

E138/1/7/1

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ពេលវេលា (Time/Heure) :15:30.....	
និមិត្តរូបបន្តករសំណុំរឿង /Case File Officer/L'agent chargé du dossier:.....SANN RADA.....	



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

Kingdom of Cambodia
Nation Religion King
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TRIAL CHAMBER

Date: 6 January 2012

TO: Professor A. John Campbell (Expert appointed pursuant to Trial Chamber Order E62/3);

Drs. Huot Lina, Koeut Chhunly, Seena Fazel and Calvin Fones Soon Leng (Experts appointed pursuant to Trial Chamber Order E11/1)

FROM: Judge NIL Nonn, Trial Chamber President

**Cc: All Trial Chamber Judges;
Trial Chamber Senior Legal Officer;
Office of Administration**



SUBJECT: Request to Trial Chamber Experts following Supreme Court Chamber Decision on appeal against Accused IENG Thirith's release (E138/1/7)

1. On 13 December 2011, the Supreme Court Chamber rendered its decision on the appeal by the Co-Prosecutors against the Trial Chamber's order to release the Accused IENG Thirith following the Trial Chamber's earlier determination that she was unfit to stand trial ("SCC Decision"). The SCC Decision, which is attached along with the Trial Chamber's original decision, set aside the Trial Chamber's order to release the Accused from the ECCC Detention Facility and directed the Trial Chamber to:

- 1) Request, in consultation with appropriate medical expert(s), additional treatment for the Accused which may help improve her mental health such that she could become fit to stand trial, to be carried out in a hospital or other appropriate facility in Cambodia and payable by the ECCC;
- 2) To order that the Accused undergo a medical, psychiatric, and/or psychological examination by an expert(s) to determine whether she is fit to stand trial, such examination to be conducted no later than six (6) months from the commencement of the treatment referred to in 1);
- 3) To determine without delay the Accused's fitness to stand trial after receipt of the expert examination referred to in 2);

- 4) As long as the Accused remains detained, to carry out the detention of the Accused in a hospital or other appropriate facility, as determined by the Trial Chamber; and
 - 5) To provisionally detain the Accused in the ECCC Detention Facility until necessary arrangements for the commencement of the treatment referred to in 1) and 4) are completed.
2. In its Decision, the Supreme Court Chamber makes supplementary recommendations, including that a trial of the drug Donepezil be considered following consultation with appropriate medical experts (SCC Decision, paragraphs 35 and 39), and that care within a familiar environment, physical exercise, a structured cognitive stimulation programme, regular monitoring of her physical health, and assessment by an occupational therapist of her activities of daily living and advice on any environmental modifications to her living conditions and similar measures which may be beneficial for her be implemented (paragraph 36). The SCC Decision determined that continued detention of the Accused in a hospital or comparable facility, or the ECCC Detention Facility upon appropriate modification, “will not pose a threat or serious problem to her mental or physical health”, which is described as “not incompatible with continued detention” (paragraphs 42 and 43). It further directed the Office of Administration to provide all necessary support to implement the decision of the Supreme Court Chamber.
3. Accordingly, the Trial Chamber requests the treating physicians of the Accused, in consultation with the designated medical expert as defined below, to initiate without delay medical treatment that may be considered as improving the Accused’s cognitive abilities such that it would make her fit to stand trial and in accordance with the best medical interests of the Accused, and the recognized rules of medical, scientific and ethical principles, as reflected in the Cambodian Code of Medical Ethics.
4. Further, the Trial Chamber directs the medical experts (Professor A. John Campbell (Expert appointed pursuant to Trial Chamber Order E62/3); Drs. Huot Lina, Koet Chhunly, Seena Fazel and Calvin Fones Soon Leng (Experts appointed pursuant to Trial Chamber Order E111)) who have previously examined the Accused to:
- a) provide to the Trial Chamber within two weeks from today, following consultation with IENG Thirith’s treating physicians, any relevant medical information which has become available since the Accused IENG Thirith was last examined by the Psychiatric Experts in September 2011, including whether the drug Donepezil has been administered to the Accused (and if so, when this commenced and the outcome), and to incorporate this information into the response requested by the Trial Chamber;
 - b) In the same report, provide the Trial Chamber with information concerning:
 - i. any medical treatment or combination of treatments directed toward improving the Accused’s cognitive status (with the objective of re-assessing her fitness to stand trial) which may be considered appropriate by her treating physicians, in addition to treatment that might instead address the Accused’s general physical well-being;

- ii. the possible risks or benefits of any treatment;
 - iii. what period such treatment should be continued pending reassessment of the Accused's cognitive function and/or general state of health insofar as it is relevant to the question of her fitness to stand trial; and
 - iv. any other related matter within the professional competence of the Experts.
- c) To facilitate their work within the applicable deadlines, the Chamber suggests that the Experts (Professor A. John Campbell (appointed pursuant to Order E62/3); Drs. Huot Lina, Koeut Chhunly, Seena Fazel and Calvin Fones Soon Leng (appointed pursuant to Order E111)) designate one Expert to respond to this request on behalf of all five Experts, or that they devise any similar workable arrangement.
- d) This designated medical expert is further directed to inform the Trial Chamber as soon as possible if any change to the Accused's current location of detention would be in her best medical interests, if other modifications to the detention facility are insufficient.
- e) The designated medical expert shall update the Trial Chamber on the progress and outcome of any medical treatment designed to improve IENG Thirith's cognitive status on a fortnightly basis.

5. The Office of Administration through the Witness/Expert Support Unit shall serve as a liaison between the Experts, the Chamber and other relevant persons, and shall transmit the Experts' reports to the Trial Chamber upon receipt. These reports should be provided to the Witness/Expert Support Unit within two weeks of the date of this request, based (if considered necessary) on further psychiatric or geriatric assessment. This request is urgent due to the fact that it relates to an issue of ongoing detention.

6. Where necessary to carry out the above directions, the Experts are authorized by the Trial Chamber to consult with the Accused and her family, as well as personnel of the ECCC Detention Facility (including the Accused's treating physicians). Upon request, the ECCC Office of Administration shall provide the Experts with all medical documents required by them to provide this information.

7. The Trial Chamber takes this opportunity to clarify the basis of IENG Thirith's current detention. Pursuant to the SCC Decision, the Trial Chamber's original order releasing the Accused was set aside (SCC Decision, disposition). The SCC further found that the original ground for detaining the Accused (namely to ensure her presence during the proceedings) remains valid (paragraphs 41, 48). It also stated that "[a]s concerns the continued detention, it is subject to review pursuant to Internal Rule 82 according to general principles" (paragraph 49). The Trial Chamber notes that the Accused's detention shall therefore continue until reassessment of her fitness to stand trial is undertaken by this Chamber in accordance with the SCC Decision. Furthermore, the Trial Chamber may, upon application, review the basis for her detention or other restrictions on her liberty pursuant to Internal Rule 82.

Encl.