



Nuon Chea Forgets and Khieu Samphan Refuses to Testify:

The Case 002 Trial Continues

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“I do not remember that.”
- Nuon Chea

On Thursday January 12, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) continued hearing evidence related to the historical background of the Khmer Rouge movement in Case 002. The morning session was reserved for further testimony by accused Nuon Chea, while accused Khieu Samphan was scheduled to testify during the afternoon session. The third accused in the case, Ieng Sary, previously informed the Chamber that he would exercise his right to remain silent and not testify at any point during the trial.

Translation Difficulties

Prior to the commencement of the day’s testimony, Trial Chamber President Nil Nonn reminded all counsel, especially international counsel, to carefully spell out all names for the sake of the Court translators and also to read out the “ERN” document code numbers for every document referenced. Following this comment Ieng Sary’s national defense counsel, Ang Udom rose and added his voice to this concern, stating that on the previous day a certain name was misstated by International Deputy Co-Prosecutor Dale Lysak, causing confusion. Ang Udom then suggested that all national counsel spend time in their offices practicing their pronunciation of Khmer names they planned to use in court moving forward.

Prosecution Outline of the Questioning Topics for Nuon Chea

The Chamber then moved to the day’s schedule and asked the prosecution how long they planned to continue the questioning of Nuon Chea. The prosecution informed the Chamber that it hoped to move as quickly as possible to expedite the proceedings and provided an overview of the remaining topics to be explored during the examination of Nuon Chea. The remaining topics included:

- conclusion of discussion of the Khmer Rouge Secret Defense Units;

- the 1963 CPK¹ Congress and events leading up to the March 1970 coup;
- the period from 1970 to April 1975; and
- the establishment of cooperatives and movements of the population in Khmer Rouge controlled areas from 1973-1975.

The prosecution then noted that as for the length of its remaining questioning, “it will depend a lot on the accused and whether we receive direct answers to our questions.”

Before questioning commenced, Nuon Chea rose and preemptively reiterated his now-routine objection to all copies of documents, stating his desire to “reiterate for the purpose of the record, that [he] cannot accept copies of the documents used as the basis of the questions put before [him] and for this reason [he] would like to exercise [his] right not to answer questions raised on the basis of those documents.”

Chamber President Nil Nonn thanked Nuon Chea for his clarification, but yet again reminded him that the Chamber had already ruled on the matter of copied documents and reminded Nuon Chea that should he remain silent, the Chamber would interpret his silence as an exercise of his right to remain silent.

Nuon Chea then announced that he “would like the Chamber to order the prosecution to inform [him] of the basis of the documents they intend to present to [him] in a timely manner. By so doing, [he would] be able to examine thoroughly the documents and present [his] submissions for the purpose of the documents for th[e] Court. In the event that the documents are lengthy, [he] suggest[ed] that the prosecution pinpoint the relevant portions. As of now, [he had] difficulty examining the documents presented to [him] in court because [he does] not have sufficient time.” The Chamber responded simply by moving into questioning by the prosecution.

Continuation of Nuon Chea’s Testimony on Secret Defense Units

The first question of the prosecution related to CPK procedures dealing with perceived enemies. In response, Nuon Chea stated that many spies tried to infiltrate the CPK, in order to subvert the revolution and so the CPK responded by creating the Secret Defense Unit to monitor individuals who behaved “suspiciously.” These Units were vested with the authority to investigate and arrest perceived traitors.

When asked what happened to people who were determined to be spies that infiltrated the party, Nuon Chea responded that “this had to take a long period of time to investigate the people. It may take one year to two years or so, and those people later on were rounded up and sent to S-21, where their confessions, or testimonies would be taken further.”

¹ “Communist Party of Kampuchea,” the official name of the Khmer Rouge movement.

While the prosecution surely welcomed Nuon Chea's candid acknowledgement that perceived internal enemies were sent to S-21 *Tuol Sleng* prison, the question had referred to the pre-1975 period and the earliest formation of security offices in Khmer Rouge controlled areas. When asked about when Security Offices were first established by the CPK prior to April 1975, Nuon Chea however, claimed that "[he does] not know." He further claimed that he had no knowledge of security offices codenamed S-39 or M-13, because at the time, cadres were instructed to only focus on their own task and his task had solely been education. Thus, he had no knowledge about security issues.

The Second CPK Congress of 1963

The prosecutor then turned to the topic of the second CPK Congress of 1963. Nuon Chea recalled that the second Congress took place at an apartment and was attended by many of the same individuals as the first party Congress of 1960. To join the party at this time, Nuon Chea stated that a candidate member had to have "revolutionary value" and be "supported by the masses" to be eligible. He stated that seniority was also a factor, but that this was secondary. When asked whether a faction of the CPK called the "people's group" had questioned Nuon Chea's leadership capabilities at this Congress resulting in Pol Pot's selection as Secretary over him, Nuon Chea stated that the Congress decided that Pol Pot had many good revolutionary characteristics and this is why he was selected as CPK Secretary.² There was some confusion over the prosecution's use of the term "the people's group" within the CPK. Nuon Chea corrected the prosecutor that this group was an "overt" and separate group that conducted public activities, but was not part of the CPK party itself. Nuon Chea denied that any members of this public "people's group" attended the 1963 Congress, because this group was "clearly distinguished" from the CPK and the groups did not mix.

When asked about the new Standing Committee elected at the 1963 Congress, Nuon Chea observed that the terms "appointed" and "elected" are different terms, and that the CPK generally added members through three means, recruitment, appointment and secret election. He stated that at the Congress Pol Pot was "appointed" CPK Secretary, Nuon Chea remained Deputy Secretary and Ieng Sary and Sao Phim were appointed to the Standing Committee. He further stated that Ta Mok and Son Sen were also appointed to the Standing Committee along with others that he could not remember. Nuon Chea then stated that at the 1963 Congress the Khmer Rouge movement officially changed its name from the "Labor Party" to the CPK.

Period from 1963 Congress to the March 1970 Lon Nol Coup³

Turning to the period leading up to the 1970 coup, the prosecution asked whether Khieu Samphan was accurate in his book, which stated that CPK senior leaders traveled to rural

² This followed the disappearance and presumed death of original Secretary Tou Samouth.

³ In this coup, General Lon Nol and Prince Sirik Matak seized power, ousting the government of King Norodom Sihanouk, who was exiled to China.

Northeast Cambodia to organize following the 1963 Congress. Nuon Chea stated that he had not read this book and could not comment on it, but affirmed that the leaders grouped along the Vietnamese border in Eastern Cambodia somewhere. He denied however, that he was the individual who led Ieng Sary and Son Sen to this area.

Nuon Chea also denied that he lived with the CPK leaders at this time and stated that he only met Pol Pot once during this period. He did note that Pol Pot “did not like to live near the Vietnamese” because Pol Pot “wanted no confusion” about the separateness of the two groups and their respective territories.

Upon further questioning, Nuon Chea stated that prior to 1966, Pol Pot, Ieng Sary and Son Sen moved out of “Office 100” near Vietnam to Ratanakiri Province, in Cambodia’s Northeast. Around this time Ieng Sary travelled to Beijing, China. He recalled that Ratanakiri was a good location to use as a revolutionary base because “no enemy could arrive there.” He claimed that he travelled to Ratanakiri only once, because the road was difficult and could not accommodate cars and it took his group one full month to travel there by foot. During this section of questioning Nuon Chea also noted that CPK meetings of senior officials took place less frequently because of the remoteness of Ratanakiri.

Next, the Prosecution explored several additional meetings alleged to have taken place throughout the late 1960s. First, the prosecution asked about the alleged 1964 multi-week CPK meeting that took place in the jungle in Northeast Cambodia according to Khieu Samphan’s book. Nuon Chea stated that he did not attend the meeting. He also stated that he could “not recollect” attending a 1965 Central Committee meeting where peaceful revolution was supposedly abandoned in favor of violent revolution, which was deemed “absolutely necessary.”

As for an alleged 1966 Central Committee meeting, where supposedly plans were made to unite all Zones in “armed struggle,” Nuon Chea only stated that in 1966 “the movement became intense” and thus, he attended a meeting where it was decided to “combine” armed struggle with the political movement. He could not recall whether this was specifically a Central Committee meeting, as “there were many meetings at this time.”

When asked about locations and dates of other meetings, Nuon Chea stated that he could not remember where precisely any individual meeting occurred, because the time was chaotic and the leaders had to move around regularly because bombing raids by American B-52 bombers.

Nuon Chea also did not recall if Ieng Sary was appointed the Secretary of the Northeast Zone around this time. He did state that at this time, the leadership of the CPK was divided in two and that he was in charge of one of two portions of CPK territory. At this time, according to Nuon Chea, the precise division of CPK Zones was “not clear” because each area had different combat

conditions and other circumstances. Nuon Chea then claimed that he did not have overall leadership over any group, because Zone authorities had direct control of local forces.

When asked about Khieu Samphan's escape from Phnom Penh in 1967, Nuon Chea stated that he did not know anything about his supposed role helping Hu Nim, Hu Youn and Khieu Samphan⁴ to escape Phnom Penh to the countryside. He similarly did not recall a meeting in Phnom Penh where the CPK allegedly chose to turn to armed struggle to achieve a socialist revolution in Cambodia.

The Post March 1970 Lon Nol Coup Period (1970-1975)

Turning to the time period following the March 1970 coup d'état in Cambodia. The prosecution inquired about the National United Front of Kampuchea (FUNK) and Royal Government of the National Union of Kampuchea (GRUNK) organizations.⁵ Nuon Chea denied that he was assigned a position in either of these organizations, stating that they were separate from the CPK and he had no knowledge of their internal administrative affairs. He further stated that he did not know about the role of Khieu Samphan in these organizations or have any other general knowledge about their work.

When asked about the period when the CPK headquarters moved from Ratanakiri to a based near the Stung Chinith river, Nuon Chea stated that he did not remember this event. He stated that he moved around regularly during this period and thus, has no clear memory about any particular place. He claimed to have moved around to various Zones to "educate people" and this included the Chinith river area. Nuon Chea denied however, that any CPK "political school" was created in the early 1970s. He also stated that he had no idea where Khieu Samphan was during the 1970-1975 period because his whereabouts were part of the "secret affairs."

Nuon Chea next stated that the CPK Central Committee did not meet regularly, but the number of meetings was "based on the situation" during this period. He did state that there were both "regular" and "extraordinary" meetings, but the CPK was flexible, based on the "practical situation." As for the Standing Committee, he stated that this group worked on a daily basis and met on an as-needed basis only. Nuon Chea was visibly annoyed when asked about the location of Standing Committee meetings, stating that he had already answered this question many times and that meetings moved constantly because there were "many guerrilla attacks."

⁴ These three individuals were all well-known leftist politicians in Cambodia at the time who came under scrutiny of the Sihanouk government because of their stance. When the three men abruptly disappeared they became known as the "three ghosts." Hu Nim and Hu Yuon were later purged by the CPK.

⁵ This was a political movement involving the Khmer Rouge and officially headed by exiled King Norodom Sihanouk. The GRUNK was the official "government in exile" of the FUNK, which referred to the united political movement of the Royalists, headed by King Sihanouk and the Khmer Rouge's CPK.

Nuon Chea further testified that military strategy was up to each Zone autonomously from 1970-1975, according to their own situation. He stated that there were joint “study sessions” involving soldiers from more than one Zone, but denied awareness of the existence of the CPK’s alleged Joint Battlefield Committee at the time supposedly responsible for coordinating national strategy. When asked whether Ieng Sary returned from China from 1971-1975 and participated in meetings of the Standing Committee, Nuon Chea responded that he could not recall.

The Third CPK Congress of 1971

Nuon Chea affirmed that he attended the Third Party Congress in 1971, but could not remember the location of the meeting. He also could not remember the number of participants in the Third Congress. When asked what matters were discussed at the Congress, Nuon Chea paused for quite some time, appearing to refer to his notes, before answering that he could not remember. He also claimed to not recall the decision in 1972 to close all markets in “liberated areas” (i.e. areas controlled by the CPK), because this was an administrative decision, outside of his area of education.

When confronted by a quotation from a 1976 issue of *Revolutionary Flag* which discussed the 1972 decision to close markets, he stated that he did not remember, but recalled that he did not think the markets were closed in 1972. Instead, Nuon Chea claimed that this decision was made individually by each Zone Committee.

Nuon Chea also continued his insistence that he be given original copies of *Revolutionary Flag* when asked additional questions about statements made therein. President Nil Nonn brushed aside these requests, reminding Nuon Chea that the Chamber was not at this juncture discussing the authenticity of documents, but only discussing their contents.

Technical and Translation Difficulties

The Chamber then ran into technical difficulties and the prosecution could not display digitized documents on the court monitors. Adding to the confusion, apparently the Khmer language translation of quotations from *Revolutionary Flag* read out by the prosecution in English, such as the phrase “seize the people” were confusing when translated. This necessitated hasty location of the Khmer version of the document by the prosecution, which was then read aloud by Cambodian prosecutor in Khmer.

Curiously, the portion of the booklet read aloud in Khmer did not include the phrase “seize the people” in the simultaneous English translation at all, demonstrating the variation in translations from Khmer to English. The national prosecutor instead quoted the document as utilizing the phrases “control the people” and “conquer the people.”⁶

⁶ According to Khmer speakers present, the actual phrase utilized has no clear English translation equivalent. The rough meaning of the phrase conveys the idea of bringing other people into one’s group.

This confusion only added fodder to Nuon Chea's demands for original documents, as he stated "now you see what I mean about the documents," referring to his refusal to accept any copies.

Nuon Chea and Ieng Sary Retire to the Holding Cell for the Afternoon Session Again

Following this incident and prior to the regular lunch break, Nuon Chea made his now-daily request to spend the afternoon in the Court's holding cell and monitor the proceedings through audiovisual link. Next, following the previous day's script, Ieng Sary's counsel then immediately rose and made the same request. Both requests were granted, pending receipt of a written waiver of the right to be present from both accused. At this juncture it appears likely that both Nuon Chea and Ieng Sary will appear in the courtroom solely for morning sessions for the foreseeable future.

Khieu Samphan Exercises His Right to Remain Silent

During the afternoon session accused person Khieu Samphan was scheduled to testify. Before Khieu Samphan was taken to the dock there was some confusion in the courtroom regarding whether Khieu Samphan would actually testify. President Nil Nonn noted that Khieu Samphan had not been clear thus far regarding the degree to which he would testify or avail himself of the privilege to remain silent. Khieu Samphan's national counsel advised the court that Khieu Samphan would not answer any questions on the historical background of the Khmer Rouge movement.

When asked about his position by Judge Jean-Marc Lavergne, Khieu Samphan stated that he would not answer any questions about the historical background of the Khmer Rouge. He explained that he had fully discussed this topic in his previous statements to the court in 2011. Showing a deep understanding of legal procedures, Khieu Samphan then cited the Trial Chamber's scheduling order, pointing out that current questioning was limited to the topic of the CPK's historical background. He stated that he will discuss the administrative divisions of the CPK, but that he believed that it was not a proper time to conduct such an inquiry. During this statement, Khieu Samphan stood at the witness dock and held up a copy of the Trial Chamber document he was citing.

Nuon Chea Falls Asleep

During this exchange, Nuon Chea's counsel rose and informed the Chamber that Nuon Chea was tired from the morning session's questioning and was presently asleep in the holding cell with the audiovisual monitor turned off. Nuon Chea's counsel stated that he had already provided the Chamber with a document in which Nuon Chea waived his right to be present, but he did not inquire with his client further because he did not want to wake Nuon Chea up. This prompted some questions from Judge Lavergne, but there did not appear to be any readily apparent solution to the situation and the Chamber simply refocused on whether Khieu Samphan would testify or not. This issue will need to be addressed at some point moving forward, as a sleeping

accused with the audiovisual link turned off cannot be said to participate in any way in proceedings.⁷

The Chamber Attempts to Elicit Limited Testimony from Khieu Samphan

Turning back to Khieu Samphan, Judge Lavergne explained to him that the day's questioning would focus on Khieu Samphan's earlier statements about the history of the CPK. Judge Lavergne explained that the Chamber would question him about certain documents and would like to hear Khieu Samphan's opinion on the documents. Judge Lavergne further reminded Khieu Samphan that this was an opportunity for him to state his opinion.

After this instruction from the Chamber and some time spent conferring with his counsel, Khieu Samphan stated that on December 13, 2011, he had clearly stated his position on this topic and that he had nothing to add.

Following some confusion, Judge Lavergne explained to Khieu Samphan that in this hearing the Chamber would present certain documents it believed may be relevant and that Khieu Samphan would be able to react to the documents and comment on them. Judge Lavergne stated that many of the documents are indeed, former statements by the accused themselves; especially documents allegedly authored by Khieu Samphan and the Chamber would like to hear Khieu Samphan's opinion on the documents.

After this explanation, the Chamber provided Khieu Samphan's counsel with some more time to confer with his client. Following this short break, Khieu Samphan's counsel informed the Chamber that his client would exercise his right to remain silent regarding any questioning for the day.

In response, Judge Lavergne discussed some specific documents the Chamber wished to discuss with Khieu Samphan, apparently in hopes of changing his mind. First, Judge Lavergne read out a document wherein Khieu Samphan is quoted as stating that when he was in hiding in the early 1970s he traveled with Ta Mok and met Pol Pot in the countryside and that only after meeting Pol Pot did Khieu Samphan realize he was Secretary of the CPK. In the document Khieu Samphan allegedly stated that Pol Pot had called him a "son of the ruined feudal class" when Khieu Samphan announced himself as an intellectual and that this comment surprised Khieu Samphan, who was born to a poor family.

⁷ While it is true that the accused (and some others, including counsel and judges) have appeared to nod off previously at the ECCC, these individuals have still been physically present in the courtroom. If the accused choose to ignore the proceedings or the audiovisual link it is surely their prerogative to do so however, that the accused can simply turn off the audiovisual equipment raises concern.

Judge Lavergne stated that the Chamber would appreciate Khieu Samphan's comments on what he thought the phrase "son of the ruined feudal class" meant. To this, Khieu Samphan stated that this phrase evidenced the conditions under which he was admitted to the Central Committee. Specifically, that he was only "tolerated" by the CPK leaders, but that not a true party member because he held independent views. He further stated that he hoped such documents would be useful for the Chamber to determine whether or not he was a "senior leader" of the CPK. When Judge Lavergne pushed Khieu Samphan to elaborate on the meaning of the phrase "son of the ruined feudal class," Khieu Samphan's defense counsel rose and objected, stating that the defense had already made it clear that Khieu Samphan would not answer.

Following this statement, Judge Lavergne went on to discuss Khieu Samphan's book *Reflections on Recent Cambodian History* in what appeared to be an attempt to bait Khieu Samphan into answering questions about the book. This tactic proved marginally successful, as Khieu Samphan affirmed that he was the author of the book, but declined to comment further.

When Judge Lavergne began to read aloud another quotation from the book, Khieu Samphan's counsel rose and requested that Judge Lavergne cease putting questions to Khieu Samphan, as he wished to exercise his right to remain silent and that any further questions would only serve to confuse Khieu Samphan as to his rights.

This request was ignored and Judge Lavergne proceeded to read out another quotation, discussing internal conflicts within the Sihanouk government leading up to the 1966 elections. This time, Khieu Samphan did not take the bait and responded that he did not wish to make any further comments.

The next excerpt read out was an account of the circumstances under which Khieu Samphan, along with Hu Youn and Hu Nim fled Phnom Penh (mentioned above). This prompted yet another objection by the Khieu Samphan defense, which argued that Judge Lavergne's continual requests that Khieu Samphan "comment" on documents, is no different from questioning and thus Khieu Samphan's right to remain silent was not being "fully respected."

As a result of this ongoing back and forth, Chamber President Nil Nonn suggested that Judge Lavergne proceed by only identifying documents which the Chamber believed probative without asking for any comments from Khieu Samphan.

The Chamber Notes Documents Placed in the Case File and Adjourns

Thus, Judge Lavergne continued by noting several documents the Chamber found probative for the record, including:

- books authored by Khieu Samphan;

- a document, *Cambodia's Seat at the United Nations*, by Khieu Samphan on behalf of the GRUNK and FUNK movements;
- *Revolutionary Flag* issues;
- *Cambodia News* articles by the Cambodia News Agency; and
- excerpts from Khieu Samphan's public speeches.

Next, the prosecution requested clarification from the defense regarding whether Khieu Samphan planned to testify or remain silent during the upcoming portion of the trial focusing on the administrative functions of the CPK.

After conferring with his lawyer again, Khieu Samphan requested some time to consider whether he will testify or not during the next phase of trial proceedings.

Following Khieu Samphan's unexpected silence, Judge Nil Nonn noted that "the afternoon session has been more expeditious than expected" and announced that the Chamber would adjourn until Monday.

Before adjourning, President Nil Nonn informed the audience that the following week, Judge Sylvia Cartwright would be absent and that during the time she would be replaced by Austrian International Trial Chamber Reserve Judge Claudia Fenz. Chamber President noted that the entire next week would be dedicated to the planned hearing on evidentiary issues.

President Nil Nonn then adjourned the Court until 9 a.m. on Monday, January 16.

END