

E138/1/10/15/3.2

**BEFORE THE SUPREME COURT CHAMBER OF THE
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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TABLE OF AUTHORITIES

**DEFENCE RESPONSE TO CO-PROSECUTORS' IMMEDIATE APPEAL AGAINST DECISION
ON REASSESSMENT OF ACCUSED IENG THIRITH'S FITNESS TO STAND TRIAL
FOLLOWING THE SUPREME COURT CHAMBER DECISION OF 13 DECEMBER 2011
AND CO-PROSECUTORS' SUPPLEMENTARY SUBMISSIONS**

Defence for Ieng Thirith:

PHAT Pouv Seang
Diana ELLIS, QC

Supreme Court Chamber Judges:

KONG Srim, President
Florence Ndepele Mwachande MUMBA
SOM Sereyvuth
Agnieszka KLONOWIECKA-MILART
MONG Monichariya
Chandra Nihal JAYASINGHE
YA Narin

Civil Party Co-Lead Lawyers:

PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors:

CHEA Leang
Andrew CAYLEY, QC

I CAMBODIAN LAW

1.1 Legal Documents – *not attached*

- Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.
- Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea.
- Internal Rules of the ECCC.
- Code of Criminal Procedure of the Kingdom of Cambodia, Articles 223, 230.
- Civil Code of the Kingdom of Cambodia, Articles 24, 1028, 1039, 1043.

1.2 Court Documents – *not attached*

President of the Supreme Court Chamber

- Decision on Co-Prosecutors' Request for Stay of Release Order of IENG Thirith, 16 September 2012, Document No. E138/1/10/1/2/1.

Supreme Court Chamber

- Decision on Co-Prosecutors' Request to File Supplementary Submissions on the Appeal against the Release Order of IENG Thirith, 17 September 2012, Document No. E138/1/10/1/3/1.
- Decision on Immediate Appeal against the Trial Chamber's Order to Release the Accused IENG Thirith, 13 December 2011, Document No. E138/1/7.

Trial Chamber

- Decision on Reassessment of Accused IENG Thirith's Fitness to Stand Trial following Supreme Court Chamber Decision of 13 December 2011, 13 September 2012, Document No. E138/1/10.

- Memorandum entitled 'Request to Trial Chamber Experts following Supreme Court Chamber Decision on Appeal against Accused IENG Thirith's release (E138/1/7)', 6 January 2012, Document No. E138/1/7/1.
- Decision on IENG Thirith's Fitness to Stand Trial, 17 November 2011, Document No. E138.

Parties' Documents

- Co-Prosecutors' Supplementary Submissions, 28 September 2012, Document No. E138/1/10/1/5.
- Co-Prosecutors' Request for Stay of Release of Accused Ieng Thirith, 14 September 2012, Document No. E138/1/10/1/2.
- Co-Prosecutors' Immediate Appeal against Decision on Reassessment of Accused Ieng Thirith's Fitness to Stand Trial following the Supreme Court Chamber Decision of 13 December 2011, 14 September 2012, Document No. E138/1/10/1/1.
- Co-Prosecutors' Immediate Appeal Against Trial Chamber Decision to Order the Release of Accused Ieng Thirith, 18 November 2011, Document No. E138/1/1.
- Response by Defence for Madame Ieng Thirith to Co-Prosecutors Appeal against the Trial Chamber's Decision of 17 November 2011, 28 November 2011, Document No. E138/1/5.

Expert Reports

- Summary Expert Report on Mrs. Ieng Thirith, 29 August 2012, Document No. E138/1/7/13/2.
- Report concerning Mrs. Ieng Thirith in Response to Trial Chamber Request Dated 6 January 2012, 24 February 2012, Document No. E138/1/7/4.

Phnom Penh Municipal Court

- Decision of the Phnom Penh Municipal Court, 14 September 2012, Document No. E138/1/10/1/2/3.1.

II INTERNATIONAL DOCUMENTS

2.1 International Texts

Treaties and Conventions – not attached

- International Covenant on Civil and Political Rights, Articles 9, 14, 15.
- European Convention on Human Rights, Article 5.
- Protocol No. 4 to the European Convention on Human Rights, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, Article 2.

Rules of Procedure and Evidence of International Tribunals – not attached

- Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, as amended on 28 August 2012, Rule 65(C).
- Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, as amended on 1 October 2009, Rule 65(C).
- Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended on 31 May 2012, Rule 65(B).

2.2 Case Law – not attached

International Criminal Court

- *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06-OA-12, Judgement on the Appeal of the Prosecutor against the Decision of Trial Chamber I entitled “Decision on the release of Thomas Lubanga Dyilo”, 21 October 2008, paras. 36-37.

International Criminal Tribunal for the former Yugoslavia

- *Prosecutor v. Stanasic and Simatovic*, Case No. IT-03-69-PT, Decision on Prosecution Motion for Revocation of Jovica Stanasic's Provisional Release and Re-Assessment of his Health and Revocation of Franko Simatovic's Provisional Release, 24 April 2009, pp. 6-8.

- *Prosecutor v. Stanasic and Simatovic*, Case No. IT-03-69-PT, Decision on Provisional Release, 26 May 2008, paras. 62, 65-66.
- *Prosecutor v. Boskoski and Tarculovski*, Case No. IT-04-82-AR65.4, Decision on Johan Tarculovski's Interlocutory Appeal on Provisional Release, 27 July 2007, para. 14.
- *Prosecutor v. Boskoski and Tarculovski*, Case No. IT-04-82-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Denying Johan Tarculovski's Motion for Provisional Release, 4 October 2005, para. 7.
- *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-PT, Decision on Ramush Haradinaj's Motion for Provisional Release, 6 June 2005, para. 22.
- *Prosecutor v. Prlic et al.*, Case No. IT-04-74-AR65.1, AR65.2, AR65.3, Decision on Motions for Reconsideration, Clarification, Request for Release and Applications for Leave to Appeal, 8 September 2004, para. 28.
- *Prosecutor v. Kovacevic*, Case No. IT-01-42/2-I, Decision on Provisional Release, 2 June 2004, p. 2.
- *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36-T, Decision on the Motion for Provisional Release of the Accused Momir Talic, 20 September 2002, paras. 32, 34-36, 39-40, 42.
- *Prosecutor v. Blagojevic et al.*, Case No. IT-02-53-PT, Decision on Request for Provisional Release of Accused Jokic, 28 March 2002, para. 18.
- *Prosecutor v. Hadzihasanovic et al.*, Case No. IT-01-47-PT, Decision Granting Provisional Release to Amir Kubura, 19 December 2001, para. 7.
- *Prosecutor v. Simic*, Case No. IT-95-9-PT, Decision on Provisional Release of the Accused, 26 March 1998, p. 5.
- *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Motion for Provisional Release filed by the Accused Zejnil Delalic, 25 September 1996, para.1.
- *Prosecutor v. Djukic*, Case No. Case IT-96-20-T, Decision Rejecting the Application to Withdraw the Indictment and Order for Provisional Release, 24 April 1996, p. 4.

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International Criminal Tribunal for Rwanda

- *Prosecutor v. Nsengimana*, Case No. ICTR-01-69-I, Decision on Nsengimana's Motion for the Setting of a Date for a Pre-Trial Conference, a Date for the Commencement of Trial, and for Provisional Release, 11 July 2005, para. 17.

The Special Panels for Serious Crimes (East-Timor)

- *Deputy General Prosecutor v. Sisto Barros aka Xisto Barros, Cesar Mendonca and Josep Nahak*, Case No. 01/2004, Decision on Prosecutor's Request for Pretrial Detention, 17 March 2004, para. 55.

Special Court for Sierra Leone

- *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-T, Fofana - Decision on Application for Bail Pursuant to Rule 65, 5 August 2004, para. 62.

Special Tribunal for Lebanon

- *In the Matter of El Sayed*, Case No. CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, 10 November 2010, paras. 45-46.

European Court of Human Rights

- *Antoine v. UK*, Admissibility Decision, Application No. 62960/00, 13 May 2003.

III NATIONAL DOCUMENTSFrench Law

- French Code of Criminal Procedure, Article 141-2.

IV LITERATURE

- K. Khan and R. Dixon *Archbold: International Criminal Courts Practice, Procedure and Evidence* (Thomson Reuters and Sweet & Maxwell, 3rd ed., 2009), p. 373.
- P. Van Dijk, F. Van Hoof, A. Van Rijn and L. Zwaak (eds.) *Theory and Practice of the European Convention on Human Rights* (Intersentia Antwerpen Oxford, 2006), pp. 497-498.

V PRESS ARTICLES

- ‘Drug giants give up on Alzheimer’s cure’, *The Independent*, 19 September 2012.
- ‘Trials for Alzheimer’s drug halted after poor results’, *The New York Times*, 6 August 2012.