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E138/1/7/13

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

TRIAL CHAMBER

TO: IENG Thirith Defence
All parties, Case 002
All judges of the Trial Chamber

Date: 22 June 2012

FROM: Nil Nonn, President, Trial Chamber;

CC: Trial Chamber Senior Legal Officer; Witness and Expert Support Unit.

SUBJECT: Scheduling of reassessment and hearing on IENG Thirith fitness to stand trial

On 17 November 2011, the Trial Chamber, following the unanimous assessment of five medical experts appointed by the Chamber, determined the Accused IENG Thirith to be suffering from a progressive, degenerative cognitive condition (probably Alzheimers Disease) which rendered her unfit to stand trial. As proceedings against IENG Thirith were stayed, with no reasonable prospect of resuming, the Trial Chamber ordered her immediate release (E138). Following an appeal of this decision by the Co-Prosecutors on the issue of release, the ECCC Supreme Court Chamber (SCC) on 13 December 2011 held that "the ECCC is obliged to exhaust all measures available to it which may help improve the Accused [IENG Thirith] to become fit to stand trial" and remitted the issue to the Trial Chamber (Decision on Immediate Appeal Against the Trial Chamber's Order to Release the Accused IENG Thirith, E138/1/7, 13 December 2011, paras 36-38).

Upon being requested by the Trial Chamber to formulate medically-appropriate recommendations to implement the SCC's decision, the medical experts subsequently identified two measures that might improve IENG Thirith's cognitive function: (1) a gradual reduction of Bromazepam (also known as Lexomil) and (2) the administration of a Rivastigmine patch. Cognitive stimulation therapy was further recommended to supplement this regime, although it was noted that no clinical evidence suggested that occupational therapy on its own is capable of reversing cognitive decline (Report Concerning Mrs. IENG Thirith in Response to Trial Chamber Request, E138/1/7/4, para. 8). The medical experts indicated that 18 weeks of Rivastigmine therapy and 3 months of cognitive stimulation therapy would be sufficient for any benefits to become apparent (E138/1/7/9 and E138/1/7/4).

IENG Thirith's treating physician has reported that the Lexomil medication was reduced by a quarter every week beginning on 23 March 2012 and its use discontinued entirely on 13 April 2012 (E12/68/1.1). The Rivastigmine therapy began on 27 March 2012 and IENG Thirith will have been on this therapy for 18 weeks on or about 31 July 2012. An occupational therapist trained two Cambodian nurses on 3-4 May 2012: a cognitive

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stimulation program for IENG Thirith was commenced on 28 May 2012 and will therefore have been running for three months as of 28 August 2012 (E138/1/7/12).

The current matter concerns the continued detention of the Accused IENG Thirith and the Chamber must determine at the first available opportunity the consequences her current medical status may have on proceedings and on her provisional detention. The Trial Chamber is therefore compelled to reassess IENG Thirith's cognitive fitness to stand trial immediately after the time necessary for the implementation of the measures taken in application of the SCC's decision has elapsed (E138/1/7, para. 40). Hearings regarding this medical expertise and provisional detention have in consequence been scheduled for late August 2012. The Trial Chamber reappoints all available medical experts (Drs. John CAMPBELL, HUOT Lina and Seena FAZEL) to undertake an examination and assessment of IENG Thirith in order to complete their previous expert assignment and to determine collaboratively whether the measures since implemented by the treating physicians have improved IENG Thirith's cognitive abilities such that she has become fit to stand trial. Given the limited scope of this re-assessment and the experts' limited availability, the Trial Chamber requests the experts to provide a consolidated, joint summarised report in written form in advance of the hearing in order to expedite proceedings.

The Trial Chamber therefore schedules the reassessment and hearing as follows:

- 27-28 August 2012: Reassessment of Accused IENG Thirith by the medical experts
- 29 August 2012: Finalization of a summary of the expert report to be provided to the Trial Chamber and the relevant parties
- 30-31 August 2012: Hearing to enable presentation of the experts' findings and in-court discussion of them by IENG Thirith's Defence, Co-Prosecutors and Civil Party Co-Lawyers. Dr. FAZEL has been nominated to testify on behalf of all medical experts, with Professor Campbell and Dr. HUOT Lina remaining available to answer questions if so required.

The presence of KHIEU Samphan, NUON Chea and IENG Sary during these hearings is not envisaged. The latter, as the spouse of Accused IENG Thirith, may however request to attend on grounds of personal interest should he so choose. Counsel for IENG Sary, if accompanying him, shall not be granted the opportunity to make submissions at this hearing.

As previously scheduled, the Trial Chamber will continue the hearing of evidence in Case 002/01 during 27-29 August 2012 but will recess on 30-31 August 2012 in order to accommodate the hearing on Accused IENG Thirith's fitness.