



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Bureau des Co-juges d'instruction
Office of the Co-Investigating Judges

សំណុំរឿងព្រហ្មទណ្ឌ
Dossier pénal/Criminal Case File
លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Investigation/Investigation
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ជាតិ សាសនា ព្រះមហាក្សត្រ

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Ordonnance sur demande de désignation d'interprète par l'avocat des parties civiles

Order on Civil Party Lawyer's Request for Designation of Interpreter

ឯកសារបានចម្លងតាមច្បាប់
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មន្ត្រីបទព្រហ្មទណ្ឌ/Case File Officer/L'agent chargé du dossier: C.A. Juy

We, **You Bunleng ឬ ប៊ុនហ្វេង** and **Marcel Lemonde**, the Co-Investigating Judge of the Extraordinary Chambers in the Courts of Cambodia ("ECCC"),

Noting the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 ("ECCC Law"),

Noting Rules 11, 21, 23(7) and 30 of the ECCC Internal Rule ("Internal Rules"),

Noting the investigation against **NUON Chea (នួន ជា) and others**, Charged with **Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 5, 6, 29 (new) and 39 (new) of the ECCC Law,

Noting the Request, dated 22 October, for appointment of an interpreter on evenings and weekends, (A227 – "Request");

PROCEDURE

1. In the Request dated 22 October 2008, Ms Silke STUDZINSKI, Lawyer for some civil parties before the ECCC, requested “*the right to an interpreter in addition to what is already provided on working days, in particular on weekends and on holidays – free of charge – whose services can be used for those communication between the Civil Parties and their international lawyers as well for the working sessions of the Co-Lawyers.*”
2. This Request was submitted after the Pre-Trial Chamber had dismissed a similar request, on 19 June 2008, because of failure to have the matter addressed through the ECCC’s Office of Administration.¹
3. On 22 July 2008, the Court Management Section (CMS) advised Ms Studzinski that translation and interpretation could be provided on working days only (see attachment A227).
4. In a letter dated 26 November 2008, the Co-Investigating Judges asked CMS whether it would be possible to provide the Civil Parties with interpretation on week-ends (A227/2).
5. In a Memorandum dated 1 December 2008 (A227/3), CMS indicated that it was unable to provide interpretation on week-ends without jeopardizing the ability of its staff to provide such services on working days.

APPLICABLE LAW

6. Internal Rule 23(7) provides: “*Any Victim participating in proceedings before the ECCC as a Civil Party has the right to be represented by a national lawyer, or a foreign lawyer in collaboration with a national lawyer (...), it being understood that “a foreign lawyer listed with the Victims Unit shall work in conjunction with a national lawyer before the ECCC.”*”
7. Rule 11(4)(c) provides that, among other criteria, the lawyers must “(v) *Be fluent in Khmer, French or English.*”
8. Lastly, Rule 30 provides: “*In case of need, the Co-Prosecutors, Co-Investigating Judges and Chambers shall use interpreters. Any witness or party may also request the use of an interpreter where needed. (...)*”.
9. In addition to the foregoing considerations, the Co-Investigating Judges must also be mindful in determining the parties’ rights and obligations of ensuring efficient use of ECCC’s judicial resources, in particular with respect to translation and interpretation.²

¹ C22/I/40, **Decision on Civil Party Co-Lawyer’s Request for Translation Services**, 19 June 2008, ERN 0016923-00196930.

² A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008, 00196923-00196930, p. 3, and footnote 12.

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SUBMISSIONS OF Ms STUDZINSKI IN SUPPORT OF HER REQUEST

10. Ms Studzinski submits that within the ECCC, Civil Parties have the same rights as the other parties to choose a foreign lawyer in conjunction with their Cambodian lawyer; that professional interpretation is essential to enable the international Co-Lawyer to provide appropriate representation; that international co-lawyers are not required to speak Khmer; that “working together with” the Cambodian co-lawyers, obtaining background information from the Civil Parties and advising them requires the attendance of an interpreter; that the Cambodian co-lawyers cannot perform the task of representing their clients and at the same time provide interpretation; lastly, that it is better to arrange meetings on weekends owing to the specific circumstances of the Civil Parties – who suffer financially as a result of loss of income when they meet on weekdays – and their Cambodian co-lawyers – who provide services outside their normal working hours.

REASONS FOR THE DECISION

11. The Internal Rules provide that the accused and the Civil Parties are entitled to the assistance of an international lawyer working “in collaboration with a national lawyer”³ and that they may also request the use of interpreter “where needed”.

12. The jurisprudence of the ECHR clearly indicates that the right to free interpretation services is germane to that of a fair trial (Art.6)⁴ and that “the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective”.⁵ Now, there is no question that this right applies to all parties in the case, including Civil Parties.⁶

13. Further, the parties are expected to make optimal use of the services available; they may request interpretation outside working hours only when needed. Also, they “must contribute to the resolution of their own language needs, by using the linguistic capacity within their teams (...) and by usefully cooperating with the translation process”.⁷

14. In the instant case, the fact that within the ECCC, Civil Parties are not entitled to legal aid means that Civil Parties lawyers often volunteer their services or do so in addition

³ Sub-Rules 22(1) and 23(7).

⁴ ECHR, *Kamasinski v. Austria*, Judgement of 19 December 1989, para. 74; see also *Cadore and Le Bihan v. France*, Com. 221/1987; ECHR, *Guesdon v. France*, 219/1986; see also, General Comments 13 of 12 April 1984 on Article 14 ICCPR, UN Doc. HRI/GEN/1/Rev.1, para. 1.

⁵ See for example. ECHR, *Airey*, 9 October 1979, para. 24; ECHRT, *Bianchi v. Switzerland*, 22 June 2006, para. 84.

⁶ International Covenant on Civil and Political Rights, Art. 14 (1), and General Comment 13 of 12 April 1984 on Article 14 ICCPR, UN Doc HRI/GEN/1/Rev.1, para. 2; ECHR, Art. 6(1).

⁷ A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008, 00196923-00196930, p. 3.

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to a main legal activity. Also, it bears recalling that the Victims Unit’s capacity to cater for interpretation is very limited.

15. It follows from the foregoing that interpretation must be provided whenever it is actually needed so as to ensure enjoyment by the Civil Parties of their right to effective participation; the Request is therefore admissible in the main; however, it cannot be granted, because it is brought in overly general terms.

FOR THESE REASONS,

DISMISS the Request for designation of an interpreter – free of charge – on week-ends or holidays, in addition to the services provided on working days, because it is brought in overly general terms;

DIRECT the Court Management Section (CMS), in conjunction with the Victims Unit, to put in place a procedure that permits a party to substitute translation and interpretation services provided to it on working days for services provided outside working hours, on the condition that such a party shows proof of the need for those services and that providing them will not adversely affect translation and interpretation services provided to other parties.

Signed at Phnom Penh, on 31 December 2008

សហចៅក្រមស៊ើបអង្កេត

**Co- Investigating Judges
Co-juges d’instruction**

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