



**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

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

Date: 07 March 2016
Original language(s): Khmer/English/French
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ORDER ASSIGNING EXPERTS TO ASSESS THE ACCUSED'S FITNESS TO STAND TRIAL

Co-Prosecutors
CHEA Leang
Nicolas KOUMJIAN

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Civil Party Lead Co-Lawyers
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SON Arun
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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 to verify that NUON Chea and KHIEU Samphan remain fit to stand trial.

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 four decisions assessing NUON Chea's fitness to stand trial and two decisions assessing KHIEU Samphan's fitness to stand trial, each time finding the respective Accused capable of meaningful participation in Case 002.² The most recent decisions, issued on 18 February 2015, were based on expert examinations conducted in January 2015,³ during which the experts found no evidence that either Accused had any cognitive impairment beyond what would be expected for men of their age and background.⁴ They made no recommendation in their Reports in relation to the mental health of either NUON Chea or KHIEU Samphan.⁵ However, the experts noted that it is likely that the memory and cognitive function of both Accused would deteriorate further with age and recommended that both Accused undergo regular reviews of their cognitive function.⁶

3. At a special hearing on 23 January 2015, the experts testified that having more data on the mental health of the Accused would enhance their ability to assess the Accused's fitness in future examinations.⁷ In addition, following three adjournments of proceedings within a few

¹ 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.

² Fourth Decision on Fitness of the Accused NUON Chea to Stand Trial, E329/7 ("Fourth NUON Chea Fitness Decision"), 18 February 2015; Second Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E329/8 ("Second KHIEU Samphan Fitness Decision"), 18 February 2015; Decision on Fitness of the Accused Nuon Chea to Stand Trial, E301/11, 25 April 2014; Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E301/12, 25 April 2014; Second Decision on Accused NUON Chea's Fitness to Stand Trial, E265/5, 2 April 2013; Decision on Accused IENG Sary's Fitness to Stand Trial, E238/9, 26 November 2012; Decision on NUON Chea's Fitness to Stand Trial and Defense Motion for Additional Medical Expertise, E115/3, 16 November 2011; *see also Prosecutor v. Pavle Strugar*, Decision re Defence Motion to Terminate Proceedings, ICTY Trial Chamber, Case No. IT-01-42-T, 26 May 2004, para. 35).

³ Expert Medical Report – NUON Chea, E329/4 ("NUON Chea Report"), 22 January 2015; Expert Medical Report – KHIEU Samphan ("KHIEU Samphan Report"), E329/5, 22 January 2015; collectively "Reports".

⁴ NUON Chea Report, para. 44; KHIEU Samphan Report, para. 43.

⁵ NUON Chea Report, para. 38; KHIEU Samphan Report, para. 38.

⁶ NUON Chea Report, para. 46; KHIEU Samphan Report, para. 45.

⁷ T. 23 January 2015, pp. 43-47.

weeks necessitated by KHIEU Samphan experiencing high blood pressure levels,⁸ the experts recommended shortening the Chamber's typical hearing day in order to provide longer rest periods for the Accused.⁹

4. In accordance with the experts' recommendations, the Trial Chamber altered its daily trial schedule to sit for two and a half hours in the morning and two and a half hours in the afternoon, with a two-hour lunch break in between.¹⁰ The Chamber also ordered quarterly cognitive testing of both Accused.¹¹ The Medical Unit continues to closely monitor KHIEU Samphan's blood pressure levels throughout each day of court proceedings. Neither NUON Chea nor KHIEU Samphan have been hospitalised since the special hearing. NUON Chea and KHIEU Samphan are now respectively 89 and 83 years old.¹² Considering the likelihood that the Accused's memory and cognitive functions will decline with age,¹³ the newly available data on the cognitive function of the Accused¹⁴ and the length of time since the most recent assessments of the Accused's fitness, the Trial Chamber finds it appropriate to reassess the Accused's fitness at this time.

3. APPOINTMENT OF EXPERTS

5. The Trial Chamber appoints Dr. Kin Ming CHAN, a geriatrician, and Dr. HUOT Lina, a psychiatrist (collectively "Experts"), to assess NUON Chea and KHIEU Samphan, to examine the Accused for their fitness to stand trial and to report their findings to the Trial Chamber.¹⁵ Each expert shall first take an oath to assist the Trial Chamber faithfully, confidentially, and

⁸ T. 8 January 2015, pp. 62-63; T. 21 January 2015, pp. 104-05; T. 22 January 2015, p. 81.

⁹ T. 23 January 2015, pp. 35, 48-53. *See also* First E-mail from WESU to the Trial Chamber in Response to E329/6, E329/6/1, 22 January 2015; Second E-mail from WESU to the Trial Chamber in Response to E329/6, E329/6/2, 22 January 2015.

¹⁰ T. 27 January 2014, p. 26; Fourth NUON Chea Fitness Decision, para. 14; Second KHIEU Samphan Fitness Decision, para. 12.

¹¹ Order for Quarterly Cognitive Testing of NUON Chea and KHIEU Samphan, E329/9, 9 June 2015; Order for Quarterly Cognitive Testing of NUON Chea and KHIEU Samphan - Clarification, E329/9.1, 24 June 2015; Order Scheduling Cognitive Testing of the Accused, E329/11, 26 August 2015; *see also* Cognitive Testing of NUON Chea and KHIEU Samphan, E329/10, 18 August 2015.

¹² Case 002/01 Judgement, E313, 7 August 2014, paras 305, 351.

¹³ NUON Chea Report, para. 46; KHIEU Samphan Report, para. 45.

¹⁴ Abbreviated Mental Test for NUON Chea – Feb 2016, E10/273.1, 19 February 2016; Abbreviated Mental Test for KHIEU Samphan – Feb 2016, E13/270.1, 19 February 2016; Abbreviated Mental Test for NUON Chea – Nov 2015, E10/259.1, 13 November 2015; Abbreviated Mental Test for KHIEU Samphan – Nov 2015, E13/256.1, 13 November 2015; Abbreviated Mental Test for NUON Chea – Aug 2015, E10/247.1, 18 August 2015; Abbreviated Mental Test for KHIEU Samphan – Aug 2015, E13/244.1, 18 August 2015.

¹⁵ 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* Decision on Accused's Fitness to Stand Trial and Order Assigning Experts, E301/10, 17 February 2014, para. 10.

to the best of their abilities.¹⁶ After conducting their examinations, the Experts shall jointly prepare a written report on their findings and conclusions for each individual Accused. Each such report shall include the Experts' certification that the Experts themselves, individually or jointly, conducted the examinations and completed 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, 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.

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

- a. Examine all relevant expert and medical reports, including material currently on the Case File and material 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 reports except to the Trial Chamber or

¹⁶ Internal Rule 31(2).

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 report.

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 appointment.

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:

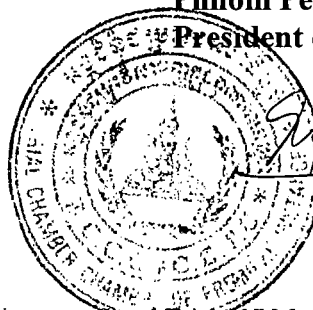
APPOINTS Dr. Kin Ming CHAN and Dr. HUOT Lina to assess NUON Chea and KHIEU Samphan in accordance with this Order;

NOTIFIES the parties that the examination of the Accused will take place on 25 and 26 July 2016, that a written report for each Accused will be finalised in English by 27 July 2016 and that translations of each relevant report will be provided to counsel for the Accused in their primary working language by 28 July 2016;

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 29 July 2016; 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, 07 March 2016
President of the Trial Chamber



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Nil Nonn