

លេខ/លេខ ១៧/៣៣



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the
Courts of Cambodia

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

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

Criminal Case File /Dossier pénal

លេខ/No: 002/14-08-2006

លេខស៊ើបអង្កេត/Investigation/Instruction

លេខ/No: 002/19-09-2007-ECCC-OCIJ

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

<p>Kingdom of Cambodia ព្រះរាជាណាចក្រកម្ពុជា Nation Religion King DOCUMENT RECEIVED/DOCUMENT REÇU</p> <p>ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/Date de reception): 16 / 09 / 2008</p> <p>ម៉ោង (Time/Heure):..... 16 : 05</p> <p>មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:..... UCH ARUN</p>

ដីកាសម្រេចលើលាក្យសុំស្តីពីទម្រង់នៃកាតព្វកិច្ចសម្រេច

ដែលមានឈ្មោះថា សហគម្មនក្រិច្ចកម្ម

Order on Application at the ECCC of the Form of
Responsibility Known as Joint Criminal Enterprise

Ordonnance sur l'application de la forme de responsabilité
connue sous le nom d'Entreprise criminelle commune

We, **You Bunleng** and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia,

NOTING the Law on the establishment of the Extraordinary Chambers, dated 27 October 2004;

NOTING Rule 55 of the Internal Rules of the Extraordinary Chambers;

NOTING the judicial investigation against **IENG Sary and others**, charged with Crimes Against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949, offences defined and punishable under Articles 5, 6, 29 (new) and 39 (new) of the Law on the establishment of the Extraordinary Chambers, dated 27 October 2004;

NOTING the Motion (D97) filed on 28 July 2008 by the Co-Lawyers for IENG Sary, requesting that the concept of Joint Criminal Enterprise not be considered a form of liability applicable before the ECCC;

NOTING the subsequent Request (D97/I) filed on 7 August 2008 by the said Co-Lawyers, "pursuant to Article 8.4 of the Practice Direction on Filing of Documents", for "an oral

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ៧១ 1
ទូរស័ព្ទលេខ +៨៥៥(០)២៣ ២១៨៩១៤ ទូរសារលេខ +៨៥៥(០)២៣ ២១៨៩៤១
Extraordinary Chambers in the Courts of Cambodia, National Road 4, Choam Chao, Dangkao Phnom Penh
Mail Po Box 71, Phnom Penh Tel:+855(0)23 218914 Fax: +855(0) 23 218941.
Chambres extraordinaires au sein des tribunaux cambodgiens, Route nationale 4, Choam Chao, Dangkao, Phnom Penh
Boite postale 71, Phnom Penh. Tel: +855(0)23 218914 Fax: +855(0) 23 218941.

<p>ឯកសារប្រាប់ច្បាប់ត្រឹមត្រូវតាមច្បាប់ដើម CERTIFIED COPY/COPIE CERTIFIÉE CONFORME</p> <p>ថ្ងៃ ខែ ឆ្នាំ នៃការបញ្ជាក់ (Certified Date/Date de certification): 16 / 09 / 2008</p> <p>មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:..... UCH ARUN</p>

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hearing, or, in the alternative... extension of time to reply to the Office of the Co-Prosecutors' response";

NOTING the Co-Prosecutors' Response, dated 11 August 2008 (D97/II);

CONSIDERING that Article 8 of the Practice Direction on Filing of Documents before the ECCC only applies to the Chambers and not to the Co-Investigating Judges; and that the Request dated 7 August is, thus, immaterial;

CONSIDERING that the question whether the concept of Joint Criminal Enterprise is applicable in this case file is clearly important; and that, pursuant to Rule 67(2) of the Internal Rules, the Co-Investigating Judges must, in light of the elements of proof gathered during the judicial investigation, decide on the nature and forms of responsibility to be set out in the Closing Order, for those persons, if any, indicted and sent for trial;

CONSIDERING that, from this viewpoint, the Motion filed on 28 July 2008 by the Co-Lawyers for IENG Sary, and the Co-Prosecutors' Response dated 11 August 2008, provide useful assistance to the work of the Co-Investigating Judges;

CONSIDERING, HOWEVER, that the issue raised therein is not of concern only to IENG Sary's defence, but also to that of the other Charged Persons; that it is also of interest to Civil Parties; and that, accordingly, it is appropriate to invite all of the parties to provide observations in order for the Co-Investigating Judges to make a fully informed decision;

FOR THESE REASONS,

OBSERVE that the Request dated 7 August is immaterial;

TAKE NOTE of the arguments contained in IENG Sary's Motion dated 28 July 2008 and the Co-Prosecutors' Response dated 11 August 2008;

INVITE the parties to file supplementary observations relating to this issue before 31 December 2008.

Done in Phnom Penh, on 16 September 2008

សហចៅក្រមស៊ើបអង្កេត

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