

E138/17/13/2

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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SUMMARY EXPERT REPORT ON MRS. IENG THIRITH

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E138/1/7/13/2

Introduction

1. We, Doctors Fazel, Campbell, and Huot, undertake to assist the Chambers honestly, confidentially and to the best of our ability.
2. We provide this summary report in accordance to the Trial Chamber's request for reassessment.¹
3. This report is strictly confidential and for the sole use of the Trial Chamber. We do not consent for it to be made publicly available at any point or for any reason without the express permission of all the authors.
4. This report should be read in conjunction with our previous report dated 9 October 2011.²

Documents Reviewed

5. E12/67 Weekly medical report from 19 to 25 April 2012
6. E12/68 Weekly medical report from 26 April to 02 May 2012
7. E12/68/1 Semester medical report from 20 October 2011 to 17 April 2012
8. E12/68/1.1 Semester medical report from October 2011 to April 2012
9. E12/68/1.2 Semester medical report from October 2011 to April 2012
10. E12/69 Weekly medical report from 03 to 09 May 2012
11. E12/70 Weekly medical report from 10 to 16 May 2012
12. E12/71 Weekly medical report from 17 to 23 May 2012
13. E12/72 Weekly medical report from 24 to 30 May 2012
14. E12/73 Weekly medical report from 31 May to 06 June 2012
15. E12/74 Weekly medical report from 07 to 13 June 2012
16. E138/1/7 Decision on immediate appeal against Trial Chamber's order to release the accused IENG Thirith
17. E138/1/7/1 Request to Trial Chamber Experts following Supreme Court Chamber decision on appeal against accused IENG Thirith's release (E138/1/7)

¹ Document Number E138/1/7/13, ERN 00818575 – 00818576, dated 22 June 2012

² Document Number E111/8, dated 9 October 2011. Please note that there was one error in paragraph 21 of this report where we stated that IENG Thirith 'was able to recall any of three objects on both occasions' whereas it should read IENG Thirith 'was unable to recall any of three objects on both occasions.' This is correctly stated in paragraph 24 of the same report.

18. E138/1/7/2 Trial Chamber memorandum entitled "Update regarding Trial Chamber's direction to medical experts requesting new information regarding IENG Thirith"
19. E138/1/7/3 Further update regarding Trial Chamber's direction to medical experts requesting new information regarding IENG Thirith
20. E138/1/7/4 Report concerning Mrs. IENG Thirith in response to Trial Chamber request dated 6 January 2012
21. E138/1/7/4.1 Rapport médical de IENG Thirith en date du 15-11-2011
22. E138/1/7/4.2 Medical report of IENG Thirith dated 12-11-2011
23. E138/1/7/4.3 Medical report of IENG Thirith dated 14-11-2011
24. E138/1/7/5 Inquiry regarding recommendation for cognitive stimulation programme
25. E138/1/7/6 Recommendations for further medical treatment of IENG Thirith
26. E138/1/7/7 Response to Chamber inquiry regarding medical expert recommendations
27. E138/1/7/8 Office of Administrative (OA) Interoffice Memorandum entitled "Forwarding hospital response on recommendations for additional treatment on the accused IENG Thirith"
28. E138/1/7/8.1 Response on recommendations for additional treatment on the accused IENG Thirith
29. E138/1/7/9 Experts' response to inquiry regarding treatment duration of rivastigmine and timeframe for reassessment of IENG Thirith's fitness to stand trial
30. E138/1/7/10 Implementation of experts' recommendations on cognitive stimulation programme - IENG Thirith
31. E138/1/7/11 regarding hospital's response to TC's memo on "implementation of experts' recommendations for cognitive stimulation programme-IENG Thirith"
32. E138/1/7/11.1 Annex 1: Nomination of Two Khmer-Soviet Friendship Hospital (KSFH) Officials
33. E138/1/7/11.2 Annex 2: Letter of nomination
34. E138/1/7/12 Report on cognitive stimulation training for IENG Thirith
35. E138/1/7/12.1 Appendix 1: Training Schedule

36. E138/1/7/12.2 Appendix 2: Daily Program for it
37. E12/58-82 Weekly medical reports 15 February 2012 to 08 August 2012

Evaluation

38. We interviewed Mrs. IENG Thirith on three occasions on 27th and 28th August 2012 with the assistance of a translator [REDACTED]
39. We also interviewed Professor CHAK Thida, one of the general psychiatrists employed by Khmer-Soviet Friendship Hospital (KSFH), who has previously examined Mrs. IENG Thirith as part of the medical care provided to her. We note three reports of brief mental state examinations by Professor CHAK in 2011,³ and one in 2012 (dated 3rd May 2012).⁴ In addition, we interviewed [REDACTED] one of the treating doctors, who attends the Detention Facility on a weekly basis. We also spoke with Mr. SREEDHARAN Sudev over the phone, who is an Occupational Therapist working for OzWorks Therapy Ltd in Singapore, and who provided training over 3rd and 4th May 2012 and subsequent supervision of staff in administering a cognitive stimulation programme for Mrs. IENG Thirith. We also spoke with Mr. MAO Sophearom, Chief of the Detention Facility, who has known Mrs. IENG Thirith since her detention in 2007, and two female guards, [REDACTED] and [REDACTED]. We then interviewed [REDACTED], one of the two individuals that Mr. SREEDHARAN trained, who is a physiotherapist and has been treating Mrs. IENG Thirith since early May 2012. Professor Campbell also spoke to Mr IENG Sary, her husband, on 28th August 2012 as part of a medical examination, and whose cell is opposite that of Mrs. IENG Thirith.
40. Professor CHAK stated in her report dated 28th October 2011 that Mrs. IENG Thirith did 'not recall an immediate memory' [sic], and that Mrs. IENG Thirith reported sleeping on the 'lowest bed'.³ When we clarified the latter, Professor CHAK said that Mrs. IENG Thirith believed someone was sleeping above her in a

³ E138/1/7/4.3

⁴ E12/68/1.1

mosquito net but Professor CHAK thought it was probably a spider and therefore not delusional. In relation to her memory, Professor CHAK stated that Mrs. IENG Thirith could not remember the topic of a conversation one or two minutes after it had started. When we asked Professor CHAK about Mrs. IENG Thirith's orientation to time (that constitutes five points on the mini-mental state examination), she explained that Mrs. IENG Thirith could correctly read the time on her watch. This is not indicative of orientation in time, which should be examined by asking specific questions about day, date, month, season and year, and without any external assistance. In a report dated 9th December 2011, Professor CHAK stated that Mrs. IENG Thirith did 'not recall an immediate memory [sic]' and that she believed that she would be released from the Detention Facility at 2pm that day. On clarification, Professor CHAK explained that Mrs. IENG Thirith had told her that she herself had bought clothes outside in anticipation of her leaving the Facility. Professor CHAK also stated that she did not gather informant history as part her assessments. Despite this, she concluded in her reports that Mrs. IENG Thirith has no symptoms of mental illness. In her interview with us, Professor CHAK stated that in her opinion, there had been no improvement in Mrs. IENG Thirith's cognitive abilities over the past few months and that her memory 'was stable'. We asked Professor CHAK about whether she had conducted any mini-mental state examinations, and she said that she had recently but could not recall the score. On the 29th August 2012, we received a fax copy of two further reports from Professor CHAK dated 12th July 2012 and 14th August 2012. We understand that the first of these includes a mini-mental state examination with a score of 24 out of 30. We note that this score is not consistent with eight other recorded mini-mental state examinations over 2011 and 2012, none of which have scored above 18 (see below), and three of which were conducted by health care staff and not part of an assessment of her fitness to plead and stand trial. On review of Professor CHAK's mini-mental state examination on 12th July 2012, she does not appear to have administered the test correctly and a number of questions have been substituted that were less demanding. When we rescored the test using the standardized version of the test, Mrs. IENG Thirith would have scored 15.

41. We understand that a trial of an acetylcholinesterase inhibitor, rivastigmine, was commenced on 27th March 2012 (starting with a 4.6mg patch daily, which was increased to 9.5mg patch daily as is usual practice after approximately one month), and that this was supplemented by a cognitive stimulation programme from the beginning of May 2012. We had previously explained that a 3 month trial of these treatments would be sufficient to test whether they improved Mrs. IENG Thirith's cognitive abilities to the extent that she would be fit to plead and stand trial. [REDACTED] explained that Mrs. IENG Thirith had been fully compliant with the rivastigmine medication (which was administered using skin patches), and that there were no reported side effects with this medication.
42. Mr. SREEDHARAN explained that there had been no noticeable change in Mrs. IENG Thirith's cognitive abilities or memory since the cognitive remediation programme had started, but also not a noticeable decline. In order to monitor any progress, Mr. SREEDHARAN stated that he had conducted the mini-mental state examination, a standard screening test for cognitive impairment, and, under his supervision, the two trained health workers had subsequently repeated this test. Mrs. IENG Thirith scored 12 (out of 30) on 3rd May 2012,⁵ and then 11 on 8th June 2012,⁶ 12 on 15th June 2012,⁷ and then 14 on 17th August 2012.⁸ We note the previous examinations by the experts on 12th and 13th September 2011 when she scored 15 and 18, respectively.⁹ We also note that such scores can vary by a few points within a day, which reflects the normal variation in attention and concentration and its subsequent impact of this test that would be expected in an older adult. We also note previous examination by Professor Campbell and Dr Lina on 3rd February 2012 where she scored 12.¹⁰ In relation to other aspects of her mental state, Mr. SREEDHARAN felt that her relationship with the physiotherapists had improved over this period, but her mood remained variable,

⁵ E138/1/7/12

⁶ E138/1/8/1.2

⁷ E138/1/8/1.3

⁸ E138/1/8/1

⁹ E111/8, paragraph 21. Herein we state that Professor Campbell scored 14 in May 2011.

¹⁰ E138/1/7/4, page 4.

and she appeared to believe for much of the time that she was living in an earlier time when she was a student or teacher. Mr. SREEDHARAN stated that he had 'no doubt' that Mrs. IENG Thirith had 'moderate to severe cognitive impairment' and he did not think that she would improve with any more cognitive stimulation or occupational therapy.

43. Mr. MAO stated that he believed that there had no change to Mrs. IENG Thirith's memory over the past few months. However, he had noticed one change over the last few months in that she now 'scolded and verbally abused' female guards more frequently than in the past. The two female guards that we interviewed corroborated this. In addition, they stated that she has become regularly incontinent of urine, and this has worsened over the past month. They also stated that she is not aware of this incontinence, and denies it when asked about it. Furthermore, the female guards stated that she has spoken on a number of occasions over the past few months about someone being physically present in her mosquito net. They said that Mrs. IENG Thirith reports sometimes that this is a human being (that she does not recognize and cannot name), and at other times a child or a skull. The guards explained that Mrs. IENG Thirith does not believe them when they explain to her that it is not there, and has asked to be personally taken out of her cell if the mosquito net is not removed. When we asked the security guards how often this has occurred, they stated 'rather often' by which they meant 'more than 10 times'. They explained that she needed persistent reminding about the need to wash herself, and needed assistance to bath, but dressed herself without assistance.
44. ██████████ felt that there had been no change to Mrs. IENG Thirith's memory since the cognitive stimulation programme had started. He also corroborated the above history of urinary incontinence, which he says has become apparent during the last month, and that her personal hygiene has deteriorated. When he challenged her about a wet mattress in the morning some days ago, Mrs. IENG Thirith said that some person had come into her room and poured water on her bed. ██████████ also explained that she had complained 'very often' of someone

being in her mosquito net, and had also stated that someone was sitting on her television at times, and once had asked him to move or frighten this person away (whose identity was not consistent). This occurred 'at least once per week'. In addition, he said that Mrs. IENG Thirith had misidentified him and referred to him as her father on occasion and her husband at other times, but never as a nurse. He also noticed that she had problems with dressing at times, and would sometimes put on two bras or more than one piece of underwear but [REDACTED] said that he did not know if this was a new problem.

45. Mr. IENG Sary explained to Professor Campbell that he thought that Mrs. IENG Thirith's memory has worsened over the last year. He also stated that recently, after her children had visited and assisted her with bathing, she could not remember their visit later on that day.
46. We interviewed Mrs. IENG Thirith on three occasions over two days. The first interview was short, and Mrs. IENG Thirith was hostile, refused to cooperate with an assessment involving all the experts, and was then inconsistent in whom she was willing to see. After a few minutes, we discontinued the interview. When Mr. IENG Sary saw that this occurred, he went into her room to encourage her to allow us to continue, but he told us that she did not recognize him as her husband but referred to him as her father. Later that afternoon, however, she was agreeable to be interviewed, was cooperative and pleasant during the interview that was held in her cell. The following day, she was interviewed in a meeting room in the Detention Facility, when she was in a good mood, cooperative and appeared happy to be interviewed again.
47. Mrs. IENG Thirith appeared mostly comfortable during the interviews although she winced with pain if she moved from a seated position to standing up. However, she walked without complaining to and from her room but needed the assistance of security staff. During the interviews, her speech was normal in rate and rhythm. Occasionally she would speak in English, and appeared to do so correctly, and on one occasion sang a short song about Cambodia in French.

However, her responses were often not relevant to the question being asked. She would often speak about being in school, being a young person or her family in response to questions on other matters. There was no spontaneous conversation. Occasionally, she would not finish a sentence but appeared unaware of this. Otherwise, her sentence structure and grammar appeared normal. Her mood was variable, and she was hostile and angry during the first interview, but was reactive and smiled appropriately in the subsequent interviews. She did not describe any abnormal perceptions during the interviews. She appeared to maintain her concentration and did not obviously tire.

48. We attempted to conduct the mini-mental state examination on two consecutive days. On the first day, she was not oriented in time or place (apart from knowing the country). She was not able to register or recall three objects, and was unable to count backwards in 7's. She could name two objects and repeat a short phrase, and follow the steps of a three-way instruction. This meant that she scored 7 out of a possible 30. Although her mood was much improved on the second day, she was also disoriented in time but was more oriented in place knowing that she was in Phnom Penh, Cambodia, and that we were on the ground floor. However, she did not cooperate with the last three tasks of the examination saying that she could not see the point of them, but assuming she could follow a three-way instruction her score would have been 9. If we assume that she was also able to do the last three tasks, which is unlikely, her maximum score would have been 12. We did not feel that her low score in the mini-mental state examination was feigned in any way – she appeared clearly bemused by the questions. Guidelines suggest that a score of 10-20 indicates moderate cognitive impairment, and a score of less than 10 indicates severe impairment.
49. Mrs. IENG Thirith's short-term memory was poor. On testing, she had no recall of three objects after a few minutes. She did not remember the assessing team on the second day. She was not able to talk about anything that she had read in the newspaper. During the interviews, she would forget what she had said a few

minutes previously, and even when she was reminded of what she had said, she would maintain that she had never said it.

50. Mrs. IENG Thirith's long term memory had some major deficiencies. She was able to name her parents, but explained that her mother has alive. She denied that she had children, and repeatedly stated that she had come to her current location when she was a child. She named her husband on the second day but was unable to do so on the first day. She could not remember her last address, or the name of the King. She named her secondary school in the second interview. Her recollection of higher education varied. On the first day, she said she had studied abroad but was not able to say where. On the second, she stated that she went to university in Phonm Penh (which we understand is not correct) and studied French and English. She was inconsistent over whether she thought she was married, and, on the second day, stated that she had worked in a government ministry in social affairs. She gave inconsistent answers about whether she was part of the Khmer Rouge during the same interview.
51. We refer to our previous report dated 9th October 2011 as to the criteria we have used to assess fitness to plead and stand trial.¹¹
52. Mrs. IENG Thirith denied repeatedly that she had been charged with anything. However, when it was put to her that she had been accused of murder, she stated, 'I cannot kill anyone. Cambodian women are gentle. My family is a good family.' In relation to torture, she said, 'I never experienced giving torture. I don't know how to do it.' In relation to genocide, she explained that it means, 'killing another race', but that 'no one dare could do that'. In relation to religious persecution, she said, 'in our team, we never did anything bad.' On the basis of these responses, we concluded that she had a basic understanding of the charges, and did have the capacity to enter a plea. However, we note that it was difficult to explore in any detail the meaning of these charges as she deemed them not relevant to her.

¹¹ E111/8, paragraph 39.

53. Mrs. IENG Thirith said at one point that ‘everyone here has a team’ and that this team included a lawyer. However, she then changed the subject and spoke about her high school when we asked her about the role of her lawyer. She was unable to name any of her lawyers, or explain their role. On the basis of this, we are of the view that, although she may be able to cooperate with Counsel, she would not be able to assist meaningfully in the preparation of her defence. This is principally on account of her memory impairment which would severely limit her ability to comment intelligibly on any information relevant to her defence.
54. Mrs. IENG Thirith refused to answer questions in relation to the consequences of any conviction. All she said was that the ‘leaders were from a good religious background’ which we assumed was one way of saying that she and other individuals who were currently being tried were not guilty.
55. On the basis of our interviews, Mrs. IENG Thirith’s capacity to follow the course of proceedings appeared substantially impaired. Although she explained that the role of a judge was ‘in general explain to us’, the degree of her cognitive impairment would preclude her from commenting on anything that was said in court by lawyers or witnesses and comment intelligibly on it.
56. Although Mrs. IENG Thirith appeared to have the ability to bring forward various defences to the charges that we presented to her, from stating that she was brought up in a good family, to being too young, to a Cambodian woman being ‘gentle’, she did not appear to have the capacity to understand the details of the evidence. The principal limitation in our view would be her short-term memory problems that would severely limit the ability to weigh up information in order to comment on it.
57. In exploring her defences, Mrs. IENG Thirith gave contradictory accounts of her involvement in the Khmer Rouge. Initially, she said that she was not in the Khmer Rouge as she was too young at the time, and that ‘I hate Khmer Rouge very much because they conducted very vigorous propaganda.... They mistreated other people. This was not correct.... For ordinary people, it was as if you are dead

when you are alive... The sons and daughters of farmers were mistreated and I don't like that.. .They were really mistreating people'. However within a minute, she could not recall this, and stated, 'when did I say we mistreated people... we tried to show our best that we are doing good for the Cambodian people... yes, I was in the group, my parents were in the group.... Finally I was in Khmer Rouge group, and we did not mistreat people'. A minute later she said that she never joined the Khmer Rouge. Shortly after this, she explained that her husband had founded a Khmer nationalist party that was also called the Khmer Rouge and that she was also a member.

Recommendations

58. There was no evidence in our view of any improvement after the introduction of rivastigmine and the cognitive stimulation programme. It is our view that sufficient time has elapsed for these treatments to have worked if they were going to do so. Therefore, we would recommend for rivastigmine to be discontinued and that the cognitive stimulation programme be stopped.
59. We do not think that there are any other treatments to improve the cognitive ability of Mrs. IENG Thirith. We recommend that Mrs. IENG Thirith's other medical treatments continue, and that they be monitored as and when deemed appropriate according to her medical team. We have no other medical recommendations.

Conclusion

60. Diagnostically, we remain of the opinion that Mrs. IENG Thirith clearly suffers from dementia. We would describe this as a moderate to severe dementia. The diagnostic guidelines of the International Classification of Diseases 10th edition (ICD-10), the World Health Organization's standardized diagnostic guidelines that are widely used internationally, state four criteria for dementia. The first two criteria need to have been present for at least 6 months. First, memory decline,

which is most evident in the learning of new information although in 'more severe cases' the recall of previously learned information may also be affected. The ICD-10 guidelines state that this memory decline can be classified as severe if 'the degree of memory loss is characterized by the complete inability to retain new information. Only fragments of previously learned new information remain. The individual fails to recognize even close relatives.' We are of the view this degree of severity is applicable to Mrs. IENG Thirith. The second criterion is a decline in other cognitive abilities characterized in judgement and thinking. The ICD-10 explains the evidence for this should ideally come from an informant or informants, and standardized tests. The guidelines state that it can be classified as moderate if 'the individual is unable to function without the assistance of another in daily living... Activities are increasingly restricted and poorly sustained.' Given the information provided by informants on Mrs. IENG Thirith's current inability in maintaining her personal hygiene and continence, we are of the view that these problems can be described as moderate in severity. The third criterion for dementia according to ICD-10 is the absence of clouding of consciousness, and this has not been reported since her detention. A fourth criterion is a decline in emotional control or motivation, or a change in social behaviour, which is clearly met by her verbal aggression and hostility towards female guards and her variation in mood reported by a number of staff. Thus, in summary, we are of the opinion that Mrs. IENG Thirith has a diagnosis of dementia that can be described as moderate to severe.

61. However, we think that her dementia has become more severe since 2011, and that there has also been a slight deterioration in her cognitive abilities over the last few months despite the new treatments. The latter is most clearly seen in her increasing verbal aggression to female detention staff, her recent urinary incontinence and her indifferent response to it, and no increases in her scores in the various mini-mental state examinations over this period. Last year, she scored 14, 15 and 18 out of a possible score of 30 in three assessments undertaken by


us.¹² Over May and August 2012, however, her scores were in the range of 11-14, and during our two assessments on this occasion, she at most scored 12 and possibly lower scores. Although caution is warranted in taking one mini-mental state examination score in isolation as there may be a few points of natural variation from one day to another, we note that there is a trend towards lower scores over time, which would be consistent with her diagnosis of a progressive illness, namely dementia. Furthermore, there are reports of hallucinations in relation to her mosquito net, another marker of progression as there was no indication of such abnormal perceptions when we interviewed her last year.

62. We remain of the view that Mrs. IENG Thirith would have considerable difficulties in some of the criteria outlined above in relation to fitness to plead and attend trial. Specifically, these most obviously relate to problems in instructing counsel, following the course of proceedings, and understanding the details of the evidence. Her severe deficits in short-term memory mean that she would have considerable difficulties in being able to retain information in written or spoken evidence long enough so that she could comment intelligibly on them. These memory deficits may now affect her ability to testify, and there was some evidence that she forgot what she had said in the course of one conversation.
63. We are not of the view that any alterations to the court procedures would assist Mrs IENG Thirith to the extent that she would be capable of fulfilling the criteria outlined in paragraph 62.

¹² E111/8, paragraph 21 and E62/3/6 paragraphs 17 and 25.

E138/2/7/13/2

Signed

Date	Name	Place	Signature
29.08.12	Dr. Seena Fazel	Phnom Penh	
29.08.12	Prof. John Campbell	Phnom Penh	
29.08.12	Asst. Prof. Lina Huot	Phnom Penh	