00872562

E138/1/10/1/5/7 / corr-3

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Request for Correction

Case : 002/19-09-2007-ECCC/SC (16)

To Document No(s):	ERN(s):	Request Date:	Correction Type:
E138/1/10/1/5/7	00869461-00869506	20/12/12	☒ Change to Original ☐ Change to Translation ☐ Reclassification

Reason for changes:
The reference of the decision quoted at footnote 42, which was inexact, has been corrected. Footnotes 168 and 169 were inverted. The text of footnote 185, which was missing, has been added. Typos in English were corrected at paras 56; 57; 60 and 75.

Details:
Please find the attachement enclosed, where modifications are highlighted.

Filed by: SEA Mao **Signature:**

Approved by Greffier (for originals): **Signature:**

Approved by ITU (for translations): **Signature:**

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
21 / 12 / 2012
ម៉ោង (Time/Heure) : 9:00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé du dossier: U.CHA ARUN

Accused could not be justified on the "mere hypothesis that medical conditions which are currently irreversible may in the future be cured".[40] Moreover, the ECCC's legal framework provides no statutory basis to justify continued detention of the Accused in the present circumstances.[41]

19. The Trial Chamber rejected the Co-Prosecutors' request to order judicial supervision of the Accused, so that her release would be subject to coercive conditions imposed by the Court. It concluded, based on the *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber 1 entitled "Decision on the release of Thomas Lubanga Dyilo"* (the "*Lubanga* Decision") issued by the Appeals Chamber of the International Criminal Court ("ICC"),[42] that the stay of proceedings entails that it "cannot exercise its jurisdiction over the Accused for the duration of the stay".[43] In the Trial Chamber's view, the jurisdiction of the court over the Accused is "suspended" during the stay.[44] As a consequence, the Chamber concluded that it "would (...) appear to lack a clear legal basis to impose coercive conditions or other forms of judicial supervision over the Accused upon release."[45] In addition, the Chamber factually distinguished the current case from other international cases relied upon by the Co-Prosecutors to support their request. Finally, it further noted that in light of IENG Thirith's medical condition, coercive conditions upon her release would, in any event, likely to be both practically and legally unenforceable.[46]

20. However, the Trial Chamber stated that it does not oppose many of the measures sought by the Co-Prosecutors.[47] In its Disposition, it reminded the Accused of her obligation pursuant to Internal Rule 35 not to interfere with the administration of justice; requested the Accused to remain within the territory of Cambodia and to inform the Court prior to any change of address; and undertook to consult with experts annually in relation to medical developments likely to reverse IENG Thirith's cognitive decline such that she would become fit to stand trial.

---

[40] Impugned Decision, para. 29.
[41] Impugned Decision, para. 30.
[42] *Prosecutor v. Lubanga*, ICC-01/04-01/06~~-1468~~ OA 12, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the release of Thomas Lubanga Dyilo"~~consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008~~, Appeals Chamber, 21 October 2008 ("*Lubanga* Decision"~~"~~).
[43] Impugned Decision, para. 28.
[44] Impugned Decision, para. 33.
[45] Impugned Decision, para. 33.
[46] Impugned Decision, para. 37.
[47] Impugned Decision, para. 39.

associated with the possibility of further action under mental health statutes, such as commitment to a mental health facility.

51. Termination of proceedings, although far from automatic, appears to be a possibility in the United States, if the circumstances of the case so justifies. At the federal level, termination of proceedings is not explicitly envisaged in the law, which provides for the commitment of all unfit defendants to an institution, "until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law."[165] In keeping with the US Constitution, this law has been construed to require that where the defendant is found incapable of proceeding to trial, is not likely to regain capacity in the future, and is not committed on account of threat to public safety, the state must either institute civil commitment proceedings under the law applicable to all citizens or release the defendant.[166] The US Supreme Court in *Jackson v. Indiana* suggested that termination of proceedings may be an available option depending on the circumstances of the case.[167] This option is explicitly envisaged in the legislation of a number of states, where courts are afforded the discretionary power to terminate proceedings against accused who face little prospect of being ever tried.[168] Termination is,

---

for committal to a healthcare institution under the Law of Law on Non-Contentious Proceedings if there are grounds to believe that the defendant will endanger the life or health of another person. (Regulation No. 2004/34 - On Criminal Proceedings Involving Perpetrators With a Mental Disorder, adopted by the United Nations Interim Administration Mission in Kosovo, Art. 9.1-9.4; Kosovo Provisional Criminal Procedure Code, Art. 103(3)).

[162] In Liberia, if a court considers that so much time has passed since the commitment of an incompetent accused that it would be unjust to resume criminal proceedings, the charges are dismissed. The accused is then released or, if his mental condition so warrants, is further committed to an appropriate institution (Liberia Criminal Procedure Law, 1969, Art. 6.3).

[163] In Sierra Leone, upon certification by a designated authority or practitioner that "the mental balance of the accused would be jeopardized by the strain of a trial, the proceedings against the accused shall not be continued unless the Attorney General informs the court that he considers it essential in the public interest for the trial to proceed" (Sierra Leone Criminal Procedure Act, Art. 78(1)). Upon such discontinuance, the accused is discharged and thereafter subject to the provisions of the relevant mental health acts "to the same extent as a mental patient against whom no proceedings have been brought." (Sierra Leone Criminal Procedure Act, Art. 78(2)).

[164] In Tanzania, there is no specific provision for accused permanently unfit to stand trial but the Criminal Procedure Act envisages the possibility for the prosecution to "discontinue" the charges, with the consequence that the accused could either be eligible to an unconditional discharge or "discharged" of the criminal charges and dealt with under the Mental Diseases Act. There remains a possibility to reinstate the criminal action. (Criminal Procedure Act, 2002, Art. 21).

[165] 18 U.S.C. ss 4244 to 4246. Many US states have enacted similar provisions (*see Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("*Jackson* Judgment"), p. 12).

[166] *Jackson* Judgment, p. 738: "We hold, consequently, that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant".

[167] *Jackson* Judgment, p. 740 (suggesting that the dismissal of charges against an incompetent accused may be warranted under the Sixth and Fourteenth Amendment right to a speedy trial or the denial of due process).

[168] *See, e.g.* Alaska Statute § 12.47.100 (2012) (providing for the dismissal of charges against a permanently unfit accused and ordering the institution of civil commitment procedures pursuant to AS §§ 47.30.700 – 47.30.915); Idaho Statutes § 18-212 (2000) (permitting the court to dismiss charges against an unfit accused if the court determines that "so much time has elapsed (...) since the commitment of the defendant that it would be unjust to resume the criminal

however, not automatic[169] and it remains possible, at least in some states, to order certain measures on release where justified by the case.[170] The flexibility of US federal and state courts to determine whether to dismiss the charges or impose measures upon release in such cases reflects the broad discretion of prosecutors and judicial officials inherent under the US common law system.

52. In the light of the foregoing, the Supreme Court Chamber finds that among various responses to unfitness to stand trial, the practice uniform to the degree of forming a general principle of law is that accused who are unfit to stand trial are not subject to regular processes capable of bringing about a criminal conviction. However, it remains exceptional that proceedings against

---

proceedings"); Hawaii Revised Statutes § 705-406 (2001) (granting the court authority to dismiss the charges against a defendant that lacks capacity in the interests of justice); New Jersey Revised Statute § 2C: 4-6 (2012) (requiring the court to hold a hearing to decide whether to dismiss the charges or hold them in abeyance where an unfit defendant fails to regain competency within three months of court-ordered commitment).~~For instance, in a New York federal case considering a defendant who had been in detention for mental incapacity and who was permanently unfit to stand trial, the court required his release, but stated that "this court does not purport in more general terms to 'dismiss' or otherwise erase the indictment. If the State should ever undertake to bring relator to trial, today's decision is not meant to foreclose (however much it may predict defeat of) a prosecution claim that such proceedings are consistent with the right to a speedy trial." *U.S. ex rel. von Wolfersdorf v. Johnston*, 317 F.Supp. 66, S.D.N.Y(1970)). *See also Greenwood v. U.S.*, 350 U.S. 366, 375 (1956) (recognizing that the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment as it relates to recovery and permanence of incapacity, and holding that a small likelihood of recovery of an unfit defendant does not irretrievably frustrate the federal power to prosecute).~~

[169] ~~*See, e.g.* Alaska Statute § 12.47.100 (2012) (providing for the dismissal of charges against a permanently unfit accused and ordering the institution of civil commitment procedures pursuant to AS §§ 47.30.700 – 47.30.915); Idaho Statutes § 18-212 (2000) (permitting the court to dismiss charges against an unfit accused if the court determines that "so much time has elapsed (…) since the commitment of the defendant that it would be unjust to resume the criminal proceedings"); Hawaii Revised Statutes § 705-406 (2001) (granting the court authority to dismiss the charges against a defendant that lacks capacity in the interests of justice); New Jersey Revised Statute § 2C: 4-6 (2012) (requiring the court to hold a hearing to decide whether to dismiss the charges or hold them in abeyance where an unfit defendant fails to regain competency within three months of court-ordered commitment).~~For instance, in a New York federal case considering a defendant who had been in detention for mental incapacity and who was permanently unfit to stand trial, the court required his release, but stated that "this court does not purport in more general terms to 'dismiss' or otherwise erase the indictment. If the State should ever undertake to bring relator to trial, today's decision is not meant to foreclose (however much it may predict defeat of) a prosecution claim that such proceedings are consistent with the right to a speedy trial." *U.S. ex rel. von Wolfersdorf v. Johnston*, 317 F.Supp. 66, S.D.N.Y(1970)). *See also Greenwood v. U.S.*, 350 U.S. 366, 375 (1956) (recognizing that the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment as it relates to recovery and permanence of incapacity, and holding that a small likelihood of recovery of an unfit defendant does not irretrievably frustrate the federal power to prosecute).

[170] This is the case *inter alia* in Illinois: *People v. Ealy*, 365 NE 2d 149, Ill. App. Ct, 1st Dist. (1977), p. 12 (discussing holding in *Jackson*: "But just what does *Jackson v. Indiana* require? Does it require defendant's release, either outright or unconditional, or a release subject to the statutory provisions of section 5-2-2 and the requirements for bail? Section 5-2-2 makes clear that an unfit, uncommittable defendant may be released on bail or recognizance 'under such conditions as the court finds appropriate, which may include, but need not be limited to requiring the defendant to submit to or to secure treatment for his mental condition. (…) In our opinion Jackson v. Indiana does not prohibit the trial court from considering sections 110-5(a) and 110-10(a) in determining the conditions under which the defendant may be released on bail"). *See also* Hawaii Revised Statute § 705-406 (2001) (permitting the release of an unfit accused "on conditions the court determines necessary"); Iowa Code § 812.6 (2001) (authorizing the court to require an unfit accused to undergo outpatient mental health treatment as a condition of release); Virginia Code § 19.2-169.3 (2009) (granting the court power to appoint a legal guardian for an unfit accused as a condition of release), as well as *People v. Lang*, 391 N.E.2d 350, 352, Ill. App. Ct. (1979) ("If the defendant is not ordered hospitalized in such hearing, the Department of Mental Health and Developmental Disabilities shall petition the trial court to release the defendant on bail or recognizance, under such conditions as the court finds appropriate, which may include, but need not be limited to requiring the defendant to submit to or to secure treatment for his mental condition.")

provisions that foresee the application of judicial supervision during the trial stage: Article 290 *in fine* provides that the trial court has the authority to determine whether the judicial supervision ordered at the pre-trial stage should continue on to the trial, whereas Article 352 provides that when the judgment is issued, judicial supervision ends. Moreover, the Internal Rules provide the possibility for the Trial Chamber of releasing the accused "on bail".[176] The Supreme Court Chamber notes that the Internal Rules, by using the expression "bail order" in their English version, may suggest a legal concept different from judicial supervision, especially when looking at it from a common law perspective. The French and Khmer versions, however, use the expression "judicial supervision". When looking at how the Internal Rules describe the "bail order" – namely a judicial order that an Accused remain at liberty or be released from detention, pending trial judgement, on condition that he or she pay a bail bond and/or respect specific conditions set out in the order[177] – it is clear that it refers to the same concept as the one described under Article 223 of the CCP.[178]

56. The Supreme Court Chamber notes that legally permissible purposes for which judicial supervision may be ordered – namely to ensure the accused's presence at trial; prevent risks to witness or victims; prevent collusion with accomplices; preserve evidence; protect the security of the accused and preserve~~ing~~ public order[179] – are inextricably connected to the necessity of criminal proceedings. The entirety of Chapter 3 of the CCP, entitled "Security Measures", demonstrates that the purpose and object of security measures do, in fact, anticipate that there will be a trial and seeks to prevent interference in advance of the trial. Outside the context of criminal proceedings, *e.g.*, upon dismissal of the case, none of the reasons could constitute an autonomous basis for the imposition of judicial supervision. That said, whereas the nexus with the criminal proceedings is indispensable, the Defence's contention that measures of judicial supervision are only allowed where the supervision is concurrently applied to ensure the presence of the Accused at trial[180] is too far-going. Other statutorily authorised reasons can be applied notwithstanding the objective of securing the presence of the Accused. Whether the given measure constitutes a permissible restriction of the rights of the accused will be dependent on the circumstances of the case.

[176] Internal Rules 82(2) and 65.
[177] Internal Rules, Glossary, and Rule 65(1).
[178] First Appeal Decision, para. 45.
[179] Internal Rule 65(1) (allowing to impose "such conditions as are necessary to ensure the presence of the person during the proceedings and the protection of others"), read in conjunction with Internal Rule 63(3)(b); Art. 223 of the CCP, read in conjunction with Art. 205.
[180] Defence Response, para. 61.

57. In conclusion, the core problem resulting from the indefinite stay of proceedings due to lasting unfitness of the Accused for the question of measures of judicial supervision is not the lack of jurisdiction or legal basis, but rather the question of the necessity and proportionality of these measures in the current circumstances. This issue has not been considered by the Trial Chamber; it therefore falls upon the Supreme Court Chamber to decide it.

3. Whether the Trial Chamber erred in law by ordering unconditional release of the Accused in place of justifiable measures of judicial supervision and erred in fact or in the exercise of its discretion in finding that such measures would be unenforceable or impracticable

58. Although less stringent than detention, the measures of judicial supervision requested by the Co-Prosecutors still restrict fundamental rights of the accused including, *inter alia*, the right to freedom of movement and privacy, protected under Articles 12 and 17 of the International Covenant on Civil and Political Rights ("ICCPR"). Therefore, it is not sufficient that the restrictions have formal statutory basis as discussed above: a court may only impose such measures as are necessary to protect legitimate interests and conform to the principle of proportionality by being appropriate to achieve their protective function, being the least intrusive instrument amongst those which might achieve the desired result and being proportionate to the interest to be protected.[181] The proportionality requirement considers the relationship between the restriction's scope and its objectives.[182] Accordingly, measures of judicial supervision may never be capricious or excessive; where a more lenient measure is possible instead of judicial supervision, or among conditions foreseen under the regime of judicial supervision, that measure must be applied.[183] Judicial supervision decisions are fact-

[181] *General comment No. 27: ICCPR Article 12*, CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 14. *See also General Comment No 31:The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para. 6 ("Where such restrictions [on the rights] are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights."); PTC 14 & 15, Decision on Khieu Samphan's Appeal Against Order Refusing Request for Release and Extension of Provisional Release Order, Pre-Trial Chamber, 3 July 2009, C26/5/26, para. 91 ("suitable, necessary, and reasonably related to the objective of the condition"), citing *Prosecutor v. Prilić*, IT-04-74, Order of Provisional Release of Slobodan Praljak, Trial Chamber, 30 July 2004, paras 14-16; *Prosecutor v. Blagojević*, IT-02-53-PT, Decision on Request for Provisional Release of Accused Jokić, Trial Chamber, 28 March 2002, para. 18; *Prosecutor v. Hadžihasanović*, IT-01-47-PT, Decision Granting Provisional Release to Enver Hadžihasanović, Trial Chamber, 19 December 2001, para. 8.

[182] *Silver v. United Kingdom*, ECtHR, App. No. 5947/72; Judgment, 25 March 1983, para. 97, citing *Handyside v. United Kingdom* (A/24) [1979-80] 1 EHRR 737, 754-55.

[183] *Talić* Decision, para. 23.

intensive and considered on an individual basis.[184] In this respect, the Supreme Court Chamber notes that the regime of judicial supervision available under Article 223 of the CCP and Internal Rule 65 is flexible enough to allow for balancing the various interests at stake and design a regime as appropriate in the circumstances.

59. In the current case, where the Accused is indicted for the most serious crimes known to mankind, including Grave Breaches of the Geneva Conventions, Crimes Against Humanity and Genocide, there is a pressing social need to ensure that reasons to suspend the proceedings remain valid, *i.e.* to ascertain whether the Accused remains unfit to stand trial. The general theoretical possibility of resumption is already envisaged by the legal framework which does not allow dismissing the proceedings based on unfitness. On the facts of the case, such possibility could be predicated upon the following factors: limited confidence in the expert opinion; degree of probability/margin of error in the expert opinion; possibility of the Accused recovering in the future; prospect of progress in treatment methods. Notwithstanding the difference of medical opinions adduced in trial,[185] this Chamber has no reason to doubt the quality of the opinion that has been obtained by the Trial Chamber from court-appointed experts and the accuracy of their diagnosis that the Accused suffers from a dementing illness which renders her unfit to stand trial. It further accepts the experts' opinion that the prospect for improvement of the Accused's condition, given her age, is minimal. However, the Chamber recalls that medical science is not exact and is subject to evolution. The inherent limitation of medical science, and, in particular, the disciplines relevant to this case, is illustrated by the fact that after one and half year of observation and treatment the expert conclusion is still on the level of probability, "*most likely* Alzheimer disease". The potential of medical science is illustrated by the example of still unexplored area of pharmacological treatment. It is recalled that that the experts previously recommended the application of the Donepezil drug which was reported to have 33% effectiveness in Alzheimer patients. While this treatment was not

[184] First Appeal Decision, para. 30; SC 04, Decision on Immediate Appeal by KHIEU Samphan on Application for Release, Supreme Court Chamber, 6 June 2011, E50/3/1/4, para. 54 ("To what extent risks may be attenuated by measures not based in detention must be evaluated by the Trial Chamber upon a proper examination of all relevant factors"). *See also, inter alia: Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-AR65.1, Decision on Johan Tarčulovski's Interlocutory Appeal on Provisional Release, Appeals Chamber, 4 October 2005, para. 7 ("Decisions on motions for provisional release are fact-intensive and cases are considered on an individual basis. In light of their factual complexity, each motion for provisional release is analysed in the light of the particular circumstances of the individual accused."); *Prosecutor v. Bemba*, ICC-01/05-01/08 (OA), Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo against the Decision of Pre-Trial Chamber III entitled "Decision on Application for Interim Release", Appeals Chamber, 16 December 2008, para. 55 (noting that detention or release may be justified upon an analysis of all factors taken together).

[185] Impugned Decision, paras 13 and 25 (referring to the unsolicited report of Dr. CHAK Thida and her testimony before the Trial Chamber to the effect that the Accused suffers "no cognitive impairment or mental illness.")

administered after the Accused showed intolerance to it,[186] it does not preclude the future finding of a formula that will be better tolerated and available for administration. The Trial Chamber itself has acknowledged this possibility by undertaking to consult with experts every year to verify if new treatments are available.[187]

60. Hence, the Supreme Court Chamber considers that measures of judicial supervision are necessary to ensure that the condition of the accused is monitored. The minimal prospect of a trial causes, however, that only measures that have a minimal practical impact on the Accused's rights can be considered proportionate in the present circumstances. On the other hand, what practically plays a role in the consideration is that an accused who is genuinely permanently unfit to stand trial because of a mental condition is, as a rule, in real and practical terms, incapable of exercising the fullness of his or her rights.

61. The Chamber emphasises that it shall take into account the fact that the Accused's mental impairment and dementing mental illness raise serious concerns as to her ability to voluntarily abide by measures of judicial supervision that would require her direct cooperation. Indeed, this aspect was stressed in the First Appeal Decision.[188] In this regard, the Defence submits that the Accused's severe memory decline entails that she "will not be in a position to remember, comprehend and abide by any coercive condition imposed on her".[189] Although the Trial Chamber's findings concerning the Accused's mental state were limited to determining whether the Accused was fit to stand trial, the Impugned Decision and the experts reports filed before the Trial Chamber indicated that the Accused suffers from moderate to severe cognitive impairment[190] impairing her ability to comprehend questions, follow instructions, recall events, concentrate and maintain a consistent line of thought.[191] Her short-term and long-term memory is impaired.[192] For example, the Accused was unable to remember her address.[193] There are also indications of disorientation, even in confined spaces with which the Accused is familiar.[194] At the hearing before this Chamber, the Accused appeared disoriented and had difficulty to comprehend questions asked by the Court.

---

[186] Report concerning Mrs. IENG Thirith in Response to Trial Chamber Request dated 6 January 2012, E138/1/7/4, 24 February 2012, para. 7.
[187] Impugned Decision, para. 39.
[188] First Appeal Decision, para. 47.
[189] Defense Response, para. 71.
[190] Impugned Decision, paras 8-9, 11, 24; First TC Fitness Decision, paras 44, 45, 53.
[191] First TC Fitness Decision, para. 33.
[192] Impugned Decision, paras 9, 12; First TC Fitness Decision, para. 53.
[193] Summary Expert Report on Mrs. IENG Thirith, 29 August 2012, E138/1/7/13/2, para. 50.
[194] First TC Fitness Decision, paras 35, 36.

verify compliance ~~by~~ with these conditions.[230] These checks should be minimally intrusive and serve the purpose of verifying if the Accused still resides at the address she has provided to the Court and that she has not left the country. Any concern about the security of the Accused, should the issue arises, must also be noted, in accordance with the obligation of the Cambodian authorities to ensure safety of the Accused.[231] At this point, however, it is noted that there appears to be no particular threat to the Accused's safety. A brief report shall be provided to the Trial Chamber every month, focused primarily on informing the court in the event of any relevant changes in the situation of the Accused. Alternatively, the Accused, through her guardian, may be offered the possibility of sending herself such brief report every month.

76. The Chamber considers that the conditions mentioned above constitute a minimal restriction of the Accused's freedom of movement[232] that is proportionate to the objective of making her available to the Court while proceedings against her are still pending.

Contact with Co-Accused, Witnesses and Victims and Interference with the Administration of Justice

77. The Co-Prosecutors request that the Accused be ordered to refrain from contacting, directly or indirectly, the other Co-Accused (excluding her husband, IENG Sary); contacting any witness, experts or victims proposed by the Trial Chamber; or interfering with the administration of justice.[233]

---

[230] Insufficient personal guarantees may be alleviated by a reliable guarantee of government cooperation or a court enforcement mechanism, such as a police force (*see inter alia Norman* Decision, para. 43 (considering release was not possible where the local police claimed to be incapable of monitoring an accused and personal guarantees were insufficient); *Galić* Decision, para. 12. At the ICTY, for example, government guarantors undertake, *inter alia*, to ensure compliance with conditions, including monitoring the presence of the Accused at the address given (*see inter alia*: *Prosecutor v. Čermak and Markač*, IT-03-73-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decision Denying Provisional Release, Appeals Chamber, 2 December 2004, para. 44(b)).

[231] ECCC Agreement, Art. 24.

[232] Universal Declaration of Human Rights, Art. 13 ("Everyone has the right to freedom of movement and residence within the borders of each state… Everyone has the right to leave any country, including his own, and to return to his country"). *See also* ICCPR, Art. 12 ("Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant"). *See inter alia Liakat Ali Alibux, Suriname*, Inter-American Commission on Human Rights, Doc. 32, 22 July 2011, para. 100 ("On the question of proportionality, the Court considered that the restriction of the right to leave the country imposed during criminal proceedings by means of a precautionary measure should be proportionate to the legitimate purpose sought, so that it is only applied when there is no other less restrictive measure and during the time that is strictly necessary to comply with its purpose"); M. Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary*, Engel Publisher, Strasbourg, 1993, p. 213 ("States have a limited right to prevent persons who have been accused of a crime from leaving the territory of the State (*e.g.* by way of pre-trial detention or taking the passport away").

[233] Co-Prosecutors' Supplementary Appeals Submissions, para. 27.