



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

Royaume du Cambodge  
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
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Case File No: 004/07-09-2009-ECCC-OCIJ

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DECISION ON AO AN’S TENTH 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 18 May 2016, the Ao An Defence (“Defence”) filed the *Tenth Request for Investigative Action* (“Investigative Request”).<sup>1</sup> The Defence identify 25 written records of investigative action (“WRIAs”) and site identification reports which, according to the Defence, fail to record probative and relevant information, or in which investigators failed to make reasonable enquiries to obtain information.<sup>2</sup> The Defence request the CIJs to, *inter alia*, identify the relevant information or documents and place them on the Case File.<sup>3</sup>
3. 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>
4. On 9 November 2016, I notified the parties of the details of the intended reduction in the scope of the judicial investigation pursuant to Internal Rule 66 *bis* (2).<sup>5</sup>

## II. SUBMISSIONS

5. The Defence submit that investigators of the Office of the Co-Investigating Judges (“OCIJ”) failed to record probative and relevant information or conduct reasonable enquiries in written records of investigative action (“WRIA”) and site identification reports.<sup>6</sup> The Defence divide these alleged failures into Categories A to D.<sup>7</sup>
6. The Defence refer to my memorandum to OCIJ investigators dated 29 September 2015 (“29 September 2015 Memorandum”), in which I directed investigators to limit screening conversations of potential witnesses or civil parties to the person’s identity, address, and ability and willingness to give information on the topic(s) of the intended interview.<sup>8</sup>
7. The Defence submit that the exchanges listed under Category A of the Investigative Request go beyond the limitations in the 29 September 2015 Memorandum.<sup>9</sup> Consequently, the Defence argue that the conversations must be considered interviews, and as such should have been documented in Written

<sup>1</sup> Case File No. 004-D311, *Tenth Request for Investigative Action*, 18 May 2016, (“Investigative Request”).

<sup>2</sup> Investigative Request, para. 2.

<sup>3</sup> *Ibid*, para. 3.

<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> Case File No. 004-D307/4, *Notification pursuant to internal rule 66 bis(2)*, 9 November 2016, paras 5, 9.

<sup>6</sup> Investigative Request, para. 2.

<sup>7</sup> *Ibid*, para. 3.

<sup>8</sup> Case File No. 004-D269, *Memorandum from ICIJ to all OCIJ investigators concerning “Instructions on screenings of civil parties and other witnesses and on the format of the procès verbal”*, 29 September 2015 (“29 September 2015 Memorandum”), para. 1.

<sup>9</sup> Investigative Request, paras 3(a), 28-29; Case File No. 004-D311.2, *Annex A: Instances in WRIAs and Site Identifications where Investigators Identified and Interviewed Witnesses and Civil Party Applicants and Failed to Place WRIs and Audio Recordings on the Case File*, 18 May 2016 (“Annex A”).



Record of Interviews (“WRIs”).<sup>10</sup> To remedy this, the Defence request, *inter alia*, that the CIJs locate the respective WRI and audio recordings and place them on the Case File.<sup>11</sup> If no WRIs exist, the Defence request the OCIJ to place notes of persons present during the interviews on the Case File.<sup>12</sup>

8. The Defence aver that the exchanges listed under Category B likewise go beyond screening conversations; however, the Defence claim that the OCIJ also failed to identify the individuals questioned by the OCIJ investigators.<sup>13</sup> The Defence request the CIJs to identify those individuals and place any written records and audio recordings of their interviews on the Case File.<sup>14</sup>
9. Category C comprises instances where the Defence assert OCIJ investigators failed to adhere to guidelines for screening conversations set out in a memorandum from my predecessor, dated 3 December 2012 (“3 December 2012 Memorandum”), as well as the 29 September 2015 Memorandum.<sup>15</sup> In particular, the Defence state that the WRIAs and site identification reports do not provide adequate information regarding the identities of individuals and the details of conversations with these individuals.<sup>16</sup> The Defence request the CIJs to provide this information.<sup>17</sup>
10. Category D encompasses instances where the Defence submit an investigator made a factual assertion on an issue that may be in dispute between the parties and the investigator did not identify the evidential basis of the assertion.<sup>18</sup> The Defence request the CIJs to specify the sources and materials that form the basis of these factual assertions.<sup>19</sup> In cases where the information sought by the Defence does not exist, the Defence request the CIJs to confirm this and place any relevant notes on the Case File.<sup>20</sup>
11. The Defence submit that they are entitled to the requested information on the basis of the above mentioned memoranda.<sup>21</sup> Additionally, the Defence contend that the requested information is critical to Ao An’s defence, essential to maintaining an accurate and complete record, may reveal material affecting the reliability and probative value of witnesses, is relevant to the CIJs’ assessment of the integrity of the judicial investigation, and may reveal exculpatory evidence.<sup>22</sup> Finally, the

<sup>10</sup> Investigative Request, paras 3(a), 28-29; Annex A.

<sup>11</sup> *Ibid*, para. 3(a).

<sup>12</sup> *Ibid*.

<sup>13</sup> Investigative Request, paras 3(b), 31; Case File No. 004-D311.3, *Annex B: Instances in WRIA and Site Identifications where Investigators Interviewed Individuals but Failed to Identify the Individuals and Place WRIs and Audio Recordings on the Case File*, 18 May 2016 (“Annex B”).

<sup>14</sup> Investigative Request, para. 3(b).

<sup>15</sup> *Ibid*, paras 3(c), 32; Case File No. 004-D116, *Memorandum entitled “Instructions on conduct of witness interviews”*, 3 December 2012; 29 September 2015 Memorandum, para. 2.

<sup>16</sup> Investigative Request, paras 3(c), 32; Case File 004-D311.4, *Annex C: Instances in the WRIAs and Site Identifications where Investigators Refer to Screening Conversations with Individuals but Fail to Identify These Individuals and Provide Adequate Details about the Conversations*, 18 May 2016 (“Annex C”).

<sup>17</sup> Investigative Request, para. 3(c).

<sup>18</sup> *Ibid*, paras 3(d), 33; Case File No. 004-D311.5, *Annex D: Instances in WRIAs and Site Identifications where Investigators Make Unsupported Factual Assertions Related to Substantive Matters Potentially at Issue in the Investigation*, 18 May 2016, (“Annex D”).

<sup>19</sup> Investigative Request, para. 3(d).

<sup>20</sup> *Ibid*, para. 4.

<sup>21</sup> *Ibid*, para. 36.

<sup>22</sup> *Ibid*, paras 37-41.



Defence assert that obtaining the requested information safeguards Ao An's fair trial rights to be afforded sufficient time and facilities to prepare his defence and to examine evidence against him.<sup>23</sup>

### III. STANDARD FOR THE ASSESSMENT OF INVESTIGATIVE REQUESTS

12. The Pre-Trial Chamber has previously stated that a party requesting investigative action "*must satisfy the two cumulative conditions [...] namely, 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>24</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>25</sup> Consequently, I am not required to grant general or speculative requests to look for exculpatory evidence.<sup>26</sup> Rather, the requesting party must point specifically towards the presence of the evidence that is sought.<sup>27</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>28</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>29</sup> Secondly, the request "*must detail why the requested information is conducive to ascertaining the truth.*"<sup>30</sup> 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.<sup>31</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>32</sup>

<sup>23</sup> *Ibid.*, paras 42-44.

<sup>24</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 casefile which assists in proving the charged persons' knowledge of the crimes*, 27 September 2010, para. 47 ("Reconsideration Decision").

<sup>25</sup> *Ibid.*, para. 48.

<sup>26</sup> *Ibid.*, paras 48 & 51.

<sup>27</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>28</sup> Reconsideration Decision, para. 48.

<sup>29</sup> *Ibid.*, para. 49.

<sup>30</sup> *Ibid.*, para. 50.

<sup>31</sup> *Ibid.*, paras 50-51.

<sup>32</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.



#### IV. DISCUSSION

##### A. Category A

##### i. *Allegations that OCIJ investigators exceeded the limits of screening conversations*

15. In Annex A, the Defence identify 68 instances where investigators recorded conversations with potential witnesses which purportedly exceeded the limits of screening conversations set by my 29 September 2015 Memorandum.<sup>33</sup> Of those, 59 instances pre-date the 29 September 2015 Memorandum.<sup>34</sup> While these instructions are intended to establish best practice among the OCIJ investigators, the previous practice, which allowed for greater flexibility regarding the level of detail in preliminary conversations with potential witnesses, is not prohibited under the Internal Rules and does not amount to a procedural defect. Specifically, the requirement pursuant to Internal Rule 55(7) to make a record of every interview does not extend to screening conversations. While some screening conversations identified by the Defence post-date the 29 September 2015 Memorandum, that memorandum does not create a legal obligation for investigators or affect the procedural validity of investigative actions.<sup>35</sup>
16. Nor have the Defence pointed to any tangible prejudice to Ao An, especially where the investigator provided a detailed record of the conversation in the WRIA. Moreover, while OCIJ investigators' conversations with potential witnesses and other individuals are recorded in the WRIs to safeguard the transparency of the investigation, I will not rely on them as inculpatory evidence for the purposes of the Closing Order.
17. In any event, no WRIs exist for any of the screening conversations listed in Annex A, although, in many instances the investigator subsequently recorded a formal witness interview.<sup>36</sup>

<sup>33</sup> Annex A, entries 1-68; 29 September 2015 Memorandum, para. 1.

<sup>34</sup> Annex A, entries 1-59.

<sup>35</sup> See Case File No. 004-D296/1/1/4, *Decision on AO An's application to annul non-audio recorded written records of interview*, 30 November 2016, para. 25.

<sup>36</sup> Annex A, entry 2; Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010; Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoen*, 3 December 2010; Annex A, entry 3; Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012; Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012; Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012; Annex A, entry 5; Case File No. 004-D219/17, *Written Record of Interview of Civil Party PIN Dan*, 16 September 2014; Annex A, entry 8; Case File No. 004-219/462, *Written Record of Interview witness PENH Chantha*, 10 August 2015; Annex A, entry 9; Case File 004-D219/472, *Written Record of Interview of Civil Party Applicant SUM Chanythol*, 24 August 2015; Annex A, entry 13; Case File No. 004-D219/405, *Written Record of Interview witness CHHIM Bunseray*, 29 June 2015; Annex A, entry 15; Case File No. 004-D219/502, *Written Record of Interview of Civil Party Applicant MUOK Sengly*, 4 September 2015; Annex A, entries 19, 29, 44, 54; Case File 004-D219/498, *Written Record of Interview of Civil Party Applicant PENH Va*, 7 September 2015; Annex A, entry 20; Case File No. 004-D219/401, *Written Record of Interview witness HIN Long*, 4 July 2015; Annex A, entry 25; Case File No. 004-D219/460, *Written Record of Interview witness SAT Pheap*, 7 August 2015; Case File No. 004-D219/504, *Written Record of Interview witness SAT Pheap*, 17 September 2015; Annex A, entry 27; Case File No. 004-D219/459, *Written Record of Interview witness YOU Oeurn*, 6 August 2015; Annex A, entry 29; Annex A, entry 32; Case File No. 004-D219/712, *Written Record of Interview witness SOK Horn*, 23 March 2016; Annex A, entry 34; Case File No. 004-D219/708, *Written Record of Interview witness DIN Sreav*, 24 February 2016; Annex A, entry 39; Case File No.



18. With respect to the Defence's requests to place on the Case File notes of the investigators, interpreters, analysts, transcribers, or others present during the screening conversations, the right to consult the Case File does not extend to any internal work product generated by the OCIJ investigators or other OCIJ staff.<sup>37</sup> Unless such internal work product is placed on the Case File, it remains strictly confidential and is not disclosable.<sup>38</sup> The Defence's request to place on the Case File notes from persons present during the screening conversations identified in Annex A is therefore denied.

19. The Defence's remaining requests from Annex A are addressed in the following paragraphs.

*ii. Witnesses interviewed regarding Met Sop (Kor) Security Centre (D3/21)*

20. The Defence request the dates of interviews with Touch Rim and Kong Toeung, who are mentioned in a site identification report dated 29 November 2010 regarding the Met Sop (Kor) Security Centre.<sup>39</sup> The Defence also request that the WRIs and audio recordings of the interviews be placed on the Case File.<sup>40</sup>

21. An OCIJ investigator interviewed Kong Toeung (alias Kung Ting) on 20 October 2010 and the WRI is already on the Case File.<sup>41</sup> The OCIJ has not interviewed Touch Rim as he was detained at Met Sop in 1976 and cannot provide information that is relevant to the investigation in Case 004.<sup>42</sup>

*iii. Witnesses interviewed regarding Wat Phnom Pros Execution Site (D3/23)*

22. The Defence identify two witnesses, Vorn Sokun and Srei Kanoeun, whose interviews are noted in a site identification report concerning Wat Phnom Pros Execution Site dated 1 December 2010.<sup>43</sup> The Defence claim that the only interviews of these witnesses on the Case File post-date the site identification

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004-D219/707, *Written Record of Interview witness TOEM Thim*, 24 February 2016; Annex A, entry 41; Case File No. 004-D219/706, *Written Record of Interview witness YOB Li*, 22 February 2016; Annex A, entry 44; Case File No. 004-D219/498, *Written Record of Interview of Civil Party Applicant PENH Va*, 7 September 2015; Annex A, entries 45, 55; Case File No. 004-D219/542, *Written Record of Interview witness NUT Kimnang*, 6 October 2015; Annex A, entries 46, 53; Case File No. 004-D219/504, *Written Record of Interview witness SAT Pheap*, 17 September 2015; Annex A, entries 51, 57; Case File No. 004-D219/607, *Written Record of Interview witness HAK Kimsroeun*, 16 November 2015; Annex A, entry 66; Case File No. 004-D219/772, *Written Record of Interview of SAT Sim*, 31 May 2016; Annex A, entries 67-68; Case File No. 004-D219/620, *Written Record of Interview witness PALL Lay*, 8 December 2015.

<sup>37</sup> Case File No. 002-D402/1/4, *Decision on Ieng Sary's appeal against the OCIJ's order rejecting Ieng Sary's application to seize the Pre-Trial chamber with a request for annulment of all investigative acts performed by or with the assistance of Stephen Heder and David Boyle and Ieng Sary's application to seize the Pre-trial chamber with a request for annulment of all evidence collected from the Document Center of Cambodia and expedited appeal against the OCIJ rejecting of a stay of the proceedings*, 30 November 2010, paras 25, 31; Case File No. 002-D171/5, *CIJ's response to the "Request for Investigative Action", concerning, Inter Alia, the Strategy of the Co-Investigating Judges in regard to the Judicial investigation*, 11 December 2009, para. 23.

<sup>38</sup> *Ibid.*

<sup>39</sup> Annex A, entry 1; Case File No. 004-D3/21, *Report of the Execution of Rogatory Letter, dated 29 November 2010: Site Identification Report*, 29 November 2010 ("Met Sop Site ID"), p. 8.

<sup>40</sup> Annex A, entry 1.

<sup>41</sup> Case File 004-D3/13, *Written Record of Interview of KUNG Ting*, 20 October 2010.

<sup>42</sup> Case File No. 004-D117/74, *Rogatory Letter Completion Report*, 11 December 2014; Met Sop Site ID, p. 8.

<sup>43</sup> Annex A, entry 2; Case File No. 004-D3/23, *Report of the Execution of Rogatory Letter, dated 01 December 2010: Site Identification Report* ("Phnom Pros Site ID"), 1 December 2010, p. 13.



report, which leads the Defence to conclude that they cannot be the interviews referred to in the report.<sup>44</sup>

23. The site identification report commenced on 1 December 2010 and this date was recorded as the date of the report. However, the site identification took place over a number of days, and the report was finalised some days after 1 December 2010. The interviews with Vorn Sokun and Srei Kanoeun took place on 2 and 3 December 2010 respectively, and these are the interviews referred to in the site identification report.<sup>45</sup>

iv. *Witnesses interviewed regarding Kok Pring Execution Site (D107/16)*

24. The Defence make two complaints about a site identification report of the alleged Kok Pring Execution Site.<sup>46</sup>
25. Firstly, the Defence state that the date of the site identification report is unclear, and ask for confirmation of the date.<sup>47</sup> The site identification to which the report relates commenced on 13 February 2012 and concluded on 24 February 2012. The investigator wrote the site identification report from 28 February 2012 to 1 March 2012.<sup>48</sup>
26. Secondly, the Defence complain that an OCIJ investigator interviewed witnesses Sann Son, Kak Shoeing, and Chuong Srim during the site identification, but did not provide dates for these interviews.<sup>49</sup> The WRIs referenced in the site identification report are the same as those already on the Case File.<sup>50</sup> However, Kak Shoeing's interview was recorded under the name Kak Sroeun.<sup>51</sup>

v. *Witnesses interviewed regarding Thnal Bek Execution Site (D117/13)*

27. The Defence raise two complaints regarding a WRIA recording a mission to Kampong Cham province.<sup>52</sup>
28. The Defence submit that the date of the WRIA is unclear; it is recorded as 10 December 2012 on the first page, but as 11 December 2012 on the last page.<sup>53</sup> The date on the first page refers to the date of the investigative action, which was performed on 10 December 2012. The date of the WRIA is noted correctly on the last page as 11 December 2012.
29. The Defence also submit that Hang Kim Yen has *prima facie* exculpatory evidence: firstly that the bombing by the U.S. government may have had an

<sup>44</sup> Annex A, entry 2.

<sup>45</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010; Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoeun*, 3 December 2010.

<sup>46</sup> Annex A, entry 3; Case File No. 004-D107/16, *Report of the Execution of Rogatory Letter, dated 28 February 2012: Site Identification Report* ("Kok Pring Site ID"), 28 February 2012.

<sup>47</sup> Annex A, entry 3.

<sup>48</sup> Kok Pring Site ID, pp. 1, 4.

<sup>49</sup> Annex A, entry 3.

<sup>50</sup> Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012; Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012.

<sup>51</sup> Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012.

<sup>52</sup> Annex A, entry 4; Case File No. 004-D117/13, *Written Record of Investigation Action*, 10 December 2012.

<sup>53</sup> Annex A, entry 4.



impact on estimates of the number of victims attributable to Ao An, and secondly that Oeun and Ke Pauk, not Ao An, were in charge of the Sector.<sup>54</sup>

30. I am not persuaded that it is necessary to investigate the impact of the U.S. bombing at Thnal Bek, located in Sector 42, nor the possibility that Oeun and Ke Pauk were in charge of Sector 42. As indicated in the notice pursuant to Internal Rule 66 *bis* (2) mentioned above, I intend to exclude all allegations relating to crime sites in Sector 42 at the conclusion of the investigation.<sup>55</sup> As I stated in another Decision in this case, I will not expend further resources investigating matters in Sector 42 unless I consider them relevant to Ao An's responsibility for crimes committed in Sector 41, or the remaining allegations of genocide of the Cham in Kampong Cham.<sup>56</sup>

vi. *Conversation with witness Sar Kim's husband (D219/124)*

31. The Defence point to a WRIA dated 17 December 2014 in which an OCIJ investigator indicates that she conducted a screening conversation with the husband of witness Sar Kim.<sup>57</sup> The Defence ask for Sar Kim's husband's full name.<sup>58</sup> As stated in her earlier interview with the OCIJ investigator, Sar Kim's husband's name is Chum Oeun.<sup>59</sup>
32. The Defence also argue that Sar Kim has *prima facie* exculpatory evidence that the South West Zone cadres did not detain or mistreat individuals in Prey Chhor District, Sector 41.<sup>60</sup> I am not persuaded of the Defence's submission. Sar Kim told the investigator that he was arrested and "*required to work in a corn warehouse for around one week*" before being returned to a plantation where he was a unit chief.<sup>61</sup> Even if this information is not inculpatory in relation to the allegations against Ao An, I am unconvinced that it could be exculpatory.

vii. *Conversation with Khi Ol regarding alleged forced marriage (D219/296)*

33. The Defence identify a WRIA in which an OCIJ investigator recorded a screening conversation with Khi Ol on 27 April 2015.<sup>62</sup> Her brother-in-law Sbondg Yan stated in his OCIJ interview that Kh Ol's marriage had been arranged.<sup>63</sup> However, she denied this during the screening conversation.<sup>64</sup> Therefore, the Defence contend that that this person had *prima facie* exculpatory evidence, namely that individuals were not forced to marry in Sector 41.<sup>65</sup>

<sup>54</sup> *Ibid.*

<sup>55</sup> Case File No. 004-D307/4 *Notification pursuant to internal rule 66 bis(2)*, 9 November 2016.

<sup>56</sup> Case File 004-D276/1, *Decision on AO An's Sixth Request for Investigative Action*, 12 October 2016, paras 33, 43, 46, 50, 51.

<sup>57</sup> Annex A, entry 6; Case File No. 004-D219/124, *Written Record of Investigation Action*, 17 December 2014.

<sup>58</sup> Annex A, entry 6.

<sup>59</sup> Case File No. 004-D219/123, *Written Record of Interview of SAR Khim*, 15 December 2014, ERN 01057805.

<sup>60</sup> Annex A, entry 6.

<sup>61</sup> Case File No. 004-D219/124, *Written Record of Investigation Action*, 17 December 2014, p. 1.

<sup>62</sup> Annex A, entry 7; Case File No. 004-D219/296, *Written Record of Investigation Action*, 5 May 2015, p. 3.

<sup>63</sup> Case File No. 004-D219/296, *Written Record of Investigation Action*, 5 May 2015, p. 3; Case File No. 004-D117/43, *Written Record of Interview of SBONG Yann*, 7 May 2014, ERN 01034901, A19.

<sup>64</sup> Case File No. 004-D219/296, *Written Record of Investigation Action*, 5 May 2015, p. 3.

<sup>65</sup> Annex A, entry 7.





34. I take note of the exculpatory nature of Khi Ol's statement to the investigator, which ideally should have been recorded in a WRI. Although the information recorded in the WRIA does not carry the same evidentiary value as a WRI, and could not form part of the case against the Charged Person, I can nevertheless take into account information of exculpatory value contained therein in assessing the WRI of Sbond Yan.

viii. *Conversations with Sum Chan Thol regarding her civil party application (D219/319)*

35. The Defence take issue with a WRIA dated 21 May 2015 in which an OCIJ investigator indicates that she spoke with Civil Party applicant Sum Chan Thol (alternative spelling, Sum Chanythol) to clarify information in her civil party application.<sup>66</sup> The Defence argue that the civil party applicant has *prima facie* exculpatory evidence that Wat Angkuonh Dei was a school and hospital, not a security office or detention centre.<sup>67</sup>

36. I note that the witness's later WRI records the same information that the Defence submit is exculpatory, namely that Wat Angkuonh Dei was used as a hospital, a meeting place, a place for rearing pigs, a school, a dining hall, and an office for Prak Yut rather than as a security office or a detention centre.<sup>68</sup>

ix. *Conversation with witness Phan Sim's wife (D219/330)*

37. The Defence refer to a WRIA in which an OCIJ investigator records her interactions with Phan Sim and his wife on 14 May 2015 during a mission to Kampong Cham Province.<sup>69</sup> The Defence request Phan Sim's wife's full name and background information.<sup>70</sup>

38. The OCIJ investigator did not record Phan Sim's wife's name or other background information and the investigative team did not conduct a formal witness interview with her. The Defence have not demonstrated any *prima facie* reason to believe that she could give relevant exculpatory evidence, hence I do not consider it necessary to obtain her name or background information.

x. *Conversation with Na Kry regarding her marriage under the Khmer Rouge (D219/330)*

39. The Defence refer to a WRIA describing a mission to Kampong Cham in which an OCIJ investigator records a conversation with Na Kry on 16 May 2015.<sup>71</sup> The Defence assert that Na Kry has *prima facie* exculpatory evidence because she indicated that she was not forced to marry her husband.<sup>72</sup> Another witness, Hai

<sup>66</sup> Annex A, entry 9; Case File No. 004-D219/319, *Written Record of Investigation Action*, 21 May 2015.

<sup>67</sup> Annex A, entry 9.

<sup>68</sup> Case File No. 004-D219/472, *Written Record of Interview of Civil Party Applicant SUM Chanythol*, 24 August 2015, ERN 01178456-01178457, ERN 01178459, A72, A92-A96, A127-A128.

<sup>69</sup> Annex A, entry 11; Case File No. 004-D219/330, *Written Record of Investigative Action*, 21 May 2015 ("Kampong Cham May WRIA"), p. 4.

<sup>70</sup> Annex A, entry 11.

<sup>71</sup> *Ibid*, entry 12; Kampong Cham May WRIA, pp. 5-6.

<sup>72</sup> Annex A, entry 12.



Taun, told the OCIJ previously that Na Kry and her husband Nan “got married during [the Khmer Rouge] regime.”<sup>73</sup>

40. The information provided by Na Kry during her screening in relation to forced marriage is specific to her situation only. It says nothing in relation to other people who may have been forced to get married. Therefore, it may only be exculpatory in relation to the evidence of Hai Taun. However, I do not consider that evidence as inculpatory, as Hai Taun does not state that this marriage was forced. Consequently, I am not persuaded by the Defence’s submission that Na Kry has *prima facie* exculpatory evidence in the wider sense.

*xi. Conversation with Chhin Bunserei (D219/330)*

41. The Defence identify a WRIA in which an OCIJ investigator records a conversation with Chhin Bunserei (alternative spelling, Chhim Bunserey) on 16 May 2015 about his marriage and the Sector 41 dam.<sup>74</sup> The Defence assert that Chhin Bunserei has *prima facie* exculpatory evidence because he said he was not forced to marry his wife.<sup>75</sup> However, the OCIJ later recorded a WRI with Chhin Bunserei and asked him explicitly about his marital status during the Khmer Rouge as well as forced marriages more broadly.<sup>76</sup>

*xii. Conversation with Civil Party Nuon Choeun (D219/329)*

42. The Defence reference a WRIA in which an OCIJ investigator documents a screening conversation with civil party applicant Nuon Choeun by telephone on 6 May 2015.<sup>77</sup> The Defence ask for an explanation as to why the WRIA they referenced is dated 19 days after the telephone conversation with Nuon Cheoun.<sup>78</sup>
43. The WRIA is dated 19 days after the telephone conversation with Nuon Cheoun because that was when the investigator wrote the report. Although such a delay between the conversation and the WRIA is not ideal, in a long and complex investigation operational requirements may sometimes cause delays in reporting on investigative activities undertaken by the OCIJ staff.

*xiii. Conversation with Khieu Han (D219/351)*

44. The Defence identify a WRIA in which an OCIJ investigator documents a screening conversation with Khieu Han that occurred on 2 June 2015.<sup>79</sup> The Defence claim that Kieu Han has *prima facie* exculpatory evidence that although Cham people worked at “the Sector dam”, neither he nor others witnessed them being killed.<sup>80</sup>
45. I am unconvinced that Khieu Han has *prima facie* exculpatory evidence. While Kieu Han said that he did not witness the killings of the Cham people at the dam

<sup>73</sup> Case File No. 004-D219/287, *Written Record of Interview witness HAI Taun*, 23 April 2015, ERN 01100843, A32.

<sup>74</sup> Annex A, entry 13; Kampong Cham May WRIA, p. 6.

<sup>75</sup> Annex A, entry 13.

<sup>76</sup> Case File No. 004-D219/405, *Written Record of Interview witness CHHIM Bunserey*, 29 June 2015, ERN 01148836, ERN 01148844-01148846, A6, A50-A63.

<sup>77</sup> Annex A, entry 14; Case File No. 004-D219/329, *Written Record of Investigative Action*, 25 May 2015, p. 1.

<sup>78</sup> Annex A, entry 14.

<sup>79</sup> *Ibid*, entry 17.

<sup>80</sup> Annex A, entry 17; Case File No. 004-D219/351, *Written Record of Investigative Action*, 3 June 2015.



personally and does not know of anyone that personally witnessed such killings, he also said that he heard that a lot of Cham were killed.<sup>81</sup>

xiv. *Conversation with Hun Sethany regarding the charged crime site of Wat Baray Chan Dek and the hierarchy under Ta Oeun in Sector 42 (D219/407)*

46. The Defence reference a WRIA in which an OCIJ investigator spoke with Hun Sethany on 1 July 2015 about Wat Baray Chan Dek, a charged crime site, and the hierarchy under Ta Oeun in Sector 42.<sup>82</sup> The Defence argues that Hun Sethany has *prima facie* exculpatory evidence that Ta Oeun, not Ao An, was in charge of Sector 42 and Wat Baray Chan Dek.<sup>83</sup>

47. I disagree with the Defence argument that Hun Santhany has *prima facie* exculpatory evidence. The witness admitted that she “*did not pay attention to the hierarchy because she was too busy trying to survive.*”<sup>84</sup> Furthermore, I intend to exclude all allegations relating to crime sites in Sector 42 at the conclusion of the investigation and will not expend further resources investigating matters in Sector 42 unless I consider them relevant to Ao An’s responsibility for crimes committed in Sector 41, or the remaining allegations of genocide of the Cham in Kampong Cham.<sup>85</sup>

xv. *Conversation with Soeun (D219/407)*

48. The Defence reference a WRIA in which an OCIJ investigator interacted with Soeun on 8 July 2015.<sup>86</sup> The Defence ask that the OCIJ provide the identification information for Soeun, including his full name.<sup>87</sup>

49. Soeun is likely a pseudonym. His full name is not recorded, but the investigator provided his address in the WRIA: Prey Dom Village, Chaeng Daeng Commune, Baray District.<sup>88</sup>

xvi. *Conversations with Suong Sy, Sok Horn, Eng Sung, Dien Srieu, Bien Tet, Rok Sok, Keut Peng, Orn Englon, Them Tim, Sor Chhen, Yub Ly, and El Hosan during a mission to Kampong Cham Province (D219/492)*

50. The Defence identify a WRIA dated 7 September 2015 detailing a mission to Kampong Cham Province and describing an OCIJ investigative team’s interactions with 12 witnesses between 20 and 25 July 2015, namely: Suong Sy, Sok Horn, Eng Sung, Dien Srieu, Bien Tet, Rok Sok, Keut Peng, Orn Englon, Them Tim, Sor Chhen, Yub Ly, and El Hosan.<sup>89</sup> The Defence complain that these

<sup>81</sup> Case File No. 004-D219/351, *Written Record of Investigative Action*, 3 June 2015, p. 2.

<sup>82</sup> Annex A, entry 23; Case File No. 004-D219/407, *Written Record of Investigative Action*, 9 July 2015 (“Kampong Cham June/July WRIA”), pp. 6-7.

<sup>83</sup> Annex A, entry 23.

<sup>84</sup> Kampong Cham June/July WRIA, p. 7.

<sup>85</sup> See *supra*, para. 30.

<sup>86</sup> Annex A, entry 24; Kampong Cham June/July WRIA, p. 12.

<sup>87</sup> Annex A, entry 24.

<sup>88</sup> Kampong Cham June/July WRIA p. 12.

<sup>89</sup> Annex A, entry 31 and Case File No. 004-D219/492, *Written Record of Investigation Action*, 7 September 2015 (“Kampong Cham July WRIA”) [regarding Suong Sy]; Annex A, entry 32 and Kampong Cham July WRIA, p. 3 [re Sok Horn]; Annex A, entry 33 and Kampong Cham July WRIA, pp. 3-4 [re Eng Sung]; Annex A, entry 34 and Kampong Cham July WRIA, p. 4 [re Dien Srieu]; Annex A, entry 35 and Kampong Cham July WRIA, p. 4 [re Bien Tet]; Annex A, entry 36 and Kampong



interactions are all dated 20 to 25 July 2015, which does not precisely identify when the OCIJ team encountered each witness.<sup>90</sup> The Defence further complain that 20 to 25 July 2015 is almost six weeks before 7 September 2015, the date the WRIA was made.<sup>91</sup>

51. Because the WRIA is the only record and it does not specify the exact date of these interactions, the OCIJ cannot determine the precise date for each one. The investigator wrote the WRIA six weeks after these interactions. As stated above, albeit not an ideal practice, delays in reporting individual investigative actions may happen due to operational requirements of the entire Office.

*xvii. Conversation with Dien Srieu regarding alleged arrests of Cham people (D219/492)*

52. The Defence reference a WRIA dated 7 September 2015 which describes an OCIJ investigator's discussion with Dien Srieu between 20 and 25 July 2015.<sup>92</sup> The Defence ask the OCIJ to confirm whether Dien Srieu is the same person as Din Sreav.<sup>93</sup>

53. Dien Srieu is the same person whom the OCIJ interviewed on 24 February 2016 under the name Din Sreav.<sup>94</sup>

*xviii. Conversation with Suon Sen regarding the Khmer Rouge's alleged forced marriage policy (D219/501)*

54. The Defence refer to a WRIA in which an OCIJ investigator spoke with Suon Sen on 2 September 2015 about the Khmer Rouge's alleged forced marriage policy in Kampong Siem District.<sup>95</sup> The Defence complain that this witness has *prima facie* exculpatory evidence, namely that the witness told the investigator that individuals could refuse offers of marriage without repercussions.<sup>96</sup>

55. While the witness said that he did not experience repercussions from his first refusal to marry a woman chosen for him, he also told the investigator that in 1978 he and three other men were punished for refusing to marry.<sup>97</sup> Therefore, I am not convinced that Suon Sen may have exculpatory evidence.

*xix. Conversation with Ta Pouch's son (D219/501)*

56. The Defence refer to a WRIA dated 11 September 2015 describing a conversation between the OCIJ investigative team and Ta Pouch's (alternative name Keith

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Cham July WRIA, p. 5 [re Rok Sok]; Annex A, entry 37 and Kampong Cham July WRIA, p. 5 [re Keut Peng]; Annex A, entry 38 and Kampong Cham July WRIA, p. 5 [re Orn Englon]; Annex A, entry 39 and Kampong Cham July WRIA, pp. 5-6 [re Them Tim]; Annex A, entry 40 and Kampong Cham July WRIA, p. 6 [re Sor Chhen]; Annex A, entry 41 and Kampong Cham July WRIA, pp. 6-7 [re Yub Ly]; Annex A, entry 42 and Kampong Cham July WRIA, pp. 7-8 [re El Hosan].

<sup>90</sup> Annex A, entries 31-42.

<sup>91</sup> *Ibid*, entries 31-42.

<sup>92</sup> *Ibid* A, entry 34; Kampong Cham July WRIA, p. 4.

<sup>93</sup> *Ibid*, entry 34.

<sup>94</sup> Case File No. 004-D219/708, *Written Record of Interview witness DIN Sreav*, 24 February 2016.

<sup>95</sup> Annex A, entry 43; Case File No. 004-D219/501, *Written Record of Investigation Action*, 11 September 2015 ("Kampong Cham September WRIA"), p. 3.

<sup>96</sup> Annex A, entry 43.

<sup>97</sup> Kampong Cham September WRIA, p. 3.



Pouch) son on 5 September 2015.<sup>98</sup> The Defence ask that the OCIJ provide the full name and identification information for this individual.<sup>99</sup>

57. Ta Pouch's son's full name is Keith Sarim, and his address is Sleng Village, Chrey Vien Commune, Prey Chhor District.

xx. *Conversation with Then Thol regarding alleged crime site Tuol Beng (D219/501)*

58. The Defence complain that a WRIA which summarises a conversation with Then Thol on 7 September 2015 about the alleged Toul Beng execution site shows that Then Thol has *prima facie* exculpatory evidence, namely that Tuol Beng was not a security centre or execution site.<sup>100</sup>

59. The WRIA records that Then Thol "*denied knowing anything*" as he was "*a low level soldier*".<sup>101</sup> He told the investigator that he "*joined the armed forces prior to the South West Zone arriving in the area*" and at the time that he was stationed at Tuol Beng it was "*just a military office*" and there were no detainees.<sup>102</sup>

60. I am not persuaded that there are *prima facie* reasons that Then Thol may be able to give exculpatory evidence. As Then Thol told the investigator, he was stationed at Tuol Beng before the Southwest Zone cadres arrived and at that time it was only a military office. Viewed in the context of other evidence on the Case File, I am not convinced that the information identified by the Defence indicates that Then Thol may be able to give exculpatory evidence that falls within the temporal scope of the investigation, which commences with the arrival of the South West Zone cadres.

xxi. *Conversation with Ta Bien regarding detention centres in Sector 42 (D219/501)*

61. The Defence refer to a WRIA detailing a discussion with Ta Bien on 8 September 2015 regarding detention centres in Sector 42.<sup>103</sup> The Defence argue that the witness has *prima facie* exculpatory evidence, namely that the security centres in Sector 42 were under Pech Chim's control, not Ao An's.<sup>104</sup>

62. As explained above, I intend to exclude all allegations relating to crime sites in Sector 42 at the conclusion of the investigation and will not expend further resources investigating matters in Sector 42 unless I consider them relevant to Ao An's responsibility for crimes committed in Sector 41, or the remaining allegations of genocide of the Cham in Kampong Cham.<sup>105</sup>

xxii. *Conversation with Ing Sary regarding the alleged Met Sop (Kor) Security Centre (D219/501)*

63. The Defence point to a WRIA in which an OCIJ investigator had a conversation with an individual named Ing Sary on 9 September 2015 in Kang Meas District.<sup>106</sup>

<sup>98</sup> Annex A, entry 48; Kampong Cham September WRIA, p. 6.

<sup>99</sup> Annex A, entry 48.

<sup>100</sup> *Ibid*, entry 49; Kampong Cham September WRIA, pp. 7-8.

<sup>101</sup> Kampong Cham September WRIA p. 7.

<sup>102</sup> Kampong Cham September WRIA, p. 7.

<sup>103</sup> Annex A, entry 50; Kampong Cham September WRIA, p.11.

<sup>104</sup> Annex A, entry 50.

<sup>105</sup> *See supra*, para. 30.

<sup>106</sup> Annex A, entry 52; Kampong Cham September WRIA, pp. 12-13.



The Defence argue that this witness has *prima facie* exculpatory evidence that persons were imprisoned in Met Sop prior to the arrival of the Southwest Zone cadres and that Southwest Zone cadres did not arrive until mid-1977.<sup>107</sup>

64. Ing Sary's statement that people were imprisoned in Met Sop prior to the arrival of the Southwest Zone is consistent with the Third Introductory Submission ("3IS"), which states that "[w]hen the Southwest Zone arrived [at Met Sop] ... there were many more executions at the Security Centre and more deaths from starvation than before."<sup>108</sup>
65. Regarding Ing Sary's statement that she "left Met Sop early 1977" and was sent home "approximately five months before the South West Zone arrived", the Defence have not explained in sufficient detail how this could be *prima facie* exculpatory. On the basis that Ing Sary left Met Sop some five months prior to the arrival of the South West Zone cadres, I am not convinced that she may be able to give exculpatory or otherwise relevant evidence.

xxiii. *Conversation with Sat Sim regarding the command structure of the Central Zone military and his knowledge of Ao An (D219/619)*

66. The Defence reference a WRIA in which an OCIJ investigator had a conversation with Sat Sim on 14 November 2015 about the command structure of the Central Zone military and whether he knew Ao An.<sup>109</sup> The Defence assert that this witness has *prima facie* exculpatory evidence, namely that Ao An was not involved in zone affairs.<sup>110</sup>
67. The OCIJ conducted an interview with Sat Sim on 31 May 2016.<sup>111</sup> This interview covers the topics discussed during the conversation on 14 November 2015, including the witness's lack of knowledge of Ao An and Ao An's responsibilities and authority.<sup>112</sup>

## B. Category B

i. *Defence requests for WRIs and audio-recordings for conversations with witnesses or for notes of all those present during such conversations*

68. In each of the five entries of Annex B, the Defence identify WRIs or Reports of Execution of Rogatory Letters that summarise information several individuals gave to OCIJ investigators.<sup>113</sup> The Defence argue that these interactions exceeded the boundaries for screening conversations as outlined in the 29 September 2015

<sup>107</sup> Annex A, entry 52.

<sup>108</sup> Case 004-D1, [Corrected 2] Third Introductory submission dated 20-11-2008, 20 November 2008, para. 28.

<sup>109</sup> Annex A, entry 66; Case File No. 004-D219/619, Written Record of Investigation Action, 30 November 2015 ("Kampong Cham November WRIA"), pp. 5-6.

<sup>110</sup> Annex A, entry 66.

<sup>111</sup> Case File 004-D219/772, Written Record of Interview of SAT Sim, 31 May 2016.

<sup>112</sup> Case File 004-D219/772, Written Record of Interview of SAT Sim, 31 May 2016, ERN 01309845, A103-A106.

<sup>113</sup> Annex B, entry 1; Phnom Pros Site ID; Annex B, entry 2; Kok Pring Site ID; Annex B, entry 3; Case File No. 004-D107/19, Written Record of acts of investigation, 27 April 2012 ("Central Zone WRIA"); Annex B, entry 4; Case File No. 004-D219/640, Written Record of Investigation Action, 5 January 2016 ("Wat Ta Meak WRIA 1"); Annex B, entry 5; Case File No. 004-D219/641, Written Record of Investigation Action, 19 December 2015 ("Wat Ta Meak WRIA 2").



Memorandum, and therefore constitute interviews.<sup>114</sup> The Defence request that the WRIs and audio recordings for these screening conversations be placed on the Case File. If WRIs and audio recordings for these conversations do not exist, the Defence further request that the OCIJ confirm this and place on the Case File the notes of investigators, interpreters, analysts, transcribers, or others present during the relevant missions.<sup>115</sup>

69. As previously discussed with regard to Annex A, my 29 September 2015 instructions are intended to establish best practice among OCIJ investigators, but preliminary conversations with potential witnesses that exceed these instructions are not prohibited under the Internal Rules and do not amount to a procedural defect.<sup>116</sup> I also note that three of the five entries identified by the Defence pre-date the 29 September 2015 Memorandum.<sup>117</sup>
70. In any event, in the case of all five entries, the relevant WRIAs or Reports of Execution of Rogatory Letters all record the general content of the conversations with these individuals, and no WRIs or audio recordings exist.
71. Regarding the Defence's requests for notes from the OCIJ investigators, translators, analysts, and others present during these conversations, as previously discussed, such internal work product is not disclosable.<sup>118</sup>

*ii. Witness who confirmed Ke Pauk visited Wat Phnom Pros Execution Site (D3/23)*

72. The Defence request the identity and interview date of a witness who is mentioned in a site identification report dated 1 December 2010<sup>119</sup> of an OCIJ investigative visit to the alleged Wat Phnom Pros Execution Site and who confirmed that Ke Pauk visited this site.<sup>120</sup>
73. As the investigator notes at the end of the site identification report, the OCIJ interviewed two witnesses in relation to this mission, namely Vorng Sokun and Srey Kanoeun (alternate spelling Srei Kanoeun).<sup>121</sup> The OCIJ interviewed Vorng Sokun on 2 December 2010 and Srey Kanoeun on 3 December 2010.<sup>122</sup> WRIs and audio recordings for each interview are on the Case File.<sup>123</sup> Vorng Sokun's WRI states that Ke Pauk visited Wat Phnom Pros, so she is likely the witness mentioned in the site identification report.<sup>124</sup>

<sup>114</sup> Annex B, entries 1-5; 29 September 2015 Memorandum, para. 1.

<sup>115</sup> Annex B, entries 1-5.

<sup>116</sup> See *supra*, paras 15-17; Case File No. 004-D296/1/1/4, *Decision on AO An's application to annul non-audio recorded written records of interview*, 30 November 2016, para. 25.

<sup>117</sup> Annex B, entries 1-3.

<sup>118</sup> See *supra*, para. 18.

<sup>119</sup> Regarding the date of the WRIs, see *supra*, paras 22-23.

<sup>120</sup> Phnom Pros Site ID, pp. 2-3; Annex B, entry 1.

<sup>121</sup> Phnom Pros Site ID, pp. 12-13.

<sup>122</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010; Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoeun*, 3 December 2010.

<sup>123</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010; Case File No. 004-D3/19R, *CD Recording of Interview of VORNG Sokun*, 2 December 2010; Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoeun*, 3 December 2010; Case File No. 004-D3/20R, *CD Recording of Interview of SREI Kanoeun*, 3 December 2010.

<sup>124</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010, ERN 00630446, A13.



iii. *Witness who estimated victim numbers at Kok Pring Execution Site (D107/16)*

74. The Defence ask for the identity and interview date of a witness mentioned in a site identification report dated 28 February 2012 who estimated that “*more than one thousand*” victims were killed at Kok Pring execution site.<sup>125</sup> The OCIJ investigator notes at the end of the site identification report that the OCIJ interviewed three witnesses in connection with the report: Sann Son, Kak Shoeing (alternative spelling Kak Sroeun), and Chuong Srim.<sup>126</sup>
75. The OCIJ interviewed Kak Shoeing and Sann Son on 16 February 2012, and Chuong Srim on 23 February 2012.<sup>127</sup> The WRIs and the audio recordings are available for these interviews.<sup>128</sup> Sann Son is likely the witness mentioned in the site identification report, as he is the only one of the three who gave estimated victim numbers: in his WRI, he states: “*I think there were less than 1,000 persons. There might have been 800 to 900 persons.*”<sup>129</sup> Further, the report states that Sann Son was the witness that guided the investigative team on the site.<sup>130</sup>

iv. *Witnesses questioned on the role of Prak Yut (D107/19)*

76. The Defence refer to a WRIA dated 30 April 2012 regarding an OCIJ mission to Kampong Siem District, which notes that the investigative team “*interviewed several witnesses, including Vorng Sokun, sister of Sophany, and Nhoem Kul, alias Say*”.<sup>131</sup> The Defence request that the OCIJ identify and provide the exact interview dates of the witnesses who were interviewed during this mission.<sup>132</sup> The Defence further submit that the investigator questioned these witnesses about Prak Yut, and that the witnesses gave exculpatory evidence that Prak Yut may have lied in her interview with the OCIJ.
77. The investigative team interviewed eight witnesses during this mission. The corresponding WRIs are all on the Case File.<sup>133</sup>

<sup>125</sup> Kok Pring Site ID, p. 3; Annex B, entry 2.

<sup>126</sup> Kok Pring Site ID, p. 4.

<sup>127</sup> Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012; Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012; Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012;

<sup>128</sup> Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012; Case File No. 004-D107/3R, *CD Recording of Interview of KAK Sroeun*, 16 February 2012; Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012; Case File No. 004-D107/10R, *CD Recording of Interview of CHUONG Srim*, 23 February 2012; Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012; Case File No. 004-D107/2R, *CD Recording of Interview of SANN Son*, 16 February 2012.

<sup>129</sup> Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012, ERN 0078733, A16.

<sup>130</sup> Kok Pring Site ID, p. 4.

<sup>131</sup> Annex B, entry 3; Central Zone WRIA, p. 2.

<sup>132</sup> Annex B, entry 3.

<sup>133</sup> Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012; Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012; Case File No. 004-D107/4, *Written Record of Interview of VORNG Sokun*, 17 February 2012; Case File No. 004-D107/5, *Written Record of Interview of ORN Kim Eng*, 18 February 2012; Case File No. 004-D107/6, *Written Record of Interview of CHHENG Yeun*, 18 February 2012; Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012; Case File No. 004-D107/8, *Written Record of Interview of NHIM Kol*, 20 February 2012; Case File No. 004-D107/9, *Written Record of Interview of MEAN Savuth*, 21 February 2012; Case File No. 004-D107/10, *Written Record of Interview of CHUONG Srim*, 23 February 2012.





v. *Witnesses who shared information on the location of Chrey Vien Commune Office (D219/640)*

78. The Defence identify a WRIA dated 5 November 2015 that supplements a site identification report dated 14 September 2015 regarding the alleged Wat Ta Meak Security Centre.<sup>134</sup> In the WRIA, the OCIJ investigator notes having received information about the location of Chrey Vien Commune office, but only identifies one such witness, named Chan Heng.<sup>135</sup> The Defence request that the OCIJ confirm whether other witnesses, in addition to Chan Heng, provided information about the Chrey Vien Commune office location.<sup>136</sup> If there are other witnesses, the Defence ask that the OCIJ identify them, provide the dates of their interviews, and locate and place on the Case File the WRIs and audio recordings of their interviews.<sup>137</sup>
79. The corresponding site identification report mentions that Nat Kim Nang (alternative spelling Nut Kimnang) gave information regarding the location of the Chrey Vien Commune office.<sup>138</sup> The OCIJ interviewed Nat Kim Nang on 6 October 2015, and in this interview the witness confirmed that the Commune office during the Khmer Rouge period was in the same location as the present Chrey Vien Commune office.<sup>139</sup>

vi. *Witnesses who described a detention centre near Wat Ta Meak Security Centre (D219/641)*

80. The Defence identify a WRIA dated 19 December 2015 regarding a mission to Kampong Cham in November 2015 that supplements a site identification report on Wat Ta Meak Security Centre.<sup>140</sup> In this WRIA, the investigator writes that Pal Lay (alternative spelling Pall Lay), the deputy chief of Daunde Village, told the investigative team about the location of a detention centre near Wat Ta Meak.<sup>141</sup> The Defence ask the OCIJ to confirm whether other witnesses, in addition to Pal Lay, also provided information about the location of the alleged detention centre.<sup>142</sup> The Defence also request, if there are other witnesses, that the OCIJ identify these witnesses, provide the dates of their interviews, and locate and place on the Case File the WRIs and audio recordings of their interviews.<sup>143</sup>
81. Pal Lay provided the bulk of the information about the alleged detention centre in his witness interview,<sup>144</sup> but the WRIA notes that Samrith An also “*told the investigative team that it is well known by locals in Prey Chhor District and surrounding areas that an area in the rice fields of Trapeang Lvea is known as ‘The Killing Fields for Wat Ta Meak.’*”<sup>145</sup> The OCIJ interviewed Samrith An on

<sup>134</sup> Annex B, entry 4; Wat Ta Meak WRIA 1; Case File No. 004-D219/584, *Site Identification Report*, 14 September 2015.

<sup>135</sup> Wat Ta Meak WRIA 1, p. 2.

<sup>136</sup> Annex B, entry 4.

<sup>137</sup> *Ibid*, entry 4.

<sup>138</sup> Case File No. 004-D219/584, *Site Identification Report*, 14 September 2015, ERN 01167239, p. 7.

<sup>139</sup> Case File No. 004-D219/542, *Written Record of Interview witness NUT Kimnang*, 6 October 2015, ERN 01173600, A36-A38.

<sup>140</sup> Annex B, entry 5; Wat Ta Meak WRIA 2.

<sup>141</sup> Wat Ta Meak WRIA 2, pp. 2-4.

<sup>142</sup> Annex B, entry 5.

<sup>143</sup> *Ibid*, entry 5.

<sup>144</sup> Case File No. 004-D219/620, *Written Record of Interview witness PALL Lay*, 8 December 2015.

<sup>145</sup> Wat Ta Meak WRIA 2, p. 2.



17 November 2015 and asked him extensively about his knowledge of the Wa Ta Meak detention centre and nearby detention centres and killing sites.<sup>146</sup> The WRI and the audio recording for this interview are on the Case File.<sup>147</sup>

### C. Category C

#### i. *Requests for specific questions and answers of screening conversations and for the notes of all those present during screening conversations*

82. In each of the ten entries of Annex C, the Defence request the questions asked of witnesses by an OCIJ investigator in screening conversations and the responses of these witnesses.<sup>148</sup> If this information does not exist, the Defence further request that the OCIJ confirm this and place on the Case File the notes of investigators, interpreters, analysts, transcribers, or others present during the relevant missions.<sup>149</sup>
83. In the case of all ten entries, the relevant WRIAs record the general content of the conversations with these individuals, and no further record of the specific question and answers from these screening conversations exist.<sup>150</sup> There is no obligation, either under the Internal Rules or in my memorandum on screening interviews, to make a verbatim record of this type of preliminary interviews.
84. With regard to the Defence's requests for notes from OCIJ investigative teams, as previously discussed, such internal work product is not disclosable.<sup>151</sup>
85. In addition, the Defence make several specific requests for information, which are addressed below.

#### ii. *Information regarding witnesses related to the alleged crime site of Andaung Ta Prum (D117/13)*

86. The Defence request the personal identification information of Leng Van Hang and Kieng Simach, who accompanied OCIJ investigators to the Andaung Ta Praum crime site and provided them with explanations of the site on 10 December

<sup>146</sup> Case File No. 004-D219/609, *Written Record of Interview witness SAMRITH An*, 17 November 2015.

<sup>147</sup> *Ibid*; Case File No. 004-D219/609R, *CD Recording of Interview of witness SAMRITH An*, 17 November 2015.

<sup>148</sup> Annex C, entry 1; Thnal Bek WRIA; Annex C, entry 2; Case File No. 004-D117/69, *Written Record of Investigation Action*, 19 September 2014; Annex C, entry 3; Kampong Cham May WRIA, pp. 3-4; Annex C, entry 4; Kampong Cham June/July WRIA, p. 5; Annex C, entry 5; Case File No. 004-D219/560, *Written Record of Investigation Action*, 14 October 2015, pp. 4-5; Annex C, entry 6; Kampong Cham November WRIA, p. 5; Annex C, entry 7; Kampong Cham November WRIA, p. 8; Annex C, entry 8; Case File No. 004-D219/642, *Written Record of Investigation Action*, 19 December 2015 ("Kampong Cham December WRIA"), pp. 2-3; Annex C, entry 9; Kampong Cham December WRIA, p. 3; Annex C, entry 10; Kampong Cham December WRIA, p. 4.

<sup>149</sup> Annex C, entries 1-10.

<sup>150</sup> Regarding entry 1 of Annex C, a Report of the Execution of Rogatory Letter also records the general content of the conversations with Kieng Simach and Leng Van Hang: Case File No. 004-D117/17, *Report of the Execution of Rogatory Letter, dated 17 December 2012: Site Identification Report Thnal Bek Execution Site*, 17 December 2012. With regard to Annex C, entry 5, the OCIJ investigative team recorded the screening conversation with Chan Heng in greater detail in a related Site Identification Report, but again no specific questions or answers are available from this screening conversation: Wat Ta Meak WRIA 1.

<sup>151</sup> See *supra*, para. 18.



2012.<sup>152</sup> The personal identification information of Kieng Simach and Leng Van Hang is contained in sufficient detail in the WRIA, which includes the individuals' names and places of residence.<sup>153</sup> An OCIJ investigator also conducted an interview with Leng Van Hang, which provides greater detail.<sup>154</sup>

*iii. Information about witnesses Chhan Chen and Chhan Chun (D117/69)*

87. The Defence request the personal identification information of Chhan Chen and Chhan Chun, whose names are mentioned in a WRIA regarding OCIJ missions to Kampong Cham spanning from 30 July to 7 August and 25 to 30 August 2014.<sup>155</sup>
88. Chhan Chen (alternative spelling Chhon Chhen) was previously summoned to appear at the ECCC on 14 July 2014.<sup>156</sup> However, the Witness and Expert Support Unit ("WESU") was unable to locate a person by that name and after extensive searching believed that the person being sought was a man named Thoang Chhen.<sup>157</sup> WESU reported that Thoang Chhen was verbally and physically incapacitated due to a stroke and unable to participate in an interview.<sup>158</sup> Later, an OCIJ investigator visited Thoang Chhen at his home and verified that, given his incapacity due to his poor health, he was not in a position to be interviewed or screened.<sup>159</sup> The investigator's report also provides this individual's address.<sup>160</sup>
89. In regard to Chhan Chun, the OCIJ does not have any additional information beyond what is contained in the WRIA.<sup>161</sup>

*iv. Information about witness Khuth Khy (D219/330)*

90. The Defence request the personal identification information of witness Khuth Khy who was screened on 13 May 2015 during a mission to Kang Meas District spanning 9 to 20 May 2015.<sup>162</sup>
91. The WRIA contains this witness's name and basic address.<sup>163</sup> Later, the OCIJ conducted an interview with Khuth Khy; the record of this interview provides his full address and more biographical details.<sup>164</sup>

*v. Information about the village chief in Takeo encountered on 1 July 2015 (D219/407)*

92. The Defence request the personal identification information for the village chief in Takeo, whom the investigative team encountered on 1 July 2015 in Kor Commune

<sup>152</sup> Annex C, entry 1; Case File No. 004-D117/13, *Written Record of Investigation Action*, 10 December 2012.

<sup>153</sup> *Ibid.*

<sup>154</sup> Case File No. 004-D117/1, *Written record of witness interview of LENG Vannang*, 11 December 2012.

<sup>155</sup> Annex C, entry 2; Case File No. 004-D117/69, *Written Record of Investigation Action*, 19 September 2014.

<sup>156</sup> Case File No. 004-A116, *Summons of Witness CHHON Chhen*, 27 May 2014.

<sup>157</sup> Case File No. 004-D219/31.3, *WESU Report On CHHON Chhen*, 20 August 2014; Annex C, entry 2; Case File No. 004-D117/69, *Written Record of Investigation Action*, 19 September 2014.

<sup>158</sup> Case File No. 004-D219/31.3, *WESU Report On CHHON Chhen*, 20 August 2014.

<sup>159</sup> Case File No. 004-D117/69, *Written Record of Investigation Action*, 19 September 2014.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> Annex C, entry 3; Kampong Cham May WRIA, pp. 3-4.

<sup>163</sup> Kampong Cham May WRIA, pp. 3-4.

<sup>164</sup> Case File No. 004-D219/686, *Written record of interview witness KHUTH Khy*, 11 February 2016.



in connection with their attempt to locate Koem Lot.<sup>165</sup> The OCIJ does not have any further records beyond what is contained in the WRIA.

vi. *Information about witness Chan Heng encountered on 8 October 2015 (D219/560)*

93. The Defence ask for the personal identification information for Chan Heng, whom an OCIJ investigator met while on a mission to Kampong Cham.<sup>166</sup> The WRIA dated 14 October 2015 includes the witness's name and address.<sup>167</sup> An OCIJ investigator also later conducted a judicial witness interview with Chan Heng, which provides greater biographical detail on the witness.<sup>168</sup>

vii. *Information about two witnesses encountered in Sralao Village on 14 November 2015 (D219/619)*

94. The Defence request the personal identification information for two individuals whom an OCIJ investigative team encountered in Sralao Village on 14 November 2015 while looking for individuals with knowledge of people taken from Kampong Siem District to a prison in Prey Torteung.<sup>169</sup> Regarding the first individual encountered by the investigative team in Sralao Village, Taem Cheang, the WRIA records both his name and address.<sup>170</sup> An OCIJ investigator later conducted an official witness interview with Taem Cheang.<sup>171</sup> This witness interview provides greater personal details of the witness.<sup>172</sup>

95. In relation to the second individual, Mon Mat (alternative spelling, Morn Mot), the WRIA also records his personal identification information, including his name, address, and title.<sup>173</sup> An OCIJ investigator had previously conducted a witness interview with Mon Mot, which provides further personal identification details.<sup>174</sup>

viii. *Information about witness Mao Samreoun encountered on 18 November 2015 (D219/619)*

96. The Defence call for the personal identification information of Mao Samroeun, the Peam Chikang commune chief, encountered on 18 November 2015 during an OCIJ investigative mission to Kampong Cham Province.<sup>175</sup> The WRIA sufficiently records the personal details of this witness, including his full name, aliases, address, age, and position.<sup>176</sup> An OCIJ investigator later conducted an official witness interview with Mao Samroeun, and this document provides further details.<sup>177</sup>

<sup>165</sup> Annex C, entry 4; Kampong Cham June/July WRIA, p. 5.

<sup>166</sup> Annex C, entry 5; Case File No. 004-D219/560, *Written Record of Investigation Action*, 14 October 2015, pp. 4-5.

<sup>167</sup> Case File No. 004-D219/560, *Written Record of Investigation Action*, 14 October 2015, pp. 4-5.

<sup>168</sup> Case File No. 004-D219/544, *Written Record of Interview witness CHUN Heng*, 9 November 2015.

<sup>169</sup> Annex C, entry 6; Kampong Cham November WRIA, p. 5.

<sup>170</sup> Kampong Cham November WRIA, p. 5.

<sup>171</sup> Case File No. 004-D219/378, *Written Record of Interview of TEAM Chheng*, 24 June 2015.

<sup>172</sup> *Ibid.*

<sup>173</sup> Kampong Cham November WRIA, p. 5.

<sup>174</sup> Case File No. 004-D219/377, *Written Record of Interview of MORN Mot*, 24 May 2015.

<sup>175</sup> Annex C, entry 7; Kampong Cham November WRIA, p. 8.

<sup>176</sup> Kampong Cham November WRIA, p. 8.

<sup>177</sup> Case File No. 004-D219/687, *Written record of interview witness MAO Saroeun*, 15 February 2016.



ix. *Information about witness Tep Mao encountered on 8 December 2015*  
(D219/642)

97. The Defence require the personal identification information for Tep Mao, a witness encountered on 8 December 2015 during an OCIJ investigative mission to Kampong Cham Province.<sup>178</sup> The WRIA provides Tep Mao's personal details, including his name, age, and address in Daundei Village, which is in Chrey Vien Commune, Prey Chhor District, Kampong Cham Province.<sup>179</sup>

x. *Information about witness Nim encountered on 8 December 2015*  
(D219/642)

98. The Defence request the personal identification information for an individual named Nim, whom an OCIJ investigator encountered on 8 December 2015 during an OCIJ investigative mission to Kampong Cham Province.<sup>180</sup> The WRIA provides sufficient personal identification information, as it includes the witness's name and address.<sup>181</sup>

xi. *Information about witness Nam Mon encountered on 9 December 2015*  
(D219/642)

99. The Defence request the personal identification information of Nam Mon (alternative spelling, Nam Monn), whom the OCIJ investigator met in Kampong Siem District on 9 December 2015 during an OCIJ investigative mission to Kampong Cham Province.<sup>182</sup>

100. The OCIJ previously conducted a formal interview with this witness, and his personal identification information is recorded in detail in that document.<sup>183</sup>

#### **D. Category D**

101. The Defence request the CIJs to place on the Case File all relevant sources and materials forming the basis of factual assertions made in the 20 purported investigative failures identified in Annex D to the Investigative Request.<sup>184</sup> If the supporting materials do not exist, the Defence request the CIJs to place on the Case File the notes taken by investigators, interpreters, analysts, transcribers, or others present during the missions corresponding to each document listed in Annex D.<sup>185</sup>

i. *Site description, OCIJ investigations results, and photographs regarding Met Sop (Kor) Security Centre (D3/21)*

102. The Defence submit that a site identification report dated 20 November 2010 concerning the Met Sop (Kor) Security Centre does not provide sources supporting its content.<sup>186</sup>

<sup>178</sup> Annex C, entry 8; Kampong Cham December WRIA, pp. 2-3.

<sup>179</sup> Kampong Cham December WRIA, pp. 2-3.

<sup>180</sup> Annex C, entry 9; Kampong Cham December WRIA, p. 3.

<sup>181</sup> Kampong Cham December WRIA, p. 3.

<sup>182</sup> Annex C, entry 10; Kampong Cham December WRIA, p. 4.

<sup>183</sup> Case File No. 004- D219/543, *Written Record of Interview witness NAM Monn*, 7 October 2015.

<sup>184</sup> Investigative Request, para. 45(d); Annex D.

<sup>185</sup> Investigative Request, para. 45(e); Annex D.

<sup>186</sup> Investigative Request, para. 33(a); Annex D, entry 1; Met Sop Site ID, pp. 2, 4, 8.



103. In the Investigative Request, the Defence point specifically to the OCIJ investigator's statements that (i) the site was the former security centre of Sector 41, (ii) executions took place nearby and people were buried there, and (iii) more than 2000 people died at the location.<sup>187</sup> In addition, in Annex D the Defence point to further factual assertions in the site identification report: (i) that Met Sop was purged in 1977 and replaced by Ta Ngov; (ii) that after the purge the Zone came under the control of Khmer Rouge from the Southwest; (iii) that many cadres from the Zone and Districts were arrested, some sent to S-21 and others to the Sector security centre, but that no one survived; and (iv) that more than 2000 people died at Met Sop.<sup>188</sup>
104. At the time of the Met Sop Site ID, there was already some evidence on the Case File from which the investigator could conclude that (i) Met Sop was the security centre of Sector 41,<sup>189</sup> (ii) people were executed and buried nearby,<sup>190</sup> and (iii) at least 2000 people died there.<sup>191</sup> The Case File also contained evidence to support the investigator's statements about (i) Chief Met Sop's alleged purge,<sup>192</sup> (ii) the subsequent command structure at the security centre,<sup>193</sup> (iii) the arrests and executions of other cadres in Sector 41,<sup>194</sup> and (iv) the estimated death toll at this location.<sup>195</sup>

<sup>187</sup> Investigative Request, 33(a).

<sup>188</sup> Annex D, entry 1; Met Sop Security Centre Site ID, pp. 2, 4, 8.

<sup>189</sup> Case File No. 004-D1.3.11.38, *OCP Interview of PAO Li*, 17 November 2006, ERN 00222960; Case File No. 004-D1.3.11.49, *OCP interview of SOENG Leum*, on 17 November 2006, 17 November 2006, ERN 00222963; Case File No. D1.3.11.32, *OCP Interview of NAI Seu*, 11 November 2006, ERN 00222958; Case File No. 004-D1.3.11.54, *OCP Interview of Tes Seuan*, 11 November 2006, ERN 00208441; Case File No. 004-D1.3.11.9, *Interview of CHHEAN Heang*, 1 August 2008, ERN 00210420; Case File No. 004-D1.3.11.22, *Interview of KHUN Sareth*, 2 August 2008, ERN 00210458; Case File No. 004-D1.3.10.18, *Kampong Cham 2000*, 28 May 2000.

<sup>190</sup> Case File No. 004-D1.3.10.18, *Kampong Cham 2000*, 28 May 2000, p. 3, ERN 00208259; Case File No. 004-D3/13, *Written Record of Interview of KUNG Ting*, 20 October 2010, ERN 00623574, A5; Case File 004-D1.3.11.32, *OCP Interview of NAI*, 11 November 2006, ERN 00222959; Case File No. 004-D1.3.11.26, *OCP Interview of Kun Sotha*, 11 November 2006, ERN 00208384; Case File No. 004-D1.3.11.49, *OCP interview of SOENG Leum*, on 17 November 2006, 17 November 2006, ERN 00222963; Case File No. 004-D1.3.11.38, *OCP Interview of PAO Li*, 17 November 2006, ERN 00222960-00222961; Case File No. 004-D1.3.11.25, *OCP interview of Krauch Village Pagoda Committee member*, 17 November 2006; Case File No. 004-D1.3.11.7, *Interview of CHENG Tol and KUN Sokha*, 2 August 2008, ERN 00210439; Case File No. 004-D1.3.11.16, *Annex B 0010: Henri LOCARD, "Report: Kampong Cham: West Bank of the Mekong (Old North Region), 2007, 31 May 2007, pp. 8-9.*

<sup>191</sup> Case File No. 004-D1.3.10.18, *Kampong Cham 2000*, 28 May 2000, pp. 3-4.

<sup>192</sup> Case File No. 004-D3/13, *Written Record of Interview of KUNG Ting*, 20 October 2010, ERN 00623574, A4; Case File No. 004-D1.3.11.49, *OCP interview of SOENG Leum*, on 17 November 2006, 17 November 2006, ERN 00222963; Case File No. 004-D1.3.11.32, *OCP Interview of NAI Seu*, 11 November 2006, ERN 00222958; Case File No. 004-D1.3.11.38, *OCP Interview of PAO Li*, 17 November 2006, ERN 00222960; Case File No. 004-D1.3.11.22, *Interview of KHUN Sareth*, 2 August 2008, ERN 00210458; Case File No. 004-D1.3.11.16, *Annex B 0010: Henri LOCARD, "Report: Kampong Cham: West Bank of the Mekong (Old North Region), 2007, 31 May 2007, pp. 8-9.*

<sup>193</sup> Case File No. 004-D3/11, *Written Record of Interview of NAI Seu*, 20 October 2010, ERN 00622282; Case File No. 004-D3/13, *Written Record of Interview of KUNG Ting*, 20 October 2010, ERN 00623574, A4; Case File No. 004-D1.3.11.42, *Record of the interview with RATH Pov*, on 1 August 2008, 1 August 2008, ERN 00210541; Case File 004-D1.3.11.35, *Interview of NIV Sun*, 1 August 2008, ERN 00210525; Case File No. 004-D1.3.11.6, *Interview of Witness Chea Maly*, 6 August 2008, ERN 00210434.

<sup>194</sup> Case File No. 004-D3/10, *Written Record of Interview of NIV Sun*, 19 October 2010, ERN 00623578, A9; Case File No. 004-D1.3.11.42, *Record of the interview with RATH Pov*, on 1 August 2008, 1 August 2008, ERN 00210535-00210538; Case File No. 004-D1.3.11.32, *OCP Interview of NAI*



105. The Defence also request the OCIJ to put on the Case File certain source information about photographs on pages 5 to 7 of the Met Sep Site ID.<sup>196</sup> In particular, the Defence seek (i) the date on which the photographs were taken, (ii) by whom they were taken, and (iii) an adequate description of the photograph's subject matter.<sup>197</sup>
106. OCIJ investigator Christian Baudesson took the photographs on pages 4 to 7 and 9 to 11 of the Met Sop Site ID during missions from 12 to 15 and 18 to 22 October 2010. The photographs found on pages 4 to 7 contain adequate descriptions of each photograph's subject matter.<sup>198</sup> Although the photographs found on pages 9 to 11 do not have captions, a visual comparison shows that these photographs portray the same subjects found in the photographs on pages 4 and 7 of the report.
- ii. *Site description, OCIJ investigations results, and photographs regarding Wat Phnom Pros Execution Site (D3/23)*
107. The Defence submit that a site identification report dated 1 December 2010 concerning Wat Phnom Pros Execution Site ("Phnom Pros Site ID")<sup>199</sup> lacks support for some of the assertions contained therein.<sup>200</sup>
108. In the Investigative Request, the Defence ask the OCIJ to place on the Case File the sources for the investigator's claims that 10,000 people were executed at Wat Phnom Pros Execution Site.<sup>201</sup> The Defence reiterate this demand in Annex D.<sup>202</sup> A witness who was interviewed during the same mission told the investigator that more than 10,000 skulls were found in either 1980 or 1981.<sup>203</sup> Additionally, there are several documents suggesting similar victim numbers at the alleged security centre at Wat Phnom Pros.<sup>204</sup>
109. The Investigative Request also complains that the statement that Zone Secretary Ke Pauk visited Wat Phnom Pros Execution Site lacks support.<sup>205</sup> A WRI on the Case File documents Ke Pauk's visit to the site.<sup>206</sup>
110. The Defence also request support for the factual allegations in the Phnom Pros Site ID about the Khmer Rouge cadres in charge of executions, namely that "[t]he

*Seu*, 11 November 2006, ERN 00222959; Case File No. 004-D1.3.11.38, *OCP Interview of PAO Li*, 17 November 2006, ERN 00222960.

<sup>195</sup> Case File No. 004-D1.3.10.18, *Kampong Cham 2000*, 28 May 2000, pp. 3-4.

<sup>196</sup> Annex D, entry 2; Met Sop Security Centre Site ID, pp. 5-7.

<sup>197</sup> Annex D, entry 2.

<sup>198</sup> Met Sop Security Centre Site ID.

<sup>199</sup> Phnom Pros Site ID.

<sup>200</sup> Investigative Request, para. 33(b); Annex D, entries 3-5; Phnom Pros Site ID.

<sup>201</sup> Investigative Request, para. 33(b); Phnom Pros Site ID, p. 3.

<sup>202</sup> Annex D, entry 3; Phnom Pros Site ID, p.3; Investigative Request, para. 33(b).

<sup>203</sup> Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoeun*, 3 December 2010, ERN 00631100, A4.

<sup>204</sup> Case File No. 004-D1.3.10.5, *Kampongcham 95-96*, 17 October 1995, ERN 00208309; Case File No. 004-D1.3.10.23, *Mission Report on OCP Mission to Sector 41 (Operation Riverland)*, 8 August 2008, ERN 00211157; Case File No. 004-D1.3.11.16, *Annex B 0010: Henri LOCARD, "Report: Kampong Cham: West Bank of the Mekong (Old North Region), 2007*, 31 May 2007, ERN 00208385; see also: 3IS, footnote 85.

<sup>205</sup> Case File No. 004-D311, *Tenth Request for Investigative Action*, 18 May 2016, para. 33(b); Phnom Pros Site ID, p 3.

<sup>206</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010, ERN 00630446, A13.



*specificity of this place is that the military were in charge of the security of the compound and the surroundings but not of the executions.*"<sup>207</sup>

111. A WRI on the Case File indicates that the alleged security centre was under the control of the military.<sup>208</sup> The same WRI says that the militiaman in command of the security centre was not an executioner himself.<sup>209</sup>
112. In addition, the Defence ask the OCIJ to place on the Case File the sources of the photographs of Wat Phnom Pros on pages 4, 7, 9, and 11 of the Phnom Pros Site ID.<sup>210</sup>
113. The OCIJ investigator took all of the photographs on pages 4 to 12 during a mission that lasted from 29 November to 3 December 2010. The photographs on pages 4 to 8 and 10 of the Phnom Pros Site ID contain basic descriptions based on signs and landmarks located at the site. Song Len, a monk who resides in Wat Phnom Pros Phnom Srey Pagoda, provided the information for the caption accompanying the photograph on page 6. Song Len did not participate in a WRI and no record of the conversation exists beyond what is contained in the Phnom Pros Site ID. The photograph on page 9 is a close-up of a sign that also appears on page 8. On page 8 the accompanying caption reads: "*View of the stupa with the bones and skulls collected on the killing site.*"<sup>211</sup> The photograph on page 11 is an alternative view of the photograph depicted on page 10 that is accompanied by the caption: "*View inside the stupa.*"<sup>212</sup>
114. The Defence also seek the sources of the assertions in the Phnom Pros Site ID concerning the alleged uses of the buildings.<sup>213</sup> The two statements in the report relevant to the uses of buildings are in the caption for the photograph on page 6: "*Main building used Choeung Aek, the commander of the place in the DK period*" and "*Only a few skulls and bones are now kept in a stupa.*"<sup>214</sup>
115. The caption accompanying the photograph on page 6 of the Phnom Pros Site ID is information provided by Song Len, the monk who resides in Wat Phnom Pros Phnom Srey Pagoda mentioned above in paragraph 113.
116. The Defence request the source of the identity of the alleged Wat Phnom Pros Security Centre's commander during the DK period.<sup>215</sup> The caption with the photograph on page 6 identifies Choeung Aek as the commander during the DK period.
117. As noted above in paragraphs 113 and 115, Song Len supplied the content for the caption on page 6 of the Phnom Pros Site ID.

<sup>207</sup> Annex D, entry 3; Investigative Request, para. 33(b); Phnom Pros Site ID, p.3.

<sup>208</sup> Case File No. 004-D3/19, *Written Record of Interview of VORNG Sokun*, 2 December 2010. ERN 00630445, A7.

<sup>209</sup> *Ibid.*

<sup>210</sup> Annex D, entries 4-5; Phnom Pros Site ID, pp. 4-7, 9, 11.

<sup>211</sup> Phnom Pros Site ID, p. 8.

<sup>212</sup> *Ibid.*, p. 10.

<sup>213</sup> Annex D, entry 4.

<sup>214</sup> Phnom Pros Site ID, pp. 6, 7.

<sup>215</sup> Annex D, entry 4.





118. The Defence request the supporting documents for the statement that “*Only a few skulls and bones are now kept in a stupa.*”<sup>216</sup> This is plainly an observation by the investigator.

119. The Defence request the source for the assertion that human remains were collected at the site in the 1980s.<sup>217</sup> This information can be found in a WRI with Srei Kanoeun dated 3 December 2010 and recorded during the same mission.<sup>218</sup>

*iii. Map regarding Anlong Chrey Dam Forced Labour Site (D3/24)*

120. The Defence take issue with a map attached to a site identification report dated 2 February 2011 regarding the Anlong Chrey Dam Forced Labour Site (“Anlong Chrey Dam Site ID”).<sup>219</sup> The map purports to mark the locations of mass graves along the Anlong Chrey Dam. The Defence complain that not only is the map unmarked, but the sources of the map, the lines, and the annotations are unidentified.

121. Using ArcView Geographic Information Spatial mapping software, the OCIJ investigator produced the map based on locations derived from GPS coordinates as well as site visits with witnesses. Page 6 of the site identification report provides the map’s sources for the locations of the “*Tuol Kok Kuo killing site*” and the “*Grave Pits*” on the map.<sup>220</sup> The execution and grave sites are marked on the map as “*5 (Estimate) Tuol Kok Killing Site*” and “*9. Grave Pits.*”<sup>221</sup> Pages 4 to 6 of the Anlong Chrey Dam Site ID provide the sources for the other locations depicted on the map.<sup>222</sup> The lines and dots on the map correspond to the legend that appears in the bottom right hand corner of the map.<sup>223</sup>

*iv. Location of alleged execution and pit sites near Kok Pring Execution Site (D107/16)*

122. The Defence request the OCIJ to put on the Case File the sources for statements identifying the locations of an alleged execution site and pits at Kok Pring, which are referenced in a site identification report dated 28 February 2012.<sup>224</sup>

123. The site identification report cites WRIs with Sann Son, Kak Shoening, and Chuong Srim.<sup>225</sup> Sann Son and Kak Shoening discuss the location of the execution site and the pits in their WRIs, which are available on the Case File.<sup>226</sup>

<sup>216</sup> Phnom Pros Site ID, p. 7.

<sup>217</sup> Annex D, entry 4; Phnom Pros Site ID, p. 7.

<sup>218</sup> Case File No. 004-D3/20, *Written Record of Interview of SREI Kanoeun*, 3 December 2010.

<sup>219</sup> Annex D, entry 6; Case File No. 004-D3/24, *Report of the Execution of Rogatory Letter, dated 02 February 2011 : Site Identification Report*, 02 February 2011, p. 2; Case File No. 004-D3/24.2, *Map of Anglong Chrey Bridge*, 10 March 2011 (“Anlong Chrey Dam Map”).

<sup>220</sup> Anlong Chrey Dam Site ID, p. 6.

<sup>221</sup> Anlong Chrey Dam Map.

<sup>222</sup> Anlong Chrey Dam Site ID, pp. 4-6.

<sup>223</sup> Anlong Chrey Dam Map.

<sup>224</sup> Annex D, entry 7; Kok Pring Site ID, p. 3.

<sup>225</sup> *Ibid.*, p. 4.

<sup>226</sup> Case File No. 004-D107/2, *Written Record of Interview of SANN Son*, 16 February 2012, ERN 00787232-00787233, A1, A6-A7, A12-A14, A16-A17; Case File No. 004-D107/3, *Written Record of Interview of KAK Sroeun*, 16 February 2012, ERN 00787202-00787204.



v. *Prak Yut's character and role in arrests and executions (D107/19)*

124. The Defence complain that certain assertions concerning Prak Yut in a WRIA dated 27 April 2012 lack support.<sup>227</sup> Specifically, the Defence seek documents corroborating the OCIJ investigator's description of Prak Yut as "*a cruel person*" and her role in arrests and executions, including the execution of her husband.<sup>228</sup>
125. The WRIA refers to two witnesses, Vorng Sokun and Nhoem Kul (alternative spelling, Nhim Kol, alias Say), whose WRIs are on the Case File.<sup>229</sup> Both witnesses describe in detail Prak Yut's role in arrests,<sup>230</sup> and mention her reputation as a person with a "*cruel*" character.<sup>231</sup> For example, Nhim Kol in one of his WRIs acknowledges the rumour that Prak Yut ordered the execution of her own husband.<sup>232</sup> Other documents on the Case File also detail Prak Yut's role in arrests and executions.<sup>233</sup>

vi. *Description of Ao An and Prak Yut's operations in the Toul Beng Execution Site (D117/48)*

126. According to the Defence, a site identification report dated 15 May 2014 concerning Angkuonh Dei District Security Centre ("Angkuonh Dei Site ID")<sup>234</sup> contains several unsupported assertions.<sup>235</sup>
127. In their Investigative Request, the Defence ask for the source for the statement in the Angkuonh Dei Site ID that "*[the] site already existed before the arrival of the SW people but was really used as a killing place after the SW people took power of the sector.*"<sup>236</sup> Support for this statement can be found in the WRI with Aok Chanty dated 10 May 2014 and recorded during the same mission as the Angkuonh Dei Site ID.<sup>237</sup>

<sup>227</sup> Annex D, entry 8; Central Zone WRIA, ERN 01109105-01109106, pp. 2-3.

<sup>228</sup> Annex D, entry 8; Central Zone WRIA, p. 2.

<sup>229</sup> Central Zone WRIA; Case File No. 004-D107/4, *Written Record of Interview of VORNG Sokun*, 17 February 2012; Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012; Case File No. 004-107/8, *Written Record of Interview of NHIM Kol*, 20 February 2012.

<sup>230</sup> Case File No. 004-D107/4, *Written Record of Interview of VORNG Sokun*, 17 February 2012, ERN 00787236, ERN 00787238, ERN 00787239, A3, A8, A16-A17, A23; Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012, ERN 00787215; Case File No. 004-D107/8, *Written Record of Interview of NHIM Kol*, 20 February 2012, ERN 00787219, ERN 00787221.

<sup>231</sup> Central Zone WRIA, p. 2; Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012, ERN 00787215.

<sup>232</sup> Case File No. 004-D107/7, *Written Record of Interview of NHIM Kol*, 19 February 2012, ERN 00787215.

<sup>233</sup> Case File No. 004-D117/42, *Written Record of Interview of KHOEM Neary*, 6 May 2014, ERN 01034076-01034078, A8-A9, A13-A14; Case File No. 004-D117/44, *Written Record of Interview of Civil Party NOV Hoeun*, 8 May 2014, ERN 01034907, ERN 01034909, A16; Case File No. 004-D117/42, *Written Record of Interview of KHOEM Neary*, 6 May 2014, ERN 01034075, A5; Case File No. 004-D117/43, *Written Record of Interview of SBONG Yann*, 7 May 2014, ERN 01034899, A5; Case File No. 004-D117/47, *Written Record of Interview of AOK Chanty*, 10 May 2014, ERN 01032988-01032989, A4-A5; Case File No. 004-D117/70, *Written Record of Interview of PRAK Yut*, 28 May 2013, ERN 01056217, A25.

<sup>234</sup> Case File No. 004-D117/48, *Report of the Execution of Rogatory Letter, dated 15 May 2014: Site Identification Report*, 15 May 2014.

<sup>235</sup> Investigative Request, para. 33(e); Annex D, entry 9.

<sup>236</sup> Investigative Request, para. 33(e) (citing Angkuonh Dei Site ID, pp. 2-3).

<sup>237</sup> Case File No. 004-D117/47, *Written Record of Interview of AOK Chanty*, 10 May 2014, ERN 01032989-01032990, A8.



128. The Defence request the OCIJ to place on the Case File the sources for five specific claims made in the report: (i) the timing of Ao An's arrival in Sector 41 and his role there, (ii) the location of the Sector 41 office, (iii) Prak Yut's role in the district and her office's location, (iv) Tuol Beng Execution Site's location and function after the arrival of the Southwest Zone cadres, and (v) the alleged transfer of prisoners between Tuol Beng Execution Site and the Sector 41 Security Centre.<sup>238</sup>
129. Regarding the first point, the report provides a date not for when Ao An arrived in Sector 41 but for when Ke Pauk assigned Ta An to the position of Sector 41 Secretary. Support for this claim appears in two WRIs with Prak Yut, which were recorded during previous missions.<sup>239</sup>
130. Regarding the second point, the Angkuonh Dei Site ID states that the location of the Sector 41 office was in Prey Chhor District. Prak Yut previously told the investigator that the Sector 41 office was in Prey Chhor District.<sup>240</sup>
131. In reference to the third point, the Angkuonh Dei Site ID also states that Prak Yut, the Secretary of the Kampong Siem District, had her office in Angkuonh Dei Village, Krala Commune, Kampong Siem District, Kampong Cham Province.<sup>241</sup> The Case File contains several WRIs that expound upon the location of Prak Yut's office and her role as Secretary of Kampong Siem District.<sup>242</sup>
132. With regard to the fourth point, the Angkuonh Dei Site ID reports that Tuol Beng Execution Site is 1.5 kilometres to the west of Angkuonh Dei village on the left side of National Road 7 and that the Southwest Zone cadres used the location as a killing site.<sup>243</sup> Several WRIs on the Case File elaborate on Tuol Beng's location and function after the arrival of the Southwest Zone cadres.<sup>244</sup>

<sup>238</sup> Annex D, entry 9.

<sup>239</sup> Case File No. 004-D117/70, *Written Record of Interview of PRAK Yut*, 28 May 2013, ERN 01056215-01056217, A6-A25; Case File No. 004-D117/71, *Written Record of Interview of PRAK Yut*, 19 June 2013, ERN 01056224, A19.

<sup>240</sup> Case File No. 004-D117/70, *Written Record of Interview of PRAK Yut*, 28 May 2013, ERN 01056217, A25.

<sup>241</sup> Angkuonh Dei Site ID, p. 3.

<sup>242</sup> Re Prak Yut's position: Case File No. 004-D117/42, *Written Record of Interview of KHOEM Neary*, 6 May 2014, ERN 01034075, A5; Case File No. 004-D117/43, *Written Record of Interview of SBONG Yann*, 7 May 2014, ERN 01034899, A5; Case File No. 004-D117/47, *Written Record of Interview of AOK Chanty*, 10 May 2014, ERN 01032990, A10; Case File No. 004-D117/70, *Written Record of Interview of PRAK Yut*, 28 May 2013, ERN 01056217, A26. Re Kampong Siem District office location: Case File No. 004-D117/41, *Written Record of Interview of THLANG Pheng*, 6 May 2014, ERN 01032975, A9; Case File No. 004-D117/44, *Written Record of Interview of Civil Party NOV Hoeun*, 8 May 2014, ERN 01034906, A6; Case File No. 004-D117/46, *Written Record of Interview of Civil Party IEM Channy*, 9 May 2014, ERN 01032980, A14; Case File No. 004-D117/32, *Written Record of Interview of NHEM Kol*, 12 November 2013, ERN 00966998, A9.

<sup>243</sup> Angkuonh Dei Site ID, p. 3.

<sup>244</sup> Case File No. 004-D117/41, *Written Record of Interview of THLANG Pheng*, 6 May 2014, ERN 01032974-01032975, A7-A9; Case File No. 004-D117/42, *Written Record of Interview of KHOEM Neary*, 6 May 2014, ERN 01034076-01034078, A8-A10, A13-A14; Case File No. 004-D117/43, *Written Record of Interview of SBONG Yann*, 7 May 2014, ERN 01034899-01034901, A8-A9, A12, A14-A15; Case File No. 004-D117/44, *Written Record of Interview of Civil Party NOV Hoeun*, 8 May 2014, ERN 01034907, ERN 01034909, A13-A15, A26; Case File No. 004-D117/45, *Written Record of Interview of THOU Sokheng*, 9 May 2014, ERN 01031702, ERN 01031704, A5, A14; Case File No. 004-D117/46, *Written Record of Interview of Civil Party IEM Channy*, 9 May 2014, ERN 01032982, A24; Case File No. 004-D117/47, *Written Record of Interview of AOK Chanty*, 10 May 2014, ERN 01032988-01032990, A2, A6-A8.



133. Regarding the fifth point, the Defence's request for clarification concerning the transfer of prisoners between Tuol Beng and the sector security office is based on a misunderstanding of the information in the Angkuonh Dei Site ID, which states that prisoners were detained in the Angkuonh Dei District Security Centre before being transferred to either the sector level or to the Tuol Beng Security Centre.<sup>245</sup> Evidence on the Case File provides information on the practice of detaining prisoners at the Angkuonh Dei District Security Centre before sending them to the Tuol Beng Security Centre.<sup>246</sup>

vii. *Alleged rape and forced marriage of Touch Chamreoun (D219/296)*

134. The Defence request that the OCIJ place on the Case File support for a statement in a WRIA dated 5 May 2015 that a female Southwest Zone cadre raped Touch Chamreoun and then Ao An allegedly forced Touch Chamreoun to marry her.<sup>247</sup>

135. The source for this claim is a WRI with Penh Van which is on the Case File.<sup>248</sup>

viii. *Site Identification Report about Wat Ta Meak Security Centre (D219/584)*

136. The Defence request the OCIJ to place on the Case File documents that support information provided in a site identification report dated 14 September 2015 concerning the Wat Ta Meak Security Centre ("Wat Ta Meak Site ID").<sup>249</sup>

137. First, the Defence ask specifically for sources supporting the OCIJ investigator's assertions about the uses of the structures at the Wat Ta Meak Security Centre.<sup>250</sup>

138. The OCIJ investigator collected the information about the buildings during a site visit to the Wat Ta Meak Security Centre.<sup>251</sup> The list of names of the people who helped with the site identification appears on page 2 of the report; they are Nat Kim Nang (alternative spelling Nut Kimnang) and Penh Va.<sup>252</sup> The report is the only record of the conversations with those witnesses. However, WRIs of Nat Kim Nang (alternative spelling Nut Kimnang) and Penh Va taken on different occasions are on the Case File.<sup>253</sup>

139. Additionally, the Defence ask for an explanation of the content of photographs relating to the Wat Ta Meak Security Centre and the sources of information for

<sup>245</sup> Annex D, entry 9; Angkuonh Dei Site ID, p. 3.

<sup>246</sup> Case File No. 004-D117/32, *Written Record of Interview of NHEM Kol*, 12 November 2013, ERN 00966998-00966999, A9-A12.

<sup>247</sup> Annex D, entry 10; Case File No. 004-D219/296, [*Corrected 1*] *Written Record of Investigation Action*, 5 May 2015, pp. 3-4.

<sup>248</sup> Case File No. 004-D219/226, *Written Record of Interview of Civil Party PENH Va*, 11 March 2015, ERN 01088625, ERN 01088628, A14, A34.

<sup>249</sup> Annex D, entry 11; Case File No. 004-D219/584, *Site Identification Report* ("Wat Ta Meak Site ID"), 14 September 2015, p. 6.

<sup>250</sup> Annex D, entry 11.

<sup>251</sup> Wat Ta Meak Site ID.

<sup>252</sup> *Ibid*, p. 2.

<sup>253</sup> Case File No. 004-D219/542, *Written Record of Interview witness NUT Kimnang*, 6 October 2015; Case File 004-D219/226, *Written Record of Interview of Civil Party PENH Va*, 11 March 2015; Case File 004-D219/289, *Written Record of Interview of Civil Party PENH Va*, 25 April 2015; Case File 004-D219/498, *Written Record of Interview of Civil Party Applicant PENH Va*, 7 September 2015.



captions accompanying certain photographs on pages 18, 19, 21, 22, 26, 27, and 28 of the Wat Ta Meak Site ID.<sup>254</sup>

140. The photographs on pages 18 and 19 of the Wat Ta Meak Site ID have no captions. They each feature the entrance to Wat Ta Meak Security Centre, which is located just off National Road 7.<sup>255</sup> The OCIJ investigator gathered the information for the captions of photographs on pages 20 to 29 during a site visit to Wat Ta Meak Security Centre.<sup>256</sup> Page 2 of the document lists the people who assisted with site identification.<sup>257</sup> The Wat Ta Meak Site ID itself serves as the record of the screening conversation with them.
141. Finally, the Defence request information concerning the satellite image of the Wat Ta Meak Security Centre, particularly the source of the image, the accompanying numbers on the buildings, and the key.<sup>258</sup>
142. The OCIJ investigator generated the satellite image of Wat Ta Meak Security Centre using Google Maps and collected the information for the annotations from the witnesses listed on page 2 of the report.

*ix. Investigative activities during mission to Slaeng Village (D219/560)*

143. The Defence request information collected by an OCIJ investigator on the first day of a mission in Prey Chhor District between 3 and 10 October 2015.<sup>259</sup>
144. On the first day of the mission, the OCIJ investigator travelled to Kampong Cham Province. No other investigative activities occurred on 3 October 2015 for that mission.

*x. Map of locations near Wat Ta Meak Security Centre (D219/640)*

145. The Defence request placement on the Case File of the sources of the information for locations near Wat Ta Meak Security Centre identified in a WRIA dated 14 October 2015 (“Wat Ta Meak WRIA 1”).<sup>260</sup> Specifically, the Defence refer to the handwritten and typed notations on the map on page 4 labelled “*Annex 1*” and the caption accompanying the photograph on page 5 labelled “*Photo 1*”.<sup>261</sup>
146. The OCIJ investigator based the map’s annotations on information collected during various site visits to Wat Ta Meak Security Centre.<sup>262</sup> The names of people who helped with the site identification for the map in Annex 1 in Wat Ta Meak WRIA 1 are listed on page 2 of the Wat Ta Meak Site ID.<sup>263</sup> Witnesses Nhong and Chan (alternative spelling Chun) Heng, mentioned on page 3 of Wat Ta Meak WRIA 1, also supplied data used to create the map in Annex 1.<sup>264</sup> Additionally,

<sup>254</sup> Annex D, entry 13; Wat Ta Meak Site ID, pp. 18-19, 21-22, 26-28.

<sup>255</sup> Wat Ta Meak Site ID, pp. 18-19.

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid.*, p. 2.

<sup>258</sup> Annex D, entry 12; Wat Ta Meak Site ID, p. 17.

<sup>259</sup> Annex D, entry 14; Case File No. 004-219/560, *Written Record of Investigation Action*, 30 October 2015, p. 1.

<sup>260</sup> Annex D, entries 15-16; Case File No. 004-D219/640, *Written Record of Investigation Action*, 14 October 2015, pp. 4-5, (“Wat Ta Meak WRIA 1”), pp. 4-5.

<sup>261</sup> Annex D, entries 15-16; Wat Ta Meak WRIA 1, pp. 4-5.

<sup>262</sup> Case File No. 004-D219/560, *Written Record of Investigation Action*, 14 October 2015; Wat Ta Meak Site ID; Wat Ta Meak WRIA 1.

<sup>263</sup> Wat Ta Meak Site ID, p. 2.

<sup>264</sup> Wat Ta Meak WRIA 1, p. 3.



Chun Heng provided the information for the caption in “*Photo 1*”. Before her interview, she showed the OCIJ investigator the location of the commune office during the time the Southwest Zone cadres controlled the area.<sup>265</sup> The Wat Ta Meak WRIA 1 stands as the record of the screening conversations with Chun Heng and Nhong.<sup>266</sup> A WRI of Chun Heng’s subsequent interview is also on the Case File.<sup>267</sup>

*xi. Investigative activities during a mission to Kampong Cham Province (D219/619)*

147. The Defence seek information generated by an OCIJ investigating team’s activities on the first day of a mission to Kampong Cham Province between 9 and 19 November 2015.<sup>268</sup>

148. On the first day of the mission, the OCIJ investigator travelled to Kampong Cham Province. No other investigative activities occurred on 9 November 2015 for that mission.

*xii. Photographs in a site identification report concerning Wat Ta Meak Security Centre (D219/641)*

149. The Defence request placement on the Case File of information pertaining to three photographs in a WRIA dated 19 December 2015 concerning Wat Ta Meak Security Centre (“Wat Ta Meak WRIA 2”).<sup>269</sup> Specifically, the Defence request the sources of the information in the notations and the captions in the photographs on pages 9 to 10 purporting to show the locations of mass graves of Wat Ta Meak Security Centre detainees and a temporary detention centre.<sup>270</sup>

150. The annotations and the captions on the photographs on pages 9 to 11 come from a screening conversation referred to on page 2 of the Wat Ta Meak WRIA 2 and conducted on 7 December 2015 with Pal (alternative spelling Pall) Lay, the Deputy Chief of Duandei village.<sup>271</sup> The Wat Ta Meak Site ID and WRIA the record of the screening conversation. A WRI of Pal Lay’s subsequent interview is also on the Case File.<sup>272</sup>

<sup>265</sup> *Ibid*, p. 2.

<sup>266</sup> Wat Ta Meak WRIA 1, p. 3.

<sup>267</sup> Case File No. 004-D219/544, *Written Record of Interview witness CHUN Heng*, 9 November 2015.

<sup>268</sup> Annex D, entry 17; Kampong Cham November WRIA, p. 1.

<sup>269</sup> Annex D, entries 18-20; Wat Ta Meak WRIA 2, pp. 9-11.

<sup>270</sup> Annex D, entries 18-20; Wat Ta Meak WRIA 2, pp. 9-11.

<sup>271</sup> Wat Ta Meak WRIA 2, pp. 2-3.

<sup>272</sup> Case File No. 004-D219/620, *Written Record of Interview witness PALL Lay*, 8 December 2015.


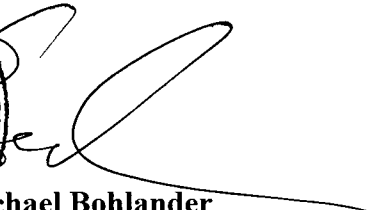


**FOR THE FOREGOING REASONS, I:**

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

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

Dated 16 December 2016, Phnom Penh



**Dr. Michael Bohlander**  
**ស្រីប្រតិបត្តិការស៊ើបអង្កេតអន្តរជាតិ**  
**International Co-Investigating Judge**  
**Co-juge d’instruction international**