

**BEFORE THE TRIAL CHAMBER**

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** The Defence for IENG Sary

**Filed to:** The Trial Chamber

**Original language:** ENGLISH

**Date of document:** 18 March 2011

**CLASSIFICATION**

**Classification of the document suggested by the filing party:** PUBLIC

**Classification by OCIJ or Chamber:**

**សាធារណៈ / Public**

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

---

**IENG SARY'S REQUEST FOR A DIRECTION STATING THAT TIME LIMITS DO NOT COMMENCE UNTIL FILINGS ARE NOTIFIED IN BOTH WORKING LANGUAGES OF THE DEFENCE**

---

Filed by:

**The Co-Lawyers:**  
ANG Udom  
Michael G. KARNAVAS

Distribution to:

**The Trial Chamber Judges:**  
Judge NIL Nonn  
Judge THOU Mony  
Judge YA Sokhan  
Judge Silvia CARTWRIGHT  
Judge Jean-Marc LAVERGNE  
Reserve Judge YOU Ottara  
Reserve Judge Claudia FENZ

**ឯកសារដើម**  
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL  
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):  
..... 18 / 03 / 2011 .....

ម៉ោង (Time/Heure): ..... 10 : 35 .....

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: ..... SANN RADA .....

**Co-Prosecutors:**  
CHEA Leang  
Andrew CAYLEY

**All Defence Teams**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”) hereby moves for the Trial Chamber to issue a Practice Direction stating that time limits do not commence until filings are notified in both official working languages of each party. The Motion is made necessary in order to protect Mr. IENG Sary’s right to a defence and adequate facilities for the preparation of his defence. Revision 6 of the Practice Direction for Filing Documents before the ECCC (“Practice Direction”) alters the standard practice that time limits do not commence until filings are notified in both working languages of the receiving party. The Defence works in English as it is the only common language between all members of the Defence team. If a filing, order or decision is received in Khmer and French, the majority of the Defence team will be unable to read it, and subsequently act upon it. This will violate Mr. IENG Sary’s right to a defence and adequate facilities for the preparation of his defence.

#### I. BACKGROUND

1. On 29 April 2008, Revision 2 of the Practice Direction came into force. Revision 2 of the Practice Direction gave parties 15 days to respond to a pleading.<sup>1</sup> Time limits for parties commenced from the date of notification of both official working languages of the party.<sup>2</sup> The Practice Direction regarding these two issues did not alter until Revision 6 of the Practice Direction.
2. On 24 January 2011, pursuant to Articles 2.2 and 7.2 of Revision 5 of the Practice Direction, the Defence notified the Greffiers of the Trial Chamber that the Defence will file and receive all documents in Khmer and English.<sup>3</sup>
3. On 9 March 2011, the Defence was notified that Revision 6 of the Practice Direction came into effect. Revision 6 of the Practice Direction reduced the time given for parties to respond to a pleading from 15 days to 10 days.<sup>4</sup> Revision 6 of the Practice Direction changed the practice that time limits do not commence until filings are notified in both working languages of the receiving party. Time limits for parties now commence from the date following notification of the document in Khmer and either French or English rather than following notification in both official working languages of the party.<sup>5</sup>

---

<sup>1</sup> Practice Direction, Rev. 2, Art. 8.3.

<sup>2</sup> *Id.*, Art. 8.5.

<sup>3</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, IENG Sary’s Notification to the Trial Chamber’s Greffiers to File and Receive all Documents in Khmer and English, 24 January 2011, E22, ERN: 00637277-00637278.

<sup>4</sup> Practice Direction, Rev. 6, Art. 8.3.

<sup>5</sup> *Id.*, Art. 8.5.

Revision 6 of the Practice Direction also states: “Exceptionally, the Co-Investigating Judges or a Chamber may decide that the time limits commence on the first calendar day following the day of filing in all three languages.”<sup>6</sup>

## II. APPLICABLE LAW

### A. Right to a defence

4. Article 38 of the Cambodian Constitution, as amended in 1999, states in pertinent part: “Every citizen shall enjoy the right to defense through judicial recourse.”
5. Article 11(1) of the Universal Declaration of Human Rights states: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

### B. Right to adequate facilities for the preparation of a defence

6. Article 31 of the Cambodian Constitution, as amended in 1999, states in pertinent part: “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, womens and children's rights.”
7. Article 35 new(b) of the Establishment Law states: “In determining charges against the accused, the accused shall be equally entitled to the following minimum guarantees in accordance with Article 14 of the International Covenant on Civil and Political Rights: b. to have adequate time and facilities for the preparation of their defence...”
8. Article 14(3)(g) of the International Covenant on Civil and Political Rights (“ICCPR”) states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality... to have adequate time and facilities for the preparation of their defence...” Similarly, Article 13 of the Agreement states in pertinent part: “The rights of the accused enshrined in Articles 14 and 15 of the [ICCPR] shall be respected throughout the trial process.”

---

<sup>6</sup> *Id.*

**III. ARGUMENT: REVISION 6 OF THE PRACTICE DIRECTION VIOLATES THE FAIR TRIAL RIGHTS OF MR. IENG SARY**

9. The Trial Chamber must implement a Direction which would allow time limits to commence the day after notification of a document in both working languages of the Defence. This is necessary to protect Mr. IENG Sary's rights to a defence and adequate facilities for the preparation of his defence. English is the only common language to all members of the Defence. If the Defence cannot receive documents in English and the Trial Chamber do not issue a Direction, the time limit to submit a response or a reply, or adhere to an order or decision, will start to run and the Defence will not be able to act accordingly because as a whole it would not be able to read the filing, order or decision. If a team cannot work in its common language, it cannot follow the proceedings and provide a due diligent and robust defence.
10. As the Defence predominantly works in English, any notifications which are received in Khmer and French must be translated immediately into English if the Defence is to have any time to comply with, respond or reply to them and have its responses and replies immediately translated into Khmer. If the facilities are not available for the Defence for both of these services, Mr. IENG Sary's right to adequate facilities for the preparation of his defence will be violated through no fault of his own. At present, the Interpretation and Translation Unit ("ITU") has a significant backlog.<sup>7</sup> The likelihood of either of these translations taking place immediately is small.
11. Even if these translations do take place immediately, the time taken to translate a 15 page motion is approximately 4 working days. As the Defence only has 5 days to read, analyze, research and reply to a response, it will have only one day to draft and translate its reply; in short, an impossible task to undertake in a due diligent manner. Even with a response, to which a party has 10 days to file from the day following the notification of the pleading, a party has up to 15 pages.<sup>8</sup> First, ITU must work immediately, flawlessly and over the weekend in order to translate the initial pleading in a timely manner so that all members of the Defence team may understand it. Second, ITU must work immediately, flawlessly and over the weekend in order to translate the response in a

---

<sup>7</sup> *Case of NUON Chea*, 002/19-09-2007-ECCC/TC, Interoffice Memorandum from Judge Nil Nonn, President of the Trial Chamber, to the Office of Administration, Regarding translation constraints before the Trial Chamber in Case 002 and vacant posts in the Interpretation and Translation Unit (ITU), 9 February 2011, E38/1, ERN: 00642944-00642945.

<sup>8</sup> Practice Direction, Rev. 6, Art. 5.1.


timely manner to ensure that it can be filed by the deadline. This will not happen as ITU does not work over the weekend. Due to the current backlog in ITU, it cannot work immediately. Third, if the initial pleading is 15 pages, and the response is 15 pages, the Defence will be left with approximately only 2 days to read, analyze, research and draft the response. This will prevent the Defence from acting in a due diligent manner.

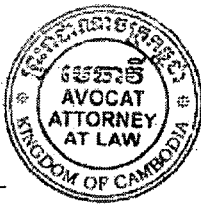
12. Although at great difficulty the Defence may be able to obtain an unofficial translation, the translation will not be official and may differ from the official ECCC translation which is placed on the Case File. If the Defence relies upon an unofficial translation, it may be responding or replying to something which was never intended to be pleaded by the filing party and which may be read differently by Chambers. If the Defence relies upon an unofficial translation it may unintentionally fail to act in strict accordance with an order or decision of the Trial Chamber. At worst, the Defence may run out of time to respond or reply to a pleading or comply with an order or direction, because it will not know what it was meant to be responding to, replying to or complying with. Revision 6 of the Practice Direction will deny Mr. IENG Sary adequate facilities for the preparation of his or her defence.
13. The Defence has two members of the team who do read Khmer. However, these two members are not translators and have other vital duties. Removing them from their duties by requiring them to act as translators in an already understaffed and under-resourced team will deny adequate facilities for Mr. IENG Sary to prepare his defence in other areas.
14. Article 8.5 of Revision 6 of the Practice Direction permits the Trial Chamber to decide that time limits commence on the first calendar day following the day of filing in all three languages. In order to correct the violation of Mr. IENG Sary's fair trial rights caused by Revision 6 of the Practice Direction, the Defence respectfully request the Trial Chamber to utilize Article 8.5 of Revision 6 of the Practice Direction and its own inherent authority to protect Mr. IENG Sary's fundamental fair trial rights by issuing a Direction stating that time limits do not commence for responding or replying to filings until filings are notified in all three languages, or at a minimum, both officially notified working languages of the Defence. The Defence further requests the Trial Chamber to issue all orders and decisions pertaining to the Defence in all three languages, or at a minimum, both officially notified working languages of the Defence.

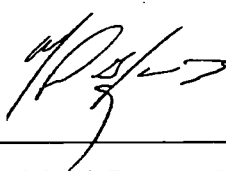
**WHEREFORE**, the Defence requests the Trial Chamber to **ISSUE** a Direction stating that:

1. time limits do not commence for responding or replying to filings until filings are notified in all three languages, or at a minimum, both officially notified working languages of the Defence; and
2. all orders and decisions pertaining to the Defence are notified to the Defence in all three languages, or at a minimum, both officially notified working languages of the Defence.

Respectfully submitted,

  
\_\_\_\_\_  
ANG Udom



  
\_\_\_\_\_  
Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this **18<sup>th</sup>** day of **March, 2011**