



**SURVIVOR ALLEGEDLY SPENT HOURS UNDER CORPSES IN A MASS GRAVE BEFORE ESCAPING FROM DUCH'S KILLING FIELD**

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**Duch Challenges the Testimony of Yet Another Alleged S-21 Survivor**

Today, Kaing Guek Eav (alias Duch) refuted the testimony of a third alleged survivor of Tuol Sleng prison (S-21). While Duch acknowledged the suffering of civil party Lay Chan, he argued there was no evidence the suffering happened at S-21. Duch's defense counsel stood to announce his challenge just after Lay began his testimony.

Lay, now a 55 year old rice farmer, was arrested sometime in 1976 while working as a messenger for the Khmer Rouge. After being stripped, blindfolded, and thrown into a few different vehicles, Lay arrived at a detention facility that he now believes to be S-21. During approximately three months there, he was interrogated and tortured twice. He was accused of stealing rice for "the enemy" and conspiring with two of his former superiors. He was detained in an individual cell and only guessed there were other detainees due to the screams and footsteps he heard. Any time he was taken out of his cell, he was blindfolded. He was often taken outside at night to dig pits that he was told were for banana trees. In the most disturbing moment of his testimony, Lay started sobbing as he described being so thirsty that he drank his own urine.

One day for unknown reasons, he was thrown into a vehicle and dropped off on the outskirts of Phnom Penh all alone. Eventually, he hitched a ride back to Phnom Penh where a comrade instructed him to go to the railway station. Once there, he learned it was a re-education facility and he was put to work collecting firewood used for cooking palm sugar. After about a year, he was sent back to his original farming unit to grow vegetables and rice. He remained there until the Vietnamese seized Phnom Penh.

The Trial Chamber was skeptical of his account. President Nil Nonn and Judge Thou Mony pressed Lay on how he knew he was at S-21. He says he overheard two guards refer to the facility as "Tuol Sleng School." When asked if he recognized anything at S-21 upon his recent return, he said the compound had been "reformed" and the situation was different. Lay could not offer any further evidence that he was at S-21 and the judges pressed his lawyers for documents given the "minimal" support for his civil party application. Lay's lawyer explained he had no relevant supporting documents. Curiously,

neither of the international judges asked any questions. Perhaps they had already decided to disregard Lay's testimony.

After the Cambodian co-prosecutor asked a few questions, the international co-prosecutor stated that he had no questions but wished to inform the Chamber that the prosecution may make written submissions regarding what weight the Chamber should assign to Lay's testimony. Given that even the prosecution was openly skeptical of the witness, I expected the civil parties to come out swinging in order to prove Lay was a prisoner at S-21. While a few questions sought to establish this fact, more of the questions sought details on the conditions and treatment he experienced and, therefore, were not terribly effective.

The Chamber gave Duch an opportunity to comment on Lay's testimony. Duch explained that S-21 was under his control and no one was released. Therefore, Lay must have suffered somewhere else. The always animated Cambodian defense counsel Kar Savuth then asked a series of questions demonstrating differences between Lay's testimony and the conditions at S-21 as others have recalled them. While he made a number of good points, the way in which he made them was inappropriate. Yesterday, Kar Savuth sought the Chamber's leave to make observations and was denied permission to do so after head international co-prosecutor Robert Petit objected on the basis that such observations were like pleadings. Today, instead of making independent observations, Kar Savuth simply inserted his observations into his questions. For example, in one "question" he stated "I think that S-21 would never, ever release anyone." After a few questions, he explained – unnecessarily – to the witness that he had asked that question because others had described S-21 differently and perhaps the witness was mistaken about where he was detained. A different international co-prosecutor was present at trial today and did not object to Kar Savuth's tactics.

### **Emerging Details Regarding Other Challenged S-21 Survivors**

While leaving the observer with considerable doubt regarding the location of his detention, Lay's testimony today was much clearer than civil party Ly Hor's testimony yesterday. Although the Chamber scolded Ly Hor's lawyer yesterday for failing to adequately prepare his client, it appears as though there was a lack of preparation on behalf of the ECCC as well. It seems no one from the ECCC met with Ly Hor or investigated his story properly in advance. According to a representative from the Documentation Center of Cambodia (DC-Cam), one of the ECCC units contacted DC-Cam the day before Ly Hor was scheduled to testify in order to track down documents for the Chamber to consider in its examination of the witness.

Last week, Duch also challenged the testimony of Norng Chan Phal, who claimed he entered S-21 with his mother shortly before the Vietnamese seized Phnom Penh on January 7, 1979. Given that there were no documents or photographs proving Chan Phal's mother, Mom Yauv, was detained at S-21, Duch said he could not accept that Chan Phal's suffering took place at S-21. Duch noted that if such a document existed, he would accept Chan Phal's complete testimony. In an exciting development, according to

DC-Cam, the biography of Mom Yauv has been discovered and provided to the prosecution to be filed with the Chamber. After Duch challenged Chan Phal's testimony, DC-Cam staff members Hin Sotheany and Sok Vannak were motivated to run additional searches of their archives and discovered the biography. Youk Chhang explained that although DC-Cam often has better knowledge of and access to relevant documents and witnesses, it leaves the cases completely to the ECCC and does not pursue legal investigations.

### **Judges Challenge Credibility of Incredible Choeung Ek Survival Story**

This afternoon, the Chamber questioned 57 year old civil party Phork Khan. Phork was arrested in 1978 while serving as a Khmer Rouge soldier and transferred to a detention facility. Like Lay, Phork could not provide detailed testimony regarding the S-21 compound itself because he spent all of his time outside his cell blindfolded. However, he believes he was at S-21.

He was first placed in a large cell with about 15 other detainees, one of whom he knew from his old military unit. After about three days, he was taken to be interrogated by two men. At one point, the interrogators threatened that "Brother East," as Duch was sometimes called, was coming. Duch sat in a chair and watched as the men interrogated and tortured Phork for perhaps 15 or 20 minutes. Phork was uncertain whether Duch had kicked him at one point before he left. After interrogation sessions, Phork was kept in an individual cell.

After three or four months at S-21, Phork and maybe 30 other prisoners were taken out to a truck while blindfolded with their hands tied and feet chained. After about an hour, the truck arrived at a location that he now believes was Choeung Ek, and the prisoners were brought into a wooden house. Prisoners were taken out a few at a time and they never came back. Phork was taken out in the last group of six prisoners. He said he stood at the edge of a pit and realized his time had come. After taking blows to his knees and ribs, he fell into the pit. Other prisoners were killed behind him and fell on top of him. He thinks he was unconscious lying in the pit beneath those corpses for several hours. When he woke up, there was blood all over him and a horrendous stench filled the air. Although dizzy, sore, and weak, he walked and crawled to a nearby river and used a wooden plank to float for two or three days to Phnom Penh where he was rescued. During his escape from the killing fields, he heard heavy gunfire and thus believes he escaped on January 6, 1979 as the Vietnamese were seizing the city.

The Chamber appeared skeptical and asked several questions seeking to understand all the details of Phork's testimony. Many of the Chamber's questions were based on the application Phork filed to become a civil party, which contains a statement prepared on his behalf by the Cambodian Human Rights and Development Association (ADHOC), a non-profit organization. President Nil Nonn said the written statement was a "stark contrast" from what Phork told the Chamber. The President read out certain parts of the statement and then asked, "What are the true facts?" He also asked Phork if he was literate and had read the statement. Phork explained that he "did not read the facts

clearly.” The statement, for example, explains that Phork escaped by sneaking into a pond at Choeung Ek, rather than by being hit into a mass grave and presumed dead as he testified today. Similar issues arose when the Chamber compared Lay’s application statement with his testimony. For example, the statement said a generator was running during torture to cover up screaming. Lay testified that he heard noise during interrogation but could not determine if it came from a vehicle or a generator. Lay did not mention anything about the purpose of the noise.

Phork’s lawyer tried to explain to the Chamber that such statements of the witnesses today and yesterday were recorded by human rights volunteers with little experience drafting such documents. She acknowledged the lack of precision in the statements and asked that the Chamber consider them in the “proper context.” Duch’s victims were generally identified by various non-profit organizations that subsequently interviewed them and assembled their civil party applications. The organizations then channeled the civil parties they had identified to certain lawyers and thus the four civil party groups were formed. The civil party lawyers, therefore, inherited the application statements from non-profit organizations and did not participate in drafting the documents themselves.

Phork will return to the ECCC tomorrow for further questioning. He is the seventh survivor to testify in the Duch trial.