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ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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

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Before: **The Co-Investigating Judges**
 Date: **17 May 2016**
 Language(s): **English [Original]**
 Classification: **CONFIDENTIAL**

**CONSOLIDATED DECISION ON AO AN'S ADDITIONAL APPLICATIONS
 TO SEIZE THE PRE-TRIAL CHAMBER WITH A VIEW TO ANNULMENT
 OF INVESTIGATION OF WAT TA MEAK AND TUOL BENG AND WAT
 ANGKUONH DEI AND CHARGES RELATING TO TUOL BENG**

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Pre-Trial Chamber

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I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 22 February 2013, 5 April 2013, and 22 January 2015.
2. On 27 March 2015, my predecessor charged Ao An with, *inter alia*, crimes against humanity and premeditated homicide allegedly committed at Tuol Beng.¹
3. On 9 September 2015, the Ao An Defence (“Defence”) filed an application pursuant to Internal Rule 76(2) requesting the CIJs to seize the Pre-Trial Chamber (“PTC”) with a view to annulment of the investigation of Wat Ta Meak (“Wat Ta Meak Annulment Application”).²
4. On 18 November 2015, I issued a decision granting the Wat Ta Meak Annulment Application (“18 November 2015 Decision”).³ The PTC is currently seized of the Wat Ta Meak Annulment Application.
5. On 18 February 2016, the Defence filed an application pursuant to Internal Rule 76(2) requesting the CIJs to seize the PTC with a view to annulment of the investigation into Tuol Beng and Wat Angkuonh Dei and the charges in relation to Tuol Beng (“Tuol Beng Annulment Application”).⁴
6. On 14 March 2016, I notified Ao An, through his Co-Lawyers, of further charges against him, which included crimes against humanity and violations of the 1956 Penal Code allegedly committed at Wat Angkuonh Dei and Wat Ta Meak Security Centre (“Further Charges”).⁵
7. On 27 April 2016, I issued a decision granting the Tuol Beng Annulment Application insofar as it relates to the annulment of investigative actions conducted during the period February 2012 to 24 April 2014, as set out in Annex A of my decision, and denying the remainder of the Application (“27 April 2016 Decision”).⁶ The PTC is currently seized of the Tuol Beng Annulment Application, to the extent it was granted in the 27 April 2016 Decision.
8. On 27 April 2016, the Defence filed two additional requests concerning the Wat Ta Meak Annulment Application (“Additional Wat Ta Meak Application”)⁷ and Tuol Beng Annulment Application (“Additional Tuol Beng Application”).⁸

¹ Case File No. 004-D242, *Written Record of Initial Appearance*, 27 March 2015, pp. 6-7.

² Case File No. 004-D263, *Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigation of Wat Ta Meak*, 9 September 2015.

³ Case File No. 004-D263/1, *Decision on Ao An’s Internal Rule 76 Application for Annulment of the Investigation of Wat Ta Meak*, 18 November 2015, paras. 16-17.

⁴ Case File No. 004-D299, *Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges Relating to Tuol Beng*, 18 February 2016.

⁵ Case File No. 004-D303, *Written Record of Further Appearance*, 14 March 2016, pp. 5-6, 7, 8.

⁶ Case File No. 004-D299/1, *Decision on Ao An’s Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges Relating to Tuol Beng*, 27 April 2016.

⁷ Case File No. 004-D263/2, *Additional Request Concerning Ao An’s Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigation of Wat Ta Meak*, 27 April 2016, para. 1, (“Additional Wat Ta Meak Application”).



II. SUBMISSIONS

9. The Defence submit that the Further Charges laid against Ao An in relation to Wat Ta Meak and Wat Angkuonh Dei are procedurally defective because they result from investigative action which the Defence purport in the Wat Ta Meak Annulment Application and Tuol Beng Annulment Application to be procedurally defective.⁹
10. The Defence argue that had my predecessor charged Ao An with crimes at Wat Ta Meak and Wat Angkuonh Dei, the Defence would have included the present applications in the Wat Ta Meak Annulment Application and Tuol Beng Annulment Application.¹⁰ Therefore, the Defence request the CIJs to seize the PTC with the Additional Wat Ta Meak Application and Additional Tuol Beng Application with a view to joining them with the Wat Ta Meak Annulment Application and Tuol Beng Annulment Application currently before the PTC.¹¹

III. DISCUSSION

11. Internal Rule 76(5) provides that where the PTC annuls an investigative action, it shall also decide whether the annulment affects any other actions or orders. The PTC is currently seised of the Tuol Beng Annulment Application and the Wat Ta Meak Annulment Application. Should the PTC decide to annul any of the investigative actions taken in relation to these two crime sites, it will also determine what other actions and orders, including charges, are affected by its findings. It is therefore unnecessary to seize the PTC with the Additional Wat Ta Meak Application and the Additional Tuol Beng Application, because the relief requested therein will be considered by the PTC when reviewing the validity of the investigations on these two crime sites.¹²
12. The outcome of the annulment motion underlying the 18 November 2015 decision is still open and the decision is therefore at present not determinative of the issue; only the PTC has the power to decide whether an act was procedurally defective.
13. Accordingly, I will not further consider whether the two additional applications meet the test for referral to the PTC.
14. This decision is filed in English, with a Khmer translation to follow.

⁸ Case File No. 004-D299/2, *Additional Request Concerning Ao An's Application to Seize the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng*, 27 April 2016, para. 1, ("Additional Tuol Beng Application").

⁹ See Wat Ta Meak Annulment Application, paras 21-52; Additional Wat Ta Meak Application, paras 15, 17; Tuol Beng Annulment Application, paras. 19-24, 39-65; Additional Tuol Beng Application, paras. 10-11.

¹⁰ Additional Wat Ta Meak Application, para.17; Additional Tuol Beng Application, para. 10.

¹¹ Additional Wat Ta Meak Application, para.3; Additional Tuol Beng Application, para. 2.

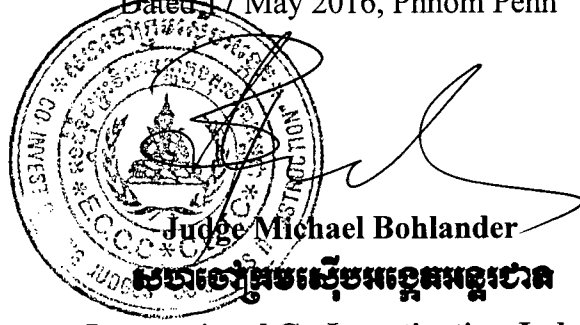
¹² See 27 April 2016 Decision, para. 35.



FOR THE FOREGOING REASONS, I:

- 15. **DENY** the Additional Tuol Beng Application and the Additional Wat Ta Meak Application; and
- 16. **INFORM** the Defence that the PTC is already seized of the relief requested in the Additional Tuol Beng Application and the Additional Wat Ta Meak Application.

Dated 17 May 2016, Phnom Penh



The image shows a circular official seal of the International Co-Investigating Judge (OCIJ). The seal features a central emblem with a crown and a sword, surrounded by text in Khmer and English. The English text includes 'INTERNATIONAL CO-INVESTIGATING JUDGE' and 'ECCC'. A handwritten signature in black ink is written over the seal.

Judge Michael Bohlander

សហចៅអឺនមេដឹកនាំអង្គការអន្តរជាតិ

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