



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: 004/2/07-09-2009-ECCC-OCIJ

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DECISION ON AO AN’S REQUEST OF EXTENSION OF TIME
LIMIT FOR REQUESTING FURTHER INVESTIGATIVE
ACTION FOLLOWING RULE 66 NOTICE

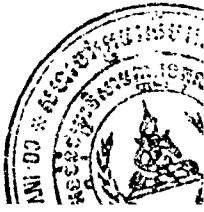
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I. PROCEDURAL HISTORY AND SUBMISSIONS

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 16 December 2016, I announced the conclusion of the judicial investigation against Ao An (“Conclusion”) and ordered his severance from Case 004.¹
3. On 21 December 2016, the International Co-Prosecutor (“ICP”) filed a request to place maps and Case 002 material on the Case File.² The documents are listed in an annex (“Maps Annex”).³
4. On 21 December 2016, the Ao An Defence (“Defence”) filed a request for 30 additional days to file requests for further investigative action (“Request”).⁴ The Defence submit that beginning on 28 November 2016 they have received notification of the addition of 684 items to the Case File, listed in an attached annex (“Defence Annex”).⁵ The Defence submit the extension is necessary to properly review and respond to the items identified the Defence Annex as well as the additional documents in the Maps Annex. The Defence submit that conducting document review concurrently with drafting requests for further investigation puts a strain on the Defence’s resources during a crucial part of the investigation in a manner that impinges Ao An’s right to an effective defence under the International Covenant on Civil and Political Rights (“ICCPR”) Article 14(3)(b).⁶
5. On 21 December 2016, the Co-Prosecutors informed me that they did not intend to respond to the Request.⁷

II. DISCUSSION

6. Internal Rule 66(1) provides parties 15 days after the notification of the close of the judicial investigation to file further requests for investigative action.⁸ Internal Rule 39(4) permits the Co-Investigating Judges to extend this time limit.⁹ In the exercise of my discretionary power to extend time limits, each case turns on its own facts.¹⁰ In all cases, I am responsible for guaranteeing the fairness of the proceedings.¹¹ In this instance, a balance must be achieved between Ao An’s right to adequate time and facilities for the preparation of his defence and the need to conclude the proceedings within a reasonable time.¹²

¹ Case File No. 004-D334, *Notice of Conclusion of Judicial Investigation against AO An*, 16 December 2016; Case File No. 004-D334/1, *Order for Severance of AO An from Case 004*, 16 December 2016.

² Case File No. 004/02-D333/3, *International Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004/2*, 21 December 2016.

³ Case File No. 004/02-D333/3.2, *Annex A*, 8 December 2016.

⁴ Case File No. 004/02-D340, *Request for extension of time limit for requesting further investigative action following rule 66 notice*, 21 December 2016, paras 3, 24.

⁵ Request, paras 6, 20; Case File No. 004/02-D340.2, *Annex A*, 21 December 2016.

⁶ Request, paras 3-4, 20-23.

⁷ Case File No. 004/02-D340/1.1, *Annex A: Email from Travis Farr to Filippo De Minicis re: Filing from the Ao An Defence in CF004/2*, 21 December 2016.

⁸ Internal Rule 66(1).

⁹ Internal Rule 39(4)(a).

¹⁰ Case File No. 003-D211/2, *Order on MEAS Muth’s request concerning the upcoming conclusion of the judicial investigation*, 8 November 2016, n. 7.

¹¹ See Internal Rule 21(1)(a).

¹² International Covenant on Civil and Political Rights, Art. 14.3(c)-(d) and Internal Rule 21(4).



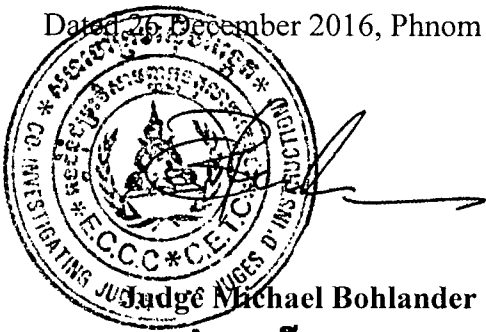
- 7. I acknowledge that several pieces of evidence and filings were added to the Case File in the weeks before the Conclusion.¹³ However, arrangements to provide the Defence with ample resources to review the Case File in the final and crucial stages of the investigative proceedings were made on 9 May 2016, when I requested the Defence Support Section to hire two additional consultants for the Defence, and again on 16 August 2016, when I requested the extension of the consultants’ contracts until at least 31 December 2016.¹⁴
- 8. Having given due consideration to the submissions of the Defence, the number and nature of documents recently placed on the Case File, previous practice,¹⁵ and the resources available to the Defence,¹⁶ I am satisfied that the addition of 15 days to the existing 15 day time limit for issuing final requests for investigative action is sufficient to balance the Defence’s responsibility to provide Ao An an effective defence without causing undue delay to the proceedings which are now on their timeline to conclude.

FOR THE FOREGOING REASONS, I:

- 9. **GRANT** an additional 15 days to request further investigative action to all parties to Case 004/2;
- 10. **INFORM** the parties that the new deadline for filing requests for investigative action is Monday 16 January 2017.

This decision is filed in English, with a Khmer translation to follow.

Dated 26 December 2016, Phnom Penh



Judge Michael Bohlander
សមាជិកក្រុមស៊ើបអង្កេតអន្តរជាតិ
International Co-Investigating Judge
Co-juge d’instruction international

¹³ See Request, paras 7-14.
¹⁴ Case File No. 004-D304/7, *Decision on Resources to be Provided to the AO An Defence*, 9 May 2016; Case File No. 004-D304/11, *Decision on AO An’s urgent request for continued provision of necessary resources*, 16 August 2016.
¹⁵ Case File No. 002-D235/2, *Order on Request for Adoption of Certain Procedural Measures*, para. 16.
¹⁶ Case File No. 004-D304/11, *Decision on AO An’s urgent request for continued provision of necessary resources*, 16 August 2016.