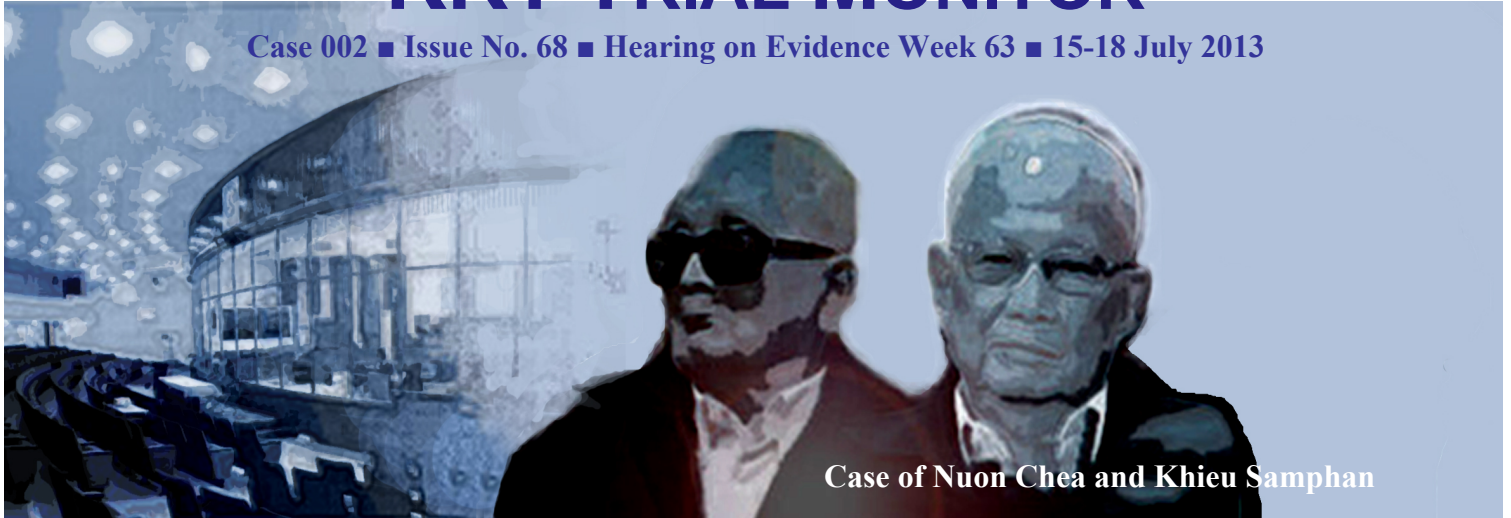


KRT TRIAL MONITOR

Case 002 ■ Issue No. 68 ■ Hearing on Evidence Week 63 ■ 15-18 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 had come to understand the Khmer Rouge regime, based on my previous work, was pretty much in line with at least one major part of Holocaust studies, which precisely puts an emphasis on local initiative, local deviation, local power as opposed to the old model of totalitarian control.¹

- Stephen Heder, Witness

I. OVERVIEW

This week's proceedings saw the completion of Stephen Heder's testimony following the Prosecution's examination of the Witness on Wednesday and Thursday last week.² The Prosecution and Civil Parties finished questioning the Witness on Monday afternoon and following a brief adjournment to discuss the Nuon Chea Defense team's urgent request to admit evidence, the Defense teams then cross-examined Heder for the remainder of the week. The Witness testified on a variety of issues, ranging from the implementation of CPK policies to the role of the Co-Accused during the DK period. Heder's examination was mired with objections from both Parties, largely related to the fact he had been called as a witness instead of an expert.

Other legal procedural issues that emerged this week included Nuon Chea's notification that he would no longer answer questions from the Prosecution or the Civil Parties and the OCP's application for sanctions against the Khieu Samphan Defense team in relation to an editorial published in the Phnom Penh Post. Despite some etiquette and technical issues, the Chamber managed to see the conclusion of the Witness' testimony according to schedule.

II. SUMMARY OF STEPHEN HEDER'S TESTIMONY (TCE-33)

Building on last week's questions, the Prosecution continued to question Heder about his experience working in Cambodia as well as information he had gathered during interviews with refugees and former KR cadre and leaders.³ His testimony focused on the evacuation of Phnom Penh, the mistreatment of "New People" leaving the cities, as well as executions and the conditions in the communes once people were evacuated. He also highlighted the significant influence of the Vietnamese on DK policy, both from an ideological and military standpoint, as well as the many ambiguities surrounding the KR leadership structure.

1. Period Prior to Fall of Phnom Penh

Heder recounted the period prior to the fall of Phnom Penh, explaining how the KR had increased attacks on urban centers in the time leading up to 17 April 1975. He explained that according to his military attaché sources, the East Zone and Special Zone KR forces had used mines to cut off the Mekong River and prevent Southern Vietnam from supplying Phnom Penh's American and Khmer Republic forces. The Witness also explained that he had watched the Khmer Republic defense deteriorate in Phnom Penh. From late 1974 into the beginning of 1975, he recalled that increased shelling in the city forced him to take shelter in a bunker. Towards the second half of 1974, he described sensing a "lull" in the shelling, which, according to the Japanese military attaché and other sources he had spoken to, was a sign that the KR were concentrating forces for a major attack. He recalled that this major attack had been launched against the city on 1 January 1975. In terms of who had launched the attack, Heder confirmed that incumbent National Assembly President, Heng Samrin played a prominent role as the commander of the regiment that attacked Phnom Penh.⁴

2. Liberation of Udong in 1974

On life in the KR controlled "Liberated Zones," Heder testified that he had heard general accounts detailing organization in the provinces, including discussions about ongoing cooperativization and rumors of executions. However, the Witness clarified that he was more focused on studying KR structure and policy at the time, and had only spent a limited amount of time in the KR liberated zones. Heder also confirmed that he read about the capture of Udong by the People's Army for The National Liberation of Kampuchea (**FAPLNK**) on 15 March 1974 and subsequent evacuation of residents to the liberated FAPLNK zone in a Foreign Broadcast Information Service (**FBIS**) teletype. However, he expressed doubt that 5000 enemies had been captured at Udong, as the report had quoted. Expanding on the basis for his belief that the figure was inflated, the Witness stated that after comparing figures quoted in similar reports with information he had gathered from people on the ground and his military attaché sources, he concluded that some events were either exaggerated or had never actually happened.

3. Influences on CPK Policy

In response to questions from the Prosecution about the ideological roots of CPK policy, Heder expanded on testimony he had provided the previous week, confirming that aspects of CPK policy had been adopted from the Vietnamese model. Heder argued that the Vietnamese influence was particularly evident in the CPK principle of armed struggle and the belief that struggle was in order to wage revolution. Heder added that the additional threat of Vietnamese invasion also had a tremendous impact on DK military policy. In an interview with Ieng Sary in 1996, Heder learned that many of the CPK policies that resulted in "genocide" grew out of what Ieng Sary described as "the fear of being swallowed by Vietnam."⁵

The fear of Vietnamese invasion also increased the speed that radical communist policy was pursued in DK. Heder told the Court that during the interview, Ieng Sary had agreed that the policy to accelerate proletarianization and Khmerization as well as the ability to arrest, torture, and kill anyone deemed an enemy of the state, had resulted in "great suffering of the nation."⁶ Ieng Sary also reportedly told the Witness that the primary motivation of the DK regime was to develop faster than Vietnam in order to foil any potential invasion plan, which in turn resulted in genocide.

Referring to his work at the Center for Advanced Holocaust Studies, and factual findings he made about the KR period, Heder noted a number of similarities between the Nazi and DK

regimes. Regarding the implementation of policy, Heder stated that both regimes had placed an emphasis on local initiatives, deviations, and local powers as opposed to totalitarianism.

4. Policy and Implementation of Evacuation Phase One

Referring to the abolition of the national currency and existing markets in the liberation zones prior to 1975, the Witness concluded that the evacuation of Phnom Penh was merely “the continuation of policy decisions that had already been made with regard to the liberated zones.”⁷ Heder told the Court that a refugee he had interviewed in 1980 on the Thai/Cambodian border described two main objectives for the evacuation of Phnom Penh: firstly, to ensure the protection of the new regime from enemies, and secondly, to move people to the countryside where they could use the rice fields to feed themselves.⁸

During examination by CPLCL Elisabeth Simonneau Fort, Heder explained that the evacuation of Phnom Penh was conducted under strict orders and people were compelled to relocate by armed personnel.⁹ However, the Witness also emphasized that in Phnom Penh and some other cities, “people were prepared to go at least somewhat voluntarily.”¹⁰ Heder also confirmed that he had heard a number of accounts from refugees in late April 1975 and later which described the poor conditions during the evacuation of Phnom Penh. This included people who were forced to move out of the city despite debilitating medical conditions as well as reports of death threats against people who refused to evacuate.¹¹ Despite terrible conditions for many during the evacuation, Heder emphasized that the evacuees’ quality of life differed from zone to zone when they arrived at their destination.

5. Policy and Implementation of Evacuation Phase Two

In relation to accounts he had heard about the second phase of the evacuation, the Witness referred to 1,500 interviews he had conducted in late 1975 with refugees who had been moved from the Southwest and East Zones to the Northwest, North or Special Zones. In response to questioning about whether he considered the population movement was forced, Heder replied that it was a combination of voluntary and forced insofar as people had moved “voluntarily” to the Northwest part of Cambodia because they had been told the food situation was better there. The Witness asserted that this was due to the long held belief that the Northwest part of Cambodia was agriculturally more abundant. However, once the people arrived at the new location, they generally found that the situation “was much worse than it had been in the places from which they had left.”¹² For those who did not wish to go, Heder stated that they eventually followed the order to leave because by that time “many had already reached the conclusion that not to obey orders was to put oneself at risk at least of detention, if not execution.”¹³

Concerning the transportation, food supply, and provision of care during the second population movement, the Witness confirmed that he had heard accounts from refugees, which described cramped boats, trucks, and trains with little food and insufficient space. The Witness also heard reports that the operation had been conducted under military control and people had been “transferred from one military operation of the next when they crossed, for example, a zone border, or a sector border, or another CPK administrative border.”¹⁴

6. Discrimination Against 17 April People

Counsel for Khieu Samphan Anta Guissé questioned Heder on the labels “17th people” and “18th people,” used during the DK. Heder clarified that the expression “17th people” was the colloquial shortening of 17 April 1975, referencing the date when those people came under CPK administration. “18th people” on the other hand, was used to describe people who came under the CPK Administration after King Sihanouk was ousted on 18 March 1970. Heder

confirmed that different language was used for propaganda and education purposes during the DK period. Elaborating on this point, the Witness expressed support for the testimony of Witness Kim Vun alias Chhaom, who claimed that the Revolutionary Flag differentiated between “Old” and “New” People because the readership of that publication was party cadres. However, he agreed that this was not allowed for the Revolutionary Youth publication because it was published for the masses.¹⁵

Addressing alleged discrimination against “17 April People,” Heder confirmed that this had happened in practice as described by Civil Party Denise Affonço.¹⁶ However, later during cross-examination by Khieu Samphan Defense counsel Anta Guissé, the Witness confirmed that formal CPK policy was to treat “New People” as Cambodians, not enemies, and to treat them with economic equality. Quoting from an article authored by the Witness, Guissé managed to elicit that instructions given to lower cadres to observe these principles, although orders were generally disobeyed.¹⁷

7. CPK Administration and Military Structure

In relation to CPK administration, the Witness provided testimony about the uncertain meaning of references to “Office 870” and the “Office of Administration,” concluding that the ambiguity of the terms was intentionally to confuse outsiders and make it more difficult to identify the structure.¹⁸ He also discussed research he had conducted in 1975 on CPK members and cadre from the East Zone. Heder described the East Zone as structurally similar to other zones in Cambodia, insofar as Security Office S-79 reported to the Party Secretary or Deputy, and dealt with KR military personnel and East Zone cadres. However, the Witness also explained that the East Zone also differed from other zones because policy was implemented in a manner more in line with the Center’s policy. This resulted in a better situation in general for people living there, with fewer executions reported.

Addressing uncertainty over the precise meaning of “Office 870,” Heder claimed that the code “870” referred to the top of CPK hierarchy, an office which emerged after 1975 and was unique only to the Central Committee.¹⁹ However, the Witness explained that because Khmer language was unclear in terms of indicating singular or plural noun, it was not certain whether 870 comprised of one or multiple offices. Heder had also heard references to “COM 870” which he considered was either short for “committee” or an individual as he was told by some people. After the Defense confronted the Witness with a number of CPK documents, Heder confirmed that references could also be translated as “political office belonging to 870” and “kariyalai 870” which Heder considered was likely to mean “Bureau 870”.²⁰

The Witness also referred to S-71, which he stated was a pseudonym for the “Office of Administration” that Ieng Sary had described in his 1996 interview. According to the Witness, S-71 served as the Center’s administrative office, performed basic organizational tasks for the party, and was present at every level in the DK along with the Party Committee, Party Secretary and Deputy Secretary. However, he added that S-71 and Office 870 referred to different offices, despite the fact that they had been wrongly confused at times.

8. Executions of Enemies including Minorities and Lon Nol’s Officials

Heder described a number of accounts he had heard about the execution of “enemies,” former Lon Nol officials and the Cham minority from refugees he had interviewed. Addressing the execution of enemies and Lon Nol officials, the Witness was only able to provide anecdotal accounts, and explained that many reports of executions he had heard were vague when it came to numbers. However, he did hear reports that Cambodians caught engaging in petty crimes, such as stealing a spade or a chicken egg, were often executed. Moreover, based on his interview with Ieng Sary, Heder also spoke about the

“Chamkar,” or flexible agricultural fields, where political enemies were sent, often for indefinite periods, to serve hard labor or to be killed.

When asked about civilian massacres prior to the fall of Phnom Penh, Heder acknowledged that it was often “impossible” to go to the alleged execution sites. He did, however, document reports from a number of refugees on the Thai border in April 1975, which had described executions, particularly of high-ranking members of the former military and upper level administrative representatives. Heder recounted one such interview, during which a refugee had told him that senior Khmer Republic civilian and military officials were summarily killed after being told to gather in Battambang. However, the Witness also stated that people were generally unhappy with the Khmer Republic regime, which may have triggered a “fringe phenomenon” of senior Khmer Republic officials being executed by their own subordinates.

Heder also discussed the KR’s hostility towards religious practice, which he believed included ill treatment of monks and the Cham Muslim minority group. He estimated that this treatment began before April 1975 and continued for the duration of the regime’s four-year reign. Beginning with active discouragement of religious practice, the regime’s hostility towards religion encouraged the scattering of the Cham. Religious hostility also extended to monks, who the KR targeted by making it hard to live off alms or voluntary contributions. Referring to an interview conducted with Ieng Sary, the Witness confirmed that although the deceased KR leader had defended KR policy, stating that crimes committed were aberrant, he did acknowledge that the cumulative acts had led to genocide (see III.2).

9. Role of the Accused, Khieu Samphan

Heder’s knowledge of the role of Khieu Samphan focused on an OCIJ record of interview conducted with Thiounn Prasith in 2009 and FBIS reports from April 1975 that the Witness had read.²¹ Heder confirmed that a FBIS report on Khieu Samphan’s 21 April Victory Message had named the Accused as the Deputy Prime Minister and Minister of National Defense of the RGNUC (Royal Government of National Union of Cambodia), and Commander in Chief of the CPNLAF.²² Referring to Thiounn Prasith’s OCIJ interview, the Defense counsel Guissé suggested to Heder that Khieu Samphan’s title as the Deputy Prime Minister of the GRUNK and commander-in-chief was false, and Pol Pot was the real commander. Heder agreed with the statement, adding that he had identified other sources that suggested the titles had been incorrectly attributed. However, the Witness confirmed that Ieng Sary told him Khieu Samphan was the Chairman of 870 and accordingly, all matters pertaining to transfers and removals of cadres must have crossed his desk (see II.6).

10. Role of the Accused Nuon Chea

Addressing the role of Nuon Chea, Heder confirmed that according to Ieng Sary had told him, in September 1975, Nuon Chea was a member of the Standing Committee along with Pol Pot, Nuon Chea, Sao Phim, Son Sen, and Ta Mok. The Witness also confirmed findings he had made in his book, “Seven Candidates for Prosecution,” wherein he concluded that Nuon Chea had been routinely copied in telegrams and reports from the zones.²³ However, he added that the 15 to 20 confessions from S-21 on which Nuon Chea had been copied had been scanned at the office of the Documentation Center of Cambodia (**DC-Cam**) without verifying whether the documents were originals.

11. Witness Demeanor and Credibility

Monitors noted that Witness Stephen Heder responded to most questions clearly and continued to have a relaxed demeanor when answering questions, as was the case during the previous week.²⁴ Under cross-examination, the Defense attempted to challenge the

credibility of the Witness through a variety of means including by suggesting that he worked as a United States intelligence officer in Phnom Penh, and challenging his research methodology. Heder denied the first allegation. Although he conceded that his research grant was paid by the US Department of State and he was an “intelligence analyst,” he added that he had also conducted research paid for by the British and Thai Governments and had never been employed by the US Government. Koppe also attempted to probe Heder’s research methodology, but was stopped short by the Chamber, who sustained the Prosecution’s objection that this would, in effect, be treating Heder as an expert witness (See III.A).

III. LEGAL AND PROCEDURAL ISSUES

This week’s legal and procedural issues centered on Stephen Heder’s role as a Witness, with many heated objections aimed to prevent the admission of expert opinion. Koppe in particular, seemed to have difficulty formulating questions that were not objected to by the Prosecution on the basis of scope or relevance. Other issues also emerged this week, including debate over the Nuon Chea Defense team’s written submission to admit new evidence related to Rob Lemkin’s film *One Day at Po Chrey*, and Nuon Chea’s statement to the Court informing the Chamber that he, along with Khieu Samphan, was no longer prepared to answer questions and would be exercising his right to remain silent for the duration of the proceedings. The Prosecution also filed an application for the Chamber to enforce sanctions against Khieu Samphan’s Defense team in relation to an editorial published in *The Phnom Penh Post*, which outlined a number of complaints about the fairness of the proceedings.

A. Scope of Witness Testimony

The majority of objections this week related to Stephen Heder’s status as a witness instead of an expert, a fact that significantly reduced the scope of questions that counsels from all Parties were able to ask.²⁵ Prosecutor Raynor read excerpts of a Trial Chamber internal email dated 3 July 2013, issuing instructions that Heder’s evidence was to be limited “... primarily to evidence the witness gathered either during the interviews he conducted or the evidence that he accumulated during the research.”²⁶ However, the Chamber’s instructions did not prevent numerous objections being raised on the scope of the Witness’ testimony. Koppe’s examination of the Witness was noticeably hampered by numerous objections.²⁷ The Chamber dismissed Koppe’s request for the Defense to be provided greater latitude to question the Witness on his academic background, despite his arguments that the Witness had worked for the OCIJ and authored the book which had, in effect, guided the prosecution.²⁸ While some objections, including the Chamber’s refusal to allow the Witness to comment on genocide, were relatively clear, the delineation between what constituted expert opinion or factual evidence was uncertain on a number of other occasions. The Chamber generally prevented Parties from posing questions that sought to elicit opinion from the Witness, but when Heder himself volunteered the information or elaborated on a response, the Chamber appeared more inclined to allow the opinion.²⁹

B. Trial Chamber’s Procedural Ruling Limiting Parties Rebuttal to Objections

This week, the Chamber appeared to adopt an inconsistent approach when applying the procedural rule issued in June that prevented the objecting Party from replying to rebuttal.³⁰ During Koppe’s examination of Heder, Prosecutor Raynor peppered the Defense counsel with objections, which he then attempted to follow up with additional arguments after Koppe had responded to the objection. The Chamber did not intervene on this occasion, however during Guissé’s examination of Heder, the Chamber chastised the Prosecutor after Guissé argued the Prosecution’s interruptions prevented her from completing her examination.

Giving what appeared to be a stern reprimand, Nil Nonn reminded Raynor that after a rebuttal to an objection there should not be any reply by the Party that raised the objection.³¹

C. Questioning on OCIJ Procedure at the Trial Chamber

On Tuesday, Prosecutor Raynor questioned the relevance of Koppe's questions to Heder asking him to confirm whether he had recommended whom the Prosecution should interview in 2006. The Defense counsel had also raised issue with Heder's employment history, particularly the fact that he had worked for both the OCIJ and the OCP. Raynor objected on the basis that the question was "veering" into the topic of procedural issues at the investigation stage, a line of enquiry that the Trial Chamber had already decided was out of its' purview.³² The President advised the counsel to pose substantive questions to the Witness.

D. Use of Documents to Examine the Witness

On Tuesday, issues were raised regarding the obligation for Parties to submit the Evidence Reference Number (**ERN**) for documents they refer to during questioning.³³ During Koppe's questioning of Stephen Heder, CPLCL Simonneau Fort objected on two occasions, claiming that Koppe had either failed to provide the ERN in all three languages or had spoken too fast for the interpreters to translate the numbers.³⁴ The President eventually instructed the counsel to cite the ERN number, reminding him that this was standard practice during the proceedings.

E. Application to Refer to Witness Statement in Lieu of Live Testimony

On Wednesday, the Prosecution found issue with both Defense teams' use of the OCIJ statements of Heng Samrin, Kho Vanny, and Chun Prasith. Prosecutor Raynor called the Chamber's attention to the OCP's application to admit witness statements in lieu of oral testimony, a submission the Chamber had so far had ignored. Referring to the fact that the Defense had used OCIJ statements during their examination of the Witness Stephen Heder, Raynor suggested that the Defense arguments against the inclusion of statements into evidence should be withdrawn. The Defense had previously argued that witness statements should not be admitted into evidence when they concerned the acts of the Co-Accused without first providing them with an opportunity to confront the witness. Guissé refused to accept that the fact the Defense had used the statements in their examination of Heder, amounted to a withdrawal of their objection. She explained that the Defense had used the statements in order to elicit a response from the Witness, rather than use the statement as stand alone evidence. The Chamber did not rule on this issue during the week's proceedings.

F. Nuon Chea's Defense Team Submission on Evidence Related to TCW-382

At the end of Monday's proceeding, the Chamber provided the opportunity for debate on the Nuon Chea Defense team's written submission to admit new evidence.³⁵ After hearing arguments from all the Parties, the President announced that the matter would be decided in due course. The Defense' submission comprised of three requests, namely for the Chamber to admit into evidence an email sent by *One Day at Tuol Po Chrey* producer Rob Lemkin (TCW-382), to conduct an investigation pursuant to IR 93, and to summon him to testify.³⁶ The Khieu Samphan Defense supported the submission, adding that the producer should be summoned in order to explain the editing process of the film, since it had been admitted as evidence in the trial. Guissé argued that this was of particular importance, because Lemkin had indicated that there might be additional footage and interviews excluded from the final edit that contained exculpatory evidence. Moreover, she added that the exculpatory

evidence would have equal importance to both her client and Nuon Chea due to the mode of responsibility (Joint Criminal Enterprise) alleged in Case 002/01.

The Prosecution raised three main points against the submission. Firstly, Abdulhak stated that the email from Rob Lemkin was hearsay proof of what Nuon Chea had said, which was also something that the Accused could explain himself in court. Secondly, referring to statements made by Lemkin, Abdulhak argued that he had a lack of expertise on KR issues and lack of familiarity with the materials presented in the video he had produced. Building on this point, Abdulhak pointed out that Lemkin had not been directly involved in the crucial interviews included in the video. Thirdly, in relation to the request for the Chamber to conduct additional investigations, Abdulhak argued that Lemkin had been unwilling to cooperate with the Chamber in the past. However, the Prosecutor did suggest that the Chamber should request Lemkin to provide all the raw footage used in the film, which the Parties could then debate in terms of admissibility. The CPLCLs supported the Prosecution's position, and emphasized that the email was not a "serious" assessment of what transpired in Court, but rather a reaction to a Phnom Penh Post article, which was irrelevant and therefore inadmissible according to rule 87.3.³⁷

In response to the arguments presented by the Parties, counsel Koppe stated that Lemkin had never identified himself as an expert, and had responded to the newspaper article because it contained information that did not conform with what he knew. While Koppe acknowledged that the probative value of the evidence could be subject to debate, he argued that the background of many documents admitted into evidence during the trial was similarly unclear, the film had been shown during proceedings many times, and further investigation could yield evidence that had not yet been shown in this footage. Koppe also clarified that Lemkin's unwillingness to cooperate with the Chamber was due to an agreement made with Nuon Chea prior to the establishment of the Tribunal, namely that no footage would be supplied to support Nuon Chea's prosecution. Therefore, Koppe asserted, there should not be any problem with a request for exculpatory material.

G. Nuon Chea Exercising Right to Remain Silent

Following Khieu Samphan's announcement last week that he was no longer prepared to answer questions from the Prosecution or Civil Parties and would be exercising his right to remain silent for the duration of the trial, Son Arun announced that Nuon Chea also intended to remain silent. Nuon Chea stated that he had lost confidence in the ECCC process and believed that the Court had failed to give him a fair and just trial. In response, Abdulhak reiterated the Prosecution's request for the Chamber to draw inferences from the Co-Accused's refusal to answer questions. The issue of drawing negative inferences from the right to remain silent was raised in a ruling made on 18 April 2012, in which the Chamber held that an adverse inference could be drawn from selective silence, but clarified that the final decision would not be based exclusively on these inferences.³⁸ Guissé responded that there was no need for the Prosecutors to make the application, adding that it was up to the Chamber to decide whether to draw adverse inferences from the Co-Accused. Abdulhak responded that he wanted the Co-Accused to hear his application for their own benefit, to ensure there was no doubt as to what the Prosecution was requesting.

H. Application for Imposition of Sanctions Under Internal Rule 35

Responding to an editorial titled, "Khieu Samphan is Forced to Remain Silent," which was published in The Phnom Penh Post on 18 July 2013, the Prosecution applied to the Chamber requesting that sanctions be imposed against Kong Sam Onn, Anta Guissé, and Arthur Vercken.³⁹ The Chamber did not decide upon the issue, but heard arguments from the Parties on the issue. The Prosecution called the letter "scandalous" and alleged that the

counsels had, by making a number of inaccurate representations,⁴⁰ interfered with the administration of justice in violation of IR 35.⁴¹ The Civil Parties supported the application, adding that the letter appeared to be an attempt to justify Khieu Samphan’s decision not to testify before the Chamber to the public. Responding to the application, Guissé emphasized that everything in the letter had been raised before the Chamber, particularly the Defense’ position on the Severance Order and the “insufficient” page limits permitted for Closing Submissions.⁴² Strongly refuting any claim that her team should be reprimanded for the article, she reminded the Chamber that she was entitled to speak to the press as a realization of the freedom of expression.⁴³

IV. TRIAL MANAGEMENT

This week, proceedings were held from Monday through to Thursday. The majority of the time was dedicated for the examination of Witness Stephen Heder, whose testimony was completed according to schedule. The Chamber managed the time strictly. However, some flexibility was demonstrated when the OCP and Counsel for Khieu Samphan were allowed extra time for examination. Some translation issues occurred throughout the week, which monitors noted was likely to be caused by the fast-paced speed the Parties were speaking.

A. Attendance

Accused Attendance: Noun Chea participated in the proceedings remotely from his holding cell throughout the week due to his health concerns. Khieu Samphan was present in the courtroom during all sessions this week.

Judges Attendance: All the Judges were present throughout this week.

Civil Party Attendance: Monitors observed 10 civil parties present in the courtroom this week. Some of them observed the proceedings in the public gallery.

Parties Attendance: All the parties were represented in the courtroom throughout the week.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 15/07/2013	<ul style="list-style-type: none"> ▪ 370 villagers from Treang District, Takeo Province ▪ 6 foreign observers 	<ul style="list-style-type: none"> ▪ 250 students from Oudong District, Kompong Speu Province ▪ 16 foreigners
Tuesday 16/07/2013	<ul style="list-style-type: none"> ▪ 294 villagers from Ou Reang Ov District, Kompong Cham Province ▪ 18 foreign observers 	<ul style="list-style-type: none"> ▪ 25 students Khmer and Korea from Cambodia-Korea Cooperation Center (CKCC) ▪ 2 foreign observers
Wednesday 17/07/2013	<ul style="list-style-type: none"> ▪ 400 villagers from Treang District, Takeo Province ▪ 20 foreign observers 	<ul style="list-style-type: none"> ▪ 50 villagers from Takeo Province ▪ 5 foreign observers
Thursday 18/07/2013	<ul style="list-style-type: none"> ▪ 86 villagers from Tram Kak District, Takeo Province ▪ 313 villagers from Treang District, Takeo Province ▪ 9 Monks from different pagodas in Takeo Province ▪ 25 villagers from Svay Rieng Province ▪ 17 foreign observers 	<i>(No court proceedings)</i>

B. Time Management

The Chamber demonstrated a strong desire to keep to the schedule this week. Some flexibility was shown to both the OCP and the Khieu Samphan Defense, allowing additional time for examination on occasions where the Chamber considered the questioning was relevant. Comparatively, the Chamber showed very little flexibility to the Nuon Chea Defense, refusing Koppe's request for additional time, seemingly because his questions were not considered to be substantive.

C. Courtroom Etiquette

Monitors noted what has been a recurring court etiquette issue during the tense exchange between counsel for Nuon Chea, Victor Koppe, and Prosecutor Raynor.⁴⁴ As the debate intensified and Koppe attempted to respond to Raynor, the President cut off Koppe's microphone mid-sentence and asked him to simply cite the reference number as was customary in the proceedings.

D. Translation and Technical Issues

This week, translation issues appeared to emerge largely due to the Defense counsels' overly rapid speech, particularly when citing ERN numbers. On Tuesday for example, both CPLCLs requested Koppe to repeat the ERN numbers he was citing, as he was speaking too quickly for the English-French and English-Khmer interpreters to catch up. Guissé was also warned that she was speaking too fast for the interpreters to catch up after she stated that her reference to S-71 had been misinterpreted from French into S-21 in Khmer.

Several technical issues were also noted throughout the week. On Wednesday during Guissé's examination of Heder, French audio was heard through the English audio channel. A Khmer version of the document Guissé had attempted to cite from also failed to appear on the Parties' computer screens at one point during her examination of the Witness.

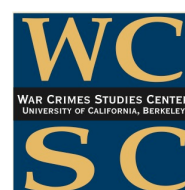
E. Time Table

DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Monday 15/07/13	9:05-10:31	10:52-12:04	13:33-14:40	15:02-16:18	5 hours and 01 minutes
Tuesday 16/07/13	9:03-10:31	10:51-12:07	13:32-14:44	15:07-16:10	4 hours and 59 minutes
Wednesday 17/07/13	9:03-10:34	10:58-11:59	13:37-14:36	15:07-16:00	4 hours and 24 minutes
Thursday 18/07/13	9:08-10:40	11:01-12:21	-	-	2 hours and 52 minutes
Average number of hours in session			4 hours 16 minutes		
Total number of hours this week			17 hours 06 minutes		
Total number of hours, days, weeks at trial			919 hours 13 minutes		
207 TRIAL DAYS OVER 63 WEEKS					

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.

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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¹ Trial Chamber. Transcript of Trial Proceedings 16 July 2013). E1/224.1 [hereinafter **16 JULY TRANSCRIPT**]. Lines 14-18. 45.

² For a detailed summary of the testimony provided by Witness Stephen Heder on 9 to 11 July 2013, see **CASE 002 KRT TRIAL MONITOR**, Issue 67, Hearing on Evidence Week 62 (8 to 11 July 2013).

³ Stephen Heder was examined in the following order: International Prosecutor Keith Raynor; International Lead Co Lawyer for Civil Parties Elisabeth Simonneau Fort; National Lawyer for Civil Parties Lor Chunthy; International Co Lawyer for Nuon Chea Victor Koppe; International Co Lawyer for Khieu Samphan Anta Guisse.

⁴ The regiment, along with the 173rd and 160th, were part of Eastern Zone's 1st Division that attacked Phnom Penh from the Southeast. Ben Kiernan's book used in this portion of the questioning was cited as document E3/153.

⁵ **15 JULY TRANSCRIPT** Lines 5-7. 63.

⁶ **15 JULY TRANSCRIPT** Lines 15. 61.

⁷ **15 JULY TRANSCRIPT** Lines 13-14. 100.

⁸ **15 JULY TRANSCRIPT** Lines 1-9. 72. The refugee's statement was read by International CPLCL Elisabeth Simonneau Fort, referred to as document E3/1740, from "Account No. 18". The refugee was described as a CPK member from Takeo; **15 JULY TRANSCRIPT** Lines 4-5. 73.

⁹ The International CPLCL referred to the refugees the Witness interviewed in 1975 at Cambodia-Thailand border. The Witness explained that most of the refugees were from Battambang, Pursat or Siem Reap, provinces that were closer to Thailand. See **15 JULY TRANSCRIPT**. Lines 23-15. 73.

¹⁰ **15 JULY TRANSCRIPT** Lines 6-7. 75.

¹¹ Elisabeth Simonneau-Fort cited from Civil Party D22/306 and from the testimony of a Civil Party on 5 December 2013, most likely referring to Civil Party Pech Srey Phal.

¹² **15 JULY TRANSCRIPT** Lines 15-17. 67.

¹³ **15 JULY TRANSCRIPT** Lines 6-8. 67.

¹⁴ **15 JULY TRANSCRIPT** Lines 11-13. 92.

¹⁵ This refers to Kim Vun See **CASE 002 KRT TRIAL MONITOR**, Issue 33, Hearing on Evidence Week 28 (21-23 August 2012).

¹⁶ See **CASE 002 KRT TRIAL MONITOR**, Issue 46, Hearing on Evidence Week 41 (11-14 December 2012). 9.

¹⁷ Addressing CPK's formal policy for the "New People," Anta cited portions of Heder's article "Re Evaluation or Re Assessment of the Role Played by the Senior Leaders and the Local Cadres in the Crimes Committed in Democratic Kampuchea: Cambodian Responsibility in a Comparative Perspective," asking the Witness to confirm whether he had translated the relevant portions from Khmer into English. The Witness confirmed this was the case.

¹⁸ As an example, Heder raised the position of Pang, referred to by some as the Chairman of Office 870, while others knew him as the Chairman of S-71, an office of 870.

¹⁹ Heder commented that evidence he collected indicated that 870, or S-71, had also been in existence since at least 1971. In that period "870" was already used to refer to the upper echelon of the party. The Witness also described that throughout his research, there had been confusion between Office 870 and S-71.

²⁰ This included for example, documents identified as "Meeting of the Standing Committee of the 9th of October 1975" and "Summary of the Decision of the Standing Committee of the Meeting of 19-20-21 April 1976" See Trial Chamber. Transcript of Trial Proceedings (17 July 2013). E1/225.1 [hereinafter **17 JULY TRANSCRIPT**]. 90-93

²¹ Heder stated that he was not directly involved in the interview, but knew of the existence of the document.

²² Equivalent to GRUNK.

²³ The document number cited by International Prosecutor Raynor was E3/48.

²⁴ see **CASE 002 KRT TRIAL MONITOR**, Issue 67, Hearing on Evidence Week 62 (8 to 11 July 2013).

²⁵ See **CASE 002 KRT TRIAL MONITOR**, Issue 62, Week 57 (3-7 June 2013).

²⁶ **16 JULY TRANSCRIPT**. Lines 16-18. 87.

²⁷ For instance, Raynor objected when Koppe asked whether Heder thought Chandler was an expert. Koppe asked whether Heder thought Nuon Chea's alleged signatures on S-21 confessions were authentic, and Raynor objected that he was again eliciting expert opinion. Simonneau Fort also objected when Koppe attempted to ask whether Heder still stood by his views in the book he wrote "Seven Candidates for Prosecution." Raynor again objected to Koppe's question on whether Heder knew that Ieng Sary was giving truthful answers during the interview. Aside from the instances where Koppe rephrased his question before any ruling was made, these objections were sustained; Koppe's continuous effort to confront the Witness with other researchers' work, particularly that of authors' Ben Kiernan and David Chandler, also became subject to objections based on Heder's status as Witness. The Chamber consistently held that assessing the work of others fell into the realm of expert's testimony and therefore was outside the scope of Heder's function as a Witness. The Chamber's absolute insistence in strictly preventing Koppe from inviting Heder to assess other researchers' works even lead to an episode where the OCP partially defended one of Koppe's questions.

²⁸ Victor Koppe's attempt to question Heder on the methodology he used to interview refugees on the Thai-Cambodian border, for example, was immediately subjected to a lengthy objection from Prosecutor Raynor which characterized Koppe's question as "jumbled" and ultimately geared to elicit expert opinion. Koppe responded that he was only asking a simple question on whether Heder had interviewed a proper cross section of the population during the DK period. Judge Lavergne explained that asking questions about Heder's methodology was relevant

to his work as an expert and questions on this matter were held to be irrelevant to these proceedings. Koppe replied, asserting that he did not understand the ruling as the OCP had asked about Heder's sources for two days. The counsel however did not pursue the line of the questioning and attempted to move on to another question. Raynor's objection against the counsel's blanket question on the Witness methodology was also sustained.

²⁹ The lack of clarity on this issue was especially evident in terms of the Witness' expertise in Khmer. While Heder was sought or volunteered to explain Khmer terms contained in documents and was largely allowed to provide translation, there were times when eliciting the Witness' expertise on DK-period language was not allowed. This occurred when Simonneau Fort asked whether the Expert noticed distinct language used by his interviewees when referring to specific activities or nouns such as "traitors" when referring to DK Period, Koppe objected to this because it elicited expert opinion. His objection was sustained. The response of the Chamber was less consistent when the Witness provided testimony beyond the questions posed to him.²⁹ While Heder explicitly attempted to keep his answers to factual testimony, at some points he offered to clarify some contextual issues. The Chamber was more consistent in preventing questions that sought Heder's opinion on general situation during DK period, presumably as it was considered as expert testimony.

³⁰ Koppe asked Heder to give his interpretation on ambiguous Khmer words used in Kiernan's interviews, to which Raynor objected. Koppe responded that Heder had so far opined on other linguistic issues. Judge Lavergne held that the question was seeking expert opinion and the objection was sustained. Next, Koppe attempted to ask if Heder wrote about Heng Samrin being the "Kim Philby of Cambodia." The President originally did not sustain national Civil Party Lawyer Pich Ang's objection, but after two questions on this topic the President halted the counsel's questioning as it was considered a query for an expert. Again, When Koppe asked a blanket question on Heder's research on East Zone, in particular, factual evidence on the Zone's role in the evacuation of Phnom Penh in 1975, Raynor intervened, reminding the Chamber that questions ought to be on evidence gathered by the Witness which served as the basis for his articles or books, and requested the counsel to refer to a specific passage from one of the Witness' work. This seemed to irk Koppe, who immediately stated that for public information this was not a legal objection but rather because what had happened in East Zone in 1975-1979 was off-limits. Judge Cartwright clarified that the objection and the Chamber's decision to sustain it was not due to the reason Koppe cited but rather because Heder should be questioned as a Witness. The International Judge cautioned the counsel that pursuing questions beyond Heder's capacity as a Witness would result in him being barred from further examination; See CASE 002 KRT Trial Monitor. Issue 64. Week 60 (17-20 June 2013).

³¹ See 17 JULY TRANSCRIPT. Line 6-12. 12

³² Prosecutor Raynor referred to a 7 December 2012 Trial Chamber decision, which determined that the Trial Chamber would not evaluate OCIJ procedures. See also, Decision on Defense Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E231 and E214/1) (7 December 2012). E251. The Decision in essence stated that the ECCC legal framework did not envisage the Trial Chamber to adjudicate procedural error at the investigative stage; as such task fell within the jurisdiction of the Pre Trial Chamber. See Lines 20-22.10-11.

³³ An Evidence Reference Number (ERN) is the eight-digit number listed on the upper left side of each document page. Because ERN numbers do not directly respond to the same pages in Khmer, English and French versions, Parties are obliged to quote the specific ERN page reference in all three languages. See, Lars Olsen, ECCC Blog (24 June 2013) <http://www.eccc.gov.kh/en/blog/2013/06/24/ern-evidence-reference-number>

³⁴ Koppe briefly responded that he had been referring to Stephen Heder's book, which he "hoped" the CPLCL had read. The President remarked that it was not the first time parties had been reminded of the obligation to provide ERNs in French, Khmer and English and directed Koppe to speak slowly when quoting the numbers. During questioning, counsel Koppe flatly refused to provide the ERN of the book the Witness had written on communism. The refusal, seemingly an expression of frustration because he had been prevented from quoting from the book previously, prompted International Prosecutor Raynor to ask "Are we in a court of law or a playground?"

³⁵ For the written submission on the issue, see Nuon Chea Defense Team. Request to Admit New Evidence, Summon (redacted) and Initiate an Investigation (11 July 2013). E 294. The submission was triggered by the email from TCW382, identified as Robert Lemkin, the producer of the video "One Day at Tuol Po Chrey" and "Enemies of The People, which was brought to the court's attention the previous week. The email, addressed to Nuon Chea's Defense Team, contained expression of concern that statements from the film did not represent accurately Nuon Chea's complicity in the massacre that took place at Tuol Po Chrey and insinuated the availability and willingness of the producer to provide exonerating evidence for Nuon Chea. See CASE 002 KRT Trial Monitor. Issue 67. Week 62 (8-11 July 2013) p. 8-9.

³⁶ See IR 93. Additional Investigations by the Trial Chamber. The rule allows the Trial Chamber to order additional investigations, either by judge or judges or by issuing rogatory letter to the Judicial Police.
2. Such judge(s) may, under the same conditions as the Co-Investigating Judges:

³⁷ See IR 87.3. Rules of Evidence. "The Chamber may reject a request for evidence where it finds that it is irrelevant or repetitious."

³⁸ See CASE 002 KRT Trial Monitor, Issue 19, The Selective Exercise of the Right to Remain Silent by the Accused Week 14 (18-20 April 2013). Page 10.

³⁹ Anta Guisse, Andrew Vercken, and Kong Sam Onn. "Khieu Samphan is forced to remain silent." *Phnom Penh Post*, sec. Editorial, July 18, 2013.

⁴⁰ These included the Chamber not addressing the concerns expressed by the Defense with regards to the numerous documentary evidence and witnesses, the lack of opportunity to discuss the evidence admitted, and the adjudication of Khieu Samphan's culpability with regards to all criminal policies within Case 002/01 and the Chamber's lack of interest in the position of the Defense. Abdulhak further reminded the Chamber that the Defense had always been afforded opportunity to challenge documentary evidence, file submissions and present key evidence. The Prosecutor emphasized that having one's submission rejected was not tantamount to being "gagged", and Khieu Samphan's Defense had rejected the opportunity to present their key evidence. With regards to the Severance Order, Abdulhak reminded the Chamber that Khieu Samphan's Defense had always showed support to the Order, and to state to the press that they were subjected to unfair treatment in the implementation of the Order was an act of hypocrisy." The Prosecutor then referred to Khieu Samphan's refusal to testify. The situation, Abdulhak insisted, was not represented accurately, because in fact accommodations were offered to the Accused, including extra time and submission of topics to be questioned to him.

⁴¹ The Prosecutor cited the UN Resolution on the Basic Principles on the Role of Lawyers, Article 13 on obligation to maintain "honour and dignity of their profession" and Article 14 on obligation to "all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession" including when "discussing the administration of justice in newspapers". See **18 JULY TRANSCRIPT**. Line 16-10. 55-56

⁴² Anta Guisse referred to the Trial Chamber's written directive that limited the discussion on the mode of responsibility of the Co-Accused to specific paragraphs in the Closing Order. See Trial Chamber. ANNEX: List of paragraphs and portions of the Closing Order relevant to Trial One in Case 002, amended further to the Trial Chamber's Decision on Ieng Thirith's Fitness to Stand Trial (E138) (undated). E124/7.3. Guisse emphasized that she had already expressed her disagreement to the OCP and CPLCLs, that discussion on CPK policies was not possible without touching on their implementation, including acts that were not part of Case 002/01.

⁴³ Abdulhak cited from the UN OHCHR Basic Principles on the Role of Lawyers by the Eight Council for the Prevention of Crimes in Havana, 27 August to 7 September 1990, paragraph 23, which states that lawyers and all parties in trial must enjoy freedom of expression. See **18 JULY TRANSCRIPT**. Line 6-12. 69

⁴⁴ In response to Raynor's comment, Koppe quipped that it was "a good question." Raynor then proposed to the Chamber to stop Koppe from asking further question, as the counsel was already insulting the proceedings. The Chamber did not entertain this request. 16 July Transcript. Line 8. 117.