



Prosecutor v Kaing Guek Eav,  
alias 'Duch'

## The KRT Trial Monitor

Asian Justice Initiative: a Collaboration between the UC Berkeley War Crimes Studies Center and East-West Center

Report Issue No. 18:  
Week Ending August 23, 2009

### ***In This Week's KRT Report:***

***Chamber hears Civil Parties' accounts (pp.2-3); Chamber balances the rights of the Accused and Civil Parties (p.3), Civil Party's testimony repeatedly interrupted (p.5), Technical problems plague proceedings (p.5)***

### **1. SUMMARY**

*"I'm not seeking revenge, I'm seeking the truth- but if the Accused does not answer my questions, I would not be able to offer forgiveness."*

This 17<sup>th</sup> week of Duch's trial marked the beginning of a two-week period allocated for the hearing of Civil Parties' testimonies. Thirteen Civil Parties took the stand and recounted the loss of their loved ones to the crimes committed at S 21. All Civil Parties expressed their experience of intense sorrow flowing from the demise of their family members. The resulting psychological trauma ran extraordinarily deep because of the knowledge that their loved ones, being S21 detainees, were possibly, perhaps likely, subjected to inhumane treatment, painful torture, and cruel execution. A number of them described the lack of a sense of closure due to the absence of information on what precisely happened to their family members. In addition, the Civil Parties often posed questions to the Accused, asking if their loved ones had been subjected to torture, how they had died, and where their bodies had been interred. In response, however, the Accused maintained his stance that he had little knowledge of the fate of individual prisoners.

The Civil Party Lawyers generally appeared prepared for their clients' appearance before the Chamber. Most had prepared and submitted in advance the documents necessary to support their clients' claims, namely, documents proving their clients' relation to the victims as well as the detention of these victims at S21. Moreover, they exercised vigilance in responding to the psychological needs of the victims, and promptly requested the Chamber to take the necessary measures when their clients appeared especially distraught.

The Chamber also anticipated that Civil Parties would possibly require professional psychological support when testifying. A staff of TPO, an organization that provides psychological assistance to victims, was on standby in the Courtroom. Unfortunately, this

attentiveness to the needs of Civil Parties was less apparent on Thursday, when the Chamber decided to put Chum Neou on the stand despite it being obvious that her testimony would be interrupted by a scheduled video-conference to hear another Civil Party's testimony. Although the Chamber may have done so to ensure effective time management, this measure may be perceived as disregarding the psychological, emotional and practical challenges faced by Chum Neou in deciding to go public with her story. An arrangement that allows Civil Parties to testify uninterrupted would be appropriate to show acknowledgement of and respect for what they have gone through.

High public attendance at the Court remained disproportionate to available Court facilities. Significantly, proceedings throughout the week were plagued with time-consuming technical problems. Matters reached a low on Thursday, when the last thirty minutes of the proceedings were spent in silent confusion, at least to the viewing public, as audio system problems rendered all goings-on in the Courtroom inaudible. This led to an abrupt end to the week's proceedings.

## **2. LEGAL AND PROCEDURAL ISSUES**

### **A. Summary of Civil Parties' Testimonies**

As scheduled, the Chamber heard the accounts of 13 Civil Parties over the course of this week. Lawyers of these Civil Parties strove to ensure the sufficiency of documentary evidence to support their clients' claims. In the end, the Defense expressed reservations with respect to only two Civil Parties on grounds that supporting documents were insufficient.<sup>ii</sup> All Civil Parties empowered their respective lawyers to claim reparations on their behalf.

In accordance with Internal Rule 23.1, Civil Parties must prove that they suffered physical, material or psychological injury as a direct consequence of the offence the accused is charged with. To this end, the testifying Civil Parties gave harrowing accounts of how their families had to endure the grief of losing loved ones, made far worse by the gruesome manner in which executions took place at S21. Indeed, emotions ran high throughout the four days as Civil Parties recounted memories of their loved ones who perished at S21, their invaluable place in the family, and the extreme trauma the family had to endure upon learning of their demise. All Civil Parties gave accounts of having suffered psychological injury. Additionally, some claimed material injury, on the basis of financial hardship suffered because the death of their loved ones also meant the loss of the family's breadwinner.<sup>iii</sup> A detailed summary of the Civil Parties' testimonies is provided in the Appendix to this report.

The following Civil Parties took the stand this week:

- **Mme Martine Lefèvre and Ms Uk Neary (Civil Party Group 3)**

Mme Martine Lefèvre and Ms Uk Neary are the wife and daughter of Mr. Uk Keth respectively. Mr. Uk Keth was detained and killed at S-21.

- **Robert Hamill (Civil Party Group 1)**

Robert Hamill lodged his application on the basis that his older brother, Mr. Kerry Hamill was detained and executed at S-21.

- **Antonia Tiulong (Civil Party Group 2)**

Antonia Tiulong also represented her mother, sister, nieces and nephews, who had filed individual civil party applications too. Their applications were made on the basis of the deaths of Antonia Tiulong's sister, Rainsy Tiulong and her husband, Lim Kimary, at S21.

- **Hav Sophea (Civil Party Group 1)**

Hav Sophea, a Cambodian citizen, claimed to have lost her father Chin Sie, alias Hav Han, at S-21.

- **So Som (Civil Party Group 3)**

So Som's brother in law, Meas Sun, had been detained and smashed at S-21.

- **Neth Phally (Civil Party Group 1)**

Neth Phally lost his brother, Neth Bunthy, at S21.

- **Im Sunthy and Phung Guth Sunthary (Civil Party Group 2)**

Im Sunthy and Phung Guth Sunthary are the wife and daughter of Professor Phung Ton respectively. Professor Phung Ton, an eminent law professor and former dean of the University of Phnom Penh, had been detained and killed at S 21

- **Seang Vandy (Civil Party Group 2)**

Seang Vandy lost his brothers, Seang Pon and Seang Pat, during the Democratic Kampuchea era. While Seang Pon's S21 confession had been found, Seang Pat's fate remained unknown.

- **Chum Sirath (Civil Party Group 2)**

Chum Sirath lodged his application for the loss of his borthers, Chum Narith and Chum Sinareth, as well as Chum Narith's wife, Kim Sovannary, and their unborn baby.

- **Chum Neou (Civil Party Group 4)**

Chum Neou brought her application on account of her personal suffering, as well as the deaths of her baby, who died at Prey Sar, and her husband, who was executed at S21. As Thursday's proceedings were adjourned before she completed her testimony,<sup>iv</sup> her account shall be provided in the next KRT report.

- **Ou Savrith (Civil Party Group 4)**

Ou Savrith testified from France via video-conference. This was the first instance of remote participation in the proceedings. Ou Savrith's brother, Ou Vindy, had been detained and executed at S 21.

## **B. Arguments Raised at Trial**

***Chamber Upholds the Accused's Rights during Civil Parties' Testimonies.*** Laudable care was taken by the Chamber to ensure that the Accused's rights were not violated when Civil

Parties posed questions and delivered somewhat stinging rebukes to the Accused. While allowing Civil Parties to pose questions to the Accused, President Nil Nonn reminded Duch of his right to remain silent.<sup>v</sup> As Civil Parties tended to use strong language to give vent to their emotions, particularly their feelings towards the Accused, the President warned Civil Parties that the Chamber would not tolerate verbal abuse and “unethical” comments directed at the Accused.<sup>vi</sup> These measures preserved the balance between the exercise of the right of Civil Parties to be heard before the Chamber on one hand, and the Accused’s right to be presumed innocent on the other. The dignity of the proceedings was thus also maintained.

### **3. VICTIM PARTICIPATION AND WITNESS AND VICTIM PROTECTION AND SUPPORT**

***Attendance of Civil Parties*** Civil Party attendance was reasonably high this week, although the number dwindled as the week progressed. Attendance of Civil Parties was 10 on Monday, 11 on Tuesday, 8 on Wednesday and 7 on Thursday

***Procedural Instructions for Examination of Civil Parties*** As this week marked the beginning of the hearing of Civil Parties’ testimonies, the Chamber on Monday saw fit to reiterate its direction of August 5, 2009, in which it delegated the responsibility of leading the examination of Civil Parties to their respective lawyers.<sup>vii</sup> It noted in particular that it was the responsibility of counsel to ensure that their clients did not give irrelevant testimony. The Chamber made clear that it consequently would not interfere with the examination of Civil Parties unless necessary to ensure all had a chance to be heard, particularly when irrelevant questions are posed or time exceeded. The Chamber also clarified that Civil Parties were allowed to read from written statements they had prepared in advance.

With respect to the order of questioning, other parties to the proceedings would have their turn to examine testifying Civil Parties only after the relevant Civil Party lawyer had completed questioning. The Chamber reserved its right to further question the Civil Party if necessary. To take into account time needed to address disputes as and when they may arise, the Chamber stated that 1/3 of the time allotted for a Civil Party’s testimony should be used for the Civil Party’s statement.

***Defense Submits Preliminary Objections to Civil Parties Application*** As directed by the Trial Chamber the week before, Monday was set aside for the Defense to submit its preliminary objections to Civil Party applications. International Defence Counsel Ms. Canizares listed 49 Civil Parties whose applications the Defense found problematic. Her objections were made on the basis that the Civil Parties in question had provided insufficient evidence to prove either their relationship with the alleged S21 victims, or that the alleged victims had been detained in S21. However, she also stated that the Defense’s objections may be withdrawn should the Civil Parties concerned provide further documentary evidence to substantiate their claims. Debate on these objections as well as the deadline for submission of further documents to support CP claims is to take place after the Parties’ final submissions.

***Psychological Support for Victims*** Much care was taken by the Chamber to accommodate the psychological needs of testifying Civil Parties. TPO officers were promptly made available to Civil Parties Im Sunthy and Chum Neou, when they were overcome by emotion during their

testimonies.<sup>viii</sup> Civil Party Lawyers similarly exhibited sensitivity and responsiveness to their clients' needs.<sup>ix</sup>

**Civil Parties' Right to Adequate Representation** Mr. Kong Pisey, the National Civil Party Lawyer for Groups 2 and 4, was absent this week. Mr. Hong Kim Suon, National Lawyer for Civil Party Group 4, was absent for the first three days of the proceedings, but was present for his clients' appearance before the Chamber on Thursday.

**Extent of Preparation by Civil Party Lawyers** Generally, the Civil Party lawyers exhibited praiseworthy preparedness in providing documentary evidence to support their clients' claims.<sup>x</sup> Unfortunately, this was not the case with the Civil Party Lawyer for Group 4, Mr. Hong Kim Suon. It was only on the day of his client's turn to testify that Mr. Hong Kim Suon presented supporting documents to the Chamber. These documents had yet to be filed,<sup>xi</sup> leaving the Defense without opportunity to examine them. Further, when asked about the provenance of the documents, in particular, the photograph of his client's brother purportedly taken at S21, Mr. Hong Kim Suon was unable to provide an answer.

**Amendment to the Scheduling Order for Civil Party Hearings** In an apparent effort to expedite the trial, and in response to the withdrawal of requests by several Civil Parties to appear before the Chamber,<sup>xii</sup> the Chamber on Tuesday announced a new schedule for the week.<sup>xiii</sup> While Wednesday's hearing went as scheduled, Chhin Navy could not proceed with her testimony on Thursday as she felt unwell. The slot was instead given to Chum Neou.

**Lack of Sensitivity in Time Allocation for Civil Party's Appearance Before the Chamber** Civil Party Chum Neou's testimony was not only rescheduled, it was also interrupted twice. Barely 20 minutes into her time slot, she was interrupted because of the scheduling of Ou Savrith's testimony via video-link. After resuming her testimony, she was interrupted yet again due to technical problems that rendered all proceedings inaudible to the public. This week's proceedings thus ended without her completing her account. While the technical issue perhaps could not have been anticipated, the first interruption could clearly have been avoided as the scheduling of the video-conference was already known. The shunting of a portion of Chum Neou's testimony into the short period between the previous testimony and the video-conference may have been motivated by the desire to use all time available to expedite the proceedings. Still, greater regard should be given for the psychological, emotional and practical difficulties faced by Civil Parties who step forward to testify before the Chamber.

#### 4. TRIAL MANAGEMENT

**Parties' Attendance:** Mr. Seng Bunkheng assumed duty as National Co-Prosecutor and Mr. Vincent de Wilde as International Co-Prosecutor. Mr. Ka Savuth and Ms. Canizares remained counsel for the Defense.

**Public Attendance:** On Monday, 500 members of the Cambodian-Cham community were in attendance - the highest number of Cambodian-Cham attending since the beginning of the trial. There were also Cambodians from different provinces such as Kampong Chhnang, Kandal, Takeo, and Kampot. Tuesday saw the attendance of almost 500 people. 200 were from Chhouk and Dang Tong district, Kampot province, while another 250 were from Koh Thom district, Kandal province. On Wednesday, there were 400 from Kratie and 60 from Kompong Chhnang. On Thursday, the public audience comprised about 200 students from the Cambodian Youth

Association in Kandal province (coming from four high schools) and 200 people from Prasath Sambo district, Kampong Thom province.

**Court Facilities:** Again, court facilities, especially seats in the public gallery, were insufficient to accommodate such high public attendance. The Monitoring Team urges the court to make available adequate facilities to accommodate high public participation, or alternatively, to regulate the number of different groups being brought to visit the court.

**Technical Problems:** Chronic audio system problems plagued this week's proceedings.<sup>xiv</sup> Most notably, Thursday's proceedings ended abruptly after a 20-minute attempt to fix audio problems.

**Time Management:** The proceedings this week have largely been conducted on schedule despite prevalent technical problems (see the section above). The Chamber exerted the utmost effort to ensure the expeditiousness of the trial. On Wednesday, the afternoon break was cancelled to ensure all items on the schedule could be completed so that preparations could be made for the next day's video-conference with Civil Party Ou Savrith. There was again no afternoon break on Thursday to allow Civil Party Chum Neou to conclude her testimony. However, this was unsuccessful as proceedings were adjourned due to an inability to fix problems with the audio system.

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 17/08/09	09.05AM	10.35 – 10.55AM	12.10 – 13.40PM	14.40 – 15.00PM	16.20PM	4 HOURS 25 MN
TUE 18/08/09	09.07AM	10.30 – 10.55AM	12.00 – 13.35PM	14.40 – 15.10PM	16.35PM	4 HOURS 58 MN
WED 19/08/09	09.05AM	10.25 – 10.45AM	11.55- 13.33PM	-	15.35PM	4 HOURS 32 MN
THU 20/08/09	09.05AM	10.32 – 10.58AM	12.03 – 13.30PM	-	16.13PM	5 HOURS 15 MN
<b>AVERAGE NO. OF HOURS IN SESSION : 4 HOURS 40 MINS</b>						
<b>TOTAL NO. OF HOURS THIS WEEK : 22 HOURS 40 MINS</b>						
<b>TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL: 272 HOURS AND 44 MINS OVER 61 TRIAL DAYS OVER 17 WEEKS</b>						

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<sup>i</sup> Phung Guth Sunthary, during the hearing on Wednesday, 21 August 2009

<sup>ii</sup> The Accused expressed doubt with respect to Hav Sophea's relationship with Chin Sie, perhaps because her birth certificate had been issued in 1982. With regards to So Som, the Defense considered of questionable probative value the sworn affidavit issued by the Civil Party's commune chief, which was submitted to establish the kinship between So Som, her sister and her sister's deceased husband. The Accused indicated reservations in acknowledging the presence of So Som's brother-in-law at S21 because the only supporting document was a photograph allegedly originating from S21.

<sup>iii</sup> This was the case for Martine Levefre, Hav Sophea and Im Sunthy

<sup>iv</sup> The Civil Party's testimony was interrupted twice: once to accommodate the video-conference session with Mr. Ou Savrith, and subsequently due to technical problems that persisted until proceedings had to be adjourned.

<sup>v</sup> When putting questions from the Civil Parties to the Accused, President Nil Non consistently made clear that the Accused could refuse to answer should he wish to do so.

<sup>vi</sup> One example of this is during Robert Hamill's testimony on Monday, when Robert Hamill described rather graphically how he frequently wished that the Accused too could experience what S21 detainees went through. President Nil Non saw such language as vengeful, and reminded Robert Hamill to refrain from using abusive words as the trial was "not a means for taking revenge".

<sup>vii</sup> The Chamber specified that this responsibility encompasses a duty on Civil Party Lawyers to ask clear and relevant questions and to ensure that their client's statements are relevant to case 001. The Trial Chamber also expects the Civil Party Lawyers to ensure that the questions they pose would at the very least include clarification of the identity of the Civil Parties and relevant documentary evidence, as well as the establishment of the link between the Civil Party and victims of S21.

<sup>viii</sup> This refers to the Transcultural Psycho-social Organization.

<sup>ix</sup> When Civil Parties found it difficult to control their emotions while recounting their experiences, their lawyers would highlight the need for breaks should their clients find it difficult to continue with the questioning. An example of this is during the proceedings on Monday, when Robert Hamill took the stand. Upon his client's display of great emotional distress, Alain Werner, requested the Chamber to adjourn to give time for Mr. Hamill to collect himself.

<sup>x</sup> Civil Party Lawyers for Groups 1, 2, and 3 indicated that they had provided the necessary documents to the Chamber and Defense prior to their clients taking the stand.

<sup>xi</sup> When presenting to the Chamber documents concerning Civil Party Ou Savrith's identity, Mr. Hong Kim Suon had a four-page document displayed on the screen, including a photo of Mr. Ou Savrith's brother, alleged to be a victim at S21. The Defense subsequently inquired about the provenance of the photo, Mr. Hong Kim Suon, however, seemed to have no knowledge of this. He said that the four-page document was provided to him by Mr. Ou Savrith and he would let Mr. Ou Savrith to explain where it came from if necessary. It appears that Mr. Hong Kim Suon had not examined and investigated into the document provided to him by his client.

<sup>xii</sup> On Tuesday Civil Party Lawyer for Group 1, Silke Studzinsky, announced that one of her clients was waiving her right to appear before the Chamber due to an incident where she felt badly treated by the Office of Co-Investigating Judges. Mr Jeffrey James from the US was also withdrawn from the list because he was unable to travel as planned due to his mother's sickness. For unspecified reasons, which his lawyer stated he would be willing to provide if necessary, video-conferencing was not a viable option.

<sup>xiii</sup> According to the new schedule, three Civil Parties from Civil Party Group 2 would be heard on Wednesday, namely Seang Vandy, Im Sunthy, and Phung Guth Sunthary. On Thursday, the Chamber would hear Chhin Navy, Chum Sirath, and Ou Savrith (by video conference). The hearing proceeded in accordance with this schedule. On August 24, Civil Parties from Group 4, Touch Monin, Ros Men, and Chum Neou are scheduled to present their claims.

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<sup>xiv</sup> On Tuesday the Khmer translation was on one occasion inaudible in the public gallery. That day the microphone on the witness stand also malfunctioned repeatedly, a problem that continued to prevail until the last day of the proceedings. Thursday's proceedings were repeatedly interrupted by technical problems: first there seemed to be a problem with the French translation channel, which was solved only after 10 minutes. Twenty minutes before the scheduled time of adjournment, the audio system again malfunctioned and nothing could be heard through the audio system.