



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

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 Florence Ndepele MWACHANDE-MUMBA
- Judge MONG Monichariya
- Judge Maureen Harding CLARK
- Judge YA Narin

Date:

14 June 2021

Language(s):

Khmer/English

Classification:

CONFIDENTIAL

**DECISION ON SUCCESSION REQUEST TO CONTINUE CIVIL PARTY ACTION**

**Co-Prosecutors**

CHEA Leang  
Brenda HOLLIS

**Accused**

KHIEU Samphân

**Civil Party Lead Co-Lawyers**

PICH Ang  
Megan HIRST

**Co-Lawyers for KHIEU Samphân**

KONG Sam Onn  
Anta GUISSÉ

**Civil Party Lawyer**

TY Srina

**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);

**BEING SEISED** of the request titled “Successor of the Deceased Civil Party to Continue the Claim for Civil Reparation”<sup>1</sup> initially filed publicly by civil party lawyer, TY Srina, on 17 December 2020 (“Request”, and “Civil Party Lawyer”), informing the Supreme Court Chamber of the death of civil party CHHUN Saman (09-VU-04216), which occurred on 26 August 2018, and requesting the Supreme Court Chamber to allow, MEAN Eng, to continue the civil action on his behalf;

**NOTING** the confidential annexes in support of the Request, which indicate the relationship of MEAN Eng to CHHUN Saman, namely: (i) MEAN Eng’s statement dated 12 September 2020;<sup>2</sup> (ii) CHHUN Saman’s death certificate, dated 28 August 2018;<sup>3</sup> (iii) MEAN Eng’s Khmer identity card;<sup>4</sup> and (iv) MEAN Eng’s family record book<sup>5</sup> (collectively “Annexes”);

**NOTING** that the Civil Party Lawyer filed for a re-classification of the Request from public to confidential on 5 January 2021;<sup>6</sup>

**NOTING** that the Co-Prosecutors and KHIEU Samphân did not file responses to the Request;

**CONSIDERING** that on 9 September 2010, the Co-Investigating Judges in Case File no. 002/19-09-2007-ECCC-OCIJ, which is now Case File No. 002/19-09-2007-ECCC/SC, declared and recognised CHHUN Saman as a Civil Party in the proceedings;<sup>7</sup>

**CONSIDERING** that the ECCC Internal Rules (“Rules”) do not expressly provide for the modalities to be followed where a recognised Civil Party dies before a criminal process is concluded;

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<sup>1</sup> Document F57.

<sup>2</sup> MEAN Eng’s Statement of Succession as a Civil Party, F57.1, 12 September 2020.

<sup>3</sup> CHHUN Saman’s Death Certificate, F57.2, 28 August 2018.

<sup>4</sup> MEAN Eng’s Khmer Identity Card, F57.3.

<sup>5</sup> MEAN Eng’s Family Record Book, F57.4.

<sup>6</sup> See E-5/corr-1, 5 January 2021.

<sup>7</sup> Order on the Admissibility of Civil Party Applicants from Current Residents of Svay Rieng Province, Case file No: 002/19-09-2007-ECCC-OCIJ, 9 September 2010, pp. 11-12.

**CONSIDERING** that Cambodian Criminal Procedural Law allows a successor of a deceased Civil Party to start or continue the civil action on his or her behalf;<sup>8</sup>

**CONSIDERING** that the Rules do not provide for monetary compensation to the victims of crimes that have been established against an accused person;

**CONSIDERING** that the Rules provide only for “collective and moral reparations”;<sup>9</sup>

**CONSIDERING** that in order to obtain moral reparations, the successors of the deceased victim intending to act on his or her behalf must demonstrate that the victim had filed a civil party application;<sup>10</sup>

**RECALLING** that CHHUN Saman is a recognised Civil Party in this case;

**FINDING** that the Annexes establish that CHHUN Saman is deceased;<sup>11</sup>

**NOTING** that MEAN Eng seeks leave to act as the successor of the deceased CHHUN Saman and states that she was asked by CHHUN Saman to continue his civil claim in this case;<sup>12</sup>

**FINDING** that MEAN Eng has not provided a marriage certificate establishing that she was lawfully married to the deceased in accordance with Cambodian Law and therefore entitled to lawful succession in accordance with the Civil Code of Cambodia;

**CONSIDERING HOWEVER** that MEAN Eng has provided a Family Record Book, signed and stamped by a military colonel of her local commune, which describes MEAN Eng as the head of household and the spouse of CHHUN Saman and that they are the parents of five children;<sup>13</sup>

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<sup>8</sup> Rule 2 of the Rules, referencing 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 (“Agreement”), Article 12(1); Code of Criminal Procedure, Article 16. See Decision on Motion Regarding Deceased Civil Party, Case File No. 001/18-07-2007-ECCC/TC, E2/5/3, 13 March 2009, para. 10 (“13 March 2009 Succession Decision”).

<sup>9</sup> Rule 23 (1) (b) of Rules.

<sup>10</sup> 13 March 2009 Succession Decision, para. 11.

<sup>11</sup> CHHUN Saman’s Death Certificate, F57.2, 28 August 2018.

<sup>12</sup> MEAN Eng’s Statement of Succession as a Civil Party, F57.1, 12 September 2020. See MEAN Eng’s Family Record Book, F57.4; MEAN Eng’s Khmer Identity Card, F57.3.

<sup>13</sup> MEAN Eng’s Family Record Book, F57.4.

**CONSIDERING** that in a previous case, applicants were admitted as civil parties as “indirect victims” on the basis of inferred bonds of affection or dependency;<sup>14</sup>

**FINDING** that notwithstanding the absence of proof of marriage, MEAN Eng’s Family Record Book provides evidence of, at a minimum, a long-standing relationship between CHHUN Saman and MEAN Eng therefore implying bonds of affection or dependency between them;

**FINDING THEREFORE** that for the sole purposes of the Civil Party claim in this case, and not as a declaration of succession within the meaning of the Cambodian Civil Code, the Supreme Court Chamber is prepared to accept that MEAN Eng is the successor to CHHUN Saman’s Civil Party claim;

**PURSUANT** to Rule 2 and 23 of the of the Rules, and Article 12 of the Agreement;

**HEREBY:**

**GRANTS** the Request; and

**DECIDES** that MEAN Eng is authorised to continue the claim of CHHUN Saman (09-VU-04216) in the civil action in Case No. 002/19-09-2007-ECCC/SC.

**Phnom Penh, 14 June 2021**

**President of the Supreme Court Chamber**



**KONG Srim**

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<sup>14</sup> Case 001 Trial Judgment, para. 650; Case 001 Appeal Judgment, paras 416-419, 422, 436, 445-450, 558-563.