



**Stephen Heder’s Testimony Continues Despite Nuon Chea’s  
“Urgent and Extraordinary” Application to Adjourn**

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The Extraordinary Chambers in the Courts of Cambodia continued to hear the testimony of political scientist and author Stephen Heder on Wednesday, July 10, 2013. All parties were present at the day’s proceedings, with the exception of Nuon Chea who observed from his holding cell in the court building, due to an ongoing health condition.

Before the court handed over to the prosecution to continue their examination of Mr. Heder, the court gave the floor to Victor Koppe, Co-Lawyer for Nuon Chea, to make an application to the court.

***Mr. Koppe’s “Urgent and Extraordinary” Application***

Mr. Koppe told the court that during the final few minutes of the preceding day’s hearing, the defense team of Khieu Samphan had received “extraordinary information.” No indication of this information, or the application that Mr. Koppe was making, had been given in advance to the prosecution or the court, both of which protested accordingly. Keith Raynor, Senior Assistant Prosecutor, complained to the court that the prosecution had not even been informed that the defense would be making an application. Similarly, Judge Sylvia Cartwright asked why the matter had not been given to the prosecutor and asked Mr. Koppe whether the matter should be addressed in open court with the witness present. She also accused Mr. Koppe of being melodramatic.

After submissions from Mr. Raynor requesting the court to go into closed session if the legal matter concerned the witness, and against the wishes of Nuon Chea’s defense, the court entered a closed session, excluding the press and public. Before doing so, Judge Cartwright informed the public and press that the court would inform them of the nature of the matter as soon as it could.

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<sup>1</sup> Cambodia Tribunal Monitor’s daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC’s hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

After a period of approximately 15 minutes, the court resumed its open hearing. Mr. Koppe proceeded to tell the court that urgent new information had been received from a person identified by the court alias as TCW382; this person, he stated, co-wrote the screen-play of the documentaries “Enemies of the People” and “One Day in Tuol Po Chrey.” This email, which had been unsolicited by the defense had been sent at 4:39 p.m. on Tuesday, July 9 and was subsequently forwarded to the parties. The email stated:

Dear Victor,

From reading *The Phnom Penh Post*'s account of the trial proceedings yesterday it seems there many have been a misunderstanding about what Nuon Chea said in our DVD. He did not agree that top Lon Nol Officers had been killed. What he said was that half a dozen Lon Nol cabinet and top officials had been put through revolutionary due process and condemned to death by a military tribunal, which from memory, Nuon Chea was not part of.

It should be added that Radio Phnom Penh, the official state radio station, broadcast announcements of these executions at the time and gave the same rationale as Nuon Chea does in our DVD.

Nuon Chea does not admit direct responsibility for executing the Lon Nol cabinet members. Rather, he asserts that the rationale was correct. Of course, that rationale is no different from U.S. killing Bin Laden, etc. I hope that the evidence to the court makes it clear that there really is little prosecutorial value in what has been reported to have been used of our film in this instance.

By the way, regarding Po Chrey, this was a massacre ordered by Ros Nhim, not central command. We have amassed a wealth of evidence about Nhim's agenda but have been so far unable to complete our second film due to the co-producer being in the U.S. for personal reasons.

Yours Sincerely,  
“TCW382”

Mr. Koppe stressed to the court that if this witness possesses this information it would vindicate what the defense counsel had been saying for months about Nuon Chea's lack of involvement in Tuol Po Chrey. The evidence TCW382 has would reinforce what the defense had been arguing for years about the role of local commanders, he asserted.

Mr. Koppe noted that Mr. Heder is likely to have a position concerning the facts in the possession of TCW382 and that TCW382 may have direct exculpatory evidence concerning the execution of Lon Nol soldiers. In light of this information Nuon Chea's defense made three requests:

1. The email message be admitted into evidence pursuant to Internal Rule 87.4 as the email was unavailable at the beginning of proceedings and is clearly relevant;
2. TCW382 be summoned to appear before the court, or the court make further investigations pursuant to Internal Rule 93; and

3. Mr. Heder's testimony be immediately adjourned, so that further information can be ascertained before he is examined.

Mr. Raynor provided what can only be described as a fierce response for the prosecution. Clearly absolutely livid, he told the chamber that he had thought the era of devices and stunts had come to an end with Nuon Chea's defense team. What the court had just heard showed otherwise, he claimed, and was "nothing short of scandalous."

Providing the name of witness TCW382, the prosecutor claimed that the witness had no business giving commentary on the court. "He *may* be in possession of information which he *may* present," stressed Mr. Raynor, and this information could be completely irrelevant. He accused the defense of trying desperately to tie this alleged new evidence to the testimony of Mr. Heder, which he characterized as a false nexus. Further, he continued, Mr. Koppe had suggested the defense needed the adjournment in order to ascertain Mr. Heder's analysis of the new information when they examined him; however, as a witness rather than an expert, Mr. Heder was not entitled to provide such an analysis, he concluded. Nuon Chea's defense was, according to Mr. Raynor, being "dishonest at worse and disingenuous at best."

"Do you admit the email? ... He is the producer; he wasn't there! What relevance does this have? None!" declared the prosecutor. Raising his voice, Mr. Raynor asserted, "Courts are about evidence, not showboating to the press." Further, apparently as an indication TCW382's character, the prosecutor stated that this person had been asked to provide the film as evidence but had refused. "How did the Co-Prosecutors get the film?" the prosecutor retorted. "Off Amazon."

"I ask you to deal with this matter now and consign all three of these applications to where they belong," he said, urging the court to reject all three of Nuon Chea's applications.

Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort echoed Mr. Raynor's submissions. She even went so far as to say that she was "somewhat distrustful" of the argument that this email somehow came from nowhere at the last moment.

Further, Ms. Simonneau Fort reminded the court that the film on the case file was of Nuon Chea speaking in Khmer. Here was a producer claiming to be telling the court what Nuon Chea had said, but, she argued, the court could surely see for itself. In addition, she stated, no mention is made of Ros Nhim in the film "One Day in Tuol Po Chrey." The submission being made was not a serious one, she concluded, and should have been made in writing in accordance with rule 87.4.

As Mr. Koppe attempted to reply to these arguments, Mr. Raynor cut him off and reminded the court that there was no right of reply. "Fine. Mr. President, I haven't heard anything interesting," Mr. Koppe rejoined.

Ultimately, Judge Cartwright handed down the decision of the chamber, She informed the parties that the court would not be adjourning the testimony of Stephen Heder and that if counsel for Nuon Chea wished to make a written application under rule 87.4, they had until Monday, July 15, at 2 p.m. to do so.

### ***Prosecution Continues to Examine Mr. Heder***

Following Judge Cartwright's ruling, Mr. Heder was brought back into the chamber. He had up until this point remained in the witness room following the closed session.

Mr. Raynor continued his examination of the witness by discussing Mr. Heder's work leading a team from the School of Oriental and African Studies at the University of London (SOAS) in conducting interviews in Cambodia. Mr. Raynor asked specifically about how the interviews had been conducted and recorded. Mr. Heder first stressed that there was no oversight from SOAS or a sense that this was a SOAS team. "There are no set rules," he claimed, but rather, experience was gained by researchers as to how to illicit information from interviewees. Simple, open-ended questions were asked of witnesses in Khmer, while the answers were recorded in English directly into his notebook, he recounted. He also noted that no audio recordings were made and it was made clear to the interviewee that their answers would not be anonymous,

Mr. Heder told the court that he was nearly fluent in Khmer, joking that the court could ask him to take a test if it wanted to. He claimed that when he was on the phone, people often thought he was Khmer himself. This level of proficiency was gained after about a year and a half of learning, at which point he could have a reasonable conversation on any topic. When Mr. Heder had left Cambodia in 1975, he was good but not fluent in Khmer, but his fluency had developed during the period between 1979 and 1984.

The witness testified that the first interviews that he had conducted on the 1975 to 1979 period in Cambodia took place in the early days of 1979 in Sector 5 of the Northwest Zone and on the Thai side of the Thai-Cambodian border. On the Thai side, Mr. Heder had spoken to asylum seekers who were fleeing Cambodia, and on the Sector 5 side, the interviews were with ordinary people – not cadre or combatants – who had fled from the cooperatives. He claimed that the cooperatives were disintegrating due to the impending arrival of the Vietnamese.

Mr. Raynor asked the witness about an interview he had conducted with Khieu Samphan on August 4, 1980. This interview had occurred over two days, Mr. Heder recalled; some of it was taped and other parts simultaneously translated into a notebook. Mr. Heder was shown a translation of this interview, which he identified as being a court translation. He could recollect that the notes had originally been made in translated Khmer and transcribed "days or months later" into a computer file. The other members of his team used the same methodology as he had.

Without quoting from the interview or providing further details, Mr. Raynor turned to discuss Mr. Heder's interviews with Ieng Sary. In December 1996, Mr. Heder stated, he had interviewed Mr. Sary in a hotel room in Thailand. As well as conducting a taped interview, he had also held a conversation with the former Khmer Rouge leader over a meal at the hotel. A second interview occurred in 1999, he said; this encounter was less formal and took place in the lobby of the Royal Phnom Penh Hotel, with Mr. Heder making notes in a notebook contemporaneously.

Moving on, the prosecutor brought up the interviews with refugees that were conducted on the Thai side of the border with Cambodia in February to March 1980. For most, if not all of them, Mr. Heder said, he had been accompanied by a journalist from Japan.

Mr. Heder also confirmed that he had conducted interviews when he had worked for the Office of the Co-Investigating Judges (OCIJ). Finally, he also recounted that he had conducted

interviews in Phnom Penh in August 1990 when he was working as a part of the Department of History at the Australian National University. To his knowledge, this interview had been transcribed by the court.

Turning to item “89,” Mr. Raynor had a document handed to the witness and asked whether it showed an interview completed by him. Mr. Heder replied that the transcript he was reading claimed to be an interview of one person but in actual fact it was of someone else. He did confirm that he conducted the interview, though, as it looked like his work. An application was successfully made to the court for Mr. Heder to be allowed to examine the document over lunch so that he could take more time to consider the subject of the interview.

Turning to document 91, which was an interview with Vann Rith, Mr. Heder was asked to confirm that he had taken the handwritten note he was shown. This he did and informed the court that the interview was conducted while he was at SOAS and working with the Documentation Center of Cambodia (DC-Cam).<sup>2</sup>

Turning to his motivation for writing a book, the witness claimed that academics were not meant to have motivations but were, “by some strange turn of events,” interested in a certain subject. Part of his motivation was to be awarded his PhD and to be published, he conceded.

To the apparent frustration of defense counsel, Mr. Raynor then spent most of the remaining session reading passages of Mr. Heder’s book and asking the witness to confirm his sources.

This process began with a passage from page 26 of the book, in which Mr. Heder dealt with events in the 1950s. The passage discussed the effects of the Vietnamese communist movement on the Communist Party of Kampuchea. “Whatever the Cambodian numbers,” it was written, “the Vietnamese instilled them with an attitude of hostility to the revolution’s enemies, foreign and national.”

The passage went on to claim that the communists believed it necessary to kill all imperialists. Mr. Heder told the court that this information was from a speech, which was broadcast in Vietnam by the Vietnamese News Service (VNS). A record was available at Cornell University Library, he said.

The next passage discussed the treatment of traitors in Vietnam. Mr. Heder confirmed that the source was a daily release from the VNS, also available at Cornell. On page 52, events in 1960 were discussed. In that passage it said that the masses were justified in using armed struggle in their attacks of the enemy and that the military and political arms of the revolution “should enjoy parity.” The source for this analysis was David Elliott, the witness stated, who had written what Mr. Heder saw as the definitive work on the communists in South Vietnam in the 1960s.

In a quote discussing Khieu Samphan, the accused was described as not being a member of the communist party at that time but being inclined to follow its instructions. Mr. Heder confirmed that the source for this claim was a Cambodian “leftist” named In Sopheap, who later wrote a biography of Khieu Samphan. The source in Mr. Heder’s book was an unpublished version of Mr. Sopheap’s book, which had been given to the witness in the 1990s.

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<sup>2</sup> DC-Cam is a sponsor of the Cambodia Tribunal Monitor, and its director, Youk Chhang, serves as managing editor.

Subsequently, Mr. Raynor read a quote concerning the 1950 party congress that stated, “Under this ideological green light, a CPK party congress was convened secretly in Phnom Penh in September 1960, by seven members of the urban party and 14 of its rural members.” At this party meeting, a number of key “lines” or policies were devised. In making this claim, Mr. Heder stated, he had referenced a document allegedly written by Nuon Chea and given to “Nate Fair” by “Khen Nguon.”<sup>3</sup>

The prosecutor moved on to page 69 of Mr. Heder’s book, which discussed “contradictions.” The contradictions within Cambodian Society among the five main class elements, which the Vietnamese had identified in Cambodia in the 50s, were portrayed as virtually identical to those said to exist in Vietnam, Mr. Heder had written.

Mr. Heder explained to the court that he had quoted a speech from Pol Pot when he had written that “the most dominant contradiction was between peasants and landlords; thus the struggle in the countryside was the most basic one in Cambodia, requiring liberation of the peasants.” The witness gave two sources for this statement: “Pol Pot: Long Live the 17<sup>th</sup> Anniversary of the Communist Party of Kampuchea” and the “Statement of Nuon Chea.”

Mr. Raynor next discussed a reference in the footnotes of Mr. Heder’s book to a statement by Nuon Chea that had been made to the Danish Communist Party and was recorded in the *Journal of Communist Studies*. On Page 75 of his book, Mr. Heder had written that the National Congress had recognized two forms of struggle – political and armed. Ultimately a people’s war would be necessary to finally reach victory, it had reportedly been claimed in a speech by Nuon Chea. U.S. imperialists were seen as using dictatorship and force and so political action alone would not succeed in “smashing the enemies of the revaluation,” it continued. A speech by Nuon Chea was referenced as the source for this statement, which Mr. Heder told the court was from a U.S. Foreign Broadcast Information Service (FBIS) daily report translation.

On the same page an extract was read in which it was said that rhetoric made it possible for the Khmer Rouge leaders to convince the peasantry that the Lon Nol regime was corrupt. This statement, Mr. Heder told the court, had been based on the books of David Chandler.

In a further quote it was noted that “Nuon” (purportedly Nuon Chea) was particularly impressed by Khieu Samphan’s ability to recruit the people in the early days of the CPK. At this stage, Mr. Koppe interjected, as the prosecutor had quoted to the chamber without even asking the witness to confirm a footnote. He questioned whether the prosecutor’s methodology was a good use of the court’s time, given that everyone present had already read the witness’s book.

Mr. Vercken also lodged an objection on the grounds that long pages were being read and then short questions raised. Both objections were overruled.

Before the lunch adjournment, Mr. Raynor asked the witness to clarify who a “Sancun” military officer was.<sup>4</sup> Mr. Heder replied that this was a term used to refer to officers under King Norodom Sihanouk.

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<sup>3</sup> Spelled phonetically according to the English channel of the ECCC live broadcast.

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Continuing after the lunch break, the court continued to hear quotes from Mr. Heder's book. "Peasant unrest against the Sancun regime broke out in early 1966," wrote Mr. Heder, which created opportunity for the communists to gain support through Khieu Samphan and others. The source of this analysis had been "Pol Pot Presents the Cambodian Party Experiences," a speech transcript that had been given to the witness directly.

At this stage, Mr. Heder announced that the unknown interviewee discussed in the morning session had been identified. The witness wrote down the name of the interviewee for the prosecution, who agreed to email it to the other participants in the trial.

The prosecutor then continued to read quotes and confirm their original sources.

Within a month of the coup, the Vietnamese were in control of an area 20 kilometers into Cambodia with a population of 1 million, Mr. Raynor read from Mr. Heder's book. This was seen as a "great leap forward" for the Khmer Rouge, according to a Khmer Republic lieutenant called Nguyen Van Vang, who had provided this opinion in a document given to the Texas Tech University, according to the witness.

The next quote documented Khmer Rouge advances in 1970. Its origins had been a statement by the Ministry of National Defense of The National Union of Cambodia to the VNA, which was the official news agency of Vietnam. A copy of the statement was held in the Cornell University Library, which is where Mr. Heder had access to it.

By September 1970 the Khmer Rouge claimed to control of nearly 3 million of Cambodia's 7 million people, according to a statement to the New China News Agency, confirmed by Mr. Heder.

Interviews describing the treatment of the Vietnamese were then presented to the court. Events during 1973 in the East and Southwest Zones, as well as the Special Zones, demonstrated the pushing out of Vietnamese Yuan. Mr. Heder was asked if he had seen any other interviews concerning the withdrawal of Vietnamese. He told the court that he had seen other interviews, which he had conducted between 1978 and 1984. These had included a series of quantitative investigations, he said, which led to "statistic-like data" on the number of fatalities under the Khmer Rouge regime.

Mr. Heder's book then tackled an individual named Huong Sai, whom Mr. Heder described in court as being of the same generation and ilk as Pol Pot and Nuon Chea. He was a member of the party in the mid-late 1950s but eventually left the party, the witness said; after the change of government he went into the *maquis* and was in the complex of offices there that constituted the party central office. Mr. Sai became a member of the Khmer Rouge's Education Ministry, the book concluded.

In a further quote, Khieu Samphan was described as being the "odd man in" and as being highly complicit in the party's early leadership. He was rewarded for this complicity with promotion to the Central Committee in 1971, with a post as a kind of personal secretary to Nuon Chea, the book stated.

According to a document in the Douglas Pike collection at the Texas Tech University, by late 1970 and early 1971, the Vietnamese Worker's Party and CPK relied on their armed power to

extend control. Where the Vietnamese had seized or liberated an area, they split it off from the rest of the country.

According to an article from the *Los Angeles Times* in 1971, peasants were fleeing from Khmer Rouge-controlled areas of Cambodia. This article was held in the Cornell University Library, the court heard. In addition, a quote from the *Christian Science Monitor* claimed that the revolution in Cambodia had even less support than the revolution in South Vietnam.

Indeed, a CIA report cited by Mr. Heder claimed that the “revolution maintained its position through threats.” This report, he told the court, was most likely declassified by Douglas Pike himself, who had access to such documents.

As the CPK expelled the Vietnamese armed forces in 1972-1973, it replaced their domination with extreme coercion, the book continued. The CPK became even more violent in mid-1973 when it radicalized its policies, Heder had written, by reference to the work of Donald Kirk, a journalist now based in Korea.

As Mr. Raynor asked the witness if he could help the court on what had happened during the evacuation of Kratie, Mr. Vercken objected on the grounds that this question treated the witness as an expert. After the question was rephrased, it transpired that the witness did not have information on that evacuation. Similarly he was unable to help the court with the evacuation of Kampong Thom in 1973.

On the subject of the evacuation of Udong, which took place in March 1974, the witness was able to be of much more help to the court. Mr. Heder said he had gone to Udong in the aftermath of an attack by the Khmer Rouge and had interviewed people who had been evacuated from the town. They had told him about citizens being executed on the spot, including women and Buddhist nuns.

Interviewees also told Mr. Heder that these people had been killed by Khmer Rouge troops who had entered Udong, killing certain categories of people and evacuating the rest of the population to the countryside. He had himself arrived in the town a day after the attack, and the town itself was “shot up” with only a couple of people left, and the bodies of Buddhist nuns could be found on the hillside on the way up to the pagoda, he recalled.

As the prosecution asked Mr. Heder who was in charge of the Khmer Rouge in that area, Mr. Koppe objected that the question was designed for an expert witness, which Mr. Heder was not. Surprisingly, Mr. Raynor agreed with the objection and rephrased his question, asking the witness if he heard from anyone who was in charge. The witness replied that at that time he had not known who was in charge.

Following the afternoon break, Judge Cartwright reminded Mr. Heder that the investigation by the OCIJ was not something that his evidence should “stray into.” Smiling, she also asked Mr. Heder to keep his answers short and requested he read to the court the name of the interviewee he had previously written down. Mr. Heder identified this person as being Doak Sam Oi.

Continuing the examination by returning to the subject of Udong, Mr. Raynor clarified the chronology of events with the witness. It was established that in 1974, Udong was in the control of the Khmer Republic. The Khmer Rouge had attacked and taken the city, but by the following



day the Khmer Republic was back in control. The attack had lasted 24 to 36 hours, and the Khmer Rouge was in control of the city for a day or so.

When the witness had earlier said that certain “categories” of people had been executed, Mr. Heder explained, these had included military personnel and civil servants from the Khmer Republic.

Relating to the period of 1971 to 1975, the witness had also obtained information about the evacuations from Kampong Cham provincial town. In 1974, the town had been evacuated, with some of its inhabitants being killed on the spot, he said. Eventually the Khmer Republic forces took the town back.

Mr. Vercken objected on the grounds that the line of questioning by the prosecutor required the witness to simply recount what he had heard in interviews. The chamber had plenty of interviews on its case files, he argued, and should reach its own conclusions from them. This objection was overruled by the chamber, and Mr. Raynor continued.

The witness was asked to explain how he knew that people had been executed on the spot in Kampong Cham, to which he replied that he had been told in an interview that the Khmer Rouge executed many of the town’s inhabitants summarily, though he did not know how many.

Mr. Raynor presented to the court a new index of documents. He then asked the witness to turn to the interview of the person he had just identified to the court as Doak Sam Oi. In that interview, Mr. Heder had asked how the interviewee understood there to be problems in the leadership of the East Zone. In reply, he had heard how cadres had been purged in that zone, on the basis that either they were womanizing or that they were an internal enemy.

Moving on, in an interview with the Khmer refugees on the Thai border, further details from the documents were given about the treatment of Vietnamese people with Khmer backgrounds – the Khmer Hanoi. The interviews recorded the refugees’ account of how the Vietnamese were placed under pressure to leave the border areas. In 1973 there had been negotiations that agreed in principle that the Vietnamese would leave Cambodia. However, some chose not to leave, and so there was bloodshed, the interviews said; after that, the Vietnamese would be forced out.

In a subsequent statement read to the court, it was explained that Mr. Heder had interviewed a person who described how Vietnamese Khmer had come from Hanoi to control the country but became the subjects of purges from the end of 1971. A further interviewee, whose name was not known by the witness, had discussed how each level of the party had received orders from the level above it about driving out and targeting the Khmer Hanoi.

The next interview was with a member of the Kampong Speu standing committee, which was a regional committee for that area. The committee member stated, “If we had captured Phnom Penh in 1974 it would also have been an evacuation. This had been a long-standing plan. [The] slogan was ‘dry up the people from the enemy.’” Mr. Heder confirmed that he had heard this “slogan” many times before from people he had interviewed.

Finally, the witness confirmed that in a meeting with Ieng Sary, he had been told that the decision to evacuate Phnom Penh was made in late 1974, which Mr. Sary stated he knew from a conversation he had with Pol Pot. Mr. Heder recalled that this was an accurate portrayal of this

interview, which had taken place after Ieng Sary had led a breakaway group of Khmer Rouge to join the government.

At this point, the court adjourned until 9 a.m. on Thursday July 11, when the court will continue to hear Mr. Heder's examination by the prosecution.