

## Ailing leng Sary a no-show at court

Written by  
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In what is becoming something of a pattern at the tribunal, leng Sary was unable to participate in his [appeal hearing today](#) due to ill health. As a result, judges adjourned court at mid-day and have scheduled another hearing arguing the extension of leng Sary's provisional detention for April 2.

In June, the [first day of an appeal hearing](#) for leng Sary ended early when the defendant said he did not have the strength to continue. At that time, he complained of dizziness, fatigue and intermittent coughing.

Today, according to an early morning report from the detention center's doctor, leng Sary was not well enough to appear in court at all. The 83-year-old had been rushed to Calmette Hospital Monday evening after passing blood in his urine and returned to the ECCC Wednesday afternoon. Court officials would not specify the symptoms that kept leng Sary out of court on Thursday.

As happened in June, the defendant insisted his lawyers not move forward with appeal arguments until he could appear in court.

This puts the court in an uncomfortable situation. Given the age of defendants such as leng Sary, there is obvious pressure for proceedings to move forward expeditiously. Yet the court cannot do so if a defendant is too ill to attend hearings and refuses to allow his lawyers to argue

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the case without him.

Civil party lawyer Silke Studzinsky tried to suggest a compromise: Perhaps leng Sary could participate in the hearing via VideoLink?

But defense lawyer Michael Karnavas called this idea "utter nonsense."

In his condition, the defendant could be "drugged up" and "hardly know where he is," Karnavas responded. This would not qualify as participation and would amount to "a trial in absentia," he added at a press conference following the hearing.

Naturally, different parties are contesting how sick leng Sary really is.

Karnavas said his client is taking numerous medications and requires additional medical and psychological testing. (His request to allow leng Sary's doctors to appear before the court [was rejected Monday](#) .)

But civil party lawyer David Blackman accused leng Sary of "using the mask of health to hide his misdeeds."

"We all agree that the defendant is an old man and suffering conditions all old men suffer from," he continued. Medical expert testimony is not needed to tell the court "his blood pressure may rise when confronted with his atrocities."

Karnavas claimed, however, that the court does not have a comprehensive picture of his client's health. Even he has not been able to acquire all of leng Sary's medical records and apparently the defendant's doctors are not allowed to disclose much information.

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A committee of doctors at Calmette appointed by the government oversees Ieng Sary's treatment; thus, the detention center's doctor "answers to, not the tribunal, not the Pre-Trial Chamber ... but he answers to the committee," Karnavas said.

And generally his answer to anyone else is "no comment."

Moreover, Karnavas explained in the press conference that he is not allowed to communicate with his client when he is in the hospital. A guard from the Ministry of Interior stands outside Ieng Sary's room and has been instructed not to let lawyers visit -- even though the Co-Investigating Judges have approved such visitation, Karnavas said.

Although his request to have [ICTY Dr. Paulus Falke](#) testify via VideoLink was denied, Karnavas told journalists he will continue to push for additional evaluations and access to Ieng Sary's medical records.

The ailing defendant may not be well enough to remain in detention, or even to stand trial, he said.

Delaying a decision on such matters will ultimately damage not only the defendant's health, but also the tribunal's legitimacy, he argued. Underneath all the legal wrangling, "we have a live human being here ... and [the judges] control him."

*\* Pictured: Attorney Michael Karnavas discusses his client's health with journalists Thursday at the Khmer Rouge Tribunal.*