

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

FILING DETAILS

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

Party Filing: Mr KHIEU Samphân

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**KHIEU Samphân Defence Request to Reject the Civil Party "Submissions" (F50/1/1)
pursuant to the Practice Direction on the Filing of Documents**

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Before:

The Supreme Court Chamber
Judge KONG Srim
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele MWACHANDE-MUMBA
Judge MONG Monichariya
Judge Maureen HARDING CLARK
Judge YA Narin

The Co-Prosecutors
CHEA Leang
Brenda J. HOLLIS

All Civil Party Lawyers

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 20 August 2019, the Prosecution filed its appeal brief in Case 002/02.¹
2. On 23 September 2019, after having been granted an extension of time,² the KHIEU Samphân Defence (the “Defence”) filed its response to the brief.³
3. On 7 October 2019, the Civil Party Lead Co-Lawyers (the “Civil Parties”) filed “submissions” relating to the Defence’s response to the Prosecution’s appeal brief.⁴
4. These “submissions” respond to a response and are therefore in reality a reply.
5. According to the Practice Direction on the Filing of Documents before the ECCC (the “Practice Direction”), “[a] reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying.”⁵
6. In this case, not only was the reply filed 10 days after notification of the response but, above all, there is to be oral argument on the matter. The Supreme Court Chamber (the “Supreme Court”) made this clear on 23 August 2019 when it “notified the parties that replies to appeal submissions shall be heard on a date to be set and communicated in due course”.⁶
7. Accordingly, the Civil Parties were formally not allowed to file their “submissions” in reply to the Defence response to the Prosecution’s appeal brief.⁷

¹ Co-Prosecutors’ Appeal against the Case 002/02 Trial Judgement, 20 August 2019, **F50**, notified on 21 August 2019.

² Decision on Khieu Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, **F49** (“Decision **F49**”), paras 23-28 and 36.

³ KHIEU Samphân Defence Response to the Prosecution’s Appeal in Case 002/02, 23 September 2019, **F50/1**, notified on 23 August 2019.

⁴ Civil Party Lead Co-Lawyers’ Submissions relating to Khieu Samphân’s Response to the Co-Prosecutors’ Appeal, 7 October 2019, **F50/1/1** (“Submissions **F50/1/1**”), notified in English and Khmer on 8 October 2019 and in French on 10 October 2019.

⁵ Article 8.4 of the Practice Direction (emphasis added).

⁶ Decision **F49**, para. 36, last subparagraph.

⁷ The mobilization of the court’s resources was all the more unnecessary at this stage since the 9-page reply contains only one paragraph on the merits in which the Civil Parties refute a single Defence argument (Submissions **F50/1/1**, para. 12).

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8. The Civil Parties cannot meaningfully claim that a “similar step was recently taken by” the Defence and are seeking to “take an equivalent step”.⁸ Indeed, while the Defence itself also replied to a response to submissions from another party,⁹ it did so in accordance with the Practice Direction: there was to be no oral argument on the matter and the time limit was observed.¹⁰
9. **FOR THESE REASONS**, the Defence requests the Supreme Court to REJECT the Civil Party “submissions” in reply to its response to the Prosecution’s appeal brief pursuant to the Practice Direction on Filing Documents before the ECCC.

KONG Sam Onn	Phnom Penh	[signed]
Anta GUISSÉ	Paris	[signed]

⁸ Submissions F50/1/1, para. 10, referring to KHIEU Samphân’s Reply to the Prosecution on the Presumption of Innocence on Appeal (F46/2/4), 9 September 2019, F46/2/4/1, (“Reply F46/2/4/1”).

⁹ This is not expressly provided for but is not prohibited by the applicable texts either, as are the ancillary requests made by the Prosecution in some of its responses to requests. See for example: Co-Prosecutors’ Response to Defence Requests for Additional Time and Page Limits for Notice of Appeal, 11 April 2019, F41, paras 22-23; Co-Prosecutors’ Response to Khieu Samphan’s Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019, F45/2, paras 18 and 22; Co-Prosecutors’ Response to NUON Chea’s Request for Additional Time and Page Limits for his Appeal Brief, 1 August 2019, F47/1, paras 25-26.

¹⁰ Reply F46/2/4/1, footnote 5, where the Defence clarifies that the time limit for replying was 9 September 2019, 5 days following the notification of the response in English and Khmer on 2 September.

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