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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA  
BEFORE THE PRE-TRIAL CHAMBER

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CO-PROSECUTORS' REQUEST TO AMEND ITS RESPONSE TO DEFENCE  
APPEAL AGAINST CO-INVESTIGATING JUDGES' ORDER OF THE PROVISIONAL  
DETENTION OF KANG KECK IEV alias DUCH ON 31 JULY 2007

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Filed by:

Office of the Co-Prosecutors:  
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ព្រឹត្តិបត្រតំណាងត្រឹមត្រូវតាមច្បាប់ដើម  
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ព្រះបណ្ឌិត/ Greffier NUP SOTHU  
VICHET

Distributed to:

**The Pre-Trial Chamber  
Judges:**

Mr PRAK Kimsan  
Mr NEY Thol  
Mr HUOT Vuthy  
Ms Katinka LAHUIS  
Mr Rowan DOWNING

**Co-Investigating Judges:**

Mr. YOU Bunleng  
Mr. Marcel LEMONDE

**Defence Counsel:**

Mr KAR Savuth  
Mr François ROUX

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NUP SOTHUVICHET

ACTING CASE FILE OFFICER

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5 November 2007

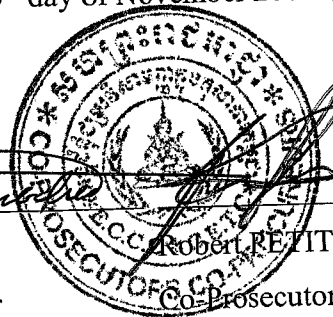
Criminal Case File No. 002/14-08-2006-ECCC-OCP

1. We, the Co-Prosecutors, respectfully request that the Co-Prosecutor's Response to the Defence Appeal Against the Co-Investigating Judges' Order of the Provisional Detention of Kang Keck Iev alias Duch filed with the Pre-Trial Chamber on 18 October 2007 be amended by replacing the Appendix C attached in this Notice with the one attached to the Co-Prosecutor's Response.
2. Appendix C will then be the document as described in the List of Appendices attached to the Co-Prosecutor's Response.

Respectfully submitted

Signed in Phnom Penh, Kingdom of Cambodia on this 5<sup>th</sup> day of November 2007.

  
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CHEA Leang  
Co-Prosecutor



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**APPENDIX C**

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## DUCH'S MOTHER: FAMILY FEARS FOR THE TUOL SLENG (S-21) PRISON CHIEF

*John D. Ciorciari and Kok-Thay Eng*

On June 6, Cambodian and United Nations officials signed an agreement to create the long-awaited Khmer Rouge tribunal. One of the tribunal's most likely defendants is Gang Khek Euv, better known as Duch, the former Khmer Rouge security chief at the infamous Tuol Sleng Prison. Abundant physical and documentary evidence links Duch to torture and other crimes against humanity, as do his confessions to journalist Nate Thayer in 1999. Duch has recanted his previous confessions somewhat, asserting that he had not killed anyone and was a "junior guy in the Khmer Rouge regime" powerless to stop the abuses ordered by party leaders. Nevertheless, if trials commence, it is nearly certain that Duch will be prosecuted for grave criminal offenses.

Speaking to his mother, Kim Siev, and his younger sister, Kim Hiev, one would scarcely envision a man accused of directing the appalling offenses of Tuol Sleng and sending thousands of victims to the "Killing Fields" of Choeung Ek. Duch was born in 1942, the only son in a family of seven. He grew up in a small village outside of Stung in Kampong Thom province. His mother remembers him fondly as "a very gentle and obedient child. He was not a picky eater, and he liked to study. He was always very helpful around the house and kind to his family. He was quiet and enjoyed fishing in the river nearby." Duch's

sister recalls that he was "an outstanding student, especially in mathematics."

At age 14, Duch left his home village to study, first in Kampong Thom and later in Siem Reap. He excelled academically and became a high school mathematics teacher by 1961. He visited his family frequently until Lon Nol's military coup in March 1970, but according to his mother and sister, he never spoke about politics. "He remained gentle, caring, and obedient," says Kim Siev. During the years of the civil war, Duch did not return to his home village, but he paid many visits after the Khmer Rouge revolution of April 1975. "We didn't know what position he had under the Pol Pot regime," explains his sister. "He didn't talk about his work when he came home, and he didn't look unusual. He wore the same black cotton clothes and red-and-white scarf as all of the other cadres."

With the Vietnamese invasion of 1979, Duch disappeared again, and for nearly two decades, his family saw nothing of him. "I thought he was dead," said his mother, "and when he came back, I was overjoyed. I couldn't believe my son was alive." Until 1995, Duch lived a quiet and impoverished life in the Khmer Rouge-controlled area of northwestern Cambodia. He turned increasingly to the Bible, and in 1995, shortly after his wife Sopal was murdered in a possible revenge attack, a Cambodian-American missionary baptized Duch a Christian. He adopted the alias Ta Pin and began spreading the Gospel as a medical aid worker in a refugee camp. He also resumed frequent visits to his mother. However, by 1999 the Cambodian government discovered Duch's whereabouts, and the relative collapse of the Khmer Rouge facilitated his capture. Security forces arrested him on May 10, 1999 and flew him by helicopter to the prison at the Military Court in Phnom Penh. Court officials charged him with



**Kim Siev, Duch's mother**

genocide and treason and appointed him a defense lawyer, Ka Savuth.

Duch's mother and sister first learned of his arrest from a fellow villager who read about it in the news media. "We were absolutely shocked by his arrest," said Kim Hiev. The elderly Kim Siev nodded in agreement. "Duch had made many visits between 1996 and 1999, but he never spoke about his work in the Khmer Rouge era. We didn't know anything about his job in Democratic Kampuchea. When he came, he only asked about the wellbeing of the family. We were shocked when he was arrested. We just hoped they wouldn't kill or torture him."

In Phnom Penh, Ka Savuth sought a speedy trial for his client. He asserted that Duch wanted to talk and to testify against senior leaders of the Khmer Rouge regime, whom he accused of ordering him to perform the killing. Cambodian law normally limits pre-trial detention to a six-month period. However, in August 1999, the Cambodian National Assembly passed a law authorizing three years of detention for suspects charged with genocide, war crimes, and crimes against humanity. Human rights advocates from the United Nations and other organizations attacked the law as a violation of the rights of the accused. Nevertheless, the measure stood. In May 2002, when Duch's three-year detention period was set to expire, Investigating Judge Ngin Sam charged him with crimes against humanity, extending his detention by another three years.

Ka Savuth reports that Duch seldom complains about prison conditions. In late 2001, military physician Tout Nara revealed that Duch was suffering from ailments in his eyes and ears, but Ngin Sam An later reported that he was healthy and fitter than he was before his imprisonment. Duch's mother and sister hear few details about the possible case against him. They know little about the intricate principles of domestic and international law and politics that will govern Duch's fate. They merely express fear for his condition in prison and for his future. "Will they kill him?" Kim Siev asked again and again, unsure of the punishment her son could face. "Does he have a lawyer?" his sister added. Both women were painfully unaware of the laws and procedures governing Duch's fate.

In late 1999, Kim Hiev went to Phnom Penh in an effort to see him. "I spent three days and nights before I

found out where he was detained. Then I waited outside the prison for hours, asking every official that I could if I could speak to him. I told them that I am Duch's sister, but they all refused," she recalls. Although prison officials accepted her care package to Duch, no one gave her an intelligible explanation for her inability to visit him. This year, requests by the Documentation Center of Cambodia to visit and interview Duch have been similarly denied.

There is little doubt that Duch is an appropriate target for prosecution before the Khmer Rouge tribunal. A mass of evidence links him to serious abuses, and under applicable law, superior orders are no defense. However, his relatively open-ended detention is problematic from a legal standpoint. The Khmer Rouge trials must ultimately be designed to exact justice, not revenge. An integral principle of justice is the right to be presumed innocent until proven guilty in a court of law. In Tuol Sleng Prison and elsewhere, the Khmer Rouge perverted that principle and asserted that "it is better for ten innocent men to be condemned than for one guilty man to go free." Victory over that horrific legacy means destroying the practice of procedural injustice, even when the evidence against a defendant appears overwhelming.

The Cambodian government must ensure that its treatment of even the most notorious detainees meets generally accepted standards of justice. Some of those rights, such as the access to counsel, medical attention, and nourishment, appear to be met. Others merit improvement. The length of Duch's detention has already become excessive. The Khmer Rouge tribunal is finally approaching, but should further delays occur, justice requires that officials give good-faith consideration to Duch's release. In addition, a just detention should permit Duch at least modest visitation rights. Granting access to his family members would comport with basic human rights standards. Allowing his family to visit will satisfy the most basic rights of the accused. Allowing outside organizations to visit the facility and observe Duch's just treatment will reflect well on the development of a rule of law in Cambodia.

◆ *John D. Ciorciari is the Wai Seng Senior Research Scholar at the Asian Studies Centre, University of Oxford.*

◆ *Kokthay Eng is Co-Editor-in-Chief of Searching for the truth (English).*