



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

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

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DECISION ON THE IMPLEMENTATION 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).

Co-Prosecutors
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Accused
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1. INTRODUCTION

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”). The SCC Decision set aside the Trial Chamber Decision insofar as it ordered the Accused’s unconditional release, and instead 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.

2. 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, and the judicial police to report monthly to the Chamber in order to verify that the Accused still resides at her address and has not left the country, and to report any threat to her safety.¹

2. PROCEDURAL HISTORY

3. On 3 January 2013, the IENG Thirith Defence requested clarification concerning the interpretation and implementation of the SCC Decision (E138/1/10/1/5/8) (“Defence Request”).

4. In its 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 Accused’s fundamental rights in relation to privacy and liberty. Clarification is requested as to how the conditions imposed on the Accused as ordered by the SCC are going to be given effect to, and in particular:

- 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 submits 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

¹ SCC Decision, Disposition.

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.²

5. The Co-Prosecutors and Lead Co-Lawyers did not respond to the Defence Request.

3. FINDINGS

6. The Chamber notes that there is no legal basis for the present request. The Decision was issued by the Supreme Court Chamber, which has within its inherent discretion power to clarify its own decisions or orders. The Trial Chamber has no jurisdiction under the Internal Rules to express an opinion on, or clarification of, a decision of the SCC.³

7. The Trial Chamber therefore forwards the Defence Request to the Supreme Court Chamber for guidance and further directions. In light of the Defence Request to the Trial Chamber, the Chamber also outlines those measures that it currently contemplates taking in implementation of the SCC Decision, subject to any further guidance the SCC may provide, along with a small number of specific requests for clarification.

3.1. Trial Chamber measures in implementation of the SCC Decisions

8. Subject to any further guidance the Supreme Court Chamber may provide, the Trial Chamber envisages taking the following measures in implementation of the SCC Decision:

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

- (a) Wherever possible, the Accused or her Guardian shall notify the Trial Chamber's Greffiers at least seven days prior to any change in address and in advance of any international travel. The Trial Chamber will confirm its acceptance of the change of address or approval of international travel as soon as is practicable..

3.1.2. Medical Examinations

- (a) The Trial Chamber shall appoint a psychiatrist to carry out the periodic reassessments of IENG Thirith's cognitive function, as directed in paragraphs 67-68 of the SCC Decision. Further details regarding the identity of this psychiatrist and timing of the first and subsequent assessments shall be provided in due course.
- (b) These periodic psychiatric reports shall be disclosed to the Trial Chamber, IENG Thirith Defence, Co-Prosecutors and Lead Co-Lawyers;

² Defence Request, paras 8-28.

³ See further Article 606(1) of the Cambodian Code of Criminal Procedure (providing that a court shall interpret its own decisions).

3.1.3. Reports on Compliance

- (a) Provided the Accused, through her General Guardian, on the last business day of every month (commencing on Friday 29 March 2013) provides the Trial Chamber with a monthly verification that she remains at her current address and reports any threat to her safety, the Trial Chamber shall not require any further security checks to be performed by the Accused or by the Judicial Police.

3.2. Requests to the SCC for Clarification in light of the Defence Request

9. The Trial Chamber seeks the following guidance in its discharge of the SCC Decision:

3.2.1. Medical Examinations

- (a) The Trial Chamber has inferred that periodic medical assessments are to be limited to the Accused's cognitive condition. In the light of the wording of paragraph 68 of the SCC Decision concerning the Accused's "generally frail condition" however, could the Supreme Court Chamber provide directions that this is so?⁴
- (b) If the Supreme Court Chamber affirms that more general medical assessments are to be undertaken, could it provide guidance as to who is to be responsible for the costs of these assessments and any medical treatment that might be required?

3.2.2. Guidance in the event of non-compliance with judicially-imposed conditions

If, in spite of the Trial Chamber's best endeavours, the Accused breaches the terms of her judicial supervision, could the SCC indicate what are the appropriate sanctions to be imposed, and against whom (the Accused personally and/or her general guardian?)

4. DISPOSITION

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

REJECTS the Defence request to the Trial Chamber for its further clarification concerning the interpretation and implementation of the SCC Decision;

FORWARDS the Defence Request, along with the current decision, to the Supreme Court Chamber, for its guidance and for any further action it may consider appropriate;

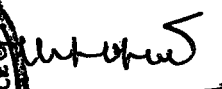
⁴ Paragraph 68 of the SCC Decision reads as follows: "The Chamber acknowledges that psychological evaluation for dementia and cognitive function, primarily consisting of memory tests and general personal questions, impact on the Accused's right to privacy. However, it considers that, at this stage, they are minimally invasive. The Accused, due to her generally frail condition, has the need of medical care. To the extent the medical evaluation may result in diagnosing illnesses and recommending treatments, there is also congruence of interest of the Accused and the interest of justice in the need for continually updated information regarding the mental health of the Accused."

E138/1/10/1/5/1/1

INFORMS the Supreme Court Chamber of the above measures the Trial Chamber contemplates taking in implementation of the SCC Decision, subject to any further guidance the Supreme Court Chamber may provide; and **REQUESTS** the guidance of the Supreme Court Chamber on the above matters upon which clarification is sought.



Phnom Penh, 26 March 2013
President of the Trial Chamber



Nil Nonu