



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

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

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 DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
14	12 / 2016
ម៉ោង (Time/Heure): 15:05	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SAMN RA DA	

Before: The Co-Investigating Judges
Date: 14 December 2016
Language(s): English [Original]
Classification: CONFIDENTIAL

DECISION ON AO AN’S REQUEST TO IDENTIFY AND PLACE
ON THE CASE FILE CERTAIN DOCUMENTS

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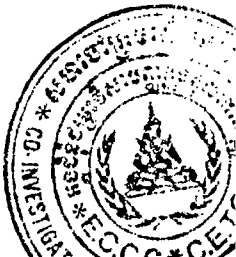
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I. PROCEDURAL HISTORY

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 11 November 2016, the Ao An Defence (“Defence”) filed the *Request to Identify and Place Certain Documents on the Case File* (“Request”).¹

II. SUBMISSIONS

3. The Defence request the CIJs to identify documents referred to during witness interviews conducted by investigators of the Office of the Co-Investigating Judges (“OCIJ”) that are not sufficiently identified in the corresponding written record of interview (“WRI”).² The Defence list 46 such instances in Annex A to the Request.³ The Defence also request the CIJs to place on the Case File any of the documents that are not already on the Case File.⁴
4. The Defence submit that the failure to identify documents shown to witnesses in judicial interviews hinders their ability to properly assess the witnesses’ evidence and take Ao An’s instructions on the evidence.⁵ The Defence argue that this infringes Ao An’s right to prepare an effective defence and examine the evidence against him.⁶

III. DISCUSSION

A. Obligation to identify documents in WRIs

5. The Request identifies 17 instances in which an OCIJ investigator referred to a specific document during a judicial interview.⁷ I agree with the Defence that documents referred to during an interview should be identified in the respective WRIs so that the witness’ answers can be properly assessed. I have therefore filed addendums to the WRIs referred to in entries 1-2, 5, 7, 9, 12, 16, 19, 21, 28, 30, 33, 41, 43-46 in Annex A which include the information sought by the Defence.⁸

¹ Case File No. 004-D327, *Request to Identify and Place Certain Documents on the Case File*, 10 November 2016.

² *Ibid.*, para. 2.

³ *Ibid.*, paras 2, 7.

⁴ *Ibid.*, paras 10, 3.

⁵ *Ibid.*, para. 7.

⁶ *Ibid.*, paras 7, 9.

⁷ Case File No. 004-D327.2, *Annex A*, 10 November 2016, entries 1-2, 5, 7, 9, 12, 16, 19, 21, 28, 30, 33, 41, 43-46 (“Annex A”).

⁸ Annex A, entry 1; Case File No. 004-D107/13, *Written Record of Interview of LONG Sokhai*, 15 March 2012; Annex A, entry 2; Case File No. 004-D107/14, *Written Record of Interview of CHHUN La*, 16 March 2012; Annex A, entry 5; Case File No. 004-D117/23, *Written record of witness interview of LONH Dos*, 29 May 2013; Annex A, entry 7; Case File No. 004-D117/30, *Written Record of Interview of PON Ol*, 9 November 2013; Annex A entry 9; Case File No. 004-D117/33, *Written Record of Interview of POV Sarom*, 14 November 2013; Annex A, entry 12; Case File No. 004-D117/51, *Written Record of Interview of YIM Seng*, 25 May 2014 (regarding Questions 19 and 29); Annex A, entry 16; Case File No. 004-D117/58, *Written Record of Interview of MUY Vanny*, 3 July 2014; Annex A, entry 19; Case File No. 004-D117/72, *Written Record of Interview of PRAK Yut* Dated 21-06-2013, 21 June 2013 (regarding Questions 3,4, and 5); Annex A, entry 21; Case File No. 004-D219/119.1.5, *Written Record of Interview of Civil Party OU Dav* Dated 03-11-2014, 3 November 2014; Annex A, entry 28; Case File No. 004-D219/250, *Written Record of Interview witness PHAN Chhen*, dated 30-03-2015, 30 March 2015; Annex A, entry 30; Case File No. 004-D219/286, *Written Record of Interview witness MIN Art*, 22 April 2015; Annex A, entry 33; Case File No. 004-D219/348, *Written Record of Interview witness UM Torn*, 2 June 2015; Annex A, entry 41; Case File No. 004-D219/542,



A list of all addendums filed in relation to the Request is included in Annex A to this Decision.⁹

B. Obligation to identify sources of information in WRIs

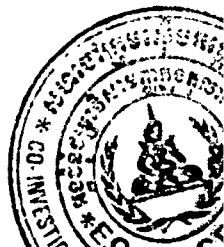
6. In addition, the Defence identify 31 WRIs in which, during the course of questioning a witness, an investigator refers the witness to information obtained over the course of the investigation.¹⁰ In the instances identified by the Defence, after representing to the witness evidence obtained by the OCIJ on certain alleged facts, investigators often asked follow up questions such as: “Do you know anything about this?”;¹¹ “Do you have anything to add to this?”;¹² “Do you

Written Record of Interview witness NUT Kimnang, 6 October 2015; Annex A, entry 43; Case File No. 004-D219/82, Written Record of Interview of RIEL Neang, 21 November 2014; Annex A, entry 44; Case File No. 004-D6.1.385, Written Record of Interview of SOU Soeun, 5 July 2009; Annex A, entry 45; Case File No. 004-D89, Written Record of Interview of witness CHEA Phy, 15 September 2011; Annex A, entry 46; Case File No. 004-D91, Written Record of Interview of witness CHHOAY Loeng, 15 September 2011.

⁹ Case File No. 004-D327/1.1, *Annex A: List of Addendums in Relation to Defence Request D327*, 14 December 2016.

¹⁰ Annex A, entry 3; Case File No. 004-D117/11, *Written record of witness interview of BÈN Chhân*, 14 December 2012; Annex A, entry 4; Case File No. 004-D117/21, *Written record of witness interview of CHAN Sang*, 29 May 2013; Annex A, entry 6; Case File No. 004-D117/24, *Written Record of witness interview - POV Sarom*, 7 August 2013; Annex A, entry 8; Case File No. 004-D117/32, *Written Record of Interview of NHEM Kol*, 12 November 2013; Annex A, entry 10; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014; Annex A, entry 11; Case File No. 004-D117/50, *Written Record of Interview of IM Pon*, 23 May 2014; Annex A, entry 12; Case File No. 004-D117/51, *Written Record of Interview of YIM Seng*, 25 May 2014 (regarding Question 17); Annex A, entry 13; Case File No. 004-D117/52, *Written Record of Interview of Civil Party BUM Ser*, 27 May 2014; Annex A, entries 14-15 (Defence has submitted duplicate entries); Case File No. 004-D117/56, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 19 June 2014; Annex A, entry 17; Case File No. 004-D117/59, [Corrected 1] *Written Record of Interview of Civil Party BEN Muy*, 23 July 2014; Annex A, entry 18; Case File No. 004-D117/71, *Written Record of Interview of PRAK Yut Dated 19-06-2013*, 19 June 2013; Annex A, entry 19; Case File No. 004-D117/72, *Written Record of Interview of PRAK Yut Dated 21-06-2013*, 21 June 2013 (regarding Question 10); Annex A, entry 20; Case File No. 004-D117/73, *Written Record of Interview of PRAK Yut Dated 27-10-2013*, 27 October 2013; Annex A, entry 22; Case File No. 004-D219/120, *Written Record of Interview of PRAK Yut*, 30 September 2014; Annex A, entry 23; Case File No. 004-D219/138, *Written Record of Interview Witness YOU Vann*, 8 January 2015; Annex A, entry 24; Case File No. 004-D219/170, *Written Record of Interview of Civil Party UM Nit*, 9 February 2015; Annex A, entry 25; Case File No. 004-D219/171, *Written Record of Interview of Civil Party NHIM Kol*, 11 February 2015; Annex A, entry 26; Case File No. 004-D219/178, *Written Record of Interview Witness KUCH Ra*, 5 February 2015; Annex A, entry 27; Case File No. 004-D219/191, *Written Record of Interview Witness KEO Voeun*, 19 February 2015; Annex A, entry 29; Case File No. 004-D219/284, *Written Record of Interview witness POV Sarom*, 9 April 2015; Annex A, entry 31; Case File No. 004-D219/320, *Written Record of Interview witness POR SÂN*, 12 May 2015; Annex A, entry 32; Case File No. 004-D219/322, *Written Record of Interview of Civil Party CHAN Sokchea*, 14 May 2015; Annex A, entry 34; Case File No. 004-D219/405, *Written Record of Interview witness CHHIM Bunseray*, 7 July 2015; Annex A, entry 35; Case File No. 004-D219/435, *Written Record of Interview witness TOUCH Chamroeun*, 30 July 2015; Annex A, entry 14-15; Case File No. 004-D219/442, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 3 August 2015; Annex A, entry 37; Case File No. 004-D219/460, *Written Record of Interview witness SAT Pheap, dated 07-08-2015*, 7 August 2015; Annex A, entry 38; Case File No. 004-D219/461, *Written Record of Interview witness PEN Thol*, 8 August 2015; Annex A, entry 39; Case File No. 004-D219/462, *Written Record of Interview witness PENH Chantha*, 10 August 2015; Annex A, entry 40; Case File No. 004-D219/502, *Written Record of Interview of Civil Party Applicant MUOK Sengly*, 14 September 2015; Annex A, entry 42; Case File No. 004-D219/702.1.142, *Written Record of Interview of BUN Loeng Chauy*, 10 June 2008.

¹¹ Case File No. 004-D219/502, *Written Record of Interview of Civil Party Applicant MUOK Sengly*, 14 September 2015, ERN 01152376, Q33.



remember this?";¹³ *"Did you know this?"*;¹⁴ or *"Is that true?"*.¹⁵ There is nothing improper in this practice. Investigators routinely put factual propositions to witnesses in order to obtain a witness's comment, or test the credibility and reliability of the witness. Investigators do not have access to the complete Case File while interviewing witnesses in the field, and therefore cannot always be expected to recall and cite information obtained over the course of the investigation.

7. The requests in entries 3-4, 6, 8, 10-15, 17-20, 22-27, 29, 31-32, 34-40, and 42 in Annex A seeking sources for information obtained over the course of the investigation are therefore denied.

C. Instances requiring clarification

8. Finally, there are some instances listed in the Annex which require clarification, and I will address them below.

i. D117/24: Peou Sarom (alias Pov Sarom)

9. The Defence complain that an OCIJ investigator conducting an interview with Peou Sarom (alternate spelling, Pov Sarom) showed the witness a *"list of people from the Southwest who were holding some positions in Kampong Siem District"*.¹⁶ The Defence request the CIJs to identify this document, or place the list of names on the Case File.¹⁷
10. The list of names referred to by the witness came from an interview with Nhim Kol.¹⁸ The investigator had taken hand-written notes during the interview with Nhim Kol and sought to corroborate this information. The WRI of the interview with Nhim Kol is on the Case File, which includes the listing of persons who came with Prak Yut to Kampong Siem District.¹⁹

ii. D117/32: Nhem Kol (alternative spelling Nhim Kol)

11. The Defence point to a WRI with Nhem Kol from 2013, in which the investigator asked the witness to sketch a map of Kampong Siem District and Krala Commune.²⁰ The Defence request the CIJs to identify this map and place it on the Case File if necessary.²¹
12. The map drawn by Nhem Kol during this interview was not placed on the Case File at the time. Unfortunately, I have not been able to locate it *ex post*, either.

¹² Case File No. 004-D219/284, *Written Record of Interview witness POV Sarom*, 9 April 2015, ERN 01098562, Q134.

¹³ *Ibid.*, Q99.

¹⁴ Case File No. 004-D117-56, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 19 June 2014, ERN 01067815, Q36.

¹⁵ Case File No. 004-D219/435, *Written Record of Interview witness TOUCH Chamroeun*, 30 July 2015, ERN 01142990, Q49.

¹⁶ Annex A, entry 6; Case File No. 004-D117/24, *Written Record of witness interview - POV Sarom*, 7 August 2013, ERN 00966965, A19.

¹⁷ Annex A, entry 6.

¹⁸ Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012.

¹⁹ *Ibid.*, p. 3.

²⁰ Annex, entry 8; Case File No. 004-D117/32, *Written Record of Interview of NHEM Kol*, 12 November 2013, Q9.

²¹ Annex A, entry 8.



iii. *D117/52: Bum Se*

13. The Defence identify a WRI with civil party applicant Bum Se, dated 27 May 2014, and submit that the investigator referred to information received from two individuals named Im and Em, without referencing the relevant document.²² The Defence request that the CIJs identify the relevant document and place it on the Case File if necessary.²³
14. The investigator put the following to Bum Se: “According to information that we received from Im and Em, they participated in the arrests and killing. What did you know about both of them?”²⁴ In reply, Bum Se said: “Yes. I know Im. He was a unit chairperson who participated in arrests and killing during the regime, but I do not know where he presently lives. For Em, I do not know where he lives either. I know that Em was a unit chairperson at another place”.²⁵
15. An OCIJ investigator interviewed Im (alias Kien Lei) on 14 March 2012, but Im denied any role in the arrests or killing of people at Kok Pring.²⁶ However, some witnesses describe his role in the arrests at Kok Pring.²⁷ The OCIJ has not interviewed Em. Kien Lei confirmed that Em (alternative spelling Aem) was the chief militiaman in Kdei Beong village.²⁸ Thus, the investigator’s admittedly imprecise representations to Bum Se are supported by other evidence on the Case File.
16. I will nevertheless take this circumstance into account when assessing the totality of the evidence in relation to Wat Angkuon Dei Pagoda and Kok Pring.

iv. *D117/59: Ben Muy*

17. The Defence identify a WRI with civil party applicant Ben Muy, dated 23 July 2009, and submit that the investigator references the witness’s complaint without providing an ERN or document number.²⁹
18. Ben Muy’s civil party application is actually referenced at the beginning of the WRI.³⁰

²² Annex A, entry 13; Case File No. 004-D117/52, *Written Record of Interview of Civil Party BUM Ser*, 27 May 2014.

²³ Annex A, entry 13.

²⁴ Annex A, entry 13; Case File No. 004-D117/52, *Written Record of Interview of Civil Party BUM Ser*, 27 May 2014, ERN 01076886, Q25.

²⁵ Annex A, entry 13; Case File No. 004-D117/52, *Written Record of Interview of Civil Party BUM Ser*, 27 May 2014, ERN 01076886, A25.

²⁶ Case File No. 004-D107/12, *Written Record of Interview of KIEN Lei*, 14 March 2012, ERN 00804705, p. 3.

²⁷ Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012, ERN 00787203, p. 4; Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012, ERN 00787198, p. 3; Case File No. 004-D1.3.11.13, *Interview of CHUONG Srim*, 4 August 2008, ERN 00210448, p. 4.

²⁸ Case File No. 004-D107/12, *Written Record of Interview of KIEN Lei*, 14 March 2012, ERN 00804705, p. 3.

²⁹ Annex A, entry 17; Case File No. 004-D117/59, [Corrected 1] *Written Record of Interview of Civil Party BEN Muy*, 23 July 2014, ERN 01031717, A86.

³⁰ Case File No. 004-D117/59, [Corrected 1] *Written Record of Interview of Civil Party BEN Muy*, 23 July 2014, ERN 1031708, A1.



v. *D117/72: Prak Yut*

19. The Defence refer to a WRI with Prak Yut which they say references a previous conversation with the witness without providing an ERN or document number.³¹ In the WRI, the OCIJ investigator said to Prak Yut: “[e]arlier you said that the district secretaries were automatically members of the sector committee, and the sector secretaries were automatically members of the zone committee. Was this system also applied in Kampot province?”³²
20. Prak Yut said in a previous answer the day before that “all the secretaries of the five districts were the members of Sector 41”.³³ After discussions with the investigator who conducted the interview, I am satisfied that this answer most likely formed the basis of the investigator’s question.

vi. *D219/170 Um Nit*

21. The Defence identify a WRI with Um Nit which references her civil party application, but the Defence are unable to locate the document on Zylab.³⁴
22. Um Nit’s civil party application has been placed on Case File 004.³⁵

vii. *D219/191: Keo Voeun*

23. The Defence complain that a WRI with Keo Voeun cites an ERN but no corresponding document can be found on Zylab.³⁶
24. The OCIJ has not been able to locate any document containing the cited ERN. It is likely that the investigator made an error in the citation. It could not be established what the proper document citation was.

viii. *D219/322: Chan Sokchea*

25. The Defence point to a WRI with Chan Sokchea which references a civil party application without providing a corresponding ERN or document number.³⁷
26. Chan Sokchea is a civil party in Case 002. I will place his application, as well as the related report from the Victim Unit, on the Case File.³⁸

ix. *D219/702.1.142: Bun Loengchaury*

27. The Defence identify a WRI with Bun Loengchaury in which the investigator refers to a handwritten document and a map prepared by the witness.³⁹

³¹ Annex A, entry 19; Case File No. 004-D117/72, *Written Record of Interview of PRAK Yut Dated 21-06-2013*, 21 June 2013, ERN 01056235, Q10.

³² Case File No. 004-D117/72, *Written Record of Interview of PRAK Yut Dated 21-06-2013*, 21 June 2013, ERN 01056235, Q10.

³³ Case File No. 004-D117/71, *Written Record of Interview of PRAK Yut Dated 19-06-2013*, 19 June 2013, ERN 01056226, A27.

³⁴ Annex A, entry 24, Case File No. 004-D219/170, *Written Record of Interview of Civil Party UM Nit*, 9 February 2015.

³⁵ Case File No. 004-D219/882, *Written record of investigation Action*, 9 December 2016; Case File No. 004-D219/882.1, *Annex: List of documents to be placed on case file 004*, 9 December 2016; Case File No. 004-D219/882.1.12, *Civil party application of UM Nit 09-VU-03660*, 26 October 2009.

³⁶ Annex A, entry 27.

³⁷ Annex A, entry 32.

³⁸ Case File No. 004-D321/1.2, *Annex B: Documents to be place on Case 004*, 14 December 2016.

³⁹ Annex A, entry 42, Case File No. 004-D219/702.1.142, *Written Record of Interview of BUN Loeng Chauy*, 10 June 2008, ERN 00274105, p. 12.



28. The WRI was taken during the investigation in Case 002, and the documents referred to are separate records on Case File 002 and were not transferred to Case File 004 with the WRI. I will now place them on the Case File.⁴⁰

FOR THE FOREGOING REASONS, I:

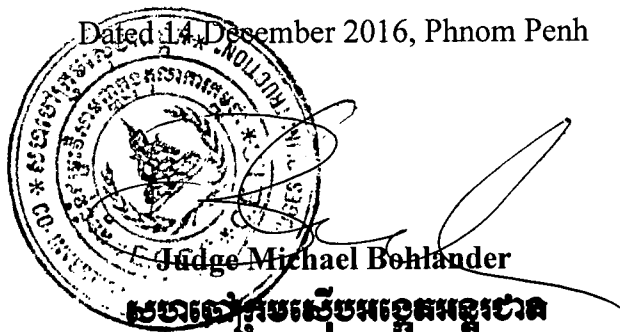
29. **INSTRUCT** the OCIJ Greffier to place on the Case File the documents identified in Annex B to this Decision;⁴¹

30. **INFORM** the Defence that the Request has been performed in part; and

31. **DENY** the remainder of the Request.

This Decision is filed in English, with a Khmer translation to follow.

Dated 14 December 2016, Phnom Penh



Judge Michael Bohlander
សមាជិកអង្គជំនុំជម្រះអន្តរជាតិ
 International Co-Investigating Judge
 Co-juge d'instruction international

⁴⁰ Case File No. 004-D321/1.2, *Annex B: Documents to be placed on Case 004*, 14 December 2016

⁴¹ Case File No. 004-D327/1.2, *Annex B: List of Documents to be placed on Case File 004*, 14 December 2016.