



**WHEN IT COMES TO WITNESS PROTECTION,  
ARE ALL WITNESSES CREATED EQUAL?**

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**By Laura MacDonald, Member of the New York Bar and Consultant to the Center for International Human Rights, Northwestern University School of Law**



Mam Nai at the fields near S-24  
*Courtesy of Documentation Center of Cambodia*

This morning, the Trial Chamber heard the remaining testimony of civil party Nam Mon, an alleged survivor of two secret detention facilities run by Kaing Guek Eav (alias Duch). Nam testified that she saw Duch beat two of her uncles to death. This is the first evidence presented to the Chamber that Duch killed someone with his own hands.

In the afternoon, the Chamber was scheduled to hear the testimony of witness Mam Nai, one of Duch's former subordinates. However, a timely objection from the defense regarding the witness's right against self-incrimination stalled the proceedings in order to allow Mam time to seek legal advice regarding this right. Complicating matters and shocking observers, Mam stated that while he would like legal representation, he cannot afford it and therefore does not have any. Mam was allegedly responsible for the

interrogation of high-ranking Communist Party of Kampuchea (CPK) cadre detained at Tuol Sleng prison (S-21).

### **Alleged S-21 Medic Claims Duch Killed Her Two Uncles with a Metal Bar**

On Thursday, President Nil Nonn questioned civil party Nam Mon for a few hours before adjourning early because she started sobbing uncontrollably after the mug shot of her deceased father was displayed. Today, the judges continued their questioning but, this time, a representative from the Transcultural Psychosocial Organization (TPO), an NGO providing mental health services, was seated beside Nam to support her. The female TPO representative often had one hand on Nam's arm or back. If words were exchanged between the women during the proceedings, they were inaudible. The President started off the morning with a calm tone asking Nam, "How are you this morning?" The President's demeanor has changed quite dramatically. Two weeks ago, civil parties were told uncaringly to console themselves and carry on because time was of the essence. Now, the President thanks victims for their testimony, acknowledges their difficult task, and offers them breaks when they appear necessary.

After being evacuated from Phnom Penh in April 1975, Nam's family returned to the city. Her parents sent her to basic medical training during which she learned how to treat wounds and administer medicine. Although Nam is illiterate, she said she memorized instructions and distinguished aspirin from vitamins, for example, based on the labels. In mid-1975, at the age of 15, she started working as a medic with two other women at S-21. On Thursday, she claimed the three female medics were equals, but today she said one was the chief, receiving medicine from a local hospital and instructing Nam to use the medicine to keep certain prisoners alive for interrogation. Nam treated men and women located in one of the four large buildings on the S-21 complex. Eventually, the modern medicines left over from the former regime ran out and she had to administer traditional medicines. Duch has acknowledged that medics drew blood from S-21 prisoners for the use of Khmer Rouge soldiers and that at least one prisoner was used for an anatomy experiment; Nam was not aware of either of these practices.

During her time as a medic, Nam's father and three uncles worked for the Khmer Rouge. At least two of her uncles were quite senior in the military. One even hosted parties at his home where Nam saw Duch on at least two occasions. Two of Nam's older brothers worked as guards at S-21. Nam attended a family meeting in which an escape plan was discussed. Shortly thereafter, one uncle escaped to the United States; he is still alive today. About two weeks after his escape, Nam's two other uncles and her father were arrested.

After his arrest sometime in 1977, Nam's father was detained in the building where she treated prisoners. She had one conversation with him in which he warned her not to recognize or acknowledge him as her father. She understood that this was for her protection and never visited him again. About six months later, Nam was told by another medic that her oldest brother had carried out an order to kill their father. Days later, that brother was killed because he had hesitated to shoot his father and was consequently

labeled as a traitor. Nam's other brother serving as a guard as well as her mother and little brother were arrested shortly thereafter. Nam never saw them again.

In response to a question from the prosecution, Nam testified that she witnessed Duch beat both of her uncles to death with a metal bar about a half a meter long. She watched from a barred window on the third floor while they were beaten, separately, by Duch and two armed men about five meters away from her building. Oddly, earlier today, she was asked by the President if she saw anyone beaten or killed at S-21 and she responded that she just saw wounds and never saw anyone beaten or killed. Nam also testified that she saw Duch at S-21 at least once every couple of weeks. She knew him as "Brother East" but was not aware of his role at the time.

Shortly after her uncles were killed, Nam was arrested as well and detained in an individual cell at S-21 for about three months. During interrogation, she denied being the daughter of a traitor and maintained she was the daughter of her godparents. For unknown reasons, she was sent to Prey Sar re-education camp (S-24), also run by Duch.

Nam said S-24 was not a re-education camp, but rather "a place where children and women were killed." At S-24, Nam was put to work digging large graves for children. She was not aware of the tasks that other detainees were assigned to do. When asked on Thursday if she knew how children died at S-24, she said she did not know, but had heard children crying. Today, she recalled seeing dead bodies of children regularly and witnessing a one or two year old thrown up in the air only to be caught on a bayonet. She was detained at S-24 for about three months before being transferred to another prison, not run by Duch, where she remained until the Vietnamese seized Phnom Penh.

The proceedings today served as a reminder that very little, if anything, comes easy in this trial. When dealing with nervous, traumatized witnesses testifying to their experiences thirty-plus years ago, it is often difficult to establish even seemingly simple facts. On Thursday, I confidently reported the following: "48 year old civil party Nam Mon testified today on her own behalf and on behalf of her four brothers, two parents, and two uncles who allegedly perished at S-21." Today, even these basic details were challenged by the judges, the defense, and Duch himself.

The President held a copy of Nam's official, government-issued identification card in his hand, which stated she was almost ten years younger than she claims to be. Nam said her aunt told the authorities the wrong age without consulting her. In her civil party application, Nam had referred to at least one sibling as a cousin. One photograph that was labeled "my sibling" in English by Nam's lawyer was apparently her father. Nam referred to her "god brother" as simply "my brother" a few times, creating confusion. Nam's justification for misnaming or failing to name family members in her civil party application is that she was scared at the time. While it is understandable for witnesses and civil parties to be scared and fear retaliation, the specific justifications for individual decisions, for example referring to her father as a brother in one instance, were not explored. In any event, the judges and parties probably spent 40 minutes clarifying how

old Nam was, how many family members she had, and what their names and aliases were – and after all that, these basic facts were still not completely clear.

The standard procedure of the Chamber is to allow Duch to respond to civil party testimony after the judges, prosecution, and civil party lawyers have completed their questions, but before the defense has begun its examination. At the same time, the Chamber also allows the civil party to put questions to Duch through the President. Nam asked if Duch was going to deny the truth and the facts she had revealed in her testimony.

In what is becoming a predictable response, Duch admitted that he is “legally,” “emotionally,” and “personally” responsible for suffering across Cambodia and recognized that Nam had suffered the loss of her entire family; however, he did not accept her suffering occurred at S-21 and S-24. Duch stated that her account did not comport with the realities of those facilities, citing a number of examples. Duch noted that her father could not have worked in “logistics” for S-21 because such a role did not exist. Moreover, her father does not appear in the S-21 prisoner list. Further, Duch maintains “there were no female medics” at S-21. Duch found it odd that Nam knew two medics and her family members at S-21, but could not name any other staff members. Duch says that he had no authority to transfer anyone from S-24 to other prisons. And, critically, Duch pointed out that Nam had not mentioned the move of S-21 from its original location to its current location, which took place during the time she allegedly worked there. Duch said there are no documents showing Nam worked as a medic at S-21: “there is no evidence at all.”

Regarding the seven mug shots of Nam’s family members that were displayed, Duch said he was not in a position to accept or deny the photographs because there is insufficient documentary evidence to back them up. When asked by Judge Cartwright if any of the people from the photographs looked familiar, Duch said, “none of them.”

While the defense is usually brief, today Francois Roux and Kar Savuth used their entire 40 minutes to point out myriad inconsistencies between (1) Nam’s oral testimony on Thursday and today, (2) her oral testimony and her civil party application, and (3) so-called reality and her testimony. For example, the defense noted that S-21 was not established at its present location until February 1976; whereas, Nam stated she began working at the present S-21 location as a medic in mid-1975. Stating information for the first time, Nam responded that in 1975 she treated Khmer Rouge military cadre who were setting up the S-21 prison facility before it officially opened.

Kar Savuth examined the civil party loudly and aggressively, as always, adding long observations appropriate for pleadings onto the end of his questions. After an objection from Nam’s civil party lawyer asking the Chamber to “calm him down” and make him “speak less aggressively,” the Chamber effectively asked him to take it down a notch. A few questions later, Kar Savuth added an inappropriate observation and the Chamber finally stepped in. The President told him to rephrase his question so as to avoid making his own presumptions. Hopefully, the Chamber will continue to regulate his questioning.

## **Long-Awaited S-21 Interrogator Takes the Stand without Access to Legal Counsel**

Mam Nai, former S-21 interrogator for high-ranking CPK cadre, took the stand this afternoon, but did not provide any substantive testimony. After Mam was asked a few harmless, introductory questions by the President regarding his name, age, occupation, and residence, international defense counsel Francois Roux raised a timely objection. While witnesses, like Mam, are reminded by the Chamber of their oath to tell the truth, their right to remain silent, and their right against self-incrimination, Roux argued that since the Chamber had yet to rule on the prosecution's submission regarding the application of Joint Criminal Enterprise (JCE) as a mode of liability in this trial, Mam risked being prosecuted by the ECCC or a national court, given that he was one of Duch's subordinates allegedly involved in the joint criminal enterprise. Roux said that unless the prosecution dismissed immediately its motion for the application of JCE, Mam should be informed of his rights and allowed leave to speak with his counsel. The Chamber announced recently it will rule on the application of JCE at the same time it rules on the merits of this case.

International co-prosecutor William Smith told the Chamber that, in accordance with Internal Rule 28.4, the prosecution informed the co-investigating judges during the investigation phase of this case that it would not seek to prosecute Mam.

Roux pressed on, noting that the prosecution's submission on JCE was made after such representations were made to the co-investigating judges and, further, those representations protecting Mam from prosecution at the ECCC did not offer him protection from prosecution in a national court.

Noting those remarks, the prosecution made clear it had no objection to Mam speaking with his counsel, and reiterated that whichever way the Chamber rules on JCE, the prosecution would not seek to prosecute Mam before the ECCC.

After the judges conversed among themselves a bit, the President asked Mam if he in fact had counsel with him. Mam said he did not have a lawyer at this time, but explained he had consulted with a lawyer during the investigation phase of the case. The President asked if Mam felt he needed counsel and Mam responded, "I want to have a lawyer but I cannot afford to hire a lawyer."

After another brief judges' huddle, the President adjourned the proceedings for the day. He noted that the Chamber had contacted the ECCC unit that can provide a lawyer, but the attempt was "not successful." The President said since Mam had not consulted with a lawyer since the JCE submission was filed, he should have the opportunity to do so before testifying.

The fact that Mam was allowed to reach the stand without a lawyer raises some red flags. While some other witnesses have appeared without counsel, they were victim witnesses who chose not to join as a civil party (Vann Nath) or missed the application deadline to

join as a civil party (Norng Chan Phal) – they were not S-21 staff who allegedly participated in interrogation, torture, and executions. This is a critical distinction.

Internal Rule 28 covers the “Right Against Self-Incrimination of Witnesses” and allows for the co-investigating judges or the Chamber to give assurances to a witness, when appropriate in light of consultation with the prosecution, that statements “will not be used either directly or indirectly against that person in any subsequent prosecution by the ECCC.” The Rule does not mention that such statements are protected from subsequent prosecution by national courts. The Rule allows for witness testimony in camera after which the identity and statements of the witness can be kept confidential. Under Rule 28.8, a witness himself can raise the need for in camera proceedings in advance of his testimony.

While civil parties appear in trial upon the request of their lawyers, witnesses are summoned by the Chamber to testify regarding certain facts. Civil parties are not required to take an oath and are eligible to take part in reparations; whereas, witnesses take an oath before appearing in the courtroom. In a press conference last week, an ECCC spokesman stated that one practical impact of this distinction is that civil party testimony is not given the “same weight” as witness testimony. Although Mam is a witness and not a civil party, he has a lot at stake in this trial and could perhaps be motivated to give false or self-serving testimony. If it is in fact true that witness testimony is given more weight, it seems the logical basis for this distinction is challenged in the case of former cadre like Mam.

At a different ECCC press conference, Wendy Lobwein from the Witness and Expert Support Unit (WESU) explained some of the many services the court provides to witnesses, including getting them to the trial, preparing them for the experience of testifying, assessing their need for protection, and providing monetary allowances for their time. She mentioned the many fears of perpetrator witnesses specifically, so I have no doubt their security and mental health are considered. Legal protection, however, is a separate issue that clearly requires greater focus. Under Rules 11 and 12, both the Defense Support Section and Victims Unit maintain lists of lawyers qualified and willing to defend or represent indigent persons.

While it appears a lot of thought has gone into protecting and preparing the victim witnesses, one is left to wonder if the rights and interests of the perpetrator witnesses have been overlooked. Roux and the Chamber took steps to protect Mam today, but who has been looking after his interests all along? If the ECCC does track down a lawyer tonight to advise Mam, will he still be fully briefed and ready to testify tomorrow morning at 9 a.m.? As much as I want to hear Mam’s testimony, given that the application of JCE and the interaction of the ECCC and national courts are complicated issues, I would feel more comfortable if he did not take the stand tomorrow morning.