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**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

**Kingdom of Cambodia  
Nation Religion King**

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

**ការិយាល័យសហចៅក្រមស៊ើបអង្កេត**

**Office of the Co-Investigating Judges  
Bureau des Co-juges d'instruction  
Case File No: 002/19-09-2007-ECCC-OCIJ**

Before: **Judge YOU Bunleng**  
**Judge Marcel LEMONDE**

Date: **13 January 2010**

Original language: **French/Khmer**

Classification: **Confidential**

**ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម**  
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**សាធារណៈ**  
**PUBLIC**  
05/03/2010

**Order on the Admissibility of Civil Party Applications  
Related to Request D250/3**

**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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We, **You Bunleng** (ឃុំ ប៊ុនហ្គុន) 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 à 508 of the 1956 Penal Code;

**Noting** Rules 12, 21, 23, 29, 49, 53, 55, and 66 of the ECCC Internal Rules (the “Internal Rules”);

**Noting** Articles 1 and 3 of the Practice Direction on Victim Participation (the “Practice Direction”);

**Noting** the Introductory and Supplementary Submissions from the Co-Prosecutors dated 18 July 2007 (D3), 26 March 2008 (D83), 31 July 2009 (D196), and 30 April 2009 (D146/3);

**Noting** the Civil Parties' Request for Supplementary Investigations Regarding the Genocide of the Khmer Krom & the Vietnamese, 3 December 2009 (D250/3)

## PROCEDURAL HISTORY

1. Pursuant to Rule 12 of the Internal Rules, the ECCC Victims Unit forwarded to the Co-Investigating Judges several reports to which were attached the Civil Party applications<sup>1</sup> of two groups of applicants identifying themselves respectively as being ethnic Vietnamese or as belonging to the Khmer Krom minority.
2. *Victims identifying themselves as being ethnic Vietnamese from Kampong Chhnang province :*
  - **VN01** - Civil Party application 08-VU-02379 was placed on the case file on August 17, 2009 with the reference D22/125
  - **VN02** - Civil Party application 08-VU-02380 was placed on the case file on September 01, 2009 with the reference D22/171
  - **VN03** - Civil Party application 08-VU-02378 was placed on the case file on January 11, 2010 with the reference D22/276
  - **VN04** - Civil Party application 08-VU-02116 was placed on the case file on October 02, 2009 with the reference D22/172
  - **VN05** - Civil Party application 09-VU-01723 was placed on the case file on January 11, 2010 with the reference D22/277

<sup>1</sup> The reference XX-VU-XXXX corresponds to the registration numbered conferred to the Civil Party applicant by the Victims Unit. The following reference D22/XXX corresponds to the Case File reference number of the Civil Party application in Case File 002. Finally, the reference V, VN, K or KK corresponds to the reference indicated in the Request D250/3.

- **VN06** - Civil Party application 09-VU-01722 was placed on the case file on January 11, 2010 with the reference D22/278
- **VN07** - Civil Party application 09-VU-02241 was placed on the case file on January 11, 2010 with the reference D22/279
- **VN08** - Civil Party application 09-VU-02242 was placed on the case file on January 11, 2010 with the reference D22/280
- **VN09** - Civil Party application 09-VU-02243 was placed on the case file on January 11, 2010 with the reference D22/281
- **VN10** – Civil Party application 08-VU-2291 was placed on the case file on December 4, 2009 with the reference D22/205
- **VN11** - Civil Party application 09-VU-02239 was placed on the case file on January 11, 2010 with the reference D22/282
- **VN12** - Civil Party application 09-VU-02240 was placed on the case file on January 11, 2010 with the reference D22/283
- **VN13** - Civil Party application 09-VU-00687 was placed on the case file on January 11, 2010 with the reference D22/284
- **VN14** - Civil Party application 09-VU-00686 was placed on the case file on January 11, 2010 with the reference D22/285
- **VN15** - Civil Party application 09-VU-00688 was placed on the case file on January 11, 2010 with the reference D22/286
- **VN16**- Civil Party application 09-VU-00685 was placed on the case file on January 12, 2010 with the reference D22/287<sup>2</sup>.

3. *Victims identifying themselves in their Civil Party application as belonging to the Khmer Krom minority:*

- **KK 01** Civil Party application 09-VU-02140 was placed on the case file on January 11, 2010 with the reference D22/262.
- **KK 02** - Civil Party application 09-VU-02139 was placed on the case file on January 11, 2010 with the reference D22/261.
- **KK 03** Civil Party application 09-VU-02138 was placed on the case file on January 11, 2010 with the reference D22/260.
- **KK 04** Civil Party application 09-VU-02137 was placed on the case file on January 11, 2010 with the reference D22/259.
- **KK 05** Civil Party application 09-VU-02136 was placed on the case file on January 11, 2010 with the reference D22/258.
- **KK 06** Civil Party application 09-VU-02135 was placed on the case file on January 11, 2010 with the reference D22/257.
- **KK 07** Civil Party application 09-VU-02134 was placed on the case file on January 11, 2010 with the reference D22/236.
- **KK 08** Civil Party application 08-VU-02103 was placed on the case file on December 18, 2009 with the reference D22/253.
- **KK09** – as of the date of the present Order, this Civil Party application had not been filed before the Greffiers of the Co-Investigating Judges.
- **K10** - Civil Party application 09-VU-02151 was placed on the case file on January 11, 2010 with

<sup>2</sup> On 23 October 2009, the Co-Investigating Judges were informed by his legal representatives that the civil party had deceased.

- the reference D22/273.
- **K11** - Civil Party application 09-VU-02150 was placed on the case file on January 11, 2010 with the reference D22/272.
  - **K12** - Civil Party application 09-VU-02149 was placed on the case file on January 11, 2010 with the reference D22/271.
  - **K13** - Civil Party application 09-VU-02148 was placed on the case file on January 11, 2010 with the reference D22/270.
  - **K14** - Civil Party application 09-VU-02147 was placed on the case file on January 11, 2010 with the reference D22/269.
  - **K15** - Civil Party application 09-VU-02145 was placed on the case file on January 11, 2010 with the reference D22/267.
  - **K16** - Civil Party application 09-VU-02146 was placed on the case file on January 11, 2010 with the reference D22/268.
  - **K17** - Civil Party application 09-VU-02144 was placed on the case file on January 11, 2010 with the reference D22/266.
  - **K18** - Civil Party application 09-VU-02143 was placed on the case file on January 11, 2010 with the reference D22/265.
  - **K19** - Civil Party application 09-VU-02142 was placed on the case file on January 11, 2010 with the reference D22/264.
  - **KK 20** Civil Party application 09-VU-02141 was placed on the case file on January 11, 2010 with the reference D22/263.
  - **KK 21** Civil Party application 09-VU-00638 was placed on the case file on August 17, 2009 with the reference D22/134.
  - **KK 22** Civil Party application 08-VU-02267 was placed on the case file on August 17, 2009 with the reference D22/135.
  - **KK 23** Civil Party application 09-VU-00641 was placed on the case file on August 03, 2009 with the reference D22/101.
  - **KK 24** Civil Party application 08-VU-02130 was placed on the case file on August 03, 2009 with the reference D22/102.
  - **K 25** Civil Party application 08-VU-02131 was placed on the case file on August 17, 2009 with the reference D22/132
  - **KK 26** Civil Party application 09-VU-04265 was placed on the case file on January 11, 2010 with the reference D22/274.
  - **KK 24** Civil Party application 08-VU-02130 was placed on the case file on August 03, 2009 with the reference D22/102.
  - **KK27** - Civil Party application 09-VU-04266 was placed on the case file on January 11, 2010 with the reference D22/275.
4. On 3 December 2009, the aforementioned Civil Parties requested the Co-Investigating Judges to consider *“new evidence regarding alleged crimes against the Khmer Krom minority group in Pursat and Takeo Provinces during the Democratic Kampuchea period and to supplement the allegations in the Introductory Submission concerning the treatment of Vietnamese”*.<sup>3</sup>
5. Their lawyers requested in addition that the Co-Investigating Judges consider granting protective

<sup>3</sup> D250/3, Civil Parties' Request for Supplementary Investigations Regarding the Genocide of the Khmer Krom & the Vietnamese, 3 December 2009, para. 1.

measures to their clients. They recommended that, pending completion of a risk assessment on their lives, families and properties, and pending any decision of the Co-Investigating Judges, the information concerning their clients should not be divulged either to the public or the lawyers of the Charged Persons.<sup>4</sup>

## REASONS FOR THE DECISION

6. In applying Rule 23 of the Internal Rules, the Co-Investigating Judges may declare by a reasoned order a Civil Party application inadmissible at any moment until the Closing Order.

### 1. Admissibility criteria specific to civil party applications by way of intervention

7. Rule 23(1) of the Internal Rules sets out that “[t]he purpose of Civil Party action before the ECCC is to:

- (i) *Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and*
- (ii) *Allow Victims to seek collective and moral reparations, as provided in this Rule.”*

8. Thus, according to ECCC procedure, contrary to Cambodian Criminal Procedure<sup>5</sup>, a Victim who wishes to be joined as a Civil Party may only do so by *way of intervention*, joining ongoing proceedings<sup>6</sup>.

9. The Co-Investigating Judges are limited by the fundamental principle under which they may not investigate beyond that of which they are seised *in rem* by the Co-Prosecutors, and Civil Parties may not extend the scope of the investigation by way of intervention.

10. The Civil Party application is therefore limited, given that Civil Parties cannot expose new facts to the Investigating Judges during the investigation without a prior Supplementary Submission from the Co-Prosecutors<sup>7</sup>.

11. Accordingly, in order for a Civil Party application to be admissible, the applicant is required to demonstrate that the injury results only from the facts for which the judicial investigation has already been opened, namely in this particular context, the treatment of Vietnamese in Prey Veng and Svay Rieng Provinces and during incursions into the territory of Vietnam, that being said the Co-Investigating Judges will also verify if the injury in question is not in relation to other facts under investigation as described in the Introductory and Supplementary Submissions.

<sup>4</sup> See part VI of the Request D250/3.

<sup>5</sup> Articles 138 to 142 of the Criminal Procedure Code (Complaint with Application to become Civil Party )

<sup>6</sup> For reference article 137 of the Code of Criminal Procedure reads **Civil Party Application by Way of Intervention** “After the opening of a judicial investigation any persons who claim to be victims of an offense may, at any time, file a request to become civil party to the investigating judge”.

<sup>7</sup> See also Article 3.1 and 3.3 of the Practice Direction which provide that “[a]ny victim of a crime coming within the jurisdiction of the ECCC may join the proceedings as a civil party in a case concerning that crime” and “Victims may only apply to be joined as civil parties to a case if the case is under investigation by the Co-Investigating Judges and up until the opening of proceedings in that case before the Trial Chamber”.

## 2. Individual Assessment of the Civil Party Applications

12. In order to be admissible, the Civil Party application must respond to the conditions defined in Rule 23 of the Internal Rules and Article 3.2 of the Practice Direction on Victim Participation. Thus:
- (i) The applicant must be a natural person or legal entity that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC.
  - (ii) To be considered to have suffered harm, the applicant must show:
    - i. Physical, material, or psychological injury; and
    - ii. Such injury to be the direct consequence of the offence, personal and have actually come into being.
  - (iii) Psychological injury may include the death of kin who were the victim of such crimes.
13. Pursuant to Rule 23(5), it must “*contain sufficient information to allow verification of their compliance with these IRs. In particular, the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator*”.
14. In light of the foregoing, the Co-Investigating Judges will now assess the merits of the Civil Party applications to determine whether or not they meet the requirements set out above. In this present decision, the Co-Investigating Judges will only provide the essential information on each applicant. A summary of the alleged criminal acts of the Civil Party applications is Annexed to the present decision<sup>8</sup>
15. First, the Co-Investigating Judges note that all the applicants have provided proof of their identity and indication of an address in Cambodia. The Co-Investigating Judges consider therefore that the applicants have shown clearly that they are natural persons and their identity has been established accordingly.
16. They note, moreover, that all the applicants provided sufficient evidence to consider it plausible that they suffered personal and direct injury. However, the causality link between the injury and the facts under investigation is not established in a number of cases.
17. They recall that a Civil Party application by way of intervention before the Co-Investigating Judges of the ECCC, as provided by Rule 23 of the Internal Rules, is only admissible to the extent that it is based on the facts for which the investigation is currently open.
18. In view of these elements, the following Civil Party applications appear admissible, the applicants having provided sufficient pertinent evidence in order to establish *prima facie* that their injury is a direct consequence of the facts within the scope of the ongoing judicial investigation, as described in the Introductory and Supplementary Submissions from the Co-Prosecutors in Case 002:

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<sup>8</sup> The information contained in the Annex is taken from the Victims Unit Individual Report attached to each Civil Party application sent by the Victims Unit to the Co-Investigating Judges.

- (i) 09-VU-02140 (D22/262), 09-VU-02139 (D22/261) and 09-VU-02137 (D22/259) as victims of persecution against Buddhist monks on the territory of Democratic Kampuchea within the jurisdiction *rationae loci* of the ECCC (paragraph 72 of the Introductory Submission) and as victims of incursions by the Democratic Kampuchea forces into the territory of Vietnam in 1978 (paragraph 70 of the Introductory Submission);
  - (ii) 09-VU-02134 (D22/236), 08-VU-02131 (D22/132) as victims of the incursions by the Democratic Kampuchea forces into the territory of Vietnam in 1978 (paragraph 70 of the Introductory Submission);
  - (iii) 09-VU-02135 (D22/257), 08-VU-02103 (see also 09-VU-02133)(D22/253) as victims of the evacuation of Phnom Penh (paragraph 37 of the Introductory Submission);
  - (iv) 09-VU-02149 (D22/271) as a victim of forced marriage (Supplementary Submission dated 30 April 2009);
  - (v) 09-VU-04266 (D22/275) as a victim of forced transfer from the East Zone, and in particular from Prey Veng and Svay Rieng provinces to Pursat and Battambang provinces (paragraph 42 of the Introductory Submission);
19. On the contrary, the Co-Investigating Judges find that the necessary causal link between the alleged injury and the facts under investigation was not established by applicants numbered 08-VU-02379 (D22/125), 08-VU-02380 (D22/171), 08-VU-02378 (D22/276), 08-VU-02116 (D22/172), 09-VU-01723 (D22/277), 09-VU-01722 (D22/278), 09-VU-02241(D22/279), 09-VU-02242 (D22/280), 09-VU-02243 (D22/281), 09-VU-02136 (D22/258); 09-VU-02239 (D22/282), 08-VU-2291 (D22/205), 09-VU-02240 (D22/283), 09-VU-00687 (D22/284), 09-VU-00686 (D22/285), 09-VU-00688 (D22/286), 09-VU-00685 (D22/287), 09-VU-02138 (D22/260), 09-VU-02151 (D22/273), 09-VU-02150 (D22/272), 09-VU-02148 (D22/270), 09-VU-02147 (D22/269), 09-VU-02145 (D22/267), 09-VU-02146 (D22/268), 09-VU-02144 (D22/266), 09-VU-02143 (D22/265), 09-VU-02142 (D22/264), 09-VU-02141 (D22/263), 09-VU-00638 (D22/134), 08-VU-02267 (D122/135), 09-VU-00641 (D22/101), 08-VU-02130 (D22/102), and 09-VU-04265 (D22/274) to the extent that the reported facts are in their entirety distinct from those of which the Co-Investigating Judges are currently seised and no circumstances allow them to consider the possibility of a direct link between the alleged injury and the alleged crimes under investigation. Indeed, pursuant to paragraphs 69 and 70 of the Introductory Submission, the Co-Investigating Judges are seised of facts relating to the treatment of the Vietnamese in Prey Veng and Svay Rieng Province, and during incursions into Vietnam. They are seised neither of facts targeting the Khmer Krom population in Pursat and Takeo provinces nor against the ethnic Vietnamese in Kampong Chhnang province.

## FOR THESE REASONS, THE CO-INVESTIGATING JUDGES

### DECLARE

- Civil Party applications 09-VU-02140 (D22/362), 09-VU-02139 (D22/261) et 09-VU-02137 (D22/259), 09-VU-02134 (D22/236), 08-VU-02131 (D22/132), 09-VU-02136 (D22/258), 09-VU-02135 (D22/257), 08-VU-02103 (also 09-VU-02133), D22/253, 09-VU-02149 (D22/271) and 09-VU-04266 (D22/275) admissible.

- Civil Party applications 08-VU-02379 (D22/125), 08-VU-02380 (D22/171), 08-VU-02378 (D22/276), 08-VU-02116 (D22/172), 09-VU-01723 (D22/277), 09-VU-01722 (D22/278), 09-VU-02241 (D22/279), 09-VU-02242 (D22/280), 09-VU-02243 (D22/281), 08-VU-2291 (D22/205), 09-VU-02239 (D22/282), 09-VU-02240 (D22/283), 09-VU-00687 (D22/284), 09-VU-00686 (D22/285), 09-VU-00688 (D22/286), 09-VU-00685 (D22/287), 09-VU-02136 (D22/258), 09-VU-02138 (D22/260), 09-VU-02151 (D22/273), 09-VU-02150 (D22/272), 09-VU-02148 (D22/270), 09-VU-02147 (D22/269), 09-VU-02145 (D22/267), 09-VU-02146 (D22/268), 09-VU-02144 (D22/266), 09-VU-02143 (D22/265), 09-VU-02142 (D22/264), 09-VU-02141 (D22/263), 09-VU-00638 (D22/134), 08-VU-02267 (D22/135), 09-VU-00641 (D22/101), 08-VU-02130 (D22/102) and 09-VU-04265 (D22/274) inadmissible.

**DECIDE** that the requests for protective measures filed by applicants 08-VU-02379 (D22/125), 08-VU-02380 (D22/171), 08-VU-02378 (D22/276), 08-VU-02116 (D22/172), 09-VU-01723 (D22/277), 09-VU-01722 (D22/278), 09-VU-02241 (D22/279), 09-VU-02242 (D22/280), 09-VU-02243 (D22/281), 08-VU-2291 (D22/205), 09-VU-02239 (D22/282), 09-VU-02240 (D22/283), 09-VU-00687 (D22/284), 09-VU-00686 (D22/285), 09-VU-00688 (D22/286) and 09-VU-00685 (D22/287) have become moot, since the Civil Party applications have been declared inadmissible, and have been placed in the Strictly Confidential section of the Case File 002.

Done in Phnom Penh, on 13 January 2010

**សហចៅក្រមស៊ើបអង្កេត**

**Co- Investigating Judges  
Co-juges d'instruction**