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Case File No: 004/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 5 September 2017

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**SECOND NOTICE OF CONCLUSION OF JUDICIAL INVESTIGATION
AGAINST YIM TITH**

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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, 21 October 2015, and 16 January 2017.
2. On 13 June 2017, we notified the parties of the conclusion of the judicial investigation against Yim Tith and notified them that they had 15 days from that notification to request further investigations.¹
3. On 16 June 2017, the Yim Tith Defence (“Defence”) filed a request seeking an extension of the 15-day investigative period of at least six months (“Extension Request”).²
4. On 23 June 2017, the International Co-Prosecutor (“ICP”) filed a request seeking clarification on the International CIJ’s decision on the ICP’s request for investigative action concerning the analytical reports of Vooun Vuthy, an osteology expert who prepared exhumation reports on certain crimes sites and testified in Case 002 on those matters (“Clarification Request”).³ Specifically, the ICP requested that the CIJs clarify with Vooun Vuthy whether one of his reports related to the Wat Pratheath security centre and, if so, for the CIJs to place that report on the Case File.
5. On 5 July 2017, we issued a decision on the Extension Request in which we denied the request for a six-month extension and instead granted the parties an additional 30 days, that is, until 28 July 2017, to request further investigations (“Extension Decision”).⁴ On the same day, the Defence filed a Notice of Appeal against the Extension Decision.⁵
6. On 10 July 2017, the Defence filed a request to suspend the deadline for the parties to request further investigations in light of their appeal of the Extension Decision.⁶
7. On 19 July 2017, the Pre-Trial Chamber (“PTC”) issued a decision denying the Defence’s request to suspend the deadline.⁷
8. On 17 July 2017, the Defence filed an appeal against the International CIJ’s decision on a request filed by the ICP in March 2017 to place maps and certain materials from Cases 002 and 003 onto Case File 004.⁸ As at the date of this notice, the PTC remains seised of this appeal.
9. On 19 July 2017, the ICP filed a request referring to the Kraing Ta Chan Site Identification Report on Case File 004 and requesting that we place the annexes of that report onto the Case File (“Kraing Ta Chan Request”).⁹

¹ Case File No. 004-D358, *Notice of Conclusion of Judicial Investigation Against Yim Tith*, 13 June 2017.

² Case File No. 004-D361, *Yim Tith’s Request for Adequate Preparation Time*, 16 June 2017.

³ Case File No. 004-D338/2, *International Co-Prosecutor’s Request for Clarification of Decision on Investigative Action*, 23 June 2017.

⁴ Case File No. 004-D361/4, *Decision on Yim Tith’s Request for Adequate Preparation Time*, 5 July 2017.

⁵ Case File No. 004-D361/4/1, *Appeal Register of Yim Tith’s Notice of Appeal against the Decision on Yim Tith’s Request for Adequate Preparation Time*, 5 July 2017.

⁶ Case File No. 004-D361/4/1/1, *Yim Tith’s Request for Suspension of D361/4 Deadline Pending Resolution of Appeal Proceedings*, 11 July 2017.

⁷ Case File No. 004-D361/4/1/3, *Decision on Yim Tith’s Request for Suspension of D361/4 Deadline Pending Resolution of Appeal Proceedings*, 19 July 2017.

⁸ Case File No. 004-D347/2/1/2, *Yim Tith’s Appeal of the Decision on the International Co-Prosecutor’s request to Place Materials on Case File 004*, 24 July 2017.

⁹ Case File No. 004-D363, *International Co-Prosecutor’s Request to Place Annexes to Kraing Ta Chan Site Identification Report on Case File 004*, 19 July 2017.



10. On 24 July 2017, the ICP filed a request to place onto the Case File the full Case 002 testimonies of those witnesses and civil parties whose partial testimony was already on Case File 004 ("Case 002 Testimony Request").¹⁰
11. On 25 July 2017, the International CIJ issued a decision on the Kraing Ta Chan Request in which he ordered the placement on the Case File of the annexes to the Kraing Ta Chan Site Identification Report.¹¹
12. On 26 July 2017, the Defence filed their appeal against the Extension Decision.¹² As at the date of this notice, the PTC remains seised of this appeal.
13. On 28 July 2017, the ICP filed two requests for investigative action in Case 004: the first being a request to conduct certain investigative acts including placing documents listed in an annex to the request onto the Case File ("First ICP Investigative Request"),¹³ and the second being a request for investigative action regarding Prison No. 8 in Kandieng District and sexual violence in Bakan District ("Second ICP Investigative Request").¹⁴
14. On the same date, the Defence filed a request for investigative action seeking information regarding the potential use by investigators of the Office of Co-Investigating Judges ("OCIJ") of torture-tainted organisational charts when interviewing Case 004 witnesses ("Defence Investigative Request").¹⁵
15. On 3 August 2017, the International CIJ issued a partial decision on the First ICP Investigative Request in which he denied the part of the request which sought to place onto the Case File the OCIJs' list of individuals detained and killed at S-21 security centre and the underlying documents, and remained seised of the remainder of the request.¹⁶
16. On 10 August 2017, the International CIJ issued a decision on the Clarification Request informing the ICP of the OCIJ's efforts to obtain information from Voeun Vuthy regarding his exhumation report of Wat Pratheat security centre, and denying the ICP's request to place the report on the Case File.¹⁷
17. On 15 August 2017, the International CIJ issued a decision on the Case 002 Testimony Request in which he granted the request and instructed the Greffier to place five transcripts onto the Case File.¹⁸

¹⁰ Case File No. 004-D364, *International Co-Prosecutor's Request to Place onto the Case File the Full Case 002 Hearings of those Witnesses and Civil Parties whose Partial Testimony is already on the Case File*, 24 July 2017.

¹¹ Case File No. 004-D363/1, *Decision on International Co-Prosecutor's Request to Place Annexes to Kraing Ta Chan Site Identification Report on Case File 004*, 25 July 2017.

¹² Case File No. 004-D361/4/1/5, *Yim Tith's Appeal against the Decision on Yim Tith's Request for Adequate Preparation Time*, 7 August 2017.

¹³ Case File No. 004-D366, *International Co-Prosecutor's Request for Investigative Action in Case 004 with Annex A*, 28 July 2017.

¹⁴ Case File No. 004-D365, *International Co-Prosecutor's Request for Investigative Action Regarding Prison No. 8 in Kandieng District and Sexual Violence in Bakan District, Pursat Province*, 28 July 2017.

¹⁵ Case File No. 004-D367, *Yim Tith's Request for Investigative Action regarding the Use of Torture-Tainted Organisational Charts*, 28 July 2017.

¹⁶ Case File No. 004-D366/1, *First Decision in Relation to the International Co-Prosecutor's Request for Investigative Action (D366)*, 3 August 2017.

¹⁷ Case File No. 004-D338/3, *Decision on International Co-Prosecutor's Request for Clarification of Decision on Investigative Action*, 10 August 2017.

¹⁸ Case File No. 004-D364/2, *Decision on the International Co-Prosecutor's Request to Place Full Transcripts on the Case File*, 15 August 2017.



18. On 5 September 2017, we issued a decision on the Defence Investigative Request in which we confirmed no torture-tainted organisational charts were used by OCIJ investigators when interviewing Case 004 witnesses.¹⁹
19. On 4 September 2017, the International CIJ issued his decision on the remainder of the First ICP Investigative Request in which he set out the steps taken by the OCIJ in answer to parts of the request, granted the request to place certain Case 002 transcripts on the Case File, and denied the remainder of the request.²⁰
20. On 4 September 2017, the International CIJ issued a decision denying the Second ICP Investigative Request.²¹

II. DISCUSSION

21. Internal Rule 66(1) mandates that upon the issuance of a notice of conclusion, the parties shall have 15 days to request further investigative action. The Internal Rules do not give parties the right to request further investigative action following investigations conducted by the OCIJ pursuant to requests filed during the 15 days' period. The granting of additional time after the filing of this second notice of conclusion is an exceptional measure falling under the discretion of the CIJs which mainly depends on the quantity and quality of the evidence gathered after the first notice of conclusion.²²
22. Following the Clarification Request, on 20 and 21 July 2017, an investigator and analyst of the Office of the Co-Investigating Judges ("OCIJ") contacted Voenu Vuthy to ascertain whether he prepared a report of an analysis of remains at Wat Pratheat security centre and the methodology he employed in preparing that report. Voenu Vuthy provided some information in those discussions, however he did not respond to subsequent contact by the OCIJ to obtain the report.²³ In light of the information provided by Voenu Vuthy, his lack of cooperation with the OCIJ, and the International CIJ's doubts as to the reliability and low probative value of the report, no further investigative action was undertaken or ordered by the International CIJ in answer to the Clarification Request.²⁴
23. Following the First ICP Investigative Request, on an OCIJ investigator contacted a number of witnesses to ascertain the location of Khieu Sarin and Yeay Khoeun, two witnesses who the ICP submitted were *prima facie* relevant to the charges against Yim Tith in the Kirivong district and at Wat Pratheat security centre. Those investigations confirmed that Khieu Sarin is not contactable and that Yeay Khoeun is likely deceased.²⁵ No new substantive evidence was thus gathered by the OCIJ with regard to the First ICP Investigative Request.
24. The Kraing Ta Chan Request and Case 002 Testimony Request sought only the placement on Case File 004 of documents that, respectively, were intended to be attached to a site identification report already on the Case File, or that completed the testimony of

¹⁹ Case File No. 004-D367/1, *Decision on Yim Tith's Request for Investigative Action regarding the Use of Torture-Tainted Organisational Charts*, 5 September 2017.

²⁰ Case File No. 004-D366/4, *Second Decision on the International Co-Prosecutor's Request for Investigative Action in Case 004 with Annex A*, 4 September 2017.

²¹ Case File No. 004-D365/3, *Decision on the International Co-Prosecutor's Request for Investigative Action regarding Prison No. 8 and Sexual Violence in Bakan District*, 4 September 2017.

²² Case File No. 004-D364/2, *Decision on the International Co-Prosecutor's Request to Place Full Transcripts on the Case File*, 15 August 2017, para. 12.

²³ Case File No. 004-D219/994, *Written Record of Investigation Action*, 26 July 2017.

²⁴ Case File No. 004-D338/3, *Decision on International Co-Prosecutor's Request for Clarification of Decision on Investigative Action*, 10 August 2017, paras 8-11.

²⁵ Case File No. 004-D219/995, *Written Record of Investigation Action*, 21 August 2017.



Case 002 witness testimony already on the Case File. We do not consider that the placement of these materials on the Case File pursuant to the decisions issued by the International CIJ on these requests requires re-opening the investigation.

- 25. No other investigative acts were undertaken in response to the First or Second ICP Investigative Requests, or the Defence Investigative Request.
- 26. On this basis, we do not consider that there are exceptional circumstances requiring reopening the investigation after the filing of this second notice of conclusion.

FOR THE FOREGOING REASONS, WE:²⁶

- 27. **NOTIFY** the parties that we consider the investigation against Yim Tith to have been concluded; and
- 28. **INFORM** the parties that no period for further investigative action is required under the Internal Rules and hence none is granted.

Dated 5 September 2017, Phnom Penh

សហចៅក្រមស៊ើបអង្កេត
 Co-Investigating Judges
 Co-judges of instruction



YOU Bunleng **Michael BOHLANDER**

²⁶ While the CIJs are issuing this notice jointly, the National CIJ notes, for the record, that documents placed on Case File 004 should be numbered sequentially from the last documents placed before the resignation of Judge Siegfried Blunk, without including in the count orders and decisions issued by Reserve CIJ Laurent Kasper-Ansermet.