



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**  
Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

Doc. No. 2

*In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea*

Case File No.: 17-02-2015-ECCC/PTC

Before: Judge PRAK Kimsan, President  
Judge Olivier BEAUVALLET  
Judge NEY Thol  
Judge Steven J. BWANA  
Judge HUOT Vuthy

Date: 17 June 2015

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):	
..... ១១ / 06 / 2015 .....	
ម៉ោង (Time/Heure):	
..... 14 : 12 .....	
អង្គីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA	

**PUBLIC (REDACTED)**

**DECISION ON [REDACTED] APPEAL AGAINST THE DEFENCE SUPPORT SECTION'S DECISION ON HIS APPLICATION TO BE PLACED ON THE LIST OF FOREIGN LAWYERS**

The Appellant

[REDACTED]

The Head of Defence Support Section

[REDACTED]



**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of [REDACTED] (the “Appellant”) Appeal against the Decision to Reject his Application to be placed on the Defence Support Section’s List of Foreign Lawyers, filed on 17 February 2015 (the “Appeal”).<sup>1</sup>

### I. Procedural Background

1. On 2 February 2015, the Appellant filed an application to be placed on the Defence Support Section’s (the “DSS”) List of Foreign Lawyers eligible to defend indigent suspects, charged persons or accused before the ECCC (the “List of Lawyers” and “Application”, respectively).<sup>2</sup>
2. On 11 February 2015, the Defence Support Section rejected the Appellant’s Application on the ground that he did not possess the requisite level of professional experience under Regulation 2.2 of the DSS Administrative Regulations (the “Defence Support Section Decision”). In particular, it determined that the Appellant did not satisfy the requirement of having at least 10 years of experience working as a lawyer, judge or prosecutor, or in some other similar capacity.<sup>3</sup>
3. On 17 February 2015, the Appellant appealed the Defence Support Section Decision dismissing his Application and requested the Pre-Trial Chamber to quash the Decision and place his name on the List of Lawyers. The Appellant submits that his Appeal is admissible pursuant to Rule 11(5) of the Internal Rules.<sup>4</sup> On the merits, he argues, on the one hand, that the Defence Support Section applied the incorrect test in calculating his working experience<sup>5</sup> and, on the other hand, that it misapprehended the nature of his experience.<sup>6</sup> Further, he takes issue with the Defence Support Section Decision for only taking into account the experience he acquired after earning his first law degree.<sup>7</sup>

<sup>1</sup> [REDACTED] Appeal against the Decision to Reject his Application to be Placed on the Defence Support Section’s List of Foreign Lawyers, 17 February 2015, Doc. No. 1.

<sup>2</sup> Application Form – Foreign Co-Lawyers, 2 February 2015, Doc. No. 1.1.5.

<sup>3</sup> Letter from the Head of the Defence Support Section to [REDACTED] entitled, “Decision on Your Application to be Placed on the Defence Support Section List of Foreign Lawyers”, 11 February 2015, Doc. No. 1.1.4, para. 1.

<sup>4</sup> Appeal, paras. 3-4.

<sup>5</sup> Appeal, paras. 10-11.

<sup>6</sup> Appeal, paras. 12-19.

<sup>7</sup> Appeal, para. 20.



4. On 5 June 2015, at the request of the Pre-Trial Chamber, the Defence Support Section provided copies of its correspondence with the Appellant seeking clarification about part of his previous working experience.<sup>8</sup>

## II – Whether [REDACTED] Appeal is admissible

5. According to Rule 11(5) of the Internal Rules, “[A]ny lawyer or assistant whose request to be placed on the lists of lawyers for indigent persons referred to in sub-rules 2(d) and 2(i) above is refused (...) may appeal to the Pre-Trial Chamber within 15 (fifteen) days of receiving notification of the decision of the Head of the Defence Support Section”.
6. As indicated *supra*, the Appellant filed his Application on 2 February 2015. The Application was dismissed on 11 February 2015 by email correspondence from the Head of the Defence Support Section.
7. The Appellant filed his appeal brief and annexes thereto on 17 February 2015. His Appeal is, therefore, admissible.

## III- Whether the Appeal has merit

### a) Standard of appellate review

8. In considering an appeal lodged under Rule 11(5) of the Internal Rules, the Pre-Trial Chamber must determine whether the Head of the Defence Support Section:

- “a) Complied with the relevant legal requirements;
- b) Observed the basic rules of natural justice or acted with procedural fairness;
- c) Took into account irrelevant material or failed to take into account relevant material; or
- d) Reached a conclusion that no reasonable person could have reached on the material before him.”<sup>9</sup>

<sup>8</sup> Email dated 5 June 2015 from the Head of the Defence Support Section to the Greffier of the Pre-Trial Chamber with copies of an email dated 3 February 2015 to [REDACTED] entitled, “Request for Clarification” and [REDACTED] reply on the same date.

Decision on [REDACTED] Appeal against the Defence Support Section’s Decision on his Application to be Placed on the List of Foreign Lawyers



**b) Experience required to be included on the List of Lawyers**

9. The Appellant contends that the Defence Support did not apply the relevant legal standard. According to the Appellant, the Defence Support Section erred in applying Regulation 2.2 of the DSS Administrative Regulations, because it is inconsistent with Rule 11(4)(c)(iii) of the Internal Rules and imposes overly restrictive conditions.<sup>10</sup> The Appellant argues that the Internal Rules take precedence over the DSS Administrative Regulations. Thus, the Appellant argues that in assessing his working experience it is not necessary that the capacity in which he worked be the same as that of a prosecutor, judge or lawyer. As far as he is concerned, it is sufficient that the experience relates to criminal proceedings.<sup>11</sup> It is noteworthy that in his submissions the Appellant seems to refer solely to the English version of the Internal Rules.

10. At the outset, the Pre-Trial Chamber observes that, in themselves, the Internal Rules do not set out qualifications for foreign lawyers seeking to defend indigent suspects, charged persons or accused before the ECCC; rather, it authorises the Defence Support Section to define those qualifications, in accordance with Rule 11(4) of the Internal Rules. In this regard, Rule 11(2) of the Internal Rules provides that “[T]he Defence Support Section shall: a) After consultations between the Defence Support Section and the BAKC, adopt administrative regulations, in accordance with Rule 4 of these IRs, which shall include: i) the criteria and procedures for the inclusion of lawyers and other personnel in the lists referred to in paragraphs d) and i) below, in accordance with sub-rule 4”. Further, Rule 11(4) provides that “[T]he criteria for inclusion in the Defence Support Section list for defending indigent persons before the ECCC, referred to in sub-rule (2)(d) above, shall comply with the following principles [...]”. It is thus clear that the Defence Support Section was not only authorised but also required to adopt administrative regulations setting out the criteria for

<sup>9</sup> Case No. 10-07-2013-ECCC/PTC, Decision on the Appeal against Dismissal of [REDACTED] Application to be Placed on the List of Defence Co-Lawyers, 6 February 2014, Doc. No. 8, para. 56.

<sup>10</sup> Appeal, para. 10.

<sup>11</sup> Appeal, para. 11.



inclusion in the List of Lawyers. The issue here is whether the Defence Support Section exceeded its authority under Rule 11(4)(c)(iii) of the Internal Rules.

11. In this regard, the Pre-Trial Chamber observes that the French, English and Khmer versions of the DSS Administrative Regulations all mirror the criteria set out in the French version of the Internal Rules, in that they require the applicant to “have at least ten years working experience as a lawyer, prosecutor or judge, on some other *similar* capacity” (emphasis added). The criterion is described as follows in the English version of Article 2.2 of the DSS Administrative Regulations: “In order to be included in the UNAKRT list as foreign co-lawyer, the candidate must fulfil each of the followings requirements: (iii) to have at least ten years working experience in criminal proceedings, as a lawyer, judge or prosecutor or in some other similar capacity”. The Khmer version of the same Rule also sets out the same requirements:

១២ ។ “ ៣-ត្រូវមានបទពិសោធន៍ការងារជាមេធាវី ជាចៅក្រម ឬព្រះរាជអាជ្ញា ឬមានសក្តានុពលស្រដៀងគ្នាដទៃទៀតយ៉ាងតិច ១០ឆ្នាំ ក្នុងរឿងព្រហ្មទណ្ឌ” ។

13. On the other hand, the English and Khmer versions of Rule 11(4)(c)(iii) of the Internal Rules do not exactly match the French version. For example, the English version states that the applicant must have “at least 10 (ten) years working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in *some* other capacity” (emphasis added). The Khmer version employs similar wording:

“ ៣-មានបទពិសោធន៍ការងារជាមេធាវី ចៅក្រម ឬព្រះរាជអាជ្ញា ឬក្នុងមុខងារផ្សេងទៀត យ៉ាងតិច ១០ (ដប់)ឆ្នាំ ក្នុង រឿងព្រហ្មទណ្ឌ”

14. The Pre-Trial Chamber finds that the English and Khmer versions of Rule 11(4)(c)(iii) of the Internal Rules are ambiguous, in that anyone having ten years working experience in criminal proceedings in whatever professional capacity, provided it relates to criminal proceedings,



may apply to be placed on the List of Foreign Lawyers. Thus, any professional in criminal investigations having ten years working experience, all of which was acquired outside a law firm or a court, may apply to be admitted as a lawyer. However, in its French version, Rule 11(4)(c)(iii) is more clearly worded, as it states that the applicant must have 1) *une expérience professionnelle de 10 ans* [TRANSLATION: 10 years working experience] 2) *en matière de procédures criminelles* [TRANSLATION: in criminal proceedings] 3) *en qualité d'avocat, de juge ou de procureur ou autre fonction assimilée* [TRANSLATION: as a lawyer, judge or prosecutor, or in some other similar capacity].

15. The Pre-Trial Chamber considers that in adopting its Administrative Regulations, the Defence Support Section had the authority to specify the type of working experience required for inclusion on the List of Lawyers – couched in vague terms in both the English and Khmer versions of the Administrative Regulations – so as to establish a clear framework for its decisions and avoid acting arbitrarily. The fact that the Defence Support Section elected to adopt the wording of the working experience criterion specifically included in the French version of the Internal Rules shows that its Regulations reflect not only the “principles” but also the letter of Rule (11)(4) of the Internal Rules. In other words, the French version of the Internal Rules and all three versions of the DSS Administrative Regulations form a consistent and sufficiently clear legal framework. Thus, far from unduly altering the eligibility requirements under Rule 11(4)(c)(iii) of the Internal Rules, Regulation 2.2 of the DSS Administrative Regulations is consistent with them.

16. Further, the choice to adopt the wording in the French version of the Internal Rules in the Administrative Regulations is consistent with the rules of interpretation set out in Rule 21(1) of the Internal Rules, which provides that “[t]he Applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement”. Now, the Pre-Trial Chamber considers that it is in the interests of suspects and charged persons to be defended by a lawyer



whose experience closely matches the services he proposes to offer to the client. As recalled by the Trial Chamber of the International Criminal Tribunal for Rwanda, “[t]he purpose of these provisions [regarding the requirements for assignment as counsel for an indigent accused] is to ensure assignment of counsel with relevant and extensive expertise at a high level who can mount an effective defence of the accused.”<sup>12</sup>

17. In conclusion, the Appellant wrongly submits that the Defence Support Section ought to have verified whether he satisfied the requirement of having ten years working experience in criminal proceedings in *any* capacity. Of course, the functions in question do not have to be the same as those of a lawyer, judge or prosecutor, otherwise it would make no sense to refer to other functions. Be that as it may, the functions claimed by the applicant must be akin to those of a lawyer, judge or prosecutor applying to be included on the Defence Support Section’s List of Foreign Lawyers.

**c) Assessment of the Appellant’s working experience**

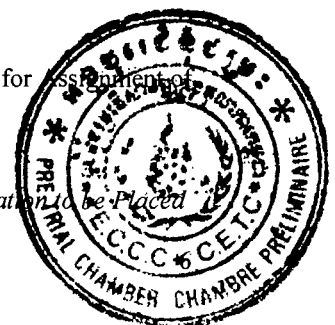
18. While the Pre-Trial Chamber has found that the Defence Support Section committed no error in setting out the criteria for inclusion on the List of Lawyers, it has nonetheless considered whether the Defence Support Section committed any error in applying those criteria to the facts in this case.

19. According to the Defence Support Section, while there is no doubt that the Appellant performed a number of important tasks which could be taken into account in computing his working experience, others could not be accepted because the level of responsibility and the nature of the work he claims to have performed are considerably different from the requirements set out in the governing texts.<sup>13</sup>

20. The Appellant complains that the Defence Support Section did not take into account his experience as i) research assistant for Professor Christine Chinkin and Professor Gerry

<sup>12</sup> *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-T, Decision on the Motion of the Defence for Assignment of Co-Counsel for Elizaphan Ntakirutimana, ICTR Trial Chamber I, 13 July 2001, para. 17.

<sup>13</sup> Defence Support Section Decision, paras. 7, 9 and 10.



Simpson (part-time while attending law school, part of which was prior to the completion of his first law degree), whereby he contributed to preparing course materials and assisted Professor Chinkin in her role as Barrister in a case before the High Court and the Court of Appeals of England and Wales; ii) paralegal in a London law firm, where his duties included collating and managing thousands of exhibits and assuming responsibility for their presentation in court, and iii) intern at the Office of the Prosecutor of the International Criminal Court, where he conducted research and addressed novel legal issues raised before the Court.

21. While those tasks may have helped the Appellant enhance his knowledge of international criminal law and may have benefited him in his later activities,<sup>14</sup> the Pre-Trial Chamber considers that they differ too widely from and are not at the same level as the work of a lawyer, judge or prosecutor. Indeed, the pedagogical or developmental nature of an internship clearly differs from the actual work that a professional would perform when dealing with the same legal or procedural issues. Accordingly, it was not unreasonable for the Defence Support Section to omit that part of the Appellant's earlier working experience in computing his working experience for the purposes of Regulation 2.2 of the DSS Administrative Regulations.

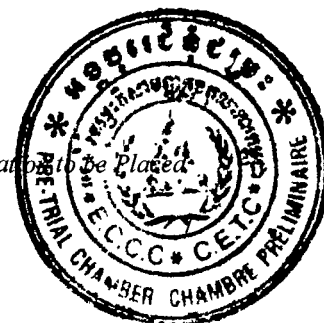
**d) Starting point for calculating working experience**

22. Finally, the Pre-Trial Chamber notes that in his appeal brief, the Appellant complains that the Defence Support Section computed his working experience starting only after the completion of his first law degree. He argues that the Defence Support Section provided no justification for this method of computation and that, in his particular case, the experience he acquired before obtaining his first law degree ought to have been considered relevant.

23. As a reading of the impugned Decision reveals, the Defence Support Section does mention that it used as a starting point for calculating the applicant's years of experience the date he

---

<sup>14</sup> Appeal, para. 17.





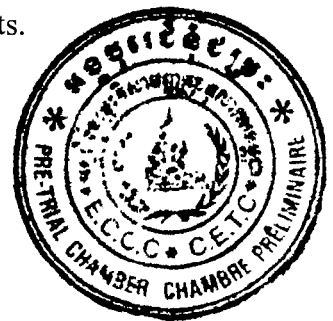
earned his first law degree.<sup>15</sup> However, in reality, the DSS considered the relevance of the Appellant's pre-first law degree experience, namely his work as research assistant for Professor Christine Chinkin and Professor Gerry Simpson, given that it extended from June 2003 to June 2005, whereas he obtained his first law degree (LL.B.) in July 2004.<sup>16</sup>

24. Considering that, on its face, the Defence Support Section Decision shows that, in assessing the Appellant's experience, the Defence Support Section did not simply rely on the date, July 2004, when the applicant obtained his first law degree, but also took into account each of the functions he performed, the Chamber finds that the starting point it chose for computing the Appellant's working experience did not adversely affect his application for inclusion on the List of Lawyers. Since the starting point for computing the Appellant's working experience for the purposes of Regulation 2.2 of the DSS Administrative Regulations has no bearing on the outcome of this appeal, it is not necessary or appropriate for the Chamber to examine it.

#### IV- Conclusion

25. The Pre-Trial Chamber finds that the Appellant has not demonstrated that the Defence Support Section committed any error in its definition of the eligibility requirements to represent indigent suspects, charged persons or accused before the ECCC or in its assessment of his working experience for the purpose of applying those requirements.

26. The Appellant's appeal shall therefore be dismissed.



---

<sup>15</sup> Defence Support Section Decision, para. 6.

<sup>16</sup> Defence Support Section Decision, paras. 8 and 10.

**V- DISPOSITION**

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY UNANIMOUSLY:**

FINDS the Appeal admissible.

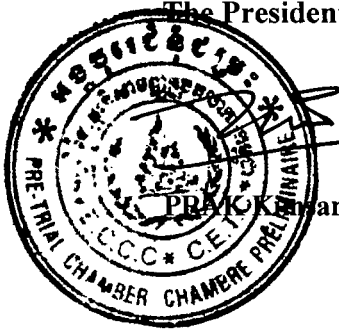
DISMISSES the Appeal its merits.

Pursuant to Rule 77(13) of the Internal Rules, this Decision is not subject to appeal.

Phnom Penh, 17 June 2015

The President

The Pre-Trial Chamber



Prak Kavan Olivier BEAUVALLET

NEY Thol

Steven J. BWANA

HUOT Vuthy