

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

Criminal Case File No.: 002/19-09-2007-ECCC-OCIJ(PTC04)
Case Name: KHIEU SAMPHAN
Filed to: PRE-TRIAL CHAMBER
Date of Document: 21 August 2008
Filing Party: Defence
Languages: French (original) and Khmer (free translation)
Type of document: PUBLIC

**NOTIFICATION OF THE PRE-TRIAL CHAMBER OF THE DEFENCE'S
POSITION CONCERNING KHIEU SAMPHAN'S APPEAL AGAINST
PROVISIONAL DETENTION ORDER**

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Filed to:
Pre-Trial Chamber

Judge PRAK Kimsan
Judge NEY Thol
Judge HUOT Vuthy
Judge Katinka LAHUIS
Judge Rowan DOWNING

Office of the Co-Prosecutors
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ឯកសារទទួល
DOCUMENT RECEIVED/DOCUMENT REÇU
ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/Date de reception):
..... 27 / Augt / 2008

ម៉ោង (Time/Heure): 11:40

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Cass File Officer/L'agent chargé
du dossier: ... UCH ARUN

Original FR: 00218013-00218016

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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..... 27 / 08 / 2008

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé
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MAY IT PLEASE THE PRE-TRIAL CHAMBER**I. INTRODUCTION**

1. The hearing on the appeal of provisional detention was held on 23 April 2008. At the hearing, KHIEU Samphan requested adjournment of the proceedings on the grounds that his French lawyer could not defend him because he could not access the case file in the French language. The same day, the Pre-Trial Chamber rendered a Decision to adjourn the hearing on provisional detention “to a date to be advised”.¹
2. On 15 August 2008, KHIEU Samphan’s defence team received the Pre-Trial Chamber’s Direction concerning the adjourned appeal hearing on provisional detention,² where the Pre-Trial Chamber directs *the Charged Person and/or his Co-Lawyers to state their position concerning the Appeal within seven (7) days of notification of [the] Direction.*

II. PROCEDURAL BACKGROUND AND INCIDENCE

3. At the hearing of 23 April 2008 on the appeal against the provisional detention Order, KHIEU Samphan’s foreign lawyer recalled that he was unable to access the case file in a language he understands; he was referring to all the documents contained in the criminal file in the French language,³ French also being an official language of the ECCC.⁴ It will be recalled that earlier, at the judicial interview of 14 February 2008, the same lawyer called the attention of the Co-Investigating Judges of the ECCC to the problem relating to translation.⁵

Original FR: 00218013-00218016

¹ Decision on Application to Adjourn Hearing on Provisional Detention, 23 April 2008, Court Document No. C26/1/25, ERN 00180344.

² Public Direction to the Defence Concerning Appeal Against Provisional Detention Order, Court Document No. C26/1/27, ERN 002123.

³ Written Record of the Hearing of 23 April 2008 on the Appeal Against Detention Order, Court Document No. C26/1/26, ERN 00185537.

⁴ Article 26 of the Agreement Between the United Nations and Cambodia, as repeated in Article 45 new of the Law on the ECCC.

⁵ Khieu Samphan Case, Written Record of Interview, Court Document No. D75, ERN 00164221.

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4. The same day, at KHIEU Samphan's request, the Pre-Trial Chamber decided to adjourn the hearing "to a date to be advised."
5. More than one month after the hearing on appeal, KHIEU Samphan's defence team asked the Chief of the Court Management Section whether translation of KHIEU Samphan's case file was underway.⁶ They are yet to receive a reply.
6. On 19 June 2005, the Co-Investigating Judges issued an Order in which they denied the request for translation of all the documents contained in KHIEU Samphan's case file.⁷ The Defence notified the Chamber of its intention to appeal the Order dated 30 June 2008, and filed its appeal on 22 July 2008.⁸ Also, more recently, on 11 August 2008, the Defence filed a Request for a Public Hearing on the Decision to Deny the Request for Translation of KHIEU Samphan's Case File.⁹
7. The absence of translation into French of the case file is the crucial problem the Defence is facing, as KHIEU Samphan and his foreign lawyer pointed out at the hearing of 23 April 2008.¹⁰ It is the original and fundamental reason for the request for a stay of the *KHIEU Samphan* case pending translation into French of his criminal file. crucial
8. However, to date, not a single translation file is done, and therefore the problem is no nearer to a solution. To the extent that no file is available in French, one of the official working languages, KHIEU Samphan is deprived of his foreign lawyer for his defence. This is clearly a breach of KHIEU Samphan's right to be defended.

⁶ Letter of 5 June 2008 to Mr Tony Kranh on an update regarding translation; it was copied to the Co-Investigating Judges on 9 June 2008, Court Document No. A185, ERN 00208477.

⁷ Order on Translation Rights and Obligations of the Parties, Court Document No. A190, ERN 00196923.

⁸ Defence Appeal of the Decision to Deny the Request for Translation of Khieu Samphan's Case File, Court Document No. 190, ERN 00207430-0207455.

⁹ Request for a Public Hearing on the Appeal Against the Decision to Deny the Request for Translation of Khieu Samphan's Case File, Court Document No. A190/I/2, ERN 00218008-00218012.

¹⁰ Written Record of the Hearing of 23 April 2008 on the Appeal Against Detention Order, Court Document No. C26/I/26, ERN 00185337.

III. RELIEF SOUGHT

9. In view of the foregoing facts and reasons, we hereby reiterate our firm position: we demand translation of the KHIEU Samphan criminal file. As long as the translation is not done, the Co-Lawyers for the Defence are unable to cooperate with the Court.

10. Therefore, the Co-Lawyers for the Defence and the Charged Person pray the Pre-Trial Chamber to consider the possibility of ordering that translation be done as a matter of priority, if not KHIEU Samphan's detention is without legal basis since his foreign lawyer is yet to be put on notice as to the charges underpinning Khieu Samphan's provisional detention.

Signed at Phnom Penh, on 21 August 2008

For the Co-Lawyers for KHIEU Samphan

(Signed)
SA Sovan