



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
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Case File No: 004/2/07-09-2009-ECCC-OCIJ

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Before: **The Co-Investigating Judges**
Date: **16 December 2016**
Language(s): **English & Khmer [Original in English]**
Classification: **CONFIDENTIAL**

**DECISION TO REDUCE THE SCOPE OF JUDICIAL
INVESTIGATION PURSUANT TO INTERNAL RULE 66 bis**

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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 19 April 2016, in my *Request for Comments Regarding Alleged Facts Not to Be Investigated Further* (“Request for Comments”), I informed the parties of my intention not to further investigate certain facts.¹
3. Ao An filed comments on 18 May 2016,² and the International Co-Prosecutor (“ICP”) filed comments on 3 June 2016.³
4. On 25 August 2016, in my *Notice of Provisional Discontinuance Regarding Individual Allegations* (“Notice of Provisional Discontinuance”),⁴ I informed the parties that I would not further investigate the following facts alleged in the ICP’s submissions, which *prima facie* appear to be subject to Internal Rule 66 *bis*:
 - a) **Fact A:** All allegations relating to crime sites in Sectors 42 and 43:
 - Tuol Ta Phlong Security Centre⁵
 - Wat Kandal Security Centre⁶
 - Chamkar Svay Chanty Security Centre⁷
 - Wat Baray Chan Dek Security Centre⁸
 - Wat Srange Security Centre⁹
 - b) **Fact B:** The arrests and executions of Cham in the Eastern Zone¹⁰
 - c) **Fact C:** Torture at Tuol Beng / Wat Angkuonh Dei¹¹
 - d) **Fact D:** Imprisonment and persecution at Wat Phnom Pros¹²
5. On 10 November 2016, I notified the parties of my intention to exclude Facts A, B, C, and D from the investigation pursuant to Internal Rule 66 *bis* (“Notification Pursuant to Rule 66 *bis*”) at the time of the conclusion of the investigation.¹³
6. On 18 November 2016, the ICP filed a submission indicating that he does not object to the exclusion of Facts A, B, C, and D and agreeing that the remaining facts are representative of the scope of the Introductory and Supplementary

¹ Case File No. 004-D307, *Request for Comments Regarding Alleged Facts Not To Be Investigated Further*, 19 April 2016, paras. 3, 7.

² Case File No. 004-D307/1, *Ao An’s Submissions in Response to the International Co-Investigating Judge’s Request for Comments Regarding Alleged Facts Not To Be Investigated Further*, 18 May 2016.

³ Case File No. 004-D307/2, *International Co-Prosecutor’s Response to the International Co-Investigating Judge’s Request for Comments regarding Alleged Facts Not To Be Investigated Further*, 3 June 2016.

⁴ Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016. It should be noted that sets of allegations are being referred to as one fact.

⁵ IS, paras. 50-51.

⁶ IS, para. 52.

⁷ IS, para. 34.

⁸ IS, para. 53.

⁹ IS, para. 49.

¹⁰ IS, paras. 45-46.

¹¹ IS, paras. 30-33; 2SS, para. 11; OCP Response, paras. 1-2.

¹² IS, para. 30-31.

¹³ Case File No. 004-D307/4, *Notification Pursuant to Rule 66 bis*, 9 November 2016.



Submissions geographically, temporally, and substantively.¹⁴ No other party filed submissions.


II. DISCUSSION

7. Rule 66 *bis* (1) provides that the CIJs may, at the time of notification of conclusion of investigation, decide to reduce the scope of judicial investigation by excluding certain facts set out in an Introductory Submission or any Supplementary Submission(s).
8. Today, I notified the parties pursuant to Internal Rule 66(1) that the judicial investigation against Ao An is concluded. The investigation is thus ripe for a decision on Internal Rule 66 *bis*.
9. I have decided to exclude Facts A, B, C, and D from the investigation pursuant to Internal Rule 66 *bis* for the reasons stated in the Notice of Provisional Discontinuance and the Notification Pursuant to Rule 66 *bis*,
10. I am of the opinion that the remaining facts are representative of the scope of the Submissions geographically, temporally and substantively, in terms of the nature and scale of crimes and the categories of victims.
11. As I have stated previously, Internal Rule 66 *bis* (5) makes clear that the evidence relating to excluded facts may still be relied upon insofar as it is relevant to the remaining facts.
12. Exclusion of Facts A, B, C, and D will not affect the status of Civil Parties or the right of Civil Party applicants to participate in the judicial investigation.

FOR THE FOREGOING REASONS, I:

13. **DECIDE** to exclude Facts A, B, C, and D from the investigation pursuant to Internal Rule 66 *bis*.

Dated 16 December 2016, Phnom Penh



Judge Michael Bohlander
 លោកជំទាវមីកែលហ្គេនឌឺរ
 International Co-Investigating Judge
 Co-juge d'instruction international

¹⁴ Case File No. 004-D307/4/1, *International Co-Prosecutor's Response to the International Co-Investigating Judge's Notification Pursuant to Internal Rule 66 bis (2)*, 18 November.