



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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

Kingdom of Cambodia
Nation Religion King

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

Case File No.: 003/07-09-2009-ECCC-OCIJ

Before: Judge YOU Bunleng
Judge Mark B. HARMON

Date: 19 March 2013

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**SECOND DECISION AND RE-SCHEDULING ORDER CONCERNING
REQUEST FOR APPOINTMENT OF CO-LAWYERS DESIGNATE**

Distribution to

Co-Prosecutors
Mrs. CHEA Leang
Mr. Andrew Cayley

Copied to

Defence Support Section
Mr. Isaac ENDELEY

Co-Lawyers-Designate
Mr. ANG Udom
Mr. Michael KARNAVAS

1. **Noting** Article 21 of the Agreement signed on 6 June 2003 between the United Nations and the Royal Government of Cambodia for the purpose of bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian and international law committed during the period of Democratic Kampuchea from 17 April 1975 to 6 January 1979 (the “ECCC Agreement”);
2. **Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (the “ECCC Law”);
3. **Noting** Rules 21, 22, 55, 71 and 72 of the ECCC Internal Rules (the “Internal Rules”);
4. **Noting** Article 6.2 of the Administrative Regulations of the ECCC Defence Support Section (the “DSS Administrative Regulations”);
5. **Noting** the International Co-Prosecutor’s Second Introductory Submission, dated 20 November 2008, initiating Case File 003 (the “Second Introductory Submission”),¹ which was placed on the Case File on 7 September 2009;²
6. **Noting** the judicial investigation relating to alleged violations of the **1956 Penal Code, crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 3, 5, 6, 29 (new) and 39 (new) of the ECCC Law, and Articles 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code of Cambodia;
7. **Noting** the Written Record of Disagreement signed by Co-Investigating Judges You and Harmon on 7 February 2013.
8. **Considering** the Notice of Termination of Proceedings against Ieng Sary in Case 002 filed by ANG Udom and Michael G. KARNAVAS (the “Co-Lawyers-Designate”) on 15 March 2013 (the “Request”);
9. **Considering further** the International Co-Prosecutor’s Request to Reschedule Submissions, dated 15 March 2013 (the “Rescheduling Request”);

SUMMARY OF THE REQUESTS

10. The Co-Investigating Judges are seised of a Request from the Co-Lawyers Designate submitting that the termination of proceedings in Case 002 due to the death of their client Ieng Sary “*effectively renders moot the International Co-Prosecutor’s Request that the appointment of Co-Lawyers be rejected on the basis*”

¹ Case File No. 003-D1, *Co-Prosecutor’s Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008.

² Case File No. 003-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

of irreconcilable conflicts of interest" (the "OCP Rejection Request") and requesting that the International Co-Investigating Judge "*lift his order to the Co-Lawyers prohibiting communication*" with their client in Case 003 (the "Suspect").

11. On the same day, the International Co-Prosecutor filed a Rescheduling Request noting that the death of Ieng Sary "*constitutes a change in the circumstances that may be relevant to the Co-Investigating Judges' assessment of the risk that dual representation... could cause conflict of interest or otherwise irreversibly prejudice the administration of justice*". Accordingly he requests the Co-Investigating Judges to issue a new schedule to allow: "*(i) a reasonable period for the Co-Prosecutors to submit a revised request; (ii) a response from the Co-Lawyers-Designate; and (iii) a reply from the Co-Prosecutors*".⁴

DISCUSSION

12. The death of Ieng Sary intervened before a reply had been received from the Co-Prosecutors under the previous schedule established by the OCIJ in this matter.⁵ Moreover, both affected parties contend that this event may have a serious influence on the Co-Investigating Judges' decision on the OCP Rejection Request.
13. Accordingly, it appears prudent, at this stage of the proceedings, to defer any decision on the confirmation of the lawyers provisionally assigned by DSS until they and the Co-Prosecutors have been afforded an opportunity to make further submissions on the impact of these changed factual circumstances on the matters raised in the OCP Rejection Request.

THEREFORE, I MARK B. HARMON HEREBY DECIDE TO:

14. **REJECT** the Request by the Co-Lawyers-Designate and confirm the previous order to Mr. Ang, Mr. Karnavas and their associates to suspend any communication with the Suspect until a decision on confirmation of their assignment has been issued by the Co-Investigating Judges;
15. **ACCEPT** the Rescheduling Request and accordingly:
- **DEFER** consideration of any order on recognition of the Co-Lawyers-Designate for the Suspect until they and the Co-Prosecutors have had an opportunity to make further submissions on the potential existence of a conflict of interest since the death of the Suspect;

³ Case File No.003-D56/1, OCP, *International Co-Prosecutor's Request that Appointment of Co-Lawyers-Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest*, 24 December 2012.

⁴ Rescheduling Request, para. 3.

⁵ Case File No.003-D56/3, *Decision and Scheduling Order Concerning Request for Appointment of Co-Lawyers Designate*, 11 February 2013; and Case File No.003-D56/4, *Re-scheduling Order Concerning Request for Appointment of Co-Lawyers Designate*, 28 February 2013.

- **RECALL** that the Co-Lawyers-Designate are under a continuing obligation to ensure the confidentiality of all material they have received in respect of this matter and to return it to the OCIJ greffiers immediately upon final determination of the Request for Assignment;
- **INVITE** the Co-Prosecutors to make submissions on the continued potential conflict of interest of the Co-Lawyers-Designate as Defence Counsel for the Suspect since the death of Ieng Sary within 10 working days of the issuing of this Decision;
- **INVITE** the Co-Lawyers-Designate to make submissions in reply within 10 working days of the filing of the Co-Prosecutors' submissions;
- **INVITE** the Co-Prosecutors to respond to the Co-Lawyers-Designates' submissions within 5 working days of the filing by the Co-Lawyers-Designate;
- **DECIDE** to place the additional filings received to date on the Case File under Document numbers: D56/4/2 (the Request by the Co-Lawyers-Designate and attachments); and D56/4/3 (the Rescheduling Request by the OCP).
- **DECLARE** that until this matter is finally determined, all filings shall be designated as Strictly Confidential.

Done in Phnom Penh, on 19 March 2013

Mark Brian Harmon

សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ
International Co- Investigating Judge
Co-juge d'instruction International