



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS - KAING GUEK EAV "DUCH"

PUBLIC

Case File N° 001/18-07-2007-ECCC/TC

31 August 2009, 0908H

Trial Day 67

Before the Judges:

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

Lawyers for the Civil Parties:

TY Srinna
Alain WERNER
Christine MARTINEAU

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
DUCH Phary
Natacha WEXELS-RISER
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For Court Management Section:

UCH Arun

For the Office of the Co-Prosecutors:

TAN Senarong
Anees AHMED
CHAN Paklino

The Accused:

KAING Guek Eav

Lawyers for the Accused:

KAR Savuth
Francois ROUX
Helene UÑAC

I N D E X

MS. SIRONI-GUILBARD AND MR. KA SUNBAUNAT

Questioning by Mr. President commences page 7

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. AHMED	English
JUDGE CARTWRIGHT	English
MR. KA SUNBAUNAT	Khmer
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
MS. MARTINEAU	French
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MS. SIRONI-GUILBARD	French
MR. TAN SENARONG	Khmer
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. TY SRINNA	Khmer
MR. WERNER	French

1

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

2 (Judges enter courtroom)

3 [09.08.30]

4 MR. PRESIDENT:

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

6 In today's session the Chamber is going to hear the testimony of
7 the two experts. We're going to hear Madam Françoise
8 Sironi-Guilbaud and Mr. Ka Sunbaunat as scheduled. Before we
9 proceed to hear the testimonies of the experts, may be the
10 Greffier be instructed to report the attendance of the parties to
11 the proceeding and the people concerned.

12 THE GREFFIER:

13 Mr. President, the parties to the proceedings today are all
14 present except the civil party lawyers group 2 and group 4 who
15 are absent.

16 Today we have Counsel Martineau who is representing the civil
17 parties and who are joining us today. The experts Madam
18 Françoise Sironi-Guilbard and Mr. Ka Sunbaunat are available
19 awaiting calls from the Chamber. They have no relation with any
20 parties to the proceeding and they are ready to be called.

21 MR. PRESIDENT:

22 Since today we have a new counsel for the civil party and
23 although she has already taken an oath but she needs recognition
24 before the Chamber before we can proceed. So before we start the
25 proceeding, according to Rule 23(7)(e)(1) of the Internal Rules,

2

1 the Chamber would like to invite the civil party lawyer, the
2 national civil party lawyer to seek recognition for the
3 international co-lawyer.

4 [09.12.19]

5 MS. TY SRINNA:

6 Mr. President, Your Honours, since the civil party lawyers group
7 3 are not here today, may I ask for Mr. President's leave
8 actually to be on their behalf to seek recognition for the new
9 counsel?

10 MR. PRESIDENT:

11 You may proceed.

12 MS. TY SRINNA:

13 Thank you, Mr. President. First of all, Your Honours,
14 distinguished members of the Court, I am Ty Srinna, the national
15 lawyer for civil party group 1 and I'm here to represent civil
16 party lawyers group 3 to seek recognition from the Bench and the
17 Chamber as a whole to recognize Counsel Martineau from the Paris
18 bar. She has already taken an oath before the Appeal Court of
19 Cambodia. The ceremony conducted in 2008 in December. So could
20 the Chamber please recognize her?

21 MR. PRESIDENT:

22 Counsel Martineau, you are now recognized as the civil party
23 lawyer for civil party group 3 for the purposes of the
24 proceedings before this Chamber. According to this recognition
25 you will enjoy the rights and privileges as the national lawyer.

3

1 Please be seated.

2 Mr. Alain Werner, I note you are on your feet. You may proceed.

3 [09.14.35]

4 MR. WERNER:

5 Thank you, Mr. President. Your Honours, good morning.

6 As you have noticed probably the civil parties attending for the
7 past five months were participating in the hearings for the past
8 five months as well as the civil parties who were expected to
9 come this week directly to participate in the hearings have
10 decided not to come this week Monday, Tuesday, Wednesday and
11 requested from us that we inform the Chamber that their action is
12 directly linked to your decision of August 27th which does not
13 authorize the civil party lawyers to put questions to a certain
14 number of experts and to a certain number of witnesses.

15 It was a bit difficult for the lawyers to explain this decision
16 to a certain number of our client civil parties so we would be
17 grateful if we could receive as soon as possible the written
18 reasons for this decision which might help us to try to explain
19 to our clients some of these decisions.

20 These civil parties also requested from us that we tell the
21 Chamber that they're going to voice their opinions outside of
22 this Court and that they will send an open letter to your
23 Chamber.

24 Thank you.

25 MR. PRESIDENT:

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1 Thank you, Mr. Alain Werner, for your explanation and
2 clarification in relation to this matter.

3 [09.17.03]

4 Before we call the expert to the courtroom the Chamber would like
5 to inform the parties to the proceedings and the public regarding
6 the schedule of the Chamber. Today the Chamber is going to hear
7 the testimony of the experts, two experts; they will testify
8 together.

9 They will first summarize their report filed during the OCIJ
10 stage and then present the update of this report. Questioning
11 will follow in accordance with their text table. Due to the
12 scheduling constraints the Chamber has decided to hear the
13 witnesses scheduled for next week, D1, D2, D3, D4, D5, and D6
14 immediately after the testimony of experts as mentioned.

15 If the testimonies scheduled for next week finish early, the
16 Chamber will continue the questioning of the accused on his
17 character. If time allows, the Co-Prosecutors and the defence
18 will also be able to question the accused at this time.

19 On the 14th and 15th of September, the Chamber will hear the
20 testimonies of experts and witnesses Richard Goldstone, Raoul
21 Marc Jennar, Christopher Lapel, D8, and Stephane Hessel. And on
22 the 16th of September, full day, and 17th of September morning
23 only the Chamber, the Co-Prosecutors and defence, as appropriate,
24 will finish the questioning of the accused on his character.

25 The Chamber will also deal with procedural matters such as

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1 putting documents before the Chamber under Rule 87 at this stage.
2 If more time is needed for this, hearings will continue on the
3 22nd and if necessary, the 23rd of September. So this is the new
4 scheduled which has been finally decided by the Bench.

5 [09.20.01]

6 We note Mr. François Roux is on his feet. You may proceed.

7 MR. ROUX:

8 Thank you, Mr. President. The defence would like to remind that
9 the expert who was scheduled to come, Mr. Henry King,
10 unfortunately has passed away but he had compiled a written
11 statement and therefore the defence would like to read out this
12 statement, the statement of Professor Henry King, and we would
13 like this to be done during the period when the defence witnesses
14 will be questioned. And the defence also indicated that it
15 wishes, when these witnesses will be questioned, that we view an
16 excerpt from the Obrenovic hearing before the ICTR (sic). The
17 defence has prepared these DVD excerpts that will be given to the
18 parties.

19 As well, Mr. President and Your Honours, the defence is
20 respectfully suggesting to the Chamber that, regarding these
21 witnesses -- these are witnesses in regards to character -- that
22 we allow each one of these witnesses to first come up with a
23 spontaneous statement before we put questions to them. We
24 consider that this will be more coherent and will allow to move
25 ahead rapidly in the process of these statements.

6

1 [09.22.24]

2 And finally, last point, we have become aware of the calendar
3 that you just mentioned, Mr. President, and as of now I would
4 like to tell you that we might face a certain amount of
5 difficulties regarding the amount of time allotted to Mr. Raoul
6 Jennar and we would like, as of now, to possibly give a bit more
7 time, if necessary, to Mr. Raoul Jennar. I'd like to remind you
8 that the Co-Prosecutors' expert, who brought up similar issues,
9 testified for more than two days -- this is to say Mr. Etcheson
10 -- and therefore we believe that it would not be suited to have
11 the defence expert, who is going to be speaking about similar
12 issues but maybe with a different point of view -- well, we do
13 not believe that it would be suited that he be limited to two
14 hours and 20 minutes. So Mr. Jennar will not need two days but
15 maybe he will need a bit more than two hours and 20 minutes.
16 These are my submissions which I respectfully wish to present to
17 the Chamber. Thank you.

18 MR. PRESIDENT:

19 Court officer is now instructed to call both the national and
20 international experts into the courtroom.

21 (Witnesses enter courtroom)

22 Good morning, the experts. First of all the Chamber would like
23 to ask the national expert in relation to the background and his
24 involvement in the proceedings.

25 [09.25.50]

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1 QUESTIONING BY THE BENCH

2 BY MR. PRESIDENT:

3 Q. Could you please tell the Court whether your name is Ka

4 Sunbaunat?

5 A. (MR. KA SUNBAUNAT): It is correct, Your Honour.

6 Q. Mr. Ka Sunbaunat, how old are you this year?

7 A. (MR. KA SUNBAUNAT): I'm 56 years old.

8 Q. What is your occupation?

9 A. (MR. KA SUNBAUNAT): I am the dean of the faculty of medicine
10 at Phnom Penh University of Health Sciences.

11 Q. Where do you live?

12 A. (MR. KA SUNBAUNAT): I live at number 18A Street 113, Boeung
13 Prohit, Prampir Meakkakra, Phnom Penh.

14 [09.27.10]

15 Q. Are you related to any parties to the proceedings?

16 A. (MR. KA SUNBAUNAT): No, I'm not.

17 Q. Have you taken an oath before you were called into the
18 courtroom?

19 A. (MR. KA SUNBAUNAT): No, I have not taken an oath yet.

20 Q. Which religion are you a follower? So of which religion are
21 you a follower?

22 Could you please be instructed that please wait until you see the
23 red light is on your console before you proceed to speak.

24 So of which religion are you a follower?

25 A. (MR. KA SUNBAUNAT): No, I'm not a follower of any particular

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1 religion.

2 Q. Next we would like to proceed to put questions to Madam
3 Francoise Sironi-Guilbaud.

4 Good morning. Is your name Sironi-Guilbaud?

5 A. (MS. SIRONI-GUILBAUD): Yes indeed.

6 Q. How old are you this year?

7 A. (MS. SIRONI-GUILBAUD): I'm 51 years old.

8 Q. What is your occupation?

9 A. (MS. SIRONI-GUILBAUD): I'm a psychologist and also a lecturer
10 at the University of Paris 8 in Paris.

11 Q. Where do you live?

12 A. (MS. SIRONI-GUILBAUD): I live in Paris.

13 Q. Are you related by blood or do you have any affiliation with
14 parties to the proceedings?

15 A. (MS. SIRONI-GUILBAUD): No, I have no affiliation with any of
16 the parties to the proceedings.

17 [09.30.39]

18 Q. Which religion are you observing?

19 A. (MS. SIRONI-GUILBAUD): I was baptized Catholic.

20 MR. PRESIDENT:

21 The Greffier, Natacha, can you make necessary arrangements for
22 the expert, Sironi, to swear before the Chamber?

23 (The witness is affirmed)

24 [09.32.02]

25 MR. PRESIDENT:

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1 The Chamber now would like the Greffier, Duch Phary, to arrange
2 for the expert, Ka Sunbaunat, to take an oath according to his
3 own belief before this Chamber.

4 (The witness is affirmed)

5 MR. PRESIDENT:

6 The Chamber would like now to put some questions to the experts
7 and before we hear the experts' report I would like to put some
8 questions to understand the backgrounds of the two experts.

9 BY MR. PRESIDENT

10 Q. Madam Sironi-Guilbaud, so you earned your doctorate degree
11 and you are a teacher and you got your degree from a university
12 in France. Is that correct?

13 A. (MS. SIRONI-GUILBAUD): That is correct, Mr. President.

14 [09.35.20]

15 Q. And from 2004 you are an expert to the Court of Appeal in
16 Paris. Is this correct?

17 A. (MS. SIRONI-GUILBAUD): That is correct.

18 Q. In addition to the certain reports of the people who suffered
19 torture, you wrote a book entitled "Torturer and the
20 Psychological Victims." Is this correct?

21 A. (MS. SIRONI-GUILBAUD): Yes, that is correct, Mr. President.

22 Q. You have researched and studied the means for treatment of
23 the tortured victims. You also studied the psychological method
24 on torture and its psychological impact. Is this correct?

25 A. (MS. SIRONI-GUILBAUD): That is correct.

10

1 Q.

2 You participated in the founding of a centre for tortured victims
3 and it is called Primo Levi and presently you are managing a
4 clinical and research centre for psychological victims at that
5 university by focusing on the tortured victims, genocidal
6 victims, and the mass massacred and tortured. Is this correct?

7 [09.37.24]

8 A. (MS. SIRONI-GUILBAUD): Mr. President, that is correct that I
9 have created, with some other people, the Primo Levi Centre which
10 is the centre for the victims of people who have been tortured.
11 What you said is correct but at the moment I'm no longer manager
12 of the Georges Devereux Centre to look after other
13 responsibilities today.

14 Q. Thank you for your response.

15 You have assisted people who have committed political crimes and
16 you have established a rehabilitation centre in Russia where
17 elderly people participated and those people who used to work in
18 the Pakistans and also people who used to be part of the Algerian
19 war in France. Is this correct?

20 A. (MS. SIRONI-GUILBAUD): Yes that is correct, Mr. President. In
21 Russia it is a centre which accompanies, should I say for the
22 veterans, war veterans who participated in war, not in Pakistan
23 but in Afghanistan and in Chechnya, and in France I work with the
24 former soldiers who fought in the war of Algeria, Indochina, and
25 more recent wars.

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1 [09.39.12]

2 Q. Thank you, Madam.

3 Mr. Ka Sunbaunat, you are the professor of psychiatry and also
4 the dean of the faculty of medicine at Phnom Penh University of
5 Health Science and you are also the Director of the National
6 Program for Mental Health of the Ministry of Health. Is that
7 correct?

8 A. (MR. KA SUNBAUNAT): Yes, Mr. President. That is correct.

9 Q. It is now time for the Chamber to invite the experts to
10 provide their descriptions on their report. Based on the request
11 by the Co-Prosecutors on the letter dated 24th of January 2008,
12 you are instructed to provide a psychological report on the
13 accused, Kaing Guek Eav, alias Duch.

14 You did the report in order to understand and to provide the
15 description of the character of the accused, based on his own
16 personality, the level of his understanding and to make judgment,
17 and whether he's a person who is prone to be affected by other
18 people, and also his ability to empathize or to have no empathy
19 for anybody or whether he is affected by any psychiatric
20 factors, as well as to indicate the scope of these impacts as a
21 result of his involvement or actions; also the scope of his life
22 based on the social and revolutionary context from the 17th April
23 '75 until the 6th January '79 and until the present date.

24 You are also instructed to provide certain critical points
25 through your expertise and also the instruction by the

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1 Co-Investigating Judges in order to respond to the defence
2 counsel whether the accused is capable to be reintegrated or
3 rehabilitated into the society as per the order of the 5th of
4 February 2008, and your report dated 31st of March 2008, document
5 B1/4 with ERN in Khmer, 00210946 to 00211081; and in English,
6 00211082 to 51; and in French, 00177506 to 76.

7 [09.43.16]

8 In addition, you're also requested by the Chamber during the
9 proceedings to provide an updated assessment on the psychological
10 report provided to us verbally. The Chamber would like now to
11 give the floor to you to provide to the Chamber your result,
12 based on the points that I just raised.

13 Before you start to make your report we would like to remind you
14 that in your presentation of this oral report or in answering the
15 questions that will be put to you by the Chamber and the parties
16 to the proceedings, you can make a joint report or an individual
17 report based on your mutual understanding or one of you
18 representing the two.

19 In relation to responding to questions to be put by the Chamber
20 and the parties to the proceedings after your presentation, if
21 the questions are too general and not for any specific expert,
22 any one of you can respond to that question and another expert
23 can add or supplement the question or remain silent. In relation
24 to the presentation of the report or the answerings of the
25 questions, you two are entitled to choose who is going to respond

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1 to the questions.

2 The Chamber also would like to remind you that it is very
3 important for you to speak slowly, in chronological order to
4 assist the interpreters and try to avoid using technical terms in
5 order for everybody to understand the content of your report.

6 [09.45.20]

7 The Chamber would like now to give you the floor to make your
8 presentation on the psychological report on the accused. You can
9 proceed.

10 A. (MS. SIRONI-GUILBARD): Mr. President, we will indeed take into
11 account all your recommendations.

12 Mr. President, ladies and gentlemen, Your Honours, we will be
13 presenting to you a summary of the psychological analyses that
14 Professor Ka Sunbaunat and myself have carried out in 2008
15 concerning the accused. This presentation also includes the
16 update of the psychological assessment carried out last week.
17 Thank you for granting us approximately 60 minutes for the
18 purpose of this report, but before we start we wish -- both of us
19 like to address our deepest homage to the victims deceased and
20 our most profound respect to all the survivors, their children
21 and their families.

22 We wish to explain and especially for the purpose of the victims
23 present here that a psychological expertise of an accused is
24 absolutely not a justification for the crimes held against him.

25 The psychological assessment's function is to shed light for the

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1 justice on the character of a person, whoever he may be, and to
2 assist in understanding what links a man to his actions, his
3 commitments, be it the worst.
4 Chairman, you reminded us of the question asked by the Co-Judges
5 and to carry out the analysis of this life course, taking into
6 account the cultural, political, and sociological background at
7 the time of the facts, as well as today, and we wish to very
8 briefly make a summary of this life course, given the fact that
9 the understanding of the personality of the accused would not be
10 understood if we did not actually proceed with this analysis of
11 the life course of the accused.
12 [09.47.31]
13 Forgive me, I was speaking too fast. How did we proceed to carry
14 out this psychological assessment? Well, the approach that we
15 adopted is that of clinical geopolitical psychology. I've
16 applied this over 20 years' experience as a professional with
17 victims of torture, those of genocide, rape and massacre, as well
18 as by authors of collective violence. Life events linked to the
19 early childhood, education, and the family are not sufficient in
20 order to understand the authors of crime against humanity.
21 Clinical and geopolitical psychology reports on the articulation
22 in each of us between collective history and individual history.
23 It takes into account the weight of political, economic,
24 historical, cultural factors on the personality of the subject,
25 just like the weight of events of personal life; that of early

15

1 childhood and that of the role of the family, the role of masters
2 and, in particular, in the Cambodian culture.

3 Professor Ka Sunbaunat, psychiatrist, is present here. He's a
4 psychiatrist, he's already been introduced, but I would just like
5 to say to the Court that this assessment was carried out
6 alongside -- you know, with at the same time the Western way of
7 understanding political crime as well as the Khmer cultural
8 context in the course of these different historical periods.

9 Now, during the interviews we were four: Professor Ka Sunbaunat;
10 Mr. Ouch Channora, sworn interpreter with the Court; myself and
11 the accused. The experts and the interpreter were held to
12 professional secrecy in the whole course of the investigation.
13 We had 13 interviews of an average duration of three hours each
14 between the month of February and the month of March 2008.

15 [09.50.03]

16 The report was given to the Co-Investigating Judges on the 31st
17 of March 2008. We then carried out three updating interviews on
18 the psychological assessment on the 28th and the 29th of August
19 2009.

20 In order to successfully carry out our work we based ourselves on
21 the gaining of the knowledge and the analysis of the following
22 documents. The psychological expertise interviews that were of
23 course the pièce maîtresse of our psychological analysis.

24 We also gathered knowledge of all the reports of the interviews
25 and the confrontation of the accused with the witness 28th, 29th

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1 of February 2008. We also read the medical reports of Duch since
2 his arrival into the detention centre, within the geographical
3 premises of the International Chambers, video-recordings of the
4 interrogations of the month of October 2007, in the course of
5 which the accused presented a letter of excuse to the survivors,
6 to the deceased of the families of the victims.

7 And we also consulted and analyzed the video-recording of the
8 re-enactments at S-21 and Choeung Ek. All of this constitutes
9 the basis for the psychological assessment.

10 [09.51.37]

11 In the course of the 13 interviews, Duch showed a very
12 co-operative, attentive and open -- during the whole course of
13 the psychological investigation, we noted a net difference
14 between the first series of psychological interviews -- that is
15 to say in February 2008 -- and the second series of interviews
16 which took place later in the month of March and which,
17 therefore, took place after the re-enactment of the facts in S-21
18 and at Choeung Ek.

19 In the first series of interviews, he would talk from an external
20 point-of-view, as if he was an observer, and in the second series
21 of interviews he started more to adopt an internal view, more
22 personal view, on his life, on his actions. And this was even
23 more perceptible during the interviews that we carried out last
24 week and which took place after four or five months of trial.
25 Duch presented some signs of fatigue during the psychological

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1 expertise exercise. He started to suffer from headaches after
2 the re-enactment. He presented difficulties in falling asleep in
3 the beginning of the week, which then were attenuated. He then
4 started to have some dreams in the night, something that he was
5 not used to at all, and this testifies for us to a real but
6 limited impact of the re-enactment of the way he functions
7 psychologically.

8 The examination of the medical file has shown no sign of notable
9 change with regard to the physiological parameters all along the
10 judicial procedure and the psychological assessment, except for
11 some headaches and some passing signs of fatigue. Professor Ka
12 Sunbaunat who made his psychological assessment since the
13 beginning of the trial has noted no change in the physiological
14 parameters concerning his mental health.

15 Let us first start by presenting the most salient facts that have
16 consciously or unconsciously influenced the life course of the
17 accused. In other words, how does one become Duch?

18 [09.54.20]

19 The first point that we believe was important is the importance
20 of the changes in names in his existence before and after the
21 Khmer Rouge period. Even though in Cambodia one changes names
22 and sometimes birth dates more easily than one does in the West,
23 the name that one bears, its choice, its significance, its
24 resonance for the person who bears the name, plays a very
25 important role in the construction of the identity of the

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1 subject, in the stability of this identity, and in the
2 self-confidence.

3 Having changed several times names out of the choice of other
4 people and one his own choice, it's tantamount to having several
5 successive parallel identities. Duch was registered under the
6 name of Kaing Eav in the civil registry in 1942, and do forgive
7 me for my bad pronunciation.

8 When he was two or three months old, a sage put pressure on his
9 parents for them to change their child's name. It was a
10 soothsayer who asked for this change. The change was to
11 guarantee a better future for him because the soothsayer was
12 saying some bad things, such as him catching some serious
13 diseases. His name was therefore changed to Yim Cheav.
14 Duch did not like this name because it signified slow, poor,
15 outdated -- slow, and he did not want to bear a name given by a
16 man whom he did not admire. And I caught him on this -- the fact
17 that he was renamed. His name was changed two or three times,
18 and that too by a person who he didn't hold in high esteem, could
19 at the unconscious level be considered as an imposition of
20 identity by somebody else.

21 [09.56.25]

22 At the age of 15, Duch asked the authorization to his father to
23 change his name and asked him also to reduce his age. He started
24 school late at the age of nine, and the fact that
25 administratively he lowered his age allowed him to sit for his

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1 various exams; something that was very important for the accused.
2 He called himself Guek Eav alias Duch -- once again forgive me
3 for my pronunciation.

4 During the psychological assessment, the accused, along with his
5 arms on his side as if on attention, explaining that Duch, he
6 said to us, means student who stands straight when a teacher asks
7 him to stand.

8 Duch is also the name of the sculptor of the Great Buddha of the
9 Pagoda of Povveuy in Siem Reap.

10 This is also the most common name that he used during the Khmer
11 Rouge period. In China, where he lived as of the end of 1986 up
12 until July 1989 as a Khmer teacher, he would have himself called
13 Hang Pin. In keeping with this importance on name, he decided to
14 give his true name, the name of his birth, to his grandson, Kaing
15 Yun Cheav.

16 We note that Yun, his Chinese name, the name of his father, is
17 reintroduced into the naming. The inscription into the Chinese
18 lineage is therefore importance in his eyes. It signifies
19 regaining of cultural importance. Duch is of Chinese origin. He
20 was naturalized Cambodian. At that time, before the arrival of
21 Mao to power, the Chinese were not considered favourably in
22 Cambodia, he says, and this was confirmed by other witnesses.
23 They were depreciated, sometimes despised, and even debased.

24 [09.58.33]

25 Let's now bring up the childhood and the family life so that that

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1 we can then delve into the analysis of his personality. So
2 Duch's father lost his parents at a very young age. He was
3 self-taught, like Duch, who will claim this quality later, as
4 self-taught. That is to say, he was able to learn everything on
5 his own.

6 The accused underwent no violence during his childhood, he said,
7 even though he was beaten several times. It was usual back then
8 and it was never in an exaggerated fashion, he said. Duch's
9 mother, who is still alive, has remained without any news of her
10 son for 15 years after the fall of the Khmer Rouge and this, he
11 says, without showing any emotion for her during the first
12 interviews. And he will also betray no particular emotion when
13 he speaks about his father who died in 1980. He will say to us
14 that, "I could not be at the same time a revolutionary and have
15 feelings".

16 He respected and very much admired a Buddhist priest with whom he
17 had lived from 1962 to 1965, that is to say between the ages of
18 20 and 23 when he was in high school studying far from the home
19 village. "It was of he, that I dreamt later when I was in China
20 and not of my father. I never dreamt of my father", he would
21 notice.

22 Duch seemed to be more attached to his mother than to his father
23 and he also spoke about his elder sister whom he said did many,
24 many things to feed the family. Duch also admired an old
25 Buddhist priest who was the head of the pagoda of his native

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1 village and he saved his life because he was sick. And that
2 admiration we will see during his entire biography and during
3 this assessment is necessary to Duch to move ahead in life and to
4 act.

5 What happened when Duch was 15 years old? The age of 15 is a key
6 life (sic) in Duch's life. He becomes fully aware of the social
7 situation of his family and of his father's enslavement to an
8 uncle, a usurer of Chinese origin. The entire livelihood of the
9 family is committed so that the family can get out of the
10 situation. It is back then that he discovers the existence of an
11 economic system that is not based on usury, that is not based on
12 exploitation, and that represents to him an ideal solution to
13 exploitation. This was Communism.

14 At the same age, at the age of 15, the accused was very strongly
15 impacted by the official visit of a Chinese dignitary to
16 Cambodia. His Chinese identity was strongly valued whereas
17 Chinese were misconsidered, devalued and humiliated by
18 Cambodians. He would say, "I felt proud to be Chinese," he says.

19 [10.01.47]

20 At the same time, as well, a schoolteacher had a deep impact on
21 him because he was courageously voicing his criticism of
22 corruption and social injustice. This schoolteacher would
23 nonetheless be executed later on at S-21, which was then run by
24 Duch. "As long as a prisoner arrives at S-21 he is an enemy," he
25 will say, without questioning the decision of his superiors.

22

1 If at the age of 15 he understands fully the exploitation and the
2 usury, it is at the age of 20 at the Sisowath College that he
3 becomes fully aware of the gap that exists between the poor rural
4 population and the well-to-do urban population, and he meets in
5 1964 his future mentor, Son Sen, a francophone intellectual and a
6 psycho-pedagogue. Son Sen, he will call master later on.
7 Duch is very much impressed, very much in admiration for the
8 knowledge that is being conveyed by his French teachers. He
9 acquires knowledge by identifying to his masters. These are
10 models. Even if he has been physically abused by certain of
11 these, he will discover this did not have any importance
12 previously; it was just usual for him. In fact, as a student he
13 discovers Stoicism; that is to say a doctrine that claims
14 indifference in the face of anything that can have an effect on
15 emotions. He discovers Stoicism through the teachings of a
16 teacher whom he still remembers today with admiration -- Mr. F.
17 The accused will keep this passion for teaching and to train, as
18 he trained his subordinates, and he will keep this passion during
19 his entire life: as a teacher first, at S-21 and then in China,
20 and then in the refugee camps. Duch's life history is therefore
21 determined by his need for an ideal. It is also impacted by what
22 we can call in our own jargon, in our psychiatric and
23 psychological jargon, experiences of acculturation and
24 experiences of deculturation.

25 [10.04.10]

23

1 Definition: acculturation designates any kind of experience of
2 encounter with another culture which is different from ours.
3 This encounter always has an impact on the construction of our
4 identity and may be traumatic or not, or this encounter can also
5 be positive or not. This acculturation can be desired or feared,
6 conscious or not conscious or, in any case, it always leaves an
7 impact.

8 Deculturation designates a radical change of culture and of
9 social organization. Deculturation is what we also designate in
10 our jargon as the attack of one culture on another; another way
11 of thinking. The culture is another way of thinking and that
12 imposes itself and it changes the other culture, so therefore we
13 can consider that Communism was a form of deculturation in his
14 personal history and in general.

15 We focused then on the reasons for his adherence to the Communist
16 Party of Kampuchea. His teachers are the ones who taught him
17 Marxist theories. He quotes his geography professor that, "May
18 everyone produce, from everyone from his ability to everyone
19 according to his needs." These are ideas that ring absolutely
20 true for him at that age; a third element. Three events are
21 going to take place at that moment in his life that will have a
22 strong influence and that will orient him, consciously or
23 unconsciously, towards Marxism.

24 The first impacting element in the psychological life is a
25 romantic disappointment. Second event, it is the theft of his

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1 bicycle, because this will prevent him from going to class,
2 whereas Duch is so much attentive to teaching. And the third
3 event that seems important to it was the arrest of 10 of his
4 friends, one of which he considered as a brother.
5 [10.15.57]
6 Another impacting event in his life history and on his
7 psychological functioning is his detainment, his arbitrary
8 detainment from 1968 to 1970 and his release thanks to his
9 great-aunt, which put him in a disturbing position for him. He
10 was relieved, of course, to be released but at the same time he
11 had at the same time to hide this because he could be considered
12 as a traitor by the Communist Party of Kampuchea.
13 His positions at M-13 and at S-21 will reveal other aspects of
14 his personality; in particular, a strong need for affiliation to
15 a group and also a great need to be recognized, to be
16 acknowledged by his superiors. He will tell me, "My superior
17 stimulates me." End of quote. Vorn Vet, his master, was
18 tortured and executed at S-21 in 1977, as you know. This episode
19 opens up a period of doubts and of fear that is more and more
20 present in Duch's mind. He, who so much needs to control
21 everything, is suddenly confronted with an absence of legibility
22 of Angkar's intentions. However, he continues working, maybe
23 with even more zeal.
24 How may we explain this? By what we can call, still again in our
25 psychological jargon, "reactional formation". Reactional

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1 formation, that is to say demonstrating zeal, allegiance, extreme
2 allegiance in order to hide one's fear or to quiet one's doubts;
3 obedience, going beyond our master's expectations or even to
4 precede these, then become mechanisms of suradaptation to fear,
5 to which he participates himself. Duch was expecting his arrest.
6 He was expecting his death at that time.

7 The accused spoke about moments of depression during his
8 existence; a first episode of depression which we analyzed and
9 which was in 1979 before the arrival of the Vietnamese when he
10 was at S-21, and another episode of depression in 1981-1982. Two
11 symptoms will reveal this depression: insomnia, whereas normally
12 Duch sleeps quite well; and what he calls brooding, rumination,
13 that is to say the fact that he was questioning himself, doubts,
14 and this slowed him down from a psychomotor standpoint.

15 [10.09.14]

16 He would brood. Why would he brood? He would brood because, as
17 he said, he did not know how -- as the eldest child of his
18 parents he did not know how he could announce to his parents the
19 death due to famine of two of his sisters, of one of his
20 brothers-in-law and of six of his nephews.

21 And finally, what may we say to finish this biography? What may
22 we say about the love life and the spiritual life of Duch? So he
23 faced this romantic disappointment at the age of 20 but he gets
24 married in 1976 with another woman, after having requested the
25 permission from Son Sen, who granted it to him, and he will bear

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1 four children. Despite his job at S 21, despite the fact that he
2 knew that there were children at S-21 who were going to die, Duch
3 was able to have children, and I will quote this: "I did not
4 want to see. I did not want to know," he said as the head of
5 S-21 and at the same time a good father.

6 The psychological mechanism of splitting is very much present in
7 Duch's psychology. That is to say in his psychology he's able to
8 partition, in a completely proof way, different activities of his
9 life and different thoughts and, on the other hand, the accused
10 expressed no form of grief in 2008, when we saw him for the first
11 time, regarding the fact that he could not see his children.

12 And, in the same way, the murder of his wife in 1995 when their
13 house was burglarized -- well, he spoke about this without much
14 emotion, but we must note that last week he spoke about his
15 family in a completely different manner with much less distance,
16 and he also said that he saw his family in detention so,
17 therefore, regarding the family, things have changed.

18 In 1996, Duch converts to Christianity as he is strongly
19 influenced by an evangelist preacher. God replaced communism.
20 God, Jesus represent a new ideal. They are new masters whom he
21 will serve with the same amount of zeal as his previous masters.

22 [10.11.33]

23 Why Christianity? First of all, Christian baptisms offer the
24 possibility of rebirth and he experiences his conversion as
25 rebirth, but also because it is the religion of the strongest, as

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1 he said to us in 2008. And it is Christianity which defeated
2 communism in Poland as well as elsewhere, and also because this
3 allows him to acquire a new identity -- an individual identity
4 and no longer a common identity as when he was a communist.
5 The need to believe has a great influence on the structuring of
6 his personality, and I'd like to mention here - this is an
7 excerpt from session number 5 on March 3rd 2008:
8 "We cannot lead without belief. I first believed that the
9 communists could save my country, but now I know that it is God."
10 Is Duch suffering from mental disorders? No, we have detected no
11 mental disorder in the accused. Duch is suffering neither from
12 neurosis nor from psychosis nor from psychopathy nor from
13 perversion; perversion, of course, being understood in the sexual
14 meaning of the term in the Western classification system of
15 mental disorders.
16 However, this Western classification system - well, in this issue
17 of perversity, could be very much discussed. In the Western way
18 of thinking, denial, manipulation, the control over others, could
19 be part of what we describe as being perversion and would explain
20 what Duch was during the Khmer Rouge period and is, what we can
21 still see, through certain consequences of this Khmer Rouge
22 shaping and that are still present in Duch's character today.
23 So how then we explain the psychological behaviour of the accused
24 and, in particular, during the Khmer Rouge period? In order to
25 do so, we have to understand the extreme implication that there

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1 is between common history and individual history in Duch's life.
2 [10.13.57]
3 The notion of typical disorder, which is a rather strange concept
4 that was coined by Georges Delerue, the ethno-psychiatrist, and
5 describes it quite well. This term designates a set of
6 psychological disorders of psychological as well as
7 socio-political, origin which is characteristic of the societies
8 that produced these disorders.
9 The psychological functioning of a given individual is
10 comparable; that is to say that it corresponds to the common
11 functioning of the entire society at any given moment of its
12 existence. This is what we call a typical disorder.
13 The analogy between Cambodia's common history and Duch's personal
14 history is linked to the fact that the country -- just as much as
15 the individual -- have gone through successive and massive
16 acculturations between different cultural systems. For example,
17 followed by a brutal deculturation (sic) to -- brutal and radical
18 deculturation (sic) -- that is to say, a new common and
19 collective individual identity that was fabricated by the Khmer
20 Rouge, and then there was the implementation of a traumatic
21 organization of the country and within the individuals that had
22 to adapt to it or perish; distrust, widespread fear, encouraging
23 -- encouragement to suppress emotions and any form of personal
24 thoughts to the benefit of a new common identity. This
25 psycho-political diagnosis, of course, does not relieve the

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1 accused from his liability and from the individual liability of
2 his acts.

3 This articulation between private history and common history, how
4 is it done? It is done through what we'd call political
5 emotions. Political emotions are emotions that are produced by
6 society; that is to say cultural, political or economic elements.

7 [10.16.23]

8 And political emotions can also be produced by singular emotions
9 as well; private emotions that are going to find a resolution in
10 the common context. That is to say in participating in the
11 political context. The kind of emotions that are going to
12 produce political emotions are always the same -- the same kind
13 of events.

14 These are experiences of humiliation, disappointment, cultural or
15 individual shame, devaluation, anger, sadness or contempt, and
16 concerning this -- just to -- I'd like to get back to his
17 biography because I forgot to mention that there was -- that
18 disappointments because here I'm mentioning them -- that
19 disappointment is something that is very much present in Duch's
20 life. Disappointments in terms of self esteem because he failed
21 his baccalaureate which he will finally pass, of course, and also
22 romantic disappointments and also ideological disappointments
23 that are very much present in the accused's life. His
24 intelligence is sharp. He has excellent mnemonic abilities.
25 Duch is the man with one single idea, with one single thought at

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1 the time.

2 Now, regarding the question of the Co-Investigating Judges which
3 was: Is Duch easily influenced and impressionable? We said,
4 "Yes, indeed". This was highlighted several times during the
5 psychological analysis of his personal history which we presented
6 above.

7 So what are the main characteristics of Duch's psychological
8 functioning? During the moment -- during the period for which
9 he's being incriminated, as well as today, devaluation is
10 something that's very much present at an early age in Duch. He
11 tried to compensate for this through studying, by working very
12 hard, and by the need for strong, masculine models that are
13 strongly idealized, for whom he will relentlessly seek
14 recognition.

15 [10.18.37]

16 This acknowledgement is going to give him the feeling of having
17 his own identity, of building his own identity through the image
18 of these masters, and Mr. Sunbaunat will have the opportunity of
19 getting back to the role of masters in Cambodian culture.

20 As a perfectionist, he can control himself. It is necessary for
21 him to control everything, thus, the presence in him of obsessive
22 traits; that is to say that he's meticulous, conscientious,
23 mindful of detail and of control to such a point that he even
24 loses himself. Duch always resorts to reason, to logic, to
25 mathematical models, in his thinking and in his analysis.

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1 This private identity is literally smashed, if I may say, to the
2 benefit of the shaping of the sole identity that is worth
3 anything in his eyes; that is to say, common identity. The
4 subconscious that does not exist. What bothers, what makes you
5 brood, according to what he says, what is not logical, what he
6 does not understand, is actively chased from his conscience.
7 This is what we call "denial". This is also what we call
8 "splitting" in our jargon. His interior way of functioning is
9 broken down into separated elements through which no information
10 might filter; splitting between the past and his emotions and
11 splitting between different parts of his self. In order to
12 remove from consciousness what he does not want to see or accept
13 from himself, as well as outer reality, he will resort to the
14 following defence mechanisms; denial, splitting, as we explained,
15 but also rationalization -- for example saying, 'I did not have
16 the choice' -- isolation, removing facts, putting facts at bay
17 such as describing in a surgical way everything, the facts.
18 Another very present defence mechanism is avoidance, "I did not
19 want to see." He does not answer the questions which bother him
20 and he gets confused rationalizations as soon as he is in contact
21 with what he does not or which he cannot accept of himself. And
22 this is also what we noticed during our sessions with him.
23 Another characteristic element of his personality is what we
24 call, in our jargon, alexithymia. Alexithymia is a clinical
25 concept that designates the inability -- or the accused's

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1 inability to feel consciously emotions, and to put them into
2 words. This of course can -- a sign of Cambodian culture cannot
3 be held responsible for this even if there are indeed cultural
4 elements that are involved in this, and Dr. Sunbaunat will
5 probably get back to this today.

6 [10.21.45]

7 His way of thinking is pragmatic. He thinks -- we think what can
8 be used, what can be practiced or what can be practised is
9 thinkable. Something exists only if it is demonstrated,
10 according to the logical thinking of the accused. Otherwise, it
11 has no reality in his eyes. But, we have however noticed last
12 week -- and here again -- that there was a change regarding this
13 and a change in particular due to the impact of the four or five
14 months of hearings so far.

15 Another element that can characterize the psychological
16 functioning of the accused is what we can call disempathy.
17 Disempathy is the inability to think the thoughts of others. It
18 is the inability to feel emotions, someone else's emotion.
19 Disempathy is the inability to think that someone else is also
20 different from who we are. This happens when the subject does
21 not have or is no longer aware of having his own identity due,
22 for example, to the shaping by the collectivist ideology of the
23 Khmer Rouge period. Disempathy is present in Duch who killed in
24 himself any kind of personal identity to the benefit of an
25 identification with a common identity.

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1 Yesterday, Communism; today, Christianity. But we should note
2 that this disempathy is not -- well, here again we notice that
3 there was a change, however, regarding this aspect which was very
4 much present even at the beginning of the psychological
5 assessment in 2008. In the psychological assessment report --
6 and we listed and commented all of the situations of disempathy,
7 which were quite numerous, that we perceived in what Duch was
8 saying in the assessment interviews.

9 [10.23.52]

10 Let me just give you a small example. When he says, "I pray so
11 that others may understand me," Duch does not pray for the dead,
12 but he prays for something that regards him. The roots of this
13 lack of empathy are however prior to the shaping of identity of
14 the Khmer Rouge periods. It was reinforced and it was used by
15 the Khmer Rouge regime and the Communism was an absolute tool of
16 Angkar.

17 Duch as a perfectionist completely abided by it. The roots of
18 this disempathy however are prior to this in childhood as well.
19 When it was necessary for him to restore the father figure and we
20 find it also in his whole dealings with stoicism. There is in
21 Duch a full absence of guilt in the western or psychoanalytical
22 sense of the term. There is no depression right now that could
23 demonstrate any form of guilt but there are deep regrets. There
24 is remorse and we can also say that guilt is something -- it was
25 inaccessible to him up until now because it supposes the ability

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1 to empathize. It supposes the end of splitting, and it supposes
2 the acquisition of self-identity. These again are elements that
3 we noticed as being -- as changing but it seems that now indeed
4 there's a resolution of all of these aspects.

5 And last point -- how may we explain Duch's psychological
6 function? No one is born a torturer. Whether we order torture
7 or whether we implement torture, but we become a torturer.

8 Before becoming a torturer who dehumanizes his victims, the
9 torturer has always first been dehumanized himself before. This
10 of course is not an excuse, no. We would like to insist upon
11 this. But it is a key to understand the psychological
12 functioning of a criminal who has committed crimes against
13 humanity and which also applies for other criminals against
14 humanity who are also analyzed in other circumstances.

15 [10.26.38]

16 So this implies -- therefore, this is also what the clinical
17 studies demonstrate since the Nuremburg Trials in 1945. What
18 dehumanizes are real life or seen experiences of cultural
19 humiliation or personal humiliation. These are disappointments.
20 These are narcissistic injuries that may happen very, very early
21 in childhood or in adolescence of which the subject can be aware
22 but of which he does not yet perceive the dimension and the
23 long-term effect of this.

24 Everything is then done to compensate for this experience with
25 humiliation. Everything is done to compensate this at the risk

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1 of denying any kind of existence for the social class that we
2 consider as responsible for this. So he first suppressed any
3 form of identity within himself as before suppressing it in the
4 other.

5 Duch is psychiatrically responsible for his acts. He suffers
6 from no mental pathology. We have said he made choices which he
7 thought were right when he made these choices. He was convinced
8 by the philosophy of Communism including, during a great period
9 of time when he was at the head of S-21. He agreed. If he is
10 easily impressed or influenceable, he is so within a realm of
11 belief of which he shares the world vision.

12 And then finally we answered yes to the question which is, "Can
13 Duch be rehabilitated or reintegrated?" Yes, he can. He may be
14 because we noticed that during his life he was always to able to
15 adapt to all of these new successive life situations.

16 This is what we have to say, Mr. President. I believe, maybe
17 with your leave, maybe Mr. Sunbaunat may add elements or would
18 you like what I just said to be the base of our discussion now?

19 [10.29.05]

20 Q. Mr. Ka Sunbaunat, you can proceed now.

21 A. (MR. KA SUNBAUNAT): Thank you, Mr. President. In Cambodian
22 culture we usually have our children to study with their mentors,
23 that is the monks. And this practice has been continuing and
24 that's why we respect our mentors a lot because of the way our
25 parents have us studied with the mentors.

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1 As usually the parents would say, whatever it takes for the
2 mentors to do in order to educate the children. And the parents
3 only want to have their eyes back. And that is the notion of
4 high respect, committed by the students upon their mentors.

5 And Mr. Duch, he had high respect for his mentor, and the mentor
6 was his role model, was his guidance, and that's why he was very
7 loyal to his master Son Sen.

8 MR. PRESIDENT:

9 Now it is an appropriate time for a break. The Chamber will take
10 20 minutes adjournment until 10 to 11, when it resumes.

11 Court officer, can you provide necessary refreshments to the two
12 experts during the break and please bring them back before the
13 Chamber when the Chamber resumes.

14 The hearing is now adjourned.

15 THE GREFFIER:

16 All rise.

17 (Judges exit courtroom)

18 (Court recesses from 1031H to 1056H)

19 (Judges enter courtroom)

20 MR. PRESIDENT:

21 Please be seated. The Chamber is now back in session.

22 Judges of the Bench, do you have questions to be put to these two
23 experts? Judge Lavergne, you take the floor.

24 BY JUDGE LAVERGNE:

25 Q. Good morning, Professor; good morning, Madam Expert, and

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1 thank you for having come from so far to report on the results of
2 your psychological assessment concerning the accused.

3 [10.57.12]

4 I would like to first of all come back to the purpose of this
5 expertise. You indicated in your report that you had explained
6 to the accused the meaning of this approach, if I am not wrong.
7 I believe you said that the idea was to proceed with the analysis
8 of a life course of an individual in order to better get to know
9 him and to understand, if need be, the links that may exist
10 between him -- that is to say this individual -- and the actions
11 that are held against him.

12 And you also said that this expertise was carried out within a
13 specific framework. That is to say a case where it is a question
14 of crimes against humanity and you indicated that this supposed
15 an approach which in itself probably supposed that one re-situate
16 the life course of the individual more globally with the history
17 of the society within which he lived.

18 It is current or common in some Western countries to carry out
19 such assessments, such expertise, and this is probably,
20 undoubtedly, rarer in Cambodia and maybe also before other
21 international jurisdictions. Could you tell us, because you have
22 experience in this field, what is the importance, over and beyond
23 the reminder that I have just given -- the importance of such
24 expertise? What is the interest of it for justice and for the
25 parties?

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1 A. (MS. SIRONI-GUILBARD): Your Honours, as you know, we answered
2 to the questions that were asked of us by the Investigating
3 Judges. The Co-Investigating Judges are the ones who
4 commissioned us with a certain number of precise questions which
5 I did not take up here again because they were mentioned by the
6 President.

7 [11.00.00]

8 This kind of psychological assessment's purpose or function is to
9 shed light, as you said, for justice -- assisting justice on the
10 basis of very precise questions that were asked of us with regard
11 to the capacity for empathy, intelligence, and one can presuppose
12 therefore that the Co-Investigating Judges felt this necessity to
13 order this expertise.

14 What is more, the importance of this kind of psychological
15 assessment, which takes into account on the one hand the
16 individual history and the collective history avoids biases which
17 are frequent in our discipline be it in psychology or be it in
18 psychiatry. That is to say, explaining the life goals of a man,
19 his facts and acts and gestures solely on the basis of elements
20 linked to his early childhood or intra-psychic determining
21 factors.

22 And very often one does not take into account all the external
23 elements, the repercussions of these elements and I think it is
24 indeed very important and all the expertise need to articulate
25 the collective history and the individual one.

39

1 I don't know whether my colleague wishes to add something.

2 A. (MR. KA SUNBAUNAT): It's all right.

3 [11.01.46]

4 Q. This evaluation, this assessment, psychological assessment
5 which there is no reference in the title to psychiatry. This
6 assessment has no therapeutic value of course; that is not its
7 prime finality.

8 However, as you have said, you've had many interviews that you
9 have noted certain evolution. Maybe it's strange to start with
10 this point, but all the same, do you believe that this assessment
11 has had an impact on the accused? And if so, what kind of an
12 impact could this have?

13 A. (MS. SIRONI-GUILBARD): Maybe we will be two to answer this
14 question very briefly to start off.

15 We asked ourselves this question. It was maybe a bit difficult
16 for us to make a distinction between the impact of this
17 psychological assessment that we carried out from the impact of
18 the whole procedure because he was before the Court every day.
19 He saw us at specific moments, a week with a month's interval
20 last year to weekends and personally I believe that it is more
21 the impact of the whole of the procedure.

22 Now what always happens in all the psychological assessments
23 there was -- and we watch over this carefully is, the accused
24 don't know the questions that the Co-Investigating Judges have
25 asked us to ask.

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1 [11.04.23]

2 And something else that we watch over is make sure that the
3 accused not be able to answer as a function of what they deem is
4 the right answer with regard to their situation because it is an
5 accused. It is a person who has been arrested and it is a person
6 who has his strategy in the face of justice. But I would say
7 this is the case in all psychological assessments.

8 The therapeutical issue, to come back to your question, sir, the
9 assessment does not have this objective, this purpose, but it is
10 perceptible.

11 A. (MR. KA SUNBAUNAT): (Speaking in French) I would like to add
12 that over the interviews that we had with the accused and
13 according to the analysis of his behaviour we do not find impacts
14 of a negative nature on the accused. To the contrary, he appears
15 -- how would I say; this has been welcome every time that we meet
16 with him.

17 Q. In the beginning of your assessment you said that the accused
18 cooperated a lot. This, he believed, was a measure that was
19 important in his eyes and I think you also said that he was
20 perfectly well informed about the judicial nature of the
21 exercise, namely that a report would be given to the
22 Investigating Judges and the same report would also be notified
23 to the parties. This was explained to him clearly. Is that
24 right?

25 I said at the beginning that in the title there is no reference

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1 to the psychiatric side which is nonetheless important. You
2 said, in the course of your oral report that the accused is
3 somebody who has no mental disorder. And the psychiatrist, the
4 expert on psychiatry may inform us that there is no mental
5 disorder that could have affected the conscience of the accused.

6 [11.07.11]

7 And maybe it will be easier for you to express yourself in
8 Cambodian -- in Khmer?

9 A. (MR. KA SUNBAUNAT): I would like to indicate that during the
10 interviews with Duch, during the first interview we were in doubt
11 as in his background from the very beginning he encountered some
12 kind of terrifying circumstances. The moment that can really
13 harm, or could really harm his life, and he faced these
14 situations on several occasions.

15 However, Duch could manage to have these problems resolved
16 without any problem. In particular when he was sent to the
17 detention facility and having been at the detention facility he
18 chose his attitude, the behaviour that suggests that he feels
19 fear or he has experienced some kind of depression.

20 And in order to know more about the truth and to make sure that
21 we want to make sure Duch does not lie to us, then we conducted
22 the first research with Mrs. Françoise Sironi-Guilbaud and we
23 found out that in the medical report there has not been any sign
24 of problem as suggested in the report which can we conclude that
25 Mr. Duch has not been affected by any psychological problem that

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1 leads to the severe distress.

2 I have verified the situation and proved that he has not been
3 psychologically affected at this stage.

4 Q. So you confirm to us that this is somebody who has no
5 hallucinations; he doesn't encounter any such problems. He is
6 somebody who is well-anchored into reality. He knows what
7 surrounds him; he knows what is the reality of the people who are
8 around him. He has no problems in terms of perception. Is that
9 correct?

10 A. (MR. KA SUNBAUNAT): According to the statements and the
11 account of Duch, he explained the accounts of his childhood and
12 he drew the reasons why he chose to follow the communist
13 ideology, and I experienced an encounter, the same situation, and
14 his account was appropriate and it cannot be viewed as the
15 illusion anyway.

16 [11.12.19]

17 Q. I don't wish to come back to the entire report, but maybe on
18 some specific points in order to bring some clarifications,
19 although I believe that your report is very clear.
20 Mention was made -- and you used a word which is not very
21 frequently used -- namely alexithymia. You indicated this
22 represented an inability -- I hope I've understood correctly --
23 inability to feel emotion and also expressing emotions. Now,
24 maybe you could define a little more precisely what type of
25 emotions are at hand because in your report mention was also made

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1 of what you called emotions of a political nature. Namely, you
2 spoke about these political emotions which could be raised
3 through feelings of humiliation, anger, which may generate a
4 desire of vengeance and can have consequences.

5 So what emotions are you talking about when you say that he has
6 this inability to feel and express these emotions?

7 A. (MS. SIRONI-GUILBARD): The emotions that we're talking about
8 which cannot be felt are emotions concerning his own
9 subjectiveness or subjectivity; emotions of compassion, emotions
10 concerning the suffering or the pain of others, but his as well.
11 By this I mean emotions such as fear, and I'm thinking here of
12 emotions of -- yes, suffering. You might say that suffering is
13 not an emotion. But it is the fact of not having access to -- or
14 not have access any more to these internal feelings.

15 [11.15.20]

16 We can talk about emotions and we can talk about joy, elements
17 which would mark a certain fragility, certain weakness or certain
18 fragile elements in the individual. This is not the case in the
19 individual. Alexithymia can indicate all the emotions when you
20 take the definition of the term.

21 Maybe it would have been important here to specify what kind of
22 emotion we're talking about because some emotions, such as anger,
23 were maybe felt -- I'm not saying they were felt during the
24 expertise -- we're not talking about all emotions but we're
25 talking about emotions which are not -- which serve the idea that

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1 the person has of his personality.

2 We insisted a lot on the tempering or the fabrication of the man

3 under the Khmer Rouge like a new psychology, but we also spoke

4 about the past. Everything cannot be attributed to this period

5 of his life. His youth, his adolescence, were marked by a strong

6 attraction towards stoicism, and I give that as a reminder.

7 There was already this learning, as it were -- how can I express

8 this? This non-expression of emotions, and what is the source,

9 the cause, and I could maybe conclude with this. Probably a

10 reaction against pain and disappointments that were too strong

11 and that he wanted to chase away from his conscience by adapting

12 a behaviour, a philosophy, an ideal, and by silencing forever his

13 heart and his feelings.

14 A. (MR. KA SUNBAUNAT): May I add something? I may add, in

15 relation to this terminology, alexithymia, which is related to

16 our Cambodian tradition and customs because, in general, our

17 children are educated not to voice their difficulties and

18 suffering because it is a kind of a way to tell people to know

19 our weaknesses. So that's why we are educated not to reveal our

20 weaknesses. And there is a slogan, that it is better to be quiet

21 than to talk, because being quiet means we don't really pose any

22 challenges to others but it means like we are not coward or we

23 don't give in anyway by being quiet.

24 [11.19.14]

25 As a boy, a son in particular, in Cambodian society, everyone is

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1 supposed to be strong and that we should not -- or are not
2 supposed to voice our difficulties or weaknesses, and Duch
3 maintains this stoicist (sic) theory. According to his studies,
4 he encountered an article about it in French, "La mort du loup".
5 This article inspired him a lot. It makes him really stay put to
6 follow this theory from the text.

7 In addition, every communist believes that communist followers
8 would be supposed as the absolute tools for Angkar and the Party;
9 therefore, when someone is assigned or appointed to the position,
10 regardless of the duty -- is it very difficult or dangerous -
11 then the person has not or is not supposed to complain and then
12 he has to obey the orders and receive the assignments.

13 During the Khmer Rouge regime, I can observe that through my -
14 the treatment I have offered to the people who survived the
15 regime - those would say that during the time when they
16 encountered great difficulties, they chose to be quiet, but not
17 to complain. I, therefore, believe that these alexithymia is
18 linked to both the Khmer history and its culture and customs.

19 [11.22.09]

20 Q. To sum up, can we say that with regard to the accused, the
21 latter -- as a result of his family history, his culture, his
22 education, upbringing, and his meeting or his encounter with
23 Communism - decided not to allow himself to feel anything and
24 that the emotions that he felt were those that corresponded
25 either to the Communist ideal or what was expected of him by

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1 society? Is that what you mean or what you said?

2 A. (MS. SIRONI-GUILBARD): Yes, indeed, it could be expressed in
3 that way.

4 I wish also to say, Your Honour, that the expertise, the
5 assessment -- we had a lot of interviews with the accused, that
6 is true, and what was also important for us was to establish
7 truly an analysis of his biography with the articulation of these
8 different elements, but I do wish to say that in all assessments
9 coming to the roots and to be able to tell before the Court at
10 what time, how things actually took place in the detail would be
11 difficult for us because this kind of description can be done
12 with certainty only if the accused was not an accused, but in the
13 course of a psychotherapy or a psychoanalysis. So there are
14 certain unconscious elements to which we do not have access.

15 Q. My other question is the following; an individual who
16 presents this characteristic, is he unable - completely unable to
17 feel the suffering of the other; be it the physical suffering
18 which can be quite obvious, I believe, but also the psychic, or
19 mental or psychological suffering?

20 [11.25.14]

21 A. (MS. SIRONI-GUILBARD): Undoubtedly, Your Honour, but this is
22 not simply related to alexithymia. But it is also due to other
23 factors that we spoke about; splitting which is "cleavage" in
24 French, other defence mechanisms or mechanisms adapted to the
25 context of terror.

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1 I wish to say that when you are not a torturer, you are not
2 suffering from alexithymia. This is a process that is desired by
3 the subject. He met outside situations where in this way of
4 being in the world was highly valued.

5 Q. Yes, indeed, that was kind of the idea of my question which
6 I'm about to put to you now.

7 So did the accused benefit in any way from this shaping process
8 which made him what he is? In a certain way, did he not
9 participate very much, very actively in becoming what he became?

10 A. (MS. SIRONI-GUILBARD): I can answer from the standpoint of the
11 personality of the accused and only from that position.

12 There is an, of course, conscious element of having adhered to an
13 ideal and you were speaking about benefits. Well, let's say
14 there was maybe satisfaction; satisfaction of becoming, for
15 example, courageous or such as these characteristics were
16 described in a specific system or in his idea of what it is to be
17 a man so I can answer from the standpoint of his personality,
18 yes, to this question.

19 [11.27.59]

20 There is no - how should I say this, of course, there is a desire
21 to become the one you wish and discover that the shaping process,
22 of course, did not happen in - of course, he did participate in
23 this shaping process. It was not done in a completely divorced
24 way from his personality; yes, of course.

25 Q. So was there also in the accused an awareness that he was

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1 an active member, an active participant in this great
2 deconstruction or reconstruction process that you mention, that
3 you describe?
4 You spoke a lot about his training, his education and I believe
5 that what's important for the accused who likes to teach, who has
6 the - but who has a past as a teacher, but who also explained
7 that he made very specific choices regarding the people who
8 seemed to him to be the best suited to become good interrogators,
9 for example. He said that he had tried to recruit young boys
10 aged around 15, adolescents who were -- according to him - "blank
11 sheets of paper on which you could write" so awareness, usage of
12 all of this; what can you tell us in relation to all of this?
13 A. (MS. SIRONI-GUILBARD): I do not believe that we can separate
14 both awareness and utilization of these elements. I can only
15 hear - come up with hypotheses and provide you with hypotheses
16 because this question was not brought up during the psychological
17 assessment, you see. An individual who likes to teach, who has
18 an ideal, who participates in the construction of society but who
19 also has doubts -- and we spoke about this at one point -- but,
20 however, he occupied a position and he was training, yes, it's
21 true. He was speaking about this position as a trainer and I
22 believe that this teaching talent that he has exists and he used
23 this love and his talent for teaching, and he probably used this
24 ability in other functions where he was transmitting knowledge.
25 And I'd like to specify that he also had been trained by a

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1 psycho-pedagogist, Son Sen, so there is probably here methods
2 that he learnt from Son Sen. Yes, that's what I can say, yes.
3 [11.32.10]

4 A. (MR. KA SUNBAUNAT):

5 I would like to add to my colleague.

6 In his role as a teacher of mathematics, before Duch went out
7 teaching, he was trained in the pedagogical area and
8 psychological area, and that made him understand the psychology
9 of the children, the adolescents and the adults.

10 Q. Earlier on during your presentation, you said to us that the
11 accused did not show any signs of perversion, and you said that
12 you understood the word "perversion" in a very specific way,
13 maybe which you might be able to explain a bit later on. But,
14 however, you also said, if I'm not mistaken, that there was also
15 a question of "perversability" -- I think you stated this.

16 Well, the question that I asked myself while I was reading your
17 assessment, in particular on page 60, you said the following:

18 "Duch was actively participating in this
19 deconstruction/reconstruction enterprise at S-21. The victims
20 were obliged to write down their confessions, which were
21 sometimes completely unbelievable, and Duch knew this, which had
22 no veracity, and in order to dehumanize the victim and to
23 subtract its identity and replace it with a new identity that was
24 completely falsified, but which agreed with what we were
25 expecting it to be."

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1 So is this approach, which is a method of falsification -- aren't
2 we here close to a rather perverse mechanism here? In any case,
3 for those who were subjected to it, isn't the fact of having to
4 confess, although we might be innocent -- having to confess that
5 we are guilty, doesn't this end up being something that is
6 completely perverse?

7 [11.35.24]

8 A. (MS. SIRONI-GUILBARD):

9 Yes, of course, I understand your question very well, Judge
10 Lavergne. It's true that this issue on the signification of
11 words does exist and I would like to get back to this.
12 Yes, I'd like to repeat, first of all, that we're not here to
13 justify what he did and I would like to stress this again as an
14 expert. That's not our function. But we are not here dealing
15 with a perversion as it is traditionally understood with a sexual
16 element to it, no. We could speak about perversity, yes, because
17 the concept exists in French. It's not the result of a
18 diagnosis, but we speak about perversity when there are a certain
19 number of elements present in the mind of a subject, in
20 particular, denial, splitting, manipulation, control,
21 fascination, trying to please the people around you -- trying to
22 do this for your own benefit, for your own personal enterprise.
23 It's obvious, as I was saying earlier, that given all these
24 elements we could indeed bring up the notion of perversity. But
25 where there is, however, an issue for psychologists and clinical

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1 psychologists is the question of whether it is shaping --
2 perversity is an observation, yes, but very soon we have to know
3 where this perversity comes from. Perversity does not exist as
4 such, and we're going to therefore try to look for what leads an
5 individual to behave in such-and-such a way. In the example that
6 you mention from my report, of course, we could bring up this
7 concept, which was also the way of operating at S-21.

8 I'm not an historian, I'm not an expert of the Khmer Rouge, so I
9 don't want to go too far here but I think it could be, yes, seen
10 as an example indeed of what I was describing as perversity.

11 [11.38.16]

12 Q. So, here again, it was a question of what you called defence
13 mechanism, what you just referred to. You spoke about denial,
14 for example, splitting in particular.

15 Is this splitting a question of removing yourself from things?
16 You're giving an example -- well, for the accused during this
17 entire trial it was very, very important for him to say that he
18 did not personally participate in any acts of "torture", that he
19 did not personally kill anybody, and he mentioned an example that
20 might seem important for me to get back to.

21 He says that one day, Nuon Chea asked him to take medicines and
22 to test this medicine on prisoners, and this medicine supposedly
23 -- this medicine could have eventually been poison that would
24 have been used to commit an attack. And he explained that he
25 took this medicine -- they were capsules, I believe -- and he

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1 emptied the capsules and he replaced the contents of the capsules
2 with a neutral substance, and that he then gave this medicine in
3 a perfectly conscientious way. He administered this medicine and
4 he was quite happy to say to us that, indeed, the people who had
5 received this medicine did not die as a result of this medicine
6 that he personally had administered.

7 But there's another question here is to know did these
8 individuals survive?

9 That's the next question, and in fact he explained that, well, as
10 anyone who was detained at S-21, they were executed; they were
11 smashed.

12 So we're dealing with what dimension here? Are we speaking about
13 splitting? This is not a question of denial unless I am
14 mistaken. Or is it removing yourself from reality? Or is it a
15 form of hiding reality? How, from a psychological standpoint,
16 can we analyze this?

17 A. (MS. SIRONI-GUILBARD):

18 Well, we can -- well, I don't want to bring up too many concepts,
19 but we can bring up the concept of negation; denegation, more
20 precisely. I would say perfectly denying an act. Denegation is
21 acknowledging partially your participation in acts and in facts
22 but by trying to justify yourself however so it's a partial
23 acknowledgment of reality or of the facts.

24 [11.41.58]

25 And in the example that you mentioned, I can compare this with

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1 what might happen sometimes in other cases, which is to say well,
2 at the beginning you might be in a state of denial and then when
3 evidence is brought to you, then you move on to de-negation and
4 then you move then to self-accusation.

5 And it seems to me that these are elements that we have perceived
6 during the re-enactment in particular because since there were
7 very many sessions and there was a re-transcription of the
8 re-enactment that we became aware of, and what we saw also from
9 the trial as well leads me to say what I just said and to state
10 that yes indeed I perceive these three phases in the accused,
11 that is to say, denial, denegation and then self-accusation.
12 Therefore, he keeps on saying that "I am a criminal," et cetera.
13 So this is a process indeed and this might be a way of not yet
14 accepting or not being able to accept completely these realities.
15 So it's a psychological mechanism, which might be a way of hiding
16 a part of the truth to yourself.

17 Q. In a rather interesting way, I believe, I think at the very
18 beginning of the assessment you asked the accused to mention the
19 names of people who might have been killed at S-21 and you said
20 that in your relationship with Duch that it was something that
21 was difficult for Duch to mention this. Whereas he is somebody
22 who has excellent intelligence and I think he had an excellent
23 memory so he mentions a figure of 200 people who died at S-21
24 which is rather surprising given his abilities.

25 [11.44.39]

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1 So isn't this a sign of this denial, denegation, self-accusation
2 that you're speaking about? Is this part of the same process,
3 this inability to remember, the selective memory?

4 A. (MS. SIRONI-GUILBARD):

5 Yes, indeed. I believe that this is part of the same process
6 indeed.

7 It's true that at the very beginning of our assessment when we
8 saw the accused, there was a certain amount maybe of distrust, we
9 can say, vis-à-vis us because we are indeed dealing with a
10 context of justice here, so he was extremely distrusting and he
11 was maybe trying to minimize maybe the figures that he probably
12 very well knew in fact.

13 And so what I would like to say is that here again things have
14 changed and I believe that my colleague agrees with this. And we
15 have been able to see indeed this mechanism -- the denial,
16 denegation, self-accusation -- but that this mechanism has
17 changed during our sessions. And recently indeed he proved to be
18 much less in a state of denial and be much more confident and
19 showed that he was able to bring up a certain amount of elements
20 linked to his own life and expressing remorse which were not
21 present at the start.

22 Q. So something else that might be difficult to understand in
23 the accused's personality -- I do not know if you use this word
24 exactly, but it is "ambivalence," that is to say that it seems to
25 me that we are dealing here with someone who can express at the

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1 same disgust, shame, for what he was doing and who says that he
2 actually felt that during the facts as well as someone who maybe
3 showed zeal and who maybe behaved maybe even beyond expectations.

4 [11.47.33]

5 So is this ambivalence something that you perceived and how may
6 we explain it?

7 A. (MS. SIRONI-GUILBARD): Well, the ambivalence is a result of
8 -- is that two contrary elements co-exist in the same person
9 which is -- and co-exists maybe in a quasi-consecutive way.
10 We can explain this by first a need for affiliation, a strong
11 need for affiliation that we see in the accused, obedience indeed
12 which is also very important. He was fulfilling his role, no
13 questions asked. And so there can be, indeed, on one side
14 obedience as I'm saying; obeying orders, the fact of therefore
15 belonging to function in a system. And on the other hand,
16 doubts, doubts which would account rather for -- well, he was not
17 able to quiet his doubts, let's say. So if both elements are
18 present, it is therefore perfectly possible in human psychology
19 and so we can have disgust and at the same time zeal, you see, or
20 excessive zeal on the other side. Because we are trying here
21 against all odds to demonstrate your allegiance, one's allegiance
22 to a Party or to ideals or to a hierarchical superior whom we may
23 admire; for example, Son Sen or his other superiors.
24 I don't know if I answered your question, but maybe do you want
25 to add something?

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1 I can add something regarding both of these elements -- zeal and
2 disgust, therefore -- that normally speaking everything had been
3 orchestrated to quiet these doubts. But when we are -- generally
4 when we are in a situation of ambivalence, what happens? We
5 cannot remain for a long time in a situation of ambivalence and
6 therefore we find coping mechanisms and exit solutions and we
7 either swing to one side or to the other, and that is when denial
8 comes into place. Of course, it's not conscious but that is the
9 psychological functioning behind this and in this case, well,
10 zeal partakes in this. That is to say definitely to quiet
11 absolutely what we cannot accept, and this factor is going to
12 lead to justifications to quiet, indeed disgust, and what we
13 cannot accept in ourselves.

14 Or if we cannot get out of this ambivalence, well, then there is
15 a risk of physical illness. That's the result maybe; some kind
16 of physical escape or depression or illness -- mental illness,
17 yes, which indeed is not the case here. I think that with Duch,
18 we were dealing more with trying to build denial in order to get
19 out of the situation of doubt which he could not handle.

20 [11.51.50]

21 Q. Another question that I might address more to Professor
22 Sunbaunat.

23 I believe that there is a word that we can see quite often in
24 your reports and it's a word that we heard quite often during
25 these proceedings, and the word is the word "sacrifice". So it

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1 was a question of sacrifice, of course, on the part of the
2 accused when he said that, "Well, when I joined the revolution ,I
3 was ready to sacrifice myself for a noble cause", and it was also
4 a question of sacrifice in the functioning of S-21 itself. It is
5 a question of human sacrifice practised in order to build the
6 foundations of a possible new society.

7 And then it was a question of sacrifice a bit, but even though it
8 wasn't directly expressed as such by the accused, when he said to
9 us that -- or maybe this is how I interpreted it, let's say --
10 when he presented himself as the person who was willing to
11 sacrifice himself -- to sacrifice himself to social reprobation;
12 to sacrifice himself to the criticism of his citizens, he said,
13 "I am willing to be pointed by the finger. I am willing to be
14 punished. I'm ready to be punished."

15 So, here again, we find this, of course, in different
16 circumstances, but we find the same mechanism again. So
17 sacrifice therefore is something -- is sacrifice something
18 important in Cambodian culture and, in a general way, does it
19 have any kind of particular signification for the accused?

20 A. (MR. KA SUNBAUNAT): I would like to respond to your question,
21 Your Honour. If I understand correctly, the question is the
22 sacrifice by the accused.

23 [11.54.31]

24 In the Cambodian culture and tradition, we received our education
25 from our parents, from society, from the school, and from the

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1 Buddhist religion, and that we have the responsibility to share
2 what we have with those people around us. And not only we share
3 what we have, but also we have to sacrifice to help the poor, the
4 dead. In our saying, the intellectual maintains his ignorance
5 and the big ship rescues the small boats. This is a notion for
6 us to sacrifice and assist the poor and not just to give value to
7 self.

8 However, in the communist movement, the term "sacrifice" has a
9 more weighty meaning than the cultural meaning. In order for the
10 communist movement to defeat the incumbent government, they had
11 to fight, physically fight, against them, and they had to face
12 the challenge of life and death situations. Therefore, in every
13 case of joining the communist movement, they realized that they
14 had to sacrifice their lives for the noble cause, for the
15 movement.

16 This means to sacrifice own life, own interests, to overcome all
17 the obstacles, even if it means ones has to give up his own life,
18 and this is for the cause of the communal benefit for those
19 people who suffered in the community. That is the general term
20 of sacrificing oneself in joining the communist movement but,
21 also in that regard, especially in the term -- in the specific
22 situation of S-21, the sacrifice is rather different. I myself
23 is not an expert in dealing with the S-21 situation, and the
24 notion of sacrificing oneself or one life for the cause of S-21,
25 for what purpose is difficult for me to understand.

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1 Q. There are, I believe, sacrifices which are voluntary, more
2 or less voluntary; that is to say that are the result of a given
3 approach, and then you have the sacrifices which are imposed upon
4 victims. Now, this other form of sacrifice, does this also exist
5 in the Cambodian tradition, Cambodian culture, that talks about
6 human sacrifice?

7 [11.59.59]

8 A. (MR. KA SUNBAUNAT):

9 I may not fully understand the question in relation to human
10 sacrifice; the sacrifice imposed on the victims. Could you
11 please elaborate the question or rephrase it?

12 Q. I think you explained in a very relevant and interesting
13 manner that you could sacrifice yourself and what was the meaning
14 of sacrifice when you joined the Communist Party which, in our
15 opinion, is very interesting. But when one talks about S-21,
16 there was also the fact that this was a machine, sacrificing
17 machine -- sacrificial machine. I believe that is also what was
18 used in your report.

19 My question was to know whether this sacrificial practice, which
20 in this case in point is not a voluntary approach but something
21 that is imposed to rebuild, to found a new society, would this
22 approach exist or has it existed in the tradition, the Khmer
23 tradition or culture?

24 A. (MR. KA SUNBAUNAT):

25 The type of sacrifice at S-21, as you indicated that it was done

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1 voluntarily or at will, I think this kind of situation did not
2 happen before. We had a kind of humanitarian sacrifice. The
3 sacrifice to save the lives of other people, the sacrifice to
4 rescue or to help ease the burden of the people who lived in
5 poverty or who had encountered difficulties. However, the
6 sacrifice at S-21 is unprecedented. And the principle of
7 sacrifice is supposed to be following the norm, the ethical norm
8 or Buddhist way of norm.

9 [12.02.59]

10 Q. There is yet another question which is important, at any rate
11 for the victims. This concerns the regrets expressed by the
12 accused.

13 Many times the accused expressed his regret and you said that the
14 question of the sincerity didn't seem to be for you a relevant
15 issue because one had gone beyond when dealing with the question
16 of regrets. And I believe you said the following:

17 "For the accused, it is a matter of choice, the choice of
18 re-affiliate with the strongest human communities. Choose groups
19 of belonging which are powerful."

20 And you indicated, for example, that for the accused these
21 powerful groups could be represented by the Christian community,
22 by the Western world, and even by the international justice
23 system.

24 Now, my question is, does this mean then that for the accused is
25 it always impossible to exist without being affiliated to a

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1 community? He cannot exist as an individual; does he absolutely
2 need to be a part of a community? And through his regrets he
3 tries to integrate these communities. Is that what you meant?

4 [12.05.11]

5 A. (MS. SIRONI-GUILBARD):

6 I would say that, generally speaking, we all have one or several
7 communities of belonging, even as singular -- as individuals. We
8 belong to groups or we may believe that we're singular
9 individuals and we don't belong to communities, such as in the
10 West, but in these cultures here, it is the belonging to a
11 family.

12 To come back to Duch, probably for him he does not live without
13 an ideal and without beliefs. He said -- and he said this time
14 and again -- and it's not just enough to be said and we
15 understood this through his assessment, his biography -- there
16 are two things that are important.

17 One, to believe in something that is transcendent and, at any
18 rate, that is one thing that is important, and then the belonging
19 to a community. We analyzed what was dealt with last week and
20 this was really quite clear, namely, that he has changed groups
21 after the belonging or affiliation to communism where there was
22 no question of individuality, where one had to deny every and any
23 individuality.

24 He then chose yet another group and this choice was thought of at
25 length. He said there were several things, the encounter with

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1 the evangelist, Christian person, as well as history which
2 showed, and I quote him here. He says that, "Those who won over
3 communism are the Christians", he said. And, therefore, for him
4 it was logical to choose this group.

5 I wouldn't say that this is necessarily the essential reason.
6 What is interesting in the thought process of the accused is the
7 choice of a group, of course, but a group where it is the
8 individual, singular individual, who exists because in the
9 Christian religion it is not the group, the Christian community,
10 but each individual has a direct link with his God.

11 [12.08.03]

12 And, therefore, here one is completely changing systems.
13 Communism was the individual who disappears, but here he finds
14 the affiliates to a group where, on the contrary, it is the
15 subject that exists in his union with God.

16 And you were mentioning -- alluding to the question of therapy.
17 I believe that this life course, this approach, probably had a
18 therapeutical outcome for the accused. There you have it.

19 Q. In the last sentence of your report where you say the
20 following, you say that:

21 "We hope that the psychological assessment involved in political
22 crime will help in explaining the life course which takes a
23 singular subject to lose his awareness of the subject. And this,
24 whatever be his culture by conviction, submission or obedience,
25 acceptance of the modes of expression of power or governance of

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1 power through fear and the need for affiliation."

2 Now, maybe to clarify things here, could you just tell us what
3 you understand by the loss of the awareness of the subject, of
4 the consciousness of the subject? What does that really mean?

5 A. (MS. SIRONI-GUILBARD):

6 Loss of awareness of being the subject, so it was the answer,
7 everything that you mentioned in regard to sacrifice.

8 [12.09.53]

9 Loss of the awareness of being the subject means being in
10 circumstances, accept to be within them, agree to be in them,
11 where the individual no longer exists to the benefit of the
12 collective.

13 There are dangers in this and yet there is discussion in the
14 matter because if you take into account cultural matters, in
15 certain cultures, this discussion may seem rather strange.

16 The conclusion is probably of a kind which is more understandable
17 to a Western tradition because the notion of the subject, the
18 awareness of the person as a subject is very important in certain
19 parts of the world and lesser so in others.

20 And I would also add -- and you mentioned this, and this was not
21 put in the report -- the fact that the watchdog, as it were,
22 against sacrifice, against the individuality and awareness of the
23 self, that which protects is not belonging to only one group but
24 to have a multiplicity within oneself. That is to say you can be
25 a judge, a father, a footballer, soccer player -- just giving you

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1 a variety of examples. That is the multiplicity of belongings,
2 and the great danger from a psychological standpoint is the
3 reduction of an individual to one single affiliation, one single
4 sense of belonging, and that is where all types of dangers may
5 occur. We're open to all kinds of danger.

6 Would you wish to -- no?

7 [12.11.51]

8 JUDGE LAVERGNE:

9 Thank you very much indeed for all these explanations. I have no
10 further questions for Madam Expert and the professor.

11 MR. PRESIDENT:

12 Since it is now time to take an adjournment, we'll take the
13 adjournment now and resume at 1.30 p.m.

14 The security personnel are now instructed to take the accused to
15 the detention facility and return him to the courtroom by 1 p.m.
16 (sic).

17 THE GREFFIER:

18 All rise.

19 (Judges exit courtroom)

20 (Court recesses from 1212H to 1330H)

21 (Judges enter courtroom)

22 MR. PRESIDENT:

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

24 The Co-Prosecutor, we note you're on your feet. You may proceed.

25 MR. AHMED:

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1 Your Honours, I just wish to request that at some stage today
2 please grant us five to seven minutes to respond to the defence
3 request made in the morning before these witnesses came in -- at
4 any stage, not at this time, subject to your convenience.

5 [13.31.50]

6 MR. PRESIDENT:

7 The Chamber notes your request and we will manage some time to
8 entertain the request and we'll see when is appropriate for your
9 request to be made.

10 Judges of the Bench, would you wish to put questions to these two
11 witnesses -- experts? Judge Silvia Cartwright, you may now
12 proceed.

13 JUDGE CARTWRIGHT:

14 Thank you, President.

15 BY JUDGE CARTWRIGHT:

16 Q. I have very few questions after your extensive statement this
17 morning and the very useful responses that you made to my
18 colleagues' questions.

19 You mentioned in the course of your presentation this morning
20 that the accused's superior, Son Sen, trained him in some
21 psychological methods. Can you expand on that for me? Were
22 these methods directed at enhancing the accused's ability to deal
23 with the job that he had been given, or were they directed at his
24 ability to cope with the job personally?

25 A. (MR. KA SUNBAUNAT): I may now respond to your question. This

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1 morning I stated that Duch, before he became the mathematics
2 teacher he had gone through teacher trainings and in that session
3 he was trained on how to become a good teacher but I did not
4 mention that Son Sen gave the lecture or trained him. So teacher
5 trainings are the courses to be given to the teachers to know how
6 to teach students according to the psychology of each student.

7 [13.34.39]

8 Q. Thank you. Clearly I misunderstood the context of your
9 comment.

10 This morning you mentioned that the accused suffered from a
11 variety of psychological issues, although you have made it clear
12 that he has no psychiatric disability, then or now. The
13 combination of the psychological problems such as disempathy,
14 splitting, alexithymia, are these qualities found in the general
15 population singly or in combination, such as you found them in
16 the accused?

17 A. (MR. KA SUNBAUNAT): Since I have encountered with several
18 Khmer Rouge leaders I have noted that those people have shared
19 common behaviour and there is no signs of remorse or regret ever
20 shown from them. So when we asked them in depth about the work
21 of the revolution, then they would be reluctant to respond to us
22 or they didn't answer our questions at all. And I met some
23 former generals of the regime, the questions of their works
24 during the Khmer Rouge regime, but they did not respond.

25 And I believe that because of the ideology, the discipline and

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1 the way of life, those senior Khmer Rouge leaders seem to enjoy
2 this behaviour and share this common behaviour.

3 Q. Were these psychological factors so overwhelming in the
4 accused that they resulted in him being unable to react more
5 normally to everyday situations around him, such as the
6 conditions that have been described at S-21?

7 [13.37.53]

8 A. (MR. KA SUNBAUNAT): I do not have a good grasp of the
9 conditions at S-21 that I may ask you to please tell us a
10 particular condition that you are referring to here.

11 Q. For example, during the testimony that we have heard, a
12 number of witnesses have spoken of hearing screams of those being
13 interrogated, have noted obvious signs of injuries, have noted
14 obvious signs of malnutrition in the detainees. Thus far the
15 accused has said that -- using the reason that his physical
16 proximity was not always close to the detainees -- that he has
17 not noted any screams, for example.

18 So what I am asking is whether the combination of psychological
19 factors could prevent a person in the accused's situation from
20 noting such conditions at S-21.

21 A. (MR. KA SUNBAUNAT): I find it difficult to respond to the
22 question because Duch already stated that he was not that close
23 to the detainees, which made it impossible for him to note
24 conditions. And we can ask how far was the accused from the
25 detainees and whether the detention facility -- the windows, the

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1 doors were opened to allow people outside the premises hear the
2 screams of the people being interrogated.

3 So if Duch did not work somewhere close to the vicinity, but if
4 the building windows opened he could have heard the screams of
5 the detainees. However, he could have been working far from the
6 premises that could not make it possible for him to hear the
7 screams or the condition of the people being interrogated, or
8 maybe the building's doors and windows were locked and closed
9 that noise could not be heard outside. But I find it difficult,
10 however, to detail this information.

11 A. (MS. SIRONI-GUILBARD): Your Honour, if you please allow me to
12 -- you brought up in your question that there was a psychological
13 involvement in this and I would like to tell you that, in
14 psychology, extreme situations coming from criminals who have as
15 a defence mechanism denial; well, as far as I know, we have never
16 faced cases of denial where the senses -- the actual senses, were
17 muted. We described cases of psychical cesity (sic) blindness,
18 but not regarding hearing; he was not made deaf because of this.

19 [13.42.18]

20 Q. And one final question. You have spoken of his psychological
21 desire and put it also into a cultural context of wishing to
22 please his superiors and indicated that this is a factor in him
23 working to excel at the task he was given. Is this a more marked
24 tendency in the situation that the accused found himself in than
25 in, say, an everyday example of an employee, who is terrified of

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1 losing his job, wanting to do everything he can to please his
2 boss?

3 A. (MS. SIRONI-GUILBARD): Indeed, we're dealing with situations
4 of another kind in which the fear of death was present and in
5 particular with the accused, who indeed saw Vorn Vet, for
6 example, his superior, being executed and he was indeed expecting
7 himself to be executed, in particular at the very end, and in
8 fact since 1977 he was living with the certainty that being
9 executed would be his fate.

10 And you brought up as well the question of obedience -- of his
11 behaviour in regard to his hierarchical superiors. I would like
12 to say before I let my colleague maybe explain and refer to the
13 cultural context -- well, these situations of obedience were
14 described beyond Cambodia even; that is to say in political
15 criminology with authors of similar kinds of crimes as Duch, we
16 can find again this kind of behaviour, this kind of obedience,
17 this kind of fear, this kind of desire to please whose origin
18 might be multi-faceted.

19 In the case of Duch, we brought up the hypothesis with my
20 colleague; the hypothesis of the restoration of a father -- the
21 rebirth of a father in a certain way because he brought up last
22 year the fact that he had to show his gratefulness again to his
23 father, which we spoke about again this week, but he didn't seem
24 to remember it this week, however, but the question of the father
25 -- of the accused's father and of his relationship with his

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1 father is also present in our explanations of this phenomena that
2 we are talking about now.

3 [13.45.53]

4 And what I'd like to add to this is that regarding this issue of
5 masters which we spoke about this morning and which I mentioned
6 as well in my statements, well, the idea of trying to restore the
7 image of his father through his quest for masters and also the
8 transmission of a model coming from the masters, and then maybe I
9 will let my colleague expand on this.

10 A. (MR. KA SUNBAUNAT): I may add in Cambodian tradition and
11 culture and customs it is very genuine that everyone is supposed
12 to pay great respect to their mentor or teachers, and parents are
13 regarded as teachers. And normally teachers are very kind and
14 they would educate people to know how to live -- the morals and
15 ethical code or conduct -- and that's why we have the tradition
16 of showing great respect to our teacher. Although the teachers
17 get very old, then we have to pay them visits and offer them some
18 offerings like money or whatever we can do to offer them. So
19 normally teachers are much respectful.

20 However, in the case of the accused, although his superior, who
21 was his former mentor or teacher -- but as a superior who is
22 superior to him of course and in the Communist regime, the
23 superior could be regarded as an Angkar. So in a situation when
24 he was obliged to kill his colleague, Vorn Vet, so he had only
25 two choices; to kill or to be killed. So for him to survive he

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1 had to choose to kill the other.

2 [13.48.57]

3 And the other point is that his role as the member of the Party
4 -- of the Party Centre -- so he was the role model, the person
5 who was absolutely determined and as an absolute tool for the
6 Party. For that reason, as a tool or the absolute tool for the
7 Party, he was supposed, like a machine -- the machine that had to
8 work according to the orders and instructions. So he had to work
9 to receive the assignments that he could not contest and then he
10 also faced the situation that I mentioned, to kill or be killed.
11 Thank you.

12 Q. Thank you very much, Professor Ka and Professor
13 Sironi-Guilbaud.

14 JUDGE CARTWRIGHT: President, I have no further questions.

15 MR. PRESIDENT:

16 Next, the Chamber would like to give the floor to the
17 Co-Prosecutors to put questions to the experts. Co-Prosecutors
18 have one hour and 15 minutes to put questions.

19 MR. TAN SENARONG:

20 Thank you, Mr. President, Your Honours. And good afternoon.

21 QUESTIONING BY THE CO-PROSECUTORS:

22 BY MR. TAN SENARONG:

23 Q. Ms. Sironi-Guilbaud and Mr. Ka Sunbaunat, in your report,
24 page 15, it was an occasion that the detainees were made to fight
25 one another but when we asked him about this then he would not

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1 respond but he said he would meet his clergy first.

2 [13.51.49]

3 However, it is very general that in other detention facilities
4 around the world the reason they separate detainees were to make
5 sure that detainees were not able to contact or to communicate
6 one another. So can you please tell the Court whether in other
7 detention facilities that the chief of the detention facility
8 allowed detainees to beat one another?

9 And we found out that in the report it was possible. And how
10 could the experts come up with this finding and why Duch did not
11 respond to your question and that he insisted he would like to
12 meet his pastor?

13 A. (MS. SIRONI-GUILBARD): Thank you, Mr. Co-Prosecutor. This is
14 indeed an important question because it remained -- until today
15 it has remained unsolved, insofar that we did not put the
16 question to him last week. It's true that we had the intention
17 of getting back to this point and to ask him if he had indeed
18 seen his professor, but we haven't done so. We've dealt with
19 other points that took more time.

20 I therefore will not be able to tell you why he answered in this
21 way. I can simply state to you that this surprised us and we had
22 told him at the beginning of the assessment that he had indeed
23 the right not to answer certain questions if he wished to do so
24 and this was one of the questions where he indeed decided not to
25 answer.

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1 A professor, by definition, we cannot know what he will say to a
2 priest but we can understand this way insofar that the accused is
3 Christian. I think he's evangelist. I don't think he's
4 Catholic. I do not quite know in the details of this and I
5 apologize for this. But maybe he wished to say that he did not
6 want to answer the question and that he first wanted to talk
7 about this with someone, with a religious figure.

8 [13.54.48]

9 We didn't ask him what he had said to this priest out of respect
10 for these men of religion and therefore they're of course acting
11 under secrecy so it's not up to us to try to bring to the open
12 what was said.

13 Q. Thank you. The follow-up question is that on page number 15
14 of the report it states that in other detention facilities
15 detainees were asked to beat one another because the chief of the
16 detention facility wanted to stop them from communicating or
17 contacting one another. So my question is, how could the chief
18 of the detention facility do to make sure that detainees could
19 not really communicate with one another?

20 A. (MS. SIRONI-GUILBARD): I'm not sure I quite understood your
21 question. When I'm speaking to you about the other detention
22 centres, I am also thinking about the testimonies of many victims
23 that we cared for in our Primo Levi Centre and it is also
24 frequent in other centres as well. And it is essentially the
25 victims who talk about this, we have noticed.

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1 So I do not know if I quite understand your question. In any
2 case, the objective could be, and I'm putting this in the
3 conditional form, could be that when two people fight, when two
4 people hurt each other and if we oblige these people to fight we
5 of course can prep them and give them indications -- and I have
6 lots of examples of this, examples of witnesses who had said that
7 because of the pain, because of the blows that they were
8 receiving from the other, that even if the people who were
9 subjected to this -- even if these people understand the purpose
10 of the torturer who asked them to fight -- or even in the case to
11 have sexual relations sometimes, but here we're talking about
12 fighting, however, only now.

13 [13.58.17]

14 Well, they still keep an inner anger, an inner wrath against the
15 other person he is fighting against because another person hurt
16 him. So therefore this incorporation of pain in the body also
17 has a psychological affect that might lead someone to hate the other
18 or at least not to feel any kind of complicity with the other.
19 And I would like to remind to you, Mr. Prosecutor, that when this
20 question was put to him last year, that is to say, we asked him
21 if he could explain a bit more in depth his intention behind
22 this, well, we did not get any information regarding why, the
23 purpose, and neither regarding the truth of this event.

24 Q. Thank you. On page 48 of the report in the first paragraph
25 you analyzed and concluded that the giving up of Buddhism

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1 comforted the feeling of Duch and if he were to maintain Buddhism
2 then his feeling would be running in circles and that he had to
3 celebrate more ceremonies for the Buddhism for his feelings to be
4 comforted.

5 Would you be able to shed light on this point why you concluded
6 in such fashion that the change of religion from Buddhism to
7 Christianity and when he became a Christian his feeling was
8 detached from the current feelings and from the sins that he
9 committed in this world?

10 A. (MS. SIRONI-GUILBARD):

11 Leaving Buddhism -- and my colleague said that he will complete
12 this answer later -- now, in terms of his conversion, this
13 morning we spoke about the reasons that he had given and that we
14 have tried to understand, analyze together with my colleague, the
15 conversion into Christianity has an effect, not to wash away the
16 sins or what had taken place in the past, but a conversion
17 supposes a rebirth. In the baptism, there is that idea of a new
18 birth into the Christian community. That is the first thing.
19 Secondly, in the Christian religion, what Duch has said and what
20 he says he found -- this is important. He said that God had -- I
21 don't have the text before my eyes -- but he said that God had
22 blessed him. We discussed this a lot, the issue of pardon. Now,
23 in the Catholic religion, God is love and sinners, as well as
24 non-sinners, are admitted into -- are sons of God, and maybe that
25 is an element that was important for him in his thought process

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1 re -- the issue of karma in Buddhism.

2 [14.02.54]

3 A. (MR. KA SUNBAUNAT): Buddhism is a religion where each

4 individual is educated and preached to commit good acts.

5 Although parents commit good acts, their good deeds cannot be

6 used in exchange for the bad acts committed by their children.

7 If a Buddhist follower relies on his own acts, he cannot avoid

8 karma if his actions prove otherwise. He would receive whatever

9 his actions show.

10 Duch also said after deep thinking and pondering only

11 Christianity where the God forgives the sinners who believe in

12 him. Therefore, he made his choice to convert himself from

13 Buddhism to Christianity, with a strong belief that he would be

14 detached from the karma or sins that he committed with the

15 forgiveness from the God in the Christianity religion, where such

16 forgiveness does not exist in Buddhism, and that only the person

17 himself commits good act and that good act would supersede the

18 bad act he commits.

19 Q. Thank you, Mr. and Madam Experts.

20 On page 50, paragraph 4 of your report, you analyzed and

21 concluded that Duch was so obsessed, and that is the key factor

22 for him to become a core person of the revolution.

23 Can you explain further to the Chamber what type of idea or

24 notions that he held onto that make him too obsessed or extremely

25 obsessed with the cruelty and barbarity that he committed?

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1 [14.06.08]

2 A. (MS. SIRONI-GUILBARD): Mr. Prosecutor, sir, we two of us --
3 not to have -- maybe not understood your question, but on the
4 word "obsessed", don't remember having used this term. Maybe it
5 was an issue of the translation. By the word "obsessed", are you
6 referring to fanaticism or his convictions as a revolutionary? I
7 don't know very well the context and I apologize.

8 Q. In the context that I would like to have you shed light on
9 it, it is in the Khmer translation on page 50, paragraph 4, which
10 states:

11 "The analyst said Duch was obsessed and with that obsession he
12 became a core revolutionary person."

13 If you cannot shed further light on this, let me move on so that
14 we do not waste time. It could be a technical issue related to
15 the translation in the Khmer version and it may not be consistent
16 with the French translation.

17 My next question for you two is that on page 56, paragraph 2, it
18 reads:

19 "Based on the analysis of the statements of the cadres and the
20 interrogators at S 21, interrogation methods they implemented was
21 the result of Duch training on them, based on the several ideas
22 based on the internal view of the individual."

23 As an expert, would you be able to explain to us the notion of
24 this conclusion of the "internal view of each individual", as you
25 stated in your report?

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1 [14.09.22]

2 A. (MS. SIRONI-GUILBARD): Could you just remind us of the last
3 part of your question because I think there's a real problem
4 between the translation and the text?

5 Q. I think in order to save time, let me further read other
6 parts of the report. It is also related to your Psychological
7 Assessment Report. It's on page 120 in paragraph number 2. You
8 wrote that:

9 "The regime was nearing an end and Duch slept day and night due
10 to his despair."

11 And based on that paragraph, can you explain to the Chamber the
12 reason why, towards the ending of the regime, prisoners were not
13 transported to S-21 and execution was not carried out, and why
14 Duch was in despair and slept day and night? I hope my question
15 is clear enough for you.

16 A. (MR. KA SUNBAUNAT): I think one week before the Vietnamese
17 troops entered Phnom Penh the workload was reduced and it's the
18 same for the prisoners. There were few prisoners brought in, and
19 why Duch slept day and night in despair and that he had no
20 strength to carry out his work.

21 This is a situation where his role in the regime would be lost
22 and then he would not know what his future would be, particularly
23 what his life would be, as communication was also lost. He
24 responded further that when Angkar evacuated them there was only
25 his unit and one of the radio broadcasting units remained and

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1 that these two units did not receive any further information
2 regarding the evacuation or fleeing from Phnom Penh.
3 [14.12.40]
4 And once the Salvation Front and the Vietnamese troops entered
5 Phnom Penh to overthrow the Khmer Rouge regime he did not know
6 anything about that. In addition, his detention facility was to
7 serve the purpose of anti-Vietnamese and this sudden change made
8 him depressed and that he was in despair. This is a typical sign
9 of depression experienced by him. That is, whatever used to be
10 normal suddenly stopped or changed and that he was in a state of
11 uncertainty of what to do next. He lost his contact and he was
12 in the middle of a situation that he had nothing to hang onto.
13 A. (MS. SIRONI-GUILBARD): If you will allow me, Mr. Prosecutor,
14 may I also add that what you mentioned a while ago when you said
15 he was obsessed, we were talking about "obsessional". This
16 morning we said that Duch was somebody who was meticulous, a
17 perfectionist and, you know, for somebody who is obsessional,
18 meticulous, rigid, very keen on detail and who wants to do his
19 work very well, whichever be this work, this job, the
20 psychological mechanism of obsessional -- when this mechanism
21 has no reason to exist then the solution is depression because
22 this gives a framework to the obsessional person. This rigidity
23 gives him a framework of life.
24 This depression was also due to the fact that he lets go, you
25 know, the doubts that he had on the one hand and the zeal on the

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1 other and no longer understanding the line of Angkar. I can't
2 give you the timeline, the month, but for as long as he could
3 situate himself in the line of Angkar, it would suit him. It
4 suited him.

5 [14.15.41]

6 But the doubts and this feeling of discomfort increased when he
7 no longer had this legibility of the line of Angkar; this lack of
8 visibility, something that is physically very marking for
9 somebody who has an obsessional personality.

10 After the consequence there is that letting go. Sleep becomes a
11 way to go forward and you look for a new solution, a life
12 solution, a strategy of existence. Up until such time as this
13 strategy is found, one sleeps.

14 The other strategy is also that all his work, if I may say so, we
15 are here to understand -- to analyze, at any rate, the end of the
16 regime where there was the calling into question of his whole
17 work, as my colleague was saying. The end of his work -- that
18 was the reason why he could sleep a lot, sleep being the
19 equivalent of depression.

20 A. (MR. KA SUNBAUNAT): Let me just add through our experience
21 this type of symptom realized when the Khmer Rouge soldiers
22 attacked and entered Phnom Penh on the 17th April '75. The
23 majority of the urban residents were shocked, taken aback, lost
24 all their strength and could not do anything besides sleeping and
25 lie in one place with despair. Thank you.

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1 Q. Thank you for your response. Also in your report, on page
2 121 in the Khmer language in paragraph number 4 you wrote that
3 Duch still used lies in order to protect himself. In that sense
4 can you explain to the Chamber the facts which show that Duch
5 utilized a mechanism of lies to make himself survive or to
6 protect himself?

7 [14.18.18]

8 A. (MR. KA SUNBAUNAT): In our report we stated that Duch did
9 not respond or that he tried to avoid the questions or, in the
10 technical term, denial. And this does not mean lie.

11 A. (MS. SIRONI-GUILBARD): That is why I would say that we are
12 running up against a difficulty. There is a lack of context. We
13 spoke about lies and denial, but in what context, considering we
14 don't have the Khmer version before us? We apologize for that.

15 Q. Thank you very much. I think it could be a problem of
16 translation. It can be found in paragraph number 4 on page 121
17 of the Khmer version.

18 Let me move on with my last question before I provide the floor
19 to my international colleague.

20 Through the testimonies of the witness KW-31, and Chan Voeun, on
21 the 20th of April 2009 which states the accused was overjoyed,
22 laughing while he was beating up a victim or a prisoner or
23 detainee.

24 In this context, and as a psychologist, what would be your
25 assessment and analysis within this context?

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1 A. (MS. SIRONI-GUILBARD): The accused was laughing -- the
2 witness said the accused was laughing, was in a very good mood.
3 Now, of course he didn't talk about himself in this manner when
4 we met with him. We could actually put this description of Duch
5 on the basis of what was already mentioned this morning, namely
6 the disempathy; that is to say the fact of considering the other
7 as an enemy and therefore not being sensitive to the pain or to
8 the situation of terror and pain that is inflicted upon another.
9 [14.22.16]

10 One can also mention, as we did this morning -- we spoke about
11 perversity -- the fact that in this example that he be happy or
12 satisfied in his system of reference of a work well done,
13 thinking that the prisoners get what they deserve, but we don't
14 know whether this laughter is to be put on the account of
15 pleasure that Duch could have in seeing another suffer. It is
16 the notion of pleasure in suffering inflicted by another but I
17 think here we can but suppose it and we can't say much more about
18 it. In our assessment, in what we saw, in what we examined, it
19 doesn't allow us to conclude in this vein.

20 A. (MR. KA SUNBAUNAT): I am also unclear on one topic. During
21 our interview with him we did not receive this information or the
22 testimony. We can only provide our advice once we know all the
23 circumstances related to that prisoner: why he was detained, for
24 instance, and what did he do to upset, for instance, the
25 revolution of the Khmer Rouge, and what was his relationship with

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1 Duch or Duch's superior?

2 And during the time of the beating up by Duch on that victim, who
3 witnessed the scene and why Duch was in such a good mood and
4 laughing? So without the context it is difficult for us to
5 provide any further report or opinion.

6 Q. Thank you, Mr. and Madam Expert.

7 MR. TAN SENARONG:

8 And Mr. President, I do not have questions and I would like to
9 give the floor to my international colleague.

10 [14.24.49]

11 MR. PRESIDENT:

12 The international Co-Prosecutor, you may now proceed.

13 MR. AHMED:

14 Thank you very much, Mr. President.

15 BY MR. AHMED:

16 Q. And thank you very much, experts, for a very erudite report
17 which I'm sure will help this Chamber in determining as to what
18 happened in S-21 and in what context, and the extent of guilt --
19 if at all -- of this accused for those crimes.

20 You've been very extensively examined by the Chamber. Your
21 report was very erudite and detailed, so I'll not have many
22 questions, and I'm not a psychological expert. I'll still try to
23 ask some very simple questions in order to assist this Chamber in
24 the determination of the matters that it has before it. So I'll
25 just read about a dozen questions, if time permits -- otherwise

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1 less than that -- and seek your opinion on that.

2 You quoted Duch as saying that he had teaching in his blood.

3 Therefore, would it be correct to say that all his life he's been

4 a teacher; a very dedicated mathematics teacher before joining

5 the revolution; a very dedicated teacher at M-13 and S-21 to his

6 subordinates in the art and science of interrogation, torture,

7 detention; and thereafter, till he was arrested, as a teacher of

8 mathematics and other things in China, in other places on the

9 Thai border? Would it therefore be correct to say that teaching
10 is the hallmark of his life?

11 A. (MS. SIRONI-GUILBARD): Yes, sir, Mr. Prosecutor. We agree
12 with you.

13 [14.27.07]

14 Q. Would it also then be correct to say that, like a very good
15 student, he respects his teachers and mentors but, like a very
16 strict teacher, he ensures discipline, control, and obedience
17 amongst his students and those he controls?

18 A. (MS. SIRONI-GUILBARD): Well, the people he was teaching? Is
19 that right?

20 Q. Yes.

21 A. (MS. SIRONI-GUILBARD): We didn't ask the question directly to
22 the accused but we dealt with, at length, the theme of teaching
23 and transmission, the importance of the acquisition of knowledge
24 and the transmission of knowledge, know-how and indeed, a good
25 teacher -- somebody who claims to be a good pedagogue takes care

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1 to -- how should I say this -- watch over his teaching framework.

2 So I would say yes to your question.

3 Q. Thank you very much for that clarification. Now, after

4 joining the revolution, which he claims to have joined

5 voluntarily out of an idealism for Communism and leftist

6 ideology, he was detained for two years in the jail. In the

7 jail, when he was detained, he said -- and you have quoted -- he

8 lived in fear every day and was afraid of death as he saw

9 prisoners being taken to their death.

10 Would it be therefore correct to say that this experience of the

11 accused fashioned his treatment of his prisoners and his work at

12 M-13 and S-21.

13 [14.29.37]

14 A. (MS. SIRONI-GUILBARD): Maybe you're bringing up here the

15 question of the origin of the techniques that he was using.

16 These are questions that we brought up with the accused but we

17 were not able to reach a conclusion regarding this question, this

18 question which we also asked to ourselves, because he brought up

19 very often as well the influence of his French teachers and the

20 way that the French teachers would abuse the Vietnamese.

21 So what we can say, however, is that having been abused made us

22 think about the possibility of a traumatic organization of his

23 personality. That is to say the fact of having been abused might

24 have brought but not necessarily automatically -- but might have

25 led to his being zealous and to paying extreme attention to the

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1 abuse of other people in similar situations.

2 A. (MR. KA SUNBAUNAT): It is true that the accused was detained
3 for two years during the Lon Nol regime. But what is more
4 important for the accused is the revolution movement, the
5 movement to help the poor, the notion that he has been determined
6 to maintain. Since he joined the Communism movement of the Khmer
7 Rouge he was entitled the M-13's chairperson and he was compelled
8 to accept the post because he was not happy to take up the police
9 work.

10 However, as an absolute tool for the Party, he was in a situation
11 that he could not contest but to take the assignment. And as a
12 person who got used to doing the best thing if he had to do it,
13 otherwise he would not do it, then his commitment at M-13 was an
14 opportunity to search for the tactics to interrogate detainees
15 and to detain them.

16 [14.32.15]

17 However, the work was not very successful because detainees --
18 some of them could manage to grab the weapons from the guards and
19 escaped. He at that time thought that he would be removed from
20 the post because of committing such a mistake by allowing the
21 detainees to grab the weapon, to attack the guards, but his post
22 was not changed.

23 And he tried to challenge the offering of the post but during the
24 Communist regime the policy was very firm and strict in that it
25 could not be challenged, so he had to be compelled to really stay

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1 put to the duty and train the others too. So he had to be
2 committed that as a person who oversaw the facility he had to
3 make sure that no mistake or margin or room for error had to be
4 made. And his subordinates and he, himself, were not really
5 allowed to pay a visit to his relatives because he had to spend
6 most of his time or all the time at the facility.

7 I hope I answered to your question. If not, then you may please
8 ask us for more clarification.

9 Q. Thank you very much for your answer, Professor. I shall go
10 to a slightly different but in the same continuation of time
11 issue.

12 You have mentioned in your report, and it has also been discussed
13 this morning in this Court, that towards 1978 Duch become afraid
14 that he himself may be killed at S-21 because he saw his
15 professor, Vorn Vet, being sent to his death.

16 [14.35.11]

17 If this was the case, if he was subjected to such fear, why do
18 you think he continued with the Khmer Rouge movement till the
19 late 1990s where at least some of that fear, if not all, must
20 have diminished?

21 A. (MR. KA SUNBAUNAT): Thank you, Mr. Co-Prosecutor, for putting
22 this question to us. I also put the same question to Duch. I
23 asked him, after 1973 when he was committed and voluntarily
24 joined the Communist movement, he said that he was betrayed
25 because he noted the form of activities of the Communists, who

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1 actually at the beginning promised to find happiness for the
2 people but later on they tended to kill people, to make arrests.
3 And he said that it was too late to withdraw himself from the
4 movement. It was like what his mentor used to tell him, that a
5 politician is like a gear of a machine of a whole system. If any
6 one screw was to be removed from the whole mechanism then the
7 machine would collapse. Otherwise it would not happen.
8 So since the movement of Communist was fast-moving, he could not
9 manage to remove himself from the part of the system. And when
10 he noted that Vorn Vet was executed, he was subjected to fear
11 because he himself knew for sure that Vorn Vet was a very loyal
12 person but he ended up being killed. So he could ask himself it
13 was just a matter of time that he would too be executed.

14 [14.38.11]

15 So he was of the opinion that if he withdrew it would be more
16 dangerous than remaining in the movement. So instead he had to
17 show to the Party, or to Angkar, that he had been very honest and
18 to avoid being implicated, and I think this is a reasonable
19 excuse or reason to live up with such situation because everyone
20 during the regime would be put under great surveillance and
21 no-one could escape. Thank you.

22 Q. Can I ask this question to Professor Sironi-Guilbaud?

23 If somebody was to be in fear during the time he was heading a
24 security centre of the kind of S-21, a fear of death -- yet
25 during those three years eight months and less than a few days he

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1 would get married, procreate two children during that time, have
2 visits from your mother and father while at the same time people
3 were denied their right to life. They were being tortured.
4 Children, women, including pregnant women, were being killed.
5 What mentality would this demonstrate of that person?
6 A. (MS. SIRONI-GUILBARD): I would like to take advantage of your
7 question, which is so serious, in order to remind once again the
8 thoughts that we might have for the victims, because in no case
9 when experts are here present at the dock and that they must
10 explain the psychological functioning of the accused who is here,
11 the author of all of these crimes, we would like to remain
12 neutral in our role today as well as tomorrow when we might --
13 we'd like to remind you of our neutrality.
14 Well, to answer your question, of course we asked ourselves the
15 same question, but we can find here again a usual mental
16 mechanism in this kind of person. That is to say we can be at
17 the same time a good father and at the same time -- well -- at
18 the same time know that children are being killed in the
19 detention centre, and how to explain this? Well, the psychical
20 mechanism that we spoke about this morning is very much linked to
21 splitting. We partition aspects of ourselves. We refuse to ask
22 ourselves questions regarding certain feelings that we might
23 have. We do not have any feelings insofar that the other person
24 is dehumanized because he's considered as an enemy, including
25 children here.

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1 So it is because of this psychological mechanism, because of
2 disempathy as well, and because we consider the other as an
3 enemy, that it is possible and that we can create this partition
4 and that we can just go home and carry out our life without
5 feeling anything about this.

6 [14.42.05]

7 And also you must understand that this is an individual who had a
8 very high opinion of what he was doing; that is to say, to serve
9 Communism, Angkar, and that he was always persuaded that what he
10 was doing, it was for the common good; that is to say, for the
11 common good of that time, which was the common good of Angkar.

12 Q. Because my time is limited can I shift to another question
13 which is very relevant to your presence here, as to the
14 expression of guilt, if any, and the expression of remorse by
15 this accused?

16 Now, a lot of civil parties who are victims have come and told
17 this Court that they have not forgiven this accused because they
18 do not accept his remorse and, to my mind, there can be two kinds
19 of remorse; a general remorse that "I'm sorry for the crimes of
20 the Khmer Rouge" and a specific individualized remorse that "I'm
21 sorry for the crime -- of a victim of my crime".

22 Can you tell us the importance of a victim -- and now please put
23 yourselves into the shoes of a victim and analyze his personality
24 -- as to what kind of remorse he or she would expect from an
25 accused of a crime with which he is directly affected?

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1 [14.44.00]

2 A. (MS. SIRONI-GUILBARD): The kind of remorse that is expected
3 here is the fact of being able to put oneself in the shoes of
4 someone else in a true manner. Maybe the victims did not have
5 the feeling that Duch was really able to feel or to think, to
6 imagine what had happened to them, to imagine their suffering.
7 And we also explained the psychological mechanism of the accused
8 this morning and we also spoke about an evolution in these and of
9 a change. All of this to say that there is indeed an evolution
10 in his awareness of this and I can say that the way Duch
11 expresses himself today regarding the victims is not the same
12 than a few months ago, which is what we only noticed last week.
13 That is to say that somebody does not remain frozen in a way of
14 considering the victims. He's also someone who can move ahead
15 and who is moving beyond this state of disempathy.

16 Q. Do you think remorse without expression of complete guilt
17 about the crimes against that victim is of any consequence of
18 unburdening that victim?

19 A. (MS. SIRONI-GUILBARD): Certainly not. Of course not. The
20 question here of remorse and of the expression of guilt -- and we
21 thought about this in depth with my colleague here present -- and
22 also indeed to bring up the notions of the shaping under the
23 Khmer Rouge regime and the cultural expression of this guilt and
24 remorse, but what we're expecting in particular in the Western
25 way of understanding this kind of criminal -- this criminal

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1 against humanity -- well, we expect that there be a manifestation
2 of this guilt and it can be manifested in very different ways:
3 by depression, by suicidal feelings, by weeping. We have this
4 idea in mind and indeed many people who have this kind of history
5 as Duch -- well, when they feel guilty, this is how they express
6 their guilt.

7 [14.47.02]

8 This is not the case, however, for the accused and where we
9 believe that there is a real question in the accused's mind is
10 that there is not only acknowledgment but also the fact that he
11 asks himself what he may do in order to repair, and the question
12 of reparation is a burning issue in his mind. And we concluded
13 that it's not a question due to circumstances, it's not a
14 question of strategy; it's a real question in his mind. Even in
15 relation to the victims there is development in his psychology.

16 Q. And one last question on this issue of remorse and guilt.
17 Would the victims -- and once again, I would request you to think
18 from the perspective of a victim -- be satisfied and their
19 suffering be unburdened if an accused were to express general
20 guilt in the sense, "I'm sorry for the crimes of the Khmer Rouge
21 but I was not directly responsible"? Would this be of any
22 consequence to the victims?

23 A. (MS. SIRONI-GUILBARD): No, indeed, Mr. Co-Prosecutor. I do
24 not think so. I cannot of course speak instead of -- in the
25 victim's place, but you asked us to put ourselves in the position

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1 of the victims and I'll say again, certainly not.

2 But, however, the question that we must maybe have in mind
3 regarding Duch's character is that he is always reasoning as a
4 mathematician and he's always reasoning according to the rules of
5 logic. He is willing to accept what is proven, and what cannot
6 be proven, well, he does not accept it.

7 [14.49.18]

8 For example, I think he refuses to give full responsibility to
9 the Khmer Rouge regime for this but he accepts the full
10 responsibility on himself for what happened at S-21, so this way
11 of functioning, this psychological functioning, is part of his
12 personality. But it doesn't really help or relieve the victims,
13 however, but I think it's also important to say that he's asking
14 himself the question -- the question of what he could do to help
15 and what he could do to repair all this harm.

16 A. (MR. KA SUNBAUNAT): Actually I share the same opinion as
17 Madam Françoise Guilbaud, but as a victim I may not be in the
18 position to express my psychological reaction or my individual
19 opinion because I am here to perform the duty, the standardized
20 or internationalized duty.

21 MR. AHMED:

22 Mr. President, I understand I have about five to seven more
23 minutes but would I be, with your indulgence, granted another
24 additional five minutes and I shall conclude this line of
25 arguments?

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1 MR. PRESIDENT:

2 You may now proceed, please.

3 [14.51.16]

4 MR. AHMED:

5 Thank you, Mr. President.

6 BY MR. AHMED:

7 Q. Professor Sironi-Gilbaud, a lot of victims who have come to
8 this Court have said in public and before this Court that they do
9 not understand this very mathematical psychology of the accused
10 that you mentioned that he continues to feel this day.

11 He refuses to accept, according to them, their victimhood because
12 of absence of a document from S-21. The accused has said, not in
13 all cases but in a number of cases, that if there is no name in
14 the prisoners list he cannot acknowledge that that victim went to
15 S-21, or if there is no other document from S-21, he would not
16 acknowledge the victimhood of that victim.

17 Victims, as a result, have felt a sense of non-acknowledgment by
18 this accused of their victimhood, despite the fact that he claims
19 to express remorse and guilt.

20 This is just a comment. Would you wish to say anything on that
21 otherwise I can proceed to my next question?

22 A. (MS. SIRONI-GUILBARD): We are here; we have taken an oath
23 this morning to say all of the truth. This is a comment indeed,
24 but I would like to add one of the themes that was brought up
25 last week with Duch regarding his development. We focused on his

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1 psychological evolution to see how far he moved ahead and where
2 he stagnated.
3 [14.54.16]
4 Religion for him is certainly a therapy, and he says it himself,
5 and I feel that I may say this before the Chamber. He brought up
6 the question in Christianity of a precept which says you will
7 love God or -- sorry, you will love the other the way God loves
8 you. And so we were speaking here about enemies, we were
9 speaking about the others, we were speaking about the victims and
10 those who do not think like us, and the discussion that we had
11 was in way just an ordinary discussion.
12 We were really talking about -- we were really trying to
13 understand where the accused was standing in relation to this
14 awareness of the other, and he said that he was -- that it was
15 not easy for him, that he was still facing difficulties stepping
16 out of this mathematical way of thinking that you spoke about,
17 and out of this Khmer Rouge way of thinking as well.
18 And it's not because, of course, someone says something that we
19 necessarily have to believe it all the way. And, of course, we
20 spoke about this. While in Duch's life today there is indeed
21 development; it is difficult for him, but he is not the way he
22 was even a few months ago.
23 What I want to say here, in short, is that there is this
24 development and this awareness or developing awareness -- let us
25 say at least -- of the other, of the victim, and it's not

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1 automatic of course and it's not easy for, of course, the accused
2 who is using religion as a therapy.

3 Q. Thank you, Professor. And my last two questions, Mr.

4 President, would be on the issue of rehabilitation.

5 Now, you have devoted a short but very important chapter on the
6 question of rehabilitation in your report, and you say that the
7 accused may be rehabilitated amongst ordinary civilian people
8 because he has shown that tendency of living in civilian areas.

9 [14.55.57]

10 Would you agree that for the purposes of rehabilitation, just as
11 it is important for the individual to be ready for

12 rehabilitation, it is equally and, in fact, maybe more important
13 for the rehabilitating surroundings -- the people among whom he
14 is rehabilitated, are also ready for that rehabilitation.

15 Most of the people in this country have some kind of suffering
16 from the times of the Khmer Rouge. Do you think, despite your
17 finding that he may be rehabilitated, unless there is an absolute
18 individualized remorse and an absolute unqualified guilt for the
19 crimes, that rehabilitation may be difficult because people may
20 not find it acceptable to have an unremorseful person amongst
21 their midst?

22 And I'm not asking only in the Cambodian context, and that's why
23 the question is directed to Professor Sironi, as to how would a
24 victim perceive this of an accused from whom he or she may have
25 direct feeling of victimhood.

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1 MR. PRESIDENT:

2 We note Mr. François Roux is on his feet. You may proceed.

3 MR. ROUX:

4 Thank you, Mr. President. I object to this question, which is
5 based on the principle, that is based on the assertion that Duch
6 would not have any form of individual remorse and that Duch would
7 not have acknowledged the totality of his responsibility.

8 [14.58.18]

9 This is what the Co-Prosecutor is saying, but you cannot ask an
10 expert to answer a closed question such as this one. You can
11 maybe say that the prosecutor asserts that there is not full
12 recognition of responsibility, but do not state this as being a
13 reality. This is your hypothesis.

14 Thank you, Mr. President, and I would like this to be corrected
15 indeed.

16 MR. PRESIDENT:

17 The Chamber would like now to give the floor to the international
18 Co-Prosecutor to provide his observation regarding the objection
19 made by the defence counsel.

20 MR. AHMED:

21 Your Honours, my learned friend is indeed a very experienced
22 counsel at international tribunals. At those tribunals,
23 including at this tribunal, there's a difference between a fact
24 witness and an expert witness. There is settled jurisprudence
25 that while with a fact witness you can only ask them about what

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1 they saw, heard or went through. With an expert, because he or
2 she has been asked by the Court to come and assist because he has
3 a special expertise, questions can be asked to elicit their
4 opinion. That's why Your Honours give direction to a fact
5 witness that you shall only say what you saw, heard, or went
6 through.

7 Your Honours did not give that direction to these honourable
8 experts because they are experts from Cambodia and
9 internationally who are assisting Your Honours in finding out
10 about the psychological characters of this accused and its
11 relevance for ascertaining his liability for the crimes for which
12 he is being indicted.

13 So my limited response is that questions seeking opinions can be
14 asked to experts. Certainly had they been fact witnesses, those
15 questions would have been inadmissible.

16 [15.02.00]

17 MR. PRESIDENT:

18 Mr. François Roux, you may respond.

19 MR. ROUX:

20 I probably didn't make myself understand properly. I am not
21 calling into question the possibility of asking the experts their
22 opinion. I am objecting to the fact that you are affirming
23 something as if it were the truth while it is your opinion. So
24 do tell the expert that the prosecutor believes that he has not
25 said everything and under those conditions can he be

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1 rehabilitated? But do not tell the expert he has not said
2 everything. I have found that he has not said everything and
3 therefore is he -- can he be rehabilitated?

4 Explain to the expert that it is your opinion that you are
5 giving. That is the reflection that I was making.

6 Thank you.

7 MR. PRESIDENT:

8 It is now an appropriate time for an adjournment. And it is
9 important for the interpreters to have a break. So the Chamber
10 will have 15 minutes break and we will resume at a quarter past
11 3.

12 Court officer, can you provide necessary refreshments to the
13 experts and invite them to be back before the Chamber at the said
14 time.

15 THE GREFFIER:

16 All rise.

17 (Judges exit courtroom)

18 (Court recesses from 1504H to 1519H)

19 (Judges enter courtroom)

20 MR. PRESIDENT:

21 Please be seated. The Chamber is now back in session.

22 I would like now to give the floor to Judge Cartwright to speak
23 to the International Co Prosecutor. Please take the floor.

24 JUDGE CARTWRIGHT:

25 Thank you, Mr. President. The concern of the defence was related

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1 to the basis on which you put the question to the experts. If
2 the prosecutor could reframe the question, for example "if the
3 Trial Chamber were to find" or some other appropriate manner,
4 then that would be acceptable.

5 [15.20.03]

6 Thank you, Mr. Prosecutor.

7 MR. AHMED:

8 Thank you, Your Honour, for that direction and I shall abide.

9 BY MR. AHMED:

10 Q. Dr. Sironi-Guilbaud, it's not for any party to rule on the
11 guilt or remorse or its extent of the accused. It's for these
12 learned Judges to decide at the end of the trial. Therefore,
13 whatever I am going to tell you is my interpretation of what the
14 current situation is or may be.

15 Therefore, can I put it to you that should -- the Trial Chamber
16 were to conclude that the guilt, the expression of guilt by this
17 accused is not complete, not unqualified, not individually
18 directed at the victims, and if the remorse similarly is not
19 individually directed and very general, how would it be for
20 victims -- amongst whom clearly this accused will have to be
21 rehabilitated if the need arose -- perceive that and how would
22 they see the rehabilitation of this accused amidst them?

23 A. (MS. SIRONI-GUILBARD): When I -- well, I wanted to say that
24 I'm a bit embarrassed by your question, or bothered by your
25 question. We'd answered the question on whether the accused can

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1 be rehabilitated as a function of the psychological analysis that
2 we carried out. You evoked the context, the victims, and I would
3 rather -- if you will allow me -- give the floor to my Cambodian
4 colleague.

5 [15.22.38]

6 A. (MR. KA SUNBAUNAT): Within the context of what you proposed
7 and per our report we can say that the accused can be
8 rehabilitated. It is our view that before the accused was
9 detained he had lived in the community and also worked as a
10 primary school teacher. This shows that he made himself to live
11 in the new society, although he had shown his remorse and of his
12 acknowledgment of guilt not toward any person in particular.
13 This behaviour reflects the notion that he can be rehabilitated
14 and reside within the society. And what I said is based on my
15 interview about his circumstance before his arrest.

16 MR. AHMED:

17 Mr. President, last follow-up question and I shall finish with my
18 examination.

19 BY MR. AHMED:

20 Q. Now, once again this question is directed to both the
21 experts.

22 It is the case of the prosecution that from at least late sixties
23 till the time he was arrested, the accused was living in areas
24 sympathetic to the Khmer Rouge. It is the prosecution's case
25 till at least 1979 he was clearly living in areas sympathetic to

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1 the Khmer Rouge and, as he told you, he was living on the Thai
2 border amongst the Khmer Rouge till at least he was arrested.
3 During this time, at least after 1979, for a large chunk of time
4 he was living under a false identity. This is the prosecution's
5 case. He was living under a different name, to the extent that
6 when he was discovered by two journalists -- and it's quoted in
7 their books -- he was angry.

8 [15.26.06]

9 How would you perceive the view of the victims in whose midst
10 he'll be living for the first time outside the areas sympathetic
11 to the Khmer Rouge? And if I may rephrase and make my question
12 very small, how would your perception be different of the
13 accused's acceptability for rehabilitation if you were to be told
14 that those areas were sympathetic to his cause, and now the
15 rehabilitation will happen -- those who were directly considering
16 themselves to be the victims of the Khmer Rouge?

17 You may or may not wish to answer this question but this is our
18 suggestion. Will you make a comment on that?

19 A. (MR. KA SUNBAUNAT): The circumstance of living of the accused
20 from 1980 until the day of his arrest, he resided at the Khmer
21 Rouge controlled zone. Although later on the people living there
22 sympathized with the former Khmer Rouge, it is still a danger for
23 someone or a person to live there and it could be for someone to
24 risk their life living in that area. I also speak through my
25 personal experience.

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1 When he relocated to live near the Thai border and the frequent
2 changes of his name showed the concern he had and his attempt not
3 to be located or that he might be found through his actual name,
4 Kaing Guek Eav. So this is a pattern of concealment of his
5 identity and at that time there was no public announcement yet of
6 the government's policy on reconciliation. And later on, through
7 the process we have witnessed the anger of the public.

8 [15.29.02]

9 However, with the implementation of the win-win policy of the
10 government, certain former Khmer Rouge leaders reintegrated
11 themselves to live within the government controlled area,
12 including Malai, Samlout and Pailin. Therefore, under the
13 reconciliation policy of the government, despite their anger the
14 general public seems to be able to manage their anger and allow
15 the integration of the former Khmer Rouge cadres or people.
16 Therefore, based on personal experience and the general
17 observation and in addition to the ability of the accused, who
18 used to -- made himself gone through the risky situations and
19 that he still survived. It reflects his ability to sustain and
20 that the reaction from the general public does not seem to be a
21 life-risking situation for him. He could adapt himself to live
22 in this society, and previously he lived with his parents. Later
23 on, he moved to be on his own and, subsequently, he lived within
24 an unclear certainty of self-suspicion and suspicion on everybody
25 else. And even if living in a life-risking situation, he still

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1 could adapt himself to such a condition.

2 And with the reconciliation policy of the government, it seems
3 that it provided him with a better opportunity to live and to
4 re-integrate himself in the Cambodian society amongst those
5 general public. Thank you.

6 MR. AHMED:

7 Thank you for your indulgence, Mr. President, Your Honours. I
8 have no further questions.

9 [15.31.50]

10 MR. PRESIDENT:

11 Mr. Alain Werner, you take the floor.

12 MR. WERNER:

13 Mr. President, Your Honours, just a very quick request. As you
14 know, the international expert started this morning by addressing
15 herself directly to the victims and she did the same this
16 afternoon. And as you know, the victims are not present for the
17 first time since the start of this trial to listen to this
18 expert, contrarily to all of the experts.

19 So, therefore, we are asking this Chamber to please explain to
20 both experts why they are testifying in the absence of the civil
21 parties and why the civil party lawyers may not put questions to
22 them, because we think that this is a normal thing and we would
23 like this information to be clearly communicated to both experts.

24 Thank you.

25 (Deliberation between Judges)

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1 MR. PRESIDENT:

2 Mr. Alain Werner, could you please be informed that the Chamber
3 is not obliged to explain to the experts in relation to their
4 testimony, and regarding the decision made by the Trial Chamber
5 in which the civil party lawyers are not allowed to put questions
6 to the experts or to the accused regarding the testimony on
7 character of the accused, the decision is clear and the grounds
8 for the decision will be made available in due course.

9 And the decision has been made based on the majority decision,
10 although there was a dissenting opinion by one of the Judges.

11 [15.35.41]

12 Mr. Alain Werner and the parties to the proceedings are quite
13 familiar with the proceedings before the Tribunal because you
14 also know how much time is needed for the translation of any
15 decision made by the Tribunal. So we believe you have already
16 been well-informed already.

17 The civil party counsel, you may proceed, but with new matter not
18 with the same matter.

19 MS. MARTINEAU:

20 Mr. President, this point is not completely new, although I'm new
21 in this Court, of course. Simply, the issue that was brought up
22 by my colleague, Alain Werner, was important to raise because
23 it's important that the experts know why the civil parties are
24 not there.

25 Of course, we will wait for the explanation, but if the civil

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1 parties are not there, it is that they feel that they have been
2 subtracted from a right and a right has been taken away from
3 them, and they wish to demonstrate or to express their
4 dissatisfaction and their feeling of being excluded from this
5 very important hearing in which they would have been able to
6 understand because it's also their purpose to understand the
7 accused and to put questions to him and to the experts.
8 And I believe that it's important that the experts be at least
9 aware of what's going on. The civil parties are not there. They
10 asked their lawyers to be here. We are here. We respect the
11 Court so, therefore, I believe that it's important that this be
12 stated. Thank you.

13 MR. PRESIDENT:

14 We would like to reiterate our position and we stand by it.
15 The defence counsel, you are now given the opportunity to put the
16 questions to the experts.

17 [15.37.41]

18 MR. KAR SAVUTH:

19 Mr. President, thank you. Your Honours.

20 BY MR. KAR SAVUTH:

21 Q. Good afternoon, Madam Francoise Sironi-Guilbaud and Mr. Ka
22 Sunbaunat.

23 Could you please help to clarify whether the apology, the
24 expression of remorse, is genuine or not?

25 A. (MS. SIRONI-GUILBARD): The -- how should I say this -- the

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1 psychological assessment is not there to ascertain the truth or
2 it's not there to distinguish what's true from what's not; that's
3 not our role. Our mission was to shed light for the Chamber on
4 the psychology of the accused.
5 What we may say is that in terms of remorse or regret or in terms
6 of guilt feelings, if we revisit the logical thought pattern and
7 if we get back to that, there is development indeed in this
8 person's awareness of what he perceives, and we can see that
9 indeed that there has been change, developments in what the
10 accused has been saying to us since the start.
11 So speaking about guilt is difficult of course because we are in
12 an inter-cultural context in this trial, and also understanding
13 how guilt is expressed in one culture and how it's expressed in
14 another culture is also an issue and how it's expressed because
15 in Western cultures we're used to seeing that guilt is expressed
16 as something that is lived. And as I was saying earlier on,
17 there might also be somatic problems related to this. There
18 might be depression, there might be all kinds of things that go
19 on when we experience guilt and that maybe are not seen in the
20 accused, however.
21 But maybe my colleague might be able to say something about guilt
22 as well. Is guilt a universal concept or not? Or how it is
23 expressed, depending on the different cultural contexts? And we
24 stayed at that question, so my conclusion would be to say that we
25 cannot answer a question regarding the truth but we can answer a

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1 question regarding the accused's development in regards to the
2 awareness of what he did to the others, and in regard to the
3 awareness of his acts and the fact that he is able to take on his
4 responsibilities.

5 [15.42.12]

6 A. (MR. KA SUNBAUNAT): I may add that the Tribunal wishes to
7 find the truth, the genuine truth, but we were not supposed to
8 search for the apology or the forgiveness or the remorsefulness
9 the accused expressed lately and we did not really attempt to
10 work on that. However, the first time I met with Duch I did not
11 ask him any questions yet but he already expressed his opinion
12 that he would seek forgiveness and would express his
13 remorsefulness.

14 So whether it is a genuine expression or not, I may not be in the
15 position to verify it but I have witnessed the situation.

16 Q. Thank you very much. I would like to proceed to the next
17 question.

18 In your report you indicated that the accused is a person who is
19 easily affected and very emotional, and easily affected by the
20 others. Can you please tell the Court whether this kind of being
21 easily affected by the other or influenced by the other had been
22 well embedded in the accused since he was born?

23 A. (MR. KA SUNBAUNAT): I would like to respond that the influence
24 he receives from the others -- of course he has been influenced
25 by the others but only in given circumstances. For example, he

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1 was influenced by the monks, by his teachers and by the suffering
2 Cambodian people have had. So these are the influences he has
3 been affected by.

4 [14.45.51]

5 However, when it comes to the Communist regime the influence, as
6 what you referred to and as what the accused himself already
7 indicated clearly, that he chose the Communist regime because at
8 that time he was influenced by the surrounding environment --
9 internal and external ones -- because he said when he worked and
10 when he witnessed the exploitation of the poor, for example the
11 excessive interest rates the rich have imposed on the poor when
12 the poor were lent the money -- and that because he was so poor
13 that when his bicycle was stolen then he could not proceed
14 further with his education, and that he contributed some of his
15 salary to help the movement of the revolution.

16 And on top of this the Maoism and the Communism were taking the
17 place of the existing rule that many believed that the poor would
18 be better living in such a regime under Communism. So he
19 believed that there would be only Communism, the Communist rule
20 that would imposed on the country, that the people could liberate
21 themselves from the poverty. That's why he was influenced by
22 such ideology -- Communist ideology.

23 In his ways of life during the regime, the Khmer Rouge regime,
24 although he did not want to take some assignments he had to be
25 compelled to be promoted to -- or to accept the offer, the

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1 position of the chairman of the detention facility and that he
2 had to meticulously execute his duties, although he was not
3 pleased with the position as the Chairman of S-21, under the
4 duress from his superior, his former teacher who influenced him a
5 lot, he had to be abided by the orders and the duties.
6 Later on he started his new life living together in the
7 community, becoming a teacher -- a schoolteacher. So without any
8 influence from the society he could not have been working as a
9 teacher again. And most importantly, he has received influence
10 from the others and at the same time he adjusts, adapts himself
11 to the environment regardless of the harsh environment or modest
12 one. So by this I can say that he is easily influenced by the
13 others.

14 [15.50.09]

15 Q. Thank you. I note that the accused is weak and that because
16 of poverty which he and the family has lived with since his born.
17 Do you think that because of these problems the accused could
18 have lived with some kind of mental health problem.

19 A. (MR. KA SUNBAUNAT): This is a good question. Have you
20 finished your question yet; I'm sorry? It is a good question
21 indeed.

22 When he was young the accused lived in a poor family in the rural
23 area and the family condition was burdened by the debt his father
24 owed to the others. And this bond of debt and the difficulties
25 he had encountered did not make him weak. Instead it helped make

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1 him find out the cause, root of the problems. Ad it made him
2 study hard and he became one of the best students in class.
3 [15.51.49]
4 So having compared the difficulties he had encountered, people
5 could argue that it would be hard for him to become a good
6 student in Phnom Penh because during that time anyone who could
7 have done or gone that far to school, everyone had to really --
8 financially capable.
9 So if he had mental health problems it would be depression only,
10 not other. And as to this depression, the symptom of such a
11 problem is that the person would not feel encouraged to work and
12 his memory becomes weakened. At that time, if he lived with that
13 kind of mental health problem, he could not have managed to
14 finish his teaching degree. And the reason he chose to study
15 mathematics reflects that he is the one who loves logic.
16 It reflects that the difficulties he had encountered made him try
17 to understand, to establish the truth or the fact of the
18 problems, and this helped build his stance and resilience, so
19 this helped him overcome the depression. So that's why he chose
20 mathematics as a field of study, which reflects that his
21 mentality has been good. So having experienced difficulties does
22 not really deteriorate the person's mentality, but the opposite
23 -- it builds up resilience in the individual.
24 Q. Thank you. At S-21 the accused knows for sure that all the
25 confessions were not true. The accused still admitted or

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1 accepted these untrue confessions and annotated on them to be
2 sent to the superior. Does this work affect the accused's mental
3 problem or fitness?

4 A. (MR. KA SUNBAUNAT): For ordinary people this type of action
5 would lead them to extreme remorse and it could ultimately affect
6 the mental being, serious mental being of that person. But in
7 hindsight, his stand was firm due to his other lessons and
8 experience. Particularly in the report we also show that his
9 position from adolescence to adulthood was further strengthened
10 by the Communist ideology and that made him a strong person to
11 face those challenges.

12 [15.56.23]

13 Although we are not certain of the feeling of remorse, we can for
14 certain know of his ability to challenge such circumstances.

15 Thank you.

16 Q. Thank you, Mr. Professor.

17 A. (MS. SIRONI-GUILBARD): Yes, thank you. I would like to add
18 several things.

19 First of all, regarding the last point that my colleague brought
20 up, we spoke earlier on about regrets, guilt, remorse, and since
21 we are not sure of the remorse I would say that it's more the
22 question of the feeling, of living this feeling of guilt. It's
23 not so much the question of regret or remorse, it's more the
24 feeling of experiencing this and also of course we might have
25 different opinions regarding this.

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1 And regarding his childhood, I would like just to add that I
2 agree with my colleague and I would like to stress the impact of
3 the feeling of debasement or maybe the feeling of inferiority,
4 given what was said, which also led Duch to surpass himself and
5 to work his way out of this situation.

6 [15.58.25]

7 And now regarding the confessions, and given that he knew that
8 they were confessions that were not truthful, we should not
9 forget that what was important for Duch was probably pleasing his
10 superiors and in particular when Son Sen was his superior.

11 And this maybe can explain that by writing out confessions in the
12 way that was expected of him -- that is to say always justifying
13 those who believed that they were spies or that there were all
14 kinds of machinations going on -- well this was allowed to
15 preserve his position at S-21 and in that way indeed he kept on
16 feeding the system.

17 Q. Thank you, Madam, for your response. The accused repeatedly
18 declares that all the crimes committed at S-21 are his
19 responsibility and that he would not allow any of his
20 subordinates to be involved or implicated alongside with him
21 because those subordinates directly received orders from him.
22 My question is why the accused has this type of psychological
23 feeling towards his subordinates?

24 A. (MR. KA SUNBAUNAT): Based on our analyzing of the situation
25 and the process, and also his mental building from childhood, it

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1 seems that he is a kind of person who is conscious of other
2 people's wellbeing. In French, we would say -- or in English,
3 "altruism" and this behaviour made him considerate on those
4 people who were suffering and that led him to protest against the
5 government in order to find in the situation a betterment for the
6 people and he even abandoned his family in order to join a
7 movement as he believed that movement -- that line would be able
8 to find justice and peace for the Cambodian people. This
9 attitude also reveals the feeling of pitiful to other people
10 which further developed.

11 However, regarding his responsibility at S-21, a person who was
12 in a chairmanship who issued orders was Duch and issuing orders
13 or teaching the interrogation methods were also organized by him
14 with the intention of showing that he was a role model for them
15 to follow.

16 [16.02.42]

17 And in his name, as someone who was responsible, he had the view
18 that from the beginning he was the responsible person because
19 everything was organized and managed based on his supervision.
20 People or his subordinates had to follow his orders so, one,
21 because of his protective idea of other people and do not want
22 other people to suffer with him and, two, because of his role as
23 the chairman of that centre. These two factors combined together
24 make him feeling responsible for all those crimes.

25 Q. Thank you, Doctor, for your response. I also have another

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1 question on this topic which I would like you to clarify.

2 In your report, you conclude that -- you conclude on page 55 that
3 Duch was unconscious of other people's feelings from the
4 beginning until the present day; however, his student -- which
5 mentions on page 33 -- describes him as an honest person,
6 determined and loyal, and always assisted the poorer people. So
7 to me these two statements seem to contradict each other and what
8 you have explained is in agreement with what was said by his
9 student, but it is in the contradiction to the other statement
10 which says that Duch was unconscious or inconsiderate to other
11 people's feelings; would you be able to shed light on this?

12 A. (MS. SIRONI-GUILBARD): Well, for this, we'll have to come
13 back a little bit concerning the altruism that was mentioned by
14 my colleague because quite obviously concerning Duch --
15 concerning everything that we know about him here, this question
16 has altruism -- what my colleague called altruism this could be
17 called an altruism under conditional altruism; wishing to share
18 the same vision of the world or to build the same vision of the
19 world. It is not an altruism as we can understand it in French,
20 for example. It is a targeted altruism towards the construction
21 of a new society.

22 [16.06.23]

23 What you have mentioned, I don't see any contradiction in what we
24 have written in the report. The question of this empathy
25 revealed itself later in a specific context; namely, when he took

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1 his function M-13, S-21. One is not dis-sympathetic; one becomes
2 dis-sympathetic.

3 And we spoke also of the role of Stoicism which, you know, shaped
4 his role. At some point, in one's life, one can -- what was
5 described by his students, you can be described in that way and
6 later, convinced of an idea to which one devotes one's whole
7 life, you can do what he was led to do; in other words, consider
8 others as enemies and as of that moment, you are in a dimension
9 of dehumanization.

10 Q. Thank you very much. Let me now ask my last question.

11 The grandparents of Duch -- on both sides -- they had Chinese
12 origin; thus the Chinese origin and the feeling of having
13 ancestral origins from China make him believe to have a society
14 or social -- a society of Communism in the same way as China
15 people want?

16 A. (MR. KA SUNBAUNAT): When we talk about the ancestors and the
17 transferring of feeling from the grandparents to the
18 grandchildren or the chromosome factor, it could only exist
19 physically; only the physical appearance can be passed on from
20 your ancestor. But it is unlikely that the feeling can also be
21 transferred from your ancestor.

22 [16.09.40]

23 In research of a twin coming from the same ova, it means they all
24 had physical similarity, but they were separated and they were
25 raised separately and when they grow up, their feelings are not

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1 the same. This example clearly shows that even if Duch's
2 ancestors had Chinese origin and their customary way of practice
3 was China -- was from China, it doesn't mean that Duch had to be
4 traited such behaviour or feeling. Wherever we live, regardless
5 of the location, we have to hang onto an identity. For instance,
6 Cambodian migrants who might live in Australia or in America,
7 they always try to locate other Cambodian migrants to be their
8 friends, in order to form ideas, to discuss amongst themselves.
9 So this tendency helps them to form an identity of that group.
10 In Duch's case, I believe that Duch's identity originated from
11 his Chinese ancestors and there might be similar traits he
12 obtained from his ancestors and then through his parents, as his
13 parents observed and practised certain Chinese customs and
14 traditions. This does not mean he received a complete trait from
15 his ancestors.

16 Also, during that time -- even if I was born at a later stage --
17 the ethnic people living in Cambodia, including the Vietnamese
18 and Chinese, who came to settle in Cambodia, apparently they were
19 degraded or devalued by the Cambodian people and that hurt their
20 feelings and made them strive to survive, to gain their dignity.

21 [16.12.34]

22 And this does not mean they want the same policy as practised and
23 used in China because they are educated in the Cambodian school,
24 so their way of thinking, their mentality, is about Cambodian
25 culture, though there might be some traits of Chinese origin with

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1 them.

2 Also, at that time, Cambodia had relationship with China, and Mao

3 Tse Tung held his Communist movement and activity and was

4 successful in China, and that had certain influence on the

5 Cambodian-Chinese ways of thinking. And not because he had

6 Chinese origin, but he believed in the lines or in the policy of

7 communism that he believed in that would help his people.

8 Further on, it was his idea to help those poor people whose

9 majority was Cambodian, so that their standard of living would

10 improve.

11 So we could, therefore, conclude that the trait of feeling

12 customary practice do not pass on from the ancestor, but it is

13 the way of nurture that he earned all these traits.

14 Q. Thank you, Mr. and Madam Expert. I no longer have questions

15 for you and, with the President's leave, I would like my

16 international colleague to put questions to these two experts.

17 MR. PRESIDENT:

18 International defence counsel, you may proceed.

19 [16.14.50]

20 MR. ROUX:

21 Chairman, given the hour, I am wondering whether it would not be

22 better for me to ask my questions tomorrow morning. I have about

23 40 minutes remaining, but I think it would be better for

24 everybody if we waited until tomorrow.

25 (Deliberation between Judges)

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1 MR. PRESIDENT:

2 After discussion, the Chamber has the view that the 40 or 50
3 minutes for the international defence counsel is going to be a
4 long time and is going to put more stress on the interpreters as
5 well as on the experts. Therefore, the Chamber will adjourn the
6 hearing today and we will resume tomorrow morning starting from 9
7 a.m.

8 And for Mr. and Madam Expert, the questioning for you has not yet
9 finished, and the Chamber would like to invite you again to the
10 Chamber tomorrow morning, starting from 9 a.m. It is likely that
11 it will take only one hour of your time tomorrow morning.

12 Security guards, take the accused back to the detention facility
13 and bring him back before 9 a.m. tomorrow. The hearing is now
14 adjourned.

15 (Judges exit courtroom)

16 (Court adjourns at 1617H)

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