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<b>ឯកសារទទួល</b>	
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Phnom Penh, 4 February 2010	

D335/2

<b>ឯកសារបានច្បាប់តាមវិធីសាស្ត្រស្របច្បាប់</b>	
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To: Co-Investigating Judges  
**YOU Bunleng** and  
**Marcel LEMONDE**

Phnom Penh, Cambodia

*Investigation No.: 002/19-09-2007*

**Subject: Response to the Order Concerning Khieu Samphan's Request for Extension of Time Limit**

Your Honours,

On 21 January 2010, the Co-Lawyers for the Defence requested your Office to allow the 30-day time limit following the Notice of Conclusion of Judicial Investigation to start to run only upon receipt by Mr Khieu Samphan of all orders and filings by the parties in his two working languages.<sup>1</sup>

In its Order dated 3 February 2010, your Office considered that the request to postpone the deadline was in order, but that the 30-day period referred to should start to run upon receipt of the Co-Investigating Judges' orders only in the Khmer language.<sup>2</sup>

Your Office therefore implicitly recognises that preparation of requests for further investigative action is linked to the review of the content and to the orders of the Co-Investigating Judges (hence to the filings by the parties which led to such decisions) prior to the Notice of Conclusion of Judicial Investigation. Yet, notification of such materials is considered official (to use Judge LEMONDE's own words) only upon receipt thereof in the language elected by the Charged Person concerned for his/her defence, in addition to Khmer. Translation of such documents is mandatory (and in this instance determines the date upon which the 30-day time limit may be extended). This is a right afforded to

<sup>1</sup> Request to Postpone the 30-day Time Limit from the Receipt of the Notice of Conclusion of Judicial Investigation, 21 January 2010, D335.  
<sup>2</sup> Order Concerning Khieu Samphan's Request for Extension of Time Limit, 3 February 2010, D335/1.

the Charged Person, as articulated by the Pre-Trial Chamber, and we will quote from the decision of 20 February 2009, paragraphs 37 to 39:<sup>3</sup>

37. The Translation Order provides that the Charged Person is entitled to receive translation into French of the following documents:

- any Indictment of the Co-Investigating Judges;
- the elements of proof on which any such Indictment would rely;
- the Introductory Submission and any Final Submissions by the Co-Prosecutors;
- the footnotes and indexes of factual elements on which those Submissions rely (concretely, D3 and D3/I-V);
- all judicial decisions and orders; and
- all filings by the Parties before the ECCC, as provided by Article 7.1 of the Practice Direction on Filing Documents before the ECCC.<sup>22</sup>

38. Pursuant to the Translation Order, these documents shall also be transmitted in Khmer, the Charged Person's mother tongue.

39. The Co-Investigating Judges specify that this order is designed to determine the rights and obligations of the Parties during the investigation and that "it is for the Trial Chamber, once seized of the case file, to manage the translation requirements of any trial, as the interests of the proper administration of justice and of the right to a fair trial dictate."<sup>23</sup>

The order of 3 February 2010 is therefore in flagrant contradiction with the applicable law, blatantly violates Mr Khieu Samphan's rights and places him in a situation of absolute inequality vis-à-vis the Office of the Co-Prosecutors.

Your Honours, we hereby invite you to measure the full extent of the impact of such a decision having regard to procedural fairness and to reconsider your conclusions as soon as possible.

Accept, Your Honours, the assurances of our highest consideration.

For the Co-Lawyers for the Defence,

[signed]  
SA Sovan

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<sup>3</sup> *Decision on Khieu Samphan's Appeal Against the Order on Translation Rights and Obligations of the Parties*, 20 February 2009, A190/I/20.