



ព្រះរាជាណាចក្រកម្ពុជា
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Kingdom of Cambodia
Nation Religion King

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Royaume du Cambodge
Nation Religion Roi

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

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Case File No: 004/07-09-2009-ECCC-OCIJ
Before: The Co-Investigating Judges
Date: 1 February 2016
Language(s): English and Khmer
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**DECISION ON IM CHAEM'S REQUESTS IN RELATION TO
THE CONCLUSION OF THE INVESTIGATION**

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I. PROCEDURAL HISTORY

1. On 18 December 2015, the Co-Investigating Judges (“CIJs”) informed the parties in case 004 that they considered the investigation against Im Chaem to be concluded.¹ The parties were further notified of the CIJs’ inclination to dismiss the charges against Im Chaem for lack of personal jurisdiction and to sever the proceedings in case 004 (“Notice of Intent”). The parties were invited to file submissions on the severance by 11 January 2016.²
2. On 30 December 2015, noting a discrepancy between the English and Khmer versions of the CIJ’s Notice of Intent, the Co-Prosecutors sought clarification as to whether the CIJs had requested submissions on the severance of proceedings against Im Chaem or on the announced intent to dismiss the charges against her.³
3. On 8 January 2016, the CIJs clarified that they had invited submissions on the severance of the proceedings and extended the deadline for submissions to 18 January 2016.⁴
4. On the same date, the Defence for Im Chaem, (“Defence”), filed their submissions on the possible severance of Case 004, requesting the CIJs to sever the proceedings against Im Chaem; to decide that the ECCC does not have jurisdiction to investigate and prosecute Im Chaem and dismiss the allegations against her; to forward the Case File to the Co-Prosecutors for their final submission at the earliest opportunity; and order the International Co-Prosecutor to inform the Defence as to whether he disagrees with the CIJs’ view.⁵
5. On 15 January 2016, the Co-Prosecutors filed their submissions on the severance of the proceedings against Im Chaem, noting a difference in the positions of the National Co-Prosecutor and the International Co-Prosecutor.⁶ The National Co-Prosecutor does not oppose the termination of proceedings, while the International Co-Prosecutor considers Im Chaem to be among those “most responsible” for the crimes committed during the Democratic Kampuchea Regime.⁷ However, neither Co-Prosecutor objects to the severance of proceedings against Im Chaem.⁸ The Co-Prosecutors also suggest that the CIJs invite the Co-Prosecutors and Defence

¹ Case 004-D285, *Notice of Conclusion of Judicial Investigation Against IM Chaem*, 18 December 2015, para. 6.

² Case 004-D286, *Notice of Intent to Dismiss the Charges Against IM Chaem and to Sever the Proceedings Against Her*, 18 December 2015 paras 7-9.

³ Case 004-D286/1, *Co-Prosecutors’ Request for Clarification on Submissions Sought by the Co-Investigating Judges in their Notice of Intent dated 18 December 2015*, 30 December 2015, paras. 2-3.

⁴ Case 004-D286/1/1, *Response to Co-Prosecutors’ Request for Clarification on Submissions Sought by the Co-Investigating Judges in their Notice of Intent dated 18 December 2015*, 8 January 2016, paras 4-6.

⁵ Case 004-D286/2, *IM Chaem’s Submission on the Co-Investigating Judge’s Notice of Intent to Dismiss the Charges Against IM Chaem and to Sever the Proceedings Against Her*, 8 January 2016, p. 4.

⁶ Case File 004-D286/3, *Co-Prosecutors’ Submission on the Severance of the Proceedings Against Im Chaem*, 15 January 2016, para.3.

⁷ Case File 004-D286/3, *Co-Prosecutors’ Submission on the Severance of the Proceedings Against Im Chaem*, 15 January 2016, para. 3.

⁸ Case File 004-D286/3, *Co-Prosecutors’ Submission on the Severance of the Proceedings Against Im Chaem*, 15 January 2016, para. 4.



to file written final submissions within three months of the forwarding of the Case File to the OCP, with no opportunity for response or reply.⁹

6. On 18 January 2016, the Im Chaem Defence responded to the Co-Prosecutors, stating that it would be contrary to the equality of arms principle, and to accepted ECCC practice, to deny the Defence the right to respond to the Co-Prosecutors' final submission. Accordingly, the Defence maintain their request for an opportunity to respond.¹⁰
7. On 22 January 2016, the Co-Prosecutors replied that the filing of simultaneous submissions would not put any party at a disadvantage, would not contravene previous ECCC practice, and would expedite the proceedings.¹¹
8. On 26 January 2016, the Defence requested leave to file a sur-reply to the Co-Prosecutors' reply. In their sur-reply, the Defence argue that the Co-Prosecutors' position as expressed in their reply is contrary to the procedure applied at the ECCC and, if granted, would set a dangerous precedent.¹²

II. DISCUSSION

A. Admissibility of Im Chaem's request for exceptional leave to file a Sur-Reply to the Co-Prosecutors' Reply on severance (D286/3/2) and Im Chaem's Sur-Reply

9. Preliminarily, we find that Im Chaem's request to respond to the Co-Prosecutors' final submissions has been exhaustively litigated and therefore it is not necessary to consider further submissions on the issue. Leave to file the sur-reply is therefore denied, and its merits will not be considered in this decision.

B. Im Chaem's request that the International Co-Prosecutor declare its position with respect to the termination of the proceedings against Im Chaem:

10. The Internal Rules set out a clear timeframe for the procedure to be followed in concluding an investigation. Rule 66(5) provides the Co-Prosecutors with three months to complete their final review of the Case File and issue written submissions. The Internal Rules do not require the Co-Prosecutors to make the declaratory statement sought by the Defence before the expiration of the period set forth in Rule 66(5). We see no reason to deviate from this procedure, nor have the Defence demonstrated the need to do so.

C. Im Chaem's request for a right to respond to the OCP's submissions

11. Internal Rule 66(5) does not provide the Defence with the right to make final submissions or to respond to the Co-Prosecutors' final submission. However, in

⁹ Case File 004-D286/3, *Co-Prosecutors' Submission on the Severance of the Proceedings Against Im Chaem*, 15 January 2016, para. 5.

¹⁰ Case File 004-D286/3/1, *Im Chaem's Response to the Co-Prosecutors' Submission on the severance of the Proceedings Against Her*, 18 January 2016, paras 10-12.

¹¹ Case File 004-D286/3/2, *Co-Prosecutors' Reply to Defence Response on the Severance of the Proceedings Against Im Chaem*, 22 January 2016, paras 2-3.

¹² Case File 004-D286/4, *Im Chaem's Request for Exceptional Leave to File a Sur-Reply to the Co-Prosecutors' Reply on Severance (D286/3/2) and Im Chaem's Sur-Reply*, 26 January 2016, para. 2.



both Cases 001 and 002, charged persons' responses to the OCP's final submissions were accepted and placed on the case file.¹³

- 12. Internal Rule 21(1)(b) enshrines the principle of equal treatment of suspects, charged persons, and accused before the ECCC. In keeping with this principle, we consider it appropriate to grant Im Chaem the same opportunity as the charged persons in previous cases investigated at the ECCC.
- 13. In order to give the Defence sufficient time to file their submissions and to avoid undue delay in the proceedings, we will determine the appropriate amount of time needed by the Defence to file their response once we have received the Co-Prosecutors' submissions.

FOR THE FOREGOING REASONS, WE:

- 14. **DENY** the Defence's request to file a sur-reply;
- 15. **DENY** the Defence's request to order the Co-Prosecutors to state their position on the CIJs' inclination to dismiss the charges against Im Chaem;
- 16. **GRANT** the Defence's request to respond to the Co-Prosecutors' submissions pursuant to Internal Rule 66(5); and
- 17. **INFORM** the Defence that they will be notified of their deadline to file a response after the filing of the Co-Prosecutors' submissions.

Dated on 1 February 2016, Phnom Penh



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 Co-Investigating Judges
 of Instruction
 YOU Bunleang Michael BOHLANDER

¹³ Case File 001-D96/1, *Defence Submission*, 24 July 2008; Case File 002-D390/1/2/3, *Decision on Ieng Sary's expedited appeal against the OCIJ's decision refusing to accept the filing of Ieng Sary's response to the Co-Prosecutors' Rule 66 Final Submission and additional observations, and request for stay of the proceedings*, 10 September 2010 and Case File No. 002-D390/1/2/4, *Decision on Ieng Sary's Appeal Against Co-Investigating Judges' Decision refusing to Accept the Filing of Ieng Sary's response to the Co-Prosecutor's Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings*, 20 September 2010, para. 19.