



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

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Before: **The Co-Investigating Judges**
Date: **2 June 2015**
Language(s): **Khmer/English [Original]**
Classification: **Confidential**

DISMISSAL OF ALLEGATIONS AGAINST SOU MET

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

Noting the Co-Prosecutors’ Second Introductory Submission, filed on 7 September 2009 (“Introductory Submission”);¹

Noting the International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, filed on 31 October 2014 (“Supplementary Submission”);²

Noting the judicial investigation relating to alleged violations of the **1956 Penal Code, Crimes against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 3 (new), 5, 6, 29 and 39 of the ECCC Law and Articles 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code;

Noting Rules 23 *bis* and 55 of the ECCC Internal Rules (“Internal Rules”);

Noting Articles 7.1 and 247 (new) of the Code of Criminal Procedure of the Kingdom of Cambodia;

Noting the *Copy of Death Certificate Number 27*, done in Ratanak commune and dated 21 June 2013;³

Noting the *Notification of the Death of a Suspect in Case File 003*, dated 22 October 2013;⁴

RELEVANT PROCEDURAL BACKGROUND

1. On 7 September 2009, the Acting International Co-Prosecutor filed the Introductory Submission with the Office of Co-Investigating Judges (“OCIJ”) alleging that SOU Met, also known as SOU Samet,⁵ committed (either individually or through his participation in a joint criminal enterprise), planned, instigated, ordered, and aided and abetted Crimes Against Humanity, Grave Breaches of the Geneva Conventions of 12 August 1949, and violations of the

¹ Case File No. 003-D1, *Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008; Case File No. 003-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

² Case File No. 003-D120, *International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003*, 31 October 2014.

³ Case File No. 003-D86/1/1, *Copy of Death Certificate Issued by Sangkat Ratanak N.27 dated on 21 June 2013; Death Certificate N.918 /13 M.P issued by the Military Region 5 Hospital dated on 15 June 2013; Death Certificate issued by Military Region 5 Hospital, N. 216/13 M.P., 4 July 2013.*

⁴ Case File No. 003-D86, *Notification of the Death of a Suspect in Case File 003*, 22 October 2013.

⁵ Introductory Submission, Paras 96-102; *See also: D4.1.601*, 1st Written Record of Interview of Witness SENG Mon, pp. 3 and 11; *D4.1.854*, 2nd Written Record of Interview of Witness SENG Mon, pp.2-3 and 5-6; *D4.1.845*, 2nd Written Record of Interview of Witness LONH Dos, pp.5-6 and 8; *D4.1.503*, Written Record of Interview of Witness LOEUNG Kimchhong, p.4; *D4.1.837*, Written Record of Interview of Witness HEN Sophal, pp.3 and 5-6; *D1.3.33.13*, Written Record of Interview of Charged Person Kaing Guek Eav *alias* Duch, p. 6; *D4.1.1107*, 12th Written Record of Interview of Charged Person Kaing Guek Eav *alias* Duch, p.7; *D4.1.780*, Site Identification Report, 02 January 2010, pp.3-5.



1956 Penal Code.⁶ SOU Met was also alleged of being criminally responsible for these crimes through superior responsibility.⁷ The Acting International Co-Prosecutor further submitted that SOU Met was a senior leader and/or a person most responsible for the crimes committed in Democratic Kampuchea from at least June 1975.⁸

2. According to the Acting International Co-Prosecutor, at the time of the filing of the Introductory Submission SOU Met held the position of Commander of the Royal Cambodian Armed Forces (“RCAF”) in Region 5 and was an advisor to the Chief of the RCAF General Staff.⁹ SOU Met’s position as a RCAF Commander in Region 5 was confirmed by a number of witnesses interviewed by the OCIJ.¹⁰
3. On 29 April 2011, Co-Investigating Judges (“CIJs”) YOU Bunleng and Siegfried Blunk notified the Co-Prosecutors about the conclusion of the judicial investigation pursuant to Internal Rule 66 (“Rule 66 Notice”).¹¹
4. On 18 May 2011, the ICP filed three investigative requests with the CIJs (“Investigative Requests”).¹² The ICP also submitted observations on the status of the investigation, stating that Internal Rule 55(2) makes a full investigation on the allegations in the Introductory Submission mandatory and that the investigation of Case File 003 could not be considered complete.¹³
5. On 7 June 2011, the CIJs rejected the Investigative Requests because they had been filed by the ICP alone without the prior recording of a disagreement with his national counterpart and without the latter having delegated the power to file the Investigative requests to the ICP (“7 June 2011 Decision”).¹⁴
6. On 10 June 2011, upon signing a disagreement with the National Co-Prosecutor, the ICP re-filed the three investigative requests (“Re-filed Requests”).¹⁵

⁶ Introductory Submission, paras 96, 97, 99.

⁷ Introductory Submission, para. 98.

⁸ Introductory Submission, para. 96.

⁹ Introductory Submission, para. 68.

¹⁰ Case File No. 003-D4.1.1053, Written Record of Interview of Witness SOU Nan, p. 3; Case File No. 003-D4.1.508, Written Record of Interview of Witness CHAN Man, p. 6; Case File No. 003-D4.1.503, Written Record of Interview of Witness LOEUNG Kimchhong, p. 4; Case File No. 003-D4.1.513, Written Record of Interview of Witness KHIN Vat, p. 2; Case File No. 003-D4.1.1107, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, p. 7. *See also* Case File No. 003-D3/2.1.10, The Cambodia Daily, “*Before Charges, Activist Cites Two in a Dormant KR Inquest*”, 4 April 2011.

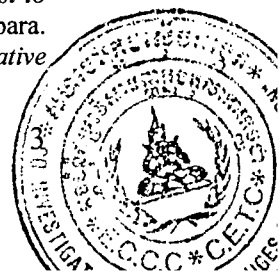
¹¹ Case File No. 003-D13, *Notice of Conclusion of Judicial Investigation*, 29 April 2011.

¹² Case File No. 003-D17, *International Co-Prosecutor’s First Case File 003 Investigative Request to Admit Additional Documents and Observations on the Status of the Investigation*, 18 May 2011; Case File No. 003-D18, *International Co-Prosecutor’s Second Request for Further Investigative Action Regarding SOU Met and Related Crime Sites*, 18 May 2011; Case File No. 003-D19, *International Co-Prosecutor’s Third Investigative Request Regarding MEAS Mut and Related Crime Sites*, 18 May 2011.

¹³ Case File No. 003-D17, *International Co-Prosecutor’s First Case File 003 Investigative Request to Admit Additional Documents and Observations on the Status of the Investigation*, 18 May 2011, paras 3, 5.

¹⁴ Case File No. 003-D20/3, *Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor Regarding Case 003*, 7 June 2011.

¹⁵ Case File No. 003-D22, *International Co-Prosecutor’s First Case File 003 Investigative Request to Admit Additional Documents and Observations on the Status of the Investigation*, 10 June 2011, para. 2; Case File No. 003-D23, *International Co-Prosecutor’s Second Request for Further Investigative*



7. On 7 July 2011, the International Co-Prosecutor filed an appeal against the 7 June 2011 Decision ("First ICP Appeal").¹⁶
8. On 27 July 2011, the CIJs denied the Re-filed Requests on essentially three grounds. First, the CIJs considered that the Pre-Trial Chamber ("PTC") was already seised of the issue following the filing of the ICP Appeal.¹⁷ Second, the CIJs considered the Re-Filed Requests to have been filed in an untimely fashion.¹⁸ Third, the CIJs considered that it was not apparent that the ICP had given sufficient consideration to whether suspects in Case 003 met the ECCC jurisdictional requirements. The CIJs stated that Rule 55(1) only allows the CIJs to conduct investigations "*within the jurisdiction of the ECCC.*" Therefore, investigations on whether the suspects met the jurisdictional requirements set forth in Article 2 of the ECCC Law should be prioritized over investigations on other matters, in order to avoid committing the ECCC's resources unnecessarily and irresponsibly ("27 July 2011 Decision").¹⁹
9. On 26 August 2011, the ICP appealed the 27 July 2011 Decision ("Second ICP Appeal").²⁰
10. On 9 October 2011, International Co-Investigating Judge Sigfried Blunk resigned.²¹
11. On 2 and 15 November 2011, the PTC issued observations respectively on the First ICP Appeal and Second ICP Appeal. On both occasions, the PTC stated that it had not been able to assemble an affirmative vote of at least four judges required for a decision.²²
12. On 30 November 2011 the International Reserve Co-Investigating Judge ("RICIJ"), Laurent Kasper-Ansermet, arrived at the ECCC to replace Judge Siegfried Blunk.²³
13. On 2 December 2011, the RICIJ issued the *Order Resuming the Judicial Investigation*, reconsidering the 27 July 2011 Decision and declaring the Investigative Requests admissible.²⁴
14. On 6 December 2011, National Co-Investigating Judge YOU Bunleng issued a statement where he noted that a new International Co-Investigating Judge had

Action Regarding SOU Met and Related Crime Sites, 10 June 2011; Case File No. 003-D24, *International Co-Prosecutor's Third Investigative Request Regarding MEAS Mut and Related Crime Sites*, 10 June 2011.

¹⁶ Case File No. 003-D20/4/1, *International Co-Prosecutor's Appeal against the "Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor regarding Case 003*, 7 July 2011.

¹⁷ Case File No. 003-D26, *Decision on International Co-Prosecutor's Re-Filing of Three Investigative Requests in Case 003*, 27 July 2011, para. 5.

¹⁸ *Ibid.*, para. 6 a) and b).

¹⁹ *Ibid.*, para. 6 c) and d).

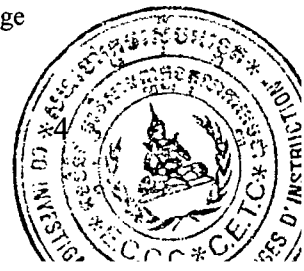
²⁰ Case File No. 003-D26/1/1, *International Co-Prosecutor's Appeal against the "Decision on International Co-Prosecutor's Re-filing of Three Investigative Requests in Case 003"*, 27 August 2011.

²¹ See <http://www.eccc.gov.kh/en/articles/statement-international-co-investigating-judge>

²² Case File No. 003-D20/4/4, *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Decision on Time Extension Request and Investigative Requests regarding Case 003*, 2 November 2011, p. 7; Case File No. 003-D26/1/3, *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Decision on Re-Filing of Three Investigative Requests*, 15 November 2011, p. 6.

²³ See <http://www.eccc.gov.kh/en/articles/press-release-international-reserve-co-investigating-judge>

²⁴ Case File No. 003-D28, *Order Resuming the Judicial Investigation*, 2 December 2011, p. 9.



- yet to be officially appointed. He further added that on 5 December 2011 he had met with the RICIJ and informed him that, in accordance with Articles 3 and 5(6) of the ECCC Agreement, Articles 26 and 27 of the ECCC Law, and Internal Rule 7(4), as well as to ensure “*the common practices applied so far on the precedent International Co-Investigating Judges*”, a Reserve International Co-Investigating Judge must first wait for an official appointment before commencing his duties. For this reason, Judge YOU Bunleng stated that he did not consider any action taken by the RICIJ to be legally valid.²⁵
15. On 24 February 2012, the RICIJ notified SOU Met that he was a named suspect in the ongoing judicial investigation on the allegations contained in the Introductory Submission.²⁶ On 27 February 2012, the RICIJ issued a Rogatory Letter instructing OCIJ investigators to conduct investigations in Case File 003.²⁷
 16. On 19 March 2011, the RICIJ tendered his resignation with effect from 4 May 2012.²⁸ Between 20 March 2012 and his resignation, the RICIJ conducted a number of civil parties interviews.²⁹
 17. On 26 October 2012, the new International Co-Investigating Judge, Mark B. Harmon, took office at the ECCC.³⁰
 18. On 7 February 2013, following the signing of a disagreement with his international counterpart, the National Co-Investigating Judge filed a Forwarding Order with the Office of the Co-Prosecutors for final submissions under Rule 66(4) of the Internal Rules.³¹ On the same day, the International Co-Investigating Judge signed a Rogatory Letter instructing OCIJ investigators to carry out investigations in Case File 003.³²
 19. On 8 February 2013 the ICP responded to the Forwarding Order, stating that he did not consider the investigation to be complete and requesting the CIJs to continue the investigation of Case 003.³³ He further noted the placement of a Rogatory Letter dated 7 February 2013 on Case File 003 by the International CIJ. The ICP considered that with the undertaking of this formal investigative action after the Rule 66 Notice but prior to the issuance of a closing order, the Rule 66 Notice had lapsed and was without legal effect.³⁴
 20. On 28 February 2013, the CIJs issued a public declaration stating their respective positions with regard to the status of Case 003. The International Co-

²⁵ <http://www.eccc.gov.kh/en/articles/statement-national-co-investigating-judge-unofficial-translation>

²⁶ Case File No. 003-D31, *Notification of Suspect's Rights [Rule 21(1)(d)]*, 24 February 2012. The RICIJ also informed SOU Met orally on 1 March 2012, see Case File No. 003-D34, *Report of Field Investigations Conducted on 01 March 2012 for Case File 003*, 9 March 2012, para. 2.

²⁷ Case File No. 003-D32, *Rogatory Letter*, 27 February 2012.

²⁸ See <http://www.eccc.gov.kh/en/articles/press-release-international-reserve-co-investigating-judge>

²⁹ See e.g. Case File No. 003-D37, *Written Record of Interview of Civil Party Robert Hamill*, 20 March 2012; Case File No. 003-D39, *Written Record of Interview of Civil Party KHIM Yeth*, 21 March 2012; Case File No. 003-D40, *Written Record of Interview of Civil Party KUNG Horn*, 21 March 2012; Case File No. 003-D41, *Written Record of Interview of Civil Party KONG Yun*, 22 March 2012; Case File No. 003-D45, *Written Record of Interview of Civil Party THORNG Channa*, 6 April 2012.

³⁰ See <http://www.eccc.gov.kh/en/articles/mark-harmon-sworn-international-co-investigating-judge>

³¹ Case File No. 003-D52, *Forwarding Order*, 7 February 2013.

³² Case File No. 003-D54, *Rogatory Letter*, 7 February 2013.

³³ Case File No. 003-D52/1, *International Co-Prosecutor's Response to Forwarding Order of 7 February 2013*, 8 February 2013, para. 3.

³⁴ *Ibid.*, paras 4-6.



- Investigating Judge stated that he considered the investigation of Case 003 open and ongoing, while the National Co-Investigating Judge considered that the judicial investigation in Case 003 was concluded by both National Co-Investigating Judge and International Co-Investigating Judge Sigfried Blunk.³⁵
21. On 27 June 2013, Voice of America reported that SOU Met had died on 14 June 2013.³⁶ On 11 July 2013, the CIJS requested the Chief of the Sangkat Ratanak Commune, Battambang City, Battambang Province, requesting to be provided with SOU Met's death certificate and pre-death files. They also requested the Chief to contact SOU Met's family or workplace and request them to hand over medical records of SOU Met's of which they may be in possession.³⁷ On 24 July 2013, the CIJs requested the television channel SEATV to be provided with the video footage of SOU Met's funeral.
 22. On 26 July 2013 the CIJs received the Certificate of Death of Suspect SOU Samet issued by the Hospital of the 5th Military Region and a copy of his Death Certificate from the Chief of the Sangkat Ratanak Commune.³⁸ On 30 July 2013, the CIJs received the video footage of SOU Met's funeral.
 23. According to the death certificate, on 15 June 2013 Dr. Youk Pechmony, physician at the Military Region 5 Hospital, certified that the SOU Met, aged 67, had died on 14 June 2013 at 11:15 a.m. due to reasons specified in the certificate.³⁹ The death of the SOU Met was also certified by the same physician and by the Hospital Director, Dr. Sok Vannara, on 4 July 2013.
 24. On 22 October 2013, on the basis of the death certificate, including the information concerning the position held by SOU Met at the time of his death, and having examined the footage of the SOU Met's funeral, the CIJs notified the Co-Prosecutors and Civil Parties in Case 003 that they had ascertained that SOU Met had died, and that the legal implications of his death, including the extinction of the criminal action against him, would be addressed in the closing order.⁴⁰ However, the CIJs have partly reconsidered their position with regard to the timing for addressing the legal implications of SOU Met's death, and believe that it is in the interest of justice to provide some clarification at this stage of the investigation, prior to the issuance of a closing order.

³⁵ See <http://www.eccc.gov.kh/en/articles/statement-co-investigating-judges-regarding-case-003>, 28 February 2013.

³⁶ VOA, Khmer Rouge Suspect SOU Met dead, Witnesses Report, 27 June 2013 (<http://www.voacambodia.com/content/khmer-rouge-suspect-sou-met-dead-witnesses-report/1690436.html>); The Associated Press, Cambodian Khmer Rouge Atrocity Suspect Dies, 27 June 2013; The Washington Post, the Associated Press, Former Khmer Rouge Air Force Leader Investigated in 1970s Cambodian Atrocities Dies, 26 June 2013. (<http://www.cambodiatribunal.org/sites/default/files/Former%20Khmer%20Rouge%20air%20force%20leader%20investigated%20in%201970s%20Cambodian%20atrocities%20dies.pdf>); The Cambodia Daily, Khmer Rouge War Crimes Suspect Sou Met Dead, Volume 55, Issue 37, 27 June 2013.

³⁷ Case File 003-D86/1, *Request for Death Certificate and Medical Files concerning Mr SOU Met*, 11 July 2013.

³⁸ Case File No. 003-D86/1/1, Copy of *Death Certificate Issued by Sangkat Ratanak N.27 dated on 21 June 2013; Death Certificate N.918 /13 M.P issued by the Military Region 5 Hospital dated on 15 June 2013*; Death Certificate issued by Military Region 5 Hospital, N. 216/13 M.P., 4 July 2013.

³⁹ *Ibid.*, p. 3.

⁴⁰ Case File No. 003-D86, *Notification of the Death of a Suspect in Case File 003*, 22 October 2013.



DISCUSSION

- 25. The Internal Rules of the ECCC do not expressly regulate the consequences of the death of a named suspect in a judicial investigation before the issuance of a closing order. When the Internal Rules do not address a matter an issue that arises during the investigation, provisions of the Code of Criminal Procedure of the Kingdom of Cambodia shall apply.⁴¹
- 26. Pursuant to Article 7.1 of the Code of Criminal Procedure of the Kingdom of Cambodia (“CCP”), which states that the death of a suspect extinguishes any criminal action against him, the CIJs find that the death of SOU Met extinguishes any criminal and civil action against him before the ECCC.
- 27. The CIJs are in agreement that the death of SOU Met terminates any criminal and civil action against him, and that any allegations against the person of SOU Met are therefore dismissed, although they have different position in respect of the ‘D’ number to be assigned to the present Order.⁴²

FOR THE FOREGOING REASONS, THE CO-INVESTIGATING JUDGES HEREBY:

NOTIFY the parties in Case 003 that the death of Suspect SOU Met *alias* SOU Samet, male, born on 30 April 1948 in Srae Andoung Village, Peam Rar Commune, Kampong Tralach District, Kampong Chhnang Province, Cambodia, has the effect of extinguishing any criminal and civil action against him in Case 003 before the ECCC; and

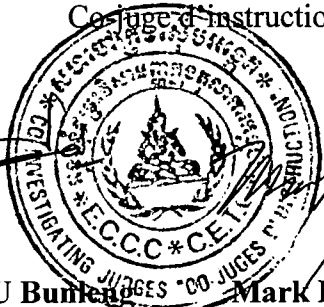
DECIDE to dismiss the allegations against Suspect SOU Met *alias* SOU Samet, due to the extinguishment of the criminal action against him.

NOTIFY the parties that determinations on the criminal responsibility for the crimes alleged in the Introductory Submission will be made at the time of the issuance of the closing order pursuant to Internal Rule 67.

Phnom Penh, dated 02 June 2015

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges
Co-Judge of Instruction



YOU Bunleang **Mark B. Harmon**

⁴¹ Case File 002-D55/1/8, Decision on Nuon Chea’s Appeal Against Order Refusing Request for Annulment, 26 August 2008, paras. 14-15.

⁴² The National Co-Investigating Judge considers that investigative actions taken after the closure of Case 003 were not validly carried out, which impacts on the Case File number that this present Order should be assigned. The “D” number assigned to this Order does not affect, therefore, the position of the National Co-Investigating Judge over the Case.