



Stephen Heder's Testimony Continues

By Simon Crowther, LL.M. (International Human Rights) 2013,
Northwestern University School of Law¹

On Monday, July 15, 2013, the Extraordinary Chambers in the Courts of Cambodia continued to hear the testimony of Stephen Heder with the Prosecution concluding their examination and the civil parties commencing theirs. At the end of the day, the court also considered a motion of the Nuon Chea defense team regarding an email from one of the directors of *Enemies of the People*, which had served as the stimulus for a request to adjourn Mr. Heder's testimony during the previous week.

Prosecution Continues to Examine Mr. Heder

For the prosecution, Senior Assistant Prosecutor Keith Raynor began by discussing an interview Mr. Heder conducted with Ieng Sary on 4th January 1999. Mr. Heder confirmed that he took shorthand notes of that interview contemporaneously. "Khieu Samphan became a central committee member in 1976," Ieng Sary had claimed, though prior to this appointment he had *de facto* involvement in the committee. As the chair of Committee 870, removals and transfers of cadres would cross Khieu Samphan's desk, Ieng Sary had said; he would know that "such and such" was being sent to the *Chamkar*. The witness stated that a *Chamkar* meant an agricultural field that was not being used for rice production.

Mr. Heder also explained that the connotation of the word "removals" was dependent on context and had been deliberately left ambiguous; it could mean, *inter alia*, removal from a post or arrest. He testified that there was "no doubt" in Mr. Sary's tone when he said that Khieu Samphan was chair of the 870 Committee.

Subsequently the prosecution turned to document E190/1/72², an interview with a cadre called Vann Rith. Mr. Heder explained that he "door-stepped" Mr. Rith, simply turning up at his place

¹ 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>.

² All ERN document numbers listed in this report refer to the English documents only.

of residence and asking to speak to him. Mr. Rith had confirmed that Khieu Samphan was the chair of the 870 Committee, succeeding a man by the name of Doeun.

Mr. Heder went on to say that he thought it was “possible” in the Documentary Center of Cambodia interviews that he had seen evidence of Khieu Samphan and Mr. Rith communicating over matters of industry.

Extracts of Mr. Heder’s book *Seven Candidates for Prosecution* were read to the court by Mr. Raynor, in which the witness had written that it was in Khieu Samphan’s capacity as chair of Committee 870 that the accused had been present at a secret meeting in 1970 when Pol Pot and others made a decision to execute key leaders. In substantiating this statement Mr. Heder had referenced E3/1915, a document by journalist Nate Thayer, who had worked in Bangkok and Phnom Penh and interviewed Duch in early 1999.

On page 65 of *Seven Candidates* (E3/48) Mr. Heder had written how reports had been authored the party leadership. These reports were sometimes addressed specifically to Pol Pot, but more often to “Brother” or “the organization.” They were routinely sent to a list of people that included Nuon Chea and often had handwritten notes so that they would be copied to the Standing Committee, according to the book. Before the Chamber, Mr. Heder testified that he had seen approximately “a dozen or two” of such documents.

The next document examined by the court was E3/724, an issue of *Revolutionary Youth* magazine from July 1975, and E3/731, a *Revolutionary Flag* special issue from December 1975 to January 1976. Mr. Heder had provided to the court copies of some of these magazines. He told the court that he had first come across them in 1980 or possibly 1979. He had first seen a collection of such magazines in 1980. The witness was almost certain that the editions provided to the court had been from such a collection, which had been duplicates of the editions at the S21 Genocide Museum.

Victor Koppe, Co-Lawyer for Nuon Chea, remarked to the Chamber that Mr. Heder was being shown a color copy of the magazine. As these magazines were an issue of contention, he wished for his client to be afforded the same privilege. In response Mr. Raynor agreed for Nuon Chea to be shown a color copy and asked for the document to be shown on the court’s monitors.

The witness was shown various pages of the documents, all of which had handwritten notes upon them.³ He confirmed that he was responsible for each of the annotations on these pages, and that he had supplied the hardcopy versions of these issues to the court.

Next, a copy of the January 1976 issue of the *Revolutionary Flag* magazine was read to the court,⁴ which covered the Khmer Rouge’s policy of “attacking the enemy politically.” The extract congratulated the revolution on successfully “fighting to seize the people” in a way that previous global revolutions had failed to achieve. This fighting to seize the people was claimed to be a decisive factor in the Khmer Rouge’s victory. The people had been “dried up” from the enemy, which had deprived them of their economic and political strength. Examples were then given of this tactic having proven instrumental in victories over Udong and Bannan.

³ *Inter alia*, E3/724, E169/4/1.1.2

⁴ E3/25 and E00063039

Mr. Heder was asked about other references to “seizing” the people or “pulling out” the people. While he was unaware of other evidence of people being “dried up” from Bannan, the witness did elaborate on the use of the Khmer word for “seize,” giving the example of children fighting over a piece of candy. He suggested that the word seize would be used to describe actions of the child who had taken the candy.

Continuing on the subject of the Khmer Rouge’s military tactics, a report headed “Subject: The meeting to celebrate the 23rd anniversary meeting” was read to the court.⁵ This meeting was ostensibly held to celebrate 23 years of struggle against the enemy; however the witness explained to the court that in actual fact this was based on a fabricated date in 1951 at which it was claimed that the Communist Party of Kampuchea (CPK) was formed.

Within the document the Khmer Rouge’s military strategy was said to have first involved attacks in the countryside. It had then moved on to surrounding the cities. This was a success, according to the document. Mr. Heder was able to tell the court that this kind of formulation was classic in Chinese communist thought; however he could not recall another instance of it appearing in a CPK document.

Moving on, a Foreign Broadcast Information Service (FBIS) document from April 1975 was read to the court, in which Khieu Samphan made a victory address, allegedly stating, “This is our nation and people’s greatest historic victory. Our entire nation and people, and people around the world warmly welcome this victory.” The Khmer Rouge had successfully fought the enemy on every field, military and economic, it was stated. Further, there had been successful attempts to “drain” the people from the enemy, depriving it of its economic and military strength. Ultimately, the enemy had “died in agony,” the address concluded.

The witness told the court that he had probably seen this speech at the U.S. embassy in Bangkok in April 1975.

On a slight tangent, the witness was asked about his movements from April 11, 1975, to the end of that year. Mr. Heder explained that he had flown out of Phnom Penh to Bangkok on the morning of April 1975. In Thailand he had traveled to the border with Cambodia arriving around April 17, where he had then interviewed those who had fled Cambodia. Subsequently Mr. Heder had gone to Laos where he had also interviewed people leaving Cambodia over the border with Laos. Following a brief period in Taiwan, he had then traveled to Cornell University in New York in September 1975.

From Cornell, Mr. Heder said, he had continued to access information about Democratic Kampuchea (DK); however he had faced great difficulty in doing so. He had access to the yellow daily report from FBIS as well as to a newspaper clipping service at the Cornell Library. In addition, he had contact with some journalist friends in Bangkok who continued to cover the country. Government officials in the United States provided Mr. Heder with some information, as did Marxist-Leninist journalists, who were able to travel to DK. In late 1978, Mr. Heder made direct contact with DK government officials, including Ieng Sary, who visited the United Nations in New York City. Through this contact, Mr. Heder arranged a trip to DK for early 1979; however the Vietnamese invasion made this untenable.

⁵ E3/1108.

Returning to the presentation of documents, Mr. Raynor presented to the witness a “Nouvelles du Cambodge” publication from late March 1974, which contained a message from Norodom Sihanouk congratulating Khieu Samphan on a friendly visit to Vietnam. The witness was asked whether he was aware of this visit at the time. Mr. Heder informed the court that it had come to his attention through the FBIS reports when he was in Phnom Penh.

Also within that document it was claimed that “the Phnom Penh traitors” were in total disarray, cornered on all fronts. The extract went on to discuss incidents at the Koh Dach Island on the Mei Kong River. This Mr. Heder could not recall. Going on, the Khmer Rouge victory over Udong was described as having led to the enemy troops being “desecrated.” Asked to elaborate on this event, the witness could not provide an estimate as to how many troops had been present there. He informed the court that it was not uncommon for the reports of such victories to be exaggerated and at times completely made up.

On the subject of detention camps, the witness testified that there were prisons and *ad hoc* detention facilities in existence in Cambodia in 1975, the latter being relatively rare.

Another extract of “Nouvelles du Cambodge” that dealt with a speech by Khieu Samphan in North Korea was read to the Court.⁶ The Khmer Rouge were said to be solidly lodged at the gates of Phnom Penh. Udong was said to have been liberated through the annihilating of 5,000 enemies there. Mr. Heder told the chamber that he was sure he would have read about the taking of Udong from the FBIS reports, which he had been reading at the time.

Staying on this theme, Mr. Raynor turned to the epilogue of Ben Kiernan’s book *How Pol Pot Came to Power*. In that text it was written how, in June 1974, the Central Committee met and decided to launch a decisive offensive to liberate the entire country. The witness told the court that he had heard references to such a meeting in 1974.

An extract of a CPK document was then read; the document boasted about the isolation of the enemy through the severance of their lines of communication. It was said that in the beginning “we” aimed at the enemy’s positions in the countryside. Later the enemy was isolated, with population centers circled. Communications and supplies became more difficult for the enemy. “When the lines of communication on the ground and river were cut in 1974, the American imperialists and the Lon Nol found themselves isolated,” the document stated. “It was during this situation when our party’s Central Committee resolved to mount the decisive offensive to liberate Phnom Penh and the entire country.”

Mr. Heder told the court that this quote actually said “party center” throughout, rather than referring to a party central committee. The witness further confirmed that he had said in his previous testimony that it was in January 1976 that Khieu Samphan became a full member of the committee.

Turning to a *New York Times* report from July 9, 1982, Mr. Raynor read how Khieu Samphan had allegedly acknowledged that a collective decision had led to the evacuation of the people from the cities and that he himself had been involved. Asked whether he had come across similar evidence or witness testimony, Mr. Heder was unable to assist the court.

⁶ ERN00280586

The next two documents brought to the court's attention were authored by Amnesty International. The first was a letter from AI to Khieu Samphan raising concerns about people being handed back from Thailand to the DK regime. The second was a press release of May 8, 1977, in which the international human rights organization raised concerns about the DK's failure to respond to its prior appeals. It had appealed to Khieu Samphan to look into the fate of 26 returnees from Thailand, who had mainly been farmers. Concerns were raised that these individuals had been executed by the Khmer Rouge regime. The witness was not aware of any response to these concerns given by the regime.

Additionally, Mr. Heder said, during the time he was in New York with Ieng Sary, he had not heard of any reference to a response being made to accusations of atrocities in DK. There was a public document given by Ieng Sary to the UN, which had characterized accusations as being propaganda.

Mr. Heder was then asked about the humanitarian situation in Phnom Penh when he had been there in 1974. He told the court that the population had been increasing and shelling was continuous from the dry season in 1974 to 1975. There was a lull in fighting in the latter half of 1974, notwithstanding the artillery fire, he recalled. While this was taken by some to mean that the Khmer Rouge were weakening, he stated, the Japanese military attaché, whom Mr. Heder had formerly testified would provide him with information, believed that the Khmer Rouge were amassing troops for a large-scale attack.

During this period a student leader called Ping in Phnom Penh had told Mr. Heder that there was no need to worry about the situation in Phnom Penh after the Khmer Rouge took control, as the people would be in the fields and not in the city. With the benefit of hindsight Mr. Heder now regarded this as being a potential scoop; however at the time he had been unaware of its significance.

From discussions with various military attachés, Mr. Heder had become aware that the use of the Mei Kong River was crucial for the supply of armaments and supplies to Phnom Penh. As such it was significant when mines were laid by East Zone and Special Zone Divisions, halting the boat traffic on the river, he said. The witness conceded that he had not seen the mines himself; however he did say he had heard about them from attachés. In addition, he recalled, the Khmer Rouge propaganda photos showed boats that had been hit by recoilless rifles.

Continuing, Mr. Heder recounted that the so-called "air bridge" that followed the mining of the river and involved the United States dropping supplies by air ended days or weeks before April 11, 1975, which was when the United States removed its personnel from Cambodia.

The refugees Mr. Heder had encountered on the Thai border had been fleeing fighting and the advance of the Khmer Rouge troops. He had heard of mass executions of civilians by the Khmer Rouge soldiers; however at the time it had been difficult to confirm these.

In this interview with Ieng Sary, Mr. Heder had written that there was no plan to commit genocide; however, he claimed, one had occurred due to four policies: The forced "proletariatization" of the people; the "Khmerization" by force and at speed; the consideration of anyone who opposed the revolution or failed to carry out these plans as a traitor or enemy of the party; and the discretion of the secret services to arrest, torture and kill anyone accused of being

an enemy or a traitor. This power to arrest, torture and kill existed from the center right down to the zones and co-operatives, the interview claimed, and the use of torture multiplied the number of enemies as people gave false confessions.

Mr. Heder was asked if this was a question that he had preconceived, or if instead he had asked it off the cuff. Before he could answer, Anta Guissé, Co-Lawyer for Khieu Samphan, objected as she saw this question as straying into characterizing genocide, which was out of the scope of the current trial.

In response Mr. Raynor dryly promised that he would not use the word genocide again in his examination. However, Judge Jean-Marc Lavergne announced for the bench that the question related to the witness's preparation for the question he had asked Ieng Sary, and so was appropriate.

Ultimately, it was determined that Mr. Heder believed he had written out extensive talking points. His intent in using the word "genocide" was to provoke Ieng Sary, who had answered, "I also see things that way." Going on, Ieng Sary had said, "The acts committed were abhorrent, and once they were in motion, they caused great suffering to the nation. These are my views on your view." He went on to say that as the revolution was beset by complications, the number said to have been enemies increased.

Mr. Heder had also asked Ieng Sary when the decisions to "do things in this manner" had taken place, to which Ieng Sary had said it was right after victory and that in late 1975, it was stipulated that it was imperative to carry out a fast communication. Virtually all of the Standing Committee, including Nuon Chea, Pol Pot, and Khieu Samphan, had been present when this decision was made, Ieng Sary claimed.

Moving to his final subject, Mr. Raynor asked for a speculation-free answer on the subsequent transfer of people to the Northwest region, not including the April 1975 evacuation. The witness told the court that there were frequent references in the "mortality survey" interviews he had conducted to people being forced to move even after April 1975. Some were prepared to leave, he said, whereas others did not wish to abandon their paddy, which was ready to be harvested. Those that did not want to go were told that they had to, he stated, contending that the overwhelming did as they were told, having already realized that disobeying would put them at risk of detention or execution.

Civil Parties Examine Mr. Heder

Elisabeth Simonneau Fort, Lead Co-Lawyer for the Civil Parties, proceeded to examine Mr. Heder. The first topic she wished to discuss was the period between 1973 and April 1975, a period in which the witness had said he was in Phnom Penh. She enquired what the witness had heard about life in the liberated zones from refugees fleeing into the city. Mr. Heder explained that he had heard general accounts of what had occurred in the zones, including problems with rice production and execution; however, as he had focused on Khmer Rouge structure and organization, he had not covered the human angle closely. With the benefit of hindsight he should have done more on conditions, he said. Beyond Udong and Kampong Cham, the witness said he had also spent time in Battambang; however this was not especially near the liberated zones.

As with previous witnesses, Ms. Simonneau Fort proceeded to read a number of quotes from civil parties to the witness and enquired as to whether he had heard similar evidence, which might corroborate them.

The first such account was from a refugee who was interviewed by Mr. Heder and had possibly been a member of the CPK.⁷ “I have the impression that the evacuation plan of Phnom Penh was part of a general policy which was around for a while,” he had claimed, characterizing population as a workforce that could be used to beat the enemy. The witness confirmed this account as being accurate.

Mr. Heder explained that, during his time interviewing evacuees who were seeking refuge over the Thai borders, he had spoken to many people from Siem Reap and Battambang, who spoke about executions of senior military and civilian personnel, as well as a threat of bombing from remnants of the Khmer Republic’s air force. Evacuees had left their homes under strict orders from the Khmer Rouge, he contended.

The witness could not recall anyone discussing killings resulting from refusal to leave; however he had heard accounts of people being forced to leave at gunpoint. Asked specifically why people had sought refuge outside of Cambodia, he stated that many had been of the upper strata of the former regimes, and so would have been at risk in DK. Word was being spread about executions under the pretense of being taken to meet Sihanouk or returned to their old posts, Mr. Heder stated.

Ms. Simonneau Fort read another civil party account, in which it was said:

When Angkar asked us to prepare our possessions, we did so; we were ready to leave our house with a few bags and salt. We started leaving. On that day the roads were full of people leaving in all directions, old and young women and men. . . . Young children were crying because they had lost their parents. . . . My family members walked for seven days. When we arrived, we saw the bodies of former soldiers.⁸

Mr. Heder confirmed that this was the kind of account he had heard from evacuees.

The next civil party account discussed people being evacuated from the Russian Hospital in Phnom Penh, some of who still had drips in their arms. Asked if the Khmer Rouge provided food, medicine, or shelter, the civil party had answered in the negative. Mr. Heder confirmed to the chamber that again this account resembled many of the accounts he had heard. That said, he had heard of other accounts with better provision of food and transport. Reclining in his seat and swinging slowly from side to side, Mr. Heder went on to discuss – unprompted - different conditions in different areas of the country.

After Mr. Heder completed this explanation, another extract on forced transfer was read to the court, in which it was said, “When I got to the market I saw two or three people who had been shot. . . . We were blocked off by the Khmer Rouge with firearms. I saw them end the lives of two or three people by shooting them, doubtless, people who had owned houses and refused to

⁷ E3/1740

⁸ T22/306’s statement ERN00864058

leave them.” An announcement by the Khmer Rouge had claimed that people only had to leave for three days and would then be allowed to return, the civil party had stated.

Mr. Heder was asked specifically if he had heard such accounts. He recalled that he had heard of people being shot in Battambang and heard of people being tricked into leaving, but he had never heard of a three-day time limit.

Turning to another account, Ms. Simonneau Fort read how Mrs. Put Dina, a civil party, described being told on a loudspeaker that she had to register with the CPK. Her husband had wanted to register, but she had not let him. Once they arrived they registered and were characterized as “17 April people.” As a result of that registration they were not allowed to settle but had to walk on for a significantly longer period.

Such accounts were close to universal, according to Mr. Heder.

At this stage Mr. Koppe objected to the way the questions were being phrased. They were not drawn upon the witness’s own work, he argued, but rather Mr. Heder was being confronted with the testimony of others and was being led. Ms. Simonneau Fort replied that she had been using this methodology for over 18 months. The president did not sustain the objection, and she was able to continue.

Coming back to the “new people,” Ms. Fort wished to know what the witness had heard about their treatment. Mr. Heder said he had spoken to many people who were categorized as new people and that there were variations in their treatment.

As read by the civil party counsel, one civil party named Mr. Affongo, when asked about the differentiation in treatment between new and old people, had said:

It was very obvious, for example, with the distribution of rice. We had one portion, and they had two. Their women did not have to work and were able to give birth. They had meat and fish, and we had only salt with our rice. Other than our ladle of rice, we ate frogs, crickets, and scorpions. We were turned into animals fighting over food.

Asked about the frequency that he had heard of such accounts, Mr. Heder replied awkwardly that he had come across “somewhere between some and many.”

Moving on, Ms. Simonneau Fort returned to the subject of petty theft, which was discussed by the prosecution on a prior day. She read an extract from civil one party that said, “As for the other Khmers, I saw the Khmer Rouge taking them away without mercy for taking palm leaf or a piece of rice. These people were executed, tortured, or beaten to death.” Two children of this civil party were executed for this reason.⁹ Similarly, an account was given of children being killed for taking kindling that was already cut when they had been told to gather wood and cut it themselves.

Consequently, the conditions of those subject to forced evacuation was revisited. The witness testified that evacuation had occurred by boat, bus, and train in crowded conditions. People had

⁹ D22/765

arrived weaker, sicker, and hungrier that they had started out, he said, noting that military guard was common.

Two further extracts of civil party witness statements were read to the court, in which the parties discussed cramped conditions on trains, trucks, and boats. Difficult conditions were described, and Mr. Heder testified that he had heard many such descriptions.

On the topic of language, Mr. Heder had previously testified that he was fluent in Khmer. Ms. Simonneau Fort enquired as to whether a particular vocabulary was used by the Khmer Rouge leaders. The witness explained that there was a political dialect used under the Khmer Rouge, giving the example of a specific word used for “production.” This dialect was used by cadres and by civilians alike, he recounted. As the witness was asked whether it appeared in documents, Mr. Koppe successfully objected on the grounds that such was a question for an expert and not Mr. Heder, who was appearing as a witness.

The examination was handed over to Chet Vanly, Civil Party co-lawyer, who discussed the prohibition of markets with Mr. Heder. This had taken place in early 1973, the witness explained, at which time currency had also been prohibited in the liberated zones.

Changing topic, Ms. Vanly asked about the treatment of the Muslim Cham minority. Mr. Heder was aware of the mistreatment of Cham, which he said increased in severity from 1975 through to 1978. Elaborating on the mistreatment faced by the Cham people, Mr. Heder described the discouragement of religious practice and the dispersal of the Cham population. He mentioned that many of the anti-Islam policies were actually initiated by Cham cadres themselves.

After the civil party lawyer asked about the impact on the population of these policies, Mr. Kong Sam Onn successfully objected on the ground that this was a question for an expert witness.

Asked about communication between the party center and the districts, Mr. Heder described telegraphic communication, written communication, reports, and meetings as being the primary methods used. This concluded the civil parties’ examination of Mr. Heder.

Motion Discussed

Rather than handing over to the defense counsel for cross-examination, Trial Chamber President Nil Nonn invited the parties to the proceedings to make submissions on the motion of Nuon Chea’s defense that additional evidence be admitted and the court hear testimony from witness TCW382.¹⁰

Ms. Guissé was first to address the court on this matter. She spoke in support of the Nuon Chea defense team’s motion as, since the beginning of the document hearing, the Khieu Samphan Defense Team had argued that it was not possible to watch the entirety of a film and the excerpts that had been cut would therefore not be before the court. Exculpatory evidence to Nuon Chea would be exculpatory to Khieu Samphan, she argued. The introduction of any new evidence from TCW382, who was one of the filmmakers behind the *Enemies of the People* film, would be highly relevant and necessary for a fair trial of the accused, she concluded.

¹⁰ Reference was at times made to TCW882; however it is believed that this was an incorrect citation of the witness’s identification number.

For the prosecution, Tarik Abdulhak, Senior Assistant Prosecutor, addressed the court. He clarified that there were three elements of the Nuon Chea Defense's motion: first, for an email from TCW382 to be admitted into evidence; second, for an investigation to be undertaken into the existence of exculpatory evidence in the hands of TCW382; and third, for TCW382 to be called as a witness.

The prosecution opposed the email being admitted and the individual being summoned. The third request they agreed with in part, with certain caveats. Mr. Abdulhak explained.

By way of introduction, Mr. Abdulhak said that the prosecution was surprised to see this apparently unsolicited communication from an individual who had in the past refused to cooperate with the court. Further, the individual could have contacted the court rather than Nuon Chea's counsel, he stated, contending that this method would have been a more appropriate avenue to air their concerns. In the prosecution's submission, he stated, TCW382 had little to offer the court, and it was pertinent to look at the role he had in producing the film, which the prosecution argued was primarily post-production. While he was a talented filmmaker, Mr. Abdulhak asserted, he is not an expert on the CPK leadership.

The prosecutor explained that the Office of the Co-Prosecutors had sent round three documents to the parties to the proceedings over the weekend. In Document 1, TCW382 is asked what TCQ720 achieved in making the *Enemies of the People* film, to which he replied, "He has achieved a much greater understanding of the Khmer Rouge regime than was ever gathered before." Mr. Abdulhak found this response highly objectionable, as he claimed it showed that TCW382 was apparently unaware of hundreds of statements and extensive research by the likes of Mr. Heder, Philip Short, David Chandler, and Ben Kiernan.

Further, Mr. Abdulhak asserted, there are misrepresentations in TCW382's email that go to his credibility. For instance, the prosecutor read, in paragraph 2, TCW382 suggests Nuon Chea "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."

The prosecutor countered that, in the DVD of the film itself, Nuon Chea said at 22 minutes that top officials "were to be liquidated; they deserved the highest penalty." Juxtaposing these two statements, TCW382 is providing "a view more exculpatory than Nuon Chea himself" and was therefore wrong about his own DVD, Mr. Abdulhak claimed.

Further, the prosecutor continued, the individual had not been present when the interviews of Nuon Chea were conducted and so could offer little to the court. Citing an interview with Radio Prague, Mr. Abdulhak stated that TCW382 himself makes this clear, explaining that only TCW720, who completed the interviews, could elicit the trust of the interviewees.

Turning to his second document -- an interview of TCW 382 with *The Independent*, Mr. Abdulhak argued that the document showed TCW382 sees the tribunal as being incompatible with the truth and reconciliation, which he supports. In the interview, TCW382 confirmed that TCW720 had obtained the interviews with Nuon Chea through an understanding that the material would not be used against him and that, if he gave the material to the court, he would be betraying Nuon Chea.

Mr. Abdulhak concluded that the email is unsuitable and does not do what it purports to do. Nuon Chea can speak for himself, the prosecutor asserted, arguing that it would be improper to introduce the email if the footage is not admitted to back it up.

As to the summoning of TCW382 as a witness, the prosecutor reiterated the OCP's opposition as he has no knowledge of relevant facts.

However, Mr. Abdulhak did state that the prosecution would support to some degree the final Nuon Chea request for an investigation. The OCP supported reasonable requests for information, he said, which would have to be raw material from the filming and the manuscript of Nuon Chea's book. However, he continued, the prosecution saw it as likely that a request would be met with silence or refusal from TCW382, given how unhelpful he had been in the past.

For the Civil Parties, Pich Ang, Co-Lead Lawyer, told the court that Ms. Simonneau Fort had made their position clear in the previous hearing. He stressed that TCW382 was not an expert and it would be inappropriate to treat him as one.

Ms. Simonneau Fort then argued that from a "juridical" point of view, if the court did not admit the email from TCW382¹¹ to Mr. Koppe into evidence, which it should not, then neither should it accept the other requests of the Nuon Chea defense team. The email is not in any way likely to do what it is purported to do, she claimed. Further, she questioned, if Nuon Chea does not say in the DVD what it is claimed he says, why has he not objected in the last year and a half that it has been used in evidence?

After the Civil Parties had concluded, Mr. Koppe rose to his feet and explained that he had "heard so much nonsense that I would really like to reply," also apologizing directly to Judge Sylvia Cartwright that "I couldn't help myself." The president allowed Mr. Koppe a brief reply in the circumstances, despite noting that this was not the convention for such applications.

First, Mr. Koppe argued that TCW382 (whom he also referred to by name) had not claimed to be an expert but rather someone wanting to set the record straight after reading an account of the court's proceedings.

Secondly, he stressed that the film was very important and had been used before the court frequently. As such, he asserted, it is important that the filmmaker be allowed to testify, especially if he can point to evidence that shows that Nuon Chea was not responsible for the events at Tuol Po Chrey.

If Nuon Chea has no problem with this footage being presented, Mr. Koppe continued, then there is no hurdle to placing the evidence before the court, as the pact between Mr. Chea and the filmmakers will not be violated. Just because it is the end phase of the trial does not mean that this evidence should not be taken seriously, Mr. Koppe stressed. "We are looking for the truth. Here is someone who claims he has seen hours and hours of footage on the areas which the court is examining. The film is clearly important; it has been shown over and over," he maintained.

¹¹ During her submission, Ms. Simonneau Fort referred to TCW382 numerous times as "Rob Lemkin."

Judge Cartwright then asked Mr. Koppe a couple of questions. First she wanted to know how the counsel knew that TCW382¹² would support the tribunal. Mr. Koppe believed this support was implicit from the email. Second, the judge wished to know if journalistic ethics would stop TCW382 from testifying. Mr. Koppe replied that with Nuon Chea's permission there should be no problem. However, when Judge Cartwright highlighted that he may have other sources to protect, Mr. Koppe had no clear reply, instead saying that it would be a matter for TCW382.

The court then adjourned. It shall reconvene on Tuesday July 16, 2013, to continue hearing the evidence of Mr. Heder. The president announced that a ruling on the Nuon Chea Defense Team's motion will follow in due course.

¹² Judge Cartwright also named TCW382 as "Rob Lemkin."