



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

**Co-Prosecutors**  
CHEA Leang  
Nicolas KOUMJIAN

**Accused**  
NUON Chea

**Civil Party Lead Co-Lawyers**  
PICH Ang  
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**Lawyers for the Defence**  
SON Arun  
Victor KOPPE

## **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.<sup>1</sup> The Co-Prosecutors responded on 22 January 2014.<sup>2</sup> 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”).<sup>3</sup> The Reports were filed on 27 March 2014.<sup>4</sup>

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

## **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.<sup>6</sup> The Co-Prosecutors opposed the request.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>1</sup> 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”).

<sup>2</sup> 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”).

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

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

<sup>5</sup> Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E301/12, 25 April 2014.

<sup>6</sup> NUON Chea Request, paras 11, 15(a).

<sup>7</sup> Co-Prosecutors' Response, paras 5-12.

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

7. The Experts examined the Accused NUON Chea over two days on 24 and 25 March 2014 and reviewed the weekly medical reports prepared by physicians at the ECCC detention facility.<sup>11</sup> They concluded that he was “frail” but in good health, given his age and chronic medical conditions.<sup>12</sup> They diagnosed two physical ailments – [REDACTED] – but concluded that these would not affect his fitness to stand trial.<sup>13</sup> They suggested practical measures to mitigate his backache while sitting in the courtroom.<sup>14</sup> [REDACTED]<sup>15</sup> They concluded that the Accused NUON Chea was not suffering from any mental illness, and found no evidence of cognitive impairment beyond what would be expected for a

<sup>9</sup> Order Assigning Experts, para. 16.

<sup>10</sup> 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.

<sup>11</sup> NUON Chea Report, paras 3, 19.

<sup>12</sup> NUON Chea Report, paras 15, 38.

<sup>13</sup> NUON Chea Report, paras 16, 17, 38.

<sup>14</sup> NUON Chea Report, para. 39.

<sup>15</sup> NUON Chea Report, para. 12(g).

person of his age and background.<sup>16</sup> They were of the opinion that he would be able to “participate in the full duration of the trials with the usual breaks in between”.<sup>17</sup>

8. The Experts also assessed the Accused NUON Chea 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.<sup>18</sup>

9. Having reviewed the Experts’ Reports and the weekly medical reports in respect of the Accused NUON Chea, 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 minor difficulties experienced by the Accused in the course of proceedings. In particular, per the Experts’ recommendations, the Chamber will continue to ensure that the Accused NUON Chea is transported to court in a wheelchair and allowed to remain seated in the wheelchair during proceedings, and will direct that the ECCC Medical Unit, Detention Facility and Court Management Section implement the medical, therapeutic and dietary suggestions set out in the Report. 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 NUON Chea achieved results within the normal range for men of his age on cognitive tests administered by the Experts.<sup>19</sup> In response to questions designed to test his long-term memory, he gave answers consistent with those given during previous medical examinations.<sup>20</sup> The Report on the Accused NUON Chea states that he was able to concentrate for the duration of his medical examinations, the longer of which

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<sup>16</sup> NUON Chea Report, para. 42.

<sup>17</sup> NUON Chea Report, para. 41.

<sup>18</sup> NUON Chea Report, paras 29-36. See *Prosecutor v. Strugar*, ICTY Appeals Chamber (IT-01-42-A), Judgement, 17 July 2008.

<sup>19</sup> NUON Chea Report, para. 26.

<sup>20</sup> NUON Chea Report, paras 24-25.

lasted 85 minutes.<sup>21</sup> 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 NUON Chea is fit to stand trial according to the legal standard set out above.

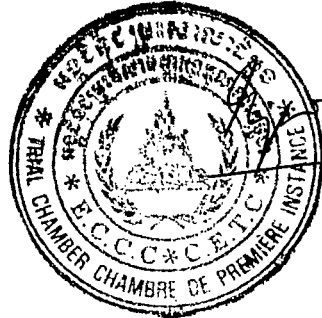
13. The Chamber notes that there are outstanding requests from the parties in relation to the modification of the Chamber's ordinary sitting schedule.<sup>22</sup> The Chamber considers that it is premature to address these requests at this juncture, but will take their submissions into account when 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:**

**AFFIRMS** its earlier findings that the Accused NUON Chea 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 15, 16, 39 and 40 of the NUON Chea Report.

**Phnom Penh, 25 April 2014**  
**President of the Trial Chamber**



**Nil Nonu**

<sup>21</sup> NUON Chea Report, paras 11(i), 22, 41.

<sup>22</sup> NUON Chea Request, paras 13-15; KHIEU Samphan Request, para. 5 ; Co-Prosecutors' Response, paras 3-4, 13.