



**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

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Nov-2012, 11:27  
CMS/CFO: Uch Arun

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(១៨)  
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(18)

**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:** 20 November 2012  
**Language(s):** Khmer/English  
**Classification:** PUBLIC

**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**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Accused**  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMMONEAU-FORT

**Co-Lawyers for KHIEU Samphan**  
KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN  
Jacques VERGÈS

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 motion filed on 12 November 2012 by the Co-Lawyers for KHIEU Samphan (“Co-Lawyers”) for an extension of time to respond to an immediate appeal filed on 7 November 2012 by the Co-Prosecutors against a decision of the Trial Chamber concerning the scope of the trial in Case 002/01.<sup>1</sup> The Co-Prosecutors have not responded to the Motion.<sup>2</sup>

2. The Co-Lawyers submit that they were notified of the Immediate Appeal in English and Khmer only,<sup>3</sup> whereas their working languages are French and Khmer.<sup>4</sup> The Co-Lawyers contend that they require the French translation of the Immediate Appeal in order to understand all its nuances and to provide a complete and knowledgeable response.<sup>5</sup> They further aver that the timing initially envisaged is insufficient to respond to the novelty and complexity of crucially important issues arising from the Immediate Appeal, and that the deadline for filing the response in both French and Khmer is also untenable at a time when the ECCC’s Interpretation and Translation Unit carries a heavy workload.<sup>6</sup> The Co-Lawyers accordingly request that the time limit for the filing of their response start counting from the date of notification of the French translation of the Immediate Appeal, along with an extension of five additional days’ time.<sup>7</sup>

3. Rule 39(1) of the Internal Rules<sup>8</sup> provides that all time limits set out in the applicable laws and the Internal Rules, the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected. Pursuant to Article 8.3 of the Practice Direction,<sup>9</sup> the time limit for the filing of any response to an application or pleadings together with any list of authorities is within 10 calendar days of notification of the document to which the participant is

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<sup>1</sup> *Demande urgente de prorogation de délai de réponse*, 12 November 2012, E163/5/1/2 (“Motion”); Co-Prosecutors’ Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, 7 November 2012, E163/5/1/1 (“Immediate Appeal”).

<sup>2</sup> The Supreme Court Chamber considers that, in light of the urgency of the matter and given the Co-Prosecutors will not be prejudiced by the outcome of this decision, it is in the interests of justice to render the present decision prior to the expiration of the deadline for filing a response to the Motion.

<sup>3</sup> Motion, para. 1.

<sup>4</sup> Motion, para. 2.

<sup>5</sup> Motion, paras. 4-5.

<sup>6</sup> Motion, para. 3.

<sup>7</sup> Motion, paras. 2, 8.

<sup>8</sup> Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

<sup>9</sup> Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 (“Practice Direction”).

responding. The judicial discretion to extend an applicable time limit, either upon request of a party or *proprio motu*, is governed by Rule 39(4)(a) of the Internal Rules.<sup>10</sup>

4. The Supreme Court Chamber notes that Notification of the Immediate Appeal was effected in the present case on 8 November 2012.<sup>11</sup> As such, a response, if any, to the Immediate Appeal, was due by Monday, 19 November 2012.<sup>12</sup> Advance courtesy notice of the Supreme Court Chamber's decision below was provided to the Co-Lawyers by electronic mail on 16 November 2012 at 12h29.

5. The Supreme Court Chamber recalls that the official working languages of the ECCC are Khmer, English, and French.<sup>13</sup> 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>14</sup> In addition, "any person entitled to file documents before the ECCC shall notify the relevant greffiers of the official language(s) in which, in addition to Khmer, they intend to file documents."<sup>15</sup> On 2 January 2008, the Co-Lawyers for KHIEU Samphan at the time – SAY Bory and Jacques VERGÈS – notified the greffiers of the Office of the Co-Investigating Judges of their preference to file and receive documents before the ECCC in French and Khmer.<sup>16</sup>

6. In the more than four years that have elapsed since then, the composition KHIEU Samphan's defence team has changed, and presently includes one Co-Lawyer with indicated fluency in both English and French,<sup>17</sup> and one Co-Lawyer with indicated fluency in both English and Khmer.<sup>18</sup> The remaining two Co-Lawyers have indicated fluency in French only.<sup>19</sup> As such, although KHIEU Samphan's defence team as presently composed may continue to prefer filing and receiving documents in French and Khmer, the Supreme Court Chamber is not persuaded that his current Co-Lawyers are generally unable to work together to jointly comprehend filings made in English and Khmer and to meaningfully respond to such filings in French and Khmer.

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<sup>10</sup> See also Article 8.1 of the Practice Direction.

<sup>11</sup> Electronic notification by the Case File Officer of the Court Management Section of the ECCC ("Notification"), sent 8 November 2012 at 11h14.

<sup>12</sup> See Rule 39(3) of the Internal Rules.

<sup>13</sup> Article 45 new of the Law on the Establishment of the ECCC, as amended on 27 October 2004.

<sup>14</sup> Article 7.1 of the Practice Direction.

<sup>15</sup> Article 2.2 of the Practice Direction.

<sup>16</sup> *Notification des avocats de M. KHIEU Samphan des langues pour le dépôt et la réception des documents*, 2 January 2008, A114, para. 1.

<sup>17</sup> Foreign Co-Lawyer Application Form for Anta GUISSÉ.

<sup>18</sup> Cambodian Co-Lawyer Application Form for KONG Sam Onn.

<sup>19</sup> Foreign Co-Lawyer Application Form for Jacques VERGÈS; Foreign Co-Lawyer Application Form for Arthur VERCKEN.

7. Nevertheless, the Supreme Court Chamber is mindful of the length, complexity, and importance of the issues arising from the Immediate Appeal, and considers that the circumstances of the present case therefore justify the Co-Lawyers' need for a French translation thereof in order to provide a full response thereto. However, the Supreme Court Chamber does not consider that these circumstances justify a need for five additional days' time. Accordingly, pursuant to Article 8.5 of the Practice Direction, the Supreme Court Chamber decides that the Co-Lawyers may respond to the Immediate Appeal within 10 days of the notification of the French translation thereof. Should exceptional circumstances arise making it impossible for the timely filing of their response in both French and Khmer in accordance with Article 7.1 of the Practice Direction, the Co-Lawyers may seek authorisation under Article 7.2 of the Practice Direction to file first in French, with a Khmer translation to follow at the first opportunity.

8. For the foregoing reasons, the Supreme Court Chamber **GRANTS** the Motion, in part. The Co-Lawyers for KHIEU Samphan may file their response to the Immediate Appeal within 10 days of being notified of the French translation thereof.

**Phnom Penh, 20 November 2012**

**President of the Supreme Court Chamber**



**KONG Srim**