

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' REQUEST FOR A REPORT  
BY THE ECCC DETENTION FACILITY ON IENG THIRITH**

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## I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Co-Prosecutors hereby request the Trial Chamber to order the submission of a detailed report on Ieng Thirith's functioning and behaviour at the ECCC Detention Facility, to be prepared by the Chief of the Detention Facility and the International Detention Liaison Officer.
2. On 11 February 2011 Mr Claude Bouchard, the International Detention Liaison Officer, prepared a Memorandum in response to the Trial Chamber's request for a report containing any additional information or observations considered relevant to the physical or psychological health of the four Accused in Case 002.<sup>1</sup> Mr Bouchard's Memorandum provided a description of the general atmosphere in the Detention Facility and brief comments on how the Accused were adapting to detention conditions.
3. On 4 April 2011, the Trial Chamber issued the Order Assigning Expert, by which it instructed Professor John Campbell, Geriatrician, to examine Ieng Thirith and provide a report on her cognitive and physical abilities, to enable the Chamber to assess whether she is fit to stand trial.<sup>2</sup> In his report of 23 June 2011<sup>3</sup> Professor Campbell concluded that Ieng Thirith suffers from a "moderately severe dementing illness," which he subsequently clarified to be a "moderate" level of cognitive impairment.<sup>4</sup> He concluded that this impairment would compromise Ieng Thirith's ability to participate fully in the trial and exercise her fair trial rights.<sup>5</sup> He also noted that a withdrawal of Ieng Thirith's psychotropic medication may improve her cognitive functioning and therefore recommended that the use of those medications be gradually discontinued.<sup>6</sup>
4. On 26 August 2011 Professor Campbell submitted an additional report following further assessment of Ieng Thirith and the commencement of reduction in her psychotropic medications.<sup>7</sup> He found that there had been no improvement in cognitive functioning, but recommended the trial of an acetylcholinesterase drug, which, in his opinion, "may enable her to participate better in her defence."<sup>8</sup>

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<sup>1</sup> E31/1 Interoffice Memorandum from Mr. Claude Bouchard, 11 February 2011

<sup>2</sup> E62/3 Order Assigning Expert, 4 April 2011

<sup>3</sup> E62/3/6 Geriatric Expert Report – Mrs. Ieng Thirith, 23 June 2011.

<sup>4</sup> E1/9.1 Transcript of Hearing, 30 August 2011 at page 37.

<sup>5</sup> E62/3/6 Geriatric Expert Report – Mrs. Ieng Thirith, 23 June 2011, para. 40 and 41.

<sup>6</sup> Ibid at para. 42.

<sup>7</sup> E62/3/12 Follow-up Report Concerning Mrs. Ieng Thirith in Accordance to the Trial Chamber's Expertise Order E62/3 dated 4 April 2011, 26 August 2011.

<sup>8</sup> E62/3/12 Follow-up Report Concerning Mrs. Ieng Thirith in Accordance to the Trial Chamber's Expertise Order E62/3 dated 4 April 2011, 26 August 2011.

5. Professor Campbell gave further evidence regarding his findings at preliminary hearings on fitness to stand trial held on 29, 30 and 31 August 2011. At these hearings, he confirmed his findings in the above reports, but also testified that, until all measures to improve Ieng Thirith's cognitive functioning have been exhausted, it cannot be concluded definitively that she will not be able to participate in her defence.<sup>9</sup>
6. On 23 August 2011 the Trial Chamber appointed four additional experts to assess Ieng Thirith's mental or cognitive ability.<sup>10</sup>

## II. APPLICABLE LAW

7. Although expert opinions provide the Trial Chamber with valuable insight into the Accused's physical and cognitive status, they are but one of a number of factors the Chamber may rely on in making a determination as to whether the Accused is fit to stand trial. As a Judge of the Special Panels for Serious Crime in East Timor observed in *Nahak*, a court of law is "not bound by [an] expert's opinion concerning competence...because [the] decision with respect to competence is a legal and not a scientific determination."<sup>11</sup> Additional considerations to which the court may have regard include the judges' own observations, the interactions between the accused and his/her counsel, and lay testimony of those familiar with the detainee's daily conduct and mental status.<sup>12</sup>
8. In *Kovacevic*, the ICTY Trial Chamber ordered the submission of a report from the Commanding Officer of the United Nations Detention Unit (UNDU) on his and his staff's observations of the accused's functioning in the UNDU.<sup>13</sup> The Chamber then summoned the Commanding Officer to testify as to his personal observations of the accused's behaviour in detention.<sup>14</sup>

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<sup>9</sup> E1/9.1 Transcript of Hearing, 30 August 2011, p.92.

<sup>10</sup> E111 Order Assigning Experts, 23 August 2011.

<sup>11</sup> *Deputy General Prosecutor for Serious Crimes v. Joseph Nahak*, Case No. 01A/2004, Findings and Order on Defendant Nahak's Competence to Stand Trial (Special Panels for Serious Crimes (Timor-Leste)) 1 March 2005 at para. 120.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Prosecutor v. Vladimir Kovačević*, Case No. IT-01-42/2-I, Decision on Accused's Fitness to Enter a Plea and Stand Trial (ICTY Trial Chamber), 12 April 2006, at para. 9.

<sup>14</sup> *Ibid.*, at para. 10.

### III. ARGUMENT

9. Given the complexity of Ieng Thirith's apparent condition, and differences in the medical assessments conducted over the past two years,<sup>15</sup> it is appropriate to conduct a comprehensive inquiry, and admit additional categories of relevant and reliable information. By doing this the Chamber can be assured that it has the most accurate understanding of the Accused's capacities.
10. The Co-Prosecutors submit that a comprehensive report should be sought from the Chief of the ECCC Detention Facility and the International Detention Liaison Officer. These individuals, together with detention staff, have had the most continuous and direct contact with Ieng Thirith since she was placed in detention in November 2007. Having interacted with Ieng Thirith on a daily basis over this period, they are well placed to offer lay persons' observations as to her general behaviour and demeanor, her daily routines, and her ability to function in detention. As experienced detention managers, they can also be expected to comment on any changes which have taken place in Ieng Thirith's behaviour and general well-being. This is particularly relevant in light of Professor Campbell's opinion that there has been a significant deterioration in Ieng Thirith's cognitive functioning since October 2009.<sup>16</sup>
11. There is no doubt that expert reports are important in ascertaining a clear picture of any cognitive disorder Ieng Thirith is suffering from. However, in light of the unclear history and status of this apparent condition, it is essential to ensure that all available evidence is before the Chamber. Professor Campbell has testified that, when interviewed by him alone, Ieng Thirith recognised that this was a test situation and that "may have affected her responses."<sup>17</sup> He explained that there is "considerable variation in the way that Ieng Thirith presents and relates to people who are interviewing her,"<sup>18</sup> and that "there are occasions when she will engage better and with certain people better than [with] others."<sup>19</sup> Observations by the ECCC Chief of Detention and International Detention Liaison Officer may shed light on this issue among others, and will in any event usefully supplement the information provided by the experts.

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<sup>15</sup> These are summarised at paragraphs 5 and 6 of **E112** Co-Prosecutors' Questions and Comments for Psychiatric Experts Regarding Accused Ieng Thirith, 2 September 2011.

<sup>16</sup> **E1/9.1** Transcript of Hearing, 30 August 2011, at p.71

<sup>17</sup> **E1/8.1** Transcript of Proceeding, 29 August 2011 at p. 136.

<sup>18</sup> **E1/9.1** Transcript of Proceeding, 30 August 2011 at p. 89.

<sup>19</sup> Ibid.

12. In reaching a determination on Ieng Thirith's fitness to stand trial, the Trial Chamber will undoubtedly consider, among other factors, its own observations of the Accused. However, these observations are limited to the occasions when the Accused appears in the courtroom, which is, of course, a starkly different environment from that experienced by her in her daily life. During the hearings, the Accused is facing a panel of judges and numerous lawyers, with up to 500 visitors in the public gallery. It is reasonable to assume that the stress which such a setting may produce could itself lead to a demeanour and behaviour different from that normally exhibited by Ieng Thirith. In this respect too, a report by the Detention Facility will greatly assist the Judges in forming a comprehensive picture of Ieng Thirith's behaviour and overall functioning.

#### IV. QUESTIONS

13. The Co-Prosecutors respectfully request the Chamber to direct the Chief of the Detention Facility, Mr Mao Sphearom, and the International Detention Liaison Officer, Mr Claude Bouchard, to provide, within 14 days of the Chamber's order, a report answering the following questions:

*Ieng Thirith's interactions with ECCC Detention Facility Staff  
and Others in the Detention Facility:*

- a) Please describe Ieng Thirith's interaction with yourselves and the Detention Facility staff: Does she recognise those who work in the Detention Facility; Does she know their names and positions; And does she recall her prior interactions with them?
- b) How often do you interact with Ieng Thirith? Are her statements coherent and logical? Does she discuss matters that are relevant to the topic of conversation?
- c) Does Ieng Thirith make requests of the Detention Facility staff? Are those requests logical?
- d) Does she understand and follow any instructions she is given?
- e) Have you noticed any changes in Ieng Thirith's interactions with detention staff generally since the commencement of her detention? If so, please describe.
- f) Are there any differences in Ieng Thirith's interactions with the International Detention Liaison Officer, compared to her interactions with others? If so, please describe any variations in these interactions.

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- g) To the extent that the International Detention Liaison Officer communicates with Ieng Thirith, which language is that communication in? If this is a foreign language, how would you assess Ieng Thirith's ability to communicate in that language? Have you observed any deterioration in her knowledge of this language?
- h) Since Ieng Thirith's arrival in the Detention Facility, has the flow of her conversations deteriorated in any way? Does she speak less often?
- i) Does Ieng Thirith hold conversations with the other Accused? How often and how long are those conversations (note: please do not comment on the substance of these conversations)?

*Ieng Thirith's general orientation and perception*

- j) Is Ieng Thirith aware that she is detained and where she is detained?
- k) Does she know that she has been charged with certain crimes and may stand trial before the ECCC?
- l) Does she recall her position as Minister of Social Affairs during the period 1975 – 1979?
- m) If discussing past events, to the best of your knowledge, is her description of those events accurate (for example, her arrest and arrival in the Detention Facility)?
- n) Is she able to remember significant dates such as her birthday and public holidays?
- o) Does she recall scheduled court dates or other appointments?
- p) Is she oriented or does she get lost within the ECCC Detention Facility?
- q) Can she use a watch or a clock? Is she aware of the date and time?
- r) Does she watch television or read the newspaper?
- s) Is she aware of events which are of public interest - for example events being discussed in the media?
- t) Does she write any materials, such as letters or notes (please do not comment on the contents of any such documents)?

*Ieng Thirith's Interactions with Visitors at the ECCC Detention Facility*

- u) Does Ieng Thirith recall her family members and their names?
- v) Does she recognise her visitors generally, including members of her legal team?


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- w) Doe she understand the rules and schedule of visits?
- x) Does she make any requests regarding the visits?
- y) How often does she meet with members of her legal team?
- z) How long do the meetings with her legal team generally last?

#### V. CONCLUSION

14. The Co-Prosecutors respectfully request the Trial Chamber to:
- a) Direct Mr Sphearom and Mr Bouchard to submit a joint report addressing each of the above questions in detail
  - b) Provide a copy of the report to the parties and the psychiatrists appointed on 23 August 2011; and
  - c) Summon Mr Mao Sphearom and Mr Bouchard to testify on their observations at any further hearings on Ieng Thirith's fitness to stand trial.

Respectfully submitted,

Date	Name	Place	Signature
20 September 2011	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		