



The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 13:
Week Ending July 16, 2009

KRT Trial Monitor - a program of The Asian International Justice Initiative, a collaboration between the U.C. Berkeley War Crimes Studies Center and the East-West Center

In this week's KRT Trial Monitor...

Proceedings dominated by the testimony of 3 former S-21 personnel (p. 2-7); Adequacy of information provided to witnesses, particularly with regard to their right against self-incrimination, ignited heated debates between both parties throughout the week (p. 7-8); Court deals with several civil party issues, including adequacy of emotional support in court (p. 8-9)...

1. Summary

*"As the saying went in the previous regime... Just be blind and deaf and not to know. If I keep poking around probably I would have been arrested and gone."*ⁱ

Proceedings this week centered on hearing the testimony of 3 former staff members of S-21, namely, Ms Nam Mun, Mr Mam Nay and Mr Him Huy. In essence, their testimony provided insight into the functioning of S-21 and executions at Choeng Ek. Duch appeared to acknowledge that both Mr Mam Nay and Mr Him Huy were former members of the S-21 Interrogation Unit and Defense Unit respectively. However, he categorically denied that Ms Nam Mun, who is also a Civil Party to the proceedings, had ever been enlisted as a medic at the security office. Duch's personal role in the execution of detainees also emerged from the witnesses' accounts, although both the Chamber and Defense Counsel called into question the credibility of their allegations. Whilst both Ms Nam Mun and Mr Him Huy were forthcoming in illuminating their alleged experiences at S-21, Mr Mam Nay asserted a more guarded stance when responding to questions and repeatedly invoked his right to remain silent.

A key legal issue that emerged this week was the extent to which the application of Joint Criminal Enterprise (**JCE**) to the present proceedings would impact the witnesses' right against self-incrimination. International Defense Counsel, Mr Francois Roux, argued that witnesses had a right to be adequately informed about the Office of the Co-Prosecutors' (**OCP**) Submissions on the applicability of JCE. He intimated that the OCP's Submissions might influence the manner in which former S-21 personnel chose to exercise their right against self-incrimination. Dismissing such arguments as "legal nonsense," International Deputy Co-Prosecutor Mr William Smith noted that potential prosecutions of former S-21 personnel are "extremely remote." He

further contended that the legal landscape for future prosecutions stands unaltered by OCP's submissions on JCE.

The Chamber continued to display sensitivity in managing witnesses' distress, and made the necessary arrangements to ensure that all witnesses received adequate emotional support. In light of the parties' discussions regarding the right against self-incrimination, Mr Mam Nay and Mr Him Huy invoked their right to consult a lawyer prior to delivering their testimony.

Overall, proceedings this week ran relatively efficiently and continued to be well attended by villagers and students. Although the Chamber adjourned an hour earlier on Monday and Wednesday, proceedings have not deviated far from the schedule. The Chamber readily intervened to curtail questions that it deemed irrelevant, and all parties appeared to adhere strictly to the time limits imposed. Notably, the Chamber rebuked parties for speaking without its leave, and urged them to refrain from such conduct in the future.

2. LEGAL AND PROCEDURAL ISSUES

A. SUMMARY OF WITNESS TESTIMONY

This week's proceedings were dominated by the testimony of 3 former S-21 personnel. In essence, their testimony provided valuable insight into the functioning of S-21, executions at Choeng Ek and Duch's personal role in the execution of detainees. Although Duch seemed to accept that Mr. Mam Nay and Mr. Him Huy had been enlisted as staff members, he emphatically denied that Ms. Nam Mun had ever served as a medic at the security office. Notably, Mr Mam Nay was demonstrably fearful of providing self-incriminating responses and therefore declined to respond to several questions.

Below is a full summary of the witnesses' accounts.

Nam Mun

Following from last week's proceedings, the Chamber resumed hearing the testimony of Ms. Nam Mun, who is also a Civil Party in the Duch case. Notably, several novel revelations emerged in the course of her testimony on Monday morning. Accompanied throughout by a representative from the Transcultural Psychosocial Organization (TPO),ⁱⁱ Ms Mun maintained a fairly composed demeanour as she recounted her alleged experiences under the DK regime.

Witness' Role as a Medic at S-21. At the outset of her testimony, the Chamber addressed her claim that she was a medic at S-21. Alluding to the "date of birth" imprinted on Ms Mun's identity card,ⁱⁱⁱ President Nil Nonn deduced that her enlistment as a medic in 1975 would have been "impossible." When confronted with this apparent discrepancy, Ms. Mun explained that her aunt had provided erroneous information to the relevant authorities, with regard to her date of birth. In line with her previous testimony, she reiterated that she had been recruited to work in the security office when she was 15 years old. She further recounted how she saw Duch "wandering around [the] S-21 premises" every fortnight. However, when asked to examine a

photograph of S-21 personnel (presumably taken during the reign of the CPK) Ms Mun was unable to identify Duch as one of the individuals in the photograph.

When afforded the opportunity to respond, Duch attempted to cast doubt on the veracity of Ms Mun's allegations. His reservations were premised on the lack of documentary evidence to prove her enrolment as a medic, coupled with her seeming obliviousness to the fact that S-21 had been relocated several times between 1975 and 1976. Duch further stated that the team of medics at S-21 was comprised solely of Division 703 cadre, who were all males.^{iv} Ensuing questions by International Defence Counsel, Mr Francois Roux, were seemingly calculated to buttress his client's contention. Mr Roux attempted to impeach Ms. Mun's credibility by highlighting her inability to recognize the name of Duch's predecessor at S-21.^v Ms Mun's responses to Mr. Roux's questions also evinced her lack of awareness of the emphasis the regime placed on secrecy,^{vi} and underscored the fact that she was unaware of the various locations previously occupied by S-21.

Turning to the medical training she received before her enlistment, she revealed that she received "hands on practice" and "real wound training" at a location "near the current TV 5 station." However, she appeared to have no exact recollection of both the location and dates during which the training was allegedly conducted. Recounting the scope of her work at S-21, she testified that she was tasked with distributing medicine to detainees in Building D. She attested that she was instructed to "work [her] best to treat prisoners so that they [could] be strong to give confessions." In contradiction to her earlier testimony, she averred that the team of medics had been led by Comrade Lorn,^{vii} whilst Comrade Kim and she played subordinate roles.

Identification of Witness' Relatives. When questioned by the National Co-Prosecutor, Ms Mun detailed the manner in which Duch had personally executed her two uncles, namely, Uncle Oern and Uncle Ket. Explaining that their deaths had occurred "a few days" apart, she recalled how Duch had purportedly beaten them to death "under a coconut tree" outside the fence of S-21. Ms Mun added that her failure to mention these incidents in her Civil Party application could be ascribed to her fear of "be[ing] killed" and her reluctance to include "too many names" in her application.^{viii}

Alleged Physical Violence and Murder. Revisiting her experiences at Prey Sar, Ms Mun declared that she bore witness to "1 or 2 children"^{ix} being "thrown into the air" and impaled with a bayonet. This declaration constitutes another material departure from her recollection of events the preceding week.^x Unequivocally labeling Prey Sar as a "place where women and children were killed," she affirmed that the premises had been littered with "dead bodies."

Ms Mun further testified that she still has a scar on her ankle as a result of being shackled for prolonged periods. In an apparent attempt to discern the extent of losses she sustained during the regime, Ms Mun was asked to examine a series of photographs, which allegedly depict members of her family who had been detained and executed at S-21. She unambiguously testified that her father, mother, brothers and sister-in-law were pictured in the photographs. Significantly, there were patent discrepancies between her identification of two photographs during her in-court testimony and documents attached to her Civil Party application.^{xi} She

acknowledged that her “fear [of] admitting that her brother had been jailed at S-21” had prompted her to conceal the truth prior to her appearance before the Chamber. When asked to comment on the aforementioned photographs, Duch signaled his reluctance to articulate a definitive position until relevant documentary evidence had been proffered. His apparent inability to identify either of her brothers as guards tended to suggest his implicit denial that they had worked at S-21.

Mam Nay

Proceedings on Tuesday and Wednesday centered on the testimony of 76-year-old Mr Mam Nay, a former interrogator at S-21. Mr Mam Nay, who currently resides in Battambang province, recounted his experiences as a former staff member of the security office. It is noteworthy that he invoked his right against self-incrimination several times during the course of his testimony. He also stated that his recollection of certain events could be fallible due to a recent accident which had occasioned some degree of memory loss.

Early Involvement in the Communist Movement. Mr Mam Nay detailed his early involvement with the communist movement in Cambodia. Before 1970, he had been arrested by the Sihanouk government for his alleged participation in the Khmer Rouge revolution and incarcerated for 2 years. He explained how he had forged a relationship with Duch during his detention. Following his release, his involvement with the CPK in 1973 was fuelled by his “love [for] communism” and his predilection for the ideology of liberating the peasant class. He added that he was subsequently compelled to “rebuild [his] psychology, stance and view” according to the “political line” extolled by the Party.

Role at M-13. When asked to illuminate his role at security office M13^{xii}, Mr Mam Nay revealed that he had been assigned to interrogate “less important”^{xiii} detainees, who had been accused of participating in “counter-revolutionary activities.” Alongside his duties as an interrogator, Mr Mam Nay stated that he was also entrusted with the task of planting potatoes. Significantly, Duch and Mr Mam Nay appear to have conflicting memories about the precise scope of the latter’s duties at S-21.^{xiv} Having arrived approximately 2 years after the establishment of M-13, Mr Mam Nay recalled that his “training” as an interrogator entailed observing Duch conducting interrogations of several other detainees. Although he acknowledged the possibility that people were tortured at M-13, he declared that he had never witnessed Duch, or any other member of the M-13 staff, inflicting torture on detainees. He averred that he was “unclear” about the fate awaiting detainees once their interrogations had been completed. He explained that his apparently limited knowledge could be attributed to the fact that he occupied his time by assiduously summarizing the detainees’ confession records, which were later transmitted to Duch. Alluding to his cognizance of the “miserable” conditions that obtained throughout M-13, Mr Mam Nay opined that such hardships were a corollary of the attack launched by the “American imperialists.”

Role at S-21 and Organizational Structure. Mr Mam Nay obliquely accepted that his ensuing designation at S-21 mirrored his role at M-13. Describing himself as a “plain and simple interrogating cadre,” his testimony was peppered with repeated proclamations of his allegedly “[un]important” role at S-21. He testified that he made concerted efforts to dissociate himself

from the daily operations of the security office. Mr Mam Nay further averred that his survival may be ascribed to the fact that he pretended to be “blind and deaf” to the atrocities that were committed on the premises. Accordingly, he asserted that he had “no actual knowledge” of the detainee composition or the conditions of imprisonment at S-21. However, he posited that the detainees at S-21 were in “normal physical condition” because the detainees he had interrogated appeared to be “in good health.” He further stated that he had “no idea” about the manner in which detainees were arrested, or the number of staff employed at the security office. Overtly alluding to the culture of obedience that suffused the institution, he explained that he invariably adhered to his superiors’ instructions, which encompassed preclusion from “wandering around the S-21 premises.” Judge Cartwright attempted to impugn the veracity of these allegations by highlighting the improbability that a “very well educated and clever man”^{xv} like Mr Mam Nay would “choose not to learn very much of what was happening” in his immediate surroundings. With regard to his cognizance of the prevailing policy at the time, Mr Mam Nay disavowed any knowledge that all detainees were condemned to death from the outset. In a similar vein, he purported to possess no recollection of the execution site at Cheong Ek.

In addition, Mr Mam Nay averred that he had not been privy to the organizational structure within the interrogation unit of S-21. However, the credibility of this assertion was rendered questionable by the ensuing disclosure of a document entitled “*New Work Plan for Interrogation Branches for a Period of 3 months.*” The document, which expounds upon the “division of the interrogation workload [and] responsibility” within the interrogation unit,^{xvi} bore Mr Mam Nay’s handwriting. Refusing to recant his earlier position, Mr Mam Nay attempted to disabuse the Chamber of the notion that he had functioned as the “main coordinator of the interrogation section.”^{xvii}

Interrogations. Mr Mam Nay testified that he was assigned to interrogate “low ranking cadre.” These interrogations, which were conducted in an interrogation house to the east of the main S 21 compound, were generally conducted in the absence of his superiors.^{xviii} Although he initially maintained that Duch had never supervised his interrogations, he recanted his position when confronted with an apparent contradiction in a prior statement to the investigators of the ECCC.^{xix} With regard to the interrogations of Vietnamese detainees at S 21, Mr Mam Nay attested that he had interrogated “10 to 20 Vietnamese combatants” and a few Vietnamese civilians who had been arrested at the battlefield.^{xx} International Deputy Co-Prosecutor William Smith evinced his skepticism about the figures articulated by Mr Mam Nay; he sought to establish that Mr Mam Nay had in fact interrogated more than two hundred Vietnamese combatants and spies.^{xxi} However, his efforts were only partially successful because the witness invoked his right to remain silent. Pertinently, Mr Mam Nay corroborated Duch’s earlier averment that the confessions of Vietnamese detainees had been broadcast on radio.

In relation to the interrogation techniques he employed, Mr Mam Nay steadfastly maintained that he eschewed the use of ‘robust’ interrogation techniques and physical coercion. He stated that he was adept at eliciting detailed biographies and confessions by relying almost exclusively on ‘playing politics.’^{xxii} Proclaiming his belief that confessions flowing from torture bore little relation to the truth, Mr Mam Nay explained that he used the ‘chewing method’^{xxiii} of

interrogation when confronted with 'stubborn' detainees. The veracity of this allegation was rendered questionable by his previous statement to ECCC investigators,^{xxiv} in which he had unambiguously stated that he "only used whips and electric wires." When confronted with this patent discrepancy, Mr Mam Nay elected to remain silent. With regard to the torture techniques employed by other interrogators, he explained that he had "no idea of the practices of the other interrogators," because members of the interrogation unit were strictly precluded from communicating with each other.^{xxv} Whilst he could not definitively exclude the possibility that torture was inflicted at S 21, he categorically disavowed any knowledge that excessive violence was an everyday phenomenon at S 21.^{xxvi} William Smith attempted to impugn the veracity of this statement by confronting Mr Mam Nay with a compilation of "notes he had written between 1975 and 1979." These notes, which putatively contain "numerous references relating to the use of torture at S 21," had been fastidiously recorded by Mr Mam Nay during lectures delivered by his superiors.

Witness Breaks Down: Regrets What Happened. When asked if he harboured any regrets about his role at S 21, Mr Mam Nay expressed profound regret that a "small group of good people" were smashed at the hands of S 21 personnel. However, he declared that he has "never been regretful for those bad people" who were liquidated at the security office. Having highlighted the stark contrast between Duch's contrition and Mr Mam Nay's apparent apathy towards the criminality that occurred at S 21, Mr Francois Roux thanked his colleague from the OCP for proposing the attendance of the witness. For his part, Duch reminded Mr Mam Nay that "communism" should not stymie the revelation of the truth. Duch further exhorted him to acknowledge his role in the annihilation of more than 1.8 million Cambodian people and to take "emotional responsibility" for his actions. Following this exhortation, Mr Mam Nay was moved to express "regret" for the fate of one of his alleged victims. Weeping as he recounted how members of his own family had been condemned to suffering under the regime, Mr Mam Nay acknowledged that he was powerless to do "anything else" apart from "being very regretful."

Him Huy

On Wednesday afternoon, the Chamber summoned 54-year-old Mr. Him Huy, who currently resides in Koh Tum province. Having been apprised of his right to consult his legal representative, Mr Huy proceeded to shed valuable insight into the functioning of S 21 and the execution of detainees. Although he appeared to be "moved"^{xxvii} at various points during his testimony, Mr Him Huy generally maintained an unflappable demeanour as he recounted his involvement in the execution of thousands of detainees.

Mr Huy briefly recounted the period prior to his enlistment at S 21, when he served as a combatant under the command of Khim Vat alias 'Ho,' the future deputy chairman of S 21. Following his transfer to Phnom Penh, Mr Huy entered S 21 as a guard in late 1976. Subsequently, he became part of the 'special unit,' which operated under the aegis of the defense unit. There, he was tasked with maintaining the 'external security' of the facility, and his job entailed documenting prisoners who entered the facility. Eventually, as the purges of S 21 personnel intensified, he was promoted in 1977 and put in charge of security matters at the prison.

Arrest and Transfer of Detainees to S-21. Mr Huy's testimony illuminated the process of arrest and transfer of detainees into S-21. He revealed that the 'special unit' was tasked with receiving detainees who had already been arrested from various zones and sectors.^{xxviii} He intimated that detainees were forced to endure some degree of discomfort during the journey into S-21 because they were blindfolded, handcuffed, shackled and precluded from relieving themselves. On other occasions, the unit would receive prisoners at its quarters^{xxix} before leading them into the S-21 compound. With regard to the arrests conducted by the unit, Mr Huy recalled that most arrests had been carried out within Phnom Penh. He added that these arrests had taken place at night, presumably to avoid unveiling the clandestine operations of the prison. He also attested to the fact that 'trickery' had been used to facilitate the *en masse* arrest of a large group of students arriving from abroad. Mr Huy affirmed that all operations were conducted upon orders emanating from Duch.

Purges. Alluding to the purges that swept through the security office, Mr Huy recounted how a significant number of S-21 personnel had been implicated in the confessions of combatants from Division 703. This allegedly led to the liquidation of "70 per cent" of cadre from all units.^{xxx} Mr Huy also maintained that none of Duch's subordinates were vested with the authority to order the arrests of S-21 personnel.^{xxxi}

Testimony Relating to Choeng Ek. Mr Huy also recounted how Choeng Ek had been utilized as a killing field in 1977. He acknowledged that he drove truckloads of prisoners to Choeng Ek and executed at least one prisoner there. He explained that during the transfer to Choeng Ek, detainees were shackled, blindfolded and systematically assured that they were being "moved to a new home." When the trucks arrived at the site, prisoners were allegedly assembled in a small building where their names were verified against an execution list prepared beforehand by Suos Thi, the head of the documentation unit. Pertinently, Mr Huy recalled that executions at S 21 were carried out alongside the systematic killings at Choeng Ek. He testified that children,^{xxxii} Vietnamese POWs,^{xxxiii} former S 21 staff^{xxxiv} and "important cadre"^{xxxv} continued to be liquidated at various areas within or around the S 21 complex.

The process of executing detainees clearly emerged from Mr Huy's testimony. He recounted that "[detainees] were ordered to kneel down at the edge of [pits]" that had been dug earlier. Subsequently, the back of their necks were struck with an ox-cart axle, before a knife was used to slash their throats. He revealed that, "once they were dead, their clothes and handcuffs were removed." As to Duch's personal involvement in the execution process, Mr Huy's testimony constitutes a marked divergence from Duch's previous averment that he persistently dissociated himself from the execution process.^{xxxvi} Significantly, Mr Huy seemed unable to affirm his earlier statement to the OCIJ, in which he had averred that Duch had personally taught execution techniques and personally ordered him to execute a detainee on a least one occasion.^{xxxvii}

Describing the pervasive suspicion and insecurity at S-21, Mr Huy recalled how the personnel were "put on high alert" as the purges of perceived "enemies" gathered momentum. He noted that their "wrongdoings [were] reported" and their "every move" was closely scrutinized.

B. LEGAL ISSUES RAISED OR OBSERVED DURING TRIAL

Joint Criminal Enterprise and the Right Against Self-Incrimination. The adequacy of information provided to witnesses, particularly with regard to their right against self-incrimination, ignited heated debates between both parties throughout the week. On Monday, Mr Francois Roux articulated his concern that the witness, Mr Mam Nay, had not been adequately informed of his risk of being prosecuted if the Chamber accepts the submission filed by the Office of the Co-Prosecutors on June 8, 2009 (**OCP's Submissions on JCE**). Paragraph 9 of the submission, which advocates the applicability of Joint Criminal Enterprise to the current proceedings, implicitly considers Duch and "all subordinates of S 21" guilty of JCE.^{xxxviii} Accordingly, Mr Roux proposed that the witness be afforded the opportunity to consult with a lawyer before providing his testimony. International Deputy Co-Prosecutor, Mr. William Smith, rejoined that Mr Mam Nay had already received an "assurance" from the Office of the Co-Investigating Judges, which precludes his prosecution before the ECCC.^{xxxix} Nevertheless, Mr Roux maintained that the OCP was not in a position to safeguard against Mr Mam Nay's possible prosecution before a national court. Upon hearing the discussion between both parties, Mr. Mam Nay invoked his right consult a lawyer, pursuant to Internal Rule 28(9).^{xl}

Mr. William Smith subsequently decried the manner in which Mr Roux had raised the issue, and urged him to do it "more delicately" in the future. He asserted that Mr Roux had failed to comport with Internal Rule 28(8),^{xli} and posited that the latter was attempting to "scare [the witness] off." Mr Smith contended that the application of JCE to the present proceedings does not change the legal landscape with regard to self-incrimination, because all former S-21 personnel remain liable to prosecution under other theories of criminal liability. Nevertheless, he emphasized that the possibility of Mr Mam Nay's prosecution was "extremely remote."

In response, Mr Roux requested that the OCP withdraw its application for JCE to be applied, so that all parties could feel "more assured." When Mr Roux again expressed his "continued concern" about the issue of "self-incrimination" during Wednesday's proceedings, President Nil Nonn became visibly irritated. Following a twenty-minute adjournment, he cautioned both parties against raising the issue during the following witness' testimony. Notably, however, in an unprecedented move, when that witness took the stand the Chamber drew his attention to his right to a lawyer as a safeguard against self-incrimination (under Internal Rule 28(9)) prior to the commencement of his testimony.

3. VICTIM AND WITNESS PARTICIPATION, PROTECTION AND SUPPORT

Civil Party Attendance. Nine civil parties were present on the first three days of this week's proceedings. However, the number of civil parties present increased to ten during Thursday's proceedings.

Victim and Witness Support. This week, the Chamber continued to be attentive to the emotional needs of Civil Parties and Witnesses. It appeared mindful of the need to allow for breaks in the proceedings when Civil Parties displayed emotional distress. This is an effort that the monitors commend. In response to the emotional instability displayed by Nam Mun during last Thursday's proceedings, the Civil Party was supported by a TPO^{xlii} staff member during the

course of her testimony on Monday. Accordingly, she appeared to be more comfortable and composed when responding to questions.

Parties to the proceedings also exerted praiseworthy efforts to ensure that Civil Parties and Witnesses received adequate emotional support. On Tuesday, Civil Party Lawyer for Group 2, Ms Silke Studzinsky, intervened when National Defense Counsel, Mr Kar Savuth, seemed to be taking a somewhat aggressive stance towards Ms Nam Mun. The Chamber subsequently urged Mr Kar Savuth to speak more “gentl[y],” in light of the Civil Party’s “emotional” state. Similarly, on Thursday, Mr. Him Huy became demonstrably upset at various points during the proceedings. This prompted International Deputy Co-Prosecutor William Smith to propose that the witness be apprised of his option to request for “witness assistance,” a service provided by TPO. However, when President Nil Nonn enquired if he desired additional “emotional assistance,” Mr Him Huy rejected the offer.

Witnesses’ Rights and Obligations under the Internal Rules. Upon being summoned to the testify, Mr. Mam Nay was informed of the right afforded to him under Internal Rule 28(1). However, the Chamber failed to inform him about his concurrent duty under Rule 36(1), which mandates that he “tell the truth” in the event that he waives his right against self-incrimination.^{xliii} Monitors have observed that witnesses are invariably informed that they have to “speak the truth” about what they have seen, heard and witnessed. However, generally speaking, they are not informed of the consequences that may result from their failure to do so.^{xliv}

Notably, both Mr Mam Nay and Mr Him Huy invoked the right afforded to them under Internal Rule 28(9),^{xlv} which stipulates that witnesses are entitled to consult a lawyer if an issue of self-incrimination arises during the proceedings. Accordingly, both witnesses received legal assistance from Mr Kung Sam On. President Nil Nonn announced that Mr Kung Sam On’s assistance had been sought by WESU^{xlvi} and other unspecified units. Given that all Parties have long been aware of the former roles of Mr. Mam Nay and Mr Him Huy at S-21, monitors opine that the repercussions of the OCP’s Submissions on JCE should have been anticipated earlier by the Chamber or one of the Parties. Therefore, arrangements for both witnesses to seek legal advice should have been made prior to their appearance before the Chamber.

Civil Party Lawyers Serve as the Voice of the Victims. This week, Ms Silke Studzinsky appeared to place noticeable emphasis on her role as a “voice” for her clients’ concerns. When presented with the opportunity to question Mr. Mam Nay, Ms Studzinsky posed questions that were clearly intended to elicit information about the fate of Professor Phoeung Ton. It appears that she represents the wife and daughter of the late Professor Ton, who was formerly detained at S 21.^{xlvii} Although the Chamber has not clearly delineated the role of Civil Parties,^{xlviii} Ms Studzinsky clearly minimized the extent of her prosecutorial role during this week’s proceedings. The Civil Party Lawyers’ ongoing efforts to represent the views and concerns of their clients are commendable.^{xlix}

Protective Measures Denied for Witness KW-10. On Thursday afternoon, the Chamber announced its ruling on the request for protective measures for witness KW-10.¹ Following a “strictly confidential risk assessment,” the Chamber denied the request for special protective measures. The Chamber reasoned that KW 10 is a well-known figure, who has publicly

acknowledged his role as an interrogator at S 21. Accordingly, the Chamber concluded that the imposition of protective measures would be “ineffective.” The Chamber further noted that its decision coincided with the recommendation provided by WESU.

4. TRIAL MANAGEMENT

Judicial Management. Overall, proceedings this week ran relatively efficiently. The Chamber commenced sessions fairly punctually and stuck closely to the schedule adjournments, an effort which the monitors commend. Notably, the Chamber adjourned proceedings an hour before the scheduled time on Monday and Wednesday. These early adjournments may be attributed to the fact that two witnesses expressed their desire to consult a lawyer prior to the commencement of their testimony. (See Victim and Witness Participation, Protection and Support Section of this report)

Seating Arrangement in the Courtroom. On Tuesday morning, International Defence Counsel Mr. Francois Roux expressed his reservations about the fact that Mr Mam Nay’s newly appointed counsel was seated at the same side of the room as the Defense counsel. Mr Roux opined that the seating arrangement was akin to “ruling beforehand on the Office of the Co-Prosecutor’s request to consider Mam Nay as an accused person.” His concerns were echoed by Civil Party Lawyer for Group 3, Ms. Martine Jacquin. For his part, International Deputy Co-Prosecutor Mr. William Smith contended that Mr Roux’s submission had created an unnecessarily negative impression of the new seating arrangement. President Nil Nonn explained that the lawyer’s proximity to the Defense was merely coincidental and entirely “appropriate” because it allowed him a close view of his client. Further, he reiterated that the Chamber was vested with “sole discretion” to manage proceedings.

Parties’ Attendance. Mr. Hong Kim Suon, Civil Party lawyer for Group 4, was absent during the first two days of this week’s proceedings, as well as on Thursday afternoon.

The Prosecution was represented by Deputy International Co-Prosecutor, Mr Anees Ahmed on Monday morning. However, he was replaced by Mr William Smith throughout the rest of the week’s proceedings. The National side of the Office was represented by Mr Tang Senarong for the first three days of the hearing this week and on Thursday, by Mr. Seng Bunkheng. The defense counsel Mr. Kar Savuth and Mr. François Roux were also present throughout the whole week’s proceedings. The Legal Representative of the witnesses, Mr. Kong Sam On, was also present as required.

Audience Attendance: Proceedings were relatively well attended throughout the week, primarily due to the support of the Public Affairs Section of the ECCC. The Public Affairs section facilitated the attendance of large groups of villagers and students throughout the week. On Monday, the public gallery was occupied by 300 people from Veal Shov commune, Kean Svay district, Kandal province. In addition, 70 students from the Royal University for Law and Economics in Phnom Penh attended the hearing. However, the number of participants dwindled slightly on Tuesday, when 200 people from Kean Svay district in Kandal Province were present. On Thursday, about 460 persons from Baray Commune, Baray District, Kompong Thom Province, and about 100 students from Puthisastra University were present in the gallery.

Additionally, 10 monitors, 39 media reporters and a large group of national and international NGOs' staff (approximately 70 persons) were also present. Unfortunately, only NGO staff, monitors and the media remained after the afternoon break, as both the villagers and students had to leave.

Interpretation Concerns. The interpretation rendered this week was generally coherent. Interpreters were more assertive in asking parties to activate their microphone and to slow down when they encountered difficulties rendering an accurate translation. On Thursday, Mr Roux interrupted proceedings to request that President Nil Nonn put questions to the witness at a slower pace, in order for the interpreters to have adequate time to render a complete translation of the witness's answers.

Irrelevant Line of Questioning Prohibited by the Chamber. On Monday, President Nil Nonn curtailed a seemingly irrelevant line of questioning pursued by Ms. Studzinsky. Ms Studzinsky had been attempting to elicit information from Ms Nam Mun about the alleged occurrence of "forced marriages" at Prey Sar. Although not explicitly referred to, President Nil Nonn invoked Internal Rule 98(2)ⁱⁱ as he explained that such questions were disallowed on the basis that the "facts do not deal with allegations on marriage," presumably referring to the fact that the Accused has not been charged with forced marriage in the Closing Order.

Courtroom Etiquette. On Tuesday, the Chamber reprimanded parties for speaking without the President's leave. They were sternly reminded to "seek permission" before speaking in the future.

Time Management

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 13/07/09	09.00	10.20 – 10.40	12.00- 1.30	2.30-2.50	3.15	4 HOURS 05 Min
TUE 14/07/09	9.10	10.30 – 10.55	12.05- 1.30	2.45-3.05	4.10	4 HOURS 50 Min
WED 15/07/09	9.05	10.40 – 11.05	11.50- 1.30	2.35-3.10	3.25	3 HOURS 40 Min
THU 16/07/09	9.05	10.30 – 10.55	12.00- 1.35	2.40-3.00	4.25	5 HOURS 00 Min
AVERAGE NO. OF HOURS IN SESSION : 4 HOURS 9 MINS						
TOTAL NO. OF HOURS THIS WEEK : 16 HOURS 35 MINS						
TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL: 194 HOURS AND 42 MINS OVER 45 TRIAL DAYS OVER 12 WEEKS						

ⁱ Testimony of Witness Mr Mam Nay

ⁱⁱ As alluded to in Report Issue No. 9, TPO is a non-governmental organization that specializes in trauma related issues.

ⁱⁱⁱ President Nil Nonn stated that the identity card, which had been issued by a governor in Kampong Cham in October 2000, indicates that her date of birth is 2 July 1968. Working on the assumption that the information is accurate, the Chamber deduced that Ms Mon would have been 7 years old when S 21 was established.

^{iv} This fact was later corroborated by Mr Him Huy, who seemed to recall that the medic unit comprised solely of males.

^v Ms Mon did not appear to recognize the name 'Nat.' Nat had chaired S 21 from the time of its inception until March 1976. See Report Issue No. 4 at page 3. The witness averred that upon her arrival at S 21 in 1975, she had been supervised by 'Comrade Yam' instead.

^{vi} Ms Mon unambiguously stated that upon her recruitment into the facility, she had not been cautioned against speaking to outsiders about her work at S 21.

^{vii} This statement constitutes a marked divergence from her earlier assertion that the medics at S 21 "worked altogether," and functioned without a chief medic.

^{viii} Her response to Kar Savuth reveals that her fear of “be[ing] executed” prompted her to omit mentioning the name of one of her brothers in her Civil Party application.

^{ix} Significantly, a few minutes after making such a proclamation, she seemed to suggest that she saw “one time when a child was thrown into the air.” When questioned by Roux, she revealed that this fact had also been omitted from her CP application.

^x She previously testified that she was unclear how or why the children at Prey Sar had died.

^{xi} It appears that the same photographs displayed before the Chamber had been appended to Ms Mon’s Civil Party application. The English annotations under the photographs suggest that she had previously indicated that her one of her elder brothers was her cousin. Similarly, she had erroneously identified her brother as her father.

^{xii} ‘M-13,’ which was also chaired by Duch, was a security prison established in 1971 for the primarily purpose of interrogating and executing “enemies” of the party. See Report Issue No. 3.

^{xiii} The witness clarified that the indicium of importance was the cadre’s seniority within the CPK

^{xiv} As highlighted by Judge Lavergne, Duch had previously alleged that Mam Nay was entrusted with guarding detainees at M 13. However, Mam Nay disputed the veracity of this allegation, and maintained that his duties were limited to interrogating detainees and planting potatoes.

^{xv} When questioned by Judge Silvia Cartwright, Mr Mam Nay recounted his brilliant academic performance at the School of Pedagogy in Phnom Penh and illustrious career as a teacher, prior to his involvement with the CPK.

^{xvi} According to the document, the interrogators were divided into 3 large groups, before being sub-divided into 11 smaller groups. It further outlines the frequency of meetings and the reporting structure within the unit.

^{xvii} International Co-Prosecutor William Smith had advanced the proposition that Mr Mam Nay functioned as the “main coordinator of the interrogation section.”

^{xviii} However, he clarified that he was accompanied by a translator when conducting interrogations of Vietnamese detainees.

^{xix} He subsequently acknowledged that he could not recall if Duch had attended his interrogation sessions with Cambodian prisoners, although he was confident that Duch never attended the interrogations of Vietnamese detainees.

^{xx} Notably, National Co-prosecutor Mr. Tan Senarong alluded to a document that appeared to prove that Mr “James William Clark” had been interrogated by Mr Mam Nay. When confronted with the aforementioned documentary evidence, Mr Mam Nay invoked his right to remain silent.

^{xxi} Mr Smith alluded to Duch’s previous allegation that Mr Mam Nay had “managed overall” the interrogations of Vietnamese detainees, due to his linguistic ability. He then alluded to the “Revised S 21 Prisoner list,” which stipulates that 122 “Vietnamese combatants” and 144 “Vietnamese spies” had been detained at the security office.

^{xxii} Presumably, ‘playing politics’ entailed the use of propaganda and persuasion.

^{xxiii} According to Mr Mam Nay, the ‘chewing method’ entailed posing “repetitive questions constantly.”

^{xxiv} This statement had apparently been articulated during the “Reconstruction Day.”

^{xxv} In order to ensure that his subordinates adhered strictly to the protocol instituted at S 21, Mr Mam Nay recalled that a device to record the telephone conversations had been installed.

^{xxvi} He claimed that the ‘cries of people being tortured’ were entirely out of his earshot.

^{xxvii} This observation was made by President Nil Nonn and International Co-Prosecutor William Smith one more than one occasion.

^{xxviii} For example, Duch had ordered the special unit to receive Vietnamese soldiers from Svay Reang on two occasions. He added that the unit carried a special “*laissez passer*” signed by Son Sen.

^{xxix} According to Mr Huy, the special unit was quartered at the current Beehive Radio Station.

^{xxx} Mr Huy enumerated the units at s 21 as follows: Guards unit, Interrogation Unit, Economic Unit, Kitchen unit and Medical Unit.

^{xxxi} Mr Huy attested to a dispute between Duch and his deputy, Ho. The dispute allegedly stemmed from Duch’s disgruntlement about Ho’s partiality towards personnel who were former members of Division 703. Mr Huy subsequently noted that the purges principally affected personnel who were former members of Division 703.

^{xxxii} Approximately 50 to 100 children who had accompanied their mothers had been executed “at the rear of the s 21 compound.” However, Duch reaffirmed his willingness to accept that at least 160 children had been executed at Choeng Ek.

^{xxxiii} Mr Huy had initially stated that 60 Vietnamese POWs had been executed to the south-west of s 21. However, when questioned by Judge Cartwright, he intimated that the remaining 285 Vietnamese detainees on the ‘Revised S 21 prisoner list’ had also been executed around the s 21 compound.

^{xxxiv} Mr Huy could only recall that s 21 staff had been “killed at a vicinity near the prison.”

^{xxxv} Important cadres were executed “to the west and south of Tuol Sleng.”

^{xxxvi} Mr Huy attested to the fact that Duch had visited the execution site on two occasions, and stayed long enough to ensure the completion of the execution process. In contrast, Duch had earlier stated that he briefly visited the execution site on only one occasion, under orders from his superiors.

^{xxxvii} In his statement, it appears that Mr Huy had definitely indicated that Duch had convened a meeting and informed his subordinates that “*hitting their necks with the steel would not kill them, their throat had to be cut too.*” Mr Huy had also indicated that Duch personally ordered him to kill a person at Choeng Ek.

^{xxxviii} Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise.

^{xxxix} The assurance had apparently been provided pursuant to Internal Rule 28(3) and 28(4). Internal Rule 28(3) states that where the Co-Investigating Judges or the Chambers determine that a witness should be required to answer a question or questions, they may assure such witness, if possible in advance, that the evidence provided in response to the question: a) will be kept confidential and will not disclose to the public; and/or b) will not be used either directly or indirectly against that person in any subsequent prosecution by the ECCC. Internal Rule 28(4) states that before giving such an assurance, the Co-Investigating Judges or the Chambers shall seek the views of the Co-Prosecutors to determine whether the assurance should be given to this particular witness.

^{xi} Rule 28(9) states that if an issue of self-incrimination arises in the course of the proceedings, the Co-Investigating Judges or the Chamber shall, unless the witness waives that right, suspend the taking of the testimony and provide the witness with a lawyer. [...].

^{xli} Internal Rule 28(8) mandates that parties raise issues with respect to self-incrimination during an “in camera” hearing and “in advance of the testimony of the witness.”

^{xlii} Transcultural Psycho-social Organization

^{xliii} This observation was made by Civil Party Lawyer for Group 3, Mr Alain Werner.

^{xliv} These consequences are articulated in Internal Rule 36(2) and 35(2).

^{xlv} Rule 28(9) states that if an issue of self-incrimination arises in the course of the proceedings, the Co-Investigating Judges or the Chamber shall, unless the witness waives that right, suspend the taking of the testimony and provide the witness with a lawyer.

^{xlvi} Witness and Expert Support Unit

^{xlvii} See, KRT Report, No. 9, p. 8.

^{xlviii} The Role of the Civil Party Lawyers is an issue, which has yet to be resolved by the Chamber; see, KRT Report, No. 7.

^{xlix} See KRT Trial Monitor, Report No. 10, Page 5.

^l This request was advanced on 3rd April 2009.

^{li} Rule 98(2) stipulates that the judgment shall be limited to the facts set out in the Indictment.



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