



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Royaume du Cambodge
Nation Religion Roi

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

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

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

ឯកសារទទួល
DOCUMENT RECEIVED/DOCUMENT REÇU
ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/date de réception):
22-Mar-2010, 13:47
ឈ្មោះ (Nom/Prénom):
Chanthan Phok

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

Before: **YOU Bunleng**
Marcel LEMONDE
Date: **3 February 2009**
Original language: **Khmer/French**
Classification: **Confidential**

ឯកសារចម្លងត្រឹមត្រូវតាមច្បាប់ខ្មែរ
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME
ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date /Date de certification):
22-Mar-2010
Chanthan Phok

Order on Khieu Samphan's Request for Extension of Time Limit

Co-Prosecutors:

CHEA Leang
Andrew CAYLEY

Charged Persons:

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

Lawyers for the Civil Parties:

NY Chandy Philippe CANONNE
LOR Chunthy Elizabeth RABESANDRATANA
KONG Pisey Pierre-Olivier SUR
HONG Kim Suon Mahdev MOHAN
YUNG Phanit Olivier BAHOUGNE
KIM Mengkhy David BLACKMAN
MOCH Sovannary Martine JACQUIN
SIN Soworn Annie DELAHAIE
CHET Vannly Fabienne TRUSSES-NAPROUS
PICH Ang Patrick BAUDOIN
Silke STUDZINSKY Lyma Thuy NGUYEN
Françoise GAUTRY Marie GUIRAUD
Isabelle DURAND Laure DESFORGES

Lawyers for the Defence:

SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
PHAT Pou V Seang
Diana ELLIS
SA Sovan
Jacques VERGÈS
KAR Savuth
François ROUX
Marie-Paule CANIZARÈS

We, **You Bunleng (ឃុំ ប៊ុនលេង)** 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 ឆា) 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 Rules 39, 55(10) and 66 of the ECCC Internal Rules (the “Internal Rules”),

Noting the Co-Investigating Judges’ orders dated 18 December 2009 (D268/2), 21 December 2009 (D180/6), 28 December 2009 (D240/3), 12 January 2010 (D300) and 13 January 2010 (D261/2);

Noting the Co-Investigating Judges’ Order of 25 November 2009 (D235/2) on extension of the time limit prescribed under Rule 66(1);

Noting the Notice of Conclusion of Judicial Investigation, which was notified to the parties by the Co-Investigating Judges on 14 January 2010 (D317);

Noting Khieu Samphan’s request, dated 21 January 2010 (D335 – “the Request”), to postpone the time limit for filing any requests for investigative action from the receipt of the conclusion of the judicial investigation.

DEFENCE SUBMISSIONS

1. In the Request, the Khieu Samphan Defence requests that: *“the 30-day time limit start to run when Mr KHIEU Samphan has received all the orders and parties’ filings in his two working languages”*.

REASONS FOR THE DECISION

2. First, the Co-Investigating Judges observe that the Khieu Samphan Defence received due notification on 14 January 2010, in all three working languages of the ECCC, of our Notice of Conclusion of Judicial Investigation advising the parties that they had 30 days to request any further investigative action.

3. Also, as indicated in the Memorandum in response to Ieng Thirith's request for translation,¹ translation of the Co-Investigating Judges' orders into the two working languages of the Defence is aimed at ensuring that the parties have adequate time to prepare their defence at trial – which is not the case here – and is not required before the conclusion of the judicial investigation.
4. Further, the truncated translation included in the Request misrepresents our Order on Translation Rights and Obligations of the Parties, which clearly states that “[r]emaining case file documents, such as pleadings, internal notes and correspondence, are not elements of proof for the determination of the trial chamber and are not therefore covered by the requirement to translate into the language of the charged person”.²
5. This having been restated, the Co-Investigating Judges consider that the only relevant question at this stage of the proceedings is to determine to what extent failure to provide translation of the documents referred to in the Request is an obstacle to effective preparation of requests for further investigative action.
6. As already explained,³ where a document exists in Khmer, the Charged Person has sufficient notice of the nature and content thereof in his own language (it should be recalled that even during trial in Case 001, the Trial Chamber did not require translation of any documents which were not relied upon directly by the Co-Prosecutors or the other parties).
7. Further, given the unique structure of the defence teams at the ECCC, consisting of systematic representation by a co-lawyer and legal assistants who are fluent in Khmer, as well as a designated translator, pursuant to our Order on Translation Rights and Obligations of the Parties, the international lawyer is afforded the assistance he or she requires to, if need be, decide whether to make requests for further actions.⁴
8. Finally, international case-law has recognised that in certain circumstances, a sight translation (as opposed to a full translation) may suffice to guarantee respect for the rights of the defence.⁵
9. However, due note is taken of the Defence's submission that some orders had not been notified in Khmer or in French by the time the Notice of Conclusion of Judicial Investigation was issued. This discrepancy – stemming from the fact that the Translation Unit is overstretched, because it has to deal with simultaneous requests from several organs of the Court – warrants an extension of the time

¹ D249/2, **Ieng Thirith's Request for Translation of Evidentiary Material**, 14 December 2009, 3rd paragraph.

² A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008, para. C.3

³ D249/2, **Response to Ieng Thirith's Request for Translation of Evidentiary Material**, 14 December 2009, para. 3.

⁴ *Ibid.*, para. 6.

⁵ See A190/I/20, ECCC Pre-Trial Chamber, **Decision on Khieu Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties**, 20 February 2009, para. 47 and footnote 36.

limit. However, the extension cannot go beyond the moment when the decision is available in Khmer, according to the principles recalled at paragraphs 6 and 7 above.

- 10. In view of all the foregoing, since a Khmer translation of the Orders referred to in the Request are has been available since 2 February, the 30-day time limit for the Khieu Samphan Defence to request any further investigative action shall start to run from that date.

FOR THESE REASONS, THE CO-INVESTIGATING JUDGES

Grant the Request as stated in paragraph 9 of this Order.

Done in Phnom Penh, on 3 February 2010

សហចៅក្រមស៊ើបអង្កេត

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

[signed]

Marcel LEMONDE

[signed]

ឃុំ ប៊ុនឡុង