



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

Before: The Co-Investigating Judges

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**DECISION ON INTERNATIONAL CO-PROSECUTOR'S  
REQUEST FOR INVESTIGATIVE ACTION TO PLACE MAPS  
AND CASE 002 MATERIALS ONTO CASE FILE 004/2**

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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, 22 January 2015, and 16 January 2017.
2. On 27 March 2015, my predecessor charged Ao An with, *inter alia*, crimes against humanity.<sup>1</sup>
3. On 14 March 2016, I further charged Ao An with, *inter alia*, genocide against the Cham, crimes against humanity including that of forced marriage, and violations of the 1956 Cambodian Penal Code in the Central Zone through various modes of liability including by participation in a joint criminal enterprise.<sup>2</sup>
4. On 16 December 2016, I notified the parties of the conclusion of the judicial investigation against Ao An, informed the parties that they may request further investigative action within 15 days,<sup>3</sup> and ordered the severance of the investigation against Ao An from Case 004.<sup>4</sup> On 26 December 2016, I extended the period of time for the parties to request further investigative action to 16 January 2017.<sup>5</sup>
5. On 21 December 2016, the ICP filed the *International Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004/2*, requesting that the CIJs place on Case File 004/2 certain maps and Case 002 materials purportedly relevant to the investigation against Ao An (“Request”).<sup>6</sup> The ICP enumerated the documents sought to be placed on the Case File in an annex to the Request (“ICP Annex”).<sup>7</sup>
6. The Ao An Defence did not file any response to the Request.

## II. SUBMISSIONS

7. The ICP submits that the Request meets the precision requirement and the *prima facie* relevance requirement of investigative requests.<sup>8</sup> Specifically, the ICP submits that the 22 materials identified in the ICP Annex are each directly relevant to either the investigation into crimes committed in the Central Zone and/or the existence of a widespread, systematic attack against civilians.<sup>9</sup> The “*National policy*” documents (items 1 to 4 in the ICP Annex) relate to the Democratic Kampuchea (“DK”) Regime’s hierarchical structure and functioning.<sup>10</sup> The documents include a book by the DK Ministry of Education, a DK media report, and videos and transcripts of testimony by Khieu Samphan. The “*Case 002/02 Trial Transcripts*” (items 5 to 13), are trial transcripts from Case

<sup>1</sup> Case File No. 004-D242, *Written Record of Initial Appearance of AO An*, 27 March 2015, p. 7.

<sup>2</sup> Case File No. 004-D303, *Written Record of Further Appearance*, 14 March 2016, pp. 4-9.

<sup>3</sup> Case File No. 004-D334, *Notice of Conclusion of Judicial Investigation Against Ao An*, 16 December 2016.

<sup>4</sup> Case File No. 004-D334/1, *Order for Severance of Ao An from Case 004*, 16 December 2016.

<sup>5</sup> Case File No. 004/2-D340/1, *Decision on Ao An’s Request for Extension of Time Limit for Requesting Further Investigative Action Following Rule 66 Notice*, 26 December 2016.

<sup>6</sup> Case File No. 004/2-D342, *International Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004/2*, 21 December 2016, paras 1, 9, 18.

<sup>7</sup> Case File No. 004/2-D342.2, *Attachment 1: Co-Prosecutor’s RIA to Place Maps and Case 002 Materials onto Case File 004/2 – Annex A*, 21 December 2016.

<sup>8</sup> Request, paras 1, 9, 17.

<sup>9</sup> Request, paras 1, 9.

<sup>10</sup> Request, paras 10-12; ICP Annex items 1-4.



002/2 that enable a better understanding of specific pieces of evidence already on Case File 004/2, which are identified in the ICP Annex.<sup>11</sup> The “Maps” (items 14 to 22) are various maps that indicate: (i) the location and widespread nature of crime sites; (ii) paths of forced transfer; (iii) Ao An and his subordinates’ proximity to crime sites; and (iv) relevant commune, district, sector, and zone boundaries.<sup>12</sup>

8. The ICP submits that the request is sufficiently specific, and that the materials are conducive to ascertaining the truth, non-duplicative of other evidence already on the Case File, and do not violate Ao An’s fair trial rights.<sup>13</sup>

### III. DISCUSSION

#### A. Standard for the assessment of investigative requests

9. The Pre-Trial Chamber (“PTC”) has previously stated that a party requesting investigative action “*must satisfy the two cumulative conditions [...] [n]amely, the request must:*

- (i) *identify the action to be taken or order to be made, as applicable, with sufficient precision (“the precision requirement”), and*
- (ii) *demonstrate in detail the reasons why the requested investigative action [...] is prima facie ‘relevant to ascertaining the truth’ (“the prima facie relevance requirement”).”<sup>14</sup>*

10. The precision requirement obliges the requesting party to be “*specific enough to give clear indications to the Co-Investigating Judges as to what they should search for*”.<sup>15</sup> The requesting party must point specifically towards the presence of the evidence that is sought.<sup>16</sup>

11. The *prima facie* relevance requirement contains two sub-requirements. Firstly, the request must be “*relevant to the scope of the investigation pursuant to the limitations and parameters set by the Introductory and Supplementary Submissions.*”<sup>17</sup> Secondly, the request “*must detail why the requested information is conducive to ascertaining the truth*”.<sup>18</sup> This requires the requesting party to

<sup>11</sup> Request, paras 13-14; ICP Annex items 5-13.

<sup>12</sup> Request, para. 15; ICP Annex items 14-22.

<sup>13</sup> Request, paras 1, 9, 16, 17.

<sup>14</sup> Case File No. 002-D365/2/17, *Decision on Reconsideration of Co-Prosecutors’ Appeal Against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File which Assists in Proving the Charged Persons’ Knowledge of the Crimes* (“Reconsideration Decision”), 27 September 2010, para. 47.

<sup>15</sup> Reconsideration Decision, para. 48; Case File No. 002-D164/4/13, *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Material Drive*, 18 November 2009, para. 45.

<sup>16</sup> Case File No. 002-D100/9/2, *Decision on The Appeal Against the Co-Investigative Judges Order on Nuon Chea’s Second Request for Investigative Action*, 5 May 2010, para. 31; Case File No. 002-D164/4/13, *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Material Drive*, 18 November 2009, paras 38-39; Case File No. 002-D273/3/5, *Decision on Appeal Against OCIJ Order on Nuon Chea’s Eighteenth Request for Investigative Action*, 10 June 2010, paras 19-20, 26, 29; Reconsideration Decision, paras 48, 73.

<sup>17</sup> Reconsideration Decision, para. 49.

<sup>18</sup> *Ibid.*, para. 50.



