPATION
1	Hav Sophea	F	Daughter of Chen Sie alias Hav Han	Farmer
2	Chhe Heap	M	Brother of Chhe Heng	Farmer
3	Man Saut	M	Father of Man Sim alias Riem	Farmer
4	Ngeth Sok	F	Sister of Nop Sar alias Nget Ngem	Farmer
5	Timothy Scott Deeds	M	Brother of Michael Scott Deeds	Crew member – sailboat
6	Yim Leng	M	Son of Thlork Luon alias Yan	Farmer
7	Um Pyseth	M	Successor of his late wife, Suos Sarin, who lost a sister named Suos Sovann	Farmer
8	Ke Khon	M	Brother of Ke Kengsy	Farmer
9	Ke Samaut	F	Sister of Ke Kengsy	Farmer
10	Sin Sinet	F	Granddaughter of Pheach Kim alias Sin	Housewife
11	Ruon Sreynop	F	Sister of Ruon Math alias Savy	Fisherman
12	El Li Mah	F	Sister of Ismael Asmat alias Sokh	Farmer
13	Sman Sar	F	Sister of Sman Sles and mother of Sa Math	Housewife
14	Sman Nob	F	Sister of Sman Sles	Housewife
15	Men Lay	F	Mother of Min Khan	Farmer
16	Nhem Sophan	F	Sister of Nhem Thol alias Ra	Farmer
17	Net Phally	M	Brother of Net Bunthy	Farmer
18	Man Mas alias Malymas	F	Mother of Tan Losmath alias Man Math	Housewife
19	Kom Men alias Kum Men	F	Wife of Srei Yeng	Housewife
20	Try Ngech Leang	F	Sister of Khoeung Muoysoa	Farmer
21	Heng Ngech Hong	F	Daughter of Sok Heng	Seller
22	Beng Chanthorn	M	Brother of Beng Pum	Farmer
23	Yun Chhoeun	M	Uncle of Yun Loeun	Farmer
24	Ly Khiek	M	Brother of Auy Mao alias Ren	Farmer
25	Puol Punloek alias Nget	M	Son of Poul Toeun alias Chaing	National Bank staff
26	Chann Kruoch	M	Brother of Chann Noun alias Sinoun	Farmer
27	Norng Kim Leang	F	Sister of Norng Kim Guek alias Norng Kimvet	Seller
28	Robert Hamill	M	Brother of Kerry Hamill	Event manager/ speaker

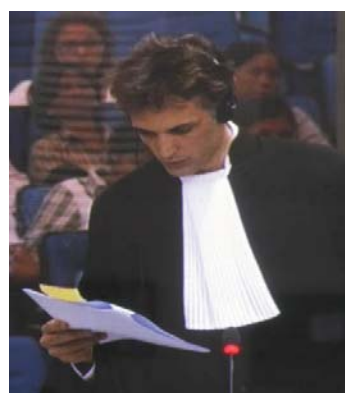
Rejected Civil Party Applicants in Case 001

1				Farmer
2	Ly Hor	M	Former S-21 prisoner	Seller
3	Suon Sieng	M	Brother of Pen Khorn, Pen Um and Pen Un	Farmer
4	Nget Uy	F	Wife of Prak Pat	Farmer
5	Thiev Neap alias Khiev Neap	F	Wife of Heng Choeun	Farmer
6	Lim Yun	F	Sister of Ma Yith	Farmer
7	Jeffrey James	M	Nephew of James William Clark	
8	Norng Sarath	M	Cousin of Norng Saruoth	Farmer
9	Joshua Rothschild	M	Nephew of James William Clark	Bailiff

DC-CAM CIVIL PARTY LAWYERS (GROUP 1)

Karim A. A. Khan (UK), Alain Werner (Switzerland), Brianne McGonigle (US), and Ty Srinna (Cambodia) represented the 37 DC-Cam-assisted survivors who directly participated in Case 001, 28 of whom were recognized to have Civil Party status in the final judgment. Lead Counsel Karim Khan has been both prosecuting and defending for over 18 years in front of international courts, including at the International Criminal Tribunals for Yugoslavia and Rwanda, the International Criminal Court (ICC), the Special Court for Sierra Leone (SCSL), the Special Panels for Serious Crimes in East Timor, and the Special Tribunal for Lebanon (advising). At the SCSL he was the Lead Defence Counsel for Charles Taylor, the former President of Liberia, and at the ICC he has acted as co Lead Counsel for Jean-Pierre Bemba, Lead Counsel for Bahar Idris Abu Garda and currently leads the defence for both Abdulla Banda and Salah Jerbo. International Co-Counsel Alain Werner has worked in the field of international criminal law since 2003 and has been a prosecuting trial attorney in complex SCSL cases, including the Charles Taylor case. International Co-Counsel, Brianne McGonigle (USA) is a US qualified attorney and a lecturer at Utrecht University in the Netherlands specialising in victim issues before international courts. National Co-Counsel Ty Srinna has worked on both civil and criminal matters since 2005, including for Legal Aid of Cambodia.

"We don't want blood, but justice"
Karim A. A. Kahn



Left to Right: Karim Khan; Alain Werner; Ty Srinna

Photo Credit: ECCC Archives

MEMORY AND JUSTICE

COVER PHOTO: The small wooden church of Sguot village, Ta Saign commune, Samlot district, Battambang province. The Christian community of Samlot was formed and supported by a Cambodian American named Christopher Lapel who assisted the conversion of people throughout the country, including former S-21 detention center chief Kaing Guek Eav alias Duch. Samlot residents comprise large numbers of former Khmer Rouge who took part in years of fighting along the Thai border after the KR lost power in 1979 and settled down to a peaceful life only in 1999 when the district became the last KR area to come under government control. PHOTO BY: Dacil Q. Keo