

**BEFORE 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:** Co-Investigating Judges      **Original language:** English

**Date of document:** 10 June 2011

**CLASSIFICATION**

**Classification of the document  
suggested by the filing party:** CONFIDENTIAL

**Classification by OCIJ:**      សម្ងាត់/Confidential

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

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**INTERNATIONAL CO-PROSECUTOR’S THIRD INVESTIGATIVE REQUEST  
REGARDING MEAS MUT AND RELATED CRIME SITES**

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**APPLICATION TO ADMIT THE VALIDITY OF THE INVESTIGATIVE REQUEST**

1. On 7 June 2011, the Co-Investigating Judges issued their Decision on Time Extension Request and Investigative Requests by the International Co-Prosecutor Regarding Case File 003 (the “Decision”),<sup>1</sup> by which they rejected as invalid four requests filed by the International Co-Prosecutor alone: three Investigative Requests including this instant Request<sup>2</sup> and one Request for the extension of the deadline for submission of Case 003 Civil Party Applications.<sup>3</sup> The International Co-Prosecutor, pursuant to Internal Rule 39 (4) and Articles 8 and 9 of the Practice Direction on Filing of Documents before the ECCC, re-files this Investigative Request and requests that the Co-Investigating Judges recognize its validity as an action being executed after the expiration of a time limit on such terms as they see fit.
2. The basis for the re-filing of this Request, after the expiration of the time limit prescribed in Rule 66 (1), is that the Co-Investigating Judges have clarified in the Decision their interpretation of the Internal Rules with regards to the formalities deemed necessary for one Co-Prosecutor to file such requests alone. This Investigative Request was rejected on the basis of two procedural technicalities and was not considered on its merits. The Co-Investigating Judges have found that in order for a Co-Prosecutor to act alone there must be a formal delegation of power under Rule 13(3) or a disagreement that has been registered pursuant to Rule 71(1) of the Internal Rules.<sup>4</sup> While the International Co-Prosecutor is appealing the Co-Investigating Judges interpretation of the Internal Rules in respect of the registration of disagreements the Co-Prosecutors have now recorded the exact nature of their disagreement in respect of this Investigative Request in a signed document, dated today, and placed in a register of disagreements kept by the Greffier of the Co-Prosecutors.
3. As one of the formalities, deemed necessary by the Decision, has now been met, and without prejudice to the appeal to be filed by the International Co-Prosecutor in respect of

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<sup>1</sup> OCIJ Decision on Time Extension Request and Investigative Requests by the International Co-prosecutor regarding Case 003, D20/3, 7 June 2011 (“Decision”)

<sup>2</sup> International Co-Prosecutor’s First Case File 003 Investigative Request to Admit Additional Documents and Observations on the Status of the Investigation, 18 May 2011, D17; International Co-Prosecutor’s Second Request for Further Investigative Action Regarding Sou Met and Related Crime Sites, 18 May 2011, D18; International Co-Prosecutor’s Third Investigative Request Regarding Meas Mut and Related Crime Sites, 18 May 2011, D19.

<sup>3</sup> International Co-Prosecutor’s Request for an Extension of Time for the Filing of Civil Party Applications in Case 3, 10 May 2011, D15.

<sup>4</sup> Decision, para. 5.

this issue, the International Co-Prosecutor respectfully requests the Co-Investigative Judges to admit this Investigative Request as valid and now examine its substance on the merits. Exercising discretion in this way will ensure that administrative legal technicalities do not impede the fairness, legal certainty and transparency of the proceedings pursuant to Rule 21 (1) and the International Co-Prosecutor's fundamental right to request further investigative action at the conclusion of an investigation pursuant to Rule 66 (1).

#### INTRODUCTION

4. Pursuant to Internal Rule 66 (1), the International Co-Prosecutor hereby files with the Co-Investigating Judges (CIJ) this Third Investigative Request Regarding MEAS Mut and Related Crime Sites (the "Request"). This Request relates to the following crime sites / criminal allegations: Wat Enta Nhien Security Centre; Stung Hav Quarry and related sites; DK Navy's capture of foreign nationals; crimes committed in Vietnam; and MEAS Mut's authority and involvement in these crimes. This Request draws attention to the sections of the Introductory Submission (IS) for which significant further investigation is necessary, and identifies specific investigative steps that should be taken by the CIJ.
5. The International Co-Prosecutor submits that the judicial investigation is not complete. The International Co-Prosecutor refers to and incorporates by reference his observations in paragraphs 3 - 19 of the First Investigative Request in this case. The above crime sites / criminal allegations are dealt with separately below.

#### WAT ENTA NHIEN SECURITY CENTRE AND DK NAVY

6. Investigations conducted thus far have confirmed the existence of Wat Enta Nhien Security Centre, which was located in Kampong Som Town and operated under the command of Division 164 (DK Navy) from as early as May 1975 until at least March 1978.<sup>5</sup> The Security Centre compound contains three primary buildings which appear to have held a large number of prisoners.<sup>6</sup> It also contains at least one grave site (lemon plantation) from which the remains of some 200 bodies were recovered. Evidence collected indicates that the victims were bound at the time of death and were executed by the use of blunt trauma.<sup>7</sup> A

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<sup>5</sup> Site Identification Report, 29 December 2010, D2/22, at page 4-5.

<sup>6</sup> Ibid at page 4 (the number of shackles discovered indicates capacity to hold at least 100 prisoners).

<sup>7</sup> Ibid at page 6, 18; Written Record of Interview of PAUCH Koy, 28 July 2010, D2/4, at page 7; OCP Interview of BOCH Koy (PAUCH Koy), 12 Aug 2008, D1.3.13.1, at page 3.

second location (durian plantation) has been identified as a mass grave site used by Division 164, and is thus likely related to this crime site.<sup>8</sup>

7. The victims imprisoned at Wat Enta Nhien included DK soldiers, Vietnamese and Thai citizens, and U.S. soldiers.<sup>9</sup> Testimonial evidence indicates that Battalion 450, the special security unit which operated the prison and reported directly to Division 164,<sup>10</sup> carried out a large purge of cadres from the East Zone, as part of which several hundred individuals were arrested and likely imprisoned at Wat Enta Nhien.<sup>11</sup> The OCIJ investigator has also found that members of Division 164 as well as yachtsmen who were killed at S-21 had been imprisoned at Wat Enta Nhien.<sup>12</sup>
8. Significant additional investigation is required in relation to this crime site. The Site Identification Report, which is entitled “Preliminary,” refers to interviews of only two individuals, and concludes that the investigation is incomplete.<sup>13</sup> The two witnesses who were interviewed provided the names of numerous additional potential witnesses, several of whom appear to still be alive (see below).<sup>14</sup> In addition, two individuals whose names were provided by the Co-Prosecutors have not been interviewed in relation to this site.<sup>15</sup>
9. The investigations also confirm that, in addition to operating the Wat Enta Nhien Security Centre, Division 164 committed crimes against foreign nationals by attacking numerous fishing and other vessels at sea.<sup>16</sup> The evidence available thus far indicates that individuals captured in this manner were either: killed at sea; imprisoned at Wat Enta Nhien Security

<sup>8</sup> Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16, at page 6; Written Record of Interview of NHOUNG Chrong, 24 Aug 2010, D2/6, at page 9-10; Written Record of Interview of IN Saroeun, 12 November 2010, D2/17.

<sup>9</sup> Site Identification Report, 29 December 2010, D2/22, at page 5, 7; OCP Interview of BOCH Koy (Pauch Koy), 12 Aug 2008, D1.3.13.1, at page 3; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 Aug 2008, D1.3.13.13, at page 7 (indicating the presence of nylon underwear on the discovered human remains, a standard military issued article of clothing).

<sup>10</sup> Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15 at page 6.

<sup>11</sup> Written Record of Interview of SAY Born, 9 September 2010, D2/10, at page 5; Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16, at page 4.

<sup>12</sup> Site Identification Report, 29 December 2010, D2/22, at page 7; see also Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15 at page 7.

<sup>13</sup> Site Identification Report, 29 December 2010, D2/22, at page 2. The report indicates that not all available witnesses were interviewed by the time of its preparation. The investigator has identified (pages 4-7) a number of areas which require further investigation, including: time and duration of operation of the Centre; its functioning and capacity; number of detainees; killings; and treatment of specific groups.

<sup>14</sup> OCP Interview of BOCH Koy (PAUCH Koy), 12 Aug 2008, D1.3.13.1; Written Record of Interview of PAUCH Koy, 28 July 2010, D2/4; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 Aug 2008, D1.3.13.13; Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15; Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16.

<sup>15</sup> OCP Second Introductory Submission, 20 November 2008, at paragraphs 55-57 (PEN Sarin, SOK Lang).

<sup>16</sup> Site Identification Report, Wat Enta Nhien, 29 December 2010, D2/22, at page 2; Site Identification Report, Stung Hav Rock Quarry, 30 December 2010, D2/23, at page 4.

Centre; executed at locations / mass grave sites in Kampong Som; or transferred to S-21. The victims included Thais, Vietnamese and Chinese nationals, and at least four Westerners.<sup>17</sup> In addition, evidence regarding the capture of the U.S. ship *Mayaguez* indicates that at least three U.S. marines were arrested, detained and eventually executed by the DK Navy.<sup>18</sup> With only five witnesses interviewed thus far,<sup>19</sup> significant additional investigation is required to ascertain the extent of the alleged crimes committed by the DK Navy.

10. The International Co-Prosecutor therefore requests that the investigative actions set out further below be carried out to ascertain the truth of the allegations in the Introductory Submission, including the following facts:

- (a) Division 164's responsibility for the Wat Enta Nhien Security Centre, and the operations at sea (including attacks on foreign vessels)
- (b) The establishment, operation and authority structure within the Wat Enta Nhien Security Centre, the number and composition of the victims (including whether former East Zone soldiers purged from Division 164 were imprisoned at Wat Enta Nhien), procedures relating to arrests, imprisonment and interrogations (if any) of the victims, the conditions under which the victims were imprisoned, and the mistreatment to which they were subjected
- (c) Disappearances and executions of prisoners and other individuals captured by Division 164 forces, both within the Wat Enta Nhien compound and elsewhere in the Kampong Som area, as well as the location of additional grave sites
- (d) The role of the Wat Enta Nhien Security Centre in imprisoning victims who were later transferred to S-21, the circumstances of those transfers, and whether individuals identified in confessions obtained at S-21 were subsequently arrested and imprisoned at Wat Enta Nhien; and

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<sup>17</sup> List of Foreigners Smashed at S-21, 31 July 2002, D4.1.5 (noting that Thai, Vietnamese, and Chinese prisoners were arrested at Kampong Som); List of Arrestees from Division 164, 25 January 2008, D1.3.11.3.

<sup>18</sup> Ralph WETTERHAHN (2002), *The Last Battle*, pages 281-289. Eye-witness accounts report that, upon arrest by the DK Navy, one Marine (LCpl Joseph N. HARGROVE) was executed immediately, while two additional Marines (PFC Gary L. HALL and PVT Danny G. MARSHALL) were transported to Wat Enta Nhien, where they were imprisoned and eventually executed.

<sup>19</sup> Written Record of Interview of NHOUNG Chrong, 24 August 2010, D2/6; Written Record of Interview of SAY Born, 6 September 2010, D2/8; Written Record of Interview of SAY Born, 7 September 2010, D2/9; Written Record of Interview of SAY Born, 9 September 2010, D2/10; Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15; Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16; Written Record of Interview of PEN Sarin, 26 August 2010, D2/7; Written Record of Interview of IN Saroeun, 12 November 2010, D2/17.

- (e) Origin, composition and total number of foreign nationals arrested at sea or killed by Division 164, and whether foreign nationals captured by Division 164 were transferred to Wat Enta Nhien or S-21 Security Centre.

11. The specific investigative actions requested by the International Co-Prosecutor with respect to these sites are as follows:

- (a) Re-interview witnesses SAY Born, TOUCH Soeuli, IN Sarouen, PEN Sarin, and NHOUNG Chrong in relation to the operation of the Wat Enta Nhien Security Centre, arrests at sea, and mass graves in the area, and ask them to indicate the whereabouts of additional potential witnesses.
- (b) Interview witness SOK Lang and civil party applicant Rob HAMILL, who has made extensive enquiries about the capture and transfer of his brother Kerry HAMILL to S-21 by Division 164's Regiment / Unit 140.
- (c) Locate and interview former cadres and other potential witnesses who have been identified in interviews conducted so far, including:
- i. SAR Samoeun (*alias* Ta Moeun), original Commander of Battalion 450, the unit operating the Wat Enta Nhien Security Centre<sup>20</sup>
  - ii. Ta Norn, who appears to have succeeded Ta Moeun<sup>21</sup>
  - iii. NORNG Chhan / SUON Chhan / NAN Chhan, member of the Division 164 Committee who was in charge of the Stung Hav area<sup>22</sup>
  - iv. Han / Hon, Commander of Regiment 140 (Division 164's marine force) and former commander of Battalion 550 (earlier Battalion T-4 in Sector 13)<sup>23</sup>
  - v. Ta Nget, Commander of Division 164's Regiment 20 (161)<sup>24</sup>
  - vi. Meanh, Commander of Division 164's Regiment 21 (162)<sup>25</sup>

<sup>20</sup> Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15 at page 5-8. SAR Samoeun reportedly lived at Wat Enta Nhien with the witness from August 1975.

<sup>21</sup> Ibid at page 8; Norn was reportedly arrested in 1977/78 for raping a female prisoner but his subsequent whereabouts have not been ascertained. Site Identification Report, 29 December 2010, D2/22, at page 6.

<sup>22</sup> Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16, at page 4; Written Record of Interview of PEN Sarin, 26 August 2010, D2/7, at page 3; Written Record of Interview of SAY Born, 7 September 2010, D2/9, at page 6.

<sup>23</sup> Written Record of Interview of SAY Born, 7 September 2010, D2/9 at page 6; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 August 2008, D1.3.13.13, at page 4, 6; Written Record of Interview of NHOUNG Chrong, 24 Aug 2010, D2/6, at page 5.

<sup>24</sup> Written Record of Interview of SAY Born, 6 September 2010, D2/8 at page 7.

<sup>25</sup> Ibid at page 8.

- vii. Ta Yan, Commander of Division 164's Regiment 22 (163) and his deputies Sras and Nhan<sup>26</sup>
  - viii. Bo, Commander of Regiment 140, Pursuit Vessel Section, currently living in Srae Ambel<sup>27</sup>
  - ix. SOK Peap (*alias* Pheap), who was identified by one witness as Head of Regiment 162<sup>28</sup>
  - x. Reem, identified as the female prisoner allegedly raped in 1977/78 by Ta Norn;<sup>29</sup> and
  - xi. KEUNG Sangkum, the local official who ordered the Public Works Department to collect the remains discovered near Wat Enta Nhien and place them in the on-site stupa.<sup>30</sup>
- (d) Locate and interview former cadres and other potential witnesses whose names appear in documentary evidence, including: Samean - naval commander;<sup>31</sup> Meuan - Commander of **Battalion 450**<sup>32</sup> (possibly the same as the Moeun referred to above); **Battalion 386** cadres who were stationed on Tang Island (**908<sup>th</sup> Company**: Somnang - Commander, Lim - Deputy Commander, Song - Member; **920<sup>th</sup> Company**: Chan Bunthon - Commander, Tuoy - Member, MEAS Nhem (*alias* Khon) - Member, Mean - Member, Chhin - Member);<sup>33</sup> **Division 164** cadres: NONG Chhan - Political Officer / Commander<sup>34</sup> who may be the same individual as the Division 164 member identified above; MOL Mon - Radar Officer stationed on Koh Tang Island;<sup>35</sup> Division 164 cadres

<sup>26</sup> Ibid at page 7; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 August 2008, D1.3.13.13, at page 6.

<sup>27</sup> Written Record of Interview of SAY Born, 7 September 2010, D2/9, at page 6-7; OCP Interview of Sieng, 20 November 2008, D1.3.13.11, at page 2.

<sup>28</sup> OCP Interview of Sieng, 20 November 2008, D1.3.13.11, at page 2.

<sup>29</sup> Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15, at page 8.

<sup>30</sup> Written Record of Interview of PAUCH Koy, 28 July 2010, D2/4, at page 8.

<sup>31</sup> Case File 002 Document: US Debriefing of anonymous 3<sup>rd</sup> Division cadre, 8 December 1998, D223.3, at page 20 (Document being submitted by the International Co-Prosecutor).

<sup>32</sup> Case File 002 Document: US Debriefing of anonymous 3<sup>rd</sup> Division cadre, 8 December 1998, D223.3, at page 20 (Document being submitted by the International Co-Prosecutor).

<sup>33</sup> US Debriefing of Mr. AEK Ny (former cadre of 386 Battalion), 19 December 2002, ERN 00387285-387292, at pages 9 and 12 (Document being submitted by the International Co-Prosecutor).

<sup>34</sup> US Debriefing of Mr. AEK Ny (former cadre of 386 Battalion), 19 December 2002, ERN 00387285-387292, at pages 13 (Document being submitted by the International Co-Prosecutor); 1<sup>st</sup> US Debriefing of MEAS Mut, 5 December 2001, ERN 00249692-249700, at page 11 (Document being submitted by the International Co-Prosecutor) and 2<sup>nd</sup> US Debriefing of MEAS Mut, 30 May 2002, ERN00249701-249707, at pages 5 and 6 (Document being submitted by the International Co-Prosecutor).

<sup>35</sup> Joint Casualty Resolution Center Documents entitled *Refugee Report, Sighting of Two Skeletons: Mayaguez Related Death*, 25 April 1983, at page 2 – these documents refer to extensive investigations carried in 1995 and 1996 (Document being submitted by the International Co-Prosecutor).

AEK Ny (who has been interviewed by U.S. investigators) and BAEN Cheoun;<sup>36</sup> and pilot PHENG Hok.<sup>37</sup>

- (e) Locate and interview **Division 164** cadres identified by MEAS Mut to U.S. investigators:<sup>38</sup> ROS Lan - Messenger; KAM Men - Company Commander in Division 3; KONG Chhay - Commander of a 50-man unit on Tang Island; MAO Ran - cadre in Division 3; KHEM Ngon - Commander of a 50-man unit in Division 3 stationed in Kampong Som; Saroeun - Deputy Commander; Nhan - Member of the Committee for Logistics; Lon - Chief of Logistics; Thean - Commander of Special Unit 130; Non - Deputy Commander of Special Unit 130; Men - Commander of 3<sup>rd</sup> Division Troops; Loan - Commander of "Armed Fishing Unit."
- (f) Interview former S-21 cadres in relation to transfer of DK Navy prisoners to S-21, including: MAM Nai (*alias* Chan), S-21 Interrogator who interrogated numerous Vietnamese prisoners;<sup>39</sup> HIM Huy, Head of the Special Guards Unit at S-21 who should be questioned about the procedures for the arrest and transfer of foreign nationals to S-21, and their execution at S-21;<sup>40</sup> and HAN Iem, former Guard at S-21.<sup>41</sup>
- (g) Conduct additional investigations regarding the capture and execution of U.S. marines following the Mayaguez incident, by:
  - i. Interviewing Ralph WETTERHAHN, author of the book "The Last Battle," who describes, among other matters, the imprisonment of U.S. military personnel at Wat Eng Nhien Security Centre,<sup>42</sup> placing a copy of the book on the Case File, and ascertaining further avenues of inquiry from the book
  - ii. Interviewing EM Son, the former DK commander about his statements on arrests and executions which are reported in "The Last Battle."

<sup>36</sup> Ibid, at page 4. AEK Ny is potentially located in Chi Meal Village, Andong Tuek Commune, Botum Sakor District, Koh Kong Province, and BAEN Cheoun is potentially located in Angkor Chey District, Kampot Province.

<sup>37</sup> Case File 002 Document: Henri LOCARD, Democratic Kampuchea Prison Network in West Region: Pachoem, May 2007, D313/1.2.18, at page 6 (Document being submitted by the International Co-Prosecutor).

<sup>38</sup> 1<sup>st</sup> US Debriefing of MEAS Mut, 5 December 2001, ERN 00249692-249700, at pages 8, 11-12 (Document being submitted by the International Co-Prosecutor); 2<sup>nd</sup> US Debriefing of MEAS Mut, 30 May 2002, ERN00249701-249707, at page 6 (Document being submitted by the International Co-Prosecutor).

<sup>39</sup> Written Record of Interview of MAM Nai *alias* Chan, 14 February 2008, D50/2, at page 4.

<sup>40</sup> Written Record of Interview of HIM Huy, 18 September 2007, D19/V, at page 6-7; Testimony of HIM Huy, Case 001, 16 July 09, T.12.

<sup>41</sup> HAN Iem, DC-Cam Statement, 10 January 2002, D1.3.32.12 (noting that there were enough Thai fishermen imprisoned at S-21 that Meung was able to learn enough Thai to communicate with them).

<sup>42</sup> Site Identification Report, 29 December 2010, D2/22, at pages 2, 8: "Ralph Wetterhahn, 'The Last Battle,' ISBN 0-452-28333-7."



- (h) Conduct additional investigations into grave sites already identified:
- i. **Lemon Plantation** - additional investigation should be undertaken concerning the origins, number, and condition of the human remains discovered (witness Keung Sangkum should be asked to assist in this site visit).<sup>43</sup>
  - ii. **Durian Plantation** - mass grave site located near Wat Enta Nhien. It is clear that witness TOUCH Soeuli has knowledge of the grave site's existence and has not provided all the information in his possession.<sup>44</sup> Witnesses NHOUNG Chrong and IN Saroeun also provided evidence regarding killings and burials at this location.<sup>45</sup> Site visits should be conducted with the assistance of these witnesses.
- (i) Conduct confrontations between witnesses identified above, where necessary to verify and confirm information.
- (j) Complete all other activities recommended by the investigator in the Site Identification Report, and update the report itself.

#### STUNG HAV ROCK QUARRY AND RELATED SITES

12. The investigative activity conducted thus far has confirmed the existence of a forced labour site at the rock quarries located near Stung Hav in Kampong Som Province.<sup>46</sup> Two more sites have been identified: a pier and a road at Stung Hav, both built with rocks from the quarries, and both, as such, directly related to the primary site.<sup>47</sup> The International Co-Prosecutor clarifies that, insofar as these sites form part of the quarries forced labour site described in the IS, the CIJ are authorised and required to investigate them.
13. The evidence collected thus far indicates that the sites were operated by RAK Division 164 from approximately the second half of 1975 / beginning of 1976 until the end of the DK regime.<sup>48</sup> The evidence also confirms that the victims enslaved at the work sites included persons considered to have "tendencies" or to be "bad elements," and that the victims were

<sup>43</sup> Ibid at pages 6, 17; Written Record of Interview of PAUCH Koy, 28 July 2010, D2/4, at page 8.

<sup>44</sup> Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16, at page 6.

<sup>45</sup> Written Record of Interview of NHOUNG Chrong, 24 Aug 2010, D2/6, at pages 9-10. According to NHOUNG Chrong Regiment 62 took people from Ream, Marine force headquarters, to the Durian Plantation to be killed and used as fertilizer, which included Thai and Vietnamese fishermen. See also, Written Record of Interview of IN Saroeun, 12 November 2010, D2/17.

<sup>46</sup> See OCP Interview of Sieng, D1.3.13.11, 12 August 2008; OCP Interview of PEN Sarin, D1.3.13.8, 13 August 2008; Written Record of Interview of PEN Sarin, D2/7, 26 August 2010; and Site Identification Report, D2/23, 30 December 2010.

<sup>47</sup> Site Identification Report, D2/23, 30 December 2010, at pages 2, 5, 22 and 26.

<sup>48</sup> OCP Interview of Sieng, D1.3.13.11, 12 August 2008, at page 4; and Site Identification Report, D2/23, 30 December 2010, at page 5.

subjected to forced “hard” labour.<sup>49</sup> Labourers committing mistakes and those identified as having former regime connections were called away and disappeared.<sup>50</sup>

14. As the investigator’s report stresses, the investigation of these sites is also incomplete.<sup>51</sup> The investigator identifies numerous areas where further investigative action is required, including: the composition of the workers; the living and working conditions, penal system and mortality rate at the sites; the leadership structures of Division 164 in relation to the sites; the treatment of specific groups, including former soldiers, 17 April persons and women working at the site; and a further visit to the road work site.<sup>52</sup>
15. The International Co-Prosecutor requests that the investigative actions set out below be carried out to ascertain the truth of the allegations in the IS, including the following facts:
  - (a) Division 164’s responsibility for the sites and the specific authority within the sites
  - (b) The establishment and operation of the sites, the working and living conditions therein, the number and composition of the victims, and the mistreatment to which they were subjected;<sup>53</sup> and
  - (c) Arrests and disappearances from the sites, the locations to which the victims were taken (including the Wat Enta Nhien Security Centre and S-21), and their subsequent imprisonment, execution or release.
16. The specific investigative actions requested by the International Co-Prosecutor with respect to these sites are as follows:
  - (a) Re-interview witnesses Sieng (who has thus far refused to provide a statement to the investigator but who has extensive knowledge of the sites) and PEN Sarin (a visit to the road site has not been completed due to the witness’s illness).
  - (b) Interview witness HOUR Chea and civil party applicant DUL Slong, who were identified in the Site Identification Report, but have not been interviewed.

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<sup>49</sup> OCP Interview of Sieng, D1.3.13.11, 12 August 2008, at page 4; OCP interview of PEN Sarin, D1.3.13.8, 13 August 2008, at page 3; Written Record of Interview of PEN Sarin, D2/7, 26 August 2010, at page 5; and Site Identification Report, D2/23, 30 December 2010, at page 7. Additional categories of victims included soldiers of the previous regime and their relatives, workers, fishermen, members of the DK navy and formerly arrested East Zone cadres.

<sup>50</sup> OCP Interview of PEN Sarin, D1.3.13.8, 13 August 2008, at page 3.

<sup>51</sup> Site Identification Report, D2/23, 30 December 2010, at page 3.

<sup>52</sup> Site Identification Report, D2/23, 30 December 2010, at pages 6 - 9.

<sup>53</sup> The only evidence thus far as to where victims removed from the site were taken is the OCP interview of PEN Sarin, in which the witness states that he “believed they were taken to the Bokor area in Kampot province,” OCP Interview of PEN Sarin, D1.3.13.8, 13 August 2008, at page 3.

- (c) Interview senior Division 164 cadres who have been identified in interviews so far, including: SOK Peap / Pheap, chief of Regiment 62 of Division 164;<sup>54</sup> Bo, commander of the vessel-pursuit section (Regiment 140);<sup>55</sup> and NORNG Chhan, member of Division 164 who supervised the Stung Hav area.<sup>56</sup>
- (d) Conduct further investigations to identify additional former cadres, labourers and other individuals with knowledge of the sites (including by interviewing the potential witnesses identified in relation to Wat Enta Nhien and DK Navy).
- (e) Obtain a copy of the book “Quatra Ans Avec Les KR” authored by the witness HOUR Chea, place it on Case File 003 and examine it in order to ascertain further avenues of inquiry about the sites.
- (f) Complete all other activities recommended by the investigator in the Site Identification Report.

#### CRIMES COMMITTED IN VIETNAM

17. With the exception of transfer of relevant documents from Case File 002, no substantive investigation has been conducted in relation to MEAS Mut and Division 164’s involvement in the crimes committed in Vietnam. One witness, who was interviewed in relation to MEAS Mut’s positions, has confirmed that Division 164 troops took part in the armed conflict, but was not asked about Division 164’s participation in the crimes.<sup>57</sup> LAY Ean’s statement, which was filed with the IS, indicates that RAK forces committed extensive crimes against civilians, and that Division 164 troops took part in the incursions.<sup>58</sup> Although his Case File 002 CIJ statements confirm the commission of the crimes and the presence of troops from Kampong Som,<sup>59</sup> he has not been interviewed in this case. Documentary evidence confirms the commission of crimes against the Vietnamese by RAK forces but the extent to which it relates to Division 164 has not been clarified through witness interviews.<sup>60</sup>
18. Significant investigation is necessary to ascertain the facts regarding Division 164’s participation in these crimes. The International Co-Prosecutor requests that witnesses who have potential knowledge of these crimes, including those who provided relevant evidence in

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<sup>54</sup> OCP Interview of Sieng, D1.3.13.11, 12 August 2008, at page 2.

<sup>55</sup> Written Record of Interview of SAY Born, D2/10, 9 September 2010, at page 3.

<sup>56</sup> OCP Interview of PEN Sarin, D1.3.13.8, 13 August 2008, at pages 2 and 4.

<sup>57</sup> Written Record of Interview of Chhouk Rin, 24 March 2011, D6.

<sup>58</sup> DC-Cam Statement of Lay Ean, 27 June 2003, D1.3.32.26.

<sup>59</sup> Written Records of Interview of Lay Ean, 4 March 2008 and 17 January 2009 (D4.1.550 and D4.1.554).

<sup>60</sup> See, for example, DK communications contained in documents D4.1.230, D4.1.606 and D4.1.214.

Case 002, be interviewed regarding the specific allegations relevant to Case 003. At a minimum, this should include the following individuals: LAY Ean, NORNG Sophang,<sup>61</sup> IENG Phan,<sup>62</sup> LONH Dos and UNG Ren,<sup>63</sup> KHUN Kim *alias* Nuon Paet,<sup>64</sup> KUNG Kim *alias* Kae,<sup>65</sup> TANN Saroeun,<sup>66</sup> and CHUON Thi *alias* THI Ov.<sup>67</sup> These witnesses should be shown the relevant documentary evidence and asked to comment on the involvement of Division 164 in the crimes described therein.

#### ROLE OF SUSPECT MEAS MUT

19. Although very limited investigations have been conducted thus far, the evidence on the Case File indicates or confirms that MEAS Mut was Secretary of RAK Division 164 throughout the period under investigation, that he had direct command, authority and control over the direct perpetrators who committed the crimes described in the IS, and that he was also personally involved in those crimes. There is also evidence to believe that MEAS Mut was a member of the RAK General Staff, and a member of the Central Committee or its Assisting Committee, and that, in these senior positions, he actively participated in the creation and implementation of the common criminal plan.<sup>68</sup> His position as a commander of the DK Navy, his membership of high level CPK and RAK bodies, and his close relationships with members of the CPK Standing Committee, establish that he was a senior leader of Democratic Kampuchea. The extent of the alleged crimes committed by those under his command, the large number of victims, the period over which the crimes were committed, and the wide geographical area on which the crimes took place, also confirm that MEAS Mut is a person most responsible for the crimes committed from 17 April 1975 to 6 January 1979.
20. While a significant amount of documentary evidence has been placed on the Case File, the investigation is not complete as MEAS Mut's role in the crimes has not been fully and thoroughly investigated. Only two witnesses, one of whom has marginal knowledge of

<sup>61</sup> Written Record of Interview of NORNG Sophang, 18 February 2009, D4.1.611.

<sup>62</sup> Written Record of Interview of IENG Phan, 23 November 2009, D4.1.846.

<sup>63</sup> See Section "Role of Suspect Meas Mut" below.

<sup>64</sup> Written Record of Interview of KHUN Kim *alias* NUON Pet, 30 April 2008, at D4.1.407.

<sup>65</sup> Written Record of Interview of KUNG Kim *alias* Kae, 9 January 2009, D4.1.556.

<sup>66</sup> Written Record of Interview of TANN Saroeun, 3 June 2008, D4.1.458.

<sup>67</sup> Written Record of Interview of CHUON Thi *alias* THI Ov, 2 March 2010, D4.1.1056.

<sup>68</sup> Written Record of Interview of KAING Guek Eav *alias* Duch, 27 April 2011, D12, at pages 3-5; Written Record of Interview of Charged Person KHIEU Samphan, 13 December 2007, D46, at page 11. See also documentary evidence on the Case File, including meeting minutes (including D1.3.27.18 and D1.3.8.3) and numerous communications evidencing MEAS Mut's participation in crimes (including D4.1.635, D1.3.12.3, D1.3.14.1, D1.3.34.60, D1.3.30.2, D4.1.638-639, D1.3.34.10, D1.3.12.18).

MEAS Mut's activities during the DK period, have been interviewed on the issue of MEAS Mut's personal authority and direct participation in the crimes.<sup>69</sup> The interview with KAING Gueak Eak *alias* Duch is incomplete as numerous matters that should be put to Duch were not raised in the interview.<sup>70</sup> The International Co-Prosecutor also notes that, although he is a suspect who is implicated by witnesses and documentary evidence, MEAS Mut has not been interviewed or informed that he is under an investigation.

21. The International Co-Prosecutor requests that the specific investigative actions described below be carried out to ascertain the truth of the allegations in the IS, including the following facts:

- (a) MEAS Mut's roles in the CPK prior to 1975, his appointment as Secretary of Division 3 / 164, and his command, authority and control of the Division throughout the period under investigation.
- (b) MEAS Mut's membership of the CPK Central Committee or its Assisting Committee and RAK General Staff, and his attendance at meetings of these bodies, as well as at other meetings (such as those with POL Pot) at which the crimes were planned, discussed and coordinated.
- (c) MEAS Mut's participation in the crimes, including: (i) his command, control and supervision of the direct perpetrators of the crimes in and around the Kampong Som area and islands off the Cambodian coast, Wat En Ta Nhien Security Centre, Stung Hav Quarry sites, and in Vietnam; (ii) his activities in Sector 505 during 1978; (iii) his ordering or authorisation of arrests, unlawful imprisonment, torture and execution of enemies and foreign nationals, as well as the use of forced labour and other inhumane acts; (iv) his authorisation for transfer of prisoners to S-21, his receipt of S-21 confessions and his involvement in arrests of supposed enemies identified in those confessions; (v) his awareness of the crimes through attendance at crime sites, receipt of reports and interaction with perpetrators such as Duch and cadres within Division 164's Battalion 450; and (vi) his participation in political indoctrination of cadres.
- (d) Authority structure, hierarchy and command chain within Division 164, including: Regiments 20 (161), 21 (162), 22 (163) and 140; Battalions 386, 450, 165, 166, 176, 168, 169, 170, 520 (141), 530 (142), 540 (143) and 550 (144); and lower level units,

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<sup>69</sup> Written Record of Interview of CHHOUK Rin, 24 March 2011, D6; Written Record of Interview of KAING Guek Eav *alias* Duch, 27 April 2011, D12.

<sup>70</sup> See list of matters to be put to Duch further below.

such as the pursuit-vessel unit, defence unit, antisubmarine unit and the unit described by witnesses as the unit responsible for arrests, which used “PCS” or “PCF”<sup>71</sup> boats.

22. The specific investigative actions requested by the International Co-Prosecutor with respect to MEAS Mut are as follows:

- (a) Re-interview Duch and put to him additional questions regarding MEAS Mut’s involvement in the crimes, including:
  - i. How and by whom prisoners were transferred from Kampong Som to S-21, whether MEAS Mut issued orders for those arrests and transfers, and whether he was otherwise involved in or aware of them. The International Co-Prosecutor notes that, in a Case 002 interview, Duch stated: “I know it was Division 164, headed by Meas Mut... that arrested them [four foreigners]...”<sup>72</sup>
  - ii. Whether MEAS Mut communicated with Duch in any manner, whether confessions obtained from S-21 prisoners were provided to MEAS Mut (or their contents otherwise reported to him), and whether he took action to investigate or arrest further enemies identified in those confessions. In particular:
    - (A) Duch should be shown the confession of KUNG Kien *alias* EUNG Vet, a Battalion commander under Division 164.<sup>73</sup> The CIJ should also retrieve full copies of all S-21 confessions of former cadres from units within Division 164, review them for any annotations referring to MEAS Mut, and ask Duch to comment on them.
    - (B) Duch should be questioned about the arrests of senior Division 164 cadres identified in document D9.3, including HOENG Doeun *alias* Dim, Division Deputy Secretary, and KUN Dim, Battalion 141 Commander.<sup>74</sup>
  - iii. To elaborate his following statement made in the interview conducted on 27 April 2011: “Also, before making any decisions, SON Sen...always asked for comments and assistance from the heads of the divisions.”<sup>75</sup> Specifically, he should be asked

<sup>71</sup> Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15, at page 4.

<sup>72</sup> Case File 002, Written Record of Interview of KAING Guek Eav *alias* Duch, 24 June 2008, D89, at page 5.

<sup>73</sup> S-21 Confession of KUNG Kien *alias* Eung Vet (Secretary of Battalion 631, Regiment 63, Division 164), 26 May 1977, D1.3.18.4 (The confession contains the following annotation by Nuon Chea: “The majority of the persons implicated are in the unit of comrade MUT,” see Case File 002 document D225, at page 4 – this statement should be transferred to Case File 003). CIJ’s table of prisoners from Division 164 identifies this individual as Commander of Battalion 165, or Regiment 63 (D1.3.11.3).

<sup>74</sup> List of Arrestees from Division 164, 25 January 2008, D9.3.

<sup>75</sup> Written Record of Interview of KAING Guek Eav *alias* Duch, 27 April 2011, D12, at page 5.

to explain how this relates to MEAS Mut's involvement in the purges and work of the RAK General Staff.

- iv. To describe all meetings (including RAK General Staff / Division meetings, and study sessions) he attended at which MEAS Mut was also present.
  - v. To name any other surviving cadres who would be familiar with MEAS Mut's positions and activities during the period under investigation.
- (b) Re-interview witnesses who may be able to further testify to MEAS Mut's position, authority and involvement in the crimes in Kampong Som, including SAY Born and TOUCH Soeuli (both of whom indicated they attended training sessions with MEAS Mut).<sup>76</sup>
- (c) Re-interview Case File 002 witnesses: (i) LONH Dos regarding Meas Mut's membership of the RAK General Staff, attendance at RAK meetings, and participation in internal purges;<sup>77</sup> (ii) UNG Ren regarding MEAS Mut's authority as Division commander and his membership of the RAK General Staff, and his attendance at General Staff meetings and training sessions;<sup>78</sup> and (iii) SENG Soeun, in relation to MEAS Mut's involvement in purges of East Zone cadres in Sector 505, and his authority in that region.<sup>79</sup>
- (d) Interview civil party applicant Rob HAMILL regarding the results of his inquiries into the arrest of his brother Kerry HAMILL, and in particular whether the transfer to S-21 was authorised or ordered by MEAS Mut.
- (e) Locate and interview senior Division 164 cadres identified in the sections above, including SAR Samoeun (*alias* Ta Moeun),<sup>80</sup> Ta Norn,<sup>81</sup> NORNG Chhan / SUON Chhan / NAN Chhan,<sup>82</sup> Han / Hon,<sup>83</sup> Ta Nget,<sup>84</sup> Meanh,<sup>85</sup> Ta Yan, Sras and Nhan.<sup>86</sup>

<sup>76</sup> Written Record of Interview of SAY Born, 6 September 2010, D2/8, at page 5; OCP Interview with TOUCH Soeuli, 16 August 2008, D1.3.13.13, at page 6.

<sup>77</sup> Written Record of Interview of LOHN Dos, 23 July 2009, D4.1.855.

<sup>78</sup> Written Record of Interview of UNG Ren, 17 September 2009, D232/21; Written Record of Interview of UNG Ren, 26 October 2009, D232/36; Written Record of Interview of UNG Ren, 4 March 2010, D369/11.

<sup>79</sup> Written Record of Interview of SENG Soeun, 11 November 2009, D232/59.

<sup>80</sup> Written Record of Interview of TOUCH Soeuli, 10 November 2010, D2/15 at page 5-8. SAR Samoeun reportedly lived at Wat Enta Nhien with the witness from August 1975.

<sup>81</sup> *Ibid* at page 8; Norn was reportedly arrested in 1977/78 for raping a female prisoner but his subsequent whereabouts have not been ascertained. Site Identification Report, 29 December 2010, D2/22, at page 6.

<sup>82</sup> Written Record of Interview of TOUCH Soeuli, 11 November 2010, D2/16, at page 4; Written Record of Interview of PEN Sarin, 26 August 2010, D2/7, at page 3; Written Record of Interview of SAY Born, 7 September 2010, D2/9, at page 6.


- (f) Interview the four Case 002 Accused (NUON Chea, IENG Sary, KHIEU Samphan and IENG Thirith) regarding the roles and authority of MEAS Mut, including his membership of the Central Committee or its Assisting Committee, and the RAK General Staff.
- (g) Summon MEAS Mut, notify him that he is under investigation, advise him of his rights, and offer him the opportunity to answer questions and provide evidence regarding all of the matters described above and in the IS.<sup>87</sup>

### CONCLUSION

23. The International Co-Prosecutor requests the CIJ to:

- (a) take all of the investigative steps described above;
- (b) perform all additional activities deemed necessary as a result of those investigations;
- (c) place the evidence gathered as part of those investigations on the Case File as soon it is received by them.

Respectfully submitted,

Date	Name	Place	Signature
10 June 2011	Andrew CAYLEY International Co-Prosecutor	Phnom Penh	

<sup>83</sup> Written Record of Interview of SAY Born, 7 September 2010, D2/9 at page 6; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 August 2008, D1.3.13.13, at page 4, 6; Written Record of Interview of NHOUNG Chrong, 24 Aug 2010, D2/6, at page 5.

<sup>84</sup> Written Record of Interview of SAY Born, 6 September 2010, D2/8 at page 7.

<sup>85</sup> Ibid at page 8.

<sup>86</sup> Ibid at page 7; OCP Interview of TOUCH Souley (TOUCH Soeuli), 16 August 2008, D1.3.13.13, at page 6.

<sup>87</sup> The Co-Prosecutor notes that, in response to speculation as to the matters under investigation in this case, MEAS Mut recently commented that he would be able to provide information regarding “fighting and shooting.” James O’TOOLE and THET Sambath, “Ex-KR leader responds to activist’s allegations,” *Phnom Penh Post*, 6 April 2011 (Document being submitted by the International Co-Prosecutor).