



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
 Royaume du Cambodge
 Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
 Trial Chamber
 Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

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 Judge Jean-Marc LAVERGNE
 Judge YA Sokhan
 Judge Claudia FENZ
 Judge YOU Ottara

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FOURTH DECISION ON FITNESS OF THE ACCUSED NUON CHEA TO STAND TRIAL

Co-Prosecutors
 CHEA Leang
 Nicolas KOUMJIAN

Accused
 NUON Chea
 KHIEU Samphan

Civil Party Lead Co-Lawyers
 PICH Ang
 Marie GUIRAUD

Lawyers for the Defence
 SON Arun
 Victor KOPPE
 KONG Sam Onn
 Arthur VERCKEN
 Anta GUISSÉ

1. PROCEDURAL HISTORY

1. Pursuant to Internal Rule 32, the Trial Chamber, on its own motion, assigned two experts, Dr. CHAN Kin Ming and Dr. HOUT Lina (“Experts”), to examine the Accused and to report on their present fitness to stand trial.¹ The Experts, after examining the Accused in accordance with this Chamber’s orders, filed their reports on 21 January 2015.² On 22 January 2015, upon request of the Chamber, the Experts provided additional opinions on the appropriate length of a court day for the Accused and addressed the effect of specific, recent health episodes experienced by KHIEU Samphan during the proceedings.³ The judges and parties had the opportunity to examine the Experts on their reports and opinions at a public hearing on 23 January 2015.

2. At the 23 January 2015 hearing, the Experts confirmed their findings and recommendations. Additionally, the Trial Chamber asked the experts to confirm their conclusion in the First Expert E-mail that a four-day court week is appropriate for both Accused. The Experts also discussed the results of tests performed on KHIEU Samphan by the Medical Unit on 8 January 2015, 21 January 2015, and 22 January 2015 after the Chamber adjourned the proceedings early due to KHIEU Samphan feeling ill. The International Co-Prosecutor, KHIEU Samphan Defence, NUON Chea Defence, and Lead Co-Lawyers for the Civil Parties also examined the experts at the hearing.

3. The Trial Chamber has previously ruled on three separate occasions that NUON Chea is fit to stand trial.⁴ To determine whether he remains fit to stand trial, the Trial Chamber

¹ Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial (“Order”), E329, 18 December 2015.

² Expert Medical Report: NUON Chea (“NUON Chea Report”), E329/4, 21 January 2015; Expert Medical Report: KHIEU Samphan, E329/5, 21 January 2015.

³ First Email from WESU to the Trial Chamber in Response to E329/6 (“First Expert E-mail”), E329/6/1, 22 January 2015; Second Email from WESU to the Trial Chamber in Response to E329/6 (“Second Expert E-mail”), E329/6/2, 22 January 2015. The Chamber is seized by the KHIEU Samphan Defence for the First Expert E-mail to be reclassified from confidential to strictly confidential and the for Second Expert E-mail to remain classified as strictly confidential. The KHIEU Samphan Defence submitted that the public hearing on KHIEU Samphan’s health provides extensive and sufficient information on KHIEU Samphan’s health. T. 23 January 2015, pp. 56-57. Considering that the Experts discussed the information contained in both E-mails publicly during the fitness hearing of 23 January 2015, the Trial Chamber finds that classifying the First Expert E-mail and the Second Expert E-mail as strictly confidential would not serve the public interest. Accordingly, the Chamber will reclassify the First Expert E-mail and the Second Expert E-mail as public.

⁴ Decision on Fitness of the Accused Nuon Chea to Stand Trial, E301/11, 25 April 2014; Second Decision on Accused NUON Chea’s Fitness to Stand Trial, E265/5, 2 April 2013; Decision on NUON Chea’s Fitness to Stand Trial and Defense Motion for Additional Medical Expertise, E115/3, 16 November 2011.

ordered the Experts to report information which would enable the Chamber to determine the Accused's fitness according to the criteria outlined in the *Strugar* Appeal Judgement.⁵

2. THE EXPERT EXAMINATION

4. The Experts examined NUON Chea over two days on 19 and 20 January 2015 and reviewed weekly medical reports prepared by physicians at the ECCC detention facility and the Khmer-Soviet Friendship Hospital in Phnom Penh.⁶ The Experts report that NUON Chea has a history of several chronic ailments⁷ but has fully recovered from a 2013 episode of acute bronchitis.⁸ His blood pressure, heart sounds, pallor, breathing, muscle tones, and hearing were all normal.⁹

5. NUON Chea has complained of backache since 2007.¹⁰ His doctors at Khmer-Soviet Friendship Hospital report that his back pain has improved and that he could now sit up for short periods of time and walk independently using a frame.¹¹ His doctors also report, however, that NUON Chea now walks more slowly than before.¹² The Experts found NUON Chea's upper and lower limb reflexes to be normal.¹³ NUON Chea described tolerable amounts of pain while moving but stated that this pain stopped once he assumed a final position.¹⁴ The Experts attributed pain in his spine, knees, and hip joints to age-related degeneration.¹⁵

6. NUON Chea has also complained to his Detention Facility doctor of dizziness, occurring infrequently and for short periods of time.¹⁶ The Experts attribute the dizziness to an age-related degeneration of the nerves in his ears but state that this should not affect his ability to

⁵ Order, para. 7, citing *Prosecutor v. Strugar*, ICTY Appeals Chamber, IT-01-42-A, Judgement, 17 July 2008 ("*Strugar*"), para. 55.

⁶ NUON Chea Report, paras 7, 10; T. 23 January 2015, p. 9.

⁷ NUON Chea Report, para. 6.

⁸ NUON Chea Report, para. 14; T. 23 January 2015, p. 16.

⁹ NUON Chea Report, para. 14; T. 23 January 2015, p. 11.

¹⁰ NUON Chea Report, para. 6; T. 23 January 2015, p. 18.

¹¹ NUON Chea Report, para. 7; T. 23 January 2015, pp. 10-12.

¹² NUON Chea Report, para. 7.

¹³ NUON Chea Report, para. 14; T. 23 January 2015, p. 11.

¹⁴ NUON Chea Report, para. 14; T. 23 January 2015, pp. 11.

¹⁵ NUON Chea Report, para. 14.

¹⁶ NUON Chea Report, para. 8; T. 23 January 2015, p. 12.

stand trial.¹⁷ The Experts conclude that NUON Chea is of good health relative to his age and chronic medical conditions.¹⁸

7. During the Experts' interviews with him, NUON Chea was alert and able to both sit up with help and remain seated without uneasiness or discomfort while holding onto a walking frame.¹⁹ He appeared well and alert, smiled readily, and had good eye contact with the Experts.²⁰ NUON Chea spoke loudly and clearly and remembered that he had met the Experts before although he could not remember their names.²¹ NUON Chea did not believe his eyesight to be good but listened to the news on the radio and was able to consult a globe and world map for countries referred to in the news broadcast.²²

8. NUON Chea's doctors at Khmer-Soviet Friendship Hospital, who have known him for about four years, note no problems with his memory, and that he appeared to have normal concentration and a normal mood.²³ The Detention Facility staff members have not noticed any memory problems in NUON Chea and state that he remembers them and does not get lost on the Detention Facility grounds.²⁴ The Experts found that NUON Chea was able to concentrate for the full duration of separate sixty-minute and ninety-minute interviews and noted that he did not seem to tire, remained alert, and responded clearly to all questions posed.²⁵ The Experts also found good evidence of the preservation of NUON Chea's long-term memory: he provided details on his parents and education consistent with answers he gave the Experts in 2014.²⁶ NUON Chea also provided information about his role in the Democratic Kampuchea government.²⁷ NUON Chea also scored normally on a mental examination administered by the Experts.²⁸ The Experts' opinion is that NUON Chea's mental state was normal.²⁹ The Experts' also specifically found that NUON Chea had the necessary capacities outlined in *Strugar*.³⁰

¹⁷ NUON Chea Report, para. 17.

¹⁸ NUON Chea Report, para. 40.

¹⁹ NUON Chea Report, para. 10; T. 23 January 2015, p. 10.

²⁰ NUON Chea Report, para. 14; T. 23 January 2015, p. 10.

²¹ NUON Chea Report, para. 11; T. 23 January 2015, p. 10.

²² NUON Chea Report, para. 13; T. 23 January 2015, pp. 11-12.

²³ NUON Chea Report, para. 19.

²⁴ NUON Chea Report, para. 20.

²⁵ NUON Chea Report, para. 21.

²⁶ NUON Chea Report, para. 23; T. 23 January 2015, p. 13.

²⁷ NUON Chea Report, para. 24.

²⁸ NUON Chea Report, para. 25.

²⁹ NUON Chea Report, para. 26; T. 23 January 2015, p. 13.

³⁰ NUON Chea Report, paras 29-36, 45; T. 23 January 2015, p. 13.

9. The Experts observe that NUON Chea is 88 years old, frail, and at risk of deconditioning with a rapid decline of physical function.³¹ They also find it likely that NUON Chea's memory and cognitive function will gradually deteriorate further with age.³² They therefore recommend regular reviews of his cognitive function.³³ At the hearing, the Experts recommended testing monthly or quarterly.³⁴

10. None of the parties contested the Experts' evidence at the hearing.

3. APPLICABLE LAW

11. To be fit to stand trial, the Accused must be capable of meaningful participation which allows him to exercise his fair trial rights to such a degree that he is able to participate effectively in his trial and has an understanding of the essentials of the proceedings.³⁵

4. FINDINGS

12. To assess whether the Accused remains fit to stand trial, the Chamber considers all pertinent factors, including expert evidence, its own observations, the impact of the Accused's medical conditions, the availability of practical measures to mitigate the effects of any impairment, and that the Accused is represented and advised by competent legal counsel.

13. Having reviewed the NUON Chea Report and the evidence given by the Experts at the 23 January 2015 hearing, the Trial Chamber is satisfied that NUON Chea remains fit to stand trial.

14. Furthermore, in the First Expert E-mail, the Experts stated that NUON Chea can attend court proceedings four days a week.³⁶ Based on KHIEU Samphan's health concerns, the Experts advised that the Chamber revise its sitting schedule to include a two-hour recess at lunchtime to provide a longer midday rest period.³⁷ As announced in the Chamber's oral

³¹ NUON Chea Report, para. 6, 15; T. 23 January 2015, p. 47.

³² NOUN Chea Report, para. 46.

³³ NOUN Chea Report, para. 46; T. 23 January 2015, pp. 19-21.

³⁴ T. 23 January 2015, p. 22.

³⁵ *Strugar*, para. 55.

³⁶ First Expert E-mail, p. 2.

³⁷ 27 January 2015, pp. 25-26.

ruling on 27 January 2015, the Trial Chamber will now sit daily from 9:00 a.m. to 11:30 a.m., and again from 1:30 p.m. to 4:00 p.m., generally from Monday through Thursday.³⁸

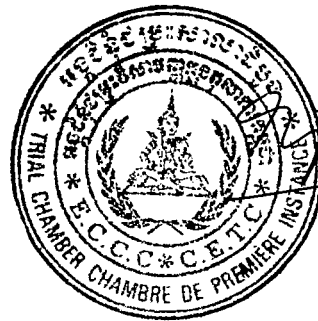
15. The Chamber will continue to take other practical measures – such as allowing the Accused to participate in proceedings via audio-visual link from his holding cell, pursuant to Internal Rule 81(5) – when necessary. The Chamber finds that such measures will adequately mitigate any impairment based on NUON Chea’s medical condition. The Chamber will also, as appropriate, issue future orders implementing the Experts’ recommendations for resuming NUON Chea’s physiotherapy regime, regular testing of his cognitive function, and accommodation which would allow him to sit through proceedings despite his back problems after determining the most feasible methods for doing so.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

AFFIRMS that the Accused NUON Chea is fit to stand trial.

Phnom Penh, 18 February 2015

President of the Trial Chamber



Nil Nonn

³⁸ T. 27 January 2015, p. 26.