



SIXTH PLENARY SESSION SET TO DISCUSS FUTURE OF CIVIL PARTY PARTICIPATION

September 7, 2009

By Michael Saliba, J.D. (Northwestern Law '09), Consultant to the Center for International Human Rights, Northwestern University School of Law

The trial of Kaing Guek Eav (alias Duch) is on a one week recess as the court holds its sixth plenary session this week in the main courtroom. The plenary president, H.E. Kong Srim, and plenary international vice-president, Judge Silvia Cartwright, delivered introductory remarks during the morning session which was held open to the press, before closing for confidential deliberations.

Plenary Session Agenda

The agenda items for this plenary session include reviewing rules relating to protective measures, evidence, deadlines for civil party applications, measures designed to expedite proceedings once a closing order is appealed, and procedures before the Supreme Court Chamber. Perhaps even more important will be the discussions relating to civil parties and the future model of victim participation.

The court as well as many non-government organizations have expressed concerns that the model of victim participation as it stands now would be untenable for the second case at the ECCC (Case 2). Judge Cartwright shared the view of the Trial Chamber that the process of involving victims as civil parties has been cumbersome, frequently having the unintended effect of slowing the trial. This result, she explained, was counter to the victims' needs of achieving timely justice for their suffering. The Documentation Center of Cambodia (DC-Cam) estimated that if the defense in Case 2 challenged one-third of the expected 2,500 civil party applications, the court would need to spend over eight months exclusively on resolving these disputes. Despite these challenges, civil party participation is considered to be an important aspect of the tribunal and representatives for civil parties want to ensure that their clients' rights and interests are upheld in the event of any changes in the Internal Rules.

Given the concerns of so many interested parties, the Rules and Procedure Committee met last week to review the rules regarding civil party participation and to make proposals for the plenary session. However, no Internal Rule changes are expected to be adopted at the conclusion of this plenary session because the discussions are expected to be of a general nature. Instead, the discussions will lay a foundation for specific rule changes in the future as the start of Case 2 approaches.

Plenary Session Overview

The court holds plenary sessions every six months to decide upon matters relating to the internal functioning of the ECCC. During the plenary session the court reviews and amends, as necessary, the Internal Rules. Once a year, the court also adopts a report, prepared by the office of administration, to be sent to the Supreme Council of the Magistracy of the Kingdom of Cambodia and to the Secretary-General of the United Nations.

Plenary sessions are attended by the co-investigating judges and judges of the chambers, as well as the reserve judges, co-prosecutors and their reserves, the head of the defense support section, the head of the victims unit and the director and deputy director of the office of administration. However, only the co-investigating judges and judges of the chambers are entitled to vote on proposed procedural changes to the Internal Rules or other decisions made at a plenary session. Such decisions and rule changes require an affirmative vote from a super-majority of fourteen out of the nineteen judges entitled to vote. (The co-prosecutors are entitled to vote on non-procedural rules concerning the administration of the ECCC due to their status as judicial officers under Cambodian law).