



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

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

14 September 2016

Trial Day 454

ឯកសារដើម

ORIGINAL/ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ (Date): 09-Dec-2016, 15:21

CMS/CFO: Sann Rada

Before the Judges: YA Sokhan, Presiding
Claudia FENZ
Jean-Marc LAVERGNE
THOU Mony
YOU Ottara
Martin KAROPKIN (Reserve)

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Doreen CHEN
Victor KOPPE
LIV Sovanna
KONG Sam Onn
Anta GUISSSE

Trial Chamber Greffiers/Legal Officers:
EM Hoy
Maddalena GHEZZI

For the Office of the Co-Prosecutors:
Dale LYSAK
William SMITH
SONG Chorvoin

Lawyers for the Civil Parties:
Marie GUIRAUD
LOR Chunthy
PICH Ang
SIN Soworn
VEN Pov

For Court Management Section:
UCH Arun

INDEX

Ms. Kasumi NAKAGAWA (2-TCE-82)

Questioning by Ms. GUIRAUD resumes page 3

Questioning by Judge LAVERGNE..... page 9

Questioning by Judge FENZ..... page 19

Questioning by Mr. LIV Sovanna page 25

Questioning by Ms. CHEN..... page 55

Questioning by Mr. KOPPE page 91

Questioning by Mr. KONG Sam Onn page 98

Questioning by Ms. GUISSE..... page 104

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Ms. CHEN	English
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LIV Sovanna	Khmer
Ms. NAKAGAWA (2-TCE-82)	English
Mr. PICH Ang	Khmer
Mr. SMITH	English
The President (YA Sokhan)	Khmer

1 P R O C E E D I N G S

2 (Court opens at 0908H)

3 MR. PRESIDENT:

4 Please be seated. The Court is now in session.

5 Today, the Chamber continues hearing the testimony of the expert,

6 Kasumi, and then proceeds to hear 2-TCW-859.

7 Mr. Em Hoy, please report the attendance of the parties and other
8 individuals to today's proceedings.

9 THE GREFFIER:

10 Mr. President, for today's proceedings, all parties to this case
11 are present.

12 Mr. Nuon Chea is present in the holding cell downstairs. He has
13 waived his right to be present directly in the courtroom. The
14 waiver has been delivered to the greffier.

15 The expert to testify today is Kasumi. She is now in the
16 courtroom.

17 Today we have a reserve witness, 2-TCW-854. The witness has
18 confirmed that, to the best of his or her knowledge, he or she
19 has no relationship, by blood or by law, to any of the two
20 accused, Nuon Chea and Khieu Samphan, or to any of the civil
21 parties admitted in this case. The witness will take an oath
22 before the Iron Club Statue this morning.

23 Thank you, Mr. President.

24 [09.10.38]

25 MR. PRESIDENT:

2

1 The Chamber now decides on the request by Nuon Chea.

2 The Chamber has received a waiver from Nuon Chea dated 14
3 September 2016 which states that, due to his health, headache,
4 back pain, he cannot sit or concentrate for long and in order to
5 effectively participate in future hearings, he requests to waive
6 his right to be present at the 14 September 2016 hearing.

7 The Defence -- his defence advises that -- about the consequence
8 of his waiver, that in no way it can be construed as a waiver of
9 his rights to be tried fairly or to challenge evidence presented
10 to or admitted by this Court at any time during the trial.

11 Having seen the medical report of Nuon Chea by the duty doctor
12 for the accused at the ECCC, dated 14 September 2016, which notes
13 that Nuon Chea has a chronic back pain when he sits for long and
14 recommends that the Chamber shall grant him his request so that
15 he can follow the proceedings remotely from the holding cell
16 downstairs. Based on the above information and pursuant to Rule
17 81.5 of the ECCC Internal Rules, the Chamber grants Nuon Chea's
18 request to follow today's proceedings remotely from the holding
19 cell downstairs via an audio-visual means.

20 [09.12.22]

21 AV Unit personnel are instructed to link the proceedings to the
22 room downstairs so that Nuon Chea can follow the proceedings from
23 the holding cell downstairs. That applies for the whole day.
24 Next, the Chamber invites the Lead Co-Lawyer for civil parties to
25 resume the questioning. And you will only be granted 10 minutes.

1 QUESTIONING BY MS. GUIRAUD RESUMES:

2 Thank you, Mr. President. Good morning, everyone. Good morning,

3 Madam Expert. We still have very brief questions to put to you.

4 Q. Yesterday in the afternoon, you talked about rapes that were

5 committed as part of forced marriages. I would like to know

6 whether your research enabled you to know whether it was <common

7 for women to report these rape cases during the Democratic

8 Kampuchea regime.>

9 [09.13.45]

10 MS. KASUMI NAKAGAWA:

11 A. Good morning, and thank you very much for your question.

12 The -- my research with the men and women who were not forced to

13 marry by the Khmer Rouge did not inquire about this issue, so my

14 answer can be only from my interviews with those who were forced

15 and how they were also forced to consummate the marriage.

16 In my opinion, I could say that most of those forced couples were

17 spied their night lives by chlop, the spies, and they had to

18 complete it. And it was impossible to avoid it. In case a spy

19 knew that they were not consummating the marriage or in case --

20 in some cases, husbands reported to the Khmer Rouge that their

21 wives did not agree to have sex with the wife, then the

22 consequences would be a punishment. It could be ranged from

23 punishment in a form of detention in the re-education centre for

24 education in many ways, or it could be a punishment in the forms

25 of sexual violence against either the wife or husband or to the

4

1 both, or it could be a punishment to death.

2 [09.15.55]

3 Q. Thank you for this answer, which is very interesting, but
4 unfortunately, it didn't respond to my question. And I <imagine
5 my question> wasn't clear. <Were these rape cases reported to the
6 authorities by women during the Democratic Kampuchea regime?>
7 That was my question.

8 A. Yes, it was. It was prohibited.

9 Q. I think there is clearly an interpretation problem because I
10 thought I was very clear in French. I'll have to ask my questions
11 in English, and this will avoid <the numerous problems we are
12 encountering with the interpretation>.
13 My question was, <did women report rapes during the Democratic
14 Kampuchea regime?>

15 [09.17.10]

16 A. Excuse me, by "women" you are meaning -- referring to the
17 wives who are forced to marry and that she reported it? Was it
18 the question? Could you rephrase the question, if you could?

19 JUDGE FENZ:

20 In English, it's very unclear. I agree with the expert. I'm a bit
21 at a loss as to what you want.

22 BY MS. GUIRAUD:

23 Q. I am speaking to francophones, and I think my question was
24 very clear.

25 As regards the women who were raped as part of those forced

5

1 marriages, did those women denounce the acts of rape to the
2 authorities during the Democratic Kampuchea regime?

3 <Did women report these rapes>?

4 [09.18.16]

5 MS. NAKAGAWA:

6 A. The answer is no. The -- it was not rape to the eyes of the
7 Khmer Rouge. It was a duty and a responsibility as a part of
8 revolution that once a man and a woman became a couple, they had
9 to consummate a marriage. And my assumption was that if those
10 couples voluntarily married, the Khmer Rouge did not spy on their
11 acts because they assumed that they were trying to consummate the
12 marriage because they proposed to get married.

13 On the contrary, if a woman and man were forced to marry, the
14 Khmer Rouge had to ensure that the marriage was completed in
15 their very private sphere. So from their eyes, it was a duty. And
16 the women and men who were forced to marry knew that it is their
17 responsibility and they had to do it, so it was simply impossible
18 for any man or woman in this marriage status to report the abuse
19 or sexual attack or rape because it was not recognized as a crime
20 by the Khmer Rouge.

21 [09.20.02]

22 Q. Thank you.

23 Yesterday, you talked of the impact those forced marriages had on
24 men and women who got married. I would like to know whether those
25 marriages had an impact on the family members of those persons,

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

6

1 for instance, <whether> parents, brothers and sisters of persons
2 who were forcibly married during the Democratic Kampuchea regime
3 also suffered as a result of that situation.

4 A. Yes, it is. Particularly if I compare all the parties in the
5 family that could have been involved, the mother of a daughter,
6 so the bride, suffered most because normally the mothers of a
7 daughter had a very, very big important role and responsibility
8 to prepare a marriage for her, for the daughter, to ensure the
9 happiness of the daughter. So the mother suffered a lot and also,
10 in the same -- on the same token, the parents because it was
11 parents' duty to ensure that their children would have a happy
12 life, happy marriage life. They were deprived of their
13 responsibility.

14 In regard to the siblings or relatives, to my knowledge,
15 everybody was suffering and had to struggle for their own
16 survival. So, my interviews -- because I asked many people about
17 the forced marriages or marriages of their family members in the
18 Khmer Rouge, they said they were far away; they could not know;
19 they could not take care; they could not even pay attention
20 because he or she was starving to death and they had to think
21 about their own future.

22 [09.22.11]

23 But I think one of the long-lasting legacy is the impact over the
24 children who are born out of such a forced marriage. In many
25 cases, not -- I cannot compare generally, but in many families,

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

1 the study shows that if parents who are forced into marriage
2 during the Khmer Rouge, the prevalence of domestic violence,
3 particularly by the husband against wife, is higher than that of
4 non-forced marriage couples.

5 And I cannot generalize this, but it could be easily assumed that
6 if a wife and husband was forced to marry, forced to have a child
7 and even forced to continue their marriages, after the Khmer
8 Rouge time, it could be assumed that the happiness was not born
9 out of the genuine, the competition or the establishment of the
10 family origin itself. They had to travel to make a happy life,
11 which was not possible in all the cases. So the impact -- we
12 should not forget the impact over the children who are born out
13 of forced marriages.

14 [09.23.43]

15 Q. Thank you.

16 As a follow-up to what you've just said, after the Democratic
17 Kampuchea regime, did your research enable you to demonstrate
18 whether a stigma existed vis à vis persons who were forcibly
19 married during the Democratic Kampuchea regime? Were those
20 couples stigmatized and, if yes, how?

21 A. The majority of the couples who are married in the Khmer
22 Rouge, they continued on their marriages. They didn't choose to
23 separate. And because my interview was conducted, the first one,
24 more than 30 years after the Khmer Rouge fall, and the recent
25 one, more than 40 years, they rather look back their forced

8

1 marriage as the beginning of their long journey as a couple, as a
2 mother and father until today.

3 Despite the fact that they were forced to married -- let me
4 rephrase.

5 [09.25.06]

6 When I asked the specific question about the time of the marriage
7 in the Khmer Rouge, they don't have any happy memory. They were
8 very sad to look back on the past, and they were -- many were
9 very angry that they were forced into the marriage.
10 Some had -- as I said yesterday, some still had -- have had
11 mental or physical problems that they had to carry on until today
12 or emotional trauma that they had to carry on today. But my
13 observations over those who were forced to marry is that they
14 tried to move forward by covering up the dark past that they were
15 forced to be married, and they tried to move forward by making a
16 family with a spouse that they were assigned to live together
17 because many cases they already have a child. So for the sake and
18 happiness of the child, they try to forget. It was a force that
19 they were tried -- they were forced to try to forget about the
20 past and look forward to survival.

21 [09.26.36]

22 MR. PRESIDENT:

23 Lead Co-Lawyer for civil parties, you have no more time now.

24 MS. GUIRAUD:

25 Thank you, Mr. President. I obviously have other questions to put

1 to the witness, but I <must respect your decision. Thank you for
2 the additional ten minutes.>

3 Thank you, expert.

4 MR. PRESIDENT:

5 I thank you very much, Lead Co-Lawyer for civil parties.

6 Judge Lavergne, you may now proceed with your questions.

7 QUESTIONING BY JUDGE LAVERGNE:

8 Yes. Thank you, Mr. President. I have a few short questions, a
9 few follow-up questions to put to the expert.

10 Q. Ms. Expert, yesterday, you explained the differences between
11 arranged marriages and forced marriages, and I'd like to get back
12 to what you said.

13 You explained yesterday, if I understood you well, that one of
14 the major aspects of the traditional role of family and of
15 parents vis à vis children, in particular young girls, was to
16 ensure protection, and this all the way up until marriage. In
17 fact, marriage was maybe even considered as <the culmination> of
18 this role of protection.

19 [09.28.14]

20 And you also said, I believe, that in this context, arranged
21 marriages, the <future> newlyweds, in particular young women,
22 were generally led<, ideally,> to <give their consent -- or as
23 you've put it, I believe -- > "blind <consent>" to their marriage
24 and to the choice of the spouse.

25 So my question is, did I understand well what you said yesterday?

10

1 And my other question is, was this blind <consent, if that is the
2 case> -- should we place this blind <consent> in a context of
3 trust? That is to say, can we understand that this <consent> was
4 granted because there was trust, trust in what the parents had
5 decided as being the best choice to serve <both> the family
6 interests as well as the individual interests of the spouses?
7 So did I understand properly what you were explaining to us
8 yesterday?

9 [09.29.52]

10 MS. NAKAGAWA:

11 A. Yes, Your Honour, that's correct.

12 What -- I didn't use the word "trust", but Your Honour, you are
13 collectively -- correctly appropriately addressing what I wanted
14 to say.

15 In the arranged marriage before the Khmer Rouge, as Your Honour
16 said, it was a family matter and the daughter -- the marriage was
17 a family matter, particularly the parents, and the daughters were
18 expecting the parents to decide on her marriage. So we would say
19 that she was blindly agreed upon the proposal by the parents for
20 a marriage because there was a mutual trust.

21 The daughters trust that their parents would make the best
22 possible selection or the best possible decision for her and for
23 her family because marriages is not an individual matter, whereas
24 in the Khmer Rouge time, Khmer Rouge failed to gain the trust by
25 those married couple. They could not regard the Khmer Rouge as

11

1 their parents.

2 [09.31.12]

3 That's why I call it "forced". They didn't give any consent. Even
4 though they agreed, it was not out of their free will. Agreement
5 or consent was done out of fear of being killed.

6 Q. <Aren't> there also other reasons explaining <the fact> that
7 Angkar <-- because we speak about the authorities, but at the
8 time it seems they spoke a lot about Angkar --> was not able to
9 replace the parents?

10 You said that there was a lack of trust, yes, but can we not
11 <also> explain this lack of trust by the fact that these people
12 were already traumatized, traumatized because of the evacuation
13 of the cities, for example, traumatized because the families were
14 separated<, as you described yesterday>?

15 The young people were sent to mobile units separated from the
16 families. The young girls were sent to mobile units, which were
17 also separated from their families without being able to know
18 what was happening.

19 [09.32.41]

20 So the fear of maybe not belonging to the right social category
21 in the eyes of the revolution, wasn't this also an element in the
22 creation of trauma that did not allow this trust?

23 A. I'm not pretty sure if I can respond to your question, but let
24 me try by recalling my interviews with the people.

25 The -- in my interviews, I asked the people when they were

12

1 children before the Khmer Rouge, how were their family life. And
2 I specifically asked were their mothers, fathers beating up them,
3 did the teacher use violence in the school. And everybody said
4 yes. "My mother beated me when I lost the cow. My father beated
5 me when I came back home late. My teacher beated me."
6 So, violence was very rampant even before the Khmer Rouge, but
7 those people saw those violence as not a tool to terrifying them,
8 but as a symbol of affection, as a symbol of education that the
9 adults were guiding them to be a good citizen. It's a part of
10 their affectionate way of education for personal development.

11 [09.34.21]

12 Whereas, during the Khmer Rouge time, violence was used only for
13 terrifying a people -- the people. The violence was used as a
14 systematic tool to generate the terror among the population, so
15 it was just impossible -- and the Khmer Rouge -- I also asked the
16 people during the Khmer Rouge in "kang chalet", "kang komar",
17 "kang yuvachun" (phonetic), "Did you -- do you recall any time
18 when the Khmer Rouge upraised you when you did something good?"
19 Majority of the people said, "No, Khmer Rouge just ordered us,
20 shouted us, scolded us".

21 I recall only one, two persons who said, "Yes, Khmer Rouge leader
22 applauded me when I did a good job". Maybe only one or two.
23 Maximum two.

24 [09.35.18]

25 So other than that, people do not recall any positive memory by

13

1 the Khmer Rouge or the state or the governing system which tried
2 to replace the parents, if I may answer to you correctly.
3 Q. Yes, thank you. You also added yesterday that after marriage<,
4 I believe>, <that> once the spouses were separated -- and again,
5 this is something that was imposed upon them -- and you said
6 that, in the past, the most important thing for the husband <was>
7 to ensure protection for the <growing> family as well as for the
8 spouse.

9 Well, can you provide us any explanations regarding why the
10 spouses were separated? <Why weren't they left together?> Was
11 this something general, something widespread, or <were these
12 isolated incidents?>

13 And my second question <is of course obvious>, how could the wife
14 expect protection from a husband who was absent?

15 Was Angkar <also> going to replace the husband in this role of
16 protection?

17 A. Yes. Thank you very much.

18 The overall goal of the Khmer Rouge, to my understanding, was to
19 achieve the revolution. And for that, the people had to engage in
20 the hard labour. And during the Khmer Rouge time, men and women
21 were separated to avoid the moral offence. And they assigned the
22 people to work collectively, not individually, or as an
23 individual family unit.

24 [09.37.24]

25 Because of this strategy, husband and wife had to be engaged in a

14

1 labour in a different place, and mostly, husband was assigned to
2 work in the group unit which is far away from their own house,
3 what they call mobile team that they were moving around the
4 locations depending on the plan of the Khmer Rouge. This is what
5 I said, that the husband and wife were separated.
6 It was not their own will, but the Angkar or Khmer Rouge
7 instructed husband to be away. And it is very general.
8 I could recall only some instances where husband was close to
9 wife, but not all the time. Mostly, husband was away. It is a
10 matter of frequency, how often the husband could come back to see
11 the wife. That's the answer to the first question.

12 [09.38.43]

13 The second question was, the Angkar, Khmer Rouge did not give any
14 single protection for a man or a woman or for a child or
15 children. There was nothing. We talked about it yesterday. There
16 was no social safety net.

17 Before the Khmer Rouge time, husband or wife -- or husband or
18 father was expected to fulfil their duty to be a protector and a
19 provider. If they fail, it is a challenge of their masculinities.
20 They had to do it. It's their duties.

21 During the Khmer Rouge time, husbands or father were deprived of
22 these rights. They suffered a lot because they could not provide
23 any protection for their family. Remember that many people were
24 married already in the Khmer Rouge time. They had wives and
25 children. They could not provide any protection for their

15

1 families.

2 The question was asking if the Khmer Rouge replaced this role to
3 protect their wife or their children. No, they didn't pay any
4 single attention from the protection viewpoint.

5 [09.40.10]

6 If I may refer to my research on pregnancy in the Khmer Rouge
7 time, pregnant women -- as we know, from ancient time, they
8 needed special attention by the family member, by the community
9 members and, in modern age, the state has the responsibilities to
10 protect the welfare of the expectant mothers. And of course, the
11 father, the husband, is one of them. He should provide the
12 protection for his wife, who is expecting a child.

13 In the Khmer Rouge time, husbands were not allowed to take care
14 of their pregnant wife simply because they were removed from
15 their wives. What about the Khmer Rouge -- did the Khmer Rouge
16 provide protection for the expectant mothers who needed a very
17 special care because of her reproductive health? No. There was no
18 protection from the Khmer Rouge.

19 On the contrary, the Khmer Rouge forced the pregnant women to
20 engage in the forced labour on the same level as non-pregnant
21 women. There was no medicine. The request for a leave, because of
22 morning sickness, was not granted. There was no protection.

23 [09.41.41]

24 So Your Honour, to answer to your question, the Khmer Rouge did
25 not try -- even try to replace the role of husband or the father

16

1 as a protector and a provider.

2 Q. So you just told us that it was difficult or impossible for
3 fathers to ensure this role of protection.

4 Now, with regard to mothers, was it possible for them to protect
5 their own children? How did Angkar understand relations between
6 children resulting from these marriages and their natural
7 parents?

8 At one point in time were the children also removed, since
9 <separations did occur>, and at what age were the children
10 removed from their families?

11 A. To the very final point I don't have an answer, but let me go
12 back to the beginning of your question.

13 The -- during the Khmer Rouge time, the family unit did not exist
14 as we assume a family per se as of now. It was all individual. If
15 there is a family unit consisting of a father, mother, children
16 as we may assume, wife was separated from the husband, husband
17 was separated from the wife, and children were also removed by
18 both parents.

19 [09.43.49]

20 My studies was investigating about this issue a lot because I'm
21 doing the research on children in the Khmer Rouge time. When the
22 mothers were breastfeeding a child, a child was allowed to stay
23 with the mother in the night and mostly over the lunch time, but
24 except those time, mothers were forced to work in the field or in
25 the farm away from even a very small baby.

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

17

1 When the mother stopped breastfeeding, mother was not allowed to
2 see a child even during the lunch time. There was an old woman
3 who were take -- taking care of a group of small children who
4 were not yet able to work, and those were small, small kids.
5 And once a child is understood as old enough or big enough to
6 work for the revolution, they were put in the children's group,
7 "kong komar", and they were again removed from their parents.
8 Many were allowed -- in this group, many were allowed to go back
9 to their home to stay with the mother in the night. During the
10 daytime, they were forced to engage in some labour.

11 [09.45.27]

12 But it is not uniformed, so some children's group, they were
13 completely removed by the parents or the mother and they were
14 forced to move around, and they could not see their parents for
15 certain period of time. Could be three months or could be two
16 years. When the children become bigger, I cannot draw the line
17 how old because it differs a lot. It's more like the height and
18 the physical growth.
19 If the Khmer Rouge regarded this size of a child enough to be in
20 the mobile unit, then a children were removed from --
21 transferred, I would say -- transferred from the child group to
22 the youth group or mobile group.
23 And I interviewed the children who are also transferred from one
24 group to another. The life in two groups are very different.
25 The lives in those single boys and single girls in the youth

18

1 group or in the mobile unit, is much harsh. They were forced into
2 the very hard labour starting at 2:00, 3:00 p.m. in the morning
3 (sic), and the work is very tough. And they were not allowed to
4 see their parents.

5 [09.46.50]

6 So to go back to your question, during the Khmer Rouge time, the
7 family as I -- we assume now, did not exist. They were completely
8 dismantled to a piece by piece, and everybody had to serve and
9 follow the instruction by the Khmer Rouge. They had no freedom.
10 Mother had no right to protect their children. If the children
11 wanted to meet their mother, they had to take permission which
12 was often not granted.

13 If the mother heard that their children had a -- far away was
14 sick, she had to ask permission from the Khmer Rouge to visit
15 their children, which was also often ungranted. So mothers were
16 deprived of their right to protect.

17 [09.47.44]

18 I had many stories that the mothers of many children in the Khmer
19 Rouge, they were telling me how much they were worried about the
20 children while away -- far away from them or they are very, very
21 sad and worried about the health of their children, because they
22 knew that Khmer Rouge were beating their children. And there was
23 not a stable communication between the mother and the child. It
24 was denied.

25 JUDGE LAVERGNE:

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

19

1 Thank you for these long and complete answers.

2 And I have no further questions to put to the expert. Thank you,
3 Mr. President.

4 MR. PRESIDENT:

5 Thank you, Judge Marc Lavergne.

6 Next, the Chamber just received an email about the request for an
7 oral submission by Nuon Chea defence team, related to two
8 documents. I would like to give the floor to Judge Fenz to talk
9 about this.

10 [09.49.03]

11 QUESTIONING BY JUDGE FENZ:

12 And before I hand the floor to the Nuon Chea team, I have two
13 questions, actually, to the expert, things that came up.

14 Q. Just recently, one -- did I understand you correctly that
15 during your research, you did not interview Khmer Rouge cadre who
16 had officiated weddings or matched people?

17 MS. NAKAGAWA:

18 A. No, I recall only one interview with a man who was in
19 authority. If I am not wrong, it was a village chief in the Khmer
20 Rouge time. But we failed to ask the questions how he organized
21 the wedding because his case was very unique. He selected his
22 wife, and he took a very special care for his wife by hiding the
23 food and everything to ensure that his wife loves him, etc. So my
24 interview focused on that point and I failed to ask the question
25 how he organized the wedding. So there is no accounts in my

1 research.

2 [09.50.23]

3 Q. And you also -- it's one interview, but you also didn't ask
4 questions on how he -- if he received orders about these
5 weddings. You said he was on village level.

6 A. No. Unfortunately, no.

7 Q. My second question is on the -- on the nature of marriages
8 before the Khmer Rouge period.

9 Now, I have understood that marriages were arranged by the
10 families, so that's clear.

11 My question goes to, was this essentially a marriage between two
12 people or between two families from the concept of marriage
13 pre-Khmer Rouge? Do you understand what I -- yes?

14 A. I cannot generalize the -- all the marriages before the Khmer
15 Rouge, but I would say commonly it was a family matters.

16 Q. I'm not sure you can answer it, but to clarify my question, at
17 the core of the decision to marry two people, was it the
18 happiness, whatever that means, in the individual case of the two
19 individuals, or was there a bigger consideration on how it would
20 impact on the two involved families and their benefits?

21 [09.52.15]

22 A. Yes, Your Honour. I don't want to use the word "benefit", but
23 I think that's the right term to put it. So, for the best
24 interest for -- best benefits of the both parties, both families.
25 They arranged the marriage for -- by believing it's the best

1 interest of a child.

2 Q. If -- again, pre-Khmer Rouge time, if one of the spouses would
3 have said, "No, I don't want that", would that have had an impact
4 on the standing of the family in the society? Would that have
5 negative -- negatively impacted on the reputation of the family?

6 A. Your Honour, maintaining the reputation of the family is of
7 paramount importance, and the daughters were obliged to keep such
8 a reputation. So if any daughter or son thought by refusing the
9 proposal from the marriage, it may affect or damage the
10 reputation of the family, they would never say no.

11 Q. Since the families were involved in this whole thing, how did
12 this play out after the Khmer Rouge period for those who stayed
13 together? Were they accepted in the families who had not
14 consented in the first place?

15 A. That was also my question because I was very interested, why
16 the majority of the forced married couples continued their
17 marriages, which was not approved or arranged by their parents.
18 My understanding is that the parents of those couples who were
19 forced to marry understood that it was an extraordinary time. We
20 could not use our logic. So they accepted and they tried to
21 reconcile or conserve the -- facilitate their family union to be
22 re-established because there are many couples who are forced from
23 very different social cultural background during the Khmer Rouge.
24 And it was very difficult, particularly for women's side, to
25 accept a husband or son-in-law from a very disadvantaged or

1 lesser family background in comparison to the women's side. But I
2 do not recall any cases where parents of those couple pressured
3 them to divorce. They tried to accept.

4 [09.55.40]

5 Q. One last question. From your field research, did you get
6 information as to when the marriages during the Khmer Rouge were
7 arranged that there was an attempt to match people who were from
8 geographically close regions, home towns, or was that not a --
9 not a criterion?

10 A. I hear many different stories, so I cannot generalize. There
11 were stories -- well, what is very uniform is this former Khmer
12 soldiers who became handicapped. They could choose anybody whom
13 they wanted to marry, so it could be from the New Person or Base
14 Person, anybody. So it's very random.

15 For the others, they -- in some areas, people reported to me that
16 the Base People did not like the New People, so matching was only
17 between the Base People or the New People. But in some areas, I
18 hear mixed stories, so Base People marrying to the New People,
19 New People marrying to the Base People. So I cannot generalize
20 this.

21 [09.57.18]

22 JUDGE FENZ:

23 Thank you. That concludes my questions.

24 We are now coming to the email sent yesterday evening by the Nuon
25 Chea Defence in which they tell us that they want to make oral

1 submissions on two documents they wish to have admitted because
2 they want to use them in the examination of this expert.

3 Now, before I give the floor to you, please concentrate on how,
4 exactly, this relates to this expert because that didn't become
5 quite clear to us from the written -- from the email.

6 MS. CHEN:

7 Good morning, everyone. Good morning, Judge Fenz.

8 Yes. To respond to that specific question, we just have a few
9 very limited questions to ask this expert based on the two
10 documents.

11 With respect to the written record of interview, that goes
12 through the methodology that that person, Rochelle Braaf, used in
13 preparing a study on a different aspect of sexual violence during
14 the Khmer Rouge. So we wanted to ask whether there were any
15 similarities or differences between the methodology used by Ms.
16 Braaf and by the expert here, in terms of preparing the
17 questionnaire.

18 [09.58.39]

19 JUDGE FENZ:

20 Just remind me. And who is Ms. Braaf?

21 MS. CHEN:

22 So, Rochelle Braaf had authored another report on sexual violence
23 against ethnic minorities during the Khmer Rouge, and that was a
24 report that the Prosecution had admitted into evidence. And
25 that's document E3/9240. And it was discussed briefly by the

24

1 Prosecutor yesterday, so --

2 Q. Is there a direct relation to her?

3 A. The relationship, as far as I can see, is that the two reports
4 were all authored under the same institutional umbrella, which is
5 the Cambodian Defenders Project. So the hypothesis that I wanted
6 to ask the expert about was whether there was some additional
7 shared information, perhaps this later report by Ms. Braaf, was
8 inspired in some way by the report prepared by the expert. So
9 it's just a very limited question in that regard.

10 [09.59.24]

11 And then the second document was the questionnaire that Ms. Braaf
12 used. And the reason that I wanted to use that was because, as we
13 understand, the expert today has destroyed the underlying
14 documents of her research, including, I presume, the
15 questionnaire.

16 Now, the questionnaire was conducted 10 years ago and I wanted to
17 ask some specifics about how it was structured, what questions
18 were included, and I thought perhaps this newer questionnaire
19 prepared by Ms. Braaf might provide a bit more of a substantive
20 basis for those questions. Particularly if, perhaps, the two
21 questionnaires were related again because they're all from the
22 CDP umbrella. Perhaps Ms. Braaf looked at the expert's
23 questionnaire in preparing her own, for example. So just very
24 limited questions in that regard.

25 [10.00.09]

25

1 The more general point we wanted to make is that because Ms.
2 Braaf's report itself is in evidence as E3/9240, then we think
3 that the WRI and the questionnaire are relevant and should be
4 admitted on that basis alone in general terms because it goes to
5 the credibility of the report itself.

6 Thank you.

7 JUDGE FENZ:

8 Do the Defence for Khieu Samphan wish to add something to
9 comments from the Co-Lead Lawyer?

10 So for the record, no?

11 Comments from the Co-Lead Lawyers? For the record, no.

12 Comments from the Prosecution?

13 [10.00.41]

14 MR. SMITH:

15 Your Honour, we have no objection. It sounds reasonable.

16 JUDGE FENZ:

17 Thank you. We trust that the Nuon Chea Defence will be able to
18 use the next 10 minutes to the break without using this, so we'll
19 make the decision during the break.

20 MR. PRESIDENT:

21 And the floor is given to the defence team for Mr. Nuon Chea to
22 put questions to the expert. The combined time for the two
23 defence teams is three sessions.

24 You may now proceed, Defence Counsel for Mr. Nuon Chea.

25 QUESTIONING BY MR. LIV SOVANNA:

1 Thank you, Mr. President. Good morning, Mr. President, Your
2 Honours, all parties around the courtroom -- in and around the
3 courtroom. Good morning, Ms. Expert. My name is Liv Sovanna. I am
4 the national Co-Defence Counsel for Mr. Nuon Chea. This morning,
5 I have a series of questions to put to you as an expert.
6 Q. The first question is about your research. Besides
7 interviewing people and witnesses, did you do the research on
8 <Khmer> culture, tradition and customs in relation to wedding?
9 Did you do the document research in relation to poem<, proverb,>
10 Khmer literature etc.?

11 [10.02.38]

12 MS. NAKAGAWA:

13 A. Thank you very much. I did not do any literature review in
14 Khmer about custom or marriages except one book that I read about
15 -- I forgot the title, but it was -- I just bought it in a
16 bookshop about the marriages tradition, instructing the daughters
17 how to prepare, etc. So I don't think I did any particular
18 literature review in Khmer language.
19 But for the culture, custom for the marriages in Cambodia,
20 throughout my research, I had my students researchers who were
21 always with me, so I was always having discussions and inquiring
22 about them, about how they knew about their mothers',
23 grandparents' marriages and these customs.

24 [10.03.52]

25 Q. Thank you. You stated that you were with a student who were

1 going to the field to conduct research. Did you ever hear <a
2 popular Khmer story which gets a lot of attention in the whole
3 Khmer society. The story is called> , "Tum Teav", concerning the
4 <vigorous love and the> force of marriage?

5 A. Of course, and it's one of my favourite movies, too.

6 Let me clarify. My research or my curiosity to know about
7 Cambodian gender issues that include tradition, culture, custom,
8 is not only about this work that I am doing on the Khmer Rouge. I
9 have been working on gender issues for more than 10 years. I have
10 produced many, many research documents, even for the government.
11 And through those work, I have collected enough information to
12 say what is the custom.

13 [10.05.13]

14 Q. Thank you. Have you ever heard a slogan that -- "The cake is
15 not bigger than <its mould>"? And this was mentioned by the civil
16 party, 2-TCCP-274. She came to testify before the Chamber <on the
17 23rd August 2016. She mentioned this slogan> at around 10.34
18 <a.m.>. Have you ever heard the proverb as I have just mentioned?

19 A. I've (unintelligible) many proverbs which are discriminating
20 against women, including that one.

21 Q. In your opinion and as an expert, regarding that proverb, what
22 do you understand about the proverb and how does that proverb,
23 the one that I have just mentioned, have impact on <> Khmer
24 society?

25 A. It teaches, same as "Chbab Srey", to the women, particularly

1 the single women, to be submissive, to be obedient and to follow
2 the instruction of the parents.

3 Q. Thank you, Ms. Expert. I am now moving to the pairing up of
4 the couples and the family status.

5 Yesterday, you <mentioned that in our Khmer> society, and I am
6 asking you about pre-1975 period, prior to the Democratic
7 Kampuchea regime, before 17 April 1975>. I am asking about the
8 matching up of the would-be husband and wife and the family
9 status.

10 My question is, in Cambodian society, if a <son from a rich
11 family> loves a <daughter from a poor family>, did the parents
12 <of the man>, in the period before 1975, agree to marry the two. I
13 meant the rich <son> and the poor <daughter>?

14 [10.08.17]

15 A. Well, in general, I do not think so that the parents were
16 trying to match a boy and girl from very different social
17 background. And "Tum Teav" was, I think, one of the very good
18 example because the man was the monk and of course, he could not
19 marry with a woman.

20 The -- however, for the man from the rich family to propose -- if
21 the boy proposed to the parents that he wanted to marry with a
22 girl that is from the lower social status, if the negotiation
23 between the families could be agreed upon, then the marriage was
24 possible.

25 On the other hand, the opposite could have been almost

1 impossible, meaning a daughter from the rich daughter was
2 requested, which is almost impossible -- was requesting a
3 marriage to a man from the lower socioeconomic background, which
4 was almost impossible, and I think that is the same as of
5 Cambodian society.

6 MR. PRESIDENT:

7 Thank you very much, counsel.

8 It is now time for break. The Chamber take a 20-minute break from
9 now.

10 (Court recesses from 1009H to 1029H)

11 MR. PRESIDENT:

12 Please be seated. The Chamber would like to give the floor to
13 Judge Fenz to issue the oral ruling on the request to submit two
14 documents by the Defence Counsel for Nuon Chea. You may proceed.

15 JUDGE FENZ:

16 Thank you, President.

17 There is a lot of numbers in this ruling, but I understand I
18 don't have to go particularly slow because there is -- the oral
19 ruling is in the -- or written version of the ruling is in the
20 interpretation booth.

21 [10.29.49]

22 The Chamber is seized of the Nuon Chea Defence request pursuant
23 to Internal Rule 87.4, to admit into evidence two documents,
24 E319/59.2.4 and E319/59.2.5, which it intends to use today during
25 the questioning of expert Kasumi Nakagawa. The Chamber notes that

1 the documents were disclosed to the parties only yesterday,
2 September 13, 2016.

3 Having heard the oral submissions by the Nuon Chea Defence,
4 noting that the other parties do not object to the request, and
5 further noting the requirements of Internal Rules 87.3 and 4, the
6 Chamber finds that the proposed documents satisfy the criteria of
7 Internal Rule 87.4 and admits them into evidence.

8 The Chamber assigns E numbers as follows: E319/59.2.4 is assigned
9 number E3/10663, and the E319/59.2.5 is assigned number E3/10664.

10 With this, I hand back to the Nuon Chea Defence.

11 [10.31.14]

12 MR. PRESIDENT:

13 The floor is given to the Defence Counsel for Nuon Chea to
14 continue putting questions.

15 BY MR. LIV SOVANNA:

16 Thank you, Mr. President. And good morning, Madam Expert. May I
17 <> continue my questions?

18 Q. We just discussed earlier about the <pairing> of <a man and a
19 woman> in the marriage, and based on what you said, it was based
20 on the status and the economic livelihood of the two <sides>. It
21 rarely happened that the poor <> was arranged to marry the rich
22 <>.

23 So my question is about this arrangement, that in Khmer society
24 it was based on the <similarity of the> economic status and
25 social class of the two sides. <Can it be concluded like this in

1 general>?

2 [10.32.22]

3 MS. NAKAGAWA:

4 A. Thank you very much. There would be some exceptions, but in
5 generally, I think what you are saying is correct.

6 Q. Thank you. I also want to know that before DK regime, based on
7 your research, were there any cases of the man and the woman who
8 fell in love with each other but, because of the social and
9 cultural restriction, that they were banned from marriage with
10 each other?

11 A. It's a good question, and I do not recall. And I assumed that,
12 particularly from the women's side, by knowing that her request
13 to marry with a man from a completely different socioeconomic
14 background, may result in the damage of the family reputations,
15 she would not dare to propose such a marriage to her parents.

16 Q. Thank you. Now I talk -- I would like to focus on <> the
17 decision about the marriage. Yesterday, you talked about the
18 decision regarding marriage, especially <from> the woman side,
19 that the decision for the daughter to be married to a particular
20 man, was <done by> the parents and the <daughter> had to show
21 <gratitude and> respect to <her> parents<>.

22 <My question is,> based on your research, how many <per cent of>
23 the people you interviewed, whose marriage were decided by their
24 parents, not by <the daughters> themselves?

25 [10.35.03]

1 A. Excuse me. Let me clarify because you started the question by
2 referring to the man, but your question is about both men and
3 women who were married before the Khmer Rouge and how many
4 percentage of both men and women who married were married because
5 they wanted to marry. Is it correct?

6 Q. My apology. <I did not specify it. But> from now on, I will --
7 because my time is short, I would like to focus my question on
8 the period before DK regime, that was, before 17 April 1975. So
9 my question now focusing on the period before the regime. And
10 then there another sequence of focus on the period during DK
11 regime.

12 You said that before 1975, daughters had to fulfil their
13 obligations by respecting and following their parents' decision,
14 so my question to you is whether the decision for the daughter to
15 get married was the decision came from the parents or from the
16 daughters themselves?

17 [10.36.34]

18 A. From my interviews, before the Khmer Rouge time, the -- I
19 cannot recall any woman who proposed her own marriage to the
20 parents, so all the interviews that I conducted, the parents
21 decided on their daughters' marriages.

22 Q. Before 1975, also based on your interviews, were there any
23 couples who were not happy with their marriage, for example, the
24 women were not satisfied with their husband, the husband were not
25 satisfied with the women? Were there such cases?

1 A. Yes, there was. And I remember at least one woman, she said
2 she divorced her husband from her side before the Khmer Rouge.
3 And I thought this extraordinary, you know, the experience for
4 the women before the war.

5 Q. My next question, for those daughters who agreed to follow
6 their parents' decision, was <it> based on their sentiment of
7 love toward the man, or was it <based on other reasons>?

8 [10.38.48]

9 A. I would say that the daughters agreed on the marriage because,
10 as the Judge put it before, it was because of the trust from the
11 daughter to the parents and also to show their respect to their
12 parents and to also pay back their gratitude to their parents.
13 So it was, I would say, extremely rare that she agreed with the
14 parents' decision because of her passion or affection to the man
15 that she was marrying to.

16 Q. Talking about her love, whether she fell in love with the man
17 before the marriage took place or after the marriage took place.
18 [10.40.07]

19 A. The term "love" is very difficult term to speak or to identify
20 under the Cambodian culture. Women took it granted that they have
21 husband and they have to respect their husband and they have to
22 love their husband, but love could mean very complex issues. And
23 my understanding is that if -- before the Khmer Rouge, if a woman
24 could have genuine love to her husband, it was a good luck for
25 her life because love is not automatically coming from the

1 marriage. And many women were oppressed to show such direct
2 affections to the man.

3 Q. Because you have talked about the decision of marriage, that
4 the decision came from the parents, <and> my question is, <>
5 especially focusing on women, could they choose their own life
6 partners <by themselves> or they had to fulfil the obligations to
7 their parents?

8 To clarify my question, I would like to rephrase it because,
9 based on Khmer traditions, the marriage ceremony <is> the
10 decision <of> the parents. <The man needs to propose a marriage
11 to the woman's parents.> So my question is that in the context
12 before 1975, for <all married women, did they have the rights to>
13 choose <their> own life partner or, because of the traditional
14 requirements, <they did not have the rights to do so and the
15 decision was made by their parents?>

16 [10.42.42]

17 A. The daughters have to follow the decision of the parents. And
18 as I said, I rarely saw a woman who initiated the marriage before
19 the Khmer Rouge time. They were waiting their parents to make a
20 decision for her.

21 Q. Thank you. <I want to go back to> a Khmer proverb<,> "A cake
22 <is not> bigger than its mould". <As you explained it as the
23 daughter has to listen to the parents. Therefore, does this
24 proverb have any influence on the Khmer society in relation to
25 marriage in general?>

1 A. It's very interesting to me that you raise up this proverb
2 again because when we talk about oppression of women in Cambodia,
3 normally it is "Chbab Srey", and not this proverb. And as I said
4 again that it is not a single proverb, but the tradition which
5 are -- I would say which was manifested with "Chbab Srey" that
6 women should be submissive, obedient and to follow the decision
7 of parents and husband. This whole structure, that includes that
8 proverb, were directing how women or the single woman should
9 behave, so it's misleading to just quote one proverb.

10 [10.44.48]

11 Q. Thank you <for> clarifying on this issue<. My> next question
12 is related to the issue of this tradition.

13 Can <we> conclude that, in the Khmer society before 1975, the
14 decision of marriage was solely the <decision> of the parents,
15 not <the purpose> of the daughter? <Could we say that?>

16 MR. PRESIDENT:

17 Counsel, could you please reformulate your question? <It sounds
18 like you concluded it.>

19 BY MR. LIV SOVANNA:

20 Thank you, Mr. President. Because you are an expert, I would like
21 to seek your insight on <the marriage in> the context of this
22 Khmer society before 1975. <As you mentioned earlier that because
23 of tradition put pressure and the decision of parents, and my
24 question is,> did that social context reflect that the decision
25 of marriage was solely the affairs of the parents, not the

1 affairs of the daughters <nor the daughters' genuine
2 willingness>? Is my understanding correct?

3 MS. NAKAGAWA:

4 A. Yes, that's correct. And I think I had the discussion about
5 this with the Judge already.

6 Let me confirm that the -- in regard to the daughters, women, it
7 is a matter of the family, particularly the decision by the
8 parents. But on the other hand, for the boys, boys could initiate
9 the marriage by asking the opinions of his parents. This right or
10 initiation was impossible for a daughter.

11 [10.47.14]

12 Q. So, the decision was solely made by the parents. <Do you think
13 for daughters, was it the violation of their will if the decision
14 for marriage was made by their parents?> I would like to seek
15 your insight about the daughters<, did this action impact their
16 sentiments or their will in making decision?>

17 A. The situation before 1975 is very different from that of now,
18 and to my understanding, parents were obliged to find the best
19 option for her -- their daughter's future. That include the
20 marriage. And the daughter internalized the idea that their
21 parents would make the best possible choice for them, and the
22 daughters should follow their decisions because it's the best.

23 [10.48.38]

24 Q. What about the grooms? Before 1975, how many <per cent> of men
25 who were obliged to get married based on their parents' decision?

1 A. I'm sorry. I do not have any percentage with my hands. But as
2 Ebihara study that was discussed yesterday also noted that
3 traditionally it was desirable that boy would initiate the
4 marriage by proposing to his family. But from my studies, it was
5 not very common that the boys proposed his marriage to his
6 parents. Normally, when the boy became at a reproductive age, 18,
7 20, the parents started to find a good spouse for their sons.
8 Q. Thank you. Now we focus on the marriage ceremony before 1975.
9 Mr. President, I would like to read document E3/9614. It was a
10 study by Ebihara, whom -- whose name was raised by the
11 Co-Prosecutor yesterday. The ERN in Khmer is <01212340>, and in
12 English 01037039. Let me quote:
13 [10.51.00]
14 "There were two theses in 1978, by Ebihara. <It was one of the
15 most comprehensive anthropological surveys> about the livelihoods
16 in the broad geography before DK regime, and that included the
17 marriage ceremony. <She described the> ceremony of marriage <as a
18 fine one which> took place for several days, and it contained
19 <deep> cultural meanings in that ceremony. The <traditional>
20 marriage ceremony<, which is called wedding, is> the happiest
21 ceremony<. There are many small ceremonies in a wedding. And> it
22 <is one of> the most wasteful ceremonies in a person's life. <It
23 also includes a religious ceremony which was carefully planned
24 and beautiful traditional costumes for the bride and the groom>.
25 It includes <13 religious ceremonies.>" End of quote.

1 My question is that before 1975, because the Khmer traditional
2 marriage ceremony contains many <small functions as you said
3 yesterday that there was a party with variety of food etc. In
4 your opinion, does it require a lot of money? And is it wasteful
5 as what stated by the expert who wrote this book?>

6 [10.52.46]

7 A. Thank you very much for asking my opinion. And personally, I
8 agree it's a waste, but traditionally, for Cambodian, it's a
9 very, very important event, so they don't think it's a waste.

10 Q. Thank you. Regarding the expenditure <for the wedding>, which
11 side was responsible for it?

12 A. It depends, because there are a lot of negotiations before the
13 marriage ceremony as to how many tables should be prepared, how
14 many cakes should be baked, what kind of presents should be
15 given, so it depends on the negotiations. And I cannot generalize
16 the whole weddings.

17 Q. Have you ever aware or heard about the dowry when a man
18 proposes a marriage to a woman and then the woman's family would
19 raise about the conditions regarding dowry? <Have you experienced
20 that? And which side is responsible for it?>

21 A. Yes, and I am aware that this system still be practised now in
22 Cambodian society.

23 Q. So that was the responsibility of the man's family that had to
24 fulfil the conditions set by the woman's family. Is that correct?

25 A. If we talk about dowry, yes, but the wedding ceremony might

1 have costed more than the amount that the groom provided as
2 dowry. Then, if the wife's side wanted to have a bigger wedding,
3 they may continue to negotiation by delaying the amount of dowry
4 or the wife's side would find additional money to make the
5 wedding as they want.

6 [10.55.35]

7 Q. Thank you. Before 1975 -- because you have conducted studies
8 in many places in Cambodia, so my question is that before 1975,
9 the groom or the man who was from a poor family, did he have the
10 ability to fulfil the dowry requirement by the woman's family <or
11 to celebrate his wedding as we discussed earlier>?

12 A. No. And I met several people who were very poor, but -- many
13 were poor, but extremely poor before 1975, and they described
14 their wedding to be very simple, only among the family member in
15 the house without the guests because they couldn't afford to pay
16 for any celebrations.

17 Q. I want to get your clarification regarding the ceremony.
18 Yesterday, through the Khmer translation, you said that before
19 the marriage ceremony, both sides had to inform the local
20 authority, so was it an act of informing the authority or an act
21 of seeking the permission from the authority?

22 So <before 1975> was it a requirement by the law that <the
23 parents> needed to seek permission <for the wedding of their
24 children>, or was it just simply an informal <reporting> to the
25 authority?

1 [10.57.54]

2 A. It was -- I think it was in the law, but in practice, people
3 did not inform the authority by registering their marriage as
4 they are doing now. Except one person that -- one woman that I
5 interviewed, she remembered that she went to the local office to
6 register her marriage with her mother.

7 And besides that, I assumed that the participation of the local
8 authorities, which would have been a village chief, to their
9 wedding was authorization or registration from the local
10 authority.

11 And to your question was it necessary to seek for approval from
12 the local authority, it was not necessary. I don't hear any women
13 or man who told me they needed a permission for marriage.

14 What I heard from some women was that when they were trying to
15 organize the wedding ceremonies in 1973 or 1974, the local
16 authority, which was village chief, prohibited a big wedding for
17 fear of the bombardment. So they were prohibited to use the
18 lighting. They were prohibited to use the loud music. And they
19 were advised to make the wedding very short and brief.

20 Q. Thank you. In that marriage ceremony, was there the attendance
21 of priests or clergymen, and during that ceremony, whether the
22 clergymen gave any advice to the <newly-weds according to your
23 research>?

24 [11.00.20]

25 A. Excuse me. I don't understand this English translation,

1 clergymen. What is "clergymen"?

2 JUDGE FENZ:

3 I believe he means monk. Is that correct?

4 BY MR. LIV SOVANNA:

5 Q. I mean achar or clergyman in the Buddhism, the one who
6 organizes religiously the marriage.

7 Based on your research, did you observe that the clergyman or
8 achar gave advice to the newlywed during the wedding ceremony?

9 [11.01.22]

10 MS. NAKAGAWA:

11 A. The -- because I didn't interview the couple who were Islam,
12 so my research was only with the majority of the Khmer who
13 believe in the Buddhism, and when they had the wedding before the
14 Khmer Rouge '75, the Buddhist monk -- whatever small the ceremony
15 was, Buddhist monks were there. And for achar, I don't recall if
16 everybody mentioned about achar, but the presence of achar was
17 sort of the very foundational, you know, the setup for the
18 marriage together with the monks.

19 Q. Thank you. I want to clarify <a> point with you. Were there
20 senior people or parents in the <Khmer traditional> wedding to
21 advise the couple to <tolerate,> live together happily, to
22 consummate the marriage and not to have arguments after the
23 marriage?

24 <In your study, did> you observe that there was one time in the
25 wedding day that the senior people or parents gave advice to the

1 couple to <follow what you called "Chbab Srey" or "Chbab Pros"?>

2 A. I saw some photos of the wedding that showed when they -- the
3 groom and bride were surrounded by the elders, parents and the
4 elder relatives, and then they were giving some blessing plus
5 perhaps some advices.

6 [11.03.47]

7 Q. Regarding the pre-1975 period, based on your research and
8 study, did you find that some husbands and wives, after the
9 marriage, did not agree to consummate? Were there such cases?

10 A. Yes. And I think I referred it yesterday briefly that I
11 interviewed a woman who said they consummated their marriage
12 after three months from the wedding date because both husband and
13 wife was very shy.

14 Q. Did you find other case that when the husband and wife did not
15 agree to consummate the marriage; did you find that if there was
16 such a case, parents of both sides called them into a meeting to
17 discuss about the issue?

18 [11.05.22]

19 A. I just found the question very interesting. I -- as I said,
20 the privacy was also very important for any person's life and I
21 could not imagine any parents asking about their children's night
22 life. But as I said, they would or could have inquired about the
23 possibility of the pregnancy of the daughter or daughter-in-law;
24 it's very common to ask that, but they would never ask directly
25 about what they are doing in the night.

1 Q. Based on your study and research, about the period before
2 1975, was there a case that a <husband> forced the wife to <have
3 sex because she did not want to consummate the marriage>? Did>
4 such a case happen before 1975?

5 A. From my interviews, I do not recall any case like that, but in
6 general, regardless of the time prior to '75 or in 2016, such a
7 case could happen, so I cannot say no to your question.

8 Q. You said no, from what I heard, so what are your basis to that
9 answer?

10 A. I said -- sorry, if I was wrong; I was saying it was possible
11 that the husband forced the wife to agree to consummate the
12 marriage. That was my answer. They -- it -- based on the studies
13 on violence against women, in Cambodia or in any other countries,
14 it was reported that marital rape happening within the marriage
15 and this would be true regardless of the time period.

16 [11.08.24]

17 Q. Perhaps there was an issue with the interpretation. I have a
18 follow-up question in relation to the traditional marriage in
19 Cambodia and you said that the woman had to <fulfil> their
20 obligation required by the parents and <after marriage, they> had
21 to respect <their husbands and fulfil the husbands' wishes.

22 According to your research, was there any case that a wife, who
23 was raped by her husband, filed a complaint to the authority or
24 an institution in Cambodia?>

25 A. Even now--

1 MR. PRESIDENT:

2 Please wait, Miss Expert. You may now proceed, the Deputy
3 Co-Prosecutor.

4 [11.09.25]

5 MR. SMITH:

6 Your Honour, just an objection to the factual basis of the
7 question. The witness didn't state that she heard of cases where
8 women were raped prior to 1975, and whether or not -- so whether
9 or not women filed cases, this is not the evidence of the expert.

10 JUDGE FENZ:

11 And can we please generally move from generally interesting
12 question to legally relevant ones and -- and preferably such
13 which are not repetitive?

14 BY MR. LIV SOVANNA:

15 Q. Thank you. I'd like to move to a set of new questions. After
16 the DK period; that is, 7 <> January 1979, did the tradition and
17 custom of marriage <in Cambodia> remain the same as the pre-1975
18 period? <Or was there any change?>

19 MS. NAKAGAWA:

20 A. I think we have a knowledge gap; particularly, the marriages
21 immediately after the Khmer Rouge fall in 1979, to late 1980s.
22 Because the religion was destroyed, it was almost impossible to
23 invite the religious people; the monks or achar, for the weddings
24 and the family was separated.

25 I assumed that many single men and women were willing to complete

45

1 the family -- the union first which might have taken a few years
2 and we do not have the -- at least I don't have the accounts,
3 immediately after the Khmer Rouge, how people got married.

4 [11.11.46]

5 Q. I -- I was not specific in my question earlier, but now I try
6 -- I'm trying to be specific. From 7 January 1979 up to now,
7 <does> the decision to marry a <daughter still> depend on the
8 parents? <Or is there any change?>

9 A. In my opinion, Cambodia has been going through a dramatic
10 socio-cultural change that we may call it a revolution due to the
11 inference of globalization and also liberation among the women.
12 So if I may say how the women and men nowadays are getting
13 married, many women are making their own decisions to point out
14 whom she wants to marry and vice versa. But I still see tradition
15 that parents are arranging or forcing; particularly, their
16 daughters to marry and also when the man in their thirties with
17 good jobs have no wives, their parents, relatives are rushing to
18 find a spouse for this man.

19 So the traditions still remain, but it has been changing
20 dramatically.

21 [11.13.29]

22 Q. Thank you. I am now discussing the period of the DK; that is,
23 the Democratic Kampuchea <> from 17 April 1975 up to 6 January
24 1979.

25 You conducted the research on the DK; did you hear a statement

1 from any <women or> witnesses that "the Angkar was their
2 parents"? <Did you hear this saying using in the DK regime?>

3 A. I asked many people, "What slogans do you remember from the
4 Khmer Rouge time?" And I think I heard, rarely, this word "Angkar
5 chiet pok madai" (phonetic)," but I think I heard one or two
6 times. But after 40 years, many people forgot what the slogans
7 was, so it was maybe just a loss of memory.

8 Q. I would like to quote a statement from a witness, <2-TCW-979>,
9 testifying <on 4> May 2015, at 16.01.46. She was the chief of
10 Cheang Tong commune in Tram Kak <district>, Takeo <province>.
11 [11.15.34]

12 She said that, "The chief of the unit was considered <as> the
13 mother <of the women unit. That's correct. In that regime many
14 people> called <their unit> chief 'mother.' <The reason that>
15 people called the chief 'mother' because the <instruction of the
16 unit> chief, <to the unit members, was warmed and friendly.
17 That's why the chief was called "mother". That is the first
18 reason. Second,> the marriage was also organized by the chief and
19 if the men and the women agreed with one another to get married,
20 they could propose the marriage to that commune chief."

21 I would like to ask about the situation, of <the women who got
22 married> in the DK <regime that we have discussed since
23 yesterday, reflects that they were paired> by the chief of <the
24 unit,> villages and communes. And I would like to ask you, did
25 you ever find, in your research or study, that <the people that

1 you interviewed> consider <Angkar as> their parents? <Could

2 Angkar replace their parents?>

3 [11.17.07]

4 A. Perhaps the village chief wanted to be nice and to be the

5 mother and the father of the population. On the contrary, my

6 study showed very different result.

7 The -- my ongoing research on childhood at war, I have the

8 varied, quantitative data of 151 people who are children in the

9 Khmer Rouge. And I specifically asked, "Whom did you afraid most

10 in the Khmer Rouge time?" And majority -- I don't have a

11 percentage now, but the super majority answered, "It was a group

12 leader or the village chief or Khmer Rouge; could be a soldier or

13 anybody who was in the authority." So, if this fear that the

14 children were very scared and afraid of the people in the

15 authority, including the village chief, easily this logic could

16 have been applied to the adults.

17 So, my answer is that I didn't find what you have just read out

18 to be applicable to the area that I have interviewed.

19 Q. Can you clarify for the Court, based on your study;

20 particularly, in the areas that you were involved in, how were

21 men and women matched <?> And who made the decision to marry the

22 couple?

23 A. I think I have briefed it yesterday already.

24 [11.19.27]

25 JUDGE FENZ:

1 Sorry, indeed, she has, so if you have additional questions that
2 are non-repetitious; please ask them, but as I've said before,
3 please avoid clearly repetitious questions.

4 (Short pause)

5 [11.20.29]

6 BY MR. LIV SOVANNA:

7 Q. My next question is about the influence of culture <of making
8 decision before 1975 which was the> decisions from the parents.
9 In the DK, were parents entitled to be engaged in the
10 decision-making based on your research and study?

11 MS. NAKAGAWA:

12 A. Again, I apologies that I think I have already discussed about
13 it yesterday that in authorized marriages, where the couples
14 submitted their application to get an approval from the Khmer
15 Rouge to marry, in most cases, parents were actively engaged in
16 the process. So they engaged in approving the application.
17 On the contrary, the forced marriages that were imposed directly
18 by the Khmer Rouge, bypassing the parents, the engagement of
19 parents was zero.

20 [11.22.10]

21 Q. I want to explore more about the marriage, <you said that
22 there were marriages by permission with the participation of the
23 parents and the> forced marriages. <My question is: were such
24 practices held> based on different areas, <situation, leaders or
25 other factors for the two forms of marriages>?

1 A. The -- the way -- how the marriage ceremony was conducted was
2 very similar across the regions. So it was like a meeting and
3 only the people marrying and the Khmer Rouge, people in the
4 authority, were attending and mostly the relatives, parents were
5 not attending. And it was very short and the people who were
6 marrying, regardless of their will, they had to make an oath to
7 the Angkar that they are going to marry from their own will.

8 [11.23.40]

9 Q. I want <you to clarify that: was the marriage by the consent
10 of the parents and the forced marriage held in the same location
11 or the two forms of marriages were conducted in different
12 locations?> For example, in a village, if a group of people
13 requested to marry one another and <> the request was made to the
14 village chief, then <it> was granted; the marriage could proceed,
15 but <another group of people were forced to marry. Therefore,> I
16 want you to clarify whether <these two> forms of marriages <were
17 in the same or different locations or it depended on different
18 leaders, or different context?>

19 A. If I understand correctly -- so you are asking me about the
20 process until the marriage, how it was arranged.

21 [11.24.54]

22 Q. My apology. Perhaps, <> my question is not clear. Yesterday,
23 you testified before the Chamber, that there were two types of
24 marriages in the DK. <The first> type was that the request was
25 made by the parents to the <> village chief or <unit chief> to

1 marry their children and the marriage could proceed after request
2 was granted and <the second> type was the marriage organized by
3 the village chief or <unit> chief and you said that the latter
4 was a form of forced marriage.

5 My question is that <did> the two types of marriages happen in
6 the same location? <Or> did they happen in different locations?

7 A. I think it's a mixture -- mixture of all the areas that I
8 visited. There were men and women who submitted their application
9 and there were areas that men and women were forced.

10 Q. I would like you to draw a comparison between the marriage
11 ceremony before 1975, that you said that before 1975, the poor
12 families would conduct the marriage ceremony in a simple way and
13 for the well-off family, they would do it in a more extravagant
14 way. So if you compare the conditions of poor people who married
15 before 1975, and those who married during DK regime, what were
16 the -- the similarities and differences?

17 [11.27.07]

18 A. Similarity was that it was simple; the wedding ceremony was
19 simple, but that's it. There are a lot of differences.

20 In the wedding ceremonies in DK, in general, parents, family,
21 they were not allowed to attend, in general, and also no
22 religious practice was carried out because Khmer Rouge abolished
23 the religion. And in most cases, there was no special food. Even
24 the poor family, they prepared one chicken or some fruits for the
25 wedding and those were most -- mostly not provided during the

51

1 Khmer Rouge time, even though there are many variations. So there
2 were big ceremonies in the Khmer Rouge time also.

3 So I would say that the similarities was only one point; that it
4 was simple, and differences were so many.

5 [11.28.18]

6 Q. President, I would like to seek your permission to ask one
7 more question before I transfer to my colleague.

8 Yesterday, the Co-Prosecutor raised a question related to the 6th
9 principle of the 12 principles implemented during DK regimes and
10 it was published in the youths -- "Revolutionary Youth" magazine.

11 You said that some -- some practices were implemented based on
12 these principles, while others were not implemented. So my
13 question is: Based on your research, why some of the principles
14 were not implemented? Was it based on <the different types of>
15 leaders <> or <other factors, in relation to the decision which
16 is contradicted to the 6th principle of the> 12 principles of
17 morality?

18 MR. SMITH:

19 Your Honour--

20 MR. PRESIDENT:

21 You may proceed.

22 MR. SMITH:

23 Sorry, I just would ask that he would clarify which part of the
24 principle he's referring to. He talks about 12 principles.

25 Principle 6 has a number of matters in it, but which particular

1 part he's referring to so the witness can understand.

2 [11.30.07]

3 BY MR. LIV SOVANNA:

4 Q. Thank you. <Perhaps there was a translation problem. Earlier>

5 I raised the sixth principle, which the Co-Prosecutor said that

6 the husband and wife could marry base on their consensus and from

7 the consensus of the community. So I would like to get your

8 insight regarding the implementation of the sixth principle that

9 in some circumstances, it was implemented; while in others, it

10 was not. So based on your research, why, in some circumstances,

11 the sixth principle <was> not implemented; was it because of the

12 <view of> local leaders or was it because of <the social need or

13 location>?

14 MR. PRESIDENT:

15 The floor is given to the Lead Co-Lawyer for civil party.

16 [11.31.28]

17 MR. PICH ANG:

18 <Mr President,> I <think> this question <was asked and it was

19 also answered by the expert> yesterday. <The expert said that she

20 did not study this issue thoroughly. >

21 MR. LIV SOVANNA:

22 Mr. President, as far as I can remember, yesterday the expert

23 said that in practice, <> the sixth principle of morality was

24 implemented, but in some other circumstances it was not

25 implemented. That's why I asked the question, "<According to her

1 study,> what were the reasons that, in some circumstances, the
2 sixth principle of morality was not implemented?" <The answer
3 will contribute to the ascertaining of the truth.>

4 MR. PRESIDENT:

5 Thank you and the floor is given to the expert to answer the
6 question.

7 [11.32.20]

8 MS. HAKAGAWA:

9 Yes, thank you very much. To the eyes of the -- the Khmer Rouge,
10 I assumed that this principle was implemented because there is no
11 doubt that number 1) both party agreed, number 2) collective
12 agreed and that was the understanding from the Khmer Rouge side.
13 But my view was based on the people who had to agree or who
14 wanted to agree because I have both people that I met. The --
15 some people, particularly those who requested the marriage, the
16 process for the marriage, until the wedding ceremony, was pretty
17 similar to pre-DK -- DK time. Both parents, if they were
18 available, they participated; they approved and it was a family
19 matter. They were just waiting for the authorization from the
20 Khmer Rouge.
21 But as in the forced married couple, both party or at least one
22 party did not agree, so the consent was missing.
23 The collective agreed. As I said, many people didn't care about
24 other people's business. They didn't care and the Khmer Rouge
25 could assume that they agreed, but it was none of this -- their

54

1 business and they dare not to make any objection to the decision
2 by the Khmer Rouge. So that's what I said.

3 [11.34.10]

4 MR. PRESIDENT:

5 Thank you, Counsel.

6 It is now time for lunch break. You may now proceed first, before
7 the break, Counsel for Mr. Khieu Samphan.

8 MS. GUISSSE:

9 Thank you, Mr. President. I just need one minute to ask for leave
10 to provide, to the expert, the documents that we might use<,
11 which I wanted to do yesterday>. Given the fact that this folder
12 has arrived rather late, <and given the questions already asked,>
13 I've taken the trouble to underline, in the list <on top in> the
14 folder, the documents that we may use, <which is not the entire
15 contents of the folder> but I -- I still wanted to provide to the
16 expert this folder to the expert with the leave of the Chamber.
17 So I repeat, I've underlined in orange the documents that we
18 might use in our examination.

19 [11.35.11]

20 MR. PRESIDENT:

21 The request is granted and Court Officer, please bring the
22 document to the expert.

23 It is now time for lunch break. The Chamber will take lunch break
24 from now on until 1.30 when we resume our hearing.

25 The expert, you can now have a rest for lunch break and you are

1 invited to come here again at 1.30.

2 Court Officer, please bring Khieu Samphan to the waiting room
3 downstairs and have him back in the courtroom before 1.30 in the
4 afternoon.

5 The Court's now in recess.

6 (Court recesses from 1135H to 1329H)

7 MR. PRESIDENT:

8 You may be seated. The Chamber is now back in session.

9 And I give the floor to the Defence Counsel for Nuon Chea to
10 continue putting questions.

11 Court Officer, please facilitate the microphone for the Expert.

12 (Short pause)

13 [13.31.14]

14 QUESTIONING BY MS. CHEN:

15 Q. Good afternoon, Professor Nakagawa, Madam Expert; can you hear
16 me?

17 Hello, my name is Doreen Chen and I have some follow-up questions
18 for you on behalf of Mr. Nuon Chea.

19 So, first of all, I would like to address a couple of topics that
20 you discussed with my colleague, Sovanna Liv, before the lunch
21 break and the first one is the "Chbab Srey".

22 You spoke briefly with my colleague about the "Chbab Srey" and I
23 wanted to ask you: To your knowledge and based on your research
24 or perhaps your other work, for example, with the Ministry on
25 Women's Affairs, to what extent, would you say, that -- that the

1 "Chbab Srey" is still taught in Cambodia today, whether it be in
2 Cambodian schools or perhaps passed down to Cambodian women by
3 elders?

4 [13.32.12]

5 MS. NAKAGAWA:

6 A. Thank you very much. Regarding to the "Chbab Srey", it was in
7 the official school curriculum to be taught in the primary
8 school, to my knowledge, at least in the primary school up until
9 2006 or 2007.

10 The United Nations CEDAW Committee, Convention on the Elimination
11 of all Forms against Discrimination against Women, CEDAW
12 Committee, recommended the Cambodian government to delete or to
13 stop teaching "Chbab Srey" in school curriculum because it's a
14 symbol of oppression of women in Cambodia.

15 So in responding to this recommendation from UN CEDAW Committee,
16 Cambodian Government, Ministry of Education abolished it. So
17 officially, it is not taught in school anymore. However, the
18 concept, itself, to oppress women, to deprive women of freedom of
19 expression or freedom in many issues, still remains and it was
20 taught by the family, by the mothers, fathers, elder sisters,
21 grandmothers as Cambodian family is quite big, extended family.

22 [13.33.38]

23 Anybody who are living together or meeting at the occasion of
24 ceremony, such as Pchum Ben or Choul Chhnam Khmer, New Year, they
25 were teaching, not "Chbab Srey" as a whole, but a core teaching

1 such as to be submissive, to be obedient, to be soft, nice, kind,
2 and helping the housework, etc., etc., have been taught as a
3 foundation to be a good, traditional Cambodian women.

4 Q. And as part of those core teachings that you're referring to,
5 are there principles being taught to young Cambodian women, as
6 far as you know, today concerning their traditional role
7 vis-à-vis their husband and vis-à-vis the institution of
8 marriage?

9 [13.34.37]

10 A. The -- I think it's diverse. When we talk about women in
11 Cambodia now, because, as I said, Cambodian society is
12 dramatically changing in last decade, but let's say, for example,
13 if my students in Phnom Penh, who are coming to the universities,
14 I can see that they try to express their opinions. They need
15 their freedom. They want their freedom, but in practice, many
16 female students still try to be obedient to their parents; for
17 example, selecting the major to study in university or even if
18 they may marry in the future, one of the priority to find a
19 husband is the agreement or approvement (sic) by the parents. So
20 they are still very conservative and tradition -- traditional.
21 In regard to the young women in the rural areas or middle-aged
22 women, or elder women in rural areas, I think they are more
23 conservative. They are very much the -- I would put that they
24 internalize the idea that they have to be obliged to the
25 traditional, good Cambodian who are manifested in "Chbab Srey".

1 [13.36.14]

2 Q. In your answer, you touched upon the next thing that I wanted
3 to follow up with you and that was this concept of there being,
4 now, a social revolution in Cambodia, especially in the last 10
5 years.

6 I would like to ask you about that revolution in terms of the
7 concept of consent to marriage. Now, you said, I think, to my
8 colleague that, tradition still remains, but that's changing
9 dramatically. You may not be able to answer this question, but as
10 someone who's studied the institution of marriage in Cambodia and
11 the role of Cambodian women within social fabric here, are you
12 able to estimate the extent to which Cambodian women, nowadays,
13 are still subject to parental will when it comes to consent to
14 marriage, arrangements for their marriage?

15 A. Thank you very much. Again, I cannot generalize Cambodian
16 women per se, because there is a huge difference between urban
17 area and rural areas.

18 In urban areas, I would estimate, perhaps, approximately half of
19 the women are now expressing their opinion to their parents and
20 asserting their opinion with whom they want to marry; around
21 50-50, I would say, because I still see my students being forced
22 into unwanted marriage.

23 But in the rural areas, on the contrary, I would say
24 approximately 90 percent of the younger girls, they are waiting
25 their parents to assign them to marry somebody or they dare not

1 to express their opinions or they even cannot tell their parents
2 that they have boyfriend.

3 [13.38.13]

4 Q. Thank you, Madam Expert. And the last topic I wanted to follow
5 up with you, from my colleague's questions, was regarding this
6 idea of the role of the local authorities, whether or not they
7 were needing to approve a marriage or just register a marriage.
8 You had some discussion with my colleague, this morning, about
9 what that role was; registration versus approval. Just to take
10 one anecdotal example; in my own marriage, I was required to seek
11 the approval of the authorities and that was, in that case, the
12 French authorities which I understand to be the administrative
13 tradition inherent in Cambodia. In your research, more broadly,
14 did you ever come across research that indicated, perhaps, how
15 common or how rare it was that authorities that registered a
16 marriage were also required to approve of that marriage?

17 [13.39.13]

18 A. No, to my knowledge, no, except the DK regime. If I am not
19 wrong, until 2003 -- until 2004 or 5, most of the marriages in
20 Cambodia were not registered. So, I remember my organization that
21 I was working with, the Cambodian Defenders Project, which was
22 mentioned several times today, we were conducting a campaign by
23 making songs and broadcast it on the radio, to encourage the
24 married couple to register their marriages and encourage the
25 young, newly married couple to go to see the authority to

60

1 register the marriage and there was no memory, as far as I
2 remember, that in Cambodian history approval was necessary in the
3 process of marriage.

4 Q. And the extension of my question was just whether you had any
5 comparative perspective on that; do you have any sense of whether
6 authorities in other countries; perhaps, with French tradition or
7 otherwise, would be required to approve of a marriage before the
8 couple could get married?

9 [13.40.32]

10 MR. PRESIDENT:

11 The floor is given to Judge Marc Lavergne.

12 JUDGE LAVERGNE:

13 Counsel Chen, I'm wondering a bit here because you were referring
14 constantly to a French tradition under which the French
15 authorities approve a marriage. I don't know where this
16 affirmation comes from. I confess I'm a bit surprised by this
17 affirmation that marriages <must> be registered and <that there
18 are> ceremonies <that take place> in the city hall, perhaps, but
19 the need for an approval by French authorities, I confess that I
20 don't understand this, perhaps, <it's a translation issue>.

21 [13.41.18]

22 BY MS. CHEN:

23 My apologies, Judge Lavergne, I was actually referring to my own
24 marriage. So I was married under French law and we had to submit
25 an extensive dossier. I understand it was slightly different in

61

1 my case as I was non-French, but I understand that the dossier,
2 the application process by which the "mairie" reviews the
3 documentation and so on was normal for the French system. As a
4 foreigner, I had to undergo an additional process of being
5 interviewed, but I'm happy to ask the question in general terms
6 in any case.

7 Q. The point was whether the expert knew, as part of her
8 research, whether there were, you know, whether local authorities
9 in countries around the world had a role in approving a marriage
10 before it could take place as opposed to simply registering the
11 marriage after it had taken place. That's the gist of my
12 question, Madam Expert. Did you have any additional comments on
13 that or had you answered it fully?

14 JUDGE LAVERGNE:

15 I think, perhaps, we need to not mix too much rules applied to
16 marriage of French citizens with those who are not French
17 citizens, and moreover, insofar as I know, but perhaps, the law
18 has changed in the very long time that I've been <in Cambodia>.
19 Perhaps, I've lost a bit of information on what happens in
20 France, but I <do not> believe that the French authorities <need
21 to approve> the marriage of French <citizens>.

22 [13.43.03]

23 MS. GUISSÉ:

24 Perhaps, I will make a very modest contribution; not of my own
25 personal experience, but something that I know. There is a file

62

1 that must be submitted for verification, whether it's age, family
2 <members>, etc. <So there is some verification.>

3 JUDGE LAVERGNE:

4 Yes, but it is meant to verify that the consent given by the
5 spouses is an informed one; it's not so that we approve or
6 disapprove of the people who want to get married. We don't
7 prevent people from getting married if they wish to.

8 [13.43.37]

9 JUDGE FENZ:

10 Since you have made your own marriage part of the proceedings, my
11 guess is that the problem -- not the problems, but the -- the
12 material you had to -- to forward, which was probably more
13 extensive, had to do with the fact that you were not a citizen
14 and most countries actually do this in this case. It's to avoid
15 citizenship marriages. So that might very well account for it.
16 I'll leave it at that.

17 BY MS. CHEN:

18 That's -- I mean that is, indeed, the case, Judge, and I tried to
19 acknowledge that in my question. The point was, I think, more
20 about the chronology of events. So as I understand it, in many
21 jurisdictions -- or perhaps, the -- the expert witness can tell
22 us about that, I am aware of jurisdictions where before a couple
23 can actually get married in a ceremony, they must submit
24 documentation to an authority and then that authority reviews
25 that documentation and makes a decision that the marriage can go

1 ahead.

2 Q. Maybe that is, as Judge Lavergne says, a rubber-stamping
3 exercise, but Madam Expert, perhaps, you could tell us about how
4 prevalent this practice might be or is it more the case that
5 couples get married in a ceremony and then after the fact, they
6 submit documentation to an authority? It's the chronology of
7 that, the -- the submission of a dossier, as it were.

8 [13.45.01]

9 MS. NAKAGAWA:

10 A. Thank you very much. I would like to answer in two ways.
11 Number 1 is the -- I missed out one point that there is -- there
12 has been a time when authority actually approved or disapproved
13 the marriage; that is the same-sex marriage in Cambodia. So I
14 have many accounts that the same-sex, married couple -- the
15 same-sex couples approached the local authority, even now, and
16 they were denied their right to marry, so in this sense that the
17 authority approved the marriage -- they disapproved the marriage.
18 [13.45.41]

19 But for the second point for chronologically, before the '75, I
20 don't recall any process, as you noted, that dossier was
21 delivered to the local authority. But as I noted that I remember
22 one woman who appeared in the local authority with her mother and
23 registered the marriage; that's only one case that I recall.
24 But after the Khmer Rouge, when the family law was introduced in
25 Cambodia, in -- I think the lawyer's here could reply which year

64

1 -- maybe '78, (sic) that they introduced a new system that the --
2 there was one week prior to the wedding approval, that anybody
3 who wants to make an objection could make an objection to the
4 local authority. But that was newly-introduced system, so I do
5 not have any accounts of such a system before '75.

6 Q. Thank you very much. Let's move on to a different and less
7 personal topic. You mentioned earlier yesterday, actually, at
8 9.47, to the President, that your undergraduate degree focused on
9 Pol Pot and how he took power including from a political science
10 perspective. In this regard, did you study or receive specific
11 training on the structure of the DK regime or the history of the
12 DK; can you enlighten us a little bit on this point?

13 [13.47.19]

14 A. The answer is no, because when I was in university from '91 to
15 '95, there was no scholar in Japan who was studying about Khmer
16 Rouge or modern history of Cambodia or political science in
17 Cambodia and I was deferring and reading those books, historical
18 books written by many Westerners, I would say. So, I didn't have
19 any training.

20 Q. Okay, thank you. I'm going to read you an exchange that you
21 had with the Prosecutor yesterday. I'll do this a little bit
22 throughout my questioning just to refresh your memory on where we
23 are at.

24 Yesterday, at around 15.03, he was speaking with you about
25 Bridgette Toy-Cronin's report, E3/3416, and this is what he read

1 to you from the report. "The consistency of the description of
2 the ceremonies across geographical areas indicates a top-level
3 policy of forced marriage. There were some variations in how
4 strictly the local administration applied the policy."

5 [13.48.28]

6 And then a little later, he read, "Even in this area, however, it
7 is clear the policy existed; the variation was only in the
8 implementation."

9 Now, the question the Prosecutor asked you was, "I assume you
10 have read Bridgette Toy-Cronin's report; can you comment on her
11 opinion as to the consistency of the description and the
12 geographical area, as indicating a top-level policy and that the
13 variation was only in the implementation?"

14 You might recall you said you think that there was a policy from
15 the top level to organize mass weddings, but you didn't have
16 enough evidence, at least now, to say that there was a policy to
17 organize forced marriages.

18 And then he followed up with the question, "Nonetheless, your
19 evidence is that forced marriage occurred in most provinces in
20 Cambodia; is that correct?" And you said yes.

21 So now, here comes my question. So, you stated that you could not
22 conclude that there was a policy on forced marriage, according to
23 your evidence, but that your evidence was that forced marriage
24 occurred in most provinces in Cambodia. On what basis did you
25 conclude that and -- and in particular, my understanding was that

66

1 the research on which you based your report, "Gender-Based
2 Violence During the DK," looked at 5 out of Cambodia's 26 or
3 then, 24 provinces and was based on in-depth interviews of
4 approximately a hundred people; am I wrong?

5 [13.50.09]

6 A. Yes, it was correct.

7 Q. Thank you very much. Now, I'm going to read to you a little
8 bit more from a few different documents and I would then like to
9 get your reaction.

10 And the first document that I wanted to read you, is a document
11 that reports something Pol Pot said on the 5th of August 1978,
12 during an interview with foreign visitors. And, Mr. President,
13 this is Document E3/76, and the ERNs in English are 00170426; and
14 in Khmer, 01327012; and there is no French.

15 [13.50.54]

16 Madam Expert, I think this is under tab 4 in your folder if you
17 want to read along. And this is what it says in the document.

18 "On building up a family, the young men and young women build up
19 families on a voluntary basis. After marriage, should problems
20 arise within the family, the masses give advice to the partners
21 in order to sort out their problems. Should the parties concerned
22 find it impossible to co-habit any longer, they have the choice
23 of divorce. Neither of the parties concerned needs to go to
24 Court. Normally, the question of separation is very rare as both
25 the husband and wife have a high political consciousness and each

1 family enjoys a well-guaranteed existence in a national society
2 which is sound and uncorrupt; therefore, no contradiction is
3 permanent and unable to be settled within the family."

4 That is the first quote. I'm going to read you two others and
5 then ask for your reaction collectively, if that's okay.

6 [13.52.23]

7 The second quote I will read to you is from a witness that my
8 colleague, Liv Sovanna, has already spoken with you about and
9 this is a commune chief in Cheang Tong dommune which was in
10 District 105 which is Tram Kak district in Takeo.

11 And, Mr. President, I am reading from the transcript, E1/297.1
12 and that is the transcript from the 5th of May 2005 (sic), and
13 I'm reading from around about 13.48 and this is the quotation. So
14 the question put to the witness was as follows:

15 "Was the marriage and family policy of the CPK based on two
16 principles; first, that both parties agree to the marriage and
17 second, that the collective agrees and if that is the case, then
18 two people could get married?"

19 The answer from this commune chief was, "Yes, that is true."

20 [13.53.25]

21 And then finally, the third quotation I wanted to read to you is
22 from somebody who was on the district committee in Baray district
23 in Kampong Thom. And, Mr. President, this is document E3/5293 and
24 the ERNs in English are 00351705; in Khmer, 00348844 to 45; and
25 in French, 00367751 to 52.

1 Madam Expert, here is the quotation; this is the witness
2 speaking.

3 "When there was a joint meeting among the district committee and
4 the sub-district committee, then the decision on the marriage
5 would be made. The marriage criteria were firstly, the issue of
6 age. The girls would have to be at least 18 years old. Secondly,
7 both persons loved each other dearly and thirdly, the parents
8 approved the marriage."

9 Madam Expert, these experts -- these excerpts, we would say,
10 suggest that at the higher level, the policy on marriage,
11 according to the CPK, fundamentally required consent of both
12 spouses as a precondition; could you give you us your views on
13 this?

14 A. I am also keen to know the answer, but I cannot conclude only
15 from the three statements that there was a uniformed policy from
16 the top level. I think we need more volume of evidences to show
17 that there was a centralized policy on how the marriage should be
18 arranged. So my answer is no.

19 [13.55.39]

20 Q. Thank you. Is it correct to say that according to the evidence
21 that you obtained in your research it was, as far as you knew,
22 commune and village chiefs who were in charge of marriages?

23 A. Yes, that's correct. Mostly it was village chiefs and because
24 those single people were belonging to the group, the group leader
25 was also in the -- I'm not pretty sure in the selection process

1 but they were often the ones who informed the person that they
2 are going to marry.

3 Q. Thank you. Now, I would like to read you a quote from your own
4 report, "Gender-Based Violence During the DK".

5 Mr. President, this is E3/2959; and the ERN, in English is
6 00421892; in French, it is 00701496; and in Khmer, it is
7 00738346.

8 [13.57.00]

9 Madam Expert, what you said as we have recorded is as follows:

10 "An objection to an order to marriage given by the Angkar might
11 have resulted in torture or death. Thus, most of respondents
12 agreed to get married."

13 My question in this regard is, could you please explain to us how
14 you reached this conclusion and particularly on which basis,
15 which individual or document you used as a source if you can
16 remember?

17 A. I can with more evidence confirm this as of now, but at the
18 time when I wrote the book I was based on the evidences that I
19 gathered from the fieldwork.

20 Q. Can you give any impressions as to how prevalent that was; how
21 many people said this or any impressions in that regard as to the
22 data set that was being used?

23 A. I am very sorry, but it is 10 years ago and I don't have any
24 record. So I cannot give you the accurate number.

25 [13.58.29]

1 Q. Very understandable. That's fine. We are looking also at -- we
2 looked at the different quotations that you used in your report
3 and there were two that interested us.

4 It is the same document number, Mr. President, and I will be
5 referring to the ERNs 00421892 to 4, in English; 00701496 to 97,
6 in French; and 00738346 to 48, in Khmer.

7 Madam Expert, the two examples that you gave were as follows. The
8 first one you were citing to an example of a man who was taken to
9 prison because he did not agree with Angkar's choice of a wife.

10 That's the first one.

11 The second one a few pages later, you cited to two examples; one
12 was of a woman who was threatened with rape if she did not agree
13 to get married. And the other was someone whose niece was raped
14 after she refused to marry.

15 [13.59.40]

16 From our understanding, that's three people in total who were
17 punished for this refusal. What we're wondering is, how were you
18 able to tell that these were not, for example, the actions of
19 rogue Khmer Rouge soldiers that instead -- something that
20 occurred throughout the DK. Would you agree that at least it was
21 a possibility that this was a rogue action?

22 A. I do not have an actual number of how many men or women were
23 tortured or attacked, as a result of refusal, but from my
24 interviews with the people, they knew that the refusal to the
25 Khmer Rouge instruction to marry would result in their torture or

71

1 to the death. So there was a terror among the people despite the
2 fact it might be a very small number of people who actually
3 suffered. I wanted to point out that the people knew.

4 Q. Thank you. I am again going to read to you some excerpts. One
5 of them is of the commune chief from Cheang Tong, who we have
6 discussed before and this is still, Mr. President, E1/2971, from
7 the 5th of May 2015, a transcript, and the time point is 10.03.
8 Madam Expert, this is the exchange happening at this point. The
9 witness answers: "In my opinion, there were no forced marriages.
10 But if the couple agreed to get married, we forced them to get
11 married."

12 [14.01.31]

13 Then the question comes: "Is it fair to conclude that in your
14 commune there were no examples of people forcibly married to each
15 other?" Her answer is, "Yes."

16 A follow-up question: "To be clear, if anybody, any man or any
17 woman did not want to marry another woman or man then this person
18 could tell so. Is that correct and that person wouldn't have to
19 marry?" The answer is "Yes".

20 And now, another excerpt. This is of a Party member, the member
21 of the district committee of the same district, Tram Kak in the
22 Southwest Zone in Takeo.

23 And Mr. President, this is document E1/297 -- sorry,
24 E1/291.1(sic) and the time point is at the 23rd of April 2015.

25 [14.02.30]

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

1 And Madam Witness -- Madam Expert, my apologies, this is the
2 quotation.

3 "In fact, when the practice on the regulations of the marriage,
4 we discussed amongst ourselves at the districts under the
5 guidelines from the zone, and from my observation there were some
6 gaps in the practice because not everyone consented to the
7 marriage. And as I knew, we were so busy at the district level
8 and sometimes we gave such authority to the unit chiefs. And as a
9 result, for those couples who consented to the marriage they were
10 happy living together but for the others they did not."

11 Now, that's quite a lot of information, I appreciate.

12 I have discussed with you documents, which showed the official
13 policy regarding marriages during the DK, which was based on the
14 consent of two individuals and that of the parents. Now, these
15 two individuals who were respectively working at district and
16 commune level said that the rule was that consent was sought but
17 that there could be discrepancies in the implementation or
18 practice.

19 This is similar also to what you said yesterday, so for example,
20 asked if a man or a woman was able to refuse in order to get
21 married, at 14.08 you said, "It is very diverse."

22 [14.03.51]

23 At 14.10, you were asked whether the possibility to refuse to
24 marry existed in all parts of the country or could be limited to
25 a region, and you said you heard about this possibility

1 everywhere that you visited. And then later you said that it
2 might depend on the location, the government system for the
3 location and the year in your opinion.

4 Now, a lot of information, I know. If I understand your evidence
5 properly, your position based on your research is it that there
6 was a possibility of refusals to marry someone even in cases
7 where Angkar "ordered it", but that it depended very much on the
8 local authorities? Is that correct?

9 [14.04.46]

10 A. Yes, that's correct and that's why I said that I cannot find
11 any evidence of centralized policy to force the people into the
12 marriage.

13 Q. Thank you. You also spoke to the Prosecution earlier about the
14 impact that it might make to have a sympathetic, more strict
15 village chief on the one hand or the other. Would you agree that
16 the existence of a climate of fear in the daily lives of men and
17 women depended in large part on the approach of the local
18 authority like the village chief?

19 A. Yes, I agree but, unfortunately, I have never recalled any
20 interview that people told me that Khmer Rouge was kind.

21 Q. Thank you. Regarding your interviews for a moment, out of
22 perhaps -- I don't know if you can answer this, but out of the
23 1,500 survey respondents in your baseline study or perhaps the
24 number that you spoke to then more in-depth. Can you say how many
25 reported that they were married without consent or that of their

74

1 parents being provided in a non-coerced way?

2 MR. SMITH:

3 Mr. President--

4 MR. PRESIDENT:

5 You may now proceed, Deputy Co-Prosecutor.

6 [14.06.35]

7 MR. SMITH:

8 Just for clarity, the expert witness has undertaken a number of
9 studies in relation to forced marriage. The one in 2008, the one
10 in 2014 or two in 2014 and also, the current one that you are
11 researching, "Child Soldiers". Just wondering if the question is
12 referring to her first report or all of the four reports?

13 BY MS. CHEN:

14 Thank you for the question. Indeed, I wasn't very clear. I was
15 referring to the first report on which the baseline survey of
16 1,500 people was undertaken. But I am happy to discuss it more
17 broadly as well to see if your opinion has changed over time.

18 [14.07.27]

19 MS. NAKAGAWA:

20 A. Thank you very much. For the first research conducted in 2006,
21 I do not recall many, many cases. It was not very many but it's
22 not small numbers. When I started this research my purpose was to
23 document the stories of sexual violence. And in the course of
24 interviews both men and women started to talk about forced
25 marriages. So, I failed to document the numbers and percentages

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

1 of forced marriages in my first study and in my -- one of the
2 latest studies on the "Motherhood at War" that interviewed more
3 than 200 people who became the mother or father in the Khmer
4 Rouge time, my impression is that those cohesive marriages was
5 not many. Maybe the forced marriages but many actually agreed.
6 They wanted to marry even though the Khmer Rouge instructed them
7 without parental consent. They agreed because they wanted to
8 marry.

9 I would say approximately half of those people who married in the
10 Khmer Rouge in my study were forced, were not instructed to marry
11 by their parents but by the Khmer Rouge.

12 [14.08.58]

13 Q. Thank you very much. I am going to move on to a slightly
14 different issue here. This morning I heard you say that Cambodian
15 parents, as far as you know, would never discuss the issue of sex
16 with their children.

17 Would it be correct to state that Cambodian society both before
18 and after the DK is conservative regarding sexual interaction?

19 A. Yes, that's correct. The younger generation, nowadays, have
20 the freedom to access information through the Facebook and the
21 internet but those who have no access to the information in ICT,
22 they were mostly not accessing to the information and the
23 discussion in the family about sexuality is very, very rare.

24 Q. And now shifting the question towards the DK itself, equally
25 do you believe that the DK was conservative when it came to

1 sexual interactions as a society?

2 [14.10.20]

3 A. I would say yes to that question and when I enquired people
4 about the moral offence that they, the people, all knew about
5 moral offences but they would refer it in a very soft way that
6 it's a relationship between men and women. And if I try to
7 investigate more about the meaning of relationship between men
8 and women, it could be a casual conversation to the sexual
9 relationship.

10 So, I would assume that discussing about sexuality is, before the
11 Khmer Rouge and in the Khmer Rouge, it is a socially taboo issue.

12 Q. Thank you. I'll come back to the concept of moral offences
13 very shortly. But first there was something we're hoping you can
14 help us with.

15 Do you think that it makes sense in a society that's as
16 sexually-conservative as the DK to have had these "chlop", the
17 village militia, listening at the door of newlyweds to hear
18 whether they were consummating the marriage particularly when, as
19 you mentioned, these "chlop" were often young children or
20 teenagers?

21 A. Yes, I think it's possible because Khmer Rouge wanted to show
22 that they are in control, that people have no freedom. So it's a
23 symbol.

24 [14.12.00]

25 Q. And my last question on this point: Do you think that it would

1 be possible that to the extent that a couple's sex life would
2 have been monitored during the DK, that this was something that
3 was decided at the local level with no involvement of the higher
4 authorities or the Centre?

5 A. I have to apologize. I have no evidence to answer to your
6 question, but my impression is that not all forced marriage
7 couples were monitored. So the assumption is that it depends on
8 the local authority who decided in order to create more terror
9 among the population.

10 Q. Thank you. Now, moving to a brief discussion of moral
11 offences. Would it be fair to say that it's your position that
12 there was a strict policy against rape during the DK but that
13 perpetrators were not necessarily punished because higher
14 authorities didn't always know about the crime being committed?
15 [14.13.21]

16 A. Yes, that's correct that there was a very strict policy and
17 everybody knew about it. I think that the higher authority failed
18 to implement that policy. So the policy to protect women, were
19 used to attack women.

20 Q. Thank you. Now, I am going to go back again to your first book
21 "Gender-Based Violence During the DK", E3/2959, and I want to
22 talk about another example that you give. The ERN in English, is
23 00421893 to 4; in French, 00731495; and in Khmer, it is 00738346
24 to 47.

25 MR. PRESIDENT:

1 Counsel, please, slow down to facilitate the interpretation.

2 Please repeat the ERN numbers.

3 BY MS. CHEN:

4 My apologies, Mr. President. The English ERNs are 00421893 to 94;

5 in French, 00731495; and in Khmer, 00738346 to 47.

6 Q. And I am sorry. I don't have the page number for you, Madam

7 Expert.

8 But in this example you refer to two examples of women who were

9 raped because they refused to marry. Maybe you are familiar with

10 it already. My question, my follow-up question is would it be

11 possible that the rape of the two women that you spoke to for

12 refusing to marry were something which was done through the abuse

13 of power by local cadres in violation of the official policy and

14 the sixth principle that we have discussed concerning rape?

15 [14.15.30]

16 MS. NAKAGAWA:

17 A. Yes, that's correct. Any sexual violence is an abuse of power.

18 Q. Thank you. And now, I would like to review to some answers

19 that you gave to the civil party lawyers yesterday afternoon and

20 to the Judges this morning with regard to this prohibition on

21 rape.

22 Now, in light of the strict prohibition on rape in DK official

23 policy, and then the fact then, as you have already discussed in

24 at least certain locations and as we have discussed in certain

25 official documents, marriage was based on consent, why do you

1 conclude as you testified in these two places that it was
2 legalized rape and not recognized as a crime? Can you give us a
3 little bit more information about this?

4 [14.16.23]

5 To be a little clearer, we are discussing those were responses
6 that you were giving with respect to the consummation of a
7 marriage in the context of a forced marriage. You concluded that
8 it would be considered legalized rape and would not be considered
9 a crime. Can you enlighten us a little bit on this in light of
10 the context of DK policy?

11 A. I'll try to answer but I may be wrong in the way so please
12 guide me after my answer. What I meant was, in the ordinary
13 circumstances if a man or woman raped the other woman or man,
14 that's a crime, and we understood it as a crime. But during the
15 Khmer Rouge time, the newly-married couple should have had sex,
16 to consummated the marriage. But failing to do so was a crime.
17 So in order to avoid the punishment, either man or woman have to
18 consummate their marriage and that we understand as rape. But the
19 Khmer Rouge authorized or forced a party to at least consummate a
20 marriage and I called it that it was legal that the husband rape
21 a wife or the wife forced the husband to rape -- and vice-versa.

22 [14.18.07]

23 Q. Yes, that's perfectly clear, actually. You understood the gist
24 of my question even though my question was a little garbled.

25 Now, just a follow-up question in this regard, and again I'm not

1 sure if you will be able to answer this, but in the course of
2 your research on this particular subject -- so we are talking
3 about marital rape -- did you come across any information on how
4 common it was around the world, or how rare at the time of the DK
5 -- so 1975 to 1979 -- that countries criminalized marital rape?

6 A. I do not think so that it was common internationally that
7 marital rape was -- marital rape, per se, as recognized as a
8 specific crime. But I don't have a good knowledge on that.

9 [14.19.07]

10 Q. Thank you. Now, a few quick follow-up questions on another
11 topic, and now we are talking about marriages to handicapped
12 soldiers.

13 In your book, you refer to two cousins who were married with
14 disabled soldiers and perhaps this is something that you then
15 came across a little more in your research but amongst the 1,500
16 individuals that you surveyed in your initial baseline survey for
17 your book or in your future research, can you tell me
18 approximately how many people were arranged to marry a disabled
19 soldier?

20 A. I am very sorry. I have no answer. We should ask the Khmer
21 Rouge.

22 Q. Thank you, fair enough. Now, a second question on this point
23 and my last question on this point, yesterday you testified that
24 you heard many accounts that young women would be very scared to
25 get married with disabled soldiers. Can you enlighten us a little

1 more on why this would be so? Why would they be scared of
2 disabled men in particular or disabled soldiers in particular?

3 [14.20.29]

4 A. I would try to avoid any discriminatory comments, but at that
5 time during the DK period both men and women, single or married,
6 they were living under the extraordinary hardships and adding any
7 burden should have been avoided by any means. Unfortunately,
8 their marrying with the ordinary person even against their own
9 will for survival was rather acceptable in comparison to marrying
10 to a man who has disabilities that would require a huge
11 protection or care from the wife.

12 Q. And this is something that was relayed to you in the in-depth
13 interviews that you undertook?

14 A. Yes, it's accounts from both mothers and fathers and young
15 women.

16 Q. Thank you very much. I am now moving to my last area of focus
17 but we'll spend quite some time here. And my interest here is in
18 understanding more about your research and the methodology that
19 you used. So there will be quite a lot of questions on this
20 subject.

21 [14.22.01]

22 My first question is about your first report, "Gender-Based
23 Violence During the DK". Now, according to your CV, you undertook
24 research on sexual violence during the DK for 10 months between
25 April 2006 and January 2007, if I am not wrong.

1 Is this correct and was this the field research that was done in
2 the context of your work with the CDP and for our first report,
3 April 2006 to January 2007?

4 A. The period that has been noted is starting from the month or
5 the date when I was granted the fund from OSJI. So in April after
6 the New Year we got the grant and then I started the preparation
7 for the research.

8 And the field research was intensively conducted during this
9 time, the rainy season. I remember that all the field work
10 included a lot of rain. So, I think I assumed that maybe
11 September or October around this time, only two, maximum two
12 months fieldwork.

13 Q. You actually touched on my next question there. You mentioned
14 OSJI. Was that Open Society Justice Initiative, and they were
15 your donor?

16 A. Yes, that's correct. I was looking for somebody to sponsor my
17 study for about one year and they are the only ones who kindly
18 helped my research.

19 [14.24.08]

20 Q. And did they or did CDP or any other entity give you any
21 guidelines or instructions regarding the scope or goal of your
22 research?

23 A. I do not think so because I had a great passion to do this
24 research and I knew what I wanted to do. So I didn't have any
25 guidance from OSJI. They just let me do the research and I was

1 very lucky to have an excellent intern in my office who could
2 help to also form the research with me.

3 Q. Thank you. Now, I am going to dig a little more deeply into
4 the methodology that you used for your report and we'll also talk
5 a little bit about Bridgette Toy-Cronin's report just because the
6 two appear to be interrelated as far as the data set is
7 concerned.

8 [14.25.15]

9 Now, the report written by Bridgette Toy-Cronin, for which you
10 acted as a research manager as I understand, it describes itself
11 as discussing, in part, redress for the victims including the
12 chances for prosecution in the ECCC. And we do know that many of
13 the civil parties here at the Tribunal are represented by CDP,
14 which was the institution partner for the reports.
15 To the extent that you can answer this, was one of the goals of
16 Bridgette Toy-Cronin's research and perhaps your research to find
17 victims of gender-based violence during the DK with a long-range
18 view to supporting these victims to pursue cases at this
19 Tribunal?

20 A. No. At that time, I'm sorry to say, but I didn't believe that
21 the Tribunal could be established and the evidence is that we
22 destroyed all the information about the informants.

23 So after the research, the Cambodian Defenders Project carried
24 all my passion to empower the survivors. And then after I left
25 CDP, because of many reasons that some of you here also left the

1 CDP. And they approached me to give them the identification of
2 those people that I spoke and documented in my book, and I
3 refused because this research was done on the super-confidential
4 basis and I could not give any ideas where they are from.

5 [14.27.05]

6 Q. Thank you. Now, I want to talk a little bit about the
7 underlying survey of the two reports that addressed 1,500
8 respondents, as you said.

9 Can you tell me how the survey was prepared and who drafted the
10 questions?

11 A. My memory might be lost to some extent but I was starting to
12 formulate how the research should be done and within the CDP we
13 have -- I was the manager for the publication and advocacy
14 department -- but CDP also had a department addressing only
15 domestic violence. And we knew that there are a lot of volunteers
16 -- we call it sentinels who are helping women who are suffering
17 from domestic violence.

18 [14.28.15]

19 So we decided -- at that time Bridgette was already on board --
20 so we decided that we'd utilize our existing resource in the
21 department of domestic violence and we mobilized those people to
22 join the research. Those people were working in specifically five
23 provinces, so we selected five provinces.

24 In regard to the questionnaires, Bridgette and I made it and
25 consolidated ideas and we used it. And we tested it before

1 actually it was conducted.

2 Q. A couple of follow-ups in that regard, the first one actually
3 about Bridgette Toy-Cronin. I think you mentioned this yesterday
4 but I am not sure if I heard correctly. Did I understand that she
5 was an intern at CDP at that time?

6 A. Yes. She came. We had a lot of interns in summers at the CD,
7 Cambodian Defenders Project. I also have some. But she came from
8 Harvard University to work in the department of domestic
9 violence. She was looking for something interesting and she
10 talked with me that she want to do the research oh witchcraft or
11 something, and I just took the opportunity to also utilize her
12 expertise because she is a super-excellent student to join with
13 my research.

14 Q. Thanks. That's very clear. And you mentioned five provinces. I
15 don't believe we've heard this so far but what were the provinces
16 and do you know why they were selected?

17 A. As I said, it was confidential so no report document the
18 provinces.

19 [14.30.11]

20 Q. Thank you. That's fine. And then regarding these sentinels, I
21 know you've mentioned that they received an intensive training
22 and they in turn trained other sentinels. Did they follow a
23 research protocol in interviewing the survey respondents?

24 A. Yes, and they were very -- I would say they are already the
25 experts because they are normally "neary srok" and "neary khomm"

1 who have been supporting women. So they know how to behave, how
2 to talk with the women.

3 Q. Thank you, and then in Bridgette Toy-Cronin's report she
4 mentions -- she discusses a little bit some of the challenges
5 around the use of the sentinels and the interviews. And she says
6 that, quote, "Some provinces yielded more informants than others,
7 perhaps because of higher rates of sexualized violence and forced
8 marriage in the area or due to the greater commitment of the
9 sentinels to the project in that province." Unquote.

10 I would just like your comment on what this greater or lesser
11 commitment of the sentinels meant and how, as far as you saw, it
12 impacted on the survey results.

13 [14.31.35]

14 A. Let me try to recall. We had 50 sentinels and everybody also
15 had different commitments. Everybody had their families. So the
16 degree of the commitment to the research was diverse. Let me try
17 to think where I went, were there any differences.

18 I think that for me it was not a very big deal because the
19 sentinel who guided me in each place because they always came to
20 see me or I went to see them first and then we visited together
21 to the house of the interviewee and then I was doing interview
22 alone.

23 And they were all very well-known to the people and they were
24 very, very honest and kind to assist my research.

25 If they are not very committed I even didn't see them. I saw only

1 those who are very committed who managed to arrange the fieldwork
2 for me through other sentinels.

3 [14.32.59]

4 Q. Thank you. Now, lets--

5 MR. PRESIDENT:

6 You may now proceed, Judge Lavergne.

7 JUDGE LAVERGNE:

8 It's a general observation. I am hearing the interpreters
9 complaining quite regularly about the speed with which you are
10 expressing yourself, particularly you made a citation quite
11 recently that was not able to be <fully> interpreted. So could
12 you please <slow down, and keep in mind that we need someone to
13 speak slowly enough,> so that all the parties can understand what
14 you are saying?

15 [14.33.41]

16 BY MS. CHEN:

17 My apologies, Judge Lavergne. I am just very conscious that I am
18 running out of time, but I will speak slower.

19 Q. Madam Expert, I want to go very briefly from -- we have talked
20 now about the 1,500 survey respondents that you interviewed or
21 the sentinels interviewed and then as part of your research the
22 data set reduced to approximately 100 individuals.
23 Now, in Bridgette Toy-Cronin's report, E3/3416, and the ERN is
24 00449502 in English; I don't have the others at the moment. My
25 apologies.

1 She talked about how the 100 interviewees were focused on victims
2 or eyewitnesses. I just want to understand what does this -- what
3 does this reference to the 100 people being victims or
4 eyewitnesses mean for the remaining 1,500 survey respondents?
5 Do we understand that they were not victims or eyewitnesses or
6 crimes or can you enlighten us further on how the selection was
7 made for the 100 in-depth interviewees?

8 [14.35.06]

9 A. In the training that we provided to the sentinels, we asked
10 them to collect the evidence, not the hearsay. So for example, we
11 specifically informed them that they -- in case of eyewitness or
12 survivors or victims they have to collect when it happened, where
13 it happened, how it happened, who did it; what that person said,
14 especially the statement what did he say to certain -- how, etc.
15 So, we needed some evidence that actually that person experienced
16 the violence or eye witnessed, because a lot of people have a lot
17 of accounts of hearsay and we didn't want to waste the time. So
18 that was one of the conditions when we examined the papers. We
19 tried to -- because many people just tick yes, yes and we have to
20 make sure that this; yes, I was the survivor. Does it back up --
21 is it backed up with the evidence of more detailed ideas of how
22 it happened?

23 [14.36.16]

24 Q. To the extent that you can say then, among this broader data
25 set of 1,500 survey responses how many people gave you direct

1 evidence of being a victim of forced marriage, if you can say?

2 A. No, I am sorry. I cannot say that. Perhaps 10, maybe around
3 10; not many.

4 Q. A very quick follow-up question on protocol after interviews.
5 This is both your own in-depth interviews and also interviews
6 conducted by your students at Pannasastra University. How were
7 you able to verify the accuracy of what an interviewee told you
8 and how would you react if there was contradictory information
9 given?

10 A. Thank you so much. For the research in 2006, we tried to ask
11 in many different ways to make sure that the informants were
12 telling the truth by asking a lot of details of how the crime
13 happened.

14 And for both women and men in order to disclose the past
15 experience of sexual violence, needed huge courage and huge
16 effort to step forward, to say. So if any of them could have
17 crossed the first step to disclose, we believe that that person
18 did experience the sexual violence. Otherwise they would never
19 say yes, and I assumed many didn't tell the truth that they were
20 actually the survivor but they denied that they were never ever
21 experienced that.

22 MS. CHEN:

23 Mr. President, I have approximately five more minutes of
24 questions. Would it be okay if I
25 proceed now, or would you like me to stop at this point?

1 [14.38.37]

2 MR. PRESIDENT:

3 Yes, you may proceed now.

4 MS. CHEN:

5 Thank you, and just a forewarning. My colleague also has a
6 question following my questions but we will stay within five
7 minutes.

8 MR. PRESIDENT:

9 The Chamber already notified you that the defence counsel team
10 have three sessions, so you need to divide among yourselves and
11 you have used two sessions already.

12 [14.39.12]

13 MS. CHEN:

14 My colleague from the Khieu Samphan defence team tells me very
15 kindly that she can offer some of the time in the next session.
16 If you would like, I can stop now and then proceed after the
17 break or I can continue now and finish the question. It's up to
18 you. I am in your hands.

19 MR. PRESIDENT:

20 Thank you, counsel.

21 It is now a convenient time for a short break.

22 The Chamber will take a 20-minute break from now. The Court is
23 now in recess.

24 (Court recesses from 1439H to 1458H)

25 MR. PRESIDENT:

1 Please be seated.

2 The floor is now given to Defence Counsel for Mr. Khieu Samphan.

3 You may now proceed.

4 QUESTIONING BY MR. KOPPE:

5 Mr. President, the Khieu Samphan team has been kind enough to

6 grant us 10 or 15 more minutes, so I will end the examination of

7 the expert.

8 Good afternoon, Madam Nakagawa. There's -- there's only one

9 subject that I would like to follow up with you and that is

10 something that I'm not quite sure if I understand fully and that

11 is -- that's the following: Talking about your first research,

12 1500 people received a survey. Of those 1500 people, about a

13 hundred were interviewed in-depth and about 10 or so people were

14 actually real eyewitnesses to a forced marriage or had personally

15 experience -- experienced such a marriage.

16 Q. Now, my -- my first question is -- is the matter of

17 representativeness of these 1500 people. Now, it's my

18 understanding that this all started--

19 [15.00.45]

20 JUDGE FENZ:

21 Q. Sorry for interrupting, Counsel, but you're actually asking a

22 question I had too and that before she answers it, is this

23 actually a correct understanding of what you said; the 10 people,

24 what number is this?

25 MS. NAKAGAWA:

1 A. I replied that approximately 10 people that I interviewed or
2 in our research was a subject of forced marriages.

3 Q. And 90 were eyewitnesses out of the hundred; is that correct
4 or not?

5 A. No.

6 BY MR. KOPPE:

7 Q. Then I think I -- I have the numbers correct. My questions are
8 about representativeness, the selection process of these first
9 1500 people. You have -- you have said earlier that you wanted to
10 research sexual violence in -- in Democratic Kampuchea. Did these
11 1500 survey recipients relate to sexual violence; in other words,
12 were they already considered to be somehow connected or involved
13 or victims of sexual violence?

14 [15.02.27]

15 MS. NAKAGAWA:

16 A. The -- I think your question is about sampling. The -- our
17 sentinels -- 50 sentinels knew that my purpose was to collect the
18 stories of sexual violences; then it depend on the each
19 individual sentinel how to find the people. But given their
20 position, that they were assisting women for many years in their
21 own villages, they mostly knew how women's lives were. But of
22 course, everybody could not identify those women or men who
23 actually suffered the sexual violence or not, so they also ended
24 up with interviewing to fill the proportion that they are
25 assigned to, to interview the people who are not, apparently, not

1 the topic of our study.

2 [15.03.30]

3 Q. That is totally clear to me, but if one is interested in what
4 happened, in general terms or generally, in relation to marriage,
5 in that time, isn't it correct that you should start with a
6 random sample of unknown people? In other words, if I may give an
7 example, if you conduct an opinion poll for upcoming elections,
8 there are all kinds of rules that people who are surveying must
9 abide by. You cannot have all the people from -- from a city. You
10 can't approach only people from that particular area or from that
11 particular age, etc. There are all kinds of very strict rules.

12 But here, it seems, the 1500 respondents were already perceived
13 to be somehow connected to sexual violence; doesn't that mean
14 that the 1500 people who receive that survey are not at all
15 representative of women or men having married during DK?

16 A. That's correct and as I am also teaching research methodology
17 in my university, that's one of the topics that I am very strict
18 about but, again, I want to confirm that my passion to do -- to
19 do research, was to document the stories of sexual violences.

20 That was the utmost importance for me.

21 Q. I fully appreciate that, but this being a courtroom there is
22 an inclination or a tendency to see if we can draw general
23 conclusions from research.

24 But having said that, let me then move on to the next level.

25 Those people selected for the in-depth interviews, they were also

1 perceived to be highly likely to have been a victim of forced
2 marriage; correct? So there was another selection within the
3 selection rather than a unrepresentative sample of those 1,500;
4 correct?

5 [15.06.25]

6 A. I do not think so because my prime focus was sexual violences,
7 so forced marriages was secondary.

8 Q. But then I don't understand the selection process of those
9 100. Was the idea that they were much more likely to be somehow
10 victim of, or witness of, sexual violence. Is that correct?

11 A. Yes, that is correct, and the target was rape, the prime
12 target was rape, and then the rape within the forced marriages
13 was one of them. So, it was not forced marriage first, but the
14 rape came first and then it was committed within the marriage.

15 Q. And then of those 100 most likely to be somehow victim of
16 sexual violence, there were approximately 10 who were actual
17 eyewitnesses or victims, as such; correct?

18 [15.08.01]

19 A. That is correct, but I cannot give you the accurate number
20 because I tried to recall the interviews that I conducted.

21 Q. Now, this is now clear to me, but do you then agree with me
22 that the only things that you can actually say about experiences
23 of women in relation to marriages is based upon those 100
24 in-depth interview or maybe those 10 eye witnesses? And, in
25 effect, that is -- that would constitute very anecdotal evidence

1 rather than a sample of something that was generally practiced.

2 Would you agree with me?

3 MR. PRESIDENT:

4 You may now proceed, Mr. Deputy Co-Prosecutor.

5 MR. SMITH:

6 Your Honour, I object to the question on the basis that the

7 witness has given evidence of forced marriage in relation to

8 three reports, which she has done which are before the Chamber,

9 not just the first report in 2006 and 2008. So I think that

10 question is not fully complete as to whether or not she could

11 extrapolate that forced marriage was occurring on widespread

12 manner. So I'd ask the question be more complete as to the

13 evidence.

14 [15.09.43]

15 MR. KOPPE:

16 Because of time, I was only limiting myself to that one survey.

17 So, because of this, I will not follow-up on what the Prosecution

18 is suggesting although I understand his suggestion.

19 BY MR. KOPPE:

20 Q. But do you agree with me that bottom line is that your expert

21 opinion in relation to this particular survey only relates to,

22 only concerns the, as you will, anecdotal evidence of those 10 or

23 possibly 100 women and that doesn't say anything about experience

24 of other women or men in relation to marriage during DK? There is

25 no basis whatsoever, in other words, to make any generalizing

1 conclusions as to marriage policy. Is that correct?

2 [15.10.52]

3 MS. NAKAGAWA:

4 A. The research was not investigating anything about policy and
5 that's the first answer to your last question. And it is true
6 that we cannot generalize the voices of those women as the fully
7 accurate representatives of those women or men who were forced to
8 married in the Khmer Rouge time within my first research, but my
9 follow-up researches confirm that the serial pattern of forced
10 marriages were forced during the Khmer Rouge time.

11 Q. But what is it then in the other research that you have done
12 that makes you conclude that these are, indeed, representative
13 surveys and that these are, in fact, surveys which allow you to
14 extrapolate? What is -- what did you do differently in those
15 other two researches?

16 [15.12.15]

17 A. I didn't do it in different way, except the third one that we
18 didn't explicitly ask sexual violence.

19 The first one and the second one was focusing on sexual
20 violences, so we explicitly asked about this question. It is not
21 forced marriage, but it was about sexual violence and then within
22 the forced marriage, the status.

23 From my interviews, we saw many people, I could draw a pattern. I
24 mean, it's not difficult for me and that's my opinion.

25 Q. I understand, but let me give an example, a current-day

1 example, to see if I can make my point.

2 If I would go to election meeting in the United States by one of
3 the presidential candidates, Trump for instance, then anyone
4 attending this meeting I would speak, would say that he or she
5 would vote for Trump. That doesn't mean that the whole country in
6 doing the elections in a few months will vote for Trump as well.
7 So taking that example in the back of your mind, what did you do
8 to avoid this bias in those two other surveys?

9 [15.14.14]

10 A. Thank you very much. For the second research, it was biased as
11 in the first research according to what you said. I targeted only
12 those sexual minorities who were identified that they experienced
13 the sexual violence in the Khmer Rouge time. That included forced
14 marriages. I met a lot of sexual minorities who were forced into
15 marriage.

16 So the first research and second research was shaped in a way
17 that I was trying to find the story and voices of women and males
18 who experienced sexual violence.

19 But on the third one, which was rather large in size, my purpose
20 was pregnancy. It was biased on that way. And many women actually
21 were pregnant in the Khmer Rouge time, and within this context,
22 within this research scope that I wanted to document the stories
23 of pregnant women in the Khmer Rouge time. Many women talked
24 about marriages because we couldn't avoid asking how they married
25 and they become pregnant.

1 [15.15.26]

2 It was not biased at all and the third survey was done in a
3 random way. I brought my student with the van to one village and
4 then we stopped the van and we spread into the village and then
5 we were visiting each -- one of each family and we asked "Is
6 there anybody who was pregnant in the Khmer Rouge in this
7 family?" If not, we skipped -- moved to the next family.

8 And we did it many, many different locations to find the women
9 who were pregnant, so it was very random survey.

10 Q. I would like to continue, but I'm already taking more time
11 from my colleague, so I have to stop here. Thank you very much,
12 Madam.

13 MR. PRESIDENT:

14 Thank you, Counsel. You may now proceed, Counsel for Mr. Khieu
15 Samphan.

16 [15.16.20]

17 QUESTIONING BY MR. KONG SAM ONN:

18 Good afternoon, Your Honours, Parties. Good afternoon, Madam
19 Expert. <My name is Kong Sam Onn.> I am the National Co-Counsel
20 for Mr. Khieu Samphan. I have a set of questions to put to you in
21 relation to methodologies of your research and study.

22 Q. I want to ask about the age range of the interviewees you met.
23 You made mention about your report and also you testified before
24 the Chamber that you interviewed people who were over 10
25 years-old back in the DK regime.

1 Did you have the report on the statistics or demography of
2 people, particularly did you note about the age range<, for
3 example, how many people were from 10 to 15 years old or from 15
4 to 20 years old,> who were interviewed by you about the DK
5 period?

6 MR. PRESIDENT:

7 You may now proceed first, Mr. Deputy Co-Prosecutor.

8 MR. SMITH:

9 Thank you, Mr. President. Just a point of clarification. I'm just
10 ask -- wondering which -- if it could be clear which report
11 Counsel's referring to, whether it's E3/2959 or E3/10654 or
12 E3/10655. Is he referring to all reports or to the first, second,
13 third reports? Just so it's clear for the expert.

14 [15.18.28]

15 BY MR. KONG SAM ONN:

16 I am asking about the first report by the expert.

17 Q. Do you find that excerpt from the report? If you have found
18 it, please provide your response.

19 MS. NAKAGAWA:

20 A. I'm sorry, I do not recall the age range, who was the oldest
21 and who was the youngest or who -- which age was the average for
22 my first research, but instructions to the sentinels were very,
23 very clear, that we wanted to interview somebody who experienced
24 the sexual violence or who eye-witnessed the sexual violence. So
25 that's what I remember.

100

1 Q. Thank you. Regarding the marriages in the DK, did you conduct
2 a study or research about the <specific> numbers <or percentages>
3 of people who got married at the time? Did you conduct the
4 research or study of how many people were forced to marry at the
5 time and how many people were not?

6 [15.20.10]

7 A. Very good question because I have not done, and I am now
8 planning to do that particular research from next month, to
9 identify how many percentage of marriages in the Khmer Rouge was
10 forced. I don't -- I have not done that and I want to know.

11 Q. Thank you. I have another question about the marital rape. You
12 discussed a lot about this issue, but I want to explore further
13 if you have done the research about the society of Cambodia, in
14 particular before the 1975 regime and after 1979.

15 I want to know if marital rape was really codified in the
16 <Cambodian> law, before 1975 and after 1979?

17 A. No, the Cambodian law does not explicitly say that marital
18 rape is a crime, but rape is a crime, and I understood that --
19 understand that it includes the rape between the married couple.

20 Q. Thank you. Could you tell the Chamber when exactly did
21 Cambodia include the marital rape in the law?

22 A. I'm very sorry, I may be wrong but even now the Criminal Code
23 of Cambodia does not explicitly say that the marital rape was a
24 crime, but I may be wrong. I'm very sorry.

25 [15.22.40]

101

1 Q. Thank you. Concerning another issue about the forced marriage,
2 I want you to clarify for the Chamber, for example, if a proposal
3 <> is made to a daughter and the daughter refuses that proposal
4 and in such a case, the parents are trying to persuade the
5 daughter to agree with the proposal, so how would they do to
6 encourage the daughter to accept the proposal?

7 A. It depends on the family, so I cannot generalize, but as I
8 noted before many single women who are the daughters were waiting
9 for their parents to decide on their marriages. So, basically, it
10 was very rare and radical for any daughter to make an objection
11 to the decision by the parents.

12 And if she makes -- if she could make objection, the parents may
13 try to encourage by either speaking or maybe depriving some her
14 freedoms to go out or whatever means if parents are really stick
15 onto that marriage for some reasons.

16 [15.24.37]

17 Q. Thank you. I have a final question perhaps in relation to the
18 divisions of marriages into different types, and you divide two
19 types of marriages. One is the forced marriage, another one is
20 the marriage with the consent, but now I want you to make a
21 distinction between the marriage, I mean the forced marriage, and
22 the other traditional marriages and marriages recognized by laws.
23 Could you make a distinction between the two?

24 MR. PRESIDENT:

25 You may now proceed, Deputy Co-Prosecutor.

102

1 MR. SMITH:

2 That's not the evidence correctly stated. The expert witness said
3 there were two types of marriages, forced marriage and authorized
4 marriages, not a marriage by proposal. There is a difference if
5 we're talking about the Democratic Kampuchea period.

6 [15.25.50]

7 JUDGE FENZ:

8 And this later question has been answered two or three times so
9 far, so if there is not anything new or if you didn't
10 misunderstand, please move on.

11 BY MR. KONG SAM ONN:

12 I may not have not understood the responses, however, based on
13 the translation I did not hear about the issues. I <raised> about
14 the traditional marriages <> and marriages authorized by law. I
15 believe that <there were many questions raised about traditional
16 marriage. However, the comparison between traditional marriage
17 and marriage authorized by law has not been discussed yet.
18 Therefore, I want the expert to compare the two, not just only
19 discuss the traditional marriage.> There <are> some different
20 elements in my questions.

21 [15.26.45]

22 MR. PRESIDENT:

23 You may proceed, Counsel.

24 MR. KONG SAM ONN:

25 Yes, I give the floor to the expert to explain.

1 MS. NAKAGAWA:

2 Yes, thank you so much. So the traditional marriages were the
3 majority of marriages prior to the DK period; that they didn't
4 register their marriages at the local office.

5 The legal marriage, according to the family law of Cambodia after
6 the DK period required the couple to register their marriages.

7 But before the DK period, they married like we call it "de-facto
8 marriage", that the community and the family and the subject
9 persons agreed and they are in the marriage status, but it was
10 not in the official registration of the state paper, I would say.
11 So that's the difference.

12 And nowadays, we have the legalized marriage that everybody is
13 requested to register their marriage at the commune office.

14 Q. Thank you, Madam Expert. I have a follow-up question, <if
15 comparing these marriages to the> marriages in the DK, the
16 authorization for the couple to become husband and wife. <Was>
17 this kind of <> marriage considered as a legalized <or
18 traditional> marriage?

19 [15.29.03]

20 A. I am sorry, I have no idea because I do not recognize any law
21 in the DK period in regards to the civil matter. So I cannot say
22 it's legal or illegal.

23 Q. Thank you. Could you explain or clarify for the Chamber, in
24 the DK period after marriages the newly-wed became husband and
25 wife and they were recognized by the local authority. Is that the

1 case?

2 A. That's right. They were authorized and recognized as wife and
3 the husband, and I assumed that there was a record of marriages
4 in the Khmer Rouge time.

5 [15.30.12]

6 MR. KONG SAM ONN:

7 I thank you very much. I have no more questions to put to the
8 expert, Mr. President, but my colleagues, my esteemed colleagues,
9 have further questions. I cede the floor for her.

10 MR. PRESIDENT:

11 You may now proceed, International Counsel for Mr. Khieu Samphan.

12 QUESTIONING BY MS. GUISSÉ:

13 Thank you, Mr. President.

14 Good afternoon, Madam Nakagawa. My name is Anta Guisse. I am the
15 Co-International Lead lawyer of Mr. Khieu Samphan, and in
16 addition to all of the questions, which have already been asked
17 of you, I will be very brief and I would just evoke some things I
18 would like some clarification on.

19 Q. My first question relates to what you said about the way in
20 which you carried out your studies, whether we talk about the
21 first, second or the third one on maternity.

22 Did you systematically, for all of these studies, have
23 pre-established forms, for all three of them?

24 [15.31.21]

25 MS. NAKAGAWA:

105

1 A. Excuse me, I just want to confirm. Pre-established meaning
2 that a systematic format of questionnaires, right? Yes?
3 Yes, we had all my studies, not only this, all my studies,
4 researches about women, I have a format, the questionnaires, that
5 we collect the quantitative data.

6 Q. So here I'd like to know concerning your second study, the one
7 relating to document E3/2959, "Gender-Based Violence" on that
8 study.

9 In the questionnaire that you used, were there questions aimed at
10 the locality and the local <authorities> who were managing the
11 area that the people you were interviewing come from? I will
12 clarify. Was there some angle of your research <aimed at finding>
13 out who was in charge, if it was a man or a woman, and who was
14 the responsible authority?

15 [15.32.51]

16 MR. PRESIDENT:

17 The floor is given to the Deputy Co-Prosecutor.

18 MR. SMITH:

19 Your Honour, may be a translation issue, but E3/2959 is her first
20 study not her second study. Just so the transcript's clear.

21 BY MS. GUISSÉ:

22 I don't think it's a problem of translation, it was just a slip
23 of the tongue.

24 Q. So <your study> E3/2959, this was the study I was referring
25 to, Gender-Based Violence.

1 MS. NAKAGAWA:

2 A. This is the first one that I have done and, if so, the answer
3 is no. I did not recall any questionnaire specifically asking
4 whether the village chief or Khmer Rouge was a male or a female
5 and who ordered the marriage.

6 [15.34.08]

7 MR. PRESIDENT:

8 Madam Expert, please hold on because there was no translation in
9 Khmer.

10 Madam Counsel, you may proceed with the question.

11 BY MS. GUISSÉ:

12 Q. Thank you. So I have understood that this was not part of the
13 questionnaires that were part of your study.

14 My next question, this time it's on your last report, "Motherhood
15 at War", E3/10655. Is that the same situation? As it wasn't
16 specifically your angle of research, was it one of the things you
17 were interested to find out, who was <in charge> in that
18 community, whether it was a man or a woman, and what perhaps the
19 person's name was? Is that something that came up when you were
20 interviewing people from the same community?

21 [15.35.35]

22 MS. NAKAGAWA:

23 A. That was the information, yes, and that's what I want to
24 correct in my next research. We didn't have in the
25 questionnaires, we didn't have a question specifically asking the

1 role of the -- in case of the marriages who was the one who
2 ordered the marriage or who presided the marriage. We did not
3 have that.

4 Only in the in-depth interviews, we asked in case that person
5 married in the Khmer Rouge, we asked in detailed, but it was
6 rather random, it was not systematic.

7 Q. I'm asking you this question because, throughout your
8 testimony each time that you say "the Khmer Rouge, the Khmer
9 Rouge", my question is to understand if this was a term that was
10 used by the people you were interviewing. Did they say "the Khmer
11 Rouge"? Did they say "Angkar?" Did they say "the village chief?"
12 And is this something that you noted somewhere in your own notes
13 and questionnaires specifically what was the word used to define
14 the authority by the persons interviewed?

15 [15.37.02]

16 A. Thank you so much. People used many different terminology, but
17 I recall when I did the first research I repeatedly heard the
18 word "kamaphibal". Many people spoke this word "kamaphibal" and
19 this was very new word to me at that time. When I did the
20 research in 2014 up until now, I hardly hear this word and they
21 used the word either "A Pot" (phonetic), Angkar, "Khmer Kraham".
22 They use many, many different languages in order to describe
23 somebody who had the authority.

24 Q. Then you, when you used the term "Angkar" in your writings,
25 you're the one who is choosing this term. This does not

108

1 necessarily have a link with what the people you interviewed gave
2 you during those interviews?

3 A. That's correct. Yes, in the "Motherhood" book, I don't think
4 so, I use the word "Angkar". I used the word throughout the book,
5 the Khmer Rouge KR.

6 [15.38.29]

7 Q. Another question I would like to ask you some clarification
8 on. Yesterday you mentioned, I believe it was a different
9 criteria that the people you interviewed brought up on the
10 criteria that were used by the cadres <prior> to these marriages
11 in order to select them.

12 So yesterday, a bit after 13.34, between 13.34 and 13.36, and you
13 say that you could not say that the criteria were uniform:

14 "For example, certain people were authorized <once they were in a
15 certain> age range, when they were older than 20 or 25 years-old
16 to get married." End quote.

17 So what's of interest to me here is the issue of the age range.

18 We've heard a lot from various people who spoke <a lot> about
19 20-something years as the prerequisite age in order to be able to
20 be married.

21 So what I'd like to do now is to make a comparison with the
22 pre-DK period, so before 1975, so if you know and if you've
23 carried out any studies on this point, what was the average age
24 of marriage for women before the Democratic Kampuchea regime?

25 [15.40.05]

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

109

1 A. From my research, mostly women got married before they became
2 20, so 16, 17 because they went to school very short or they even
3 didn't go to school at all. So at the time of puberty, that would
4 be around 14 to 15, the parents started to find a husband for the
5 daughter and then the marriage would be completed at the age of,
6 let's say, 16, 17, 18 but before they became 20.

7 Q. And in your research, were you able to conclude that the
8 marriage age in DK, at least <for women>, was higher than the
9 average marriage age before the DK period and perhaps in the time
10 period following the DK regime, if you have any information on
11 that?

12 A. It's a very interesting view and I think -- I think so, you
13 are pointing the right direction, but there are a lot of
14 varieties in the Khmer Rouge time.

15 The youngest girl who was forced to marry, that I interviewed,
16 was 14, so I cannot again generalize but commonly I think women
17 in their twenties were either called or invited or forced to
18 marriage. So the average age of marriage among the women became
19 elder as you said; that's correct.

20 [15.41.57]

21 Q. You spoke with my colleague earlier and also throughout your
22 testimony of the status of women in society, in traditional Khmer
23 society. You also talked about the foundation of marriage being a
24 family matter <with parents' consent>, so it's something I would
25 just like to confirm.

110

1 So the issue of sentimental feelings of love as a prerequisite
2 for marriage is not something that is part or that is predominant
3 in the traditional idea of Khmer marriage?

4 A. That's correct. Before the DK time, women were oppressed to
5 even think about sexuality or love. They didn't have any idea
6 about love.

7 Q. So on this point, at least on the notion of a loving feeling
8 before the marriage, there's a similarity between the pre-DK
9 period and the DK period; or between the pre-DK period, it was
10 the parents who decided who the proper partner or spouse would be
11 and <as you stated,> during the DK regime, this was similar
12 except that it was the cadres who decided who the proper partner
13 would be for the wife-to-be or the husband-to-be, during DK. So
14 there's a similarity in that aspect.

15 [15.44.13]

16 A. That's correct. And those who requested the marriage during
17 the Khmer Rouge time, I would say it was very same only the
18 living condition was different.

19 But those who was forced was different. The lack of love or
20 affection might have been the same, but they were living under
21 the extreme fear and they didn't want to marry. So it's not the
22 same.

23 Q. A point that I'd like to ask you for clarification on. I
24 understand from your description of arranged marriages pre-DK
25 regime, the importance of tradition, the importance of the will

111

1 of the parents, to use words that you've used.

2 So my question, I said I'd like to know if this arranged marriage
3 -- so my first question. Let me start again. My first question,
4 would this arranged marriage have lasted after <DK>? So it
5 existed pre-DK <in its traditional form>. Now, I'm putting a
6 parenthesis around the period of the DK regime, and <I'm> looking
7 to after the DK period<, post 1979>. Would this arranged
8 marriage, in which the position <and desires> of the family
9 counted strongly, is this something that was maintained or
10 resumed after the DK period?

11 [15.46.06]

12 A. I think that's what I stated, that we have knowledge gap, that
13 we do not know immediately after the Khmer Rouge fall and in
14 1980s how the marriages were arranged or conducted. We do not
15 have studies, but as of now, until now, that we started to have
16 either census or a lot of researches and studies, we came to know
17 that these traditions still remain and many girls think it's very
18 important.

19 Q. In terms of life experience concerning these arranged
20 marriages, either before or after the DK period, I know that
21 you've worked with a lot with people in Cambodia, so perhaps you
22 have some elements regarding that.

23 First question, on the average age today of marriages in
24 Cambodia, is it around the age of 20 as in the DK period or have
25 we returned to a younger age? And perhaps you'd like to tell us

112

1 if there's a difference between cities and rural areas.

2 [15.47.41]

3 A. Thank you so much. To my knowledge, after the Khmer Rouge
4 regime, the child marriages became very rare, so children under
5 18 were no longer forced to marry in many instances, except
6 ethnic minorities. To my knowledge, that the ministry is trying
7 to conduct a research on the forced marriage among the very young
8 girls in the ethnic minorities as of now, but it is very rare.
9 According to the census, the latest one, if I am not wrong, the
10 average age of Cambodian women to get married is around 24 or 25
11 and the man a bit older than that. So if I compare that the
12 average age of marriage becomes older and older, that is very
13 same to my country, Japan, that in Cambodia also people are
14 postponing to get married.

15 Q. Time is passing quickly, so I'd like now to focus on your last
16 study, the last one we have in any case, "Motherhood at War", so
17 document E3/10655, and I would just like to confirm with you -- I
18 believe I understood in the context of this study that it was 200
19 people. Is that correct?

20 [15.49.22]

21 A. That's correct in regard to the field interviews in the
22 provinces, but we did a preparatory research in Phnom Penh for
23 each field trip before I bring my students to -- I forgot how
24 many provinces I visited on how many occasions, but they
25 conducted the research in Phnom Penh also.

113

1 So total set of the transcripts that I have examined would expand
2 to, let's say, maybe 500.

3 Q. And it's from these 500 people that you selected the 200. Is
4 that correct or is the 200 something that I understood but it
5 didn't actually come from you?

6 A. Thank you very much for asking again. So, 200 people were the
7 people in the provinces that we interviewed in the fieldwork. But
8 before that, approximately 500 people are interviewed in addition
9 to those 200 and this book was based basically on those 200
10 interviews, but because I had a lot of interesting stories from
11 my files consisting of 500-plus people, I extracted some into my
12 research also.

13 [15.51.03]

14 Q. A general question on your methodology. When you carry out
15 general surveys and then afterwards you reduce the number, at
16 some point do you put together some sort of statistics or
17 percentages before you reduce to the number of 200, which <are
18 of> interest to you, do you carry out any generalized statistics
19 or -- on the elements that came out in your interviews because
20 you -- as you said with <my> colleague <from the Nuon Chea team>
21 earlier, <when you performed the selection process, from your
22 starting point, which percentage belonged to this or that
23 category>? So in "Motherhood at War", did you have a type of
24 analysis or <summary> of the types of questionnaires that were
25 carried out before you got to this -- the 200 that were selected?

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.

114

1 A. Before we met in total 200 people, we didn't select on any
2 conditions except those were -- those became mothers in the Khmer
3 Rouge time or their wives; for the man whose wife became pregnant
4 during the Khmer Rouge time.

5 [15.52.43]

6 And for the quantitative data, I collected in a systematic way as
7 to the average age and percentage of men and women, Base People,
8 New People etc. I have a data set in Excel because it's a sample,
9 very small number, so I used only Excel to generate the data
10 according to the province.

11 Q. So these are things that you still have in your possession, at
12 least on the third study. I'd understood that you had destroyed
13 them for the report E3/2959, "Gender-Based Violence", but for
14 this "Motherhood at War" study have you retained these
15 statistical elements?

16 A. That's correct. Only the first research that I did in 2006 I
17 destroyed myself, everything, but for the second research on
18 "Sexual Violence Against Sexual Minorities", I still keep all the
19 tapes, the recording, and also the third, "Motherhood at War", I
20 still keep all the tape recordings. Sometimes I listen to their
21 voices in order to cheer me up when I was especially writing the
22 book, I wanted to hear their voices again. I have all the
23 documents with me.

24 [15.54.16]

25 Q. More than the recordings, I was asking if you have the summary

115

1 documents. I know that you have documents in the Excel form, so
2 do you have <summary> documents that can say, for example, among
3 the 500 people that I interviewed, there were 10 percent that got
4 married on such-and-such a date or <ten per cent were married> at
5 such-and-such an age etc.?

6 So do you have a document that would be able to be used to have a
7 <general> idea on these elements <from the initial interviews>?

8 A. Yes, I have, for both two researches the latest one depending
9 on the -- what information you need. I may not have the complete
10 information but I still have those set of data.

11 Q. Something I'd like to bring up, still on "Motherhood at War"
12 but, more generally speaking, in the interviews that you carried
13 out during which marriage was mentioned, was the possibility of
14 divorce under the Democratic Kampuchea regime mentioned?

15 [15.55.40]

16 A. Yes. We didn't specifically ask about divorce in the Khmer
17 Rouge, but I interviewed one woman in Siem Reap, she divorced
18 during the Khmer Rouge time as a consequence of forced marriage.
19 She was forced to marry against her will, but her husband was
20 very, very abusive and she went to see the village chief with her
21 mother and then the village chief granted a divorce.

22 Q. I understood that you didn't ask specific questions because I
23 <imagine> that <divorce> wasn't your field of research
24 specifically but, outside of that one case -- I'll ask this a bit
25 differently, I'll re-word it.

116

1 Did this person who spontaneously spoke about this divorce -- and
2 that's why you included in the work -- it's at ERN 01322864. It
3 was because she spontaneously talked about it? Was it for that
4 reason that you mentioned it in your work or is it a question
5 that might have been asked even if it wasn't systematic in your
6 questionnaires but it might have been something you asked of
7 other people as well?

8 A. The issue of divorce was not in my questionnaire, so there was
9 no particular question about divorce, but in the questionnaire
10 during the pregnancy we also asked the relationship between the
11 husband and wife. So from this conversation, the women spoke that
12 their husband was separated from them, removed, or they were
13 killed or they disappeared, and I think that was one of the
14 conversation that she refer that she divorced the husband.

15 [15.58.04]

16 Q. Generally speaking, when I was talking about the pre-1975,
17 pre-DK traditional marriages when you said that it just wasn't
18 possible to talk about sex given the very modest, conservative
19 Cambodian society during that period.

20 So without talking about sex, was it possible for a woman to
21 explain that she had problems with her husband, that he was
22 violent with her, was it something she could talk about with her
23 parents or in the community she lived within?
24 Was that something that was common to ask for someone's mediation
25 when there were problems in a couple, excluding sexual problems?

117

1 For example, talking about domestic violence.

2 [15.59.15]

3 A. No, it is not very common that the woman who is suffering from
4 violence by their own husband could disclose their problem to
5 outsiders, even to their mothers. So this case was very rare and
6 maybe that's why I put it into my book.

7 BY MS. GUISSÉ:

8 I see the time is short, Mr. President. I just have one very
9 simple last question.

10 Q. In the context of your interviews, did you bring up domestic
11 violence in the Democratic Kampuchea period and how that issue
12 was dealt with?

13 MS. NAKAGAWA:

14 A. Yes, there was a session asking about domestic violence. If
15 they have seen the domestic violence or what she or he was the
16 trouble with the domestic violence, the answer was very, very
17 common; that there was no domestic violence during the Khmer
18 Rouge time.

19 The reason number 1 was husband and wife was not living together.
20 They could meet only sometimes. Sometimes once a month, three
21 times a month, so when they could meet they would not have an
22 argument.

23 And, second one, is that if there is any argument in the
24 community that includes the family, the Khmer Rouge would punish
25 those people for having the trouble. So it was -- they subjected

118

1 to the punishment if husband used the violence against the wife.

2 Also, I -- in addition to this, I was also interested to ask

3 whether the parents are beating the child because it was very

4 common before the Khmer Rouge time and it was also very, very

5 rare that parents, both mother and father, used violence against

6 a child because they missed each other so much.

7 [16.01.38]

8 MS. GUISSÉ:

9 Mr. President, I have finished. Thank you for having waited up to

10 this time, and thank you, Ms. Nakagawa.

11 MR. PRESIDENT:

12 Thank you, Counsel.

13 The hearing of the testimony of expert Kasumi Nakagawa now come

14 to an end. The Chamber wish to thank the expert for your times

15 during the two days hearing. Your presence in this courtroom is

16 important and may contribute to the ascertaining of the truth in

17 this case. The Chamber wish you all the best.

18 Court Officer, in collaboration with WESU, please make necessary

19 transport arrangement to send the expert to her home.

20 (Short pause)

21 [16.03.12]

22 It is now convenient time for the adjournment. The Chamber will

23 resume its hearing tomorrow, 15 September 2016, from 9 o'clock.

24 The hearing tomorrow, the Chamber hear the testimony of witness

25 2-TCW-854, and a reserve civil party, 2-TCCP-283. Please be

119

1 informed.

2 Security personnel are instructed to bring Khieu Samphan and Nuon
3 Chea back to the detention facility and have them returned to the
4 courtroom tomorrow morning before 9 a.m.

5 The Court is now adjourned.

6 (Court adjourns at 1604H)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Corrected transcript: Text occurring between less than (<) and greater than (>) signs has been corrected to ensure consistency among the three language versions of the transcript. The corrections are based on the audio recordings in the source language and may differ from verbatim interpretation in the relay and target languages.