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

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ម/អ.ជ.ត.ក(១៨)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(18)

Before: **Judge KONG Srim, President**
Judge Chandra Nihal JAYASINGHE
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Florence Ndepele Mwachande MUMBA
Judge SOM Sereyvuth
Judge YA Narin

Date: **30 April 2013**
Language(s): **Khmer/English/French**
Classification: **PUBLIC**

DECISION ON REQUEST BY THE DEFENCE FOR KHIEU SAMPHÂN FOR TRILINGUAL NOTIFICATION OF THE SUPREME COURT CHAMBER'S DECISIONS

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
KHIEU Samphân

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU-FORT

Co-Lawyers for KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGÈS

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 ("Supreme Court Chamber" and "ECCC", respectively) is seized of a motion filed on 20 February 2013 by the Defence for KHIEU Samphân ("Defence") requesting that the Supreme Court Chamber issue its decisions in all three official languages of the ECCC ("Request").[1]

2. On 8 February 2013, the Supreme Court Chamber issued its "Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01"[2] ("Decision"), declaring that the cumulative effect of a number of errors committed by the Trial Chamber regarding the severance of Case 002 occasioned the invalidity thereof.[3] The Supreme Court Chamber specified that the Decision is without prejudice to the Trial Chamber's reassessment of severing Case 002, but that "it must first invite the parties' submissions on the terms thereof, and only after *all* parties' respective interests are balanced against *all* relevant factors may a severance of Case 002 be soundly undertaken".[4] The Trial Chamber thereafter immediately issued a memorandum scheduling a hearing to take place on 14 and 15 February 2013, and listing nine detailed and specific issues related to the severance of Case 002 for the parties to address.[5] The hearing was subsequently rescheduled to 18 and 20 February 2013.[6]

3. The Defence submits that it was notified of the Decision in English and Khmer only, whereas the International Co-Lawyers for KHIEU Samphân work only in French.[7] It contends that the Interpretation and Translation Unit of the ECCC ("ITU") indicated an inability to provide a finalized French translation of the Decision before 22 February 2013,[8] a situation which, it argues, in turn resulted in the Defence's inability to diligently prepare for the hearing, thereby causing it prejudice.[9] The Defence further avers that the Decision is of crucial importance, entailing "potentially grave consequences on the right of the Accused to a fair and expeditious

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[1] *Demande de l'équipe de défense de M. KHIEU Samphân tendant à ce que les ordonnances et décisions rendues par la Chambre de la Cour suprême lui soient notifiées dans les trois langues officielles des CETC*, E163/5/1/14, 20 February 2013.
[2] E163/5/1/13.
[3] Decision, para. 49.
[4] Decision, para. 50 (emphasis in original).
[5] Memorandum by Judge NIL Nonn, President of the Trial Chamber, entitled "Directions 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, dated 12 February 2013 and filed on 14 February 2013.
[6] T. (EN), 18 February 2013, pp. 6, 114.
[7] Request, paras. 1, 4, 6.
[8] Request, para. 2.
[9] Request, paras. 5, 10, 13.

trial",[10] and that it was reasonable to expect that the parties would have to react extremely quickly upon notification thereof.[11] The Defence submits that the Supreme Court Chamber should therefore have issued the Decision in all three official languages of the ECCC,[12] and accordingly requests that this practice be adopted henceforth in respect of all future decisions of the Supreme Court Chamber.[13]

4. The Supreme Court Chamber notes that the Defence is composed of two International Co-Lawyers with indicated fluency in French only,[14] one International Co-Lawyer with indicated fluency in both English and French,[15] and one National Co-Lawyer with indicated fluency in both English and Khmer.[16] The Defence is therefore collectively fluent in English, French, and Khmer. Thus, although the three International Co-Lawyers may prefer to work in French,[17] the issuance of the Decision in English and Khmer in no way impedes the National and International Co-Lawyers from working together in order to jointly and meaningfully understand the contents of the Decision,[18] an unrevised French translation of which was provided by the ITU to the Defence four days prior to the hearing.[19] To the contrary, the fair trial requirements for provision of decisions in a language that an accused understands are amply met by the fact that the Decision was issued in Khmer – KHIEU Samphân's mother tongue – in conjunction with the full linguistic capacities of the Defence to explain to him the legal implications of the Decision on the basis of the English and Khmer versions thereof.

5. The Defence does not substantiate its claim that the lack of a finalized French translation of the Decision prevented it from diligently preparing for the hearing, and a review of the Trial Chamber's memorandum containing directions to the parties reveals nothing that would have required such translation for the purposes of the hearing. The memorandum, however, provides a detailed set of questions and issues to be addressed at the hearing, and wherever reference is made to the Decision, it is sufficiently described in the memorandum. The Decision contains the

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[10] Request, para. 11.
[11] Request, para. 12.
[12] Request, para. 12.
[13] Request, para. 14.
[14] *See* Foreign Co-Lawyer Application Form for Jacques VERGÈS *and* Foreign Co-Lawyer Application Form for Arthur VERCKEN. *See also* Decision on Request by Co-Lawyers for KHIEU Samphân 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 ("Decision on Extension of Time"), para. 6.
[15] *See* Foreign Co-Lawyer Application Form for Anta GUISSÉ. *See also* Decision on Extension of Time, para. 6 *and* Request, para. 6.
[16] *See* Cambodian Co-Lawyer Application Form for KONG Sam Onn. *See also* Decision on Extension of Time, para. 6 *and* Request, para. 6.
[17] Request, paras. 4, 6.
[18] *See also* Decision on Extension of Time, para. 6.
[19] Request, para. 2

instruction that, should the Trial Chamber continue to consider severance to be in the interest of justice, the parties must be heard on the terms thereof first,[20] thereby prompting the Trial Chamber to schedule the hearing. To the extent that a French translation of any document would therefore have been required for the Defence to diligently prepare for the hearing, the memorandum would have been the operative document. However, the Defence does not appear to have taken issue with the Trial Chamber's issuance of the memorandum in English and Khmer only.[21]

6. There is also no indication that the Defence requested a postponement of the hearing for the few more days required to receive the finalized French translation of the Decision. A review of the transcript of the hearing further indicates that the Defence proved fully capable of answering to the issues raised by the Trial Chamber in the memorandum,[22] and this without any French translation thereof, or any finalized French translation of the Decision. The Defence's unsupported contention that it suffered prejudice from the Supreme Court Chamber's issuance of the Decision in English and Khmer only therefore does not stand.

7. Equally unsupported is the Defence's contention that the Decision entails "potentially grave consequences on the right of the Accused to a fair and expeditious trial".[23] To the contrary, the Decision's primary purpose is to safeguard those fundamental rights for all interested parties. Specifically, the argument that the Supreme Court Chamber should have had the foresight to expect that the parties would have to react quickly is neither tenable nor relevant. The issue under consideration has been recently litigated among the parties on appeal, which gave the Defence the opportunity as well as ample time to prepare their position on the merits. Moreover, the Supreme Court Chamber's decisions are final and do not activate any procedural deadlines. As such, should the Defence have required more time to react to the Trial Chamber's instructions and timetable in preparation for the hearing, it should have requested more time from the Trial Chamber.

8. The official working languages of the ECCC are Khmer, English, and French.[24] Accordingly, all documents before the ECCC must be filed in Khmer as well as in English or French, and parties may seek translation into the other language.[25] Nothing in the ECCC Law or

[20] *See* Decision, para. 50. *See also* Decision, paras. 40, 42, 44, 48.
[21] The French translation of the memorandum was filed on 1 March 2013.
[22] T. (EN), 18 February 2013, pp. 3-4, 61-63, 65, 75, 90; T. (EN), 20 February 2013, pp. 60-79, 81-90, 124-128.
[23] Request, para. 11.
[24] Article 45 *new* of the Law on the Establishment of the ECCC, as amended on 27 October 2004 ("ECCC Law").
[25] Article 7.1 of the Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 ("Practice Direction").

the Internal Rules or Practice Direction imposes a duty on any Chamber of the ECCC to issue decisions or orders simultaneously in all three languages, and no Chamber of the ECCC has adopted such practice as a rule. The Supreme Court Chamber nevertheless recognizes the general desirability of simultaneous trilingual filings and takes note of the Defence's preference in this regard. Such preference, however, may only be accommodated where circumstances permit. In the present case, considering the strict time constraints under which the Supreme Court Chamber, in particular, is required to issue its decisions, and in the light of the Defence's indicated fluencies in the English language, it would have gone against the interests of all parties to have had to wait until a French translation of the Decision was ready before notification thereof.

9. The Defence's request that the Supreme Court Chamber issue, as a rule, all its future decisions and orders simultaneously in Khmer, English, and French, is therefore unsustainable. Nevertheless, the Supreme Court Chamber grants the Request to the extent that it will henceforth simultaneously notify its decisions and orders in all three working languages of the ECCC where circumstances permit and do not risk affecting the rights of any other parties. The Supreme Court Chamber will also continue to ensure that its decisions and orders notified in English and Khmer only are immediately submitted to the ITU for translation into French.

10. For the foregoing reasons, the Supreme Court Chamber **GRANTS** the Request, in part, and **DECIDES** to henceforth issue, on a case-by-case basis and where circumstances permit, its decisions and orders in all three working languages of the ECCC.

Phnom Penh, 30 April 2013

President of the Supreme Court Chamber

KONG Srim