



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Before: **The Co-Investigating Judges**
Date: **04 May 2017**
Language(s): **English & Khmer [Original in English]**
Classification: **CONFIDENTIAL**

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NOTIFICATION PURSUANT TO INTERNAL RULE 66 bis (2)

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I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges in this case were registered on 22 February 2013, 5 April 2013, 21 October 2015, and 16 January 2017.
2. On 4 March 2016, in my Request for Comments regarding Alleged Facts Not to Be Investigated Further,¹ I informed the parties of my intention not to further investigate certain facts.
3. Yim Tith filed comments on 8 April 2016,² and the International Co-Prosecutor (“ICP”) filed comments on 11 April 2016.³
4. On 25 August 2016, I issued the Notice of Provisional Discontinuance Regarding Individual Allegations,⁴ in which I informed the parties that I would not further investigate the following facts alleged in the ICP’s submissions, which *prima facie* appear to be subject to Internal Rule 66 *bis*:
 - a) **Fact 6** – All allegations relating to Damnak Reang execution site,⁵
 - b) **Fact 13** – Allegations of forced marriage near Kang Hat Dam,⁶
 - c) **Fact 14** – Allegations in relation to sites in Sector 5, Northwest Zone:
 - Phnom Trayoung security centre and worksite,⁷
 - Spean Spreng and Prey Roneam Dam worksites,⁸
 - Wat Preah Net Preah and related detention and execution sites,⁹
 - Phum Chakrey security centre and execution site,¹⁰
 - Prey Taruth execution site,¹¹
 - Wat Chamkar Khnol execution site,¹² and
 - Trapeang Thma Dam worksite.¹³
5. On 20 January 2017, in my Notice of Intention to Add Modes of Liability by way of Judicial Order and of Provisional Discontinuance,¹⁴ I informed the parties of my intention not to further investigate additional facts.

¹ Case File No. 004-D302, *Request for Comments Regarding Alleged Facts Not to Be Investigated Further*, 4 March 2016.

² Case File No. 004-D302/1, *Yim Tith’s Submissions on Alleged Facts Not to Be Investigated Further*, 8 April 2016.

³ Case File No. 004-D302/2, *International Co-Prosecutor’s Response to the International Co-Investigating Judge’s Request for Comments Regarding Alleged Facts Not to Be Investigated Further*, 11 April 2016.

⁴ Case File No. 004-D302/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016.

⁵ Case File No. 004-D65, *Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011, para. 9 (“1SS”).

⁶ Case File No. 004-D272/1, *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”), para. 6.

⁷ Case File No. 004-D1, *Co-Prosecutors’ Third Introductory Submission*, 20 November 2008 (“3IS”), paras 74 – 75.

⁸ 3IS, para. 79.

⁹ 3IS, para. 77.

¹⁰ 3IS, para. 76.

¹¹ 3IS, para. 76.

¹² 3IS, para. 71.

¹³ 3IS, para. 78.



6. On 1 February 2017, the ICP filed his Response.¹⁵ Yim Tith did not submit any comments.
7. On 17 March 2017, I issued the Notice of Provisional Discontinuance Regarding Facts Relating to Six Crime Sites, informing the parties that I would not continue to investigate further facts alleged in the ICP's submissions, which *prima facie* appear to be subject to Internal Rule 66 *bis*:
 - a) **Crime Site 8**¹⁶ – Anlong Vil Breng and Related Execution Site¹⁷
 - b) **Crime Site 14** – Phnom Tra Chek Chet Worksite¹⁸
 - c) **Crime Site 15** – Banteay O Ta Krey Execution Site¹⁹
 - d) **Crime Site 23** – Wat Kandal Security Centre²⁰
 - e) **Crime Site 24** – Wat Banteay Neang Security Centre²¹
 - f) **Crime Site 25** – Wat Thoamayutt Security Centre²²

II. DISCUSSION

8. Internal Rule 66 *bis* (2) provides that, before reducing the scope of the judicial investigation, the Co-Investigating Judges shall notify the details of any intended reduction to the parties, who in turn will have 15 days to file submissions.
9. For the reasons stated in the Notices of Provisional Discontinuance, I intend to exclude Facts 6, 13, 14, and facts relating to Crime Sites 8, 14, 15, 23, 24, and 25 from the investigation pursuant to Internal Rule 66 *bis* at the time of the conclusion of the investigation.
10. After exclusion of Facts 6, 13, 14, and facts relating to Crime Sites 8, 14, 15, 23, 24, and 25 at the time of the conclusion of the investigation, the remaining facts will be representative of the scope of the ICP's Introductory and Supplementary Submissions geographically, temporally and substantively, in terms of the nature and scale of crimes and the categories of victims.
11. Under Internal Rule 66 *bis* (5) evidence relating to excluded facts may still be relied upon insofar as it is relevant to the remaining facts.
12. Exclusion of Facts 6, 13, 14, and facts relating to Crime Sites 8, 14, 15, 23, 24, and 25 will not affect the status of Civil Parties or the right of Civil Party applicants to participate in the judicial investigation.

¹⁴ Case File No. 004-D342, *Notice of Intention to Add Modes of Liability By Way of Judicial Order and of Provisional Discontinuance*, 20 January 2017.

¹⁵ Case File No. 004-D342/1, *International Co-Prosecutor's Response to the International Co-Investigating Judge's Notice of Intention to Add Modes of Liability by way of Judicial Order and of Provisional Discontinuance*, 1 February 2017.

¹⁶ The numbering of crime sites used in this document refers to the numbers used in the following document: Case File No. 004-D281, *Written Record of Initial Appearance*, 9 December 2015.

¹⁷ 1SS, para.7.

¹⁸ 1SS, para.7.

¹⁹ 3IS, para. 61.

²⁰ 3IS, paras 65 and 66.

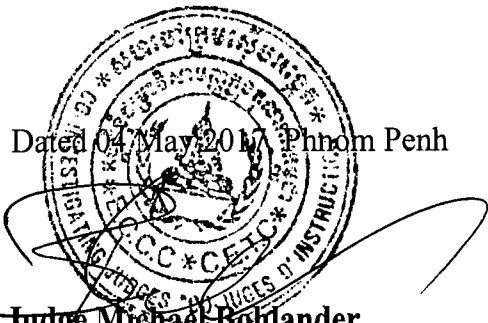
²¹ 3IS, para. 69.

²² 3IS, para. 63-64.



FOR THE FOREGOING REASONS, I:

- 13. **NOTIFY** the parties of my intention to exclude Facts 6, 13, 14, and facts relating to Crime Sites 8, 14, 15, 23, 24, and 25 from the investigation pursuant to Internal Rule 66 *bis*;
- 14. **INVITE** the parties to file submissions within 15 days from the date of this notification;
- 15. **INFORM** the parties that I remain seized of all the aforementioned facts and that this notification does not prejudice my ability to resume the investigation on these facts should I decide that there is reason to do so; and
- 16. **ORDER** that replies and responses to other parties' Internal Rule 66 *bis* (2) submissions shall not be admitted.



Judge Michael Bohlander

សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ

International Co-Investigating Judge

Co-juge d'instruction international