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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
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**DECISION ON INTERNATIONAL CO-PROSECUTOR'S
REQUEST FOR INVESTIGATIVE ACTION REGARDING
THREE WITNESSES**

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I. PROCEDURAL HISTORY

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 14 March 2015, I charged Ao An with the crimes against humanity of, *inter alia*, imprisonment, murder, and torture committed at Met Sop Security Centre and Wat Ta Meak Pagoda, among other sites.¹
3. On 29 June 2016, the International Co-Prosecutor (“ICP”) filed the *International Co-Prosecutor’s Request for Investigative Action Regarding Three Witnesses* in which he requests the Office of the Co-Investigating Judges (“OCIJ”) to conduct interviews with three specific witnesses (“Request”).²
4. The Ao An Defence did not file any response to the Request.

II. SUBMISSIONS

5. The ICP requests that the OCIJ interview Chom Vong, Ke, and Saur Saren.³
6. The ICP clarifies that Chom Vong worked at the Sector 41 Office from early 1978 to 1979 and visited the Met Sop Security Centre on a weekly basis.⁴ Although the ICP acknowledges that the OCIJ interviewed him on 19 November 2014, he requests the OCIJ to re-interview Chom Vong and ask him specifically about the conditions, events, and personnel at Met Sop Security Centre.⁵
7. The ICP points out that Ao An’s former bodyguard, Nhem Chen, identified an individual named Ke as an executioner who lived and worked at Met Sop Security Centre between 1977 and 1979.⁶ The ICP requests the OCIJ to locate Ke and question him about the events, conditions, and personnel at Met Sop Security Centre, as well as the extent of Ta Ngauv and Ao An’s responsibility for the events there.⁷
8. The ICP also specifies that Saur Saren told the Documentation Centre of Cambodia that he served as a messenger for Ao An at the Sector 41 Office before being detained at Wat Ta Meak Pagoda in 1978.⁸ The ICP requests the OCIJ to interview Saur Saren for his detailed and unique information about the crimes committed at Met Sop Security Centre as well as the conditions, events, and personnel at Wat Ta Meak Pagoda.⁹ The ICP also requests the OCIJ to confirm that Saur Saren received a direct order from Ao An to arrest Koh Sautin District

¹ Case File No. 004-D303, *Written Record of Further Appearance of AO An*, 14 March 2016, pp. 5, 7.

² Case File No. 004-D314, *International Co-Prosecutor’s Request for Investigative Action Regarding Three Witnesses*, 29 June 2016.

³ *Ibid.*, paras 12, 15, 16.

⁴ *Ibid.*, paras 3, 12; Case File No. 004-117/56, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 19 June 2014, ERN 01067811, ERN 01067813, A18-A19, A25.

⁵ Request, paras 12-14.

⁶ *Ibid.*, para. 15; Case File No. 004-D219/731, *Written Record of Interview witness NHEM Chen*, 15 March 2016, ERN 01224102-01224104, ERN 01224106-01224108, A5-A6, A17-A18, A31, A33, A50-A51, A53-A55, A59.

⁷ Request, para. 15.

⁸ *Ibid.*, para. 16; Case File No. 004-D219/776.1.2, *DC-Cam Interview of SAUR Saren*, 3 May 2016, ERN 01309856-01309858.

⁹ Request, para. 16.



committee members as evidence of Ao An's direct criminal responsibility for purges of East Zone cadres.¹⁰

III. DISCUSSION

9. The Pre-Trial Chamber ("PTC") has previously stated that a party requesting investigative action "*must satisfy the two cumulative conditions [...] [n]amely, the request must:*
- i. *identify the action to be taken or order to be made, as applicable, with sufficient precision ("the precision requirement"), and*
 - ii. *demonstrate in detail the reasons why the requested investigative action [...] is prima facie 'relevant to ascertaining the truth'" ("the prima facie relevance requirement").¹¹*
10. The precision requirement obliges the requesting party to be "*specific enough to give clear indications to the Co-Investigating Judges as to what they should search for*".¹² Consequently, I am not required to grant general or speculative requests to look for exculpatory evidence.¹³ Rather, the requesting party must point specifically towards the presence of the evidence that is sought.¹⁴ For example, the PTC found that a request that does not clearly state the number of documents sought or their exact location within collection of documents or archives fails to meet this test.¹⁵
11. The *prima facie* relevance requirement contains two sub-requirements. Firstly, the request must be "*relevant to the scope of the investigation pursuant to the limitations and parameters set by the Introductory and Supplementary Submissions.*"¹⁶ Secondly, the request "*must detail why the requested information is conducive to ascertaining the truth*".¹⁷
12. I am satisfied that the Request meets the precision and *prima facie* relevance requirements enunciated by the PTC. Set out below are the investigative actions undertaken by the OCIJ in response to the Request.

A. Witness Chom Vong

13. On 19 November 2014, an OCIJ investigator interviewed Chom Vong¹⁸ and obtained a written record of interview ("WRI").¹⁹ Chom Vong discussed the Met

¹⁰ *Ibid.*, para. 18.

¹¹ Case File No. 002-D365/2/17, *Decision on Reconsideration of Co-Prosecutors' Appeal Against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File which Assists in Proving the Charged Persons' Knowledge of the Crimes* ("Reconsideration Decision"), 27 September 2010, para. 47.

¹² Reconsideration Decision, para. 48.

¹³ *Ibid.*, paras 48, 51.

¹⁴ Case File No. 002-D100/9/2, *Decision on The Appeal Against the Co-Investigative Judges Order on Nuon Chea's Second Request for Investigative Action*, 5 May 2010, para. 31; Case File No. 002-D164/4/13, *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Material Drive*, 18 November 2009, paras 38-39; Case File No. 002-D273/3/5, *Decision on Appeal Against OCIJ Order on Nuon Chea's Eighteenth Request for Investigative Action*, 10 June 2010, paras 19-20, 26, 29; Reconsideration Decision, paras 48, 73.

¹⁵ Reconsideration Decision, para. 48.

¹⁶ *Ibid.*, para. 49.

¹⁷ *Ibid.*, para. 50.

¹⁸ Alternative spelling, Chum Vong; alias Youk Nhouv, alternative spellings, Ngov, Ngauv.



Sop Security Centre (aliases Sector 41 Security Office, Wat Kor Security Office),²⁰ not only identifying the personnel who worked there,²¹ but also answering questions about the length of each prisoner's detention,²² their origin,²³ and his duties to report on their status.²⁴ In a second interview on 3 August 2015, Chom Vong again described his responsibilities concerning the security centre to an OCIJ investigator.²⁵ On 21 October 2016, an OCIJ investigator interviewed Chom Vong about the conditions of the prisoners and the detention facilities,²⁶ the interrogation process,²⁷ agricultural work conducted on site,²⁸ the administrative set-up of the prison,²⁹ and the duties of the personnel.³⁰ All three WRIs are on the Case File.

B. Witness Ke

14. On 4 December 2014, an OCIJ investigator interviewed Pin Pov (alias Khun Khim) about his duties as the controller of the Wat Batheay Security Office beginning in 1978.³¹ On 22 November 2016, an OCIJ investigator interviewed Pin Pov who conceded he was known to some people as "Ke."³² He flatly denied any knowledge of Met Sop Security Centre,³³ Ta Ngauv,³⁴ or Ao An.³⁵ The WRI of the 2 December 2014 interview is on the Case File in both Khmer in English. The WRI of the 22 November 2016 interview is on the Case File in Khmer, and the English translation is forthcoming.

C. Witness Saur Saren

15. On 19 June and 22 September 2016, an OCIJ investigator interviewed Saur Saren (alternative spelling, So Saren) about his experience and observations at Wat Ta Meak Security Centre,³⁶ his insights into Met Sop Security Centre,³⁷ and whether

¹⁹ Case File No. 004-D117/56, *Written Record of Interview of Witness CHOM Vong alias YOUK NHOV or Ngov*, 19 June 2014.

²⁰ *Ibid.*, ERN 01067812, A20-A21.

²¹ Case File No. 004-D117/56, *Written Record of Interview of Witness CHOM Vong alias YOUK NHOV or Ngov*, 19 June 2014, ERN 01067811, A19, A22.

²² *Ibid.*, ERN 01067814, A32.

²³ *Ibid.*, ERN 01067814-01067815, A29, A34.

²⁴ *Ibid.*, ERN 01067811-01067815, A18-19, A25, A27, A33.

²⁵ Case File No. 004-D219/442, *Written Record of Interview of Witness CHOM Vong alias YOUK NHOV or Ngov*, 3 August 2015, ERN 01147894, ERN 01147918-01147925, A21, A162-A206.

²⁶ Case File No. 004-D219/851, *Written Record of Interview witness CHOM Vong*, 21 October 2016, ERN 01356236-01356237, A4-A10.

²⁷ *Ibid.*, ERN 01356237-01356238, A11-A18.

²⁸ *Ibid.*, ERN 01356238, A19-A22.

²⁹ *Ibid.*, ERN 01356238-01356239, A24-A27, A29.

³⁰ *Ibid.*

³¹ Case File No. 004-D219/116, *Written Record of Interview of PIN Pov*, 4 December 2014, ERN 01057780-01057781, A5, A13-A14.

³² Case File No. 004-D219/871, *Written Record of Interview witness PIN Peou*, 22 November 2016, ERN 01352075, A1-A5.

³³ *Ibid.*, ERN 01352081-01352082, A50-A54, A56-A60.

³⁴ *Ibid.*, ERN 01352081-01352082, A49, A55.

³⁵ *Ibid.*, ERN 01352081, A42-A48.

³⁶ Case File No. 004-D219/800, *Written Record of Interview Witness SO Saren*, 19 June 2016, ERN 01331731, ERN 01331738-01331742, ERN 01331744, ERN 01331747-01331749, ERN 01331749, A138, A190-A201, A204-A216, A221, A235-A244; Case File No. 004-D219/837, *Written Record of Interview witness SO Saren*, 22 September 2016, ERN 01335581-01335585, A36-A38, A42-A83.

³⁷ Case File No. 004-D219/800, *Written Record of Interview Witness SO Saren*, 19 June 2016, ERN 01331720, 01331728, 01331730, 01331732-01331738, A56-A57, A113-A115, A131, A143-A189;

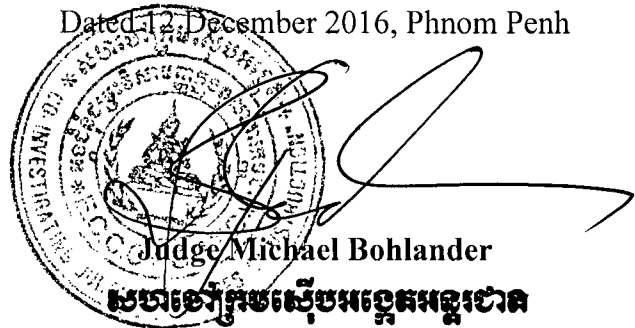


Ao An had a role in the arrest of Koh Sautin district committee members.³⁸ The WRI of the 19 June 2016 interview is on the Case File in both Khmer and English. The WRI of the 22 September 2016 interview is available on the Case File in Khmer, and the English translation is forthcoming.

FOR THE FOREGOING REASONS, I:

16. **INFORM** the ICP that the requested investigative actions have been undertaken.

Dated 12 December 2016, Phnom Penh



Judge Michael Bohlander
សម្រេចក្រុងស្ទែងហ្គេតអន្តរជាតិ

International Co-Investigating Judge
Co-juge d'instruction internationale

Case File No. 004-D219/837, *Written Record of Interview witness SO Saren*, 22 September 2016, ERN 01335586-01335589, A100-A121.

³⁸ Case File No. 004-D219/800, *Written Record of Interview Witness SO Saren*, 19 June 2016, ERN 01331742, ERN 01331744, A213-A216, A222.