



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
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Nation Religion Roi

Supreme Court Chamber

TRANSCRIPT OF APPEAL PROCEEDINGS - IENG THIRITH

PUBLIC

Case File N° 002/19-09-2007-ECCC/SCC

13 November 2012

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 16-Nov-2012, 11:09
CMS/CFO: Sann Rada

Before the Judges: KONG Srim, Presiding
Ya Narin
Agnieszka KLONOWIECKA-MILART
SOM Sereyvuth
Chandra Nihal JAYASINGHE
MONG Monichariya
Florence MUMBA
Sin Rith (Reserve)

The Accused: IENG Thirith

Lawyers for the Accused:

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For the Office of the Co-Prosecutors:

SONG Chorvoin
Andrew CAYLEY
Tarik ABULHAK

For Court Management Section:

UCH Arun
SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Langue
MR. ABDULHAK	English
MS. ELLIS	English
MS. IENG THIRITH	Khmer
MS. IENG VICHIDA	Khmer
JUDGE KLONOWIECKA-MILART	English
THE PRESIDENT (KONG SRIM, Presiding)	Khmer
JUDGE MONG MONICHARIYA	Khmer
JUDGE MUMBA	English
MR. PHAT POUV SEANG	Khmer
JUDGE SOM SEREYVUTH	Khmer
MS. SONG CHORVOIN	Khmer

1

1 P R O C E E D I N G S

2 (Court opens at 0947H)

3 MR. PRESIDENT:

4 Please be seated.

5 Upon having been seized of the immediate appeal, the Supreme
6 Court Chamber pronounces the opening of the hearing to hear this
7 appeal.

8 The appeal is the immediate appeal by the Co-Prosecutors against
9 the decision on reassessment of accused Ieng Thirith's fitness to
10 stand trial of the 13 of September 2012. This appeal was lodged
11 after the decision by the Trial Chamber was issued on the 13th of
12 December 2011, in Case 002/19-09-2007/ECCC/TC.

13 [09.50.12]

14 During this hearing, the Chamber will hear matter concerning as
15 to whether conditions should be imposed on Ieng Thirith's
16 release, and the parties should be - note that the arguments to
17 be raised during today's session are merely the matter as
18 mentioned, in particular the grounds for the release and how they
19 can be implemented and enforced.

20 The composition of the Supreme Court Chamber Judges include Judge
21 Kong Srim - I, myself, the President - Judge Chandra Nihal
22 Jayasinghe, Judge Som Sereyvuth, Judge Agnieszka Milart, and
23 Judge Mong Monichariya, Judge Florence Mumba, Judge Ya Narin;
24 Reserve Judge: Judge Sin Rith; greffiers: Mr. Sea Mao, Ms.
25 Anne-Marie, and Mr. Phan Thoeun.

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1 Greffier of the Supreme Court Chamber is now instructed to report
2 on the current presence of the parties to the proceedings.

3 THE GREFFIER:

4 Mr. President and Your Honours, all the parties to the
5 proceedings are present.

6 On the Prosecution side, we have Ms. Chorvoin and Mr. Andrew
7 Cayley.

8 [09.52.05]

9 And the accused person Ieng Thirith and her custodian, Ieng
10 Vichida, Mr. Phat Pouv Seang, and Counsel Diana Ellis are
11 present.

12 On the civil parties' side, we see Mr. Pich Ang and Ms. Élisabeth
13 Simonneau-Fort.

14 Thank you, Mr. President.

15 MR. PRESIDENT:

16 In order to assist the accused person during today's session, two
17 security personnel are assigned to assist her during the whole
18 course of proceedings.

19 On the 13th of September 2012, Trial Chamber of the ECCC issued a
20 new decision in which Ieng Thirith is found to be unfit to stand
21 trial and that the proceedings are stayed indefinitely, and that
22 accused person Ieng Thirith is ordered to be released
23 immediately, and that the accused person is reminded of some
24 conditions pursuant to Internal Rule 35 of the ECCC Internal
25 Rules.

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1 [09.53.55]

2 The Appeal.

3 This decision was appealed by the Co-Prosecutors and that - the
4 Co-Prosecutors, on the 14 of September 2012, filed their Appeal
5 to delay the release of Mr. - of Ms. Ieng Thirith on - and then
6 the Supreme Court Chamber issued a decision rejecting such
7 application and ordered that Ieng Thirith be released on the 16th
8 of September 2012.

9 The co-counsels for Ieng Thirith filed their application, asking
10 for immediate release of Ms. Ieng Thirith without any condition,
11 and that - the Co-Prosecutors also submitted additional
12 submission on the 28 of September 2012, when the co-counsels then
13 replied on the 18 of October 2012.

14 I would like now to proceed to inform the accused person on her -
15 of her rights.

16 According to Internal Rule 21, subparagraph 1(d), "every person
17 suspected or prosecuted shall be presumed innocent as long as
18 his/her guilt has not been established".

19 [09.55.39]

20 I would like now to ask the Court Rapporteur to read the report
21 of the proceeding - the report of the examination, rather.

22 JUDGE SOM SEREYVUTH:

23 Report of the Co-Prosecutor - of the Co-Rapporteur, pursuant to
24 Internal Rule 108, subparagraph 5.

25 Having been appointed by the President of the Supreme Court

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1 Chamber to act as co-rapporteur for the appeal, we hereby submit
2 our report setting out the details of the Trial Chamber's
3 decision on reassessment of accused Ieng Thirith's fitness to
4 stand trial, following Supreme Court Chamber's decision on - of
5 the 13 of December 2011, which is appealed against, and the
6 relevant facts of the case.

7 A. Trial Chamber's decision.

8 The impugned -- or decision reaffirmed that Ieng Thirith remains
9 unfit to stand trial after additional treatments recommended by
10 experts have been administered to her, given that there is no
11 reasonable prospect for the Accused to regain competency in the
12 foreseeable future, the Trial Chamber ordered an indefinite stay
13 of proceedings. It concluded that its jurisdiction over the
14 Accused is suspended, so it lacks a clear legal basis to impose
15 coercive conditions or other forms of judicial supervision over
16 the Accused upon release. The Trial Chamber, therefore, ordered
17 the unconditional release of the Accused.

18 [09.57.35]

19 B. Appointment of a guardian.

20 2. On 15th of September 2012, the Phnom Penh Municipal Court
21 appointed Ieng Vichida, the Accused's daughter, as general
22 guardian.

23 C. Appeal by the Co-Prosecutors.

24 The Co-Prosecutors argue that the Trial Chamber erred by
25 suspending its jurisdiction over the Accused and that her release

1 should be subject to conditions of judicial supervision.

2 Specifically, they request that this Chamber impose six

3 conditions; that the Accused should:

4 1. Reside at a specified home address provided by her co-lawyers;

5 2. Make herself available for a weekly safety check by

6 authorities or officials designated by the Trial Chamber;

7 3. Surrender her passport and identification card;

8 4. Refrain from directly or indirectly contacting the other

9 co-accused, excluding her husband, Ieng Sary, and any witnesses -

10 any witness, expert or victim who will be heard by the Trial

11 Chamber;

12 5. Not interfere with the administration of justice; and

13 6. Undergo semi-annual medical examinations by practitioners

14 appointed by the Trial Chamber.

15 [09.59.30]

16 D. Defence response.

17 The Defence argues that the imposition of judicial supervision

18 and coercive conditions has no legal - or, rather, justification

19 and serves no rational purpose, given the indefinite stay of

20 proceedings. The absence of a reasonable prospect of the Accused

21 being tried or her inability to remember, comprehend or abide by

22 any coercive condition imposed on her.

23 Further, the Defence contends that the appointment of a general

24 guardian to the Accused will not assist in the enforcement of

25 coercive conditions, as this would fall outside her role under

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1 Cambodian Civil Law.

2 Phnom Penh, 12 of November 2012.

3 Judge Som Sereyvuth and Judge Agnieszka Klonowiecka-Milart.

4 MR. PRESIDENT:

5 Thank you, Judge Co-Rapporteur.

6 We would like now to proceed to the Co-Prosecutor.

7 [10.00.51]

8 MS. SONG CHORVOIN:

9 Thank you, Mr. President and Your Honours.

10 Today, on behalf of the Prosecution, I am on my feet to submit
11 our submission on the Appeal against the Decision of the Trial
12 Chamber.

13 MR. PRESIDENT:

14 Co-Prosecutor, please speak louder, because you are hardly heard.

15 MS. SONG CHORVOIN:

16 (No interpretation)

17 MS. ELLIS:

18 May it please you, Mr. President, I apologize for interrupting
19 the Co-Prosecutor, but we had understood that the matters this
20 morning would commence with any questions which would be asked of
21 Madam Ieng Thirith.

22 [10.01.50]

23 I raise this because, having spoken with her daughter this
24 morning, we understand that it is very difficult for her to
25 maintain a position where she is seated for any significant

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1 length of time. Indeed, we were advised that it would be
2 difficult for more than a few minutes.

3 In those circumstances, we had understood she was to be
4 questioned, if Your Honours wished to question her, before
5 submissions were heard.

6 I raise that out of concern for your being able to achieve what
7 your aim is, if that is possible, when she is most stable, if she
8 can, to answer.

9 MR. PRESIDENT:

10 I would like to also know whether accused person Ieng Thirith can
11 remain seated for a few more minutes or not. Could you ask her
12 for us, please?

13 (Counsel Diana Ellis consults with accused Ieng Thirith)

14 [10.05.04]

15 MR. PRESIDENT:

16 Counsel, can you please report back to us?

17 MS. ELLIS:

18 Mr. President, I'm sorry for what has taken place.

19 The difficulty we have is that it's very difficult for Madam Ieng
20 Thirith to understand what she's being asked, which is why this
21 morning I spoke with Ieng Vichida to inquire as to the facilities
22 which would be necessary to accommodate the respondent. And I was
23 then told - and I'm not hearing anything to the contrary - that
24 she will not be able to sit for very long. She has physical
25 problems, if she sits in this position, and needs to lie down.

8

1 She's also had very little, if any, sleep.

2 It was for that reason we thought Your Honours would best achieve
3 any aim you had if she was spoken to at an earlier rather than
4 later stage.

5 (Judges deliberate)

6 [10.06.43]

7 MR. PRESIDENT:

8 In order to facilitate the Accused, due to her health condition,
9 I would like to instruct the security guards to bring the Accused
10 down to the holding cell downstairs where the facility is
11 arranged for her.

12 Do you have any objection or remarks concerning sending her back
13 to the holding cell downstairs?

14 MS. ELLIS:

15 Not at all.

16 (Short pause)

17 JUDGE KLONOWIECKA-MILART:

18 We do understand that a facility was made available to the
19 Accused so that she could lie down or be at a comfortable
20 environment while watching what is going on in the courtroom. She
21 is not under detention. The holding cell is used solely for the
22 purpose of her convenience, and the Accused is not under guard
23 there.

24 [10.08.20]

25 MS. ELLIS:

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1 Your Honour, may we say that we are grateful for the facilities.

2 We see it at the moment as a holding room, and not a cell.

3 JUDGE KLONOWIECKA-MILART:

4 Thank you.

5 MR. PRESIDENT:

6 So, I now hand over to the Prosecution to resume their
7 submission.

8 MS. SONG CHORVOIN:

9 Thank you, Mr. President, and thank you, Your Honours. And good
10 morning to everyone.

11 Today, the Office of Co-Prosecutors will submit the oral
12 submission in relation to the decision on the unconditional
13 release of Ieng Thirith.

14 Your Honours, you have directed us to make submissions on the
15 third and fourth grounds of the Co-Prosecutors' Appeal against
16 the Trial Chamber's Decision on the 13 of September 2012.

17 [10.09.34]

18 I will make my submissions in three parts. First, I will refer
19 very briefly to the Trial Chamber's factual findings which have
20 an impact on the issues which are before you. Second, I will make
21 submissions on our third point of appeal, namely the Trial
22 Chamber's refusal of the six restrictive conditions on Ieng
23 Thirith's release. And, third, I will address our fourth ground
24 of appeal: the Trial Chamber's findings that the restrictive
25 conditions would be unenforceable or impractical.

1 At paragraph 24 of its decision, the Trial Chamber sets out its
2 findings as to the effect of Ieng Thirith's cognitive impairment.
3 In summary, the Chamber found that Ieng Thirith suffers from a
4 dementing illness, most likely Alzheimer's disease. This illness
5 has caused a long-term and short-term memory loss which prevents
6 Ieng Thirith from understanding the course of the proceedings in
7 a manner sufficient to adequately instruct her counsel and to
8 effectively participate in her own defence. The Chamber has also
9 noted that it appears unlikely that Ieng Thirith would be able to
10 testify at trial. The Co-Prosecutors and the Defence do not take
11 issue with these findings.

12 [10.11.42]

13 What emerges from these findings, however, is that Ieng Thirith
14 has not lost all cognitive abilities. While her memory is
15 diminished, the Chamber did not find that Ieng Thirith is unable,
16 for example, to communicate with those around her or understand
17 instructions given to her. As I will demonstrate later, this is
18 relevant to the issue of enforceability and practical application
19 of the proposed restrictive measures.

20 On the issue of prospects for improvement, the Chamber's finding
21 is also qualified. At paragraph 24, the Chamber found that there
22 "appears to be no reasonable prospect that Ieng Thirith's
23 cognitive impairment can be reversed" - in other words, the
24 possibility of reversal cannot be excluded conclusively. This is
25 reflected in the Trial Chamber's allowance for the possibility of

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1 a presumption of the - of the resumption, rather, of the
2 proceedings. At paragraph 28, the Chamber orders the proceedings
3 against Ieng Thirith stayed "until and unless the Chamber orders
4 their resumption against the Accused".

5 The Chamber further states at paragraph 39 that it is "willing to
6 consult annually with the experts to ascertain whether new
7 treatments for progressive, dementing ^illnesses - in particular
8 Alzheimer's disease - have in the interim been ^approved".

9 [10.13.54]

10 These parts of the Trial Chamber's decision are important, in our
11 submission, as they clearly reflect the Chamber's acceptance of
12 the submission we made on 31st of August 2012 - namely that,
13 while a change of circumstances in relation to Ieng Thirith
14 remains unlikely, it cannot be entirely dismissed.

15 In sum, the present position is that, while Ieng Thirith does not
16 face a reasonable prospect of a trial in the foreseeable future,
17 she retains some cognitive capacities, and the possibility of her
18 recovery and a resumption of the trial, while remote, cannot be
19 conclusively excluded.

20 Against this background, I will now deal with the two grounds of
21 appeal that you have asked us to address.

22 As Your Honours would recall, in our first ground of appeal we
23 submitted that under the applicable international jurisprudence,
24 having ordered a reversible stay of proceedings, the Trial
25 Chamber was required to consider whether any restrictive measures

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1 should be placed on Ieng Thirith's release.

2 [10.15.44]

3 Our third ground of appeal builds on this point. We submit that
4 the Trial Chamber was obliged to assess and balance the rights
5 and interests at stake in deciding whether any condition would be
6 appropriate. The Trial Chamber erred by declining to undertake
7 this balancing exercise and finding instead that it had no legal
8 basis to impose restrictive measures. This decision was based in
9 part on what is, in our submission, as - an incorrect reading of
10 the applicable international case law.

11 I will deal with three relevant cases which the Trial Chamber has
12 considered: the ICTY decision in Talic and Djukic and the
13 decision of the East Timor Special Panels for Serious Crimes in
14 the case of Nahak.

15 The Trial Chamber has sought to distinguish these cases from the
16 case of Ieng Thirith. We respectfully disagree and submit that
17 the principles emerging from these cases should have guided the
18 Trial Chamber's approach in this case.

19 [10.17.35]

20 Talic and Djukic were both terminally ill. Both were released
21 while the proceedings against them were stayed. At the time of
22 their release, both accused had no prospects of recovery, and
23 yet, in both cases, fully cognizant of the fact that a resumption
24 of trial against these accused were extremely remote, the ICTY
25 did not release them unconditionally, but imposed a set of

1 restrictions on the accused.

2 The ECCC Trial Chamber distinguishes Talic on the basis that, in
3 that case, there was disagreement between the experts as to
4 whether the accused was fit to stand trial.

5 Firstly, the difference between the experts in Talic related only
6 to the accused's fitness in the short term.

7 Secondly, that difference of opinion is irrelevant because
8 fitness to stand trial is determined by the Court, not the
9 experts.

10 Thirdly and most importantly, all three experts accepted that
11 Talic was suffering from an incurable form of cancer and that his
12 death within a relatively short period of time was inevitable.

13 [10.19.42]

14 The ICTY Trial Chamber echoes this in paragraph 32 of its
15 decision of the 20th of September 2002 - and I quote:

16 "The stark reality of Talic's medical condition is that there is
17 no escape for him from the natural consequence that his illness
18 will ultimately bring about because his condition is incurable
19 and inoperable and can only deteriorate with or without
20 treatment. The stark reality is that the odds in favour of his
21 being alive a year from now are few indeed." End quote.

22 As another basis to distinguish Talic from the case of Ieng
23 Thirith, the ECCC Trial Chamber states that, in Talic, the ICTY
24 declined to make a final determination on fitness. In fact, there
25 was no refusal to rule on fitness because there was no

1 application before the Chamber to determine fitness. A
2 determination of fitness was not necessary, given the Accused's
3 condition - he was suffering from a rapidly developing terminal
4 illness with an extremely short life expectancy.

5 [10.21.46]

6 The ECCC Trial Chamber further seeks to distinguish Talic on the
7 basis that the conditions on his release were justified by the
8 possibility that he may eventually stand trial.

9 At paragraph 62 of their appeal response, our learned friends
10 counsel for Ieng Thirith raise a similar point. They argue that
11 Talic is to be distinguished because of the reference in the ICTY
12 decision to his trial being "ongoing". We submit that this is not
13 a correct reading of the decision.

14 The reference to a possible resumption of proceedings and
15 "ongoing" trial in Talic should be understood in light of the
16 following facts.

17 Talic was indicted together with another accused, Brdjanin. By
18 September 2002, their trial was in progress, but Talic was
19 diagnosed with terminal cancer and a decision was made on
20 provisionally release him - to provisionally release him, rather.
21 By a separate decision issued on the same day, on the 20th of
22 September 2002, the ICTY Trial Chamber severed the case against
23 his co-accused Brdjanin so that the second case could continue.
24 Talic's trial was stayed and never resumed. At the time of
25 issuance of these decisions, Talic's chances of resuming trial

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1 were more remote than those for Ieng Thirith; Talic, in fact,
2 died within nine months of being released.

3 [10.24.06]

4 Your Honours, we submit that all of these purported distinctions
5 between Talic and the case of Ieng Thirith are ultimately
6 artificial and unconvincing. All cases must be decided on their
7 own merits, but the principles arising from Talic should not be
8 ignored.

9 Talic's trial could not continue and was suspended indefinitely,
10 prospects of a resumption of that trial were extremely remote,
11 and yet the ICTY considered that it was appropriate to put in
12 place a range of measures to safeguard the integrity of the
13 proceedings.

14 You are facing a similar situation, Your Honours: an accused is
15 being released with no immediate prospect of a resumption of her
16 trial, while the trial against her co-accused is continuing.

17 Unlike Talic, Ieng Thirith is not terminally ill. In fact, the
18 evidence we have heard in Court indicates that her physical
19 health is very good for a person of her age. Therefore, while she
20 faces a remote prospect of a resumption of trial, that prospect
21 is higher than the prospect in Talic. And, finally, Ieng Thirith
22 is charged with crimes whose gravity far exceeds the gravity of
23 the crimes with which Talic was charged.

24 [10.26.14]

25 The case of Djukic is also relevant. As I indicated earlier, the

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1 facts of this case were similar to those of Talic. During the
2 pre-trial proceedings, the accused was diagnosed with a terminal
3 illness in an advanced stage. A recovery was ruled out - in fact,
4 he died within less than a month of his release - and yet, the
5 ICTY Trial Chamber considered it necessary to impose a set of
6 restrictive measures on his release.

7 In distinguishing that decision from the present case, the ECCC
8 Trial Chamber simply noted that Djukic was described in Talic as
9 a "practically unconditional" release. In our submission, this is
10 irrelevant.

11 Djukic was subjected to more modest conditions than those applied
12 in Talic, but this is simply a reflection of the fact that each
13 case turns on its own circumstances. The indisputable fact is
14 that Djukic's release was subject to conditions, which the
15 Chamber, in that case, described as "stringent".

16 [10.28.11]

17 And the third precedent which the Trial Chamber declined to
18 follow is the 1st March 2005 decision of the East Timor Special
19 Panels for Serious Crime in the case of Nahak. In that case, the
20 accused was found unfit to stand trial due to a long-standing
21 psychiatric condition. His trial was stayed, and he was ordered
22 to remain under a set of restrictive conditions.

23 The ECCC Trial Chamber states that no legal justification was
24 given for this order. We submit that this is an incorrect reading
25 of the decision. The judge in Nahak made it clear that the basis

1 for a continuation of the restrictive measures against the
2 accused was the remote possibility of a resumption of trial. This
3 can be found at paragraphs 157 to 164 of that decision.

4 Furthermore, in a manner similar to that which we have proposed
5 before the Trial Chamber, the judge in Nahak provided for either
6 the Prosecution or the Defence to apply for a variation of the
7 restrictive measures should there be a change in the
8 circumstances.

9 [10.29.48]

10 Your Honours, while in this area of the law, jurisprudence is
11 necessarily limited, one must look at the substance of the
12 available cases and consider what guidance they provide. In our
13 submission, these decisions are a clear authority for the
14 principle that in cases of serious international crime, where a
15 reversible stay of proceedings has been ordered, even where a
16 resumption of the trial is remote, it is appropriate to consider
17 the imposition of the restrictive measures on an accused who is
18 being released. What measures are appropriate will, of course,
19 turn on the facts of each case. In some cases, the measures will
20 be extensive, such as in Talic; in others, they will be limited,
21 such as in Djukic and Nahak. But it cannot be said that, once a
22 stay has been ordered, the Trial Chamber lacks jurisdiction to
23 consider any restrictive orders.

24 Of course, the international case law mandates that any measures
25 restricting the rights or liberties of individuals must be

1 proportionate to the aim sought to be achieved. In the Talic
2 Decision, the ICTY held at paragraph 23 that to be proportionate,
3 a measure must be suitable and necessary. Furthermore, the degree
4 and scope of the measure must remain in a reasonable relationship
5 to the envisaged target.

6 [10.31.57]

7 It is our submission that the six modest restrictive measures we
8 have proposed meet these criteria.

9 First, if I can deal with the aims sought to be achieved by the
10 restrictive measures.

11 On the one hand, from the Trial Chamber's decision, it appears
12 that the Chamber considered that the only aim to be safeguarded
13 is the Accused's attendance at trial.

14 This is implicit in the Chamber's reasoning that no measures can
15 be imposed on an accused "where there is no reasonable prospect
16 that the Accused will be tried in the foreseeable future" -
17 paragraph 33. This would, of course, be an unduly narrow reading
18 of the law, especially in light of Internal Rule 63(3)(b) which
19 provides for a whole range of interests which can form the basis
20 of a detention order.

21 And yet, by putting in place a set of unforeseeable measures
22 framed as "requests" to the Accused, the Trial Chamber seems to
23 be seeking to protect a broader range of interests. In addition
24 to requesting the Accused to remain in the territory of the
25 Kingdom of Cambodia and inform the ECCC of any change of address,

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1 the Trial Chamber reminds the Accused of her obligation not to
2 interfere with the administration of justice and requests her not
3 to communicate with the media in relation to these proceedings.

4 [10.34.07]

5 These requests facilitate the achievement of the same aims which
6 the Co-Prosecutors' proposed measures were designed to achieve,
7 namely: protecting witnesses and victims, protecting the security
8 of the Accused, preserving public order, and, of course, ensuring
9 the presence of the Accused at any future hearings. The Trial
10 Chamber obviously recognized the need to protect these interests
11 by putting in place the unforeseeable measures I referred to
12 earlier. I note that, at paragraph 61 of their appeal response,
13 counsel for Ieng Thirith recognize that considerations such as
14 the need to protect victims and witnesses may form the basis of a
15 judicial supervision order.

16 Your Honours, we have submitted that the Trial Chamber has the
17 power to protect these interests by way of enforceable orders and
18 that issuing requests to the Accused, which have no legal force,
19 is not the appropriate course of action.

20 [10.35.24]

21 The enforceable measures we have sought represent a minimal
22 interference with the Accused's right to liberty: there is no
23 proposal to place her under house arrest; no particular address
24 is being prescribed at which the Accused would have to reside;
25 her movements, as long as she remains within the country, are

1 essentially unimpeded; the weekly security checks are not onerous
2 and could be arranged in a manner that minimizes disruptions to
3 the Accused's freedom of movement.

4 The requirement not to contact other co-accused, except her
5 husband, as well as victims and witness is a reasonable measure
6 that is necessary to safeguard against potential interferences
7 with the proceedings. We would respectfully remind the Court
8 that, up until her release, the Accused was held in detention in
9 order to safeguard against these various risks.

10 The proposed requirement that Ieng Thirith undergo regular
11 medical examinations is not dissimilar from the Trial Chamber's
12 own provision for annual consultation with medical experts.

13 [10.37.04]

14 Your Honours, we submit that the imposition of these measures
15 strikes a reasonable balance between, on the one hand, protecting
16 the rights and interests of the victims and Co-Prosecutors to see
17 justice done, and on the other hand, the need to minimize the
18 restrictions on Ieng Thirith's freedom of liberty.

19 As we stated at the hearing of August the 31st, we do not propose
20 that these measures continue indefinitely. We recognize that a
21 point in time may come at which the measures may need to be
22 discontinued. Six monthly reviews and, in any event, a review at
23 the conclusion of Case 002/01 would ensure that Ieng Thirith is
24 not placed in a state of uncertainty.

25 And the final issue that you have asked us to address today is

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1 the implementation of the proposed measures.

2 [10.38.27]

3 At paragraph 37, the Trial Chamber questions the practical or
4 legal enforceability of these measures. The Chamber doubts
5 whether the Accused would be capable of forming an intention to
6 violate the conditions or that penalties could be imposed on her
7 in the event of a breach.

8 We respectfully submit that the Chamber has committed a
9 discernible error of discretion in its approach to this issue.

10 Whether the Accused could ultimately be penalized for a breach of
11 a Court order is not determinative of whether the order should be
12 imposed in the first place. The purpose of issuing the orders is
13 first and foremost to protect the interests which the Chamber has
14 recognized require protection. A Court order addressed to the
15 Accused sends an important message about the behaviour which she
16 must refrain from.

17 As I indicated earlier, the Trial Chamber did not find Ieng
18 Thirith to lack any cognitive capacity. There is no reason to
19 believe at this point that Ieng Thirith would be unable to comply
20 with the orders. In any event, she would be assisted in this
21 respect by her guardian, who has now been validly appointed by
22 the Municipal Court.

23 [10.40.18]

24 It would only be upon any breach by Ieng Thirith of the
25 conditions of her release that the Court would need to consider

1 consequences that would follow for the Accused. While on a venue
2 - rather, while one avenue of dealing with such a breach is
3 provided in Rule 35, which requires a wilful and intentional act,
4 a breach could also be dealt with by reviewing and strengthening
5 the restrictive conditions themselves. In any event, by deciding
6 not to impose any conditions now because there may be obstacles
7 in imposing penalties for their breach, the Trial Chamber has
8 improperly fettered its discretion in this matter.

9 Turning to the issue of the role of the guardian, we note that
10 guardianship applications were filed on the 13th of September by
11 both the Municipal Prosecutor of Phnom Penh and Madam Ieng
12 Vichida, Ieng Thirith's daughter. In her application, Madam
13 Vichida sought to take care of her mother at her home residence
14 and agreed to be subject to any orders the Court may impose.

15 [10.41.46]

16 Our learned friends, counsel for Ieng Thirith, argue that we have
17 sought to circumvent the jurisdiction of this Court by pursuing
18 the imposition of coercive conditions through the guardianship
19 procedure. I can deal with this issue in very brief terms.

20 First, to state the obvious, the ECCC Office of the
21 Co-Prosecutors is a body entirely separate from the Phnom Penh
22 Municipal Prosecutor's Office.

23 Secondly, Madam Vichida herself sought to be appointed as a
24 guardian to her mother. She is a well-educated individual who is
25 perfectly capable of exercising her rights in an informed manner.

1 She has agreed to any conditions to be imposed by the Municipal
2 Court.

3 Thirdly, it is our understanding that Ieng Thirith's defence
4 counsel was consulted in this process. Therefore - would be
5 disingenuous to suggest that actions were taken by the Phnom Penh
6 Prosecutor without the knowledge of Ieng Thirith's counsel.
7 Your Honours, there can be no suggestion of an improper attempt
8 by this office to have coercive measures imposed by another
9 judicial institution.

10 [10.43.24]

11 As soon as we read the terms of the Trial Chamber's decision, we
12 filed an immediate appeal before the Supreme Court Chamber. We
13 have no standing before the domestic courts, nor would we seek to
14 frustrate our own appeal by pursuing proceedings in other
15 judicial institutions.

16 Incidentally, we note that our learned friends have asked you to
17 remove the measures imposed by the Municipal Court as part of the
18 decision on the appointment of a guardian. That order would, of
19 course, be beyond this Court's jurisdiction. As the Pre-Trial
20 Chamber noted in its 3rd of December 2007 decision on Duch's
21 appeal against a provisional detention order, the ECCC has no
22 power to review decisions of regular Cambodian courts.

23 Should Ieng Thirith or her guardian take issue with the terms of
24 the Municipal Court decision, a number of options are available
25 to them. They have the option of seeking a variation of the

1 guardianship decision, under Articles 39 to 42 of Law on
2 procedure of non-suit civil case. They were also entitled to an
3 appeal before the Appeals Court against the decision within two
4 weeks of the service of that decision. In its disposition, the
5 Municipal Court specifically reserved that appeal right. We are
6 not aware of any appeal having been filed.

7 [10.45.27]

8 Furthermore, under Articles 1105 and 1110 of the Civil Code, the
9 current general guardian can also apply for the appointment of an
10 additional guardian or assist with the implementation of the
11 guardianship if she considers that necessary.

12 Our learned friends the counsel for Ieng Thirith also submit, at
13 paragraph 79 of their appeal response, that the "prospect of
14 sanctioning a guardian of a respondent for a lack of compliance
15 imposed on the respondent is without legal basis".

16 We consider these submissions to be superfluous. The guardian has
17 a duty to assist the Accused in complying with her legal
18 obligations, provided the guardian has discharged that duty, and,
19 of course, no sanctions would be imposed on her for a failure by
20 Ieng Thirith to comply with Court orders. The purpose of a
21 guardianship is to assist the beneficiary in exercising her
22 rights and obligations, not to create an alternative for
23 enforcement of sanctions.

24 [10.46.44]

25 Finally, it is our submission that the appointment of the

25

1 guardian will facilitate the implementation of the proposed
2 measures. Just as the guardian would assist Ieng Thirith in
3 discharging her rights and obligations in general, she would also
4 assist Ieng Thirith in complying with any restrictive measures
5 imposed by the Court. The guardianship creates a contact point
6 through which the Court can communicate with Ieng Thirith. It
7 also ensures that instructions can be given to Ieng Thirith's
8 counsel in the event that Ieng Thirith herself is unable to do
9 so.

10 We note that the submissions (sic) issued to Ieng Thirith is - in
11 respect of these hearings was signed by Ieng Vichida as her
12 guardian. And here today, we see that Ieng Thirith has complied
13 with your summons and Madam Vichida has attended the hearing in
14 order to assist Your Honours. This is perhaps best illustration
15 of the way in which the guardianship can operate effectively to
16 facilitate the implementation of the measures we have proposed.

17 [10.47.45]

18 In conclusion, Your Honours, we have recognized that, based on
19 the evidence currently available, the possibility of resumption
20 of the trial against Ieng Thirith is remote, but that possibility
21 cannot be excluded. For as long as the stay of proceedings is
22 reversible, the Court has jurisdiction to issue such orders as
23 may be necessary to safeguard the integrity of its proceedings.
24 Those orders include measures to restrict the Accused's liberty
25 in a manner that is reasonable and proportionate.

26

1 In a case of this magnitude, where the Accused is charged with
2 some of the worst crimes known to humanity, which affected
3 literally millions of people, there is a compelling public
4 interest in maintaining judicial control over the Accused until
5 it becomes absolutely clear that no trial against her will ever
6 take place. It is also appropriate to maintain that judicial
7 control in order to provide certainty for the Accused.

8 [10.48.55]

9 We submit that the Trial Chamber has erred by concluding that it
10 had no jurisdiction to consider or impose restrictive measures
11 and by failing to weigh Ieng Thirith's right to liberty against
12 all of the other rights and interests which are affected by the
13 Chamber's decision. We submit that the very limited conditions we
14 have proposed will definitely - or, rather, will effectively
15 safeguard the rights and interests of victims and the integrity
16 of these proceedings, while minimally restricting Ieng Thirith's
17 right to liberty.

18 We invite Your Honours to amend the Trial Chamber's decision by
19 imposing the conditions sought by the Co-Prosecutors on the 31th
20 of August 2012.

21 We thank you so much indeed, Your Honours.

22 MR. PRESIDENT:

23 International Co-Prosecutor, would you wish to add something else
24 on top of this?

25 You may have the floor.

27

1 MR. ABDULHAK:

2 No, I thank Your Honours. Those were our joint submissions. We're
3 available to answer any further questions Your Honours might
4 have, but those are our submissions for now.

5 And I thank you for the extra time.

6 [10.50.14]

7 MR. PRESIDENT:

8 Next, we would like to hand over to counsels for the accused
9 person to make their submission.

10 MR. PHAT POUV SEANG:

11 Very good morning, Your Honours. Very good morning, Mr.
12 President, and very good morning to everyone in the courtroom.
13 For our oral submissions, we would like to submit it into two
14 sections: first, I will be making the submission, and the second
15 part will be shared by my colleague, Counsel Diana Ellis.
16 Allow me, Your Honours, to make this oral submission in response
17 to the oral submissions by the Co-Prosecutors as follows.
18 The respondent requests, Your Honours, to reject the appellant's
19 immediate appeal against the Trial Chamber's decision on
20 reassessment of accused Ieng Thirith's fitness to stand trial
21 following the Supreme Court Chamber decision of the 13th of
22 September (sic) 2011 and their supplementary submissions in their
23 entirety and uphold the Trial Chamber's impugned decision.

24 [10.52.35]

25 Further, the respondent requests the removal of the coercive

1 conditions which were attached to the respondent's release while
2 she waited the hearing of the appeal.

3 The respondent submits that the Trial Chamber did not make any
4 error in law or fact occasioning a miscarriage of justice or in
5 the exercise of its discretion which resulted in prejudice to the
6 appellants. Accordingly, the Trial Chamber was correct to order
7 the immediate, unconditional release of the respondent. It is
8 unnecessary to restate in detail the arguments set out in the
9 Response to the Co-Prosecutors' Immediate Appeal and
10 Supplementary Submissions, filed on the 8th of October 2012. The
11 legal principles and the framework which are relevant to the
12 liberty of an accused are fully set out in the response. We
13 submit that, even though judicial supervision is less draconian
14 than pre-trial detention, it necessarily imposes restrictions on
15 the right to liberty of an individual and, therefore, should only
16 apply where it is ordered on a sound, legal basis.

17 Further, it is respectfully submitted that the ECCC Chambers
18 should act in accordance with the well-recognized principles
19 designed to ensure that the respondent is not subject to
20 arbitrary deprivation or limitation of her right to liberty
21 without good and proper cause justified by the applicable law.

22 [10.55.11]

23 The relevant provisions in the case at hand are Internal Rules
24 63, 65, and 82, Articles 223 and 230 of the Cambodian Code of
25 Criminal Procedure.

1 The respondent is permanently unfit to stand trial. The
2 respondent suffers from moderate to severe dementia, probably
3 Alzheimer's disease, which was diagnosed in 2011 but been
4 developing over several years. The Court-appointed medical
5 experts have unanimously concluded that there has been no
6 improvement of her condition since Your Honours directed that she
7 should undergo further treatment, but they found signs of further
8 deterioration.

9 The sad reality is that the respondent's condition is such that
10 her cognitive functioning will deteriorate over time. She is not
11 fit to stand trial and will never become fit to stand trial.

12 There is no evidential basis upon which this Court can conclude
13 that the respondent will ever become fit to stand trial.

14 In recognition of these facts, the Trial Chamber stayed the
15 proceedings indefinitely and confirmed the 2011 decision to sever
16 the charges against the respondents from Case 002/01.

17 [10.57.10]

18 The appellants implicitly accepted that the respondent will never
19 be fit to stand trial, when they stated that the impugned
20 decision satisfies the provisions of Internal Rule 104,
21 subparagraph 4(a), as a decision which has the effect of
22 terminating the proceedings. They also explicitly stated that it
23 is unlikely that the respondent will face a trial in the
24 foreseeable future, in the course of argument in August 2012. The
25 respondent supports this assertion as, in effect, there is a

1 termination of proceedings although there is no legal mechanism
2 available for formally terminating proceedings in case of
3 unfitness to stand trial within this jurisdiction, unlike in many
4 common law jurisdictions.

5 It follows that measures which impose restrictions on the liberty
6 of the respondent have no justifiable legal basis and authority.
7 Pursuant to the provisions of Internal Rule 65, subparagraph 1,
8 conditions may be imposed following the release on bail of a
9 charged person when such conditions are necessary to ensure the
10 presence of the person during the proceedings and the protection
11 of others. Thus, it is not mandatory to impose conditions.

12 [10.59.06]

13 Measures taken at the investigating stage of the proceedings must
14 be the ones least intrusive to the charged person. This principle
15 is related to the presumption of innocence. As a result, a
16 tribunal should favour release at the earliest reasonable
17 opportunity and with the least intrusive conditions necessary to
18 satisfy the requirements of Internal Rule 63. The requirement of
19 necessity cannot be deemed fulfilled in the present case, taking
20 into account the circumstances. The Trial Chamber rightly held
21 that, if there is no legal basis for continued detention of the
22 respondent, based on its finding, that there is no reasonable
23 possibility that she will become fit to stand trial in the
24 foreseeable future, by analogy, there is no legal basis for the
25 imposition of coercive conditions or any form of judicial

1 supervision upon the respondent's release. Because there is no
2 prospect of a trial being held, ever, imposing these six
3 conditions would amount to a restriction of the respondent's
4 rights to liberty not provided by law.

5 [11.01.11]

6 Internal Rule 65, subparagraph 1, provides for two cumulative -
7 rather, justifications for imposing judicial supervision:

- 8 1. To ensure the presence of the charged person at trial; and
- 9 2. For the protection of others.

10 Article 223 of the Cambodian Code of Criminal Procedure also
11 presupposes that there is a reasonable prospect of an ongoing
12 trial.

13 In *Talic*, the Trial Chamber held that, "in determining these
14 individual cases [requesting provisional release], it is
15 necessary to bear in mind the rationale for the institution of
16 provisional release, which is linked to the rationale for the
17 institution of detention on remand". Accordingly, imposing
18 conditions presupposes that there will be a trial and the
19 existence of a real risk that the Accused is going to fail to
20 attend the trial and/or that others need protection.

21 [11.02.45]

22 Given the factual determination of the proceedings, these two
23 cumulative requirements are not met. The appellants' contention
24 that imposing judicial supervision on the respondent is necessary
25 to safeguard the integrity of the proceedings and to sever -

1 rather, to serve legitimate public purposes should be rejected as
2 having no legal basis. It is contrary to the respondent's right
3 to be tried within reasonable time, to be placed under judicial
4 supervision for an indefinite period of inactivity in a case
5 where there is no prospect of a trial.

6 Your Honours, my colleague will now address the six coercive
7 conditions proposed by the appellants more specifically.

8 MS. ELLIS:

9 May it please Your Honours, could I firstly correct a point made
10 by the appellants?

11 It is our submission that there should be no conditions imposed
12 upon the respondent and that those conditions which were imposed
13 by this Court when her release was ordered should also be lifted.

14 [11.04.56]

15 We did not in our response, at any time, suggest that this Court
16 had the jurisdiction to interfere with any order made by the
17 Municipal Court of Phnom Penh. We do not advance any such
18 argument before Your Honours.

19 I would like to specifically address the request of the
20 appellants as set out in the immediate appeal dated the 14th of
21 September of this year, at paragraph 2; namely, that the
22 respondent be required, "through any duly-appointed guardian [...],
23 to comply with specific conditions to appropriately safeguard the
24 competing rights and legal interests engaged by her release from
25 detention". That involves looking at three separate elements: the

1 conditions that are proposed, the reasons put forward to justify
2 them, and the manner in which it is suggested the respondent
3 complies with such conditions - in other words, how they are
4 "implemented and enforced", to quote the appellant.

5 Before touching on those three separate matters, it is important
6 to remind the Court respectfully of why it is we are here today.
7 It is because the respondent, aged 80, is mentally incapacitated.
8 And it is with that in the forefront of your minds that focus
9 must be made on these points.

10 [11.07.34]

11 It is the unanimous view of all the experts - independent,
12 international, and Cambodian, Court-appointed in every case -
13 that the respondent is suffering from dementia. Your Honours will
14 have, of course, seen all of the reports, which now span a
15 considerable period of time, which describe her condition, which
16 rely not only on the assessments of the doctors, but standardized
17 tests, the views of those who've observed her behaviour. They are
18 all of one voice: the condition is incurable, irreversible, and
19 the prognosis is one of increasing incapacity.

20 It is a genuine condition, not faked. It is a tribute to this
21 Court that Your Honours' decision of December the 13th of last
22 year led to a program of medication on cognitive therapy in the
23 hope that this might, in some way, alleviate the condition.

24 Regrettably, it did not. And, indeed, as the doctors noted in
25 August of this year, there was a further deterioration, as is

1 normal with this particular condition - most significantly, no
2 memory, short-term or long-term. It is completely wrong of the
3 appellants to say that there is evidence before this Court that
4 the respondent could communicate intelligibly with anyone. The
5 evidence, on the contrary, was that she didn't recognize her
6 nearest and dearest, she didn't remember individuals from one
7 hour to the next, she couldn't orientate herself, she couldn't
8 focus, and she couldn't respond to questions. And that was the
9 reality.

10 [11.10.34]

11 There is no mechanism, within the jurisprudence of this Court, to
12 acknowledge when an individual becomes unfit to stand trial, in a
13 way that allows the proceedings to be terminated. Clearly set out
14 in the codes are the circumstances that allow that. There is no
15 reference to mental incapacity, and it is, we submit, for that
16 reason that the Trial Chamber has been forced into a position of
17 relying on the mechanism whereby it could stay the proceedings
18 for an indefinite period. But we submit that it is a complete
19 fantasy for this Court or, indeed, anyone to imagine for one
20 minute that there is going to be any improvement in the mental
21 health of the respondent such that will allow her to stand trial.
22 We heard the evidence, in the lower Court, that there are no
23 treatments that can improve this condition for more than a matter
24 of a few months before the downhill progress continues. The drug
25 companies have stopped funding this research on dementia because

1 it has had so little success. There possibly will be, in many
2 years to come, ways of treating dementia, but of course, before
3 they're within the public domain, they're subject to trials. And,
4 therefore, to look at the respondent in her 81st year and to
5 suggest sensibly, for one minute, that she might become fit to
6 engage in the trial process is, we submit, a complete fallacy.

7 [11.13.08]

8 And it is against this background that you have to look at the
9 conditions that it is sought to impose upon her under judicial
10 supervision.

11 We would submit that the appellants fully understand that there
12 will be no trial because it formed part of the justification for
13 appealing, that the result of the Trial Chamber's findings - and
14 they never contested the fitness - was that, effectively, there
15 would be a termination. If that is the effective position, which
16 we submit it must be, then, if we move on to look at the actual
17 conditions that they request, conditions which they describe
18 themselves as restrictive and coercive and which have been read
19 out - and I will not repeat, but it's set out at paragraph 10 of
20 their immediate appeal on the 14th of September - these amount to
21 the kind of conditions that are imposed in order to check and
22 control the movement of an individual and to ensure there is no
23 interference with the administration of justice. They are
24 conditions which clearly can be imposed through Article 223 of
25 the Cambodian Code of Criminal Procedure. Likewise, the Internal

1 Rules of the ECCC permit, under Internal Rule 65, bail
2 conditions, which could include any or all of these specifically
3 set out conditions.

4 [11.15.45]

5 What is the objective that the appellants seek to achieve? They
6 have developed their arguments in their supplementary submissions
7 set out in their document of the 28th of September of this year.
8 At paragraph 5, they accept that, primarily, they are securing,
9 if they can, the attendance of the respondent were there to be a
10 future trial, in respect of the notification as to her
11 whereabouts. They wish, they say, to preserve the integrity of
12 the proceedings. They wish to protect others. They wish to
13 prevent pressure being put upon witnesses, or victims, or any
14 other person who might be an anticipated witness. They wish to
15 protect the respondent. They wish to preserve public order.
16 Of course, all of these objectives, in fact, are to be found in
17 Internal Rule 63(3), at the point at which it is determined that
18 the individual -- the charged person or the Accused -- is to be
19 held in preventive detention.

20 [11.17.33]

21 And that is why, as you've heard in the argument of my colleague,
22 we submit, the truth and reality behind these objectives is to
23 ensure the attendance of the respondent at a future trial and to
24 ensure there is no disruption with the administrative process,
25 the proceedings -- worthy objectives, of course, but there is no

1 evidence that the respondent needs protection from others. She
2 has now lived with her family for a significant period of time,
3 without any problems arising. There is no evidence of any
4 pressure put upon anyone who has an interest in these
5 proceedings, nor any attempt to contact any of the co-accused -
6 other, of course, than her husband, which is permitted - and
7 there is no evidence of any concern, at this stage, to preserve
8 public order.

9 The public, if we may comment, dealt with the decision of the
10 Trial Chamber to order the unconditional release in a very
11 understanding and sophisticated way, no doubt appreciating the
12 basis upon which that decision was taken. The Court has to have
13 clear evidence, and that is apparent from international
14 jurisprudence, if it is to seek to fulfil the objectives that I
15 have just referred to. And, of course, the primary objective, by
16 virtue of the notification of the address that is sought, is in
17 order to, we submit, unrealistically suggest there might in the
18 future be a trial.

19 [11.20.20]

20 The appellants have sought to invoke the inherent jurisdiction of
21 the Court in order to impose conditions which, to quote them, are
22 "to ensure a good and fair administration of justice". Of course,
23 no condition is necessary for that. All citizens, within this
24 country as everywhere, are obliged to ensure there is no
25 interference with the administration of justice. And should there

1 be, deliberately and intentionally, then the perpetrator is
2 subject to the criminal offence, if appropriate.

3 We submit that the appellants have sought to rely on the inherent
4 power in the realization that, under the Internal Rules of this
5 Court - which, of course, reflect very much the content of the
6 Cambodian Criminal Code and, indeed, the French Criminal Code -
7 these conditions sought do in fact anticipate attendance at a
8 trial and that there should be no interference in advance of that
9 trial.

10 We submit that it is entirely erroneous of the appellants to
11 characterize the situation that faces Your Honours as being a
12 balancing exercise of all the interests at stake. This is not a
13 balancing exercise; this is a situation in which an accused, the
14 respondent, is no longer able to participate in trial
15 proceedings, through no fault of her own.

16 [11.22.52]

17 What follows from that is that, were there to be conditions
18 imposed upon her, it would have to be shown, in the event of any
19 breach, that that breach had been intentional, that she had
20 intentionally evaded an obligation of judicial supervision, in
21 which circumstances, according to Article 230 of the Cambodian
22 Code of Criminal Procedure, a judge can order preventive
23 detention, because, of course, an intentional breach gives rise,
24 in any criminal justice system, to an appropriate sanction. It is
25 entirely repugnant to a system of justice for there to be the

1 imposition of conditions which can never be met through no fault
2 of the individual concerned and which can then, if breached, be
3 met by sanctions. And, of course, we're confident that would not
4 happen. But the Court is brought into disrepute if, in the face
5 of evidence that the respondent cannot know what is meant by the
6 conditions, cannot know how to comply or not, but nevertheless,
7 inadvertently, might wander the streets and end up somewhere
8 else, for example, and then be sanctioned for what she's done -
9 that would be a wholly unacceptable, inhumane state of affairs
10 and one which we're confident would not arise. And no Court
11 should be in a position where it puts in place coercive measures
12 which, it is clear on all the evidence, cannot be complied with.
13 It makes a mockery of the whole system.

14 [11.25.46]

15 The position of the respondent at this time is that she remains,
16 in spite of the gravity of the offences with which she is
17 charged, presumed innocent. That is her right. She also has a
18 right to liberty. That right should only be displaced when there
19 is proper reason for it. It is clear from the Internal Rules
20 that, however grave the crime, the position is not as perhaps
21 implied by the appellants that it is appropriate, therefore, to
22 have conditions, because the rules envisage: provisional
23 detention where deemed necessary in accordance with Internal Rule
24 63; bail, in accordance with Internal Rule 65, where it's not
25 necessary to detain; but also unconditional release where that is

1 appropriate.

2 If the Court saw fit to impose conditions and felt the objectives
3 were justified, then it is necessary to consider whether
4 compliance can be obtained.

5 If compliance, for the reasons we've already submitted or due to
6 mental incapacity, cannot be placed upon the shoulders, as the
7 responsibility, of the respondent, can it fall to the guardian?
8 We submit that, just as the Municipal Court in Phnom Penh is a
9 separate jurisdiction, this Court has no jurisdiction over the
10 guardian. A guardian cannot take upon herself the responsibility
11 to ensure compliance. The rules indicate that it is not a third
12 party who has to ensure compliance, but it is the individual upon
13 whom the conditions are made who must be able to comply.

14 [11.28.50]

15 We would like to make short comments about the guardianship
16 order.

17 A guardian has the legal authority to care for the personal and
18 property interests of another person who is in need of
19 protection. The appointment is made because the individual, the
20 ward, is incapable of caring for her own interests due to
21 incapacity, disability or infancy. That is the definition of a
22 guardian. It is a protective function; it is not in any way to be
23 the person who ensures coercive measures - comply to it. That is
24 a complete contradiction of the role.

25 The general guardianship order which was imposed allows Ieng

41

1 Vichida to look after her mother, and it is a measure put in
2 place to protect the respondent due to her incapacity. Under
3 Article 24 of the Code of Civil Procedure, an order can only be
4 made where a person remains in a habitual condition - and I
5 underline "habitual" - condition of lacking the ability to
6 understand the legal consequences of her actions, due to mental
7 disability. It is under that article that the guardianship order
8 has been made - and I know Your Honours have a copy of it.

9 [11.30.57]

10 I want to correct the manner in which that order came to be made
11 because we submit it has been dealt with in an unfortunate and
12 inappropriate way.

13 The application was not made at the instigation of Madam Ieng
14 Vichida, the daughter of the respondent. The application was made
15 following the approach of the deputy prosecutor of this Court,
16 Mr. Yeth Chakriya. He, wearing a different hat, is the Prosecutor
17 of the Municipal Court of Phnom Penh, and indeed, as the
18 Prosecutor, he is referred to as having made the application.

19 We accept that he spoke with my colleague about this matter, but
20 the fact is it was an application generated by the prosecutor, we
21 submit, at a wholly inappropriate time, because the approach was
22 made on the 10th of September; on the 13th of September, the
23 Trial Chamber gave its decision, which was to say there should be
24 unconditional release, and that very same day the prosecutor -
25 that is, deputy prosecutor of this Court - went to the Municipal

1 Court and, there, provided the documents that led to the
2 appointment of Vichida as guardian.

3 [11.33.09]

4 The decision to appoint her was made on the basis that it was
5 said by the prosecutor she is permanently lacking the ability to
6 understand and judge the possible legal action to deal with Ieng
7 Thirith, with cognitive impairment. And so the prosecutor
8 requests general guardianship consistent with the application of
9 Ieng Vichida. Ieng Vichida's request went no further, as you can
10 see from the document, than that she wanted to be able to care
11 for her mother in her home. As a result, the order was that there
12 would be guardianship and, indeed, that there would be
13 notification to this Court of the address. And we submit there
14 has been a worrying confusion of positions and that the
15 prosecutor should have complied with Article 22 of the Code of
16 Civil Procedure and waited until the outcome of this appeal
17 before suggesting any other matter was pursued, which touches
18 upon the issues this Court is considered with - considering.
19 However, we are confident that this Court will independently
20 evaluate the situation. But we submit that the fact that there is
21 a guardian does not allow this Court to use the guardian as a way
22 of imposing conditions upon the respondent. This Court would have
23 to be satisfied that the respondent understood the nature of the
24 conditions, the obligations put upon her by the conditions, and
25 the consequences of her failure, in some way, to abide by them.

43

1 [11.35.30]

2 We may be talking in hypothetical terms, to the extent that the
3 incapacity of the respondent is such that, in reality, she may
4 not be able to fail to comply with any condition, but that is not
5 a basis for imposing it.

6 Your Honours, we submit, have to look at the important
7 principles, and the principles are that what this Court - lower
8 Court found, that there is mental incapacity, has now been also
9 the view of a different judge-

10 MR. PRESIDENT:

11 Counsel, could you please hold on a little bit? Because the DVD
12 has run out and we may need to have a new one replaced. Please,
13 hold on.

14 (Short pause)

15 [11.37.01]

16 You may now proceed.

17 MS. ELLIS:

18 The appellants have referred, Your Honours, to three cases. We
19 submit none of those cases - nor, indeed, any other international
20 jurisprudence - has relevance to this particular situation.

21 The reason for that is that the cases that have been relied upon
22 and cited to you involve, in two instances, terminal illness, and
23 in the third, psychiatric illness which was a psychotic illness.

24 And what distinguishes those cases from that of the respondent is
25 that a terminal illness, by definition, will cause death, but

1 there is uncertainty as to whether there will be remission and,
2 if so, for how long. But the one thing that is clear is that
3 coming out of the decisions in Djukic and Talic is the fact that
4 there is no suggestion that, in those cases, the accused lacked
5 the capacity to understand and that there was never deemed to be
6 such a lack of capacity or such physical infirmity that no trial
7 could take place.

8 The situation with Nahak was of course different because it was
9 psychotic illness, but again, psychotic illness is very different
10 from dementia, and dementia, as you've seen from the reports, is
11 an illness of progressive deterioration and decline. Psychotic
12 illness is frequently amenable to treatment, and therefore that
13 was what was proposed. And, in fact, events intervened which
14 caused the Court to cease sitting, and therefore the outcome was
15 never known.

16 [11.39.41]

17 We submit that there has been no case which is on all fours with
18 this. And, indeed, it is clear from the jurisprudence that, in
19 matters to do with fitness to stand trial, each case turns on its
20 own facts - they are fact-specific cases.

21 And so, finally, we submit that the important principle for this
22 Court, who is essentially making law in this area, is to be true
23 to the rights of an accused - that is, the presumption of
24 innocence - to acknowledge the right to liberty and to accept
25 that whatever the gravity of the crime, there is something

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1 entirely unacceptable and, indeed, repugnant, in a civilized
2 society, to impose coercive and restrictive conditions on an
3 individual who has no capacity to understand what's being imposed
4 upon her and no capacity to decide whether to abide by the
5 conditions or not. And, therefore, we submit that the decision of
6 the Trial Chamber that there should be unconditional release
7 should be upheld by Your Honours in this Court.

8 And, unless I can assist with any other matters, those are our
9 submissions. Thank you.

10 MR. PRESIDENT:

11 Next, the Supreme Court Chamber wishes to pose some questions to
12 the accused person. Nonetheless, we would like to seek advice
13 from counsels for the accused person, whether Ms. Ieng Thirith is
14 - avails herself to be questioned by the Bench at this time.

15 [11.42.25]

16 MS. ELLIS:

17 Mr. President, we did understand that the Court wished to be in a
18 position to ask questions of the respondent. It is for that
19 reason that she came into Court this morning. If she is in a
20 position to return, then, of course, we will ensure that she
21 does. As to how that - the questioning will progress, that will
22 be determined when questions are posed. We can't assist further
23 than that.

24 But I don't know whether the Court proposes rising or whether she
25 can just be brought up by her daughter and the - those who are

1 attending her.

2 MR. PRESIDENT:

3 Security personnel are now instructed to bring the accused person
4 into the courtroom now.

5 (Accused Ieng Thirith enters courtroom)

6 [11.50.03]

7 MR. PRESIDENT:

8 We may proceed.

9 Due to the medical condition of the accused person Ms. Ieng
10 Thirith, it took some time to bring her to the courtroom.

11 During today's session, indeed, the Bench is not putting
12 questions concerning the subject matter of the appeal; Ieng
13 Thirith is allowed to remain seated next to her daughter and
14 guardian.

15 And we note also that Ms. Ieng Thirith is fatigued and weak; Ms.
16 Ieng Thirith can request to the Chamber that she be excused from
17 this courtroom and she may remain in the holding cell for the
18 remainder of the day if she wishes to do so. And the two security
19 personnel who accompany her and who are assisting her will be
20 ready to help her for the remainder of the day.

21 [11.51.37]

22 The Judges of the Bench wish to put some questions to the accused
23 person - to Madam Ieng Thirith. At the same time, she can be
24 reminded that she can exercise her right not to respond to any
25 questions if she wishes to do that.

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1 The first question I would like to pose to her is that - to Ms.

2 Ieng Thirith: How are you feeling?

3 (Short pause)

4 Can you hear me? How are you?

5 MS. IENG THIRITH:

6 I am fine. I am very well.

7 MR. PRESIDENT:

8 Have you been feeling better since you've been released and be at
9 home?

10 MS. IENG THIRITH:

11 I have been better because the host receives me well, and I am
12 well treated - I am well assisted because they know what kind of
13 medicine I should take. They help me recover, and I feel better
14 now.

15 [11.53.20]

16 MR. PRESIDENT:

17 Next, I would like to hand over to the fellow Judges of the Bench
18 to put some questions to Ms. Ieng Thirith.

19 JUDGE MUMBA:

20 Thank you, Mr. President.

21 Ms. Ieng Thirith, the Court has to ensure that it can reach you
22 and you can come to Court if need arises for you to come to Court
23 in the future.

24 So the first question to you is: Are you prepared to come to the
25 Court if you are requested to do so in the future?

1 MS. IENG THIRITH:

2 Yes.

3 JUDGE MUMBA:

4 Thank you. Do you--

5 MS. IENG THIRITH:

6 I also thank you very much. And for a period, I have been staying
7 there, I have been ill, and I have been in the forest, but my
8 illness still remains.

9 [11.55.06]

10 JUDGE MUMBA:

11 Thank you.

12 Do you have a permanent address in Cambodia?

13 MS. IENG THIRITH:

14 Here, at the new place, I am treated and I follow them to this
15 location. And that's all I wish to tell you.

16 JUDGE MUMBA:

17 Thank you.

18 Do you have a - do you have family and friends abroad - outside
19 Cambodia?

20 MS. IENG THIRITH:

21 It is just normal. We - I have some friends abroad. They are
22 professors - mainly professors or school teachers and they are
23 very nice people. They protect me, they think of me, and they are
24 also respected by their neighbours because they never treated me
25 as someone who has committed any wrongdoings.

1 From my young age until the time I graduated with the - at French
2 schools, I had been very much loved by the French teachers.

3 JUDGE MUMBA:

4 Thank you. Do you see any occasion requiring you to go abroad -
5 outside Cambodia?

6 MS. IENG THIRITH:

7 No, I don't, because at home there are Cambodian people who are
8 educated who could help me. For example, whatever I need, I just
9 communicate this to them; then they could assist me. And, indeed,
10 I would like to make sure that I still speak my foreign language,
11 because everyone agrees that they would like to help me to
12 remember the language I have acquired, and they know that
13 Cambodia is a small country with small population. So they are
14 happy about what I have learned, and they're happy because what
15 I've learned so far, I still remember it.

16 [11.58.45]

17 JUDGE MUMBA:

18 Thank you.

19 The Court is considering continuing to monitor your health.

20 Are you at present undergoing treatment or medical tests?

21 MS. IENG THIRITH:

22 Currently, at the place where I stay, there were - there is
23 service and they know my condition, so they remain there to
24 assist me, to help make sure that I can deal with this, because
25 sometimes, after working too long hours, I do not wish to eat my

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1 meals, so they could come and assist me, trying to convince me to
2 have my meals, and I - by doing so, I would recover soon. And
3 these people work together to help me to have my regular meals.
4 And, indeed, after having these regular meals, I can read books
5 more regularly than before and I can also be communicated with
6 them better. And everyone says that they're doing their best to
7 make sure that I recover. That's all.

8 [12.00.46]

9 JUDGE MUMBA:

10 Thank you very much, Ms. Ieng Thirith, for responding to the
11 questions. Thank you.

12 JUDGE KLONOWIECKA-MILART

13 One question, please. Without telling us too much detail, if you
14 could just answer to a general question -- if you are aware of
15 any security guards in the vicinity? Is there any security regime
16 that - that is applied to you?

17 MS. IENG THIRITH:

18 I can see that everyone can agree with me that there is no
19 security personnel. I think I live a normal life here in
20 Cambodia, because I don't think that I would be treated as
21 someone who requires security or protection. And for those who
22 can speak Khmer, they can come, and approach me, and talk to me
23 because I, indeed, understand English significantly, so they know
24 that I can speak a foreign language. That's all.

25 [12.02.30]

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1 JUDGE KLONOWIECKA-MILART:

2 Of course, we - we know that. I was just wondering whether it
3 would bother you if the security checks were imposed, pursuant to
4 the prosecutors' request.

5 MS. IENG THIRITH:

6 They just started. I started - I began to do it. The place where
7 I lived were surrounded by foreigners, and our neighbours were of
8 the view that their children were educated. So, wherever they had
9 difficulty, we assisted them. And Cambodian - my Cambodian
10 compatriots also assisted me a lot. As such, our friends - our
11 French friends who resided close to me assisted all Cambodians -
12 the Cambodians who have suffered from illnesses. So, they were
13 very helpful. They helped us a lot.

14 JUDGE KLONOWIECKA-MILART:

15 Thank you very much, Madam.

16 Do you like receiving visits? Do you like to receive people or
17 you rather prefer to be left alone?

18 [12.04.27]

19 MS. IENG THIRITH:

20 I don't want to be left alone. I - when I came to work
21 downstairs, there were people, foreigners, who came to work with
22 me. Is that correct? They came to work with me, these people.

23 JUDGE KLONOWIECKA-MILART:

24 Thank you.

25 MR. PRESIDENT:

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1 The Chamber wishes to retire to the deliberation room for five
2 minutes.

3 And security guards are instructed to take care of the Accused,
4 if the Accused can stay behind in this courtroom. But otherwise
5 security guards may bring the Accused to the holding cell
6 downstairs.

7 THE GREFFIER:

8 All rise.

9 (Court recesses from 1205H to 1218H)

10 MR. PRESIDENT:

11 Please be seated. The Court is now back in session.

12 (Short pause)

13 [12.20.10]

14 Next, the Supreme Court Chamber will put the question to the
15 general guardian of Ms. Ieng Thirith - that is, Ms. Ieng Vichida.
16 Ms. Ieng Vichida, do you reside with or close by to Ieng Thirith?

17 MS. IENG VICHIDA:

18 Yes, that is correct, Your Honour, I reside with her.

19 MR. PRESIDENT:

20 Do you live in the same house with Ms. Ieng Thirith?

21 MS. IENG VICHIDA:

22 I do. I go back and forth visiting her.

23 MR. PRESIDENT:

24 How many times a week would you have contact with Ieng Thirith?

25 MS. IENG VICHIDA:

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1 I stay close to her around three times per week.

2 MR. PRESIDENT:

3 What types of activities do you currently assist Ieng Thirith
4 with?

5 [12.21.29]

6 MS. IENG VICHIDA:

7 I assist her in all ways, including in -- during meal time,
8 treatment, and follow up her health condition, and ask her and
9 encourage her to do some physical activities.

10 MR. PRESIDENT:

11 As for yourself, have you travelled away from your current
12 residence? For example, have you travelled to the countryside or
13 overseas?

14 MS. IENG VICHIDA:

15 I, of course, go to the province, the place where I have to work,
16 but I have never been abroad.

17 MR. PRESIDENT:

18 Thank you. Thank you, Madam Ieng Vichida.

19 And I would like to hand over to Judges of the Bench. If you have
20 any questions to put to her, you may proceed.

21 JUDGE KLONOWIECKA-MILART:

22 Thank you, Mr. President.

23 Madam Vichida, we don't want to put you in any position of the
24 conflict of conscience between considering assisting your mother
25 and at the same time, as a guardian, being faced with the Court

1 orders or requests upon your mother.

2 [11.22.54]

3 However, it appears there is a consistent position of the Trial
4 Chamber, the Co-Prosecutors, the position also expressed in the
5 Provisional Order of the President of this Chamber, that a - that
6 the Court may need the presence of your mother in the future, and
7 there is a question of making her available to the Court if this
8 becomes necessary.

9 So, we are wondering whether you would be ready to assist your
10 mother to respond to summons of the Court if such were issued.

11 MS. IENG VICHIDA:

12 Yes, I will.

13 JUDGE KLONOWIECKA-MILART:

14 Thank you.

15 Do you foresee any occasion why the Accused would need to go
16 abroad?

17 [12.24.16]

18 MS. IENG VICHIDA:

19 No. No, I don't think so because she is in her advanced age now
20 and she has difficulty moving around, even to a closer place, let
21 alone going that far.

22 JUDGE KLONOWIECKA-MILART:

23 As far as you aware, is that correct, what your mother told us
24 before, that she has friends abroad who protect her and take care
25 of her, or was it just a figure of speech?

1 MS. IENG VICHIDA:

2 I think it was a mere speech by her.

3 JUDGE KLONOWIECKA-MILART:

4 So you do not confirm that there are friends of the Accused
5 abroad, with whom she remains in a close contact and who would be
6 ready to harbour her if she wanted to flee the jurisdiction?

7 MS. IENG VICHIDA:

8 Yes.

9 JUDGE KLONOWIECKA-MILART:

10 Do you foresee any reason why would the Accused, your mother,
11 need to change address, either permanently or temporarily?

12 MS. IENG VICHIDA:

13 She may need to change the address so long as there is a real
14 need for that. For example, if she gets really tired and bored
15 with the place where she is currently residing, she may want to
16 move to a different place.

17 [12.26.08]

18 JUDGE KLONOWIECKA-MILART:

19 I understand. Would it be a problem for you to inform the Court
20 about this change of address?

21 MS. IENG VICHIDA:

22 I think that there would be some complication in relation to the
23 paperwork or documentation. So I do not very much foresee the
24 change of address because we are all very busy; we cannot assist
25 very much with the paperwork, or documentation, or so.

1 JUDGE KLONOWIECKA-MILART:

2 I'm not sure if we understand each other properly. I was asking
3 whether you would have problems informing the Court about the
4 change of address of your mother.

5 MS. IENG VICHIDA:

6 If there is a change, I don't have any problem at all informing
7 the Court as such.

8 JUDGE KLONOWIECKA-MILART:

9 Yes, this is what I was asking about.

10 Another question is about the need for the identification card of
11 your mother. We understand at present it is being withheld by the
12 Court. How do you go about without the identification card of
13 your mother?

14 MS. IENG VICHIDA:

15 Currently, there is - there is - we do not envisage any need for
16 the identification card, so there is no problem at all when the
17 Court withheld the card.

18 [12.28.15]

19 JUDGE KLONOWIECKA-MILART:

20 I understand there was no practical problem, but hypothetically
21 -- because we, internationals, even though we try very hard, we
22 are not very - well familiar with the conditions of daily life of
23 the Cambodians.

24 Can you foresee any occasions on which the identification card
25 would be immediately necessary for your mother?

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1 MS. IENG VICHIDA:

2 According to the situation in Cambodia and due to her advancing
3 age as well, I don't think that there is any need for the
4 identification card, so I don't foresee this as an important
5 thing. We may not need it.

6 JUDGE KLONOWIECKA-MILART:

7 How about access to healthcare? Is it not necessary to have an
8 identification card produced?

9 MS. IENG VICHIDA:

10 Due to the fact that she is now still involved with this Court -
11 so, in relation to health access, I have contacted with the
12 treating doctors who were assigned to take care of her. Those
13 doctors have never asked for the identification card from her.
14 And those were the doctors whom we have contacted.

15 [12.30.00]

16 JUDGE KLONOWIECKA-MILART:

17 But suppose that there is a need to change doctors - or just tell
18 me in general terms, if you, yourself, or any other Cambodian
19 goes to the hospital, isn't it necessary to show the
20 identification card, from what you know?

21 MS. IENG VICHIDA:

22 In general, in Cambodia, when someone needs medical service, we
23 do not think ID card is necessary to - for a person to be
24 admitted to a hospital, anyway.

25 JUDGE KLONOWIECKA-MILART:

1 If her friends from France will send her a parcel or some
2 medicines, for example, or some nice present, will it be --
3 through registered mail, will it be possible to claim it without
4 an identification card?

5 MS. IENG VICHIDA:

6 It would need an ID card for that purpose, indeed. However, there
7 is no foreign friend who is - or who sends her any gift, or
8 present, or medicine.

9 JUDGE KLONOWIECKA-MILART:

10 And when it comes to managing the estate of your mother, in order
11 to enter into legal relations concerning her property, you do not
12 need her identification document?

13 [12.31.56]

14 MS. IENG VICHIDA:

15 There is very little property left over from my mother, so we do
16 not have any problem with this, and in some circumstances we do
17 not need such identification card.

18 JUDGE KLONOWIECKA-MILART:

19 Do I, then, infer correctly that even less necessity is there for
20 you to keep possession of her passport?

21 MS. IENG VICHIDA:

22 As required by the Court, she shall not carry with her any
23 identification card or passport, so we are in the hands of the
24 Court.

25 JUDGE KLONOWIECKA-MILART:

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1 Yes, this was the Provisional Order by Mr. President, with the
2 understanding that this Court will consider the foundation and
3 necessity of the prosecutors' request for these conditions.

4 So the question is whether - do you think that the passport will
5 be needed for any reason?

6 I understand from what you've said to this Court already that you
7 do not foresee any travelling abroad. Any other use of the
8 passport?

9 MS. IENG VICHIDA:

10 No, I don't think her passport will be needed anyway.

11 [12.33.52]

12 JUDGE KLONOWIECKA-MILART

13 Thank you very much. These were my questions.

14 JUDGE SOM SEREYVUTH:

15 Ms. Ieng Vichida, the Court is considering to require your mother
16 undergoing periodic medical evaluations to assess any development
17 of her mental condition. You said that your mother is still on
18 medication.

19 My question to you is: Is your mother currently under medical
20 care and does she continue to receive any sort of treatments?

21 MS. IENG VICHIDA:

22 Currently, she still receives treatment in accordance with the
23 prescription as ordered.

24 JUDGE SOM SEREYVUTH:

25 Do you foresee any issue with the Court requiring Ieng Thirith to

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1 undergo medical examinations for the purposes of ascertaining of
2 her cognitive capacity?

3 MS. IENG VICHIDA:

4 I don't know. Currently, her mental status is not stable. It
5 remains fluctuating, and sometimes we need to bring her to the
6 hospital for treatment. So, it depends on her condition, and I am
7 not in the position to say - to be able to say much about this.

8 [12.35.51]

9 JUDGE SOM SEREYVUTH:

10 Do you understand, as a guardian, that you will have the
11 obligation to assist your mother in attending medical evaluations
12 if the Court orders these to take place?

13 MS. IENG VICHIDA:

14 I have no expertise in psychology, and my expertise is in general
15 aspects, so I can't say exactly more detail about this.

16 JUDGE MONG MONICHARIYA:

17 Thank you.

18 I have a few questions to you. As you already been informed that
19 - in the prosecutors' submission, there is a request that your
20 mother shall refrain from communicating with witnesses or
21 victims. So far, as her daughter and currently her guardian, are
22 you sure that your mother has no connection or no relation or
23 communication with other co-accused persons?

24 MS. IENG VICHIDA:

25 My mother is mentally challenged and she doesn't know everyone

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1 very clearly, let alone communicating with them.

2 [12.37.33]

3 JUDGE MONG MONICHARIYA:

4 Has she ever expressed that she missed anyone of the co-accused
5 persons?

6 MS. IENG VICHIDA:

7 That doesn't happen.

8 (Short pause)

9 JUDGE MONG MONICHARIYA:

10 With regard to the witnesses in Case File 002, as an accused
11 person, has Ieng Thirith ever talked to you whether she has any
12 resentment about any of the co-accused persons?

13 MS. IENG VICHIDA:

14 No.

15 JUDGE MONG MONICHARIYA:

16 As a guardian, as you've already been informed, you are supposed
17 to assist your mother to make sure that she refrains from
18 communicating with the co-accused, or victims, or witnesses,
19 except her husband. Do you think you can do this and fully
20 understand this?

21 MS. IENG VICHIDA:

22 Yes, I do, and I fully understand this order and instruction,
23 Your Honours.

24 JUDGE MONG MONICHARIYA:

25 I have no further questions, Mr. President.

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1 [12.39.10]

2 JUDGE KLONOWIECKA-MILART:

3 One more question I was asked to ask: If it was - you know that
4 there is a demand by the Co-Prosecutors that a weekly or monthly
5 safety check be imposed regarding your mother - mother's
6 compliance with the conditions imposed by the Court, namely the
7 requirement of informing the Court of the residence, would it be
8 a practical problem for you and - for your mother and you to
9 endure such checks?

10 MS. IENG VICHIDA:

11 Perhaps it cannot be done. As I already indicated, that - my
12 mother is mentally challenged. This morning, we were late when we
13 left home because sometimes she did not want to leave home. And
14 it proves to be quite challenging to meet her.

15 And at the same time, since I have other commitments, I do not
16 remain with her all the time, and she is cared by some of her
17 grand-children. So I can see that it is quite challenging for
18 such a thing to be conducted.

19 [12.41.06]

20 JUDGE KLONOWIECKA-MILART:

21 Thank you.

22 MR. PRESIDENT:

23 Thank you, Madam Guardian. You may be seated.

24 Next, the Chamber wishes to ask whether counsels for the accused
25 person or the prosecutors would like to have any words or any

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1 remarks concerning the responses by the general guardian just
2 now.

3 Co-Prosecutor, you may proceed first.

4 MR. ABDULHAK:

5 Thank you, Mr. President.

6 We're happy to provide or make brief submissions based on the
7 additional information that we've heard, and perhaps, as part of
8 that, we can deal with some of the other issues that have arisen
9 in our friends' submissions. We're happy to do that if it's going
10 to be of assistance, but we're in your hands.

11 [12.42.25]

12 MS. ELLIS:

13 Mr. President, could I, then, intervene at this stage? Because we
14 would invite Your Honours to look a little more closely, perhaps,
15 at the answers you've been given. It might, we respectfully
16 suggest, be helpful, as you've got Ieng Vichida here, to
17 ascertain from her whether the content of the answers given by
18 the respondent were indeed accurate and reliable.

19 We know from one of the answers given by Ieng Vichida that it is
20 not accurate that there is any friend, professor or otherwise,
21 out of the country involved in her life. As you will know from
22 the content of the reports you've read, there is a well-known
23 condition which causes people who have gaps in their knowledge -
24 memory, to confabulate, and that was well documented by Professor
25 Campbell.

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1 It would be, in our submission, wholly wrong not at least, if you
2 are seeking to rely on answers to these many questions you've
3 posed firstly from her, to establish the accuracy of the content.

4 [12.44.00]

5 And we would respectfully invite the Court to also ascertain from
6 Ieng Vichida whether her mother is aware of relationships,
7 whether she is aware that she has come to Court, whether she is
8 aware that there are proceedings still against her, because if
9 you were to evaluate the answers you're being given to the
10 questions you pose, we submit these are fundamental questions
11 that must inform the view that you take. So we invite matters of
12 that nature to be further pursued by the Bench at this stage.

13 MR. ABDULHAK:

14 Your Honours, with your leave, if I can respond briefly to that
15 application, we respectfully disagree with my learned friend.

16 Your Honours are perfectly capable of assessing Ieng Thirith's
17 ability to communicate with you, to understand the questions, and
18 to respond. You're perfectly capable of assessing the degree to
19 which she understands facts being communicated to her and to
20 which she's able to respond.

21 [12.45.12]

22 It would be inappropriate, in our submission, to now require her
23 daughter to testify effectively on the accuracy of her responses.
24 You've heard from both Madam Ieng Thirith - you've heard from her
25 and from her daughter, and we think the matter can rest here.

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1 I will recall that our submissions have not been that Ieng
2 Thirith is fit to stand trial; our submissions are that she
3 understands instructions and is able to communicate, perhaps with
4 some assistance. And on that issue, we're prepared to make
5 further submissions. But it is our strong position that you don't
6 need to enter into further inquiries as to the accuracy of every
7 response she gave you.

8 MR. PRESIDENT:

9 The Supreme Court Chamber notes that questions should not be put
10 to the general guardian on this because the Chamber just wishes
11 to know a few things. And the accused person already stated about
12 her relationship with her friends, and also the general guardian
13 stated about how this went about, and the Chamber will take this
14 into consideration.

15 And if the accused person Ms. Ieng Thirith wishes to say a few
16 words, she may do so. She will be allocated 10 minutes for this
17 purpose.

18 (Judges deliberate)

19 [12.48.29]

20 Madam Ieng Thirith, you may proceed, if you wish to say a few
21 words.

22 MS. IENG THIRITH:

23 Who is the Accused, really?

24 MR. PRESIDENT:

25 Please be reminded that, Madam Ieng Thirith, you have the floor

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1 now. The Chamber wishes to know whether you wish to say a few
2 words at this conclusion of the proceedings. If you wish to do
3 so, you may proceed.

4 MS. IENG THIRITH:

5 I'm not fully informed of this.

6 MR. PRESIDENT:

7 The Chamber takes that you do not get the point.

8 And as the guardian, Ms. Ieng Vichida, if you wish to say a few
9 words on behalf of your mother, you may do so now.

10 [12.50.08]

11 MS. IENG VICHIDA:

12 Thank you very much indeed, Mr. President and Your Honours.

13 I do not have much to say at this time. I just wish to indicate
14 that my mother is in the state of dementia and she cannot
15 remember anything at all. Sometimes she would address her
16 children as brothers or sisters, and that - she has tried - she
17 has been strongly convinced before she could come to the Court,
18 and we know that her physical fitness is also at a very weak
19 state.

20 As her daughter, I am doing my best to make sure that she can
21 deal with this.

22 And I thank you, the President and Your Honours, for coordinating
23 and helping to ensure that my mother can attend the proceedings
24 today and allow her to also retire to the holding cell when she
25 feels - needed.

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1 And, with that, I thank you very much indeed, and I have no more
2 to say.

3 MR. PRESIDENT:

4 Finally, the Supreme Court Chamber wishes to inform the parties
5 to the proceedings that the ruling on this will be made in due
6 course, in writing.

7 [12.52.23]

8 The Supreme Court Chamber wishes to announce the hearing closed.

9 The hearing is adjourned, indeed.

10 THE GREFFIER:

11 (No interpretation)

12 (Court adjourns at 1252H)

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