



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens

Kingdom of Cambodia
Nation Religion King

Case File No: 002/19-09-2007-ECCC-OCIJ

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d'instruction

Before: Judge YOU Bunleng
Judge Marcel LEMONDE
Date: 09 April 2010
Language(s): Khmer/English
Classification: PUBLIC

ឯកសារពិតប្រាកដត្រឹមត្រូវតាមច្បាប់ដើម
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du dossier: Ratanak

Order on Investigative Request Regarding the Film
"Enemies of the People"

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Charged Person(s)

NUON Chea KHIEU Samphan
IENG Sary KAING Guek Eav
IENG Thirith alias "Duch"

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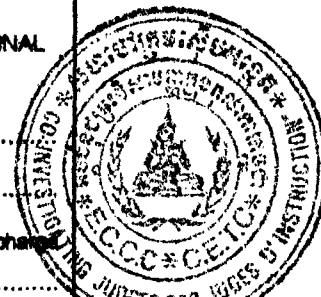
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du dossier: Uch Arun



We, **You Bunleng (ឃុំ ប៊ុនលេង)** and **Marcel Lemonde**, Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”),

Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (the “ECCC Law”);

Noting the ongoing judicial investigation against **NUON Chea (នួន ឆា)** and other **Charged Persons**, relating to charges of **Crimes against humanity, Grave breaches of the Geneva Conventions dated 12 August 1949, Genocide, Murder, Torture and Religious persecution**, offences defined and punishable under Articles 3, 4, 5, 6, 29 (new) and 39 (new) of the ECCC Law, and 209, 210, 500, 501, 503 to 508 of the 1956 Penal Code;

Noting Rules 55 and 66 of the ECCC Internal Rules (the “Internal Rules”);

Considering the Co-Prosecutors’ Investigative Request dated 3 February 2010 (the “Request”- D344).

CO-PROSECUTORS’ REQUEST

1. On 3 February 2010, the Co-Prosecutors requested the Co-Investigating Judges (“CIJs”) to obtain copies of the film “*Enemies of the People*” and of the video and audio taped interviews behind the creation of such film - including but not limited to interviews of NUON Chea regarding his involvement in crimes committed in Democratic Kampuchea - and to place such copies onto Case File 002. The Co-Prosecutors requested the CIJs to contact Mr. THET Sambath, director of the film, Mr. Rob LEMKIN, producer of the film and/or any other individuals in order to obtain such copies. Additionally, the Co-Prosecutors requested the CIJs to document their efforts in obtaining the materials and collect information on the chain of custody of all the obtained materials.
2. As an annex to their Request the Co-Prosecutors attached a media article entitled “*Khmer Rouge killing machine explored at Sundance*” dated 28 January 2010, published by Agence France Presse, which describes the content of the film and, in particular, the declarations of NUON Chea therein¹.

SUMMARY OF THE FACTS

3. Although the contents of this film and any declarations made by NUON Chea therein must be afforded a lesser degree of weight compared to evidence gathered directly by the CIJs during the investigation, the CIJs agreed with the Co-Prosecutors’ submissions and considered, based on public media descriptions of the content – particularly declarations made by the Charged Person NUON Chea

¹ A public copy of the article can be found at <http://www.nrw.nl/international-justice/article/khmer-rouge-killing-machine-exposed-sundance> and <http://www.france24.com/en/20100128-khmer-rouge-killing-machine-explored-sundance>



- that the film could contain information that might be of interest to establishing the truth in Case File 002, and if so, should therefore be placed on the Case File. Thus, the request was accepted by the CIJs.
4. To this end, the CIJs wrote a letter on 3 February 2010 to Robert Lemkin² requesting a copy of the film for the purposes of the investigation into NUON Chea.³
 5. Robert Lemkin responded by email on 9 February 2010 stating he had discussed the request with Thet Sambath and that, as the film had not yet been “generally released” they would not be able to provide a copy but that they would be prepared to organise a public screening of the film to which, “any officer of the court may come and see the film.”⁴
 6. The CIJs responded to Robert Lemkin by letter on 15 February 2010⁵ providing fuller detail as to the legal regime governing judicial investigations at the ECCC, emphasizing that the investigation was nearing conclusion and explaining that for any official of the court to attend a public screening of the film would not endow it with any evidential value and would be insufficient legally for the purposes of considering the contents of the film in the judicial investigation into NUON Chea.
 7. Since no response to this letter was received from Robert Lemkin, telephone contact was made with him by the Office of the Co-Investigating Judges in March 2010. In the course of the conversation, Robert Lemkin reiterated that he was not prepared to provide a copy of the film to the Court any earlier than the film’s general release date to the public, that no assurances provided by the CIJs as to the confidentiality and limited legal use of the film would be sufficient and that he was only prepared, before its general release, for members of the court to attend a public screening of the film.

REASONS FOR THE DECISION

8. In January 2010, Robert Lemkin publicly declared: “*The film is going to be used by the court and given to the court. We are very proud of it.*”⁶ The CIJs find it deeply regrettable that despite these comments made to the international press, the filmmakers showed to be subsequently unwilling to cooperate upon being formally approached by the court and despite being given judicial assurances.
9. The CIJs consider that waiting until the public release of a film – at which point it can be easily obtained without any assistance required of the filmmakers – cannot be equated to the court being “given” the film by the filmmakers.

² The signed letter was scanned and then sent to Robert Lemkin’s email at his production company Old Street Films based in Oxford in the United Kingdom.

³ Annex 1 to this Order.

⁴ Annex 2 to this Order.

⁵ Annex 3 to this Order.

⁶ AFP article dated 28 January 2010, above-mentioned (See Footnote 1)



- 10. The CIJs reiterate that to attend a public screening of the film would not endow it with any evidential value and would not have the legal effect (were it to be deemed necessary) of placing the film on the Case File to consider it in the preparation of the Closing Order.
- 11. The CIJs gave due consideration to the possibility of seizing copies of the film "Enemies of the People" and of the video and audio taped interviews behind the creation of such film. However, given the amount of time required and the practical difficulties involved in order to enforce an international rogatory letter, the CIJs did not consider that it would be a judicious use of time or resources to take any further action in this regard, especially as in any event, should the Charged Person be indicted and the case were to proceed to trial, the Co-Prosecutors would still be entitled to seek to have the film (which by this stage will presumably be on general release) added to the Case File for consideration during the trial.

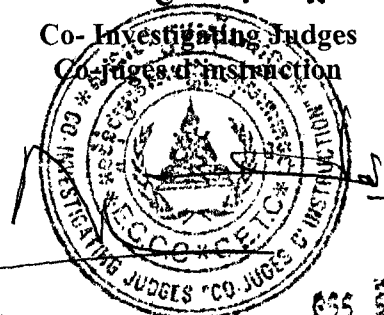
FOR THESE REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

- **Accept** the Co-Prosecutors' Request.
- **Inform** the Co-Prosecutors of the results of the action taken by the CIJs as stated in this Order.

Done in Phnom Penh, on 09 April 2010

សហចៅក្រមស៊ើបអង្កេត

Co- Investigating Judges
Co-juges d' instruction



Marcel LEMONDE

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