



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងក្រុងភ្នំពេញ

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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
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Case File No: 003/07-09-2009-ECCC-OCIJ

Before: **The Co-Investigating Judges**
Date: **19 April 2017**
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**DECISION ON INTERNATIONAL CO-PROSECUTOR'S REQUEST
FOR INVESTIGATIVE ACTION IN CASE 003**

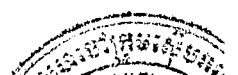
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I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 7 February 2013, 22 February 2013, 17 July 2014, and 16 January 2017.
2. On 18 July 2007, the International Co-Prosecutor (“ICP”) filed the *Second Introductory Submission* opening a judicial investigation against Meas Muth and proposing various charges against him.¹
3. On 31 October 2014, the ICP filed a *Supplementary Submission* (“Supplementary Submission”) alleging that Meas Muth bears criminal responsibility for further crimes including crimes of sexual and gender based violence (“SGBV”).²
4. On 3 March 2015, my predecessor charged Meas Muth with violations of Articles 501 and 506 of the 1956 Penal Code (homicide), grave breaches of the Geneva Conventions, and the crimes against humanity of murder, extermination, enslavement, imprisonment, persecution, and other inhumane acts.³ On 14 December 2015, I rescinded certain charges against Meas Muth laid by my predecessor, and charged him with the crimes of genocide, additional counts of crimes against humanity, grave breaches of the Geneva Conventions, and violations of Articles 501 and 506 of the 1956 Penal Code (homicide).⁴
5. On 10 January 2017 I notified the parties that I considered that the judicial investigation against Meas Muth had concluded, granted the parties 30 days to file any further requests for investigative action, and reduced the scope of the judicial investigation pursuant to Internal Rule 66bis.⁵
6. On 9 February 2017, the ICP filed the *International Co-Prosecutor’s Request for Investigative Action in case 003* (“Request”).⁶
7. On 16 February 2017 the Meas Muth Defence (“Defence”) filed a response to the Request (“Response”).⁷

II. SUBMISSIONS

A. Request 1 – Koh Tang site visit

8. The ICP requests that the CIJs conduct a site visit to Koh Tang in the company of witness Ek Ny (alternative spelling Ek Ni) (“Request 1”), as (i) the CIJs have not previously conducted a site visit to Koh Tang although there is evidence of its relevance to Case File 003; (ii) Ek Ny has demonstrated thorough and precise knowledge of various factors such that “*he would be able to direct OCIJ investigators to burial sites*” on Koh Tang; (iii) the site visit would provide the chance to ask Ek Ny about a radar installation on Koh Tang;

¹ Case File No. 003-D1, *Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008, para. 99.

² Case File No. 003-D120, *International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003*, 31 October 2014, paras 25-27.

³ Case File No. 003-D128, *Decision to Charge Meas Muth in Absentia*, 3 March 2015; Case File No. 003-D128.1, *Annex: Notification of Charges against Meas Muth*, 3 March 2015.

⁴ Case File No. 003-D174, *Written Record of Initial Appearance of Meas Muth*, 14 December 2015.

⁵ Case File No. 003-D225, *Notice of Conclusion of Judicial Investigation Against Meas Muth*, 10 January 2017; Case File No. 003-D226, *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*, 10 January 2017.

⁶ Case File No. 003-D233, *International Co-Prosecutor’s Request for Investigative Action in Case 003*, 9 February 2017.

⁷ Case File No. 003-D233/1, *Meas Muth’s Response to the International Co-Prosecutor’s Request for Investigative Action in Case 003*, 16 February 2017.

and (iv) Ek Ny is able to identify other relevant locations of buildings used by Regiment 62 on Koh Tang.⁸

B. Request 2 – additional interviews of witnesses regarding Kang Keng

9. The ICP requests that the CIJs re-interview witnesses Meas Im and Hing Uch and interview Neak Yan (“Request 2”). Meas Im has not been asked about his role at Kang Keng and as there is reason to believe he had a significant role in relation to the Kang Keng forced labour sites, the ICP requests that he be questioned about (i) the conditions and crimes at Kang Keng forced labour sites; (ii) reports to, and orders received from Meas Muth regarding Kang Keng; and (iii) whether Meas Muth visited Kang Keng.⁹
10. Hing Uch was not asked about his work at Kang Keng in previous interviews conducted by the CIJs and therefore the ICP requests that the CIJs inquire into the working and living conditions at Kang Keng, as well as any other relevant areas.¹⁰
11. The ICP requests that the CIJs interview Neak Yan regarding Kang Keng worksites as it is “*highly likely that Neak Yan has probative information concerning forced labour sites in and around Kang Keng and in Ream generally*”. This is based on a summary of the English translation of Neak Yan’s Case File 002 complaint which indicates that Neak Yan worked at multiple sites in the Kang Keng area.¹¹

C. Request 3 – interview of witness regarding Bet Trang

12. The ICP requests that the CIJs locate and interview Chuon Mao (“Request 3”), as he may be able to provide evidence confirming witness Snguon Chhum’s testimony and/or provide further evidence regarding events in Bet Trang. Snguon Chhum identified Chuon Mao as someone from his cooperative in Bet Trang that was still alive.¹²

D. Request 4 – interview of witnesses regarding S-21

13. The ICP requests that the CIJs interview two S-21 guards, Chhun Phal and Kung Phai (“Request 4”). While both were interrogated prior to or during the Case File 001 trial, they have not been questioned in relation to Case File 003 specific issues, and therefore no detailed questions were asked regarding the circumstances under which “*Vietnamese and Westerners were arrested, possibly at sea, then transferred, detained, interrogated and/or executed, at or directly from, S-21*”. Chhun Phal and Kung Phai also previously gave broad evidence about such matters.¹³
14. Request 4 sets out a number of questions to be put to Chhun Phal and Kung Phai regarding Vietnamese and foreign nationals; the presence of Division 164 and Division 117 cadres and combatants at S-21, including their names, rank, treatment and fate; and any knowledge they have in respect of Meas Muth or other Division 164 leaders. It is further requested that they be presented with photos of “*Western*” prisoners of S-21, where available.¹⁴

⁸ Request, paras 6-8.

⁹ *Ibid.*, para. 9.

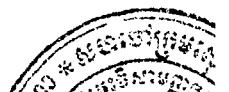
¹⁰ *Ibid.*, para. 10.

¹¹ *Ibid.*, para. 11.

¹² *Ibid.*, para. 12.

¹³ *Ibid.*, paras 13-14.

¹⁴ *Ibid.*, paras 15-16.



E. Request 5 – interviews of witnesses regarding Toek Sap

15. The ICP requests that the CIJs identify and interview additional witnesses in relation to a prison at Ou Kombot (alternative spelling Ou Kambot or Au Kambot) (“Request 5”). A *Site Identification Report* notes that further information is required in relation to the site’s controlling sub-unit, and whether the site should be considered as a sub-site of Toek Sap.¹⁵
16. In particular, the ICP requests that the CIJs identify and interview (i) former Division 164 individuals who were either imprisoned at, guarded or had authority over the prison; and (ii) any civilian residing in the area who would have been aware of its existence with a view to determining the conditions of detention and fate of prisoners, the duration of the operation of the prison, the unit within Division 164 controlling the prison, and whether it was a sub-unit of Toek Sap security centre.¹⁶

F. Request 6 – interview of Division 164 cadres identified by Meas Muth

17. The ICP requests that the CIJs ascertain the current state of health of Khem Ngon and if he is fit, interview him (“Request 6”), as, on the basis of evidence on Case File 003, he is likely to be able to provide highly relevant and reliable evidence in relation to the evolution and implementation of Communist Party of Kampuchea (“CPK”) policies, military personnel, communications, authority structures (national and regarding Division 164), and Meas Muth’s role in crimes committed in the Kampong Som region, at sea and on maritime islands.¹⁷

G. Request 7 – interview of witnesses regarding forced marriage

18. The ICP requests that the CIJs, in relation to forced marriage, (i) “*identify and interview other female witnesses who married in Kampong Som during the DK era*”; (ii) re-interview at least 10 of a list of 17 witnesses; and (iii) interview the spouses of witnesses married in the Kampong Som region during the Democratic Kampuchea (“DK”) regime to establish whether they fully agreed to marry (“Request 7”).¹⁸
19. The ICP submits that since being seised of the crime of forced marriage “*only a very limited number*” of persons interviewed by the CIJs were questioned in relation to marriages organised during the DK regime and several Division 164 cadres or combatants have not been questioned at all on the topic. The questioning of almost half of the witnesses lacked questions on important topics and several lines of relevant questioning were not pursued. Further, (i) it is clear that marriages organised for male soldiers in Kampong Som by Division 164 “*had to involve female civilians*”; (ii) establishing the consent of those women is crucial; and (iii) the investigation into forced marriage is incomplete as important Division 164 witnesses were not questioned and too few females were identified and interviewed.¹⁹

H. Request 8 – interviews with Meas Muth

20. The ICP requests that the CIJs (i) place a copy of the documentary film ‘Brother Number One’ (“Film”), its publicly available transcript (“Transcript”), and an interview given by Meas Muth to Voice of America (“Interview”) onto Case File 003; and (ii) contact the

¹⁵ *Ibid.*, para. 17; Case File No. 003-D114/275, *Site Identification Report*, 2 November 2016, p. 6.

¹⁶ Request, para. 18.

¹⁷ *Ibid.*, paras 19-20.

¹⁸ *Ibid.*, para. 25.

¹⁹ *Ibid.*, paras 21-25.

writers, directors and/or producers of the Film with a view to obtaining the entire interview with Meas Muth (“Film Interview”) (“Request 8”).²⁰

21. The ICP submits that the Film (i) contains statements by Meas Muth that are directly relevant to establishing his knowledge of and involvement in the treatment of foreign nationals captured at sea and on maritime islands by the DK Navy; (ii) helps to establish Meas Muth’s *mens rea* in relation to the treatment of perceived enemies of the CPK; and (iii) provides further evidence of detention conditions, torture techniques, and interrogations at S-21. Further, it is unlikely that the entire interview with Meas Muth is reproduced in the Film, and the Interview is relevant to establishing Meas Muth’s knowledge of the military purges, including within Division 164, and his *mens rea* regarding CPK policies on internal enemies.²¹

I. Defence response

22. The Defence defer to my decision to close the judicial investigation, and raise general concerns of timeliness and undue delay. In relation to Request 7, the Defence observe that many of the witnesses referred to were interviewed “*more than one and a half to two years ago*” and the ICP does not explain why the request has only been made now. In relation to Request 8, they note that the Film and the Interview have been publicly available for several years, and that the ICP does not explain why the request has only been made now.²²
23. The Defence also submit that, at this stage in the investigation, further investigative acts should only be performed in exceptional circumstances, for example “*where there are ‘clear indications’ that interviewing a witness or gathering documents could yield ‘new evidence capable of substantially changing or rebutting the evidence presently on the Case File’*”.²³ The ICP, the Defence aver, has provided no such indications. Additionally, Meas Muth has the right to be tried within a reasonable time, and the proceedings will be unreasonably lengthened if additional investigative acts are conducted.²⁴
24. In relation to Request 1, the Defence request that, if it is granted, in order to ensure fairness in the proceedings and protect the equality of arms, both parties should be permitted to attend and participate by putting questions to the witness through the CIJs (“Defence Request”).²⁵

III. DISCUSSION

A. Standard for assessment of investigative requests

25. The Pre-Trial Chamber (“PTC”) has previously stated that a party requesting investigative action “*must satisfy 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*

²⁰ *Ibid.*, paras 26-30.

²¹ *Ibid.*

²² Response, paras 2-4.

²³ Response, para. 4, citing Case File No. 003-D223, *Consolidated Decision on the International Co-Prosecutor’s First, Second, and Third Investigative Requests*, 9 January 2016 (“Consolidated Decision”), para. 47.

²⁴ Response, para. 4.

²⁵ *Ibid.*, para. 5.

ii. *demonstrate in detail the reasons why the requested investigative action [...] is prima facie 'relevant to ascertaining the truth' ('the prima facie relevance requirement')*.²⁶

26. 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*”.²⁷ Consequently, I am not required to grant general or speculative requests; rather the requesting party must point specifically towards the presence of the evidence that is sought.²⁸
27. As I have previously stated in relation to requests for site visits in the presence of witnesses, the necessary specificity will involve the identification of, in respect of each site to be visited: (i) the reasons why the site visit is necessary, including specifying any alleged uncertainty in respect of the site; (ii) the particular witnesses requested to be present; and (iii) the reasons why each witness is relevant to resolving any alleged uncertainty.²⁹
28. 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*”.³⁰ Secondly, the request “*must detail why the requested information is conducive to ascertaining the truth*”.³¹ This requires the requesting party to establish a *prima facie* nexus between the requested investigative action and a matter within the scope of the investigation.³² Where the request concerns exculpatory evidence, the requesting party must demonstrate a *prima facie* reason that the investigative action may yield exculpatory evidence.³³
29. I further recall that, at this stage of an investigation, further actions of the nature requested by the ICP will only be undertaken in exceptional circumstances, such as the presence of clear indications that the requested action could yield new evidence capable of substantially changing or rebutting evidence on the Case File.³⁴ Requests at this stage of an investigation that attempt to broaden the evidence base (where there is already sufficient evidence in relation to a matter) rather than fill necessary gaps will, in the absence of such indications, accordingly be denied.

²⁶ 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*, 27 September 2010 (“Reconsideration Decision”), para. 47; *see also*, Case File No. 004/2-D320/1/1/4, *Decision on Appeal Against Decision on Ao An's Twelfth Request for Investigative Action*, 16 March 2017, para. 13.

²⁷ Reconsideration Decision, para. 48.

²⁸ *Ibid.*, para. 48, 73; 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.

²⁹ Case File No. 003-D177/1, *Decision on Meas Muth's Request for the Co-Investigating Judges to Conduct Site Visits*, 19 April 2016 (“Site Visits Decision”), para. 16.

³⁰ Reconsideration Decision, para. 49.

³¹ *Ibid.*, para. 50.

³² *Ibid.*, paras 50-51.

³³ Case File No. 002-D353/2/3, *Decision on the Ieng Thirith Defence Appeal Against 'Order on Requests for Investigative Action by the Defence for Ieng Thirith' of 15 March 2010*, 14 June 2010, para. 47.

³⁴ Consolidated Decision, para. 47.

B. Request 1 – Koh Tang site visit

30. The ICP requests that the CIJs conduct a site visit to Koh Tang in the company of witness Ek Ny. Witness Ek Ny has been interviewed four times and provided detailed information in relation to (i) the capture, interrogation, killing and burial of Vietnamese persons on or around Koh Tang Island; and (ii) relevant locations on the island (including by sketching a map).³⁵ The information provided by Ek Ny is consistent with information provided by other witnesses³⁶ and other documents on the Case File relate to the capture and killing of Vietnamese persons on and/or around Koh Tang Island.³⁷ Evidence has also been placed on the Case File in relation to the installation and use by the DK Navy of a radar installation on Koh Tang Island.³⁸ I am therefore satisfied that there is already sufficient evidence on the Case File in relation to these matters.
31. In relation to ascertaining with the witness the location of other relevant buildings on Koh Tang Island, I am neither satisfied that it would be an efficient use of the OCIJ's resources nor that it would be beneficial to have the witness attend and provide information he has already given under oath, by sketching the island.³⁹ Even if the witness were to identify more accurately specific locations on the island, I am not satisfied that such information will enhance the evidence on the Case File. In addition, based on the OCIJ's experience to date with the Royal Cambodian Armed Forces, whose assistance would be required to fulfil the request, I do not expect it will be possible to undertake the request in a timely manner.
32. I am also not satisfied that the ICP has established that there are exceptional circumstances justifying the granting of Request 1 at this stage in the investigation. In particular, there are no clear indications that the requested action could yield new evidence capable of substantially changing or rebutting evidence on the Case File.
33. Request 1 is denied, hence it is not necessary to address the Defence Request.

³⁵ Case File No. 003-D54/102, *Written Record of Interview of Ek Ni (Ek Ny)*, 3 April 2014, ERN01001475-ERN01001476, A38-A39, A41-A42; Case File No. 003-D114/282, *Written Record of Interview of witness Ek Ni*, 23 November 2016, ERN01373284-ERN01373285, A57, A59-A63; Case File No. 003-D114/283, *Written Record of Interview of witness Ek Ni*, 24 November 2016, ERN01373290-ERN01373292, A22-A23, A29-A30, A32, A34, A37, A39; Case File No. 003-D114/284, *Written Record of Interview of witness Ek Ni*, 25 November 2016, ERN01373299-ERN01373300, A13-A16; Case File No. 003-D114/284.1, *Annex: Sketch of Places*, 25 November 2016.

³⁶ Case File No. 003-D114/57, *Written Record of Interview of witness Sam Soam*, 19 March 2015, ERN01089938-ERN01089939, A10-A28; Case File No. 003-D54/106, *Written Record of Interview of Sann Kan*, 10 June 2014, ERN01044934-ERN01044935, A84-A86, A91; Case File No. 003-D54/23, *Written Record of Interview of Pak Sok*, 18 October 2013, ERN00977534-ERN00977535, A25, A28-A29; Case File No. 003-D54/25, *Written Record of Interview of Pak Sok*, 19 October 2013, ERN00977714, ERN00977716-ERN00977717, A11, A20, A22.

³⁷ Case File No. 003-D54/11.2, *Confidential telephone message on 20/3/78: To respected Brother 89 about situation on the sea*, 20 March 1978; Case File No. 003-D1.3.34.64, *Confidential telephone message on 20/3/78: To respected Brother 89 about situation on the sea*, 20 March 1978.

³⁸ Case File No. 003-D2/9, *Written Record of Interview of Say Born*, 7 September 2010, ERN00613022, ERN00613024, A41, A61; Case File No. 003-D114/186, *Written Record of Interview of Witness Shat Chek*, 14 March 2016, ERN01251775, ERN01251777-ERN01251778, A79, A100-104; Case File No. 003-D54/13.1, *Minutes of the Meeting of Comrades 164: Report on Vessel Training*, 9 September 1976.

³⁹ Case File No. 003-D114/284.1, *Annex: Sketch of Places*, 25 November 2016.

C. Request 2 – additional interviews of witnesses regarding Kang Keng

34. The ICP requests that the CIJs re-interview Meas Im and Hing Uch and interview Neak Yan. Regarding the request to question Meas Im in relation to Meas Muth,⁴⁰ the witness was summoned to appear for an interview with the OCIJ on 9 March 2017.⁴¹ On 9 March 2017 however, when the witness appeared for interview he reported that he was suffering from tuberculosis and high blood pressure. Following medical examination by the ECCC medical doctor and on the recommendation of security, the interview was not carried out.⁴² In light of the witness's overall behaviour in relation to attempts to interview him I regard the witness as uncooperative and, given the stage of the investigation, do not consider it to be an efficient use of resources to pursue further attempts to interview him.
35. I am otherwise satisfied there is already sufficient evidence on the Case File in relation to the working and living conditions at the Kang Keng worksite, regarding, in particular, the allegations that workers had insufficient food, were overworked and unpaid, were required to perform farming and construction work, were unable to rest or visit families, and that some disappeared and did not return.⁴³ It is therefore unnecessary to re-interview Hing Uch or interview Neak Yan in relation to these matters. The request in relation to Hing Uch is also insufficiently precise in its reference to "any other relevant areas".⁴⁴ Request 2 is denied.

D. Request 3 – interview of witness regarding Bet Trang

36. The ICP requests that the CIJs interview Chuon Mao, an unfollowed lead, in relation to the Bet Trang worksite. I am satisfied that there is already sufficient evidence on the Case File regarding the number of workers on the Bet Trang dam site, their backgrounds, working hours and conditions, and that some were removed and disappeared, and the destruction of a pagoda at Bet Trang.⁴⁵ It is therefore unnecessary to attempt to contact and interview Chuon Mao.

⁴⁰ Request, para. 9.

⁴¹ Case File No. 003-A225, *Summons of Witness Meas Im*, 17 February 2017.

⁴² Case File No. 003-D114/308, *Written Record of Investigation Action*, 11 April 2017.

⁴³ Case File No. 003-D2/6, *Written Record of Interview of Nhoung Chrong*, 24 August 2010, ERN00607259-ERN00607260, A24-A30; Case File No. 003-D54/97, *Written Record of Interview of Khoem Yat*, 23 May 2014, ERN01074509, ERN01074515, A10, A36; Case File No. 003-D114/86, *Written Record of Interview Witness Chet Bunna*, 16 June 2015, ERN01119979, A12; Case File No. 003-D114/121, *Written Record of Interview of Witness Suon Phar*, 10 September 2015, ERN01168314, ERN011683316, A23, A32-A36; Case File No. 003-D114/135, *Written Record of Interview of Witness Nub Phorn*, 26 October 2015, ERN01178903-ERN01178905, A23, A27-A29, A32, A38-A39; Case File No. 003-D114/89, *Written Record of Interview Witness Seng Sin*, 24 June 2015, ERN01128190-ERN01128192, A72, A79-A80, A82-A83, A103-A104; Case File No. D54/115, *Written Record of Interview of Neak Yoeun*, 6 August 2014, ERN01032428-ERN01032430, A13-A23; Case File No. 003-D114/116, *Written Record of Interview of Witness Svay Saman*, 4 September 2015, ERN01172473, A26-A33; Case File No. 003-D114/146, *Written Record of Interview of Witness Uy Nhoek*, 14 December 2015, ERN01185629-ERN01185630, A49.

⁴⁴ Request, para. 10.

⁴⁵ Case File No. 003-D54/19, *Written Record of Witness Interview Nou Saroeun*, 16 August 2013, ERN00977287, A3; Case File No. 003-D114/31, *Written Record of Interview of Moul Chhin*, 17 December 2014, ERN01056659, ERN01056669, ERN01056672-ERN01056674, A18, A89, A111-A124; Case File No. 003-D114/96, *Written Record of Interview of Witness Cheng Laung*, 25 July 2015, ERN01142629, A69-A72; Case File No. 003-D114/139, *Written Record of Interview of Witness Nguon Lay*, 16 November 2015, ERN01184830-ERN01184831, A103, A106, A108; Case File No. 003-D114/179, *Written Record of Interview of Witness Snguon Chhum*, 25 February 2016, ERN01226864-ERN01226865, A53, A58-A59; Case File No. 003-D54/18, *Written Record of Witness Interview Nou Saroeun*, 15 August 2013, ERN0977278-ERN00977280, A11-A23; Case File No. 003-D114/239, *Written Record of Interview of Witness Sao Men*, 5 August 2016, ERN KH 01318497, A20, A23.

37. Further, I am not satisfied that the ICP has demonstrated exceptional circumstances justifying the grant of Request 3. There are no clear indications that the requested actions could yield new evidence capable of substantially changing or rebutting evidence on the Case File. On the contrary, the ICP asserts that Chuon Mao may be able to confirm the evidence of witness Snguon Chhum.⁴⁶ Request 3 is denied.

E. Request 4 – interview of witnesses regarding S-21

38. The ICP requests that the CIJs interview Chhun Phal and Kung Phai in relation to, *inter alia*, Vietnamese and other foreigners at S-21 and the presence of Division 164 and Division 117 cadres and combatants at S-21.

39. Chhun Phal was interviewed on 23 February 2017 and Kung Phai was interviewed on 28 February 2017.⁴⁷ The requested topics were put to the witnesses in the interviews: questions were asked regarding, for example, the presence of Vietnamese and foreign nationals at S-21; the circumstances of their arrest, including the units responsible for their arrest; the period of their imprisonment; the conditions of detention, including interrogation and physical torture; and their ultimate fate.⁴⁸

F. Request 5 – interviews of witnesses regarding Toek Sap

40. The ICP requests that the CIJs identify and interview additional witnesses in regards to a prison at Ou Kombat. The CIJs became seised of the Toek Sap crime site pursuant to the *International Co-Prosecutor's Response to Forwarding Order Regarding Toek Sab Prison* which clarified that the investigation should encompass “*any associated locations, such as sites at which victims were interrogated and/or tortured immediately before, during or after their imprisonment at Toek Sab, as well as execution sites at which Toek Sab prisoners were killed*”.⁴⁹ The Supplementary Submission used similar language (“*any associated locations such as interrogation/torture and execution sites*”) to clarify the scope of the investigation.⁵⁰

41. Regarding evidence relating to Ou Kombat, the first mention of the worksite was in a civil party application which made no mention of any military presence or prison.⁵¹ Witnesses have since referred to the location of Ou Kombat, one without providing further information, two noting fighting at the location before April 1975, and one noting that Company 420 of Division 3 was stationed at Toek Sap and Ou Kombat.⁵² Witness San Chuon gave evidence that he was imprisoned at Ou Kombat with eight to ten others

⁴⁶ Request, para. 12.

⁴⁷ Case File No. 003-A228, *Summons of Witness Chhun Phal*, 17 February 2017; Case File No. 003-A226, *Summons of Witness Kung Phai*, 17 February 2017; Case File No. 003-D114/301, *Written Record of Interview of Witness Chhun Phal*, 23 February 2017 (“Chhun Phal WRI”); Case File No. 003-D114/302, *Written Record of Interview of Witness Kung Phai*, 28 February 2017 (“Kung Phai WRI”).

⁴⁸ Chhun Phal WRI, ERN KH 01396539-01396545, 01396547, A5, A7, A17, A21-A22, A32, A34-A36, A40-A41, A48, A60, A77; Kung Phai WRI, ERN KH 01396553, 01396555-01396558, 01396562-01396568, A10-A11, A25, A35, A40, A43, A73, A76, A81, A85, A93, A95-A101, A111.

⁴⁹ Case File No. 003-D102/1, *International Co-Prosecutor's Response to Forwarding Order Regarding Toek Sab Prison*, 20 June 2014, paras 3-4.

⁵⁰ Supplementary Submission, para. 11.

⁵¹ Case File No. 003-D11/488, *Civil Party Application of Nop Nat*, 16 October 2009, p. 19.

⁵² Case File No. 003-D114/182, *Written Record of Interview of Witness Houg Kham*, 3 March 2016, ERN01226323, A18; Case File No. 003-D114/68, *Written Record of Interview Witness Kuy Sambathe*, 1 May 2015, ERN01111724, A9; Case File No. 003-D54/12, *Written Record of Witness Interview - Pres Mean (25-06-2013)*, 25 June 2013, ERN0977249, A4; Case File No. 003-D114/112, *Written Record of Interview of Witness Oem Sokhan*, 27 August 2015, ERN01170520, A13; Case File No. 003-D114/217, *Written Record of Interview of Witness Neak Khoeurn*, 13 June 2016, ERN01348469, A28.

for five to six months before the Vietnamese invasion. He confirmed the location given by previous witnesses, and gave evidence that the site was controlled by the military, he was put to work there, there were no other prisoners there besides the group with which he arrived, and no one was interrogated, tortured or killed there.⁵³ The *Site Identification Report* by the investigator states that San Chuon identified the site of a former prison and worksite at Ou Kombot and further notes that it is unclear whether Ou Kombot can be considered a sub-site of Toek Sap.⁵⁴

42. Having reviewed the relevant evidence on the Case File, I am satisfied that it does not support the proposition that Ou Kombot is part of or associated with Toek Sap prison. It appears to be, at most, a minor worksite and possibly a temporary and *ad hoc* place of detention. There is no evidence suggesting torture or killings occurred there.
43. Furthermore, Request 5 is insufficiently specific, requesting that “*further investigations be carried out in order to identify and interview other former Division 164 individuals who were either imprisoned at that location and survived, guarded it or had authority over it, as well as any civilian residing in the area who would have been aware of its existence*”.⁵⁵ Undertaking such open-ended further investigations at this stage in the proceedings would likely (i) unduly delay proceedings, potentially infringing Meas Muth’s right to a fair trial; and (ii) require the use of resources disproportionate to any potential benefit. Finally, the ICP has failed to demonstrate exceptional circumstances justifying the requested action at this stage in proceedings. Request 5 is denied.

G. Request 6 – interview of Division 164 cadres identified by Meas Muth

44. The ICP requests that the CIJs seek confirmation of the health of Khem Ngon, with a view to interviewing him. On 24 February 2017 an OCIJ legal officer met Khem Ngon’s doctor who stated that due to ongoing health problems Khem Ngon cannot be interviewed anytime in the near future.⁵⁶ Given this information and the stage of the investigation, no further attempts to interview the witness will be pursued.

H. Request 7 – interview of witnesses regarding forced marriage

45. The ICP considers that the investigation into forced marriage is incomplete and requests that the CIJs identify and interview additional witnesses, re-interview at least 10 witnesses, and interview spouses of witnesses that married in the Kampong Som region during the DK regime. The Defence rightly submit that Request 7 raises concerns of timeliness.
46. I have reviewed the evidence on the Case File and am satisfied that the ICP’s claim regarding the incompleteness of the investigation into forced marriage is unsubstantiated. The Supplementary Submission, which seized the CIJs of the investigation into forced marriage, was based on seven Case 003 witnesses who made statements about the existence of facts that could amount to SGBV crimes. Leads identified by those initial seven witnesses were interviewed and their evidence, along with other relevant documentary evidence, was added to the Case File. Preliminary investigation into SGBV crimes had already been undertaken prior to Meas Muth being charged by my predecessor on 3 March 2015. The OCIJ only undertook subsequent further investigations in relation

⁵³ Case File No. 003-D114/220, *Written Record of Interview of Witness San Chuon*, 16 June 2016, ERN01395481-ERN01395484, ERN01395491, A4-A20, A67.

⁵⁴ Case File No. 003-D114/275, *Site Identification Report*, 2 November 2016, p. 3, 6.

⁵⁵ Request, para. 18.

⁵⁶ Case File No. 003-D114/306, *Written Record of Investigation Action*, 15 March 2017.



to SGBV crimes, with the 14 witnesses specifically identified by the ICP in the Request⁵⁷ and with other witnesses, when there was reasonable cause for that line of questioning. As such, the last comprehensive interviews in relation to SGBV crimes were conducted in early 2016.

47. I am in any event satisfied that the Case File contains sufficient evidence on the topics of forced marriages in Kampong Som, within the Navy, and the CPK policy on marriage, including evidence relevant to the allegations that (i) couples were forced to marry and/or had weddings arranged for them;⁵⁸ (ii) group or collective weddings occurred in which at least some couples were forced to marry;⁵⁹ (iii) in many instances the first time a couple met was on the day of the wedding or in the preceding several days;⁶⁰ (iv) ceremonies were often conducted by cooperative chairpersons and/or were attended by cadres and civilian CPK personnel;⁶¹ (v) individuals were fearful of repercussions if they refused to marry, including being assigned harder work, and being imprisoned, beaten or killed;⁶² (vi) couples frequently spent a period of several days together after a wedding, and some

⁵⁷ Request, note 66.

⁵⁸ Case File No. 003-D114/38, *Written Record of Interview Witness Chum Roem*, 29 January 2015, ERN01067839, A89; Case File No. 003-D114/103, *Written Record of Interview of Witness Liet Lorn*, 11 August 2015 (“Liet Lorn WRI”), ERN01148778-ERN01148780, A160-A174; Case File No. 003-D114/32, *Written Record of Interview of Civil Party Meas Saran*, 29 December 2014 (“Meas Saran WRI”), ERN01057618, A2-A6; Case File No. 003-D114/117, *Written Record of Interview of Witness Nav Sokhan*, 7 September 2015 (“Nav Sokhan WRI”), ERN01170565, A218-A228; Case File No. 003-D114/78, *Written Record of Interview Witness Svay Sameth*, 28 May 2015 (“Svay Sameth WRI”), ERN01115933, A22-A24; Case File No. 003-D114/47, *Written Record of Interview of Civil Party Teu Ry*, 18 February 2015 (“Teu Ry WRI”), ERN01079940, A85; Case File No. 003-D114/129, *Written Record of Interview of Witness Oem Hun*, 30 September 2015 (“Oem Hun WRI”), ERN0116383, A72-A74; Case File No.003-D114/297.1.1, *Written Record of Interview Witness Ruos Suy*, 7 July 2015 (“Ruos Suy WRI”), ERN01147808-ERN01147809, A75; Case File No.003-D114/75, *Written Record of Interview Witness Sin Sispohal*, 25 May 2015 (“Sin Sispohal WRI”), ERN01111743-ERN01111744, A7-A26; Case File No. 003-D114/53, *Written Record of Interview Witness Uk Sok*, 25 February 2015 (“Uk Sok WRI”), ERN01076794, A293; Case File No. 003-D114/87, *Written Record of Interview Witness Chhuk Rin*, 16 June 2015 (“Chhuk Rin WRI”), ERN01118174, A70; Case File No. 003-D114/34, *Written Record of Interview of Civil Party Nap Somaly*, 22 January 2015 (“Nap Somaly WRI”), ERN01069371, A141; Case File No. 003-D114/183, *Written Record of Interview of Witness Beit Boeurn*, 3 March 2016 (“Beit Boeurn WRI”), ERN01300049, A198; Case File No. 003-D114/33, *Written Record of Interview of Hem Ang*, 24 December 2014 (“Hem Ang WRI”), ERN01074451, A157.

⁵⁹ Liet Lorn WRI, ERN01148785, A211; Meas Saran WRI, ERN01057618, A4-A5; Nav Sokhan WRI, ERN01170566, A231; Case File No. 003-D114/83, *Written Record of Interview Witness Sok Neang*, 11 June 2015 (“Sok Neang WRI”), ERN01128182, A45-A46; Svay Sameth WRI, ERN01115933-ERN01115934, A30-A31; Teu Ry WRI, ERN01079942-ERN01079943, A96, A110; Case File No. 003-D114/95, *Written Record of Interview of Witness Yoem Sroeng*, 27 July 2015 (“Yoem Sroeng WRI”), ERN01137219, A265-A267; Beit Boeurn WRI, ERN01300049, A198; Hem Ang WRI, ERN01074451, A155; Case File No.003-D114/120, *Written Record of Interview of Witness Oum It*, 9 September 2015 (“Oum It WRI”), ERN01168300, A23; Sin Sispohal WRI, ERN01111746, A50; Uk Sok WRI, ERN01076791, A268; Chhuk Rin WRI, ERN01118174, A70; Case File No. 003-D114/171, *Written Record of Interview of Witness Kev Sarourn*, 16 February 2016 (“Kev Sarourn WRI”), ERN01223473, A28; Nap Somaly WRI, ERN01069372, A148.

⁶⁰ Liet Lorn WRI, ERN01148779, A168; Nav Sokhan WRI, ERN01170566, A232; Case File No. 003-D114/94, *Written Record of Interview of Civil Party Applicant Sam Vuthy*, 22 July 2015, ERN001349478, A105; Svay Sameth WRI, ERN01115933, A22; Teu Ry WRI, ERN01079944, A111-A113; Oem Hun WRI, ERN0116384, A80-A83; Oum It WRI, ERN01168300, A24; Sin Sispohal WRI, ERN01111744, A32; Uk Sok WRI, ERN01076794, A295-A297; Kev Sarourn WRI, ERN01223473, A29.

⁶¹ Liet Lorn WRI, ERN01148780, A175-A176; Meas Saran WRI, ERN01057620-ERN01057622, A21-A28; Hem Ang WRI, ERN01074451, A159; Oum It WRI, ERN01168300, A23; Sin Sispohal WRI, ERN01111745, A42-A43.

⁶² Meas Saran WRI, ERN01057622, A32; Svay Sameth WRI, ERN01115933-ERN01115934, A24, A32; Teu Ry WRI, ERN01079942-ERN01079943, A101-A106; Yoem Sroeng WRI, ERN01137219, A263, A266-A267; Ruos Suy WRI, ERN01147810, A83; Uk Sok WRI, ERN01076795, A299; Chhuk Rin WRI, ERN01118174, A70; Nap Somaly WRI, ERN01069371, ERN01069373, A141, A154-A157.

were told to consummate the marriage or were placed under surveillance to determine if they had consummated their marriage;⁶³ and (vii) forced and arranged marriages were often instructed or arranged by senior members of the CPK and were part of a broader CPK policy to increase the population.⁶⁴ I am therefore satisfied the investigation into forced marriage is complete.

48. The request to identify and interview “*other female witnesses who married in Kampong Som during the DK era*”⁶⁵ is insufficiently precise and in the absence of identified leads does not give a clear indication of who the CIJs should attempt to locate and interview. As such, undertaking the request would likely (i) unduly delay proceedings, potentially infringing Meas Muth’s right to a fair trial; and (ii) require the use of resources disproportionate to any potential benefit. In addition, the evidence pertaining to the forced marriage investigation has been on the Case File since early 2016, and, as noted by the Defence in the Response, no explanation has been given as to why the request has only been made now.
49. Notwithstanding these considerations, I have reviewed the witness statements of the persons identified for re-interview. I am satisfied that only one of the 17 witnesses identified for re-interview,⁶⁶ Chuon Thi, provided evidence demonstrating sufficient knowledge of CPK policy on forced marriage to warrant further exploration. Chuon Thi was summoned and re-interviewed on 28 February 2017.⁶⁷
50. The spouses of most cadre witnesses, where alive and available, have been interviewed.⁶⁸ Only the spouses of four witnesses (Liet Lan, Oum It, Nguon Lay, and Svay Sameth) were not interviewed. Following review of the evidence of Oum It and Svay Sameth,⁶⁹ I am satisfied that their evidence did not present any exceptional or unique elements and, being purely corroborative of existing evidence, did not warrant interviewing their

⁶³ Liet Lorn WRI, ERN01148782-ERN01148783, A190-A201; Meas Saran WRI, ERN01057623-ERN01057626, A40-A60; Nav Sokhan WRI, ERN01170571, A305-A313; Yoem Sroeung WRI, ERN01137218-ERN01137219, A259-A262; Hem Ang WRI, ERN01074456-ERN0107457, A192-A198; Oem Hun WRI, ERN0116386-ERN0116387, A100-A103; Oum It WRI, ERN01168300, A23-A25; Uk Sok WRI, ERN01076796, A308-A316.

⁶⁴ Liet Lorn WRI, ERN01148783-ERN01148784, A202-A209; Case File No. 003-D114/91, *Written Record of Interview Witness Seng Ol*, 13 July 2015, ERN01147531, A158-A159; Sok Neang WRI, ERN01128182, A45-A46; Yoem Sroeung WRI, ERN01137217, A253; Case File No. 003-D114/123, *Written Record of Interview of Witness Chuon Thy*, 18 September 2015, ERN01168344-ERN01168350, A23-A54; Ruos Suy WRI, ERN01147807-ERN01147811, A71-A91; Sin Sisphal WRI, ERN01111752, A130; Case File No.003-D114/198, *Written Record of Interview of Witness Pin Samoun*, 18 April 2016, ERN01246899, A97-A99.

⁶⁵ Request, para. 25.

⁶⁶ *Ibid.*

⁶⁷ Case File No. 003-A227, *Summons of Witness Chhuon Thi*, 17 February 2017; Case File No. 003-D114/303, *Written Record of Interview of witness Chuon Thy*, 28 February 2017.

⁶⁸ Case File No. 003-D114/33, *Written Record of Interview Hem Ang*, 24 December 2014, and the interview of his spouse, Case File No. 003-D114/134, *Written Record of Interview of Suon Sann*, 19 October 2015; Case File No. 003-D114/64, *Written Record of Interview of Witness Em Sarin*, 23 April 2015, and the interview of his spouse, Case File No. 003-D114/129, *Written Record of Interview of Witness Oem Hun*. The spouse of witness Nav Sokan died, Case File No. 003-D114/117, *Written Record of Interview of Witness Nav Sokhan*, 7 September 2015, ERN01170567, A250; the spouse of witness Meas Saran was arrested and disappeared, Case File No. 003-D114/32, *Written Record of Interview of Civil Party Meas Saran*, 29 December 2014, ERN01057627, A69-A75; the spouse of witness Uk Sok has not been seen by the witness since 1979, Case File No. 003-D114/53, *Written Record of Interview Witness Uk Sok*, 25 February 2015, ERN01076792, A278.

⁶⁹ Case File No. 003-D114/120, *Written Record of Interview of Witness Oum It*, 9 September 2015; Case File No. 003-D114/78, *Written Record of Interview of Witness Svay Sameth*, 28 May 2015.

spouses. Vun Na (Liet Lan's former spouse) was interviewed on 7 March 2017.⁷⁰ Nao Choeun (Nguon Lay's spouse) was summoned for interview on 15 March 2017, however, she was unable to attend an interview until April 2017 and therefore, considering the stage of the investigation and that I am satisfied that the investigation is complete, she will not be interviewed.⁷¹

I. Request 8 – interviews with Meas Muth

51. The ICP requests that copies of the Film, the Transcript, and the Interview be placed on Case File 003 and that the CIJs attempt to obtain the Film Interview. I am satisfied that Request 8 satisfies both the specificity requirement and the *prima facie* relevance requirement. While the ICP did not explicitly set out exceptional circumstances justifying the investigative action at this stage of the investigation, I am satisfied that Request 8, which pertains directly to statements made by the charged person, Meas Muth (in particular in relation to his knowledge of military purges and CPK policies towards perceived enemies of the CPK), satisfies the criterion.
52. While I agree with the Defence that the request could have been made in a more timely manner, I do not consider that the time involved in undertaking (or attempting to undertake) Request 8 will adversely affect the timing of the investigation, or the fair trial rights of Meas Muth, and accordingly the request is granted in respect of placing copies of the Film, the Transcript, and a copy of the transcript of the Interview onto Case File 003. An online order has been placed for the Film, which will be placed on the Case File when available. The Transcript and a transcript of the Interview were both added on 28 March 2017.⁷²
53. In relation to the Film Interview, an OCIJ investigator contacted Robert Hamill on 21 February 2017 by email requesting a copy by 13 March 2017. On 24 February 2017, Robert Hamill agreed in principle to do so, however, he also indicated that some effort and time would be required to convert the outdated footage into a transferable current format. He further indicated on 9 March 2017 that he had not located the original footage and could not be certain when or where it would be found.⁷³ Given the stage of the investigation, the uncertainty of the time involved in obtaining the Film Interview footage, the potentially low evidentiary value of portions of the Film Interview not included in the Film, and that this is the second attempt to obtain the Film Interview,⁷⁴ I have decided not to pursue further attempts to obtain it.

⁷⁰ Case File No. 003-A229, *Summons of Witness Vun Buunna*, 24 February 2017; Case File No. 003-D114/304, *Written Record of Interview of Witness Vun Bunna*, 7 March 2017.

⁷¹ Case File No. 003-A230, *Summons of Witness Nao Choeun*, 7 March 2017; Case File No. 003-D114/305, *Written Record of Investigation Action*, 13 March 2017; Case File No. 003-D114/305.1, *Letter from WESU dated 14 March 2017*, 14 March 2017.

⁷² Case File No. 003-D114/307, *Written Record of Investigation Action*, 28 March 2017.

⁷³ *Ibid.*; Case File No. 003-D114/307.2, *Annex 2*, 30 March 2017; Case File No. 003-D114/307.4, *Annex 4*, 30 March 2017; Case File No. 003-D114/307.3, *Annex 3*, 30 March 2017.


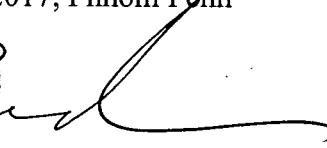
⁷⁴ Case File No. 003-D114/307.1, *Annex 1*, 30 March 2017.

FOR THE FOREGOING REASONS, I:

- 54. **INFORM** the ICP that the Request has been performed in part as set out above;
- 55. **INFORM** the ICP that a copy of the Film will be placed onto Case File 003 once received by the OCIJ;
- 56. **DENY** the remainder of the Request;
- 57. **DENY** the Defence Request; and
- 58. **INSTRUCT** the OCIJ Greffier to reclassify all Strictly Confidential Case 003 documents referenced in this Decision, as listed in the Annex to this Decision, to Confidential.

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

Dated 19 April 2017, Phnom Penh



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