



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
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ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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13 December 2016
Trial Day 492

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

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I N D E X

2-TCW-823

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Questioning by Ms. GUISSÉ..... page x

Mr. VOEUN Vuthy (2-TCE-1062)

Questioning by The President (NIL Nonn) page x

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
2-TCW-823	Khmer
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUISSÉ	French
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
Mr. VOEUN Vuthy (2-TCE-1062)	Khmer

1 PROCEEDINGS

2 (Court opens at 0903H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear testimony of witness

6 2-TCW-823 and begin hearing testimony of an expert, 2-TCE-1062.

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

9 [09.04.24]

10 THE GREFFIER:

11 Mr. President, for today's proceedings, the greffier notes that

12 all parties are present, except Mr. Son Arun, the national

13 counsel for Nuon Chea, who is absent for the morning sessions for
14 personal reasons.

15 Mr. Nuon Chea is present in the holding cell downstairs. He has
16 waived his rights to be present in the courtroom. The waiver has
17 been delivered to the greffier.

18 The witness who is to conclude his testimony today, that is,

19 2-TCW-823, and his duty counsels are present in the courtroom.

20 Today, we also have a reserve expert, 2-TCE-1062.

21 Thank you.

22 [09.05.20]

23 MR. PRESIDENT:

24 Thank you, Mr. Em Hoy. The Chamber now decides on the request by

25 Nuon Chea.

2

1 The Chamber has received a waiver from Nuon Chea, dated 13
2 December 2016, which states that, due to his health, that is,
3 headache, back pain, he cannot sit or concentrate for long. And
4 in order to effectively participate in future hearings, he
5 requests to waive his right to be present at the 13 December 2016
6 hearing.

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

16 [09.06.35]

17 The Chamber instructs the AV Unit personnel to link the
18 proceedings to the room downstairs so that Nuon Chea can follow.
19 That applies for the whole day.

20 And before I hand the floor to the defence teams to question the
21 witness, the Chamber hands the floor to Judge Lavergne to put the
22 question to the Lead Co-Lawyers in relation to one civil party.

23 And Judge Lavergne, you have the floor.

24 JUDGE LAVERGNE:

25 Yes. Thank you, Mr. President.

3

1 Last week, we spoke about the situation of Sar Sarin, the civil
2 party, and the Lead Co-Lawyers were requested to come into
3 contact with the lawyer of the <interested party> in order to let
4 us know if <Mr. Sar Sarin> wishes to retain his status as civil
5 party or to withdraw from that.

6 So to date, can the civil party Lead Co-Lawyers tell us the
7 situation? Have you been in contact with Mr. Sar Sarin's lawyer,
8 and did you receive any updated information?

9 [09.08.06]

10 MR. PICH ANG:

11 Good morning, Mr. President, Your Honours. We have contacted the
12 lawyer for civil party, and the information we received is that
13 this civil party wants to retain his status as a civil party in
14 Case 002.

15 JUDGE LAVERGNE:

16 Thank you for this clarification.

17 MR. PRESIDENT:

18 Thank you, Judge.

19 I now hand the floor to the defence teams, first to the defence
20 team for Nuon Chea to put questions to the witness. You have the
21 floor.

22 [09.08.54]

23 MR. KOPPE:

24 Yes, Mr. President. Good morning, Your Honours. Good morning,
25 counsel.

4

1 Mr. President, before I start, I would like to raise an issue in
2 respect of the upcoming expert and the schedule -- scheduling in
3 general.

4 On the 8th of December 2016, a week ago, so you send a memo to
5 all parties in relation to the upcoming expert, and the subject
6 was the Krang Ta Chan study. In this memo, you said that the soft
7 copy of the study in two separate charts received, but they were
8 in Khmer only, that these documents have been placed on the
9 shared materials drive and that the Chamber has requested an
10 urgent translation of the introduction of the study and of the
11 two charts -- two charts, sorry.

12 We have checked this morning. We still haven't seen a translation
13 of the relevant documents of the study in relation to Krang Ta
14 Chan. We have been able to look at the Khmer versions, but as you
15 know, I will be leading the questioning, the examining.

16 [09.10.48]

17 So what is the way to proceed, is my question, if we don't have
18 any translations on the relevant Krang Ta Chan studies. I can ask
19 some basic questions, but not maybe the detailed level of
20 questions that I anticipate.

21 For instance, one of the things we have learned from the Khmer
22 study is the number of cranial or skulls that were investigated.
23 We've also established that the -- let's say the equivalent of
24 Him Huy used to establish trauma of victims at the Choeung Ek is,
25 in fact, Soy (phonetic) -- what's his name? Soy Say (phonetic),

5

1 one of the witnesses.

2 So these are all very relevant points that I think I should raise
3 now, and we are in urgent need of that translation. Otherwise,
4 it's going to be very difficult to ask any detailed questions in
5 relation to Krang Ta Chan.

6 That's my first point.

7 My second point is about the scheduling in general. The expert
8 was originally planned to appear tomorrow. We are, nevertheless,
9 ready to start examining him. But we, and especially my team
10 members, are in desperate need of clarification in respect of the
11 witness who's working for Office of the Co-Investigating Judges
12 and who has made the OCIJ S-21 prisoner list.

13 [09.12.46]

14 Is there any possibility that she will be testifying this week
15 because she has been mentioned as a reserve witness after the
16 testimony of 2-TCW-971? But we'd really like to have some
17 certainty as to whether she will appear. We've also seen the
18 email from the Senior Legal Officer indicating that she might
19 actually be called on the 9th of January. That would really have
20 our preference that she will not appear this week, but merely and
21 only on the 9th of January.

22 Thank you.

23 [09.13.41]

24 MS. GUISSÉ:

25 Thank you, Mr. President, good morning. <Good morning> to all of

6

1 you.

2 I support my colleague's concerns regarding the report related to
3 Krang Ta Chan. This is a point that we also wanted to raise today
4 <on behalf of Khieu Samphan's defence team>.

5 We have no translation of this report, neither in French nor in
6 English. The people speaking Khmer in our team and <who> are not
7 present here today, <such as my colleague Kong Sam Onn, who> are
8 working on other projects <at the moment>. In order to put
9 questions regarding very technical elements to an expert, a
10 minimum amount of preparation is necessary with documents that we
11 can understand.

12 So my first concern is: will it be possible to break the
13 examination <of this expert> into two parts? That is to say, to
14 allow us to put questions this week regarding the report that we
15 <had the opportunity to> review, and <since there should be> at
16 least be a witness scheduled in January, <would> it be possible
17 for him to come back when all of the parties will have had an
18 opportunity to review at least the introduction of this second
19 report on Krang Ta Chan?

20 We understand that the Chamber has been made aware of this report
21 <only a short time ago>, but <if> the parties are< to prepare
22 accordingly so that the questioning phase makes sense,> instead
23 of acting blindly, it might be better to postpone this second
24 part <on the Krang Ta Chan matter> until the beginning of
25 January.

7

1 This is my request on behalf of the Khieu Samphan team today.

2 [09.15.36]

3 MR. PRESIDENT:

4 And on behalf of the Chamber, allow me to inform the parties in
5 relation to the translation of document before we hear testimony
6 on Expert 1062.

7 Yesterday, the Chamber was informed by the National Legal
8 Officer, who was tasked to submit the documents for translation.
9 He contacted the translation unit, and we were told that the
10 translation shall be ready this morning. However, so far, we have
11 not received the document yet.

12 For the second issue, that is, in relation to hearing the witness
13 on the 15th, we actually scheduled that we continue to hear
14 testimony of 2-TCW-971 via video link from Ourdor Meanchey
15 province.

16 [09.16.54]

17 In relation to the request by Counsel Anta Guisse, the Chamber
18 will decide on this issue later on, and we will see how it goes
19 this morning. And probably we would limit the questioning and
20 tomorrow then we will consider it once again. <If we do not
21 receive the translated documents, we will see it in reality, and>
22 we can decide on this issue when we conclude the hearing of
23 testimony of this current witness.

24 I'd like now to hand the floor once again to the defence counsel
25 for Nuon Chea to begin putting questions to this witness, if you

1 have any.

2 MR. KOPPE:

3 Yes, I do, Mr. President. But I apologize for revisiting the
4 matter in relation to the OCIJ witness because that witness
5 really needs a lot of preparation. That's why my request -- my
6 urgent request would be that we hear as soon as possible that she
7 is not, in fact, a reserve witness on Thursday. That's all we
8 need to know. If that's the case, then we will be very relieved,
9 Mr. President.

10 MR. PRESIDENT:

11 Let me set this matter aside and we'll inform you after the short
12 break.

13 [09.18.30]

14 QUESTIONING BY MR. KOPPE:

15 Thank you, Mr. President.

16 Q. Good morning, Mr. Witness. I am the International Co-Counsel
17 for Nuon Chea, and I would like to ask you some questions this
18 morning.

19 Let me ask you first a question about something you said in one
20 of your WRIs.

21 I will be referring specifically to his answer 18 in document
22 E3/9698.

23 But let me ask an open question first, Mr. Witness.

24 Can you tell us what you or your unit at sea would do when you
25 would see a fishing boat enter the territorial waters of DK?

1 [09.18.51]

2 2-TCW-823:

3 A. When <their> fishing boats entered our territorial water,
4 <they came in the form of fishing boats> but they had weapons on
5 their boats. As for us, we mobilized our forces to protect our
6 islands<, then they opened fire at our side, we then exchanged
7 fire. The fire happened at night. But the skirmish took place far
8 off our islands' boundaries.> They encroached further to the area
9 of Koh <Sampoch> (phonetic) <>, which was within the vicinity of
10 Koh <Totoem (phonetic), Koh> Thmei.

11 Q. Let's make a distinction between, on the one hand, real
12 fishing boats, boats with people on it, fishermen on it who were
13 really fishing on the one hand and boats with guns and arms on
14 it.

15 If you or your men during a patrol had established that the boat
16 that was crossing territorial waters was really a genuine fisher
17 boat, what would you do?

18 A. In the case of a fishing boat which did not have any weapon on
19 board or which did not fire at us, then we would tell them, but
20 in reality, there was no such cases. Usually there would be armed
21 clashes. We did not see <their ships>, but usually we saw these
22 forms of <small> fishing boats.

23 [09.22.20]

24 Q. Very well, then. Then let's talk about boats that weren't
25 really fisher -- fishing boats. But just one follow-up question:

10

1 We have testimony of someone who was also patrolling the
2 territorial waters of DK. He was, however, a commander not
3 belonging to Division 164 but, rather, to the military of the
4 West Zone, and his name in -- I'm not sure if I can mention his
5 name. Just in case, I will refer to him as 2-TCW-1008. And on the
6 2nd of February, he testified in this courtroom, and he said, and
7 let me read it out to you, at 14.09:

8 "When a ship encroached on our territorial waters, we would
9 deploy our ship in order to inspect what kind of ship that --
10 what kind of ship that encroached on our territorial waters,
11 whether it was a large ship or a fishing boat. For a fishing
12 boat, we would chase it away. However, if we were fired upon,
13 then we would return the fire." End of quote.

14 Although not in your division, Mr. Witness, but do you know
15 whether there was any order or standing instruction that if it
16 was, indeed, a fishing boat, you would chase it away out of the
17 territorial waters?

18 [09.24.33]

19 A. Yes, there were such cases. For the fishing boats, <we did not
20 shoot at them but> we chased them away. When we knew that they
21 did not fire upon us and when they entered our territorial water
22 and when they spotted us, they would retreat. However, if we were
23 fired upon, we would return fire.

24 Q. Now let's focus again on boats, which might not have been real
25 fishing boat -- fishing boats.

11

1 In question and answer 18 of E3/9698, you were a bit more
2 specific, and let me read it back to you, Mr. Witness. You said,
3 and I quote:

4 "They instructed us that if we saw fishing boats enter our
5 territorial waters but remain close to the maritime border line,
6 we should not do anything. But if those boats came deep inside
7 our territorial waters and remained inside them for long, we
8 should attack them immediately." End of quote.

9 Is that something that you said? Did you, at the time, make a
10 difference as to how far inside of the territorial waters a ship
11 would come, and that would somehow make you decide on the course
12 of action?

13 [09.26.36]

14 A. When they came to the area of Koh Seh, <near Koh Tral>, then
15 we did not have any clashes, but if they entered beyond Koh Seh<,
16 we would chase them away,> and if we were fired upon, we would
17 return fire.

18 Q. In that same WRI, a bit further, question and answer 21, you
19 said that Vietnamese motorboats, which entered your territorial
20 waters, were armed with B-40 rockets. Is that correct? And if
21 yes, do you know whether that happened often?

22 A. They did not enter our territorial water every day. Once in a
23 while, they would do that.

24 As for those who had weapons, they had <pistols,> AK rifles. They
25 also have B-40 rocket launchers. And then we would have armed

12

1 clashes. If they came, we chased them away, and in some cases,
2 they would retreat. And in other instances, <if they did not
3 retreat,> we fired at them <and> their boats <might sink>. And
4 sometimes we also had casualties on our side.

5 And that's natural because during armed clashes, sometimes it was
6 us who were wounded, but sometimes it was them who were wounded.

7 [09.28.44]

8 Q. Now, these instances when you encountered fishing boats with
9 B-40 rockets and AK-47s on board, was your conclusion at the time
10 that these were, in fact, Vietnamese armed forces, they were
11 Vietnamese naval forces pretending to be fishermen?

12 A. I cannot say that they were soldiers or not, but once we
13 determined that a boat had weapons, then we would consider them
14 <> soldiers because only soldiers had weapons. However, that is
15 my personal conclusion. It was my personal view.

16 Q. Let me ask it differently. Would it be fair to say that if
17 your unit detected inside the territorial waters a Vietnamese
18 fishing boat, this would not necessarily mean that it was a
19 fisher -- fishing boat, but it could very well be a boat
20 consisting of Vietnamese naval forces?

21 [09.30.38]

22 A. <At this point,> I <do not understand so I> cannot make that
23 conclusion or analysis. As I have just stated, in our capacity as
24 a border protecting force, <in whatever forms of encroachment,>
25 if there were armed clashes from the other side, we had to return

13

1 fire. And that's my view, and that's what happened.

2 Q. Thank you, Mr. Witness, for clarifying that.

3 We just spoke about Vietnamese fishing boats, but have you or has
4 your unit ever also encountered Thai fishing boats?

5 A. In the area where I was based, it was not close to Thailand.
6 However, it was close to Vietnamese maritime border, so we did
7 not have any interaction with Thai.

8 Q. I understand. But were you, nevertheless, aware of what the
9 orders or instructions were within Division 164 in respect of
10 encountering Thai fisher -- fishing boats?

11 [09.32.34]

12 A. I did not grasp the situation because <we had different>
13 spearheads. <I could only grasp the situation only at my base and
14 the superiors' instructions. And we would implement the
15 instructions accordingly.> For that reason, I cannot speak <or
16 make analyses about Thai boats because it was at a different
17 location>.

18 Q. Just to complete this subject, let me read to you what that
19 same witness I just referred to said in Court on the 2nd of
20 February 2016 at around 14.20. He's being asked questions about
21 encountering Thai fishing boats, fisher boats. I'm not sure what
22 the word is. He says:

23 "At the time, most of the Thai fishing boats actually entered our
24 territorial waters. We did not fire upon them. And of course, our
25 defence resources were rather limited." End of quote.

14

1 Do you know whether there was, within Division 164, an
2 instruction simply not to fire upon Thai fishing boats?

3 A. I have clarified already I had different instructions, <and
4 for the Thai side,> I did not know what kind of instructions they
5 received. I <can> not tell you what is not true, and I will tell
6 you only what is true in relation to the work at my location.

7 [09.35.00]

8 Q. Well, that is exactly what we would like you to do, Mr.

9 Witness, so if you don't know, that's no problem at all.

10 Now let's move away from fishing boats and move away to boats
11 containing refugees from Vietnam.

12 If I understood your testimony from yesterday correctly, you said
13 that you or your unit never intercepted anyone on sea or at sea.

14 But do you know whether there was a general policy or general
15 orders within Division 164 as to what should happen to refugees,
16 Vietnamese refugees, once they would be spotted in a boat
17 entering the territorial waters?

18 A. <>Regarding the instruction from the division, I <could not
19 grasp it fully>. <But at my location, I never received any
20 instruction to fire and sink Vietnamese boats that attempted to
21 flee to foreign countries>.

22 [09.36.50]

23 Q. Well, let me -- let me confront you, then, with testimony of a
24 witness who was interviewed by the International Co-Investigating
25 Judge, who was also within Division 164.

15

1 Mr. President, I'll be referring to E3/9699, question and answer
2 75.

3 This is what he said, and let me read it to you:

4 "In the context of work of Division 164, I heard Meas Muth
5 reporting about the Vietnamese boats that had entered Cambodian
6 territorial waters. Son Sen said if those Vietnamese were
7 refugees to Thailand, we should not arrest them and we should let
8 them travel on." End of quote.

9 Mr. Witness, were you aware of this order or instruction by Meas
10 Muth in respect of Vietnamese refugees trying to get to Thailand?

11 A. I did not receive any specific instructions from the divisions
12 since the division <already was knowledgeable about our>
13 geographic areas in relation to the island, Koh Tral<. Within
14 that vicinity, there was mainland, so the Division assumed that
15 Vietnamese refugees who fled abroad> could not approach <> the
16 mainland. As I said, I have no idea about those instructions.

17 [09.39.26]

18 Q. Mr. Witness, that same order from Son Sen was also read to the
19 witness we just discussed, the West Zone naval forces commander.

20 And on that same day, 2nd of February 2016, at just before 14.14,
21 he said, and I quote:

22 "I heard about that order. The same thing applied to the Thai
23 people. If the Thai people were captured, they would be returned
24 to Thailand. As for the Vietnamese, the same political chain was
25 used." End of quote.

16

1 Now, I understand that you didn't really have an experience with
2 Thai refugees. Just for completeness sake, do you know of any
3 standing orders within Division 164 to also not touch or not act
4 upon Thai refugees? If they were real refugees, just to let them
5 go to wherever they wanted to go.

6 [09.40.58]

7 MR. PRESIDENT:

8 Please hold on, Mr. Witness.

9 You may now proceed, Judge Lavergne.

10 JUDGE LAVERGNE:

11 Counsel Koppe, can you clarify what you mean by "Thai refugees"?

12 I may know about Vietnamese refugees, but I do not know exactly
13 what you are referring to when you talk of Thai refugees.

14 Are you talking of refugees <went> to Vietnam?

15 BY MR. KOPPE:

16 No, that is a correct intervention, Judge Lavergne. I didn't mean
17 refugees. I meant, rather, Thai people because the witness
18 doesn't speak about Thai refugees but, rather, about Thai people.

19 Q. So my question should be reformulated, Mr. Witness. I was not
20 mentioning -- I was not talking about Thai refugees, but about
21 Thai people. But I presume the answer is the same, that once
22 people of Thai nationality were discovered, they would be left
23 alone and be allowed to go to Thailand. Is there anything -- is
24 that something that you knew as being the instructions within
25 Division 164?

17

1 [09.42.34]

2 2-TCW-823:

3 A. <As for> instructions from the divisions <relative to Thai
4 people, as I already informed that> I <could not grasp such
5 matters>. <My view, however, on> fishing boats <such as Thai
6 boats or others is this, if they came in and had no> weapons<, it
7 was fine. These boats> would <simply> be told to return to their
8 territory. Only when they fired at us, we would fire back. <If
9 there was no shooting, we would not sink their boats.> That was
10 the instruction from the division.

11 Q. Thank you, Mr. Witness.

12 Now, returning to Vietnamese refugees, but this time in more
13 general terms, do you know whether, at any point in time, there
14 was a discussion or there were orders within Division 164 as to
15 how Vietnamese refugees should be perceived, whether they should
16 be perceived as enemies or whether they should be seen as
17 ordinary normal people?

18 Is that anything that you remember?

19 [09.44.16]

20 A. To my understanding, the refugees were not perceived as
21 enemies since they fled from Vietnam to other countries, and they
22 were not armed, so how could we fire at them <because they were
23 unarmed>?

24 Q. Let me read to you what this same West Zone commander said,
25 also on the 2nd of February, this time at around 14.16. And my

18

1 question will be whether you would agree or disagree with what he
2 says:

3 "Regarding Vietnamese refugees, they were not considered enemies.
4 They were considered ordinary people who were afraid of the war,
5 as we used to be afraid of wars."

6 "They were not considered the enemy", he says, a bit further
7 down.

8 Would it be correct to say that you or your unit or Division 164
9 held the same position in respect of Vietnamese refugees being
10 ordinary people who just had fled war?

11 [09.45.50]

12 A. In my opinion, those Vietnamese people who fled their country
13 to the other countries were not considered enemies<. They were
14 ordinary people>. We, the soldiers, could not attack them or
15 mistreat them. As I told the Court already about my opinion, an
16 as for the opinion or the instruction of the division, I did not
17 know. I could not say about it because the instruction from the
18 upper echelon was that they were not considered enemy. <If they
19 fled, they> would be allowed to flee <off the areas. This was the
20 common instruction from the Division that I could grasp>.

21 Q. Thank you for that clarification, Mr. Witness.

22 Let me address a new subject, and that is a follow-up question
23 from what you said yesterday at around 15.05 in the afternoon.

24 You said, and I quote:

25 "Usually, the Vietnamese forces attacked us first, and we had to

1 counter-attack." End of quote.

2 What did you mean when you used the word "usually"? Was it -- did
3 you mean it was almost always the Vietnamese forces who started
4 first, or are you in a position to quantify that to a certain
5 extent?

6 [09.47.58]

7 A. Let me clarify the point for you. <Normally, at the
8 battlefield, the fight occurred at the borderline or> beyond our
9 spearhead <which was determined by us>. <My view is that it was
10 not a full-blown war. The full-blown or invading war> would
11 involve a lot of soldiers<, weapons, artilleries,> and
12 battleships. That is my opinion. As for the sporadic clashes <at
13 the border,> I think that it was normal<, it was not big>.
14 Sometimes we would have <skirmishes> and, in that case, we would
15 <say, it was normal. The fight was not in the form of a large
16 number of troops and not continuous. At the border, after the
17 clash, they did not have reinforcement and nor did we. Of course,
18 there were some occasional clashes. But we did not fight with
19 large army. I therefore concluded that it was merely a skirmish.
20 It was not a war of invasion>. This is my personal opinion.

21 [09.50.04]

22 Q. I was asking this question of clarification about the word
23 "usually", and it was usually the Vietnamese forces that attacked
24 first because a bit further, at -- yesterday, at 15.14, you said,
25 and I quote:

20

1 "Regarding entering the maritime boundary of Vietnam, we never
2 invaded their boundary." End of quote.

3 Is that correct; at least your unit never invade the Vietnamese
4 boundary?

5 A. Yes, I did say that.

6 Q. But then wouldn't it be more accurate to say that the
7 Vietnamese forces always attacked DK forces first, and not
8 usually?

9 A. I was referring to the fishing boats when they < opened> fires
10 <first along the borderline.> We would counter fire so that they
11 would return to their territory without coming across our
12 boundary. <If they did not open fire, we would chase them away
13 but we did not shoot at them.> It was not the invading war.
14 Usually they came in the form of fishing boats.

15 [09.52.25]

16 Q. I understand. Thank you for that clarification, Mr. Witness.

17 Let's move away from the individual clashes with Vietnamese naval
18 forces and let's move to what was the general instruction within
19 Division 164 in respect of Vietnam and Vietnamese naval forces,
20 and let me refer you to what you said about this. And I would
21 like to ask you some clarification.

22 In E3/9698, question and answer 24, this is what you said. Let me
23 read that out to you:

24 "They instructed us not to seek trouble with Vietnam because our
25 country was small and Vietnam was a large country. At that time,

21

1 when there was conflict between Vietnam and Cambodia, there was
2 fighting in Koh Krachak Seh Island and Koh Poulo Wai Island." End
3 of quote.

4 My question is about "they instructed". Who was it specifically,
5 Mr. Witness, if you remember, that instructed you or other
6 battalion commanders, "not to seek trouble with Vietnam because
7 our country was small and Vietnam was large"?

8 [09.54.23]

9 A. Allow me to make a clarification on this issue. The policy of
10 Kampuchea was not to invade another country. We were a small --
11 Cambodia was a small country and had small population. We needed
12 only to defend our country. <Though> Cambodia was a small
13 country, <when there was an invasion,> we had to defend our
14 country at all costs<, even if it would cost us our lives>. This
15 is the policy.

16 For instance, when there was the attack on the Koh Krachak Seh,
17 that was a case of invasion. Therefore, it was unavoidable that
18 we had to counter-attack, so we attacked one another in that
19 case.

20 And as for the case of Poulo Wai Island, we had very small number
21 of ammunitions, so we lost the battle <to Vietnam>. And later on,
22 we could capture back that island. And this is my personal
23 opinion.

24 [09.55.58]

25 Q. Mr. Witness, what you're just saying was confirmed by that

1 witness from the West Zone naval forces, but it was also quite
2 extensively confirmed by someone who testified on the 31st of
3 October 2016. At 15.43, he also said, and let me read that to
4 you. This witness said:

5 "The instruction of the upper echelon to the soldiers in general
6 was that Kampuchea was small. Kampuchea had a small number of
7 soldiers and small population compared to Vietnam, which had
8 larger forces and large population."

9 Let me ask first whether you know this particular person, Mr.
10 Witness. He was not in Division 164, but he is presently maybe a
11 well-known person. He's a two-star major general and commander of
12 Region 5 today, and his name is Ieng Phan. Do you know Ieng Phan?

13 A. Yes.

14 Q. What is it that you know about him?

15 A. Could you please clarify your question about Ieng Phan? Are
16 you asking me about his position, rank, or what do you really
17 want to know about him? I do not really get your question.

18 [09.58.20]

19 Q. Just some general information. How do you know him? Have you
20 worked with him? What do you know about his present position?

21 A. He is currently part of the zone, and he is the major general
22 currently. He <> used <> to be working with <me> as well.

23 Q. When, exactly, was it that he was your superior? Was it long
24 after 1979 and, if yes, until when?

25 A. I was not talking about the period of 1979. I talked about the

1 period between 1975 and 1978.

2 Q. I understand. But please correct me if I'm wrong, but it's my
3 understanding that Major General Ieng Phan was reintegrated into
4 the Royal Cambodian Armed Forces in 1996 together with your
5 former commander, Meas Muth. Do you know if that's correct?

6 A. That is correct.

7 Q. And were you one of the members of those forces in 1996 who
8 also reintegrated into the Royal Cambodian Armed Forces?

9 A. Correct.

10 [10.01.00]

11 Q. And is in that position that you know Major General Ieng Phan
12 very well?

13 A. Yes.

14 Q. Now, let me return to what he said in Court on the 31st of
15 October 2016, and that is what my question is about, Mr. Witness.
16 You just confirmed that the instruction within Division 164 was
17 not to attack Vietnam, but only to react because, obviously,
18 Vietnam is a much bigger country and has a much bigger army. But
19 let me now read to you what Major General Ieng Phan said at
20 15.43. He says, and I quote:

21 "Allow me to clarify this point, the point of what the policy
22 was. The instruction of the upper echelon to the soldiers in
23 general was that Kampuchea was small, Kampuchea had a small
24 number of soldiers and small population compared to Vietnam,
25 which had larger forces and larger population. How could

24

1 Kampuchea wage the war against Vietnam?"

2 [10.02.40]

3 And he goes on to say that it was always the Vietnamese who were
4 aggressive, and not DK forces.

5 But my specific question is that he said that this instruction or
6 this policy was to "the soldiers in general", so not only to
7 Division 164, but to every single soldier belonging to the
8 Revolutionary Armed Forces of Kampuchea.

9 Is that something that you know as well, that this was a general
10 instruction from Son Sen to every single soldier not to start
11 first against Vietnam?

12 MR. PRESIDENT:

13 Witness, please hold on.

14 And International Deputy Co-Prosecutor, you have the floor.

15 [10.03.44]

16 MR. BOYLE:

17 Thank you, Mr. President.

18 Not an objection, but just an observation. In the one part of
19 that quote that counsel skipped over, the individual in question
20 said, "And the instruction was also that Kampuchea had just been
21 liberated", so it might be helpful for our discussion about this
22 regarding the time periods that we're talking about when we are
23 discussing these policies.

24 BY MR. KOPPE:

25 I'm happy to answer that question because it's - the prosecutor

25

1 wasn't present. He was speaking, as the Chamber will remember,
2 about when he was sent to the border with Vietnam in -- some time
3 May '78. He was also referring to the period of '77, so he was
4 definitely not referring to the period immediately following the
5 liberation. I hope that clarifies the question.

6 Q. So again, returning to my original question, Mr. Witness, this
7 policy, was this a policy for each and every soldier, both in the
8 armed forces, the naval forces and the air forces within the
9 Revolutionary Army of Kampuchea?

10 [10.05.16]

11 2-TCW-823:

12 A. Yes, and it is my understanding that the instruction was
13 proper. And allow me to apologize and let me put you a question.
14 Their country is big and our country is small. How could we
15 invade their country? And it is my understanding that protecting
16 our border was what we did, and we did not want to cause any war
17 because our country was small. But if we were invaded, we had to
18 retaliate. We could never initiate any invasion. We were like an
19 ant, and they were like an elephant. How could we invade Vietnam?
20 Maybe your analysis or view is different, but if you were in our
21 position, then you should be able to answer the question I just
22 posed because that is our understanding.

23 [10.06.30]

24 Q. As a matter of fact, Mr. Witness, I think we completely agree
25 with each other.

26

1 To finalize my questions, Mr. President, I have two more
2 questions or three more questions in relation to this very
3 subject.

4 Mr. Witness, I would like to put the exact words of the two
5 highest commanders at the time, highest military commanders, the
6 exact words which were used by Son Sen and Ta Mok, respectively.
7 And yesterday, you indicated that you had seen Son Sen once in
8 Phnom Penh. This is what he said during a meeting of another
9 division -- not your division, but Division 920. And this is what
10 he said to all soldiers on the 7th of September 1976.

11 Mr. President, it is document E3/799; English, ERN 00184781;
12 Khmer, 00083160; and French, 00323916.

13 So Son Sen says the following: "Our revolution is a socialist
14 revolution and already is a deep one. So, toward Vietnam, we take
15 the following stances:

- 16 1. We won't be the ones who make trouble.
- 17 2. But we must defend our territory absolutely and absolutely not
18 let anyone either take it or violate it.
- 19 3. If Vietnam invades, we will ask them to withdraw, and if they
20 do not withdraw, we will attack. Our direction is to fight both
21 politically and militarily." End of quote.

22 Mr. Witness, are these words coming very close to the actual
23 order from the very top of the revolutionary armed forces to the
24 soldiers?

25 [10.09.13]

1 A. Yes, that's the instruction to all the soldiers.

2 Q. And then my final question. These are the words from Ta Mok,

3 but quoted into -- quoted by that same witness, the deputy

4 commander of Division 1 in the West Zone that we just referred to

5 and we discussed.

6 Mr. President, that is document E3/8752; English, ERN 00849511;

7 Khmer, 00733339; French, 01309293.

8 Mr. Witness, this is what Ta Mok said according to the deputy

9 commander of Division 1 in the West Zone, and let me quote the

10 words of Ta Mok:

11 "At the borders, he gave instructions on enemies from outside.

12 He, Ta Mok, said that we must defend our territory and we must be

13 patient. Do not fight back when they fire off a few shots. Do not

14 fight back. Remain calm. If they fire off a few shots and we fire

15 back, it means we will create a very big problem. That was what

16 they told us, and they told us that we must defend our maritime

17 border, land borders and air space." End of quote.

18 Mr. Witness, these words of Ta Mok, do they reflect closely the

19 instruction that you received as battalion commander?

20 A. I did not receive such direct instruction from Ta Mok.

21 However, the speech by Ta Mok is consistent with my response that

22 -- my response to your last question. That is my personal

23 understanding.

24 [10.11.57]

25 JUDGE FENZ:

28

1 Can I just ask a follow-up question on that to the degree it was
2 answered.

3 You have now confirmed a couple of times the understanding of
4 other people of the policies when it came to Vietnam. Now, can
5 you tell me where you knew that from? Was that something you
6 read? Was that something you heard in meetings? Obviously there
7 were no direct instructions, as you just said. Or is this
8 something you just -- that just reflects your own feelings?

9 Do you understand my question?

10 2-TCW-823:

11 The instructions were issued by Pol Pot <nationwide>.

12 JUDGE FENZ:

13 And how did you see them? Did you hear, or how did you learn
14 about them?

15 Did you hear Pol Pot say it or did you read a speech of his in a
16 paper, or did you hear it on the radio?

17 2-TCW-823:

18 They were Pol Pot's documents.

19 [10.13.26]

20 JUDGE FENZ:

21 And what documents are we talking about? Were these -- yes. What
22 documents are we talking about?

23 Did you see these documents or learn about these documents?

24 2-TCW-823:

25 I <myself> read them, and divisional commanders also gave

1 instructions consistent with those documents.

2 JUDGE FENZ:

3 And then let me come back. What kind of documents were those?

4 Were these written orders or something in a publication, in a

5 newspaper? What kind of documents did you read that talked about

6 this policy?

7 2-TCW-823:

8 During our study sessions, they issued documents and the

9 divisions <would continue to disseminate the information

10 further>.

11 [10.14.45]

12 JUDGE FENZ:

13 So you learned about these policies in study sessions, and during

14 these study sessions, written material, obviously, to study was

15 disseminated. Do I understand that correctly?

16 2-TCW-823:

17 Yes.

18 BY MR. KOPPE:

19 Q. Well, let me follow up on that, Mr. Witness, just to make sure

20 that we're all clear.

21 You were a soldier. You had to follow military hierarchy. Your

22 highest commander was Meas Muth.

23 Did Meas Muth and your lower-ranking commanders in your division

24 order the very same thing, not to cause any trouble with Vietnam?

25 2-TCW-823:

30

1 A. Yes.

2 [10.15.55]

3 MR. KOPPE:

4 That concludes my questioning. And just for completeness sake,
5 Mr. President, let me refer you also to document E3/749; English,
6 ERN 00532686; Khmer, 00399114; and French, 00593942. This is a
7 "Revolutionary Youth" magazine, August 1975, that says the exact
8 same thing, so here you have also a written -- real written
9 instruction that says, and I quote:

10 "Along the borders, it is imperative to be vigilant and not to do
11 anything to cause trouble with the foreign neighbouring people.
12 However, it is also imperative to absolutely defend and counter
13 and not allow them to violate or insult our nation and our
14 people." End of quote.

15 Thank you.

16 [10.17.14]

17 MR. PRESIDENT:

18 It is now convenient time for a short break. We'll take a break
19 now and resume at 25 to 11.00 to continue our proceedings.

20 Court officer, please assist the witness at the waiting room
21 during the break time and invite him, as well as his duty counsel
22 back into the courtroom at 25 to 11.00.

23 The Court is now in recess.

24 (Court recesses from 1017H to 1039H)

25 MR. PRESIDENT:

31

1 Please be seated. The Court is now back in session.

2 Before the Chamber gives the floor to the defence team to put

3 questions to the witness, the Chamber would -- wishes to inform

4 the parties that their concern -- the document concerning

5 2-TCE-1062 is available in the translation version and it is now

6 placed in the case file.

7 [10.40.34]

8 So the Chamber will hear the -- this expert, as scheduled, and I,

9 the President of the Chamber, will put introductory questions to

10 the expert and then we will adjourn. Tomorrow, parties will have

11 a chance to put questions to the expert as we have planned. This

12 is to expedite and to save time for parties for putting

13 questions.

14 And tomorrow, the Chamber will also have a reserve witness, 1042.

15 Please be informed.

16 And now the floor is given to the defence team to put questions

17 to the witness, but first Judge Lavergne, you may proceed.

18 [10.41.43]

19 QUESTIONING BY JUDGE LAVERGNE:

20 Thank you, Mr. President. I will perhaps have a few questions to

21 put to the witness before giving the floor to Counsel Guisse.

22 Q. Witness, this morning, the Nuon Chea defence put questions to

23 you regarding the instructions you received as regards fishing

24 vessels that were in Cambodia's territorial waters and you stated

25 that you never received instructions from the division and, as

1 such, you nevertheless said that you received instructions not to
2 sink fishing vessels.

3 I would like you to tell us who gave you those instructions; if
4 those instructions were not from the division, who issued them?

5 2-TCW-823:

6 A. I could not get the question, Judge. It is not clear; could
7 you please repeat it, Judge?

8 Q. Very well. Can you, first of all, confirm that you did not
9 receive any instructions from the division regarding the conduct
10 you had to uphold regarding fishing boats that were in Cambodia's
11 territorial waters?

12 A. I received the instructions through the regiment.

13 [10.43.48]

14 Q. So what should we understand from that statement; are you
15 saying that the instructions were not directly from the division,
16 but they were relayed by the regiment? Did the instructions you
17 receive only emanate from the regiment?

18 A. I received the instructions from the regiment and the regiment
19 would receive those instruction from the division.

20 Q. Furthermore, you said something this morning that I did not
21 quite understand. You talked of your knowledge of the geography
22 of the islands and Cambodia's territorial waters in the zone that
23 was under your responsibility and you stated that you were
24 familiar with that geography.

25 Did I understand you to mean that it was not possible for

1 fishermen to enter those waters? And I'm referring to Vietnamese
2 fishermen. Is your answer yes or no to the question; were there
3 any Vietnamese fishermen who entered the territorial waters under
4 your responsibility?

5 A. I have already answered the question, but I will give you the
6 answer once again. The fishing boats were mounted with the
7 weapons. Those boats appeared to be the fishing boats, but they
8 had weapons on them.

9 [10.45.52]

10 Q. I very well understand. While you were working, did you <ever>
11 see any <fishing> boats that were <truly> fishermen's boats; that
12 is, boats that were not armed?

13 A. Never, I never see those boats.

14 Q. Very well, same question: Did you ever see boats carrying
15 refugees?

16 A. I never see those boats.

17 Q. Very well. You stated that when you encountered boats that
18 were armed, there were ensuing clashes; did you ever sink any
19 boats following any clashes between you and those boats?

20 A. <Yes,> sometimes, <during the shootout,> they were injured and
21 the boat would be sunk by us and <some of them swam. Likewise>;
22 sometime, they would fire and we got injured and our boats sank
23 as well.

24 [10.47.51]

25 Q. And in the event in which you sank a Vietnamese boat, you

1 earlier stated that there were casualties; did you provide any
2 relief to those casualties; did you try to find out who were the
3 persons who had opened fire on you?

4 A. I did not go directly to observe those boats <because the
5 boats looked similar.> When we were opening fire toward one
6 another and then we would run away to our sides <in order to get
7 artillery support>. If they did not go back, we would be
8 reinforced by <increasing the numbers of> boats to chase them
9 away.

10 Q. Did someone go to crosscheck whether the persons on the boats
11 that were sunk were wearing military uniforms, whether they were
12 soldiers or civilians; did anyone check that?

13 A. For example, after we opened fire at each other, we would go
14 back to our own islands and they would take their injured
15 soldiers back to their territory.

16 [10.49.55]

17 Q. Very well. How could you tell whether they were wounded
18 soldiers or soldiers if you <did> not go and check that, on the
19 spot, and find out whether they were wearing military uniforms or
20 not?

21 We are talking, indeed, of fishing vessels; <you did> not talk
22 <about> military vessels. You say that those fishing vessels were
23 armed; how were you able to tell that on <board> those fishing
24 vessels <there> were soldiers?

25 A. I have already answered the question, so this is repetitive. I

35

1 have clarified already that the firing <that took place at> the
2 maritime territory <was in the form of guerrilla-fashioned
3 attack;> we fired at each other to defend ourselves. I did not go
4 to crosscheck whether or not they were soldiers. Anyone who were
5 armed <> and fired at us, we would fire back at them.

6 Q. Very well. Last question: Did you see any Vietnamese military
7 boats in Cambodian territorial waters or <did you only> all you
8 <see> fishing vessels?

9 A. I have already answered the question and this question was put
10 again by you, Your Honour. I never saw ships -- Vietnamese ships;
11 I saw only the boats since my spearheads' water was not really
12 deep and <Vietnamese> ships could not travel.

13 [10.52.25]

14 Q. In order for things to be perfectly clear, because the French
15 interpretation is somewhat ambiguous; when you talk of ships, are
16 you referring to military ships?

17 A. I was referring to military ships or combat ships.

18 JUDGE LAVERGNE:

19 Thank you, Witness, for all these clarifications. I have no
20 further questions for the witness.

21 MR. PRESIDENT:

22 Thank you. And the floor is now given to the defence team for Mr.
23 Khieu Samphan to put questions to the witness. You may now
24 proceed.

25 [10.53.00]

1 QUESTIONING BY MS. GUISSÉ:

2 Thank you, Mr. President.

3 Good morning, Witness. My name is Anta Guisse. I am International
4 Co-Counsel for Mr. Khieu Samphan.

5 Alongside my colleague, Kong Sam Onn, I have a few brief
6 <additional> questions to put to you, <in light of> the questions
7 that have already been put to you.

8 I would start by asking questions about the period when you were
9 in Phnom Penh in December 1978 and I'll focus on the meeting you
10 said you attended with Chhum and Khieu Samphan.

11 A first question for the purposes of clarification is as follows:

12 Who was <this> person called Chhum?

13 2-TCW-823:

14 A. I am familiar with Chhum; however, I do not know his duties.

15 [10.54.30]

16 Q. Another question for clarification regarding what you said
17 earlier: I understand that you attended that meeting with Chhum
18 and Khieu Samphan, but when you <re-read> your DC-Cam statement,
19 you gave some clarifications and provided some annotations. I
20 would like you to clarify for the Chamber and the parties what
21 you meant. And I'm referring to document E3/9817A and the ERN in
22 French is 01308963; the ERN in English, 01313343; and the ERN in
23 Khmer is 01033989; and this is what you stated in the
24 annotations:

25 "No, I did not control the Ministry of Industry, but I was

37

1 <ordered to deport the industrial workers>. At the time, I met
2 Chhum alias Sek, to <arrange for the deportation of> the workers,
3 I saw Khieu Samphan, but briefly. <In the end>, I did not speak
4 with him." End of quote.

5 So my question, for clarification purposes, is as follows: When
6 you say "I did not speak with him," what did you mean? Because as
7 part of a meeting, <one assumes> that there are exchanges between
8 <the people there>; can you specify what you meant when you said
9 that you did not speak with him?

10 [10.56.42]

11 A. Allow me to make the clarification. Sometime, the
12 interpretation may not have been clear to you or I may have not
13 expressed myself clearly. <So I would like to repeat.>
14 I already told the Court that I met Khieu Samphan in a meeting to
15 discuss about the Ministry of <Industry>. I was requested to go
16 and supervise <> the workers at that factory. At by the time, the
17 "Yuon" almost reached Phnom Penh<. Workers were dispersed and
18 some fled in groups and> <factories> closed down and I was not
19 familiar with <all> locations of those factories. The Vietnamese,
20 at the time, was attacking into Phnom Penh --

21 Q. Very well. The Vietnamese were at the doors of Phnom Penh. My
22 question is: You saw Khieu Samphan at the time when the
23 Vietnamese were <advancing - they were> on the outskirts of Phnom
24 Penh; first question, I know that you stated yesterday that since
25 you did not know Phnom Penh very well, you did not know exactly

1 where that meeting occurred; can you at least try to describe the
2 place? Was it in <a factory, in> an office and were you the one
3 who went to that location?

4 A. I attended that meeting. I do not recall the meeting venue.
5 [10.59.10]

6 Q. Without necessarily remembering the exact location, do you
7 remember if it was in a room that resembled an administrative
8 office or was it in a factory or somewhere else; do you have any
9 kind of memory in that regard?

10 A. It was at a house, but I do not recall the geographical area.

11 Q. Here again, I would like you to refresh your memory if you
12 can. So do you remember that in order to go into this house, did
13 you have to go through a guard post or did you just walk in
14 freely?

15 A. No, there wasn't any.

16 Q. You said that the Vietnamese were at the gates of Phnom Penh;
17 do you know exactly where the troops were? Did you get any kind
18 of information with regard to the location of the Vietnamese
19 troops; how far were they from Phnom Penh?

20 A. Vietnamese arrived at the Monivong Bridge, that is, through
21 the main road, and they also reached Chrouy Changva Bridge. There
22 were tanks there. <So, I fled.>

23 At first, there was no fire by the Vietnamese when they initially
24 arrived. In fact, one of their tanks arrived first and it reached
25 Chrouy Changva Bridge. Then I fled and I did not know what

1 happened after.

2 [11.01.55]

3 Q. Fine. Well, my question, more specifically speaking, was; that
4 day when you had the meeting with Chhum and Khieu Samphan, <were>
5 the Vietnamese already at the bridge or are you speaking about
6 something that happened a few days later? I'm speaking about the
7 day of the meeting itself; did you know, during that day, where
8 the Vietnamese were?

9 A. I had met him before the arrival of the Vietnamese.

10 Q. Fine. So my question is: During that meeting, were you already
11 informed of where the Vietnamese were exactly; were you already
12 informed or not?

13 A. No, but the information we received was that the Vietnamese
14 were approaching, although I did not know the exact location
15 where they were.

16 [11.03.20]

17 Q. The last question regarding Khieu Samphan: You said,
18 therefore, that you saw Khieu Samphan on that day, so how did you
19 know that this was Khieu Samphan in fact?

20 A. I knew him and regarding the meeting with him, was that I had
21 known him before and I also got to know him <well> after 1979 and
22 before that, I did not know him that well.

23 Q. When you tell us that you know him <is it> because you had
24 already seen him <personally> or because you had heard about him,
25 or was it because you had seen pictures of him?

1 A. In fact, I saw his photo and later on, I saw him in person, so
2 I got to know him.

3 Q. Now, one question regarding the evacuation of the workers:

4 Yesterday, you said, a little bit before 3.49.03 in the
5 afternoon, "I had to stabilize the workforce and <when the time
6 came,> the workers had to be evacuated towards different places
7 according to the itinerary that was planned out." End of quote.

8 So you're speaking about an itinerary to evacuate the workers
9 from the factories, so can you tell the Chamber if you remember
10 which itinerary it was and how the people had to leave Phnom Penh
11 when the Vietnamese arrived?

12 [11.06.07]

13 A. Regarding the transportation, they were transported to
14 Battambang and Pursat provinces. They were transported by
15 vehicles, while others were on their foot, while others were on
16 the train, and part of them were travelling along National Road
17 Number 4. Again, some were on foot, while others were transported
18 by vehicles.

19 Q. So on the day of the meeting; this itinerary going through
20 Battambang, etc., was this something that was already planned or
21 was this something that was planned afterwards?

22 A. Regarding the arrangement to transport the workers, it was done
23 in a hurry, that is, when the "Yuon" suddenly arrived. They had
24 -- those people had to travel quickly by whatever means they
25 could; some were on foot, while others were on vehicles, because

41

1 by that time, the "Yuon" troops were at Chrouy Changva Bridge,
2 <at the time, some> workers <had not left yet while others left
3 at night>.

4 [11.08.02]

5 Q. You said that when you arrived in Phnom Penh, your soldiers
6 were not with you; so before the arrival of the Vietnamese, did
7 you obtain any kind of reinforcement in your unit, in your
8 battalion?

9 A. No, we did not. I was by myself, while my forces were still at
10 Kampong Som.

11 Q. So when the Vietnamese arrived, were you able to organize the
12 workers in the way they were going to leave the city or were you
13 only able to just simply escape yourself?

14 A. In fact, workers were organized to leave and the majority of
15 them had left and only a small number remained behind.

16 I was in a vehicle, but I was even further behind the workers.

17 [11.09.32]

18 Q. So you say that your meeting with Chhum and Khieu Samphan took
19 place in December 1978; if I understood you well, you said that
20 it happened about 10 days before the arrival of the Vietnamese.
21 So <right after the meeting or> the day following that meeting,
22 <did> the evacuation of the workers start?ed <And> if it didn't
23 happen on that day or the following day, how many days after the
24 meeting did the evacuation of the workers start?

25 A. In fact, the plan was <prepared through our discussion>. <But

1 we had to prepare for it because we got> information <from the
2 military> -- there was a rumour that the "Yuon" troops were
3 approaching and at that time, we prepared and we worked out the
4 plan, but workers were not yet evacuated and suddenly, we had to
5 do it in a hurry and it was not according to what had been
6 planned.

7 Q. Well, I would like to be sure; so are you sure that this
8 meeting took place in December 1978?

9 A. I cannot recall the exact date as I stated earlier.

10 Q. Well, even if you don't remember the exact date, you are sure
11 that this meeting took place in December and not in January on
12 the eve of the arrival of the Vietnamese, <meaning January 1979>?

13 A. It happened before.

14 [11.12.12]

15 Q. Fine. A last question: You said that Chhum -- and you didn't
16 know what Chhum's exact position was; but before the meeting, had
17 you already met him?

18 A. No, I did not.

19 Q. So it was the first time you met him on the day of that
20 meeting, so do you remember if, before the arrival of the
21 Vietnamese, you had attended other meetings with <anyone> to
22 discuss and organize the evacuation of the workers?

23 A. Yes, I did say that; I talked about workers at a paper
24 factory.

25 Q. Well, I'm not sure that my question was very clear. My

1 question was: Aside from that meeting with Chhum and Khieu
2 Samphan, did you attend other meetings regarding the evacuation
3 of the workers? And must I understand from your previous answer
4 that you held a meeting in a paper plant?

5 A. When we heard that the "Yuon" were approaching, we held a
6 meeting to tell the workers in that factory, so that they could
7 prepare themselves and I did not know about other factories.

8 [11.14.35]

9 Q. Fine. Well, in <the> French <translation>, I heard, "we held a
10 meeting"; whom are you speaking about; who was present at that
11 meeting in the paper plant?

12 A. Regarding the factories, I cannot recall it clearly whether it
13 was a paper factory or a cigarette factory or whether the two
14 factories were adjacent to one another and I only attended a
15 meeting there once.

16 Q. And who was present there <at this meeting>, simply the
17 workers in that factory and yourself or were there other people?

18 A. There was myself and the workers there, although I did not
19 know any of them; I was new.

20 [11.16.03]

21 Q. Fine. A last point, now, which I would like to discuss with
22 you; you spoke, yesterday, about a certain number of meetings,
23 which you attended, during which you were <told about> the policy
24 of Kampuchea in general. They spoke about defending the borders;
25 <you stated that> they even gave you advice in terms of hygiene.

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1 So my question is: At any one of these meetings, did you receive
2 orders or information according to which it was necessary to
3 carry out forced marriages; that is to say, to oblige people to
4 get married when they <were not consenting>?

5 A. To my understanding, the units did not force them and I,
6 myself, was married too. And later on, there were a series of
7 weddings, but I was not aware of any forcee wedding. Maybe it
8 happened in other units; I did not know.

9 MS. GUISSÉ:

10 Mr. President, I am done with my questions and my colleague, Kong
11 Sam Onn, has no extra questions.

12 [11.17.50]

13 MR. PRESIDENT:

14 Thank you.

15 And the Chamber would like to inform the parties, since we have
16 further information, the witness 2-TCW-1042 cannot be a reserve
17 party today, but he will be available on Thursday, that is, the
18 day after.

19 And Mr. Witness, the Chamber is grateful of your testimony and
20 the hearing of your testimony is now concluded. Your testimony
21 may contribute to the ascertainment of the truth in this case. So
22 you are no longer required to be present in the courtroom and you
23 may return to your residence or wherever you wish to go to and we
24 wish you all the very best.

25 [11.18.48]

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1 And the Chamber would like to thank Mr. Chan Sambo, the duty
2 counsel, as well. Since the hearing of this witness is now
3 completed, you are also excused.

4 Court officer, please work with WESU to return the witness to his
5 residence or wherever he wishes to return to.

6 And for this afternoon sessions, the Chamber will begin hearing
7 testimony of an expert, 2-TCE-1062.

8 It is now convenient for a short break. The Chamber will take a
9 break now and resume at 1.30 this afternoon.

10 Security personnel, you are instructed to take Khieu Samphan to
11 the waiting room downstairs and have him returned to attend the
12 proceedings in this courtroom before 1.30 this afternoon.

13 The Court is now in recess.

14 (Court recesses from 1119H to 1332H)

15 MR. PRESIDENT:

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

17 The Chamber will now hear testimony of an expert, 2-TCE-1062,
18 concerning his study at Choeung Ek, as well as the relevant
19 materials and other issues within the scope of Case 002/02.

20 Court officer, please usher 2-TCE-1062 into the courtroom.

21 (Witness enters the courtroom)

22 [13.33.50]

23 QUESTIONING BY THE PRESIDENT:

24 Q. Good afternoon, Mr. Expert. Could you please tell the Chamber
25 your name?

1 MR. VOEUN VUTHY:

2 A. Good afternoon, Mr. President. My name is Voeun Vuthy.

3 Q. Thank you, Mr. Vuthy, and when were you born?

4 A. I was born on 5th December 1973.

5 Q. And where were you born?

6 A. I was born in Siem Reap province, that is, in Siem Reap
7 commune, Siem Reap district.

8 Q. And where is your present address?

9 A. At the present, I live in Phnom Penh in Tuek L'ak 3, Tuol Kork
10 district.

11 [13.35.15]

12 Q. And what is your current occupation and position?

13 A. At present, I work for the Ministry of Fine Arts. I was the
14 Director of Archaeology and Prehistory for the Cambodian History.

15 Q. And to your best knowledge, are you related by blood or by law
16 to any of the two accused, that is, Nuon Chea and Khieu Samphan,
17 or any other civil parties admitted in this case?

18 A. Your Honour, I am not related to the accused.

19 Q. What about the civil parties, are you related to any of the
20 civil parties in this case?

21 A. I am not related to any of them.

22 Q. Have you taken an oath before the Iron Club Statue before your
23 appearance?

24 A. Yes, I have taken an oath before the Iron Club Statue.

25 [13.36.50]

1 Q. On behalf of the Chamber and the parties, the Chamber would
2 like to thank you for coming here to testify and to assist the
3 Chamber in searching for the truth in relation to some important
4 matters, that is, for the proceedings and for the general
5 Cambodian population.

6 And I'd like to ask you some questions in relation to your study
7 background and research.

8 And Mr. Voeun Vuthy, could you tell the Chamber about your
9 educational background, that is, at what level did you end your
10 education and please summarize it?

11 A. I studied anthropology at the University of Fine Arts, then I
12 went to study in Japan in relation to <> fish remains, and later
13 on, <I went to study in Germany on> fauna remains<. I then
14 studied> in Italy in Bologna City concerning <Ornithology and
15 Fauna>, and then I continued my study in Hawaii University in the
16 United States <on> Human Bone<>.

17 [13.38.26]

18 Q. And to what level of achievement did you obtain; were you at
19 the doctoral level <or lower>?

20 A. I obtained my Master degree since I pursued my studies in my
21 relevant fields.

22 Q. Thank you.

23 And Mr. Vuthy, could you please summarize the history of your
24 work and that is the chronology of your work history from the
25 time that you started until the present time?

1 A. Since 1988, I involved in the research in archaeology; in
2 particular, focus on the prehistory, as well as the human bone<
3 which is my specialty>. Later on, I did my research on the
4 gathering <recent> remains <to compare with those we gathered at
5 archaeology laboratories>.

6 <After> 1999, I participated in a historical research with United
7 State research group.

8 And also, in 1990, I participated in research activity in
9 prehistory in the eastern part of Cambodia.

10 And from 2001-2003, I did my research in prehistory in the
11 prehistory era.

12 And from 2006 to 2007, I participated in the study of the
13 Angkorian era and later on, I did my research in many regions in
14 Cambodia, concerning the prehistory of Cambodia with a particular
15 focus on the changes from one kingdom to the next.

16 [13.41.00]

17 And by 2010, I fulfilled another study, that is, on human bone
18 analysis at the Hawaiian University.

19 And after I returned from the <study of> human bone analysis <at>
20 University of Hawaii, I participated in a work, that is, on the
21 analysis of <victims'> bone at the Choeung Ek Genocidal Centre
22 from 2013 to 2015.

23 And at the present, I conduct analysis of human bones in four
24 <different> areas; <first>, Choeung Ek Genocidal Centre; and
25 second, <Genocidal Centre> Wat Prasat Vitei (phonetic) pagoda in

1 Kampong Cham; third, the analysis of victims at Kouk Prech in
2 Takeo province; and fourth, I <completed> my analysis of Krang Ta
3 Chan genocidal crime centre.

4 Q. Thank you. Regarding your research at the four crime sites,
5 what were your main focus? And what was your role or position in
6 those analysis?

7 [13.42.58]

8 A. In my research or the analysis of those victims, I was the
9 director and the core person leading the work group on the
10 analysis and the conservation of evidence on the victims'
11 remains.

12 And in term of the analysis or the conservation of the victims,
13 with the aim to maintain the evidence available with those
14 victims' remains in order to preserve and to record the history
15 that happened between 1975 to 1979, that is, early 1979.

16 And the second purpose of the analysis was to compile historical
17 document in order for the next generation to avoid the return of
18 the regime. And the <third point,> the said purpose was to record
19 the remains of the marks on those victims' bones to show them
20 about the <brutality> that were inflicted upon them.

21 Q. Thank you. And I noticed that for your last response, you
22 speak rather slowly and that would be ideal in this situation
23 since your response will be interpreted into other languages and
24 your area seems to be new to some of us, so that please speak
25 slowly so that your response will be properly interpreted.

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1 And regarding those projects that you were involved, concerning
2 the four crime sites, have those projects ended or was there or
3 is there any other project which is still ongoing?

4 A. In my research, all the four projects are completely ended
5 this month and the last project, that is, the crime site of Krang
6 Ta Chan.

7 [13.45.38]

8 Q. Thank you. And why are you interested in participating in
9 these projects on the four crime sites?

10 A. My interest in participating in this area as well as the
11 duties of my <department>, since I am also one of the victims as
12 I lost my father, who was a teacher who was killed in late '76.
13 In my family, we lost six members.

14 Secondly, it is my duty as I am the chief of a unit to compile a
15 historical document and that cannot be forgotten and that we all
16 have to acknowledge it.

17 Q. And besides your research on the bones <of> victims of the
18 regime in the four crime sites, have you conducted other
19 research?

20 [13.46.52]

21 A. Besides our analysis on the marks contained on the victims'
22 remains, we also studied the surrounding context around those
23 crime sites which led to -- which resulted in the killing of
24 those victims by the Khmer Rouge and why those people were killed
25 <differently> at each <> site.

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1 For example, at the Choeung Ek site, what kind of <prisoners>
2 were killed there, and what kinds of <prisoners> were killed at
3 Krang Ta Chan?

4 Q. Thank you. Now, I would like to ask you about the
5 conservational projects of victims' bones at the Choeung Ek
6 Genocidal Centre. Regarding this project, <> was it you that
7 initiated this project or was it somebody else's initiative?

8 [13.48.22]

9 A. Regarding the conservation of the analysis of victims at the
10 Choeung Ek Genocidal Centre, I, myself, and those staff at
11 Choeung Ek saw that the bones decayed<. We> had the same notion
12 that if the victims remains continued to be in that way without
13 <properly keeping record of beating and stabbing traces>, those
14 remains would lose once they are decayed.

15 And some funding we received from the Choeung Ek Centre, as well
16 as with the permission from the ministry for us to conduct the
17 research.

18 The work would be very difficult without the participation of my
19 16 crew members.

20 And I would like to inform the Chamber that during the
21 conservation project and process, we have other six parties from
22 other countries who participated in. Firstly, we have an expert
23 from Kosovo. Second, we also have an expert from the United
24 States, from New Zealand, from England, who cooperated with us in
25 order to assist us in the analysis of the human remains so that

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1 we could succeed and to make it more effective.

2 [13.50.07]

3 Q. Thank you. And regarding your project at the Choeung Ek
4 killing site, how long did it take and, as a result, did you
5 publish any book or document, and if so, when?

6 A. Regarding the analysis of human bones of victims at the
7 Choeung Ek Genocidal Centre, we started in 2013 and it continued
8 to 2015. As for the documents, we actually compiled a three-part
9 document: one is the database, and the second is in a form of a
10 book, and a third is stored in a little form that is on a CD or
11 external drive.

12 Also, in terms of the conservation of victims' bones, we
13 conserved <6,426>.

14 Q. Thank you.

15 Also could you please tell the Chamber regarding your methodology
16 and the process of conservation of the bones at Choeung Ek? How
17 was it conducted?

18 [13.51.54]

19 A. Regarding the process of conservation of the victims' bones as
20 well as the analysis, 12 stages were involved. First, we take out
21 the bones or the remains to study marks or traces on the bones.
22 Then we cleaned the bones. Before that, photographs were taken on
23 those marks, on the remains, in particular, on the <skulls which
24 would provide us better identities>. And after that, we had to
25 register the bones, that is, to give an identification to each

1 victim, that is, to number it, starting from 00; <next is> 001,
2 denoting Victim <>1.

3 Later on, <we took> the bones <to> clean and then we compared the
4 marks on those bones <in comparison to previous marks> that were
5 photographed.

6 And after we made verification and if there is any missing parts,
7 then we would register it. That is to avoid any confusion.

8 And after such verification, we re-photograph so that the marks
9 on the bones would be put onto our inventory.

10 [13.53.19]

11 And after that, we begin to analyze the gender of the cranial,
12 that is, male or female, the age range and the cause of death. We
13 did this analysis.

14 And we also had to analyze how many marks or traces of trauma on
15 the cranium or on the skeletal elements. And after we examined
16 those marks, then we had to analyze what kind of tool was used;
17 namely, was it a stick or an iron club or was it a knife that was
18 used or was it an axe?

19 And after we examined the marks, then we registered them. We
20 photographed the marks and we compared the tools that we found.

21 [13.54.26]

22 After such analysis, we proceeded to the next step, that is, to
23 conserve those marks so that they would not be lost.

24 And, finally, we would conserve the bones or the remains by the
25 form of <>consolidation so that those remains would not go

1 decayed.

2 <The final stage,> we would document all the steps that we
3 involved for the next generation or for the next researchers who
4 could use them as their guidelines or sample. And those documents
5 have not yet been published for public use due to a short of
6 funding.

7 Q. Thank you for your rather detailed response.

8 And in terms of your research and analysis, do you refer to any
9 existing documents or did you interview any individual?

10 [13.55.41]

11 A. In the course of our analysis, we divided them into three
12 major steps or stages before we begin our process of analysis or
13 conservation. We studied the general context or history of the
14 site. Then we interviewed the living witnesses <who lived through
15 the regime and witnessed what happened at the site>.

16 And the interviews were conducted in three stages<. The first
17 stage, we interviewed> those who came to the site<,> who
18 witnessed the corpses of the victims so that we can evaluate the
19 graves <>.

20 And second, we interviewed those people who worked there, that
21 is, during the Pol Pot regime or those who used to enter the
22 area; for example, Him Huy, who used to work there.

23 And for the third stage of interview, we interviewed those who
24 might witness the <clubbing> or <tying victims in line to Choeung
25 Ek.> So these are the three main stages <of our research

1 regarding the sites from the accounts of witnesses and
2 perpetrators>.

3 [13.57.10]

4 Q. Thank you.

5 And based on your research, can you inform the Chamber of how you
6 identified or determined the violent trauma or marks on the
7 cranial or on the skeletal elements of the victims?

8 A. First, allow me to provide Your Honour with the first stage
9 that I used to interview those eyewitnesses.

10 We studied how the people were placed at the crime site before
11 they were sent to be killed.

12 And then we engaged in the reconstruction by drawing sketches as
13 I show here. This is to show the hard evidence based on the
14 testimony of live witnesses.

15 Then we reached the second stage, that is, to analyze each mark.

16 For example, victims are divided into two groups, that is,
17 whether they were the direct victims of the killing or by
18 scientific medicine.

19 Here, <in this picture,> we could see <a victim was killed by
20 scientific medicine, where> a cranium was cracked in <four>
21 parts<> before the victim was sent to be killed. And this is the
22 photo of another victim. The victim was subject to torture
23 <before the killing.> <The> person was <bashed> against a solid
24 material. It could be a wall <or solid carpet> so that you could
25 see a dent and the victim could die there or could be killed

1 later on.

2 [13.59.22]

3 As for the other matter, that is, the person was killed by
4 scientific medicine, the victim was subject to experiments. Then
5 there was a wound on the cranium.

6 MR. PRESIDENT:

7 Counsel Anta Guisse, you have the floor.

8 MS. GUISSSE:

9 Thank you, Mr. President. I apologize for interrupting the expert
10 as he is testifying but for the record, we are going to have a
11 problem. In what I heard or, in any case, <from> what I heard in
12 French <and what> I see, the expert is referring to <documents
13 saying "as you see here", although when one goes through the
14 record, it is going to be hard to understand exactly which
15 document he is talking about> .

16 So the first question: Are these excerpts of -- or <an excerpt
17 of> photographs that are in his research? And if that's the case,
18 we should know the reference numbers so that we can indeed follow
19 properly the expert's demonstration <at a later date>.

20 [14.00.30]

21 JUDGE FENZ:

22 Alternatively, I agree. We have to make copies and attach them to
23 the transcript and clarify what he is referring to. But perhaps
24 the first question is -- yes, sorry.

25 MR. LYSAK:

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1 Yes, I would just add to that that each -- each victim's skull
2 that was examined has a specific remains number/specific
3 identification number. So I don't know whether he knows that.
4 That's one way he could identify or he could get the information
5 to us later if he doesn't have it right now.

6 JUDGE FENZ:

7 Do you understand the problem, sir? You are talking to us but we
8 need something in writing. And if you are just waving a picture,
9 it doesn't show in the transcript.

10 So we need to find a way to clarify, for the written transcript,
11 what you are talking about.

12 [14.01.36]

13 MR. VOEUN VUTHY:

14 My apology.

15 In fact, I have 32 books <within the inventory and as for
16 victims, there were 6,426. What I have mentioned was extracting
17 from the inventory which has been recorded here, the written
18 record and photographs of marks. Among the other marks, we
19 display here only three important traumas because some victims
20 had 8 to 10 marks.> I have already provided a copy of this book
21 to the Court.

22 BY THE PRESIDENT:

23 Q. Thank you very much. <We could not arrange it on time, and
24 on the other hand,> these are the introductory or
25 preliminary questions put to you <>, and as for substantive

1 questions, <they> will be asked by parties. <Now we move
2 further, the Chamber is> interested in <initial> approaches and
3 methodologies that you used in your research and projects so that
4 they can shed light <on the way of putting> questions
5 <from> parties tomorrow.

6 [14.03.18]

7 Based on your study and research and also the study and research
8 of your group, did -- do you distinguish the remains of the
9 victims, particularly the <victims'> remains<, including skulls
10 and skeleton elements,> suffered by the weapons used at the time
11 <compared to undisturbed remains>? Can you clarify for the Court?

12 MR. VOEUN VUTHY:

13 A. The research and analysis that we have conducted <among these
14 victims, I now am talking only about> victims at Choeung Ek <for
15 elaboration>. There were 6,426 remains at Choeung Ek and we have
16 found 28,083 <> traces and some of them were killed by <clubbing.
17 I would like to clarify that the club here refers to> bamboo
18 <stem and wood.> <We also found> 9,802< traces resulted from
19 these tools. 2,435> traces were suffered from <square wood,
20 while> 5,806 <traces suffered from the round iron bar and iron
21 rod. 5,880 traces--- sorry 4 traces suffered from a cane-iron
22 bar.> And the traces of the <sharp and thin edge-knife stabbing>
23 consists of 3,563; and traces of <> hoe <clubbing consists of>
24 541<.> Traces <of the kill by> axe, 101<.> Traces of bullets,
25 168; traces used by bayonets, 990; and traces at the back of the

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1 neck <are 400-sorry it> consists of 48.

2 [14.06.16]

3 <Traces of the dead or near dead that were to be exterminated by>

4 chemical elements are 286. <Pushing against solid material

5 consists of 1,631 traces.> Torture consists of 38 traces

6 <resulted from the pushing of gun points or gun point-like iron.>

7 The victim died because of the iron poke into the ears, 758.

8 We have compared the <photo-head brace> used at Choeung Ek and

9 <that of>Tuol Sleng and we have found <11 traces resulted from

10 such tools that> victims <were heavily bashed against. We found 9

11 traces of> remains <suffered from> medical treatment<. 20 traces

12 suffered from ear-cutting. Also, 8> traces of <medical> torture

13 <but it is> on the teeth, meaning that the victims were

14 punched<>. <These are all traces that we found.>

15 MR. PRESIDENT:

16 Anta Guisse, you may now proceed.

17 MS. GUISSSE:

18 I apologize to interrupt once again, but I think that the expert

19 is reading a document, so maybe it would be useful for us to know

20 which document he's reading from so that we may follow him.

21 Is this a document on the case file? So then, in that case, we'd

22 like to know what its reference is.

23 [14.08.11]

24 MR. KOPPE:

25 I believe I can be of some assistance. It seems that the expert

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1 is reading from document E3/10648, however, he is using total
2 numbers rather than the documents that we have. So it might be
3 useful to have that total number as well.

4 It's English, ERN 01324883 and further; in Khmer, 01240476 and
5 further; but that's what I think is happening.

6 MR. LYSAK:

7 Actually, what -- the correct documents where you'll find these
8 totals that the expert was just giving are two of the new charts
9 or documents that were just admitted by the Trial Chamber
10 yesterday, I think. E3/10765 and E3/10766 contain the totals of
11 the various markings of the -- various types of markings found.

12 [14.09.39]

13 MS. GUISSÉ:

14 Therefore, can I make a request to the Chamber? So if the expert
15 is using documents that were disclosed to us for which we already
16 have the ERN numbers as well as the E3 numbers, is it therefore
17 possible to provide the Khmer version of these documents with the
18 <identification numbers to the> experts, so that when the expert
19 is referring to figures at the points, we know exactly which page
20 of the document <included in the evidence> he is referring to?
21 That's a practical request that I'm presenting to the Chamber.

22 MR. VOEUN VUTHY:

23 What I have just told the Court is based on the document that I
24 provided already to the Court. And this document is also
25 reflected in a book authored by <a> foreign expert <who assessed

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1 our work>.

2 [14.10.54]

3 MR. PRESIDENT:

4 I thank you very much again. <To solve this problem,> I only put
5 introductory questions to you, so <it will be of general nature.

6 I will not go in details.> Please answer briefly and you are
7 advised not to respond in detail. You can only raise one or two
8 examples, that is enough.

9 Tomorrow, you will be questioned -- substantive ones will be put
10 to you by parties and the concerned documents will be prepared
11 for you tomorrow. The documents used here has something to do
12 with the identification number and pages that parties need to
13 refer to. So everyone needs to refer specifically to the ERN
14 number, identity document number and pages <so that the Chamber
15 and parties can follow>.

16 [14.11.57]

17 BY THE PRESIDENT:

18 Q. So. <According to your study,> what did you do in order to
19 distinguish the traces of the victims of the DK?

20 MR. VOEUN VUTHY:

21 A. In order to identify the victims who died in the genocidal
22 regime or who died at a genocide site, we used certain documents
23 and we <analyzed> the remains <as follows: first, we examined the
24 remains whether before their death, people were buried at that>
25 exact site.

1 [14.12.47]

2 I have told the Court already, <before we went to the field,> we
3 first have to make analysis of the site. Then we proceed to
4 analyze the remain <of> victims. If we want to establish that the
5 victims really died in <that mass> grave, we need to thoroughly
6 examine the remains to avoid <any confusion regarding whether
7 particular> victims <> had died before <or after> the Khmer Rouge
8 time <>.

9 <This is the experience that we drew from the exhumation of>
10 remains dated back to 2,500 years ago on some occasions. So <we
11 relied on experiences and theories that we have studied so far,
12 and such theories has been practiced worldwide. This technicality
13 has to be made in long articulation. I am afraid if it takes so
14 long to elaborate>.

15 Q. Concerning the skulls and <skeleton elements>, after you have
16 made the analysis, can you find out when the victims died?

17 A. <I am afraid> we did not conduct the DNA analysis or C14;
18 <because the budget of the project was limited.> We could only
19 identify the gender and the age of the victims.

20 And we can only find out the victims or the remains in the
21 gravesite. <How could we easily analyze?> In the whole Choeung Ek
22 site, we could see 109 <graves> and we could only exhume 89
23 sites.

24 [14.15.00]

25 The Khmer Rouge used DDT to spray <into each> gravesite, so we

1 could find out that those victims died at that site<>. But at
2 Krang Ta Chan, <this substance was not used. Other
3 identifications had to be determined whether or not victims died
4 at our conservation area.> This is just one example I can bring
5 to your attention.

6 Q. You made mention <already about that, except> Krang Ta Chan,
7 so how could you find out if the victims really died at Krang Ta
8 Chan?

9 A. At Krang Ta Chan, we analyzed the traces and the mud. We took
10 out the mud that came with the <skulls> of the victim and made
11 the analysis. <Second, we examined trauma whether victims> died
12 in a normal situation, usually the remain does not come with the
13 mud <similar to those who died at gravesites at the vicinity of
14 Krang Ta Chan. We know that from one site to another, the nature
15 of soil is different>. This is the basis that we can identify.

16 Q. Besides the skulls, have you found other remains, and have you
17 found that those remains were stored at various locations <of>
18 the four locations that were under your project?

19 [14.17.00]

20 A. <Beside the> skull <which> is an important part<, leading to
21 the> identification of <> gender and the age of victims, and
22 <the> beating during the period<,> we <also> examined <femurs,
23 ulna, humerus, and other skeleton elements. I also would like to
24 give that for example,> at Choeung Ek, we examined 63,112 bones,
25 and, at that location, people exhumed bones <but> they did not

1 exhume <> small bones <including phalanges or phalanx. They
2 exhumed only big parts of skeleton to be placed at the bank of
3 mass graves>. So at the four locations, we could find skeletal
4 remains.

5 Q. I am now asking you about Choeung Ek site. When you conducted
6 your research at Choeung Ek on the skeletal remains and skulls,
7 did you ever find the remains, which were not the results of
8 <weapons, or solid materials against those remains and skulls? If
9 you found any, how many of them?>

10 A. At Choeung Ek, among the <6,426> bones, after we conducted
11 theanalysis, we could find only one skull that was not result of
12 the torture or the heavy beating by the tools. There was only one
13 skull.

14 I would like to add another point. That skull was not the skull
15 from the outside sites because we could find the mud <in that
16 cranium> came with the <DDT>, but that <cranium> was not the
17 result of torture.

18 [14.19.50]

19 Q. You have brought several examples. I do not want you to expand
20 on your answers.

21 I would like to know about the methodologies and the approaches
22 that <leads to the conclusion on violence>. <What methodologies
23 or techniques> your <team apply to analyze that the skulls and
24 skeleton> remains were a result of the violent tools?

25 A. <All the analysis of the torture and killing were> based on

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1 our comparisons of <> tools with <> traces on the remains. For
2 example, the remains <registered number 0328> is the result of a
3 long bar<, breaking the bone by beaten from one side. We did our
4 analysis against all traces.>

5 We did not draw our conclusion based on our subjective opinion<.
6 Besides that,> we used the <microscope> to examine <traces. If it
7 was beaten with a bamboo stick, there could be a little piece
8 there; particularly, with a square wood, we found some dented
9 skulls resulted of heavily beating. On them, there could still be
10 small residual pieces remained there as a result from the
11 beating>.

12 [14.21.43]

13 Q. You have already told the Court that some remains are results
14 of the chemical elements. What is your basis for your conclusion
15 that the victim died of chemical elements?

16 A. Regarding <the death of> the chemical reaction, as far as we
17 are concerned, a poison usually transformed <> the colours of the
18 bones, <it has reaction against bones, especially, the scapula
19 below the vertebrae.>

20 As for the bones under the chin, if the victim died of chemical
21 reaction, usually it became dark and <the jawbone would> also
22 <turn dark. When it reacted with the mud over there, the bone
23 would turn dark green>. In addition to that, we also sent that
24 remains to our colleagues abroad to have a confirmation.

25 [14.23.22]

1 Q. <Since I> am not really an expert in that field and I'm really
2 interested in your explanation regarding some victims.
3 You stated that victims' ears were cut off and to me when the
4 ears are cut off, I don't think traces will remain on the bones.
5 So how could you find out that some remains are the result of
6 ear-cutting injury?

7 A. You are right, sir. The ears are not part of the bone, but
8 usually if the ears are cut off, the scar will remain on the bone
9 next to the ear. So<, there would have had one or two marks of
10 knife left on the bone.> If one trace is found out, so it's not
11 the trace of the ear cutting, but usually when ears are cut off,
12 there are many traces there because of the forces of the knives
13 or the tool used. And when we compare the <edge of knife with
14 that of palm fruit-cutting-knife, they are quite similar>.

15 [14.25.05]

16 Q. I thank you very much. And you stated that some victims, some
17 remains are the result of shackling.

18 So what is your approach to find out that some victims died with
19 the shackles on? <Or did you see the shackles attached to the
20 remains or you have other approaches to find out that victims
21 died with their ankles shackled?>

22 A. Some victims <were> tied and also shackled. <Our findings
23 based on> the scars on the bones. When the victim died, <> knots
24 remained with the bones<>. <Bones with iron shackles have
25 different colour from those without iron shackles.>

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1 For example, when we find out <a pair of> small shackles, then we
2 will have doubt in mind whether the small shackles are used to
3 shackle children or adults. And after we conducted the research,
4 we can find out that the small shackles can also be used to
5 shackle the adults. <Those shackles were found at the last grave,
6 the grave which was not covered, according to an eyewitness, Mr.
7 Neang Say (phonetic).>

8 [14.26.43]

9 Q. What tools have you found when you <and your team> conducted
10 your research <in relations to the killing> at Choeung Ek? I want
11 to know the tools that you found out <> were used to <beat and>
12 kill people at Choeung Ek?

13 A. We have found <over> 10 types of tools <at Choeung Ek as I
14 indicated earlier relative to traces>. I will bring <up only> two
15 or three tools <among such 18 types to talk about>. <They> were
16 axes, iron bars, knives, iron rods, square wood. I have
17 elaborated 18 types of those tools for you already.

18 The tools are included in the inventory attached to the book,
19 then pictures are also attached in the inventory book as well.

20 Q. Another question to put to you is that you could identify the
21 gender and age of victims. What methods did you use to find out
22 and help establish that the victims are male, female, young
23 children and adults?

24 [14.28.44]

25 A. We have the formula used not <only within> Cambodia but <also

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1 in> the world. <These> book are so heavy, I have left them
2 outside this courtroom. That formula is useful to identify
3 victims <worldwide>.

4 <I give one example about the finding the gender>. First, we look
5 at the eyebrow. If it is male,<> it's <curve up,> and usually for
6 the female, the eyebrow is flat. <> Usually the earlobe is <long
7 for male> and the female is <short>.

8 We need to have the <eight> criteria to find out one is male or
9 female. <The application of only six criteria is not official, at
10 least, seven criteria are to be applied. For the determination of
11 age, we have to analyze> skulls, there is line on the skull, so
12 we can find out the age of the victim by looking at the line on
13 the skull. <This is not our opinion, it> is the formula used
14 worldwide.

15 [14.30.06]

16 Q. And based on your research, after you have examined and
17 analyzed the remains, how many were <> female and how many were
18 children?

19 A. The female remains were 1,611 <at Choeung Ek Genocidal
20 Centre>. <Sorry, I go back >, among the 6,426, the female remains
21 were <> 1,611 and male remains 4,798.

22 As for age range, we divided them into five categories; three
23 years old to eight years-old, <we found> 13 of them. <From> eight
24 years old to 19 years-old, <we found> 241<.>

25 I would like to go back. Among the 13 children, two are <males>

1 and <> 11 are females.

2 For the age between eight and 19, the remains consist of 241: 74
3 males, 167 females.

4 From 20 to 34 years old, we have 3,984 amongst whom male were
5 2,845 and female 1,127.

6 And there were 12 skulls that we could not determine their
7 gender. <There were between 20 to 34 years of age;> the main
8 reason <that their gender could not be determined> is that the
9 remains of the skulls were not complete.

10 As for the age range 35 to <49>, it was 1,894.

11 And, Mr. President, would you like me to read the complete list
12 <or just a few>?

13 So for the 35 to <> 49 range was 1,894. Male was 1,618 and female
14 was <275.> and one skull that the gender could not be determined.

15 [14.33.41]

16 MR. PRESIDENT:

17 And, Mr. Expert, please slow down for the proper record.

18 MR. VOEUN VUTHY:

19 As for the age range between 50 to 69, there are 273, and the
20 male is 245, female is 27, <within this age range,> the gender
21 <of one skull> could not be determined.

22 The age range from 70 and above, there were 18 cranial, male was
23 14 and female was 4. And we have three skulls that the gender
24 could not be determined due to the <loss of lines on> those
25 skulls.

1 MR. PRESIDENT:

2 Thank you, Mr. Voeun Vuthy. I have no further questions for you.

3 And maybe Judges of the Bench have some questions?

4 If not, then the Chamber will adjourn the proceedings for today

5 since the Chamber cannot proceed to hear the further testimony of

6 this expert since part of the documents involved <>Krang Ta Chan,

7 which is part of the scope of the proceedings in Case 002/02.

8 [14.35.29]

9 And it has just been translated into English and parties only

10 just received it. So that we need to give reasonable time to the

11 parties to study the document, and that is the reason for today's

12 adjournment.

13 And we will resume tomorrow, that is, Wednesday, 14 December

14 2016, commencing from 9 o'clock in the morning.

15 Tomorrow, the Chamber will continue to hear testimony of this

16 expert, Mr. Voeun Vuthy.

17 And, Mr. Expert, the Chamber is grateful of your testimony,

18 however, it is not yet concluded, and we will invite you to

19 return tomorrow commencing from 9 o'clock in the morning,

20 And, Court officer, please work with WESU to arrange for Mr.

21 Voeun Vuthy to return to his residence and invite him back into

22 the courtroom tomorrow.

23 Security personnel, you are instructed to take the two accused

24 back to the detention facility and have them returned to attend

25 the proceedings tomorrow before 9 o'clock in the morning.

1 The Court is now adjourned.

2 (Court adjourns at 1436H)

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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.