

Over Objections, Ieng Sary Fit to Stand Trial
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The Khmer Rouge tribunal's trial chamber has ruled that ailing co-accused Ieng Sary is physically and mentally fit to stand trial, announcing its decision over sustained protests from the defence that chronic dizziness, pain and fatigue had rendered the 87-year-old incapable of following court proceedings.

Ieng Sary's health – and the future of his participation in the trial – has been a heightened matter of debate since the ex-foreign minister was hospitalised for two months beginning in early September after complaining of fatigue, shortness of breath and difficulty breathing.

The trial chamber sought to put an end to that debate, however, saying in a document released yesterday and based on the expert testimony of geriatrician Dr John Campbell, “the Trial Chamber has determined the accused to be capable of participating in his own defence, and rejects the defence request for the appointment of an additional expert to reassess the accused's fitness to stand trial”.

Ieng Sary's co-counsel, Michael Karnavas, lambasted the court's decision, saying it was based on “unfounded information”, including portions of Campbell's testimony that Karnavas called “ridiculous”.

Since Ieng Sary's hospitalisation, court proceedings have been able to continue thanks to a series of waivers in which the defendant allowed witnesses to give testimony that did not directly pertain to Ieng Sary's defence.

According to Karnavas, those waivers will be immediately revoked, as will Ieng Sary's waivers allowing him to follow proceedings remotely.

Revoking the waivers means that in order for the trial to continue, Sary will have to be present in the courtroom – in spite of concerns that he is unable to sit upright for more than a few minutes – rather than “tucked away [in the holding cell] where we're all participating in some fraud, some charade, where he's dozing off or unable to follow the proceedings”.

“We don't care about the logistics,” Karnavas added. “It's up to the trial chamber to figure out the logistics. You can't have it both ways. You can't say he's fit to stand trial and that the trial can move forward, and then have him downstairs where he has double vision, or he's unconscious, or in pain.”

Karnavas said that if Ieng Sary's conditions causes delays in the trial that negatively affect the other two defendants, then his severance from the proceedings remains an option if the chamber wishes to move forward.

Clair Duffy, a tribunal monitor with the Open Society Justice Initiative, said that while Ieng Sary's presence in the courtroom would have no bearing on the court's ruling, it would have implications in the court of public opinion.

"The Trial Chamber and the general public would have to see the actual condition of Ieng Sary in the courtroom every day," said Duffy, via email.

"While the Trial Chamber has unequivocally found Ieng Sary fit to stand trial, there is also the reality of his frailty, and various health conditions he suffers from which could play into the public perception of the process."

Seemingly anticipating this, the trial chamber's ruling contains a section entitled "Should the accused Ieng Sary, in the interests of justice, be ordered to participate from the holding cell?"

In it, the trial chamber notes that based on Campbell's opinion that Sary concentrates better laying down, his "medical needs are most appropriately provided for in the holding cell".

"The Expert Geriatrician did not, however, include the provision of a hospital bed in the courtroom among the list of recommendations considered either to enhance the accused's welfare, or to be medically appropriate," the ruling reads, before adding the "Chamber therefore considers that the accused's participation by audio-visual means from the holding cell may be ordered in the interests of justice and provides early notice to the parties that the Chamber may do so".