

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA  
FILING DETAILS**

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

**Party Filing:** Mr KHIEU Samphân

**Filed to:** The Trial Chamber

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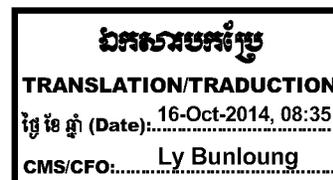
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**Request to Urgently Direct the Administration  
to Reinforce the Capacity of the Translation Unit**

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Before:

**The Trial Chamber**

Judge NIL Nonn  
Judge Claudia FENZ  
Judge YOU Ottara  
Judge Jean-Marc LAVERGNE  
Judge YA Sokhan

**Co-Prosecutors**

CHEA Leang  
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**MAY IT PLEASE THE TRIAL CHAMBER**

1. At the current stage of the proceedings in Case 002, it is crucial to urgently reinforce the capacity of the Interpretation and Translation Unit (“ITU”) to fully service the translation needs of the Chambers and the Parties. If this is not done, delays stemming from ITU’s difficulties to produce timely translations of submissions may be exacerbated over time and impede the “*ECCC’s obligation to conclude the proceedings [...] within a reasonable time*”<sup>1</sup> on the charges against Mr NUON Chea and Mr KHIEU Samphân. As stated by the Supreme Court Chamber (“the Supreme Court”), “*it is imperative that the ECCC utilize every available day to ensure a final determination of the remaining charges as expeditiously as possible.*”<sup>2</sup>

2. Mr KHIEU Samphân’s Defence (“the Defence”) hereby requests the Trial Chamber (“the Chamber”) to intervene in order to direct the Administration of the Tribunal to urgently reinforce the ITU’s translation capacity. The Defence has submitted this same request to the Supreme Court.

**I. IMPORTANCE OF EACH OF THE THREE ECCC WORKING LANGUAGES**

3. Referring to the instruments governing the ECCC, the Supreme Court had occasion to recall that:

*The official working languages of the ECCC are Khmer, English and French. 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.*<sup>3</sup>

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<sup>1</sup> See for example: Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01, 8 February 2013, **E163/5/1/13**, para. 51.

<sup>2</sup> *Idem.*

<sup>3</sup> Decision on Request by the Defence for KHIEU Samphân for Trilingual Notification of the Supreme Court Chamber’s Decisions, 30 April 2013, **E163/5/1/15** (“Decision **E163/5/1/15**”), para. 8 (emphasis added). The Supreme Court refers to Article 45 new of the Law on the Establishment of the ECCC and to Article 7.1 of the Practice Direction on the Filing of Documents before the ECCC, (“Practice Direction”). See also Article 7.3 of the same Practice Direction which stipulates: “*The Court Management Section shall ensure the timely translation of documents filed in accordance with this Practice Direction.*”

4. The Supreme Court again recalled that the purpose of the requirement to file documents in several languages “*is to allow both national and international components of the relevant organs of the ECCC to properly examine and address filings.*”<sup>4</sup>

5. The Supreme Court has also recognized the “*general desirability of simultaneous trilingual filings.*”<sup>5</sup>

6. It is worth emphasizing that there is no requirement in any of the instruments governing the ECCC that the parties or the judges be trilingual or even bilingual.<sup>6</sup>

7. While the other parties in Case 002 work in English and Khmer, Mr KHIEU Samphân’s Defence works in French and Khmer. While the Chamber is comprised of Khmer-, English-, and French-speaking judges, the Supreme Court is comprised of Khmer- and English-speaking judges.

8. Members of the Parties and of the Chambers are jurists, not linguists.

## **II. ITU’S INABILITY TO MEET CURRENT AND FUTURE NEEDS**

### **1. Needs in relation to the translation of written submissions from English to French**

9. As the only party working in French, in addition to Khmer, the Defence almost always requests the translation into French of other parties’ written submissions, and decisions of the chambers, not filed in French or for which a French translation has not been requested.

10. During the months of drafting of the judgement in Case 002/01, to which ITU devoted itself on a priority basis, many translation requests made by the Defence could not be completed. However, the fact of the matter is that the situation has not improved since the judgement was

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<sup>4</sup> Decision on Immediate Appeal Against the Trial Chamber’s Decision on KHIEU Samphân’s Application for Immediate Release, 22 August 2013, **E275/2/3**, para. 13.

<sup>5</sup> Decision **E163/5/1/15**, para. 8.

<sup>6</sup> For example, for the composition of the defence teams, see: <http://www.eccc.gov.kh/en/dss/the-list-of-lawyers>.

issued on 7 August 2014. The accumulated backlog of requests anterior to that date has certainly not been cleared up. Moreover, requests made after that date have not been completed either.

11. The Defence is still awaiting 29<sup>7</sup> translations into French requested before 7 August 2014 and 9 requests made after that date. For example, the French translation of a Supreme Court decision issued on 29 July 2014,<sup>8</sup> requested concurrently by the Supreme Court and the Defence, has still not been provided as of now, October 2014. Yet, the Defence has, on countless occasions, signalled to ITU that this translation was its top priority.

12. The Defence is thus very worried about the future. It will come as no surprise that the Defence will continue to request translations into French of written submissions by the parties and, if necessary, French translations of filings by the Chambers in connection with the appeal in Case 002/01 and the proceedings in Case 002/02. In light of the complexity and the crucial nature of the issues raised in the appeal, the Defence will request that time limits for responding and replying to the Prosecutors begin to run as of the date of notification of their submissions in French.<sup>9</sup>

## **2. Needs in relation to the translation of written submissions from French to Khmer**

13. As the only party working in French, in addition to Khmer, the Defence has, to this day, generally not encountered major difficulties in having its French to Khmer translation requests fulfilled.

14. Nevertheless, the increased number of Defence filings resulting from the appeal (requests, brief, response, reply) and the proceedings in Case 002/02 will lead to significant delays if ITU's

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<sup>7</sup> The Defence understands that 5 of these 29 translations were completed, but not notified.

<sup>8</sup> Decision on KHIEU Samphân's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, 29 July 2014, E301/9/1/1/3.

<sup>9</sup> Article 8.5 of the Practice Direction; 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, 20 November 2012, E163/5/1/2/1, para. 7.

capacity is not reinforced in the short term. In fact, time limits commence upon the filing of documents in Khmer, in addition to French or English.<sup>10</sup>

15. For example, the Defence has just requested leave from the Supreme Court to file a 300-page appeal brief in French, which will require 84 days for translation into Khmer, based on the usual turnaround time.<sup>11</sup>

### 3. Needs in relation to the translation of written submissions from French to English

16. To date, the Defence has very rarely requested the translation of its own written submissions into English. It did so on one occasion at first instance when it observed that no one had requested the translation into English of its Closing Brief, filed on 26 September 2013.<sup>12</sup> On 24 December 2013, in the hopes that the translation would, at least, be of interest to the judges of the Supreme Court, in connection with the highly probable appeal of the judgement, the Defence submitted the relevant request to ITU. A few weeks ago, the Defence reminded ITU of its request. To date, the translation has not been completed.

17. Very recently, the Defence made a second request for the translation into English of a filing in connection with the appeal. In the same vein that the translation into English of its notice of appeal<sup>13</sup> is likely to interest the judges of the Supreme Court, the Defence requested the translation of the notice of appeal into English immediately after requesting its translation into Khmer. Two days after these requests were made, the Head of ITU telephoned the Defence to request that the Defence withdraw its request for translation into English. The Head of ITU blamed the Defence for monopolizing ITU resources. He then claimed that the request was not consistent with the duties of the parties and that he was therefore under no obligation to honour it. He added that the parties were required to work in the three languages and that, to date, all

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<sup>10</sup> Article 8.5 of the Practice Direction; Decision on IENG Sary's Expedited Request to File Appeal in English Only with Khmer Translation to Follow, 30 January 2013, **E254/3/1/1.2**, para. 4.

<sup>11</sup> *Demande urgente de la défense de M. KHIEU Samphân aux fins de prorogation du délai et d'extension du nombre de pages du mémoire d'appel*, 6 October 2014, **F7**, para. 19.

<sup>12</sup> *Conclusions finales*, 26 September 2013, **E295/6/4**.

<sup>13</sup> *Déclaration d'appel de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 September 2014, **E313/2/1**.

English to French translations for the Defence had been undertaken on an “*exceptional basis*.” The Defence asked that he defer to the applicable instruments and refused to withdraw its request.

18. The statements of the Head of ITU are not only contrary to what has been stated *supra* (Part I), but also demonstrate that ITU is overwhelmed and is not in a position to meet the Defence’s requests for translation of its written submissions into English.

19. Unless the Supreme Court announces that translating Defence submissions into English is unnecessary, the Defence states right away that it will ask ITU to translate its appeal brief, its response to the prosecutors’ brief, and its reply to the response in both Khmer and English.

#### **4. Needs in relation to the translation of the correction of transcripts**

20. At the start of the trial in Case 002/01, the Defence noted serious discrepancies between the various language versions of the transcript of the trial proceedings. The Defence asked the Chamber to cause the entire French language version of the transcript to be revised, based on the original Khmer language version.<sup>14</sup> In accordance with the procedure which the Chamber directed the Defence to follow,<sup>15</sup> the team spent a considerable amount of time pinpointing the exact discrepancies and requesting corrigenda in the midst of drafting its Closing Brief. The Defence hoped that the Parties and the Chamber would benefit from these corrections for the purposes of drafting their final submissions, their closing arguments, and the deliberations of the Chamber.

21. The Defence identified and requested the correction of 473 excerpts in the transcript in 2013 (271 of which concerned the testimony of François PONCHAUD), as well as one excerpt in 2014. On 17 July 2014, at the request of the Chamber, the correction of the entirety of the transcript of the testimony of François PONCHAUD, who had testified in Khmer, was made

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<sup>14</sup> Request by Mr KHIEU Samphân’s Defence for Review of the French Transcripts of the Proceedings, 16 May 2012, **E195**.

<sup>15</sup> KHIEU Samphan Defence Motion E195 and Envisaged Future Procedures for Correction of Transcripts, 24 July 2012, **E195/1**.

available. As of today, October 2014, only 20 of the Defence requests for correction of the transcript have been completed.

22. However, not only have these requests not become moot ever since the Chamber issued its judgement, to the contrary, they will continue to increase. When it started verifying the footnotes of the judgement, the Defence started discovering new discrepancies between the various language versions of the transcript on which the Chamber based its findings.

23. Once again, it is absolutely necessary that ITU's capacity be reinforced immediately to service the needs of the Defence in time for its appeal.

### **III. THE CHAMBERS' POWERS OF INJUNCTION**

24. There is no doubt that the Judges have the power to direct the Tribunal's Administration to urgently reinforce ITU's capacity. In fact, the Chamber has already exercised such power in the past "*to permit the ITU a sufficient staffing complement to fully service the needs of the Chambers and the Parties in Case 002.*"<sup>16</sup>

25. Neither is there any doubt that the Defence is not expending considerable time and energy in submitting requests to ITU for legacy purposes. The translation requests are dictated by the need to ensure the Defence's ability to perform its duties and fulfil its obligations to its client. Each of its requests is justified and complies with the relevant instruments. Accordingly, ITU never does the Defence a favour when it completes any of its requests. It should be recalled that the main purpose is to enable the Chambers to have access to the totality of the Defence arguments and evidence referred to by the parties in order to adjudicate.

26. Again, there is no doubt that ITU is currently unable to meet the needs of the Chambers and the Parties, and that this situation will worsen if it is not rectified immediately.

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<sup>16</sup> Translation constraints before the Trial Chamber in Case 002 and vacant posts in the Interpretation and Translation Unit (ITU), 9 February 2011, **E38/1**.

27. Lastly, the Defence stresses that it is the first in wanting that its appeal be concluded as expeditiously as possible. The Defence understands that certain time limits cannot be compressed (drafting, deliberations); however, translation times may be shortened if ITU were to have the necessary resources.

**FOR THESE REASONS**

28. Mr KHIEU Samphân's Defence requests the Trial Chamber to:

- DIRECT the Tribunal's Administration to urgently reinforce ITU's capacity;
- DIRECT ITU to address all of the Defence's past and future requests, as quickly as possible.

	Mr KONG Sam Onn	Phnom Penh	[Signed]
	Ms Anta GUISSÉ	Paris	[Signed]
	Mr Arthur VERCKEN	Paris	[Signed]