



Prosecutor v Kaing Guek Eav,
alias 'Duch'

The KRT Trial Monitor

Asian Justice Initiative: a Collaboration between the UC Berkeley War Crimes Studies Center and East-West Center

Report Issue No. 16:
Week Ending August 10, 2009

In this week's KRT Trial Monitor ...

Chamber hears further evidence from insider witnesses (pp.2-4), and from expert witness David Chandler (pp.5-6); Confusion over witnesses' right against self-incrimination continues (p.7); Civil parties continue to exhibit laudable efforts to cooperate (p.8)...

1. Summary

"I dislike people who say "We would never stoop to such level". We never know what we are going to do in the same situation. 'Holier than Thou' is the least admirable of human characteristics..."ⁱ

The sixteenth week of trial at the KRT proceeded on schedule, with the Chamber's decision to have certain witness statements read into the record *in lieu* of witness testimony increasing the overall expeditiousness of proceedings. In addition to five testimonies that were read into the record, the Chamber heard from three former S-21 staff from Monday to Wednesday. Expert witness David Chandler then took the stand on Thursday, largely testifying on his book *Voices from S-21: Terror and History in Pol Pot's Secret Prison*.

Accounts provided by insider witnesses this week were largely consistent with prior testimony. In particular, the testimony provided regarding detention conditions, the administration of Khmer Rouge policies (especially the need for secrecy), and the use of certain torture techniques corroborated that of prior witnesses, as well as the Accused. At times, the extent to which the Chamber and the Parties questioned witnesses on largely undisputed facts seemed unwarranted: in this regard, International Defense Counsel François Roux pointed out that much of the evidence being presented was repetitious and merely confirmed allegations that the Defense did not dispute. The Chamber agreed that it would review its present schedule to determine whether a further reduction in the witness list could be made, but cautioned the Parties to assume the existing timetable would be followed for now.

With regard to Victim Participation and Witness and Victim Protection and Support, the Court has commendably provided witnesses with legal counsel in order to ensure that their rights are upheld during the course of the proceedings. However, two of the three insider witnesses who took the stand this week appeared confused about the extent to which this right could be exercised. Monitors opine that further efforts need to be made to ensure witnesses fully comprehend their rights prior to taking the stand.

The approach taken by the Chamber and the Counsel for Witnesses to ensure witnesses comprehend questions was the cause of some concern this week. Constant reminders about witnesses low level of education may be perceived as demeaning to the witnesses in question and may further intimidate them during the

course of the proceedings. It is the monitors' view that the Chamber and the Parties should find ways to address this issue so as not to compromise the dignity of the witnesses.

The week ended with thoughtful testimony from David Chandler, who reminded both the Chamber and the public gallery that decisions made by the Accused Person during the period of Democratic Kampuchea should be viewed in their historical context. Chandler eloquently pointed out that the broader context in which Khmer Rouge cadres were operating would have presented many difficulties for the choices they made at this time. Although he did not assert that this should excuse those choices, his comments served as a reminder of the importance of the deterrence effect provided by the tribunal, as well as of ensuring that murderous regimes, such as that of the Khmer Rouge, were unable to attain platforms to power.

2. LEGAL & PROCEDURAL ISSUES

A. Summary of Testimony

Evidence from Insider Witnesses

The following summary provides a summary of the evidence presented by insider witnesses this week. It groups the evidence presented by topic area. For a more complete overview of the evidence, readers should consult Annexure A to this report, which gives them an overview of the unedited notes collated by monitors this week.

The following witness testimonies were either presented or heard this week:

- Sek Dan, a former child medic (testified in court);
- Lach Mean, a guard, who subsequently held an administrative position in records and finally, became an interrogator (testified in court);
- Cheam Sou, a former S-21 guard (testified in court);
- Kheav Yet, a former guard inside the compound (statement read out);
- Pesh Mab, a former guard who manned both the inside and outside of S-21 (statement read out);
- Nhem En, a former photographer (statement read out);
- Nheab Ho, a former guard inside the compound (statement read out); and
- Khung Pai, a former guard outside the compound (statement read out).

Detention Conditions Generally speaking, evidence provided regarding detention conditions at S-21 corroborated the evidence of other witnesses. However, there were some notable differences in the details provided regarding rationing and incarceration: Lach Mean, for instance, described prisoners being fed 'rice' (as opposed to gruel) and Nheam Ho noted in his statement that the prisoners were not shackled in the cells he guarded. In addition, Sek Dan's testimony on the rationale for providing witnesses with medicine tended to support the claim that prisoners were only kept alive in order to be further interrogated. He further recalled that prisoner's wounds would be "splashed with salt water", allegedly to ensure a speedy recovery.

Interrogation and Torture. Sek Dan, Kheav Yet, and Nheab Ho asserted that while they had never seen acts of torture first hand, they could see the evidence of it from the wounds visible on the prisoners' bodies. Sek Dan further recounted that he had heard prisoners' whispering about the torture methods administered, including beating, nail extraction and electrocution. On the other hand, Lach Mean, who allegedly witnessed and participated in torture, confirmed that detainees were

electrocuted behind the ears and beaten with tree branches. However, he asserted that he had never seen interrogators use plastic bags or water torture techniques during interrogation.

The statements read out during proceedings also shed further light on the interrogation techniques used at S-21, and the prevalence of the use of torture. For example, Kung Pai stated that he had seen whipping and electrocution used as methods of interrogation and that, because “prisoners were considered as enemies”, interrogators were permitted to use torture when they failed to respond to questioned. This statement differed from Lach Mean’s evidence, which provided that Duch never ordered him to use torture, instead encouraging him to “play politics” or coax the witnesses into agreeing to the confessions required.

The Final “Smashing” Before Liberation Day. Both Kung Pai and Nheab Ho’s statements detailed events that occurred immediately prior to 7 January 1979 – when S-21 prisoner’s by Vietnamese forces in what is now widely considered the Vietnamese ‘liberation’ of Cambodia. In particular, Kung Pai’s statement revealed details about mass killings that took place in the compound, as a final round of smashings were carried out. Both statements asserted that prisoners were transported to Cheung Eak at this time.

The Policy of Secrecy. The evidence this week showed that a policy of secrecy pervaded all of the units in operation at S-21. Lach Mean and Kheav Yet described how staff members were strictly prohibited from contacting outsiders, including family and friends. Nhem En’s statement also described how photographers would not be allowed to develop the photographs they had taken, in a seeming attempt to segregate their duties and prohibit them from knowing about those of others. He also noted that all members of the staff had restricted movement within the Security Office. Cheam Soeu confirmed this during the course of his testimony: he noted that during execution of their duties, members of staff were not allowed to stray from their assigned locations. (This is why, according to the witness, he had never been inside the detention compound).

Atmosphere of Fear. All the witnesses who testified this week confirmed that an atmosphere of fear was prevalent at S-21. Witnesses noted that simple mistakes could lead to people’s demise, and that no one could be trusted. In particular, Sek Dan described the constant dread he felt while working at the Security Center – fuelled largely by the fear that he would be arrested and smashed. Similarly, Nhem En and Heab Ho’s statements pointed out that staff had to carry out their duties with diligence and precision, unquestioningly following orders.

Purging at S-21. Most of the insider witnesses this week recounted how other S-21 staff members were smashed. Sek Dan, for example, recalled that his Medic Supervisor, Comrade Paor, was arrested at night after detainees had suffered from complications from the medication he provided. He further stated that his arrest was ordered by Duch. Lach Mean also testified that staff at S-21, including the chief and members of his unit, disappeared on a continuous basis. Similarly, Cheam Soeu described how his superior Hong was summoned to go to inside the compound to attend a meeting but once inside was arrested.

Foreign Detainees. Several insider witnesses this week confirmed the presence of Vietnamese prisoners in S-21. Lach Mean, Nhem En, and Kung Pai alleged that they had seen Vietnamese prisoners in the Security Office, although the number of prisoners varied between the accounts. Lach Mean claimed to have seen 100-200 Vietnamese detainees, Nhem En only 20, while Kung Pai simply stated that he had seen “many”. With regard to Western prisoners, Kung Pai claimed to have seen 3

Americans brought in through the south entrance of S-21. Nhem En also alleged that he had seen the same number of “Western prisoners”, but was not aware of their nationality. In addition, Cheam Soeu described the alleged immolation of a Western prisoner outside the S-21 compound.

Trainings and Meetings Sek Dan and Cheam Soeu claimed that they had never attended political trainings and had only joined the self-criticism meetings among their respective groups. The other witnesses, however, recounted participating in trainings or political sessions, albeit with differing frequency. For example, Nheab Ho claimed that during his assignment at S-21, he attended only one study session in a training site near the Accused Person’s house, and that the session was not taught by the Accused. Kung Pai, on the other hand, alleged that he attended two sessions during which the Accused lectured on how to prevent prisoners from escaping; the party statute; and the war with Vietnam. Kheav Yet had also seen the Accused in two of the training sessions he received.

The Accused’s Role at S-21. Most of the insider witnesses this week claimed to have never received orders directly from Duch, although they all were aware that he held the highest position in the Security Office. One witness who did allege that he had received direct orders from Duch was Nhem En. The former S-21 photographer described Duch’s orders as “strict” and that “he allowed no mistake”. In his statement, the witness also surmised that although Duch seemingly received orders from Son Sen, they “were the same”. He further elaborated that it was Duch’s meticulous reporting to Son Sen, Pol Pot and Nuon Chea that enabled the latter to determine who should be smashed. According to the statement, it was effectively Duch who “gave the green light to Son Sen and Pol Pot”.

With regards to Duch’s direct involvement in acts of torture, Nhem En noted that he had once witnessed Duch beating a prisoner with a rattan stick.

David Chandler

On Thursday, the Chamber heard from expert witness David Chandler, a 76-year-old historian and expert on Cambodian history, whose research has focused on the period of Democratic Kampuchea. Chandler is the author of *Voices from S-21: Terror and History in Pol Pot’s Secret Prison* (“**Voices**”) – a book which is the culmination of four years of studying the S-21 archives and interviews conducted by the author in the mid 1990s. The Chamber and Parties questioned Chandler about *Voices*, focusing their questions on the characteristics of S-21 and the Accused Person’s role at the Security Center. Chandler’s testimony corroborated the Accused Persons testimony in certain important respects: the historian affirmed Duch’s view that he did not have the authority to make arrests and that he was under close and direct supervision of the party center. However, Chandler also maintained that Duch had an “outstanding enthusiasm” for his work, and that he did exhibit a certain degree of initiative and possess a certain amount autonomy in carrying out his duties at S-21. When given leave to provide his observations on the expert’s account, Duch expressed deep admiration for David Chandler’s work.

Role of S-21. According to Chandler, the CPK leadership’s conceptualization of S-21 was unique and not comparable to the Security Offices or detention centers of other Communist regimes. Chandler asserted that there were two key distinguishing features of this particular “total institution”: first, the existence of S-21, its mandate and operations, were kept completely secret. Second, prisoners were effectively being re-educated in order to be killed, insofar as giving their confessions and admitting they were wrong constituted “re-education”. For Chandler, this was the

great tragedy of the institution: that in effect, it was allowed to become a murderous killing machine because all those sent to S-21 would almost inevitably be “smashed”.

Functioning of S21.

Interrogations. In Chandler’s view, the fact that everyone brought to S-21 was deemed guilty “underpinned the interrogators’ role”. However, revealing evidence that may go towards mitigating the Accused Person’s sentence, Chandler stated that he had studied documents that showed Duch’s praising confessions that were not obtained under torture. In Chandler’s assessment, satisfactory confessions meant that minimum, or even no, torture might be used.

Torture. Chandler was questioned on the description of the treatment of detainees provided in *Voices* and asked to verify why he thought such techniques might amount to torture. The witness confirmed that certain practices he had detailed would not be considered torture under international law, but noted for the most part that the treatment of detainees accorded with the definitions provided by international legal instruments. He agreed that the depraved conditions at S-21 were part and parcel of a system designed to “break prisoners down” for the purpose of obtaining information through interrogation. In Chandler’s words, “mercy was to have no place in the prison”.

Female Detainees and Sexual Violence. Notwithstanding incidents of sexual abuse at S-21, Chandler clarified that there was no evidence to support the view that S-21 was a place where it was “open season” on women prisoners. While acknowledging that the situation at S-21 was volatile, being an enclosed compound filled with young men, he maintained that Duch would have stopped any incidents of abuse of female prisoners. Chandler also identified female Vietnamese detainees as the most vulnerable group at S-21, as they were regarded as “outside the human race” once the CPK’s conflict with Vietnam began.

Purges. Answering Judge Cartwright, Chandler confirmed the Accused’s description of the two main phases of purges (i.e., from 1975 to September 1976 - mainly of people associated with the former regime; and from 1976 till the end of the existence of S-21 – predominantly comprising CPK cadres). Chandler noted that it was likely that at least some of those being purged were, in fact, people who genuinely opposed the regime.

Confessions. Chandler affirmed that the accuracy of prisoners’ confessions was “of little concern” to the upper echelon. With regard to lists of traitors supplied by prisoners who had been interrogated, Chandler believed that prisoners were simply told to list everyone they knew, regardless of whether they were truly “enemies”. He surmised all this was done to satisfy the CPK leaders’ need to legitimate their paranoia about the regime – namely, that it was beset with internal and external enemies.

Duch’s Character and Involvement.

Character of the Accused. Chandler acknowledged that he had never interviewed Duch personally: his analysis of Duch’s personal role in the operation of S-21 and of his character was based on interviews he had conducted with former S-21 staff and victims, as well as his examination of S-21 documents. To him, Duch had “professional enthusiasm” for his job, and wanted S-21 to be seen by the party center and the international community as “a highly professional and efficient organization” and “one he could be proud of”. Consistent with his desire to not only perform

satisfactorily but to excel, Duch was continuously innovating and improving in his administration of S21.ⁱⁱ

Knowledge. According to Chandler, few things would have escaped Duch's attention as he was kept apprised of what happened at S-21 through his trusted immediate subordinates. This was how Duch knew to punish interrogators who behaved poorly or who did not toe the party line.

Difference made by Duch. The idea that Duch was the sole initiator of activities at S-21 was not acceptable to Chandler. He explained that it was consistent with the characteristics of the Chinese and Cambodian revolution that people were deliberately given leeway to behave in a "revolutionary manner". Presumably, this means that, among other things, Duch allowed his subordinates to improvise during interrogations.

A Matter of Choice? Alluding to the possibility that Duch's activities were not merely a result of him having no choice, Chandler pointed out that Duch was aware of the damage inflicted by his actions, yet his enthusiasm for his work appeared unflinching. Still, he acknowledged that documents revealed that Duch had suggested that "politics" be employed in place of torture. Notably, Chandler emphatically agreed that higher-ranking cadres would have been able to use a certain amount of discretion to protect people they favored.ⁱⁱⁱ Evidence showed that a hierarchical patronage system existed in Cambodia during this time, and would likely have contributed to this.

A Certain Sense of Historical Perspective. In some ways echoing earlier testimony provided by François Bizot, Chandler suggested that although the Accused Person's behavior was not excusable, it was to some extent understandable. Drawing from his years of immersion in the study of the tragedy that took place during the reign of the Khmer Rouge, Chandler observed that the inhumanity seen at S-21 was characteristic of a global phenomenon – despite being one we would hope to prevent. He suggested that almost anyone could be led to carry out the same atrocities if placed in the same conditions.

B. Arguments/Concerns Raised at Trial

Issue of DC-Cam Witness Statements Raised Again. The use of DC-Cam interviews during proceedings was raised again on Tuesday, when the Deputy National Co-Prosecutor attempted to question witness Lach Mean on a statement he had given to the NGO.^{iv} International Defense Counsel François Roux again reiterated the Defense's objection to the use of such statements, arguing that interviews outside the judicial context should not be used to test evidence elicited during the proceedings. The objection was overruled, with Judge Lavergne stating that statements given to NGO were permissible, provided the witness in question was available to be questioned on the conditions under which the statements were made.

The Procedure for the Reading of Sworn Affidavits Clarified. After the completion of Lach Mean's testimony on Tuesday, the President of the Chamber announced that the rest of day's proceedings would be dedicated to reading the sworn affidavits of the witnesses that it had decided not to summon. The Chamber determined that the procedure for reading sworn statements would be as follows: after the Greffier had read out the statement, the Parties would be given the opportunity to provide their observations on the evidence. The Accused would then be allowed to provide comments on the statement, should he wish to do so.

Defense Call for Further Reduction in the Witness List/Evidence Presented At Trial. In an ongoing effort to expedite proceedings, the Chamber continued to allow witness' sworn statements to be read into the record this week, *in lieu* of their giving testimony in Court. Despite these efforts, the Defense raised concerns about the repetitiveness of the accounts, pointing out that many of the facts confirmed by the testimonies were those that the Accused did not dispute.^v International Defense Counsel François Roux subsequently proceeded to file a verbal motion, invoking Rule 85 and 87 of the Internal Rules to exclude the testimony of several accounts on grounds that they were "repetitious and did not contribute to the ascertainment of the truth".^{vi} Deputy International Co-Prosecutor, Anees Ahmed, pointed out that the evidence was not repetitive but corroborated other accounts – as would be considered common in any major criminal case. He further proposed that if expeditiousness was the Defense' major concern, then measures such as having summaries read instead of the full statements should be considered. After deliberation during the afternoon break, the Chamber announced that it would revisit its schedule and determine whether a further reduction of witnesses could be made or whether summaries could be read out instead of the full statements. The President asserted however, that until such determination is made, the existing schedule of witnesses' examination and statement reading would continue.

Premature Ruling on The Use of Confessions Elicited under Torture. On Thursday when questioning expert witness David Chandler, International Civil Party Lawyer for Group 2 Silke Studzinsky mentioned S-21 confessions from several former interrogators. Mr. François Roux immediately reminded the Chamber of its previous recommendation that the content of confessions made under torture should not be used in a Court of Law as stipulated in the Convention Against Torture^{vii}. President Judge Nil Nonn sustained this objection without granting Ms. Studzinsky the opportunity to clarify whether her question was indeed about the content of the confessions or other aspects of the documents. There was also no inquiry to shed light on the conditions under which the confessions were likely to have been made^{viii}. While it is commendable to ensure the adherence to international standards in the proceedings, it may be more prudent in instances such as this to provide an opportunity to the Parties to clarify the direction of their line of questioning and to establish under what conditions the documentary evidence was obtained.

Witnesses' Right against Self-Incrimination v. Obligation to Tell the Truth. Following the appearance of insider witnesses before the Chamber, the right against self-incrimination has become a key concern during the proceedings. This week, despite constant reminders and explanation from the bench about this issue, and the provision of a legal counsel in the Courtroom to provide assistance, witnesses continued to experience difficulty in grasping the balance between their right against self-incrimination and their obligation to tell the truth. On Monday, for example, Sek Dan kept on refusing to answer questions that did not appear incriminating^{ix}, despite several attempts to explain to him that the evidence was not incriminating. Judge Lavergne also had to emphasize this point to witness Chiem Seu on Wednesday, when he exhibited reluctance in addressing the Judge's questions.^x

It was not clear to the monitors whether or not witnesses had a chance to speak to their counsel before the proceedings. However, it was obvious that witnesses exhibited confusion about their rights and obligations, which not only raised concerns about their ability to protect themselves from self-incrimination, but also affected the ascertainment of truth and the overall expeditiousness of the proceedings. Monitors recommend that witnesses are fully informed of their rights prior to entering the courtroom, and that WESU review its policies in this regard.

3. VICTIM PARTICIPATION AND VICTIM AND WITNESS PROTECTION & SUPPORT

Civil Parties Attendance As per last week, there were 9 civil parties attending the proceedings in the courtroom this week.

Civil Party's Right to Representation On Monday, a new International Civil Party Lawyer for Group 3, Ms. Fabienne Trusse Naprous, was recognized by the Chamber. During the proceedings on Tuesday, Wednesday, and Thursday, Civil Party Lawyers for Group 4, Mr. Hong Kim Soun and Mr. Yong Panith, were not present. However, Mr. Kong Pisey announced that he would represent Civil Party Group 4 at this time.

Civil Party Lawyers Continued to Display Laudable Cooperation. Following last week's practice, Civil Party lawyers this week continued to attempt to reduce the number of groups questioning witnesses, determining instead to allow for common representation amongst the groups. On Monday Civil Party Lawyers for Group 3 represented all four groups; on Tuesday, only Civil Party Groups 1 and 2, questioned the witness on behalf of the four groups; and on Wednesday, Civil Party Lawyers for Group 3 and 4 represented the four groups in questioning the witness on the stand. Not surprisingly, the number of Civil Party Lawyers questioning the witness increased on Thursday, as three Civil Party Groups examined David Chandler. The practice of opting for common representation seems to allow for a more coherent line of questioning and reduce the occurrence of repetitive questioning by Civil Party Lawyers. This continued cooperation is a commendable effort to facilitate the smooth running of the trial which monitors applaud.

Legal Counsel for Witness. This week, Kong Sam Onn continued to be present in the Court to provide legal counsel to the witnesses. He provided counsel and clarification about self incrimination to his clients, as well as ensuring that Parties frame questions in ways that the witnesses would understand.

4. TRIAL MANAGEMENT

Judicial Management

Flexibility in Time Allocation. Consistent with its earlier pronouncement to "accord more time to the Defense" where necessary, the Chamber on Monday allowed the Defense a total of 10 additional minutes to question witness Sek Dan.^{xi} The Chamber exhibited further flexibility on Thursday during David Chandler's examination. The International Co Prosecutor requested an extra 15 minutes to complete his questioning, which the Chamber allowed. The same addition was also granted to the Civil Party Lawyers upon request. Monitors further noted that the Defense exceeded its time allocation without reprimand from the bench.

Parties Attendance. During the proceedings this week, the Office of the Co-Prosecutors was represented by Deputy International Co-Prosecutor Mr. Anees Ahmed on Monday, Tuesday and Wednesday and Mr. William Smith on Thursday. National Co-Prosecutor Mr. Tan Se Narong appeared on Monday, Tuesday, and Thursday, and Mr. Yet Chakrya appeared on Wednesday.

After last week's absence, François Roux was present during proceedings this week. However, he announced that next week he would be absent and Ms. Canizares would represent the Defense instead. Kar Savuth continued to represent the Accused this week.

Public Attendance. Proceedings this week continued to be well-attended, and the ECCC Outreach Program continued to arrange the attendance of Cambodian public from different parts of the country. Monday’s trial saw the attendance of more than 350 Cambodians from different communities in Borey Chulsa district of Takeo province. On Tuesday, 400 people from Kirivong District were in the public gallery. Approximately 300 Cambodian local villagers from Kampong Siem and Srey Santo District, Kampong Cham province, attended the proceedings on Wednesday. The last day of the proceedings this week was attended by 400 villagers from different communes in Puok district, Siem Reap province.

Courtroom Etiquette

Language Describing Witness’ Capacity to be Questioned. Monitors noticed that both the Chamber and Counsel for Witness made somewhat derogatory references to witnesses’ ability to answer questions this week.^{xii} While references to witnesses’ lack of education and literacy was evidently made with good intentions, the approach did not appear to be sensitive to the witnesses themselves. Monitors recommend that the Chamber and Counsel refrain from using judgmental language when assessing witnesses’ capacities in this regard. For example, the bench could make reference to the need to take care when asking questions “due to the witness’ lack of familiarity with the courtroom environment” or “due to the difficulties many people experience when understanding legal language”, rather than referring to the skills of the particular witness in question.

Parties Reminded Not to Speak Before Being Given Leave. The President of the Chamber again had to forcefully remind the Parties not to speak before being given leave on Tuesday morning. During the discussion on the use of statements made to DC CAM as the basis for witness questioning (see the Legal & Procedural section of this report), the Deputy International Co Prosecutor rose without first seeking the President’s approval to reply to the International Defense’ observation. This elicited a stern rebuke to the bench, which on the occasion seemed to be merited as the proceedings were becoming rather unruly.

Mobile phones in the Public Gallery. The prohibition against the use of mobile phones in the public gallery was not strongly enforced this week, as a cell phone rang loudly during the proceedings on Monday. This raises the concern that rules meant to protect the decorum in the public gallery are not properly enforced.

Question on What is Construed as “Official Translation” Left Unaddressed. On Tuesday, the issue of what constitutes the official translation of documents was again raised during the proceedings. As the President of the Chamber announced that a number of witnesses’ sworn affidavits shall be read out in Court, he remarked that Parties should heed the simultaneous interpretation of the reading as discrepancies had been found in the French and English translation of the documents. This prompted Mr. Kong Pisey, the National Lawyer for Civil Party Groups 2 and 4, to inquire to the Chamber as to which version should be considered the official translation of the documents: namely the written record read out during proceedings, or the existing translated document. In his view, if the court record is considered the official translation, the examination of the evidence should be suspended until the international parties are given leave to study it. This query was left unaddressed by the Chamber.

Time Management

DAY/	START:	MORN.	LUNCH:	AFT.	RECESS:	TOTAL HOURS	IN
------	--------	-------	--------	------	---------	-------------	----

DATE:		BREAK:		BREAK:		SESSION
MON. 03/08/09	09.00AM	10.35 – 11.05AM	12.05 – 13.35PM	14.40 – 15.03PM	16.15PM	4 HOURS 52 MNs
TUE. 04/08/09	09.05AM	10.37 – 10.57AM	12.10 – 13.35PM	14.40 – 15.00PM	16.12PM	5 HOURS 12 MNs
WED. 05/08/09	09.00AM	10.40 – 11.00AM	12.05 – 13.30PM	14.40 – 15.20PM	16.15PM	4 HOURS 40 MNs
THURS. 06/08/09	09.00AM	10.40 – 10.55AM	11.50 – 13.30PM	14.30 – 14.50PM	16.15PM	5 HOURS
AVERAGE NO. OF HOURS IN SESSION :					4 HOURS 56 MINS	
TOTAL NO. OF HOURS THIS WEEK :					19 HOURS 44 MINS	
TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL:					235 HOURS AND 14 MINS OVER 54 TRIAL DAYS OVER 15 WEEKS	

ⁱ David Chandler during the questioning of the International Defense Lawyer on Thursday, August 7, 2009

ⁱⁱ One example of an innovative measure taken by Duch to ensure that S-21 was an exemplary institution was to make multiple copies of confessions for systematic distribution to security offices and committees throughout Cambodia.

ⁱⁱⁱ Civil Party Law for Group 1, Alain Werner, had put to Mr Chandler the testimony of Mam Nai. Mam Nai had stated in relation to an arrest of his former student, that had he been informed of this beforehand, he would have been able to prevent the arrest.

^{iv} See KRT Monitoring Report Week 4.

^v Mr. Roux also asked the Office of the Co-Prosecutors to point out which new and relevant facts can be found in the statements that were yet to be read. Anees Ahmed recalled determining which witnesses' accounts were relevant was a matter that the Chamber should determine.

^{vi} The International Defense Counsel specifically referred to Rule 85(1), which reads "... In consultation with the other judges, the President may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth" and Rule 87(3), which reads "... The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous.

^{vii} See KRT Monitoring Report Week 7.

^{viii} Preceding his answer to Ms. Studzinsky's next question, Chandler stated that he believed the confessions she had referred to earlier were probably not made under torture, because former interrogators at S-21 knew very well what was awaiting them if they did not respond.

^{ix} This was most obvious during Mr. François Roux's questioning. The witness refused to answer inquiries about his age and the time he worked in the rice field prior to becoming a staff member at S-21. Counsel for witness had to approach the witness in a seeming effort to clarify the matter.

^x The witness exhibited reluctance in answering questions about his feelings when he was working at S-21. Judge Lavergne issued the same reminder as the President had to Sek Dan – namely, that the witness' right to refrain from answering questions only pertains those that may incriminate him. While Chiem Seu finally answered the Judge's question, he remained visibly tense during the rest of the examination. The witness acknowledged that he feared the Judges. At one point during the questioning

by the Co-Defense the witness expressed his unwillingness to answer further questions, although he then conceded to continue after consultation with his lawyer.

^{xi} This included the time the witness took to consult his counsel about his rights and obligations as a witness, which was less than 5 minutes.

^{xii} On Monday, President Judge Nil Nonn repeatedly reminded Parties to shorten and simplify questions posed to Mr. Sek Dan, bearing in mind his “poor memory and limited education”. Noticeably, this tone was also adopted by Kong Sam Onn, the lawyer for witnesses, who on Wednesday was representing Chiem Seu. In his effort to ensure parties forming questions in succinct manner, he also referred to the witness’ lack of education and literacy as well as his profession of “just a palm juice gatherer”.

ANNEXURE A
SUMMARY OF TESTIMONY

Sek Dan

On Monday, Sek Dan, a 48 year old former child medic at S 21 from Kompong Tralach District, Kompong Chhnang Province where Duch had asserted as the place where he had gathered adolescents to work at S 21, gave his testimony to the Chamber. The witness claimed that he began to work as a medic in early 1978 before Phnom Penh fell. He expounded upon the fact that before working as a medic at S 21, he was trained for three months at the Prek Tnaot Technical School on firearms maintenance, and subsequently was sent to work at the rice field and dig canals in a location he was not aware of. Sek Dan evoked his right to remain silent on a number of occasions, which on was discovered as due to his lack of comprehension about the concept of self incrimination (see Victim Participation and Victim and Witness Protection & Support Section of this report. The section below provided description of his account:

Scope of work: The witness alleged that he had been a child medic and was assigned to distribute medicines to prisoners who support wounds and injuries as well as suffering from ailments such as diarrheas, fevers, and headaches. His task was limited to only the prisoners who were housed in the 3rd building- which he later on identified as Building C. At that time he was accompanied and trained by an adult medic. Sek Dan was able to recall that 3 members of his group had also been children who originated from the same place as him.

Medical Treatment for Prisoners: During his testimony, Sek Dan recalled that aside from distributing pills, he had treated prisoner's wounds by splashing them with salt water to ensure speedy recovery. Treatment was given to ensure the prisoners have enough strength to be able to be interrogated again. In answer to Lavergne's question about the effectiveness of the medication dispensed, he explained that some were effective and some were not effective because the medicine was locally made.

Self- Criticism meeting: When the witness was responding to Judge Thumony's questions, he alleged that he had never attended Political Trainings because at that time he was only 11 years old. He further explained that he had only joined the self-criticism meeting among his group, consisting of 3 people, whereby they delivered criticism on topics such as sanitation, working hour, discipline and other issues.

Arrest of S 21 staffs: The witness maintained that he had started working at S 21 in early 1978, not 1976 as Duch claimed in his observation. He recalled that 2 or 3 months later his Medic Supervisor, Comrade Paor, was arrested at night by Duch's order because detainees suffered from complications after taking the medication he provided. He added that his new supervisor, Comrade Soeung, was also about to be arrested but he escaped and committed suicide. He estimated that the ground for Soeung's arrest was probably the same as Paor. However, when the National Co Prosecutor Mr. Senarong asked the witness to pinpoint the place where Paor was arrested and Soeng committed suicide on a photo of S 21, the witness was unable to comply.

Interrogation and Torture: In response to Judge Thou Mony, Mr. Don recalled that detainees usually did not get sick, but he saw "prisoners with injuries covering their backs,

aims, and legs” and hearing “screams” of detainees who were being interrogated. He also heard detainees whispering about torture methods administered against them such as beating, pulling toe and finger nails. Upon questioning by Judge Lavergne, the witness also acknowledged his awareness of electrocution as a method of torture, which was evident by the burned marks on the detainees’ ears caused by the electric current.

Detainee corpses: On the contrary to other prior witnesses’ testimonies, Sek Dan claimed to have seen hundreds of corpses in the detention building during his assignment at S 21. The children medics were ordered by the superior to carry out and bury them. If there were a few, they would be buried around the compound of S 21, behind the detention building. In occasions there were many, then the corpses would be trucked out.

The atmosphere of fear : When questioned by the International Civil Party Lawyer for Group 3 Ms Fabienne Trusse Naprous about his feeling during his assignment at S-21, Mr. Don maintained that he felt “tremendous fear.” As other witnesses before him, he described how he was always under constant dread that one day he would be arrested and smashed as other S 21 staff.

Lach Mean

From Monday afternoon to Tuesday morning, former S-21 guard and interrogator Mr. Lach Mean testified briefly on conditions at the Tak Mao and PJ prisons, before being questioned in detail on his experiences at S-21. Initially a monk, he was recruited as a combatant at a local military unit in late 1974. In 1975, he was sent to Tak Mao School to be “tempered”, and was subsequently assigned to guard detainees and water vegetables at Tak Mao. Thereafter, he worked for a year as a guard at PJ prison, and moved to the Tuol Sleng premises when PJ prison was relocated to S-21.

Unlike other former S-21 staff, not once did Mr Lach Mean invoke his right to self-incrimination. In fact, he appeared unfazed at the prospect of self-incrimination and candidly admitted that, at Comrade Hor’s behest, he had participated in the beating of detainees using tree branches.

Role at S 21. Mr Lach Mean was first a guard at S 21, before being assigned to type documents and records. In 1978, he underwent 3 months of training to be an interrogator. His stint as interrogator was short-lived, as soon after completing his training, the Vietnamese took over Phnom Penh and he was made to flee S-21.

Composition of Detainees. As a guard, Mr. Lach Mean patrolled specific floors within the S-21 compound. Due to the limited scope of his movement, he was unable to give a full picture of the composition of detainees at S 21. While he did not see any children and only less than 10 female prisoners, he confirmed seeing roughly 100 to 200 Vietnamese soldiers and civilians brought to S-21 in 2 or 3 truckloads.

Detention Conditions. Mr Lach Mean’s account of the detention conditions at S-21, though rather detailed, raised no novel facts. Perhaps questionable, however, was his account of detainees’ food rations, which he described as consisting of thick gruel at first, and subsequently, soup with rice. Other witnesses had maintained that rice was never served at S-21, only gruel.

Duch’s Role in Training, Interrogation and Torture. The picture of Duch’s interrogation training painted by Mr. Lach Mean was largely favourable to Duch. According to Mr. Lach Mean, he had never received hands-on interrogation training from Duch. He firmly asserted

that Duch had never ordered him to use torture, although he had encouraged them to “play politics” - verbal abuse was allowed, but violence was not. Further, interrogators were instructed by Duch to *not* “lead enemies to give confessions”. As far as Mr. Lach Mean knew, Duch was never present during any interrogations. Instead, it was Hor who often accompanied him during interrogation sessions and who ordered detainees to be tortured. According to Mr. Mean, Hor went to interrogation rooms on a daily basis and would provide instructions to the interrogators.

Due to the organizational structure at S-21, Mr. Lach Mean never reported on the completion of interrogations to Duch directly. However, Duch would telephone him directly to make inquiries pertaining to interrogations, or to inform him that an interrogation was not yet complete or appropriate. However, he claimed that he could not recall whether or not Duch annotated on the confessions he reported to his unit chief. Like other witnesses who claimed to be former staff of S 21, Mr. Mean stated that he was very afraid of Duch, and did not dare to talk to him when he was working in S 21.

Interrogation and Torture Mr. Lach Mean confirmed that he witnessed detainees being electrocuted on the ears and beaten with tree branches. However, he asserted that he had never seen the use of plastic bags, the pouring of water into detainees’ nostrils or the plunging of prisoners into water jars. He claimed that only “skillful” interrogators could use torture. He, as a new interrogator, was not allowed to do so. If a prisoner did not confess, he would call Hor and Hor would provide instructions. Lach Mean confirmed that he knew Mr. Prak Khorn, a witness having testified before, as an interrogator at S 21.

Purges Mr. Lach Mean testified that staff of S 21, including the chief and members of his unit, disappeared on a continuous basis. The day after a disappearance he would see a person covered with a blanket being led to the interrogation room. He consequently surmised that staff who disappeared had been arrested, and were covered with blankets in order to avoid identification.

Medics The ambiguity surrounding the medics unit at S 21 continued. Mr. Lach Mean recalled having seen only 4 to 5 male medics in all, including teenage medics, but no child or female medics. Given the secrecy and strict separation between different units, and Mr Lach Mean’s only limited role at S 21, it would be unsurprising for Mr Lach Mean’s knowledge of the medics unit to be incomplete. Notably, although Mr Lach Mean did not know what Mr Sek Dan’s role at S-21 was, he was able to confirm with certainty that Mr Sek Dan was present at S-21 because they attended the same study sessions together. Duch has expressed doubts as to whether both Mr Sek Dan and Mr Lach Mean were in fact S-21 staff, though he informed the Chamber that he found S 21 confessions with Mr. Lach Mean’s name appearing as the interrogator. The Accused stated that he fully believe the Chamber’s ability to “make its own judgment”.

Secrecy and Suppression in DK Regime The witness repeatedly affirmed that secrecy was prevalent during the daily work of S 21. He claimed that although he saw prisoners brought in and out of S 21, and believed they were taken to be smashed, he did not know for sure what would happen to them. As some other witnesses, Lach Mean, when answering whether he was happy with his work at S 21, stated that he was not satisfied and was actually very disappointed about his work, because the working hour was very long and they could not move about. The S 21 staffs, according to Mr. Mean, were strictly prohibited from contacting outsiders, including family and friends. Neither did they ever discuss among themselves matters about detainees, because they did not trust anyone, and everyone was supposed to only “mind their own business”. He said he wanted to escape, but there was

nowhere to escape and the only option was to work even harder “to get favor from superiors”. He also confirmed that some of the cadres did enjoy their work because they wanted to work hard to serve the party.

Kheav Yet

One of the sworn affidavits the Chamber has read out in Court is that of Kheav Yet. The 1963 born former inner guard at S-21 provided his account under oath before OCIJ investigators in the investigative phase of the case. The following is his account:

Recruitment He had been recruited into Youth Group in his village and after the Khmer Rouge succeeded in toppling Lon Nol’s regime, he was recruited along with other children in 5 GMC trucks to Phnom Penh. After receiving military training in a training center with 500 other children for one year, the witness was dispatched to S-21 and assigned to be a guard inside the compound.

Role at S-21 as a guard at S-21, Kheav Yet designated location was the upper floor of one of the buildings in the compound. There were four shifts in guarding the prisoners, and each guard would have to serve two shifts. Interior guards, Kheav Yet asserted, performed their duties unarmed. The witness’ allotted duty when on guard encompassed emptying the containers used by the prisoners to relieve themselves, providing bath, and handing over those scheduled to be interrogated to the interrogators. Kheav Yet stated that they had been instructed to never let down guard and should there be any successful attempt of escape, the guards shall be punished. Consistent with other accounts, the witness also stated that during his assignment in S-21 he was not allowed to have contact with other people from outside nor had even been given leave to visit his family.

Detention Condition consistent with the previous accounts the witness described prisoners being shackled on one foot, with the policy only to change the constrained foot if there was injury to the presently shackled. He also recounted the insufficient food provided to the prisoners. Kheav Yet also stated that he saw many prisoners sustained wounds and bruises after interrogation.

Procedure of Interrogation The witness confirmed that the interrogators would bring a list provided by Suos Thy, and would ask the guard in charge of the cell to bring out the particular prisoner in the list. The interrogator then would take the prisoner away and would return him or her after several hours

Duch’s Role at S-21 The witness stated that he had seen Duch twice in 1976 during trainings but he had never received orders from him nor seen him committed torture.

Pesh Mab

The written testimony of former S-21 guard Pesh Mab was relatively brief. Assigned to guard both outside and inside S-21, Pesh Mab’s testimony hinted at the pervasive paranoia that characterized the upper echelon’s attitude towards the Vietnamese. Pesh Mab was warned against conspiring with the Vietnamese and instructed to inform his team leader of any member who was an “activist” and who “talked to strangers”. When questioned on Vietnamese prisoners at S-21, Pesh Mab recalled seeing wounds on a few Vietnamese in military uniforms after a few days of detention, leading him to conclude that they had been beaten and tortured. Interestingly, he also asserted that both Vietnamese and Cambodian prisoners were treated in the same manner and according to the same principle of “no threats, no torture”. In relation to blood-drawing at S-21, Pesh Mab had heard of this

practice from friends, and identified Sra Srong as the location for the preservation of blood for wounded revolutionary soldiers. Duch later clarified that the decision to preserve blood in a place like Sra Srong could only be made by the upper echelon. Apart from other minor clarifications, Duch found Pesh Mab's testimony "fundamentally appropriate".

Nhem En

The 1959 born former photographer of S-21's sworn statement to the OCIJ was read out on Wednesday. The Accused in his response remarked that while there was no major shortcoming in the testimony, the witness had exaggerated his role as a photographer in S 21. The International Defense Counsel also challenged this witness' credibility, stating that the person had always capitalized on his experience in S-21, offering his story to researchers and media and even tried to auction Pol Pot's sandals for USD 500. The following is his evidence as read out in Court:

Recruitment The witness claimed that because he was a well-accomplished child, he had been shortlisted to participate in training for the finest children. He claimed that 7 finest children from each district were entitled to experience this. He said the training took place in Ta Khmao, whereby he went through the Division 703 technical training program in infantry and airforce issues. He claimed that Nat was in charge there. Later on, he stated, he was selected to be amongst the 46 to receive further training in China for 6 months. The Accused claimed that this was a fabrication.

Training Nhem En claimed that only the "leading children" would receive training that he was provided with, while "the lazier children" would be assigned to do farming. The training comprises of transference of military skills to defend Cambodian territory and society and fight imperialists. However no particular enemy, such as Vietnamese, was named in the training. After he was chosen to be the selected few to be trained in China in 1976, he recalled that they were transported by ship to the country, and the participants then were dispatched to learn different skills. Nhem En himself was taught in how to take and develop photographs as well as make maps. This training went on for 6 months. He claimed he did not know where specifically in China they were trained in, but could definitely say that it was not in Beijing. Nhem En alleged that during the training Nat was there to supervise them, but he had come and leave with an airplane instead of a ship.

Knowledge of Upper Echelons The witness claimed that he first met Son Sen and Nat during the his initial training in Ta Khmao but only heard mentions about the Central Committee during meetings. After he received training in China, Nhem En alleged that he was assigned to the office of General Staff to take photographs. He also set up a printing shop near the General Military Hospital to print news papers. At the time he was under the supervision of Pang, a special agent of Pol Pot and Neun the city messenger. After the September 1977 announcement that CPK would establish the most prominent communist party in the world, Nhem En started to take pictures of assembly meetings, visits of foreign dignitaries as well as the upper echelon's visits to the provinces. It was in this context that he met Pol Pot, Nun Chea, Kiu Sam Phan and zone secretaries including Ta Mok. He asserted however, because of his work in the General Staff Office, he knew that Office 870 was Pol Pot's office, the biggest one in Cambodia. When he was in S-21, the witness asserted that he had received direct orders from Duch, Son Sen and Nat.

Role in S-21 In 1977 Nhem En claimed to have been transferred to S-21 by the order of Son Sen and Nat. he was assigned to take photos of prisoners but at times would be engaged in taking photographs outside the compound when assigned. He stated that there

were 6 photographers for S-21, and that all of them were provided with an accommodation near the Hungarian Embassy. Srieng was the chief photographer, but the witness himself was appointed as a team leader with 2 subordinates. There were two teams of photographers who were assigned to take photos of prisoners.

Policy of Secrecy The witness affirmed that division of duty was enforced in the Democratic Kampuchea. He said that photographers were assigned to specific duties and there would be others who would be assigned to develop photographs' that another had taken. For instance, the picture of dead prisoners would be taken only by Srie and no other, although the witness may be assigned to develop the negatives. Staff would also be restricted in their movement within the Security Office. Nhem En claimed he had never entered the S-21 prison compound because he was not authorized to do so.

Atmosphere of Fear Nhem En claimed that every mistake would be a life-threatening problem. He claimed that staying alive was the main concern, and thus everyone had to be very cautious not to damage anything. He recalled guards who had lost their lives because of sleeping on duty or a cook who had been arrested and smashed because he had served vegetables still smelling of pesticide to the staff. He also recounted in his statement how once he had been removed temporarily to another unit assigned to raise rabbits when the photo of Pol Pot he had developed came out flawed. He was reinstated back into his position when it was found that the flaw was due to defective negative.

Duch's Role and S-21 Position The witness stated that Duch had given him direct orders and was the person who was in charge of every affair in the security office. He described Duch's orders as strict and he allowed no mistake. Although aware that Duch probably received orders from Son Sen, Nhem En stated that actually the two men "were the same". He further elaborated that in his view, if Duch had not reported to Son Sen, Pol Pot and Nun Chea could not have known any information that would be the basis of their decision on who to be killed. The witness perceived that this in effect meant that Duch "gave green light to Son Sen and Pol Pot".

In his statement Nhem En claimed that he had once witnessed Duch beating a prisoner with a rattan stick. He claimed that at the time he was riding by an interrogation house and saw from an ajar window the Accused interrogating and administering torture.

The witness claimed that Son Sen came to S-21 once a week, and during a training he had announced that S-21 was the soul of the nation.

S-21 admission process The former security office's photographer described how prisoners would come in trucks or cars, sometimes without number plates or sometimes with West or Northwest Zone license plates. They would be brought in to S-21 compound blindfolded, and the blindfold would be removed when it was time to take photographs. Each prisoner would then be given a tag bearing a specific number or her or his name. The numbers would be assigned based on the date of the picture taken. He claimed that while in 1977 S 21 had received so many prisoner, in 1978 the Security Office only had to admit one or two people every day.

Foreign Prisoners Nhem En claimed that he had seen a number of Western prisoners admitted to S-21 in 1977, whom he thought either French or American. He also asserted that he had taken the photo graoh of 20 Vietnamese prisoners.

Cheam Soeu

Witness Cheam Soeu took the stand on Wednesday. The 52- year-old former external guard at S 21 seemed to be tense as he answered questions posed by The Chamber and the Parties, and at some points seemed to experience difficulty in understanding questions. The following is his testimony:

Background and Recruitment Cheam Soeu claimed that he had been forcedly recruited into the Khmer Rouge army during the war with Lon Nol's regime. In 1975, after the fall of Phnom Penh, he was brought to Ta Khmao to be trained in military skills. He was told that it was to prepare in defending the country from the Vietnamese. However, he was not assigned to the battlefield but rather to S-21 instead, as an external guard.

Work Condition Cheam Soeu claimed that he had been assigned guarding the West corner of S 21's outer gate. He said that there were two shifts of guarding at S-21, each lasting for 12 hours. Guards would stand guard in a group of three. When asked about his immediate superiors, he initially claimed he did not remember, but upon questioning by Judge Ya Sokhan he recalled that a person named Hong had once been his immediate superior before he was smashed. The witness seemed to have difficulty in recalling the names of other guards as well, including those who had been on the same guard shift with him. Echoing a number of previous witnesses, he depicted the segregation between units in S 21 namely when he described that even in mealtimes staff of different units were not allowed to eat at the same time. He also claimed that he was not allowed to go inside the compound

Atmosphere of fear The witness affirmed his statement before the OCIJ, namely that during his assignment at S 21 he feared failing his duty because failure meant arrest. He also had heard then that it was Duch's plan to arrest the guards should a prisoner managed to escape. Cheam Soeu also confirmed that during that period every member of the staff feared the Accused.

The incineration of Western Prisoner this seemed to be the key point of this witness' testimony as many questions from The Chamber and the Parties seemed to be centered on this incident. The witness claimed that one day, when he was on guard duty, he saw a Western man burned alive with tires at around 6 pm. The details were fuzzy in the testimony however, as the witness claimed first only to have glimpsed the prisoner being walked and after further questioning recounted that the man had been sat down, then had tires inserted around his body and then incinerated. The time of the incident was also different from what he had claimed in his statement to OCIJ, namely at 12 pm. The Accused in his observation acknowledged that the incineration of a Western prisoner with tires occurred as ordered by Nun Chea, but it was the corpse and not a live person. Duch further stated that the order was clear, namely to burn the corpse completely, and thus the witness' account describing the remains were left out in the open until the subsequent days was highly improbable.

Internal Purges the witness recalled the event when the leader of his unit, Hong, had been arrested. As can be found in other witnesses' account, the witness described how false pretense also used in this arrest. Hong was summoned to go to inside the compound to attend a meeting but once inside was arrested.

Training the witness asserted that during his assignment at S 21 he had never participated in any training, only self criticism meeting amongst his group. He claimed that as he was illiterate, it was not seen as useful for him to attend trainings. Instructions were given by

Peng, who was Hor's subordinate. In his OCIJ statement, however he claimed that he had received training sessions conducted by Duch and Hor.

Nyet Ho

On Wednesday the statement of Nyet Ho, the 1953 born former inner guard at S-21, was read out before the Chamber. The following is his account:

Background and Recruitment The witness has started his involvement in Pol Pot's army prior to the fall of Phnom Penh in the economics unit of Battalion 112, Regiment 73, Division 12 unit 112. He was subsequently recruited to serve at S-21 in March 1977.

Work Condition Just as Kheav Yet, Nyet Ho was assigned as an inner guard, in charge of the upper floor of building C. He described that at the time there were 10 teams of inside guards. The guards were assigned to take care of the prisoners, maintain security, carry the food, and bring out human waste. He claimed that the upper echelons instructed the guards to talk quietly to prisoners and not to beat them, and when the time came, to carry gruel for prisoners to eat.

Detention Conditions Nyet Ho claimed that while prisoners were deprived of liberty, their shackle would be removed when they were relieving themselves in the provided ammunition boxes. He explained that on the floor he was guarding, the prisoners were not shackled. He further reiterated that the upper floor of building C was occupied by a number of large cells that housed prisoners who had been interrogated, while those who had not would have been detained in the lower floors. Some cells on his floor were for women and children and elderly people, and some were for men. The ration provided to the prisoners comprised of gruel and sometimes soup, which was distributed twice a day. Bathing would be administered by spraying the cell with water.

With regards to a prisoner committing suicide, Nyet Ho claimed that he had firsthand knowledge. He recounted how the prisoner, when the interrogator was about to bring him down to be interrogated again, wrestled himself free and jumped off the building.

Torture While he claimed not attaining any knowledge about the activities of the interrogation unit, the witness claimed to have seen evidence of torture administered to prisoners. When he was on guard duty, Nyet Ho saw prisoners in weak state due to torture and beating..He also saw that when prisoners were returned by the interrogators to the cell, they had whip marks. Upon request by the prisoners he would summon the medics to administer medication.

Smashing The witness recalled how Him Huy's team would bring out the prisoners at night, at one point the mothers and children. However he did not know where they were taken to.

Secrecy and Atmosphere of fear Nyet Ho claimed that he feared asking questions because to do so would make him be considered as an enemy of revolution. He was also afraid to have prisoners died on his watch for it would be considered as failure in his part. The witness asserted that his avoidance in communicating with prisoners was because he did not want to be implicated when they were interrogated again. He confirmed that Duch prohibited contacts amongst units. The Accused also prohibited contact with guards who were brought in by Nat.

Duch's Role In so far as his knowledge on leadership at S 21, the witness only knew that Duch was the highest superior in the security office, followed by Hor, his deputy, and Huei

at Prey Sar. He said that he had seen Duch coming often to S 21 but only to speak to his deputy and never came into the detention buildings.

Training Nyet Ho claimed that during his assignment at S-21, he attended one study session in a training site near the Accused's house. With regards to meetings, he had never attended one with senior people present, only with Huy or Srie.

The Final Smashing Before the Liberation Day The witness claimed that within ten days prior to the 1979 Liberation Day, Him Huy's group had transported the prisoners in trucks. He did not know where they were taken, but at the time when Vietnamese troops entered Phom Penh the Security Office did not have any prisoner anymore, except in Building A, who were killed by the defense unit before they fled.

Kung Pai

On Wednesday Proceedings, the Chamber ordered the Grieffier to read out statements made by Kung Pai, a former guard at S-21, in the interview with OCIJ and during the reconstruction visits to Ta Khmao, S 21, and Cheoung Ek.

Background and Recruitment Kung Pai, a 49-year-old former guard at S 21, had lived in Kompong Tralach District, Kompong Chhnang Province before joining Khmer Rouge revolution. He was assigned to be a sub-district militia in charge of food transportation in 1975. In early 1976, he was sent to Ta Khmao Military School in Phnom Penh. After brief assignments in farming units, in 1977 he was assigned to S 21 to work as an outside guard.

Scope of work: Kung Pai stated that he was assigned to stand and guard along the walls, or in charge of opening the gate for the trucks coming in and out of S 21 compound. Occassionally, he saw Tuy whom he knew was an interrogator unloading prisoners from the trucks inside the compound.

Foreigner detainees: The statement indicated that in 1978, Kung Pai incidentally saw 3 Americans brought in through the south entrance. They were subsequently brought to the 2nd floor of the building where important prisoners were detained. The witness identified Chan, Hor, and Duch as those who were in charge of interrogating the westerners. Kung Pai claimed he witnessed Duch interrogating one of them but did not see him administering torture. He was also aware of the many Vietnamese prisoners brought into S 21, both civilians and soldiers. He identified Vietnamese women as amongst the arrested and in his knowledge they were Vietnamese prostitutes who had served Vietnam solders.

Political session: In his statement, Kung Pai responded that he attended two lessons taught by Duch on issues such as how to prevent escaping, the stipulations of the party statute, and the war with Vietnam. In the training, Duch always stated that "*Youths are party bamboo sprouts that replace the bamboo*".

Interrogation, Torture, and Smash: Kung Pai has confirmed both in his sworn statement and during the reconstruction visits that he saw torture implemented in S 21 during interrogation, usually by whipping and electrocution. He said that the prevalent rule in S 21 was that "*prisoners were considered as enemies*", thus if they failed to answer, interrogators were permitted to use torture.

Final Smashing before the Liberation Day the witness in his statement pointed out that in 1979, several days before 7 January, there was no new prisoner admitted to S 21. At that time, Kung Pai was ordered to guard a building he identified as "the big building where they

kept many prisoners” and claimed he had witnessed with his own eyes that mass killings that were committed either inside S 21 compound and the transport of prisoners to Choeung Ek.

David Chandler

On Thursday, the Chamber heard expert witness David Chandler. 76-year-old Prof. Chandler is an expert on Cambodian history. He focused on studying S-21 from 1994-1998. This study led to the publishing of his book “Voices from S-21: Terror and History in Pol Pot’s Secret Prison”, which was the reason why he was summoned by the Chamber. The Chamber and Parties questioned Prof. Chandler about his comments in the book, centering on the characteristics of S-21 and the Accused’s possible role in the security center. Prof. Chandler’s testimony largely corresponded to the Accused’s assertion that S-21 had not the authority to make arrest and was under close and direct supervision of the party center. However, Prof. Chandler also maintained that Duch had an outstanding enthusiasm and professionalism about his work, and that he did have certain degree of initiative and autonomy in the whole process of S-21’s operation. The Accused, when he was given leave to provide his observation to the expert’s account, expressed his admiration to David Chandler’s work. He also requested the Chamber to give public access to his written response to the expert’s book. Unfortunately the President of the Chamber did not understand this request and thus did not issue any ruling with regards to this matter.

Characteristic and Role of S-21. According to Mr Chandler, the CPK leadership’s conceptualization of S-21 was unique and incomparable even to security office models in other Communist countries. Mr Chandler offered two key distinguishing features: first, S-21 was completely secret. Second, prisoners were effectively being re-educated in order to be killed, insofar as giving their confessions and admitting they were wrong constituted re-education.

Prof. Chandler deemed secrecy in the Democratic Kampuchea regime. He quoted Noun Chea as having stated at one point that “*Secrecy was central to the party’s operation -the moto of CPK*”. Subsequently it became the main characteristic of S-21. The expert emphasized the policy of secrecy repeatedly during his testimony, which he saw as one of the reasons for the security center’s another important characteristic, i.e., everyone sent into S-21 was to be executed. It also lead to the compartmentalized management of the Security Office, with policies such as the proscription of interrogators from speaking to one another.

While admitting that he did not find documentary evidence from other security centers in the country, Prof. Chandler still believed that S-21 was the most efficient institution and one of the most important one in DK regime. One of the evidence for this, he asserted, was the S-21 archives extensive archives. He attributed the professionalism of keeping these documents to the leadership of Duch. Specifically with regards to the archive, Prof Chandler estimated that the through and systematic documentation system was established to fulfill three reasons: to demonstrate to the upper echelon that S-21 was a responsible organization and Duch and his colleagues were fulfilling their duties with vigilance; to uncover information on “strings and traitors” and provide it to the party center; and to serve as historical evidence of the CPK’s triumph in overcoming its enemies. Mr Chandler further described S-21 as a facility of such thoroughness and efficiency that it was without precedent in Cambodian history. This appears to indicate Duch’s effectiveness in running S-21

Rationale for establishing S-21. Based on evidence of the upper echelon's intensifying conviction that "nests of traitors" existed within the CPK, Mr Chandler inferred that S-21's existence and relocation to the present Tuol Sleng premises was due to a perceived need for a full-scale interrogation facility to address these suspicions. S-21's purpose was thus to procure and furnish the Khmer Rouge leadership with information on conspiracies taking place or being planned. The office's move to the Tuol Sleng premises indicated an intent to transform it from an institution where it was still possible for detainees to be released into a completely secret institution. Accordingly, interrogations were the "major business" of S-21.

Functioning of S-21.

Interrogations. In Prof. Chandler's view, the fact that everyone brought to S-21 was deemed guilty "underpinned the interrogators' role". The interrogators' job was not to find out whether or not the detainees were "enemies", but to obtain confessions that would prove they were indeed "enemies". However, Prof. Chandler stated that he studied documents showing Duch's praise for confessions not obtained under torture. According to Prof. Chandler's appraisal, if confessions were satisfactory, minimum, or even no torture might have been used.

Torture. Supporting the contention that torture was pervasive at S-21 was Mr Chandler's characterization of S-21 as a "dehumanized universe". From the moment they arrived, prisoners were considered to have departed from any semblance of human society – upon arrival, "they were as good as dead". He observed that S-21 staff too could be described as "dehumanized", though certainly to a different extent.ⁱ

Mr Chandler's description of the treatment of detainees at S-21 largely dovetailed with the definition of torture in international law.ⁱⁱ He agreed that the depraved conditions at S-21ⁱⁱⁱ were part and parcel of a system designed to "break prisoners down" for the purposes of obtaining information through interrogation. In Mr Chandler's words, "mercy was to have no place in the prison".

Female detainees. Notwithstanding incidents of sexual abuse at S-21, Mr Chandler clarified that there was no evidence to support the view that S-21 was a place where it was "open season" on women prisoners. While acknowledging that the situation at S-21 was volatile, being an enclosed compound filled with young men, he maintained that Duch would have stopped any incidents of abuse of female prisoners. Mr Chandler also identified female Vietnamese detainees as the most vulnerable group at S-21, as they were regarded as "outside the human race" once the CPK's conflict with Vietnam began.

Purges. Answering Judge Catwright, Prof. Chandler confirmed the Accused's description about the two phases of purges, i.e., from 1975 to September 1976, mainly concerning people associated with the former regime, and from 1976 till the end of the existence of S-21, of CPK cadres. Interestingly, Prof. Chandler believed some of the purges were done against people who genuinely opposed the regime.

Confessions. Mr Chandler affirmed that the accuracy of prisoners' confessions was of little concern to the upper echelon. Evidence showed that S-21 continued steadily churning out confessions, even though it was probably known that a good portion was inaccurate or useless.^{iv} With regard to the lists of traitors made by interrogated prisoners, Mr Chandler believed that prisoners were simply told to list everyone they knew, regardless of whether they were truly enemies. He surmised all this was done to satisfy the CPK leaders' need to validate their paranoia that the regime was beset with internal and external enemies.

Duch's Character and Involvement.

Character of the Accused. Prof. Chandler acknowledged that he had never interviewed Duch personally. His analysis of Duch's personal role in the operation of S-21 and of his character was based on interviews of former S-21 staffs and victims, as well as examination of S-21 documents. To him, Duch had professional enthusiasm for his job, and wished for S-21 to be seen by the party center and the international community as a highly professional and efficient organization, one he could be proud of. Consistent with his desire to not only perform satisfactorily but to excel, Duch was continuously innovating and improving in his administration of S-21.^v

Significantly, Mr Chandler echoed Duch's earlier testimony when he ventured his view that Duch's enthusiasm for his task likely declined towards the end of 1978. According to expert Chandler, Duch had stated in his response to the author's book that "*he was a hostage and actor of a criminal regime*". While acknowledging some truth in the statement, Chandler was of the opinion that the realization that S 21 was a criminal venture had not occurred to the Accused prior to 1978, when he saw former revolutionaries were brought in to the security office to be purged. The expert estimated that at this point Duch grew frightened and fearful because the "final machine gun bursts were arbitrary". Chandler also pointed out that even if Duch had regrets in the last few months, it should be noted that the sentiment did not drive him to desert Khmer Rouge at least throughout 1979-1980.

Knowledge: According to Mr Chandler, few things escaped Duch's attention as he was kept well-apprised of goings-on at S-21 through his trusted immediate subordinates. This was how Duch knew to punish interrogators who behaved out of line.

Difference made by Duch: The idea that Duch was the sole initiator of activities at S-21 was not acceptable to Mr Chandler. He explained that it was consistent with the characteristics of Chinese and Cambodian revolution that leeway be deliberately given to the people to behave in a "revolutionary manner". Presumably, this means that, among other things, Duch allowed his subordinates to improvise during interrogations and the extraction of confessions.

Mr Chandler was unable to offer an answer to whether Duch had, through his mechanical efficiency, exacerbated the level of purges and arrests throughout Cambodia. He acknowledged however, that as the confessions produced more strings of traitors, the belief that a country wide conspiracy seemed to be substantiated, and thus it lead to more arrests until it spiraled out of control.

A matter of choice? Alluding to the possibility that Duch's activities were not merely a result of him having no choice, Mr Chandler pointed out that Duch was aware of the damage inflicted by his actions, yet his enthusiasm for his work appeared unhampered. Still, he acknowledged that documents revealed that Duch had suggested that "politics" be employed in place of torture. Notably, Mr Chandler emphatically agreed that higher-ranking cadres would have a margin of maneuver to protect people they favoured.^{vi} Evidence showed that the hierarchical Cambodian practice of patronage remained fully in force even during the DK regime.

S-21 and global humanity. Drawing from his years of immersion in the study of the tragedies that took place during the reign of the Khmer Rouge, Mr Chandler observed that the inhumanity seen at S-21 was a global phenomenon, e.g. the Holocaust. He suggested that almost anyone could be led to carry out the same atrocities if placed in the same conditions. In other words, “there is a dark side to all of us.” While purely philosophical and unrelated to the factual and legal issues at hand, Mr Chandler’s poignant observations are thought to be valuable for the historical record, and perhaps for the local audience in the public gallery.

Judicial System in DK Regime. Corresponding to Duch’s testimony earlier on, Prof. Chandler affirmed that there were no laws, no courts, and no trials ever taking place in the DK regime.

ⁱ This observation was based on confessions by S-21 staff complaining of their lack of food, free time, and lack of freedom to leave the premises and visit their family.

ⁱⁱ Convention Against Torture.

ⁱⁱⁱ E.g. severe absence of hygiene, lack of food, isolation, being bathed with water hoses and made to relieve oneself in containers.

^{iv} Mr Chandler gave the example of confessions by several prisoners stating that they had dug tunnels in Phnom Penh to hide Vietnamese soldiers. There was no evidence that this evidence had been acted upon, indicating a lack of belief in the truth of the confessions.

^v The idea to make multiple copies of confessions for systematic distribution to security offices and committees throughout Cambodia is one example of Duch’s innovation in building an efficient and exemplary institution.

^{vi} CP Group 1 Lawyer Alain Werner had put to Mr Chandler the testimony of Mam Nai. Mam Nai had stated in relation to an arrest of his former student, that had he been informed of this beforehand, he would have been able to prevent the arrest.



WSDHANDACENTER
FOR HUMAN RIGHTS & INTERNATIONAL JUSTICE
Stanford University

This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

A complete archive of trial monitoring reports is available online at:

<http://handacenter.stanford.edu/reports-list>

For more information about Handa Center programs, please visit:

<http://handacenter.stanford.edu>
