



Supreme Court Chamber Rules that the Trial Chamber Is Inappropriately Limiting Its Access to Case 002 Information

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In an unprecedented decision lifting the veil on inter-chamber power struggles at the Extraordinary Chambers in the Courts of Cambodia, the Supreme Court Chamber (SCC) says the Trial Chamber Greffier has improperly denied it access to the complete Case 002 case file, hindering its prompt consideration of six immediate appeals. It has therefore ordered the Trial Chamber to immediately comply with Court rules and forward the entire file.¹

Internal Rule 108(2) provides:

Where there is an immediate appeal against a decision of the Trial Chamber, the case file together with certified copies of the decision and each immediate appeal shall be forwarded to the Supreme Court Chamber within 10 (ten) days of the filing of the appeal, unless there are extenuating circumstance (*sic*). Any such circumstances shall be specified at the time of forwarding.

The SCC says that rather than forwarding the entire case file as required by this rule, the Trial Chamber Greffier has provided it access to only those “confidential” or “strictly confidential” portions of the case file “which he deemed relevant.” When the SCC asked for access to additional “confidential” or “strictly confidential” documents it considered necessary for the determination of an appeal:

[It] was denied provision and access to the requested documents, based on the claim that Rule 108 of the Internal Rules “distinguishes between appeals of the judgment and immediate appeals” in a way that precludes the Supreme Court Chamber's access to documents beyond those cited in parties' immediate appeals, and that “[i]f it were otherwise, the Trial Chamber and the Supreme Court Chamber could be simultaneously seized of the entire [c]ase [f]ile.”²

As a consequence, the SCC has found it necessary to issue a formal order overruling that interpretation, clarifying that the language of Rule 108(2) in no way limits the SCC to only a portion of the case file and instructing the Greffier to grant access to the “case file,” as defined by the glossary of the Internal Rules to include “all the written records (*proces verbaux*) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachments thereto at all stages of the proceedings, including the record of proceedings before the Chambers.”³

¹ Order for Immediate Compliance with Rule 108 of the Internal Rules (Mar. 12, 2013).

² *Id.* ¶¶ 2-3.

³ *Id.* ¶ 4.

The order emphasizes that the SCC is the arbiter of what materials are required to decide an appeal:

The determination of what, if any, documents on the case file are relevant to the proper adjudication of appeals—be they immediate or from judgment—rests within the sole discretion of the Supreme Court Chamber. The Supreme Court Chamber therefore requires unrestricted access to the entirety of the case file in Case 002 every time that it becomes seized of any immediate appeal.

Moreover, the SCC found it unremarkable, and indeed axiomatic, that both it and the Trial Chamber may both be seized of the same case file at the same time due to the existence of an immediate appeal.⁴

Notably, the SCC’s demand for unadulterated document access comes a week after it sought—apparently for the first time—information directly from the Co-Investigating Judges. This request relates to an immediate appeal alleging that political interference in Cases 003 and 004 has impacted the fairness of Case 002:

The Supreme Court Chamber considers it desirable for the proper adjudication of the Appeal to be informed of what, if any, formal action was taken in response to the allegations of interference in Cases 003 and 004, particularly in the way of any investigation(s) launched under Rule 35 of the Internal Rules [re interference in the administration of justice]. To this end, the Supreme Court Chamber requests the Co-Investigating Judges to provide it, to the extent they deem appropriate considering confidentiality of the ongoing proceedings and other legitimate interests, with information on the nature of actions taken and their outcome.⁵

The SCC thus appears to be leaving no stone unturned in its review of the many appeals currently before it, all of which raise important and novel fair trial issues.

⁴ *Id.* (citing Internal Rules, r. 104(4) in part: “Unless otherwise provided in the [Internal Rules] or decided by the Trial Chamber, an immediate appeal does not stay the proceedings before the Trial Chamber”).

⁵ Interoffice Memorandum from Kong Srim, President of the Supreme Court Chamber to Co-Investigating Judges re: request for information in relation to interference in Cases 003 and 004 (March 5, 2013).