

ក្រុមបេឡាវីការពារក្តី នួន ថា
NUON CHEA DEFENCE TEAM

PRESS RELEASE

**Nuon Chea Continues to Instruct Lawyers Not to Appear
Until Disqualification Decision Issued**

28 October 2014, Phnom Penh

On 27 October 2014, Nuon Chea sent a letter to the ECCC Defence Support Section reconfirming he has instructed his lawyers “to leave the courtroom” and “not to appear at the substantive hearing” in Case 002/02 until a decision has been issued on whether four of the trial judges should ultimately be disqualified.

Nuon Chea stated in his letter that he has taken this position “because I have no faith in the three national judges and the French judge” currently serving as trial judges in that case, and that it was his “firm belief” that the four judges in question – namely, Nil Nonn, Ya Sokhan, Jean-Marc Lavergne and You Ottara – “are biased and not independent.”

In his letter, Nuon Chea voiced “absolute faith and confidence” in his lawyers Son Arun and Victor Koppe and his refusal to accept any other lawyers. While he exceptionally permitted his lawyers to attend one trial management meeting being held *in camera* today to discuss certain fundamental issues (with a video of this meeting to be released by the ECCC in due course), Nuon Chea’s “instructions in respect of the substantive hearings remain unchanged”.

Nuon Chea’s letter builds on his earlier remarks at the opening of the Case 002/02 trial on 17 October 2014, in which he said the four judges had “frequently and flagrantly violated my right to a fair trial” in Case 002/01 and urged them to reconsider stepping down while the disqualification motion was being considered, in line with Cambodian law.

The original letter, a full Khmer transcription and an English translation are attached, together with an excerpt of the official transcript of the Case 002/02 opening statements. The disqualification motion is available at <http://www.eccc.gov.kh/en/document/court/nuon-chea-application-disqualification-judges-nil-nonn-ya-sokhan-jean-marc-lavergne-a>.

Nuon Chea’s lawyers filed a motion to disqualify the four judges on 29 September 2014. Over 45 pages, it detailed multiple grounds on which the judges should be disqualified on the basis of a lack of impartiality, independence, and judicial moral integrity.

A special bench of ECCC judges have been appointed to decide on the disqualification motion. They have yet to issue their decision.

ENDS

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ក្រុមការពារក្តី ណួន ឆា
NUON CHEA DEFENCE TEAM

Letter from Nuon Chea to Isaac Endeley, Head, Defence Support Section, ECCC
English Translation

Dear Mr. Endeley,

I write to you in your capacity as chief of the defense office.

At the hearing of 17 October 2014 I instructed my lawyers to leave the courtroom, because I have no faith in the three national judges and the French judge. It is my firm belief that they are biased and not independent. They should not be the judges in my new trial. I have instructed my lawyers not to appear at the substantive hearing until the Special Bench has made a decision on my disqualification motion. I also instructed my lawyers not to appear at the trial management meeting of last week.

My lawyers can go the trial management meeting tomorrow, but my instructions in respect of the substantive hearings remain unchanged.

Today I have been informed that the prosecutors want the ECCC to appoint new lawyers. Let me be very clear to you. It is my absolute stance that I shall not accept under any circumstances new lawyers. I have absolute faith and confidence in Son Arun and Victor Koppe. If the court decides to appoint new lawyers I shall not accept them and I shall refuse to come to court. Only by use of force shall I attend any hearing.

I would like to invite you to my cell so that you can hear my position in person.

Phnom Penh, 27 October 2014

[Nuon Chea's signature]

Nuon Chea

විසර්ග ඉතිහාසයේ වැදගත් තීරණයන් පිළිබඳව විමර්ශනයක් සිදු කිරීමට අපට අවස්ථාවක් ඇත. මෙහිදී අප විමර්ශනය කළ යුතු ප්‍රධාන කරුණක් වන්නේ විසර්ගයේ ස්වභාවය සහ එහි ප්‍රතිඵලයයි.

විසර්ගයේ ස්වභාවය පිළිබඳව

විසර්ගයේ ස්වභාවය පිළිබඳව විමර්ශනය කිරීමට අපට අවස්ථාවක් ඇත. මෙහිදී අප විමර්ශනය කළ යුතු ප්‍රධාන කරුණක් වන්නේ විසර්ගයේ ස්වභාවය සහ එහි ප්‍රතිඵලයයි.

විසර්ගයේ ස්වභාවය පිළිබඳව විමර්ශනය කිරීමට අපට අවස්ථාවක් ඇත.

විසර්ගයේ ස්වභාවය පිළිබඳව විමර්ශනය කිරීමට අපට අවස්ථාවක් ඇත.

විසර්ගයේ ස්වභාවය පිළිබඳව විමර්ශනය කිරීමට අපට අවස්ථාවක් ඇත.

ជូនចំពោះលោក Endeley,

ខ្ញុំសរសេរសំបុត្រនេះទៅកាន់លោកក្នុងឋានៈលោកជាប្រធានអង្គភាពគាំពារ
ការការពារក្តី។

នៅក្នុងសវនាការថ្ងៃទី១៧ ខែតុលា ឆ្នាំ ២០១៤ ខ្ញុំបានបង្ហាញឱ្យមេធាវីរបស់ខ្ញុំ
ចាកចេញពីបន្ទប់សវនាការ ពីព្រោះខ្ញុំគ្មានជំនឿទៀតទេទៅលើចៅក្រមជាតិទាំងបី
និងចៅក្រមបារាំងមួយរូប។ ខ្ញុំមានជំនឿយ៉ាងមុតមាំថា គាត់មានភាពលម្អៀង និង
គ្មានឯករាជ្យទេ ហើយគាត់មិនសមធ្វើជាចៅក្រមនៅក្នុងសំណុំរឿងថ្មីរបស់ខ្ញុំទេ។
ខ្ញុំបានប្រាប់មេធាវីរបស់ខ្ញុំឱ្យធ្វើពហិការមិនចូលរួមក្នុងសវនាការលើអង្គសេចក្តី
រហូតដល់សមាសភាពចៅក្រមពិសេសសម្រេចលើបណ្តឹងដិតចិត្តរបស់ខ្ញុំសិន។ ខ្ញុំក៏
បានប្រាប់មេធាវីរបស់ខ្ញុំមិនឱ្យចូលរួមក្នុងសវនាការកាលពីសប្តាហ៍មុនដែរ។

មេធាវីរបស់ខ្ញុំអាចចូលរួមសវនាការក្នុងការរៀបចំសវនាការនៅថ្ងៃស្អែកបាន
ក៏ប៉ុន្តែជំហររបស់ខ្ញុំនៅក្នុងការធ្វើពហិការមិនចូលរួមក្នុងសវនាការលើអង្គសេចក្តី
គឺនៅ ដដែល។

នៅថ្ងៃនេះខ្ញុំបានទទួលដំណឹងថា សហព្រះរាជអាជ្ញាចង់ឱ្យ អរតក ចាត់តាំង
មេធាវីថ្មីសម្រាប់ខ្ញុំ។ ខ្ញុំសូមជម្រាបលោកឱ្យបានច្បាស់ថា វាជាជំហរដាច់ខាត
របស់ខ្ញុំថា ខ្ញុំនឹងមិនទទួលយកមេធាវីថ្មីនោះទេ ទោះជាក្នុងកាលៈទេសៈបែបណាក៏

ដោយ។ ខ្ញុំមានការជឿទុកចិត្ត និងជឿជាក់យ៉ាងច្បាស់ទៅលើលោក សុន អរុណ
និង Victor Koppe ។ ប្រសិនបើតុលាការសម្រេចចាត់តាំងមេធាវីថ្មី ខ្ញុំសូម
ជម្រាបថា ខ្ញុំនឹងមិនទទួលស្គាល់គាត់ទេ ហើយខ្ញុំក៏នឹងមិនទៅចូលរួមក្នុងសវនាការ
ដែរ លើកលែងតែមានការប្រើប្រាស់កងកម្លាំងដើម្បីបង្ខំខ្ញុំ។

ខ្ញុំសូមអញ្ជើញលោកមកជួបក្នុងបន្ទប់របស់ខ្ញុំដើម្បីស្តាប់ពីជំហររបស់ខ្ញុំដោយ
ផ្ទាល់។

ភ្នំពេញថ្ងៃទី ២៧ ខែ តុលា ឆ្នាំ ២០១៤

នួន ជា



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

ឯកសារបកប្រែ
TRANSLATION/TRADUCTION
ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Oct-2014, 08:44
CMS/CFO: Sann Rada

TRANSCRIPT OF PROCEEDINGS
PUBLIC

Case File N° 002-02/19-09-2007-ECCC/TC

17 October 2014
Trial Day 1

Before the Judges:

NIL Nonn, Presiding
Claudia FENZ
YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Martin KAROPKIN (Reserve)

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Roger PHILLIPS

For the Office of the Co-Prosecutors:

CHEA Leang
Nicholas KOUMJIAN
William SMITH
SENG Bunkheang
Dale LYSAK
Vincent DE WILDE D'ESTMAEL
Salim NAKHJAVANI
SONG Chorvoin
SENG Leang
SREA Rattanak

Accused:

NUON Chea
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Victor KOPPE
KONG Sam Onn
Anta GUISSÉ

Lawyers for the Civil Parties:

PICH Ang
Marie GUIRAUD
TY Srinna
LOR Chunthy
VEN Pov
SIN Soworn
Yiqiang LIU
MOCH Sovannary
HONG Kimsuon

For Court Management Section:

UCH Arun

1 [13.31.23]

2 MR. PRESIDENT:

3 Mr. Nuon Chea and counsel, could you inform the Chamber who is
4 going to speak first?

5 MR. SON ARUN:

6 My name is Son Arun I'm a - the counsel for Nuon Chea, and my
7 client, Mr. Nuon Chea, will speak first.

8 MR. PRESIDENT:

9 Thank you. And Mr. Nuon Chea, you may now proceed.

10 [13.31.53]

11 MR. NUON CHEA:

12 My respect to all venerable men, to my beloved fellow Cambodians
13 and to all those who are genuinely committed to truth and
14 justice. I am Nuon Chea and I was the Deputy Secretary of the
15 Communist Party of Kampuchea. Today, as this tribunal begins its
16 second trial against me, I would like to take this opportunity to
17 speak again to the Cambodian people. Judges, two months ago, in
18 this room, you issued your first judgment against me. You
19 convicted me of crimes against humanity relating to the
20 evacuation of the population from Phnom Penh and the execution of
21 Lon Nol soldiers and officers at Tuol Po Chrey and you sentenced
22 me to life in prison.

23 You said that the Communist Party of Kampuchea had a strict
24 hierarchy that was perfectly controlled from the Party Centre.
25 You said that at the very centre of it all were Pol Pot and I.

1 [13.33.47]

2 According to you, the two of us exercised the Party's ultimate
3 decision-making power, could make and implement all Party
4 policies and decisions, and controlled every single Khmer Rouge
5 cadre from the lowest foot soldier to all members of the Party's
6 Standing and Central Committees.

7 In arriving at that decision, you completely ignored clear and
8 concrete evidence that the Party was internally strongly divided,
9 and that zones could and did in fact act autonomously. You
10 ignored evidence that, contrary to being under my total control,
11 standing and Central Committee members like So Phim, Ros Nhim,
12 Vorn Vet, Koy Thuon, and others were actually the leaders of an
13 opposing faction within the Party supported by Vietnam.

14 [13.35.33]

15 This faction acted independently. From the very beginning this
16 faction was determined to fiercely undermine the Party's aims and
17 it was ultimately successful.

18 You also ignored evidence that my lawyers and I raised right from
19 the start of the first trial that many events in Democratic
20 Kampuchea occurred because of long-term aggression towards
21 Cambodia, by the land swallowing, annexationist neighbour,
22 Vietnam. You ignored evidence that Vietnam sponsored So Phim's
23 faction and was essential to its success. Nowhere in your
24 judgment of nearly one thousand pages in Khmer did you ever even
25 bother to directly address this evidence. Instead, you dismissed

1 Vietnamese aggression as some kind of paranoid delusion. In
2 addition, you did not mention the existence of the other faction
3 at all.

4 [13.37.54]

5 Let me be very clear. This was not paranoid delusion. As my
6 lawyers and I argued in the first trial, and will argue again in
7 this second trial, there were severe internal divisions within
8 the Party. It did contain a defecting faction which was supported
9 by Vietnam, led by So Phim and Ros Nhim. And we do not have to
10 have a judge's education to know that Vietnam had long been
11 extremely aggressive towards Cambodia. This is something that
12 every Cambodian already knows. I will speak more about this
13 later.

14 [13.39.04]

15 For now, let me just say that you ignored all this. Instead you
16 presented a story that was simple, but ultimately just a child's
17 fairy tale. And how did this happen? Well, one reason is that
18 despite my lawyer's constant efforts, every single one of the
19 Cambodian Judges among you refused to call Heng Samrin as a
20 witness, even though he was obviously the most important witness
21 in the whole trial. Even though he could give eyewitness
22 testimony about Party meetings at which our supposedly key
23 policies were decided. Even though he could have confirmed my
24 position that there were never any orders to kill Lon Nol
25 soldiers and officials. Even though he could have confirmed there

1 was no decision to kill innocent people during the evacuation.
2 Even though he could have explained my conduct and character in
3 detail, since we have known each other for over sixty years.
4 Despite all of this, you thought that my lawyers were trying to
5 call Heng Samrin as some kind of trick.
6 I wanted to speak to you from my heart today, and so I must tell
7 you that today I am very hurt. This tribunal was established to
8 find the truth and render justice, but in your first judgment
9 against me two months ago you completely failed to do so. You did
10 not reveal the truth, and you made a bitterly disappointing
11 mockery of justice.

12 [13.42.01]

13 Immediately after you rendered your first judgment against me, I
14 instructed my lawyers to file an application to disqualify the
15 Cambodian Judges Non, Sokhan and Ottara, and a French
16 International Judge Lavergne from all further trials against me
17 since your first judgment showed that you were no longer
18 qualified to remain sitting in judgment against me. My lawyers
19 filed this application a few weeks ago and we are still waiting
20 to hear what the decision will be. My lawyers argued that your
21 first judgment showed your lack of independence and your bias and
22 that this is because like all Cambodian judges, you work in fear
23 and under government control.
24 You demonstrated your lack of independence most of all in your
25 decision not to summon Heng Samrin. He was not only the most

1 important witness in the trial, and my only character witness, he
2 is also the current number three in the government and the
3 honorary president of the Cambodian People's Party. And you, the
4 French Judge Lavergne, my lawyers argued that you were even
5 worse.

6 [13.44.24]

7 For although you agreed with us that Heng Samrin should testify
8 and that he could have given important evidence that other
9 witnesses could not give, somehow you still concluded that I was
10 guilty without a doubt, even without hearing Heng Samrin's
11 important evidence. And you were not even willing to declare that
12 refusing to call Heng Samrin completely violated my right to a
13 fair trial, even though this was obvious. It is pointless to make
14 a decision on principle yet you are not brave enough to stand by
15 it to the end.

16 In this second trial, Heng Samrin remains the most important
17 witness. In fact, he is even more important now because it is
18 even more important in this second trial to understand Vietnam's
19 aggression, expansion, annexation and elimination of the Khmer
20 people.

21 Unfortunately your first judgment showed that you don't agree
22 with this. Therefore, in addition to applying to disqualify four
23 of the Judges among you right after I received the first judgment
24 against me, I immediately instructed my lawyers to appeal it.
25 That appeal will list more than two hundred errors you made in

1 your judgment.

2 [13.46.58]

3 Appealing the judgment does not mean that I want to deny the
4 suffering of the Cambodian people. My position is in fact the
5 complete opposite as I have already explained in this tribunal
6 many times. I recognize that during the Democratic Kampuchea
7 period, many people suffered greatly by the provocation of those
8 enemies within.

9 I am remorseful for that suffering and I accept moral
10 responsibility for it since I was one of the most senior leaders
11 of the Communist Party of Kampuchea. However, as I have already
12 also previously explained to this tribunal, I never intended to
13 cause such suffering.

14 [13.48.24]

15 Everything our Party did was intended to create a better society,
16 an equal society where the people would be the masters of their
17 own independence. During the modern society from the 1930s,
18 Vietnam had spoken of establishing an Indochinese Federation.
19 This federation would have brought Vietnam, Cambodia and Laos
20 together as a single state under Vietnam's control.

21 In January 1979, Vietnam partly achieved this ambition when it
22 successfully invaded Cambodia. In immediate response, King Father
23 Sihanouk went to the United States and spoke before its most
24 powerful organ, the Security Council, and he seeks (sic)
25 intervention from the United Nations. Samdech Sihanouk told the

1 Security Council that Vietnam had – and I quote: "Decided
2 cold-bloodedly to embark upon a very special operation whose
3 ultimate goal was nothing less than to swallow up little
4 Kampuchea just as a starving boa constrictor would fling itself
5 upon an innocent animal." Unquote. And in fact in that Security
6 Council meeting many diplomats agreed that Vietnam had, indeed,
7 illegally invaded Cambodia, including the representatives of
8 America, China and Australia.

9 This is no fantasy. It is recorded in a publicly available United
10 Nations documents.

11 [13.51.04]

12 The Vietnamese boa constrictor sent troops to invade Cambodia to
13 satisfy its insatiable appetite for more territory and more
14 subjugated peoples. Most significantly, it sponsored many former
15 traitorous comrades inside the Communist Party of Kampuchea to
16 serve its purposes. And a standard role of Vietnam is essential
17 to discovering the truth about many parts of this second trial.
18 These parts of the trial include, among other things, the
19 so-called genocide of the Vietnamese and Cham, the events at S-21
20 Security Centre, and the purges in the East Zone.

21 It is also my position that several crimes of which I am accused
22 in this second trial were in fact committed by So Phim, Ros Nhim,
23 and some other traitors and were committed outside my control and
24 knowledge.

25 [13.52.43]

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1 If you summon Heng Samrin to testify in this second trial, I
2 believe he will be able to confirm this.

3 In my lawyer's application to disqualify Judges from the Trial
4 Chamber, they argued that it would be simply impossible to
5 continue with a second trial if the three Cambodian Judges and
6 the French Judge among you remain on the Trial Chamber bench.

7 [13.53.28]

8 Under my instructions, my lawyers presented many reasons for
9 this, but one of the main ones was that the four of you had
10 already sat in judgment in the first trial. You have already
11 found me guilty. You also found that I had the ultimate power in
12 the Party and that our Party established several key policies.
13 You showed that you simply could not bring an open mind towards
14 several important arguments that my lawyers and I wanted to make.
15 You showed that you disbelieved our case in general and that you
16 would disbelieve anything I said that did not suit the fairy tale
17 you were writing.

18 Now that you have found me guilty in that first judgment, I
19 believe that you now have a clear bias against me in this second
20 trial. Under these circumstances, I simply cannot see how you can
21 continue to participate in this second trial. I simply cannot see
22 how I can enjoy my fair trial right, to be presumed innocent
23 until proven guilty, if you will continue to be part of this
24 trial. It is impossible.

25 [13.55.53]

1 The tribunal has not yet issued its decision about my
2 disqualification application against the four of you. I
3 understand that it may take several months for such a decision to
4 be issued. Now, under Cambodian law, whenever a party has applied
5 to disqualify a judge from a trial, that judge immediately steps
6 down until the disqualification application is decided. Indeed,
7 my lawyers tell me that this is the normal practice in courts in
8 general.

9 However, instead of doing so, you have continued to sit in
10 judgment in this second trial. You ordered us to appear in this
11 second trial and you ordered that this second trial should go
12 ahead, even though we are still waiting for the disqualification
13 decision.

14 [13.57.18]

15 In issuing such orders and sitting on the bench today, you have
16 shown complete disregard for the proper procedures under
17 Cambodian law. This is consistent with the way you have behaved
18 throughout the first trial, which my lawyers also argued in their
19 disqualification decision. Throughout the first trial, you showed
20 contempt for proper procedures. You defined and applied the
21 procedural rules inconsistently during the trial to suit your
22 purpose. You frequently and flagrantly violated my right to a
23 fair trial as my lawyers will detail at length in their appeal
24 against the first judgment.

25 I want to take this opportunity to personally request that each

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1 of you, except the new Judge, reconsider your decision to
2 continue with this trial. I request that you step down now until
3 the tribunal issues its decision on whether you should be
4 disqualified from this second trial. I understand that it might
5 take about three months for a disqualification decision to be
6 issued. Now, I know that you want this second trial to go ahead
7 as quickly as possible.

8 [13.59.33]

9 I too want this trial to proceed so that I have the opportunity
10 to speak to the Cambodian people about what really happened. But
11 we have already waited seven years and one month for this day;
12 waiting just three months more for a disqualification decision is
13 nothing. Judges, if you will not step down while your
14 disqualification application is being decided, you leave me with
15 no choice. I will instruct my lawyers to leave the courtroom
16 after Mr. Khieu Samphan has spoken and to boycott all further
17 hearings in this second trial until the disqualification decision
18 is issued.

19 MR. PRESIDENT:

20 Thank you.

21 Security guards you are instructed to bring him back to his seat
22 at the table.

23 (Mr. Nuon Chea leaves the dock)

24 [14.01.19]

25 MR. PRESIDENT:

1 Next the Chamber grants the floor to the defence team for Mr.
2 Nuon Chea to respond to the opening statement by the
3 Co-Prosecutors.

4 MR. SON ARUN:

5 Good afternoon Mr. President, since Mr. Nuon Chea, who is our
6 client, has made his statement the two lawyers for Mr. Nuon Chea
7 do not have any response to the Co-Prosecutor.

8 MR. PRESIDENT:

9 Thank you.

10 Next the Chamber grants the floor to the defence team for Mr.

11 Khieu Samphan and Mr. Khieu Samphan himself to make the statement
12 if they so wish.

13 And security guards are now instructed to bring Khieu Samphan to
14 the dock.

15 (Mr. Khieu Samphan is taken to the dock)

16 [14.03.54]

17 MR. PRESIDENT:

18 Mr. Khieu Samphan, you may proceed.

19 MR. KHIEU SAMPHAN:

20 Mr. President, Your Honours, members of the Bench and good
21 afternoon to everyone in this courtroom. Venerable monks in
22 pagodas across Cambodia. My beloved fellow Cambodian compatriots.
23 First and foremost, I would like to thank the President for
24 granting me the floor to address your Chamber. On the 7th of
25 August, the Trial Chamber convicted me and sentenced me to life