

BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**FILING DETAILS****Case No:** 003/07-09-2009-ECCC/OCIJ **Party Filing:** International Co-Prosecutor**Filed to:** The Co-Investigating Judges **Original Language:** English**Date of Document:** 9 February 2017**CLASSIFICATION****Classification of the document suggested by the filing party:** CONFIDENTIAL with One CONFIDENTIAL Annex**Classification by OCIJ:** សម្ងាត់/Confidential**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR INVESTIGATIVE
ACTION IN CASE 003**Filed by:**
**International
Co-Prosecutor**
Nicholas KOUMJIAN**Distributed to:**
Co-Investigating Judges
Judge YOU Bunleng
Judge Michael BOHLANDER**Charged Person**
Meas MUTH
ANG Udom
Michael KARNAVAS**Copied to:**
National Co-Prosecutor
CHEA Leang**All Civil Parties**
in Case 003

I. INTRODUCTION

1. Pursuant to Internal Rules¹ 66(1)² and 55(10) the International Co-Prosecutor (“Co-Prosecutor”) respectfully requests that the Co-Investigating Judges (“CIJs”) carry out the investigative actions described below. The Co-Prosecutor submits that, in accordance with the applicable jurisprudence, this request is sufficiently precise and explains why the action is *prima facie* relevant to ascertaining the truth³ within the scope of the investigation pursuant to the limitations and parameters set by the Case 003 Introductory and Supplementary Submissions.⁴

II. PROCEDURAL HISTORY

2. The judicial investigation in Case 003 began on 7 September 2009 with the filing of the Co-Prosecutors’ Second Introductory Submission.⁵ On 31 October 2014, the Co-Prosecutor filed a Supplementary Submission.⁶
3. On 14 December 2015, the International Co-Investigating Judge (“ICIJ”) informed Meas Muth that there is clear and consistent evidence that he may be responsible for crimes committed between 17 April 1975 and 6 January 1979.⁷ Meas Muth was charged with commission of these crimes through various modes of responsibility, including by participation in a joint criminal enterprise (“JCE”).⁸
4. On 10 January 2017, the ICIJ notified the Parties that he considered the Case 003 judicial

¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rule(s)” or “Rule(s)”).

² According to Rule 66(1), “the parties shall have 15 (fifteen) days to request further investigative action.” In **D225** Notice of Conclusion of Judicial Investigation Against Meas Muth, 10 January 2017 (“Closure Notice”), paras 4, 7, the ICIJ extended this period to 30 days.

³ As required by the Internal Rules and the Pre-Trial Chamber. *See* Rules 55(5), 55(10) and 58(6); Case 002-**D365/2/17** Decision on Reconsideration of Co-Prosecutors’ Appeal Against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File which Assists in Proving the Charged Persons’ Knowledge of the Crimes, 27 September 2010 (“Reconsideration Decision”), paras 47-48, 50; Case 002-**D164/4/13** Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 18 November 2009, para. 44; Case 002-**D164/3/6** Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 12 November 2009, para. 43.

⁴ Case 002-**D365/2/17** Reconsideration Decision, para. 49.

⁵ **D1** Co-Prosecutors’ Second Introductory Submission regarding the Revolutionary Army of Kampuchea, 20 November 2008 (“Introductory Submission”); **D1/1** Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission, 7 September 2009.

⁶ **D120** International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014 (“Supplementary Submission”).

⁷ **D174** Written Record of Initial Appearance of Meas Muth, 14 December 2015 (“Written Record of Initial Appearance”).

⁸ **D174** Written Record of Initial Appearance, pp. 4-9.

investigation to have been concluded,⁹ and granted the Parties 30 days to file any further requests for investigative action.¹⁰ On the same day, the ICIJ issued his decision to reduce the scope of the judicial investigation pursuant to Internal Rule 66*bis*.¹¹

5. The Co-Prosecutor now requests that the CIJs carry out the investigative acts described below.

III. REQUEST

Site Visit to Koh Tang

6. The Co-Prosecutor requests that the CIJs conduct a site visit to Koh Tang in the company of witness Ek Ny. The OCIJ has not conducted a site visit to Koh Tang, although Ek Ny and others provide evidence of its relevance to a number of aspects of Case 003.
7. Ek Ny, a former cadre in Division 164, has discussed at some length in his interviews with OCIJ investigators the capture of Vietnamese boats by naval forces of Democratic Kampuchea, and the transportation of Vietnamese on those boats to Koh Tang where they were executed shortly thereafter.¹² His unit was involved in the capture of those boats by, at a minimum, directing DK naval forces to intercept the Vietnamese boats.¹³ He explained that at first the boats and the Vietnamese people arrested had to be sent to Kampong Som, but that later the Division 164 leadership ordered that the captives should be executed on the island and used as fertilizer after seizing their gold.¹⁴ He had knowledge of the beatings and interrogations that were inflicted on the Vietnamese once they were captured,¹⁵ how the Vietnamese were subsequently killed,¹⁶ and he saw their bodies following their executions.¹⁷ He has evidenced a thorough and precise knowledge of the capture of the Vietnamese,¹⁸ the terrain of Koh Tang, as well as the placement of the execution and burial sites.¹⁹ Indeed, he has stated that he was personally involved in

⁹ **D225** Closure Notice.

¹⁰ **D225** Closure Notice, paras 4, 7.

¹¹ **D226** Decision to Reduce the Scope of Judicial Investigation pursuant to Internal Rule 66 *bis*, 10 January 2017.

¹² **D114/282** WRI of Ek Ny, A57; **D114/283** WRI of Ek Ny, A22, A29; **D54/102** WRI of Ek Ny, A41-45.

¹³ **D114/283** WRI of Ek Ny, A34, A36.

¹⁴ **D114/282** WRI of Ek Ny, A63; **D54/102** WRI of Ek Ny, A41, A44.

¹⁵ **D114/283** WRI of Ek Ny, A39.

¹⁶ **D114/283** WRI of Ek Ny, A33.

¹⁷ **D114/283** WRI of Ek Ny, A33, A34; see also **D54/102** WRI of Ek Ny, A41-42.

¹⁸ **D114/284** WRI of Ek Ny, A13, A14; **D114/282** WRI of Ek Ny, A61.

¹⁹ See, e.g., **D114/283** WRI of Ek Ny, A23, A25, A60; **D114/282** WRI of Ek Ny, A57; **D114/284** WRI of Ek Ny, A13-14.

digging some of the burial pits.²⁰ There is no question that he would be able to direct OCIJ investigators to burial sites of the executed Vietnamese on Koh Tang, as evidenced by the hand-drawn map he produced,²¹ and his statements to that effect.²²

8. The site visit with Ek Ny to Koh Tang would also present an opportunity to ask him about whether he recalls a radar installation on the island, as some witnesses have testified,²³ and, if so, where it was situated. Additionally, he may provide information regarding how the radar was used to capture boats, and describe the coordination and communication between that radar station and other radar stations located elsewhere, including Bokor mountain.²⁴ Moreover, Ek Ny, as evidenced by the hand-drawn map he produced,²⁵ is able to show other relevant locations of buildings used by Regiment 62 on Koh Tang, such as the headquarters and house of the Regiment 62 commander named Meanh, the Regiment 62 radio communication room,²⁶ the port where the captured Vietnamese ships were docked and the location where the Vietnamese arrestees were temporarily detained and interrogated prior to their execution.²⁷

Additional Interviews of Witnesses Regarding Kang Keng

9. The Co-Prosecutor requests that the CIJs re-interview Meas Im, brother of Meas Muth, in order to question him regarding his role at Kang Keng forced labour sites. Although the OCIJ has questioned Meas Im three times,²⁸ he was not asked about his role at Kang Keng. There is reason to believe that Meas Im had a significant role in regards to the Kang Keng forced labour sites. Sam Saom, who was assigned to farm rice in Kang Keng Airport in 1977, states that he was in a mobile unit under “Ta Im”. He proceeds: “Im was the next highest ranking cadre under Meas Mut. Im was in charge of the work at the Kang Keng worksite and was also the deputy commander for logistics of Division 164. I think that Im was perhaps one of Meas Mut’s relatives, but I do not know if he was one of Meas Mut’s

²⁰ **D114/284** WRI of Ek Ny, A15.

²¹ **D114/284.1** Attachment to WRI of Ek Ny.

²² **D114/283** WRI of Ek Ny, A24.

²³ See, e.g., **D59/1/1.14** DC-Cam Interview with Hing Uch, EN 00970745; **D59/1/1.11a** DC-Cam Interview with Hieng Ret, EN 00974105; **D2/9** WRI of Say Bom, A41; **D114/186** WRI of Sath Chak, A101, A104; see also **D54/13.1** Minutes of Division 164 Meeting, 9 September 1976, EN 00974010.

²⁴ **D54/13.1** Minutes of Division 164 Meeting, 9 September 1976, EN 00974008 (describing the anticipated construction of radar at Bokor, Koh Kong, and Koh Tang); **D1.3.34.21** DK Military Telegram, 17 June 1977, EN 00324804 (describing reports from radar at Bokor); **D114/186** WRI of Sath Chak, A79 (describing the coordination between radar on Bokor and Koh Tang).

²⁵ **D114/284.1** Attachment to WRI of Ek Ny.

²⁶ **D114/283** WRI of Ek Ny, A53-55; **D114/284** WRI of Ek Ny, A13; see also **D54/102** WRI of Ek Ny, A38.

²⁷ About the interrogation: **D114/283** WRI of Ek Ny, A39-41, **D114/284** WRI of Ek Ny, A13

²⁸ **D114/214** WRI of Meas Im; **D114/215** WRI of Meas Im; **D114/216** WRI of Meas Im.

siblings or cousins.”²⁹ In a later interview, Sam Soam identifies Ta Im as Meas Im,³⁰ and says he was “responsible for all the worksites including the ones at Kang Keng as well.”³¹ The Co-Prosecutor therefore requests that Meas Im be questioned about the conditions and crimes at Kang Keng forced labour sites, reports to, and orders received from, Meas Muth concerning the site, and whether Meas Muth ever visited the site. The Co-Prosecutor requests that Meas Im be confronted with Sam Saom’s statements as necessary.

10. The Co-Prosecutor requests that the CIJs re-interview Hing Uch regarding his knowledge of worksites at Kang Keng. In his DC-Cam statement, witness Hing Uch, a former Division 164 cadre, states that he was assigned to Kang Keng airport in 1976 in order to grow rice.³² However, he was not asked about his work at Kang Keng in any of his interviews with the OCIJ.³³ The Co-Prosecutor therefore requests that the OCIJ inquire into the working and living conditions at Kang Keng, as well as any other relevant areas.
11. The Co-Prosecutor requests that the CIJs interview Neak Yan regarding Kang Keng worksites. Neak Yan’s Case 002 complaint was cited in the Co-Prosecutor’s Supplementary Submission,³⁴ however it has not been placed on Case File 003.³⁵ An OCIJ Investigator deemed Neak Yan’s complaint “irrelevant”,³⁶ however the Co-Prosecutor respectfully disagrees. Although the complaint³⁷ has not been fully translated into English yet, the English summary that is available³⁸ indicates that she worked in multiple sites in the Kang Keng area, including planting rice “near Veal Kang Keng”, planting potatoes “near Cham Naot Ream Mountain”, clearing land “near Ream sea side”, and digging a canal to the “west of [the] Airport”.³⁹ She further provided information that because her group of workers could not complete the assigned work at at least one worksite “they were re-educated and food was reduced...”⁴⁰ It is therefore highly likely that Neak Yan has probative information concerning forced labour sites in and around

²⁹ **D54/20** WRI of Sam Saom, A14.

³⁰ **D114/58** WRI of Som Saom, A14-A16.

³¹ **D114/58** WRI of Som Saom, A16.

³² **D59/1/1.14** DC-Cam Interview with Hing Uch, EN 00970738.

³³ **D54/81** WRI of Hing Uch; **D54/82** WRI of Hing Uch; **D54/83** WRI of Hing Uch.

³⁴ **D120** Supplementary Submission, fn. 19.

³⁵ The Co-Prosecutor has included Neak Yan’s Complaint and its Summary in the separate filing covering the documents he requests be added to Case File 003.

³⁶ **D114/296** Written Record of Investigative Action, EN 01372336.

³⁷ Case 002-**D230/2.1.650a** Complaint of Neak Yan.

³⁸ Case 002-**D230/2.1.650c** Summary of Complaint of Neak Yan.

³⁹ Case 002-**D230/2.1.650c** Summary of Complaint of Neak Yan, EN 00445712.

⁴⁰ Case 002-**D230/2.1.650c** Summary of Complaint of Neak Yan, EN 00445712.

Kang Keng and in Ream generally.

Interview of Witness in Regards to Bet Trang

12. The Co-Prosecutor requests that the CIJs locate and interview witness Chuon Mao. In Written Record of Interview D114/179, witness Snguon Chhum was asked if he knows whether anyone from his cooperative in Bet Trang is still alive.⁴¹ He identifies an individual named Chuon Mao, *alias* Ta Mao, who he states lives near his house in Bet Trang commune, Prey Nob district, Preah Sihanouk province.⁴² It does not appear from the Case File documents that an attempt was made to contact this potential witness. However, it seems that Snguon Chhum is willing and able to direct investigators to the location of this potential witness. Moreover, as a fellow worker in Snguon Chhum's cooperative, Chuon Mao may be able to provide evidence confirming Snguon Chhum's testimony, and/or provide further evidence regarding events in Bet Trang.

Interview of Witnesses in Regards to S-21

13. The Co-Prosecutor requests that the CIJs interview two S-21 guards, Chhun Phal and Kung Phai, who were assessed in the Written Record of Investigative Action D114/296 dated 28 December 2016 "to be unable to provide new relevant information".⁴³ Although they did provide broad evidence about the presence and killing of Vietnamese nationals as well as Westerners at S-21, they were both interrogated prior to or during the trial of Kaing Guek Eav *alias* Duch (Case 001) but never afterwards,⁴⁴ and therefore not with regard to any Case 003-specific issues. As such, no detailed questions were ever put to them about the circumstances under which those Vietnamese and Westerners were arrested, possibly at sea, then transferred, detained, interrogated and/or executed, at or directly from, S-21.
14. When interviewed, Chhun Phal stated that at least one of the prisoners he guarded at S-21 was a Vietnamese fisherman: "Vietnamese prisoners were held in small one-person cells; they came in during approximately 1978. I questioned a Vietnamese prisoner who could speak some Khmer, and he said that he came from Tay Ninh and he was a fisherman, not a soldier. He had been fishing on the ocean, at the border. [...] I did see western (a)

⁴¹ **D114/179** WRI of Snguon Chhum, A53.

⁴² **D114/179** WRI of Snguon Chhum, A53.

⁴³ **D114/294** Written Record of Investigative Action, EN 01372334-35.

⁴⁴ **D1.3.32.9** WRI of Chhun Phal; **D98/3.1.29** TC Transcript (Chhun Phal), 10 August 2009 (Case 001 Trial); **D98/3.1.140** DC-Cam Statement of Kung Phai; **D64.1.10** US POW/MIA Statement of KUNG Phai (Stony Beach report); **D1.3.32.24** & **D114/37.1.7** OCP Statement of Kung Phai; **D4.1.378** WRI of Kung Phai.

prisoner(s) being brought in.”⁴⁵ Kung Phai mentioned the presence at S-21 of female and male Vietnamese prisoners⁴⁶ and personally saw three Westerners (“Americans”), one of whom he described in considerable detail.⁴⁷ However, he did not indicate the precise place from which any of these individuals had been arrested and transferred.

15. The Co-Prosecutor requests that the Chhun Phal and Kung Phai be questioned in detail about Vietnamese and Westerners at S-21, specifically:

- the number of Vietnamese and other foreign nationals, including Thai and Westerners, they personally saw at S-21, as well as the total number they had knowledge of;
- the place(s) and circumstances of arrest of those Vietnamese and other foreign nationals, and in particular whether some or all of them were arrested at sea or on maritime islands;
- whether the Vietnamese arrested were fishermen, refugees, perceived spies or soldiers;
 - the unit(s) responsible for the prisoners’ arrest and their transportation to S-21;
- the period of the prisoners’ imprisonment at S-21;
- the building where the prisoners were imprisoned, together with details of their conditions of detention;
- the prisoners’ possible interrogation and physical torture; and
- the prisoners’ ultimate fate.

With regard to the Western prisoners arrested at sea, whose number at S-21 was limited, the Co-Prosecutor requests the CIJs to present Chhun Phal and Kung Phai with their photos, where available, for identification purposes.⁴⁸

⁴⁵ **D1.3.32.9** WRI of Chhun Phal, EN 00163814; see also **D98/3.1.29** TC Transcript (Chhun Phal), 10 August 2009 (Case 001 Trial), EN 00361868-69.

⁴⁶ **D4.1.378** WRI of Kung Phai, EN 00163634.

⁴⁷ **D4.1.378** WRI of Kung Phai, EN 00163633-34: “Then I took rice to one of the three, and saw Duch interrogating one foreign prisoner, a man with long curly red hair down to his shoulders, white skin, with chest hair, and wearing shorts. Before Duch interrogated this person, he was wearing a short-sleeved camouflage T-shirt.”

⁴⁸ In particular, Case 002--**E3/8063.8** (photo of David Lloyd Scott, Australian); Case 002--**E3/8063.21** (photo of unidentified Westerner); Case 002--**E3/8168** (photo of Ronald Keith Dean), Case 002--**E394.1** New S-21 Photos, P 01223834 (double S-21 photo of Christopher Delance) to be read together with Case 002--**E3/9214** DC-Cam List of Names of Prisoners and Photographs, EN 01224637, KH 00993365, FR 01224697. The other Westerners identified at S-21 are James William (Jim) Clark (USA) and Lance McNamara, arrested together on 18 April 1978 (see **D114/230.1.1** OCIJ S-21 List no.13021 and 13022); Michael Scott Deeds (USA, see his S-21 confession **D11/4.2.4**) arrested together with Chris Delance on 24 November 1978 (see **D114/230.1.1** OCIJ S-21 List no.12719 & 12720); John Dawson Dewhurst (UK, see his

16. Finally, the Co-Prosecutor requests that Chhun Phal and Kung Phai be questioned about the presence at S-21 of Division 164 and Division 117 cadres and combatants, including details of their names, rank, treatment and fate at S-21, and any knowledge they may have regarding Meas Muth or other Division 164 leaders.

Interviews of Witnesses in Regards to Toek Sap

17. The Co-Prosecutor requests that the CIJs identify and interview additional witnesses in regards to a prison at Ou Kombot. In the Site Identification Report D114/275 (“Report”) dated 2 November 2016, Witness San Chuon, a former Division 164 soldier from the East Zone, stated that he was detained in a small DK prison at Ou Kombot (or Ou / Au Kambot), close to Toek Sap to the East, and that it was under the authority of Division 164.⁴⁹ He stated that he saw at any given time 10 to 20 prisoners at this prison.⁵⁰ The Report notes that his testimony was reliable, as Witness San Chuon was able to clearly identify the site of the former DK prison and worksite at Ou Kombot and clarified whilst on site contradictions concerning its location contained in his previous WRIs.⁵¹ As mentioned in the Report, although San Chuon stated that he was part of Division 164 when he was imprisoned at Ou Kombot and that the prison itself was under Division 164 *“further information is needed at this stage [to determine] under which sub-unit command the site operated. It is also unclear, due to its close proximity, if Ou Kombot can be considered as a sub-site of Toek Sap or not [...]. Further clarifications are advised.”*⁵²
18. Since San Chuon’s testimony about Ou Kombot Division 164 prison is unique to date, the Co-Prosecutor requests that further investigations be carried out in order to identify and interview other former Division 164 individuals who were either imprisoned at that location and survived, guarded it or had authority over it, as well as any civilian residing in the area who would have been aware of its existence, with a view to determining the conditions of detention and fate of prisoners, the duration of the prison’s operation, the

S-21 confession **D11/2.3**) & Kerry Hamill (NZ, see his S-21 confession Case 002--**E3/7344** dated 13 October 1978; the civil party Rob Hamill has shown photos of his brother Kerry Hamill during the CF1 trial, see TC transcript Case 001--**E1/63.1** at [14:26], and at [15:03]), arrested together. For other sources about the presence of those 8 Westerners at S-21, see also Case 002--**E3/3973** S-21 List of Foreign nationals, EN 00837565, FR 00875951, KH00006635; Case 002--**E3/1553** S-21 Name List of Prisoners 26 November 1978, EN 01236388-89, KH 00088751-52, FR 01187845; Case 002--**E3/2210** S-21 List of Prisoners who entered on 21-28 April 1978, EN 00181722, KH 00087035, no FR.

⁴⁹ **D114/275** Site ID report, 13 July 2016, EN 01346014, 01346020; see also **D114/219** WRI of San Chuon, KH 01301510-29, no EN, no FR; **D114/220** WRI of San Chuon, KH 01301531-46, no EN, no FR.

⁵⁰ **D114/275** Site ID report, 13 July 2016, EN 01346020.

⁵¹ **D114/275** Site ID report, 13 July 2016, EN 01346014, 01346019-20.

⁵² **D114/275** Site ID report, 13 July 2016, EN 01346017.

unit controlling it within Division 164 (Regiment, Battalion, Company) and whether this small prison was effectively a sub-unit of Toek Sap security centre due to its close proximity.

Interview of Division 164 Cadres Identified by Meas Muth

19. The Co-Prosecutor requests the CIJs to seek confirmation of the current state of health of Khem Ngon, identified by Meas Muth as the commander of a 50-man unit in Division 3 (164) stationed in Kampong Som⁵³ and if he is fit, to conduct a formal interview. The OCIJ has confirmed that one of its investigators visited Khem Ngon in the Soviet Cambodia Friendship Hospital in Phnom Penh in November 2015 and March 2016, and that although Khem Ngon confirmed his potential knowledge of facts relating to Case 003 during a screening interview, he was too ill to be interviewed at the time.⁵⁴ However, there appears to be no further record of investigations into his health since March 2016.
20. It is clear from evidence already on Case File 003 that Khem Ngon is likely to be able to provide highly relevant and reliable evidence. In addition to the OCIJ's positive screening interview, in the year 2000 Khem Ngon spoke to members of the U.S. Department of Defense investigating U.S. military personnel missing in action.⁵⁵ Khem Ngon appears to have held a leadership position within Division 164 and was based in Kampong Som during at least part of the DK period,⁵⁶ having joined the Khmer Rouge as early as 1970.⁵⁷ He had close links to the CPK upper echelons, including Ta Mok and Nuon Chea, after the fall of the DK regime.⁵⁸ Indeed, the fact that he is known to Meas Muth, and later studied in China,⁵⁹ are both indicative of his prominence and connections within the CPK upper echelons. Khem Ngon is therefore in a position to provide information relating to the evolution and implementation of CPK policies, military personnel, communications, and

⁵³ **D22.2.182** Statement of Meas Mut (POW/MIA) (“Meas Muth Statement”), pp. 6-7, EN 00249705-06.

⁵⁴ **D222** Written Record of Investigative Action (“WRIA”), 29 December 2016; **D114/298** WRIA, 5 January 2017; **D223** Consolidated Decision on the International Co-Prosecutor's First, Second, and Third Investigative Requests, 9 January 2017, para. 8 (“Consolidated Decision”).

⁵⁵ **D4.1.759** Organisation and History of the Khmer Communist 3rd Division, June 2000 (“Statement of Khem Ngon (POW/MIA)”).

⁵⁶ **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 003872654; **D22.2.182** Second Meas Muth Statement, pp. 6-7, EN 00249705-00249706.

⁵⁷ **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 00387264.

⁵⁸ See **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 00387275. Khem Ngon is the author/transcriber of the interview with Nuon Chea, **D4.1.194** National Suspect Statement entitled “History of the Struggle and Movement of Our Cambodian Peasants from 1954 to 1970 by Nuon Chea”, undated.

⁵⁹ **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 00387266.

authority structures, both nationally and specifically in relation to Division 164,⁶⁰ as well as to Meas Muth's role in the crimes committed in the Kampong Som region, at sea and on the maritime islands, including the capture or killing of U.S. soldiers following the Mayaguez incident.⁶¹

Interview of Witnesses in Regards to Forced Marriage

21. The Co-Prosecutor requests that the CIJs interview additional witnesses regarding the practice of forced marriage. By his Supplementary Submission D120 dated 31 October 2014, the Co-Prosecutor seized the CIJs of the additional crime of forced marriage (including rape) in Kampong Som and Division 164 based on the evidence gathered by OCIJ after the filing of the Second Introductory Submission.⁶² Since 31 October 2014, only a very limited number of the witnesses and civil parties interviewed by OCIJ were asked questions in relation to marriages organized for them or others during the DK regime. Several Division 164 cadres or combatants have not been interrogated at all on this topic.⁶³
22. Out of 184 interviews conducted (141 different persons), only 23 persons were questioned regarding the organization by Meas Muth or his subordinates of marriages in the Kampong Som area,⁶⁴ and amongst them only 10 were interviewed in detail about it.⁶⁵ In addition, 27 persons were interrogated about marriages that took place elsewhere in the country or about the existence of a DK marriage policy, but only 14 in detail.⁶⁶

⁶⁰ See for example, **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 00387265.

⁶¹ **D4.1.759** Statement of Khem Ngon (POW/MIA), EN 00387265-66. This is relevant to the deaths of prisoners held on the maritime islands, and at Wat Eng Ta Nhien Security Centre at the hands of Division 164.

⁶² **D120** ICP Supplementary Submission, 31 October 2014, paras. 3, 20-24. The evidence gathered consisted in contemporaneous CPK documents (**D4.1.874**, **D114/36.1.59**, **D114/36.1.60**, Case 002-**E3/1337**), a book (**D54/74.1.20**) and statements (Chuon Thi: **D4.1.1056**; Ma Chhoeun & Suon Vat: **D59/1/1.7a**; Seng Ol: **D114/36.1.64**; Pen Sarin: **D2/7**; Liet Lan: **D54/29**; Civil Party Sam Vuthy: **D11/387/1**; and Lon Seng: **D54/43**).

⁶³ See the list below, para. 25.

⁶⁴ Chet Bunna (**D114/66**), Chum Roeun (**D114/38**), Koem Men (**D114/113**), Liet Lan (**D114/103**), Mao Ran (**D114/132**), Meas Saran (**D114/32**), Nav Sokan alias Ken (**D114/117**), Nguon Lay alias Y (**D114/139**), Nub Phorn (**D114/135**), Pev Rim (**D114/135**), Prum Sambath (**D114/109**), Sam Vuthy (**D114/94**), Sem Kol (**D114/181**), Seng Ol (**D114/91**), Seng Sin (**D114/89**), Shat Chak (**D114/186**), Sok Neang (**D114/83**), Suon Phar (**D114/121**), Svay Sameth (**D114/78**), Tae Ry (**D114/47**), Thorn Phalla (**D114/97**), Uy Nhoek (**D114/146**), Yoem Sroeung (**D114/95**).

⁶⁵ Chum Roeun (**D114/38**), Liet Lan (**D114/103**), Meas Saran (**D114/32**), Nav Sokan alias Ken (**D114/117**), Sam Vuthy (**D114/94**), Seng Ol (**D114/91**), Sok Neang (**D114/83**), Svay Sameth (**D114/78**), Tae Ry (**D114/47**), Yoem Sroeung (**D114/95**).

⁶⁶ Interrogated in detail: Beit Boeurn (**D114/183**), Cheam Nha (**D114/162**), Chen Phat (**D114/192**), Chuon Thy (**D114/123**), Hem Ang (**D114/33**), Houng Khan (**D114/182**), Kim Phally (**D114/110**), Oem Hun (**D114/129**), Oum It (**D114/120**), Ruos Suy (**D114/297.1.1**), Sam Komnith (**D114/234**), Sin Sisophal (**D114/75**), Some

23. Among the group of 50 persons interrogated about the DK marriages, the interviews of 23 lacked questions on important topics.⁶⁷ The questions asked were mostly limited to whether the person interviewed was married during the DK period and the circumstances of any such marriage, but they were not questioned about their knowledge of the organization of other marriages within their unit or area. A number of lines of relevant questioning were not pursued such as:

- whether the future spouses knew in advance they would marry or had the opportunity to meet or talk to their future spouse before the ceremony;
- the possibility for both future spouses to freely refuse the marriage without fear of negative consequences;
- despite any consent formally given at the ceremony, the existence of potentially coercive circumstances (including in respect of military hierarchy), perceived threats, or mandatory submission to Angkar's orders;
- the age, background and origin of all spouses at the ceremony (and not only of the individual male interviewed), with a view to determining whether some, particularly women, were sent from units outside the area of Kompong Som;
- the presence of former Buddhist monks or of handicapped soldiers among the people marrying;
- the circumstances surrounding the marriage ceremony including the location, the time period, details about the authority presiding, the content of the speeches made (including the need to produce children), the content of the commitment made by the

Chomren (D114/224), Uk Sok (D114/53); Interviews that were incomplete: Chhouk Rin (D114/87), Koch Tuy (D114/105), Moeng Seng (D114/209), Sao So (D114/94), Som Song (D114/279), Hor Or (D114/190), Kev Sarun (D114/171), Moeng Vet (D114/297.1.8), Nap Somaly (D114/34), Pich Daree (D114/148), Pin Samoun (D114/198), Prum Mon (D114/170), Sok Ren (D114/155).

⁶⁷ Among others, a single question was asked at the end of the interview to Koch Tuy, Moeng Seng, Pev Rim, Sao So, Sem Kol, Shat Chak, Som Song, Thorn Phalla (whether they married during the DK: respectively D114/105 at Q4; D114/209 at Q63; D114/180 at Q67; D114/94 at Q50; D114/181 at Q57; D114/186 at Q186, D114/279 at Q125; D114/97 at Q25); another single question was asked to Nub Phorn and Suon Phar (whether they were ever asked if they wanted to marry; D114/135, Q43; D114/121, Q141); three basic questions were asked to Mao Ran who claimed that nobody was forced to marry as "if a soldier loved a woman he could marry that woman. I never heard about anyone force to marry this or that person". (D114/132, A168-170; no question was asked about the fact that the women might have been forced); Nguon Lay alias Y, Nhan's bodyguard, gave some details about his marriage in 1978 in Toek Sap (D114/139 at A93, 135-139) but was never asked about whether the wife that he chose without knowing her beforehand freely agreed to marry him or was even informed that she would marry prior to the wedding; no question was asked about the 4 other couples who married that day, their respective backgrounds and why all of them died afterwards. The other persons concerned are: Chet Bunna (D114/66), Chhouk Rin (D114/87), Hor Or (D114/190), Kev Sarun (D114/171), Koem Men (D114/113), Moeng Vet (D114/297.1.8), Nap Somaly (D114/34), Pich Daree (D114/148), Pin Samoun (D114/198), Prum Mon (D114/170), Sok Ren (D114/155) and Uy Nhoek (D114/146).

spouses, the presence or not of family members, and the way participants identified their future spouses upon arrival;

- the details about the consummation of marriage (*i.e.*, houses prepared for the newlyweds, surveillance, threats from authorities and / or husband, violence used, rape);
- the possible punishments against people refusing to marry or refusing / avoiding consummating the marriage (*e.g.*, re-education, loss of position / reassignment, further deprivation of rights, harsher forced labour, arrest, execution);
- the possibility to divorce during the DK era;
- the reasons why people forced to marry did not divorce after 1979; and,
- the possibility that people accepted to marry in order to improve their status (*e.g.*, as a “new” person) or life conditions (*e.g.*, in order to work in a cooperative where conditions were better than in mobile units) or to avoid close surveillance.

24. The marriage issue is particularly important regarding Division 164 which was comprised of over 8,500 soldiers (and many single males of marrying age) but just one female battalion (Battalion 167) composed of approximately 430 soldiers.⁶⁸ Further, marriages were not organized for soldiers before 17 April 1975.⁶⁹ Due to the deficit of women within the division, it is clear that marriages organized by Division 164 for male soldiers in Kampong Som had to involve female civilians, whether the latter came from the Kampong Som area or beyond its boundaries.⁷⁰ The question of the consent of those civilian women working in Kampong Som cooperatives or sent from other regions (particularly the Southwest Zone) is crucial. Although some witnesses interviewed provided valuable

⁶⁸ **D22.2.4** Division 164 Daily List of Forces as of July 1976 [Division 164 counted 8,716 members in July 1976 including 430 female soldiers (Battalion 167)]; **D1.3.5.3** Division 164 Daily List of Forces, by Meas Muth as of 27/10/1976 [Division 164 counted 8,611 members in October 1976 including 434 female soldiers (Battalion 167)]; **D22.2.6** Division 164 Daily List of Forces, by Meas Muth as of 27 November 1976 [Division 164 counted 8,685 members in November 1976 including 430 female soldiers (Battalion 167)]; **D1.3.30.9** Report from RAK General Staff entitled "Joint Statistics of Armed Forces - March 1977 [Division 164 counted 8,568 members]; Regarding the fact that female soldiers were all part of Battalion 167: **D114/83** WRI of Sok Neang at A6, 13-14, 19, 24 (where she states that there were 4 companies 31, 32, 33 and 35 in the female Battalion 167); **D54/23** WRI of Pak Sok at A2-3, **D2/9** WRI of Say Born at A26; **D2/10** WRI of Say Born at Q/A46; **D54/17** WRI of Say Born at A13.

⁶⁹ **D114/75** WRI of Sin Sisophal, A63 (“There were two phases. From 1970 to 1975, marriages were postponed in the liberated zones. In the second phase, from 1976 to 1978 people were forced to get married”); **D114/36.1.64** WRI of Seng Ol, (Q45: “When did *Angkar* permit marriage? A45: Around 1976 or 1977”.

⁷⁰ See, *e.g.*, **D114/36.1.64** WRI of Seng Ol, A20-30 [young women selected in Tram Kak district to marry soldiers in Kampong Som]; **D114/91** WRI of Seng Ol, A173-A244; **D114/117** WRI of Nav Sokhan alias Ken, A246-A318; **D114/95** WRI of Yoem Sroeung, A258 [women sent from Srae Ambel and elsewhere to marry in Kampong Som].

information about the organization of such (forced) marriages in Division 164 / Kampong Som area, including by Meas Muth himself or other division leaders such as Dim and Nhan,⁷¹ the Co-Prosecutor considers that the investigation is incomplete since important Division 164 witnesses were not questioned about it and too few female witnesses forced to marry were identified and interviewed.

25. Therefore, the Co-Prosecutor requests that the CIJs identify and interview other female witnesses who married in Kampong Som during the DK era and that at least 10 witnesses among the following individuals be re-interviewed specifically regarding the DK marriages and in particular the issues listed above: EK Ny, Pak Sok, Chum Chy, Prum Sarat, EM Son, Heang Ret, Hing Uch, Iem Phong, Ing Chhon. Meas Im, Moul Chhin, Mut Mao, Neak Yoeun, Ou Kim, Sam Saom (Sam Som), Soem Ny, and Suos Vanna (Sok Vanna). In addition, where witnesses married in the Kampong Som region during the DK regime, it is requested that their spouses be interviewed separately in order to establish whether they fully agreed to the marriage.

Interviews with Meas Muth

26. The Co-Prosecutor requests the CIJs to obtain a copy of the documentary film entitled “Brother Number One”,⁷² and to place this, together with its publicly available transcript,⁷³ onto Case File 003.
27. The documentary follows Case 003 civil party⁷⁴ Robert Hamill on his journey to Cambodia to retrace the steps taken by his brother, Kerry Hamill, a New Zealand national, who was arrested by Division 164 cadres on Koh Tang island and sent to S-21, where he was tortured and executed. It includes an interview with Meas Muth,⁷⁵ in which he confirms, *inter alia*, that “most of the captives” of any captured western or other boat

⁷¹ **D114/103** WRI of Liet Lan, A160-A178 [marriage arranged by Nhan at Meas Muth’s house]; **D59/1/1.7a** Statement of Ma Chhoeun (DC-Cam), EN 00969949-50 [stating that Meas Muth instructed him to get married], as confirmed by **D114/17** WRI of Ma Chhoeun, A2-A5; **D114/32** WRI of Meas Saran, A1-A57 [Dim presiding a 71 couples marriage ceremony at the Kampong Som cinema hall], **D114/117** WRI of Nav Sokan alias Ken [marriage to a Regiment 140 commander Sun Mot presided by Ta Soeun]; **D114/78** WRI of Svay Sameth, A22-A34 [wedding presided by Nhan]; **D114/95** WRI of Yoem Sroeng, A245-A267.

⁷² Brother Number One, 8 March 2012, written by Annie Goldson and Robert Hamill, directed by Annie Goldson and Peter Gilbert and produced by BNO Productions and Pan Pacific Films (“Brother Number One”).

⁷³ “Film: Brother Number One” by Journeyman Pictures Ltd, available at https://www.journeyman.tv/film_documents/5894/transcript/. This transcript is attached at **Annex A**. The OCP has noted that all time stamps on this transcript have been incorrectly shifted by one hour. For example, the first entry, “01:00:00”, should read “00:00:00”.

⁷⁴ **D11/2** Civil Party Application of Rob Hamill, 7 April 2011; **D11/2/1** Victim Unit Report on Civil Party Application of Rob Hamill, 22 April 2011.

⁷⁵ Brother Number One, at 00:43:50-00:48:10.

“were sent to Phnom Penh”.⁷⁶ These statements are directly relevant to establishing Meas Muth’s knowledge of and involvement in the treatment by the DK Navy of foreign nationals captured at sea and on the maritime islands, as well as their subsequent fate, including transfer to S-21. The documentary also helps to establish Meas Muth’s *mens rea* with regard to treatment of perceived enemies of the CPK. With regard to political opponents, he states that “in any country in the world, it’s universal that political opponents are not forgiven. They are never forgiven. [...] no country allows their opponents to continue their opposition.”⁷⁷ On the topic of the existence of internal enemies he asks rhetorically, “Was it Pol Pot who did the killing? Or was it an infiltrator trying to overthrow Pol Pot and undermine his good policies?”⁷⁸

28. The documentary provides further evidence of detention conditions, torture techniques and interrogations at S-21, through new interviews with S-21 survivors, Vann Nath,⁷⁹ Bou Meng,⁸⁰ and Chum Mey,⁸¹ as well as S-21 photographer Nhem En,⁸² and S-21 interrogator Prak Khan,⁸³ which confirm and complement the evidence from these witnesses already on Case 003. Vann Nath confirmed seeing and hearing Westerners at S-21 in 1978, including likely Kerry Hamill.⁸⁴
29. The Co-Prosecutor submits that it is unlikely that the entirety of the interview with Meas Muth has been reproduced in the documentary. The Co-Prosecutor therefore further requests the CIJs to make the requisite enquiries with the writers and directors Robert Hamill, Peter Gilbert and Annie Goldson, and/or the producers, BNO Productions and Pan Pacific Films, with a view to obtaining the entire interview.
30. The Co-Prosecutor further requests the CIJs to place on Case File 003 an interview given by Meas Muth to Voice of America.⁸⁵ In it, he confirms the General Staff’s practice of

⁷⁶ Brother Number One, at 00:44:18 and 00:44:32.

⁷⁷ Brother Number One, at 00:45:43-00:46:22.

⁷⁸ Brother Number One, at 00:46:51.

⁷⁹ Brother Number One, at 01:04:45-01:05:52; 01:10:03-01:11:08; 01:13:13-01:13:59.

⁸⁰ Brother Number One, at 01:04:04-01:04:45; 01:05:52-01:06:27; 01:11:08-01:11:36.

⁸¹ Brother Number One, at 01:06:27-01:07:50; 01:32:42.

⁸² Brother Number One, at 00:54:45-00:58:04; 01:14:13-01:14:49.

⁸³ Brother Number One, at 01:08:25-01:10:03; 01:14:49-01:15:19.

⁸⁴ Brother Number One, at 01:10:03-01:11:08; 01:13:59-01:14:13.


⁸⁵ **E3/9074** Statement of Meas Muth (Interview by Voice of America), 6 October 2011 (“Meas Muth VOA Interview”). The audio file of this interview is available at **E3/8999R** Audio recording of interview of Meas Muth by Voice of America. In accordance with the procedure set out by the ICIJ in **D209** Decision on Yim Tith’s Request for Further Information and Documents Regarding the International Co-Prosecutor’s Request to Place [REDACTED] Materials on Case File 004, 16 September 2016 (“16 September Decision”), paras 12-14, 18, the Co-Prosecutor has sought the permission of the Trial Chamber to make document **E3/9074**,

summoning cadres, including Division 164 military cadres, to attend training, only to send them to S-21.⁸⁶ He further discusses the CPK's enemies policy with approval,⁸⁷ and confirms the practice of investigating cadres' backgrounds.⁸⁸ This interview is therefore relevant to establishing Meas Muth's knowledge of the military purges, including specifically within Division 164, as well as Meas Muth's *mens rea* with regard to the CPK policies on internal enemies.

IV. CONCLUSION

31. The requested action is sufficiently specific, conducive to ascertaining the truth, necessary to the investigation, and respectful of the fair trial rights of Meas Muth. The Co-Prosecutor therefore requests that the CIJs carry out all of the investigative requests described above.

Respectfully submitted,

Date	Name	Place	Signature
9 February 2017	Nicholas KOUMJIAN International Co-Prosecutor	Phnom Penh	

which is classified as "Confidential" in Case 002, available to the Meas Muth Defence. Authorisation was granted on 7 February 2017. See **E442/3/1** Trial Chamber Memorandum entitled "Decision on International Co-Prosecutor's Second Request for Authorisation, 7 February 2017.

⁸⁶ **E3/9074** Meas Muth VOA Interview, EN 00746176, 00746178.

⁸⁷ **E3/9074** Meas Muth VOA Interview, EN 00746178.

⁸⁸ **E3/9074** Meas Muth VOA Interview, EN 00746178.