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ជាតិ សាសនា ព្រះមហាក្សត្រ
Royaume du Cambodge
Nation Religion Roi

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

Kingdom of Cambodia
Nation Religion King

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

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

Composed of: **Judge YOU Bunleng**
Judge Marcel LEMONDE

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Combined Order on Co-Prosecutors' Two Requests for Investigative Action Regarding Khmer Krom and Mass Executions in Bakan District (Pursat) and the Civil Parties Request for Supplementary Investigations Regarding Genocide of the Khmer Krom & the Vietnamese

Co-Prosecutors

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 Andrew CAYLEY

Charged Person(s)

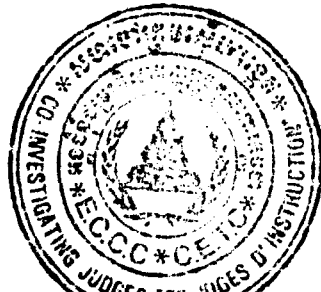
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We, You Bunleng (ឃុំ ប៊ុនលេង) and Marcel Lemonde, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”),

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 and 508 of the 1956 Penal Code;

Noting Rule 53, Rule 55(2) and 55(10) of the ECCC Internal Rules (the “Internal Rules”);

Considering the Civil Parties’ “Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and the Vietnamese” of 3 December 2009 (D250/3);

Considering the Co-Prosecutors’ “Request for Investigative Actions Regarding Khmer Krom and Mass Executions in Bakan District (Pursat)” of 11 December 2009 (D274);

Considering the Co-Prosecutors’ “Further Investigative Request Regarding Khmer Krom” of 6 January 2010 (D274/2);

Considering the Order on the Admissibility of Civil Party Applications Related to Request D250/3 (D250/3/2)

PROCEDURAL HISTORY

1. On 3 December 2009, the Co-Investigating Judges received a request from a group of Civil Parties¹ “to consider new evidence regarding alleged crimes against the Khmer Krom minority group in Pursat and Takeo Provinces during the Democratic Kampuchea period and to supplement the allegations in the Introductory Submission concerning the treatment of Vietnamese”.² The Civil Parties argue in their request that the Khmer Krom may have been subjectively perceived to be Vietnamese by alleged perpetrators, thus they fall under the definition of the Vietnamese national group.³

¹ The admissibility of the civil party applications that the Co-Investigating Judges have received in relation to this filing is dealt with in a separate order dated 13 January 2010, which addresses the matter of protective measures sought in Part VI of the filing.

² D250/3, para. 1.

³ D250/3 paras 11-12.



2. On 11 December 2009, the Office of the Co-Prosecutors (“OCP”) submitted a request for investigative action under Internal Rule 55(10) referring to alleged crimes targeting the Khmer Krom population as part of the alleged policy of eliminating Vietnamese persons in the Bakan district of Pursat province.⁴
3. On 6 January 2010, the OCP submitted a further investigative request under Internal Rule 55(10) requesting the Co-Investigating Judges to take certain actions related to alleged crimes committed against the Khmer Krom population in the Bakan District of Pursat Province.⁵

REASONS FOR THE DECISION

4. Pursuant to Rules 53 and 55(2) of the ECCC Internal Rules, the scope of the CIJs’ judicial investigation is limited only to those facts which have either been set out in the Introductory Submission or facts which the CIJs have been seized of by way of a Supplementary Submission. Additionally, in accordance with the Co-Prosecutors’ 13 August 2008 Response clarifying the scope of the judicial investigation,⁶ the CIJs may consider investigating the circumstances surrounding the specific factual scenarios as they assist in the determination of the jurisdictional elements and the potential modes of liability of the Charged Persons.
5. Beyond these two specific purposes, the CIJs are not legally authorised to conduct investigations into any factual situation which they have not been formally seized of in accordance with the requirements stipulated in Rules 53 and 55(3).
6. The Co-Investigating Judges note that Rule 53(1) sets out certain formalities that are required for Introductory Submissions to be valid. These also apply to Supplementary Submissions. Furthermore, pursuant to Article 3-2 (h) of the Practice Direction on filing of documents, filings which purport to be Introductory or Supplementary Submissions must be stated to be as such.
7. The 11 December 2009 filing of the OCP is titled as a “request for investigative action” under Rule 55(10). However, it relates to facts of which the Co-Investigating Judges have not previously been seized and thus are not allowed to investigate.⁷ Indeed, pursuant to paragraphs 69 and 70 of the Introductory Submission, the Co-Investigating Judges are seized of the treatment of the Vietnamese in Prey Veng Province, Svay Rieng Province, and during incursions into the territory of Vietnam, not of alleged crimes targeting the Khmer Krom population in Pursat province. Although the request mentions Internal Rule 53 relating to Introductory Submissions⁸, it does not satisfy the requirements of

⁴ D274, paras 3-6.

⁵ D274/2, paras 2-5.

⁶ Co-Prosecutors’ Response to the Co-Investigating Judges Request to Clarify the Scope of the Judicial Investigation Requested in its Introductory and Supplementary Submission, dated 13 August 2008, D98/I

⁷ D274, paras 3-6.

⁸ D274, para. 1.



Rules 53, 55-2 and 55-3 and cannot be considered to be a Supplementary Submission. Therefore, it must be rejected.

8. The 6 January 2010 filing of the OCP purports to “specify the additional judicial investigation that the Co-Prosecutors believe is necessary in relation to the factual matters set for in the Co-Prosecutors’ 11 December 2009 filing regarding the Khmer Krom and mass executions in Bakan District”.⁹ However, for the reasons noted above, the 11 December 2009 filing contains facts of which the Co-Investigating Judges have not been seized. As the 6 January 2010 filing requests investigation action that does not fall within the scope of the Introductory nor a Supplementary Submission, it must also be rejected.
9. With respect to the first aspect of the Civil Party Request (to consider new evidence regarding alleged crimes against the Khmer Krom group in Pursat and Takeo Provinces and against ethnic Vietnamese in Kampong Chhnang province), the Co-Investigating Judges find that it raises substantively the same matter as in the OCP Requests, namely, investigations into the treatment of Khmer Krom and ethnic Vietnamese people in geographic regions which do not fall within the scope of the Introductory nor the Supplementary Submissions. The Co-Investigating Judges therefore reject this aspect of the Civil Party Request on the same basis as for the OCP Requests.
10. With respect to the second aspect of the Civil Party Request (the fact that the Khmer Krom may have been subjectively perceived to be Vietnamese by alleged perpetrators), the Co-Investigating Judges will not provide declaratory relief on the applicable law since such legal characterizations will be set out in the Closing Order in accordance with ECCC Internal Rule 67(2).
11. Additionally, the Co-Investigating Judges note that in the course of their investigation, Khmer Krom victims have been interviewed as witnesses relating to the crime scenes falling under the facts in the Introductory and Supplementary Submissions. Aside from assisting in the investigation of those particular crime scenes, the Co-Investigating Judges confirm that the investigation of Khmer Krom as a group is also relevant in determining jurisdictional elements of the crimes charged and the potential applicable modes of liability of the Charged Persons.¹⁰

FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

REJECT the 11 December 2009 request of the Co-prosecutors in as much as it seeks to expand the scope of the investigation as currently defined by the Introductory Submission and the Supplementary Submission;

REJECT the 6 January 2010 request for investigative action from the OCP in so far as it relates to facts that fall outside the scope of the investigation;

⁹ D274/2, para 1.

¹⁰ Indeed, the Co-Investigating Judges have already interviewed three out of the five victims who were named within the OCP’s 6 January 2010 filing : ██████████ (D22/101), ██████████ (D22/103) and ██████████ (D22/102).



REJECT the Request of the Civil Parties insofar as it raises the same issues made by the OCP which fall outside the scope of the investigation;

MAINTAIN that the definition of the group for the crime of genocide will be decided in the Closing Order;

CONFIRM that the Request of the Co-Prosecutors was granted in as much as it requests investigative action which may assist in establishing the truth on matters relating to the potential modes of liability applicable to the Charged Person and/or the jurisdictional elements of the crimes charged.

Done in Phnom Penh, on 13 January 2010

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges
Chambers of Instruction



ឃុំ ប៉ែនឡេង

Marcel LEMONDE