

**BEFORE THE TRIAL CHAMBER  
OF THE EXTRAORDINARY CHAMBRERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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

**Party Filing:** Mr KHIEU Samphan

**Filed Before:** The Trial Chamber

**Original:** French

**Date of Document:** 25 March 2011



**CLASSIFICATION**

**Classification of the Document Suggested by the Filing Party:** Public

**Classification by the Trial Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

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**Signature:**

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**FILING OF LISTS OF DOCUMENTS AND EXHIBITS  
REQUEST FOR EXTENSION OF DEADLINE**

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Filed by:

SA Sovan

Jacques VERGÈS

Philippe GRÉCIANO

Before:

**The Trial Chamber**

Judge NIL Nonn

Judge Silvia CARTWRIGHT

Judge THOU Mony

Judge Jean-Marc LAVERGNE

Judge YA Sokhan

**Co-Prosecutors**

CHEA Leang

Andrew CAYLEY

## MAY IT PLEASE THE TRIAL CHAMBER

### I – INTRODUCTION

1. On 13 January 2011, the Trial Chamber issued an Order, under Rule 80 of the Internal Rules, for the parties to file material in preparation for the trial.<sup>1</sup> It ordered the parties to, *inter alia*, file, no later than 13 April 2011, a list of documents and exhibits with a brief description of their nature and content.<sup>2</sup>
2. On 8 February 2011, Mr KHIEU Samphan filed an application for extension of the deadline for filing all his evidence after the Prosecution had disclosed its evidence.<sup>3</sup> The Trial Chamber advised that it would reject any requests to adopt a modified procedure to that envisaged by the Internal Rules.<sup>4</sup>
3. Mr KHIEU Samphan is hereby requesting an extension of the deadline for filing his list of documents and exhibits, pursuant to Internal Rule 39(4)(a).<sup>5</sup>
4. He submits that the deadline imposed infringes his most fundamental rights. He recalls that he is presumed innocent, that the burden of proof lies with the Prosecution and that the Court must guarantee him a fair and speedy trial.

### II - ARGUMENT

5. Much the same way as international humanitarian law and international criminal law, the law before the ECCC recognizes that every person charged with a criminal offense is presumed innocent until proven guilty according to law; this confirms further the general legal principle that it is for the prosecution to prove the guilt of the accused.
6. Mr KHIEU Samphan has already submitted that in order to conform to those basic principles, he ought to be allowed to disclose his evidence **after** the prosecution has disclosed theirs, in accordance with the procedure before international criminal tribunals and consistent

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<sup>1</sup> Order to File Material in Preparation for Trial, 17 January 2011, E9.

<sup>2</sup> *Ibid*, paras. 12-14.

<sup>3</sup> Application for Extension of Time to File Evidence, 8 February 2011, E9/6.

<sup>4</sup> Internal Memoranda by Susan Lamb, 3 and 14 February 2011, E35 and E9/6/1.

<sup>5</sup> “(...) the Chambers may, at the request of the concerned party or on their own motion, extend any time limits set by them”.

with the cardinal principles of civil law. For the sake of brevity and efficacy, he refers the Trial Chamber to his earlier and detailed legal submissions.<sup>6</sup>

7. As a consequence, requiring Mr KHIEU Samphan to file his documents and exhibits **at the same time** as the Co-Prosecutors and the Civil Parties makes no sense, and amounts to an egregious violation of basic principles and Mr KHIEU Samphan's rights.

8. Furthermore, Mr KHIEU Samphan again submits that he has not been afforded, in full equality, adequate time and facilities for the preparation of his defence. He refers to his earlier legal and factual submissions concerning the **lack of transparency** in the judicial investigation, the impossibility of conducting investigations, breach of equality of arms with the Co-Prosecutors, and the lack of notice of Prosecution evidence in order to be in a position to discuss it.<sup>7</sup>

9. It is **imperative** to be informed of the documents and exhibits that the Co-Prosecutors and Civil Parties intend to present for him to determine which documents and exhibits Mr KHIEU Samphan should rely on for his defence.

10. This is especially true considering that the Co-Investigating Judges' case file is colossal: 66,418 documents amounting to a total of 412,135 pages. Translation is **still pending** for a very large number of those documents (124,690 pages available in Khmer only, 65,775 pages in English only, 7,063 pages in French only, and 33,825 in only two of the three languages).<sup>8</sup>

11. Similarly, in order for Mr KHIEU Samphan to be in a position to file new documents, he must undertake extensive research outside the case file and the SMD; this involves a myriad of indicia and documents.

12. Mr KHIEU Samphan must analyse all the material, make a selection, summarize it and then establish links with the Closing Order.

13. If Mr KHIEU Samphan is afforded adequate time after notification of the Co-Prosecutors' and Civil Parties' lists, he would not only be able to focus his research, but

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<sup>6</sup> Application for Extension of Time, 8 February 2011, paras. 6-15.

<sup>7</sup> *Ibid.*, paras. 16-29.

<sup>8</sup> See Annex: Records and Archives Unit (RAU) table dated 9 March 2011.

he would also be able to select good, relevant material, instead of listing an excessively large number of documents in order to be on the safe side.<sup>9</sup>

14. Extending the deadline for filing his lists of documents and exhibits will not only safeguard Mr KHIEU Samphan's basic rights, but it will also ensure speedy and smooth proceedings, in the interests of the **Truth** and **Justice**.

**FOR THESE REASONS**

15. May it please the Trial Chamber:

- TO GRANT Mr KHIEU Samphan more time for filing his lists of documents and exhibits, at least 30 to 45 days after notification of the Co-Prosecutors' and Civil Parties' documents, depending upon the quantity of the documents and the Co-Prosecutors' and Civil Parties' pleading strategy.

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

	SA Sovan	Phnom Penh	[signed]
for	Jacques VERGÈS	Paris	[signed]
for	Philippe GRÉCIANO	Paris	[signed]
Date	Name	Place	Signature

<sup>9</sup> As indicated earlier, it is extremely difficult to modify the evidence list once it has been filed, before the initial hearing or during trial. See Application for Extension of Time dated 8 February 2011, paras. 30 and 31.