

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

FILING DETAILS

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CO-PROSECUTORS' REQUEST FOR THE PLACEMENT ON CASE FILE 002 OF DOCUMENTS CONTAINED IN CASE FILE 001

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I. INTRODUCTION

1. Pursuant to Sub-rule 55(10) of the ECCC Internal Rules, the Co-Prosecutors request the Co-Investigating Judges to put on Case File 002/19-09-2007/ECCC/OCIJ (Case File 002) copies of all substantive documents contained in Case File 001/18-07-2007/ECCC/TC (Case File 001) which have not already been transferred to Case File 002.

II. RELEVANT CONSIDERATIONS

2. By a Note dated 28 October 2008¹ the Co-Investigating Judges decided that copies of the following Case File 001 documents are to be placed on Case File 002:
 - a) All substantive documents itemised in sub-folder category "D" that had not already been placed on Case File 002, with the exception of those categorised under numbers D25 (civil party applications relating only to Case File 001) and D98; and
 - b) The psychological report on KAING Guek Eav.
3. In their Note the Co-Investigating Judges stated that the above documents were conducive to ascertaining the truth in Case File 002. The Co-Prosecutors submit that the same applies to all substantive documents filed during the subsequent phase of Case 001, namely in the trial proceedings.
4. The Co-Prosecutors understand that the transfer which they are requesting can be effected by the placement on Case File 002 of copies of all documents contained in sub-folder category "E" in Case 001. The Co-Prosecutors would defer to the wisdom of the Co-Investigating Judges on the practicalities of the transfer.
5. The relevance and evidentiary value of substantive documents and trial records from Case File 001 are apparent on their face. During the trial in Case 001, the Accused KAING Guek Eav and a multitude of witnesses and civil parties gave evidence relating to events taking place in, and surrounding, security office S-21. The First Introductory Submission,² pursuant to which Case 002 was opened, requires an investigation of the criminal responsibility of suspects (now Charged Persons) KHIEU Samphan, NUON

¹ Note by the Co-Investigating Judges, 28 October 2008, D108

² Introductory Submission, 18 July 2007, D3

Chea, IENG Sary and IENG Thirith in relation to crimes committed at, or relating to, security centers in Democratic Kampuchea, including S- 21. In light of this fact, the evidence presented at trial in Case 001 is of direct relevance to Case 002. KAING Guek Eav is also a Charged Person in Case 002.

6. Filings, evidence and records placed on Case File 001 in preparation for, and during, the trial are official Court records, received in compliance with all applicable procedural guarantees, and their authenticity is therefore also beyond question.
7. The Co-Prosecutors recognise that the trial records in Case File 001 include “D” documents which had been gathered during the judicial investigation – i.e. documents whose copies have already been transferred to Case File 002 pursuant to the decision referred to above. Upon placement and examination before the Trial Chamber, such documents were given a new “E3” number. For simplicity, completeness and easier reference, the Co-Prosecutors submit that copies of these documents too should be included in this transfer. Alternatively, the Records and Archives Unit of the Court Management Section may be able to advise as to how the records in Case File 002 should be updated in as far as they relate to these documents.
8. Finally, as noted above in paragraph 2(a), in ordering the transfer of copies of sub-folder category “D” documents, the Co-Investigating Judges exempted civil party applications relating to Case File 001. The Co-Prosecutors submit that, for completeness, and since no protective measures were ordered in relation to civil party applicants in Case 001, it is now appropriate to place copies of all those applications (that is, sub-folder categories D25 and E2³ in Case File 001) on Case File 002. Various documents which were filed in support of these applications may be conducive to ascertaining the truth in Case File 002.

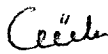
III. REQUEST

9. The Co-Prosecutors respectfully request that the Co-Investigating Judges order, with the Trial Chamber’s consent, a transfer to Case File 002 of copies of the following documents from Case File 001:

³ Sub-folder E2 contains all Civil Party applications before the Trial Chamber in Case 001.

- a) all substantive documents (including written records, filings, evidence and transcripts whether classified as public or confidential), which were placed on Case File 001 since the transfer of the case to the Trial Chamber - i.e. the entire sub-folder category "E," and any other documents the Co-Investigating Judges deem relevant; and
- b) all documents contained in sub-folder category D25.
10. The Co-Prosecutors are at the Co-Investigating Judges' disposal should their Honours determine that a request to the Trial Chamber in relation to this transfer should be made by the Co-Prosecutors.

Respectfully submitted,

Date	Name	Place	Signature
22 October 2009	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
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