



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 Jean-Marc LAVERGNE

Judge YA Sokhan

Judge Claudia FENZ

Judge YOU Ottara

Date:

27 February 2018

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

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1. PROCEDURAL HISTORY

1. Pursuant to Internal Rule 32, the Trial Chamber, on its own motion, assigned two experts, Dr. CHAN Kin Ming and Dr. HUOT Lina (“Experts”), to examine the Accused and to report on their present fitness to stand trial.¹ The Experts, after examining the Accused in accordance with this Chamber’s orders, submitted their reports on 31 January 2018. The Trial Chamber circulated courtesy copies of the reports² to the Parties on the same day, inviting the Parties to submit by 2 February 2018 any request to examine in court the Experts on their reports and opinions on the Accused’s fitness to stand trial.³ As no request was received, no hearing was held on this matter.

2. The Trial Chamber has previously ruled on five separate occasions that NUON Chea is fit to stand trial.⁴ For the purposes of the current decision, the Trial Chamber ordered the Experts to report information, based on the criteria described in the *Strugar* case, which would enable the Chamber to determine whether or not each Accused is currently fit to stand trial for the purposes of the delivery of the judgment.⁵

2. THE EXPERT EXAMINATION

3. The Experts examined NUON Chea on 29 January 2018 and reviewed weekly medical reports prepared by physicians at the ECCC detention facility and the Khmer-Soviet Friendship Hospital in Phnom Penh.⁶ In the NUON Chea Report, the Experts state that NUON Chea has a history of several chronic ailments but note that his blood pressure, heart sounds, pallor, breathing, muscle tones, and hearing are all normal.⁷

¹ Order Assigning Experts to Assess the Accused’s Fitness to Stand Trial and Scheduling Assessment (“Order”), E460, 28 December 2017.

² Expert Medical Report: NUON Chea, E460/2, 30 January 2018 (“NUON Chea Report”); Expert Medical Report: KHIEU Samphan, E460/3, 30 January 2018. Both Reports were filed as strictly confidential. The reports were formally filed only on 1 February 2018 as 31 January 2018 was an official ECCC holiday.

³ Emails from Trial Chamber to the Parties dated 31 January 2018.

⁴ Fifth Decision on Fitness of the Accused NUON Chea to Stand Trial and Order for Quarterly Cognitive Testing, E389/5, 6 September 2016 (“Fifth Decision on Fitness”); Fourth Decision on Fitness of the Accused NUON Chea to Stand Trial, E329/7, 18 February 2015 (“Fourth Decision on Fitness”); 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.

⁵ Order, para. 6, citing *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 (“*Strugar*”), para. 55.

⁶ NUON Chea Report, paras 3, 5, 7, 26.

⁷ NUON Chea Report, paras. 6, 19.

4. NUON Chea has complained of lower back pain since 2007.⁸ The Experts report that his treating doctors at Khmer-Soviet Friendship Hospital noted that his back pain remains stable, subsiding when he remains still, and he can sit up for short periods of time.⁹ The treating doctors added that although his movements are slower, he can still walk independently using a walking frame with some assistance.¹⁰ The Experts attribute his backache to a chronic degenerative condition of his lumbar spine as a result of his advanced age as well as an old injury, but state that this should not affect his ability to stand trial.¹¹

5. NUON Chea has also complained about dizziness in the past, which persists occasionally when he changes posture.¹² The Experts attribute NUON Chea's dizziness to an age-related degeneration of the nerves in his ears but state that this should not affect his ability to stand trial.¹³ The Experts conclude that NUON Chea is of good health relative to his age and chronic medical conditions.¹⁴

6. During his interview with the Experts, NUON Chea was able to sit up unsupported for up to 60 minutes.¹⁵ NUON Chea spoke loudly and clearly and remembered that he had met the Experts before although he could not remember their names.¹⁶ NUON Chea told the Experts that he did not believe his eyesight to be good and resorted to listening to the radio.¹⁷

7. The Experts report that three of NUON Chea's treating doctors at Khmer-Soviet Friendship Hospital noted no problems with his memory, and specifically remarked about his 'good memory' with regards to his recent medical history.¹⁸ The treating doctors also noted that his mood was not abnormal in any way.¹⁹ The Experts find that NUON Chea was able to fully concentrate for the duration of their 60-minute interview and note that he did not seem to tire or experience discomfort, he remained alert, and responded clearly to all questions posed.²⁰ The Experts also report that NUON Chea demonstrated an awareness of the crimes

⁸ NUON Chea Report, para. 6; *See* Fifth Decision on Fitness, para. 4.

⁹ NUON Chea Report, para. 7.

¹⁰ NUON Chea Report, para. 7.

¹¹ NUON Chea Report, paras 23, 47.

¹² NUON Chea Report, paras 8, 24; *See* Fifth Decision on Fitness, para. 5.

¹³ NUON Chea Report, paras. 24, 47.

¹⁴ NUON Chea Report, para. 47.

¹⁵ NUON Chea Report, paras. 16, 48.

¹⁶ NUON Chea Report, para. 17.

¹⁷ NUON Chea Report, para. 18.

¹⁸ NUON Chea Report, para. 27.

¹⁹ NUON Chea Report, para. 27.

²⁰ NUON Chea Report, para. 29.

with which he had been charged.²¹ Additionally, NUON Chea scored within the range considered as normal on a mental examination administered by the Experts which is a commonly used screening test for cognitive impairment.²² The Experts note that regular mental tests in the form of Abbreviated Mental Tests (AMTs) were performed on NUON Chea every three months.²³ Only on one occasion of the test done on 30 March 2017 his score indicated a light impairment in cognitive function.²⁴ In the three subsequent tests, administered on 7 June 2017, 6 September 2017 and 15 December 2017 respectively, he again scored within the range considered normal.²⁵ Overall, the Experts' opinion is that NUON Chea's mental state is normal and that his short term memory, concentration and attention are all well-preserved for his age.²⁶ The Experts specifically find that NUON Chea has no mental or physical problems that would affect his ability to exercise the necessary capacities outlined in *Strugar*.²⁷

8. The Experts observe that NUON Chea is 91 years old, frail, and at risk of "deconditioning with a rapid decline of physical function".²⁸ They recommend that he continue with physiotherapy at least once to twice per week.²⁹ They also find it likely that NUON Chea's memory and cognitive function will gradually deteriorate further with age.³⁰ They therefore recommend regular reviews of his cognitive function, particularly if there is a noticeable decline.³¹ The Experts suggest that in order to ensure his most effective participation at trial, NUON Chea could sit on his wheelchair or a chair with arms and a high backrest for support during the hearing.³²

²¹ NUON Chea Report, paras. 30, 38.

²² NUON Chea Report, para. 31.

²³ NUON Chea Report para. 26.

²⁴ NUON Chea Report para. 26

²⁵ NUON Chea Report para. 26

²⁶ NUON Chea Report, paras 32-33.

²⁷ NUON Chea Report, paras 34-45, 52.

²⁸ NUON Chea Report, para. 22.

²⁹ NUON Chea Report, para. 22.

³⁰ NUON Chea Report, para. 53.

³¹ NUON Chea Report, para. 53.

³² NUON Chea Report, para. 48.

3. APPLICABLE LAW

9. To be fit to stand trial, 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.³³

4. FINDINGS

10. In making this assessment, the Chamber considers all pertinent factors, including expert evidence, its own observations, the impact of the Accused's medical conditions, the availability of practical measures to mitigate the effects of any impairment, and that the Accused is represented and advised by competent legal counsel.

11. Having reviewed the NUON Chea Report, the Trial Chamber is satisfied that NUON Chea remains fit to stand trial and does not currently suffer from any mental or physical impairment which would prohibit his continued participation in Case 002/02.

12. The Chamber notes the recommendation of the Experts to have regular reviews of NUON Chea's cognitive function, and recalls that on 7 July 2017 it ordered the continuation of his quarterly cognitive testing through June 2018, administered by medical professionals contracted to provide services to the ECCC Detention Unit ("Medical Unit").³⁴

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

AFFIRMS that the Accused NUON Chea is fit to stand trial;

ORDERS, in accordance with the Order for Quarterly Cognitive Testing, that:

1. the Accused NUON Chea's cognitive function continue to be tested at least once every quarter; and
2. the appointed Experts prepare tests to assess the Accused NUON Chea's cognitive function and work with qualified ECCC Medical Unit staff to administer these tests and report the results to the Trial Chamber;

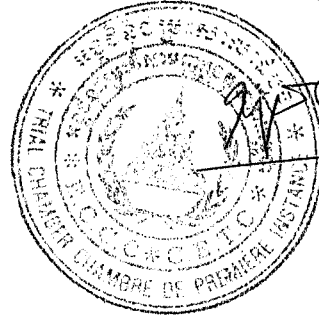
³³ *Strugar*, para. 55.

³⁴ Order for the Quarterly Cognitive Testing of the Accused and Scheduling the Tests, E389/5/2, 7 July 2017 ("Order for Quarterly Cognitive Testing"), paras. 3-4.

DIRECTS, in accordance with the Order for Quarterly Cognitive Testing, WESU to coordinate and schedule the remaining tests, the next no later than 15 March 2018.

Phnom Penh, 27 February 2018

President of the Trial Chamber



NiL Nonn