



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Royaume du Cambodge  
Nation Religion Roi  
Kingdom of Cambodia  
Nation Religion King

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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des Co-juges d'instruction  
Case File No: 002/19-09-2007-ECCC-OCIJ

**ឯកសារដើម**  
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Before: Judge YOU Bunleng  
Judge Marcel LEMONDE  
Date: 22 December 2009  
Original language: Khmer/English  
Classification: Public

**Order on Co-Prosecutors' Request for the Placement on Case File 002 of Documents Contained in Case File 001**

**Co-Prosecutors**  
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Mr. Andrew CAYLEY

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IENG Sary KAING Guek Eav  
IENG Thirith alias "Duch"

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**ឯកសារច្បាប់ចម្លងត្រឹមត្រូវតាមច្បាប់ដើម**  
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du dossier: ..... Uch Arun .....



We, **You Bunleng (ឃុំ ប៊ុនឡេង)** 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** Rule 55(10) of the ECCC Internal Rules (the “Internal Rules”);

**Noting** the Co-Prosecutors’ Request dated 22 October 2009 (“the Request” – D288)

### **CO-PROSECUTORS’ REQUEST**

1. In the above-mentioned Request the Co-Prosecutors request that a transfer be undertaken to place on Case File 002, “*all substantive documents (including written records, filings, evidence and transcripts whether classified as public or confidential), which were placed on Case File 001 since the transfer of the case to the Trial Chamber...*” as well as “*all documents contained in sub-folder category D25*” – namely, the documents pertaining to all Civil Party applications in Case File 001.

### **REASONS FOR THE DECISION**

2. It is acknowledged by the Co-Prosecutors that all substantive documents which the CIJs had placed in Case File 001 up to the transfer of the Case File to the Trial Chamber have already been placed in Case File 002 by effect of the 28 October 2008 Note by the Co-Investigating Judges – D108.<sup>1</sup> As such, despite the Co-Prosecutors’ submission that for the sake of “*[s]implicity, completeness and easier reference, the Co-Prosecutors submit that copies of these documents too should be included in this transfer*”<sup>2</sup> the CIJs do not find that it is warranted to create such a large duplication of documents when all of the documents collected during the judicial investigation in Case File 001 (minus the Civil Party applications) have already been placed in Case File 002.
3. Furthermore, as alternatively submitted by the Co-Prosecutors, the CIJs do not consider it necessary to “*update*”<sup>3</sup> any of these documents via the Records and Archives Unit for the purposes of this Request as they are fully particularized in the recapitulative table annexed to the CIJs’ Note – D108.1.

<sup>1</sup> Request – para. 2

<sup>2</sup> *Ibid.* – para. 7

<sup>3</sup> *Ibid.* – para. 7



4. Regarding the Civil Party applications relating to Case File 1 which were excluded from the transfer effected by D108, the CIJs consider that despite no protective measures being ordered in respect of these applications, it remains inappropriate and unnecessary for these application documents<sup>4</sup> to be placed on Case File 002. The individuals that filed applications to be joined as Civil Parties in Case File 001 were admitted on the basis that they alleged a direct and personal harm linked to the *in rem* scope of the investigation against the Charged Person. This Civil Party status cannot be transferred to another set of legal proceedings unless the applicants have expressed in a written document their wish to join Case File 002. A significant number of the Civil Parties in Case File 001 whose applications were also admissible for the purposes of Case File 002 did reapply to be parties in the new Case File, and so all of the documents pertaining to these applications are already present in Case File 002. The Co-Investigating Judges consider that this is adequate for the purposes of the current investigation and consequently reject the Co-Prosecutors' request that these D25 documents be placed on Case File 002.
5. Finally, the responsibility for any documents which have been placed in Case File 001 by the Trial Chamber subsequent to its receipt from the CIJs and the commencement of the trial phase of the proceedings would be solely within the purview of the Greffier of the Trial Chamber. Pursuant to Rule 69(2) upon forwarding to the Trial Chamber, the Case File is sealed by the Greffier of the CIJs, who are no longer at this stage the custodians of any of the contents of the Case File.
6. For these reasons, the Co-Prosecutors are correct when they state that in order to give effect to their Request the consent of the Trial Chamber would be required.<sup>5</sup> This is particularly so as a certain number of the documents placed in Case File 001 by the Trial Chamber would be categorised as "Confidential" or "Strictly Confidential" to which the CIJs would have no access.
7. Taking these considerations into account, the CIJs nonetheless do agree with the Co-Prosecutors that the evidence which was presented at trial in Case File 001 would be of direct relevance to aiding in the establishment of the truth in Case File 002. For this reason, the CIJs provisionally grant the Co-Prosecutors' request that any substantive documents placed in Case File 001 by the Trial Chamber also be placed in Case File 002.
8. This acceptance by the CIJs is provisional on the consent of the Trial Chamber. In furtherance of this a letter will be sent to the President of the Trial Chamber requesting consent and assistance on this matter.

**FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:**

- **PARTIALLY ACCEPT** the Request of the Co-Prosecutors to place all substantive documents from Case File 001 in Case File 002 in that this shall apply

<sup>4</sup> Comprising Victims Unit reports, Civil Party individual information forms, supporting documentation to forms, powers of attorney, etc.

<sup>5</sup> Request – para. 9



to any document placed on Case File 001 by the Trial Chamber subsequent to the Co-Investigating Judges' forwarding of Case File 001. This partial acceptance remains subject to the consent of the Trial Chamber.

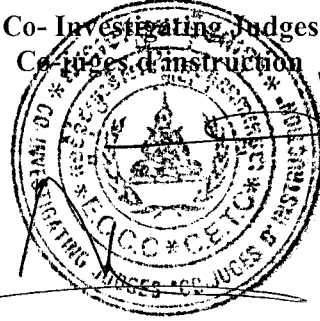
- **REJECT** the remainder of the Co-Prosecutors' Request.

Done in Phnom Penh, on 22 December 2009

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges

Co-Prosecutors & Instruction



ឃុំ អ៊ុំតាឃ្មុំ

Marcel LEMONDE