



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
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**NOTICE OF PROVISIONAL DISCONTINUANCE REGARDING
INDIVIDUAL ALLEGATIONS**

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I. PROCEDURAL HISTORY

1. On 19 April 2016, in my Request for Comments Regarding Alleged Facts Not To Be Investigated Further (“Request for Comments”), I informed the parties the parties of my intention not to investigate the following facts¹ further:
 - **Fact 1** - All allegations relating to Tuol Ta Phlong Security Centre.²
 - **Fact 2** - All allegations relating to Wat Kandal Security Centre.³
 - **Fact 3** - The arrests and executions of Cham in the Eastern Zone.⁴
 - **Fact 4** - Torture at Tuol Beng.⁵
 - **Fact 5** - Imprisonment and persecution at Wat Phnom Pros.⁶
 - **Fact 6** - Persecution of Vietnamese and Chinese at Wat Baray Chan Dek.⁷
 - **Fact 7** - Torture at Wat Srange.⁸
 - **Fact 8** - Ao An’s responsibility for all crime scenarios alleged in the 1SS.⁹
2. I noted that Facts 4 to 7, *prima facie*, appear to be subject to a partial dismissal, while Facts 1 to 3 are potentially suited for the application of Internal Rule 66 *bis*.¹⁰ I invited the parties to file submissions about whether they consider a dismissal pursuant to Internal Rule and/or the application of Internal Rule 66 *bis* to be appropriate in relation to Facts 1-7.¹¹
3. On 18 May 2016, Ao An filed comments that support the exclusion of Facts 1-3 through application of Internal Rule 66 *bis* and purport that Facts 4-7 should be dealt with by way of an immediate partial dismissal.¹²
4. On 3 June 2016, the International Co-Prosecutor (“ICP”) filed comments in which he supports the proposal that Facts 1-3 and 5-7 do not require further investigation at this stage, suggests that the investigation into Fact 4 (torture at Tuol Beng) should continue based on the availability of additional leads, and agrees that I am not directly seised of Fact 8 in regard to Ao An.¹³
5. The ICP further submits that Internal Rule 66 *bis* should be applied to additional facts in the Submissions, namely all allegations at Chamkar Svay Chanty Security

¹ Case File No. 004-D307, *Request for Comments Regarding Alleged Facts Not To Be Investigated Further*, 19 April 2016 (“Request for Comments”), paras. 3, 7; It should be noted that sets of allegations are being referred to as one fact.

² Case File No. 004-D1, *Third Introductory Submission*, 20 November 2008 (“IS”), paras. 50-51.

³ IS, para. 52.

⁴ IS, paras. 45-46.

⁵ IS, paras. 30-33; Case File No. 004-191, *Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence*, 24 April 2014 (“2SS”), para. 11; Case File No. 004-D237/1, *Response to Forwarding Order D237*, 4 February 2015 (“OCP Response”), paras. 1-2.

⁶ IS, paras. 30-31.

⁷ IS, para. 53.

⁸ IS, para. 49.

⁹ Case File No. 004-D65, *Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011 (“1SS”), para. 23.

¹⁰ Request for Comments, para 5.

¹¹ Request for Comments, para. 8.

¹² 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 (“Ao An’s Submissions”), paras. 3- 4.

¹³ 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 (“OCP Comments”), para. 3(2)-(4).



Centre, Wat Srange Security Centre, and Wat Baray Chan Dek Security Centre, so that effectively all crime sites in Sectors 42 and 43 be excluded from the investigation.¹⁴ The ICP submits that Facts 6 and 7 have not been fully investigated in light of the availability of additional leads, but that he would not object to these allegations being excluded pursuant to Rule 66 *bis* rather than dismissed.¹⁵

6. The ICP also submitted that Internal Rule 66 *bis* should be applied where there is insufficient evidence in support of the Submissions because I made “a discretionary decision to cease the investigation early”.¹⁶

II. DISCUSSION

i. Internal Rules 66 *bis* and 67

7. The time for making the determination on application of Internal Rule 66 *bis* or dismissal pursuant to Internal Rule 67 is at the conclusion of the investigation.
8. Before reducing the scope of the judicial investigation, I shall, pursuant to Internal Rule 66 *bis* (2), notify the details of the intended reduction to the parties, who in turn will have 15 days to file submissions. Equally, where I consider the investigation concluded, I shall notify the parties pursuant to Internal Rule 66 (1). This notification triggers a series of deadlines for investigative requests, subsequent orders and possible appeals, as well as the final submissions by the OCP according to Internal Rule 66.
9. I take note of the submissions of the ICP and Ao An relating to the admissibility of the use of Internal Rule 66 *bis* in cases of insufficient evidence¹⁷ and of Ao An’s request for a partial dismissal, and will give them due consideration at the appropriate juncture.
10. Finally, I consider that Internal Rule 66 *bis* (5) makes it clear that upon the exclusion of facts, the evidence relating to these facts may still be relied upon insofar as it is relevant to the remaining facts. In my view, this applies *mutatis mutandis* to evidence underlying facts that may be subject to a partial dismissal pursuant to Internal Rule 67.
11. Having said that, any complex investigation, especially against an institutional background as it prevails under the ECCC’s legal and factual framework, requires pragmatic solutions. In this regard, it would neither make practical sense to issue a formal notification under Internal Rule 66 *bis* (2) which would trigger the 15-day period for submissions from the parties and potentially cause further precautionary litigation which may well later appear unnecessary with the benefit of hindsight, nor would it be helpful to engage in a partial dismissal process now, which would necessitate nothing less than the initiation of the proceedings under Internal Rule 66 leading to a partial closing order pursuant to Internal Rule 67. The efficiency gains achieved by my indication of where I intend to direct my resources for the remainder of the investigation would be more than offset by doing that. Ao An has no right to a partial ruling to that effect.

¹⁴ OCP Comments, paras. 25-26.

¹⁵ OCP Comments, para. 21.

¹⁶ OCP Comments, para. 13.

¹⁷ OCP Comments, para. 13; Ao An’s Submissions, para. 15.



12. Thus, in the present Notice, after taking into account the submissions of the parties, I indicate the reasons for my current intentions regarding a set of individual allegations, rather than formally notifying any reduction of the scope of the investigation pursuant to Internal Rule 66 *bis* (2) or conclusion of the investigation into any Facts pursuant to Internal Rule 66.
13. Having considered the parties' comments, I am of the opinion that Facts 1-7 would *prima facie* appear to be subject to Internal Rule 66 *bis*, and accordingly the investigation into these facts will be discontinued. In addition, all other facts alleged in relation to crime sites in Sectors 42 and 43 would also *prima facie* appear to be subject to Internal Rule 66 *bis*, and investigation into these facts will also be discontinued. As a result, facts no longer to be investigated are re-categorized below as Facts A, B, C, and D:
- a) **Fact A:** All allegations relating to crime sites in Sectors 42 and 43:
 - Tuol Ta Phlong Security Centre¹⁸
 - Wat Kandal Security Centre¹⁹
 - Chamkar Svay Chanty Security Centre²⁰
 - Wat Baray Chan Dek Security Centre²¹
 - Wat Srange Security Centre²²
 - b) **Fact B:** The arrests and executions of Cham in the Eastern Zone²³
 - c) **Fact C:** Torture at Tuol Beng / Wat Angkuonh Dei²⁴
 - d) **Fact D:** Imprisonment and persecution at Wat Phnom Pros²⁵
14. Where discontinued, the investigation may be resumed if compelling circumstances present themselves. In that case, the parties will be given sufficient time to adapt their own efforts to the changed circumstances (provisional discontinuance).
15. I have taken this approach of provisional discontinuance, not explicitly provided for in the Internal Rules, in order to provide maximum clarity and assurance to the parties regarding matters to which they and I will need to assign our finite resources, and in order to streamline the investigation well in advance of the formal temporal threshold for Internal Rule 66 *bis* and conclusion of the investigation.

ii. **Fact A:** All allegations relating to crime sites in Sectors 42 and 43

16. The ICP alleges that Ao An is responsible for the detention, killing, ill-treatment, and targeting of certain groups at five sites in Sectors 42 and 43 in the Central (old North) Zone: Tuol Ta Phlong Security Centre,²⁶ Wat Kandal Security Centre,²⁷

¹⁸ IS, paras. 50-51.

¹⁹ IS, para. 52.

²⁰ IS, para. 34.

²¹ IS, para. 53.

²² IS, para. 49.

²³ IS, paras. 45-46.

²⁴ IS, paras. 30-33; 2SS, para. 11; OCP Response, paras. 1-2.

²⁵ IS, para. 30 – 31.

²⁶ IS, paras. 50-51.

²⁷ IS, para. 52.



Chamkar Svay Chanty Security Centre,²⁸ Wat Baray Chan Dek Security Centre,²⁹ and Wat Srange Security Centre.³⁰ The ICP submits that Persecution of Vietnamese and Chinese at Wat Baray Chan Dek (Fact 6) and Torture at Wat Srange (Fact 7) have not been fully investigated in light of the availability of additional leads, but that he would not object to these allegations being excluded pursuant to Internal Rule 66 *bis* along with all other allegations involving crime sites in Sectors 42 and 43.³¹

17. Even after exclusion of Fact A at the time of the conclusion of the investigation, the remaining facts relating to detention, killing, ill-treatment, and targeting of certain groups in Sector 41 in the Central (old North) are likely to be representative of the scope of the Submissions geographically, temporally and substantively. Specifically, the remaining facts should be representative in terms of the nature and scale of crimes and the categories of victims.

iii. **Fact B:** The arrests and executions of Cham in the Eastern Zone

18. The ICP alleges that Ao An is responsible for genocide against the Cham in Kampong Cham province committed in both the Central (old North) Zone and Eastern Zone.³² Ao An was charged with genocide of the Cham committed in the part of Kampong Cham falling within the Central (old North) Zone.³³ The ICP and Ao An have indicated that they will not object to the exclusion of Fact B pursuant to Rule 66 *bis*.³⁴
19. Even after exclusion of Fact B, the remaining facts related to the genocide of Cham in Kampong Cham in the Central (old North) Zone are likely to be representative of the scope of the genocide allegations in the Submissions geographically, temporally and substantively. Specifically, the remaining facts should be representative in terms of the nature and scale of crimes and the categories of victims.

iv. **Fact C:** Torture at Tuol Beng / Wat Angkuonh Dei

20. The ICP alleges that Ao An is responsible for detention, killings and ill-treatment at Tuol Beng / Wat Angkuonh Dei.³⁵ Ao An was charged with imprisonment, murder, extermination, other inhuman acts (inhumane conditions of detention), and persecution on political and religious grounds at this site.³⁶ There is currently insufficient evidence to support a charge of torture at this site. The ICP suggests that the investigation into this Fact should continue and proposes further investigative steps.³⁷

²⁸ IS, para. 34.

²⁹ IS, para. 53.

³⁰ IS, para. 49.

³¹ OCP Comments, para. 21.

³² IS, paras. 37-48.

³³ Case File No. 004-D303, *Written Record of Further Appearance of AO An*, 14 March 2016, ("Further Appearance"), p. 4.

³⁴ OCP Comments, para. 15, Ao An's Submissions, para. 3.

³⁵ IS, paras. 30-33; 2SS, para. 11; OCP Response, paras. 1-2.

³⁶ Further Appearance, pp. 5-6.

³⁷ OCP Comments, paras. 22-23.



21. I note that Ao An has been charged *inter alia* with torture at a number of other crime sites in Sector 41: Met Sop (Kor) Security Centre,³⁸ Wat Au Trakuon Security Centre,³⁹ Wat Batheay Security Centre⁴⁰ and Wat Ta Meak Security Centre.⁴¹ Even after exclusion of Fact C at the time of the conclusion of the investigation, the remaining facts relating to crime sites in Sector 41 in the Central (old North) are likely to be representative of the scope of the Submissions geographically, temporally and substantively. Specifically, the remaining facts should be representative in terms of the nature and scale of crimes and the categories of victims.

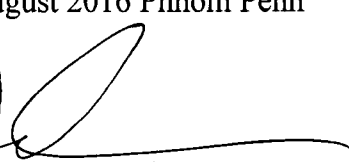
v. **Fact D:** Imprisonment and persecution at Wat Phnom Pros

22. The ICP alleges that Ao An is responsible for detention, killing and persecution at Wat Phnom Pros.⁴² Ao An was charged with murder and extermination at Wat Phnom Pros.⁴³ The ICP supports the proposal that I conduct no further investigations into Fact D and does not envisage that he would object to the application of Rule 66 *bis* to this fact.⁴⁴ Upon further consideration of the evidence and available leads, I am of the opinion that further reasonable investigation could be conducted to completely investigate Fact D and, accordingly, at this stage it appears *prima facie* to be potentially suited for the application of Internal Rule 66 *bis*.

FOR THE FOREGOING REASONS, I:

23. **INFORM** the parties that I will not further investigate Facts A, B, C, and D;
24. **INFORM** the parties that I may decide to resume the investigation into Facts, A, B, C, and D, and will, in that case, ensure that the parties have sufficient time to prepare their case;
25. **INFORM** the parties that the decision on partial dismissal pursuant to Internal Rule 67 or application of Internal Rule 66 *bis* will be taken at the conclusion of the investigation.

Dated 25 August 2016 Phnom Penh



Judge Michael Bohlander
 សម្រេច ក្រុមស៊ើបអង្កេតអន្តរជាតិ
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³⁸ Further Appearance, p. 5.

³⁹ Further Appearance, p. 6.

⁴⁰ Further Appearance, p. 6.

⁴¹ Further Appearance, p. 7.

⁴² IS, paras. 30-31

⁴³ Further Appearance, p. 7.

⁴⁴ OCP Comments, para. 15.