



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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

Royaume du Cambodge
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d'instruction

Case File No: 004/1/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges
Date: 22 February 2017
Language(s): Khmer/English [Original]
Classification: ~~CONFIDENTIAL~~ សាធារណៈ/Public

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
22 / 02 / 2017	
ពេលវេលា (Time/Heure):	
09:50	
ឈ្មោះមេធាវីករណី/Case File Officer/L'agent chargé du dossier:	
JANN	

CLOSING ORDER (DISPOSITION)

Distribution:

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Im Chaem Defence
BIT Seanglim
Wayne JORDASH

Civil Party Lawyers
CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov

Laure DESFORGES
Isabelle DURAND
Emmanuel JACOMY
Martine JACQUIN
Lyma NGUYEN



I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 22 February, 5 April 2013, and 20 May 2014.
2. On 20 November 2008, pursuant to Internal Rule 53, the then International Co-Prosecutor (“ICP”) issued the *Co-Prosecutors’ Third Introductory Submission* (“Introductory Submission”) where he alleged, *inter alia*, that Im Chaem was criminally responsible for a number of national and international crimes committed in the territory of the Kingdom of Cambodia, which during the period relevant to the allegations was called Democratic Kampuchea, between 17 April 1975 and 6 January 1979.¹ [REDACTED] the Introductory Submission was forwarded to the CIJs by the Acting International Co-Prosecutor on 7 September 2009.²
3. On 18 July 2011, 24 April 2014, 4 August 2015, and 20 November 2015, the international component of the Office of the Co-Prosecutors filed supplementary submissions, thereby seising the CIJs of new allegations against Im Chaem, pursuant to Internal Rule 55(3).³
4. On 3 March 2015, Judge Harmon charged Im Chaem and, due to her failure to appear at the ECCC, notified her of the charges in writing. Specifically, he charged Im Chaem with:
 - (i) violations of Articles 501 and 506 (homicide) of the 1956 Penal Code committed at Phnom Trayoung security centre and Spean Sreng worksite through commission (via co-perpetration), planning, instigating, ordering, aiding and abetting, and superior responsibility; and
 - (ii) the crimes against humanity of (a) murder, enslavement, imprisonment, and other inhumane acts (enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) committed at Phnom Trayoung security centre and Spean Sreng worksite; and (b) extermination and persecution on political grounds committed at Phnom Trayoung security centre, through commission (via participation in a joint criminal enterprise), planning, instigating, ordering, aiding and abetting, and superior responsibility.⁴

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5. On 18 December 2015, the CIJs issued the Notice of the Conclusion of the Judicial Investigation, pursuant to Internal Rule 66(1), and [REDACTED]
6. On 5 February 2016, pursuant to Internal Rule 21(4), the CIJs ordered the severance of Im Chaem from Case File 004, and instructed the creation of a new Case File, numbered 004/1.⁶
7. On 27 July 2016, pursuant to Internal Rule 66(4), the CIJs forwarded Case File 004/01 of the judicial investigation to the Co-Prosecutors for the purpose of their final submission.⁷
8. On 27 October 2016, (i) the National Co-Prosecutor filed her *Final Submission Concerning Im Chaem Pursuant to Internal Rule 66*, and requested that the allegations against Im Chaem be dismissed; and (ii) the ICP filed the *International Co-Prosecutor's Rule 66 Final Submission Against Im Chaem*, and submitted that Im Chaem should be indicted.⁸
9. On 29 November 2016, the Defence for Im Chaem filed *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submission against Her*, submitting that the ECCC lacks personal jurisdiction over Im Chaem.⁹

II. DISCUSSION

10. We have carefully weighed the evidence collected in the course of the investigation. In our view, there is no evidence that would allow us to find that Im Chaem was either a senior leader or otherwise one of the most responsible officials of the Khmer Rouge Regime. The ECCC thus does not have personal jurisdiction over her.
11. We take this view based on criteria for the overall evaluation of her acts and participation in the Khmer Rouge regime over the period relevant to the investigation and of the evidence relating to all crime sites and modes of liability she had been charged with as well as those listed in the Introductory and Supplementary Submissions but with which she was not charged.
12. We will explain our full reasons for this conclusion in detail in a separate document as soon as possible. We opted for a separation of disposition, including a summary of the reasons, and full reasons in the interest of the charged person's right to have the outcome of the proceedings against her determined as soon as possible, and due to the current logistical and budgetary restrictions impacting upon the provision of translation services, which would have delayed the issuance of the closing order without necessity.
13. We do not consider this approach, even if it is unusual, to be in breach of the law applicable at the ECCC. While Internal Rule 67(4) requires a closing order to state

⁵ Case File No. 004-D285, *Notice of Conclusion of Judicial Investigation Against Im Chaem*, 18 December 2015; [REDACTED]

⁶ Case File No. 004-D286/1, *Order for Severance of Im Chaem from Case 004*, 5 February 2016.

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]



the reasons for the decision, it does not state that it has to contain the full reasons in detail in one document. The provision leaves interpretive space to give a summary of the reasons in the actual closing order – which we have done above – and to provide the full reasons in an adequate timeframe afterwards, especially if this is conducive to ensuring compliance with the demands of the principle of speedy proceedings. The Supreme Court Chamber, the Trial Chamber and the Pre-Trial Chamber of the ECCC have each used this approach,¹⁰ it has been adopted in other international criminal tribunals,¹¹ and it is common usage in national systems even for verdicts to be delivered *ex tempore* from the bench with or without summary reasons and with written reasons to follow within often regulated periods.¹²

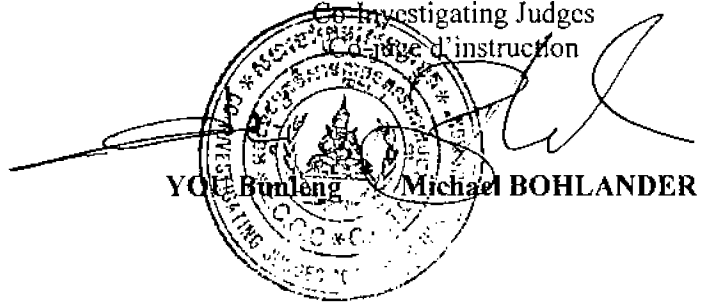
FOR THE FOREGOING REASONS, WE:

- 14. **FIND** that the ECCC has no personal jurisdiction over Im Chaem;
- 15. **DISMISS THE CHARGES** against Im Chaem, and
- 16. **INFORM** the Parties that more specific reasons will be provided at a later date.

Dated 22 February 2017, Phnom Penh

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Co-Investigating Judges
Co-Juges d'instruction



¹⁰ See e.g. Case File No. 002-F2/9, *Decision on Pending Requests for Additional Evidence on Appeal and Related Matters – Disposition –*, 21 October 2015; Case File No. 002-E380/1, *Trial Chamber Memorandum Entitled "Decision on motions to hear additional witnesses on the topic of the treatment of the Vietnamese, with reasons to follow (E380, E381, E382)"*, 12 January 2016; Case File No. 002 D427/2/12, *Decision on Ieng Thirith and Nuon Chea's Appeal Against the Closing Order*, 13 January 2011.

¹¹ See e.g. *Prosecutor v Mladić*, Reasons for Decision on Defence Renewed Motion for Stay of Proceedings Pending Appeal, ICTY Trial Chamber I (IT-09-92-T), 24 January 2017; *Prosecutor v Popović et al.*, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, ICTY Trial Chamber II (IT-05-88/2-PT), 16 December 2009; *Prosecutor v Rušić*, Written Reasons for Oral Sentencing Judgement, ICTY Trial Chamber III (IT-98-32/1-R77.2), 6 March 2012; *Prosecutor v Krajišnik*, Reasons for Oral Decision Denying Mr Krajišnik's Request to Proceed Unrepresented by Counsel, ICTY Appeals Chamber (IT-00-39-T), 18 August 2005.

¹² See e.g., although these provisions do not relate to closing orders, Code of Criminal Procedure of the Kingdom of Cambodia, Articles 357-359; French Code of Criminal Procedure, Article 365-1; German Code of Criminal Procedure, Sections 268, 275; Italian Code of Criminal Procedure, Article 544.