

The Court Report

August / September
2009



The Extraordinary Chambers in the Courts of Cambodia

Moving Forward Through Justice

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Welcome to the 16th edition of The Court Report. This newsletter is published monthly in an effort to keep the public better informed about court activities.

In the Judicial section, updates from the Pre-Trial Chamber, the Trial Chamber, the Supreme Court Chamber, the Office of the Co-Prosecutors, the Victim's Unit and the Office of the Co-Investigating Judges are included.

In the Public Information & Outreach section, information on the production of Khmer Mekong Film's television program *Duch on Trial: Time for Justice* is included.

The NGO page has an overview of the Outreach Harmonization Workshop held on 7 August 2009.

As usual, we have included calendars with upcoming Court and Outreach Information.

Hearing Dates (Weekly)	Total Visitors (Weekly)
30/03/09 - 01/04/09	1,176
06/04/09 - 09/04/09	623
20/04/09 - 23/04/09	642
27/04/09 - 30/04/09	742
18/05/09 - 21/05/09	575
25/05/09 - 28/05/09	560
08/06/09 - 10/06/09	415
15/06/09 - 17/06/09	621
22/06/09 - 25/06/09	860
29/06/09 - 02/07/09	1,899
06/07/09 - 09/07/09	1,553
13/07/09 - 16/07/09	1,504
20/07/09 - 22/07/09	1,301
27/07/09 - 28/07/09	1,094
03/08/09 - 06/08/09	1,687
10/08/09 - 12/08/09	1,463
17/08/09 - 20/08/09	2,176
24/08/09 - 26/08/09	1,359
Grand Total as of Wednesday, 26 August 2009	20,250

Milestone Attendance in Case 001

As of Wednesday, 26 August 2009, 20,250 visitors had attended the Duch-trial since it commenced on 30 March. This makes a daily average of 311 visitors. The total number of visitors includes visitors from 11 Cambodian provinces (Kandal, Kampong Cham, Kam Pong Speu, Kampong Thom, Phnom Penh, Kampong Chhnaing, Kratie, Pursat, Siem Reap, Takeo and Kampot). In addition, visitors from 22 other countries have attended the court proceedings.

The ECCC is providing free bus transportation to the court from the provinces for groups of 30 or more that have expressed interest in attending the Duch-trial.

Connecting Lost Loved Ones

Thursday, 20 August civil party, Mr. Chum Sirath, testified at the ECCC about the death of his brother Mr. Chum Nareth at S-21. Mr. Chum Sirath moved to France in 1975, and was therefore able to escape the Khmer Rouge, but the rest of his family was not so fortunate and he no longer has any living relatives.

This same day, Mr. Kim Navy was listening to the substantive hearing in the Preah Vihear province, and recognized his brother-in-law's name. Mr. Chum Nareth had married Mr. Kim Navy's sister, Ms. Kim Sovannary, but they were both killed at S-21 under the Khmer Rouge regime.

Mr. Kim Navy called the ECCC's Victim's Unit, who provided him with Press Officer Mr. Sovannarom Dim's mobile number. During the lunch recess, Mr. Sovannarom Dim found Mr. Chum Sirath and put him on the phone with his sister-in-law's brother, Mr. Kim Navy. Although these two men had never met before, they have since met in Phnom Penh to talk about their loved ones.

Appointment of William Smith as Acting International Co-Prosecutor



On 29 August 2009, the Supreme Council of Magistracy of Cambodia, upon the nomination of the Secretary-General of the United Nations, appointed, as an interim measure, Mr. William Smith (Australia) as the Acting International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia. His appointment was effective 1 September 2009. This appointment has been made pending the decision on the permanent replacement for the current International Co-Prosecutor, Mr. Robert Petit, whose resignation took effect on the same date. Two nominations for the permanent replacement have been forwarded by the Secretary-General to the Royal Government of Cambodia for a decision by the Supreme Council of Magistracy.

Mr. Smith has been the international Deputy Co-Prosecutor of the ECCC for the last 3 years. Between 1995 and 2006, Mr. Smith worked as a trial attorney, legal officer and analyst at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Prior to that, Mr. Smith practiced criminal law in South Australia as a defence barrister and solicitor as well as a prosecutor for the South Australian Police Department. Mr. Smith was educated at the University of Adelaide where he received a degree in law and arts. He also obtained a masters in international law from Leiden University in the Netherlands.

Pre-Trial Chamber

On 3 July 2009, the Pre-Trial Chamber rendered its decision in relation to Khieu Samphan's appeals against the Co-Investigating Judges' Order Refusing Request for Release and Extension of Provisional Detention Order. This decision followed the hearing held on 3 April 2009. The Pre-Trial Chamber declared the appeals admissible, confirmed the Order Refusing Release and the Order on Extension of Provisional Detention of the Office of the Co-Investigating Judges and dismissed the appeals.

On 13 July 2009, the Chamber rendered its decision on the admissibility of the Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation, in which the appeal was declared inadmissible.

During the reporting period, the Pre-Trial Chamber also attended to a number of trial-management and related matters before the Chamber.

At the conclusion of the reporting period, the Pre-Trial Chamber remained seised of seven pending motions. Six pertain to Case File 002. Five are appeals concerning requests for investigative action and the sixth is an application for disqualification. The seventh pertains to a confidential matter currently before the Pre-Trial Chamber pursuant to Rule 71.

To date, the Pre-Trial Chamber has decided and closed two appeals in



relation to Case File 001 and 18 appeals in relation to Case File 002.

Trial Chamber

During the reporting period, the Trial Chamber continued trial proceedings in the case against Kaing Guek Eav (alias Duch). This trial, which is the first before the ECCC, commenced on 30 March 2009.

The Chamber sat continuously from Monday 1 July 2009 until 28 July 2009 (encompassing trial days 37-51). Twelve persons testified during July 2009, including a number of alleged survivors of S21, Civil Parties, and former guards or medics at S-21 or S-24.

In July 2009, the Trial Chamber rendered three written decisions. On 3 July 2006, the Chamber rendered its Decision on Ieng Sary's Request to make Submissions in response to the Co-Prosecutors' Request for the Application of Joint Criminal Enterprise. The Chamber rejected this request, on grounds that Ieng Sary is not a party to Case 001.

On 22 July 2009, the Chamber rejected the Co-Prosecutor's request for confidential classification of a Defense request relating to self-incrimination, and

for a closed session hearing. The Chamber determined that that the document in question did not warrant being classified as confidential, nor any need to hold the requested hearing in closed session.

On 29 July 2009, the Chamber rendered its Decision on the Vietnamese Film Footage filed by the Co-Prosecutors and on witnesses CP 3/3/2 and CP 3/3/3. The Chamber declined to use the film footage in question – allegedly comprising images of S-21 shot soon after its liberation by Vietnamese forces in 1979 – on grounds that it is superfluous to prove the matters for which its admission was sought. Further, the authenticity of this footage was contested by the Defence. Verification of its reliability would likely entail a number of supplementary investigations that would likely lead to significant delays in the trial. The Chamber declined to call the two witnesses in question, following the withdrawal of the Civil Party Group's request that they be summoned.

During July, the Chamber also heard submissions, and rendered a number of written and oral decisions in relation to procedural and trial management matters, including two scheduling orders.

Supreme Court Chamber

The Supreme Court Chamber is not currently operational.

Office of the Co-Prosecutors

Legal Work:

In July 2009, the OCP continued its participation in the judicial investigation and the appellate proceedings in Case File No. 002 in which charged persons DUCH, KHIEU Samphan, IENG Sary, IENG Thirith and NUON Chea are being investigated. In particular, the OCP filed its responses to IENG Sary's applications 1) for sanctioning the Co-Prosecutors (16 July), and 2) for disqualification of two investigators of the office of the Co-Investigating Judges (23 July).

Trial Proceedings:

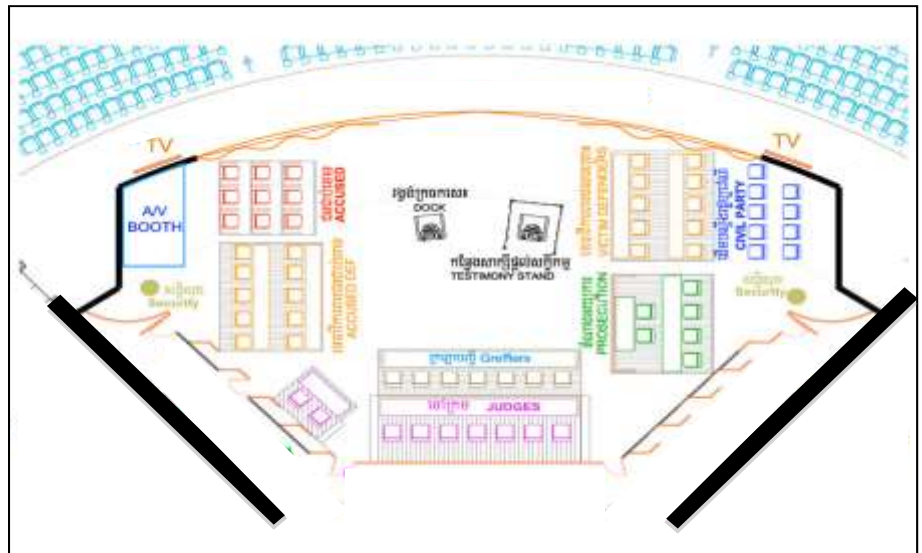
The OCP continued its participation in Case File No. 001 that deals with the Khmer Rouge's S-21 Security Centre in Phnom Penh. The substantive trial commenced on 30 March and is ongoing.

Analysis:

Amongst many other activities, the OCP maintained and updated its case management database (CaseMap), prepared witness summaries of potential witnesses, analyzed open source and in-house documents, updated chronologies of the defendants, prepared audio-visual case presentation aids and continued its microfilm digitization project.

It continued to analyze the Case File and prepared Trial Readiness Assessment Reports (TRAR) to assess the requirements of making further investigative requests to the Co-Investigating Judges.

Main courtroom of the ECCC



Prosecutorial Disagreement:

The Co-Prosecutors now await the determination of the Pre-Trial Chamber in respect of the disagreement proceedings. The pleadings in these proceedings are complete. While the International Co-Prosecutor filed his Statement of Disagreement on 1 December 2008, the National Co-Prosecutor filed her Response on 29 December 2008.

Notwithstanding the disagreement, the Co-Prosecutors have been and shall continue to work together, in all their cases, to ensure that justice is rendered to the victims of the Khmer Rouge.

External Activates:

On 10 July, International Co-Prosecutor Robert PETIT attended an outreach program organized by a national NGO in the Pursat province of Cambodia.

On 3 July, Senior Assistant Prosecutor Anees AHMED addressed the annual meeting of the Australia and New Zealand Society for International Law in Wellington on advantages of hybrid criminal justice.

INFORMATION ON THE WEB:



The ECCC website

www.eccc.gov.kh



The UNAKRT website

www.unakrt-online.org



www.krtrial.org



www.cambodiatribunal.org

Victims Unit

The processing team of the Victims Unit received 303 new Information Forms (VIF) during the month of July, bringing the total to 4072 (2138 Complaints and 1876 Civil Party applications, with 58 unclear, withdrawn or deceased). The VU has hired two additional data entry clerks on an Ad Hoc basis, to expedite the processing, analysis and filing of documents.

The total number of lawyers on the list managed by the Victims Unit increased to 41 (12 National and 29 International). One more lawyer was recognised by the Co-Investigating Judges taking the tally to a total of 17 Lawyers up to the end of July 2009.

Regular meetings are now being held between Civil Party lawyers and VU staff to discuss increased assistance to the legal teams both in terms of facilities and coordination and support to the Civil Parties. During this month the ten seats in the court room allocated for Civil Parties have been filled, and assistance is being given to the civil parties including

psychological support by TPO to Civil Parties attending the hearings and especially for those testifying. We are grateful for this support from TPO.

The VU conducted outreach activities in Pursat Province from the 9 to 12 July. An outreach team headed by the Outreach Coordinator Mr. Neou Kassie went to remote villages and spoke to the victims, informing victims including Civil Parties and complainants about the ongoing trial of Duch and answered questions about the status of Case 002. Laptop computers and other audio/visual media were used to ensure an effective dissemination of information. Additionally, the team gave presentations on the filling of the Victims Information Form and distributed brochures discussing the rights of the victims before the ECCC. The team also attended a Public Forum organized by the Center for Social Development (CSD) where Mr. Kassie made a presentation on Victims Rights at the ECCC.

Constanze Oehlich, the Legal Advisor to the Victims Unit, and Nafia Tasmin Din, Legal Intern with the Victims Unit attended

Mr Neou Kassie giving a presentation at the CSD Public Forum in Pursat Province, 10 July 2009



the Second International Conference on Genocide, Truth and Justice in Dhaka, Bangladesh on July 30 – 31, 2009. They gave a joint presentation on the development of victims' rights in criminal proceedings and discussed the concept of victim participation before the ECCC as an unprecedented expansion of victims' rights. They also spoke of the practical challenges currently faced by the Victims Unit and discussed the efforts underway to afford victims a meaningful role in the prosecution of serious international crimes without infringing upon the rights of the accused to a fair and impartial trial.

Victim Information Forms Received by the Victim's Unit From 2007 to July 2009

Date of receipt	Civil Party Applications	Complaints	Other (Unclear, Withdrawn, or Deceased)	Total
In 2007 (before the creation of VU)	99	340	41	480
January to December 2008	941	1424	16	2381
January to June 2009	626	275	7	908
Total	1666	2039	64	3769

Victim's Unit (Cont.)

The VU starting from the month of August has a fully functional helpline to answer the queries of victims, complainants and civil parties. The VU has hired Ms Hang Monthary as a helpline operator to provide information to the victims regarding the filling of victims information form, rights of victims at ECCC, outreach activities in their regions, access to psychological support, etc. Ms Monthary previously worked with the United Nations Department of Safety and Security (UNDSS) and Cambodian Mine Action Centre (CEMAC). The VU helpline can be contacted on +855 (0) 12 842 861 and +855 (0) 97 7424218, Monday to Friday, 7.30 AM to 9 PM.

In addition to Ms Monthary, the VU welcomes four new staff members. Mr. Snguon Sothearith and Ms Bun Sophana have joined the processing team of the VU unit as data entry clerks on an ad hoc basis. Sothearith has a bachelor's degree and law and Sophana has a background in law and economics. The outreach



Outreach Facilitator Mr. Leoung Sophal giving a presentation to the victims in Pursat Province, 9 July 2009

Present Status of Lawyers Registered with the Victim's Unit

	Reporting Period: July 2009	Total
Number of lawyers' applications registered with the Victims Unit	1	41
Number of lawyers' approved by the Bar Association of the Kingdom of Cambodia	0	41 (12 National and 29 International)
Number of lawyers recognized by the Co-Investigating Judges	1	17 (8 National and 9 International)

team of the VU has been strengthened by the addition of Mr. Kong Sokoeun, who has joined the VU as an outreach assistant. He has a bachelor in Psychology and has previously worked with TPO and DC Cam. The VU bids farewell to Sangeetha Yogendran from Singapore who completed her internship in July.

Office of the Co-Investigating Judges

The Office of the Co-Investigating Judges (OCIJ)'s investigation in Case File 002 is ongoing.

A further 9 field missions were conducted in July.

32 witnesses and 3 civil parties were heard by ECCC/OCIJ investigators in the filed on the basis of 8 new Rogatory Letters.

The OCIJ has received additional requests for investigative action from the parties which are entered into the investigative calendar and organized within the existing work and judicial strategy and timeline.

The OCIJ has placed on the ECCC website an "Order on use of statements which were or may have been obtained by torture".

http://www.eccc.gov.kh/english/cabinet/courtDoc/386/D130_8_EN.pdf

33 civil parties have been admitted into the case file. There are consequently one hundred and four (104) Civil Parties in Case File 002.

In July, the victims Unit filed 161 civil party applications which are currently being processed.

Judge Lemonde participated in an outreach activity organized by a non governmental organization in Pursat.

Outreach & Public Information



Duch on Trial: Time for Justice Khmer Mekong Films

Every Monday, millions of Cambodians tune into CTN, the Cambodian Television Network, to watch *Duch on Trial: Time for Justice*. This program provides a 24 minute, weekly summary of the Duch-trial and focuses on making the court proceedings more accessible to the general public. TV and radio broadcasts have been found to be the most effective method of disseminating information around the country.

While many Cambodians watch the trial streaming live every day on TV, *Duch on Trial* provides explanations and analysis of the legal issues being faced in court and summaries of recent developments.

In August, Matthew Robinson, the owner of Khmer Mekong Films (KMF), which is the production company behind the program, invited Knut Rosandhaug, Deputy Director of the Office of Administration; Sambath Reach, Chief of



the Public Affairs Section and Yuko Maeda, Public Affairs Officer to visit the KMF offices and observe the process through which the show is developed each week.

While the production team prepares all week long for each episode, the majority of the work occurs on Saturday morning when the filming begins. For three and a half hours every Saturday, *Duch on Trial* hosts Neth Pheaktra of the Phnom Penh Post and Ung Chan Sophea

of the Cambodia Soir guide their audience through various clips of footage from inside the court room and speak with visiting legal experts about all aspects of the trial. From Friday to Sunday, the crew works straight around the clock in order to have the final episode to CTN by 10 am every Monday. The show is broadcast during its prime lunchtime spot on Monday's.

Duch on Trial is entirely independent of the ECCC, but receives cooperation and support from the Court. KMF first produced a series of pre-trial TV programs, *Time for Justice*, that explained the purpose and the function of the ECCC in simplified language Cambodians, and after this show's success, the Hawaiian-based East-West Center hired the company to create *Duch on Trial*. The funding for the project comes from the British Embassy in Phnom Penh, and the show is commissioned to run through the end of the Duch-trial with a post-verdict summary show.



Hosts Ung Chan Sophea and Neth Pheaktra meet with Knut Rosandhaug

To Contact Khmer Mekong Films:

+855 12 91 99 33

www.cambodiafilms.com

email@cambodiafilms.com

To view episodes of *Duch on Trial* streaming online, please visit:

<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/category/duch-on-trial-video/>

Court Calendar



Recent Decisions / Orders

Pre-Trial Chamber

4 August 2009: Decision on Request for Leave to File Amicus Curiae Brief

18 August 2009: Decision on Appeal against the Office of the Co-Investigating Judges' Order on the Charged Persons Eleventh Request for Investigative Action

18 August 2009: Considerations of the PTC regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71

20 August 2009: Decision on "Request for an Oral Hearing" on the Appeal PTC24 and 25

31 August 2009: Corrigendum to the Considerations of the PTC Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71

All decisions and orders are available at: http://www.eccc.gov.kh/english/court_doc.list.aspx

Trial Chamber

10 August 2009: Decision on Request to reconsider decision on proof of identity for Civil Party application (E2/36)

13 August 2009: Order Scheduling the Trial Proceedings (Topics and Order of call of Witnesses) for the period of 17 August to 17 September 2009

27 August 2009: Directions on Proceedings Relevant to Reparations and on the Filing of Final Written Submissions

Scheduled Court Activities

Trial Chamber Hearings:

The Chamber sat continuously between 1-28 July 2009. Trial proceedings in relation to Kaing Geuk Eav (alias Duch) are ongoing.

14 September – 17 September Substantive Hearings in Case 001 will be held Monday through Thursday, from 9:00 to 16:00.

22 September – 23 September Substantive Hearings in Case 001 will be held Tuesday through Wednesday, from 9:00 to 16:00.

28 September – 1 October Substantive Hearings in Case 001 will be held Monday through Thursday, from 9:00 to 16:00.

A schedule with topics and witnesses to be called can be accessed at: http://www.eccc.gov.kh/english/cabinet/courtDoc/375/E92.1_KH_FR_EN.pdf

NGO Page: Partners in ECCC Outreach

Outreach Harmonization Workshop, 7 August 2009 Sponsored by the Victims Unit and the Cambodian Human Rights Action Committee

"I am delighted that our new outreach team has been working so enthusiastically over the past month under the leadership of Mr Neou Kassie .. [and] .. in conjunction with the NGOs who have been active in this field," said ECCC Victims Unit Head, Dr Helen Jarvis, at the opening of an Outreach Harmonization Workshop in Phnom Penh, Friday 7 August.

Over 70 participants comprising Victims Unit (VU) staff, representatives of more than 20 NGOs, lawyers and researchers, took part in the workshop which was jointly sponsored by the VU and the Cambodian Human Rights Action Committee (CHRAC).

Mr Neou Kassie, VU Outreach Coordinator, introduced six new VU staff and presented an ambitious outreach strategy focusing on facilitating victim participation at the court, holding regional forums for civil parties and establishing provincial networks as well

as information dissemination through the media. These outreach plans are therefore based on the need to ensure these people are kept up to date about the work of the ECCC. Dr Jarvis reported that "up to the end of July we have received a total of 4072 Victims Information Forms, of which 2136 are Complaints and 1876 are Civil Party Applications."

Mr Reach Sambath from the ECCC Public Affairs Section led a lively question and answer session on the work of his unit. Each NGO gave a short summary of their outreach plans and Ms Mychelle Balthazard, a PhD candidate from Tulane University presented data on outreach related to the ECCC.

During the afternoon session, small groups made plans for the following activities:

- Organizing four regional forums for those who have applied to become civil parties for case 002 or submitted complaints, before the end of 2009;

Leading one of the group discussions.



- Cooperation between VU and NGOs to contact applicants who have submitted incomplete victim information forms;
- Ensuring the best possible legal representation for civil parties in case 002; and
- Establishing regional information sharing networks to keep civil parties and other victims informed about the progress of the ECCC trials.

In his closing remarks, Mr Sok Sam Oeun, Chairman of CHRAC and Executive Director of the Cambodian Defenders Project (CDP), stressed that victim participation is crucial for the success for the ECCC.

The workshop was made possible through the generous financial support for the VU by German Technical Cooperation (GTZ), plus funding and material support from CHRAC and the ECCC.



Outreach Calendar



Recent Activities- ECCC and Partner NGOs

3 August 2009: 300 villagers from Pork Ko commune in Takeo province attended the substantive hearing in Case 001

4 August 2009: 400 villagers from the Preah Bath Choan Chum commune, Kiri Vong, Takeo province attended the substantive hearing in Case 001

5 August 2009: 400 villagers from Prey Koy commune, Kampong Cham province attended the substantive hearing in Case 001

6 August 2009: 400 villagers from Bakong district, Siem Reap province attended the substantive hearing in Case 001

7 August 2009: Outreach Harmonization Workshop hosted in Phnom Penh by the Victim's Unit and the Cambodian Human Rights Action Committee (CHRAC).

10 August 2009: A group of 24 fellows from the Rotary Center for International Studies in Peace and Conflict Resolution at Chulalongkorn University in Thailand attended the substantive hearing in Case 001 and meet with members of the ECCC for a briefing on the courts.

10 August 2009: 500 villagers from Kampong Os Commune, Kandal province attended the substantive hearing in Case 001

11 August 2009: 400 teachers from Ta Khmao City attended the substantive hearing in Case 001

12 August 2009: Students from Hun Sen Boribo High School in Kampong Chhnang attended the substantive hearing in Case 001

12 August 2009: Mr. Reach Sambath attended a round table discussion hosted by the Club of Cambodian Journalists on "Vietnamese Documentary films on S-21 in 1979 and UN-Cambodia Tribunal"

17 August 2009: Documentation Center of Cambodia brought 390 Heads of Cham Muslim (Tuon and Hakem), 50 villagers, 30 Civil Parties, 30 Buddhist Nuns and 10 student volunteers to attend the substantive hearing in Case 001

18 August 2009: 300 villagers from Koh Thom, Kandal province attended the substantive hearing in Case 001

19 August 2009: 300 villagers from the Kratie province attended the substantive hearing in Case 001

20 August 2009: 300 villagers from Kampong Thom province, Sambo Preykop district attended the substantive hearing in Case 001

20 August 2009: 200 students from the Ta Khmao Youth Association attended the substantive hearing in Case 001

24 August 2009: 300 students from Vanda University attended the substantive hearing in Case 001

24 August 2009: 150 villagers from Kampong Speu, M13 attended the substantive hearing in Case 001

25 August 2009: 300 students from Norton University attended the substantive hearing in Case 001

26 August 2009: 300 villagers from Kampong Chhnang attended the substantive hearing in Case 001

1 September 2009: 400 Teachers from Ta Khmao attended the substantive hearing in Case 001

1 September 2009: 29 participants from Sierra Leone, Liberia, Columbia, Cambodia and Timor-Leste organized by the Sida financed International Training Programme in Human Rights, Peace and Security at InDevelop-IPM in Sweden attended the substantive hearing in Case 001 and meet with members of the ECCC for a briefing on the courts.

Scheduled Activities- ECCC and Partner NGOs

14 September 2009: 450 villagers from Samrong Thom Commune, Banteay Dek Commune and Koky Thom Commune will attend the substantive hearing in Case 001

15 September 2009: 450 villagers from Siem Reap's Bakong and Pourk Districts will attend the substantive hearing in Case 001

16 September 2009: 300 villagers from Takeo will attend the substantive hearing in Case 001

16 September 2009: 200 students from Battambang, Preah Sihanouk Reach University will attend the substantive hearing in Case 001

17 September 2009: 300 villagers from Staung District will attend the substantive hearing in Case 001





Find out more about the ECCC

"Everyone can be involved in the process"

Extraordinary Chambers in the Courts of Cambodia

National Road 4, Chaom Chau, Dangkao
PO Box 71
Phnom Penh, Cambodia

Information Centre

Street 21, House 6a, (near Psar Kap Ko)
Phnom Penh Cambodia



Contact the Court

General

Tel: (855) 23 219 814

Fax: (855) 23 219 841

Press Contacts

Tel: (855) 12 488 156

Tel: (855) 12 488 421

Information Centre

Tel: (855) 23 214 291

(855) 23 214 293

(855) 23 214 295

On the Web

ECCC
<http://www.eccc.gov.kh/>

UNAKRT
<http://www.unakrt-online.org>

Twitter
<http://twitter.com/KRTribunal>

Flickr
<http://www.flickr.com/photos/krtribunal>



**** Do you want to visit the Khmer Rouge Tribunal? ****

The ECCC welcomes visitors every Tuesday. The tours begin in the visitors' gate at 9:00 and 11:00.