



Ieng Sary's Doctor Testifies Before the ECCC

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Proceedings in Case 002 against accused Nuon Chea, Ieng Sary, and Khieu Samphan resumed Wednesday, May 23, 2012, after being postponed a day and a half due to Ieng Sary's poor health. Witness TCW 487 had been scheduled to begin testimony Monday, May 21, 2012, but as Ieng Sary has not waived his right to be present at trial, the examination of this witness has been postponed.

The Court began Wednesday's proceedings by hearing testimony of Ieng Sary's doctor, Lim Sivutha. In light of Dr. Lim's testimony, which recommended continued rest for Ieng Sary, the Chamber agreed to postpone proceedings until Monday, May 28, 2012.

Ieng Sary Does Not Waive His Right To Be Present For Witness 487's Testimony

Before calling Dr. Lim to the witness stand, President Nonn consulted Ieng Sary's defense counsel for commentary regarding the accused's condition. Ieng Sary's co-lawyer, Michael Karnavas, informed the Court that he had spoken with his client that morning. Mr. Karnavas subsequently delivered the following statements on behalf of Ieng Sary:

- Ieng Sary waives his presence during the parts of today's proceedings that concern his health.
- Ieng Sary has no objections to public disclosure and dissemination of information relating to his health.

- Ieng Sary does not waive his right to be present during the examination of next two witnesses scheduled to testify, as both witnesses “relate directly or indirectly to acts or conduct alleged against him.”
- Ieng Sary is willing to waive his presence for other witnesses who “do not directly touch upon” acts alleged against him, as he does not wish to delay future proceedings.

Concerning his client’s health status, Mr. Karnavas informed the Court that Ieng Sary becomes dizzy when he attempts to concentrate beyond a five-minute time span. For this reason, Ieng Sary has requested there be no proceedings for the remainder of the week concerning the two witnesses mentioned above. Mr. Karnavas concluded by clarifying that Ieng Sary does wish to be present for the examination of the witness waiting to be called today but feels he should not come to court today or tomorrow.

After President Nonn opened the floor for questions, Assistant Prosecutor Dale Lysak asked for clarification regarding the identity of the second witness Ieng Sary wishes to see examined. Mr. Karnavas responded that he believed the next witness to be called (after TCW 487) is Witness TCW 583.

President Nonn Questions Dr. Sivutha Regarding Ieng Sary’s Ability to Participate In Trial

After inviting Dr. Lim into the Chamber, President Nonn clarified to the doctor, “You are invited to give your opinion in relation to the health condition of Ieng Sary regarding his hospitalization in the last couple of days and his following discharge. The chamber will consider your opinion in regards to the health condition of the accused as to whether he is able to participate in the proceedings of this Chamber.”

President Nonn proceeded in asking the doctor a series of preliminary background questions. Dr. Lim informed the Court that he received his diploma degree at the Faculty of Medicine in 2003, after which he completed his “specialized skill in heart disease” in 2004 in Paris, France. Following his medical study in France, Dr. Lim began working at the emergency section of the Khmer-Soviet Friendship Hospital, where he is presently employed.

Dr. Lim was next presented with a doctor’s report sent to the trial chamber on Monday, May 21, 2012. President Nonn followed with questions regarding Ieng Sary’s condition since he entered the hospital on May 17, 2012.

Dr. Lim informed the Court that Ieng Sary had been admitted to the hospital on the morning of May 17, 2012, exhibiting symptoms of frequent coughing, breathing difficulties, and dizziness; after being treated at the emergency section of the hospital, Ieng Sary was diagnosed with bronchitis. Dr. Lim stated that the bronchitis did not impact Ieng Sary’s existing heart condition. When the accused’s condition improved over the next couple of days, the doctors held a meeting and decided to discharge him on the morning of May 22, 2012. Dr. Lim added that Ieng Sary’s discharge was based upon the condition that he receive a “brief period of rest” and his condition be consistently monitored.

As for recommendations on how Ieng Sary may participate in Court proceedings, Dr. Lim told the Court, “He should only attend the proceedings in the waiting room downstairs where it is closer to the doctors and easier for doctors to monitor his condition.”

President Nonn sought further clarification from the doctor. Regarding Ieng Sary’s rest period, Dr. Lim stated that the “true two-day rest period is to be counted from the day after he is to be discharged from the hospital – that is today.” When asked what would be the condition for Ieng Sary’s participation remotely, Dr. Lim replied that Ieng Sary should be able to participate remotely from the waiting room downstairs one week after his two-day rest.

Concluding his own line of questioning, President Nonn opened the floor for questions from other parties.

Dr. Lim Says Ieng Sary’s Condition Is “Deteriorating”

Mr. Karnavas questioned Dr. Lim briefly on behalf of Ieng Sary’s defense. After receiving confirmation from Dr. Lim that he is not a psychologist or psychiatrist, Mr. Karnavas inquired about the specialties of the other doctors treating his client. Dr. Lim said they are specialized in heart disease and “psychological matters.”

The doctor went on to inform Mr. Karnavas that Ieng Sary’s heart condition, though currently stable, “cannot be improved” and will continue to “deteriorate.” His condition at this point, Dr. Lim continued, “can only be stabilized.” The doctor stated, however, that Ieng Sary’s “present condition is not very different from his condition sixth months ago.” To better determine if the bronchitis has had any permanent adverse affects, Dr. Lim told Mr. Karnavas that doctors need to “closely examine” Ieng Sary over a period of at least one week.

After Mr. Karnavas concluded his questioning, Assistant Prosecutor Dale Lysak took control of the floor, asking Dr. Lim to clarify the extent of Ieng Sary’s participation during his two-day rest. The doctor responded that Ieng Sary is “to rest completely without participation in the proceedings – not even remotely.”

National Civil Party Lead Co-Lawyer Pich Ang followed Mr. Lysak, asking Dr. Lim to explain why Ieng Sary is experiencing dizziness. Dr. Lim explained that Ieng Sary’s preexisting health conditions combined with his age exacerbated the symptoms of his bronchitis and “flu condition.” “For a normal person,” Dr. Sivutha stated, “this wouldn’t be an issue, but with his existing health problems it is an issue for Ieng Sary.”



Mr. Lysak concluded the morning’s examination, asking Dr. Lim how long Ieng Sary is likely to suffer from spells of dizziness. Dr. Lim responded, “Given his health conditions, it depends entirely on his physical strength. But we cannot come up with a 100 percent conclusion as to how long he will suffer with this. If he sits for a long time it will be a problem, but not if he sits for a short time. Given his age and heart condition, he will experience this dizziness frequently.”

The Chamber Postpones Proceedings and The Testimony of Witness TCW 487

After a 30-minute deliberation President Nonn announced the postponement of further proceedings until Monday, May 28, 2012. In light of Dr. Lim's medical testimony and Ieng Sary's request to be present at the examination of witnesses TCW 487, TCW 583, and TCW 323, President Nonn stated the Chamber would not be able to hear the testimony of Witness TCW 487 as scheduled.

Assuming Ieng Sary is able to participate through audio-visual means, President Nonn stated, the Court would begin hearing the testimony of Witness TCW 487 when proceedings resumed on Monday, May 28, 2012. If Ieng Sary is unable to participate, the Court will hear the testimony of Witness TCW 488, at whose testimony Ieng Sary does not request to be present.

Tension In The Courtroom

Before adjourning the Court for the afternoon, President Nonn handed the floor over to Judge Jean-Marc Lavergne in order to settle a few "residual matters" regarding documents parties intended to raise during hearings.

Judge Lavergne informed the parties of three "problematic" documents that parties intend to use during witness examination. All three documents, he continued, had not been included in any document list submitted to the Court. Judge Lavergne told the Court the first document, entitled "The Statutes of the Youth League of the Communist Party of Kampuchea", was intended to be used by the prosecution and the second two, transcripts of interviews with witnesses, were intended to be used by the defense counsel of accused, Nuon Chea.

Speaking to counsel for Nuon Chea, Judge Lavergne reiterated the Chamber's opinion that the same rules apply for *all* documents put before the Chamber, "no matter the aim." "The fact that documents are used to impeach a witness," he continued, "does not change the applicable rules." Judge Lavergne instructed counsel for Nuon Chea that a written request complying with ECCC Internal Rule 87.4 must be submitted to the Chamber to receive approval for putting new documents before the Court.

After Judge Lavergne concluded, President Nonn, appearing eager to adjourn the day's proceedings, reluctantly handed the floor to co-lawyer for Nuon Chea, Andrew Ianuzzi, standing ready for his turn before the Court. Mr. Ianuzzi started off by asking when the Chamber would make a "definitive" judgment on the applicability of Rule 87 to impeachment materials. As a footnote, Mr. Ianuzzi informed the Court it was his belief that "documents used for impeachment should fall outside Rule 87." He additionally offered the opinion that "any wishes to put new documents before the Chamber should be able to be made orally, not in writing."

Before Mr. Ianuzzi could proceed further, President Nonn instructed him to clarify the exact points he wished to make before the Court. President Nonn continued, telling Mr. Ianuzzi, "The court is open only for discussion of the three documents as clarified by Judge Lavergne." Mr. Ianuzzi retorted sarcastically, "I was not aware that the Court was not always open for *any* issue. Closing the floor – I just don't understand that."

With growing impatience, President Nonn stated that “all parties are instructed to make a new document submission in writing pursuant to rule 87.4 The Chamber will not accept or decide on any request that is not in writing regarding this matter.” Speaking to Mr. Ianuzzi, President Nonn stated curtly, “I don’t think there is any other point for you to raise, Counsel. The hearing today has come to an end.”



Yet again, Mr. Ianuzzi continued to speak. Before President Nonn could remove himself from his chair, Mr. Ianuzzi said, “I have two points to make. Nothing to do with the documents, nothing to do with the witnesses.”

President Nonn’s patience had run out, however: “You cannot just stand on our feet and raise other points which are not part of the schedule of the hearing!”

Again, Mr. Ianuzzi sarcastically retorted: “Thank you, your honor. It is my fault for not being clear, as usual.” Trying the entire Chamber’s patience at this point, Mr. Ianuzzi changed topics, asking “when they [counsel] will know what witnesses will precisely be before the court next week.” President Nonn told Mr. Ianuzzi the Chamber has already been told the parties which witnesses will appear next week.

Bravely, Mr. Ianuzzi attempted to continue dialogue. “May I make my two other points?” he asked.

President Nonn replied, “No, you are not allowed,” and he quickly exited the chamber, effectively ending the proceedings for the day.