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E238/12/1/1

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

សាធារណៈ / Public

MEMORANDUM – TRIAL CHAMBER



TO: All parties, Case 002
FROM: NIL Nonn, President, Trial Chamber
CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: IENG Sary's Request for Modification of the Trial Chamber's Memorandum to his Treating Doctor at the Detention Facility (E238/12/1)

1. On 18 December 2012, the Trial Chamber directed IENG Sary's treating physicians to report daily and directly to the Trial Chamber before it convenes each morning, and if necessary during the course of the day. The report should include reference only to significant changes in IENG Sary's health status that deviate from the expert's conclusions in his report (E238/4). In addition, if the treating doctor has any observations on the facilities in the holding cell that might enhance IENG Sary's physical ability to participate, then these observations should also be included in the report (E238/12).
2. The Chamber was on 4 January 2013 seized of a further motion by the IENG Sary Defence (E238/12/1) requesting that the Chamber:
 - a. Instruct the Khmer-Soviet Friendship Hospital to assign qualified medical experts to make daily assessments, on a continuing basis, of IENG Sary's ability to participate in proceedings when he is in the holding cell, or alternatively;
 - b. Order IENG Sary's existing treating physicians to provide explicit information as to the extent to which IENG Sary's condition affects his ability to follow these proceedings, and in particular that they:
 - (1) Articulate in their reports the extent to which IENG Sary is able to follow the proceedings when he is dizzy, asleep, in pain or suffering from any other condition; and

- (2) Detail in their reports the factors that are contributing to Mr. IENG Sary's dizziness or sleeping or pain; and
 - (3) Include in their reports anything that they consider relevant to IENG Sary's physical or mental ability to participate in the proceedings (not limited to "significant" changes).
3. The Accused IENG Sary was found fit to participate in his trial as recently as 26 November 2012 (E238/9). That finding was based on the evidence of independent court-appointed medical experts and was extensively tested before the Chamber, including by the IENG Sary Defence. IENG Sary's fitness to participate will be reassessed by independent court-appointed experts in March 2013. In the meantime, the Chamber has requested that IENG Sary's treating physicians provide it with written records on each day of proceedings and alert it to any significant change in IENG Sary's health status. The Chamber considers this to be the proper approach in the circumstances.
4. The Defence's request that IENG Sary's treating physicians provide further commentary on IENG Sary's medical condition amounts to a request for ongoing assessment of his fitness to stand trial. At the same time the Defence motion indicates that the treating physicians are not qualified to critique the experts' conclusion that IENG Sary is fit to participate. In this context it is noted the Chamber has very recently, on the basis of expert evidence, found that the Accused IENG Sary can meaningfully participate in proceedings and is therefore fit to stand trial. The Chamber's order to the treating physicians to alert it to any significant changes in IENG Sary's health status ensures that sufficient information is available.
5. Independent experts have already been appointed to assess IENG Sary's ability to participate in his trial, and the next assessment will occur in March 2013. The Defence request that the Chamber appoint qualified medical experts from the Khmer Soviet Friendship Hospital to provide daily, continuing expert assessments of IENG Sary's ability to participate in proceedings while he is in the holding cell, is therefore also rejected. Additional assessments by doctors from the Khmer Soviet Friendship Hospital would merely duplicate existing arrangements. The Chamber will then consider the experts' assessment of IENG Sary's fitness and any recommendation as to the required frequency of future expert assessments.