អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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TRANSCRIPT OF HEARING
ON ACCUSED IENG THIRITH'S FITNESS TO STAND TRIAL
PUBLIC
Case File Nº 002/19-09-2007-ECCC/TC

31 August 2012



Before the Judges:
NIL Nonn, Presiding
Silvia CARTWRIGHT
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Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
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# I N D E X

EXPERTS: MR. John CAMPBELL; MR. Seena FAZEL, MR. HUOT Lina

**List of Speakers:**

Language used unless specified otherwise in the transcript

| Speaker | Language |
|---|---|
| MR. ABDULHAK | English |
| MR. CAMPBELL | English |
| JUDGE CARTWRIGHT | English |
| MS. ELLIS | English |
| MR. FAZEL | English |
| MR. HUOT LINA | Khmer |
| JUDGE LAVERGNE | French |
| THE PRESIDENT (Nil Nonn, Presiding) | Khmer |
| MR. PHAT POUV SEANG | Khmer |
| MR. PICH ANG | Khmer |
| MS. SIMONNEAU-FORT | French |

P R O C E E D I N G S

(Court opens at 0908H)

MR. PRESIDENT:

Please be seated. The Court is now in session.

Today is the last day for the fitness to stand trial hearing in which the Chamber continues to hear the testimonies of the experts concerning Ieng Thirith's fitness to stand trial.

[09.09.38]

Before we hand over to Judge Silvia Cartwright to pose some questions to the experts, the Chamber now rules on the request by the Prosecutor concerning the documents by the experts -- the reports by the experts concerning the fitness -- physical and mental fitness of Ms. Ieng Thirith that have been compiled all along by the experts to the doctor.

The Chamber notes that the request is not appropriate because Dr. Chak Thida is not a normal witness; she is a treating doctor who examines Ieng Thirith's health from the time when she has been assigned by the Administration Office of the ECCC to look after her after the agreement has been signed with the Khmer-Soviet Friendship Hospital.

To that effect, the Chamber decides to hand over this document to the doctor: B29/1; B37/9/8; three document, E63/3/6.1; the report on -- Ieng Thirith's psychological report and -- document E62/4/6, dated on the 23rd of June 2011; the report prepared in response to the expert order, document E63/3; another report is

E63/3/12 -- this report was filed in accordance with the Order E63/3 as well; another document, document number 6, is E111/8, in response to document E111 of the Trial Chamber; another document, document number 7, is document E138/1/7/12, the report compiled at ECCC as well; another document is document E138/1/7/4.

[09.13.57]

Concerning the handling of these documents to the doctor, the Chamber would like to instruct the greffier of the Trial Chamber to manage to hand over the documents to Dr. Chak Thida.

Next, we would like to proceed to Judge Silvia Cartwright to continue posing some questions to the experts. You may now proceed.

QUESTIONING BY JUDGE CARTWRIGHT RESUMES:

Thank you, President.

Well, first, on behalf of the Trial Chamber, I would like to thank you for your patience yesterday as we went through a necessary examination of Dr. Chak Thida, who, as you know, is Ieng Thirith's treating physician.

I want to emphasize also that although, obviously, she has a degree of expertise, she is called to this Court as a witness, which puts her in a different category to your category as Court-appointed experts. So, when you are referring to her or speaking about her, please bear that in mind. It is a different technical qualification of her attendance here yesterday.

[09.15.34]

Now, I want to start today with asking you some questions concerning Dr. Chak Thida's evidence yesterday. And there were a number of issues where she diverted sharply from your stated views in your report, which was dated the 30th of August. Now, I'm not sure how you would like to do this. Do you wish to give me your views now as experts, and then, perhaps, later I can ask you some additional matters that might -- I feel might need some clarification? Would that be the best for you?

MR. FAZEL:

A. Yes. Professor Campbell and myself will make a -- can make a number of comments on the report or on the evidence given by Professor Thida.

BY JUDGE CARTWRIGHT:

Q. Well, thank you. If you would do that now?

[09.16.47]

MR. FAZEL:

A. Thank you. I have four brief comments.

First of all, I think it's important for us to emphasize that the rapport we struck with Ieng Thirith was very good. She was often smiling, friendly, quite happy to be interviewed, and we felt that it was not ever a gender issue. And the most clear example of this was that she was extremely hostile towards women guards on one occasion, when we interviewed her earlier this week. Interestingly enough, the following day she was extremely pleasant towards the very same women guards.

[09.17.27]
Second, Professor Chak's reports of the 28th of October 2011 and the 9th of November 2011, state -- and I quote -- that "Ieng Thirith does not recall an immediate memory". When we asked Professor Chak about this in our interview with her, she said that Ieng Thirith did not remember a topic of conversation one to two minutes later. It is our feeling that that is not normal for someone of Ieng Thirith's age, that that, actually, is something which is quite abnormal and indicative of at least a moderate degree of cognitive impairment.
Third, we have some comments to make on the mini-mental state examination. This, of course, is only one small part of a broad diagnostic approach that we have taken, but nevertheless, because it was discussed yesterday, we have some comments to make on it. First of all, Professor Chak omits one question in relation to orientation, and that question is the day of the week. It's our understanding that this question is in every version of the mini-mental state examination that's been published.
[09.19.10]
Second, she -- in the mini-mental state examination that was presented, she's added some questions that aren't actually there. The one example is she could say the pen and the watch again - and, again, that is not in the versions of the mini-mental state examination that have been published.
Third of all, and this -- I think this is the most important

point, maybe, that she substituted questions with other questions which are easier or simpler.

And a very clear example was one that she also gave in oral evidence, which is the mini-mental state examination asks you to write a sentence. Professor Chak says that her interpretation of this was that Ieng Thirith wrote the name of the physician, and this is not the same as writing a sentence.

[09.20.15]

Another example is that one of the questions in relation to orientation to place is "what province are you currently in?", which, of course, you can modify by saying, in another country, "what state are you in?" or "what region are you in?", and Professor Chak has used the question in relation to Ieng Thirith's children. So it's presented as "my children are in Pailin Province". This is not the same as your own interpretation or your own understanding of your orientation to place, which, of course, is "where are you now?", "what province, or region, or area are you currently in?".

The fourth and final comment I want to make is that we did not find any evidence in any of the reports from Professor Chak that she has asked any criteria in relation to fitness to plead. And of course this is not part of her assessment as a treating physician, but it's just an additional comment that we would add.

And so I'm going to ask Professor Campbell to make a number of brief comments as well in relation to her evidence.

BY JUDGE CARTWRIGHT:

Q. Yes, thank you. Would you now comment, please, Professor Campbell?

[09.22.00]

MR. CAMPBELL:

A. Thank you, Your Honour. The diagnosis of dementia is very much a clinical diagnosis, and I would like to go through the process that we have undertaken to arrive at our diagnosis and how this might differ from Professor Chak's assessment.

I have been assessing people with a probable diagnosis of dementia for more than 30 years, and there are really five steps that I and my colleagues undertake.

The first step is the initial interview with the person him or herself, and in that interview, one establishes rapport. And as have been indicated, we felt that we have had good rapport with Ieng Thirith in our assessments.

But one also uses that initial interview to dig below the surface in what is not a very apparent testing way to test memory in a way that does not seem a formal assessment of memory. And that's very important because many people with dementia preserve a good social façade; they can give the appearance of normality, which is not in actual fact so.

[09.23.06]

When we have done this with Ieng Thirith, inquiring about -- for example, about her family, we have found that, consistently, she

has problems with the memory of her family, where they are, and the circumstances.

The second very important step in diagnosis is to get history from those who have seen the person over a longer time and see that person in their day to day activities.

Now, we have had the advantage of the earlier reports on Ieng Thirith. We have had the report from Professor Ka, who is Dean of the Faculty of Medicine at the University of Health Sciences here, and Dr. Brinded, in 2009, where they felt that Ieng Thirith had early dementia. We have also spoken with the guards and the doctors who see Ieng Thirith on a day to day basis.

Now, in taking the history from these people, it's important not just to rely on what they tell you -- that is, comments about her behaviour -- but also ask about issues such as her function. And what we have found is the guards report an increasing deterioration in Ieng Thirith's function.

[09.24.24]

For example, when I first saw her, she was able to dress, but now a situation where she often dresses in an inappropriate manner, for example, putting on two lots of underwear, so that there has been a deterioration in her function. And of course the development of urinary incontinence is also an indication of the deterioration, plus her lack of awareness of this.

The third issue -- the third step is the physical examination to ensure that there is no underlying physical medical illness that

may have affected her temporarily, and there has not been any evidence of that at any time when we have seen her on examination on the first time. Also, that is used to determine if there may be some underlying other condition that is causing her deterioration - for example, a brain tumour -- and there's been no evidence of that.

[09.25.22]

The fourth step is the formal testing, using standardized instruments such as the mini-mental state examination -- the MMSE. This is used to assess severity in part, although the severity can also be assessed, of course, by the person's functional deterioration, and also to determine progress to see if there is deterioration which would be consistent with dementia.

And we have administered each time that she has been seen -- we have only administered when we felt that she is cooperating with us and willing to participate in the test -- and we have found a consistent deterioration over that time.

Because it's a standardized test, there is no place for substituting questions during it.

The other issue, the issue of the naming of the pen and watch, came up yesterday in Professor Chak's testimony. When I look back on my records of May 2011, I note that she was actually able to identify the pen and the watch. So, our MMSE tests over this time have shown a persistent consistent deterioration and they have

been done not only by us, but also by the people who are involved in her cognitive therapy programme, people with whom she had good rapport.

The fifth step is in the investigations, the blood tests--

[09.26.55]

BY JUDGE CARTWRIGHT:

Q. I'm sorry; could I ask -- I don't mean to interrupt you, but I need to remind you that what you're saying is being translated into Khmer and into French. And would you mind slowing down and having gaps between your sentences, please, so that it's -- everyone here today can follow clearly what you're telling us? Thank you.

MR. CAMPBELL:

A. My apologies; I'll slow down, but I've just about finished. The fifth step is the laboratory investigations and the radiology -- in Ieng Thirith's case, the CT scanning. The purpose of these is not to determine the extent of the dementia or to confirm the diagnosis; it is to make sure there is no other condition that may be contributing to the memory impairment. And with the laboratory testing and the CT scanning, there has been -- there has not been shown to be any other condition other than, probably, Alzheimer's -- possibly with a component multi-infarct dementia -- that is contributing to her cognitive impairment, so that we have had no doubts, over the time that we have been seeing her, that there has been a deterioration in Ieng Thirith's

cognitive function, that her cognitive impairment dementia may have been mild in 2009, but it has now progressed to the point where it is moderate to severe, as shown particularly with the deterioration in the formal testing and also with the deterioration in her function.

[09.29.00]

BY JUDGE CARTWRIGHT:

Q. Thank you.

Is there anything that Dr. Huot Lina wishes to add at this stage?

MR. HUOT LINA:

A. No, I don't have anything else to add, Your Honour.

BY JUDGE CARTWRIGHT:

Q. Thank you.

And from that, do I infer that you agree with the summary given by your colleagues?

MR. HUOT LINA:

A. Yes, I do.

BY JUDGE CARTWRIGHT:

Q. Thank you.

Now, just returning briefly to Dr. Chak Thida's testimony yesterday, you've - you've touched on two of the matters -- two or more of the matters that she emphasized -- the need to develop a rapport, to have a good friendly relationship, her perception that being a woman psychiatrist was useful in establishing this rapport -- and I want to talk about another couple of matters.

[09.30.21]

First of all, do you think that there is any cultural factor that impedes your ability to assess a Cambodian, and of course that is directed only to you, Dr. Fazel, and you, Professor Campbell, because I note that every other person who has commented or assisted in the compilation of your report is a Cambodian, with the exception of the occupational therapist from Singapore. But I'd just to clarify, is there a cultural factor that needs to be taken into account?

MR. FAZEL:

A. My view is that an awareness of cultural issues is important, and this is one of the reasons why we took a considerable effort to get good quality information from other individuals in her care and who know her over a long period of time. In addition, of course, it was important that we had Cambodian colleagues as part of our assessments because they enabled us to clarify any things that we didn't understand.

BY JUDGE CARTWRIGHT:

Q. Thank you.

Now, yesterday, Professor Chak Thida used the term "pre-dementia". Does that mean you and me or does it have some other meaning?

[09.32.20]

MR. CAMPBELL:

A. Professor Chak Thida was trying to distinguish between the

changes one would expect with aging and dementia. And Ieng Thirith's cognitive impairment goes way beyond what one would expect with aging change.

The changes one might expect with aging are the ability to assimilate a lot of new information quickly and to do tasks against time, but not the impairment of past and recent memory that is clearly evident with Ieng Thirith. So there is no doubt in our minds that this is not part of normal aging. One does not expect this sort of impairment in someone in their eighties, fortunately. So there is no doubt that this is no longer a mild cognitive impairment, but is dementia.

BY JUDGE CARTWRIGHT:

Q. Another matter that I want to ask you about is the administration of medication before this most recent change to rivastigmine.

[09.33.24]

I understand that -- from about the stage where professor Ka and Dr. Brinded reported, that following from what they considered to be a mental disorder arising out of her -- as a result of her operation in November of 2009, more of less since that time, Ieng Thirith has been administered medications that are more associated with mental health than with physical health. Indeed, you recommended the reduction of a high level of psychotropic medication when you first consulted of Ieng Thirith.

So, can you comment for me, please, on the role of the treating

physician who does not believe that a person suffers from a dementing illness who nonetheless allows or prescribes psychotropical or other medication to be used?

MR. CAMPBELL:

A. So I'll make two comments.

The first, the psychotropic drugs were started in Thailand after her hip fracture, and it was my opinion that her problems at that stage were due to a delirium rather than a psychotic illness.

[09.35.04]

People with early cognitive impairment are particularly susceptible to delirium when they have an intercurrent illness or injury such as she had. When I saw her, I did not feel there was any ongoing need for these medications and that the quetiapine she was on and also the sleeping tablets may be affecting her cognitive function.

With people with dementia who have behavioural problems, then psychotropic drugs may be used, but they have to be used very cautiously because often the adverse effects from them outweigh any benefit.

BY JUDGE CARTWRIGHT:

Q. So, to be more specific, would you have, if you had been her treating doctor, simply continued the use of those psychotropic medications if your professional view was that she did not suffer from any dementing illness?

[09.36.16]

MR. CAMPBELL:

A. No. I think there is a real problem that people get started on psychotropic drugs and no one actually reviews the medication and tries to wean then off and stop them. So, had she been my patient, I certainly would of started to wean her off those medications.

BY JUDGE CARTWRIGHT:

Q. Now, the last point that I would like your comments on, please. Yesterday, we examined Professor Chak Thida's qualifications -- medical and psychiatric -- and the extent of her professional experience in the field of psychiatry. It was probably a matter of translation, but my understanding was that she had had limited and severely interrupted schooling but that of course she is an intelligent person and was promoted through her later schooling years, underwent medical training here in Phnom Penh, and then underwent a two-year course -- a three-year course -- and I'm still not clear whether the end result is psychotherapy or psychiatric qualification. That course was not full time; it was two weeks of every month.

[09.37.43]

Now, how does that measure against your professional qualifications -- all three of you -- please?

MR. FAZEL:

A. Well, every country has a different system of training. So, in the -- in my case, I would have started psychiatric training

fulltime in 1995. As part of that training, I did a fulltime attachment in old age psychiatry. And when you do old age psychiatry, you learn quite a lot about diagnosis of dementia, you are supervised on how to used standardized tests like the mini-mental state examination, and you see, of course, many patients with early, mild, moderate, and severe dementia over that period of training.

Normally, then, what happens is there's a post graduate exam that tests your competence in your psychiatric training, which is an exam that, in countries like the UK, over 50 per cent of people taking it fail.

[09.39.09]

And then, if you pass that exam, then you go into a period of higher training – so, sub-specialty training. I did a year of old age psychiatry sub-specialty training, and then another three years of forensic psychiatry sub-specialty training. And then there's an assessment of your competence every year of that to check that you've done the requisite training and seen the requisite type of patients in the right sort of settings.

And then, at that point, you are eligible to apply for a consultant post.

And so a period of training, usually – well, in my case, I applied for consultants posts in 2003, so my formal psychiatric training was over eight years, and that's not unusual in the UK and many countries in Europe.

BY JUDGE CARTWRIGHT:

Q. Thank you.

Perhaps, Dr. Huot Lina, would you give us a brief overview of your -- your training as a psychiatrist?

[09.40.30]

MR. HUOT LINA:

A. I started studying psychiatry in 2002 -- in 2005, rather, but actually I started familiarizing this -- with this subject in 1993, but then it was until 1995 when Norway, particularly Oslo University, invited expert psychiatrists professors to conduct a training, and those renowned professors in psychiatry were the ones who wrote many books on psychiatry, for example Mr. Lima, who wrote a number of articles and journals, and other professor, Professor Meyer, from Minnesota, from the United States, and Professor Sydney Bloch, who was the reader and reviewer of the journal -- psychiatry journal in Australia, and a number of other professors who have written many articles for the World Health Organization.

At that time, I could understand English better than my classmates, so I picked up the skills faster than others, and then I completed the course in late 1997. But as for the formal graduation ceremony, it was not held in 1997 because at that time professors from Oslo University was in -- on their Christmas holiday, so the graduation ceremony was delayed and it was held in 2008.

There were other professors whom I cannot tell the names, but I can only tell Your Honours that there were renowned professors from all five continents across the globe.

[09.43.01]

At that time, there were no translators or interpreters for us, but I could understand English language at that time. And back then, at the University of Health Science, there was no psychiatry course, but it was my personal commitment that I wanted to study something that people do not like to study or they could not study. So, at that time, even if there was no psychiatric training course, but I always attended -- intended to attend such course. And some people have cautioned me that, if I studied psychiatry, probably I, myself, might be -- suffer from psycho problems or so, but I was not deterred by that and I actually wanted to study this subject even further. And then, after that, I studied the psychiatric, and I believe we study a lot of things concerning psychology. For example, we study about the family relations and things like that.

[09.44.14]

When I was studying there at that time, I thought to myself that every subject I was instructed were important. When I was first studying in the University of Health Science, I thought to myself that probably, when we were studying health science, then they would probably tell us what medication to be administered for certain patient, but then we did not only study that; we studied

other basic or fundamental medical science as well. So, at that time, even though the course was very difficult, but I could study it well and I turned out to be an outstanding student. And the supervisor of the program, Professor Edward Hawk (sic), he encouraged me to pursue my study overseas because he thought I had the potential to pursue my higher education.

And I was young back then; I was very happy with my study. I -- it was in a cultural sense in Cambodia that the higher we were educated, the more money we might earn, so this was the great motivation for me.

[09.45.31]

Then I applied for scholarship to study in foreign country, for example in Australia. The scholarship was not easy to win because there was so many candidates applying for the scholarship to study overseas, and at that time there was only five places for the students at the University of Health and -- Health Science, and at that time the scholarship scheme was under the auspices of the World Health Organization. And once I passed the test, then I had to undergo the interview at the Australian Embassy in Phnom Penh, and then I was in the view by the World Health Organization, and then they tested English language as well.

I had to also attend the academic English course in order to enhance my English for academic purposes. And that training was to prepare the applicants to sit for the international -- ILTS test, which the minimum overall score bend was 6.5, at that time,

in order that I could go to study in Australia. And at that time I scored 6.5 on the ILTS, and eventually I went to study in Australia.

And when -- at that time, I applied to Monash University, and before they admitted me to that university, I had to undergo vigorous interview as well. They conducted phone interview with me and they asked me whether or not I deserve the candidacy of the foreign scholar to study in Monash University, and I pass that interview. I also passed the English test, and as a result, I was awarded the scholarship to study in Australia.

[09.47.31]

And the course that I studied over there was designed for the Australian doctors, which were those who wanted to study the subjects. They had to spend five year part time training course, but for us, as the Cambodian or foreign students, we had to undergo a very extensive training. I had to complete it within two years and a half. And since I had substantial background in psychiatry back in Cambodia, then I could complete the course within two year and a half. And that course was called Master of Psychological Medicine. It was the curative course. And other colleagues of mine who went to study in Australia, they studied preventative medicines. It was not a curative medicine. And I was very lucky to study curative medicine because it was very specific for treating patients.

So, I -- I don't know if I should be proud of that, but I have

had a lot of training. Not only do I have the degree in medical science, but I also possess my master's degree in psychology. And -- and I attended courses in another -- in Australia. It was designed for the psychiatrist to -- to supplement their training. And the course that I attended normally was very intensive because it was meant for a specialist, but that was not a problem for me because I had sufficient backgrounds in my professional practice. And I was interviewed by Australian university, and they found that I was qualified for the course.

[09.49.47]

And at the time there was no any other foreign students in my course; I was the only foreign student in that particular course, studying with other Australian psychiatrist.

BY JUDGE CARTWRIGHT:

Q. Dr. Huot Lina, "som akoun".

Professor Campbell, can you -- you've had a length professional career, so perhaps a synopsis? Thank you.

MR. CAMPBELL:

A. I shall be brief. After my initial undergraduate training at University of Otago and my health officer jobs, I undertook specialist training in internal medicine leading to my post-graduate qualification of fellow of the Royal Australasian College of Physicians.

I then started to specialize in old age medicine and geriatric medicine, and undertook training in New Zealand, and in England,

and in Canada.

[09.50.45]

I then returned to a consultant post in New Zealand and undertook the research leading to my doctorate from the University of Otago, and that research, amongst other things, included a study of the prevalence of dementia in the community.

I was appointed at Otago to an academic position which has involved 50 per cent clinical work, 50 per cent teaching and research in the field of geriatric medicine.

BY JUDGE CARTWRIGHT:

Q. Thank you very much.

Now, is there anything that any of you would wish to add to the -- any other comment you would wish to make concerning professor Chak Thida's testimony yesterday? Just nod or shake your heads, and I'll-- Nothing else? All right.

Well, shall we now return to your report dated the 30th of August - yes, 30th of August?

[09.51.49]

You've already emphasized that an important part of the testing process is to talk to the people who have the closest associations with the patient. Obviously, that will be family members and, in Ieng Thirith's case, her husband as well as the other treating physicians, other than Professor Chak Thida, and her guards, and the head of the detention facility.

Could you just outline the result of those consultations with

those people who are close to Ieng Thirith, perhaps not repeating items that have already come up? Thank you.

[09.52.46]

MR. FAZEL:

A. The information that we received from various sources was that there has been a deterioration in her functioning. This includes memory, but also aspects of her wider functioning -- and we've already referred to the increasing verbal abuse towards guards, which is very variable and inconsistent, and that level of inconsistency has increased over time.

In addition, the new onset of personal hygiene problems – specifically, urinary incontinence and, importantly, that people say she's not aware of this. So these are new -- new things that have arisen since our last assessment. And, overall, people felt that there had been a deterioration in the overall functioning and the overall cognitive abilities of Ieng Thirith over that period.

[09.53.58]

BY JUDGE CARTWRIGHT:

Q. And I believe that the Singaporean occupational therapist who came to train to -- local health professionals in how to provide an occupational therapy program for Ieng Thirith, he also gave you some specific comments, and without over emphasising the MMSE test, he also administered that test. And could you just comment on his views too, please?

MR. FAZEL:

A. Yes. This individual -- occupational therapist from Singapore, who has considerable experience of working with people in -- older people and people with cognitive impairment, said to us that he had no doubt that Ms. Ieng Thirith had a moderate to severe cognitive impairment and that he didn't think that his program that he had instituted -- that of a cognitive remediation program -- had improved her cogitative function.

[09.55.15]

One of the ways that this was measured was by administering the mini-mental state examination over a period of three months. And over that period there was no obvious change in the scores, and they varied between 12 and 14. These scores are slightly lower than the scores that we administered in 2011, but as I say, the main principle finding was that he felt there was no improvement in her cognitive abilities over the period of the program that he started and trained staff to administer.

BY JUDGE CARTWRIGHT:

Q. One measure has been raised, and that is Ieng Thirith's ability to speak or write in other languages. And I expect that some people might feel that this is an indication of someone who has full control of her mental abilities. What are your comments on that?

[09.56.41]

MR. CAMPBELL:

A. We have always worked through the translator in dealing with Ieng Thirith.

One of the comments from her guards earlier on was that she was able to respond in English or commonly did, but that has become less frequent as time has progressed. We do not feel that the language issue has in any way impeded our ability to asses her.

BY JUDGE CARTWRIGHT:

Q. But does it say anything about her dementing illness, the fact that she still retains this -- these skills and this knowledge?

MR. CAMPBELL:

A. No, I don't think it -- I don't think it does. She does retain those skills, but probably at a lesser level than previously.

[09.57.24]

BY JUDGE CARTWRIGHT:

Q. At one point in your report, you spoke of her maintaining her concentration and not tiring. Is that a significant factor in your assessment of her mental health?

MR. FAZEL:

A. I think it indicates, firstly, that there is no obvious physical illness.

Secondly, I think it's also important that we clarify that we didn't conduct tests when Ieng Thirith was obviously tired, or losing concentration, or – you know, very fatigued.

Thirdly, I don't think it's -- it is directly relevant to the diagnosis -- the issue around diagnosis because maintaining

concentration and attention over a period of -- over the period of an interview is not the same as memory which is really the -- one of the main diagnostic criteria that we looked at it some detail. In addition, we looked at functioning overall and we looked at many domains of this - and, of course, attention and concentration could be considered one domain, but we looked at many domains: short term memory, long term memory, what's called executive functioning, which relates to judgement and control, and other issues.

[09.59.18]

BY JUDGE CARTWRIGHT:

Q. Now, in cases where people suffer from a mental illness, it's not uncommon for it to be suggested that the person is feigning an illness or pretending to be ill, and it's obvious that, in this present instance, a number of people have remarked that she could be pretending to be ill in order to avoid being tried for what are extremely serious matters. Could you expand on your views on whether or not she is pretending or feigning to be ill?

MR. CAMPBELL:

A. We have been very conscious of that.

During the administering of the test we have had no indication that she has been. She has looked genuinely bemused with the questions that she could not answer. And as I commented last time, one of the issues when we were doing the numerical test, which is a subtraction of seven, she was able to do those which

were in -- within the same 10 -- for example, 79 to 72 -- but couldn't do 72 to 65, which is slightly more demanding. And it would have required a very sophisticated feigning to have done that.

[10.00.41]

I think the other issue is that her behaviour and her functioning have also deteriorated consistently with what we've been finding on examination, and that would be much more difficult to feign over a prolonged period.

BY JUDGE CARTWRIGHT:

Q. For the sake of clarity, I just want to confirm what you said in one part of your report, that you had been conscious of the seven Strugar criteria and that you had followed through with those in this round of assessments as you had previously, when you had assessed her – and, of course, those are the ability to plead, to understand the nature of the charges, to understand the course of proceedings, to understand the details of the evidence, instruct counsel, understand the consequence of the proceedings, and to testify.

[10.01.55]

Now, it -- I think it's -- that there were a number of submissions made on the last occasion which suggested that perhaps you had not fully understood or interpreted these criteria. One was where the prosecutors made the submission that "whether or not the Accused has an adequate level of

understanding of Court proceedings [should be interpreted as – this] should not be interpreted as understanding the course of proceedings, as they unfold in a very detailed and an extensive manner, and an ability to comment on everything that is happening at all times". In their submission, it is "an ability to understand the charges, the roles of the parties, and how the proceedings will unfold".

Do you think that makes -- that interpretation, whether it's right or wrong, do you think that makes any difference to the manner in which you consider that particular criterion?

MR. FAZEL:

A. No, I don't think so.

The issue, I think, has always been around -- one of the central issues has always been around the ability to follow the proceedings and the -- because of the impairment of her memory -- her short-term memory -- the inability to weigh information that she would have heard during the course of proceedings in order to comment on it and to speak to her legal team about -- about it. So, if one takes a more broad definition of that criteria, I still am of the view that she would have significant problems in meeting that particular criteria.

[10.04.20]

BY JUDGE CARTWRIGHT:

Q. Another submission made after the last examination and report is that she "is fit to participate in person because she can

listen, she can speak, she can remain seated or remain standing physically, although not for a long period of time. She is able to analyze right from wrong, and therefore the cognitive function has not been completely impaired. And the reason she has poor memory is because she's an older person".

Well, you've dealt with that, but what do you have to say to the submission that, physically, she is able to participate?

[10.05.13]

MR. FAZEL:

A. Well, I think there's – there's two issues.

One is that -- the physical competence to go to Court -- and as you've cited, being able to listen, sit for long periods of time, and speak. And we've never said that that has been an issue. For us, the issue has been the cognitive side of the competence criteria. And in relation to the cognitive side, there are significant problems with a number of the criteria, such as the one we previously discussed about -- following Court proceedings, being able to instruct her counsel. And we believe now the ability to testify is also impaired -- because of cognitive problems, not because of physical problems.

BY JUDGE CARTWRIGHT:

Q. Now, on the last occasion when you individually came to speak to your respective reports, you were unable to assess how quickly her dementing illness had progressed, and this was emphasized in the submissions before us. Have you had enough historical data,

now, that you feel is reliable, that allows you to make a clear statement about the progression of her disease or whether it still is much the same as it was previously?

[10.07.12]

MR. FAZEL:

A. Yes, we believe that there – there has been a progression and we have commented this -- on this in our report, so that we would describe the current level of dementia as moderate to severe, whereas, I think, in 2011, it could be described as moderate. And as we've heard, in 2009, Professor Ka and Dr. Brinded described it as mild. So, I think there's now a progression from mild to moderate, to moderate and severe.

Part of that can be seen in her scores in the mini-mental state examination, which have changed from between 15 and 18 last year to, this year, apart from one mini-mental state from Professor Thida, which we do not believe was administered correctly -- but if you take that one out, all the mini-mental state examinations this year have been in the range of 11 to 14, and therefore we think that there's been clinical criteria that have shown the deterioration over time, and this has been supplemented by testing.

[10.08.38]

And I think I'll also ask Professor Campbell to comment on this issue as well.

BY JUDGE CARTWRIGHT:

Q. Please, Professor Campbell.

MR. CAMPBELL:

A. I would certainly support what has been said. There is clear historical evidence of the deterioration, both from Professor Ka and Dr. Brinded's report through to now, deterioration in both the testing and also in function. And I also feel that, over the time that I have seen her, there has been a deterioration in her cognitive ability, and this deterioration has not been influenced by any of the treatments that we have tried.

[10.09.24]

BY JUDGE CARTWRIGHT:

Q. Thank you.

Now, lawyers tend to like the black and white, and I know that scientists avoid it if at all possible, but towards the end of your report you use terms such as "appeared to have the ability", "it is our view that", "we do not think". However, you do say that in paragraph 60 of your report: "Diagnostically, we remain of the opinion that Ms. Ieng Thirith clearly suffers from dementia."

Now, I just want to be clear that that is your agreed conclusion: you have no doubts left, there is no other treatment that you would be suggesting, that might maintain her present level of mental competence or improve it, and there is no other – other points of view that could viably be put forward concerning your conclusions?

[10.10.49]

MR. CAMPBELL:

A. That is correct. We are quite firm in our opinion that Ieng Thirith has significant dementia.

We have tried the treatments that are available to no effect, and there would be no advantage in trying any other medication or remedy.

BY JUDGE CARTWRIGHT:

Q. And perhaps just a final matter. It's clear, from a reading of international commentary -- scientific commentary on the disease of Alzheimer's or of -- other dementing illnesses, that a large number of trials are under way or have been concluded. And just recently it's been big news that major trials have stopped because there has been no measurable improvement in those patients who have been treated with a particular new medication. Is there any other treatment or is there any other comment you would wish to make on the scientific literature concerning new treatments, new available medications or options?

[10.12.20]

MR. CAMPBELL:

A. There are no other treatments likely to become available that would be in any way effective in Ieng Thirith's situation. The medications that we have tried -- that's the rivastigmine, particularly -- are only effective in about a third of patients. They, at best, take a person back to where they were six months

ago and may slow progression -- clinical progression, although not the inevitable progression of the disorder. And so there are certainly no agents available that would improve her to the situation where she was able to assist with her own defence.

BY JUDGE CARTWRIGHT:

Q. Well, is there anything you would wish to add that you feel I have not adequately covered from your report or from the evidence that we heard yesterday?

[10.13.20]

MR. FAZEL:

A. Could I just add one comment on feigning?

I think, in addition to what Professor Campbell said, I would also add that it would be very difficult to feign the change to her personal hygiene - namely, the urinary incontinence -- and also her indifference to it. That's very difficult to feign.

In addition, what was noticeable was the fluctuation in mental -- in her function, and for instance the fluctuation in her hostility towards staff that were working in the detention centre, and that isn't usually something that people do when they feign; they maintain a consistent approach to something.

And there was a lot of fluctuation in her responses to questions about memory. So, for instance, on the first day we interviewed Ieng Thirith, she couldn't remember the name of her husband; on the second day, she could. And I would -- it's my view that, if you're feigning a memory problem, you would keep a consistent

line that you can't remember. And that is just one example of many. So there was a lot of inconsistency from day to day.

[10.14.44]

And even within the same conversation, the memory, the recall changed. So, sometimes, there was a recall, for instance of the fact that she had studied abroad, and then later in the same conversation, she said, "no, I studied in Phnom Penh, at university in Phnom Penh", which we know is not the case. So someone -- you know, someone who would feign, I think, would maintain the view that -- you know, "I can't remember this", and not fluctuate in terms of their responses.

JUDGE CARTWRIGHT:

Thank you.

President, I have concluded my questioning. And thank you all very much.

MR. PRESIDENT:

Thank you, Judge Cartwright.

[10.15.30]

Now, Judge Lavergne, you may now proceed.

QUESTIONING BY JUDGE LAVERGNE:

Thank you very much, Mr. President.

Q. I just wish to clarify a question that has been elaborated upon extensively. It refers to methodology and the administration of the standardized mini-mental state examination, the MMSE. Now, questions on that exam are standardized questions, if I

gather correctly. Can you please tell this Court whether those questions have been vetted by international entities that are -- that have medical authority? Are those questions standardized mainly by the northern hemisphere, or do they also apply in the southern hemisphere, or they're applied throughout the world, or--

MR. CAMPBELL:

A. The MMSE is used internationally. There are not questions within it that would be culturally inappropriate.

As well as the MMSE, we have used other tests as we're able, and there has been a consistency in the impairment in scoring in the other tests as well.

So our feeling is that the MMSE is an appropriate test to use, and it has shown change over time, which is consistent with our other findings with Ieng Thirith. So we feel it is a valid test, and that the way that it has been administered has been reliable.

[10.17.29]

BY JUDGE LAVERGNE:

Q. Yesterday, we were told that one of the reasons why Professor Chak Thida had amended some of the questions on that test was attributable to the fact that here, in Cambodia, the target audience on which this test would be administered had a low level of education and they would have some difficulty understanding the questions, even though Ieng Thirith has a relatively high level of education, relative to the average in Cambodia.

However, another reason why those questions were amended – and, again, this is based on my understanding of her answer -- is the legal context in which this person finds herself and the fact that she is a detainee.

Now, in this instance and for the purposes of absolute clarity, do professors -- do Professor Thida's explanations serve as a sufficient rationale to amend the questions that are asked on the standardized mini-mental state examination?

[10.18.51]

MR. FAZEL:

A. No. It would make no sense, in my view, that you would omit a question, for instance, in relation to orientation and time. It would also make -- it would not seem appropriate to substitute questions that are simpler to someone who is of high intelligence such as Ieng Thirith, and -- so I can't see any reason why you would change it.

If you were, for instance, to administer the mini-mental state examination to someone who couldn't read or write, the normal procedure would be that you would score it at -- out of a different total score. So, for instance, you would omit the questions that require reading and writing and you would actually report transparently a score out of a different total. So, for instance, the total might be 25 instead of the total which is 30, and you would just present that, but you wouldn't, then, adapt the instrument in a way that hasn't been validated using research

from -- either locally or internationally.

BY JUDGE LAVERGNE:

Q. Dr. Campbell, do you wish to add anything?

MR. CAMPBELL:

A. No, the points have been well covered.

[10.20.36]

JUDGE LAVERGNE:

Thank you very much.

I have no further questions to ask the experts.

MR. PRESIDENT:

Thank you.

The Chamber would like to hand over to the parties to the proceedings, starting from the Prosecution.

(Judges deliberate)

[10.21.41]

MR. PRESIDENT:

International Co Prosecutors, you may now proceed.

Each party is allotted 30 minutes to put questions to the experts.

MR. ABDULHAK:

Thank you, Mr. President. Just with reference to communications with the senior legal officer, and with my comments yesterday, our understanding is that the defence is to proceed first, as was also the approach on the last occasion. If I misunderstood that, I'm – I'm happy to proceed. I just wish to clarify that – that

we're departing from the procedure adopted last time, which is with the Defence questioning first, then Prosecution, and then, perhaps, Defence being given the opportunity to re examine.

(Judges deliberate)

[10.23.05]

MR. PRESIDENT:

For the time being, indeed, the Chamber wishes the prosecutors to start first, and there would not be a rebuttal session because we need to expedite these proceedings.

QUESTIONING BY MR. ABDULHAK:

Very well. And thank you, President.

Let me say first, a very good morning to the experts. I want to join the Chamber in formally acknowledging the contributions that you have made to ascertaining the truth in this matter. We acknowledge you have returned to Cambodia a number of times, you have conducted numerous interviews and examinations with Ieng Thirith and others, and you have provided helpful and detailed reports. We wish to note that for the record.

[10.24.12]

And let me also say at the outset that the Prosecution also acknowledges the efforts made by the Chamber to diligently follow up, following the Supreme Court Chamber's decision, to ensure that the appropriate treatments are provided, to ensure that a reassessment is conducted properly, and to give the parties an opportunity to examine the experts. And we wish to acknowledge

that, the way in which this matter has been dealt with by the Chamber since the Supreme Court Chamber's decision.

And lastly, before I begin, let me say that the Prosecution does not take issue with the thrust of your findings. As Judge Cartwright explained yesterday, we must leave no stone unturned. We are directed by the Supreme Court Chamber to exhaust all reasonable measures, and it is in that light, purely, that I will ask you a number of questions about the assessments you have conducted and about your findings as to the current state and prospect for the future.

Q. I might start -- and perhaps we can do this briefly -- by looking at the issue of the MMSE. Professor Campbell, you've explained to use earlier that, in your opinion, there is no scope for a departure from the - from the questions being asked in an standardized MMSE testing.

[10.26.39]

I want to quote to you from a document issued by the National Aging Research Institute in Victoria, Australia. I have a hard copy for you; it might make it easier to refer.

Your Honours, with your leave, I have copies for the experts and I can submit a copy to you as well.

MR. PRESIDENT:

You may proceed.

Court officer is now instructed to bring the hard copy document for the experts to examine.

BY MR. ABDULHAK:

Professor Campbell, if we look on the first page--

MS. ELLIS:

Before the questioning starts, I wonder if there is a copy for the Defence as well, please? Thank you.

BY MR. ABDULHAK:

Yes.

[10.27.42]

Q. If we return to the document -- it's a brief fact sheet, and I just wish to obtain your opinion on this - on this treatment of MMSE -- at the bottom right-hand corner: "The MMSE is a cognitive screening tool that has commonly been reported to have cultural and educational biases."

And then, over the page, left-hand side, bottom left-hand corner: "Questions most commonly modified in overseas studies to make the MMSE more culturally and linguistically relevant or relevant to those less educated include…" And then there are a couple of examples repeating to -- relating to cultural issues.

I note your extensive experience in the administration of the test and I certainly don't wish to challenge your expertise. My question is simply whether you consider these types of adaptations to be appropriate in a - in a cross-cultural setting.

[10.29.10]

MR. CAMPBELL:

A. We haven't considered them necessary because Ieng Thirith has

managed the questions in the standardized MMSE, for example the series of subtractions of seven. Also, the orientation; no need for change there.

BY MR. ABDULHAK:

Q. Thank you.

Now, you commented in your report, when looking at the various scores, that they may vary within a few points even within a single day -- this is at paragraph 42 of the report. And do I understand that correctly, that a - that a score in an MMSE may vary within a few -- perhaps a couple or a few digits, but not reflect an underlying change?

MR. CAMPBELL:

A. This may occur in someone with cognitive impairment, obviously won't in someone who is cognitively intact. But it may reflect, for example, tiredness and the degree of cooperation with the test, and that's why we've been careful to ensure that the testing is done at a time when she is pretty cooperative and able to undertake the test.

What one is looking for is a pattern over time, and the pattern that we have seen is of progressive deterioration in the scores.

[10.30.56]

BY MR. ABDULHAK:

Q. Just on that issue of progressive deterioration. Mr. -- I hope I pronounce his namely correctly -- Mr. Sreedharan, who is the Singaporean therapist you have interviewed, said to you -- and

this is from paragraph 42 -- that "there had been no noticeable change in Ms. Ieng Thirith's cognitive abilities since the cognitive remediation programme had started".

That programme had started in May. How does one reconcile his view that "there had been no noticeable change in [her] cognitive [abilities]" with what you found to be a gradual decline, with respect to the scores?

[10.32.06]

MR. CAMPBELL:

A. Alzheimer's disease is a slowly progressive disorder; one would not expect to see a significant change over a three-month period. What we were really looking for over that time was whether there was any sign of improvement with the programme that had been instituted and with the rivastigmine patch, and there was no evidence of any improvement over that time. We're looking at the deterioration since 2009.

And the other point, of course, is that he saw her the once and within working through on the reports of the other people who had seen her.

BY MR. ABDULHAK:

Q. And these were the therapists who administered the MMSE, I believe, on two further occasions.

Is it the case that they were trained by the gentleman to whom I just referred, in administering MMSE?

MR. CAMPBELL:

Yes, that's certainly our understanding, that he undertook the initial training. And I think he may well have done the initial MMSE with them.

[10.33.31]

BY MR. ABDULHAK:

Q. I do think the record reflects this.

And--

MR. PRESIDENT:

Thank you, Mr. Co Prosecutor and the Experts.

It is now appropriate moment for the adjournment. The Chamber will adjourn for 20 minutes. The next session will be resumed by 10 to 11.00.

Court officer is now instructed to assist the three experts during the adjournment and have them return to the courtroom by 10 to 11.00. Thank you.

THE GREFFIER:

(No interpretation)

(Court recesses from 1034H to 1052H)

MR. PRESIDENT:

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

We would like to now hand over to the Prosecution to continue putting questions to the experts.

BY MR. ABDULHAK:

Thank you, Mr. President.

[10.53.47]

Q. If we return briefly to the issue of deterioration in cognitive abilities -- and if I can direct this question to you, Dr. Fazel -- at paragraph 61 of the report, you conclude that "there has been a slight deterioration in her cognitive abilities over the last past few months".

And you go on to state that "the latter is most clearly seen in her increasing verbal aggression to female detention staff". And if I can pause there.

We seem to have potentially divergent explanations of this apparent phenomenon.

We heard Professor Thida testify yesterday that she believed this aggression or aggressive behaviour may have been a manifestation of Ieng Thirith's anger or frustration at the fact of her detention.

And looking at the recent Court decisions that may be relevant, this Chamber had ordered Ieng Thirith released in November 2011, and that decision was then reversed in December 2011. Have you considered whether those developments may be one explanation, if not the only, for this apparent aggressive behaviour?

[10.55.58]

MR. FAZEL:

A. Yes, we have. I think there are two comments I would make. One is that the verbal aggression is inconsistent. So, it changes, for instance, on the gender of the person. So, this verbal aggression is not focused on male guards. And if it was

purely consequences of her anger towards being in detention, then you would expect it to be shared between all the guard staff. Second, it's inconsistent even within the female staffs over a period of two days that we saw her, and we understand this is the case more generally. So, on the first day we saw her, we saw her hostility very clearly with our own eyes. On the next day, we saw her very friendly, being assisted to walk from her cell to the interview room by the same female staff who she was cursing the day before.

[10.57.04]

The other comment I would make is that there have also been indications in the past -- so before 2011 -- and we note in our previous report from last year that she had accused staff of stealing things from her room.

So, there are signs that she's had a inconsistent relationship with staff, and we believe this is an indication of deterioration in her judgement and her control -- social control -- and that's one of the central cognitive abilities that we also sought to test.

BY MR. ABDULHAK:

Q. Thank you. The remainder of that finding in paragraph 61 was dealing with the issue of Ieng Thirith's recent urinary incontinence and her indifferent response to it.

What may be of relevance here is a set of assessments that we've been provided copies of, and these are, I understand, described

as Barthel -- or modified Barthel Index Assessments. And looking at these, at -- on the issue of incontinence, it would appear--

[10.58.47]

And I'll -- just in the interest of time, I might just quote the 3rd of May report, which was done by, I believe, a Singaporean expert. He found, in relation to toilet use and bladder control -- he gave her the highest scores. This is in May 2012; she was able to use toilets independently and she was able to control her bladder.

And we see then a change in that -- on that front. We see in July, in relation to bladder control, it has gone from 10 to 8, and I think that is then repeated in the August report.

Would you agree that that would seem to coincide with Professor Thida's assessment that this issue of incontinence is a - is a recent one?

MR. FAZEL:

A. Yes. When we spoke to individuals involved in the care of Ieng Thirith, I think they made it clear that it was something that had become obvious to them over the last month.

[11.00.17]

BY MR. ABDULHAK:

Q. And one account that you've provided of how Ieng Thirith dealt with the issue was at paragraph 44 of your report, where Mr. Mean, who, I believe, is one of the therapists, had essentially challenged or questioned Ieng Thirith about wetting her bed. And

the explanation she gave was that someone had poured water on the bed.

Is it not possible that this particular explanation is one that an individual may give simply out of shame or embarrassment?

MR. FAZEL:

A. Yes. And we've stated a number of occasions that people try and maintain a social front, and that is sometimes something which appears on first interview, but once you look and examine more closely, you see that the -- that's purely just a social front.

BY MR. ABDULHAK:

Q. If it is a social front, would it be fair to say that there are other - perhaps, there may be other explanations other than her indifferent response to it? This particular account I've given seems to suggest a slightly different situation. There may be other information that I don't have. So, if you could expand on that? It would seem that -- if one is denying this fact, that perhaps that is not evidence of indifference; there may be other facts that you can share with us.

[11.02.12]

MR. FAZEL:

I'd ask Professor Campbell to respond to that.

MR. CAMPBELL:

A. I'm not sure I fully understand the question in order to respond. Can you clarify please?

BY MR. ABDULHAK:

Q. Yes, indeed. The question was simply in relation to the conclusion that she had an indifferent response to the – to these episodes of incontinence. And referring to the explanation she gave, which appears to be one of denial, perhaps out of embarrassment or putting up a front, is that a possible explanation -- that is, she is not being indifferent, but rather she is embarrassed and providing, perhaps, a false explanation?

MR. CAMPBELL:

I think it's more likely that, for example, the incontinence occurred overnight. She awakes with it. It may well be embarrassment or it may well be that she actually forgets that she's been incontinent and not aware of it.

[11.03.23]

BY MR. ABDULHAK:

Q. Do we have other evidence of her indifference or is -- do I take it that the main evidence would be the fact that she has remained in bed?

MR. CAMPBELL:

A. Yes, that would be so. And as far as we're aware, she doesn't notify the guards or attendants that she needs assistance to deal with the issue.

BY MR. ABDULHAK:

Q. Now, moving on to the issues of further treatment -- and perhaps, Professor Campbell, this might be in your area, but I'm

happy for any of the experts to comment -- you've recommended, essentially, a discontinuation of the treatment with rivastigmine; is that -- is that correct?

[11.04.36]

MR. CAMPBELL:

A. That is correct. As I've indicated, these agents only work on a certain proportion of the patients -- around a third -- and if there is no evidence of benefit after three months, there is no point of continuing the medication, especially as they do have adverse effects. So, this would be the normal time to evaluate to see whether the treatment should be continued.

BY MR. ABDULHAK:

Q. The reason I ask that question, Professor, is, in looking at your conclusions and in doing some very basic research, we came across a study published in the "New England Journal of Medicine", which you may well be aware of. We're in your hands; you gentlemen are the experts. It's a study of about seven or eight pages.

I have copies, Your Honours, for the Chamber, and for the Defence, and for the experts, if I could share it with everyone at this point.

[11.05.45]

MR. PRESIDENT:

You may now proceed.

Court officer is now instructed to bring the hard copies from the

Prosecution to be distributed to parties involved.

MR. ABDULHAK:

Given that it is a paper written by experts and it may require -- you may - you may need some time to review it-

MR. PRESIDENT:

Co Counsel for the civil party, you may now proceed first.

MS. SIMONNEAU-FORT:

Good morning, Mr. President. Good morning, everyone. As parties to these proceedings, we would also wish to receive a copy of the document that has been provided to all other parties. Thank you.

[11.06.55]

MR. PRESIDENT:

Indeed, he asked that the copies be allowed to be distributed to parties, and the Chamber already moved on that. So please make sure that everyone gets a copy.

BY MR. ABDULHAK:

Thank you, Mr. President. And I understand we are providing a copy presently.

Q. This study, if I can attempt to summarize it -- and it may well be appropriate for you to consider it during the break and give us your views after the lunch, with the President's permission -- it was a study of a sample size of 430 patients and it was - essentially, looking at participants or people - eligible participants were people who had met standardized clinical criteria for probable or possible moderate or severe

Alzheimer's disease, had been prescribed donepezil continuously for at least three months, and, essentially, had a score between 5 and 13 on the standardized MMSE test -- we're looking at page 894.

[11.08.13]

The study seems to conclude that -- and this is on the very first page of the article -- "in patients with moderate or severe Alzheimer's disease, continued treatment with donepezil was associated with cognitive benefits that exceeded the minimum clinically important difference, and with significant functional benefits over the course of 12 months".

The patients had essentially received the treatment for a period of 52 weeks.

Well, let me ask you first whether you are familiar with this particular study?

MR. CAMPBELL:

A. Yes, we have looked at this study.

BY MR. ABDULHAK:

Q. What's of interest is -- in the part dealing with study, design, and participants -- this is on the second page -- is that this study was administered to patients whose prescribing clinicians were already considering a change effectively of stopping the donepezil, which appears to be a situation very similar to this -- to the case of Ieng Thirith.

[11.09.42]

They found that if one -- if donepezil -- administration of donepezil is continued, that beyond the three month mark -- for another six weeks - one would not see an improvement -- again, that's similar to the timeframe we are looking, and that's why I'm particularly interested -- but that improvement may occur further down the track.

Am I summarizing that finding correctly? And would you agree with it?

MR. CAMPBELL:

A. It is a difficult area because, if one looks at how these drugs work, there is no good reason why there should be improvement at six months if not at three months. I mean, what is happening in Alzheimer's is that there is a lot nerve cells, particularly those that use acetylcholine as the neurotransmitter. What the drug - what the drug does is slow down the breakdown of the acetylcholine, and that effect would be fully evident at the three months.

[11.11.01]

BY MR. ABDULHAK:

Q. So, would you - would you disagree with the -- with this group of experts that there may be functional benefits or cognitive improvements if one were to continue administering donepezil or an equivalent for an extra six or 12 months, the latter being the case in this study?

MR. CAMPBELL:

A. Yes, it's our feeling that there would not be benefit in continuing, given the deterioration that has occurred since the start of the treatment, and--

Additional comment?

MR. FAZEL:

A. I think the study is an important study. It's done very well, it's a randomized clinical trial, so it's one of the sort of gold standard approach to studying the effects of medication.

[11.12.07]

I'll just make a couple of points.

One is that the improvement that they found, I think, that -- we might need to check this -- is two points on the mini-mental state examination. Of course, what we're saying is that an improvement of that magnitude will not be sufficient to assist Ieng Thirith in meeting some of these criteria.

The other thing we would say is that we based our evidence on rivastigmine specifically, and these drugs probably have slightly different effects over time. And the evidence on rivastigmine is a review of all these randomized trials that was published in 2009, called Cochrane Review, and we cite it in one of the documents that you've already received previously in response to some questions that the Trial Chamber asked of us. And in that collection of all the randomized evidence for rivastigmine, the evidence was -- the current evidence base suggests three months is a point at which you will see progress, and not necessarily

beyond. What this study is saying is that, even if you assume – which, I think, is an assumption -- that these medications act in similar ways, you will get a two point increase in the mini-mental state.

[11.13.48]

BY MR. ABDULHAK:

Q. How has Ieng Thirith coped with rivastigmine -- with its administration? Has it caused adverse effects?

MR. FAZEL:

A. Yes. We understand there's been no side-effects; it's been administered as a patch -- skin patch; and we also understand that she's been fully compliant with the medication.

MR. CAMPBELL:

A. Otherwise, common adverse effect is the nausea and vomiting which she experienced with donepezil because we started it too high a dose. She has not had that with rivastigmine. There have not been any evident adverse effects from rivastigmine, but sometimes the adverse effects can be subtle, such as increased feeling of paranoia or irritability.

[11.14.50]

BY MR. ABDULHAK:

Q. I just want to make sure I get this right. Your medical advice, putting aside the considerations that the Court must undergo, your medical opinion in terms of Ieng Thirith's welfare would be that rivastigmine should not be continued in that it

simply would not provide her with appreciable cognitive benefits?
MR. CAMPBELL:
A. Yes, that is so.
BY MR. ABDULHAK:
Q. In terms of other forms of treatment that Ieng Thirith is currently receiving, you made a -- you commented, I believe this may be in your February report -- you looked at the current level of supervision of treatment. If rivastigmine is now discontinued, what other treatment would need to continue, given her other overall medical state, and what supervision would be required?
[11.16.21]
MR. CAMPBELL:
A. With the cognitive behavioural programme, there has not been any noticeable improvement, so there would be little value in continuing that.
With the discontinuation of the rivastigmine, as with the other agents, if there is a sudden deterioration after stopping, then the agent can be restarted. It's one way of monitoring if there has been an effect. Even with restarting it just brings the person back to the point where it - where they were or he or she was when the medication was stopped.
BY MR. ABDULHAK:
Q. Just in terms of her overall care -- care being provided to her -- how much care is required on an ongoing basis?
[11.17.12]

MR. CAMPBELL:

A. Because of her increasing - increasing inability to care for herself, she will need ongoing support, probably nursing support, for example with her dressing and with assistance with daily living activities. Given her function impairment, I do not -- we do not feel that she is in a position where she would be able to live independently without that assistance.

BY MR. ABDULHAK:

Q. And, generally and more broadly, perhaps not looking specifically at Ieng Thirith, where would you normally recommend that such continued care and treatment be provided?

MR. CAMPBELL:

A. That depends very much on the ability of the family to provide support and on the ability of community services to provide that support. If that support is not available, then the person would need care within a home where there was nursing support available.

BY MR. ABDULHAK:

Q. Did you wish to add, Dr. Fazel?

[11.18.26]

MR. FAZEL:

A. It was - it was my impression that there would need to be some form of support. It doesn't necessarily have to be specialist nursing support, but some form of support. This could be provided in a home setting if that's - if there is provision for that.

BY MR. ABDULHAK:

Q. Dr. Lina, did you wish to add to that, given your knowledge of local medical services?

MR. HUOT:

A. I have no further comment to add. I fully concur with what have been said by my colleagues.

MR. PRESIDENT:

Mr. Co Prosecutor, we allotted only 30 minutes for you to put the questions, but now you have used seven minutes more than the 30 minutes allocated. Could you tell the Chamber how much more time you need to put questions to the experts?

MR. ABDULHAK:

Thank you, Mr. President. I'm grateful for the extra time.

[11.19.51]

I have no further questions. I wish to thank the experts for their work and their efforts, and wish you a safe journey.

MR. PRESIDENT:

Thank you. Next, we would like to hand over to the Lead Co-Lawyers for the civil parties to put some questions to the experts if they would wish to do so.

QUESTIONING BY MR. PICH ANG:

Good morning, Mr. President. Good morning, Your Honours, and very good morning to professors.

Q. My first question to the international experts is: How often have you visited Cambodia so far?

[11.21.01]

MR. CAMPBELL:

A. I think this is my fourth visit. And during that time we have assessed Ieng Thirith on each occasion, and on each occasion assessed her over two days -- seen her on both days.

MR. FAZEL:

A. This is my third visit, but I've assessed Ieng Thirith on two occasions, and on those two occasions it was over two days each time. So, in total, I saw her for on six separate interviews over a period of four days, on two visits.

BY MR. PICH ANG:

Q. Thank you very much.

My next question is: Before you conducted these assessments on the patient, to what extent is your knowledge about the culture -- Cambodian culture, in particular toward women?

[11.22.37]

MR. FAZEL:

A. I mean, it's clearly -- you know, I have - I haven't interviewed a Cambodian patient before or a Cambodian person with cognitive impairment before. So, clearly, that's -- I'm limited in that respect.

In terms of Cambodian culture, I'm not sure exactly what you mean. I happen to have visited the country previously as a tourist, some years ago, and, you know, I read about the country's history and the culture of the time, but I would never

imagine to think I'm an expert in any way about the culture -- cultural issues.

MR. CAMPBELL:

A. Throughout my interviews with Ieng Thirith, I have been supported by Cambodian staff, usually doctors, who have alerted me to any particular issues, for example the fact that Ieng Thirith thought her mother and father were still alive or still in communication with her -- that sort of issue.

[11.24.06]

BY MR. PICH ANG:

Q. Professor Campbell just stated that he was assisted by Cambodian staff on how to treat Ms. Ieng Thirith culturally. But my next question will be: How -- or what was your assessment concerning Ms. Ieng Thirith's knowledge and background of education?

MR. CAMPBELL:

A. We were fully informed about Ms. Ieng Thirith's background, her study both within Cambodia and at the Sorbonne, in France. So, at all times, we were all aware of her previous education and level of intellectual functioning.

BY MR. PICH ANG:

Q. My next question would be about your methodology in administering the tests on Ms. Ieng Thirith. How many times had Ms. Ieng Thirith been administered -- how many times were the tests been administered to her?

[11.26.03]

MR. CAMPBELL:

A. May I preface my comment by stating that one should not overemphasize the importance of the MMSE. It is part of an overall assessment; it is not the primary basis for the diagnosis.

In terms of administering the test, it has been administered certainly each time I have seen her. And when I have seen her twice, I have commonly -- on each occasion I have commonly administered the test on both days to determine whether there is consistency.

Dr. Fazel may wish to comment on the frequency with which he has had administered the test.

MR. FAZEL:

A. Yes. So, that's the same. On each occasion I assessed Ieng Thirith, it was administered on consecutive days. So, in total, that's four times I've been involved in administering it.

[11.27.09]

I should add that, on the first two occasions, it was actually administered by my Cambodian colleagues. And on this particular occasion when we interviewed her, it was jointly administered by myself and Dr. Lina. So, it hasn't been solely administered by me on any one occasion -- on any occasion; it's always been either administered by my medical -- my psychiatric colleagues or in combination with them.

BY MR. PICH ANG:

Q. Is it fair to say, then, that the questions in the MMSE were repeated, although the tests were administered on different time -- at different times?

MR. CAMPBELL:

A. Yes, that is so. And we've used the MMSE consistently to determine if there is change over time. As I indicated previously, on my early visits I did try some other tests of cognitive function, for example the frontal lobe battery test and Montreal study, but she was unable to cooperate with those tests.

[11.29.01]

BY MR. PICH ANG:

Q. Just now, you stated that questions were put -- the same questions were put when the tests were being administered. My question is: Did these repetitive questions impact on the responses Ms. Ieng Thirith made? By doing so, did you believe that Ms. Ieng Thirith could have guessed the questions and responses?

MR. CAMPBELL:

A. If she had learned from the repeated questioning, one would have expected an improvement in her score, but there was no improvement in her score. It's also important to recognize that there are quite long gaps between the administrations of the tests, apart from those done on consecutive days.

MR. FAZEL:

A. Just to add that, when I was involved in administering the tests on consecutive days, Ms. Ieng Thirith had no recollection of the test being administered on the first day when we did it on the second day.

[11.30.44]

BY MR. PICH ANG:

Q. Thank you very much for your response.

Just now, if I got it correctly and -- Professor Campbell said: "If she could respond to the repeated question, then she would have scored more."

But could you give us your overall impression about that, whether or not she improved or she understood the purpose of questioning?

MR. CAMPBELL:

A. Yes. On each occasion, we have explained why we're doing the tests and explained that this is a routine that we do very commonly.

In relationship with her learning, there has been no evidence of improvement or learning from doing the tests. As I said, there has been a deterioration in her score over time.

[11.31.59]

BY MR. PICH ANG:

Q. In your test methodology, did you envisage the possibility of feigning by Ms. Ieng Thirith in her response to the questions you have repeated to her?

MR. FAZEL:

A. Yes, we did consider this. And as we've said previously, we do not think this was a possibility. The answers to the questions are consistent with information we gathered from other sources and at other stages of the interview when she was not being tested. So, for instance, the problems with her short-term memory that you find in this particular test we found at other points in the interview, before and after administering the test, in relation to other questions.

So, really, what we're saying is that there's a pattern here which is consistent, irrespective of what test you use and when you use it, and this consistency is also when she speaks to other people at other times, in other situations when she is not being formally assessed.

[11.34.02]

BY MR. PICH ANG:

Q. The -- considering the educational background Ms. Ieng Thirith obtained as well as her high profile career in the government of the Democratic Kampuchea as the Minister of Social Affairs, did you adjust the -- or modify your tests or your questions in light of those backgrounds?

MR. FAZEL:

A. No. The only minor modification, if you like, is that one of the questions in the mini-mental state examination is you spell a word backwards. We actually used a French word, "monde", which is five letters, because the score is a five point score for this,

and we -- she was able to spell it forwards but not able to spell it backwards. So we felt that that was a more -- an equivalent question to the English version of the test which asks: "Can you spell the word 'world' -- w o r l d - backwards?"

So, that's the only modification we made, and that's of course consistent with the guidelines in using this instrument -- the international guidelines.

[11.35.57]

BY MR. PICH ANG:

Q. Based on your professional experience, the modification that you actually made to the question and test you administered to Ms. Ieng Thirith, was it effective in a sense?

MR. FAZEL:

A. Yes, because she recognized the word. She, as you know, has some fluency in French and she was able to spell it forwards. And this modification is consistent with guidelines.

BY MR. PICH ANG:

Q. I move on to another point now. When you conducted interview with Ms. Ieng Thirith, if I understand it correctly, there were many people present when you were interviewing her; is that correct?

MR. FAZEL:

A. Yes, there were a - usually, a translator was present, and members of the assessing medical team were present. So, usually, there was more than two people present.

Professor Campbell will add something.

[11.37.57]

MR. CAMPBELL:

A. We were very aware of the need to ensure that this was not too imposing a group that were assessing Ieng Thirith, so that the other people within the room kept in the background as much as possible and the discussion was just with the primary person, through the translator where necessary.

BY MR. PICH ANG:

Q. I only have a few minor questions to our experts, and then I will hand it over to my esteemed colleague, Madam Élisabeth Simonneau-Fort.

So, my follow up question is that: You -- did you observe any difference when there were the presence of several people in the room, particularly they were all male people? And do you think that this in any way affected the response by Ms. Ieng Thirith?

[11.39.26]

MR. CAMPBELL:

A. We have already commented on the variability of her response, that sometimes she'd be quite angry and uncooperative, but other times very agreeable. These -- this fluctuation has not been related at all to the nature of the person doing the interview or the number of people involved.

MR. HUOT LINA:

A. I would like to add to my colleague in response to this

question.
Actually, there were several people during the interview, and the last time there were four experts and an interpreter, so five of us were there. But before we started our interview, we introduced ourselves and we established rapport with her, and she was smiling toward us, she expressed her welcomes. For example, she asked the women guard to bring in the chair for us to sit. So, what I am trying to say here is that she was not uncomfortable when there were several people present during that interview.
[11.40.54]
And in the process of the interview, we actually started from the very beginning that we had to establish rapport, as Professor Chak Thida said yesterday. That was the first important impression we had to have before the person.
And, in addition, the psychiatric experts were different from many other physicians -- for example cardio physician and others. As psychiatrists, it took us time in order to establish a rapport with the patient -- or the interviewee. And, in addition, we have to ensure that the interviewee or the patient was in a relaxed mood before we proceed, and to do that we that we introduce ourselves, we had to explain to her the reason why we are here, as what as Professor Chak Thida said yesterday.
And, in addition, we had -- as part of the qualification of the psychiatrist, they have to learn how to behave themselves and they are in contact with the patient, how to pay attention to the

patient, and we must not, in any way, express our attitude that may be disturbing to her. For example, we cannot move around back and forth, or when we are sitting we pick up the phones, or we scratch our head, or we express any gesture that may disrupt the interview; we may not laugh during the interview. In other words, we have to behave very properly in order to ensure that the patient view us as somebody who are attentive to what she says. So these kinds of specialized field is the qualification that all psychiatrists must have, and that makes psychiatrists different from other medical physicians.

[11.43.25]

So, at that time, even though there was several people, but we sat very quietly, politely, and calmly, and she was also very welcome as well to all the members of the interviews. And we sat there calmly, we did not distract the process of the interview, and it was our observation that she was very cooperative even if she could not answer the questions correctly or so. But we generally observed that she made her level best to answer our questions; there was no sign that she was feigning at all.

BY MR. PICH ANG:

Q. This is going to be my final question for this session. Just now, Dr. Lina said she was very cooperative and she made her best to respond to the question. I would like to know whether or not there was any difference between the effort to establish a relationship or rapports with the patient between the Cambodian

doctor – Cambodian doctor and the foreign doctor. Did you see any difference in establishing this rapport?

[11.44.50]

According to Professor Chak Thida, who testified before this Court yesterday, that there were two questions put by Professor Campbell, and the result was not satisfactory. And the same questions were asked by Professor Chak Thida, and the result was more favourable in that context. So, could you explain the Court about the outcome of the questions -- or observation by Professor Chak Thida? Thank you.

MR. HUOT LINA:

A. We have encountered this problem once in a while. Even if I am Cambodian doctor, I asked her – no, before – before me, there was another medical doctor, Mr. Koeut Chhunly. He asked her, and she responded to him, but on another occasion she refused to respond the question. And the same is true – sometimes, on certain occasion we met her, she did not cooperate. So, it was not person-specific, but it was -- it varied depending on her mood of the day.

[11.46.28]

MR. FAZEL:

Professor Campbell will add something.

MR. CAMPBELL:

A. Just comment very briefly that I've certainly observed no change when she is dealing with me through an interpreter or

through -- directly with a Cambodian doctor.
The second issue is that I've looked back on my records of that interview at that time, the assessment of the MMSE, and I find that she did actually identify the pin and the watch correctly at that time when I asked her.
QUESTIONING BY MS. SIMONNEAU-FORT:
Q. I have a few quick questions.
[11.47.28]
We all know that what is happening today will have consequences on the procedure that we follow, and it's very important for everybody. What I'm concerned about is that we should fully understand the decisions consequent upon what you say, but also that the civil parties, and the victims, and the public in Cambodia understand what's going to be decided as a result of what is happening here. So I apologize in advance if you find my questions a little over insistent, a little over detailed, but in any case there are very few of these questions.
So the first which is directed to you all is that you have told us that's it's not possible to change the questions in this famous mini-mental test outside international guidelines that do allow for slight changes. Could you very quickly explain to us why it's so important not to change those questions?
[11.48.14]
MR. FAZEL:
A. Well, the first reason is that if you want to measure

progress, which is one of the main reasons why this tool is useful, then you need a consistent set of questions asked -- the same questions need to be asked in order to monitor progress. You can't monitor progress if the questions change and, for instance, simpler ones are substituted.

The second reason is that the research base or the evidence base has used the standard approach -- the standardized approach to identify what cut-off scores relate to approximately what level of impairment, and that research base or evidence base has used the standardized set of questions. So, if you want to extrapolate from the mini-mental state examination about a degree of impairment, you need to rely on the instrument as it's used internationally, including in research studies. If you modify it, and particularly if you substitute simpler questions, then it's not possible to understand what the score means in terms of level of impairment because you do not have any research evidence to draw that on.

Shall I pass over to Professor Campbell next to answer this question?

[11.50.33]

MR. CAMPBELL:

No, I think that's covered the issue fully.

BY MS. SIMONNEAU-FORT:

Q. I'd like to ask some questions specifically to Dr. Lina Huot because I do think it's very important to hear certain answers

from a Cambodian doctor.
And so my question is this: Doctor, have you, yourself, used this test for Cambodian patients?
MR. HUOT LINA:
A. I'm happy to respond to this question. I would like to divide it into two different situations.
When I asked Ms. Ieng Thirith, it was in a different -- a completely different situation. And I administered this standardized test, MMSE, with patients in the hospital where I worked. It was in a complete different - a completely different context.
[11.51.47]
So, coming back to the question, of course I have administered this standardized test with the patients, but the methodology used was different because, in Cambodia, the Cambodian patients were off different backgrounds; some were of high backgrounds, and some were not.
So, the purpose of administering MMSE was different from the one administered with the patient who were in the custody of the Court.
In the domestic hospitals we administered this test, and it was not difficult to administer this test at all because of the history of the people who have known her (sic); we could ask the questions to those people who were close to her (sic). For example, the children or the relatives who were taking care of

them, they could provide information about that. But when we administer this test with them, we have to bear in mind that those patients might be literate -- or some of them were literate, some of them were not literate, so--

[11.53.10]

But if we had to modify this standardized test, there must be an approval by a committee appointed by the authority – a competent authority of the hospital, in order to modify the test in a manner that it will be applied, and the result of which will be acceptable as well. So we had to communicate and we have to adopt a national standard of the test. And so far we have administered this test in its entirety.

Then you may further ask me: What if the patients were illiterate? How could I administer this test to them? As you see, in this test, the denominators account for some 30 different denominators.

And now, what happen if the patient were blind? What could we do? So, we have to reduce certain questions that may not be applicable to certain patient. For example, if they were blind, then we would have to strike out certain questions so the denominators remain only 28. So we had to observe this on a case-by-case basis.

[11.54.24]

And as my colleagues mentioned from the beginning, MMSE was not the only tool to have the proper diagnosis of dementia and other

similar diseases. With people at the advanced age, for example in their eighties or so, we did not even have to administer the test, sometimes, and we can only get the information from their relatives who knows that the person was suffering from forgetfulness -- or a serious forgetfulness or so.

Once again, the test contains 30 denominators, but it varies depending on individual patients, so it has to be applied differently in different context. For example, in this Court, we know that the person - the patient in question was someone who is knowledgeable -- she speaks French and English and she has worked in a very high profile institution before -- so we did not modify this test; we applied in its entirety.

BY MS. SIMONNEAU-FORT:

Q. Thank you. You have also answered my second question by pointing out that it wasn't necessary to adapt the test for Ms. Ieng Thirith.

Third question: Can you briefly confirm that there were no language difficulties in Khmer when it came to translating the different terms used in the test?

MR. HUOT LINA:

A. (No interpretation)

[11.56.30]

THE INTERPRETER:

I'm sorry, can I ask you for--

MS. SIMONNEAU-FORT:

I'd be grateful if you could repeat your answer because I think we had a problem with the interpretation coming through.

MR. HUOT LINA:

A. When you asked about interpreting, were you referring to the communication between my client outside this courtroom setting or referring to Ms. Ieng Thirith in particular?

MS. SIMONNEAU-FORT:

I'm talking about the translation of the words used in the test; that's all.

MR. HUOT LINA:

In the test we gave to Ms. Ieng Thirith, we had no problem with the translation of the terms.

[11.57.44]

BY MS. SIMONNEAU-FORT:

Q. Thank you.

Another question that might seem a little bizarre to you, but which is in fact connected to the way that we have talked a great deal, about the question of whether or not it's important to be examined by a woman. And we know that, in certain countries, there are rules which mean that women are examined by other women rather than by male physicians. Now, in Cambodia, are there certain ethical rules which would indicate that it is preferable or compulsory to have a woman examined by another woman?

MR. HUOT LINA:

A. This is a very good question indeed, and I'm so happy to

respond to it as well.

Indeed, there is no such rule set to say that a female patient has to be examined by a female doctor or nurse. In our country, traditionally, the culture is rather strict. However, we have a lot of male doctors who are very skilled and qualified to examine female patients, and it is a known practice that has been applied across the country, and there is no such rule limiting male doctor from examining female patients. So I can conclude that there is no such ethical rule, and many women -- many female patients even prefer or would like male doctors to examine them other than being examined by female doctors. So, by that, I say there is no such rule.

[12.00.10]

BY MS. SIMONNEAU-FORT:

Q. One final question, Mr. President, if I may. Once again, it's a question that I'm putting so that everybody can understand what is going on and the consequences that may arise from it in this Court. This question is put to the three experts.

You have answered Judge Cartwright yesterday, saying that as far as you three are concerned, there's no doubt about the state of dementia of Ms. Ieng Thirith. You also told Judge Cartwright that, in your view, there was no point in continuing the treatment or switching to another one.

So that things you should be stated clearly, can you answer the following question: According to current medical knowledge, can

you state with certainty that there are no chances for a state of dementia to improve? Or, on the contrary, can you quote any cases of improvement in cases of dementia once all the possible treatments in terms of drugs and medicines have been explored?

MR. FAZEL:

Professor Campbell, first.

MR. CAMPBELL:

A. I am aware of no such cases. We have explored the possibilities here, and there's been no improvement. What we have seen is consistent with progressive Alzheimer's disease.

[12.02.02]

MR. FAZEL:

A. I concur with that. I've -- I am not aware of any cases of improvement of people in a clear -- with a clear diagnosis of dementia where they have excluded all other causes. And, of course, there are -- it's important to exclude other possible causes first. And once those have been excluded, then a diagnosis can be confirmed.

MR. HUOT LINA:

A. I wish to add that, first of all, I fully concur with the statements made by my colleagues, that currently there is no possibility that such illness could be improved.

However, I learned from the Khmer rendition to be not the exact term from "Alzheimer" because it was rendered as a different kind of disease. So please stick to "Alzheimer", which could be

interpreted as "vongveng vongvan". That's all for me.

MS. SIMONNEAU-FORT:

Thank you very much. I have no further questions.

[12.03.59]

MR. PRESIDENT:

Thank you, Counsels, and thank you, Professors.

It is now appropriate time for the lunch adjournment. The Court will adjourn for lunch, and the next session will be resumed by 1.30 p.m.

Court officer is now instructed to assist the three experts during the break and have them returned to the courtroom by 1.30.

The Court is adjourned.

THE GREFFIER:

(No interpretation)

(Court recesses from 1204H to 1331H)

MR. PRESIDENT:

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

We would like to hand over to counsels for Ms. Ieng Thirith to put questions to the experts if they would wish to do so.

And counsels for Ms. Ieng Thirith is allotted 30 minutes to put these questions.

QUESTIONING BY MR. PHAT POUV SEANG:

Thank you, Mr. President. Good afternoon, Your Honours, and good afternoon to everyone in this courtroom and to the experts. We thank you very much, indeed, for your time here before us to

clarify on your reports with regard to the fitness to stand trial of Ms. Ieng Thirith, who is our client.

Q. I have a few questions to put the experts.

The first question is concerning the scores Dr. Chak Thida gave to Ieng Thirith. She scored 24 out of 30. However, in your reports -- the joint reports -- you indicated already that you scored lower gradually, starting from 18 to currently 14 points. There is a huge discrepancy concerning these findings.

[13.33.48]

My question is: What is your opinion concerning the way Dr. Chak Thida gave the scores to Madam Ieng Thirith -- whether it was part of the standardized scoring system or not?

MR. FAZEL:

A. No. The scoring system and the questions that Chak Thida used were, as I have already explained, incorrect. If you re-score her own test using the correct criteria, you get a score of 15, which is not completely different to the scores that we have presented over the last two years, which have, as you said, last year ranged from 15 to 18; and this year they've ranged from around 11 to 14. So, the scores used by Professor Thida cannot be used because they were incorrectly administered. If you re-score them using guidelines -- the standardized guidelines, we estimated a score of 15.

And our own scoring done on two separate days, we, this week, could not score her above 12. And as I've indicated previously,

the mental health staff in the detention centre who know Ms. Thirith very well -- and they scored it between 11 and 14 when they administered the test between May and August this year. [13.35.45]

BY MR. PHAT POUV SEANG:

Q. Thank you very much, Professor for your response.

I have another question to you. Last year -- perhaps by late of last year -- you issued the report concerning the health status of Ms. Ieng Thirith. And recently, after six months of treatment, according to the Order by the Supreme Court Chamber, the Trial Chamber orders Ieng Thirith to be treated for a period of six months. And after this you also had met Ieng Thirith on two occasions, over two days, if I'm not wrong; it was on the 26th and 27. And on the 29 of August, a report was filed.

May I know about your impression concerning – or your findings concerning the changes in her physical and mental fitness?

MR. FAZEL:

Can I clarify? Do you -- are you asking about her fitness to stand trial -- to plead and stand trial or are you talking about her cognitive – overall cognitive abilities?

BY MR. PHAT POUV SEANG:

Q. My question was about her, indeed, cognitive ability. We would like to know whether her cognitive ability has improved or not, because before you already indicated that her cognitive ability was impaired and that she could not provide or consult with her

counsels for pleadings. So we would like to know whether this situation remains the same or improved.

[13.38.11]

MR. FAZEL:

A. It has not improved. It -- in our opinion, her cognitive abilities have deteriorated over the last few months, and therefore there's been no change in our opinion as to the issues relating to her ability to instruct counsel.

BY MR. PHAT POUV SEANG:

Q. Thank you very much, Professor.

I have another question which is more technical in nature. Dr. Chak Thida stated in her testimony that Ms. Ieng Thirith could read the newspapers in a foreign language – or foreign languages accurately. We would like to know how she could assess someone to have the ability to read the newspapers accurately and that the person was not experience any symptom of dementia?

[13.39.40]

MR. CAMPBELL:

A. That's a bit difficult because you're asking us to comment on Dr. Chak Thida's findings that she said. I -- we have no idea how she actually tested that. Our indication from those looking after her was that she was not taking in what she was reading.

BY MR. PHAT POUV SEANG:

Q. Thank you. I also wish to refer to Dr. Chak Thida, who testified before the Chamber that on one occasion she met with

Ms. Ieng Thirith and she saw her reading news article. Dr. Chak Thida did not remember the heading of that newspaper article, but she remembered that Ms. Ieng Thirith was reading in French, and Ms. -- Dr. Chak Thida could read French, who at the same time could judge Ieng Thirith's reading of French to be accurate. [13.41.00]

So, my question is that, if someone who could read a newspaper article accurately, was she or he free from having dementing illness when reading that?

MR. CAMPBELL:

A. No, people with dementia can still read; it's a question as to how much they actually they retain and how much understanding they have of what they're actually reading.

Given that we do not know what Dr. Chak Thida was actually questioning her about, it's difficult to comment on whether or not she was able to understand. I think it is most unlikely that she was.

BY MR. PHAT POUV SEANG:

Q. Thank you.

I refer to your report, paragraph 59. And, on the second sentence, you indicated that -- I do not know whether it was not properly translated, but on the second sentence, you said that: "We recommend that Ms. Ieng Thirith's other medical treatment continue and that they be monitored as and when deemed appropriate according to her medical team."

[13.42.51]
I just feel not sure whether the translation is correct from the English version or not because you said that there would be no other alternative or approach to improve her cognitive abilities. But here, in this paragraph, you said you recommend that Ms. Ieng Thirith's other medical treatments continue. So could you please help -- elaborate on this?
MR. CAMPBELL:
A. Ms. Ieng Thirith is on a number of other medications for cardiac disease and also for gastrointestinal problems. She's not on -- currently on any psychotropic medications at all. The tablets that she -- the treatment she is receiving for the dementia, the rivastigmine, we've already commented on. What we're saying there -- and this in the absence of a physical re-examination -- is that the medications that she is on are not affecting her cognitive function at all, and their continuation should be depended on the underlying medical conditions which they are being used to treat.
BY MR. PHAT POUV SEANG:
Q. Thank you.
I have my final question, please: After examining Ms. Ieng Thirith by the team of experts, may I know your final conclusion on her mental and physical fitness currently?
[13.45.06]
MR. FAZEL:

A. We came to the unanimous view that Ms. Thirith suffers from -- Ms. Ieng Thirith suffers from a moderate to severe dementia, that she has no acute physical health problems, to our knowledge, and that, as we've stated, we do not believe there's any other treatments that are available to improve her cognitive functioning.

MR. PHAT POUV SEANG:

I thank you very much, Professors. I have no further questions. But at the same time I wish to cede the floor to my colleague to continue with more questions.

Thank you, Mr. President and Your Honours.

QUESTIONING BY MS. ELLIS:

Q. Incoming to the conclusion that you reached, that Ieng Thirith is suffering from a moderate to severe dementia, we see from your report, at paragraph 60, that you looked at the diagnostic guidelines laid out by the International Classification of Diseases, the 10th Edition.

They are, are they not, standardized guidelines produced by the World Health Organization to assist in determining dementia and the stage it has reached? Is that correct?

[13.47.25]

MR. FAZEL:

A. Yes, they are a standardized way used internationally to come to diagnosis and they also allow for staging of diagnosis, and they specifically allow for some staging of dementia.

BY MS. ELLIS:

Q. And are they guidelines that have developed over many years in order to assist with an accurate diagnosis of the stage a dementia has reached?

MR. FAZEL:

A. Yes. They have been developed -- I think, from the 1960s onwards -- by consensus, panels of experts who weigh up all the available evidence at the time and then come together to examine what is the best way to standardize diagnoses.

BY MS. ELLIS:

Q. And there are four guidelines.

The first is that of a loss of memory. And you characterized, on the basis of what you learned about Ieng Thirith, that she had a severe memory decline, on the basis of an inability to retain new information and only fragments of previous memory remaining; is that right?

[13.49.22]

MR. FAZEL:

A. Yes, it is.

BY MS. ELLIS:

Q. The second aspect of that first guideline is a decline in cognitive abilities such as judgement and thinking. And again you classified Ieng Thirith as having a significant decline in that particular cognitive ability; is that right?

MR. FAZEL:

A. Yes. There are -- that criteria relates to a number of cognitive abilities in relation to judgement, thinking, and related behaviours.

BY MS. ELLIS:

Q. One of the other guidelines requires that those declines in memory, judgement, and thinking must have been in existence for at least six months. And you found, on the basis of all the information you had and your own knowledge, that that criterion was also satisfied, did you not?

[13.50.48]

MR. FAZEL:

A. Yes.

BY MS. ELLIS:

Q. The final criterion for dementia as set out in the International Classification is the absence of clouding of consciousness.

Could I ask you, firstly: Is that related to a person's ability to be aware of the environment that they're in?

MR. FAZEL:

I'm going to ask Professor Campbell to comment.

MR. CAMPBELL:

A. Yes, it is. It's used particularly to help distinguish between delirium -- that is a shorter period of confusion related to an intercurrent illness and in which the level of awareness fluctuates quite considerably.

[13.51.53]
There has been no fluctuation with Ieng Thirith that has been constant, and so it's not as though a cloud passes away across the sun for a time and she is not seeing is so well and then clears again; it had been constant, that she has been confused by questions and not remembering properly.
BY MS. ELLIS:
Q. So that -- she also fulfils the criterion in that she is in a constant state of lacking an awareness, perhaps, of her surroundings?
MR. CAMPBELL:
A. That is correct. And she's been fully alert, with no clouding of consciousness, during all of our testing.
BY MS. ELLIS:
Q. Thank you.
What I would like to do now is just ask you a little bit about the history, and I'm not going to go into detail, because this has been explored.
[13.53.00]
But you were asked by Her Honour Judge Cartwright about the administering of antipsychotic medication. Firstly, she was prescribed quetiapine and also clonazepam, but -- I pronounced that badly; I apologize. Are they both used as antipsychotic medications?
MR. CAMPBELL:

A. No. Quetiapine is used as an antipsychotic medication, but clonazepam is used as a sedative. It's--

BY MS. ELLIS:

Q. And is--

MR. CAMPBELL:

A. It's the same group as Valium - diazepam -- for example.

BY MS. ELLIS:

Q. It's used as a sedative. Is it sometimes used where there is considerable anxiety in a patient?

MR. CAMPBELL:

A. Yes, that is so.

[13.54.14]

MS. ELLIS:

We know, from the records of the hospital attended by Ieng Thirith in Bangkok, that she was first prescribed with clonazepam back in December 2004, along with other medication. Might that be an indication of a very early stage in the development of some form of dementia?

MR. CAMPBELL:

A. It is difficult to say because any person can have an episode of delirium related to physical illness. For example, pneumonia may trigger an episode of delirium in a younger person. But people with early dementia are predisposed to delirium and are much more likely to get delirium with any physical illness. And so it is certainly possible that this was an early indicator of

dementia.

BY MS. ELLIS:

Q. Whilst on the subject of the medication--

Perhaps I should say that the document I've just referred to is E111/3.3, and the next document I'll refer to is 00646360.

[13.55.44]

And what we are able to see from the medical records which have been kept since Ieng Thirith has been in detention is that, in fact, over the period from the 20th of December 2007 through until -- and the document I am looking at goes to the 27th of July 2011 -- there were in fact variations in the amount of quetiapine that was prescribed and also of clonazepam. And the only point I wish to refer to really, for the record, is that in December 2010 two milligrams of clonazepam was prescribed, and 150 milligrams of quetiapine. In July 2011, at a time when Professor Chak Thida was the doctor in charge, it was still the same quantity of clonazepam, but the quetiapine had been reduced by 50 milligrams, to 100.

[13.57.16]

Would it be right to say that it is a result of some symptom or alteration in a symptom that medication is changed in that way?

MR. CAMPBELL:

A. I have two comments.

Firstly, when reducing psychotropic drugs, it needs to be done gradually, and that is what I recommended when I first saw Ieng

Thirith -- a gradual reduction in her medications.

The second is that these medications are used occasionally in people with dementia, when their behaviour becomes agitate or aggressive. And so, although they are used primarily for a psychotic illness, in particular the quetiapine, they are used for people with dementia but do have to be used very carefully because of the adverse effects that they can cause.

BY MS. ELLIS:

Q. Thank you.

I'd like now just to look at one or two points in your report. And it's right, isn't it, that we read this report in conjunction with all of the reports provided by the experts last year -- yourselves -- and, indeed, in February of this year?

[13.58.38]

You've already dealt with the number of people to whom you spoke in connection with Ieng Thirith's condition. From what you say, it is particularly important to have the observations of those that are responsible for her care on a daily basis as well as the doctors who care for her; would that be right to say?

MR. FAZEL:

A. Yes, I think that is a vital part of the information that one needs to collect. As has been stated before, people with dementia can present a social front, and therefore just a one-off interview without collecting that background information or that corroborative information can be misleading.

[13.59.43]

BY MS. ELLIS:

Q. You made it quite clear in your report of October of last year that you had consulted with both Dr. Koeut Chhunly and Dr. Chamroeun, of Calmette Hospital, and they were of the same view, that there was a decline of significance in Ieng Thirith's memory. I mention them because, of course, they add to the involvement of Cambodians in this assessment. Would you agree with that?

MR. FAZEL:

A. And -- yes, I would agree. And also just to reiterate the fact that, in 2009, Professor Ka, a psychiatrist – a Cambodian psychiatrist, in conjunction with Dr. Brinded, an international expert, came to the view that there was a diagnosis of mild dementia.

BY MS. ELLIS:

Q. Looking at your observations at paragraph 40 of your report, would it be your view that, if Ieng Thirith believed someone was sleeping above her, that is indication of something that is hallucinatory?

[14.01.27]

MR. FAZEL:

A. I think our view is that it is abnormal. Whether you define it as a misinterpretation of a mosquito net that's wrapped up or a hallucination, I think we would probably want to look at it in

more detail and ask some further questions over time. I think the important fact is that it is abnormal and that she either misinterpreted a mosquito net as being a human being, or a skull, or a child, or she actually hallucinated and saw something that wasn't there. So there's two possibilities; either possibility is abnormal.

BY MS. ELLIS:

Q. We know, from the note provided by Mr. Sreedharan in May of this year, which is E138/1/7/12, that, when he was conducting the training program, at one stage Ieng Thirith was very distressed because she believed she had insects crawling all over her. And in your report, at paragraph 43, she -- you refer to the report of the guards that she'd spoken of someone physically present in her mosquito net over the past few months.

[14.03.00]

So, when one puts together these various observations from different people, does that begin to provide an indication that there is a problem with hallucinating?

MR. FAZEL:

A. Yes, I think we would say, broadly, there's a problem with perception, and there are very specific definitions around whether you call it an illusion, a misinterpretation and -- or an hallucination. I think -- I think it's fair to say that, without us having spoken to Mr. Sreedharan about the specific symptom, all we can say is that it's an abnormal perception. And, equally,

the information we got from the guards about a human being in a mosquito net, again we would say that that's an abnormal perception.

BY MS. ELLIS:

Q. These kinds of abnormal perceptions are seen in patients who suffer from a significant degree of dementia, aren't they? Thank you.

You say a correct scoring of Professor Chak's MMSE test would have been 15. That would have brought Ieng Thirith within the significant degree of cognitive impairment, wouldn't it?

[14.04.51]

MR. FAZEL:

A. Yes. International guidelines suggest a score below 23 is abnormal, and a score between 10 and 20 indicates a moderate degree of cognitive impairment.

BY MS. ELLIS:

Q. And, indeed, that would support, would it not, what was said by Professor Chak to you on the same paragraph 40, where she says that Ieng Thirith could not remember the topic of her conversation one or two minutes after it had started?

MR. FAZEL:

A. Yes. And as we stated before, that would be abnormal for an 80 year old person with just an aging -- a normal aging process.

BY MS. ELLIS:

Q. Looking at paragraph 41, the trial of rivastigmine, in fact,

extended to about 20 weeks in all, didn't it?

[14.06.10]

Do I understand, from your observations on the report that were shown to you by the prosecutor this morning, that there has been found to be, perhaps, reason to sometimes extend the use of these drugs which help people with dementia but that, if there's no improvement noted at all within the first three months, then there is not going to be any improvement thereafter?

MR. FAZEL:

A. Well, the evidence on this topic does develop over time. Our understanding of the study that was presented this morning was that the improvement was no more than two points on the mini-mental state examination if you extended the period of time that not this particular medication was used, but another one, donepezil and memantadine (phonetic). So, our understanding was that this single trial found a two point increase, but as we said earlier, this isn't directly applicable to the rivastigmine, and we do not believe two points will increase the cognitive abilities of Ieng Thirith to a degree that she can sufficiently participate in the trial process.

[14.07.57]

BY MS. ELLIS:

Q. One of the other people spoken to was Mr. Mean. Did you have an opportunity, apart from speaking to him, to see the note that he made on the 12th of July of this year, in which he said that

Ieng Thirith could not walk far, that she needs to be reminded to bathe, dress and eat? It's not a documentary reference; its E138/1/8/2.2. But it, again, would you agree, is in line with all the other findings that have been made?

And I raise it because it's the same day that the examination was undertaken by Professor Chak, which produced a score of 24. Would you agree that the note of the nurse enough is more consistent with someone with a score of 15?

MR. FAZEL:

Professor Campbell.

MR. CAMPBELL:

A. We have not seen the actual note itself. It is consistent with what Mr. Mean told us when we talked with him and, as you indicated, it is much more consistent with a score in the 12 to 15 range than the score of 24.

[14.09.38]

BY MS. ELLIS:

Q. You've made it quite clear that the deficiencies in the memory are significant, so I'm not going to go through, again, any of that with you. It's clear the family are not recognized. All the matters you raised are, again, typical of dementia, aren't they?

MR. FAZEL:

A. Yes.

BY MS. ELLIS:

Q. Thank you.

Just, then, if I can come onto the capacities, your conclusion at paragraph 62 is that she, Ieng Thirith, would have considerable difficulties in relation to both fitness to plead and fitness to stand trial, as I understand it.

MR.FAZEL:

A. Yes.

[14.10.49]

BY MS. ELLIS:

Q. And, although you note that she has a somewhat basic understanding of crimes against humanity as involving doing wrong, and "murder" is killing, and "genocide" is destroying a group or destroying a race, she has no greater subtlety in understanding any of the issues raised by those particular offences; would be that a fair way to put it?

MR. FAZEL:

A. Yes.

BY MS. ELLIS:

Q. Have you ever had any indication, for example, that Ieng Thirith understands that she is, herself, in a detention centre, awaiting trial on very grave offences?

MR. FAZEL:

A. We had no indication of this in our interviews -- three interviews this week.

[14.12.04]

MR. CAMPBELL:

A. (Microphone not activated)

(Microphone is not activated)

BY MS. ELLIS:

Q. Professor Campbell, I'm sorry, I did hear what you said. The question of inconsistencies is covered by your report, and what you have all noted is that, in questioning Ieng Thirith, she isn't able to give a consistent answer to a question. It's your view, from everything you've said, that she's not purposely trying to fool you in feigning, but she just can't really understand what she's being asked; is that fair?

I think the record requires a 'yes'.

MR. CAMPBELL:

A. Yes.

[14.12.51]

BY MS. ELLIS:

Q. The position, therefore, is that you have concluded, taking all the strands together and not giving too much weight at all to the MMSE, that she simply lacks the capacities -- that you're very familiar with -- to be able to exercise any of her fair trial rights at this stage in her illness.

MR. FAZEL:

A. That's exactly right.

BY MS. ELLIS:

Q. Now, just about the treatment, we're clear from what you've said, that there is no known treatment, either by therapy or

medication, that is going to change her situation and that dementia is a progressive disease, so she will get worse; is that right?

[14.13.55]

MR. FAZEL:

A. Yes.

BY MS. ELLIS:

Q. Is that because the disease involves the destruction of the cells of the brain?

MR. FAZEL:

A. Yes.

BY MS. ELLIS:

Q. And therefore any expert in this Court, faced with a woman who was found to have moderate to severe dementia, would not be able to say that her condition would, in the future, improve in any meaningful significant way; is that the result of it?

MR. FAZEL:

A. Yes.

[14.14.47]

BY MS. ELLIS:

Q. Finally, this: From what you've said, she is capable of living within a family environment as long as she is cared for by someone with sufficient knowledge to support her in her daily needs -- she does not require the input of the medical profession on a regular daily basis; is that a fair summary of what you've

said?
MR. FAZEL:
A. Yes.
And I'll ask Professor Campbell just to comment on that issue, as well.
MR. CAMPBELL:
A. She will require ongoing support for her physical needs because of her inability to manage that herself. Now, that may be managed by family or by support from outside.
If her behaviour is settled within her home, then she could be managed there. If some of her behavioural difficulties persist or worsen, then she may need care -- it may not be able -- she may not be able to be managed at home.
[14.16.10]
She won't require ongoing medical care on a daily basis, but her medical conditions will need to be kept under regular review.
BY MS. ELLIS:
Q. And just finally this, for clarification: The article produced by the prosecutor from the "New England Law" – "New England Journal of Medicine" on donepezil and memantine refers to the standardized mini-mental state examination. Should we conclude that is in fact the same as the MMSE that we've been referring to in Court?
MR. CAMPBELL:
A. I've never seen it referred to as a SMMSE before, but I think

we can assume that it is the MMSE standardized.

MS. ELLIS:

Thank you very much.

MR. PRESIDENT:

Thank you.

(Judges deliberate)

[14.17.28]

We thank you, Professor and -- Dr. Seena Fazel, Professor John Campbell, and Professor Lina Huot, we thank you very much.

The hearing of the expert reports concerning the result of the reassessment of the fitness to stand trial of Ms. Ieng Thirith has come to an end. You will be now released and you may return home or to any location or direction you wish to go.

And we are very much grateful for your time and efforts over the past two days. And we thank you, especially Dr. Seena Fazel and Professor John Campbell, who have travelled from afar to assist the Chamber. And your assistance will significantly contribute to ascertaining the truth in the current case before us. And the Chamber also notes that the three experts have been very patient and very cooperative with the Chamber. And we strongly believe that your contribution is significant to ascertain the truth concerning the fitness to stand trial of Ms. Ieng Thirith. We wish you a very safe travel back home.

[14.22.14]

Court officer is instructed to facilitate, with the WESU unit, to

arrange the transport and the facilitation of their release back home.

So, now, the three experts are released.

MR. CAMPBELL:

Thank you very much, Mr. President and Your Honours. I would just like to say thanks to -- on behalf of us all, to the witness support group, who have provided us with excellent support and made our visits here very much easier. So, thank you for the opportunity to appear before the Court and for the support that we have had. Thank you.

MR. PRESIDENT:

Indeed.

You may now leave the room.

(Experts exit courtroom)

[14.23.49]

Counsel, you are on your feet. You may now proceed.

MS. SIMONNEAU-FORT:

Mr. President, before we make closing statements, I want to ask you about the presence of Ms. Ieng Thirith during this part. And the parties may wish her to be here. Obviously, during the technical discussions on her state of health, there was a very good reason for her not to be there, but unless there is a legal reason for her being absent from this stage of the discussion, we, at the very least, would certainly wish to have present during this final stage.

(Judges deliberate)

[14.25.10]

MR. PRESIDENT:

The Chamber notes that it is not necessary to grant such request because the hearing on her fitness to stand trial has already been ruled upon. Ieng Thirith has been ordered to remain in her holding cell, and we have already ordered her to be brought to only her holding cell during the course of the proceedings, and she is there.

And finally, before we conclude the hearing, we would like to hand over to Judge Silvia Cartwright to have a few words concerning the submissions by parties. Judge Cartwright, you may now proceed.

JUDGE CARTWRIGHT:

Thank you, President. On behalf of the Judges of the Trial Chamber, we would like counsel, in their closing submissions, to comment specifically on three topics -- you are not limited to these, of course, but we wish to hear your submissions on the following three topics.

[14.26.39]

First, there is an undisturbed decision that Ieng Thirith is unfit to stand trial. If you have any submissions that suggest that that decision should be reviewed, then please say so.

Secondly, if she remains -- if the decision remained that she is still unfit to stand trial, do you have any submissions on the

issue of her continuing detention?

And if you -- and the third matter that I -- that the Chamber would like you to focus on is whether you would be proposing any conditions on her release from detention and, if you sought such conditions, what is your legal basis for making that submission. The time allowed for closing submissions will be brief, and these topics will assist the Trial Chamber greatly. Thank you very much.

President, is there anything you wish to add to that?

MR. PRESIDENT:

No, I'm afraid not.

[14.28.09]

Now, the Chamber would like to adjourn for 20 minutes, and the next session will be resumed -- and when the session resumes, we will hear the closing statements, starting from the Prosecution, then the Lead Co-Lawyers for the civil parties, and finally the counsels for Ms. Ieng Thirith.

THE GREFFIER:

(No interpretation)

(Court recesses from 1428H to 1441H)

MR. PRESIDENT:

Please be seated. The Court is not back in session.

Before we hand over to the Prosecution to make their closing statement, today's hearing will be a bit long, and we may be late. We already communicated with the Transportation Unit to

ensure that the buses' schedule could be extended to, for example, to 20 to 30 minutes late so that staff from the Court can be accommodated home.

We would like now to hand over to the parties to the proceeding to make a closing statement concerning the fitness to stand trial of Ms. Ieng Thirith.

[14.43.30]

The Co-Prosecution will have 30 minutes for this.

You may now proceed.

MR. ABDULHAK:

Thank you, Mr. President. And good afternoon, Your Honours. If I may begin by indicating our positions on each of the three questions that Her Honour Judge Cartwright has asked us to address and then, perhaps, move on to more detailed submissions as to the way forward.

As to the first question -- whether the undisturbed decision as to unfitness to stand trial ought to be revisited in anyway -- our response to that is no.

We are of the view that the evidence before your Honours has confirmed that Ieng Thirith suffers from moderate to severe dementia, that her cognitive abilities are affected to a degree such that she is not currently able to exercise her fair trial rights and she is therefore currently unfit to stand trial.

As to the second question -- whether any request is to be made as to continue detention -- the answer is also no.

[14.45.16]
The Co-Prosecutors consider that we've reached a stage, having exhausted the immediately available measures to improve Ieng Thirith's cognitive functioning, where immediate recovery or recovery within a reasonable period of time is highly unlikely. It is therefore unlikely that she will face a trial again in any immediate or foreseeable period of time, and therefore the grounds for her continued detention, in our respectful submissions, no longer exist.
As to the third question, as to whether any conditions are being proposed by the Co-Prosecutors, our position is that a range of conditions should be imposed -- a range of conditions that are reasonably necessary and proportionate -- and we will deal with them in turn.
But before I move on to them, if I can try and address briefly, also, Your Honours' question as to the legal basis for the imposition of any conditions, we are happy to provide further written submissions if Your Honours consider that necessary, but I will try and summarize our legal position at this point, and hope that is of some assistance.
[14.47.28]
We start from the premise that, at the international law, the finding of unfitness of an accused cannot lead to the termination of proceedings. A termination is not a consequence that follows from a finding of unfitness. We've made submissions on this at

prior hearings, so I'll be very brief on this point. From the Statute and Rules of the ICC to the available international jurisprudence and, of course, the Law and Internal rules of the ECCC, there is no legal basis for a termination of proceedings in the event of unfitness.

The default position seems to be, if one -- if one can search for a common ground before -- between the various jurisdictions, is that proceedings are stayed and indictment is not withdrawn, the case is not terminated, but consideration is given to what, if any, measures are appropriate.

On this, I would note briefly that the Supreme Court Chamber appears to have arrived at the same conclusion; and that is found at paragraph 19 of the Decision of the 13th of December 2011.

Incidentally, the Chamber also considered whether, during a stay of proceedings, measures of compulsion can be ordered against an accused, and I think that goes to the question your Honours have asked.

[14.49.29]

And I'll go through a number of decisions at the international level which indicate that indeed measures of compulsion, if necessary, and appropriate, and proportionate, can be imposed.

I'll quote briefly from paragraph 25 of the Supreme Court Chamber's Decision -- more for the benefit of the public because I know Your Honours are familiar with this jurisprudence:

"Neither unfitness nor other serious obstacles to proceedings

remove from the court's realm the application of measures, including continued detention, aimed at securing the presence of the accused at trial."

Skipping one sentence: "Moreover, unconditional release seems only to be exceptionally applied on humanitarian grounds in cases of a par excellence terminal condition."

And I will slow down for the interpreters. I note I am a repeat offender.

One may then look at how international courts have dealt with situations comparable to this one.

[14.51.09]

In the case of Nahak, which of course we've looked at previously, as Your Honours are aware, the Court arrived at a finding similar to that which we propose is appropriate in this case, that an accused was unfit to stand trial. The Court suspended the preceding. Relevantly, in our submission, it did not relate that decision to any ongoing treatment or any foreseeable event that would lead to a resumption of the trial, but the Court, nevertheless, noted that a resumption may well be possible even -- even if remote, and the Court ordered a number of restrictive measures. Those measures are not set out in the decision itself; they're detailed in a separate earlier decision -- and I'll give the date of that document, for the record: it's dated the 17th of March 2004; it is available on the Internet. We're happy to provide a copy if parties or the Judges are unable to locate this

decision.
Other cases of relevance -- in the case of Kovacevic, at the ICTY, again there was a finding of unfitness to stand trial due to mental illness, and an order was made for a series of restrictive measures -- I should say it was an order for provisional release, of course, subject to a range of restrictive measures, including measures to protect the integrity of the proceedings, to protect the evidence, and essentially to ensure that the accused does not abscond.
[14.53.39]
Two more cases are relevant – again, ICTY decisions: Talic and Dukic. We've, I think, touched on these in the past, so I will not spend any great amount of time on them.
In Dukic, the accused was terminally ill, suffering from cancer. It was in fact the Prosecution that had applied to withdraw the indictment against General Dukic, and the Trial Chamber, in that case, refused that request. And, in addition to refusing that request and noting that a withdrawal of indictment – effectively, at termination of the proceedings -- is not permitted at the international level, the Court went on to impose a number of restrictive measures on the accused. The case was ultimately terminated by the Appeals Chamber on the 29th of May 1996, following the accused's death. And this would be one of the cases that, in our submission, reflect the approach taken by the Supreme Court Chamber to this issue.

[14.55.24]

And, lastly, Talic, another terminally ill accused. This decision was rendered on the 20th of September 2002. At page 5 -- this is in a section entitled "Application of the Law to the Facts" -- the Chamber noted that "there can be no doubt that Talic is suffering from an incurable and inoperable locally advanced carcinoma which presently is estimated to be at stage III-B with a rather unfavourable prognosis of survival even on short term". In this case, of course, Your Honours, the accused also passed away. But in provisionally releasing him, the ICTY Trial Chamber, again, imposed a range of restrictive measures -- in fact, quite an extensive range of restrictive measures.

Coming back to the issue of appropriateness and a legal basis for an application of restrictive measures--

Perhaps it may be useful if I refer first to the provisions of the Internal Rules which, in our submission, give Your Honours the power to order such measures. We submit that that power is contained in Rule 82, subrule 2, which provides that Your Honours "may, at any time during the proceedings, order the release of an Accused, or where necessary release on bail, or detain an Accused in accordance with these Internal Rules".

[14.57.37]

And we would submit that, by analogy, you would then turn to Rule 65, which deals with bail orders that can be issued by the Co-Investigating Judges. And that provision, in subrule 1, of

course provides that the Court may order release from detention on bail; it "shall specify whether a bail bond is payable" and, significantly, it may "impose such conditions as are necessary to [1] ensure the presence of the person during the proceedings and [2] the protection of others".

And that brings me be back to the issue of necessity and appropriateness of measures.

In a nutshell, we say, Your Honours, that for as long as the case before you is not terminated, even though the trial is suspended, there is always at least a theoretical possibility of a resumption of the trial. It is a theoretical and remote possibility, but it is one that, we submit, you can take into account. To give a simple and, perhaps, blunt example, we don't know currently of any cure to the disease that Ieng Thirith suffers from, but we equally don't know that a cure may well be found.

[14.59.48]

The essential reasons that we say you should continue to impose a limited set of conditions, perhaps, is threefold: these conditions would be necessary to ensure the Accused does not abscond, to ensure that she doesn't interfere with the proceedings which are in process, with the trial that is afoot, to ensure that the integrity of the proceedings as a whole is protected and that Your Honours continue to exercise judicial supervision over an individual who continues to be subject to an

indictment.

Now, I want to pause here and also stress that we are very much aware of the fact that a restriction of one's right to liberty is an exception; it is a restriction that should not be ordered lightly; it, of course, cannot be indefinite; it must be reasonable; and it must be proportionate to the aims sought to be achieved. I will set out the six conditions that we say would be appropriate.

Number 1, Ieng Thirith should be ordered to reside at a specified home address to be provided by her counsel to the Court.

Secondly, she should make herself available for a weekly safety check by the authorities or officials to be appointed by Your Honours.

[15.02.09]

Number 3, she should be required to surrender her passport and her identity card.

Number 4, she should be directed not to contact directly or indirectly the other co-accused, excluding her husband, Ieng Sary.

Number 5, she should be ordered not to contact directly or indirectly any witness, expert or victim who are -- who is proposed to be heard by the Court and also directed not to interfere in any way with the administration of justice before this Court.

Lastly, she should be ordered to undergo a medical examination by

medical practitioners to be appointed by the Court on a regular basis -- which we say would be every six months -- the first such examination to be undertaken in March 2013. That last condition will ensure that you're able to monitor the progress, deterioration or otherwise of Ieng Thirith's medical condition, and also it would ensure that Ieng Thirith is not facing an indefinite period of restriction of her right to liberty. [15.04.09]

Let me assure Your Honours we've taken great care and considered very carefully these conditions and, I should say, we started with a significantly longer list. We've -- we put forward this list of conditions which, we submit, are reasonable and not onerous and we respectfully ask Your Honours to impose them. One practical matter which arises is the enforcement of these -- of these rules by the Court. If we accept that Ieng Thirith suffers from a significant impairment of her memory and that she -- and that her cognitive abilities are reduced, then we must also accept that there will be a degree of difficulty on her part in complying with these conditions without some assistance. While this -- the modality of enforcement of these measures is obviously in Your Honours' discretion, one option of dealing with this issue or one potential solution is provided by the recently enacted Code of Civil Procedure which provides, in articles 24 and 28, for the appointment of a guardian or curator who can assist a person who is unable to recognize and understand the

legal consequences of their actions.

[15.06.36]

I should correct my reference to the code; it is the Civil Code of Cambodia, not the Code of Procedure.

Just returning briefly to the issue of continued imposition of these measures, the ICTY has commented in Talic that provisional release measures must be proportionate. And of course we know that, at the international level, detention cannot continue indefinitely, as I mentioned earlier, and of course there is an overriding right to a trial without undue delay.

And one might ask, looking at that last provision or the last right, which is enshrined in the ECCC Law in Article 35new: How do we ensure that? How do we continue to impose restrictive conditions on an individual who is not facing trial in the immediate future?

We would simple say, Your Honours, that we have not reached a time -- a point in time where an undue delay has occurred. Under the jurisprudence of the European Court of Human Rights and in the decisions of the Human Rights Committee and of international courts, there is extensive discussion of this issue. What is reasonable depends on the circumstances of a case; that must take into account: the complexity of the case; the diligence with which the Court has acted; the overall length of time.

[15.09.02]

As I bring my submissions to a close, we would say that this

Court has acted diligently. It has progressed this case, at each stage, with expedition; this, of course, includes this current phase. Your Honours have dealt expeditiously with the matter of fitness to stand trial. Ieng Thirith's rights have been protected at all times, and to the extent that she -- if Your Honours decide to release her from detention, her rights will be restricted less than they have been thus far.

We say that we have simply not reached a threshold where one could submit that an undue delay has taken place. Ultimately, Your Honours may revisit the issue, and an appropriate point in time may be at the conclusion of the proceedings in Case 002/02. That provides a definite point in time for Ieng Thirith at which she can expect a reconsideration of these conditions. And of course, under the Rules, she has the right to apply for a variation of the conditions or their termination should there be a change in the circumstances.

[15.10.37]

Those are my submissions. I would thank Your Honours for the time allocated to us, and again I would thank you for the diligence and professionalism with which the Chamber has dealt with this issue.

MR. PRESIDENT:

Judge Silvia Cartwright, you may now proceed.

JUDGE CARTWRIGHT:

Yes. Thank you, President. I have one or two questions, by way of

clarification, concerning the submissions made on behalf of the Co-Prosecutors.

I am assuming that the six conditions you would wish the Chamber to impose are in the category of bail conditions -- that is conditions on release.

I would like you to clarify: If the procedures in the civil -- Cambodian Civil Code were invoked and a guardian appointed, what possible sanctions could there be if the -- if the Accused did not comply with your conditions?

[15.12.03]

MR. ABDULHAK:

Well, Your Honours, ultimately, a -- we would argue that a failure to comply with an order of the Court can be dealt with under the Internal Rules -- can be dealt with under Rule 35 as an interference in the administration of justice. Obviously, in some jurisdictions, any breech of a Court order amounts to contempt of Court.

It is difficult for me to speculate in the absence of a - of a specific example, but any range of orders may be available, from warnings to directions, to a guardian - ultimately, perhaps, to a review of the conditions imposed, if that were considered appropriate.

JUDGE CARTWRIGHT:

So, on that topic still, the sanctions arguably would fall on the guardian rather than the Accused. Or, if they fell on the

Accused, it might logically lead to her being placed back in detention again, still with a diagnosis of unfitness to stand trial. Is that a fair summary of the prosecutors' position?

[15.13.34]

MR. ABDULHAK:

Thank you. Thank you, Your Honour. We don't take the view that that outcome necessarily follows.

The guardian takes over the legal interests of the Accused. If the guardian has made all reasonable efforts to comply with Your Honours' orders and if Ieng Thirith were to, independently -- independent of the guardian's advice and assistance, breech your orders, then Your Honours could consider what measures are appropriate.

We don't think that it would follow necessarily that she may be placed back in detention; you may consider more restrictive measures. We did not propose house arrest; you could consider the measure of house arrest. We proposed a requirement that she reside at a specific residence, but not necessarily that she be effectively detained in that residence.

[15.14.36]

And if I may add, in any event, I want to stress that we only see those measures continuing for as long as Your Honours consider them reasonable, and up to a point, and certainly before you consider that an undue delay would ensue if a trial were to take place.

JUDGE CARTWRIGHT:

So, you are suggesting consequences for Ieng Thirith if she fails to abide by the conditions, even though you have conceded that she does not have the mental capacity now to stand trial. So, it seems to me to be an absurd outcome because, if she were breeching conditions imposed on her, there can be no inference of a deliberate breech of those conditions, given her medical condition as you have conceded it.

MR. ABDULHAK:

Thank you, Your Honour. We wouldn't -- our submission would be that it does not turn on whether or not it's a deliberate breech and whether or not Your Honours want to exercise punitive measures, but rather what measures would then become necessary to safeguard the integrity of the proceedings.

[15.16.08]

By way of an example, if Ieng Thirith were to contact a witness, attempt to intimidate him or her into not giving evidence, then Your Honours could consider imposing a more restrictive regime, not because she did so deliberately, but perhaps because it is necessary to safeguard the integrity of the proceedings.

We do, of course, always have to act within the law, ultimately -- no measure can be inhumane or degrading -- but it's hard for me to speculate. I would say that it would depend on the circumstances of each situation if it were to arise.

I would add that, of course, the international tribunals have

imposed restrictive measures on accused who are suffering from mental impairments, so Your Honours would not be making such an order for the first time.

JUDGE CARTWRIGHT:

Can I look at a couple of your specific conditions that you -- you submitted are appropriate?

A weekly safety check -- who's safety, Ieng Thirith's or the public's?

MR. ABDULHAK:

It would be a check of both, I would suggest.

[15.17.35]

The ECCC Rules provide for an order of detention to protect the Accused, and by analogy the conditions on release can follow along similar lines. So, we would say you can order them to protect both her and the public, or more specifically witnesses or victims.

Of course, one -- one can recall that Ieng Thirith has exhibited aggressive behaviour on a number of occasions -- and we've heard that evidence consistently.

JUDGE CARTWRIGHT:

The other condition that you suggested that I'd like clarification on: a regular six-monthly medical examination. Are you proposing that this be a reprise of the expert opinion or, perhaps, that Professor Chak Thida would continue with her medical checks, the outcome of which may well be that she is

found suddenly to be fit to stand trial?

[15.18.48]

MR. ABDULHAK:

No, Your Honours, we are not suggesting those examinations to be performed for the purposes of a reassessment of fitness. If information were to come to light that changes the present circumstances, Your Honours can order such a reassessment. It is -- the purpose of this requirement is really in the interest of the Accused. She has benefited from ongoing medical treatment in the detention facility. It would assist her also -- and I think it would assist the Court in considering the reasonableness of a continuation of the measures at any point in time.

JUDGE CARTWRGHT:

And two final points -- and I hope the President will forgive me. One is the undue delay submission that you made. Of course, Ieng Thirith has been in detention for about four years now. You seem to favour her release. Do you consider -- there's two parts to my question.

Do you consider that any longer term of detention meets the other standards that other internationalized courts have imposed?

[15.20.14]

And, secondly, do you -- would you agree with a proposal for immediate release with conditions to follow? And I immediately emphasize that this is a question that I alone am asking; it has

not been discussed amongst my colleagues.

MR ABDULHAK:

I'm afraid, on the second question, Your Honours, equally I'm not authorized to respond; I would have to take instructions from the Co-Prosecutors.

My instructions at the moment is that a release should be conditional, and I take that to mean the conditions should be imposed at the time of the release. And certainly it is our view that these measures can be put in place expeditiously.

[15.21.08]

Coming back to your earlier question, whether a continuation or imposition of restrictive measures would meet international standards as set by the international tribunals, Your Honours would be familiar with the fact that accused before the ICTY and the ICT are often held in detention for periods of time well in excess of that for which Ieng Thirith has been detained. I'm sorry that I am unable to cite cases or provide statistics off the top of my head, but I'm prepared to provide those in due course if you so wish. I can recall certainly cases ranging from five to 10 years at the international tribunals.

And I would recall that, of course, Ieng Thirith's detention would cease within less than five years if she were to be released now. The measures that we're proposing are significantly less restrictive.

JUDGE CARTWRIGHT:

Thank you, President, for allowing me that time to seek clarification of the prosecutors' submissions.

[15.22.26]

MR. PRESIDENT:

Thank you.

Next, we would like to proceed to Co-Lead Lawyers (sic) for the civil parties to make their closing arguments. They may now proceed.

MR. PICH ANG:

Thank you, Mr. President and Your Honours and everyone in this courtroom and the public, including the civil parties. I am now raising a few points concerning the closing statement, and my colleague, Ms. Élisabeth Simonneau-Fort, will add on top of what I stated.

Your Honours, we have already discussed at length concerning the tests that had been administered by the experts and Dr. Chak Thida. We also discussed the regime of the assessments and how Ms. Ieng Thirith's behaviour was assessed.

[15.23.47]

I would like to pinpoint in particular to the approach in putting questions to Ms. Ieng Thirith. The international standardized tests were used by Mr. Seena Fazel and Professor John Campbell, and they were both of the opinion that such tests would not be allowed to modified (sic). However, Dr. Huot Lina said that the tests could be modified if the doctors had discussed about the

modification of the test before it could be administered. The international experts said that the test could not be modified. However, one of the doctors said that he tried to modify the test.

My question is: How strict the test would -- could have been, or could it be modified or not, if the experts themselves also are not consistent in that?

If we talk about Cambodian context and culture, to communicate with people or patients or to be able for foreign nationals to understand our cultures, they could have been familiar and studied the language, at some point, and the cultures to establish this kind of understanding before they could properly administer any test on any Cambodian. But the professors or doctors were not fully informed of these.

[15.26.15]

And Ms. Ieng Thirith used to be highly educated and she also was involved in leading the radio station during the Khmer Rouge regime. She, at times, could easily manipulate her responses to fit her needs. For that, the three experts also had to take into account these specifications and they should have modified the questions to suit these circumstances. In the contrary, the experts did not try to modify the test to establish whether Ms. Ieng Thirith was feigning.

With regard to Dr. Chak Thida, although she is not as highly educated as the other two professors -- Professor Campbell and

Fazel -- her experience is plausible enough, and that (sic) she has been fully familiar with the Cambodian culture and traditions, and she has been treating patients of that kind for several years, and she is the best person who can understand Cambodian patients, as she is Cambodian herself. But this was missed in the part of the preparation for the international doctors-experts, and this omission would also impact on the findings of the international experts.

[15.28.38]

And we were talking about the slamming of the door by Ms. Ieng Thirith using her crutch, her urinary incontinence, and we heard the experts talked in particular about the feeling that somebody could have been hiding in Ieng Thirith's mosquito net. So, we could see that language in communicating with the patient at that time plays a significant role in the findings itself (sic) and it has to be assessed properly. And we already experienced this problem when the term "dementia" was not properly interpreted and corrected by Professor Huot Lina. So, when the communication had to go through interpreting, we can call into question the result of the finding. And even in our Penal Code, the terms in Khmer could be divided and not in harmony. Or, in other words, the Khmer terms for "dementia" are not fully agreed across the board. And for that reason the problem in translating or interpreting the language for communicating with the patient had to be very carefully reassessed.

And when the experts came to visit Ms. Ieng Thirith, they were all male doctors, and the environment was not friendly enough for Ms. Ieng Thirith to cooperate. And she felt friendly and more comfortable when she was interviewed by Dr. Chak Thida.

[15.31.33]

We talked to the civil parties who observed the proceedings, about 40 civil parties who were in agreement with the method applied by Professor Chak Thida because they were also of the opinion that the tests administered on Ms. Ieng Thirith by Professor Chak Thida was suitable and the test was amended to suit the situation in Cambodian context.

So we would like to submit that there should be a group of doctors where there would be more women doctors than men to administer tests on Madam Ieng Thirith because only women doctors who understood Cambodian culture and tradition would be able to establish good relations with the patient.

And, finally, we submit that more experts should be appointed to reassess her condition.

Mr. President and Your Honours, I now conclude my statement and I would like to cede the floor to my colleague.

[15.33.28]

MS. SIMONNEAU-FORT:

Mr. President, Your Honours, esteemed colleagues, and all those present in the courtroom, I think you will surmise that the position of the civil parties is rather complicated. In fact, it

is always the case in a trial of this nature, given the complexity of the facts. Nevertheless, I shall endeavour to answer the questions that have been put forward by Your Honours. To begin, I believe that you have already heard the comments of Mr. Pich Ang, who has recommended the appointment of new experts. I believe that our answer to that question is abundantly clear. Perhaps there is a reason to examine fitness, and the civil parties would request the appointment of new experts to provide expertise that would then be appreciated by Your Honours.

With respect to detention, in the scenario that Ms. Ieng Thirith be found once again unfit to stand trial, without betraying the position of the civil parties and the rights that are to be enjoyed by the civil parties, I wish to say at the outset that, by allowing for civil party participation, the Extraordinary Chambers have endowed them with rights to be full-fledged parties to this trial.

[15.35.32]

Does it come as a surprise to anyone when I state that the civil parties -- and I'm talking about the consolidated group and our clients -- have a very deep conviction and desire to see this trial come to a conclusion, to have all four Accused be - be tried, and to arrive at a guilty verdict, and that this Court should do its level best to arrive at such a judgement. Nevertheless, I would indicate that, on behalf of the civil parties and as Lead Co-Lawyer, the civil parties would agree that

the rule of a fair trial be applied and that this be enforced with respect to national and international rules. The civil parties cannot heed any decision that does not fully respect all of their rights.

The civil parties, obviously, cannot speak to the medical information that is provided by the experts. But with respect to the second question, it is clear that the civil parties do not wish to see the violation of any of the parties' rights.

In response to your third question with respect to additional measures to be implemented should the Chamber declare the release of the Accused, we fully subscribe to the position of the Co-Prosecutors. I can state very clearly that the civil parties who are present here would like to see those measures ordered.

[15.38.04]

With respect to the legal position of the lawyers, I would defer to the Chamber's decision, which shall apply all international criteria.

I hope I have sufficiently answered all of the questions posed by the Chamber and would simply add one final comment to convey the perspective of civil parties.

Regardless of the final decision to be rendered by the Chamber, whether detention be maintained, or whether a new panel of experts be appointed, or if the Accused be released, or if measures are ordered, regardless of the decision to be rendered, it is very important that Your Honours provide very clear

explanations to the civil parties with respect to the findings that you will reach as well as the basis on which your decisions are founded.

[15.39.26]

I speak on behalf of approximately 4,000 civil parties and on behalf of all the victims. It is only if the Chamber is able to fully explain the foundation and basis of its decision that the civil parties will be left with the impression that their rights will have been respected and that they will be in a position to understand this finding of justice to which they have taken part. Those are the comments I sought to convey. The civil parties will defer entirely to the Trial Chamber and have full confidence in the decision that it will reach. I thank you, Your Honours.

MR. PRESIDENT:

Thank you.

Next, I hand over to the defence team for Ms. Ieng Thirith. You may proceed with your closing statement.

MR. PHAT POUV SEANG:

Good afternoon, Mr. President, Your Honours. My name is Phat Pouv Seang. I am the national defence counsel for Ms. Ieng Thirith. I would like to now make a final statement concerning her mental status and fitness to stand trial before we close the hearing.

[15.41.20]

After listening to the closing statements by both the Prosecution and the Civil Party Lead Co-Lawyers, I am of the opinion that the

requests made by the Civil Party Lead Co-Lawyers were not acceptable because they are requesting another team of experts to reassess the mental status of Ms. Ieng Thirith once again. But if I understand correctly, this team of experts was the fourth team of its kind: the first one was conducted by Dr. Ka Sunbaunat and Professor Brinded; and the second time of which was conducted by Professor Campbell; and the third assessment was conducted by Dr. Koeut Chhunly, Huot Lina, and Seena Fazel; and, fourth, this assessment -- the reassessment, was conducted jointly by Professor Campbell, Dr. Seena Fazel, and Dr. Huot Lina. So this was the fourth time already that we conducted assessment on the mental health status of Mr. - of Ms. Ieng Thirith in line with the standards of the World Health Organization.

[15.43.06]

For example, the experts have administered standard tests, including the MMSE test. So, this test was administered properly, and I don't think that there is any reason to delay any proceedings any further by appointing another team of experts.

Secondly, the Civil Party Lead Co-Lawyers also mentioned the report by Dr. Chak Thida. I do not understand why the Civil Party Lead Co-Lawyer was making this request because, if you compare the two reports -- one being prepared by the experts and practitioners in the field who had both academic qualifications and practical experience for many years, and they also had a report by the physiotherapist from Singapore - they also -- it

also corroborates with the report of the expert, whereas the report by Dr. Chak Thida was not appropriate, and there were a lot of shortcomings.

In addition, she prepared report based on the information from the nurses who reported to her regularly. So, if she relied on the reports of the nurses, her report was not good enough; it was not grounded. So, if the information was merely taken from the nurses, there was no substantial ground to support the accuracy of her report.

[15.45.01]

And, in addition, we ask Dr. Chak Thida whether or not she smelled anything bad - the bad odour from her room when she visited Ms. Ieng Thirith there. She said that she did not smell anything, but actually that was completely wrong because even the women guards who, from time-to-time, take Ms. Ieng Thirith to the toilet, she -- they mentioned very clearly that twice or three times a week they had to have her carpets or have her mattress and other stuff in the room to get them clean. So, the situation was deteriorating and it is getting degenerative. So, that situation was obvious, but it was strange when Dr. Chak Thida said that she did not smell anything bad in the room of Ms. Ieng Thirith.

[15.46.01]

And the third idea raised by the Civil Party Lead Co-Lawyers concerning the female doctors who were supposed to attend to the

female patient, that is not really the case. I don't find it convincing enough. You know, even when the ladies deliver babies, sometimes they also have the doctors who help the pregnant women deliver the baby as well. So there is no difference whether or not the physicians are male or female, but what is important is their practice, particularly their experience in relation to the psychiatric expertise. And I think that on that particular point the expert has already explained very clearly.

Now, in response to the statements made by the Prosecution, they have raised six points in relation to the condition for -- if any release order was handed down by the Chamber.

[15.47.47]

The Prosecution requests that the accused Ieng Thirith -- the Co-Prosecutor, actually, would like her release on condition, but we feel that she would be under much pressure if she's still under constant watch under this kind of conditional release, so we submit that our client shall be released unconditionally and that we should allow her family members to take good care of her after this. And we believe that her family members could also help to ensure that her health is not seriously deteriorating after she is being released.

I thank you very much indeed and I conclude my statement. I would like to cede over the floor to my colleague.

MS. ELLIS:

May it please you, Mr. President, Your Honours, as you appreciate

from what has been said on behalf of Ieng Thirith, our answers to the three questions, in essence, are:

Firstly, there should be confirmation of the decision reached last year, not contested by the prosecutors, that Ieng Thirith is unfit. In the light of the evidence given in this hearing, she is unfit to plead, at this stage, and also unfit to stand trial. [15.49.56]

In answer to the second question, her detention should therefore cease, and she should be released from the detention facility without any conditions remaining. We submit that there is no longer any legal basis for her detention or release subject to conditions.

If I could just briefly develop each of those three points.

The Co-Investigating Judges put in motion the inquiry and examination of the mental health of Ieng Thirith. That proceeded on the basis of information they had from the detention centre as to the nature of her behaviour, which was changing.

As a result of that decision by the Co-Investigating Judges, she was deemed to be suffering from a mild cognitive impairment after an examination by Professor Ka, Cambodian, and the international doctor, Brinded, and that was in November 2009.

By 2011, there had been an apparent deterioration in her behaviour and cognitive functioning. The Defence, in February 2011, expressed their concern and requested that she should be examined as to her fitness to stand trial. Three days after,

Professor Chak Thida was brought in as her doctor.

[15.52.19]

And the Court is very familiar with what has happened thereafter. Professor Campbell, who is extremely experienced -- and we examined the extent of his knowledge, expertise, and reputation world-wide on the last occasion when we looked into the question of Ieng Thirith's mental state -- he found her last year to be suffering, as he believed, from Alzheimer's disease.

The Trial Chamber, encouraged by all parties, brought in a number of other experts, all considered to have sufficient knowledge, some greater than others, to make the necessary assessment. The conclusion last year was that she was unfit to stand trial, and that was unchallenged by the prosecutor in any meaningful way.

[15.53.33]

As a result of the decision of the Higher Court, there has been a significant and impressive input into her medical treatment to see whether it is possible to render her in a better cognitive state, and that has failed in spite of a lengthy period on appropriate medication and in spite of quite intensive therapy from trained nurses, people from Cambodia who have formed good relationships with her. She, sadly, is one of the two-thirds who do not respond to any form of treatment.

As a result, further assessments at the beginning of this year and now this week have caused the doctors to conclude that she suffers from moderate to severe dementia, that she is cognitively

impaired to the extent that she cannot exercise her fair trial rights; she cannot meaningfully participate in her own trial. And the doctors, all now very familiar with the Strugar standard and the capacities, have found she is unable to meaningfully participate in any aspect of her trial, and therefore can't exercise her fair trial rights, and therefore clearly cannot participate in a trial which is to be viewed as a fair trial. [15.55.38]

The nature of her condition is such that she cannot respond to treatment and she cannot improve with or without treatment. And that, as we heard this afternoon, is because her brain cells which are used in her cognitive functioning are no longer there; they have died and, as the doctors informed you on the last occasion, they cannot be regenerated as is the case with some bodily cells. As a result, it matters not how long anyone waits, Ieng Thirith will simply deteriorate further. She will never get better and she will not remain stable.

No doubt in years to come there will be medication or other methods of stem cell research which make the situation different, but we all know that any drug has to be tested at length over years, and therefore the speculation that something might happen in her lifetime is no more than that, is unfounded in any available material. There is nothing that has been put before you, Mr. President and Your Honours, to indicate that at any time in the near future we are likely to have any medicational form of

treatment that is going to alter the current situation. And, therefore, we submit that to do justice to the evidence in this case, the time has come to confirm that she is not in a position to be tried and will never be so. And hence the decision previously made should be confirmed. The evidence not only confirms it, but, indeed, makes it even more clear that that was the right decision that was taken last year.

[15.58.12]

To move on to develop the second point -- it links of course in with the first -- once it is apparent that it is not possible, due to the mental state of Ieng Thirith, for her to participate in a trial now or in the future, there can be no justification for her further detention.

To remind the Trial Chamber of Article 5 of the ECHR, which guarantees the right to liberty of all persons, the Supreme Court has recognized the significance of that right and has concluded that the International Rules of this Court and the provisions of the Cambodian Code of Procedure must be read in the light of that right to liberty. That right to liberty is a fundamental right. It is closely linked to the presumption of innocence, which of course is one of the guaranteed rights under ECCC law and set out at Rule 21 of the Internal Rules.

[16.00.00]

And therefore, if there is a presumption of innocence and a right to liberty, that right is only replaced by detention in

circumstances which justify it. And that is why, under Rule 63 of the Internal Rules, is set out the factors to be considered and the manner in which provisional detention should be exercised. And the provisions of Rule 68 allow for provisional detention to continue once the Closing Order has been made and any appeal period has expired.

But fundamental to these provisions is the need to ensure that the attendance of the charged person who becomes the suspect -- the Accused -- is insured for the trial process. Any person who can be trusted to be at liberty remains at liberty, albeit sometimes subject to conditions.

[16.01.36]

Ieng Thirith was not granted her liberty subject to conditions back in November 2007 because the Co-Investigating Judges, and confirmed by the Pre-Trial Chamber, took the view that she was at risk of non-attendance if granted freedom, that there might be interference with witnesses, which was a risk particularly once details of the case file became apparent, and that there might be some public disorder were she not to be detained. But the thrust of the provisions is to ensure that the individual concerned is present at the trial when it takes place. And therefore, if, as the reality must be, there is to be no trial, then, clearly, any detention would be entirely without foundation and unlawful.

Of course, question 3 follows on from that because to impose conditions on any individual presupposes that they are, without

those conditions, going to fail to attend their trial. That is the purpose for which a Trial Chamber, if it considers provisional release to be appropriate, will impose conditions. They all have in mind preserving the integrity of the evidence, ensuring there's no interference with witnesses, which might otherwise work to the advantage of the person who is to stand trial, and, most significantly, guaranteeing the attendance of that individual.

[16.03.56]

And, therefore, for the prosecutor to propose that there are six conditions makes no factual sense in the circumstances and is without any legal authority that we can find. It is particularly difficult to comprehend the application for conditions of this nature against a background where the prosecutors have accepted that she is unfit to stand trial and accept that she should not be held in detention.

We have looked for any authorities which can assist the Trial Chamber in this respect. And perhaps a case of relevance and significance that we would cite is that of Brdjanin and Talic, which is a case from the International Criminal Tribunal for Former Yugoslavia, and its decision on a motion for provisional release of September 2002.

And in that case of particular significance, the Trial Chamber said that when assessing whether an accused should be released, the Trial Chamber "must focus on the concrete situation of the

individual applicant and consequently […] the provision [on provisional release] cannot be applied in abstracto, but must be applied with regard to the factual basis of the particular case". [16.06.05]

And in that instance, the Trial Chamber went on to hold that a procedural measure "should never be capricious or excessive. [And] if it is sufficient to use a more lenient measure, [then] that […] must be applied".

And the Court urged that weight should be attached to the presumption of innocence, the individual facts of the case, and the principle of proportionality and that it was important to ensure the reputation of the tribunal was upheld.

The Trial Chamber, in that case, held that after balancing the public interest, which included "the interest of victims and witnesses who have agreed to [cooperated] with the Prosecution, and the right of […] detainees to be treated in a humane manner in accordance with the fundamental principles of respect for their inherent dignity and of the presumption of innocence, that it was convinced that the accused should be released with regard to the reality of his medical condition.

And the Trial Chamber went on to say:

"There can be no doubt that when the medical condition of the accused is such as to become incompatible with a state of continued detention, it is the duty of this Tribunal and any court or tribunal to intervene […] on the basis of humanitarian

law [and] provide the necessary remedies."

[16.07.57]

And in that case, in due course, the accused was unconditionally released.

In the case of Kovacevic, where, again, the issue of his mental condition was raised, he had conditions imposed. He was sent back to the Former Yugoslavia, and, most significantly, it was not accepted by the ICTY Trial Chamber that, in fact, he had deteriorated to such an extent that the proceedings would not be able to be resumed. And, again, the same applied in respect of Talic.

Those cases that have been cited by the prosecutor, where there has been conditional release, are cases where, in spite of there being sometimes terminal illnesses, that of itself has not been seen as sufficient to conclude there cannot be a trial. There is nothing that stops somebody who is terminally ill from necessarily being able to plead and stand trial, so they can be distinguished on the facts, but where in a situation that somebody is on the verge of death, the Court has at times determined that for humanitarian reasons they should be unconditionally released.

[16.09.44]

What we submit in this case is that the proper approach is to look at the humanitarian law considerations, to look at the reality of the situation, and to appreciate that Ieng Thirith

does not at this stage need conditions, there is no legal basis to impose conditions, and her release should be unconditional so that she is in a position to return to live with her family, where she can be cared for in the most appropriate way.

Anyone who has been in this Court for the last two days and listened to the evidence that has been given by the experts must have difficulty in considering the six proposed conditions of the prosecutor and understanding how they have any sense in the context of what is now fully understood about the cognitive functioning and behaviour of Ieng Thirith.

We are of course, if I can say in concluding, mindful of the concerns of the civil parties and of the victims in this case, but the overriding responsibility of this Trial Chamber, we submit, is to act in accordance with fair trial procedures, recognized international humanitarian law, and to prohibit the imposition of any condition which would be contrary to sense or law and is without a legal foundation.

[16.12.00]

So, those are our submissions. Thank you.

MR. PRESIDENT:

Thank you, Counsel.

International Co-Prosecutor, you may now proceed.

MR. ABDULHAK:

Thank you, Mr. President, I'll be extremely brief.

I was listening carefully to my learned friend's detailed

submissions. We both referred to a number of decisions. I'm unable to identify the decisions that she made reference to. I will distribute through the senior legal officer all of the decisions that I cited, and perhaps, if my learned friend could do the same so that's -- we know which decisions she's referring to when she talks about unconditional release. Thank you.

[16.12.54]

MS. ELLIS:

Mr. President, we will certainly do that.

MR. PRESIDENT:

We thank you very much indeed.

The session now comes to an end.

As the President and on behalf of the Trial Chamber, I am very grateful for your inputs during the course of this hearing. And again, on behalf of my fellow Judges of the Trial Chamber, I would like to thank the Co-Prosecutors, co-counsels for the Accused, co-counsels for the civil parties, and personnel of units, sections of the administration, security personnel, detention facility guards, TC staff members, and the interpreters for their support without which this hearing could not have been successful.

[16.14.09]

After this, the Trial Chamber will render a decision concerning Ms. Ieng Thirith's fitness to stand trial in due course.

I now declare the hearing closed.

Security personnel are now instructed to bring Ms. Ieng Thirith and Mr. Ieng Sary back to the detention facility.

The Court is adjourned.

THE GREFFIER:

(No interpretation)

(Court adjourns at 1614H)