

ECCC Trial Chamber Fitness Hearing: Ieng Thirith and Nuon Chea

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I. Introduction

From 29-31 August 2011, the Extraordinary Chambers in the Courts of Cambodia (ECCC) held a public hearing to provide parties with an opportunity to question consultative expert geriatric physician John Campbell concerning his methodology and conclusions regarding the fitness to stand trial of ECCC Case 002 accused Ieng Thirith and Nuon Chea.¹ The ECCC Trial Chamber's scheduling order divided the hearing into three segments: (1) questioning by all parties of Dr. Campbell limited to his methodology; (2) questioning of Dr. Campbell regarding his substantive findings on the health of Ieng Thirith; and (3) questioning of Dr. Campbell regarding his substantive findings on the health of Nuon Chea.

Questioning of Dr. Campbell regarding his methodology lasted for the majority of the first day of the hearing. Dr. Campbell was first questioned by Judge Sylvia Cartwright. Upon Judge Cartwright's questioning, it became apparent that Dr. Campbell is held in high professional regard within his field and has extensive clinical and scholarly experience in the fields of internal and geriatric medicine. Dr. Campbell also explained what sources he had consulted before arriving at his diagnoses of Ieng Thirith and Nuon Chea. Even at this early stage, it was evident that Dr. Campbell had serious concerns about the mental health of Ieng Thirith, as he outlined various cognitive tests and other steps undertaken to gain a better picture of Ieng Thirith's mental health history; measures he found unnecessary during his evaluation of Nuon Chea.

II. Ieng Thirith's Fitness in Jeopardy

A. Ieng Thirith's Health Issues

The questions posed to Dr. Campbell by Ieng Thirith's defence team confirmed the strong suspicions that Dr. Campbell had concluded in his still-confidential medical reports that Ieng Thirith may be unfit to stand trial. The Ieng Thirith defence in recent submissions and public statements has made it clear that it is operating under the assumption that Ieng Thirith is unfit to stand trial based on mental health problems.² It was also clear that Ieng Thirith's defence fundamentally agreed with the findings of Dr. Campbell, as defence counsel questioned Dr. Campbell in a manner that highlighted his expertise and experience and therefore generally tended to increase confidence in his capabilities.

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¹ Dr. Campbell assessed the health and fitness to stand trial of co-accused Ieng Thirith, Nuon Chea and Ieng Sary at the request of the Trial Chamber. Fourth Case 002 accused Khieu Samphan declined the examination and declared himself fit to stand trial. Ieng Sary was found fit to stand trial by Dr. Campbell, who recommended certain accommodations be made to address Ieng Sary's health issues. The Trial Chamber has agreed to implement necessary accommodative measures and is currently communicating with the Ieng Sary defence on the issue. As such, the hearing only involved Nuon Chea and Ieng Thirith. Ieng Sary was present as an interested observer.

² See e.g., Thomas Miller, *Ieng Thirith Needs Exam*, PHNOM PENH POST (18 Aug. 2011).

During the initial portion of questioning limited to methodology, Ieng Thirith's defence counsel veered at one point into the substantive issue of Dr. Campbell's conclusions. During this exchange, Dr. Campbell affirmed a statement by the defence lawyer that he had diagnosed Ieng Thirith as suffering from cognitive impairment, most likely due to Alzheimer's disease. This revelation was the culmination of months of public speculation and rumours concerning Ieng Thirith's mental health and is sure to have a major effect on the course of proceedings in Case 002, as such a diagnosis casts serious doubt on Ieng Thirith's fitness to stand trial. Following this major revelation, questioning continued and Dr. Campbell stated that Ieng Thirith had failed two cognitive memory tests, demonstrated other signs of cognitive impairment and CT scans of Ieng Thirith's brain displayed atrophy. All of these factors contributed to Dr. Campbell's ultimate diagnosis.

These early hints at Dr. Campbell's full diagnosis were later confirmed during the afternoon's substantive portion of the inquiry into Ieng Thirith's health. During this session Dr. Campbell explained his diagnosis of Ieng Thirith more fully. Upon questioning, Dr. Campbell stated that his diagnosis of Ieng Thirith is that she suffers from "moderate to severe dementia" most likely attributable to Alzheimer's, which is a "chronic progressive" condition. Dr. Campbell further explained that in his opinion, Ieng Thirith's condition creates a "significant" cognitive impairment in relation to a task and Dr. Campbell is quite doubtful that any combination of treatments will result in "any significant clinical improvement." When describing his interview of Ieng Thirith, Dr. Campbell stated that she had become "lost and confused" when questioned about basic information from her own personal history, such as questions about the time she spent studying in France. Dr. Campbell also indicated that throughout his evaluation he was "concerned" about the possibility that Ieng Thirith was intentionally exaggerating the extent of her mental difficulties and stated that he had "not detected any indication that [Ieng Thirith] may be trying to deceive [him]." The first day of the hearing concluded before Ieng Thirith's defence finished questioning Dr. Campbell.

B. Dr. Campbell's Opinion of Ieng Thirith's Cognitive Abilities

Following the previous day's revelation that Ieng Thirith has been diagnosed with Alzheimer's disease, Dr. Campbell elaborated upon how he arrived at this diagnosis and explained his impressions of Ieng Thirith's specific remaining cognitive capabilities. Dr. Campbell testified that during the course of his examinations Ieng Thirith "talk[ed] to herself, usually about the past and her youth," commonly spoke of "irrelevant matters" and could not remember the number of children she has, along with other basic personal information. Ieng Thirith also sometimes gets disoriented and lost, even in a small and simple place, such as the detention facility. Dr. Campbell also related the contents of his interviews with Ieng Thirith's husband and co-accused, Ieng Sary, who told Dr. Campbell that there had been "great changes" in Ieng Thirith's behaviour. Specifically, Ieng Sary told Dr. Campbell that Ieng Thirith routinely forgets things, such as that her elder sister and parents are dead, despite Ieng Sary's reminding her of these facts and also that Ieng Thirith now often gets angry out of frustration.

The defence also asked for Dr. Campbell's opinion on incident reports from the ECCC detention facility involving Ieng Thirith. The Court initially allowed one incident report to be displayed on the court monitors, but subsequently ruled that the document had to be taken down due to confidential information contained therein. The document revealed numerous

incidents at the detention facility during which Ieng Thirith verbally lashed out at the guards and/or co-accused Nuon Chea.

The defence then posed a series of questions drawn from international fitness standards, contained in the seminal case of *Prosecutor v. Strugar* at the International Criminal Tribunal for the former Yugoslavia (ICTY).³ The *Strugar* test for fitness requires that an accused be able to "exercise effectively" her fair trial rights. In order to do so, the *Strugar* test includes seven non-exhaustive capabilities that an accused must be able to "meaningfully" undertake, including:

1. to plead;
2. to understand the nature of the charges;
3. to understand court proceedings;
4. to understand details of the evidence;
5. to communicate with counsel;
6. to understand the consequences of judgment; and
7. to testify⁴

The defence asked Dr. Campbell for his professional opinion concerning whether Ieng Thirith can currently "understand the nature of the charges" and "concepts of guilt and innocence." In response, Dr. Campbell opined that Ieng Thirith would experience "difficulty understanding" court processes. When asked whether Ieng Thirith could presently understand evidence and challenge adverse witness testimony, Dr. Campbell stated that "she would have great difficulty" doing so. He also affirmed that Ieng Thirith would have "great difficulty" should she attempt to testify. Finally, the defence counsel asked Dr. Campbell whether he considers the challenges facing Ieng Thirith in communicating effectively with her counsel "insurmountable." Dr. Campbell replied "as she is at present, I would."

After clearly demonstrating that Dr. Campbell's professional opinion is that Ieng Thirith cannot currently perform the basic cognitive functions necessary to be found fit to stand trial, the defence explored the possibility of Ieng Thirith's condition improving in the near term. Upon questioning, Dr. Campbell stated that Ieng Thirith has thus far, showed no improvement after having been taken off two of the three psychotropic medications she had previously been prescribed. Furthermore, Dr. Campbell was doubtful that any other modifications in Ieng Thirith's medication regime would result in an improvement in her cognition moving forward. Dr. Campbell did recommend that Ieng Thirith be prescribed alternative medications which help improve some symptoms of Alzheimer's in approximately 30% of patients. If Ieng Thirith responds positively to this medication she may become less cognitively challenged, however this improvement would only be temporary and the drug does not halt the overall progression of Alzheimer's disease.

Following the defence questioning, the prosecution and civil parties were given an opportunity to pose questions to Dr. Campbell. Both the prosecution and civil parties appeared to agree with Dr. Campbell's basic findings, as counsel for neither party asked

³ *Prosecutor v. Strugar*, Decision re the Defence Motion to Terminate Proceedings, Case No. IT-01-42-T (26 May 2004); *aff'd*, *Prosecutor v. Strugar*, Appeal Judgment, IT-01-42-A (17 Jul. 2008).

⁴ *Strugar*, Decision re the Defence Motion to Terminate Proceedings, ¶136.

questions that directly challenged his diagnosis. Instead, questions during this period focused on clarification and explanation of specific findings. One civil party lawyer did ask Dr. Campbell to clarify whether it is his personal or professional opinion that Ieng Thirith was not misleading him during testing. Dr. Campbell responded that his opinion was based on his extensive experience administering cognitive capacity tests and that he did not believe that Ieng Thirith had the capacity to mislead him by strategically manipulating the tests. The conciliatory postures of the prosecution and civil parties strongly suggest that neither party would strongly oppose a finding that Ieng Thirith is currently unfit to stand trial.

C. Implications of Ieng Thirith's Alzheimer's Diagnosis

The testimony elicited from Dr. Campbell made it quite clear that he is fully confident in his diagnosis that Ieng Thirith suffers from Alzheimer's. Moreover, it also became evident that Dr. Campbell's professional opinion is that Ieng Thirith's illness has already progressed to a point where she cannot meaningfully participate in her own defence. These diagnoses have grave implications for Ieng Thirith's fitness to stand trial at the ECCC. According to the opinions provided by Dr. Campbell, Ieng Thirith's current condition precludes her from being able to satisfy most, if not all of the *Strugar* fitness requirements. For example, Ieng Thirith's memory problems would interfere with both her abilities to understand the evidence and testify.

As such, absent a radical departure from Dr. Campbell's diagnosis in subsequent expert evaluations, Ieng Thirith appears to currently be presumptively unfit to stand trial. Furthermore, as Alzheimer's is a degenerative disease for which there is no cure, it appears extremely unlikely that Ieng Thirith could be restored to fitness with treatment. Thus, Ieng Thirith could possibly survive for years in an unfit state if her fitness is found currently compromised, as Dr. Campbell opined that Ieng Thirith has no "specific physical problems" that would otherwise prevent her from attending trial.

III. Nuon Chea Appears Fit but Requests Additional Evaluations

A. Nuon Chea's Health Issues

While the majority of interest at the hearing focused on the revelation that Ieng Thirith has been diagnosed with Alzheimer's disease, information related to Nuon Chea's fitness and his defence team's legal posture regarding the issue also came to light. The Nuon Chea defence, in contrast to Ieng Thirith's defence team, questioned Dr. Campbell in a manner that was designed to undermine confidence in his opinion of Nuon Chea's fitness and defence counsel even referred to the questioning process as "cross-examination" several times. This posture was a result of the defence's disagreement with Dr. Campbell's opinion that Nuon Chea is fit to stand trial and has no limitations that would impede his abilities to exercise his rights.

After brief questioning of Dr. Campbell by his counsel regarding methodology on the initial day of the hearing, Nuon Chea rose and directly addressed the Court during the morning session before retiring to the holding cell for the day. Nuon Chea claimed that he desires to attend all court proceedings in his case as long as his health permits. However, he went on to state that his health is poor and deteriorating and that currently he cannot sit and pay attention for more than 1.5 hours at a time. He stated that after this period of time his eyes become sore and he becomes exhausted and must lie down. Nuon Chea then claimed

that his inability to concentrate beyond 1.5 hours in the courtroom is not ameliorated by retiring to the holding cell where he can lie down and watch the proceedings via an audio-visual link. He concluded by requesting another evaluation by an expert who can provide guidance specifically related to his fatigue and concentration difficulties.

When questioning resumed, the Nuon Chea defence highlighted two main shortcomings it perceived among Dr. Campbell's extensive experience and qualifications. First, the defence focused on the fact that Dr. Campbell has never acted as an expert consultant on an individual's legal fitness in a criminal case, despite his extensive experience in civil proceedings. Second, the defence team questioned Dr. Campbell regarding his specific expertise in the area of "concentration" in patients. Following defence counsel's questioning of Dr. Campbell on the topic of his methodology, the issue of Nuon Chea's fitness was not taken up again until well into the second day of proceedings, following the close of questioning regarding Ieng Thirith's substantive health issues.

At this juncture, Nuon Chea's counsel made a preliminary request that substantive questioning on the topic of Dr. Campbell's findings related to Nuon Chea's health be conducted in closed session in order to protect Nuon Chea's privacy interest in his medical information. This request was opposed by the prosecution and the civil parties, who pointed out the presumption of public hearings at the ECCC and the great interest of the Cambodian public in the fitness of Nuon Chea to stand trial. The Trial Chamber conferred and rejected the defence request, but stated that no confidential documents would be displayed publicly during the session and Nuon Chea's specific health reports were to be discussed only in general terms to protect his privacy interests.

Judge Cartwright questioned Dr. Campbell on his evaluation of Nuon Chea's health first. During this questioning, Dr. Campbell reiterated that he does not have any specific concerns regarding Nuon Chea's current fitness to stand trial and elaborated on the reasoning underlying this opinion. Dr. Campbell also provided a list of physical ailments that Nuon Chea has suffered or currently suffers from. One topic of interest was the stroke that Nuon Chea suffered in 1995. Dr. Campbell explained that all evidence suggests that this stroke was a minor, lacuna stroke, which did not affect core brain functions whatsoever and had only minor lasting physical effects. Dr. Campbell did state that Nuon Chea's claim that he cannot sit in court and concentrate for more than 1.5 hours at a time is reasonable given his advanced age and heart problems, but stated that this was likely due solely to general weakness and could be addressed by existing accommodation measures. Notably, Dr. Campbell found "nothing" suggestive of any cognitive impairment during his examinations of Nuon Chea.

At this point, near the close of the second day of the hearing, Nuon Chea became agitated and requested to address the Court again. This request was granted, but Nuon Chea was told to wait until the following morning to speak because the hearing was drawing to a close and he had spoken out of turn. Nevertheless, Nuon Chea proceeded to ignore this order and began speaking about his health problems. Nuon Chea acknowledged that in the recent past he was fit, but stated that this has changed and he has weakened recently. He stated "past and present is different, my condition is changed. In the past I could walk even after the stroke, later only with a walking stick, and currently only with 'six legs' [the help of

two other people]. My health has been decreased, it is not that I do not believe in doctors, but my health condition has changed, it becomes worse and worse, both physical and emotionally; as well as my intellectual abilities." He continued with an almost poetic statement, saying "what is now influences what will be in the future, it will change, it will change in a negative way, nothing stays the same, things will get worse; my health will get worse."⁵

Following this outburst, the Court adjourned for the day and took up questioning of Dr. Campbell by Nuon Chea's defence counsel the following day. During questioning by Nuon Chea's defence counsel, Dr. Campbell reiterated his basic findings. When asked whether his examination was exhaustive, Dr. Campbell stated "I did not feel at any time that I was short on time or required additional testing to be done." Dr. Campbell did opine that Nuon Chea's claim that he cannot concentrate and sit for more than 1.5 hours is a reasonable one given Nuon Chea's various ailments however, Dr. Campbell also stated that the Court had already taken all necessary measures to accommodate Nuon Chea.

During the morning session of the final day of the hearing, Nuon Chea again asked to be excused. He also requested that he be allowed to completely waive his right to participate in the proceeding and return to the detention facility, rather than the holding cell adjacent to the courtroom where he could observe via audio-visual monitor. Nuon Chea was allowed to leave the courtroom but ordered to remain in the holding cell. Following the break, Nuon Chea's defence counsel notified the Court that Nuon Chea had reiterated his request to return to the detention facility and had informed counsel that he had turned off the video monitor in his holding cell because he was feeling too ill to watch the proceedings via video. His defence counsel then stated that "holding cells should not be used to create an illusion that an accused is meaningfully participating in a proceeding, when he is not."

In response to the defence request that Nuon Chea be returned to the detention facility, the Chamber ordered court doctors to conduct an examination during the lunch recess to determine whether any present condition necessitated such a move. Pending this examination, the Chamber again denied Nuon Chea's request. For the remainder of the morning session, Nuon Chea's defence lawyers questioned Dr. Campbell with the apparent goal of uncovering possible alternative reasons for Nuon Chea's claims that he cannot concentrate for extended periods. The defence did so by asking a series of narrow questions based on theoretically possible, but clearly unlikely, alternative scenarios which were clearly designed to elicit a response of simply "yes" or "no" from Dr. Campbell. However, Dr. Campbell was unwilling to cooperate and provide simple answers and instead routinely answered by explaining why each theory posed to him by the defence was extremely unlikely. For example, Nuon Chea's defence asked Dr. Campbell whether a thalamic stroke (the type of stroke Nuon Chea suffered in 1995) could ever cause memory loss and attention span problems. The clear purpose of this question was to force Dr. Campbell to answer with a simple "yes," because presumably such a result is theoretically possible. However, Dr. Campbell instead replied with a clear "no" and elaborated that thalamic strokes are not clinically associated with memory or attention capacity loss. Dr. Campbell was also asked whether it is possible that subtle changes in Nuon Chea's brain functions resulted from his 1995 stroke that were not evident in subsequent testing. Dr. Campbell responded "yes, but

⁵ Quotation taken from ECCC simultaneous translation from Khmer to English.

there is no clinical evidence of this" in Nuon Chea. This type of questioning lasted quite some time and although the defence needed to ask such questions to lay the groundwork for their request for additional expert testing, Dr. Campbell's responses appeared to only make the audience more sceptical of Nuon Chea's claims.

Following the lunch recess, the Chamber received test results for Nuon Chea. These results uncovered no immediate concerns and all tested levels were within normal ranges based on Nuon Chea's medical history and age. Nonetheless, Nuon Chea's defence counsel informed the Chamber that Nuon Chea reported that he is tired and cannot concentrate enough to even "watch 'tele'" in the holding cell and had turned the monitor off. Some of the judges appeared frustrated with Nuon Chea's complaints and Judge Cartwright offered a sharp criticism of counsel's reference to remote participation of the accused via the holding cell's audio-visual system as "watching 'tele'," stating "I don't know what you mean by [watching] the 'tele,' but I infer that you mean the audio-visual screen, not some soap opera." The Chamber then asked Dr. Campbell whether the holding cell was a suitable location for Nuon Chea to remain. Dr. Campbell opined that after visiting the holding cell, he found no reason why Nuon Chea would have any greater physical difficulties in the cell than any other location because he can lie down as needed and receive medical attention if necessary. The Chamber then ruled that Nuon Chea was to remain in the holding cell until the close of the hearing.

The hearing continued with the prosecution's questioning of Dr. Campbell. The prosecution's questions were general in nature and allowed Dr. Campbell to reiterate and summarize the reasons why he believes Nuon Chea is currently fit to stand trial and requires no additional testing. The civil parties stated that they felt no need to ask further questions because they argued the proceedings had already made it quite clear that Nuon Chea is fit to stand trial.

B. Summations of the Parties Regarding Nuon Chea's Requests

Following an exhaustive three full days of questioning, the Chamber excused Dr. Campbell and heard final submissions from the parties. The Nuon Chea defence summarized their previous arguments that they do not accept the conclusions of Dr. Campbell because: (1) Dr. Campbell lacks necessary relevant experience; (2) Dr. Campbell's methodology was flawed; (3) the reports and history Dr. Campbell relied upon were flawed or insufficient; (4) Dr. Campbell made no serious attempts to test Nuon Chea's mental abilities; and (5) Dr. Campbell lacked necessary knowledge of psychological tests. The defence concluded by requesting appointment of additional experts who can exhaustively test Nuon Chea's cognitive functions, focusing specifically on concentrating for longer periods of time and medium/long-term memory.

The prosecution opposed the defence request for additional expert testing, arguing that there is no "adequate reason" as required by international jurisprudence on the issue, to appoint an expert for further assessments because: (1) Dr. Campbell is fully qualified and competent; (2) Nuon Chea did not object to Dr. Campbell's qualifications until disagreeing with his findings; (3) Dr. Campbell's findings are sound and consistent with Nuon Chea's demeanour; (4) the defence made no submissions stating that Nuon Chea is not actually fit

or cannot instruct counsel; and (5) an earlier psychiatric assessment was offered by the ECCC and rejected by Nuon Chea. The civil parties joined the prosecution arguments and noted that Dr. Campbell faithfully followed the instructions provided in the order appointing him as expert. One civil party lawyer also noted that throughout the hearing Nuon Chea appeared to be “doing quite well” for an 85 year old man.

C. Implications of Nuon Chea's Health Claims

The arguments put forth by Nuon Chea's defence create a novel scenario for the Trial Chamber to address should it find Nuon Chea's subjective health complaints credible. Nuon Chea expressly desires to exercise his right to be present during trial, yet states that he cannot attend any proceeding in a meaningful capacity for more than 1.5 hours per day. Thus, Nuon Chea argues that he is unfit to stand trial because, though he retains his full mental faculties generally, he cannot physically or mentally *maintain* meaningful participation in proceedings for more than short periods, effectively precluding him from exercising his rights.

This argument does not appear to be persuasive at this point according to publicly available information and observations of Nuon Chea throughout the hearing proceedings. Dr. Campbell's examination found no causes for concern regarding Nuon Chea's mental capacity and Nuon Chea appeared fully capable of exercising all of his rights, especially in light of the forcefulness and clarity of his two statements to the Court. However, determining Nuon Chea's fitness to stand trial and whether any further testing is necessary before doing so are ultimately decisions entrusted solely to the Trial Chamber judges.

IV. Conclusion: Ieng Thirith's Fitness in Doubt, Nuon Chea Appears Fit

The hearing provided important insights into several aspects related to the fitness of Ieng Thirith and Nuon Chea. First, geriatric expert Dr. Campbell acquitted himself well during three full days of questioning. His expertise in elder health issues was apparent and he clearly and carefully answered all questions put to him, engendering confidence in his findings. Second, proceedings against Ieng Thirith are in extreme jeopardy. Dr. Campbell appeared fully confident in his diagnosis that Ieng Thirith suffers from Alzheimer's and that the disease has advanced to a degree that she cannot meaningfully participate in her own defence, rendering her presumptively unfit to stand trial. Third, Nuon Chea appears to fully retain his mental faculties and be legally fit to stand trial at this point in time. Each time Nuon Chea spoke, he was clear, coherent and forceful, at times displaying glimpses of his former persona as one of the Khmer Rouge's chief ideologues. Fourth and finally, Nuon Chea's defence strategy related to fitness appears to be based on the progression of Nuon Chea's health problems, portending further, possibly numerous, challenges to his fitness throughout trial even if the Trial Chamber finds Nuon Chea currently fit.

Moving forward from this hearing, issues of Ieng Thirith's mental health will likely continue to be a topic of great interest and speculation amongst ECCC observers. Many attendees voiced concerns that Ieng Thirith may be faking her mental health problems. These concerns persisted even after Dr. Campbell extensively explained the various factors he had considered, which all suggested that Ieng Thirith suffers from Alzheimer's. These doubts highlight the difficulties courts face in assessing mental fitness to stand trial, as

mental health issues are rarely verifiable through conclusive diagnostic testing. The Trial Chamber has already ordered additional testing of Ieng Thirith by four psychiatric experts, perhaps out of an abundance of caution and sensitivity to the likelihood of public scepticism should Ieng Thirith be found unfit.

These tests may assuage some public doubts and additional expert opinions are always useful to judges making difficult fitness decisions. However, conducting additional tests is likely to take months. Accordingly, it appears the most desirable course of action would be severing Ieng Thirith's case from Case 002 and continuing proceedings against her as an individual accused. This would expedite moving forward with the cases against Nuon Chea, Ieng Sary and Khieu Samphan, who themselves are all of advanced age and in states of fragile health, exemplified by Nuon Chea's claims of deteriorating health.

It is important to note that such a severance would not amount to a dismissal of the case against Ieng Thirith altogether, but would merely allow the inquiry into Ieng Thirith's fitness to proceed simultaneous to trial proceedings against the rest of the current Case 002 accused. Moreover, even if Ieng Thirith is ultimately found unfit to stand trial, it is extremely unlikely that she would be unconditionally released from detention. The jurisprudence on the issue is clear and states that an unfit accused should only be released to the custody of an appropriate treatment facility.⁶ Such provisional release is without any prejudice to resuming criminal proceedings against an accused who returns to fitness at any point in the future.

Regardless of the final outcome of Ieng Thirith and Nuon Chea's fitness determinations or the possibility of severing Ieng Thirith from Case 002, the fitness hearing made one fact abundantly clear, time is an extremely scarce commodity at the ECCC; one the Court cannot waste without running the risk of losing some or all Case 002 accused to unfitness or death.

END

⁶ *Prosecutor v. Kovačević*, Public Version of the Decision on Accused's Fitness to Enter a Plea and Stand Trial, Case No. IT -01-42/2-1 (12 Apr. 2006); *aff'd*, *Prosecutor v. Kovačević*, Decision on Appeal Against Decision on Referral Under Rule 11bis, Case No. IT -01-42/2-AR11bis.1 (28 Mar. 2007). Kovačević was found indefinitely unfit to stand trial due to suffering from "paranoid psychosis" and transferred to a secure wing of the Military Medical Academy in Serbia for treatment. There are currently no plans to return him to trial.