CAMBODIA TRIBUNAL MONITOR

Doctors Detail Health Status of Ieng Sary
By Mary Kozlovski

On Friday, September 21, 2012, two separate non-evidentiary hearings were held on the medical condition of Case 002 defendant Ieng Sary and the testimony of expert witness Philip Short, respectively, at the Extraordinary Chambers in the Courts of Cambodia (ECCC).[1]

The day began with the testimony on Ieng Sary's health condition from two doctors who are treating the accused at the Khmer-Soviet Friendship Hospital, where, as of Friday afternoon, he is still admitted. The Trial Chamber then heard submissions from parties on the testimony of expert witness Philip Short,[2] who is currently scheduled to testify October 1-8, 2012. Ieng Sary has not waived his right to be present during Mr. Short's testimony.[3]

While co-accused Nuon Chea and Khieu Samphan waived their right to be present in court for the day's proceedings, their lawyers did attend the hearings.

Trial Chamber Outlines Details of Hearings
Trial Chamber President Nil Nonn began by explaining that the chamber would first hear testimony on a report on Ieng Sary's admission, treatment, and current condition by two treating

[1] During the hearing, pronunciation and translation of numerous medical terms were unclear in the English interpretation. Such terms are generally spelled phonetically according to the live English translation. Additionally, there were technical medical terms that could not be clearly identified. Those who wish to verify any term or name should consult the official ECCC transcripts. Transcripts of Case 002 proceedings are available at: http://www.eccc.gov.kh/en/case/topic/2.
[2] Philip Short is a journalist and author of *Pol Pot: Anatomy of a Nightmare.*
[3] Ieng Sary's non-waiver of his right to be present during Philip Short's testimony is available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E229_2_EN.PDF

doctors at the Khmer-Soviet Friendship Hospital, where Ieng Sary has been hospitalized since September 7, 2012. President Nonn said the chamber would hear testimony about the accused's health status, if and when he can be discharged, and if released from hospital, whether he could participate in the proceedings directly or through remote means. If the doctors' reports and recommendations found Ieng Sary could participate soon, then the chamber would hear expert testimony as scheduled, President Nonn explained, but if the reports were "negative," the chamber would decide according to the doctors' recommendations and hear experts and witnesses for whose testimony Ieng Sary has waived his presence.

The president noted that the second hearing would involve submissions from parties regarding the testimony of expert witness Philip Short – scheduled to testify from October 1 to 8 – and how and when the hearing ought to be conducted given Ieng Sary's health issues. President Nonn said Mr. Short had informed the chamber that he could not appear at another time this year. "The chamber is of the view that if Mr. Ieng Sary cannot participate in the hearing of the testimony of the expert, his defense team will be allowed to question the witness through a remote means, if there is a request from his defense team," President Nonn said.

After brief discussions on the order of questioning, President Nonn inquired if the Ieng Sary defense had any objection to the hearing on their client's health being conducted in public. International Co-Lawyer for Ieng Sary Michael Karnavas said the team had indicated to the senior legal officer that it should be a public hearing, which had been discussed with Ieng Sary. Mr. Karnavas said the team had Ieng Sary's "full authority and confidence" to proceed in a public forum.

Two Witnesses Take the Stand

Before beginning the questioning of the doctors, President Nonn noted briefly that the two treating doctors were considered "witnesses" by the court and not "experts." In response to preliminary questions from President Nonn, the first doctor identified himself as Lim Sivutha and confirmed that the chamber had already noted his personal information and qualifications on May 23, 2012.[4] President Nonn inquired if Mr. Sivutha's position or status within the Khmer-Soviet Friendship Hospital had changed during that time. Dr. Sivutha said there had been no change and confirmed that he was not related to Ieng Sary or any civil parties and had taken an oath.

Next, President Nonn asked Professor Ky Bousuor preliminary questions. Prof. Bousuor stated that he was born January 15, 1955, in Kien Svay district in Kandal province, and currently lives in Phnom Penh's Daun Penh district. Prof. Bousuor confirmed that he was not related to Ieng Sary or any civil parties and had taken an oath. When asked by President Nonn about his education and qualifications, Prof. Bousuor said he received a doctoral degree in 1985 from the Faculty of Medicine,[5] continued to study medicine, and studied at a university in France in 2001.[6] Prof. Bousuor said he had worked in medicine for 26 years and currently worked at the

[4] A detailed account of Lim Sivutha's prior testimony at the ECCC is available at: http://www.cambodiatribunal.org/blog/2012/05/ieng-sary%E2%80%99s-doctor-testifies-eccc

[5] It was unclear in the English translation which university Prof. Bousuor attended.

[6] Dr. Bousuor's response was unclear in the English translation.

Khmer-Soviet Friendship Hospital as chief of the "general admission section" and member of the governing board for examining the health of the accused at the ECCC.

President Nonn presented a copy of a report by the Khmer-Soviet Friendship Hospital inclusive of September 7 to 19, 2012, submitted to the Trial Chamber and dated September 19, 2012, to the two doctors. President Nonn asked if Dr. Sivutha had treated Ieng Sary since he was admitted to the hospital. Dr. Sivutha said he was part of the medical group that had treated Ieng Sary since his most recent admission, and he and his team had been treating Ieng Sary for almost a year since the responsibility was handed from Calmette Hospital to the Khmer-Soviet Friendship Hospital.

Asked about the status of Ieng Sary's health since his admission to hospital on September 7, 2012, Dr. Sivutha explained that Ieng Sary was admitted to the emergency section due to his fatigue and doctors observed thereafter that Ieng Sary's health problems were related to high blood pressure and heartbeat, which did not differ from those issues previously identified. However, Dr. Sivutha said shortly after his admission, doctors found Ieng Sary had a problem with the bone in his neck, which meant insufficient blood was flowing to his head resulting in limited movement. Dr. Sivutha said the bone was putting pressure on a vein, limiting blood flow and restricting limb movement, which was the primary reason for his admission and continued hospitalization. Dr. Sivutha said Ieng Sary's heart condition was "normal."

President Nonn inquired about Ieng Sary's heart condition. Dr. Sivutha testified that Ieng Sary had a problem with a vein in his heart, which was treated in 1992, and he had also undergone stenting and bypass. Dr. Sivutha said Ieng Sary had problems with the right side of his heart where the valve did not close completely, meaning that his heart condition was abnormal. However, the doctor said in a year of monitoring Ieng Sary, the doctors had not noted any concerning change in his heart condition and treatment was "normal." "There is no immediate danger to his heart condition," Dr. Sivutha concluded.

Seeking more detail on Ieng Sary's condition starting from his current hospital admission, President Nonn noted that the report said Ieng Sary experienced fatigue and dizziness at the slightest movement and the ECCC doctor said he could not climb without feeling dizzy. President Nonn inquired as to the cause of these symptoms. Dr. Sivutha said Ieng Sary's weak heart was the main cause of his fatigue and dizziness, but it was in a stable condition. He said he had sought a neurologist to conduct a scan on Ieng Sary's upper body, revealing the pressure on the vein in his neck, which caused numbness in his limbs. Dr. Sivutha said Ieng Sary's fatigue was related to his heart condition and the pressure on blood flow to his head.

President Nonn cited a comment in the doctors' report that stated Ieng Sary could not follow proceedings even remotely, due to his lumbago or backache, and inquired as to the cause of this condition. Dr. Sivutha said that medical documents from Calmette Hospital, including a scan, revealed that the accused's backache was "stuck," thereby limiting his movement. Dr. Sivutha

reiterated that the main reason Ieng Sary could not be discharged from hospital was related to his "stiff neck bone," which led to dizziness and numb limbs.

President Nonn asked if Ieng Sary's condition had improved since his recent admission on September 7 and if he could be discharged. Dr. Sivutha replied that he observed that since Ieng Sary's admission, his heart condition, though not good, was normal. The main reason Ieng Sary cannot be discharged is limited blood flow to the brain, or head, which the neurologist found was causing dizziness and numbness in his limbs, Dr. Sivutha testified. The witness said doctors attempted to seek treatment solutions through consultations with various medical experts at the hospital, but noted that medical treatment would be lengthy and of limited success. Dr. Sivutha said if doctors opted for surgery to dilate the affected vein they would face several "critical challenges," including the use of anaesthetic given Ieng Sary's heart condition and the issue of "osteoporosis."[7] Dr. Sivutha said he consulted with neurologists and surgeons over the past few days – and would try to consult with other medical experts – about alternatives to surgery, and they were continuing their current treatment of Ieng Sary. Dr. Sivutha said if surgery cannot be performed Ieng Sary will be hospitalized for at least another month, medical treatment will take a while, and it is unclear if Ieng Sary will return to a better condition. "If we can dilate the blood vein to release the pressure, it's going to be good for him, but the challenge is that whether the patient is able to sustain the process of surgery, and this is the issue that we are trying to deal with at the moment," Dr. Sivutha testified.

Trial Chamber Judge Silvia Cartwright assumed questioning, beginning by asking the witnesses if it was fair to summarize that Ieng Sary's heart condition and back problems remained serious, but stable. Dr. Sivutha said Ieng Sary's cardiovascular system remained stable from the date of his admission, meaning that there was no substantial deterioration of the condition. Doctors sent scans for analysis but fluctuations in Ieng Sary's conditions were minimal, Dr. Sivutha said. However, he said Ieng Sary's cervical unco-disc arthrosis[8] was a new discovery that led to circulation problems, restricting blood flow to the brain.

Judge Cartwright inquired if the circulation problem could only have been identified through a neurological examination, including a scan. Dr. Sivutha said they discussed the issue with neurologists, had Ieng Sary's head scanned and found osteoporosis[9] and cervical unco-disc arthrosis[10]. Dr. Sivutha said an operation was one possibility, though it involved an "inherent risk." He also noted the issue of vertebral basilar insufficiency syndrome.[11] Judge Cartwright asked if such surgery had been carried out on other patients at the Khmer-Soviet Friendship Hospital or it would require people with additional expertise to supplement staff at the hospital.

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[7] In this part of the testimony, Dr. Sivutha appeared to say that there was osteoporosis in Ieng Sary's neck bone, but the English translation was unclear.

[8] This medical term was unclear in the English translation. Those who wish to verify the term should consult the official ECCC transcripts, which are available at: http://www.eccc.gov.kh/en/case/topic/2.

[9] In this part of the testimony, Dr. Sivutha appeared to say "diffuse" or "disuse" osteoporosis, but the English translation was unclear.

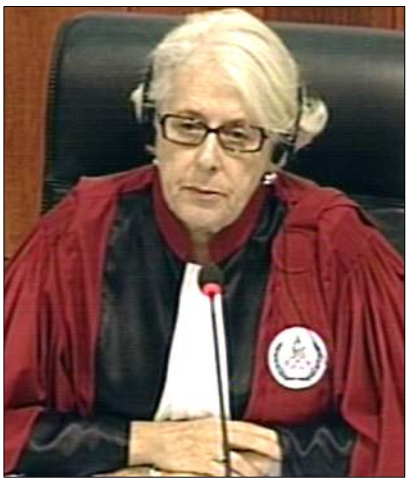
[10] See footnote 7.

[11] This medical term was unclear in the English translation. Those who wish to verify the term should consult the official ECCC transcripts, which are available at: http://www.eccc.gov.kh/en/case/topic/2.

Dr. Sivutha replied that if surgery was to be considered, they had to consult with neurologists,[12] but he personally did not recommend any operations at this time, as it poses a risk given Ieng Sary's fragile health. He stated he was seeking consultation with neurologists to discuss the issue, however. Dr. Sivutha said their relevant specialist at the Khmer-Soviet Friendship Hospital was currently on mission overseas but they were consulting with other experts and exploring treatment options.

Judge Cartwright inquired about potential alternative treatment to improve Ieng Sary's blood flow. Dr. Sivutha said Ieng Sary was still in the hospital's emergency section and a different specialist was prescribing medicine to treat his lumbago and that he had to consult with neurologists to assess Ieng Sary's neurological condition. The witness said doctors had examined Ieng Sary on a regular basis in the intensive care unit and consulted with a visiting French specialist, who felt that medicine would have minimal impact on the accused's condition. Dr. Sivutha said an operation was the likely option but given Ieng Sary's fragile health, surgical intervention was "very risky." The doctor said he must consult with specialists – including those at Calmette Hospital – to obtain their medical opinions on how to proceed.

Judge Cartwright noted a September 3 report on Ieng Sary by court-appointed experts – who were called to examine Ieng Thirith – in which they made recommendations on medication and practical arrangement involving beds and chairs. Judge Cartwright asked if Dr. Sivutha had examined that report. The witness confirmed he had read the report and such facilities were being provided to Ieng Sary at the hospital, but reiterated that Ieng Sary's cervical unco-disc arthrosis[13] was a new discovery and doctors were seeking a remedy. Judge Cartwright noted that the experts' report was prepared before the most recent diagnosis and they were not aware of this problem.



Judge Cartwright inquired if it was fair to summarize Dr. Sivutha's testimony as saying that surgical intervention was high risk and Ieng Sary would need considerable time to recover from an operation, but medical interventions such as those currently being administered would be lengthy, and in either case, Ieng Sary would not be well enough to participate in the trial directly or remotely for some time. Dr. Sivutha concurred and said he did not believe Ieng Sary could attend proceedings in the short term due to problems with his neck, which would exacerbate if he had to move a lot. Dr. Sivutha said he believed Ieng Sary should remain in intensive care longer, but he would consult with specialists to find alternative treatment to ensure Ieng Sary can return to the ECCC detention facility as soon as possible.

Trial Chamber Judge Jean-Marc Lavergne proceeded to ask the witnesses further questions. Judge Lavergne inquired if they believed Ieng Sary's "cardiopathy" had worsened; he also noted

[12] In this part of the testimony, Dr. Sivutha appeared to say doctors must consult also with anesthesiologists, but the English translation was unclear.
[13] See footnote 7.

the September 19 hospital report that said Ieng Sary presented with "NYH3" dyspnoea,[14] and asked what this classification meant and if it impacted upon Ieng Sary's pathology. Dr. Sivutha said based on the ECG,[15] doctors did not observe any significant evolution, though Ieng Sary had suffered from many cardiovascular complications thus far. Dr. Sivutha said the condition might degenerate due to his advancing age and the dyspnoea class he noted was an issue with cardiovascular disease. Dr. Sivutha said compared to reports from the last six months, Ieng Sary's cardiovascular function had not degenerated and doctors were not very concerned about it. The witness said the main concern was cervical unco-disc arthrosis.[16] Judge Lavergne asked if "level 3 dyspnoea" meant a patient suffers from shortness of breath when in a state of rest or at the smallest exertion. Dr. Sivutha said people who suffer this level of dyspnoea have problems moving around and are exhausted even by small movements. Dr. Sivutha said Ieng Sary had this problem for a long time and it had stabilized but that he now had a new diagnosis that was of concern.

Finally, Judge Lavergne inquired about the risks Ieng Sary might face from surgery. Dr. Sivutha said there could be complications given Ieng Sary's "vulnerable" heart condition and age. He said it was unclear if Ieng Sary could stand the operation and administration of anaesthetic and, even if surgeons could perform the operation, the possible impact on Ieng Sary's other conditions was unknown.[17]

Ieng Sary Defense Questions Treating Doctors

Mr. Karnavas began by seeking clarification on whether the doctors were stating that Ieng Sary's brain was not receiving sufficient oxygen, causing immobility and dizziness. Dr. Sivutha said the neurologist advised the doctors that the dizziness and numbness of limbs was related to the narrowing of "cervical canals,"[18] which puts pressure on veins and limits the flow of blood to the head.[19] Dr. Sivutha said the dizziness was also related to Ieng Sary's hypertension.

Mr. Karnavas repeated his question, inquiring if an insufficient flow of blood to the head meant an insufficient amount of oxygen for the brain to properly function. Dr. Sivutha said if the blood flow was "insufficient" it was not yet at that stage and, according to the neurologist, the current condition did not have a severe impact. Mr. Karnavas asked if the dizziness affected Ieng Sary's ability to concentrate. Dr. Sivutha said he could not offer an opinion on the link between dizziness and concentration, as an expert in neurology would need to make such a determination, but the psychologists' report indicated that it was not having a psychological impact on Ieng Sary. Mr. Karnavas asked if Ieng Sary would currently be able to concentrate and answer questions for the same period of time as the doctors had testified thus far. Dr. Sivutha said he did not have expertise to judge Ieng Sary's mental status or ability to concentrate, and he was assessing Ieng Sary's ability to participate physically in proceedings, especially given his mobility issues.

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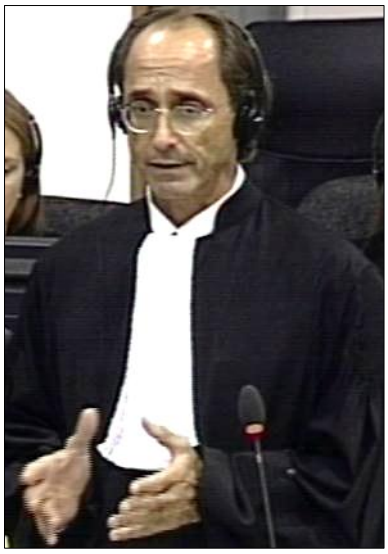
[14] "Dyspnea" is believed to be the correct spelling of this medical term. "NYH" appears to be a reference to the New York Heart Association Functional Classification system; however this is not entirely clear.
[15] ECG stands for "electrocardiogram."
[16] See footnote 7.
[17] Dr. Sivutha's response was unclear in the English translation.
[18] The English translation of this term was unclear.
[19] Dr. Sivutha's response was unclear in the English translation.



Mr. Karnavas noted that the doctors' medical report read that Ieng Sary was being treated with 17 different drugs on a daily basis, and asked how many of the medication the doctors were directly prescribing for Ieng Sary. Dr. Sivutha said a few of the medicines were for Ieng Sary's "cervical" condition – after consultations with neurological experts – and others were short-term doses to treat dizziness that would be stopped if there was no improvement within three or four days. When Mr. Karnavas repeated his question, Dr. Sivutha said the doctors added three medicines to treat dizziness and most on the list were medications Ieng Sary had been taking for a long time.[20] In response to a question from Mr. Karnavas, Dr. Sivutha said Ieng Sary had been taking codeine for pain for some time, though they were attempting to reduce his dosage. Mr. Karnavas asked what day a scan was performed on Ieng Sary. Dr. Sivutha initially said he could not recall the exact date, but then said a "cervical" scan began on September 11 after the doctors noted Ieng Sary's heart condition was stable. He also noted that previous scanning was done of Ieng Sary's backbone but they could not link his condition to fatigue, dizziness, or numbness of limbs, and therefore decided to conduct a "cervical" scan.

When Mr. Karnavas asked when neurologists were consulted, Dr. Sivutha said it was on the morning of September 11. Dr. Sivutha further testified that Ieng Sary indicated the numbness in his limbs on the Sunday after he was admitted, prompting the consultation with a neurologist, but he was first admitted with symptoms of fatigue and they initially assessed the cause to be his heart condition. Mr. Karnavas noted that the doctors' records indicated Ieng Sary was admitted on Friday morning after he was unable to use his legs properly and the numbness would have been obvious to anyone at the hospital. He asked on which day Dr. Sivutha saw Ieng Sary. Dr. Sivutha said doctors generally had to examine patients in the emergency section twice a day and he would examine Ieng Sary every day and report to the group daily. He said after Ieng Sary was first admitted he was sent to the emergency section and Dr. Sivutha received him personally.

Mr. Karnavas asked if Dr. Sivutha spoke with the neurologist and examined the results of the scan. Dr. Sivutha said that if a patient was admitted to his section – as in Ieng Sary's case – he would read all reports, examine the patient at least once a day, and report to the "technical group" and relevant specialist to reach a joint conclusion. Dr. Sivutha said doctors in the emergency section must examine patients at least once and file a report and if necessary, another doctor would examine that patient. When Mr. Karnavas repeated the question, Dr. Sivutha said two days ago the neurologist came to re-examine Ieng Sary after he conducted the scan and planned to visit him again this morning. He also consulted with the professor in the emergency department, he asserted, and all parties agreed on the treatment administered to Ieng Sary. Dr. Sivutha testified that a radiography specialist "translated" the scan for the doctors, which included two main points – osteoporosis and the "narrowing of cervical canals" – and was sent to the neurologist in order to find a solution.

[20] In a subsequent response, Dr. Sivutha appeared to confirm Mr. Karnavas' statement that Ieng Sary was taking 14 medicines before his hospital admission. However, the English translation was unclear.

In response to further queries from Mr. Karnavas, Dr. Sivutha said the neurologist came to his section and he received the report the neurologist wrote. Dr. Sivutha explained that in his section, when a symptom relates to a specialty, a specialist would be invited to consult and voice opinions on treatment – a practice that applied to neurologists. Mr. Karnavas inquired if there was a team of doctors, or a board, to review reports, discuss, and determine treatment for Ieng Sary. Dr. Sivutha said before treatment commenced he had to contact and consult with relevant people – such as the neurologist and the heart specialist to ascertain if medication should be prescribed – before assessing if it was appropriate to administer such medicines.

Mr. Karnavas asked if Dr. Sivutha helped prepare the September 19 report, to which the witness said a section would send a relevant report to the technical group and if it was appropriate, the group would send it to the head of the hospital for approval. Mr. Karnavas then inquired if Dr. Sivutha consulted with other doctors or board members about what they all agreed upon before testifying. Dr. Sivutha said the doctors consulted on the "technical aspects" and attempted to find treatment and that he did not consult with other team members before appearing in court. He explained that the head of the hospital oversaw the report and that the doctors engaged in consultation and shared reports; they met in person or spoke over the phone and usually had daily morning meetings to discuss the patient's condition.

Mr. Karnavas sought clarification on the function of the aforementioned board. Dr. Sivutha asked to defer to Prof. Bousuor to respond to the question, as he was a board member. Mr. Karnavas argued that Dr. Sivutha could answer the question, as he ought to know what the board does. President Nonn said either doctor could respond to questions or supplement the other's answer, and noted the intention of the hearing was to deal with Ieng Sary's health condition to assist the chamber in scheduling, not address his mental status or fitness. Mr. Karnavas said he wished to confirm if Dr. Sivutha was speaking on behalf of the group of doctors and/or the board, and if they would agree with his assessments, to ensure there would not be questions about bringing in other doctors. Mr. Karnavas said he understood at Calmette Hospital the doctors met before medications were administered and reports were provided, and he wished to confirm if that procedure was followed in this case, as it would assure the parties that Dr. Sivutha was speaking for the medical team when he said Ieng Sary is not physically fit for the next month or two. President Nonn told the Ieng Sary defense to proceed.

Mr. Karnavas asked if the board shared Dr. Sivutha's opinion provided in court. Dr. Sivutha said the doctors read relevant reports and medical dossiers when dealing with "technical questions" and said he and his colleague[21] represented the team. Dr. Sivutha said the team would meet to discuss reports, even if his appearance in court was not required. Mr. Karnavas inquired if the September 19 report was approved or provided to team members to ensure that it accurately reflected the doctors' involvement in Ieng Sary's treatment. Dr. Sivutha said that before making a report, all the doctors met and the report would be submitted to the technical team for review. The witness said all relevant doctors must know the report's content and all relevant people would be consulted before the report was made.

[21] Dr. Sivutha appeared to be referring to Prof. Bousuor when he said "my colleague".

Turned to the issue of feigning, Mr. Karnavas inquired if it was possible that Ieng Sary was faking his ailments. Dr. Sivutha said the doctors were assessing Ieng Sary's physical condition based on the data they received and they did not consider if he was faking or not. Dr. Sivutha noted the issue of blood flow to the head observed in Ieng Sary and said the primary concern was technical and related to translation. Dr. Sivutha suggested that his colleague assist in explaining the terms, as vertebral basilar insufficiency syndrome[22] was complicated. Prof. Bousuor said he believed there were translation issues and stated that there was a smaller and larger lobe in the brain, and vertebral basilar insufficiency syndrome related to the smaller lobe.[23] Prof. Bousuor also said Ieng Sary's heart condition was "severe but stable".

Mr. Karnavas repeated his question about potential feigning. Dr. Sivutha said a person could not simply undergo a scan and obtain a certain result, as the film could not be faked. He testified that it was "almost impossible" to fake a physical condition because it is based on data, although feigning of mental illness was another matter.

Finally, Mr. Karnavas asked if Dr. Sivutha and his team had considered if Ieng Sary might need attention from foreign doctors or to be sent abroad for treatment to Bangkok or Singapore where there is more modern equipment than at the Khmer-Soviet Friendship Hospital, or Cambodia generally. Dr. Sivutha said they considered this option and consulted a French doctor about whether such treatment was available. Dr. Sivutha said he would rely on the neurologist and if this were insufficient, he would seek consultation with specialists from Calmette Hospital. He said he would gather information and if the risk of surgery was high, it would not be considered. However, if doctors agreed the surgery could be performed abroad, that option could be considered, Dr. Sivutha testified, noting that he would consider the aforementioned factors and provide information to the Trial Chamber in due course.

With this response, the Ieng Sary defense finished questioning the witnesses.

Prosecutors Examine the Doctors

National Deputy Co-Prosecutor Seng Bunkheang began by noting that Dr. Sivutha testified he attended to Ieng Sary regularly during his hospitalization, and inquired if he asked Ieng Sary about his overall health condition. Dr. Sivutha said the doctors usually asked questions about a patient's general health, but they also examined Ieng Sary's cardiac and other conditions. Mr. Bunkheang asked what observations Dr. Sivutha had of Ieng Sary's concentration and if Ieng Sary responded to inquiries appropriately. Dr. Sivutha said he did not think Ieng Sary had an issue with concentration, as he made an effort to answer questions and even provided more information than was necessary because he was concerned about his health. Mr. Bunkheang inquired if the doctors could obtain the information they needed from Ieng Sary, to which Dr.

[22] See footnote 10.

[23] Prof. Bousuor's response was unclear in the English translation.

Sivutha said there were no noticeable issues except that Ieng Sary sometimes had trouble hearing the question.

Citing the September 19 hospital report, International Assistant Co-Prosecutor Dale Lysak quoted a section in which it states that Ieng Sary's cardiac condition was stable during the 10-day hospital stay and "peripheral neuropathy and vertebral basilar insufficiency syndrome are the main problems." Mr. Lysak sought an explanation on the two terms mentioned in the excerpt. Dr. Sivutha said the doctors found Ieng Sary's cardiac condition was stable but, in relation to peripheral neuropathy, he was not a neurologist. However, Dr. Sivutha said Ieng Sary informed them that his fingers felt numb and it was discovered that this was due to a problem with blood flow to his brain. In relation to vertebral basilar insufficiency syndrome,[24] Dr. Sivutha said they consulted with treating doctors and concluded there was a problem with cervical unco-disc arthrosis[25] and a narrowing of cervical canals. Mr. Lysak asked if vertebral basilar insufficiency syndrome was sometimes called "Beauty Parlor Syndrome" in English. Dr. Sivutha said he knew the medical term as he had received an explanation from the neurology section. When Mr. Lysak inquired about the identity of the neurologist who conducted the scan and provided opinions on Ieng Sary's condition, Dr. Sivutha said he invited the deputy director of the hospital[26] to provide expert consultation along with a foreign professor visiting the hospital.

Mr. Lysak asked if Dr. Sivutha could clarify how the vein in Ieng Sary's neck was blocked. Dr. Sivutha said if there is a problem with cervical discs, there is compression of veins so blood does not circulate properly to the brain and there is not enough oxygen in the brain. Dr. Sivutha said there was thus a problem with vertebral basilar insufficiency syndrome and the flow of blood from the brain to the body.[27]

Mr. Lysak inquired about what other specialists would be useful to consult on appropriate treatment for Ieng Sary aside from neurologists and whether a possible outpatient treatment options. Dr. Sivutha said that he had consulted with neurologists and other specialists and they remained in consultation and would attempt to find a solution and formulate recommendations once their neurologist returned from overseas. The doctors therefore could not yet reach a clear conclusion on the best treatment option, he concluded.

Turning to Ieng Sary's dyspnoea, Mr. Lysak noted that hospital medical reports, including a report dated September 11, seemed to indicate that Ieng Sary was diagnosed with NYHA[28] level 4 upon admission, and his condition improved – dropping to level 3 – by September 19. Mr. Lysak sought confirmation on whether Ieng Sary's condition had improved and, if so, how this was achieved. Dr. Sivutha said generally if Ieng Sary remained stable they did not take any action, but said that when Ieng Sary was admitted to hospital he relaxed and he was given support, and his level was dyspnoea was between NYHA 3 and 4. Dr. Sivutha said if Ieng Sary had a salt-free diet then his condition would probably improve, though he said it fluctuates daily

[24] See footnote 10.
[25] See footnote 7.
[26] The name of the deputy director was unclear in the English translation.
[27] Dr. Sivutha's response was unclear in the English translation.
[28] "NYHA" appears to refer to the New York Heart Association Functional Classification system.

and ranges from NYHA 3 to 4.[29] Mr. Lysak queried how the dyspnoea level was determined. In response, Dr. Sivutha referred to Ieng Sary's dizziness and said they did not believe it was related to his hypertension or blood pressure and explored other possibilities through consultation with other doctors to discover its cause, which they did not believe was cardio-related.[30]

Finally, Mr. Lysak questioned if Ieng Sary could arise from bed and move around in his current condition. Dr. Sivutha said the doctors today asked Ieng Sary to get up and examined the strength of his backbone. Ieng Sary found it "very difficult" to get up, could not sit straight, and would have to lie on his back for the entire day, Dr. Sivutha testified. He said that the doctors will likely provide Ieng Sary with support for his cervical discs. The prosecution concluded their examination of the treating doctors.

Ieng Sary eats a meal with fellow Cambodians during the 1980s.
(Source: Documentation Center of Cambodia)

Doctors Questioned by Civil Party Lawyers

National Civil Party Lead Co-Lawyer Pich Ang firstly inquired if Ieng Sary suffered from chronic dizziness. Dr. Sivutha said Ieng Sary was still in hospital and noted that if Ieng Sary lies still, he has no problems, but would suffer dizziness and nausea if he stood up. Mr. Ang asked if Ieng Sary could sufficiently understand questions put to him by doctors and respond appropriately and how long such consultations lasted. Dr. Sivutha said the doctors did not generally observe problems with Ieng Sary's responses – which were appropriate – and each consultation would normally last a few minutes, while the neurologists consulted with Ieng Sary for 10 to 15 minutes. Dr. Sivutha said they sometimes had to repeat questions because Ieng Sary sometimes did not pay attention, and he also asked for clarification.

When Mr. Ang queried whether Ieng Sary could maintain concentration during a 15- minute consultation, Dr. Sivutha said he noticed Ieng Sary often grew fatigued when he was questioned and they limited the time they spent querying Ieng Sary to a maximum of about 15 minutes so as

[29] Dr. Sivutha's response was unclear in the English translation.
[30] Dr. Sivutha's response was unclear in the English translation.

not to disturb him. Mr. Ang asked how often such interviews were conducted, to which Dr. Sivutha said the doctors did not count but had attempted to provide support to his neck and backbone over the past two days. Dr. Sivutha said the doctors wanted to give Ieng Sary as much rest as possible, because he experiences neck pain when he moves that can create complications.

Mr. Ang sought clarification on Ieng Sary's current condition and asked if it would be months before he could attend the proceedings. Dr. Sivutha said he would not definitely state that Ieng Sary would remain hospitalized for that amount of time and his release from hospital depended on the results of weekly assessments and consultations with specialists. Ieng Sary's conditions demand attentive care and he would probably remain in hospital for at least one more month, the doctor testified. Finally, Mr. Ang asked if Ieng Sary had undergone physical therapy. Mr. Sivutha said they encouraged Ieng Sary to do physical therapy, but he found it difficult to move around and was therefore limited. Dr. Sivutha said Ieng Sary had to perform a program moving his hands and legs three times per week, but he did not know to what extent it was administered and the results of this therapy were unknown.

International Civil Party Lead Co-Lawyer Elisabeth Simmoneau Fort asked when a decision would be made on whether Ieng Sary should undergo an operation or some form of medical intervention. In response, Dr. Sivutha said surgery was one possibility but it depends entirely on specialists' recommendations; if such a conclusion were reached, the doctors had to explore means to implement the decision and take into account factors such as Ieng Sary's cardiac problems and potential complications resulting from surgery. Dr. Sivutha said that given Ieng Sary's existing conditions and advancing age, surgery was a "remote possibility" but medication would take a long time to have an effect. He further noted that problems such as osteoporosis cannot be cured in the short-term. Dr. Sivutha said they would provide the court with a weekly medical report, explore possibilities at the hospital, and reach a conclusion after consulting with all concerned specialists. Ieng Sary is old, has weak health, serious cardiovascular problems, and may not handle anaesthesia, and any surgery must therefore be conducted in a "vigilant manner," the doctor concluded.

Civil party lawyers finished questioning the witnesses, concluding the doctors' testimony for the day.

Expert Testimony Discussed in Second Hearing

After the lunch recess, the chamber began its second hearing for the day, hearing submissions from the parties on the scheduled testimony of Philip Short. Firstly, International Deputy Co-Prosecutor William Smith said the prosecution did not oppose postponement of Mr. Short's testimony. Mr. Smith asserted that there was uncertainty about the physical health status of Ieng Sary, though it was clear from a September 3 expert report on his mental fitness that he is fit to plead. Mr. Smith said it was unclear from the day's testimony what treatment Ieng Sary should receive and what effect his physical condition has on his mental health, as the witnesses just heard were not experts in that field. The prosecution noted the uncertainty and the fact that the Ieng Sary defense did not intend to prolong proceedings by agreeing to waive Ieng Sary's right to be present for eight witnesses and for document presentations particularly related to authority and communications structures and the admissibility of witnesses.

Mr. Smith said the prosecution estimated the hearing of certain witnesses and document presentations for which the chamber had requested parties be prepared – both of which Ieng Sary has waived his right to be present for – would take about four weeks. Mr. Smith argued that the trial could proceed while there was uncertainty about Ieng Sary's medical status. Nothing is lost continuing in that fashion, Mr. Smith asserted. Mr. Smith said that ECCC Internal Rule 81(5)[31] reflects international jurisprudence that all alternatives should be considered before potentially limiting the rights of an accused. The prosecution believed they were not at that stage because Ieng Sary and his defense team were prepared for the chamber to hear witnesses that do not relate directly to Ieng Sary's acts and conduct or the structure of the Ministry of Foreign Affairs (MFA), Mr. Smith said.

Mr. Smith pointed out a recent letter from the court's Witness and Expert Support Unit (WESU) that said Mr. Short could provide testimony in early 2013.[32] Mr. Smith said it was beneficial to the witness, accused, and the Trial Chamber that the trial continue without "great legal debate" on whether it should or not. Noting that Mr. Short lived overseas and a decision must be taken today, Mr. Smith said that even if the first weekly report from doctors showed Ieng Sary was physically able to participate in the proceedings, it would be too late to inform Mr. Short. Mr. Smith argued it was beneficial to all parties that Mr. Short's testimony be adjourned and if witnesses did not appear in perfect order, it was not a major detriment to the case.

Additionally Mr. Smith requested that, under Internal Rule 32,[33] the chamber call for an international and national neurologist to examine Ieng Sary urgently so that parties know the state of his physical health. Mr. Smith said prosecutors requested – as outlined in a motion dated September 19, 2012 – that the chamber ask Ieng Sary and his defense team to consider the hearing of 35 witnesses related to the first and second forced transfers during the Democratic Kampuchea (DK) period, given that nearly all do not give evidence directly against Ieng Sary or the MFA. Mr. Smith argued that the court could then potentially have a bank of about 20 witnesses for whose testimony Ieng Sary may waive his presence, allowing the trial to proceed while Ieng Sary's health condition is being determined. Mr. Smith said the prosecution approached the Ieng Sary defense prior to the hearing to suggest a meeting to determine which witnesses they may consider and encouraged the chamber to prompt parties to do so in order to avoid delays.

Finally, Mr. Smith asserted that the prosecution wished the trial to be fair and expeditious while balancing various rights and the aforementioned points would ensure this occurred.

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[31] The ECCC Internal Rules (Rev. 8) are available at: http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8.
[32] The letter from WESU is available at: http://www.eccc.gov.kh/en/document/court/letter-wesu-trial-chamber-expert-witness-philip-short-tce-65-update.
[33] See footnote 31.

Civil Parties Note Balance of Rights

Ms. Simmoneau Fort began by affirming that civil party lawyers supported the prosecution's position. The civil party lawyers noted the obvious right of an accused to be present at trial, deliver instructions, and react when a witness or expert is questioned; however, she asserted, one could not invoke that right without also accounting for the rights of civil parties, emanating from Internal Rule 21 on balancing the rights of the accused[34] with protection of the rights of those parties to a fair trial. Ms. Simmoneau Fort said this was supported by the Declaration on Fundamental Justice Principles made on November 29, 1985,[35] and it was important to remember that the sole right of the accused did not prevail, but rather a balance between parties' rights.

Ms. Simmoneau Fort noted the death of 76-year-old civil party this morning, citing it as an example of a person who will not see a fair trial. She asserted that the lawyers felt there had to be a plan so the hearings can continue without interruptions and noted the civil party lawyers' concern about a letter from the Ieng Sary defense, dated September 17, 2012, which said they were also not currently able to prepare for the testimony of witness Elizabeth Becker – along with that of Philip Short – and a postponement should be considered.

Given the day's testimony, Ms. Simmoneau Fort said, civil party lawyers supported the prosecution though they would have preferred to maintain Mr. Short's hearing at the scheduled date as they felt nothing in the medical documentation suggested the need for deferral. Civil party lawyers did not wish to create procedural difficulties and if the chamber can swiftly determine the content of forthcoming hearings, proceedings can continue as normal, Ms. Simmoneau Fort argued. She also agreed that the proposal by Ieng Sary would allow them to avoid delay. Civil party lawyers supported the deferral of Mr. Short's testimony, requested the chamber provide a schedule of hearings, and expressed hope that the chamber would ask the Ieng Sary defense to clarify their position on Elizabeth Becker's testimony and allow it time to defer her testimony, if necessary, she concluded.[36]

Ieng Sary Defense Voice Submissions on Expert Testimony

Mr. Karnavas said the defense was grateful to the prosecution for their reason and pragmatism and believed their submission was currently the only viable solution. Mr. Karnavas said for over four years the Ieng Sary defense has cooperated with the Trial Chamber and Ieng Sary has shown an "exceptional willingness" to engage in the tribunal, albeit as an accused on trial for very serious crimes. Mr. Karnavas asserted that when the defense learned of Ieng Sary's health problems, they were proactive and consulted immediately on a list of witnesses with their client, who voluntarily waived his right to be present for eight witnesses. Mr. Karnavas noted the civil party lawyers' statement that they saw no reason for deferral of Mr. Short's testimony based on medical reports, but further noted that the doctor had testified that Ieng Sary's brain was not getting sufficient oxygen and the slightest movement caused dizziness. He inquired as to how a person in this condition could assist in his own defense. The defense is not stating that Ieng Sary

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[34] See footnote 31.

[35] A copy of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is available at: http://www.un.org/documents/ga/res/40/a40r034.htm.

[36] Ms. Simmoneau Fort also appeared to support a request for two experts to provide reports to the parties, but the English translation was unclear.

was mentally unfit, Mr. Karnavas contended, only that he was presently unable to concentrate for more than a few minutes during a meeting with his lawyers – let alone hours of proceedings in the court. Mr. Karnavas concluded that Ieng Sary was physically and mentally unable to follow proceedings and participate in his own defense, citing his client's difficulties when lawyers met with Ieng Sary on the day he was hospitalized to comb through passages from Mr. Short's book and discuss what he thought occurred during interviews with Mr. Short.

Noting the testimony of Ms. Becker, Mr. Karnavas said that for anyone who had read his letters, it was clear that if Ieng Sary is incapable of assisting with his defense in relation to Mr. Short, he would also be unable to do so with Ms. Becker's testimony and that he would not waive his presence for the testimony of either witness. Mr. Karnavas noted the prosecution's request concerning 35 witnesses and said the defense informed parties they would speak with Ieng Sary and go through the list. He stated that, of the names proposed by the prosecution, they were uncertain how many would be accepted by the Trial Chamber and though he would sit with the prosecution and his client to discuss the list, the sooner this decision was reached by the chamber, the sooner the defense could give them notice.

Mr. Karnavas said the defense concurred that neurologists should be consulted and agreed fully that Ieng Sary should receive proper medical attention as it was in his best interests to be fit. Mr. Karnavas said the demands Ieng Sary put on the team indicated they were engaging in the case in a robust manner such that it could not be said at the close of proceedings that Ieng Sary suffered from a lack of defense. He asserted that he believed both Ieng Sary and his defense had displayed a willingness to participate.

On the issue of video-link testimony, Mr. Karnavas said the chamber indicated this method was only for exceptional circumstances and as Mr. Short said he is available in 2013, there was no reason he had to testify this year, though there was a claim travel would cost from $200 to $700 more,[37] which would in any case "pale in comparison" to violating somebody's rights. Ieng Sary will not consent to video-link, Mr. Karnavas said, further stating that if Ieng Sary is not able to participate in his own defense or give instructions and does not authorize his lawyers to proceed, then they could not be in court representing him; this outcome would amount to a trial in absentia – albeit just for Mr. Short's testimony. Mr. Karnavas said Internal Rule 81(5) – particularly 81 (5) b – presumed an accused was physically and mentally capable of participating. The rule effectively states that where the accused's absence causes a substantial delay and the interests of justice require – which the defense argued was not currently the case – the chamber may order that the accused participate via audiovisual means, Mr. Karnavas said. Mr. Karnavas argued that if Ieng Sary was capable of participating he would be in the holding cell and he did not believe the court could proceed in questioning Mr. Short via video-link to meet scheduling needs, when no one would be prejudiced if he testified in 2013. Mr. Karnavas said there was enough business for the court to conduct until the end of year, when they could examine Ieng Sary's status, noting that doctors seemed to indicate Ieng Sary could be fit to assist in his own defense in a month or two.

Finally, Mr. Karnavas commended the prosecution for their stance and said the defense would make themselves available to go over the witness list and consult with their client and do what

[37] See footnote 'xxxii'.

they could to ensure continuation of the proceedings. Mr. Karnavas said the defense would encourage the chamber to set out a schedule, particularly regarding 1,400 statements the prosecution wishes to admit about which discussions should be held in public. Mr. Karnavas said the court had enough work ahead of it that it should not lose time while Ieng Sary recuperates.

Lawyers for Nuon Chea and Khieu Samphan Make Brief Submissions

International Co-Lawyer for Nuon Chea Michiel Pestman said he welcomed the flexibility of the parties, which also included his client who was willing to expedite the proceedings as much as possible. Mr. Pestman noted that almost every afternoon Nuon Chea had waived his right to be present in court and he wished to stress that a video-link did not mean his client was actually following the proceedings, let alone participating effectively. Mr. Pestman said the Nuon Chea defense supported the position of the Ieng Sary defense on the testimonies of Mr. Short and Ms. Becker.

National Co-Lawyer for Khieu Samphan Kong Sam Onn said he believed the chamber's flexibility in accommodating requests by parties was important and would facilitate the testimony of witnesses at appropriate times.

With this submission, President Nonn adjourned the day's proceedings, which are set to resume on Tuesday, September 25, 2012, at 9 a.m.[38]

[38] President Nonn said the chamber would hear the testimony of witness TCW-475 for whom Ieng Sary had requested to be present. However, in Ieng Sary's limited waiver he appears to waive his right to be present for this witness' testimony. It is unclear if this was an issue with translation. The limited waiver is available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E229_EN.PDF.