

**Nuon Chea Announces Decision on Responding to Questions,
as Stephen Heder Testimony Continues**

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On Wednesday, July 17, 2013, the Extraordinary Chambers in the Courts of Cambodia continued to hear the testimony of Stephen Heder, with counsel for Khieu Samphan examining the witness.

Before the floor was handed over to counsel, Mr. Heder himself addressed the court, offering to clarify the link between communist doctrine and the accused. He also offered to clarify the source of a footnote that had been an issue of contention on the prior day. Both these offers were turned down by Trial Chamber President Nil Nonn, who reminded the witness that he should only testify on the questions put to him by counsel. He also reminded the witness to be succinct in his answers.

At this juncture, and before the Khieu Samphan defense team started their examination, Keith Raynor, Senior Assistant Prosecutor, addressed the court to observe that some of the documents listed by the Khieu Samphan team were not in the revised annexes, where, he argued, they would need to be listed in order to be relied upon in court.

Anta Guissé, Co-Lawyer for Khieu Samphan replied that this remark was premature; however she noted that she would identify her documents for the court.

Khieu Samphan Defense Examine Mr. Heder

Ms. Guissé began her examination of the witness by emphasizing the need for a factual reply from the witness to all of her questions. The first topic she covered was the period from May 1973 to April 1975. Mr. Heder confirmed that when he arrived in Phnom Penh, there was still bombing being undertaken by the United States, until August 15, 1973. Mr. Heder was not himself in the proximity of bombing; however where he lived on the southwest outskirts of Phnom Penh, the sound and shockwaves were noticeable. He did not visit any of the areas that were being bombed, as these areas were controlled by the Khmer Rouge.

On a sidenote, Ms. Guissé informed the court that the two documents that the prosecutor had discussed earlier were contained in the prosecution's initial annex. Mr. Raynor replied that this was the wrong list and the documents needed to be on a revised list. This the defense counsel did not accept, stating that the documents already had an E3 number.

Returning to the witness, Ms. Guissé reminded Mr. Heder that on July 11 he had testified that he was able to get information from a Japanese military attaché. Mr. Heder was asked to confirm whether the Lon Nol regime had an air force. To this question Mr. Raynor objected on the grounds that it was repetitious.

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>.

Saying the objection was “fine,” Ms. Guissé asked the witness how he had found out about the Lon Nol air force. Mr. Heder had heard from officers of the air force itself, the U.S. Embassy, as well as the Japanese attaché. On the subject of the testimony of Sydney Schanberg, which had included an account of bombing on March 1, 1975, the witness was able to confirm that bombing had occurred on that day, primarily by T-28 Bombers.

During this exchange Mr. Raynor interjected, sarcastically claiming, “Sloppiness does not just affect one defense team; it is systemic” and that there was a need for counsel to provide a page number and ERN number. He accused the defense counsel of “imprecise advocacy.”

“Well, I see that the co-prosecutor is willing to object to all of my questions. If we must proceed this way, then we will,” Ms. Guissé countered. She maintained that she had already provided references.

Putting Mr. Raynor in his place, the president remarked that the prosecution had taken the floor many times and needed to allow the defense to proceed.

Moving on, Ms. Guissé turned to an intelligence report that the witness had told the court about during his prior testimony, which had included an organizational chart of the Khmer Rouge. It was recounted that in at least some of that evidence Saloth Sar (Pol Pot) was at the top of the organizational charts. The witness could recall giving this testimony and recalled Saloth Sar named at the top of the chart. Mr. Heder remarked that Saloth Sar did not use an alias at this time; indeed, before April 1975, Mr. Heder had not heard the alias Pol Pot.

There had been discussions at that time about whether or not Pol Pot was the head of the Khmer Rouge movement, which resulted from speculation in the intelligence community that the “three ghosts,” including Khieu Samphan, were actually dead, the witness continued. Thus photographs presenting them as heads of the GRUNK (Royal Government of National Union of Kampuchea) and FUNK (National United Front of Kampuchea) were presumed to be fakes. There had then been speculation as to whether they held real power, as it was thought that there might be Vietnamese control of the Khmer Rouge movement.

Mr. Heder recounted that he had argued that the Vietnamese were not in control of the Khmer Rouge, though his news story on this issue never appeared because the CIA in Langley told his senior editors that he was wrong.

The witness recalled having conducted numerous interviews with Chhuon Praset, though none had occurred in 1978. He stated that he met Mr. Praset after the Democratic Kampuchea era. During one interview the witness had contemporaneously paraphrased what the interviewee had said, recording that Khieu Samphan was like a secretary to Nuon Chea.

Ms. Guissé asked the witness whether, when he worked at the Office of the Co-Investigating Judges, he ever heard of an interview record with Mr. Praset from 2009. The witness said he was aware of the document and was probably involved in helping to brief the investigators who had conducted the interview.

Document E3/96 was placed on the screen, which was an interview transcript of the interview conducted with Mr. Praset by the OCIJ. Mr. Raynor objected that this document had not been uploaded and the prosecution had no advanced notice of it. Apologizing for not having uploaded

the document, Ms. Guissé was able to successfully gain the courts permission to exhibit the document, as it had already been assigned an E3 number.

On the subject of Khieu Samphan, Mr. Praset told his interviewer that he was unsure if he had known him in France but had come across Khieu Samphan when he began to publish the *L'Observateur*, which Mr. Praset had written for on occasion. Khieu Samphan was described as having a reputation as a man of integrity.

It was recounted in that interview that Khieu Samphan had been Commander in Chief of the armed forces during the DK period, which was a bogus title because Pol Pot had the real military power. When Khieu Samphan went abroad on diplomatic delegations, it was Ieng Sary who had the real power even if Khieu Samphan was head of delegation, Mr. Praset had said.

Mr. Heder said he had seen this document but did not process or analysis it. The witness went on to say that the document's suggestion that Commander in Chief was a bogus title for Khieu Samphan was correct. He also had no further evidence to suggest that Khieu Samphan had been the personal secretary of Nuon Chea.

In his testimony of July 11, the witness had discussed radio broadcasts on the "Voice of the FUNK." From time to time these radio broadcasts were presented by Khieu Samphan; however most of the time it was an anonymous speaker who made addresses. Mr. Heder confirmed that in the Foreign Broadcast Information Service (FBIS) reports of such broadcasts, it was specified who was speaking. He could not recall instances of a speaker being introduced prior to their statement in a broadcast itself.

The witness was reminded that he had said that decision-making had not always been carried out in accordance with official procedure. He was then read a quote from *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes* in which in a chapter called "Pol Pot and Khieu Samphan," he had written, "In order to make the new people part of the state power, the local people were instructed to be open-minded to them and consider them in no case as prisoners of war."

"They had to improve the standards of living of the new people to make it clear that this revolution was theirs" had been cited as the official policy. Mr. Heder confirmed that he had made his own translations of quotes that he had incorporated into his text in order to summarize these policies.

The footnotes 31-41 of that text were discussed by Ms. Guissé, who presented each document cited in those notes to the witness, so that he could confirm they were the documents on the case file that he had relied upon. E3/216 was shown to the witness and he confirmed that this document from the Documentation Center of Cambodia (DC-CAM) or from Mr. David Chandler. In note 32 a document known as "Notes from Democratic Kampuchea" was referenced, which Mr. Heder told the court were the notes of cadres. Note 35 was a reference to a party document from the Tuol Sleng Genocide Museum.

In sum, the policies cited were found in instructions contained within documents of the Communist Party of Kampuchea and interviews the witness had conducted with refugees on the Thai border, Mr. Heder explained.

Following a brief morning break, Ms. Guissé explained she would be going through documents and discussing the differences between those purported by the leadership and those that were implemented.

The first such document was D224.77, which was an interview, dated October 14, 2005, that took place in Pursat province. In that document, it was stated, “In 1977, we had two crops per year having solved the water problem, and got two tons per hectare from the crops. The stipulation was two cans of rice per person, but the reality was one per day. The production was enough to eat, but too much was taken away.”

The District level, it was said, stipulated this ration. If people were overfed, then there would be sanctions; however underfeeding the population was permissible.

The witness confirmed he had written this account straight into his notebook, translating it on the go himself. In typing up his notes Mr. Heder would have added “articles” back into the text, such as “a,” “an,” and “the.” He stressed that he produced objective summaries rather than transcripts, and so his own questions would not be recorded.

On examination, the witness stated that while he had been given many accounts to support this view, he had also heard some that differed.

Proceeding, Ms. Guissé quoted an interview in which it was said, “In April 1975, the instructions were that the 17s and 18s should eat together; we should not work them harder than ourselves.”

Mr. Heder clarified that 18s referred to people who came under communist control on March 18, 1970, and 17s were those who came under the control of the Khmer Rouge on April 17, 1975. He stated that this was a common claim by a lower-level cadre.

A further interview with document number D224.31 was shown to the witness. The person being questioned, who was not revealed to the court, stated that the husband of her sister was arrested, as he had been an official of a public works. He was accused of being a “mooch.”

After a brief period of translation problems, the witness was asked if he had heard of other people being arrested because of problems with local authorities. This the witness said was commonly reported in the material which he had seen.

Turning to E3/1714 – the “famous interviews” conducted by Mr. Heder with refugees at the Thai border, Ms. Guissé read a quote from March 1980. In an account by a cadre who had been associated with the Ministry of Foreign Affairs, it was said that the upper levels of the leadership did not investigate the concrete situation on the ground but instead sat in their offices reading reports. At the lower levels it was said that cadre hid from them what was going on in the countryside.

Mr. Heder was asked if he heard similar accounts stating that the upper levels did not get all the information from the lower levels, which he confirmed was commonly stated by interviewees.

Next a document was read to the court, which Mr. Heder did not believe to be a common account. In ERN001730, it was said, “Each region held a congress to decide how much rice was to be grown in common. Another congress decided how much rice went to the center.” Such a

statement was rare, the witness asserted, in that it claimed that the center did not provide a quota. This he thought was possibly unique.

Contained within ERN00170714 was a quote claiming that it was district and sector secretaries who were responsible for killings, rather than Pol Pot. Mr. Heder saw such accounts as being widespread.

Similarly, ERN0017723 attributed extensive power to local leaders. This source was a person in the Southwest Zone, who was probably a member of the party. "In the Northwest the situation was very strange," he averred. "The system of cooperatives had not been put in place before 1976. People would sometimes shake in terror when the cadre came. I made them understand that the revolution had no more feudal relationships. The word feudal arose because some cadre acted like feudal lords."

Mr. Heder had heard accounts of people being in fear of cadre but had not heard them being compared to feudal lords before.

E3/198 was the next document tackled by Ms. Guissé. This was an "objective summary" of an interview with Khieu Samphan, stating, "According to him, in the Khmer Rouge regime, in each Zone the secretaries were like viceroys, managing the zone as they wished." The upper echelon had not been aware of many arrests, it had been claimed by Khieu Samphan. This interview had not been conducted or translated by him, the witness told the court.

Seeking clarification, Ms. Guissé was told that Mr. Sam carried out this interview. The translation looked to Mr. Heder like a court translation.

Document 00089756 was subsequently shown to Mr. Heder, which was an interview with an unnamed cadre reportedly conducted on September 22, 2005. The witness did interview this cadre; however he corrected that the date was actually in 1980, at a UN refugee camp on the Thai side of the border. In that interview it was said, "At 17 April celebrations, Pol Pot was always the speaker. Khieu Samphan was not even on the stage. The only time there were lots of people on the stage was in 1975; after that it would only be Ta Mok or Nuon Chea."

The Prosecution Makes Submissions on the Use of Witness Statements

Following the lunch recess, Mr. Raynor rose to address a matter of law. He argued that as both defense teams had now referred to statements from witnesses who had not testified, they could no longer maintain their stance opposing the prosecutor's application to admit statements in lieu of oral testimony.

In response Ms. Guissé asserted that it was essential to remember that it was never her intent to backtrack. Further, the examination of Mr. Heder could be distinguished from the proposition of the prosecution, as the statements were being used to elicit responses from a witness, not presented as evidence in their own right.

This examination technique was necessary, she maintained, where questions cannot be put to an expert. As such the chamber should not consider the documents as the answer, but rather Mr. Heder's responses.

Co-Counsel for Nuon Chea, Son Arun, was asked for the Nuon Chea team's response to the prosecution's submission. Instead of providing such a response, he stated that his client wished to address the court. Under pressure from the president, however, his colleague Victor Koppe replied that their response would be contained within a written submission.

Nuon Chea Addresses the Court

Nuon Chea appeared before the court via video-link. Unlike his other recent appearances, he was sitting down and not wearing sunglasses. Addressing the bench, he stated:

Good afternoon, your honors. I would like to make a brief notification to your honors. As I have always reiterated that this court has failed to respect principles of a fair and just trial, and through my observation, I observe that the treatment of the accused and of my defense team is getting worse. I therefore have no confidence in this court, and this is a similar position to Khieu Samphan.

The treatment by the court towards me is unbalanced as it seems to favor the prosecution. For example, recently my defense counsel was prohibited from asking substantive questions in order to defend my case. It is an example of injustice that my counsel is prohibited from performing his defense duty to his full capacity. This is a case of life and death for me; it is not just for an expeditious process to punish me.

With such lack of confidence and unbalanced treatment by the chamber, I would like to therefore notify that, in order to respond to the question put by the prosecution and Civil Parties, I decline to do so due to this nature of injustice by this very court.

Following this address, Tarik Abdulhak, Senior Assistant Prosecutor, rose to make the same argument that had been made regarding Khieu Samphan's refusal to testify but this time applied to Nuon Chea.

An accused who takes the stand waives his right to silence, the prosecutor maintained, and adverse inferences should now be drawn from their combined refusals to testify. As such, he wished to make an oral application that the motion they had filed with regard to Khieu Samphan also apply to Nuon Chea. In addition, he applied to the court for time in which the prosecution could address the court specifically on which adverse inferences they believed it should make.

Supporting the prosecution, the Civil Party lawyer rose to say they were flabbergasted and that the accused were trying to appear as victims.

Addressing the prosecution's application to address the court on the inferences it should draw, Ms. Guissé requested the court reject this application, as it would rather be properly placed within the closing statement.

Interestingly, Mr. Abdulhak's response was that this address would be for the benefit of the accused, as it would put them on notice of the areas their silence could lead to inferences on.

Judge Sylvia Cartwright responded to the submissions on behalf of the chamber. She held that the chamber would deal with matter of references to statements unsupported by oral evidence within the verdict.

Khieu Samphan Defense Continues Examination

Turning back to the examination at hand, Ms. Guissé quoted Document 19.71 to the witness, in which it was explained that “intellectuals” in Phnom Penh had no idea of the scale of starvation in the countryside. “In 1976 when we were eating gruel we thought that there may be shortages in the countryside, however we thought things improved in 1977; this is what the radio and magazines said.”

Mr. Heder said he was aware of non-party intellectuals in Phnom Penh who had said similar things to him. Others had told him that they were aware of what had happened in the countryside. Having heard an additional quote, he told the court that he had heard information that the creation of a false façade had occurred when people from the top arrived to visit certain rural areas.

Moving on to discuss the witness’s work with the court, Ms. Guissé established that the witness’s background in Khmer studies was significant in his being given a job at the ECCC. When he had interviewed people on behalf of the court, he had conducted interviews in Khmer, but in the company of a Cambodian co-investigator. He had enjoyed access to all documents with the exception of those that were marked “strictly confidential.”

E/31/69 1976 was next read to the court, which contained minutes from a Standing Committee meeting in February 1976. National defense matters were listed on the agenda, and it was said, “Comrade Khieu reported that since early February, Vietnam had acted on the border, entering and deploying two to three kilometers from the border inside our territory. When we gave chase, they withdrew. They said their central command had sent them.”

Mr. Heder was aware of such incursions from telegrams and reports originating from the east of Cambodia and from interviews he had conducted. Such incidents had occurred before April 1975 and through both 1976 and 1977.

The Defense continued after the break by discussing how the prosecutor had asked the witness if he had seen factual documents on the functioning of office 870. The witness had said yes, asking to see the documents again as the issue was contested. Mr. Heder was asked if he remembered saying this, to which he elaborated, explaining that it was unclear whether office 870 was a single entity or a number of offices.

The topic of office 870 was the subject of the next section of Ms. Guissé’s questioning. Mr. Heder had heard references to both office 870 and committee 870; however he could not think of an instance in which the term 870 committee was used in full. Rather, it was commonplace to see “Com. 870,” he said. The witness had heard the phrase before the existence of the court and during and after his time working at the ECCC.

Brother 870 was also a phrase that the witness had seen on internal CPK documents, both at DC-Cam and during his work at the court. An agenda was shown to the witness, which he confirmed he had seen before. On that agenda it was listed that Doeun was in charge of “political office 870.” Referring to the Khmer version, Mr. Heder said this could be a reference to Doeun being

the chair of the office or belonging to it. The witness refused to elaborate further as he said this would be within the realm of expert testimony.

The next segment of the cross-examination was devoted to the laborious presentation of documents to the witness so that he could test the accuracy of their translation. These included E3/235, which was the Summary of a Standing Committee Meeting from 1976, which referred to committees being established around “870.” Document E3/220 was another Standing Committee minute, which mentioned Doeun being transferred to the commerce committee for three months. One of the words in these documents of particular interest to Ms. Guissé was “Monty,” which was used to mean “office,” according to Mr. Heder. He went on to elaborate that the word could be both used as a plural or singular.

Continuing to question translations, Ms. Guissé showed to the witness three copies of E3/893, which was a telegram translated into English and French. Having examined all three copies, Mr. Heder declared that the English translation was more accurate than the French.

Finally, E3/902, another telegram, was read out, stating, “Dear beloved 870.” Mr. Heder translated the Khmer as saying, “Presented with respect to Com. 870.” It was ambiguous whether this was to a committee or individual, he commented.

The court adjourned until Thursday, July 18, 2013, when the Khieu Samphan’s defense team will be allowed a further one hour and 30 minutes to examine Mr. Heder.