



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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ជាតិ សាសនា ព្រះមហាក្សត្រ

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អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 September 2012
Trial Day 110

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MR. KY BOUSUOR	Khmer
JUDGE LAVERGNE	French
MR. LIM SIVUTHA	Khmer
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English

1

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

2 (Court opens at 0908H)

3 MR. PRESIDENT:

4 (No interpretation, technical problem)

5 [09.12.26]

6 We may now resume.

7 As the Chamber informed the parties and the public yesterday,
8 today the Chamber will hear two separate hearings.

9 The first session will be the hearing of the report by the two
10 treating doctors at the Khmer-Soviet Friendship Hospital who are
11 the treating doctors of Mr. Ieng Sary, who has been sent to be
12 treated at that hospital since Friday the 7th September 2012
13 until today. It was due to his health condition. When he -- we
14 will hear the report when he was first admitted, then the process
15 of the treatment and his current health condition. And we will
16 inquire about his current status, whether he will be able to be
17 discharged, if so, and when, and after the discharge, whether
18 he's able to participate directly in the proceeding or that he
19 can follow it through a remote means, and if so, when can he do
20 that.

21 And if the report and the recommendation by the two treating
22 doctors -- that he -- that Mr. Ieng Sary can participate in the
23 very near future, then, as scheduled, the Chamber will hear the
24 testimony of the expert.

25 [09.14.24]

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1 However, on the contrary, if the recommendation is of a negative
2 nature, the Chamber will decide accordingly, based on the
3 recommendation of the treating doctors, and the Chamber will then
4 hear the testimonies of other witnesses or experts who Mr. Ieng
5 Sary has waived his direct presence.

6 As for the second hearing, the Chamber will hear the opinions and
7 the oral submissions of various parties regarding the hearing or
8 the testimony of the expert Phillip Short, how the hearing and
9 when the hearing shall be conducted, taking into account the
10 condition of the health issue of Mr. Ieng Sary.

11 As schedule was planned, he was planned to be heard from -- from
12 the 1st to the 8th of October, as indicated in document E172/24.
13 The expert also informs the Chamber that he could not make any
14 other alternative appearance within this year, and as -- and for
15 that reason, the Chamber will hear the views of other parties
16 with respect to the rights of the Accused.

17 [09.16.06]

18 The Chamber is of the view that if Mr. Ieng Sary cannot
19 participate in the hearing of the testimony of the expert, his
20 defence team will be allowed to question the witness through a
21 remote means if there is a request from his defence team.

22 That is the intention of today's proceeding.

23 Ms. Se Kolvuthy, could you report the attendance of the parties
24 and individuals to today's proceeding?

25 THE GREFFIER:

3

1 Mr. President, all parties to the proceeding are present except
2 the accused Ieng Sary, who is absent due to his health. The
3 accused Ieng Sary and -- Nuon Chea and Khieu Samphan waive their
4 presence through their counsels in today's proceeding. The
5 letters of waivers from the two Accused have been submitted to
6 the greffier.

7 [09.17.15]

8 The two treating doctors who have been summoned by the Chamber to
9 testify today are present and ready to be called by the Chamber.
10 The two doctors confirmed, to their best knowledge, they have no
11 relation by blood or by law to any -- to the accused Ieng Sary or
12 any of the civil parties who have been recognized by the Chamber
13 in this case. The two doctors already took an oath this morning.
14 Thank you.

15 MR. PRESIDENT:

16 Thank you.

17 Before we invite the doctors into the courtroom, the Chamber
18 would like to inquire with Ieng Sary's defence regarding the
19 proceeding for the first hearing. This is to discuss the health
20 condition of Mr. Ieng Sary.

21 MR. KARNAVAS:

22 Good morning, Mr. President. Good morning, Your Honours, and good
23 morning to everyone in and around the courtroom.

24 [09.18.38]

25 We've discussed this matter with Mr. Ieng Sary. Obviously, he has

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1 no problem and waives any rights as far as his medical condition
2 being discussed openly and transparently before the public.
3 We are prepared to question the doctors ourselves, so we can
4 either proceed first or, if the Trial Chamber wishes, as it has
5 done in the past, proceed by asking the general questions and
6 then allowing the parties to follow up; that suits us as well. We
7 believe that we should be going after the Trial Chamber and
8 before the Prosecution, giving the Prosecution the last word or
9 the opportunity to clear up any matters that they may feel have
10 not been satisfactorily covered through the questioning by the
11 Judges or the Defence. So I'm at your disposal. I can go first or
12 you can go -- Your Honours can go first. Either way, I'm good to
13 go.

14 [09.19.53]

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 The question to you is that this hearing is related to the
18 personal health status of your client and the question is whether
19 the hearing can be conducted in public. Do you have any objection
20 to that?

21 MR. KARNAVAS:

22 Actually not; in fact, we did indicate to the senior legal
23 officers -- officer that we wish to have this -- a public hearing
24 because we do believe that the public should be aware of what is
25 going on and we have discussed this with Mr. Ieng Sary. We have

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1 his full confidence and his authority to go forward in a public
2 forum. So the answer is yes.

3 MR. PRESIDENT:

4 Thank you. That is clear.

5 Upon hearing the response from Mr. Ieng Sary's defence team, the
6 Chamber will proceed with the hearing of the testimony of the two
7 treating doctors of Ieng Sary at the hospital, and the Chamber
8 decides to hold this hearing in public.

9 [09.21.38]

10 Before the Chamber invites the doctors into the courtroom, we
11 would like to inform the parties and the public that the hearing
12 of the testimonies of the two doctors from the Khmer-Soviet
13 Friendship Hospital are of the nature that they are considered
14 witnesses, not experts.

15 Court Officer, could you invite the doctors in?

16 (Witnesses enter courtroom)

17 MR. PRESIDENT:

18 Good morning, Doctors. This morning you are invited by the
19 Chamber to provide your opinions in regard to the health
20 condition of the accused Ieng Sary, who has been hospitalized for
21 a number of days at the Khmer-Soviet Friendship Hospital.
22 He was hospitalized since Friday the 7th of September 2012 and he
23 is still being treated. However, in light of the necessity of the
24 proceedings before the Chamber, we will try to find the best
25 solution for the proceedings to move forward as scheduled and we

6

1 will take into account our scheduling and the health condition of
2 Ieng Sary and whether he's able to participate in the proceeding.

3 [09.24.49]

4 Before we start questioning you, we would like to inform you that
5 before you respond to the questions put to you by the Bench or
6 any other parties, please wait until you see the red light on the
7 tip of the microphone and the console. When the red light is on,
8 it means the microphone is operational and you can respond.

9 Please leave a small gap between question and other session so
10 that the interpreter is able to interpret your response.

11 The questions put to you will be related to either one or the two
12 of you, and any of you can respond to the question put to you, as
13 deemed appropriate based on your experience, or you can assist
14 one another if you think a response is incomplete or if you wish
15 to add additional information so that the information is clear
16 and complete.

17 [09.26.26]

18 Before we delve into the substance of the report, we would like
19 to ask some preliminary background information from both of you.

20 That is the judicial procedure practiced at this Court.

21 QUESTIONING BY THE PRESIDENT:

22 Q. Mr. Lim Sivutha?

23 MR. LIM SIVUTHA:

24 A. My name is Lim Sivutha.

25 BY THE PRESIDENT:

7

1 Q. Thank you. Dr. Lim Sivutha, the Chamber noticed that we
2 already asked your personal information and your qualifications
3 on the 23rd of May 2012; is that correct?

4 MR. LIM SIVUTHA:

5 A. Yes, that is correct.

6 BY THE PRESIDENT:

7 Q. If that is correct, then there is nothing else to add to the
8 transcript dated 23rd May 2012, regarding your personal
9 background and qualifications.

10 [09.28.02]

11 The next question to you is the following: Since then, have you
12 changed your status or position within the Khmer-Soviet
13 Friendship Hospital?

14 MR. LIM SIVUTHA:

15 A. Since then, there is no change to my employment.

16 BY THE PRESIDENT:

17 Q. Thank you.

18 As reported by the greffier, you have no relation, by blood or by
19 law, to the accused Ieng Sary or any of the civil parties in this
20 case; is this information accurate?

21 MR. LIM SIVUTHA:

22 A. Yes, that is correct.

23 BY THE PRESIDENT:

24 Q. Thank you. Also, in the same report, you already took an oath;
25 is that correct?

1 MR. LIM SIVUTHA:

2 A. Yes, that is correct.

3 BY THE PRESIDENT:

4 Q. Thank you.

5 We would like now to ask some background information from Dr. Ky
6 Bousuor.

7 Doctor, is your name Ky Bousuor?

8 [09.29.18]

9 MR. KY BOUSUOR:

10 A. Yes, that is correct.

11 BY THE PRESIDENT:

12 Q. Doctor, can you tell the Chamber your date of birth?

13 MR. KY BOUSUOR:

14 A. I was born on the 15 of January 1955 in Chbar Ampov
15 sub-district, Kien Svay district, Kandal province.

16 BY THE PRESIDENT:

17 Q. Thank you. Where is your current address?

18 MR. KY BOUSUOR:

19 A. I live at number 60, Street 51, Psar Thmei III quarter, Doun
20 Penh district, Phnom Penh.

21 BY THE PRESIDENT:

22 Q. Thank you.

23 [09.30.30]

24 As reported by the greffier, you have no relation with the
25 accused Ieng Sary or any of the civil parties recognized in this

1 case; is that correct?

2 MR. KY BOUSUOR:

3 A. Yes, that is correct.

4 BY THE PRESIDENT:

5 Q. Also in the same report, it's stated that you already took an
6 oath before you entered this courtroom; is that correct?

7 MR. KY BOUSUOR:

8 A. Yes, that is correct.

9 BY THE PRESIDENT:

10 Q. Doctor, can you inform the Chamber of your education and your
11 qualifications in relation to your occupation?

12 MR. KY BOUSUOR:

13 A. Yes, I can do that. Allow me to inform the Chamber of my brief
14 biography.

15 [09.31.37]

16 I received my doctoral degree in 1985 from the Faculty of
17 Medicine. I then continued to study in my specialized medical
18 doctor at Bocto (sic), and in 2001, I studied at a university in
19 France. Since I started my employment, I worked in the medical
20 field for 26 years.

21 BY THE PRESIDENT:

22 Q. Thank you. Where is your current place of employment, and in
23 which area of specialty?

24 MR. KY BOUSUOR:

25 A. I currently work at the Khmer-Soviet Friendship Hospital and I

10

1 am Chief of General Admission Section and a member of the
2 governing board for the examination of the health of the Accused
3 at the ECCC detention facility.

4 BY THE PRESIDENT:

5 Q. Thank you. That is all for the preliminary questions of the
6 two doctors. Let me go into the substance.

7 [09.33.21]

8 Doctor Lim Sivutha, I'd like to ask questions regarding the
9 report by the Khmer-Soviet Friendship Hospital -- that is the
10 report inclusive of the date from the 7th to the 19th of
11 September 2012, which has been submitted to the trial chamber,
12 your report dated 19 September 2012. And in the case file it
13 bears the number E11/87/2.

14 Court Officer, could you hand the report to the two doctors and
15 project it on the screen?

16 (Short pause)

17 Ms. Se Kolvuthy, could you prepare the document -- the remaining
18 documents -- that is, any of the relevant medical documents
19 starting from the 7 September 2012 ready for the doctors to
20 review, if there is any?

21 Doctor, the report in your hand, is that the actual report by the
22 Khmer-Soviet friendship Hospital that you made and submitted to
23 the Trial Chamber on the 19th September 2012?

24 MR. LIM SIVUTHA

25 A. Yes, that is correct.

11

1 BY THE PRESIDENT:

2 Q. Is it you who actually treated Mr. Ieng Sary after he was
3 admitted at the Khmer-Soviet Friendship Hospital starting from
4 the 7th September 2012 and up to today?

5 MR. LIM SIVUTHA

6 A. Since he was admitted to the hospital, our medical group,
7 including myself, have treated him.

8 BY THE PRESIDENT:

9 Q. And before he was admitted to the hospital on the 7 September
10 2012, have you ever examined and treated the accused Ieng Sary?

11 [09.38.24]

12 MR. LIM SIVUTHA

13 A. Regarding the treatment of Ieng Sary, I, myself, and my team
14 started since it was handed over by the Calmette Hospital to the
15 Khmer-Soviet Friendship Hospital, and it has been almost one
16 year.

17 BY THE PRESIDENT:

18 Q. Thank you.

19 Can you tell the Chamber of the status of the health of Mr. Ieng
20 Sary when he was admitted to the hospital since 7 September 2012
21 and the subsequent days during his hospitalization?

22 MR. LIM SIVUTHA

23 A. Allow me to give Your Honour a brief medical report as to the
24 reason he was admitted to the Emergency Department on the 7th
25 September 2012.

1 [09.39.38]

2 The reason for his hospitalization was in relation to his malaise
3 -- that is, his fatigue and that he could not be allowed to stay
4 at this location. So, he had to be admitted for treatment at the
5 Khmer-Soviet Friendship Hospital.

6 Allow me to remind you as well, Your Honour, regarding his
7 condition during his hospitalization.

8 We observed that after he was admitted to the Emergency Section,
9 the conditions related - that is, the general conditions related
10 to his health was in regard to his high blood pressure, his
11 heart-beat, and in general they were the same as previously
12 examined. However, after - awhile after he was admitted, we found
13 another reason for him to be -- remain at hospital. It is related
14 to his "ostéoporose" with his -- that is the bone of his neck,
15 and that meant insufficient blood drawing to his upper head and
16 that he would have limited motor movement. And this medical
17 condition means, because of the collarbone -- of the bone in his
18 neck which has pressure - to put pressure on the blood veins
19 which draw insufficient blood to his upper head, and that caused
20 the limited movement in his limbs. And during about of the 10
21 days of his admittance and treatment at hospital, his heart
22 condition is normal -- there is no concern about his heart-beat
23 -- but the main reason for his admittance and remaining at the
24 hospital is due to the strict movement of his limbs and the
25 limited blood flow to his upper head.

13

1 [09.42.19]

2 BY THE PRESIDENT:

3 Q. Thank you, Doctor. Can you also inform the Chamber of his
4 heart condition at this moment?

5 MR. LIM SIVUTHA

6 A. In relation to his heart condition, allow me to tell you of
7 his previous conditions.

8 He used to have a problem with his veins through his heart, and
9 it was treated back then, in 1992, and he has also gone through
10 surgery with stenting and with vein bypass. And that was his
11 previous condition.

12 And after those operations and his conditions which started back
13 then until today is regard to his - the right part of his heart,
14 that the valve could not close completely, and it means that his
15 heart condition is not as normal as ordinary people.

16 [09.43.45]

17 And during the one year monitoring of his heart condition, there
18 is no concernable (phonetic) change in his heart status. So far,
19 the treatment in regard to his heart is normal; there is no
20 immediate danger to his heart condition.

21 BY THE PRESIDENT:

22 Q. Thank you.

23 Doctor, can you also add some additional information in addition
24 to all the reports submitted to the Chamber by the Khmer-Soviet
25 Friendship Hospital, in particular all those information started

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1 from the 7 September 2012? In that report, it states about his
2 fatigue, his dizziness, even of a slightest movement, that would
3 make him fatigued.

4 The question to you is that: This symptom of fatigue, what is the
5 main cause of the fatigue?

6 And the doctor who is here at the ECCC tells us that he cannot go
7 into a higher ground or go up because he will have dizziness. Can
8 you tell us the condition for this symptom? What is the main
9 cause for such condition?

10 MR. LIM SIVUTHA

11 A. In relation to his fatigue, it is at a third level, and the
12 main cause is due to his weakening heart. Dizziness is related to
13 two symptoms or conditions. So, one is his heart condition. And
14 since he's been treated by us, the condition cannot go back to
15 normal, but its evolution is stable.

16 [09.46.30]

17 And recently the concern for him in regard to the dizziness --
18 and as I also seek advice from the neurologists to conduct a
19 scanner of his upper part, we found of - found of the pressure on
20 the blood veins on his neck bone toward the - for the blood flow
21 limited or restriction to the upper head. And as result he would
22 feel numb in his limbs.

23 So, to conclude, his fatigue is related to his heart condition
24 and -- recently, as we discovered -- due to the pressure on the
25 blood flow to the upper head, at the neck bone.

15

1 BY THE PRESIDENT:

2 Q. Thank you, Doctor.

3 Another point that we'd like your opinion, also as stated in your
4 - in the medical report by the treating doctor and various other
5 reports made by the treating doctors here at the ECCC, it states
6 that Ieng Sary cannot follow the proceeding, even remotely, due
7 to his lumbago or backache.

8 [09.48.08]

9 Can we inquire from your why -- or what is the cause of this
10 lumbago or backache; that he cannot sit and follow the
11 proceeding?

12 MR. LIM SIVUTHA

13 A. Regard -- in regard to his backache, after we received the
14 documents -- medical documents from Calmette Hospital, the
15 scanner from that hospital reveals that his backache is kind of
16 stuck, and that limits his movement. However, the current issue
17 at the moment in regard to his lumbago and the main cause that he
18 cannot be discharged is related to his stiff neck bone, and that
19 cause - that leads to dizziness as well and leads to the numb in
20 his limbs. These are the main causes related to his neck bone.
21 Previously, the diagnostic was done only for the lower part, but
22 later on the diagnostic was conducted on the upper part and it
23 revealed the issues with this neck bone.

24 BY THE PRESIDENT:

25 Q. Thank you, Doctor.

16

1 Let me now look at the latest medical report. As you have treated
2 him at the hospital since the 7th September 2012, has his
3 condition improved? If so, can you tell us if he is able to be
4 discharged from the hospital? And if so, when can he be
5 discharged?

6 [09.50.23]

7 MR. LIM SIVUTHA

8 A. Since his first day of admittance on 7 September 2012, through
9 our observation and my personal observation, it indicates that
10 his heart condition, although is not good, but is normal. So his
11 heart functions normally.

12 The issue or the main cause that he cannot be discharged, as I
13 indicated early, is the numbness in his limbs and the limited
14 blood flow to his brain or his head. According to the
15 neurologist, the main cause for him -- or for his dizziness and
16 the numbness in his limbs is solely based on his limited blood
17 flow due to the pressure on the blood vein at the neck bone. And
18 that is the main cause today.

19 [09.51.29]

20 And we have tried to find other solutions for the treatment by
21 consulting with various other medical experts at the hospital to
22 deal with this issue because, if we rely on the medical
23 treatment, it's going to take quite a long time and the treatment
24 will be - the success of the treatment will be also limited. And
25 if we opt for the surgery to dilate the blood vein and the blood

17

1 flow at the neck bone level, we are trying to find whether it is
2 possible; and according to medical experts, we will face a number
3 of critical challenges. One main issue is his heart condition, as
4 he cannot - as anaesthesia cannot be used on his. Also,
5 osteoporosis is another main cause, because for his bone --
6 osteoporosis is a main cause as well. These are two main
7 challenges to limit the option for surgery.

8 And during the last few days, I consulted with neurologists and
9 surgeons to find other alternative. If we cannot operate on him
10 and we continue the medical treatment as we are doing now, it's
11 going to take quite a long time. And I will try to consult with
12 expert - medical experts at the Calmette Hospital to deal with
13 the pressure of the neck bone on the blood flow.

14 [09.53.21]

15 And if surgery cannot be done, he is going to be hospitalized for
16 quite a long while at the hospital -- at least another month. And
17 if we try to fix the issue of the pressure on the blood vein at
18 his neck bone as well as deal with his osteoporosis, it's going
19 to be a long process as well. So, medical treatment is going to
20 take quite a while -- it's going to take two months -- and it is
21 difficult to say whether he can return to his better condition.
22 If we can dilate the blood vein to release the pressure, it's
23 going to be good for him, but the challenge is that -- whether
24 the patient is able to sustain the process of surgery, and this
25 is the issue we are trying to deal with at the moment.

1 MR. PRESIDENT:

2 Thank you.

3 Judges or the Bench, do you have any questions to be put to the
4 doctor?

5 Judge Cartwright, you may proceed.

6 QUESTIONING BY JUDGE CARTWRIGHT:

7 Thank you, President, and thank you to both of you for coming
8 today. I know it interferes seriously with your usual work and I
9 am very grateful to you for assisting in this way. I'm also very
10 grateful for the clarity of that explanation because sometimes we
11 can't fully understand the medical reports that we receive.

12 [09.55.17]

13 Q. So I have just a few additional questions.

14 First, you have made it very clear that his current heart
15 condition and his issues with his back remain pretty stable
16 although they are quite serious; is that a fair summary of what
17 you have told us?

18 MR. LIM SIVUTHA:

19 A. I would like to clarify the general condition of Mr. Ieng Sary
20 following his admission to the emergency section of the hospital.
21 The clinical assessments of his coronary system is that of course
22 the cardiovascular system was stable, but by "being stable", in
23 this sense, is that when he was admitted to the hospital and
24 until to date he was stable, but I mean - in that sense I mean
25 that he - there was no substantial deterioration of the

19

1 condition. And we also sent the result of the scanning for
2 analysis. But in terms of the fluctuation of the conditions it
3 was minimal.

4 However, what prevents us, actually, from saying that it was
5 stable is that -- because of the problems with his cervical
6 uncodiscarthrosis -- that is the situation, the new discovery
7 that lead to the problem with his blood vein circulation that
8 blood cannot be actually sent to the brain.

9 [09.57.40]

10 But in terms of the heart condition, it is stable; there was no
11 significant deterioration, but the pertinent problems we have
12 discovered is the multi-stage cervical uncodiscarthrosis.

13 BY JUDGE CARTWRIGHT:

14 Q. Thank you. And you have, to a large degree, answered my next
15 question, which was that this problem with the insufficient blood
16 flow to the head has been very recently discovered and could not
17 have been discovered without doing a neurological examination,
18 including a scan; is that the situation?

19 MR. LIM SIVUTHA

20 A. In relation to the blood circulation to the brain, we
21 discussed with the neurologists in relation to this issue. We had
22 his head scanned and we also found that diffuse osteoporosis.
23 And, in addition, it also concerns with the cervical
24 uncodiscarthrosis. We had to, probably, conduct operation that
25 was one of the possibilities, even though there was an adherent

20

1 risk of conducting this, but we so far consulted with many
2 specialists that that was one of the possibilities and that was
3 the pertinent problems concerning this cervical
4 uncodiscarthrosis. And it also relates to the vertebrobasilar
5 syndrome insufficiency as well.

6 [09.59.55]

7 BY JUDGE CARTWRIGHT:

8 Q. Thank you for that explanation.

9 The operation to which you refer, you've made it very clear that
10 it is - it carries risks that are higher than the usual risks of
11 surgical intervention because of Ieng Sary's heart problems and
12 probably, as well, his orthopaedic problems. Can I inquire of you
13 if such surgery has been carried out on similar patients at
14 Khmer-Soviet Friendship Hospital, or is this the types of very
15 highly-specialized surgery that would require additional
16 expertise to be -- to supplement the skills already at your
17 hospital?

18 MR. LIM SIVUTHA

19 A. This is the truth. If we have to undergo the surgical
20 intervention, we have to think of various options. We have to
21 consult with neurologists and the anaesthetist as well. In my
22 personal, professional opinion, I do not recommend any surgical
23 operation at this time. It may be one of the options, but taking
24 into consideration his fragile state of health, it poses a real
25 risk if the -- any surgical intervention is conducted.

21

1 [10.01.45]

2 However, I am now seeking consultation with other specialists,
3 neurologists, and -- or so in order to discuss this. And that is
4 the main challenges facing us now.

5 And as for the specialization of this at our hospital, our
6 specialist is on his overseas mission now, but we are consulting
7 with other specialists as well.

8 But as for the surgical intervention, we have to explore more
9 options as to which one -- which way is more feasible in this
10 present condition of the patient.

11 BY JUDGE CARTWRIGHT:

12 Q. Thank you. I clearly understand that as you assess the
13 situation at present, you would not be recommending surgery
14 because of the associated risks. Can I ask you, then, in the
15 alternative, should you treat him with your skills as a
16 physician, what sort of treatment would be involved in helping to
17 improve the blood flow, as you have described it?

18 [10.03.18]

19 MR. LIM SIVUTHA

20 A. As for the treatment, Mr. Ieng Sary is still in the Emergency
21 Section of the hospital. And as for his lumbago, he was being
22 treated by a different specialist, and he has provided his
23 observation to his condition, and he also prescribes certain
24 medicines as well in order to ensure the stability of his
25 condition. And that can, to a certain extent, ensure this

22

1 stability. And I have to consult a neurologist as well, in order
2 to come up with the assessment in terms of his neurology problem.
3 And so far we have examined him on a regular basis in the
4 Intensive Care Section. And we also discuss with a French
5 specialist who is on a consultation mission at our hospital, and
6 he also recommends that -- the use of medicine has minimal
7 positive impacts on his condition, an operation will be the
8 likely possibility. But once again, as I said, taking into
9 account his fragile state of health, a surgical intervention is
10 very risky. I have to consult with the specialist at Calmette
11 Hospital and other specialists to get their opinion -- medical
12 opinion in relation to the alternative way forward.

13 BY JUDGE CARTWRIGHT:

14 Q. Thank you very much.

15 [10.05.09]

16 Just one final matter. There were some medical experts called by
17 the Court in relation to Ieng Thirith, who were also asked to
18 examine Ieng Sary and provided the Chamber with a report dated
19 the 3rd of September, which made certain recommendations
20 concerning medication and changes to the practical arrangements,
21 such as beds, chairs, and so on. Have you had an opportunity of
22 reading that report?

23 MR. LIM SIVUTHA

24 A. As for the -- that medical report, yes, I read it. And that is
25 what's being applied to him, as well.

1 And as for the -- his arrangement for his stay at the hospital --
2 for example, the provision of chairs and beds or so -- we
3 actually provided him these facilities as well.

4 But once again, in relation to his cervical uncodiscarthrosis,
5 which was just discovered, it is a new discovery, and we have not
6 provided any particular solution -- medical solution to this
7 problem. So we are trying now to find a remedy for this new
8 discovered disease. And we will explore whether or not medication
9 is appropriate, or we have to explore other alternatives.

10 [10.07.05]

11 As I said, we have to consult with neurologists and other
12 specialists as well to come up with any remedy recommendation.

13 BY JUDGE CARTWRIGHT:

14 Q. Thank you. I fully understand that the report from the experts
15 was prepared before the diagnosis of -- the limited blood flow to
16 the head was diagnosed. I simply wanted to make sure that you had
17 all the available information. And, of course, the experts, when
18 they examined Mr. Ieng Sary, were not aware of this most recent
19 diagnosis that you have explained today. And I didn't consider
20 that anything in that report would -- in the experts report would
21 have made any difference, given the new diagnosis that you have
22 just explained to us today.

23 So, thank you very much for the clear manner in which you have
24 explained the current issue. And I think, in summary, it would --
25 you are saying to the Court that a surgical intervention is

24

1 high-risk and would -- and I'm assuming that it would be
2 successful, but he would still need a considerable period to
3 recover from surgery.

4 [10.08.45]

5 By the same token, a medical intervention such as you are
6 following now is also going to take a long time.

7 So, whichever option is finally selected, Ieng Sary will not be
8 well enough, in your opinion, to return to participate in the
9 trial from the holding cells or from the courtroom for some time;
10 is that a fair summary?

11 MR. LIM SIVUTHA

12 A. Based on the evolution of the -- of his condition, it is as
13 what you have just described, and I do not expect that, at least
14 in the short -- in the short term, he will not be able to attend
15 the proceeding himself because he has problems in moving his
16 neck, and that situation will exacerbate if he has to move a lot,
17 for example if he has to come up and down.

18 [10.10.11]

19 And so he has to be kept under observation in Provisional
20 Intensive Care Unit. And I think that he should remain in this
21 intensive care for at least some time more, but I'm going to
22 consult with other specialists as well in order to find other
23 alternatives to ensure that he can be returned to the detention
24 facility of the Court as soon as possible. So, we will try
25 explore other feasible options to ensure that he will receive

25

1 better treatment for his current condition and diseases.

2 JUDGE CARTWRIGHT:

3 Thank you very much to both of you.

4 President, I have no further questions at this point.

5 MR. PRESIDENT:

6 Thank you.

7 I now hand over to the Prosecution, if you have any questions,

8 but--

9 Oh, no, my colleague, Judge Lavergne, you may proceed.

10 [10.11.10]

11 QUESTIONING BY JUDGE LAVERGNE:

12 Thank you very much, Mr. President. Just two very quick questions
13 for further clarification.

14 Q. With respect to cardiopathy that you referred to, you stated
15 that it was rather serious, yet it was stabilized. Do you believe
16 that there has been a deterioration in Mr. Ieng Sary's health
17 condition with respect to that particular pathology?

18 And I would call your attention to a section of your report from
19 the Khmer-Soviet Friendship Hospital on the 19th of September.

20 You wrote that Mr. Ieng Sary presents NYH-III (sic) levels. Can
21 you please explain to this Court what exactly that means and
22 whether that dyspnoea, class NIHA-III (sic) impacts his
23 pathology?

24 [10.12.30]

25 MR. LIM SIVUTHA:

26

1 A. Thank you. Thank you very much. In relation to his
2 cardiovascular condition, if you look at the result of our
3 clinical examination, I can respond to the question that if we
4 compare the clinical assessment of his cardiovascular condition,
5 based on the ECG, we did not observe any significant evolvement
6 that is noticeable.

7 But, of course, he has suffered from a lot of cardiovascular
8 complication so far, and what is now (unintelligible) that the
9 situation might be degenerative because of his advancing age, as
10 well. And now, as you mentioned, in this report, the dyspnoea,
11 class NYHA-III, is a pertinent issue with his cardiovascular
12 disease.

13 If we compare with the last six months' report, the
14 cardiovascular function did not degenerate. I can say that it is
15 rather stable and that that is not something we are very
16 concerned. But the main concern, that is the cervical
17 uncodiscarthrosis that we have just diagnosed.

18 [10.14.27]

19 BY JUDGE LAVERGNE:

20 Q. Just to be absolutely certain, can it be said that dyspnoea
21 level III means that the patient suffers from short of breath --
22 shortness of breath, rather, even when the patient is in a state
23 of rest, or does the patient suffer from shortness of breath at
24 the slightest, most minimal exertion?

25 MR. LIM SIVUTHA

1 A. In explanation of this cardiovascular -- particularly people
2 who suffer from dyspnoea, class NYHA-III, is someone who has
3 problems with moving around. He will be fatigued when he moves
4 around. Even making a slight movement, he would feel exhausted
5 immediately.

6 And this situation, actually, was prevalent in this patient for a
7 long time, and the situation remained stabilized over there. But,
8 as I said, we diagnosed, in addition to his current disease -- is
9 another disease of concern, which is cervical uncodiscarthrosis.

10 [10.16.10]

11 BY JUDGE LAVERGNE:

12 Q. One final question with respect to that problem and the
13 eventuality of surgical intervention. You state that it would
14 entail rather significant risks. Can it be understood as to the
15 types of risks that Mr. Ieng Sary is vulnerable to -- are we
16 talking about further risks of cardiovascular problems or heart
17 attacks? What are the - what is the nature of the risk that he
18 runs?

19 MR. LIM SIVUTHA

20 A. If he undergoes surgical intervention -- that is one of the
21 options, of course, and we -- and that is taking into account the
22 recommendation from other specialists as well, who said that in
23 order to dilate the cervical uncodiscarthrosis, one option is to
24 conduct surgical intervention. But taking into consideration his
25 heart disease, at the moment this surgical intervention will

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1 involve a lot of complication. And, in addition, we have to
2 factor in the fact that he is now very old, and he does not have
3 any energy to stand this operation. And, in addition, he has to
4 stand with the anaesthetic administration as well, and whether or
5 not he will stand this anaesthetic administration. And, in
6 addition, he is also suffering from a diffuse osteoporosis. This
7 is also a problem with him. And even if we can dilate the
8 cervical uncodiscarthrosis, we don't know whether or not there
9 will be any other side effects or implications for other
10 diseases.

11 [10.18.32]

12 That's why, as I said from the very beginning, this is one of the
13 options. We will have to explore other options to find the best
14 alternative that has minimal impacts on his condition. Because we
15 understand that his cardiovascular condition is very vulnerable
16 at the moment, so we have to take into consideration every
17 possible side effect of this operation if he has to undergo it.

18 JUDGE LAVERGNE:

19 Thank you very, Doctor, for those clarifications.

20 MR. PRESIDENT:

21 Thank you.

22 So I now hand over to the Prosecution if you have any questions
23 to put to the witnesses. You may proceed.

24 [10.19.29]

25 MR. LYSAK:

1 Thank you, Mr. President. We do have a few questions.

2 Mr. Karnavas has requested to go first. That is agreeable to us
3 if it's agreeable to the Court. We would be agreeable to
4 following Mr. Karnavas if he wishes to question the doctors
5 first, at your discretion.

6 MR. PRESIDENT:

7 The Chamber would like to give the floor now to Counsel Michael
8 Karnavas, the defence counsel for Ieng Sary. You may proceed.

9 QUESTIONING BY MR. KARNAVAS:

10 Thank you, Mr. President. And I wish to thank the Prosecution for
11 allowing me to go at this point. I'll be very brief.

12 Q. Doctor, from what I understand, what you're telling us is that
13 Mr. Ieng Sary's brain is not getting sufficient oxygen and that's
14 what's causing his inability to have mobility and the dizziness.
15 Do I have it right?

16 MR. LIM SIVUTHA:

17 A. Regarding the dizziness, as advised by the neurologist, yes,
18 this somehow is interconnected. And that is in relation to the
19 narrowing cervical canals.

20 [10.21.06]

21 And regarding the numbness of his limbs, as I was advised, if his
22 cervical canals narrowed -- that is, the pressure put on the
23 blood veins -- that caused the numbness in his limbs.

24 And also, for the dizziness, it's also related to his
25 hypertension and his heart condition. I also read a report by the

30

1 doctor who examined him. The condition is slightly related, and
2 his movement -- that is, from sitting to stand-up -- is limited,
3 but mainly, it deals with the -- his neuro-system.

4 BY MR. KARNAVAS:

5 Q. All right. But let me go back, because I'm just trying to
6 simplify it so I can understand it right. There's a problem with
7 the blood flowing to the brain, and that's where everything else
8 stems from. Do I have it right?

9 MR. LIM SIVUTHA

10 A. According to the opinion of the neurologist, his narrowing
11 cervical canals limit the blood flow from the heart to his head.
12 However, it is not an immediate risk at the present time, but it
13 may evolve in the future, which may cause a concern.

14 BY MR. KARNAVAS:

15 Q. Thank you.

16 [10.22.58]

17 And I'm going to go step-by-step. I understood what you said; I
18 just want to make sure that I simplify it enough so I can
19 understand it. And so, if there's an insufficient flow of blood
20 to the head, can we conclude that the brain is getting an
21 insufficient amount of oxygen for it to properly function?

22 MR. LIM SIVUTHA

23 A. If we say that the blood flow is insufficient -- it is not yet
24 at that stage, but the symptom includes the restriction of blood
25 flow to the head. The current status does not have any severe

1 impact. And that is the opinion of the neurologist. This is a
2 symptom determined by the neurology -- neurologist.

3 BY MR. KARNAVAS:

4 Q. Okay. Well, that is causing the dizziness, is it not? Doctor,
5 I would most appreciate it if you would give me the courtesy of
6 listening, as opposed to carrying on a conversation, please.

7 [10.24.37]

8 So let me - let me ask my question again: Is the lack of blood
9 flowing to his head causing the dizziness? And it's a yes or a
10 no.

11 MR. LIM SIVUTHA

12 A. As we consulted with the neurologist, it plays some role in
13 this process.

14 BY MR. KARNAVAS:

15 Q. And does the dizziness--

16 Are we ready to proceed, Doctor?

17 Is the dizziness, in any way, affecting his ability to
18 concentrate?

19 MR. LIM SIVUTHA

20 A. Regarding dizziness and concentration, I cannot give that
21 opinion. Even recently, as in the report by the doctor who
22 examined, there is no indication of that link. You need to have
23 an expert in neurology to give that opinion.

24 However, the report made by the psychologist on this patient, it
25 indicates that at the moment it does not have any psychological

1 impact on him.

2 BY MR. KARNAVAS:

3 Q. All right.

4 [10.26.20]

5 Now, you've been observing him for some time. Let's talk about
6 the last 10 days. We've been in this courtroom now for
7 approximately one hour and 25 minutes. Given what you've observed
8 of Mr. Ieng Sary, would he have been able to concentrate and
9 answer questions such as the ones that you've been answering for
10 such a period of time?

11 MR. LIM SIVUTHA

12 A. As for the concentration, we cannot make our assessment
13 whether he's able to concentrate. Our capacity is -- whether he's
14 able to participate in the proceeding is mainly to deal with his
15 movement and his neck movement. That is my field of the
16 assessment. And when it comes to his feeling or psychological
17 status, that should be the opinion of the expert in that field.
18 To me, I do not see any concern regarding this aspect, but of
19 course I am not the expert in this area.

20 BY MR. KARNAVAS:

21 Q. All right. So, you're here just to speak about the physical
22 aspects of Mr. Ieng Sary's condition.

23 MR. LIM SIVUTHA

24 A. Yes, that is correct, because I do not have any expertise to
25 make assessment regarding his mental status. The reason that he

1 cannot be discharged from the hospital or that he cannot
2 participate in the proceedings physically, that is my field, but
3 when it comes to the medical -- to the mental status, that's
4 outside of my expertise.

5 BY MR. KARNAVAS:

6 Q. Thank you.

7 [10.28.31]

8 Now, if we go to the last page of your report, I noticed that
9 there's 17 types of drugs that you or your fellow doctors -- your
10 colleagues -- are administering to Mr. Ieng Sary on a daily
11 basis. Do you see that? Do you see the list, sir?

12 MR. LIM SIVUTHA

13 A. Yes, I do.

14 BY MR. KARNAVAS:

15 Q. And of these 17 different medications, how many of which are
16 you, directly, administering to Mr. Ieng Sary -- prescribing,
17 that is?

18 MR. LIM SIVUTHA

19 A. The medicines listed on this page are that being administered
20 on him on a regular basis. And, of course, it seems quite a lot.
21 I also consulted with other fields. As for prostate, it's
22 removed, but there's a few medicines to deal with his cervical
23 condition, and it is necessary for him to take those medicines.
24 And, of course, we give the medicines based on the opinions given
25 to us by the experts in neurology.

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1 [10.30.11]

2 As for the dizziness, the medicines that we administer to him is
3 for a short-term. If we don't see any improvement within three or
4 four days, then we will stop administering those medicines.

5 Of course, I understand, as you can see, due to his advanced age
6 and a number of medicines to be administered, I consulted
7 repeatedly with my colleagues, and we only try to administer the
8 necessity -- necessary medicines for him, and only those
9 medicines to stop this nature would be -- would not be
10 administered and it will stop today.

11 BY MR. KARNAVAS:

12 Q. Thank you, Doctor. Let me ask my question again: Of these 17,
13 can you just list the numbers of the ones that you are directly
14 prescribing to Mr. Ieng Sary, so we know which ones you are not?

15 MR. LIM SIVUTHA

16 A. Among all these medicines, in general, they are the medicines
17 that he has taken regularly since he was transferred to our care.
18 The new medicines upon consultation are those to -- for the
19 treatment and for his dizziness symptoms. And the medicines that
20 we add are three: that is one multivitamin -- that is, Supradyn
21 and Provastral (phonetic).

22 [10.32.00]

23 BY MR. KARNAVAS:

24 Q. Okay. So you're saying, if I understand -- out of the 17, 14
25 of these drugs he was taking prior to being admitted. Is that --

1 are we to understand that?

2 MR. LIM SIVUTHA

3 A. Among all these medicines, although I may not recollect it
4 correctly, they are the medicines that he had taken previously.

5 BY MR. KARNAVAS:

6 Q. And that would include codeine, for instance -- number 16?

7 MR. LIM SIVUTHA

8 A. Efferalgan Codeine -- he has taken it for quite some time now.
9 This is to stop his pain. And we tried to reduce the number of
10 tablets taken, but we administered this medicine to him because
11 of his pain. And he has taken these medicines for quite a while
12 now.

13 BY MR. KARNAVAS:

14 Q. Now, you told us that a scan was performed on him. We know
15 that he was admitted on September 7th in the emergency. Can you
16 please tell us when the scan was performed -- what day?

17 [10.34.03]

18 MR. LIM SIVUTHA

19 A. I cannot recall the exact date, but we conduct his cervical
20 scan -- I think it was on 11th. And after we made the assessment
21 -- initial assessment, that he -- the problem lied within his
22 heart, but then we noticed his stable heart condition, then we
23 initiated his cervical scanning on the 11th.

24 BY MR. KARNAVAS:

25 Q. Okay, so that was five days after he was admitted into the

1 emergency room at your hospital.

2 (Short pause)

3 So my question is: That was five days after he was admitted; is
4 that what your records reflect?

5 MR. LIM SIVUTHA

6 A. Yes, it was five days after. And after we asked the experts to
7 examine him, then we tried to find other solutions and we decided
8 to conduct the cervical scanning.

9 [10.36.10]

10 The previous scanning was in regard to his backbone, but we could
11 not link this condition to his fatigue, or the dizziness, or the
12 numbness of the limbs. The numbness of the limbs was the latest
13 symptom, and after we made the assessment, then we decided to
14 conduct that cervical scanning.

15 BY MR. KARNAVAS:

16 Q. When were the consultants -- the experts -- like the
17 neurologists -- when were they actually consulted -- the
18 specialists?

19 MR. LIM SIVUTHA

20 A. We consulted with the neurologist on the morning of 11th
21 September.

22 I'd also like to add that when he was admitted, on the 7th, it
23 was before the weekend period. I think it was either on Friday or
24 Saturday. And while he was hospitalized at the hospital, then he
25 showed us -- he indicated to us that he felt the numbness in his

1 limbs. But when he was admitted, the symptom was his fatigue and
2 exhaustion, so then we made assessment on his heart condition.
3 And as I recall, in the afternoon of Sunday, he felt the numbness
4 in his limbs, and that made us to consult with the neurologist.
5 Because we did it a few days later, as the symptom only was shown
6 later on, not when he was hospitalized.

7 [10.38.21]

8 BY MR. KARNAVAS:

9 Q. Thank you, Doctor, though your records should reflect that he
10 was admitted Friday morning -- Friday morning, after he was
11 unable to, basically, have any use of his legs. So the numbness
12 would have been - would have been obvious to anyone there.
13 But may I ask you, did you see him on Friday, or Saturday, or
14 Sunday?

15 MR. LIM SIVUTHA

16 A. For the Emergency Section, in general, regardless whether it's
17 a weekday or a weekend, we would examine a patient in that
18 section twice a day and we took eight-hour shifts. And as for
19 your client -- that is, Mr. Ieng Sary -- every day I would
20 examine him and report to the treating group. Because we make a
21 daily report regarding what's going on there and try to find a
22 solution. So, although sometimes other doctors would treat him,
23 I, personally, would see him every day.

24 BY MR. KARNAVAS:

25 Q. So, is that a yes, that you saw him on Friday, when he was

1 admitted into the hospital -- Friday, September 7th -- or was it
2 until Monday that you actually saw him?

3 [10.40.15]

4 MR. LIM SIVUTHA

5 A. Let me tell you this. On the day of his first admittance, Dr.
6 Tong Hong sent him to the Emergency Section. On that day, I
7 personally received the dossier from Dr. Tong Hong, and then he
8 returned to the ECCC. I personally received him.

9 BY MR. KARNAVAS:

10 Q. Thank you.

11 Now, after he was scanned, I take it, you being the primary
12 physician overseeing him -- along with the other team members, of
13 course -- you had an opportunity to speak with the neurologist,
14 and also look at the results of the scan. Is that right?

15 MR. LIM SIVUTHA

16 A. The issue -- the technical issue for each section -- for
17 example, if a patient is admitted to my section, as in the case
18 of Mr. Ieng Sary, it is not I, myself, who make an assessment. I
19 would read all the reports; I would examine him at least once a
20 day and report to the technical group and the relevant specialist
21 so that we can make a joint conclusion.

22 [10.41.50]

23 And there are a number of issues at the Emergency Section, as a
24 lot of people coming and going to the Emergency Section. The
25 doctors stationed at the Emergency Section must, at least,

39

1 examine a patient once, and then we will make a report, and if it
2 is necessary, then another doctor would go and see that
3 particular patient, as we have an eight-hour shift.

4 MR. PRESIDENT:

5 Thank you, Doctor.

6 The time is now appropriate for a short break. We will have a
7 20-minute break and will return at 11 o'clock.

8 Court Officer, could you assist the two doctors during the break
9 and have them return to the courtroom at 11.00?

10 THE GREFFIER:

11 (No interpretation)

12 (Court recesses from 1042H to 1104H)

13 MR. PRESIDENT:

14 You may be seated. The Court is now back in session.

15 The floor is once again given to Ieng Sary's defence to continue
16 posing questions to the two doctors. You may proceed.

17 [11.04.53]

18 BY MR. KARNAVAS:

19 Thank you, Mr. President.

20 Q. Doctor, if we could go back to my earlier question; it's
21 rather specific. After Mr. Ieng Sary was scanned, did you have an
22 opportunity to consult with a neurologist and to go over the
23 report -- the results of the scanning?

24 MR. LIM SIVUTHA:

25 A. Allow me to say this: after the scanning was done -- that is,

1 on the same day that the neurologist examined the scanning --
2 and, actually, the day after tomorrow -- the day before
3 yesterday, rather, the neurologist came again to re-examine and
4 monitor the status of the patient. So, he already came twice and
5 he planned to come again this morning.

6 [11.06.10]

7 At the same time, I consulted with the professor who assists us
8 in the Emergency Department, and we all agreed in regards to the
9 treatment administered to him and we weighed the proposal that I
10 submitted, whether the condition -- his condition would be
11 improved, based on the administration of medicines or based on
12 the surgical intervention.

13 BY MR. KARNAVAS:

14 Q. Thank you, Doctor, but if we could just go step-by-step, I
15 would appreciate it. There's no need to read into what I'm trying
16 to achieve through my questioning.

17 Would it be fair to say that, after Mr. Ieng Sary was scanned,
18 you, along with others, met with the neurologist to go over the
19 results?

20 MR. LIM SIVUTHA

21 A. The result of the scan, the specialist from radiography
22 actually translated that to us, and the result is included in the
23 section under "Nerve and Joint Systems". It is interrelated to
24 the osteoporosis -- that is the first point. And the second major
25 one is the narrowing of cervical canals. These are the two main

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1 points I extract from the report of the scanning. And the report
2 was also sent to the neurologist so that we can find a proper
3 solution.

4 [11.08.17]

5 BY MR. KARNAVAS:

6 Q. All right. Now, again, we're going to go step-by-step.

7 Once you got this report and once the neurologist got the report
8 -- because, from what I understand, technicians did the scanning,
9 you received the report, the neurologist received the report --
10 did you meet with a neurologist to go over the report? It's a
11 yes, or it's a no. And from my - from -- what I'm hearing is the
12 answer is yes.

13 MR. LIM SIVUTHA

14 A. At my section, the neurologist personally came to my section,
15 and I received a report that he personally wrote.

16 BY MR. KARNAVAS:

17 Q. Thank you. Thank you. That's what I was trying to get at 15
18 minutes ago. Now, did you go over the report with the neurologist
19 or were able to just understand it and appreciate it without any
20 further consultation from the neurologist?

21 [11.09.40]

22 MR. LIM SIVUTHA

23 A. The way we work at my section -- that is, technically -- when
24 a symptom is related to a particular specialist, that specialist
25 would be invited for consultation and opinion for the treatment.

42

1 And that is the practice we've been doing at the hospital for
2 every case. So, if a case is related to neurology, then the
3 neurologist would be invited to give opinion and advice on the
4 treatment.

5 BY MR. KARNAVAS:

6 Q. Thank you.

7 Which leads me to my next question. With respect to Mr. Ieng
8 Sary, as I understand your testimony today and the reports that
9 we have been receiving, there are a team of doctors and that --
10 there is a board set up to review these reports, have
11 discussions, and determine what, if any, medication or treatment
12 Mr. Ieng Sary should be receiving. Do I have it right?

13 MR. LIM SIVUTHA

14 A. Regarding the treatment, before the treatment commenced, I
15 have to contact with all areas -- for example, what medicines
16 shall be administered from the neurologist and, for the heart
17 specialist, whether the medicine should be administered as well.
18 So I consulted all these relevant areas before the medicines can
19 be administered, and then I would make an assessment whether it
20 is appropriate to administer such medicines.

21 [11.11.32]

22 BY MR. KARNAVAS:

23 Q. Thank you.

24 And the report that we received, that is dated of the 19th of
25 September, did you participate in the preparation of this report,

1 or was it prepared based on your other reports to someone else
2 who prepared it?

3 MR. LIM SIVUTHA

4 A. regarding the report, the report started from a section. So, a
5 section would send (unintelligible) report to the technical group
6 and whether the report is appropriate, and then the technical
7 group would send to the head of the hospital for his agreement

8 BY MR. KARNAVAS:

9 Q. And before coming here today to give your evidence, did you
10 consult with the other doctors or with the board? And I believe
11 the professor sitting next to you is a member of the board, if I
12 understand his answers correctly to the President. Did you folks
13 meet to discuss to what extent you should provide answers in this
14 courtroom today -- in other words, what you were all in agreement
15 based on the medical condition and the examinations?

16 [11.13.23]

17 MR. LIM SIVUTHA

18 A. Regarding consultation, we consult in technical aspect and try
19 to find a treatment. I do not consult with other team members as
20 for my appearance before this Court. We know our duty, what we
21 have to do in our specific field. And as I said, whether the
22 report is correct or not, it would be overseen by the head.
23 For example, yesterday I invited a professor to assist us in the
24 Emergency Section in regard to the cervical problems of this
25 patient, and his advice is consistent with the advice given to us

1 by the neurologist.

2 So it doesn't have to do with what I shall or shall not say in
3 this courtroom. We take consultation and, jointly, we share the
4 report, either we meet in person or by a phone call. And usually
5 we will have a daily morning meeting to discuss the condition of
6 this patient, whether things have evolved or what has been
7 improved, and it is done on a daily basis.

8 [11.14.56]

9 BY MR. KARNAVAS:

10 Q. Thank you. What does the board actually do, then, or is it
11 just a loose group of doctors that are assisting in the medical
12 treatment of Mr. Ieng Sary?

13 MR. LIM SIVUTHA

14 A. I'd like to get permission from the President for my colleague
15 to respond to this question, as he is a member of the board.

16 MR. KARNAVAS:

17 Mr. President, with all due respect, I'm asking the doctor who's
18 here giving evidence. He should be confident to first answer the
19 question, and then I'll ask the other gentleman to provide an
20 answer, but he ought to know what the board does -- unless he
21 doesn't know ; then I'll be happy to pose that question to the
22 professor.

23 MR. PRESIDENT:

24 We already informed the parties that any of the two doctors can
25 respond to the question if his response is clearer. And he can

1 also provide additional, supplementary response in order to make
2 a response from another doctor complete.

3 [11.16.33]

4 And, thirdly, in this morning's proceeding, we limit the scope to
5 the health issue of Mr. Ieng Sary at the present time so that we
6 can have the basis for the Trial Chamber to consider the
7 scheduling in this case in the near future so that it will be
8 used as a basis for next week's and the week after's proceeding.
9 This is the main issue dealing with the health condition of Ieng
10 Sary.

11 We do not intend to delve into details in this proceeding
12 regarding the assessment of his mental condition or his fitness
13 to participate in the proceeding. The intention of this hearing
14 is to consider -- is to give the Chamber the ability to schedule
15 the hearing in the very near future, and that is all.

16 MR. KARNAVAS:

17 Thank you, Mr. President. And just for relevancy purposes, the
18 reason I'm asking you this question is that this gentleman has
19 come here and is saying that my client is dizzy, he has this
20 problem, that problem; we now know that there are many doctors
21 that are consulting him; we know that there is a board. I just
22 merely wish to confirm whether the gentleman is speaking on
23 behalf of the group of doctors and/or the board -- in other
24 words, would the other members of the board agree with the
25 assessment he is giving the Trial Chamber -- so that there would

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1 be no other questions as to bringing in other doctors in relation
2 to what this gentleman has told us thus far. So, that's the
3 purpose.

4 [11.19.00]

5 And from our experiences with Calmette, the board was actively
6 meeting -- all the doctors were meeting before medications were
7 being administered and reports were being provided. I just with
8 to figure out whether this is the same procedure, because then we
9 have more assurances that the gentleman -- the doctor, the first
10 doctor talking to us -- is speaking on behalf of the entire
11 medical team when he says that, in his opinion, Mr. Ieng Sary is
12 not -- at least physically -- fit for the next month or two. So,
13 that was the purpose of my question, not to go into any other
14 areas.

15 MR. PRESIDENT:

16 Counsel, please continue with your questioning.

17 BY MR. KARNAVAS:

18 Q. Let me ask you, Doctor, does the board share your opinion --
19 the one that you gave us today when you were answering the
20 questions posed to you by the Judges?

21 MR. LIM SIVUTHA:

22 A. When it comes to the technical questions -- and before our
23 appearance, what we read are all those relevant reports and the
24 medical dossier.

25 [11.20.40]

1 I and my colleague represent the team; we work together on a
2 daily basis; even yesterday afternoon we met together to make an
3 assessment. So, when it comes to the technical aspect, even if
4 there is no need for my appearance here, we meet together to
5 discuss, and all the reports would go through our team, as we
6 will technically see that report, whether it is appropriate or
7 not.

8 BY MR. KARNAVAS:

9 Q. Thank you. And the report that was provided to us on the 19th,
10 was that approved or at least provided to all the members of the
11 team to ensure that it is - that it accurately reflects all the
12 doctors' involvement in the treatment of Mr. Ieng Sary?

13 MR. LIM SIVUTHA:

14 A. Our daily meeting at the hospital is that for the report that
15 we make. And before we make a report, all the medical doctors
16 would meet, and then a report would be made and submitted to the
17 technical team for review. The relevant doctors - all relevant
18 doctors must know about the content of the report so that they
19 are familiar.

20 [11.22.29]

21 But let me repeat: all the 11 people related to the report would
22 be consulted before a report would be made -- and whether that
23 report would be appropriate or not, as we have to stand by and
24 confirm what the content of the report is.

25 BY MR. KARNAVAS:

1 Q. All right.

2 One final question. Now, you told us all these examinations that
3 were performed, especially the scan and based on the scan, the
4 findings that his – his head is not getting a sufficient flow of
5 blood, which is causing him to be dizzy and immobile -- do you
6 think it's possible for Mr. Ieng Sary to be faking all of this,
7 to be pretending?

8 MR. LIM SIVUTHA:

9 A. The issue whether Ieng Sary is faking or otherwise is another
10 matter. What we are assessing here is the physical assessment
11 based on what we see on the data we received from the scanner.
12 And if the result is unclear, then we will conduct the test
13 again. This is about the medical assessment, a technical
14 assessment based on what we obtained, the data that we received.
15 And we do not consider whether he is faking it or not.

16 [11.24.10]

17 And I'd like to confirm, regarding the flow of blood to the head,
18 the main concern is in regards to the technical issues and its
19 translation.

20 And when it comes to the flow of the blood into the head, I'd
21 like my colleague here to assist in the delivery of the technical
22 terms as well as the simple terms. When it comes to
23 vertebrobasilar insufficiency syndrome, it's a very complicated
24 issue; it is -- not just simply means the flow of blood to the
25 head.

1 MR. KY BOURSUOR:

2 A. Allow me to respond, Your Honour. Good morning, Mr. President,
3 Your Honours.

4 I think there is some issues with the -- with the translation.

5 When it comes to the cervical scanning, the syndrome is the

6 vertebrobasilar insufficiency syndrome. The brain has two - two

7 lobes, a small lobe and a bigger lobe. And the small - and here,

8 the vertebrobasilar insufficiency syndrome is only related to the

9 smaller lobe of the brain. And this is for your information,

10 Counsel.

11 And, also, there is another information when it comes to the

12 decision of the board. When it comes to his heart condition,

13 actually, his heart condition is severe but is stable -- severe

14 but stable.

15 BY MR. KARNAVAS:

16 Q. Thank you. Let me go back to why I said "faking".

17 [11.26.01]

18 The reason I raised this is that some may assume that Mr. Ieng

19 Sary or another patient in this position would be able to fake

20 these examinations -- in other words, to game the scan so that

21 the results come out that would allow you to then -- to have such

22 a reading. And that's the question I want to you to answer

23 because -- I believe I know the answer, but I think we need to

24 hear it publically.

25 MR. LIM SIVUTHA:

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1 A. When it comes to the word "faking" and "scanning", it is not
2 just a person goes into the scanning, and then the results can be
3 obtained. We work in specific section, and when it comes to the
4 films from the scanning, we will have the films as evidence, and
5 it cannot be faked. I don't know what to - what else to tell you.

6 [11.27.21]

7 However, when it comes to the medical assessment -- that is,
8 physical assessment -- faking is almost impossible because the
9 data you see is the physical data that you see. When it comes to
10 mental faking, that is a different matter. But here we are
11 dealing with things physically, and if the result is unclear,
12 then we conduct another scanning.

13 BY MR. KARNAVAS:

14 Q. Thank you very much.

15 One final question: Have you or the medical team considered
16 whether overseas attention should be considered -- in other
17 words, sending Mr. Ieng Sary abroad, to either Bangkok, Singapore
18 - to other facilities where they do have other specialists and
19 more modern equipment than your hospital or in Cambodia in
20 general? Has consideration been given to that?

21 MR. LIM SIVUTHA:

22 A. In relation to the sending for treatment, we actually
23 considered that option as well. We consulted with a doctor from
24 France and whether such a treatment can be made available.

25 [11.28.49]

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1 I also have to rely on the neurologist to give me a clearer
2 picture when it comes to the neurology and whether it is possible
3 to do it. And if the opinion is insufficient, then I would seek
4 consultation from the specialist from the Calmette Hospital. I
5 would gather all those informations and the risk of conducting a
6 surgery. And if the risk is high, then I will not consider that
7 option. And our decision is based entirely on those opinions. And
8 if we all agree that such a surgery can be done abroad, of course
9 this is an option that we will consider, and I will take leave to
10 consult or to inform the Chamber regarding that option, and of
11 course I will consider all these factors and give this
12 information to the Trial Chamber in due course.

13 MR. KARNAVAS:

14 Thank you, Doctors. I have no further questions.

15 MR. PRESIDENT:

16 (No interpretation, technical problem)

17 [11.30.36]

18 Thank you.

19 I now hand over the floor to the prosecutor. You may proceed.

20 QUESTIONING BY MR. SENG BUNKHEANG:

21 Thank you, Mr. President. Good morning, Your Honours, and good
22 morning to everyone, and good morning, particularly, to the
23 doctors.

24 Q. You mentioned this morning that you attended to Mr. Ieng Sary
25 on a regular basis when he were in the hospital. And whenever you

1 visited Mr. Ieng Sary, did you ask him any questions in relation
2 to his overall health condition?

3 MR. LIM SIVUTHA:

4 A. Generally, when we visit the patient, we not only ask the
5 questions about general condition of the patient, but we also
6 examine his cardiac condition as well as his adenoma. We not only
7 simply go and visit him, but we also have to examine other
8 conditions as well.

9 [11.32.24]

10 BY MR. SENG BUNKHEANG:

11 Q. Thank you. When you interviewed the patient in question, what
12 was your observation of his concentration on your questions? And
13 did he respond appropriately to your questions?

14 MR. LIM SIVUTHA:

15 A. I don't think that there was any issue in relation to his
16 concentration. He actually made every effort to answer to all the
17 questions. He actually answered more than we wanted to hear
18 because he was himself concerned of his state of health.

19 Yesterday I visited him; I asked him to stand up and sit down,
20 and we observed the general movements of him, and he actually
21 agreed to do as what we asked him to do because he was rather
22 concerned for his health himself.

23 [11.33.37]

24 BY MR. SENG BUNKHEANG:

25 Q. So, is it fair to say, according to your testimony this

1 morning, that when you were conducting interview with Mr. Ieng
2 Sary you have received information from Mr. Ieng Sary? Do you --
3 is it fair to say that you, actually, were able to obtain the
4 necessary information you wanted when you conducted that
5 interview with the patient? Is that correct?

6 MR. LIM SIVUTHA:

7 A. I don't think that it is an issue. There is no noticeable
8 issue. I know that he has some problem hearing the questions, so
9 I have to repeat the questions or I have to raise my voice in -
10 when I ask him. But in relation to the response, I found that he
11 responded appropriately.

12 MR. SENG BUNKHEANG:

13 Thank you. Thank you, Doctors.

14 I do not have any questions, Mr. President. I would like to hand
15 over to my esteemed colleague.

16 [11.34.47]

17 MR. PRESIDENT:

18 You may proceed.

19 QUESTIONING BY MR. LYSAK:

20 Thank you, Mr. President. Good morning, Doctors.

21 Q. I have just a few questions just to seek some further
22 clarification on what you've told us this morning, and I want to
23 start with the very end of your September 19, 2012 report.
24 At the end of your 19 September report, the very final section
25 states, "Cardiac condition stable during the 10-day hospital

1 stay", and then makes the following statement: "Peripheral
2 neuropathy and vertebrobasilar insufficiency syndrome are the
3 main problems."

4 [11.35.42]

5 And I know that we - you've talked about the underlying issues
6 here, but in order to help us understand these two terms, could
7 you give us a brief explanation of what these two terms mean --
8 what is meant by "peripheral neuropathy" and what is the meaning
9 of "vertebrobasilar insufficiency syndrome"?

10 MR. LIM SIVUTHA:

11 A. In this report, in relation to the evolution of cardiac
12 condition, we found that it was stable. But in relation to
13 peripheral neuropathy, I have to admit that I am not a
14 neurologist myself, but according to the condition of the patient
15 and the information he provided to us was that he felt the
16 numbness - he felt numb in - with his fingers, and that's why we
17 found that it was because of the problem with the flow of blood
18 into his brain.

19 [11.37.10]

20 But as for vertebrobasilar insufficiency syndrome, we consulted
21 with all the treating doctors and we came up with the conclusion
22 that there was problem with the cervical uncodiscarthrosis as
23 well as the narrowing cervical canals as well. And I would not
24 delve further on this because we have to have detailed report by
25 respective physician in this field.

1 BY MR. LYSAK:

2 Q. Thank you very much, Doctor. Can you tell us, is
3 vertebrobasilar insufficiency syndrome the same condition that is
4 sometimes referred to in English as "beauty parlour syndrome"?

5 MR. LIM SIVUTHA:

6 A. This is a technical medical term, and I actually got this term
7 and explanation from the Neurology Section. And as I explained
8 earlier, when the patient suffers from narrowing cervical canals,
9 then the blood flow from the heart to the - to the brain would be
10 insufficient, and that was because of the narrowing of the
11 canals. And that canal has to be dilated in order to ensure that
12 the blood circulation functions as normal.

13 [11.39.29]

14 BY MR. LYSAK:

15 Q. Can you tell us, Doctor, who the neurologist is who conducted
16 the cervical scan and provided these opinions on Ieng Sary's
17 condition?

18 MR. LIM SIVUTHA:

19 A. Normally, the neurologist attended to him was the Professor
20 Chea Lahoeun, who was the deputy director of the hospital. I
21 invited him to provide his expert consultation. And, in addition
22 to him, there was another foreign professor who is on a
23 consultation mission to our hospital assisting him as well.

24 BY MR. LYSAK:

25 Q. One other issue I wanted to clarify about this problem with

1 the vein in Ieng Sary's neck. When you initially explained this
2 condition, it was translated, in English at least, as -- that
3 there was a problem in his collarbone that was blocking a vein.
4 And based on the medical report that I'm reviewing and subsequent
5 explanation from you, it seemed as if the problem was with the
6 cervical disc and cervical canal.

7 [11.41.07]

8 Can you clarify for us? The vein that's being blocked, is that
9 related to his collarbone or to a cervical disc in his neck?

10 MR. LIM SIVUTHA:

11 A. Generally, it is rather difficult to explain this in a layman
12 term because, if there is a problem with cervical disc, there
13 will be a compression of the blood vein so that blood cannot be
14 circulated to the brain, and consequently there was not enough
15 oxygen in his brain. That's why there was a problem with the
16 vertebrobasilar syndrome insufficiency. Actually, there was --
17 the main problem was the flow of blood from the brain down to the
18 body.

19 BY MR. LYSAK:

20 Q. Thank you, Doctor.

21 You've indicated that you are still in the process of consulting
22 specialists and -- before a decision is made on the most
23 appropriate treatment for Ieng Sary. Other than neurologists,
24 what other type of specialists would be useful for you to consult
25 with in order to determine the best treatment course for Ieng

1 Sary?

2 [11.43.08]

3 MR. LIM SIVUTHA:

4 A. Generally, before the treatment -- we are the medical doctor;
5 even though we are attached to the Intensive Care Unit, we have
6 to attend to the patient, and that is done in consultation with
7 Mr. Chea Lahoeun -- Dr. Chea Lahoeun and our foreign consultant.
8 And yesterday in particular, we were there together, and we
9 conducted a clinical examination, and we also listened to the
10 expert comments by Professor Chea Lahoeun, and what -- the
11 recommendation he had in his report was correct. And we work
12 together to find out what is really the problem and we came up
13 with the conclusion that the problem was mainly on his cervical
14 uncodiscarthrosis.

15 [11.44.31]

16 BY MR. LYSAK:

17 Q. And can you tell us at this point whether one of the possible
18 options for treatment for Ieng Sary would involve medicine or
19 other treatment done on an outpatient basis outside the hospital,
20 or are the only options that are available treatment at the
21 hospital?

22 MR. LIM SIVUTHA:

23 A. As for the medical intervention, I consulted with the
24 neurologist and other specialists, and as I mentioned earlier,
25 that -- that is an issue we are still in consultation. We will

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1 try our level best to come up with the conclusion. Once the --
2 our neurologist is coming back from his overseas mission, we are
3 going to finalize these consultations and come up with the
4 recommendation as to what is the best remedy or treatment for
5 patient. So, as of now, we cannot come up with a clear conclusion
6 as for the alternatives -- the best alternative for his
7 treatment.

8 [11.46.02]

9 BY MR. LYSAK:

10 Q. Thank you, Doctor.

11 I just have a few more questions. I want to turn to a different
12 subject, which is the issue of -- that Judge Lavergne discussed
13 with you, the -- Ieng Sary's condition of dyspnoea. Looking at
14 the medical reports from your hospital, it appears that when Ieng
15 Sary was admitted, he was diagnosed as having dyspnoea at the
16 level NH - NYHA, grade IV, and that by the 19th, at least, his
17 condition had improved to grade III.

18 And the earlier document that I'm referring to, just for your
19 reference -- and let me know if you don't have it -- is a report
20 that's dated 11 September 2012. And--

21 Do you have the 11 September 2012 report?

22 At least the rough translation that I received, it indicates that
23 on the morning of September 7th, Mr. Ieng Sary was admitted and
24 that one of the conditions that's listed is dyspnoea NYHA IV.

25 [11.47.32]

1 So, first of all, I'd like to confirm whether -- whether, in
2 fact, Mr. Ieng Sary's condition was at grade or stage IV when he
3 was admitted and what was done -- if that was the case, what was
4 -- what was done that was able -- effective to improve his
5 condition to grade III?

6 MR. LIM SIVUTHA:

7 A. Generally, if he was -- or he remained stable, then we did not
8 take any other necessary action. But as for the classification or
9 the degree of dyspnoea, we did not find it noticeable because, if
10 he was admitted to the hospital and he would probably feel a
11 little better, then his condition would relax a little bit. So,
12 when he was in the hospital, we tried to provide him some support
13 -- medical support, then the level of this dyspnoea was between
14 NYHA-III or IV. And if, for example, he could be on diet of
15 unsalty -- or salt-free foods, then the condition would probably
16 get a little better then. And it fluctuates from day to day as
17 well. It ranges in between this III and IV.

18 [11.49.31]

19 BY MR. LYSAK:

20 Q. And can I ask you, the determination of the level of dyspnoea,
21 is that based on objective medical tests or is that a subjective
22 evaluation of the doctor based on consultation with the patient
23 and observations?

24 MR. LIM SIVUTHA:

25 A. The general condition of his dizziness, we have to understand

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1 the cause; it could be a problem of hypertension. If his
2 cardiovascular was not functioning very well, then that causes
3 problems, as well, to him with dizziness. And we have to measure
4 his blood pressure when he takes a rest, so -- we measured that.
5 So, we did not think that it was the consequence of the
6 hypertension or blood pressure.

7 Then we explored other possibilities. It could be a problem of
8 peripheral paraesthesia or other vertebrobasilar syndrome
9 insufficiency that causes this dizziness.

10 [11.51.06]

11 So, following the clinical examination, we consulted with the
12 treating doctors to find out as for -- as to what was the main
13 cause of his dizziness. And if it was the problems of his
14 cardiovascular system, I don't think that that contributed much
15 to his dizziness, but it may cause by other -- the other problems
16 as I mentioned.

17 BY MR. LYSAK:

18 Q. One last question, Doctor: In his current condition, is Ieng
19 Sary able to get up out of bed and move around at all?

20 MR. LIM SIVUTHA:

21 A. As for his current state of health, today we asked him to get
22 up, but we also observed the strength of his backbone, and he
23 found it very difficult -- difficult to get up, so he could not
24 actually sit straight, so he had to lie down on his bed the whole
25 day today. And today we are going to probably provide some

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1 support to his cervical disc as well -- as well, in his bone, to
2 give additional support to him.

3 [11.52.48]

4 MR. LYSAK:

5 Thank you very much, Doctor, for the information you provided us
6 today.

7 Mr. President, I have no -- no further questions at this time.

8 MR. PRESIDENT:

9 Thank you, Prosecutor.

10 How about the Civil Party Lead Co-Lawyers? If you have any
11 questions to put to the witnesses, you may proceed.

12 QUESTIONING BY MR. PICH ANG:

13 Thank you very much, Mr. President. And good morning, Your
14 Honours. I have only a few questions and I will hand over to my
15 esteemed colleague, Madam Simonneau-Fort.

16 Q. Good morning, Doctors. My first question to you is that: Does
17 Mr. Ieng Sary suffer from the chronic disease -- chronic
18 dizziness?

19 MR. LIM SIVUTHA:

20 A. He is now still in the hospital. In relation to his dizziness,
21 if he lies down, he does not move, then there is not a problem
22 for him. But if he has to stand up or so, he will suffer from
23 dizziness and he feel like vomiting as well.

24 [11.54.31]

25 BY MR. PICH ANG:

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1 Q. You said in your testimony, earlier, that Mr. Ieng Sary could
2 respond to your question appropriately when you ask him. Can you
3 tell the Court, when you were consulting with Mr. Ieng Sary, did
4 you observe that Mr. Ieng Sary could understand the questions
5 sufficiently enough to respond appropriately? And how long did
6 the interview last?

7 MR. LIM SIVUTHA:

8 A. Generally, when we ask him, we did not observe any problems in
9 his response to our questions; he responded appropriately to our
10 questions. And normally each interview lasted for a few minutes,
11 but as for the neurologist, when they conducted interview or so
12 with him, it would last approximately 10 to 15 minutes, but
13 generally his response was appropriate to the questions; there
14 was no issue in -- in relation to that. But sometimes he did not
15 pay attention to the questions; we had to repeat our questions as
16 well. But he also asked us for clarification in relation to the
17 questions we ask, as well, from time to time.

18 [11.56.26]

19 BY MR. PICH ANG:

20 Q. In your assessment, the interview would last for approximately
21 15 minutes, as you mentioned in your answer earlier on. But do
22 you think that he could maintain his concentration span during
23 the 15-minute interview?

24 MR. LIM SIVUTHA:

25 A. I noticed that he had fatigue once he had to respond to a

1 question. So, fatigue was the main problem facing him. And if we
2 raised our voice, for example, then he attempted to respond in a
3 louder voice as well, then he was rather exhausted. So we had to
4 limit the time for the interview. I think, so far, the maximum
5 time we spent interviewing him was about 15 minutes. The idea was
6 not to disturb him that much, so we had to do everything to
7 ensure that it was favourable for his condition.

8 [11.57.58]

9 BY MR. PICH ANG:

10 Q. So, I understand from your testimony that the interview would
11 last no longer than 10 or 15 minutes or so. But how often was the
12 interview conducted?

13 MR. LIM SIVUTHA:

14 A. We actually have not counted that as well, but -- today and
15 yesterday we tried to provide the support to his neck and his
16 backbone, but as for the frequency of the interview, we did not
17 keep that precise record. But what I can respond to you is that
18 we want to leave him for his rest as much as we can because we do
19 not want him to move because if he -- whenever he moves, he would
20 feel pains in his neck and there would be complication as well.

21 [11.59.19]

22 BY MR. PICH ANG:

23 Q. I learned from Mr. Karnavas that the condition of Mr. Ieng
24 Sary is of a concern and it may take time -- or months or so in
25 order for him, if he is provided with good care, to be able to

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1 return to attend the proceeding. Mr. Karnavas may correct me if
2 I'm wrong on that. But is it the current condition of Mr. Ieng
3 Sary at the moment?

4 MR. LIM SIVUTHA:

5 A. I will not enter into that definitive conclusion that he will
6 remain in the hospital for that long, but once again, as I said,
7 we have to assess his condition from time to time, and basically
8 we assess his condition on a weekly basis, so -- but as far as
9 the issue of dizziness is concerned, if we can administer
10 medicine to him, it may take time, as well, but I cannot enter
11 into a definitive conclusion. As I said, we are exploring other
12 alternative treatments for him, as well, but I know that if we
13 are going to continue to administer medication to him, it will
14 take a longer time. He may be released from hospital or he may
15 stay in the hospital for a long time. I have to depend my
16 conclusion on the result of the assessment -- weekly assessment.

17 [12.01.12]

18 And once again, the diseases that Mr. Ieng Sary has -- suffers
19 from is the condition that demands attentive care and it may take
20 some time, as well. But, once again, I am going to provide
21 definitive answer only when we get all the consultation results
22 with other specialists. But one thing that I can say for sure is
23 that it may take some time -- probably one month or so more --
24 for him to remain in this hospital.

25 BY MR. PICH ANG:

1 Q. Thank you very much.

2 This is going to be my last question for you: Did you administer
3 any physical therapy for Mr. Ieng Sary?

4 MR. LIM SIVUTHA:

5 A. In relation to physical therapy, we, of course, encourage him
6 to do, but he has difficulty moving around; that is the problem.
7 So there is a limitation to what we could do with him in relation
8 to therapy.

9 [12.02.41]

10 And there was a program administered to him, and he had to do it
11 approximately three times per week, but to what extent that was
12 administered, I did not know. Of course, he had to move around,
13 move his hands and legs or so. But, once again, the improvement
14 as a result of this physical therapy is not known at the moment,
15 but this is done, in accordance to the program, three times per
16 week.

17 MR. PICH ANG:

18 Thank you very much, Doctors, for responding to my questions.

19 I thank you, Mr. President, for the opportunity to ask the
20 questions.

21 QUESTIONING BY MS. SIMONNEAU-FORT:

22 Good morning, Mr. President. Good morning, Your Honours. Good
23 morning to everyone, and good morning to you, Doctor. I have very
24 few questions. Therefore, I think I should be able to move rather
25 swiftly.

1 [12.03.51]

2 Q. Obviously, my main concern is over future hearings. For the
3 civil parties, every day matters. I apologize, but I do want to
4 focus on the matter of timelines.

5 I've only been apprised of this report yesterday, and for the
6 past 15 days Mr. Ieng Sary has been hospitalized.

7 You indicated that stemming from his physical condition, he was
8 unable to leave and that he had to take a decision over an
9 operation. Can you please tell me when such a decision would be
10 made, in terms of days, weeks, or months, over the possibility of
11 any medical intervention? Can you please provide us the details?

12 MR. LIM SIVUTHA:

13 A. Generally, in relation to surgical intervention, it's one of
14 the possibilities. But as I said in my testimony earlier, it
15 depends entirely on the recommendation by each specialist. And if
16 we come up with a conclusion that a surgical intervention is to
17 be implemented, then we have to explore the best means to get
18 this done, as well, because we have to take into consideration
19 other factors as well -- for example, cardiac problems. We have
20 to avoid the side effects and the complication as a consequence
21 of this surgery. And I think that, taking into consideration his
22 existing diseases as well as his advancing age, surgery is a very
23 remote possibility. But if we choose medication, it will take a
24 rather long time to see the effects.

25 [12.06.21]

1 And now, for example, if he is now diagnosed with problems of
2 osteoporosis, this cannot be cured for a short period of time.
3 So, once again, in short, we will provide the Court with a weekly
4 medical report and we will come up with the conclusion after
5 consulting with all specialists concerned. And for the time being
6 we are exploring the various possibilities, and now we are
7 waiting for our -- one of our specialists who is due to return
8 from his overseas mission today, and then we will explore all the
9 possibilities and alternatives at our hospital.

10 And according to Professor Jones, who consulted with me
11 yesterday, that -- the possibility of having him undergoing the
12 surgery intervention was rather remote because it is -- it is --
13 it involves a lot of complication.

14 [12.07.33]

15 His cardiovascular problem is in a serious condition and then,
16 in addition, he may not stand the anaesthetic administration
17 either. And, in addition, his age is also rather old, and his
18 condition of health is very weak, as well, so any surgery
19 intervention has to be done in a very vigilant manner.

20 MS. SIMONNEAU-FORT:

21 Yes, I understood, sir, that you are awaiting the results and
22 consultations of others and that you are not in a position to
23 provide us any timeline or the possible date of departure of Mr.
24 Ieng Sary from the hospital. I therefore have no further
25 questions for you. Thank you.

1 MR. PRESIDENT:

2 Thank you.

3 Thank you, Dr. Lim Sivutha and Dr. Ky Bousuor. Thank you very
4 much for testifying in relation to the state of health of Mr.
5 Ieng Sary. Your testimony has come to an end. You are now
6 released. You may return back home or to your destination. And I
7 would like to, once again, express our gratefulness to both of
8 you for spending your valuable time to provide testimony to this
9 Court, and I can assure you that your testimony is very important
10 for the Chamber in order to schedule the hearing of Case 002/01
11 in the future. And we wish you the very best of luck and success
12 in your endeavours.

13 [12.09.41]

14 The time is now appropriate for lunch adjournment.

15 Court Officer, please coordinate with the WESU unit to arrange
16 the transport of the two doctors back to his home.

17 And this afternoon, for your information, to all parties and
18 members of the public, we are going to discuss the schedule for
19 the testimony of expert witness Mr. Phillip Short.

20 And since there is some problems in relation to the health
21 condition of Mr. Ieng Sary and other matters concerned, we will
22 spend the afternoon session this afternoon to discuss this
23 matter, starting from 1.30.

24 The Court is now adjourned.

25 THE GREFFIER:

1 (No interpretation)

2 (Court recesses from 1210H to 1330H)

3 MR. PRESIDENT:

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

5 As we informed the parties and the public today, that -- through
6 separate proceedings and for this second session, we will hear
7 opinions of the parties in relation to the hearing of the
8 testimony of Philip Short, who is scheduled to be heard from the
9 1st to the 8th of October 2012.

10 And as we informed all the parties and as you heard the opinions
11 from the two doctors this morning regarding the health status of
12 Mr. Ieng Sary at the present time and in the very near future,
13 which will not allow him to participate in the proceedings -- for
14 that reason, we'd like to hear opinions of the parties as to how
15 we shall proceed with the hearing of the testimony of Philip
16 Short as scheduled and if it is possible to do so.

17 First, we'd like to give the floor to the Prosecution. You may
18 proceed.

19 MR. SMITH:

20 Good afternoon, Mr. President, Your Honours, Counsel, and people
21 around the Court.

22 [13.33.08]

23 Your Honours, I know my presence is very recent, but I've been
24 following the proceedings this morning and speaking with the
25 prosecutor and the prosecutors in Court today, and in brief, our

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1 position is that we don't oppose the adjournment of the expert
2 Philip Short's testimony, based - based on a few factors.
3 Firstly, we don't oppose because, as we can see today, some
4 uncertainty has arisen in relation to the immediate health, at
5 least, of Mr. Ieng Sary. We're aware of the expert reports
6 looking at his fitness, in terms of his mental fitness, only
7 recently, the 3rd of September. And it's clear that their view is
8 that he's fit to plead. But since that time some new information
9 has arisen in relation to his physical health, not his mental
10 health, and it's really unclear from the testimony this morning
11 what that treatment should be and also what the effect of the -
12 his physical health condition is on his mental health. That was
13 sort of unclear because the witnesses this morning, as Your
14 Honours have rightly said, were not experts in that particular
15 field, but very informative and provided valuable testimony
16 nonetheless.

17 [13.34.46]

18 In relation to that uncertainty as to his health, in addition to
19 the current situation that we're in with the defence for Ieng
20 Sary intending, certainly from the letters they have put forward
21 or the letter they put forward - intending not to prolong the
22 proceedings by agreeing to waiving Mr. Ieng Sary's right to be
23 present for a number of witnesses -- for eight witnesses, and
24 also agreeing to waive that right in relation to document
25 presentations, particularly in relation to this stage of the case

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1 -- the authority structure and communication structure -- and
2 document presentations in relation to the admissibility of
3 witness statements, certainly, the Prosecution are of the view,
4 looking at - looking at the number of witnesses the Defence at
5 this stage are prepared to waive and looking at the procedural
6 hearings that they're also prepared - Ieng Sary is prepared to
7 waive his presence for in Court -- our estimation, particularly
8 in relation to witnesses 475, 428, 320, 389, and 186, in addition
9 to a document presentation which Your Honours have requested the
10 parties to be ready for in the next couple of weeks -- we have
11 put forward to the senior legal officer that we would take one
12 and a half days -- we would like one and a half days to present
13 documents on the authority and communication structure in
14 addition to, perhaps, a possible hearing on witness statement
15 admissibility.

16 [13.36.58]

17 Our calculation is that, with those waivers, there's another -
18 certainly another four weeks of Court - available Court time that
19 would be well used listening to witnesses that Your Honours have
20 wanted to call in this case and also listening to document
21 presentations that Your Honours have wanted to hear.

22 So, in terms of the trial moving forward, which is an extremely
23 important issue for the Prosecution, the trial can move forward
24 in this - in this present time when there's a state, perhaps, of
25 uncertainty as to the nature of the effect of the current medical

1 condition on Mr. Ieng Sary. And, in short, nothing is lost by
2 proceeding in that way.

3 And certainly we would say that before the Court gets to a
4 situation where it has to consider issues of substantial delay to
5 the trial and no waivers being given in relation to witnesses
6 being heard -- by any of the Defence -- before we reach that
7 stage, we're certainly of the view that Rule 81(5) reflects the
8 international jurisprudence that all other alternatives should be
9 considered before starting to address the idea of limiting an
10 accused's right.

11 [13.38.43]

12 And so we believe we're not at that stage yet where that
13 discussion is in fact a worthwhile one because of the position
14 that the Ieng Sary defence have taken, that they are prepared -
15 or Ieng Sary is prepared to hear witnesses, particularly ones
16 which don't directly relate to his acts and conduct nor to the
17 structure of the Ministry of Foreign Affairs.

18 And if we - if we combine that with the position of the expert -
19 and we noticed -- we received the report yesterday from the
20 Witness Expert and Support Unit stating that it is in fact the
21 preference of Professor Short to give testimony in early 2013 --
22 which, in reality, is only a few months away -- because of his
23 current workload. And that was the preference that he made
24 earlier. And now that the situation has arisen where other
25 witnesses can be heard, we're of the view that we - it's of

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1 benefit to the witness, it's of benefit to the Accused, and it's
2 of benefit to the Trial Chamber that the trial can continue
3 without great legal debate on whether it should or not.

4 And so we - our view would be in terms of - particularly, I
5 think, in light of the fact that Mr. Short lives in America and -
6 for the time, I believe, and for the - he's overseas, in any
7 event. And so, for the time that it would be required for him to
8 travel, that decision would really need to be taken today, I
9 would suggest.

10 [13.40.56]

11 And even -- on the evidence this morning, even in the best of
12 situations where the weekly report on Mr. Ieng Sary was obtained
13 next week and that report said, "look, he's physically fit, he
14 should come back and participate in the hearing", that - that
15 week would be too long; it would be too late to provide an answer
16 to Professor Short.

17 So, to be on the safe side in terms of the trial management
18 aspect of this, we would suggest that the adjournment really is
19 beneficial to everyone in the Court.

20 It's difficult at times to not have the witnesses appear in the
21 exact order that we would like, but in nature - in light of the
22 nature of this case, and -- you know, the age of the Accused, and
23 other complicating factors, I think, as long as the witnesses
24 that are intended to be called do come, if not in the perfect
25 order, that would still not really be of any sort of major

1 detriment to the case.

2 [13.42.17]

3 In - just on - just on this point in relation to the physical
4 health of Mr. Ieng Sary, one thing we would ask, in conjunction
5 with our request that the - Professor Short's testimony be moved
6 to another date, is that we would request that Your Honours,
7 under Rule 32, call for a neurologist -- a national and
8 international neurologist to examine Mr. Ieng Sary with -- you
9 know, with the greatest of urgency so that we can actually get
10 the true situation in relation to his health. It's clear that
11 these doctors are referring to - that testified this morning are
12 referring to consultants, and I think it's - certainly now is the
13 time, in relation to the new revelation, that experts be assigned
14 by the Court and produce - neurological experts - and produce a
15 report as soon as possible so we know exactly the state of Mr.
16 Ieng Sary's physical health.

17 Thirdly, we would also ask, as we have in our motion on the 19th
18 of September -- just a couple of days ago -- E299/1 - we would
19 also ask, in order to ensure that perhaps we don't, perhaps, have
20 these discussions every - every week and be in a position in not
21 knowing what witnesses can be called and can't be called, that
22 Your Honours ask the Ieng Sary defence team and, obviously, Ieng
23 Sary himself to consider the 35 witnesses that we have placed in
24 this notice to the Court that would relate to the forced transfer
25 aspect of the case -- the first forced transfer from Phnom Penh

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1 and also the second forced transfer during the DK period.

2 [13.44.45]

3 And the reason why we ask this now is that certainly, on the
4 basis of the waivers given to date, it appears that the Ieng Sary
5 defence or Ieng Sary himself may well be prepared to waive
6 witnesses that don't directly relate to his acts and conduct nor
7 the structure of the Ministry of Foreign Affairs.

8 And certainly we can say, in relation to the forced transfer
9 witnesses, that nearly all of them and – do not give evidence
10 directly against Ieng Sary nor the Ministry of Foreign Affairs.

11 And so, by doing so and by encouraging the parties to do so --
12 say, perhaps within the next week -- we can be in a situation
13 where we have a bank of witnesses -- who knows, potentially 20
14 witnesses -- that can be called, that the Defence may waive their
15 right to – the Ieng Sary defence may waive their right to so that
16 the trial can be continuous whilst the state of Mr. Ieng Sary's
17 health is being – is being determined.

18 [13.46.04]

19 And certainly, in line with that motion, we've approached the
20 Ieng Sary defence just before Court, and we certainly have an
21 invitation – we've always generally cooperated well in the past –
22 that we would meet them, perhaps on Monday, to determine which
23 other witnesses they may consider, on this notice, that their
24 client may be willing to waive their right. And we just encourage
25 Your Honours to perhaps prompt the parties to do that so that we

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1 avoid any unnecessary delays because of the unpredictability of
2 the immediate state of Ieng Sary's health.
3 So, Your Honour, to conclude, the Prosecution -- I think, like
4 everyone, of course -- wants to make sure that this trial is fair
5 and expeditious. There are rights that need to be balanced
6 together. And we submit that by adjourning Philip Short's
7 testimony, hearing the witnesses that Ieng Sary have already said
8 they have waived their right to, and considering another list of
9 witnesses that they may be prepared to waive their right to, and
10 appointing an international and national expert neurologist --
11 perhaps the same national one that's been seeing Mr. Ieng Sary
12 now -- and ordering that they give a report in the very short
13 future would ensure the common goal of making sure that this
14 trial is expeditious and also fair.

15 That's all my submissions, Your Honour.

16 [13.48.02]

17 MR. PRESIDENT:

18 Thank you, Prosecutor.

19 We would like now to give the floor to the Lead Co-Lawyers for
20 civil parties.

21 MS. SIMONNEAU-FORT:

22 Mr. President, distinguished members of the Bench, dear
23 colleagues, let me share the position of the civil parties.
24 Perhaps by beginning at the end, I could say that the civil
25 parties have decided to fully support the position of the

1 Prosecution.

2 Prior to that, perhaps I should inform you of the reasons for
3 which we reach that particular decision. I think it's important,
4 in particular for those who it is our job to defend.

5 We took the decision taking due account of the obvious point,
6 which is the right of an accused person to be present at their
7 trial to deliver instructions and to be able to react directly
8 when a witness or an expert is questioned. But you cannot invoke
9 that particular right without also taking account of the right of
10 the civil parties, in particular that which emanates from Rule 21
11 of the Internal Rules on the balancing of the rights of the
12 parties and, in the same rule, the stipulation that you have to
13 protect the rights and the guarantee of those rights of the civil
14 parties to have a fair trial. That is, in fact, supported by the
15 Declaration on Fundamental Justice Principles. It's a decision of
16 the 29th of November 1985.

17 [13.50.02]

18 And so it would be a grave mistake not to remember that the sole
19 right of the Accused - it is not the sole right of the Accused
20 that prevail; it is the need for a balance between the parties'
21 rights. A 76-year-old civil party this morning passed away. And
22 that, for example, is an example of a person who will also not
23 see a fair trial.

24 Let me say that we do regret that the situation that we have
25 reached today isn't something that, perhaps, been anticipated,

1 bearing in mind their age and the status of their health. So, we
2 believe that we have to plan for a dual agenda so that the
3 hearings can continue and not be interrupted as they have so far.
4 On the subject of anticipation, I would also add that we are also
5 concerned by the content of the letter of the 17th of September
6 2012 by the Ieng -- from the Ieng Sary defence because, in that
7 letter, the counsel points out that they are not only able to
8 prepare for Philip Short and they will not be present during the
9 hearing, but also that for the moment Mr. Ieng Sary is not ready
10 -- able to prepare for Elizabeth Becker, and we should therefore
11 consider, perhaps, the postponement of her attendance here. And I
12 think that we really have to be properly prepared so that we're
13 not going to be raising the same questions in a few days or a few
14 weeks, as the ones that we are raising in this courtroom today.

15 [13.51.47]

16 Having said that, we have heard today that there is nothing new
17 on the map regarding Ieng Sary's psychological problems; we have
18 heard that there are physical ailments, and the doctors cannot
19 share with us exact timescales about the medical developments.
20 And therefore, to come to the conclusion that I have already
21 stated, we support, too - we support the Prosecution's position
22 even if, at the outset, we would have preferred to have
23 maintained Mr. Philip Short's hearing, because we believe that in
24 the medical documents there were no particular reasons for a
25 deferral. We accept the decision -- we accept the proposal from

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1 the Co-Prosecutors because we don't want to trigger procedural
2 difficulties and because we believe that if the Chamber is able
3 quickly to specify the contents of forthcoming hearings, in terms
4 of experts and witnesses and so forth, then we can continue in a
5 normal way. We accept also to support the Prosecution because we
6 have listened to Ieng Sary's proposal to be absent for the
7 hearing of certain witnesses, and we do believe that that is a
8 way not to impede the advancement of the trial.

9 [13.53.20]

10 So, we support the request to defer the hearing of Mr. Philip
11 Short. We would ask the Chamber to provide us with a program for
12 the forthcoming hearings as soon as possible. We hope that the
13 Chamber will ask the Ieng Sary defence about precisely what their
14 intentions are vis-à-vis Elizabeth Becker so that the Chamber can
15 plan in time for that situation and, if necessary, make a
16 deferral in her case as well.

17 Finally, we demur (sic) to the request of the Co-Prosecutors to
18 have two experts come and provide the Chamber and the parties
19 concerned -- in other words, the civil parties as well -- with
20 regular reports that will allow us to assess the situation in a
21 precise kind of way.

22 That is the situation and the position of the civil parties.

23 Thank you, Mr. President.

24 MR. PRESIDENT:

25 Thank you.

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1 The Chamber would like now to hear the opinion from the defence
2 teams. If any other defence team wishes to speak regarding this
3 matter, please take the floor.

4 [13.54.35]

5 Michael Karnavas, please proceed.

6 MR. KARNAVAS:

7 Thank you, Mr. President. And good afternoon, everyone in and
8 around the courtroom.

9 Let me begin by stating that we are grateful to the Prosecution's
10 position. We think it's a reasonable one and a pragmatic one. We
11 believe that that is the only possible solution at this time.

12 Let me begin by saying that for the last four years plus, the
13 Ieng Sary defence, on behalf of Ieng Sary, have cooperated
14 enormously with the Trial Chamber, and Mr. Ieng Sary in
15 particular has shown an exceptional willingness to engage in this
16 institution, albeit as an accused being tried for some very
17 serious crimes.

18 [13.55.33]

19 When we learned of Mr. Ieng Sary's health, we were proactive, we
20 immediately looked at the list of witnesses, we consulted with
21 our client, and we were able to come up with a list of eight
22 witnesses that Mr. Ieng Sary voluntarily waived his right to be
23 present.

24 I think we all understand that right, so I'm not going to go into
25 it. However, I do wish to address one particular point especially

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1 made by the civil parties, where they say that they saw no
2 particular reasons for deferral of Mr. Short in light of what
3 they saw in the medical reports.

4 Now, we heard the doctor today. I tried to press him about
5 concentration. And when I questioned him, he needed a
6 neurologist. But pressed later, one, he admitted to my first
7 questions, which was: the brain is not getting sufficient oxygen;
8 two, that the slightest bit of commotion causes him to be dizzy.
9 How on earth can someone like this, in this condition, possibly
10 be able to assist in his own defence? We're not saying that he's
11 mentally unfit, but what we are saying is that at the current
12 status he's unable, for more than a few minutes, to concentrate
13 with his lawyers, let alone concentrate and watching the
14 proceedings for -- from 9 o'clock to 4 o'clock -- with the
15 breaks, of course.

16 [13.57.18]

17 So, in light of all of that, for all intents and purposes, he's
18 not just physically incapable, he's also mentally incapable of
19 following the proceedings and assisting in his own defence
20 because I need more than five minutes at a time to consult with
21 him. And as I've noted in my letter, it was when we went to meet
22 with him on that Friday, the same day that he was hospitalized,
23 it was for Philip Short, and we were going through Philip Short's
24 passages in his book, which is also in French, which assists Mr.
25 Ieng Sary in reading these passages and discussing with us what

1 he believes took place during the interviews that he had with Mr.
2 Short.

3 As for Becker, let me just make -- let me just dispense with that
4 very quickly. Anyone that has read my letter ought to know -- or
5 letters, the letters that we -- both of us sent -- it's very,
6 very clear: if he's not capable to assist in his own defence for
7 Philip Short, he's certainly not capable for assisting in his own
8 defence in Elizabeth Becker. And he is not waiving his right to
9 assist in his own defence with those witnesses. So we made it
10 very, very clear.

11 [13.58.35]

12 A follow-up letter was sent out concerning the prosecutors'
13 latest request concerning some 35 witnesses. We sent out an
14 email, out of respect for the emergency situation, to let
15 everybody know where we stand, where we indicated that -- of our
16 willingness to meet with our client and to go through the list of
17 names. Fair to say, however, that of the names that were proposed
18 by the Prosecution, we're not certain at this time -- no one is
19 -- how many of those witnesses, actually, will be accepted by the
20 Trial Chamber. Now, I have no problem sitting with Mr. Smith or
21 his team to go over the names, and then we could do that with our
22 client, but the sooner the Trial Chamber makes a decision on
23 which witnesses they wish to hear for that area, the sooner we
24 can begin with some certainty to give further notice to the Trial
25 Chamber on that.

1 [13.59.46]

2 We concur that neurologists should be consulted; we have always
3 been in full agreement that Mr. Ieng Sary get the proper medical
4 attention because it's in his best interest that he - that he is
5 fit. And as I've indicated and as we have proved -- and I think
6 he's -- the defence team that he's chosen, and the instructions
7 that he's given to the defence team, and the demands that he has
8 put on the defence team demonstrate that we are engaging in this
9 case in a very robust manner, so that at the end of these
10 proceedings at least one thing cannot be said, and that is that
11 Mr. Ieng Sary suffered from a lack of defence. So, to that
12 extent, I think that we've demonstrated our willingness at every
13 level -- and Mr. Ieng Sary certainly has demonstrated his
14 willingness at every level to participate.

15 [14.00.50]

16 Finally, with respect to Philip Short, and video-links, and what
17 have you, I just want to touch on one issue because I don't -- I
18 see it as a non-starter, at least when it comes to Mr. Ieng Sary.
19 Of course, when it came to Kiernan, you've already indicated that
20 video-link testimony is for exceptional circumstances; these are
21 not exceptional circumstances. Philip short has indicated, 2003
22 -- 2013, he is clearly available. There's no compelling reason
23 why he must testify in 2012, even though I see that there's some
24 claim that the cost could be anywhere from 200 to 700. My last
25 estimation was that it cost approximately 100 euro to change the

1 travel date of a ticket. So, where these cost come in, I don't
2 know. But be that as it may, even if it was 700, it certainly
3 pales when comparing what is at stake at the other end, and that
4 is violating somebody's rights.

5 [14.02.04]

6 And -- so the video-link doesn't - doesn't work. Mr. Ieng Sary
7 will not consent to that. And if he were not to consent to that,
8 then I think we need to look at Rule 81(5), which deals with
9 trials in absentia, because that's what this would amount to. It
10 would amount to a trial in absentia because, if we are not -- if
11 Mr. Ieng Sary -- if Mr. Ieng Sary is not able to participate in
12 his own defence and if Mr. Ieng Sary does not authorize his
13 attorneys to proceed forward and is unable to give instructions,
14 then, obviously, we cannot be in this courtroom, representing
15 him. And so, effectively, he would be -- this would amount to a
16 trial in absentia, albeit just for Philip Short. And when you
17 look at 81(5) and you look at it carefully, especially 81(5)(b)
18 (sic), there's a presumption that the Accused is capable,
19 mentally and physically, of participating because 81(5)(b) (sic)
20 effectively states:

21 "Where the Accused's absence causes a substantial delay and where
22 the interests of justice so require" -- and we're suggesting
23 that's not the case -- "the Chamber may order" - may order -
24 "that the Accused's participation be by audio-visual means."

25 [14.03.53]

1 So, our starting position is that he's incapable, because he has
2 been participating, and if he was capable, he would be in the
3 holding cell. So I don't think that, in the immediate future, we
4 can proceed by video-link with Mr. Short solely in order to meet
5 the scheduling that we have, when in fact no one -- no one --
6 will be prejudiced if Philip Short appears in 2013, because as
7 the Prosecution pointed out and as we endeavoured to do so
8 through our letters with the Court -- that there's enough
9 business that we can conduct in this trial that is necessary and
10 reasonable between now and, say, the end of the year, when we can
11 have a better look to see where Mr. Ieng Sary is.

12 And the doctors, although it wasn't a rosy picture today, seem to
13 indicate that, a month or two months down the road, Mr. Ieng Sary
14 may be fit to continue in assisting and participating in his own
15 defence.

16 So, I want to, again, commend the Prosecution for taking a very
17 reasonable approach. Monday we will make ourselves available to
18 go over the entire list; I can't guarantee that we're going to
19 come up with too many names. Certainly we will talk to them, and
20 then we will talk to our client; we will do whatever we possibly
21 can to ensure that the proceedings continue.

22 [14.05.39]

23 And, of course, we would encourage the Trial Chamber to set up a
24 scheduling order -- to set out a scheduling order with respect to
25 all the other businesses, especially the 1,400 statements that

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1 the trial -- that the Prosecution wish to have admitted. I think
2 this is going to take a substantial period of time. I think these
3 discussions ought to take place in public. The parties will need
4 some time to look over those statements in order to make proper
5 oral or written submissions, whatever the case may be, or a
6 combination. But we do have enough work ahead of us that we will
7 not and should not lose any time while Mr. Ieng Sary is given
8 time to recuperate.

9 And I want to thank the Trial Chamber for setting today's
10 hearings, and for calling the doctors, and to hearing from the
11 doctors, and perhaps, next time, we may need to hear with the
12 specialists as well. Thank you.

13 MR. PRESIDENT:

14 Thank you, Counsel.

15 I would like to now hand over to the other defence teams. If you
16 have any observation to make, you may proceed.

17 [14.07.13]

18 MR. PESTMAN:

19 Thank you, Mr. President. Good morning -- or good afternoon. I
20 had some very brief remarks.

21 First of all, we welcome the flexibility of all the parties on
22 this particular issue, and I'm sure we would all welcome, too,
23 the flexibility of the Trial Chamber.

24 I would like to take this opportunity to briefly note that this
25 flexibility also applies for our client, and he is more than

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1 willing, like Ieng Sary has shown today, to expedite the
2 proceedings as much as possible. I would like to point out that
3 he has, almost every afternoon, waived his right to participate
4 in these proceedings. I realize, saying that, that Your Honours
5 every afternoon order court officials to install a video-link and
6 other technical equipment to allow my client to participate, but
7 I would like to stress, like we've done in the past on several
8 occasions, that this video-link does not mean that he's actually
9 following the procedures, let alone effectively participate. A
10 television screen does not miraculously cure an accused able --
11 ability to participate in his or her proceedings.

12 [14.08.42]

13 Having said this, we fully support the position taken by the Ieng
14 Sary defence on the issue of Short and Elizabeth Becker.

15 Thank you very much.

16 MR. PRESIDENT:

17 Thank you, Counsel.

18 Now, I hand over to the other - the other defence team.

19 MR. KONG SAM ONN:

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

21 Through my observation of our previous hearing, the parties have
22 agreed on the legal principle relating to the right of the
23 Accused to confront witnesses, and I do not need to belabour this
24 point.

25 [14.09.47]

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1 I simply would like to ask for clarification on the flexibility
2 of schedule because it was not something that was scheduled
3 earlier; it is prepared for something that we have not actually
4 scheduled so far. And this is meant for the parties -- the civil
5 parties, and especially the Accused, who are now in their
6 advancing age, and we have to anticipate some problems in
7 relation to the presence of them. And I think that the
8 flexibility that the Chamber is now allowing is very important
9 because that should be the possibility to accommodate the request
10 by parties. For example, in this case, Mr. Philip Short has
11 deliberately mentioned that he will not be available for the
12 testimony sometime next year. And this will facilitate the
13 witnesses to come to testify at their appropriate time, so the
14 testimony itself will be meaningful because there was -- there is
15 cooperation by the witnesses. And if we cannot accommodate their
16 request, probably they can -- they might not come to testify with
17 happiness.

18 So, I appreciate the flexibility of the Trial Chamber in this
19 respect.

20 MR. PRESIDENT:

21 Thank you.

22 (Judges deliberate)

23 [14.14.25]

24 Now the discussion in relation to the scheduled summon of
25 testimony by expert Philip Short is now done, and the Chamber

1 appreciates the expression of -- observations of all parties
2 involved in relation to the testimony of Mr. Philip Short, as
3 well as the challenges we have to overcome. The Chamber will take
4 into consideration every observation made by parties, and we will
5 render a memorandum of understating in due course, sometime next
6 week.

7 And the Chamber wishes to advise the parties and members of the
8 public that the hearing will resume on the 25th of September,
9 which will be on Tuesday next week, on TCW-475.

10 And Mr. Ieng Sary has requested that he be present to hear the
11 testimony of this witness, then that is the request made by him.
12 But that is what he suggests. But as scheduled, the Chamber will
13 resume the hearing on the 25th of September 2012 with the said
14 witness.

15 The time is now appropriate for the adjournment, so the Chamber
16 will adjourn now for the day, and then we will resume on the 25th
17 of September, starting at 9.00.

18 The Court is now adjourned.

19 (Court adjourns at 1416H)

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