



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

To: Judge Nil Nonn
President, Trial Chamber

CC: Trial Chamber Judges
Ka Savuth
Francois Roux

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 09 / 07 / 2010
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5 July 2010

**RE: Request by Mr Kaing to Withdraw
Co-Lawyer Francois Roux**

Dear Judge Nil Nonn,

1. On 30 June 2010, I received a letter from Mr Kaing requesting the withdrawal of his foreign co-lawyer, Maitre Roux (hereafter, 'Request'). In his Request, Mr Kaing states that he has lost confidence in Maitre Roux and provides three underlying reasons.

Procedure and grounds:

2. The exact procedure for changing a co-lawyer is not provided for in the Law on the Bar of Cambodia, the Internal Rules, or the DSS Administrative Regulations. In my view, the correct procedure is for the Defence Support Section (DSS) to make an administrative decision on the Request and forward it to the relevant Chamber - in this case the Trial Chamber - to confirm (or reverse or vary). Such an approach would mirror the procedure for assignment of counsel, whereby the DSS assigns and the Investigating Judges confirm the assignment. The DSS will proceed on this basis.

3. The grounds for dismissing a co-lawyer are provided for in the DSS Administrative Regulations. Article 7.2 states:

"Change of lawyers. A suspect, charged person or accused may apply to the ECCC to change both or either of the Co-Lawyers. A suspect, charged person or accused may only be permitted to change Co-Lawyers in exceptional circumstances."

4. A review of the approach taken at the other international or hybrid criminal courts indicates that accused persons' requests for the withdrawal of their counsel are generally accepted if there is a genuine loss of confidence, unless it would unduly delay the proceedings. The courts have denied requests where they were aimed at obstructing the proceedings. In the only case we identified where an accused requested the withdrawal of his counsel after the completion of trial but before the verdict, the court granted the request on the basis that:

ប្រភេទច្បាប់ត្រឹមត្រូវតាមច្បាប់ខ្មែរ CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date/Date de certification): 09-Jul-2010, 15:03
Sann Rada

"the trial of the accused has been completed and is awaiting issue of the Judgement and thus the withdrawal of counsel will not in any way delay the current proceedings." (See *Tadic* (IT-94-1), TC, Order, 22 April 1997).

Administrative decision:

5. The DSS grants the Request of Mr Kaing for the withdrawal of his foreign co-lawyer, Maitre Roux.
6. In making this decision the DSS noted the following:
 - a. There is no reason to doubt that Mr Kaing's loss of confidence is genuine;
 - b. There is no reason to believe that the Request is aimed at obstructing the proceedings;
 - c. The withdrawal of Maitre Roux at this stage will not unduly delay the proceedings;
 - d. The loss of confidence amounts to exceptional circumstances.
7. This decision is not an endorsement of the underlying reasons for the loss of confidence put forward by Mr Kaing in his Request. In the circumstances, it has not been necessary either to accept or to reject the underlying reasons.
8. The DSS invites the Trial Chamber to confirm the withdrawal of Maitre Roux as foreign co-lawyer for Mr Kaing.

Yours sincerely,



Richard J Rogers
Chief, Defence Support Section