



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King

Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

<b>ឯកសារដើម</b>
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**Before:** Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge THOU Mony

**Date:** 11 August 2011  
**Original language(s):** Khmer/English/French  
**Classification:** PUBLIC

**SCHEDULING ORDER FOR PRELIMINARY HEARING ON FITNESS TO STAND TRIAL**

**Co-Prosecutors**

CHEA Leang  
Andrew CAYLEY

**Accused**

NUON Chea  
IENG Sary  
IENG Thirith  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**

PICH Ang  
Elisabeth SIMONNEAU FORT

**Lawyers for the Defence**

SON Arun  
Michiel PESTMAN  
Victor KOPPE  
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PHAT Pouv Seang  
Diana ELLIS  
SA Sovan  
Jaques VERGÈS

**THE TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

**BEING SEISED** of Case File No. 002/19-09-2007-ECCC/TC pursuant to the Decisions on Appeal Against the Closing Order by IENG Sary, IENG Thirith, NUON Chea and KHIEU Samphan, rendered by the Pre-Trial Chamber on 13 January 2011<sup>1</sup>;

**NOTING** the Trial Chamber’s Order of 4 April 2011 (E62/3) appointing Professor John CAMPBELL, Geriatrician, of Dunedin, New Zealand as an expert and requesting that he conduct a medical assessment of all Accused who challenge their fitness to stand trial or their ability to sit for lengthy periods during trial and to prepare a written report in respect of each named Accused individually;

**OBSERVING** that the Accused KHIEU Samphan chose not to avail himself of this assessment and consequently that he does not presently contest his fitness to stand trial<sup>2</sup>;

**FURTHER NOTING** the submission by Professor CAMPBELL of his expert reports in relation to the Accused IENG Sary, NUON Chea and IENG Thirith, following his medical assessment of them and the distribution of these reports to the relevant parties on 13 June 2011 and 23 June 2011, respectively, pursuant to the modalities outlined by the Chamber in E62/3/10 of 6 July 2011 and E62/3/10/4 of 29 July 2011;

**NOTING**, in consequence of the IENG Sary Defence’s request of 7 July 2011 that the expert report of Professor CAMPBELL concerning IENG Sary be made public (E62/3/9), that this report concludes that Accused IENG Sary is fit to stand trial and that no modifications to the Chamber’s trial schedule are presently required in relation to this Accused;

**FURTHER NOTING** the email communication of the IENG Sary Defence to the Trial Chamber on 30 June 2011, indicating that the IENG Sary Defence does not seek to challenge the conclusions of the expert report pertaining to the Accused IENG Sary but requesting that specific recommendations in this report, concerning the Accused’s in-court seating, be implemented;

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<sup>1</sup> Decision on Ieng Sary’s Appeal Against the Closing Order, 13 January 2011, D427/1/26; Decision on Ieng Thirith’s and Nuon Chea’s Appeals Against the Closing Order, 13 January 2011, D427/2/12; Decision on Khieu Samphan’s Appeal Against the Closing Order, 13 January 2011, D427/4/14; and Decision on Ieng Sary’s Appeal Against the Closing Order’s Extension of his Provisional Detention, 13 January 2011, D427/5/9.

<sup>2</sup> T., 5 April 2011, p. 20 (confirming the wish of Accused KHIEU Samphan not to undergo any medical examination and his intention to be present at all hearings); Order Assigning Expert, 4 April 2011, E62/3, para. 4.



**CONSIDERING** that the Chamber has since taken measures to implement these recommendations, in collaboration with the IENG Sary Defence, and that these consultations are ongoing;

**DECLARING**, in consequence, that the Chamber is not otherwise seised of any challenge to the expert report in relation to the Accused IENG Sary or the latter's fitness to stand trial or ability to attend trial sessions;

**HAVING RECEIVED** the objections of the NUON Chea Defence to the expert report pertaining to the Accused NUON Chea on 8 July 2011 (E62/3/4/1) and the response of the Office of the Co-Prosecutors of 15 July 2011 (E62/3/4/2);

**FURTHER NOTING** the comments of the IENG Thirith Defence in relation to the expert report pertaining to the Accused IENG Thirith of 18 July 2011 (E62/3/6/1) and the Office of the Co-Prosecutor's Response of 25 July 2011 (E62/3/6/2);

**HEREBY** schedules hearings, commencing on Monday 29 August 2011 and continuing on subsequent days until and including Wednesday 31 August 2011, if required, to permit questioning of the expert and adversarial argument by the IENG Thirith and NUON Chea Defence, the Co-Prosecutors and the Civil Party Lead Co-Lawyers in relation to the conclusions of the expert reports concerning the Accused NUON Chea and IENG Thirith; and

**PROVIDES** the following additional information to the parties and the public regarding the modalities for the conduct of these hearings:

#### **Preliminary Hearing on Fitness to Stand Trial, 29-31 August 2011**

The Chamber confirms that, in accordance with Internal Rule 79(6), these hearings will be presumptively public and conducted to the maximum extent possible in open session. The Chamber has, however, already indicated a need to balance the rights of the Accused to privacy concerning medical information, against the public's right to know the basis on which an application on fitness to stand trial will be determined (E62/3/10).

The Chamber is also aware that while the expert reports pertaining to the Accused IENG Thirith and NUON Chea raise different issues and require consideration by the Chamber in separate hearings, many of the observations made by both teams in relation to their respective expert reports (concerning, for example, the expert's methodology) are similar or overlapping.

To avoid repetitious questioning of the expert during both hearings, the Chamber will accordingly commence these hearings as a joint hearing involving both Defence teams. The NUON Chea and IENG Thirith Defence teams are invited to collaborate and ensure that all questions common to both teams are put to the expert in a coordinated manner during this initial session. As the IENG Sary Defence does not challenge Professor CAMPBELL's report



in relation to him, the IENG Sary Defence is not required to be present and will not be called upon by the Chamber to speak in this hearing. The Chamber notes the request of the IENG Sary Defence to the Chamber's Senior Legal Officer of 28 July 2011 to observe these proceedings. The Chamber grants this request in relation to this initial portion of the hearing.

At the conclusion of this joint session, the Chamber will then proceed to individualized hearings in relation to the expert reports concerning Accused IENG Thirith and NUON Chea. The Chamber will commence with a consideration of the expert report concerning Accused IENG Thirith (in the presence of the IENG Thirith Defence, the Office of the Co-Prosecutors and the Civil Party Lead Co-Lawyers), followed by a hearing on the issues raised by the expert report for Accused NUON Chea (in the presence of the NUON Chea Defence, the Office of the Co-Prosecutors and the Civil Party Lead Co-Lawyers.)

All hearings will commence in open session. Where any party considers there to be a need to proceed only in closed session, an oral motion may be made to the Chamber. These applications will be heard in open session and granted by the Chamber where the Chamber considers the interests of justice to so require. Should the Chamber permit any hearing to proceed in closed session, the parties are requested to consolidate all matters for consideration *in camera* within a single non-public session in order to ensure efficiency and minimize disruption to the public.

The Chamber recalls that a list of potentially relevant documents from the case file was made available to the expert in advance of his assessment and circulated to the parties on 6 May 2011 (E62/3/1). It advises the parties that it is now in the process of compiling a list of documents cited by the expert in his reports pertaining to Accused IENG Thirith and NUON Chea. This will be communicated to the relevant parties shortly and all documents not presently accessible to them on the case file will be placed there as soon as possible. The Chamber has also since requested Professor KA Sunbaunat, whose report was provided to Professor Campbell upon the latter's request, to provide a signed copy of the document submitted by him at the time, as well as a clarification. These have since been assigned document numbers E62/3/6.1 and E62/3/6.2 respectively and placed on the case file.

To ensure the expeditiousness of these proceedings, the Office of the Co-Prosecutors, IENG Thirith Defence, NUON Chea Defence and Civil Party Lead Co-Lawyers shall each be represented by no more than four lawyers at any one time (two national and two international).

Unless otherwise indicated, these hearings will commence each day at 9 a.m. in the ECCC Main Courtroom.

The Chamber clarifies that the purpose of these hearings is limited to consideration of all issues arising specifically from Professor CAMPBELL's expert reports and to grant the relevant parties the opportunity for adversarial argument in relation to them. In consequence of these reports, the Chamber will soon appoint additional experts in order to supplement Professor CAMPBELL's findings. Further information regarding the next steps in relation to this supplemental expertise will be provided to the parties and the public in due course. *ke go*



Phnom Penh, 11 August 2011  
President of the Trial Chamber

*Nil Nonn*