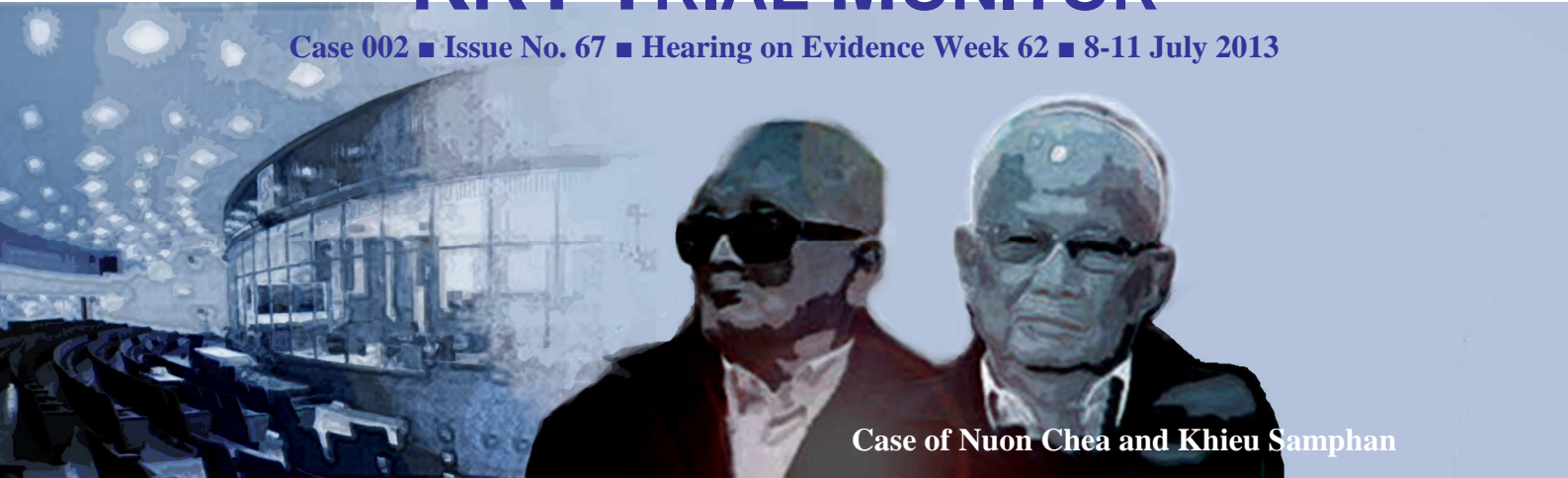


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 67 ■ Hearing on Evidence Week 62 ■ 8-11 July 2013



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*I have decided to exercise my right to remain silent. The reasons are because the court has failed to respect the rights of my Defense counsels. At the beginning I had faith in this court, but after this last moment, I have no faith in this court.*

- Khieu Samphan, Co-Accused

## I. OVERVIEW

This week, the Chamber heard the Defense teams respond to documents which had been presented by the OCP and CPLCLs two weeks earlier as part of the final “key document hearing” for Case 002/01.<sup>1</sup> The Nuon Chea Defense attempted to distinguish policy from implementation and place the documents into context. Nuon Chea himself made a personal statement, during which he explained the reasoning behind DK policy, challenged the accuracy of books written by foreigners, and clarified his leadership role during the DK. The Khieu Samphan Defense also informed the Chamber that Khieu Samphan had decided to invoke his right to remain silent and was no longer prepared to respond to questions from the OCP or Civil Parties. Khieu Samphan also made a personal statement explaining that his decision was fuelled by what he considered to be unfair treatment of his Defense counsel, and violations of his right to a fair trial. International counsel for Khieu Samphan, Arthur Vercken, used the time allotted to respond to the documents by lodging a variety of complaints about the fairness of the trial.

Following the conclusion of the document hearing on Tuesday, the Chamber heard the testimony of Witness Stephen Heder for the remainder of the week. Numerous legal and procedural issues were raised, including recurring debate about the fact that Heder had been summoned as a witness rather than an expert. Courtroom etiquette remained an issue throughout the week, with heated exchanges between Vercken, Prosecutor Keith Raynor, and the Trial Chamber Judges.

## II. SUMMARY OF CIVIL PARTY AND WITNESS TESTIMONIES

This week, the Chamber heard the testimony of one witness, Stephen Heder. Heder had originally been called as an expert, but declined his appointment in an email written to the Witness and Expert Support Unit (**WESU**) on 24 May 2013.<sup>2</sup> The Trial Chamber then summoned him as a factual witness. Questioning by the Prosecution focused on confirming the sources the Witness had used for specific passages in books he authored, including: *Cambodian Communism and the Vietnamese Model* and *Seven Candidates for Prosecution: Accountability for Crimes of the Khmer Rouge*. The passages read by Prosecutor Raynor

largely concerned the policy of evacuation, purging of enemies, and Khieu Samphan's role during the DK.

#### **A. Witness Stephen Heder's Testimony (TCE-33)**

Beginning on Tuesday afternoon, the Chamber heard the testimony of Witness Stephen Heder.<sup>3</sup> The Witness was questioned on the sources he used to write specific passages in his books, as well as his academic work in Cambodia prior to 17 April 1975 and research he conducted after the fall of the DK regime.

##### **1. Academic and Professional Background**

Stephen Heder described a long personal history in Cambodia, having worked as a journalist prior to 1975 and as the deputy director of the United Nations Transitional Authority in Cambodia (**UNTAC**) after the fall of the DK. He also worked at the ECCC in both the OCIJ and the OCP as an investigator, researcher, and analyst. He testified that he had conducted academic research on behalf of the University of London, School of Oriental and African Studies (**SOAS**) and summarized witness interviews funded in part by the Open Society Institute and the Documentation Center of Cambodia (**DC-Cam**) from 2004 to 2005. After being asked by Prosecutor Raynor about his motivation for writing the book *Cambodian Communism and the Vietnamese Model*, the Witness clarified that as an academic, his motivation for writing the book was for his work to be published and obtain a doctorate. The Witness also explained that SOAS interviews were conducted using "simultaneous translation," which involved asking questions in Khmer and writing down the responses in English.

##### **2. 1960 Worker's Party of Kampuchea (WPK) Party Congress Meeting**

Prosecutor Raynor asked the Witness about a secret party congress of the WPK (a predecessor to the CPK) held in September 1960, which he had described in his book, *Cambodian Communism and the Vietnamese Model*. During the party congress, the strategic and national policies of the WPK had been established, including movement of the Cambodian population and class contradictions existing in society. The WPK considered that Cambodian peasants, who formed 85 per cent of the population at the time, were grossly exploited and in need of liberation. To reach this goal, the WPK stated that they had to be prepared for political and economic armed struggle. According to Heder's book, the Party Congress meeting led to the formation of the Central Committee and comprised eight people, including Tou Samoth as secretary, Nuon Chea as deputy secretary as well as Saloth Sar (*aka Pol Pot*), Ieng Sary, Keo Meas, Sao Phim and others.

##### **3. Vietnamese Role in the KR Revolution**

Throughout his testimony, Stephen Heder spoke at length about the influence of Vietnamese communists on the KR. Passages read aloud from his book described hostile attitude from the Vietnamese towards enemies of the revolution. At the First Congress of Vietnamese Defenders, Siv Heng stated that the only way to live in freedom was to "kill the imperialists who were mad dogs, who must be exterminated." The book also stated that the Cambodian communists had initially relied on the Vietnamese communists for political and military structural support. However, in 1973, the CPK began attacking Vietnamese troops and had driven them out from the East, Southwest, and Special Zones by late 1973.

#### **4. Policy and Planning of the Evacuation**

The Prosecution's questioning of the Witness firstly attempted to establish a pattern of forced evacuations from liberated zones, and secondly, touched on the planning of the evacuation of Phnom Penh. The Witness described a number of interviews he had conducted in September 1973 with residents of Kampong Cham Province in areas that had been evacuated by the KR. Most interviewees he spoke to told him that the evacuation had been by force, and he told the Court that he heard some reports of people who were killed by the KR on the spot. The Witness also recalled seeing the bodies of half a dozen Buddhist nuns lying near a damaged pagoda in Udong at some time in March 1974. In relation to the planning of the evacuation, the Witness told the Court that the evacuation of Phnom Penh was planned well beforehand. He noted that although the KR had portrayed the relocation as voluntary, they actively enforced people to flee to the zones that had already been liberated. Referencing an interview he had with Ieng Sary in 1986, the Witness stated that the phrase "dry up the people from the enemy" was frequently broadcast on KR radio stations before April 1975.

#### **5. Personal Experience Prior to the Fall of Phnom Penh**

On Thursday afternoon, Prosecutor Raynor questioned the Witness on the sources he had used in several of his published works, including the Witness' personal experiences in Cambodia. Heder explained that he arrived in Phnom Penh to work as a journalist in May 1973. He lived in Cambodia and reported on the political scene until he was evacuated on 11 April 1975. Asked by the Prosecution to "paint a picture" of life in Phnom Penh from January to April 1975, Heder recounted the situation as "scary," elaborating that there was constant shelling and rockets falling on the city and he had to dig a bunker under his house. He also described an anti-government attitude amongst students, workers, and the middle class. According to the Witness, the population thought Khieu Samphan, Hu Nim, and Hou Yun were leading the party and would do well by the population. Prior to his evacuation, the Witness recalled that he read Foreign Broadcast Information Services (**FBIS**) reports daily, and occasionally listened to local radio broadcasts including the Voice of FUNK, which voiced the Front's policies of the "liberated zones" and the objectives of the revolution.<sup>4</sup>

#### **6. Purging of Enemies**

Addressing the issue of enemy purges, the Witness told the Court that he considered the translation of the KR phrase "wipe out" was inaccurate and was actually more akin to the term "swept cleanly away." He noted that the importance of the distinction is that the latter phrase does not imply killing all Lon Nol soldiers. Referring to a number of interviews included in his book, the Witness told the Court that during an interview with the secretary of the North Zone in 1975 and later a member of the Central Committee, Ke Pauk, he had been told that the North Zone implemented a CPK policy to kill Khmer Republic officials and to arrest and execute alleged traitors among CPK members subordinate to him. Ke Pauk also told the Witness that he had known alleged traitors interrogated by the security service headquarters at S-21 would be killed, but followed orders from Nuon Chea to assist in their arrests nonetheless.

Regarding the purging of internal enemies in the East Zone, Heder told the Court that arrests had taken place even at the lowest levels. He confirmed that during an interview, Um Samang told him "people were perplexed and afraid," because they knew that something was terribly wrong. "They could not understand how all the cadres could have been traitors." Regarding the treatment of former Lon Nol soldiers, the Witness told the Court that Um Samang had explained that they were asked to join a meeting voluntarily to be offered forgiveness, but were instead taken away and executed. The Witness also confirmed that

during an interview he conducted in 1980 with Khieu Samphan, the Accused claimed that Khmer-Vietnamese Agents had infiltrated both the Standing and Central Committees. When the Witness probed Khieu Samphan on the issue, he denied any wrongful arrests during the regime, and stressed that cases were always thoroughly investigated. However, the Witness recalled that at one point, Khieu Samphan conceded that there had been one wrongful accusation against a man in the west, but after investigation the man had been released.

## **7. Role of the Accused Khieu Samphan**

The Witness was also questioned about Khieu Samphan's role during the DK. The Witness described an announcement made by Pol Pot at the assembly meeting in 1976, which named Khieu Samphan as the Chairman of the State Presidium. Referring to Khieu Samphan's membership of the Central Committee, but not the Standing Committee, the Witness stated that the Accused was one of only two people he knew of that attended the Standing Committee meetings regularly, despite not being a member.<sup>5</sup> He also referred to a speech made on 7 September 1977, where Pol Pot expressed his trust in Khieu Samphan and Nuon Chea. Pol Pot had stressed that Khieu Samphan was a distinguished intellectual and paid him the "accolade of arrest and attention" for his political activities. Raynor also asked the Witness to comment on Michael Vickery's research, which suggested that Khieu Samphan had lulled Cambodian intellectuals into a false sense of security.<sup>6</sup> In support of Vickery's conclusion, the Prosecutor read aloud information that Heder had gathered from FBIS reports including a radio broadcast and speech made by Khieu Samphan during the second CPK National Congress.<sup>7</sup> According to the Witness, during these speeches, Khieu Samphan had told people that only the "seven super traitors" would be executed, and those who joined the Sihanouk side would be pardoned.<sup>8</sup>

## **8. Demeanor and credibility**

The Witness Stephen Heder, appeared to have a relaxed demeanor throughout his testimony, and responded clearly, consistently and coherently. Monitors observed that the Witness was forthcoming with information throughout his testimony, although he was asked on several occasions to provide more detailed responses. He was open about shortcomings in his testimony, and admitted when was unable to recall a fact or could not remember a piece of information. When pressed by the Defense about why he had refused to testify as an expert, he provided a lengthy response. He explained that he, like most academics did not wish to express themselves in a tribunal setting and that since 2011, he had decided to "move on from the KR."

## **III. DOCUMENTARY HEARING**

This week, the Defense teams responded to documents which had been presented by the OCP and CPLCLs two weeks earlier as part of the final "key document hearing" for Case 002/01.<sup>9</sup> The Nuon Chea Defense challenged the probative value of the documents presented, and claimed the Prosecution had severely mischaracterized the documents by selectively quoting from them. The Khieu Samphan Defense did not challenge the probative value of the documents, but continued to challenge the admissibility of a number of documents. Following heated debate on a number of issues, including allegations that Khieu Samphan's rights had been violated by the admissibility procedures and the uncertain scope of Case 002/01, the Chamber concluded the document hearing, stating that the time allocated to the Khieu Samphan Defense to respond to the documents had elapsed.

## **A. Nuon Chea Defense Team's Response to Documents on Joint Criminal Enterprise**

Responding to the documents presented, the Nuon Chea Defense team attempted to place the documents into context and distinguished general political rhetoric from actual orders. Building on this argument, the Defense sought to differentiate CPK policy from its implementation at the lower levels. The Defense responses also expanded on objections they had made during the OCP and CPLCL presentation of documents, particularly with respect to the distinction between policy and implementation.<sup>10</sup>

### **1. Policy vs. Implementation**

Counsel for Nuon Chea, Victor Koppe, commenced his arguments by highlighting that at the beginning of Case 002/01, it had already been established that evidence of the alleged policies of the DK were admissible, but implementation was not. Referring to the Chamber's decision to exclude some documents during the live testimony of witnesses, Koppe stated, "[T]he Chamber may not apply one standard to live evidence, and a lesser standard regarding documentary evidence." Koppe reiterated the Defense position that that any criminal acts were not committed systematically across the country, but perpetrated by local cadre acting "in defiance of Nuon Chea's role." He added that his client did not deny the seniority of his role in the DK or that his role in creating a substantial part of DK policy, but did deny that he took part in the alleged crimes. Koppe concluded by arguing that the documentary evidence presented by the OCP had failed to show criminal intent behind the DK policies.

### **2. CPK Policy on Enemies**

In response to documents presented by the OCP, Koppe argued that the *Revolutionary Flag* issues contained general political rhetoric, rather than literal instructions to attack people. Examining a *Revolutionary Flag* issue from September 1977, Koppe accused the OCP of manipulating the content of the document through selective quoting. An example of this, Koppe argued, was seen in the Prosecution's interpretation of the CPK line to eradicate imperialists (especially Americans), and to eliminate feudalism as part of the revolution. Koppe argued that when taken in context, the quote clearly refers to the broader imperialist, capitalist and feudal systems; rather than individual Americans. Moreover, the Defense argued that the word "smash" was a general term used in the magazine, which had a variety of meanings, not only to "kill".<sup>11</sup> Explaining the increased harshness of the magazine during 1977, Koppe said this was due to the escalation of the war with Vietnam and did of itself not make Nuon Chea a "war criminal."

### **3. Purging of Lon Nol officials**

Koppe argued that it was impossible to prove that a broad policy of purging existed, pointing to the fact that no witness had ever personally seen Lon Nol officials being executed. He also challenged the notion that "purge" meant "kill", stating that the term simply referred to the separation of people.<sup>12</sup> Attacking the quality of the OCP evidence, Koppe argued that all the witness testimony was circumstantial at best, and witness testimony had only alleged that victims had been "arrested or taken away to Angkar," not killed. Many of the OCP's documents, according to Koppe, were evidence of broad class divisions rather than any policy of systematic purging.<sup>13</sup> With regard to the alleged execution of the "seven super-traitors," Koppe argued that even if the issue was within the scope of the trial, the CPK message that only those seven would be killed actually contradicted the existence of a policy to purge ordinary Lon Nol soldiers.<sup>14</sup> In further support of the argument that no policy existed to kill Lon Nol soldiers, Koppe pointed out that the prisoner lists from S-21 presented by the Prosecution showed that not all Lon Nol soldiers were killed immediately after 17 April



1975.<sup>15</sup> In relation to the crimes alleged to have occurred at Tuol Po Chrey, Koppe claimed that the document presented by the OCP which purportedly ordered the extermination was actually dated two years after the alleged events.<sup>16</sup> Moreover, the Defense argued that Nuon Chea was not aware of any Lon Nol soldiers being killed until after 1998, which was supported by statements he had made in the film, *One Day at Tuol Po Chrey*.<sup>17</sup>

#### **4. Revolutionary Family & Forced Marriage**

Addressing the documents presented by the OCP and Civil Parties in support of a CPK policy of forced marriage, Koppe firstly argued that forced marriage is not within the scope of Case 002/01. Nonetheless, he argued that the alleged policy was not mentioned in a single CPK document. He asserted that the policy to increase the population was to be achieved through raising the standard of living and health across the country. Using the February 1974 Party publication, *Revolutionary and Non-Revolutionary World Views on the Manner of Family Building* as an example, he explained that the publication only gives advice on who to marry, adding that his own mother also gave him advice on his marital choice. Challenging excerpts which the OCP had presented from Philip Short's book, Koppe suggested that Short's analysis was overly simplistic and criticized the fact that the information in the book had been gathered twenty years after the fall of the DK regime by a man who personally admitted to having "no Cambodian cultural background."<sup>18</sup>

#### **5. Cooperatives and Quota System**

Concerning the formation of cooperatives, Koppe questioned the existence of a criminal policy, arguing that establishing cooperatives as part of a socialist ideology is not illegal. He asserted that the KR intention was that strong cooperatives would protect Cambodia's population from external threats—in particular, Vietnam. Additionally, the policy to create cooperatives was intended to improve productivity and increase the national rice supply. According to the Defense, whether or not the KR leaders were aware the productivity goals were unrealistic, is inadmissible in Court.

### **B. Response to Documents presented related to the Accused Nuon Chea**

Defense counsels for Nuon Chea challenged the veracity of a range of documents that had been presented by the OCP in support of Nuon Chea's alleged role as the Interim Prime Minister, and responsibility for military and security matters.

#### **1. Role as Interim Prime Minister**

Son Arun began by clarifying that Nuon Chea never denied that he held the position of Deputy Secretary in the CPK, but admitted to undertaking some leadership tasks in the educational sector. In a personal response delivered on Tuesday, Nuon Chea continued to deny that he was ever acting Prime Minister of the DK, adding that the suggestion was illogical because Pol Pot had appointed Ieng Sary and Vorn Vet for this purpose.

#### **2. Role in Military and Security Matters**

Son Arun stated that Nuon Chea had no role in military or security affairs. He stressed that the only thing the 15 telegrams presented by the OCP showed was that Nuon Chea may have received information about military operations occasionally, especially regarding the border situation with Vietnam. However, he argued that the information dealt with only with military campaigns rather than strategic military operations or planning. Moreover, the Defense pointed to the fact that no evidence had been produced to suggest that Nuon Chea actually responded to the telegrams. In support of their argument, the Defense highlighted a

letter addressed to Nuon Chea, in which a cadre had apologized for writing to him about internal disciplinary affairs.<sup>19</sup> Nuon Chea himself explained on Tuesday that as part of the CPK leadership, he dealt with questions regarding security and external enemies as every government leader in the world does, but had nothing to do with internal security or enemies.

### **3. Nuon Chea's Role at S-21 Security Center**

Despite S-21 being technically outside the scope of Case 002/01, the Defense responded to 26 confessions from the security center, which had allegedly been undersigned by Nuon Chea. Defense counsel Son Arun argued that the only evidence supporting the allegation the annotations on six of the confessions were made by Nuon Chea, was the testimony of Duch. He then made several points that he considered diminished the veracity of the documents. Firstly, he stated that 30 years had elapsed between the time Duch last saw Nuon Chea and his testimony about the annotations. Secondly, he stated that Duch is not an expert in examining handwriting and thirdly, he added that the documents presented were not originals. President Nil Nonn reminded Son Arun that the purpose of the documentary hearing was not to question the admissibility of the documents, but their probative value, and instructed him to move on to another issue.

#### **C. Defense Response Limited to Contents of Documents and Scope of Case 002/01**

Responding to a document list circulated by the Nuon Chea Defense before the morning's first session, Prosecutor Dale Lysak expressed concern that the Defense had intended to read from trial transcripts in order to respond to the documents presented by the OCP and the Civil Parties. The Prosecution argued that the Defense response should be limited to responding to the contents of the documents only. Vercken protested that many of the documents admitted into evidence actually fell outside the scope of the issues at trial in Case 002/01. Prior to commencing his response, Koppe assured the Chamber that any reference to transcripts would be used to contextualize the documents, and would not amount to "closing arguments." The Nuon Chea Defense was initially allowed to proceed without any specific instructions. However, on a number of occasions, the President instructed him to limit the Defense response to the contents of the documents that had been presented by the Prosecution and Civil Parties two weeks earlier. An example of this was seen on Monday morning, when Koppe attempted to draw a parallel between the rhetoric used in speeches delivered by Nuon Chea and other national leaders during times of crisis. To illustrate his point, Koppe referred to former US president George W. Bush's threat to "smoke out" terrorists following the 9/11 attacks.<sup>20</sup> The Chamber warned him to refrain from going outside the scope of Case 002/01 and gave further warnings after Koppe attempted to quote from witness testimony, general communist theory,<sup>21</sup> and a motion which had been filed by the Nuon Chea Defense in February.<sup>22</sup>

#### **D. Khieu Samphan Defense Arguments on the Admissibility of Documents**

Arthur Vercken began his brief response to the documents by disputing the authenticity of documents admitted into evidence and reiterating the Khieu Samphan Defense position that the threshold for admissibility was too low. He argued that documents had been admitted to the case file without an adversarial debate on the sole basis that they were used during the OCIJ investigation. Referring to the Chambers' ruling that the Defense was only permitted to comment on probative value (not authenticity or admissibility) during the document hearing, Vercken claimed to have been trapped. This was supported by counsel Koppe, who added that the document hearings were not "truly adversarial" because the Defense had been limited to commenting on probative value. Although he did not address the probative value of any document, Vercken challenged the admissibility of a number of Prosecution

documents.<sup>23</sup> The OCP responded that the presumption of admissibility was rebuttable and suggested that the Khieu Samphan Defense was stalling because they were unprepared to respond to the documents. Responding to both lawyers, Judge Lavergne informed Vercken that the hearing was intended for him to respond to the individual documents and if he wished to introduce new evidence in relation to the documents, he had the means to do so separately. Vercken replied that there was not enough time to repudiate the thousands of pieces of evidence in the case file, nor was he permitted enough pages in his closing brief to reply to each one. The courtroom discussion continued in much the same manner until President Nil Nonn announced that the Defense time to respond to the documents had elapsed, and concluded the final document hearing for Case 002/01.

#### **IV. OTHER LEGAL AND PROCEDURAL ISSUES**

Throughout the first two days of the proceedings, a variety of legal and procedural issues were raised including the admission of new evidence pursuant to IR 87.4 and the President's warning to Vercken for allegedly disrupting the proceedings the previous week.<sup>24</sup> The Khieu Samphan Defense also informed the Chamber that their client was no longer willing to respond to questions, which raised a spate of issues regarding the Prosecution's request for adverse inferences to be drawn against the Accused and the right to remain silent. Witness Steve Heder's testimony also triggered renewed discussion about the distinction between expert and witness testimony.

##### **A. The Accused's Right to Remain Silent and Adverse Inferences**

On Tuesday morning, Vercken notified the Chamber that further to a written submission filed the previous day, Khieu Samphan would be invoking his right to remain silent. This was followed by a personal statement from Khieu Samphan, who explained that his fair trial rights had been violated and as a consequence, he was no longer prepared to answer questions.

The written submission listed the following five reasons which had led to his decision:

1. The Chamber had refused to give him a list of topics that would be covered in questioning;
2. The Chamber had failed to provide a list of documents that would be used in questioning;
3. The Khieu Samphan Defense team's request to have three weeks to prepare had been denied;
4. Issues in relation to his counsel's access to the Detention Unit had not been addressed; and
5. His request to provide testimony in half day sessions was refused.

Throughout Case 002/01, Khieu Samphan had responded to questions posed by Civil Parties on a number of occasions, but had expressed a preference to testify at the conclusion of the hearing.<sup>25</sup> Prosecutor Abdulhak argued that by responding to questions posed by Civil Parties, Khieu Samphan had "unilaterally and unequivocally waived his right to remain silent." He repeated the Prosecution's request for the Chamber to draw adverse inferences in relation to his "decision to stop testifying."<sup>26</sup> Speaking on behalf of the Chamber, Judge Cartwright dismissed the allegation that Khieu Samphan's fair trial rights had been breached and added that the Chamber "does not accept this reason for exercising right to remain silent." In previous hearings addressing the issue, the Chamber had acknowledged the right of the Accused to remain silent at any time during the proceedings, but also stated that adverse inferences could be drawn from selective silence.<sup>27</sup>



## **B. Closed Courtroom and Koppe's Request to Submit New Evidence**

Prior to the start of proceedings on Wednesday, Koppe made an urgent request to admit new evidence pursuant to IR 87.4. The Defense made three requests: to admit the email into evidence, to summon Rob Lemkin as a witness, and to adjourn Stephen Heder's testimony. Koppe claimed the evidence had important implications for the trial generally and Stephen Heder's testimony in particular. The Judges requested to discuss the issue in a session, and after 20 minutes, invited Koppe to repeat the request publicly. Koppe explained closed that the Nuon Chea Defense had received an email from *One Day at Tuol Po Chrey* producer Rob Lemkin. The email had expressed concern that statements made by Nuon Chea in the film had been taken out of context by the Prosecution. Moreover, Koppe explained that the email also suggested Lemkin possessed evidence that exonerated Nuon Chea and instead implicated Zone Chief Ros Nhim in the massacre of Lon Nol officials at Tuol Po Chrey. The Prosecution responded that the email was speculative and accused Koppe of pulling a stunt to delay proceedings. Both the OCP and Civil Parties called for the request to be rejected immediately. Following deliberations at the bench, Judge Cartwright announced that Heder's testimony would continue as scheduled, and directed the Nuon Chea Defense to submit a written request.

## **C. Scope of Witness Testimony**

Throughout the week, the Defense raised numerous objections to Prosecution questions they considered fell outside the scope of what Stephen Heder was permitted to testify on as a Witness. The Chamber did not sustain any objections from the Defense on the issue. At one stage in the proceedings, Koppe accused Raynor of developing "craftier" ways of wording his questions, so that they appeared to be related to the content of Heder's work and not to his own opinions. Vercken also claimed the Prosecution was attempting to elicit opinion from the Witness about past events. Further objections were directed toward Raynor's practice of quoting a lengthy passage to the Witness, then asking a brief question related to the passage. Koppe described the approach as a "charade," a term Raynor had previously used in relation to Koppe's request to enter Lemkin's email into evidence. Supporting the objection, Vercken called the Prosecution's "documentary presentation" a waste of the witness' time. In response, Raynor offered to give Vercken a lesson in the art of cross-examination at his convenience.

## **D. Heder's Testimony on *Seven Candidates for Prosecution***

On Thursday, Raynor began to ask Heder a series of questions related to the sources used in his book, *Seven Candidates for Prosecution*. The book had been commissioned by the OCIJ prior to the commencement of the KR trials. Koppe objected immediately, claiming that it was unfair for the Witness to speak about sources related to a book, which, according to Koppe, "played a role in prosecuting our client." Raynor retorted that the book had already been placed on the case file, and added that the Witness had not yet answered any questions to prompt an objection. After some deliberation, Judge Cartwright responded that questions about the book were valid, as it had already been entered into evidence. The Trial Chamber, she explained, would determine the probative value of the book.

## **V. TRIAL MANAGEMENT**

Throughout the week, the Chamber was required to deal with a number of trial management issues, including Khieu Samphan's decision not to testify, Koppe's urgent request to admit new evidence on Wednesday morning and a wide array of courtroom etiquette issues. The Chamber appeared to deal with the unexpected issues with minimal disruption to the schedule. In four days of trial, the Chamber concluded the Defense teams' response to the

OCP's document presentation, followed by the Prosecution's examination of Witness Stephen Heder.

### A. Attendance

The Accused Nuon Chea continued to observe the proceedings from the holding cell throughout the week due to his health concerns, while Khieu Samphan was present in the courtroom for every session.

#### Civil Party Attendance:

Approximately 30 Civil Parties attended the proceedings each day this week, either in the courtroom or in the public gallery. On Tuesday, a representative from the ethnic Cham minority also observed the proceedings in the courtroom.

#### Parties Attendance:

All Parties were properly represented during the week. However on Monday, monitors noted the absence of a number of Civil Party Lawyers, including CPLCL Pich Ang, who arrived late and was absent without notice during the afternoon sessions.

#### Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 8/7/2013	<ul style="list-style-type: none"> <li>▪ 180 villagers from Ou Reang Ov districts, Kampong Cham province</li> <li>▪ 16 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 100 villagers from Ou Reang Ov district, Kampong Cham province</li> <li>▪ 2 foreign observers</li> </ul>
Tuesday 9/7/2013	<ul style="list-style-type: none"> <li>▪ 230 villagers from Rolea Bier, Kampong Chhang province</li> <li>▪ 20 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 160 students from Asia-Europe University</li> <li>▪ 30 villagers from different provinces organized by DC-CAM</li> <li>▪ 8 foreign observers</li> </ul>
Wednesday 10/7/2013	<ul style="list-style-type: none"> <li>▪ 420 students from three High Schools of Sambo Prey Kuk district, Kampong Thom province</li> <li>▪ 30 villagers from Sambo Prey Kuk district, Kampong Thom province</li> <li>▪ 15 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 2 national visitors</li> <li>▪ 10 foreign observers</li> </ul>
Thursday 11/7/2013	<ul style="list-style-type: none"> <li>▪ 50 law students from Royal University of Phnom Penh (RUPP)</li> <li>▪ 250 villagers from Treang district, Takeo province</li> <li>▪ 30 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 5 national visitors</li> <li>▪ 10 foreigner observer</li> </ul>

### B. Time Management

The Chamber continued to make efforts to run efficient proceedings, despite granting Parties more time as requested. President Nil Nonn given Son Arun more time to finish his response to OCP documents on Wednesday. Similarly, the President gave more than ten additional minutes to the OCP to complete testimony on Thursday afternoon. Raynor also received extra time because of a brief closed session on Wednesday morning.

### **C. Courtroom Etiquette**

A number of courtroom etiquette issues were raised this week during heated exchanges between both the Prosecution and the Defense, and the Defense and President Nil Nonn. Monitors noted that the Prosecution directed a number of sarcastic comments toward the Defense counsels throughout the course of Stephen Heders examination. Moreover, consequences followed from Arthur Vercken's behavior during last week's proceedings when the President warned him in relation to a potential violation of the Internal Rules governing the disruption of proceedings.

#### **1. Disruption of Proceedings pursuant to Internal Rule 37.1**

Before the start of proceedings on Monday, President Nil Nonn called Vercken to rise up in order to receive a verbal warning in relation to his behavior during the previous week's proceedings. Counsel Vercken was warned pursuant to IR 37.1, which allows for the exclusion of disruptive individuals from court proceedings.<sup>28</sup> The President explained that on 4 July 2013, Vercken had shouted at him and "remained seated as the Judges left." In contrast to this interpretation, monitors present on the day in question noted that the English translation did not suggest Vercken had yelled at the bench, but rather that he had attempted to clarify his actions with the President.<sup>29</sup> Nonetheless, the President claimed, "[T]his behavior falls well below the standards of professionalism expected here" and added, "It is a poor example to more junior lawyers." The President then ordered Vercken to sit down, preventing him from responding to the warning.

#### **2. Exchanges between Prosecutor Raynor and the Defense**

During the proceedings this week, Prosecutor Raynor was noted to make a number of sarcastic comments to the Defense, particularly during the examination of Witness Stephen Heder. On Tuesday, counsel for Khieu Samphan Kong Sam Onn, challenged the Prosecution about questions they had asked about Stephen Heder's biography, on the basis that the facts had not been confirmed by interview with the OCIJ. In response, Raynor stated, "I hope my learned friend knows about Google, that's the sources of the Witness' biographies." Again on Thursday, Raynor offered to give Vercken a "lesson in cross-examination" following criticism about his style of questioning. Monitors noted that the Chamber did not intervene or comment in any of the cases.

#### **3. Requirements for Entry into Court**

Throughout the week, multiple visitors were refused entry into the public gallery.<sup>30</sup> ECCC security prevented them from entering the courtroom because their clothing was not in accordance with ECCC regulations.<sup>31</sup> Monitors also confirmed that several visitors were below the age of 16 years, in violation of ECCC regulations.<sup>32</sup>

### **D. Translation and Technical Issues**

Monitors noted only one minor technical issue this week. The audiovisual unit appeared to experience some difficulties when they set up the video link to Nuon Chea's holding cell in order for him to respond to the OCP documents. The issue caused only a five-minute delay and no other issues were observed for the remainder of the week.

### E. Time Table

DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Monday 08/07/13	9:04-10:27	10:52-11:58	13:32-14:37	15:02-16:07	4 hours and 39 minutes
Tuesday 09/07/13	9:03-10:45	11:10-11-58	13:33-14:46	15:03-16:02	4 hours and 42 minutes
Wednesday 10/07/13	9:02-10:40	11:00-12:00	13:32-14:45	15:06-16:10	4 hours and 55 minutes
Thursday 11/06/13	9:02-10:31	10:53-12:09	13:33-14:41	15:02-16:12	5 hours and 03 minutes
Average number of hours in session			4 hours 40 minutes		
Total number of hours this week			18 hours 39 minutes		
Total number of hours, days, weeks at trial			901 hours 51 minutes		
<b>203 TRIAL DAYS OVER 62 WEEKS</b>					

**Unless specified otherwise,**

- The documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith 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; and
- Photos are courtesy of the ECCC.

**Glossary of Terms**

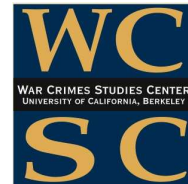
Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
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
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
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
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



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AIJI TRIAL MONITORING



\* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. 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 South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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<sup>1</sup> The Trial Chamber informed Parties that a number of “key document hearings” would be held to “grant to the parties an opportunity to present before it a limited number of documents considered to be particularly relevant to the segment of Case 002/01.” The first key document hearing was held in February 2012, the second in October 2012, the third in January 2013, and the fourth in June 2013. See Trial Chamber Memorandum. “Scheduling of



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oral hearing on documents (13-16 February 2012).” (9 February 2012) E/170. For an outline of the documents presented by the Prosecution and Civil Parties See **CASE 002 KRT TRIAL MONITOR**, Issue 65, Hearing on Evidence Week 60 (24 to 27 June 2013).

<sup>2</sup> See Witness and Expert Support Unit Memorandum. (24 May 2013). E202/82/1.

<sup>3</sup> Stephen Heder was examined in the following order: President Nil Nonn and Prosecutor Keith Raynor.  
<sup>4</sup> Document D366/1.14.

<sup>5</sup> The other named person was Soeu Vasy alias Doeun.

<sup>6</sup> The Witness had been quoting research from Michael Vickery.

<sup>7</sup> Document E3/3169

<sup>8</sup> Document E366/1.14

<sup>9</sup> For a summary of the key documents presented by the OCP and CPLCLs, see **CASE 002 KRT TRIAL MONITOR**, Issue 65, Hearing on Evidence Week 60 (24 to 27 June 2013).

<sup>10</sup> see **CASE 002 KRT TRIAL MONITOR**, Issue 65, Hearing on Evidence Week 60 (24 to 27 June 2013).

<sup>11</sup> Document E3/213

<sup>12</sup> Document E3/807

<sup>13</sup> Document E3/146; Document E3/1076

<sup>14</sup> Document E3/783; Document E3/118

<sup>15</sup> The S-21 prisoner lists presented by the Prosecution stated that 328 Lon Nol soldiers were killed there.

Koppe calculated this to be 2.5% of the total 12,000 prisoners. He further argued that in March 1976, 106 Lon Nol soldiers were killed at S-21, suggesting that Lon Nol soldiers were not all exterminated immediately following 17 April 1975. Document E3/1539.

<sup>16</sup> Document E3/193.

<sup>17</sup> Document E1861. This was called into question in the email sent to Victor Koppe by Rob Lemkin, producer of *One Day at Tuol Po Chrey*.

<sup>18</sup> Philip Short, “Pol Pot: The History of a Nightmare.” See Document E3/9.

<sup>19</sup> Document E3/1154

<sup>20</sup> Following the comment, President Nil Nonn advised Koppe to refrain from going beyond what was in the case file for Case002/01. Koppe agreed, but remarked, “It’s a pity” and hinted he had a few other comparisons he was eager to present to the Chamber.

<sup>21</sup> Koppe had attempted to clarify Nuon Chea’s statements as being representative of general communist thought and theory. Lysak objected, claiming that Koppe was not an expert on communist ideology and therefore should refrain from making interpretations based on outside information. Judge Sylvia Cartwright clarified that the Trial Chamber would not give any consideration to any information it considered to fall outside the scope of allowed documentary evidence.

<sup>22</sup> Koppe attempted to counter issues raised in one of the documents presented by the prosecution, Ben Kiernan’s book *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge*, by presenting a motion filed by his team in February. Lysak objected to Koppe introducing evidence, especially a document created by the defense team itself. President Nil Nonn reiterated that Koppe’s response was limited to documents presented during the hearings two weeks earlier, and not to refer to other items presented for evidence.

<sup>23</sup> For example, Vercken submitted that fact sheets created by the US National Security Council should not be entered into evidence because the Prosecution had not complied with IR 87.4. On 24 June 2013, the OCP had attempted to admit the document into evidence. The Khieu Samphan Defense had objected to the document at the time but was instructed that it would have an opportunity to respond at a later time.

<sup>24</sup> See IR 87(4) Rules of Evidence. The Chamber may admit any new evidence which it deems conducive to ascertaining the truth, but Parties must submit a formal submission in writing, and the restrictions pursuant to IR 87(3) apply.

<sup>25</sup> See **CASE 002 KRT TRIAL MONITOR**, Issue 5, Opening Statement (21-23 November 2011); **CASE 002 KRT TRIAL MONITOR**, Issue 39, Hearing on Evidence Week 34 (8-10 October 2012); and **CASE 002 KRT TRIAL MONITOR**, Issue 44, Hearing on Evidence Week 39 (22-23 November 2012).

<sup>26</sup> Prosecutor Abdulhak also referenced a 2004 Katanga Case ruling from the ICTY that maintained once an Accused testifies on a subject, then refuses, the decision to remain silent may be met with adverse inference.

<sup>27</sup> See **CASE 002 KRT TRIAL MONITOR**, Issue 19, Hearing on Evidence Week 14 (18-20 April 2012).

<sup>28</sup> See IR 37(1) Disruption of Proceedings. If the Chamber views a person as disrupting the proceedings, he will be issued a warning. Continued disruption may lead to the person being excluded from the Courtroom, the ECCC, or attending the proceedings.

<sup>29</sup> See **CASE 002 KRT TRIAL MONITOR**, Issue 66, Hearing on Evidence Week 61 (8 to 11 July 2013).

<sup>30</sup> On Wednesday, approximately ten young foreign visitors were not allowed to go inside the Court due to their attire. A foreign teenage girl was also denied entry due to inappropriate clothing.

<sup>31</sup> See ECCC Website, Visitor information for public hearings, para. 3, line 1-3.

<<http://www.eccc.gov.kh/en/about-eccc/visitor-info/public-hearings>>

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<sup>32</sup> See ECCC Website, Visitor information for public hearings, para. 3, line 3-5.  
<<http://www.eccc.gov.kh/en/about-eccc/visitor-info/public-hearings>>