



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 16-Sep-2012, 09:45
CMS/CFO: Uch Arun

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក/ អ.ជ.ស.ដ/អ.ជ.ត.ក(១៦)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(16)

Before: Judge KONG Srim, President

Date: 16 September 2012
Language(s): English/Khmer
Classification: PUBLIC

DECISION ON CO-PROSECUTORS' REQUEST FOR STAY OF RELEASE ORDER OF IENG THIRITH

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
IENG Thirith

Civil Party Co-Lead Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Accused
Diana ELLIS, QC
PHAT Pouy Seang

THE PRESIDENT OF THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia:

NOTING the Trial Chamber's decision of 13 September 2012 ordering the unconditional release of the Accused, IENG Thirith, from the ECCC Detention Facility ("Release Order");¹

BEING SEISED of a request lodged by the Co-Prosecutors under Internal Rule 82(6) (Rev. 8) to stay such Release Order ("Request"),² together with a copy of the Co-Prosecutors' appeal against such Release Order filed with the Greffier of the Trial Chamber ("Appeal")³ whereby the Co-Prosecutors request that judicial supervision be imposed on the Accused, more specifically that her release be subject to the following conditions: i) to reside at a specified home address to be provided by her Co-Lawyers; ii) to make herself available for a weekly safety check by authorities or officials to be designated by the Trial Chamber; iii) to surrender her passport and identification card; iv) not to contact, directly or indirectly, the other Co-Accused (excluding her husband, Accused Ieng Sary); iv) not to contact, directly or indirectly, any witness, expert or victim who is proposed to be heard by the Trial Chamber, and not to interfere in the administration of justice; vi) to undergo six-monthly medical examinations by medical practitioners to be appointed by the Trial Chamber⁴;

CONSIDERING that the Co-Prosecutors do not contest that the Accused should be released but only appeal the Release Order in so far as the conditions of such release are concerned;

CONSIDERING that the Accused's fundamental right to liberty, which is protected under Cambodian Law⁵ and Article 9 of the International Covenant on Civil and Political Rights, may be restricted only where it is necessary and where the measure being imposed is proportionate to the aim it seeks to achieve;

¹ Decision on Reassessment of Accused Ieng Thirith's Fitness to Stand Trial Following Supreme Court Chamber Decision of 13 September 2012, E138/1/10.

² Co-Prosecutors' Request for Stay of Release of Accused Ieng Thirith, E138/10/1/2, 14 September 2012.

³ 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, E138/1/10/1/1.

⁴ Appeal, para. 10.

⁵ Article 205 of the Cambodian Code of Criminal Procedure, referred to in the Decision on Immediate Appeal against the Trial Chamber's Order to Release the Accused Ieng Thirith, 13 December 2011, E138/1/7, para. 39.

CONSIDERING that detention of the Accused is not necessary pending determination of the appeal that is limited to the conditions of her release and would not be a proportionate measure in these circumstances;

CONSIDERING that the conditions requested by the Co-Prosecutors, by their nature, do not conflict with the Accused being at liberty pending determination of the Appeal;

CONSIDERING, however, that measures must be taken to ensure that the Accused remains at the disposition of the Court pending determination of the Appeal, given the seriousness of the crimes with which she is indicted, so conditions should be imposed to her release pending determination of the Appeal;

CONSIDERING that the President, having authority to order continuation of the detention under Internal Rule 82(6), is logically, *a maiori ad minus*, authorized to apply a less restrictive measure;⁶

PURSUANT to Internal Rule 82(6);

HEREBY:

GRANTS in part the Co-Prosecutors' Request;

ORDERS that the Trial Chamber's Release Order is stayed in so far as it orders unconditional release of the Accused;

ORDERS that pending determination of the Appeal, the Accused's release is subject to the following conditions:

1. The Accused shall inform the Chamber of the address where she will reside and not change residence without prior authorisation from the Chamber;
2. The Accused shall surrender her passport and any other travel documents, and remain in the territory of the Kingdom of Cambodia;

⁶ Decision on Immediate Appeal against the Trial Chamber's Order to Release the Accused Ieng Thirith, 13 December 2011, E138/1/7, para. 45.

3. The Accused shall response to any summon issued by the Court;

REMINDS the Accused of her obligation under Internal Rule 35 to refrain from interference with the administration of justice.

Phnom Penh, 16 September 2012

President of the Supreme Court Chamber



Kong Srim