



**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 Jean-Marc LAVERGNE  
Judge YA Sokhan  
Judge Claudia FENZ  
Judge YOU Ottara

**Date:** 27 August 2015  
**Original language(s):** Khmer/English/French  
**Classification:** PUBLIC

**TERMINATION OF THE PROCEEDINGS AGAINST THE ACCUSED IENG THIRITH**

**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN

**Accused**  
IENG Thirith

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Marie GIRAUD

**Lawyers for the Defence**  
Diana ELLIS  
PHAT PouV Sang

1. The Trial Chamber is seised of the death certificate of the Accused IENG Thirith.<sup>1</sup>

## **1. PROCEDURAL HISTORY**

2. On 12 November 2007, IENG Thirith was arrested by order of the Co-Investigating Judges and notified of the charges against her.<sup>2</sup> On 15 September 2010, the Co-Investigating Judges indicted IENG Thirith for crimes against humanity, genocide and grave breaches of the Geneva Conventions.<sup>3</sup> Trial proceedings began with an initial hearing on 27 June 2011.<sup>4</sup>

3. On 17 November 2011, the Trial Chamber found IENG Thirith unfit to stand trial due to dementia, stayed proceedings against her and released her unconditionally.<sup>5</sup> Following an appeal by the Co-Prosecutors, the Supreme Court Chamber ordered the Trial Chamber to request additional treatment for IENG Thirith which might improve her mental health to a degree that she could become fit to stand trial.<sup>6</sup> IENG Thirith then received a combination of medical treatment and cognitive stimulation therapy beginning on 27 March 2012.<sup>7</sup> In August 2012, after IENG Thirith had undergone treatment, the Trial Chamber recalled the court-appointed experts to again assess her fitness to stand trial.<sup>8</sup> In their report, the experts agreed that IENG Thirith's dementia had become more severe since 2011 and that her cognitive abilities had deteriorated slightly over the previous months despite the new treatments.<sup>9</sup> On 13 September 2012, the Trial Chamber re-affirmed that IENG Thirith was unfit to stand trial and again released her.<sup>10</sup>

4. Following an additional appeal by the Co-Prosecutors, the Supreme Court Chamber ordered terms of judicial supervision to be implemented by the Trial Chamber.<sup>11</sup> This regime,

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<sup>1</sup> Death certificate of IENG Thirith, E359.3, 24 August 2015.

<sup>2</sup> Police Custody Decision on IENG Thirith, C15, 20 November 2007; Written Record of IENG Thirith's Arrest, C13/I, 14 November 2007; Arrest Warrant of IENG Thirith, C13, 14 November 2007.

<sup>3</sup> Closing Order, D427, 16 September 2010, para. 1613.

<sup>4</sup> Written Record of Proceedings – Public – Case File No. 002/19-09-2007-ECCC/TC – 27 June 2011, E1/4, 29 June 2011.

<sup>5</sup> Decision on IENG Thirith's fitness to stand trial, E138, 17 November 2011.

<sup>6</sup> Decision on Immediate Appeal against the Trial Chamber's order to release the Accused IENG Thirith, E138/1/7, 14 December 2011, disposition.

<sup>7</sup> Experts' response to inquiry regarding treatment duration of rivastigmine and timeframe for reassessment of IENG Thirith's fitness to stand trial, E138/1/7/9, 3 April 2012, p. 2.

<sup>8</sup> Scheduling of reassessment and hearing on IENG Thirith fitness to stand trial, E138/1/7/13, 22 June 2012.

<sup>9</sup> Summary Expert Report on Mrs. Ieng Thirith, E138/1/7/13/2, 29 August 2012, para. 61.

<sup>10</sup> Decision on Reassessment of the Accused IENG Thirith's Fitness to Stand Trial Following Supreme Court Chamber Decision of 13 December 2011, E138/1/10, 19 September 2012.

<sup>11</sup> Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith, E138/1/10/1/5/7 ("First Supreme Court Chamber Decision"), 14 December 2012, disposition.

in part, required IENG Thirith to undergo six-monthly medical examinations by experts appointed by the Trial Chamber to verify her impaired cognitive condition.<sup>12</sup>

5. On 1 October 2013, the Chamber appointed an expert to perform a six-monthly re-evaluation of the Accused's cognitive condition.<sup>13</sup> The expert reported that IENG Thirith's cognitive condition had continued to decline since the last evaluation.<sup>14</sup> IENG Thirith frequently failed to remember or recognize close family members and had forgotten that her husband was deceased.<sup>15</sup> She also seemed frequently bewildered by ordinary household items and did not remember the locations of various rooms within her own home.<sup>16</sup> The expert concluded that IENG Thirith suffered from moderate to severe dementia.<sup>17</sup> On 19 February 2014, the expert noted that a CT scan taken on 14 January 2014, read together with three prior CT scans from 2007, 2009, and 2011, showed a progression of general cerebral atrophy.<sup>18</sup> The CT scan of 14 January 2014 also showed that IENG Thirith had suffered two mini-strokes since her last CT scan in 2011.<sup>19</sup>

6. On 6 March 2014, IENG Thirith's daughter, her General Guardian, informed the Chamber that IENG Thirith had injured herself by falling and had been bedridden ever since, and sought permission for IENG Thirith to seek treatment in Thailand.<sup>20</sup> The Trial Chamber granted the requested permission.<sup>21</sup> On 21 March 2014, the General Guardian reported that IENG Thirith was treated at Bangkok Hospital where she required surgery.<sup>22</sup> Although IENG Thirith's surgery was successful, she remained in the hospital with heart and lung problems.<sup>23</sup> After being discharged from the hospital and returning to her home in Pailin Province, Cambodia, the General Guardian reported to the Chamber that IENG Thirith required close

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<sup>12</sup> First Supreme Court Chamber Decision, disposition; Decision on Requests by the Trial Chamber and the Defence for IENG Thirith for Guidance and Clarification, E138/1/10/1/5/8/2, 31 May 2013, para. 11.

<sup>13</sup> Appointment of medical practitioners to perform six-monthly medical examination of IENG Thirith, E138/1/10/1/5/9, 1 October 2013.

<sup>14</sup> Six-Monthly Medical Examination of IENG Thirith in Response to Trial Chamber Request dated 1 October 2013, E138/1/10/1/5/9/2 ("Report on First Six-Monthly Exam"), 24 October 2013, para. 26.

<sup>15</sup> Report on First Six-Monthly Exam, paras 17-19, 24.

<sup>16</sup> Report on First Six-Monthly Exam, paras 17, 19.

<sup>17</sup> Report on First Six-Monthly Exam, para. 25.

<sup>18</sup> Review of CT scan results – IENG Thirith, E138/1/10/1/5/9/6 ("Report on 14 January 2012 CT Scan"), 24 February 2014, para. 11.

<sup>19</sup> Report on 14 January 2012 CT Scan, para. 11.

<sup>20</sup> Letter from IENG Vichida to TC President requesting to bring IENG Thirith to Thailand for medical treatment dated 04 Mar 2014, E138/1/11, 4 March 2014.

<sup>21</sup> Request to bring IENG Thirith to Thailand for medical treatment, E138/1/11/2, 6 March 2014, para. 5.

<sup>22</sup> Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 20 March 2014, E138/1/11/2/3 ("20 March 2014 Letter"), 21 March 2014.

<sup>23</sup> 20 March 2014 Letter.

medical attention and had upcoming appointments at Bangkok Hospital.<sup>24</sup> On 8 June 2014, the General Guardian reported that IENG Thirith had been hospitalized for two and a half months.<sup>25</sup> Since that time, IENG Thirith frequently returned to Bangkok Hospital for follow-up treatment due to anaemia and weakening cardiac and renal functions.<sup>26</sup> During this period of frequent hospitalization in Thailand, the Trial Chamber did not order six-monthly examinations.

7. On 9 June 2015, the Trial Chamber issued an order resuming the mandatory six-monthly examinations and appointed an expert, a practicing geriatrician, to examine IENG Thirith.<sup>27</sup> By this time, IENG Thirith was too ill to travel to Phnom Penh for the examination.<sup>28</sup> On 16 July 2015, the expert examined IENG Thirith at her residence in Pailin City, Cambodia.<sup>29</sup> The expert observed muscle wasting in IENG Thirith's legs along with other signs that she had been bedridden.<sup>30</sup> The expert attempted to engage IENG Thirith in conversation and asked her how she felt.<sup>31</sup> IENG Thirith did not respond although she at times quickly opened and closed her eyes.<sup>32</sup> The expert was unable to perform any of the standard cognitive assessments that he had intended to use, including the Mini Mental State Examination.<sup>33</sup> Accordingly, IENG Thirith scored 0 out of a possible 30 points.<sup>34</sup> Using the Global Deterioration Scale, IENG Thirith scored a 7, meaning that she was in the most severe stage of dementia.<sup>35</sup> The expert

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<sup>24</sup> Report on Ieng Thirith health condition dated on 18 March 2014, E138/1/11/2/2, 20 March 2014.

<sup>25</sup> Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 08 June 2014, E138/1/11/4, 12 June 2014.

<sup>26</sup> Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 21 April 2014, E138/1/11/3/2, 24 April 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 04 July 2014, E138/1/11/5, 7 July 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 22 July 2014, E138/1/11/6, 22 July 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 08 September 2014, E138/1/11/8, 15 September 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 30 October 2014, E138/1/11/9, 4 November 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 20 November 2014, E138/1/11/10, 20 November 2014; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 02 January 2015, E138/1/11/11, 6 January 2015; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 04 May 2015, E138/1/11/12, 12 May 2015; Letter from IENG Vichida to TC President regarding IENG Thirith's health condition dated 22 June 2015, E138/1/11/13, 22 June 2015.

<sup>27</sup> Order Appointing Expert to Examine IENG Thirith, E138/1/10/1/5/9/7, 9 June 2015, para. 3.

<sup>28</sup> Letter from Chief of Pailin Provincial Hospital dated 22 June 2015, E138/1/11/13.1, 25 June 2015.

<sup>29</sup> Expert Medical Report - IENG Thirith, E138/1/10/1/5/9/8 ("Expert Report"), 24 August 2015, para. 8.

<sup>30</sup> Expert Report, paras 18, 19.

<sup>31</sup> Expert Report, para. 22.

<sup>32</sup> Expert Report, para. 22.

<sup>33</sup> Expert Report, para. 22.

<sup>34</sup> Expert Report, para. 22.

<sup>35</sup> Expert Report, para. 25.

concluded that IENG Thirith suffered from severe dementia with complete medical certainty.<sup>36</sup>

8. The expert also reported that there was no available medical treatment capable of improving IENG Thirith's condition.<sup>37</sup> IENG Thirith remained bedridden and suffered from several internal ailments.<sup>38</sup> The expert had no doubt that her physical condition was genuine and concluded that IENG Thirith was in end-of-life care.<sup>39</sup>

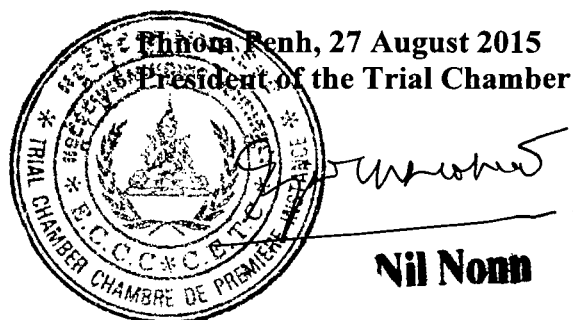
9. According to both a death certificate and a record of IENG Thirith's death, issued respectively by the Chief of Pailin Sangkat and the Deputy Head of Pailin Provincial Referral Hospital, IENG Thirith died at home in Pailin Province, Cambodia on 22 August 2015.<sup>40</sup> The cause of death was cardiac arrest.<sup>41</sup>

## **2. APPLICABLE LAW**

10. Pursuant to Article 7(1) of the Cambodian Code of Criminal Procedure, the death of the Accused extinguishes the criminal action against her.<sup>42</sup> Under Internal Rule 23 *bis*, the death of the Accused also ends all Civil Party proceedings against her at the ECCC.<sup>43</sup>

### **FOR THE FOREGOING REASONS, THE TRIAL CHAMBER**

**FINDS** that the death of the Accused IENG Thirith extinguishes all criminal action against her and ends all civil actions against her at the ECCC.



<sup>36</sup> Expert Report, para. 25.

<sup>37</sup> Expert Report, para. 26.

<sup>38</sup> Expert Report, para. 27.

<sup>39</sup> Expert Report, para. 27.

<sup>40</sup> Death certificate of IENG Thirith, E359.3, 24 August 2015; Report of Death of IENG Thirith, E359.1 ("Report"), 24 August 2015.

<sup>41</sup> Letter of Death of IENG Thirith dated on 22 August 2015, E359, 24 August 2015; Report.

<sup>42</sup> Code of Criminal Procedure of the Kingdom of Cambodia, Art. 7(1).

<sup>43</sup> IR 23 *bis*(6); *see also* Termination of the Proceedings against the Accused IENG Sary, E270/1, 14 March 2013, fn. 8.