



**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: **09 August 2011**

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**Decision on International Co-Prosecutor's Re-Filing of the Request for an Extension of Time for the Filing of Civil Party Applications in Case 003**

**Co-Prosecutors**

CHEA Leang  
Andrew CAYLEY

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា មានទីតាំងស្ថិតនៅ ផ្លូវជាតិលេខ៤ សង្កាត់ ចោមចៅ ខណ្ឌ ដង្កោ ក្រុង ភ្នំពេញ ប្រអប់សំបុត្រលេខ ៧១  
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We, **YOU Bunleng** (ឃុំ ប៊ុនលេង) and **Siegfried BLUNK** (ស៊ីគ្រីហ្វដ 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 and 66 of the ECCC Rules (Rev.7) (the "Rules");

**Noting** Articles 3.12 of the Practice Direction on Filing Documents before the ECCC (the "Practice Direction");

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

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

## I - PROCEDURAL HISTORY

1. On 10<sup>th</sup> May 2011, the International Co-Prosecutor ("ICP") in Case 003 submitted to the Co-Investigating Judges ("CIJ") a request for an extension of time for the filing of civil party application ("The Request")<sup>1</sup>.
2. On 7<sup>th</sup> June 2011, the CIJs *inter alia* rejected as invalid the Request ("Decision")<sup>2</sup>.
3. On 13<sup>th</sup> June 2011, the ICP re-filed the Request ("Re-filed Request") and requested pursuant to Rule 39(4), "*that the Co-Investigating Judges recognize its validity as an action being executed after the expiration of a time limit under such terms as they see fit*"<sup>3</sup>.
4. On 7<sup>th</sup> July 2011, the ICP filed an appeal against the Decision to the Pre-Trial Chamber ("PTC")<sup>4</sup>. The appeal was based both on the grounds that the CIJs erred in rejecting the Requests as invalid and on the further alternative that "*the CIJ's failure to consider the substance of the Requests contravenes the CIJ's legal obligation to conduct a complete and impartial investigation*"<sup>5</sup>.

<sup>1</sup> D15 International Co-Prosecutor's Request for an Extension of Time for the Filing of the Civil Party Application in Case 3, dated 10 May 2011.

<sup>2</sup> D20/3 Decision on Time Extension Request and Investigative Requests by International Co-Prosecutor Regarding Case 003, dated 07 June 2011.

<sup>3</sup> D25 International Co-Prosecutor's Request for an Extension of Time for the Filing of the Civil Party Application in Case 3, dated 10 June 2011.

<sup>4</sup> D20/4/1 International Co-Prosecutor's Appeal against the "Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor Regarding Case 003, dated 07 July 2011.

<sup>5</sup> D20/4/1 International Co-Prosecutor's Appeal against the "Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor Regarding Case 003, dated 07 July 2011, para. 9 (c) (ii).



## II – REASONS FOR THE DECISION

### ICP's attempt to circumvent the jurisdiction of the PTC

5. After the CIJs rejected the Request as invalid, the ICP, instead of appealing that Decision as would have been the appropriate procedure<sup>6</sup> re-filed the Request, but then did not await the CIJs decision on the Re-filed Requests but appealed the original Decision and based the Appeal on both formal and substantive grounds<sup>7</sup>. Therefore, the PTC is now seized with the issue whether the Requests are valid and founded. It is solely for the PTC to decide on this issue, and the CIJs are not entitled to interfere with the PTC's competency and to circumvent the PTC's jurisdiction by deciding on the issue themselves. The ICP, by re-introducing the issue in the guise of a re-filing cannot hide the fact that the issue remains the same.

### ICP's lack of competency to submit the Re-filed Request

6. Rule 12 bis. (1) provides:

*"1. The Victims Support Section shall:  
a) under the supervision of the Co-Prosecutors, assist Victims in lodging complaints"*.

Pursuant to this Rule, the Co-Prosecutors are merely entitled to supervise the Victims Support Section, but are not entitled to file requests on behalf of victims or potential civil parties.

### ICP's Re-filed Request in violation of Rule 66

7. Rule 66 (1) provides:

*"Where the Co-Investigating Judges consider that investigation has been concluded, they shall notify all the parties and their lawyers. (...). The parties shall have 15 (fifteen) days to request further investigative action. "*

This time limit is important because it emanates from a procedural principle enshrined in Rule 21 "*Fundamental Principles*", which provides:

*"4. Proceedings before the ECCC shall be brought to conclusion within reasonable time."*

The ICP, in order to comply with the requirement of expeditiousness of proceedings, was obligated to file valid requests for further investigations within the stipulated 15 day period which, however he failed to do. Were the CIJs to extend the time limit and recognize the invalid requests as valid despite this failure by the ICP, they would violate a fundamental procedural principle.

### Further Reason for CIJs not to exercise their Discretion as requested

<sup>6</sup> Rule 74 (2).

<sup>7</sup> Supra para. 4.



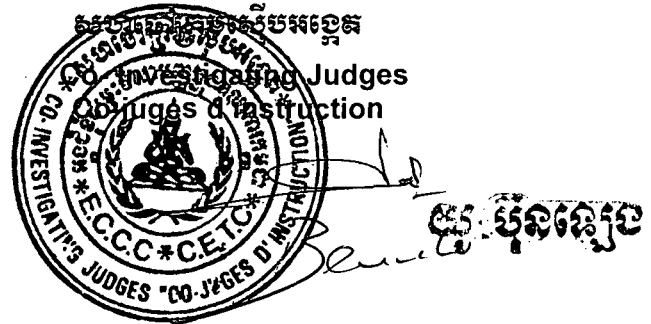
- 8. The CIJs, while fully aware of their discretion under Rule 39, are unable to exercise it as requested by the ICP for the further reason that the CIJs on their own motion already extended the time limit for the filing of civil party applications<sup>8</sup>.

**III - DECISION**

- 9. For these reasons the Co-Investigating Judges

**REJECT** the Re-filed Request.

Done in Phnom Penh on 09 August 2011



**Dr. Siegfried BLUNK**

<sup>8</sup> Press Release: Statement from the Co-Investigating Judges related to Case 003 Requests from the International Co-Prosecutor, dated 07 June 2011.