



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

Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Date: 25 April 2014
Original language(s): Khmer/English/French
Classification: PUBLIC

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 25 / 04 / 2014
ម៉ោង (Time/Heure): 11:25
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Cese File Officer/L'agent chargé du dossier: Sann Rada

DECISION ON FITNESS OF THE ACCUSED KHIEU SAMPHAN TO STAND TRIAL

Co-Prosecutors
CHEA Leang
Nicolas KOUMJIAN

Accused
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Defence
KONG Sam Onn
Arthur VERCKEN
Anta GUISSÉ

1. INTRODUCTION

1. At the Trial Chamber's request, the Defence teams for the Accused NUON Chea and KHIEU Samphan filed written submissions on 15 January 2014 on the fitness of the Accused to stand trial in Case 002/02.¹ The Co-Prosecutors responded on 22 January 2014.² On 17 February 2014, the Chamber assigned three medical experts – Dr. Seena FAZEL, Dr. CHAN Kin Ming and Dr. HUOT Lina (“Experts”) – to examine the Accused and prepare a joint report on each of the Accused (“Reports”).³ The Reports were filed on 27 March 2014.⁴

2. The Chamber hereby issues its decision on the fitness of the Accused KHIEU Samphan to stand trial. The Chamber is filing a separate, concurrent decision on the fitness of the Accused NUON Chea to stand trial.⁵

2. SUBMISSIONS

3. The NUON Chea Defence, citing symptoms reported by the Accused NUON Chea and purported deficiencies in previous expert medical examinations, sought a comprehensive assessment of NUON Chea's health condition and his ability to participate in trial proceedings.⁶ The Co-Prosecutors opposed the request.⁷ The KHIEU Samphan Defence did not specifically seek an assessment of the Accused KHIEU Samphan's fitness to stand trial, but noted that he was available for such an examination.⁸

4. An expert assessment of the health of the two Accused was carried out in March 2014. The resulting Reports were made available to the parties, though not to the public. The Chamber had previously invited the parties to indicate whether they wished to attend an oral

¹ Response to Trial Chamber's Request for Submissions Concerning NUON Chea's Fitness Review, E301/7, 15 January 2014 (“NUON Chea Request”); Informations de la Défense de M. KHIEU Samphân concernant l'aptitude et les modalités d'organisation des audiences, E301/6, 15 January 2014 (“KHIEU Samphan Request”).

² Co-Prosecutors' Joint Response to NUON Chea and KHIEU Samphan's Submissions Concerning Court Hearing Schedule and Fitness Review, E301/8, 21 January 2014 (“Co-Prosecutors' Response”).

³ Decision on Accuseds' Fitness to Stand Trial and Order Assigning Experts, E301/10, 17 February 2014 (“Order Assigning Experts”).

⁴ Expert Medical Report NUON Chea, E301/10/6, 27 March 2014; Expert Medical Report KHIEU Samphan, E301/10/7, 27 March 2014 (“KHIEU Samphan Report”).

⁵ Decision on Fitness of the Accused NUON Chea to Stand Trial, E301/11, 25 April 2014.

⁶ NUON Chea Request, paras 11, 15(a).

⁷ Co-Prosecutors' Response, paras 5-12.

⁸ KHIEU Samphan Request, para. 4. At a hearing on 11 February 2014, counsel for KHIEU Samphan stated that the Accused was “in good health”, and suggested that concerns raised by the NUON Chea Defence about KHIEU Samphan's health and purportedly diminishing capacities were unfounded: T. 11 February 2014, p. 25.

hearing in order to question the Experts on the Reports.⁹ All parties informed the Chamber that they did not wish to attend such a hearing, and no hearing was convened.

5. While in their written submissions both Defence teams made observations on the health of the respective Accused, and in particular on their ability to concentrate for prolonged periods, no party specifically contended that either of the Accused was unfit to stand trial. Following receipt of the Reports, none of the parties sought to question the Experts.

3. FINDINGS

6. The Chamber has previously set out the applicable law on the fitness of an accused person to stand trial. In brief, 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. In making this assessment, the Chamber considers all pertinent material and factors, including expert evidence; its own observations; the existence of particular medical conditions and their impact on fitness; the availability of practical measures to mitigate the negative effects of any impairment; and the fact that the accused is represented by counsel.¹⁰

7. The Experts examined the Accused KHIEU Samphan over two days on 24 and 25 March 2014 and reviewed the weekly medical reports prepared by physicians at the ECCC detention facility.¹¹ They concluded that he was in good health, despite his existing medical conditions.¹² They stated that [REDACTED], and found no physical health problems that would affect his fitness to stand trial.¹³ They suggested practical measures to improve his ability to read and hear while in the courtroom.¹⁴ They concluded that the Accused KHIEU Samphan was not suffering from any mental illness, and found no evidence of cognitive impairment beyond what would be expected for a person of his age and background.¹⁵ They were of the opinion that he would be

⁹ Order Assigning Experts, para. 16.

¹⁰ See Decision on NUON Chea's Fitness to Stand Trial and Defense Motion for Additional Medical Expertise, E115/3, 15 November 2011, paras 14-18; Decision on IENG Thirith's Fitness to Stand Trial, E138, 17 November 2011, paras 25-30; Decision on Reassessment of Accused Ieng Thirith's Fitness to Stand Trial Following Supreme Court Chamber Decision of 13 December 2011, E138/1/10, 13 September 2012, para. 18; Decision on Accused IENG Sary's Fitness to Stand Trial, E238/9, 26 November 2012, para. 18; Second Decision on Accused NUON Chea's Fitness to Stand Trial, E256/5, 2 April 2013, paras 13-14.

¹¹ KHIEU Samphan Report, paras 3, 17.

¹² KHIEU Samphan Report, para. 36.

¹³ KHIEU Samphan Report, paras 36, 39.

¹⁴ KHIEU Samphan Report, para. 39.

¹⁵ KHIEU Samphan Report, para. 40.

able to “participate for the full duration of the trial sessions with the usual breaks in the hearings”.¹⁶

8. The Experts also assessed the Accused KHIEU Samphan against the seven criteria for fitness to plead and stand trial, as set out by the ICTY Appeals Chamber in *Prosecutor v. Strugar*, and found these criteria to be satisfied.¹⁷

9. Having reviewed the Experts’ Reports and the weekly medical reports in respect of the Accused KHIEU Samphan, the Trial Chamber is satisfied that he is not suffering from any mental or physical impairment which would render him unable to participate meaningfully in the proceedings of Case 002/02.

10. The Chamber will continue to take practical steps – such as allowing the Accused to participate in proceedings remotely via audio-visual link from the ECCC holding cell, pursuant to Internal Rule 81(5) – where these are necessary to address difficulties experienced by the Accused in the course of proceedings. In particular, per the Experts’ recommendations, the Chamber will direct that the ECCC Medical Unit, Detention Facility and Court Management Section implement the medical and therapeutic suggestions set out in the Report, and ensure the Accused KHIEU Samphan is given the opportunity to stand and move his legs at least once every two to three hours in the course of the hearings. The Chamber considers that these measures will adequately mitigate the potential impact of the existing medical conditions of the Accused on his ability to participate in the trial.

11. The Chamber notes that the Accused KHIEU Samphan achieved results within the normal range for men of his age on cognitive tests administered by the Experts.¹⁸ In response to questions designed to test his long-term memory, he gave answers consistent with information available to the Trial Chamber.¹⁹ The Report on the Accused KHIEU Samphan states that by the Accused’s own admission, he is able to concentrate for two periods of three hours each per day, and the Experts observed that he was able to concentrate for the duration of his medical examinations, the longer of which lasted 115 minutes, reporting that he was

¹⁶ KHIEU Samphan Report, para. 38.

¹⁷ KHIEU Samphan Report, paras 27-34. See *Prosecutor v. Strugar*, ICTY Appeals Chamber (IT-01-42-A), Judgement, 17 July 2008.

¹⁸ KHIEU Samphan Report, para. 24.

¹⁹ KHIEU Samphan Report, para. 22.

“only a little tired” at the end.²⁰ The Chamber is satisfied that the Accused has the requisite mental capacity to participate in his own defence.

12. The Chamber therefore finds that the Accused KHIEU Samphan is fit to stand trial according to the legal standard set out above.

13. The Chamber notes that there are outstanding requests from the parties in relation to the modification of the Chamber’s ordinary sitting schedule.²¹ The Chamber considers that it is premature to address these requests at this juncture, but will take their submissions into account when fixing the schedule for evidentiary hearings in Case 002/02, which it will do shortly before those hearings begin.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

FINDS that the Accused KHIEU Samphan is capable of meaningful participation in his own defence and is therefore fit to stand trial;

DIRECTS the Medical Unit, the Detention Facility and the Court Management Section, with the assistance of the Office of Administration, to implement the recommendations of the Experts set out in paragraphs 12(e), 16 and 39 of the KHIEU Samphan Report.

Phnom Penh, 25 April 2014
President of the Trial Chamber



[Handwritten signature]

Nil Nonu

²⁰ KHIEU Samphan Report, paras 11, 12(f), 20, 37, 38. On 27 March 2014, the KHIEU Samphan Defence sent an email to a Legal Officer of the Trial Chamber. In that email, the KHIEU Samphan Defence agreed that there was no need for a hearing on the question of the fitness of their client, but asked that three ‘observations’ be conveyed to the judges of the Trial Chamber. The Trial Chamber declines to consider these ‘observations’. If a party wishes to make submissions to the Trial Chamber as to the sitting schedule for Case 002/02, it should do so in an appropriate way at the appropriate time.

²¹ NUON Chea Request, paras 13-15; KHIEU Samphan Request, para. 5 ; Co-Prosecutors’ Response, paras 3-4, 13.