



The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 5:
Week Ending May 2, 2009

In this week's KRT Trial Monitor...

Duch explains Khmer Rouge policies (p.3); Clashes between Common Law and Civil Law continue (p.4); Accused is reprimanded for his approach to a Civil Party Lawyer (p.5); Chamber Makes efforts to Expedite Proceedings (p.6).

1. Summary

'Zone Standing Committee...the Central Office Committee...the Standing Committee...and the General Staff...these are the people who are most responsible [for the crimes] according to Cambodian Law.'ⁱ

This week's trial proceedings at the Khmer Rouge Tribunal were dominated by the Accused Person's testimony: first (and continuing from last week), on the establishment of S-21; and subsequently, on the implementation of the policies of the Communist Party of Kampuchea ('**CPK Policy**'). Despite the trial continuing to move slowly, the Chamber evinced a strong desire to expedite the proceedings, issuing constant reminders to Parties to ensure they directed their questions to the specific evidence under consideration.ⁱⁱ

Following on from last week's questioning, the Prosecution and Civil Parties sought this week to establish the extent to which the Accused Person had autonomy at S-21, as well as his role in interrogations. Duch maintained that he abhorred 'police work', yet could not refuse his superior's orders. As a result, he said, he tried to keep a distance from the daily operations at the security center. While he continued to apologize for his 'many crimes', Duch was firmer on who should be considered 'most responsible' for them, either intentionally or inadvertently invoking the KRT's mandate. In this regard, he named four groups of people who had the authority to order arrests and send detainees to S-21, stating emphatically that 'they were the most responsible under Cambodian law'. On Thursday, questioning centered more on the ideology underlying the CPK's attempt to radically transform Cambodia, with the Chamber asking Duch to explain the meaning behind several sections of the Party's Statute and the Constitution of Democratic Kampuchea.

With regard to legal and procedural issues, critical determinations on the admissibility of untested portions of the case file were again deferred this week. President Judge Nil Nonn explained on Monday that since the matter required the judges to consider carefully both national and international bodies of law, the Chamber would take the upcoming two-week recess to make its determinations and issue a reasoned decision. Further debates on the difference in procedural practice between common law and civil law systems again emerged

this week – this time concerning the Defense’s right to discuss with the Accused the evidence being presented at trial, as well as the extent to which Parties should be allowed to ask leading (or ‘closed’) questions. The Chamber gave a clear indication that it would not be limiting the Defense’s right to speak with its client, but did not provide adequate reasoning on the latter issue for monitors to assess whether or not leading questions are prohibited.

In a somewhat surprising announcement on Tuesday, International Defense Counsel Francois Roux informed the Chamber that he had been summonsed urgently to The Hague, thus leaving Duch in the hands of his Cambodian Defense Counsel for the remainder of the week’s proceedings. Although the Court’s Internal Rules do not prohibit Roux from doing so, the Accused Person’s representation seemed to suffer as a result. Duch appeared to become more assertive on issues – in many instances, in order to protect his own rights and interests – and at one point became somewhat unruly, laughing and being sarcastic towards one of the Civil Party Lawyers. The Chamber reprimanded him as a result. At another point, Deputy Co-Prosecutor Alex Bates rose to ask the Chamber to include the Accused Person’s perspective in a line of questioning about the agreed facts – a point which would have perhaps been more appropriately raised by his own Defense Counsel.

While translation continued to be a concern this week, it appeared less problematic than during previous weeks, perhaps due to the concerted effort made by the Chamber, the Defense and the Accused to correct the mistakes being made. The Chamber further assured the Parties that it had noted the translation issues and would be working with the Court’s Management to resolve them.

President Nil Non announced this week that the Chamber did not intend to break for a holiday in July and August, though as this report went to print, the official timetable for this time period had not been issued.ⁱⁱⁱ Proceedings will resume on Monday, 18 May 2009, after the Court completes a two-week recess.

2. Legal and Procedural Issues

A. Abridged Testimony of the Accused Person

The following comprises an abridged version of the summary of Duch’s testimony for the week ending April 30, 2009. The complete summary can be found in Annexure A to this document. Annexures B and C provide the reader with the diagram of the command structure that Duch referred to during proceedings, and a map of the location of S-21, respectively.^{iv} Both this summary and Annexure A are arranged by topic, rather than by the order in which they were raised during proceedings. Furthermore, where the Accused Person merely repeated his statements from last week, these statements were only included if he gave new information about them.

Duch’s testimony comprised two parts this week: first, he gave ongoing responses to questions about the establishment of S-21, and second, he discussed his role in implementing the policies of the Communist Party of Kampuchea (**‘CPK Policy’**). Questions raised by the Prosecution and Civil Parties on Monday and Tuesday largely centered on establishing the extent of Duch’s autonomy as Chairperson of the Security Center. As well as this, both Parties sought to negate the claim that he was an unwilling participant in ‘police work’. The Accused Person reaffirmed the stance that he was merely following orders, albeit the fact that his status as Chairman enabled him to decide on a number of issues. He further maintained that he had only ever interrogated one prisoner himself.^v

As has been noted in previous reports, the Chamber has chosen to consider evidence on a 'topic-by-topic' basis. This in effect means that Parties must segregate their questioning of the Accused and witnesses to a particular area of the evidence. Although the judges and the Parties made distinct efforts to tackle the evidence as per the Chamber's direction this week, it was clearly difficult for them to maintain a ring-fence around various interrelated topics under discussion. There remained a number of instances this week where questions and answers regarding CPK Policies were raised during the Accused Person's testimony on the establishment of S-21, and vice versa. In some instances, this appeared to lead to the same or similar questions being asked more than once.

The Chamber will continue to hear evidence on the implementation of CPK Policies at S-21 when the trial resumes on May 18, 2009.

Continued Evidence on the Establishment of S-21

Ta Khmouv Prison. Ta Khmouv Prison (also known as Takmao Prison), a former psychiatric hospital, was turned into a prison a few days after the Khmer Rouge took power in 1975. The evidence about the prison is likely to be important to the Chamber's assessment of the establishment of S-21 due to the fact that some of the prisoners interrogated at S-21 were originally detained there. The Accused Person alleges that 'Nath' was Chairman of the prison until it closed in August, 1976.

Organizational Structure of the Units at S-21 and Prey Sar. Following on from last week's more focused discussion on the interrogation unit, Duch explained how the S-21 ran and functioned as a whole, giving detailed explanations about each of the other units under his overall command.^{vi} He gave the Chamber an overview of each of the following: the military unit, the typing unit, the phone and communication management unit, the photography unit, the food security and production unit, the medics, and the subunit to reproduce maps. Of key importance was his discussion of the military unit, through which he gave detailed evidence about the role of the special units used to receive and register victims, guard prisons outside of S-21, and bury corpses at Choeng Eak. He also further gave evidence about the reporting structure at S-21. Regarding Prey Sar, Duch explained that this was primarily a correction facility for ill-disciplined combatants, as well as being used for the agricultural production of food.

The Implementation of CPK Policy at S-21

Policies. The latter half of the week was somewhat dominated by a discussion about the ideology of the Khmer Rouge and how this ideology was implemented at S-21. Duch asserted that he believed in the 'concepts of socialism and Leninism' during his youth, but that he became disillusioned after the fall of Phnom Penh in April 1975, due to the bloodshed he saw. The Constitution of Democratic Kampuchea and the party Statute were both discussed in detail, with Judge Lavergne asking for clarification on the meaning of a number of sections of these documents. Duch noted that party members were encouraged to keep a strong stance toward perceived enemies in order to keep the party 'clean and pure'. The definition of 'enemy' however, seemed to change over time. When questioned on whether Pol Pot's approach to communism was Maoist, he said it was 'not even Maoist', but 'Pol Pot-ist', seemingly adopting 'even crueler approaches' than the Chinese regime.

"Smashing" and Purges. Duch also gave detailed testimony regarding those who had the authority to order executions (also referred to as 'smashing' or 'smashes') and periods of purges.

According to the Accused Person, only four groups within the movement were authorized to order smashes: the Zone Standing Committees (for targets at the base level), the Central Office Committee (for areas surrounding the Center Office), the Standing Committee (for Independent Sectors) and the General Staff (for the Center Military). Duch also claimed there were two periods of purges: the period after 17 April 1975 (when the party concentrated on purging former Lon Nol officials, police and soldiers) and after a Standing Committee decision dated 30 March 1976 (which comprised an internal purge).

The Accused also testified to the re-education programs deployed by the CPK. Further information on this (and other topics) can be found in Annexure A to this report.

B. Issues Raised or Observed During Trial

Documents Selected By Parties from the Case File a ‘Submission’? After seeking the Chamber’s permission to distribute to all parties a compilation of documents from the Case File last Thursday, oral arguments with regards to the circulation of the compiled documents were heard on Monday morning. International Deputy Prosecutor, Alex Bates, maintained that since the compilation only comprised a selection of documents, without analysis or comments from the Prosecution, the document compilation should not be considered a ‘submission’ for the purposes of Rule 92.^{vii} Furthermore, he insisted that all Parties had the right to select documents to establish sufficient proof of the facts.^{viii} The Defense argued that this form of document selection amounted to a submission for (or selection made in support of) the Prosecution’s case. As a result, François Roux argued, allowing the submission was partial and biased and should be contested before the Chamber decided whether to accept it. The Chamber overruled the Defense’s objection, agreeing with the Prosecution that other the Parties could submit similar compilations, provided no additional analysis was provided.

The Clash of Systems Continues: More Debates on Civil Law vs Common Law. Two further procedural questions turning on distinctions between common law and civil law approaches to procedure arose at trial this week. The first related to the issue of whether Defense Counsel should be able to discuss with their client the testimony he has given during the course of trial. The second related to leading or ‘closed’ questions.

With regard to the first issue, Civil Party Lawyer for Group 1, Alain Werner, questioned the extent to which the Defense should be able to discuss outside of the proceedings the testimony given to the Chamber by their client.^{ix} Werner argued that Rule 90(2) of the Court’s Internal Rules, which sets out the order in which the Parties question an Accused Person, should be interpreted to limit the right of the Defense to question their client on the evidence given at trial.^x Defense Lawyer François Roux argued that, unlike in the common law system, where the accused was questioned as a witness, in the current civil law proceedings the Accused did not swear an oath when he takes the stand. As a result, the Accused should be allowed to discuss his position with his Counsel. ‘Nobody will prevent me from [discussing with] my client whatever [is] said during the hearing’, he said. In a civil law system, doing so would be ‘disastrous’. The Chamber ruled on this issue in favor of the Defense’s position on Tuesday.

With regard to the second issue, on Tuesday, Defense Lawyer Francois Roux raised an objection to the Prosecution posing what he argued were ‘closed’ or leading questions to his client.^{xi} Roux described ‘closed questions’ as ‘questions already containing the answer expected, which he said the opposing counsel was not allowed to pose.’^{xii} Curiously, Roux appeared to be supporting the common law principle that prohibits leading questions, despite the fact that this rule would seemingly not apply to these proceedings on counsel’s previous

analysis. The Chamber overruled the Defense's objection. However, there was no clear explanation as to whether it made this determination because leading questions are allowed, or because the Co Prosecutor's questions were not considered leading, or 'closed', in this instance.

The Impartiality of Document Translation. During the Prosecution's questioning of the Accused on Tuesday, the Defense queried the neutrality of the translated versions of the documents being presented. According to the Defense, discrepancies existed between the translated versions of some confessions annotated by Duch and the interpretation of the Greffier's reading of these documents. The Prosecutor explained that the translations being read were done 'in-house' by the Office of Co-Prosecutors, as the heavy workload of the Court's Interpretation Service made it 'necessary for each party to do as much translation as possible'. The Defense submitted that the Prosecution should file a note for each document that it had translated in this manner, alerting the Chamber and the Parties to the fact that it was subject to a "free-style translation". It also expressed specific concerns about documents translated by the NGO DC-Cam. The Chamber stated it would rule upon this matter 'at a later date'.

Representation of the Accused. Defense Counsel François Roux was absent from proceedings on Wednesday and Thursday.^{xiii} Although the Court's Internal Rules do not oblige both National and International Counsel to be present,^{xiv} Roux's absence did appear to impact negatively on the extent to which the Defense advocated for the Accused Person's rights. Cambodian Defense Counsel Kar Savuth seemed to be significantly less active than his international counterpart in asserting his client's rights. Notably, there were a number of instances in which the Accused himself raised objections to the manner of questioning during proceedings. He also further had to ask the Chamber to view a document raised by Counsel for Civil Parties Group 2, after complaining twice that he could not understand the lawyer's interpretation of it.

Right to remain silent. The Accused attempted to exercise his right to remain silent a number of times on Wednesday. He based his ability to do so on two grounds: the first was, the question asked was repetitive; and the second was, the question touched on a subject that, in his opinion, should be discussed at a later point in the proceedings. In both instances, the Chamber allowed the Accused Person's objections. It will be interesting to see the extent to which the Chamber gives the Accused person leeway to exercise this right during the course of the trial.

3. Victim Participation and Witness and Victim Protection and Support

Order of Civil Parties' Questioning to Be Reversed to Avoid Unfairness. President Judge Nil Nonn noted the inherent 'unfairness' of the sequence of Civil Party questioning this week. His Honor pointed to the fact that Civil Party Lawyers for Group 4 were always the last to pose questions, due to the procedure currently adopted by the Chamber to hear lawyers in the same sequence as the groups they represented.^{xv} He therefore ruled that, for the next category of evidence being presented, the sequence would be reversed, starting from Civil Party Lawyers for Group 4 and working back to Group 1.

Accused Person Behaves Inappropriately Toward Civil Party Lawyer. During the Wednesday's questioning of the Accused by Civil Party Lawyer for Group 2, Silke Studzinsky, the Accused showed signs of disrespect towards the lawyer when answering her questions. Duch seemed to be perplexed at Ms. Studzinsky's manner and line of questioning, and showed it by laughing and even replying sarcastically, before refusing altogether to answer by raising his right to remain silent.^{xvi} The President of the Chamber reprimanded the Accused, requesting

him 'to use proper gesture[s] in answering and exercising right to remain silent... [and] to not laugh when addressing questions.'

Request to Identify CP Number in Motion. Further evidence of tensions between the Accused Person and Civil Party Lawyer Studzinsky emerged this week, when it became clear that Ms Studzinsky had filed a motion protesting greetings made by the Accused Person toward Civil Parties when he enters the courtroom. In an apparent attempt to dissociate itself from this (and potentially other motions) raised by different groups, Civil Party Group 1 filed a separate submission requesting all motions be marked with the name of the Civil Party Group raising the issue. The request was clearly aimed at ensuring that motions submitted by one Civil Party Lawyer were not deemed the position of all the Civil Party Lawyers. Studzinsky argued before the Court on Monday that a mere signature should suffice to identify the author of a motion. She noted that even members from the same group of Civil Parties did not always agree on the position being advanced, hence meaning the numbering would not necessarily assist the Chamber in clarifying which lawyers and parties concurred with its author. Agreeing with the argument put forth by Group 1, the Chamber rendered a decision concerning this issue on Tuesday afternoon, overruling the arguments by Civil Party Group 2 and requesting parties to clearly state on whose behalf they file a motion.

Witness and Victim Protection and Support Issues Clarified. Last week, monitors reported on the ambiguity surrounding the level of support given to victims and witnesses testifying at the KRT, citing a possible lack of victim and witness support in the courtroom.^{xvii} Correspondence received from the Court this week somewhat clarified the process adopted at the KRT. According to Wendy Lobwein, the Coordinator of the Court's Witness and Experts support Unit ('WESU'):

"...The ECCC via WESU has services of psychosocial support available to witnesses in three stages: the first stage is the period prior to their testimony/interview when support services can be provided to assist with physical, emotional and psychological and/or practical preparation issues; the second stage is focused on the witnesses' day/s of testimony when 24 hour services of support and assistance are provided including constant accompaniment at the Court during the day of testimony; and the third stage is the period after the witnesses testimony is concluded, where WESU will provide follow-up services of support and/or referral. WESU has staff within its Unit who are trained and qualified to provide these services. Additionally WESU works closely with non-governmental organizations, particularly, the Trans-cultural Psychosocial Organization Mental Health Programme, Cambodia ('TPO') who have identified and trained a number of mental health professionals to assist WESU."^{xviii}

Monitors will continue to correspond with the Court regarding this issue, to determine the extent to which follow-up services are utilized when provided. Ms Lobwein also clarified the consultation process between WESU and the Trial Chamber for the use of Witness Protection Measures, noting that protective measures will be ordered after consideration of a number of factors, "such as the nature of the request; details about a specific individual. It will frequently include interviews with the identified witnesses, and any necessary research, advice or information from other agencies and authorities on any particular matter that may assist the Trial Chamber in deciding how best to provide the safety and security required by witnesses as is provided in the Rules." Ms Lobwein further clarified that to date, no witness protection measures have been ordered, despite the abundance of caution exhibited by the Trial Chamber at the Court's initial hearing.^{xix}

4. Trial Management

Judicial Management. The Chamber continued to make commendable efforts to avoid undue delays during the proceedings this week. In particular, Judge Sylvia Cartwright tried to expedite a request for extension for a written filing by asking the lawyer in question to provide her position verbally instead.^{xx} This was just one of a number of instances where the Chamber prevented submissions on matters from being unduly prolonged.

The Chamber also endeavored to keep proceedings focused on the topics being presented.^{xxi} Despite this constant reminder, some lawyers still asked questions outside the predetermined scope of evidence being assessed.^{xxii} The Chamber also expressed its intention to act more assertively, stating on Wednesday that it would reserve the right to interrupt the Parties where it thought appropriate to do so. Heeding this intention, all Parties seemed to limit their lines of questioning accordingly.^{xxiii} As a result, repetitious questioning seemed to be less of a problem this week.

Scheduling of Trial Proceedings. The Chamber assured the Parties that a new directive on the scheduling of trial would be issued this Thursday, covering the hearings in May and June. However, as this report went to print, this information had been yet to be released to the public. The Chamber further informed the parties that it would not sit from June 1 – 5, 2009, because the Pre-Trial Chamber will be holding hearings during that week. However, the judges do not foresee any recess in July and August and noted they would be discussing this with the judges of the Pre-Trial Chamber, to determine whether pre-trial hearings planned for the last week of July will be going ahead.

Upon request of Civil Party Lawyer Philippe Cannone, the Chamber further reassured the Parties that decisions concerning the admissibility of untested portions of the case file, as well as on the translation issues, would both be rendered after the two-week of recess. According to the Chamber, these matters required a ‘detailed discussion’.

Courtroom Etiquette. As previously discussed, tensions emerged between the Accused Person and Civil Party Lawyer, Silke Studzinsky, this week. The Accused Person became somewhat overly assertive when answering some of Studzinsky’s questions, and Studzinsky appeared to interrupt him when he was not answering her directly. Duch refused to answer several questions she posed, and at other times replied somewhat sarcastically. His demeanor during her questioning was at best, indifferent and at worst, disrespectful. At some points he openly laughed at the lawyer. The Chamber later reprimanded the Accused for doing so. (See ‘Civil Party’ section above).

Translation Concerns. Translation problems continued to persist during the proceedings, although the issue did not appear to be raised as much as in previous weeks.^{xxiv} This may have been due to the fact that no witnesses were testifying this week, and the Accused Person (who understands French) seemed vigilant in ensuring that his testimony is translated correctly. Judge Sylvia Cartwright also invited the parties to correct mistakes immediately, should they discover any.

Public Attendance. Public attendance was fairly high this week, with an average of 150-200 people attending each day. Monitors noted in particular the attendance of Cambodian villagers and students. On Monday, about 70 people from Prey Veng commune, Dong Kor District Phnom Penh were organized to go to the Court. On Wednesday, with the support of DC-Cam and the Court’s Public Affairs section, 100 villagers from Kandal Province and around 70 Phnom

Penh residents managed to attend the hearing for a whole day. DC-Cam also organized and supported the attendance of several villagers last week – a fact that was attributed wholly to the KRT in last week’s monitoring report. According to a source from DC-Cam, the Court’s Public Affairs section was responsible for bringing villagers from Dangkor District, Phnom Penh, whereas DC-Cam was responsible for bringing in villagers from Am Liang.^{xxv} A large number of university students also attended on Monday and Tuesday.

Parties’ Attendance. Still only 3 Civil Parties were in the courtroom this week; however their counsel have been present throughout the proceedings.^{xxvi} Both National and International Co-Prosecutors, Mrs. Chea Leang and Mr. Rober Petit, were not present during proceedings this week. As with the case last week, Mr. Yet Chakriya and Mr. Tang Senarong (rotating) appeared before the Chamber for the national side of the Prosecution and Mr. Alex Bates for the international side. As noted previously, Defense counsel François Roux was not present on Wednesday and Thursday. He announced this on Tuesday and explained that it was because his presence was suddenly required at the Special Tribunal for Lebanon in The Hague, where Mr Roux is scheduled to act as the Principal Defender. The short notice prevented his Assistant International Defense Counsel from attending the Court in his absence, although international legal consultant, Ms Héleyn Uñac, was present throughout proceedings. Cambodian Defense Counsel Kar Savuth was also present during proceedings.

TIME MANAGEMENT TABLE

As can be seen from the table below, despite efforts to expedite the proceedings, the Chamber’s time management appeared to slip towards the end of the week, with an early afternoon recess on Wednesday and a lengthy lunch break on Thursday causing monitors some concern. The Chamber continues to average around 4.5 hours in session per day each week.

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON 27/04/09	09.05AM	10.30 – 11.10AM	12.05 – 13.40PM	15.00 – 15.25PM	16.25PM	4 HOURS 40 MIN
TUE 28/04/09	09.10AM	10.25 – 11.00AM	12.05 – 13.35PM	14.40 – 15.20PM	16.30PM	4 HOURS 35 MIN
WED 29/04/09	09.15 AM	10. 45 – 11.15 AM	12.05 – 13.35 PM	14.50 – 15.15PM	16.10 PM	4 HOURS 25 MIN
THU 30/04/09	09.15AM	10.40 – 11.08AM	12.00 – 13.58PM	15.05 - 15.28PM	16.20PM	4HOURS 16 MIN
AVERAGE NUMBER OF HOURS IN SESSION:					4 HOURS 29 MINUTES	
TOTAL NUMBER OF HOURS THIS WEEK:					17 HOURS 56 MINUTES	
TOTAL NUMBER OF HOURS, DAYS, AND WEEKS AT TRIAL:					65 HOURS 56 MINS over 15 TRIAL DAYS over 4 TRIAL WEEKS	

ⁱTestimony of the Accused Person, Duch at trial proceedings this week.

ⁱⁱAs a further note of caution to lawyers, it also warned the Parties that it would interrupt them if it thought questions were irrelevant.

ⁱⁱⁱThe President of the Trial Chamber will discuss with the President of the Pre-Trial Chamber whether there will be Pre-Trial hearings held in the last week of July, or whether the Trial Chamber could sit.

^{iv}Both documents form part of the case file.

^vThe Prisoner in question is a Mr Kouy Tun.

^{vi}With regards to his role in the command structure and reporting more generally, however, Duch reiterated that his subordinates reported to him, and subsequently he reported to the Standing Committee.

^{vii}The Parties may, up until the Closing Statement, make written submission as provided in the practice, direction on filing of documents. The Greffier of the Chamber shall sign such written submission and indicate that they are received and place them in the case file.

^{viii}The Civil Parties supported the submissions of the Prosecution.

^{ix}Last Thursday, the Defense had asked the leave of the Court for the Accused to clarify his answers during the previous day's questioning, claiming that during his discussion with his client after the session, they had discovered that his account had been mistranslated.

^xRule 90(2) of the Internal Rules provides for the order of questioning the accused, namely "the Chamber, then the Co-Prosecutors, then the Civil Parties, then the Defense Lawyer".

^{xi}This may also be referred to as Leading Question. At some points, Bates asked a long question containing the answer he expected to attain, such as "... would you not say that in August 1975 the Party considered you as the perfect candidate to lead interrogation at S21?"

^{xii}Roux hereby defended a common law approach.

^{xiii}See below, at 'Parties' Attendance'.

^{xiv}Point 12 of the Direction on the Scheduling of the Trial also states that "As long as one lawyer representing or defending each party is present, the proceedings will generally continue"

^{xv}His Honor made this observation as Hong Kim Suon, counsel for Civil Party Group 4, was about to question the Accused.

^{xvi}One example of this was during Studzinsky's questioning the Accused on an apparent inconsistency between his statement before the Court and his documented statement before the OCIJ with regards to the number of interrogation team at S21. Duch was trying to answer when she interrupted and asked him to just affirm whether he had said what was stated in the English translation of the document. Duch waved at her direction, laughed, and said "[relax], don't be too anxious Ms. Studzinsky, I am trying to answer your question". He proceeded in explaining that the apparent inconsistency was due to translation discrepancy: namely the lack of plural-singular signifier in Khmer was translated in English version as signifying "one". At another point, during questioning on how he could replace Nath's duties as the Chairman in the event of his absence without knowing much about the situation in the ground, Duch again laughed and in sarcastic tone replied "Ms. Studzinsky obviously has never been in the military ..."

^{xvii}See KRT Trial Monitor, Issue No.4, at page 7, 'Witness Support in the Courtroom: Ambiguity Arises Around Witness Support Functions'.

^{xviii}Email correspondence from Wendy Lobwein, Coordinator, Witness and Experts Support Unit, April 28, 2009.

^{xix}Ibid. See also KRT Trial Monitor, Issue No.4, at p.7, 'Victim Protection Measures'.

^{xx}The issue in question related to a filing submitted by lawyers for Civil Party Group 1 with regard to procedures for clearly marking motions submitted to the Chamber to distinguish between Civil Party Groups. Lawyer for Civil Party Group 2, Silke Studzinsky, noted she was going to have to request an extension to file a response, due to problems obtaining translation for the motion to meet the timing set by the Chamber for responses. Judge Cartwright therefore asked her to submit her arguments orally and 'in two sentences' to avoid further delays on a seemingly minor point in debate.

^{xxi}For example, during Tuesday and Wednesday's proceedings, the President repeatedly reminded the parties that questions should be focused only on the establishment of S-21.

^{xxii}Understandably, since the issues maybe overlapping and interrelated, making it sometimes difficult to distinguish which category the questions fall in.

^{xxiii}For example, the Accused reserved answers to some questions from the Civil Party lawyers for a "more appropriate time"; the Civil Party Counsel responded by endeavoring to remain focused on the evidentiary topic identified. Furthermore, earlier in the week International Defense Lawyer Francois Roux strenuously objected when questions were repetitive; in his absence, and the Accused simply refused to answer questions he deemed as such. Similarly, at another point, and again to avoid repetition, International Assistant Prosecutor Alex Bates apologetically interrupted International Lawyer for Civil Party Group 2 stating that the Co-Prosecutor would address the issue she was raising during the discussion of the functioning of S-21.

^{xxiv}This being said, Defense Lawyer Roux and the Accused Person continued to be especially assertive in pointing out translation and interpretation issues at various instances.

^{xxv}Email correspondence with DC-Cam's Legal Advisor, April 29 2009.

^{xxvi}A source from a local non-governmental organization stated that low Civil Party attendance is not due to a lack of interest or engagement by Civil Parties, but due to the failure of the Court to assist them to attend the trial.

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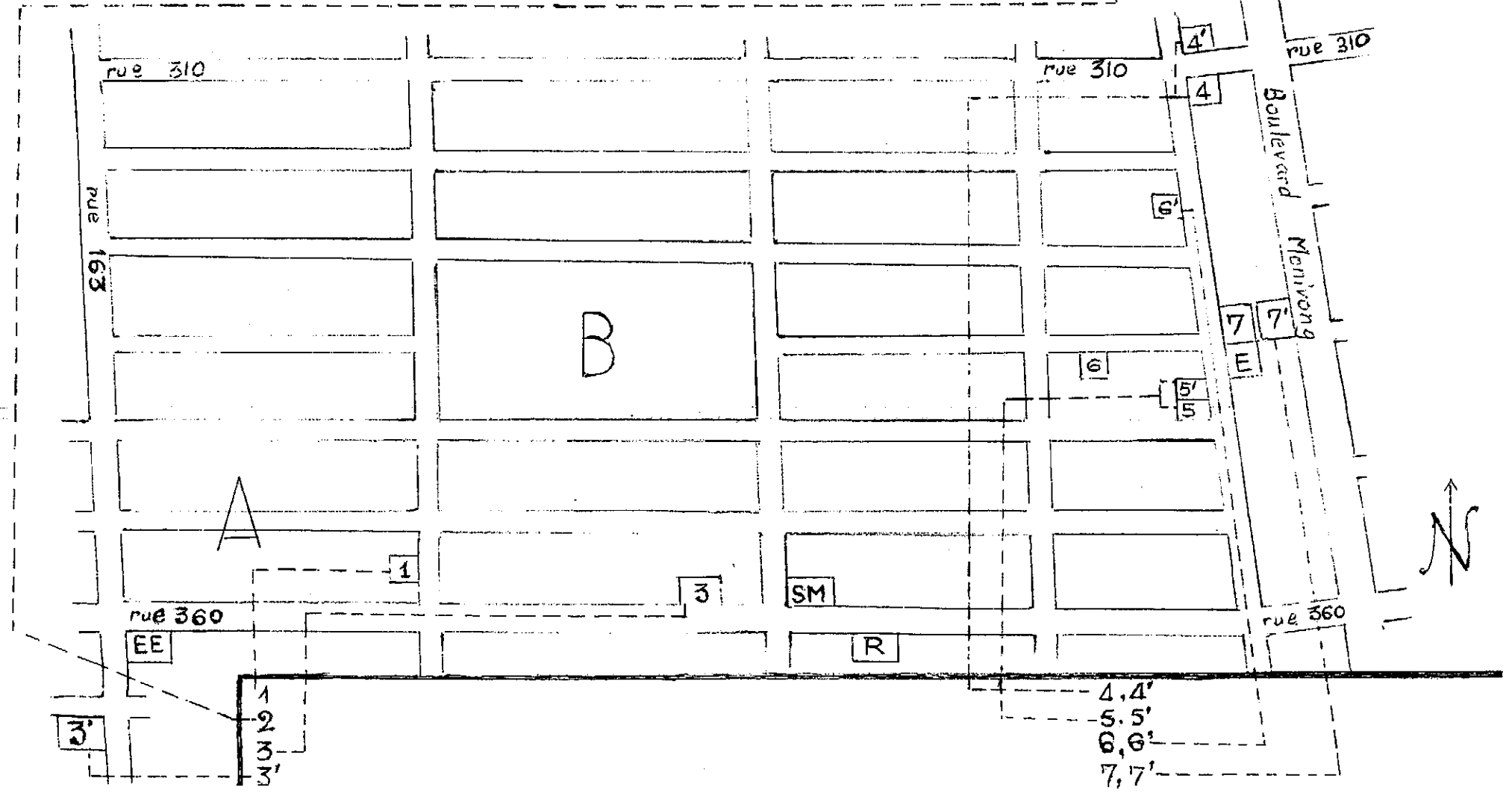
Bureau S.21

N°1

Mr. Duch

Secteur Phnom Penh

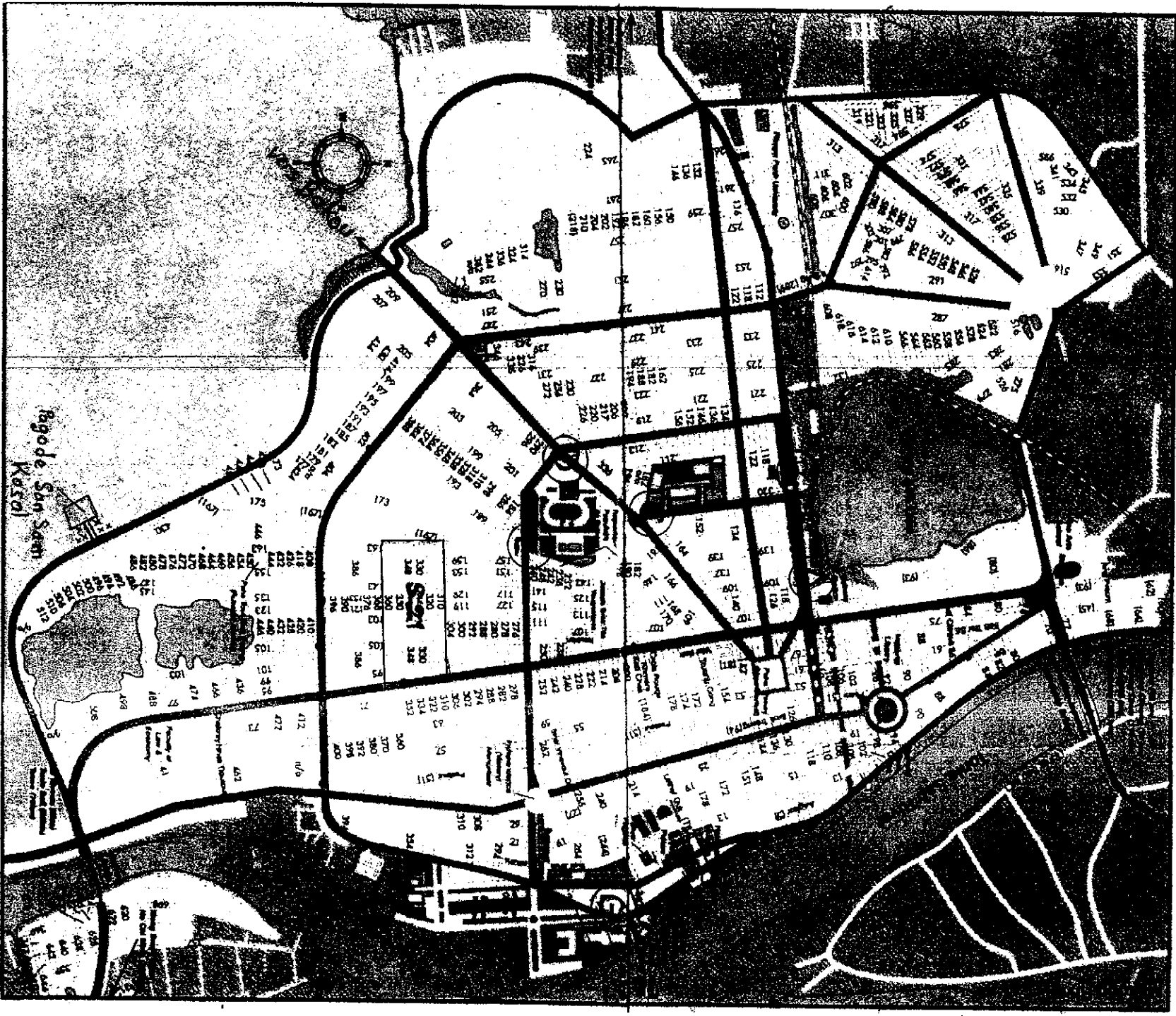
Maisons et bureaux successifs de Duch



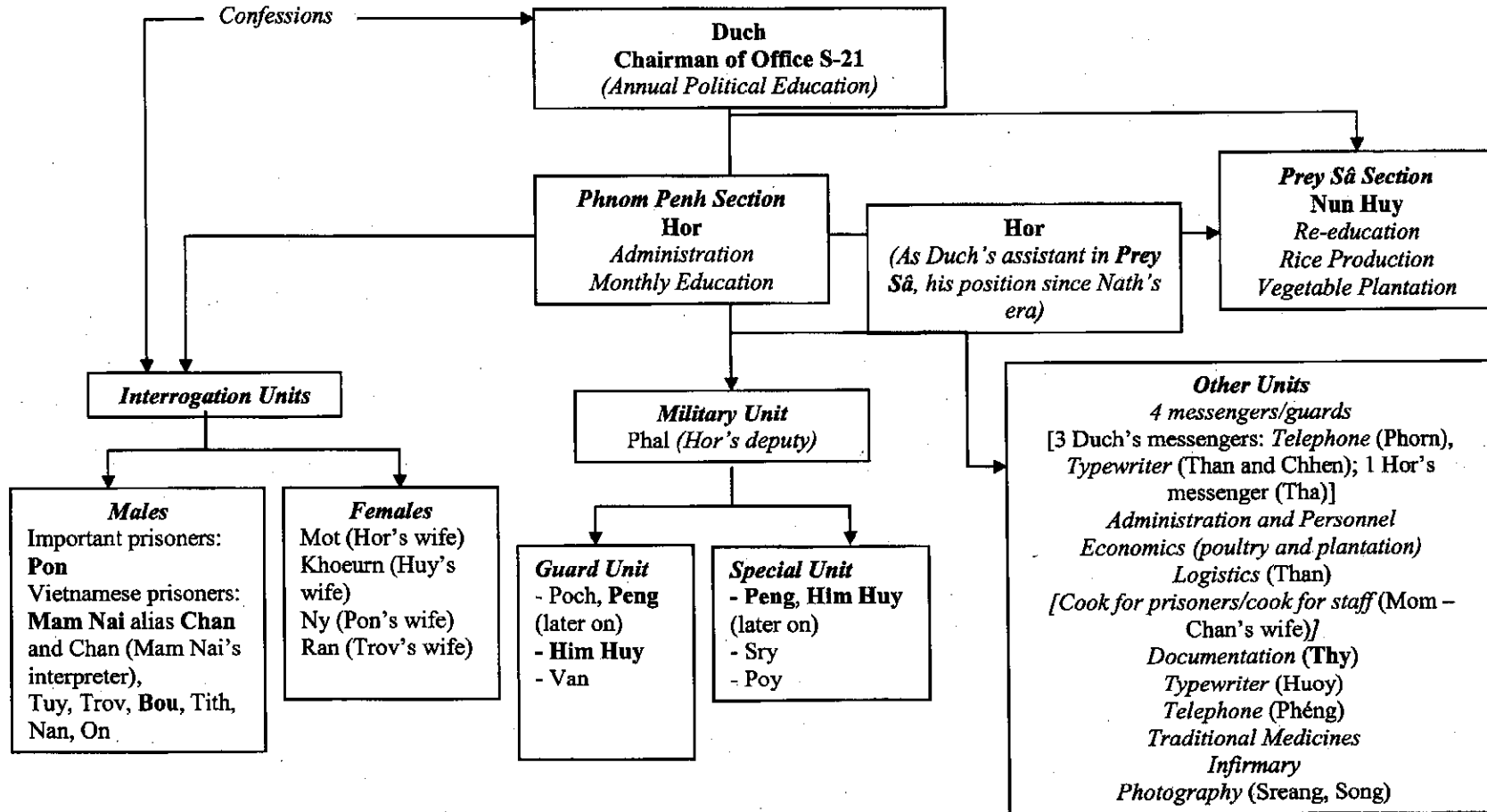
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MAP OF PHNOM PENH

N. 2



Committee of Office S-21: Duch (*secretary*), Hor (*Duch's deputy*) and Huy (*Committee Member*) before the arrest of Nun Huy (in the second half of 1978)

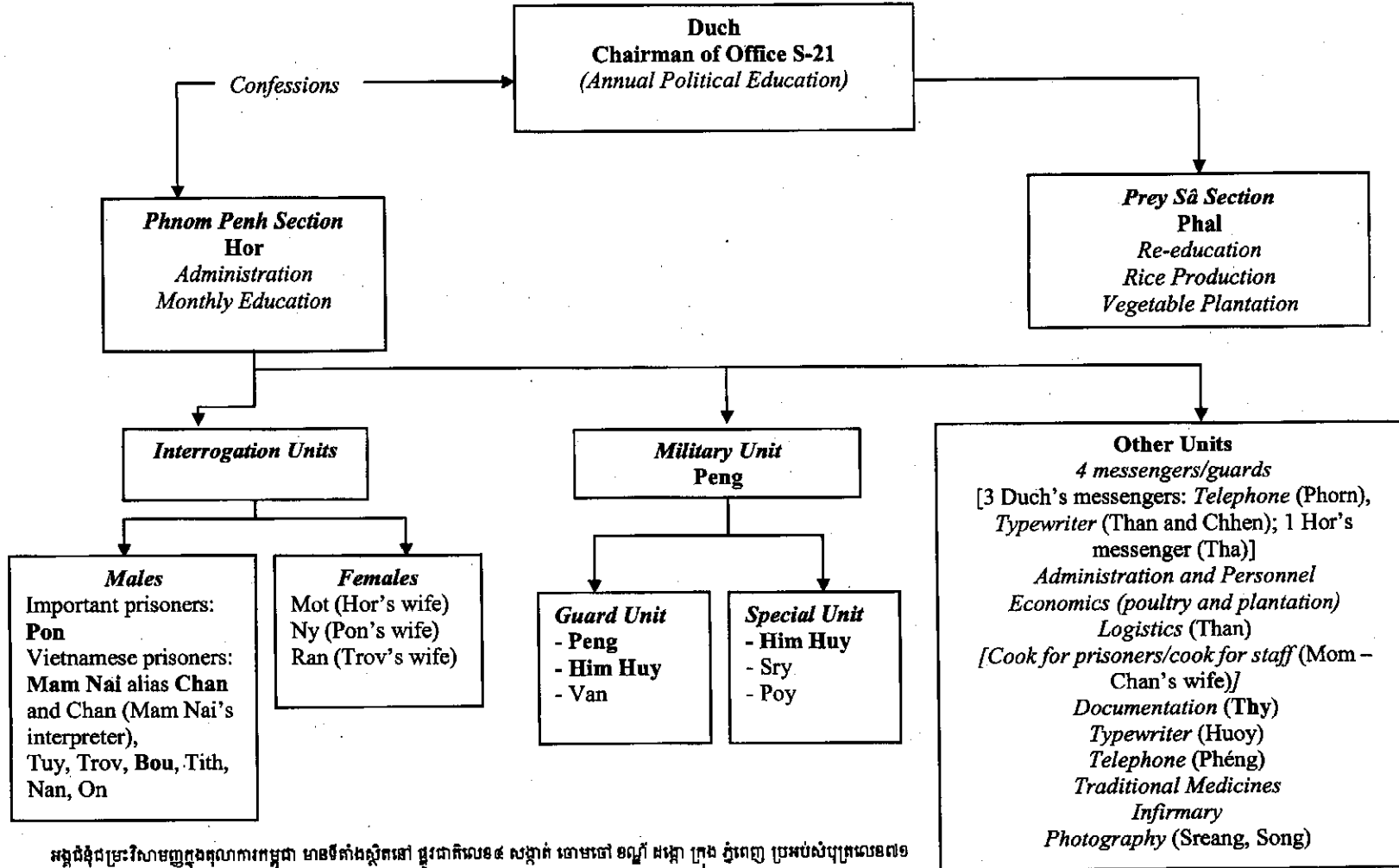


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ទូរស័ព្ទលេខ +៨៥៥(០)២៣ ២១៨៩១៤ ទូរសារលេខ +៨៥៥(០)២៣ ២១៨៩៤១។

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Committee of Office S-21: Duch (*secretary*), Hor (*Duch's deputy*) and Phal (*Committee Member*) after the arrest of Nun Huy (in the second half of 1978)



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៥ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១
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Confession

The Establishment of S-21

Ta Khmouv

Ta Khmouv was the prison where Nat was the Chairperson, and deemed to be important in the establishment of S-21 because at the early stage the prisoners who were interrogated at the Center were detained there. Duch explained that it used to be a psychiatric hospital, which was turned into a prison and a plantation a few days after the liberation on April 17, 1975. Duch claimed he only knew a few things about Ta Khmouv, because he was a deputy to Nath at that time and he only visited the prison once with Nath. According to Duch, the prison ceased to be operational on 15, August 1976, namely, 3 months after Nath was officially transferred to another position. The building subsequently was handed over to the Ministry of Social Affairs. Duch claimed not being involved in the operational management of the prison, a duty that was designated to Hor.

Duch Chairmanship at S21

Duch stated that he was appointed as chairman of S-21 after Nath was replaced. He asserted that when currently analyzing his past, he concluded that he was chosen because he was better at interrogation and at teaching interrogation methods to others. Furthermore, he was more trustworthy, honest and faithful to the party.

Duch has consistently maintained that he did not want to be appointed to S-21, that he hated security work. He noted the two occasions he tried to avoid the position, once before coming to Phnom Penh, when he asked his superiors to be positioned at industry department and when Nath was transferred, in which he tried to propose someone else to be the Chairman. However, he said he never directly told anyone that he disliked the security work, for doing so would be detrimental to his and his family's safety.

Organizational Structure

This week the questioning addressed the other units aside from the interrogation, namely the military unit, typing unit, phone communication management unit, a photography unit, medics, food security and production unit, as well as a sub-unit to reproduce maps.

Duch explained that the military unit was under the supervision of Hor (Phal ¹was his deputy), whose duty was to arrest, detain and smash prisoners. Although Duch claimed not knowing too much about the details of this unit- such as how many personnel were there- he explained that it consisted of guards and special unit. The duties of the guards were to guard detainees, provide food and medicine (in order to keep prisoners alive for interrogation), send prisoners to the interrogators and prevent the escape of prisoners. Normal guards were assigned inside S-21, whereas the special force guarded the special prisons outside the S-21 compound. Other tasks of the special force included to receive victims and register them, before delivering them to the guards. Furthermore, the special guards were responsible for defending the unit from internal interventions (e.g. when an enemy grabbed a weapon) and from outside interventions (however, there

¹ Duch painted Phal as “Phal was one of the ... absolute cadre. Someone who was absolute to commit the crime. Amongst the cadre of Division 703, Phal was the [most] absolute to commit the crime”

were none). There were also 3-4 members of the special unit stationed at Choeung Ek, with the duty to dig pits and bury corpses.

Duch explained that after the upper echelon decided to replace Nath with Duch; Hor then was promoted to be Deputy Chairman and Phal served as his Deputy. Peng was promoted to being in charge of the military unit. Phal, while had to report to Duch, was the person in charge at Prey Sar. He affirmed that Hor was in charge of the daily operations of the center and also reported to him.

Composition of Staff

This week Duch elaborated further on the youth recruited for S-21. He claimed that their recruitment was his initiative, approved by the Superior. He asserted however, that teenagers were “too young for serious duties”, and thus he only chose a few of them to be messengers, while the rest were put under the Military Unit’s supervision. The children and teenagers were appointed because of their good biographies.

He further explained that while the staff of S-21 originally also comprised of personnel from Division 703 and from the “city people”, the majority of them fell victim to the purges. Thus at the later stage, the remaining staff of S21 were mainly those recruited from M13, and the youth from Kampong Chhnang.

Locations

Duch reaffirmed that the relocation to Phohea Yat High School as well as the determination of Choeng Ek as the execution and burial ground were his initiatives, the latter he decided without consulting the superior.

Reporting Structure

According to Duch, his subordinates reported to him, and subsequently he reported to the standing committee. He displayed various confessions which he annotated and sent to Son Sen and later Nuon Chea, addressing them “respectful brother”. Other annotations in the documents showed that Sons Sen passed these documents on to Pol Pot or circulated them within the standing committee, as he found appropriate. However, activities within the S-21 organization were not reported to the superiors in writing, but verbally, because Duch claimed to meet his superiors “quite often”.

Prey Sar

Duch explained that Prey Sar was for the correction of ill-disciplined combatants as well as for the production and plantation of food. Duch stated that Prey Sar was under his complete supervision, through the reporting of his subordinate Phal.

Methods of Interrogation

Duch stated that interrogation and torture methods at S21 were similar with S-21. They were also consistent with other security offices. The difference could be seen in the use of confessions. He further stated that he learned the torture methods mainly from his experience as a prisoner in the Lon Nol regime, as well as from books he read.

However, Duch emphasized that he had never interrogated prisoners himself except for one prisoner called Kouy Tun.

The Implementation of CPK Policy at S-21

Policies

On Monday, upon inquiry by Judge Ya Sokhan, Duch claimed that the 10 rules currently at display at the Tuol Sleng Genocide Museum were created by the Vietnamese. He acknowledged however that the policy at S21 represented the “strict” party line.

On the last day of the week the issue that was discussed at length was party ideology and how it was implemented at S21. Judge Lavergne presented the CPK statute and the DK Constitution and asked for clarification on the meaning of various sections of the documents. During this discussion, Duch asserted that during his youth he believed in the concept of socialism and Leninism, but after the Fall of Phnom Penh, as he watched people being driven away and killed, he was disillusioned. He considered that Pol Pot’s approach to communism was not even “Maoist”, but “Pol Pot-ist”, with even crueler approaches than the Chinese regime at the time.

With regards to the Party ideology, according to Duch, it dictated members to keep strong stance towards those perceived to be enemies to keep the party “clean and pure”. The definition of enemies, however, changed across time, as elaborated in the “smashing and purges” section of this appendix. In line with the aforementioned party ideology, Duch acknowledged that the main principle in S21 was that once a person was arrested and brought to S21 (s)he would not be released- even in the case of false arrest.

Position of S21 in CPK structure

The characteristic of S21 was compared to other Security Offices in the country at the time in the questioning on Tuesday. Judge Lavergne inquired upon the inference in the Closing Order that S21 was at the top of Security Offices hierarchy. Duch however replied that all Security Offices were equal, and any difference² between it and the others only occurred due to its geographical proximity to the Standing Committee.

Smashing and Purges

With regards to the order to smash, Duch noted that based on a document dated on 30 March 1976 attributed to CPK Central Committee, only four groups of people had the authority to do so, namely the Zone Standing Committee (for targets at base level), the Central Office Committee (for areas surrounding the Center Office), the Standing Committee (for Independent Sectors), and the General Staff (for the Center Military), whom he claimed as the people “most responsible according to the Cambodian Law. In his testimony on Tuesday and Wednesday, the Accused clarified there were two different period of purges: firstly was the period after April 17, 1975, where the purges were concentrated on the former Lon Nol officials, police and soldiers. The second was

² The differences inquired by the Judge, amongst others, were S 21 capability to receive prisoners from other zones and the arrested Central Committee members would be detained and interrogated there instead of other centers.

after a Standing Committee's Decision dated 30 March, 1976 from the standing committee, the main task became internal purge.

Upon questions of Judge Cartwright and Judge Lavergne on Tuesday, Duch agreed that once a family member was killed, the rest of the family would also gradually be smashed. The same applied to the hierarchical structure. If a superior was arrested, his subordinates would also be arrested.

With regards to the purges at S-21, Duch explained that when Hor saw any wrongdoings, he had to report to Duch. If he did no report, he himself would be in trouble. Duch then reported to his superior who in turn would decide whether to smash the respective person. Duch claimed that Hor and Huy would propose who to arrest and then ask Duch for his decision. Duch acknowledged that he did not have to ask approval from his superior to make these decisions, but only needed to report them. Only in some special cases, should he seek permission. Duch argued that he had to follow the orders, thus he had to report on his own subordinates he suspected of doing something wrong³. Duch was aware that if he reported someone, this would lead to a decision to arrest that person.

Education

Duch himself was also required to attend political training once a year. Participants were assigned three types of documents during these trainings for them to learn and understand, i.e., political documents, ideological documents, and organizational documents. This he did before his appointment as the deputy chairman of S-21. Duch explained that he went to Phnom Penh on June 21, 1975 to attend a political training. During the training, participants were required to provide their biographies and write about their "revolutionary opinions". While claiming that he never lied to his superior, Duch admitted that in his biography, he did not reveal his family connection with Lon Nol.

Duch further explained that during the annual trainings, the members would be provided with training materials, to be used for the training of his subordinate. Thus after his training, Duch would conduct short trainings with cadres to pass down the political ideas.

Duch pointed out the education of young people as one of the same characteristics of M-13 and S21. Young people were educated in a way that aimed at cruelty, using the communist terminology. This education (or transformation as judge Lavergne put it) in essence turned young people into cruel persons.

³ This may suggest that Duch had a certain discretion about whom to report. It should be noted when Duch elaborated on this point, he stated "[but saying the victims had done something wrong] seemed like pointing fingers at the victims who died. We the educators and the reporters were part of the crime. We did not educate them [enough] to be determined at their job and were quick to report them". However afterwards he retreated back to his stance that he had to report them, because if he and Hor had not then they would have been "beheaded" by the upper echelons.



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