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

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CO-PROSECUTORS' REQUEST FOR INVESTIGATIVE ACTION CONCERNING THE DOCUMENTATION CENTRE OF CAMBODIA [DC-CAM]

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INTRODUCTION

1. Pursuant to ECCC Internal Rule 55(10), the Co-Prosecutors hereby file with the Co-Investigating Judges (“CIJs” or “OCIJ”) the following Request for Investigative Action (“Request”).
2. The Co-Prosecutors have reviewed the evidence that has been placed on the case file to date, for the purpose of determining the additional investigative actions that are necessary in order to establish the truth and have a complete factual record regarding the subject matter of this judicial investigation. Based on this review, the Co-Prosecutors respectfully request that the CIJs conduct the additional investigative action described below.

FACTUAL BACKGROUND

3. The Documentation Centre of Cambodia (DC-Cam) is an independent non-governmental organization that collects and disseminates information on the Khmer Rouge regime based on impartial inquiry into facts and history. DC-Cam’s mission is to record and preserve the history of the Khmer Rouge regime for future generations, as well as to compile and organize information that can serve as evidence in the judicial process for the crimes of the Khmer Rouge.
4. Since 1995, DC-Cam has been conducting extensive research and documentation activities. Its archive contains more than 555,000 pages of documents, and a wide array of other types of materials. DC-Cam is the world’s largest repository of primary documents from Democratic Kampuchea. Consequently, there is a logical expectation that DC-Cam be called upon as the principal source of evidentiary materials for the ECCC.¹
5. In the course of the preliminary investigation, the OCP has heavily relied on the DC-Cam archive as a source of information and evidence. A team of OCP analysts was dispatched to DC-Cam and reviewed their archive during the course of several

¹ A UN Secretary General Report to the UN General Assembly, dated 12 October 2004 stated: “It is expected that the Chambers will rely heavily on documentary evidence. Some 200,000 pages of documentary evidence are expected to be examined. The bulk of that documentation is held by the Documentation Centre of Cambodia, an NGO dedicated to research and preservation of documentation on crimes perpetrated during the period of Democratic Kampuchea”. See: A/59/432, para 19

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months, collecting numerous pieces of evidence which were disclosed with the Introductory Submission (over 1500, see Annex 1) or at a later stage (over 400, see Annex 2). The OCP has, to date, disclosed over 1900 documents originating from DC-Cam to the case file. The OCP review of the DC-Cam archive was, however, limited in time and scope due to the constraints inherent in the nature of the preliminary investigation. Furthermore, it is believed that, as a result of DC-Cam's continuing activities, their archive should now feature new materials which were not available at the time of the preliminary investigation.

6. Through their Rogatory Letter of 4 July 2008, the Co-Investigating Judges have already requested OCIJ Investigators "*to consult and/or copy any documents, audiovisual archives or other materials in [DC-Cam's] possession relating to the [...] ongoing judicial investigation [...] so that any incriminating and exculpatory evidence [collected] may be considered for placement in the case file in a timely manner*".² Despite the wide scope of mandate given to the Investigators however, the execution of this Rogatory Letter has resulted in only 229 documents being placed in the case file.³ In addition to those, OCIJ has placed several other DC-Cam documents in the case file, however virtually all of them are Case File 001 documents which have been moved to Case File 002, or documents otherwise related to S-21.⁴

LEGAL BASIS

7. Article 23 of the Law on the ECCC allows the Co-Investigating Judges to "conduct investigations on the basis of information obtained from any institution, *including [...] non-governmental organizations.*"
8. Internal Rule 55(5) further articulates that "[i]n the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth. In all cases, they shall conduct their investigation impartially, whether the evidence is inculpatory or exculpatory. To that end, the Co-Investigating Judges may: [...] c) *Seek information and assistance from [...] any [...] non-governmental organization, or other sources that they deem appropriate.*

² See: D175

³ See: Annex 3, entries under D175

⁴ See: Annex 3, entries under D 108 and D121

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9. Internal Rule 55(10) states that “[a]t any time during an investigation, the Co-Prosecutors [...] *may request the Co-Investigating Judges to [...] undertake such investigative action as they consider necessary for the conduct of the investigation.*”

ARGUMENT

10. The Co-Prosecutors considers that identifying relevant evidence contained in DC-Cam’s archive, and placing such evidence in the case file is a necessary investigative action, which is of paramount importance for the successful completion of this judicial investigation.
11. Based on the small number of DC-Cam documents which have been placed on the case file to date and based on the size and content of the DC-Cam archive the Co-Prosecutors believe that there is likely to be more relevant and probative evidence to either prove or disprove the allegations contained in the Introductory Submission. The OCP is concerned that a failure to exploit the full potential of DC-Cam’s archive and institutional knowledge of the Khmer Rouge as a source of evidence could impact on the CIJs endeavor to establish the truth on the subject matter of this judicial investigation.
12. In order to exploit the full potential of DC-Cam’s archive as an evidence source, the Co-Prosecutors believe a systematic and comprehensive review by DC-Cam aimed at identifying evidence regarding every issue being the subject-matter of this judicial investigation is necessary. Considering the size of the archive, the limited time available, and the limited results yielded by previous inquiries, the Co-Prosecutors respectfully submit that the most effective way of performing such review would be by requesting DC-Cam itself to perform it, based on a list of issues to be supplied by the OCIJ.
13. Accordingly, the Co-Prosecutors respectfully requests the Co-Investigating Judges to seek that DC-Cam assist them by reviewing their archive in order to identify evidence relevant to the subject matter of this judicial investigation, as per the list in the attached request “**Annex 4**”, and forwarding such evidence to the CIJ’s for placement in the case file.

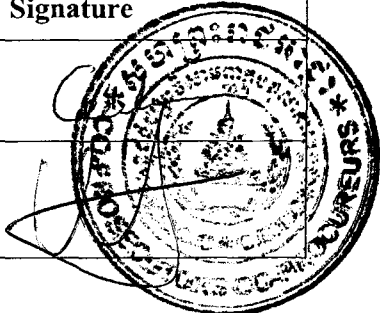
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CONCLUSION

14. The OCP requests the Co-Investigating Judges to conduct the following investigative action:

- a. To request DC-Cam to assist them by reviewing their archive in order to identify evidence relevant to the subject matter of this judicial investigation, as per the list in the attached request "**Annex 4**," and forwarding such evidence to the Co-Investigating Judges to be placed in the case file.

Respectfully submitted,

Date	Name	Place	Signature
16 November 2009	YET Chakriya Deputy Prosecutor	Phnom Penh	
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