

**BEFORE THE SUPREME COURT CHAMBER
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case File No: 002/19-09-2007-ECCC/SC

Party Filing: Mr KHIEU Samphan

Filed Before: The Supreme Court Chamber

Original: French

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CLASSIFICATION

Classification of the Document

Suggested by the Filing Party: Public

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URGENT REQUEST FOR EXTENSION OF FILING TIME LIMITS

Filed by:

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Before:

The Supreme Court Chamber

Judge KONG Srim

Judge Motoo NOGUCHI

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge SIN Rith

Judge Chandra Nihal JAYASINGHE

Judge YA Narin

Co-Prosecutors

CHEA Leang

Andrew CAYLEY

MAY IT PLEASE THE SUPREME COURT CHAMBER

I - INTRODUCTION

1. On 3 March 2011, Mr KHIEU Samphan filed an appeal against the Decision on the Application for Immediate Release, dated 16 February 2011.¹
2. On 2 March 2011, the Practice Direction the Filing of Documents Before the ECCC (“Practice Direction”) was amended, in direct violation of the right to a fair trial. In effect, the amendment has repealed the Accused’s right for the time limits to start with notification in their working language.²
3. On 29 March 2011, Mr KHIEU Samphan received notification of the Co-Prosecutors’ Response (“the Response”) to his appeal, in English and Khmer **only**.³ The same day, he asked the Translation and Interpretation Unit (ITU) to provide him with the French translation of the Response as a matter of urgency, but he has not received it to date.
4. According to the new provisions of the Practice Direction, Mr KHIEU Samphan would have 5 days to file his reply counting from the first calendar day following the day of service of the notification of the document in Khmer and one other official language of the ECCC”.⁴ **French** is the working language he chose from the outset and which was validated by the ECCC in its record of proceedings.
5. On account of the incorrect assumption that he might have changed his initial choice and all of a sudden opted for English as the language of his defence, against the advice of his defence lawyers, he would have to file his reply by Monday, 4 April 2011, i.e. within a matter of **only four** working **days**. Knowing the shortcomings of the ITU, it is simply **not feasible** to file a reply to the Co-Prosecutors’ Response.
6. The situation is becoming farcical in regard to substance and totally absurd in regard to form. It is not possible to exclude French from the work of the ECCC, its records since its

¹ Appeal against the Decision on the Application for Immediate Release, 3 March 2011, E50/3.

² Notification on 9 March 2011; Practice Direction on the filing of Documents before the ECCC ECCC/2007/1/Rev.6 (“Practice Direction”). See new Articles 2.2, 7.1, 7.2, 8.3 and 8.4.

³ Co-Prosecutors’ Response to the KHIEU Samphan’s Appeal against the Decision on the Application for Immediate Release, 28 March 2011, E50/3/1/1.

⁴ Articles 8.4 and 8.5 of the Practice Direction (emphasis added).

establishment or from testimonies and expertises in French concerning Mr KHIEU Samphan's case file.

7. The fact of the matter is that Mr KHIEU Samphan has **not forfeited French**. Moreover, the ECCC must uphold the French language and the Francophone legal culture as the sources of **international criminal law and Cambodian law** and the international rules of procedure, including notification **in French**, in order to ensure a just, fair and smooth trial after 30 years of research work.

II- ARGUMENT

8. The term "Practice Direction" as defined in the Internal Rules means "regulations covering details aspects of the conduct of the work of the ECCC adopted by the Rules and Procedure Committee, in accordance with the ECCC Law, the Agreement and the IRs".⁵

9. However, the **risky practice** that could arise from use of the new version of the Practice Direction is entirely contrary to the higher norms, in particular to the debates and reflections concerning the establishment of an international hybrid tribunal in Cambodia, and especially the founding act of the ECCC.

10. Applying it would amount to doing away with French, and would therefore adversely affect the proceedings as a whole. This is utterly contrary to the hierarchy of norms, considering that Articles 26.2 of the Agreement and 45 (new) of the ECCC Law clearly state: "[t]he official working languages of the Extraordinary Chambers and the Pre-Trial Chamber shall be Khmer, English and French".⁶

11. Worse still, the amendments to the Practice Direction are likely to call into question the whole notion of a fair trial,⁷ with all the actual consequences this might have for the Accused in relation to, *inter alia*, his right to **legal certainty**, his right to the assistance of a **lawyer of his own choosing** (A) and his right to have **adequate time and facilities** for the preparation of his defence (B).

A. Infringement of the right to the assistance of a lawyer of his own choosing and to legal certainty

⁵ Internal Rules, Glossary, p. 81 (emphasis added).

⁶ Emphasis added.

⁷ Articles 12 and 13 of the Agreement, Articles 33 and 35 of the ECCC Law, Rule 21 of the Rules.

12. The Agreement, the ECCC Law and the Rules provide that suspects or accused before the ECCC are entitled to the assistance of a lawyer of their own choosing.⁸

13. According to Rule 21 of the Rules: “[t]he applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty (...)”.

14. However, Mr KHIEU Samphan – who is of French and Khmer culture, studied in Paris, graduated from the Sorbonne and was invited to France numerous times for talks, conferences and large political events – made the informed choice of defence counsel from the country of Human Rights. He organises his defence with his international lawyers in French, with Francophone experts, consultants and witnesses, because he considers it essential to express himself with the highest degree of accuracy as to matters of law and legal discourse.⁹

15. Any incorrect interpretation of the Practice Direction would adversely affect the trial process, the more so because any departure from the norm must be **addressed** right away, prior to the initial hearing.

16. Clarifying the usages is crucial to guaranteeing legal certainty of the trial, in accordance with Article 13(1) of the Agreement, which provides that “[t]he rights of the accused enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process”.¹⁰

B. Violation of the right to adequate time and facilities for the preparation of his defence

17. Like the ICCPR, the Constitution of Cambodia, the Agreement and the ECCC Law provide that everyone charged with a criminal offence must have adequate time and facilities for the preparation of his or her defence.¹¹

⁸ Article 13(2) of the Agreement, Article 35(d) new, Rule 21(d) of the Rules.

⁹ Mr KHIEU Samphan chose his lawyers from a list of candidates, including both foreign and Cambodian candidates, for whom being fluent in more than one working language was not a requirement: see Rule 11(4)(c)(v) and (d) of the Rules.

¹⁰ Emphasis added.

¹¹ Article 14.3(b) of the ICCPR, Article 31 of the Constitution of the Kingdom of Cambodia, Article 13(1) of the Agreement, Article 35 (new) of the ECCC Law.

18. Access to the case file in French, to administrative documents or to issues in dispute, to Francophone laws and legal authorities, to legal advice from his Francophone lawyers are all, needless to say, part and parcel of the preparation of his defence.

19. Mr KHIEU Samphan and his defence team would like to reply with the highest degree of precision to the Co-Prosecutors' arguments as to factual and legal matters, and according to the expectations of both the Judges and his fellow countrymen.

20. Mr KHIEU Samphan is already at a disadvantage given that the Co-Prosecutors and the other Anglophone defence teams express themselves in English only, even though civil law and **French legal doctrine** provide for a better understanding of the nuances of the law and of Mr KHIEU Samphan's place during the Khmer Rouge period, as well as his contribution to Peace and to the History of Cambodia, to which France is associated.

21. Moreover, his defence cannot work in Khmer only, as the Cambodian lawyer's role is not to spend his time translating or interpreting.

22. If French is dropped, Mr KHIEU Samphan will not be in a position to defend himself fully and effectively.

23. Finally, the requirement to file in two working languages already considerably and systematically **curtails** the time limits, especially given not only is ITU overloaded with work and understaffed, but also it does not work on week-ends.

24. In conclusion, Mr KHIEU Samphan has neither the facilities nor adequate time for the preparation of his defence, given that the Co-Prosecutors' Response is awaiting translation, whereas he has only one working day left to file his reply in the working languages he chose, which is simply **not feasible**.

25. For all these reasons, Mr KHIEU Samphan is rendered unable to reply to a document that is 12 pages long and is in English.

26. He is therefore not afforded a fair trial.

FOR THESE REASONS

27. May it please the Supreme Court Chamber:

- TO NOTE that Mr KHIEU Samphan chose French language for his defence and that the Court has always taken account of the right to French translation when calculating time limits;
- TO FIND and DECLARE that any **interpretation** of the Practice Direction shall uphold Mr KHIEU Samphan's most basic rights, including the **right to translation and to defending himself in French**;
- TO ALLOW Mr KHIEU Samphan to file his reply at least 5 days after notification of the French translation of the Response;
- TO ORDER that his reply shall be filed after he has received notification of the impending decision in French.

**WITHOUT PREJUDICE,
AND IT WILL BE JUSTICE**

	SA Sovan	Phnom Penh	
	Jacques VERGÈS	Paris	
	Philippe GRÉCIANO	Paris	
Date	Name	Place	Signature