



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

**Kingdom of Cambodia
Nation Religion King**

**Royaume du Cambodge
Nation Religion Roi**

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

**Office of the Co-Investigating Judges
Bureau des co-juges d'instruction**

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

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 01-Mar-2018, 10:37
CMS/CFO: Sann Rada

Before: **The Co-Investigating Judges**
Date: **1 March 2018**
Language(s): **Khmer & English**
Classification: **សាធារណៈ/Public**

FORWARDING ORDER PURSUANT TO INTERNAL RULE 66(4)

Distribution:

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Yim Tith Defence

SO Mosseny
Suzana TOMANOVIĆ
Neville SORAB

Civil Party Lawyers

CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov

Laure DESFORGES
Isabelle DURAND
Emmanuel JACOMY
Martine JACQUIN
Lyma NGUYEN
Nushin SARKARATI



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 20 November 2008, the International Co-Prosecutor (“ICP”) issued the Third Introductory Submission alleging that Yim Tith is responsible for crimes within the jurisdiction of the ECCC.¹ Due to a disagreement between the Co-Prosecutors, the Third Introductory Submission was forwarded to the CIJs by the Acting ICP on 7 September 2009.² Subsequently, the ICP filed Supplementary Submissions alleging that Yim Tith bears criminal responsibility for further crimes.³
3. On 9 December 2015, the International CIJ charged Yim Tith with violations of Articles 501 and 506 of the 1956 Penal Code (premeditated murder), genocide, crimes against humanity, and grave breaches of the Geneva Conventions of 1949.⁴ On 29 March 2017, the International CIJ issued an order amending the charges to include additional modes of liability.⁵
4. On 13 June 2017, the International CIJ issued a decision reducing the scope of the investigation pursuant to Internal Rule 66 *bis*.⁶
5. 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.⁷
6. On 16 June 2017, the Defence filed a request seeking an extension of the 15-day investigative period of at least six months (“Extension Request”).⁸
7. On 23 June 2017, the 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 [REDACTED] (“Clarification Request”).⁹
8. 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 investigative action (“Extension Decision”).¹⁰

¹ Case File No. 004-D1, *Co-Prosecutors’ Third Introductory Submission*, 20 November 2008.

² Case File No. 004-D1/1, *Acting International Co-Prosecutors’ Notice on Filing of the Third Introductory Submission*, 7 September 2009.

³ Case File No. 004-D65, *Co-Prosecutor’s Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011; Case File No. 004-D191, *Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence*, 24 April 2014; Case File No. 004-D254/1, *Response to Forwarding Order and Supplementary Submission Regarding Wat Ta Meak*, 4 August 2015; 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.

⁴ Case File No. 004-D281, *Written Record of Initial Appearance of Yim Tith*, 9 December 2015.

⁵ Case File No. 004-D350, *Order Amending the Charges against Yim Tith*, 29 March 2017; Case File No. 004-D350.1, *Annex: Notification of Amended Charges against Yim Tith*, 29 March 2017.

⁶ Case File No. 004-D359, *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*, 13 June 2017.

⁷ Case File No. 004-D358, *Notice of Conclusion of Judicial Investigation Against Yim Tith*, 13 June 2017.



9. On 19 July 2017 and 24 July 2017, the ICP filed requests to place certain material onto Case File 004.¹¹ The International CIJ issued decisions on those requests on 25 July and 15 August 2017 respectively.¹²
10. On 26 July 2017, the Defence filed an appeal against the Extension Decision ("Defence Appeal").¹³
11. On 28 July 2017, the ICP filed two requests for investigative action: the first requesting investigative action regarding Prison No. 8 in Kandieng District and sexual violence in Bakan District ("First ICP Investigative Request"),¹⁴ and the second requesting investigative action as set out in an attached annex ("Second ICP Investigative Request").¹⁵
12. On 28 July 2017, the Defence filed a request for investigative action regarding the use of torture-tainted [REDACTED] ("Defence Investigative Request").¹⁶
13. On 3 August 2017, the International CIJ issued a partial decision on the Second ICP Investigative Request.¹⁷
14. On 10 August 2017, the International CIJ issued a decision on the Clarification Request.¹⁸
15. On 4 September 2017, the International CIJ issued decisions on the First ICP Investigative Request and on the remainder of the Second ICP Investigative Request.¹⁹
16. On 5 September 2017, the International CIJ issued a decision on the Defence Investigative Request.²⁰
17. On 5 September 2017, we issued a second notice of conclusion of the investigation and informed the parties that no further opportunity to request investigative action would be afforded.²¹

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.

¹⁹ 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;

²¹ Case File No. 004-D368, *Second Notice of Conclusion of Judicial Investigation against Yim Tith*, 5 September 2017.



18. On 12 September 2017, the Defence filed an application to seize the Pre-Trial Chamber (“PTC”) with a view to annulling certain documents relating to civil parties (“First Annulment Request”).²²
19. On 25 September 2017, the International CIJ granted the First Annulment Request and ordered that the Case File be forwarded to the PTC for its determination of the request.²³
20. On 25 October 2017, the ICP filed an appeal of the International CIJ’s decision on the First ICP Investigative Request (“ICP Appeal”).²⁴
21. On 8 November 2017, the Defence filed an application to seize the PTC with a view to annulling evidence obtained under torture (“Second Annulment Request”).²⁵ The International CIJ issued a memorandum to the parties that he intended to wait for the PTC’s decision on an identical challenge which had been pending in Case 003, before he decided whether to forward the Second Annulment Request to the PTC.²⁶
22. On 13 November 2017, the PTC issued a decision denying the Defence Appeal.²⁷
23. On 8 January 2018, in the absence at that stage of a decision by the PTC on the Case 003 challenge referred to above in paragraph 21, the International CIJ granted the Second Annulment Request and ordered that the Case File be forwarded to the PTC for its determination of the request.²⁸
24. On 9 February 2018, the Defence filed a request seeking the correction of translation errors in certain written records of interview on the Case File (“Defence Correction Request”).²⁹
25. On 13 February 2018, the PTC issued a decision dismissing the ICP Appeal.³⁰
26. On 28 February 2018, the International CIJ issued a decision on the Defence Correction Request and instructed the Interpretation and Translation Unit to make all corrections to the relevant written records of interview as authorised in that decision.³¹
27. As at the date of this forwarding order, the PTC remains seised of the First and Second Annulment Requests. Notwithstanding that these annulment applications are pending before the PTC, we do not consider it necessary that they be determined before the filing of the Co-Prosecutors’ final submissions pursuant to Internal Rule 66(5), or the Defence’s

³⁰ Case File No. 004-D365/3/1/5, *Decision on the International Co-Prosecutor’s Appeal of Decision on Request for Investigative Action regarding Sexual Violence at Prison No. 8 and in Bakan District*, 13 February 2018.



response. The First and Second Annulment Requests concern distinct groups of evidence on the Case File. In the event the PTC grants any of the applications resulting in an impact on the evidence on the Case File, we will make appropriate orders if necessary to account for that impact, such as allowing the parties additional time to submit their final submissions/response if necessary, or, if they have already been filed, an opportunity to amend them. We remind the parties in this context of our standing practice that we will in any event not rely upon any torture-tainted materials when reaching our conclusions on the Closing Order, regardless of whether such material remains on the Case File or is formally removed by the PTC, and the parties should bear this in mind when preparing their submissions.

28. We consider it to be in the interest of the proper administration of justice to now invite the Co-Prosecutors to file their final submissions.
29. Under Internal Rule 66(5), the Co-Prosecutors have three months from the notification of this Order to file their final submissions in both languages. However, the ICP's office has advised that it will require the full three months in order to prepare the ICP's final submission in English alone.³² The National Co-Prosecutor submitted no such indication.
30. According to the practice applied previously in Cases 003 and 004/2, we accept the estimate by the ICP, and permit him to file his final submission within three months from the notification of this Order in English alone, with the full Khmer translation to be filed as soon as possible thereafter.
31. Once the full Khmer translation is filed, the Defence will be given adequate time to respond. We will instruct the Defence to provide an estimate of the time they will need to submit their response in English once the ICP has filed his final submission in English.



FOR THE FOREGOING REASONS, WE:³³

- 32. **FORWARD** Case File 004 of the judicial investigation to the Co-Prosecutors, pursuant to Internal Rule 66(4), for the purpose of their final submissions;
- 33. **PERMIT** the ICP to file his final submission in English alone within three months from the notification of this Order, and to file a fully translated Khmer version as soon as possible thereafter;
- 34. **INSTRUCT** the Defence to provide an estimate of the time they will need to submit their response in English, within one week from the notification of the English version of the ICP's final submission.

Dated 1 March 2018, Phnom Penh

សហចៅក្រមស៊ើបអង្កេត
 Co-Investigating Judges
 Co-juges d'instruction



YOU Bunleang **Michael BOHLANDER**

³³ While the CIJs are issuing this order 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.