



In this week's KRT Trial Monitor...

Victims of S-21 Testify to Painful Experiences At the Security Center (pp. 2- 4); Chamber Endeavors to Delay its Determination of Joint Criminal Enterprise until the end of the case (p.4); Questions Emerge Regarding Treatment of Witnesses, as Victims asked to Reveal Permanent Injuries in Public (p.6); Chamber Eliminates Approx. 15 witnesses from its Witness List in an effort to Further Expedite the Trial (p. 7)...

1. SUMMARY

"What I seek is intangible, its justice...I hope justice becomes tangible, one that everyone can see."ⁱⁱ

This week's proceedings centred on hearing the testimony of 4 witnesses who purport to be former detainees at S-21. Kept alive because of their skills, Vann Nath, Chum Mei and Bo Meng testified to their painful experiences during the reign of the Khmer Rouge. When presented with an opportunity to respond to their testimonies, Duch unambiguously accepted that these three witnesses had suffered at the hands of the security office which he presided over. The fourth witness - Nong Chan Phal – alleged that he was a former child detainee at S-21, who had accompanied his mother upon her arrest. Significantly, Duch expressed reservations about the accuracy of this allegation, citing the lack of documentary evidence to prove that his mother had even been detained there. Unsurprisingly, the recollection of such traumatic events invoked strong and emotional reactions from all the witnesses. They appeared to agree that their primary motivation for appearing before the Chamber was to achieve justice for their loved ones and all Cambodian people who had perished during the regime.

Evidence elicited this week seemed to underscore the fact that detainees at S-21 were regarded as sub-human. Consequently, they were forced to endure excruciating conditions, which encompassed food deprivation, unsanitary living conditions, restriction of movement and habitual verbal abuse. Designated as enemies of the regime, two of the witnesses recounted how they were severely tortured by interrogators at S-21 until they had endorsed spurious confessions. Witnesses appeared to agree that Duch had never tortured any detainee in their presence.

Alongside this testimony, a procedural issue regarding admissibility was briefly addressed this week. The Chamber revisited the extent to which a piece of contested video footage, as well as interviews obtained from non-governmental organizations, should be able to be considered as evidence during trial.

The Chamber's treatment of the witnesses, three of whom had been victims of severe torture, was a key concern during this week's proceedings. Chum Mei and Bo Meng were both asked to exhibit their physical injuries in public, although the request advanced to Bo Meng was retracted upon the intervention of Civil Party lawyer Silke Studzinsky. Furthermore, there appears to be a tension between ensuring that proceedings run in an expeditious manner, and the need to ensure that survivors are afforded sufficient time to cope with the emotions invoked by the recollection of painful experiences.

Overall, proceedings this week ran relatively efficiently. Although the Chamber has adjourned early every day this week, proceedings have not deviated far from the schedule. The Chamber was generally vigilant in enforcing the time limits articulated in its latest scheduling direction. Notably, the attendance of Civil Parties increased marginally, whilst the proceedings were exceedingly well attended by members of the public throughout the week.

2. LEGAL & PROCEDURAL ISSUES

A. Witness Testimony

This week's proceedings were dominated by the testimony of four survivors of S-21. Vann Nath, Chum Mei and Bo Meng had escaped death because their professional skills were perceived as useful to the regime.ⁱⁱ Nong Chan Phal, who averred that he was a child detainee at S-21, was found by Vietnamese troops upon the liberation of Phnom Penh. Duch unambiguously accepted that Vann Nath, Chum Mei and Bo Meng had suffered at the hands of S-21 personnel. However, he expressed reservations about Nong Chan Pal's assertion that he had been a child prisoner at S-21, due to the lack of documentary evidence in support of the assertion.

The section below sets out abridged summaries of the testimony of witnesses who appeared before the Chamber this week. To view the full summary, please see Annexure A to this report.

Arrest and Transfer to S-21. The witnesses' accounts provided a similar picture in relation to the circumstances of their arrests. With the exception of Mr Chan Pal, all the witnesses revealed that they were lured to the location of their arrest under false pretenses. For example, Vann Nath was instructed to go to Posath with the Chief Cadre of his commune, when in fact he was brought there to be apprehended. Unlike the other witnesses, Vann Nath had been first detained and interrogated at Kandal Pagoda, a security office which operated under the aegis of the Northwest Zone, before being transferred to S-21. Chum Mei and Bo Meng were both brought to S-21 under the pretext of receiving new "assignments" from Angkar. Similarly, Nong Chan Pal's mother - who brought him and his younger brother along with her - was transported to the S-21 under the guise of being reunited with her husband. In general, none of the witnesses had been informed of the reason for their arrest. Based on their testimony, it appears that the significance the regime

placed on secrecy meant that all prisoners were blindfolded as they were led into the S-21 compound.ⁱⁱⁱ

Registration Process at S-21. The survivors' testimonies largely coincide with evidence given by the Accused in relation to the registration process instituted at S-21. In general, the witnesses attested to being photographed upon their arrival.^{iv} They would then be led to "common rooms," where prisoners were segregated based on gender.^v They were totally or partially stripped upon arrival, because they were made to discard their black revolutionary clothes.

Detention Conditions. The accounts of Vann Nath, Chum Mei, and Bo Meng provided insight into the unremittingly harsh conditions of imprisonment at S-21. Corroborating Duch's earlier testimony, these witnesses recalled being treated "like animals" who were verbally abused by the guards. They stated that prisoners in the common room were shackled to a long bar, and subjected to severe restrictions of movement. From their testimony, it appears that there were no washing facilities and prisoners remained shackled when "bathed." The witnesses explained that "bathing" consisted of a guard spraying the room with a hose from the doorway. They were not permitted to leave their cells to use the toilet, and were forced to urinate in jerry cans and defecate in ammunition boxes. All three witnesses concurred that prisoners faced meagre food rations, which consisted of 3 small spoonfuls of gruel twice a day. Vann Nath recalled experiencing extreme hunger, and "thought [that] even eating human flesh would be a good meal for [him]." Chum Mei's testimony also shed light on detention conditions in the individual cells. According to him, the individual cells were very small and invariably dark. Prisoners were chained, and were compelled to sleep and eat next to the containers in which they defecated. However, it appears that the witnesses' food rations and sleeping quarters improved once they received their various appointments.

The conditions faced by child detainees at S-21 clearly emerged from Nong Chan Phal's testimony. He revealed that the children on the compound were supervised by an "elder woman" and were not compelled to work. They were regularly fed gruel twice a day. Although he was not handcuffed or shackled, his freedom of movement was restricted. He further recalled that he was afflicted with skin rashes, mosquito bites and malnutrition during the period of his detention.

Interrogation and Torture Techniques. Designated as "enemies" of the state, Vann Nath, Chum Mei, and Bo Meng had all been accused of membership in counterrevolutionary organizations like the "CIA" and "KGB." All three witnesses averred that the accusations levelled at them were entirely befuddling, in light of their minimal knowledge of the "CIA" and "KGB" at the time. Despite their repeated professions of innocence, it appeared that their arrest and transfer to S-21 evidenced their guilt irrefutably. Two witnesses further recounted how the omniscience and infallibility of "Angkar" had been assiduously championed by their interrogators.

Although Vann Nath had evaded torture at S-21,^{vi} Bo Meng and Chum Mei recalled being repeatedly beaten and electrocuted. According to Duch's previous testimony, the use of these two techniques had been expressly sanctioned at S-21. Chum Mei further recounted how his toe nails had been ripped off on two separate occasions. Although Vann Nath^{vii} and Chum Mei had been tortured into providing spurious confessions, Bo Meng had refused to relent and was forced to sign a pre-drafted confession instead.

With regard to Duch's personal involvement in torture, all witnesses unambiguously testified that they had never been personally tortured by the Accused. They further revealed that they had never witnessed Duch torturing other detainees. Bo Meng was the only witness who claimed to have witnessed Duch ordering the torture of a Vietnamese detainee. However, when questioned by National Defense Counsel Kar Savuth, he acknowledged that his memory of the incident was vague, and that he "[did not] know who had ordered it."

The Presence of Foreigners at S-21. When questioned by Judge Sylvia Cartwright, Bo Meng affirmed the presence of Westerners in his "common cell." He also recalled seeing people who were wearing the Vietnamese military uniform when they arrived at S-21.

The Arrest of Family Members. The survivors' testimonies corroborated Duch's assertion that the prevailing policy at the time was to arrest an entire family if one member was perceived as an "enemy." Therefore, Bo Meng had been arrested with his wife, whilst Chum Mei's arrest immediately preceded his wife's detention at Prey Sar. Similarly, the arrest of Nong Chan Pal's mother ensued several months after his father had been summoned to Phnom Penh. An S-21 biography, which was putatively composed by his father, suggests that his father had been detained at S-21.

Motivations for Testifying and Expectations of the ECCC. All the witnesses summoned this week unequivocally expressed hope that their testimony would help to achieve justice for their loved ones, and for all other victims of the regime. Vann Nath provided a pithy summary of his motivation for appearing before the Chamber, by expressing his hope that his testimony could "serve as a mirror to reflect to the younger generation the lives of those who were arrested for no reason." He added that he was expecting "justice for those who died... I hope justice becomes tangible, one that everyone can see." Some witnesses also opined that providing testimony before the Chamber was a means of achieving some peace of mind. As stated by Bo Meng, "I am so delighted that now my chest seems to be lighter.... All my statements to the judges and to the lawyers and the rest, I feel much better now."

B. Issues Arising At Trial

Joint Criminal Enterprise. On Monday, The Trial Chamber briefly revisited the applicability of the doctrine of Joint Criminal Enterprise ('JCE') to the proceedings. The Chamber took note of submissions filed by the OCP on June 8, 2009, requesting an articulation that Categories I, II and III of JCE were applicable. Acknowledging that the "mode of responsibility of the Accused, including his participation in a JCE" was before it, the Chamber signaled its inclination to render a decision on the issue "at the same time as its judgment on the merits." Parties were also invited to proffer written submissions on the issue.

Questioning of Civil Parties. 2 out of 4 witnesses summoned by the Chamber this week, namely – Mr Chum Mei and Mr Bo Meng, are Civil Parties to the proceedings. Internal Rule 23(6) mandates that Civil Parties who are summoned to provide testimony cannot be questioned as "simple witnesses" in the case. However, monitors were unable to discern any difference between the manner in which the Chamber and Parties posed questions to Mr Chum Mei and Mr Bo Meng, as compared to the questioning of other witnesses who were summoned this week. In this regard, further guidance from the Chamber on the interpretation of Rule 23(6)(a) would seem to be desirable.

Admissibility and Authentication of Evidence. Prior to the hearing of Mr. Nong Chan Phal's testimony on Thursday morning, International Co Prosecutor Mr. William Smith submitted a two-fold request before the Chamber. First, he requested that a statement made by the witness to DC-Cam, dated 13 February 2009, be put before the Chamber under the Internal Rule 87(4). Second, he requested that specific segments of contested video footage^{viii} be shown to Mr. Chan Phal. Labelling this a "unique opportunity" for the Chamber to authenticate the video, Mr Smith urged the court to allow the witness to proffer his opinions on the authenticity of the footage.^{ix}

In response, National Defense Counsel Mr. Kar Savuth vehemently objected to the admissibility of the witness's interview with DC-Cam. He argued that the Defence had not been afforded sufficient time to examine the contents of the document.^x In support of her national counterpart's contention, Ms Carnizares emphasized that the interview was conducted in a non-judicial context and under unknown circumstances. With regard to the viewing of the contested video footage, Mr Kar Savuth reiterated that the admissibility of the video was still *sub judice* following on from submissions made by the Parties earlier this year.

After a 45-minute deliberation, the Chamber rejected the OCP's request to admit the witness's statement to DC CAM into evidence. It reasoned that the inclusion of the statement would be prejudicial to the interests of the Defense. The Chamber initially refrained from issuing a definitive ruling on the presentation of the video before the witness, indicating that it would make its determination "after the witness had given evidence." However, the Chamber eventually allowed a still-picture from the contested video footage to be shown at the close of the day's proceedings. The witness was requested to identify the two young boys in the picture, and he affirmed that one of the children captured in the picture was him.

3. WITNESS AND VICTIM PARTICIPATION, PROTECTION AND SUPPORT

Civil party attendance. Seven civil parties attended the proceedings on Monday and Tuesday. Wednesday's proceedings were attended by nine civil parties, excluding the witness, Mr Bo Meng. However, the number of Civil Parties present dropped to six during Thursday's proceedings.

Victim and Witness Support. Unsurprisingly, the witnesses testifying this week exhibited varying degrees of distress as they recounted the atrocities committed against themselves and their family members at S-21. Although all 4 witnesses broke down on several occasions during their testimony, monitors observed that Mr Chum Mei and Mr Nong Chan Phal experienced particular emotional distress when revisiting their painful experiences.

Monitors opine that the Chamber's reactions to these displays of distress raise serious concerns over its apparent lack of empathy for witnesses who may require additional psychological support. For example, when Mr Chum Mei patently became distraught, President Nill Nonn repeatedly urged him to "recompose" himself and "collect his emotions," in order to avoid impeding the progress of the proceedings. In response, Civil Party lawyer for Group 2, Ms. Silke Studzinsky, proposed that all witnesses should be apprised of their option to request for a break, in the event that they require time "to cope with [their] emotions." Although President Nil Nonn assured all Parties that adequate psychosocial support services are readily available to witnesses,^{xi} he continued to exhort Mr Bo Meng and

Mr Norng Chan Pahl to “be strong” in the face of their emotional breakdowns.^{xii} However, to its credit, the Chamber eventually granted a 10 minute adjournment to enable Mr Norng Chan Phal to regain his composure during Thursday’s proceedings.^{xiii}

It is also somewhat disconcerting that Civil Party lawyer for Group 4, Mr Hong Kim Suon, appeared to emulate the Chamber’s approach.^{xiv} In another instance, Civil Party Lawyer for Group 1, Ms. Ty Srinna, asked Mr. Bo Meng to keep his answers brief, so that she could pose all her questions within the time limit. In view of the Chamber’s latest scheduling direction, it appears that Civil Party lawyers are struggling to balance the seemingly competing considerations of acting as a “voice for the victims”^{xv} and adhering to the time limits imposed by the Chamber.

Chamber’s request for Witnesses to Display their Permanent Injuries in Public. In an apparent attempt to ascertain the permanence of injuries sustained by Mr. Chum Mei and Mr Bo Meng as a result of torture, President Nil Nonn requested that they display their physical injuries in public. Notably, both witnesses seemed willing to accede to the President’s request. However, the President’s request to Mr Bo Meng provoked an immediate reaction from Ms Silke Studzinsky, who urged the Chamber to adjourn the proceedings so that the “appropriate[ness]” of the measure could be considered. It is noteworthy that the Chamber withdrew its request to Mr Bo Meng after the adjournment, and informed him that he could tender photographic evidence of the scars on his back instead.^{xvi} Nevertheless, monitors opine that witnesses should be given the option of displaying their wounds in private from the outset of their testimony.

4. TRIAL MANAGEMENT

Parties’ Attendance During Proceedings. The Prosecution was represented by International Co-Prosecutor Mr. Robert Petit on Monday and Wednesday and by Deputy International Co-prosecutor, Mr. William Smith on Tuesday and Thursday. Mr. Yeth Chakrya represented the National side of the Office on Monday. However, he was replaced by Mr. Tang Senarong on Tuesday and Thursday, whilst Mr. Seng Bunkheang was present on Wednesday. International Defense Counsel Mr. Roux was replaced by Ms. Marie-Paule Carnizares this week.

Public attendance. Principally due to the support of the Public Affairs Section of the ECCC, this week’s proceedings were exceedingly well attended. The Public Affairs section facilitated the attendance of large groups of villagers and students throughout the week. On Monday, the public gallery was fully occupied by 500 people from Kean Svay district, Kandal province.^{xvii} 312 people from the same provincial district attended the proceedings on Wednesday morning. On Tuesday morning, approximately 450 students from Asia Europe University and Cambodian University of Specialists (**‘UCS’**) attended the hearing. In the afternoon, an additional 40 people from Posath Province attended the hearing, with the support of the Center for Social Development (**‘CSD’**). In addition to the villagers from Kandal province, 50 students from UCS were also present on Wednesday. Thursday’s proceedings were attended by 300 people from Kang Meas district, Kampong Cham Province. Their attendance was similarly facilitated by the Public Affairs Section.

Judicial Management. Overall, proceedings this week ran relatively efficiently. The Chamber commenced sessions punctually and stuck closely to the scheduled adjournments, an effort which the monitors commend.

The Chamber also evinced its desire to adhere strictly to its ruling on the time limits for questioning witnesses. Accordingly, it denied the request of Civil Party lawyers for an extension of their time limitations on two occasions this week.^{xviii} Nevertheless, the Chamber demonstrated its willingness to be flexible in certain circumstances when it granted the request of Civil Party Group 1 Lawyer, Ms. Ty Srinna, for additional time to question Mr Chum Mei. The Chamber did not cite any reasons for this decision, except to take note of the fact that the “international lawyers had grabbed all the time allotted for questioning”.

In response to a request advanced by Ms Silke Studzinsky, the Chamber provided clarification on the practical implementation of the time limits set by the Chamber in its latest scheduling direction. President Nil Nonn explained that the time allotted to each Party for questioning witnesses did not include time taken for objections, legal submissions and “outside events.”^{xix} He assured all Parties that the Chamber would be “flexible [in implementing the time limits], depending on what happens practically in court.”

Judicial Management: Chamber decides to reduce the witness list. In a bid to expedite proceedings, the Chamber announced its decision to remove approximately 15 people from the witness list.^{xx} The Chamber explained that after listening to arguments advanced by all parties, it had made a determination from the existing list as to which witnesses “are more likely to give relevant testimony.” It added that evidence adduced from testimony given by a witness during the investigative stage could still be tendered as evidence. Notably, parties are still in dispute over the need to summon witness KW-24. With a view to resolving the dispute, the Chamber has invited the OCP to make written submissions on the issue. On Tuesday, the Chamber declared its intention to issue a schedule on the hearing of witness testimony, once it has rendered its decision on the attendance of KW-24.

Repetitive questioning. On Monday, monitors observed that Judge Thou Mony posed questions that the witness had already answered in detail. Although the Chamber has constantly exhorted all Parties to refrain from asking repetitive questions, President Nil Nonn made no attempt to curtail his fellow Judge’s line of questioning.^{xxi}

Courtroom etiquette. As mentioned previously, the recollection of their painful experiences tended to invoke strong emotional reactions from the witnesses. At times, these reactions were considered inappropriate. For example, Mr Chum Mei incurred the Chamber’s disapproval when he declared that “Duch [would not have] lived to see the sunlight” if he had personally beaten him. Deeming this to be an “inappropriate comment,” President Nil Nonn reminded him to “refrain from insulting the accused.”

Interpretation Concerns. The interpretation rendered this week was generally coherent. Significantly, the Chamber made arrangements for the witnesses’ microphone to be automatically activated only after a full interpretation of the questions had been rendered.^{xxii} Monitors opine that this represents a praiseworthy effort to ensure the accuracy of the interpretation. However, Khmer monitors noted the questionable quality of the Khmer interpretation on Thursday morning, which made it difficult for them to fully comprehend the proceedings.

Technical Difficulties. In general, the hearing this week proceeded without any significant technical glitches. However, the Chamber encountered a minor technical problem on Monday; the AV unit clearly experienced considerable difficulty in projecting images on the screen, and the President had to solicit the assistance of the OCP to proceed with his line of questioning.

| DAY/ DATE: | START: | MORN. BREAK: | LUNCH: | AFT. BREAK: | RECESS: | TOTAL HOURS IN SESSION |
|---|--------|--|------------------|----------------|---------|------------------------------|
| MON. 29/06/09 | 09.05 | 10.40 – 11.00 | 12.05- 1.30 | 2.45-3.05 | 3.40 | 4 HOURS 30 Min |
| TUE 30/06/09 | 9.00 | 10.30 – 10.50 | 11.45- 1.38 | 2.50-3.15 | 3.45 | 4 HOURS 07 Min |
| WED 01/07/09 | 09.05 | 10.40 – 11.00 | 12.00 – 13.30 | 2.40 – 3.00 | 4.10 | 5 HOURS 05 Min |
| THURS 02/07/09 | 09.00 | 09.40 - 10.25 ; 11.20 – 11.30 | 12.00 – 13.30 | 2.50 – 3.10 | 4.00 | 4 HOURS 20 Min |
| AVERAGE NO. OF HOURS IN SESSION : 4 HOURS 31 MINS | | | | | | |
| TOTAL NO. OF HOURS THIS WEEK : 18 HOURS 4 MINS | | | | | | |
| TOTAL NO. OF HOURS, DAYS, AND WEEKS AT TRIAL: 158 HOURS AND 34 MINS OVER 37 TRIAL DAYS OVER 10 WEEKS | | | | | | |
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ⁱ Testimony of Victim-Witness Mr Vann Nath.

ⁱⁱ Vann Nath and Bo Meng were both painters, whilst Chum Mei was a mechanic.

ⁱⁱⁱ Chum Mei, Bo Meng, Vann Nath and the people who had arrived with them were all blindfolded before being led into the security office.

^{iv} Mr Nong Chan Phal was the only witness who was not photographed upon arrival at S-21, although he allegedly witnessed his mother being photographed and ill-treated by the photography unit.

^v Bo Meng stated that he and his wife had been led away in different directions after they were photographed.

^{vi} However, it is noteworthy that Vann Nath had been repeatedly electrocuted at Kandal Pagoda, a security office that operated under the aegis of the Northwest Zone.

^{vii} Monitors opine that this is a reasonable inference based on Vannath's testimony.

^{viii} The video footage, which was allegedly filmed when Vietnamese troops entered S-21 during the liberation, was provided by the Vietnamese government to DC-Cam. Its authenticity has been challenged by the Defence from the outset of these proceedings.

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- ^{ix} Mr William Smith highlighted the fact that the witness is widely believed to be featured in the video footage.
- ^x According to Mr Kar Savuth, the Defence had only received the document on the evening of July 2 2009.
- ^{xi} According to President Nil Nonn, doctors and psychiatrists are at hand to render assistance when the need arises. He further stated that the court had taken the matter under “serious” consideration.
- ^{xii} He further advised them to seize the “opportunity to inform the Chamber and the public about their suffering.”
- ^{xiii} It is noteworthy that shortly before the adjournment was granted, Civil Party lawyer for Group 1, Mr Alain Werner, had exhorted the Chamber to ask the witness if he needed “a few minutes to relax... to compose himself.”
- ^{xiv} Mr Chun May broke down again during Mr Hong Kim Suon’s questioning, and the latter urged him to “recompose himself” so that he could pose all his questions within the time limit.
- ^{xv} See KRT Trial Monitor Issue No. 10, Page 5.
- ^{xvi} It should be noted that the Chamber initially inquired if the witness was in a position to tender his own photos before the Chamber.
- ^{xvii} Due to the overwhelming attendance by members of the public, approximately 50 people had to observe the proceedings from the monitor outside the courtroom.
- ^{xviii} The Chamber rejected requests advanced by Ms. Silke Studzinsky and Ms Martine Jacquin for an extension of time on Monday and Wednesday respectively.
- ^{xix} Ms. Silke Studzinsky apparently deployed this phrase to refer to instances when a witness is overwhelmed by emotions is unable to continue providing testimony.
- ^{xx} Among the originally scheduled witnesses who will no longer testify are CP 2/1, CP 2/2, CP 2/3, CP 2/4, CP 2/6, CP 2/7, CP 2/10, KW -06, KW -12, KW – 13, KW-14, KW-16, KW-17, KW-18, KW-19, KW-25, KW-27, Nic Dunlop
- ^{xxi} Examples of the repetitive questions posed by Judge Thou Mony are: i) “When you were resting at night, were you shackled?” ii) “Was there a difference in the food provisions when you were detained upstairs, compared with after you became a painter?” iii) “Were you guarded strictly when you were resting at night?” iv) “Was there a difference in the conditions of your detention upstairs, and the conditions when you were assigned to work as a painter?”
- ^{xxii} This arrangement was instituted on Tuesday morning and maintained throughout the week.