



Trial Chamber Finds Accused Nuon Chea Fit for Trial
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With the death of accused Ieng Sary on March 14 and the September 2012 release of his wife Ieng Thirith due to dementia, only two former senior Khmer Rouge leaders remain on trial in Case 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC). Accused Khieu Samphan required hospitalization most recently in late 2012, but otherwise has been the most robust of the octogenarian defendants and the only one to consistently attend full days of trial proceedings. Accused Nuon Chea has been hospitalized twice this year and regularly requests to be excused from the courtroom at the morning break, preferring to participate from the special audio/video-equipped holding cell due to chronic physical ailments including headaches, dizziness, back pain, fatigue, and a general lack of concentration. One medical expert recently testified that he would not be surprised if Nuon Chea died within the next six months — emphasizing that this was not a prognosis but an acknowledgment that at 86 years of age, “life is precarious.”¹

After Nuon Chea’s January 2013 hospitalization for acute bronchitis and hypotonia in his legs and February hospitalization for hypertension, drowsiness, and extreme fatigue, treating doctors reported his condition to be frail but stable. The Defense argued that Nuon Chea’s numerous physical ailments and diminished cognitive function required additional physical and mental evaluation and treatment before he could be found fit to continue participating in trial proceedings. In the alternative, they sought permission for Nuon Chea to follow the trial by audio/video link from the detention facility because being moved to the courtroom—and ultimately the lower-level holding room—makes him too tired to participate effectively.

In late March, the ECCC Trial Chamber heard testimony from two medical experts, rejected the Defense requests, and, applying the International Criminal Tribunal for the former Yugoslavia’s *Strugar* criteria, found Nuon Chea fit for trial. To evaluate if he is “currently capable 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,’” the Trial Chamber considered both medical reports and its own observations regarding his medical conditions and their impact on his ability to understand and follow proceedings with assistance from his counsel.²

The Trial Chamber accepted the experts’ determination that Nuon Chea’s degenerative health problems do not impact his ability to meaningfully participate in trial proceedings. His heart disease is being controlled by medication, and his chronic back pain is being mitigated through

¹ See Cambodia Tribunal Monitor Blog, Examination of Nuon Chea’s Fitness to Stand Trial, and Renewed Discussion of Case 002 Severance (Mar. 25, 2013), at <http://www.cambodiatribunal.org/blog/2013/03/examination-nuon-chea%E2%80%99s-fitness-stand-trial-and-renewed-discussion-case-002-severance>.

² Second Decision on Accused Nuon Chea’s Fitness to Stand Trial, ¶¶ 13, 14 (Apr. 2, 2013).

“positioning, lumbar support and pain medication.” The Chamber also accepted that the chest infection and attendant “temporary delirium” that had required recent hospitalization have been resolved. Although the onset of cataracts is affecting his ability to read, the Trial Chamber found that his counsel could read legal documents to him when required.

Noting that “an Accused must have adequate long-term and short-term memory to recall events from the time of the alleged criminal conduct and to comment on evidence presented,”³ the Trial Chamber accepted the experts’ determination that although Nuon Chea has experienced some recent decline in his short-term memory, it is not severe enough to impact his ability to participate in his defense. Moreover, his long-term memory remains intact. The Chamber also accepted the experts’ finding that Nuon Chea does not have significant concentration or attention problems and has the capacity to concentrate for up to two hours at a time without obviously tiring. As a consequence, the Chamber found that he “is capable to plead; understand the nature of the charges, the course of the proceedings, the details of the evidence and the consequences of the proceedings; to instruct counsel; and to testify.”⁴

Based on the opinion of the medical experts, the Trial agreed that “reasonable efforts” to facilitate Nuon Chea’s participation in trial proceedings by accommodating his frail condition were appropriate. However, they disagreed with the Defense that his ailments made his participation from the specially equipped holding cell too onerous and ruled that he must participate either from there or from the courtroom:

The specially-equipped holding cell contains audio-visual equipment transmitting a live feed of the proceedings, a telephone enabling the Accused to freely and confidentially communicate with his counsel and an adjustable bed, specifically designed to alleviate the Accused’s physical condition. Further, as the holding cell is located in the ECCC court building, members of his Defence team have ready access to the Accused throughout the day.⁵

Hearings resumed on April 8 with Nuon Chea participating from the holding cell. Due to the precarious state of his health, the very real possibility that he may not live to see judgment will remain a pervasive apprehension for the Court during the remainder of proceedings.

³ *Id.* ¶ 24.

⁴ *Id.* ¶ 27.

⁵ *Id.* ¶ 28.