



**Stephen Heder’s Testimony Concludes  
as Evidentiary Proceedings in Case 002/1 Draw Near to a Close**  
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In a half-day session on July 18, 2013, the Extraordinary Chambers in the Courts of Cambodia heard the final segment of the testimony of Stephen Heder.

The day began with a request directly from Mr. Heder asking the court if he could make a number of points on translation and terminology to the court. This request was granted, and before the examination had even begun the witness took the floor.

Mr. Heder stressed was that the world of code numbers and abbreviations on which he had been giving evidence was a part of a deliberate attempt by the Khmer Rouge to be opaque and obscure to people on the outside.

In translating such language, those working in intelligence and academia had conventions. The matters he had highlighted in his testimony, as mistakes in translations, were not translation errors as such, but a failure in convention on the part of the translator.

Khieu Samphan’s Defense Continue Examination of Mr. Heder

This initial focus on translation continued as Anta Guissé, Co-Lawyer for Khieu Samphan, picked up her questioning of the witness with an examination of interpretation and translation issues. She started by requesting the witness say “Central Committee” in Khmer, providing both a long and short version of the phrase. Mr. Heder highlighted how, when the term was shortened, it became more ambiguous, and could mean one of the members of the committee, its head, or the committee as a whole.

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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>.

In the hearing of July 15, Ms. Guissé noted, the co-prosecutor had referred to Mr. Heder's book *Seven Candidates for Prosecution*. In that text Mr. Heder had written how reports were sometimes addressed specifically to Pol Pot, either by alias code 009 or to "Brother," or to the Central Committee by its designation 870. This assertion, the witness told the court, was based on research he had conducted in the late 1990s that involved the examination of documents he received from David Chandler and the Documentation Center of Cambodia (DC-Cam).<sup>2</sup> Since having written that piece, Mr. Heder said, his assessment has changed and he would not stick by this extract in relation to "870," as he now saw this as a level rather than a specific institution. The witness would now compare a reference to office 870 as being comparable to a reference to the institution of "Washington."

While working at the ECCC, Mr. Heder continued, he had seen the transcripts of the interviews between Khieu Samphan and the Office of the Co-Investigating Judges (OCIJ), in which it was stated, "The organization 870 referred to the party, which meant Pol Pot. Pol Pot signed documents with 870 or 87. As for working group 870, it was one of the offices of 870." The witness had seen no piece of paper that defined these codes, however. To his knowledge, "87" was only used after January 1979. He noted that "working group 870" was a phrase from the testimony of Duch, which Mr. Heder had not seen elsewhere. The witness reiterated that such codes were intentionally ambiguous and context dependent.

Turning to Mr. Heder's 1996 interview with Ieng Sary, the defense counsel asked the witness to confirm some of the terminology he used in it. The French to English interpretation was particularly difficult to follow during the day's proceedings, perhaps in part because Ms. Guissé was pushing to include as much material as possible into her tight time allocation. The interpreted interview segment that Mr. Heder was asked to consider appeared to involve Ieng Sary's claim that Khieu Samphan and Nuon Chea were in charge of education, and that Khieu Samphan was an "Office Chairman" on the industry side, with Lim being the "Office Chairman" on the political side. In control of both was Paun, who was eventually purged and replaced by Lim.

On examination, Mr. Heder testified that the term "Monty" was mentioned in the passage, which indicated that an industry office was being discussed. The witness was asked which office was under consideration and in which era. He confirmed that the term "Monty" was used throughout the Khmer Rouge period, so was not indicative of a specific time.

In the context of what he had been told by others, Mr. Heder was aware that Paun was chair of office S271. This institution oversaw other offices with the initial "K." Lim was also referred to as Lin and took over as chair of 870 administrative offices, *alias* S71, around the middle of 1978, he said.

The witness confirmed that the word "Monty" had also been used to refer to the industry office. Differentiating between 870 and S71, Mr. Heder elaborated that the term 870 was used to signify the broad upper echelons of the party, whereas S71 was seen as the office of administration. It was in the Chinese model known as the "general office of the party," he explained, noting that

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

interviewees often made no distinction between the two and ambiguity as to the exact reference was widespread.

Ms. Guissé read from an OCIJ interview with Khieu Samphan in which he was asked to describe Office 870. “It was an office of the Standing Committee made up with Doeun and myself,” Mr. Samphan had said, going on to recount that Doeun was in charge of politics while he was in charge of the production of a “price table” for the communes.

Mr. Heder was sure that S71 was never referred to as the political office of 870. However, he again noted that intentional obscuration had made it difficult to ascertain who was in charge of the office. This confusion phenomenon was systemic, he said. Based on the facts he had gathered, the S71 office was physically located “wherever Paun wanted it to be on that particular day,” though it had numerous field offices, including in K7 on the waterfront in Phnom Penh.<sup>3</sup>

Paun and Pol Pot had been very close, according to Mr. Heder. It was seen by many as impossible that Paun could be a traitor, and so there was widespread shock when Pol Pot had him arrested, the witness said.

Moving on, Ms. Guissé asked about the context in which Ieng Sary was interviewed in 1996. The witness recounted that, at that time, Mr. Sary’s political position had been as formal head of the Democratic National Union Movement, which was an organization of those who had broken from the Khmer Rouge in the second half of 1996.

A document entitled “The Truth on the Dictatorial Pol Pot Regime” was shown to the witness, and Mr. Heder confirmed that he had read it before his interview with Ieng Sary. Thus at the time the witness had interviewed Ieng Sary he was aware of the split in the Khmer Rouge, so what was said would be in the “framework” of that split, Mr. Heder acknowledged.

Referring first to Mr. Heder’s previous testimony that footnote 361 in *Seven Candidates* came from a source from Nate Thayer, Ms. Guissé showed an article titled “Death in Detail” by Mr. Thayer to the witness. Mr. Heder confirmed this article as the source for the footnote, which had said that Duch claimed Khieu Samphan attended a secret meeting with Pol Pot where he took notes. Mr. Heder was unable to confirm either way whether this was the only document that suggested such a role for Khieu Samphan.

Briefly Mr. Heder confirmed that when he interviewed Khieu Samphan on August 4, 1980, the accused’s official position had been Prime Minister of the Democratic Kampuchea government.

The next document considered before the court was a 2009 letter to the OCIJ from the witness.<sup>4</sup> In that letter it was written that attached was an account of a press conference held by Khieu Samphan, which had been held while Mr. Heder was a researcher and contract analyst for the U.S. State Department. This press conference had occurred during a visit at the behest of the DK authorities.

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<sup>3</sup> This, Mr. Heder added, was where the restaurant Tapas used to be.

<sup>4</sup> ERN00417794

During the visit Khieu Samphan made a press statement and was available for interview. In addition to the formal interview, Mr. Heder had also encountered the accused at meals and during informal interviews. Mr. Heder agreed with the defense counsel that there was a willingness on the part of the Khmer Rouge government to provide information at this event, as they had invited the journalists and Mr. Heder.

When Mr. Heder had met with Khieu Samphan on that occasion, it had been the first time he had interviewed Mr. Samphan and was able to confirm to the court that up until that time he had no ties with the accused whatsoever. He had introduced himself as a research fellow and not discussed his funding from the U.S. State Department, the witness explained.

After an objection and clearly running out of time, Ms. Guissé turned to the prior testimony of the witness, specifically a claim that it was of utility to examine a 1987 document, published with the authority of Khieu Samphan and entitled “The Truth and Justice Regarding the Massacres of Democratic Kampuchea.”<sup>5</sup>

Ms. Guissé questioned whether it was claimed that this document was written with Khieu Samphan’s authority simply because it was labeled with “Deputy President in Charge of Foreign Affairs.” This the witness confirmed, as he had no indication as to who had actually authored the document.

Prior to the break, and after an application of Ms. Guissé for extra time, Judge Sylvia Cartwright provided clarification that matters needing discussion before the chamber closes the evidence portion of the trial will be allocated time early next week. She also sought information from the prosecution as to how much time they would need to address another (unnamed) issue they had raised by email, if given time after Mr. Heder’s testimony ended. Senior Assistant Prosecutor Tarik Abdulkhak noted that the prosecution would need only 15 to 20 minutes to address this matter.

President Nonn granted Ms. Guissé’s request for an additional 10 minutes to question Mr. Heder and dismissed the parties for the morning recess.

Following the recess, the floor was handed back to the Khieu Samphan defense team.

Ms. Guissé discussed a speech, previously raised by the prosecution, which was given by Pol Pot on September 29, 1977, and entitled “Long Live the 70<sup>th</sup> Anniversary of Kampuchea.” In an article Mr. Heder had written that in the speech Pol Pot presented in detail his views on the communist movement - its successes and failures - and expressed support for Nuon Chea and Khieu Samphan as the only ones worthy of praise. While not mentioning Khieu Samphan specifically by name, Pol Pot had said that in the 1960s, “our comrades who are great intellectuals, like the president of the presidium, were arrested.”

It was on the basis of this passage that Mr. Heder had written that Khieu Samphan was considered a distinguished intellectual. The witness was asked whether this speech should be taken in context, i.e., Khieu Samphan was an intellectual at the time of the arrest rather than being the subject of praise at the time of the arrest. This was a view Mr. Heder rejected twice.

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<sup>5</sup> E3/703.

Concluding his testimony, Mr. Heder finally informed the court that to his knowledge Khieu Samphan's revolutionary name had been "Hem."

***Prosecution Responds to Khieu Samphan's Defense Team Letter to Phnom Penh Post***

Following the conclusion of Mr. Heder's testimony, the floor was handed to Mr. Abdulhak. He brought to the courts attention a letter to the editor by the Khieu Samphan defense team that had been published in that day's *Phnom Penh Post*. The letter is entitled "Khieu Samphan Is Forced to Remain Silent" and is signed by Anta Guissé, Kong Sam Onn, and Arthur Vercken.<sup>6</sup>

Mr. Abdulhak did not hold back in his criticism of this letter, describing the accusations within it as being "scandalous" and worthy of an Internal Rule 35 application for a formal reprimand to be issued to the defense team. He argued that the defense counsel were clearly obstructing justice and acting far below the standards expected of them.

The prosecutor then went on to outline and respond to the five allegations made within the letter:

1. *That the judges have heard dozens of witnesses and admitted thousands of documents while ignoring the requests of the defense:* Mr. Abdulhak characterized this allegation as a clear misrepresentation. At every turn the defense had been given the chance to challenge evidence and submit their own material, he said, arguing that it was "clearly false" that defense concerns were ignored. To make such false allegations was "unreasonable, unethical and unprofessional," he declared.

2. *That there had been a denial of "a real discussion" of the mountain of evidence admitted:* To this allegation, Mr. Abdulhak responded that he wondered if the Khieu Samphan team was in a parallel reality. They had refused to make document presentations despite the prosecution even suggesting that they have extra time allocated to them to do so, he stated. "To make this claim is simply outrageous," he declared.

3. *That the Severance Order was unfair:* Mr. Abdulhak described it as "amusing" to see the defense take issue with the severance order, having supported it throughout the trial. "The chamber surprisingly said it would adjudicate all criminal policies," he stated, remarking that the defense team apparently sees this as "shocking." Noting that counsel for Khieu Samphan had not previously questioned the order nor asked for reconsideration of the severance and had opposed the prosecution's appeal to have the scope revisited, the prosecutor characterized this third allegation as "an unbelievable exercise in hypocrisy."

4. *That "the dice is loaded" and that the chamber has never been interested in what the defense has to say:* Mr. Abdulhak described this claim as "outrageous and false." He argued that the defense had been given equal time to examine witnesses, had called their own witnesses, had been given the opportunity to make document hearings, and had made no substantive complaints until now. As recently as May 27, Khieu Samphan had said he would appear, with no complaints, the prosecutor asserted.

5. *That the chamber's denial of all Khieu Samphan's requests had led to the accused's refusal to testify:* According to the prosecutor, the bench had initially allowed some of the accused's

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<sup>6</sup> This letter was published in *The Phnom Penh Post* newspaper on July 18, 2013, and is available at <http://www.phnompenhpost.com/analysis-and-op-ed/khieu-samphan-forced-remain-silent>.

requests, while denying others, a practice consistent with that in other international courts. Further, Mr. Abdulhak asserted, the prosecution had advocated for further concessions with the court's permission. None of this information was contained in the letter in *The Phnom Penh Post*, he stated.

As a result of each of these unfounded allegations, Mr. Abdulhak argued, a blatant attempt had been made to interfere with the administration of justice through the issuance of a false and misleading statement.

Next, he contended, this behavior was in contravention of the UN Resolution on the Basic Principles on the Role of Lawyers. "One should not have to read this in a court of law with professional counsel," he insisted, even as he proceeded to do so:

Article 12- Lawyers shall at all times maintain the honor and dignity of their profession as essential agents of the administration of justice.

Article 14 - Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

Concluding, Mr. Abdulhak described the letter as a "cynical and calculated attempt to mislead the public." It constituted an appalling failure to act professionally and ethically, he declared, and he called on the court to issue a Rule 35 reprimand and refer the issue to the national professional bodies of each of the counsel.

Elisabeth Simonneau Fort, Co-Lawyer for the Civil Parties, echoed the prosecutor's request, accusing the Khieu Samphan team of having been "false and disloyal." When we do not wish to speak, it is always easier to say we were prevented, she averred. Newspapers were not the proper venue for an adversarial debate, Ms. Simonneau Fort argued, adding that she "regretted" the form that had been chosen to air these grievances.

Going on, the civil party lawyer described the article as an insult to the chamber, to the civil parties, and to the Cambodian people at large. She asserted that what was being seen today was an attempt to withhold credibility from the chamber as the proceedings draw to a close.

Moving the subject on, her national colleague Pich Ang addressed the right to silence, asking the chamber to urge the accused to testify.

As though this would be the final submission of the day, President Nonn appeared to wrap up proceedings, before realizing that the Khieu Samphan defense team had not had a chance to address the accusations against them.

Clearly having forgotten that she had to speak slowly to be interpreted, Ms. Guissé proceeded to provide an impassioned defense of her team's actions. First, she stressed that the defense had never intended to insult anyone, neither the chamber nor the people of Cambodia.

Secondly, she stated that as defense lawyers they had a duty to defend their client. There was nothing in the article that had not already been argued before the chambers, she asserted.

Ms. Guissé described the criticism she was facing for not appealing the severance order as being “scandalous” and maintained that the arguments of the Khieu Samphan defense had been developed and presented on the modes of Joint Criminal Enterprise liability.

Going on, Ms. Guissé stressed again and again that what had been raised in the article was nothing new.

On a side note and in conclusion, she raised the fact that the prosecution had its page limit for final briefs maintained even after the death of Ieng Sary and had an opening submission with no page limits.

Also responding to the prosecution’s submission, Kong Sam Onn, Co-Lawyer for Khieu Samphan, stated that overall he believed the application of the prosecution had been done in haste and that the procedure for requesting sanctions had not been followed properly. Like his colleague, he maintained the letter contained nothing new.

Mr. Sam Onn asserted that the prosecution had failed to look at the substance of the article. “Any allegation that we are interfering in the administration of justice is a position that is misleading, and it is also a misrepresentation of the defendant’s position,” he declared. Finally, he argued that the right to remain silent was an inherent right and that it was solely Khieu Samphan’s decision whether to trust the chamber. This is a trial in a court of law, not a classroom where people conduct research, he maintained.

At this point, the president adjourned the proceedings until Tuesday, July 23, 2013, when the chamber will hear outstanding applications of the parties and hand down a timetable for its remaining proceedings in Case 002/1.