



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

## The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,  
alias 'Duch'

Report Issue No. 9:  
Week Ending June 21, 2009

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

***...Duch questioned on the Functioning of S-21 (pp.2-5) and Killings at S-21, the surrounding areas, and Choeung Ek (pp.5-6); Further Psychological Support required for Civil Parties, as Testimony Turns to S-21 atrocities (pp.8-9); Chamber and Parties attempt to expedite trial (p.9);...***

### **1. SUMMARY**

*"I betrayed my friends to further see the sunlight."<sup>i</sup>*

This week, the Chamber questioned Duch on the "Functioning of S-21" and "Killings at S-21, the surrounding areas, and Choeung Ek". The Chamber completed its examination on these topics over a three-day period, and the Prosecution will begin questioning the Accused Person on Monday, 22 June 2009. There were no proceedings held on Thursday, as it was a Cambodian public holiday.

Although Duch continued to show remorse and admit that atrocities occurred at S-21 this week, he also consistently denied much of his personal involvement in both the decision-making process and the daily operation of the security center. The Accused did acknowledge, however, his personal role in annotating confessions and reporting to the upper echelon, which he admitted led to the latter's decision on further arrests. He appeared to become very emotional at several points during this week's proceedings, particularly when asked to describe acts committed against people he knew personally.

In legal and procedural matters, the Chamber issued its decision regarding Duch's provisional detention this week. After lengthy deliberation, the Chamber denied the request for release, but nonetheless recognized the illegality of Duch's detention while awaiting trial before the Cambodian Military Court. The Chamber therefore determined that, in the case of a conviction, the Accused Person would be entitled to credit for the entire time served in pre-trial detention (i.e. both at the Military Court, as well as under the authority of the ECCC). The Chamber also further considered issues related to the admissibility of evidence (and particular, how documents are put before the Chamber), but again this week did not appear to fully resolve the Parties' concerns.

In a further effort to expedite proceedings, the Chamber has allocated each Party time limits for questioning the witnesses and the Accused. Though the Chamber explained that it would endeavor to be flexible where appropriate, its announcement still raised concerns among the Parties. In particular, the Defense made an "explicit observation" on

the “unfairness” of these limits, and asked that it be noted in the record of proceedings that it was allocated less time than the Prosecution and Civil Parties collectively. This further raises concerns about how the Chamber is interpreting the principle of equality of arms. The Chamber, however, did not respond to the Defense’s remarks. Despite these efforts, monitors noted that the judges themselves appeared to be asking repetitive and irrelevant questions this week, with members of the bench sometimes repeating questions that their learned colleagues had already asked. Greater cooperation amongst the judges may be required in order to ensure that this does not occur in the future.

Civil Party attendance increased significantly on Monday, with a large number of Civil Parties attending the proceedings. While this was a positive development, a lack of psychological support afforded to them during this week’s proceedings meant that one Civil Party, who became emotionally disturbed by Duch’s testimony, was not given entirely adequate psychological support on Tuesday. The Court’s Witness and Expert’s Support Unit noted that the responsibility for ensuring psychological assistance for Civil Parties was primarily the responsibility of the Court’s Victim’s Unit. The new Head of the Victim’s Unit, Dr Helen Jarvis, noted that the Civil Party had access to a Witness Support Officer who had been trained by psycho-social staff, as well as a Victims Unit employee, and a medical officer, shortly after the incident occurred. However, she further noted that the Victims Unit was exploring offering greater psychological services to Civil Parties. Given the likelihood of increasing distress at the testimony that emerges as the Chamber hears evidence about S-21, this seems a pressing concern, and one which the Court should be encouraged to deal with swiftly.

## **2. LEGAL AND PROCEDURAL ISSUES**

### **A. Abridged Account of the Accused Person’s Testimony**

#### ***Functioning of S-21***

***Composition of Prisoners.*** Reinforcing his previous statements, Duch stated that the composition of prisoners at S-21 could be divided into two temporal phases. In the first phase, before he was appointed chairman, the prisoners were mostly former officers from the Lon Nol regime. In the second phase, after his appointment to chairman in March 1976, the prisoners consisted mainly of cadre inside the CPK.

***Demographics of S-21.*** When responding to questions regarding the documented presence of 48 foreign prisoners from 11 different countries, Duch asserted that he could not verify the number of Western foreigners at S-21. He said he could only remember 4 Westerners, but agreed that there may have been prisoners from other Asian countries at S-21 that could be included in this number. Duch confirmed that over 160 children between the ages of 15 and 18 were listed as being detained and smashed at S-21 as they were classified as spies, bandits, or secret agents. Children under the age of five were not included on the lists as they were brought to S-21 with their families, not in their own capacity. Duch also confirmed the detention and execution of at least 1,925 women who were classified as either related to male prisoners or accused of individual offenses. When asked by the Chamber how Chinese prisoners were detained at S-21, he responded that they were not viewed any differently from ordinary members of society.

***Arrest of Prisoners.*** Duch reiterated that the authority to arrest was vested solely in the Standing Committee. Further, once such a decision to arrest was made, everyone had to

follow it unconditionally. He commented on six “release lists,” which appeared to be lists of people released from S-21. Calling these lists “façades,” Duch emphasized that these people were actually executed, and that “the word ‘release’ did not exist in S-21.”

Duch confirmed that prisoners were generally arrested in their respective units and then sent to S-21. As for S-21 staff, Duch stated that he would report offenses to the upper echelon allowing it to reprimand people accordingly. He also acknowledged that he could not recall any incident when the upper echelon either did not approve of his reports or decided to spare the people reported.

According to Duch, S-21 forces never arrested prisoners in Phnom Penh, as this would have risked unveiling the clandestine operations of the security center. When answering questions about the arrest of “important prisoners,” he further stated that the decision to arrest was kept secret and that S-21 members were not generally aware of arrests until they were informed that they would be receiving prisoners. The factual basis for such arrests was seldom verified. Detainees were never informed of the reason for their arrests.

Duch stated that it was a common practice to arrest an entire family if one member was considered an “enemy”. Commenting on arrests stemming from S-21 confessions, Duch asserted that the General Staff and the Secretary of the Division concerned needed to agree to such arrests before they could be carried out.

***Treatment of Prisoners.*** According to Duch, prisoners were segregated into different cells based on their importance. Status was determined based on both the prisoner’s position and the time served in the Party. Duch stated that the most important prisoners were not detained in the common room, but under better conditions in specialized individual cells. These prisoners of special interest also received better food rations and were assigned a special interrogator. He further elucidated that he himself initiated the building of individual cells without needing to consult his superior for approval.

Duch stated that the prisoners at S-21 were “already treated as dead people.” He acknowledged that they were detained without any safeguards, and were “eating like animals.” According to Duch, prisoners had their ankles shackled to a metal bar for 24 hours a day. He confirmed medical treatment was only available for the purpose of keeping prisoners alive for interrogation. While claiming he was not fully aware of the situation, Duch stated that all the male prisoners were stripped immediately upon arrival at S-21, leaving them in underwear.

While confirming that prisoners were generally interrogated, tortured, and then executed, Duch also stated that some were executed without being interrogated.

***Duch’s Role in the Daily Operation of S-21.*** Duch stressed that while he was not directly involved in the daily operation of S-21, he did receive daily updates. Duch confirmed that “noxious odors” dominated S-21 but that he did not go inside the facility.

***Detention Conditions.*** Duch confirmed that famine, although incidental due to nationwide food shortages, had the “desirable consequence” of making detainees too weak to resist or escape. When asked about the sanitation conditions at S-21, Duch stated that the prisoners were not allowed to take a shower. Instead, the guards would pour water on them from outside the room. He admitted bathing was incidental and that

the primary purpose of this task was to clean the cells rather than the prisoners. However, he also repeatedly asserted that he did not witness these practices. While expressing disappointment and regret in relation to these conditions, Duch confirmed receiving special food rations for himself.

He further elaborated that since suicides were often attempted, preventative measure were installed in order to preserve the opportunity to elicit confessions. He claimed that “these acts were beyond cowardice,” as he was even betraying his friends. Duch also confirmed that while detainees were explicitly prohibited from speaking to each other, some compassionate guards allowed communication.

**Methods of Interrogation.** In response to the Nil Non’s questions, and reiterating what has now become familiar testimony, Duch explained that there were three methods of interrogation at S-21: cold, hot, and chewing. At first, the interrogators used the cold method, trying to extract confessions by questioning them in a gentle way. If this was not effective, the hot method, which utilized torture, was used. The Accused also averred that only he and Morm Nay, his assistant, could use the cold method effectively, thus avoiding torture.

The Accused stated that ideally, there was only one interrogator present during an interrogation session. Interrogations took place every day from 7:00 am - 11:00am, from 2:00 pm – 5:00 pm, and from 7:00 pm – 10:00 pm. Once inside the interrogation room, one of the prisoner’s legs was shackled to a table. Although Duch admitted that he permitted torture during interrogation, he said that it was only used to assist in eliciting confession. Duch confirmed that the purpose of interrogation was to obtain confessions about traitorous acts. These confessions were used to both justify the arrest as well as apprehend others who were implicated. A female interrogation team was created after an interrogator raped a female prisoner.

**Duch’s Personal Role in Interrogation.** Despite exhibiting fairly detailed knowledge about interrogation techniques, Duch denied any participation in interrogations, except during two instances. The Accused admitted interrogating and slapping S-21 deputy Chhit Ev twice on the face.<sup>ii</sup> He further asserted that the only prisoner he personally interrogated was Koy Tuon, the ninth ranking member of party and ex-minister of Commerce. In an additional incident, when confronted with a fallacious confession letter that he annotated to show that he himself was the first, and Pon the second, interrogator, Duch confirmed forging the document. He conceded altering the truth in order to meet his Superior Commanders’ demands that several interrogators be present during confessions. He admitted listing himself as the first interrogator, although he did not participate at all.

**Training of Interrogators.** When questioned on the frequency with which he conducted interrogation training sessions, Duch stated that he trained interrogators 2 - 3 weeks a month, for 2 hours per day. In response to the Nil Non’s questions, Duch denied instructing interrogators in torture methods.

**Truthfulness of the Confessions.** Duch said that he never believed confessions were absolutely true. In fact, he contended that he believed that only 50% of confessions were true and that only 20% of the implications were accurate. Furthermore, Duch stated that even the upper echelon at one time did not believe in the truthfulness of the confessions.

**Types of Torture.** When asked what torture is, Duch replied that, “while it is an inherently elusive philosophy, it undeniably encompasses both psychological and physical suffering”. Duch admitted that water-boarding and the use of plastic bags to make victims feel as if they were suffocating were pervasive throughout S-21. He described how new creative methods were introduced as some torture techniques were deemed largely ineffective. Duch asserted that the most popular form of torture was the traditional method of beating prisoners until they were unconscious or near death in order to produce confessions. This limit, he affirmed, was very difficult for most interrogators to gauge and thus many prisoners died. He stated the severity of the torture was inexorably linked to the degree of self-control exercised by the individual interrogator. The accused affirmed that electrocuting male’s genitals until they became impotent was a common practice. Although denying any witnessing of the aforementioned torture methods, Duch affirmed that he adopted an “ends justifies the means,” policy when it came to authorizing them.

Although Duch admits acts of sexual violence did occur, he maintains it was only on one or two occasions, and that measures were taken to prevent future occurrences. Further, Duch confirmed that prisoners were often forced to ingest faeces and urine.

**Medical Experimentation.** Duch admitted that live prisoners were used for surgical experimentation. He claims this policy was in effect before he assumed the position of S-21 Chairman. Some prisoners were killed specifically for the purpose of anatomical research while others were killed through bloodletting which in-turn was used for treating combatants at Hospital 98. He confirmed that such bloodletting practices were systematic and that he modified the procedure to screen for tainted blood. Duch further confirmed that while he was given unknown pills to administer to prisoners, he secretly substituted the “phantom powder” with Paracetamol in order to mitigate the effects of medical experimentation.

### ***Killings at S-21, its surrounding areas, and Choeung Ek***

**Killings at S-21 and Surrounding Areas.** In response to Judge Nil Non’s questions, Duch said that at least 12,380 prisoners were killed. There were three main places of execution: the Psychological Hospital at Ta Khmouv, the surroundings of S-21, and Choeung Ek. Despite attributing the choice of arrests and smashing generally to the upper echelon, he stated that the S-21 committee, which was comprised of himself, Ho, and Huy, decided when to smash prisoners. The main responsibilities of this committee were to detain, interrogate, obtain confessions, and smash. There was a special “elite unit” responsible for taking victims to be killed at Choeung Ek. There were four people at Choeung Ek who dug and covered pits and fulfilled other duties at the site. Prisoners were initially killed by stabbing (in the neck); later on, they were killed by being beaten at the base of their necks with various instruments.

**Duch’s Training of the Executioners.** When Duch was asked how he instructed prisoners’ executions, he responded by saying he did not teach that at all. He elaborated that “*I did not [need to] teach a crocodile how to swim, they already knew how to swim.*” Duch denied that poisonous insects were used to kill prisoners because he did not order it. He also denied any personal participation in executions. The method of killing important prisoners such as Koy Tuon, Vorn Vet, and Hou Nim, among others, was to slit their throats and take pictures as instructed by the upper echelon “in order to confirm

kills". Duch affirmed that children were killed by bashing their heads against tree trunks. Many of the child victims were buried around S-21. Duch said that the four Westerners were killed and their remains incinerated, as ordered by superiors. Duch stated no other victims were cremated, although there is documentation to support the proposition that more than four victim's ashes existed.

**Executions at Choeung Ek.** According to the Accused Person, the killings at Choeung Ek started in April 1976. Duch affirmed that he was proactive about choosing this location, in order to prevent an epidemic at S-21. When people were taken to be killed at Choeung Ek, they were told they were moving into new houses. Prisoners were usually transported to Choeung Ek at night, in order to maintain secrecy. In response to Judge Ya Sokhan, Duch said that mass killings were committed at five different times. Each time, over 100 prisoners were executed. In these cases, the S-21 guard units were ordered to help the Special Unit. Duch said he had been to Choeung Ek only one time, for a brief visit. When asked why his superiors ordered him to go there, Duch said that it was because, his superiors "did not trust the Division 703's ability to smash prisoners."

**Decision to "Smash".** Duch constantly repeated his position that the decision to smash was made by the upper echelon. However, he acknowledged that he would decide which prisoners' were completely interrogated and thus ready for execution.

**Special Execution Unit.** According to Duch, a special unit of S-21 staff was in charge of executions. Duch confirmed that the members of this "elite" unit were considered to be "experienced" at killing, and able to maintain confidentiality. He said that no more than 30 members of this unit were from M-13. Duch further called himself "the father of such unit," but denied any direct involvement in the Special Unit's operations. He stated that he would only give orders to the Special Unit through his subordinate, Deputy Ho.

**Execution Methods.** Duch explained that he never paid much attention to the methods applied for execution, because the prisoner's death was the only requirement. He maintained that he never witnessed an execution apart from a few occasions where he was ordered by his superior to inspect and confirm the killing. Execution methods included stabbing in the throat, and using a bamboo stick to hit the neck. The latter had also been adopted at M-13. Duch acknowledged that in certain cases involving key prisoners, photos were taken after the prisoners' were disembowelled. The photos were requested by the upper echelons in order to confirm the execution. He further explained that other prisoners who died inside the S-21 compound were photographed in anticipation of superiors' inquiries as to the whereabouts of these prisoners.

**Mass Executions.** When asked about mass executions at S-21, Duch's memory seemed to be rather imprecise. Duch stated that in the earlier stages of S-21, the purpose of mass killings was to make room for the arrival of new prisoners. Towards the end of S-21, however, he was ordered by Nuon Chea to execute all the prisoners because the Vietnamese were approaching Phnom Penh. Duch claimed that this reason was not revealed to him at that moment, and he still thought it was to prepare for the arrival of new prisoners. He considered keeping some prisoners alive for interrogations but decided against this, because in addition to being held responsible for their escape, he also genuinely believed there would be future prisoners to interrogate.

**Survivors of S-21.** Duch claimed that there were 15 survivors from S-21. (Five artists, a dentist, and the rest being prisoners helping with the work at S-21). These people

avoided execution at the security center because they possessed skill sets that were of potential value to Pol Pot. Asked why they survived Duch's execution order to "remove" all the prisoners before the fall of Phnom Penh, the Accused explained he simply fled without thinking about them.

***Duch's Personal Involvement in the Execution.*** The Accused persistently dissociated himself from both the decision-making and the actual implementation of the execution process. He steadfastly maintained that the upper echelon had already decided that the people sent to S-21 were to be smashed. He claimed that the only thing he could do was to turn a blind-eye to the torture and killing at S-21, and refrain from participating in its daily operations. Duch maintained that he only witnessed killings when specifically ordered to do so. In an uncontrollable emotional state dominated by gasping and tears, the Accused again asserted that he was only performing his work at S-21 out of fear and under the order of his superiors. He said he "betrayed" his "friends to further see the sunlight."

## **B. LEGAL ISSUES OBSERVED AT TRIAL**

### ***Chamber Issues Ruling in favor of the Accused Person's Continued Provisional Detention; Time in Custody to be Considered when Verdict has been Determined.***

The Trial Chamber issued its oral ruling on the Defence's request to release the Accused from provisional detention this week, and ordered the Accused to remain in the provisional detention for the duration of the trial. Because the Chamber acknowledges the detention by the Military Court as unlawful, the Accused has the right to compensation for time served and for the violation of his rights while detained under the authority of the Military Court. If the ECCC acquits the Accused, then he may seek appropriate remedies within the National Courts of Cambodia. However, if the ECCC determines that he is guilty, the Accused is entitled to credit for the time served for both his detention under the authority of ECCC since 31 July 2007, and his detention under the authority of the Military Court from 10 May 1999 to 30 July 2007.

***Equality of Arms.*** Following his assertion that the Defense was confronted with more than one opponent last week,<sup>iii</sup> international Defense counsel François Roux again claimed that the Accused's right to a fair trial was being violated. The Chamber on Tuesday announced its decision as to the time allocation for each Party to question the Accused. The Prosecution was given three hours, the four groups of Civil Party Lawyers all together were given three hours, and the Defense was given another four hours for the questioning. Roux claimed this to be unfair because the Defense should at least be allowed "same time as all its opponents together". He argued that if the Prosecution and the Civil Parties had six hours altogether, it was not fair to give the Defense only four hours. While stating that he was not "criticiz[ing]" the Chamber's ruling, Roux required the Defence's "explicit reservation" to be noted, and suggested he would refer to it on appeal. This again raised the question of how the Chamber would preserve a balance between the rights of the parties, bearing in mind that the Civil Parties do have overlapping interests with the prosecution. The Chamber remained silent on the point.

***Admissibility of Evidence: Putting Documents before the Chamber.*** The issue of how to interpret Rule 87(2) and 87(3), i.e. what is considered to be "put before the Chamber", and thus available to be taken into consideration for the final decision, has been lengthily discussed in previous proceedings.<sup>iv</sup> On Wednesday, International Deputy Co-Prosecutor William Smith repeatedly sought the Chamber's confirmation as to

whether a series of documents that the Prosecution wished to submit would be considered put before the Chamber. When explaining his position, Smith referred to guidance given by Judge Cartwright in last Thursday's Trial Management Meeting. According to Smith, this "guidance" seemed to suggest that for the purpose of putting a document before the Chamber under Rule 87, it is not necessary to summarize it or read it out in Court. It suffices if "at least" a reference number to identify the document is read into the Court's records. Given the fact that Smith requested the Chamber to confirm the admissibility of evidence submitted this way several times during the day, it appears that how the Chamber has chosen to interpret this Rule is still unclear. The Chamber confirmed that the Prosecution's documents could be considered "put" before the Chamber once it was certain that the Defense did not object to it.

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

***Civil party Attendance.*** Distinguishing from the Civil Parties' attendance in previous weeks, Monday's trial was attended by 34 victims from different provinces including Ratanakiri, Kratie, Kompong Cham, Kandal, and Koh Kong. Legal counsel accompanied ten of these people. On Tuesday, however, attendance again diminished significantly, with only 3 civil parties present, and on Wednesday, only 2.

Early in Tuesday's proceedings, national Civil Party Lawyer for Group 4, Mr. Hong Kim Suon, introduced Mr. Olivier Pierre Sur's assistant, who was allowed to attend the proceedings in the courtroom. Mr. Hong Kim Suon was then absent on Tuesday afternoon and Wednesday.

***Role of Civil Parties in the Proceedings.*** Debates about the role of civil parties kept arising during this week's proceedings. New time limits invoked by the Chamber for Parties' questioning saw International Defense Counsel, Francois Roux maintain his previous stance that the Civil Parties were acting as a "second prosecutor". The Civil Party lawyers and the Prosecution, on the other hand, stressed that Civil Parties were independent parties to the proceedings, and had a separate function. The Internal Rules provide that one of the purposes of civil party participation is to "support the prosecution". While some of the Civil Party Lawyers tend to be "supporting the prosecution" by way of trying to prove the guilt of the Accused, others are more concerned about expressing the views of the victims. The Chamber, however, has thus far not provided any guidance as to the interpretation of this provision in the Internal Rules.

***Civil Parties' Right to Address the Court.*** During Duch's testimony, a Civil Party sought the chance to comment by raising her hand. It seemed that she had some comments on Duch's statement concerning an S-21 victim, Prof. Phoeung Ton. At least one member of the Bench seemed to have noticed her, but before the Judge took any measures, Civil Party Lawyer Alain Werner communicated with the Civil Party. She seemed to give up the attempt to address the Court afterwards. According to the Internal Rules, civil parties who are represented by a lawyer can exercise their rights to participate in proceedings, only through their lawyer.

***Victim and Witness Support: Additional Civil Party Support May Be Required.*** The Co-Prosecutor's submission of new documents to the case-file prompted the defence to express its concern regarding the need to protect the anonymity of future witnesses



appearing in Court. The Chamber made note of the issue and proclaimed its commitment to protecting witness identities.

During Wednesday's proceedings, one of the Civil Parties present in the courtroom collapsed and had to be taken outside. According to the Civil Party's counsel, Silke Studzinsky, no psychological support was available for her client immediately after this incident. Counsel further noted that the Civil Party in question had experienced fairly severe psychological distress.

According to email correspondence with Ms Wendy Lobwein, Head of the Court's Witness and Expert's Support Unit, it is true that a trained psychologist was not present in the courtroom that day. This is because the Court's current arrangements only provide for a psychologist from trauma specialist non-governmental organization, TPO, to be on standby in the courtroom when witnesses are testifying. (As the Accused Person was testifying that day, no TPO staff was on standby). Ms Lobwein also further noted that the primary responsibility for the psychosocial support of Civil Parties lies with the Victims Unit. The new Head of the ECCC's Victim's Unit, Dr Helen Jarvis, noted by telephone that the Civil Party in question had been accompanied to Court by a Cambodian Witness Support Officer (who has been trained by TPO) as well as a Victim's Unit employee. Medical staff were on standby soon after to attend to the Civil Party in question. Dr Jarvis did note, however, that the Victim's Unit was currently exploring how best to ensure that further psychosocial support services were made available to Civil Parties and that this was an ongoing concern for the unit. Monitors would urge the Victims Unit and the Court as a whole to deal with this issue swiftly, in light of the likelihood that ongoing psychological distress may be a concern as the Accused and witnesses testify to the atrocities committed against individuals at S-21, Cheoung Ek and Prey Sar.

#### **4. TRIAL MANAGEMENT**

**Judicial Management.** Due to the slow pace of proceedings and concern expressed by Civil Parties, the Chamber announced its decision to allocate time limits on witness questioning and submissions. When questioning a witness, the Prosecution is now limited to 30, the civil parties to 40, and the defence to 40 minutes. Concerning submissions, 5-10 minutes are given for both questions and objections. Another 5 minutes are given for any responses. Furthermore, the Chamber suggested that the four Civil Party Groups collectively assign one national and one international lawyer for witness questioning. For the questioning of the Accused, the prosecution and the civil parties will be allowed 3 hours each, the Defense 4 hours. Moreover, the Chamber declared that it will modify its sitting order by eliminating one daily court session every month in order to take more time to prepare as, "a lot of work is done outside the courtroom."

On Monday the Chamber acknowledged the Civil Parties' concerns regarding poor working conditions and future obligations of Civil Party Lawyers and their staff. The Chamber noted that they would confer with the Victims Unit about these issues.

In light of concerns relating to expediency and repetitious questioning, Co-prosecutor William Smith proposed that the Court break after the Chamber's questioning of the Accused in order for all parties to come to a consensus on the complex body of evidence presented in the last few sessions. The Chamber agreed and, citing a lack of time, suggested that the Parties take notes and prepare their questions during the Chamber's

questioning. On Tuesday, the Chamber announced that their questioning of the Accused would proceed through the end of Wednesday so that parties might have sufficient time to prepare their questions and start their questioning next Monday.

Furthermore, on Monday, and again on Tuesday, the Co-Prosecutor asked for clarification on the topic for this week's questioning. The Chamber maintains its decision to separate the functioning of S-21 and Prey Sar (S-24).

The questioning on Wednesday by judges Ya Sokhan and Jean-Marc Lavergne seemed to include numerous irrelevant and repetitive questions.<sup>v</sup>

**Interpretation Concerns.** On Tuesday, some minor interpretation problems arose. During Wednesday's questioning of the accused, defence counsel Roux interrupted proceedings on two occasions in order to clarify mistakes in the French translation.

**Accused Person Breaks Down.** The accused became very emotional, almost whimpering, on Tuesday when asked about the torture procedures at S-21. The President gave him some time to, "collect his emotions." Again on Wednesday afternoon, the accused seemed to be very emotional.

**Defense Counsel Appears to Be Asleep.** Cambodian defense counsel Kar Savuth came to court late on Tuesday and appeared to fall asleep twice during this week's hearings.

**Public attendance.** The attendance in the public gallery on Monday was noticeably higher compared to previous weeks, with more than 150 people present. Cambodian villagers from various localities including approximately 18 people from the Cham community in Pursat Province were brought in from Krako, Sampov Meas, and Kan Dieng districts, as were another 47 people from the Prek Tasek Commune in the Russei Keo district, Phnom Penh. The Victim's Unit, in conjunction with DC-Cam, provided transportation for another 60 people. Additionally, DC-Cam funded the attendance of approximately 20 American students. A large group of Cambodian students from Build Bright University (BBU) as well as national and international NGO staff were also present.

Tuesday's public gallery was also bustling with fervor with around 200 people in attendance. Much of the audience was comprised of Cambodian villagers from different provinces. Unfortunately, most of them left at the lunch recess. About 40 Cambodian students from Build Bright University (BBU) were present for the remainder of the day.

There were 60 local people from Phnom Penh Thmei commune, Sen Sok district, present in Wednesday's morning session, supported by the Victim's Unit. Unfortunately, they left at the lunch break. Additionally, about 45 students from the Build Bright University (BBU) attended for the whole day. Large groups of national and international NGO staff and media were also present.

**Court and Official Attendance.** Both national and international co-prosecutors, Ms. Chea Leang and Mr. Robert Petit, were absent this week. The prosecution was represented by Mr. Seng Bunkheang, Mr. Yet Chakrya and Mr. William Smith. Defense

counsel Mr. Kar Savuth and Mr. François Roux were also present throughout this week's proceedings.

**Technical Problems.** Monday's proceedings were delayed from starting by 15 minutes as a result of technical issues with the AV equipment.

On Tuesday the Chamber asked the prosecution to provide a specific document for the Chamber's questioning of the accused. In response, the defence objected and asked why the Greffier could not provide the document. The Chamber revealed that only the prosecutor's Computer was linked to the AV System. However, the Chamber noted this problem and promised to provide a timely solution.

**Scheduling.** On Monday, the Chamber informed the public of a decision reached at the trial management meeting on June 11. Stemming from all parties' concerns regarding time restraints on the presentation and the discussion of evidence, the Chamber promised to take a proactive role by announcing a new schedule by the end of the week. According to this schedule, proceedings will be held every week until October, except for a two day-recess on July 29 and 30 (due to pre-trial hearings) and a one week recess from September 7 to September 11. Furthermore, the Chamber will only sit three days every third week.

Additionally, civil party lawyer Alain Werner announced a preliminary agreement between the Civil Parties regarding their appearance before the Chamber. According to Mr Werner, 20 (one application is outstanding) Civil Parties wish to appear in court, and would endeavor to adhere to time limits while testifying. Civil party groups 1 and 3 were allocated 11 hours each, while groups 2 and 4 were allocated 15 hours total. The Chamber expressed its gratitude for this attempt at consolidation, and stated it would issue a ruling on this issue shortly.

### ***Time Management.***

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 15/06/09	09.15	10.38 – 11.08	12.05 – 13.40	14.52 – 15.14	16.22	4 HOURS
TUE. 16/06/09	09.02	10.40 – 11.03	12.02 – 13.32	14.40 – 15.00	16.27	4 HOURS 32 MN
WED. 17/06/09	09.05	10.44 – 11.06	12.12 – 13.38	14.42 – 15.05	16.12	4 HOURS 25 MN
THURS. 18/06/09	-	-	-	-	-	-
<b>AVERAGE NO. OF HOURS IN SESSION :</b>						4 HRS 29 MINS
<b>TOTAL NO. OF HOURS THIS WEEK :</b>						13 HRS, 28 MINS
<b>TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL:</b>						125 HOURS AND 50 MINS  OVER 29 TRIAL DAYS OVER 8 WEEKS

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<sup>i</sup> Duch on Wednesday, June 17, 2009. In a rather emotional description of his own position in the Khmer Rouge regime, Duch stressed that he was performing his duty as chief of S-21 only out of fear and following orders from the upper echelon.

<sup>ii</sup> In response to a question by Nil Non, Duch further elaborated interrogation techniques by saying, “*when someone conceded that they were guilty, and we beat them, they will be afraid of us.*”

<sup>iii</sup> See KRT Report, Issue 7, p. 4.

<sup>iv</sup> See KRT Report, No. 6.

<sup>v</sup> For example, Judge Ya Sokhan asked the Accused how many people were killed at S-21 and if they could be classified, whether Duch inspected the pits at Choeung Ek and how many pits there were at Choeung Ek – all of these questions had been asked and answered earlier. Judge Jean-Marc Lavergne asked Duch whether he ate together with the executioners which seemed to be irrelevant. Furthermore, he again asked about the time of transports from S-21 to Choeung Ek which had previously been answered (at night).