

**Co-prosecutor responds to Cayley
James O'Toole and Cheang Sokha
May 11, 2011**

KHMER Rouge tribunal co-prosecutor Chea Leang has responded to a statement from her international counterpart calling for further investigation in the court's controversial third case, reiterating her opposition to the investigation and claiming that the suspects are out of the tribunal's jurisdiction.

In a statement on Monday, international co-prosecutor Andrew Cayley said he believed allegations set forth by the prosecution in a 2009 submission to the court's investigating judges "have not been fully investigated". The statement followed an announcement from the investigating judges last month that they had concluded their Case 003 investigation, though they did limited field investigation and did not even interview the suspects in the case, causing court observers to charge that the investigation had been deliberately curtailed in the face of government opposition.

Cayley listed a series of additional investigative steps in his statement that he said he planned to request that the judges perform, as he is permitted to do under the rules of the Extraordinary Chambers in the Courts of Cambodia, as the tribunal is formally known.

Cambodian officials, however, have repeatedly expressed opposition to Case 003 as well as the still-pending Case 004, and yesterday, Chea Leang renewed her claim that the suspects in Case 003 fall outside the tribunal's jurisdiction.

"The National Co-Prosecutor maintains that the named suspects in Case File 003 do not fall within the jurisdiction of the ECCC to be brought to trial and that the Tribunal's mandate can be adequately fulfilled through the prosecution of the Accused persons in the ECCC Detention Facility," Chea Leang said in a statement. The agreement between the United Nations and the government that established the tribunal, she added, "envisaged the prosecution of a limited number of people".

The identities of the suspects in Case 003 remain officially confidential, though court documents reveal them as former Khmer Rouge navy commander Meas Muth and air force commander Sou Met.

International prosecutor William Smith made submissions for Cases 003 and 004 to the investigating judges in 2009 without the support of Chea Leang after a lengthy dispute over the issue. Cambodian court staff have consistently expressed opposition to these cases, echoing public remarks by Prime Minister Hun Sen, who has warned that

prosecutions beyond Case 002 could plunge the Kingdom into civil war.

Prosecutors have said they will not request further investigations beyond Case 004.

In response to Cayley's statement on Monday, Information Minister Khieu Kanharith said the government's stance on the issue remained the same, repeating a warning about the additional cases to the tribunal's international staff.

"If they want to go into Case 003 or 004, they should just pack their bags and return home," he said.

Yesterday, however, he sought to walk back his remarks, saying the government thinks "the court should be allowed to do its work".

"In general, we should let the court officials do their job," he said. "The government is not involved in that."

The 2003 agreement between the government and the UN establishing the tribunal empowers it to prosecute "senior leaders" and those "most responsible" for Khmer Rouge crimes. But John Ciorciari, a senior legal adviser with the Documentation Centre of Cambodia, said in an email that specific questions about the ECCC's jurisdiction were "never adequately resolved in the political negotiations to create the court".

"If cases 003 and 004 are dismissed, the decision not to interview suspects will raise legitimate questions on whether the dismissals were pre-planned, especially if dismissals are justified by a lack of evidence," he said.

"If the ECCC does dismiss the cases, it will be important not to appear to dress up jurisdictional disputes in the guise of insufficient evidence."

In his statement on Monday, Cayley provided details on a number of crime sites being investigated as part of Case 003 in an attempt to aid prospective civil party applicants interested in joining the case. The move apparently came in response to the fact that the investigating judges had provided no such details, even after the conclusion of their investigation.

Under court rules, victims have until next Wednesday to submit civil party applications, though Cayley has asked the judges to extend this deadline by six weeks.

Civil party lawyer Silke Studzinsky said yesterday that there was "high interest" in the case among prospective civil parties, but that these people had unfortunately received no guidance from the court on the issue prior to Cayley's statement.

"Very often when I'm in the provinces and talk to victims and civil parties, they often ask about Case 003 and Case 004," she said.