



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King

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DECISION ON AO AN’S SIXTH REQUEST FOR  
INVESTIGATIVE ACTION

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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 27 March 2015, my predecessor notified Ao An of his decision to charge him for the commission of crimes at Tuol Beng Security Centre, Kok Pring execution site, and Wat Au Trakuon Security Centre.<sup>1</sup>
3. On 20 November 2015, the Ao An Defence (“Defence”) filed the *Sixth Request for Investigative Action* (“Request”).<sup>2</sup>
4. On 14 March 2016, I charged Ao An with the commission of further crimes at Anlong Chrey Dam Forced Labour Site, Met Sop (Kor) Security Centre, Angkuonh Dei Pagoda, Wat Batheay Security Centre, Wat Phnom Pros Security Centre, Wat Ta Meak Security Centre, Chamkar Svay Chanty Security Centre, Wat Baray Chan Dek Security Centre, Wat Srange Security Centre. I also charged Ao An with the crimes of forced marriage in Kampong Siem and Prey Chhor Districts, and Genocide of the Cham in Kampong Cham Province. I charged Ao An in his former capacities as Deputy Secretary of the Central (old North) Zone, Member of the Central (old North) Zone Committee, and Secretary of Sector 41 in the Central (old North) Zone.<sup>3</sup>
5. On 25 August 2016, in the *Notice of Provisional Discontinuance Regarding Individual Allegations*, I informed the parties that I will not further investigate the allegations relating to crime sites in Sector 42 and Sector 43, but may resume the investigation if compelling circumstances present themselves.<sup>4</sup>

## II. SUBMISSIONS

6. In the Request, the Defence ask for further investigation into command structures and *de facto* decision-making power of individuals in the Central Zone, and within Sectors 41, 42, and 43.
7. The Defence submit that the International Co-Prosecutor’s (“ICP”) allegations in the Third Introductory Submission (“3IS”) are based on a *de jure* command structure, as set out in the Statute of the Communist Party of Kampuchea (“CPK Statute”) and the Constitution of Democratic Kampuchea (“Constitution”).<sup>5</sup> In contrast, the Defence contend that there were unofficial command structures, and much power was held by Ta Mok’s and Ke Pauk’s relatives, who assumed authority over key matters such as security.<sup>6</sup>
8. The request is divided into three sub-requests, each of which relate to a sector within the Central Zone. The first part of the Request relates to the *de facto* decision-making structures and chains of command in Sector 41.<sup>7</sup> In particular, the Defence request that the CIJs:

<sup>1</sup> Case File No. 004-D242, *Written Record of Initial Appearance of Ao An*, 27 March 2015.

<sup>2</sup> Case File No. 004-D276, *Sixth Request for Investigative Action*, 20 November 2015 (“Request”).

<sup>3</sup> Case No. 004-D303, *Written Record of Further Appearance of Ao An*, 14 March 2016.

<sup>4</sup> Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016, paras 13-14.

<sup>5</sup> Request, paras 10-11.

<sup>6</sup> *Ibid.*, paras 11, 15, 21.

<sup>7</sup> *Ibid.*, paras 23-27.



- a) investigate whether Um Sim is alive, and if so, interview him regarding several specified topics;
  - b) identify and interview witnesses like To Sem concerning Um Sim's *de facto* authority and decision-making power in Sector 41; Um Sim's relationship with Ke Pauk; and whether Um Sim continued to report to, receive orders from, or maintain a link with Ta Mok after he was sent to the Central Zone;
  - c) re-interview To Sem regarding several specified topics;
  - d) place on the Case File photographs of Um Sim that To Sem or DC-Cam may have in their possession;
  - e) identify and interview the family members of To Sem and Um Sim, including Ta Sorn, Yeay Men, Um Than (m), Um Than (f), Um ThonUm Khoeung, To Sœur, To Sim, To Ram, and To Sun;
  - f) identify and interview telegram operators and messengers, including Suon Kanil, Lim Seng, and Pon Ol; and
  - g) identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 41.<sup>8</sup>
9. The second part of the Request relates to the *de facto* decision-making structures and chains of command in Sector 42, and in particular the authority of Oeun and Sou Soeun within the sector.<sup>9</sup> Here the Defence request that the CIJs:
- a) re-interview Tep Pauch, Ban Siek, and Sou Soeun;
  - b) interview Hang Kim Yen;
  - c) identify and interview telegram operators and messengers in Sector 42;
  - d) locate and interview Hap and Chuon; and
  - e) identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 42.<sup>10</sup>
10. The third part of the Request relates to the *de facto* decision-making structures and chains of command in Sector 43.<sup>11</sup> The Defence ask that the CIJs:
- a) identify and interview witnesses, including Sector 43 messengers Chann Sang and Lim Seng, regarding communications between Um Sim and Ke Pauk, Um Sim and Ta Mok, Ke Pauk and Ta Mok, or Um Sim and his subordinates;
  - b) identify and interview other messengers, drivers and telegram operators who may have information about communications in Sector 43;
  - c) identify and interview witnesses who may have information about the decision-making structures and chains of command in Sector 43, and who may be able to identify other family members holding positions of authority; and

<sup>8</sup> *Ibid.*, para. 26.

<sup>9</sup> *Ibid.*, paras 28-32.

<sup>10</sup> *Ibid.*, para. 31.

<sup>11</sup> *Ibid.*, paras 33-36.



- d) identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 43.<sup>12</sup>
11. The Defence submit that these investigative actions will likely lead to *prima facie* exculpatory evidence regarding the allegations that Ao An ordered the perpetration of certain crimes in those sectors, as well as allegations that he had effective control over the Central Zone and the respective sectors.<sup>13</sup> In particular, the Defence submit that the Request will assist the Defence case that Ao An did not have knowledge of, or decision-making authority over, security matters in the Central Zone and Sectors 41, 42, and 43.<sup>14</sup>

### III. DISCUSSION

12. The Pre-Trial Chamber 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”).*<sup>15</sup>
13. 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*.”<sup>16</sup> Consequently, I am not required to grant general or speculative requests to look for exculpatory evidence.<sup>17</sup> Rather, the requesting party must point specifically towards the presence of the evidence that is sought.<sup>18</sup> 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.<sup>19</sup>
14. The 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.*”<sup>20</sup> Secondly, the request “*must detail why the requested information is conducive to ascertaining the truth*.”<sup>21</sup> This requires the requesting party to establish a

<sup>12</sup> *Ibid.*, para. 35.

<sup>13</sup> *Ibid.*, paras 27, 32, 36.

<sup>14</sup> *Ibid.*, paras 2, 21.

<sup>15</sup> 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.

<sup>16</sup> Reconsideration Decision, para. 48.

<sup>17</sup> *Ibid.*, paras 48 & 51.

<sup>18</sup> 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.

<sup>19</sup> Reconsideration Decision, para. 48.

<sup>20</sup> *Ibid.*, para. 49.

<sup>21</sup> *Ibid.*, para. 50



*prima facie* nexus between the requested investigative action and a matter within the scope of the investigation.<sup>22</sup> Where the request concerns exculpatory evidence, the requesting party must demonstrate a *prima facie* reason that the investigative action may yield exculpatory evidence.<sup>23</sup>

#### A. Sector 41

a) *Investigate whether Um Sim is alive and, if so, interview him regarding several specified topics.*

15. On 3 February 2016, an OCIJ investigator interviewed Um Sim's wife To Sem, and she confirmed that Um Sim is deceased.<sup>24</sup> She also stated that she did not have his death certificate because she never applied for one.<sup>25</sup> There are no circumstances suggesting that To Sem may have lied in relation to her husband's demise. I am thus satisfied that Um Sim is deceased and do not consider it necessary to further investigate the fact of his death.

b) *"Identify and interview witnesses, like To Sem, concerning Um Sim's de facto authority and decision-making power in Sector 41, his relationship with Ke Pauk and whether he continued to report to, receive orders from, or maintain a link with Ta Mok after he was sent to the Central Zone."*

16. The Defence have not identified any particular witnesses to be interviewed, but have instead asked me to identify witnesses like To Sem, and interview them regarding Um Sim's involvement in Sector 41.

17. An OCIJ investigator interviewed To Sem after the Defence filed the Request. She stated that her late husband Um Sim had frequent meetings with Ke Pauk, but she was unable to provide specific details about the contents of those meetings.<sup>26</sup> To Sem stated that she and her husband Um Sim continued to report to Ta Mok after arriving in the Central Zone, but was unable to provide specific dates and details about the reports.<sup>27</sup> On the basis of these answers, I am not convinced that To Sem can give any more detailed evidence regarding her late husband's *de facto* authority and decision-making power in Sector 41, or his relationships with Ke Pauk and Ta Mok.

18. The remainder of this request is insufficiently specific for me to properly consider it. It is for the Defence to provide sufficiently precise information to give clear indications as to what specific investigative action they request the CIJs to perform.<sup>28</sup> Over the course of the investigation, OCIJ investigators

<sup>22</sup> *Ibid.*, paras 50-51.

<sup>23</sup> 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.

<sup>24</sup> Case File No. 004-D219/677, *Written Record of Interview of witness TO Sem*, 3 February 2016, A1-A3; Case File No. 004-D219/677.1, *Attachment: Photograph of UM Sim*, 3 February 2016; Case File No. 004-D119/70/3, *DC-Cam Interview of TO Sem*, 18 August 2013, p. 2; Also corroborated by Tep Pauch: Case File No. 004-D117/19, *Written record of witness interview of TEP Pauch*, 4 March 2013.

<sup>25</sup> Case File No. 004-D219/677, *Written Record of Interview witness TO Sem*, 3 February 2016, A1.

<sup>26</sup> *Ibid.*, A8.

<sup>27</sup> Case File No. 004-D219/677, *Written Record of Interview witness TO Sem*, 3 February 2016, A18-A20.

<sup>28</sup> Case File No. 002-D164/3/6, *Decision on the Appeal From the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*, 12 November 2009, paras 40-45; *Reconsideration Decision*, para. 48.



have interviewed numerous witnesses regarding Um Sim's *de facto* authority and decision-making power in Sector 41.<sup>29</sup> Where relevant, investigators have also questioned witnesses regarding Um Sim's relationship with Ke Pauk,<sup>30</sup> and whether he continued to report to, receive orders from, or maintain a link with Ta Mok after he was sent to the Central Zone.<sup>31</sup> As I stated above, OCIJ investigators will continue to search for evidence relevant to the decision-making structures in Sector 41, including Um Sim's role in the sector.

c) *Re-interview To Sem to provide information about various issues*

19. The Defence request that the CIJs re-interview To Sem to provide information about: (1) her familial relationship with Ta Mok and her role in the Khmer Rouge; (2) her and her husband's relationship with Ke Pauk; (3) continuing communications between her or her husband and Ta Mok; (4) Um Sim's *de facto* authority and decision-making power; (5) Um Sim's statements about his promotion to Secretary of Sector 43 and to Deputy Secretary of the Central Zone; (6) the names of Um Sim's subordinates, including messengers, drivers and body guards; (7) any meetings held by Um Sim; and (8) the potential *de facto* authority of Prak Yut.<sup>32</sup>
20. An OCIJ investigator interviewed To Sem on 3 February 2016 and asked her about the matters raised in this part of the Request.<sup>33</sup>

<sup>29</sup> Case File No. 004-D117/70, *Written Record of Interview of PRAK Yut*, 28 May 2013, A23-A24; Case File No. 004-D117/71, *Written Record of Interview of PRAK Yut*, 19 June 2013, A14; Case File No. 004-D117/72, *Written Record of Interview of PRAK Yut*, 21 June 2013, A1-A2; Case File No. 004-D117/18, *Written record of witness interview of PICH Cheum*, 28 February 2013, A1, A15; Case File No. 004-D117/19, *Written record of witness interview of TEP Pauch*, 4 March 2013, A12-A13; Case File No. 004-D117/50, *Written Record of Interview of IM Pon*, 23 May 2014, A15, A17-A18, A23, A55-A56; Case File No. 004-D219/249, *Written Record of Interview witness SUON Kanil*, 28 March 2015, A1, A4; Case File No. 004-D117/56, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 19 November 2014, A10, A25-A26, A31; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A13-A15, A63; Case File No. 004-D219/711, *Written Record of Interview witness CHHORN Pech*, 28 February 2016, A44; Case File No. 004-D117/26, *Written Record of Witness Interview - PUT Kol*, 25 September 2013, A28; Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p.3; Case File No. 004-D219/442, *Written Record of Interview of Witness CHOM Vong alias YOUK Nhov or Ngov*, 3 August 2015, A78-A80, A103, A115; Case File No. 004-D219/687, *Written record of interview witness MAO Saroeun*, 15 February 2016, A32.

<sup>30</sup> Case File No. 004-D219/353, *Written Record of Interview witness SARAY Hean*, 22 May 2015, A3-A4, A6; Case File No. 004-D219/249, *Written Record of Interview witness SUON Kanil*, 28 March 2015, A1, A4; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A13-A15; Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 3; Case File No. 004-D219/178, *Written Record of Interview Witness KUCH Ra*, 5 February 2015, A5; Case File No. 004-D219/762, *Written record of interview witness SARAY Hean*, 19 May 2016, A33-A34, A123-A125.

<sup>31</sup> Case File No. 004-D219/677, *Written Record of Interview witness TO Sem*, 3 February 2016, A18-A20.

<sup>32</sup> Request, para. 26.

<sup>33</sup> Case File No. 004-D219/677, *Written Record of Interview witness TO Sem*, 3 February 2016, A3-A5, A6-A7, A12, A17-A20, A22-A28, A30-A33 A35-A36.



- d) *Place on the Case File photographs of Um Sim that To Sem or DC-Cam may have in their possession*
21. During her interview on 3 February 2016, To Sem produced a photograph of her late husband, and the investigator took a picture of that photograph, which has been added to the case file.<sup>34</sup>
- e) *Identify and interview the family members of To Sem and Um Sim, including Ta Sorn, Yeay Men, Um Than (m), Um Than (f), Um Thon, Um Khoeung, To Soeur, To Sim, To Ram, and To Sun*
22. According to witness Khun Sareth, Ta Sorn is deceased.<sup>35</sup> Interviewing him is therefore not possible.
23. The Defence bear the onus of establishing a *prima facie* nexus between the requested investigative action and a matter that is within the scope of the investigation.<sup>36</sup> In other words, the Defence must give *prima facie* reasons that the persons they request the CIJs to interview can give evidence that bears on the allegations against Ao An.<sup>37</sup>
24. The reason given by the Defence for interviewing Yeay Men, Um Than (m), Um Than (f), Um Thon, Um Khoeung, To Soeur, To Sim, To Ram, and To Sun, is that they are Um Sim's siblings and as such may have information regarding his role in Sector 41.<sup>38</sup> I am not convinced that a general family connection to To Sem and Um Sim, coupled with some evidence indicating that Ta Mok and Ke Pauk appointed some of their relatives to positions within Sector 41,<sup>39</sup> establish the *prima facie* relevance of interviewing these individuals.<sup>40</sup> This sub-request is therefore denied.
- f) *Identify and interview telegram operators and messengers, including Suon Kanil, Lim Seng, and Pon Ol*
25. OCIJ investigators interviewed Suon Kanil on various occasions regarding communications between the Central Zone and its sectors.<sup>41</sup> He confirmed that his job involved transmitting and receiving telegrams between the Central Zone and its sectors,<sup>42</sup> but stated that he did not know the frequency or the

<sup>34</sup> Case File No. 004-D219/677, *Written Record of Interview witness TO Sem*, 3 February 2016, A3-A5; Case File No. 004-D219/677.1, *Attachment: Photograph of UM Sim*, 3 February 2016.

<sup>35</sup> Case File No. 004-D1.3.11.22, *OCP Interview of Witness KHUN Sareth*, 2 August 2008, p. 4.

<sup>36</sup> Reconsideration Decision, paras 50-51.

<sup>37</sup> 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, para. 26; Reconsideration Decision, paras 50-51, 73-74; Case File No. 002-D164/3/6, *Decision on the Appeal From the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*, 12 November 2009, para. 39.

<sup>38</sup> Request, para. 26.

<sup>39</sup> Request, paras 15-17, 23-24.

<sup>40</sup> 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, paras 34, 39-40, 43;

<sup>41</sup> Case File No. 004-D6.1.697; *Written Record of Interview of SUON Kanil*, 18 August 2009; Case File No. 004-D29, *Written Record of Interview of Witness SUON Kanil*, 10 June 2011; Case File No. 004-D219/249, *Written Record of Interview Witness SUON Kanil*, 28 March 2015.

<sup>42</sup> Case File No. 004-D6.1.697; *Written Record of Interview of SUON Kanil*, 18 August 2009, pp. 6-9, 11; Case File No. 004-D29, *Written Record of Interview of Witness SUON Kanil*, 10 June 2011, p. 4; Case File No. 004-D219/249, *Written Record of Interview Witness SUON Kanil*, 28 March 2015, A1.



contents of those telegrams because they were encoded.<sup>43</sup> He also said that he did not attend any zone-level meetings as he was a low-ranking combatant.<sup>44</sup> I am thus not persuaded that Suon Kanil can give further evidence about meetings and communications involving Ke Pauk, Ta Mok, Um Sim, and Um Sim's subordinates.

26. An OCIJ investigator has also interviewed Lim Seng,<sup>45</sup> who worked as a telegram translator in the communications centre of the Central Zone from 1977.<sup>46</sup> In late 1977, he was assigned to be a driver for Ke Pauk, accompanying him to different sectors for meetings and worksite visits.<sup>47</sup> Lim Seng also stated that sector secretaries would be summoned for meetings at the Central Zone headquarters.<sup>48</sup> As Lim Seng told the OCIJ that he was not allowed to attend any of Ke Pauk's meetings, it is highly unlikely that he could provide further information regarding the content of meetings between the various parties mentioned by the Defence.<sup>49</sup>
  27. An OCIJ investigator interviewed Pon Ol on two occasions.<sup>50</sup> From 1976 he worked in the Central Zone telegram unit sending and receiving telegrams between the zone and the sectors.<sup>51</sup> While he acknowledged that he received between four to five messages per day mostly from the Centre, he stated that he had no knowledge of the contents of those messages because they were encoded.<sup>52</sup> He also appears to have limited knowledge on the specific roles and authority of the most senior members in the Central Zone committee.<sup>53</sup> Therefore, there is no reason to believe that that Pon Ol could provide further information regarding the content of communications between the various parties mentioned or their *de facto* authority.<sup>54</sup>
  28. For these reasons, I do not consider it necessary to conduct further interviews with any of these three witnesses. As I indicated above, OCIJ investigators will continue to pursue leads with regard to evidence of meetings and communications between zone and sector level officials, so far as the evidence is relevant to the scope of the investigation.
- g) *Identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 41*
29. The decision-making structures and chains of command in Sector 41, both *de jure* and *de facto*, have been a major focus of the investigation in Case 004.

<sup>43</sup> Case File No. 004-D6.1.697; *Written Record of Interview of SUON Kanil*, 18 August 2009, pp. 6-7; Case File No. 004-D29, *Written Record of Interview of witness SUON Kanil*, 10 June 2011, p. 4; Case File No. 004-D219/249, *Written Record of Interview witness SUON Kanil*, 28 March 2015, A1.

<sup>44</sup> Case File No. 004-D219/249, *Written Record of Interview witness SUON Kanil*, 28 March 2015, A7.

<sup>45</sup> Case File No. 004-D117/20, *Written Record of Interview witness LIM Seng*, 5 March 2013.

<sup>46</sup> *Ibid.*, A1.

<sup>47</sup> *Ibid.*, A1, A7.

<sup>48</sup> *Ibid.*, A7.

<sup>49</sup> *Ibid.*, A8, A10.

<sup>50</sup> Case File No. 004-D6.1.373, *Written Record of Interview witness PON Ol*, 7 May 2009; Case File No. 004-D117/30, *Written Record of Interview witness PON Ol*, 9 November 2013.

<sup>51</sup> Case File No. 004-D6.1.373, *Written Record of Interview witness PON Ol*, 7 May 2009, pp. 3-5; Case File No. 004-D117/30, *Written Record of Interview witness PON Ol*, 9 November 2013, A1-A2.

<sup>52</sup> Case File No. 004-D6.1.373, *Written Record of Interview witness PON Ol*, 7 May 2009, pp. 3-5; Case File No. 004-D117/30, *Written Record of Interview witness PON Ol*, 9 November 2013, A2.

<sup>53</sup> Case File No. 004-D117/30, *Written Record of Interview witness PON Ol*, 9 November 2013, A5.

<sup>54</sup> Case File No. 004-D6.1.373, *Written Record of Interview witness PON Ol*, 7 May 2009, pp. 4-5.





This includes, where relevant, the potential *de jure* and *de facto* authority of Ke Pauk's and Ta Mok's family members.<sup>55</sup>

30. However, a request to identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 41 is overly broad. I am not prepared to commit resources to undertake such a labour-intensive investigative activity in the absence of clearer indications that certain relatives who have not yet been interviewed by the OCIJ could possess information relevant to Ao An's decision-making authority within Sector 41.

## B. Sector 42

### a) Re-interview Tep Pauch, Ban Siek, and Sou Soeun regarding certain topics

31. The Defence argue that re-interviewing Tep Pauch, Ban Siek, and Sou Soeun is necessary in order to obtain information regarding five topics, namely: (1) to clarify the *de facto* decision-making structures and chains of command in Sector 42; (2) to identify the names of all commune and district committee members; (3) to explain the specific responsibilities of Oeun and Sou Soeun with respect to politics and security; (4) to locate any communications between Ke Pauk and his family members; (5) to identify other persons with relevant information.<sup>56</sup>
32. Regarding topics 2, 4, and 5, the Defence have failed to meet the threshold requirements of precision and/or *prima facie* relevance.
33. With regard to the second topic, I am not persuaded that it is necessary, at this time, to identify the names of all commune and district committee members in Sector 42. Within Sector 42, Ao An has been charged<sup>57</sup> with crimes alleged to have been committed at Chamkar Svay Chanty Security Centre, located in Svay Teap commune, Chamkar Leu District;<sup>58</sup> and Wat Baray Chan Dek Security Centre, located in Ballang commune, Baray District.<sup>59</sup> The 3IS further alleges that Ao An is responsible for crimes committed at Wat Kandal

<sup>55</sup> Ke Pauk's role in the Central Zone see for example: Case File No. 004-D1.3.16.1, *Biography of KE Pauk entitled "Ke Pauk Had Defended Himself Before He Died"*, ERN 00089711; Case File No. 004-D219/249, *Written Record of Interview of Witness SUON Kanil*, 28 March 2015, A1; Case File No. 004-D6.1.407, *Written Record of Interview of AU Hau*, 18 November 2008, p. 4; Case File No. 004-D1.3.11.7, *Interview of CHENG Tol and KUN Sokha*, 2 August 2008, p. 3; Case File No. 004-D107/15, *Written Record of Interview of Witness BAN Siek*, 1 April 2012, pp. 3-4; Case File No. 004-D6.1.386, *Written Record of Interview of Witness BAN Siek*, 6 July 2009, pp. 11-12; Case File No. 004-D117/35, *Written Record of Interview of Witness BAN Siek*, 24 March 2014, A13-A15; Case File No. 004-D219/41, *Written Record of Interview of PHANN Chhen*, 12 October 2014, A12-A18 Case File No. 004-D1.3.11.35, *Interview of NIV Sun*, 1 August 2008, p. 5; Case File No. 004-D6.1.106, *Written Record of Interview of Witness SALES Ahmat*, 15 August 2008, p. 5; Case File No. 004-D40, *Written Record of Interview of witness SALES Ahmat*, 15 July 2011, p. 4; Case File No. 004-D119/70/3, *DC-Cam Interview of TO Sem*, 18 August 2013, p. 37; Ta Mok's role in the Central Zone see for example: Case File No. 004-D219/138, *Written Record of Interview Witness YOU Vann*, 8 January 2015, A63; Case File No. 004-D118/259, *Written Record of Interview of PECH Chim Dated 19-06-2014*, 19 June 2014, A56, A169.

<sup>56</sup> Request, para. 31.

<sup>57</sup> Case File No. 004-D303, *Written Record of Further Appearance of Ao An*, 14 March 2016.

<sup>58</sup> Case File No. 004-D107/17, *Report of the Execution of Rogatory Letter, dated 03 March 2012: Site Identification Report*, 1 March 2012, p. 1.

<sup>59</sup> Case File No. 004-D6.1.391, *Report of the Execution of Rogatory Letter, dated 01-05-2009: Site Identification Report*, 1 May 2009, p. 2.



Security Centre, located in Chro Neang Commune, Baray District.<sup>60</sup> The OCIJ has investigated the composition of committees at the commune and district levels in these locations, and will continue to do so to the extent that this is relevant to the investigation.<sup>61</sup> In this regard, I recall that, in the *Notice of Provisional Discontinuance Regarding Individual Allegations*, I informed the parties that I will not further investigate the allegations relating to crime sites in Sectors 42 and 43, but may resume the investigation if compelling circumstances present themselves.<sup>62</sup> Consequently, I will not expend further resources investigating the composition of committees in communes and districts in Sector 42 unless I consider this relevant to Ao An's responsibility for crimes committed in Sector 41, or the remaining allegations of genocide of Cham in Kampong Cham.

34. With respect to the fourth topic, a general request to identify any communication between Ke Pauk and his family members is clearly too general and the Defence have not specified any reason why Ke Pauk's relatives might be in possession of information relevant to Oeun or Sou Soeun's authority within Sector 42; nor have the Defence established *prima facie* reasons why Tep Pauch, Ban Siek, and Sou Soeun could give evidence about any such communications.
35. In regard to the fifth topic, a general request "*to identify other persons with relevant information*" is insufficiently specific. The identification of persons with information relevant to the allegations, including *de facto* authority, is routinely done as part of our investigation and efforts to identify such people will continue.
36. I consider the first and third topic as sufficiently specific and relevant, and will consider them together.
37. OCIJ investigators have already interviewed Tep Pauch about (1) the *de facto* decision-making structures and chains of command in Sector 42; and (3) the specific responsibilities of Oeun and Sou Soeun with respect to politics and security.<sup>63</sup> When asked about the districts which comprised Sector 42, Tep Pauch was unable to recall the names of the district committee members.<sup>64</sup> When asked about the cooperatives or communes under his control in Baray District, he was unable to recall the total number.<sup>65</sup> When asked about security centres in Baray District, he acknowledged their existence but denied having

<sup>60</sup> Case File No. 004-D1, [Corrected 1] *Third Introductory submission dated 20-11-2008*, 20 November 2008, para. 52; Case File No. 004-D117/16, *Report of the Execution of Rogatory Letter, dated 14 December 2012: Site Identification Report Wat Kandal security Center*, 14 December 2012, p. 2; Case File No. 004-D117/5, *Written record of witness interview of UY Rim*, 12 December 2012, p. 3; Case File No. 004-D117/2, *Written record of witness interview of BRAK Yun*, 11 December 2012, p. 3.

<sup>61</sup> Case File No. 004-D6.1.386, *Written Record of Interview of BAN Siek*, 6 July 2009, pp. 11-12; Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 4; Case File No. 004-D6.1.385, *Written Record of Interview of SOU Soeun*, 5 July 2009, p. 4.

<sup>62</sup> Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016.

<sup>63</sup> Case File No. 004-D6.1.384, *Written Record of Interview of TEP Poch*, 4 July 2009; Case File No. 004-D117/19, *Written record of witness interview of TEP Pauch*, 4 March 2013.

<sup>64</sup> Case File No. 004-D6.1.384, *Written Record of Interview of TEP Poch*, 4 July 2009, p. 8.

<sup>65</sup> *Ibid.*



knowledge of their operations.<sup>66</sup> He also stated that he did not know anything about the “*purging of enemies*” in Sector 42.<sup>67</sup> Re-interviewing Tep Pauch is therefore unlikely to further clarify the *de facto* chain of command in Sector 42. Tep Pauch also denied knowing who Sou Soeun was,<sup>68</sup> and provided little information on Oeun.<sup>69</sup> I am therefore unconvinced that a re-interview will shed any further light on the specific responsibilities of Oeun and Sou Soeun with respect to politics and security.

38. The OCIJ interviewed Ban Siek on five occasions. OCIJ investigators asked Ban Siek about the organisational structure and chain of command in Sector 42,<sup>70</sup> as well as his involvement with Oeun and Sou Soeun.<sup>71</sup> Since the Defence filed this Request, Ban Siek has also testified in Case 002 about some topics which the Defence have requested the CIJs to investigate, including Oeun’s rise through the ranks.<sup>72</sup> Regarding Oeun’s day to day activities, Ban Siek said that his office was some two kilometres distance from Oeun’s office, and located in a different commune,<sup>73</sup> although this contradicts a previous OCIJ interview where Ban Siek stated that his office was only 500 metres distance from the sector office.<sup>74</sup>

39. Ban Siek also stated that Sou Soeun was in charge of political affairs in Chamkar Leu District,<sup>75</sup> and that his meetings with her concerned only work at the worksites, not purges or arrests.<sup>76</sup> He stated on numerous occasions that he had no knowledge of security matters in Sector 42.<sup>77</sup> He also stated that he did not participate in any meetings at the Sector 42 level.<sup>78</sup> I am thus not persuaded that a re-interview with this witness will yield more specific information on the *de facto* decision-making structures and chains of command in Sector 42, or on the specific responsibilities of Oeun and Sou Soeun with respect to politics and security.

<sup>66</sup> *Ibid.*, pp. 5, 9; Case File No. 004-D117/19, *Written Record of Witness Interview of TEP Pauch*, 4 March 2013, A9-10.

<sup>67</sup> Case File No. 004-D6.1.384, *Written Record of Interview of TEP Poch*, 4 July 2009, pp. 5-6; cf Case File No. 004-D219/234.2.1, *DC-Cam Interview of TEP Pauch*, 19 June 2008, p. 11.

<sup>68</sup> Case File No. 004-D6.1.384, *Written Record of Interview of TEP Poch*, 4 July 2009, p. 8.

<sup>69</sup> Case File No. 004-D117/19, *Written Record of Witness Interview of TEP Pauch*, 4 March 2013, A6.

<sup>70</sup> Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 3; Case File No. 004-D6.1.386, *Written Record of Interview of BAN Siek*, 6 July 2009 pp. 11-13. Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, p. 6.

<sup>71</sup> Case File No. 004-D6.1.386, *Written Record of Interview of BAN Siek*, 6 July 2009, pp. 3, 13; Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 3; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A9, A10, A12, A18-A19, A27 A40; Case File No. 004-D219/702.1.75, *Transcript of hearing on the substance in Case 002/02 – 05 October 2015*, 5 October 2015, p. 9.

<sup>72</sup> Case File No. 004-D219/702.1.75, *Transcript of hearing on the substance in Case 002/02 – 05 October 2015*, 5 October 2015, pp. 10, 19-20.

<sup>73</sup> *Ibid.*, p. 22.

<sup>74</sup> Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A19.

<sup>75</sup> Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 4.

<sup>76</sup> Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A27.

<sup>77</sup> Case File No. 004-D6.1.386, *Written Record of Interview of BAN Siek*, 6 July 2009, p. 13; Case File No. 004-D219/702.1.75, *Transcript of hearing on the substance in Case 002/02 – 05 October 2015*, 5 October 2015, pp. 16, 20; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, 24 March 2014, A6, A22, A24; A27-A29; A33-A34.

<sup>78</sup> Case File No. 004-D6.1.386, *Written Record of Interview of BAN Siek*, 6 July 2009, p. 13; Case File No. 004-D117/35, *Written Record of Interview of BAN Siek*, A36.



40. In 2009, an OCIJ investigator conducted a lengthy interview with Sou Soeun as part of the investigation in Case 002.<sup>79</sup> Sou Soeun also testified in Case 002 about her role and her husband Ke Pauk's role during the CPK regime.<sup>80</sup> She is an elderly and reluctant witness, as evidenced by her difficulty in answering questions especially about the structure and security operations of Chamkar Leu District.<sup>81</sup> She also claimed to have limited knowledge about her husband Ke Pauk's activities and authority in the Central Zone.<sup>82</sup> Furthermore, when asked about the security operations in Chamkar Leu District, Sou Soeun denied having direct knowledge of the purge,<sup>83</sup> or details about security centres located in her district.<sup>84</sup> I am therefore not satisfied that re-interviewing Sou Soeun would yield any further evidence conducive to ascertaining the *de facto* decision-making structures and chains of command in Sector 42, or her own and Oeun's specific responsibilities with respect to politics and security.

*b) Interview Hang Kim Yen*

41. Hang Kim Yen was the Chief of Thnal Bek West village in Svay Teap commune, Chamkar Leu District. An OCIJ investigator met him during a field mission on 10 December 2012.<sup>85</sup> The investigator noted Mr Hang's advanced age and condition of health and decided not to record an interview with him.<sup>86</sup> In these circumstances, I concur with the investigator's assessment that an interview would not be an efficient use of OCIJ resources. Furthermore, the Defence have not pointed to any *prima facie* reason that Hang Kim Yen may be able to give exculpatory evidence.

*c) Identify and interview telegram operators and messengers in Sector 42*

42. On 28 June 2016, an OCIJ investigator interviewed former Sector 42 telegram operator Chhean Chhoeurn.<sup>87</sup>

43. In accordance with the provisional discontinuance of the investigation into crime sites in Sectors 42 and 43 mentioned above,<sup>88</sup> I do not consider it

<sup>79</sup> Case File No. 004-D6.1.385, *Written Record of Interview of SOU Soeun*, 5 July 2009.

<sup>80</sup> Case File No. 004-D219/702.1.73, *Transcript of hearing on the substance in Case 002/02 – 04 June 2015*, 4 June 2015; Case File No. 004-D219/702.1.74, *Transcript of hearing on the substance in Case 002/02 – 05 June 2015*, 5 June 2015.

<sup>81</sup> Case File No. 004-D219/702.1.73, *Transcript of hearing on the substance in Case 002/02 – 04 June 2015*, 4 June 2015, pp. 5, 19, 49, 60; Case File No. 004-D6.1.385, *Written Record of Interview of SOU Soeun*, 5 July 2009, p. 4.

<sup>82</sup> Case File No. 004-D219/702.1.73, *Transcript of hearing on the substance in Case 002/02 – 04 June 2015*, 4 June 2015, pp. 5, 21, 52, 59; Case File No. 004-D219/702.1.74, *Transcript of hearing on the substance in Case 002/02 – 05 June 2015*, 5 June 2015, pp. 38, 81-82.

<sup>83</sup> Case File No. 004-D6.1.385, *Written Record of Interview of SOU Soeun*, 5 July 2009, pp. 5-6; Case File No. 004-D219/702.1.73, *Transcript of hearing on the substance in Case 002/02 – 04 June 2015*, 4 June 2015, pp. 51-52; Case File No. 004-D219/702.1.74, *Transcript of hearing on the substance in Case 002/02 – 05 June 2015*, 5 June 2015, p. 78.

<sup>84</sup> Case File No. 004-D6.1.385, *Written Record of Interview of SOU Soeun*, 5 July 2009, pp. 5-6; Case File No. 004-D219/702.1.73, *Transcript of hearing on the substance in Case 002/02 – 04 June 2015*, 4 June 2015, pp. 37, 45-47.

<sup>85</sup> Case File No. 004-D117/13, *Written Record of Investigative Action*, dated 10 December 2012, 10 December 2012.

<sup>86</sup> *Ibid.*

<sup>87</sup> Case File No. 004-D219/789, *Written Record of Interview Witness CHHEAN Chhoeurn*, 28 June 2016.



necessary to expend further resources identifying and interviewing other telegram operators and messengers in Sector 42, unless I consider this relevant to Ao An's responsibility for crimes committed in Sector 41, or the remaining allegations of genocide of Cham in Kampong Cham..

d) *Locate and interview Hap and Chuon*

44. In an OCIJ interview Ban Siek nominated "*Hap*" and "*Chuon*" as those responsible for security in Chamkar Leu District.<sup>89</sup> If corroborated, these two persons may be able to give evidence that is relevant to the allegations at Chamkar Svay Chanty Security Centre, which is located in Chamkar Leu District.<sup>90</sup>

45. However, I am not convinced that the Request gives sufficient detail to establish a *prima facie* reason that this sub-request would lead to the discovery of exculpatory evidence. In this regard, the Defence's general submission<sup>91</sup> that the requested actions relating to Sector 42 are likely to result in *prima facie* exculpatory evidence is not sufficient.<sup>92</sup> It follows that the obligation to investigate exculpatory evidence pursuant to Internal Rule 55(5) does not apply in this instance, and instead I have a wide discretion to accept or reject the sub-request.<sup>93</sup>

46. In accordance with the provisional discontinuance of the investigation into crime sites in Sectors 42 and 43 mentioned above, including Chamkar Svay Chanty Security Centre, I will not grant the sub-request to locate and interview "*Hap*" and "*Chuon*" unless I decide to resume the investigation into crime sites in Sector 42.

e) *Identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 42*

47. For the reasons provided in paragraphs 28 and 29, I am not prepared to grant a request to conduct a potentially wide-ranging search for witnesses in the absence of submissions regarding their identity and relevance.

<sup>88</sup> Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016.

<sup>89</sup> Case File No. 004-D107/15, *Written Record of Interview of BAN Siek*, 1 April 2012, p. 4.

<sup>90</sup> Case File No. 004-D107/17, *Report of the Execution of Rogatory Letter, dated 03 March 2012: Site Identification Report*, 1 March 2012, p. 1.

<sup>91</sup> Request, para. 32.

<sup>92</sup> Reconsideration Decision, para. 50; Case File No. 002-D164/3/6, *Decision on the Appeal From the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*, 12 November 2009, para. 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, 26; 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, paras 47, 50.

<sup>93</sup> 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, para. 26; Reconsideration Decision, para. 43.



### C. Sector 43

- a) *Identify and interview witnesses, including Sector 43 messengers Chann Sang and Lim Seng, regarding communications between Um Sin and Ke Pauk, Um Sin and Ta Mok, Ke Pauk and Ta Mok, or Um Sin and his subordinates*

48. OCIJ investigators have already interviewed Chann Sang about communications in her area of responsibility.<sup>94</sup> She was a messenger based in Sector 43, where she was tasked with taking letters from mobile units to the sector office.<sup>95</sup> She stated that she did not know the content of the messages she transported,<sup>96</sup> and acknowledged that while she knew that “Sim” was the Sector 43 secretary, she never talked to him.<sup>97</sup> Chhan Sang appeared to be more familiar with communications between sectors and mobile units than between zone and sector level members.<sup>98</sup> On the basis of the interviews with her, there is no reason to believe that she would be able to give further evidence on the issues flagged in the Defence’s request.

49. An OCIJ investigator has interviewed Lim Seng regarding communications in the Central Zone.<sup>99</sup> Lim Seng worked as a telegram translator in the communications centre of the Central Zone from 1977.<sup>100</sup> In late 1977, he was assigned to be a driver for Ke Pauk and accompanied him to the Sectors for meetings and worksite visits.<sup>101</sup> The Defence have not pointed to any specific issues that are not covered in the existing WRI and that may justify a further interview with this witness.

- b) *Identify and interview other messengers, drivers, and telegram operators who may have information about communications in Sector 43*

50. The OCIJ have made efforts to identify and locate other Sector 43 messengers and telegram operators with knowledge of communications between the Centre, Central Zone, and sectors. These efforts have been unsuccessful due to a lack of viable leads.<sup>102</sup> In accordance with the provisional discontinuance of the investigation into crime sites in Sectors 42 and 43 mentioned above,<sup>103</sup> I do not consider it necessary to expend further resources identifying and interviewing other messengers, drivers, and telegram operators who may have information about communications in Sector 43, unless there are indications that this information may also be relevant to the communication system in place in Sector 41.

<sup>94</sup> Case File No. 004-D219/179, *Written Record of Interview Witness CHANN Sang*, 6 February 2015; Case File No. 004-D117/21, *Written record of witness interview of CHAN Sang*, 24 May 2013.

<sup>95</sup> Case File No. 004-D219/179, *Written Record of Interview Witness CHANN Sang*, 6 February 2015, A1.

<sup>96</sup> *Ibid.*, A4.

<sup>97</sup> Case File No. 004-D117/21, *Written record of witness interview of CHAN Sang*, 24 May 2013, A8; Case File No. 004-D219/179, *Written Record of Interview Witness CHANN Sang*, 6 February 2015, A2-3.

<sup>98</sup> Case File No. 004-D219/234.2.3, *DC-Cam Interview of CHAN Sang*, 21 April 2012, pp. 16-17; Case File No. 004-D219/179, *Written Record of Interview Witness CHANN Sang*, 6 February 2015, A1, A3.

<sup>99</sup> Case File No. 004-D117/20, *Written Record of Interview witness LIM Seng*, 5 March 2013.

<sup>100</sup> *Ibid.* A1.

<sup>101</sup> *Ibid.*, A1, A7.

<sup>102</sup> Case File No. 004-D219/195, *Written Record of Investigation Action*, 24 February 2015.

<sup>103</sup> Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016.


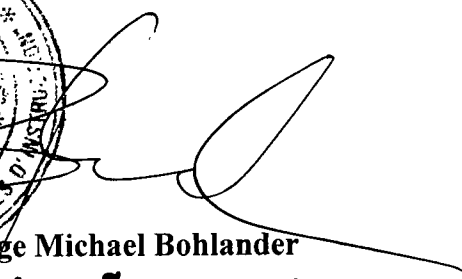


- c) *Identify and interview witnesses who may have information about the decision-making structures and chains of command in Sector 43, and who may be able to identify other family members holding positions of authority*
- 51. The OCIJ has made efforts to identify and locate other witnesses with knowledge of the decision-making structures and chains of command in Sector 43. These efforts have been unsuccessful due to a lack of viable leads.<sup>104</sup> In accordance with the provisional discontinuance of the investigation into crime sites in Sectors 42 and 43 mentioned above, I do not consider it necessary to expend further resources identifying and interviewing witnesses who may have information about the decision-making structures and chains of command in Sector 43, and who may be able to identify other family members holding positions of authority.
- d) *Identify and interview all family members of Ke Pauk and Ta Mok who held official or unofficial positions in Sector 43*
- 52. For the reasons provided in paragraphs 28 and 29, I am not prepared to grant a request to conduct a potentially wide-ranging search for witnesses in the absence of submissions regarding their identity and relevance.

**FOR THE FOREGOING REASONS, I:**

- 53. **INFORM** the Defence that this Request has been performed in part; and
- 54. **DENY** the remainder of the Request.

Dated 12 October 2016, Phnom Penh



**Judge Michael Bohlander**  
**សមាជិកអង្គជំនុំជាតិអន្តរជាតិ**  
**International Co-Investigating Judge**  
**Co-juge d’instruction international**

<sup>104</sup> Case File No. 004-D219/195, *Written Record of Investigation Action*, 24 February 2015.