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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

Date: **13 January 2010**

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**Order on Co-Prosecutors' Request for Investigative Action
Regarding Boeung Trabek & Chraing Chamres Re-Education
Offices, and Clarification of Allegations in the Introductory
Submission**

Co-Prosecutors

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Andrew CAYLEY

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IENG Sary	KAING Guek Eav
IENG Thirith	alias "Duch"

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We, **You Bunleng (ឃុំ ប៊ុនឡុង)** 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 ជា)** 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 Co-Prosecutors’ Request for Investigative Action Regarding Boeng Trabek & Chraing Chamres Re-Education Offices, Clarification of Allegations in the Introductory Submission, dated 8 December 2009 (D266).

PROCEDURAL HISTORY

1. On 8 December 2009, the Co-Prosecutors (“OCP”) submitted a request for investigative action under Internal Rule 55(10) asking for certain investigative action to be undertaken with regards to the Boeng Trabek and Chraing Chamres Re-Education Offices and which sought to clarify the allegations originally contained in the Introductory Submission.

REASONS FOR THE DECISION

2. Pursuant to Rules 53 and 55(2) 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,¹ 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.
3. Beyond these two specific purposes, the CIJs are not legally authorised to conduct investigations into any factual situation which they have not been

¹ 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, D98/1



formally seized of in accordance with the requirements stipulated in Rules 53 and 55(3).

4. 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.
5. The 8 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 investigate²: indeed, the CIJs have not been seized of Boeng Trabek and Chraing Chamres as unique crime sites in the same way as those crimes and sites identified by the Co-Prosecutors in paragraphs 37 to 72 of the Introductory Submission³ and paragraphs 5 to 20 of the Supplementary Submission⁴; the facts of both Boeng Trabek and Chraing Chamres are found in paragraphs 85 and 88 of the Introductory Submission, sections referring to the participation and knowledge of IENG Sary.
6. If footnote 1 of the Co-Prosecutors’ filing was intended (as is the understanding of the CIJs) that this Investigative Request serve the function to “[s]upplement the crime sites to be investigated by the Co-Investigating Judges in relation to Case File 002...”⁵ and that “The Co-Prosecutors intended by these allegations that Boeng Trabek (B30, B31 and B32) and Chraing Chamres (M-1) be judicially investigated as crime sites for which IENG Sary could be legally responsible”⁶, then the CIJs do not consider, contrary to the Co-Prosecutors’ submission, that this Request can be considered as capable of having the legal effect to supplement the existing crime sites being investigated with Boeng Trabek and Chraing Chamres as new distinct crime sites for which IENG Sary could be legally responsible. Unless the CIJs receive a formal Supplementary Submission conforming to the requirements of Rule 53(1) they do not consider any other type of filing which may purport to have such supplementary effect, if indeed that was the intention of the Co-Prosecutors as understood by the CIJs, to have such legal effect.
7. Thus, the request, which does not satisfy the requirements of Rules 53, 55-2 and 55-3 and cannot be considered to be a Supplementary Submission, must be rejected insofar as it seeks to expand the scope of the investigation.
8. Additionally, the Co-Investigating Judges confirm that, whilst they cannot investigate Boeng Trabek and Chraing Chamres as new crime sites, they have, throughout the course of the judicial investigation, treated the Boeng Trabek and Chraing Chamres re-education offices as constituting a part of the investigation for the sole purpose of assisting in determining issues regarding the potential applicable modes of liability of IENG Sary. To this end, the CIJs confirm that

² D266, paras 3-6.

³ D3

⁴ D83

⁵ Co-Prosecutors’ Request – Footnote 1

⁶ *Ibid.*



they have been investigating facts relating to Boeng Trabek and Chraing Chamres and their roles and functioning vis-à-vis the Ministry of Foreign Affairs since the beginning of the judicial investigation, for which all relevant evidence has been sought, particularly where it is conducive to establishing the truth concerning the alleged individual criminal responsibility IENG Sary.⁷

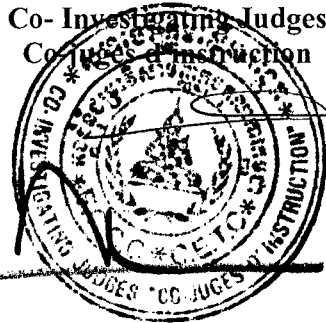
FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

- **REJECT** the 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 Supplementary Submission.
- **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
Co-Judges of Instruction



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Marcel LEMONDE

⁷ See Acceptance of Ieng Sary's Eighth Request for Investigative Action – D218