



COURT ALLOWS CHALLENGES TO CIVIL PARTY APPLICATIONS

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The court in the trial of Kaing Guek Eav (alias Duch) decided to hear defense challenges to civil party applications. Pursuant to the Internal Rules, a civil party must demonstrate a personal physical, material, or psychological injury sustained as a direct consequence of the crimes of the accused. This typically involves establishing a family link between the civil party and a victim of Tuol Sleng prison (S-21). Accordingly, the majority of defense challenges were based on a lack of documentary evidence to prove that the victim was detained and executed at S-21 and a lack of documentary evidence to prove that the civil party was related to the victim in the manner alleged. The defense also argued that a civil party application cannot be based on friendship to a victim of S-21. Before reaching the substance of these challenges, all the parties made preliminary remarks.

Importance of liberal evidentiary standard

The prosecutor and civil party lawyers argued that the trial chamber should not view documentary evidence, or the lack thereof, as conclusive with regard to proving kinship between a civil party and a victim, or that the victim was detained at S-21. Instead they reminded the chamber of the liberal evidentiary standards under the Internal Rules and argued that the chamber should consider all evidence which may be probative on these issues. They noted that relevant facts often go back 30 years and it was impossible to preserve some documents that would have been useful today. For example, people were forced to destroy almost all photographs of family members during the Khmer Rouge regime. Others destroyed evidence of family links to protect themselves from being arrested and executed like their family members.

More specifically, the prosecutor and civil party lawyers explained that the archives at S-21 were incomplete and underrepresented the true number of victims who perished at Tuol Sleng. Numerous documents were destroyed or deteriorated over time because they were not properly archived. (The accused himself also has admitted that the archives of S-21 were incomplete.) Therefore, according to the prosecution and civil parties, the absence of a victim from the archives of S-21 is not conclusive on the issue of whether the victim was detained at the prison. Rather, the trial chamber should consider the

coherence and logic of civil party statements and assess them within their specific historical context.

The prosecutor and civil party lawyers made similar remarks regarding civil registry documents to prove kinship between civil parties and victims. The civil registries in many provinces, communes, and districts cannot always provide proper registration documents because some of these documents do not exist or have disappeared. Therefore, the prosecution and civil parties urged the chamber to consider other evidence to establish kinship. Specifically, it should consider documents from the mayor of the civil party's commune or affidavits from persons who are familiar with the identities of the civil parties and the victims.

Finally, the prosecutor and civil parties objected to the defense argument that a civil party application cannot be based on friendship to a victim of S-21. They argued that civil parties can suffer from psychological harm following the death of their friends at S-21. All that is required, they argued, is a close relationship which can include a direct family member or a third party such as a close friend.

The defense counsels stressed that the burden of proof rested with the civil parties to demonstrate a family link with a victim of S-21. They explained that proof that a victim was detained at S-21 could be demonstrated by a photograph from the prison, a confession, or the victim name on the prisoner's list. The defense explained that while they were not seeking all three of these documents, they could not accept a civil party application that did not contain at least one of these documents.

Trial chamber proceeds methodically through civil party application challenges

As stated, the defense challenges were based almost exclusively on a lack of documentary evidence to prove that the victim was detained and executed at S-21 and a lack of documentary evidence to prove that the civil party was related to the victim in the manner alleged. Most civil party applications that the defense challenged were, in their opinion, deficient in both respects. For each contested civil party application, the defense stated its grounds of objection and provided a very brief description of the alleged relationship between the civil party and the victim.

The civil party lawyers provided several general responses to the defense objections. On the issue of proof that the victim was detained at Tuol Sleng, many civil parties provided the chamber with either a photograph or biography that was recently obtained from S-21. Many other civil parties asked the court to consider the coherence and logic of their statements as evidence that their family members were sent to S-21. For example, the family member of one of the civil parties was suspected of involvement with the Lon Nol regime and was arrested on April 17, 1975. According to prior testimony before the tribunal, during that time period, those suspected of having participated in the Lon Nol government were detained and sent to S-21. Finally, some civil parties informed the court that they would submit additional documentation in the coming days to prove that the victim was detained at S-21.

On the issue of proof of kinship between the civil party and the victim, some civil parties provided the chamber with documents from the mayors of their communes. Others provided affidavits from persons close to the civil party and the victim to prove that they were related in the manner alleged. Finally some civil parties informed the court that they were in the process of obtaining proper documentation and hoped to be able to deliver this documentation to the court next week.

Two challenges to civil party applications were based on the defense argument that a civil party application cannot be based on friendship to a victim of S-21. On this issue the civil party lawyers reiterated their preliminary argument that a civil party application is appropriate and admissible when the civil party suffered from a personal physical, material, or psychological injury sustained as a direct consequence of their friends' detention and execution at S-21.

The court heard challenges to all but five of the contested civil party applications. It will conclude this process during tomorrow's session which will be the last time that the chamber will address this issue.