



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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩កញ្ញា២០០៧/អវតក/អជសដ

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Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Date: 19 September 2014
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**DECISION ON KHIEU SAMPHAN'S REQUEST TO POSTPONE THE COMMENCEMENT OF
CASE 002/02**

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN
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1. INTRODUCTION

1. On 25 August 2014, the KHIEU Samphan Defence filed a motion (“Motion”) requesting the Trial Chamber to delay any proceedings in Case 002/02 until the Supreme Court Chamber has ruled upon the appeals from the Judgement in Case 002/01 as well as any other appeals relating to Case 002/01. In the alternative, the KHIEU Samphan Defence seeks to disqualify President NIL Nonn and Judges Silvia CARTWRIGHT, YA Sokhan, Jean-Marc LAVERGNE, YOU Ottara and Claudia FENZ from any further trials in Case 002.¹ The Office of the Co-Prosecutors responded on 4 September 2014 (“Response”).²

2. SUBMISSIONS

2. The Defence submits that two new circumstances warrant *de novo* consideration of this issue by the Trial Chamber.³ It submits that the first new circumstance, the Supreme Court Chamber Decision of 29 July 2014 upholding the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02, highlights “the risk of an overlap of findings that determine individual criminal responsibility with the question of individual criminal responsibility in subsequent trials”.⁴ The second new circumstance, the delivery of Judgement in Case 002/01 on 7 August 2014, demonstrates, according to the Defence, that the Trial Chamber in fact made findings on the criminal responsibility of the Co-Accused in relation to charges to be adjudicated in Case 002/02.⁵

3. On the merits of the issue, the KHIEU Samphan Defence submits that the Trial Chamber exceeded the scope of trial by making findings in the Judgement in Case 002/01 in relation to issues within the scope of Case 002/02.⁶ Relying on the reasoning of the Supreme Court Chamber, it submits that these findings, which it alleges determine individual criminal

¹ Demande de réexamen de M. KHIEU Samphân sur la nécessité d’attendre un jugement définitif dans le procès 002/01 avant de commencer le procès 002/02 et sur la nomination d’un nouveau collège de juges, E314/1, 25 August 2014.

² Co-Prosecutors’ Response to Khieu Samphan’s Request for Stay of Proceedings or Disqualification of Judges, E314/3, 4 September 2014.

³ Motion, para. 7.

⁴ Motion, para. 9.

⁵ Motion, paras. 10-43, 45, 47, 53, 54.

⁶ Motion, paras. 23-35.

responsibility, overlap between the two cases and result in prejudice to the Accused.⁷ It is submitted that this warrants a stay of the proceedings until the Supreme Court Chamber rules on the appeals against Judgement in Case 002/01.⁸

4. The Co-Prosecutors respond that a stay of the proceedings is not warranted in the circumstances.⁹ It submits that the Supreme Court Chamber itself clearly envisages the start of trial in Case 002/02 “as soon as possible” and, in any event, before the pronouncement of any final Judgement on appeal in Case 002/01.¹⁰

3. FINDINGS

5. The Trial Chamber recalls that it has previously considered and dismissed a similar request from the KHIEU Samphan Defence to delay proceedings in Case 002/02.¹¹ The Internal Rules do not provide for reconsideration of Trial Chamber decisions. However, the Chamber may consider an issue anew where justified by new circumstances.¹² The Trial Chamber notes that both the Judgement in Case 002/01 as well as the Supreme Court Chamber Decision of 29 July 2014 were issued since the previous Trial Chamber decision on this subject. It considers that these constitute new and exceptional circumstances warranting *de novo* consideration of this issue.

6. In the Motion, the Defence seeks either a stay of proceedings or, in the alternative, the disqualification of certain Judges of the bench. Its argument in favour of a stay of proceedings is based on the assertion that certain findings of the Trial Chamber exceeded the scope of Case 002/01 and that these will necessarily impact the assessment of the guilt of the Accused in Case 002/02. It concludes that the Trial Chamber should accordingly postpone the commencement of Case 002/02 until the verdict in Case 002/01 is final.

⁷ Motion, paras. 36, 39-42, 52. *See also*, Motion, para. 9 referring to Decision on KHIEU Samphan’s Immediate Appeal Against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/1/3, 29 July 2014 (“SCC Decision dated 29 July 2014”), para. 85.

⁸ Motion, para. 10, 46, 47, 54.

⁹ Response, paras. 2-24.

¹⁰ Response, para. 6.

¹¹ Decision on Khieu Samphan Request to Postpone Commencement of Case 002/02 Until a Final Judgement is Handed Down in Case 002/01, E301/5/5/1, 21 March 2014 (“TC Decision dated 21 March 2014”), p. 7.

¹² Decision on IENG Sary’s Request for Reconsideration of the Trial Chamber Decision on the Accused’s Fitness to Stand Trial and Supplemental Request, E238/11/1, 19 December 2012, para. 7; Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, para. 39.

7. The request for a stay of proceedings must be balanced with the Court's obligation under Article 33 (new) of the ECCC Law to ensure a fair and expeditious trial and in this regard the interests of all parties must be taken into account.¹³ The Chamber recalls that both the NUON Chea Defence team and the Co-Prosecutors have urged the Trial Chamber to commence the trial in Case 002/02 as soon as possible.¹⁴ The Supreme Court Chamber has also, on several occasions, urged the Trial Chamber to start the proceedings in Case 002/02 as soon as possible.¹⁵ Most recently, in its Decision dated 29 July 2014, the Supreme Court Chamber emphasized the pressing interests of ensuring meaningful justice through obtaining a verdict within the lifespan of the Co-Accused on at least those remaining charges which will render the combination of Cases 002/01 and 002/02 reasonably representative of the Indictment.¹⁶ The Trial Chamber has previously stated that it is reasonable to estimate that the Supreme Court Chamber would hand down judgement in Case 002/01 before any trial in Case 002/02 would conclude.¹⁷ Therefore, the parties will have the opportunity at that time to make submissions before the Trial Chamber as to any findings that the Supreme Court Chamber may reach that are of relevance to Case 002/02. This does not unfairly prejudice the Accused given that all parties to Case 002/02 will be similarly situated.

8. The Chamber notes that the Internal Rules envisage a limited number of instances in which a stay of proceedings is warranted. None of these are applicable here. Pursuant to Internal Rule 34(5), even the alternative request for the disqualification of the bench does not impose a stay in proceedings.

9. With respect to the Defence's alternative request to disqualify certain Judges, this is a matter for the Judges appointed by the Judicial Administration Committee to hear all disqualification motions.¹⁸

¹³ See TC Decision dated 21 March 2014, para. 11.

¹⁴ Response, para. 24 ; T. 30 July 2014, p. 38 (MR. KOPPE: Thank you, Mr. President. The Nuon Chea defence team is and remains available to participate in hearings in 2014 and 2015, and we strongly urge the Trial Chamber - that the Trial Chamber commence - that trial commences as soon as possible).

¹⁵ See TC Decision dated 21 March 2014, para. 10.

¹⁶ See SCC Decision dated 29 July 2014, paras. 55, 62, 87.

¹⁷ See TC Decision dated 21 March 2014, para. 14.

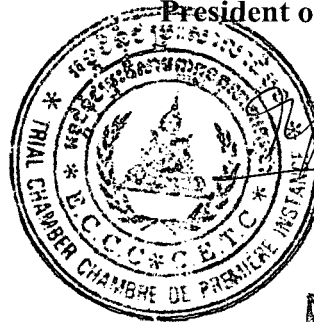
¹⁸ Interoffice Memorandum, Judicial Administration Committee, E314/4, Decision of the JAC regarding the constitution of bench following disqualification motions, 4 September 2014.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

REJECTS the request to delay proceedings;

REFERS the Defence's alternative request to disqualify certain Judges of the bench to the Judges appointed by the Judicial Administration Committee. *RH*

Phnom Penh, 19 September 2014
President of the Trial Chamber



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Nil Nodd