



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 and 004/07-09-2009-ECCC/OCIJ

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges

Bureau des co-juges d'instruction

Before:

Judge YOU Bunleng

Judge Siegfried BLUNK

Date:

19 May 2011

Original:

Khmer/English

Classification:

Confidential

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):

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មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé
du dossier:.....Ratanak.....

**Order on Motion for Reconsideration of the Decision on the
Defence Request for Access to Case Files 003 and 004 Dated
5 April 2011**

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

**Counsel assigned to represent the
interests of Unnamed Suspects**

Kong Sam Onn



We, You Bunleng (ឃុំ ប៊ុនឡុង) and Siegfried Blunk (ស៊ីគហ្វ្រីដ ប្លង់), 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 judicial investigations opened pursuant to the Co-Prosecutors' Second and Third Introductory Submissions in which five as yet Unnamed Suspects are identified by the Co-Prosecutors;

Noting Rules 21, 23 *bis*, 55 of the ECCC Internal Rules (the "Internal Rules");

Noting the Defence Support Section's Notification of Assignment – Case 003 and 004, dated 11 February 2011;

Noting the Defence's Request for Access to Case Files 003 and 004 (the "Original Request"), dated 14 February 2011;

Noting the Co-Investigating Judges' Decision on Request for Access to Case Files 003 and 004 (the "Decision"), dated 5 April 2011.

PROCEDURAL HISTORY

1. The Defence submits in its Motion for Reconsideration that:

- i) The applications to be admitted as Civil Parties in the proceedings in both Case Files 003 and 004 by Theary Seng and Robert Hamill constitute a change of circumstances;¹
- ii) The Co-Investigating Judges erred in their reasoning on a number of issues in their Decision;² and
- iii) The Decision caused an injustice to the Unnamed Suspects.³

REASONS FOR THE DECISION

Asserted change in circumstances causing an injustice to the Unnamed Suspects

2. The Co-Investigating Judges recall the Decision of the Pre-Trial Chamber cited in the Motion for Reconsideration⁴ as well as further international jurisprudence on the inherent power of a Chamber or Judge to reconsider a prior decision.
3. The Co-Investigating Judges note that the question of whether or not their Decision will be reconsidered is a discretionary matter for themselves,⁵ which

¹ Motion for Reconsideration, paras. 11-19.

² Motion for Reconsideration, paras. 20-43.

³ Motion for Reconsideration, paras. 41-43

⁴ 002/19-09-2007-ECCC/OCIJ (PTC03), **C22/1/68**, Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person, 28 August 2008, paras.25-28 (the "PTC Decision").

⁵ *Mucić et al.*, Judgment on Sentence Appeal, Case No. IT-96-21-A *bis*, App. Ch., 8 April 2003, para. 49; *Bagosora et al.*, Decision on Interlocutory Appeal from Refusal to Reconsider



only applies in exceptional cases where the new circumstances have caused unfairness or prejudice.⁶

4. The Co-Investigating Judges find that the fact that at the time of the Original Request the Civil Party applications of Theary Seng and Robert Hamill not having been submitted does not constitute an exceptional change in circumstances nor has it caused any injustice to the Unnamed Suspects. These applications were both rejected by the Co-Investigating Judges within days of their filing pursuant to Rule 23 *bis* (2) and these applicants never had "unfettered access" to the Case Files, as the Defence asserts.⁷ Therefore, they could not "prepare their cases against the Unnamed Suspects"⁸.
5. The Assigned Counsel once again makes the speculative assumption as to the identities of the Unnamed Suspects contained in Case Files 003 and 004, but nonetheless proceeds to submit that the filing of the civil party applications has caused these individuals prejudice. However, for the Counsel to assert that a suspect he does not even know has been caused prejudice, is obviously nonsensical.

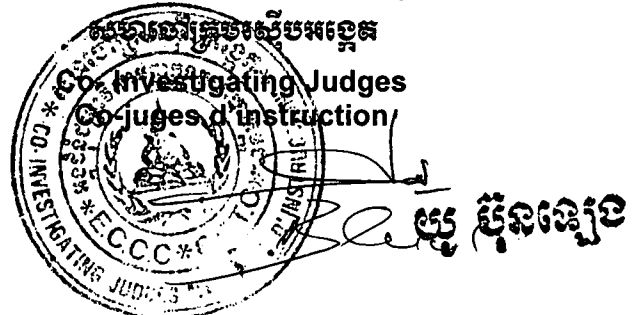
Asserted errors in the Co-Investigating Judges's Decision

6. It is unnecessary to address the arguments submitted by the Assigned Counsel regarding the alleged errors by the Co-Investigating Judges, insofar as they are merely repeated from the Original Request.

FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

- **REJECT** the Motion for Reconsideration.

Done in Phnom Penh, on 19 May 2011



Dr. Siegfried BLUNK

Decisions Relating to Protective Measures and Application for a Declaration of "Lack of Jurisdiction", Case No. ICTR-98-41-A, App. Ch., 2 May 2002, para. 10.

⁶ PTC Decision, para. 25; See also, *Brima et al.*, Judgment, Case No. SCSL-2004-16-A, App. Ch., 22 February 2008, para. 63; *Ntagerura et al.*, Judgment, Case No. ICTR-99-46-A, App. Ch., 7 July 2006, para. 55; *Kajelijeli*, Judgment, Case No. ICTR-98-44A-A, App. Ch., 23 May 2005, para. 203; *Nahimana et al.*, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, Case No. ICTR-99-52-A, App. Ch., 4 February 2005, p. 2; *Galić*, Decision on Defence's Request for Reconsideration, Case No. IT-98-29-A, App. Ch., 16 July 2004, p. 2.

⁷ Motion for Reconsideration, para. 15.

⁸ *Ibid.*