



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens

លេខ/n° : D337/10

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

Case File No: 002/19-09-2007-ECCC-OCIJ

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges

Bureau des co-juges d'instruction

Before : **Judge YOU Bunleng**
Judge Marcel LEMONDE

Date: **2 August 2010**

Langue(s): **Khmer/French**

Classification: **Public**

ឯកសារទទួល
DOCUMENT RECEIVED/DOCUMENT REÇU
ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/dates de réception):
08-Sep-2010, 09:01
ម៉ោង (Time/heure):
Chanthan Phok

ឯកសារចម្លងត្រឹមត្រូវតាមច្បាប់
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date /Date de certification):
08-Sep-2010
Chanthan Phok

**Order on the Organisation of Civil Party Legal Representation
under Rule 23 *ter* of the Rules**

Co-Prosecutors:

CHEA Leang
Andrew CAYLEY

Charged Person(s):

NUON Chea KHIEU Samphan
IENG Sary KAING Guek Eav *alias*
IENG Thirith Duch

Lawyers for the Civil Parties:

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LOR Chunthy Elizabeth RABESANDRATANA
KONG Pisey Mahdev MOHAN
HONG Kim Suon Olivier BAHUGNE
YUNG Phanit Martine JACQUIN
KIM Mengkhy Annie DELAHAIE
MOCH Sovannary Fabienne TRUSSES-NAPROUS
SIN Soworn Patrick BAUDOIN
CHET Vannly Lyra Thuy NGUYEN
PICH Ang Marie GUIRAUD
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Original FRENCH: 00577773-00577777

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We, **You Bunleng (ឃុំ ប៊ុនឡុង)** and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”),

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

Noting the ongoing judicial investigation against **NUON Chea (នួន ជា)** and **other Charged Persons**, relating to charges of **Crimes against humanity, Grave breaches of the Geneva Conventions dated 12 August 1949, Genocide, Murder, Torture and Religious persecution**, offences defined and punishable under Articles 3, 4, 5, 6, 29 (new) and 39 (new) of the ECCC Law, and 209, 210, 500, 501, 503 to 508 of the 1956 Penal Code;

Noting Rule 12, 12bis, 23(4) and 23 ter (1) and 2(a) of the ECCC Internal Rules (the “Rules”);

PROCEDURAL BACKGROUND

1. By Interoffice Memorandum dated 22 December 2009, the Co-Investigating Judges requested the Victims Unit to:
 - (i) *Present an assessment of the focus chosen by the existing legal representation teams; and*
 - (ii) *Make recommendations regarding possible common legal representation.*¹
2. On 23 April 2010, the Victims Unit (which has since been renamed Victims Support Section) filed a reply inviting the Office of the Co-Investigating Judges to consider, *inter alia*, the following steps:
 - (i) take no action to disturb existing groupings or selections of lawyers;
 - (ii) proceed on a basis that provincially-oriented representation is best likely to address the remaining difficulties in legal representation;
 - (iii) direct Civil Party lawyers and the Victim Support Section, working in conjunction, to continue to identify and contact unrepresented individuals falling within existing teams expressed willingness and abilities to absorb more clients with a view to procuring formal client authority, and to report back within a fixed timeframe on these efforts.²
3. By Memorandum dated 29 April 2010³, the Co-Investigating Judges informed the parties of their intention to ensure that all Civil Parties were represented.⁴

¹ D289 Civil Party Legal Representation Scheme.

² D289/1 Issues of grouping of Civil Parties and Civil Party applications for purposes of legal representation, para. 24.

³ D337/6.

4. On 22 June 2010, the Victims Support Unit informed the Co-Investigating Judges that they had formally registered, on 11 June 2010,⁵ the *Association of Khmer Rouge Victims in Cambodia* as a victims association within the meaning of Rule 23 *quater* of the Rules, and also that the president of the association had expressed his desire that the legal representation effected through the association's lawyer, Ny Chandy, be limited to 84 members of the association,⁶ bearing in mind that:
 - three⁷ members out of the 84 had earlier submitted powers of attorney designating other lawyers;
 - among the Association members whose names do not appear on the representation list established by the president of the Association, 35 have already chosen to be represented by other legal teams and 24 are unrepresented thus far.
5. The Lawyers for the Civil Parties further informed the Co-Investigating Judges of their ability to absorb additional Civil Parties.⁸
6. On the basis of the above information, the Victims Support Section submitted to the Co-Investigating Judges, on 23 July 2010,⁹ a proposed designation of lawyers and a list of Civil Parties who were still unrepresented then (see Annexes).

REASONS FOR THE DECISION

7. Under Rule 23 *ter* (2)(a) of the Rules, as amended at the last Plenary, “*By the issuance of the Closing Order, all Civil Parties shall be represented by a lawyer*”, and “*(...) the Co-Investigating Judges shall make appropriate orders for this purpose*”. In this regard, Rule 23(4) of the Rules provides: “*(...) the Co-Investigating Judges may group Civil Parties and nominate a lawyer to represent them, or assign them to existing groups*”¹⁰.

⁴ On 25 June 2010, the Co-Investigating Judges informed the parties of their intention to deliver an order to this effect as soon as the necessary additional lawyers had been recruited by the ECCC (D337/7).

⁵ **D337/8**, Inter-Office Memorandum of the Victim Support Section to CIJs Concerning Registration of Victims Association and Consequential Representational Issues, D337/8.1 Victim Support Section's Letter of Recognition.

⁶ **D337/8.3**, Letter of Delegation by the President of the Association.

⁷ 09-VU-02064, 09-VU-02097 and 09-VU-02185.

⁸ The Co-Investigating Judges have received the following letters:

- **D337/9.2**, Letter from NY Chandy and Lyma NGUYEN, dated 7-06-2010
- **D337/9.3**: 2nd Letter from NY Chandy and Lyma NGUYEN, dated 7-06-2010
- **D337/9.4**: Letter from Olivier BAHOUAGNE, dated 7-06-2010
- **D337/9.5**: Letter from the *Avocats Sans Frontières France* group, dated 7-06-2010
- **D337/9.6**: Letter from NY Chandy and Mahdev MOHAN, dated 8-06-2010
- **D337/9.7**: Letter from NY Chandy and Silke STUDZINSKY, dated 18-06-2010
- **D337/9.8**: Letter from CHET Vanly and PICH Ang, dated 22-06-2010
- **D337/9.9**: Letter from Emmanuel Altit, Emmanuel Jacomy, Julien Rivet and NY Chandy, dated 24-06-2010

- **D337/9.10**: Letter from NY Chandy and Lyma NGUYEN, dated 27-06-2010

⁹ **D337/9**: Interoffice Memorandum from VSS, dated 23 July 2010

¹⁰ See also Rule 23 *ter* (1)).

8. The Co-Investigating Judges note that **3990** Civil Parties applicants in Case File 002. Of that number, **3201** have submitted valid powers of attorney designating a Cambodian (and, where applicable, an international) lawyers to represent them (see list in **Annex A**). Those powers of attorney have been submitted to the Office of the Co-Investigating Judges by the Victims Support Section and are gradually being placed on the case file. The purpose of the present Order is to organise the legal representation of the **799** Civil Parties who were still unrepresented by its issuance.

9. In effecting this Civil Parties representation scheme, the Co-Investigating Judges have taken into account, on the one hand, the Civil Parties' earlier choice of lawyers, and, on the other hand, whether such lawyers are able to absorb additional clients (based on the desires expressed by the lawyers and their profiles, i.e. their specialties and the Civil Parties' place of residence), and also on the recommendations made by the Victims Support Section in its Memorandum of 23 July 2010.

10. It must be emphasised that pursuant to Rule 23 *ter* (2) (a), it is entirely open to Civil Parties to change lawyers by filing a new power of attorney, subject to the Co-Investigating Judges' preponderant powers under Rule 23(4) of the Rules and to the obligation set out in Rule 23 *ter* (3) (e) of the Rules to submit an application to the Co-Investigating Judges requesting reconsideration of the Victims Unit's choice of lawyer.

1. Association of Khmer Rouge Victims in Cambodia

11. In accordance with Rule 23 *quarter* of the Rules, the *Association of Khmer Rouge Victims in Cambodia* has indicated that its lawyer, NY Chandy, is prepared to represent 84 Association members who are Civil Party applicants.¹¹ However, 3 out these 84 members are already represented by their personal lawyers. Although this situation is not specifically envisaged in Rule 23 *quater* of the Rules, the Co-Investigating Judges consider that by virtue of their powers under Rule 23(4) of the Rules, where the interests of justice so require, they can confirm existing relations between a lawyer and his or her client even if the client has subsequently joined an association, or designate a lawyer other than the association lawyer.

12. In view of the foregoing, the Co-Investigating Judges hold the view that the Association members who have already filed powers of attorney will continue to be represented by the lawyer they chose for as long as they have not notified the Co-Investigating Judges in writing, through the Victims Support Section, of their choice to be represented by the lawyers of their victims associations.

2. Representation of additional Civil Parties by existing legal teams

The Co-Investigating Judges have accepted the proposals put forward by the legal teams within the limits defined in the disposition and, where no power of attorney has been filed, have appointed those lawyers to represent the 139 Civil Parties listed in Annex C.

¹¹ **D337/8.3**, Letter of Delegation by the President of the Association. See Annex B

3. *Representation of the remaining Civil Parties*

The Co-Investigating Judges appoint Ven Pov, Chet Vanly and Pich Ang, members of the legal teams which have entered into a contract with the ECCC under Rule 12 of the Rules to represent **569** unrepresented Civil Parties (Annex D).

FOR THESE REASONS,

HEREBY CONFIRM THE DESIGNATIONS of lawyers by the Civil Parties in Case File 002, as per the powers of attorney duly filed to date (*Annex A*).

CONFIRM that the **81** applicants referenced in the letter of the President of the *Association of Khmer Rouge Victims in Cambodia* who have not otherwise filed a power of attorney designating another lawyer shall be represented by the Association lawyer (*Annex B*).

DESIGNATE the existing legal teams of Lawyers for Civil Parties to represent **139** applicants listed in *Annex C* of this Order.

DESIGNATE Counsel Ven Pov, Chet Vanly and Pich Ang to represent the **569** Civil Parties who are unrepresented thus far, as indicated in *Annex D* of this Order.

RULE that any Civil Party wishing to change lawyers shall inform the Co-Investigating Judges accordingly.

Done in Phnom Penh, on 2 August 2010

សហចៅក្រមនៃបុគ្គលិក

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

(Signed)

Marcel LEMONDE

(Signed)

ឃុំ ប៊ុនឡុង