



The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 3:
Week Ending April 12, 2009

KRT Trial Monitor - a program of The Asian International
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In this week's KRT Trial Monitor...

Duch testifies to his role at M-13 (pp.2-3); Former detainees testify to the Accused Person's character and conditions at the interrogation center (pp. 3-4); Civil Parties' role in 'supporting' the Prosecution construed broadly (p.6); Translation concerns continue (p.7)

1. Summary

"[I saw] the reality of a man who was a vector of state-institutionalized mass killing on the one hand, and on the other hand, a young man who had committed his life to a cause, to a purpose, based on the idea that crime was not only legitimate, it was deserved."ⁱ

"I do not fear [Duch] anymore, because he is now a tiger without any teeth."ⁱⁱ

This week's proceedings at the Khmer Rouge Tribunal centered on the character of the Accused Person and the history of his involvement with the communist party. After briefly focussing on Duch's early life and subsequent incarceration as a political prisoner, the Chamber considered his role as the Head of M-13 – a security prison established in 1971, primarily to interrogate and execute "enemies" of the party. Pursuant to the Chamber's scheduling order, which sees it examining evidence under topic headings rather than through witnesses, Duch's testimony on M-13 was followed by witnesses François Bizot and Uch Sorn, both former detainees at the prison. The Chamber is due to hear another witness on M-13 before proceedings turn to the substance of the Closing Order – namely, the Accused Person's role at S-21.

The evidence elicited this week seemed to show Duch as a man with a dual nature – a point most emphatically made by François Bizot. Recalling a particular conversation with Duch the night before he was released from M-13, the witness described in vivid detail a 'turning point' in his understanding of humanity. Confronted with Duch outside the interrogation process, Bizot said realized that it would be wrong simply to demonise him as an evil monster: 'It is important to make a distinction between what humans do, and what humans are', he said. Duch himself displayed this seeming duality by explaining his deep sense of loyalty to the communist party and the ideology of liberating the peasant class and openly admitting that one of primary purposes of M-13 was to execute "spies", many of whom themselves were peasants. The Co-Prosecutors sought to establish that regardless of what might be said about this duality, the Accused Person had established a system at M-13 that he would later further implement at S-21. Civil Party Lawyers further endeavoured to focus the Court's attention on the inhumane conditions at the prison camp and the use of various torture techniques to extract confessions from prisoners – some of which Duch denied occurred or he knew about. Witness Uch Sorn's testimony regarding detention conditions tended to support at least some of the Civil Party's assertions. Both the witnesses and the Accused appeared to agree that one major reason for deaths at M-13 was lack of food, disease and illness – including malaria.

The key procedural issue discussed this week centered on the use of extra-judicial documents on the case file during trial proceedings. The extent and degree of Civil Party participation was raised again as an issue on Tuesday. Witness participation and protection concerns can also be highlighted, with the Chamber seemingly dropping witness pseudonyms without any explanation. Its handling of witness' oaths is also somewhat unclear to monitors.

Overall, trial proceedings continued smoothly this week, though issues with translation continue to be a major cause for concern. Interpreters should be advised to be more assertive in asking parties and witnesses to speak slowly and clearly, as warnings issued from the bench did not appear to assist at several points during the course of questioning.

Proceedings at the KRT have now adjourned for one week for Cambodian (or Khmer) new year. The proceedings will resume on Monday, 20 April, 2009.

2. Legal & Procedural Issues

A. Abridged Summary of M-13 Evidence

The section below sets out abridged summaries of the testimony of the Accused Person and witnesses who appeared before the Chamber this week. To view the full summary, please see Annexure A to this document.

Kaing Guek Eav alias 'Duch'

Historical Context of M-13: During his testimony about M-13, Duch clarified the historical circumstances which motivated him to participate in the CPK. After detailing his early life and the influence that Buddhism had upon him, he turned to detail his early involvement with the communist movement in Cambodia. He made his final decision to participate in the communist party when ten people from the movement were arrested by the Sihanouk government. He was "introduced" by Met Kep Pah as a candidate on 25 November 1967. After joining the movement, Duch said he was arrested by the Sihanouk government on 5 January, 1968. In June 1968 Duch was sentenced to 20 years prison with hard labour for breaches against state security. His trial took half a day and Duch saw his lawyer for the first time at the trial. He was released, like many other political prisoners, in April 1970, by Lon Nol. During Duch's detention, he was not tortured although he stated that other detainees were beaten.

Questioning of Duch on issues relating to M-13: Duch's testimony on the establishment and functioning of M-13 largely dominated the first three days of proceedings. Although the functioning of M-13 lies outside the jurisdiction of the Chamber, President Nil Nonn termed Duch's testimony on this issue as "related and necessary" to foster an understanding of the context, organizational structure and operational functions of S-21.

Command Structure and Purpose: Duch elaborated on the various physical locations occupied by M-13. He explained that M-13 had been sub-divided into two separate and distinct branches – namely, 'M-13a' and 'M-13b.'ⁱⁱⁱ Duch stated that M-13a, which had been relocated several times, functioned under his direct supervision.^{iv} M-13b was supervised by his deputy, Comrade Sum.

Turning to the intended purpose of M-13, Duch revealed that his principal mission was to "beat, interrogate [and] smash" perceived "spies" from what he referred to as the "Lon Nol area". He accepted that "the smash was the main principle [at M13a]," and unflinchingly explained that the dutiful performance of his mission at M-13 was a means of defending the "liberated zone [and its] people." Duch pointed out that the purpose of M-13 morphed to accommodate the requirements of the revolution. Specifically, he mentioned that M-13 began receiving detainees from outside the "liberated zone," such as from the Kop Sreu areas.

Upon questioning Duch, International Co-Prosecutor Robert Petit seemed adamant on substantiating his earlier assertion that “M-13 was the training ground [in which] Duch honed his skills as a prison chief.”^v In particular, Petit’s questions were designed to elicit information about Duch’s recruitment strategies, and the inception of an alleged “system of recording confessions” at M-13.

When questioned by Judge Lavergne and National Defence lawyer, Kar Savuth, on the scope of his authority at M-13, Duch steadfastly maintained that decisions pertaining to the arrest and execution of detainees were made exclusively by the “upper echelon.”^{vi} Based on his testimony, it appears that prior to 1975, the “upper echelon” encompassed individuals such as Ta Mok, Von Vet and Chou Cheat alias ‘Brother C’. Duch also indicated that Son Sen and Hoot Hey were prominent members of the CPK, who apparently held command positions.^{vii} Duch later testified that his exhortations to the “upper echelon” had secured the release of 10 detainees, over the course of the existence of M-13. He stressed that this fact should not enure to his benefit. He stated the release of 10 people was insignificant in light of the scale of crimes that had occurred, and likened it to a “drop of water in a large amount of water in a pond.”

Turning to the context in which Duch served as head of M-13, International Defence lawyer François Roux attempted to lead evidence in support of his earlier submission that the DK regime was sustained by the “twin pillars of terror and secrecy.”^{viii} In response to Roux’s question, Duch agreed that “in [the] Party, everyone obeyed orders, and if you disobey orders, you run the risk of losing your life.” In a further attempt to reveal the endemic terror within the Khmer Rouge, Duch alluded to Pol Pot’s supreme paranoia, and explained that the desire to please one’s superiors, at every link in the chain of command, was motivated primarily by fear. With regard to the pervasive secrecy of the regime, Duch unambiguously stated, “We kept everything a secret. All tasks remained confidential.”

Detainee Population and Detention Conditions: Duch acknowledged that detainees at M-13 were subjected to “very inhumane” conditions, explaining that they were deprived of adequate food, hygiene and medical care. Detailed questions from the Chamber and Civil Party lawyers also revealed that detainees were deprived of washing facilities, shackled for extended periods at a time and forced to provide manual labour.^{ix}

Methods & Means of Interrogation: Duch betrayed no visible emotion as he admitted to acquiescing and participating in the use of torture, as the head of M-13. His unflappable demeanour remained unaltered as he related the litany of torture techniques that he personally devised in order to extract confessions – namely, repeated beatings, hanging of detainees by their wrists^x and exposure to cold temperatures.^{xi} Significantly, his description of the torture techniques employed at M-13 served to elucidate unmistakable parallels between S-21 and its predecessor.

Duch’s testimony throughout the week evidenced his distaste and dissatisfaction with his assigned role at M-13. However, he portrayed himself as a hostage of the regime, forcefully saying, “At that time, in that regime, I saw no alternative other than to respect Party Discipline.” Significantly, Duch appeared to choke with emotion when confronted with an interview he had given while under judicial investigation on 3 October 2007. Judge Lavergne’s recitation of the interview, which evinces Duch’s ‘*despair*’ with his role at M-13, prompted the latter to explain that he sought comfort through his recital of a French poem. Notably, Duch intermittently drew sharp breaths throughout the proceedings, possibly revealing his anxiety and discomfort when faced with the gravity of crimes that routinely occurred under his supervision.

François Bizot

On Wednesday afternoon, the Trial Chamber summoned its first witness, 69-year-old researcher François Bizot.^{xii} Bizot, who currently resides in Northern Thailand, had been arrested by Khmer Rouge soldiers in October 1971 and subsequently detained at M-13 for three months. In 2003, Bizot published *The Gate*, a book which recounts his impressions and experiences at M-13. Notably,

excerpts from *The Gate* were periodically read out by the Chamber and Parties over the course of his testimony.

Testifying in the “name of his fellow detainees” who perished at M-13, Bizot recounted the detention conditions and interrogation techniques that had allegedly been employed at the security center. Accused of being a CIA spy, Bizot endured daily interrogation sessions conducted by Duch himself, “in [an] ever polite way.” Bizot acknowledged that his daily encounters with Duch bred “familiarity” and “created humanity between [them].” Although he had neither seen nor personally experienced any beatings, Bizot acknowledged his cognizance of the fact that guards used such techniques to “get people to talk.” Turning to the detention conditions at M-13, Bizot stressed that disease, particularly malaria, was rampant. Acknowledging his special status amongst detainees, Bizot testified that he was afforded privileges that were not bestowed on the others – namely, the ability to consume as much rice as he wanted, and to take daily baths in the nearby river.

More pertinently, Bizot’s testimony provided profound insight into the duality of Duch. Describing Duch as a “tireless worker” who had been “willing to surrender his life for the revolution,” Bizot spoke of his realization that a “double reality” existed. Bizot described this as “the reality of a man who was a vector of state-institutionalized massive killing on the one hand, and on the other hand, a young man who had committed his life to a cause, to a purpose, based on the idea that crime was not only legitimate, it was deserved.” Referring to the humanity of Duch, Bizot espoused the need to “distinguish between what humans do and what humans are,” which prompted his realization that his jailor was “endowed with human characteristics.”

International Co-Prosecutor Robert Petit questioned the basis of Bizot’s conclusion that Duch found his work “repulsive.” In line with his earlier assertion, which pertained to the questionable nature of Duch’s contrition, Petit suggested that Bizot’s recollection of any apparent discomfort was based on an impression, as opposed to material facts.^{xiii} When questioned by International Defense lawyer François Roux, Bizot affirmed that Duch had been locked in a “regime of terror,” in which his “margin of maneuver [had been] absolutely nil.” Alluding to Duch’s “passionate quest for moral righteousness,” Bizot described how Duch himself lived in constant fear of his superiors. Significantly, François Roux expressed his appreciation for the “major contribution [Bizot has] offered to the work of justice,” by acknowledging the “deep sense of humanity in respect of Duch.”

Uch Sorn

On Thursday morning, the Chamber summoned 72-year-old Uch Sorn, who had been imprisoned at M-13 from March 1973 to 1974.^{xiv} The Chamber experienced some initial confusion about Sorn’s identity, but this confusion was promptly resolved and questioning proceeded as scheduled.

Sorn’s testimony related primarily to the detention conditions and interrogation techniques employed at M-13, where he apparently witnessed “torture [and] ill-treatment of prisoners in all forms.” Accused of being a “spy,” he testified to the total stripping of prisoners, being kept shackled in a pit and the constant deprivation of food. Additionally, Sorn affirmed Bizot’s testimony that illness was rampant at M-13. Further, he provided accounts of two summary executions he had witnessed at M-13.

Notably, his testimony differed significantly from Duch’s testimony with regard to the interrogation techniques employed at M-13. Sorn unambiguously testified that the immersion of detainees in water and the removal of fingernails were techniques that were regularly inflicted upon detainees. However, as soon as he was afforded the opportunity to do so, Duch questioned the veracity of such allegations, and reiterated his position that such practices were non-existent at M-13. Nevertheless, Duch accepted that Sorn’s testimony was “fundamentally” true. However, when asked to provide specific figures on the number of detainees, Sorn’s testimony contained significant internal inconsistencies.

Expressing his sentiments towards the Pol Pot regime, Sorn stated his inability to comprehend how “Khmer people could bring themselves to kill Khmer people.” When Judge Lavergne confronted Duch with this statement, he explained that the killings were a by-product of “a class struggle in a liberated zone,” which entailed the need to eliminate “enemy spies.” When asked by Judge Lavergne if he still harboured any fear of Duch, Sorn answered in the negative, adding, “he is now a tiger without teeth”.

B. Arguments/Concerns Raised at Trial

Witness Seated in the Public Gallery Before Testifying. Rule 88(2) of the Internal Rule requires that experts and witnesses be proscribed from watching the proceedings prior to testifying at trial. This rule was demonstrably violated during Tuesday’s proceedings, when at least one witness who was scheduled to testify during the trial was found to be sitting in the public gallery. Following a request by International Defense lawyer Francois Rous, President Nil Nonn announced that all individuals on the witness list were precluded from sitting in the public gallery, and should therefore leave the venue. At least one person left the gallery at this time.

President Nil Nonn seemed to opine that the Witnesses/Experts Support Unit (**WSEU**) should be solely responsible for preventing a recurrence of a breach of Rule 88(2). However, other than making this announcement the Chamber failed to take any steps themselves to ensure the effective implementation of Rule 88(2) at the time the incident occurred. The sufficiency of the Chamber’s response is questionable, given that a breach of this Rule directly impacts on Duch’s right to a fair trial. Notably, the Criminal Procedure Code of Cambodia contains a parallel provision to Rule 88(2).^{xv}

The Use of Extra-Judicial Documents. Before beginning to question the Accused this week, President Nil Nonn read out the list of documents which pertained to Duch’s testimony on M-13. Upon completion, Defense lawyer François Roux submitted that one of the documents on the list, a statement given by Duch to Christophe Peschoux, should not be used in a manner that was prejudicial to his client.^{xvi} Roux questioned the circumstances in which the interview had been conducted, specifically, the objectivity of the interviewer and translator involved. In particular, Roux emphasized that at the time of the interview, Duch had not envisioned the use of its contents in a judicial context. In response, International Co-Prosecutor Robert Petit contended that “the court [was] free to consider relevant evidence provided that [the] evidence was not contrary to the interest of justice.” Petit framed this as the sole criterion for deciding upon the admissibility of evidence before the Chamber. Further, Petit pointed out that the Defence ought to have presented a motion before the OCIJ to have the statement withdrawn from the case-file, if they had any objection to its use in court. The Chamber has invited all parties to make written submissions on this issue, with a view to resolving this dispute.

3. Victim Participation and Witness and Victim Protection and Support

Attendance of Civil Parties and Right to Representation. Last week’s trend of decreasing Civil Parties’ presence continued through the week, with hearings being attended by no more than 7 Civil Parties sitting in the Court Room.^{xvii}

Chamber Rejects Civil Parties Request to Respond on Detention Order Issue and Make Oral Statements. As noted in last week’s report, Civil Party lawyers requested leave to make submissions on the Accused Person’s release from detention, as well as to respond to the Co-Prosecutor’s Opening Statement. On Monday, the Chamber issued its decision to reject both these requests, which would have broadened participation rights of civil parties. In essence, the Chamber rejected both requests on the ground that they were unsupported by a plain reading of the Internal Rules.

With regard to the request to respond to the Co-Prosecutor’s Opening Statement, the Chamber reasoned that the Court’s Internal Rules do not envision Civil Parties providing a response to Co-

Prosecutors' Opening Statements.^{xviii} Turning to the Civil Parties' right to make submissions on the Accused Person's pre-trial detention, the Chamber determined that the Rules do not anticipate the possibility of Civil Party intervention. The Chamber noted that while the specific rule in question (Rule 82(3)) deviated from parallel provisions under Cambodian law, this deviation could be attributed to a conscious decision by the Judicial Plenary. The Chamber noted that the ECCC (or KRT) was established to try individuals who had allegedly committed mass crimes. Accordingly, it held that the need to balance the civil parties' rights to participation, with the accused person's right to a fair and expeditious trial, was of heightened importance. In effect, the Chamber seemed to be asserting that the Judicial Plenary specifically narrowed the rights of Civil Parties due to the fact that the complexity of the cases before the KRT required a different threshold for participation. Furthermore, it confirmed that the Chamber is not bound by previous decisions of the Pre-Trial Chamber. However, the Chamber invited the Civil Parties to give their opinion within 5 days regarding the extent to which the Accused Person should be compensated (including by lowering his sentence) to address the violation of the Accused Person's right due to his nine year detention in a domestic Military prison.

Civil Party Questioning of the Accused and Witnesses: Rules 90(2) and 91 of the Internal Rules afford Civil Parties the right to question the Accused person and the witnesses. The Chamber has determined that the order of questioning throughout the trial will be as follows: first, the Prosecution, then the Civil Parties and then the Defense.^{xix} This week, Civil Party lawyers elected to question the Accused Person and the two witnesses who were summoned before the Chamber – namely, François Bizot and Uch Sorn. They were given leave to do so by the Chamber.

The four groups of Civil Parties, comprising both Cambodian and International lawyers, appeared generally well organized when putting their questions to witnesses this week, although on certain occasions they were asked to ensure questions were phrased succinctly. It became evident that some questions were being asked with direct input from Civil Parties or to clarify Victim's expectations.^{xx} The majority of the questions, however, focused on establishing factual background. On some occasions the questions appeared to be repetitive^{xxi} and focusing more on tangential details, rather than sticking to key points.^{xxii} While the Chamber requested several times that the Civil Parties avoid repetitive questioning, only on two occasions did it intervene specifically to prevent questions from being asked that had already been answered. This leeway may have been granted due to the fact that the Court experienced ongoing translation difficulties, which meant the Chamber likely could not be certain that the parties had understood the questions the first time they were put. In an additional attempt to curtail Civil Party questioning, when the Accused was questioned, the Chamber requested two of the Civil Party Groups to finish their interrogation within an hour.^{xxiii} Given the extrajudicial purpose of the M13 questioning, imposing a time limit may have been appropriate.

Perhaps understandably, given the number of clients they are representing and their desire to ensure victims "views and concerns" are made known the Chamber, Civil Party questioning thus far has tended to be more detailed and time-consuming than that of the Prosecution and the Defense. However, given the evidence being tested this week only provides historical background for the case and does not concern the charges faced by the Accused Person, the extensive leeway granted to Civil Parties to put their questions seemed generous.^{xxiv} Civil Party lawyers themselves appear to take differing approaches to their role in "supporting" the Prosecution as defined in rule 23(1a). While some civil party lawyers appear to put questions directly relevant to proving the charges against the Accused Person, others seem more concerned to ensure that the horror of the Khmer Rouge regime and the terrible treatment of victims generally are exposed. In this regard, further guidance from the Chamber on the parameters of their role would seem to be desirable.

Adequacy of Witness Protection and Support Mechanisms: The extent to which the Chamber will continue to use witness protection measures, and how they will determine when to use them remained ambiguous this week, with both witnesses who testified doing so in public, despite pseudonyms being used for their names up until the point they entered the gallery. Although monitors

welcomed the fact that the witnesses testified in open session, some explanation regarding why the pseudonyms had been dropped appeared necessary, especially given both witnesses were former detainees of M-13. There also appeared to be no established protocol for witnesses taking the oath before testifying, with Mr Bizot taking an oath in the courtroom prior to testifying and Mr Sorn refraining from doing so. Although President did make a general announcement regarding witness' oaths, and monitors observed that Khmer witnesses had been seen swearing an oath in front of a statue at the front of the tribunal earlier in the week, it was not confirmed during proceedings that Mr Sorn was one of these witnesses. Adding to this, at one point it appeared that the Chamber was to have Mr Bizot seated next to Duch while he testified. It was only after International Co-Prosecutor Robert Petit raised the issue as a concern that Duch was told to sit behind his counsel. Neither witness was informed of his right against self-incrimination, nor were they reminded not to speak about their testimony during the breaks in proceedings.

4. Trial Management

Judicial Management: Despite what was characterized as a 'slow start' last week, proceedings this week continued at an efficient pace, with judges seemingly mindful not to take lengthy breaks or early adjournments. The Chamber appears to be making commendable efforts to ensure that parties are using time efficiently, including placing generally appropriate limitations on questioning. A primary judicial management concern appears to be balancing Civil Party lawyers' right to ask questions against the Accused Person's right to a fair and expeditious trial. Two of the Civil Party groups expressed discontent this week when President Nil Nonn asked them to limit their questions to a thirty minute timeslot. It is perhaps understandable that the lawyers in question would defend their right to speak, especially given the time limit was not set in the Rules. It may be that going forward, the Chamber could adopt a strategy to curtail irrelevant or repetitive questions asked by any of the parties, rather than attempting to place time limits on any particular group. In particular, it would seem feasible to consider asking parties to confirm they are seeking clarification on a question previously asked, rather than simply allowing them to repeat asking it.

Translation Concerns: Interpretation issues became a heightened concern during proceedings this week, with the Judges, Co-prosecutors, Defense, and Civil Parties all noting at various stages that they had not understood the translation. From the public gallery, it appeared additionally that translators were generally rushing to keep up with witnesses and lawyers rather than asking them to slow down.^{xxv} This was particularly so in relation to the testimony of Mr Bizot, who, although extremely eloquent, also spoke extremely quickly. Similarly, exchanges between Cambodian lawyers and Mr Uch Sorn often proceeded without the necessary pause to ensure accurate translation into English and French. Given the system adopted at the Court is for testimony to be translated from Khmer to English to French and *vice versa* (ie there is no direct French – Khmer translation), the need for parties and witnesses to speak slowly is imperative. The fact that they repeatedly failed to do so likely made it difficult for the Chamber to assess whether questions were being asked repeatedly because parties did not understand the translation, or because they were simply being repetitive. Although the President of the Trial Chamber instructed the parties to speak slowly, clearly and in short sentences to ensure the language interpretation could process smoothly on more than one occasion, problems with translation continued. Interpreters should be encouraged to be more assertive in asking parties to slow down and speak clearly if they have any difficulty understanding questions.

Courtroom Etiquette – Sleeping During Trial? Perhaps the most important concern regarding courtroom etiquette this week was that it appeared that at least one of the judges on the bench was falling asleep during three out of four days of trial. A Defense Lawyer also appeared to be sleeping at one point during proceedings. Other than this, lawyers were generally polite towards witnesses and one another. At one point during the Accused Person's questioning, however, a Civil Party Lawyer for Group 2 was reprimanded by the Chamber for questioning Duch inappropriately after attempting to

control the manner in which the Accused Person responded. Co-Prosecutor Robert Petit also seemed to be asserting a somewhat aggressive stance toward the Accused after he did not appear to be able to answer what Petit termed were ‘simple’ questions.

Audience Attendance: For the second week of Duch’s trial, audience numbers continued to dwindle, with far less people in the public gallery than during the first week trial.

Absence of Lawyers: Mr Ka Savuth, the Cambodian Defense Co-lawyer was not present during proceedings on the second day of the trial this week.

Technical Problems: Minor technical glitches continued to occur throughout the proceedings during the second week of Duch’s trial. In particular, microphones and appeared to disconnect several times which shortly interrupted the proceedings.

Time Management:

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 06/04/09	09.15AM	10.30 – 10.55AM	12.06 – 1.40PM	14.40 – 15.10PM	16.20PM	4 HOURS 36 MIN
TUE. 07/04/09	09.10AM	10.35 – 10.55AM	12.05 – 13.35PM	14.50 – 15.20PM	16.35PM	4 HOURS 55 MIN
WED. 08/04/09	09.09AM	10.45 – 11.10AM	12.00 – 13.35PM	14.45 – 15.10PM	16.30PM	4 HOURS 56 MIN
THURS. 09/04/09	09.04AM	10.45 – 11.13AM	12.07 – 13.39PM	14.45 – 15.10PM	16.15PM	4 HOURS 46 MIN
AVERAGE NUMBER OF HOURS IN SESSION:						4 HOURS, 48 MINS
TOTAL NUMBER OF HOURS THIS WEEK:						19 HOURS, 13 MINS
TOTAL NUMBER OF HOURS, DAYS AND WEEKS AT TRIAL:						31 HOURS, 13 MINS over 7 TRIAL DAYS over 2 TRIAL WEEKS

ⁱTestimony of Mr François Bizot, Wednesday, 8 April 2009 (afternoon session). Quote is taken from authors' notes of the English translation of trial proceedings. All quotes in this monitoring report are taken from notes of trial monitors throughout the proceedings.

ⁱⁱTestimony of Mr Uch Sorn, Thursday, 8 April 2009 (afternoon session).

ⁱⁱⁱ Pursuant to a question posed by Mr Alain Werner, Duch explained that 'M-13' is an abbreviation for 'Mah – 13' in Khmer, which means 'Office 13' in English.

^{iv} Specifically, M-13a occupied 3 different locations over the course of its existence. From the point of its establishment until February 1972, it was located at Anlong Veng, Anlong sub district. Following which, it was relocated to Tha Lieu, where it remained until approximately April 1973. Finally, it was relocated to Trei Pong Chap, where it remained from June 1973 until its dissolution on 30 April 1975.

^v See Opening Statement of Co-Prosecutors, delivered on 31 March 2009. See also KRT Trial Monitor Report, Issue No. 2, at Pages 2-3.

^{vi}This assertion is in accord with the position articulated by the Defence lawyers in the previous week's proceedings. See KRT Trial Monitor Report, Issue No.2, at pages 3-4.

^{vii}These individuals were the Deputy Secretary of the Special Zone and Chairperson of the Special zone respectively.

^{viii}See Defense Response to Opening Statement of Co-Prosecutors, delivered on 31 March 2009.

^{ix} However, based on testimonies given Duch and two other witnesses, it appears that this concern only existed during the initial phase of M-13's existence, when it was located at Anlong Veng, until February 1972.

^x Duch explained that he implemented the use of this technique upon the specific instructions of 'Brother C.'

^{xi} Duch clarified that he 'experimented' with this technique only once on a female detainee. However, in light of its failure to produce the required result, he proscribed its implementation at M-13.

^{xii} François Bizot was previously referred to by the Chamber as 'TC-1'.

^{xiii} Refer to Opening Statement of Co-Prosecutors, delivered on 31 March 2009.

^{xiv} Uch Sorn was previously referred to by the Chamber as 'KW-30'.

^{xv} Specifically, Article 322 of the Cambodian CPC requires experts and witnesses to retreat to a waiting room prepared for them, from which they cannot see or hear anything in the courtroom.

^{xvi}Mr Peschoux is the current Representative of the UN High Commissioner for Human Rights in Cambodia.

^{xvii} Throughout the week, CP 1 was represented by Ms. Ty Srinna and Mr Alain Werner and CP 3 by Ms. Moch Sovannary and Philippe Canone (France). While CP 2 was constantly represented by at least three lawyers, Mr. Kong Pisey or Mr. Yung Panith (rotating), Mr. Hong Kim Son and Ms Silke Studzinsky, CP 4 was by times only represented by one national lawyer Mr. Hong Kim Son or Mr. Kong Pisey. Pierre Olivier Sur was absent the whole week.

^{xviii} Internal Rule 89B(2) allows the Co-Prosecutors to make a brief opening statement of the Charges against the Accused, and affords the Accused person the right to respond briefly.

^{xix} This determination was made by way of a Scheduling Order dated 20 March 2009.

^{xx}There was an exchange of notes observed between the lawyers and their clients during the questioning. According to Studzinsky, the question to the Accused about different categories of prisoners and different treatment was asked upon Civil Parties' request. Lawyer for CP Group 3, Phillippe Canone, also asked Bizot what he thought they and the Civil Parties could expect from the trial.

^{xxi} For example, lawyer Studzinsky asked the accused if pliers were used to remove fingernails, which was already asked by Judge Lavergne in the Tuesday's morning session. Similarly, when Hong Kim Suon asked

about the distances between the different detention centers and the liberated zone he repeated the question of his CP colleague Yung Panith.

^{xxii} For instance, when lawyer Kong Pisey asked Uch Sorn if detainees were provided with mosquito nets, which was obviously not the case.

^{xxiii} Lawyer Studzinsky asked for questioning to be adjourned to the following day in order not to be interrupted by the evening break. The President dismissed the request and limited the time to finish the questioning of the three remaining groups up to 20 minutes. When CP lawyer Studzinsky and Kong Pisey, national lawyer for CP 2 and 4, claimed that this was not enough and that a fair trial would include the right of all parties to ask questions. Nevertheless, on Wednesday morning CP 2 and 4 was each given 30 minutes to further question the accused. Notably, lawyer Studzinsky questioned the Accused Person for 55 minutes, leaving national lawyer Hong Kimson only 5 minutes. The Chamber granted him a 10-minute extension.

^{xxiv} For example, when questioning the Accused Person, the Prosecution's questioning took 65 minutes and the one of the defense lawyers 90 minutes. In total, Civil Parties took two hours.

^{xxv} There was only one occasion during which the interpreter specifically asked the parties speaking to slow down, during a week in which there were several instances where this appeared necessary.

ANNEXURE A

1. Complete Summary of M-13 Evidence

A. Kaing Guek Eav, alias 'Duch'

Questioning of Duch on issues relating to M-13: Duch's testimony on the establishment and functioning of M-13 largely dominated the first three days of proceedings. Although the functioning of M-13 lies outside the jurisdiction of the Chamber, President Nil Nonn termed Duch's testimony on this issue as "related and necessary" to foster an understanding of the context, organizational structure and operational functions of S-21.

Historical Context of M-13: During his testimony about M-13, Duch clarified the historical circumstances that motivated him to participate in the CPK. After detailing his early life and the influence that Buddhism had upon him, he turned to detail his early involvement with the communist movement in Cambodia. He made his final decision to participate in the communist party when ten people from the movement were arrested by the Sihanouk government. He was "introduced" by Met Kep Pah as a candidate on 25 November 1967. After joining the movement, Duch was arrested by the Sihanouk government on 5 January, 1968. In June 1968 Duch was sentenced to 20 years prison with hard labour for breaches against state security. His trial took half a day and Duch saw his lawyer for the first time at the trial. Lon Nol released him, like many other political prisoners, in April 1970. During Duch's detention, he was not tortured although he stated that other detainees were beaten.

Command Structure and Purpose: Duch devoted parts of his testimony to elaborating on the various physical locations occupied by M-13. He explained that M-13¹ had been subdivided into two separate and distinct branches – namely, 'M-13a' and 'M-13b.' Duch stated that M-13a, which had been relocated several times, functioned under his direct supervision. M-13b, on the other hand, remained at the Anlong district, and was supervised by his deputy, Comrade Sum.²

Turning to the intended purpose of M-13, Duch revealed that his principal mission was to "beat, interrogate [and] smash" perceived "spies" from what he referred to as the "Lon Nol area". He accepted that "the smash was the main principle [at M13a]," and unflinchingly explained that the dutiful performance of his mission at M-13 was a means of defending what he termed as the "liberated zone [and its] people." Expounding upon this issue, Duch pointed out that the purpose of M-13 morphed to accommodate the requirements of the revolution. Specifically, he mentioned that M-13 began receiving detainees from outside the "liberated zone," such as from the Kop Sreu areas.

When presented with the opportunity to question Duch, International Co-Prosecutor Robert Petit seemed adamant on substantiating his earlier assertion that "M-13 was the training ground [in which] Duch honed his skills as prison chief."³ In particular, Petit's questions were designed to elicit information about Duch's recruitment strategies, and the inception of an alleged "system of recording confessions" at M-13.

When questioned by Judge Lavergne and National Defense lawyer, Ka Savuth, on the scope of his authority at M-13, Duch steadfastly maintained that exclusively the "upper echelon" made decisions pertaining to the arrest and execution of detainees.⁴ Based on his testimony,

¹ Pursuant to a question posed by Mr Alain Werner, Duch explained that 'M-13' is an abbreviation for 'Mah – 13' in Khmer, which means 'Office 13' in English.

² Specifically, M-13a occupied 3 different locations over the course of its existence. From the point of its establishment until February 1972, it was located at Anlong District. Following which, it was relocated to "Tha Lieu", where it remained until approximately April 1973. Finally, it was relocated to "Tray Pong Chap", where it remained from June 1973 until its dissolution on 30 April 1975.

³ See Opening Statement of Co-Prosecutors, delivered on 31 March 2009. See also KRT Trial Monitor Report Issue No. 2 at pages 2-3.

⁴ This assertion is in accord with the position articulated by the Defence lawyers in the previous week's proceedings. See KRT Trial Monitor Report, Issue No.2 at pages 3-4.

it appears reasonable to surmise that prior to 1975, the “upper echelon” encompassed individuals such as Ta Mok, Von Vet and Chou Cheat alias ‘Brother C’. Duch also indicated that Son Sen and Hout Hey were prominent members of the CPK, who apparently held command positions.⁵ Duch later testified that his exhortations to the “upper echelon” had secured the release of 10 detainees, over the course of the existence of M-13. Having detailed the efforts he had expended to secure their release, he stressed that this fact should not enure to his benefit. He opined that the release of 10 people was insignificant in light of the scale of crimes that had occurred, and likened it to a “drop of water in a large amount of water in a pond.”

Turning to the context in which Duch served as head of M-13, International Defense lawyer Francois Roux attempted to lead evidence in support of his earlier submission that the DK regime was sustained by the “twin pillars of terror and secrecy.”⁶ In response to Roux’s question, Duch agreed that “in [the] Party, everyone obeyed orders, and if you disobey orders, you run the risk of losing your life.” In a further attempt to reveal the endemic terror within the Khmer Rouge, Duch alluded to Pol Pot’s supreme paranoia, and explained that the desire to please one’s superiors, at every link in the chain of command, was motivated primarily by fear. With regard to the pervasive secrecy of the regime, Duch unambiguously stated, “We kept everything a secret. All tasks remained confidential.” Enumerating the four golden rules that prevailed among revolutionary ranks,⁷ he affirmed that everyone in the chain of command observed the principle of secrecy, because “everyone knew that if they breached this [principle], their life would be in danger.” Duch also spoke of his attendance at regular “Party Livelihood Meeting[s].” He explained that these meetings served a dual purpose of constructing the Party’s “collective political, psychological and organizational stance,” whilst simultaneously demanding a jettisoning of its members’ “personal stance.”

Duch’s testimony throughout the week evidenced his distaste and dissatisfaction with his assigned role at M-13. However, he portrayed himself as a hostage of the regime, forcefully saying, “At that time, in that regime, I saw no alternative other than to respect Party Discipline.” Significantly, Duch appeared to choke with emotion when confronted with an interview he had given to the Office of Co-Investigating Judges on 3 October 2007. Judge Lavergne’s recitation of the interview, which evinces Duch’s ‘despair’ with his role at M-13, prompted the latter to explain that he sought comfort through his recital of a French poem entitled [OOO]. Notably, Duch intermittently drew sharp breaths throughout the proceedings, revealing his anxiety and discomfort when faced with the gravity of crimes that routinely occurred under his supervision.

Detainee Population and Detention Conditions: Duch recounted that the detainee population of M-13 consisted predominantly of indigent people from the “Lon Nol area,” who had been categorized as ‘spies’ because they did not have the means to escape. However, he added that the demographics of the detainee population at M-13 gradually evolved, and eventually comprised of former cadre and people residing close to what he characterized as “enemy zones.”

Duch acknowledged that detainees at M-13 were subjected to ‘very inhumane’ conditions, explaining that they were deprived of adequate food, hygiene and medical care. Detailed questions from the Chamber and Civil Party lawyers also revealed that detainees were deprived of washing facilities,⁸ shackled for extended periods at a time and forced to provide manual labour.

Methods & Means of Interrogation: Duch betrayed no visible emotion as he admitted to acquiescing and participating in the use of torture, as the head of M-13. His unflappable demeanour remained unaltered as he related the litany of torture techniques that he personally devised in order to extract confessions – namely, repeated beatings, hanging of

⁵ These individuals were the Deputy Secretary of the Special Zone and Chairperson of the Special zone respectively.

⁶ See Defense Response to Opening Statement of Co-Prosecutors, delivered on 31 March 2009.

⁷ According to Duch, these four rules were: “Neither speak nor know, neither see nor hear.”

⁸ However, based on testimonies given Duch and two other witnesses, it appears that this concern only existed during the initial phase of M-13’s existence, when it was located at Along until February 1972.

detainees by their wrists⁹ and exposure to cold temperatures.¹⁰ Significantly, his description of the torture techniques employed at M-13 served to elucidate unmistakable parallels between S-21 and its predecessor.

In response to questions from Judge Lavergne and Civil Party Lawyer Silke Studzinsky, Duch categorically denied that mock suffocations, 'water-boarding' and the removal of fingernails were ever carried out at M-13. In particular, questions from Francois Roux revealed Duch's aversion to employing sexual violence as a torture technique. His disinclination to acquiesce in or order the debasement of female detainees was explicitly conveyed when he said, "I did not order stripping. I did not want to see sexual parts of [a] victim at all."

Francois Bizot

On Wednesday afternoon, the Trial Chamber summoned its first witness, 69-year-old researcher Francois Bizot.¹¹ Bizot, who currently resides in Northern Thailand, had been arrested by Khmer Rouge soldiers in October 1971 and subsequently detained at M-13 for three months. In 2003, Bizot published *The Gate*, a book that recounts his impressions and experiences at M-13. Notably, the Chamber and Parties periodically read out excerpts from *The Gate* over the course of his testimony.

Testifying in the "name of his fellow detainees] who perished at M-13, Bizot recounted the detention conditions and interrogation techniques that had allegedly been employed at the security centre. Accused of being a CIA spy, Bizot endured daily interrogation sessions conducted by Duch himself, "in [an] ever polite way." Bizot acknowledged that his daily encounters with Duch bred "familiarity" and "created humanity between [them]." Although he had neither seen nor personally experienced any beatings, Bizot acknowledged his cognizance of the fact that guards used such techniques to "get people to talk." Turning to the detention conditions at M-13, Bizot stressed that disease, particularly malaria, was rampant. Acknowledging his special status amongst detainees, Bizot testified that he was afforded privileges that were not bestowed on the others – namely, the ability to consume as much rice as he wanted, and to take daily baths in the nearby river.

More pertinently, Bizot's testimony provided profound insight into the duality of Duch. Describing Duch as a "tireless worker" who had been "willing to surrender his life for the revolution," Bizot spoke of his realization that a "double reality" existed. Bizot described this as "the reality of a man who was a vector of state-institutionalized massive killing on the one hand, and on the other hand, a young man who had committed his life to a cause, to a purpose, based on the idea that crime was not only legitimate, it was deserved." Referring to the humanity of Duch, Bizot espoused the need to "distinguish between what humans do and what humans are," which prompted his realization that his jailor was "endowed with human characteristics."

For his part, International Co-Prosecutor Robert Petit questioned the basis of Bizot's conclusion that Duch found his work "repulsive." In line with his earlier assertion, which pertained to the questionable nature of Duch's contrition,¹² Petit suggested that Bizot's recollection of any apparent discomfort was based on an impression, as opposed to material facts. However, Bizot firmly maintained that "in a spontaneous, sincere moment," Duch had indeed displayed "extreme embarrassment" when he spoke of beating prisoners. In addition, Petit sought to lead evidence that Bizot had been the victim of what he labeled as "psychological torture."

When questioned by International Defense lawyer Francois Roux, Bizot affirmed that Duch had been locked in a "regime of terror," in which his "margin of maneuver [had been] absolutely nil." Alluding to Duch's "passionate quest for moral righteousness," Bizot described

⁹ Duch explained that he implemented the use of this technique upon the specific instructions of 'Brother C.'

¹⁰ Duch clarified that he 'experimented' with this technique only once on a female detainee. However, in light of its failure to produce the required result, he proscribed its implementation at M-13.

¹¹ François Bizot was previously referred to by the Chamber as 'TC-1'.

¹² Refer to Opening Statement of Co-Prosecutors, delivered on 31 March 2009.

how Duch himself lived in constant fear of his superiors. Significantly, Francois Roux expressed his appreciation for the “major contribution [Bizot has] offered to the work of justice,” by acknowledging the “deep sense of humanity in respect of Duch.”

Uch Sorn

On Thursday morning, the Chamber summoned 72-year-old Uch Sorn,¹³ who had been imprisoned at M-13 from March 1974 to 1974. The Chamber experienced some initial confusion about Sorn’s identity, but this confusion was promptly resolved and questioning proceeded as scheduled.

Sorn’s testimony related primarily to the detention conditions and interrogation techniques employed at M-13, where he apparently witnessed, “torture [and] ill-treatment of prisoners in all forms.” Accused of being a “spy,” he testified to the total stripping of prisoners, being kept shackled in a pit and the constant deprivation of food. Additionally, Sorn affirmed Bizot’s testimony that illness was rampant at M-13. Further, he provided accounts of two summary executions he had witnessed at M-13. In particular, he recalled that on one occasion, four people had been attached to poles and forced to witness a co-detainee middle being shot in the head. Sorn also recounted an incident where Duch had apparently derived pleasure from watching a woman experience a fit of seizure, after he had severely beaten her.

Notably, his testimony differed significantly from Duch’s testimony with regard to the interrogation techniques employed at M-13. Sorn unambiguously testified that the immersion of detainees in water and the removal of fingernails were techniques that were regularly inflicted upon detainees. However, as soon as he was afforded the opportunity to do so, Duch questioned the veracity of such allegations, and reiterated his position that such practices were non-existent at M-13. Nevertheless, Duch accepted that Sorn’s testimony was “fundamentally” true.

With regard to detainee composition, Sorn mentioned that detainees comprised of men, women, several children and even former Khmer Rouge soldiers. However, when asked to provide specific figures on the number of detainees, Sorn’s testimony contained significant internal inconsistencies.

Expressing his sentiments towards the Pol Pot regime, Sorn stated his inability to comprehend how “Khmer people could bring themselves to kill Khmer people.” When Judge Lavergne confronted Duch with this statement, he explained that the killings were a by-product of “a class struggle in a liberated zone,” which entailed the need to eliminate “enemy spies.” When asked by Judge Lavergne if he still harboured any fear of Duch, Sorn answered in the negative, adding, “he is now a tiger without teeth”.

¹³ Uch Sorn was previously referred to by the Chamber as ‘KW-30’.



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