



## The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,  
alias 'Duch'

Report Issue No. 4:  
Week Ending April 26, 2009

KRT Trial Monitor - a program of The Asian International  
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War Crimes Studies Center and the East-West Center

***In this week's KRT Trial Monitor...***

***Accused Person Testifies to the Establishment of S-21; (p.3 and Annexure A); Judging History, or Fair Disclosure? Admissibility of Untested Documents in the Case File Challenged (pp.4-5); Translation Issues Seriously Affecting Proceedings – Chamber Requested to Order Administrative Action (p.8); Four Witnesses Heard over Three Weeks' Trial – Proceedings Likely to Take Longer than Previously Anticipated (Summary).***

### **1. Summary**

“My detailed roles in S-21, for which I felt deep remorse...[was] training and education of interrogators, so they had the courage to torture and interrogate, although they hated it...if we ponder deeply, this was the worst crime, compared to [my] other duties...”<sup>i</sup>

After a week's recess to celebrate Khmer New Year, trial proceedings at the Khmer Rouge Tribunal recommenced this week, with the Chamber hearing the remaining witnesses on the M-13 interrogation center. Despite efforts from President Nil Nonn to move proceedings swiftly to the testimony forming the substantive part of the case, the trial was dominated by procedural arguments for much of Wednesday, and the Chamber adjourned early on Thursday in order to consider outstanding motions. Hence, although the Accused began his testimony on the establishment of S-21 during Wednesday afternoon of this week, after three weeks of trial, the KRT is yet to hear any witnesses on S-21. As a result, the initial estimates of the trial completing in twelve weeks now seem somewhat unrealistic. Given the Chamber is yet to hear an estimated 49 further witnesses, proceedings may continue till at least the end of 2009.<sup>ii</sup>

Both the witnesses this week – Mr Chan Voeun and Mr Chan Khorn – claimed to be former guards at M-13. They testified to their experiences serving as Duch's subordinates, as well as general conditions at that prison facility. Duch denied that Voeun had ever been a guard under his command. While the witness' credibility was somewhat shaken by inconsistencies in his testimony, his role as a Duch's subordinate at M-13 was corroborated by Khorn. Khorn further testified to the fact that he was forced to serve at M-13, which Duch affirmed as the general condition for the youth called to take up posts from the 'base villages'. Although Khorn's account of M-13 differed from Duch's at some points, it seemed to support his assertion that he had never killed prisoners himself.

The Accused was then questioned on the issue of S-21's establishment, as well as the establishment of the Takmao prison (also known as 'Ta Khmouv prison') that preceded it.<sup>iii</sup> He testified to his appointment as the Deputy Chairman of the S-21 security center when it was established around September or October of 1975, and subsequent promotion to Chairman in March 1976. Duch also elaborated on the functions of the buildings at the former High School and the surrounding area, the composition of the interrogation unit, as well as his own role and duties and that of subordinates. The Accused Person seemed to paint himself as someone solely in charge of annotating and reporting confessions, passing down orders to subordinates, and training and educating interrogators. Somewhat surprisingly, he further stated that he had only stepped inside S-21's detention buildings during a visit he made to the facility – now a Genocide Museum (Tuol Sleng) – during the investigation phase of his case.

Trial proceedings were significantly hindered by the questionable quality of translation this week, with International Defense Counsel François Roux raising this as a serious violation of the Accused Person's right to a fair trial. According to Roux, about 50% of what was said during trial proceedings was being misinterpreted. Cambodian (or Khmer) monitors tended to estimate more conservatively, at around 30 – 40% of translation being lost. It seemed clear this week that the KRT is experiencing problems with translation of a magnitude significantly greater and more troubling than previously experienced by other international justice institutions. At points, it was impossible for non-Khmer speakers to understand the meaning of exchanges between the judges and the Accused Person. Interpreters are strongly urged to stop parties from speaking, if they are unable to translate at the pace at which people are speaking.

Finally, a key procedural issue regarding admissibility was raised this week. The issue concerns the extent to which interviews and documents on the case file obtained from non-governmental organization should be able to be considered at evidence during trial. While the Prosecution argues that all evidence on the case file is admissible, the Defense asserts that evidence not previously tested during the investigation phase should be limited in its application at trial. The Chamber's ruling on the issue, if in favour of the Defense, could have 'dramatic' consequences for the case as a whole.

## **2. Legal and Procedural Issues**

### **A. Abridged Summary of Witness Testimonies (M-13 cont'd) and Duch's Testimony on the Establishment of S-21**

The following is an abridged summary of the testimony heard at trial this week. For a complete summary, please consult Annexure A to this report.<sup>iv</sup>

#### ***Chan Voeun***

The now 56-year old Mr. Chan Voeun testified on Monday of this week, and claimed to be a former guard at M-13 – a statement that the Accused Person contested.<sup>v</sup> Voeun testified on the detention conditions, interrogation methods and executions at M-13, as well as on the Accused Person's character. His testimony did not correspond to Duch's statements in several respects. It was also both internally inconsistent, as well as with regard to prior statements the witness had given to the Office of Co-Investigating Judges ('OCIJ').<sup>vi</sup> Furthermore, it was not always clear what the witness actually saw and what

he had deduced through hearsay. As a result, the witness' credibility appeared to be questionable.

### ***Chan Khorn***

Monday afternoon and the bulk of Tuesday's proceedings were taken up by the testimony of witness Mr. Chan Khorn, who was the third and final witness to testify on M-13. The witness claims he was 13 or 14 years old when he was recruited as a guard at the camp in 1973. Late that year (or in early 1974) he was removed from M-13 and forced to work in the rice fields. Mr Khorn stated that he did not want to work at M-13, but he had no other choice than to follow the orders.

Khorn's testimony before the Court somewhat differed from his previous statement to the OCIJ. Furthermore, while his testimony supported Duch's assertions that he had never killed prisoners himself, it differed from the Accused's statements with regard to the presence of children and concerning the 1973 flash flood. In addition, Chan Khorn testified regarding insufficient medical care at M-13.

### ***Duch's Testimony on the Establishment of S-21***

Pursuant to its Direction on the Scheduling of the Trial, the Chamber officially declared its hearing of the evidence on M-13 completed on Wednesday. It then commenced questioning the Accused Person on its second category of evidence – namely, the establishment of S-21 – heralding the beginning of its consideration of the substantive issues of the case.<sup>vii</sup> After a brief set of questions from the President, Nil Nonn, Judge Ya Sokha began questioning the Accused Person in earnest. Judge Sokha asked the Accused Person to elaborate on the period between M-13 and his assignment at S-21. After briefly testifying to the transition between these two roles, the Accused Person noted he was first assigned to S-21 as Deputy Chairman, with 'Nat' (alias 'Brother 03') being the Chairman of the security prison. However, in March 1976 Nat left this position and Sun Sen (also known as 'Son Sen'), Duch's direct superior, promoted him to Chairman.

***Order of Establishment and Meaning of 'S-21'***. Duch asserted that S-21's establishment was ordered by Sun Sen. According to the Accused, the letter 'S' stood for 'Santebal', a reference to a new form of security force deployed by the Khmer Rouge regime. 'At that time, Sun Sen said we should no longer use the word 'police''. According to the Accused, this was because the 'police' looked after land/property, whereas the 'Santebal' would be deployed to preserve peace/security. The number '21' is said to have been Nat's 'communication number' at the time. Duch explained that S-21 was under the control of Son Sen, but that later Nuon Chea took over, during the time at which Son Sen was 'on the frontline'. The purpose of S-21 was to 'imprison, torture, and "smash" the prisoners.

***Location of S-21.*** After having moved locations a few times, the Center was finally located at the Pohea Yat High School (also known as 'Ponhea Yat' High School) in 1976, and on Duch's initiative. The site is now known as the Tuol Sleng Genocide Museum. Duch subsequently explained the location of the interrogation and detention facilities and the place where prisoner's pictures were taken and lists documenting their intake were written.

**Organizational Structure.** Upon answering questions concerning the organizational structure of S-21, Duch explained that the staff of S-21 came from M-13 and the Ta Khmau prison, as well as from the secret police. The staff was arranged in accordance to a certain structure, which Duch claimed was designed by Nat. He stated that upon his promotion, he did not change it.

**Role of Interrogators: Female Interrogation Unit Established After Rape Incident.** Duch also testified this week to the role of interrogators, providing a detailed description of several of interrogator's specific roles and duties. According to Duch, 'Hor' was in charge of the interrogation unit as a whole, but there were leaders assigned to groups of interrogators, details of which are further provided in Annexure A to this report. Notably, the Accused Person mentioned that he established a unit of female interrogators following on from an incident where 'a male interrogator sexually abused, or raped, a female detainee.' The Accused Person said the male interrogator 'inserted a stick into the vagina of the woman'. The description provided corresponds to the factual allegations of rape contained in the Closing Order.<sup>viii</sup> However, given Parties have been asked by the Chamber to curtail their questions to the establishment of S-21 at this stage, the Accused Person may be asked further questions on this evidence during a later stage of the trial.

## **B. Arguments Raised at Trial**

**Judging History, or Fair Disclosure? Ongoing Challenges Regarding the Admissibility of Case File Interviews at trial.** The issue of whether certain portions of the case file should be rendered inadmissible during trial was again raised as an issue this week. Consistent with arguments it previously put regarding the admissibility of interviews taken with now deceased persons, the Defense argued that portions of the case file – again relating to interviews conducted outside the course of the current judicial investigation - should be rendered inadmissible.

The admissibility issue previously arose in relation to interviews given by interviewees speaking to the Documentation Center of Cambodia (**DC-Cam**). Established in the mid-1990s, DC-Cam is an archival and historical research center which houses copies of several of the files that now also form part of Duch's case file. Prior to the Court's Khmer New Year recess, International Defense Counsel François Roux raised objections to these interview statements being used by Judge Lavergne to confront the Accused Person.<sup>ix</sup> At that stage, the Chamber decided it would render a decision on the issue 'at a later stage', and required the parties not to refer to the interviews until it had done so.<sup>x</sup>

Similar questions of admissibility arose again during this week's proceedings. In the first instance, Silke Studzinsky, international lawyer for Civil Party Group 2, tried to confront witness Chan Khorn with an interview he gave to DC-Cam in 2003, to which the Defense objected. This objection was overruled. Subsequently however, and upon recommendation by the Chamber, International Deputy Prosecutor Alex Bates submitted the Prosecution's intention to refer to another DC-Cam document concerning a Mr Chan Sothy. The Prosecution noted that, according to the OCIJ, Sothy was unable to be traced for interview. As a result, the Chamber heard procedural arguments on the admissibility of this, and other DC-Cam documents on the case file, on Wednesday morning.

On behalf of the Co-Prosecutors, Bates argued that the issue of admissibility should not arise in relation to documents already on the case file; the only concern was how much weight might be given to them. Bates based this argument on Rule 87(1), which clearly provides that “all evidence is admissible”. According to Bates, objections regarding the inclusion of a document in the case file should only be raised at the investigative stage, given the objection would amount to a request to cure a pre-trial procedural defect.<sup>xi</sup> Since the Defense failed to submit a motion to strike out the documents at the investigating stage, their admissibility could no longer be challenged.

Bates also challenged the Chamber’s Direction on the Scheduling of the Trial, which states that testimonies of witnesses who are dead or cannot be heard should only be read into the record upon the Parties’ consent.<sup>xii</sup> Bates argued that the Direction provided for an additional condition to admissibility not stipulated by the Court’s Internal Rules and was therefore inconsistent with them.<sup>xiii</sup> He highlighted that any ruling in line with the Direction could have important ramifications for the trial as a whole. ‘The potential impact of this ruling is extremely dramatic,’ he said. ‘It would put the power of admissibility into the hand of the opposing party, rather than that of the Trial Chamber: this cannot be the Chamber’s intention.’ Bates concluded that all documents on the case file were admissible, and the probative value of each document had to be established on a ‘case-by-case’ basis. ‘A blanket approach for categories of evidence should not be permitted’, he said. The Civil Party lawyers for all groups agreed in substance with the arguments raised by the prosecution.

International Defense Lawyer François Roux maintained his previous stance that interviews and statements taken in a non-judicial context, or which had not been subject to scrutiny during the current investigation, should not be admissible at trial. Roux appeared to argue that certain interviews conducted by DC-Cam were conducted in conditions rendering them ‘unsuitable to prove the facts they purport to prove’. He further asserted that such interviews could be excluded, because they were irrelevant and repetitious. To bolster this argument, he further cited the questionable competence of the interviewers and translators (from the perspective of a judicial process). He also cautioned that statements taken by interviewers working for non-governmental organizations may be taken with a particular agenda in mind and should therefore not be considered as evidence.

Roux also asserted that under the civil law system, the Chamber could rule documents inadmissible at trial even if they were in the case file. He noted that portions of the case file that had not been tested during the course of the investigative phase should have limited application at trial, particularly mentioning film footage shown by the Co-Prosecutors during their Opening Statement.<sup>xiv</sup> Contrary to Bates’ interpretation of the Rules regarding procedural defects, Roux contended that DC-Cam interviews were not ‘legal documents’ and therefore should not be considered ‘written records’ for the purposes of claiming they were defective during the investigative phase. Rather, Roux asserted that while such records could not be declared ‘void’ during investigation, they should have limited application at trial. ‘I warned you many times: what you are doing during the course of an investigation cannot be done afterwards,’ he said, pointing to the fact that the Accused Person should have been confronted with DC-Cam interviews during the investigation. Roux seemed to be taking less issue with archival documents, at one point leading to the parties to be speaking at cross-purposes: while Roux seemed to accept that certain documents which could be considered ‘DC-Cam records’ may be able to be admitted (including the document the Prosecution sought to admit), he argued

more generally that statements from interviews and articles in the organization's print publications should be inadmissible.

Issues regarding disclosure tend to dominate proceedings at international tribunals, with the admissibility of evidence forming a significant portion of the procedural debates tackled at other courts to date. However, what is perhaps novel about the debate emerging at the KRT is the additional challenges to admissibility that must be considered when a Chamber is grappling with a thirty-year temporal gap since the events in question occurred. Whereas at other tribunals, admissibility largely relates to reports and interviews issued at the time a conflict occurred (or shortly after) and statements taken solely during the course of the tribunal's investigations, Duch's case file is said to contain over 16,000 documents, spanning three decades - many of which were not the subject of inquiry during the Court's investigative phase. In addition to this, the KRT appears to be the first internationalized tribunal largely modelled – at least in theory – on French criminal proceedings. As a result, issues of admissibility not previously considered at other tribunals are being raised in this context. Although the Court's Internal Rules do favour broad admissibility (hence, tending to follow the precedent set by other international criminal tribunals) the KRT has endeavored to 'model' the Rules on the newly enacted Cambodian Criminal Procedure Code, drafted largely with assistance from France. According to Article 33 (as amended) of the Law on the Establishment of the Extraordinary Chambers, 'existing procedures in force' in Cambodia should take precedence when determining these issues. However, the Law also further states that in the event of uncertainty or inconsistency, 'guidance may be sought in procedural rules established at the international level'.<sup>xv</sup> Despite adjourning to consider the issue on Wednesday, the Chamber was unable to reach a determination, and stated that it would again, issue a decision 'at a later stage'.

***UNHCHR interview with Duch: Accused Appears to Allege Interview was Conducted Under Duress.*** Following last week's debate about the admissibility of an interview conducted by Christophe Peschoux of the UNHCHR, Judge Lavergne questioned the accused this week on the circumstances under which the interview was conducted. As the Court is yet to make a ruling on the admissibility of the interview in question, Judge Lavergne clarified that the questions would only be on the circumstances of the interview, and not the content of the interview itself.

When answering Judge Lavergne's questions, Duch claimed that Mr. Peschoux shouted at him during this interview.<sup>xvi</sup> He also stated that he was not informed of the purpose of the interview and had gone to the interview place under the assumption that they would be discussing the building of a school. Duch said the interview resembled an interrogation. According to the Accused, because Peschoux had said he was mandated by the UN to ask the Accused Person questions, he had felt 'obliged to answer'.

After being given leave to do so by the Chamber, International Deputy Prosecutor Alex Bates questioned Duch as to why he had not brought up these "serious allegations" against Mr. Peschoux at the investigating stage, when the OCIJ presented him with the interview. In response, international Defense Lawyer François Roux maintained that the Defense had indeed raised their objections at the time the accused was being questioned. Citing a document on the case file, Roux asserted that the Defense had raised their concerns about the extra-judicial character of the interview. According to Roux's quote from the transcripts of investigative proceedings, the Defense had unambiguously stated, "I consider the statement to the UNCHR obsolete and without

any interest today.” Bates responded by suggesting that the objections Roux raised regarding the relevance of the interview at the time and the current allegation of seeming duress were two separate issues, and the accused should have raised the latter before the OCIJ at the time. He then asked Duch whether he was only trying to prevent the Chamber from hearing the interviews because his statements to Peschoux were “more incriminating” than what he stated now in the courtroom. Roux interrupted Duch’s answer to this question, claiming that the prosecutor was trying to lure the accused into revealing the content of the interview, the admissibility of which was still to be determined by the Chamber. The Chamber accepted this observation as appropriate.

***Decision on Accused Person’s Provisional Detention To Be Further Delayed.***<sup>xvii</sup> On Thursday, the President read out a ruling on the review of the Accused Person’s provisional detention, delaying the Chamber’s release of its decision on the matter. The President stated that the final decision would be issued on June 15, 2009. Although the Chamber was aware that the Court’s Internal Rules obliged it to issue a decision within 30 days of hearing oral arguments on the issue, it noted that it could extend this time period, if circumstances that justified it doing so. The Chamber therefore ruled that there would be a 45-day extension to its determination of this issue, citing a number of grounds. These included: the delay in obtaining the Cambodian Military Court’s Case File on the Accused Person’s previous detention (deemed necessary for its deliberation); the previous one-week, and the forthcoming two-week, break; the need for sufficient time to enable translations of the documents to allow the parties to comment on the application; and the time required for the Chamber itself to deliberate.

## **2. Victim Participation and Witness and Victim Protection and Support**

***Attendance of Civil Parties.*** Civil Parties’ attendance in the courtroom was consistently low this week, with only three out of a potential ten seats being filled by Civil Parties. While monitors are unable to determine the number of Civil Parties (if any) seated in the public gallery, given the spaces for civil parties were not filled inside the courtroom, it seems reasonable to surmise that this comprised the entire number attending the proceedings.

***Witness Support in the Courtroom: Ambiguity Arises Surrounding Witness Support Functions.*** International Lawyer for Civil Party Group 2, Silke Studzinsky, exhibited care and concern for witness Chan Khorn this week, asking the witness whether he was comfortable testifying with the Accused in the room. While well-meaning, her question raised the concern of what the correct role of lawyers in asking such questions should be. The Court’s Internal Rules stipulate that Witness Protection Measures are to be ordered by the Chamber, including with regard to technical means used to allow remote participation in the proceedings. It would appear that as a result, the Chamber should make it clear to the Parties whether it has determined witnesses require these measures before they take the stand. The level of support provided to witnesses in the Courtroom generally appears to be fairly ambiguous, with there appearing to be no psychosocial support officers present during the proceedings to ensure witnesses are comfortable while testifying.<sup>xviii</sup>

***Victim Protection Measures: Pseudonyms Continued to Be Dropped, but Oaths and Rights Issues are Clarified.*** As was the case with last week, witnesses were questioned without the use of the assigned pseudonyms during proceedings. The

Chamber has not clarified why these pseudonyms were dropped. This prompted some concerns for monitors regarding what level of risk assessment has been undertaken to mandate the pseudonyms being dropped since the Court's initial hearing.<sup>xix</sup> In other matters, monitors noted this week the Chamber's commendable confirmation of witnesses having taking their oath outside the courtroom, as well as ensuring the witness' rights against self-incrimination were explained to them.<sup>xx</sup>

***Repetitive Questioning.*** The Chamber continues to endeavor to prevent repetitive questioning during the proceedings. The President Judge Nil Nonn warned parties not to do so a number of times this week, to varying degrees of success.

Similarly, the Parties have made some efforts to avoid repetitious or irrelevant questions. Notably, during Monday's hearing, in contrast to the examination of the Accused Persons and the previous witnesses, Civil Party Lawyers did not pose many questions to Chan Voeun. However, this may have been because they did not want to further aggravate the already apparent doubt cast over his credibility during the Chamber's questioning of the witness.

However, in the opinion of some monitors, submissions made by International Civil Party Lawyers regarding admissibility this week showed worrying signs that they may feel at liberty to unnecessarily restate arguments put forth by the Prosecution. Although Prosecuting Attorney, Alex Bates, eloquently stated reasons why the Chamber should not curtail the admissibility of documents, International Civil Party Lawyers appeared to feel compelled to further elaborate on the issue. While the lawyers were similarly articulate in their submissions, they largely repeated the argument, and did not bring any significant new issues or concerns to the Chamber's attention. In the case of Civil Part Group 1, Lawyer Karim Khan went so far as to request the right to be able to make submissions before the Prosecution, so that he could leave to attend to another appointment. This seemed unnecessary, given co-counsels on his team were present and could have made the submission in his absence. The Chamber may wish to consider issuing an order requiring common representation on procedural issues to curtail this kind of repetition. Notably, however, Cambodian Civil Party Lawyer, Hong Kimsuon, drew the Chamber's attention to provisions in the Criminal Procedure Code that may be of assistance during its deliberations.

#### **4. Trial Management**

***Judicial Management.*** Despite the slow pace at which the trial is progressing, the proceedings generally ran smoothly this week. Overall, the Chamber is making commendable efforts to ensure efficiency and curtail repetitive questioning. However, monitors noted that the Chamber issued a number of the rulings to this end only after one of the Parties had raised the issue.

At times, however, the desire to be efficient and the need to ensure fairness during the proceedings clash, perhaps signalling the inherent difficulties associated with balancing these two aims. In one instance this week, these competing considerations appeared to lead to the Chamber to reverse one of its rulings, without providing clear reasons for doing so. Following on from a ruling in which the Chamber allowed International Civil Party Lawyer, Silke Studzinsky, to question Chan Khorn on a prior interview statement, Studzinsky was subsequently prevented from confronting the witness, after he said 'he couldn't remember' the interview having ever taken place. The Chamber appeared to



become irritated by what appeared to be repetitive questioning by Ms Studzinsky. However, it was not clear why the fact the witness indicated he could not remember the interview justified prohibiting Studzinsky from confronting him with its content. This is especially so, given 'loss of memory' seems a fairly obvious tactic used by witnesses to avoid answering questions about prior statements during trial. Studzinsky seemed unwilling to comply with the Chamber's ruling, perhaps further aggravating the circumstances (See Courtroom Etiquette, below). The issue was also further complicated by the fact that translation issues were the primary cause for the witness not understanding the question. (See Translation Concerns, immediately below).

***Translation Concerns Seriously Compromising the KRT's Proceedings.*** Continuing the trend of proceedings to date, translation issues continued to frustrate the progress of trial this week, with two major concerns raised by the Parties. The first (and perhaps less pressing) concern related to the translation of documents in the case file, and in particular, a DC-CAM interview used during the proceedings. As was pointed out by the International Defense Lawyer François Roux, the Khmer and French versions of the witness' interview with the NGO appeared to refer to different dates, casting doubt over whether the documents referred to the same interview. Roux raised this as one of the grounds upon which such documents were unsuitable to be used during the proceedings.

The second – and more serious - issue was the ongoing decline in interpretation during proceedings, which triggered confused responses during questioning, witness frustration, and lawyers being prohibited from asking seemingly 'repetitive' questions.<sup>xxi</sup> For example, at one point during his testimony Mr. Chan Khorn pointed out that he would like to answer questions with all honesty, if only they were phrased in a simpler manner. It should be noted that in some instances, the interpreter's choice of words may be the cause of this misunderstanding, rather than the lawyer's questions themselves. International Defense Lawyer François Roux repeatedly raised this issue before the Chamber, arguing that the questionable quality of interpretation was detrimental to the administration of justice. He further requested that the Chamber order the Court's administration to remedy the situation. All the Parties generally supported his position, and the Chamber has determined it will issue a ruling on the problem prior to hearing the third category of evidence in the case.<sup>xxii</sup>

***Courtroom Etiquette*** The manner in which parties address the Accused was raised again this week, when one of the Lawyers of Civil Party Group 1 confronted the Accused with Chan Khorn's testimony.<sup>xxiii</sup> François Roux took offence at the lawyer's tone and demanded the Chamber to instruct the lawyer in question to be more polite, given the legal proceedings are "not a boxing-match". Furthermore, during the questioning of witness Chan Khorn, the International Lawyer for Civil Party Group 2 repeatedly posed questions to the witness on a prior witness statement, even after the Chamber had ordered the lawyer to stop doing so. Rather than addressing the Chamber on the fact that it had seemingly reversed its ruling, the lawyer continued to raise questions relating to the interview.

***Attendance:*** In the first three days of proceedings this week, there were about 30 to 50 people in the public gallery. On Thursday, however, the attendance increased tremendously. There were more than 400 people, with about 200 from the Am Liang Village, and some from other provinces, universities, and non-governmental organizations. Press and Public Affairs informed the monitoring group that the villagers

had been brought to proceedings as part of the KRT's outreach efforts - a measure that is commendable.

**Absence of Co-Prosecutors:** Both National and International Co-Prosecutors, Mrs. Chea Leang and Mr. Robert Petit, were not present during proceedings this week. Mr. Yet Chhakriya and Mr. Tang Senarong (rotating) appeared before the Chamber on behalf of the national side of the Office of the Co-prosecutors, while Mr. Alex Bates represented the international side of the office.

**Technical Problems.** Minor radio wave interruption to the relayed interpretation could be heard a number of times during the proceedings. This is commonly caused by the presence of other signal relaying items near the interpretation equipment, such as mobile phones. The problem can be prevented by ensuring everyone operating the equipment, including the interpreters, is prohibited from carrying such items in the "on" position. Notably, noise caused by afternoon showers caused difficulties in hearing what had been said, and resulted in a 10 minutes' cessation of the proceedings. Considering the approaching rainy season in Cambodia, the Court will be served better with the installation of a better sound-proofing system in the interpretation booth.

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<sup>i</sup>Testimony of Kaing Guek Eav alias 'Duch', on one of two aspects of his duties as Chairman of S-21, the other being to annotate and report on confessions. Wednesday, April 23, 2009, morning session (Monitor's own notes).

<sup>ii</sup>Monitors were told the witnesses due to testify comprise a total of 53. Based on an estimate of two witnesses per week, the trial would complete hearing all witnesses in a further 24.5 trial weeks or approximately 6 months. Assuming the Chamber does not take any further breaks, the trial could then complete, at its current pace, by mid December 2009 at the very earliest.

<sup>iii</sup>The Accused stated that Tak Mao was 'south of the current Tuol Sleng Museum' where Brother 03 alias 'Nath' would detain prisoners.

<sup>iv</sup>Please note that translation problems experienced during proceedings this week may affect the accuracy of these summaries. However, monitors have endeavoured so far as possible to ensure accuracy.

<sup>v</sup>Duch claimed that the witness was never a guard nor a prisoner at M-13.

<sup>vi</sup> For example, the witness started by saying that he was working in the economic unit and only occasionally worked as a guard when this was necessary. Later on, however, he said that he worked in the economic unit for 4 months, and then as a guard for the following 3 months.

<sup>vii</sup>Testimony on M-13 does not form part of the substantive charges faced by the Accused Person, as the events in question occurred outside the temporal jurisdiction of the KRT.

<sup>viii</sup>See Closing Order, paragraphs 105 and 137.

<sup>ix</sup> The document in question concerns In Von and Ham In, both of whom as deceased.

<sup>x</sup> The Chamber had issued this statement on April 7, 2009.

<sup>xi</sup>He further noted that that Court's Internal Rules made clear that the Closing Order would cure all such defects.

<sup>xii</sup> "[...] The Accused cannot be confronted with statements of witnesses yet to be heard. An exception to this is if the witness is dead or cannot be heard for another reason and the parties have agreed to the reading of the statement."

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<sup>xiii</sup> These exceptions can be found in Rules 87 (3) and 21 (1), (2) and (3), which the Prosecutor argued were not the case in the current situation.

<sup>xiv</sup> See KRT Trial Monitor Report, Issue No. 1, at Pages 1-2.

<sup>xv</sup> See Article 33 (as amended), Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, October 2006, available on the KRT's website: [www.eccc.gov.kh](http://www.eccc.gov.kh).

<sup>xvi</sup> According to the Cambodian monitors, what Duch said was actually "he was strict to me" in Khmer.

<sup>xvii</sup> See also KRT Trial Monitor Report, Issue No. 2, pages 4-5.

<sup>xviii</sup> This differs significantly from proceedings at the Special Court for Sierra Leone, where psychosocial support officers were present during proceedings to ensure that victims and witnesses were able to consult them, should they feel discomfort at any stage.

<sup>xix</sup> Although Judge Cartwright did note during the Court's initial hearing that witness pseudonyms were being used 'in the abundance of caution', it would seem appropriate for the Chamber publicly disclose the reasons why these pseudonyms have been dropped, given the various safety and security issues that may arise when witnesses testify before the tribunal.

<sup>xx</sup> Notably, however, the Chamber did not confirm exactly when or under what circumstances witnesses had taken the oath, which may also be appropriate.

<sup>xxi</sup> With regards to the last mentioned, as explained by the National Civil Party Lawyer for Group 2 and 3, the question posed by an International Lawyer of Group 2 on whether the witness remembered *having been* interviewed by DC-CAM was translated as whether the witness remembered *the content or the document* of the interview, to which the witness empathically stated that he could not remember because he was only a farmer. This response in turn triggered President Judge Nonn's ruling that the lawyer should not to pose questions on the document, given the witness could not remember it. Also, with regards to further questioning by the same International Lawyer, when she asked whether the witness *would want* to know about what had happened to his grandfathers at M-13, the Khmer version of the question was whether the witness *knew* about the fate of his grandfather, to which the witness, with apparent frustration, answered that he could not understand why he was asked with something he had already explained before, namely that he did not know what had happened to him, because at the time of their detention he had been sent away from the detention center.

<sup>xxii</sup> Roux said that 50% of what was said was lost in the translation process. He said that asking the parties to speak slowly and to put short questions were not enough to ensure the accuracy of the translation. He requested the trial chamber to order the administration to take immediate actions to deal with problem. This position was emphatically supported by Lawyers from Civil Party Groups 1 and 2

## ANNEXURE A

### A. SUMMARY OF WITNESS' ACCOUNTS

#### Chan Voeun

The 56-year-old villager Mr. Chan Voeun, previously known as by his pseudonym KW-31, was the first witness to appear before the Chamber this week. Chan Voeun claimed to be former staff of M-13. He testified on the detention conditions, interrogation methods, and executions at M-13, as well as Duch's character.

A large part of the witness' testimony did not correspond to Duch's statements about the events. Specifically, the witness testified that he personally saw Duch interrogating and torturing detainees, applying torture techniques including the burning of a female detainee's breasts with a torch, which the Accused had previously denied.<sup>1</sup> He also claimed to have seen Duch personally shooting (and executing) detainees on three separate occasions. When confronted with this testimony, Duch firmly denied those allegations and maintained his previous statements. He was visibly irritated by the testimony, which he called "a mixture of facts and fiction", and declared that "I can't accept this testimony". According to Duch, Chan Voeun was neither a staff nor detainee in M-13. Duch stated that "I met Chan Voeun only in this Court."

Notably, Chan Voeun showed inconsistencies in his own testimony, and there were also discrepancies between his testimony today and his statements made before the Co-Investigation Judges. Both Duch and the Chamber noticed this. Duch tried to point them out when giving the chance to comment on the witness' testimony. While reminding Duch that he was not supposed to do so at that particular point, the Chamber later openly asserted that there were inconsistencies. To verify the testimony, the Chamber ordered Chan Voeun's statements in the investigation stage to be read out, and asked the witness to either confirm or modify his previous statement whenever there was any discrepancy.

By questioning the witness with factual details, Prosecuting Attorney Alex Bates tried to demonstrate that the witness was indeed a staff at M-13, and that he personally saw the events happen. On the other hand, Roux mainly questioned the contested incidents, casting further doubts on the credibility of the witness and the veracity of his testimony.

#### Chan Khorn

Mr. Chan Khorn, a former guard at M-13, was the last witness to testify about M-13. In an apparently more comfortable manner than the previous day, he continued his testimony upon questioning by the Chamber and the parties on Tuesday. The witness, who was 13 or 14 years old at the time, addressed the flooding at M-13 in 1973. He stated that most prisoners had been saved, but four or five of them had drowned. This contradicted Duch's previous claims that no prisoners died during this flood.

With regards to the detainees' population composition, Chan Khorn initially said that there had not been any children in M-13. However, upon Judge Lavergne's confronting him with his statement before the OCIJ, he conceded that there were some.

The witness furthermore expounded upon his recruitment to M-13 and the end of his service there. Chan Khorn described how initially he had been told by the village chief to be a soldier; but instead was sent to work as a guard at M-13 in late 1973 or early 1974. He seemed to assert this was intentional, because he did not like the job and because his grandfather, who had served as a former military official in Sihanouk's army, was imprisoned at M-13. Duch then sent Khorn to work in the rice fields with other guards and prisoners at Oudong.

Upon a request to confirm the recruitment process by the Prosecution, the Accused corroborated the witness' account; he would select amongst the youth in the surrounding "base villages" whom he considered as fulfilling the criteria he had set. He then submitted this list to his superiors and they would pass the order of recruitment through the existing hierarchy to the local authority. Through further questioning the Accused conceded that the villagers did not have many choices at their disposal: any youth under 18 could only become either members of militias or office staff. With regards to the support of the "base villages" to the Khmer Rouge, Duch said the policy of smashing shifted from spies to villagers considered as "capitalists" in 1973. This eroded support from nearby villages for the revolution.

The witness also testified to the medical care at M-13. He described staff as "having not much knowledge on medicine" and noted medical provisions were scarce. Thus, although treatment was to be provided for ill guards and prisoners alike, many prisoners died because of lack of health care. The witness also noted that prisoners were not treated for injuries due to interrogation - which affirmed Duch's earlier statement that prisoners were to be kept alive only to enable further interrogation.

Chan Khorn's testimony before the Court, albeit different from his statement before the OCIJ, supported to a certain extent Duch's assertions that he never committed killings himself. (Chan Khorn stated that he had never seen Duch shooting or executing prisoners). As other witnesses before him, he described Duch as very strict, always acted according to the party's principle and the superiors' orders. Chan Khorn also mentioned that during his time at M-13, he himself was very frightened of the revolution's orders: in response to a question from Francois Roux he made it clear that he 'had no choice, but to work at M-13, or he would lose his life'.

## **B. DUCH'S TESTIMONY ON THE ESTABLISHMENT OF S-21**

On Wednesday afternoon, the Chamber announced the end of discussion on M13 and the start of the proceedings on the first substantive topic of the trial, namely the establishment of S21 and Ta Khmouv Prison.

The President summoned Duch to the dock to begin the questioning of the Accused on S-21. Duch started by explaining the period after his service at M-13 ended, starting from 24 April 1975. At that time, he, along with four other people from M-13 were invited to attend training by the Party in Phnom Penh. The training lasted for half a month and subsequently, upon Son Sen's order, he stayed at Phnom Penh Train Station. According to the Accused Person, Phnom Penh train station was designated for cadres awaiting assignment orders from Pol Pot. Duch stated that prior to his assignment, Nat, the Supervisor of Ta Khmouv Prison, brought him to visit the 'Security Center'. In September or October, Duch claimed that Nat brought him to a villa on Street 431 and told him to receive prisoners from Ta Khmouv to be interrogated. This, he claimed, was the start of S-21. Thus, Ta Khmouv was called the principal prison and S-21 was an interrogation center. Prisoners at the Ta Khmouv prison were transferred to S-21 to be interrogated and smashed.

**Initial Assignment.** Initially Duch was assigned as the Deputy Chairman of S-21, with Nat as the Chairman. However, in March 1976 Nat left the position and he was promoted by Son Sen into chairmanship of the Interrogation Center.

**S-21 Ordered By Son Sen.** Duch asserted that S-21's establishment was ordered by Son Sen, at the time the seventh highest person in the Party. The letter S stood for preserving peace/security (Santebal) and the number 21 was his "communication number". The closure of Ta Khmouv, according to Duch, was upon order by Son Sen, who stated that the location was 'demanded by the Social Affairs Division'. After ordering his subordinate, Hor, to clean the place from the bones buried there, he and Nat organized Ponhea Yat High School as the new prison. Duch explained that S-21 was under the control of Son Sen and later, Nuon Chea, during the time Son Sen was in the frontline. The purpose of S-21 was to 'imprison, to torture, and to "smash"' the prisoners. As previously stated by the Accused Person, the term 'smash' is an euphemism for 'kill'.

**Location of S-21.** During its existence, S-21 moved between a number of locations: first it was on the corner of Street 163 and 360 (Location 'A' on a map used during court proceedings). Then it moved to PJ (*Police Giudiciare*) prison, by Nat. Duch claimed he was never consulted with the decision regarding the premises, but he deduced that the re-positioning was because it was difficult to manage the prisoners and interrogation at Location A since it was a residential building. The Security Center returned to Location A, according to Duch because the Superiors determined it to be done. In March 1976 he was appointed as the Chairman of S-21 and shortly after, Duch requested to his Superior to allow the relocation of the Center to Ponhea Yat High School, with the same reasoning he had deduced as Nat's when he first had moved it to PJ. His request was granted.

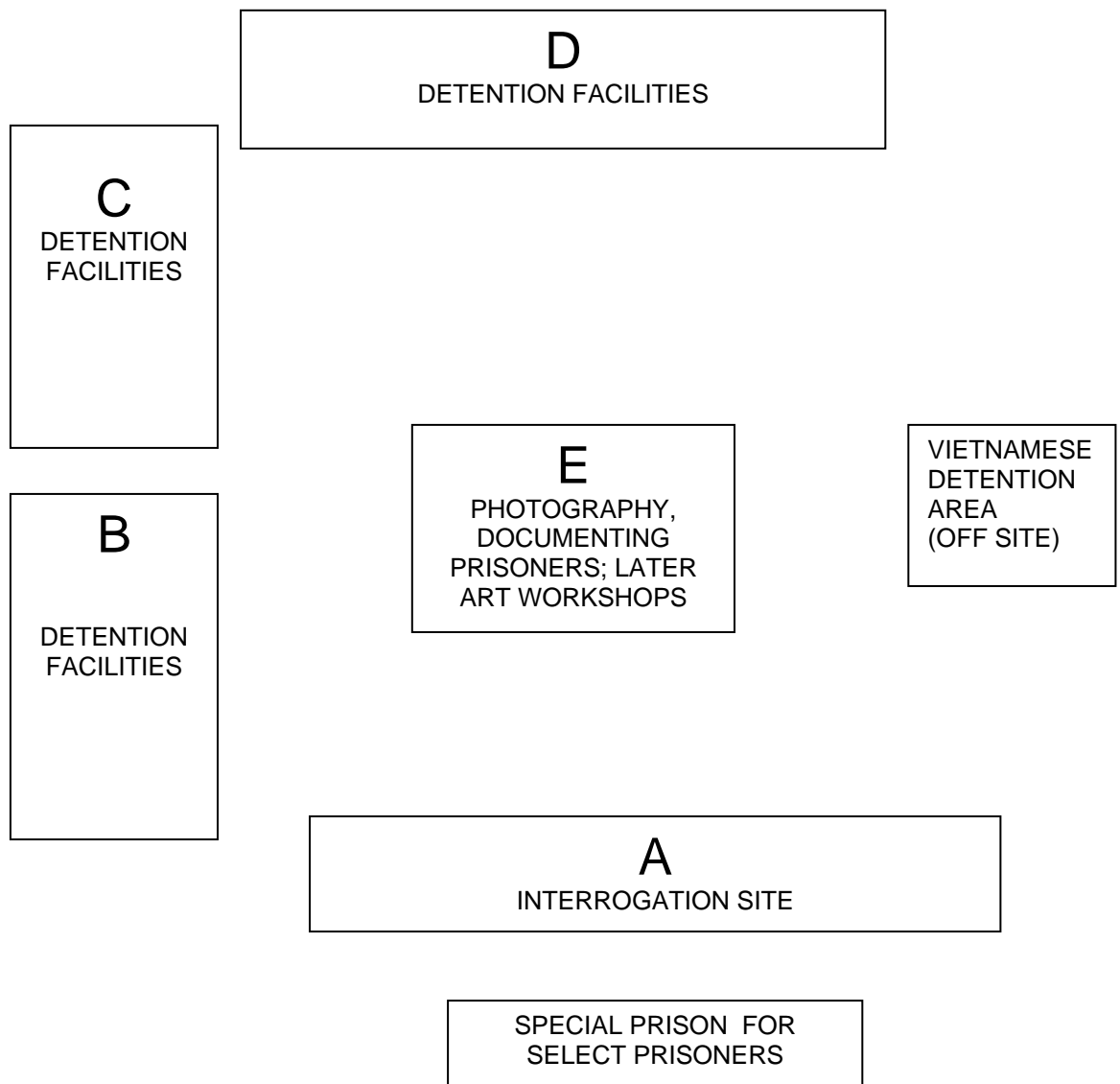
Duch arranged the utilization of the buildings in the Ponhea Yat High School complex as well as the surrounding area. He explained that there were five buildings there, marked A-E in the map displayed in the courtroom. Building A, was utilized as the interrogation site, while B, C, D were assigned as the detention facilities, and E was the designated place for taking the photograph of the detainees and making list of documents as well as archiving. Later on, it was further designation for painting and sculpting workshops. Duch explained that aside from the High School complex, the adjacent Tuol Suay Prei Elementary School was also utilized as a workshop. Building A was not the only interrogation site however. Duch also pointed out that there was a specific place assigned for the interrogation of key persons to the South of Building A and another one for Vietnamese detainees at the East of the complex. Most notably, Duch claimed that although he had ordered the construction of individual cells in the buildings assigned for detention purposes, he had never entered them before his visit to S-21 as arranged by the OCIJ during the investigative phase. A diagram showing the positioning of buildings A-E is included as Part C below.

**Staff at S-21.** With regards to the composition of S-21 staff, Duch explained that the composition of S-21 staff was a mixture between his former staff from M-13 and Nat's from Ta Khmouv Prison (Division 703) as well as from the Secret Police. The staff was arranged in accordance to a certain structure, which Duch claimed was designed by Nat, and upon his promotion, he did not change it. He conceded however that when he was the Chairman he drew the organizational chart as can be found in the Case file. Thus he retained the units such as the Production Unit and the Interrogation Unit, which Nat had established during his chairmanship. The accused claimed that he was more focused on the Interrogation Unit.

In further elaboration on the structure and division of tasks at S21, Duch explained that he had assigned Comrade Hor to be in charge of the daily management of S21, and that Nun Huy was tasked to be in charge of the establishment of Prey Sar, as well as re-education. He described his own duty as, firstly, to annotate the confessions gathered from people who were tortured (cross-checking them to other confessions) before reporting to his Superiors. Secondly, which he described as his 'most criminal' duty, he was to train and educate interrogators, ensuring that "they dare to torture and interrogate although they hated it".

**Structure of Interrogation.** Specifically on interrogation, Duch expounded upon the staff structure for the purpose. He described 'Hor' as the person who was in charge of interrogation, although there were two staff, Pon and Mom Nai, who were assigned for interrogating specific types of detainees. Pon was to exclusively in charge of interrogating key prisoners, and Mom Nai Vietnamese POWs. For other detainees, interrogation was undertaken by 4 teams, each headed by a lead interrogator. The first three teams were the 'cold' team, 'hot' team, and 'chewing' team. The fourth team was added to the structure after a male interrogator sexually abused a female detainee. This team consisted of 4 women, who were the wives of the cadres, and were assigned solely to interview women detainees.

**C. DIAGRAM OF S-21 BUILDINGS (NOT DRAWN TO SCALE)**



**D. TIME MANAGEMENT TABLE**

The following table shows the number of hours in session this week. Most notably, on Wednesday, the Chamber took an extended lunch break, and thus the hearing continued without any afternoon break. On Thursday, the hearing started 30 minutes late and ended at 12.15PM in order to give the Chamber time to resolve a number of pending decisions.

<b>DAY/ DATE:</b>	<b>START:</b>	<b>MORN. BREAK:</b>	<b>LUNCH:</b>	<b>AFT. BREAK:</b>	<b>RECESS:</b>	<b>TOTAL HOURS IN SESSION</b>
MON. 20/04/09	09.10AM	10.34 – 11.00AM	12.11 – 13.40PM	14.43 – 15.05PM	16.30PM	4 HOURS 57 MIN
Tuesday 21/04/09	09.06AM	10.30- 10.55AM	12.05- 13.35PM	14.45 - 15.15PM	16.20PM	4 HOURS 49 MIN
Wed 22/04/09	09.10AM	10.48 – 11.35AM	12.15 – 14.00PM	No	16.15PM	4 HOURS 33 MIN
THUR 23/04/09	09.30AM	10.45 – 11.07AM			12.20PM	2 HOURS 28 MIN
<b>AVERAGE NUMBER OF HOURS IN SESSION:</b>						<b>4 HOURS, 20 MINS</b>
<b>TOTAL NUMBER OF HOURS THIS WEEK:</b>						<b>16 HOURS, 47 MINS</b>
<b>TOTAL NUMBER OF HOURS, DAYS AND WEEKS AT TRIAL</b>						<b>48 HOURS over 11 TRIAL DAYS over 3 TRIAL WEEKS</b>





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