

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC

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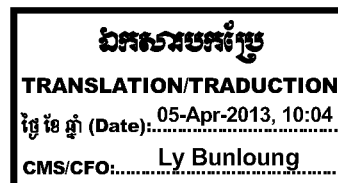
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Mr Khieu Samphân's Defence Team's Request that Orders and Decisions Rendered by the Supreme Court Chamber be Notified to Them in the Three Official Languages of the ECCC

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Before:

The Supreme Court Chamber

Judge KONG Srim

Judge Agnieszka KLONOWIECKA-MILART

Judge SOM Sereyvuth

Judge Chandra Nihal JAYASINGHE

Judge MONG Monichariya

Judge YA Narin

Judge Florence Ndepele MUMBA

The Co-Prosecutors

CHEA Leang

Andrew CAYLEY

All Civil Party Lawyers

All Defence Teams

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 8 February 2013, the parties were notified of the Supreme Court Chamber's (the "Supreme Court") decision on the Co-Prosecutors' appeal against the decision of the Trial Chamber with respect to the scope of trial 002/01.¹ The Supreme Court Decision was distributed to the parties in English and Khmer only.
2. On 11 February 2013, KHIEU Samphân's Co-Lawyers submitted a request to the ECCC Translation Unit for translation into French of the Supreme Court Decision. Beset by work, the Unit indicated that it could not provide a French translation of the Decision before 22 February 2013. Upon the insistence of the Defence team, an unrevised draft with untranslated footnotes was sent to them on 14 February 2013.
3. On 12 February 2013, the Trial Chamber ("the Chamber") sent a memorandum to the parties on the imminent scheduling of hearings to debate, *inter alia*, the consequences of the Supreme Court Decision on the organisation of the on-going trial.² These hearings had originally been scheduled for 14 and 15 February 2013. Ultimately, due to Mr IENG Sary's international Co-Lawyer's inability to be present on those dates, the hearings were postponed to 18 and 19 February 2013.
4. Despite this last minute postponement for a few days, Mr KHIEU Samphân's international Co-Lawyers, whose working language is French, will not have the full and complete translation of the Supreme Court Decision in time for the hearings of 18 and 19 February. Moreover, had the hearings taken place on 14 and 15 February as initially scheduled, they would not have had access to any French translation of the Decision.
5. The result of this situation is that Mr KHIEU Samphân's Defence team is significantly

¹ *Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01*, E163/5/1/13, 8 February 2013.

² *Direction to the parties in consequence of the Supreme Court Chamber's Decision on Co-Prosecutors Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01 (E163/5/1/13)*, E163/5/1/13/1, 12 February 2013, para. 15.

prejudiced by not having the means necessary to prepare for these hearings with all due diligence.

6. Even though Mr KHIEU Samphân's Defence team includes one Co-Lawyer with indicated fluency in English and French,³ and one Co-Lawyer with indicated fluency in English and Khmer,⁴ the fact remains that the legal working language of the three international Co-Lawyers is French. As of today, these three Co-Lawyers still have no final translation of a decision that is crucial for the future of the trial and the hearings that will take place next week.

7. It is true that the Case 002 Pre-trial Chamber had ruled that "*the right for the Co-Lawyers to have access to the Case File during the investigation does not mean that all the material collected should automatically be translated into their language*".⁵

8. Nevertheless, the Chamber had clearly emphasized that the key requirement guaranteed by the Translation Order is to allow a Charged Person to have "*knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events*".⁶

9. Indeed, the Translation Order provides that the Charged Person is entitled to translation into French of the following documents: 1) any Indictment of the Co-Investigating Judges; 2) the elements of proof on which any such Indictment would rely; 3) the Introductory Submission and any Final Submissions by the Co-Prosecutors; the footnotes and indexes of factual elements on which those submissions rely; 4) all judicial decisions and orders; 5) all filings by the Parties before the ECCC, as provided by Article 7.1 of the Practice Direction on Filing Documents

³ Decision on Request by Co-Lawyers for Khieu Samphan for Extension of Time to Respond to co-Prosecutors' Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01, **E163/5/1/2/1**, 20 November 2012, para. 6, citing *Foreign Co-Lawyer Application Form for Anta GUISSÉ*.

⁴ *Ibid.*, citing *Cambodian Co-Lawyer Application Form for KONG Sam Onn*.

⁵ Decision on Khieu Samphan's Appeal Against the Order on Translation Rights and Obligations of the Parties, **A190/I/20**, 20 February 2009, para. 42.

⁶ *Ibid.*, para. 43.

before the ECCC.⁷

10. Considering the difficulties faced by the ECCC Translation Unit, when a decision is notified in Khmer and English only, the result is that parties whose working language is French are significantly disadvantaged by the time required for translation, in comparison to other parties whose working language is English.

11. In the current situation, the Supreme Court issued a decision of crucial importance entailing potentially grave consequences on the right of the Accused to a fair and expeditious trial.

12. Having relatively long timeframes to issue its Decision, and considering that it might reasonably have anticipated that the parties would need to respond extremely quickly upon notification of the said Decision, the Supreme Court ought to have waited for the translation of the Decision in the three official languages of the ECCC before notifying it to all the parties.

13. Mr KHIEU Samphân's Defence team considers that it has been placed at a disadvantage through this desire to give precedence which impacts on the right of their client to a fair trial.

14. **WHEREFORE**, the Supreme Court Chamber is requested to:

- notify all future decisions in the three official languages of the ECCC so as not to place any of the parties to the current trial at a disadvantage.

⁷ *Ibid.*, para. 37

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| | Mr KONG Sam Onn | Phnom Penh | [Signed] |
| | Ms Anta GUISSÉ | Phnom Penh | [Signed] |
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| | Mr Jacques VERGÈS | Paris | [Signed] |
| Date | Name | Place | Signature |

Mr Khieu Samphân's Defence Team's Request that Orders and Decisions Rendered by the Supreme Court Chamber be Notified to Them in the Three Official Languages of the ECCC