



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Date: 10 October 2011
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SCHEDULING ORDER FOR HEARINGS OF 19 AND 20 OCTOBER 2011

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Defence
SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
PHAT PouV Seang
Diana ELLIS
SA Sovan
Jaques VERGÈS

THE TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

BEING SEISED of Case File No. 002/19-09-2007-ECCC/TC pursuant to the Decisions on Appeal Against the Closing Order by IENG Sary, IENG Thirith, NUON Chea and KHIEU Samphan, rendered by the Pre-Trial Chamber on 13 January 2011;¹

CONSIDERING the Trial Chamber’s Orders inviting the Civil Party Lead Co-Lawyers, in accordance with Internal Rules 80*bis* (4) and 23*quinqüies* (3)(b), to provide initial specifications of the substance of the reparations awards they intend to seek within their final claim for collective and moral reparation;²

NOTING the invitation to the Civil Party Lead Co-Lawyers of 23 September 2011 to supplement, update and, where necessary, remedy the initial specifications provided at the Initial Hearing;³

HEREBY schedules a hearing on Wednesday 19 October 2011 to permit the Civil Party Lead Co-Lawyers to present their revised reparations specifications;

FURTHER NOTING the request filed by the Defence for Accused IENG Thirith on 21 February 2011 for an assessment of the Accused’s medical fitness to stand trial;⁴

CONSIDERING the report dated 23 July 2011 by Professor A. John CAMPBELL, an expert geriatrician appointed by the Trial Chamber on 4 April 2011, his conclusion that the Accused IENG Thirith suffers cognitive impairment compromising her ability to participate fully in her trial and to exercise her fair trial rights, and his consequential recommendations;⁵

NOTING the Trial Chamber’s consequential Order appointing Assistant Professor Dr. Lina HUOT, Psychiatrist; Assistant Professor Dr. Chhunly KOEUT, Psychiatrist; Dr. Seena FAZEL, Forensic Psychiatrist, and Dr. Calvin FONES SOON LENG, Consultant Psychiatrist

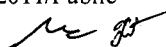
¹ Decision on Ieng Sary’s Appeal Against the Closing Order, 13 January 2011, D427/1/26; Decision on Ieng Thirith’s and Nuon Chea’s Appeals Against the Closing Order, 13 January 2011, D427/2/12; Decision on Khieu Samphan’s Appeal Against the Closing Order, 13 January 2011, D427/4/14; and Decision on Ieng Sary’s Appeal Against the Closing Order’s Extension of his Provisional Detention, 13 January 2011, D427/5/9.

² Scheduling of Initial Hearing of Case 002, E86, 11 May 2011; *see also* Agenda for Initial Hearing from 27th to 30th June 2011, E86/1, 14 June 2011 and T., 29 June 2011 (Initial Hearing), pp. 92-112.

³ Trial Chamber Memorandum Entitled “Initial Specification of the Substance of Reparations Awards Sought by the Civil Party Lead-Co-Lawyers pursuant to Internal Rule 23*quinqüies* (3)”, E125, 23 September 2011.

⁴ Request for Appointment of a Neuropsychiatrist to Assess Madame Ieng Thirith’s Fitness to Stand Trial with Attachment, Annexes and Strictly Confidential Annex D Containing Privileged Information (IENG Thirith), E52, 21 February 2011; *see also* Co-Prosecutors’ Response to IENG Thirith’s Request for Appointment of a Neuropsychiatrist, E52/1, 1 March 2011.

⁵ Order Assigning Expert, E62/3, 4 April 2011; Geriatric expert report of IENG Thirith dated on 23 June 2011 in response to Trial Chamber’s Order Assigning Expert – E62/3, E62/3/6, 23 July 2011; *see also* T., 29-30 August 2011 (Preliminary Hearing on Fitness to Stand Trial).



("Psychiatric Experts") to supplement the conclusions reached by Professor CAMPBELL concerning the Accused IENG Thirith's cognitive impairment, and to provide specialist psychiatric expertise to the Chamber to enable it to determine her fitness to stand trial;⁶

FURTHER NOTING the submission by the Psychiatric Experts of their Report on 10 October 2011 (E111/8);⁷

HEREBY schedules a hearing, commencing on Wednesday 19 October 2011 and continuing on the subsequent day, if required, to permit questioning of the Psychiatric Experts by the Chamber and the parties, in addition to adversarial argument by the IENG Thirith Defence, the Co-Prosecutors and the Civil Party Lead Co-Lawyers in relation to the conclusions of the Psychiatric Experts' Report concerning the Accused IENG Thirith's fitness to stand trial; and

PROVIDES the following additional information to the parties and the public regarding the modalities for the conduct of both hearings:

Hearing on Specification of Civil Party Reparations Awards and Accused IENG Thirith's Fitness to Stand Trial, 19-20 October 2011

The hearing in relation to the Civil Party Lead Co-Lawyers' presentation of their reparations submissions shall be public and will commence on 19 October 2011 at 9.00 a.m. in the ECCC Main Courtroom. The Civil Party Lead Co-lawyers will be allocated 3 hours for this purpose. As was the case during the Initial Hearing reparations submissions, all parties are entitled to attend this hearing.

Upon the conclusion of the Lead Co-Lawyers' submissions, the Chamber will proceed to consider via a separate hearing the Accused IENG Thirith's fitness to stand trial. The Trial Chamber will commence by questioning the Psychiatric Experts and will then permit these Experts to be questioned by the parties. The Chamber will also hear oral argument concerning the appropriate legal standard to be applied in determining the Accused IENG Thirith's fitness to stand trial, if sought by the parties. This hearing shall commence at 1.30 p.m. on 19 October 2011 in the ECCC Main Courtroom and continue over the following day, if required.

In accordance with Internal Rule 79(6), this hearing will be presumptively public and conducted to the maximum extent possible in open session. The Chamber has, however, already indicated a need to balance the rights of the Accused to privacy concerning medical information, against the public's right to know the basis on which an application on fitness to stand trial will be determined (E62/3/10). The hearing on Accused IENG Thirith's fitness to stand trial will in consequence commence in open session. Where any party considers there to be a need to proceed only in closed session, an oral motion may be made to the Chamber.

⁶ Order appointing experts, E111, 23 August 2011; *see also* Co-prosecutors' Questions and Comments for Psychiatric Experts Regarding Accused IENG Thirith, E111/2, 2 September 2011; IENG Thirith Defence Question and Comments for Experts in Accordance with Trial Chamber's "Order Appointing Experts", E111/3, 2 September 2011; Memorandum Entitled: "Clarification of Extent of the Experts' Report Requested pursuant to E111 in the light of Defence Questions (E111/3)", E111/4, 6 September 2011.

⁷ Expertise Report Prepared in Response to the Trial Chamber's Expertise Order Document Number E111, dated 23 August 2011, E111/8, 10 October 2011.



These applications will be heard in open session and granted by the Chamber where it considers the interests of justice to so require.

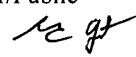
On 10 October 2011, the English version of the Psychiatric Experts' Report was communicated to the parties on a strictly confidential basis, pending ultimate determination by the Chamber of its classification (E111/8). The Khmer and French versions of this Report will be similarly notified as soon as possible and prior to the hearing.

To ensure the expeditiousness of these proceedings, all parties shall each be represented by no more than four lawyers at any one time (two national and two international). Other Defence teams and Civil Parties are not required to be at the Accused IENG Thirith's fitness hearing, but may attend all public portions of this hearing if they so wish. Should any other Defence team wish at this hearing to be heard on question (iv) posed by the Chamber (below), they are requested to inform the Trial Chamber Senior Legal Officer as soon as possible.

The Chamber clarifies that the purpose of the hearing concerning Accused IENG Thirith's fitness to stand trial is consideration of the issues arising specifically from the Psychiatric Experts' report when read together with Professor CAMPBELL's earlier report, and is intended to grant the relevant parties the opportunity for adversarial argument in relation to them. The Chamber considers the following questions to be relevant to its determination of the Accused's fitness to stand trial and invites the parties to specifically address them during oral argument:

- i. May an accused be considered mentally unfit to stand trial if any one of the criteria for this determination identified in *Strugar* is found to be lacking, or must all criteria instead be viewed together when making this assessment?⁸
- ii. Does the Accused IENG Thirith's impaired memory as identified by both Professor CAMPBELL and the Psychiatric Experts render her unable to exercise her fair trial rights to the standard required by the *Strugar* test?
- iii. Does the degree of impairment identified by Professor CAMPBELL and the Psychiatric Experts in relation to the Accused IENG Thirith's capacity to a) enter a plea, b) instruct counsel, c) testify, and d) understand the nature of the charges, course of the proceedings, details of the evidence and consequences of the proceedings indicate that she is unfit to stand trial, taking account of the fact that the Accused is represented and thus able to some extent to exercise these rights through counsel?
- iv. As found by the Experts, the nature of the Accused IENG Thirith's condition is degenerative and may entail ongoing delays to the proceedings due, for example, to the need for additional or ongoing medical testing or day-to-day fluctuations in her condition. Given the impact of these factors on the rights of the other Accused to an expeditious trial and the likely overall lengthening of proceedings in Case 002, do the parties consider it to be in the interests of justice that the Accused IENG Thirith be severed from these proceedings pursuant to Internal Rule 89ter

⁸ See *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision re Defence Motion to Terminate Proceedings, Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia, 26 May 2004, para. 36 and *Prosecutor v. Strugar*, Judgment, ICTY Appeals Chamber (IT-01-42-A), 17 July 2008, para. 55 cf. *Deputy General Prosecutor for Serious Crimes v. Josep Nahak*, Case No. 01A/2004, Findings and Order on Defendant Nahak's Competence to Stand Trial, Special Panel for Serious Crimes (Timor-Leste), 1 March 2005, para. 56.



(as an alternative to termination of the proceedings against her in the event of a finding of unfitness to stand trial)?

- v. What consequences for the Accused IENG Thirith would stem from a severance order pursuant to this Rule?

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Phnom Penh, 10 October 2011
President of the Trial Chamber



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Nil Nonn

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