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E138/1/10/1/5/8/3

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

TRIAL CHAMBER

Date: 27 June 2013

TO: IENG Thirith Defence

FROM: NIL Nonn, President, Trial Chamber

CC: All Trial Chamber Judges; all parties, Case 002;
Witness/Expert Support Unit ("WESU"); Trial Chamber Senior Legal Officer

SUBJECT: IENG Thirith Defence Request for Clarification of the Execution of the Supreme Court Chamber's Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (E138/1/10/1/5/8).

សាធារណៈ / Public



1. On 14 December 2012, the Supreme Court Chamber ("SCC") rendered its Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (E138/1/10/1/5/7) ("SCC Decision on Supervision"). The SCC Decision on Supervision ordered the Accused:

- a. To inform the Trial Chamber or an official designated by it prior to any change of her current address;
- b. Not to leave the territory of the Kingdom of Cambodia without the authorisation of the Trial Chamber;
- c. To undergo six-monthly medical examinations by medical practitioners to be appointed by the Trial Chamber; and
- d. To make herself available for monthly security checks by the judicial police, or alternatively, if the Trial Chamber so orders, to file a monthly report attesting to compliance with the terms of her judicial supervision.

The SCC also ordered that the Accused's passport and identification card be returned to her general guardian, on the condition that they are not used for the purpose of international travel without the prior authorisation of the Trial Chamber, that the judicial police report monthly to the Chamber in order to verify that the Accused still resides at her address and has not left the country, and that any threat to the Accused's safety be reported (SCC Decision on Supervision, disposition).

2. On 3 January 2013, the IENG Thirith Defence requested clarification concerning the interpretation and implementation of the SCC Decision on Supervision (E138/1/10/1/5/8) ("Defence Request"). The Defence submits that detailed information as to the manner in which this regime of judicial supervision shall be implemented is necessary in order to avoid further restriction of the

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Accused's fundamental rights in relation to privacy and liberty. The Defence Request sought clarification regarding:

- a. How and who is the Accused to inform of a change in her residential address?
- b. The nature of the six-monthly medical examinations, identity and positions of the persons designated by the Trial Chamber to perform them, their locations, date and times, and which, if any, other parties to the proceedings might be provided with these reports, as well as applicable procedures in the event a previously unidentified medical condition is discovered during these medical examinations or if the Accused IENG Thirith should in future fall ill or require any form of further medical attention and care.
- c. The identity and positions of the persons designated by the Trial Chamber to perform these security checks, the nature of these checks, location, dates and time when they will take place, and identity of the persons who will monitor these matters. The Defence submit that it is unclear whether the SCC sought to install a regime of two separate checks, namely one security check performed by the judicial police and one by the Accused through her general guardian, or if it is envisaged that all objectives of the checks be combined in only one monthly check-up and report. They also allege inconsistencies in the measures required by the SCC, and possible duplication of roles in light of the concurrent obligation of the Cambodian authorities to ensure the Accused's safety.
- d. The procedure to be adopted in order to obtain the prior authorization from the Trial Chamber in case the Accused wished to leave the territory of the Kingdom of Cambodia for medical reasons, given the Accused's frail medical condition and as medical emergencies are by their nature urgent.
- e. Given the potentially adverse effects of any violation of these conditions on the rights of the Accused, clarification of procedures to follow should the Accused, due to physical or mental incapacity, be unable to keep an appointment at a designated time or otherwise breach these conditions.

3. The Trial Chamber on 26 March 2013 rejected the request, holding that it had no jurisdiction to clarify or express an opinion on a decision of the Supreme Court Chamber. The request was therefore forwarded to the Supreme Court Chamber for clarification and for further guidance and directions. The Trial Chamber did, however, indicate specific measures it would envisage taking in relation to questions regarding (1) the notification of change in address and/or international travel, (2) the timing and appointment of a psychiatrist for further medical examinations, and (3) reports on compliance. The Trial Chamber specifically requested clarification on (1) the scope of the medical examinations and who is to bear responsibility for the costs of these examinations and (2) questions regarding the consequences for the Accused of not complying with any judicially-imposed conditions.

4. On 31 May 2013, the Supreme Court Chamber in its Decision on Request by the Trial Chamber and the Defence for IENG Thirith for Guidance and Clarification (E138/1/10/1/5/8/2) ("SCC Clarification Decision") remanded the request to the Trial Chamber with the instruction to implement the SCC Decision on Supervision without any further delay. It however granted the Trial Chamber request for clarification insofar as it pertained to issues of law.

5. In this respect, the Supreme Court Chamber clarified that medical examinations "are aimed at ascertaining whether IENG Thirith's cognitive condition has improved or worsened and to assess the need for treatment" and that "while sanctions are available under the Cambodian Code of Criminal Procedure, their imposition in practice will require an assessment of questions of liability, as well as of necessity and proportionality in the given circumstances. As for recourse under Rule 35 of the Internal



Rules, even in the absence of subjective elements [...], measures of an administrative nature may be ordered in order to cease such interference or prevent its reoccurrence".¹

6. The Trial Chamber now notifies the following measures in implementation of the SCC Decision on Implementation and the SCC Decision on Supervision and Clarification:

i. Notification of Change in Address and/or International Travel

- (a) The Accused or her Guardian shall notify the Trial Chamber's Greffiers at least seven days prior to any change in address and at least seven days in advance of any request for authorisation to travel abroad. In cases of medical emergency requiring international evacuation, the Trial Chamber's Greffiers shall be notified as soon as practicable and before any such evacuation.
- (b) The Trial Chamber will confirm its acceptance of the change of address or approval of international travel as soon as is practicable.

ii. Medical Examinations

- (a) The Trial Chamber will appoint a psychiatrist to carry out the periodic reassessments of IENG Thirth's cognitive function, as directed in paragraphs 67-68 of the SCC Decision on Implementation.
- (b) The purpose of this medical examination is limited to ascertaining whether IENG Thirth's cognitive condition has improved or worsened and to assess the availability of appropriate treatment.
- (c) The first periodic reassessment will be scheduled in September 2013. Reassessments will thereafter be ordered every six months, in conformity with the SCC Decision on Implementation.
- (d) Further details regarding the identity of the psychiatrist who will undertake this reassessment will be provided in due course.
- (e) These periodic psychiatric reports shall be disclosed to the Trial Chamber, IENG Thirth Defence, Co-Prosecutors and Lead Co-Lawyers.

iii. Reports on Compliance

Provided the Accused, through her General Guardian, on the last business day of every month (commencing on Wednesday 31 July 2013) provides the Trial Chamber with monthly verification that she remains at her current address and reports any threat to her safety, the Trial Chamber will not require any further security checks to be performed by the Accused or by the Judicial Police.

7. This constitutes the Chamber's official response to the Defence Request E138/1/10/1/5/8. *er*

¹ SCC Clarification Decision, paras 11 and 15.