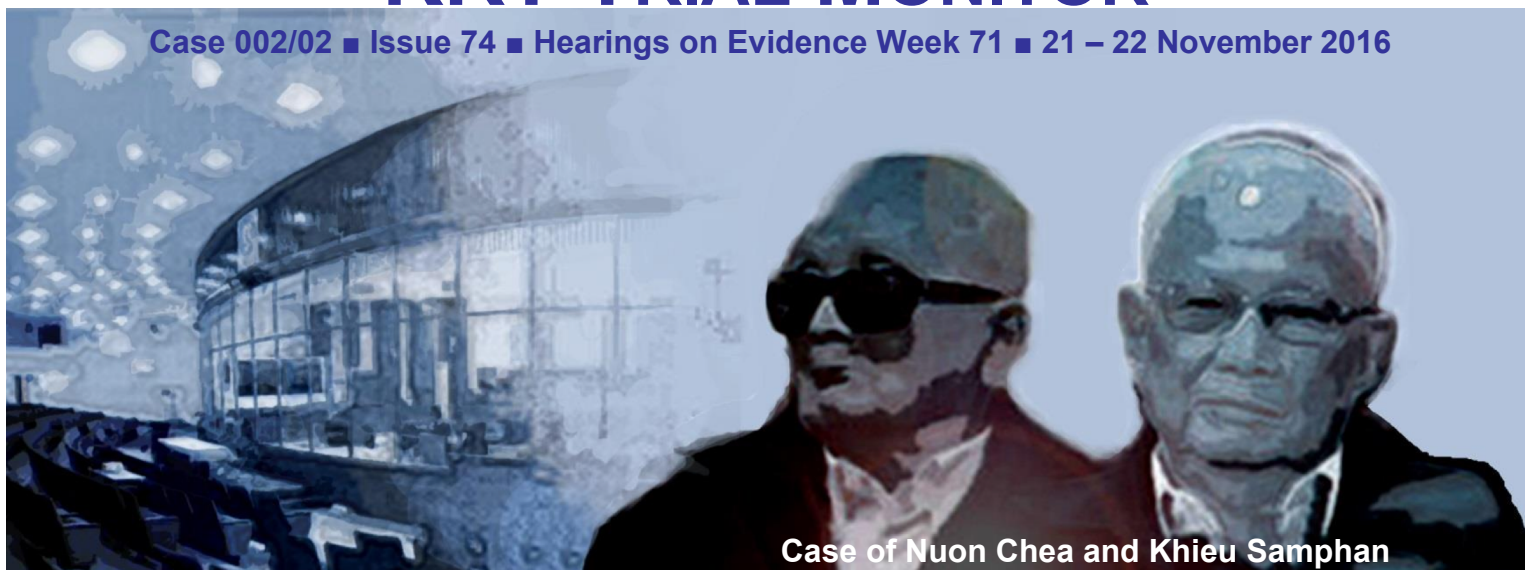


KRT TRIAL MONITOR

Case 002/02 ■ Issue 74 ■ Hearings on Evidence Week 71 ■ 21 – 22 November 2016



Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDB Center for Human Rights and International Justice at Stanford University
(previously known as the UC Berkeley War Crimes Studies Center)

*"I thought Nuon Chea was powerful because he could
remove a woman from living in that house and make her live with us.
It means that he even had more superior rights than Ieng Thirith."*

- Witness Touch Sithorn

I. OVERVIEW

The Trial Chamber sat for only two days this week to hear testimony related to Case 002/02, as on Wednesday the Supreme Court Chamber met to hand down its final verdict in the appeal on Case 002/01. This appeal verdict has been covered in a separate monitoring report.¹ On Monday and Tuesday, the Chamber heard from one Civil Party and one witness. Although both were called in relation to the role of the Accused, both testified on a range of other topics including purges and marriage. The first to testify, Civil Party 2-TCCP-223, did so under a protective pseudonym due to his participation in investigations that are ongoing, however on a number of occasions during questioning, he was asked to identify personal details, undermining this measure. Second to testify this week was Ms. Touch Sithorn, who did so via video-link from Paris. The Trial Chamber adjourned on Tuesday afternoon and will resume proceedings next Monday as normal.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

One Civil Party and one witness testified over the two days of Case 002/02 hearings this week on the role of the Accused. 2-TCCP-223 testified during the morning sessions of each day, while Ms. Touch Sithorn, testifying from Paris via video-link, was heard in the afternoon sessions to accommodate the time difference between Cambodia and France.

A. Summary of Testimony by 2-TCCP-223

The first to testify this week was only identified by his pseudonym, as he is part of ongoing investigations before the tribunal.² Called for the segment on the role of the Accused, 2-TCCP-223 mainly testified about his position during the regime and the purge of Northwest Zone cadres, although he did recall attending one meeting at which Nuon Chea spoke.

1. Roles at Battambang University and Office 560

In 1976, the Civil Party moved to Battambang Province to work as a messenger at Battambang University.³ He said that when reports arrived from the lower level, namely Sectors 4 and 5, led by Su and Hoem respectively, he would transmit these via telegram to Khorn, *alias* Keu, who he identified as the leader of the Northwest Zone. In addition to relaying messages, the Civil Party's responsibilities also included receiving guests. On one occasion, guests from the seven sectors of the Northwest Zone arrived at the school to attend study sessions, and he took them to visit Angkor Wat. He also received Chinese and Korean guests in 1976, but did not take them on any trips outside the province. In 1977 the Civil Party was transferred to work in Office 560 in the same capacity. He was responsible for sending documents to Office 870 (the Central Office of the CPK) and he only received guests from the sector level who came to attend meetings.⁴ Om Say, the Civil Party's uncle and head of Office 560, invited Khorn, Ruos Nhim, and others to attend meetings there.

2. Purge of Northwest Zone Cadres

The Civil Party testified that the purge in the Northwest Zone began at the lower levels. He said Southwest Zone cadres were given low-level positions in order to become familiar with the work of purge targets. Afterward, those targeted were "sent to study" and disappeared. The Civil Party summarized for the Court that "those who purged others were finally purged by other people, and this led to the collapse of the regime." His uncle, Om Say, and his father, Sou Chet, who oversaw the industrial sector of the province, both disappeared. The Civil Party said he heard from others after the regime fell that his father had been sent to S-21. However, he was unable to identify him among the prisoner lists he had found later at the Tuol Sleng Genocide Museum.⁵ About three or four months after his father was taken away, the Civil Party was accused of being part of a "traitorous network," and was sent to Phnom Penh.⁶

3. Role of Nuon Chea

After his transfer to Phnom Penh, the Civil Party attended a meeting where Nuon Chea spoke. He recalled that hundreds attended that meeting, all from the Northwest Zone. 2-TCCP-223 said that Nuon Chea told those in attendance that many people in the Northwest Zone's leadership were traitors, and the party had gathered them at the meeting in order to protect them from being killed by the "traitors" in their zone. The Civil Party recalled Nuon Chea specifically mentioning that Say had betrayed the revolution. The meeting lasted three days, and they were also shown Chinese and Khmer propaganda films. When asked about Nuon Chea, the Civil Party mentioned that as a child he had lived with Nuon Chea, however it became clear that he was too young to remember this, and he based his testimony on what his mother had told him.⁷

4. Statement of Suffering and Questions to the Accused

At the end of his testimony, Civil Party 2-TCCP-223 made a statement of suffering and put questions to the Accused. He described his suffering as "beyond words," elaborating on his pain at being separated from his parents, siblings and relatives, enduring difficult living conditions, having no education and no property. The Civil Party was visibly upset, as he told the court: "At present I live in a status which is lower than animals, and that is the result of what happened during the regime." He asked Noun Chea whether he felt responsible for the deaths that occurred in DK or whether "foreigners" should take responsibility for the deaths and mistreatment.⁸ No Party questioned the Civil Party on his statement of suffering.

B. Summary of Testimony by Touch Sithorn

On Monday and Tuesday afternoon, Ms. Touch Sithorn testified via video-link from Paris,

France, where she currently lives.⁹ The 61 year-old Witness testified extensively about her time working at the Ministry of Social Affairs under Ieng Thirith, who was charged in Case 002 however passed away last year.¹⁰

1. Background and Work at Soviet Hospital

Witness Touch Sithorn told the Chamber that she joined the revolution in 1972 at the age of 16, and lived in the jungle until liberation with her brother Touch Rean, who later became director of Kampong Som port.¹¹ She testified that after 17 April 1975, she was sent to the Soviet Hospital in Phnom Penh along with other medics. She said she was chosen to work there because she was able to read French when not many others could, and many of the medicine labels were in French. She indicated that chief of the 17 April hospital was Bong Sae, the wife of Chiv Ol.¹² The Witness said Bong Sae disappeared and was possibly arrested three or four months after 17 April 1975,¹³ however by this time the Witness herself had been transferred to work at the Ministry of Social Affairs under the supervision of Bong Su and, ultimately, Ieng Thirith.¹⁴

2. Role at Ministry of Social Affairs & Knowledge of Medicines

The Witness testified that, while she had never become a member of the CPK, she had been a cadre in charge of medicine distribution at the Ministry of Social Affairs (also known as K-2), and was in charge of about 20 people. She said that Bong Su gave her demographic information for each province, and she then had to arrange packages of the medicines for each province. She said that she had only worked within the Ministry of Social Affairs, and never went to the provinces by herself. She therefore could not guarantee the medicines had reached their intended destinations. Touch Sithorn recalled that meetings, chaired by Bong Su and Ieng Thirith, were conducted once a year with people from hospitals and the medicine production team working at the Ministry. During meetings, participants were encouraged to criticize themselves and profess loyalty to *Angkar*. She said the speakers also talked about enemies who had to be “smashed.” The Witness was also questioned about her knowledge of the medicines. She recalled that most of the French-labeled medicine distributed had been gathered from around Phnom Penh shortly after 17 April 1975. She also remembered some medicine with Chinese labels, although said she was not in charge of this. She said she did not distribute Khmer traditional medicine.

3. Marriage

Touch Sithorn told the Chamber that she was married at the Ministry of Social Affairs in September 1976. She said that Bong Su presided over the ceremony, and there were two other couples married that day. None of her family members attended the wedding.¹⁵ It was the wife of the deputy chief of Bong Su who had told her first about her marriage. Touch Sithorn said she had first tried to refuse, but Bong Su did not listen, and the second time she was asked, Touch Sithorn agreed to the match. The husband chosen for her had been living in France previously, and the Witness only met him once before their wedding. She recalled being worried that her husband-to-be had a wife or fiancée back in France, and also said she had had “love feelings” towards the secretary of Bong Su, but was not allowed to marry him.¹⁶ Explaining the reason for her marriage, Touch Sithorn said Bong Su had warned her she had best marry the man chosen for her by Angkar, or else she may have to marry “a worker or farmer.” The Witness said she became pregnant five or six months after her wedding and delivered her baby 13 January 1978. She said she was not forced to consummate the marriage. Shortly after delivering her baby, her husband disappeared along with his supervisor.

4. Role of the Accused

Touch Sithorn discussed three occasions when she had seen Nuon Chea. She said she first met him when he arrived at Phnom Penh Hospital in a jeep with bodyguards and a driver

approximately five months after the liberation of Phnom Penh. She said she had met him while her team was collecting medicines from the evacuated homes around Phnom Penh, and he asked to which ministry they belonged. Another time she saw Nuon Chea was at a meeting in 1976 attended by hundreds of participants from various ministries. She said Nuon Chea spoke about the current situation of Cambodia. Touch Sithorn explained that she was able to attend the meeting, which was held partially to celebrate the victory of the movement, because she was not considered to be in the category of “new people,” and because at the time the “situation was not yet tense.” The other encounter took place when Nuon Chea went to the Ministry of Social Affairs to meet with Bong Su. The Witness was unable to be sure whether the 1976 meeting took place before or after Nuon Chea visited the Ministry of Social Affairs.

Touch Sithorn said she had also seen Khieu Samphan on one occasion in 1978, shortly after her husband disappeared. After this, she took over her husband’s former position ordering materials, and on one occasion she submitted a request form to Khieu Samphan in person. She said he advised her “to not purchase anything unnecessary.” The Witness could not recall where she had met Khieu Samphan exactly, although she said it was neither the Ministry of Social Affairs nor the Ministry of Commerce.

5. Knowledge of Internal Conflicts within the CPK

Touch Sithorn was questioned by the Defense for Khieu Samphan about an assassination attempt against Ieng Thirith. In response, she described the 1977 incident where she was asked to deliver a box of Cambodian fermented fish as a gift to Ieng Thirith. She recalled that Ieng Thirith had not wanted the gift, and had told the Witness she should keep it for herself. Touch Sithorn recalled opening the box and seeing shards of glass amongst the food, leading her to throw the box away. She said that at the time she did not think much about this, however after the regime when she moved to France she learnt from others about internal rifts in the CPK and began to wonder whether this had been an attempt on Ieng Thirith’s life. She said people had told her Son Sen in particular was “disappointed” with Ieng Thirith and that there was a dispute within the regime between Ieng Thirith and Son Sen’s wife Yun Yet. The Witness described further conflict concerning Ieng Thirith, recalling the Minister for Social Affairs being angry that Khieu Samphan had spoken to the Witness about the medical supply order without speaking to Ieng Thirith first.¹⁷ When confronted with an excerpt from Elizabeth Becker’s interview with Ieng Thirith in which she spoke of someone attempting to poison her during a visit of a Laotian delegation, the Witness said she did not know anything about this.

6. Witness Demeanor and Credibility

Touch Sithorn was generally cooperative and calm while giving evidence, however she regularly gave lengthy, extended answers that sometimes went beyond the original question asked. She sometimes had to be asked to shorten her responses. When confronted with discrepancies between her previous statements and her in-court testimony, Touch Sithorn appeared to consider the contradiction and explain any difference.¹⁸ In circumstances where the Witness could not answer the question, she explained why: for example she often cited her low rank and not being a member of the CPK.¹⁹

III. LEGAL AND PROCEDURAL ISSUES

No major legal or procedural issues delayed proceedings this week, however during the testimony of 2-TCCP-223 monitors noted a number of instances during which Parties asked questions related to the Civil Party’s personal background, date of birth, or family circumstances, undermining the confidentiality under which he was testifying.

A. Confidentiality of 2-TCCP-223

At the start of 2-TCCP-223's testimony, President Nil Nonn reminded Parties that he was testifying under a protective pseudonym due to his role in ongoing cases before the tribunal. However, despite this, a number of personal details came to light during his testimony. On Monday Dale Lysak first asked the Civil Party for his father's full name, and then read the name into the record from a list of prisoners entering S-21. On Tuesday, Victor Koppe read out the Civil Party's birth year when asking him questions about having lived with Nuon Chea as a child. In order to clarify this situation, Judge Fenz then asked the Civil Party for his mother's maiden name. Only after this third detail was revealed did President Nil Nonn advise Parties that if they want to verify personal details they should do so on paper so as not to infringe on the confidentiality of the Civil Party.

IV. TRIAL MANAGEMENT

This week the Trial Chamber successfully concluded the testimonies of one Civil Party and one witness on Monday and Tuesday. To manage the video-link testimony of Touch Sithorn from France, the Chamber split the two individuals' testimony over two days.

A. Attendance

This week Noun Chea continued to waive his right to be present in the courtroom. He observed proceedings through video link from the holding cell due to his poor health, while Khieu Samphan was present in the courtroom throughout the week.

Judge Attendance: All judges of the bench were present in the courtroom as normal this week.

Parties: All Parties were present this week.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 21/11/2016	<ul style="list-style-type: none">▪ 155 villagers from Kandeang District, Pursat Province.▪ 10 Civil Parties▪ 2 Foreign observers	<ul style="list-style-type: none">▪ 10 Civil Parties
Tuesday 22/11/2016	<ul style="list-style-type: none">▪ 37 villagers from Teuk Chu District, Kampot Province.▪ 2 Foreign observers	<ul style="list-style-type: none">▪ 9 Civil Parties▪ 5 Foreign observers

B. Time Management

Some significant time delays were caused by problems with the video-link testimony of Ms. Touch Sithorn this week. On Monday afternoon the Chamber resumed 30 minutes late after the lunch break without providing a reason, and later that day the court adjourned early due to a lost connection.²⁰ In order to conclude her testimony before Wednesday, President Nil Nonn held proceedings through the afternoon break on Monday, and maintained strict time limits in order to give Parties equal opportunity to address the Witness.

C. Courtroom Etiquette

There were no noteworthy breaches of courtroom etiquette this week, and overall proceedings ran smoothly.

D. Translation and Technical Issues

Ms. Touch Sithorn, fluent in both Khmer and French, tended to alternate between the two languages throughout her testimony, sometimes switching during the same sentence, which posed challenges for the interpreters. After being reminded by the President numerous times to try to use only one language during her testimony, she appeared to improve. As mentioned above, technical issues establishing the connection to Ms. Touch Sithorn in Paris also delayed proceedings on Monday afternoon. Indeed, there were a few minor technical issues with the sound and picture quality during the video-link testimony. This is uncommon, and was eventually addressed.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 21/11/2016	9:02	10:17-10:35	11:36-13:57	*no break	15:58	4 hours 17 minutes
Tuesday 22/11/2016	9:03	10:08-10:31	11:35-13:31	14:43-14:59	15:58	4 hours 20 minutes
Average number of hours in session				4 hours and 18 minutes		
Total number of hours this week				8 hours and 37 minutes		
Total number of hours, day, weeks at trial				976 hours and 9 minutes		
256 TRIAL DAYS OVER 74 WEEKS						

*This report was authored by Michael Chen, Hanna Daych, Caitlin McCaffrie, Vuthy Nin, Louise Rettweiler, Lina Tay and Penelope Van Tuyl as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- ☐ the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- ☐ the quotes are based on the personal notes of the trial monitors during the proceedings;
- ☐ the figures in the *Public Attendance* section of the report are only approximations made By AIJI staff; and
- ☐ photos are courtesy of the ECCC.

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eavalias “Duch”</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (CaseNo.002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCF	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ See CASE 002/01 KRT TRIAL MONITOR, Final Appeal Verdict, (23 November 2016).

² 2-TCCP-223 was questioned in the following order: President NIL Nonn; Civil Party lawyer LOR Chunthy; international assistant prosecutor Dale LYSAK; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISE.

³ The Civil Party said the University was also known as *Sala Pak*, or Party’s School.

⁴ When asked for more detail about the frequency of these meetings the Civil Party said they happened: “sometimes once a month, or once every three months, or once every six months. It depends”

⁵ Dale LYSAK read into the record two lists from S-21 which included the Civil Party’s father’s name and date of entry to S-21. Although Mr. LYSAK used the Civil Party’s father’s full name in open court, KRT montiors have chosen not to include it in this report in line with the court’s procedures on maintaining the confidentiality of individuals who are part of ongoing investigations.

⁶ The Civil Party estimated that this was, in late 1977, during the harvesting season.

⁷ On Monday 2-TCCP-223 said that “my mother used to live with Nuon Chea. I myself also lived with Nuon Chea when I was young” however when confronted with this statement on Tuesday he denied having ever lived with Nuon Chea and said he had in fact worked with him. Later he clarified again, saying it was in fact his father who had worked with Nuon Chea and not himself, and that his mother had said they had lived with Nuon Chea when the Civil Party was very young.

⁸ 2-TCCP-223 specifically asked whether Nuon Chea was responsible for the mistreatment of “7 million people” and the deaths of “1.5 - 3 million people”

⁹ Witness TOUCH Sithorn (2-TCW-842) was questioned in the following order: President NIL Nonn; senior assistant prosecutor Vincent DE WILDE D’ESTMAEL; international co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISE; judge Claudia FENZ; international co-lawyer for Khieu Samphan, Anta GUISE.

¹⁰ IENG Thirith was indicted on 10 September 2010 for crimes against humanity, genocide and grave breaches of the Geneva Conventions. She was originally one of the four charged persons in Case 002, including the current two

Accused and her husband IENG Sary. On 13 September 2012 the Trial Chamber issued a decision to stay proceedings against her due to advanced dementia. She passed away on 22 August 2015.

¹¹ She described having joined the revolution almost incidentally, saying her sister in law had asked her to accompany them into the forest and Touch Sithorn had believed she would return home soon.

¹² Bong Sae was the woman's revolutionary name. Touch Sithorn could not recall her birth name. The Witness said that Bong Sae remained working at the hospital for five to six months after her husband Chiv Ol was arrested.

¹³ Senior Assistant Prosecutor Vincent DE WILDE D'ESTMAEL confronted the Witness with a list of entry for S-21 which listed Bong Sae, aged 38, as having entered S-21 on 17 December 1977 and being executed on 31 March 1978. In response the Witness repeated that she was not certain about the date Bong Sae was arrested, as she herself was no longer working at the hospital at that time and was relying on what she recalled being told by others.

¹⁴ The Witness identified Ieng Thirith's role as encompassing hospitals, medicine production and health.

¹⁵ According to Touch Sithorn she only heard that Angkar was now acting as their parents and would choose their spouses when they were an appropriate age to get married.

¹⁶ The Witness said Bong Su's secretary a better "appearance" than the husband selected for her, but confirmed she had had "no choice to make regarding the selection of [her] own husband."

¹⁷ Touch Sithorn recalled that Ieng Thirith got "angry with this and that person" and suggested that it was "maybe her nature."

¹⁸ For example there were instances where her testimony did not match her statement or earlier testimony such as her description of her second encounter with Nuon Chea, which she first said was in 1976 and then later stated that this was a mistake, and it was actually soon after the Khmer Rouge victory over Phnom Penh. In another instance, Senior Assistant Prosecutor Mr Vincent de Wilde recalled the witness's statement that a person named Sae was arrested in mid-1975 which contradicted S-21 records stating that this person entered S-21 on 17 December 1977.

¹⁹ After being asked several questions about a policy to improve the health of Cambodian people by International Co-Lawyer for Nuon Chea Mr Victor Koppe which she could not answer, the witness firmly stated non-party members were privy to very little information and as a result she could not answer any questions about policy or other matters determined by party members.

²⁰ While no explicit reason was given for the half hour delay it was assumed to be a problem establishing the video connection with France.