



Accused Khieu Samphan Responds to Recalled Civil Party

By Mary Kozlovski¹

During an abbreviated hearing in Case 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) on Thursday, May 23, 2013, Khmer Krom civil party Chau Ny was recalled to the stand at the request of the Khieu Samphan defense team.

On November 23, 2012, when Mr. Ny was testifying about the harms he had suffered as a result of the Democratic Kampuchea (DK) regime – a right accorded to civil parties after they have been questioned – he asked Khieu Samphan about the whereabouts of his uncle, alleging that Khieu Samphan had called his uncle back to Phnom Penh during the evacuation in the days after April 17, 1975. Khieu Samphan’s lawyers argued at the time that their client’s rights were being violated.² On May 23, 2013, Mr. Ny was questioned by the Khieu Samphan defense, the prosecution, and civil party lawyers before restating the suffering he alleges to have experienced during the DK era.

In the morning, 216 people from Kampot province attended the ECCC. As the hearing was adjourned earlier than usual, the 100 villagers from Battambang province who were to observe the proceedings in the afternoon instead were taken to see Tuol Sleng, or S-21, a former Khmer Rouge prison in Phnom Penh. Khieu Samphan was present in court, while defendant Nuon Chea observed the hearing remotely from a holding cell.

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 Cambodia Tribunal Monitor’s detailed account of this hearing can be found at: <http://www.cambodiatribunal.org/blog/2012/11/civil-party%E2%80%99s-challenge-khieu-samphan-account-disappeared-creates-drama-and-tension>.

Sequence of Parties' Examinations Debated

Trial Chamber President Nil Nonn informed the parties that they could not question the civil party on facts about which he had already testified. Initially, International Co-Lawyer for Khieu Samphan Arthur Vercken requested that they be permitted to question the witness last instead of first, as customarily civil parties were questioned first by the civil party lawyers, then by the prosecutors, followed by the defense. He reminded the chamber that the defense requested the recalling of the civil party because Mr. Ny had spontaneously alleged a new fact about Khieu Samphan in his statement of suffering and they were barred from posing questions about it.

Mr. Vercken mentioned that civil party lawyers had sent the team an email about their questions and it appeared that other new facts were surfacing, such as the purported name of Mr. Ny's uncle on the radio. Thus, Mr. Vercken argued that it would be more straightforward for civil party lawyers to examine their client first, followed by the prosecution, as the defense could then comprehend the facts at issue in the hearing. International Civil Party Co-Lawyer Mahdev Mohan preferred that the protocol suggested by the chamber be followed because the civil party was only recalled at the request of the defense team, which could ask Mr. Ny what they wished.

Khieu Samphan Defense Questions Civil Party

As the chamber decided to reject his request, Mr. Vercken began his examination by reading from Mr. Ny's prior testimony on November 23, 2012. The defense lawyer noted that Mr. Ny stated on that day that he wished to ask Khieu Samphan a question, prompting a dispute among the parties. Mr. Vercken quoted the civil party as saying that on April 17, 1975, Khieu Samphan wrote a letter inviting his uncle Chau Sao to return to Phnom Penh and that he wished to know whether Khieu Samphan ended up meeting his uncle then. According to the court transcript, Mr. Ny asserted that he met Chau Sao's driver in Phnom Penh in 1979, who told him that when his uncle arrived at Prek Kdam³ after being evacuated, two soldiers delivered a letter to him from Khieu Samphan, which said that Chau Sao was required to return to the capital. Mr. Vercken read Mr. Ny's testimony that, according to the driver, Chau Sao declared he would only return to Phnom Penh when all residents were permitted to return. Mr. Ny's uncle's driver informed him that the two soldiers returned a second time inviting Chau Sao to return but he still refused and thereafter disappeared, according to Mr. Ny's comments in court. The defense lawyer quoted Mr. Ny from the transcript:

My question to Khieu Samphan is this: where did he [Chau Sao] die? This is what I want to know. If I know where he died, I could at least try to find his remains so that I can carry out a proper religious ceremony for his soul.

Under questioning from Mr. Vercken, Mr. Ny confirmed the accuracy of the transcript. He testified that he met his uncle's driver Chheang in 1979 at a wedding celebration along with his wife and mother-in-law, where Chheang spoke about the events at Prek Kdam. Mr. Ny remarked that at the time he did not think a tribunal like the ECCC would be established and did not ask Chheang much; it was the only time they met and he did not know if Chheang was still alive. The conversation at the wedding lasted about 10 to 15 minutes, during which time Chheang told him that he had left Chau Sao to search for his family, Mr. Ny recalled.

³ Prek Kdam is an area located along National Road 5 in Kandal province.



Slight confusion ensued during an exchange about the date of the letter in question, and eventually Mr. Ny confirmed that Chheang told him the letter was dated April 17, 1975, but arrived at Prek Kdam three days after that date. At the time, Mr. Ny stated that he, his mother-in-law, and other relatives heard radio broadcasts on April 17, 1975, seeking Chau Sao, along with Cheng Heng and Sisowath Sirik Matak.⁴ Mr. Ny testified that when he was younger, he lived near Olympic Stadium, while his uncle worked at the national credit bank and lived in Tuol Kork.⁵ They did not meet often

because his uncle had a senior position at the bank, but he recounted that at the time of the liberation, Chau Sao brought his assets and belongings to Mr. Ny's home. Mr. Ny told the court he last saw his uncle three days before April 17, 1975; they were not together during the evacuation because Mr. Ny left Phnom Penh via National Road 2, while his uncle was heading to National Road 5. The civil party recollected that he received information about the letter from Chau Sao's driver Chheang but did not know its exact contents. He added that there was also a second letter.⁶

Khieu Samphan Responds to Chau Ny's Questions

Khieu Samphan's lawyers affirmed that their client would respond to the questions that Mr. Ny had previously posed. Repeating and supplementing his earlier queries, Mr. Ny asked Khieu Samphan what the letter he had sent to Chau Sao was about, why Chau Sao told his driver to go and look for his family and not remain involved with him, and why Chau Sao disappeared thereafter. He continued:

If Khieu Samphan knows where Chau Sao died or disappeared, if so, can Khieu Samphan tell me please where he could have disappeared or died, so that we can find the place where he could have died and where we can hold a traditional ritual ceremony?

Khieu Samphan rose from his seat and replied to Mr. Ny that he knew Chau Sao in the 1960s, when he was president of the national credit bank. The accused told Mr. Ny that he understood his suffering and how his family must have felt while trying to ascertain his uncle's whereabouts and fate. Khieu Samphan stated that, unfortunately, he had no information about the Chau Sao's fate and that he had never written the aforementioned letters to him. There was no soldier under his command whom he could have sent letters through, Khieu Samphan said. He affirmed that he was compelled to flee Phnom Penh in 1967, leaving his sick mother and younger siblings behind, and had not met Chau Sao from that point on. The defendant reiterated that he had no means to transport a letter to Chau Sao, and it was not his intention to look for or recall him to Phnom Penh. Khieu Samphan concluded his answer:

⁴ Cheng Heng and Sisowath Sirik Matak are among a group the Khmer Rouge labeled the "seven traitors," along with Lon Nol, Son Ngoc Thanh, In Tam, Long Boret, and Sosthene Fernandez.

⁵ Tuol Kork is a district in Phnom Penh.

⁶ In one response, Mr. Ny seems to say that the driver Chheang left Chau Sao at the time Chau Sao received a second letter and that Chau Sao disappeared two days after the letter arrived. However, the details about the second letter in this section of the testimony were unclear in the English translation.

Today, I may wish to also tell you that I fully appreciate the suffering you and your family could have had. . . . I fully understand that you have the sympathy with, or towards, your uncle, and for this reason, I would like to take this opportunity to talk to you in person so that you understand my heart. I am talking this from the bottom of my heart so that everything is clear and that your mind is clear. I feel sorry that there is no way I can help you, to entertain your request, or to answer to your request, and I hope you understand me and my situation.

After this answer, Mr. Ny declared that he was not satisfied because Khieu Samphan and his uncle were very close and Khieu Samphan would visit him at his home in Tuol Kork. “I still feel that he has not told me all the truth,” the civil party said. “I don’t really say that he has killed my uncle, but I just wish to get more truthful information from him.” President Nonn informed the civil party that the Khieu Samphan defense had already probed his sources for the letters purportedly sent by Khieu Samphan to Chau Sao and Mr. Ny had indicated that there was “no strong source of information.”

Prosecution Briefly Questions Chau Ny

Returning to the topic of the letter, International Senior Assistant Co-Prosecutor Tarik Abdulhak inquired if Chau Sao’s driver Chheang told Mr. Ny that he had personally seen the letter. Mr. Ny recollected that Chheang said Chau Sao told him he received a letter from Khieu Samphan and that there were two letters.⁷ Upon receiving the first letter, Chau Sao told the two soldiers he would not return, and he said nothing after getting the second letter a couple of days later but told Chheang to return to his family, Mr. Ny recalled Chheang telling him.

When Mr. Abdulhak referred to Mr. Ny’s past testimony read out by Mr. Vercken in which he mentioned the second letter being an invitation to return to Phnom Penh, Mr. Vercken rose and observed that Mr. Ny had only spoken about a single letter on November 23, 2012. Mr. Abdulhak recited the excerpt where Mr. Ny testified last year that “two soldiers returned for the second time inviting him [Chau Sao] to come to Phnom Penh again” and sought clarification from the civil party on this point. Mr. Ny responded that Chheang told him there was a first and second letter, and he understood the second letter was also an invitation for his uncle to return to Phnom Penh, which his uncle refused to do. However, Mr. Ny affirmed that he did not know the specific contents of the letter or why Chau Sao had then asked his driver to return to his family.

On the issue of his uncle’s activities from the late 1960s up to 1975, Mr. Ny testified that at that time his mother lived in a wooden house behind Chau Sao’s house and told him that his uncle had invited Khieu Samphan for a meal. Though Mr. Ny said he did not know the extent of their relationship, Khieu Samphan frequently visited Chau Sao at his house. The civil party stated that Chau Sao was president of a bank and formed a democratic political party. He confirmed that Chau Sao was in fact his wife’s uncle.

Chau Ny Examined by Civil Party Lawyers

Under questioning from Mr. Mohan about his uncle’s reputation among the Khmer Krom population in Cambodia in the 1960s and early 1970s, Mr. Ny testified that Chau Sao was famous among Khmer Krom in Phnom Penh. The civil party said he was a just person, who was not corrupt, lived honestly, and assisted Khmer Krom people in finding housing and

⁷ Again, the contents of this second letter were unclear in the English translation.

employment. Mr. Ny recalled that many Khmer Krom people worked with Chau Sao at the national credit bank.

Mr. Ny confirmed that his mother-in-law informed him that Chau Sao and Khieu Samphan knew each other and had meals together. He added that his mother-in-law fled to Kampuchea Krom in 1974, but came looking for her relatives, including Chau Sao, in 1979. “All disappeared, and she almost became mentally ill due to the loss of the relatives,” Mr. Ny said.



Mr. Mohan sought clarification on the content of the 1975 radio broadcasts that Mr. Ny earlier described. In response Mr. Ny reiterated that from April 17, 1975, the names Chau Sao, Cheng Heng, and Sirik Matak were heard on the radio, requesting that they return to their workplaces in Phnom Penh but mentions of Chau Sao’s name stopped after about three days. When asked his thoughts on why the broadcast of Chau Sao’s name ended, Mr. Ny confessed that he did not understand why his uncle’s name was mentioned among “high-ranking leaders”⁸ because he was only a banker. Mr. Mohan sought Mr. Ny’s perspective on why Chau Sao told his driver to return to his family upon receiving a second letter. The civil party said he believed that the second letter was problematic for Chau Sao and he

therefore told Chheang to go to his family. He added that it was likely the DK regime considered his uncle to be a Khmer Krom, who would therefore be executed.

Finally, Mr. Mohan inquired why it was important for Mr. Ny to discover the truth about his relatives and his wife’s late uncle Chau Sao. The civil party replied that they were born in Kampuchea Krom, but when he was five or six years old he moved to Phnom Penh where Chau Sao raised him:

He did not only help my family, but also other Khmer Krom people in Phnom Penh. In Cambodia, everybody knew he was a good-hearted person. He would help and gave support to any Khmer Krom who came to seek help in Phnom Penh. So to me it is a great loss.

After this response, National Civil Party Lead Co-Lawyer Pich Ang questioned Mr. Ny about the personality of Chheang, his uncle’s driver. The civil party replied that he did not meet Chheang prior to April 17, 1975, but his wife informed him that before selecting a driver, Chau Sao had to understand the driver’s personality well. “Chheang was a strict-mannered person,” he said. At this point, President Nonn interjected to remind Mr. Ang to use his time effectively and adhere to the facts before the court rather alluding to “indirect evidence,” rumor, or hearsay.

Pressed for his assessment of Chheang’s honesty, Mr. Ny stated that he believed Chheang did not lie to him, his wife, and his mother-in-law. The civil party said that, according to Chheang, the two soldiers who brought the letter did not introduce themselves but they wore black uniforms and kramas⁹ and were therefore soldiers of the liberation armed forces. Mr. Ny told the

⁸ This is a reference to Cheng Heng and Sirik Matak, with their roles in the former Lon Nol regime.

⁹ A krama is a traditional Cambodian scarf.

civil party lawyer that Khieu Samphan had the closest contact with his uncle of all the Khmer Rouge leaders.

Chau Ny's Statement of Harm Suffered

Mr. Ny began by stating that his suffering under DK could not be described in words but it and the loss of his family and relatives remained with him until today. He said he had tried not to remember the past and the establishment of the ECCC had again triggered the pain he suffered under the DK regime. His uncles and relatives had quite senior positions under the former government but he lost them all after April 17, 1975. "I lost everyone and the pain and the suffering was unbearable – it remains with me for the rest of my life," he added. Mr. Ny declared that the only thing he wished to ask at the court was the whereabouts of his late uncle so that he could locate his remains and hold a proper religious ceremony for him, but his hope had now disappeared, and only the pain remained. The civil party recalled that two of his wife's other siblings died along with Chau Sao, as did his nieces and nephews and his uncle in Pursat province. Mr. Ny stated that all of those people of Khmer Krom origin died and he did not know why the DK regime "took revenge" on them, with even innocent children killed because of their Khmer Krom origin. Mr. Ny said Khieu Samphan should understand because he used to have meals with Khmer Krom people and should have known why the Khmer Rouge hated the Khmer Krom.

At this point, President Nonn requested that Mr. Ny attest to his own suffering in relation to the allegations against the accused and not raise any new facts; otherwise he would have to be repeatedly recalled to the stand. Finally, Mr. Ny said that he had suffered greatly because of the loss of his parents, uncle, and relatives. His additional testimony was thus concluded.

Debate over Statements and Questioning of Accused

As President Nonn moved to adjourn the hearing for the day, Mr. Abdulhak rose and commented that the prosecution did not have notice prior to the hearing that Khieu Samphan would be answering questions and he had not exercised his right to remain silent on prior occasions. The prosecutor said he wished to ensure that allegations were not made in future proceedings that the prosecution had waived their right to examine the accused, citing Internal Rule 90,¹⁰ which outlined the chamber's duty and the other parties' right to examine the accused. Mr. Abdulhak applied as follows:

The prosecution insists on being afforded that right and to respectfully ask the chamber, if possible, to take this into account in your scheduling in these final stages of the trial. If possible, we're of the view that it would be helpful to give as much notice to the accused, as well as to other parties, of when his questioning is to be scheduled so that we can all be prepared and so that proceedings can unfold in an orderly manner.

Following this statement, Mr. Ang said that the lead co-lawyers shared the view of the prosecution that if the accused wished to respond to questions, parties ought to be offered the opportunity to question him. After Mr. Vercken confessed that he did not understand what his colleague was proposing,¹¹ President Nonn interrupted and stated that the bench also did not comprehend Mr. Ang's comments. Mr. Ang argued that civil parties' statements of suffering are

¹⁰ The ECCC Internal Rules can be accessed at: <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.

¹¹ As President Nonn interjected, it is unclear whether Mr. Vercken was referring to the Mr. Abdulhak or Mr. Ang.

usually connected to the facts of the case and if a new allegation is raised during such a statement, the chamber should not consider it an error on the part of the civil party. President Nonn replied that it was at his discretion to direct parties to the proceedings regarding whether a civil party statement falls within the scope of the case. He affirmed that the chamber was endeavoring to ensure that no new factual allegations were made in civil party statements, because the chamber would then have to schedule another hearing. “We would like to make sure that time is not wasted,” President Nonn concluded.

Mr. Vercken said the defense believed that it was necessary to have a trial for a civil party or complainant to be considered a victim in legal terms. He noted that for next week the chamber had summoned civil parties who would speak only about their suffering, which the defense considered “a leap in time” and an attempt to “economize” on the trial. “These people are considered *de facto* victims,” Mr. Vercken said, before President Nonn interrupted to remark that his comments were irrelevant. He requested Mr. Vercken’s response on Mr. Abdulhak’s application regarding the right of the accused to remain silent or respond to questions.



Khieu Samphan’s Lawyer Queries Trial Management Strategy

Pressing on with his argument, Mr. Vercken contended that the court was speaking of suffering “without facts grounding the suffering.” He said he did not fully understand Mr. Abdulhak’s application. But on the point about the prosecution needing to be organized, Mr. Vercken stated that the defense had requested a trial management meeting and presently the parties were completely unaware of the chamber’s schedule beyond the following week. Elaborating, Mr. Vercken declared:

We don’t know where we’re going. We don’t know how many witnesses will come testify. We don’t know when this trial will end. There are rumors, of course. I have no information. We asked for a trial management meeting to deal with these issues, for us to have visibility, so there are pending requests with no answers coming from parties. For example, my colleague is making a semi-request today, and I’m making a request as well. I’d like to know where we are --

President Nonn cut Mr. Vercken off and asked that he respond to the prosecutor’s application. Mr. Vercken repeated that he did not understand the prosecution’s request and felt that Mr. Abdulhak simply wished to state that he does not renounce the right to question Khieu Samphan.

After a lengthy consultation on the bench, Trial Chamber Judge Silvia Cartwright noted that Mr. Abdulhak’s statement raised the question of whether Khieu Samphan and Nuon Chea would retain their right to remain silent or answer questions. Khieu Samphan may be able to answer that presently, but Nuon Chea may need more time and defense counsel can advise the chamber accordingly, she said. Judge Cartwright informed the parties that the chamber was planning a trial management meeting within the next few weeks and that, in order to plan the agenda, the chamber required certain basic information, referring to the aforementioned issue of Khieu Samphan’s and Nuon Chea’s potential testimony. If the accused elect to answer questions, the chamber will require an estimate from parties during the meeting of how long they will need to

examine them, she affirmed. Finally, Judge Cartwright emphasized that both accused would be able to make statements during submissions.

When Judge Cartwright asked Khieu Samphan if he could tell the chamber whether he wished to remain silent or submit to questioning, the accused replied that the allegations against him were serious and he was not fully familiar with the legal aspects of the tribunal. He told the court that he responded to Mr. Ny's questions because he felt for his pain and suffering, but he wished to consult further with his lawyers before determining if he would submit to further questioning.

Acknowledging Khieu Samphan's response, Judge Cartwright informed the parties that both defendants had until Monday, May 27, 2013, at 9 a.m. to inform the chamber of their decision. International Co-Lawyer for Nuon Chea Victor Koppe said he believed this would be feasible for Nuon Chea.

President Nonn adjourned the hearing. Proceedings in Case 002 are set to resume on Monday, May 27, 2013, at 9 a.m., with civil parties' statements of harm and suffering under the DK regime.