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ឯកសារប្រាកដកម្មនៃស្នងការដ្ឋានតុលាការកម្ពុជា
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ជាតិ សាសនា ព្រះមហាក្សត្រ
 Kingdom of Cambodia
 Nation Religion King
 Royaume du Cambodge
 Nation Religion Roi

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

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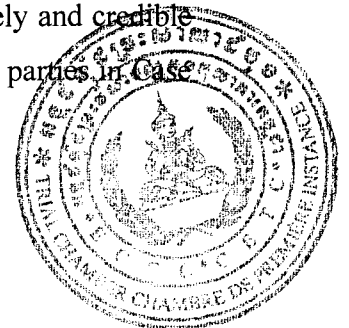
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អង្គជំនុំជម្រះសាលាដំបូង
 Trial Chamber
 Chambre de Première instance
 No. 47 ECCC/T.C

To the United Nations Secretary-General

1. The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) respectfully requests the assistance of the United Nations Secretary-General in a matter currently pending before it in the trial of Kaing Guek Eav, alias “Duch” (Case 001).

2. The Trial Chamber is presently seized of a submission filed on 11 May 2009 by Civil Party (Group 1) in Case 001, which notes that the United Nations Office of Internal Oversight Services conducted an investigation into allegations of corruption within the ECCC. This investigation resulted in the publication of a report (“UN-OIOS Report”), the existence of which was rendered public. The contents of the UN-OIOS Report however, remain confidential and have not been disclosed to the Trial Chamber or to parties before the ECCC. The Civil Party (Group 1) submission requests that the Trial Chamber presently facilitate the disclosure of the UN-OIOS Report to the Case 001 parties on the basis that its potential publication after the close of the proceedings would raise fair trial issues that might undermine the trial judgment. The Trial Chamber notes that, although the Office of the Co-Prosecutors of the ECCC opposes the Civil Party (Group 1) request, they have acknowledged publicly that the release of the report and a timely and credible resolution of the issue would enhance the credibility of the process. Other parties in Case



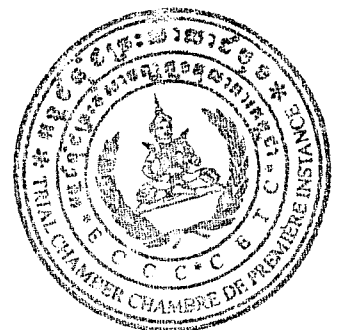
001 have either sought its release or indicated no objection to the release of the UN-OIOS Report by the United Nations.

3. Disclosure of the UN-OIOS Report is, among other requests, also the subject of four appeals before the Pre-Trial Chamber of the ECCC in the case of Nuon Chea (Case 002). Further, the Trial Chamber is aware of press reports indicating that requests for disclosure of the UN-OIOS Report have been filed with the local Cambodian courts and directly with the United Nations.

4. The allegations of corruption which are the focus of the submissions before the Trial Chamber (and it was presumed, of the UN-OIOS Report) primarily concern whether certain national administration officials of the ECCC paid money to obtain or retain their positions. The Trial Chamber notes, however, that the 30 March 2009 transcript of the daily press briefing by the Office of the Spokesperson for the Secretary-General (quoted in relevant part below) indicates that the UN-OIOS Report may have also explored corruption allegations of a different nature:

Question: Michele, the UN-sponsored Khmer Rouge war crimes tribunal kicked off today in Cambodia against the protests of the defence team, who said that there were kickbacks and corruption preceding this. They also said that they'd brought to the Secretary-General complaining about this. Is the Secretary-General aware of an investigation into the war crimes tribunal there conducted by the OIOS, and if so, does he have anything to say about that?

Spokesperson: The Secretary-General certainly is aware of that investigation. I cannot comment on issues that may affect an ongoing legal process, as you know. What I can really say at this point is that corruption within the court has been under investigation by OIOS and, as you know, that work is confidential. The result of the probe will be submitted to the Cambodian party for further action. As you know, we signed an agreement, a joint statement with the Cambodian Government dated 23 February 2009. Among other things, this creates a new structure within the tribunal that would allow all staff of the ECCC [Extraordinary Chambers in the Court of Cambodia] to confidentially complain to an ethics monitor in a way that would provide genuine protection. This protection is the bottom line for the United Nations. And as I said, the OIOS report will be submitted to the Cambodian party once we receive it.



Question: Do you have any clarification though on why, if the UN is sponsoring and helping fund this tribunal, why if there is an ongoing investigation into corruption that it still is going forward without any protests from the UN?

Spokesperson: These allegations concern some Cambodian judges that have been named by Cambodia. So this matter is not for us to act upon. What we can do is refer all our investigation, the whole thing and what was found about kickbacks as well as corruption of judges, we have to forward this to the Cambodian party and they have to act on it.

Question: Are there any specific names, or anybody specific ...?

Spokesperson: Not that I can reveal right now, because at this point, as I said it is under investigation.

5. The Trial Chamber has yet to rule on the submissions in Case 001 related to the UN-OIOS Report. Any ruling would include whether the ECCC constitutes a proper forum for the matter, and whether the Trial Chamber would seek disclosure of the UN-OIOS Report.

6. In order to reach a determination of these issues however, it is necessary to seek clarification of the statements made by the Office of the Spokesperson for the Secretary-General. Therefore, the Trial Chamber respectfully requests that the United Nations Secretary-General, through the Office of the Spokesperson for the Secretary-General, clarify

- (a) whether the quote accurately reflects the statement made by the spokesperson;
- (b) whether the statement made by the spokesperson accurately reflects the contents of the report; and
- (c) if the statement has been retracted, has this been done publicly.

7. As you will appreciate, this is a matter of some urgency. The Trial Chamber therefore respectfully seeks a response as soon as possible.



8. As a courtesy, and to enable you to respond to our requests, the Trial Chamber has filed the letter in the Case File marked 'strictly confidential'. However, in accordance with the procedures associated with the work of the Trial Chamber, the letter must be made available to the parties and therefore to the public as soon as it is appropriate to do so.

Please accept, Secretary-General, my sincere regards. (D.A) *DA*.

Phnom Penh, 09 July 2009

President of the Trial Chamber

