



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux

កម្រិតច្បាប់ត្រឹមត្រូវតាមច្បាប់ដើម
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ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date/Date de certification):
..... 25 / 01 / 2008

មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer / L'agent chargé
du dossier: SANN RADA

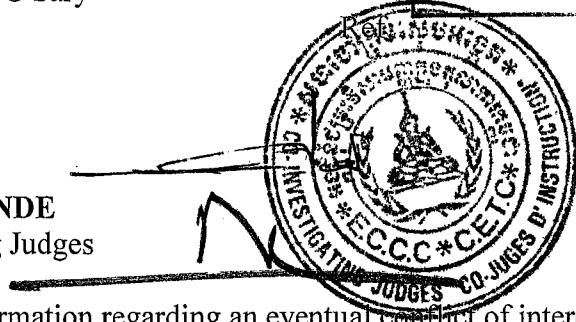
OFFICE OF THE CO-INVESTIGATING JUDGES

A: Ang Udom, Michael G. Karnavas,
TO: Lawyers for IENG Sary

Date: 24-01-2008

PAR:
THROUGH:

DE: YOU Bunleng
FROM: Marcel LEMONDE
Co-Investigating Judges



SUBJECT: Request for Information regarding an eventual conflict of interest
OBJET:

ORIGINAL DOCUMENT
RECEIVED ON 25-01-2008
AT: 11:45
BY SANN RADA
COURT OFFICER

Dear Sirs,

We acknowledge receipt of your letter dated 10 January 2008, asking whether it is true that an investigator from the Office of the Co-Investigating Judges (M. Stephen Heder) had previously been employed by the Office of the Co-Prosecutors; and whether this situation is likely to cause a problem of conflict of interest, be it real or alleged.

We confirm that Mr Heder, was hired for UNAKRT (United Nations Assistance to the Khmer Rouge Trials) by the UN Department of Economic and Social Affairs in July 2006 and assigned to the Office of the Co-Investigating Judges. However, before taking up his duties, he was detached to the Office of the Co-Prosecutors from July to December 2006.

This is not an unusual situation. Indeed, in accordance with the relevant articles of the Internal Rules (Rules 13(4), 14(5), 15, 16, 50(2), 55(9) and 62), ECCC investigators may be compared with judicial police officers: they are subject to a comparable accreditation process and, with the exception of coercive measures that can only be undertaken by judicial police officers, they have the same attributions in the preliminary investigation and during the judicial investigation; the exercise of these functions is controlled by the relevant judicial officer.

These provisions of the Internal Rules are directly drawn from Cambodian law, where the judicial police works under the authority of the Prosecutor during preliminary investigations and under the authority of the Investigating Judge during the judicial investigation phase (see Article 37(1) of the Cambodian Criminal Procedure Code).



This is common practice in all countries applying a comparable procedural system that of Cambodia (for instance, see Articles 14, 75 and 151 of the French Criminal Procedure Code; Articles 9 and 56 of the Belgian Criminal Investigation Code etc...). In addition, the relevant case-law recalls that the rules governing the incompatibility of functions, aimed at guaranteeing the independence and impartiality of courts, only apply to magistrates and not to investigators.

Therefore, the situation referred to in your letter dated 10 January 2008 does not raise any problem regarding the independence and impartiality of the Co-Investigating Judges, and in no way prejudices the progress of on-going judicial investigations.

Yours sincerely,

