

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

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**Response from KHIEU Samphân's Defence to the
Civil Parties' Request Regarding the Table of Authorities**

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MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 26 May 2020, the Civil Party Lead Co-Lawyers (“Civil Parties”) filed a motion entitled “Requests Concerning KHIEU Samphân’s Non-Compliance with Article 6 of the Practice Direction on the Filing of Documents before the ECCC” (“Requests”).¹ On 1 June 2020, the Prosecution supported this motion, without adding anything.²
2. The Civil Parties invoke a breach of the rules by KHIEU Samphân’s Defence (“Defence”) in order to request that the Supreme Court Chamber (“Supreme Court”):
 - (1) Direct the Defence to re-file a complete Table of Authorities for its appeal brief, together with all the required attachments pursuant to Article 6 of the Practice Direction at the earliest opportunity or within a timeframe set by the Judges,
 - (2) Grant the Civil Party Co-Lawyers 28 days to file their Table of Authorities following the filing of their response to the appeal brief.³
3. The Defence hereby opposes these unfounded requests.

I. REQUEST TO JOIN THE DEFENCE IN FILING A NEW TABLE OF AUTHORITIES WITH ALL THE REQUIRED ANNEXES

4. After recalling the texts applicable to documents and tables of sources,⁴ the Civil Parties highlight the importance of a complete Table of Authorities with accompanying attachments, particularly in the case of very sizeable filings citing many non-ECCC sources.⁵ They identify certain shortcomings in the Table of Authorities of the Defence’s appeal brief: some of the authorities used in the brief do not appear in it; among those included, there is often no mention of whether or not they have been filed under the case, and whether they are provided in the attachment if that

¹ Requests concerning KHIEU Samphân’s non-compliance with Article 6 of the practice Direction on the filing of documents with the ECCC, 26 May 2020, **F56** (“Requests”). This request was notified in English and in Khmer on 27 May 2020, bringing the deadline for response to 8 June 2020. The request was notified in French on 29 May 2020.

² *Co-Prosecutors’ Response to the Civil Party Lead Co-Lawyers’ Requests Concerning KHIEU Samphân’s Non-Compliance with Article 6 of the Practice Direction on the Filing of Documents*, 1 June 2020, **F56/1**.

³ Requests, para. 9. See also para. 2.

⁴ Requests, paras. 3 and 4, *citing* Internal Rules 39-6 and 108-6, as well as Article 6 of the Practice Direction, more specifically paras 6.1, 6.3 and 6.4.

⁵ Requests, para. 5.

is not the case. They complain about having the “onerous” task of having to find these authorities, either in the case file or by some other means.⁶

5. According to the Civil Parties, whether the Defence acted in bad faith or not, “non-compliance with Article 6 of the Practice Direction has an impact the parties’ ability to comply with the existing timelines for responses.” For this reason, they are requesting that the Supreme Court direct the Defence to re-file “an accurate and complete Table of Authorities together with all required attachments and annexes not included in the ECCC Law Compendium or in the Case File” “at the earliest opportunity”.⁷
6. The Defence readily recognizes that it is quite possible that the Table of Authorities for its appeal brief may not be perfect, like the form of the brief itself which the Defence is in the process of correcting.⁸ Even before the Civil Parties’ request, the Defence had noted that it had not appended a table listing the decisions of the Trial Chamber that it had referenced. It had therefore planned to prepare a corrected version of its Table of Authorities once the corrected version of the brief was filed.
7. On the other hand, although the Defence may have made mistakes (which it intends to correct), it can in no way be criticized for having failed to respect the applicable rules. Indeed, the Civil Parties (and the Prosecution) have clearly forgotten the existence of an amendment to Article 6 of the Practice Direction of the Chamber and the Supreme Court Chamber. Since 2011, the parties in Case 002 are no longer required to append the documents cited in the Table of Authorities when they are already in the public domain and easily accessible:

“The Supreme Court Chamber informs the parties in Case 002 that, like the Trial Chamber, **it exempts them from the need to file copies of authorities such as *ad hoc* Tribunal jurisprudence and well-known international instruments, that are already in the public domain and easily accessible by the Chamber and all parties.** Authorities that are not easily accessible must still be filed with the Table of Authorities in accordance with

⁶ Requests, para. 6.

⁷ Requests, para. 7.

⁸ The Defence did its best and made incredible efforts to be able to file its appeal brief within the allotted timeframe with the resources at its disposal, resources that were far inferior to what it had requested from the Supreme Court and the Defence Support Section. Unfortunately, it was unable to review its work as it would have liked to.

the Practice Direction on Filing. All authorities must be listed in the Table of Authorities for ease of reference.” (*emphasis added*).⁹

8. In accordance with these decisions by the Judges,¹⁰ since 2011, the Defence only includes in its submissions authorities which are not readily available to the chambers and the parties. Something it did not fail to do when filing its appeal brief.¹¹ Until now, this has never been a problem for anyone, not even in the case of substantial briefs.
9. In view of the foregoing, the Civil Parties’ request to order the Defence to file an “accurate and complete Table of Authorities” is moot, since the Defence will file a correction of it as soon as it can, in which it will rectify anything needing rectification. It will do so “at the earliest opportunity”, with the understanding that its resources were drastically reduced by the Defence Support Section the day after the appeal was filed.¹² In any event, it is important to underline that all the authorities are precisely referenced in the brief, in conjunction with the arguments they support, and this should therefore in no way prevent the Civil Parties from working on the preparation of their response.
10. With respect to the request to order the Defence to “re-file an accurate and complete Table of Authorities, together with all attachments not found in the ECCC legal compendium or Case File,” it is unfounded in light of the Supreme Court Chamber’s decision to amend Article 6 of the Practice Direction by exempting the parties from doing so.
11. Thus, the first part of the Civil Parties’ requests must be rejected. The second must also be rejected.

⁹ Memorandum of the Supreme Court Chamber entitled “Amendment of requirement to file copies of authorities”, 28 October 2011, **E116/1/3**. See also the memorandum of the Trial Chamber entitled “Amendment of the requirement to attach materials listed in the Table of Authorities which are already in the public domain and readily accessible to all parties”, 5 April, 2011, **E72**.

¹⁰ Requests, para. 3, *quoting* Internal Rule 39-6: “Documents [...] filed before the ECCC shall be submitted to the Greffier [...] in accordance with the applicable laws, these IRs, the applicable Practice Directions and, **where appropriate, any decision by the judges.**” (*emphasis added*)

¹¹ Annexes **F54.1.11** to **F54.1.51** (if the Defence has forgotten to attach an authority that is not readily available, it will do so when it files the corrected version of the table of authorities). Furthermore, with regard to the authorities in the public domain and easily accessible to the judges and parties, the Defence has often indicated where they could be found (website, ECCC library, etc.).

¹² The Head of the Defence Support Section felt that once the appeal brief was filed, the Counsels would no longer need to work more than part-time (50%) and would not need more than 2 people to assist them.

II. REQUEST TO EXTEND THE TIME LIMIT TO FILE THE CIVIL PARTY TABLE OF AUTHORITIES

12. The Civil Parties maintain that they need an extension of the time limit of no less than 128 days to file the Table of Authorities and the annexes of their future appeal brief “to compensate for the time lost and benefit from the same advantage granted to the Defence”.¹³
13. No advantage was granted to the Defence. The Judges’ exemption from attaching all the authorities applies to all the parties in Case 002. The Civil Parties therefore do not need additional time to do so.
14. Moreover, there is no “lost time” to “compensate”. If the Judges decided to amend Article 6 of the Practice Direction, it is because they felt that the parties and themselves would not suffer any prejudice by looking for authorities in the public domain and readily accessible. This is a common practice in other courts, whether in response to other parties or in the event of an appeal of decisions (including lengthy judgments). Furthermore, neither the Civil Parties nor the Prosecution have ever complained of having to do this work, including following the Defence appeal brief in 002/01 or even its final brief in 002/02, filed in accordance with the Judges’ exemption, even though they had proportionally less time to respond to it than to the 002/02 appeal brief.
15. In addition, the Defence finds it very difficult to see the impact alleged by the Civil Parties on their ability to respond within the time limits set for them, given that these time limit have not even started yet.¹⁴
16. Finally, it should be noted that the Civil Parties are far from being disadvantaged, and benefit from having time and plenty of resources for their response. They have had the opportunity to become acquainted with the reasons for the judgment since 28 March 2019,¹⁵ and then with the

¹³ Requests, para. 8.

¹⁴ Article 8.5 of the Practice Direction on the filing of documents provides that time limits commence at the time of the notification of the document in Khmer and one other official language of the ECCC. The notification of the Khmer translation of the Defence’s appeal brief has not yet taken place.

¹⁵ Case 002/02 Judgement, 16 November 2018, **E465**. Document notified on 28 March 2019.

Defence's Notice of Appeal since 1 July 2019.¹⁶ They were notified of the Defence's appeal brief in French on 28 February 2020.¹⁷ Barely an hour later, in order to facilitate their work, the Defence sent them (and the Prosecution) the Word version of their brief.¹⁸ About two months later,¹⁹ they benefited from the English translation of the brief, even before it was translated into Khmer (starting point for response times), which is quite exceptional. They were allowed to file their response (relating to grounds directly affecting Civil Parties' rights and interests) initially in one language only, within 40 days of the notification in Khmer of Prosecution's response.²⁰ This response must be filed in one language within 120 days of the notification in Khmer of the Defence's appeal brief (which has still not taken place).²¹ Thus, depending on the translation deadlines, the Civil Parties will not have to file their response before the end of 2020/beginning of 2021, at the earliest.

17. Consequently, the Civil Parties have ample time to “compensate” for the time spent searching for the authorities belonging to the public domain and easily accessible, in addition to being exempt from attaching their own authorities. Their request for an extension of the time limit is unjustified.
18. In conclusion, all the Civil Parties' requests, supported by the Prosecution, are unfounded and must be dismissed.
19. **FOR THESE REASONS**, the Defence respectfully requests that the Supreme Court DISMISS the Requests.

¹⁶ KHIEU Samphân's Notice of Appeal (002/02), 1 July 2019, **E465/4/1**. Notified in French and in Khmer on the same day, and in English on 18 July 2019.

¹⁷ KHIEU Samphân's Notice of Appeal (002/02), 27 February 2020, **F54**. Notification the next day at 10:54 in French and on 11 May 2020 in English.

¹⁸ E-mail of 28 February 2020 at 11:53 from the Defence to the Prosecution and to the Civil Parties.

¹⁹ See *supra*, footnote on page 18.

²⁰ *Decision on Requests Concerning the Civil Party Lead Co-Lawyers Response to KHIEU Samphân Appeal*, 6 December 2019, **F52/1**, paras. 12-13, 30.

²¹ Decision on KHIEU Samphân's request for extensions of time and page limits for filing his appeal brief, 23 August 2019, **F49**, para. 36. The Supreme Court Chamber also granted the Prosecution an extension of 145 pages for its response, which will lengthen the time limit for the translation into Khmer and therefore postpone the starting point for the time limit for the Civil Parties' response: Decision on Co-Prosecutor's Request for additional pages to Respond to KHIEU Samphân's Appeal Brief of the Case 002/02 Judgement, 24 April 2020, **F55/3**, para. 26.

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