

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

FILING DETAILS

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**REQUESTS CONCERNING KHIEU SAMPHÂN'S NON-COMPLIANCE WITH
ARTICLE 6 OF THE PRACTICE DIRECTION ON THE FILING OF DOCUMENTS**

Filed by:

Lead Co-Lawyers for Civil Parties

PICH Ang
Megan HIRST

Co-Lawyers for Civil Parties

CHET Vanly
HONG Kim Suon
KIM Mengkhy
LOR Chunthy
MOCH Sovannary
SIN Soworn
SAM Sokong
VEN Pov

Before:

Supreme Court Chamber

Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele MWACHANDE-
MUMBA
Judge MONG Monichariya
Judge Maureen HARDING CLARK
Judge YA Narin

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Daniel LOSQ
Christine MARTINEAU
Lyma NGUYEN
Nushin SARKARATI
Mahesh RAI

CHEA Leang
Brenda J. HOLLIS

The Accused:

KHIEU Samphân

Co-Lawyers for the Defence:

KONG Sam Onn
Anta GUISSÉ

I. INTRODUCTION

1. On 16 November 2018, the Trial Chamber issued the summary of its verdict in Case 002/02 during a public hearing.¹ On 28 March 2019, the full reasoned judgment was notified to the Parties in Khmer, English, and French.² On 1 July 2019, the KHIEU Samphân defence team (“the Defence”) filed its notice of appeal against the Trial Chamber’s judgment.³ Following requested extensions of page and time limits,⁴ the Supreme Court Chamber (“the Chamber”) directed KHIEU Samphân to file his appeal brief on or by 27 February 2020 in English or French (with a Khmer translation to follow at the soonest possibility) and that the brief must not exceed 750 pages.⁵ The Defence duly filed its appeal brief (“the Appeal Brief”).⁶
2. The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) hereby request that the Chamber direct the Defence to (i) re-file a complete list of authorities for the Appeal Brief and (ii) file all required attachments pursuant to Articles 6.1, 6.3, and 6.4 of the Practice Direction on the Filing of Documents before the ECCC (“Practice Direction”).⁷

II. APPLICABLE LAW

3. Internal Rule 39(6) provides that “[d]ocuments filed before the ECCC, such as complaints, requests and pleadings, shall be submitted to the Greffier of the Office of the Co-Prosecutors, the Office of the Co-Investigating Judges or the Chambers, as the case may be, in accordance with the applicable laws, these IRs, the applicable Practice Directions and, where appropriate, any decision by the judges.” Internal Rule 108(6) provides that during appeal procedures, the parties “may submit any pleadings for the appeal to the Greffier of the Chamber as provided in the Practice Direction on filing of documents.”

¹ See **E1/529.1** Transcript of Hearing on the Substance in Case 002/02, 16 November 2018.

² **E465** Case 002/02 Judgement, 16 November 2018 (full reasoned decision notified 28 March 2019).

³ **E465/4/1** KHIEU Samphân’s Notice of Appeal (002/02), 1 July 2019 (identifying 1,824 errors and 355 Trial Chamber decisions).

⁴ **F45** KHIEU Samphân’s Request for an Extension of Time and Page Limits for Filing his Appeal Brief, 10 July 2019.

⁵ **F49** Decision on KHIEU Samphân’s Request for Extensions of Time and Page Limits for Filing his Appeal Brief, 23 August 2019, para. 36.

⁶ **F54** Memoire d’appel de KHIEU Samphân (002/02), 27 February 2020 (“Appeal Brief”) (notified on 28 February 2020).

⁷ Practice Direction on Filing of Documents before the ECCC (Revision 8).

4. Pursuant to Article 6 of the Practice Direction,

6.1 Documents shall be filed with a list of the authorities referred to therein. Such list shall include the name, date and full citation for each authority, **specifying which provisions, paragraphs or pages are relied upon**, together with any explanatory note required under this paragraph. Where an authority exceeds 10 pages in English or French or 20 pages in Khmer, **a copy of the first page of the authority and the relevant section of the text shall be filed along with a note in the List of Authorities specifying that the authority exceeds 10 in English or French or 20 pages in Khmer, as appropriate.** (*emphasis added*)

[...]

6.3 Documents shall be filed with copies of all authorities listed therein, with the exception of those documents listed in ECCC Law Compendium hosted in the ECCC's official website. (*emphasis added*)

6.4 Where an authority has previously been filed in the same case or proceeding it shall not be re-filed, but the person filing the later document shall indicate in the list of authorities the title, the court record document number and the ERN number of the document with which the authority was previously filed. (*emphasis added*)

III. SUBMISSIONS

5. The Lead Co-Lawyers recognise that the task of compiling an accurate table of authorities and providing the listed authorities as required by the Practice Direction is onerous and time-consuming. They also recognise that on this point the Practice Direction has not always been perfectly complied with. Despite this, breaches of the requirement have in general been minor and have not caused prejudice. However, an accurate table of authorities and the accompanying attachments attain particular importance where very sizeable filings are made which extensively cite to non-ECCC sources. In these circumstances, compliance with the Practice Direction is essential to enable the other parties to prepare their responses, and thereby enable the fair and expeditious conduct of proceedings.

6. The Lead Co-Lawyers' review to date⁸ has revealed that a number of the authorities referred to in the Appeal Brief are not included in the Table of Authorities.⁹ Additionally, a significant number of those authorities which are listed in the Table of Authorities have not been properly identified if they appear on the Case File,¹⁰ or provided as attachments if they do not.¹¹ This effectively shifts the time-consuming burden of finding these sources – either on the Case File or by other means – from the filing party to the responding parties.

⁸ The authorities cited in the following footnotes of this document are examples only. They are based on the Lead Co-Lawyers' efforts thus far to identify and locate sources from the Appeal Brief. Providing a comprehensive list of these authorities would require a disproportionate use of the Lead Co-Lawyers' limited resources.

⁹ See, for example, the following sources referred to in footnotes in **F54** Appeal Brief: footnote 308, "Opinion de la Minorité présentée par la juge Christine Van den Wyngaert, ICC-01/04-01/07-3436-AnxI, 07.03.2014, §172"; footnote 460, "Répertoire de droit pénal et de procédure pénale, Dalloz, Art. 3 - Méconnaissance du principe du contradictoire §278-279"; footnote 2081, "TMI pour l'Extrême-Orient, proclamation spéciale du Commandant suprême des Forces alliées en Extrême-Orient à Tokyo, 19.01.1946 (amendée le 26.04.1946)"; footnote 2115, "Code pénal français du 05.08.2013, article 222-14-4. (Accessible sur le site légifrance)". The Lead Co-Lawyers also note that various primary source legislation has not been included in the Table of Authorities or provided as an attachment, with only a secondary source citing to the legislation included. See, for example, footnote 2110, "Code pénal allemand, loi du 19.02.2005, section 240 (4).) (Source : Sahra MEKBOUL, Le Mariage forcé : réponses du droit et enjeux juridiques, Centre d'information et d'études sur les migrations internationales, 2008/5, n°119)." Germany is discussed in this source but the Penal Code is not specifically cited and the provision is not quoted. See also, footnote 2112, "Code pénal belge, 1ère loi en 2005 puis seconde loi le 02.06.2013, article 391 sexis. (Source : Sahra MEKBOUL, Le Mariage forcé : réponses du droit et enjeux juridiques, Centre d'information et d'études sur les migrations internationales, 2008/5, n°119)." Belgium is mentioned in this source but the provision is not cited or quoted. The footnote also cites amendments from 2013, several years after the publication of Mekboul's article. See also, footnote 2113, "Code pénal béninois, loi du 09.01.2012. (Source : Sahra MEKBOUL, Le Mariage forcé : réponses du droit et enjeux juridiques, Centre d'information et d'études sur les migrations internationales, 2008/5, n°119)." Benin is not mentioned in this article, which is about French and European legislation. The Beninese legislation cited was passed several years after the publication date of the article.

¹⁰ See, for example, **F54.1** Memoire d'appel de KHIEU Samphân (002/02), Table des Sources, 27 February 2020 ("Table of Authorities") at ERN 01638772, "Jugement Akayesu, Le Procureur c. Akayesu, Jugement, 2 septembre 1998". Several extracts from the Akayesu judgement appear on the Case File, however, as pinpoint citations were not provided in the Table of Authorities, it is not possible to determine whether the relevant extracts are available without taking the added step of finding the references to the Akayesu judgment in the Appeal Brief. See also, ERN 01638781, "United States of America v. Karl BRANDT et al., American Military Court for the Trial of War Criminals, Nuremberg, 20 aout 1947, UNWCC, vol. II". Sections of this case appear on the Case File but it is unclear from the Table of Authorities if they are the relevant selections as reference to the case is not immediately apparent in the Appeal Brief. See also, ERN 01638780, "Cour de Cassation, Chambre criminelle, 17 juin 2003, Bull. Crim. 2003 n°122 (affaire Aoussas)". It is not indicated in the Table of Authorities that the source appears on the Case File at E46.1.14.


¹¹ See, for example, **F54.1** Table of Authorities, at ERN 01638758, "Règles concernant le contrôle de la radiotélégraphie en temps de guerre et la guerre aérienne fixées par une Commission de Juristes à La Haye, décembre 1922 - février 1923". See also, ERN 01638772, "Avis, Namibie, Rec. 1971, 21 juin 1971, 2106.1971, §69"; ERN 01638779, "Affaire X. c. Belgique (Commission EDH), Requête n° 7628/76, Décision sur la recevabilité de la requête, 9 mai 1977". See also, ERN 01638780, "Simunek et consorts c. République tchèque, constatations dur du 19 juillet 1995, Communication n° 516/1992, CCPR/C/54/D/516/1992". See also, ERN 01638780, "Cour de Cassation, Chambre criminelle, 08 novembre 1934, Bull. Crim. n°179"; "Cour de Cassation, Chambre criminelle, Bull. Crim n° 28, 14 janvier 1951"; and "Cour de Cassation, Chambre criminelle, 26 mars 1957, Bull. Crim no 285". See also, ERN 01638782, "Lettre à la rédaction du Phnom Penh Post : << Objectors Requests Concerning Article 6 of the Practice Direction on the Filing of Documents

7. The Lead Co-Lawyers in no way suggest bad faith on the part of the Defence. However, regardless of intention, non-compliance with Article 6 of the Practice Direction has an impact on the parties' ability to comply with the existing timelines for responses. The Lead Co-Lawyers therefore respectfully request the Chamber to direct 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 at the earliest opportunity.
8. Further, in order to compensate for time lost and benefit from the same advantage obtained by the Defence, the Lead Co-Lawyers request to file their own table of authorities, and copies of authorities listed therein, within 28 days following the filing of their Response Brief.

IV. REQUEST

9. The Lead Co-Lawyers respectfully request the Supreme Court Chamber to:
 - (1) **DIRECT** the Defence to re-file their Table of Authorities together with all required attachments at the earliest opportunity or within a time frame set by the Chamber;
 - (2) **GRANT** the Lead Co-Lawyers' request to file their Table of Authorities 28 days following the filing of their Response Brief.

Respectfully submitted,

Date	Name	Place	Signature
26 May 2020	PICH ANG Lead Co-Lawyer	Phnom Penh	
	Megan HIRST Lead Co-Lawyer	London	

to [Y]uon have been hypnotised by foreign 'Expert' >>, BORA Touch, 4 février 2010". See also, ERN 01638784, "Livre de Iris HAENEN, Force & Marriage: The criminalization of forced marriage in Dutch, English and international criminal law, Intersentia, 2014 (Disponible a la bibliothèque des C.E.T.C)" While the book is available at the ECCC library, this does not relieve the Defence of placing the relevant pages on the Case File as attachments.