



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Royaume du Cambodge
Nation Religion Roi

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

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

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

Before: **The Co-Investigating Judges**
Date: **23 April 2014**
Language(s): **English [Original]**
Classification: **CONFIDENTIAL**

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DECISION ON TA AN'S REQUESTS FOR INVESTIGATION

Distribution:

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Civil Party Lawyers:
CHET Vanly
HONG Kimsuon
KIM Mengkhy
KONG Phallack
LOR Chunthy
SAM Sokong
TY Srinna
VEN Pov

Ferdinand DJAMMEN-
NZEPA
Nicole DUMAS
Isabelle DURAND
Françoise GAUTRY
Martine JACQUIN
Emmanuel JACOMY
Christine MARTINEAU
Mahdev MOHAN
Barnabe NEKUI
Lyma NGUYEN
Philippine SUTZ

Co-Lawyers for Suspect:
MOM Luch
Göran SLUITER
Richard ROGERS

Annie DELAHAIE
Laure DESFORGES
Herve DIAKIESE



Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”);

Noting the Third Introductory Submission, filed on 7 September 2009;¹

Noting the Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom;²

Noting the judicial investigation opened in relation to alleged violations of the **1956 Penal Code**, the **Convention on the Prevention and Punishment of the Crime of Genocide**, the **Geneva Conventions of 1949**, and **Crimes against Humanity**, punishable under Articles 3 (new), 4, 5, 6, 29 and 39 of the ECCC Law; and Articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code;

Noting Rules 21, 55, 57, 58, and 72 of the ECCC Internal Rules (“Internal Rules”);

Considering *Ta An’s First Request for Investigative Action pursuant to Internal Rule 55(10)*, dated 8 April 2014; *Ta An’s Second Request for Investigative Action pursuant to Internal Rule 55(10)*, dated 9 April 2014; and *Ta An’s Third Request for Investigative Action pursuant to Internal Rule 55(10)*, dated 17 April 2014 (“Requests for Investigation”);³

Noting that on 5 April 2013, Judges You Bunleng and Harmon (“International CIJ”) signed a Written Record of Disagreement concerning, *inter alia*, this Decision;

I- PROCEDURAL HISTORY

1. On 8, 9, and 17 April 2014, the Lawyers representing the suspect Ta An (“Suspect” and “Suspect’s Lawyers”) submitted the Requests for Investigation, requesting the Co-Investigating Judges to carry out various investigative actions in relation to the investigation of Case File 004.

II- APPLICABLE LAW

2. Internal Rule 55(10) provides that: “*At any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigating Judges to make such orders or undertake such investigative action as they consider useful for the conduct of the investigation.*”

¹ Case File No. 004-D1, *Co-Prosecutor’s Third Introductory Submission*, 20 November 2008 (“Third Introductory Submission”); Case File No. 004-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

² Case File No. 004-D65, *Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011.

³ Case File No. 004-D187, *Ta An’s First Request for Investigative Action pursuant to Internal Rule 55(10)*, 8 April 2014; Case File No. 004-D188, *Ta An’s Second Request for Investigative Action pursuant to Internal Rule 55(10)*, 9 April 2014; Case File No. 004-D189, *Ta An’s Third Request for Investigative Action pursuant to Internal Rule 55(10)*, 17 April 2014.



3. Internal Rule 58(6) provides that: “*At any time during an investigation, the Charged Person may request the Co-Investigating Judges to interview him or her, question witnesses, go to a site, order expertise or collect other evidence on his or her behalf. The request shall be made in writing with a statement of factual reasons for the request. If the Co-Investigating Judges do not grant the request, they shall issue a rejection order as soon as possible, and in any event, before the end of investigation. The rejection order shall state the factual reasons for rejection. The Charged Person shall immediately be notified of the rejection order. The Charged Person may appeal the rejection order to the Pre-Trial Chamber.*”

III- DISCUSSION

4. Internal Rules 55(10) and 58(6) limit the right to submit requests for investigative action to “*the Co-Prosecutors, a Charged Person or a Civil Party.*” Article 133 of the Cambodian Code of Criminal Procedure, relied on by the Suspect’s Lawyers, is consistent with the Internal Rules in granting this right to charged persons and not to mere suspects.
5. The Suspect is not a charged person and, as such, he is not entitled to file requests for investigative action. His status as a suspect has already been the subject of findings in the *Decision on the Ta An Defence Requests to Access the Case File and Take Part in the Judicial Investigation*, issued on 31 July 2013,⁴ which was not overturned on appeal,⁵ and in the *Decision on Request for Reconsideration of International Co-Investigating Judge’s Decision on the Ta An Defence Requests to Access the Case File and Take Part in Judicial Investigation*, issued on 22 April 2014.⁶ The International CIJ considers that the Suspect’s status is now clear and need not be further discussed.
6. The re-submission of arguments which have already been rejected, in the absence of a relevant change of circumstances, is contrary to judicial economy. Unless there is a change in the Suspect’s status, the International CIJ will not entertain, nor place on the Case File, further requests filed on behalf of the Suspect for the exercise of rights reserved by the Internal Rules to charged persons.
7. Should there be a change in the relevant circumstances, the Suspect’s Lawyers will be able to re-submit the Requests for Investigation, which the International CIJ will entertain according to the applicable provisions.

⁴ Case File No. 004-D121/4, *Decision on the Ta An Defence Requests to Access the Case File and Take Part in the Judicial Investigation*, 31 July 2013.

⁵ Case File No. 004-D121/4/1/4, *Considerations of the Pre-Trial Chamber on Ta An’s Appeal Against the Decisions Denying his Requests to Access the Case File and Take Part in the Judicial Investigation*, 15 January 2014, para. 16.

⁶ Case File No. 004-D121/4/6, *Decision on Request for Reconsideration of International Co-Investigating Judge’s Decision on the Ta An Defence Requests to Access the Case File and Take Part in Judicial Investigation*, 22 April 2014.

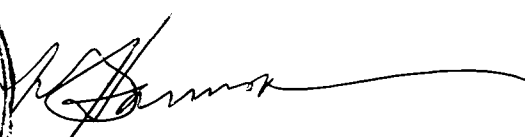



8. This Decision is filed in English, with a Khmer translation to follow.

FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:

9. **DENY** the Requests for Investigation.

Dated 23 April 2014, Phnom Penh

Judge Mark B. Harmon
 អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
 អង្គជំនុំជម្រះសហប្រតិបត្តិការជាមួយតុលាការកម្ពុជា

**International Co-Investigating Judge
Co-juge d'instruction international**