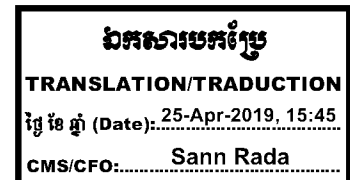


**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**NATIONAL CO-PROSECUTOR'S APPEAL AGAINST THE INTERNATIONAL
CO-INVESTIGATING JUDGE'S CLOSING ORDER IN CASE 003**

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Distributed to:

Pre-Trial Chamber
Judge PRAK Kimsan
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

I. Introduction

1. On 28 November 2018, the Co-Investigating Judges (CIJs) issued two separate Closing Orders, in which the National Co-Investigating Judge (NCIJ) issued Order Dismissing the Case against **MEAS Muth** on the grounds that the Extraordinary Chambers in the Courts of Cambodia (ECCC) has no personal jurisdiction over **him**,¹ while the International Co-Investigating Judge (ICIJ) issued Closing Order (Indictment).²
2. The NCIJ's Closing Order dropping the case against **MEAS Muth** was issued in Khmer with the English translation to follow.³ The ICIJ's Closing Order (Indictment) was issued in English with the Khmer translation to follow.⁴
3. In accordance with the Practice Direction, all documents shall be filed in Khmer as well as in English or French. In exceptional circumstances, a Chamber of the ECCC may authorise a party to file a document in French or in English in the first instance, provided however, that a Khmer translation must be filed before the Chamber at the first opportunity.⁵
4. On 18 January 2019, the Co-Prosecutors filed a response to the request for an extension of the time for the appeal against Closing Orders in Case 003.⁶ In response to this request, the Pre-Trial Chamber (PTC) ordered the parties to file appeals against the Closing Orders in Case 003 within 60 days after translations of both Closing Orders have been notified.⁷
5. On 14 February 2019, the NCP submitted a notice of appeal against the ICIJ's Closing Order (Indictment).⁸

¹ **D266**, NCIJ's Order Dismissing the Case against **MEAS Muth**, 28 November 2018.

² **D267**, ICIJ's Closing Order (Indictment), 28 November 2018.

³ **D266**, NCIJ's Order Dismissing the Case against **MEAS Muth**, 28 November 2018, with a notification of the English translation that would be finished on 6 February 2019.

⁴ **D267**, ICIJ's Closing Order (Indictment), 28 November 2018, with a notification of the Khmer translation that would be finished on 6 February 2019.

⁵ Practice Direction on Filing Documents before the ECCC, Articles 7.1 and 7.2.

⁶ **D267/1/2**, Co-Prosecutors' Response to MEAS Muth's Request for an Extension of the Time and Page Limits for His Appeal against the International Co-Investigating Judge's Closing Order in Case 003.

⁷ **D267/1/3**, PTC's Decision on MEAS Muth's Request for Extension of Time and Page Limits to Appeal the International Co-Investigating Judge's Closing Order in Case 003, 29 January 2019.

⁸ **D267/2**, NCP's Notice of Appeal against ICIJ's Closing Order, 14 February 2019.

6. Pursuant to the Internal Rules,⁹ Rules 67(5),¹⁰ 73(a)¹¹ and 74(2),¹² the NCP appealed against the ICIJ's Closing Order indicting **MEAS Muth**.¹³

II. Procedural History

7. On 18 November 2018, the NCP and ICP discussed a disagreement on additional prosecutions and suspects at the ECCC so as to forward them to the CIJs to open investigations.¹⁴ The ICP indicated during the discussion that he wished to send additional suspects (Cases 003 and 004) to the CIJs to open investigations, while the NCP disagreed to additional suspects beyond those described in Cases 001 and 002.¹⁵
8. The disagreement was reasoned by the NCP and ICP for the PTC to examine and decide in accordance with the legal proceedings. As a consequence, the PTC did not receive the affirmative vote of at least four judges required to have a decision on the disagreement.¹⁶
9. The PTC concluded that as it could not reach a decision on the disagreement brought before it, pursuant to Internal Rule 74.1, the ICP shall send the New Supplementary Submission [to the CIJs] for opening a judicial investigation pursuant to Internal Rule 53.1.¹⁷
10. Pursuant to the considerations of the PTC dated 18 August 2009 regarding the disagreement between the Co-Prosecutors, pursuant to Internal Rule 71,¹⁸ on 7

⁹ Internal Rules of the ECCC.

¹⁰ Rule 67(5) of the Internal Rules (Closing Orders by Co-Investigating Judges) provides the Co-Prosecutors with immediate notification upon issuance of a Closing Order which is subject to appeal.

¹¹ Rule 73(a) of the Internal Rules (Additional Jurisdiction of the Pre-Trial Chamber) gives jurisdiction to the Pre-Trial Chamber over appeals against decisions of the Co-Investigating Judges.

¹² Rule 74(2) of the Internal Rules (Grounds for Pre-Trial Appeals) grants right to the Co-Prosecutors to appeal against all orders by the Co-Investigating Judges.

¹³ **D267**, ICIJ's Closing Order (Indictment), 28 November 2018.

¹⁴ The International Co-Prosecutor opened secret, preliminary investigation unilaterally without notifying and engaging the National Co-Prosecutor. This is against the ECCC Law which requires both Co-Prosecutors to work together within the Office of the Co-Prosecutors.

¹⁵ Record of disagreement between the International and National Co-Prosecutors on indicting additional suspects, 18 November 2008.

¹⁶ D1/1.1 and D1/1.3, the Pre-Trial Chamber, 18 August 2009.

¹⁷ D1/1.1, the Pre-Trial Chamber, 18 August 2009.

¹⁸ D1/1.3, Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009.

September 2009, the acting ICP forwarded to the CIJs the Introductory Submissions regarding Cases 003 and 004 to open judicial investigations of the two Cases.¹⁹

11. On 29 April 2011, the CIJs issued Notice of Conclusion of Judicial Investigation against **MEAS Muth** and **SOU Met**, notifying the parties that they had 15 days after this notice to request further investigative actions.²⁰ On 22 October 2013, the CIJs found that **SOU Met** had died and legal implications would be addressed in the Closing Order.²¹
12. On 24 May 2017, the CIJs issued Second Notice of Conclusion of Judicial Investigation against **MEAS Muth** and notified the parties that no further requests for investigative action may be filed.²²
13. On 25 July 2017, the CIJs forwarded the case file to the Co-Prosecutors for issuing their final submissions.²³ The NCP filed her final submission on 14 November 2017, requesting to dismiss allegations against **MEAS Muth** on the grounds that **he** does not fall under the ECCC personal jurisdiction.²⁴

III. Submission

RAK Establishment

14. The Revolutionary Army of Kampuchea (RAK) originated from “secret defence units.”²⁵ In 1968, these secret defence units were transformed into “armed guerrilla units.”²⁶ [CPK forces] started launching armed attacks officially on 17 January 1968 and this date was marked by the CPK as the birth of the Revolutionary Army [of Kampuchea].²⁷ Later, the CPK considered that from 1969 the preconditions for an army were already there. In some major Zones, there were already companies. Other locations had just platoons, groups and squads. Those forces were in the ranks of the

¹⁹ D1/1, Acting International Co-Prosecutor’s Notice of Filing of the Second and Third Introductory Submissions, 07 September 2009.

²⁰ **D13**, Notice of Conclusion of Judicial Investigation against **MEAS Muth**, 29 April 2011.

²¹ **D256**, Forwarding Order Pursuant to Internal Rule 66(4), para. 3, 25 July 2017.

²² **D252**, Second Notice of Conclusion of Judicial Investigation against **MEAS Muth**, 24 May 2017.

²³ **D256**, CIJs’ Forwarding Order Pursuant to Internal Rule 66(4), 25 July 2017.

²⁴ **D256/6**, NCP’s Final Submission concerning **MEAS Muth** Pursuant to Internal Rule 66, 14 November 2017.

²⁵ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 17.

²⁶ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 18.

²⁷ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 18; **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Special Issue, December 1976, p. 18 and January 1977, p. 21.

Revolutionary Army,²⁸ and, in March 1970, were officially named the “Kampuchean People’s National Liberation Armed Forces.”²⁹

15. The formal organisation of those armed forces was publicly announced in July 1975 at a ceremony that was officially called an “important political conference of the CPK” with approximately 3,000 representatives of every unit of the Revolutionary Army, and with the presence of the Comrade Chairman of the High-Level Military Committee of the Party who addressed to those participants.³⁰ The brigades of all sectors were placed under the control of the Central Committee, namely under the command of the General Staff of which SON Sen was Chairman.³¹

RAK Structure

16. The Constitution of Democratic Kampuchea (DK) gave the RAK the duty to “defend the State power” and “help to build the country.”³² The RAK had general responsibility for both internal and external security.³³ It was divided into three branches: regular, regional, and guerrilla.³⁴ All were “under the absolute leadership monopoly” of the CPK.³⁵

²⁸ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 20.

²⁹ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 16.

³⁰ **D4.1.861**, CPK Magazine entitled “Revolutionary Flag”, Issue 08, August 1975, p. 16.

³¹ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3.

³² DK Government Legal Document entitled the Constitution of DK, **D1.3.22.2** dated 6 [5] January 1976, ERN 00184838-00184839, Chapter 16.

³³ See CPK Magazine entitled Revolutionary Flag, **D1.3.24.2**, July 1976, pp. 5-6, ERN 00268913-00268946 (describing the need to protect the country “domestically” and “on the international stage”); CPK Magazine entitled Revolutionary Youth, **D1.3.24.1** dated May 1976, p. 4, ERN 00357868-000357899 (stating that the army “must constantly heighten its spirit of revolutionary vigilance and be combat ready to defend most firmly and excellently water, land, sea and island borders and the interior of the country so as to guarantee the security of our people in the cooperatives”); CPK Magazine entitled *Revolutionary Youth*, **D1.3.6.1** dated June 1976, pp. 8-9 (KH), ERN 00062836-00062876 (KH).

³⁴ DK Government Legal Document entitled the Constitution of DK, Chapter 16, **D1.3.22.2** dated 6 [5] January 1976, ERN 00184838-00184839. See also, DK Government Legal Document entitled Communist Party of Kampuchea Statute, **D1.3.22.1** dated January 1976, ERN 00184022-00184047, Article 27 (referred to all three categories of the RAK: the regular [army], sector [army], and the militias).

³⁵ DK Government Legal Document entitled Communist Party of Kampuchea Statute, **D1.3.22.1** dated January 1976, p. 13, ERN 00184022-00184047; CPK Standing Committee Meeting Minutes, **D1.3.27.1** dated 9 October 1975, p. 2, ERN 00183393-00183408 (in which the Standing Committee noted in its meeting minutes on 9 October 1975 that “national defence is being arranged at the Centre”); CPK Magazine entitled Revolutionary Flag, **D1.3.24.2** dated July 1976, p. 33, ERN 00268913-00268946 (“only the Party leads the army; no other organisation or individual leads it”).

17. The RAK was under the direct supervision of the Military Committee, which was a subcommittee of the CPK's Central Committee³⁶ that was responsible for military and security affairs.³⁷ The permanent members³⁸ of the Military Committee included POL Pot,³⁹ NUON Chea and SON Sen⁴⁰ (*alias* Khieu or Brother 89) as well as other senior CPK leaders.⁴¹

The General Staff

18. The General Staff of the RAK acted as the central command for the military, performing functions including planning, operations, intelligence, and logistics. SON Sen served as Chairman of the General staff.⁴² He was assisted in his work by CPK cadres assigned to the General Staff, including Raen⁴³ and Teanh.⁴⁴ Collectively, the

³⁶ The role of the Central Committee of the CPK is addressed in OCP Introductory Submission section entitled Communist Party of Kampuchea and CPK Standing Committee and Office 870, **D10.1.95** dated 18 July 2007, paras. 22-24, ERN 00185898-00186167. *See also*, OCP Introductory Submission section entitled Overview of Hierarchy of Democratic Kampuchea and Standing Committee, **D10.1.95** dated 18 July 2007, paras. 6 & 11-13, ERN 00185898-00186167.

³⁷ IENG Sary *alias* Van Statement, **D1.3.33.2** dated 6-19 September 1996, p. 6, ERN 00078605-00078618 (“there was a committee which considered all questions about security”).

³⁸ The role of the Central Committee of the CPK was addressed in OCP Introductory Submission section entitled Communist Party of Kampuchea and CPK Standing Committee and Office 870, **D10.1.95** dated 18 July 2007, paras. 24-28, ERN 00185898-00186167, 00185898-00186167. *See also* OCP Introductory Submission section entitled Overview of Hierarchy of Democratic Kampuchea and Standing Committee, **D10.1.95** dated 18 July 2007, paras. 6 & 11-13, ERN 00185898-00186167.

³⁹ In the 9 October 1975 Decision of the Standing Committee, general responsibility over the military was delegated to POL Pot, CPK Standing Committee Meeting Minutes, **D1.3.27.1** dated 9 October 1975, p. 1, ERN 00183393-00183408.

⁴⁰ In March 1976, SON Sen was appointed as Deputy Prime Minister in charge of national defence; CPK Central Committee Directive entitled Decision of the Central Committee regarding a number of matters, **D1.3.19.1** dated 30 March 1976, ERN 00182809-00182814. *See also* minutes of conference of the people's assembly of DK entitled Document on Conference 1 of Legislature 1 of the People's Representative Assembly of Kampuchea, 11-13 April 1976, **D1.3.27.4**, pp. 21-22, ERN 00184048-00184077. SON Sen was also a member of the CPK Central Committee. **KHIEU Samphan** OCIJ Statement, **D1.3.33.15** dated 13 December 2007, p. 10, ERN 00156612-00156620.

⁴¹ IENG Sary *alias* Van Statement, **D1.3.33.2** dated 6-19 September 1996, p. 6, ERN 00078605-00078618 (IENG Sary said that [there] was a committee which considered all questions about security “consisting of four people: POL Pot, NUON Chea, SON Sen, and SON Sen's advisor YUN Yat”).

⁴² CPK Standing Committee Meeting Minutes, **D1.3.27.1** dated 9 October 1975, p. 1, ERN 00183393-00183408 (giving SON Sen responsibility for the General Staff and Security); DK Military Meeting Minutes, **D1.3.19.2**, entitled To beloved Committees of Divisions and Regiments, ERN 00590300-00590300 (in which SON Sen issues instructions from the General Staff to military divisions and regiments); **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.3** dated 7 August 2007, ERN 00147518, 00147517-00147527.

⁴³ DK Military Meeting Minutes entitled Report on the Situation in Division 310 dated 25 November 1976, **D1.3.12.15**, ERN 00233968-00233968 (General Staff Office Report signed by Raen); DK Military Report

General Staff and its sub-offices, Office 62 and Office 63, had about 4,500 personnel.⁴⁵

19. One of the most important roles of the General Staff was to maintain internal security, including monitoring “internal enemies” and taking steps to eliminate them.⁴⁶ In particular, the CPK Central Committee delegated to the General Staff the authority to determine which RAK personnel to execute in furtherance of CPK policies.⁴⁷ The General Staff exercised this authority and many General Staff cadres were sent to S-21,⁴⁸ where they were executed.⁴⁹

entitled Report about the Situation in Division 450, 24 December 1976, **D1.3.9.2**, ERN 00876997-00877001 (General Staff Office Report signed by Raen); DK Military Meeting Minutes entitled Meeting at Division 170's Location, 1 October 1976, **D1.3.8.6**, ERN 00233934-00233934 (General Staff Meeting Minutes with Division 170 signed by Raen).

⁴⁴ DK Military Report, 29 March 1977, **D1.3.9.4**, ERN 00233990-00233990 (document from General Staff Logistics Committee to Brothers 89 and 81 signed by Teanh); DK Military Report entitled Statistics of Weapons and Ammunition required by Divisions 450 and 502 dated 27 May 1976, **D1.3.12.5**, ERN 00233998-00233998 (General Staff Document that is signed by Teanh); DK Military Report entitled Rice Consumption Plan for 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743-00543744 (DK Military report signed by Teanh).

⁴⁵ The General Staff had two sub-offices: Office 62 and Office 63. Office 62 had a number of sub-offices: K-15, K-16, K-18, K-27, K-28, Po-98, Vor-66, Tractors and Water trucks. Office 62 had 1,385 personnel while Office 63 had 3,201 personnel. DK Military Report entitled DK Military Report re Overall Force Statistics for Army, **D54/47.1**, ERN 00052319-00052319 (KH) dated 7 April 1977. Another document refers to offices within the General Staff named “military logistics,” “tank units,” “artillery units,” and “staff office.” These may simply be different names for Offices 62 and 63 and their various sub-offices. DK Military Report entitled Rice Consumption Plan for 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743-00543744.

⁴⁶ DK Military Meeting Minutes entitled Minutes of an Experience Drawing Meeting on Guarding in City Defence, 19 December 1976, **D1.3.8.9**, ERN 00233994-00233997 (General Staff meeting minutes describing the enemy situation inside the country and at the border); DK Military Meeting Minutes entitled Summary of the Situation Inside the Country and at the Border According to Telegrams from 1 to 31 December 1976 dated 31 December 1976, **D1.3.12.16**, ERN 00233942-00233942 (General Staff document providing a summary of activities occurring within the country and at the border); DK Military Meeting Minutes entitled Meeting at Division 170's Location, 1 October 1976, **D1.3.8.6**, ERN 00233934-00233934 (describes “shortcomings” in defending the country and states that cadre with “no-good political tendencies” should be removed to protect internal security).

⁴⁷ CPK Central Committee Directive entitled Decision of the Central Committee regarding a number of matters, **D1.3.19.1** dated 30 March 1976, ERN 00182809-00182814 (authorising the General Staff to “smash” individuals within the “Centre Military”).

⁴⁸ S-21 was the CPK's premier security centre, located in Phnom Penh. It is described in more detail in OCP Introductory Submission section entitled Phnom Penh - Office S-21, **D10.1.95** dated 18 July 2007, paras. 49-55, ERN 00185898-00186167.

⁴⁹ See, for example, S-21 Prisoner List containing names of prisoners from the General Staff Office, Military Hospitals and Other Units, **D1.3.28.18** dated 1977, ERN 01321453-01321456 (list of 37 people who had been arrested, 13 from the General Staff); S-21 Prisoner List containing names of prisoners from the General Staff in 1977, **D1.3.28.26**, ERN 01321445-01321452 (listing names of 76 people from the General Staff office, 4 of

whom are indicated as “smashed”); S-21 Prisoner List entitled Chann’s Report on 13 prisoners taken into S-21 on 21 May 1977, **D1.3.28.31**, ERN 00797093-00797093 (containing the names of some prisoners from General Staff Logistics); S-21 Prisoner List entitled Chann’s Report on 18 prisoners taken into S-21 on 22 May 1977, **D1.3.28.32**, ERN 00800892-00800893 (containing the names of some prisoners from the General Staff); S-21 Prisoner List, **D1.3.28.34** dated 28 May 1977, ERN 00797688-00797689 (containing the names of 30 prisoners including some from the General Staff); S-21 Prisoner List, **D1.3.28.37** dated December 1977, ERN 00233722-00233723 (containing the names of 8 prisoners); S-21 Prisoner List containing names of prisoners from the General Staff and S-21, **D1.3.28.50** dated October 1977, ERN 01566146-01566152 (listing the names of 55 people from the General Staff and S-21); S-21 Prisoner List containing names of prisoners from the General Staff Office, **D1.3.28.59** dated January 1978, ERN 00181704-00181708 (containing the names of 66 people from the General Staff, 23 of which are indicated as having already been arrested); S-21 Prisoner List, **D1.3.28.60** dated 18 January 1978, ERN 00181709-00181710 (list of 13 names, 5 from General Staff offices); S-21 Prisoner List, **D1.3.28.102** dated May 1978, ERN 00855374-00855395 (containing names of 270 prisoners, some from the General Staff); S-21 Prisoner List containing names of prisoners from the offices under the General Staff dated July 1978, **D1.3.28.64**, ERN 01566161-01566163 (containing the names of 22 people arrested from the General Staff); S-21 Prisoner List dated 30 March 1978, **D1.3.28.65**, ERN 01303411-01303416 (containing the names of 84 prisoners, some from the General Staff); S-21 Prisoner List dated 2 April 1978, **D1.3.28.66**, ERN 01210349-01210372 (containing the names of 144 prisoners, some from the General Staff); S-21 Prisoner List, **D1.3.28.67** dated 3 April 1978, ERN 01210335-01210348 (containing the names of 88 prisoners, some from the General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Cool Group”, **D1.3.28.75** dated 10 April 1978, ERN 01321413-01321413 (includes prisoners from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Documentation Group”, **D1.3.28.74** dated 10 April 1978, ERN 01321414-01321423 (list of 76 prisoners, some from General Staff); S-21 Prisoner List, **D1.3.28.84** dated 23 April 1978, ERN 01333530-01333541 (list of 99 prisoners, some from General Staff); S-21 Prisoner List, **D1.3.28.85** dated 24 April 1978, ERN 01210373-01210390 (list of 110 Prisoners, some from General Staff); S-21 Prisoner List, **D1.3.28.86** dated 25 April 1978, ERN 00748465-00748482 (containing names of 307 prisoners, some from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Cool Group”, **D1.3.28.87** dated 26 April 1978, ERN 00752367-00752367 (list of 5 prisoners, 1 from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Cool Group”, **D1.3.28.95** dated 29 April 1978, ERN 01321403-01321403 (list of 5 prisoners, 1 from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Cool Group”, **D1.3.28.104** dated 1 May 1978, ERN 00747644-00747644 (list of 5 prisoners, 1 from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Cool Group”, **D1.3.28.106** dated 2 May 1978, ERN 00746750-00746750 (list of 5 prisoners, 1 from General Staff); S-21 Prisoner List containing names of prisoners interrogated on 2 May 1978, **D1.3.28.105**, ERN 00842733-00842743 (list of 89 prisoners, some from General Staff); S-21 Prisoner List, **D1.3.28.111**, ERN 00040144-00040146 (KH) (list of 27 prisoners, some from General Staff); S-21 Prisoner List containing names of prisoners interrogated by the “Hot Group”, **D1.3.28.125** dated June 1978, ERN 00086865-00086867 (KH) (list of 34 prisoners, some from General Staff Tank Unit); S-21 Prisoner List, **D1.3.28.129** dated 30 June 1978, ERN 00183840-00183842 (list of 18 prisoners, some from General Staff Tank Unit); S-21 Prisoner List, **D1.3.28.137** dated December 1978, ERN 00758336-00758338 (list of 22 prisoners, some from General Staff); S-21 Prisoner List containing names of prisoners kept in the special prison, **D1.3.28.138** dated December 1978, ERN 00789491-00789493 (list of prisoners, some from General Staff); S-21 Prisoner List, **D1.3.28.141** dated December 1978, ERN 00789703-00789710 (list of 60 prisoners, some from General Staff Office); S-21 Prisoner List, **D1.3.28.146** dated 16 December 1978, ERN 00789497-00789512 (list of 46 prisoners, some from General Staff).

While only some of the prisoner lists expressly indicate that the prisoners were executed, **KAING Guek Eav alias Duch**, who commanded S-21 for most of the DK period, has testified that everybody who entered S-21 was eventually executed; **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.3** dated 7 August 2007, ERN 00147524, 00147517-00147527 (Duch refers to execution at S-21 as systematic and says: “for those sent to S-

20. In exercising this right to smash RAK personnel, the General Staff sometimes dispatched cadres into the field to deal with internal security problems in RAK units.⁵⁰ However, it appears that the right to smash was usually delegated to the commanders of RAK Divisions, often in direct consultation with S-21. Other cadres were sent for re-education.⁵¹

21, it had already been decided to smash them all... At S-21 there was no right to release.”); **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.5** dated 5 September 2007, ERN 00147582, 00147579-00147585 (Duch describes how NUON Chea told him that “all persons sent to S-21 had to be killed – as I was in charge of S-21, I implemented his orders.”); **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.11** dated 23 August 2007, ERN 00147565, 00147563-00147573 (Duch describes receiving an “absolute order” on 2 or 3 January 1979 from NUON Chea to “smash” all prisoners at S-21); **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.8** dated 3 October 2007, ERN 00149911, 00149907-00149919 (Duch says: “All persons in detention had to be smashed. At the beginning, the killings were done in Phnom Penh, west of S-21. Later, because of a fear of disease, the killing was done at Choeung Ek”).

Others who worked at S-21 have also noted that all prisoners at S-21 were executed. **BOU Meng** OCP Statement, **D1.3.32.4** dated 24 August 2006, ERN 00146762-00146766 (witness notes that in some cases, detainees were executed at S-21); **KUNG Phai** OCP Statement, **D1.3.32.24** dated 9 December 2006, ERN 00184689-00184693; **SOKH Sophat** DC-Cam Statement, **D1.3.32.45** dated 22 January [25 June] 2002, ERN 00335094-00335153; **SAOM Mon** DC-Cam Statement, **D1.3.32.41** dated 13 August 2003, ERN 00053936-00053961 (KH); **HAM Seng alias Uk Bun Seng** DC-Cam Statement, **D1.3.32.13** dated 14 March 2003, ERN 00337755-00337755 (describing how people were sent to S-21 and never seen again and calling S-21 a killing place); **SAOM Met** DC-Cam Statement, **D1.3.32.40** dated 25 January 2003, ERN 00337617-00337706 (Met states that prisoners were executed after interrogation).

⁵⁰ General Staff member Raen was sent to various divisions to conduct and assist with RAK arrests and purges. DK Military Meeting Minutes entitled Meeting at Division 170’s Location, 1 October 1976, **D1.3.8.6**, ERN 00233934-00233934 (Comrade Raen states “It is possible to implement Party discipline and to follow the Party’s decisions, such as by removing cadre who have no-good political tendencies. Comrade Tet also refers to the importance of purging “dangerous elements”). DK Military Meeting Minutes entitled Report about the Situation in Division 450 dated 14 November 1976, **D1.3.9.2**, ERN 00876997-00877001 (describing how Raen from the General Staff Office went to Division 450 to investigate the links of an alleged traitor named Chhaoet. Includes the names of 25 people from Division 450, Division 310, the factories, and Commerce, who were implicated by the confession of Chhaoet); DK Military Meeting Minutes entitled Report on the Situation in Division 310 dated 25 November 1976, **D1.3.12.15**, ERN 00233968-00233968 (discusses two individuals in Division 310 who were implicated in confessions. Raen states that the two individuals “have already been grasped” by the Division); DK Military Report entitled Report about the Situation in Division 450 date 24 December 1976, **D1.3.9.2**, ERN 00876997-00877001 (Raen reports back to the General Staff about Comrade Lum and requests his “removal” from Division 450).

⁵¹ DK Military Meeting Minutes entitled Meeting at Division 170’s Location, 1 October 1976, **D1.3.8.6**, ERN 00233934-00233934 (noting that several individuals had been sent for “re-education” by the division); DK Military Report entitled General Staff Logistics Committee to Brothers 89 and 81, 29 March 1977, **D1.3.9.4**, ERN 00233990-00233990 (List of individuals with traitorous links in General Staff Logistics indicates that “administrative measures” have been taken against them).

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21. The General Staff also prepared reports on internal and external threats,⁵² and it had the authority to issue orders pertaining to internal security including orders for cadre dress codes, guarding, patrolling, and weapons permits.⁵³ It appears that the General Staff had its own security forces.⁵⁴
22. The General Staff coordinated the implementation of CPK policies in the RAK units under its command. To accomplish this, the General Staff communicated with the Divisions and Independent Regiments through regular meetings between the Chairman of the General Staff and the senior cadres from the Divisions and Independent Regiments.⁵⁵ At these meetings, division commanders would summarise

⁵² DK Military Report entitled Summary of the Situation Inside the Country and at the Border According to Telegrams from 1 to 31 December 1976 dated 31 December 1976, **D1.3.12.16**, ERN 00233942-00233942 (providing a summary of arrests and suspected enemy activity); DK Military Report entitled To beloved Brother dated 17 September 1976, **D1.3.12.11**, ERN 00234460-00234460 (describing patrol experiences in Phnom Penh, where some workers used electricity to catch fish; many factories used guns and speeding drivers in the capital were a worrying sign); DK Military Meeting Minutes entitled Office 62 of the General Staff dated 3 October 1976, **D1.3.12.13**, ERN 00233925-00233925 (report on the shooting of a suspected enemy who was thought to have a grenade); DK Military Meeting Minutes entitled Minutes of an Experience Drawing Meeting on Guarding in City Defence dated 19 December 1976, **D1.3.8.9**, ERN 00233994-00233997 (General Staff meeting minutes summarising the enemy situation within the country).

⁵³ DK Military Meeting Minutes entitled Minutes of an Experience Drawing Meeting on Guarding in City Defence dated 19 December 1976, **D1.3.8.9**, ERN 00233994-00233997 (General Staff Office issues commands regarding, guarding and patrolling, possessing weapons, obtaining enemy situation reports from Division Committees and Independent Regiment Committees, and cadre appearance).

⁵⁴ DK Military Meeting Minutes entitled Office 62 of the General Staff dated 3 October 1976, **D1.3.12.13**, ERN 00233925-00233925 (General Staff document that reports on the shooting of a suspected enemy who was thought to have a grenade).

⁵⁵ Records of 14 meetings of the senior cadres of the divisions and independent regiments exist and it is believed that many more took place. There are records of meetings on 2 August 1976, 12 August 1976, 18 August 1976 and 30 August 1976, suggesting that meetings might have occurred on a weekly basis. DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Economics of Divisions, **D1.3.27.8** dated 16 May 1976, ERN 00184820-00184820; DK Military Meeting Minutes entitled Minutes of the Meeting of All Division Committees, **D1.3.8.2** dated 1 June 1976, ERN 00233954-00233959; DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions Secretaries and Deputy Secretaries of Regiments, **D1.3.27.10** dated 2 August 1976, ERN 00183959-00183961; DK Military Meeting Minutes entitled Minutes of the Meeting of the Committees attached to Divisions and Independent Regiments, **D114/27.1.4** dated 12 August 1976, ERN 00596993-00597006; DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.12** dated 18 August 1976, ERN 00234456-00234459; DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.13** dated 30 August 1976, ERN 00183966-00183969; DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D114/27.1.5** dated 19 September 1976, ERN 00183970-00183981; DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.20** dated 9 October 1976, ERN 00183982-00183994; DK Military Meeting Minutes entitled Meeting Minutes of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.8.7** dated 18 October 1976, ERN 00233918-00233920; DK

the activities of their divisions, focusing on internal and external enemy situations and actions taken to ensure security, and then the Chairman of the General Staff, SON Sen, would summarise the situation within the country and issue orders.

23. There were also meetings between the General Staff and individual division commanders,⁵⁶ some of which occurred in conjunction with the meetings of all division commanders and independent regiment commanders.⁵⁷ In addition, there were a series of meetings devoted to organisational matters, like recruiting for the air force, deployment of the navy, increasing food production, cooperation with Chinese military trainers, and improving the defence of Phnom Penh.⁵⁸

Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.21** dated 11 November 1976, ERN 00184824-00184825; DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Divisions, **D1.3.27.21** dated 21 November 1976, ERN 00184824-00184825; DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D1.3.27.23** dated 15 December 1976, ERN 00233710-00233721; DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.26** dated 1 March 1977, ERN 00183949-00183955.

⁵⁶ DK Military Meeting Minutes entitled Minutes of Plenary Meeting of the 920th Division dated 7 September 1976, 14.00 hours, **D1.3.27.14**, ERN 00184777-00184781; DK Military Meeting Minutes entitled Minutes of the Meeting of 164 Comrades, dated 9 September 1976, **D1.3.8.4**, ERN 00234009-00234010; DK Military Meeting Minutes entitled Meeting of Comrade Tal Division 290 and Division 170, **D1.3.27.17** dated 16 September 1976, ERN 00937114-00937116; DK Military Meeting Minutes entitled Meeting at Division 170's Location, 1 October 1976, **D1.3.8.6**, ERN 00233934-00233934; DK Military Meeting Minutes of Division 920, **D1.3.27.24** dated 16 December 1976, ERN 00923160-00923162; DK Military Meeting Minutes, **D1.3.27.25** entitled Minutes of Division 801 dated 16 December 1976, ERN 00874986-00874989.

⁵⁷ SON Sen might have met with division commanders individually as part of regular meetings with all division commanders. For example, SON Sen met with Divisions 170 and 290 on 16 September 1976 – the same day that he met with all of the division commanders together. DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments dated 16 September 1976, ERN 00184338-00184341; DK Military Meeting Minutes of Division 290 and Division 170, **D1.3.27.17** dated 16 September 1976, ERN 00937114-00937116.

In another example, SON Sen held separate meetings with Divisions 801 and 920 the day after a meeting of all the division commanders. DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D1.3.27.23** dated 15 December 1976, ERN 00233710-00233721; DK Military Meeting Minutes of Division 290 [920], **D1.3.27.24** dated 16 December 1976, ERN 00185237-00185237; DK Military Meeting Minutes entitled Minutes of Division 801, **D1.3.27.25** dated 16 December 1976, ERN 00874986-00874989.

⁵⁸ DK Military Meeting Minutes entitled *Meeting on 18 March 1976 regarding Air Force Recruitment* dated 18 March 1976, **D1.3.8.1**, ERN 00234008-00234008; DK Military Meeting Minutes regarding Deployment of the DK Navy dated 3 August 1976, **D1.3.8.3**, ERN 00234012-00234016; DK Military Meeting Minutes entitled Minutes of the discussion (meeting) of Chinese team of artillery experts dated 24 September 1976, **D1.3.8.5**, ERN 00002387-00002390; DK Military Meeting Minutes entitled *Minutes of the Meeting on Production Work*, **D1.3.27.19** dated 30 September 1976, ERN 00184821-00184823; DK Military Meeting Minutes entitled *Minutes of an Experience Drawing Meeting on Guarding in City Defence* dated 19 December 1976, **D1.3.8.9**, ERN 00233994-00233997.

24. The General Staff provided logistical support to the RAK. For example, the General Staff contained a Logistics Committee that handled functions like vehicle repairs, weapons repairs, construction, ammunition storage, and transport.⁵⁹ The General Staff monitored a variety of statistics related to the military, including food consumption, weapons allocations, and military equipment.⁶⁰ It also advised on issues relating to food production.⁶¹ Finally, the General Staff was responsible for political education for division and regimental military cadre and carried out periodic General Staff study sessions which were attended by hundreds of individuals from RAK units all over the country.⁶²

Regular, Regional and Guerrilla Units

25. The RAK was divided into three branches: “regular, regional, and guerrilla.”⁶³ The “regular” army was composed of divisions and independent regiments that reported

⁵⁹ DK Military Report entitled General Staff Logistics Committee to Brothers 89 and 81 dated 29 March 1977, **D1.3.9.4**, ERN 00233990-00233990 (Cadre deemed traitorous in General Staff Logistics included individuals from: vehicle repair shop, wood cutting, weapon repair shop, supply section, construction team, logistics transport section, logistics survey team, and arms dump).

⁶⁰ DK Military Report entitled Cambodian Revolutionary Armed Forces General Staff: Statistics of Collective-Eating Forces - March 1977, **D1.3.30.10** dated 7 April 1977, ERN 00193064-00193064 (General Staff document provides collective eating statistics across all divisions); DK Military Report entitled Statistics of Weapons and Ammunition required by Divisions 450 and 502 dated 27 May 1976, **D1.3.12.5**, ERN 00233998-00233998 (General Staff Document that contains information on the kinds of weapons needed by Division 450 and Division 502); DK Military Report entitled Rice Consumption Plan for 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743-00543744 (Teanh describes the planned rice consumption for various military units); DK Military Report entitled List of Military Equipment Received from Viet Nam, **D1.3.5.23**, ERN 00003678-00003681 (KH); DK Military Report entitled Statistics of National Army, Division 310 dated 13 June 1977, **D1.3.12.19**, ERN 00655683-00655683; DK Military Report entitled List of Military Equipment Received from Viet Nam dated 2 May 1976, **D114/27.1.3**, ERN 00678452-00678454.

⁶¹ DK Military Meeting Minutes entitled To beloved Committees of Divisions and Regiments, **D1.3.19.2** dated 3 September 1977, ERN 00590300-00590300 (providing instructions from the General Staff to RAK divisions in the area of farming and telling them to model their efforts on Division 164).

⁶² DK Military Meeting Minutes entitled Statistical List of Participants – 1st General Staff Training, **D1.3.30.5** dated 20 October 1976, ERN 00897649-00897666; DK Military Report entitled First General Staff Study Session dated 20 October 1976, **D1.3.8.8**, ERN 00234011-00234011; DK Military Report entitled General Staff Study Session, Second Session, **D1.3.30.6** dated 23 November 1976, ERN 00195322-00195338; DK Military Meeting Minutes entitled Report re Working with Brother Euan, Division 310 dated 25 November 1976, **D1.3.12.15**, ERN 00233968 (nothing that two individuals who have been implicated in confessions have “come for studies.” This is apparently a reference to the General Staff study session that was going on at the same time).

⁶³ DK Government Legal Document entitled the Constitution of Democratic Kampuchea, Article 19, **D1.3.22.2** dated 6 January 1976, ERN 00184833-00184839. *See also*, DK Legal Document entitled Communist Party of Kampuchea Statute, Article 27, **D1.3.22.1** dated 6 January 1976, ERN 00184022-00184047 (referring to the same three branches as the regular, sector, and militia).

directly to the General Staff. “Regional” divisions reported to their respective Zone Committees and “regional” regiments reported to their respective Sector Committees. The “guerrilla” section of the RAK consisted of “*chhlop*” or local militia units that reported to District Committees.⁶⁴ All levels of the DK military were under the command of CPK cadres at all times.⁶⁵ The CPK leadership noted that “only the Party leads the army; no other organ or individual leads it.”⁶⁶

26. The regular RAK consisted, at various times, of between nine and ten divisions (divisions 164, 170, 290, 310, 450, 502, 690, 703, 801, 900, and 920) with three independent regiments (regiments 152, 377, and 488), as well as several offices (S-21, M-62, and M-63).⁶⁷ S-21, a body primarily responsible for enforcing internal security, was considered to be part of the RAK for certain purposes.⁶⁸ According to reports

⁶⁴ The CPK Statute indicates that the Regular Army divisions reported to the General Staff Party Committee, the Zone divisions reported to the Zone Party Committee, the Sector regiments reported to the Sector Party Committee, and the District, Sub-district and Village Militias reported to the District Party Committee. *See*, DK Legal Document entitled Communist Party of Kampuchea Statute, Article 13(b), **D1.3.22.1** dated 6 January 1976, ERN 00184022-00184047.

⁶⁵ DK Legal Document entitled Communist Party of Kampuchea Statute, **D1.3.22.1** dated 6 January 1976, p. 14, ERN 00184022-00184047.

⁶⁶ CPK Magazine entitled Revolutionary Flag, **D1.3.24.2** dated July 1976, p. 38, ERN 00268913-00268946.

⁶⁷ DK Military Report entitled DK Military Report re Joint Statistics of Armed Forces, **D1.3.30.9** dated 7 April 1977, ERN 00183956 (lists nine divisions, three independent regiments, and three offices in its statistics of armed forces); DK military report entitled Cambodian Revolutionary Armed Forces General Staff: Statistics of Collective-Eating Forces – March 1977, **D1.3.30.10** dated 7 April 1977, ERN 00193064 (lists six divisions, three independent regiments, and three offices located in Phnom Penh in March 1977); DK Military Report entitled Rice Consumption Plan in 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743 (lists 13 units and one office within RAK).

⁶⁸ **KAING Guek Eav alias Duch**, Chairman of S-21, has testified that the security centre was part of the DK military: **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.5** dated 5 September 2007, ERN 00147583, 00147579-00147585. In addition, S-21 is listed as part of RAK in various military reports; DK Military Report entitled DK Military Report re Joint Statistics of Armed Forces, **D1.3.30.9** dated 7 April 1977, ERN 00183956; DK Military Report entitled Cambodian Revolutionary Armed Forces General Staff: Statistics of Collective-Eating Forces – March 1977, **D1.3.30.10** dated 7 April 1977, ERN 00193064; DK Military Report entitled Rice Consumption Plan in 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743; DK Military Meeting Minutes entitled Minutes of the Meeting of Divisions and Independent Regiment Secretaries and Deputy Secretaries, **D1.3.27.12** dated 18 August 1976, ERN 00234456-00234459. *See also*, rice consumption charts indicating that S-21 was a part of the RAK: DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputies of Divisions and Independent Regiments, **D1.3.27.20** dated 9 October 1976, ERN 00183982-00183994; DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Divisions, **D1.3.27.22** dated 21 November 1976, ERN 00184826-00184828.

from the General Staff, the “regular” RAK units had between 60,000 and 65,000 personnel.⁶⁹

27. Sometimes central division and regional forces were in the same region. For instance, Centre’s Division 920 garrisoned in Mondulkiri (Sector 105) was regarded as the regular army, while Mondulkiri had two battalions which were considered regional forces under the command of Mondulkiri Commander.⁷⁰ There was also a division responsible for Kratie or Sector 505.⁷¹
28. The third force, local militias, was called “*chhlop*”. They lived among local people, i.e. in villages and provided security to those areas.⁷² Their duties included arrests,⁷³ execution,⁷⁴ as well as protection of villages and cooperatives.⁷⁵ They reported to village, commune, and district committees,⁷⁶ and performed other security work.⁷⁷

“Regular” Divisions and Independent Regiments

⁶⁹ DK Military Report entitled DK Military Report re Joint Statistics of Armed Forces, **D1.3.30.9** dated 7 April 1976, ERN 00183956 (indicating a total of 61,189 RAK personnel); DK Military Report entitled Rice Consumption Plan in 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743 (indicating a total of 64,248 personnel in RAK in 1976).

⁷⁰ **D1.3.27.1**, CPK Standing Committee Meeting Minutes, 9 October 1975, pp. 5-6; **D4.1.437**, Written Record of Interview of Witness **SAN Lan**, 29 October 2008, pp. 2-3, 5; **D4.1.439**, Written Record of Interview of Witness **SAO Champi alias Sao Maing**, 18 November 2008, pp. 3-4.

⁷¹ **D1.3.27.1**, CPK Standing Committee Meeting Minutes, 9 October 1975, pp. 5-6.

⁷² **D4.1.518**, Written Record of Interview of Witness **SAO Phen**, 21 May 2009, p. 4; **D4.1.849**, Written Record of Interview of Witness **KHUM Kim alias Nuon Pet**, 30 November 2009, p. 5.

⁷³ **D4.1.484**, Written Record of Interview of Witness **Seng Srun**, 11 August 2008, pp. 3-4; **D10.1.56**, Written Record of Interview of Witness **HOK Hoeun alias Hoeun**, 23 November 2008, pp. 4-6, 8.

⁷⁴ **D10.1.56**, Written Record of Interview of Witness **HOK Hoeun alias Hoeun**, 23 November 2008, pp. 4-5; **D4.1.242**, Written Record of Interview of Witness **PHANN Pich alias Pich**, 22 September 2008, p. 2; **D1.3.16.4**, United Nations Economic and Social Council Thirty-first Session on “Question of the Violation of Human Rights and Fundamental Freedoms including Policies on Racial Discrimination and Segregation and of Apartheid, in all Countries, with particular reference to Colonial and other Dependent Countries and Territories: Report of the Sub-Commission under Commission on Human Rights Resolution 9 (XXIII)”, 14 August 1978, p. 17-18.

⁷⁵ **D1.3.849**, Written Record of Interview of Witness **KHUM Kim alias Nuon Pet**, 30 November 2009, p. 5.

⁷⁶ **D1.3.22.1**, DK Government Document entitled “Communist Party of Kampuchea Statute”, 6 January 1976, Article 1 (2)(B), pp. 6-7.

⁷⁷ **D1.3.16.4**, United Nations Economic and Social Council Thirty-first Session on “Question of the Violation of Human Rights and Fundamental Freedoms including Policies on Racial Discrimination and Segregation and of Apartheid, in all Countries, with particular reference to Colonial and other Dependent Countries and Territories: Report of the Sub-Commission under Commission on Human Rights Resolution 9 (XXIII)”, 14 August 1978, p. 17.

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29. “Regular” RAK divisions and independent regiments reported directly to the General Staff. As noted above, senior division cadres met regularly with personnel from the General Staff, including SON Sen, to report on the activities that had taken place within their units and to receive additional orders from the General Staff. These meetings often focused on so called internal and external enemy situations.
30. A standard RAK division was comprised of 3 regiments, with each regiment formed of 3 battalions.⁷⁸ A standard independent regiment consisted of 3 battalions. In most cases, RAK divisions had between 800 and 1,800 personnel.⁷⁹ Regular RAK divisions had messenger, radio, and telephone units to facilitate communication inside the division, with other divisions, and with the CPK Centre.⁸⁰
31. RAK divisions were responsible for external security, which meant protecting the borders of Cambodia.⁸¹ Ensuring DK’s external security also meant engaging in

⁷⁸ CPK Standing Committee Meeting Minutes entitled Meeting of the Standing Committee, 9 October 1975, **D1.3.27.1**, pp. 5-6, ERN 00183393-00183408 (noting that RAK divisions were to be standardised with three regiments each and a combat strength of approximately 4,000 people); DK Military Report entitled Statistics of National Army, Division 310 dated 13 June 1977, **D1.3.12.19**, ERN 00655683-00655683 (summarising the structure of Division 310, including 3 regiments and 9 battalions).

⁷⁹ DK Military Report entitled DK Military Report re Overall Force Statistics for Army, **D1.3.30.9** dated 7 April 1977, ERN 00183956-00183956; DK Military Report entitled Cambodian Revolutionary Armed Forces General Staff: Statistics of Collective-Eating Force March 1977, **D1.3.30.10** dated 07 April 1977, ERN 00193064-00193064; DK Military Report entitled Rice Consumption Plan for 1976 by Unit dated 4 January 1976, **D114/27.1.7**, ERN 00543743-00543744; DK Military List by SOU Met entitled Monthly list of forces for October 1976 dated 25 October 1976, **D1.3.5.21**, ERN 00233924-00233924 (indicates a total of 5,599 cadres in Division 502).

⁸⁰ DK Military List by **MEAS Mut** entitled Daily List of Forces 27 October 1976, dated 27 October 1976, **D1.3.5.3**, ERN 00233989-00233989 (indicates that Division 164 had 346 cadre in its messenger unit, 55 cadre in its radio unit, and 26 in its telephone unit); DK Military List by SOU Met entitled Monthly list of forces for October 1976 dated 25 October 1976, **D1.3.5.21**, ERN 00233924-00233924 (A monthly list of forces in Division 502 indicates that there were 82 cadre in the messenger unit, 11 cadre in the radio unit, and 23 in the telephone unit).

⁸¹ CPK Magazine entitled Revolutionary Flag, **D1.3.22.1 [D1.3.24.2]** dated July 1976, pp. 7-9, ERN 00268913-00268946 (describing the need to protect the country “domestically” and “on the international stage”); CPK Magazine entitled Revolutionary Youth dated May 1976, ERN 00184259-00184261, 00184256-00184266 (stating that the “army must constantly heighten its spirit of revolutionary vigilance and be combat ready to defend most firmly and excellently water, land, sea and island borders and the interior of the country so as to guarantee the security of our people in the co-operatives”); CPK Magazine entitled Revolutionary Flag dated June 1976, pp. 4-5, **D1.3.6.1**, ERN 00233948-00233953 (states that the “core and crucial duty of the Revolutionary Army is the defence of the country and of security domestically within the country”); DK Government Legal Document entitled Constitution of Democratic Kampuchea, Chapter 16, **D1.3.22.2** dated 6 January 1976, ERN 00184833-00184839 (according to the DK Constitution, the RAK must “defend the State power of the Kampuchean people and of independent, unified, peaceful, neutral, non-aligned, sovereign, and democratic Kampuchea”).

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international armed conflicts with Vietnam⁸² and Thailand.⁸³ RAK divisions were also responsible for internal security, which meant identifying “enemies,” “traitors” and other undesirable elements.⁸⁴ Many of these personnel were sent to S-21,⁸⁵ where they

⁸² CPK Directive by Office 870 entitled Instructions of 870, **D1.3.19.3**, ERN 00183995-00184000 (Office 870’s orders to DK zones, sectors, districts, ...on attacking the Vietnamese enemies and spies politically, and psychologically); CPK Directive by Office 870 entitled Announcement of Steady and Absolute Combat Against the Yuan Enemy Aggressors and Expansionist Land-Grabbers, **D1.3.19.4** dated 1 January 1979, ERN 00183666-00183666 (ordering the DK population, including “the entire Revolutionary Army of Kampuchea, and all the combatants male and female,” to take up arms against the Vietnamese); CPK Public Statement by SALOTH Sar *alias* POL Pot entitled International Media Report on Speech of POL Pot at a 17th January Mass Meeting on the 10th Anniversary of the Cambodian Revolutionary Army – Vietnamese Report of Cambodian Border Encroachments dated 19 January 1978, ERN 00021108-00021108 (KH) (POL Pot describes “the results and fighting quality of our revolutionary army” and stresses that DK forces have won many victories in the course of the armed conflict with Vietnam); DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.26** dated 1 March 1977, ERN 00933833-00933845 (SON Sen advises RAK Secretaries and Deputy Secretaries on armed conflict with Vietnam saying “It is imperative to further strengthen our defence work along the border with Vietnam. The attack method is to be sure to be able to use small forces to find opportunities to smash their big forces. Be sure of grasping the enemy’s rules and regulations and they jump at opportunities to attack so that the enemy doesn’t know what hit him”).

⁸³ DK Government Report entitled Summary of the Situation from 15 July until 31 August 1976 dated 31 August 1976, **D1.3.30.4**, ERN 00185548-00185550 (describing various RAK encounters with Thai forces along the border); DK Military Telegram entitled Telegram 52 – Radio Band 874 – Dear Missed and Beloved Com[mittee], **D1.3.34.25** dated 23 August 1977, ERN 00183627-00183628 (describing the existence of armed conflicts between DK and Thai armed forces along the borders of the two countries); DK Military Telegram entitled Telegram 238 – Radio Band 195 – Dear Beloved M 870, **D1.3.34.47** dated 13 December 1977, ERN 00183625-00183625 (describing clashes between Thai and DK forces and provides casualty figures for the Thai); DK Military Telegram entitled Respectfully presented to beloved Committee 870, **D1.3.34.63** dated 19 March 1978, ERN 00436995-00436996 (describing enemy situation and skirmishes with Thai forces along the border).

⁸⁴ DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputies of Divisions and Independent Regiments, **D1.3.27.20** dated 9 October 1976, ERN 00940336-00940358 (Division Secretaries and Deputy-Secretaries state that they will be increasingly vigilant against enemies from within); DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D1.3.27.1.5** dated 19 September 1976, p. 10, ERN 00183970-00183981 (SON Sen urges vigilance especially with “the enemies who attack us from inside, by burrowing inside our base as well as inside our army”); DK Military Meeting Minutes entitled Minutes of the Meeting of All Division Committees dated 1 June 1976, **D1.3.8.2**, ERN 00233954-00233959 (SON Sen advises Division Secretaries and Deputy Secretaries to “monitor closely” within their divisions); DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.13** dated 30 August 1976, ERN 00183966, 00183966-00183969; DK Military Meeting Minutes entitled Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.26** dated 1 March 1977, ERN 00933833-00933845 (SON Sen urges division leaders to be vigilant as enemy remnants remain will continue to be created); DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D1.3.27.23** dated 15 December 1976, p. 2 (ENG summary), ERN 00233710-00233721 (SON Sen speaks of the existence of enemies who were “conducting bore-from-within activities” inside the Army and then elaborates with examples of “phenomena” to substantiate his claim); CPK Magazine entitled Revolutionary

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were executed. While the Central Committee formally authorised the General Staff to decide who to “smash” amongst RAK personnel, in practice it appears that senior division cadres often made the decisions about who to arrest and smash within their own division.⁸⁶ Finally RAK divisions were responsible for producing food.⁸⁷

Flag, **D1.3.22.1 [D1.3.24.2]** dated July 1976, pp. 7-13, ERN 00268913-00268946 (describing RAK’s efforts to search for enemies “boring from within” and taking “pre-emptive purge measures” as crucial to internal security and national defence work).

⁸⁵ Sometimes S-21 sent personnel to arrest people at their units, other times units arrested the people first and then sent them to S-21. It was more common for people to be arrested by their own units and then sent to S-21. See **HIM Huy** OCIJ Statement, **D1.3.32.17** dated 18 September 2007, ERN 00161600, 00161595-00161604; **PRAK Khan** OCIJ Statement, **D1.3.32.36** dated 21 September 2007, ERN 00161573, 00161568-00161586. RAK units usually arrested and sent in their own prisoners by themselves.

⁸⁶ DK Military Meeting Minutes entitled Meeting of Comrade Tal Division 290 and Division 170, **D1.3.27.17** dated 16 September 1976, ERN 00937114-00937116 (KAING Guek Eav *alias* Duch, IENG Sary, and SON Sen meet with Tal of Divisions 290 and 170 to discuss security measures that should be taken within the division. Describes how confessions obtained from people were used to arrest other people, agrees on additional individuals to arrest, and encourages the Divisions to coordinate and plan arrests directly with S-21); DK Military Letter entitled Dear Beloved Brother Duch dated 28 July 1977, **D1.3.23.4**, ERN 00233646-00233646 (describing the sending of a person named Sem by SOU Met to KAING Guek Eav *alias* Duch. The text bears a short note: Interrogate [him] right now”); DK Military Letter entitled Dear Beloved Brother Duch dated 4 October 1977, **D1.3.23.4**, ERN 00233646-00233646 (describing brief activities of three soldiers from Division 11, later on moved to Division 502, and Division 310 who were sent to KAING Guek Eav *alias* Duch by SOU Met of Division 502); DK Military Report entitled Request to send 14 Division 502 personnel to S-21, **D1.3.30.1**, ERN 00321796-00321800 (describing 14 “youths” from Division 502 who were implicated in confessions and asks that they be sent to S-21); DK Military Report entitled Dear Beloved Comrade Duch, **D1.3.30.17** dated 1 June 1977, ERN 00195318-00195318 (report from SOU Met to KAING Guek Eav *alias* Duch regarding describing how SUN Heng was arrested and sent to S-21 after being implicated by confessions); DK Military Letter entitled Dear Beloved Brother Duch, **D1.3.30.16** dated 1 June 1977, ERN 00178187-00178187 (letter from SOU Met to KAING Guek Eav *alias* Duch proposing sending 3 people already arrested to S-21. One of them, Lay Chea, is described as being the brother of Lay Try, who SOU Met had already arrested and sent to S-21); DK Military Letter entitled Dear Beloved Comrade Duch, **D1.3.30.18** dated 2 June 1977, ERN 00002409-00002409 (letter from SOU Met KAING Guek Eav *alias* Duch describing 3 people who were being sent to S-21 by SOU Met. One individual had not been implicated in any confessions, however SOU Met had examined him personally and concluded that he was an enemy); DK Military Report entitled Sent to Beloved Comrade Duch, **D1.3.30.12** dated 5 May 1977, ERN 00178184-00178185 (list of 27 people who had been arrested after having been implicated by confessions as being CIA agents. Requests that they be turned over to S-21); DK Military Report entitled Sent to Beloved Brother Duch, **D1.3.30.8** dated 3 April 1977, ERN 00233650-00233651 (list of seven personnel from Division 310 who are being sent to S-21 for various reasons); DK Military Report entitled Sent to Beloved Comrade Duch, **D1.3.30.14** dated 26 May 1977, ERN 00233652-00233653 (list of six personnel from Division 310 who are being sent to S-21 for various reasons); DK Military Meeting Minutes entitled Minutes of Meeting with the Organisation’s Office, 703 and S-21, **D1.3.27.15** dated 9 September 1976, ERN 00178149-00178150 (SON Sen advises senior cadres of Division 703 to heighten revolutionary vigilance, increase surveillance and re-examine their units).

⁸⁷ DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, **D114/27.1.5** dated 19 September 1976, ERN 00183970-00183981 (in which each secretary discusses food supply and production within their division); DK Military Meeting Minutes entitled

Division 164

32. Division 164 originated from Division 3, a Southwest Zone⁸⁸ military unit, and was established in 1973 or early 1974.⁸⁹ **MEAS Muth**, *Ta Mok's* son-in-law, was appointed as Division Secretary⁹⁰ and **MEN Nget** *alias* Nget and **LONG Saroeun** *alias*

Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, **D1.3.27.12** dated 18 August 1976, ERN 00234456-00234459 (SON Sen proposes the Party's plan to the Army regarding rice growing and the amount of land allowed to be cultivated); DK Military Meeting Minutes entitled Minutes of the Meeting of the Committees Attached to Divisions and Independent Regiments, **D114/27.1.4** dated 12 August 1976, ERN 00596993-00597006 (SON Sen describes DK regime's intention to produce three tons per hectare for heavy paddy to Division, providing specific instructions on farming and cultivation); DK Military Meeting Minutes entitled To beloved Committees of Divisions and Regiments, **D1.3.19.2** dated 3 September 1977, ERN 00590300-00590300 (containing instructions to RAK divisions in the area of farming and telling them to model their efforts on Division 164); CPK Magazine entitled Revolutionary Flag dated June 1976, pp. 4-6, **D1.3.6.1**, ERN 00233948-00233953 (describes the role of the army in food production. The article gives army cadre and combatants credit for having "hitherto" displayed "a spirit of launching storming attacks to exert efforts to farm paddy and manufacture fertilizers," but declares that they 'must give a further impetus to these movements' and grow supplementary crops and vegetables. "In particular", it declares, they must "double the farming of paddy"); CPK Magazine entitled Revolutionary Youth, **D1.3.24.1** dated May 1976, pp. 4-5 ERN 00357868-00357899 (in discussing role of army, says it is "essential that it must go down into the fray to farm paddy with our people in the co-operatives in every grass-roots sub-district, village and paddy field that is near its units' positions").

⁸⁸ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 9; **D4.1.751**, Report entitled "Additional Details on Khmer Communist 3rd Division Organisation", 21 March 2005, p. 3.

⁸⁹ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, pp. 4-5; **D2/6**, Written Record of Interview of Witness **NHOUNG Chrong**, 24 August 2010, p. 5; **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 3.

⁹⁰ **D4.1.911**, Written Record of Interview of Witness **IEP Duch**, 30 October 2007, p. 3; **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 5; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, pp. 5-6; **D2/6** Written Record of Interview of Witness **NHOUNG Chrong**, 24 August 2010, p. 5; **D4.1.746**, Report entitled "Debriefing of Som Sok, Former Member of the Khmer Communist 3rd Division", 19 December 2002, p. 3; **D4.1.750**, Report entitled "Historical Background of Khmer Communist 3rd Division", 16 September 2004, p. 2.

- Roeun or Rin were his deputies.⁹¹ Division 3 had three⁹² regiments under its command: Regiments 20, 21, and 22.⁹³
33. MEN Nget was Secretary⁹⁴ of Regiment 20 with three battalions under his control: Battalions 320, 330, and 370. Regiment 20 was stationed in Stung Hav.⁹⁵
 34. *Ta Meanh* was Secretary⁹⁶ of Regiment 21 with three battalions under his control: Battalions 410, 420 and 480. Regiment 21 field command was close to Ream and stationed on the islands in DK territorial waters, including Koh Tang, Koh Pring, Koh Puolo Wai Chas and Koh Puolo Wai Thmei, etc.⁹⁷
 35. Morm Choem *alias* Yan was Secretary⁹⁸ of Regiment 22 with two battalions under his control: Battalions 520, and 540 based on Ses Island, Thmei Island and in Kampong Som.⁹⁹
 36. In 1975, Division 3 was stationed near Pochentong Airport.¹⁰⁰ After the liberation on 17 April 1975, it was ordered to deploy to Kampong Som.¹⁰¹ There¹⁰² it was renamed

⁹¹ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 6; **D1.3.30.6**, DK Report entitled “General Staff Study Session, Second Session”, 23 November 1976, p. 12; **D1.3.8.8**, DK Report entitled “Second General Staff Study Session, Revolutionary Outlook, Table of Splitting up into Groups by Unit of Organisation”, 23 November 1976, p. 3 [KH].

⁹² **D4.1.759**, Report entitled “Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island”, 16 June 2000, p. 5; **D2/6** Written Record of Interview of Witness **NHOUNG Chrong**, 24 August 2010, p. 5; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 6; **D4.1.759**, Report entitled “Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island”, 16 June 2000, p. 5; **D4.1.751**, Report entitled “Additional Details on Khmer Communist 3rd Division Organisation”, 21 March 2005, p. 3.

⁹³ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 6; **D4.1.750**, Report entitled “Historical Background of Khmer Communist 3rd Division”, 16 September 2004, p. 2.

⁹⁴ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 7.

⁹⁵ **D4.1.747**, Report entitled “Oral History-Debriefing of AEK Ny, Former Member of the Khmer Communist 386th Battalion, Remains on the Northern End of Tang Island”, 19 December 2002, p. 5.

⁹⁶ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 8.

⁹⁷ **D4.1.750**, Report entitled “Historical Background of Khmer Communist 3rd Division”, 16 September 2004, p. 2.

⁹⁸ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 7.

⁹⁹ **D4.1.750**, Report entitled “Historical Background of Khmer Communist 3rd Division”, 16 September 2004, p. 3.

¹⁰⁰ **D4.1.759**, Report entitled “Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island”, 16 June 2000, p. 3; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 8; **D4.1.751**, Report entitled “Additional Details on Khmer Communist 3rd Division Organisation”, 21 March 2005, p. 2.

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Centre Division 164 in a large meeting at Olympic Stadium on 22 July 1975,¹⁰³ and later became the [DK] Navy on 9 October 1975¹⁰⁴ under **MEAS Muth**'s command.¹⁰⁵ This Navy was stationed on various islands such as Koh Poulo Wai, Koh Tang, Koh Pring, Koh Rong, Koh Rong Sanloem, Koh Ses, Koh Thmei, and other smaller islands¹⁰⁶ and also on land such as in Kang Keng, Ream, Toek Sab, Stung Hav, Kampong Som with the radar at Bauk Kor.¹⁰⁷

37. **MEAS Muth** became Secretary of Division 164 of the [DK] Navy¹⁰⁸ in Kampong Som¹⁰⁹ (now Preah Sihanouk Province) – the division had the land base unit and the

¹⁰¹ **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 9; **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 3.

¹⁰² **D2/6**, Written Record of Interview of Witness **NHOUNG Chrong**, 24 August 2010, p. 5; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 9; **D1.3.30.29**, Interviews with Kampuchean Refugees at Thai-Cambodia Border by Masato Matsushita and Stephen Heder, February-March 1980, p. 32; **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 3; **D4.1.750**, Report entitled "Historical Background of Khmer Communist 3rd Division", 16 September 2004, p. 2; **D4.1.751**, Report entitled "Additional Details on Khmer Communist 3rd Division Organisation", 21 March 2005, p. 3.

¹⁰³ **D4.1.861**, CPK Magazine entitled "Revolutionary Flag", Issue 08, August 1975, p. 13: (On 22 July 1975 on the occasion of the ceremony of the Communist Party of Kampuchea Centre to establish the Revolutionary Army, the comrade chairman of the High-Level Military Committee of the Party convened an important political conference of the Communist Party of Kampuchea Centre for approximately 3,000 representatives of every unit of the Revolutionary Army. The complete content of this important conference was as follows: [...] 4. The new missions of our Revolutionary Army"); **D4.1.801**, Written Record of Interview of Witness **CHHAOM Se**, 31 October 2009, p. 3; **D4.1.805**, Written Record of Interview of Witness **CHHAOM Se**, 8 November 2009, p. 5; **D4.1.454**, Written Record of Interview of Witness **KOY Mon**, 29 May 2009, p. 3; **D4.1.827**, Written Record of Interview of Witness **HIM Horn**, 18 December 2009, pp. 5-6; **D4.1.794**, Written Record of Interview of Witness **UNG Ren**, 23 October 2009, p. 7; **D1.3.17.4**, Huy Vannak, "The Khmer Rouge Division 703: From Victory to Self-Destruction", p. 6; **D1.3.17.1**, Elizabeth Becker, "When the War Was Over", p. 45.

¹⁰⁴ **D1.3.27.1**, CPK Standing Committee Meeting Minutes, 9 October 1975, p. 5.

¹⁰⁵ **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 5; **D2/6** Written Record of Interview of Witness **NHOUNG Chrong**, 24 August 2010, p. 5; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, p. 6; **D2/9**, Written Record of Interview of Witness **SAY Born**, 7 September 2010, p. 6; **D1.3.30.29**, Interviews with Kampuchean Refugees at Thai-Cambodia Border by Masato Matsushita and Stephen Heder, February-March 1980, p. 32.

¹⁰⁶ **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, pp. 7-8.

¹⁰⁷ **D2/9**, Written Record of Interview of Witness **SAY Born**, 7 September 2010, p. 7.

¹⁰⁸ **D1.3.13.1**, OCP Interview Notes, 11 and 12 August 2008, p. 3; **D2/16**, Written Record of Interview of Witness **TOUCH Soeuli alias Soeu Touch**, 11 November 2010, p. 4; **D4.1.759**, Report entitled "Organisation and History of the Khmer Communist 3rd Division, Burial of Remains on Tang Island", 16 June 2000, p. 5; **D2/8**, Written Record of Interview of Witness **SAY Born**, 6 September 2010, pp. 5-6; **D1.3.33.16**, Interview

sea base unit¹¹⁰ – at least between January 1976 and April 1978¹¹¹ and Chairman of the Kampong Som City Committee.¹¹² When he became Secretary of Division 164, he like other secretaries reported directly to the General Staff and to the Party Centre on military, administration and other issues.¹¹³

38. The Introductory Submission alleged that **MEAS Muth** controlled 17,000 civilians and division personnel¹¹⁴ among whom there were between 8,500 to 10,000 or 20,000 in late 1975,¹¹⁵ 8,611 in October 1976,¹¹⁶ and 8,568 in March 1977.¹¹⁷ Kampong Som was an autonomous city led by **MEAS Muth** and under the control of the Party Centre.¹¹⁸

DK Navy

with **MEAS Muth**, by Christine Chaumeau and Bou Saroeun, 20 July 2011, p. 1; **D4.1.810**, Written Record of Interview of Witness **SENG Soeun**, 11 November 2009, p. 5; **D4.1.762**, Interview of Kam Men, Former Member of the Khmer Communist 164th Division”, 2 November 2000, p. 3.

¹⁰⁹ **D4.1.810**, Written Record of Interview of Witness **SENG Soeun**, 11 November 2009, p. 5; **D4.1.947**, Written Record of Interview of Charged Person **KAING Guek-Eav alias Duch**, 4 June 1999, p. 3; **D1.3.32.28**, **MEAS Chana** DC-Cam Statement, 21 June 2004, p. 36; **D1.3.30.29**, Interviews with Kampuchean Refugees at Thai-Cambodia Border by Masato Matsushita and Stephen Heder, February-March 1980, p. 32; **D4.1.4**, Timothy CARNEY’s Analytical Report entitled “the Organisation of People” published in a book edited by Karl Jackson, entitled: “Cambodia 1975-1978: Rendezvous with Death”, p. 17.

¹¹⁰ **D2/15**, Written Record of Interview of Witness **TOUCH Soeuli alias Soeu Touch**, 10 November 2010, p. 3; **D2/9**, Written Record of Interview of Witness **SAY Born**, 7 September 2010, pp. 4-5; **D1.3.13.13**, Written Record of Interview of Witness **TOUCH Soeuli alias Soeu Touch**, 16 August 2008, p. 6.

¹¹¹ **D1.3.12.1**, DK Report entitled “Rice Consumption Plan 1976”, 4 January 1976; **D1.3.30.2**, Meas Mut’s Report entitled “May Brother 89 be informed”, 5 January 1976.

¹¹² **D1.3.30.25**, Mut’s Secret Telephone, Report from Division 164, 1 April 1978.

¹¹³ **D4.1.947**, Written Record of Interview of Charged Person **KAING Guek-Eav alias Duch**, 4 June 1999, p. 3; **D4.1.4**, Timothy CARNEY’s Analytical Report entitled “the Organisation of People” published in a book edited by Karl Jackson, entitled: “Cambodia 1975-1978: Rendezvous with Death”, p. 17.

¹¹⁴ **D1**, Co-Prosecutors’ Second Introductory Submission regarding the Revolutionary Army of Kampuchea, 20 November 2008, para. 37, pp. 12-13.

¹¹⁵ **D1**, Co-Prosecutors’ Second Introductory Submission regarding the Revolutionary Army of Kampuchea, 20 November 2008, para. 86, pp. 29-30.

¹¹⁶ **D1**, Co-Prosecutors’ Second Introductory Submission regarding the Revolutionary Army of Kampuchea, 20 November 2008, para. 84, p. 29.

¹¹⁷ **D1.3.7.8**, The Cambodia Daily, “Let Bygones Be Bygones”, Erika Kinetz and Yun Samean, Issue 520, 1-2 March 2008, p. 2; **D1.3.13.1**, BOCH Koy OCP Interview, 11 and 12 August 2008, p. 3; **D1.3.33.16**, Interview with **MEAS Muth** by Christine Chaumeau and Saroeun, 20 July 2001, p. 1.

¹¹⁸ **D1.3.13.11**, Witness **Sieng** OCP Interview, 12 August 2008, p. 2.

39. The DK navy was responsible for aggressively defending waters claimed by the DK government against any intruders.¹¹⁹ In the process it sought to capture or destroy any Thai or Vietnamese vessels that entered waters claimed by the government,¹²⁰ which resulted in a large number of clashes between Thai and DK naval forces in the waters off the coast of the two countries.¹²¹ The DK navy also attacked many Thai fishing vessels, killing or capturing the Thai fishermen.¹²²

¹¹⁹ Media Article by BBC Summary of World Broadcasts entitled *Cambodian maritime forces maintain vigilance*, **D1.3.25.40** dated 30 March 1978, ERN S 00010449, S 00010448-00010453 (noting that the purpose of the DK navy was to protect Cambodia's "territorial sea" against all aggressors and that all "enemies" who have violated Cambodian territorial waters have been defeated); CPK Magazine entitled *Revolutionary Youth*, **D1.3.24.1** dated May 1976, pp. 13-14, ERN 00357868-00357899 (noting that the RAK must "defend most firmly and excellently water, land, sea and island borders"); CPK Magazine entitled *Revolutionary Youth*, **D4.1.50** dated April 1976, pp. 9-10, ERN 00392427-00392462 (noting that the RAK must ensure "mighty, solid and perfect national defence of every nook and cranny, of the most isolated areas and of the land and sea borders and of islands"); Media Article by BBC Summary of World Broadcasts entitled *Cambodian Navy's Defence of Off Shore Islands* dated 27 August 1977, ERN S 00007890-00007891, **D1.3.7.2**, ERN S 00007889-00007892 (noting that the RAK loves the "territorial sea and islands more than their own lives," and that the RAK has "resolutely defended day and night all territorial waters and islands"); Witness OCP-**00138**, OCP Interview Notes, **D1.3.13.11** dated 12 August 2008, ERN 00217565, 00217563-00217566 (noting that DK naval forces held regular morning meetings where they were told to defend the country).

¹²⁰ DK Military Report dated 29 May 1977, **D1.3.12.18**, ERN 00233992-00233993; DK Military Report dated 12 August 1977, **D1.3.12.20**, 00233972-00233972; DK Military Telegram dated 12 August 1977, **D1.3.34.23**, ERN 00233655-00233655; DK Military Telegram, **D1.3.34.28** dated 15 September 1977, ERN 00233654-00233654; DK Military Telegram, **D1.3.34.64** dated 20 March 1978, ERN 00233649-00233649.

The DK navy trained specifically in capturing vessels at sea. See DK Military Telegram entitled *Telegram 04, Band 429, For Respected and Beloved Brother Mut*, **D1.3.34.39** dated 5 November 1977, ERN 00233656-00233656 (discussing training to detain vessels at sea).

¹²¹ See *supra* note 107 (describing armed conflicts between DK and Thai naval forces).

¹²² Media Article entitled *Thailand reports brief naval clash with Cambodians*, **D1.3.25.2** dated 13 June 1975, ERN 00165959-00165959 (noting that Cambodian forces had attacked two Thai fishing vessels and captured one of them); Media Article entitled *Thai-Cambodian Clash*, **D1.3.25.4** dated 14 June 1975, ERN S 00003551-00003551 (noting that Cambodian forces had attacked two Thai fishing vessels and captured one of them); Media Article entitled *Vietnamese, Thai clashes*, **D1.3.25.7** dated 26 July 1975, ERN 00166196-00166196 (noting that Cambodian naval vessels had captured a Thai fishing vessel and its crew of 18); DK Military Telegram entitled *Telegram No 44, sent to respected Brother 89 for his knowledge, about the situation in August 1976*, **D1.3.34.10** dated 23 August 1976, ERN 00233647-00233648 (noting the capture of a Thai fishing vessel and also noting that Division 164 could not guarantee its ability to shoot Thai fishing vessels); DK Government Report dated 31 August 1976, **D1.3.12.7**, ERN 00233963-00233967 (noting that 1 Thai fishing vessel was captured on 12 August 1976 and 2 Thai boats were captured between 13 and 18 August 1976); DK Military Meeting Minutes entitled *Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments*, **D114/27.1.5** dated 19 September 1976, ERN 00183970-00183981 (noting that as many as 150 Thai fishing vessels were entering Cambodian waters and that the DK navy had caught one on 11 September 1976); DK Military Report, dated 29 May 1977, **D1.3.12.18**, ERN 00233992-00233993 (noting that DK naval forces had encountered 50 to 60 Thai fishing boats and had captured one); DK Military Telegram, **D1.3.34.23**, dated 12 August 1977, ERN 00233655-00233655 (noting that Comrade **Mut**'s forces had captured a boat carrying 4

40. A small number of the Thai fishermen who were captured were returned to Thailand,¹²³ but reports indicate that many more Thai fishermen were detained by the DK navy.¹²⁴ This appears to have been part of a larger policy of kidnapping Thai

Thais and a Khmer); DK Military Report entitled *Reported on 12/8/77 by secret telephone about situation along the border with Thailand*, **D1.3.12.20** dated 12 August 1977, ERN 00233972-00233972 (noting that Division 164 had captured two boats and five people four of whom were Thai); DK Military Telegram entitled *Report by Secret Telephone to Brother Division Commander*, **D1.3.34.28** dated 15 September 1977, ERN 00233654-00233654 (noting that 2 Thai fishing boats were captured and that some of the fishermen were killed); DK Military Telegram entitled *Telegram 45*, **D1.3.34.31** dated 6 October 1977, ERN 00233645-00233645 (noting that a Thai vessel and one Thai person had been captured); DK Military Telegram entitled *To respected Brother 89 about the situation on the sea*, **D1.3.34.64** dated 20 March 1978, ERN 00233649-00233649 (noting that a Thai vessel with 21 people aboard had been captured); DK Military Telegram entitled *Telegram 01*, **D1.3.34.66** dated 31 March 1978, ERN 00185587-00185587 (noting the capture of 3 Thai motorboats and the capture of one person); Media Article entitled *Cambodian Attack on Thai Fishermen*, **D1.3.25.47** dated 19 June 1978, ERN S 00010681, S 00010678-00010681 (describes attacks on 3 unarmed Thai fishing vessels by DK naval forces that left 11 Thai fishermen dead); Media Article entitled *Cambodia Said to Attack Thai Fishing Boats*, **D1.3.25.48** dated 20 June 1978, ERN S 00011664-00011664 (noting that Cambodian forces had attacked 3 Thai fishing vessels, killing 11 people, seven of whom appeared to have been tied up before being shot); Witness OCP-00138, OCP Interview Notes, **D1.3.13.11** dated 12 August 2008, ERN 00217565, 00217563-00217566 (noting that DK naval forces fired on Thai fishing boats and captured Thai fishing vessels).

¹²³ Media Article entitled *Near Thai-Cambodia Frontier Tension and Danger are the rule*, **D1.3.25.44** dated 4 May 1978, ERN S 00011241-00011241 (noting that 5 Thai fishermen had been released but that 100 more were allegedly still being held in Cambodia); Media Article entitled *Cambodian Offer to Release Thai Fishermen*, **D1.3.25.40** dated 30 March 1978, ERN S 00010453, S 00010448-00010453 (describing DK's offer to release 5 captured Thai fishermen); DK Military Report, **D1.3.25.42** [**D54/112.3**] dated 1 April 1978, ERN 00183357-00183357 (describing the process of releasing Thais held by Division 164); Media Article entitled *Thai Trade with Cambodia*, **D1.3.25.42** dated 19 April 1978, ERN S 00010576, S 00010574-00010577 (noting that 5 Thai fishermen had been released by the Cambodian authorities); Witness OCP-00138, OCP Interview Notes, **D1.3.13.11** dated 12 August 2008, ERN 00217565, 00217563-00217566 (noting that sometimes Thai fishermen were released).

¹²⁴ Media Article entitled *Near Thai Cambodia Frontier Tension and Danger are the rule*, **D1.3.25.44** dated 4 May 1978, ERN S 00011241-00011241 (describing the situation on the maritime border with DK, noting that approximately 100 Thai fishermen had been captured by the DK navy and were being held in Cambodia); Media Article entitled *Tough Warning from Bangkok*, **D1.3.25.60** dated 31 July 1978, ERN S 00008277-00008277 (discussing arrests of Thai fishing boats and fishermen. States that 33 Thai fishermen were interned in Cambodian work camps); DK Military Report, **D1.3.30.25** dated 1 April 1978, ERN 00183357-00183357 (indicating that Division 164 was responsible for holding Thais who had been captured by the DK navy prior to their repatriation to Thailand); Media Article entitled *Thai Trade with Cambodia*, **D1.3.25.36** dated 10 February 1978, ERN S 00008976-00008979 (noting that IENG Sary had agreed to release Thai fishermen being held by Cambodian forces); Witness OCP-00138, OCP Interview Notes, **D1.3.13.11** dated 12 August 2008, ERN 00217565, 00217563-00217566 (noting that DK naval forces captured Thai fishermen); Witness OCP-00117, OCP Interview Notes, **D1.3.13.8** dated 13 August 2008, ERN 00217562, 00217559-00217562 (noting that during the course of one week in 1976, he saw two different groups of Thai fishermen, each numbering between 15 and 20, tied up and taken to a barracks building at the DK naval base); Witness OCP-00153, OCP Interview Notes, **D1.3.13.13** dated 16 August 2008, ERN 00217575, 00217569-00217575 (noting that BE vessels were not designed to chase Thai fishing vessels but would still sometimes capture Thai fishermen).

nationals in border areas.¹²⁵ Some of these captured Thai fishermen were sent to S-21, where they were executed. One surviving S-21 prisoner list indicates that 31 Thai fishermen who had been arrested in Kampong Som were executed at S-21 on 24 May 1976.¹²⁶ Several former S-21 guards also remember the detention of Thai nationals, including Thai fishermen, at S-21.¹²⁷

41. Nationals of other countries were also captured by the DK navy and sent to S-21. For example, at least four Westerners were captured by the DK navy in Cambodian waters and transferred to S-21, where they were executed.¹²⁸ The DK navy also attacked Vietnamese vessels,¹²⁹ and reported capturing “Vietnamese agents” at sea.¹³⁰ One

¹²⁵ Media Article entitled *Thai border villagers abducted into Cambodia*, **D1.3.25.40** dated 30 March 1978, ERN S 00010453, S 00010448-00010453 (describing the abduction of 160 Thai villagers by Cambodian forces); Media Article by New York Times entitled *Raids from Cambodia are worrying Thais*, **D1.3.25.27** dated 23 December 1977, ERN 00165991-00165991 (noting that 48 Thais has been kidnapped and taken to Cambodia); Media Article by New York Times entitled *Thais Upset Over Abduction of 350 Border Villagers into Cambodia*, **D1.3.25.37** dated 21 February 1978, ERN 00166004-00166004; Media Article by the Christian Science Monitor entitled *Thais Mend Fences with Neighbours*, **D1.3.25.39** dated 29 March 1978, ERN 00166243-00166243 (noting that hundreds of villagers, including many Cambodian-born villagers, had been kidnapped from Thailand by Cambodian forces); Media Article by BBC Summary of World Broadcasts, entitled *Thai newspaper on Khmer Rouge incursion*, **D1.3.7.4** dated 6 April 1978, ERN S 00010324-00010324 (noting that at least 400 Thai villagers were believed to have been held by Cambodian soldiers); Media Article by BBC Summary of World Broadcasts, entitled *Thailand to contact Cambodia on kidnapped villagers*, **D1.3.7.6** dated 14 April 1978, ERN S 00010387-00010388 (noting that about 200 Thai citizens were abducted from Chanthaburi province to work in Cambodia); Media Article by the Los Angeles Times entitled *Underground Indochina War Lives On*, **D1.3.25.41** dated 16 April 1978, ERN 00166098-00166098 (estimating that more than 400 Thai villagers had been kidnapped by Cambodian forces “in the past few months”); Media Article entitled *Tough Warning From Bangkok*, **D1.3.25.60** dated 31 July 1978, ERN S 00008277-00008277 (estimating that more than 1,000 Thais had been kidnapped by Cambodian forces during the previous 18 months).

¹²⁶ S-21 Prisoner List, **D1.3.28.11** dated May 1976, ERN 00181627-00181630.

¹²⁷ See **HAN Iem** DC-Cam Statement, **D1.3.32.12** dated 10 January 2002, ERN 00337757-00337792 (noting that there were enough Thai fishermen imprisoned at S-21 that Meung was able to learn enough Thai to communicate with them); **CHHUN Phal** DC-Cam Statement, **D1.3.32.8** dated 8 July 2002, ERN 0 00337721-00337754 (noting that there were a few Thais and Vietnamese held at S-21); **SAV Khe** OCIJ Statement, **D1.3.32.44** dated 2 April 2008, ERN 00194976, 00194973-00194977 (in which the witness notes that he saw six Thais detained and taken for interrogation and execution at S-21).

¹²⁸ **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.3** dated 7 August 2007, ERN 00147526-00147527, 00147517-00147527; **KAING Guek Eav alias Duch** OCIJ Statement, **D1.3.33.4** dated 24 June 2008 at ERN 00198221, 00198217-00198225. See also, S-21 Prisoner List, **D1.3.28.140** dated 26 November 1978, ERN 01236388-01236390 (noting that two Americans, Christopher Edwards Delance and Michael Scott Deeds had been received from Kampong Som).

¹²⁹ DK Military Telegram entitled *Confidential telephone message on 20/3/78: To respected Brother 89 about situation on the sea*, **D1.3.34.64** dated 20 March 1978, ERN 00233649-00233649 (noting that the DK navy attacked 4 motor boats, 3 Vietnamese boats and a Thai boat. 2 of the Vietnamese vessels were sunk and 76 Vietnamese people were captured. 21 Thais were also captured); DK Military Report, **D1.3.30.25** dated 1 April

witness stated that “many” Vietnamese were arrested by the DK navy and sent to the Division 164 headquarters.¹³¹ A number of people described as “Vietnamese spies” and bearing Vietnamese names were sent to S-21 from Division 164 and from Kampong Som.¹³² At least some of the Vietnamese prisoners at S-21 were fishermen who had been captured while fishing in waters near the Vietnamese border.¹³³ In addition, it appears that some of the people who eventually confessed to being Vietnamese soldiers or Vietnamese spies were actually Vietnamese civilians captured by the DK navy.¹³⁴

Communication between Divisions and the Central Committee

1978, ERN 00143507-00143508 (noting that 5 motor boats had been captured and a total of 120 Vietnamese captured and killed between 27 and 30 March 1978).

¹³⁰ Media Article entitled *Cambodian maritime forces maintain vigilance*, **D1.3.25.40** dated 30 March 1978, ERN S 00010450, S 00010448-00010453 (noting that “Vietnamese agents had been captured at sea on 3rd 18th and 25th January and 1st February 1978”).

¹³¹ Witness OCP-00153, OCP Interview Notes, **D1.3.13.13** dated 16 August 2008, ERN 00217574, 00217569-00217575.

¹³² S-21 Prisoner List, **D1.3.28.5**, ERN 00053309-00053328 (indicating that 10 “Yuon” were received from Kampong Som on 1 May 1978, and that another 2 “Yuon” were received from Division 164 on the same day).

¹³³ **CHHUN Phal** OCIJ Statement, **D1.3.32.9** dated 18 February 2008, ERN 00163814, 00163811-00163815 (noting that at least one of the Vietnamese prisoners who entered S-21 in 1978 claimed to be a fisherman not a soldier and stated that he was captured while fishing).

The confessions of some Vietnamese prisoners at S-21 also suggest that they were captured by the DK navy and transferred to S-21 by Division 164. The S-21 confession of VINH Seang, a Vietnamese soldier arrested in March 1978, has hand-written annotations indicating that VINH Seang was among other Vietnamese spies arrested from Vin Te Canal and areas near Koh Russei Island in Cambodian waters, suggesting that Division 164 carried out these arrests. S-21 Confession of **VINH Seang**, **D1.3.1.14** dated 23 March 1978, ERN 00233999-00234007. As indicated by his S-21 Confession, VINH Minhchov, a Vietnamese marine, was arrested on 13 March 1978 at Koh Angkrang Island of Cambodia. The last page of his confession is an excerpt from an S-21 prisoner list that indicates he and six other Vietnamese prisoners were transferred to S-21 from Kampong Som. The location of his arrest, as well as the fact that the Vietnamese prisoners were sent to S-21 from Kampong Som both suggest that Division 164 participated in his arrest. S-21 Confession of **VINH Minhchov**, **D1.3.1.13** dated 3 April 1978, ERN 00233921-00233923.

¹³⁴ See Media Article by BBC Summary of World Broadcasts, entitled *Confession of a captured SRV sailor*, **D1.3.26.5** dated 3 February 1978, ERN S 00008895, S 00008892-00008899 (noting that a person who confessed to being a Vietnamese sailor was captured by Cambodian forces along with approximately 40 others, 25 of whom were children, who initially claimed to be “war refugees”); Media Article by BBC Summary of World Broadcasts, entitled *Confessions by Captured Vietnamese*, **D1.3.26.9** dated 19 May 1978, ERN 00010018, S 00010014-00010019 (noting that a Vietnamese man “disguised as a fisherman” had been captured in Cambodian waters and later confessed to having been ordered to spy on Cambodia); Media Article by BBC Summary of World Broadcasts, entitled *Confession by Vietnamese spy* **D1.3.7.3** dated 4 April 1978, ERN S 00010313-00010313 (noting that a person who confessed to being a Vietnamese private claimed that he was a Chinese national trying to escape to Malaysia by fishing boat).

42. IENG Sary asserted that the Military Committee generally reported to the Standing Committee after receiving reports from the zones, and he himself ever heard of reports on the security.¹³⁵ The communication between divisions and the Centre was made, on a regular basis, many times per day.¹³⁶ The headquarters of the Centre communicated regularly with divisions¹³⁷ and depended on those divisions that forwarded its command to lower units. Important decisions of the division level were left to the headquarters of the Centre to make.¹³⁸ Divisions sent reports to the headquarters of the Centre on a regular basis. Generally, those reports described issues including combats, discovery of internal enemies and other matters.¹³⁹
43. Communication was facilitated by many means. Its most frequently-used means were walkie-talkies and telegraph.¹⁴⁰ To this end, the Staff as well as each division had a

¹³⁵ **D4.1.1032**, Interview of IENG Sary, New York, at the UN Mission of Democratic Kampuchea, by Elizabeth Becker, 22 July 1981, pp. 2-3.

¹³⁶ **D4.1.845**, Written Record of Interview of Witness **LONH Dos**, 20 November 2009, pp. 4-5; **D4.1.925**, Written Record of Interview of Witness **POL Nhan**, 31 August 2009, p. 7.

¹³⁷ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D4.1.848**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh** 26 November 2009, p. 5; **D4.1.408**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh** 21 May 2008, pp. 6, 8; **D4.1.925**, Written Record of Interview of Witness **POL Nhan**, 31 August 2009, p. 7; **D4.1.1056**, Written Record of Interview of Witness **CHUON Thi alias Thi Ov**, 2 March 2010, p. 8; **D1.3.30.2**, **Mut's** Report entitled "May Brother 89 be informed", 5 January 1976; **D1.3.12.3**, **Mut's** Report to Brother 89, 22 February 1976; **D1.3.8.4**, Minutes of Meeting of 164 Comrades, 9 September 1976; **D1.3.4.1**, Letter from Comrade **Mut**, entitled "Dear respected Brother 89", 19 October 1976; **D1.3.2.2**, Telegram 10 from Brother 89 "To beloved and missed Comrade **Mut**", 4 November 1976; **D1.3.4.2**, Brother 89's Telegram to Beloved and Missed Comrade Dim, 26 November 1976; **D1.3.12.18**, **Mut's** Telegram 09 to "Brother 89 with respect", 29 May 1977; **D1.3.34.23**, Soeung's Telegram 28, 12 August 1977; **D1.3.34.10**, **Mut's** Telegram No. 44 "Dear respected Brother 89", 13 August 1976; **D1.3.34.64**, **Mut's** Confidential Telephone Communication to Respected Brother 89, 20 March 1978.

¹³⁸ **D4.1.925**, Written Record of Interview of Witness **POL Nhan**, 31 August 2009, p. 7.

¹³⁹ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D4.1.848**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh**, 26 November 2009, p. 5; **D4.1.925**, Written Record of Interview of Witness **POL Nhan**, 31 August 2009, p. 7; **D4.1.1056**, Written Record of Interview of Witness **CHUON Thi alias Thi Ov**, 2 March 2010, p. 8; **D4.1.1042**, Written Record of Interview of Witness **MEAS Voeun alias SVAY Roeun [Voeun]**, 4 March 2010, p. 3; **D1.3.30.2**, **Mut's** Report entitled "May Brother 89 be informed", 5 January 1976; **D1.3.12.3**, **Mut's** Report to Brother 89, 22 February 1976; **D1.3.8.4**, Minutes of Meeting of 164 Comrades, 9 September 1976; **D1.3.4.1**, Letter from Comrade **Mut**, entitled "Dear respected Brother 89", 19 October 1976; **D1.3.2.2**, Telegram 10 from Brother 89 "To beloved and missed Comrade **Mut**", 4 November 1976; **D1.3.34.64**, **Mut's** Confidential Telephone Communication to Respected Brother 89, 29 March 1978; **D1.3.4.2**, Brother 89's Telegram 10 to Beloved and Missed Comrade Dim, 26 November 1976; **D1.3.12.18**, **Mut's** Telegram 09 to "Brother 89 with respect", 29 May 1977; **D1.3.34.23**, Soeung's Telegram 28, 12 August 1977; **D1.3.9.1**, DK Report entitled "Report on the Situation in Division 450", 14 November 1976.

¹⁴⁰ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D4.1.408**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh**, 21 May 2008, p. 6; **D4.1.1139**, Written Record of Interview of Witness **POL Leang**, 17 January 2008, p. 3; **D4.1.1142**, Written Record of Interview of Witness

walkie-talkie unit and telegraph unit. Messages were sent in secret codes.¹⁴¹ Generally, messengers were frequently asked to deliver messages,¹⁴² and each division had its own messenger unit to do the job.¹⁴³ Messages between the Staff or various divisions with the Military Committee were sent to the members of the Central Committee.¹⁴⁴

44. Face-to-face meetings were a means used frequently for communication between the Central command headquarters and divisions.¹⁴⁵ These could be small¹⁴⁶ or big meetings.¹⁴⁷ For instance, big meetings were held before the ultimate attack on Phnom

THA Sot, 19 January 2008, p. 3; **D4.1.851**, Written Record of Interview of Witness **MEAS Voeun alias SVAY Voeun**, 16 December 2009, p. 5; **D4.1.1153**, Written Record of Interview of Witness **SEM Am alias Prum Iet**, 5 March 2008, p. 4; **D4.1.1056**, Written Record of Interview of Witness **CHUON Thi alias Thi Ov**, 2 March 2010, p. 8; **D4.1.803**, Written Record of Interview of Witness **CHIN Kimthong alias Chhang**, 3 November 2009, pp. 3-4.

¹⁴¹ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3.

¹⁴² **D4.1.837**, Written Record of Interview of Witness **HEN Sophal alias Chhum**, 31 August 2009, p. 3.

¹⁴³ **D4.1.848**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh**, 26 November 2009, p. 5; **D4.1.846**, Written Record of Interview of Witness **IENG Phan**, 23 November 2009, p. 6; **D4.1.845**, Written Record of Interview of Witness **LONH Dos**, 20 November 2009, p. 5; **D4.1.1056**, Written Record of Interview of Witness **CHUON Thi alias THI Ov**, 2 March 2010, p. 8.

¹⁴⁴ **D4.1.806**, Written Record of Interview of Witness **CHEANG Sreimom**, 11 November 2009, p. 4.

¹⁴⁵ **D4.1.803**, Written Record of Interview of Witness **CHIN Kimthong alias Chhang**, 3 November 2009, p. 3.

¹⁴⁶ **D4.1.782**, Written Record of Interview of Witness **SUON Kanil**, 21 August 2009, p. 3; **D4.1.699**, Comrade Dim's Telegram to Brother Mut, 24 September 1976 (copied to Brothers Nuon and Khieu, Office, Documentation); **D1.3.34.39**, Telegram 04, Band 429 from Roeun to Brother Mut, 5 November 1977.

¹⁴⁷ **D4.1.408**, Written Record of Interview of Witness **CHHOUK Rin alias Sokh**, 21 May 2008, pp. 5-7; **D4.1.837**, Written Record of Interview of Witness **HEN Sophal alias Chhum**, 31 August 2009, p. 3; **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D1.3.27.10**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Brigades, Secretaries and Deputy Secretaries of Regiments, 2 August 1976; **D1.3.27.11**, Minutes of the Meeting of the Committees Attached to Divisions and Independent Regiments, 12 August 1976; **D1.3.27.12**, Minutes of the Meeting of Division and Independent Regiment Secretary(s) and Deputy Secretary(s), 18 August 1976; **D1.3.27.13**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 30 August 1976; **D1.3.30.6**, DK Report entitled "General Staff Study Session, Second Session: Table of Participant Statistics", 23 November 1976; **D1.3.27.20**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.27.21**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 11 November 1976; **D1.3.27.22**, Minutes of the Plenary Meeting of Divisions, 21 November 1976; **D1.3.27.26**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 1 March 1977; **D1.3.27.17**, Minutes of the Meeting with Comrade Tal, Division 920 and Division 170, 16 September 1976; **D1.3.27.24**, Minutes of the Meeting of Division 920, Comrades Say and Ren, 16 December 1976; **D1.3.27.25**, Minutes of the Meeting of Division 801, Comrades Seuan and Thi, 16 December 1976.

Penh¹⁴⁸ or before the purge of the East Zone.¹⁴⁹ In big meetings, speeches were made by Party leaders.¹⁵⁰ Witnesses testified that a big military meeting was held at the Olympic Stadium in Phnom Penh and attended by unit commanders from the rank of battalion and above under SON Sen's chairmanship.¹⁵¹

45. Division 164 was under the control of the Centre¹⁵² and was in charge of military affairs, including supplies, logistics, weaponry, soldiers, communication and information.¹⁵³ **MEAS Muth** as Division 164 Secretary directly reported to the General Staff.¹⁵⁴ If they found foreigners encroaching on [the] DK [territorial waters], they would report to the higher level immediately and, in turn, wait for the order.¹⁵⁵

¹⁴⁸ **D1.3.8.3**, Minutes of Meeting of the Military Work in Kampong Som, 3 August 1976.

¹⁴⁹ **D4.1.1151**, Written Record of Interview of Witness **PRAK Yoeun** *alias* Y, 4 March 2008, p. 6; **D4.1.509**, Written Record of Interview of Witness **KHOEM Samhuon** *alias* Tauch *alias* Aun, 6 March 2009, p. 5.

¹⁵⁰ **D4.1.851**, Written Record of Interview of Witness **MEAS Vocun** *alias* Svay Voeun, 16 December 2009, p. 3; **D4.1.827** Written Record of Interview of Witness **HIM Horn**, 18 December 2009, p. 3; **D4.1.504**, Written Record of Interview of Witness **KEV Kin**, 12 February 2009, p. 3.

¹⁵¹ **D4.1.409**, Written Record of Interview of Witness **CHHOUK Rin** *alias* Sokh, 29 July 2008, p. 4; **D4.1.848**, Written Record of Interview of Witness **CHHOUK Rin** *alias* Sokh, 26 November 2009, p. 3.

¹⁵² **D4.1.1151**, Written Record of Interview of Witness **PRAK Yoeun** *alias* Y, 4 March 2008, p. 6; **D4.1.509**, Written Record of Interview of Witness **KHOEM Samhuon** *alias* Tauch *alias* Aun, 6 March 2009, p. 5; **D4.1.805**, Written Record of Interview of Witness **CHHAOM Se**, 8 November 2009, p. 4; **D4.1.454**, Written Record of Interview of Witness **KOY Mon**, 29 May 2009, p. 3.

¹⁵³ **D4.1.240**, Written Record of Interview of Witness **OEUN Tan**, 9 October 2008, p. 5; **D1.3.27.8**, Minutes of the Meeting of Secretaries and Economics of Divisions, 16 May 1976; **D1.3.27.10**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Brigades, Secretaries and Deputy Secretaries of Regiments, 2 August 1976; **D1.3.27.11**, Minutes of the Meeting of the Committees Attached to Divisions and Independent Regiments, 12 August 1976; **D1.3.27.12**, Minutes of the Meeting of Division and Independent Regiment Secretary(s) and Deputy Secretary(s), 18 August 1976; **D1.3.30.6**, DK Report entitled "General Staff Study Session, Second Session: Table of Participant Statistics", 23 November 1976; **D1.3.27.20**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.27.21**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 11 November 1976; **D1.3.27.22**, Minutes of the Plenary Meeting of Divisions, 21 November 1976; **D1.3.27.23**, Minutes of Meeting of Secretaries and Logistics Officers of Divisions and Independent Regiments, 15 December 1976; **D1.3.27.26**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 1 March 1977.

¹⁵⁴ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3.

¹⁵⁵ **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D4.1.520**, Written Record of Interview of Witness **KE Pich Vannak** *alias* Vannak *alias* Yuth, 4 June 2009, pp. 8-9; **D1.3.9.4**, DK Military Report entitled "General Staff Logistics Committee to Brothers 89 and 81", 29 March 1977.

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46. For example, **MEAS Muth** directly reported to SON Sen about armed conflicts with Vietnam in Koh Tral¹⁵⁶ and the number of the enemies arrested. Then SON Sen reported to the higher *Angkar*.¹⁵⁷ **MEAS Muth** reported that, “*We... caught two machine boats. ... were arrested 2 kilometres from Koh Kong. Later, we questioned them... a Khmer among the five arrestees. The rest is Siamese.*”¹⁵⁸ Moreover, SON Sen made an annotation on this report that, “*To Angkar: [1] We ask to find the inside networks. [2] Find the entry and exit. [3] Traitorous elements along the border.*”¹⁵⁹
47. In this regard, **MEAS Muth** reported to SON Sen about the arrests of Thai fishermen,¹⁶⁰ the purge in units,¹⁶¹ and military situations.¹⁶² **MEAS Muth** reported to the Party Centre via telegraph,¹⁶³ telephone,¹⁶⁴ letters,¹⁶⁵ and messengers.¹⁶⁶ **MEAS Muth**’s telegrams, letters, and reports were sent to SON Sen and copied to NUON

¹⁵⁶ **D12**, Written Record of Interview of Charged Person [Witness] **KAING Guek-Eav alias Duch**, 27 April 2011, p. 3; **D1.3.13.13**, Written Record of Interview of Witness **TOUCH Soeuli alias Soeu Touch**, 16 August 2008, p. 7.

¹⁵⁷ **D2/10**, Written Record of Interview of Witness **SAY Born**, 9 September 2010, p. 7.

¹⁵⁸ **D1.3.30.2**, **MEAS Mut**’s Report entitled “May Brother 89 be informed”, 5 January 1976.

¹⁵⁹ **D1.3.12.20**, **Mut**’s Secret Telephone Message, Report dated 12 August 1977; **D1.3.12.18**, **Mut**’s Telegram 09 to “Brother 89 with respect”, 29 May 1977.

¹⁶⁰ **D1.3.12.20**, **Mut**’s Secret Telephone Message, Report dated 12 August 1977.

¹⁶¹ **D1.3.12.20**, **Mut**’s Secret Telephone Message, Report dated 12 August 1977.

¹⁶² **D1.3.30.4**, Summary of the Situation from 15 July until 31 August 1976.

¹⁶³ **D1.3.27.26**, Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 1 March 1977, p. 1.

¹⁶⁴ **D1.3.8.3**, Minutes of Meeting of the Military Work in Kampong Som, 3 August 1976, pp. 1-2.

¹⁶⁵ **D4.1.1020**, **Mut**’s Telegram “To respected Brother 89”, 20 February 1976; **D1.3.34.10**, **Mut**’s Telegram No. 44 “Dear respected Brother 89”, 13 August 1976; **D1.3.30.2**, **Mut**’s Report entitled “May Brother 89 be informed”, 5 January 1976; **D1.3.12.3**, **Mut**’s Report to Brother 89, 22 February 1976; **D1.3.14.1**, **Mut**’s Telegram “Dear respected Brother 89”, 11 June 1976: (Mut reported about the finding of a letter sent to Battalion 165 Deputy Secretary Sam At and Regiment Deputy Secretary Bunny or Sunny, and requested SON Sen’s advice: “As for this matter, please, Angkar, give advice and make decision because as we have seen it is fairly clear.”); **D1.3.12.18**, **Mut**’s Telegram 09 to “Brother 89 with respect”, 29 May 1977; **D1.3.2.2**, Telegram 10 from Brother 89 “To beloved and missed Comrade **Mut**”, 4 November 1976; **D4.1.855**, Written Record of Interview of Witness **LONH Dos**, 23 July 2009, pp. 2-3; **D1.3.12.2**, **Mut**’s Report “Dear Brother 89 with respect”, 6 February in an unspecified year; **D1.3.14.2**, Moeun’s Secret Telegram to Beloved Comrade Brother **Mut**, 13 July 1977; **D1.3.34.60**, Telegram Number 00, Band 354 from **Mut** to Committee 870, 31 December 1977.

¹⁶⁶ **D1.3.34.64**, **Mut**’s Confidential Telephone Communication to Respected Brother 89 dated 29 March 1978; **D1.3.30.25**, **Mut**’s Secret Telephone, Report from Division 164, 1 April 1978; **D4.1.637**, **Mut**’s Confidential Telephone Message to Respected Brother 89 dated 4 April 1978; **D1.3.12.20**, **Mut**’s Secret Telephone Message: Report dated 12 August 1977. **D1.3.12.20**, **Mut**’s Secret Telephone Message, Report dated 12 August 1977.

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Chea, VORN Vet, Brother Nat, Brother Saom, SIET Chhè and Brother Kat [Tat],¹⁶⁷ and MEAS Muth also reported about rice growing¹⁶⁸ and health of the army.¹⁶⁹

MEAS Muth's Personal Details

48. **MEAS Muth** named KHE Muth at birth was born in Takeo Province¹⁷⁰ or Kampot Province.¹⁷¹ He is the eldest son-in-law of CHHIT Chhoeun *alias Ta Mok*,¹⁷² former Secretary of the Southwest Zone from April 1975 to January 1979.
49. After joining the Khmer Rouge in 1970, **MEAS Muth** was assigned as a medic. He was posted first in Pou Village and then in Angkor Chey District (District 102), located in Sector 13.¹⁷³ At the end of 1970 or early 1971, **MEAS Muth** became the Deputy Commander of Angkor Chey District military where he controlled at least 200 troops.¹⁷⁴ Shortly after, he was appointed to Sector 13 Committee in the Southwest Zone,¹⁷⁵ where he was in charge of the military until 1973.¹⁷⁶ At that stage, **MEAS Muth** had already been inducted as a full-rights member of the CPK.¹⁷⁷

¹⁶⁷ **D1.3.30.25, Mut's** Secret Telephone, Report from Division 164, 1 April 1978.

¹⁶⁸ **D1.3.4.1**, Letter from Comrade **Mut**, entitled "Dear respected Brother 89", 19 October 1976; **D4.1.1010**, Letter from Kan and **Mut**, entitled "To Respected Brother 89" regarding Elizabeth Becker's request, 8 December 1978.

¹⁶⁹ **D1.3.4.1**, Letter from Comrade **Mut**, entitled "Dear respected Brother 89" dated 19 October 1976; **D4.1.1020, Mut's** Telegram "To respected Brother 89" dated 20 February 1976.

¹⁷⁰ **MEAS Chana** DC-Cam Statement, **D1.3.32.28**, 21 June 2004, ERN 00881815-00881873.

¹⁷¹ Witness OCP-00143, OCP Interview Notes, **D1.3.13.1**, 12 August 2008, ERN 00217558, 00217556-00217558 (shows that MEAS Muth was from Chum Kiri district, Kampot province).

¹⁷² **KHIEU Samphan** OCIJ Statement, **D1.3.33.15** dated 13 December, ERN 00156751, 00156741-00156751; Witness OCP-00117, OCP Interview Notes, **D1.3.13.8** dated 13 August 2008, ERN 00217562, 00217559-00217562 (states that **MEAS Mut** is the son-in-law of TA Mok).

¹⁷³ **D22.2.182, MEAS Muth** US POW/MIA Statement, 30 May 2002 ["MEAS Mut was initially assigned as a medic in Angkor Chey District, Sector 13 in 1970"].

¹⁷⁴ **D22.2.182, MEAS Muth** US POW/MIA Statement, 30 May 2002 ["At the end of 1970 or early 1971, MEAS Mut became Deputy Commander of the Angkor Chey District Military. At that time there were about 200 troops in the District Military"].

¹⁷⁵ **D114/297.1.22, MOENG Vet**, T. 26 Jul 2016, 09.57.53-10.02.20 ["From 1973 to 1975, **Muth** was the chief and Saom was the deputy. And later on, **Muth** was transferred to Division 3. Saom became the deputy (sic)"]; **D54/62, MOENG Vet** Written Record of Witness Interview ["A15: When I joined the revolutionary movement in 1973, I saw that he was already on the Sector Committee"].

¹⁷⁶ **D54/60.2, MEUN Vet** DC-Cam Statement ["He was on the Sector 13 Committee"].

¹⁷⁷ **D54/110, LON Seng** Written Record of Witness Interview ["A27: **MEAS Mut** was a full staff member of the Party because he joined the revolution since a long time ago, since 1960"].

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50. In 1973, he was appointed as Secretary of Division 3, the Southwest Zone.¹⁷⁸ He was the Secretary of Division 164 of the RAK in the DK regime.

MEAS Muth's Role

51. From April 1975 to January 1979, MEAS Muth was the Secretary of Division 164 of the RAK and Commander of the DK Navy. MEAS Muth was a member of the Central Committee of the CPK.¹⁷⁹ In addition to his role of the military and the Party, MEAS Muth was responsible for defending the towns of Kampong Som and other off-shore islands.
52. The CPK Central Committee members consisted of full-rights and alternate members. They were ministers, zone, sector, and division secretaries. According to the Communist Party of Kampuchea Statute, the tasks of the Central Committee are among important tasks and responsibilities including implementing the Party political line, instructing all the zone and sector committees to carry out activities according to the Party political line, and govern and arrange cadres and Party members by clearly and constantly grasping personal histories, political and organisational stances.¹⁸⁰
53. **MEAS Muth** was the Secretary of Division 164 of the RAK, which was based in Kampong Som, Ream and Kampot.¹⁸¹ He was Secretary of Division 164 from at least January 1976¹⁸² until at least April 1978.¹⁸³
54. In addition to his role as Secretary of Division 164, **MEAS Muth** was either a member of the Central Committee of the CPK¹⁸⁴ or a member of the Assisting

¹⁷⁸ Magazine Article, Searching for the Truth, entitled *I Only Want Justice*, **D1.3.7.9** dated 8 August 2000, Issue 08, ERN 00204275, 00204272-00204275.

¹⁷⁹ **D1.3.33.15**, Written Record of Interview of KHIEU Samphan, 13 December 2007 ["The Central Committee consisted of more than 30 members, but I don't remember the names of all those members. Among them was **MEAS Mut**, Ta Mok's son-in-law"].

¹⁸⁰ **D1.3.22.1**, Communist Party of Kampuchea Statute, January 1976, Article 23.

¹⁸¹ **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.7**, 4 June 1999, ERN 00184829-00184832; **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.15**, 13 December, ERN 00156751, 00156741-00156751; Media Article by Erika KINETZ and YUN Samean entitled Let Bygones Be Bygones: Ex-KR Commander **MEAS Muth** Reflects on Life, the Tribunal and Justice, 1-2 March 2008, ERN 00165820-00165822; Statement of **MEAS Muth**, **D1.3.33.16** dated 20 July 2001, ERN 00089661-00089662 (admitting that he was the commander of an RAK division); Witness OCP-00138, OCP Interview Notes, **D1.3.13.11**, 12 August 2008, ERN 00217564, 00217563-00217566 (indicating that **MEAS Mut** was in charge of Division 164); Witness OCP-00138, OCP Interview Notes, **D1.3.13.11**, 12 August 2008, ERN 00217565, 00217563-00217566 (noting that the main naval base and the Division headquarters were located in Ream).

¹⁸² DK Military Report, 4 January 1976, **D114/27.1.7**, ERN 00543743-00543744 (listing "Comrade **Mut**" as the commander of Division 164); DK Military Report, **D1.3.30.2**, 5 January 1976, ERN 00231824-00231824.

¹⁸³ DK Military Report, **D1.3.30.25**, 1 April 1978, ERN 00183357-00183357.

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Committee of the Central Committee of the CPK.¹⁸⁵ The members of the Assisting Committee had “political responsibilities” within the CPK¹⁸⁶ and were entitled to receive training at Office 870 with Central Committee Members.¹⁸⁷

ICIJ’s Charges against MEAS Muth

55. On 3 March 2015, International Co-Investigating Judge **Mark Harmon** issued Notification of Charges against **MEAS Muth** *in absentia*¹⁸⁸ as specified in the Annex¹⁸⁹ as follows:

Violations of Articles 501 and 506 of the 1956 Penal Code

- a. Killings at Wat Enta Nhien Security Centre;
- b. Purges of those regarded as enemies and traitors in Kampong Som, some of whom were sent to S-21 Security Centre;
- c. Purges, in Kratie Province, of Division 117 and Sector 505 cadres who were regarded as enemies or traitors, some of whom were sent to S-21 Security Centre;
- d. Killings of Vietnamese and Thai civilians (fishermen and refugees) and other foreigners at sea and on the islands over which the DK claimed sovereignty;

punishable under Articles 3 new and 29 of the ECCC Law.

Crimes against Humanity

Murder, extermination, enslavement, imprisonment, persecution on political and ethnic grounds of the Vietnamese and former soldiers and government officials of the Khmer Republic, who were considered traitors or enemies, and other inhumane acts (namely, enforced disappearances and attacks against human dignity resulting from deprivation of adequate food) in relation to:

¹⁸⁴ **KHIEU Samphan** OCIJ Statement, **D1.3.33.15**, 13 December, ERN 00156751, 00156741-00156751.

¹⁸⁵ **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.13**, 4 December 2007, ERN 00154911, 00154906-00154913; **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.10**, 2 June 2008, ERN 00195577, 00195571-00195579.

¹⁸⁶ **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.10**, 2 June 2008, ERN 00195577, 00195571-00195579.

¹⁸⁷ **KAING Guech Eav alias Duch** OCIJ Statement, **D1.3.33.13**, 4 December 2007, ERN 00154911, 00154906-00154913.

¹⁸⁸ **D128**, Decision to Charge **MEAS Muth** *in Absentia*, 3 March 2015.

¹⁸⁹ **D128.1**, Annex, Notification of Charges against **MEAS Muth**, 3 March 2015.

- a. Wat Enta Nhien Security Centre;
- b. purges of those regarded as enemies and traitors in Kampong Som, some of whom were sent to S-21 Security Centre (Phnom Penh);
- c. purges, in Kratie Province, of Division 117 and Sector 505 cadres who were regarded as enemies or traitors, some of whom were sent to S-21 Security Centre (Phnom Penh); and
- d. Vietnamese and Thai civilians (fishermen and refugees) and other foreigners at sea and on the islands over which the DK claimed sovereignty.

These crimes are punishable under Articles 5 and 39 of the ECCC Law.

Grave Breaches of the Geneva Conventions

Unlawful confinement of civilians, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial, wilful killing, and unlawful deportation or transfer, wilfully causing great suffering or serious injury to body or health, and torture, in relation to:

- a. purges of those regarded as enemies and traitors in Kampong Som, some of whom were sent to S-21 Security Centre (Phnom Penh);
- b. purges, in Kratie Province, of Division 117 and Sector 505 cadres who were regarded as enemies or traitors, some of whom were sent to S-21 Security Centre (Phnom Penh); and
- c. Vietnamese and Thai civilians (fishermen and refugees) and other foreigners at sea and on the islands over which the DK claimed sovereignty.

These crimes are punishable under Articles 6 and 39 of the ECCC Law.

Modes of Liability

Through planning, instigating, ordering, and aiding and abetting the crimes, he is charged with:

- a. the repeated movement of the population from towns and cities to rural areas as well as from one rural area to another;
- b. the establishment and operation of cooperatives and worksites;
- c. the re-education of bad elements and killing of enemies both inside and outside the CPK ranks;

- d. the targeting of specific groups in particular Vietnamese and former officials of the Khmer Republic including both the civil servants and former military personnel and their families;
- e. the regulation of marriage.

NCP's Viewpoint

Free of Liability

56. The purge policy was reflected in the Decision of the Central Committee on 30 March 1976 related to the right to smash inside and outside the ranks. The same Decision clearly states that, for purges at the zone, if in the base framework, **“to be decided by the Zone Standing Committee.”**¹⁹⁰ Duch described it as “a historical document. It shows a turning point, because it reveals the beginning of internal purges.”¹⁹¹
57. The DK communist-based leadership vested its supreme power in the Party via the most influential institution known as the Central Committee of the CPK who made major decisions concerning the fate of the country. The committee consisted of approximately 30 members who met regularly (once every six months). In practice, the composition of meetings also included zone and sector committee leaders. As a matter of fact, [who had] the authority over decision-making was the Standing Committee who played a key role in a day-to-day leadership on behalf of the Central Committee of the CPK. The Standing Committee consisted of seven people, including POL Pot, Party Secretary, and NUON Chea, Party Deputy Secretary.
58. The CPK was established prior to the DK regime coming to power from 1975 to 1979. The DK regime was a communist-led regime in which the Party led the state. CPK policies aimed to sweep clean feudal class and intellectuals among others who were considered enemies and they were accused of exploiting and oppressing people. Thus, the CPK laid out policies, taking revenge against those people.
59. In the DK regime, there was also suppression policy requiring its cadres to follow, or otherwise any anti-policy cadres would be purged. The suppression began with arrests of a number of zone leaders to be executed at S-21 Security Centre, namely, KOY Thuon, SAO Phim, VORN Vet, RUOS Nhim, and KANG Chab *alias* Se, etc.

¹⁹⁰ D1.3.19.1, Decision of the Central Committee regarding a number of matters, 30 March 1976, p. 1; D6.1.1073, Submission of the Response of the Charged Person KAING Guek Eav *alias* Duch, former Chairman of S-21, to the Co-Investigation Judges' Written Questions, 21 October 2008, p. 3; D6.1.91, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 19 November 2008, p. 3; D6.1.1060, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 5 May 2008, p. 15.

¹⁹¹ D6.1.1063, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 5 May 2008, pp. 6-7.

60. The suppression became widespread across the country, particularly in 1976, after the Central Committee of the CPK's decision dated 30 June 1976, and coincided with the word "enemies" whose meaning was broadened and utilised widely. When someone was accused of being an enemy, he or she was taken away and killed without justice sought and judicial process.

Non-applicability of Personal Jurisdiction

61. The ECCC has a mandate – not a permanent court. It follows the pattern of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL), which have ended their mandates one after the other.
62. The ECCC was established under the Agreement between the Royal Government of Cambodia (RGC) and the United Nations (UN), and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia. The purpose of this Law is to bring to trial **senior leaders of Democratic Kampuchea and those who were most responsible** for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
63. The RGC, a founder of the ECCC Agreement, may have an influence on the functioning of the ECCC and the termination of its mandate. A method acceptable for terminating the ECCC mandate is a restriction on the scope of the personal jurisdiction. Such a method was employed at the ICTY, ICTR and SCSL.
64. In reality, the UN Security Council, the founder of the ICTY, instructed this tribunal through numerous rules and instruments to concentrate on senior leaders who were suspected of being most responsible for the crimes under its jurisdiction.¹⁹² UN Security Council Resolutions 2004 and 1503 called on each tribunal to ensure that, in reviewing and confirming new allegations, new indictments focus only on senior leaders who were suspected of being most responsible for the crimes under the jurisdiction of the tribunal concerned.¹⁹³
65. With regard to the determination of the personal jurisdiction, ICTY judges have created several new rules in line with the instructions of the UN Security Council, for example, Rule 11 *bis* and Rule 28(a) of the ICTY Rules of Procedure and Evidence.

¹⁹² Press Statement "United Nations Security Council adopts referral mechanisms to national jurisdictions for a number of specific cases in relation to Crimes Against Humanity in Former Yugoslavia; UNSC, 23 July 2001; United Nations Security Council Resolution 1503, dated 28 August 2003, paras. 6-7; United Nations Security Council Resolution 1534, dated 26 March 2004, para. 5; United Nations Security Council Resolution 1966, dated 22 December 2010."

¹⁹³ United Nations Security Council Resolution 1534, as in footnote 25 above, para. 5.

The judges are not concerned that the creation of such rules violates the ICTY Statute and the prosecutorial independence. Since the creation of these rules, the ICTY has transferred case files to national jurisdictions in line with the instructions of the UN Security Council to implement the ICTY Completion Strategies.¹⁹⁴

66. As far as the jurisdiction of the ECCC is concerned, the RGC and the UN did not agree to provide the jurisdiction to national courts for the prosecution of the crimes committed by those in the categories of “**senior leaders of Democratic Kampuchea**” and “**those who were most responsible**” for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
67. This suggests that founders of international tribunals may have an influence on the scope of the personal jurisdiction and judicial affairs without prejudice to impartiality and independence of tribunals. For the restriction of the ECCC personal jurisdiction, the RGC is playing a role as the UN Security Council did with the ICTY, ICTR and SCSL. Therefore, the NCP urges the ICIJ and the Chamber to act in line with the RGC determination and the spirit of the ECCC Law that requires [the Court] to bring to investigation and trial only **senior leaders** and **those most responsible** during the DK period.
68. The RGC idea for the ECCC Agreement was to screen just a small number of “**senior leaders**” within the ECCC personal jurisdiction, i.e. aiming at the Members of the Party Central and Standing Committees, including POL Pot, NUON Chea, SON Sen, IENG Sary, KHIEU Samphan, KE Pauk, IENG Thearith, VAN Rith, and UNG Choeun *alias* Ta Mok, while “**those who were most responsible**” is referred to just S-21 Security Centre Chairman KAINING Guek Eav *alias* Duch as he played a key role in the commission of the crimes, having the autonomy and de facto authority. The limitation on the small number of those to be brought to trial had been raised on several occasions and hotly debated during the National Assembly sessions before passing the ECCC Draft Law, in which the number of those falling under the ECCC jurisdiction is very limited and restricted.
69. Therefore, in March 1999, during the course of negotiation for establishing the ECCC Law, UNG Choeun *alias* Ta Mok and KAINING Guek Eav *alias* Duch were arrested and temporarily detained at the military court on charges of war crimes, violations of the 1949 Geneva Conventions, and crimes against Internationally Protected Persons, punishable under Articles 6 and 8 of the 2001 ECCC Law.

¹⁹⁴ *Stankovic* (IT-96-23/2-PT), RB Decision on Referral of Case under Rule 11*bis*, 14 September 2005, para. 96; *D.Milosevic* (IT-98-29/1-PT), RB Decision on Referral of Case under Rule 11*bis*, 8 July 2005, para. 24; *Lukic & Lukic* (IT-98-23/1-PT), RB Decision on Referral of Case under Rule 11*bis*, 5 April 2007, paras. 128-29.

70. UNG Choeun *alias* Ta Mok died in July 2006. KAING Guek Eav *alias* Duch was transferred from the Phnom Penh Military Court to the ECCC detention facility on 30 July 2007 by order of the Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia.¹⁹⁵
71. In the preamble of the ECCC Agreement between the United Nations and the Royal Government of Cambodia adopted by the General Assembly of the United Nations, in its resolution 57/228 of 18 December 2002 concerning the prosecution under Cambodian law of crimes committed during the period of DK, the United Nations recognised the legitimate concern of the Government and the people of Cambodia in the pursuit of justice, national reconciliation, stability, peace, and security, which means striking a balance between “justice” and “national reconciliation.”
72. With this recognition, the ECCC Law and Agreement between United Nations and the Royal Government of Cambodia aim at just two categories of persons to be brought to trial, i.e. DK **senior leaders** and **those who were most responsible** for the crimes and violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
73. Expanding the scope of the personal jurisdiction over **MEAS Muth** beyond the scope of the existing Cases 001 and 002 will lengthen the time and spend money unnecessarily. In addition, as regards the number of victims who lost their lives in the DK regime and the suffering of surviving victims, justice has been brought to them through the trial of Cases 001 and 002.
74. In conclusion, the NCP still considers that **MEAS Muth** does not fall within the ECCC personal jurisdiction as stated in Article 1 of the ECCC Law.

IV. Request

75. For the foregoing reasons, the NCP requests the PTC to dismiss the case against **MEAS Muth** because the ECCC has no personal jurisdiction over him.

Date	Name	Place	Signature
5 April 2019	CHEA Leang National Co-Prosecutor	Phnom Penh	

¹⁹⁵ C4/2 [C4], Detention Order of **KAING Guek Eav alias Duch**, 31 July 2007.