



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber  
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

**Before:** 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

**Date:** 15 November 2019  
**Language(s):** Khmer/English  
**Classification:** PUBLIC



**DECISION ON THE CO-PROSECUTORS AND CIVIL PARTY URGENT REQUESTS  
FOR EXTENSION OF TIME TO RESPOND TO KHIEU SAMPHÂN'S  
DISQUALIFICATION REQUEST**

**Co-Prosecutors**  
CHEA Leang  
Brenda HOLLIS

**Accused**  
KHIEU Samphân

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Megan HIRST

**Co-Lawyers for KHIEU Samphân**  
KONG Sam Onn  
Anta GUISSÉ

**THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “Chamber” and “ECCC”, respectively) is seized of both urgent requests from the Co-Prosecutors<sup>1</sup> and from the Civil Party Lead Co-Lawyers<sup>2</sup> for extension of time to respond to KHIEU Samphân’s Disqualification Request (together the “Extension Requests”).

## I. BACKGROUND

1. On 31 October 2019, KHIEU Samphân filed an application for disqualification of the six appeal judges of the Supreme Court Chamber who adjudicated in Case 002/01 (“Disqualification Application”).<sup>3</sup>
2. On 4 November 2019, the Co-Prosecutors filed an urgent request seeking permission to respond to the Disqualification Application in both English and Khmer by Monday 25 November 2019 (Co-Prosecutors Request).<sup>4</sup>
3. On 7 November 2019, the Civil Party Lead Co-Lawyers similarly filed an urgent request seeking extension of time to respond to the Disqualification Application in two languages until Monday 25 November 2019 (“Civil Party Request”).<sup>5</sup>

## II. APPLICABLE LAW

4. The Internal Rules (“IRs”) provide that “all time limits set out in the applicable laws and these IRs, the applicable Practice Directions and, where appropriate, by decision of the judges, must be respected [...] failure to do so shall lead to the invalidity of the action in question”.<sup>6</sup> It further provide that the Chamber may, at the request of the

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<sup>1</sup> Co-Prosecutors’ Urgent Request for an Extension of Time to Respond to KHIEU Samphân’s Recusal Request, 4 November 2019, F53/1, (“Co-Prosecutors Request”).

<sup>2</sup> Civil Party Lead Co-Lawyers’ Urgent Request for Extension of Time to Respond to F53, 7 November 2019, F53/2, (“Civil Party Request”).

<sup>3</sup> KHIEU Samphân’s Application for Disqualification of the Six Appeal Judges who adjudicated in Case 002/01, 31 October 2019, F53, (“Disqualification Application”).

<sup>4</sup> Co-Prosecutors Request, para. 1.

<sup>5</sup> Civil Party Request, para. 4(1).

<sup>6</sup> Internal Rules, Rule 39(1).

concerned party, “a) extend any time limits set by them; or b) recognise the validity of any action executed after the expiration of a time limit prescribed in the se IRs on such terms, if any, as they see fit”.<sup>7</sup>

5. The Practice Direction on Filing of Documents before the ECCC (“Practice Direction”) provides that “unless otherwise provided in the Internal Rules or this Practice Direction or ordered by a Chamber of the ECCC, pleadings and applications shall be filed with the greffier of the Chamber hearing the case together with the relevant authorities in accordance with the following timetable, subject to the right in Rule 39 of the Internal Rules to request an extension of time limits”.<sup>8</sup> It specifies that “[a]ny response to an application or pleadings shall be filed together with any list of authorities within 10 calendar days of notification of the document to which the participant is responding”.<sup>9</sup>

### III. SUBMISSIONS

6. In the Extension Requests, both the Co-Prosecutors and the Civil Party Lead Co-Lawyer seek permission from the Chamber to file their responses to the Disqualification Application in two languages by Monday 25 November 2019.<sup>10</sup>
7. The Co-Prosecutors submit that exceptional circumstances warrant such time extension because the Disqualification Application:
  - a. includes 200 pages of comparative tables in 16 annexes and further incorporates by reference 173 paragraphs of argument from KHIEU Samphân’s Case 002/2 Final Brief (“Defence Final Brief”), which effectively extend the length of the Disqualification Application considerably and, subsequently, the time required to submit a fully informed response; (“Reason A”)<sup>11</sup>
  - b. raises several complex legal issues concerning “the ECCC’s Internal Rules and their interpretation, as well as the jurisprudence of the ECCC, the international tribunals (or residual mechanisms) and the European Court of Human Rights”,<sup>12</sup>

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<sup>7</sup> Internal Rule 39(4).

<sup>8</sup> Practice Direction, art. 8.1.

<sup>9</sup> Practice Direction, art. 8.3.

<sup>10</sup> Co-Prosecutors Request, para. 7; Civil Party Request, paras 3-4.

<sup>11</sup> Co-Prosecutors Request, para. 4.

<sup>12</sup> Co-Prosecutors Request, para. 4.

- c. raises issues of critical importance to the future conduct of Case 002 and that the interests of justice command to enable a meaningful opportunity of review and a comprehensive response.<sup>13</sup>
8. Finally, the Co-Prosecutors anticipate that their response will likely be approximately 30 pages in English, and that this will impact upon the period necessary to prepare the document in two languages, especially in light of the Water Festival official holidays falling within the time period allocated to the Co-Prosecutors to respond.<sup>14</sup>
9. The Civil Party Lead Co-Lawyers submit that the Water Festival official holidays will delay translation services as well as consultations with Civil Party Lawyers. They add that filing their response by 25 November 2019 would not cause prejudice or delay since the Co-Prosecutors requested to file the same day.<sup>15</sup>

#### IV. DISCUSSION

10. The Supreme Court Chamber accepts that the Water Festival official holidays in effect involved more than two working days and therefore reduced the time period allocated to the Co-Prosecutors and the Civil Party Lead Co-Lawyers to respond to the Disqualification Application, both for the parties themselves and for the translation services.
11. The Supreme Court Chamber also accepts the Co-Prosecutors' other reasons to justify the need for extension of time. The Chamber therefore grants the Co-Prosecutors Request.
12. The Chamber observes that even though the Civil Party Request does not articulate Reason A, the lengthy annexes and references to the Defence Final Brief equally impacts the Civil Party Lead Co-Lawyers in the preparation of their response. The Chamber further observes that given that it grants the Co-Prosecutors Request, no prejudice or delay will result from granting the Civil Party Request. The Chamber therefore also grants the Civil Party Request.

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<sup>13</sup> Co-Prosecutors Request, para. 5.

<sup>14</sup> Co-Prosecutors Request, para. 6.

<sup>15</sup> Civil Party Request, para. 3.

13. The responses of both the Co-Prosecutors and the Civil Party Lead Co-Lawyers to the Disqualification Application must be filed by Monday 25 November 2019 in both Khmer and English.

#### V. DISPOSITION

**FOR THE ABOVE REASONS, THE SUPREME COURT CHAMBER:**

- **DECLARES** the Extension Requests admissible;
- **GRANTS** the Extension Requests.

**Phnom Penh, 15 November 2019**

**President of the Supreme Court Chamber**



**KONG Srim**