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Case of Nuon Chea and Khieu Samphan

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“Each prisoner was sent one at a time. I had a chair and took their names one by one. After the names were recorded they were sent away for execution. Prisoners were asked to sit down and then clubbed on the back of the neck.”

- Witness Him Huy

I. OVERVIEW

This week the Trial Chamber continued hearing witnesses on the trial segment relevant to the S-21 Security Center. Prak Khan was the first witness to appear this week, and concluded testimony he commenced last week about his role first as a guard and interrogator at S-21. Next, Witness Mak Thim testified about his time as a teenage medic at S-21. He described prison conditions, the medical treatment available and the treatment of female prisoners. Witness Him Huy was the last witness to appear and provided testimony about his role at S-21 and Choeung Ek. Him Huy has been identified by other witnesses in Case 002/02 as a senior guard at S-21, although this week denied he held a position of significant responsibility.¹ Testimony from all three of this weeks' witnesses featured in Case 001, and all three appeared with the assistance of duty counsel.² In addition to hearing testimony from three witnesses, the Trial Chamber also dealt with a request for an adjournment of proceedings ahead of the final two witnesses in the S-21 segment, and legal issues related to torture-tainted evidence and a Witness's right against self-incrimination.

II. SUMMARY OF WITNESS TESTIMONY

Three witnesses appeared before the Trial Chamber to give evidence on the S-21 Security Center. All three men: Prak Khan, Mak Thim and Him Huy, testified to having worked there in varying capacities and each provided their own insight into the Center's functioning.

A. Summary of Testimony by Witness Prak Khan

Witness Mr. Prak Kahn appeared on Monday to conclude his testimony from the previous week about his time spent working as a guard and interrogator at S-21 Security Center.³ He spoke about his duties in both roles and particularly interrogation techniques he learned from Duch, the chief of S-21.

1. Work as a Guard at S-21

Expanding on testimony he provided last week, Witness Prak Kahn explained that he was part of a group of 12 guards, all of whom lived together in what is now the location of the Beehive Radio Station in Phnom Penh, who were responsible for guarding the perimeter of S-21. He recalled meeting another S-21 guard named Lach Mean towards the end of the DK regime, explaining that he had arrived with a group from the West who were sent to work at S-21 shortly after members of Division 703 were arrested.⁴

2. Work as an Interrogator at S-21, including Use of Torture

Probed further into his role as an interrogator, the Witness told the Chamber that he usually conducted interrogations alone, and that the room was closed to others with the exception of Tith and Duch, who occasionally watched his work. He clarified that Duch had control over S-21 and Duch's superior was Son Sen, who he saw visit the Center once or twice during the time he worked there. The Witness said interrogators were forbidden from discussing interrogations with one another, and were only allowed to report their progress to Tith. He told the Court that Duch provided both training in politics and interrogation techniques to staff at S-21 once or twice per fortnight. Specifically, he said that Duch taught them the method of using a round head pin inserted under a prisoner's finger or toe nail to remove the nail.⁵

Prak Kahn was asked particularly about the interrogation techniques he used while questioning Eng Meng Chhun, (*alias* Chhun) who he recalled beating with a tree branch in order to obtain a "complete" confession.⁶ He said that if a prisoner did not confess, they would be subjected to torture, with the aim being to "terrify." In addition to methods of physical torture, the Witness also told the Court that interrogators were instructed to remind prisoners of their families, aiming to psychologically compel them to confess. He said that after confessions were produced, six carbon copies were made, but he did not know where all of these copies were ultimately sent or kept.

3. Medical Treatment and Fleeing S-21

Prak Khan testified that in 1978 he required medical treatment for wounds he had sustained during fighting prior to the DK regime. He said that a female medic named Thorn, who was a prisoner at S-21, treated him with acupuncture. He estimated to having been in hospital for four or five months, and said afterwards he resumed his work. Towards the end of the regime, Prak Khan said, interrogations ceased and no new prisoners were brought in to S-21. He said he was instructed to stay in his living quarters and to destroy certain documents by burning them in rubbish bins. He said when Vietnamese troops advanced on the Center on 7 January 1979 he, along with others including Ung Pech, fled to Om Lieng.

4. Witness Demeanor and Credibility

Similar to his testimony last week, Witness Prak Kahn appeared attentive throughout his testimony, and was able to follow along and respond to questions with ease. He seemed to have a good memory, and was generally clear and precise in his answers. He appeared confident when providing specific dates and details, and again, made efforts to avoid speculating over gaps in his knowledge.

B. Summary of Testimony by Witness Mak Thim

On Monday afternoon Witness Mr. Mak Thim appeared before the Chamber to testify on S-21 Security Center.⁷ Mak Thim is now fifty-four years old and was born in Tha Sok Village, Saeb Commune, Kampong Trolach District, Kampong Chhnang Province.

1. Medical Training and Time Spent in Medical Production Unit

Mak Thim testified that he was approximately 13 years old at the beginning of the DK regime. He said he was first part of a group which grew vegetables and learned how to use weapons in Takhmao. He said while there he also was taught how to make medicinal tablets and later he was sent to undergo medical training at Psa Thmey for two to three months. While there he was trained in how to administer medicine and give injections, along with about 10 others trainees. He was also sent to Takhmao for 6 to 8-month training session in how to produce medicinal tablets, where he was instructed by traditional healers who were in their sixties. He identified an individual named Dam who he identified as being in charge of production of traditional medicines.⁸ The Witness testified that when he was at Takhmao, he produced “rabbit drop pellets” from sweet potato flowers mixed with sugar, vinegar and palm fruits. Mak Thim said the pills made at Takhmao were sent to S-21, which he knew because he recognized them later when he worked there.

2. Work as a Medic at S-21

The Witness was unclear about the date he was assigned to work at S-21, although he estimated that he had only worked there for about one year prior to the arrival of Vietnamese troops in January 1979.⁹ During year, the Witness estimated that he had treated hundreds of prisoners. He said that as a medic he was responsible for administering pills, cleaning wounds and applying bandages to prisoners. Mak Thim described his daily routine at S-21, saying that he walked around the cells each morning from about 6:00AM and then again at about 1:00PM in the afternoon. He said that at night he was sometimes required to be “on stand-by” at the medical office. While being treated in their cells, prisoners remained shackled. Mak Thim said he usually did not treat those prisoners with severe health conditions, adding that that was the task of the chief medic. He also said that medics were warned to show extra care when treating “important prisoners” who had not yet completed their interrogations, repeatedly affirming that he did not know what happened to prisoners after he treated them.

Mak Thim testified that medical unit staff lived entirely separately from interrogators and they did not know one another. He said that there were approximately 10 to 15 members of the medical unit, all of whom were in their late-teens like himself, as well as 3 additional staff in a separate unit for treating those working at S-21. Each medic was assigned to a specific floor or building, and a main “medical house” was located opposite the main entrance to S-21, within the compound. The medics also slept in the medical office, although he described the conditions as poor, with no sleeping mats or mosquito nets. The Witness identified his medical group chief as Huor, and his “supreme chief” as Try.¹⁰ It was Huor who gave the Witness his instructions on who to treat and how. Mak Thim also said he had seen Duch only once or twice during his time working as a medic, because Duch rarely came to the medical house.

The Witness also described the medicines he used during DK, including pills for dysentery and malaria, saline water, P medicine (penicillin), Vitamin B1, Vitamin B12, vitamin C, and something he referred to as “red liquid.” Mak Thim said that he was told by his chief that most of the medicines they had at S-21 had expired. Medics had limited access to medical equipment, although the Witness did say syringes were sterilized prior to use by washing them in boiling water. Other than syringes and the tablets produced at Takhmao, there were sometimes bandages however Mak Thim said that often medics had to make do with using other materials for this purpose, such as mosquito nets or clothing. He said he treated prisoners after they were interrogated, but as he had no alcohol to use on wounds he had to use saline water.

3. Condition of Prisoners

Despite repeatedly saying he did not observe any interrogations first-hand, Mak Thim was able to testify to a limited degree on prison conditions based on what prisoners had told him while he treated them in their cells. He said that some prisoners told him they had been beaten on their backs during interrogations, resulting in the large wounds he subsequently treated, although he said he only saw prisoners with such wounds on their backs two or three times. Some prisoners had the nails pulled out of their fingers or toes with pliers, an injury he saw about once or twice a month. The Witness testified that prisoners had limited food rations of gruel with morning glory, which led to malnutrition. He recalled prisoners looking "emaciated" and said they had no toilets in which to relieve themselves. When prompted with an earlier statement, Mak Thim said he had treated prisoners who had been electrocuted, however added that this was uncommon and usually those he treated had minor illnesses or wounds.

The Witness identified the most common diseases at S-21 as "swelling and numbness," which he attributed to long periods of being shackled, as well as a nutrient-deficiency known as beriberi. He said he was told to give patients who were numb or swollen injections of Vitamin B1 and Vitamin B12. He recalled seeing prisoners who had died "every three to four days," saying that medical staff assigned to the building in which the deceased prisoner had been housed would be ordered to carry dead bodies outside the compound on stretchers and then bury them at a designated location. He said sometimes these prisoners had died as a result of abscesses formed after injections were administered. He didn't recall hearing or knowing of any suicides while at S-21.

4. Allegations of Blood-Drawing at S-21

Last week Prak Khan testified that blood-drawing took place at S-21.¹¹ This week, Mak Thim repeatedly stated that he never witnessed this practice first-hand, however he did see about 20 to 30 bags of blood under a staircase to the east of the medic office on the S-21 compound. He also claimed to have treated prisoners who had had their blood drawn, which he appeared to have guessed because they seemed very weak. He surmised from this observation that blood had been taken from some of the prisoners, going further to suggest that it would have been the responsibility of the chief medic, because simple medics such as himself would not be given this level of responsibility.

5. Treatment of Female Prisoners and Children

The Witness testified that he never treated female prisoners for wounds, but did deliver pills to those female prisoners for their illnesses. He said there were no female medics, and that female prisoners were detained separately to the men. Mak Thim also recalled seeing children detained at S-21, although said they "weren't too young." He said children were detained with their mothers in an open room without shackles. He said he only saw them if they needed treatment for specific illnesses.

6. Witness Demeanor and Credibility

The Witness appeared to struggle to remember specific details of his time at S-21, and excused his poor memory on the grounds that he was only young at the time. Some of his in-court testimony had to be prompted by reference to his prior statements. For example, at first the Witness said he never saw prisoners who had been electrocuted, however after being read an excerpt from his prior statement he stated: "The interview happened several years ago, I may have forgotten some of my work that I did at the time. Yes, a prisoner was electrocuted, actually perhaps may have fainted in interrogation room."

C. Summary of Testimony by Witness Him Huy

66-year-old Witness Mr. Him Huy was the third to testify this week on the topic of the S-21 Security Center.¹² He told the Chamber about his role as a guard at S-21 and his responsibility to transport prisoners to Choeung Ek.

1. Witness's Transfer to S-21 and Details about its Location and Layout

Him Huy testified that Ta Hor, his regiment commander and Duch's deputy at S-21, transferred him to S-21 in 1976. He explained that at the time many forces from Division 703 were being reassigned to work at S-21 and that he was put on guard duty along with these soldiers. His duty station had been located in the building now known as the Beehive Radio Station, close to the sewage canal and to the east of the fence that surrounded S-21. Him Huy told the Court that at the time S-21 had consisted of the area now occupied by the Tuol Sleng Genocide Museum as well as some other buildings in the surrounding area. He testified that prior to being converted into a prison, Tuol Sleng had been known as Tuol Svay Prey high school.

2. S-21 Staff, Chain of Command and Political Meetings

Him Huy recalled that while at S-21 all staff, including himself, attended compulsory political meetings run by Ta Hor and Duch at a school to the south of Duch's house. During these sessions staff were instructed to be "absolute," in their work and to have no empathy with prisoners.¹³ He recalled being told at these meetings that they were the "children of *Angkar*" and that anyone arrested by *Angkar*, as well as their extended "network," was an enemy and should be killed. He also said that Duch would teach them phrases including "when you dig up the grass, you also have to dig up the root" or "it is better to arrest ten people by mistake than let one guilty person go free." Him Huy explained that it was his understanding that this meant if a person was arrested, their whole family would be arrested as well.

Concerning the command structure of S-21, Him Huy testified that Son Sen had been Duch's superior and that Son Sen sometimes held the study sessions in Duch's place. He said that Duch referred to Son Sen by his alias of Ta Khieu, and that he had only seen Son Sen once in 1977, when he had held a study session for S-21 staff and general soldiers to the south of the Olympic Stadium. Him Huy explained that during this meeting Son Sen had talked about developing DK, agricultural production, military strategy, fighting with the Vietnamese and "internal enemies." He added that Duch had identified Brother Number One and Brother Number Two as Pol Pot and Nuon Chea respectively, however he had not referred to them as his superiors. In regard to his own unit, Him Huy explained that he had been supervised by Peng, but that he had received his orders directly from Ta Hor, who in turn reported to Duch and had been in charge of all security guards. He testified that Peng and his superior Poch (later replaced by Phal) had been chiefs of the security guard unit of which Him Huy and Sri were members.

3. System for Arrival of Prisoners at S-21

Although initially Him Huy testified that prisoners arriving at S-21 were first processed at the Beehive Radio Station, he later clarified that this was only used with unauthorized vehicles, and the majority of prisoners were brought directly into the S-21 compound. He stated that prisoners were blindfolded and handcuffed when they were unloaded from trucks and sent into the house located on the premises. The guards accompanying the prisoners provided him with letters concerning the origin of the prisoners, which he would later deliver to Suos Thy who was in charge of registering prisoners and sending them to have their photograph taken. The destination for each prisoner was identified in a list provided by Ta Hor, and those prisoners to be sent to Prey Sar were unloaded on a road to the east of the compound and were then put on a different truck without having their name or photograph recorded.

Him Huy testified that there was only one entrance to S-21, in the East. When vehicles arrived, they had to first pass through this gate and then a second fence within the compound in order to reach the prison buildings. Him Huy stated that it had been his job to meet and report on arriving prisoner transportation. He told the Court that Ta Hor prohibited drivers from taking their vehicles into S-21 themselves. Instead, the driver had to get out and then Him Huy or one of his men would drive the vehicle into the compound. Him Huy explained that non-S-21 vehicles transporting prisoners came from all over the country, including S-10, the North Zone, the Northeast Zone and Division 703. He remembered that S-21 had been in possession of five land rovers, which were the vehicles usually used for transporting prisoners, as well as one Chinese-made truck and two other vehicles. He said the land-rovers could usually carry between 10 and 20 prisoners and four guards were assigned to each vehicle. He also remembered three occasions on which S-21 staff had been sent to collect prisoners from Battambang, once from Svay Rieng and once from state institution warehouses in Phnom Penh.

4. Types of Prisoners at S-21

Him Huy told the Court that he saw children of 15 to 17 years of age and babies of 1 month to 8 years old detained with their mothers at S-21. He also said there were Vietnamese prisoners and other foreigners, as well as those he referred to as “important prisoners.” The Witness recalled once being ordered to collect five Vietnamese soldiers from Svay Rieng. He explained that he brought them to Suos Thy and then videos were made of their arrival, interrogations and executions, which were then screened during a special study session for S-21 staff commemorating the 17 April. Him Huy also recalled two American prisoners, saying they had been killed and their bodies burned, which was not the usual practice at the time.¹⁴ The Witness recalled Thai fishermen transported to S-21 in a van, but said that they had not been allowed to enter the compound and he did not know what had happened to them.

5. Executions and Burial Sites near S-21

Him Huy stated that the killings at S-21 were conducted and overseen by Peng and his unit. He said that the killings would take place in the evenings at around 8:00PM or 9:00PM and that they took place approximately once every two weeks, sometimes more frequently, with between 50 and 100 people killed each time. Him Huy stated that bodies were buried to the west of the prison compound where there was a wide open space. He also recalled a second execution site located to the south, approximately 100 meters from the first site. He stated that the ditches were dug at both of these sites by Peng and his unit on orders of Duch.

Although he claimed not to have carried out any executions himself, Him Huy stated that adult prisoners were hit on the base of their neck while kneeling at the edge of a pit and then had their throats slit with a knife. Him Huy testified that Peng had told him that the children detained at S-21 were executed behind the prison, and he assumed the children were killed in the same way as the adults. Him Huy told the Court that the 50 to 60 Vietnamese detainees at S-21 were killed inside the compound, to the south and that Peng had been in charge of their execution. The Witness recounted that “important prisoners” were also killed to the south and west of S-21, because *Angkar* did not trust the people tasked with transporting prisoners to external execution sites.

6. Establishment and Functioning of Choeung Ek

Him Huy testified that Choeung Ek, was established as an execution site in either 1977 or 1978. He explained that while most prisoners were sent there to be executed, important prisoners continued to be killed at S-21. He explained that executions were relocated to Choeung Ek because the number of dead bodies around S-21 were creating a bad smell around the

compound and the regime did not want the international community to learn what was happening there. Him Huy explained that he would receive an order from Ta Hor whenever prisoners were meant to be transferred for execution at Choeung Ek, and then he was in charge of preparing the transportation. He stated that Ta Hor usually only informed them a couple of hours in advance that a transport had to be arranged and that he would tell them how many prisoners were going to be sent to Choueng Ek so that they could get the correct number of vehicles ready.¹⁵ He said he never knew the names of the prisoners to be transported in advance. Him Huy stated that when killings took place at Choeung Ek, Duch, Ta Hor, Peng, Phal or Sri would travel to Choeung Ek to supervise the executions.¹⁶

Him Huy stated that his only role at Choeung Ek was to organise the transportation of prisoners and keep records. He stated that each transfer to Choeung Ek usually comprised about 50 to 100 prisoners, and that they were usually transported in the evenings at around 8:00PM. He stated that prisoners were blindfolded and shackled throughout the journey from S-21 to Choeung Ek, and that he was instructed to tell them they were merely being transported to a new house. He stated that four guards were assigned to each vehicle. When they arrived at Choeung Ek, the prisoners were taken to a wooden house, and then led to his checkpoint one by one. At this location it was his job to count the prisoners and record their names and sequential numbers in order to confirm with Suos Thy that all of the prisoners who left S-21 had indeed arrived at Choeung Ek and been killed. After he had recorded their names the prisoners were led away one by one to be killed, although Him Huy said he did not go to check whether the individuals had died. Although he said he did not carry out the actual executions, he said he was able to describe the killing method in detail because Duch and Ta Hor had instructed all S-21 staff in this way. Once a prisoner had arrived at a pit they were forced to sit down and then were struck on the neck with a club. After that their throat was slit with a knife and their body disembowelled in order to avoid gas from collecting inside and creating a bad smell. Finally the bodies were thrown into the pits and covered with dirt. Him Huy told the Court that each grave at Choueng Ek could hold about 50 to 100 people.

The Witness repeatedly stated that it was Peng's group who had been in charge of the killings at Choeung Ek, and that a man named Teng and his group of ten men were permanently stationed there to dig pits.¹⁷ He said that Peng was Teng's superior. Him Huy remembered that he heard prisoners crying shortly before being executed, as well as the sound from a loud generator. He said that Duch only rarely came to the execution site and only remembered seeing him there three times in total. Him Huy was unable to estimate the number of prisoners who were killed at Choeung Ek in total, however he did say that there was a lot of graves. He was not aware of how often prisoners were transported to Choeung Ek. He did not remember seeing any mothers or babies at Choeung Ek, and said he believed they were usually sent to Prey Sar.¹⁸

7. Purges of S-21 Guards and Witness's Transfer to Prey Sar

Him Huy testified that several men from the "100 man unit" were arrested in 1977. He specifically recalled Poch, Snguon, Man and Chorn being taken into custody. He explained that the men had implicated each other and were consequently arrested one after another, although he claimed not to know the reason for their arrests. Him Huy testified that Duch and Ta Hor had argued with one another on several occasions. He explained that after one of these arguments, ten of Ta Hor's subordinates, including himself, were sent to Prey Sar, sometime in mid-1978. Him Huy said he was sent there because Duch believed he was "preparing a rebellious plan," adding that he had been implicated in a confession by Nop Nuon, a former messenger and fellow S-21 guard. He said that after Nop Nuon "confessed," Duch asked the Witness directly whether he was planning a rebellion, which the Witness denied. Regardless, Duch ordered him to be relocated to Prey Sar, along with Nop Nuon, who later committed suicide in fear that he would be killed. At Prey Sar, Him Huy had to work in the rice fields digging and transplanting seedlings and harvesting rice as well as building dykes and clearing

forest. Asked how many people worked at Prey Sar, the Witness stated that there had been “hundreds” of people, but no more than one thousand.

8. Collective Marriages and Sexual Violence

Him Huy told the Court that he recalled six couples at S-21 that were married in a group ceremony. He testified that Duch had arranged the marriages and had brought in women from the sewing unit to marry S-21 staff. The Witness said Duch had asked him if he wanted a wife, but he told him that he did not and so did not have to get married. Nevertheless, Him Huy attended the ceremony, which he said included a meal served at a long table with coconut juice. He stated that ultimately all of the six couples were sent to S-21 and only two of the couples survived: Hor, Pon and their wives.

Him Huy also testified that while he worked at S-21 he heard that a young guard raped a female prisoner. He said he heard that this guard was accused of committing a “moral offense” and was later arrested, detained and killed, however he qualified this by saying he did not know the guard in question. He said he was told of this incident by Peng, who was in charge of the inside guards.

9. Questioning of the Witness by the Civil Party Lawyers

The national and international Civil Party Lead Co-Lawyers questioned Him Huy for almost one full session this week. National Lead Co-Lawyer Pich Ang concluded his questioning by asking the Witness how he felt while working as a guard at S-21. Him Huy responded with a lengthy answer, focused on his feelings about the work he had done at S-21. Him Huy recounted his experience over the three years he worked at S-21, saying he feared his family would be harmed, saying: “I requested to Son Sen to return to the army so that if I was in trouble, only myself would die and not my family members.” After providing his lengthy response, Pich Ang then asked the Witness how he had felt while transporting prisoners from S-21 to Choeung Ek, however President Nil Nonn interjected before the Witness could respond. Nil Nonn told the Civil Party lawyer that such questions were “not appropriate,” reminding him that Him Huy was appearing as a Witness, not a Civil Party, further adding “You can put such questions to Witnesses who were victims, and to Civil Parties, but not to this Witness.”

10. Witness Demeanor and Credibility

The Witness Him Huy generally provided clear and detailed responses to questions, however on several occasions he appeared to base his response on hearsay or assumptions. The President of the Trial Chamber reminded the Witness several times to only convey information that he had personally experienced and to be clear about his sources. There were also some discrepancies between Him Huy’s testimony and that of Toy Teng, a guard from Choeung Ek who testified receiving orders from Him Huy.¹⁹ It is plausible that the Witness would seek to minimize his responsibility for the events that took place at both S-21 and Choeung Ek, considering his role at the time. On two occasions when asked directly about his involvement in killings he declined to respond on the advice of his duty counsel.

III. LEGAL AND PROCEDURAL ISSUES

This week Parties once again debated the use of potentially torture-tainted evidence, particularly regarding one confession the Defense for Nuon Chea wished to use during questioning. The Trial Chamber also dealt with interesting issues around a Witness’s reluctance to answer potentially incriminating questions. Upcoming scheduling was also discussed this week after the Defense made a request for further time to prepare for the final witnesses in the segment on S-21.

A. Debate over the Use of Chhun's Confession

During the testimony of Prak Kahn this week, Defense Counsel Victor Koppe requested that he be allowed to use the confession of Eng Meng Chhun, *alias* Chhun. Chhun was a prisoner at S-21 and had been interrogated by Prak Kahn. Counsel Koppe argued that the methods used by Prak Kahn during the interrogation, namely a beating with a tree branch, did not leave permanent marks or wounds and did not constitute torture. He argued that this could instead be construed as "cruel, inhuman or degrading treatment," under the Convention Against Torture.²⁰ He further argued that based on both the Trial Chamber's decision on the use of evidence obtained under torture²¹ and the Supreme Court Chamber's decision on probability,²² he should be allowed to ask questions to the Witness based on the information in the confession.

Senior Assistant Prosecutor Vincent de Wilde d'Estmael opposed the request, stating that it was up to the Chamber, and not Defense Counsel, whether the document had been obtained through torture. International Co-Lawyer for Civil Parties Marie Guiraud also opposed the use of Chhun's "confession," arguing that regardless of whether physical acts met the threshold of torture, the "climate of extreme fear" and "moral or psychological suffering" at S-21 was sufficient to meet the threshold. Moreover the Defense had failed to show the absence of a risk that torture was used in this case. Judge Fenz put further questions to the Witness in an attempt to determine whether torture had been used in this particular interrogation. Prak Kahn told the Court he was unable to remember exactly how many times he had interrogated Chhun. Some issues were again raised with the translation of the English word for "torture" into Khmer "tearunakam," which has a broader meaning than the English word.²³ The President attempted to establish whether the Witness's understanding of the meaning of "torture" met the legal threshold, however this was difficult due to the limitations of language. Ultimately the Trial Chamber announced it would take time to review the issue and come to a decision on the Defense Counsel's request in due course. During questioning this week Counsel Koppe was prohibited from using the contents of Chhun's confession, however if the Chamber decides it is permissible, the Witness will be recalled.

B. Decision over Upcoming Scheduling of Witnesses Related to S-21

On Tuesday 3 May, following arguments from Parties the previous day, the Trial Chamber decided to adjourn court proceedings for an additional week following the conclusion of Him Huy's testimony. Proceedings will resume on the 23 May after the previously scheduled King's Birthday holiday. The decision was made in response to the Nuon Chea Defense team's request for a four-week adjournment to prepare for the final three witnesses to appear on S-21 Security Center.²⁴ Counsel Koppe argued that his team required the additional time to prepare for upcoming witnesses, particularly given the recent release of new documents, including the new S-21 prisoner lists. Assistant Prosecutor Dale Lysak opposed the request, explaining that it would unduly delay proceedings, and highlighted that all Parties had the same amount of time to prepare for upcoming witnesses. Civil Party Lead Co-Lawyer Marie Guiraud also opposed the submission, stating that it is in the interest of the Civil Parties to "ensure the trial moves forward and closes rapidly." She argued that the rights of the Civil Parties to a speedy trial must be balanced with the Defense' right to proper and informed representation.²⁵ Defense for Khieu Samphan supported their colleagues' request, drawing attention to what they have repeatedly claimed is an inequality of arms with reference to the size of the Prosecution and Defense Teams.

C. Him Huy's Right Against Self-Incrimination

All three Witnesses who appeared this week did so with the assistance of a Duty Counsel, appointed to protect witnesses from giving testimony that might tend to incriminate them.²⁶ On Tuesday Him Huy exercised his right against self-incrimination after being asked whether he or

anyone under his command had participated in killings while working at S-21. On Wednesday, Him Huy was asked by Senior Assistant Prosecutor Travis Farr whether he had ever killed anyone at Choeung Ek. After consulting with his Duty Counsel, the Witness declined to answer, however Victor Koppe objected on the grounds that this was a special circumstance. First, he said that the Witness had already admitted to organizing killings on a large scale at Choeung Ek, and so his criminal responsibility for having personally executed someone. Secondly, a Cambodian court had convicted Him Huy shortly after 1979 for his involvement in the killings at Choeung Ek, and thus he was protected by the legal principle of *ne bis in idem*.

Travis Farr pointed out that, while this is a matter for the Chamber to decide, the specificity of the principle of *ne bis in idem* may not necessarily prevent "further danger for the Witness" depending on the exact terms of the prior conviction. The Chamber then attempted to establish the circumstances around the Witness's prior conviction by questioning both the Defense and the Witness himself. Counsel Koppe said his source was a DC-Cam article, which stated that Him Huy had been imprisoned for two years. For his part, Him Huy said that he was arrested by district police in 1981 and detained for two or three months, then was sent to farm rice near the Vietnamese border for another ten months before he was released. The Witness said he had no written evidence of this conviction and it was unclear whether he had actually faced trial, whether he was detained for his role at S-21, his role at Choeung Ek, or both or neither. President Nil Nonn spoke from his experience of being a local judge for the Ministry of Justice since 1982, saying that no courts had been established until 1982, with most not being fully operational until at least 1984, although he added that he would double check this information.

The next morning the Defense raised the issue again, citing a quote from Craig Etcheson which said: "[Him Huy] surrendered to authorities professing his loyalty to the new order, and was given a one year sentence and then released to return to life as a farmer."²⁷ Judge Lavergne criticized Defense Counsel for presenting the information in a misleading manner, as he said the man identified by Etcheson was Yu Huy, not Him Huy. However, Counsel Koppe said the other evidence in the book and footnotes makes it clear that Yu Huy and Him Huy were the same person. The Bench ultimately found that the available information was insufficient to compel the Witness to respond to a question that may incriminate him.

D. OCP Request to Admit Further Documents

On Thursday during the lunch break the OCP filed a request to admit 47 written records of interview, five of which were related to S-21 and a further five to the upcoming segment on internal purges. 19 of the documents had previously been disclosed to the Chamber, and 38 had not. The Prosecution explained that the OCP was required to disclose exculpatory material arising from the ongoing investigations into Cases 003 and 004 as soon as it is uncovered and added that all five statements from the S-21 witnesses, including Him Huy, had been previously disclosed.²⁸ In response to criticism from all Parties at the last minute nature of the request, the Prosecutor explained that the OCP's practice was to disclose documents as a priority, to allow all Parties to access the documents, then request to admit the documents pursuant to Rule 87(4), a practice which occasionally results in a lag between the date of disclosure and the date of request for admission. The Defense Teams were particularly taken aback as it appeared that some of the documents related specifically to Witness Him Huy, who Defense Counsel for Nuon Chea was in the process of questioning when the request was made. The Trial Chamber will issue a ruling on the OCP request in due course.

IV. TRIAL MANAGEMENT

Over the course of four days the Trial Chamber successfully concluded the testimonies of two former security guards and one former medic, all of whom worked at the S-21 Security Center during DK regime. The Trial Chamber also opened discussion on Nuon Chea's request for four-week adjournment and the admissibility of documents used for this segment.

A. Attendance

Nuon Chea continued to waive his right to be present in the courtroom this week and observed proceedings from the holding cell due to his poor health, while Khieu Samphan was present in the courtroom throughout the week. Duty Counsels Mam Rithea and Moeun Sovan were also present this week in the courtroom in order to provide legal counsel to the Witnesses on their right against self-incrimination.²⁹

Judge Attendance: All Judges were present in the courtroom throughout the week.

Parties: All Parties were properly represented in the courtroom this week. On 3 May, Ms. Doreen Chen was officially recognized as an international Co-Defense Lawyer for Nuon Chea in order to represent her client before the Trial Chamber. Ms. Anta Guissé, Defense Lawyer for Khieu Samphan, returned late 30 minutes to her seat in the courtroom in the fourth session on 4 May 2016, however her national counterpart Kong Sam Onn was present.

Attendance by the public and Civil Parties: on Tuesday 3 May, Monitors noted approximately 100 students from Sonlong Secondary at School, Ksach Kandal District, Kandal Province, who were not allowed to enter the courtroom as they were under the age of 16.

DATE	MORNING	AFTERNOON
Monday 02/05/2016	<ul style="list-style-type: none">▪ Approximately 150 villagers from Banteay Ampil District, Oddar Meanchey Province▪ One foreign observer▪ Nine Civil Parties	<ul style="list-style-type: none">▪ Approximately 290 villagers from Ksach Kandal District, Kandal Province.▪ One foreign observer▪ Six Civil Parties
Tuesday 03/05/2016	<ul style="list-style-type: none">▪ 150 villagers and three monks from Ksach Kandal District, Kandal Province▪ 153 trainees and two trainers from regional training center at Takhmao City, Kandal Province▪ Five foreign observers▪ Nine Civil Parties	<ul style="list-style-type: none">▪ 36 villagers and two monks from Ksach Kandal District, Kandal Province▪ Four foreign observers▪ Nine Civil Parties
Wednesday 04/05/2016	<ul style="list-style-type: none">▪ 270 students and one teacher from Chea Sim Samaki High School, Phnom Penh▪ Three foreign observers▪ Nine Civil Parties	<ul style="list-style-type: none">▪ 273 villagers from Ksach Kandal District, Kandal Province.▪ One foreign observer▪ Five Civil Parties
Thursday 05/05/2016	<ul style="list-style-type: none">▪ 250 students and one teacher from Chea Sim Samaki High School, Phnom Penh▪ Three foreign observers▪ Nine Civil Parties	<ul style="list-style-type: none">▪ Approximately 240 villagers from Ksach Kandal District, Kandal Province▪ Six foreign observers▪ Five Civil Parties

B. Time Management

This week the Trial Chamber successfully managed its time in order to conclude the testimonies of three witnesses in relation to S-21 Security Center in Case 002/02. On Monday 2 May, international counsel for Nuon Chea requested an additional two sessions to examine Witness Prak Khan, however after calculating the time in order to ensure equality between all Parties, the Trial Chamber granted an extra 15 minutes.³⁰ This week the Trial Chamber also made a ruling on a request by the Nuon Chea Defense Team for a four-week adjournment to

proceedings, ultimately scheduling a one week break next week. This adjournment comes in addition to the already scheduled one week break for the Cambodian King's birthday holiday. The Trial Chamber will resume its proceedings on 23 May 2016.

C. Courtroom Etiquette

There were not any substantial breaches of courtroom etiquette during the proceedings this week.

D. Translation and Technical Issues

This week Monitors noted a number of mistranslations and incomplete translations from Khmer to English, particularly in relation to numbers and names.³¹ Parties experienced some minor issues with the translation of names of security guards at S-21 and the names of medicine and diseases during examination of Witnesses Mak Thim and Him Huy, but these were resolved relatively quickly. There were no technical issues this week and overall proceedings ran smoothly.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 02/05/2016	9:02	10:06-10:28	11:33-13:30	14:19-14:39	15:59	4 hours 18 minutes
Tuesday 03/05/2016	9:01	10:13-10:30	11:32-13:30	14:17-14:38	15:59	4 hours 22 minutes
Wednesday 04/05/2016	9:02	10:09-10:30	11:30-13:29	14:39-15:00	16:01	4 hours 18 minutes
Thursday 05/05/2016	9:00	10:08-10:30	11:29-13:29	14:39-15:01	15:49	4 hours 5 minutes
Average number of hours in session				4 hours and 15 minutes		
Total number of hours this week				17 hours and 3 minutes		
Total number of hours, day, weeks at trial				689 hours and 35 minutes		
186 TRIAL DAYS OVER 53 WEEKS						

*This report was authored by Lena Harris-Pomeroy, Melanie Hyde, Nicholas Maycock, Caitlin McCaffrie, Visot Nom, Lina Tay and Sathapor Thom as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANNA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations made By AIJI staff; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (CaseNo.002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ PRAK Khan and TOY Teng respectively identified HIM Huy as being in charge of guards outside S-21 and of transporting prisoners from S-21 to Choeung Ek, see CASE 002/02 KRT TRIAL MONITOR, Issue 52, Hearings on Evidence week 49 (25-28 April 2016).

² PRAK Khan and HIM Huy appeared to testify in Court in Case 001, while MAK Thim's written record of interview was read into the record. Case 001 was the trial of KAING Guek Eav alias Duch, who was the chairman of S-21 during the DK regime. On 26 July 2010 the Trial Chamber found Duch guilty of crimes against humanity and grave breaches of the 1949 Geneva Conventions and sentenced him to 35 years' imprisonment (see Trial Chamber "Judgment" (26 July 2010), E188.) KAING Guek Eav appealed this verdict to the Supreme Court Chamber, which was dismissed. The OCP also appealed the verdict, and on 3 February 2012 the Supreme Court Chamber quashed the decision of the Trial Chamber and increased the Accused's sentence to life imprisonment, see Supreme Court Chamber, "Appeal Judgment" (3 February 2012), F28.

³ Witness PRAK Khan (2-TCW-931) was questioned in the following order: international co-counsel for Nuon Chea, Victor KOPPE; international judge Claudia FENZ; international co-counsel for Khieu Samphan, Anta GUISSE; international co-counsel for Nuon Chea, Victor KOPPE. The Witness continued his questioning from last week. For a summary of his prior testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 52, pp; 5-8.

⁴ LACH Mean testified on 25 and 26 April 2016. He was unsure of the exact time period in which he was transferred to work at S-21 but estimated that it was in either late 1975 or early 1976. For a summary of his testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 52, pp. 3-5.

⁵ International Co-Counsel for Khieu Samphan, Anta Guissé, confronted the Witness with Duch's testimony in Case 001 from June 2009, when he said that he instructed interrogators to discontinue the practice of pulling out prisoners' nails, however the Witness said he never received such an instruction, adding "maybe his statement was to avoid trouble."

⁶ Prak Khan was questioned in particular about Eng Meng Chhun so as to potentially ascertain whether his confession had been produced under means that may not constitute torture under the Convention Against Torture. For a further analysis of this issue see Section III.C. This was also covered in our report from last week when Prak Khan first began testifying, see CASE 002/02 KRT TRIAL MONITOR, Issue 52, pp 9-10.

⁷ Witness MAK Thim (2-TCW-808) was questioned in the following order: President NIL Nonn; Civil Party lawyer SONG Chorvoi; assistant prosecutor Dale LYSAK; international lead co-lawyer for Civil Parties Marie GUIRAUD; national lead co-lawyer for Civil Parties PICH Ang; Judge Jean-Marc LAVERGNE; Judge Claudia FENZ; international co-counsel for Nuon Chea, Victor KOPPE; international co-counsel for Khieu Samphan Anta GUISSE.

⁸ The Witness said he later saw Dam when he arrived as a prisoner at S-21 about three or four months after the Witness had been transferred from Takhmao to S-21. He said he saw Dam shackled but did not know why he had been sent there.

⁹ MAK Thim also estimated he was approximately 15 or 16 years old at the time of his transfer to S-21 which, if the date of birth he provided to the Chamber is accurate, would support the theory that he was transferred in early 1978, one year prior to the arrival of the Vietnamese.

¹⁰ MAK Thim identified two men named Try at S-21, one who had been his “supreme chief” and another who was ethnically Cham who was part of his medical unit. It is also to be noted that Huor, the medic chief, was different to Ta Hor, the second-in-command under Duch at S-21.

¹¹ See last week's report: CASE 002/02 KRT TRIAL MONITOR, Issue 52.

¹² Witness HIM Huy (2-TCW-906) was questioned in the following order: President Nil Nonn; senior assistant prosecutor Travis FARR; national lead co-lawyer for Civil Parties PICH Ang; international lead co-lawyer for Civil Parties, Marie GUIRAUD; judge Jean-Marc LAVERGNE; international co-counsel for Nuon Chea, Victor KOPPE; President NIL Nonn; international co-counsel for Nuon Chea, Victor KOPPE; international co-counsel Anta GUISSE. HIM Huy previously testified in Case 001 on 15, 16 and 20 July 2009. For summaries of his Case 001 testimony see: CASE 001 KRT TRIAL MONITOR, Issue 13, week ending 16 July 2009, and CASE 001 KRT TRIAL MONITOR, Issue 14, week ending 26 July 2009.

¹³ HIM Huy stated that being ‘absolute’ meant to monitor and report anything that happened at the Security Center to Angkar.

¹⁴ HIM Huy said that Duch told guards the men’s bodies contained a poisonous gas that would leak into the ground if the bodies were buried. From his testimony it is unclear whether Duch meant that only these two American men’s bodies contained poisonous gas, or all bodies.

¹⁵ This response differs from that provided by TOY Teng previously. TOY Teng testified to being a guard at Choeung Ek who occasionally carried out executions. He said that HIM Huy would inform his team two days in advance of the arrival of prisoners so that they had sufficient time to dig new pits. For a summary of TOY Teng’s testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 51, Hearings on Evidence Week 48 (18-21 April 2016) pp. 7-8 and CASE 002/02 KRT TRIAL MONITOR, Issue 52, pp. 1-3.

¹⁶ This also differs from the testimony of TOY Teng, who said that HIM Huy accompanied every convoy of prisoners to Choeung Ek.

¹⁷ HIM Huy did not recognize the name TOY Teng, however he repeatedly referred to the individual in charge of the pit digging unit at Choeung Ek as Teng, and details about his position correspond with TOY Teng’s earlier in-court testimony.

¹⁸ Earlier in his testimony, HIM Huy said he believed children were executed at S-21 and then their mothers were taken to Choeung Ek for execution later, although it was unclear whether he knew this from first-hand information or hearsay. He said the mothers would be told that their children were going to a ‘children’s unit’ to avoid them panicking.

¹⁹ TOY Teng testified before the Chamber on 21 and 25 April 2016, see CASE 002/02 KRT TRIAL MONITOR, Issue 51, pp. 7-8 and CASE 002/02 KRT TRIAL MONITOR, Issue 52, pp. 1-3.

²⁰ United Nations. General Assembly. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984). New York: United Nations (Entry into force 26 June 1987). [hereinafter CAT]. Art. 15.

²¹ Trial Chamber “Decision on Evidence Obtained Through Torture” (5 February 2016) E350/8

²² Supreme Court Chamber “Decision on Objections to Document Lists Full Reasons” (31 December 2015) F26/12, pp. 11-37.

²³ This issue was covered in CASE 002/02 KRT TRIAL MONITOR, Issue 52, Section III. C.

²⁴ In the alternative, the Defense made an alternative suggestion that the remaining S-21 witnesses be questioned only by the OCP and LCLCPs, and the Defense be given time at a later date when they have had time to adequately prepare. The written request was filed on 28 April 2016: Nuon Chea Defense Team. “Nuon Chea’s Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in Order to Safeguard his Fundamental Fair Trial Rights” (28 April 2016) E402.

²⁵ In response, Defense Counsel for Nuon Chea remarked that the right to an efficient trial is solely a right of the Accused, not a right of Civil Parties.

²⁶ Internal Rule 28 that provides that “[A] witness may object to making any statement that might tend to incriminate him or her. See, Extraordinary Chambers in the Courts of Cambodia “Internal Rules (revision 9)” (16 January 2015); The privilege against self-incrimination is also enshrined in Article 14 of the International Covenant on Civil and Political Rights. See, United Nations. General Assembly. *International Covenant on Civil and Political Rights* (16 December 1966) New York: United Nations (Entry into force 23 March 1976). Art. 14.g.

²⁷ Taken from Monitoring notes. At the time of publication, the official court transcript is yet to be released.

²⁸ The Prosecutor specified that the three statements of Him Huy were disclosed on 29 January 2016 (E319/40) and 10 March 2016 (E319/41), and the two remaining statements belonged first to Prak Khan who testified last week, and was disclosed on 26 April 2016 (E319/46) and the final statement related to Witness 2-TCW-816 and was disclosed on 26 April 2016 in the same filing as the statement of Prak Khan.

²⁹ Mam Rithea served as Duty Counsel for both PRAK Khan and HIM Huy this week.

³⁰ The Defense argued that the Prosecution did not need as much time as the Defense for questioning this witness as they had already done so in Case 001. After the President informed Parties of the extra 15 minutes awarded to the Defense, International Counsel for Nuon Chea, Victor Koppe, stated: "For the record we consider that a flagrant violation of the fair trial rights of Nuon Chea." Based on monitors observations, the time allotted to the Prosecution and Civil Parties on the one hand and the two Defense Teams on the other was essentially equal.

³¹ Monitors noted mistranslations and simplifications from Khmer to English, for example, the names 'Dan' to 'Rin'; '15 staff' to '5 medical staff'; 'drumstick' to 'the side'; 'this afternoon' to 'this morning'; 'beehive station' to 'sewage canal'; 'Bong Thy's building' to 'that building'; 'I was a deputy took in charge of the team' to 'I was in charge of team'; 'chief of Division 703' to 'staff from Division 703'; 'factory workers' to 'garment workers'; 'self-incrimination' to 'discrimination'; 'artillery' to 'heavy weapon'; 'Touch' to 'Duch'