



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: 004/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 04 March 2016

Language(s): Khmer/English

Classification: CONFIDENTIAL

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ០១ / ០៣ / ២០១៦
ម៉ោង (Time/Heure) :..... ១២:១០
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier:..... Sanna Reda

**REQUEST FOR COMMENTS REGARDING ALLEGED FACTS
NOT TO BE INVESTIGATED FURTHER**

Distribution:

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Ao An Defence

MOM Luch
Richard ROGERS
Göran SLUITER

Im Chaem Defence

BIT Seanglim
John R.W.D. Jones

Yim Tith Defence

SO Mosseny
Suzana TOMANOVIĆ

Civil Party Lawyers:

CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov
Linda BEHNKE
Laure DESFORGES
Herve DIAKIESE

Ferdinand DJAMMEN-
NZEPA
Nicole DUMAS
Isabelle DURAND
Françoise GAUTRY
Emmanuel JACOMY
Martine JACQUIN
Christine MARTINEAU
Barnabe NEKUI
Lyma NGUYEN
Beini YE



I. PROCEDURAL HISTORY

1. On 9 December 2015, Yim Tith attended an initial appearance pursuant to Internal Rule 57 at the Extraordinary Chambers in the Courts of Cambodia (“ECCC”).
2. During the hearing, I informed Yim Tith that I was considering not further investigating certain facts alleged in the Third Introductory Submission,¹ the Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom,² the Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence,³ and the Supplementary Submission regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4⁴ (“4SS”) (collectively “Submissions”) of the Office of the Co-Prosecutors (“OCP”) and that I would invite the parties to make representations on the matter. In the following, these facts will be referred to as Facts 1 to 13.

II. DISCUSSION

3. In relation to the following facts alleged in the Submissions, I intend not to take the investigations further:
 - **Fact 1**⁵ - All allegations relating to Wat So Ben security centre in Kirivong district, Sector 13, Southwest Zone, according to the administrative structure of the Democratic Kampuchea.⁶
The OCP allegations only concern crimes allegedly committed against Khmer Krom. However, there is insufficient evidence that Khmer Krom were specifically killed and buried at Wat So Ben security centre in 1976 and 1977.
 - **Fact 2** - All allegations relating to Saom village, Kirivong district, Sector 13, Southwest Zone.⁷
These allegations only concern crimes allegedly committed against Khmer Krom. However, there is insufficient evidence that Khmer Krom were killed at Saom village.
 - **Fact 3** - Allegations of targeting, arrest and execution of Khmer Krom and Vietnamese within Thipakdei cooperative, Koas Krala district, Sector 1, Northwest Zone.⁸
There is insufficient evidence that Khmer Krom and persons of Vietnamese ethnicity were specifically targeted, arrested and executed.

¹ Case File No. 004-D1, *Third Introductory Submission*, 20 November 2008 (“3IS”).

² Case File No. 004-D65, *Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011 (“1SS”).

³ Case File No. 004-191, *Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence*, 24 April 2014 (“2SS”).

⁴ Case File No. 004-, *Response to Forwarding Order dated 5 November 2015 and Supplementary Submission regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4*, 20 November 2015 (“4SS”).

⁵ It should be noted that sets of allegations are being referred to as one fact.

⁶ 1SS, para. 12.

⁷ 1SS, para. 12.

⁸ 2SS, para. 8.



- **Fact 4** – All allegations relating to Wat Banteay Treng security centre, Rotonak Mondul district, Sector 1, Northwest Zone:⁹
Investigative steps taken to identify witnesses and obtain evidence were unsuccessful. There is insufficient evidence in support of the OCP allegations.
- **Fact 5** - Allegations of mass executions at Phnom Tra Cheak Chet, Sector 1, Northwest Zone:¹⁰
The evidence suggests that the executions committed are outside of the temporal jurisdiction of the ECCC pursuant to Article 1.
- **Fact 6** – All allegations relating to Damnak Reang execution site, near Pailin according to OCP submission:¹¹
This alleged execution site could not be located.¹² There is insufficient evidence in support of the OCP allegations.
- **Fact 7** - All allegations relating to Trach Kraol security centre also known as Boeng Bat Kandal prison, Bakan district, Sector 2, Northwest Zone:¹³
These allegations only concern crimes allegedly committed against Khmer Krom. However, there is insufficient evidence that Khmer Krom were specifically arrested and detained at the security centre.
- **Fact 8** – All allegations relating to La-Ang Kuoy Yum caves, Mongkol Borei district, Sector 3, Northwest Zone:¹⁴
The evidence suggests that the executions committed are outside of the temporal jurisdiction of the ECCC pursuant to Article 1.
- **Fact 9** - Allegations relating to the targeting, arrest and execution of Vietnamese within Reang Kesci commune, Sangkae district, Sector 4, Northwest Zone:¹⁵
There is insufficient evidence that persons of Vietnamese ethnicity were targeted, arrested and executed at this site.
- **Fact 10** - Allegations relating to the rape and murder of two women of Vietnamese descent in Preah Net Preah district, Sector 5, Northwest Zone:¹⁶
There is insufficient evidence in support of the OCP allegations of rape.
- **Fact 11** - Allegations of sexual violence, including rape, and subsequent murder committed against female Khmer Krom and “East Zone Evacuees” within Bakan District, Sector 2, Northwest Zone:¹⁷
While there is clear and consistent evidence that rape as another inhumane act pursuant to Article 5 of the ECCC Law may have been committed

⁹ 3IS, para. 62.

¹⁰ 1SS, para. 7.

¹¹ 1SS, para. 9.

¹² Case File No. 004-D105/21, *Written Record of Investigation Action*, 26 April 2012, p. 3; and Case File No. 004-D118/121, *Written Record of Investigation Action*, 25 Oct 2013, p. 2.

¹³ 1SS, para. 16.

¹⁴ 3IS, para. 70.

¹⁵ 2SS, para. 8.

¹⁶ 2SS, para. 9.

¹⁷ 2SS, para. 7.



against Khmer Krom and East Zone women in Bakan district, there is insufficient evidence that Yim Tith may be responsible for these crimes.

- **Fact 12** – All alleged crimes relating to Tuol Purchrey execution site, Kandieng district, Sector 7, Northwest Zone:¹⁸
There is insufficient evidence that Yim Tith may be responsible for these crimes.
 - **Fact 13** – This concerns the allegation of forced marriage in “Krahok village” in “Banan commune” in the 4SS.¹⁹ However, “Krahok” village does not exist and it seems the name is the consequence of a translation error. Rather, underlying events are alleged to have happened near Kang Hort Dam, in Sangkae district, Sector 1, Northwest Zone.²⁰ Currently, there is evidence of one forced marriage ceremony near Kang Hort Dam involving 20 couples provided by one reliable witness and there is a Civil Party applicant who may potentially provide information on a forced marriage ceremony at the same site. I am currently not inclined to pursue this particular allegation further.
4. In light of the above, I am currently inclined to exclude Facts 1 to 13 from the investigation. I am moreover satisfied that further investigations will not change the current state of affairs.
 5. As a question of law, the above-mentioned facts would *prima facie* appear to be subject to a partial dismissal with the exception of Fact 13, which is a potential case for the application of Internal Rule 66 *bis*; however, the applicability of Internal Rule 66 *bis* to situations where, all other criteria of that Rule being fulfilled, there is insufficient evidence to support a charge, is unclear. Further, the Rule has not been applied so far and there is therefore no precedent to shed light over this question. I would therefore welcome the views of the parties on the interpretation of Internal Rule 66 *bis* in this context.
 6. This decision is filed in English, with a Khmer translation to follow.

FOR THE FOREGOING REASONS, I:

7. **NOTIFY** the parties that I am currently inclined to exclude Facts 1 to 13 from the investigation;
8. **NOTIFY** the parties that paragraph 6(b) in the Response to Forwarding Order dated 5 November 2015 and Supplementary Submission regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, dated 20 November 2015, concerns an allegation of forced marriage near Kang Hort Dam, Sangkae district, Sector 1, Northwest Zone;
9. **INVITE** the Office of the Co-Prosecutors, to file, within one month from the date of the notification of this decision, a corrigendum of their the Response to Forwarding Order dated 5 November 2015 and Supplementary Submission

¹⁸ 3IS, para. 73; 1SS, paras 18-19.

¹⁹ 4SS, para. 6.

²⁰ D219/647, Written Record of Investigation Action, 18 January 2016.



regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4 as set out in the preceding paragraph;

- 10. **INVITE** the parties, to file, within one month from the date of the notification of this decision, any submission they may have on the above, in particular whether, in relation to Facts 1 to 13, they consider a dismissal pursuant to Internal Rule 67 and/or the application of Internal Rule 66 *bis* appropriate; and
- 11. **NOTIFY** the parties that replies and responses to other party filings are not permitted at this time.

Dated 04 March 2016, Phnom Penh



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