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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: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក
 Case File/Dossier N°. 002/19-09-2007-ECCC/SC

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

Date: 11 February 2015
Language(s): Khmer/English
Classification: PUBLIC

DECISION ON CO-PROSECUTORS’ REQUEST TO FILE THEIR RESPONSE IN ONE LANGUAGE ONLY WITH KHMER TRANSLATION TO FOLLOW

Co-Prosecutors
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Accused
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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 request filed on 26 January 2015 by the Co-Prosecutors to submit their consolidated response to NUON Chea’s and KHIEU Samphân’s appeal briefs in one language only, with the Khmer translation to follow at the first opportunity (“Request”).¹

A. BACKGROUND

2. On 7 August 2014, the Trial Chamber issued its judgement in Case 002/01,² convicting KHIEU Samphân and NUON Chea of the crimes against humanity of extermination (encompassing murder), persecution on political grounds, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity), and sentencing them each to life imprisonment.³

3. On 29 September 2014, NUON Chea and KHIEU Samphân filed their notices of appeal against the Trial Judgement, advancing 223 and 148 grounds of appeal, respectively.⁴

4. On 29 December 2014, NUON Chea and KHIEU Samphân filed their appeal briefs in English and French respectively,⁵ permission having been granted by the Supreme Court Chamber to file the Khmer version thereof at the first opportunity.⁶

5. The Co-Prosecutors are required to file their consolidated response no later than 30 days from the notification of said Khmer translations of the Defence Appeals Briefs, whichever is notified last.⁷

¹ Co-Prosecutors’ Request to File Appeal Response in One Language, F21, 26 January 2014.

² Case 002/01 Judgement, E313, 7 August 2014 (“Trial Judgement”).

³ Trial Judgement, p. 622.

⁴ Notice of Appeal Against the Judgment in Case 002/01, E313/1/1, 29 September 2014; *Déclaration d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, E313/2/1, 29 September 2014. *See also* Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, F3/3, 29 August 2014.

⁵ NUON Chea’s Appeal Against the Judgment in Case 002/01, F16, 29 December 2014; [*Corrigé 1*] *Mémoire d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, F17, 29 December 2014 (corrected version filed on 31 December 2014) (“Defence Appeal Briefs”, collectively).

⁶ Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, F9, 31 October 2014 (“Decision on Extensions”), para. 23.

⁷ Decision on Extensions, para. 23.

B. SUBMISSIONS

6. The Co-Prosecutors request permission from the Supreme Court Chamber to file their consolidated response to the Defence Appeal Briefs in English only, with the Khmer translation to follow at the first opportunity.⁸ Based on information received from the Interpretation and Translation Unit (“ITU”), the Co-Prosecutors assert that the Khmer translations of the Defence Appeal Briefs are expected to be completed on 27 February 2015.⁹ According to the Co-Prosecutors, the deadline for the submission of their consolidated response would therefore be 27 March 2015. The Co-Prosecutors submit that, according to the ITU, it will take at least 40 working days to complete the required translation of the Co-Prosecutors’ response to the Defence Appeal Briefs from English into Khmer.¹⁰ As a consequence, the English version of their response would need to be finalised and submitted to ITU by 2 February 2015, that is, before the Co-Prosecutors will receive the Khmer translation of the Defence Appeal Briefs.¹¹ Hence the national side of the Office of the Co-Prosecutors would be prevented from contributing to the preparation of the response.¹²

7. Furthermore, the Co-Prosecutors submit that, in addition to their work in relation to Case 002/01, they are also fully engaged in work on Case 002/02 and Cases 003 and 004.¹³ They recall that the Supreme Court Chamber previously granted similar requests by the Defence, based on the size and complexity of the legal issues on appeal and the time it would take to prepare the translation into Khmer.¹⁴

C. APPLICABLE LAW

8. Article 7.2 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction”) states that “[i]n exceptional circumstances, the Co-Investigating Judges or a Chamber of the ECCC may authorise a party to file a document in French or in English in the first instance, provided however, that a Khmer translation must be filed before the Chamber at the first opportunity”.

⁸ Request, para. 1.

⁹ Request, para. 3.

¹⁰ Request, para. 3.

¹¹ Request, para. 4.

¹² Request, para. 4.

¹³ Request, para. 5.

¹⁴ Request, para. 6.

D. DISCUSSION

9. The Supreme Court Chamber recalls that it is inherent in the ECCC's structure and mandate that both the national and the international sides are crucial elements of the judicial process, and are to entertain a fruitful cooperation to attain the ECCC's statutory goals. To this end, among others, the parties must at all times strive to meet the general requirement of simultaneous bilingual filings. Filings in any of the three official languages of the ECCC are attributed equal authoritativeness, as implied by Article 26(2) of the Agreement,¹⁵ Article 45 new of the ECCC Law¹⁶ and Article 7.1 of the Practice Direction. A permission to file in English or French only, in addition to being justified by extraordinary circumstances, is necessarily predicated upon an assumption that the national component of the filing entity is sufficiently informed of the content of the filing and has suffered no prejudice in expressing its position.

10. The Co-Prosecutors' argument is based on two assumptions. First, that they would have to submit a final English version of the response to the ITU without having had the possibility to involve the national side of their Office in the preparation of the response. Second, that they would be prevented from making further amendments to the draft submitted for translation. The Supreme Court Chamber wishes to make reservations to this line of reasoning. First, it recalls that both sides of any ECCC section must cooperate "to jointly comprehend filings" made in any of the ECCC official languages and optimally utilise the language resources available within their office to work in parallel with the ITU to produce the Khmer version of their submissions.¹⁷ The Supreme Court Chamber assumes, therefore, that the input of the national side of the Co-Prosecutors' Office will not be diminished should the response be filed in English, with a Khmer version to follow. Second, the Supreme Court Chamber notes that in organizing their work, the Co-Prosecutors must take into account the time required to file in both Khmer and English or French.¹⁸ In practical terms, submissions need not be completed in their final form before being sent for translation; the translation

¹⁵ Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, signed 6 June 2003 (entered into force 29 April 2005) ("Agreement").

¹⁶ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 10 August 2001, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) ("ECCC Law").

¹⁷ See 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.

¹⁸ Decision on IENG Sary's Expedited Request to File Appeal in English only with Khmer Translation to Follow, E254/3/1/1.2, 30 January 2013, para. 4.

might be requested for portions thereof so as to make full use of the ITU's ability to produce the Khmer translation within a reasonable amount of time.¹⁹

11. This said, the Supreme Court Chamber considers that the Co-Prosecutors have demonstrated that their current workload marks the peak of the activity of the ECCC and, in light of size and complexity of the cases,²⁰ it amounts to exceptional circumstances, as required by Article 7.2 of the Practice Direction. The Supreme Court Chamber recalls that, indeed, in similar circumstances, it granted NOUN Chea's and KHIEU Samphân's requests to file their respective appeal briefs in either English or French only, "with the Khmer versions to follow as soon as possible thereafter".²¹ The Supreme Court Chamber is, moreover, mindful of its own responsibility toward disposal of the appeals pending before it within a reasonable time. Having available to it the Co-Prosecutors' response at an earlier time, albeit in English only, would serve the efficiency of the process.

12. The Supreme Court Chamber takes note of the Co-Prosecutors' statement that they might submit future requests for extension of time and page limits.²² This Chamber shall evaluate such requests at any such time they are lodged. It emphasises, however, the need for an expeditious conduct of the proceedings on appeal.

E. DISPOSITION

13. For the foregoing reasons, the Supreme Court Chamber:

GRANTS the Request.

Phnom Penh, 11 February 2015

President of the Supreme Court Chamber



KONG Srim

¹⁹ On current issues with ITU capacity, *see* Order on Defence for KHIEU Samphân Request to Reinforce Interpretation and Translation Unit, F8/1, 14 November 2014; Trial Chamber Memorandum entitled "KHIEU Samphân Defence Request to order the Office of Administration to urgently reinforce ITU's capacity", E317/1, 16 October 2014.

²⁰ Request, para. 5.

²¹ Decision on Extensions, para. 23. *See also* Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, F13/2, 11 December 2014 (on 16 January 2015, NOUN Chea was authorized via e-mail to file his response to the Co-Prosecutors' appeal brief in one language only with Khmer translation to follow).

²² Request, para. 7.