



New Witness Testifies after Debate over Defendant's Health

By Mary Kozlovski¹

On Monday, November 12, 2012, hearings continued at the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Case 002, involving defendants Nuon Chea, Ieng Sary, and Khieu Samphan. About 350 people from Phnom Penh, Kampong Chhnang, and Takeo provinces sat in the public gallery to observe today's hearing.

The Ieng Sary defense, the prosecution, and civil party lawyers made oral submissions in response to the expert testimony of Professor A. John Campbell of November 8, 2012, on the health status of Ieng Sary. After submissions were made, the prosecution and civil party lawyers questioned new witness Pe Chuy Chip Se.

Ieng Sary observed proceedings from a holding cell, as did Khieu Samphan in the morning before being brought into the courtroom. Nuon Chea spent the entire day out of the courtroom after being examined by a treating doctor, who said he was fatigued.

Defense Responds to Testimony on Health of Ieng Sary

Briefly, International Co-Lawyer for Nuon Chea Jasper Pauw attempted to speak, according to International Co-Lawyer for Ieng Sary Michael Karnavas, about Nuon Chea suffering from dizziness, and was told by Trial Chamber President Nil Nonn that he would be permitted to do so after oral submissions were made.

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

Mr. Karnavas thanked the Trial Chamber for having Ieng Sary examined, holding two separate hearings concerning his health, and allowing them the opportunity to make submissions regarding Dr. Campbell's testimony. He paraphrased Thomas Jefferson: "Sound heads and honest views need nothing more than explanation and mutual understanding to enable them to unite in some measures which might enable them to get along," adding that in the Ieng Sary defense team's case, they hoped to unite "in finding a just and acceptable solution."

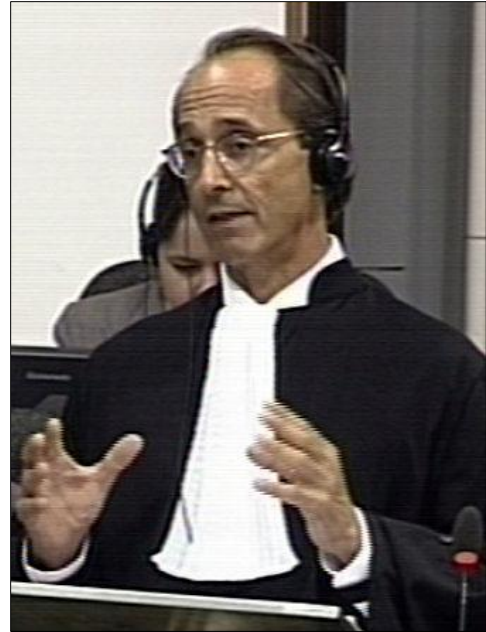
Mr. Karnavas noted that the parties were endeavoring to reach a mutual understanding in order to deal with the current and future impact of Ieng Sary's health on the trial, taking into account Ieng Sary's fundamental fair trial rights guaranteed in Articles 31 and 38 of the Cambodian Constitution and Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which is incorporated into the constitution and the ECCC agreement, establishment law, and internal rules.² He reminded the chamber that although many of the defense's questions to doctors at hearings on September 21, 2012, and November 8, 2012, turned on the issue of competency – particularly the ability to meaningfully participate in proceedings – they were not calling for a termination of proceedings against their client.

Based on the medical reports, testimony of doctors, and the reality of an 88-year-old accused in a "precarious physical condition," Mr. Karnavas contended, the issue of competency will need to be confronted at some point. He suggested that using the hearing to make a lengthy submission on competence was "premature" and a misuse of time. Mr. Karnavas cited Trial Chamber Judge Silvia Cartwright's comment at a hearing last week that Ieng Sary had waived his right to be present for the testimony of all witnesses set to appear in November, and most likely for December, given the current pace of proceedings and the particular witnesses. The matter of competency is not ripe for discussion because the proceedings may continue uninterrupted despite Ieng Sary's current health status, Mr. Karnavas argued, though that may alter in the coming weeks and months.

Though the defense could devote a significant amount of time to arguing the merits and shortcomings of Prof. Campbell's assessment and testimony it was pointless to do so, Mr. Karnavas said, while emphasizing that this did not imply the defense accepted Prof. Campbell's views. "We take grave exception to the manner and scope of his latest examination of Ieng Sary as well as some of his rather ... fanciful conclusions," he said, adding that his observations of Ieng Sary differed from those of Prof. Campbell. Mr. Karnavas submitted that it was reasonable and necessary for the chamber to engage an expert who was not associated with Prof. Campbell's assessment of Ieng Sary to provide an independent evaluation, which was common in the civil law system. He noted Prof. Campbell's comment that seeking second or third opinions was common in the medical field.

² The ICCPR can be found at: <http://www2.ohchr.org/english/law/ccpr.htm>; The ECCC Agreement can be found at: http://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement_between_UN_and_RGC.pdf; The ECCC Law can be found at: http://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf; The ECCC Internal Rules (Rev.8) can be found at: [http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20\(Rev.8\)%20English.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20(Rev.8)%20English.pdf).

Mr. Karnavas told the chamber that Dr. Bursztajn³ submitted a letter – though not a medical report – calling into question Prof. Campbell’s methodology and sources. Though acknowledging that Dr. Bursztajn did not have all relevant material in Prof. Campbell’s possession, including the previous medical report and one-on-one examination, Mr. Karnavas said the doctor provided a basic assessment in his letter after the Ieng Sary defense team requested a pro bono consultation. The defense lawyer emphasized that Dr. Bursztajn had never been associated with the Ieng Sary defense, but is highly regarded in the field of forensic psychiatry with an interest in issues of competency, and comes from one of the most prestigious medical schools in the United States. Mr. Karnavas suggested that the chamber should reach out to Dr. Bursztajn to determine whether he might be useful to them.



Given that Ieng Sary is an 88-year-old man with heart, breathing, prostate and back problems, Mr. Karnavas argues, the issue of his fitness for trial would not go away; he might at best be stabilized but would not improve. He observed that Prof. Campbell’s “generous description” of Ieng Sary admitted that parties must be guarded about his future health. The defense team requested that the chamber seek an independent evaluation by Dr. Bursztajn and that he be provided with all of the information made available to Prof. Campbell.

Mr. Karnavas said the defense did not object to the prosecution or civil parties proposing their own experts, as they were likely to assume the defense’s proposals to be “self-serving, defense-oriented, subjective,” though he asserted that the expert they proposed was not defense-oriented. Finally, Mr. Karnavas said his team would make written submissions requesting the appointment of an expert if the chamber so wished and if the chamber rejected their request, they would appreciate a written decision.

Trial Chamber Seeks Clarification on Defense Submissions

Judge Cartwright inquired if the Ieng Sary defense was asserting that their client was currently unfit or whether he could participate in the trial from the holding cells. Further, she requested clarification on why, if the defense maintained that he is fit, they sought an additional expert.

Mr. Karnavas asserted that for some time the defense’s position has been that Ieng Sary is not fit and cannot meaningfully participate in the trial, in accordance with international standards. However, as Ieng Sary had agreed to waive his right to be present for certain witnesses, the defense had agreed to proceed in the hope that his condition might physically improve to the point where he could monitor proceedings from within the holding cell as he could prior to his

³ Harold J. Bursztajn, whom the Ieng Sary defense referred to during Prof. Campbell’s testimony on November 8, 2012, is Associate Clinical Professor of Psychiatry and co-founder of the Program in Psychiatry and the Law at Harvard Medical School in the United States. For further reference, see CTM’s account of the hearing: <http://www.cambodiatribunal.org/blog/2012/11/ieng-sary-remains-fit-stand-trial-medical-expert-testifies>

hospitalization. Mr. Karnavas argued that if the defense could only consult with Ieng Sary in five, ten, or fifteen-minute windows, it was not meaningful participation. He recounted Prof. Campbell's testimony that he had dozed off at lectures, and asserted that this was a trial, not a lecture. Prof. Campbell was 20 years younger than Ieng Sary and appeared to be in perfect health, the defense lawyer argued. Mr. Karnavas stated that Ieng Sary was currently unable to participate in his own defense:

It could be that in January or December, Mr. Ieng Sary recovers. It could be, however, that we at some point will run out of witnesses that he has waived and at that point our position is rather unmoving. We are not going to budge, we are not going to waive. We're going to hold our ground, and you will need to make a decision.

Mr. Karnavas asserted that if the chamber was convinced by Prof. Campbell's testimony that Ieng Sary is competent and need only "will himself into paying attention," which is "rather generous," then the alternative would be to have Ieng Sary in the courtroom on a bed or gurney where the world can see if he is dozing in and out and whether he is participating. He argued that when the chamber has gone through witnesses that Ieng Sary has waived his right to be present for, the issue will need to be revisited.

We're basically kicking the can down the road, as they say, but we're doing so with the expectation that perhaps Mr. Ieng Sary will get better. And one might think that he will get better if Dr. Campbell is correct and the Cambodian doctors are all wrong as far as what exact is causing his dizziness, that his brain is getting sufficient oxygen and that all we need to do is apply a neck brace and ... with some adjustments he would be able to get back to a normal position.

Mr. Karnavas said the defense was attempting to not delay the proceedings and the alternative at this stage would be to file a motion to sever, which, the defense submitted, would require the halting of proceedings while the matter was pending. The defense doubted that Ieng Sary will improve, Mr. Karnavas affirmed, but they were nonetheless willing to accommodate the chamber given the importance of the proceedings. "We are not trying to obstruct the proceedings and we're trying to work with the parties," he concluded.

After this response, Trial Chamber Judge Jean-Marc Lavergne noted that when Ieng Sary waived his right to be present for certain witness testimonies, the situation was different as he was hospitalized for certain problems that were not accepted by Prof. Campbell. The judge inquired if the defense considered Ieng Sary "totally unfit" to participate in the trial – and if so, on what basis – or if the schedule could be modified to accommodate him.

"I'm always grateful for the opportunity to expand; I'll try to be cogent," Mr. Karnavas responded. He stated that, having spent time with their client, he found that Ieng Sary was unable to concentrate, became dizzy, experienced double vision, and was unable to follow proceedings beyond a five or ten-minute period. Mr. Karnavas said that Ieng Sary was back from the hospital because they could no longer treat him – "they've done the best they can" – noting that Prof. Campbell came to a different analysis of the underlying problem causing Ieng Sary's dizziness and lack of concentration.

Mr. Karnavas asserted that Ieng Sary wished to participate but due to his age and medical conditions, he could not muster the strength to follow the proceedings and his present state was essentially the same as when he was hospitalized, though this may change. Mr. Karnavas said if they were at a stage where the chamber had run out of witnesses to hear who had less impact on Ieng Sary's case – unlike witnesses such as Philip Short⁴ – the defense would be submitting that Ieng Sary be severed from the trial. He reiterated that the defense disagreed with Prof. Campbell's assessment and an independent evaluation was needed.

When you have an 88-year-old man who is most of the time in a fetal position, in pain in one way or the other, needs somebody to turn him over, can't stand up, is urinating on himself without help, cannot even take his own pills, is seeing double vision, and to say that this person is actually meaningfully participate in the proceedings is a rather ridiculous conclusion to reach. ... We're submitting that he is not capable of participating, but we are also submitting that because he has waived these witnesses that are not that impactful on his case and because one never knows whether his medical condition will improve, why not go forward with the witnesses that we have at hand so we don't stop the proceedings, see if his health improves. And if it doesn't improve then ultimately we will be faced with having to make full-blown submissions for him to be severed from these proceedings.

Mr. Karnavas noted these were crucial decisions that impact on civil parties, the prosecution, and public perception – though, he contended, these reasons are “quasi-political” as opposed to legal. Rather than confront them now, he said, the defense suggests that the trial go forward. If the chamber feels Ieng Sary is fit, however, he should be in court and the defense would make “immediate submissions” for his severance from the case, requesting an independent evaluation, Mr. Karnavas said. He added that he was attempting to be nuanced and did not wish to attack anybody's testimony, but to provide the chamber and the parties with a reasonable way for the trial to proceed.

Judge Lavergne inquired if the unfitness asserted by the defense went so far as to affect Ieng Sary's ability to understand the extent of the rights he is waiving when forgoing the right to be present for the examination of certain witnesses. Mr. Karnavas explained that Ieng Sary could concentrate for five or ten minutes at a time, and thus the defense had previously gone through witness statements of those anticipated to testify and discussed them with Ieng Sary for short periods when he is able to focus. He assured the chamber that if the defense believed Ieng Sary was mentally incapable of issuing the waiver, it would have been raised.

Mr. Karnavas said he did not wish to decide who ought to be waived, but advised Ieng Sary and acted on his instructions. The defense team was confident Ieng Sary had provided a waiver that was “knowing ... intelligently made and willingly made,” Mr. Karnavas said. “That said you cannot say because he's able to concentrate for 10 or 15 minutes in providing a waiver that he can actually participate in proceedings where you have testimonies, you have objections, you have rulings and he needs instructions. There is a vast difference,” Mr. Karnavas added.

⁴ Philip Short is a journalist and author of *Pol Pot: Anatomy of a Nightmare*. He is expected to testify as an expert witness in Case 002/01 in 2013.



Finally, Judge Cartwright referred to the September 3, 2012, examination of Ieng Sary by Prof. Campbell, Dr. Seena Fazel, and Dr. Huot Lina, in which they found there was no cause for concern regarding his mental status. She inquired if the Ieng Sary defense accepted that report. Mr. Karnavas stated that the defense was not present for the September 3 examination because Ieng Sary was in the holding cell at that time, while waiving his right to be present in the courtroom. He noted that the defense had scheduled a one-hour meeting with Ieng Sary in the detention unit on September 7 and prior to their arrival, he informed them that he could not get out of bed. Mr.

Karnavas recounted that after a roughly half-hour meeting where they attempted to discuss the testimony of Philip Short, they were told by the detention facility about half an hour after the meeting that Ieng Sary was being transferred to the hospital, where he remained for three or four days before he was examined.

Mr. Karnavas asserted that at the time of the September 3 evaluation the defense had no concern about Ieng Sary being able to assist the defense or participate in the proceedings, as he had done previously. The defense therefore felt no need to challenge the report, he explained. Mr. Karnavas noted that Prof. Campbell was building on that report, but the defense held that something changed between September 3 and September 7, as Ieng Sary was fine on September 6 but was in a fetal position, emaciated, on oxygen, and looked as though he was about to pass away when Mr. Karnavas visited him in hospital the following week. “While I don’t want to take anything away from Dr. Campbell and the examinations performed by the doctors Campbell, Huot, and Fazel on September 3, I don’t think that that examination is the benchmark from where we start here today, especially when we’re dealing with someone of the age and physical condition of Mr. Ieng Sary,” Mr. Karnavas concluded.

Prosecution Makes Submissions on Health Findings

International Deputy Co-Prosecutor William Smith noted that initially the defense did not wish to put forward a submission on whether Ieng Sary was fit to plead, but it was clear now that the defense believed their client was not fit to stand trial. Mr. Smith said he felt the changing position reflected the delicate situation. It was clear from Prof. Campbell’s testimony that Ieng Sary is fragile, but it was unnecessary for him to remain hospitalized, though he required more assistance than usual upon returning to the detention facility with such tasks as going to the bathroom, eating, and showering, Mr. Smith stated. Many of the conditions that require extra assistance for Ieng Sary relate to Ieng Sary’s mobility, which had perhaps deteriorated slightly between September 3 and early November, Mr. Smith submitted.

However, Mr. Smith argued, Prof. Campbell would not have suggested that Ieng Sary return to the detention facility if he needed critical care, and his view was that the defendant’s condition was stable and with the right assistance, he could participate in the trial. “We do have a situation where we have a very fragile accused, but at the same time we have situation where we have an

accused that Dr. Campbell has said is mentally fit to plead and physically fit to stand trial,” Mr. Smith said, adding that having Ieng Sary present in the courtroom may not be the best option at this stage as it would not augment his comfort. He recalled that Dr. Campbell testified that due to Ieng Sary’s back problems it was better he lay in bed on an incline and recommended adjustments in the holding cell, from where he could participate in the proceedings. Whether the trial proceeds or not was not really a question, Mr. Smith submitted, based on the evidence of Prof. Campbell, who specializes in geriatric medicine and has dealt with many patients similar to Ieng Sary.

Mr. Smith said that while defense counsel might have experienced situations where Ieng Sary could only communicate for 15 minutes that was not evidence before the chamber. Prof. Campbell who assessed Ieng Sary over a two-day period one week ago, Mr. Smith recalled, testified that he spoke to Ieng Sary for an hour and a half and Mr. Sary was able to engage interactively, and again when Prof. Campbell met him the same afternoon and the following day. Mr. Smith noted that Prof. Campbell performed the Mini-Mental State Examination (MMSE)⁵ and concluded that Ieng Sary had the same ability to participate in the trial as on September 3. “Your Honors have no real evidence before you that between September 3 and early November that Mr. Ieng Sary’s mental capacity had in fact dropped,” he said.

Mr. Smith contended that the chamber must determine whether Ieng Sary was fit to plead, and if there were later a significant decline in Ieng Sary’s mental state or condition, the prosecution would not object to a re-examination. The prosecutor argued that the chamber was in a position to decide, noting that the defense had submitted that Ieng Sary was not fit to plead, that Prof. Campbell suggested in his expert report and testimony that Ieng Sary was fit to plead, and that Drs. Fazel and Huot were of the same opinion two months ago. Prof. Campbell testified a week ago that Ieng Sary’s condition was unchanged since his previous examination and the defense appeared to be referring more to Ieng Sary’s physical condition, Mr. Smith stated:

The issue before your Honors is: is he mentally fit to plead, can he understand the nature of the charges, the course of the proceedings, the details of the evidence, can he instruct counsel, understand the consequence of the proceedings, can he testify. And you’ve had three experts over a two-month period that have all said the same thing: he can.

Mr. Smith further submitted that it might be “dangerous” not to decide on this issue as if it later becomes a point of appeal, judges in a higher court would like to know as of this date what the chamber’s view was on Ieng Sary’s fitness to plead. The prosecutor thanked the defense for their accommodating approach in providing waivers, but argued that it is important that the issue is decided upon for the record and for the future. He added that Drs. Campbell, Fazel, and Huot are three qualified doctors who have given opinions on Ieng Sary’s mental state in the last two months, the only difference being a weakness in the defendant’s physical health, which Dr. Campbell said can be managed appropriately with medication, assistance, and a proper bed. “There’s been no statement by doctors during this two-month period saying Ieng Sary is not mentally fit to plead, other than that one incident where a doctor stated that they spoke to him in the hospital for 15 minutes and then he was tired, he could not concentrate,” Mr. Smith said.

⁵ In the Trial Chamber’s “Decision on Ieng Thirith’s fitness to stand trial” (November 17, 2011), the MMSE is described as “a common test for assessing cognitive impairment.” The Trial Chamber’s decision on Ieng Thirith’s fitness to stand trial can be found at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E138_EN.PDF.

Citing the “Decision re: the defense motion to terminate proceedings” in the *Strugar* case at the International Criminal Tribunal for the former Yugoslavia (ICTY),⁶ Mr. Smith noted that in the September 3 report Ieng Sary understood every capacity and provided answers demonstrating his ability to plead and stand trial; he reiterated that Prof. Campbell’s view had not changed on the matter two months later.



Mr. Smith contended that a core principle in the *Strugar* case was that ultimately the inquiry into the medical condition of an accused, the symptoms, and their causes was not the chamber’s primary role. “Your primary role as a Trial Chamber is to determine whether or not he’s fit to plead and stand trial,” he said. Mr. Smith argued that once the chamber was satisfied with that determination, under the law it did not need to concern itself so much with the causes of various symptoms.⁷

Furthermore, the prosecution asserted that the chamber should only consider evidence before them. Though the chamber allowed parties to seek advice in order to better understand Prof. Campbell’s evidence, Dr. Bursztajn’s letter – completed in 24 hours with no consultation with Ieng Sary, analysis of his medical records, or understanding of his prior history – was not evidence, nor was the defense counsel’s remarks about Ieng Sary’s condition, Mr. Smith contended. “Your Honors must make your decision on evidence, rather than purely a submission, and the reason for that of course is that counsel can’t be cross-examined as to the facts that are being put forward – it’s untested,” he said.

Mr. Smith submitted that if the chamber was not confident about the evidence they could request another expert, but the prosecution felt that three experts in two months with a unanimous view after extensive consultation with Ieng Sary should leave the judges in no doubt as to his current fitness. While the prosecutor agreed that Ieng Sary’s condition was “precarious,” if there is a significant change from what Prof. Campbell reported then another expert could be called. Mr. Smith affirmed that in the civil law system of the court, the chamber had to be satisfied with qualifications and experience of the people put forward. He argued that it would be unnecessary and a waste of the court’s time and resources to call another expert, citing paragraph 25 of the *Strugar* decision and noting that it said there “must be an adequate reason.”

⁶ According to the Trial Chamber’s “Decision on Ieng Thirith’s fitness to stand trial” (November 17, 2011), the *Strugar* criteria outline the “appropriate approach to be adopted in determining fitness to stand trial” as evaluating the capacity of the Accused to plead; to understand the nature of the charges; to understand the course of the proceedings; to understand the details of the evidence; to instruct counsel; to understand the consequences of the proceedings; and to testify.

⁷ Mr. Smith referred to paragraphs 35 and 46 of the *Strugar* decision.

The prosecutor asserted that at the ICTY there is a presumption that an accused is fit to plead, but to determine unfitness, judges at the international tribunals must find “on the balance of probabilities” that it’s more likely than not that an accused is not fit to plead, and this chamber was not at that stage. Finally, Mr. Smith asked that the chamber not postpone a decision and submitted that the trial proceed normally, either with Ieng Sary’s presence in court or in a holding cell with appropriate equipment and care. If Ieng Sary must return to hospital in the future but was still mentally fit, audiovisual links could be set up, Mr. Smith suggested. He submitted that there was no evidence to cast doubt on the opinions of Prof. Campbell and Drs. Fazel and Lina and the letter by Dr. Bursztajn had little value given that it was not based on enough information. “Further assessments are not currently required,” he said. Mr. Smith argued that though Ieng Sary’s ongoing medical care was of great importance to the court, his requirement of extra personal care did not detract from the opinions of the three experts that he was fit to stand trial.

Lawyers for Civil Parties Comment on Expert Testimony

After the prosecution concluded its submissions, International Civil Party Lead Co-Lawyer Elisabeth Simmoneau-Fort noted that the Ieng Sary defense had suggested the parties could wait and hear testimony that Ieng Sary had waived his right to be present and the defense would request severance if necessary in the future, which would impact the civil parties and the other accused. She asserted that Prof. Campbell’s conclusions were clear in his report and testimony that it was unnecessary and potentially harmful to keep Ieng Sary in hospital and there was currently no physical or mental unfitness for trial. Noting the Ieng Sary defense’s challenges to Prof. Campbell’s findings, Ms. Simmoneau-Fort recalled that Prof. Campbell had produced a report on the health of Ieng Thirith, which was relied upon by her defense counsel and the chamber in their ruling on her fitness. Prof. Campbell’s most recent findings “do not seem to suit the Ieng Sary defense” despite their reason and clarity, Ms. Simmoneau-Fort said, adding that she had not heard a well-founded medical argument challenging Prof. Campbell’s findings.

Ms. Simmoneau-Fort supported the prosecution’s comments that the chamber should not base its decisions on the Ieng Sary defense’s observations, that the expert report was clear, and that Dr. Bursztajn’s letter criticized only the form of Prof. Campbell’s findings, not their substance. In agreement with the prosecution, the civil parties requested that the chamber not delay their decision and reject the request for further expert consultation because it was not well founded. Finally, Ms. Simmoneau-Fort argued that Ieng Sary’s presence at the hearings was a duty, as well as a right for the civil parties and the public.



Counsel for Ieng Sary Responds to Prosecution and Civil Parties

Firstly, Mr. Karnavas noted that the Ieng Sary defense had nothing to do with Ieng Thirith, as she was not their client. He noted that the parties had no recordings to observe Prof. Campbell’s examination of Ieng Sary and therefore had to take his word at face value, but there was nothing to prohibit such recordings. Mr. Karnavas recalled that on December 21, 2009, the defense team

inquired if Ieng Sary's first psychiatric evaluation was recorded and were told it was not recorded. On March 16, 2011, Mr. Karnavas continued, the defense requested that the examination of Ieng Sary be undertaken in the presence of one of his lawyers, adding that they would request that any future examinations be video-recorded.

Mr. Karnavas further argued, in relation to the prosecution's concern about what may occur on appeal, that the chamber need not worry unless it was concerned that Ieng Sary's waivers were provided when the defendant was not competent. "It would seem that there is no need to worry about somehow the defense, in a rather clever way, trying to set the stage up for the appeal process by creating error into the process, something that is commonly done at times by defense lawyers," Mr. Karnavas asserted, assuring the chamber that this was not one such case. Mr. Karnavas noted that it was up to the chamber if they wished to decide on Ieng Sary's competency, but it may push the defense into employing other options:

If indeed there is this finding, which we submit would be in error, then perhaps because we would be waiving a point for appeal, or we would be looking to be less than diligent, we certainly would need to revisit the issue of the waivers, and it would be my advice to the client, so that there's no misunderstanding for appeal purposes, that he withdraw those waivers and that we proceed with his full presence.

Mr. Karnavas submitted that if Ieng Sary were to be present in the detention center, the defense would request that there be video to monitor him, as he did not wish to engage "in a charade" where his client was asleep, could not be seen, and all parties pretend that he is participating. Mr. Karnavas said it was "objectionable" that because the court was dealing with an 88-year-old man with a range of problems, the standard for pleading should be lower than if someone was more robust and the court can tolerate an accused dozing in and out. "Should the Trial Chamber make findings then we would need to revisit certain issues with our client and that's what we have attempted not to do; we try not to precipitate a situation where we would have to go down the road of severance," Mr. Karnavas said.

As Mr. Karnavas referred to paragraph 55 of the *Strugar* judgment dated July 17, 2008, Mr. Smith interjected that the prosecution had been referring to the trial judgment, which then went on appeal. Mr. Karnavas noted that in the case the Trial Chamber set out certain criteria, the case went on appeal. In many ways, Mr. Karnavas asserted, the appeal chamber's decision was controlling and it qualified parts of the Trial Chamber's finding. He quoted paragraph 55 as saying:

As noted above the applicable standard is that a meaningful participation which allows the accused to exercise his fair trial rights to such a degree that he is able to participate effectively in his trial and has an understanding of the essentials of the proceedings. ... In this respect the Trial Chamber applied the standard correctly as evidenced by its conclusion that an accused's fitness to stand trial should turn on whether his capacities "viewed overall" in a reasonable and common sense manner at such a level that it is possible for him or her to participate in the proceedings, in some cases with assistance, and sufficiently exercise the identified rights.

Mr. Karnavas suggested that if a person is dozing in and out, it is "common sense" that the person is not following the proceedings. "They're present but not mentally," he added. "How does one follow the proceedings, and how will we be able to track that he's following the

proceedings unless we view Ieng Sary at all times to see whether he's dozing in and out?" Mr. Karnavas inquired if Ieng Sary was dizzy, fatigued, experiencing double vision, or in pain and unable to follow the hearing, whether the chamber would take a recess. The Ieng Sary defense submitted that the trial proceed as it has been for the time being.

Chamber Presses Defense on Submissions

After Mr. Karnavas concluded his response, Judge Cartwright expressed a concern that if the position of the Ieng Sary defense was that their client was unfit but they would prefer to proceed as usual for the time being, the chamber could possibly be furthering a trial of Ieng Sary when he is unfit. She continued that she was unsure how the chamber would proceed without clarifying the current situation.

In response, Mr. Karnavas repeated that Ieng Sary's ability to participate for limited periods of ten to fifteen minutes was not sufficient to meet his fair trial rights under the Cambodian constitution and the ECCC statute. He stated that the defense hoped Ieng Sary's condition will improve and therefore felt that provided they had waivers, the trial could proceed. The defense was concerned partly with not disrupting the trial, he said, but Mr. Karnavas suggested that if the chamber were to make a decision, it may change their posture. He said the defense was attempting to be reasonable and creative while respecting their client's rights, but were not saying that Ieng Sary is fit to participate in the proceedings as they are now, even if his presence was reduced to half a day. He added:

If you make that decision, then we certainly would have to have a conversation with our client, ask him to withdraw his waivers, and then of course we would want full view of Ieng Sary in the state that he is in at all times so that, yes, he can be comfortable but also we need to be sure exactly what it is that we're saying is competence to participate and following the proceedings.

At this point, President Nonn informed the parties that the chamber would rule on the matter in due course, and permitted Mr. Pauw to make his comments.

Defense Counsel Inquires about Examination of Nuon Chea

Mr. Pauw said the defense team had been informed prior to the hearing that Nuon Chea was unwell and had seen a doctor. He requested to know the doctor's findings before the chamber proceeded with questioning the next witness. Mr. Pauw also asked if Nuon Chea was examined for the purpose of assessing whether he could effectively participate in the proceedings and, if so, requested that the defense be provided with a copy of the report. If the doctor had not examined Nuon Chea for that purpose, the defense requested that he do so before hearing the next witness to allow the defense to formulate a position, Mr. Pauw added.

Following a consultation among the judges, President Nonn said the chamber had received a report from the treating doctor on an examination of Nuon Chea conducted this morning, which noted that the accused was fatigued, but his condition was not serious. President Nonn added that the doctor recommended Nuon Chea monitor proceedings from the holding cell.

Mr. Pauw repeated his request for a copy of the report prior to the examination of the next witness. President Nonn responded that Nuon Chea would be permitted to observe the hearing remotely from a holding cell, that he had waived his right to be present during the proceedings

and the report would be added to the case file. At this point, Mr. Pauw noted that Nuon Chea had not waived his right to be present in court through his counsel, and the medical report would provide counsel with the relevant information to assess whether or not he should do so. Judge Cartwright informed Mr. Pauw that he would be provided with a copy of the report during the recess.

After the recess, Mr. Pauw stated that Nuon Chea would waive his right to be present in the courtroom for the day, as he was fatigued and is feeling generally unwell.

New Witness Takes the Stand

After noting that Ieng Sary had waived his right to be present for the testimony of the new witness according to Internal Rule 81.5,⁸ President Nonn asked witness Pe Chuy Chip Se preliminary questions. Pe Chuy Chip Se testified that he was 58 years old, lives in Kork Thloun Krom commune in Siem Reap province's Chi Kreng district, and works as a primary school teacher. He is married with three children. Pe Chuy Chip Se told the chamber he had no relationship to the accused or civil parties, had taken an oath, and was interviewed twice by staff from the Office of the Co-Investigating Judges (OCIJ) in 2008 – at Wat Thmey pagoda and at the primary school where he works. The witness stated he had reviewed the written records of his interviews and confirmed that they accorded with his statements.



Prosecution Leads Questioning of Witness Pe Chuy Chip Se

National Deputy Co-Prosecutor Seng Bunkheang proceeded with his examination by citing Mr. Chip Se's OCIJ interview, asking what he did between 1971 – when he joined the revolutionary movement – and when he was appointed to work at the Pong Ro security office.⁹ The witness said when he joined the Khmer Rouge forces in 1971, he worked with other soldiers and was involved in fighting in the battlefields. When the Khmer Rouge launched the Chenla II campaign Mr. Chip Se returned to his home village in Siem Reap's Chi Kreng district.¹⁰ Referring to the same interview, Mr. Bunkheang quoted Mr. Chip Se as saying that in 1974 there were many killings of those accused of being bandits, including women and children. When the prosecutor asked who named the people as bandits, Mr. Chip Se replied that the district committee made those accusations and ordered the security forces, including himself, to arrest and imprison them, after which they were sent to the security office.

When asked what the charges were against these “bandits,” the witness testified that his superiors at the time told them those people rebelled against the Khmer Rouge and took refuge in the forest to join the Lon Nol forces. Mr. Bunkheang inquired about Mr. Chip Se's whereabouts on April 19, 1975, to which the witness replied that he lived at the Pong Ro security office and had not yet left the Khmer Rouge.

⁸ The ECCC Internal Rules (Rev.8) can be found at: [http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20\(Rev.8\)%20English.pdf](http://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20(Rev.8)%20English.pdf).

⁹ Initially, the date cited was 1961, but this is believed to have been an error in translation.

¹⁰ Mr. Chip Se's response was unclear in the English translation.

As the prosecutor began to ask if he was aware that the Siem Reap population was being evacuated, Mr. Pauw objected that the evacuation of Siem Reap was not part of Case 002/01. In response, International Assistant Co-Prosecutor Dale Lysak argued that the Trial Chamber could hear evidence on the evacuation of Siem Reap because it related to the practice and policy of evacuation by the Khmer Rouge and the court had previously heard witness testimony about the evacuation of Kampot, Takeo, and other cities. Secondly, Mr. Lysak asserted, the prosecution had the burden of proving that evacuation was a widespread and systematic practice in order to prove the crimes against humanity charge, which entailed evidence showing that cities and urban areas were evacuated nationwide. Evidence relating to the evacuation of other areas like Siem Reap is relevant to the case, Mr. Lysak concluded. After the judges conferred briefly, President Nonn overruled the objection, noting that the witness's knowledge related to the Khmer Rouge general policy of evacuations.

In response to the question, Mr. Chip Se testified that people from Siem Reap were evacuated after April 17, 1975, like the people in Phnom Penh. Civilians were sent to rural areas, but former officials and soldiers were kept at Kampong Kdey to await execution, he said. The security forces at Pong Ro had no authority over the evacuation of soldiers and former officials from the Khmer Republic to Kampong Kdey, but they learned that many people were sent there where Khmer Rouge soldiers were on guard and interrogations took place.

Witness Testifies about Executions of Former Lon Nol Officials

The witness described seeing people transported in trucks – including whole families and former officials who would be executed.¹¹ He clarified that he was referring to former Lon Nol officials and soldiers who were detained and executed by the Khmer Rouge, whose spouses and children were also kept in old buildings at Kampong Kdey. “I saw their children were running, playing there, before they had been sent out to be executed,” the witness detailed. Mr. Bunkheang noted that Mr. Chip Se indicated in his OCIJ interview that he saw the evacuation of former Khmer Republic soldiers and officials, who were kept in buildings at Chi Kreng where they were guarded day and night. He asked where Phsar Chi Kreng was in relation to the security center, to which the witness responded that Kampong Kdey market was in Chi Kreng about seven kilometers away from the Pong Ro security office and he went there with colleagues when ordered by the head of security to search for people who must be brought to the detention center.

People who had to be detained at Pong Ro security office were those who committed some moral misconduct with young women. These people were evacuees. And people who were former Lon Nol officials or soldiers were not brought to that security center. Only civilians would be brought there, civilians who committed such crimes.

The witness explained that former Lon Nol soldiers and officials who had been evacuated to Kampong Kdey were interrogated – which was not the role of the security forces – and sent to be executed. Mr. Chip Se recalled that people told him about senior officials and soldiers of the former regime and he had seen them heavily guarded by Khmer Rouge soldiers. “Every now and then the soldiers would fire some gun shots to scare the people not to escape,” he added.

¹¹ Mr. Chip Se's response was unclear in the English translation.

Citing Mr. Chip Se's witness interview, Mr. Bunkheang inquired who was assigned to guard former Lon Nol soldiers and officials detained at Chi Kreng market. The witness recounted that he did not know which unit the guards were from and only heard this information from villagers. The prosecution noted that in his interview, the witness indicated that several hundred former senior Lon Nol soldiers and officials and their families were taken to be executed at Makak by security personnel from Pong Ro, under the pretext that they would be sent for education or study sessions.¹² "To put it simply, everyone was killed. None were spared, everyone who was brought in was sent out to be executed altogether," the witness said.



When Mr. Bunkheang asked how the witness knew that security forces from Pong Ro executed former soldiers and officials at Makak, Mr. Chip Se said people who carried out the executions told him upon returning from where the people had been killed. He added that other Khmer Rouge soldiers carried out the executions, but he could not recall the unit. In response to a query about who arranged the executions, Mr. Chip Se mentioned people from "the sector" – meaning Siem Reap and Uddor Meanchey – and a "few security personnel" but said he did not know who was in charge.

The witness testified that Makak – now known as Makak dam – was located about 10 kilometers from Pong Ro security center; the Makak execution site was to the northwest of the security center. Mr. Chip Se said he had never personally seen any of the executions but learned about them from people who committed them.

Prosecution Quizzes Witness on Interview with Henri Locard

Taking over from his colleague, Mr. Lysak referred to a July 1991 interview attributed to Mr. Chip Se with Henri Locard at the Siem Reap Grand Hotel, inquiring if the witness recalled it. At this juncture, Mr. Pauw noted that it was the chamber's practice that the witness must be asked whether he has seen document, and if he has not, it must be removed. Mr. Lysak countered that there were many circumstances where a witness has been permitted to view a document they have not seen before, including a document containing an interview attributed to the witness.

Also interjecting, Mr. Karnavas said he understood that Mr. Locard was slated to give witness testimony and inquired if they were now in the same situation as with authors like Philip Short, whereby documents by a witness were being used before they testified. He requested clarity on whether such a practice was permissible. In response, Mr. Lysak informed the chamber that he would not ask questions about Mr. Locard's comments or observations, but statements that are attributed to the witness. He argued that parties had been permitted to proceed on such a basis, for example when questioning witness Phy Phuon who was interviewed by Philip Short and whose statements were included in Philip Short's book. President Nonn said the objection was overruled and parties could use such documents when questioning the witness.

¹² Several of Mr. Chip Se's responses were unclear in the English translation in this part of his testimony.

In response to the original question, Mr. Chip Se said he met with Mr. Locard and was interviewed. Mr. Lysak quoted a statement attributed to Mr. Chip Se:

The Viet Cong followed by a few Khmer Rouge first occupied his home village in May 1970. The Viet Cong were on the first line and the Khmer Rouge followed in black clothes with the Viet Cong. He heard Sihanouk's announcement on Peking radio campaigning for the National Reconciliation Front, asking people to join him in the forest *maquis*. Because Sihanouk declared from Peking that he was the president of the front to fight against the American colonialists and imperialists, the inhabitants welcomed the revolutionaries. They gave their children. He was the fifth of a family of nine children, and two joined the revolutionaries. His small younger brother who was then only eight and himself who was sixteen were enrolled.

Upon questioning from Mr. Lysak, Mr. Chip Se noted it was incorrect that his younger brother joined the revolution when he was 8 years old, though he did join the revolution later in 1976.

Testimony Touches on Former Khmer Rouge Leaders

When the prosecutor asked if any Khmer Rouge leaders came to speak in his district between 1971 and 1973, the witness said they did. Mr. Lysak quoted a statement attributed to Mr. Chip Se in the 1991 interview with Mr. Locard that Hu Yun delivered a speech in the forest around 1973 in Kork Thlork Leu commune, which Mr. Chip Se did not attend. The prosecutor read: "Hu Yun encouraged the people to make their contribution to this military struggle in order to overthrow Lon Nol. According to Hu Yun's words, the Khmer Rouge wanted to sever links with the Viet Cong."

As Mr. Lysak asked Mr. Chip Se if the statement was accurate, Mr. Pauw objected, arguing that the prosecutor should not lead the witness or feed him information that he may not remember. "If the witness is fed the information in this way, it taints the evidence of his particular witness," Mr. Pauw emphasized, adding that if the witness indicated he did not remember, the prosecutor could then attempt to refresh his memory with his earlier statement. He requested that the prosecutor ask "open-ended questions." Mr. Lysak replied that he would proceed in the manner proposed by Mr. Pauw, though it would be lengthier. Noting the objection by the Nuon Chea defense, President Nonn said the chamber advised the prosecution to rephrase the question and ensure it was open-ended.

Mr. Lysak inquired which leaders came to Chi Kreng district prior to 1975, to which the witness recalled that Hu Yun came to Prey Thom village – also recorded by Mr. Locard – to propagandize. Mr. Chip Se explained that only the base people were permitted to take part but he heard that the message was to chase away the Viet Cong. He testified that he never saw Nuon Chea, Khieu Samphan, and Ieng Sary in Chi Kreng district, which the Khmer Rouge took control of in 1970 after the coup d'état. Cooperatives were first established in Chi Kreng in 1972. When asked if there was a time in Chi Kreng when families were no longer allowed to live together, Mr. Chip Se testified that people lived with their families in 1970, but when the Khmer Rouge encouraged people to resist the Lon Nol administration, sons and daughters of villagers rallied around the Khmer Rouge and the families separated. Some children went to the forest to take refuge or join the resistance while their parents remained and joined the cooperatives, the witness recounted. The Khmer Rouge encouraged young people to join their forces at the time, he added.



Referring back to Mr. Chip Se's statement to OCIJ investigators, Mr. Lysak inquired what his position was at Pong Ro security office when he was assigned there in 1972. Mr. Chip Se explained that he was a clerk – a “documentary custodian” – who prepared documents and kept records of prisoners. Pong Ro security office was the district security office of the Khmer Rouge. The witness explained that when he was working at the office, the Khmer Rouge established the organizational structure with Ta Voan as the first secretary, who was arrested and replaced by Ta Kun, who was later accused of betraying the organization and also arrested. Mr. Chip Se explained that the Khmer Rouge established a very secretive “underground organization” that included the youth league and party members, but he did not know how it worked.

The witness explained that his superiors at the security office told them in 1972 and 1973 it was a place for prisoner reeducation, in order to “refashion” the detainees before they were returned to their localities. “During the imprisonment or the so-called reeducation some of them were killed. Of course, they said of good things, they wanted to reeducate them, but the deeper purpose of it was to execute them so they did not live up to what they told them,” Mr. Chip Se testified.

Mr. Lysak quoted another excerpt from Mr. Chip Se's interview with Mr. Locard, which said: “It was a security center. It was meant for the entire population to fear the power of Angkar. Angkar had told PCCS [Pe Chuy Chip Se] that all the inmates were imperialists and capitalists. The power of Angkar would terrorize them.” Under questioning from the prosecutor, the witness explained that the chiefs of security offices and their associates told them that the inmates were “imperialists and capitalists.” Mr. Chip Se testified that Lon Nol soldiers evacuated in 1975 were not captured and sent to Pong Ro security office but executed instantly upon capture.

Before 1975, there were some soldiers who surrendered; then the Khmer Rouge captured them and they were placed in the security office, but that was before 1975. Those soldiers who surrendered and gave up and they came to the territory controlled by the Khmer Rouge and they were arrested and sent to the security office, but other soldiers who were around in 1975, they were captured and killed instantly.

The witness recalled that Lon Nol soldiers whom he saw detained in the vicinity of Pong Ro were later executed. “There were four people detained and some of whom managed to run away; the rest had been executed,” he added. Mr. Lysak read a sentence from the witness's interview with Mr. Locard – “when Lon Nol soldiers were captured they were immediately killed” – asking who the soldiers referred to were. Mr. Chip Se said Lon Nol soldiers evacuated from Siem Reap on April 17, 1975, were arriving at Kampong Kdey and after being interrogated they were loaded onto trucks and executed. The prosecutor asked the witness if he saw former Lon Nol soldiers and officials being transported to Chi Kreng market in trucks as mentioned in his OCIJ statement, to which the witness responded that he had heard about it through people who moved the soldiers executed at Makak. “I remember having heard them say that these people

were blindfolded, all of them including their young children were executed,” Mr. Chip Se testified, adding that three people who used to live in his village told him about this event.

Prosecution Presses Witness on Siem Reap Evacuation

Mr. Lysak inquired how many civilians were evacuated from Siem Reap to Chi Krenng district on or after April 17, 1975. The witness said he was unsure, but people evacuated to Chi Krenng were not necessarily from Siem Reap. He explained that evacuees were sent to remote rural areas to live and work in “very hard” places and village chiefs would be alerted to where new arrivals had come from. When asked if the Khmer Rouge endeavored to identify people within the group of evacuees who might be connected to the Lon Nol regime, Mr. Chip Se replied:

During the Khmer Rouge regime, the Khmer Rouge did not like the 17 April people. They did their best to hunt for every detail concerning the background of each and individual evacuee of the 17 April person and if they learned about this, the person would end up being executed. To put it simply, the Khmer Rouge were not pleased with the 17 April people.

Examination Turns to Administration, Authority, and Communications

Mr. Lysak asked to whom Ta Voan and Ta Kun from Pong Ro security office reported, to which the witness explained that they received instructions from the head of the district committee, Ta Sun and later Ta Sok, who accused Ta Voan and his associates of betrayal. Ta Sok later installed Ta Kun as head of security, the witness recalled, and they all issued orders and made decisions. Ta Sok came from Kampot in the southwest zone.¹³ Mr. Lysak asked what happened to the 17 April people in Chi Krenng after Ta Sok and the southwest zone cadres arrived. The witness detailed that the 17 April people were still under surveillance after Ta Sok became district head and were still “badly treated.” “They were accused of being affiliated with the imperialists, the American imperialists; they were still made to do hard labor and they did not enjoy comfortable life or happiness at all because they were still regarded as people from different class,” Mr. Chip Se recounted.

Quoting again from the 1991 interview with Mr. Locard, Mr. Lysak read:

After the execution of the ex-leaders, the Nearodey¹⁴ continued to arrest and massacre the 17 April. PCCS does not know the place of execution but saw a lorry covered by palm leaves that every day transported inhabitants to execute them (or take them to another prison?). The Nearodey established another district prison in Kampong Kdey pagoda.

Under questioning from the prosecutor, Mr. Chip Se described how detainees were transported for execution at Kampong Kdey, which the Khmer Rouge said was because the 17 April people had revolted against the Khmer Rouge whose policy it was to arrest anyone seen carrying a machete, axe, or club. The witness said the Khmer Rouge tricked people who had killed Khmer Rouge soldiers to come forward with those weapons at a meeting, and they were arrested, rounded up, and loaded onto trucks with their hands bound behind their backs. Mr. Chip Se testified that the secretary of Chi Krenng, which was under the sector including Siem Reap and Uddor Meanchey provinces, had to report to the sector.

¹³ The witness noted that Kampot and Takeo provinces were both part of the Southwest Zone.

¹⁴ “Nearodey” is a Khmer term referring to people from Takeo province.

Mr. Lysak noted that Mr. Chip Se referred to Ta Sot – the head of the region¹⁵ – in his interview with Mr. Locard, and inquired as to the identity of this person. Mr. Chip Se replied that Ta Soth was the chief or secretary of the sector including Siem Reap and Uddor Meanchey.

Testimony Sifts through Khmer Rouge Communications

The prosecutor cited Mr. Chip Se’s OCIJ statement, which indicated that confessions from the district security office were delivered to the Chi Krong district committee, and inquired how such documents were prepared and what information they included. The commune chief had to file a report about the prisoners who had been brought to the security center from other locations and arrange for someone to bring them in, Mr. Chip Se recounted.

When people came in, they would be shackled and their names and some personal details would then be kept and the record would be submitted to the district, who made the final decision to see whether these individuals had to be freed or further detained or executed. So Ta Kun did not make any decision all on his own accord. He had to go through the district for final decision.

Mr. Chip Se testified that he took notes of the confessions, which would then be submitted to the chief of security, who would make the decisions. Quoting an excerpt from the witness’s interview with Mr. Locard, Mr. Lysak sought information about a ledger that Mr. Chip Se copied reports into, which prisoners also thumb-printed. Mr. Chip Se recalled that the logbook had to go through the district level, which decided whether each individual had committed a light or heavy offense and the district chief would choose how the individuals would be treated – whether they should be released, detained, or executed. Ta Sun came to the security center to converse with the personnel and would call detainees to meet him, the witness related.

Citing Mr. Chip Se’s OCIJ interview, Mr. Lysak read: “The Pong Ro security office was under the command of the district. Only when there were orders from the district were there any interrogations, releases, or killings.” When asked whether the district secretary or committee had to receive orders to execute from the upper echelons, the witness replied that he did not know whether orders or decisions were made higher up. “Nonetheless, when people had to be sent out for executions, I could note that some of the prisoners’ details were crossed out in red. And these people could be executed,” Mr. Chip Se testified.¹⁶

The prosecution concluded their questioning.

Witness Examined by Civil Party Lawyers

National Civil Party Co-Lawyer Ven Pov cited the written record of the written record of Mr. Chip Se’s OCIJ interview dated September 10, 2008, and inquired if Mr. Chip Se witnessed Buddhist monks being evacuated. Mr. Chip Se replied that he did not pay attention to the categories of people, and because he worked at Pong Ro and heard about the former Lon Nol soldiers and officials evacuated out of Siem Reap. The witness testified that he had heard from others that “all people” were evacuated, but he did not see it himself. Mr. Chip Se described the evacuation as being on foot, with no vehicles or means to get out of the city:

¹⁵ Ta Sot was referred to as the head of the “Dombon,” which roughly translates to “region” in English.

¹⁶ Mr. Chip Se expanded on this issue in his next answer, but the English translation of his response was unclear.

The situation was terrible and miserable. There were dead people along the streets. Some families lost their loved ones. And as for the distance, you may also be aware that some were evacuated out of Phnom Penh city and they had to go all the way to live in the countryside. And if the evacuees were from Siem Reap city, it was not that far compared with those who were evacuated out of Phnom Penh city.

The witness related meeting one evacuee who told him he was given no food and the situation was miserable, as they were starving, did not have access to medicine or healthcare, and endured constant fear of being accused of betraying the organization. “The difficulty and suffering he endured was indescribable,” Mr. Chip Se testified. Mr. Pov asked whether the Khmer Rouge organized meetings prior to 1975 to receive new people in his locale, to which the witness responded that no such events were arranged. “The new people actually at that time ran the risk of being accused as traitors, so they had constant fear, and people, particularly the Khmer Rouge, did not have the sentiment for the evacuee particularly the new people. There was a clear segregation between the new people and old people,” the witness explained.

Mr. Pov asked if there was any difference in food distributed to new and old people. The witness described how cooperatives where people ate collectively had already been established before the new people arrived. When they did arrive, the new people had to eat at the communal hall but they did not get along with the old people, Mr. Chip Se recollected, and the Khmer Rouge asked the old people to consider the new people as those who had lived with the Lon Nol administration. The old people mistreated the new people, Mr. Chip Se said:

There was a world of difference, because as for hard labor work was destined for the new people ... the new people held no position at all, they had to be under the supervision and control of the base people and they had to go without many things in life; they had to go hungry most of the time. ... When they were sick they had no access to medicines, so as a consequence a big number of 17 April people died during that period.

At this point, the civil party lawyer quoted a document,¹⁷ which stated that some prisoners killed were accused of being connected to Vietnam or committing moral misconduct. Mr. Pov inquired if there were any sessions in his locality that dealt with moral misconduct of people. The witness explained that the term “misconduct” implied “prenuptial affairs” to the Khmer Rouge and they would take either one or both people to be reeducated. Base people were also subject to similar punishment but it was more lenient than that dealt to new people, Mr. Chip Se testified. He continued that old and new people were both subject to punishment for moral misconduct but those arrested were usually “young ladies.” “There were cases of the affairs between the base people and the 17 April people,” Mr. Chip Se said.

Mr. Pov asked Mr. Chip Se if he listened to radio broadcasts or statements by senior Khmer Rouge leaders. The witness replied that he had little access to radio and only attended meetings



¹⁷ This document was not directly identified.

to discuss security matters and work procedures in his office. He was, however, told of the roles of the senior leaders, usually Pol Pot as secretary of the Communist Party of Kampuchea (CPK) and Khieu Samphan as president of the state presidium; they rarely heard about Ieng Sary, he recalled.

International Civil Party Co-Lawyer Nishin Sarkarati assumed questioning of the witness, asking about the evacuation of civilians from Siem Reap. Mr. Chip Se said that based on what he had learned from other people, those evacuated from Siem Reap were coerced into leaving the city – sometimes at gunpoint – threatened to leave as quickly as possible or be punished or killed. “Those who were opposed to evacuating the city dare not resist or protest against the order,” Mr. Chip Se explained. People died along the road of starvation and disease, or if they did not have anyone to look after them, such as young children who did not have breast milk, he continued:

As for the treatment of the 17 April people, it was up to the base people. The base people were the hosts of the new people. Of course it was under the supervision of the security side but if, for example, there was any report of tardiness or laziness of the 17 people, then the security guards would seek to arrest them and put them in a security center.

The witness described how 17 April people were reported by base people, arrested, and sent to the security office for reeducation, and often charged with theft, immoral misconduct, or laziness. The 17 April people sometimes had to disguise themselves if they were officials or teachers in the previous regime, Mr. Chip Se continued. He confirmed that he was instructed to record whether prisoners were April 17 people or base people when he was at Pong Ro security office. The 17 April people were put in another place at the security office, or if they were in the same place, they would be inferior, the witness recollected, or they were treated as subordinates.

Mr. Chip Se testified that he saw people treated badly when they were taken for interrogation. They would be tortured if they failed to confess or if they contested questions, he detailed, explaining that they were whipped or beaten with sticks or clubs – some until they died. From what he recalled, Mr. Chip Se said security personnel would record confessions for the detainee to thumb print, which were then kept in a logbook passed onto the district chief who made the final decision. The witness said he believed only the district chief would be entitled to make decisions about the severity of the prisoners’ offences.

Ms. Sarkarati inquired if any detainees died while imprisoned. The witness responded that he saw several shackled detainees, though he did not see them being executed. The prisoners would be given thin gruel and during the cool season many died in the center, Mr. Chip Se said, and only female detainees would be permitted to go outside to work. Mr. Chip Se testified that those executed would be buried far from the detention facility but those who died at the center would be buried very close, sometimes in shallow graves.

At this point, President Nonn informed Ms. Sarkarati that her questions appeared to be falling out of the confines of the general implementation of policy during the first phase of evacuation and local administration. Security centers did not fall within the ambit of the current trial, he emphasized.



The civil party lawyer asked Mr. Chip Se if there was any effort to keep families together during the evacuation. At this question, Mr. Pauw intervened to request that the counsel ask Mr. Chip Se specifically what he witnessed. After she rephrased the question to ask if the witness saw any effort to keep families together in his district, Mr. Chip Se testified that when people were evacuated from Siem Reap they were separated because the heads of cooperatives would divide them, by assigning them different tasks in different locations. According to later instructions by cooperative chiefs, children would go in one direction and parents would be asked to work elsewhere. “They would no longer meet,” Mr. Chip Se stated.

Civil party lawyers concluded their questioning of the witness.

Defense Lawyers Make Requests

Mr. Pauw requested that the statement the witness gave to Mr. Locard be removed so he does not read it in the coming days, in order to avoid contaminating his knowledge, as it contains observations and conclusions by Mr. Locard. Mr. Karnavas then pointed out that Mr. Locard was present in the audience taking notes and suggested it was perhaps “by serendipity” that he decided to attend today. He inquired as to how Mr. Locard was present on the day he was mentioned in court, and submitted that the chamber should perhaps investigate whether such information was being “funneled out.” Mr. Lysak rose to assure the chamber that the prosecution had had no communications with Mr. Locard and noted that he had discovered the document containing the witness’s interview “by fortune” in the course of conducting research last week. President Nonn said the chamber would rule on Mr. Pauw’s request at the start of the next hearing.

President Nonn adjourned the proceedings, which are set to resume on Wednesday, November 14, 2012, at 9 a.m. On Tuesday, November 13, 2012, the Supreme Court Chamber has scheduled a hearing to hear oral arguments on the co-prosecutor’s appeal regarding the conditions of Ieng Thirith’s release, set to begin at 9:30 a.m.