



The KRT Trial Monitor

Prosecutor v Kaing Guek Eav,
alias 'Duch'

Report Issue No. 12:
Week Ending July 9, 2009

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1. Summary

"Were all suffering, we could not stand the situation... that's why we wanted to just die"ⁱ

The Chamber continued to hear from survivors this week, with five Civil Parties testifying to alleged atrocities committed at S-21 and Prey Sar. Unlike last week, however, there appeared to be several inconsistencies in their statements, thus placing a question mark over their credibility as witnesses. In addition, four out of five of the Civil Parties who testified admitted that they could not definitively conclude that they were S-21 detainees: instead, they stated that they had relied on overhearing guards' conversations to ascertain where they were at the time. The Accused Person repeatedly expressed sympathy toward them, but refused to accept that they had been detained at the security center.

In addition to testifying on S-21, the Civil Parties' testimonies shed further light on the conditions at Prey Sar (S-24). According to several of the Civil Parties, S-24 was essentially a labour camp where detainees were forced to work with minimum food and rest. Further detailed evidence on Cheoung Eak also emerged this week, with Civil Party Pok Khorn detailing both the execution methods used there and his escape.

The discrepancies within Civil Parties' testimonies gave rise to concerns about the extent to which their lawyers had adequately prepared them to take the stand. This was further compounded by an oral submission given by Lawyer for Civil Party Group 2, Silke Studzinsky, in which counsel requested that her client be able to testify about facts which had recently been discovered for which neither the Defense nor the Prosecution were on notice. Upon further questioning from Judge Cartwright, it became evident that Ms Studzinsky had only questioned her client three times prior to the hearing, twice at an earlier stage for which Ms Studzinsky "could not remember the exact date" and once just before she took the stand. Judge Cartwright

seemed to allude to the fact that a more diligent lawyer would have known about this new evidence at an earlier stage of the proceedings, and alerted the Parties accordingly. The Judge also commented on Civil Parties' lack of preparation during Li Hor's testimony.

In a more positive development, the Chamber took care to offer (and allow for) breaks in the proceedings when Civil Parties were overcome by emotions. In particular, Judge Nil Nonn adopted a measured and sensitive approach to those testifying.

While attendance was impressive, the increase also highlighted an apparent lack of sufficient security facilities at the Court. With one entrance and metal scanner available for a public gallery that seats over 500 people, a long queue formed at the end of every adjournment. As a result, although President Nil Nonn had hoped that all audience members would be seated before the judges entered the room, this goal soon appeared unrealistic. Security guards and members of Public Affairs attempted to ensure people returned to the public gallery in an orderly fashion, but met with only limited success.

2. LEGAL AND PROCEDURAL ISSUES

A. Abridged Summary of Testimony

This week, five Civil Parties were summoned to testify before the ECCC on facts relating to S-21 and Prey Sar. Unfortunately, questioning revealed inconsistencies between their testimony and their applications as well as between their testimony and those given by other witnesses and victims. At one point, the Accused challenged the veracity of a Civil Party's identity, producing seemingly credible evidence to support his claim. Li Hor, who testified on Monday, presented himself as Ear Hor, whose S-21 confession was attached to his application. However, his testimony differed significantly from the both confession attached to his application and the application itself.ⁱⁱ While the Accused Person accepted the aforementioned document was the biography and confession of a person named Ear Hor, who had been detained at S-21, he subsequently produced the Co-Prosecutor's list of executed S-21 prisoners which contained this person's name. Based on this evidence, Duch insisted that the Ear Hor referred to in the document had already been "smashed" and therefore could not be the person testifying.

The relevance of the evidence presented was further undermined by the fact that many Civil Parties seemed unable to provide the Chamber with clear testimony regarding the details of their physical surroundings while being detained. As a result, and as every battalion is alleged to have had its own detention center, it was unclear whether Civil Parties had been detained at S-21 or another security office. Li Hor, Lay Charn, Pok Khorn and Chin Met all acknowledged that they had been detained under conditions preventing them from clearly identifying the specific detention center in which they had been housed. Nam Mun, whose testimony will continue next week, was the only Civil Party who did not express this uncertainty as she claims to have worked at S-21 as a medic. However, upon questioning by the Chamber's President, she seemed to have difficulty identifying S-21's spatial lay-out.

Regarding detentions at S-24, the Accused Person acknowledged Chin Met's detention there, based on the documentation (photograph and biography) that she provided, asserting that this

kind of documentation had been produced at S-24. Chin Met maintained that she had been photographed and had her biography taken when she was still stationed with Battalion 450.

The following is this week's abridged summary, organized by issues raised during the Civil Parties' testimonies. For a more comprehensive summary of each Civil Party's testimony please refer to Annexure A to this report.

S-21

Arrest and Transfer to S-21. All five Civil Parties testified to being transferred to detention facilities under basically the same conditions this week, with Parties testifying that they were blindfolded, bound and placed in a vehicle (either a Lumbretta or a truck). The regime's use of false pretenses to apprehend detainees was further evidenced by Chin Met's testimony: according to her, she was arrested while waiting for a meeting she was summoned to attend.

Registration process. None of the Civil Parties this week claimed to have been photographed or have had their biography taken during their admission into S-21. Li Hor and Nam Mun asserted that they were not stripped and were allowed to wear black clothing (clothing distributed to DK forces), which was at odds with the testimony given by a number of witnesses last week.ⁱⁱⁱ

Detention conditions. All Civil Parties this week recounted their detention experiences and how they were shackled or chained in detention cells. However, their accounts differed concerning both eating and bathing procedures. Li Hor claimed to have been fed rice, while others claimed to have been provided only with gruel. Hor, as well as Lay Chan, Chin Met and Nam Mun recalled being allowed to take a bath outside the detention room, while Pok Khorn (consistent with other accounts from last week) recalled being doused with a hose. Lay Chan was the only Civil Party who claimed that he was put to work at night to dig pits (allegedly for planting banana trees, around the S-21 compound).

Interrogation and Torture Techniques. All Civil Parties claimed to have been interrogated - although different information was extracted. For example, Pok Khorn was being interrogated regarding his involvement with KGB and CIA, while Nam Mun was tortured to determine whether she as the daughter of a detainee. Beatings were employed as a consistent method of torture. Nam Mun claimed to have been tortured by having her leg shackles tightened. She was the only Civil Party this week that stated that she had been tortured inside her detention cell. The others recalled being bound, blindfolded, and herded to a separate room in order to be interrogated.

Prey Sar (S-24)

Detention Conditions. Li Hor and Nam Mun claimed that they were shackled when they were not working. This differed from Chin Met's recollection, which was that prisoners were gathered in a house in Unit 17 of S-24. Chin Met recalled the insufficient food provided to detainees who were expected to conduct extreme physical labor. She also recounted high detainee turnover as people around her were "disappearing" constantly (apparently to be taken to a new domicile).

Forced Labour. Li Hor, Nam Mun, and Chin Met recalled the hard labor they had to undertake, which included digging canals, planting rice, or digging pits for deceased children. This grueling work was undertaken with minimum food and insufficient rest. Chin Met recalled that one would not be allowed to finish working if the day's work quota had not been achieved. She also recalled the beatings administered to women who failed to work.

Choeung Ek

Pok Khorn's escape from the killing fields. Pok Khorn is the first person to testify who claims to have survived Choeung Ek. He recounted that on 6 January 1979, all remaining prisoners at S-21, including him, were "thrown like pigs" into trucks. He then stated that he was made to kneel by the edge of a pit and was dealt a blow to the neck. However, he did not die but only fainted. Pok Khorn claimed that he was unaware at the time as to the location of his brush with death. Although he has never visited Choeung Ek, he asserted that his experience must have taken place there, because he believed that prior to the execution attempt he had been detained at S-21.

B. LEGAL ISSUES RAISED OR OBSERVED DURING TRIAL

Evidence Originating from Non Governmental Organizations Defended. On Wednesday, Mr. Pok Khorn stated that an NGO representative had assisted him in preparing his Civil Party application. The account provided in his application greatly differed from the testimony he provided to the Chamber.^{iv} Civil Party Lawyer for Group 3, Ms Martine Jacquin, attempted to address these inconsistencies by observing that NGOs had limited fact-finding capabilities. Ms. Jacquin suggested the combination of limited resources, a lack of legal training, as well as the enormous number of victims' accounts recorded throughout Cambodia prevented well-meaning NGO workers from performing their duties with the utmost diligence. While Ms Jacquin appeared to be asking the Chamber to grant Civil Parties greater leeway when testifying, she also underlined the Defense's longstanding doubts over the veracity of documents originating from or submitted by NGOs. At the very least, Ms Jacquin's comments tended to suggest that the weight attached to NGO submissions and interviews should be limited, bearing in mind the circumstances under which such documents are collected.

Origin of Evidence Not Clarified. On Wednesday, International Deputy Prosecutor Anees Ahmed requested that a photo shown by Civil Party Chin Met be put into the case file. According to Chin Met, the photo was taken by her friends who went to S-21 and recognized her on the board of prisoners' photos displayed.^v The Defense declared that they would not object to the photo being put into the case file as long as it was clearly noted that the photo of Chin Met displayed at S-21 was taken at Prey Sar and not at the Security Office. Chin Met's lawyers, Mr. Kim Mengkhy and Ms. Martine Jacquin, contended the location where the photograph was taken was still an issue to be determined. The Chamber announced that the photo would be taken into the case file and did not offer any conclusion on the factual issue regarding its origin.

Submission of New Evidence: Monitors Have Concerns about the Accused Person's Rights. Last week, the Accused stated that he would only acknowledge that Civil Party Nong Chan Phal had been detained in S-21 if some evidence was shown to him to support this claim.

This week, DC-Cam provided the Prosecution with the biography of Nong Chan Phal's mother. The Prosecution submitted this document to the Chamber on Wednesday, requesting it to be put into the Case File, and deemed put before the Chamber for the purposes of Internal Rule 87(3). Despite concerns raised by Defense Counsel about the tardiness of this submission, the Prosecution's requests were granted.^{vi} Citing Internal Rule 87(4), the President stated that there was no restriction on evidence being submitted during trial. The President Judge Nil Nonn explained that future disputes regarding evidence submission would be resolved according to the practical circumstances as it pertains to the particular submission.

This liberal interpretation of submitting new evidence was further evinced during Wednesday's proceedings. Following on from a request for more time for her client Nam Mun (a ka E2-32) on Monday, Civil Party Lawyer Ms. Silke Studzinsky's provided the judges with a brief summary of the 'new information' that her client sought to provide. This information included the assertion that Nam Mun used to work in S-21 as a medic, and that her two brothers were former S-21 guards. According to Ms. Studzinsky, the information had not been disclosed to the Parties previously on account of her client only having disclosed it to her 10 days prior to taking the stand. Although Ms Studzinsky was reprimanded by Judge Cartwright for not having informed the Parties sooner, the Defense failed to object to the admissibility of this new evidence, requesting only that any documents pertaining to the witness' testimony be disclosed to them.

While it is true that the Court has the discretion to admit any evidence,^{vii} (other than evidence which is wholly irrelevant) Rule 87(4) requires any party who wishes to submit new evidence to "satisfy the Chamber" that the evidence was indeed "not available before the opening of the trial". Although reasons for the tardiness of admitting evidence were given in both instances, the Chamber did not issue any reasoned determination regarding the criteria which needs to be fulfilled in order to satisfy the Chamber that such evidence had not been previously available.^{viii} Judge Nonn's assertion that such evidence should be reviewed on a "case-by-case" basis did little to clarify when, and upon what grounds, the Chamber would admit new evidence, setting a dangerous precedent for arbitrary and "last minute" determinations that may allow for the expansion of the case against the Accused Person. It seems to be important, at the very least, for the Accused to be given the opportunity to prepare to respond to such new information before a witness or Civil Party is examined. It is also worthy of note that the Defense did not raise this ground when given the opportunity to do so.

The Weight of Civil Party's Accounts in The Proceedings. ECCC Internal Rule 23(6)(a) states that victims who have become Civil Parties to the case "can no longer be questioned as simple witnesses" and "may only be interviewed under the same conditions as a Charged Person or the Accused." As had been the case last week, the application of this provision remains unclear, despite the distinction between the examination of Civil Parties and witnesses seeming to be especially significant this week. As was pointed out by International Defense Counsel,^{ix} Ms Carnizares, Civil Parties are entitled to attend the proceedings and hence listen to other witnesses and Civil Parties. For this reason it seems that they are susceptible to being influenced by previous testimonies. This influence was further noted by the Civil Party Lawyer for Group 2, Silke Studzinsky, on Thursday. In justifying her client's late disclosure of new

evidence, Ms. Studzinsky explained that Nam Mun had only decided to testify to these atrocities “after she heard other witness’ testimony and was encouraged to tell stories that she did not dare to tell before”. Yet because Civil Parties are not required to take an oath prior to testifying, and given they may have a personal interest in seeing the Accused Person convicted, the weight given to such evidence may be somewhat diminished.^x While this is ultimately a matter for the judges to determine, the extent to which this should impact on the questions put to Civil Parties remains unclear. Although the Court’s Internal Rules tend to suggest that some distinction should be made when Civil Parties are questioned, to date there appears to be very little difference in the manner of questioning or the way in which Civil Parties are treated.

3. VICTIM AND WITNESS PARTICIPATION, PROTECTION AND SUPPORT

Decision of Removing Witness KW-24 from the Witness List. The Chamber last week requested that the Co-Prosecutors submit written submissions concerning witness KW-24’s removal from the witness list. Following this submission, the Chamber announced on Monday their decision to remove KW-24 from the list. The Chamber ruled that it was not necessary to hear KW-24 in person, because the witness’ testimony concerned evidence to which other witnesses would be testifying. The Chamber nevertheless affirmed that KW-24’s written testimony would still be considered “put” before the Chamber in accordance with Internal Rule 87, presumably on the grounds that his testimony had already been summarized in the Prosecution’s submissions.

Scheduling of Civil Parties Appearing before the Chamber: Civil Party ‘Too Traumatized’ to Testify. Several issues concerning Civil Parties appearing before the Chamber were raised on Monday. In particular, Civil Party Lawyer for Group 1, Mr. Alain Werner, informed the Chamber that Civil Party E2-43, who was scheduled to “share her experiences” before the Chamber, could not come anymore because she was “too traumatized” to testify. Mr Werner noted that as a result, the original time allocated for the Civil Parties to testify could be reduced from 37 hours to 35 hours. The fact that the Civil Party expressed these concerns raises questions regarding the extent to which the trial proceedings may be impacting upon the victims participating, and the relevant psychosocial support that is likely to be required to ensure that proceedings do not act to their detriment. (This secondary issue was not discussed during trial proceedings).

Civil Parties Subject to More Stringent Time Management Requirements. This week the Chamber indicated that it would keep a tight rein on the time allocated for Civil Parties’ testimony and their questioning by the Civil Party Lawyers. This became particularly evident on Monday, when Civil Party Lawyer for Group 2, Ms Silke Studzinsky, requested more time to be allocated to Civil Party E2-32 for her testimony to be heard, arguing that she could provide “very important new information.” The Chamber rejected Studzinsky’s request for more time to be allocated to her. Similarly on Thursday, the Chamber rejected a request from National Lawyer for Civil Party Group 3 for more time for Civil Party Lawyers to question this witness. The approach adopted by the Chamber this week differed from the more lenient approach it adopted last week, when it allowed Civil Parties to pose additional questions after the time allocated had expired.^{xi}

Extent of Preparation by Civil Party Lawyers Queried By the Chamber. This week, the Chamber questioned the extent to which Civil Party Lawyers had prepared their clients for testifying before the Court. The questions arose in large part largely due to inconsistencies between Civil Party applications and their testimonies before the Chamber.^{xiii} On Monday, Judge Sylvia Cartwright called on Li Hor's lawyers to account for their client's seeming lack of preparedness.^{xiii} Judge Cartwright's remarks came as there was much confusion as to whether or not the document entitled "Biography of Ear Hor" was truly an account of Li Hor's experience. The inconsistencies between the biography and Li Hor's profile were seemingly overlooked by Li Hor's own lawyers.^{xiv} Similarly, on Thursday Ms. Silke Studzinsky was questioned about the extent to which she had prepared her client for trial. Judge Cartwright was seeking clarification as to why Nam Mun's full account had been discovered at a point of time very near to the date assigned for the Chamber to hear her testimony. In both instances, the Lawyers explained that they had only met their clients three times prior to their appearance before the Chamber. In the monitors' view, whether or not this is construed as "sufficient" preparation can be best judged against the extent of time lost by the confusion caused from the discrepancies in testimony, and the distress caused to the Civil Parties in question once they take the stand.^{xv} However, the extent to which a Party is "prepared" to take the stand clearly requires a delicate balance to be struck: at other international tribunals, such as the Special Court for Sierra Leone, the Defense has raised allegations of witnesses being "prepped" due to the extent to which the Prosecution has interviewed witnesses prior to testifying, and the discrepancies between prior statements that have emerged as a result.

Ambiguities Surrounding Victims Cause For Concern Regarding the Application and Preparation Process. A lack of Civil Party preparation, as well as seeming "glitches" in the applications process also appeared to result in poor Civil Party support this week. At least one victim became visibly distressed while testifying, and several others contended with repeated questions from the Chamber and the Parties that sought to establish their standing to participate as victims in the Duch trial. Li Hor was clearly upset throughout Monday's proceedings, as his credibility was publicly undermined and his right to be a Civil Party in Duch's trial seriously called into question. As the week unfolded, the Defense repeatedly raised doubts regarding whether the Civil Parties testifying should be Parties to Case 001. This was likely due to the fact that three of the five Civil Parties – namely Lay Chan, Pok Khorn, and Chin Met - themselves acknowledged that they could not affirm that they had been detained at S-21.

It appeared from the Parties' appearance in Court this week that the review of their applications had not clearly determined a nexus between the harm suffered by them and the charges faced by the Accused Person. This nexus appears to be required under Rule 23(5), although the way the Rule is drafted is ambiguous. according to this Rule, Civil Parties must provide "details of their status as a victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator" [Emphasis added].^{xvi} The use of the disjunctive in this instance suggests that Civil Party applications only need to be vetted to show either that the victim has suffered an injury as a result of a crime or that this injury can be linked to a particular perpetrator. Furthermore, the Rules do not specify whether the crimes in question

need to be the crimes for which a particular Accused Person has been charged, or whether the crimes only need be enumerated in the ECCC's Statute.

The issue was further compounded by a seeming lack of adequate preparation for Civil Parties by their Lawyers. This was especially evident on Tuesday afternoon, when Civil Party for Group 3, Mr. Pok Khorn, was examined on the discrepancies between the version of events in his application and the account he provided before the Chamber. Mr Khorn's application states that he both met with, and was tortured by, the Accused at S-21. In his testimony, however, he claimed to be uncertain about the location of his detention and the conditions of torture.^{xvii} The President questioned the Civil Party on this discrepancy, and Pok Khorn emphatically stated that he had never said what was written in his application. The Civil Party further explained that he was assisted by an NGO in filing out the application, and may have reiterated his account in an unclear manner, resulting in the discrepancy. Such errors may have been resolved by more diligent preparation being undertaken by his lawyers before the witness took the stand. It may be traumatizing for victims to recount their experiences only to be confronted with the fact that their testimony may not be relevant to Case 001 - and hence not given any weight by the Chamber. This may lead to the unfortunate consequence that a Civil Party may feel at best, dissatisfaction, and at worst, re-traumatization, after testifying to his or her experiences.

Judges Display Greater Sensitivity When Managing Civil Parties. The Chamber displayed sensitivity in managing victims' distress when recounting their experiences this week. The President offered Civil Parties breaks on occasions when they became overwhelmed by emotions. In particular, during the testimony of Nam Mun, the President granted a ten-minute recess when she indicated her need for time to recompose herself.

The Chamber indicated that it did not appreciate comments regarding judges' ability to handle victims and witnesses experiencing trauma this week. Prior to Nam Mun's testimony her lawyer, Ms. Studzinsky, had cautioned the Chamber to take "appropriate steps" in examining this Civil Party, because the victim was especially distressed and nervous. Judge Cartwright subsequently explained that not only were the Civil Parties' mental and physical states important factors in their selection as witnesses, but further that the Judges of the Chamber had received training in managing traumatized victims. These preparatory steps are commendable.

4. TRIAL MANAGEMENT

Judicial Management. Constant efforts were made to ensure that the trial would proceed expeditiously. The Chamber has commendably continued to maintain punctuality in commencing proceedings. As well as being stringent about keeping to the times allocated for each Party's questioning,^{xviii} President Nil Nonn also acted more assertively in interrupting lawyers' repetitive and irrelevant questions.^{xix}

On the other hand, the Chamber appeared rather liberal with time allocations when it came to the Civil Parties' recounting their experiences. On Wednesday, Chin Met was allowed nearly one hour to recount her experiences during the Democratic Kampuchea period,^{xx} with more than ten minutes spent describing experiences that took place after 6 January 1979. Bearing in

mind that the Court's temporal jurisdiction covers only the period from 17 April 1975 to 6 January 1979, and further, that the Accused is charged for alleged crimes related to S-21 and S-24, the events that happened to Chin Met after 6 January 1979 *prima facie* do not seem to be relevant.

On Thursday, the Chamber responded to a proposal by the International Co-Prosecutor that the time frames given for 1-day testimonies be proportionately increased for testimonies scheduled to span 2 days. Notwithstanding a repeated request by the International Defense Counsel for time equal to the combined time of the Prosecution and Civil Party Groups, the Chamber decided on the following time-frames:

	Duration of Testimonies			
	1/2-day	1-day	1 ½ day	2 day
Prosecution	15 min	30 min	45 min	60 min
4 Civil Party Groups combined	20 min	40 min	60 min	80 min
Defence	20 min	40 min	60 min	80 min

It is also worth noting that on Thursday, the Chamber sent a clear message to all lawyers that it had little tolerance for convoluted and confusing questions.^{xxi}

Scheduling. The schedule for the hearing of witness and expert testimony from 13 July to 26 August 2009 is now available on the ECCC website.

Parties' Attendance. On Monday, the Prosecution was represented by the International Co-Prosecutor Mr. Robert Petit and Mr. Seng Bunkheng. Tuesday, Wednesday and Thursday saw the appearance of Deputy International Co-Prosecutor, Mr. Anees Ahmed, while the National Co-Prosecutor, Mr. Yeth Chakrya, attended proceedings on Tuesday and Mr. Seng Bunkheng on Wednesday and Thursday's morning. Mr. Tan Senarong took over on Thursday afternoon.

Audience attendance. Following an unprecedented level of attendance last week,^{xxii} the public gallery appeared relatively full throughout this week as well. On Monday, at least 250 people from Tuol Sangkae commune, Russey Keo district, Phnom Penh attended the morning session, but left after lunch. Tuesday saw the presence of about 200 people from Rokakaong District, Kandal Province, and about 150 people from the Prek Kuy Commune, Kang Meas District, Kanal Province. Their transportation was organized by the ECCC Outreach Program. On Wednesday, around 400 people came to the hearing from Prek Thoney, Kampong Svay, Koh Krabey Commune, Keavsvay District. There were also 50 students from Build Bright University and 35 from the Lawyer Training School. In addition, a group of about 20 American students attended Tuesday and Wednesday's proceedings with the support of the CIEE and Centre for

Khmer Studies. On Thursday, more than 300 Cambodians, including members of the Cham community flocked to the courtroom. About 200 of the Cham were from Stung Meanchey and Russey Keo district, Phnom Penh. There were also 50 students from the Royal Judge Training School in Phnom Penh, and another 50 students from the Court Clerk Training in Phnom Penh, whose transportation was funded by the ECCC Outreach Program.

Courtroom Etiquette. During the past 2 emotionally-charged weeks, the Chamber has generally displayed consistent and keen sensitivity to the needs of the victims testifying. The Chamber did not hesitate to adjourn proceedings to allow witnesses and Civil Parties to regain their composure, and would convey acknowledgement and appreciation of the difficulties they had to overcome in order to tell their tragic stories in Court. However, Monitors thought that it was unfortunate that the President repeatedly used the impolite form of “you” in Khmer to address Mr. Pok Khorn, a Civil Party from Group 3.^{xxiii} Monitors urge that greater care be taken in this regard. Respect to victims’ dignity and care for their emotions is a weighty concern, and due regard for their tragic history and suffering should be given to them.

Interestingly, during this same period, the Chamber’s attitude towards Civil Party Lawyers appears to have undergone a different kind of shift. While the judges have become increasingly more mindful toward the sensitivities of Civil Parties, they have also concurrently become more mindful of curtailing Civil Party Lawyers questioning. Although attempts to curtail irrelevant questions and limit the extent of questioning accordingly are clearly commendable, at times the Chamber’s attitude toward Civil Parties appears to be surprisingly dismissive.^{xxiv}

Public Gallery Management. On Wednesday, the Chamber noted the increased level of public attendance, and expressed concern over “some disorderly behavior in entering and exiting the public gallery.” Latecomers were thereafter disallowed by Court Officials from entering the public gallery, a measure that appeared extreme under the circumstances. In order to gain entrance into the Courtroom, members of the public must pass through a metal detector and have their bags searched. This acts as an additional security measure to entrance into the court compound itself, where all members of the public are screened. As a result, entrance into the public gallery after a court recess on days where the gallery is full is extremely time-consuming. The Chamber’s insistence that all members of the public be seated prior to the judges entering the Courtroom effectively means that a twenty-minute recess is shortened to approximately 10 minutes. This is compounded by the fact that the public often have to wait in long queues for use of the restrooms. These queues can also be seen during every break (due to the small number of available facility in this regard), making it extremely difficult for the public to comply with the judges’ wishes. Furthermore, the public cafeteria is often overcrowded during the lunch break, and there are both insufficient food and seats when attendance is high.

Better facilities and logistical support appear necessary in order to keep up with efforts to increase public attendance. Additionally, the Chamber should bear in mind that any “disturbance” caused by the public entering the gallery after proceedings have commenced may be due to these factors. In addition, it appears somewhat strange that these movements should be deemed to impact upon the proceedings, given the bullet-proof glass between the gallery and the Courtroom would eliminate any noise caused by this disturbance.

DAY/ DATE:	START:	MORN. BREAK:	LUNCH:	AFT. BREAK:	RECESS:	TOTAL HOURS IN SESSION
MON. 06/07/09	09.00AM	10.35 10.55AM	12.10 13.30PM	14.30 14.50PM	16.00PM	5 HOURS
TUE. 07/07/09	09.00	10.25 10.48AM	11.50 13.30PM	14.45 15.02PM	16.15PM	4 HOURS 55 Min
WED. 08/07/09	9.00	10.45 11.05AM	11.55 13.30PM	14.45 15.05PM	16.10PM	4 HOURS 55 Min
THURS. 09/07/09	09.00AM	10.43 11.05AM	12.00 13.30PM	14.45 15.00PM 15.45 15.55PM	16.00PM	4HOURS 43Min
AVERAGE NO. OF HOURS IN SESSION :						4 HOURS 53 MINS
TOTAL NO. OF HOURS THIS WEEK :						19 HOURS 33 MINS
TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL:						178 HOURS AND 7 MINS OVER 41 TRIAL DAYS OVER 11 WEEKS

ⁱChin Met on Thursday, when explaining the desperate situation at Prey Sar, up to the point where she and her colleagues contemplated suicide.

ⁱⁱ On issues related to the submission of this document to the Chamber, see the “Victim and Witness Participation, Protection and Support” section of this report.

ⁱⁱⁱ A number of witnesses last week stated that the prisoners at S-21 were not allowed to wear black clothes because they were considered “enemies.”

^{iv}See Victim Participation, Protection and Support section of this report.

^vChit Met showed two photos on Tuesday, but when answering President Judge Nil Nonn’s inquiry, Mr. Ahmed affirmed that he was only referring to the photo taken by her friends. One the photo, two friends of Chin Met’s were standing in front of the board of prisoners’ photos in S-21, on which Chin Med’s photo can be seen.

^{vi} According to Lawyer for Civil Party Group 1, Alain Werner, the reason concerning why Nong Chan Phals mother’s biography had not been previously disclosed, was that the spelling used by the search in the DC-Cam Database for the biography had not been correct. Only after Nong Chan Phal testified, they tried with other possible spellings and found out the document.

^{vii} See Internal Rule 87 (1), which states that all evidence is admissible.

^{viii}See Internal Rule 87 (1), which states that all evidence is admissible.

^{ix} Ms. Canizares, the International Defense Lawyer, questioned Pok Khorn on whether or not he had been listening to other Civil Parties and witnesses prior to him testifying before the Chamber. The Civil Party acknowledged that he had been attending the proceedings during Van Nath's, Bu Mein, and Chun Mein's testimony last week.

^xA Victims Support Unit Representative noted during the Court's weekly press conference that, unlike witness and experts, Civil Parties do not testify under oath. This would tend to suggest that the evidence they present must be given less weight than other witnesses, in light of their interest in the proceedings. Moreover, as stated by

^{xi}In addition, last Wednesday, the President stated that the Chamber would apply caution in calculating the time allocated for each party's questioning. He specifically mentioned that the time used for victims to recompose themselves and for confirming facts to the Accused would not be calculated into the time allocation.

^{xii}See the Legal and Procedural Section of this Report.

^{xiii} On Thursday Civil Lawyer for Group 2 delivered a preliminary remark on the scope of knowledge her client being more extensive than the information provided in the Civil Party application form. Judge Cartwright in response inquired whether the additional knowledge was known to the lawyers before submitting the names of the Civil Parties whose account would be helpful for the Trial Chamber (see the Legal and Procedure Section of this report). This indicated the selection process applied to choose which Civil Parties will take the stand is initiated by the lawyers, who are not only duty bound to protect their client's interest, but also to choose the Civil Parties who would most shed light on the facts during the trial.

^{xiv} See Li Hor's Abridged Testimony above for an account of these inconsistencies

^{xv}See Victim and Witness Participation, Protection and Support Section.

^{xvi}ECCC Internal Rules, available online at www.eccc.gov.kh.

^{xvii}During his testimony, Pok Khorn claimed uncertainty about whether or not he had met the Accused during his detention. He only recollected that a person had walked in during an interrogation session, and the interrogators had referred to this person as "Brother East". Pok Khorn claimed that as he was tortured face down, he could only see the person's shoes. He claimed that the person did not participate in the interrogation and torture at the time, and walked away after a brief period of time.

^{xviii} All requests thus far by Civil Party lawyers for additional time to question witnesses or civil parties have been refused by the Trial Chamber, on the ground that they had been given advance and clear notice of the relevant time limits.

^{xix} He also interrupted Civil Party Lawyers' questions when deemed as repetitive or irrelevant, and instructed Civil Party Pok Khorn that he did not need to answer the questions.

^{xx} Asked by Nil Nonn to give "general observations" on her experiences, Chin Met began to recount her experiences in detail for approximately 20 minutes. After the lunch break, she continued for another approximately 40 minutes.

^{xxi} President Nil Nonn interrupted mid-way through a convoluted compound question posed by Civil Party Group 3 Lawyer Kim Mengkhy to Duch, and spoke sternly to the lawyer: "Do you think you would be able to answer this question if you were the Accused?" The President then instructed the Accused to answer the questions he could remember, and to request the lawyer to repeat himself if necessary.

^{xxii} It was announced at Wednesday’s press conference that a “record-breaking” 2078 people attended the trial last week.

^{xxiii} The Khmer term *eang* is more appropriately used by an older person when speaking to a child, or by a powerful person when addressing a person of lower economic class. The use of this word in the trial may be perceived as disrespectful to the witness.

^{xxiv} For example, on Thursday, International Lawyer for Civil Party Group 3, Martine Jacquin, asked to be heard by the Chamber, stating without a microphone (which President Nil Nonn did not permit to be turned on) that she had a request seemingly unrelated to her national counterpart’s preceding request for additional time for Civil Parties questioning (see Victim Participation and Witness Protection and Support section of this report). She was entirely ignored by the Chamber, whose only reaction was to reiterate that it would not allow additional time. Later that day, the National Co-Prosecutor attempted to assist the Chamber by drawing its attention to a map of S-21 that could better aid the testifying Civil Party.