



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Royaume du Cambodge  
Nation Religion Roi

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

Case File No: 004/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 01 July 2013

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**Lawyer's Recognition Decision Regarding KONG Phallack and Mahdev MOHAN on Case File 004**

**Distribution :**

**Co-Prosecutors**

CHEA Leang  
Andrew Cayley

**Civil Party Lawyers**

CHET Vanly  
HONG Kimsuon  
KIM Mengkhy  
KONG Phallack  
LOR Chunthy  
SAM Sokong  
TY Srinna  
VEN Pov

Annie DELAHAIE  
Laure DESFORGES  
Herve DIAKIESE

Ferdinand DJAMMEN-  
NZEPA  
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Martine JACQUIN  
Emmanuel JACOMY  
Christine MARTINEAU  
Mahdev MOHAN  
Barnabe NEKUI  
Lyma NGUYEN  
Philippine SUTZ



**Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”);

**Noting** the Third Introductory Submission, dated 20 November 2008, relating to Case File 004,<sup>1</sup> which was placed on the case file on 7 September 2009;<sup>2</sup>

**Noting** the Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom (“Supplementary Submission”<sup>3</sup>);

**Noting** the judicial investigation opened in relation to alleged violations of the **1956 Penal Code**, the **Convention on the Prevention and Punishment of the Crime of Genocide** and **Crimes against Humanity**, punishable under Articles 3 (new), 4, 5, 29 (new) and 39 (new) of the ECCC Law; and Articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code;

**Noting** Rules 23, 23 *bis*, 23 *ter* and 72 of the ECCC Internal Rules (“Internal Rules”);

**Noting** Article 4 of the Practice Direction 02/2007/Rev.1 on Victim Participation (“Practice Direction”);

**Noting** that, on 25 May 2013 Civil Party Applicant **REDACTED** D5/59/3, designated KONG Phallack and Mahdev MOHAN as his lawyers through a valid Power of Attorney that was accepted by these lawyers on 25 May 2013 and placed on the Case File on 11 June 2013;<sup>4</sup>

**Noting** advice from the Victims Support Section (“VSS”) that the above-named lawyers have satisfied all requirements to appear before the ECCC;<sup>5</sup>

**Noting** that, pursuant to Internal Rule 23 *bis* (2), Civil Party applicants may exercise Civil Party rights “*unless and until rejected*”, that there is no requirement in this Internal Rule that formal charges be laid before this right may be exercised, and that Internal Rule 23 *ter* (1) enjoins the Co-Investigating Judges to make appropriate orders for the purpose of ensuring legal representation of Civil Parties as soon as practicable;

**Considering** that, in order to safeguard the interests of victims and Civil Parties and to ensure legal certainty and transparency of the proceedings pursuant to Internal Rule 21, pending decisions on admissibility or the review of previous admissibility decisions, it is important to clarify the state of legal representation for all Civil Party applicants in Case No.004;<sup>6</sup>

<sup>1</sup> Case File No. 004-D1, *Co-Prosecutor’s Third Introductory Submission*, 20 November 2008.

<sup>2</sup> Case File No. 004-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

<sup>3</sup> Case File No. 004-D65, *Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011.

<sup>4</sup> Case File No. 004-D5/59/3, *Power of Attorney Letter of REDACTED designating KONG Phallack and MOHAN Mahdev as lawyers*, 5 June 2013.

<sup>5</sup> Email from VSS to OCIJ dated 21 June 2013 regarding the qualifications of KONG Phallack and Mahdev MOHAN.

<sup>6</sup> The investigatory discretion of the CIJs is subject to an express duty set out in Internal Rule 55(5) itself, to “*conduct their investigation impartially, whether the evidence is inculpatory or exculpatory*”



**Noting** that the following rights and obligations apply as a result of being designated as a Civil Party lawyer:

- **Participation in the judicial investigation:** recognized lawyers are authorised to represent their clients during participation in investigative action and Pre-Trial proceedings, as provided in the ECCC Internal Rules and any related rulings by the Co-Investigating Judges or the Pre-Trial Chamber;
- **Access to the case file:** recognized lawyers have the right to examine and make copies of the original case file of the judicial investigation to which their client is a party, as well as the paper copies thereof, during working days and subject to the requirements of the proper functioning of the ECCC. Electronic access will be granted *upon request*,<sup>7</sup> with the assistance of the Victims Unit or the Case File Officer, but remains under the overall supervision of the Greffiers of the Co-Investigating Judges or the Pre-Trial Chamber, as appropriate; Within reason, recognized lawyers may make, or request, copies of documents contained in the case file and take them to discuss with their client, but must not hand over such copies to the client or to any other person;
- **Professional and Judicial Confidentiality:** Through the client's participation as a Civil Party, both the recognized lawyers and their clients will have access to confidential information contained in the case file. Only the ECCC Judges and Prosecutors can decide to make such information public. The recognized lawyers are bound by the confidentiality of the judicial investigation and their own professional rules not to disclose any information that they have gained from consulting the case file.
- **Filing of documents:** All official documents must be filed through the Case File Officer, as set out in the Practice Direction on Filing of Documents; once electronic access has been organized, the recognized lawyers will receive electronic notification of documents placed on the case file, and should provide an email address to the OCIJ greffier for this purpose; Service of a hard copy will only be possible where a recognized lawyers does not have access to email;<sup>8</sup>

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and that this duty also safeguards the rights of the victims to a genuine investigation, as confirmed by Internal Rule 21 sub-rules (1)(a) and (c).

<sup>7</sup> The Zylab Request form is available from the OCIJ greffier or CMS; the original should be submitted to the OCIJ greffier and then forwarded to the CFO/RAU for processing; a remote access request form may also be obtained from the OCIJ greffier if required.

<sup>8</sup> The Internal Rules and practice directions relating to Civil Party participation before the ECCC can be consulted and downloaded from the Victims Unit web page (<http://www.eccc.gov.kh/>). If you need any further advice concerning the representation of clients in ECCC proceedings, please contact the Victims Unit.



**Noting** that on 7 February 2013, Judges You Bunleng (“National CIJ”) and Harmon (“International CIJ”) signed a Written Record of Disagreement concerning *inter alia* this Decision;

**FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:**

1. **Accredit and Recognize** KONG Phallack and Mahdev MOHAN as lawyers duly admitted to the list of lawyers willing to represent victims before the ECCC, as the lawyers for **REDACTED** , as well as for all other pending Civil Party applicants and admitted Civil Parties who have designated them, or who may do so in the future, for the purposes of the judicial investigation before the ECCC in Case File No.004;
2. **Instruct** the OCIJ greffiers:
  - to note such additional designations on the files of the Civil Parties and Civil Party applicants that are already in the Case File;
  - to grant access to the Case File to the recognized lawyers upon receiving a Zylab request in due form, as set out above.



Judge Mark B. Harmon

សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ

International Co-Investigating Judge  
Co-juge d'instruction international