



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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
Bureau des co-juges d'instruction

Case File No: 003/07-09-2009-ECCC-OCIJ

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): ១៤ / ០៨ / ២០១៦
ពេលវេលា (Time/Heure): ១៣ : ៤០
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA

Before: **The Co-Investigating Judges**

Date: **24 August 2016**

Language(s): **Khmer/English [Original in English]**

Classification: **CONFIDENTIAL**

**NOTICE OF PROVISIONAL DISCONTINUANCE REGARDING
INDIVIDUAL ALLEGATIONS**

Distribution:

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Meas Muth Defence

ANG Udom
Michael G. KARNAVAS

Civil Party Lawyers:

HONG Kimsuon
KIM Mengkhy
MOCH Sovannary
SAM Sokong
TY Srinna
VEN Pov
Philippe CANONNE
Laure DESFORGES
Ferdinand DJAMMEN-
NZEPA
Nicole DUMAS
Isabelle DURAND

Françoise GAUTRY
Martine JACQUIN
Christine MARTINEAU
Barnabe NEKUI
Lyma NGUYEN
Nushin SARKARATI
Fabienne TRUSSES
CHET Vanly
LOR Chunthy
Yiqiang LIU
SIN Soworn
Beini YE



I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 16 March 2016, in my Request for Comments regarding Alleged Facts Not to Be Investigated Further (“Request for Comments”),¹ I informed the parties of my intention not to investigate further the following facts² alleged in the Submissions:
 - **Fact 1** - All allegations relating to S-22 security centre.³
 - **Fact 2** - All allegations relating to Kampong Chhnang Airport Construction Site.⁴
 - **Fact 3** - Allegations relating to crimes committed in Vietnam, with the exception of the islands claimed by Democratic Kampuchea and the eastern border region.⁵
 - **Fact 4** - All allegations relating to Prison 810.⁶
 - **Fact 5** - Allegations of crimes committed at other unidentified security centres operated by the Royal Army of Kampuchea (“RAK”).⁷
 - **Fact 6** - All allegations relating to Stung Tauch execution site.⁸
 - **Fact 7** - All allegations relating to RAK involvement in the “purges” of the Central Zone, the New North Zone and the East Zone, excluding the alleged “purges” of members of the RAK units located in those areas.⁹
2. I noted that Facts 3 to 5 and 7 would *prima facie* appear to be subject to a partial dismissal, while Facts 1, 2, and 6 are potentially suited for the application of Internal Rule 66 *bis*.¹⁰ I invited the parties to file submissions as to whether they consider a dismissal pursuant to Internal Rule 67 (3) or the application of Internal Rule 66 *bis* appropriate in relation to Facts 1 to 7.¹¹
3. On 18 March 2016, the Defence of Meas Muth (“Defence”) responded that they “consider Rule 66 *bis* to be ambiguous” and requested leave to further respond to any submissions from the International Co-Prosecutor (“ICP”) and the Civil Party Lawyers.¹²
4. On 29 April 2016, the ICP filed his Response stating that while it is premature to determine conclusively whether Internal Rule 66 *bis* or 67 would be most appropriate, he supports, subject to certain considerations, that the International Co-Investigating Judge in conducting no further investigations

¹ Case File No. 003-D184, *Request for Comments regarding Alleged Facts Not to Be Investigated Further*, 16 March 2016 (“Request for Comments”).

² It should be noted that sets of allegations are being referred to as one fact.

³ IS, para. 46.

⁴ IS, para. 47.

⁵ IS, para. 5 and 62.

⁶ IS, para. 63 and 64. *See also*, Case File No. 003-D105/1, *International Co-Prosecutor’s Response to Forwarding Order D105 Regarding Security Centres 808, 809 and 810*, 1 July 2014.

⁷ IS, para. 65.

⁸ IS, para. 66.

⁹ IS, para. 66.

¹⁰ Request for Comments, para. 5.

¹¹ Request for Comments, para. 8.

¹² Case File No. 003-D184/1, *Meas Muth’s Letter in Response to Request for Comments Regarding Alleged Facts not to be Investigated Further*, 16 March 2016, p. 3 (“Defence Letter”).



into Facts 1-7.¹³ He added that Fact 7 would be more amenable to the application of Internal Rule 66 *bis*, than to partial dismissal, with the caveat that those investigations continue insofar as they are relevant to jurisdictional elements, elements of modes of liability, and other facts under investigation.¹⁴ Further, the ICP submitted that he would not object to the discontinuation of investigations into the ‘purges’ of Division 502 and 310, referred to in paragraphs 44-51 of the Introductory Submission (**Fact 8**), and these facts could be excluded utilising Internal Rule 66 *bis*.¹⁵

5. The Civil Party Lawyers did not respond to the Request for Comments and the Defence did not file any further response to the ICP’s Response.

II. DISCUSSION

i. Internal Rules 66 *bis* and 67

6. 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.
7. 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.
8. I take note of the submissions of the ICP relating to the admissibility of the use of Internal Rule 66 *bis* in cases of insufficient evidence¹⁶ and will give them due consideration at the appropriate juncture.
9. 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.
10. In the instant Notice, after taking into account the submissions of the ICP, I indicate the reasons for my current intentions regarding Facts 1 to 8, 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.
11. Presently, Facts 1, 2, 6 and 7 would *prima facie* appear to be subject to Internal Rule 66 *bis* and into which the investigation will be discontinued (Category A). Facts 3 to 5 would *prima facie* appear to be subject to dismissal pursuant to Internal Rule 67 and into which the investigation will be

¹³ Case File No. 003-D184/2, *International Co-Prosecutor’s Response to the International Co-Investigating Judge’s Request for Comments regarding Alleged Facts Not to Be Investigated Further*, 29 April 2016 (“Response”), paras 3, 15-21.

¹⁴ Response, para. 19.

¹⁵ Response, paras 22-23.

¹⁶ Response, paras 16 and 19.



discontinued (Category B). Investigation into Fact 8 will be continued (Category C).

12. Where discontinued, the investigation may be resumed if compelling circumstances present themselves in which event the parties will be given sufficient time to adapt their own efforts to the changed circumstances.
13. 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. Category A: Facts 1, 2, 6, and 7

14. The ICP supports the discontinuation of investigation in Facts 1, 2, and 6 pursuant to Internal Rule 66 *bis*.¹⁷ The ICP also supports the discontinuation of investigations into Fact 7, indicated in the Request for Comments as being appropriate for partial dismissal, but for reasons of representativeness of remaining facts suggests it is more amenable to the application of Internal Rule 66 *bis*.¹⁸
15. With respect to Fact 7, the ICP adds that those investigations should be continued to a limited degree and only insofar as they are relevant to jurisdictional elements of the Introductory and Supplementary Submissions; elements of modes of liability; and relevance to other facts under investigation, in particular ‘purges’ of Divisions 164 and 117.¹⁹
16. I clarify that upon reflection the understanding of the ICP with respect to Fact 7 comports with mine with respect to the discontinuation of investigations into all four facts under Category A.

iii. Category B: Facts 3 to 5

17. With respect to Fact 3, the ICP confirms that the references to crimes committed in ‘Vietnam’ and during ‘attacks into Vietnam’ be limited to be understood as ‘crimes committed on islands claimed by Democratic Kampuchea and on Cambodian and Vietnamese territories on the border between the two countries’.²⁰ Investigation will be limited in scope accordingly.
18. With respect to Fact 4, the ICP does not envisage any objection to a partial dismissal where all reasonable investigative efforts have been exhausted and proposes the use of Internal Rule 66 *bis* should such efforts yield results.²¹ Based on the current state of the investigation, direct investigations into

¹⁷ Response, paras 15-16.

¹⁸ Response, paras 19-20.

¹⁹ *Ibid.*

²⁰ Response, para. 17.

²¹ Response, para. 16.



locating Prison 810 will accordingly cease and the investigation efforts on it be limited to those facts otherwise investigated in its estimated location.

19. With respect to Fact 5, the ICP does not foresee any objection to the extent that no further RAK security centres have been found and would not object to the use of Internal Rule 66 *bis* to discontinue investigation into any that were found under ongoing investigations.²²


iv. Category C: Fact 8


20. At the current stage of the investigations, I take note of the ICP's submissions on Fact 8,²³ however the investigation into Divisions 502 and 310 is well advanced and relevant to the crimes under active investigation. Further, I do not consider that any gain in terms of expediency would be achieved by its discontinuation. It is thus my intention to proceed with the investigation.

FOR THE FOREGOING REASONS, I:

21. **INFORM** the parties that I will not further investigate Facts 1 to 7, but will continue to investigate Fact 8; and
22. **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 24 August 2016, Phnom Penh




Judge Michael Bohlander
សមាជិកអង្គជំនុំជម្រះស៊ើបអង្កេតអន្តរជាតិ
International Co-Investigating Judge
Co-juge d'instruction internationale

²² Response, para. 18.

²³ Response, para. 22.