



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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: 003/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 25 July 2017

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FORWARDING ORDER PURSUANT TO INTERNAL RULE 66(4)

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1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 7 February 2013, 22 February 2013, 17 July 2014, and 16 January 2017.
2. On 20 November 2008, pursuant to Internal Rule 53, the International Co-Prosecutor (“ICP”) issued the *Second Introductory Submission* (“Introductory Submission”) wherein he alleged that between June 1975 and January 1979, Sou Met, and between April 1975 and January 1979, Meas Muth, were 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.¹ The ICP filed the Introductory Submission on 7 September 2009.²
3. On 22 October 2013, the CIJs found that suspect Sou Met had died, and notified the Co-Prosecutors that the legal implications of Sou Met’s death, including the extinction of the criminal action against him, would be addressed in the Closing Order.³
4. On 31 October 2014, the ICP filed a Supplementary Submission regarding crime sites related to Case 003.⁴
5. On 3 March 2015, my predecessor, Judge Harmon, charged Meas Muth *in absentia* with violations of Articles 500, 501, and 506 of the 1956 Penal Code (torture and homicide), crimes against humanity and grave breaches of the Geneva Conventions of 1949.⁵ On 14 December 2015, I rescinded those charges and charged Meas Muth with genocide, crimes against humanity, grave breaches of the Geneva Convention, and violations of Articles 501 and 506 of the 1956 Penal Code, allegedly committed between 17 April 1975 and 6 January 1979.⁶
6. On 10 January 2017, I issued a decision reducing the scope of the investigation pursuant to Internal Rule 66 *bis*.⁷
7. On 10 January 2017, I notified the parties of the conclusion of the judicial investigation against Meas Muth and notified them that they had 30 days from that notification to request further investigations.⁸
8. On 25 January 2017 and 27 January 2017, the Meas Muth Defence (“Defence”) filed two requests for investigative action (“Defence Requests”).⁹

¹ Case File No. 003-D1, *Co-Prosecutor’s Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008.

² Case File No. 003-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

³ Case File No. 003-D86, *Notification of the Death of a Suspect in Case File 003*, 22 October 2013.

⁴ Case File No. 003-D120, *International Co-prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003*, 31 October 2014.

⁵ Case File No. 003-D128, *Decision to Charge Meas Muth In Absentia*, 3 March 2015; Case File No. 003-D128.1, *Annex: Notification of Charges Against Meas Muth*, 3 March 2015.

⁶ Case File No. 003-D174, *Written Record of Initial Appearance of MEAS Muth*, 14 December 2015.

⁷ Case File No. 003-D226, *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*, 10 January 2017.

⁸ Case File No. 003-D225, *Notice of Conclusion of Judicial Investigation Against Meas Muth*, 10 January 2017.

⁹ Case File No. 003-D227, *Meas Muth’s Request for Investigative Action Regarding D114/174, D114/184, and related Witness Interviews and the Potential use of Torture-Tainted Evidence*, 25



- On 9 February 2017, the ICP filed two requests for investigative action (“ICP Requests”).¹⁰
9. On 19 and 28 April 2017, I issued decisions on the ICP Requests.¹¹ On 24 May 2017, I issued a consolidated decision on the Defence Requests.¹²
 10. On 24 May 2017, I issued a second notice of conclusion of the investigation and informed the parties that no further opportunity to request investigative action would be afforded following this second notice.¹³
 11. On 23 June 2017, the Defence filed an application to seize the Pre-Trial Chamber (“PTC”) with a view to annulling four written records of interview (“Annulment Application”).¹⁴ On 4 July 2017, I granted the Annulment Application and instructed the Greffier to forward Case File 003 to the PTC pursuant to Internal Rule 76(3).¹⁵ As at the date of this forwarding order, the Annulment Application remains pending before the PTC.
 12. Notwithstanding that the Annulment Application is pending before the PTC, I do not consider it necessary that it be resolved before the filing of the Co-Prosecutors submissions pursuant to Internal Rule 66(5) or the Defence’s response. I firstly note that it was filed outside the period envisaged in Internal Rule 66(1) and hence the PTC may well deem it inadmissible for being filed out of time.¹⁶ Secondly, the Annulment Application concerns four discrete pieces of evidence on the Case File. If the PTC grants the Annulment Application, I will allow the parties time to amend their submissions, if at all necessary¹⁷ or if so instructed by the PTC, at the appropriate time.
 13. I consider it to be in the interests of the proper administration of justice to invite the Co-Prosecutors to file their final submissions now.
 14. Under Internal Rule 66(5), the Co-Prosecutors have three months from the notification of this Order to issue final submissions. The Defence will then be given adequate time to respond.

January 2017; Case File No. 003-D229, *Meas Muth's Request for Investigative Action Concerning an Unrecorded Interaction with a Witness and Request to Revise Written Record of Witness Interview*, 26 January 2017.

¹⁰ Case File No. 003-D233, *International Co-Prosecutor's Request for Investigative Action in Case 003*, 9 February 2017; Case File No. 003-D234, *International Co-Prosecutor's Request for Investigative Action to Place Materials onto Case File 003*, 9 February 2017.

¹¹ Case File No. 003-D233/2, *Decision on International Co-Prosecutor's Request for Investigative Action in Case 003*, 19 April 2017; Case File No. 003-D234/2, *Decision on International Co-Prosecutor's Request for Investigative Action to Place Materials onto Case File 003*, 28 April 2017.

¹² Case File No. 003-D251, *Consolidated Decision on Meas Muth's Requests for Investigative Action Regarding Potential Use of Torture-Tainted Evidence*, 24 May 2017.

¹³ Case File No. 003-D252, *Second Notice of Conclusion of Judicial Investigation against Meas Muth*, 24 May 2017.

¹⁴ Case file No. 003-D253, *Meas Muth's Application to Seize the Pre-Trial Chamber with a Request for Annulment of D114/164, D114/167, D114/170, and D114/171*, 23 June 2017.

¹⁵ Case File No. 003-D253/1, *Decision on Meas Muth's Application to Seize the Pre-Trial Chamber with a Request for Annulment of D114/164, D114/167, D114/170, and D114/171*, 4 July 2017.

¹⁶ I declined to rule it inadmissible and deny the Annulment Application merely on the grounds of being out of time, because the wording of Internal Rule 66(1) is silent on the issue, there is no prior guidance from the PTC on that question of interpretation of Internal Rule 66(1), and the Application otherwise passes the required threshold. Moreover, the PTC may entertain motions filed out of time on their merits under its general discretion, and may choose to do so here.

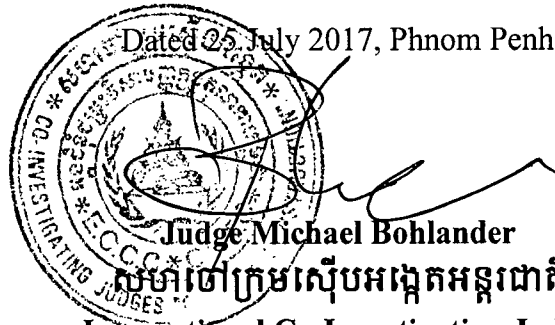
¹⁷ I currently do not consider it unreasonable to expect the parties simply to make alternative submissions regarding the relevance and impact of those four written records of interview.



FOR THE FOREGOING REASONS, I:

- 15. **FORWARD** Case File 003 of the judicial investigation to the Co-Prosecutors pursuant to Internal Rule 66(4) for the purpose of their final submissions.

Dated 25 July 2017, Phnom Penh



Judge Michael Bohlander
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 International Co-Investigating Judge
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