



## Special Edition Case 002: Release of Ieng Thirith

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# The Court Report

SEPTEMBER 2012

## The Extraordinary Chambers in the Courts of Cambodia

*Moving Forward Through Justice*



*Ieng Thirith, minister of social affairs under the Khmer Rouge regime, is released from provisional detention.*

### Ieng Thirith Released from Provisional Detention

Former Khmer Rouge minister Ieng Thirith was released on 16 September from the detention facility of the Extraordinary Chambers in the Courts of Cambodia under conditions, following a ruling by the President of the ECCC's Supreme Court Chamber. Her release is an interim measure while the Supreme Court Chamber considers the merits of an appeal lodged by the Co-Prosecutors against the Trial Chamber's decision to release Ieng Thirith unconditionally.

Three days earlier, on 13 September, the Trial Chamber delivered its decision reassessing the fitness to stand trial of the accused. In November 2011, the Trial Chamber had found Ieng Thirith unfit to stand trial. Following an appeal by the Co-

Prosecutors, the Supreme Court Chamber ordered that she undergo additional treatment recommended by medical experts and that her condition be reassessed within six months. On 13 September, the chamber reaffirmed its earlier ruling that Ieng Thirith is unfit to stand trial due to her dementia, most likely Alzheimer's disease. In view of her mental state, which rendered her incapable of understanding or complying with conditions, the Trial Chamber ordered that she be released with no coercive conditions. However, it acceded to some of the Co-Prosecutors' requests by permitting certain administrative measures to accompany her release.

Prior to reaching its decision, the Trial Chamber

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## Frequently Asked Questions: Release of Accused Ieng Thirith

On 16 September 2012, accused Ieng Thirith was released from provisional detention in compliance with a court order. Below are answers to frequently asked questions on her release and fitness to stand trial.

### Q. Why was Ieng Thirith released from detention?

On 13 September 2012, the Trial Chamber affirmed that Ieng Thirith remained unfit to stand trial because she suffered from moderate to severe dementia, likely Alzheimer's disease. As there was no longer any prospect that she could be tried before the ECCC, the Trial Chamber lacked a legal basis to keep her in detention, and therefore ordered her immediate unconditional release. This followed an earlier decision of 16 November 2011 where the Trial Chamber had also found Ieng Thirith unfit to stand trial and followed the imposition of further medical treatment ordered by the Supreme Court Chamber following a prosecution appeal of the Trial Chamber's November 2011 decision.

The Trial Chamber concluded that due to her long-term and short-term memory loss, Ieng Thirith would be unable to understand sufficiently the course of proceedings to enable her to adequately instruct her defence lawyers and to effectively participate in her own defence. The Trial Chamber also noted that due to Ieng Thirith's medical condition, it appeared unlikely that she would be able to testify at trial.

Although the Co-Prosecutors agreed with the Trial Chamber that Ieng Thirith should be released, they sought to impose conditions on her release such as requiring her to surrender



Accused Ieng Thirith's fitness to stand trial has been evaluated by the Extraordinary Chambers in the Courts of Cambodia.

her passport and identity card and make herself available for a weekly security check. They appealed the Trial Chamber's decision to release her without conditions, and requested the President of the Supreme Court Chamber to stay the release order.

The President of the Supreme Court Chamber on 16 September 2012 found it unnecessary to keep the accused detained while the appeal is pending, and decided to release her on the following provisional conditions: Ieng Thirith must (1) provide her residing address to the chamber and seek authorization before moving; (2) surrender her passport and remain in Cambodia; (3) respond to any sum-

mons by the court. In addition, she is reminded not to interfere with the administration of justice.

### Q. Does this mean Ieng Thirith is found not guilty on the charges brought against her?

No, neither the Trial Chamber nor the Supreme Court Chamber has determined the guilt or innocence of Ieng Thirith with regards to the charges of crimes against humanity, grave breaches of the 1949 Geneva Conventions and genocide for which she has been indicted. While trial proceedings against Ieng Thirith have been stayed since November 2011 when she was initially found unfit to stand trial, the charges against her are not withdrawn. She remains an accused person before the ECCC.

### Q. How can she be released if she is still charged?

In its ruling on the reassessment of Ieng Thirith's fitness to stand trial, the Trial Chamber found that there is no reasonable possibility that Ieng Thirith will recover her cognitive functions in order for her to become fit to stand trial in the foreseeable future. The continued detention of Ieng Thirith would violate her fundamental rights, notably the protection against indefinite detention in national and international law.

Neither the Prosecution nor the Defence has contested the Trial Chamber's decision to release Ieng Thirith. Only the Trial Chamber's powers to impose conditions surrounding her release are contested on appeal.

### Q. Does Ieng Thirith's release affect the ongoing trial of the three other co-accused in

## Ieng Thirith's Release (continued from page 1)

heard in late August court-appointed medical experts who testified that Ieng Thirith's condition had deteriorated further despite the additional treatment ordered in consequence of the Supreme Court Chamber's decision, that treatment options had been exhausted and that there is no reasonable prospect of the accused's mental state improving such that she could instruct her lawyers and participate in her defense. Neither the Prosecution nor the Defence disputed that Ieng Thirith is

unfit to stand trial but the Prosecution requested that several conditions be imposed upon her release.

Having considered the medical experts' conclusions and legal arguments from all parties, the Trial Chamber affirmed its previous finding that Ieng Thirith is unfit to stand trial. The chamber ordered her immediate release as in consequence of the indefinite stay of proceedings against the accused, there was no legal basis to further detain her. Noting

that in consequence of there being no prospect of the accused ever being tried, the Trial Chamber also lacked jurisdiction to impose coercive measures for her release. In response to measures sought by the Co-Prosecutors, the chamber nonetheless requested that she remain within Cambodia and to inform the court of her address of residence.

On the following day, the prosecution appealed the Trial Chamber's decision, argu-

## Frequently Asked Questions on Ieng Thirith's Release (continued from page 2)

### Case 002, namely Nuon Chea, Khieu Samphan and her husband Ieng Sary?

No, Ieng Thirith was separated from Case 002 in November 2011 and the trial proceedings against her have been stayed since that date. Trial proceedings against the remaining three co-accused continue.

### Q. How did the ECCC determine Ieng Thirith's fitness to stand trial?

The assessment of Ieng Thirith's fitness to stand trial before the Trial Chamber began in April 2011 following a motion submitted by her defence team alleging that she was unfit to stand trial. Ieng Thirith's counsel indicated that they experienced difficulties receiving instructions from the Accused as to how she wished them to conduct her defence. The Trial Chamber then appointed five medical experts to examine the accused's mental and physical fitness and held public hearings to examine the findings of the medical experts in August and October 2011. The court-appointed medical experts testified at that time that she was suffering from "mild to moderate" dementia, likely Alzheimer's disease.

The Chamber then evaluated the medical information provided by the experts in the light of several criteria contained in the international jurisprudence concerning fitness to stand trial. In a first decision issued on 17 November 2011, the Trial Chamber unanimously found Ieng Thirith unfit to stand trial in light of these criteria, severed the proceedings against her from the other co-accused's in Case 002 and stayed the proceedings against her, and ordered her unconditional release.

In its decision following an appeal of the decision to release the Accused, the Supreme Court Chamber ruled on 13 December 2011

that the ECCC was obliged to exhaust all measures available to help improve Ieng Thirith's mental health such that she may become fit to stand trial. The Supreme Court Chamber directed the Trial Chamber to identify, in consultation with the experts, additional medical treatment for Ieng Thirith and to re-assess her condition within six months of the start of the medical treatment.

Following the completion of medical treatment implemented in consequence of the SCC's decision, the Trial Chamber re-appointed three of the five medical experts to examine Ieng Thirith on 27-28 August 2012. Following various examinations, tests and interviews of the accused and her carers, the experts – Dr. John Campbell of New Zealand, Dr. Seena Fazel of United Kingdom and Dr. Huot Lina of Cambodia – testified during the hearings on 30-31 August 2012 that Ieng Thirith's mental state had deteriorated despite the additional treatment and that she suffered from "moderate to severe" dementia that is permanent and irreversible. There are no additional medical treatments that may help improve Ieng Thirith's mental condition such that she would become fit to stand trial.

On 13 September 2012, the Trial Chamber reaffirmed that Ieng Thirith remains unfit to stand trial and ordered that she be released without coercive conditions. The prosecution appealed this decision, arguing her release should be subject to conditions.

### Q. What does fitness to stand trial mean?

Fitness to stand trial is based on a general principle that an accused person can only be tried if he/she has sufficient mental and physical capacity to exercise his or her rights during trial. These rights include the capacity to understand the nature of the charges, the

course and consequences of the proceedings, evidential details, the ability to instruct his or her lawyers, and the capacity to testify.

A decision on fitness to stand trial is a judicial decision. The judges make a decision after considering the findings from medical experts and relevant legal issues.

### Q. What does the prosecution's appeal entail?

On 14 September 2012, the prosecution appealed the Trial Chamber's decision, arguing that the Trial Chamber has jurisdiction to impose coercive measures on Ieng Thirith's release, and requested the Supreme Court Chamber to amend the Trial Chamber's decision and require the accused to comply with specific conditions.

The prosecution has proposed the following six conditions for release: that Ieng Thirith (1) resides at a specified home address; (2) be available for a weekly safety check by authorities and officials; (3) surrenders her passport and identification card; (4) refrains from contacting the other co-accused (except her husband, Ieng Sary); (5) refrains from contacting any witness or expert scheduled to testify before the Chamber; (6) and undergoes medical examinations once every six months.

### Q. What is the next step?

The Supreme Court Chamber will rule on the prosecution's appeal within three months of the Co-Prosecutors' filing of the notification of appeal.

*(Edited by The Trial Chamber's senior legal officer)*

## Ieng Thirith's Release (continued from page 2)

ing that conditions should be imposed on Ieng Thirith's release in the form of judicial supervision and requested the President of the Supreme Court Chamber not to release her until the appeal is resolved.

On 16 September, President Kong Srim found that it is unnecessary to keep Ieng Thirith detained while his Chamber determines the prosecution's appeal, but ruled that conditions must be imposed on her release pending the appeal decision. His

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ruling requires Ieng Thirith to inform the chamber of her address of residence, surrender her passport and travel documents, remain inside Cambodia, and respond to any summons issued by the court.

Following the President's ruling, Ieng Thirith was released to her family after nearly five years in detention. She is now under the care of her daughter who has been appointed as her guardian by the Phnom Penh Municipal Court. Despite her release, Ieng Thirith

remains an accused person charged with crimes against humanity, grave breaches of the 1949 Geneva Conventions and genocide. The three other co-accused, Nuon Chea, Ieng Sary and Khieu Samphan, are currently being tried for these charges by the Trial Chamber.

The Supreme Court Chamber is expected to issue a decision on the prosecution's appeal within three months.

*(Edited by The Trial Chamber's senior legal officer)*

# Overview of Proceedings Against Ieng Thirith in Case 002

## TIMELINE

18 July 2007	Investigation into crimes committed by Ieng Thirith, along with Nuon Chea, Ieng Sary, Khieu Samphan and Kaing Guek Eav alias Duch, is initiated by the Co-Prosecution's first <b>Introductory Submission</b> . Later, the Co-Investigating Judges separate the five accused into two cases with Duch in Case 001 and the other four accused in Case 002.
12 Nov 2007	Ieng Thirith is arrested and placed in pre-trial detention.
15 Sep 2010	Ieng Thirith, along with the three other accused, is indicted for crimes against humanity, genocide, grave breaches of the Geneva Conventions of 1949, and offences under the 1956 Penal Code of Cambodia (homicide, torture and religious persecution) in the Co-Investigating Judges' <b>Closing Order</b> .
13 Jan 2011	The Pre-Trial Chamber confirms the indictments of the four accused with minor amendments, in response to appeals against the closing order filed by the defence teams.
27-30 Jun 2011	The Trial Chamber holds an <b>Initial Hearing</b> in Case 002 to consider preliminary objections and witnesses, effectively opening the long-awaited trial.
29-31 Aug 2011	The Trial Chamber holds preliminary hearing on the fitness to stand trial of Ieng Thirith and her co-accused Nuon Chea.
22 Sep 2011	The Trial Chamber rules out charges under the 1956 Cambodian penal code from the indictment and severs the case into a series of separate trials.
17 Nov 2011	The Trial Chamber finds Ieng Thirith unfit to stand trial, stays the proceedings against her, severs her from Case 002 and orders her release. Prosecutors file an appeal against the accused's immediate release the following day.
21-23 Nov 2011	The Trial Chamber hears <b>Opening Statements</b> in Case 002 from Co-Prosecutors and responses by the accused and their lawyers, except Ieng Thirith.
13 Dec 2011	The Supreme Court Chamber sets aside the Trial Chamber decision to immediately release Ieng Thirith. It orders the accused to remain detained and undergo medical treatment; her fitness is to be reassessed in six months' time.
30-31 Aug 2012	Medical experts testify before the Trial Chamber that Ieng Thirith suffers from moderate to severe dementia.
13 Sep 2012	Trial Chamber rules that Ieng Thirith remains unfit to stand trial and orders her immediate and unconditional release.
14 Sep 2012	The prosecution appeals the Trial Chamber's decision and requests the Supreme Court Chamber reexamine the release order and impose conditions.
16 Sep 2012	Ieng Thirith is released from provisional detention in compliance with a court order. The Supreme Court Chamber will issue a ruling on the prosecution's appeal within three months.



**Name:** IENG Thirith  
**Alias:** Phea  
**Date of Birth:** 10 March 1932  
**Place of Birth:** Phnom Penh  
**Position in Democratic Kampuchea:** Minister of Social Affairs  
**Date of Arrest:** 12 November 2007

### Personal Background:

Ieng Thirith graduated from the Lycée Sisowath in Phnom Penh, before she went to study in Paris, where she majored in Shakespeare studies at the Sorbonne. She became the first Cambodian to receive a degree in English Literature. Returning to Cambodia in 1957, she worked as a professor before founding a private English school in 1960.

On 9 October 1975, Ieng Thirith was allegedly appointed minister of social affairs of Democratic Kampuchea. It is alleged that she remained with the Khmer Rouge movement until her husband Ieng Sary was granted a royal amnesty and pardon in 1996. Thereafter, they lived together in Phnom Penh until being placed in pre-trial detention by the ECCC in November 2007.

### Key Allegations

Ieng Thirith is charged with:

- **Crimes against humanity:** murder, extermination, enslavement, deportation, imprisonment, torture, persecution and other inhumane acts
- **Genocide:** of the Vietnamese community
- **Grave breaches of the Geneva Conventions of 1949:** willful killing, torture or inhumane treatment, willfully causing great suffering or serious injury to body or health, willfully depriving a prisoner of war or civilian the rights of fair and regular trial, unlawful deportation or unlawful confinement of a civilian

Although she was found unfit to stand trial and the proceedings against her have been indefinitely stayed, she remains an accused person charged with the above allegations.

### The Court Report Special Edition

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