



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

Case File No: 003/07-09-2009-ECCC-OCIJ

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

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

Before: Judge YOU Bunleng
Judge Siegfried BLUNK

Date: 18 May 2011

Original: English

Classification: Public

Order on International Co-Prosecutor's Public Statement Regarding
Case File 003

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

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We, **YOU Bunleng** (ឃុំ ប៊ុនហ្គេង) and **Siegfried BLUNK** (ស៊ីកហ្វ្រីដ ប្លឺង), 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 Rules 21, 54, 55, 56 and 66 of the ECCC Rules (Rev.7) (the “Rules”);

Noting the judicial investigation being conducted pursuant to the Co-Prosecutors’ Second Introductory Submission;

Noting our notice of conclusion of judicial investigation dated 29 April 2011 (D13)

Noting the Press Release, Statement by the International Co-Prosecutor Regarding Case File 003 dated 03rd May 2011 (the “Public Statement”) on the ECCC website

I - PROCEDURAL HISTORY

1. The Public Statement contained among other things (A) information about crimes that according to the opinion of the International Co-Prosecutor required to be judicially investigated, thereby mentioning in detail as part of Case 003 alleged crimes, crime bases and criminal scenarios; (B) the contents of his intended request pursuant to Rule 66.1 for further investigative actions.
2. Regarding item (A), the International Co-Prosecutor stated that *“crimes required to be judicially investigated as part of Case 003 took place at several crime sites and criminal episodes covered by Case 002, including the S-21 Security Centre, Kampong Chhang Airport Construction Site, purges of the East, Central and New North Zones, and incursions into Vietnam, as well as the following new crime sites and criminal episodes: (1) S-22 Security Centre in the Phnom Penh area; (2) Wat Eng Tea Ngnien Security Centre in Kampong Som Province; (3) Stung Hav Rock Quarry forced labour site in Kampong Som Province; (4) Capture of foreign nationals off the coast of Cambodia and their unlawful imprisonment transfer to S-21 or murder; and (5) Security Centres operated in Rattanakiri Province.”*
3. Regarding item (B), the International Co-Prosecutor made public his intended request for investigative actions pursuant to Rule 66.1 by stating that



“Having carefully reviewed the Case File, the International Co-Prosecutor intends to request further investigative actions regarding the alleged crimes, within the 15 day period specified in ECCC Internal Rule 66 (1). Among other things, the International Co-Prosecutor will request the Co-Investigating Judges to:

- 1. Summon and question the suspects named in the Case File 003 Introductory Submission, and notify them that they are under investigation;*
- 2. Interview additional individuals who have been identified as potential witnesses thus far;*
- 2. Interview or re-interview witnesses identified in Case File 002, focusing on the specific allegations contained in the Case File 003 Introductory Submission;*
- 3. Examine further the crime sites (including by searching for mass grave locations);*
- 4. Place additional evidence on the Case File, including by transferring further evidence from Case File 002 to Case File 003; and*
- 5. Further investigate the involvement of the Case 003 suspects in the crimes, including the transfer of prisoners under their control to S-21, their receipt of “confessions” taken from prisoners murdered at S-21, and their involvement in further arrests.”*

II – REASONS FOR THE DECISION

Item A of the Public Statement

- 4. Rule 54 provides: “Introductory, Supplementary and Final Submissions filed by the Co-Prosecutors shall be confidential documents. However, mindful of the need to ensure that the public is duly informed of ongoing ECCC proceedings, the Co-Prosecutors may provide the public with an objective summary of the information contained in such submissions, taking into account the rights of the defence and the interests of Victims, witnesses and any other persons mentioned therein, and the requirements of the investigation”.*

Pursuant to this Rule, the International Co-Prosecutor was only entitled to give a summary of his Case 003 Submission, and not to express publicly his opinion about “crimes required to be judicially investigated”, which by definition (Rule 55.1) are investigations by the Co-Investigating Judges.

- 5. Rule 54 further provides “In addition, the Co-Prosecutors may jointly, either personally or through the Public Affairs Section, correct any false or misleading information, provided that the case is still under preliminary investigation”.*



However, the preliminary investigation (Rule 50) had ended with the sending of the Introductory Submission to the Co-Investigating Judges pursuant to Rule 53.1 on 7 September 2009.

6. In sum, the International Co-Prosecutor had no legal basis for issuing Item A of the Public Statement.

Item B of the Public Statement

7. Rule 56 states: *"In order to preserve the rights and interest of the parties, judicial investigation shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality"*.

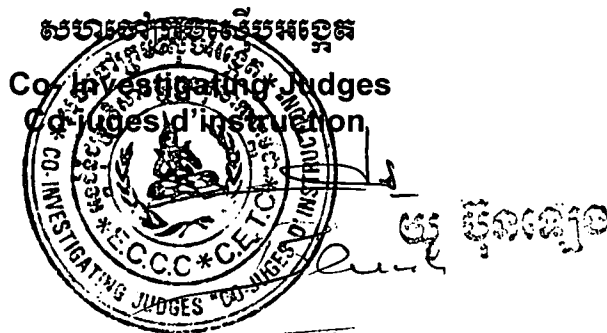
However, the International Co-Prosecutor by informing the public in advance and in detail about what according to Rule 66.1 *"he will request the Co-Investigating Judges to"* do, has violated the Rule of Confidentiality.

8. Because of the lack of legality for Item (A), and the breach of the confidentiality by Item (B) the International Co-Prosecutor has to publish a retraction of the Public Statement, which is to be effected in the same form as the issuance of the statement, and which, to restore public confidence in the legality and confidentiality of the investigations, has to be accomplished in a short period of time.

III- DECISION

9. For these reasons, the Co-Investigating Judges ORDER the International Co-Prosecutor to publish a retraction of items (A) and (B) of the Public Statement on the ECCC website within three (3) working days from the date of filing.

Done in Phnom Penh on 18 May 2011



Dr. Siegfried BLUNK