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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

TRIAL CHAMBER

សាធារណៈ / Public

TO: All Parties, Case 002

Date: 26 May 2014

FROM: NIL Nonn, President, Trial Chamber

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer



SUBJECT: Decision on Requests for Sanctions Against KHIEU Samphan Defence counsel

1. The Chamber is seized of two requests by the Co-Prosecutors' Office to impose sanctions on members of the KHIEU Samphan Defence.¹
2. The first request arises from the in-court questioning of Witness Ms. SO Socheat. National counsel for KHIEU Samphan, Mr. KONG Sam Onn, objected to a question posed to this witness by Mr. Keith RAYNOR of the Co-Prosecutors' Office.² Although the witness' prior testimony was read to her in English and Khmer in preface to the question,³ Mr. Sam Onn asserted that Mr. RAYNOR's recitation was incorrect and proceeded to paraphrase a limited portion of the witness' prior testimony.⁴ Mr. RAYNOR considered this to be an attempt to interfere with the witness' testimony and moved the Chamber to warn and impose sanctions on national counsel.⁵
3. Upon reviewing the English and Khmer transcripts from this exchange, it is not clear whether national counsel for KHIEU Samphan actually intended to interfere with this witness' testimony. Although the English translation of Mr. Sam Onn's objection indicates that he informed the Chamber, in the presence of the witness, what he thought she meant to say, the original Khmer language version of the transcript is more equivocal,⁶ allowing for the

¹ T. 12 June 2013, pp. 36-37; T. 18 July 2013, pp. 56-57.
² T. 11 June 2013, p. 78.
³ T. 11 June 2013, pp. 75-77.
⁴ T. 11 June 2013, p. 78.
⁵ T. 11 June 2013, p. 78; T. 12 June 2013, pp. 36-37.
⁶ KONG Sam Onn stated: "So I think it was a difference in the reading of the language. When Mr. Khieu Samphan came to assist her, she really meant that at that time her child was nearly a month old. That is not something difficult to understand in Khmer when we read it carefully." T. 11 June 2013, p. 78 (ENG). The

possibility that Mr. Sam Onn did not intend to direct the witness' testimony. Based on the standard set by the Supreme Court Chamber,⁷ and considering the uncertainty attached to counsel's statement in the courtroom, we are unable to impose sanctions on counsel for this conduct. Nonetheless, the Chamber emphasizes the importance of permitting the examination of witnesses and the testing of evidence and cautions counsel for all parties to refrain in future hearings from providing guidance to witnesses as they are questioned by opposing parties.

4. The second Co-Prosecutors' request for sanctions arises from a newspaper editorial authored by counsel for KHIEU Samphan, Anta GUISSÉ, Arthur VERCKEN and KONG Sam Onn and published in English on 18 July 2013.⁸ The editorial asserts that many procedural errors occurred in the trial and criticizes decisions of ECCC judges. In particular, it refers to the trial in Case 002/01 as a "race against death" and a "show trial." The Co-Prosecutors submit that the statements in the editorial are demonstrably false, constitute a clear attempt to interfere with the administration of justice, and are a violation of ethical and professional standards required of counsel.⁹

5. The Chamber notes that many of the claims raised in the newspaper editorial are included in the KHIEU Samphan Defence closing submissions in Case 002/01,¹⁰ albeit using less provocative language. Submissions regarding the fairness of the proceedings will be addressed in the judgement in Case 002/01. The Chamber does not therefore consider it appropriate to express a view at this time on whether the editorial misrepresents facts in the case, and declines to impose any sanctions on counsel for KHIEU Samphan.

6. The Chamber reminds the parties that the proper forum for the litigation of Case 002 is in the courtroom and through submissions to the appropriate ECCC Chamber. It observes that the use of intemperate language is unfortunate. In addition, misrepresentations made to the Chamber or to the public are a serious matter and, if proven, may result in the imposition of sanctions on counsel.

Chamber understands that the phrase "she really meant" can equally be translated as "she stressed/asserted/emphasized." This nuance in language could be the difference between telling the witness what to say and merely repeating the prior testimony of the witness.

⁷ Decision on NUON Chea's Appeal Against the Trial Chamber's Decision on Rule 35 Applications for Summary Action, E176/2/1/4, 14 September 2012, para. 49 (no basis to initiate Rule 35 investigation where the SCC was not satisfied by evidence of specific intent and where SCC considers "[it] is highly unlikely that evidence of such specific intent, such as an admission, will be adduced through the initiation of criminal proceedings." (emphasis added); Decision on NUON Chea's "Immediate Appeal Against Trial Chamber Decision on Application for Immediate Action Pursuant to Rule 35," E189/3/1/8, 25 March 2013, para. 27 (the Trial Chamber may only issue a warning to counsel pursuant to Internal Rule 38 for "conduct that objectively lends itself to certain qualification as [misconduct]. Where there is room for doubt, a more cautious approach should be adopted." (emphasis added)); cf. Decision on Immediate Appeal by NUON Chea Against the Trial Chamber's Decision on Fairness of Judicial Investigation, E116/1/7, 27 April 2012, paras 23, 37 (warning Defence counsel against further unauthorised disclosure of confidential or strictly confidential information where Defence counsel admitted that it had distributed confidential documents to various members of the local and international press).

⁸ *Khieu Samphan is Forced to Remain Silent*, Phnom Penh Post, 18 July 2013.

⁹ T. 18 July 2013, pp. 48.

¹⁰ T. 25 October 2013 (KHIEU Samphan Defence Closing Statement), pp. 32-33; [KHIEU Samphan's] *Conclusions finales*, E295/6/4, 26 September 2013, paras 4-8.