



## **DUCH DENIES THAT ANOTHER “SURVIVOR” WAS IMPRISONED AT S-21**

**July 6, 2009**

**By Laura MacDonald, Member of the New York Bar and Consultant to the Center for International Human Rights, Northwestern University School of Law**

The Trial Chamber started off the day by announcing the removal of yet another witness from the list of those set to testify during the trial of Kaing Guek Eav (alias Duch). After a strange day of testimony by civil party Ly Hor in which few, if any, new facts regarding Tuol Sleng prison (S-21) came to light, I expect the Chamber will increase its standards even further and more witnesses will be struck from the list.

Last week, after a day of detailed testimony by child survivor Norng Chan Phal, Duch argued he was never a prisoner at S-21 because all children were killed as a matter of policy and none ever escaped. Duch noted there were no documents demonstrating Chan Phal or his mother ever arrived at S-21. Duch’s challenge came in the late afternoon and appeared to shock all parties, including the judges. Today, the defense took a new approach announcing Duch refuted the fact that the witness was an S-21 survivor *before* the witness began to testify. The defense stated that it made the challenge known early so the judges and parties could question accordingly. President Nil Nonn brushed the suggestion aside, responding that the defense would be given an opportunity to verify Ly Hor’s statements during the defense’s regular question time. However, not long into the President’s examination of the witness, certain questions from the bench were clearly aimed at determining if Ly Hor was in fact at S-21.

57-year-old Ly Hor had trouble understanding questions put to him and recalling the events from 1975 to 1979. After defecting from the Khmer Rouge army and being arrested sometime in 1975, he allegedly spent time in four detention facilities – Office 15’s prison, Ta Kmao Psychiatric Hospital, S-21, and Prey Sar re-education camp, also known as S-24. The lines among these four facilities seemed to be blurred in his memory and his testimony. At Ta Kmao, he claims he was interrogated three times and beaten into giving confessions before being transferred to S-21 where he was interrogated only once. He spent about a month at S-21 before being transferred to S-24 from which he eventually escaped by swimming across a river.

While the four S-21 survivors who testified last week all provided statements consistent with details that have emerged throughout the proceedings, Ly Hor’s testimony was quite different. Ly Hor could not recall having a photograph taken when he arrived at S-21. He said he did not receive an identification number. He received three baths per week

outside the cell during which his handcuffs were removed. He was allowed to keep his clothing and wear it. He ate rice or soup twice a day. He described the guards as scared and recalled one giving him medicine. He was not tortured, although he was beaten for spilling the urine container in his group cell. When a man died in his cell, the corpse was removed immediately. These procedures and conditions are much more humane than those that have been described in detail time and again. Ly Hor testified that he knows he was at S-21 because an S-21 guard told him so.

Compounding the confusion of Ly Hor's testimony, the documents used by the Chamber to examine him, including his alleged biography and confessions, were only available in Khmer, lacked origin information on their face, and came from the Documentation Center of Cambodia (DC-Cam), a Phnom Penh-based non-profit organization. While most of the documents had been submitted to the ECCC along with Ly Hor's civil party application, he displayed great confusion about the origin of the documents, whose handwriting appeared on the documents, and how he came across the documents before trial. Ly Hor's lawyer, Alain Werner, asked that the documents be read out for the parties. He was later scolded by Judge Silvia Cartwright for having a lack of facility with the documents and asked him whether he agreed that the witness was "very poorly prepared." Werner explained there had been a problem getting the documents translated and that he had in fact met with the witness three times prior to his testimony. Judge Cartwright stated that she and her colleagues expect better preparation of civil parties in the future.

Judge Lavergne pressed the issue of the origin of the documents and Werner suggested he could get a sworn affidavit from DC-Cam stating that the documents came from S-21. Later, the defense asked several questions about Ly Hor's interaction with DC-Cam. As with the questioning of Chan Phal, the defense's approach toward Ly Hor implied that he had been given a biography from DC-Cam who fed him the idea that he had been at S-21 when he had actually been at another prison. On several occasions, the defense has subtly and not so subtly introduced the possibility of DC-Cam bias into the proceedings. Given that DC-Cam has spent the last 12 years tirelessly collecting hundreds of thousands of documents on the Khmer Rouge era, a large percentage of the documents at play in the Duch trial were provided to the ECCC by DC-Cam. Therefore, if substantiated, such accusations of DC-Cam bias could have a wide impact. To my knowledge, however, there is no evidence to substantiate the defense's implication of DC-Cam bias or tampering.

The most interesting part of today's proceedings occurred when Duch was given an opportunity to respond to Ly Hor's testimony. After a confusing day of questions and answers in which no one seemed to know what was going on, Duch stood confidently and delivered a well-organized statement. Duch confirmed that some of the documents originated from S-21 because he recognized the annotations of two of his subordinates on them. Duch pointed out that "Ear Hor," the name Ly Hor went by before 1979, is listed as "smashed" on the prosecution's revised S-21 prisoner list. Another document stated that Ear Hor was released. In this context as well as others, Duch maintains no one was ever released and the original S-21 head, Nat, had produced some fake lists of release to cover

up unauthorized executions. Duch said, "According to these documents, Comrade Ear Hor already died." Drawing on his days as a math professor, Duch did some adding and subtracting and noted that the age of Ear Hor listed in the biography does not accord with the age Ly Hor would have been at the time. Duch acknowledged that Ly Hor suffered and was tortured, but argued it must have been at another detention center.

The revised prisoner list states that an Ear Hor entered S-21 on November 10, 1975. When the defense asked Ly Hor where he was on that date, he said he was in his home province. Ly Hor's lawyer failed to confirm or deny that the Ear Hor on the prisoner list is one and the same as the Ear Hor from the biography and confessions referenced throughout the day.

No one today openly questioned Ly Hor's motives. Everyone seemed to perceive him as a traumatized victim doing his best to recall what happened to him over 30 years ago. While his testimony could demonstrate the possibility of release from S-21 to S-24 and the possibility of escape from S-24, it is unclear how much weight the Chamber will give it.