



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

Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Date: 28 December 2017
Original language(s): Khmer/English/French
Classification: PUBLIC

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SANN RADA	

ORDER ASSIGNING EXPERTS TO ASSESS THE ACCUSED'S FITNESS TO STAND TRIAL AND SCHEDULING ASSESSMENT

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Nicolas KOUMJIAN

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Lawyers for the Defence
SON Arun
Victor KOPPE
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Anta GUISSÉ

1. INTRODUCTION

1. Pursuant to Internal Rule 32, the Trial Chamber orders an expert medical and psychiatric evaluation of the Accused to verify that NUON Chea and KHIEU Samphan remain fit to stand trial for the purposes of delivery of the judgment in Case 002/02.

2. FINDINGS

2. The Trial Chamber may in its discretion appoint experts to perform physical or mental fitness assessments of the Accused.¹ The Trial Chamber has previously issued five decisions assessing NUON Chea's fitness to stand trial² and three decisions assessing KHIEU Samphan's fitness to stand trial,³ each time finding the respective Accused capable of meaningful participation in Case 002. The most recent decisions, issued on 6 September 2016, were based on expert examination conducted in July 2016,⁴ during which the experts found no evidence that either Accused had any cognitive impairment beyond what is expected for men of their age and background and established that the Accused appeared to be in good health relative to their age and medical conditions.⁵ The experts, however, found it likely that both Accused's memory and cognitive function will gradually deteriorate further with age and recommended regular reviews of their cognitive function.⁶

3. In light of the experts' recommendations, the Trial Chamber ordered that the cognitive function of the Accused continue to be tested once every quarter through regular mental tests in the form of an Abbreviated Mental Test (AMT).⁷ In the latest assessment held on 15

¹ Internal Rules 31 and 32.

² Fifth Decision on Fitness of the Accused NUON Chea To Stand Trial and Order for Quarterly Cognitive Testing, E389/5, 6 September 2016; Fourth Decision on Fitness of the Accused NUON Chea to Stand Trial, E329/7, 18 February 2015; 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, E256/5, 2 April 2013; Decision on NUON Chea's Fitness to Stand Trial and Defense Motion for Additional Medical Expertise, E115/3, 15 November 2011.

³ Third Decision on Fitness of the Accused KHIEU Samphan to Stand Trial and Order For Quarterly Cognitive Testing, E389/6, 6 September 2016; Second Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E329/8, 18 February 2015; Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E301/12, 25 April 2014.

⁴ Expert Medical Report - NUON Chea, E389/3, 27 July 2016 ("NUON Chea Report"); Expert Medical Report - KHIEU Samphan, E389/4, 27 July 2016 ("KHIEU Samphan Report").

⁵ NUON Chea Report, paras 41-47, pp. 10-11; KHIEU Samphan Report, paras 2-8, pp. 10-11.

⁶ NUON Chea Report, para. 47; KHIEU Samphan Report, para. 8, p. 11.

⁷ Fifth Decision on Fitness of the Accused NUON Chea To Stand Trial and Order for Quarterly Cognitive Testing, E389/5, 6 September 2016, para. 13; Third Decision on Fitness of the Accused KHIEU Samphan to Stand Trial and Order For Quarterly Cognitive Testing, E389/6, 6 September 2016, para. 13; Order for Quarterly Cognitive Testing of the Accused and Scheduling of Tests, E389/5/2, 7 July 2017.

December 2017, NUON Chea scored 7/10 and KHIEU Samphan scored 10/10. A score of 7 or more is normal. The Accused's health is also reviewed weekly by the ECCC Medical Unit.

4. In light of the stable health of the Accused and the conclusion of the hearings in Case 002/02, the Trial Chamber did not consider it necessary to schedule a fitness assessment in 2017. However, it will do so at the beginning of 2018 with a view to ensuring that the Accused can fully participate in the delivery of the judgment in Case 002/02.

3. APPOINTMENT OF EXPERTS AND ORDERS

5. The Trial Chamber appoints Dr. CHAN Kin Ming, a geriatrician, and Dr. HUOT Lina, a psychiatrist, (collectively "Experts"), to examine NUON Chea and KHIEU Samphan with a view to assessing their fitness to stand trial and to report their findings to the Trial Chamber.⁸ The Experts shall first take an oath to assist the Trial Chamber faithfully, confidentially and to the best of their abilities.⁹ After assessing the Accused, the Experts shall jointly prepare written reports of their activities and their findings on each individual Accused. Each report shall include a statement by the Experts certifying that the Experts themselves conducted the assessments and prepared the reports. The Trial Chamber authorises the Experts to communicate with the Accused, NUON Chea and KHIEU Samphan, for these purposes.

6. The Experts' reports shall include information, based on the criteria described in the *Strugar* case,¹⁰ which will enable the Trial Chamber to determine whether or not each Accused is currently fit to stand trial for the purposes of the delivery of the judgment. To assist the Trial Chamber to ensure the effective participation of both NUON Chea and KHIEU Samphan in their trial, the Experts shall also assess and report whether specific arrangements, including audio-visual facilities, sufficiently address the medical issues of each Accused.

7. In accordance with this assignment, the Trial Chamber **ORDERS** that the Experts shall:

⁸ The Trial Chamber has previously found both Dr. CHAN Kin Ming and Dr. HUOT Lina to be qualified experts and appointed them to assess the Accused's fitness. *See* Order Assigning Experts to Assess the Accused's Fitness to Stand Trial, E389, 7 March 2016, para. 5.

⁹ Internal Rule 31(2).

¹⁰ *Prosecutor v. Strugar*, ICTY Trial Chamber, IT-01-42-T, Decision Re the Defence Motion to Terminate Proceedings, 26 May 2004, para. 36 and *Prosecutor v. Strugar*, ICTY Appeals Chamber, IT-01-42-A, Judgement, 17 July 2008, para. 55.

- a. Examine all relevant expert and medical reports, including material currently on the Case File or referred to therein or held by the Khmer Soviet Friendship Hospital, the ECCC Medical Unit or other medical facility;
 - b. Examine each Accused in order to determine his level of physical and cognitive ability and give a prognosis on the medical and cognitive condition of each Accused and the improvement or deterioration of these conditions since the most recent previous medical and cognitive assessment of the Accused;
 - c. Consult as needed with other medical and psychiatric experts who have previously reported the condition of the Accused to the Office of the Co-Investigating Judges or who have treated each Accused for medical or other related issues during their detention by the ECCC;
 - d. Identify in their reports any and all additional testing ordered by the Experts but administered by another individual, along with the identity of said individual;
 - e. Report to the Trial Chamber on the results of the examinations and consultations in respect of each Accused.
8. The Experts shall treat their assignment as a confidential doctor-patient relationship and shall not disclose any of their findings, conclusions or prognoses of the Accused, or their reports thereon, except to the Trial Chamber or to another medically-trained professional during any consultation referred to in paragraph 7(c) *supra*. The Experts shall have interpreters available to assist them as well as Cambodian medically trained assistants who are also obliged to respect the confidentiality of the examinations and the reports.
9. The Experts shall comply with these orders and are otherwise bound by all applicable provisions of Internal Rules 31 and 32.
10. The Trial Chamber will, through the Witnesses and Experts Support Unit and the Court Management Section, make available to the Experts all relevant confidential medical material currently on the Case File. The Witnesses and Experts Support Unit shall coordinate the availability of interpreters to assist the Experts during their assignment.
11. All interpreters, medical personnel and others assisting the Experts or facilitating their examinations of the Accused, shall respect and observe this order and the confidentiality of the Experts' examinations, findings and reports.

FOR THE FOREGOING REASONS THE TRIAL CHAMBER:

APPOINTS Dr. CHAN Kin Ming and Dr. HUOT Lina to assess NUON Chea and KHIEU Samphan in accordance with this Order;

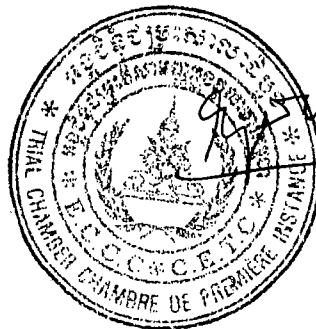
NOTIFIES the Parties that the examination of the Accused will take place on 29 and 30 January 2018, that a written report for each Accused will be finalised in English and submitted to the Trial Chamber by 30 January 2018, that the English version of the reports will be transmitted to the Parties by 31 January 2018 and that translations of the reports will be provided to counsel for the Accused in their primary working language by 1 February 2018;

NOTES that the Experts, if required by the Chamber, will present their findings and respond to questions from the parties at a hearing to be held on 2 February 2018; and

REQUESTS the Office of Administration of the ECCC and the Khmer Soviet Friendship Hospital to provide all necessary assistance to the Experts for the period of their assignment.

Phnom Penh, 28 December 2017

President of the Trial Chamber



Nil Nonn



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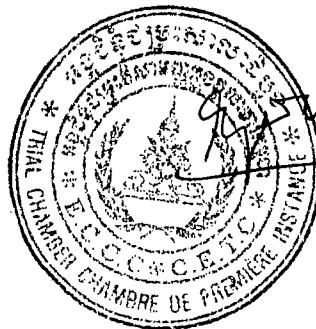
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