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du dossier: ..... Ratanak

លេខ / No: D357/1

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
ROYAUME DU CAMBODGE  
Nation Religion Roi

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

**Kingdom of Cambodia  
Nation Religion King**

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**

Before: **Judge YOU Bunleng**  
**Judge Marcel LEMONDE**  
Date: **15 March 2010**  
Original language: **Khmer/English**  
Classification: **Public**

**ឯកសារប្រាកដថាបានច្នៃចេញតាមច្បាប់ដើម**  
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ថ្ងៃ ខែ ឆ្នាំ ទ្រព្យការបញ្ជាក់ (Certified Date/Date de certification):  
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé  
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**Order on Request for Investigative Action by the Civil Parties  
Concerning the Charge of Attack Against Culture**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Charged Person(s)**  
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IENG Sary KAING Guek Eav  
IENG Thirith alias "Duch"

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We, **You Bunleng (ឃុំ ប៊ុនហ្គ័ង)** 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 ធី)** 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 31, 55, 66 and 67 of the ECCC Internal Rules (the “Internal Rules”);

**Noting** the Request of the Civil Parties Concerning the Charge of Attack Against Culture dated 8 February 2010 (D357, the “Request”);

#### **ARGUMENTS BY THE PARTIES**

1. On 8 February 2010, the Co-Lawyers for Civil Parties filed their Request that the Co-Investigating Judges conduct a full investigation into alleged crimes concerning attacks against culture; to appoint an expert on the crime against culture as a crime against humanity of other inhumane acts; to re-interview seven named persons and to identify and interview other non-specified individuals<sup>1</sup>.

#### **REASONS FOR THE DECISION**

2. With respect to the Request to conduct an investigation into alleged crimes concerning attacks against culture, the Co-Investigating Judges note that the Introductory Submission refers to destruction of property and in particular to destruction of cultural buildings such as pagodas.<sup>2</sup> The Supplementary Submission relating to allegations concerning members of the Cham population also contains allegations of destruction of property, language and culture.<sup>3</sup> The Co-Investigating Judges are also seized of facts relating to separation of families<sup>4</sup> and forced marriage.<sup>5</sup>
3. With respect to matters raised in the Request such as courtship practice,<sup>6</sup> birth and death rituals,<sup>7</sup> imagination,<sup>8</sup> the human spirit,<sup>9</sup> identity of time and place,<sup>10</sup>

<sup>1</sup> D357, p. 17.

<sup>2</sup> See for example, D3, Introductory Submission, paras 12, 70, 72.

<sup>3</sup> D196, Co-Prosecutors’ Supplementary Submission Regarding Genocide of the Cham.

<sup>4</sup> See for example, D196, Co-Prosecutors’ Supplementary Submission Regarding Genocide of the Cham, paras 4, 9, 10, 14 and 15; and D3, Introductory Submission, paras. 41, 69.

<sup>5</sup> D268/2, Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations, para. 8.

<sup>6</sup> D357, para. 14.

<sup>7</sup> D357, paras 21-26.

<sup>8</sup> D357, paras 27, 30.



and the exercise of language as described in the Request,<sup>11</sup> the Co-Investigating Judges note that these facts have not been specifically referred to them by the Co-Prosecutors. The Co-Investigating Judges are therefore not seized of such matters and, in accordance with Internal Rule 55(3), they cannot investigate any new fact without a Supplementary Submission from the Co-Prosecutors.

4. With respect to the Request to appoint an expert under Internal Rule 31(1) to research the crime against humanity of other inhumane acts with respect to allegations of crimes against culture, the Co-Investigating Judges note that under ECCC Internal Rule 67(2) they are required to draft a Closing Order setting out the material facts and legal characterizations. This presupposes an examination of the facts on the Case File and assessment of what legal charges may or may not be established. The Co-Investigating Judges find that the nature of the Request essentially duplicates their judicial functions as defined under Rule 67(2). In drafting the Closing Order, the Co-Investigating Judges will therefore consider any facts they were seized of and investigated relating to potential attacks on culture and, depending on their factual findings, may also consider application of the crime against humanity of other inhumane acts in this context.
5. With respect to the Request to re-interview the seven names provided, the Request does not indicate how the witness statement already made by each of the named persons did not sufficiently address the legal and evidentiary issues which are the subject matter of the Request. The Co-Investigating Judges therefore see no reason to re-interview the persons named in the Request.
6. In addition, the Co-Investigating Judges note that the Request purports to transmit a non-exhaustive list. In principle, Requests are required to be as specific as possible. Although the parties may propose a line of investigation or group of unspecified potential witnesses, there still must be sufficient indicia, either through details in the Request or reference to material already on the Case File, to facilitate any potential further investigation. This is particularly the case towards the close of the investigation when the Co-Investigating Judges are approaching the degree of sufficiency which suggests that the dispensing of further judicial resources is not in the interests of justice. Indeed, the Co-Investigating Judges have rejected previous requests for investigative action for vagueness when there were insufficient details of the identity of proposed witnesses.<sup>12</sup> For these reasons, the Co-Investigating Judges reject the implicit request to investigate beyond the seven names provided in the Request.

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

- **REJECT** the Request for the appointment of an expert;
- **REJECT** the Request to re-interview the seven named persons and to identify and interview other non-specified individuals;

<sup>9</sup> D357, paras 27-30.

<sup>10</sup> D357, paras 31-33.

<sup>11</sup> D357, paras 28, 29.

<sup>12</sup> See for example D300, Order on Requests D153, D172, D173, D174, D178 & D284, para. 22.

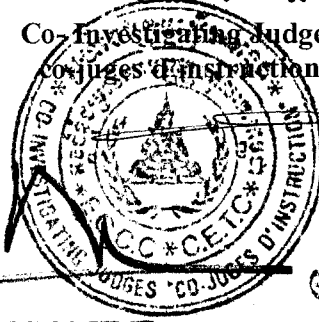


- **CONFIRM** that the subject matter of the Request was covered during the judicial investigation insofar as the Co-Investigating Judges are seized of factual circumstances involving cultural property under the Introductory and Supplementary Submissions; and
- **NOTE** that the appropriate legal characterisations will be set out in the Closing Order, based upon an assessment of all the evidence in the Case File.

Done in Phnom Penh, on 15 March 2010

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges  
Co-Juges d'Instruction



Marcel LEMONDE