



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

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

Disagreement N° 001/18-11-2008-ECCC/PTC

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 31 August 2009

PUBLIC

**CORRIGENDUM TO THE CONSIDERATIONS OF THE PRE-TRIAL CHAMBER REGARDING
THE DISAGREEMENT BETWEEN THE CO-PROSECUTORS PURSUANT TO INTERNAL RULE
71 AND ANNEX II**

Co-Prosecutors

CHEA Leang
Robert PETIT

Office of Administration

KRANH Tony
Knut ROSANDHAUG



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes that paragraph 45 of the “Considerations of the Pre-Trial Chamber regarding the Disagreement Between the Co-Prosecutors pursuant to Internal Rule 71” filed on 18 August 2009 contained an error. The paragraph should read as follows:

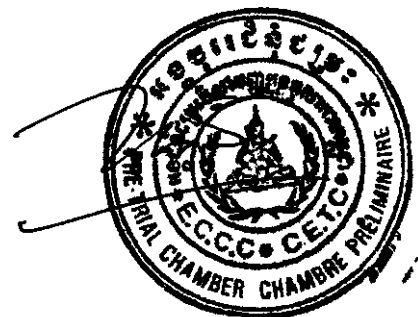
As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule **71(4)(c)** provides that the action of the International Co-Prosecutor shall be executed. In the current case, this means that the International Co-Prosecutor shall, pursuant to Internal Rule 53(1), forward the New Introductory Submissions to the Co-Investigating Judges to open judicial investigations.

The Khmer and English versions of the “Annex II: Excerpt of the Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71” contains the same error in the conclusion, which should read as follows:

As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule **71(4)(c)** provides that the action of the International Co-Prosecutor shall be executed. In the current case, this means that the International Co-Prosecutor shall, pursuant to Internal Rule 53(1), forward the New Introductory Submissions to open judicial investigations.

Phnom Penh, 31 August 2009

President of the Pre-Trial Chamber



PRAK KIMSAN



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Pre-Trial Chamber
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Disagreement N° 001/18-11-2008-ECCC/PTC

Before: Judge PRAK Kimsan, President
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Judge NEY Thol
Judge Katinka LAHUIS
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Date: 18 August 2009

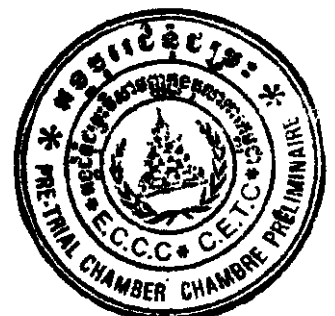
**ANNEX II: EXCERPT OF THE CONSIDERATIONS OF THE PRE-TRIAL CHAMBER
REGARDING THE DISAGREEMENT BETWEEN THE CO-PROSECUTORS PURSUANT
TO INTERNAL RULE 71**

Co-Prosecutors

CHEA Leang
Robert PETIT

Office of Administration

KRANH Tony
Knut ROSANDHAUG



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") is seised of a disagreement between the Co-Prosecutors of the ECCC pursuant to Internal Rule 71(2), as the International Co-Prosecutor requests that two new Introductory Submissions to create Case Files 003/20-11-2008-ECCC/OCIJ and 004/20-11-2008-ECCC/OCIJ ("New Submissions") and one Supplementary Submission in Case File 002/19-09-2007-ECCC/OCIJ be forwarded to the Co-Investigating Judges for judicial investigation and the National Co-Prosecutor disagrees ("Disagreement").

CONCLUSION

As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule 71(4)(c) provides that the action of the International Co-Prosecutor shall be executed. In the current case, this means that the International Co-Prosecutor shall, pursuant to Internal Rule 53(1), forward the New Introductory Submissions to open judicial investigations.

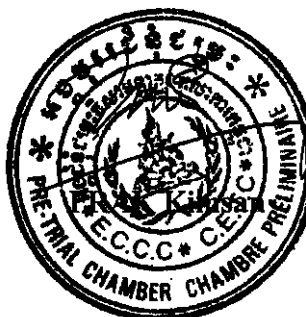
THEREFORE, THE PRE-TRIAL CHAMBER HEREBY:

- 1) DECLARES the Disagreement admissible;
- 2) DECLARES that it had not assembled an affirmative vote of at least four judges on a decision on the Disagreement.

Phnom Penh, 18 August 2009

President

Pre-Trial Chamber




Rowan DOWNING


NEY Thol


Katinka LAHUIS


HUOT Vuthy

18. [...] The Co-Prosecutors categorically asserted in their first introductory submission that they were seizing the Co-Investigating Judges only of the twenty-five set of criminal facts identified in that submission. This understanding of the Co-Prosecutors was underlined by their subsequent periodic seizing of the Co-Investigating Judges with new facts and/or crimes, for example, those pertaining to a new security centre, the crime of forced marriages, etc. Indeed, owing to this understanding, the Co-Prosecutors empowered the Co-Investigating Judges to investigate facts throughout Cambodia only to establish the jurisdictional criteria for the charged crimes.”⁴⁵

43. In relation to the Third Issue, pertaining to the alleged illegality of the preliminary investigation, the International Co-Prosecutor asserts that the preliminary investigation was valid and permissible as it was principally done on the basis of an in-house analysis of documents collected prior to 18 July 2007 and with the consent of the National Co-Prosecutor. In any event, assuming that the preliminary investigation was “unilateral”, he argues that “it is permissible under the Rules as long as the disagreement crystallized at the state of the signing of the Introductory and Supplementary Submissions”.⁴⁶

VI. EXPRESSION OF OPINION

44. After extensive deliberations, the Pre-Trial Chamber has not reached a super-majority of votes on a decision concerning this Disagreement. It has unanimously decided on how to express the approach taken by the Chamber in these “Considerations of the Pre-Trial Chamber”. As Internal Rule 71(4)(d) provides that decisions on disagreements shall be reasoned and in order to ensure transparency, the Pre-Trial Chamber finds it necessary to express the opinions of its various members, which are attached to these Considerations.

VII. CONCLUSION

45. As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule 71(4)(c) provides that the action of the International Co-Prosecutor shall be executed. In the current case, this means that the International Co-Prosecutor shall, pursuant to Internal Rule 53(1), forward the New Introductory Submissions to the Co-Investigating Judges to open judicial investigations.

⁴⁵ International Co-Prosecutor’s Reply to Directions, paras 17-18.

⁴⁶ International Co-Prosecutor’s Reply to Directions, para. 16.

