



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

សំណើសុំការកែតម្រូវ
Request for Correction
Demande de Rectificatif

សំណុំរឿងលេខ (Case/ Dossier): 002/19-09-2007/ECCC/TC

កែលម្អឯកសារលេខ: To Document No(s): Cote des documents à rectifier:	ERN(s):	កាលបរិច្ឆេទ: Date:	ប្រភេទកំរែក: Correction Type: Type de Correction:
E138	1 - ENG 00753479- (Public); 00753508	2 December 2011	<input checked="" type="checkbox"/> កែលម្អឯកសារដើម Change to Original Correction à apporter à l'original <input type="checkbox"/> កែលម្អឯកសារបកប្រែ Change to Translation Correction à apporter à la traduction <input type="checkbox"/> រៀបចំចាត់ថ្នាក់ឡើងវិញ Reclassification Nouveau classement

មូលហេតុនៃការកែតម្រូវ (Reason for changes/ Explications):
1 - Error in footnotes 154 and 155.

លម្អិតនៃការកែតម្រូវ (Details/ Détails):
1. Footnote 154 should read as follows:
Majority Decision, para. 61.
2. Footnote 155 should read as follows:
Majority Decision, para. 76.

ភាគីស្នើសុំ:
Filing Party/ Déposé par: R. Phillips- TC Greffier

ហត្ថលេខា
Signature:

បានទទួលការឯកភាពពីក្រុមបញ្ជី(ចំពោះឯកសារដើម):
Approved by Greffier (for originals):
Approuvé par le greffier (pour les originaux) :

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Signature:

បានទទួលការឯកភាពពីអង្គភាពបកប្រែភាសា(ចំពោះការបកប្រែ):
Approved by ITP (for translations):
Approuvé par le Groupe d'interprétation
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du dossier:..... SANNARADA.....

position.¹⁵³ This is the fundamental understanding of the fair trial rights enshrined in Article 35(new) of the ECCC Law. The Trial Chamber has therefore concluded that IENG Thirith lacks the capacity to understand the proceedings against her and that she could not participate meaningfully in her own defence. We concur with the conclusion that a continuation of the proceedings against her at this time would not serve the interest of justice.

64. We are, however, unable to find an agreement with our learned colleagues on the consequences of that conclusion. The Trial Chamber held that it is in the interests of justice to sever the charges against the Accused IENG Thirith in Case 002 pursuant to Internal Rule 89ter and to stay the proceedings against her.¹⁵⁴ Again, we concur with that holding and note that, according to our international colleagues, the proceedings were stayed and not terminated. However, we are unable to agree that IENG Thirith be immediately released from the ECCC Detention Facility.¹⁵⁵ We are not of the opinion that such a conclusion should be drawn at this stage. Rather, we should first consider whether there is any possibility that IENG Thirith's condition could improve in the future which would permit her eventually to stand trial. In that respect we note that the medical experts noted the following in paragraph 38 of their report:

We have been asked to advise on whether there are any other treatments or measures that would be beneficial to IENG Thirith's mental state and cognitive functioning. The following *may* be beneficial: consistent and stable staffing; retaining a familiar environment; flexibility to accommodate her fluctuating abilities; physical exercise, with assessment and advice from a physiotherapist when needed; and support for participation in activities she enjoys. In addition, structured cognitive stimulation programme may be helpful (but needs to be undertaken with those who are trained and supervised). Furthermore, the treatment of her knee and back pain and the regular monitoring of her physical health would be important to maintain. *The continued treatment of co-existent medical conditions will improve her prognosis.* (emphasis added) We note that there are no occupational therapists currently in Cambodia, but if there were, an assessment of her activities of daily living would be helpful and advice on any environmental modifications of her living conditions could be sought. However, we do not believe that such intervention is urgent as IENG Thirith maintains a reasonable level of independent living, and appears to receive appropriate help as and when it is required from detention staff.

65. It follows that the medical experts are of the view that IENG Thirith's situation could improve if she receives a programme of cognitive stimulation administered by a professional.

¹⁵³ See also *Deputy General Prosecutor for Serious Crimes v. Joseph Nahak*, Case No. 01A/2004, Findings and Order on Defendant Nahak's Competence to Stand Trial, 1 March 2005, para. 48.

¹⁵⁴ Majority Decision, para. 61 (Draft Decision).

¹⁵⁵ Majority Decision, para. 76-62 (Draft Decision).