

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**NATIONAL CO-PROSECUTOR'S OBSERVATIONS RELATING TO CIJS'  
EXERCISE OF DISCRETION OVER THE CASE OF IM CHAEM REGARDING  
D251**

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Filed by:

**National Co-Prosecutor:**  
CHEA Leang

Distribution to:

**Co-Investigating Judges:**  
Judge YOU Bunleng  
Judge Michael Bohlander

Copied to:

**International Co-Prosecutor:**  
Nicholas KOUMJIAN

**Defence for IM Chaem:**  
BIT Seanglim  
John R.W.D. JONES QC

**Defence for AO An:**  
MOM Luch  
Richard ROGERS  
Göran SLUITER

**Co-Lawyers for the Civil Parties:**

CHET Vanly  
HONG Kim Suon  
KIM Mengkhy  
LOR Chunthy

SAM Sokong  
SIN Soworn  
TY Srinna  
VEN Pov

Laure DESFORGES  
Herve DIAKIESE  
Ferdinand DJAMMEN NZEPA  
Nicole DUMAS  
Isabelle DURAND  
Françoise GAUTRY

Emmanuel JACOMY  
Martine JACQUIN  
Christine MARTINEAU  
Barnabe NEKUI  
Lyma NGUYEN  
Beini YE

## 1. INTRODUCTION

1. On 24 July 2015, the Co-Investigating Judges (“CIJs”) invited all the Parties to submit their observations whether, in the exercise of their discretion, the CIJs should consider IM Chaem a “senior leader” or among “those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”<sup>1</sup>

## 2. PROCEDURAL HISTORY

2. On 18 November 2008, the National and International Co-Prosecutors discussed their disagreement over the prosecution of new suspects in addition to the existing suspects in the Extraordinary Chambers in the Courts of Cambodia (ECCC) to be referred to the CJIs to open judicial investigations. In this regard, the International Co-Prosecutor had the stance to have judicial investigations opened against additional suspects for Cases 003 and 004 while the National Co-Prosecutor disagreed to have judicial investigations opened against any other suspects other than the existing suspects in Cases 001 and 002.<sup>2</sup>
3. The International Co-Prosecutor decided to bring the disagreement before the Pre-Trial Chamber by submitting a written statement of facts and reasons for the disagreement dated 20 November 2008<sup>3</sup> to the ECCC Office of Administration. On 3 December 2008, the Office of Administration copied this document and forwarded it to the National Co-Prosecutor pursuant to Rule 71.2 of the Internal Rules.<sup>4</sup>
4. On 29 December 2008, the National Co-Prosecutor submitted to the Pre-Trial Chamber the Response to the International Co-Prosecutor’s Written Statement of Facts and Reasons for Disagreement<sup>5</sup> pursuant to Article 20 New of the ECCC Law and Rule 71.2

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<sup>1</sup> CIJs, D251, dated 24 July 2015.

<sup>2</sup> Written Record of Disagreement between the National Co-Prosecutor and the International Co-Prosecutor over the Prosecution of Additional New Suspects, dated 18/11/2008.

<sup>3</sup> International Co-Prosecutor’s Written Statement of Facts and Reasons for Disagreement pursuant to Rule 71(2).

<sup>4</sup> Rule 71.2 of the Internal Rules.

<sup>5</sup> National Co-Prosecutor’s Response to the International Co-Prosecutor’s Written Statement of Facts and Reasons for Disagreement pursuant to Rule 71(2), dated 29 December 2008.

of the Internal Rules after the Pre-Trial Chamber granted the applications for extension of time to file the Response. In the Response, the National Co-Prosecutor set out the reasons why she disagreed with the International Co-Prosecutor's Supplementary Submission and New Introductory Submissions (Cases 003 and 004).

5. On 6 February 2009, the Pre-Trial Chamber issued an order to invite the Co-Prosecutors to file any further submissions that they may have in relation to the proceedings of their Disagreement.<sup>6</sup>
6. On 19 February 2009, the International Co-Prosecutor notified the Pre-Trial Chamber that "he has no further observations to make in relation to his submissions already contained in his filing of 1 December 2008."<sup>7</sup> The National Co-Prosecutor filed documents in relation to the debates of the National Assembly of the Kingdom of Cambodia and the discussions between the Royal Government of Cambodia and the United Nations about the establishment of the ECCC.
7. On 24 April 2009, the Pre-Trial Chamber issued its Directions to Provide Further Particulars and Scheduling Order to both Co-Prosecutors, attached with observations and a number of questions to be answered by both Co-Prosecutors.<sup>8</sup>
8. On 22 May 2009, the National Co-Prosecutor filed a reply to the Pre-Trial Chamber's Directions to Provide Further Particulars and additional observations,<sup>9</sup> in which she held the stance that there was no personal jurisdiction over the persons named in the New Introductory Submissions and the Supplementary Submission. In this regard, the persons named in the two Submissions above are neither "senior leaders" nor "those who were most responsible."

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<sup>6</sup> The Pre-Trial Chamber's Invitation to the Co-Prosecutors to Submit Further Submissions, dated 6 February 2009.

<sup>7</sup> International Co-Prosecutor's Response to The Pre-Trial Chamber's Invitation to File Further Submissions, dated 19 February 2009.

<sup>8</sup> The Pre-Trial Chamber's Directions to Provide Further Particulars and Scheduling Order, dated 24 April 2009.

<sup>9</sup> National Co-Prosecutor's Response to The Pre-Trial Chamber's Directions to Provide Further Particulars dated 24 April 2009, and National Co-Prosecutor's Additional Observations, dated 22 May 2009 (Doc. No. 17).

9. The Pre-Trial Chamber failed to secure the affirmative vote of at least four judges required for a decision on the Disagreement.<sup>10</sup>
10. The Pre-Trial Chamber concluded that while the Chamber could not reach a decision on the disagreement brought before it, pursuant to Rule 74.1 of the Internal Rules, this means that the International Co-Prosecutor shall, pursuant to Rule 53.1 of the Internal Rules, forward the New Introductory Submissions to open judicial investigations.<sup>11</sup>
11. In accordance with the 18 August 2009 Considerations of the Pre-Trial Chamber Regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71,<sup>12</sup> the Acting International Co-Prosecutor on 7 September 2009 forwarded the Introductory Submissions regarding Cases 003 and 004 to the CIJs to open judicial investigations in both cases.<sup>13</sup>

### 3. APPLICABLE LAWS

12. The ECCC Law and the Agreement require the Court to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.<sup>14</sup>

### 4. OBSERVATIONS

13. The National Co-Prosecutor hereby holds the stance that the suspects named in the new Introductory Submissions and the Supplementary Submission, including IM Chaem, are neither *senior leaders* nor *those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and*

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<sup>10</sup> Pre-Trial Chamber's D1/1.1 dated 18 August 2009; and D1/1.3 dated 18 August 2009, the Considerations of the Pre-Trial Chambers Regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71.

<sup>11</sup> Pre-Trial Chamber's D1/1.1 dated 18 August 2009.

<sup>12</sup> D1/1.3, the Considerations of the Pre-Trial Chambers Regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71, 18 August 2009.

<sup>13</sup> D1/1, Acting International Co-Prosecutor's Notice of Filing of the Second and Third Introductory Submissions, 7 September 2009.

<sup>14</sup> Article 1 and Article 2 New of the ECCC Law; and Article 1 of the Agreement between the Royal Government of Cambodia and the United Nations.

*custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979, thus not falling under the ECCC jurisdiction.*

14. Therefore, the National Co-Prosecutor submits the observations for the CIJs to exercise their discretion to determine if they should consider IM Chaem a “senior leader” or among “those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.

Respectfully submitted,

Date	Name	Place	Signature
21 September 2015	CHEA Leang National Co-Prosecutor	Phnom Penh	