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ជាតិ សាសនា ព្រះមហាក្សត្រ

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Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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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:	**18 December 2014**
Original language(s):	**Khmer/English/French**
Classification:	**PUBLIC**

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

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1. INTRODUCTION

1. Pursuant to Internal Rule 32, the Trial Chamber orders an expert medical and psychiatric evaluation of the Accused. The Trial Chamber has received no indication that the condition of either Accused has changed substantially since the last expert report, filed in March 2014.[1] Nonetheless, the Trial Chamber orders this assessment in order to verify that NUON Chea and KHIEU Samphan presently remain fit to stand trial and to evaluate proposals for an appropriate hearing schedule.

2. FINDINGS

2. The Trial Chamber may, in its discretion, appoint experts to perform physical or mental fitness assessments of the Accused.[2]

3. NUON Chea is now 88 years old.[3] During his medical assessment on 24 and 25 March 2014, the medical experts found NUON Chea to be well and alert, to have fully recovered from an episode of acute bronchitis from 2013, and able to hear and listen well.[4] He could stand without pain or discomfort using the aid of a frame but needed help sitting up from bed and lying down from a sitting posture.[5] NUON Chea's examiners believe that his muscles and spine both show signs of degeneration related to age.[6] His vision was impaired by a severe cataract on his left eye but he was able to read with normal glasses following cataract surgery on his right eye.[7] NUON Chea stated that he was better than he was at the previous medical examination and due to medical treatment and physical therapy could now walk.[8] The expert medical report of 27 March 2014 concluded that, according to the capabilities outlined in *Strugar*,[9] NUON Chea has no mental or physical problems that would affect his fitness to

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1 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 ("KHIEU Samphan Report").

2 Internal Rules 31, 32; *See also,* Decision on IENG Sary's Request for Reconsideration of the Trial Chamber Decision on the Accused's Fitness to Stand Trial and Supplemental Request, E238/11/1, 19 December 2012, para. 9; Second Decision on Accused NUON Chea's Fitness to Stand Trial, E256/5, 2 April 2013, para. 13.

3 Case 002/01 Judgement, E313, 7 August 2014 ("Case 002/01 Judgement"), para. 305.

4 NUON Chea Report, para. 11.

5 NUON Chea Report, para. 11.

6 NUON Chea Report, para. 11.

7 NUON Chea Report, para. 11.

8 NUON Chea Report, para. 10.

9 *Prosecutor v. Strugar,* ICTY Appeals Chamber, IT-01-42-A, Judgement, 17 July 2008 ("*Strugar* Case"), para. 55("[...] the applicable standard is that of meaningful participation which allows the accused 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 this regard, the Trial Chamber applied the standard correctly, as evidenced by its conclusion that an accused's fitness to stand trial should turn on whether his capacities, 'viewed

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plead and stand trial.[10] In this report, the experts recommend regular reviews of NUON Chea's cognitive function, particularly if it is thought that there is a noticeable decline in his memory or cognition.[11]

4. KHIEU Samphan is now 83 years old.[12] Since 2006, he has been diagnosed with gout, high blood pressure, and two respiratory tract infections which required treatment.[13] He had cataract surgery on both his eyes and could read with the use of a magnifying glass.[14] At the time of his expert examination, KHIEU Samphan was able to walk around his room unassisted.[15] He has a history of two cerebrovascular incidents from which he has made a good recovery.[16] Because he had previously suffered a stroke, he has a high risk of suffering another stroke.[17] A doctor who had known KHIEU Samphan for two years at that point in time explained that his concentration was good for someone of his age and that his mood was normal.[18] The report concluded that KHIEU Samphan appeared to be in good health despite his medical conditions and is able to move and care for himself independently.[19] The report also concluded that there were no physical health problems that would affect his ability to stand trial.[20] Since this report, KHIEU Samphan has been hospitalized twice: once for six days in May 2014 for influenza[21] and once again in September 2014 for shortness of breath with acute hyperthermia.[22] Discharge papers for both hospitalizations state that his condition had improved.[23] As with NUON Chea, his examiners recommend regular reviews of KHIEU Samphan's cognitive function, particularly if it is thought that there is a noticeable decline in his memory or cognition.[24]

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overall and in a reasonable and commonsense manner, at such a level that it is possible for [him or her] to participate in the proceedings (in some cases with assistance) and sufficiently exercise the identified rights'.").

[10] NUON Chea Report, para. 43.

[11] NUON Chea Report, para. 44.

[12] Case 002/01 Judgement, para. 351.

[13] KHIEU Samphan Report, para. 6.

[14] KHIEU Samphan Report, paras 6, 11.

[15] KHIEU Samphan Report, para. 10.

[16] KHIEU Samphan Report, para. 17.

[17] KHIEU Samphan Report, para. 15.

[18] KHIEU Samphan Report, para. 18.

[19] KHIEU Samphan Report, para. 36.

[20] KHIEU Samphan Report, para. 39.

[21] Rapport Médical de Khieu Samphan en date du 03-05-2014, E13/179/1, 6 May 2014; Letter of Discharge of Khieu Samphan from Hospital dated 09-05-2014, E13/179/1.3, 9 May 2014.

[22] Rapport Médical de Khieu Samphan en date du 17-09-2014, E13/199/1, 18 September 2014

[23] Letter of Discharge of KHIEU Samphan from Hospital dated 09-05-2014, E13/179/1.3, 9 May 2014; Hospital Discharge – Khieu Samphan, E13/200/5, 26 September 2014.

[24] KHIEU Samphan Report, para. 42.

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5. The Trial Chamber considers it appropriate and necessary to reassess the Accused's fitness given their advanced age and ongoing medical conditions, the amount of time since experts last assessed their fitness, and the demands that the upcoming trial proceedings will impose on the Accused.

3. EXPERT ASSIGNMENT AND ORDERS

6. The Trial Chamber appoints Dr. CHAN Kin Ming, a geriatrician, and Dr. HUOT Lina, a psychiatrist, (collectively "Experts") to assess NUON Chea and KHIEU Samphan, to collaborate and provide to the Trial Chamber the information specified below.[25] The Experts shall first take an oath, memorialized in writing and signed, to assist the Trial Chamber faithfully, confidentially, and to the best of their abilities. After assessing the Accused, the Experts shall prepare a written report of their findings on each individual Accused. Each report shall include a statement by the Experts certifying that the Experts themselves, either individually or jointly, completed the assessments and the report. The Trial Chamber authorises the Experts to communicate with the Accused, NUON Chea and KHIEU Samphan, for these purposes.

7. The Experts' reports shall include information, based on the criteria described in the *Strugar* Case, which will enable the Trial Chamber to determine whether or not each Accused is currently fit to stand trial. 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 accommodations provided, including audio-visual facilities and limited sitting hours, sufficiently address the significant medical issues of each Accused.

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

a. Examine all relevant expert and medical reports and material currently on the Case File or referred to therein or held by the Khmer Soviet Friendship Hospital 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

[25] The Trial Chamber has previously found both Dr. CHAN Kin Ming and Dr. HUOT Lina to be qualified experts. *See* Decision on Accuseds' Fitness to Stand Trial and Order Assigning Experts, E301/10, 17 February 2014, para. 10.

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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 report(s) 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.

9. The Experts shall treat their assignment as a confidential doctor-patient relationship and shall not disclose any of their assessments or prognoses of the Accused, or their report(s) thereon, except to the Trial Chamber or to another medically-trained professional during any test referred to in paragraph 8.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 examinations and the report.

10. The Experts are otherwise bound by all applicable provisions of Internal Rule 31 and Internal Rule 32.

11. 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.

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 19 and 20 January 2015, that a written report for each Accused will be finalised in English by 21 January 2015 and translations of the report provided to counsel for the Accused in their primary working language by 22 January 2015;

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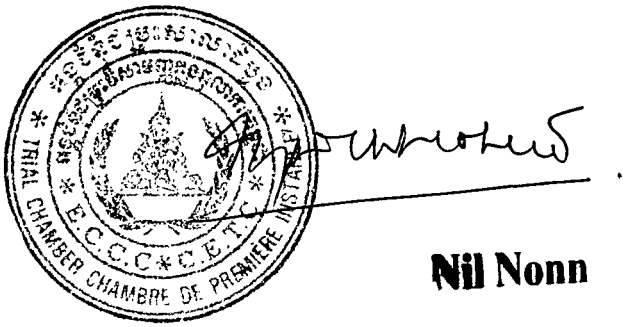
SCHEDULES a hearing on the fitness of the Accused for 23 January 2015 to permit the experts to present their findings and to be questioned by the Defence and Co-Prosecutors; and

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, 18 December 2014
President of the Trial Chamber



Nil Nonn

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