



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**Phnom Penh, 3 March 2009**

The Co-Investigating Judges have today issued an Order on Breach of Confidentiality of the Judicial Investigation ([http://www.eccc.gov.kh/english/court\\_doc.list.aspx?courtDocCat=ocij\\_docs](http://www.eccc.gov.kh/english/court_doc.list.aspx?courtDocCat=ocij_docs)), following the publication by a Defence team of confidential documents on a web site established by them.

In response to repeated contraventions of their clear instructions, the Co-Investigating Judges have ordered that the Defence Lawyers immediately cease to publish any documents relating to the judicial investigation, other than those already published on the ECCC web site; and remove any such documents from the Defence web site within 48 hours, or face sanctions for a new offence. At the same time the Co-Investigating Judges have transmitted a copy of the order to the Bar Association of the Kingdom of Cambodia, the American Bar Association, the Alaska Bar and the Defence Support Section for their consideration of appropriate action.

This decision has been taken in accordance with Rule 56(1) of the ECCC Internal Rules, which stipulates that “[i]n order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigations shall maintain confidentiality”. This Rule applies to everyone participating in judicial investigations, particularly to the lawyers for the parties, regardless of the nature of the material involved. The Internal Rules further stipulate (Rule 56(2)) that only the Co-Investigating Judges may decide whether to disseminate information relating to a case under investigation, or to authorize limited access to investigative acts to the media or third parties. In case of a breach of the conditions imposed by the Co-Investigating Judges, Internal Rules 35 to 38 apply.

The Co-Investigating Judges wish to explain the spirit in which this decision has been taken.

Before any public trial hearings are held, all judicial proceedings necessarily begin with a preparatory investigation stage, the length of which varies depending on the size of the investigation. The confidential nature of this stage of the proceedings is indispensable to the quality of the judicial process, particularly to guarantee the protection of privacy of those persons mentioned in the case file and the presumption of innocence, as well as to promote efficiency in investigations.

The Co-Investigating Judges are aware that confidential judicial investigations do not allow observers outside the tribunal to be completely informed of the progress of the proceedings. For this reason they are endeavoring to keep the judicial investigations as brief as possible. They note that, in the Duch case, the investigation took less than a year (the Closing Order, containing a detailed description of the charges, was published on 8 August 2008) which, in view of the complexity of the case, cannot be seen as an excessive period. Equally, the Co-Investigating Judges are sparing no efforts to ensure that the ongoing investigation in the second case file suffers no unjustifiable delay.

Furthermore, in order to improve public information to the extent possible, the Co-Investigating Judges recall that every month a court report is published on the ECCC website, summarizing the activities of the different sections of the Tribunal, including the Office of the Co-Investigating Judges (<http://www.eccc.gov.kh/english/publications.courtReport.aspx>). In addition, while upholding the

principles referred to above, the Co-Investigating Judges will communicate more systematically about their activities in future, and will publish an increased number of documents with regard to the judicial investigation.

Finally, the Co-Investigating Judges note that, while a judicial decision can always be contested by exercising the avenues of recourse prescribed by the law, it cannot simply be ignored.