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Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

OFFICE OF CO-INVESTIGATING JUDGES

Phnom Penh, 15 February 2010

Mr Rob Lemkin
Old Street Films

By email : rob@oldstreetfilms.com

Dear Mr Lemkin,

In response to our letter dated 3 February 2010, you sent an email to Judge Lemonde explaining that February 12th is too soon for you to provide us with the Film *Enemies of the people*. You stated that as the film has not been publicly released you would prefer not to make it available at this stage, but that you are happy to arrange a public screening in Phnom Penh at a later date.

While we acknowledge your concerns and we appreciate your offer of a public screening, there appears to be a misunderstanding about the situation. In particular the way this system operates and the manner in which evidence is used by the judges and the parties.

Media reports suggest that your film contains interviews with Nuon Chea which may be of interest to our investigation. As we have not had an opportunity to view the film ourselves, it has not been possible for us to assess its potential evidentiary value. Hence, we kindly requested to be provided with the film, on a confidential basis, so that this assessment could be made.

In the event we consider that the film contains material of evidentiary value we would proceed to add it to the large body of evidence which will form the basis of our assessment of the criminal responsibility of the charged persons. Of course, should we consider that the film contains relevant evidence we would also have to make it available to the parties. However, you must be assured that the parties are bound by strict rules of confidentiality which prohibit them from publishing any material disclosed to them in this manner.

We note your statement to the Agence France Presse on 28 January 2010 : *"The film is going to be used by the court and given to the court. We are very proud of it."* In this regard, the reason why we required a copy of the film as soon as possible is because the investigation is nearing its conclusion. In this system, an investigating judge cannot consider evidence obtained after the close of an investigation when assessing the criminal responsibility of a charged person. It would be deeply regrettable should we be obliged to note on the case file that we were unable to make use of your film simply because it was made available after the close of the investigation. You may not be aware, but in case file 001 (Duch's case) the



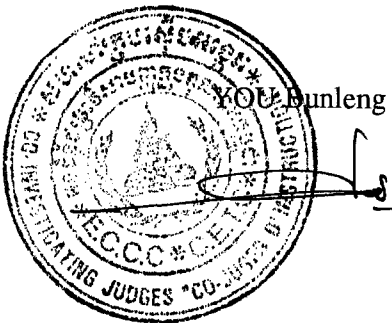
prosecution sought to play a film of S21 taken by Vietnamese soldiers but were prevented from doing so for a number of reasons including that it was received too late in the process.

If, after assessing the evidentiary value of the film, we make it available to the parties, the film may be used at trial. As you are probably aware, it is not anticipated that any trial before the Extraordinary Chambers will take place until 2011, by which time the film should already be in public circulation. In conclusion, if we decide to use your film as part of our body of evidence, you can rest assure that it will not reach the public domain until after you choose to make it available to the public.

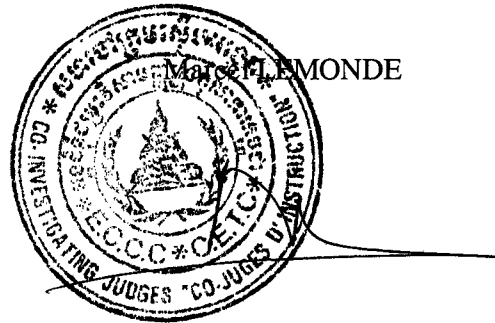
Regarding your offer of a public screening, unfortunately, this would not be legally sufficient for us to meet our obligation to obtain evidence which may be relevant to our investigation

We hope that in light of this clarification you will reconsider our request .

Yours sincerely,



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Marcel LEMONDE

