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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA
BEFORE THE CO-INVESTIGATING JUDGES

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CO-PROSECUTORS' OBSERVATIONS ON DEFENCE REQUEST FOR FRANCOIS
BIZOT TO BE PERMITTED TO MEET THE CHARGED PERSON

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I. INTRODUCTION

1. The lawyers for KAING Guek Eav, alias DUCH (“the Charged Person”) have requested¹ the Co-Investigating Judges to re-visit their original decision of 12 May 2008² refusing permission for the witness Mr. François BIZOT to meet with the Charged Person at the ECCC Detention Facility. The Co-Prosecutors submit that any such meeting before the conclusion of the entire proceedings (including the trial stage and any subsequent appeal) is improper and that the Co-Investigating Judges should reject this request.

II. PROCEDURAL HISTORY

2. Mr BIZOT has provided two statements before the Co-Investigating Judges of the ECCC.³ He has stated that he first met the Charged Person after he had been captured by Khmer Rouge guerrillas and detained at M-13, the security office controlled by DUCH in the early 1970s. Evidence from witnesses interviewed by the Co-Investigating Judges confirms that large numbers of prisoners were unlawfully detained, inhumanely treated, tortured and murdered under DUCH’s command at M-13.⁴ Mr BIZOT has described how as a prisoner of M-13 he spoke with DUCH. Mr BIZOT was eventually released from M-13 by DUCH, and later described these events in detail in a book entitled *Le Portail* (“The Gate”).⁵
3. Mr BIZOT wrote to the Co-Investigating Judges on 26 April 2008⁶ requesting permission to visit the Charged Person in the ECCC Detention facility, in effect to discuss what he had written in his book *Le Portail*. Mr BIZOT also requested permission to use a tape recorder.

¹ *Case of KAING Guek Eav*, Demande de délivrance d’un permis de communiquer à M.François Mr BIZOT, Investigation No. 001/18-07-2007-ECCC/OCIJ, 6 June 2008, Document A99/II (“Defence Request”).

² *Case of KAING Guek Eav*, Letter of the Office of the Co-Investigating Judges, Investigation No. 001/18-07-2007-ECCC/OCIJ, 12 May 2008, Document A99/I.

³ François MR BIZOT OCIJ Statement dated 22 January 2008, Document D40, ERN 00158854-00158859 (for Investigation No. 001/18-07-2007-ECCC/OCIJ); and François MR BIZOT OCIJ Statement dated 22 January 2008, Document D68, ERN 00158866-00158868 (for Investigation No. 002/19-09-2007-ECCC/OCIJ).

⁴ See, for example, MAM Nai OCIJ Statement, D22/14 dated 26 October 2007 at ERN 00162818-20, ERN 00162809-00162820 (ENG); CHAN Voeun OCIJ Statement, D78/1 dated 27 March 2008, ERN 00186741-00186746 (KHM); CHEAM Sour OCIJ Statement, D22/12, dated 23 October 2007, ERN 00162757-00162770 (KHM); UCH San OCIJ Statement, D78/2 dated 28 March 2008, ERN 00186747-00186751 (KHM); CHAN Khan OCIJ Statement, D78/4 dated 31 March 2008 ERN 00186760-00186764 (KHM)

⁵ Book by François MR BIZOT entitled *The Gate IS Annex C No. 4.2* dated 2004 ERN 00182026-00182048 (ENG).

⁶ *Case of KAING Guek Eav*, Letter of François Mr BIZOT, Investigation No. 001/18-07-2007-ECCC/OCIJ, 26 April 2008, Document A99.

4. In their rejection letter, the Co-Investigating Judges responded that Mr BIZOT would most likely be interviewed as a witness by the Trial Chamber, and that this testimony “would become meaningless” if he had spoken in advance and at length with the Charged Person.⁷ The Co-Investigating Judges reminded Mr BIZOT of the importance of the appearance as well as the reality of any conversations he sought with the Charged Person.
5. In a letter dated 6 June 2008,⁸ the lawyers for the Charged Person requested the Co-Investigating Judges to re-examine their refusal. The Defence cite four grounds in justification, asserting:
- (i) That Mr BIZOT is purely a character witness and not a witness as to fact;
 - (ii) That given Mr BIZOT has written publicly and extensively on DUCH’s character, it would be “completely improbable” that any meeting could have any influence upon his final appearance before the Trial Chamber;
 - (iii) That Mr BIZOT is in an identical situation to the character witness, Pasteur LAPEL, who will visit the Charged Person.
 - (iv) That such meetings are very important for the Charged Person’s “moral and psychological plan” to enable him to recognise his responsibility, as has been noted by the psychologist, Madame Sironi.
6. At the interrogation hearing on 25 June 2008, the lawyers for the Charged Person orally renewed their request. The Co-Prosecutors submitted that the request should be denied. The Co-Investigating Judges invited the Co-Prosecutors to submit written arguments, which leads to the instant pleadings.

III. ARGUMENT

7. The Defence assertions are erroneous and misguided. The grounds relied upon by the Co-Investigating Judges in their refusal of 12 May 2008 continue to exist.

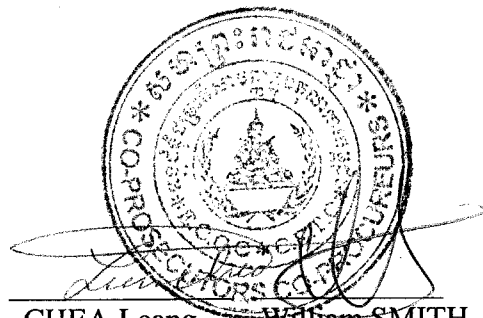
⁷ *Case of KAING Guek Eav*, Letter of the Office of the Co-Investigating Judges, Investigation No. 001/18-07-2007-ECCC/OCIJ, 12 May 2008, Document A99/I.

⁸ *Case of KAING Guek Eav*, Demande de délivrance d’un permis de communiquer à M.François Mr BIZOT, Investigation No. 001/18-07-2007-ECCC/OCIJ, 6 June 2008, Document A99/II (“Defence Request”).

8. Mr BIZOT is plainly not merely a character witness but also a witness as to fact, and it therefore cannot be said that Mr BIZOT is in a similar position to Pasteur LAPEL. As a survivor of M-13, Mr BIZOT can give evidence of the Charged Person's specific conduct within the security office, of the general conditions and of the crimes committed there. Such testimony is relevant, amongst other reasons, to establishing the Charged Person's criminal responsibility (both participation and knowledge) for the ordering, planning, instigating, aiding and abetting and commission of the methods and systems of detention, interrogation, torture and execution at S-21 that had previously had been employed at M-13. The testimony also has a bearing upon the Charged Person's claims to have only undertaken his tasks at S-21 reluctantly, establishing rather DUCH's long-standing commitment to the Khmer Rouge, its aims and methods.
9. It would be completely inappropriate for a witness of fact to have any contact with the Charged Person in advance of his ultimate testimony at the Trial Chamber. It is a cardinal principle of criminal law that in order for their evidence to be considered probative and reliable, witnesses should be free to testify without interference, inducements or threats. Contact between witnesses and accused in advance of the trial is for this reason generally prohibited.
10. Notwithstanding Mr BIZOT's previous statements and published materials relating to the Charged Person's character, the Co-Investigating Judges' initial reasoning was, and remains, correct. Any conversation with the Charged Person in advance of Mr BIZOT's testimony before the Trial Chamber would compromise the probative value and reliability of his evidence. Additionally, the appearance of fairness is as important as the probability of collusion itself; it is incompatible with such an appearance for any witness of fact to meet with the Charged Person in advance of the trial, regardless of the actual content of their discussions. Out of a total of three known prisoners to have survived M-13, Mr BIZOT is one of only two alive today. It is critical therefore that he is able to give evidence before the Trial Chamber free from interference or the appearance of interference.
11. Finally, the Defence reliance on the development of the Charged Person's "moral and psychological plan" as a reason for justifying the meeting with Mr BIZOT is misguided. The

Co-Investigating Judges are charged with taking any investigative action conducive to ascertaining the truth. Such a duty necessarily requires the Co-Investigating Judges to protect the integrity of witnesses and the evidence they give. Permitting contact between the witness and the Charged Person on the grounds of the development of DUCH's "moral and psychological plan" at this stage is therefore contrary to the Co-Investigating Judges' duty to take investigative action conducive to ascertaining the truth.

- 12. For the above-mentioned reasons, the Co-Investigating Judges are requested to DISMISS the Defence request and to deny the witness Mr BIZOT any personal contact with the Charged Person.



CHEA Leang William SMITH
Co-Prosecutor Deputy Co-Prosecutor

Signed in Phnom Penh, Kingdom of Cambodia on this 30th day of June, 2008.