

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**MEAS MUTH’S RESPONSE TO THE INTERNATIONAL CO-PROSECUTOR’S
FINAL SUBMISSION**

Filed by:
The Co-Lawyers:
ANG Udom
Michael G. KARNAVAS

Distribution to:
Co-Investigating Judges:
Judge YOU Bunleng
Judge Michael BOHLANDER

Co-Prosecutors:
CHEA Leang
Nicholas KOUMJIAN

All Civil Parties

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Table of Acronyms

Acronym	Full Name
ACABQ	Advisory Committee on Administrative and Budgetary Questions
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CIA	Central Intelligence Agency
CIJ	Co-Investigating Judge
CPK	Communist Party of Kampuchea
DC-Cam	Documentation Center of Cambodia
DK	Democratic Kampuchea
DSS	Defence Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
FBIS	Foreign Broadcast Information Service
FSU-UNAKRT	Field Staff Union – UNAKRT
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICIJ	International Co-Investigating Judge
ICP	International Co-Prosecutor
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IS	Introductory Submission
JCE	Joint Criminal Enterprise
KGB	Komitet Gosudarstvennoy Bezopasnosti [Committee for State Security]
KSC	Kosovo Special Court
MICT	Mechanism for International Criminal Tribunals
NCP	National Co-Prosecutor
OA	Office of Administration
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors
PDG	Principle Donors' Group
POW/MIA	Prisoners of War/Missing in Action (US Department of Defense accounting agency)
RAK	Revolutionary Army of Kampuchea
RGC	Royal Government of Cambodia
SCSL	Special Court for Sierra Leone
SESG	Special Expert to the Secretary-General on UNAKRT
SS	Supplementary Submission
STL	Special Tribunal for Lebanon
TASS	Telegrafnoe Agentstvo Sovetskovo Soyuzo [Telegraph Agency of the Soviet Union]
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
UNHQ	United Nations Headquarters
US	United States of America
WRI	Written Record of Interview

I. OVERVIEW

1. It is high time for the CIJs to exercise their authority to permanently stay the proceedings in Case 003 with full prejudice. Those most responsible for funding the ECCC have failed to make good on their expressed commitments. The projected funding will not meet the Court's requirements as set out in the 2018-2019 budget and there are no early and reliable assurances of compliance by the donors. The OA cannot assure the CIJs that, should an indictment be issued, MEAS Muth's fair trial rights will be respected throughout all stages of the proceedings, or that proceedings (pre-trial review of the Closing Order, trial, and appeal) will occur at all. The harm to MEAS Muth's fair trial rights would be irreparable, resulting in manifest injustice. It cannot be cured after the issuance of a Closing Order.
2. Should the CIJs decline to permanently stay the proceedings, they must issue a Dismissal Order. MEAS Muth was neither a senior leader nor one of those most responsible for serious crimes committed across DK from 1975-1979. He does not fall within the ECCC's jurisdiction.
3. MEAS Muth is not one of those envisaged by the Parties to the ECCC Agreement to fall within the ECCC's jurisdiction because he is not among those with the greatest responsibility in DK. This is borne out by the evidence, applying the principles of *in dubio pro reo* and strict construction of criminal law. His role was not sufficiently high in the DK hierarchy. He had no authority or discretion to determine CPK policies or their implementation. His alleged acts and their effects were not sufficiently grave when considering the entirety of suffering during the DK period. Even when viewed in the light most favorable to the ICP, the evidence does not establish that MEAS Muth was a "senior leader" or one of those "most responsible."
4. MEAS Muth held no CPK or DK roles that gave him nationwide authority or responsibilities. He was not a member of or involved in the activities of the Standing Committee. He was not a member of the Central Committee. Nor was he a *de jure* or *de facto* Deputy Secretary of the General Staff, member of the General Staff Committee, Secretary of Kampong Som Autonomous Sector, or the highest authority on the Kampong Som Autonomous Sector Committee. Any authority MEAS Muth may have had as

commander of Division 164 was limited to naval matters along the Kampong Som coastline and mainland and, for the last two months of the DK regime, Sector 505.

5. MEAS Muth was not part of the senior decision-making entities in the CPK. He had no authority or discretion to determine CPK policies or their implementation. Any access he may have had to CPK senior leaders does not make him one of those “most responsible.” He and other members of the Division 164 Committee, and the Kampong Som Autonomous Sector Committee, reported to and received instructions and policies from CPK senior leaders and the General Staff and were required to comply. Even if MEAS Muth had authority to issue orders or decisions regarding Division 164, Division 164’s operations and impact were limited to a restricted geographical area – the waters near Kampong Som, including Koh Poulo Wai, Koh Tang, and Koh Rong. MEAS Muth did not have authority over security centers at Wat Enta Nhien or Tuek Sap, or worksites and cooperatives at Stung Hav and Ream. Nor was he responsible for civilians or soldiers who were sent to or executed at S-21.
6. Without minimizing the impact on and suffering of the victims of any crimes that may have been committed in DK waters or in Kampong Som, even if criminal responsibility could be ascribed to MEAS Muth, the crimes and numbers of victims are not sufficiently grave to render him one of the “most responsible.” When considering the entirety of suffering across DK from 1975-1979 – the total number of deaths from execution, starvation, forced labor, and insufficient public health services, and the number of displaced persons and those who were forced to do hard labor in DK during this period – MEAS Muth’s alleged responsibility is miniscule.
7. In claiming that MEAS Muth is a “senior leader” and one of the “most responsible,” the ICP relies heavily on dubious evidence: evidence that is uncorroborated; evidence collected by persons or entities external to the ECCC; DC-Cam interviews; OCP interviews; Civil Party applications; interviews conducted with MEAS Muth by entities external to the ECCC; hearsay evidence; and torture-tainted or torture-derived evidence.
8. The ICP relies on: witnesses whose statements are based on hearsay or speculation or are tainted; witnesses whose statements do not support his claims; documentary evidence that is unreliable, of low probative value, or does not support his claims; and evidence obtained through the impermissible use of torture-tainted evidence.

9. The ICP misrepresents evidence and ignores relevant structural and contextual evidence that weakens or negates his claims.
10. The ICP relies heavily on the same unreliable witnesses to establish MEAS Muth's roles and authority, such as Duch, Pak Sok, Chet Bunna, Soem Ny, Meas Voeun, Em Son, Lon Seng, Moeng Vet, and Seng Soeun.
11. The ICP requests the CIJs to indict MEAS Muth for crimes and under modes of liability that cannot be applied at the ECCC. Under the principles of legality, *in dubio pro reo*, and strict construction of criminal law, the CIJs must apply the law as it was in 1975-1979, and not as it is today. MEAS Muth cannot be prosecuted for crimes listed in Article 3 new of the Establishment Law ("National Crimes"), Grave Breaches of the Geneva Conventions of 1949 ("Grave Breaches"), and forced marriage as a Crime Against Humanity of an other inhumane act. He cannot be held responsible under the modes of liability of Command Responsibility and JCE. He also cannot be held responsible for any Crimes Against Humanity committed by the CPK against its own armed forces because such forces are not "civilians" under customary international law.
12. The evidence in Case File 003 is insufficient to support a finding that a reasonable Trial Chamber could convict MEAS Muth beyond a reasonable doubt. This standard of proof is justified because of the extraordinary nature of the crimes, the high burden to charge a suspect at the ECCC, the considerable length of the investigation, and the CIJs' ample opportunity to assess the evidence in the Case File by the time they draft the Closing Order.
13. The CIJs should permanently stay the proceedings in Case 003 with full prejudice. Alternatively, the CIJs should issue a Dismissal Order.

II. DISPOSITIVE MATTER

“Justicia does not weigh a person’s freedom against available assets. Neither shall we.”¹

A. The CIJs must permanently stay the proceedings in Case 003 because MEAS Muth will not enjoy all his fair trial rights in light of the funding crisis

14. Judicial restraint is no longer an option. The time has come for the CIJs to exercise their authority to permanently stay the proceedings in Case 003 with full prejudice. The Court’s budgetary situation and outlook going forward has not improved since the CIJs declared that the budgetary situation had “become incompatible with the basic principles of fair trial, the rule of law and judicial independence.”² Despite the CIJs’ efforts to alert the UN and donors to the ECCC’s funding crisis, those most responsible for funding the ECCC have failed to make good on their expressed commitments. The OA cannot assure the CIJs that, should an indictment be issued, MEAS Muth’s fair trial rights will be respected throughout all stages of the proceedings, or that proceedings (pre-trial review of the Closing Order, trial, and appeal) will occur at all.
15. The CIJs alerted the Parties and the OA – and by extension, the UN, RGC, donor States, and the SESG, David Scheffer – that they were contemplating permanently staying all investigations because they were deeply concerned over the ECCC’s budgetary situation.³ They considered it their “duty under ... oath of office to consider any and all options to ensure that the further development of the investigations before this Court” complies with the Charged Persons’ fair trial rights.⁴ Submissions were requested.⁵ The CIJs sought assurances that sufficient funding would be available for them to complete their mandate, for appellate review of the Closing Orders, and should indictments be issued, for trials and appeals.⁶ The CIJs concluded that if such assurances could not be provided all investigations would be brought to an end.⁷

¹ Request for Submissions on the Budgetary Situation of the ECCC and Its Impact on Cases 003, 004, and 004/2, 5 May 2017, D249 (“Request for Submissions on the Budgetary Situation of the ECCC”), para. 4.

² *Id.*, para. 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*, para. 85.

⁶ *Id.*, paras. 1, 79.

⁷ *Id.*, paras. 1, 79.

16. The CIJs have yet to be provided with the detailed information and assurances they requested.⁸ Instead, the OA, UN, PDG, and SESG presented deceptively rose-tinted views of the ECCC's budgetary situation, arguments that the CIJs were acting *ultra vires*, excuses why funding guarantees could not be made, and vague promises to secure funding.⁹ The CIJs were not convinced by the representations – and showed just how disingenuous and empty they were.¹⁰
17. The CIJs opted to exercise judicial restraint, considering that the UN's and PDG's responses did not represent a total lack of engagement with their concerns and that some rapid funding had come in. The CIJs deferred making *the* decision on whether to stay the proceedings pending further developments, vowing to remain seized of the matter and to take necessary measures should judicial independence, fairness, and the integrity of the proceedings become threatened.¹¹
18. Now, roughly one year since the CIJs issued their request, the budgetary situation and outlook going forward has not improved and is perhaps even more precarious. The projected funding – which is dependent on the non-binding, vagary-driven pledges of the donors – will not meet the Court's requirements as set out in the 2018-2019 budget. Voluntary contributions are only expected to decline. All the makings of the perfect storm identified by the CIJs persist: insecure and unreliable funding, staff shortages and turnover, delays, or even a disorderly ceasing of the proceedings, and their impact on MEAS Muth's fair trial rights.

⁸ Combined Decision on the Impact of the Budgetary Situation on Cases 003, 004, and 004/2 and Related Submissions by the Defence for YIM Tith, 11 August 2017, D249/6 (“Combined Decision on the Impact of the Budgetary Situation”), para. 61: “The responses by the UN and PDG submitted through the OA have not reached the full degree of specificity we had hoped for.”

⁹ *Case of AO An*, 004/2/07-09-2009-ECCC-OCIJ, Office of Administration's Submission on the Budgetary Situation of the ECCC and Its Impact on Cases 003, 004, and 004/2, 5 June 2017, D349/3 (“OA Submission”); *Case of AO An*, 004/2/07-09-2009-ECCC-OCIJ, Annex 1: Observations of the United Nations Secretariat in Relation to the Request for Submissions on the Budgetary Situation of the ECCC and its Impact on Cases 003, 004 and 004/2, D349/3.1.1 (“UN Observations”); *Case of AO An*, 004/2/07-09-2009-ECCC-OCIJ, Annex 2: Statement by the Extraordinary Chambers in the Courts of Cambodia (ECCC) Principal Donors Group (PDG) on the *Request for Submissions on the Budgetary situation of the ECCC and its Impact on Cases 003, 004, and 004/2* issued by the Co-Investigating Judges on 5 May 2017 (Request for Submissions), 22 May 2017, D349/3.1.2 (“PDG Observations”); *Case of AO An*, 004/2/07-09-2009-ECCC-OCIJ, Annex 3: U.N. Secretary-General's Special Expert on U.N. Assistance to the Khmer Rouge Trials, Confidential Statement in Relation to the *Request for Submissions on the Budgetary Situation of the ECCC and Its Impact on Cases 003, 004, and 004/2*, 26 May 2017, D349/3.1.3 (“SESG Observations”). See also *infra* paras. 29-40.

¹⁰ See Combined Decision on the Impact of the Budgetary Situation, paras. 16-60. See also *infra* paras. 29-40.

¹¹ Combined Decision on the Impact of the Budgetary Situation, para. 67.

19. Maybe MEAS Muth will be tried sporadically or in stages as donor funding trickles in. Maybe funding will cease and cause a disorderly breakdown of the Court's operations, leaving an indictment hanging ominously over MEAS Muth's head in perpetuity, permanently branding him as a war criminal and *genocidaire*. Maybe he will be tried in the future by some other court. What is not a maybe in this calculus is that, if an indictment is issued, MEAS Muth will not enjoy all the same fair trial rights enjoyed by the Accused in Cases 001 and 002 – to be presumed innocent and to have a fair and expeditious trial, which includes, among other things, the rights to have adequate time and facilities for the preparation of his defence, examine the witnesses and evidence used against him, be tried within a reasonable time, and to appellate review.
20. The CIJs have considered it *their* task to prevent this manifest injustice. Given the dire state of the ECCC's budgetary situation, the lack of planning for future trials and appeals in Cases 003, 004, and 004/2, and the high probability that, if indicted, MEAS Muth will have no procedural venue to challenge the charges against him, the CIJs must act now and permanently stay the proceedings against him with full prejudice.

B. The CIJs' concerns for entering a stay of proceedings

21. On 5 May 2017, the CIJs reluctantly considered ordering a stay of proceedings in Cases 003, 004, and 004/2 with full prejudice no later than the end of June 2017, unless they were provided with sufficiently specific and reliable assurances that the funding situation would improve drastically, and with sufficiently specific and reliable assurances of a proactive planning outlook.¹² The CIJs requested the OA to pass copies of their request to the UN, RGC, donor States, and SESG and to "explain in as much detail as possible" information on any budget discussions, forecasts, and policies for 2017 and beyond, "especially for the scenario of an indictment followed by pre-trial chamber appeal, trial and appeal to the [Supreme Court Chamber]."¹³
22. At the time of the CIJs' request, the Court's budgetary situation had reached a "crisis point."¹⁴ Funding had not been provided to the endorsed levels, neither by UN subvention

¹² Request for Submissions on the Budgetary Situation of the ECCC, para. 79.

¹³ *Id.*, paras. 86-87.

¹⁴ *Id.*, para. 75.

nor voluntary contributions.¹⁵ The ECCC was several million dollars short of its endorsed budget.¹⁶ The CIJs had been informed by the OA that it was highly unlikely that more funding would be available for 2017 or that funding levels would increase thereafter.¹⁷ The direness of the situation was that “once the funding for the international judges and staff runs out, their employment contracts are terminated and the international component disappears physically; the same applies for the national component.”¹⁸

23. The CIJs were concerned that the “gravely uncertain future funding basis for any procedural forum to be available *after* a closing order, be it a dismissal or indictment, raises fundamental questions of fairness for the ongoing investigations...”¹⁹ The CIJs found it unacceptable to issue a Closing Order, especially an indictment, if there is a high probability that there will not be sufficient funding to provide for appellate review of the Closing Order, “and, by extension, serious doubt about the parties getting their day in court before the Trial Chamber ... and [Supreme Court Chamber].”²⁰
24. The CIJs were also not aware of any exit strategy: whether there would be a forum for the Charged Persons to challenge the allegations against them should the ECCC’s operations suddenly cease.²¹ Leaving an unfinished investigation or indictment hanging over the Charged Persons by simply ceasing the ECCC’s operations would be incompatible with the basic demands of the rule of law.²²
25. The CIJs recognized that they could not simply issue Closing Orders and wash their hands of the matter. “[Their] perspective as investigating judges cannot be merely focused on the timeline needed until the closing order as the end to [their] own mandate.”²³ Their work involves the initial construction of the case, which sets the course of successive trials and appeals if indictments are issued.²⁴ The CIJs’ rightfully acknowledge that their duty to ensure the Charged Persons’ fair trial rights does not end with the issuance of a Closing Order.

¹⁵ *Id.*, para. 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Request for Submissions on the Budgetary Situation of the ECCC, para. 46.

¹⁹ *Id.*, para. 52.

²⁰ *Id.*, para. 53.

²¹ *Id.*, para. 55.

²² *Id.*, para. 54.

²³ *Id.*, para. 52.

²⁴ Request for Submissions on the Budgetary Situation of the ECCC, para. 52.

C. The OA, UN, PDG, and SESG failed to answer the CIJs' concerns

26. The responses of the OA, UN, PDG, and SESG showed that there was no well-thought-out and pro-active fundraising plan in place to continue the ECCC's operations, especially in the event that one, two, or all three of Cases 003, 004, and 004/2 go to trial. No specifics were provided on any ongoing fundraising discussions. No timelines or cost projections were provided to the CIJs. No reliable assurances were provided that funds would be available for trials and appeals that would fully respect the Charged Persons' fair trial rights.
27. Apart from clarifying that no exit strategy was in the works,²⁵ the OA did not answer the CIJs' concerns. It provided no specifics on ongoing budget discussions with the UN, RGC, and the donors. Instead, the OA presented a "non-answer" answer: a technical summary of the process for approving a budget.²⁶ Despite acknowledging a budget shortfall of millions of dollars for 2017, the OA asserted that everything was fine: projected funds would be adequate for the ECCC to complete its mandate, fundraising efforts were being made to secure funds for 2017 and beyond, and the budget and funding for any trials in Cases 003 and 004 would be considered during the 2018-2019 budgeting process.²⁷
28. Although professing to remain "deeply committed" to securing funding for the ECCC,²⁸ the UN, PDG, and SESG (submitting their views through the OA) insisted that:
- a. The CIJs should stick to ruling on the investigations – they do not have authority to rule on financial matters, and financial concerns beyond the issuance of Closing Orders are for the higher chambers, if at all;²⁹
 - b. There is no funding crisis;³⁰

²⁵ OA Submission, para. 26.

²⁶ *Id.*, paras. 21-23.

²⁷ *Id.*, paras. 10, 24-25.

²⁸ PDG Observations, p. 1-2.

²⁹ UN Observations, para. 6.

³⁰ *Id.*, para. 16; OA Submissions, paras. 10, 24.

- c. There is nothing unique about the ECCC's budgetary situation (financial insecurity is the norm for international(ized) criminal tribunals and courts; even under assessed contribution models, States do not always pay up on their obligations);³¹
- d. There is no legal requirement to guarantee funding for the ECCC;³²
- e. It is impossible to guarantee funding due to the UN's and donor States' varying budgeting cycles;³³ and
- f. Funding decisions are not intended to influence the proceedings.³⁴

D. The CIJs deferred making the decision on whether to stay the proceedings pending further development

29. The CIJs were unmoved by the OA's, UN's, PDG's, and SESG's representations. The CIJs went out of their way to clarify why and on what legal bases they issued their request. In so doing, the CIJs showed how those responsible for funding the ECCC had been apprised since October 2016 of the ECCC's funding crisis and the possibility that the proceedings could be stayed.³⁵ The CIJs' request should have come as no surprise.³⁶
30. The CIJs' concretely responded to the OA's, UN's, PDG's, and SESG's arguments that:
- a.** the CIJs have no power to issue a stay; **b.** the CIJs have no power to rule on funding matters; **c.** the CIJs are not concerned with financial matters beyond the Closing Order stage; **d.** there is no funding crisis; **e.** the Court must live with uncertain funding and States do not always pay up even under assessed contribution models; **f.** there is no legal obligation to fund the Court during its lifetime; **g.** it is impossible to guarantee funding due to budgeting cycles; **f.** the PDG did not attempt to influence the proceedings; and **h.** there is no exit strategy.³⁷

³¹ See UN Observations, paras. 14-15; SESG Observations, para. 8.

³² UN Observations, para. 13; PDG Observations, p. 2.

³³ PDG Observations, p. 1; SESG Observations, para. 3.

³⁴ PDG Observations, p. 2.

³⁵ Combined Decision on the Impact of the Budgetary Situation, para. 21.

³⁶ See PDG Observations, p. 1: "The PDG was both surprised and concerned by the Co-Investigating Judges' Request for Submissions issued on 5 May 2017."

³⁷ Combined Decision on the Impact of the Budgetary Situation, paras. 7, 16-60.

31. ***The CIJs have the power to issue a stay:*** The CIJs issued their request after careful consideration and deliberation. They would not have taken this drastic step if they were unsure about their power to stay the proceedings.³⁸
32. ***The CIJs are entitled to be concerned with funding matters:*** The CIJs identified the argument that they have no power to rule on funding matters as a “red herring.” The CIJs held that they *do* “have the power to stop all investigations because of a fundamental breach of fair trial rights and the *de facto* abolition of [their] office as CIJs.”³⁹
33. ***The CIJs must be concerned with financial matters beyond the Closing Order stage:*** The CIJs reiterated that they must be concerned with financial matters beyond the Closing Order stage, even though the Judges of the other Chambers will also have to ensure the Charged Persons’ fair trial rights throughout the proceedings.⁴⁰
34. ***There is a funding crisis:*** The CIJs showed the disingenuousness of this assertion:
- a. *OA:* The OA informed the ICIJ on several occasions during the 2017 budget negotiations “that in the Court’s history, the funding outlook had never been so dire and that the future budget negotiations would be a struggle beyond the usual level of arduousness; that the Court was indeed in danger of falling victim to an accidental closure because the funding might simply stop.”⁴¹ The OA also advised the ICIJ in light of the recruitment freeze that OCIJ staff who had job offers elsewhere should take them.⁴²
 - b. *PDG:* The CIJs met with the PDG and attempted to explain the strictures under which they work, clarify any misunderstandings, answer questions, and make their case for adequate funding.⁴³ They were met with ignorance: “[T]he first comment expressed criticism of the pace of the investigations, while another related to countering delay tactics by the defence.”⁴⁴

³⁸ *Id.*, para. 16.

³⁹ *Id.*, para. 17.

⁴⁰ *Id.*, para. 18.

⁴¹ *Id.*, para. 25.

⁴² *Id.*

⁴³ Combined Decision on the Impact of the Budgetary Situation, para. 23.

⁴⁴ *Id.*

c. *SESG*: The *SESG*'s representations contradicted "a number of frank email communications" he had with the CIJs, which "painted a similar picture on the international level to the conversations with the OA *in situ*."⁴⁵

35. ***The Court cannot live with uncertain funding***: The CIJs found the excuse that States do not always pay up under assessed contribution models to be an admission of States' failure to live up to their obligations under the treaties and resolutions they themselves created.⁴⁶

36. ***There is a legal obligation to fund the Court during its lifetime***: The CIJs stressed that "voluntary" funding – funding borne by some UN Member States, as opposed to assessed contributions, which are borne by all Member States – does not mean "optional" funding.⁴⁷ If the ECCC Agreement is in force, the parties to the Agreement are obliged to make good on their obligations.⁴⁸

37. ***Varying budgeting cycles are no defence to paying owed obligations***: The CIJs found that they could not give weight to States' varying budgeting cycles as an excuse to States paying on their owed obligations. It is a general obligation of law that one must pay up on owed obligations; internal budgeting procedures are no defence.⁴⁹

38. ***The PDG has attempted to influence the proceedings***: The CIJs disagreed with the PDG's "fulsome statement" that neither it nor its members had attempted to influence the judicial investigations.⁵⁰ The CIJs pointed out an example of direct influence by one member of the PDG, the US, concerning the tying of funds to the indictment of MEAS Muth.⁵¹ "If we indict Meas Muth, court observers may say that we caved in to US demands; if we dismiss the case or do not indict ... we risk the loss of a major donor to the ECCC."⁵² The CIJs also recalled less direct intrusion into judicial decision-making: the PDG's intrusive and repetitive requests during the budgeting process in 2016.⁵³

⁴⁵ *Id.*, para. 26.

⁴⁶ *Id.*, para. 28.

⁴⁷ *Id.*, para. 31.

⁴⁸ *Id.*, paras. 30-32.

⁴⁹ Combined Decision on the Impact of the Budgetary Situation, para. 33.

⁵⁰ *Id.*, para. 44.

⁵¹ *Id.*, paras. 45-47.

⁵² *Id.*, para. 48.

⁵³ *Id.*, paras. 49-55.

39. ***There is no exit strategy:*** The CIJs noted that since there is no exit strategy, a lack of funds would result in “an unordered breakdown and unregulated limbo for pending proceedings.”⁵⁴
40. Considering that some rapid funding had come in since the CIJs’ request for submissions,⁵⁵ and that the UN’s and PDG’s responses did not demonstrate total disengagement with their concerns, the CIJs deferred a decision on whether to stay the proceedings pending further development.⁵⁶ Funding would have to meet the Court’s requirements as set out in the forthcoming budget and there would need to be early and reliable assurances of compliance.⁵⁷

E. The projected funding will not meet the ECCC’s requirements and there are no early and reliable assurances of compliance from the donors

41. Insecure and unreliable funding, staff shortages and turnover, and resultant delays (and perhaps a disorderly ceasing of the proceedings) are all in the forecast. “The progress of [Cases 003, 004, and 004/2] continues to depend substantially on factors outside the judges’ control, in particular on sufficient funding, adequate staffing, timely recruitment for vacant posts and expeditious translations.”⁵⁸
42. After the CIJs’ decision to defer staying the proceedings, the UN Secretary-General requested a \$10.4 million subvention for 2018 because “the financial situation of the Extraordinary Chambers has not improved.”⁵⁹ The Secretary-General noted that despite fundraising efforts by the PDG and SESG, the level of voluntary contributions

⁵⁴ *Id.*, para. 57.

⁵⁵ See Combined Decision on the Impact of the Budgetary Situation, para. 63: “[W]e have recently learned from an article in the *Phnom Penh Post* that the European Union (“EU”) had apparently pledged €10 million to the ECCC to cover part of the Court’s costs until 2019. We have recently been informed that the Government of Japan has announced a new contribution of just over US \$1.2 million to the international component of the ECCC for the 2017 fiscal year.” While the CIJs welcomed these pledges, they found it “both unfortunate and inefficient, especially against the potentially disruptive impact of the current proceedings regarding the Request, that we had to learn about the EU’s pledge through the media, rather than from the OA (or the PDG)... Enhanced transparency and prompt communication of budgetary developments – an issue that we have flagged as crucial for all cases – should thus be of paramount importance to the OA going forward.” *Id.* (internal citations omitted).

⁵⁶ *Id.*, paras. 61-63, 65.

⁵⁷ *Id.*, para. 66.

⁵⁸ ECCC Completion Plan, Rev. 15, 31 December 2018, para. 23.

⁵⁹ UN Secretary-General, Request for subvention to the Extraordinary Chambers in the Courts of Cambodia, UN Doc. No. A/72/341, 16 August 2017 (“2018 Subvention Request”), para. 38.

consistently declined in 2015, 2016, and 2017 and “is projected to decline further.”⁶⁰ “[I]t is expected that resources will be pledged incrementally and in varied amounts, with insufficient fund balances available at any given time to ensure staff contracts of a reasonable duration.”⁶¹ The Secretary-General also highlighted that with the continuing shortfalls in voluntary contributions and depletion of the operational reserve, there is “no funding mechanism to address unforeseen operational contingencies.”⁶²

43. The UN only approved an \$8 million subvention for 2018, endorsing the ACABQ’s recommendations to cut costs and impose further managerial constraints on the ECCC’s use of its funding.⁶³ The ACABQ recommended that the budgets for each of the defence teams in Cases 003, 004, and 004/2 be reduced from \$564,375 to \$460,317 to match those allocated to the Defence teams in Case 002/02,⁶⁴ ignoring that these cases are in different stages of the proceedings and have different resource demands.⁶⁵ The ACABQ also recommended reducing the furniture budget to match the 2017 budget, obviously not foreseeing the possibility that one or multiple cases will progress to trial.⁶⁶ The ACABQ’s recommendations indicate that the UN either does not foresee future trials and appeals in Cases 003, 004, and 004/2, or that should such proceedings occur, cost-cutting measures would be implemented to the detriment of the Charged Persons’ fair trial rights.

⁶⁰ *Id.*, para. 28.

⁶¹ *Id.*, para. 37.

⁶² *Id.*

⁶³ UN General Assembly, Special subjects relating to the proposed programme budget for the biennium 2018-2019, UN Doc. No. A/RES/72/262, 16 January 2018, p. 5-6.

⁶⁴ UN General Assembly, Eighth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2018-2019, UN Doc. No. A/72/7/Add.7, 27 October 2017 (“ACABQ Recommendations”), para. 30: “**The Advisory Committee is of the view that the resources provided for the legal assistance of each of the defendants should be the same and should be adjusted to the level provided in case 002/02, which is an annual amount of \$460,317 per defendant.**” (bold in original).

⁶⁵ Closing Briefs in Case 002/02 have already been submitted to the Trial Chamber, which is expected to render a judgement in the second quarter of 2018. ECCC Completion Plan, Rev. 15, 31 December 2017, para. 6; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Co-Prosecutor’s Amended Closing Brief in Case 002/02, 2 October 2017, E457/6/1/1; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Civil Party Lead Co-Lawyers’ Amended Closing Brief in Case 002/02 (Public Redacted with Confidential Annexes), 2 October 2017, E457/6/2/3; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, NUON Chea’s Amended Closing Brief in Case 002/02, 28 September 2017, E457/6/3/1. The Accused in Case 002/02 will soon be on appeal, which is less resource-intensive than trial. At trial, the number of resource requirements are case-specific and dependent “on the number and nature of indictments, namely, ... [the] scope and complexity of the charges.” ECCC Proposed Budget for the Biennium 2018-2019, 20 December 2017 (“ECCC 2018-2019 Budget”), para. 71. See also Richard J. Rogers, *Assessment of the ICC’s Legal Aid System*, 4-5 January 2017, para. 256, available at <https://www.icc-cpi.int/itemsDocuments/legalAidConsultations-LAS-REP-ENG.pdf>.

⁶⁶ See ACABQ Recommendations, para. 31: “**The Advisory Committee notes that the requirement for furniture and equipment amounted to \$210,400 in 2017. Considering that the staff complement of the Extraordinary Chambers would be reduced by 27 posts from 2017 to 2018, the Committee is of the view that the requirement for furniture and equipment in 2018 should be adjusted to the level of 2017.**” (bold in original).

44. The \$8 million subvention only facilitates the ECCC's uninterrupted operations for the first four months of 2018, leaving the remainder of the year's budget to be filled by voluntary contributions, should they come in.⁶⁷ According to the latest completion plan, voluntary contributions are projected to fall short of the 2018 budget by millions of dollars on both the international and national sides.⁶⁸ "Voluntary contributions are currently projected to amount to \$9.22 million for the international component and \$0.13 million for the national component, against the approved budget of \$18.93 million for the international component and \$5.79 million for the national component for 2018."⁶⁹ As of 31 December 2017, the international component collected just \$0.48 million in voluntary contributions.⁷⁰ As of February 2018, there has been just a single contribution by India of \$.05 million to the national component⁷¹ – an amount that is just enough to cover 1.3% of the \$3.8 million required to continue 160 posts on the national side in 2018.⁷²
45. As the PDG and SESG proclaimed, it cannot be guaranteed when, if at all, voluntary contributions will come in due to States' varying budget cycles and priorities.⁷³ Considering the austerity and budget cuts being implemented by the UN⁷⁴ and at least one of the PDG States,⁷⁵ the lack of political will to fund the ECCC is not surprising.

⁶⁷ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 12.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See ECCC Press Release, *Government of India Contributes US\$50,000 to ECCC*, 27 February 2018, <https://www.eccc.gov.kh/en/articles/government-india-contributes-us50000-eccc-0>.

⁷² See ECCC 2018-2019 Budget, para. 19: "2018 resources requirement of \$3.58 million would provide for the continuation of 160 posts on the national side (15 D-1, 1 P-5, 20 NO-D, 16 NO-C, 17 NO-B/A and 91 locally recruited staff)."

⁷³ PDG Observations, p. 1; SESG Observations, para. 3.

⁷⁴ See US Mission to the UN, *Ambassador Haley on the United States Negotiating a Significant Reduction in the UN Budget*, 24 December 2017, <https://usun.state.gov/remarks/8243>: "Today, the United Nations agreed on a budget for the 2018-2019 fiscal year. Among a host of other successes, the United States negotiated a reduction of over \$285 million off the 2016-2017 final budget. In addition to these significant cost savings, we reduced the UN's bloated management and support functions, bolstered support for key U.S. priorities throughout the world, and instilled more discipline and accountability throughout the UN system." See also UN Press Release, *Concluding Main Part of Seventy-Second Session, General Assembly Adopts \$5.397 Billion Budget for 2018-2019, as Recommended by Fifth Committee*, 24 December 2017, <https://www.un.org/press/en/2017/ga11997.doc.htm>.

⁷⁵ See US Office of Management and Budget, *Major Savings and Reforms, Budget of the U.S. Government, Fiscal Year 2018*, p. 71, available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/msar.pdf>: "The Budget proposes to end or reduce funding for international programs and organizations whose missions do not substantially advance U.S. foreign policy interests or for which the funding burden is not fairly shared amongst members." See also US Congressional Budget Justification, Department of State, Foreign Operations, and Related Programs, Fiscal Year 2018, p. 179, available at <https://www.state.gov/documents/organization/271013.pdf> (requesting a 31% decrease – \$447 million – in US contributions to international organizations from the Fiscal Year 2017 estimate).

46. Even when the Court's fundraising efforts were in full force, budget shortfalls persisted. In 2013, funding was insufficient to pay national staff, resulting in staff walk-outs and strikes.⁷⁶ "The RGC failed to pay national staff, and at times the Secretariat needed to encourage donors with outstanding pledges to the UN to redirect those pledges to the national component in order to secure the presence of national staff at the court."⁷⁷ In requesting a subvention for 2018, the UN Secretary-General noted that from 2015-2017, "[d]espite the combined efforts of the principal donors group, the Secretariat and the Special Expert, voluntary contributions for the international component continued to decline."⁷⁸
47. As indicated by the OA, staff shortages and even minor staff turnover against the backdrop of the Court's funding crisis, the approach of the end of the Court's mandate, or career planning have affected and will affect the Chambers' institutional memory and projected timelines.⁷⁹ The Court can only expect more staff turnover considering "the uncertain financial situation of the court and its temporary nature, which has increasingly motivated staff to look for more secure and longer-term employment."⁸⁰
48. The Court's ability to recruit qualified staff is complicated by its inability to offer long-term contracts⁸¹ and the UN's cumbersome recruitment process for staff posts.⁸² Any

⁷⁶ Request for Submissions on the Budgetary Situation of the ECCC, para. 27 (internal citation omitted).

⁷⁷ *Id.*

⁷⁸ 2018 Subvention Request, para. 28. *See also id.*, para. 25: "Past fundraising activities, including two pledging conferences (in 2010 and 2013), a written appeal from the Secretary-General to all Member States, bilateral requests by senior United Nations officials to donor countries and a written appeal from the then chair of the principal donors group to permanent missions of Member States in New York in 2015, were unsuccessful in generating significant new sources of funding."

⁷⁹ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 24. *See also* Combined Decision on the Impact of the Budgetary Situation, para. 59; 2018 Subvention Request, para. 24, citing Eighth FSU-UNAKRT Management Quarterly Meeting-Minutes of the Discussion, 6 May 2017, Updated 6 June 2017, filed 16 June 2017: "Key staff leaving, for instance against the background of the overall funding situation; the approaching of the Office's mandate; or career planning, represents another serious risk to the projected timelines."

⁸⁰ ECCC Completion Plan, Rev. 14, 30 September 2017, para. 38.

⁸¹ The OCIJ stressed that several of its Legal Officers and Investigators departed from the Office for more secure employment. Combined Decision on the Impact of the Budgetary Situation, para. 59. 2018 Subvention Request, para. 23: "Previous reports of the Secretary-General have highlighted to Member States the financial challenges faced by the Extraordinary Chambers, which have persisted in 2016 and 2017. In previous years, the impacts of these challenges have included recruitment freezes and the uncertainty of staff working on month-to-month contracts, with the potential for distraction from the discharge of core functions. National component staff had gone without contracts and salaries for prolonged periods, resulting, inter alia, in a walkout by 100 staff in September 2013. Given the structure of the Extraordinary Chambers wherein national component and international component staff work side by side, the overall work of the Court was severely impeded by this action."

⁸² Combined Decision on the Impact of the Budgetary Situation, para. 59: "Under the current system, it can take about two months from the posting of a vacancy to recruiting a new UN staff member, somewhat less if a

newly recruited staff will “need time to familiarize themselves with the proceedings and the evidence in order to work effectively on the case,” which “will have an unavoidable impact on the progress of the cases.”⁸³ The ICIJ is all too familiar with the human resource impact of the Court’s funding crisis, as on his Case 003 team:

*[A]ll staff from the original team except one legal officer resigned ... making urgent recruitment efforts and re-assignment of current staff from other teams necessary and resulting in a loss of actual case work time and efficiency: None of the newly recruited staff have any deep knowledge of the case when they arrive and need to familiarise themselves with the proceedings and the massive amount of evidence on the case file before being able to work effectively. The full impact of this development on the progress of case 003 is yet unclear but already now an additional three months needs to be added to the timeline....*⁸⁴

49. The Court’s ability to provide timely translation services will also hinder the progress of the proceedings.⁸⁵ All documents must be filed in Khmer, as well as English or French.⁸⁶ Timelines for submissions begin to run upon the notification of the Khmer version of documents.⁸⁷ The National Judges and their teams mainly work from the Khmer versions of those documents.⁸⁸ The Charged Persons/Accused must also have Khmer versions of any documents filed as part of their right to be kept informed of the nature and progress of the proceedings against them.⁸⁹

consultancy is requested – however, we have been informed by the OA that UNHQ increasingly frowns upon the use of consultancy contracts.” *See also* ECCC Completion Plan, Rev. 15, 31 December 2017, para. 41.

⁸³ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 24.

⁸⁴ ECCC Completion Plan, Rev. 14, 30 September 2017, para. 22 (emphasis in original). Case 002/02 is also an example where “judgement drafting preparations were negatively impacted by staff turnover in the Chamber.” *Id.*, para. 38.

⁸⁵ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 25.

⁸⁶ Practice Direction on the Filing of Documents Before the ECCC, ECCC/01/2007/Rev.8, 7 March 2012, Art. 7.2.

⁸⁷ *Id.*, Art. 8.5: “Except as otherwise directed by the Co-Investigating Judges or a Chamber of the ECCC, time limits commence on the first calendar day following the day of service of the Notification of the document in Khmer and one other official language of the ECCC. Exceptionally, the Co-Investigating Judges or a Chamber may decide that the time limits commence on the first calendar day following the day of filing in all three languages.”

⁸⁸ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 20.

⁸⁹ *See Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order on Translation Rights and Obligations of the Parties, 19 June 2008, A190, para. B4: “[A] charged person is entitled to the translation into Khmer of any Indictment of the Co-Investigating Judges under Rule 67(1) of the IR, since that constitutes the final characterization and founding of the charges on which a charged person is sent forward for trial. In addition, a charged person is entitled to translation into Khmer of the elements of proof on which any such Indictment would rely...” The ECCC’s legal framework guarantees the Charged Persons/Accused the rights to “be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them.” *See* Constitution of the Kingdom of Cambodia dated 24 September 1993 Modified by Kram dated 8 March 1999 promulgating the amendments to Articles 11, 12, 13, 18, 22, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia which was

F. There is no pro-active planning outlook that considers the possibility that Cases 003, 004, and 004/2 may go to trial

50. There is no pro-active planning outlook. By this point, it should be known what it is like to try a case at the ECCC from inception to appeal: how much it costs to finance a prosecution and a defence team, provide resources to Civil Parties, adequately staff the Chambers and its judicial support units, and the physical and technological needs (furniture, space, hardware, and software licenses) to hold the proceedings. Despite two cases reaching the appellate stage, the OA has been unable to make any projections on the timeline or resources required in the event that one or all of Cases 003, 004, and 004/2 would proceed to trial.⁹⁰ Perhaps the OA did not want to discourage the donors from making long-term funding commitments by providing them candid estimations. Or, perhaps, the OA is resigned to the fact that UNAKRT is of a limited mandate and duration,⁹¹ and is just going through the motions until an indictment is issued, at which point it will declare victory, pack up, and go home.

51. Using the ECCC's previous caseload as a gauge, it is obvious that should an indictment be issued, proceedings in Case 003 would continue for many more years:

- a. A Closing Order in Case 003 is expected to be issued by the end of the third quarter of 2018⁹² and the Pre-Trial Chamber is expected to dispose of any appeals of the Closing

adopted by the National Assembly on the 4th of March 1999 ("Cambodian Constitution"), Arts. 31, 38; ECCC Agreement, Arts. 12(2), 13(1); Establishment Law, Arts. 33 new, 35 new (a)-(e); Rule 21(1); International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976 in accordance with Article 49 ("ICCPR"), Art. 14(3)(a)-(e).

⁹⁰ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 47: "Until decisions are made on whether case 003 and/or case 004 are sent for trial, it is premature to make a projection on the time required to complete these trials." ECCC 2018-2019 Budget, para. 71: "While the extent of the resource requirements for any trials in cases 003, 004 and 004/02 would depend on the number and nature of indictments, namely, number of cases, number of accused and scope and complexity of charges, that would only become apparent once the closing orders are issued, the budget line for other staff costs includes the minimum resource requirements that one trial with a single accused would entail."

⁹¹ See *Case of YIM Tith*, 004/07-09-2009-ECCC/OCIJ, YIM Tith's Filing of Newly Received Information Pertinent to the CIJs' Request for Submissions on the Budgetary Situation of the ECCC and its Impact on Cases 003, 004, and 004/2, 16 June 2017, D355/5, para. 12, citing Eighth FSU-UNAKRT – Management Quarterly Meeting: Minutes of the Discussion, 16 May 2017, Updated 6 June 2017: "It is no longer a secret that UNAKRT is beginning to wrap up.... UNAKRT is a technical assistance project that will complete its mandate at a finite point; hence staff ought to prepare for this completion. The coordinator advised staffers to apply for new posts, especially for roster-positions."

⁹² ECCC Completion Plan, Rev. 15, 31 December 2017, para. 28.

Order by the second quarter of 2019.⁹³ Although, these projections “are made on the basis that all Chambers and offices are adequately staffed, and that judicial proceedings will not be disrupted as a result of financial insecurity.”⁹⁴ Experience shows that the drafting of the Closing Order will likely take longer than the OA’s projection. In Case 001, in which the Accused essentially pled to the charges against him, the drafting of the Closing Order took around three months.⁹⁵ In Case 002, it took eight months.⁹⁶ In Case 004/1, it took about seven months from the date of filing of the Defence’s response to the ICP’s final submission to draft the reasons for the dispositive part of the Closing Order.⁹⁷

- b. If Case 003 is sent to trial, the trial could start as early as January 2020, after trial management hearings and the hearing of any preliminary objections.⁹⁸ In Case 001, the period between the Closing Order and the start of the substantive hearing was about eight months.⁹⁹ The Case 001 Defence did not appeal the Closing Order and it took the Pre-Trial Chamber roughly four months to decide on the Co-Prosecutors’ appeal.¹⁰⁰ In Case 002, this period was 14 months, with the Pre-Trial Chamber issuing its decisions on the appeals of the Closing Orders with reasons to follow, which allowed the Trial Chamber to be seized of the case sooner than expected.¹⁰¹

⁹³ *Id.*, para. 32.

⁹⁴ *Id.*, para. 14.

⁹⁵ ECCC Completion Plan, Rev. 14, 30 September 2017, para. 23.

⁹⁶ *Id.*, para. 23.

⁹⁷ IM Chaem’s Response to the International Co-Prosecutor’s Final Submission was filed on 28 November 2016. The Closing Order with reasons was rendered on 10 July 2017. *Case of IM Chaem*, 004/1/07-09-2009-ECCC/OCIJ, IM Chaem’s Urgent Request for (1) a Retraction Order Against the International Co-Prosecutor’s Summary of His Final Submission and (2) a Joint Public Statement from the Co-Investigating Judges, 16 December 2016, D306/2.1, para. 7; *Case of IM Chaem*, 004/1/07-09-2009-ECCC-OCIJ, Closing Order (Reasons), 10 July 2017, D261 (“Case 004/1 Closing Order”).

⁹⁸ This date assumes that a Closing Order is issued at the end of the third quarter of 2018 and that a Defence appeal against this Closing Order is decided with reasons to follow three months after the appeal is filed.

⁹⁹ *Case of KAING Guek Eav*, 001/18-07-2007/ECCC/TC, Judgement, 26 July 2010, E188 (“Case 001 Trial Judgement”), paras. 6, 9.

¹⁰⁰ *Id.*, para. 7.

¹⁰¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC75), Decision on IENG Sary’s Appeal Against the Closing Order, 11 April 2011 (“Case 002 Decision on IENG Sary’s Appeal of the Closing Order”), D427/1/30; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-PTC/OCIJ (PTC 104), Decision on KHIEU Samphan’s Appeal Against the Closing Order, 21 January 2011, D427/4/15; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC 145 & 146), Decision on Appeals by NUON Chea and IENG Thirith Against the Closing Order, 15 February 2011, D427/3/15; *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Case 002/01 Judgement, 7 April 2014, E313 (“Case 002/01 Trial Judgement”), para. 7.

- c. A trial in Case 003 would likely last at least two years. In Case 001, the substantive hearing lasted eight months.¹⁰² In Case 002/01, it lasted roughly 20 months.¹⁰³ In Case 002/02, the substantive hearing lasted over two years with a total of 274 hearing days.¹⁰⁴ Should Case 003 proceed to trial, it can be expected to take just as long as the proceedings in Cases 002/01 or 002/02.
- d. A trial judgement may be expected by 2023. In Case 001, the Trial Chamber took eight months after closing statements to issue a judgement.¹⁰⁵ In Case 002/01, it took nine months.¹⁰⁶ The Case 002/02 Trial Chamber expects to render its judgement by the second quarter of 2018, although “issues including ECCC financing, Chamber staffing and the translation of the judgement into Khmer and French may yet necessitate an extension...”¹⁰⁷
- e. An appeal judgement might be expected by 2024. In Case 001, the Appeal Judgement was rendered 18 months after the Trial Judgement.¹⁰⁸ In Case 002/01, the Appeal Judgement was rendered 27.5 months after the Trial Judgement.¹⁰⁹

52. Accordingly, sufficient resources will be necessary through *at least* 2024 to allow any trial and appeal in Case 003 to proceed. The OA has budgeted \$7.26 million for 2018-2019 for the “*minimal resource requirements that one trial with a single accused would entail.*”¹¹⁰ Of this amount, \$1.48 million is intended to cover the costs of trial management meetings in 2018 and \$5.78 million is intended to cover initial hearings, opening statements, and evidentiary hearings in 2019.¹¹¹ Assuming that this budget line accurately reflects the entirety of costs associated with trial proceedings,¹¹² \$36 million

¹⁰² Case 001 Trial Judgement, paras. 9-10.

¹⁰³ Case 002/01 Trial Judgement, paras. 7-8.

¹⁰⁴ ECCC Completion Plan, Rev. 15, 31 December 2015, para. 38: “Evidentiary proceedings commenced on 8 January 2015, with the Trial Chamber initially sitting for three days per a week.... Evidentiary hearings concluded on 11 January 2017 after a total of 274 hearing days.”

¹⁰⁵ Case 001 Trial Judgement, para. 10.

¹⁰⁶ Case 002/01 Trial Judgement, para. 8.

¹⁰⁷ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 46.

¹⁰⁸ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28 (“Case 001 Appeal Judgement”).

¹⁰⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Appeal Judgement, 23 November 2016, F36 (“Case 002/01 Appeal Judgement”).

¹¹⁰ ECCC 2018-2019 Budget, para. 71 (emphasis added).

¹¹¹ *Id.*, para. 73.

¹¹² These costs would include remuneration for the Judges, Co-Prosecutors, and Co-Lawyers and their staff, the Court Management Section, Interpretation and Translation Unit, Transcription Unit, Witness Support and Expert

would be the minimum *baseline* cost required to bring just one case to completion, notwithstanding any (un)foreseen delays or complications in the proceedings.¹¹³

53. In an ordinary case, delays are unfortunate, but not fatal. Considering MEAS Muth's health and advanced age, such delays can be. IENG Sary and IENG Thirith are examples.¹¹⁴
54. The 2018-2019 budget does not contemplate the costs if more than one case proceeds to trial. To the Defence's knowledge and based on the available information,¹¹⁵ there has been no planning for the possibility that multiple cases may be simultaneously sent to trial and how the Court could accommodate the attendant fiscal, human, and physical demands.¹¹⁶
55. One option is to establish an additional panel of the Trial Chamber, but this is not feasible considering the process for appointing judges. The ECCC's legal framework only provides for a limited number of judges for each Chamber.¹¹⁷ There are only three

Unit, Detention Unit, Records and Archives Unit, and Audio-Visual Unit, and other costs such as witness transportation, bus drivers, and software licenses.

¹¹³ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 36: "The timeline for the completion of trials is influenced by various factors such as the nature and complexity of the case, the health of the ageing accused, the number of witnesses, civil parties and experts called, their availability and the length of their testimonies, the logistical and practical impediments to the conduct of proceedings, the number of motions filed by the parties and other administrative considerations, including accuracy of interpretation and timely translation of documents."

¹¹⁴ IENG Sary passed away on 4 March 2013, in the middle of the Case 002/01 trial. The Trial Chamber stayed the proceedings against IENG Thirith in November 2011 because she was found unfit to stand trial. She passed away on 22 August 2015. ECCC Press Release, *Accused Person Ieng Sary Dies*, 14 March 2013, <https://www.eccc.gov.kh/en/articles/accused-person-ieng-sary-dies>; *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on IENG Thirith's Fitness to Stand Trial, 17 November 2011, E138, EN 00753507-00753508; ECCC Press Release, *Accused Person Ieng Thirith Dies*, 22 August 2015, <https://www.eccc.gov.kh/en/articles/accused-person-ieng-thirith-dies>.

¹¹⁵ ECCC 2018-2019 Budget; ECCC Completion Plan, Rev. 15, 31 December 2017; Letter to DSS titled "Request for information concerning discussions on the progress of Cases 003, 004 and 004/2 and their impact on the ECCC's budget," 27 February 2018 (*see* Attachment 1); Letter from DSS titled "Re: Request for information concerning discussions on the progress of Cases 003, 004 and 004/2 and their impact on the ECCC's budget," 13 March 2018 (*see* Attachment 2). *See also infra* paras. 58-59.

¹¹⁶ *See infra* paras. 55-60.

¹¹⁷ The Supreme Council of the Magistracy appoints seven Cambodian Judges and appoints Reserve Judges as needed. Candidates for International Judges are nominated by the UN Secretary-General, from which the Supreme Council of the Magistracy appoints five sitting Judges and at least two Reserve Judges. Establishment Law, Art. 11 new; ECCC Agreement, Art. 3(1). *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, President's Memorandum on the Proposal to Appoint a Second Panel of the Trial Chamber to Try the Remaining Charges in Case 002, 20 December 2013, E301/4 ("President's Memorandum on Appointing a Second Panel of the Trial Chamber"), para. 3: "The ECCC legal framework provides for a specific number of judges for each Chamber."

Reserve Judges¹¹⁸ and no Roster of Judges.¹¹⁹ Even if it were possible to reallocate already assigned Reserve Judges to a second panel, a Royal Decree would be required.¹²⁰ Any new international judges from outside the ECCC would need to be nominated by the UN Secretary-General and appointed by the Supreme Council of the Magistracy.¹²¹ The President of the Trial Chamber's authority to appoint a second panel of the Trial Chamber is also unclear, as President NIL Nonn concluded when considering whether to establish a second panel to hear the remainder of the charges in Case 002/02.¹²²

56. The ECCC only has one courtroom. Even if new judges could be appointed in a timely manner, an additional courtroom would need to be built and new staff would need to be employed (including Legal Officers, consultants, translators, interpreters, IT professionals, other judicial support staff, and even bus drivers).¹²³ In addition, “[o]nce new judges and legal staff have arrived in Cambodia, they will need to familiarise themselves with the Closing Order, the evidence on the case file, the procedure and the proceedings thus far.”¹²⁴ All of these factors would add significantly to the cost and time required to complete Cases 003, 004, and 004/2.

57. A single Trial Chamber would then have to deal with the scheduling complications associated with holding multiple trials in a single courtroom:

- a. *Alternative 1:* The Trial Chamber could hold Case 003 during part of the week and Case 004 and/or Case 004/2 during another part of the week. This would significantly extend the overall duration of the proceedings, rendering it unlikely that MEAS Muth, the witnesses, and the Civil Parties would live to see the end of the proceedings.

¹¹⁸ ECCC Website, Judicial Chambers, <https://www.eccc.gov.kh/en/organs/judicial-chambers> (last visited 12 April 2018).

¹¹⁹ Unlike the MICT and the KSC, the ECCC does not have a Roster of Judges from which to call judges as needed. See Statute of the International Residual Mechanism for Criminal Tribunals, S/RES/1966 (2010), Art. 8; Law on Specialist Chambers and Specialist Prosecutor's Office, Law No. 05/L-053, 3 August 2015, Art. 26; President's Memorandum on Appointing a Second Panel of the Trial Chamber, para. 2.

¹²⁰ President's Memorandum on Appointing a Second Panel of the Trial Chamber, para. 5.

¹²¹ The Supreme Council of the Magistracy appoints seven Cambodian Judges and appoints Reserve Judges as needed. Candidates for International Judges are nominated by the UN Secretary-General, from which the Supreme Council of the Magistracy appoints five sitting Judges and at least two Reserve Judges. Establishment Law, Art. 11 new; ECCC Agreement, Art. 3(1).

¹²² President's Memorandum on Appointing a Second Panel of the Trial Chamber, para. 3.

¹²³ *Id.*, para. 6.

¹²⁴ *Id.*, para. 7.

- b. *Alternative 2*: Cases 003, 004, and/or 004/2 could be tried together for part of the week on common issues and bifurcated later in the week on individual issues. This would also drag out the proceedings, not to mention raise questions as to whether the Accused would be able to fully exercise their fair trial rights if the Defence teams are lumped together, expected to present a common defence, and denied adequate time to present their evidence and examine witnesses.¹²⁵
- c. *Alternative 3*: The Trial Chamber could hold one trial in the morning and one trial in the afternoon. If morning sessions are held from 9:00 a.m. until around 1:45 p.m.,¹²⁶ afternoon sessions could go on as late as 7:00 p.m.¹²⁷ Considering that the Trial Chamber is, in the best of traffic conditions, one hour's drive from the center of Phnom Penh (where the majority of the Court's international staff reside), this would be particularly taxing on all those involved in the proceedings. It would also raise security concerns.

58. In exercising its duty of due diligence,¹²⁸ the Defence wrote to the Chief of DSS and asked whether he or the OA had any information concerning any plans to continue Cases 003, 004, and 004/2 beyond the Closing Order stage,¹²⁹ including:

¹²⁵ In *Prlić et al.*, the Trial Chamber limited the amount of cross-examination by applying a mathematical *one-sixth-solution*: the Defence collectively had the same time for cross-examination as the Prosecutor had for direct examination, and in the absence of an agreement between Defence Counsel, each would have one-sixth of the time allotted to the Prosecutor for direct examination. Defence Counsel were forced to focus on time constraints at the expense of substance. A thorough and proper cross-examination must be prepared in advance, in full knowledge of the available time. Defence Counsel were placed in a position of having to either select some of the issues to address in cross-examination or cover all the issues without going into the substance, sacrificing the quality of the questioning process. See *Prosecutor v. Prlić et al.*, IT-04-74-A, Transcript, 8 May 2006, p. 1476. See also *Prosecutor v. Prlić et al.*, IT-04-74-A, Jadranko Prlić's Notice of Re-Filing of Public Redacted Version of Jadranko Prlić's Appeal Brief, 29 July 2015, paras. 208-15.

¹²⁶ See e.g., *Prosecutor v. Prlić et al.*, IT-04-74-A, Transcript, 31 January 2007, p. 13227, 13340 (commencing at 9:02 a.m. and adjourning at 1:47 p.m.).

¹²⁷ See e.g., *Prosecutor v. Prlić et al.*, IT-04-74-A, Transcript, 17 March 2008, p. 27348 (adjourning at 7:08 p.m.).

¹²⁸ Due diligence requires the Co-Lawyers to do anything and everything to ensure that MEAS Muth is accorded all his fair trial rights, including by making all necessary legal and factual challenges, checking the veracity and accuracy of evidence gathered by the CIJs that is used against MEAS Muth by the ICP in his Final Submission, and so on. ALASKA RULES OF PROF'L CONDUCT (2017-2018 ed.), Rule 1.3: "A lawyer shall act with reasonable diligence and promptness in representing a client." *Id.*, Comment to Rule 1.3: "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." See also Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia, Art. 7; Law on the Statutes of the Bar (1995), Art. 58; Rule 22(4).

¹²⁹ Letter to DSS titled "Request for information concerning discussions on the progress of Cases 003, 004, and 004/2 and their impact on the ECCC's budget," 27 February 2018 (see Attachment 1).

- a. Whether the OA has developed any plans for or held any discussions on the possibility of multiple cases being sent to trial;
- b. Whether the OA has held any discussions concerning the ECCC's ability to conduct simultaneous trials, considering the financial, logistical, human resource, and physical needs;
- c. Whether the OA has submitted any requests to build a new Trial Chamber;
- d. Whether the OA has submitted any requests to the UN for the nomination of new international judges;
- e. Whether the OA has submitted any requests to the Supreme Council of the Magistracy for the nomination of new national judges;
- f. Whether the OA has held discussions concerning the scheduling issues that would arise in the event two or three cases are held simultaneously in a single Trial Chamber;
- g. Whether the UN Secretary-General has nominated a new SESG or, if not, whether anyone is currently assigned to carry out the fundraising and lobbying tasks formerly carried out by Mr. Scheffer;
- h. Whether the OA has developed a fundraising plan to continue the ECCC's operations for 2018 and beyond;
- i. Whether the OA has established any working groups or engaged any consultants to develop budget and timeline projections for the possibility that two or three cases may simultaneously proceed to trial; and
- j. Whether there are any FSU-UNAKRT staff meeting minutes similar in nature to the management quarterly meeting held on 16 May 2017, in which the Deputy Director of Administration stated: "UNAKRT is a technical assistance project that will complete its mandate at a finite point; hence staff ought to prepare for this completion."¹³⁰

¹³⁰ Eighth FSU-UNAKRT – Management Quarterly Meeting Minutes of the Discussion, 16 May 2017, Updated 6 June 2017, cited in *Case of YIM Tith*, YIM Tith's Filing of Newly Received Information Pertinent to the CIJs'

59. DSS informed the Defence that “[t]he OA’s current position is that in its submission to the CIJs it has already provided the answers to the questions you have raised....” and that the OA is “available and willing to implement any order issued by the ECCC judges.”¹³¹ Although by its own admission, the OA “has nothing to add at this time,”¹³² the CIJs could use their truth-seeking powers to request answers to these questions in making their determination on whether to stay the proceedings in Case 003. By all indications, the lack of planning by the OA shows that there is no appetite to go beyond pre-trial review of the Closing Orders, or, if the cases reach the trial stage, that the plan would be to beg for quick-fix, stop-gap funding.
60. Conducting simultaneous trials before a single Trial Chamber will be unwieldy, prolonged, costly, and burdensome for all those involved in the proceedings. Further factors such as “the nature and complexity of the cases going forward to trial, the health of the ageing accused, the logistical and practical impediments to the conduct of proceedings, [and] the number of motions filed by the parties” will also affect the ECCC’s ability to conduct simultaneous trials¹³³ – a considerable case-management test for the Trial Chamber and its judicial support units.

G. Neither the ECCC nor UNAKRT can guarantee that the proceedings will be fair, in light of the funding crisis, if the CIJs issue an indictment

61. MEAS Muth must enjoy all the fair trial rights accorded to the Accused in Cases 001 and 002 and no less – lest his right to equal treatment be violated.¹³⁴ He is entitled to the same resources, same procedural protections, and same reasoned judicial considerations as those Accused received throughout the proceedings.¹³⁵ The right to equal treatment before

Request for Submissions on the Budgetary Situation of the ECCC and its Impact on Case 003, 004, and 004/02, 16 June 2017, D355/5, para. 12(c).

¹³¹ Letter from DSS titled “Re: Request for information concerning budget discussions on the progress of Cases 003, 004 and 004/2 and their impact on the ECCC’s budget,” 13 March 2018 (*see* Attachment 2).

¹³² *Id.*

¹³³ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 36.

¹³⁴ Article 31 of the Cambodian Constitution provides that “[e]very Khmer citizen shall be equal before the law.” The right to equal treatment is also guaranteed under Articles 14(1) and 26 of the ICCPR. The right to equal treatment “is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.” Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. No. CCPR/C/GC/32, 23 August 2007 (“General Comment No. 32”), para. 2.

¹³⁵ *See id.*, para. 8: “The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.”

the law requires that objectively equal cases be treated equally.¹³⁶ Differential treatment must be “based on reasonable and objective criteria.”¹³⁷ Lack of funding is not a justification for unequal treatment. The Charged Persons’ and Accuseds’ fair trial rights cannot depend on extraneous elements. Yet, the ECCC’s budgetary situation and outlook going forward is such that MEAS Muth’s human rights depend on extraneous elements – the whims of the donors.

62. Closing Order: MEAS Muth is entitled to receive a thorough and dispassionate evaluation of the evidence.¹³⁸ He is also entitled to a reasoned Closing Order¹³⁹ and a timely translation of it¹⁴⁰ as part of his rights to appeal, have adequate time and facilities to prepare his defence,¹⁴¹ and be tried within a reasonable time.¹⁴² Whether he will enjoy

¹³⁶ *Id.*, para. 14: “Equality before courts and tribunals also requires that similar cases are dealt with in similar proceedings. If, for example, exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of categories of cases, objective and reasonable grounds must be provided to justify the distinction.”

¹³⁷ See *Rita Hiro Balani v. Spain*, Communication No. 1021/2001, UN Doc. No. CCPR/C/77/D/1021/2001 (1998), para. 4.3; *Waldman v. Canada* (Views adopted on 3 November 1999), in UN, Report of the Human Rights Committee (vol. II), UN Doc. No. A/55/40, para. 10.6.

¹³⁸ Case 004/1 Closing Order, para. 36.

¹³⁹ Rule 67(4): “The Closing Order shall state the reasons for the decision.” A reasoned opinion “set[s] out in a clear and articulate manner the factual and legal findings on the basis which it reached the decision.” *Prosecutor v. Nindiliyimana et al.*, ICTR-00-56-A, Judgement, 11 February 2014, para. 293 (internal citation omitted). At the ECCC, “All judicial decisions – whether oral or written – must comply with a court’s obligation to provide adequate reasons as a corollary of the accused’s fundamental fair trial rights. Indeed, the right to receive a reasoned decision forms part of the right to be heard.” *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC/SC(15), Decision on NUON Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35 Applications for Summary Action, 14 September 2012, E176/2/1/4, para. 25 (internal citation omitted). A reasoned Closing Order places the appellant “in a position to be able to determine whether to appeal and on what grounds. Equally, a respondent to any appeal has a right to know the reasons of a decision for so that a proper and pertinent response may be considered.” The appellate chamber must also have reasoned decisions to make its rulings on appeal. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC67), Decision on 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, 15 June 2010, D365/2/10, para. 24.

¹⁴⁰ The Charged Persons and Accused at the ECCC have the right to be informed promptly and in detail of the nature and cause of the charges against them in a language they can understand. In Case 002, the CIJs considered that “translation of the Co-Investigating Judges’ orders into the two working languages of the Defence is aimed at ensuring that the parties have adequate time to prepare their defence at trial.” *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ, Order on KHIEU Samphan’s Request for Extension of Time Limit, 3 February 2009, D335/1, para. 3.

¹⁴¹ The right to have adequate time and facilities to prepare a defence is enshrined in Article 13(1) of the ECCC Agreement, Article 33 new of the Establishment Law, and Article 14(3)(b) of the ICCPR. “[I]t is not possible to set a standard of what constitutes adequate time and facilities to prepare a defence. The length of the preparation period depends on a number of factors specific to each case, such as, for example, the complexity of the case, the number of counts and charges, the gravity of the crimes charged, the individual circumstances of the accused, the status and scale of the Prosecutor’s disclosure, and the staffing of the Defence team.” *Prosecutor v. Ngirabatware*, ICTR-99-54-A, Decision on Augustin Ngirabatware’s Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 28.

¹⁴² Article 33 new of the Establishment Law requires that proceedings are “fair and expeditious and conducted ... with full respect for the rights of the accused.” Rule 21(4) requires that “[p]roceedings before the ECCC ...

these rights depends on the OCIJ being adequately resourced and staffed.¹⁴³ The CIJs remarked that staff turnover had resulted in the loss of institutional memory, and with further staff cuts, staff were “under even greater pressure, affecting work quality and lengthening the time taken to complete the investigations, and hence all judicial proceedings.”¹⁴⁴

63. Pre-Trial Chamber: If MEAS Muth is indicted, he is entitled to appeal the Closing Order.¹⁴⁵ He is also entitled to robustly reply to the ICP’s response and respond to any appeal the ICP or the Civil Parties may lodge.¹⁴⁶ He is also entitled to a reasoned decision on appeal – a full consideration of all alleged errors of law and fact and abuses of discretion – within a reasonable time and translated in a language he can understand.¹⁴⁷ Whether he will enjoy these rights depends on the Pre-Trial Chamber being adequately resourced and staffed to review the briefs filed by the Parties and the evidence in the Case File.¹⁴⁸

64. Trial Chamber: At trial, MEAS Muth is entitled to make preliminary objections,¹⁴⁹ have adequate time and facilities to prepare his defence;¹⁵⁰ confront his accusers and present

be brought to a conclusion within a reasonable time.” *See also* Establishment Law, Art. 35 new (c); ECCC Agreement, Arts. 12(1), 13(1); Cambodian Constitution, Art. 31; ICCPR, Art. 14(3)(c). The right to be tried within a reasonable time “is not only designed to avoid keeping persons too long in uncertainty about their fate ... but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.... At all stages, whether in first instance or on appeal must take place ‘without undue delay.’” General Comment No. 32, para. 35.

¹⁴³ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 27: “Lack of adequate resources will impact on the drafting of the closing orders in all cases.”

¹⁴⁴ Request for Submissions on the Budgetary Situation of the ECCC, para. 42.

¹⁴⁵ Rule 74(3)(a) accords the Charged Person a right to appeal orders or decisions of the CIJs confirming the jurisdiction of the ECCC.

¹⁴⁶ Counsel appointed to represent indigent accused persons must be effective in their representation, which includes being put in a position to robustly respond to all assertions of law and fact advanced by the opposing parties. *See* General Comment No. 32, para. 38 (stating that Counsel appointed to represent indigent accused persons must be effective in their representation and that a violation of the right to legal assistance occurs “if the court or other relevant authorities hinder appointed lawyers from fulfilling their task effectively”). *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC67), Decision on 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, 15 June 2010, D365/2/10, para. 24 (recognizing that a respondent must know the reasons for a decision to prepare an effective response).

¹⁴⁷ Rule 77(14) requires the Pre-Trial Chamber to provide reasoned decisions. *See also supra* fn. 139.

¹⁴⁸ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 33.

¹⁴⁹ Rule 89(1) provides the Accused the right to raise preliminary objections concerning the Chamber’s jurisdiction, any issue which requires termination of the proceedings, and the nullity of any procedural acts made after the indictment is filed. Rule 89(3) requires the Chamber to issue a reasoned decision “either immediately or at the same time as the judgment on the merits.”

his case;¹⁵¹ object to evidence proposed by the Co-Prosecutors and Civil Parties;¹⁵² have his health monitored;¹⁵³ have documents translated in a timely manner;¹⁵⁴ have the proceedings interpreted;¹⁵⁵ make motions on the applicable law and procedure;¹⁵⁶ file interlocutory appeals of the Trial Chamber's decisions to the Supreme Court Chamber;¹⁵⁷ and be tried within a reasonable time.¹⁵⁸ Whether he will enjoy these rights depends on the Trial Chamber and its judicial support units – the Court Management Section, Interpretation and Translation Unit, Transcription Unit, Witness Support and Expert Unit,

¹⁵⁰ See Establishment Law, Art. 35 new (b); ECCC Agreement, Arts. 12(2), 13(2); ICCPR, Art. 14(3)(b). See also *Prosecutor v. Ngirabatware*, ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, 12 May 2009, para. 28. See also *supra* fn. 141.

¹⁵¹ Establishment Law, Art. 35 new (e); ECCC Agreement, Art. 13(1); ICCPR Art. 14(3)(e); Cambodian Constitution, Art. 31. See also Rule 84(1): "The Accused shall have the absolute right to summon witnesses against him or her whom the Accused had no opportunity to examine during the pre-trial stage." The right to confront or examine witnesses is a fundamental fair right and an "instrumental procedure for testing evidence and enabling the court to decide how much reliance can safely be placed upon it." Ian Dennis, *The Right to Confront Witnesses: Meanings, Myths and Human Rights*, 4 CRIM L. REV. 255, 259. See also *id.*, p. 266: "Cross-examination of adverse witnesses enables the defendant to participate fully in the presentation of the evidence to the fact-finder. The defendant's autonomy and dignity is acknowledged by allowing his voice to be heard to the maximum extent, irrespective of the effect of the cross-examination on the reliability of the evidence and the likely outcome of the case."

¹⁵² See Rule 87(3): "The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous." See also *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, 20 June 2012, E96/7, para. 27: "Where the OCIJ statements of individuals not called to give evidence at trial are ... proposed to be put before the Chamber absent the testimony of their authors, the Defence shall be accorded an equivalent right to pose relevant objections, if any, to this material."

¹⁵³ Rule 32: "The Co-Investigating Judges or the Chambers may, for the purpose of determining whether a Charged Person or Accused is physically and mentally fit to stand trial, or for any other reasons, or at the request of a party, order that they undergo a medical, psychiatric or psychological examination by an expert." See also Rules Governing the Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Courts of Cambodia, 17 December 2008, Rule 11(1): "The ECCC Medical Unit shall provide health care to detainees."

¹⁵⁴ The Charged Person or Accused must have translations of documents as part of his or her right to participate in his or her own defence. In order to effectively participate in the proceedings, the Accused must be able to understand the nature of the charges, understand the course of the proceedings, understand the details of the evidence, instruct Counsel and assist in his or her own defence, and understand the consequences of the proceedings. The exercise of this right is predicated on the provision of evidence and decisions in a language the Charged Person or Accused can understand. *Prosecutor v. Strugar*, IT-01-42-T, Decision Re the Defence Motion to Terminate the Proceedings, 26 May 2004, para. 36. See also *Lagerblom v. Sweden*, ECtHR App. No. 26891/95, Judgement, 14 April 2003, para. 49, establishing that Article 6 of the ECHR "guarantees the right of an accused person to participate effectively in a criminal trial." European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, 4 November 1950 ("ECHR"), Art. 6. At the ECCC, the party seeking the introduction of documents at trial bears the burden of ensuring their timely translation in all three official languages. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, 31 January 2012, E162, para. 8.

¹⁵⁵ See Establishment Law, Art. 35 new (f); Rule 30.

¹⁵⁶ Rule 92 allows the Accused to submit written motions until closing statements.

¹⁵⁷ Rule 104(4) provides the Accused the immediate right to appeal Trial Chamber decisions affecting the termination of proceedings, detention and bail, protective measures, and interference with the administration of justice.

¹⁵⁸ See *supra* fn. 142.

Detention Unit, Records and Archives Unit, and Audio-Visual Unit – being adequately resourced and staffed.¹⁵⁹

65. Supreme Court Chamber: MEAS Muth has the right to appeal any judgement convicting him and to robustly reply to the ICP’s response and any appeal he may lodge.¹⁶⁰ He is also entitled to adequate time and facilities to present his appeal and a thorough review of all his alleged errors of law and fact by the Supreme Court Chamber.¹⁶¹ Whether he will enjoy these rights depends on the Supreme Court Chamber being adequately resourced and staffed.¹⁶²

66. If funding is cut short and proceedings are ceased at any point after an indictment is issued, MEAS Muth’s fair trial rights, including the rights to be presumed innocent and confront his accusers, are violated.¹⁶³ There is no residual mechanism to dismiss an indictment once one is issued.¹⁶⁴ MEAS Muth would not have any opportunity to demonstrate his innocence. He would bear the permanent stigma of having been indicted – by a UN-backed tribunal – of the most serious crimes of concern to the international community as a whole, including genocide. This is precisely the unacceptable situation the CIJs set out to prevent.

H. Only a permanent stay of the Case 003 proceedings with full prejudice will guarantee MEAS Muth’s fair trial rights

67. The CIJs have understood the ECCC’s legacy to include both its positives and negatives.¹⁶⁵ They have attempted to distance themselves from a legacy that involves

¹⁵⁹ ECCC Completion Plan, Rev. 15, 31 December 2017, para. 41; ECCC 2018-2019 Budget, para. 59.

¹⁶⁰ Article 14(5) of the ICCPR guarantees that “[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law.” *See also* Rule 104(1); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC67), Decision on 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, 15 June 2010, D365/2/10, para. 24: “It is a fundamental right that parties know the reasons for a decision. This permits a party to know the basis of a decision, placing an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of a decision for so *[sic]* that a proper and pertinent response may be considered.”

¹⁶¹ *See supra* fn. 141 regarding the right to adequate time and facilities and fn. 139 regarding the right to a reasoned decision.

¹⁶² ECCC Completion Plan, Rev. 15, 31 December 2017, para. 48.

¹⁶³ Cambodian Constitution, Art. 38; Establishment Law, Art. 35 new; ECCC Agreement, Art. 13(1).

¹⁶⁴ Case 004/1 Closing Order, para. 12.

¹⁶⁵ Request for Submissions on the Budgetary Situation of the ECCC, para. 39.

weighing a person's fair trial rights against available assets,¹⁶⁶ by raising fair trial concerns and alerting those responsible for funding the Court. They have understood that it would be an abdication of their judicial duties to issue a Closing Order if there is a high probability that there will be insufficient funding for trials and appeals.¹⁶⁷ They understand that it is a violation of fundamental human rights to have an indictment hanging over MEAS Muth's head for some indefinite period until funds are secured for proceedings to start, with no guarantee that they will be conducted expeditiously, and to full completion – or worst yet, to just have an indictment hanging over him and his family in perpetuity.¹⁶⁸

68. The CIJs appreciate that this procedural defect cannot be cured once a Closing Order is issued. Once MEAS Muth is indicted, his fair trial rights depend on the whims of the UN and donor states – on inconsistent, unsure, and non-binding “commitments.” It is unfair, unjust, and unacceptable to complete the investigation and issue a Closing Order indicting MEAS Muth only to deny him his day in court and his internationally recognized human rights. He would have no available avenue to seek relief should an indictment be issued and the case fails to go forward.
69. To avoid irreparable harm to MEAS Muth's fair trial rights and manifest injustice, the CIJs, in meeting their duties under oath of office to guarantee the Charged Persons' fair trial rights, must permanently stay Case 003 with full prejudice.

¹⁶⁶ *Id.*: “Much has been said by different stakeholders about the ‘legacy’ which the ECCC is meant to leave for the Cambodian administration of justice and for society in the wider sense. We wish to stress that in our understanding any ‘legacy’ in that sense cannot be artificially constructed, disassociated from and independent of the actual facts. The legacy we leave is the legacy we leave, in all its aspects, positive and negative. One legacy we feel any court should do its utmost to avoid leaving for posterity is that expediency overrides due process.”

¹⁶⁷ *Id.*, para. 53.

¹⁶⁸ *Id.*, paras. 54-55.

III. LAW

A. Factors for assessing personal jurisdiction

70. The ECCC's personal jurisdiction is limited to "senior leaders of Democratic Kampuchea and those who were most responsible for the crimes that were committed" in Cambodia between 17 April 1975 to 6 January 1979.¹⁶⁹ The ICP alleges that MEAS Muth was both.¹⁷⁰ MEAS Muth was neither a "senior leader" nor one of those "most responsible." He does not fall within the ECCC's personal jurisdiction.¹⁷¹
71. The terms "senior leaders" and "most responsible" are not clearly defined in the ECCC's founding documents: the ECCC Agreement and the Establishment Law.¹⁷² While the term "senior leader" is more readily discernable, the term "most responsible" is more elusive. The available negotiations material sheds little light on who the Parties to the ECCC Agreement considered to be "senior leaders" or "most responsible."¹⁷³ Much of it is not available to the public.¹⁷⁴

¹⁶⁹ Establishment Law, Arts. 1, 2 new; ECCC Agreement, Art. 2(1): "The present Agreement recognizes that the Extraordinary Chambers have personal jurisdiction over senior leaders of Democratic Kampuchea and those who were most responsible for the crimes referred to in Article 1 of the Agreement."

¹⁷⁰ International Co-Prosecutor's Rule 66 Final Submission, 29 November 2017, D256/7 ("Final Submission"), paras. 1078-1108.

¹⁷¹ See *infra* Section IV: MEAS Muth was Neither a "Senior Leader" Nor One of Those "Most Responsible."

¹⁷² See Establishment Law, Arts. 1, 2 new; ECCC Agreement, Arts. 1, 2(1), 5(3), 6(3).

¹⁷³ See MEAS Muth's Request to Obtain and Place on the Case File the United Nations and Royal Government of Cambodia Archive Material Concerning the Negotiations to Establish the ECCC, 10 November 2015, D170 ("UN Archives Request"), paras. 31-34; Consolidated Decision on MEAS Muth's Requests on Personal Jurisdiction, 1 February 2016, D181 ("Consolidated Decision on Personal Jurisdiction Requests"), para. 33.

¹⁷⁴ See Notice of Unsuccessful Attempt to Obtain Strictly Confidential United Nations' Archive Materials, 3 May 2016, D181/1 ("Notice of Unsuccessful Attempt to Obtain Archive Material"), paras. 4-6. The Defence also wrote to Mr. Scheffer, who – as US Ambassador-at-Large for War Crimes Issues – was involved in the negotiations leading up to the ECCC's establishment, and Stephen Heder, a former OCP and OCIJ investigator/analyst, who has written about the ECCC's negotiation history, requesting them to provide relevant source material cited in their writings to gain an understanding of the context and substance of the negotiations. The ICIJ considered that the Defence's letters were investigative actions solely within the CIJs' purview and requested Mr. Scheffer and Mr. Heder to direct their responses to him. Mr. Scheffer informed the ICIJ that, "upon consultation with the Legal Adviser's Office of the U.S. Department of State and with the United Nations' Office for Legal Affairs, certain documents sought by the Defence could not be disclosed." In relation to other documents, Mr. Scheffer advised the ICIJ to contact the US Department of State. The US Department of State never responded to the ICIJ's request for the documents. Mr. Heder informed the ICIJ that the vast majority of the documents sought by the Defence were no longer in his possession. Written Record of Investigation Action, 10 January 2017, D224, EN 01375463-01375464; Letter to David Scheffer titled "Request for source material related to the personal jurisdiction of the Extraordinary Chambers in the Courts of Cambodia," 6 November 2015, D224.1; Letter to Stephen Heder titled "Request for source material related to the personal jurisdiction of the Extraordinary Chambers in the Courts of Cambodia," 6 November 2015, D224.2.

72. The Defence requested the CIJs to obtain the negotiations material and place it on the Case File.¹⁷⁵ The ICIJ “agree[d] with the Defence that to ascertain the intent of the drafters of the UN-RGC Agreement, consideration of the full history of the negotiations that led to its adoption, rather than selected documents, is advisable to the extent possible.”¹⁷⁶ He endeavored to obtain this material and make it available to the Parties in all cases under investigation by the OCIJ.¹⁷⁷ Despite his best efforts, he was unsuccessful.¹⁷⁸ Considering the material to be “sensitive,” the UN declined to accommodate the ICIJ’s request.¹⁷⁹
73. The CIJs had already determined that the terms “senior leaders” and “most responsible” cannot entail “an entirely free-wheeling selection policy approach by the OCP or OCIJ.”¹⁸⁰ They also determined that using the ICTY’s Referral Bench jurisprudence to determine whether someone is “most responsible,” as the ICP argues,¹⁸¹ is inappropriate because of the ECCC’s unique negotiated context.¹⁸² The CIJs set out several factors to be considered in assessing whether a Charged Person is among those “most responsible”:¹⁸³
- a. The intent of the Parties to the ECCC Agreement to restrict the ECCC’s personal jurisdiction to those with the greatest responsibility in the DK period;¹⁸⁴
 - b. The principles of *in dubio pro reo* and strict construction of criminal law;¹⁸⁵
 - c. The Charged Person’s formal role in the hierarchy and the degree to which he or she was able to determine CPK policies and/or their implementation;¹⁸⁶ and

¹⁷⁵ UN Archives Request. *See also supra* fn. 174.

¹⁷⁶ Consolidated Decision on Personal Jurisdiction Requests, para. 33.

¹⁷⁷ *Id.* *See also supra* fn. 174, concerning the ICIJ’s attempt to obtain from Mr. Scheffer and Mr. Heder the source material cited in their writings on the negotiations leading up to the ECCC’s establishment.

¹⁷⁸ Notice of Unsuccessful Attempt to Obtain Archive Material, para. 6.

¹⁷⁹ *Id.*, para. 5.

¹⁸⁰ Case 004/1 Closing Order, para. 9. *See also* Consolidated Decision on Personal Jurisdiction Requests, para. 30: “I cannot accept that ‘personal jurisdiction’ at the ECCC is a non-justiciable concept. In my view, the very fact that the CIJs’ discretion can be judicially reviewed when exercised ‘*in bad faith*’ or according to ‘*unsound professional judgement*’ renders the interpretation of the Terms in principle justiciable. The [Supreme Court Chamber’s] argument implicitly assumes that there is a standard against which such reviews for abuse can be carried out. This, in my view, renders the Terms genuine jurisdictional requirements, albeit subject to a wide margin of appreciation, as opposed to an unfettered policy guidance for the CIJs.” (italics in original).

¹⁸¹ Final Submission, paras. 1054-57.

¹⁸² Case 004/1 Closing Order, para. 18.

¹⁸³ *Id.*, paras. 3-41.

¹⁸⁴ *Id.*, paras. 18-19.

¹⁸⁵ *Id.*, paras. 26-36.

- d. The relative gravity of the Charged Person's acts and their effects, subject to the intent of the Parties to the ECCC Agreement to limit the ECCC's jurisdiction to those with the greatest responsibility in the DK period.¹⁸⁷

74. In claiming that MEAS Muth is one of those "most responsible," the ICP points to KAING Guek Eav ("Duch") and alleges that MEAS Muth has greater responsibility.¹⁸⁸ Duch is an anomaly. Although he did not hold a leading position in the Party, Duch was considered highly responsible for mass killings at S-21. He had already publicly confessed to the crimes at S-21, a site specifically focused on by the UN Secretary-General's Group of Experts.¹⁸⁹ He was detained in a military prison¹⁹⁰ and thus readily available for trial. The failure to indict him would have raised questions.¹⁹¹ The CIJs should ignore the ICP's comparison of MEAS Muth to Duch and analyze whether MEAS Muth falls under the ECCC's personal jurisdiction based on their factors.

1. The intent of the Parties to the ECCC Agreement

75. When the UN Secretary-General's Group of Experts made its recommendations for "bringing 'Khmer Rouge leaders' to justice," it concluded: "[P]rosecutions should [not] attempt to bring to justice all or even most people who committed violations of international or Cambodian law during the relevant period. Such a scenario is ... logistically and financially impossible for any sort of tribunal that respects the due process rights of defendants."¹⁹² The Parties to the ECCC Agreement – the UN and RGC – knew the massive death toll of the DK period and that there were a large number of

¹⁸⁶ *Id.*, para. 39.

¹⁸⁷ *Id.*, para. 38.

¹⁸⁸ Final Submission, para. 1096.

¹⁸⁹ See Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135, UN Doc. Nos. A/53/850 and S/1999/231, 18 February 1999 ("Group of Experts' Report"), Annex, para. 55, available at <http://undocs.org/A/53/850>: "As for the documentary record that clearly points to the role of specific individuals as immediate participants or as superiors, it appears quite extensive for some atrocities, most notably the operation of the interrogation centre at Tuol Sleng. For other atrocities, documentary evidence that directly implicates individuals, whether at the senior governmental level or the regional or local level, is currently not available and may never be found given the uneven nature of record-keeping in Democratic Kampuchea and the apparent loss of many documents since 1979."

¹⁹⁰ Case 001 Trial Judgement, Annex I, para. 1.

¹⁹¹ See Stephen Heder, *The Personal Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia as Regards Khmer Rouge "Senior Leaders" and Others "Most Responsible" for Khmer Rouge Crimes: A History and Recent Developments* 27 (12 April 2012), available at <http://www.cambodiatribunal.org/sites/default/files/A%20Review%20of%20the%20Negotiations%20Leading%20to%20the%20Establishment%20of%20the%20Personal%20Jurisdiction%20of%20the%20ECCC.pdf>.

¹⁹² See Group of Experts' Report, para. 106.

potential perpetrators.¹⁹³ “Signing the ECCC Agreement in the absence of a residual mechanism in the ordinary Cambodian courts was a conscious political choice” by the UN and RGC.¹⁹⁴ Concomitantly, “a massive impunity gap for crimes committed during the DK era ... must have no policy impact” on the CIJs’ personal jurisdiction analysis.¹⁹⁵ The ECCC’s limited personal jurisdiction reflects the Cambodian government’s “goal of peace and reconciliation, which entails reintegration of the Khmer Rouge into society,”¹⁹⁶ and the ECCC’s limited capacity and resources to conduct investigations and trials.

76. The ICP’s argument that the CIJs use the ICTY’s Referral Bench jurisprudence to assess the gravity of crimes alleged and the Charged Person’s level of responsibility¹⁹⁷ is inappropriate at the ECCC, as the CIJs have held.¹⁹⁸ The ICP’s suggested approach would lead to numerous investigations and an expansive caseload,¹⁹⁹ which “was clearly not something envisaged by the drafters of the law governing the ECCC, yet they were aware of the fact that this massive category of perpetrators existed and would not face justice.”²⁰⁰ Only a small set of individuals fall within the ECCC’s jurisdiction.²⁰¹

2. The principles of *in dubio pro reo* and strict construction of criminal law

77. All doubts in the assessment of facts and interpretation of law, including the ECCC’s jurisdictional provisions, must be resolved in favor of the Charged Person.²⁰² “The application of *in dubio pro reo* / strict construction is ... crucial in systems where the law is often not fully settled.”²⁰³ It is especially crucial where, in the eyes of the public and media, the Charged Person’s guilt “seems beyond debate *ab initio* and the judicial

¹⁹³ Case 004/1 Closing Order, para. 18 (internal citation omitted).

¹⁹⁴ *Id.*, para. 32.

¹⁹⁵ *Id.*, para. 25.

¹⁹⁶ *Id.*, para. 16 (internal citation omitted).

¹⁹⁷ Final Submission, paras. 1054-57.

¹⁹⁸ Case 004/1 Closing Order, para. 18.

¹⁹⁹ *Id.*, para. 19. *See also* Rule 53(1), requiring the Co-Prosecutors to open a judicial investigation if they have reason to believe that crimes within the ECCC’s jurisdiction have been committed.

²⁰⁰ Case 004/1 Closing Order, para. 19.

²⁰¹ *See also id.*, para. 31: “The ECCC is quite clearly a court which exercises selective justice in the objective sense of the word, because only a certain small group of people will ever be prosecuted in the courts of Cambodia for the atrocities which occurred during the DK, namely those which fall under its own jurisdiction.”

²⁰² *Id.*, paras. 26-27.

²⁰³ *Id.*, para. 27.

proceedings are not infrequently expected simply to attach the seal of official approval and confirmation to the pre-existing general view of history.”²⁰⁴

3. The Charged Person’s formal role in the hierarchy and the degree to which he or she was able to determine CPK policies and/or their implementation

78. In assessing a Charged Person’s formal role in the hierarchy, an important consideration is the degree to which he or she was able to contribute to or determine CPK policies and/or their implementation.²⁰⁵ That a Charged Person may have had access to persons who could have qualified as senior leaders is not determinative as to whether he or she is a senior leader.²⁰⁶ That the Charged Person may have had a higher position at a certain point in time is also not determinative of the evaluation of his or her position at the time of the crimes for which he is being investigated.²⁰⁷ Similarly, “[w]hether someone developed or had to develop their own initiative ... is not in and of itself a criterion that would elevate them into the category of those most responsible.”²⁰⁸

4. The relative gravity of the Charged Person’s acts and their effects, subject to the intent of the Parties to the ECCC Agreement to limit the Court’s jurisdiction to those with the greatest responsibility in DK

79. While the relative gravity of a Charged Person’s acts and their effects are a valid point of reference, this assessment is subject to the understanding that the Parties to the ECCC Agreement “wanted to restrict personal jurisdiction to those with the greatest responsibility under the DK.”²⁰⁹ The nature and number of the ICP’s allegations in the IS and SS and the extent to which they are borne out by the evidence must be viewed against the backdrop of the entirety of the suffering caused by CPK policies.²¹⁰ This “inevitably include[s] looking at the total number of deaths from execution, intentional or reckless starvation of forced labourers and prisoners, and insufficient public health services in

²⁰⁴ *Id.*, para. 28.

²⁰⁵ *Id.*, paras. 39-40.

²⁰⁶ *Id.*, para. 315.

²⁰⁷ Case 004/1 Closing Order, para. 316.

²⁰⁸ *Id.*, para. 40.

²⁰⁹ *Id.*, para. 18.

²¹⁰ *Id.*, para. 317.

general during the period of the DK, the number of displaced persons, and those who were forced to do hard labour, etc.”²¹¹

80. The number of victims must be viewed in the context of the entirety of the evidence in the Case File and in light of the Charged Person’s individual position, development, and actions.²¹² Multiple legal characterizations of the same facts allowing for multiple charges and convictions do not significantly enhance the gravity of the alleged crimes.²¹³ Nor does a reputation for cruelty equate to enhanced responsibility.²¹⁴

5. Conclusion

81. In assessing whether MEAS Muth falls under the ECCC’s jurisdiction, the CIJs must consider the intent of the Parties to the ECCC Agreement, principles of *in dubio pro reo* and strict construction of criminal law, his formal role in the hierarchy and discretionary authority to determine CPK policies and/or their implementation, and the relative gravity of his acts and effects – subject to the intent of the Parties to the ECCC Agreement to limit the ECCC’s jurisdiction to those with the greatest responsibility for the suffering caused by CPK policies throughout Cambodia.

B. The standard of proof for an indictment

82. Under ECCC Internal Rule (“Rule”) 67(3)(c), the CIJs shall issue a Dismissal Order if “[t]here is not sufficient evidence against the Charged Person or persons of the charges.” The standard of proof in determining whether there is sufficient evidence against the Charged Person is unclear. Cambodian and French law do not assist in determining the standard of proof.²¹⁵ In Cases 001, 002, and 004/1, the CIJs applied different standards in determining whether or not to indict Charged Persons.²¹⁶

²¹¹ *Id.*

²¹² *Id.*, para. 318.

²¹³ Case 004/1 Closing Order, para. 323.

²¹⁴ *Id.*, para. 324.

²¹⁵ In Case 002, the CIJs noted a lacuna in the Internal Rules and Cambodian law as to the standard of proof for “sufficient charges.” Looking to other sources, including French jurisprudence, they stated: “The French Code of Criminal Procedure ... offers no further definition. This is also the case for French jurisprudence.” *See Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ, Closing Order, 15 September 2010, D427 (“Case 002 Closing Order”), paras. 1321-22. In France, investigating judges have unfettered discretion to indict a Charged Person and the standard for “sufficient charges” is discretionary. *Répertoire de droit pénal et de procédure pénale* (Dalloz), Christian Guéry, *Instruction préparatoire* (June 2013), para. 799: “Le juge d’instruction ... décide en toute indépendance sur le règlement de l’information.” (Unofficial translation: “The investigating

83. In Case 001, the CIJs found that there was “sufficient evidence” to indict Duch and send him to trial, without articulating any standard of proof.²¹⁷ In Case 002, the CIJs applied a “probability standard,”²¹⁸ but it is unclear how the CIJs identified this standard based on the cited French jurists and international jurisprudence.²¹⁹ In the French system, the decision to indict a Charged Person is discretionary.²²⁰ The international jurisprudence cited by the Case 002 CIJs shows no common approach, contrary to their conclusion.²²¹ In Case 004/1, the CIJs adopted the probability standard without elaboration.²²²
84. The standard of proof the CIJs should apply is *whether a reasonable Trial Chamber could convict the Charged Person beyond a reasonable doubt based on the evidence in the Case File*. For the reasons explained below, this standard is justified because of the extraordinary nature of the crimes, the high burden to charge a suspect at the ECCC, the considerable length of the investigation, and the CIJs’ ample opportunity to assess the evidence in the Case File by the time they draft the Closing Order.
85. The ICP suggests that the CIJs apply the indictment confirmation standards of the ICC, ICTY, and ICTR.²²³ The standards of proof the ICP cites ignore the differences between the ECCC’s Closing Order process and the indictment confirmation processes of these tribunals. Given the unique procedural and contextual features of the ECCC, the CIJs should not adopt these standards nor the confirmation standards of other international(ized) criminal tribunals and courts.

judge decides independently on the outcome of the proceedings”). See also J.-A ROGRON, CODE D’INSTRUCTION CRIMINELLE ET CODE PENAL EXPLIQUES (Videocoq fils ainé 4th ed. 1849), citing Cass. Crim., 25 September 1824, Bull. crim., n. 126. See also *infra* fn. 219.

²¹⁶ See *infra* para. 83.

²¹⁷ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC-OCIJ, Closing Order Indicting KAING Guek Eav alias Duch, 8 August 2008, D99, para. 130.

²¹⁸ Case 002 Closing Order, para. 1323.

²¹⁹ In Case 002, the CIJs relied on two French jurists, Pierre Chambon and Christian Guéry, and indictment confirmation standards from the ICTY, ICTR, and ICC in concluding that the standard of proof for an indictment at the ECCC is a balance of probabilities. See Case 002 Closing Order, paras. 1320-26. In the French system, the decision to indict a Charged person is discretionary. See *supra* fn. 215 and *infra* fn. 220. The investigating judge can freely decide on the outcome, based on his or her *intime conviction*. It is unclear as to how Pierre Chambon and Christian Guéry deduced a probability standard in practice. See *infra* paras. 95-106, discussing the confirmation standards of the various international(ized) criminal courts and tribunals.

²²⁰ Répertoire de droit pénal et de procédure pénale (Daloz), Christian Guéry, Instruction préparatoire (June 2013), para. 799. See also J.-A ROGRON, CODE D’INSTRUCTION CRIMINELLE ET CODE PENAL EXPLIQUES (Videocoq fils ainé 4th ed. 1849), citing Cass. Crim., 25 September 1824, Bull. crim., n. 126.

²²¹ Case 002 Closing Order, para. 1326. See *infra* paras. 95-106, discussing the confirmation standards of the various international(ized) criminal courts and tribunals.

²²² See Case 004/1 Closing Order, para. 2.

²²³ Final Submission, paras. 1048-50.

1. The applicable standard of proof should be whether a reasonable Trial Chamber could convict the Charged Person beyond a reasonable doubt based on the evidence in the Case File

86. The extraordinary nature of crimes prosecuted at the ECCC mandates a higher standard of proof to indict a Charged Person than would be required in a normal Cambodian court or French court.²²⁴ The Pre-Trial Chamber has recognized that “the focus of the ECCC differs substantially enough from the normal operation of Cambodian criminal courts to warrant a specialized system.”²²⁵ The ICP too has recognized the “necessity, long-accepted at the ECCC to depart from domestic practice due to the extraordinary nature of the crimes investigated and prosecuted at the Court ... in order to achieve a fair and expeditious judicial process.”²²⁶ The scale, magnitude, and seriousness of the charges alleged against MEAS Muth (and the stigma associated with them) are unmatched by charges in any domestic proceedings.

87. The CIJs must apply a higher standard of proof than the “clear and consistent evidence” standard used to charge suspects.²²⁷ Although the CIJs have never defined the “clear and consistent evidence” standard,²²⁸ it is clear that it is higher than the confirmation standards of the other international(ized) criminal tribunals and courts,²²⁹ considering the amount of time between the initiation of the investigation and the Suspects’ Written

²²⁴ In France, the investigating judge has unfettered discretion to indict a Charged Person. *See* Case 002 Closing Order, para. 1322, citing PIERRE CHAMBON AND CHRISTIAN GUÉRY, *DROIT ET PRATIQUE DE L’INSTRUCTION PRÉPARATOIRE* (Daloz 6th ed. 2007), para. 213.12: “Le juge d’instruction et la chambre de l’instruction apprécient l’existence et la gravité des charges en toute souveraineté” (translation by the Case 002 CIJs: “The Investigating Judge and the Examining Chamber have unfettered discretion to assess the existence and seriousness of the charges”). The Case 002 CIJs noted that “there is no jurisprudence available from the Cambodian national courts concerning the question of sufficient charges.” Case 002 Closing Order, para. 1321.

²²⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC06), Decision on NUON Chea’s Appeal Against Order Refusing Request for Annulment, 26 August 2008, D55/I/8, para. 14.

²²⁶ International Co-Prosecutor’s Response to the International Co-Investigating Judge’s Request for Comments Regarding Alleged Facts Not to Be Investigated Further, 29 April 2016, D184/2, fn. 21.

²²⁷ Written Record of Initial Appearance of MEAS Muth, 14 December 2015, D174 (“Written Record of Initial Appearance of MEAS Muth”), EN 01187675. Rule 55(4) gives the CIJs the power to charge Suspects named in the IS or other persons when there is “clear and consistent evidence” indicating that the Suspect or other person may be criminally responsible for crimes referred to in the IS or a SS.

²²⁸ The standard of “clear and consistent evidence” is not defined in any of the publicly available Written Records of Initial Appearance. *See Case of KAING Guek Eav*, 001/18-07-2007, Written Record of Initial Appearance of KAING Guek Eav, 31 July 2007, E3/915; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Written Record of Initial Appearance of IENG Sary, 12 November 2007, E3/92; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Written Record of Initial Appearance of NUON Chea, 19 September 2007, E3/54. *See also* Written Record of Initial Appearance of MEAS Muth.

²²⁹ *See infra* paras. 95-106, discussing the confirmation standards of the various international(ized) criminal courts and tribunals.

Record of Initial Appearance and notification of charges.²³⁰ Before deciding to charge the Suspect, the CIJs screen the evidence in the Case File and determine the facts and charges on which to focus the investigation.²³¹

88. The probability standard (also known as the preponderance of the evidence standard) means “more than a mere possibility”;²³² i.e. a mere 51% chance that the Charged Person is responsible for the crimes alleged in the IS and SS. This standard of proof is inappropriate for a Closing Order because of the extraordinary nature of the crimes prosecuted at the ECCC, the considerable length of time in between the Charged Person’s initial appearance and the conclusion of the investigation,²³³ the CIJs’ lengthy and thorough investigation, and their ample opportunity throughout the investigation to assess the evidence in the Case File.
89. The OCIJ’s lengthy and thorough investigation – spanning nearly nine years – has given the CIJs ample time to assess the evidence in the Case File, warranting the application of a high standard of proof. The OCIJ has had access to the entire Case File since 7 September 2009, when the acting ICP forwarded the IS and Case File to the OCIJ, and requested it to open a judicial investigation.²³⁴ According to the ICP, the Case File at that time “included both inculpatory and exculpatory evidence and was comprised of more than 500 documents, including witness statements, DK reports, and telegrams.”²³⁵ Since then, the OCIJ has conducted several site visits²³⁶ and 352 interviews with witnesses and

²³⁰ In Case 003, the CIJs opened an investigation in September 2009 and MEAS Muth was formally charged *in absentia* in March 2015 by former ICIJ Mark Harmon. *See* Notification of Charges Against MEAS Muth, 3 March 2015, D128.1. ICIJ Bohlander formally charged MEAS Muth in December 2015. *See* Written Record of Initial Appearance of MEAS Muth.

²³¹ *See infra* para. 90. *See also* Written Record of Initial Appearance of MEAS Muth, EN 01187676, 01187682.

²³² Case 002 Closing Order, para. 1323: “While it is obviously not required at this stage to ascertain the guilt of the Charged Person (given that only the Trial Chamber has such jurisdiction), it is clear that ‘probability’ of guilt is necessary (i.e. more than a mere possibility).” (internal citations omitted). *See also* BLACK’S LAW DICTIONARY 1301 (9th ed. 2009), defining “preponderance of the evidence” as: “The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is sufficient to incline a fair and impartial mind to one side of the issue rather than the other.... Also termed *preponderance of proof*; *balance of probability*.” (italics in original).

²³³ MEAS Muth was charged by the ICIJ on 14 December 2015. The ICIJ issued a second notice of conclusion of the investigation on 24 May 2017 and forwarded the Case File to the Co-Prosecutors on 25 July 2017 to draft their Final Submissions. *Written Record of Initial Appearance of MEAS Muth*; *Second Notice of Conclusion of Judicial Investigation Against MEAS Muth*, 24 May 2017, D252; *Forwarding Order Pursuant to Internal Rule 66(4)*, 25 July 2017, D256.

²³⁴ Final Submission, para. 9.

²³⁵ *Id.*

²³⁶ *See e.g.* Site Identification Report, 29 December 2010, D2/22; Site Identification Report, 15 December 2014, D114/30; Site Identification Report, 23 July 2015, D114/99.

Civil Parties.²³⁷ The OCIJ has also acted as a filter, determining which material would come in to or stay out of the Case File in deciding on the parties' requests for investigative action.²³⁸

90. Throughout the investigations, the CIJs have had ample opportunity to assess the reliability and probative value of the evidence in the Case File – the credibility of the witnesses interviewed by the OCIJ and the reliability and authenticity of documents it has collected, including materials gathered by the OCP, the RGC, and outside organizations.²³⁹ Indeed, ICIJ Bohlander pre-screened the evidence in the Case File when he decided to charge MEAS Muth with the additional crime of Genocide and to rescind some of the charges laid *in absentia* against him by former ICIJ Harmon.²⁴⁰
91. The CIJs should apply a standard of proof akin to that used in ICTY Rule 98*bis* proceedings. Before 2004, ICTY Rule 98*bis* mirrored Rule 67(3)(c), stating that, after the close of the Prosecutor's case, "[t]he Trial Chamber shall order the entry of judgement of acquittal ... if it finds that *the evidence is insufficient* to sustain a conviction on that or those charges."²⁴¹
92. The procedural setting of Rule 98*bis* proceedings resembles the Closing Order stage. Investigations by the parties are complete, the Prosecutor presents the Trial Chamber with all its evidence, and the Prosecutor's evidence is tested through cross-examination by the Defence. The Trial Chamber, much like the CIJs at the Closing Order stage, is in a position to assess all the Prosecution evidence to determine whether it is insufficient to sustain any or all of the charges.

²³⁷ A search in Zylab reveals that the OCIJ conducted 352 interviews with witnesses and Civil Parties during the investigation.

²³⁸ Under Rule 55(5), the CIJs may take any investigative action conducive to ascertaining the truth, including summoning and questioning Suspects and Charged Persons, interviewing victims and witnesses and recording their statements, seizing exhibits, seeking expert opinions, and conducting on-site investigations. They may also annul investigative or judicial action for procedural defect where the Suspect's or Charged Person's rights have been infringed. *See* Rule 48.

²³⁹ *See Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, 31 January 2012, E162, para. 3: "Internal Rule 67(3) requires the Co-Investigating Judges to review and evaluate documents to determine whether as a whole there is sufficient evidence to support the charges against the Accused. It follows that during the judicial investigation, the Co-Investigating Judges assessed all documents placed on the case file for relevance, and accorded some probative value to the evidence cited in the Closing Order."

²⁴⁰ Written Record of Initial Appearance of MEAS Muth, EN 01187676, 01187682.

²⁴¹ ICTY Rules of Procedure and Evidence, IT/32/Rev.32, 12 August 2004, Rule 98*bis* (A)-(B) (emphasis added).

93. The standard of proof under ICTY Rule 98*bis* (the test for determining whether the evidence is *insufficient* to sustain a conviction) was interpreted as “not whether the trier of fact would in fact arrive at a conviction beyond reasonable doubt on the prosecution evidence ... but whether it *could*.”²⁴² In considering whether to enter a judgement of acquittal under Rule 98*bis*, the ICTY Trial Chamber would assess the Prosecutor’s evidence as well as evidence adduced by the Defence through confrontation of the Prosecutor’s witnesses and documents proposed by the Defence and admitted by the Trial Chamber during the Prosecutor’s case.²⁴³ Although ICTY Rule 98*bis* was amended in 2004 with a slight change in wording,²⁴⁴ the standard of proof remained unchanged.²⁴⁵
94. The financial outlook of the ECCC and the high probability that, if sent to trial, Case 003 will never come to completion, also militates towards the application of the highest standard of proof short of proof beyond a reasonable doubt. To indict MEAS Muth based on a 51% probability standard under such uncertainty – with the stigma attached to the crimes charged against him and lack of a residual mechanism to challenge those charges – would lead to an egregious violation of his fair trial rights (*see supra* Section II).

2. The indictment confirmation standards cited by the ICP and those of other international(ized) criminal courts and tribunals are inappropriate for a Closing Order at the ECCC

95. The ICP suggests that the CIJs use inappropriate standards from the ICC, ICTY, and ICTR²⁴⁶ that ignore the differences between the ECCC Closing Order process and the indictment confirmation processes of those tribunals. The indictment confirmation standards of other international(ized) criminal tribunals and courts such as the SCSL, STL, and KSC are also inappropriate for a Closing Order at the ECCC for similar reasons.

²⁴² *Prosecutor v. Jelisić*, IT-95-10-A, Judgement, 5 July 2001, para. 37 (emphasis added).

²⁴³ *See Prosecutor v. Orić*, IT-03-68, Transcript, 8 June 2005, p. 8984.

²⁴⁴ ICTY Rules of Procedure and Evidence, IT/32/Rev.33, 17 December 2004, Rule 98*bis*: “At the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.”

²⁴⁵ *See Prosecutor v. Orić*, IT-03-68, Transcript, 8 June 2005, p. 8983: “[T]he last amendment to Rule 98 *bis* does not in any way change the standard of review ... which therefore remains that set out ... in the Jelisić appeals judgement.” However, some ICTY Chambers had erroneously considered that the amended Rule 98*bis* altered the standard of proof, requiring the Trial Chamber only to consider Prosecution evidence and not evidence adduced by the Defence. *See e.g., Prosecutor v. Prlić et al.*, IT-04-74-T, Transcript, 20 February 2008, p. 27206.

²⁴⁶ Final Submission, paras. 1048-50.

a. The ICC's confirmation standard is higher than the probability standard, but inappropriate for a Closing Order at the ECCC

96. At the confirmation stage, the ICC Pre-Trial Chamber must determine “whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged.”²⁴⁷ The requisite standard of proof at the confirmation stage is “concrete and tangible proof demonstrating a clear line of reasoning underpinning its specific allegation.”²⁴⁸
97. Unlike the OCIJ at the Closing Order stage, the ICC Pre-Trial Chamber does not have access to the entirety of the evidence at the confirmation of charges stage. The Rome Statute does not require the Prosecutor’s investigations to be completed before the confirmation hearing.²⁴⁹ The ICC Pre-Trial Chamber may adjourn the confirmation hearing and request the Prosecutor to conduct further investigations.²⁵⁰ Even if the Pre-Trial Chamber declines to confirm all or some of the charges, the Prosecutor is not precluded from subsequently requesting confirmation with additional evidence.²⁵¹ The ICC Appeals Chamber considered that barring investigations after the confirmation hearing could “deprive the Court of significant and relevant evidence, including potentially exonerating evidence – particularly in situations where the ongoing nature of the conflict results in more compelling evidence becoming available for the first time after the confirmation hearing.”²⁵²
98. The Defence at the ICC are restricted in their ability to assess the Prosecutor’s evidence and simultaneously conduct investigations during the limited time allotted for the confirmation period. The period between the Accused’s initial appearance – the point at which the Accused becomes entitled to legal assistance²⁵³ – and the confirmation hearing

²⁴⁷ Rome Statute of the International Criminal Court, entered into force on 1 July 2002 (“Rome Statute”), Art. 61(7).

²⁴⁸ *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Decision on the confirmation of charges, 29 January 2007, para. 39.

²⁴⁹ *Prosecutor v. Lubanga*, ICC-01/04-01/06-568, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence,” 13 October 2006, para. 54.

²⁵⁰ Rome Statute, Art. 61(7)(c)(i).

²⁵¹ *Id.*, Art. 61(8).

²⁵² *Prosecutor v. Lubanga*, ICC-01/04-01/06-568, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence,” 13 October 2006, para. 54.

²⁵³ ICC Rules of Procedure and Evidence, Rule 121(1).

typically lasts less than one year.²⁵⁴ The Prosecutor only needs to disclose a detailed description of the charges and a list of evidence upon which she intends to rely at the confirmation hearing 30 days before the hearing.²⁵⁵ The Defence is required to disclose its list of evidence 15 days prior to the start of the confirmation hearing.²⁵⁶

99. At the confirmation hearing, the Prosecutor “need not submit more evidence than is necessary to meet the threshold of substantial grounds to believe”²⁵⁷ and may rely on anonymous witness interviews.²⁵⁸ “[T]he Prosecutor can reserve the use of a so called ‘smoking gun’ for the trial phase if she does not need it for the ‘sufficient evidence’ threshold....”²⁵⁹ This was the intent of the drafters of the Rome Statute, who believed that giving the Pre-Trial Chamber access to the Prosecutor’s entire Case File “would entail unnecessary delays ‘if the evidence collected in the case was excessive.’”²⁶⁰

b. The ICTY’s and ICTR’s confirmation standards are lower than the probability standard and inappropriate for a Closing Order at the ECCC

100. At the ICTY and ICTR, indictment confirmation proceedings are conducted *ex parte*.²⁶¹ The Defence may only challenge the indictment once it has been confirmed by a Reviewing Judge.²⁶² According to former ICTY Prosecutors Michael Keegan and Daryl

²⁵⁴ In *Mbarushimana*, the Accused made his initial appearance on 28 January 2011, confirmation hearings were held from 16 to 21 September 2011, final written submissions by all parties were received by 21 October 2011, and a written decision on the confirmation of charges was rendered on 16 December 2011. *Prosecutor v. Mbarushimana*, ICC-01/04-01/10-465-Red, Decision on the confirmation of charges, 16 December 2011, paras. 16, 32. In *Abu Garda*, the Accused’s initial appearance was held on 18 May 2009 and the confirmation proceedings began on 19 October 2009. *Prosecutor v. Abu Garda*, ICC-02/05-243-Red, Decision on the Confirmation of Charges, 8 February 2010, paras. 5-13.

²⁵⁵ ICC Rules of Procedure and Evidence (2016), Rule 121(3).

²⁵⁶ *Id.*, Rule 121(6).

²⁵⁷ *Prosecutor v. Mbarushimana*, ICC-01/04-01/10-514, Judgment on appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges,” 30 May 2012, para. 47.

²⁵⁸ Rome Statute, Art. 61(5).

²⁵⁹ Kai Ambos and Dennis Miller, *Structure and Function of the Confirmation Procedure before the ICC from a Comparative Perspective*, 7 INT’L CRIM. L. REV. 335, 343-44 (2007).

²⁶⁰ *Prosecutor v. Gbagbo*, ICC-02/11-01/11-432-Anx-Corr, Decision adjourning the confirmation of charges, Dissenting Opinion of Judge Silvia Fernández de Gurmundi, 6 June 2013, para. 20, quoting Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol. I (1996), para. 232.

²⁶¹ See e.g., *Prosecutor v. Milošević*, IT-02-54, Decision on Review of Indictment, 22 November 2001. See also ARCHBOLD INTERNATIONAL CRIMINAL COURTS, PRACTICE, PROCEDURE & EVIDENCE 199 (Khan and Dixon, eds. 2009)

²⁶² ICTY Rules of Procedure and Evidence, IT/32/Rev.50, 8 July 2015 (“ICTY Rules of Procedure and Evidence”), Rule 72(A)(ii). See also *Prosecutor v. Krnojelac*, IT-97-25, Decision on the Defence Preliminary

Mundis, this confirmation procedure was due to the fact that when the ICTY and ICTR began their operations, Prosecutors had to draft indictments during ongoing hostilities, while suspects were at large.²⁶³ Consequently, the standard of proof to confirm the indictment was low; the Reviewing Judges of the ICTY and ICTR only had to be “satisfied that a *prima facie* case ha[d] been established by the Prosecutor.”²⁶⁴ In determining whether the Prosecutor had established a *prima facie* case, the Reviewing Judge was not concerned with the sufficiency of the Prosecutor’s evidence, but whether the facts as pleaded by the Prosecutor in the indictment formed a credible case against the Accused.²⁶⁵ “[A] *prima facie* case [is] ... a credible case which, if accepted and uncontradicted, would be a sufficient basis on which to convict the accused. It is for a Trial Chamber to determine whether to accept the facts pleaded in the indictment: this is not the task for the [R]eviewing Judge.”²⁶⁶

c. The SCSL’s confirmation standard is lower than the probability standard and inappropriate for a Closing Order at the ECCC

101. The SCSL applied similar Rules of Procedure and Evidence as the ICTY and ICTR²⁶⁷ and used a standard of proof akin to the ICTY’s and ICTR’s *prima facie* case standard.²⁶⁸ For an indictment to be approved at the SCSL, the Designated Judge had to be satisfied

Motion on the Form of the Indictment, 24 February 1999; ARCHBOLD INTERNATIONAL CRIMINAL COURTS, PRACTICE, PROCEDURE & EVIDENCE 199 (Khan and Dixon, eds. 2009).

²⁶³ See Michael J. Keegan and Daryl A. Mundis, *Legal Requirements for Indictments*, in ESSAYS ON ICTY PROCEDURE AND EVIDENCE IN HONOUR OF GABRIELLE KIRK McDONALD 124 (Richard May et al., eds. 2001): “It is also significant that the conflict from which its mandate arose was still ongoing at the time the ICTY began its operations. Thus, the Office of the Prosecutor (“OTP”) began drafting indictments during the conduct of ongoing hostilities and investigations.”

²⁶⁴ Statute of the International Criminal Tribunal for the Former Yugoslavia, as amended by Security Council Resolution 1877 on 7 July 1999, Art. 19. Statute of the International Criminal Tribunal for Rwanda, as amended by Security Council Resolution 1901 on 16 December 2009, Art. 18. *Prosecutor v. Milošević*, IT-02-54, Decision on Review of Indictment, 22 November 2001, para. 2. *Prosecutor v. Serushago*, ICTR-98-39-1, Decision on Review of the Indictment, 29 September 1998.

²⁶⁵ *Prosecutor v. Milošević*, IT-02-54, Decision on Review of Indictment, 22 November 2001, para. 14. *Prosecutor v. Krnojelac*, IT-97-25, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999, para. 7. “A pleading is not defective because its style is clumsy provided that, when taken as a whole, the indictment makes clear to each accused (a) the nature of the responsibility (or responsibilities) alleged against him and (b) the material facts – but not the evidence – by which his particular responsibility (or responsibilities) will be established.”

²⁶⁶ *Prosecutor v. Milošević*, IT-02-54, Decision on Review of Indictment, 22 November 2001, para. 14.

²⁶⁷ Statute of the Special Court for Sierra Leone, 16 January 2002, Art. 14.

²⁶⁸ Tom Perriello and Marieke Wierda have argued that there is no requirement for a *prima facie* case at the SCSL such that a “reduced level of judicial review” exists at the confirmation stage. Tom Perriello and Marieke Wierda, *The Special Court for Sierra Leone under Scrutiny*, International Centre for Transitional Justice Prosecutions Case Study Series, 5 March 2006, p. 12, www.ictj.org/static/Prosecutions/Sierra.study.pdf. See also Cecily Rose, *Troubled Indictments at the Special Court of Sierra Leone: The Pleading of Joint Criminal Enterprise and Sex-based Crimes*, 7 J. INT’L. CRIM. JUST. 353, 358 (2009).

that the crimes charged were within the Court’s jurisdiction and that “the allegations in the case summary would, if proven, amount to the crime or crimes as particularized in the indictment.”²⁶⁹ In practice, the Designated Judge confirmed indictments where “there [was] sufficient evidence to provide reasonable grounds for believing that the suspect ... committed crimes within the jurisdiction of the Court and that the allegations would, if proven, amount to the crimes specified and particularised in the said Indictment.”²⁷⁰

102. Like the ICTY and ICTR, the Defence did not participate in the indictment review process and preliminary motions challenging the indictment could only be made after the indictment was approved.²⁷¹ As the investigation was able to continue after the indictment had been approved,²⁷² indictments were confirmed without the Designated Judge having access to all the material the Prosecutor could rely on at trial.

d. The STL’s confirmation standard is lower than the probability standard and inappropriate for a Closing Order at the ECCC

103. The STL applies the same standard of proof as the ICTY, ICTR, and SCSL: the Pre-Trial Judge must be satisfied that the case is within the Court’s jurisdiction and that a “prima facie case exists against the suspect.”²⁷³ The Pre-Trial Judge has held this to mean “whether the evidence submitted by the Prosecutor in support of the counts is sufficient to prosecute [the] suspect.”²⁷⁴

104. The Pre-Trial Judge’s assessment at the indictment confirmation stage is done without considering all the evidence adduced by the Prosecution and the Defence.²⁷⁵ According to

²⁶⁹ SCSL Rules of Procedure and Evidence, as amended 31 May 2012 (“SCSL Rules of Procedure and Evidence”), Rule 47(E).

²⁷⁰ See e.g., *Prosecutor v. Taylor*, SCSL-2003-06-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003, p. 2; *Prosecutor v. Norman*, SCSL-2003-08-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003, p. 2.

²⁷¹ SCSL Rules of Procedure and Evidence, Rule 72(A), (B)(ii).

²⁷² At the SCSL, the Prosecution conducted 11 interviews with an Accused, Issa Sesay, after the indictment was approved. The interviews were ultimately ruled inadmissible on the basis of involuntariness. *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Written Reasons – Decision on the Admissibility of Certain Prior Statements of the Accused Given to the Prosecution, 30 June 2008, p. 2.

²⁷³ STL Rules of Procedure and Evidence, STL-BD-2009-01-Rev.9, amended and corrected on 3 April 2017 (“STL Rules of Procedure and Evidence”), Rule 68(F).

²⁷⁴ *Prosecutor v. Ayyash et al.*, STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, 28 June 2011, para. 23.

²⁷⁵ STL Rules of Procedure and Evidence, Rule 88(D) requires the Prosecutor, “when he deems it timely,” to provide the Pre-Trial Judge with “any item that the Prosecutor considers necessary for the exercise of the functions of the Pre-Trial Judge.” Rule 68 (B) states that the Prosecutor shall file an indictment with “supporting

former STL Prosecutor, Daniel Bellemare, investigations at the STL remain ongoing, including throughout the trial.²⁷⁶ The Defence at the STL also does not participate in proceedings prior to the confirmation of an indictment.²⁷⁷

e. The KSC's confirmation standard is lower than the probability standard and inappropriate for a Closing Order at the ECCC

105. The standard of proof to confirm an indictment at the KSC is whether the supporting material supports a “well-grounded suspicion” against the Charged Person.²⁷⁸ This terminology was taken from the Kosovo Criminal Procedure Code, which defines a “well-grounded suspicion” as “[p]ossession of admissible evidence that would satisfy an objective observer that a criminal offence has occurred and the defendant has committed the offence.”²⁷⁹ As no indictments have been filed at the KSC at this stage, it is unclear what level of evidence is required to satisfy the “well-grounded suspicion” standard.
106. Unlike the Closing Order process at the ECCC, the Defence does not participate in the confirmation process at the KSC.²⁸⁰ While the KSC Rules of Procedure and Evidence require the Special Prosecutor to file indictments with supporting evidentiary material and “a detailed outline demonstrating the relevance of each item of evidentiary material to each allegation, with particular reference to the conduct of the suspect with respect to the alleged crime(s),”²⁸¹ it is unclear whether the Prosecutor is required to provide *all* evidentiary material in his or her possession since there are currently no active cases at the KSC.

material.” See *Prosecutor v. Ayyash et al.*, STL-11-01/I, Decision Relating to the Examination of the Indictment of 10 June 2011 Issued Against Mr Salim Jamil Ayyash, Mr Mustafa Amine Badreddine, Mr Hussein Hassan Oneissi and Mr Assad Hassan Sabra, 28 June 2011, para. 11.

²⁷⁶ Daniel A. Bellemare, *Bringing Terrorists Before International Justice: A View from the Front Lines, Notes for an Address*, 23 CRIM. L. FORUM 425, 425 (2012).

²⁷⁷ STL Rules of Procedure and Evidence, Rule 88(E). See e.g., *Prosecutor v. Merhi*, STL-13-04/I/PTJ, Public Redacted Version of the “Decision Relating to the Examination of the Indictment of 5 June 2013 Issued Against Mr Hassan Habib Merhi Dated 31 July 2013,” 11 October 2013.

²⁷⁸ Rules of Procedure and Evidence before the Kosovo Specialist Chambers, KSC-BD-03/Rev1/2017/1, entered into force on 5 July 2017 (“KSC Rules of Procedure and Evidence”), Rule 86(4); Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No. 05/L-053, 3 August 2015, Art. 39(2).

²⁷⁹ Kosovo Criminal Procedure Code 2012, Law No. 04/L-123, 13 December 2012, Art. 19 (1.12).

²⁸⁰ KSC Rules of Procedure and Evidence, Rule 86(2): “The Specialist Prosecutor shall file the indictment confidentially and *ex parte* with the Pre-Trial Judge for a decision pursuant to Article 39(2) of the Law.”

²⁸¹ *Id.*, Rule 86 (3).

3. Conclusion

107. The CIJs should apply the highest standard of proof short of proof beyond a reasonable doubt in determining whether to indict MEAS Muth – *whether a reasonable Trial Chamber could convict him beyond a reasonable doubt based on the evidence in the Case File*. This standard is justified because of the extraordinary nature of the crimes prosecuted at the ECCC, the clear and consistent evidence standard used to charge suspects, the CIJs' lengthy and thorough investigation and opportunity to assess the evidence in the Case File, and the high probability that funding will be insufficient to bring Case 003 to completion.
108. The CIJs should not rely on the indictment confirmation standards the ICP cites or confirmation standards from other international(ized) criminal tribunals and courts. The ICC's *substantial grounds to believe* threshold is too low and inappropriate to indict a Charged Person at the ECCC because the ICC Pre-Trial Chamber does not have access to all the evidence. The ICTY's, ICTR's, and STL's *prima facie* case standard is lower than the probability standard and the Defence do not participate in the confirmation process. The SCSL's and KSC's indictment confirmation standards are also inappropriate for a Closing Order, considering the procedural differences of these tribunals and the ECCC.

C. Applicable crimes and modes of liability

109. The Defence generally agrees with the definitions of crimes and modes of liability set out in the Case 004/1 Closing Order.²⁸² However, it disagrees with the CIJs that the ECCC has jurisdiction to prosecute National Crimes and that Command Responsibility and JCE I are applicable modes of liability under Article 29 new. It also disagrees with the ICIJ's decisions in Case 003 where he considered that the ECCC has jurisdiction to prosecute Grave Breaches, forced marriage can constitute the Crime Against Humanity of an other inhumane act in 1975-1979, and an attack by a State or organization against its own armed forces can amount to an attack directed against a "civilian population" for the purposes of Article 5 of the Establishment Law.

²⁸² Case 004/1 Closing Order, paras. 43-56 (National Crimes), 57-77 (Crimes Against Humanity), 78-100 (modes of liability).

110. The Defence disagrees with several of the ICP's assertions on the elements of crimes and modes of liability.²⁸³ These disagreements are not addressed in this Response as they relate to the specific contours of the crimes or modes of liability. The Pre-Trial Chamber has held that such challenges are a matter for trial.²⁸⁴
111. The ICP incorrectly argues that nothing in the Rules prohibits crimes or modes of liability not charged by the CIJs at an initial or further appearance from forming part of the Closing Order.²⁸⁵ A Charged Person "may ... only be indicted for crimes that he or she has been charged with and duly notified of."²⁸⁶

1. The ECCC does not have jurisdiction to prosecute National Crimes

112. The ECCC does not have jurisdiction to prosecute National Crimes because the statute of limitations for such crimes has expired. National Crimes are subject to a 10-year statute of limitations.²⁸⁷ Although the Establishment Law "extends" the prescriptive period of these crimes for an additional 30 years,²⁸⁸ the 10-year period elapsed before the Establishment Law was enacted in 2001.²⁸⁹ The Case 002 Pre-Trial Chamber erred when it found that the Cambodian judicial system did not function until 1982 and that the statute of limitations was tolled until 1993 because domestic prosecutions and

²⁸³ See e.g., Final Submission, paras. 884-85 (arguing that the *Nottebohm* test is too restrictive to define a "national group" for the purpose of the crime of Genocide), 894-95 (arguing that, for the crime of Genocide, intended "destruction" of the group need not be physical or biological), 951 (arguing that living in a constant state of anxiety and uncertainty as a result of physical abuse and confinement constitutes mental suffering amounting to torture and that credible threats to physical torture, harm, or kill the victim can constitute psychological torture), 953 (arguing that the *mens rea* of torture can include inflicting acts of torture with the purpose of discriminating against the victim or a third person), 990 (arguing that once an international armed conflict exists, international humanitarian law applies beyond the cessation of hostilities), 994 (arguing that the "allegiance" test should be used to determine nationality for the purpose of Grave Breaches), 1020, 1023 (arguing that, for the purposes of "planning" and "instigating", where direct perpetrators were aware of the status of victims as civilians or *hors de combat*, it is unnecessary to show that the Charged Person/Accused intended, or was aware of the substantial likelihood of the commission of a crime as a result of a plan or instigation), 1025 (arguing that the existence of an order can be inferred from various factors), 1042 (arguing that, for the purpose of Command Responsibility, there is no need to show a causal link between the superior's failure to prevent his subordinate's crime and the crime's occurrence).

²⁸⁴ Case 002 Decision on IENG Sary's Appeal Against the Closing Order, paras. 45-46.

²⁸⁵ Final Submission, para. 1062.

²⁸⁶ Case 004/1 Closing Order, para. 245.

²⁸⁷ Under Cambodia's 1956 Penal Code, crimes that carry a minimum of a five-year sentence are subject to a 10-year statute of limitations. 1956 Penal Code, Arts. 21, 32, 33, 109.

²⁸⁸ Establishment Law, Art. 3 new: "The statute of limitations set forth in the 1956 Penal Code shall be extended for an additional 30 years for the crimes enumerated above, which are within the jurisdiction of the Extraordinary Chambers."

²⁸⁹ See Reach Kram No. NS/1004/006, 27 October 2004, promulgating amendments to the Law on the Establishment of the Extraordinary Chambers of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, promulgated in Reach Kram No. NS/RKM/0801/12 of 10 August 2001.

investigations were impeded until that time.²⁹⁰ Weaknesses in the Cambodian judicial system do not indicate that legal actions were *impossible* prior to 1993.²⁹¹ Reactivation of an already expired statute of limitations violates the principle of non-retroactivity.²⁹² Any doubt regarding retroactivity must be resolved in the Charged Person's favor in accordance with Article 38 of the Cambodian Constitution and the principle of *in dubio pro reo*.²⁹³

113. The application of National Crimes also violates MEAS Muth's right to equal treatment.²⁹⁴ MEAS Muth could be indicted for National Crimes while anyone else who had allegedly committed National Crimes in 1975-1979 and is tried before any other Cambodian court could not.²⁹⁵ MEAS Muth's right to equal treatment is also violated by

²⁹⁰ Case 002 Decision on IENG Sary's Appeal of the Closing Order, para. 286.

²⁹¹ A Cambodian judicial system existed and was functioning in the 1980s. See EVAN GOTTESMAN, *CAMBODIA AFTER THE KHMER ROUGE* 241-47 (Silkworm Books 2004); Suzannah Linton, *Putting Cambodia's Extraordinary Chambers into Context*, 11 SING. Y.B. INT'L L. 195, 199-200 (2007); Basil Fernando, *The System of Trial under the Vietnamese – Khmer Model (1981-1993) in PROBLEMS FACING THE CAMBODIAN LEGAL SYSTEM*, (Asian Human Rights Commission 1988). See also Michael Vickery, *The Rule of Law in Cambodia*, 14.3 CULTURAL SURVIVAL Q (1990); MICHAEL VICKERY, *KAMPUCHEA: POLITICS, ECONOMY AND SOCIETY* 120 (Frances Pinter 1986): "One non-political trial which was reported involved five men accused in May 1982 of robbery and in one case murder, who were sentenced to prison for terms of eighteen years up to life for the murderer." Judges Cartwright and Lavergne pointed out in Case 001 that "[a]lthough civil war and effective control by the Khmer Rouge over certain areas of the country presented genuine constraints in initiating prosecutions or judicial investigations, ... prosecutions or judicial investigations were not precluded in all parts of the country" and that there was "evidence to indicate that from 1979 onwards, laws and decrees were progressively enacted." See *Case of KAINING Guek Eav*, 001/18-07-2007/ECCC/TC, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations for Domestic Crimes, 26 July 2010, E187, paras. 32-33.

²⁹² The principle of non-retroactivity prohibits the retroactive application of a law to the detriment of a Charged Person. New laws may only apply retroactively when they are more favorable to the Charged Person than a prior otherwise-applicable law. See Universal Declaration of Human Rights, Adopted by General Assembly Resolution 217 A(III) of 10 December 1948 ("UDHR"), Art. 11(2); ICCPR, Art. 15(1); Cambodian Constitution, Art. 31; ECCC Agreement, Art. 12(2); Establishment Law, Art. 33 new. See also 1956 Penal Code, Art. 6, and 2009 Penal Code, Art. 10, which both prohibit the retroactive application of law. See also Kingdom of Cambodia, Constitutional Council, Decision No. 040/002/2001, 12 February 2001, p. 2, concluding that Article 3 of the Establishment Law "unquestionably affects a fundamental principle, 'the non-retroactivity of any new law over offences committed in the past...'" (unofficial translation).

²⁹³ See Closing Order, paras. 26-36.

²⁹⁴ The right to equal treatment before the law is guaranteed by Article 31 of the Cambodian Constitution, Article 7 of the UDHR, and Articles 14(1) and 26 of the ICCPR. See also General Comment No. 32, para. 2: "The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law." Any differential treatment must be "based on reasonable and objective criteria." *Rita Hiro Balani v. Spain*, Communication No. 1021/2001, UN Doc. No. CCPR/C/77/D/1021/2001 (1998), para. 4.3; *Waldman v. Canada* (Views adopted on 3 November 1999), in UN, Report of the Human Rights Committee (vol. II), UN Doc. No. A/55/40, para. 10.6.

²⁹⁵ Article 3 new of the Establishment Law "extends" the statute of limitations for homicide, torture, and religious persecution under the 1956 Penal Code *only* when those crimes are charged at the ECCC. The statute of limitations has not been extended generally.

the fact that National Crimes were not applied in Cases 001 or 002,²⁹⁶ but are charged in his own case.

114. The Defence incorporates by reference the arguments set out in its previous submissions.²⁹⁷

2. Command Responsibility is not applicable at the ECCC; alternatively, if applicable, it cannot be applied to specific intent crimes or to crimes unconnected to an international armed conflict

115. Command Responsibility cannot be applied at the ECCC because it did not exist in any applicable domestic law, customary international law, or treaty law in 1975-1979. The Case 002 Pre-Trial Chamber erred in finding that Command Responsibility existed in customary international law in 1975-1979.²⁹⁸ The few post-World War II cases that applied Command Responsibility do not provide sufficient evidence of widespread and consistent State practice or *opinio juris* concerning Command Responsibility.²⁹⁹ The

²⁹⁶ The OCP sought to have National Crimes applied against Duch, NUON Chea, IENG Sary, IENG Thirith, KHIEU Samphân, but it was ultimately not applied because the Trial Chamber Judges (in Case 001) and CIJs (in Case 002) could not agree as to the ECCC's jurisdiction to apply National Crimes. There are no reasonable or objective criteria that would permit applying National Crimes against MEAS Muth when they could not be applied against the Accused in Cases 001 and 002. See *Case of KAING Guek Eav*, 001/18-07-2007/ECCC/TC, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, 26 July 2010, E187, para. 14; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), 22 September 2011, E122, EN 00743463. In Case 002, the CIJs could not agree as to whether National Crimes could be applied, so they left this determination to the Trial Chamber. However, the Trial Chamber could not apply National Crimes (even if it considered them to be applicable) because the Indictment was flawed – the CIJs had not set out the material facts giving rise to the charges or the nature of any of the Accused's criminal responsibility in relation to them. See *id.*, paras. 21-22.

²⁹⁷ MEAS Muth's Motion Against the Application of Crimes Listed in Article 3 New of the Establishment Law (National Crimes), 24 October 2013, D87/2/1.13; MEAS Muth's Appeal Against the International Co-Investigating Judge's Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 6 January 2016, D174/1/1, paras. 31-53.

²⁹⁸ Case 002 Decision on IENG Sary's Appeal of the Closing Order, paras. 399-460.

²⁹⁹ The *Yamashita* case is the first modern case to apply the theory of Command Responsibility, and probably the most criticized, because it essentially employed a strict liability standard. See *In re Yamashita*, 327 U.S. 1, 15-16 (1946). See also *id.*, p. 34 (dissenting opinion of Justice Murphy) and p. 43-44 (dissenting opinion of Justice Rutledge); Jenny S. Martinez, *Understanding Mens Rea in Command Responsibility: From Yamashita to Blaškić and Beyond*, 53 J. INT'L CRIM. JUST. 638, 641 (2007); Major Bruce L. Landrum, *The Yamashita War Crimes Trial: Command Responsibility Then and Now*, 149 MIL. L. REV. 293, 294 (1995): "General Yamashita had no way of knowing that he would be judged against the strictest standard ever devised to hold a commander responsible for the actions of his subordinates." The Pre-Trial Chamber in Case 002 considered four cases under Control Council Law No. 10 in the American zone of occupation and one case from the French zone of occupation that applied Command Responsibility. Case 002 Decision on IENG Sary's Appeal of the Closing Order, paras. 428-43. These cases do not constitute valid international precedent since Control Council Law No. 10 was passed under the legislative authority of Germany (the Allied Control Council). Attila Bogdan, *International Criminal Responsibility in the Execution of a "Joint Criminal Enterprise" in the Jurisprudence of*

application of Command Responsibility was not sufficiently frequent or uniform to form the basis for the widespread or consistent State practice required to find customary international law.³⁰⁰ The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts³⁰¹ could not have codified customary international law related to Command Responsibility given the inconsistent or lacking State practice and divergent application in the World War II case law.³⁰²

116. If Command Responsibility is found to be applicable, it may not be applied to specific intent crimes such as Genocide or the Crime Against Humanity of persecution. Command Responsibility for those crimes lowers the requisite *mens rea* and effectively removes the specific intent element. Under Command Responsibility, a commander can be held responsible when he did not intend for a crime to take place and may not have even learned of its occurrence until after the fact.³⁰³ “[I]t is logically impossible to convict a person who is merely negligent of a crime of specific intent.”³⁰⁴

117. If Command Responsibility is found to be applicable, it must only be applied to crimes connected to an international armed conflict. Command Responsibility as a form of individual criminal liability was applied for the first time in the post-World War II tribunals,³⁰⁵ which only concerned international armed conflicts. There is no evidence of general and consistent State practice, let alone *opinio juris*, of applying Command Responsibility in the context of non-international armed conflicts by 1975-1979. While

the ad hoc International Tribunal for the Former Yugoslavia, 6 INT’L CRIM. L. REV. 63, 100 (2006). The Pre-Trial Chamber also considered that the International Military Tribunal for the Far East (“IMTFE”) found certain commanders guilty for war crimes through Command Responsibility, but recognized that the contours of the elements of Command Responsibility at the IMTFE were unclear. Case 002 Decision on IENG Sary’s Appeal of the Closing Order, paras. 444-55. Lastly, the Pre-Trial Chamber considered the 1948-49 Australian/US trial of Admiral Toyoda. *Id.*, paras. 456-57. These cases are not sufficient to demonstrate widespread and consistent State practice.

³⁰⁰ WARD N. FERDINANDUSSE, DIRECT APPLICATION OF INTERNATIONAL CRIMINAL LAW IN NATIONAL COURTS 118-19 (T.M.C. Asser Press 2006); Ilias Bantekas, *The Contemporary Law of Superior Responsibility*, 93 AM. J. INT’L L. 573, 574-75 (1999).

³⁰¹ International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (“Additional Protocol I”).

³⁰² See *supra* fn. 299-300.

³⁰³ Command Responsibility holds a superior liable when he or she fails to punish subordinates after actually becoming aware of crimes or having reason to know that crimes were committed. See Case 001 Trial Judgement, para. 538.

³⁰⁴ William Schabas, *Canadian Implementing Legislation for the Rome Statute*, 3 Y.B. INT’L HUMAN L. 337, 342 (2000).

³⁰⁵ Case 002 Decision on IENG Sary’s Appeal of the Closing Order, para. 423.

the ICIJ considered that it is settled law at the ECCC that Command Responsibility is applicable to both international and non-international armed conflicts,³⁰⁶ the Pre-Trial Chamber and Trial Chamber jurisprudence he relied upon did not consider whether Command Responsibility was applicable in non-international armed conflicts.³⁰⁷

118. The Defence incorporates by reference the arguments set out in its previous submissions.³⁰⁸

3. JCE I is not applicable at the ECCC

119. JCE I cannot be applied at the ECCC because no form of JCE existed in customary international law in 1975-1979. Judge Shahabuddeen, Presiding Judge of the *Tadić* Appeals Chamber, admits it was “an error” for the Appeals Chamber to conclude that JCE liability was based in customary international law:

The writer has referred to an error of the Tribunal, to which he was a party; it concerns the question of whether joint criminal enterprise was customary international law insofar as it permits of a conviction without proof of intent. In this respect, two rival theories—joint criminal enterprise and co-perpetratorship—hold sway in most parts of the world, but not generally; neither is therefore entitled to be regarded as customary international law.³⁰⁹

Because JCE was first recognized at the ICTY,³¹⁰ this admission is a cogent reason to depart from the ECCC’s jurisprudence on JCE in the interests of justice.³¹¹

120. There is neither “extensive and virtually uniform” State practice regarding JCE I’s application³¹² nor *opinio juris* that JCE is customary international law.³¹³ An ICTY Office

³⁰⁶ Decision on the Application of Command Responsibility Outside International Armed Conflict, 1 August 2016, D145/3, para. 33.

³⁰⁷ Case 002 Decision on IENG Sary’s Appeal of the Closing Order, paras. 413-60. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC 145 & 146), Decision on Appeals by NUON Chea and IENG Thirith Against the Closing Order, 15 February 2011, D427/3/15, paras. 190-232.

³⁰⁸ MEAS Muth’s Appeal Against the International Co-Investigating Judge’s Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 6 January 2016, D174/1/1, paras. 63-80; MEAS Muth’s Motion Against the Application of Command Responsibility to Crimes that are not Connected to an International Armed Conflict, 23 July 2015, D145.

³⁰⁹ Mohamed Shahabuddeen, *Judicial Creativity and Joint Criminal Enterprise*, in JUDICIAL CREATIVITY AT THE INTERNATIONAL CRIMINAL TRIBUNALS 202-03 (2010).

³¹⁰ See *Prosecutor v. Tadić*, IT-94-1-A, Judgement, 15 July 1999 (“*Tadić* Appeals Judgement”), paras. 187-229.

³¹¹ Case 001 Trial Judgement, para. 512; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, para. 69; *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on the Applicability of Joint Criminal Enterprise, 12 September 2011, E100/6, para. 22; Case 004/1 Closing Order, para. 91. The applicability of JCE I and II was not challenged in the Case 002/01 appeal.

of the Prosecutor-commissioned study confirmed that “a comparison of the rules governing participation in crimes reveals a high degree of variance among the legal systems studied” and that most States use co-perpetration rather than JCE liability.³¹⁴ The ICC rejected calls to apply JCE liability, finding that it is not provided for in the Rome Statute.³¹⁵ The aim of the Rome Conference was to achieve the broadest possible acceptance of the ICC, by mainly adopting into the Rome Statute provisions that are recognized as customary international law.³¹⁶ Article 25 of the Rome Statute (individual criminal responsibility) was drafted within the broader negotiations of the Rome Statute over a three-year period and with 160 participating countries.³¹⁷ By admission of the *Tadić* Appeals Chamber, the Rome Statute is a “text supported by a great number of States [that] may be taken to express the legal position i.e. *opinio juris* of those States.”³¹⁸

121. Cambodian law provides that co-perpetration is the applicable mode of liability.³¹⁹ The Pre-Trial Chamber erred when it found that JCE I resembles criminal accountability in civil law systems,³²⁰ by failing to consider that co-perpetration, unlike JCE I liability, requires the co-perpetrator’s contribution to the common plan be “essential” or a *sine qua non* of the commission of the crime.³²¹

³¹² *North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.)*, 1969 I.C.J. (20 February), para. 74.

³¹³ *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. (27 June), para. 207.

³¹⁴ Participation in Crime: Criminal Liability of Criminal Groups and Networks, Expert Opinion, Commissioned by the United Nations – ICTY, Office of the Prosecutor Project Coordination: Max Planck institut für ausländisches und internationales Strafrecht, Freiburg, Germany, Introduction, p. 3; Part 1: Comparative Analysis of Legal Systems, p. 16.

³¹⁵ See Thomas Weigend, *Intent, Mistake of Law and Co-Perpetration in the Lubanga Decision on Confirmation of Charges*, 6 J. INT’L CRIM. JUST. 471, 476-78 (2008).

³¹⁶ See GERHARD WERLE, PRINCIPLES OF INTERNATIONAL CRIMINAL LAW 45, marginal no. 127, 402, fn. 108 (1st ed. 2005).

³¹⁷ John Washburn, *The Negotiation of the Rome Statute for the International Criminal Court and International Lawmaking in the 21st Century*, 11 PACE INT’L L. REV. 361, 361 (1999).

³¹⁸ *Tadić* Appeals Judgement, para. 223.

³¹⁹ 1956 Penal Code, Art. 82.

³²⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, para. 41.

³²¹ *Prosecutor v. Gacumbitsi*, ICTR-2001-64-A, Judgement, Separate Opinion of Judge Shahabuddeen, 7 July 2006, para. 50: “[T]he contribution of an accused to a JCE does not have to be a *sine qua non* of the commission of the crime. Indeed, the contribution does not have to be substantial, as it has to be in the case of aiding and abetting. By contrast, under the co-perpetratorship theory, since the non-fulfilment by a participant of his promised contribution would ‘ruin’ the accomplishment of the enterprise as visualised, the making of his contribution would appear to be a *sine qua non*.” See also *Prosecutor v. Lubanga*, ICC-01/04-01/06-803-tEN, Decision on the confirmation of charges, 29 January 2007, para. 342: “The concept of co-perpetration based on joint control over the crime is rooted in the principle of the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the participants has overall control over the offence because they all depend on one another for its commission, they

122. The application of JCE I also violates the principle of *nullem crimen sine lege*. JCE I is not included in the Establishment Law, which defines the ECCC's jurisdiction. The Pre-Trial Chamber erred when it found that the Establishment Law's drafters could have intended JCE liability, since the Establishment Law is worded similarly to the ICTY Statute and the drafters would have been aware that JCE liability was considered a form of "commission" at the *ad hoc* tribunals.³²² Only the *Tadić* Appeals Chamber had applied JCE prior to the Establishment Law's passing on 11 July 2001.³²³ JCE was not applied after the *Tadić* Appeals Judgment until the August 2001 *Krstić* Trial Judgement.³²⁴ It was also discussed in *Prosecutor v. Brđanin and Talić*, but again, this was not until the middle of 2001, too late for the Establishment Law's drafters to have considered it when deciding on the wording of Article 29.³²⁵ There was no "consistent and precedential case law" on JCE by the time the Establishment Law was drafted, contrary to the Pre-Trial Chamber's conclusion.³²⁶ Aside from the fact that JCE was controversial at the time of its inception,³²⁷ it is equally plausible that the drafters of the Establishment Law did not know of JCE at the time Article 29 was drafted or that they knew of JCE but purposely disregarded it in drafting Article 29. The Pre-Trial Chamber speculates and fails to support its conclusion.

all share control because each of them could frustrate the commission of the crime by not carrying out his or her task."

³²² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, para. 49.

³²³ See ECCC Website, *Establishment of the ECCC – Chronology*, <https://www.eccc.gov.kh/en/about-eccc/chronologies> (last visited 12 April 2018).

³²⁴ *Prosecutor v. Krstić*, IT-98-33-T, Judgement, 2 August 2001, para. 601.

³²⁵ *Prosecutor v. Brđanin and Talić*, IT-99-36-PT, Decision on Form of Further Amended and Prosecution Application to Amend, 26 June 2001.

³²⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ (PTC38), Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9, para. 49.

³²⁷ JCE has been the most controversial form of liability applied at the *ad hoc* international tribunals. Since its inception, it has come under severe criticism, particularly because it has been viewed as judge-made and not reflective of customary international law. See e.g., Ciara Damgaard, *The Joint Criminal Enterprise Doctrine: A "Monster Theory of Liability" or a Legitimate and Satisfactory Tool in the Prosecution of the Perpetrators of Core International Crimes?*, in *INDIVIDUAL CRIMINAL RESPONSIBILITY FOR CORE INTERNATIONAL CRIMES* 129 (Springer 2008): "[T]his doctrine raises a number of grave concerns. It, arguably, inter alia is imprecise, dilutes standards of proof, undermines the principle of individual criminal responsibility in favour of collective responsibility, infringes the *nullem crimen sine lege* principle and infringes the right of the accused to a fair trial"; Mohamed Elewa Badar, *"Just Convict Everyone!" – Joint Perpetration: From Tadić to Stakić and Back Again*, 6 INT'L CRIM. L. REV. 239, 301 (2006): "A major source of concern with regard to the applicability of JCE III in the sphere of international criminal law is that under both the objective and subjective standards, the participant is unfairly held liable for criminal conducts that he neither intended nor participated in"; William A. Schabas, *Mens Rea and the International Criminal Tribunal for the Former Yugoslavia*, 37 NEW ENGLAND L. REV. 1033-34 (2002): "Granted these two techniques [JCE and command responsibility] facilitate the conviction of individual villains who have apparently participated in serious violations of human rights. But they result in discounted convictions that inevitably diminish the didactic significance of the Tribunal's judgements and that compromise its historical legacy."

123. The Defence incorporates the arguments set out in its previous submissions.³²⁸

4. The ECCC does not have jurisdiction to prosecute Grave Breaches

124. The ECCC does not have jurisdiction to prosecute Grave Breaches because the statute of limitations for such crimes has expired. The ECCC must apply the law as it existed in Cambodia in 1975-1979, meaning that it must apply the 10-year statute of limitations under the 1956 Penal Code.³²⁹ That 10-year period elapsed before the Establishment Law was enacted in 2001.³³⁰ Regardless of whether the statute of limitations was tolled due to the situation in Cambodia after 1979,³³¹ the limitation period would have expired prior to the filing of the IS in Case 003. Under the *lex mitior* principle, a statute of limitations cannot be abolished retroactively: “the most lenient law has to be applied if the law between the commission of the offence and the trial is amended.”³³²

125. Persons alleged to have committed Grave Breaches in 1975-1979 were subject to prosecution under the 1956 Penal Code. It must be applied, including the statute of

³²⁸ MEAS Muth’s Appeal Against the International Co-Investigating Judge’s Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 6 January 2016, D174/1/1, paras. 54-62.

³²⁹ 1956 Penal Code, Arts. 21, 32, 33, 109. The crime of Grave Breaches carries a minimum five-year sentence. See Establishment Law, Art. 39.

³³⁰ See Reach Kram No. NS/1004/006, 27 October 2004, promulgating amendments to the Law on the Establishment of the Extraordinary Chambers of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, promulgated in Reach Kram No. NS/RKM/0801/12 of 10 August 2001.

³³¹ According to the National Trial Chamber Judges, the statute of limitations set out in the 1956 Penal Code was tolled until 23 September 1993 at the earliest. According to the International Trial Chamber Judges, the statute of limitations was not tolled and began to run from January 1979. See *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on the Defence Preliminary Objection Concerning the Statute of Limitations of Domestic Crimes, 26 July 2010, E187, paras. 25, 35. See also Case 002 Decision on IENG Sary’s Appeal of the Closing Order, para. 286. See also *supra* paras. 112-14 regarding the ECCC’s jurisdiction over National Crimes.

³³² Case 004/1 Closing Order, para. 21. While many States have enacted laws removing statutes of limitations for certain crimes, they have taken care not to apply these laws retroactively. See e.g. French Criminal Code, Art. 112-2, para. 4: “The following are immediately applicable to the repression of offences committed before their coming into force ... 4° where the limitation period has not expired, laws governing the limitation of the public prosecution and the limitation of penalties” (official translation). States such as the former West Germany, Hungary, and Switzerland have held that prosecutions based on retroactive extensions or removals of statutes of limitations are unconstitutional where the statutes of limitations have expired. See Martin Clausnitzer, *The Statute of Limitations for Murder in the Federal Republic of Germany*, 29 INT’L & COMP. L. Q. 473, 478-79 (1980); Paul R. Dubinsky, *Human Rights Law Meets Private Law Harmonization: The Coming Conflict*, 30 YALE J. INT’L L. 211, 292-93 (2005); RUTH A. KOK, STATUTORY LIMITATIONS IN INTERNATIONAL CRIMINAL LAW 289, 399-401 (T.M.C. Asser Press 2007) (“KOK, STATUTORY LIMITATIONS”); YASMIN Q. NAQVI, IMPEDIMENTS TO EXERCISING JURISDICTION OVER INTERNATIONAL CRIMES 198 (T.M.C. Asser Press 2010). The Dutch and Japanese legislatures have abolished statutes of limitations for serious crimes but have taken care not to apply the charges retroactively to time-barred offenses. KOK, STATUTORY LIMITATIONS, p. 399-401; Shinichi Kawaranda, *Japan Abolishes Statute of Limitations for Murder, Extends Others*, ASAHI SHIMBUN, 28 April 2010. The US Supreme Court held that a California law permitting the prosecution of sex-related child abuse crimes where the limitation period under a prior statute of limitations expired violated the *Ex Post Facto* (non-retroactivity) Clause of the US Constitution. *Stogner v. California*, 539 U.S. 607, 609 (2003).

limitations. The Trial Chamber in Case 002/01 erroneously concluded that only those provisions of the 1956 Penal Code that are enumerated in Article 3 of the Establishment Law apply.³³³ While the ECCC may not have jurisdiction to prosecute additional crimes set out in the 1956 Penal Code,³³⁴ this does not mean that other provisions of the 1956 Penal Code may be disregarded. While Articles 4 and 5 of the Establishment Law state that no statutes of limitations apply to the crimes of Genocide and Crimes Against Humanity, Article 6 does not state that the statute of limitations is inapplicable to Grave Breaches.

126. There is no domestic law, applicable treaty-based law, or customary international law that abrogates or supersedes this statute of limitations. Cambodia did not enact any legislation implementing the Grave Breaches provision of the Geneva Conventions.³³⁵ Less than half of the UN Member States voted for the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.³³⁶ By 1979, it had only 22 States Parties and today, it has just 55.³³⁷ No State ratified the European Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity or War Crimes by 1979.³³⁸ In 1985, the French *Cour de cassation* held that “[t]here is no principle of law with which an authority superior to that of French law would allow war crimes ... to be declared not subject to statutory limitation.”³³⁹

127. There is no absolute “duty to prosecute” Grave Breaches that overcomes the statute of limitations. “It would ... be far too simple to claim that statutes of limitation are inapplicable to grave breaches based on the seemingly absolute wording of the obligation

³³³ *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Defence Preliminary Objection Regarding a Statute of Limitations for Grave Breaches of the Geneva Conventions of 12 August 1949, 31 October 2014, E306/6, para. 8.

³³⁴ Article 3 new of the Establishment Law limits the ECCC’s jurisdiction to prosecute homicide, torture, and religious persecution as violations of the 1956 Penal Code.

³³⁵ See Study submitted by the Secretary-General to the Commission on Human Rights, “Question of Punishment of War Criminals and of Persons Who Have Committed Crimes Against Humanity,” UN Doc. No. E/CN.4/906, 15 February 1966, p. 56, para. 69.

³³⁶ Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. Res. 2391 (XXIII), Annex, 32 UN GAOR Supp. (No. 18) at 40, UN Doc. No. A/7218 (1968).

³³⁷ See UN Treaty Collection, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-6&chapter=4&clang=_en (last visited 12 April 2018).

³³⁸ See Council of Europe, *Chart of signatures and ratifications of Treaty 082*, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/082/signatures?p_auth=3ZEIY1PQ (last visited 12 April 2018).

³³⁹ Cass. Crim., 20 December 1985, Bull. crim., n. 407 (unofficial translation of: “Aucun principe de droit ayant une autorité supérieure à celle de la loi française ne permet de déclarer imprescriptibles les crimes de guerre”).

to search for and prosecute grave breaches contained in the Geneva Conventions. Treaty-based *aut dedere aut iudicare* [“extradite or prosecute”] regimes are simply not interpreted in this way in state practice.”³⁴⁰ Any doubt regarding retroactivity must be resolved in MEAS Muth’s favor in accordance with Article 38 of the Cambodian Constitution and the principle of *in dubio pro reo*.³⁴¹

128. The Defence incorporates the arguments set out in its previous submissions.³⁴²

5. The ECCC does not have jurisdiction to prosecute forced marriage as a Crime Against Humanity of an other inhumane act

129. The ECCC does not have jurisdiction to prosecute forced marriage as a Crime Against Humanity of an other inhumane act because it was not sufficiently well-defined in 1975-1979 and it is not of a similar nature and gravity to other Crimes Against Humanity enumerated in the Establishment Law.³⁴³

130. Forced marriage is not criminalized or defined in the 1956 Penal Code, international human rights instruments codifying the laws of war by 1975, or the statutes of any international(ized) criminal tribunals and courts. The *Brima et al.* Appeals Chamber was the first to define forced marriage and did so “in the context of the Sierra Leone conflict,”³⁴⁴ in which soldiers entered villages and violently abducted women and girls to claim as their “wives,” forcing them to act as conjugal partners and treating them as sex slaves.³⁴⁵ The *Taylor* Trial Chamber subsequently considered the label of forced marriage

³⁴⁰ See Claus Kreß, *Reflections on the Iudicare Limb of the Grave Breaches Regime*, 7 J. INT’L CRIM. JUST. 789, 806 (2009). See also *id.*, p. 790.

³⁴¹ Case 004/1 Closing Order, paras. 26-30.

³⁴² MEAS Muth’s Motion Against the Application of Grave Breaches of the Geneva Conventions Due to Expiry of the Applicable Statute of Limitations, 12 December 2013, D103/1.3; MEAS Muth’s Appeal Against the International Co-Investigating Judge’s Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 6 January 2016, D174/1/1, paras. 8-30; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Case 003 Defence Request for Leave to File Amicus Curiae Brief & Amicus Curiae Brief Concerning the Statute of Limitations for Grave Breaches of the Geneva Conventions, 14 May 2014, E306/3.

³⁴³ Even though the category of other inhumane acts existed prior to 1975, the “other inhumane act” in question must have been sufficiently well-defined and of a similar nature and gravity to the enumerated Crimes Against Humanity, or the principle of legality will be violated. *Case of AO An and YIM Tith*, 004/07-09-2009-ECCC-OCIJ, Consolidated Decision on the Requests for Investigative Action Concerning the Crime of Forced Pregnancy and Forced Impregnation, 13 June 2016, D301/5, paras. 51, 63.

³⁴⁴ *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgement, 22 February 2008, para. 196.

³⁴⁵ *Id.*, para. 190.

in this context to be a “misnomer” and found that sexual slavery best described the acts.³⁴⁶

131. Forced marriage in and of itself is not of a similar nature and gravity to other Crimes Against Humanity enumerated in Article 5 of the Establishment Law: murder, extermination, enslavement, deportation, imprisonment, torture, rape, and persecution. The *Brima et al.* Appeals Chamber relied on evidence that “victims of forced marriage endured repeated acts of rape and sexual violence, forced labour, corporal punishment, and deprivation of liberty [and were] ... forced to watch the killing or mutilation of other close family members” to find that forced marriage was of a similar nature and gravity to other Crimes Against Humanity.³⁴⁷ Absent such conditions, the act of arranging a marriage between two adults would not meet the gravity threshold of an other inhumane act.

132. The application of forced marriage as an other inhumane act violates the principle of *nullem crimen sine lege*. Criminal liability for forced marriage would not have been foreseeable to Charged Persons or Accused in 1975-1979. While human rights instruments emphasized the importance of consent in marriage by 1975,³⁴⁸ none universally prohibited “forced marriages” as they did torture or slavery. Any doubt as to the foreseeability and accessibility of forced marriage as an other inhumane act in 1975-1979 must be resolved in MEAS Muth’s favor in accordance with Article 38 of the Cambodian Constitution and the principle of *in dubio pro reo*.³⁴⁹

133. The Defence incorporates by reference the arguments set out in its previous submissions.³⁵⁰

³⁴⁶ *Prosecutor v. Taylor*, SCSL-03-01-T, Judgement, 18 May 2012, paras. 425-28. *See also id.*, para. 429: “[P]art of the confusion created by the Prosecution’s charge of ‘forced marriage’ was its presentation as the conceptualization of a new crime.”

³⁴⁷ *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgement, 22 February 2008, para. 199.

³⁴⁸ UDHR, Art. 16; ICCPR, Art. 23(3); ECHR, Arts. 8, 12.

³⁴⁹ Case 004/1 Closing Order, paras. 26-36.

³⁵⁰ MEAS Muth’s Motion Against the Application of Forced Marriage as the Crime Against Humanity of an Other Inhumane Act, 18 November 2016, D214; MEAS Muth’s Reply to the International Co-Prosecutors’ Response to MEAS Muth’s Motion Against the Application of Forced Marriage as the Crime Against Humanity of an Other Inhumane Act, 12 December 2016, D214/1/1.

6. An attack by a State or organization against its own armed forces does not amount to an attack directed against a “civilian population”

134. An attack by a State or organization against its own armed forces does not amount to an attack directed against a “civilian population” for the purposes of Article 5 of the Establishment Law.³⁵¹ The ICIJ incorrectly decided that an attack carried out by a State or organization against its own soldiers satisfies the Crime Against Humanity *chapeau* requirement of an attack against a civilian population.³⁵² A definition of a “civilian population” that includes soldiers is not supported by customary international law in 1975-1979 and would not have been foreseeable or accessible to a Charged Person.
135. Customary international law has always distinguished between soldiers and civilians, requiring Crimes Against Humanity to be directed against a *civilian* population.³⁵³ No State practice or *opinio juris* indicates that the distinction between soldiers and civilians is relevant only to enemy populations. Jurisprudence indicates that this distinction is relevant in peacetime and when evaluating attacks by a State against its own soldiers.³⁵⁴

³⁵¹ MEAS Muth’s Submission on the Question of Whether Under Customary International Law in 1975-1979 an Attack by a State or Organization Against its Own Armed Forces Could Amount to an Attack Directed Against a Civilian Population for Purposes of Article 5 of the Establishment Law, 19 May 2016, D191/2.

³⁵² Notification on the Interpretation of ‘Attack Against the Civilian Population’ in the Context of Crimes Against Humanity with Regard to a State’s or Regime’s Own Armed Forces, 7 February 2017, D191/18.

³⁵³ The principle of distinction provides that parties to a conflict must at all times distinguish between civilians and combatants; attacks may only be directed against combatants, never against civilians. This principle was first recognized in the Preamble of the 1868 Declaration Renouncing the Use, in Time of War, of Certain Explosive Projectiles, St. Petersburg, 29 November/11 December 1868. It subsequently has been codified in Additional Protocols I and II to the 1949 Geneva Conventions and numerous national military manuals. *See* Additional Protocol I, Arts. 48, 51(2), 52(2); International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, 1125 UNTS 609 (“Additional Protocol II”), Art. 13(2); JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECKS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I 3-6 (Cambridge 2005).

³⁵⁴ *See e.g., Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement, 21 May 1999, para. 127, where the ICTR *Kayishema* Trial Chamber considered that even a wide definition of civilian applicable in a context where there was no armed conflict “includes all persons *except* those who have the duty to maintain public order and have the legitimate means to exercise force.” (emphasis in original). This interpretation of civilian was endorsed by the Special Rapporteur on the Topic of Crimes Against Humanity. UN General Assembly, Int’l Law Comm’n Rep (ILC), *First Report on Crimes Against Humanity*, UN Doc. No. A/CN.4/680, 17 February 2015, fn. 272. The *Kayishema* Trial Chamber’s holding is consistent with the *ad hoc* jurisprudence, which has uniformly required that the targeted population be predominantly civilian in nature, although the presence of certain non-civilians in their midst does not change the character of the population. *See Prosecutor v. Tadić*, IT-94-1-T, Judgement, 7 May 1997, para. 638; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgement, 17 December 2004, paras. 94-95; *Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006, paras. 129-306; *Prosecutor v. Dragomir Milošević*, IT-98-29/1-A, Judgement, 12 November 2009, para. 50; *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgement, 2 September 1998, para. 582; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgement, 28 May 2008, para. 528. *See also Prosecutor v. Martić*, IT-95-11-A, Judgement, 8 October 2008, paras. 291-314, espec. paras. 302, 311; *Prosecutor v. Taylor*, SCSL-03-01-T, Judgement, 18 May 2012, paras. 508-10. ECCC jurisprudence has followed the jurisprudence of the *ad hoc* tribunals. *See also* Case

No absurdity results from applying this distinction. A regime's acts against its own soldiers in peacetime would be dealt with under national law, or could, depending on the circumstances, be prosecuted as Genocide. During armed conflicts, if non-civilians (such as active soldiers, soldiers *hors de combat*, or detained soldiers) are the target of an attack by their own State, such an attack might be a violation of international humanitarian law, Genocide, or national law, depending on the circumstances.³⁵⁵ Such an attack would not be a Crime Against Humanity.

136. The Defence incorporates by reference the arguments set out in its previous submissions.³⁵⁶

D. General principles of evidence

1. Principles governing the assessment of evidence

137. The CIJs, Trial Chamber, and Supreme Court Chamber have set out principles governing the assessment of evidence. The CIJs must apply these principles in assessing the evidence in Case File 003.

138. WRIs generated by the OCIJ during the investigation are entitled to a presumption of relevance and reliability.³⁵⁷ Trial transcripts from other ECCC proceedings placed on the

002/01 Trial Judgement, para. 185 (internal citations omitted); Case 002/01 Appeal Judgement, para. 738 (internal citations omitted).

³⁵⁵ See e.g., *Prosecutor v. Prlić et al.*, IT-04-74-T, Judgement, 29 May 2013, Vol. 3, paras. 607-11, 647-48. In *Prlić et al.*, the Trial Chamber considered the application of Grave Breaches of the Geneva Conventions and Crimes Against Humanity arising from the treatment of Muslim members of the Croatian Defence Council ("HVO") – the official military body of the Croatian Community of Herzeg-Bosna, consisting of both Croatian and Muslim soldiers – by non-Muslim members of the HVO. The Trial Chamber held that Muslim HVO members could be considered "protected persons" for the purposes of the Fourth Geneva Convention using allegiance rather than nationality to determine the Muslim HVO soldiers' status. In extending protection to soldiers under the Grave Breaches regime, the Trial Chamber found that soldiers' status as soldiers did not change and still required that the targeted population be civilian for purposes of Crimes Against Humanity. See also JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECKS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. I 3-6 (Cambridge 2005), Rule 156.

³⁵⁶ MEAS Muth's Submission on the Question of Whether Under Customary International Law in 1975-1979 an Attack by a State or Organization Against its Own Armed Forces Could Amount to an Attack Directed Against a Civilian Population for Purposes of Article 5 of the Establishment Law, 19 May 2016, D191/2; MEAS Muth's Combined Response to *Amici Curiae* Submissions on the Question of Whether Under Customary International Law in 1975-1979 an Attack by a State or Organization Against its Own Armed Forces Could Amount to an Attack Directed Against a Civilian Population for Purposes of Article 5 of the Establishment Law, 11 July 2016, D191/17; MEAS Muth's Appeal Against the International Co-Investigating Judge's Notification on the Interpretation of 'Attack Against the Civilian Population' in the Context of Crimes Against Humanity with Regard to a State's Or Regime's Own Armed Forces, 1 May 2017, D191/1/4; MEAS Muth's Reply to the International Co-Prosecutor's Response to MEAS Muth's Appeal Against the International Co-Investigating Judge's Civilian Population Decision, 21 June 2017, D191/18/1/7.

Case File because of their relevance to the allegations enjoy the same presumption.³⁵⁸

Other evidence – such as evidence collected by persons or entities external to the ECCC and without judicial supervision, DC-Cam statements, OCP interviews, Civil Party applications, and hearsay evidence – requires a more cautious approach and should only be relied on when the information contained therein is corroborated by other sources.³⁵⁹

139. Evidence collected by persons or entities external to the ECCC without judicial supervision does not enjoy a presumption of relevance and reliability.³⁶⁰ Evidence that was not collected specifically for the purpose of a criminal trial, such as accounts collected by authors, are of low probative value.³⁶¹ See Annex A.

140. While contemporaneous DK-era documents originating from DC-Cam are entitled to a rebuttable presumption of *prima facie* relevance and reliability,³⁶² statements prepared by DC-Cam must be assessed with caution. DC-Cam interviews are not conducted with judicial supervision and the formalities of WRIs conducted by the OCIJ.³⁶³ The interviewers are not trained investigators for the purpose of gathering evidence for use in criminal proceedings.³⁶⁴ The interviewees do not give their statements under oath and face no penalties for giving false statements.³⁶⁵ See Annex B.

³⁵⁷ Case 004/1 Closing Order, para. 103. See also *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, E96/7, para. 26.

³⁵⁸ Case 004/1 Closing Order, para. 104.

³⁵⁹ *Id.*, para. 108.

³⁶⁰ *Id.*, para. 104. *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber, 20 June 2012, E96/7, para. 29.

³⁶¹ Case 002/01 Appeal Judgement, para. 296: "Even lower probative value must in principle, be assigned to evidence that – unlike the interview records produced by the Office of the Co-Investigating Judges – was not collected specifically for the purpose of a criminal trial, such as in the case of the accounts collected by Henri LOCARD, François PONCHAUD and Stephen HEDER."

³⁶² *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Objections to Documents Proposed to be put before the Chambers on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, 9 April 2012, E185 ("Case 002 Decision on Objections to Documents"), para. 28. See also Case 002/01 Appeal Judgement, para. 373.

³⁶³ Case 004/1 Closing Order, para. 104; Case 002 Decision on Objections to Documents, para. 28; Case 002/01 Appeal Judgement, para. 373.

³⁶⁴ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 24 January 2012, E1/32.1, 10.04.46-10.07.26: "A. With regard to the interviews, we normally have the questionnaires – set-up questions, indeed, that are reviewed by senior legal advisors of the DC-Cam before we conducted the interview. So these advisors would review them, and questionnaires have also been communicated to the Office of the Co-Investigators of the Chamber as well. Q. Is that a procedure that you learned while you were training? A. We have been trained, and our trainings are focusing on documentation. But interview is another skill."

³⁶⁵ See e.g., Written Record of Interview of Meas Im, 9 June 2016, D114/214, A6: "At that time the persons(s) [from DC-Cam] who came to interview me did not tell me that they had come to do an interview. They said that

141. Interviews conducted by the Co-Prosecutors during preliminary investigations must also be treated with caution, although they have been afforded higher probative value than evidence that was not collected for the purpose of a criminal trial (including DC-Cam evidence).³⁶⁶ These interviews “are not conducted under oath and are prepared by a party with an inherent interest in the outcome of the case.”³⁶⁷ *See* Annex C.
142. Civil Party applications and victim complaints enjoy no presumption of reliability and are “afforded little, if any, probative value if the circumstances in which they were recorded are not known.”³⁶⁸ Civil Party applications and victim complaints offering only general conclusions or a “common narrative,” as opposed to personal experience, are insufficient to establish relevant facts.³⁶⁹ Out-of-court Civil Party statements are of low probative value.³⁷⁰ At trial, in-court Civil Party testimony is assessed with caution.³⁷¹ Civil Parties, like the Co-Prosecutors, are parties to the proceedings with an inherent interest in the outcome of the case.³⁷² Since they are not witnesses, they take no oath, and as a result, face no penalties for giving false testimony.³⁷³ *See* Annex D.
143. Interviews with the Charged Person conducted by persons or entities external to the ECCC are not prepared under judicial supervision or subject to legal and procedural safeguards.³⁷⁴ They are afforded less weight compared to evidence gathered by the OCIJ during the investigation and their credibility and probative value must be assessed in light of the evidence on the Case File.³⁷⁵ *See* Annex E.

they had come for a chat. He said that he had come for a convivial chat. If it had been an interview, it would have been in minute detail like this. Given that it was just a convivial chat, some of what I told him was true, some not true.”

³⁶⁶ Case 004/1 Closing Order, para. 106.

³⁶⁷ *Id.*, para. 105.

³⁶⁸ *Id.*, para. 107; Case 002/01 Appeal Judgement, para. 296.

³⁶⁹ Case 004/1 Closing Order, para. 107; Case 002/01 Appeal Judgement, para. 457.

³⁷⁰ Case 004/1 Closing Order, para. 107; Case 002/01 Appeal Judgement, para. 550.

³⁷¹ Case 002/01 Appeal Judgement, para. 315. The Supreme Court Chamber considered that factors unique to Civil Parties (they take no oath, their principle interest is seeking reparations, the lack of sanctions for false testimony, and their ability to consult with counsel to the proceedings) are factors to be considered when assessing the probative value of in-court Civil Party testimony.

³⁷² Under Rule 23(1), the role of Civil Parties is to support the prosecution and seek reparations for the harm they suffered. *See also* Case 002/01 Appeal Judgement, para. 314.

³⁷³ Rule 23(4); Case 002/01 Appeal Judgement, paras. 314-15. *See e.g.*, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, E1/465.1, 09.14.46-09.22.38 (the Civil Party gave no oath before testifying).

³⁷⁴ *See* Case 004/1 Closing Order, para. 104.

³⁷⁵ *Id.*, para. 139.

144. While hearsay evidence is admissible and the CIJs have discretion to consider and rely on hearsay evidence in making their findings, caution is required.³⁷⁶ Hearsay evidence should only be relied upon if corroborated by reliable sources. At the trial stage, the weight and probative value afforded to hearsay evidence is generally less than that of a witness who has given evidence under oath and been subject to examination.³⁷⁷ In assessing the weight or probative value of hearsay evidence, the source of the witness's knowledge, bias, motive, precise character of his or her information, and whether other evidence corroborates the hearsay evidence must be considered.³⁷⁸ During the judicial investigation, the OCIJ is responsible for interviewing witnesses.³⁷⁹ The Defence has no opportunity to examine the witnesses and must rely on the OCIJ Investigators to draw out the source of the witness's knowledge. *See* Annex F.
145. Any evidence, regardless of origin, should only be relied on when the information contained therein is corroborated by other sources. *See* Annex G.

2. Torture-tainted or torture-derived evidence cannot be relied upon

146. The ICP relies on torture-tainted or torture-derived evidence in ways that are prohibited under Article 15 of the CAT.³⁸⁰ Under Article 15 of the CAT, statements obtained under torture may *only* be used against an accused torturer as evidence that the confessions were made under torture.³⁸¹ "The object and purpose of Article 15 of the CAT requires broad exclusion of any information obtained through torture, and the exception to this rule, by its nature, is to be interpreted narrowly."³⁸² Any interpretation of Article 15 that weakens the prohibition and prevention of torture must be rejected.³⁸³

³⁷⁶ Case 002/01 Appeal Judgement, para. 302 (internal citations omitted).

³⁷⁷ *Id.*, citing *Prosecutor v. Kalimanzira*, ICTR-05-88-A, Judgement, 20 October 2010, para. 96, quoting *Prosecutor v. Karera*, ICTR-01-74-A, Judgement, 2 February 2009, para. 39.

³⁷⁸ Case 002/01 Trial Judgement, para. 34; *Prosecutor v. Karera*, ICTR-01-74-A, Judgement, 2 February 2009, para. 39.

³⁷⁹ Decision on MEAS Muth's Request for the Co-Investigating Judges to Clarify Whether the Defence May Contact Individuals Including Witness Em Son, 4 December 2015, D173/1, para. 9: "Internal Rule 55(10) sets forth the Charged Person's permissible role in the conduct of the investigation, which is limited to requesting the CIJs to undertake investigative action they consider useful for the conduct of the investigation."

³⁸⁰ *See* Annex H.

³⁸¹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, 10 December 1984 ("CAT"), Art. 15.

³⁸² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Decision on Objections to Document Lists Full Reasons, 31 December 2015, F26/12 ("Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists"), para. 67.

³⁸³ *Id.*, para. 40.

a. WRIs derived from torture-tainted S-21 confessions or obtained by using torture-tainted S-21 biographies as investigative leads must not be relied upon

147. WRIs derived from torture-tainted S-21 confessions must not be relied upon.³⁸⁴ S-21 confessions are presumptively torture-tainted.³⁸⁵ They cannot be relied upon for, or to imply, the truth of their contents, or to question witnesses.³⁸⁶ The CAT's restrictions cannot be circumvented by using summaries of S-21 confessions to question witnesses rather than the actual confessions.³⁸⁷ The CAT's prohibition on the use of torture-tainted evidence logically extends "*to any information derived from a person subjected to torture.*"³⁸⁸ The CIJs recognized the prohibition against torture-derived evidence in Case 004/1 when they disregarded answers of witnesses and investigator notes based on an organizational chart containing names of persons taken from S-21 confessions.³⁸⁹

148. WRIs obtained by using torture-tainted S-21 biographies as investigative leads also must not be relied upon.³⁹⁰ Using S-21 biographies as investigative leads amounts to using them as "evidence."³⁹¹ Relying on the S-21 biographies as lead evidence runs contrary to the policy rationales behind the CAT's exclusionary rule: disincentivizing

³⁸⁴ MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview, 10 August 2017, D257/1/3. *See also* Case 004/1 Closing order, para. 112.

³⁸⁵ Consolidated Decision on MEAS Muth's Request for Investigative Action Regarding Potential Use of Torture-Tainted Evidence, 24 May 2017, D251, para. 27.

³⁸⁶ Case 004/1 Closing Order, para. 109 (internal citations omitted).

³⁸⁷ MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interviews, 10 August 2017, D257/1/3, para. 21. *See also* MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171, 17 July 2017, D253/1/3, paras. 18, 30.

³⁸⁸ Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists, para. 42 (emphasis added). *See also* MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171, 17 July 2017, D253/1/3, paras. 18, 30.

³⁸⁹ Case 004/1 Closing Order, para. 112.

³⁹⁰ MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171, 17 July 2017, D253/1/3.

³⁹¹ Evidence is not simply something used as proof of an Accused's guilt or innocence at trial. It can be a link in a chain of information tending to prove or disprove a fact and encompasses information that is necessary to establish the foundation of the evidence. EDWARD J. IMWINKELREID, EVIDENTIARY FOUNDATIONS §1.02 (LexisNexis 9th ed. 2015): "[T]he most important procedural rule is that the proponent of an item of evidence must ordinarily lay the foundation before formally offering the item into evidence. For example, the proponent of a letter must present proof of its authenticity before offering the letter into evidence. Proof of the letter's authenticity is part of the letter's 'foundation' or 'predicate.'"

torture, preserving the integrity of the proceedings, and protecting the Charged Person's or Accused's right to a fair trial.³⁹²

149. In denying MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171,³⁹³ the Pre-Trial Chamber erred in holding that investigative leads are not encompassed within the ordinary meaning of "evidence." The Pre-Trial Chamber erroneously relied on the Case 002/02 Trial Chamber's decision that derivative evidence is not encompassed within the CAT's exclusionary rule,³⁹⁴ misinterpreted the Committee Against Torture's and Special Rapporteur on Torture's recommendations,³⁹⁵ and read into Article 15 of the CAT a strict causation requirement.³⁹⁶
150. Contrary to the Pre-Trial Chamber's holding, investigative leads are "evidence."³⁹⁷ The investigative lead is necessary to establish the provenance of the evidence obtained as a result of it; it is predicate and part and parcel of the evidence placed on the Case File.³⁹⁸ Using S-21 biographies to find relatives of persons allegedly killed at S-21 is using these documents for their evidentiary value. While the OCIJ Investigators did not use information such as the birth place or name of family members in the S-21 biographies to prove alleged facts, the WRIs obtained as a result of the Investigators' actions are relied upon by the ICP to substantiate his allegations against MEAS Muth.³⁹⁹
151. The Pre-Trial Chamber should not have relied on the Case 002/02 Trial Chamber's Decision on Evidence Obtained Through Torture.⁴⁰⁰ The Case 002/02 Trial Chamber erred in finding that Article 15 of the CAT's exclusionary rule does not encompass

³⁹² See *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Reasons for Partially Dissenting Opinion of Judge Fenz, 11 March 2016, E350/8.1, para. 21.

³⁹³ Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171, 13 December 2017, D253/1/8 ("Decision on Torture-Derived Annulment Application").

³⁹⁴ *Id.*, paras. 29-33. See *infra* para. 151.

³⁹⁵ Decision on Torture-Derived Annulment Application, para. 36. See *infra* paras. 152-53.

³⁹⁶ Decision on Torture-Derived Annulment Application, para. 37. See *infra*, para. 154.

³⁹⁷ See BLACK'S LAW DICTIONARY 635 (9th ed. 2009).

³⁹⁸ See *supra* fn. 391.

³⁹⁹ See Final Submission, fn. 3485 (citing Written Record of Interview of Men Theary, 1 February 2016, D114/164), 3470, 3472, 3476-77, 3483, 3548 (citing Written Record of Interview of Chhum Ya, 4 February 2016, D114/167), 176, 358, 2121, 2124, 3268, 3447, 3476, 3181, 3484, 3492 (citing Written Record of Interview of Prum Mon, 15 February 2016, D114/170), 3407, 3443, 3468, 3477, 3483, 3543 (citing Written Record of Interview of Kev Sarourn, 16 February 2016, D114/171).

⁴⁰⁰ *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Decision on Evidence Obtained Through Torture, 5 February 2016, E350/8 ("Case 002/02 Trial Chamber Decision on Evidence Obtained Through Torture"), paras. 63-70. See also MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171, 17 July 2017, D253/1/3, paras. 18-30.

torture-derived evidence.⁴⁰¹ The preparatory work of the CAT does not support a conclusion that torture-derived evidence was intended to be excluded from the CAT.⁴⁰² That language expressly addressing torture-derived evidence was not included in the final draft of the CAT does not indicate that Article 15 does not encompass torture-derived evidence.⁴⁰³ The term “made as a result of torture” is sufficiently flexible to encompass torture-derived evidence. There is no evidence that the drafters explicitly rejected a flexible interpretation. None of the 162 States Parties to the CAT have entered reservations to Article 15 of the CAT or declarations to the effect that torture-derived evidence *is* admissible in judicial proceedings.⁴⁰⁴

152. Subsequent practice of the UN Committee Against Torture and other international sources indicates that torture-derived evidence is encompassed within CAT’s exclusionary rule.⁴⁰⁵ The Pre-Trial Chamber misinterpreted the Committee Against

⁴⁰¹ Case 002/02 Trial Chamber Decision on Evidence Obtained Through Torture, p. 33.

⁴⁰² There is not enough information available to determine why a proposed draft of Article 15 of the CAT explicitly clarifying that derivative evidence was included in the scope of the exclusionary rule was not chosen. Article 15’s silence as to derivative evidence does not mean that derivative evidence is not included within the scope of Article 15. The policy rationales behind the CAT demonstrate that the intent was to include derivative evidence within Article 15’s scope. *See supra* para. 148. Any doubt as to the applicability of Article 15’s exclusionary rule to derivative evidence must be resolved in MEAS Muth’s favor in accordance with Article 38 of the Cambodian Constitution and the principle of *in dubio pro reo*. *See* Case 004/1 Closing Order, paras. 26-36.

⁴⁰³ During the negotiations leading up to the adoption of the CAT, the International Association of Penal Law submitted a draft that included a prohibition against “[a]ny oral or written statement or confession obtained by means of torture *or any other evidence derived therefrom*” (emphasis added). Several other States submitted proposals with varying language. That the International Association of Penal Law’s language was not ultimately adopted does not mean that the adopted language – “*made as a result of torture*” – does not encompass derivative evidence. *See* Decision on Torture-Derived Annulment Application, para. 35, citing Draft submitted by the International Association of Penal Law, UN Doc. No. E/CN.4/NGO/213, 15 January 1978; Original draft submitted by Sweden, UN Doc. No. E/CN.4/1285, 18 January 1978; Draft submitted by the United States, UN Doc. No. E/CN.4/1314, 19 December 1978; Revised draft submitted by Sweden, UN Doc. No. E/CN.4/WG.1/WP.1, 19 February 1979.

⁴⁰⁴ UN Treaty Collection, CAT, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en (last visited 12 April 2018).

⁴⁰⁵ The UN Committee Against Torture recommended to Finland “that a special provision be incorporated into the State party’s criminal procedure concerning the exclusion from judicial proceedings of evidence which has been obtained, *directly or indirectly*, as a result of torture, as provided for by article 15.” Summary Record of the Public Part of the 250th Meeting: Finland, UN Doc. No. CAT/C/SR.250, 8 May 1996, Recommendations, p. 7, para. 18 (emphasis added). It recommended to Georgia and Poland “that *statements obtained directly or indirectly under torture* may not be produced as evidence in the courts.” Summary Record of the Public Part of the 279th Meeting: Georgia, Poland, UN Doc. No. CAT/C/SR.279, 21 March 1997, Recommendations, p. 3, para. 15 (emphasis added). It also recommended to Germany that “further legislative attention be paid to the strict enforcement of [Article 15] and that *all evidence obtained directly or indirectly by torture* shall be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings.” Summary Record of the Public Part of the 329th Meeting: Germany, UN Doc. No. CAT/C/SR.329, 14 May 1998, Recommendations, p. 8, para. 15 (emphasis added). UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Human Rights Council 25th Session, UN

Torture's and Special Rapporteur on Torture's recommendations.⁴⁰⁶ The Committee Against Torture's recommendations to States to incorporate provisions into their criminal procedure excluding evidence obtained "directly or indirectly, as a result of torture"⁴⁰⁷ reflect an authoritative interpretation of the CAT.⁴⁰⁸ Its recommendations do not "contradict the plain letter of Article 15."⁴⁰⁹ They prompt States to take legislative action to strictly enforce Article 15.⁴¹⁰

153. The Special Rapporteur on Torture's conclusion that the exclusionary rule applies to evidence derived from torture⁴¹¹ is not part of a "general recommendation to the judicial branch of the States requesting 'to go beyond the literal remit of article 15,'" as characterized by the Pre-Trial Chamber.⁴¹² It is an authoritative declaration on the interpretation of the CAT's exclusionary rule based on human rights jurisprudence.⁴¹³
154. The Pre-Trial Chamber erroneously read into Article 15 of the CAT an overly strict causation requirement when it considered that the degree of causation between the torture and the WRIs at issue was tenuous.⁴¹⁴ That the ECCC was not complicit in the torture is

Doc. No. A/HRC/25/60, 10 April 2014, para. 29, citing *Cabrera García and Montiel Flores v. México*, IACtHR, Series C, No. 220, Judgement, 26 November 2010, para. 167.

⁴⁰⁶ Decision on Torture-Derived Annulment Application, para. 36.

⁴⁰⁷ See Summary Record of the Public Part of the 250th Meeting: Finland, UN Doc. No. CAT/C/SR.250, 8 May 1996, Recommendations, p. 7, para. 18; Summary Record of the Public Part of the 279th Meeting: Georgia, Poland, UN Doc. No. CAT/C/SR.279, 21 March 1997, Recommendations, p. 3, para. 15; Summary Record of Public Part of the 329th Meeting: Germany, UN Doc. No. CAT/C/SR.329, 14 May 1998, Recommendations, p. 8, para. 15.

⁴⁰⁸ Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 2, UN Doc. No. CAT/C/GC/2, 24 January 2008, para. 1: "The provisions of article 2 [of the CAT] ... constitute the foundation of the Committee's authority to implement effective means of prevention [of torture]...."

⁴⁰⁹ Decision on Torture-Derived Annulment Application, para. 36.

⁴¹⁰ See e.g., Summary Recommendations Part of the 329th Meeting: Germany, UN Doc. No. CAT/C/SR.329, 14 May 1998, Recommendations, p. 8, para. 15: "The Committee recommends that *further legislative attention be paid to the strict enforcement of article 15 of the Convention* and that all evidence obtained directly or indirectly by torture be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings." (emphasis added).

⁴¹¹ UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Human Rights Council 25th Session, UN Doc. No. A/HRC/25/60, 10 April 2014, para. 29.

⁴¹² Decision on Torture-Derived Annulment Application, para. 36, citing UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Human Rights Council 25th Session, UN Doc. No. A/HRC/25/60, 10 April 2014, para. 68 (Pre-Trial Chamber's emphasis).

⁴¹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/25/60, 10 April 2014, para. 29, citing *Cabrera García and Montiel Flores v. México*, IACtHR, Series C, No. 220, Judgement, 26 November 2010, para. 167.

⁴¹⁴ Decision on Torture-Derived Annulment Application, para. 37.

immaterial.⁴¹⁵ The OCIJ Investigator's search for witnesses was initiated from the S-21 biographies. But for the biographies, the Investigator would not have located the witnesses, interviewed them, and placed their WRIs on the Case File. The degree of causation is not attenuated by the fact that the Investigator, after using the S-21 biographies, had to search for witnesses in various places and determine if they were available and willing to be interviewed.⁴¹⁶

155. The Defence incorporates by reference the arguments set out in its previous submissions.⁴¹⁷

b. S-21 confessions may not be relied upon to establish facts other than the truth of the contents of the confession

156. Torture-tainted S-21 confessions may not be relied upon to show what action resulted based on the fact that a statement was made – for example, to show that arrests were carried out as a result of a confession. Article 15 of the CAT prohibits using torture-tainted evidence to prove the truth of its contents or even imply that it might be truthful.⁴¹⁸ The only permissible use of S-21 confessions is against an accused torturer as evidence that the confessions were made under torture. Any other use of such evidence is prohibited. *See* Annex H.

157. The Case 002/02 Trial Chamber erred in holding that information in a torture-tainted statement may be relied upon to establish facts other than the truth of the statement.⁴¹⁹ The Case 002/02 Trial Chamber failed to explain why the permissible use of torture-

⁴¹⁵ Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists, para. 46 (“In sum, human rights bodies have found that the prohibition on the use of information derived through torture concerns any formal proceedings, whether judicial or administrative. It further indicates that it is immaterial whether the act of torture was committed by the forum state or another state....”), citing *Othman (Aby Qatada) v. United Kingdom*, ECtHR App. No. 8139/09, Judgement, 17 January 2012, paras. 263, 267; *El Haski v. Belgium*, ECtHR App. No. 649/08, Judgement, 25 September 2012, para. 85. *See also* UN Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture, United Kingdom of Great Britain and Northern Ireland, UN Doc. CAT/C/CR/33/3, 10 December 2004, para. 4 (the Committee Against Torture expressed concern that the United Kingdom's law had “been interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit” and stated that “article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained”).

⁴¹⁶ Decision on Torture-Derived Annulment Application, para. 37.

⁴¹⁷ MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interviews, 10 August 2017, D257/1/3; MEAS Muth's Application for Annulment of D114/164, D114/167, D114/170, and D114/171, 17 July 2017, D253/1/3.

⁴¹⁸ Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists, para. 47.

⁴¹⁹ Case 002/02 Trial Chamber Decision on Evidence Obtained Through Torture, para. 75.

tainted evidence under Article 15 (as evidence that a statement was made under torture) is not enough to prosecute those accused of torture, failed to explain how reliability concerns are attenuated by using the torture-tainted evidence in this manner, and erroneously considered that the integrity of the proceedings must be balanced against the prosecutorial necessity of obtaining evidence against those accused of torture.⁴²⁰

158. The Case 002/02 Trial Chamber erroneously considered that the purpose of disincentivizing torture is defeated “if in prosecuting those responsible for torture, all use of such evidence were prohibited, thereby favoring accused of this crime.”⁴²¹ There is one permissible use of torture-tainted evidence under Article 15 of the CAT: it may be invoked as evidence that a statement was made under torture. The Case 002/02 Trial Chamber failed to explain why this use would be insufficient to prosecute alleged torturers.

159. The Case 002/02 Trial Chamber considered torture-tainted S-21 confessions to be “intrinsically unreliable,” but considered that the content of the confessions could be used to prove actions that were taken as a result of the fact that a confession was made.⁴²² The Case 002/02 Trial Chamber failed to explain how using the S-21 confessions in this manner attenuate any reliability concerns. The source of the evidence originates from victims who were subjected to torture – victims who were likely say anything to end the torture.⁴²³ Any other facts would have to be extracted by inference from that unreliable evidence.⁴²⁴ “Logically ... the argument that evidence obtained through torture is unreliable is relevant not only to forced confessions, but more generally, *to any information derived from a person subjected to torture*, even if that person is not a party to proceedings in which the information is being used.”⁴²⁵

160. The Case 002/02 Trial Chamber erroneously considered that the integrity of the proceedings must be considered in tandem “with the need to ensure the availability of evidence to prosecute those accused of torture.”⁴²⁶ The Supreme Court Chamber rejected this interpretation when the Co-Prosecutors argued that the exigencies of effective

⁴²⁰ See *infra* paras. 158-60.

⁴²¹ Case 002/02 Trial Chamber Decision on Evidence Obtained Through Torture, para. 74.

⁴²² *Id.*, para. 75.

⁴²³ Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists, para. 42.

⁴²⁴ *Id.*, para. 68.

⁴²⁵ *Id.*, para. 42 (emphasis added).

⁴²⁶ Case 002/02 Trial Chamber Decision on Evidence Obtained Through Torture, para. 76.

prosecution warranted broadening the use of statements obtained by torture beyond the plain language of Article 15 of the CAT:

[T]he exclusionary rule does not lend itself to accommodating the Co-Prosecutors' interpretation. The object and purpose of Article 15 of the CAT requires broad exclusion of any information obtained through torture, and the exception to this rule, by its nature, is to be interpreted narrowly. Specifically, the Supreme Court Chamber concurs with the jurisprudence cited above, which holds that necessities of prosecution do not justify the use of statements obtained through torture, even where the party moving to use the statements is not responsible for the torture.⁴²⁷

161. That torture was not charged in Case 002/01 does not alter the analysis. Use of torture-tainted evidence, for whatever reason, legitimizes the use of torture and impugns the integrity of the proceedings. "Torture evidence is excluded to protect the integrity of the trial process and, ultimately, the rule of law itself."⁴²⁸ The integrity of the proceedings and fairness of the process cannot be abandoned in the interests of obtaining convictions as expeditiously as possible. As Professor Kai Ambos explains:

While it is difficult to accept that defendants like the Khmer Rouge's leaders take advantage of Article 15 of the CAT—a provision which certainly was not designed to shield them from criminal responsibility—damage to the legitimacy of a trial against torturers that essentially relies on torture evidence should not be underestimated by the four criteria proposed by Scharf. In fact, these criteria are not concerned with the question of integrity or fairness of the proceedings but sacrifice these considerations on the altar of "judicial efficiency" with a view to convicting the defendants as smoothly as possible. Such "flexibility," a recent example of which is the trial against Saddam Hussein, does, in the long run, a disservice to criminal justice.⁴²⁹

162. Subsequently, the Case 002/02 Trial Chamber ignored its own decision and adhered to the letter and spirit of the CAT when it disallowed the Prosecutor from reading into evidence a broadcast of a torture-tainted confession to demonstrate that the DK

⁴²⁷ Case 002/01 Supreme Court Chamber Decision on Objections to Document Lists, para. 67 (internal citations omitted).

⁴²⁸ *Othman (Aby Qatada) v. United Kingdom*, ECtHR App. No. 8139/09, Judgement, 17 January 2012, para. 264.

⁴²⁹ Kai Ambos, *The Transnational Use of Torture Evidence*, 42 ISRAEL L. REV. 362, 381 (2009). Professor Michael P. Scharf's four criteria are: (1) torture-tainted evidence must never be used in a trial where the victim of such abuse is the defendant; (2) torture-tainted evidence must never be used where the prosecuting authorities were directly or indirectly involved in the torture; (3) torture-tainted evidence should not be considered unless it meets a high level of corroboration; and (4) torture-tainted evidence should not be admitted if the prosecution could obtain non-torture tainted evidence that would be effective in establishing criminal liability. See Michael P. Scharf, *Tainted Provenance, When, if ever, Should Torture Evidence be Admissible?*, 65 WASH & LEE L. REV. 129, 170-71 (2008).

government used such broadcasts for propaganda purposes against Vietnam.⁴³⁰ “These questions are not allowed to be put to the witness since they have something to do with the content of the confessions. So you have to be very careful regarding the presentation of the content of the confession on the radio broadcast.”⁴³¹

163. Creating new exceptions to Article 15 of the CAT risks relegating the prohibition against torture-tainted evidence to a mere hearsay rule – “a rule that has so many exceptions so as to be a veritable Swiss cheese.”⁴³² A weakened prohibition on the use of torture-tainted evidence “lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”⁴³³ So warned the Cambodian Center for Human Rights in an *amicus curiae* brief on this very issue:

[T]here remains the very real concern that the Cambodian judiciary will exploit the discretion to admit Torture Tainted Evidence.... Any decision to widen the exception in Article 15 could serve to legitimise and perpetuate endemic torture practices in Cambodia.... In Cambodia, as well as other transitional or post-conflict societies, police use of torture to obtain confessions from detainees is such that the deterrent rationale underlying the ban on Torture Tainted Evidence holds particular significance.⁴³⁴

164. WRIs obtained by using torture-tainted S-21 confessions as investigative leads and WRIs derived from torture-tainted evidence must not be relied upon. The contents of S-21 confessions cannot be relied upon to establish facts other than the truth of their contents. The CAT does not make exceptions for such use of torture-tainted or torture-derived evidence. The *only* permissible use of torture-tainted evidence under Article 15 of the CAT is that it may be invoked as evidence against a person accused of torture as evidence that a statement was made under torture.

⁴³⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.38.55-09.51.04.

⁴³¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.49.22-09.51.04.

⁴³² RICHARD A. POSNER, *FRONTIERS OF LEGAL THEORY* 395 (Harvard University Press 2004). In the US, there are more than 25 exceptions, including a residual exception, to the hearsay rule. See US Federal Rules of Evidence, Rules 803, 807.

⁴³³ *Korematsu v. United States*, 323 U.S. 214, 246 (1944), Jackson J. dissenting.

⁴³⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ (PTC), Application of the CCHR to Present an Amicus Curiae Submission Pursuant to Internal Rule 33, 25 September 2009, D253.1.1, paras. 26, 28.

IV. MEAS MUTH WAS NEITHER A “SENIOR LEADER” NOR ONE OF THOSE “MOST RESPONSIBLE”

165. MEAS Muth was neither a senior leader nor one of those most responsible for serious crimes committed across DK from 1975-1979. He held no CPK or DK roles that gave him nationwide responsibilities or authority. Any authority he may have had was limited to Division 164, naval matters along the Kampong Som coastline and mainland and, for the last two months of the regime, military matters in Sector 505. Any such authority was exercised according to the orders and instructions issued by the Standing and Central Committees and the General Staff. The NCP’s position similarly is that MEAS Muth was neither a “senior leader” nor one of those “most responsible,” in contrast to NUON Chea,⁴³⁵ IENG Sary,⁴³⁶ KHIEU Samphân,⁴³⁷ IENG Thirith,⁴³⁸ and Duch.⁴³⁹ She had the opportunity to conduct a preliminary investigation and had access to Case 003 evidence since 2008, if not earlier.⁴⁴⁰ There is no reason to consider that the NCP did not review all the evidence on the Case File before reaching her decision.⁴⁴¹ An impartial, thorough review of the evidence confirms the NCP’s position that the ECCC lacks personal jurisdiction over MEAS Muth.

166. In addition to the general principles of evidence discussed in Section III.D, when assessing the evidence, the CIJs must consider the highly secretive context in which the CPK operated. It was a statutory duty of Party members to: “Always and absolutely strive to maintain Party secrecy with high stance of revolutionary vigilance.”⁴⁴² Accordingly,

⁴³⁵ NUON Chea was a senior leader and most responsible because he was the deputy secretary of the CPK, a permanent member of the CPK, and the chairman of the People’s Representative Assembly of DK, and held other positions. Final Submission Concerning MEAS Muth Pursuant to Internal Rule 66, 14 November 2017 (“NCP’s Final Submission”), D256/6, para. 30.

⁴³⁶ IENG Sary was a senior leader and most responsible because he was a permanent member of the CPK, a deputy prime minister and Minister of Foreign Affairs, and held other positions. NCP’s Final Submission, para. 30.

⁴³⁷ KHIEU Samphân was a senior leader and most responsible because he was the Head of State, a member of the CPK’s Central Committee, and held other positions. NCP’s Final Submission, para. 30.

⁴³⁸ IENG Thirith was a senior leader and most responsible because she was a member of the CPK’s Party Center, the Minister of Social Affairs, and held other positions. NCP’s Final Submission, para. 30.

⁴³⁹ Duch was a senior leader and most responsible because he was the chairman of the S-21 security office “with the most special characteristics,” and held other functions. NCP’s Final Submission, para. 30.

⁴⁴⁰ Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008, D1, para. 8.

⁴⁴¹ NCP’s Final Submission, paras. 26, 31, 35.

⁴⁴² Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 2.2.E.

the CPK implemented an “extreme policy on secrecy,”⁴⁴³ according to which people were told only what they needed to know to perform their work and only concerned themselves with their own work.⁴⁴⁴ A former Division 801 member described the regime as a “prison without walls.”⁴⁴⁵ In such an environment, witnesses’ knowledge would have been limited to their own units and own tasks. As the CIJs found: “the pervasive use of mostly vertical lines of communication in the chain of command and the accompanying intended secrecy ... generally did not permit or at least did not encourage or facilitate a free egalitarian horizontal exchange of tactical and operational information on the levels below the top leadership.”⁴⁴⁶ The CIJs must view with skepticism and caution any witness’s claim to have detailed knowledge of matters outside of his or her restricted sphere.

⁴⁴³ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 19 May 2009, D98/1.2.2, 15.25.57-15.29.16 (Dr. Craig Etcheson, a former OCP analyst, testified: “One of the characteristics we have observed about the Communist Party of Kampuchea and, correspondingly, the State of Democratic Kampuchea, is that they had a quite extreme policy on secrecy for a very wide range of topics; indeed, such that for nearly two and a half years after this Party seized state power, they refused to publicly acknowledge that their Communist Party even existed. This was a devotion to secrecy which was unparalleled in the history of Communist movements throughout the world, and was quite astonishing and somewhat bewildering to their fraternal Communist parties in other countries”).

⁴⁴⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 1 November 2016, D114/297.1.40, 09.47.30-09.49.00 (Ieng Phan testified that during the DK period secrecy was an important principle. He minded his own business and his superior minded his own business; usually, people did not know all the information because some information was revealed to subordinates and some was not); Written Record of Interview of Pev Rim, 1 March 2016, D114/180, A30-31 (he was in a different unit from those on PCF boats so he did not know what orders they received; they only knew their own work); Written Record of Interview of Sieng Koy, 8 September 2015, D114/119, A9 (a member of Launh’s fishery unit who said that people seldom talked to each other or asked about what others saw or heard because that could be dangerous; they just paid attention to their assigned work); Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A8 (he only worked within his own unit, he knew nothing of other affairs), 10 (he did not even know how many people were in his team); Written Record of Interview of KAING Guek Eav, 3 June 2008, D4.1.1118, EN 00195602 (“Nuon Chea replied to me that ‘*The base also knows how to work*’ which meant, ‘*focus on your work, mind your own business*’, in accordance with the political line based on secrecy: to each his own work (that’s what they called the ‘action line’)”); Written Record of Interview of Norng Sophang, 27 August 2016, D114/245, A40 (“I just bore in mind that someone knew only what work he did. This was my principle. Someone said what he had to; he did not say what he must not. They did not allow us to know or see anything except for our work”); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2013, D98/3.1.20, 14.27.23 (Chhaom Se, Division 801 security chief: “[A]s a low-ranking personnel, I did not know much about what happened at the upper level and I had to focus on my tasks. I was supposed to know much about my own business, mind my own business.... I know something, but I just don’t know everything”).

⁴⁴⁵ Written Record of Interview of Beit Boeurn, 3 March 2016, D114/183, A134: “During that time, we were not allowed to go anywhere freely. We were in a so-called prison without walls. We had to stay within that boundary designed for us to stay. Because of such restriction, we did not know other places. We only focussed on our own work.”

⁴⁴⁶ Case 004/1 Closing Order, para. 41.

A. MEAS Muth was not a senior leader in the CPK or the DK government

167. The ICP overreaches in asserting that MEAS Muth was a senior leader in the CPK or DK government. Even when viewed in the light most favorable to the ICP, the evidence does not establish that MEAS Muth was a “senior leader.” The ICP: **a.** relies on witnesses whose statements are based on hearsay or speculation or are tainted; **b.** cites witness statements and documentary evidence that do not support his claims; **c.** ignores relevant structural and contextual evidence; and **d.** misrepresents evidence. MEAS Muth was not a participating member of the highest Party Committees, a Deputy Secretary in the General Staff, or a Member of its General Staff Committee. He did not have sole authority over Division 164 and the navy. He was not the Secretary or the highest authority in Kampong Som Autonomous Sector. MEAS Muth was not a “senior leader.”

1. MEAS Muth was not a member of the Standing Committee

168. MEAS Muth was not a member of the Standing Committee nor involved in its activities, nor does the ICP assert that MEAS Muth held any such role.

169. The Standing Committee was the most powerful entity in the CPK, setting the political line and making Party decisions.⁴⁴⁷ Its elite nature is demonstrated by the fact that it had only seven members: Pol Pot, NUON Chea, IENG Sary, Ta Mok, Sao Phim, Vorn Vet, and Son Sen.⁴⁴⁸

170. Of those members, Pol Pot, Ta Mok, and Son Sen were the most powerful regarding military matters.⁴⁴⁹ Ta Mok has been described as one of the most powerful CPK senior

⁴⁴⁷ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183396 (the Standing Committee monitors each section’s implementation of the line); Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156750; *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 27 May 2009, D98/1.2.6, 14.06.19-14.12.49 (Dr. Etcheson testified that the real power and authority in the CPK resided with the Standing Committee of the Central Committee and, for that reason, he believed the 30 March 1976 Central Committee Directive delegating the right to smash to various Party entities originated with the Standing Committee, not the Central Committee); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 28 May 2009, D98/1.2.7, 14.24.44-14.27.29, 15.33.31-15.34.30 (Dr. Etcheson testified that the Standing Committee set policies). *See also* Case 002/01 Trial Judgement, para. 203.

⁴⁴⁸ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156750; Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999, D1.3.33.7, EN 00184829 (although, Duch he learned this information “[t]hrough my studies”). *See also* Case 002/01 Trial Judgement, para. 203.

⁴⁴⁹ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156750; Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999, D1.3.33.7, EN 00184829; Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A4, 24.

leaders. Meas Voeun, deputy commander of Division 1,⁴⁵⁰ described him as the commander-in-chief of the military, possessing more power than Son Sen, with the ability to issue orders to any unit.⁴⁵¹ Ta Mok had the authority to act in naval matters, as demonstrated by Son Sen's report to Angkar that Ta Mok had assessed a Vietnamese ship moving around in DK waters near Koh Tauch.⁴⁵² Ta Mok could issue orders and carry out decisions in any part of DK.⁴⁵³ His authority was reflected in a slogan that indicated the extent of his power: above Ta Mok's head was his hat, above his hat there was only sky.⁴⁵⁴ No one could supervise him.⁴⁵⁵

171. Son Sen also held powerful positions in the CPK, government, and military. As Dr. Craig Etcheson, a former OCP analyst, testified: "Son Sen's powerful role in Democratic Kampuchea is illustrated by his interlocking positions of authority in the government, the military, and the Party."⁴⁵⁶ In the government, Son Sen was the Deputy Prime Minister for National Defence; in the military, he was the Chief of Staff of the General Staff; and in the Party, he was a member of the Standing Committee.⁴⁵⁷ Son Sen was one of the most senior CPK leaders regarding military planning.⁴⁵⁸

⁴⁵⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 09.56.33-09.59.21.

⁴⁵¹ Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A24; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A1; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 13.50.30-13.52.04; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 October 2012, D98/3.1.180, 09.55.15-09.57.33.

⁴⁵² Report titled "Report from Meas Mut to Son Sen Regarding Situation on Thai Border," 29 May 1977, D1.3.12.18, EN 00233992-00233993.

⁴⁵³ Written Record of Interview of Meas Voeun, 16 December 2009, D4.1.851, A12 (in 1978, after Meas Voeun had been in Preah Vihear Province for about two months, Ta Mok ordered the removal of Khim of the Sector 103 Committee in Preah Vihear by using his forces to take Khim away); Written Record of Interview of Uy Nhim, 31 March 2014, D54/76, A20-21 (in 1977, Ta Mok held a meeting in Sector 37 in 1977 about the purge of Battalion 386 and East Zone soldiers); Written Record of Interview of Sak Sim, 24 June 2016, D114/222, A28-29 (Division 801 was in Rattanakiri Province, Northeast Zone, but the Division Chief received orders from Ta Mok in Kampot Province, Southwest Zone); Written Record of Interview of Pech Chim, 26 June 2013, D98/3.1.207, A9 (in addition to being Southwest Zone Secretary, Ta Mok took control of the Northwest Zone, North Zone, and Central Zone after insurgencies in 1978).

⁴⁵⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 1 November 2016, D114/297.1.40, 10.41.26-10.44.03 (Ieng Phan testified that people said that above Ta Mok's head, there was only hat, and above his hat, there was only sky; no one could supervise him); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 23 April 2013, D98/3.1.28, 11.19.55-11.23.20 (Chhouk Rin testified that Ta Mok used the slogan "there was only the head about Ta Mok's head," meaning he could give orders to soldiers anywhere).

⁴⁵⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 1 November 2016, D114/297.1.40, 10.41.26-10.44.03.

⁴⁵⁶ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 18 May 2009, D98/1.2.1, 16.11.08.

⁴⁵⁷ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 18 May 2009, D98/1.2.1, 16.11.08-16.12.04. See also Written Record of Interview of Norng Sophang, 28 March 2009, D4.1.618, EN 00483968 (Son Sen was head of the Ministry of National Defence); Written Record of Interview of Sreng Thi, 7 April 2016, D114/199, A22 (the General Staff was the highest level of the military), 26 (Son Sen was Minister of the

172. Pol Pot, Ta Mok, and Son Sen oversaw military matters for the CPK through the Military Committee.⁴⁵⁹ The Military Committee was a sub-committee of the Standing Committee, chaired by Pol Pot, with responsibility for military and security policy in DK.⁴⁶⁰ It controlled Center Divisions and Independent Regiments through the General Staff and implemented a strict reporting regime.⁴⁶¹ Reports and requests were sent to the Military Committee through Office 870, which could issue orders to all political and military echelons of the government.⁴⁶² As with the Standing Committee, there is no evidence MEAS Muth was a member of the Military Committee nor does the ICP assert that he held any such role.

2. MEAS Muth was not a member of the Central Committee

173. The sources the ICP cites do not support his claim that MEAS Muth was a member of the Central Committee.⁴⁶³ The ICP cites only unreliable statements from KHIEU Samphân and Duch. At best, their statements are ambiguous regarding MEAS Muth's involvement in the Central Committee and do not establish that he had any participating role in the body.

Ministry of National Defence); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 June 2016, D114/277.8, 09.54.39-09.58.03 (Duch said Son Sen was deputy prime minister and Minister of National Defence); Written Record of Interview of Lay Ean, 17 September 2016, D114/258, A20 (Son Sen was military chief and in charge of Ministry of Defence); Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A67 (Son Sen was in charge of the General Staff, which commanded Division 3), 81-82 (Pol Pot ordered the navy's creation and gave orders to the Ministry of National Defence, which ordered the Divisions).

⁴⁵⁸ Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A12; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 14.35.25-14.37.55 (Ieng Phan stated that only Pol Pot and Son Sen oversaw the military). *See also* Case 002/01 Trial Judgement, para. 204 (finding that Pol Pot chaired the Military Committee and Son Sen was a member).

⁴⁵⁹ Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, paras. 99-100. Suspect Statement of IENG Sary, 17 December 1996, D4.1.964, EN 00417637-00417638; Written Record of Initial Appearance of NUON Chea, 19 September 2007, D114/29.1.12, EN 00148817.

⁴⁶⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2012, D98/3.1.133, 11.14.32-11.15.55 (NUON Chea testified that Pol Pot was chief of the Military Committee); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 28 May 2009, D98/1.2.7, 14.22.20 (Pol Pot was the chair of the Center Military Committee), 14.24.44-14.27.29 (Dr. Etcheson testified that the Central Military Committee created and defined policy); Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, para. 106. *See also* Case 002/01 Trial Judgement, para. 204.

⁴⁶¹ *See infra* para. 213.

⁴⁶² *See* Standing Committee Directive by Office 870 titled "Advice from 870," 3 January 1979, D1.3.34.78, EN 00182799-00182803; Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, para. 101.

⁴⁶³ Final Submission, paras. 49-50.

174. **KHIEU Samphân.** KHIEU Samphân held the symbolic position of President of the DK State Presidium⁴⁶⁴ and claimed that, from 1976, he was a full-rights member of the Central Committee.⁴⁶⁵ He had no involvement with military matters.⁴⁶⁶ He claimed that Division commanders including MEAS Muth were members of the Central Committee.⁴⁶⁷ KHIEU Samphân did not indicate how or when he learned this, what this membership entailed, or the degree to which Division commanders could participate in discussions or decision-making within the Committee. He did not say MEAS Muth had any authority or ability to participate in Central Committee meetings, discussions, or decisions. The Central Committee, which was less powerful than the Standing Committee,⁴⁶⁸ had at least 20 to 30 members,⁴⁶⁹ including the Standing Committee.⁴⁷⁰ There are no Central Committee meeting minutes or other Party documents indicating MEAS Muth was a member of the Committee or attended any meetings. KHIEU Samphân's claim is not supported by other evidence.

175. **Duch.** Duch, the chairman of S-21 from 1976 to 1979,⁴⁷¹ is unreliable regarding any matters beyond S-21. He claimed to have known MEAS Muth was an assistant to the Central Committee,⁴⁷² yet admitted his activities were limited to S-21⁴⁷³ and his movements and knowledge were limited during the DK period.⁴⁷⁴ Anything that happened outside of S-21 was not his business.⁴⁷⁵ Because he was "at a lower level," he

⁴⁶⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 24 July 2012, D98/1.2.42, 15.23.20-15.24.54 (David Chandler testified that this position was not equivalent to those of the people who held power in DK). *See also* Case 002/01 Judgement, para. 381.

⁴⁶⁵ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156751.

⁴⁶⁶ Case 002/01 Trial Judgement, para. 378.

⁴⁶⁷ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156751. Final Submission, para. 49.

⁴⁶⁸ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156750. *See supra* para. 169 regarding the Standing Committee. Statutorily, the Central Committee was the most powerful Party entity between Congresses. Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 7(1).

⁴⁶⁹ Written Record of Interview of Charged Person KHIEU Samphân, 13 December 2007, D1.3.33.15, EN 00156751. *See also* Case 002/01 Trial Judgement, para. 202.

⁴⁷⁰ Case 002/01 Trial Judgement, para. 202.

⁴⁷¹ Case 001 Trial Judgement, paras. 128-29; Case 002/01 Trial Judgement, para. 343.

⁴⁷² *See e.g.*, Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796. Final Submission, fns. 139, 141.

⁴⁷³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 March 2012, D98/1.2.16, 11.26.47-11.28.26.

⁴⁷⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 09.03.39-09.05.31.

⁴⁷⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 10.00.56-10.02.03.

did not get full information about events.⁴⁷⁶ He “never grasped anything concretely.”⁴⁷⁷ He did not know about other people’s work.⁴⁷⁸ He never received Standing Committee or Central Committee meeting minutes⁴⁷⁹ and did not dare ask anyone what happened at Standing Committee meetings.⁴⁸⁰ He never visited Office 870 and did not know where it was located.⁴⁸¹ As he admitted to the Trial Chamber: “if you really want me to only talk about what I knew back then, I’m afraid I may not have anything to tell the world about this because I was confined to S-21 in particular.”⁴⁸²

176. Any contemporaneous knowledge Duch might have had of matters outside S-21 was tainted irreparably by the OCIJ during his involvement in ECCC proceedings. During Case 001, Duch’s “knowledge evolve[d].”⁴⁸³ He read books on communism and the DK period.⁴⁸⁴ He reviewed Case File documents provided to him by his lawyers and the CIJs.⁴⁸⁵ The OCIJ gave him questions that he was given several weeks or months to answer, with the assistance of secondary materials.⁴⁸⁶ Historians and other experts testified during his trial, including David Chandler, Nayan Chanda, Raoul Jennar, and Dr. Etcheson.⁴⁸⁷ Through his review of the Case File, he “understood better the organisation

⁴⁷⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 March 2012, D98/1.2.16, 11.26.47-11.28.26.

⁴⁷⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 13.42.42-13.45.05.

⁴⁷⁸ Written Record of Interview of KAING Guek Eav, 5 May 2008, D1.3.33.12, EN 00204286.

⁴⁷⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 09.39.56-09.42.29; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 April 2012, D98/1.2.25, 13.34.55-13.36.47.

⁴⁸⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 10.02.22-10.03.41.

⁴⁸¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 09.38.17-09.42.29.

⁴⁸² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 March 2012, D98/1.2.16, 11.26.47-11.28.26.

⁴⁸³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 March 2012, D98/1.2.16, 11.26.47-11.28.26. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 11.00.10-12.04.10.

⁴⁸⁴ Written Record of Interview of KAING Guek Eav, 5 May 2008, D1.3.33.12, EN 00204287; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 April 2012, D98/1.2.25, 13.51.15-13.57.22; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 10.30.37-10.33.19, 13.42.42-13.53.24. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 13.34.25-13.52.02.

⁴⁸⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 10.28.42-10.31.37, 13.52.02-13.55.38; Written Record of Interview of KAING Guek Eav, 5 May 2008, D1.3.33.12, EN 00204287; Written Record of Interview of KAING Guek Eav, 29 November 2007, D4.1.1117, EN 00154202.

⁴⁸⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 April 2012, D98/1.2.26, 11.52.08-12.04.10.

⁴⁸⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 April 2012, D98/1.2.25, 13.55.32-13.57.22.

of the Regime.”⁴⁸⁸ Until Duch appeared before the ECCC, he had never seen any Standing Committee documents or decisions because during the DK regime, his core documents were the Party Statute and the *Revolutionary Flag* and *Revolutionary Youth* magazines.⁴⁸⁹ For the first time, he learned about the Standing/Central Committee’s 30 March 1976 directive on smashing and the annotations Son Sen and NUON Chea wrote on S-21 confessions.⁴⁹⁰ As he said: “I compared what I learned during [the DK regime] and the information acquired later on [by the OCIJ] to incorporate into whether my understanding back then was correct.”⁴⁹¹ As a result of Duch’s post-1979 exposure to CPK- and DK-related information, it is impossible to distinguish what he knew during the DK period from what he learned afterward. Any claims Duch made about matters other than his work at S-21 must be viewed with skepticism and accorded little probative value, if any.

177. Demonstrating his unreliability, Duch made conflicting claims about MEAS Muth’s role in the CPK and DK government. In June 1999, he claimed that, “[t]hrough [his] studies” of the DK leadership structure, he knew⁴⁹² MEAS Muth was the naval commander in Kampong Som and chairman of the Kampong Som Committee.⁴⁹³ In OCIJ

⁴⁸⁸ Written Record of Interview of KAING Guek Eav, 25 June 2008, D4.1.1119, EN 00198882.

⁴⁸⁹ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 9 June 2009, D98/3.1.90, 10.15.47-10.21.32.

⁴⁹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 April 2012, D98/1.2.25, 14.06.10-14.09.02 (confirming his statement to the OCIJ that he read about the 30 March 1976 Directive in an excerpt from a book by David Chandler); Written Record of Interview of KAING Guek Eav, 29 April 2008, D4.1.1112, EN 00185474 (stating that he was preparing to answer the CIJs’ questions about David Chandler’s book and had read about the 30 March 1976 Directive in the excerpt from the book); Written Record of Interview of KAING Guek Eav, 11 November 2009, D4.1.860, EN 00403921 (stating that he did not know of the annotations on S-21 confessions until he read them in the Case 001 Case File).

⁴⁹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 March 2012, D98/1.2.16, 11.28.26-11.29.35 (Duch described how his knowledge of the disrobing of monks evolved during the OCIJ investigation: “We -- I conducted -- gathered this information, and we learned that the Office of Co-Investigating Judges went down to the fields, and information was obtained that head monks was disappearing, so it came to me that temples or pagodas were demolished, head monks or monks were executed or disrobed. And by that, I compared what I learned during that time and the information acquired later on to incorporate into whether my understanding back then was correct.”)

⁴⁹² Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999, D1.3.33.7, EN 00184829.

⁴⁹³ Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999, D1.3.33.7, EN 00184829-00184830: “(00184829) Through my studies I know that ... (00184830) The Member Assistants of the Center were: Chhim Sam-Aok known as Pang was the first individual, the Chairman of the Center Office. Besides him, there were Cheng Ân, Chairman Committee of Industry. Pêt Soeung was Chairman of the 1st Division of the Southwest Zone. Later, he was a member of the West Zone Committee. Sam Bit was Assistant to the Center responsible for the military in the Southwest Zone, and Meas Mut was the Commander of Naval forces stationed at Kampong Saom City and Chairman of the Kampong Saom City Committee, and Sou Samet was Commander of the Air Force and Assistant Member of the Center.” See also Final Submission, para. 75, fn. 227.

interviews in 2007, 2008, and 2011, he claimed MEAS Muth was an assistant, or member of the Assisting Committee, to the Central Committee.⁴⁹⁴ In 2009, he claimed to the Trial Chamber that MEAS Muth was on the Standing Committee,⁴⁹⁵ a claim that is not supported by any evidence. He did not repeat his claim until 2012, when he told the Trial Chamber MEAS Muth “just became a member of the Standing Committee recently.”⁴⁹⁶ If the CIJs accord Duch’s statements any probative value, they must consider that, among his conflicting statements, he primarily claimed MEAS Muth *assisted* the Central Committee but did not participate in it.⁴⁹⁷ He also claimed Son Sen confirmed this non-participatory role.⁴⁹⁸ Having a non-participatory role in the Central Committee does not make MEAS Muth a “senior leader.”

178. In claiming that the Central Committee had “full, alternate, and *de facto*” members consisting of the Standing Committee, Zone and Sector secretaries, Ministers, and Division commanders, the ICP presents an inaccurate picture.⁴⁹⁹ According to Duch (should the CIJs accord probative value to his testimony about non-S-21 matters), there were four levels of Central Committee membership.⁵⁰⁰ The Standing Committee was the highest level of membership, with seven members.⁵⁰¹ The next highest level of

⁴⁹⁴ Written Record of Charged Person KAING Guek Eav, 4 December 2007, D1.3.33.13, EN 00154911 (claiming that he learned that MEAS Muth was appointed to the Assisting Committee of the Central Committee); Written Record of Charged Person KAING Guek Eav, 2 June 2008, D1.3.33.10, EN 00195577 (claiming that he learned that the military section was appointed to the Assisting Committee of the Central Committee); Written Record Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796 (claiming MEAS Muth was an assistant to the Central Committee).

⁴⁹⁵ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 25 November 2009, D98/3.1.105, 11.57.20-13.33.56.

⁴⁹⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 April 2012, D98/1.2.22, 14.20.23-14.21.58.

⁴⁹⁷ Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999, D1.3.33.7, EN 00184830; Written Record of Interview of Charged Person KAING Guek Eav, 2 June 2008, D1.3.33.10, EN 00195577 (he learned that the military section was appointed to the Assisting Committee of the Central Committee); Written Record of Interview of Charged Person KAING Guek Eav, 4 December 2007, D1.3.33.13, EN 00154911 (he learned that MEAS Muth, commander of the navy, was appointed to the Assisting Committee of the Central Committee); Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796-00680797 (MEAS Muth was an assistant to the Central Committee); Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A3-4. The ICP misrepresents Duch’s 2016 trial testimony. He did say that MEAS Muth and Sou Met were cadres who were members of the Center, but he then said there were cadres of the Center, for example Pang and Sou Met, who were assistants to the Center. His testimony is in line with his other statements that MEAS Muth and Sou Met were assistants to the Center. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 June 2016, D114/277.8, 10.58.02-10.59.48.

⁴⁹⁸ Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796-00680797.

⁴⁹⁹ Final Submission, para. 50, fn. 139.

⁵⁰⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 March 2012, D98/1.2.18, 15.09.40-15.12.10; Written Record of Interview of Charged Person KAING Guek Eav, 23 August 2007, D1.3.33.11, EN 00147570-00147571; Written Record of Interview of KAING Guek Eav, 1 February 2016, D114/158, A32, 35.

⁵⁰¹ Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796.

membership was full-rights membership. Full-rights members could join discussions and vote.⁵⁰² The third level of membership was reserve or candidate membership, of which there were “many” members.⁵⁰³ Reserve/candidate members could give comments during discussions but could not vote.⁵⁰⁴ The fourth and lowest level of membership were the assistants to the Central Committee, the largest membership group.⁵⁰⁵ Assistants could attend Central Committee training sessions and take notes, but had no right to participate in or vote on discussions or decisions about Party lines and policies.⁵⁰⁶ Duch later slightly altered his description of the different membership levels,⁵⁰⁷ but he maintained that assistants were the lowest level of “member” with no participation rights.⁵⁰⁸

179. Duch claimed that, at the 2 November 1978 Party Congress, MEAS Muth became a reserve member of the Central Committee.⁵⁰⁹ Duch did not say whether he attended the Congress or whether this was information he heard or learned after the DK period. If the CIJs consider his statement to be of any probative value, they must consider MEAS Muth would have been a reserve member of the Central Committee for only two months before the fall of the DK regime. He would have had no right to vote on or participate in Central Committee decisions and thus no ability to determine Party policies. Being a reserve member of the Central Committee for two months towards the end of the DK regime does not make MEAS Muth a senior CPK leader from 17 April 1975 to 7 January 1979.

180. MEAS Muth was not a member of the Central Committee. KHIEU Samphân and Duch are insufficient support for the ICP’s claim. When viewing the evidence in the light most favorable to the ICP, at most, MEAS Muth may have assisted the Central Committee in a non-participating manner or become a reserve member two months before the DK regime fell. This evidence does not elevate him to the category of “senior leader.”

⁵⁰² Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796.

⁵⁰³ Written Record of Interview of Charged Person KAING Guek Eav, 23 August 2007, D1.3.33.11, EN 00147571.

⁵⁰⁴ Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796.

⁵⁰⁵ Written Record of Interview of Charged Person KAING Guek Eav, 23 August 2007, D1.3.33.11, EN 00147571.

⁵⁰⁶ Written Record of Interview of Charged Person KAING Guek Eav, 4 December 2007, D1.3.33.13, EN 00154911 (right to be trained at Office 870 with Central Committee members); Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680797 (no right to vote or give opinion); Written Record of Interview of KAING Guek Eav, 1 February 2016, D114/158, A32 (no right to vote or give opinion).

⁵⁰⁷ Written Record of Interview of Charged Person KAING Guek Eav, 4 December 2007, D1.3.33.13, EN 00154911 (referring to the second level of membership as “ex officio” membership).

⁵⁰⁸ See *supra* fn. 506.

⁵⁰⁹ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A18.

3. MEAS Muth was not a Deputy Secretary of the General Staff or a member of its Committee

a. MEAS Muth was neither a *de jure* nor *de facto* Deputy Secretary of the General Staff or a member of its Committee

181. The sources the ICP cites do not support his claims that MEAS Muth was appointed a Deputy Secretary of the General Staff and was a member of the General Staff Committee until the fall of DK.⁵¹⁰ The ICP primarily cites unreliable or unsupportive statements from Moeng Vet, Seng Soeun, Chet Bunna, Lay Bunhak, Sath Chak, Prum Sarat, Meas Voecun, Lon Seng, Duch, and Hieng Ret.⁵¹¹ None of these witnesses provide sufficient evidence of the *de jure* or *de facto* appointment of MEAS Muth to the position of Deputy Secretary of the General Staff or member of the General Staff Committee, or the time frame in which he held these positions.

182. **Moeng Vet.** Moeng Vet is unreliable. He gave contradictory and speculative statements about MEAS Muth's activities with the General Staff and Party Center. Moeng Vet was transferred to Sector 505 in 1977⁵¹² to become the deputy chairman in charge of logistics for Division 117.⁵¹³ He claimed MEAS Muth was a deputy in the General Staff.⁵¹⁴ He did not say MEAS Muth was a member of the General Staff Committee.⁵¹⁵ He told an OCIJ Investigator he did not attend a meeting in Kratie where MEAS Muth called Division 117 and Sector 505 arrestees traitors, but only heard about the meeting from people in his office.⁵¹⁶ This statement contradicts his DC-Cam interview, in which he said he had attended such a meeting.⁵¹⁷ In a later interview with the OCIJ, Moeng Vet changed his story and said he did attend the meeting, stating: "Today I agree with the content of my interview with the Documentation Center of

⁵¹⁰ Final Submission, paras. 53, 56, 222.

⁵¹¹ Final Submission, fns. 158, 160, 168, 668.

⁵¹² Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A2.

⁵¹³ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A6.

⁵¹⁴ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A22-23. Final Submission, fn. 160.

⁵¹⁵ As claimed by the ICP in Final Submission, para. 56, fn. 170, quoting Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A23.

⁵¹⁶ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A30-31.

⁵¹⁷ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 00992999-00993000. *C.f.* DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212317 (a different English translation of the DC-Cam interview, in which it is less clear that Moeng Vet said he was present at the meeting, rather than merely stating that a meeting was held).

Cambodia,” claiming that forgetfulness made him contradict his DC-Cam interview.⁵¹⁸ Even in his DC-Cam interview, Moeng Vet said he had “forgotten everything. I generally cannot remember anymore.”⁵¹⁹ In addition to contradicting himself and forgetting things, Moeng Vet learned some of his information after 1979. He told DC-Cam 11 people were arrested in Kratie and sent to Tuol Sleng.⁵²⁰ When he spoke to the OCIJ, he admitted hearing after 1979 that these 11 people were sent to Tuol Sleng.⁵²¹

183. Even if the CIJs consider Moeng Vet reliable, his claim that MEAS Muth was a deputy in the General Staff⁵²² is of little probative value because he speculated. He believed MEAS Muth was a deputy in the General Staff because: **a.** MEAS Muth went to the border to check the front line when the Vietnamese attacked;⁵²³ **b.** the three branches of the military were under the General Staff and MEAS Muth was a deputy in charge of the navy;⁵²⁴ and **c.** in late 1978, all requests sent to the General Staff were answered by Sou Met and MEAS Muth.⁵²⁵ Moeng Vet did not see MEAS Muth go to the border⁵²⁶ but only heard from a naval regiment commander that it happened.⁵²⁷ He claimed only that MEAS Muth examined specific border issues at Kratie and Stung Treng, not that MEAS Muth generally handled all border issues for the General Staff.⁵²⁸ That the navy was under the General Staff and that MEAS Muth may have been in charge of the navy does not mean MEAS Muth was a *de jure* or *de facto* deputy in the General Staff; it simply means that the navy, as a branch of the military, was under the General Staff’s authority. Moeng Vet also confirmed during his Case 002/02 testimony that he did not actually

⁵¹⁸ Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A1. When he testified in Case 002/02, he stated that he had been present at the meeting. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 09.35.51-09.44.13. See Final Submission, fn. 1008.

⁵¹⁹ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212294.

⁵²⁰ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 00992992 (EN 01212299 in the second translation).

⁵²¹ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A38-39.

⁵²² Final Submission, fns. 160-61, 168, 3466-67.

⁵²³ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A22, 25. Final Submission, fns. 160, 3467. See *infra* Section IV.C.8 for detailed submissions regarding MEAS Muth’s alleged authority over Division 117 and Sector 505.

⁵²⁴ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A23. Final Submission, fns. 160, 3467.

⁵²⁵ Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A31. Final Submission, fns. 161, 3467.

⁵²⁶ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A26.

⁵²⁷ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A24.

⁵²⁸ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A24.

know the details of communications within the General Staff but based his conclusions on speculation.⁵²⁹

184. **Seng Soeun.** Seng Soeun is unreliable. His memories were tainted during his OCIJ interview, rendering unreliable both his OCIJ interview and his subsequent Case 002/02 testimony. In 2016, Seng Soeun, the chairman of the Sector 505 office for the last 25 days of the DK regime,⁵³⁰ claimed MEAS Muth was the Deputy Minister of Defence acting for Son Sen.⁵³¹ He did not say MEAS Muth was on the General Staff Committee.⁵³² Prior to 2016, Seng Soeun described MEAS Muth as commanding Division 164 in Kampong Som.⁵³³ In 2016, Seng Soeun was interviewed by the OCIJ and later testified in Case 002/02. His memory and statements were tainted by the way in which the OCIJ Investigator conducted the interview. The Investigator began the interview by re-reading to Seng Soeun his 2009 OCIJ interview to “refresh”⁵³⁴ his memory. Seng Soeun had not yet indicated any need for his memory to be refreshed. Upon the completion of this reading, Seng Soeun said: “I remember now. If I had not listened, I probably would have forgotten everything.”⁵³⁵ He also said it had been a long time and that he had been “sick and unconscious.”⁵³⁶ The Investigator’s questioning technique tainted Seng Soeun’s evidence.⁵³⁷ He supplied Seng Soeun with his memories rather than first questioning him to either obtain his independent memories or determine that Seng Soeun could not

⁵²⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 10.12.25-10.15.42 (discussing his earlier testimony in *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 13.45.51-13.48.58). See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC, Transcript, 28 July 2016, D114/297.1.24, 09.39.40-09.44.15.

⁵³⁰ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A5-7; Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A24-25.

⁵³¹ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A25. Final Submission, fn. 3466.

⁵³² As claimed by the ICP in Final Submission, para. 56, fn. 170, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 13.55.39-14.00.52.

⁵³³ Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A30. In his DC-Cam interview, Seng Soeun said only that MEAS Muth came to Kratie to “manage works on behalf of Pol Pot,” that he organized the army there. DC-Cam Interview with Seng Soeun, 11 February 2006, D59/2/4.16a, EN 00753837.

⁵³⁴ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, EN 01237985: “I have your 2009 interview in the Khmer language, ERN00402505 to ERN00402517. For fairness, I will have it read to you with the intent of helping refresh your memory for today’s interview.

⁵³⁵ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A1.

⁵³⁶ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A2.

⁵³⁷ Final Submission, fns. 160-61.

remember and needed to have his memory refreshed.⁵³⁸ Seng Soeun's statements in this interview and during the Case 002/02 trial are of little probative value.

185. Even if the CIJs do not consider Seng Soeun's evidence tainted, his Case 002/02 trial testimony is of little probative value because: **a.** Seng Soeun testified as a Civil Party⁵³⁹ and therefore was not a disinterested participant and did not swear an oath,⁵⁴⁰ and **b.** at the beginning of his testimony, his statements raised grave credibility concerns. He said he could not read his prior written interviews, was unconscious for three days and three nights, regained his memory but forgot it all, and that his lawyer tried to refresh his memory so he was able to recall part of it.⁵⁴¹ Despite these statements, Seng Soeun then said his WRIs were "the truth that I have reviewed and that I provided information to them. Everything is the truth as I told them. And the records are correct."⁵⁴² This statement is not credible given his prior descriptions of his physical and mental health.

186. **Chet Bunna.** Chet Bunna is unreliable. He was merely a combatant on a ship who did not know about the leadership level after early 1977.⁵⁴³ He speculated and is motivated by animus toward MEAS Muth.⁵⁴⁴ He claimed he heard in an assembly that MEAS Muth was Son Sen's deputy and thought MEAS Muth was a deputy at the General Staff because of his work, responsibility, and the "18 thousands [*sic*]" troops under his command.⁵⁴⁵ He did not say MEAS Muth was on the General Staff Committee.⁵⁴⁶ As an ordinary combatant on a ship, Chet Bunna's knowledge of Division-level or higher-level

⁵³⁸ See MEAS Muth's Request that the Co-Investigating Judges Instruct the OCIJ Investigators to Audio or Video Record all Witness and Civil Party Interviews, 27 April 2015, D136, paras. 16-24, discussing the ways in which questioning techniques can impact witness statements, particularly those from elderly witnesses.

⁵³⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 09.11.49-09.14.46 (referring to him as Civil Party 2-TCCP-219); Rule 23(1). He has not yet applied to be a Civil Party in Case 003, according to Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, EN 01237985.

⁵⁴⁰ See *supra* para. 142 regarding the use of Civil Party evidence.

⁵⁴¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 09.20.16.

⁵⁴² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 09.20.16.

⁵⁴³ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A16; Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A4, 6, 16; Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A19.

⁵⁴⁴ See *infra* paras. 187-88.

⁵⁴⁵ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A10. Final Submission, fn. 160.

⁵⁴⁶ As the ICP asserts in Final Submission, para. 56, fn. 170, quoting Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A12. See also Final Submission, para. 222, fn. 668, quoting Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9.

governing structures would have been limited, as it was after early 1977 by his own admission.⁵⁴⁷

187. In addition to his low level of knowledge because of his position, Chet Bunna's recollection of events is unreliable. When discussing his memory of the specific date he went to work at Stung Hav quarry (which he claimed was 30 September 1978),⁵⁴⁸ he said he could remember dates so well because he had a book in which he wrote down all events.⁵⁴⁹ When queried about the whereabouts of the book, he claimed to have lost it upon the arrival of the Vietnamese troops.⁵⁵⁰ This story is not credible. That Chet Bunna had a book, in effect a diary, which he lost in late 1978 or early 1979, does not explain how he would remember specific dates and events so clearly more than 35 years later. Other testimony of Chet Bunna's confirms the inaccuracy of his memory. An OCIJ Investigator asked about his professed memory that MEAS Muth held a meeting on 17 April 1977 to announce Dim's and Norng Chhan's arrests, when S-21 documents indicated the arrests occurred in May 1977.⁵⁵¹ Despite acknowledging the dates in the S-21 documents, Chet Bunna reiterated his claim that the meeting was held on 17 April 1977, meaning his testimony was that MEAS Muth had announced arrests before they happened.⁵⁵²

188. Ultimately, Chet Bunna may be motivated by animus toward MEAS Muth. He appears to believe MEAS Muth personally ordered his arrest and transfer to a production unit⁵⁵³ and volunteers negative claims about MEAS Muth's character several times during his interviews.⁵⁵⁴

189. **Lay Bunhak.** Lay Bunhak is unreliable. He gave contradictory statements to DC-Cam and the OCIJ and his OCIJ interview was conducted under non-transparent circumstances. He was a radio operator at Regiment 140 headquarters.⁵⁵⁵ He claimed

⁵⁴⁷ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A19.

⁵⁴⁸ Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A16.

⁵⁴⁹ Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A17.

⁵⁵⁰ Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A18.

⁵⁵¹ Written Record of Interview of Chet Bunna, 15 June 2015, D114/85, Q26.

⁵⁵² Written Record of Interview of Chet Bunna, 15 June 2015, D114/85, A11, 24-27.

⁵⁵³ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9; Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A1, A10-11.

⁵⁵⁴ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A20, 22; Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A8.

⁵⁵⁵ Written Record of Interview of Lay Bunhak, 28 May 2014, D54/99, A36.

MEAS Muth was moved to the General Staff and became the Deputy Chief.⁵⁵⁶ There are contradictions in Lay Bunhak's statements. He told DC-Cam MEAS Muth became Deputy Chief of the General Staff⁵⁵⁷ but told the OCIJ only that MEAS Muth was moved to the General Staff.⁵⁵⁸ He claimed to DC-Cam that he commanded the radio communications unit in Regiment 140 but denied this to the OCIJ.⁵⁵⁹ He claimed to DC-Cam that he was deputy chief of a ship but denied this to the OCIJ.⁵⁶⁰ His OCIJ interview occurred over multiple days but the WRI does not indicate when the interview ended on the first day, began on the second day, or why the interviewers changed during the interview.⁵⁶¹

190. Even if Lay Bunhak's statements are accorded any probative value, his statements regarding MEAS Muth's transfer to Phnom Penh are unclear. He said he knew MEAS Muth was on the General Staff because, after the Vietnamese attacked, he saw MEAS Muth "come back about 10 days before the Vietnamese soldiers dropped bombs on Kampong Som in late 1978. [He] concluded [MEAS Muth] was probably going to the General Staff Headquarters."⁵⁶² It is unclear whether he saw MEAS Muth "come back" to Kampong Som or to Phnom Penh. In any event, Lay Bunhak's personal conclusion about where MEAS Muth was "probably" going is of no probative value. If Lay Bunhak's statements are accorded any probative value, the CIJs must consider his statements that, contrary to the ICP's claim that MEAS Muth controlled over Division 164 after he left,⁵⁶³ Toem Seng controlled all military units and passed along all orders from the upper echelon.⁵⁶⁴ Hing Uch also said Toem Seng issued orders after MEAS Muth left.⁵⁶⁵

⁵⁵⁶ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A93, 95-96; DC-Cam Interview with Lay Boonhak, 20 May 2007, D54/99.1, EN 01115988. Final Submission, fns. 160, 168.

⁵⁵⁷ DC-Cam Interview with Lay Bunhak, 20 May 2007, D54/99.1, EN 01115988.

⁵⁵⁸ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A92, 96.

⁵⁵⁹ Written Record of Interview of Lay Bunhak, 28 May 2014, D54/99, A36.

⁵⁶⁰ Written Record of Interview of Lay Bunhak, 28 May 2014, D54/99, A37-38.

⁵⁶¹ Decision on MEAS Muth Defence's Request Regarding Corrections to the Case File, 13 June 2016, D176/1, para. 7(f): "WRI D54/100 does not indicate the time line of the interview, such as when the breaks were taken or when the interview was terminated on the first day or recommenced on the second day, nor does it indicate when or why the interviewer changed from Sarah Kryss to Ignacio Tredici. Due to the departure of both staff members from the OCIJ and the lapse of time, the timeline for this interview can no longer be verified. An assessment of the impact of this matter on the probative value of the evidence will be made at the appropriate time."

⁵⁶² Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A100.

⁵⁶³ Final Submission, para. 56.

⁵⁶⁴ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A93, 96.

⁵⁶⁵ Written Record of Interview of Hing Uch, 22 April 2014, D54/81, A14-16.

191. **Prum Sarat.** Prum Sarat is unreliable. His statements about MEAS Muth and the General Staff stem from leading questions from the DC-Cam interviewer. Prum Sarat, a company commander in Regiment 140 who later became a ship captain,⁵⁶⁶ said MEAS Muth left Kampong Som in 1978 to go to Phnom Penh.⁵⁶⁷ His statement to DC-Cam that MEAS Muth was promoted to deputy commander-in-chief of the General Staff at the end of 1978⁵⁶⁸ was based on a leading question from the interviewer. After Prum Sarat said MEAS Muth went to Memot to replace Son Sen, who was still the General Staff's commander-in-chief,⁵⁶⁹ the DC-Cam interviewer asked: "So Ta Mut was deputy commander in chief?"⁵⁷⁰ Prum Sarat answered affirmatively.⁵⁷¹ Prum Sarat did not independently volunteer the information.
192. **Sath Chak.** Sath Chak is unreliable. His statements are based on unverifiable hearsay. He was a soldier in Regiment 62, primarily based on the islands.⁵⁷² He claimed to have heard in meetings with his commanders that in 1978 MEAS Muth was transferred to Phnom Penh to become the Deputy Chief of the General Staff.⁵⁷³ Sath Chak's claim is based on hearsay from unidentified people.⁵⁷⁴
193. **Meas Voeun.** Meas Voeun is unreliable. He had a limited area of knowledge, speculated about MEAS Muth, and his wife tainted his testimony during his interview. Meas Voeun was the "so-called"⁵⁷⁵ deputy commander of the West Zone's Division 1.⁵⁷⁶ He was in charge only of a "small fragment of [a] geographical location" in Koh Kong Province⁵⁷⁷ until August 1978 when he was transferred to Preah Vihear Province.⁵⁷⁸ He

⁵⁶⁶ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A55.

⁵⁶⁷ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A57. *See also* Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A70 (stating that MEAS Muth was under Son Sen's direct command).

⁵⁶⁸ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974226. Final Submission, fns. 160, 169.

⁵⁶⁹ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974225-00974226.

⁵⁷⁰ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974226.

⁵⁷¹ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974226.

⁵⁷² Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A19-21. He was hospitalized in Kampong Som for about three months. *See Id.*, A51-52, 54.

⁵⁷³ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A126-30. Final Submission, fns. 160, 168.

⁵⁷⁴ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A126, 129.

⁵⁷⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 October 2012, D98/3.1.180, 09.45.21-09.46.49.

⁵⁷⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 09.56.33-09.59.21.

⁵⁷⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 October 2012, D98/3.1.180, 09.45.21-09.46.49.

had no contact with MEAS Muth during the DK regime.⁵⁷⁹ He speculated that MEAS Muth was a member of the General Staff Committee because MEAS Muth advised Division 1 on maritime operations and reported to and received instructions from Son Sen.⁵⁸⁰ He never heard any official announcements about MEAS Muth's position⁵⁸¹ and based his opinion on what he "noticed" about MEAS Muth's work,⁵⁸² despite never having communicated or met with MEAS Muth.⁵⁸³ At most, Meas Voeun's claims reflect the role of a commander of a naval division under the General Staff's authority,⁵⁸⁴ not a Deputy Secretary in the General Staff. In addition, Meas Voeun's wife tainted his memory and impacted the reliability of his statements. His wife was present during his early OCIJ interviews, listened to the questions, and helped him answer them.⁵⁸⁵ Her assistance tainted Meas Voeun's testimony during those interviews as well as his later testimony. The recollections upon which his initial testimony drew were influenced by her input.⁵⁸⁶

194. **Lon Seng.** Lon Seng is unreliable. His low rank would have prevented him from knowing details of MEAS Muth's membership in the General Staff Committee or the Committee's membership in general. Lon Seng describes himself as the chief of a company in Battalion 420⁵⁸⁷ or as the commander of Battalion 420.⁵⁸⁸ He claimed all Center Division commanders were members of the General Staff Committee and that, as far as he knew, MEAS Muth was a member of the General Staff from April 1975 until the

⁵⁷⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 09.54.14-09.56.33, 14.03.21-14.16.03.

⁵⁷⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.14.58-10.17.11; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.14.35-11.19.35, 11.41.13-11.46.56; Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A20; Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15.

⁵⁸⁰ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5, 26. Final Submission, fns. 160, 168. *See infra* Section IV.C.2.a regarding MEAS Muth's lack of authority over Division 1.

⁵⁸¹ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5.

⁵⁸² Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5.

⁵⁸³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.14.58-10.17.11; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.14.35-11.19.35, 11.41.13-11.46.56; Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A20; Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15.

⁵⁸⁴ *See infra* paras. 211 and 213 regarding Division 164 and the General Staff.

⁵⁸⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 October 2012, D98/3.1.180, 10.35.36-11.37.30. *See also* Written Record of Investigation Action, 7 February 2014, D54/56, fns. 7-8 (noting that Meas Voeun's information that Launh was still alive and living in Thailand was received from his wife).

⁵⁸⁶ *See* MEAS Muth's Request that the Co-Investigating Judges Instruct the OCIJ Investigators to Audio or Video Record all Witness and Civil Party Interviews, 27 April 2015, D136, paras. 16-24, discussing the ways in which questioning techniques can impact witness statements, particularly those from elderly witnesses.

⁵⁸⁷ Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A3.

⁵⁸⁸ Written Record of Interview of Lon Seng, 11 December 2013, D54/44, A11.

fall of the DK regime.⁵⁸⁹ As a soldier who was, at most, at the battalion level, it is unlikely he would have known whether MEAS Muth was a member of the General Staff Committee. His lack of knowledge is confirmed by the fact that the set-up of the General Staff did not begin until October 1975.⁵⁹⁰ MEAS Muth could not have been a member (of any kind) of the General Staff in April 1975.

195. **Duch.** Duch is unreliable.⁵⁹¹ He claimed MEAS Muth was appointed to the General Staff Committee at a 2 November 1978 Party Congress.⁵⁹² This claim is contrary to other claims he made (including in the same interview) that MEAS Muth was only a reserve member of the General Staff⁵⁹³ or was a member of the General Staff.⁵⁹⁴ Given Duch's restricted purview during the DK regime, it is unlikely he would have known specific information about MEAS Muth. Even if the CIJs consider his claim to be of any probative value, MEAS Muth would have been a member of the General Staff Committee for less than two months before the DK regime fell and acted in that capacity only in relation to Division 164 and Sector 505. These narrow circumstances do not elevate MEAS Muth to the category of "senior leader."

196. **Hieng Ret.** Hieng Ret does not support the ICP's claim. Hieng Ret, a deputy company commander in Battalion 450/165,⁵⁹⁵ is the only witness the ICP cites who refers to MEAS Muth being on a committee and he referred to a "military committee" or "military commission."⁵⁹⁶ He did not refer specifically to the General Staff Committee.⁵⁹⁷

197. The ICP claims that MEAS Muth's influence in the General Staff "reach[ed] its peak in late 1978" when he was given control of all three branches of the military and was assigned to conduct purges in multiple Center Divisions and Autonomous Sectors.⁵⁹⁸ He

⁵⁸⁹ Written Record of Interview of Lon Seng, 23 June 2014, D54/110, A9-10. Final Submission, fn. 158.

⁵⁹⁰ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183396, 00183402.

⁵⁹¹ See *supra* paras. 175-77 for more information about this witness.

⁵⁹² Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A18-19. Final Submission, fn. 158.

⁵⁹³ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A23; Written Record of Interview of KAING Guek Eav, 3 February 2016, D114/160, A8.

⁵⁹⁴ Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680797.

⁵⁹⁵ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A11.

⁵⁹⁶ The Khmer transcript of his DC-Cam interview indicates that Hieng Ret said MEAS Muth was a deputy on the military "commission," not "committee." DC-Cam Interview with Hieng Ret, 20 April 2007, D59/1/1.11a, EN 00974120, KH 00926561.

⁵⁹⁷ Contrary to the ICP's claim in Final Submission, para. 56, fn. 170, quoting DC-Cam Interview with Hieng Ret, 20 April 2007, D59/1/1.11a, EN 00974120.

⁵⁹⁸ Final Submission, para. 53.

also claims that MEAS Muth was promoted to Deputy Secretary because of his “commitment to and efficient implementation of CPK’s policies.”⁵⁹⁹ He fails to substantiate these claims with any witness or documentary evidence. They must be disregarded. Regarding “conduct[ing] purges in multiple Center Divisions and Autonomous Sectors,”⁶⁰⁰ the ICP later claims only that MEAS Muth was involved in purges of Division 117 and Sector 505 cadres in Kratie, beginning in late November 1978.⁶⁰¹ *See infra* Section IV.C.8 regarding this claim.

198. The ICP ignores the role of the General Staff in claiming MEAS Muth held a formal position in it. The General Staff, through Son Sen⁶⁰² and possibly Ta Mok,⁶⁰³ implemented and disseminated the Standing Committee’s instructions and orders regarding military and national defence matters.⁶⁰⁴ Once the General Staff passed the Standing Committee’s instructions and orders down to the Center Divisions,⁶⁰⁵ they were required to comply.⁶⁰⁶ Center Divisions were not autonomous units that could act on their own. Given the General Staff’s authority over the Center Divisions, it is logical that members of Center Division Committees would be considered deputies or subordinates of the head of the General Staff.

⁵⁹⁹ Final Submission, para. 56, fn. 168.

⁶⁰⁰ Final Submission, para. 53.

⁶⁰¹ Final Submission, paras. 58, 87.

⁶⁰² Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183396-00183397, in which Son Sen is tasked with policy regarding the General Staff and instructed to “[o]rganize the new Army, Navy, [and] Air Force”; Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A58, 60. *See also* Case 002/01 Judgement, para. 240.

⁶⁰³ Report titled “Report from Meas Mut to Son Sen Regarding Situation on Thai Border,” 29 May 1977, D1.3.12.18, EN 00233992-00233993 (Son Sen referred to Ta Mok assessing a foreign boat); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 15.33.36-15.35.24; Written Record of Interview of Chhouk Rin, 16 June 2015, D114/87, A85, 89 (he attended a meeting Ta Mok held for “his [Ta Mok’s] unit,” during which Ta Mok talked about defending the country from the enemy). *See supra* paras. 169-70 and 172, discussing Ta Mok’s role in the CPK and overarching authority.

⁶⁰⁴ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183396-00183397 (national defence was being arranged at the Center); Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, para. 121; Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680797-00680798. *See also* Case 002/01 Judgement, paras. 240, 242. As acknowledged by the ICP in paragraph 52 of his Final Submission.

⁶⁰⁵ *See e.g.*, *infra* para. 213 regarding meetings between the General Staff and Center Divisions and Independent Regiments.

⁶⁰⁶ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 6(5); Military Meeting Minutes titled “Minutes of the Meeting of Secretaries and Logistics Officers of the Divisions and Independent Regiments,” 15 December 1976, D1.3.27.23, EN 00233719 (“Military installations: Must prepare, especially for the intervention unit. Must screen it clean. Only when the Generals [*sic*] Staff send orders to the division and the division give the order can they go out on operations”) (emphasis in original); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 18 May 2009, D98/1.2.1, 16.15.54-16.20.03 (“[Dr. Etcheson].... [H]ierarchical authority was absolute in the Communist Party of Kampuchea and in the organization of Democratic Kampuchea, so that anyone in that organization was required to obey the orders and directives of his or her superior echelon”).

199. There is evidence that from mid-1977, Son Sen had no deputies at the General Staff but that Sou Met worked at the General Staff office when Son Sen was away. From June 1977, Lohn Dos oversaw the radio and the telephone section at the General Staff office.⁶⁰⁷ He was very close with Son Sen.⁶⁰⁸ In late 1977, he went to Svay Rieng Province with Son Sen.⁶⁰⁹ Lohn Dos said that, to his knowledge, Son Sen had no deputies when he was in Phnom Penh, as his office was empty whenever Son Sen was not there.⁶¹⁰ He also said that when Son Sen was in the East Zone, he traveled back and forth between Svay Rieng and Phnom Penh.⁶¹¹ In Son Sen's absence, Lohn Dos often saw Sou Met going in and out of the General Staff,⁶¹² although he did not state the time period in which this occurred. He did not say he saw MEAS Muth at the General Staff office in Son Sen's absence.

b. MEAS Muth's responsibilities regarding the General Staff did not significantly change in 1978

200. The sources the ICP cites do not support his claims that MEAS Muth's responsibilities significantly changed in 1978 because he was promoted to the position of Deputy Secretary of the General Staff,⁶¹³ moving from providing logistics support to becoming responsible for border issues, making decisions for the General Staff, and executing orders from the Center.⁶¹⁴ The ICP primarily cites unreliable or unsupportive statements from Liet Lan, Moeng Vet, Meas Vooun, Seng Soeun, and Prum Sarat.⁶¹⁵ Evidence that MEAS Muth was deployed to Sector 505 in late 1978 is not evidence that he was promoted to Deputy Secretary of the General Staff. It is evidence only that, at a time of intensifying fighting against Vietnam,⁶¹⁶ the Center and General Staff deployed a Center Division to Sector 505, where some of this conflict was occurring.⁶¹⁷

⁶⁰⁷ Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364070.

⁶⁰⁸ Written Record of Interview of Ke Pich Vannak, 4 June 2009, D4.1.520, EN 00346152.

⁶⁰⁹ Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364071.

⁶¹⁰ Written Record of Investigation Action, 20 November 2015, D114/142, EN 01175091.

⁶¹¹ Written Record of Interview of Lohn Dos, 20 November 2009, D4.1.845, A45; Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364072 (stating that, when he was in Svay Rieng, Son Sen always went to attend meetings at the Center with Pol Pot).

⁶¹² Written Record of Interview of Lohn Dos, 20 November 2009, D4.1.845, A45. Duch also said he sometimes saw Sou Met leaving Son Sen's house. Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A27.

⁶¹³ Final Submission, para. 57.

⁶¹⁴ Final Submission, para. 57.

⁶¹⁵ Final Submission, fns. 171-74.

⁶¹⁶ See e.g., Telegram from the DK Ministry of Foreign Affairs titled "Message to Swedish-Kampuchea Friendship Association," 4 March 1978, D234/2.1.9, EN 00717585; Statement of the DK Ministry of Foreign

201. **Liet Lan.** Liet Lan is unreliable. He was in China for most of the DK period and his statements about MEAS Muth are based on hearsay and speculation. Liet Lan was sent to China in January 1976.⁶¹⁸ He did not return until late 1978,⁶¹⁹ when he became commander of Battalion 142.⁶²⁰ He did not meet MEAS Muth until he returned.⁶²¹ Because of his time abroad, he only knew about the beginning and end of the DK period.⁶²² Liet Lan heard from his superior, Toem Seng, that MEAS Muth was an assistant to the General Staff.⁶²³ “According to [his] understanding,” this meant MEAS Muth helped provide support in mobilizing forces, formulating combat strategies, logistics support, food supplies, and ammunition.⁶²⁴ Liet Lan only learned about MEAS Muth’s “assistant” role “at the time the Vietnamese were about to arrive in Cambodia.”⁶²⁵ At most, Liet Lan’s statements indicate that any role MEAS Muth played in the General Staff occurred at the end of 1978 and merely involved an assisting role, not a role as Deputy Secretary.⁶²⁶

202. **Moeng Vet.** Moeng Vet is unreliable.⁶²⁷ The ICP relies heavily on him to support his claims regarding MEAS Muth’s enhanced responsibilities. Moeng Vet claimed that MEAS Muth had responsibility for the eastern border beginning in 1978,⁶²⁸ could receive

Affairs, 31 December 1977, D69.1.5, EN 00282392; Linda Mathews, *Hanoi Girding for Offensive into Cambodia*, LOS ANGELES TIMES, 5 October 1978, D1.3.25.65.

⁶¹⁷ Declaration of the Spokesman of the Ministry of Propaganda and Information of Democratic Kampuchea, 6 January 1978, D1.3.29.1, EN 00337188: “Concurrent with the aforementioned major fronts, the Vietnamese have continued to pound, machine-gun and invade Kampuchean territory from Mondolkiri, Rattanakiri and Kratie”; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 11.07.07-11.09.28, 15.16.26-15.18.24.

⁶¹⁸ Written Record of Interview of Liet Lan, 23 October 2013, D54/28, A17.

⁶¹⁹ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A60-62. *See also id.*, A51, in which he said he returned after 20 months.

⁶²⁰ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A67, 86.

⁶²¹ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A96.

⁶²² Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A1.

⁶²³ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3.

⁶²⁴ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A10. Final Submission, fn. 171.

⁶²⁵ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A13.

⁶²⁶ Liet Lan’s statement, which was not fully reflected in the Final Submission, supports this interpretation: “According to my understanding, the role of an assistant to headquarters was to *help* provide support in mobilizing forces, *help* formulate combat strategies, *help* provide logistics support, food supplies and the provision of ammunition. These were all the main tasks for the military.” Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A10 (emphasis added).

⁶²⁷ *See supra* paras. 182-83 for more information about this witness.

⁶²⁸ Final Submission, fn. 172, quoting Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A22, 25; Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A19; DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212292.

reports and make decisions on requests,⁶²⁹ and oversaw the purging of Division 117 and Sector 505 cadres in Kratie in late 1978.⁶³⁰ These statements are based on hearsay and speculation.⁶³¹

203. Moeng Vet is the only witness the ICP cites to support his claim that MEAS Muth had authority to make decisions on behalf of the General Staff.⁶³² His statements do not support the ICP's claim. Moeng Vet initially told the OCIJ that his reports were sent to the General Staff, not to a specific person.⁶³³ He then said Son Sen, MEAS Muth, and Sou Met had the authority to receive his reports, whomever responded was up to them,⁶³⁴ and MEAS Muth and Son Sen would communicate among themselves about the reports.⁶³⁵ He made no claims regarding who could ultimately make a decision. He later admitted he speculated – he did not know the details of MEAS Muth's and Son Sen's communications and did not see communications between them.⁶³⁶ Moeng Vet's testimony that MEAS Muth sent airplanes to his location does not indicate that MEAS Muth made the decision to send the airplanes. Moeng Vet only said MEAS Muth told Rum to wait, and in the afternoon, he sent the airplanes.⁶³⁷ There is no indication MEAS Muth issued the order for the airplanes. As the air force was under the General Staff's direct authority,⁶³⁸ Son Sen or Sou Met likely made the decision.

⁶²⁹ Final Submission, fn. 173, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.41.46-09.46.58; Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A11-13.

⁶³⁰ Final Submission, fn. 176, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 09.35.51-09.39.49; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.52.20-09.54.38; Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A24, 29-30, 32-33, 38-39; DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 00992998-01212299. See also Final Submission, fn. 177, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.41-46-09.46.58; Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A11-19.

⁶³¹ See *supra* para. 183, discussing these claims.

⁶³² Final Submission, para. 57, fn. 173. See also Final Submission, para. 58, fn. 177.

⁶³³ Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A16.

⁶³⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.39.40-09.44.15.

⁶³⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 13.45.51-13.50.21.

⁶³⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 10.12.25-10.15.42 (discussing his earlier testimony in *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 July 2016, D114/297.1.23, 13.45.51-13.50.21).

⁶³⁷ Written Record of Interview of Moeng Vet, 14 February 2014, D54/63, A11-13.

⁶³⁸ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183396-00183397. See also Written Record of Interview of KAING Guek Eav, 3 February 2016, D114/160, A13-14.

204. **Meas Voeun.** Meas Voeun is unreliable.⁶³⁹ Meas Voeun claimed that in 1978 MEAS Muth and Soeung, the Division 1 commander, disseminated Son Sen's instructions to reduce confrontation on the western border.⁶⁴⁰ His claim is solely based on hearsay. Meas Voeun never attended any meetings with MEAS Muth and Soeung⁶⁴¹ and had no contact or communication with MEAS Muth during the DK regime.⁶⁴² His statement does not indicate MEAS Muth was a Deputy Secretary of the General Staff or oversaw border issues for Son Sen. It indicates only that MEAS Muth attended a meeting with Son Sen and at least one other military commander, at which both commanders received instructions about reducing confrontation on the western border. The meeting was nothing more than a regular General Staff meeting, where Son Sen passed down policies and instructions from CPK senior leaders.⁶⁴³
205. **Seng Soeun.** Seng Soeun is unreliable.⁶⁴⁴ He said when he arrived in Kratie, MEAS Muth announced his appointment.⁶⁴⁵ Seng Soeun gave contradictory statements about MEAS Muth's role in his appointment. To the OCIJ, he said MEAS Muth was given a letter from the Central Committee listing the persons who were to be the new Sector 505 appointments⁶⁴⁶ and that the order to arrest Division 117 and Sector 505 cadres came from Son Sen.⁶⁴⁷ In Case 002/02, he changed his story. He said there was no letter or written order and the new appointees merely brought their biographies with them to give to MEAS Muth.⁶⁴⁸ Seng Soeun's statements regarding MEAS Muth's execution of Center orders in Kratie are of no probative value. Even if the CIJs consider his statements to be

⁶³⁹ See *supra* para. 193 for more information about this witness.

⁶⁴⁰ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A26. Final Submission, para. 57, fn. 172.

⁶⁴¹ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15.

⁶⁴² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.11.41-10.14.58; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.14.35-11.19.35; Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A20; Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15.

⁶⁴³ See *infra* para. 213 discussing General Staff meetings in more detail.

⁶⁴⁴ See *supra* paras. 184-85 for more information about this witness.

⁶⁴⁵ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A5, 23; DC-Cam Interview with Seng Soeun, 11 February 2006, D59/2/4.16a, EN 00753837-00753838; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 13.46.29-13.50.40. Final Submission, fns. 174, 176.

⁶⁴⁶ Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A26-27; Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A20.

⁶⁴⁷ Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A25, 48.

⁶⁴⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 13.50.4-13.55.39.

of probative value, they do not establish that MEAS Muth “was in charge of” executing Center orders,⁶⁴⁹ only that he was sent to Kratie to carry out orders issued by the Center.

206. **Prum Sarat.** Prum Sarat is unreliable.⁶⁵⁰ His claim about MEAS Muth going to the East Zone is based on uncorroborated, unverifiable hearsay.⁶⁵¹ He claimed MEAS Muth went to Kampong Cham Province to act for Son Sen and suppress East Zone rebels led by Sao Phim.⁶⁵² He heard this story from his regiment commander.⁶⁵³ It is unsupported by other evidence on the Case File. In his final OCIJ interview, Prum Sarat made no reference to MEAS Muth being sent to Kampong Cham Province, but only said he was sent to Kratie.⁶⁵⁴

c. Conclusion

207. MEAS Muth was neither a *de jure* nor a *de facto* Deputy Secretary of the General Staff or member of the General Staff Committee, nor was he given significantly increased responsibilities in 1978. Being transferred to Phnom Penh to work at the General Staff headquarters or to Sector 505 to carry out orders from the General Staff or Center does not mean MEAS Muth was a Deputy Secretary of the General Staff or a member of the General Staff Committee. At most, the evidence indicates MEAS Muth, as a member of the Division 164 Committee and the navy, was subordinate to the General Staff, required to report it, and subject to its orders. Only in that sense could MEAS Muth be called a “deputy” of Son Sen or “member” of the General Staff.

⁶⁴⁹ Final Submission, para. 57.

⁶⁵⁰ See *supra* para. 191 for more information about this witness.

⁶⁵¹ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A73-76; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.27.30-09.30.10.

⁶⁵² Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A73-76, 84; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.27.30-09.30.10; DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974226. Final Submission, para. 58, fns. 174-75; para. 124, fn. 370.

⁶⁵³ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A75; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.27.30-09.30.10.

⁶⁵⁴ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A206, 224-25.

4. Even if MEAS Muth commanded Division 3 and later Division 164 and the navy, these positions do not make him a “senior leader”

208. The ICP claims that MEAS Muth was the commander of Division 3 and later Division 164, and that these positions make him a “senior leader.”⁶⁵⁵ The ICP relies on evidence that is based on hearsay and speculation. He ignores relevant structural and contextual evidence. He fails to substantiate his claims. Even if MEAS Muth led Division 3, Division 164, and the navy, these roles do not make him a “senior leader.”

a. Division 3 was under the authority of Ta Mok, the Southwest Zone Secretary

209. Division 3, a Southwest Zone military unit, was under the ultimate authority of Ta Mok, Secretary of the Southwest Zone and long-time member of the CPK’s Standing and Central Committees.⁶⁵⁶ The ICP claims that Division 3, under MEAS Muth’s leadership, was involved in the April 1975 offensive against Phnom Penh, and that MEAS Muth commanded battlefields and assigned battle targets to regiment and battalion commanders.⁶⁵⁷ The ICP ignores Ta Mok’s role in Division 3 operations. Ta Mok issued all battlefield orders to MEAS Muth.

210. Ta Mok exercised total control over Division 3 and other Southwest Zone Divisions. He appointed MEAS Muth to lead Division 3 and selected and screened other military officers.⁶⁵⁸ He chaired meetings with the Division, including meetings regarding the attack on Phnom Penh.⁶⁵⁹ He assigned the Divisions their tasks before the attack.⁶⁶⁰ He

⁶⁵⁵ Final Submission, paras. 45-46, 67, 81, 1082-83.

⁶⁵⁶ Written Record of Interview of Keo San, 10 June 2015, D114/82, EN 01123314 (Division 3 was under the Southwest Zone); Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A27 (Division 3 was under Ta Mok’s supervision at the Zone level); Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A5-6, 8 (Division 3 was a Southwest Zone division established by Ta Mok; MEAS Muth commanded it and reported to Ta Mok); Written Record of Interview of Say Born, 6 September 2010, D2/8, A23-25 (Division 3 was a Southwest Zone unit). *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 March 2012, D98/1.2.20, 10.20.59-10.27.20. *See supra* paras. 169-70 and 172, discussing Ta Mok’s power and roles in the CPK senior leadership.

⁶⁵⁷ Final Submission, paras. 45-46.

⁶⁵⁸ Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A5.

⁶⁵⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, D98/3.1.56, 20 May 2013, 09.37.24-09.39.27; Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A3. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, D98/1.2.20, 28 March 2012, 10.22.45-10.25.14 (Duch said Pol Pot and NUON Chea had ultimate command authority over the Divisions regarding the April 1975 attack on Phnom Penh).

⁶⁶⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 October 2012, D98/3.1.177, 14.35.27-14.38.08; DC-Cam Interview with Meas Vooun, 11 December 2010, D59/1/1.36, EN 00849493. The Defence

controlled Division 3's movements, deploying it to Kampong Som after 17 April 1975.⁶⁶¹ Division 3 was wholly subject to Ta Mok's authority.

b. Division 164 was under the authority of the General Staff and the Standing Committee

211. Division 164, like all RAK and Party entities, was "under the absolute leadership monopoly of the Communist Party of Kampuchea."⁶⁶² The ICP claims that MEAS Muth controlled Division 164 operations.⁶⁶³ He ignores the statutory and practical realities of governance in DK. Division 164 was controlled by the Party's upper-level entities, the Standing Committee and the General Staff. Through the General Staff,⁶⁶⁴ the Standing Committee controlled every aspect of military operations, issuing orders regarding the deployment of soldiers,⁶⁶⁵ rice production,⁶⁶⁶ screening,⁶⁶⁷ and arrests and

has challenged the probative value of DC-Cam interviews (*see supra* para. 140). However, if the CIJs deem these interviews to have probative value, they must consider Meas Voeun's statement. *See also* Written Record of Interview of Em Son, 26 November 2013, D54/46, A40 (stating that, as Chief of the Southwest Zone, Ta Mok could command any military units within the Zone).

⁶⁶¹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A8, 27.

⁶⁶² Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 27. *See also* CPK Magazine titled "Revolutionary Flag," Issue 4, April 1976, D4.1.883, EN 00517864 ("The Army is the pure instrument of the Party's dictatorship, and this is the highest level of collectivity"); CPK Magazine titled "Revolutionary Flag," Issue 7, July 1976, D1.3.24.2, EN 00268944 ("It is imperative to see the Revolutionary Army of Kampuchea as the dictatorial organization of the Party, located under the absolute and monopolistic leadership in every sector of the Party"); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 10.55.20-10.58.27.

⁶⁶³ Final Submission, paras. 67, 81. *See infra* paras. 233 and 337-42 for further submissions on the witnesses the ICP cites in footnotes 201 and 239.

⁶⁶⁴ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183394 (stating that national defence is being arranged at the Center), 001831396-00183397 (discussing the establishment of the General Staff and set-up of the RAK), 00183402 (Pol Pot issues instructions for the set-up of the General Staff Committee); Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A81 (stating that Pol Pot ordered the creation of the navy); CPK Magazine titled "Revolutionary Flag," Issue 8, August 1975, D4.1.861, EN 00401488 (regarding a July 1975 assembly held by the Center to announce the creation of the RAK); Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A4. *See also* Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A58, 60.

⁶⁶⁵ Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Logistics Officers of the Divisions and Independent Regiments," 15 December 1976, D1.3.27.23, EN 00233719 ("Military installations: Must prepare, especially for the intervention unit. Must screen it clean. Only when the Generals [*sic*] Staff send orders to the division and the division give the order can they go out on operations"); Telegram titled "Tenth Telegram to Brother Mut about the situation of enemy at the border," 4 November 1976, D1.3.2.2 (Son Sen issues instructions for making attack plans on islands); Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A67-68, 70, 73, 166; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A24-26.

⁶⁶⁶ Military Meeting Minutes titled "Minutes of the Meeting of all Division Committees," 1 June 1976, D1.3.8.2, EN 00233956; Military Meeting Minutes titled "Minutes of the meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 18 August 1976, D1.3.27.12, EN 00234456; CPK Magazine titled "Revolutionary Flag," Issue 4, April 1976, D4.1.883, EN 00517867.

⁶⁶⁷ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183397; Military Meeting Minutes titled "Minutes of the meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments,"

interrogations.⁶⁶⁸ The Standing Committee even controlled the words to be used by the Divisions and Independent Regiments.⁶⁶⁹ In one General Staff meeting, Son Sen instructed attendees: “There is no need to repeat the phrase ‘my respect to Angkar’ every time you speak.”⁶⁷⁰

212. Like all Party entities,⁶⁷¹ Division 164 and other Center Divisions were led by three-person Committees.⁶⁷² These Committees contained a commander in charge of politics, a deputy commander in charge of the military, and a member in charge of logistics.⁶⁷³ The Committees made decisions collectively in accordance with the CPK Statute.⁶⁷⁴ According to NUON Chea, Deputy Secretary of the CPK, all Party organizations – from the branch to the Central Committee – followed the principle of collective decision-making. Everyone would express ideas, the Committee Secretary would consolidate the ideas, and discussions would continue if an agreement was not reached.⁶⁷⁵

213. The CPK Statute required lower echelons to report to their upper echelons and upper echelons to disseminate instructions and orders down to their lower echelons.⁶⁷⁶ The

18 August 1976, D1.3.27.12, EN 00234458-00234459; Military Meeting Minutes titled “Minutes of the Meeting of Secretaries and Logistics Officers of the Divisions and Independent Regiments,” 15 December 1976, D1.3.27.23, EN 00233718.

⁶⁶⁸ Central Committee Directive titled “Decision of the Central Committee Regarding a Number of Matters,” 30 March 1976, D1.3.19.1, EN 00182809 (delegating to the General Staff the right to smash the Center military inside and outside the ranks); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 27 May 2009, D98/1.2.6, 14.06.19-14.08.17; Report titled “Report dated 12 August 1977 via secret telephone,” 12 August 1977, D4.1.639 (Son Sen forwards a message purportedly from MEAS Muth and asks Angkar about finding inside networks, entry and exit, and traitorous elements along the border); Telegram titled “Telegram 7 - Radio Band 545 - Be It Please Reported to Respected Brother,” 15 June 1977, D1.3.34.20 (a telegram from Vy requesting Angkar’s comment and decision on arrests and confessions of 209 Vietnamese soldiers arrested near O Laak). See also Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, para. 121.

⁶⁶⁹ See Committee 870 Directive titled “Directive on the use of terms ‘Angkar’ and ‘Party,’” 24 July 1977, D4.1.377 (a directive issued to all Party organizations at all levels).

⁶⁷⁰ Military Meeting Minutes titled “Minutes of Meeting Between Secretaries, Division’s Logistic Unit and Independent Regiment,” 27 June 1976, D234/2.1.18, EN 00543728.

⁶⁷¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 15 December 2011, D98/3.1.160, 10.55.17-11.05.55; Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A10; Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A3.

⁶⁷² Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Arts. 1.2.B, 7. See also Military Report titled “List of Monthly Military Personnel Strength, September 1976,” 27 September 1976, D1.3.5.19 (a monthly report submitted to the General Staff by the Division 502 Committee).

⁶⁷³ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A164-65; Written Record of Interview of Say Born, 14 August 2013, D54/17, A10.

⁶⁷⁴ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 6(1). See also CPK Magazine titled “Revolutionary Flag,” November 1976, D4.1.887, EN 00455307; Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A3.

⁶⁷⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 15 December 2011, D98/3.1.160, 11.02.32-11.04.47.

⁶⁷⁶ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Arts. 6(5), 27-28.

Standing Committee implemented this requirement.⁶⁷⁷ The General Staff and Standing Committee issued instructions and orders to the Division 164 Committee⁶⁷⁸ and the Division 164 Committee had to report regularly to the General Staff.⁶⁷⁹ It also reported in person to the General Staff and members of the Standing Committee.⁶⁸⁰ Accordingly, each of the Committee members could communicate directly with the General Staff.⁶⁸¹ Son Sen held meetings with Division and Independent Regiment Committees at which attendees reported to him on the situation within their units regarding agricultural production, construction, enemies, and any other items on the meeting agenda.⁶⁸²

⁶⁷⁷ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183394-00183395; Central Committee Directive titled "Decision of the Central Committee Regarding a Number of Matters," 30 March 1976, D1.3.19.1, EN 00182809 (implementing a regime of weekly reporting on rice production).

⁶⁷⁸ See e.g., Military Meeting Minutes titled "Minutes of meeting of the military work in Kampong Som," 3 August 1976, D1.3.8.3, EN 00234013-00234016 (in which Pol Pot advises the Division 164 Committee). See *supra* para. 172 regarding the required reporting hierarchy.

⁶⁷⁹ See Report titled "Reported to Brother 89," 5 January 1976, D1.3.30.2 (referring to the submission of this "monthly" report); Central Committee Directive titled "Decision of the Central Committee Regarding a Number of Matters," 30 March 1976, D1.3.19.1, EN 00182809 (instituting a regime of weekly reporting to Office 870 to "follow-up on plans closely and resolve problems in a timely manner in the goal of three tons per hectare").

⁶⁸⁰ Military Meeting Minutes titled "Minutes of the Meeting of all Division Committees," 1 June 1976, D1.3.8.2; Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18, EN 00195341; Military Meeting Minutes titled "Minutes of meeting of the military work in Kampong Som," 3 August 1976, D1.3.8.3, EN 00234012 (indicating that MEAS Muth, Dim, and Nget Nhan attended a meeting with Pol Pot, Vorn Vet, and Son Sen). See also Military Meeting Minutes titled "Minutes of the Meeting of the Committees Attached to Divisions and Independent Regiments," 12 August 1976, D1.3.27.11, EN 00183962 (a meeting between Son Sen and the Committees of the Center Divisions and Independent Regiments, although it does not appear that the Division 164 Committee was present); Military Meeting Minutes titled "Minutes of an Experience Drawing Meeting on Guarding in City Defense," 19 December 1976, D1.3.8.9, EN 00233994-00233995 (in which Son Sen requests people to bring information from Division or Independent Regiment Committees about the enemy situation and city defence, although it is unclear who attended this meeting).

⁶⁸¹ See e.g., Telegram titled "Dear Comrade Dim," 26 November [year unknown], D1.3.4.2 (a telegram from Son Sen to Dim acknowledging receipt of Dim's telegram to him).

⁶⁸² See e.g., Military Meeting Minutes titled "Minutes of the Meeting on 3 March 1976 at 17 [o'clock]," 3 March 1976, D1.3.8.1; Military Meeting Minutes titled "Minutes of the Meeting of all Division Committees," 1 June 1976, D1.3.8.2; Military Meeting Minutes titled "Minutes of the Meeting of the Committees Attached to Divisions and Independent Regiments," 12 August 1976, D1.3.27.11; Military Meeting Minutes titled "Minutes of Divisional and Independent Regiment Secretary - Under Secretary's Meeting," 16 September 1976, D1.3.27.16. See Case 002/01 Judgement, para. 294.

Son Sen in turn issued instructions and policy information to the attendees.⁶⁸³ The Military Committee also issued instructions directly to Center Divisions.⁶⁸⁴

214. MEAS Muth may have been a member of the Division 164 Committee, which would have involved sharing responsibility for the Division.⁶⁸⁵ This shared responsibility is demonstrated in a report from MEAS Muth to Son Sen and Pol Pot. In this document, he reported that he was on Koh Rong and Koh Rong Krao to help ensure the Party's decision was effectively implemented, Chhan had gone to meet members of other units to carry out the Party's decision, and Dim was reinforcing existing forces on Koh Seh and Koh Thmei in accordance with Party instructions.⁶⁸⁶

215. The Division 164 Committee oversaw Division 164's operations, subject to the instructions and orders issued by the General Staff and Standing Committee. In addition to the submissions presented in this section, *see infra* Section IV.C.3 addressing in more detail the ICP's claims regarding MEAS Muth's authority over Division 164.

c. Division 164's size and structure does not make MEAS Muth a "senior leader"

216. The sources the ICP cites do not support his claims that MEAS Muth commanded the largest Center Division in DK⁶⁸⁷ and that this command contributes to his categorization as a senior leader.⁶⁸⁸ The ICP cites unreliable statements from Chet Bunna and "Sieng," statements from MEAS Muth, and General Staff documents.⁶⁸⁹ The ICP overreaches.

⁶⁸³ *See e.g.*, Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Brigades, Secretaries and Deputy Secretaries of Regiments," 2 August 1976, D1.3.27.10, EN 00656574, 00656576-00656579; Military Meeting Minutes titled "Minutes of the Meeting of Division and Independent Regiment Secretary(s) and Deputy Secretary(s)," 18 August 1976, D1.3.27.12, EN 00234456-00234457, 00234458-00234459; Military Meeting Minutes titled "Minutes of Divisional and Independent Regiment Secretary - Under Secretary's Meeting," 16 September 1976, D1.3.27.16, EN 00184339-00184341; Military Meeting Minutes titled "Minutes of the Meeting of all Division Committees," 1 June 1976, D1.3.8.2, EN 00233954-00233956. *See also* Case 002/01 Judgement, para. 297.

⁶⁸⁴ *See* Military Meeting Minutes titled "Minutes of Meeting of the Military Work in Kampong Som," 3 August 1976, D1.3.8.3, EN 00234013-00234016 (in which Pol Pot issues instructions to the Division 164 Committee).

⁶⁸⁵ According to Prum Sarat, there were four Division 164 Committee members – MEAS Muth, Dim, Norng Chhan, and Nhet Nhan – who all had the authority to issue orders based on the particular need. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 15.04.35-15.07.21; Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A188 (stating that all Committee members had to be informed of Division 164 activities, including the capture of boats).

⁶⁸⁶ Report titled "Reported to Brother 89," 5 January 1976, D1.3.30.2.

⁶⁸⁷ Final Submission, paras. 64, 219.

⁶⁸⁸ Final Submission, para. 1082.

⁶⁸⁹ Final Submission, fns. 195-96, 641.

Division 164 was one of about a dozen Divisions and Independent Regiments under the General Staff's authority. While it may have been large, it was not of such a size or structure as to make it abnormal in the RAK or among other DK military units. Neither Division 164's size nor its structure was sufficiently significant to make MEAS Muth a "senior leader."

217. **Chet Bunna.** Chet Bunna is unreliable.⁶⁹⁰ Chet Bunna claimed that the "Navy Forces Division, which was under Meas Muth's command, was the biggest division among the 25 divisions of the Khmer Rouge."⁶⁹¹ His claim was based on his memory of assemblies he said regiment commanders held every trimester.⁶⁹² He provided no specific information as to when, where, or from whom he learned this information. To the best of the Defence's knowledge, Chet Bunna's claim is not supported by other evidence on the Case File.⁶⁹³

218. **"Sieng."** "Sieng" is unreliable. He had a limited area of operations during the DK period, has only been interviewed by the OCP, and refused to be interviewed by the OCIJ. He was a soldier in Regiment 62 who was deployed on islands for six-month periods⁶⁹⁴ and said Division 164 had more than 10,000 soldiers.⁶⁹⁵ Given his status and station, he would not have known how many people were in the entire Division. Moreover, his interview is of little probative value because it was conducted by the OCP and is only available in summary form.⁶⁹⁶ Since he refused to give an interview to the OCIJ,⁶⁹⁷ the Defence will not be able to confront him about the OCP's summary.

⁶⁹⁰ See *supra* paras. 186-88 for more information about this witness.

⁶⁹¹ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A12. Final Submission, fn. 195.

⁶⁹² Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A10-12.

⁶⁹³ Ben Kiernan referred to a meeting of Zone and Region secretaries in Phnom Penh in late 1977 in which Pol Pot referred to 15 DK divisions. BEN KIERNAN, *THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79*, 353 (Yale University Press, 1996), D114/29.1.4, EN 00678678.

⁶⁹⁴ OCP Interview with "Sieng," 12 August 2008, D1.3.13.11, EN 00217565-00217566.

⁶⁹⁵ OCP Interview with "Sieng," 12 August 2008, D1.3.13.11, EN 00217565. Final Submission, fn. 195.

⁶⁹⁶ OCP Interview with "Sieng," 12 August 2008, D1.3.13.11, EN 00217565. See *supra* para. 141 discussing the use of this type of evidence.

⁶⁹⁷ Consolidated Decision on the International Co-Prosecutor's First, Second, and Third Investigative Requests, 9 January 2016, D223, paras. 99-100.

219. The ICP also cites purported estimates from MEAS Muth that Division 164 had 10,000 or 12,000 troops.⁶⁹⁸ These estimates are contained in a newspaper article and an interview conducted by POW/MIA investigators. The interviews were not done under judicial supervision and were done for a purpose other than a criminal trial. These sources are unreliable and of no probative value.⁶⁹⁹
220. Even if Division 164 was the largest Center Division, being part of its Committee does not mean MEAS Muth was a “senior leader.” Division 164 was one of 12 Divisions and Independent Regiments, not including Offices, totaling approximately 61,000 personnel under the General Staff’s supervision and authority.⁷⁰⁰ General Staff documents indicate that, in April 1977, Division 164 had approximately 8,500 soldiers.⁷⁰¹ Division 1 was of a similar size: 7,000 soldiers.⁷⁰² Division 164 was not significantly larger than other Divisions in DK.
221. Division 164 also was not unique in its structure.⁷⁰³ Its structure of regiments, independent battalions, and an office resembled that of other Divisions. Like Division 164, Divisions 310 and 502 each had approximately 10 sub-units and an office. Division 310 had three regiments, seven battalions, a unit called K-4, and an office.⁷⁰⁴ Division 502 had two regiments; seven battalions; one company; children, handicap, and telegram units; and an office.⁷⁰⁵ As the Trial Chamber found in Case 002/01, although there was a

⁶⁹⁸ Final Submission, fn. 641, quoting Christine Chaumeau and Bou Saroeun, *We were in a cage like today*, PHNOM PENH POST, 20 July 2001–2 August 2001, D1.3.33.16; Statement of MEAS Mut (POW/MIA), 5 December 2001, D22.2.181, EN 00249692-00249700.

⁶⁹⁹ See *supra* para. 143, discussing the use of this type of evidence.

⁷⁰⁰ Military Report titled “Joint Statistics of Armed Forces,” March 1977, D1.3.30.9.

⁷⁰¹ Military Report titled “List of fighting forces,” 27 October 1976, D1.3.5.3; Military Report titled “Joint Statistics of Armed Forces,” March 1977, D1.3.30.9.

⁷⁰² Written Record of Interview of Meas Voeun, 3 March 2010, D4.1.1057, A9; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 10.55.20-10.58.27 (Meas Voeun testified that usually a special Division, one with a special battalion attached to it, would have about 7,000 soldiers, and that Division 1 was that size).

⁷⁰³ Final Submission, paras. 65, 217-18, in which the ICP discusses Division 164’s structure.

⁷⁰⁴ Military Report titled “Statistics of National Army, Division 310,” 13 June 1977, D1.3.12.19.

⁷⁰⁵ Military Report titled “Monthly List of Forces for October 1976,” 25 October 1976, D1.3.5.21; Military Report titled “List of Monthly Military Personnel Strength, September 1976,” 27 September 1976, D1.3.5.19.

typical structure for DK military Divisions,⁷⁰⁶ the precise organizational structures may have varied between Divisions.⁷⁰⁷

222. Having special independent battalions attached to Division 164 was not unusual.⁷⁰⁸ Division 1 had such a battalion,⁷⁰⁹ as did Division 2 in the Southwest Zone⁷¹⁰ and Division 801 in the Northeast Zone.⁷¹¹ Regiments had their own special units.⁷¹² Sector armies had special intelligence squads.⁷¹³ Moreover, the independent battalions in Division 164 were not all combat units. Battalion 167 was the women's unit.⁷¹⁴ Battalion 168 oversaw transportation.⁷¹⁵ Battalion 169 was a medical unit.⁷¹⁶ Battalion 170 was the lathing machine or repair work unit.⁷¹⁷ Their existence indicates that Division 164 may not have contained a larger fighting force than other Divisions, even if it had a larger number of people.

d. Division 164 operated in a limited area of DK

223. The sources the ICP cites do not support his claims that Division 164 had authority over approximately 200 islands and the entire Cambodian coastline⁷¹⁸ and that the breadth

⁷⁰⁶ Case 002/01 Judgement, para. 243 (finding that typically there were three regiments to a division, three battalions to a regiment, three companies to a battalion, three platoons to a company, three squads to a platoon, and about 12 soldiers in a squad).

⁷⁰⁷ Case 002/01 Judgement, para. 244. *See also* Ieng Phan's testimony in Case 002/01 regarding the military structure (three squads to a platoon, which contained 30 soldiers; three platoons to a company; three companies to a battalion; four battalions to a regiment; four regiments to a brigade; and five brigades to a division. *Case of NUON Chea et al.*, 002/19-09-2007/ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 09.27.50-09.35.02.

⁷⁰⁸ Final Submission, para. 218, in which the ICP claims "there were six independent battalions placed directly under the authority of Meas Muth and his Division 164 Committee."

⁷⁰⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 10.26.50-10.32.07.

⁷¹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 09.44.06; Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A4.

⁷¹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2013, D98/3.1.20, 14.21.54 (Chhaom Se).

⁷¹² Written Record of Interview of Sok Vanna, 16 October 2014, D144/16, A12, 14.

⁷¹³ DC-Cam Interview with Seng Soeung, 11 February 2006, D59/2/4.16a, EN 00753847 (although DC-Cam interviews are of lesser probative value than OCIJ interviews, if the CIJs grant such interviews probative value, they must consider this statement).

⁷¹⁴ Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A13.

⁷¹⁵ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A19; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A13.

⁷¹⁶ Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A13; Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A19.

⁷¹⁷ Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A13; Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A43; Written Record of Interview of Say Born, 7 September 2010, D2/9, A25.

⁷¹⁸ Final Submission, paras. 62, 220.

of this authority renders MEAS Muth a “senior leader.”⁷¹⁹ The ICP cites two unreliable witnesses, Chet Bunna and Kang Sum, who state that Division 164 had responsibility for 200 islands. The ICP also cites other witnesses and documents that do not support his claims. Division 164 only had authority over the coastline and islands in the Kampong Som area.

224. **Chet Bunna.** Chet Bunna is unreliable.⁷²⁰ He claimed Division 164 controlled about 200 islands.⁷²¹ His claim is based on his memory of an assembly.⁷²² He provided no specific information as to when, where, or from whom he learned this information.

225. **Kang Sum.** Kang Sum is unreliable. He gave contradictory statements in his DC-Cam and OCIJ interviews. He was an ordinary combatant who held no positions⁷²³ and claimed the navy was stationed on, *inter alia*, an archipelago of over 200 islands.⁷²⁴ When questioned by the OCIJ, he had problems with his memory and gave answers that contradicted his DC-Cam interview. He explained he was drunk during his DC-Cam interview.⁷²⁵ The OCIJ Investigator then tainted the interview by pressing Kang Sum to give answers consistent with his statements to DC-Cam, as opposed to stating what he independently remembered at the time of questioning.⁷²⁶ Even when pressed, Kang Sum could not provide a clear chronology of where he was in 1975-1979.⁷²⁷ Even if the CIJs consider him a credible witness, his statements are of little probative value. He did not say how he learned the information about the islands under Division 164’s control. He could not have learned it from a map because he is illiterate.⁷²⁸ Moreover, he was stationed on one island, imprisoned on Koh Tral, and then moved to the Kang Keng

⁷¹⁹ Final Submission, para. 1083.

⁷²⁰ See *supra* paras. 186-88 for more information about this witness.

⁷²¹ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A11. Final Submission, fns. 193, 654.

⁷²² Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A11.

⁷²³ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A7, 29.

⁷²⁴ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A114. Final Submission, fn. 654.

⁷²⁵ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A99.

⁷²⁶ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, Q-A 3, 99, 101, 106: “Q: If today I ask you the same questions as those of the DC-Cam, will you tell us the same as you told the DC-Cam? A3: Yes, I will.... Q: What you have told me does not reflect what you told the DC-Cam in March 2015. I have a problem understanding why you could remember things better when providing answers three months ago than now. A99: I was drunk at that time.... Q: I want to clarify with you again whether or not you will provide the same answers if I ask the same questions as those of the DC-Cam team who interviewed you? A101: I cannot remember. I cannot provide the same answers. I can remember only if I listen to my audio recorded statements at that time.... Q: I want to clarify with you that you are answering under oath, but now you seem to be answering with some concerns. May I ask you to recompose yourself and concentrate in answering my questions. A106: I’m answering according to what I know. If I do not know, how can I answer?”

⁷²⁷ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, Q-A 229.

⁷²⁸ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A116.

Airport area and Stung Hav during the DK regime.⁷²⁹ It is unlikely that, at the time, he would have known the entire geographic scope of Division 164's patrol.

226. The other witnesses the ICP cites only state generally that Division 164 or MEAS Muth protected "islands" or the "sea."⁷³⁰ The telegrams and reports the ICP cites only relate to about 15 islands.⁷³¹ This evidence does not support a conclusion that Division 164 or MEAS Muth controlled 200 islands.

227. Division 164 did not control the entire Cambodian coastline.⁷³² Its operations and impact during the DK regime were limited to a restricted geographical area. The coastline, which the ICP claims is 400 kilometers long,⁷³³ represents about 13% of Cambodia's 3,012 kilometers of border area.⁷³⁴ Of that total coastline, Division 164 patrolled only the waters near Kampong Som, including Koh Poulo Wai, Koh Tang, and Koh Rong.⁷³⁵ The waters off Koh Kong and Kampot were under the command of other forces: Koh Kong was patrolled by Division 1⁷³⁶ and Kampot was patrolled by Sector 35 forces.⁷³⁷

⁷²⁹ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A126, 150, 229-30, 262.

⁷³⁰ Final Submission, fn. 193, quoting Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A17; Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A16; Written Record of Interview of Moeng Seng, 22 May 2016, D114/209, A17-18; Written Record of Interview of Svay Saman, 4 September 2015, D114/116, A5-6, 10; Written Record of Interview of Uy Nhik, 1 April 2014, D54/77, A52; Written Record of Interview of Meas Im, 10 June 2016, D114/215, A39; Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A49. *See also* Final Submission, fn. 654, quoting *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 April 2012, D98/1.2.22, 14.17.05-14.20.23; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 13.35.04-13.37.29; Written Record of Interview of Koch Tuy, 19 August 2015, D114/105, A30; Written Record of Interview of Yoem Sroeng, 27 July 2015, D114/95, A34.

⁷³¹ Final Submission, fn. 193.

⁷³² As the ICP claims. Final Submission, para. 220.

⁷³³ Final Submission, para. 62, fn. 193.

⁷³⁴ US Library of Congress, Federal Research Division, CAMBODIA: A COUNTRY STUDY xv (1990), available at <https://www.loc.gov/item/89600150/>.

⁷³⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.11.41-10.14.58 (Meas Voeun stated that his target area was between Koh Sdech to Koh Kong and Koh Yar, while Division 3 patrolled from Koh Sdech to Koh Rong, the base toward Kampong Som, and Koh Poulo Wai).

⁷³⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.11.41-10.14.58; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 October 2012, D98/3.1.180, 09.11.38-09.16.58; DC-Cam Interview with Meas Voeun, 11 December 2010, D59/1/1.36, EN 00849498 (his Division 1 regiment was deployed to Koh Kong and based along the sea borders of Koh Kong, Koh Yar, Koh Moul, and Koh Cham Yeam). Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A16 (Koh Mnoah was in Sector 11); Written Record of Interview of Chea Phun, 18 November 2015, D114/140, A20-21 (Sector 11 was in the West Zone).

⁷³⁷ *See e.g.* Written Record of Interview of Koem Men, 3 September 2015, D114/113, A62 (Sector 35 covered parts of Kampot and Takeo); Written Record of Interview of Sok Ren, 13 January 2016, D114/155, A23 (one of the chiefs in Prey Nob was from Sector 35 in Kampot Province). *See also* DC-Cam Interview with Chiem Nha,

e. Conclusion

228. MEAS Muth's command of Divisions 3 and 164 or membership on the Division 164 Committee do not make him a "senior leader." A Committee collectively decided matters and shared responsibility for the Division. Division 164 was one of a dozen Divisions and Independent Regiments. It was not significantly larger than other Divisions nor was its structure unique. It operated within a limited geographical area. Possessing any leadership role in relation to Division 164 does not elevate MEAS Muth to the level of a "senior leader."

5. MEAS Muth was not the Secretary of Kampong Som Autonomous Sector or on the Kampong Som Autonomous Sector Committee; even if he was, these positions would not make him a "senior leader"

229. The ICP claims that MEAS Muth was appointed Secretary of Kampong Som Autonomous Sector upon his arrival in Kampong Som after 17 April 1975⁷³⁸ and that he was the highest authority on the Kampong Som Autonomous Sector Committee.⁷³⁹ The ICP cites unreliable evidence that is based on hearsay and speculation. He misconstrues evidence. He fails to substantiate his claims. Even if the CIJs consider that there is sufficient evidence of MEAS Muth's roles in Kampong Som Autonomous Sector, positions as the Secretary of an Autonomous Sector or a member of a Sector Committee do not constitute "senior leader" status.

21 May 2004, D1.3.32.10, EN 00184184 (Ta Mok frequently visited her site in Srae Ambil in Kampot and Pon was her division chairman). OCIJ Investigator Kuehnel told a witness that Sector 35 was in Kampot Province (Written Record of Interview of Meas Im, 10 June 2016, D114/215, EN 01333468). The OCIJ appears to agree that Kampot was not under the jurisdiction of Division 164, because it is not part of the Case 003 judicial investigation. Written Record of Investigation Action, 14 March 2016, D114/189, EN 01215547 ("events in Kampot are not within the scope of the investigation").

⁷³⁸ Final Submission, para. 72. *See also id.*, paras. 75, 220, 1083.

⁷³⁹ Final Submission, paras. 72, 221.

a. MEAS Muth was not the Secretary of the Kampong Som Autonomous Sector

230. The sources the ICP cites do not support his claim that MEAS Muth was the Secretary of Kampong Som Autonomous Sector.⁷⁴⁰ He primarily cites unreliable statements from Duch, Ben Kiernan, Pak Sok, Chet Bunna, Em Son, Seng Ol, Yem Sroeng, and unreliable documentary evidence.⁷⁴¹ The ICP fails to substantiate his claim. There is no documentary evidence from the CPK indicating that MEAS Muth was formally appointed as the Secretary of Kampong Som Autonomous Sector and insufficient evidence that he informally held this position.

231. **Duch.** Duch is unreliable.⁷⁴² He claimed MEAS Muth was a “special sector secretary” in Kampong Som and chairman of the Kampong Som Party Committee, and that the port was under MEAS Muth’s control.⁷⁴³ These claims are unreliable and inaccurate. Despite making several statements about MEAS Muth, Duch had not previously claimed MEAS Muth was a “special sector secretary” in Kampong Som. In June 1999, he said MEAS Muth was the naval commander stationed in Kampong Som and chairman of the Kampong Som Committee.⁷⁴⁴ In OCIJ interviews prior to 2016, he said MEAS Muth, commander of the navy and part of the military section, was an assistant to the Central Committee.⁷⁴⁵ He did not mention a role as “special sector secretary” of Kampong Som. Given the CPK’s policy of secrecy,⁷⁴⁶ it is unlikely that during the regime Duch would have had concrete knowledge of any roles held by MEAS Muth. Contrary to Duch’s

⁷⁴⁰ Final Submission, paras. 72, 75, 220, 1083.

⁷⁴¹ Final Submission, fns. 217, 226-29, 660.

⁷⁴² See *supra* paras. 175-77 for more information about this witness.

⁷⁴³ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A10. Final Submission, para. 75.

⁷⁴⁴ Cambodian Military Court Suspect Statement, 4 June 1999, D1.3.33.7, EN 00184830. He “knew” this “[t]hrough his studies” of the structure of DK leadership. *Id.*, EN 00184829. See also Final Submission, fn. 227.

⁷⁴⁵ Written Record of Interview of Charged Person KAING Guek Eav, 2 June 2008, D1.3.33.10, EN 00195577 (he learned that the military section was appointed to the Assisting Committee of the Central Committee); Written Record of Interview of Charged Person KAING Guek Eav, 4 December 2007, D1.3.33.13, EN 00154911 (he learned that MEAS Muth, commander of the navy, was appointed to the Assisting Committee of the Central Committee); Written Record of Interview of KAING Guek Eav, 27 April 2011, D12, EN 00680796 (MEAS Muth was an assistant to the Central Committee).

⁷⁴⁶ See *supra* para. 166 discussing the CPK’s policy of secrecy and its impact on the assessment of evidence.

claim that MEAS Muth controlled the port, the ICP acknowledges⁷⁴⁷ and multiple witnesses have said Thuch Rin controlled the port and its approximately 6,000 workers.⁷⁴⁸

232. **Ben Kiernan.** Ben Kiernan is unreliable. He is an academic who has refused to testify regarding his research and publications on the DK regime. His refusal to be confronted by ECCC parties is consequential to the weight to be given to his evidence.⁷⁴⁹ Mr. Kiernan claimed MEAS Muth's appointment as Kampong Som Secretary occurred "[a]round 1975."⁷⁵⁰ He cited the following as support:

- His interview with a CPK member from 1973 and DK subdistrict chief, Kirivong, 25 August 1980;
- His interview with a CPK member since 1973 and DK subdistrict committee member, Kong Pisei, 17 September 1980;
- His interview with Chon, Takeo, 16 July 1980;
- His interviews in Kampot, 29 August 1980; and
- Stephen Heder's interview with a Region 13 cadre, Sakeo, 8 March 1980.⁷⁵¹

These interviews were not done under judicial supervision and were for purposes other than a criminal trial. None of these sources are fully identified. The author has provided no transcripts, notes, or audio recordings of these interviews. *See infra* paragraph 239 for submissions on Stephen Heder's interviews. The reliability of Mr. Kiernan's sources

⁷⁴⁷ Final Submission, para. 221.

⁷⁴⁸ Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A2; Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A5-7, 12; Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A199.

⁷⁴⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, 7 August 2014, E312, para. 59; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, 18 July 2017, E459, para. 190.

⁷⁵⁰ BEN KIERNAN, *THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79*, 88 (Yale University Press, 1996), D114/29.1.4, EN 00678539. Final Submission, fn. 217.

⁷⁵¹ BEN KIERNAN, *THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79*, fn. 77 (Yale University Press, 1996), D114/29.1.4, EN 00678539.

cannot be established. His statement cannot be verified or confronted and thus is of no probative value.⁷⁵²

233. **Pak Sok.** Pak Sok is unreliable. He was a combatant of the lowest rank whose claims about MEAS Muth are inaccurate, contradictory, and based on hearsay. During the DK regime, no one was ranked lower than Pak Sok.⁷⁵³ Given Pak Sok's low rank and the CPK's policy of secrecy,⁷⁵⁴ he would have had little knowledge of MEAS Muth's responsibilities and authority. Pak Sok claimed that he "heard" MEAS Muth was Party Secretary of Kampong Som.⁷⁵⁵ His own statement indicates he did not have personal knowledge of MEAS Muth's role. Pak Sok incorrectly claimed MEAS Muth was "in overall charge of Kampong Som as a whole in terms of the military, the workers, and the port."⁷⁵⁶ Within the area in which Division 164 was based, the Division 164 Committee supervised military matters, Thuch Rin supervised civilian and port matters,⁷⁵⁷ and Launh oversaw the fisheries unit.⁷⁵⁸ Pak Sok's story about destroying ammunition in Ream on MEAS Muth's orders⁷⁵⁹ – his only indication of a direct interaction with MEAS Muth – does not establish that MEAS Muth controlled all decisions regarding Division 164, only that MEAS Muth may have once issued an order to destroy some ammunition.

234. Pak Sok further demonstrated his lack of relevant knowledge when, despite making detailed claims to the OCIJ about MEAS Muth and Division 164's structure,⁷⁶⁰ he did not know who Norng Chhan was, although he said he knew who Dim and Nhet Nhan were.⁷⁶¹ The ICP claims Norng Chhan, Dim, and Nhet Nhan were deputy secretaries of Division

⁷⁵² See *supra* para. 139 discussing the use of external sources as evidence.

⁷⁵³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 09.24.43-09.27.45.

⁷⁵⁴ See *supra* para. 166 discussing the CPK's policy of secrecy and its impact on the assessment of evidence.

⁷⁵⁵ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A11. Final Submission, fn. 217.

⁷⁵⁶ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A15. Final Submission, fn. 229.

⁷⁵⁷ Written Record of Interview of Em Son, 27 November 2013, D54/47, A9, 15, 17, 33; Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A5-7, 12; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A199. See also Final Submission, para. 221.

⁷⁵⁸ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A30; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A10; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A30.

⁷⁵⁹ Written Record of Interview of Pak Sok, 17 October 2013, D54/24, A20. Final Submission, fn. 201.

⁷⁶⁰ See e.g., Written Record of Interview of Pak Sok, 17 October 2013, D54/24, A16-20; Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A19.

⁷⁶¹ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A1.

164.⁷⁶² If Pak Sok knew two of these allegedly high-level people, it is unlikely he would not have known the third person as well. Pak Sok also inaccurately said MEAS Muth organized Division 164 into the army of the Center.⁷⁶³ In reality, CPK senior leaders organized Division 164 within the RAK and organized the RAK within the CPK hierarchy.⁷⁶⁴ Pak Sok's statements are unreliable. Even if he had any relevant knowledge at the time, his testimony is of little probative value because of his admitted memory problems.⁷⁶⁵

235. **Chet Bunna.** Chet Bunna is unreliable.⁷⁶⁶ He claimed MEAS Muth controlled the autonomous areas from Tuek Sap, through Kang Keng, Ream, and Kampong Som, and all the islands.⁷⁶⁷ Given his rank, his lack of knowledge about the leadership level after early 1977, and his animus toward MEAS Muth,⁷⁶⁸ his statements are of little probative value.

236. **Em Son.** Em Son does not support the ICP's claims that MEAS Muth was the Secretary of Kampong Som Autonomous Sector or on its Committee.⁷⁶⁹ Em Son was a Member of Battalion 450.⁷⁷⁰ He was stationed on Koh Tang⁷⁷¹ and then transferred to work at the port under Thuch Rin.⁷⁷² The ICP misconstrues Em Son's statement that MEAS Muth was the Secretary or representative of the CPK in Kampong Som.⁷⁷³ The OCIJ Investigator showed Em Son an FBIS report about CPK senior leaders visiting Kampong Som with a Chinese delegation⁷⁷⁴ and said: "According to the first page of the

⁷⁶² Final Submission, Annex B, D256/7.3.

⁷⁶³ Written Record of Interview of Pak Sok, 17 October 2013, D54/24, A16.

⁷⁶⁴ See e.g., CPK Magazine entitled "Revolutionary Flag," Issue 8, August 1975, D4.1.861, EN 00401488 (regarding a July 1975 assembly at which the Party Center announced the establishment of the RAK); Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 27; Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183394, 00183396-00183397; CPK Magazine titled "Revolutionary Flag," Issue 7, July 1976, D1.3.24.2, EN 00268945 (stating that only the Party leads the Army).

⁷⁶⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.41.42-10.45.27 (in which he admits to giving conflicting testimony because of memory problems).

⁷⁶⁶ See *supra* paras. 186-88 for more information about this witness.

⁷⁶⁷ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9-10. Final Submission, fn. 660. See also Final Submission, fn. 1651.

⁷⁶⁸ See *supra* paras. 186 and 188.

⁷⁶⁹ Final Submission, paras. 72, 75, 220-21, 1083.

⁷⁷⁰ Written Record of Interview of Em Son, 26 November 2013, D54/46, A27; Written Record of Interview of Em Son, 27 November 2013, D54/47, A42.

⁷⁷¹ Written Record of Interview of Em Son, 27 November 2013, D54/47, A8.

⁷⁷² Written Record of Interview of Em Son, 27 November 2013, D54/47, A17-18.

⁷⁷³ Written Record of Interview of Em Son, 27 November 2013, D54/47, A28-33. Final Submission, fn. 217.

⁷⁷⁴ Written Record of Interview of Em Son, 27 November 2013, D54/47, Q27. See *infra* para. 240 for additional submissions on the FBIS report.

document, MEAS Mut was the Secretary of the Communist Party of Kampuchea in Kampong Som, and the second page writes that MEAS Mut was the Secretary of Kampong Som Party of the Communist Party of Kampuchea.”⁷⁷⁵ He asked Em Son to explain the difference between the titles.⁷⁷⁶ Em Son said he thought the correct title was “Secretary of the Communist Party of Kampuchea in Kampong Som.”⁷⁷⁷ He did not know what MEAS Muth’s responsibilities were as Party Secretary.⁷⁷⁸ He then said MEAS Muth was in charge of the military and was the CPK representative in Kampong Som, while Thuch Rin was in charge of civilians and workers at the port and was the Deputy Secretary.⁷⁷⁹ Em Son distinguished between administrative roles and Party roles. His statement does not establish that a Sector Secretary is the equivalent of a Party Secretary or Party representative. Aside from his unsupportive statements, Em Son is generally unreliable regarding MEAS Muth; he gave several contradictory statements about his interactions with MEAS Muth during the *Mayaguez* incident.⁷⁸⁰

237. **Seng Ol.** Seng Ol is unreliable. Her statements about MEAS Muth are of no probative value. She was a low-ranking cadre in charge of a women’s unit in Takeo Province who was transferred to Battambang Province in 1978.⁷⁸¹ She never went to Kampong Som.⁷⁸² She only heard MEAS Muth oversaw Kampong Som; she never saw him.⁷⁸³ She did not indicate from whom she heard this information. By her own testimony, she did not have personal knowledge of MEAS Muth during the DK regime.

238. **Yoem Sroeung.** Yoem Sroeung is unreliable. His statements are based on unverifiable hearsay and speculation. He was in Regiment 140 based on a mobile ship.⁷⁸⁴ He heard from his commander that MEAS Muth controlled the entire Kampong Som area except for the port.⁷⁸⁵ This statement cannot be verified. He also said he only assumed MEAS Muth governed from Tuek Sap to Ream and Kampong Som.⁷⁸⁶ He speculated that

⁷⁷⁵ Written Record of Interview of Em Son, 27 November 2013, D54/47, Q28.

⁷⁷⁶ Written Record of Interview of Em Son, 27 November 2013, D54/47, Q28.

⁷⁷⁷ Written Record of Interview of Em Son, 27 November 2013, D54/47, A28.

⁷⁷⁸ Written Record of Interview of Em Son, 27 November 2013, D54/47, A29.

⁷⁷⁹ Written Record of Interview of Em Son, 27 November 2013, D54/47, A33. See Final Submission, fn. 667.

⁷⁸⁰ See *infra* para. 349. See also *infra* paras. 244 and 515.

⁷⁸¹ Written Record of Interview of Seng Ol, 13 July 2015, D114/91, A9, 137-38, 165, 222, 337.

⁷⁸² Written Record of Interview of Seng Ol, 13 July 2015, D114/91, A220.

⁷⁸³ Written Record of Interview of Seng Ol, 13 July 2015, D114/91, A359-61. Final Submission, fn. 217.

⁷⁸⁴ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A38, 71, 79, 101.

⁷⁸⁵ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A198. See also *id.*, A193-97, 199-200. Final Submission, fn. 660.

⁷⁸⁶ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A194.

Thuch Rin, who controlled the port, “probably was with the more senior men up above” as opposed to with MEAS Muth.⁷⁸⁷

239. The ICP cites statements from several unreliable and unverifiable documents as additional support for his claims.⁷⁸⁸ An unknown source interviewed by Stephen Heder in 1980 said that “[i]n 1975” MEAS Muth took the position of Secretary of Kampong Som City.⁷⁸⁹ Mr. Heder identified this source only as a “man from tambon 13 (Takeo) in Southwest, presumably Party person.”⁷⁹⁰ This interview was conducted without judicial supervision for purposes other than a criminal trial.⁷⁹¹ The Supreme Court Chamber specifically identified Mr. Heder’s interviews as being of low probative value because of the circumstances in which they were conducted.⁷⁹² He frequently interviewed multiple people at once and allowed third parties to participate in the interviews, tainting the interviewees’ statements.⁷⁹³ There is no audio recording of the interview on the Case File. The statement cannot be verified or confronted. It is of no probative value. Similarly, the statement (attributed to Chap Lonh) that MEAS Muth was Secretary of the Kampong Som Party Committee and political commissar of the navy is of no probative value.⁷⁹⁴ The document in which this claim is made is either a summary or an excerpt of another statement that is not identified in the document.⁷⁹⁵ The document was prepared by an unknown author on an unknown date.⁷⁹⁶ The original, complete statement by Chap Lonh is not on the Case File. Even if the document is of any probative value, Chap Lonh claims only that MEAS Muth was Secretary of the Kampong Som Party Committee. He does not indicate the period in which MEAS Muth allegedly held this position or that MEAS Muth was Secretary of Kampong Som Autonomous Sector itself.

⁷⁸⁷ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A201.

⁷⁸⁸ Final Submission, fn. 217.

⁷⁸⁹ Interviews with Kampuchean Refugees at the Thai-Cambodia Border, February-March 1980, D1.3.30.29, EN 00170723.

⁷⁹⁰ Interviews with Kampuchean Refugees at the Thai-Cambodia Border, February-March 1980, D1.3.30.29, EN 00170723.

⁷⁹¹ See *supra* para. 139 discussing the use of this type of evidence.

⁷⁹² See *supra* fn. 361.

⁷⁹³ See Interviews with Kampuchean Refugees at the Thai-Cambodia Border, February-March 1980, D1.3.30.29, EN 00170712 (in which one interview is done with two Khmer Rouge soldiers and another interview is done with two sources), 00170718 (two people interject during a third person’s interview).

⁷⁹⁴ Document titled “Chap Lonh US POW/MIA Statement,” date unknown, D4.1.1030, EN 00526844. Final Submission, fn. 217. See also Final Submission, fn. 667.

⁷⁹⁵ The ICP claims the document is Chap Lonh’s “US POW/MIA Statement” (see Final Submission, fn. 217) but there is no indication in the document itself or in Zylab that this description is accurate.

⁷⁹⁶ See Document titled “Chap Lonh US POW/MIA Statement,” D4.1.1030.

240. The ICP also cites an FBIS report about, *inter alia*, a Chinese delegation's visit to Kampong Som with CPK senior leaders Pol Pot and IENG Sary.⁷⁹⁷ This report is of limited probative value, if any. It is a compilation of reports prepared by an unknown author based wholly on hearsay. At most, according to the unidentified person who issued the broadcast reported in this document, the document indicates that a person named "Mout" bore the titles of "Secretary of the Kampong Som Town [CPK] Committee and chairman of the Kampong Som town Serve-the-People Committee" on 12 December 1977, the alleged date of the visit.⁷⁹⁸ The document is not evidence that MEAS Muth held either position or of the length of time in which he held the positions.

241. Even if MEAS Muth was Secretary of the Kampong Som Autonomous Sector, he would have been one of 12 Secretaries of Autonomous Sectors or Zones.⁷⁹⁹ All were directly subordinate and subject to the Party Center.⁸⁰⁰ None played any role in determining or setting Party or governance policies, unless the Secretaries were participating members of the Standing Committee or Central Committee.⁸⁰¹ Holding the title of Secretary of the Kampong Som Autonomous Sector or possessing authority regarding operations and activities in the area does not make MEAS Muth a "senior leader."

242. The ICP also claims that MEAS Muth was appointed to control Sector 505 in Kratie toward the end of the DK regime and that this appointment enhanced the breadth of the geographical area over which his power extended.⁸⁰² The ICP fails to substantiate his claims.⁸⁰³ Even if MEAS Muth was appointed to control Sector 505, this appointment did not occur until late 1978, two months before the end of the DK regime.⁸⁰⁴ This

⁷⁹⁷ Final Submission, fn. 217, citing FBIS, Collection of December 1977, 1 December 1977, D22.1.10, EN 00168349. *See also* Final Submission, paras. 73-74 and fn. 667.

⁷⁹⁸ FBIS, Collection of December 1977, 1 December 1977, D22.1.10, EN 00168349.

⁷⁹⁹ *See* 1976 Map of Democratic Kampuchea, D4.1.376.

⁸⁰⁰ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 8. *See also* Case 002/01 Judgement, paras. 206, 274 (autonomous Sectors reported directly to the "Party Centre," which meant the Standing Committee, Central Committee, Military Committee, Office 870, and Government Office S-71 and its sub-offices.)

⁸⁰¹ *See supra* paras. 169, 174, and 178 regarding the Standing and Central Committees.

⁸⁰² Final Submission, paras. 58, 87, 1083.

⁸⁰³ *See infra* Section IV.C.8 for submissions regarding the ICP's claims about MEAS Muth's actions in Sector 505.

⁸⁰⁴ *See supra* para. 200. *See also supra* para. 179, regarding Duch's claim about MEAS Muth's 2 November 1978 appointment as a reserve member of the Central Committee.

appointment was not a nationwide position. It extended only to a Sector that was one of the smallest Autonomous Sectors and Zones in DK.⁸⁰⁵

b. MEAS Muth was not the highest member of the Kampong Som Autonomous Sector Committee

243. The sources the ICP cites do not support his claim that MEAS Muth was the highest authority on the Kampong Som Autonomous Sector Committee, with Thuch Rin the deputy in charge of the Kampong Som port and Launh the member in charge of logistics.⁸⁰⁶ The ICP primarily cites unreliable statements from Em Son, Soem Ny, Sam Komnith, and documents to support his claims.⁸⁰⁷

244. **Em Son.** Em Son is unreliable.⁸⁰⁸ He “believe[d]” MEAS Muth held a superior position to Thuch Rin simply because MEAS Muth came from the military committee.⁸⁰⁹ This reason is insufficient to find that MEAS Muth was superior to Thuch Rin in Kampong Som. Em Son also indicated that any authority MEAS Muth may have had in Kampong Som was shared with Thuch Rin. He said only Thuch Rin and MEAS Muth had the power to transfer a military unit from Division 3 to Thuch Rin.⁸¹⁰

245. **Soem Ny.** Soem Ny is unreliable. He made inaccurate and contradictory claims about MEAS Muth.⁸¹¹ Soem Ny was in Battalion 550, grew vegetables near Wat Enta Nhien, and worked under Thuch Rin at the port before he was sent to the East Zone in late 1978.⁸¹² He incorrectly claimed MEAS Muth “absolutely controlled everything.”⁸¹³ This claim is belied by his statement that MEAS Muth, Thuch Rin, and Launh were on the Kampong Som Autonomous Sector Committee supervising separate sections of Kampong

⁸⁰⁵ 1976 Color Map of Democratic Kampuchea, D4.1.376, EN 00295143.

⁸⁰⁶ Final Submission, paras. 72, 221.

⁸⁰⁷ Final Submission, fns. 220-25, 667.

⁸⁰⁸ See *supra* para. 236 and *infra* paras. 349, 416, and 515 for more information about this witness.

⁸⁰⁹ Written Record of Interview of Em Son, 27 November 2013, D54/47, A32. Final Submission, fns. 217, 667.

⁸¹⁰ Written Record of Interview of Em Son, 27 November 2013, D54/47, A30.

⁸¹¹ See *infra* paras. 406-08 regarding Soem Ny’s claims about MEAS Muth’s authority over Wat Enta Nhien.

⁸¹² Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A6-7, 9.

⁸¹³ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332612. Final Submission, fns. 220-21, 667. The ICP cites Soem Ny three times to support the same claim. Final Submission, fns. 220-21, quoting Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A10-12; DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 01070550; DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332598. See also Final Submission, fn. 223, citing Soem Ny regarding the decision-making process of the Kampong Som Autonomous Sector Committee.

Som: MEAS Muth supervised the military, Thuch Rin supervised the enterprise section, and Launh supervised the State fishing unit.⁸¹⁴

246. **Sam Komnith.** Sam Komnith is unreliable. The OCIJ noted concerns about his credibility and his statements do not support the ICP's claim. Sam Komnith was a port worker in charge of construction under Thuch Rin until 1977, when he was jailed in Battambang.⁸¹⁵ He said Kampong Som City was under the military and that it and Kampong Som port had different leaders.⁸¹⁶ He did not say MEAS Muth was on the Kampong Som Autonomous Sector Committee or was superior to Thuch Rin or Launh.⁸¹⁷ The OCIJ Investigator described him as a "sensitive and vulnerable" witness who "underperformed in his second statement."⁸¹⁸ The Investigator had grounds to believe Sam Komnith withheld information and may have been influenced by a village or commune leader.⁸¹⁹ Sam Komnith's statements must be assessed with caution.
247. The ICP also cites documents of questionable reliability and probative value.⁸²⁰ Chap Lonh's purported POW/MIA statement⁸²¹ and the FBIS report about a Chinese delegation's visit to Kampong Som⁸²² are of limited probative value.⁸²³ A Russian document purporting to list various "Zone" CPK leaders including MEAS Muth⁸²⁴ is unreliable. According to the English translation,⁸²⁵ the Russian document is a translation of a Spanish document attached to a Russian news agency's summary of two speeches by Pol Pot in September and October 1977.⁸²⁶ The OCIJ obtained this document from the Case 002 Case File, which obtained it from the former East German archives of Germany's Ministry of Foreign Affairs.⁸²⁷ Although a "source" for the information (a Soviet Ambassador) is named at the end of the list, there is no information as to the date

⁸¹⁴ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332612. Final Submission, fns. 220-21, 667.

⁸¹⁵ Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, Q-A3, 5.

⁸¹⁶ Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A20. Final Submission, fn. 667.

⁸¹⁷ As the ICP claims in paragraphs 72 and 221 of his Final Submission.

⁸¹⁸ Written Record of Investigation Action, 25 July 2016, D114/235, EN 01310764.

⁸¹⁹ Written Record of Investigation Action, 25 July 2016, D114/235, EN 01310764.

⁸²⁰ Final Submission, fns. 220, 224-25, 667.

⁸²¹ Final Submission, fn. 667.

⁸²² Final Submission, fns. 220, 224-25, 667.

⁸²³ See *supra* paras. 239-40.

⁸²⁴ List attached to Russian TASS Report, 5 October 1977, D114/266.1.2. Final Submission, fn. 220.

⁸²⁵ List attached to Russian TASS Report, 5 October 1977, D114/266.1.2, EN 01519465-01519466.

⁸²⁶ Russian TASS Report, 5 October 1977, D114/266.1.1, EN 01519460-01519464. See Written Record of Investigation Action, 30 August 2016, D114/266, EN 01335526.

⁸²⁷ Written Record of Investigation Action, 30 August 2016, D114/266, EN 01335525.

of this document, where this source was located, or how the Soviet Ambassador obtained this information.

248. MEAS Muth was neither a member of nor the head of the Kampong Som Autonomous Sector Committee. At most, the evidence on the Case File indicates that he oversaw the military in the area, Thuch Rin oversaw the port and civilians, and Launh oversaw the State fishing unit.⁸²⁸ Like all DK Party units, Autonomous Sectors were governed by three-person Committees that acted collectively.⁸²⁹ Even if MEAS Muth was on the Sector Committee, the operational functions of such Committees meant he was not the sole authority in the area.

c. Even if MEAS Muth was the Secretary of Kampong Som Autonomous Sector or a member of its Committee, Kampong Som Autonomous Sector was not a sufficiently significant part of DK to make MEAS Muth a “senior leader”

249. Like the Kampong Som coastline,⁸³⁰ the Kampong Som mainland was a small portion of the total DK land mass. The ICP claims that Kampong Som Autonomous Sector was approximately 800 square kilometers in area.⁸³¹ The ICP primarily cites unreliable or limited statements from Meas Voeun, Ek Ny, Uy Nhik, Meas Im, and various documents to support his claims.⁸³² The ICP overreaches. Cambodia has a total land area of approximately 181,000 square kilometers.⁸³³ Even if Kampong Som Autonomous Sector was 800 square kilometers in area, it represented only 0.44% of DK’s total land mass.

⁸²⁸ As stated by witnesses the ICP cites: DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332612; Written Record of Interview of Em Son, 27 November 2013, D54/47, A9, 15, 17, 33; Written Record of Interview of Yoem Sroeng, 27 July 2015, D114/95, A199; Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A2. *See also* Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A5-7, 12; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A30.

⁸²⁹ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Arts. 6(1), 8. *See supra* para. 212 for submissions on these Committees.

⁸³⁰ *See supra* para. 227, discussing the DK coastline.

⁸³¹ Final Submission, para. 71 (asserting that Kampong Som was bounded by Stung Hav port, Veal Renh commune, Ream commune, and Kampong Som city, and that its longest point from north to south was 30 kilometers and from east to west was 35 kilometers).

⁸³² Final Submission, fn. 215. *See also id.*, fn. 655.

⁸³³ National Institute of Statistics, Ministry of Planning, Cambodia Country Report submitted to the Sixth Session of the UN Committee of Experts on Global Geospatial Information Management, New York, 3-5 August 2016, p. 1, available at <http://ggim.un.org/country-reports/documents/Cambodia-2016-country->

250. **Meas Voeun.** Meas Voeun is unreliable.⁸³⁴ He claimed the navy controlled the mainland from Veal Renh to Kampong Som.⁸³⁵ His interactions with Division 164 were limited to coordinating maritime movements with a Division 164 regiment in the waters around Koh Kong.⁸³⁶ He would not have known where on the mainland Division 164 operated.
251. **Ek Ny.** Ek Ny is unreliable. He was a group chairman in Battalion 386 based on two islands after 17 April 1975 until 1977,⁸³⁷ and then based near Kang Keng and Tuek Sap.⁸³⁸ He claimed Division 164's area of operations was bordered by the Tonle Sap in the east, Stung Hav in the north, and the sea and a number of islands in the west.⁸³⁹ Given his limited area of operations, it is unlikely Ek Ny would have known of the entire area under Division 164's control, regardless of his time on the mainland.
252. **Uy Nhik.** Uy Nhik is unreliable. He was a combatant in Battalion 386 who was sent to a production unit in 1977.⁸⁴⁰ He claimed to have seen MEAS Muth coming to inspect Stung Hav by car.⁸⁴¹ The extent of what he observed was: MEAS Muth drove by Stung Hav every two weeks, he did not stop or get out of the car, and Uy Nhik saw him from a distance of 30-40 meters.⁸⁴² These statements indicate only that MEAS Muth drove past Stung Hav. They do not establish that Division 164 or MEAS Muth had any authority over Stung Hav or that Stung Hav was within Kampong Som Autonomous Sector. Uy Nhik later changed his story. He told the OCIJ Investigator he never saw MEAS Muth at

report.pdf. *See also* US Library of Congress, Federal Research Division, CAMBODIA: A COUNTRY STUDY xv (1990), available at <https://www.loc.gov/item/89600150/>.

⁸³⁴ *See supra* para. 193 for more information about this witness.

⁸³⁵ Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A17. Final Submission, fns. 215, 1651, 1823.

⁸³⁶ *See infra* paras. 320-34 for more information about Divisions 1 and 164.

⁸³⁷ POW-MIA Interview titled "Debriefing of AEK Ny, Former Member of the Khmer Communist 386th Battalion," 19 December 2002, D4.1.747, EN 00387287-00387288; Written Record of Interview of Ek Ny, 2 April 2014, D54/101, A9 (confirming and correcting his POW/MIA interview).

⁸³⁸ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A7, 24; Written Record of Interview of Ek Ny, 2 June 2014, D54/103, A3.

⁸³⁹ Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A16. Final Submission, fn. 215.

⁸⁴⁰ Written Record of Interview of Uy Nhik, 31 March 2014, D54/76, A10, 14, 17.

⁸⁴¹ Written Record of Interview of Uy Nhik, 1 April 2014, D54/77, A52. Final Submission, fn. 215. *See also* Final Submission, para. 197, fns. 533-34, 536-37.

⁸⁴² Written Record of Interview of Uy Nhik, 1 April 2014, D54/77, A54-57.

Stung Hav but had only seen him walking in Kampong Som.⁸⁴³ After the Investigator repeated his prior account to him, Uy Nhik reverted to his original statement.⁸⁴⁴

253. **Meas Im.** Meas Im is unreliable. He made contradictory statements about MEAS Muth, did not swear an oath to tell the truth in his OCIJ interviews, and lied to a DC-Cam interviewer. Meas Im did a variety of work in Division 164, including overseeing tractors at Stung Hav.⁸⁴⁵ At Stung Hav, he only knew about his own work.⁸⁴⁶ Meas Im said MEAS Muth came to Stung Hav once a week beginning in early 1977.⁸⁴⁷ He did not say Stung Hav was within Kampong Som Autonomous Sector. He also said MEAS Muth began visiting Stung Hav in mid-1976,⁸⁴⁸ rather than early 1977, and that he (Meas Im) did not go to Stung Hav until 1977.⁸⁴⁹ Even setting aside these contradictions, Meas Im's testimony is of little probative value. Because he is MEAS Muth's relative, he did not swear an oath to tell the truth to the OCIJ Investigator.⁸⁵⁰ From his first interview with DC-Cam, Meas Im demonstrated a penchant for telling untruths. As he told the Investigator, because he was only having a "convivial chat" with the DC-Cam interviewer, "some of what [he] told him was true, some not true."⁸⁵¹

254. The ICP also cites reports and meeting minutes to support his claims regarding Kampong Som Autonomous Sector's boundaries.⁸⁵² These documents do not indicate that the locations referred to therein were part of Kampong Som Autonomous Sector. They only indicate that Division 164 may have undertaken some activities in these locations. D1.3.12.3, a report purportedly to Son Sen, is relevant only to determining whether people were arrested east of Tuek Sap and whether people were hiding around Veal Renh.⁸⁵³ D1.3.8.3, a set of meeting minutes between the Division 164 Committee and members of the Standing/Military Committee, indicates only that Division 164 undertook activities in Kampong Som City, Ream, Kang Keng, and the islands referred to in the

⁸⁴³ Written Record of Interview of Uy Nhik, 14 December 2015, D114/146, A50-51.

⁸⁴⁴ Written Record of Interview of Uy Nhik, 14 December 2015, D114/146, Q-A52.

⁸⁴⁵ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A22-25.

⁸⁴⁶ Written Record of Interview of Meas Im, 10 June 2016, D114/215, A52.

⁸⁴⁷ Written Record of Interview of Meas Im, 10 June 2016, D114/215, A39. *See also* Written Record of Interview of Meas Im, 10 June 2016, D114/215, A12. Final Submission, fn. 215. *See also* Final Submission, para. 197, fns. 533-34, 536-37.

⁸⁴⁸ Written Record of Interview of Meas Im, 10 June 2016, D114/215, A12, 66.

⁸⁴⁹ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A25.

⁸⁵⁰ *See* Written Record of Interview of Meas Im, 10 June 2016, D114/215, EN 01333468; Rule 24(2).

⁸⁵¹ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A6.

⁸⁵² Final Submission, fn. 215.

⁸⁵³ Report titled "Reported to Brother 89," 22 February 1976, D1.3.12.3.

document.⁸⁵⁴ D1.3.34.10, a telegram purportedly to Son Sen, is only relevant to acts reported in relation to Koh Tang, Koh Yum, Koh Sdach, and Kampong Som.⁸⁵⁵ D1.3.14.2, a telegram purportedly sent by Moeun in Division 164, is relevant only to the activities reported as having occurred in Ouchheuteal.⁸⁵⁶

d. Conclusion

255. MEAS Muth was not the Secretary of Kampong Som Autonomous Sector, nor was he the highest authority on the Sector Committee. At most, there is evidence that he oversaw the military in the area. That MEAS Muth may have had responsibility for naval activities along a coastline that was less than one-sixth of the entire DK coastline and a mainland area that was 0.44% of DK's total land area does not make him a "senior leader." Similarly, that he may have had authority over Sector 505 for two months at the end of the DK regime does not make him a "senior leader."

B. Frequent access to CPK senior leaders does not make MEAS Muth a "senior leader" or one of those "most responsible"

256. In fulfilling its duty to defend and protect DK and its people,⁸⁵⁷ Division 164 communicated regularly with the General Staff and CPK senior leaders about matters of national defence, security, and national reconstruction. Such communications are common to militaries across the world. Communicating or having close relationships with CPK senior leaders does not mean MEAS Muth was a "senior leader"⁸⁵⁸ or one of those "most responsible." The ICP claims MEAS Muth communicated and worked closely with CPK senior leaders, implying that he was a "senior leader" or "most responsible" and that these communications aided the commission of crimes in areas under his control.⁸⁵⁹ The ICP: **a.** cites few witnesses to support his claims; **b.** cites documents unrelated to Division 164; and **c.** extrapolates from a few documents to make broad claims about MEAS Muth and Division 164. He fails to substantiate his claims.

⁸⁵⁴ Military Meeting Minutes titled "Minutes of meeting of the military work in Kampong Som," 3 August 1976, D1.3.8.3.

⁸⁵⁵ Telegram titled "Telegram 44 from Mut to Brother 89," 13 August 1976, D1.3.34.10.

⁸⁵⁶ Telegram titled "Telegram 43 from Moeun to Brother Mut," 13 July 1977, D1.3.14.2.

⁸⁵⁷ See DK Constitution, 5 January 1976, D1.3.22.2, Art. 19, setting out the RAK's duties.

⁸⁵⁸ Case 004/1 Closing Order, para. 315.

⁸⁵⁹ Final Submission, paras. 51, 262, 295-307, 980.

1. Communications between the Center and its Divisions

257. The sources the ICP cites insufficiently support his claims that Divisions and the Center were in contact multiple times a day by radio, with the telephone or telegram used for confidential communications and to summon commanders to confidential meetings.⁸⁶⁰ The ICP cites Lohn Dos, Chhouk Rin, Ieng Phan, and Chuon Thi.⁸⁶¹ The scope and relevance of these witnesses' knowledge are limited either by time or their specific circumstances. Their statements do not establish a broader pattern of communications between Divisions and the Center regarding confidential or non-confidential information.
258. **Lohn Dos.** Lohn Dos's knowledge of communications is temporally limited.⁸⁶² He did say that his section had radio contact with Divisions multiple times a day, that the telephone and telegraph were used for confidential communications, and that commanders received faxes summoning them to confidential meetings.⁸⁶³ His knowledge of the communications structure is limited to the approximately 18-month period during which he worked for the General Staff. His statements do not apply to the entire DK period.
259. **Chhouk Rin.** Chhouk Rin's knowledge of communications is limited by his position. He was a battalion commander in the Southwest Zone until 1977 when he became a regiment commander in Division 703 in Svay Rieng Province.⁸⁶⁴ He said normally only Division commanders could send telegrams to the General Staff and that he never sent such telegrams.⁸⁶⁵ His knowledge of telegrams as a form of communication is limited to the one telegram order he received sending him to Svay Rieng Province.⁸⁶⁶ Normally, he received orders by radio.⁸⁶⁷ He did not say Divisions were in radio contact with the Center multiple times a day or that confidential communications were sent by telegram or telephone.

⁸⁶⁰ Final Submission, para. 296.

⁸⁶¹ Final Submission, fns. 964-67.

⁸⁶² See *supra* para. 199 for more information about this witness.

⁸⁶³ Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364071. Final Submission, fns. 964-67.

⁸⁶⁴ Written Record of Interview of Chhouk Rin, 26 November 2009, D4.1.848, A1; Chhouk Rin, 21 May 2008, D4.1.408, EN 00268869-00268870.

⁸⁶⁵ Written Record of Interview of Chhouk Rin, 26 November 2009, D4.1.848, A7. Final Submission, fn. 967.

⁸⁶⁶ Written Record of Interview of Chhouk Rin, 21 May 2008, D4.1.408, EN 00268871.

⁸⁶⁷ Written Record of Interview of Chhouk Rin, 21 May 2008, D4.1.408, EN 00268873.

260. **Ieng Phan.** Ieng Phan's knowledge of communications is limited to his Division's communications. He was a regiment commander in Division 2.⁸⁶⁸ In 1978, he was sent to Svay Rieng Province.⁸⁶⁹ He said he communicated with the upper echelon by telegram but was referring to his time in the East Zone when he communicated with his Division commander, Ren, and Son Sen about military plans.⁸⁷⁰ He did not make broad statements about communications between the General Staff and the Divisions or say that confidential communications were sent by telegram or telephone.
261. **Chuon Thi.** Chuon Thi's statements are relevant only to his Division's internal communications. He was a regiment commander in Division 1.⁸⁷¹ He received telegrams from Division 1 leaders that mentioned enemy activities.⁸⁷² He did not make broad statements about communications between the General Staff and the Divisions or say that confidential communications were sent by telegram or telephone.
262. The ICP also cites a Case 002/01 transcript and incorrectly claims that it contains testimony from Meas Voeun⁸⁷³ that radio and telegraph lines were some of the most common communication lines.⁸⁷⁴ The statement the ICP cites is not a statement from Meas Voeun. It is a statement from the Case 002 Closing Order read by the Trial Chamber Greffier.⁸⁷⁵ A finding in a Closing Order is not evidence.

2. MEAS Muth's interactions with CPK senior leaders do not mean he was a "senior leader" or one of those "most responsible"

263. The sources the ICP cites do not support his claims that MEAS Muth worked closely and communicated frequently with the Standing and Central Committees and General Staff⁸⁷⁶ by telegram, telephone, letter, messenger, and train.⁸⁷⁷ The ICP primarily cites unreliable and unsupportive statements from Duch, Lon Seng, Mut Mao, and Hieng Ret,

⁸⁶⁸ Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A1.

⁸⁶⁹ Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A5.

⁸⁷⁰ Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A11. Final Submission, fn. 966.

⁸⁷¹ Written Record of Interview of Chuon Thi, 2 March 2010, D4.1.1056, A3.

⁸⁷² Written Record of Interview of Chuon Thi, 2 March 2010, D4.1.1056, A9. Final Submission, fn. 965.

⁸⁷³ See *supra* para. 193 for more information about this witness.

⁸⁷⁴ Final Submission, fn. 966.

⁸⁷⁵ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 October 2012, D98/3.1.177, 09.08.38-09.09.40.

⁸⁷⁶ Final Submission, para. 51. See also *id.*, para. 91.

⁸⁷⁷ Final Submission, paras. 299, 980.

and documents.⁸⁷⁸ The ICP overstates the evidence. Even if MEAS Muth did work closely or communicate frequently with CPK senior leaders, that does not mean he was a “senior leader” or one of those “most responsible.”

264. **Duch.** Duch is unreliable.⁸⁷⁹ He primarily claims MEAS Muth *assisted* the Central Committee but did not participate in it.⁸⁸⁰ He did not say MEAS Muth “worked closely” with the Central Committee.⁸⁸¹ Having a non-participatory role in relation to the Central Committee does not make MEAS Muth a “senior leader.” If the CIJs decide MEAS Muth was an assistant to the Central Committee, they must consider that assistants only had the right to attend training sessions but could not give comments or vote.⁸⁸²

265. **Lon Seng.** Lon Seng is unreliable.⁸⁸³ He claimed to have heard MEAS Muth was on the “Supporting Commission,” which disseminated the Center’s policies to the lower-level military and civilians.⁸⁸⁴ He did not say MEAS Muth “worked closely” with the Central Committee.⁸⁸⁵ Given the CPK’s policy of secrecy,⁸⁸⁶ it is unlikely that such information would have been shared with soldiers who were, at most, at the battalion level.

266. **Mut Mao.** Mut Mao is unreliable. She gave contradictory statements to the OCIJ about MEAS Muth, her work as a telephone switchboard operator, and her time in Kampong Som. Mut Mao was a switchboard operator at Division 164 headquarters who lived with MEAS Muth briefly during the DK regime.⁸⁸⁷ The ICP cites only Mut Mao to assert that Office K-1, the Standing Committee’s office and residence, called MEAS Muth’s office once a day or every two days.⁸⁸⁸ The ICP ignores her contradictory statements.

⁸⁷⁸ Final Submission, fns. 141-48, 976-79.

⁸⁷⁹ See *supra* paras. 175-76 for more information about this witness.

⁸⁸⁰ Final Submission, fn. 141.

⁸⁸¹ Final Submission, para. 51.

⁸⁸² As explained *supra* in para. 178.

⁸⁸³ See *supra* para. 194 for more information about this witness.

⁸⁸⁴ Written Record of Interview of Lon Seng, 23 June 2014, D54/110, A20-23. Final Submission, fn. 142.

⁸⁸⁵ Final Submission, para. 51.

⁸⁸⁶ See *supra* para. 166 regarding the CPK’s policy of secrecy and its impact on the assessment of evidence.

⁸⁸⁷ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A10, 17-18, 23. Mut Mao was related to MEAS Muth’s first wife, Khom. Written Record of Interview of Mut Mao, 11 March 2014, D54/70, EN 00983613.

⁸⁸⁸ Final Submission, paras. 51, 91, 299. See *id.*, fns. 143, 276, 977, quoting Written Record of Interview of Mut Mao, 14 March 2014, D54/73, A3-5.

267. Mut Mao first told the OCIJ Investigator she did not remember ever connecting the telephone network for MEAS Muth to the upper echelon, speculating that he probably had a secret telephone line or used the telegraph.⁸⁸⁹ She then claimed her switchboard must have connected calls from MEAS Muth to the Center but said she did not remember doing it.⁸⁹⁰ The next day, she added additional details to her story: Office K-1 called MEAS Muth once a day or once every two days and there were calls back and forth between him and the Center.⁸⁹¹ Mut Mao's contradictory testimony is not limited to communication between MEAS Muth and the Center. When she was interviewed by DC-Cam, she said she saw captured Americans in Kampong Som, describing in detail their appearance and where she saw them.⁸⁹² When she spoke to the OCIJ, she denied ever having seen them.⁸⁹³

268. Even setting aside her contradictory testimony, Mut Mao's evidence is of little probative value. Her position as a switchboard operator was limited in time to mid-late 1978. She said she was sent to Kampong Som at the end of 1977⁸⁹⁴ and that she worked at the Sokha guesthouse for about half a year (i.e., until the first or second quarter of 1978), after which she became a cook in MEAS Muth's house.⁸⁹⁵ She stayed with MEAS Muth for a few months before being sent to a telephone operation class.⁸⁹⁶ Two or three months before they fled from the Vietnamese, her team was demobilized and she returned to cooking for MEAS Muth.⁸⁹⁷ Given these statements, she would have worked at the switchboard for only a few months in 1978. Even these statements are contradicted by her initial statements to DC-Cam. She told DC-Cam she worked at the switchboard for more than one year, including a half-year training.⁸⁹⁸ This timeframe does not align with arriving in Kampong Som at the end of 1977.

⁸⁸⁹ Written Record of Interview of Mut Mao, 13 March 2014, D54/72, A46.

⁸⁹⁰ Written Record of Interview of Mut Mao, 13 March 2014, D54/72, A47.

⁸⁹¹ Written Record of Interview of Mut Mao, 14 March 2014, D54/73, A4.

⁸⁹² DC-Cam Interview with Mut Mao, 28 June 2007, D59/1/1.13, EN 00966917-00966922.

⁸⁹³ Written Record of Interview of Mut Mao, 11 March 2014, D54/70, A7-12.

⁸⁹⁴ Written Record of Interview of Mut Mao, 11 March 2014, D54/70, A37.

⁸⁹⁵ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A17.

⁸⁹⁶ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A23.

⁸⁹⁷ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A39.

⁸⁹⁸ DC-Cam Interview with Mut Mao, 28 June 2007, D59/1/1.13, EN 00966922. In an OCIJ interview, she reiterated that her training lasted for six months. Written Record of Interview of Mut Mao, 13 March 2014, D54/72, A29.

269. **Hieng Ret.** Hieng Ret is unreliable. He had no personal knowledge of the way orders were sent to MEAS Muth. He was a deputy company commander in Battalion 450/165⁸⁹⁹ who said orders were sent to Meas Muth by telegraph.⁹⁰⁰ He assumed this fact based on attending a training session about communicating by telegraph and secret codes.⁹⁰¹

270. The ICP cites meeting minutes between the Division 164 Committee and members of the Standing Committee, as well as telegrams and reports, to support his claim that MEAS Muth informed senior leaders of the situation in areas under his authority.⁹⁰² Reporting to Pol Pot, NUON Chea, Vorn Vet, or other CPK senior leaders does not make MEAS Muth a “senior leader.” As Ieng Phan testified, soldiers usually had to report to the General Staff.⁹⁰³ The ICP ignores the reporting hierarchy set out in the CPK Statute and the Division 164 Committee’s subordinate position compared to the Standing Committee and Military Committee, of which Pol Pot, NUON Chea, and Vorn Vet were members.⁹⁰⁴ Communications between MEAS Muth, the Division 164 Committee, and CPK senior leaders were required by the CPK Statute and the Standing Committee because Division 164 was under the Standing Committee’s authority, through the General Staff.⁹⁰⁵

271. The ICP cites reports and telegrams⁹⁰⁶ to support his claim that MEAS Muth communicated frequently with Son Sen through a variety of means.⁹⁰⁷ Several of these documents are misstated or do not support the ICP’s claims:

- **D1.3.30.25:** The ICP cites the same 1 April 1978 telephone message under three different document numbers,⁹⁰⁸ giving the appearance that he is citing more documents than he actually cites.

⁸⁹⁹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A11.

⁹⁰⁰ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A62. Final Submission, fn. 976.

⁹⁰¹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A62 (beginning his answer by saying “To my knowledge,”).

⁹⁰² Final Submission, para. 51, fn. 145. *See also id.*, para. 91, fns. 273-76.

⁹⁰³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 1 November 2016, D114/297.1.40, 09.44.47-09.45.54.

⁹⁰⁴ *See supra* paras. 169 and 172 regarding the Standing Committee and Military Committee.

⁹⁰⁵ *See supra* paras. 211-13 regarding the Standing Committee’s and General Staff’s authority over Division 164, and the three-person Committee that commanded Division 164.

⁹⁰⁶ Final Submission, fns. 146, 273, 976-78.

⁹⁰⁷ Final Submission, paras. 51, 91. *See also id.*, paras. 299, 980.

⁹⁰⁸ Final Submission, fn. 977, citing Report titled “Confidential Telephone Messages on 1.4.78,” 1 April 1978, D54/23.3; Report titled “The Secret Telephone Call on 1 April 1978,” 1 April 1978, D54/73.1, and Report titled

- **D1.3.30.26:** There is no indication that a 15 April 1978 telephone message, purportedly from Regiment 63 to NUON Chea regarding fighting in the East Zone, was from or involved MEAS Muth.⁹⁰⁹
- **D1.3.12.20:** There is no indication who created the 12 August 1977 report, which is purportedly based on a telephone call from MEAS Muth, with annotations from Son Sen.⁹¹⁰
- **D1.3.34.64:** A 20 March 1978 telephone report purportedly to Son Sen does not describe killings at sea but rather capturing Thai and Vietnamese boats and sinking a Vietnamese boat.⁹¹¹
- **D4.1.637:** A 4 April 1978 telephone report purportedly to Son Sen does not pertain to soldiers injured in fighting at Koh Tral but to people injured after naval mines were lifted from the bottom of the sea.⁹¹²
- **D4.1.1010:** There is no indication that MEAS Muth is the “Mut” who signed an 8 December 1978 letter about Elizabeth Becker’s request to meet senior CPK leaders and travel within DK.⁹¹³
- **D1.3.30.2:** A report purportedly sent to Son Sen by train on 5 January 1976 does not indicate that multiple reports were sent by train or that such reports were sent monthly. The ICP cites this report twice under two different document numbers.⁹¹⁴

“Confidential Telephone Messages on 1.4.78,” 1 April 1978, D1.3.30.25, all of which are the same message. *See also* Final Submission, fn. 981, citing Report titled as “Confidential Telephone Messages on 1.4.78,” 1 April 1978, D54/23.3, and Report titled “The Secret Telephone Call on 1 April 1978,” 1 April 1978, D54/73.1.

⁹⁰⁹ Final Submission, fn. 977, citing Report titled “Confidential Phone Conversation Dated April 15, 1978,” 15 April 1978, D1.3.30.26.

⁹¹⁰ Final Submission, fn. 977, citing Report titled “Report Dated August 12, 1977 ‘via Secret Telephone,’” 12 August 1977, D1.3.12.20. *See also* Final Submission, fn. 983.

⁹¹¹ Final Submission, fn. 977, citing Report titled “Confidential Telephone Communication on March 20, 1978,” 20 March 1978, D1.3.34.64. *See also* Final Submission, fns. 146, 273, 983.

⁹¹² Final Submission, fn. 977, citing Report titled “Confidential Telephone Message on 4 April 1978,” 4 April 1978, D4.1.637. *See also* Final Submission, fns. 273, 981, 983.

⁹¹³ Final Submission, fn. 978, citing Report titled “Letter from Kan and Mut to ‘Respected Brother,’” 8 December 1978, D4.1.1010.

⁹¹⁴ Final Submission, fn. 980, citing Report titled “Report to Brother 89,” 5 January 1976, D114/19.1 and Report titled “Reported to Brother 89,” 5 January 1976, D1.3.30.2.

272. The ICP cites four telegrams and reports to support his claim that MEAS Muth copied Pol Pot, NUON Chea, and IENG Sary in correspondence to Son Sen, particularly regarding implementation of the Party's enemy policy.⁹¹⁵ These documents do not support the claim:

- **D4.1.699:** This telegram is not from MEAS Muth to CPK senior leaders. It does not solely or primarily relate to the Party's enemy policy. It also discusses border and rice production issues.⁹¹⁶
- **D1.3.34.60:** This telegram relates to the Party's policy of national defence against the Vietnamese invasion. It does not relate to a policy regarding internal enemies.⁹¹⁷
- **D1.3.30.25:** This report does not solely or primarily relate to the Party's enemy policy. It also discusses logistical issues such as the scheduled release of Thai detainees, mine testing, and ammunition needs.⁹¹⁸
- **D1.3.12.2:** This report does not solely or primarily relate to the Party's enemy policy. It also discusses national defence issues related to Koh Tral.⁹¹⁹

Other telegrams on the Case File similarly show that Division 164 personnel copied CPK senior leaders on reports on a variety of issues including national defence, Party celebrations, and logistical needs, as well as internal or external enemy issues.⁹²⁰

273. The ICP cites a *Cambodia Daily* article quoting MEAS Muth as saying he met with Son Sen "a few times."⁹²¹ According to the article, the meetings were to carry out the Central Committee's work.⁹²² There is no audio recording of the interview on the Case

⁹¹⁵ Final Submission, para. 91, fn. 274. *See also id.*, fn. 203.

⁹¹⁶ Telegram titled "Telegram 11 from Dim to Brother Mut," 24 September 1976, D4.1.699.

⁹¹⁷ Telegram titled "Telegram 00 – Radio Band 354 – Respectfully Presented to the Office 870 Committee," 31 December 1977, D1.3.34.60. *See infra* para. 511 discussing the context in which this telegram was sent.

⁹¹⁸ Report titled "Confidential Telephone Message on 1/4/78," 1 April 1978, D1.3.30.25.

⁹¹⁹ Report titled "Reported to Brother 89," 6 February [year unknown], D1.3.12.2.

⁹²⁰ *See e.g.*, Telegram titled "Telegram 12 to Brother Mut," 27 September 1976, D1.3.34.12, EN 00897638; Telegram titled "Telegram 16 from Dim to Brother Mut," 6 October 1976, D1.3.34.13; Telegram titled "Telegram 15 from Comrade Dim to Brother Mut," 6 October 1976, D1.3.34.14; Telegram titled "Secret telegram from Moeun to Brother Mut," 13 July 1977, D1.3.14.2.

⁹²¹ Final Submission, para. 51.

⁹²² Erika Kinetz and Yun Samean, *Let Bygones be Bygones*, CAMBODIA DAILY, 1-2 March 2008, D1.3.7.8, EN 00165821. Final Submission, fn. 148.

File. This interview was not done under judicial supervision and was done for purposes other than a criminal trial. It is of little probative value.⁹²³

274. The ICP also cites an interview that American POW/MIA investigators held with MEAS Muth to support his claim that MEAS Muth communicated with the Center by messenger.⁹²⁴ MEAS Muth purportedly said that during the May 1975 *Mayaguez* incident communications with Phnom Penh were done by messenger.⁹²⁵ There is no audio recording of this interview on the Case File. It was not done under judicial supervision and was done for purposes other than a criminal trial. The interview is of little probative value.⁹²⁶ The statement is limited to May 1975. It is irrelevant to determining general methods of communication between Division 164 and the Center.

275. The ICP cites a statement purportedly from IENG Sary and an FBIS document to assert that MEAS Muth accompanied IENG Sary in meetings with foreign authorities.⁹²⁷ Being present when foreign delegations visited DK does not make MEAS Muth a “senior leader.” In any event, the ICP fails to substantiate his claim. IENG Sary’s statement simply refers to a “Comrade Mut” attending a meeting with IENG Sary and others.⁹²⁸ There is no indication “Comrade Mut” is MEAS Muth. The wording of the document indicates that only staff members of the Ministry of Foreign Affairs attended the meeting.⁹²⁹ The FBIS report⁹³⁰ is of limited probative value.⁹³¹ It is a compilation of reports prepared by an unknown author, based wholly on hearsay. If the CIJs accord the document any probative value, they should consider that the document does not describe MEAS Muth as a member of the Central Committee (in contrast to Pol Pot, who is

⁹²³ See *supra* para. 143 discussing the use of this type of evidence.

⁹²⁴ Final Submission, para. 299, fn. 979.

⁹²⁵ Statement of MEAS Mut (POW/MIA), 5 December 2001, D22.2.181, EN 00249694.

⁹²⁶ See *supra* para. 143 for additional submissions on this type of evidence.

⁹²⁷ Final Submission, para. 51.

⁹²⁸ IENG Sary Statement, 19 May 1976, D4.1.1031, EN 00003694.

⁹²⁹ See *e.g.*, IENG Sary Statement, 19 May 1976, D4.1.1031, EN 00003698 (“Although comrade Neay Sarann, Seng Hong and Se are absent, the ministry of foreign affairs here, representing the delegation, is pleased to express our gratitude to you all, who have made tremendous efforts to reinforce cooperation and friendship between the two parties”), 00003700 (“Representing the Ministry of Foreign Affairs, we would like to invite North and South Vietnamese journalists and cameramen to enter Cambodia for the period of one week to ten days”).

⁹³⁰ FBIS, Collection of December 1977, 1-31 December 1977, D22.1.10, EN 00168349. Final Submission, fn. 147.

⁹³¹ See *supra* para. 240.

described as the Secretary of the Central Committee).⁹³² The document indicates only that MEAS Muth may have been part of an event in Kampong Som when Pol Pot and IENG Sary brought a Chinese delegation to visit the town.

276. The ICP cites several telegrams and reports from Divisions other than Division 164 to support his claims that MEAS Muth reported to the Center on a variety of topics including military engagements,⁹³³ foreign and internal enemies,⁹³⁴ rice production,⁹³⁵ soldiers' health,⁹³⁶ and construction progress.⁹³⁷ These documents do not concern Division 164 or MEAS Muth. They are of no probative value and must be disregarded.

3. Conclusion

277. There was nothing criminal about MEAS Muth's communications with CPK senior leaders. The military was wholly controlled by the Party Center, which established a rigid reporting hierarchy and required regular reports.⁹³⁸ MEAS Muth communicated with CPK senior leaders about military and national defence matters. That he did so – regardless of the frequency – does not mean he was a “senior leader” or one of those “most responsible.”

⁹³² FBIS, Collection of December 1977, 1-31 December 1977, D22.1.10, EN 00168349. *See supra* paras. 236 and 240 regarding the document's relevance to the ICP's claim that MEAS Muth was the Secretary of Kampong Som Autonomous Sector.

⁹³³ Final Submission, fn. 982, citing Report titled “Handwritten Note ‘To Angkar’, ‘To Uncle 89’ From Roeun 801,” 25 March 1977, D4.1.572 (a report from Ung Ren of Division 801 to Son Sen).

⁹³⁴ Final Submission, fns. 983-84, citing Military Report titled “Report as of 1 May 1976 from Euan to Brother 89,” 1 May 1976, D234/2.1.46 (a report from Division 310 to Son Sen); Military Report titled “Report as of 4 June 1977 from Sok to Brother 89,” 4 June 1977, D234/2.1.45 (a report from Division 170 to Son Sen); Military Report titled “Report from Ren to Brother 89,” 6 July 1977, D234/2.1.48 (a report from the General Staff Office to Son Sen); Military Report titled “Report from Roeun to Brother 89,” 25 November 1976, D10.1.98 (a report from Division 801 to Son Sen); and Military Report titled “Report from Division 310 Committee to Brother 89,” 4 November 1977, D4.1.643 (a report from the Division 310 Committee to Son Sen).

⁹³⁵ Final Submission, fn. 985, citing Military Report titled “Report as of 4 June 1977 from Sok to Brother 89,” 4 June 1977, D234/2.1.45 (a report from Division 170 to Son Sen); Military Report titled “Report from Ren to Brother 89,” 6 July 1977, D234/2.1.48 (a report from the General Staff Office to Son Sen); and Military Report titled “Report from Roeun to Brother 89,” 25 November 1976, D10.1.98 (a report from Division 801 to Son Sen).

⁹³⁶ Final Submission, fn. 986, citing Telegram titled “Report to Brother 89 about Division 801,” 11 March 1976, D10.1.97 (a report from Division 801 to Son Sen).

⁹³⁷ Final Submission, fn. 987, citing Military Report titled “Report from Division 310 Committee to Brother 89,” 4 November 1977, D4.1.643 (a report from the Division 310 Committee to Son Sen) and Military Report titled “Report dated May 26, 1976,” 26 May 1976, D4.1.1014 (a report from Division 310 to Son Sen).

⁹³⁸ *See supra* paras. 172 and 213 regarding the Party's reporting requirements.

C. MEAS Muth was not one of the persons most responsible for serious crimes committed across DK from 1975-1979

278. Even when viewed in the light most favorable to the ICP, the evidence does not establish that MEAS Muth was one of those most responsible for serious crimes committed across DK from 1975-1979. The ICP overreaches. He: **a.** relies on witnesses whose statements are based on hearsay or speculation or are tainted; **b.** cites documentary evidence that is unreliable or does not support his claims; **c.** ignores relevant historical and contextual evidence; and **d.** misstates evidence. Even if criminal responsibility could be ascribed to MEAS Muth for his alleged activities and authority in Division 164, Kampong Som Autonomous Sector, or Sector 505, such findings would not elevate him to the category of “most responsible.” MEAS Muth’s acts and authority were confined to naval matters in the Kampong Som area, with a two-month period in Sector 505. They must be viewed against the entirety of the suffering caused by CPK policies in 1975-1979.⁹³⁹

1. MEAS Muth had no authority to determine CPK policies or their implementation

279. MEAS Muth was not a part of the senior CPK decision-making entities: neither the Standing Committee, Central Committee, Military Committee, nor the General Staff.⁹⁴⁰ He and other members of the Division 164 Committee, as with the Kampong Som Autonomous Sector Committee, reported to and received policies and instructions from the General Staff and other CPK senior leaders. They were required to comply. Even when viewing the evidence in the light most favorable to the ICP, the evidence does not show that MEAS Muth could contribute to or determine CPK policies or their implementation.

⁹³⁹ Case 004/1 Closing Order, para. 317.

⁹⁴⁰ See *supra* Section IV.A.1-3.

a. The Standing Committee and General Staff disseminated policies and instructions to the Divisions and required reports from the lower levels

280. The sources the ICP cites do not support his claim that the General Staff issued written and in-person commands to MEAS Muth, including to destroy enemies.⁹⁴¹ The ICP cites unsupportive statements from Hing Uch and Ung Ren, as well as telegrams and other reports.⁹⁴² He ignores relevant structural evidence about the CPK. At most, the evidence the ICP cites indicates a military functioning as militaries do, with superiors issuing instructions to their subordinates and lower units reporting to their superiors about matters related to the military and national defence.

281. **Hing Uch.** Hing Uch does not support the ICP's claim. Hing Uch, who is married to Mut Mao,⁹⁴³ was a message translator in Regiment 63.⁹⁴⁴ He only knew how his own unit worked.⁹⁴⁵ He only received telegrams from Division 164.⁹⁴⁶ He never saw or received telegrams from Son Sen or the General Staff.⁹⁴⁷ He said Office 870 sent an instructional message to Division 164 and that he received the forwarded message from Division 164.⁹⁴⁸ His statement related to one instance in 1978 when he received from Division 164 forwarded instructions from Office 870 about Vietnam's invasion of Svay Rieng and Prey Veng.⁹⁴⁹ It was not a statement about the general process by which the General Staff (or Office 870) issued commands to MEAS Muth or Division 164.⁹⁵⁰

282. **Ung Ren.** Ung Ren does not support the ICP's claim. He was a regiment commander in Division 801 who was briefly promoted to deputy Division commander in 1977.⁹⁵¹ He said he knew about instructions from the upper echelon through the Division 801

⁹⁴¹ Final Submission, para. 301.

⁹⁴² Final Submission, fns. 988-89, 991.

⁹⁴³ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, EN 01056696. *See supra* paras. 266-68 for more information about Mut Mao.

⁹⁴⁴ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, Q-A3, 9.

⁹⁴⁵ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A10.

⁹⁴⁶ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A9.

⁹⁴⁷ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A5.

⁹⁴⁸ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A6. Final Submission, fn. 988.

⁹⁴⁹ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A5.

⁹⁵⁰ Final Submission, para. 301.

⁹⁵¹ Written Record of Interview of Ung Ren, 7 May 2013, D55/4, A3-4, 8. *See also* Written Record of Interview of Ung Ren, 7 May 2013, D55/4, A33-39 (indicating that after his transfer to Banlung District from Phnom Penh, he did not have any position).

Secretary, Saroeun, only through meetings he held with Saroeun.⁹⁵² His statement is relevant only to Division 801.

283. The ICP misstates a 4 November 1976 telegram from Son Sen, which the ICP claims includes “instructions including the absolute necessity to destroy the enemies entering DK waters or territories.”⁹⁵³ The ICP omits the word “illegally” from his description, thereby altering the intent of the instructions. Son Sen referred to destroying enemies who *illegally* enter DK waters or territories.⁹⁵⁴ He was addressing the legitimate military objective of defending the nation. To that end, for example, Son Sen ordered forces to go to Koh Krasar to examine whether enemy troops really had deployed there and the measures to take in response, and instructed that plans must be made regarding Koh Yar and Koh Kong if the enemy came closer.⁹⁵⁵

284. The ICP also cites several reports from Divisions other than Division 164.⁹⁵⁶ These reports indicate that other Divisions sought instructions from the Center, demonstrating the complete control the Party’s senior leaders exerted over all aspects of the military.⁹⁵⁷

285. The ICP claims that MEAS Muth was required to have a direct reporting relationship with CPK senior leaders and that he did so through regular reports to Son Sen and other senior leaders.⁹⁵⁸ The ICP cites Meu Ret, Meas Voeun, the CPK Statute, and telegrams, General Staff meeting minutes, and reports.⁹⁵⁹ This evidence establishes, at most, that there was a mandatory reporting structure within the CPK and that MEAS Muth was a subordinate within this structure.

286. **Meu Ret.** Meu Ret does not support the ICP’s claims. He was in an anti-submarine unit in Regiment 140.⁹⁶⁰ After being shown a message about Vietnamese and Thai motorboats,⁹⁶¹ Meu Ret said MEAS Muth was required to report to Son Sen, so that Son

⁹⁵² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 10 January 2013, D98/3.1.307, 09.23.42-09.26.04.

⁹⁵³ Final Submission, fn. 989.

⁹⁵⁴ Telegram titled “Telegram 10 dated 4 November 1976,” 4 November 1976, D1.3.2.2, EN 00233970.

⁹⁵⁵ Telegram titled “Telegram 10 dated 4 November 1976,” 4 November 1976, D1.3.2.2, EN 00233970.

⁹⁵⁶ Final Submission, fn. 991.

⁹⁵⁷ *See supra* para. 211 regarding the Party’s control over the RAK.

⁹⁵⁸ Final Submission, paras. 69, 72, 302. *See supra* paras. 263-77, regarding the ICP’s related allegations in paragraph 91 of his Final Submission.

⁹⁵⁹ Final Submission, fns. 212-13, 219.

⁹⁶⁰ Written Record of Investigation Action, 17 July 2013, D54/15, EN 00942726.

⁹⁶¹ Report titled “Confidential Telephone Communication on March 20, 1978,” 20 March 1978, D1.3.34.64.

Sen could instruct MEAS Muth as to the appropriate measures to take.⁹⁶² Given Meu Ret's station during the DK regime, he would not have known of MEAS Muth's reporting requirements. Meu Ret's statement confirms the appropriate functioning of a military: a subordinate reports national security matters to his superior, who in turn relays instructions to his subordinate. Such hierarchical reporting is common in militaries and was required by the Party's legal framework.⁹⁶³

287. **Meas Voeun.** Meas Voeun is unreliable.⁹⁶⁴ He said MEAS Muth had to report to his upper echelon.⁹⁶⁵ Although, at the time he would not have known about MEAS Muth's reporting requirements, like Meu Ret, he simply confirms the appropriate functioning of a military.

288. MEAS Muth and the Division 164 Committee reported to and received orders from Son Sen and the Standing/Military Committee because Division 164 was commanded by the General Staff and the Standing Committee.⁹⁶⁶ MEAS Muth's reports do not equate to possessing the authority to make policy determinations. As surviving General Staff meeting minutes make clear, the issuance of instructions was one-way: from Son Sen to the Divisions and Independent Regiments. There was no exchange of ideas or free-wheeling discussion. In Case 001, Dr. Etcheson testified that Son Sen's instructions during these meetings were "known in the Party as propagating the line; that is making sure that his subordinates understood the policy of the Party and their role in implementing that policy."⁹⁶⁷ These instructions had to be followed. As Hieng Ret observed, MEAS Muth had to seek clearance and advice from his superior before he could act.⁹⁶⁸ The process was "[l]ikewise as in these modern days [*sic*] army rules, the

⁹⁶² Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A19-20, 22. Final Submission, fn. 992.

⁹⁶³ See *supra* paras. 172 and 213 regarding the CPK's hierarchical structure in relation to reporting within the military and Party units.

⁹⁶⁴ See *supra* para. 193 for more information about this witness.

⁹⁶⁵ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A13. Final Submission, fn. 992.

⁹⁶⁶ Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364071: "All the divisions of the Centre's military had to report to the General Staff." See *supra* paras. 211 and 213, discussing the Standing Committee's and General Staff's control over Center Divisions.

⁹⁶⁷ *Case of KAINING Guek Eav*, 001/18-07-2997-ECCC/TC, Transcript, 28 May 2009, D98/1.2.7, 14.09.55-14.12.01.

⁹⁶⁸ Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A60-61.

reports will have to be made to the general commander [Son Sen] if something happens.”⁹⁶⁹

289. In implying that MEAS Muth had sole authority and responsibility for reporting to CPK senior leaders,⁹⁷⁰ the ICP ignores the Division 164 and Kampong Som Autonomous Sector Committees.⁹⁷¹ These Committees shared authority over or responsibility for Division 164 and Kampong Som Autonomous Sector, subject always to the orders and instructions issued by their direct superiors in the Standing Committee and General Staff. Neither MEAS Muth nor any other Committee members had any authority to create and implement their own Party policies, refuse to carry out any instructions or orders issued by the Standing Committee and General Staff, or otherwise perform independently any of the tasks assigned to the Standing Committee and General Staff.

290. Even if MEAS Muth had authority over all matters under Division 164’s area of operations – islands, worksites, security centers, political trainings, receiving reports from and instructing subordinates, and reporting to his direct superiors – such authority would not make him one of the persons most responsible for serious crimes committed across DK from 1975-1979. MEAS Muth lived and worked in one part of the country, with a two-month stint in Sector 505.⁹⁷² He did not have nationwide authority or reach.

b. Attending General Staff meetings and Party assemblies does not mean MEAS Muth could contribute to CPK policies

291. The sources the ICP cites do not support his claims that MEAS Muth travelled often to Phnom Penh and attended General Staff meetings and assemblies where purge policies were discussed, or his implication that these actions make MEAS Muth one of those “most responsible.”⁹⁷³ The ICP primarily cites unreliable statements from Soem Ny, Liet Lan, Lon Seng, Meas Voeun, Lohn Dos, Hieng Ret, as well as documents including General Staff meeting minutes and non-ECCC interviews with MEAS Muth.⁹⁷⁴ The ICP

⁹⁶⁹ Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A62.

⁹⁷⁰ Final Submission, paras. 69, 72 (in paragraph 72, the ICP addresses the collective nature of Kampong Som Autonomous Sector Committee meetings but only refers to MEAS Muth reporting to the Standing Committee).

⁹⁷¹ See *supra* para. 212 regarding the Division 164 and Kampong Som Autonomous Sector Committees.

⁹⁷² See *infra* Section IV.C.8 regarding the ICP’s claims about Sector 505.

⁹⁷³ Final Submission, paras. 54-55, 95, 297-98, 1090, 1093.

⁹⁷⁴ Final Submission, fns. 163-67, 285, 968-74.

exaggerates. Attendance at General Staff meetings or Party assemblies does not equate to authority to make policy determinations or responsibility for nationwide events.

292. **Soem Ny.** Soem Ny is unreliable.⁹⁷⁵ He also does not support the ICP's claim. He said his superior – who was not MEAS Muth – attended monthly meetings, assuming that MEAS Muth also attended them.⁹⁷⁶
293. **Liet Lan.** Liet Lan is unreliable.⁹⁷⁷ He said MEAS Muth had to travel back and forth to Phnom Penh to meet with Son Sen.⁹⁷⁸ He speculated that MEAS Muth went to Phnom Penh to report to the Center.⁹⁷⁹ He then qualified his statement regarding MEAS Muth's trips to Phnom Penh by saying he did not know how often MEAS Muth made the trips.⁹⁸⁰ The ICP ignores this qualification.⁹⁸¹ Liet Lan did not say MEAS Muth met with CPK leaders in Kampong Som.⁹⁸² He said that after he attended an Olympic Stadium assembly where Pol Pot spoke about fighting on the Vietnamese border, he traveled to Kampong Som and met MEAS Muth, who made similar statements to Pol Pot's.⁹⁸³ He did not say CPK leaders were present during this meeting or that MEAS Muth met with any such leaders.
294. **Lon Seng.** Lon Seng is unreliable.⁹⁸⁴ He also does not support the ICP's claim. He said the General Staff collected comments from Division commanders when it needed to make a work plan and that Division commanders were members of the General Staff Committee.⁹⁸⁵ He did not say MEAS Muth attended monthly military meetings at the General Staff.

⁹⁷⁵ See *supra* para. 245 and *infra* paras. 406-08 for more information about this witness.

⁹⁷⁶ Written Record of Interview of Soem Ny, 13 November 2013, D54/37, Q-A30-31. Final Submission, fns. 163, 167, 285, 968.

⁹⁷⁷ See *supra* para. 201 for more information about this witness.

⁹⁷⁸ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3. Final Submission, fns. 167, 968.

⁹⁷⁹ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A142-43.

⁹⁸⁰ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3.

⁹⁸¹ Final Submission, fn. 968.

⁹⁸² Final Submission, fn. 971, citing Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3.

⁹⁸³ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3.

⁹⁸⁴ See *supra* para. 194 for more information about this witness.

⁹⁸⁵ Written Record of Interview of Lon Seng, 23 June 2014, D54/110, A8. Final Submission, fn. 968.

295. **Meas Voeun.** Meas Voeun is unreliable.⁹⁸⁶ He claimed Division 164 was directly under the General Staff and the Center.⁹⁸⁷ He did not say MEAS Muth attended monthly meetings at the General Staff.
296. **Lohn Dos.** Lohn Dos's evidence is temporally limited.⁹⁸⁸ He said General Staff meetings were held weekly or monthly, "only when there was a need to do it."⁹⁸⁹ The ICP ignores this latter statement.⁹⁹⁰ Lohn Dos did not say meetings were always held monthly.
297. **Hieng Ret.** Hieng Ret does not support the ICP's claims. He said he attended an assembly in Phnom Penh at which MEAS Muth reported on Vietnamese boats entering DK territorial waters.⁹⁹¹ The ICP ignores the part of Hieng Ret's statement in which he said Son Sen instructed attendees that, if the Vietnamese were refugees travelling on to Thailand, they should not be arrested.⁹⁹² Hieng Ret also said that, if the upper echelon (Son Sen and the General Staff) issued an order, the lower level (Division 164) had to obey.⁹⁹³ His statements show that attendance at General Staff meetings does not equate to participation in or development of the CPK senior leaders' policies.
298. The remaining two witnesses the ICP cites, Sath Chak and Prum Sarat, claim only that MEAS Muth was transferred to Phnom Penh in 1978, not that he travelled there often for meetings.⁹⁹⁴ They do not support the ICP's claim.
299. The ICP also cites General Staff meeting minutes that indicate MEAS Muth's presence at the meetings and claims that his participation in General Staff meetings became more frequent in the later years of the regime.⁹⁹⁵ While these meeting minutes

⁹⁸⁶ See *supra* para. 193 for more information about this witness.

⁹⁸⁷ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A4. Final Submission, fn. 968.

⁹⁸⁸ See *supra* para. 199 for more information about this witness.

⁹⁸⁹ Written Record of Interview of Lohn Dos, 20 November 2009, D4.1.845, A14.

⁹⁹⁰ Final Submission, fn. 968.

⁹⁹¹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75. Final Submission, fn. 975.

⁹⁹² Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75.

⁹⁹³ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75.

⁹⁹⁴ Final Submission, fn. 167, quoting Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A126-27; DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974225-00974226. See *supra* para. 140, discussing the use of DC-Cam interviews as evidence.

⁹⁹⁵ Final Submission, fns. 968 and 166, citing Military Meeting Minutes titled "Minutes of the Plenary Meeting of Divisions," 21 November 1976, D1.3.27.22; Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 9 October 1976, D1.3.27.20; Military Meeting Minutes titled "Minutes of the Meeting of all Division Committees," 1 June 1976, D1.3.8.2; and Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18 (same as D114/27.1.5). In footnote 968, the ICP also cites Military Meeting Minutes titled "Minutes of Meeting between Secretaries, Division's Logistic Unit and Independent

may indicate MEAS Muth's presence at the meetings, they do not establish their frequency. They do not indicate that meetings occurred every month on a set date, only that these meetings occurred on particular dates. These documents show that six meetings were held over a 10-month period, beginning about one year after the start of the DK regime. They are not evidence that meetings became "more frequent" toward the end of the regime.⁹⁹⁶ The ICP also cites one set of meeting minutes that indicate that, on 3 August 1976, the Division 164 Committee met with and received instructions on military matters from Pol Pot and other members of the Military Committee.⁹⁹⁷ This document does not establish that MEAS Muth met monthly or frequently with the General Staff or the Military Committee.

300. The ICP cites a *Phnom Penh Post* interview with MEAS Muth to support his claim that MEAS Muth attended monthly General Staff meetings.⁹⁹⁸ There is no audio recording of this interview on the Case File. This interview was conducted by an external entity without judicial supervision and for purposes other than a criminal trial. It is of little probative value.⁹⁹⁹

301. The ICP further claims that MEAS Muth met CPK leaders in Kampong Som, citing meeting minutes from two 1976 meetings.¹⁰⁰⁰ Neither set of meeting minutes supports this claim. There is no indication MEAS Muth attended the 9 September 1976 meeting.¹⁰⁰¹ While both meetings may have been about naval matters in Kampong Som, the location of the meetings was not indicated in the minutes.

302. The ICP claims that, in his role on the General Staff, MEAS Muth encouraged other Division and regiment commanders to purge enemies in their ranks.¹⁰⁰² There is no

Regiment," 27 June 1976, D234/2.1.18. In footnote 166, the ICP also cites Military Meeting Minutes titled "Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 1 March 1977, D1.3.27.26.

⁹⁹⁶ Final Submission, para. 54, fn. 163.

⁹⁹⁷ Final Submission, fns. 166, 968-69, 971, citing Military Meeting Minutes titled "Minutes of Meeting of the Military Work in Kampong Som," 3 August 1976, D1.3.8.3.

⁹⁹⁸ Final Submission, fn. 970, citing Christine Chaumeau and Bou Saroeun, *We were in a cage like today*, PHNOM PENH POST, 20 July 2001–2 August 2001, D1.3.33.16 (MEAS Muth said he discussed rice production in meetings with Son Sen). This document is the same as D22.2.180.

⁹⁹⁹ See *supra* para. 143 for additional submissions on this type of evidence.

¹⁰⁰⁰ Final Submission, para. 297, citing Military Meeting Minutes titled "Minutes of Meeting of the Military Work in Kampong Som," 3 August 1976, D1.3.8.3; Military Meeting Minutes titled "Minutes of the Meeting of 164 Comrades," 9 September 1976, D1.3.8.4.

¹⁰⁰¹ See Military Meeting Minutes titled "Minutes of the Meeting of 164 Comrades," 9 September 1976, D1.3.8.4.

¹⁰⁰² Final Submission, para. 1093.

evidence that MEAS Muth did so in any General Staff meetings he attended. Surviving meeting minutes do not indicate that enemies or the CPK's policy on enemies was the main topic of these meetings, as the ICP claims.¹⁰⁰³ The enemy situation and related policies was one of several topics discussed during these meetings. Other topics included national defence, food production, and health.¹⁰⁰⁴ Each attendee reported only on the situation within their own units and received general instructions as to what to do within their own units.¹⁰⁰⁵ Attendees were not instructed to take action related to others' units, nor did they take the initiative to suggest tasks or work to other Divisions. Such initiative would have been unthinkable at that time.¹⁰⁰⁶

303. In a 9 October 1976 meeting, MEAS Muth is recorded dutifully repeating the Party lines regarding no-good elements being hidden and infiltrated in the rank-and-file, that the most important factor is to grasp ideology, and that measures must be taken to seize the initiative in advance and do whatever needs to be done to not allow the situation to get out of hand and not let enemies strengthen or expand themselves.¹⁰⁰⁷ The ICP cites this meeting as evidence of MEAS Muth's knowledge of the Party's enemy policy and knowing and willing participation in the purge of the RAK.¹⁰⁰⁸ He ignores the context in which General Staff meetings were held.

304. These meeting minutes are evidence of the Party Center's standard operating procedure regarding the dissemination of policies and decisions. Son Sen instructed his subordinates on the Party line and policy.¹⁰⁰⁹ They obediently assented and repeated the

¹⁰⁰³ Final Submission, para. 54. D1.3.27.20 is the only set of meeting minutes the ICP cites in which it appears that the meeting was only about national defence and enemy issues. *See also* Final Submission, paras. 95-97.

¹⁰⁰⁴ *See e.g.*, Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18; Military Meeting Minutes titled "Minutes of the Plenary Meeting of Divisions," 21 November 1976, D1.3.27.22; Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics Officers of Divisions and Independent Regiments," 15 December 1976, D1.3.27.23; Military Meeting Minutes titled "Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 1 March 1977, D1.3.27.26; Military Meeting Minutes titled "Minutes of Meeting of the Military Work in Kampong Som," 3 August 1976, D1.3.8.3 (this meeting involved members of the Military Committee and Son Sen, not Son Sen alone).

¹⁰⁰⁵ *See e.g.*, Military Meeting Minutes titled "Minutes of Secretaries and Logistics Officers of Divisions and Independent Regiments," 15 December 1976, D1.3.27.23; Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18.

¹⁰⁰⁶ Case 004/1 Closing Order, para. 40.

¹⁰⁰⁷ Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 9 October 1976, D1.3.27.20, EN 00940350-00940351.

¹⁰⁰⁸ Final Submission, paras. 92, 99-100, 541, 552. *See infra* paras. 507-13 discussing the claims in paragraphs 541 and 552 of the Final Submission.

¹⁰⁰⁹ *See supra* para. 288, quoting Dr. Etcheson regarding Son Sen's propagation of the Party line during General Staff meetings.

Party line with the required accolades. As the CIJs noted in Case 004/1, the DK system “thrived, on the outside as much as on the inside, on a rule by terror and fear through the intentional very use of cruelty and mass atrocities.”¹⁰¹⁰ The chain of command and the Party’s principle of secrecy did not permit, encourage, or facilitate the “free, egalitarian horizontal exchange” of information by those under the senior leaders.¹⁰¹¹ Decisions by the CPK senior leaders had to be followed “on pain of personal consequence.”¹⁰¹² MEAS Muth repeated the Party lines because to do otherwise would have branded him an opponent of the revolution.¹⁰¹³ As Suong Sikoeun, a former member of the Ministry of Foreign Affairs,¹⁰¹⁴ testified: “[W]e all considered the Party as a god. Whatever was said by the Party, we had to follow it and accomplish it. Whatever views [were] expressed by the Party, we had to agree and conform to such opinions of the Party.”¹⁰¹⁵ Disagreeing or expressing concerns about Party policies was impossible.

305. The ICP cites minutes from 19 September 1976 and 1 March 1977 General Staff meetings to support his claim that MEAS Muth reported on the search for internal enemies in Division 164.¹⁰¹⁶ During the 19 September 1976 meeting, MEAS Muth reported on Thais illegally entering DK territorial waters, the Vietnamese navy firing on RAK naval units when they approach the sea demarcation line, and incidents of theft in Kang Keng.¹⁰¹⁷ He reported on national security matters and criminal acts in Kang Keng. He did not report on any search for internal enemies. During the 1 March 1977 meeting, a

¹⁰¹⁰ Case 004/1 Closing Order, para. 324.

¹⁰¹¹ Case 004/1 Closing Order, para. 41.

¹⁰¹² Case 004/1 Closing Order, para. 40.

¹⁰¹³ See Written Record of Interview of Ke Pich Vannak, 4 June 2009, D4.1.520, EN 00346160. See also Case 004/1 Closing Order, para. 40.

¹⁰¹⁴ See *infra* para. 590 for more information about this witness.

¹⁰¹⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 August 2012, D98/3.1.198, 09.14.43-09.17.47. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 August 2012, D98/3.1.243, 11.53.53-11.56.24: “Mr. Ieng Sary did not tell me that the decision was of the Standing Committee. Although I do not recollect the full message, that decision was the common decision by the Party or the collective decision by the Party. But, as usual, the decision made by Pol Pot alone represents the decision made the Party -- *the decision made by the Party already, and other people would then agree with such decision.*” (emphasis added).

¹⁰¹⁶ Final Submission, para. 98, fns. 290-93, citing Military Meeting Minutes titled “Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments,” 19 September 1976, D1.3.27.18, EN 00195341 (the ICP cites D4.1.655, EN 00143159, in footnote 290 of his Final Submission; D4.1.655 is a compilation document created by DC-Cam for the OCP); Military Meeting Minutes titled “Secretaries and Deputy Secretaries of Divisions and Independent Regiments,” 1 March 1977, D1.3.27.26, EN 00933835.

¹⁰¹⁷ Military Meeting Minutes titled “Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments,” 19 September 1976, D1.3.27.18, EN 00195340-00195341.

“Comrade Maut” reported on a platoon of depot units.¹⁰¹⁸ It is unclear that this person was MEAS Muth. In Khmer, the name “Maut” may not be the same as “Muth.”¹⁰¹⁹

306. The ICP claims that MEAS Muth attended a large assembly at the Olympic Stadium at which senior CPK leaders were present and purging East Zone cadres was discussed, and that other similar assemblies were held.¹⁰²⁰ The ICP primarily cites unreliable statements from Chhouk Rin and Meas Voeun.¹⁰²¹

307. **Chhouk Rin.** Chhouk Rin is unreliable.¹⁰²² He gave contradictory statements about MEAS Muth and meetings with senior leaders, and other witnesses deny his statements. In mid-1977, he attended a meeting at Ta Mok’s home in Takeo at which Ta Mok said the attendees would be sent to cleanse the East Zone, which had collaborated with the Vietnamese.¹⁰²³ Chhouk Rin then said that, a few weeks after this meeting, he attended a large meeting in Phnom Penh with Pol Pot, Ta Mok, NUON Chea, Son Sen, and 600-700 other participants (including MEAS Muth), to discuss the purge of the eastern cadres.¹⁰²⁴ He earlier told the OCIJ only 50-60 Division and regimental commanders attended the meeting.¹⁰²⁵ He later said he saw MEAS Muth frequently at meetings from 1976 until mid-1977, but did not see him after that.¹⁰²⁶ He also said the East Zone was not mentioned in meetings until the end of 1977 or 1978.¹⁰²⁷ Contrary to his earlier testimony, therefore, Chhouk Rin did not attend any meetings with MEAS Muth at which the East Zone was discussed.

308. Chhouk Rin claimed Ieng Phan, a regiment commander who became the commander of Division 221 in Svay Rieng in 1978,¹⁰²⁸ attended the large meeting in Phnom Penh.¹⁰²⁹ Ieng Phan said he did not attend any such meeting, although he did attend the meeting at

¹⁰¹⁸ Military Meeting Minutes titled “Secretaries and Deputy Secretaries of Divisions and Independent Regiments,” 1 March 1977, D1.3.27.26, EN 00933835.

¹⁰¹⁹ According to the Khmer-speaking members of the Defence, the two names are different.

¹⁰²⁰ Final Submission, para. 298.

¹⁰²¹ Final Submission, fns. 973-74.

¹⁰²² See *supra* para. 259 for more information about this witness’s position during the DK regime.

¹⁰²³ Written Record of Interview of Chhouk Rin, 29 July 2008, D4.1.409, EN 00268896.

¹⁰²⁴ Written Record of Interview of Chhouk Rin, 29 July 2008, D4.1.409, EN 00268896-00268897. Final Submission, fn. 973.

¹⁰²⁵ Written Record of Interview of Chhouk Rin, 21 May 2008, D4.1.408, EN 00268871.

¹⁰²⁶ Written Record of Interview of Chhouk Rin, 16 June 2015, D114/87, A54.

¹⁰²⁷ Written Record of Interview of Chhouk Rin, 16 June 2015, D114/87, Q-A60-61.

¹⁰²⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 10.14.06-10.18.27.

¹⁰²⁹ Written Record of Interview of Chhouk Rin, 29 July 2008, D4.1.409, EN 00268897.

Ta Mok's home.¹⁰³⁰ Ieng Phan said Chhouk Rin was not present at the meeting with Ta Mok because it was only for Brigade and Division commanders.¹⁰³¹ Another witness, Chuon Thy (also known as Thy Ov) also denied attending the large meeting in Phnom Penh, despite Chhouk Rin's claim that he had been there.¹⁰³² Chuon Thy said he only attended a meeting with Pol Pot in 1978 in Kampong Chhnang, during which Pol Pot talked about protecting DK from foreign aggressors like Vietnam.¹⁰³³

309. **Meas Voeun.** Meas Voeun is unreliable.¹⁰³⁴ He claimed Division-level cadres attended meetings with the Center where policies on screening and sweeping enemies clean were discussed.¹⁰³⁵ His claim is solely based on what he heard from the Division 1 commander, Soeung.¹⁰³⁶ He did not say MEAS Muth attended any such meetings.

310. Even if MEAS Muth did attend General Staff meetings or assemblies, as a member of the Division 164 Committee and commander of the navy, it is logical that MEAS Muth would have done so. Attending meetings or Party assemblies, even if they involved discussing or reporting on purges, does not make him one of the persons most responsible for serious crimes committed across DK from 1975-1979. Any purge-related actions MEAS Muth may have undertaken were limited to the Kampong Som area and, briefly, Sector 505, and were at the direction of the Center. He did not operate across DK and was not involved in events that occurred outside of his area of operations.

c. Providing political trainings to Division 164 personnel does not mean MEAS Muth could contribute to CPK policies

311. The sources the ICP cites are insufficient to support his claim that MEAS Muth held political trainings for Division 164 personnel on internal enemy activities.¹⁰³⁷ The ICP primarily cites statements from Mao Ran, Say Born, Sam Saom, and an external statement purportedly from MEAS Muth.¹⁰³⁸ This evidence does not establish that MEAS

¹⁰³⁰ Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A5, 8-9.

¹⁰³¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 13.52.02-13.54.33.

¹⁰³² Written Record of Interview of Chhouk Rin, 21 May 2008, D4.1.408, EN 00268872.

¹⁰³³ Written Record of Interview of Chuon Thy, 2 March 2010, D4.1.1056, A3-4, 13.

¹⁰³⁴ See *supra* para. 193 for more information about this witness.

¹⁰³⁵ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A14. Final Submission, fn. 974.

¹⁰³⁶ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A14-15.

¹⁰³⁷ Final Submission, paras. 68, 105.

¹⁰³⁸ Final Submission, fns. 205-07, 209-10, 306-08.

Muth solely was responsible for such trainings. Even if MEAS Muth did provide such trainings to Division 164 personnel, doing so does not mean he falls within the category of “most responsible.”

312. **Mao Ran.** Mao Ran does not support the ICP’s claim. Mao Ran was a soldier in Regiment 21 who then joined the navy as a combatant on a boat.¹⁰³⁹ He saw MEAS Muth “once in a while” at study sessions but was too low-ranking to otherwise meet him.¹⁰⁴⁰ He said MEAS Muth and a deputy organized a training for Regiment 140 about military procedures and discipline, the Vietnamese army wanting to seize DK territory, and the need to defend the border.¹⁰⁴¹ Mao Ran never attended any other trainings or meetings with MEAS Muth.¹⁰⁴² His statements indicate the training was about legitimate military objectives: military procedures and national defence. Discussing the need to defend one’s borders against an invading country’s military is not a discussion of “enemy activities within our ranks.”¹⁰⁴³
313. **Say Born.** Say Born does not support the ICP’s claim. He attended annual political trainings at Koh Rong cinema.¹⁰⁴⁴ He said MEAS Muth, the political commander, taught political affairs, ideology, and organization; Dim, the military commander, taught military combat techniques; and Chhan, the logistics commander, taught about weapons and equipment, food supply, and health care.¹⁰⁴⁵ Say Born said that, at the closing of training sessions, MEAS Muth summarized the sessions and gave additional guidance, including to watch for enemies within the ranks.¹⁰⁴⁶ His evidence indicates all members of the Division 164 Committee taught at annual study sessions.
314. **Sam Saom.** Sam Saom does not support the ICP’s claim. He indicates that multiple people presented at the trainings he attended, not only MEAS Muth. He said MEAS Muth

¹⁰³⁹ Written Record of Interview of Mao Ran, 6 October 2015, D114/132, A27, 74, 82.

¹⁰⁴⁰ Written Record of Interview of Mao Ran, 6 October 2015, D114/132, A17.

¹⁰⁴¹ Written Record of Interview of Mao Ran, 6 October 2015, D114/132, A63, 66-69. Final Submission, fns. 205-06.

¹⁰⁴² Written Record of Interview of Mao Ran, 6 October 2015, D114/132, Q-A114-17, 183 (saying he only attended squad and regimental meetings).

¹⁰⁴³ Final Submission, para. 68.

¹⁰⁴⁴ Written Record of Interview of Say Born, 14 August 2013, D54/17, A6, 8. Final Submission, fns. 206-07, 306.

¹⁰⁴⁵ Written Record of Interview of Say Born, 14 August 2013, D54/17, A10.

¹⁰⁴⁶ Written Record of Interview of Say Born, 14 August 2013, D54/17, A10-11.

attended training sessions “once in a while,”¹⁰⁴⁷ that he opened and closed the sessions, and that he and other speakers spoke about topics including the KGB, Vietnamese spies, and watching for enemy activities at cooperatives.¹⁰⁴⁸

315. The ICP cites a statement purportedly from MEAS Muth to author David Kattenberg that he oversaw politics for the Division.¹⁰⁴⁹ This interview was conducted without judicial supervision for a purpose other than a criminal trial. It has little probative value.¹⁰⁵⁰

316. Like Mao Ran, Say Born, and Sam Saom, other witnesses said other Division 164 Committee members conducted political trainings. Koem Men and Mak Chhoeun, who both were battalion commanders,¹⁰⁵¹ said Dim also conducted political trainings.¹⁰⁵² Yem Sam On said MEAS Muth did not conduct any of the political trainings he attended; only Dim did.¹⁰⁵³ Other witnesses said MEAS Muth did not discuss internal enemies during the training sessions. Koem Men said MEAS Muth talked about protecting the country from the Vietnamese enemy.¹⁰⁵⁴ He never heard MEAS Muth talk about enemies destroying the revolution and burrowing, although he did attend study sessions where such topics were discussed.¹⁰⁵⁵ Svay Sameth said MEAS Muth did not talk about political tendencies or biographies, but rather about self-sufficiency.¹⁰⁵⁶ Lay Bunhak said the only enemy discussed at the political meetings held by MEAS Muth was the enemy of the mind (laziness) and that the meetings were about building up the forces, refashioning oneself, ideology, and military customs and respect.¹⁰⁵⁷

¹⁰⁴⁷ Written Record of Interview of Sam Saom, 20 March 2015, D114/58, A22.

¹⁰⁴⁸ Written Record of Interview of Sam Saom, 20 March 2015, D114/58, A23, 26-27. Final Submission, fn. 308.

¹⁰⁴⁹ Final Submission, para. 68, fn. 210, quoting Audio Recording of Interview between MEAS Muth and David Kattenburg, April 2009, D54/16/1R, 20:07-23:03.

¹⁰⁵⁰ See *supra* para. 143 discussing the use of this type of evidence.

¹⁰⁵¹ Written Record of Interview of Koem Men, 3 September 2015, D114/113, A21; Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A5.

¹⁰⁵² Written Record of Interview of Koem Men, 3 September 2015, D114/113, A109-10; Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A16-17; Written Record of Interview of Mak Chhoeun, 23 October 2014, D114/20, A25.

¹⁰⁵³ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A13-15.

¹⁰⁵⁴ Written Record of Interview of Koem Men, 3 September 2015, D114/113, A111-14.

¹⁰⁵⁵ Written Record of Interview of Koem Men, 3 September 2015, D114/113, A249.

¹⁰⁵⁶ Written Record of Interview of Svay Sameth, 28 May 2015, D114/78, A43-44.

¹⁰⁵⁷ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A31-32. Although the Defence submits that this interview should be granted low probative value because of issues with the taking of the interview (*see supra* para. 189), if the CIJs consider it to be reliable, they must consider this statement.

317. Any policies discussed at Division-level or lower-level meetings were mandated by the Standing Committee. The Division 164 Committee had no autonomy in determining the content of the trainings. It disseminated policies and instructions issued by the Party Center, as did officers in every Party unit across DK. These policies and instructions were issued by the Standing Committee to the General Staff, which disseminated them to the lower-level Divisions through meetings and study sessions.¹⁰⁵⁸

d. Conclusion

318. MEAS Muth had no authority to determine CPK policies or their implementation. The Division 164 Committee received policies and instructions from the Standing Committee and General Staff, which they were required to implement. Attending General Staff meetings or assemblies does not mean MEAS Muth could provide comments or feedback on proposed Party policies or plans. The Division 164 Committee had no autonomy regarding the political trainings it held within Division 164. Trainers were required to disseminate the Party lines. Attending meetings and assemblies and providing trainings does not mean MEAS Muth was one of those “most responsible.”

2. Division 164’s scope of responsibility was not broad enough to make MEAS Muth one of the persons “most responsible”

319. The sources the ICP cites do not support his claims that, in addition to patrolling the coastline and islands, Division 164 was responsible for providing military support to other Divisions and had authority over all Zone army divisions deployed along the sea shore, particularly Division 1.¹⁰⁵⁹ The ICP cites unreliable witnesses and telegrams that do not support his claims.¹⁰⁶⁰ He also ignores exculpatory evidence. The evidence he cites only relates to Division 1 and its operations around islands in Koh Kong Province. MEAS

¹⁰⁵⁸ See *supra*, paras. 169 and 213, discussing the Standing Committee and General Staff meetings. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 10.11.57-10.15.55 (Mak Chhoeun testified that instructions to avoid confronting Vietnam were issued by Pol Pot nationwide during study sessions and the Divisions would disseminate the information downward using the same language as Pol Pot); General Staff Study Session document titled “Statistical List of Participants – 1st General Staff Training,” 20 October 1976, D1.3.30.5; General Staff Study Session document titled “General Staff Study Session, Second Session, Table of Participant Statistics,” 23 November 1976, D1.3.30.6; Written Record of Interview of Ek Ny, 4 June 2014, D54/105, Q-A11 (stating that the language Son Sen used in the minutes of a 9 October 1976 General Staff meeting regarding purges based on three principles is the same language the army used at that time).

¹⁰⁵⁹ Final Submission, paras. 63, 222. See also *id.*, paras. 303-06.

¹⁰⁶⁰ Final Submission, fns. 194, 669. See also *id.*, fns. 993-1007.

Muth did not have authority over Division 1. There is no evidence Division 164 provided support to other Divisions.

a. MEAS Muth did not have authority over Division 1 or other Divisions

320. The sources the ICP cites do not support his claims that MEAS Muth had authority over Division 1 because: **a.** MEAS Muth communicated with Soeung, the Division 1 commander, about vessels and military forces in Koh Kong and occasionally met with him to give instructions;¹⁰⁶¹ **b.** if an incident occurred during joint operations, Soeung had to discuss it with MEAS Muth before giving orders to Division 1;¹⁰⁶² and **c.** MEAS Muth had the authority to advise military units such as Division 1 on operations.¹⁰⁶³ The ICP heavily relies on unreliable and unresponsive statements from Meas Voeun, as well as statements from Ing Chhon and Ek Sophal.¹⁰⁶⁴ He also cites telegrams that do not support his claims.¹⁰⁶⁵

321. **Meas Voeun.** Meas Voeun is unreliable.¹⁰⁶⁶ Even if his statements have any probative value, they do not support the ICP's claims. Meas Voeun speculated MEAS Muth had the authority to advise other military units such as Division 1 on maritime operations.¹⁰⁶⁷ He claimed MEAS Muth represented the Center and was on the General Staff Committee.¹⁰⁶⁸ He never heard any official announcements about MEAS Muth's position.¹⁰⁶⁹ He based his opinion on what he "noticed" about MEAS Muth's work.¹⁰⁷⁰ Since Meas Voeun had no contact with MEAS Muth,¹⁰⁷¹ the probative value of his claims is minimal.

322. Meas Voeun said Ta Mok and the General Staff had ultimate authority over Division 1. He said Ta Mok was the military commander-in-chief in charge of the navy, infantry, and air force, and had the authority to issue orders to both Division 1 and Division

¹⁰⁶¹ Final Submission, para. 306. *See also id.*, para. 304.

¹⁰⁶² Final Submission, para. 305.

¹⁰⁶³ Final Submission, para. 306.

¹⁰⁶⁴ Final Submission, fns. 669, 1004-1007. *See also id.*, fn. 194.

¹⁰⁶⁵ Final Submission, fn. 194.

¹⁰⁶⁶ *See supra* para. 193 for more information about this witness.

¹⁰⁶⁷ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5. Final Submission, para. 306.

¹⁰⁶⁸ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A10; Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5.

¹⁰⁶⁹ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5.

¹⁰⁷⁰ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A5. Final Submission, fns. 669, 1007.

¹⁰⁷¹ *See supra* paras. 193 and 204.

164.¹⁰⁷² He also said the General Staff issued instructions to both Soeung and MEAS Muth for dissemination to the lower levels,¹⁰⁷³ indicating MEAS Muth did not have authority over Division 1. Meas Voeun's claim that Division 164 soldiers could shoot at retreating soldiers from any Division is based on uncorroborated hearsay from Division 1 soldiers.¹⁰⁷⁴

323. Meas Voeun said the navy would assist if there were conflicts at sea with another country¹⁰⁷⁵ but could not remember a time when the navy had directly intervened.¹⁰⁷⁶ Meas Voeun also said Division 1 assisted Division 164 in watching for ships or vessels at sea.¹⁰⁷⁷ Such coordination is logical because Division 1 and Division 164 controlled contiguous areas between Koh Kong and Kampong Som Provinces, as the ICP acknowledges.¹⁰⁷⁸

324. The ICP cites Meas Voeun to support his claim that MEAS Muth communicated with Soeung by radio regarding vessels and military forces in Koh Kong and occasionally met with him to give instructions to Division 1.¹⁰⁷⁹ Although Meas Voeun claimed MEAS

¹⁰⁷² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 13.48.27-13.54.29: "Q. So going back to my question, Mr. Witness; first of all, did I summarize your testimony in relation to Ta Mok accurately, that he was the military commander in chief of all three branches of the battlefields and had more power than Son Sen? A. That is correct.... Q. You referred to the navy, the army and the air force and you said that Ta Mok was the military commander in chief of all these three branches of the military so, in fact, from a military perspective, higher than Son Sen? A. I am now telling the Court about the chain of command. Regarding all the three branches of the military; navy, infantry and air forces, I did not know the tasks that he performed but what I saw at the time, he had the authority to issue orders to all three branches of the military; navy, infantry and air forces. Q. But I'm still not quite sure how you knew that Ta Mok was sort of overall military commander, military commander in chief. How did you know at the time? A. I knew that since he was entitled to order my soldiers and the other soldiers had to receive his order as well. And I do not know how broad his authority -- his power at the time." See also Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A4; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A1, 16.

¹⁰⁷³ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, Q-A26: "Q: Did your unit confront Thai troops frequently in 1978? A26: ... During that time in 1978 we were instructed to reduce confrontation on the western border because the conflict on the eastern border was escalating. The General Staff held meetings and gave instructions through Ta Mut and Ta Soeung." See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 11.10.36-11.12.35: "Q. You stated that during the three years you spent at Koh Kong, you personally received orders from Ta Soeung and sometimes, when he wasn't there, you received telegrams from Son Sen; did I properly understand your testimony? A. Yes, that is correct."

¹⁰⁷⁴ Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A4-5. Final Submission, fn. 669. See also Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A7 (indicating he was not present).

¹⁰⁷⁵ Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A17-18. Final Submission, fn. 999.

¹⁰⁷⁶ Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A20.

¹⁰⁷⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.41.13-11.46.56.

¹⁰⁷⁸ Final Submission, para. 303.

¹⁰⁷⁹ Final Submission, para. 306.

Muth communicated and met with Soeung,¹⁰⁸⁰ his knowledge of such events was limited. He had no contact or communication with MEAS Muth during the DK regime.¹⁰⁸¹ He attended no meetings with MEAS Muth and Soeung.¹⁰⁸² He only remembered them contacting each other once, in 1978, regarding vessels and military forces.¹⁰⁸³ Meas Voeun had limited contact with Soeung. Soeung visited him once while he was in Koh Kong; they did not see each other often¹⁰⁸⁴ and mainly communicated by telegram.¹⁰⁸⁵

325. The ICP disingenuously cites Meas Voeun's communications with Sim, a Division 3/164 regimental commander, as evidence that MEAS Muth and Soeung, the Division 1 commander, met or communicated by radio.¹⁰⁸⁶ Meas Voeun said he and Sim communicated by radio and in meetings to coordinate their activities, avoid overlaps in work, and avoid firing upon one another,¹⁰⁸⁷ beginning in early 1978.¹⁰⁸⁸ Communications between Meas Voeun and Sim are not evidence of communications between MEAS Muth and Soeung.

326. The ICP inflates the importance of Meas Voeun's claim that Soeung had to discuss incidents with MEAS Muth during joint operations because Division 1 did not have

¹⁰⁸⁰ Final Submission, fns. 1004-05.

¹⁰⁸¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.11.41-10.14.58, 10.20.29-10.23.23; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.16.46-11.19.35, 11.41.13-11.46.56; Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A19-20; Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15. See Final Submission, fn. 1005, regarding Meas Voeun's meetings with Division 164 regiments or battalions.

¹⁰⁸² Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A15.

¹⁰⁸³ Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A21. Final Submission, fn. 1004.

¹⁰⁸⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.17.11-10.20.29; Written Record of Interview of Meas Voeun, 4 March 2010, D4.1.1042, A6 (stating that he never attended meetings with Soeung; he reported to him by telegram and attended Zone meetings every three to four months because it was hard to travel to them from Koh Kong); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.35.35-09.37.53 (stating that he only attended Zone meetings once every six months or when he was told to go).

¹⁰⁸⁵ Written Record of Interview of Meas Voeun, 4 March 2010, D4.1.1042, A6. Soeung was based in Prey Nob District and Kampong Speu Province. Written Record of Interview of Meas Voeun, 3 March 2010, D4.1.1057, A2; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.20.29-10.23.23.

¹⁰⁸⁶ Final Submission, para. 306, fns. 1004-05.

¹⁰⁸⁷ See e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.41.13-11.46.56. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.14.58-10.17.11; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A32, 35; Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A1, 9. Final Submission, para. 303, fn. 993.

¹⁰⁸⁸ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A32; Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A19-20; Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A20. Final Submission, fns. 1004-05.

authority to command the navy.¹⁰⁸⁹ Meas Voeun said that, if an incident occurred during a joint operation, Soeung discussed it with MEAS Muth before issuing orders to the units to take their respective actions.¹⁰⁹⁰ He did say, “[m]y unit waited to get orders from our commanders, including *Ta Soeung* and *Ta Mut*,”¹⁰⁹¹ but likely was referring to the joint operational unit. He maintained that his Division 1 unit reported to and received orders from Soeung and that the Division 164 regiment reported to and received orders from Division 164.¹⁰⁹² That MEAS Muth and Soeung discussed joint operations does not mean MEAS Muth had authority over Soeung. Meas Voeun said he and Sim took their own actions, such as capturing boats, to deal with situations.¹⁰⁹³ He sometimes acted without instructions from his commander. His statements do not establish that MEAS Muth had authority over Division 1 or all Divisions along the DK coastline.

327. **Ing Chhon.** Ing Chhon is unreliable. He made improbable and contradictory statements about communications between Divisions 1 and 164. He was “just an ordinary sailor” in Division 164¹⁰⁹⁴ with no rank, but he described himself as the deputy chief of his ship’s engines.¹⁰⁹⁵ He was not involved in sending or receiving any communications with Division 164 headquarters, MEAS Muth, or any higher-level Division member. He did not know how the Division and ship commanders communicated, whether directly or indirectly through regiment or battalion levels.¹⁰⁹⁶ Yet, he then described in detail how communications occurred between MEAS Muth and his ship and how Division 1 reported to Division 164.¹⁰⁹⁷ Ing Chhon claimed that, according to his observations of communications between leadership echelons in Koh Kong, they sometimes sent messengers by row boat and did not use radio or telegrams.¹⁰⁹⁸ He then contradicted himself. He said radio and telegrams were used, Division 1 reported illegal boats to a

¹⁰⁸⁹ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A3. Final Submission, para. 305.

¹⁰⁹⁰ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A3.

¹⁰⁹¹ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A3 (emphasis in original).

¹⁰⁹² Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A2; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.20.29-10.23.23; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A18, 30-31. *See also* Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, Q-A21.

¹⁰⁹³ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A7-8.

¹⁰⁹⁴ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A1.

¹⁰⁹⁵ DC-Cam Interview with ING Chhon, 20 May 2011, D54/33.1, EN 01073819; Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A15.

¹⁰⁹⁶ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A4.

¹⁰⁹⁷ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A2-4, 12. Final Submission, fn. 669, quoting Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A12. *See also* Final Submission, para. 304, fn. 998.

¹⁰⁹⁸ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A5.

ship's telegram office by voice radio, and the telegraph operator reported to MEAS Muth, who sent back orders.¹⁰⁹⁹

328. **Ek Sophal.** Ek Sophal does not support the ICP's claim.¹¹⁰⁰ He was a deputy Division 1 regiment commander stationed across from Koh Tral.¹¹⁰¹ He said Division 1 assisted Division 164 in fighting against the Vietnamese on Koh Tral.¹¹⁰² He was not present at the time and did not learn of the event until after 1979.¹¹⁰³ As he noted, "there was no information sharing during that regime."¹¹⁰⁴

329. The ICP cites two telegrams to support his claim that Division 164 was responsible for patrolling the coastline and islands and providing military support to other Divisions.¹¹⁰⁵ These telegrams indicate only that patrols occurred around Koh Kong. They do not establish that Division 164 patrolled in other areas or provided military support to Divisions other than Division 1.¹¹⁰⁶ As explained *supra* in paragraph 227, of the 13% of Cambodia's 3,012 kilometers of border, Division 164 patrolled only the coast and islands near Kampong Som.

b. Even if Division 1 and Division 164 cooperated to capture Thai and Vietnamese boats, such cooperation does not mean MEAS Muth had authority over Division 1

330. The sources the ICP cites do not support his claims that Divisions 1 and 164 shared information to facilitate the capture of Thai and Vietnamese boats¹¹⁰⁷ and that detainees were sent to Division 164 in Kampong Som.¹¹⁰⁸ The ICP cites unsupportive and unreliable statements from Meas Voeun and Ing Chhon.¹¹⁰⁹ He overreaches in his claims. He also ignores relevant exculpatory evidence. Even if the two Divisions did cooperate,

¹⁰⁹⁹ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A5, 12. Final Submission, para. 305.

¹¹⁰⁰ Final Submission, para. 222.

¹¹⁰¹ Written Record of Interview of Ek Sophal, 12 June 2015, D114/84, Q-A3-4.

¹¹⁰² Written Record of Interview of Ek Sophal, 12 June 2015, D114/84, A15-16. Final Submission, para. 222, fn. 669.

¹¹⁰³ Written Record of Interview of Ek Sophal, 12 June 2015, D114/84, A7, 16.

¹¹⁰⁴ Written Record of Interview of Ek Sophal, 12 June 2015, D114/84, A10.

¹¹⁰⁵ Final Submission, fn. 194, citing Telegram titled "Telegram 09 from Mut to Brother 89," 29 May 1977, D1.3.12.18; Telegram titled "Telegram 04 from Roeun to Brother Mut," 5 November 1977, D1.3.34.39.

¹¹⁰⁶ See *supra* para. 227 for submissions on the geographical scope of Division 164's patrol.

¹¹⁰⁷ Final Submission, para. 304.

¹¹⁰⁸ Final Submission, para. 305.

¹¹⁰⁹ Final Submission, fns. 996-1000, 1003.

such actions do not mean MEAS Muth had authority over Division 1. Nor would such cooperation make MEAS Muth one of those “most responsible.”

331. **Meas Voeun.** Meas Voeun is unreliable.¹¹¹⁰ His statements also do not support the ICP’s claims. His unit patrolled an area about 40 nautical kilometers from the international sea passage.¹¹¹¹ Division 164 ships were closer to international waters.¹¹¹² When Meas Voeun saw ships that were 70 nautical kilometers away or farther, he reported them to Sim, the Division 164 regimental commander,¹¹¹³ as instructed by Soeung.¹¹¹⁴ Sim’s regiment was contacted only when ships entered Division 164’s area of operations. When Meas Voeun’s unit captured Thai or Vietnamese fishing boats illegally entering Division 1’s area of operation, he reported the capture to Soeung.¹¹¹⁵ Division 164 was not contacted in all instances of ships entering Koh Kong waters.
332. **Ing Chhon.** Ing Chhon is unreliable.¹¹¹⁶ He claimed Division 1 used radar and binoculars to scan for illegal boats.¹¹¹⁷ Meas Voeun said that, when he was in Koh Kong,¹¹¹⁸ Division 1 ships only used binoculars because radar had not yet been installed.¹¹¹⁹ Meas Voeun’s testimony is of higher probative value than Ing Chhon’s testimony. Unlike Ing Chhon, Meas Voeun was in Division 1. The ICP also cites Ing Chhon to support his claim that when Division 1 located a target, it contacted Division

¹¹¹⁰ See *supra* para. 193 for more information about this witness.

¹¹¹¹ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A26.

¹¹¹² Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A26.

¹¹¹³ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A35. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.48.28-11.52.50: “[I]f the vessel was deep in their territory other than ours, but we could see, then we could also communicate such message to people concerned through the radio communication.... I never reported to Division 3. However, I would communicate the message to the people who were in charge of the vessel who then reported to their superiors. And I also had to report to Ta Soeung, who was at the rear so that he can be informed.”

¹¹¹⁴ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A1.

¹¹¹⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.20.29-10.23.23; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A18, 30-31. See also Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, Q-A21: “Q: When there was fighting, did Division 1 report to the navy? A21: No, we reported to the West Zone.”

¹¹¹⁶ See *supra* para. 327 for more information about this witness.

¹¹¹⁷ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A5, 7. Final Submission, fn. 996.

¹¹¹⁸ See Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A4 (stating that he left for Preah Vihear in August 1978); Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A26 (stating that he left for Preah Vihear in July 1978).

¹¹¹⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 11.54.50 “Q. Was there a radar in Koh Kong or did you receive information from a radar on the coast -- a radar located on the coast? A. As I indicated, such radar was not yet in existence. We only used the binoculars to watch or to see things from a far distance”; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A26 (indicating that they were preparing to install radar on Ta Man Mountain when he left).

164,¹¹²⁰ implying that Division 1 *always* contacted Division 164. Ing Chhon's claims about communications between MEAS Muth and ships in Koh Kong are contradictory and not based on his personal knowledge.¹¹²¹ The ICP overstates the evidence.¹¹²²

333. The ICP claims that, after Division 1 captured a boat, detainees were sent to Division 164 in Kampong Som.¹¹²³ The ICP inaccurately cites Meas Voeun.¹¹²⁴ He also ignores exculpatory evidence. Meas Voeun did not say detainees were sent to Division 164. He said they were sent to Division 1 soldiers in Kampong Som.¹¹²⁵ He did not know what the navy did with the detainees; his mission was complete once they were delivered to Division 1.¹¹²⁶ He did not know about Kampong Som's affairs.¹¹²⁷

c. Conclusion

334. Division 164 did not have authority over Zone army Divisions along the sea shore or provide military support to other Divisions. There is no evidence MEAS Muth had authority over Division 1. The evidence indicates only that two Divisions cooperated in patrolling DK waters. Even if Division 164 had authority over or provided military support to other Divisions, that does not mean MEAS Muth was one of those most responsible for serious crimes committed across DK from 1975-1979. He was no different than other Center Division or Independent Regiment commanders in terms of status, power, or authority. He operated in a limited area and was subject to the policies and instructions of the CPK senior leaders in the Standing Committee and General Staff.

¹¹²⁰ Final Submission, para. 304, fn. 998.

¹¹²¹ See *supra* para. 327.

¹¹²² See *supra* para. 331.

¹¹²³ Final Submission, para. 305.

¹¹²⁴ Final Submission, fn. 1003.

¹¹²⁵ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A19-20. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.20.29-10.23.23.

¹¹²⁶ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A19.

¹¹²⁷ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A19; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 13.34.07-13.35.14 (testifying about a telegram purportedly from MEAS Muth regarding the shooting of 120 Vietnamese people and a delay in releasing Thais).

**3. Authority over Division 164 does not make MEAS Muth one of those
“most responsible”**

335. The sources the ICP cites do not support his claim that MEAS Muth controlled every aspect of Division 164 and issued a variety of orders in respect of military operations.¹¹²⁸ The ICP cites unreliable witnesses and documentary evidence of low probative value. He misrepresents the evidence. He ignores relevant contextual evidence. The ICP fails to substantiate his claims. Even if MEAS Muth did control Division 164, that would not make him one of those most responsible for serious crimes committed across DK from 1975-1979.

**a. MEAS Muth did not solely issue orders or make decisions regarding
Division 164 military operations**

336. The sources the ICP cites do not support his claims that MEAS Muth controlled all decisions affecting Division 164’s area of operations, including issuing orders regarding military operations.¹¹²⁹ The ICP cites unreliable or unresponsive statements from Pak Sok, Meu Ret, Soem Ny, Kang Sum, Lon Seng, Sorn Sot, Sok Vanna, and Svay Sameth.¹¹³⁰ He ignores relevant contextual evidence about Division 164.

337. **Pak Sok.** Pak Sok is unreliable.¹¹³¹ He incorrectly claimed MEAS Muth was in charge of the military, logistics, fisheries, ship repair, and port activities.¹¹³² He also said all events had to be reported to the Division commander.¹¹³³ Within the area of Kampong Som in which Division 164 was based, MEAS Muth supervised military matters, Thuch Rin supervised civilian and port matters,¹¹³⁴ and Launh was in charge of the fisheries

¹¹²⁸ Final Submission, para. 81, fns. 239-45. *See also id.*, fns. 260-62.

¹¹²⁹ Final Submission, paras. 67, 81. *See also id.*, paras. 180, 1095.

¹¹³⁰ Final Submission, fns. 201, 239, 246, 484-85.

¹¹³¹ *See supra* paras. 233-34 for more information about this witness.

¹¹³² Written Record of Interview of Pak Sok, 17 October 2013, D54/24, A20.

¹¹³³ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A19. Final Submission, fns. 201, 239.

¹¹³⁴ Written Record of Interview of Em Son, 27 November 2013, D54/47, A9, 15, 17, 33; Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Sam Komnith, 11 July 2016, D114/233, A69; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A2, 19; Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A5-7, 12; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Yoem Sroeing, 27 July 2015, D114/95, A199. *See* Final Submission, para. 221.

unit.¹¹³⁵ Pak Sok's statement about the reporting and instructional hierarchy¹¹³⁶ represents the normal reporting structure in a military. A battalion reports to its regiment, which reports to the Division, which reports to the General Staff. The General Staff then issues orders to the Division, which are disseminated step-by-step down through the command structure.¹¹³⁷

338. **Meu Ret.** Meu Ret is unreliable. He claimed MEAS Muth monitored military units, gave political trainings, and commanded and coordinated troop movements in the battlefield.¹¹³⁸ Meu Ret was a low-ranking soldier in a naval anti-submarine unit who primarily was stationed on a ship at Ouchheuteal Beach.¹¹³⁹ Given the CPK's policy of secrecy¹¹⁴⁰ and Meu Ret's low rank and station, he would not have known the details of MEAS Muth's role and responsibilities.
339. **Soem Ny.** Soem Ny is unreliable.¹¹⁴¹ He claimed MEAS Muth was responsible for interrogations and decisions as to who entered and left Wat Enta Nhien.¹¹⁴² Soem Ny's numerous contradictory statements indicate he may not have seen MEAS Muth at Wat Enta Nhien at all. He may have only heard about MEAS Muth from guards.¹¹⁴³
340. **Kang Sum.** Kang Sum is unreliable.¹¹⁴⁴ He said MEAS Muth ordered his unit to go to Koh Kracheh Seh to protect it.¹¹⁴⁵ He said MEAS Muth's order was passed along from Pol Pot.¹¹⁴⁶ His statement indicates MEAS Muth did not independently issue the order.
341. **Lon Seng.** Lon Seng is unreliable.¹¹⁴⁷ He said MEAS Muth ordered Division 3 to enter Phnom Penh during the April 1975 attack on Phnom Penh and that, as the

¹¹³⁵ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A30; Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A10; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A30.

¹¹³⁶ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A19. Final Submission, fn. 203.

¹¹³⁷ See e.g., Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A62. See *supra* paras. 172 and 213 regarding the Standing Committee's reporting requirements.

¹¹³⁸ Written Record of Interview of Meu Ret, 22 June 2013, D54/10, A12. Final Submission, fns. 201, 484.

¹¹³⁹ See *supra* para. 286 for more information about this witness.

¹¹⁴⁰ See *supra* para. 166 discussing the CPK's policy of secrecy and its impact on the assessment of evidence.

¹¹⁴¹ See *supra* para. 245 and *infra* paras. 406-08 for more information about this witness.

¹¹⁴² DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332607. Final Submission, fn. 201.

¹¹⁴³ See *infra* para. 407.

¹¹⁴⁴ See *supra* para. 225 for more information about this witness.

¹¹⁴⁵ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A126, 145-47. Final Submission, fn. 239.

¹¹⁴⁶ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A146-47.

¹¹⁴⁷ See *supra* para. 194 for more information about this witness.

Division's political commissar, MEAS Muth reported to Ta Mok.¹¹⁴⁸ Ta Mok exercised ultimate authority over Division 3 and issued instructions to MEAS Muth.¹¹⁴⁹ MEAS Muth did not issue orders independently regarding Division 3's battlefield tasks. Mao Ran said Division 3 was not permitted to enter Phnom Penh on 17 April 1975 but, instead, was sent to Kampong Som.¹¹⁵⁰ Lon Seng also said MEAS Muth gave him a permission letter to visit his family,¹¹⁵¹ which the ICP cites to assert that MEAS Muth controlled his subordinates' movements.¹¹⁵² Permission letters to move outside of one's area were standard CPK requirements.¹¹⁵³ Division 164 was not unique in issuing them.

342. **Sorn Sot.** Sorn Sot is unreliable. He speculated about MEAS Muth's authority and issuance of orders. Sorn Sot was a soldier in Battalion 386 who was sent to grow rice in late 1976 or early 1977.¹¹⁵⁴ He said he was a young child who never went anywhere.¹¹⁵⁵ His limited knowledge is demonstrated by his claims about MEAS Muth's authority and involvement in arrests. He claimed that group chiefs and cooperatives were under MEAS Muth's command; a conclusion based solely on his observation that Kampong Som messengers went to cooperatives.¹¹⁵⁶ He said MEAS Muth ordered the arrest of a boat; he believed this was the case because a C25 radio was used to contact "the chief" before any arrest and, if "the chief" ordered an arrest, they had to do it.¹¹⁵⁷ He said MEAS Muth's men arrested Sector 37 soldiers but did not know who the men were.¹¹⁵⁸ He explained his belief that MEAS Muth's men arrested the soldiers through the example of a house that has a manager and a person in a different place issues orders through this manager.¹¹⁵⁹ Sorn Sot's statements also suggest he does not accurately remember MEAS Muth. He claimed he met MEAS Muth once at a meeting in 1975, describing him as tall with a face

¹¹⁴⁸ Written Record of Interview of Lon Seng, 10 December 2013, D54/43, Q-A6-9. Final Submission, fn. 239.

¹¹⁴⁹ See *supra* para. 210.

¹¹⁵⁰ Statement of Mao Ran (POW/MIA), 19 June 2000, D4.1.759, EN 00387267. The Defence has challenged the use of these types of statements by the ICP. However, if the CIJs consider them to have any probative value, they should consider this statement. See also Written Record of Interview of Say Born, 6 September 2010, D2/8, A57 (stating that Division 3 did not enter Phnom Penh but only went up to Pochentong).

¹¹⁵¹ DC-Cam Interview with Lon Seng, 26 February 2012, D54/38.1, EN 01072400. Final Submission, fn. 485.

¹¹⁵² Final Submission, para. 180.

¹¹⁵³ See e.g., Military Meeting Minutes titled "Minutes of an Experience Drawing Meeting on Guarding in City Defence," 19 December 1976, D1.3.8.9, EN 00233997 (instructing checkpoint guards in Phnom Penh to ask clarifying questions about incomplete letters and focus on travelers without permit letters).

¹¹⁵⁴ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A5, 12.

¹¹⁵⁵ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A49.

¹¹⁵⁶ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A42-43. Final Submission, fns. 239, 246.

¹¹⁵⁷ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, Q-A54-55.

¹¹⁵⁸ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, Q-A69.

¹¹⁵⁹ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, Q-A69.

pockmarked by chickenpox.¹¹⁶⁰ He may be remembering Chhin Sambath alias Bau,¹¹⁶¹ rather than MEAS Muth.¹¹⁶²

343. **Sok Vanna.** Sok Vanna is unreliable. His statements are based on hearsay and speculation. He said MEAS Muth was the Division 3 chairman, commanded military units, and had authority over cooperative chairpersons and commune chiefs.¹¹⁶³ Given his rank and location, his knowledge of the governance or administration of military affairs would have been limited.¹¹⁶⁴ Sok Vanna heard MEAS Muth had authority over cooperative chairpersons and commune chiefs.¹¹⁶⁵ He had no personal knowledge of any such authority.
344. **Svay Sameth.** Svay Sameth does not support the ICP's claim. He was a company commander in Battalion 480, who became the Battalion commander in late 1977.¹¹⁶⁶ He said MEAS Muth formed an Inspection Committee to inspect soldiers' biographies¹¹⁶⁷ and decided everything because he was responsible for Division 164.¹¹⁶⁸ He also said the higher levelers ordered MEAS Muth to form the Inspection Committee.¹¹⁶⁹ His statement indicates, at most, that MEAS Muth carried out orders issued by the CPK senior leaders in the Standing Committee and General Staff.¹¹⁷⁰
345. In asserting that MEAS Muth had ultimate control and decision-making authority over Division 164, the ICP ignores the Division 164 Committee.¹¹⁷¹ All Committee members carried out Party decisions¹¹⁷² and had to be informed of Division 164's

¹¹⁶⁰ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A71.

¹¹⁶¹ See Written Record of Interview of Chum Chy, 22 September 2016, D114/264, Q-A28 (describing Bau as tall and dark); Written Record of Interview of Ou Kim, 20 September 2015, D114/127, Q-A21 (describing Bau as tall with a dark complexion).

¹¹⁶² The photographs of MEAS Muth that the OCIJ has placed on the Case File do not indicate a face pockmarked by chickenpox. See Photograph of MEAS Muth, 26 November 2014, A66.1, EN 01044999-01044500 (A66.1 is the same document as C1.1).

¹¹⁶³ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A11-14. Final Submission, fn. 246.

¹¹⁶⁴ See *supra* para. 166, discussing the CPK's policy of secrecy and its impact on the assessment of evidence.

¹¹⁶⁵ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A15.

¹¹⁶⁶ Written Record of Interview of Svay Sameth, 26 May 2015, D114/76, A11, 13, 21.

¹¹⁶⁷ Written Record of Interview of Svay Sameth, 27 May 2015, D114/77, A39, 46-47. Final Submission, fn. 246.

¹¹⁶⁸ Written Record of Interview of Svay Sameth, 27 May 2015, D114/77, A46.

¹¹⁶⁹ Written Record of Interview of Svay Sameth, 27 May 2015, D114/77, A46-47.

¹¹⁷⁰ See *supra* paras. 211 and 213 regarding the Standing Committee's and General Staff's authority over Center Division. See also *infra* paras. 469-71 regarding the Center's policy and orders on screening of biographies.

¹¹⁷¹ See *supra* para. 212, discussing the Division 164 Committee and its functions.

¹¹⁷² See e.g., Report titled "May Brother 89 be informed," 5 January 1976, D1.3.30.2 (report signed by MEAS Muth, in which he says this monthly report is to be sent by train, Dim sent men and weapons to Koh Seh and

activities.¹¹⁷³ Even if MEAS Muth commanded Division 164, it is not unusual in the military for a commander to issue orders regarding military operations. As Prum Sarat testified, “[u]sually, soldiers have to have orders in order [*sic*] before they can perform their tasks.”¹¹⁷⁴

b. MEAS Muth did not monitor the mainland, islands, and troops

346. The sources the ICP cites do not support his claims that MEAS Muth frequently instructed and received reports from subordinates about the mainland and islands, personally inspected islands to ensure Party decisions were being effectively implemented, and monitored military units and coordinated troop movements.¹¹⁷⁵ The ICP cites unresponsive telegrams and unreliable and unresponsive statements from Em Son, Mak Chhoeun, Meu Ret, and Soem Ny.¹¹⁷⁶ The ICP also misleads regarding evidence.

347. The telegrams that the ICP cites¹¹⁷⁷ do not indicate MEAS Muth sent instructions to his subordinates and other Division 164 personnel, only that such people sent reports to him. That MEAS Muth may have – frequently or not – received reports from or instructed subordinates and other Division 164 personnel does not mean he was at a different or higher level of responsibility than any other Division leader. This reporting structure was required by the CPK Statute and the Standing Committee, and is common in the military.¹¹⁷⁸ In seven of the eight telegrams, NUON Chea and Son Sen are copied.¹¹⁷⁹ That members of the Standing Committee and General Staff were copied in these telegrams indicates that lower-level RAK units reported to CPK senior leaders at the

Koh Sampauch, MEAS Muth is on Koh Rong and Rung Krao to make sure the CPK’s decision is effectively implemented, and Norng Chhan went to meet Nhoek, Se, and Kim to execute the CPK’s decision); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 15.04.35-15.07.21 (Prum Sarat says the four people in Division 164 who could issue orders were MEAS Muth, Dim, Chhan, and Nhan).

¹¹⁷³ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A188 (stating “[i]n the division committee, all of them had to know the information. Both the commander and the member of the committee were supposed to be informed”).

¹¹⁷⁴ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A122.

¹¹⁷⁵ Final Submission, paras. 67, 180.

¹¹⁷⁶ Final Submission, fns. 203-04, 483.

¹¹⁷⁷ Final Submission, fn. 203.

¹¹⁷⁸ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 6(5); Central Committee Directive titled “Decision of the Central Committee Regarding a Number of Matters,” 30 March 1976, D1.3.19.1, EN 00182809; Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A62. See *supra* paras. 172 and 213 for submissions on the reporting requirements for Division 164.

¹¹⁷⁹ Final Submission, fn. 203 (all telegrams except D1.3.34.39 were copied to NUON Chea, Son Sen, or both).

same time as they reported to their immediate superiors in the Division.¹¹⁸⁰ Such a reporting structure aligns with the Party's rule that the RAK is in every way under its absolute authority.¹¹⁸¹

348. The ICP cites a 5 January 1976 telegram to Son Sen in which MEAS Muth purportedly indicates he is at Koh Rong and Koh Rung Krao to ensure the Party's decision is implemented there.¹¹⁸² The ICP fails to present the telegram in its entirety, misleading the OCIJ as to its relevance and importance. MEAS Muth was not the only member of the Division 164 Committee to have travelled to or overseen islands. The telegram indicates that, in accordance with "our existing measures and instructions of the Party," Dim reinforced soldiers and weapons on Koh Seh, Koh Thmei, and Koh Sampauch, and Chhan met Nhoek, Sè, and Kim to "execute the decision by the Party."¹¹⁸³

349. **Em Son.** Em Son is unreliable.¹¹⁸⁴ He gave contradictory statements about MEAS Muth and the *Mayaguez* incident, which the OCIJ noted. Em Son said he reported to MEAS Muth about the *Mayaguez*.¹¹⁸⁵ He first said he spoke to MEAS Muth directly over the radio and recognized his voice because he had known him for a long time¹¹⁸⁶ but then said he did not speak to MEAS Muth directly, but rather to two radio operators.¹¹⁸⁷ He claimed that, three days after handing over two American soldiers to the Division 164 office in Kampong Som, he met MEAS Muth to explain what happened and saw the two soldiers' corpses about 20 days later.¹¹⁸⁸ He also told the OCIJ he did not know what happened to the soldiers after they went to Kampong Som.¹¹⁸⁹ To journalists, Em Son later claimed to have no information about the two soldiers after they were handed over to MEAS Muth.¹¹⁹⁰ POW/MIA investigators also noted concerns about Em Son's credibility

¹¹⁸⁰ Written Record of Analysis by Craig Etcheson, 18 July 2007, D234/2.1.52, para. 128. *See also* Final Submission, para. 91.

¹¹⁸¹ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 27.

¹¹⁸² Final Submission, fn. 483, quoting Report titled "Reported to Brother 89," 5 January 1976, D1.3.30.2.

¹¹⁸³ Report titled "Reported to Brother 89," 5 January 1976, D1.3.30.2.

¹¹⁸⁴ *See supra* paras. 236, 244, 416, and 515 for more information about this witness.

¹¹⁸⁵ Written Record of Interview of Em Son, 28 November 2013, D54/48, A21-22, 26, 32. Final Submission, fn. 203.

¹¹⁸⁶ Written Record of Interview of Em Son, 28 November 2013, D54/48, A11, 14.

¹¹⁸⁷ Written Record of Interview of Em Son, 28 November 2013, D54/48, A15.

¹¹⁸⁸ Written Record of Interview of Em Son, 28 November 2013, D54/48, A31-32, 35-36, 39-43; Written Record of Interview of Em Son, 29 November 2013, D54/49, A53.

¹¹⁸⁹ Written Record of Interview of Em Son, 28 November 2013, D54/48, A4; Written Record of Interview of Em Son, 27 November 2013, D54/47, A49.

¹¹⁹⁰ Matt Blomberg & Sek Odom, *US Vets Revisit Site of Vietnam War's Last Battle*, CAMBODIA DAILY, 13 May 2015, D114/71.1, EN 01097304.

as a first-hand observer of the capture of the *Mayaguez*. They believed he reported hearsay information as his first-hand experience.¹¹⁹¹

350. **Mak Chhoeun.** Mak Chhoeun does not support the ICP's claim. He commanded Battalion 560 on Koh Thmei.¹¹⁹² He said MEAS Muth visited his island only once, before a 1976 incident involving fighting with Vietnamese fishing boats and soldiers.¹¹⁹³ He also said that he had to report events to the regiment, which would relay reports to MEAS Muth in the Division.¹¹⁹⁴
351. **Meu Ret.** Meu Ret does not support the ICP's claim.¹¹⁹⁵ He said regiment and battalion commanders were required to report to MEAS Muth.¹¹⁹⁶ He also said MEAS Muth monitored units and coordinated movements.¹¹⁹⁷ He is the only witness the ICP cites to support the latter claim.¹¹⁹⁸ Meu Ret admitted he did not know how MEAS Muth and the deputies divided work.¹¹⁹⁹ As a low-ranking soldier,¹²⁰⁰ Meu Ret would not have had personal knowledge of how Division 164 was run.
352. **Soem Ny.** Soem Ny is unreliable.¹²⁰¹ He said regiment commanders went to MEAS Muth's house for meetings several days each month.¹²⁰² Soem Ny's knowledge of such events is temporally limited. He was not in Kampong Som for the entirety of the DK regime. He worked at the port between Stung Hav and Kampong Som from 1977 until he was transferred to the East Zone in 1978.¹²⁰³
353. The ICP again ignores the Division 164 Committee by asserting that MEAS Muth was the sole authority overseeing Division 164 units.¹²⁰⁴ Other Division 164 Committee

¹¹⁹¹ Stony Beach POW/MIA Report, 14 November 2005, D4.1.758, EN 00387316-00387317.

¹¹⁹² Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A24, 32.

¹¹⁹³ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A30, 33. Final Submission, fn. 483.

¹¹⁹⁴ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A34-35. Final Submission, fn. 483.

¹¹⁹⁵ See *supra* paras. 286 and 338 for more information about this witness.

¹¹⁹⁶ Written Record of Interview of Meu Ret, 22 June 2013, D54/10, A22. Final Submission, fns. 203-04.

¹¹⁹⁷ Written Record of Interview of Meu Ret, 22 June 2013, D54/10, A12.

¹¹⁹⁸ Final Submission, fn. 204.

¹¹⁹⁹ Written Record of Interview of Meu Ret, 22 June 2013, D54/10, Q-A11.

¹²⁰⁰ Written Record of Interview of Meu Ret, 22 June 2013, D54/10, A18.

¹²⁰¹ See *supra* para. 245 and *infra* paras. 406-08 for more information about this witness.

¹²⁰² Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A5. Final Submission, fn. 203.

¹²⁰³ Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A8-9.

¹²⁰⁴ Final Submission, paras. 67, 180.

members could issue orders on military movements and monitor military units.¹²⁰⁵ Any military movements coordinated by the Division 164 Committee were based on instructions from Son Sen or other CPK senior leaders.¹²⁰⁶

c. MEAS Muth did not issue orders regarding patrolling and capturing boats

354. The sources the ICP cites do not support his claim that MEAS Muth issued orders regarding patrolling and capturing boats.¹²⁰⁷ The ICP cites unreliable statements from Ou Dav, Ing Chhon, and Neak Yoeun.¹²⁰⁸ He ignores relevant contextual evidence.

355. **Ou Dav.** Ou Dav is unreliable. His knowledge of MEAS Muth is solely based on hearsay.¹²⁰⁹ He was a Civil Party in Case 002 and applied to be a Civil Party in Cases 003 and 004.¹²¹⁰ He was a platoon commander based primarily on a ship in the waters near the Thai border.¹²¹¹ He also was sent to Koh Kong Provincial Town and other places to build bridges.¹²¹² Ou Dav claimed orders to capture foreign boats came from his battalion commander, who received the orders from MEAS Muth.¹²¹³ He said MEAS Muth received orders from his upper echelon, but sometimes made decisions by himself.¹²¹⁴ Ou Dav only heard about MEAS Muth's supposed roles and authority through his battalion commander and other soldiers in his unit.¹²¹⁵

356. **Neak Yoeun.** Neak Yoeun is unreliable. His statements are based on speculation. Neak Yoeun was a weapons operator on a Regiment 140 defence ship.¹²¹⁶ He was always working on boats.¹²¹⁷ He said MEAS Muth was the Division-level person who issued

¹²⁰⁵ See e.g., Report titled "Reported to Brother 89," 5 January 1976, D1.3.30.2 (indicating that Dim was on islands overseeing the reinforcement of soldiers and weapons); Telegram titled "Eleventh Telegram to Brother Mut about Enemy Situation in Along Border," 24 September 1976, D4.1.699 (in which Dim decided to transfer two combatants).

¹²⁰⁶ See *supra* para. 213, discussing General Staff meetings and Standing Committee instructions.

¹²⁰⁷ Final Submission, para. 81.

¹²⁰⁸ Final Submission, fn. 240.

¹²⁰⁹ See *infra* paras. 509 and 533-34, for other examples of Ou Dav's unreliable statements.

¹²¹⁰ Civil Party Application of Ou Dav, 9 February 2013, D11/340, EN 01210462. See *supra* para. 142, discussing the use of Civil Party evidence.

¹²¹¹ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A58, 85, 161.

¹²¹² Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A34.

¹²¹³ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A91, 139-41.

¹²¹⁴ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A140.

¹²¹⁵ Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A8.

¹²¹⁶ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, A6-7; Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A10.

¹²¹⁷ Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A6, 12.

orders to his battalion commander.¹²¹⁸ To explain this, he said that “[a]ll of the decisions came from the senior leader” and in his battalion Han, the chairman, made the decisions and this process was the same as at the Division level.¹²¹⁹ He speculated about MEAS Muth’s actions based on the process within his battalion. Neak Yoeun was not at the Division level, so could not have known the actual process of decision-making at that level. As in all Party entities, a Committee governed Division 164.¹²²⁰ Neither MEAS Muth nor other Committee members could issue orders without first receiving orders from their direct superior, Son Sen, or the Military Committee.¹²²¹

357. **Ing Chhon.** Ing Chhon is unreliable.¹²²² He claimed MEAS Muth issued orders to capture illegal fishing boats and had a telegraph machine at his place from which he would issue orders to telegraph operators at Koh Kong port.¹²²³ Ing Chhon contradicts himself.¹²²⁴

d. MEAS Muth did not issue orders regarding soldiers’ movement, demobilization, or transfer

358. The sources the ICP cites do not support his claim that MEAS Muth issued orders regarding moving locations and demobilizing and transferring soldiers.¹²²⁵ The ICP primarily cites unreliable or unsupportive statements from Liet Lan, Lon Seng, Moul Chhin, and Ou Dav.¹²²⁶

359. **Liet Lan.** Liet Lan is unreliable.¹²²⁷ He also does not support the ICP’s claim. After 17 April 1975, he said his unit was under MEAS Muth’s command and, a day after their stay in Ream, was sent to Koh Seh.¹²²⁸ He did not say MEAS Muth issued the order.

¹²¹⁸ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, Q-A21.

¹²¹⁹ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, A22-23.

¹²²⁰ See *supra* para. 212, discussing the Division 164 Committee.

¹²²¹ See *supra* paras. 211 and 213, discussing the issuance of instructions and orders from the General Staff and Standing/Military Committee.

¹²²² See *supra* para. 327 for more information about this witness.

¹²²³ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, Q-A1-2.

¹²²⁴ See *supra* para. 327.

¹²²⁵ Final Submission, para. 81.

¹²²⁶ Final Submission, fns. 241-42.

¹²²⁷ See *supra* para. 201 for more information about this witness.

¹²²⁸ Written Record of Interview of Liet Lan, 23 October 2013, D54/28, A14. Final Submission, fn. 241.

Prum Sarat said Son Sen issued deployment orders to the Division, which disseminated the orders downward.¹²²⁹ The same was true regarding daily activities on the islands.¹²³⁰

360. **Lon Seng.** Lon Seng is unreliable.¹²³¹ He speculated about a decision to send soldiers to a production unit. He was “not sure” who made the decision but “think[s]” MEAS Muth made it.¹²³²

361. **Moul Chhin.** Moul Chhin is unreliable. His claims about MEAS Muth are based on hearsay and speculation. He was an ordinary combatant in Battalion 386, stationed on two islands¹²³³ until his unit was sent to a production unit.¹²³⁴ He never met or saw MEAS Muth.¹²³⁵ He said MEAS Muth’s men gathered his unit for a meeting and told them they would be sent to different worksites.¹²³⁶ He speculated that MEAS Muth issued this demobilization order.¹²³⁷ He first said that “there was a big meeting” they had to attend.¹²³⁸ He then said the meeting was attended only by battalion and regiment commanders.¹²³⁹ As an ordinary combatant who never met or saw MEAS Muth,¹²⁴⁰ he only heard from his superiors that the “upper echelon” had issued the order.¹²⁴¹ He concluded “upper echelon” meant Ta Mok and MEAS Muth, based on his “understanding and analysis.”¹²⁴² If the CIJs accord Moul Chhin’s statements any probative value, they must consider that he said Ta Mok was at the demobilization meeting with MEAS Muth,¹²⁴³ indicating that Ta Mok had authority over Division 164.¹²⁴⁴

362. **Ou Dav.** Ou Dav is unreliable.¹²⁴⁵ He also does not support the ICP’s claim. He said that, after 17 April 1975, Sou Met, MEAS Muth, and Ta Mok sent his battalion to

¹²²⁹ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A67-70, 166.

¹²³⁰ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A71-74.

¹²³¹ See *supra* para. 194 for more information about this witness.

¹²³² Written Record of Interview of Lon Seng, 12 December 2013, D54/45, Q-A15.

¹²³³ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A19, 22-23.

¹²³⁴ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A89.

¹²³⁵ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A86, 88.

¹²³⁶ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A93.

¹²³⁷ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, Q-A93.

¹²³⁸ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A95.

¹²³⁹ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A96.

¹²⁴⁰ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A86, 88.

¹²⁴¹ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A95-97.

¹²⁴² Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A98.

¹²⁴³ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A96.

¹²⁴⁴ See *supra* paras. 169-70 and 172, regarding Ta Mok’s authority over military matters.

¹²⁴⁵ See *supra* para. 355 and *infra* paras. 509 and 533-34 for more information about this witness.

Kampong Som, where he joined the navy under MEAS Muth's command.¹²⁴⁶ Ou Dav referred to an event he claims happened immediately after 17 April 1975, before Division 164 was established.¹²⁴⁷ His claim is irrelevant to MEAS Muth's alleged authority over Division 164. Ta Mok and Son Sen had the authority to deploy Division 3 soldiers and ordered such deployments.¹²⁴⁸

e. MEAS Muth did not issue orders regarding arrests

363. The sources the ICP cites do not support his claim that MEAS Muth issued orders regarding arrests.¹²⁴⁹ The ICP cites unreliable and unsupportive statements from Ou Dav, Chet Bunna, Dol Song, Lon Seng, and Soem Ny.¹²⁵⁰ He ignores evidence that Son Sen and the Standing/Central Committee ordered arrests.¹²⁵¹

364. **Ou Dav.** Ou Dav is unreliable.¹²⁵² He said that in early 1976 "Angkar" arrested three battalion commanders and other soldiers including him.¹²⁵³ He did not say MEAS Muth ordered the arrests. Any claimed knowledge of MEAS Muth's authority to issue orders was based on hearsay.¹²⁵⁴

¹²⁴⁶ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A42.

¹²⁴⁷ Division 164 appears to have been established in mid-late 1975. *See* Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183394 (stating that national defence is being arranged at the Center), 001831396-00183397 (discussing the establishment of the General Staff and set-up of the RAK), 00183402 (Pol Pot issues instructions for the set-up of the General Staff Committee); Written Record of Interview of Prum Sarat 28 November 2016, D114/285, A81 (stating that Pol Pot ordered the creation of the navy); CPK Magazine titled "Revolutionary Flag," Issue 8, August 1975, D4.1.861, EN 00401488 (regarding a July 1975 assembly held by the Center to announce the creation of the RAK).

¹²⁴⁸ Written Record of Interview of Mao Ran, 6 October 2015, D114/132, A21 (the order deploying Division 3 to Kampong Som would have come from a higher level than the Division because the entire Division was moved); Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A9, 27 (Ta Mok was in charge of the Southwest Zone military and Division 3 was under his supervision); Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A67-70, 166 (Son Sen ordered the initial deployments to the islands). *See also* Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A24 (Ta Mok was commander-in-chief of all three branches of the military and was more powerful than Son Sen).

¹²⁴⁹ Final Submission, para. 81.

¹²⁵⁰ Final Submission, fn. 244.

¹²⁵¹ Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198219; Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364072. *See supra* paras. 169 and 171-72 regarding Son Sen's and the Standing/Central Committee's authority and power.

¹²⁵² *See supra* para. 355 and *infra* paras. 509 and 533-34 for more information about this witness.

¹²⁵³ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A42. Final Submission, fn. 244.

¹²⁵⁴ Written Record of Interview of Ou Dav, 3 September 2014, D114/25, A8.

365. **Chet Bunna.** Chet Bunna is unreliable.¹²⁵⁵ Regarding the arrest of Oeng Vet, Chet Bunna stated, “[t]hey had to arrest [Oeng Vet]” and that MEAS Muth publicly announced the arrest.¹²⁵⁶ He did not say MEAS Muth issued the arrest order.
366. **Dol Song.** Dol Song is unreliable. His statements are based on hearsay and speculation. He said MEAS Muth was responsible for deciding whether to arrest someone who had committed mistakes.¹²⁵⁷ Dol Song only heard about arrests from his battalion chairman.¹²⁵⁸ He said no one knew who came from where to arrest whom.¹²⁵⁹ Dol Song speculated that MEAS Muth was responsible for deciding arrests simply because MEAS Muth commanded a marine division; he did not actually know this to be true.¹²⁶⁰
367. **Lon Seng.** Lon Seng is unreliable.¹²⁶¹ He said he attended a meeting at which MEAS Muth announced 1,500 East Zone cadres had to be demobilized because they were bad elements.¹²⁶² He said only MEAS Muth would have had the authority to send the cadres to a production unit.¹²⁶³ He speculated.¹²⁶⁴ The ICP ignores Lon Seng’s speculation.
368. **Soem Ny.** Soem Ny is unreliable.¹²⁶⁵ He claimed MEAS Muth was responsible for interrogations and decisions as to who entered and left Wat Enta Nhien.¹²⁶⁶ He made significantly contradictory statements about MEAS Muth and Wat Enta Nhien.¹²⁶⁷
369. The ICP claims that MEAS Muth held meetings at which he announced the purge of senior Division 164 members, read arrestees’ confessions to soldiers, and told attendees there were enemies in the ranks.¹²⁶⁸ He ignores the context of such meetings and the role of the Standing Committee and General Staff. Division 164 was under the total control of the Party Center, including matters concerning arrests and purges.¹²⁶⁹ Lohn Dos¹²⁷⁰ and

¹²⁵⁵ See *supra* paras. 186-88 for more information about this witness.

¹²⁵⁶ Written Record of Interview of Chet Bunna, 15 June 2015, D114/85, A19-20. Final Submission, fn. 244.

¹²⁵⁷ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A16. Final Submission, fn. 244.

¹²⁵⁸ Written Record of Interview of Dol Song, 19 June 2013, D54/8, Q-A9.

¹²⁵⁹ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A13.

¹²⁶⁰ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A16-17.

¹²⁶¹ See *supra* para. 194 for more information about this witness.

¹²⁶² Written Record of Interview of Lon Seng, 11 December 2013, D54/44, Q-A19, 22. Final Submission, fn. 244. See also Final Submission, fns. 2686-87.

¹²⁶³ Written Record of Interview of Lon Seng, 12 December 2013, D54/45, A16.

¹²⁶⁴ See *supra* para. 360.

¹²⁶⁵ See *supra* para. 245 and *infra* paras. 406-08 for more information about this witness.

¹²⁶⁶ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332607. Final Submission, fn. 244.

¹²⁶⁷ See *infra* paras. 406-08.

¹²⁶⁸ Final Submission, paras. 107-10.

¹²⁶⁹ See *supra* para. 211 regarding the Party’s control over Center Divisions.

Duch¹²⁷¹ have said that decisions to arrest implicated cadres had to be approved by both Son Sen and the Central Committee.¹²⁷²

f. MEAS Muth did not issue orders regarding executions

370. The sources the ICP cites do not support his claim that MEAS Muth issued orders regarding executions.¹²⁷³ The ICP cites unreliable statements from Pech Chim, Pak Sok, Meas Voeun, and Sorn Sot.¹²⁷⁴

371. **Pech Chim.** Pech Chim's evidence is irrelevant. It falls outside the ECCC's temporal jurisdiction. Pech Chim was not a member of Division 164 or in Kampong Som. He was an interim Secretary of District 105 in the Southwest Zone until 1977 when he became chairman of a Central Zone rubber plantation.¹²⁷⁵ He claimed that, in 1974, Ta Mok scolded MEAS Muth for ordering the killing of an ammunition guard.¹²⁷⁶ This alleged incident pre-dates the ECCC's temporal jurisdiction, has no relevance to MEAS Muth's authority to issue execution orders from 1975-1979, and must be disregarded.

372. **Pak Sok.** Pak Sok is unreliable.¹²⁷⁷ He claimed executions of 17 April people occurred at a site under Division 164's control.¹²⁷⁸ He believed Division 164 conducted the executions because they occurred in an area he said was under MEAS Muth's control.¹²⁷⁹ He never went to the site.¹²⁸⁰ Pak Sok did not say MEAS Muth ordered the executions; he only guessed that people from Division 164 carried out the executions.

373. **Meas Voeun.** Meas Voeun is unreliable.¹²⁸¹ He claimed Launh allegedly survived an assassination attempt ordered by MEAS Muth in late 1978 or early 1979.¹²⁸² Meas Voeun

¹²⁷⁰ See *supra* para. 199 for more information about this witness.

¹²⁷¹ See *supra* paras. 175-77 for more information about this witness.

¹²⁷² Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364072; Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198219.

¹²⁷³ Final Submission, para. 81.

¹²⁷⁴ Final Submission, fn. 245.

¹²⁷⁵ Written Record of Interview of Pech Chim, 25 August 2009, D4.1.783, EN 00379171; Written Record of Interview of Pech Chim, 6 December 2009, D64.1.50, A1.

¹²⁷⁶ Written Record of Interview of Pech Chim, 28 August 2009, D4.1.786, EN 00381027-00381028. Final Submission, fn. 245.

¹²⁷⁷ See *supra* paras. 233-34 for more information about this witness.

¹²⁷⁸ Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A26-27, 30. Final Submission, fn. 245.

¹²⁷⁹ Written Record of Interview of Pak Sok, 21 October 2013, D54/26, Q-A30.

¹²⁸⁰ Written Record of Interview of Pak Sok, 21 October 2013, D54/26, Q-A31.

¹²⁸¹ See *supra* para. 193 for more information about this witness.

¹²⁸² Written Record of Investigation Action, 7 February 2014, D54/56, EN 00973406. Final Submission, fns. 245, 351.

heard this story from one of Launh's messengers after the messenger returned from Thailand.¹²⁸³ There is no indication as to the year in which Meas Voeun heard this story. To the best of the Defence's knowledge, this story is not corroborated by other evidence.

374. **Sorn Sot.** Sorn Sot is unreliable.¹²⁸⁴ He claimed all commanders were arrested after Sector 37 cadres were accused of being traitors; his group was dissolved and sent to grow rice; in general, MEAS Muth issued the orders; and his men carried out the arrests.¹²⁸⁵ He claimed anyone who refused to carry out MEAS Muth's orders would be killed.¹²⁸⁶ Sorn Sot speculated about MEAS Muth's authority and involvement in these matters.¹²⁸⁷

g. MEAS Muth did not issue orders regarding agricultural production

375. The sources the ICP cites do not support his claim that MEAS Muth issued orders regarding agricultural production.¹²⁸⁸ The ICP cites unreliable or unresponsive statements from Meas Im, Neak Sitha, and Yin Teng.¹²⁸⁹

376. **Meas Im.** Meas Im is unreliable.¹²⁹⁰ He also does not support the ICP's claim. He said MEAS Muth gave orders regarding road construction, not agricultural production.¹²⁹¹ He also contradicted himself. He first said he did not know about instructions from MEAS Muth to Mienh¹²⁹² but then said they communicated by field telephone and telegram.¹²⁹³

377. **Neak Sitha.** Neak Sitha is unreliable. Her claims about MEAS Muth are based on hearsay and do not appear in her Civil Party Application. She is a Civil Party applicant who worked in cooperatives in Sector 35, Prey Nob District, and in Koh Sla in Kampot.¹²⁹⁴ She said she heard MEAS Muth say they had to work.¹²⁹⁵ She later said she

¹²⁸³ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, Q-A29.

¹²⁸⁴ See *supra* para. 342 for more information about this witness.

¹²⁸⁵ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A5, 70. Final Submission, fn. 245.

¹²⁸⁶ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A5, 70.

¹²⁸⁷ See *supra* para. 342.

¹²⁸⁸ Final Submission, para. 81.

¹²⁸⁹ Final Submission, fn. 243.

¹²⁹⁰ See *supra* para. 253 for more information about this witness.

¹²⁹¹ Written Record of Interview of Meas Im, 10 June 2016, D114/215, Q-A70.

¹²⁹² Written Record of Interview of Meas Im, 10 June 2016, D114/215, A67.

¹²⁹³ Written Record of Interview of Meas Im, 10 June 2016, D114/215, Q-A75.

¹²⁹⁴ Written Record of Interview of Neak Sitha, 20 February 2016, D114/175, A17, 44, 46.

¹²⁹⁵ Written Record of Interview of Neak Sitha, 20 February 2016, D114/175, A48, 52.

heard this from others.¹²⁹⁶ She said MEAS Muth was the chief, describing him as an autocratic Sector commander in Prey Nob and other places she worked.¹²⁹⁷ Despite these statements, she did not mention MEAS Muth in her Civil Party Application.¹²⁹⁸ She claimed this omission was because the events occurred 20-30 years ago and, when she wrote her Application, she forgot things.¹²⁹⁹ Moreover, she did not live or work in areas under the control of the Division 164 Committee or the Kampong Som Autonomous Sector Committee. Sector 35 was in Kampot and Takeo.¹³⁰⁰ Some parts of Prey Nob District were under Division 1's jurisdiction.¹³⁰¹

378. **Yin Teng.** Yin Teng is unreliable. She made several contradictory statements about MEAS Muth and her family during her interviews. She is a Civil Party applicant who lived in cooperatives during the DK regime.¹³⁰² The ICP cites Yin Teng to support his claims that MEAS Muth's name was frequently invoked by supervisors when discussing the labor to be done at Ream worksites.¹³⁰³ He ignores her contradictory statements about MEAS Muth. She said that, to her knowledge, the village chief met with MEAS Muth every morning.¹³⁰⁴ She then said that, according to the village chief, they met once a month.¹³⁰⁵ She said the village chiefs did not mention MEAS Muth in meetings.¹³⁰⁶ Later,

¹²⁹⁶ Written Record of Interview of Neak Sitha, 20 February 2016, D114/175, A55-56.

¹²⁹⁷ Written Record of Interview of Neak Sitha, 20 February 2016, D114/175, A50-53. Final Submission, fn. 243.

¹²⁹⁸ Civil Party Application of Neak Sitha, 24 November 2013, D11/374.

¹²⁹⁹ Written Record of Interview of Neak Sitha, 20 February 2016, D114/175, Q-A49.

¹³⁰⁰ Written Record of Interview of Meas Im, 10 June 2016, D114/215, EN 01333468 (in which OCIJ Investigator Thomas Kuehnel informs the witness that, *inter alia*, Sector 35 was in Kampot Province); Written Record of Interview of Koem Men, 3 September 2015, D114/113, A62. *See also* Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, Q-A120 (stating that Sector 35 soldiers were from the Southwest Zone).

¹³⁰¹ Written Record of Interview of Sok Ren, 13 January 2016, D114/155, A13-14, 26 (Ta Ney in Prey Nob was under Division 1's jurisdiction); Written Record of Interview of Hem Sambath, 31 July 2014, D54/114, A10, 15 (Babos village in Prey Nob was under the jurisdiction of Soeung, the Division 1 commander); Written Record of Interview of Ek Sophal, 12 June 2015, D114/84, A6. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.20.29-10.23.23 (Meas Voeun says Soeung's office was in Prey Nob). *See also* Written Record of Interview of Hem Ang, 24 December 2014, D114/33, A10, 39-41, 109 (he was in Sector 37 and in early 1976 attended a meeting at Prey Nob pagoda led by Ta Mok, who was the most senior cadre there), Q-A107 (he never heard of MEAS Muth).

¹³⁰² *See* Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A4, 20. *See supra* para. 142, regarding the use of Civil Party evidence.

¹³⁰³ Final Submission, para. 666, fns. 2689-90. *See also id.*, para. 192, fn. 523.

¹³⁰⁴ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A31. Final Submission, fn. 243.

¹³⁰⁵ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A34.

¹³⁰⁶ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, Q-A35, 114 (in both instances, she is discussing daily meetings held at Tham Thum and Put Thoeung villages).

she said he was mentioned every one or two weeks in daily cooperative meetings and that the village chiefs would say his orders had to be followed or there would be trouble.¹³⁰⁷

379. Yin Teng also contradicted herself regarding her family. She said she was married in 1982¹³⁰⁸ but applied to be a Civil Party based on her husband dying during the DK regime.¹³⁰⁹ She then told the OCIJ Investigator she did not remember when she got married.¹³¹⁰ She told the Investigator she and her husband had three children, the eldest of whom died while the other two are still alive.¹³¹¹ In her Civil Party Application, she indicated she had two children, both of whom died.¹³¹² She said her oldest son was 10 when he disappeared during the DK period, her middle son was seven years old at that time, and that (as of 2014) her middle son was 40 years old.¹³¹³ These ages mean that, in 2014, her oldest son would have been 43 years old. If so, he disappeared around 1981, after the DK period.

380. In her Civil Party Application, Yin Teng said her husband was imprisoned once in Tuek Sap and, after his release, was tied around the neck and pulled behind a truck until he died, with his body left at the foot of a mountain.¹³¹⁴ In her OCIJ interview, she said her husband was imprisoned twice in Tuek Sap,¹³¹⁵ was killed on a boat, and, after his first imprisonment in Tuek Sap, was tied up and made to run after a truck.¹³¹⁶ She said the Put Thoeung village chief said her husband worked in an artillery unit at Tuek Sap,¹³¹⁷ but later said she was told he was in an artillery unit stationed at Stung Hav.¹³¹⁸ She

¹³⁰⁷ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A153-54. See Final Submission, fns. 2689-90.

¹³⁰⁸ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A2.

¹³⁰⁹ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, Q-A4 (in which she apologizes for forgetting, after Philip Weiner reminds her that in her Civil Party Application she wrote that she was married in the early 1970s).

¹³¹⁰ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, Q-A4.

¹³¹¹ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A5. In A20, she also referred to having three children.

¹³¹² Summary of Civil Party Application of Yin Teng, 19 May 2009, D114/28.1.2, EN 00445741. She also said she was pregnant for six months. *Id.*

¹³¹³ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A9.

¹³¹⁴ Summary of Civil Party Application of Yin Teng, 19 May 2009, D114/28.1.2, EN 00445741.

¹³¹⁵ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A57-58.

¹³¹⁶ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A121-22.

¹³¹⁷ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A22.

¹³¹⁸ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A138.

“clarif[ied]” her husband was imprisoned at Tuek Sap and based at Stung Hav.¹³¹⁹ The many contradictions render Yin Teng’s evidence unreliable.

h. Conclusion

381. MEAS Muth did not exercise sole authority over Division 164. Any orders that were issued regarding military operations, monitoring, demobilization or transfer of soldiers, arrests and executions, or agricultural production were made collectively by the Division 164 Committee. The ICP ignores this role of the Division 164 Committee. He cites witnesses whose statements are based on hearsay and speculation or are contradictory. He ignores relevant contextual evidence about the Standing Committee, General Staff, and subordinate entities. He fails to substantiate his claims. Even if MEAS Muth did exercise sole authority over Division 164, such authority would not make him one of those most responsible for serious crimes committed across DK from 1975-1979.

4. Authority over Kampong Som Autonomous Sector does not make MEAS Muth one of those “most responsible”

382. The sources the ICP cites do not support his claim that MEAS Muth controlled military and civilian affairs in Kampong Som Autonomous Sector, including civilian cooperatives.¹³²⁰ The ICP primarily cites unreliable statements from Chet Bunna, Sok Vanna, Cheng Laung, Ou Dav, “Sieng,” Yem Sam On, Moeng Vet, Pak Sok, and Ek Ny.¹³²¹ He also cites unsupportive documentary evidence.¹³²² He misrepresents evidence. He ignores evidence that Thuch Rin controlled the civilian side of Kampong Som¹³²³ and that some civilian cooperatives were under Division 1’s jurisdiction.¹³²⁴ Even if MEAS Muth entirely controlled Kampong Som Autonomous Sector, given its limited

¹³¹⁹ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A139.

¹³²⁰ Final Submission, para. 76. *See also id.*, paras. 7, 220.

¹³²¹ Final Submission, fns. 231-32.

¹³²² Final Submission, fns. 233-36.

¹³²³ Written Record of Interview of Em Son, 27 November 2013, D54/47, A9, 15, 17, 33; Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A2; Written Record of Interview of Neak Khoern, 24 March 2016, D114/195, A5-7; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Yoem Sroeng, 27 July 2015, D114/95, A199. *See also* OCP interview of Pauch Koy, 11-12 August 2008, D1.3.13.1, EN 00217558; DC-Cam Interview with Touch Soeuli, 1 June 2007, D59/2/3.6a, KH 00958669. While the Defence has challenged the quality of these interviews (*see supra* paras. 141-42), should the OCIJ consider these types of evidence to be reliable and probative, it must consider these witness statements.

¹³²⁴ *See e.g.*, Written Record of Interview of Hem Sambath, 31 July 2014, D54/114, A10, 15 (Babos village in Prey Nob was under the jurisdiction of Soeung, the Division 1 commander).

geographical area, this authority does not make him one of those most responsible for serious crimes committed across DK from 1975-1979.

383. **Chet Bunna.** Chet Bunna is unreliable.¹³²⁵ After early 1977, he did not know about the leadership level.¹³²⁶ He nevertheless claimed MEAS Muth controlled Tuek Sap, through Kang Keng, Ream, and Kampong Som; all islands; and oversaw civilian cooperatives.¹³²⁷ Chet Bunna would not have had detailed knowledge of MEAS Muth's scope of authority.¹³²⁸
384. **Sok Vanna.** Sok Vanna is unreliable.¹³²⁹ He "heard" MEAS Muth had authority over cooperative chairpersons and commune chiefs.¹³³⁰
385. **Cheng Laung.** Cheng Laung is unreliable. He speculated based on hearsay. He was a peasant working in a cooperative. His co-workers said MEAS Muth was in Kampong Som and "controlled all of us," which meant MEAS Muth also controlled the Sector.¹³³¹ Cheng Laung merely believed this to be true based on this hearsay. Given his position during the DK regime, he would not have had detailed knowledge of the Sector's governance or administration.¹³³²
386. **Ou Dav.** Ou Dav is unreliable.¹³³³ He said MEAS Muth commanded the Kampong Som region.¹³³⁴ Initially, he told the OCIJ he only knew MEAS Muth was the commander of the navy; he did not mention any civilian roles.¹³³⁵ Any knowledge he had about MEAS Muth's authority in Kampong Som was based on hearsay.¹³³⁶

¹³²⁵ See *supra* paras. 186-88 for more information about this witness.

¹³²⁶ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A19.

¹³²⁷ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9-10. Final Submission, fns. 231-32.

¹³²⁸ See *supra* para. 186 for more information about this witness.

¹³²⁹ See *supra* para. 343 for more information about this witness.

¹³³⁰ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A14-15. Final Submission, fn. 231.

¹³³¹ Written Record of Interview of Cheng Laung, 25 July 2015, D114/96, A11, 13.

¹³³² See *supra* para. 166, discussing the CPK's policy of secrecy and its impact on the assessment of evidence.

¹³³³ See *supra* para. 355 and *infra* paras. 509 and 533-34 for more information about this witness.

¹³³⁴ Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A8. Final Submission, fn. 231.

¹³³⁵ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A64.

¹³³⁶ Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A8.

387. **“Sieng.”** “Sieng” is unreliable.¹³³⁷ He told the OCP that MEAS Muth controlled the whole Kampong Som area.¹³³⁸ Since he refused to be interviewed by the OCIJ,¹³³⁹ his statement has not been tested by a disinterested party.
388. **Yem Sam On.** Yem Sam On is unreliable. He was only in DK for a limited period of time. He was a group chairman in the navy.¹³⁴⁰ He did not work directly with MEAS Muth.¹³⁴¹ He moved to China on 27 July 1976¹³⁴² and did not return to Cambodia until 1981.¹³⁴³ In his DC-Cam interview, Yem Sam On said MEAS Muth “might have” been in charge of everything in Kampong Som because there were no other units present in the area (to his knowledge).¹³⁴⁴ The DC-Cam interviewer then led him by asking: “So it means that Kampong Som was under Meas Mut’s command?”¹³⁴⁵ He answered affirmatively.¹³⁴⁶ He also said he was unsure whether MEAS Muth was in charge of only Division 3 or the whole Kampong Som area.¹³⁴⁷
389. **Moeng Vet.** Moeng Vet is unreliable.¹³⁴⁸ He said MEAS Muth was in charge of Kampong Som.¹³⁴⁹ He only interacted with MEAS Muth in Sector 505 and admitted to having memory problems.¹³⁵⁰
390. **Pak Sok.** Pak Sok is unreliable.¹³⁵¹ He said the area starting from Veal Renh was under MEAS Muth’s control.¹³⁵² Given his low rank and the CPK’s policy of secrecy,¹³⁵³ Pak Sok would have had little knowledge of MEAS Muth’s scope of authority.

¹³³⁷ See *supra* para. 218 for more information about this witness.

¹³³⁸ OCP Interview of “Sieng,” 12 August 2008, D1.3.13.11, EN 00217564. Final Submission, fn. 231.

¹³³⁹ Consolidated Decision on the International Co-Prosecutor’s First, Second, and Third Investigative Requests, 9 January 2016, D223, paras. 99-100.

¹³⁴⁰ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A10.

¹³⁴¹ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A62.

¹³⁴² Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A57; DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063514.

¹³⁴³ DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063527-01063528.

¹³⁴⁴ DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063510. Final Submission, fn. 231.

See *supra* para. 140, discussing the use of DC-Cam interviews as evidence.

¹³⁴⁵ DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063510.

¹³⁴⁶ DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063510.

¹³⁴⁷ DC-Cam Interview with Yem Sam On, 7 June 2011, D59/2/3.17a, EN 01063510.

¹³⁴⁸ See *supra* paras. 182-83 for more information about this witness.

¹³⁴⁹ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 00992990. Final Submission, fn. 231.

See *supra* para. 140, discussing the use of DC-Cam interviews as evidence.

¹³⁵⁰ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212294. See *supra* para. 182.

¹³⁵¹ See *supra* paras. 233-34 for more information about this witness.

¹³⁵² Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A30. Final Submission, fn. 232.

¹³⁵³ See *supra* para. 166 discussing the CPK’s policy of secrecy and its impact on the assessment of evidence.

391. **Ek Ny.** Ek Ny is unreliable.¹³⁵⁴ Despite his limited area of operations, Ek Ny claimed MEAS Muth had the authority to make arrests and punish civilians and soldiers within the area controlled by Division 164.¹³⁵⁵ He claimed this area was Tonle Sap in the east, Stung Hav in the north, and the sea and a number of islands in the west.¹³⁵⁶
392. The ICP claims that MEAS Muth had 8,000 to 9,000 civilians under his authority in Kampong Som.¹³⁵⁷ The ICP exaggerates the contents of the military documents he cites. The ICP cites a 19 September 1976 report to Son Sen regarding rice production in Kampong Som.¹³⁵⁸ He claims MEAS Muth reported on 17,000 soldiers and civilians cultivating crops in the area under his control.¹³⁵⁹ MEAS Muth did not say these people were under his control or working in an area under his control. He merely reported on the work they were doing.¹³⁶⁰ In an environment where one had to comply with all requests for information from one's superior,¹³⁶¹ giving information about an area during a General Staff meeting did not mean MEAS Muth supervised the area.
393. The ICP purports to deduce the number of civilians under MEAS Muth's control using this reported figure of 17,000, troop numbers in General Staff documents,¹³⁶² and a Division 164 request for 5,000 sets of clothes for people and 7,000 sets for soldiers.¹³⁶³ A request for 5,000 sets of clothes does not mean the number of civilians under MEAS Muth's control was "well above 5,000," as the ICP claims.¹³⁶⁴ The ICP has no way of knowing how many people were to receive clothes, how many sets of clothes the people were to receive, who these people were, or where they resided. The request could have been intended to result in a distribution of three, five, or 10 sets of clothes to each person. The ICP speculates.

¹³⁵⁴ See *supra* para. 251 for more information about this witness.

¹³⁵⁵ Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A16. Final Submission, fn. 232.

¹³⁵⁶ Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A16.

¹³⁵⁷ Final Submission, para. 220, fn. 656. See also *id.*, para. 77, fn. 235.

¹³⁵⁸ Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18, EN 00195341.

¹³⁵⁹ Final Submission, para. 77, fn. 235.

¹³⁶⁰ See Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18, EN 00195341.

¹³⁶¹ See *supra* paras. 172 and 213 regarding the CPK's reporting requirements.

¹³⁶² Final Submission, fn. 656. The ICP also cites a claim from Chet Bunna that MEAS Muth was responsible for 18,000 troops. Chet Bunna is unreliable, as demonstrated *supra* in paras. 186-88.

¹³⁶³ Final Submission, fn. 656, citing Military Meeting Minutes titled "Minutes of the meeting of comrades 164," 9 September 1976, D1.3.8.4, EN 00657355.

¹³⁶⁴ Final Submission, fn. 656.

394. The ICP claims that MEAS Muth issued and received reports on the population and food production.¹³⁶⁵ He cites meeting minutes and telegrams.¹³⁶⁶ These documents do not indicate MEAS Muth had authority over Kampong Som Autonomous Sector. Regarding the 19 September 1976 report to Son Sen, *see supra* paragraph 392. In the 13 August 1976 telegram,¹³⁶⁷ MEAS Muth did not describe the troops and people cultivating rice in Kampong Som as people under his control or authority. He merely reported on the work they were doing. The 24 September 1976 telegram from Dim states that “our brothers [combatants]” are helping to save rice.¹³⁶⁸ The telegram indicates soldiers were doing agricultural work, which aligned with the Center’s requirement that RAK units be wholly self-sustaining.¹³⁶⁹ The telegram does not indicate the Kampong Som civilian population was under MEAS Muth’s authority.

395. The ICP claims that MEAS Muth implemented a CPK directive on food rations.¹³⁷⁰ The ICP cites only Soem Ny.¹³⁷¹ Soem Ny is unreliable.¹³⁷² He claimed he knew the Central Committee set the policy on food rations, which MEAS Muth had to implement, because he was in the Kampuchea Youth League and the rations were announced in an assembly.¹³⁷³ That the CPK had a policy on food rations to be served to guests demonstrates its total control over all Party units.¹³⁷⁴ MEAS Muth’s alleged compliance with that policy does not mean he had authority over the entire Kampong Som Autonomous Sector.

396. The ICP claims that MEAS Muth maintained control over Kampong Som after being transferred to Phnom Penh in late 1978 by transmitting orders to the Division 164 navy

¹³⁶⁵ Final Submission, para. 77.

¹³⁶⁶ Final Submission, fns. 233, 235.

¹³⁶⁷ Telegram titled “Telegram No 44 to Brother 89 about the situation in August 1976,” 13 August 1976, D1.3.34.10, EN 00233647 (stating that “the people” are drenching rice fields).

¹³⁶⁸ Telegram titled “Eleventh telegram to Brother Mut about situation along the border with Thailand,” 24 September 1976, D4.1.699.

¹³⁶⁹ Military Meeting Minutes titled “Minutes of the Meeting of All Division Committees,” 1 June 1976, D1.3.8.2, EN 00233956 (Divisions must be 100% self-supporting and must support Angkar 30-100%); Military Meeting Minutes titled “Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments,” 19 September 1976, D1.3.27.18, EN 00195350 (must push to achieve 90-100% of rice production goal); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 09.17.58-09.20.04; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 11.45.38-11.47.53.

¹³⁷⁰ Final Submission, para. 77.

¹³⁷¹ Final Submission, fn. 234.

¹³⁷² *See supra* para. 245 and *infra* paras. 406-08 for more information about this witness.

¹³⁷³ Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A12. Final Submission, fn. 234.

¹³⁷⁴ *See supra* para. 211, discussing the Party’s control over every aspect of Center Divisions’ operations.

chief, Toem Seng.¹³⁷⁵ The ICP cites Lay Bunhak, Sath Chak, Prum Sarat, Hieng Ret, Nop Hal, and a statement purportedly from MEAS Muth.¹³⁷⁶ The ICP overreaches. The evidence does not support his claim. At most, it indicates a degree of authority over naval or Division 164 matters, not Kampong Som Autonomous Sector.

397. **Lay Bunhak.** Lay Bunhak is unreliable.¹³⁷⁷ He said that, after MEAS Muth moved to the General Staff and became the Deputy Chief,¹³⁷⁸ Toem Seng controlled all military units and passed along all orders from the upper echelon.¹³⁷⁹ He also said MEAS Muth no longer had the power to give orders when he was in Phnom Penh¹³⁸⁰ but then claimed Toem Seng received orders from MEAS Muth.¹³⁸¹ Even if Lay Bunhak's statements are granted any probative value, his statements regarding the circumstances of MEAS Muth's transfer to Phnom Penh are unclear.¹³⁸²
398. **Sath Chak.** Sath Chak is unreliable.¹³⁸³ He claimed to have heard in meetings with his commanders that in 1978 MEAS Muth was transferred to Phnom Penh to become the Deputy Chief of the Army.¹³⁸⁴ This statement is unverifiable. Sath Chak did not say MEAS Muth maintained control over Kampong Som after leaving the area.
399. **Prum Sarat.** Prum Sarat does not support the ICP's claim.¹³⁸⁵ He said MEAS Muth retained "influence and authority" after he left Kampong Som.¹³⁸⁶ He did not say MEAS Muth maintained control over the entire area.
400. **Hieng Ret.** Hieng Ret does not support the ICP's claim.¹³⁸⁷ He initially said only that MEAS Muth was still "influential" after he left Kampong Som.¹³⁸⁸ The DC-Cam

¹³⁷⁵ Final Submission, para. 78. *See also id.*, paras. 56, 224.

¹³⁷⁶ Final Submission, fns. 236, 686.

¹³⁷⁷ *See supra* paras. 189-90 for more information about this witness.

¹³⁷⁸ DC-Cam Interview with Lay Boonhak, 20 May 2007, D54/99.1, EN 01115988; Written Record of Interview of Lay Boonhak, 29 May 2014, D54/100, A93, 95-96. Final Submission, fn. 236. *See also* Final Submission, fns. 160, 168, 686.

¹³⁷⁹ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A93, 96.

¹³⁸⁰ DC-Cam Interview with Lay Boonhak, 20 May 2007, D54/99.1, EN 01115988.

¹³⁸¹ DC-Cam Interview with Lay Boonhak, 20 May 2007, D54/99.1, EN 01115988.

¹³⁸² *See supra* para. 190.

¹³⁸³ *See supra* para. 192 for more information about this witness.

¹³⁸⁴ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A126-30. Final Submission, fn. 236. *See also* Final Submission, fns. 160, 168.

¹³⁸⁵ *See supra* para. 191 for more information about this witness.

¹³⁸⁶ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A171. Final Submission, fn. 236.

¹³⁸⁷ *See supra* para. 196 for more information about this witness.

¹³⁸⁸ DC-Cam Interview with Hieng Ret, 20 April 2007, D59/1/1.11a, EN 00974119: "Q: So, was he still in command even though he was in Phnom Penh? A: He was still influential."

interviewer led him to say MEAS Muth was still in charge of Division 164 after he left Kampong Som.¹³⁸⁹ He later said Toem Seng became the Division 164 commander,¹³⁹⁰ indicating Toem Seng had complete control over the unit. Hieng Ret did not say MEAS Muth oversaw Kampong Som Autonomous Sector after he moved to Phnom Penh.

401. **Nop Hal.** Nop Hal does not support the ICP's claim. He was a motor boat captain in Battalion 622.¹³⁹¹ Nop Hal said MEAS Muth held a more senior position than Toem Seng and that both were in charge, but he did not know how they actually worked together.¹³⁹² He did not say MEAS Muth maintained authority over Kampong Som Autonomous Sector after he was transferred to Phnom Penh.

402. Other witnesses confirm Toem Seng was wholly in charge of Division 164 after MEAS Muth was transferred away from Kampong Som. Liet Lan said Toem Seng was in charge in MEAS Muth's absence.¹³⁹³ Hing Uch said Toem Seng had the authority to give orders at that time and that he received no orders from MEAS Muth.¹³⁹⁴ Even if MEAS Muth did continue to send orders to the Division 164 navy chief regarding naval matters after his transfer to Phnom Penh, that does not mean MEAS Muth retained authority over the entire Kampong Som Autonomous Sector.

5. MEAS Muth did not have authority over security centers, worksites, or cooperatives; even if he did, such authority does not make him one of those "most responsible"

403. The sources the ICP cites do not support his claims that MEAS Muth personally inspected and had authority over security centers, worksites, and cooperatives.¹³⁹⁵ The ICP cites unreliable witnesses and unsupportive documentary evidence. He fails to substantiate his claims. Even if MEAS Muth had any authority over security centers, worksites, or cooperatives in Kampong Som, such authority would not make him one of the persons most responsible for serious crimes committed across DK from 1975-1979.

¹³⁸⁹ DC-Cam Interview with Hieng Ret, 20 April 2007, D59/1/1.11a, EN 00974119: "Q: So, was he still in command even though he was in Phnom Penh? A: He was still influential. Q: So, was he still in charge of Division 164 or what? A: Yes, he was in charge of the navy."

¹³⁹⁰ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A35.

¹³⁹¹ Written Record of Interview of Nop Hal, 8 April 2014, D54/78, A13-14.

¹³⁹² Written Record of Interview of Nop Hal, 9 April 2014, D54/79, A26. Final Submission, fn. 686.

¹³⁹³ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3.

¹³⁹⁴ Written Record of Interview of Hing Uch, 22 April 2014, D54/81, A14-16.

¹³⁹⁵ Final Submission, paras. 63, 67, 156-57, 160-63, 191-92, 197, 444-47, 486-90.

a. Wat Enta Nhien security center

404. The ICP claims that MEAS Muth inspected and was responsible for a security center in Wat Enta Nhien.¹³⁹⁶ The ICP primarily cites unreliable evidence from Meas Voeun, Kang Sum, Soem Ny, Chet Bunna, Ek Ny, Pak Sok, Sam Phin, Pen Sarin, Pauch Koy, Touch Soeuli, and Em Son, as well as documents and non-ECCC interviews with MEAS Muth that do not support his claim.¹³⁹⁷ The ICP also misleads regarding some evidence.
405. The ICP cites Meas Voeun, Kang Sum, and an OCIJ site identification report to support his general claim that Wat Enta Nhien was situated within MEAS Muth's area of responsibility.¹³⁹⁸ This evidence does not support the claim. Meas Voeun was in Division 1; his interactions with Division 164 were limited to interactions with a regiment around Koh Kong.¹³⁹⁹ He would not have had personal knowledge that the navy controlled the mainland from Veal Renh to Kampong Som.¹⁴⁰⁰ Kang Sum's claim that "[t]here was only 164 in Kampong Som Province"¹⁴⁰¹ is unreliable.¹⁴⁰² The OCIJ site identification report states only the Investigator's opinions or conclusions; it was based on only two witness statements, a book, and the OCIJ Investigator's "findings" at the site.¹⁴⁰³
406. **Soem Ny.** Soem Ny is unreliable. He gave significantly contradictory statements about Wat Enta Nhien that undermine his credibility. He grew vegetables near Wat Enta Nhien and worked at the port under Thuch Rin before going to the East Zone in late 1978.¹⁴⁰⁴ The ICP relies solely on Soem Ny to support his claims that MEAS Muth visited Wat Enta Nhien at least once a month to examine the situation and possibly bring food for the guards, and that he interrogated and sent people away.¹⁴⁰⁵

¹³⁹⁶ Final Submission, paras. 155-57, 444-47.

¹³⁹⁷ Final Submission, fns. 441-49, 1650-72.

¹³⁹⁸ Final Submission, para. 444, fn. 1651. The Defence has addressed Chet Bunna's claim elsewhere in the Response. *See supra* para. 235.

¹³⁹⁹ *See e.g.*, Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A32-33, 35. *See supra* para. 193 for more information about this witness.

¹⁴⁰⁰ Final Submission, fn. 1651, citing Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A17. *See also* Final Submission, fn. 1823.

¹⁴⁰¹ Final Submission, fn. 1651, citing Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A83. *See also* Final Submission, fn. 1823.

¹⁴⁰² *See supra* para. 225 for more information about this witness.

¹⁴⁰³ Site Identification Report, 29 December 2010, D2/22, EN 00634139. Final Submission, fn. 1651.

¹⁴⁰⁴ *See supra* para. 245 for more information about this witness.

¹⁴⁰⁵ Final Submission, paras. 445-46, fns. 1655-63, 1666-68. *See also id.*, para. 63, fn. 194; para. 156.

407. In his DC-Cam interview, Soem Ny said he saw MEAS Muth at Wat Enta Nhien “once in a while”¹⁴⁰⁶ or that he “came in and out once for a while,”¹⁴⁰⁷ depending on the translation. In the same interview, he then said he saw MEAS Muth at Wat Enta Nhien “frequently”¹⁴⁰⁸ or “often,”¹⁴⁰⁹ depending on the translation. To the OCIJ, Soem Ny said he saw MEAS Muth go to Wat Enta Nhien twice bringing food to the guards,¹⁴¹⁰ but then said that, as far as he knew, MEAS Muth went there once a month.¹⁴¹¹ In the same interview, he said he believed he saw MEAS Muth bring food there once a month – rather than only seeing him bring food twice, as previously stated.¹⁴¹² He learned this from two guards.¹⁴¹³ If he heard information from guards, Soem Ny may not have seen MEAS Muth at Wat Enta Nhien at all. That Soem Ny’s claim to have seen MEAS Muth in a Chinese jeep¹⁴¹⁴ parallels another witness’s claim to have seen MEAS Muth at Tuek Sap in a Chinese jeep¹⁴¹⁵ does not make his contradictory statements any more reliable. Other witnesses say MEAS Muth used an American jeep.¹⁴¹⁶

408. Soem Ny also told the DC-Cam interviewer that Launh, chairman of the State fishery unit, was in charge of Wat Enta Nhien,¹⁴¹⁷ but then said that only MEAS Muth was in charge and responsible and that Launh provided supplies.¹⁴¹⁸ Despite telling the OCIJ he saw Launh “almost every single day,”¹⁴¹⁹ Soem Ny could not identify him from a photograph.¹⁴²⁰ Another witness, Chheng Cheang, was shown the same photograph and quickly identified Launh.¹⁴²¹

¹⁴⁰⁶ DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 01070552.

¹⁴⁰⁷ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332601.

¹⁴⁰⁸ DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 01070558.

¹⁴⁰⁹ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332607.

¹⁴¹⁰ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A12.

¹⁴¹¹ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A13.

¹⁴¹² Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A14.

¹⁴¹³ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A15.

¹⁴¹⁴ Final Submission, para. 445, fn. 1663, quoting Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A35.

¹⁴¹⁵ Written Record of Interview of Svay Saman, 4 September 2015, D114/116, A8. Final Submission, fn. 1664. There also are credibility concerns regarding Svay Saman’s statements about Tuek Sap, as the Defence demonstrates *infra* in paragraph 423.

¹⁴¹⁶ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A13; Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A40.

¹⁴¹⁷ DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 01070550; DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332598-01332599.

¹⁴¹⁸ DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 01070563; DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332612.

¹⁴¹⁹ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A23.

¹⁴²⁰ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A22. The photograph of Launh is on the Case File as D54/88.1, which is the same as D54/56.1. In Written Record of Investigation Action, 7 February

409. **Chet Bunna.** Chet Bunna is unreliable.¹⁴²² He claimed Wat Enta Nhien was the Division 164 prison of MEAS Muth.¹⁴²³ He heard this information from his leaders.¹⁴²⁴
410. **Ek Ny.** Ek Ny is unreliable.¹⁴²⁵ He claimed Wat Enta Nhien was the Division 164 security and detention center under MEAS Muth.¹⁴²⁶ Like Chet Bunna, Ek Ny's claim is based on hearsay. He heard the information from other soldiers.¹⁴²⁷
411. **Pak Sok.** Pak Sok is unreliable.¹⁴²⁸ He heard about Wat Enta Nhien from other soldiers but never went inside.¹⁴²⁹ He speculated that the site was under Division 164 control because soldiers were told not to approach it.¹⁴³⁰ These statements do not establish that Wat Enta Nhien was a Division 164 security and detention center or that MEAS Muth controlled it.¹⁴³¹
412. **Sam Phin.** Sam Phin is unreliable. His statements are based on speculation. He was a low-ranking soldier in a unit that guarded a warehouse at Phsar Leu.¹⁴³² He never attended any meetings with MEAS Muth.¹⁴³³ He never went to Wat Enta Nhien.¹⁴³⁴ Sam Phin nevertheless claimed that, "[b]ased on what [he] knew," Wat Enta Nhien was a place for soldiers.¹⁴³⁵
413. **Pen Sarin.** Pen Sarin is unreliable. His evidence is based on hearsay and is inaccurate. He was a Division 164 machine worker who worked in Kampong Som and at

2014, D54/56, EN 00973407, an OCIJ Investigator states that Launh's family provided them with the photograph of Launh.

¹⁴²¹ Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A19.

¹⁴²² See *supra* paras. 186-88 for more information about this witness. See Final Submission, fns. 1823, 2668, quoting Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9 (claiming the territory under MEAS Muth's control stretched from Tuek Sap through Kang Keng, Ream, and Kampong Som, and all the islands in the sea).

¹⁴²³ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A14. Final Submission, fns. 441, 1650-51.

¹⁴²⁴ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A15.

¹⁴²⁵ See *supra* para. 251 for more information about this witness.

¹⁴²⁶ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A6. Final Submission, fns. 441, 1650.

¹⁴²⁷ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A6.

¹⁴²⁸ See *supra* paras. 233-34 for more information about this witness and see *infra* para. 422 regarding Tuek Sap.

¹⁴²⁹ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A25. Final Submission, fn. 1650. See also Final Submission, fns. 194, 1824.

¹⁴³⁰ Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A8.

¹⁴³¹ As the ICP asserts in paragraph 444 of his Final Submission.

¹⁴³² Written Record of Interview of Sam Phin, 24 June 2014, D54/111, Q-A2, A8-9.

¹⁴³³ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A12.

¹⁴³⁴ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A14.

¹⁴³⁵ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A15. Final Submission, fn. 1650.

Stung Hav.¹⁴³⁶ He never saw MEAS Muth; he only heard soldiers and subordinates talking about him.¹⁴³⁷ Based on this hearsay, he said he knew MEAS Muth was in charge of Division 1¹⁴³⁸ and that Wat Enta Nhien was a Division 1 detention facility.¹⁴³⁹ Pen Sarin first learned about Wat Enta Nhien when he went there in April 1979.¹⁴⁴⁰ There is no indication that he knew during the DK regime who supervised the site. Any knowledge he had about Division 164 or MEAS Muth is inaccurate, as demonstrated by his statements that Division 1, not Division 164, was the unit of which MEAS Muth was in charge.¹⁴⁴¹ The Defence will not be able to confront Pen Sarin at trial about his statements to the OCP¹⁴⁴² because he is deceased.¹⁴⁴³

414. **Pauch Koy.** Pauch Koy is unreliable. He learned of Wat Enta Nhien after 7 January 1979. During the DK regime, he was a farmer in Srae Ambil.¹⁴⁴⁴ He claimed that Wat Enta Nhien was a detention center¹⁴⁴⁵ but he did not go there until August 1979.¹⁴⁴⁶ Given his location and position during the DK regime, he would not have known the use, if any, that was made of Wat Enta Nhien and by whom. As with Pen Sarin, the Defence will not be able to confront Pauch Koy at trial about his statement to the OCP¹⁴⁴⁷ because he is deceased.¹⁴⁴⁸

415. **Touch Soueli.** Touch Soueli is unreliable. He has made speculative and contradictory statements about Wat Enta Nhien, some of which are based on hearsay. He was in Battalion 450 and, for about four months in 1975, stayed at Wat Enta Nhien as a messenger before joining the navy.¹⁴⁴⁹ He claimed Battalion 450 “might well have” received orders from MEAS Muth.¹⁴⁵⁰ To the OCP, he said he knew from colleagues that

¹⁴³⁶ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A3, 10.

¹⁴³⁷ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A7.

¹⁴³⁸ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, Q-A7.

¹⁴³⁹ OCP Interview with Pen Sarin, 13 August 2008, D1.3.13.8, EN 00217562. Final Submission, fns. 441, 1650.

¹⁴⁴⁰ OCP Interview with Pen Sarin, 13 August 2008, D1.3.13.8, EN 00217562.

¹⁴⁴¹ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A4, 7; OCP Interview with Pen Sarin, 13 August 2008, D1.3.13.8, EN 00217562.

¹⁴⁴² See *supra* para. 141 discussing the use of OCP interviews as evidence.

¹⁴⁴³ Consolidated Decision on the International Co-Prosecutor’s First, Second, and Third Investigative Requests, 9 January 2016, D223, para. 101.

¹⁴⁴⁴ OCP Interview with Pauch Koy, 11-12 August 2008, D1.3.13.1, EN 00217557.

¹⁴⁴⁵ OCP Interview with Pauch Koy, 11-12 August 2008, D1.3.13.1, EN 00217557. Final Submission, fn. 1650.

¹⁴⁴⁶ OCP Interview with Pauch Koy, 11-12 August 2008, D1.3.13.1, EN 00217557.

¹⁴⁴⁷ See *supra* para. 141 discussing the use of OCP interviews as evidence.

¹⁴⁴⁸ Written Record of Investigation Action, 17 July 2013, D54/15, EN 00942731.

¹⁴⁴⁹ Written Record of Interview of Touch Soueli, 10 November 2010, D2/15, A12-14, 25.

¹⁴⁵⁰ Written Record of Interview of Touch Soueli, 14 March 2016, D114/187, A47. Final Submission, fn. 442.

Wat Enta Nhien was a detention center.¹⁴⁵¹ To the OCIJ, he said he went back to Wat Enta Nhien in 1977 and saw prisoners there.¹⁴⁵² He said that, when he left Wat Enta Nhien, it was not a detention center and no prisoners were there.¹⁴⁵³ Touch Soueli then said that, during his 1977 visit, he did not think it was a detention center because he was allowed to walk around freely, and he saw one person who was not a prisoner but was being detained for holding.¹⁴⁵⁴ The ICP ignores evidence from “Sieng,” another OCP interviewee, that Wat Enta Nhien seemed not to be a detention place.¹⁴⁵⁵

416. **Em Son.** Em Son is unreliable.¹⁴⁵⁶ He did not work at Wat Enta Nhien.¹⁴⁵⁷ He said everyone knew Wat Enta Nhien was Division 164’s security center.¹⁴⁵⁸ Em Son gave conflicting statements regarding the site. First, he told the OCIJ Investigator he never went to Wat Enta Nhien.¹⁴⁵⁹ He then changed his story. He said he went there once to check on two of his soldiers who were detained there.¹⁴⁶⁰ His changing story about Wat Enta Nhien is similar to his changing story about what he knew about American soldiers after the *Mayaguez* incident.¹⁴⁶¹

417. The ICP cites two interviews of MEAS Muth to support his claim that MEAS Muth was “less than candid” about his knowledge of Wat Enta Nhien.¹⁴⁶² These interviews were conducted by non-ECCC individuals without judicial supervision for purposes other than a criminal trial. They are of little probative value.¹⁴⁶³ If the interviews are accorded any probative value, the CIJs must consider that the ICP misrepresents MEAS Muth’s statements. MEAS Muth was consistent in both interviews in indicating that Wat Enta Nhien was not used as a detention facility.¹⁴⁶⁴ He also told the POW/MIA investigators

¹⁴⁵¹ OCP Interview with Touch Soeuli, 16 August 2008, D1.3.13.13, EN 00217575. Final Submission, fn. 1650.

¹⁴⁵² Written Record of Interview of Touch Soueli, 10 November 2010, D2/15, Q-A27-32.

¹⁴⁵³ Written Record of Interview of Touch Soueli, 14 March 2016, D114/187, A19, 21.

¹⁴⁵⁴ Written Record of Interview of Touch Soueli, 14 March 2016, D114/187, A24, 26, 29-34.

¹⁴⁵⁵ OCP Interview with “Sieng,” 12 August 2008, D1.3.13.11, EN 00217566.

¹⁴⁵⁶ See *supra* paras. 236, 244 and 349 and *infra* para. 515 for more information about this witness.

¹⁴⁵⁷ See *supra* para. 236.

¹⁴⁵⁸ Written Record of Interview of Em Son, 28 November 2013, D54/48, A44. Final Submission, fn. 1650.

¹⁴⁵⁹ Written Record of Interview of Em Son, 26 November 2013, D54/46, A14.

¹⁴⁶⁰ Written Record of Interview of Em Son, 28 November 2013, D54/48, A52.

¹⁴⁶¹ See *supra* para. 349.

¹⁴⁶² Final Submission, para. 447, fn. 1671 (quoting from an audio recording of an interview between MEAS Muth and David Kattenburg), fn. 1672 (quoting from a POW/MIA summary of an interview with MEAS Muth).

¹⁴⁶³ See *supra* para. 143, discussing the use of this type of evidence.

¹⁴⁶⁴ To David Kattenburg, MEAS Muth said there were no detention facilities in Kampong Som (see Final Submission, fn. 1671) and to the POW/MIA investigators he said he had no information on Wat Enta Nhien’s use as a detention center (see Final Submission, fn. 1672).

that American prisoners were not captured.¹⁴⁶⁵ Logically, there would be no facility holding American prisoners.

418. The ICP misleadingly cites a story about the killing of Rem, the Battalion 386 commander, in front of Wat Enta Nhien to support his claim that MEAS Muth knew about killings at the pagoda and used the stories during meetings.¹⁴⁶⁶ Rem allegedly was shot and killed outside the pagoda after punching Division 164 soldiers and trying to resist arrest.¹⁴⁶⁷ This event happened after a meeting MEAS Muth allegedly held regarding traitors,¹⁴⁶⁸ not before.¹⁴⁶⁹ There is no indication Rem was detained or executed at Wat Enta Nhien or that MEAS Muth was involved in his killing.¹⁴⁷⁰

419. The ICP cites a report purportedly sent to Son Sen on 12 August 1977 to support his claim that MEAS Muth interrogated detainees at Wat Enta Nhien.¹⁴⁷¹ The ICP misrepresents this report. The report was not written by MEAS Muth.¹⁴⁷² It relates to the questioning of Thai fishermen arrested in Koh Kong and taken to Kampong Som.¹⁴⁷³ The report says “we” are questioning them.¹⁴⁷⁴ It does not indicate who is conducting the questioning or where within Kampong Som the questioning is being done. There is no indication the questioning was done by Division 164. Division 1 forces could have conducted the questioning. They also were in Kampong Som and received people arrested in Koh Kong by Division 1 units.¹⁴⁷⁵ The ICP implies Son Sen responded to MEAS Muth and requested that “*questions be put*” to identify internal networks.¹⁴⁷⁶ To the contrary, Son Sen sent the report to “Angkar” requesting that questions be asked to identify internal

¹⁴⁶⁵ Statement of MEAS Muth (POW/MIA), 5 December 2001, D22.2.181, EN 00249698.

¹⁴⁶⁶ Final Submission, para. 157.

¹⁴⁶⁷ Written Record of Interview of Ek Ny, 2 April 2014, D54/101, A10.

¹⁴⁶⁸ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A3. *See also id.*, A5 (Ek Ny says he did not hear MEAS Muth talk about Rem’s story in any other meetings).

¹⁴⁶⁹ *See* Final Submission, para. 157.

¹⁴⁷⁰ Contrary to the ICP’s claim in paragraph 157 of the Final Submission.

¹⁴⁷¹ Final Submission, para. 446, fns. 1669-70.

¹⁴⁷² The report purportedly is based on a telephone message from MEAS Muth. Report titled “Reported on 12/8/77 by secret telephone about situation along the border with Thailand,” 12 August 1977, D1.3.12.20. *See supra* para. 271 and *infra* para. 571 discussing this report.

¹⁴⁷³ Report titled “Reported on 12/8/77 by secret telephone about situation along the border with Thailand,” 12 August 1977, D1.3.12.20.

¹⁴⁷⁴ Report titled “Reported on 12/8/77 by secret telephone about situation along the border with Thailand,” 12 August 1977, D1.3.12.20.

¹⁴⁷⁵ Written Record of Interview of Meas Voeun, 17 January 2014, D54/53, A19-20; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 4 October 2012, D98/3.1.178, 10.17.11-10.23.23.

¹⁴⁷⁶ Final Submission, para. 446 (emphasis in original).

networks.¹⁴⁷⁷ This report does not establish that MEAS Muth interrogated detainees at Wat Enta Nhien or any other location.

b. Tuek Sap security center

420. The ICP claims that MEAS Muth inspected and was responsible for a security center in Tuek Sap.¹⁴⁷⁸ The ICP cites unreliable documentary evidence and statements from Pak Sok and Svay Saman, as well as individual accounts from Long Phansy, Sam Saom, Mak Chhoeun, Kuy Nen, Prak Bunny, Sok Vanna, and Hieng Ret.¹⁴⁷⁹

421. The ICP cites a 22 February 1976 report and minutes from a 9 October 1976 General Staff meeting to support his claims regarding MEAS Muth's authority over a Tuek Sap security center.¹⁴⁸⁰ These documents do not support his claims. The report indicates only that someone was arrested east of Tuek Sap; it does not indicate who carried out the arrest, the specific location of the arrest, or who is questioning the person.¹⁴⁸¹ Even if MEAS Muth sent the telegram, that does not mean he was responsible for the events reported in it. Similarly, Dim's alleged report in a General Staff meeting that a 13-year-old girl was seized near Tuek Sap and questioned¹⁴⁸² indicates only that a girl was seized near Tuek Sap and questioned. It does not indicate there was a security center in Tuek Sap, that MEAS Muth was responsible for any such security center, or that MEAS Muth was "well informed" of the results of interrogation practices there.¹⁴⁸³ Similarly, even if Son Sen ordered Division 164 to stop water flowing from "the mountains and Prek Toek Sap small stream without fail,"¹⁴⁸⁴ this does not mean there was a security center in Tuek Sap over which MEAS Muth had authority.

¹⁴⁷⁷ Report titled "Reported on 12/8/77 by secret telephone about situation along the border with Thailand," 12 August 1977, D1.3.12.20: "To Angkar: (1) We ask to find inside networks. (2) Find the entry and exit. (3) Traitorous elements along the border."

¹⁴⁷⁸ Final Submission, paras. 63, 160-63, 486-90.

¹⁴⁷⁹ Final Submission, fns. 194, 454-58.

¹⁴⁸⁰ Final Submission, paras. 160-61, fns. 454-55; paras. 486-87, fns. 1825-27.

¹⁴⁸¹ Final Submission, fns. 454 and 1825, quoting Report titled "Reported to Brother 89," 22 February 1976, D1.3.12.3.

¹⁴⁸² Final Submission, fns. 455 and 1827, quoting Military Meeting Minutes titled "Meeting of Secretaries and Deputy Secretaries of Division and Independent Regiments," 9 October 1976, D1.3.27.20, EN 00940340.

¹⁴⁸³ Final Submission, para. 487.

¹⁴⁸⁴ Final Submission, fn. 1826, quoting Military Meeting Minutes titled "Minutes of Divisional and Regiment Under-Secretary of Logistics Meeting," 19 September 1976, D114/27.1.5, EN 00183980.

422. **Pak Sok.** Pak Sok is unreliable.¹⁴⁸⁵ He claimed Tuek Sap was a Division 164 detention office,¹⁴⁸⁶ but based his claim only on seeing three chained men working near Tuek Sap one day while walking to work.¹⁴⁸⁷ Pak Sok also provided contradictory testimony about who was sent to Tuek Sap, telling the OCIJ that people who committed serious wrongdoings generally were not detained at Tuek Sap¹⁴⁸⁸ but later telling the Trial Chamber that people who committed serious acts or serious infractions were sent there.¹⁴⁸⁹
423. **Svay Saman.** Svay Saman is unreliable. He gave conflicting evidence about Tuek Sap and made statements based on hearsay. Svay Saman was an ordinary combatant in Regiment 63 who worked at Kang Keng airport until he was sent to the East Zone.¹⁴⁹⁰ He said he only heard of MEAS Muth at the time of his first OCIJ interview in 2015,¹⁴⁹¹ but later said he saw MEAS Muth come in a Chinese jeep to inspect Tuek Sap prison.¹⁴⁹² He then admitted he heard from subordinates that MEAS Muth visited the site every four to five months, but did not see it first-hand.¹⁴⁹³ He also said he was not a Tuek Sap guard, as claimed by another witness.¹⁴⁹⁴ He said he never went to Tuek Sap¹⁴⁹⁵ and did not know its use.¹⁴⁹⁶ He then wanted to tell the truth and said he cooked for guards there.¹⁴⁹⁷
424. The ICP cites several other witnesses who claim Tuek Sap was under Division 164's jurisdiction.¹⁴⁹⁸ Most of these witnesses' statements are based on speculation, hearsay, or are misrepresented. Long Phansy, commander of an artillery battalion,¹⁴⁹⁹ claimed Tuek Sap was under Division 164's jurisdiction¹⁵⁰⁰ but immediately qualified his claim by

¹⁴⁸⁵ See *supra* paras. 233-34 for more information about this witness.

¹⁴⁸⁶ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A40-41. Final Submission, fn. 1824.

¹⁴⁸⁷ Written Record of Interview of Pak Sok, 22 October 2013, D54/27, A6-12.

¹⁴⁸⁸ Written Record of Interview of Pak Sok, 22 October 2013, D54/27, A8-9.

¹⁴⁸⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 14.09.06-14.11.49.

¹⁴⁹⁰ Written Record of Interview of Svay Saman, 2 September 2015, D114/114, A11, 15, 26-27.

¹⁴⁹¹ Written Record of Interview of Svay Saman, 2 September 2015, D114/114, A19-20.

¹⁴⁹² Written Record of Interview of Svay Saman, 4 September 2015, D114/116, A6-8. Final Submission, fn. 1828. See also Final Submission, fns. 194, 456-57.

¹⁴⁹³ Written Record of Interview of Svay Saman, 4 September 2015, D114/116, A9-11.

¹⁴⁹⁴ See e.g., Written Record of Interview of Svay Saman, 2 September 2015, D114/114, A37-38, 40; Written Record of Interview of Svay Saman, 3 September 2015, D114/115, A26.

¹⁴⁹⁵ Written Record of Interview of Svay Saman, 2 September 2015, D114/114, A28.

¹⁴⁹⁶ Written Record of Interview of Svay Saman, 2 September 2015, D114/114, A35-36.

¹⁴⁹⁷ Written Record of Interview of Svay Saman, 3 September 2015, D114/115, A27-28.

¹⁴⁹⁸ Final Submission, fn. 1824.

¹⁴⁹⁹ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A15.

¹⁵⁰⁰ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A41.

saying, “This is just my conclusion.”¹⁵⁰¹ Sam Saom, stationed on islands and then in Ream,¹⁵⁰² said MEAS Muth controlled Tuek Sap prison.¹⁵⁰³ He heard this from his colleagues.¹⁵⁰⁴ Mak Chhoeun, commander of Battalion 560 on Koh Thmei,¹⁵⁰⁵ said Tuek Sap was the only Division 164 detention office he knew about,¹⁵⁰⁶ but heard this from Regiment 63 soldiers.¹⁵⁰⁷ He also indicated that commanders decided on their own to send soldiers to Tuek Sap.¹⁵⁰⁸ He heard all detainees were released,¹⁵⁰⁹ which Hieng Ret confirmed.¹⁵¹⁰ Kuy Nen, a fisherman near Tuek Sap,¹⁵¹¹ never went to Tuek Sap prison,¹⁵¹² never saw prisoners,¹⁵¹³ and only heard from a soldier that it was a detention place or prison.¹⁵¹⁴ Prak Bunny, a member of a children’s unit,¹⁵¹⁵ said everyone knew of Tuek Sap prison¹⁵¹⁶ but his knowledge is based on hearsay¹⁵¹⁷ and what he saw after January 1979.¹⁵¹⁸ Sok Vanna, who joined the navy in 1977,¹⁵¹⁹ was mainly at sea or on the islands and only visited the mainland about every six months.¹⁵²⁰ The ICP incorrectly cites him to assert that Chorn, a Regiment 63 commander at Tuek Sap, received orders directly from MEAS Muth.¹⁵²¹ Sok Vanna said Chorn got orders from MEAS Muth.¹⁵²²

¹⁵⁰¹ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A41.

¹⁵⁰² Written Record of Interview of Sam Saom, 19 August 2013, D54/20, A2-4.

¹⁵⁰³ Written Record of Interview of Sam Saom, 19 August 2013, D54/20, Q-A10. *See also* Final Submission, fn. 458.

¹⁵⁰⁴ Written Record of Interview of Sam Saom, 19 August 2013, D54/20, A11-12.

¹⁵⁰⁵ Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, Q-A22, A32.

¹⁵⁰⁶ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, Q-A8.

¹⁵⁰⁷ Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A47 (in A38-39, he says he saw the detention office because he traveled past it but then says he heard from Regiment 63 soldiers that it was a detention office).

¹⁵⁰⁸ Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A42-43 (stating that he never sent his soldiers to Tuek Sap, although he could not speak for other units).

¹⁵⁰⁹ Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A38.

¹⁵¹⁰ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A141-42.

¹⁵¹¹ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A12.

¹⁵¹² Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A20, 22.

¹⁵¹³ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A19, 21.

¹⁵¹⁴ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A13-14, 19.

¹⁵¹⁵ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A9.

¹⁵¹⁶ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A98.

¹⁵¹⁷ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A82, 86: “A82: I heard from my chiefs that they were soldiers who were politically incorrect.... A86: ... I asked my colleagues who saw them and they said those prisoners had already been sent to Tuek Sab Prison.”

¹⁵¹⁸ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A93-94.

¹⁵¹⁹ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A4-6.

¹⁵²⁰ Written Record of Interview of Sok Vanna, 15 October 2014, D114/15, A19, 21. Sok Vanna joined Regiment 140 in 1977, after which he no longer knew about the army; prior to joining the navy, he was in Regiment 33, which he said was based in Tuek Sap under the command of Yan. Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A4-6.

¹⁵²¹ Final Submission, para. 489, fn. 1842, quoting Written Record of Interview of Sok Vanna, 15 October 2014, D114/15, A26.

¹⁵²² Written Record of Interview of Sok Vanna, 15 October 2014, D114/15, A26.

He was referring to the commander of his anti-submarine ship, not the Regiment 63 commander.¹⁵²³

425. The ICP claims that MEAS Muth presided over regular meetings with regiment commanders including, impliedly, the regiment commander overseeing Tuek Sap.¹⁵²⁴ The ICP cites Dol Song, Chet Bunna, Lon Seng, Mak Chhoeun, and Soem Ny.¹⁵²⁵ Most of these witnesses do not mention the content of meetings, only that meetings were held. Dol Song, “just a normal soldier,”¹⁵²⁶ claimed MEAS Muth presided over regular meetings between regiment commanders and the special battalion.¹⁵²⁷ He did not attend such meetings.¹⁵²⁸ Chet Bunna claimed MEAS Muth called battalion and regiment commanders to his place to receive orders.¹⁵²⁹ Given his rank and location,¹⁵³⁰ he would not have known the details of any such meetings. Lon Seng¹⁵³¹ said only that MEAS Muth chaired a special meeting for certain battalion and regiment leaders about East Zone soldiers.¹⁵³² He did not say MEAS Muth regularly held meetings for battalion and regiment commanders. Mak Chhoeun said both Dim and MEAS Muth chaired meetings.¹⁵³³ Soem Ny¹⁵³⁴ claimed to have seen from afar commanders arriving at MEAS Muth’s house.¹⁵³⁵ He did not say he attended any such meetings.

c. Stung Hav worksite

426. The ICP claims that MEAS Muth inspected and was responsible for Stung Hav worksite, including holding meetings there.¹⁵³⁶ The ICP primarily cites unreliable or

¹⁵²³ Written Record of Interview of Sok Vanna, 15 October 2014, D114/15, Q-A26: “Q: Who was the commander of the anti-submarine ship? A26: I was on Ship 011, and my commander was Chhorn. Chorn got orders directly from MEAS Mut. Both anti-submarine ships were under the direct command of MEAS Mut.”

¹⁵²⁴ Final Submission, para. 489.

¹⁵²⁵ Final Submission, fn. 1843.

¹⁵²⁶ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A27.

¹⁵²⁷ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A14-15.

¹⁵²⁸ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A5-6, 9.

¹⁵²⁹ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A20.

¹⁵³⁰ See *supra* paras. 186-88 for more information about this witness.

¹⁵³¹ See *supra* para. 194 for more information about this witness.

¹⁵³² Written Record of Interview of Lon Seng, 11 December 2013, D54/44, A26-28.

¹⁵³³ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A16-17.

¹⁵³⁴ See *supra* paras. 245 and 406-08 for more information about this witness.

¹⁵³⁵ Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A6. Final Submission, fn. 1843.

¹⁵³⁶ Final Submission, paras. 63, 193-97, 605-12.

unsupportive statements from Uy Nhik, Meas Im, Long Phansy, Pres Mean, and Pen Sarin.¹⁵³⁷ He also cites documentary evidence that does not support his claim.

427. **Uy Nhik.** Uy Nhik is unreliable regarding MEAS Muth and Stung Hav.¹⁵³⁸ Even if the CIJs consider Uy Nhik's statements reliable, they do not establish that MEAS Muth visited Stung Hav "on a number of occasions, sometimes as frequently as weekly."¹⁵³⁹ Nor do they establish that MEAS Muth inspected the site or had authority over it. His statements establish only that MEAS Muth drove past Stung Hav.
428. **Meas Im.** Meas Im is unreliable.¹⁵⁴⁰ He said MEAS Muth began visiting Stung Hav in mid-1976¹⁵⁴¹ and instructed Mienh, the Stung Hav chief, by telephone and telegram.¹⁵⁴² He said he knew MEAS Muth communicated with Mienh because he saw the equipment at Mienh's house.¹⁵⁴³ Meas Im also said, however, that he did not go to Stung Hav or meet MEAS Muth until 1977.¹⁵⁴⁴
429. **Long Phansy.** Long Phansy does not support the ICP's claim. He was transferred to work at Stung Hav in 1976.¹⁵⁴⁵ He said he saw MEAS Muth at Stung Hav when they inaugurated the site or when the Chinese visited.¹⁵⁴⁶ That MEAS Muth may have been present at Stung Hav when it was inaugurated or when Chinese visitors were there does not mean he had authority over the site. Long Phansy claimed "they" would not let him get close to MEAS Muth at Stung Hav because "they" no longer trusted him,¹⁵⁴⁷ indicating that someone other than MEAS Muth had authority over Stung Hav.
430. **Pres Mean.** Pres Mean does not support the ICP's claim. His battalion commander sent him to Stung Hav in 1976.¹⁵⁴⁸ He is the only witness the ICP cites to support his

¹⁵³⁷ Final Submission, fns. 194, 2358-62, 2365-69, 2373-77.

¹⁵³⁸ See *supra* para. 252 for more information about this witness's statements.

¹⁵³⁹ Final Submission, para. 605. See also *id.*, para. 197.

¹⁵⁴⁰ See *supra* para. 253 for more information about this witness.

¹⁵⁴¹ Written Record of Interview of Meas Im, 10 June 2016, D114/215, Q-A62, 64. Final Submission, paras. 605, 608, and fns. 2359, 2361, 2373-76. See also Final Submission, paras. 197, 610, and fns. 194, 536-37.

¹⁵⁴² Final Submission, para. 608, fns. 2373-76.

¹⁵⁴³ Written Record of Interview of Meas Im, 10 June 2016, D114/215, A75-76. Final Submission, fns. 2374-75.

¹⁵⁴⁴ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A25, 28-29; Written Record of Interview of Meas Im, 10 June 2016, D114/215, A39.

¹⁵⁴⁵ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A15.

¹⁵⁴⁶ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, Q-A26. Final Submission, fns. 536-37, 2359-60.

¹⁵⁴⁷ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A26.

¹⁵⁴⁸ Written Record of Interview of Pres Mean, 25 June 2013, D54/12, A4, 6, 11-12, 14-15, 17.

claim that MEAS Muth held meetings at Stung Hav.¹⁵⁴⁹ Pres Mean said that, in mid-1977, he attended a non-routine meeting in Stung Hav led by MEAS Muth.¹⁵⁵⁰ This statement is indicative only of one special meeting, not of multiple or regular meetings. Meas Im did not know about any such meeting.¹⁵⁵¹ Other witnesses have said that other members of Division 164 held meetings at Stung Hav, not MEAS Muth.¹⁵⁵²

431. The ICP attempts to bolster his claim that MEAS Muth held meetings at Stung Hav by citing an OCIJ site identification report that includes the claim that “a meeting was held by Meas Muth [at the Stung Hav military base] in mid 1977.”¹⁵⁵³ This unsourced claim was based on Pres Mean’s statements since the site visit was conducted with him.¹⁵⁵⁴ This report adds no support to the ICP’s claim and is of little probative value. Its purpose is to physically identify potential crime sites, not to make claims about MEAS Muth.¹⁵⁵⁵

432. **Pen Sarin.** Pen Sarin is unreliable.¹⁵⁵⁶ He told the OCP that MEAS Muth visited Stung Hav on several occasions and stayed overnight in the same place that the Chinese technicians stayed.¹⁵⁵⁷ To the OCIJ, he said he never saw MEAS Muth and that MEAS Muth never came to his workplace.¹⁵⁵⁸

433. The ICP claims that Stung Hav was discussed in Division 164 meetings and that MEAS Muth was “apprised” of matters related to Stung Hav, including the search for enemies.¹⁵⁵⁹ In an effort to substantiate his claims, the ICP misrepresents the minutes of a 9 September 1976 meeting between Son Sen and unidentified members of Division

¹⁵⁴⁹ Final Submission, para. 606, fns. 2365-69.

¹⁵⁵⁰ Written Record of Interview of Pres Mean, 25 June 2013, D54/12, A23, 25, 28, 30; Written Record of Interview of Pres Mean, 26 June 2013, D54/13, Q-A1-2, 4, 17. Final Submission, fns. 2365-69.

¹⁵⁵¹ Written Record of Interview of Meas Im, 10 June 2016, D114/215, Q-A81-82. If the CIJs consider Meas Im’s statements to be reliable and of probative value, they must also consider this statement.

¹⁵⁵² Written Record of Interview of Iem Phong, 1 October 2015, D114/130, A122; Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A24-25. *See also* Final Submission, fn. 2379.

¹⁵⁵³ Site Identification Report, 26 March 2015, D114/60, EN 01082179. Final Submission, fn. 2364.

¹⁵⁵⁴ Site Identification Report, 26 March 2015, D114/60, EN 01082172.

¹⁵⁵⁵ The OCIJ Investigator noted: “This report is only a **site identification report**, it is not a forensic or crime scene report or a comprehensive report about the crimes and events occurred, since only preliminary inspections and fact findings measures were done (photos, measures, GPS, description, sketches, locating of graves). No consecutive measures (for e.g. exhumations) were done, and nothing was seized.” Site Identification Report, 26 March 2015, D114/60, fn. 1 (emphasis in original).

¹⁵⁵⁶ *See supra* para. 413 for more information about this witness.

¹⁵⁵⁷ OCP Interview with Pen Sarin, 13 August 2008, D1.3.13.8, EN 00217560. Final Submission, fns. 536-37, 2363. *See supra* para. 141 discussing the use of OCP interviews as evidence.

¹⁵⁵⁸ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A7.

¹⁵⁵⁹ Final Submission, para. 607. *See also id.*, paras. 195-96.

164.¹⁵⁶⁰ There is no indication MEAS Muth was present at or had any role in this meeting.¹⁵⁶¹ Stung Hav is mentioned once regarding a planned defection by forces from Chroy Changvar.¹⁵⁶² The portion of the minutes that the ICP quotes relates to Son Sen's instructions regarding 40 soldiers who tried to leave Stung Hav; it does not relate broadly to Stung Hav or the general search for enemies.¹⁵⁶³

434. The ICP claims that a 20 September 1976 telegram and a 24 September 1976 telegram are indicative of MEAS Muth's authority over and knowledge of Stung Hav, including crimes committed therein.¹⁵⁶⁴ These telegrams do not support the ICP's claim. The 20 September 1976 telegram does not relate to Stung Hav but to a boat stopped at Sanghav.¹⁵⁶⁵ Rather than indicating MEAS Muth's authority over Stung Hav, the 24 September 1976 telegram indicates Dim's authority over the site. Dim could make decisions regarding soldiers there, as indicated by his decision to transfer two combatants away from Stung Hav.¹⁵⁶⁶

435. Other witnesses said MEAS Muth did not go to Stung Hav. Iem Phong, who was there for two years, only ever saw Division 164 Committee members Chhan and Dim.¹⁵⁶⁷ Em Son,¹⁵⁶⁸ Chet Bunna,¹⁵⁶⁹ and Prak Sokha¹⁵⁷⁰ said MEAS Muth did not visit Stung Hav. Sok Neang, from Battalion 167,¹⁵⁷¹ also did not see MEAS Muth there.¹⁵⁷²

¹⁵⁶⁰ Final Submission, fns. 2370-71.

¹⁵⁶¹ Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657354-00657356.

¹⁵⁶² Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657355.

¹⁵⁶³ Final Submission, para. 607, quoting Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657356.

¹⁵⁶⁴ Final Submission, paras. 195, 608.

¹⁵⁶⁵ Telegram titled "Telegram from Mut to Brother 89," 20 February 1976, D4.1.1020, EN 00525783. Final Submission, fn. 529.

¹⁵⁶⁶ Telegram titled "Eleventh Telegram to Brother Mut about the Enemy Situation Along the Border," 24 September 1976, D4.1.699. Final Submission, fn. 2377. *See also* Final Submission, para. 608, in which the ICP asserts that Dim and Chhan "had some responsibility for Stung Hav" prior to their arrests.

¹⁵⁶⁷ Written Record of Interview of Iem Phong, 1 October 2015, D114/130, Q-A115. Although he then said he thought orders came from MEAS Muth because MEAS Muth controlled Kampong Som, Stung Hav was near Kampong Som, and military construction was occurring at Stung Hav, these statements were speculative because he never saw MEAS Muth. *Id.*, A136-37, 146.

¹⁵⁶⁸ Written Record of Interview of Em Son, 29 November 2013, D54/49, A32-33.

¹⁵⁶⁹ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A20. Chet Bunna stated that he heard MEAS Muth went to Stung Hav before Chet Bunna worked there; this statement is of little probative value, however, as it is based on hearsay. Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, Q-A25.

¹⁵⁷⁰ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A17-18.

¹⁵⁷¹ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A5, 13.

¹⁵⁷² Written Record of Interview of Sok Neang, 11 June 2015, D114/83, Q-A42.

d. Ream area worksites and cooperatives

436. The ICP claims that MEAS Muth inspected and was responsible for Ream area worksites and cooperatives.¹⁵⁷³ The ICP primarily cites unreliable and unresponsive statements from Say Born, Uk Sok, Prak Sokha, Soeng Noch, Yin Teng, Sok Vanna, Sam Saom, Chet Bunna, Kuy Sambath, and Long Ly, as well as documentary evidence.¹⁵⁷⁴
437. **Say Born.** Say Born is unreliable. His statements are based on hearsay and speculation. He was a sailor based in Smach Daeng until 1976 when he moved to Ouchheuteal Beach.¹⁵⁷⁵ He claimed a Kang Keng brick kiln site was under Division 164's control because MEAS Muth inspected work there.¹⁵⁷⁶ His friend told him MEAS Muth had come to look at the site.¹⁵⁷⁷ Based on this statement, Say Born concluded MEAS Muth inspected the site and, therefore, it was under Division 164.¹⁵⁷⁸
438. **Uk Sok.** Uk Sok is unreliable. Her statements are based on hearsay. She also made contradictory statements and has memory problems. She was a child caretaker in Kampong Som.¹⁵⁷⁹ She heard MEAS Muth visited a rice field near Kang Keng airport and sometimes heard that he stood on the national road.¹⁵⁸⁰ She never met him.¹⁵⁸¹ She did not know who oversaw Kampong Som Province.¹⁵⁸² Although she claimed Division 3 oversaw worksites near her cooperative, she did not remember what Division 3 became until the OCIJ Investigator told her the Division's new name, at which point she adopted the Investigator's statement.¹⁵⁸³ She gave conflicting statements in her OCIJ and DC-Cam interviews, including regarding who oversaw a Division 164 hospital,¹⁵⁸⁴ how many children were in her unit and how much food they received,¹⁵⁸⁵ and whether people

¹⁵⁷³ Final Submission, paras. 63, 186-92, 662-66.

¹⁵⁷⁴ Final Submission, fns. 194, 513-24, 2668-95.

¹⁵⁷⁵ Written Record of Interview of Say Born, 7 September 2010, D2/9, A3, 7, 9-10, 44, 55.

¹⁵⁷⁶ Written Record of Interview of Say Born, 14 August 2013, D54/17, A14-15. Final Submission, fns. 194, 520, 2668.

¹⁵⁷⁷ Written Record of Interview of Say Born, 14 August 2013, D54/17, A16.

¹⁵⁷⁸ Written Record of Interview of Say Born, 14 August 2013, D54/17, A15.

¹⁵⁷⁹ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, Q-A51-52.

¹⁵⁸⁰ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, Q-A216-17, 224. Final Submission, fns. 520, 2678.

¹⁵⁸¹ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A64.

¹⁵⁸² Written Record of Interview of Uk Sok, 25 February 2015, D114/53, Q-A249.

¹⁵⁸³ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, Q-A251-53. Final Submission, fn. 2668.

¹⁵⁸⁴ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A83-89.

¹⁵⁸⁵ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A102-03, 110-17.

disappeared or were arrested from her cooperative.¹⁵⁸⁶ She also admitted to having memory problems, telling the OCIJ Investigator: “Like now, after I speak, I forget.”¹⁵⁸⁷

439. **Prak Sokha.** Prak Sokha is unreliable. His statements are based on hearsay and his OCIJ interview was tainted. He was in an artillery unit until he was moved to a mobile unit in Kang Keng and then to Stung Hav.¹⁵⁸⁸ He heard “from mouth to mouth” that MEAS Muth oversaw the Zone, but was unclear about it because he was not allowed to know such matters.¹⁵⁸⁹ He heard from his commander that his unit was under Division 164¹⁵⁹⁰ but the Division leadership never inspected his unit.¹⁵⁹¹ Aside from Prak Sokha’s lack of personal knowledge of MEAS Muth or Division 164, his OCIJ interview was tainted. The OCIJ Investigator began the interview by reading Prak Sokha’s DC-Cam interview, “to stimulate [his] memory.”¹⁵⁹² Prak Sokha then confirmed his DC-Cam interview.¹⁵⁹³ As another Investigator did regarding Seng Soeun,¹⁵⁹⁴ rather than first questioning Prak Sokha to obtain his independent recollections or determine whether he had forgotten something, the Investigator “refreshed” Prak Sokha’s memory before there was any indication of a need to do so. Prak Sokha’s evidence was tainted.¹⁵⁹⁵

440. **Soeng Noch.** Soeng Noch is unreliable. His statement is based on hearsay and speculation. Soeng Noch was in a children’s unit in Battalion 580.¹⁵⁹⁶ He never met MEAS Muth.¹⁵⁹⁷ In early 1977 at Kang Keng airport, he saw a man from behind who was riding a bicycle, and someone told him this man was MEAS Muth.¹⁵⁹⁸

¹⁵⁸⁶ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A147-52.

¹⁵⁸⁷ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A150. *See also id.*, A151 (saying she does not have a good memory now).

¹⁵⁸⁸ Written Record of Interview of Prak Sokha, 12 November 2013, D54/35, A10, 12, 17.

¹⁵⁸⁹ Written Record of Interview of Prak Sokha, 12 November 2013, D54/35, A16.

¹⁵⁹⁰ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A19-20. Final Submission, fn. 2668.

¹⁵⁹¹ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A18.

¹⁵⁹² Written Record of Interview of Prak Sokha, 12 November 2013, D54/35, Q-A2.

¹⁵⁹³ Written Record of Interview of Prak Sokha, 12 November 2013, D54/35, Q-A3.

¹⁵⁹⁴ *See supra* para. 184 and Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, EN 01237985.

¹⁵⁹⁵ *See* MEAS Muth’s Request that the Co-Investigating Judges Instruct the OCIJ Investigators to Audio or Video Record all Witness and Civil Party Interviews, 27 April 2015, D136, paras. 16-24, discussing the ways in which questioning techniques can impact witness statements, particularly those from elderly witnesses.

¹⁵⁹⁶ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A10, 13, 17.

¹⁵⁹⁷ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, Q-A50.

¹⁵⁹⁸ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A50-54. Final Submission, fn. 520.

441. **Yin Teng.** Yin Teng is unreliable.¹⁵⁹⁹ The ICP cites Yin Teng to support his claims that MEAS Muth's name was frequently invoked by supervisors when discussing the labor to be done at Ream worksites.¹⁶⁰⁰ He ignores her contradictory statements about MEAS Muth. She first said the village chiefs did not mention MEAS Muth in meetings.¹⁶⁰¹ Later, she said he was mentioned every one or two weeks in daily cooperative meetings and that the village chiefs would say his orders had to be followed or there would be trouble.¹⁶⁰²
442. **Sok Vanna.** Sok Vanna is unreliable.¹⁶⁰³ He heard from others that MEAS Muth had authority over "ordinary people" such as cooperative and commune chiefs.¹⁶⁰⁴ He had no personal knowledge of MEAS Muth's authority over worksites or cooperatives.
443. **Sam Saom.** Sam Saom is unreliable. He speculated about Division 164. He was in a regiment stationed on Koh Tang but moved around to other islands and Ream.¹⁶⁰⁵ He was not sure who had authority over Put Thoeung dam, but speculated it was under Division 164 because it was in an area controlled by Division 164.¹⁶⁰⁶ It is unlikely he would have had detailed knowledge of Ream area worksites or cooperatives under Division 164's authority, since he was mainly stationed on Koh Tang and other islands.¹⁶⁰⁷
444. **Chet Bunna.** Chet Bunna is unreliable.¹⁶⁰⁸ He claimed MEAS Muth oversaw civilian cooperatives including Thmar Thom, Ou Mlou, Lar Ed, Smach Deng, Put Thoeung, and Babos.¹⁶⁰⁹ Chet Bunna was not present in all these locations and gave conflicting information about his location from early 1977 to September 1978. He first said he was building dams and canals in Smach Deng and Babos.¹⁶¹⁰ He then said he was in Tuek

¹⁵⁹⁹ See *supra* paras. 378-80 for more information about this witness.

¹⁶⁰⁰ Final Submission, para. 666, fns. 2689-90. See also *id.*, para. 192, fn. 523.

¹⁶⁰¹ Written Record of Interview of Yin Teng, 7 October 2014, D114/6, Q-A35, 114.

¹⁶⁰² Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A153-54. Final Submission, fns. 2689-90.

¹⁶⁰³ See *supra* para. 343 for more information about this witness.

¹⁶⁰⁴ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A14-15. Final Submission, fns. 194, 231-32.

¹⁶⁰⁵ Written Record of Interview of Sam Saom, 19 August 2013, D54/20, A2-4.

¹⁶⁰⁶ Written Record of Interview of Sam Saom, 20 March 2015, D114/58, A14. Final Submission, fn. 194. See also Final Submission, para. 668, fn. 2699.

¹⁶⁰⁷ Written Record of Interview of Sam Saom, 19 August 2013, D54/20, A3-4, 12.

¹⁶⁰⁸ See *supra* paras. 186-88 for more information about this witness.

¹⁶⁰⁹ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A10. Final Submission, fn. 2668.

¹⁶¹⁰ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A16.

Sap.¹⁶¹¹ These locations are near each other but are not the same places.¹⁶¹² Chet Bunna gave no indication he was ever in Thmar Thom, Ou Mlou, Lar Ed, or Put Thoeung.

445. **Kuy Sambath.** Kuy Sambath does not support the ICP's claims. He lived near Kang Keng airport.¹⁶¹³ He said MEAS Muth was a kind, good person who often ate dinner at his house and never harmed anyone in Kang Keng.¹⁶¹⁴ He did not say MEAS Muth inspected Kang Keng or other Ream-area worksites or cooperatives.

446. **Long Ly.** Long Ly is unreliable. She did not testify under oath. Long Ly was married to the Put Thoeung cooperative chairman.¹⁶¹⁵ She claimed MEAS Muth came to the cooperative occasionally to see if they needed anything, that they could give him written requests, and he would send messengers telling them about meetings.¹⁶¹⁶ She made these statements in a DC-Cam interview, which is of little probative value.¹⁶¹⁷ The OCIJ was unable to interview her separately and test her evidence.¹⁶¹⁸

447. The ICP claims that a 24 September 1976 telegram from Dim regarding matters in Ream and Babos Py sub-districts indicates MEAS Muth's authority over and knowledge of Ream area worksites and cooperatives.¹⁶¹⁹ Rather than indicating MEAS Muth had authority over Ream worksites and cooperatives, the telegram indicates Dim had authority over the area. Dim arrested the five people referred to in the telegram, took political and consciousness measures, and organized more patrol units to conduct searches.¹⁶²⁰ At most, the telegram indicates that MEAS Muth decided unidentified measures to be taken against unidentified people regarding an unidentified issue.

448. The ICP claims that meeting minutes in which MEAS Muth and Dim allegedly reported to Son Sen about various matters involving Ream indicate MEAS Muth closely

¹⁶¹¹ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A25.

¹⁶¹² See e.g., Administrative Map of Sihanoukville Province, D114/77.2, KH 01101729; Administrative Map of Prey Nob District, D54/89.1, KH 00987086.

¹⁶¹³ Written Record of Interview of Kuy Sambath, 1 May 2015, D114/68, A5.

¹⁶¹⁴ Written Record of Interview of Kuy Sambath, 1 May 2015, D114/68, A5. Final Submission, fns. 520, 2677.

¹⁶¹⁵ DC-Cam Interview with Long Ly, 18 April 2012, D59/1/4.25, EN 00970702.

¹⁶¹⁶ DC-Cam Interview with Long Ly, 18 April 2012, D59/1/4.25, EN 00970714. Final Submission, paras. 67, 192; fns. 202, 521-22, 524. See also Final Submission, para. 666, fns. 2692, 2694-95.

¹⁶¹⁷ See *supra* para. 142 discussing the use of this type of evidence.

¹⁶¹⁸ Written Record of Investigation Action, 20 November 2015, D114/142, EN 01175091-01175092.

¹⁶¹⁹ Final Submission, paras. 662-63. See also *id.*, para. 188, fns. 513-15.

¹⁶²⁰ Telegram titled "Eleventh Telegram to Brother Mut about the Enemy Situation Along the Border," 24 September 1976, D4.1.699. See also Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 9 October 1976, D1.3.27.20, EN 00940340, in which Dim reports to Son Sen on the capture of bandits in Ream who had gone into the forest.

supervised and had detailed knowledge of Ream area worksites.¹⁶²¹ The ICP overreaches. That MEAS Muth may have reported to Son Sen about rice production in Kampong Som or Ream¹⁶²² does not mean he was the sole authority or had any authority over the events being reported. As the ICP acknowledges,¹⁶²³ Dim and other Division 164 Committee members also reported to Son Sen about the Ream area, including arrests and strange activities in Kang Keng.¹⁶²⁴

449. The ICP claims that MEAS Muth gave speeches near Kang Keng airfield denouncing traitors, after which people were sent to production units and worksites in the Ream area.¹⁶²⁵ The ICP cites unreliable and unresponsive statements from Ek Ny, Seng Sin, Lon Seng, and Moul Chhin.¹⁶²⁶

450. **Ek Ny.** Ek Ny is unreliable.¹⁶²⁷ He said MEAS Muth gave a speech at a large meeting near Kang Keng airfield where he read traitors' confessions and that he named people who were traitors to the revolution.¹⁶²⁸ It is not clear from Ek Ny's statements whether he referred to one or several meetings. He does not say MEAS Muth sent soldiers to production units.

451. **Seng Sin.** Seng Sin is unreliable. He gave contradictory information about MEAS Muth. He was "just an ordinary soldier" on Koh Tang who was transferred to work in a production unit.¹⁶²⁹ He said he attended a meeting at Kang Keng airport at which MEAS Muth read Norng Chhang's confession aloud and said he was a traitor, after which Seng Sin was sent to farm rice.¹⁶³⁰ He did not say this meeting occurred at a worksite, or that

¹⁶²¹ Final Submission, para. 663.

¹⁶²² See e.g., Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18, EN 00195341; Military Meeting Minutes titled "Minutes of the Plenary of the Brigade/Division Committees/Commanders," 21 November 1976, D1.3.27.22, EN 00656384.

¹⁶²³ Final Submission, para. 663, fns. 2672-73.

¹⁶²⁴ Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657355; Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 9 October 1976, D1.3.27.20, EN 00940340. Final Submission, fns. 517, 519.

¹⁶²⁵ Final Submission, paras. 664-65.

¹⁶²⁶ Final Submission, fns. 2680-84, 2686-88. See also Final Submission, fns. 242, 244.

¹⁶²⁷ See *supra* paras. 251 and 410 for more information about this witness.

¹⁶²⁸ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A1; Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A3; Written Record of Interview of Ek Ny, 4 June 2014, D54/105, A6. Final Submission, fns. 2680, 2682-84.

¹⁶²⁹ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A10, 25, 46, 61.

¹⁶³⁰ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A56, 60-61. Final Submission, fns. 2680-81.

MEAS Muth sent him to farm rice. He said his company commander told him about the creation of Division 164 and that MEAS Muth was its commander, and that no higher-ranking people ever went to Koh Tang.¹⁶³¹ He then said MEAS Muth, Norng Chhan, and the other deputy commanders went to Koh Tang to announce the formation of Division 164.¹⁶³²

452. **Lon Seng.** Lon Seng is unreliable.¹⁶³³ He said he attended a meeting at which MEAS Muth said East Zone cadres had to be demobilized because they were bad elements, and that these cadres were then sent to a production unit.¹⁶³⁴ He said only MEAS Muth would have the authority to send the cadres to the production unit.¹⁶³⁵ The ICP misleads as to Lon Seng's statements. Lon Seng was "not sure" who decided to send soldiers to a production unit but "think[s]" the decision was made by MEAS Muth.¹⁶³⁶

453. **Moul Chhin.** Moul Chhin is unreliable.¹⁶³⁷ He said MEAS Muth's men gathered his unit for a "big meeting" and told them they would be sent to different worksites.¹⁶³⁸ Despite first saying he had to attend this meeting, he then said the meeting was attended only by battalion and regiment commanders.¹⁶³⁹ Moul Chhin speculated about MEAS Muth's role in this meeting and in sending him to a production unit.¹⁶⁴⁰ If the CIJs accord Moul Chhin's statement any probative value, they must consider his statement that Ta Mok was involved in the meeting with MEAS Muth.¹⁶⁴¹ His statement shows Ta Mok had authority over Division 164.¹⁶⁴²

454. As with Stung Hav, other members of the Division 164 Committee had authority over Ream area worksites and cooperatives.¹⁶⁴³ For example, Kang Sum, who worked at a rock quarry near Kang Keng airport, heard that Nhan, deputy commander of Division 164, set

¹⁶³¹ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A16, 19, 36.

¹⁶³² Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A171-77.

¹⁶³³ See *supra* para. 194 for more information about this witness.

¹⁶³⁴ Written Record of Interview of Lon Seng, 11 December 2013, D54/44, Q-A19, 22. Final Submission, fn. 2686.

¹⁶³⁵ Written Record of Interview of Lon Seng, 12 December 2013, D54/45, Q-A16. Final Submission, fn. 2687.

¹⁶³⁶ Written Record of Interview of Lon Seng, 12 December 2013, D54/45, A15.

¹⁶³⁷ See *supra* para. 361 for more information about this witness.

¹⁶³⁸ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A93. Final Submission, fn. 2688.

¹⁶³⁹ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A95-96. Final Submission, fn. 2688.

¹⁶⁴⁰ See *supra* para. 361.

¹⁶⁴¹ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A96.

¹⁶⁴² See *supra* paras. 169-70 and 172, regarding Ta Mok's authority over military matters.

¹⁶⁴³ See *supra* para. 448 regarding other Division 164 members reporting to Son Sen about the Ream area.

the site's work quota.¹⁶⁴⁴ He said Nhan commanded the site and was the only Division 164 leader who visited it.¹⁶⁴⁵

e. Conclusion

455. MEAS Muth did not have authority over security centers at Wat Enta Nhien or Tuek Sap, a worksite at Stung Hav, or worksites or cooperatives in Ream. The ICP cites witness and documentary evidence that is unreliable or does not support his claims. Other Division 164 members had authority over these sites. Even if MEAS Muth had any such authority, considering the level of suffering across DK, it would not elevate him to the category of "most responsible."

6. Authority to appoint, promote, and dismiss personnel in Division 164 and Kampong Som Autonomous Sector does not make MEAS Muth one of those "most responsible"

456. The sources the ICP cites do not support his claim that MEAS Muth had the power to appoint, promote, and dismiss military and civilian personnel in Division 164 and Kampong Som Autonomous Sector, including by ordering their demobilization, arrest, and execution.¹⁶⁴⁶ The ICP primarily cites unresponsive and unreliable S-21 prisoner lists and statements from Sok Ren, Hing Uch, Seng Sin, and Ek Ny. Neither the documents nor the witness statements indicate that MEAS Muth was the person who appointed, promoted, or dismissed the people referred to therein. The witnesses merely identify these people as holding or taking various positions in Division 164.¹⁶⁴⁷ Even if MEAS Muth did have such authority, it would not make him one of those most responsible for serious crimes committed across DK from 1975-1979.

457. The S-21 prisoner lists the ICP cites¹⁶⁴⁸ do not indicate MEAS Muth ordered the demobilization, arrest, or execution of the Division 164 names on these lists, only that people allegedly from Division 164 are on the lists. D114/145.1.17 is a list of people

¹⁶⁴⁴ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A177-78, 229, 271. The Defence has submitted that this witness is unreliable (*see supra* para. 225). However, if the CIJs deem his testimony reliable, they must consider this statement.

¹⁶⁴⁵ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A271, 273-74.

¹⁶⁴⁶ Final Submission, paras. 82, 490. *See also id.*, paras. 75, 221.

¹⁶⁴⁷ *See e.g.*, Final Submission, fn. 248. *See also id.*, fn. 1851.

¹⁶⁴⁸ Final Submission, fn. 249, citing S-21 Prisoner List, 26 August 1977, D1.3.28.45; S-21 Prisoner List, 2 June 1977, D1.3.28.2.

implicated by others, apparently prepared by S-21 staff.¹⁶⁴⁹ It does not indicate MEAS Muth's involvement in demobilizing, arresting, or executing the people implicated.

458. The ICP cites Sok Ren, Hing Uch, Seng Sin, and Ek Ny to support his claim that MEAS Muth promoted Division 164 personnel to replace people he demobilized, arrested, or executed.¹⁶⁵⁰ None of these witnesses said MEAS Muth had any involvement in demobilizations, arrests, or executions. Sok Ren, in a handicraft unit under Division 1's authority,¹⁶⁵¹ heard MEAS Muth was the Division 164 commander and simply said Dim, Yan, and Norng Chhan were in Division 164.¹⁶⁵² Hing Uch¹⁶⁵³ said only that Dim was the Division deputy commander from the East Zone, Chhan was a Division member from Koh Kong, and Yan later came to take charge of Division 164 with MEAS Muth.¹⁶⁵⁴ Seng Sin claimed only that MEAS Muth read Norng Chhan's confession in a meeting.¹⁶⁵⁵ Ek Ny¹⁶⁵⁶ similarly claimed only that MEAS Muth read Norng Chhan's confession in a meeting and made a rhyme of traitors' names including Yan's.¹⁶⁵⁷

459. Other witnesses the ICP cites also did not say MEAS Muth ordered the demobilization, arrest, or execution of any of the people mentioned in their statements, only that people were "removed," "disappeared," "taken away," or "arrested."¹⁶⁵⁸ The witnesses did not say who they thought was responsible for these acts. Even if any consideration is given to the evidence the ICP cites, he fails to establish that MEAS Muth

¹⁶⁴⁹ List of Implicated People in Division 164, 12 April 1977, D114/145.1.17. Final Submission, fn. 249.

¹⁶⁵⁰ Final Submission, paras. 82, 490. *See also id.*, paras. 75, 221.

¹⁶⁵¹ Written Record of Interview of Sok Ren, 13 January 2016, D114/155, A13-14, 17, 28, 43.

¹⁶⁵² Written Record of Interview of Sok Ren, 13 January 2016, D114/155, A67. Final Submission, fn. 249.

¹⁶⁵³ *See supra* para. 281 for more information about this witness.

¹⁶⁵⁴ Written Record of Interview of Hing Uch, 22 April 2014, D54/81, A14. Final Submission, fns. 249, 230.

¹⁶⁵⁵ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A60. Final Submission, fn. 249.

¹⁶⁵⁶ *See supra* para. 251 for more information about this witness.

¹⁶⁵⁷ Written Record of Interview of Ek Ny, 3 June 2014, D54/104, A5. Final Submission, fn. 249. The ICP also cites a statement from Ek Ny's POW-MIA statement regarding Norng Chhang being killed at Wat Enta Nhien (Final Submission, fn. 249, citing Statement of Aek Ny (POW/MIA), 19 December 2002, D4.1.747, EN 00387291). Ek Ny later corrected this statement and indicated he was referring to Rem, Battalion 386 commander, who he claimed was shot dead after he resisted and attacked some soldiers who were trying to arrest him. Written Record of Interview of Ek Ny, 2 April 2014, D54/101, A10. *See supra* para. 418 regarding this story.

¹⁶⁵⁸ Final Submission, fn. 249, citing Written Record of Interview of Meu Ret, 22 June 2013, D54/10, A8; Written Record of Interview of Iem Phong, 11 August 2015, D114/104, A53; Written Record of Interview of Svay Saman, 4 September 2015, D114/116, A31; Written Record of Interview of Em Son, 28 November 2013, D54/48, A58; Written Record of Interview of Dol Song, 18 June 2013, D54/7, A8; Written Record of Interview of Dol Song, 19 June 2013, D54/8, A4-5.

“dismissed” an “extensive list of cadres.”¹⁶⁵⁹ The evidence refers to approximately 15 Division 164 personnel who were allegedly removed, arrested, or executed.

460. The ICP claims that MEAS Muth appointed high-level Division 164 commanders to leadership positions in Kampong Som port.¹⁶⁶⁰ He primarily cites Em Son, Neak Khoeurn, Mut Mao, Nop Hal, Soem Ny, and Hieng Ret to support his claim.¹⁶⁶¹ The ICP overreaches. None of these witnesses indicate MEAS Muth played any role in appointing Division 164 personnel to the positions of chief and deputy chief of the Kampong Som port. Em Son¹⁶⁶² merely said Thuch Rin introduced Long Saroeun and Sok Pheap in a meeting in February 1978.¹⁶⁶³ Neak Khoeurn, a welder at the port,¹⁶⁶⁴ speculated “it was more likely” that Saroeun replaced Thuch Rin¹⁶⁶⁵ and admitted that he was too minor to know about it.¹⁶⁶⁶ Mut Mao¹⁶⁶⁷ said Saroeun and Nhan were on MEAS Muth’s Committee,¹⁶⁶⁸ but assumed this only because they worked in the same place as MEAS Muth.¹⁶⁶⁹ Nop Hal said only that Saroeun was transferred to take charge of the port.¹⁶⁷⁰ Soem Ny¹⁶⁷¹ said only that Saroeun replaced Thuch Rin.¹⁶⁷² Hieng Ret said only that deputy commanders often changed and that Toem Seng replaced Saroeun.¹⁶⁷³

461. The CPK senior leaders ordered the selection and movement of high-ranking cadres and soldiers. In practice, Committee members generally were appointed by the Committee of the level immediately above.¹⁶⁷⁴ For a Center military division, the General Staff appointed the Committee members.¹⁶⁷⁵ For an Autonomous Sector, the Central or

¹⁶⁵⁹ Final Submission, para. 82.

¹⁶⁶⁰ Final Submission, para. 75. *See also id.*, para. 221, fn. 666.

¹⁶⁶¹ Final Submission, fns. 230, 666.

¹⁶⁶² *See supra* para. 236 for more information about this witness.

¹⁶⁶³ Written Record of Interview of Em Son, 27 November 2013, D54/47, A37. Final Submission, fns. 230, 666.

¹⁶⁶⁴ Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A5, 8.

¹⁶⁶⁵ Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A17, 19.

¹⁶⁶⁶ Written Record of Interview of Neak Khoeurn, 24 March 2016, D114/195, A17.

¹⁶⁶⁷ *See supra* paras. 266-68 for more information about this witness and the unreliability of her statements.

¹⁶⁶⁸ Written Record of Interview of Mut Mao, 14 March 2014, D54/73, A6. Final Submission, fns. 230, 666.

¹⁶⁶⁹ Written Record of Interview of Mut Mao, 14 March 2014, D54/73, A8.

¹⁶⁷⁰ DC-Cam Interview with Nop Hal, 28 June 2007, D59/1/1.12, EN 00968421. Final Submission, fns. 230, 666.

¹⁶⁷¹ *See supra* paras. 245 and 406-08 for more information about this witness.

¹⁶⁷² Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A26. Final Submission, fn. 666.

¹⁶⁷³ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A28. Final Submission, fn. 666.

¹⁶⁷⁴ Case 002/01 Trial Judgement, para. 218.

¹⁶⁷⁵ Standing Committee Meeting Minutes, 9 October 1975, D1.3.27.1, EN 00183397 (Son Sen is instructed to grasp/control the forces, set up divisions and military installations, and organize the army, navy, and air force).

Standing Committee appointed high-level members.¹⁶⁷⁶ Thus, Pol Pot created the navy and the General Staff arranged Division 164.¹⁶⁷⁷ Ta Mok selected and screened people before they joined Division 3.¹⁶⁷⁸ Lon Seng thought the separation of East Zone soldiers from Division 164 was by order of the Center because the decision to organize a Division or combine Divisions could only be made by the Center.¹⁶⁷⁹ Hieng Ret said the Center ordered his unit to move elsewhere and leave Kampong Som port in the charge of others, and that the Center assigned the chief of the port.¹⁶⁸⁰ MEAS Muth did not have the sole authority to appoint, promote, or dismiss personnel. Even if he did have such authority, given his limited area of operations, it does not make him one of those “most responsible.”

7. Authority to punish subordinates does not make MEAS Muth one of those “most responsible”

462. The sources the ICP cites do not support his claims that MEAS Muth had the power and authority to punish his subordinates.¹⁶⁸¹ The ICP misleadingly cites the CPK Statute.¹⁶⁸² He ignores contextual and structural evidence. Even if MEAS Muth had the authority to punish subordinates, that does not mean he was one of those most responsible for serious crimes committed across DK from 1975-1979.

463. The ICP cites Article 6(5) of the CPK Statute, which provides: “At the designated times, lower echelon must report to upper echelon on the situation and on work done. Also at each designated time, upper echelon must report to lower echelons regarding the general situation and regarding instructions which they must carry out.”¹⁶⁸³ Article 6(5)

¹⁶⁷⁶ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 8; Written Record of Interview of Sao Sarun, 17 December 2008, D4.1.444, EN 00278695 (a Pich Chenda District secretary in Sector 105 who said the Sector 105 Secretary told him that the upper Angkar had him appoint the district secretaries); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 June 2016, D114/277.4, 11.13.54-11.15.35 (Duch testified that all decisions over the Kampong Som independent sector had to be made by Office 870, not by the Southwest Zone). *See also* Case 002/01 Trial Judgement, paras. 206, 274 (autonomous Sectors reported directly to the “Party Centre,” meaning the Standing Committee, Central Committee, Military Committee, Office 870, and Government Office S-71 and its sub-offices).

¹⁶⁷⁷ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A80-83. *See also supra* fn. 1247 regarding the creation of the RAK and navy.

¹⁶⁷⁸ Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A5.

¹⁶⁷⁹ Written Record of Interview of Lon Seng, 12 December 2013, D54/45, A9-10, 12.

¹⁶⁸⁰ Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A24-26.

¹⁶⁸¹ Final Submission, para. 83.

¹⁶⁸² Final Submission, fns. 250, 252.

¹⁶⁸³ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 6(5). Final Submission, fn. 250.

merely illustrates that the Division 164 and Kampong Som Autonomous Sector Committees, like all Party entities, had the reporting duties and responsibilities prescribed in the Statute. They had to report to their upper echelon, just as any of the Committee's or MEAS Muth's subordinates had to report upward. MEAS Muth had no special or elevated powers and abilities that would render him a "senior leader" or one of the persons "most responsible."

464. The ICP claims that, as part of his power to punish, MEAS Muth was responsible for ensuring that the lower level followed Party lines, instructions, and orders.¹⁶⁸⁴ The ICP cites Article 19(1) of the CPK Statute.¹⁶⁸⁵ Article 19(1) applies to Zone Committees, not to Autonomous Sectors or Center Divisions. There is no indication in the CPK Statute that an Autonomous Sector or a Center Division is at the same level as a Zone Committee, or that an Autonomous Sector Secretary or Center Division commander is at the same level as a Zone Secretary,¹⁶⁸⁶ as the ICP implies.

465. The ICP claims that MEAS Muth was required to punish those who failed to follow his orders by implementing Party discipline through "detailed examination, analysis, and deliberation" of individual violations,¹⁶⁸⁷ implying that MEAS Muth was the only person in Division 164 with the responsibility for punishing subordinates. The ICP cites only the CPK Statute.¹⁶⁸⁸ He misleads regarding its language. The ICP cites the last sentence of Article 4(2) of the CPK Statute to support his claim but ignores language that weakens it. The entire sentence states: "Implementation of Party discipline is done through detailed examination, analysis, and deliberation standing on the principle of absolute collectivity, and in the framework of the collective, and is reserved for many echelons according to the importance of each individual matter."¹⁶⁸⁹ Article 4(2) indicates that disciplinary actions were done in a collective manner by the Division 164 Committee or Kampong Som Autonomous Sector Committee.

¹⁶⁸⁴ Final Submission, para. 83.

¹⁶⁸⁵ Final Submission, fn. 250.

¹⁶⁸⁶ Article 8 of the CPK Statute states only that Sectors with special characteristics may be organized separately under the Central Committee. Chapter VI, which relates to the RAK, does not indicate RAK units' equivalence to other Party structures. Article 7(6) of the Statute states that RAK Party organizations would have similar organizational structures, according to each Party echelon framework, but does not specify that a Center Division Committee equates to a Zone Committee.

¹⁶⁸⁷ Final Submission, para. 83.

¹⁶⁸⁸ Final Submission, fn. 252.

¹⁶⁸⁹ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 4(2).

466. The ICP claims that, to discharge his duty of implementing Party discipline, MEAS Muth set up a system to record and screen soldiers' biographies for enemy traits and suspicious activities.¹⁶⁹⁰ The ICP cites unreliable and unresponsive statements from Dol Song and Sem Kol.¹⁶⁹¹ *See infra* paragraph 471 regarding Lon Seng's statement about investigations of biographies.
467. **Dol Song.** Dol Song is unreliable.¹⁶⁹² He claimed that, as far as he knew, Division commanders oversaw screening soldiers' biographies.¹⁶⁹³ This was "just [his] assumption."¹⁶⁹⁴ Dol Song based his statement on speculation about a military title, rather than on actual knowledge related to MEAS Muth. Dol Song did not say MEAS Muth had the authority to authorize arrests of alleged traitors, only that he announced them.¹⁶⁹⁵ He again speculated that MEAS Muth had this authority, opining that because MEAS Muth was the Division commander, he alone would be the person to pass arrest announcements to the lower levels.¹⁶⁹⁶
468. **Sem Kol.** Sem Kol does not support the ICP's claims. He was an ammunition loader on a navy defence ship.¹⁶⁹⁷ He had to record his biography twice a year.¹⁶⁹⁸ He did not say MEAS Muth ordered the recording of his biography or played any role in the process.
469. The ICP incorrectly implies MEAS Muth took the initiative to set up this recording and screening system in Division 164 – i.e. that it was not implemented elsewhere in DK or not done on the orders of the Standing Committee and the General Staff. This recording and screening system was instituted by the Standing Committee. It existed across DK.
470. At a 9 October 1975 Standing Committee meeting, the Committee instructed Son Sen to grasp personal histories and screen.¹⁶⁹⁹ Son Sen in turn instructed his subordinates to obtain biographies of cadres, Party members, and Communist Youth of Kampuchea,

¹⁶⁹⁰ Final Submission, paras. 84, 103-04. *See also id.*, para. 68.

¹⁶⁹¹ Final Submission, fns. 209, 253, 302-04.

¹⁶⁹² *See supra* para. 366 for more information about this witness.

¹⁶⁹³ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A16. Final Submission, fns. 209, 253, 303.

¹⁶⁹⁴ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A17: "I did not see all about this. This is just my assumption. I think it was the responsibility of the division commanders."

¹⁶⁹⁵ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A6-8. Final Submission, fns. 209, 253, 303.

¹⁶⁹⁶ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A7-8.

¹⁶⁹⁷ Written Record of Interview of Sem Kol, 1 March 2016, D114/181, A13, 16.

¹⁶⁹⁸ Written Record of Interview of Sem Kol, 1 March 2016, D114/181, A40. Final Submission, fns. 253, 304.

¹⁶⁹⁹ Standing Committee Meeting Minutes, 9 October 1975, D13.27.1, EN 00183397.

because there were no-good elements and destructive elements within the Party who had to be screened.¹⁷⁰⁰ These instructions had to be followed.¹⁷⁰¹ Svay Sameth¹⁷⁰² confirmed this higher-level instruction. He said the higher levels ordered MEAS Muth to form the biography inspection committee.¹⁷⁰³

471. Inspections of biographies were done in all Party units and bodies across DK. Lon Seng stated: “The investigation on soldiers’ historical backgrounds was not only done at Division 164; it was also done in other divisions.”¹⁷⁰⁴ Division 1 had a special force tasked with investigating and examining biographies.¹⁷⁰⁵ The collection of biographies pre-dated the DK regime¹⁷⁰⁶ and continued after its demise. Mak Chhoeun said the collection of biographies from soldiers was a general procedure that is still done today.¹⁷⁰⁷ Ieng Phan¹⁷⁰⁸ said everyone, including him, had to write their biographies and that people would be sent to the villages to find out whether the biographies were true.¹⁷⁰⁹ He also said that making biographies is “common practice even for the current military; everyone has to make their biography in the military service.”¹⁷¹⁰ Standard biographical forms were created by the Party Center, not by Division 164, as demonstrated by Nong Net’s biography.¹⁷¹¹ Nong Net was not a member of Division 164 but was sent to Stung Hav in late 1978.¹⁷¹² He filled in his biographical form at Office K-5 in Borei Keila, Phnom Penh.¹⁷¹³ Division 164 was not alone in obtaining and inspecting biographies.

¹⁷⁰⁰ See e.g., Military Meeting Minutes titled “Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions, Secretaries and Deputy Secretaries of Regiments,” 2 August 1976, D1.3.27.10, EN 00656579; Military Meeting Minutes titled “Minutes of the meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments,” 18 August 1976, D1.3.27.12, EN 00234458.

¹⁷⁰¹ See *supra* paras. 213 and 288, discussing Son Sen’s dissemination of the Party line in General Staff meetings.

¹⁷⁰² See *supra* para. 344 for more information about this witness.

¹⁷⁰³ Written Record of Interview of Svay Sameth, 27 May 2015, D114/77, A46-47.

¹⁷⁰⁴ Written Record of Interview of Lon Seng, 11 December 2013, D54/44, A29. Final Submission, fn. 253.

¹⁷⁰⁵ Written Record of Interview of Meas Voeun, 3 March 2010, D4.1.1057, A10.

¹⁷⁰⁶ See Written Record of Interview of Moeng Seng, 22 May 2016, D114/209, A40 (he wrote his first biography in 1973).

¹⁷⁰⁷ Written Record of Interview of Mak Chhoeun, 23 October 2014, D114/20, A4.

¹⁷⁰⁸ See *supra* para. 260 for more information about this witness.

¹⁷⁰⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 11.13.54-11.15.26.

¹⁷¹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 May 2013, D98/3.1.56, 11.15.26-11.17.40.

¹⁷¹¹ Biography of Nong Net, 1976, D54/67.1. Final Submission, fn. 1172.

¹⁷¹² Written Record of Interview of Nong Net, 5 March 2014, D54/68, A13.

¹⁷¹³ Written Record of Interview of Nong Net, 4 March 2014, D54/67, A16-19.

472. The ICP claims that, during a study session, MEAS Muth forced people to declare any close association with Mom Chim alias Yan, a Division 164 Committee member arrested for treason.¹⁷¹⁴ The ICP cites only one witness, Neak Yoeun.¹⁷¹⁵ He said both Nhet Nhan and MEAS Muth ordered the study session attendees to answer questions about Yan in their biographies.¹⁷¹⁶ To the best of the Defence's knowledge, Neak Yoeun's statement is not corroborated by other evidence on the Case File. Nhet Nhan was a member of the Division 164 Committee.¹⁷¹⁷ Neak Yoeun's statement demonstrates that the Division 164 Committee governed the gathering of biographies from cadres, not only MEAS Muth.
473. The ICP claims that MEAS Muth would punish "enemies," those who failed to obey his orders, and those who made mistakes through self-criticism sessions, re-education, demobilization, arrests, and executions.¹⁷¹⁸ He cites unreliable or unresponsive statements from Dol Song, Sorn Sot, and Moul Chhin.¹⁷¹⁹
474. **Dol Song.** Dol Song is unreliable.¹⁷²⁰ He said MEAS Muth was responsible for screening and arresting those who made mistakes.¹⁷²¹ Dol Song speculated about MEAS Muth's authority or power.¹⁷²² He was unsure what kinds of mistakes reached the threshold for arrest and killing but nevertheless gave examples of such mistakes.¹⁷²³
475. **Sorn Sot.** Sorn Sot is unreliable.¹⁷²⁴ He speculated about MEAS Muth's authority and involvement in the arrest of Sector 37 cadres.¹⁷²⁵
476. **Moul Chhin.** Moul Chhin is unreliable.¹⁷²⁶ He speculated that MEAS Muth issued a demobilization order assigning troops to different production units and that the unit

¹⁷¹⁴ Final Submission, para. 337.

¹⁷¹⁵ Final Submission, fn. 1168.

¹⁷¹⁶ Written Record of Interview of Neak Yoeun, 6 August 2014, D54/115, A15.

¹⁷¹⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.92, 15.04.35-15.07.21.

¹⁷¹⁸ Final Submission, para. 84.

¹⁷¹⁹ Final Submission, fns. 254-55.

¹⁷²⁰ See *supra* para. 366 for more information about this witness.

¹⁷²¹ Written Record of Interview of Dol Song, 18 June 2013, D54/7, A16-17; Written Record of Interview of Dol Song, 19 June 2013, D54/8, A2. Final Submission, fn. 254.

¹⁷²² See *supra* para. 467.

¹⁷²³ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A3.

¹⁷²⁴ See *supra* para. 342 for more information about this witness. See Final Submission, fns. 254-55.

¹⁷²⁵ See *supra* para. 342.

¹⁷²⁶ See *supra* para. 361 for more information about this witness.

commanders all had been killed.¹⁷²⁷ If the CIJs accord Moul Chhin's statements any probative value, they must consider that he said Ta Mok was with MEAS Muth.¹⁷²⁸ Ta Mok issued demobilization and arrest orders to Division 164 personnel.¹⁷²⁹

477. **Sok Vanna.** Sok Vanna does not support the ICP's claims regarding MEAS Muth's punishment of enemies.¹⁷³⁰ He said MEAS Muth had the greatest power over Division 3 and could easily beat or shoot someone for a mistake, claiming to have seen MEAS Muth beat someone unconscious.¹⁷³¹ He recounts one alleged incident that is not supported by other evidence on the Case File.

478. Division 164 and Kampong Som Autonomous Sector were both under the control of the Standing Committee and General Staff.¹⁷³² The Party Center was the ultimate decisionmaker regarding punishments.¹⁷³³ Even if MEAS Muth had the authority to punish subordinates in Division 164 or Kampong Som Autonomous Sector who did not follow his orders, possessing or using such authority does not mean he was one of those most responsible for serious crimes committed across DK from 1975-1979.

8. Authority over Division 117 or Sector 505 personnel does not make MEAS Muth one of those "most responsible"

479. The ICP broadly claims that, as one of Son Sen's deputies, MEAS Muth exercised similar control over Division 117 and Sector 505 as he did over Division 164 and Kampong Som.¹⁷³⁴ The ICP ignores evidence that conflicts with his claims. He fails to substantiate them. Having authority over Division 117 and Sector 505 does not mean MEAS Muth was one of those "most responsible."

¹⁷²⁷ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A90-94. Final Submission, fn. 254. See *supra* para. 361 regarding Moul Chhin's speculation about MEAS Muth's role in these events.

¹⁷²⁸ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A96.

¹⁷²⁹ See *supra* paras. 169-70 and 172, regarding Ta Mok's authority over military matters.

¹⁷³⁰ Final Submission, para. 84. See *supra* para. 343 for more information about this witness.

¹⁷³¹ Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A23-25. Final Submission, fn. 255.

¹⁷³² See *supra* para. 211 and *infra* para. 504 regarding the Party's control over Center Divisions and Autonomous Sectors.

¹⁷³³ Written Record of Interview of Charged Person KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198220 (Son Sen was the person who ultimately ordered arrests); Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364072 (Son Sen and the Central Committee had to approve decisions to arrest implicated cadres). See *supra* paras. 169, 172, and 211 regarding the Standing Committee's authority.

¹⁷³⁴ Final Submission, para. 87, fns. 263-68. See also *id.*, paras. 58, 307.

480. The sources the ICP cites do not support his claim that in November 1978 MEAS Muth went to Sector 505 to purge Division 117 and Sector 505 personnel by ordering arrests, personally organizing the transportation of the arrestees, and restructuring the Division 117 and Sector 505 command.¹⁷³⁵ The ICP primarily cites unreliable statements from Moeng Vet, Seng Soeun, Prum Sarat, Pak Sok, Prum Mon, and Cheang Chuo.
481. **Moeng Vet.** Moeng Vet is unreliable.¹⁷³⁶ He claimed he received a message from Office 870 listing the names of Division 117 and Sector 505 cadres who were to be sent to Phnom Penh.¹⁷³⁷ Moeng Vet contradicted himself regarding MEAS Muth's role in the arrests. In an OCIJ interview, he said the cadres were arrested because "MEAS Mut had lost his trust in the division leadership [after losses against Vietnam] and removed those 11 people."¹⁷³⁸ In Case 002/02, however, he said Office 870 sent a letter listing the names of the people to be arrested.¹⁷³⁹ Moeng Vet is the only witness the ICP cites to assert that MEAS Muth held a meeting in Kratie about the arrests.¹⁷⁴⁰ He contradicted himself about this meeting. First, he said he attended it, then he said he did not attend it, and then he said did attend it.¹⁷⁴¹ Regardless, simply because MEAS Muth may have held a meeting about some arrests does not mean he had the authority to order the arrests or assign replacements.
482. **Seng Soeun.** Seng Soeun is unreliable.¹⁷⁴² He said MEAS Muth announced his assignment to the Sector 505 office.¹⁷⁴³ Seng Soeun gave contradictory statements about MEAS Muth's role in his assignment.¹⁷⁴⁴ He also said MEAS Muth organized the plane

¹⁷³⁵ Final Submission, para. 87, fns. 263-64; para. 58, fn. 176. *See also id.*, paras. 120-24.

¹⁷³⁶ *See supra* paras. 182-83 for more information about this witness.

¹⁷³⁷ *See e.g.*, *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.52.20-09.54.38. Final Submission, fns. 264, 357. *See also* Final Submission, fn. 3474.

¹⁷³⁸ Written Record of Interview of Moeng Vet, 14 February 2014, D114/297.1.4, A2.

¹⁷³⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.52.20-09.54.38.

¹⁷⁴⁰ Final Submission, para. 122.

¹⁷⁴¹ *See supra* para. 182 for more information about these statements.

¹⁷⁴² *See supra* paras. 184-85 for more information about this witness.

¹⁷⁴³ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A5, 23; DC-Cam Interview with Seng Soeun, 11 February 2006, D59/2/4.16a, EN 00753837-00753838; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 13.46.29-13.50.40. Final Submission, fn. 176.

¹⁷⁴⁴ *See supra* para. 205.

that sent the 11 arrestees to Phnom Penh.¹⁷⁴⁵ Plane transport was organized by Son Sen,¹⁷⁴⁶ not by MEAS Muth.

483. **Prum Sarat.** Prum Sarat does not support the ICP's claim. He stated MEAS Muth went to Kratie when border fighting with the Vietnamese intensified.¹⁷⁴⁷ He did not say MEAS Muth had the power to issue orders to Division 117 or had direct contact with the Division commanders.¹⁷⁴⁸

484. **Pak Sok.** Pak Sok is unreliable.¹⁷⁴⁹ His statements about MEAS Muth and Kratie were tainted by the OCIJ Investigator. Pak Sok first said he did not know whether MEAS Muth was ever sent to Kratie.¹⁷⁵⁰ At Pak Sok's request, the Investigator told Pak Sok MEAS Muth went to Kratie in 1978, prompting Pak Sok to confirm that and speculate as to why MEAS Muth went to Kratie.¹⁷⁵¹ If the CIJs accord his statements any probative value, they must consider that Pak Sok said MEAS Muth was in Kratie for about two weeks in late 1978 and that he went there *after* the arrests of cadres surged in that area.¹⁷⁵²

485. **Prum Mon.** Prum Mon is unreliable. Her statements are unverifiable hearsay obtained through the unlawful use of torture-tainted evidence. Prum Mon was the wife of Khun Sarom, a Division 117 Secretary sent to Phnom Penh.¹⁷⁵³ She said MEAS Muth ordered the arrest of her husband.¹⁷⁵⁴ Prum Mon was not in Kratie. She was later told by a regiment commander that MEAS Muth arrested her husband.¹⁷⁵⁵ Her statements were

¹⁷⁴⁵ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A30. Final Submission, fn. 176.

¹⁷⁴⁶ Written Record of Interview of KAINING Guek Eav, 3 February 2016, D114/160, A13-14.

¹⁷⁴⁷ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A224. Final Submission, fn. 355.

¹⁷⁴⁸ Final Submission, para. 87, fn. 263.

¹⁷⁴⁹ See *supra* paras. 233-34 for more information about this witness.

¹⁷⁵⁰ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A7. Final Submission, fn. 176.

¹⁷⁵¹ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, Q-A7-8: "Q: Now we go back to talk about MEAS Mut. Given his position and role from 1975 to 1979, to your knowledge was he ever sent to carry out operations in Kratie? A7: **No, I do not know. Can you tell me which year MEAS Mut was sent to Kratie?** Q: **According to our information, he was sent to Kratie in 1978.** A8: Okay. I remember that year MEAS Mut was sent to Kratie because at that time the arrests of cadres surged. **Maybe there was a shortage of cadres there, so he had to go there.** But when the Vietnamese approached there, he returned to Kampong Som." (emphasis added).

¹⁷⁵² Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A8-9.

¹⁷⁵³ Written Record of Interview of Prum Mon, 15 February 2016, D114/170, A19.

¹⁷⁵⁴ Written Record of Interview of Prum Mon, 15 February 2016, D114/170, A35-36. Final Submission, fn. 176.

¹⁷⁵⁵ Written Record of Interview of Prum Mon, 15 February 2016, D114/170, A35-36.

obtained after the OCIJ Investigator unlawfully used torture-tainted S-21 evidence as an investigative lead.¹⁷⁵⁶

486. **Cheang Chuo.** Cheang Chuo does not support the ICP's claim. He was a Division 1 platoon commander until 1977 when he became a battalion commander in Division 117.¹⁷⁵⁷ He said MEAS Muth came to organize Division 117 and assigned Nhan to be the Division commander.¹⁷⁵⁸ Cheang Chuo did not know which leaders came to transfer the Division 117 leaders, only that the replacements were from the "Southwest group" and that the Center facilitated MEAS Muth's deployment.¹⁷⁵⁹ He never saw MEAS Muth in Kratie.¹⁷⁶⁰ He said the "Center / 87" removed the Division 117 cadres.¹⁷⁶¹

487. The ICP claims that MEAS Muth replaced the purged Division 117 and Sector 505 cadres with Division 164 soldiers.¹⁷⁶² The ICP primarily cites unreliable or unresponsive statements from Seng Soeun, Moeng Vet, Menh Noeum, Chen Phat, Mak Chhoeun, Lon Seng, and Cheang Chuo.

488. **Seng Soeun.** Seng Soeun is unreliable.¹⁷⁶³ He also does not support the ICP's claim. He said MEAS Muth announced in a meeting that Pheap, from the navy, was the new Sector 505 Secretary.¹⁷⁶⁴ He did not say MEAS Muth formally promoted or assigned Pheap.

489. **Moeng Vet.** Moeng Vet is unreliable.¹⁷⁶⁵ He said a naval regiment under Pheap's command came to assist Division 117 and that Pheap was promoted to Sector 505 Secretary.¹⁷⁶⁶ He did not say MEAS Muth formally promoted or assigned Pheap or other

¹⁷⁵⁶ See *supra* paras. 147-55 regarding the use of torture-tainted evidence as investigative leads.

¹⁷⁵⁷ Written Record of Interview of Cheang Chuo, 21 February 2015, D114/51, EN 01076735.

¹⁷⁵⁸ Written Record of Interview of Cheang Chuo, 22 February 2015, D114/52, A40-41. Final Submission, fns. 265, 357.

¹⁷⁵⁹ Written Record of Interview of Cheang Chuo, 21 February 2015, D114/51, EN 01076737.

¹⁷⁶⁰ Written Record of Interview of Cheang Chuo, 22 February 2015, D114/52, A55.

¹⁷⁶¹ Written Record of Interview of Cheang Chuo, 22 February 2015, D114/52, A31-32.

¹⁷⁶² Final Submission, para. 87, fn. 265. See also *id.*, para. 58, fn. 176; para. 123, fn. 363; para. 864, fns. 3498-3501.

¹⁷⁶³ See *supra* paras. 184-85 for more information about this witness.

¹⁷⁶⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 13.46.29-13.50.40. Final Submission, fns. 176, 265. He also stated this in an OCIJ interview (Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A32) and his DC-Cam interview (DC-Cam Interview with Seng Soeun, 11 February 2006, D59/2/4.16a, EN 00753837). Final Submission, fn. 3499.

¹⁷⁶⁵ See *supra* paras. 182-83 for more information about this witness.

¹⁷⁶⁶ Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A24. Final Submission, fns. 265, 3499.

replacements. If the CIJs accord Moeng Vet's testimony any probative value, they must consider his statements that Nhan arrived in Kratie on the same airplane that the 11 arrestees then took to Phnom Penh.¹⁷⁶⁷ This statement indicates that Nhan came to Kratie from Phnom Penh¹⁷⁶⁸ and likely was appointed by Office 870. Seng Soeun also said he was transferred to Kratie with a letter from Office 870.¹⁷⁶⁹

490. **Menh Noeum.** Menh Noeum does not support the ICP's claim. In 1978, he joined Division 117 as a soldier.¹⁷⁷⁰ He did not know MEAS Muth while he was in Kratie.¹⁷⁷¹ He merely said Nhan was a chief of Division 117.¹⁷⁷² He did not say MEAS Muth replaced high-ranking Division 117 cadres with Nhan or other Division 164 soldiers.

491. **Chen Phat.** Chen Phat does not support the ICP's claim. He was a soldier in the West Zone until he was transferred to Division 117 in 1977.¹⁷⁷³ Chen Phat did not know if MEAS Muth went to Kratie, because he was always on the front line.¹⁷⁷⁴ He said Nhan was sent to Kratie to replace Rum and Leang.¹⁷⁷⁵ He did not say MEAS Muth had any involvement in this transfer.

492. **Mak Chhoeun.** Mak Chhoeun does not support the ICP's claim. The ICP misrepresents Mak Chhoeun's statements, which do not support his claim. Mak Chhoeun did not say Nhan was sent to fight the Vietnamese in Kratie Province.¹⁷⁷⁶ He said *he thought* Nhan was sent to fight against the Vietnamese at the border in *Takeo Province*.¹⁷⁷⁷ The ICP misleadingly omitted from its quote the words "I think that he was sent" and "in Takeo."

¹⁷⁶⁷ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212302.

¹⁷⁶⁸ Possibly with Seng Soeun. See Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, A35; Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A17.

¹⁷⁶⁹ Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A26-27; Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A20. *But see supra* para. 205 regarding Seng Soeun changing his story when he testified in Case 002/02.

¹⁷⁷⁰ Written Record of Interview of Menh Nhoem, 27 April 2016, D114/203, A5, 11.

¹⁷⁷¹ Written Record of Interview of Menh Nhoem, 27 April 2016, D114/203, A45.

¹⁷⁷² Written Record of Interview of Menh Nhoem, 27 April 2016, D114/203, A44. Final Submission, fns. 265, 3501.

¹⁷⁷³ Written Record of Interview of Chen Phat, 1 April 2016, D114/192, A12, 16-18.

¹⁷⁷⁴ Written Record of Interview of Chen Phat, 1 April 2016, D114/192, A30.

¹⁷⁷⁵ DC-Cam Interview with Chen Phat, 20 May 2012, D114/157.1.3, EN 01507038-01507039. Final Submission, fns. 265, 3501. See also Written Record of Interview of Chen Phat, 1 April 2016, D114/192, A41-42.

¹⁷⁷⁶ As the ICP implies in footnotes 265 and 3501 of his Final Submission.

¹⁷⁷⁷ Written Record of Interview of Mak Chhoeun, 21 October 2014, D114/18, A16, 17.

493. **Lon Seng.** Lon Seng is unreliable.¹⁷⁷⁸ He said Nhan went to Kratie with MEAS Muth.¹⁷⁷⁹ Lon Seng heard this during a meeting.¹⁷⁸⁰
494. **Cheang Chuo.** Cheang Chuo is unreliable.¹⁷⁸¹ He speculated based on hearsay. He said MEAS Muth assigned Nhan to be the Division 117 commander.¹⁷⁸² He only believed that to be the case because Nhan said MEAS Muth came to organize Division 117.¹⁷⁸³
495. Even if the CIJs accord these witnesses' statements any probative value, the witnesses do not state or indicate that MEAS Muth had the authority to assign people to new positions. At most, they indicate that two members of Division 164 replaced Division 117 and Sector 505 cadres.¹⁷⁸⁴ Seng Soeun was not a Division 164 soldier; he was flown to Kratie from Phnom Penh to become the chief of the Sector 505 office.¹⁷⁸⁵ Other replacements also came from Phnom Penh and were not from Division 164.¹⁷⁸⁶
496. The ICP claims that MEAS Muth remained in command of Division 117 and Sector 505 and maintained a physical presence there until Vietnamese troops arrived at the end of 1978.¹⁷⁸⁷ The ICP cites only unreliable statements from Moeng Vet and Seng Soeun.¹⁷⁸⁸ The ICP also misstates evidence.
497. **Seng Soeun.** Seng Soeun is unreliable.¹⁷⁸⁹ He said MEAS Muth came to Sector 505 to organize the civilian and military sides, ordered Seng Soeun to gather forces to flee from the border, and that he heard MEAS Muth reporting to Sou Met.¹⁷⁹⁰ If the CIJs accord Seng Soeun's testimony any probative value, they must consider that he said Pol Pot did

¹⁷⁷⁸ See *supra* para. 194 for more information about this witness.

¹⁷⁷⁹ Written Record of Interview of Lon Seng, 23 June 2014, D54/110, A5. Final Submission, fns. 265, 3501.

¹⁷⁸⁰ Written Record of Interview of Lon Seng, 23 June 2014, D54/110, A6.

¹⁷⁸¹ See *supra* para. 486 for more information about this witness.

¹⁷⁸² Written Record of Interview of Cheang Chuo, D114/52, A40. Final Submission, fns. 265, 3501.

¹⁷⁸³ Written Record of Interview of Cheang Chuo, D114/52, A41.

¹⁷⁸⁴ See Final Submission, fns. 176, 265.

¹⁷⁸⁵ Written Record of Interview of Seng Soeun, 11 November 2009, D4.1.810, A25-27.

¹⁷⁸⁶ See Written Record of Interview of Moeng Vet, 13 February 2014, D54/62, Q-A35.

¹⁷⁸⁷ Final Submission, para. 87. See also *id.*, para. 866.

¹⁷⁸⁸ Final Submission, fns. 266-68.

¹⁷⁸⁹ See *supra* paras. 184-85 for more information about this witness.

¹⁷⁹⁰ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A23-24; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 29 August 2016, D114/297.1.27, 10.58.45-11.00.50, 13.55.39-13.58.19, 13.59.45-14.00.52. Final Submission, fns. 266-68.

not come to Kratie in person,¹⁷⁹¹ indicating that MEAS Muth was not the highest authority in Sector 505.

498. **Moeng Vet.** Moeng Vet is unreliable.¹⁷⁹² The ICP misstates Moeng Vet's claim that MEAS Muth was the only superior in Kratie.¹⁷⁹³ He relies on an incomplete transcript of his DC-Cam interview. Moeng Vet was referring to a meeting held after the Division 117 and Sector 505 cadres were arrested. He said MEAS Muth was the only superior *at that meeting*.¹⁷⁹⁴ The translation upon which the ICP relies omits several statements from Moeng Vet that are included in the complete transcript.¹⁷⁹⁵ Moeng Vet also said MEAS Muth returned to Kampong Som after that meeting.¹⁷⁹⁶ MEAS Muth did not stay in Kratie until the Vietnamese arrived.¹⁷⁹⁷ Seng Soeun also said MEAS Muth returned to Phnom Penh in late 1978.¹⁷⁹⁸
499. Despite the evidence that MEAS Muth left Sector 505 in late 1978, the ICP attempts to ascribe criminal responsibility to MEAS Muth for the late December 1978 transfer to S-21 and execution of 22 Sector 505 cadres¹⁷⁹⁹ and for the arrests or fleeing of local cadres.¹⁸⁰⁰ None of the S-21 documents or witness statements the ICP cites indicate that MEAS Muth had any involvement in these events.
500. The ICP claims that MEAS Muth was responsible for shooting and killing retreating military forces in Sector 505 pursuant to Center policy.¹⁸⁰¹ He cites only unreliable and unsupportive statements from Meas Voeun and Pak Sok.¹⁸⁰² He also misstates evidence.
501. **Meas Voeun.** Meas Voeun is unreliable.¹⁸⁰³ He said Division 164 soldiers shot at and killed Division 1 soldiers who were retreating from battle against Vietnamese troops.¹⁸⁰⁴

¹⁷⁹¹ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A23.

¹⁷⁹² See *supra* paras. 182-83 for more information about this witness.

¹⁷⁹³ Final Submission, fn. 266, quoting DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212292.

¹⁷⁹⁴ See DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212317-01212318.

¹⁷⁹⁵ Compare DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212317-01212318 with DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 00993000, regarding the witness's statements about MEAS Muth's messengers' attendance at the meeting, what MEAS Muth said, and his demeanor.

¹⁷⁹⁶ DC-Cam Interview with Moeng Vet, 13 August 2013, D54/60.2, EN 01212322.

¹⁷⁹⁷ Contrary to the ICP's claim in Final Submission, para. 87.

¹⁷⁹⁸ Written Record of Interview of Seng Soeun, 11 February 2016, D114/169, A28.

¹⁷⁹⁹ Final Submission, para. 868, fn. 3527-28.

¹⁸⁰⁰ Final Submission, para. 868, fns. 3592-31.

¹⁸⁰¹ Final Submission, para. 124.

¹⁸⁰² Final Submission, fns. 368-69, 3503.

His statement is solely based on hearsay from Division 1 soldiers.¹⁸⁰⁵ Meas Voeun was not present at the time, having been transferred to Preah Vihear Province.¹⁸⁰⁶

502. **Pak Sok.** Pak Sok is unreliable.¹⁸⁰⁷ The ICP misstates Pak Sok's claim that orders to arrest and kill "them" came from MEAS Muth.¹⁸⁰⁸ Pak Sok was referring to an alleged order regarding Vietnamese people arrested at sea,¹⁸⁰⁹ not to Division 1 forces on the eastern border.

503. The ICP also cites a statement MEAS Muth purportedly made to David Kattenburg saying that he went to Kratie Province in February 1978.¹⁸¹⁰ Interviews of MEAS Muth that are not conducted by the ECCC and are done without judicial supervision for purposes other than a criminal trial are of little probative value.¹⁸¹¹

504. Any orders MEAS Muth may have issued to Division 117 and Sector 505 and any actions that he may have undertaken in the Kratie area were based on orders issued by Pol Pot and Office 870.¹⁸¹² As Sao Sarun, who was briefly the Secretary of Sector 105,¹⁸¹³ testified, Pol Pot announced in September 1978 that Divisions were not allowed to arrest or detain cadres without a prior summons from the Central Committee.¹⁸¹⁴ There was no permission or ability for Division commanders to undertake independent actions. There is no evidence that MEAS Muth issued his own orders or initiated his own policies in Sector

¹⁸⁰³ See *supra* para. 193 for more information about this witness.

¹⁸⁰⁴ Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A5, 8. Final Submission, fns. 369, 3503. See also Final Submission, fn. 669.

¹⁸⁰⁵ Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A4-5.

¹⁸⁰⁶ Written Record of Interview of Meas Voeun, 14 January 2014, D54/50, A7.

¹⁸⁰⁷ See *supra* paras. 233-34 for more information regarding this witness.

¹⁸⁰⁸ Final Submission, fn. 369, citing DC-Cam Interview with Pak Sok, 25 April 2007, D54/24.1, EN 00978576.

¹⁸⁰⁹ See DC-Cam Interview with Pak Sok, 25 April 2007, D54/24.1, EN 00978576.

¹⁸¹⁰ Final Submission, para. 124, fn. 371, citing Audio Recording of MEAS Muth Interview with David Kattenburg, April 2009, D54/16/1R, 33:32-35:26. See also Final Submission, fn. 264.

¹⁸¹¹ See *supra* para. 143 discussing the use of this type of evidence.

¹⁸¹² As demonstrated by the testimony that Pol Pot and the Center ordered the arrests of the Division 117 and Sector 505 cadres: *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 July 2016, D114/297.1.24, 09.52.20-09.54.38.

¹⁸¹³ Written Record of Interview of Sao Sarun, 2 April 2016, D114/193, A7-8, 30-31; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 6 June 2012, D98/1.2.32, 14.22.43-14.24.17. He may also have been handling some tasks from early 1978 as a *de facto* Secretary assigned by Pol Pot. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 June 2012, D98/1.2.34, 09.32.33-09.34.22.

¹⁸¹⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 June 2012, D98/1.2.34, 10.22.31-10.24.29.

505. The lack of any such evidence is in keeping with the fact that Division 117 and Sector 505 were under the Center's direct authority.¹⁸¹⁵

505. MEAS Muth did not exercise independent power or authority regarding Division 117 or Sector 505. Even if he exercised such authority (whether as a Center Division Commander or a Deputy in the General Staff), this authority existed for less than two months before the DK regime fell. It involved the arrest and transfer of 11 people, at most.¹⁸¹⁶ Such authority and acts do not mean MEAS Muth was one of the persons most responsible for serious crimes committed across DK from 1975-1979.

9. MEAS Muth is not responsible for a purge of Division 164

506. The ICP fails to establish that MEAS Muth zealously implemented a purge, had sole power to smash soldiers, or ordered the arrests of Division 164 soldiers. The ICP cites unreliable witnesses and documentary evidence. He misrepresents evidence. He ignores relevant contextual and conflicting evidence that weakens or negates his claims. Even when the evidence is viewed in the light most favorable to the ICP, it does not establish that MEAS Muth is criminally liable for a purge of Division 164. Even if the CIJs find that MEAS Muth is criminally liable, when considering the similar acts and numbers of victims across DK, the evidence is insufficient to make MEAS Muth one of those "most responsible."

a. MEAS Muth did not zealously implement the Party's purge policy together with CPK and Division 164 senior leaders

507. The sources the ICP cites do not support his claims that MEAS Muth zealously implemented the Party's purge policy,¹⁸¹⁷ worked closely with Son Sen and Dim to purge Division 164,¹⁸¹⁸ and is responsible for 67 Division 164 prisoners and 4,800 non-Division 164 RAK prisoners who were sent to S-21.¹⁸¹⁹ The ICP primarily cites unreliable and unsupportive statements from Duch, Ou Dav, Hieng Ret, and Ek Ny.¹⁸²⁰ He cites

¹⁸¹⁵ Telegram titled "Telegram from Division 117 to General Staff," 2 March 1978, D4.1.313; Written Record of Interview of Cheang Chuo, 22 February 2015, D114/52, A4-5, 40. *See supra* para. 241, regarding Autonomous Sectors.

¹⁸¹⁶ Final Submission, para. 861.

¹⁸¹⁷ Final Submission, para. 334.

¹⁸¹⁸ Final Submission, paras. 111-13, 117.

¹⁸¹⁹ Final Submission, paras. 541, 552. *See also id.*, paras. 103-19, 172-73, 329-36.

¹⁸²⁰ Final Submission, fn. 1155.

telegrams, General Staff meeting minutes, and other documents that do not support his claims.¹⁸²¹ He also misstates some evidence.

508. **Duch.** Duch is unreliable.¹⁸²² He claimed MEAS Muth only purged Division 164 and said he believed purges at the port, nearby villages, and Kampong Som city also occurred.¹⁸²³ He speculated. He received no documentation about these events.¹⁸²⁴

509. **Ou Dav.** Ou Dav is unreliable.¹⁸²⁵ Ou Dav claimed that, during meetings in which MEAS Muth was the presenter, the Party proclaimed plans to screen the army and smash capitalists and Lon Nol soldiers.¹⁸²⁶ The ICP presents the statement as if it was Ou Dav's first-hand experience.¹⁸²⁷ Ou Dav never attended any political education meetings; he merely recounted what a friend told him.¹⁸²⁸

510. **Hieng Ret and Ek Ny.** Hieng Ret and Ek Ny do not support the ICP's claims. They make general statements regarding internal purging of the military.¹⁸²⁹ Ek Ny said MEAS Muth referred in meetings to keeping track of enemies hiding in the ranks.¹⁸³⁰ Neither he nor Hieng Ret said MEAS Muth was involved in or responsible for purges.

511. The ICP cites annotated confessions and reports that do not support his claim that MEAS Muth closely coordinated with Son Sen and Dim to purge Division 164:

- **D234/2.1.55** and **D234/2.1.54:** The ICP claims annotations on two confessions indicate that Son Sen asked MEAS Muth to review S-21 confessions to determine whether implicated Division 164 soldiers were traitors.¹⁸³¹ On one of the two annotated confessions, D234/2.1.55, an unidentified person wrote that he would "invite comrade Mut to check this together."¹⁸³² The ICP claims that this person was

¹⁸²¹ Final Submission, fns. 324-27, 334, 343-45, 2040-43, 2129-30.

¹⁸²² See *supra* paras. 175-76 for more information about this witness.

¹⁸²³ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A30.

¹⁸²⁴ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A30, 32.

¹⁸²⁵ See *supra* para. 355 and *infra* paras. 533-34 for more information about this witness.

¹⁸²⁶ Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A13-14.

¹⁸²⁷ Final Submission, fn. 1155.

¹⁸²⁸ Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A12.

¹⁸²⁹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A57; Written Record of Interview of Ek Ny, 25 November 2016, D114/284, A8-9. Final Submission, fn. 1155.

¹⁸³⁰ Written Record of Ek Ny, 25 November 2016, D114/284, A6-7. Final Submission, para. 105, fn. 307.

¹⁸³¹ Final Submission, para. 117.

¹⁸³² S-21 Confession of Hang Doeun alias Dim, 4 May 1977, D234/2.1.55 and D1.3.18.1, EN 00224085-00224086 (Son Sen's signature is not under the annotations). Final Submission, fn. 343.

Son Sen, citing a statement from Duch.¹⁸³³ The ICP misrepresents Duch. Duch did not say Son Sen was the author. He guessed it was Son Sen after deciding the author was not NUON Chea: “[I]t seems to me that it is SON Sen’s handwriting, in any case it is not NUON Chea’s handwriting, and only they could annotate S-21 confessions in this way.”¹⁸³⁴ Duch later admitted he only heard of such annotations upon seeing the Case 001 Case File: “I did not know of the existence of annotations on the confessions and was only informed of them when I was charged, and read the case file.”¹⁸³⁵ On the second annotated confession the ICP cites, D234/2.1.54, Son Sen purportedly wrote: “Contact Comrade Mut so that he can take measures.”¹⁸³⁶ These annotations are one-sided. There is no indication MEAS Muth received the confessions or acted upon them.

- **D1.3.34.10 and D1.3.12.7:** The ICP claims that on 13 August 1976 MEAS Muth reported to Son Sen that “all our detained people that had problems” were released by two Division 164 combatants and that, in a later RAK meeting, he or his representative called the two combatants “traitorous” for their actions.¹⁸³⁷ The telegram does not indicate the detainees were from Division 164, only that two Division 164 combatants released them.¹⁸³⁸ The document from the RAK meeting does not indicate who called the two Division 164 combatants “traitorous,” whether it was someone from Division 164 or someone else.¹⁸³⁹ There is no indication who prepared the RAK document or when it was prepared.
- **D1.3.34.11:** The ICP claims that on 24 September 1976 Dim reported to MEAS Muth that he followed MEAS Muth’s orders to arrest individuals seen as enemies or traitors.¹⁸⁴⁰ The ICP misrepresents the telegram.¹⁸⁴¹ Dim said they took measures as MEAS Muth decided. He said five enemies ran into the forest but were arrested, he took political and consciousness measures, and organized more patrol units to conduct

¹⁸³³ Final Submission, fn. 343, citing Written Record of Interview of KAING Guek Eav, 21 October 2009, D4.1.766, EN 00398210.

¹⁸³⁴ Written Record of Interview of KAING Guek Eav, 21 October 2009, D4.1.766, EN 00398210-00398211.

¹⁸³⁵ Written Record of Interview of KAING Guek Eav, 11 November 2009, D4.1.860, EN 00403921.

¹⁸³⁶ S-21 Confession of Kun Dim, 21 July 1977, D234/2.1.54, EN 00822359. Final Submission, fn. 344.

¹⁸³⁷ Final Submission, para. 111.

¹⁸³⁸ Telegram titled “Telegram from Mut to Brother 89, 13 August 1976, D1.3.34.10. Final Submission, fn. 324.

¹⁸³⁹ Military Report titled “Summary of Situations from 15 July to 31 August 1976,” 31 August 1976, D1.3.12.7, EN 00233963. Final Submission, fn. 325.

¹⁸⁴⁰ Final Submission, para. 112.

¹⁸⁴¹ Final Submission, fn. 326.

searches.¹⁸⁴² The telegram does not indicate MEAS Muth issued an arrest order, only that he may have decided unidentified measures. The telegram shows specific action by Dim: he arrested people, took specific measures, and organized additional patrols.

- **D1.3.2.2:** The ICP misrepresents a 4 November 1976 directive from Son Sen to MEAS Muth instructing him to keep recent arrests secret in claiming it is evidence of MEAS Muth's continued collusion with Son Sen regarding the arrests and purge of Division 164.¹⁸⁴³ Son Sen referred to the arrest of Thai or Vietnamese soldiers on one of the islands, as his reference to "their troops chas[ing]" makes clear.¹⁸⁴⁴ He did not refer to the arrest of Division 164 personnel.
- **D1.3.27.26:** The ICP claims that, on 1 March 1977, MEAS Muth reported to Son Sen and Division commanders about purges of a platoon in Division 164.¹⁸⁴⁵ The meeting minutes do not indicate MEAS Muth attended this meeting.¹⁸⁴⁶
- **D1.3.34.60:** The ICP claims that, in a 31 December 1977 telegram to Office 870, MEAS Muth confirmed his duty to kill enemies,¹⁸⁴⁷ demonstrating his knowing and willing participation in the RAK purge.¹⁸⁴⁸ The ICP misrepresents the telegram. He also ignores the context in which it was sent. MEAS Muth was responding to guidance and instructions from the Center regarding the ongoing fighting with Vietnam.¹⁸⁴⁹ On 31 December 1977, the DK government cut diplomatic ties with

¹⁸⁴² Telegram titled "Eleventh Telegram to Brother Mut about the Enemy Situation Along the Border," 24 September 1976, D4.1.699 (this document is the same as D1.3.34.11, cited in footnote 326 of the Final Submission).

¹⁸⁴³ Final Submission, para. 113, fn. 327.

¹⁸⁴⁴ Telegram titled "Telegram from Brother 89 to Mut," 4 November 1976, D1.3.2.2: "For those in the west who had been arrested in Koh Hawaii, must keep this [issue] secret. And must prepare and ready to attack in case their troops chase."

¹⁸⁴⁵ Final Submission, para. 114, fn. 334, citing Military Meeting Minutes titled "Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 1 March 1977, D1.3.27.26, EN 00933835.

¹⁸⁴⁶ See *supra* para. 305 for more information about this document.

¹⁸⁴⁷ Final Submission, para. 117, citing Telegram by MEAS Muth titled "Telegram 00 – Radio Band 354 – Respectfully Presented to the Office 870 Committee," 31 December 1977, D1.3.34.60. See also Final Submission, para. 334, fn. 1156.

¹⁸⁴⁸ Final Submission, para. 541.

¹⁸⁴⁹ Telegram by MEAS Muth titled "Telegram 00 – Radio Band 354 – Respectfully Presented to the Office 870 Committee," 31 December 1977, D1.3.34.60, EN 00184995: "We have received the guiding view and the declaration of the Party about the aggression of the Yuon who have come to swallow the territory of our Motherland." Final Submission, fn. 2040. See also Final Submission, para. 334 and fn. 345.

Vietnam because of its continuing aggression against DK.¹⁸⁵⁰ The government issued a *communiqué* explaining its decision.¹⁸⁵¹

- The DK government described Vietnam's assaults on DK and the country's efforts to defend itself,¹⁸⁵² Vietnam's efforts to recruit Cambodians to overthrow the DK government,¹⁸⁵³ Vietnamese propaganda about DK becoming an "Indochinese federation member,"¹⁸⁵⁴ and the foreigners and foreign governments providing military assistance to Vietnam.¹⁸⁵⁵ The government said "for the foreigners who are advisors, specialists, and direct commanders involved in invading [DK], the [DK] government has regarded those individuals and governments as invading [DK] and Kampuchean people directly."¹⁸⁵⁶ The government called on the Party, the RAK, and the people to heighten revolutionary vigilance, protect DK's independence and territorial integrity, and stop the enemy's invasion and efforts to take DK territory.¹⁸⁵⁷ The government instructed: "[W]e must struggle with the spirit and endurance for the independence, freedom, and honour of our nation and to avoid being enslaved. We must absolutely protect our magnificent territory; forces cannot defeat nor invade our territory."¹⁸⁵⁸ It was this document – calling for the defence of the nation against a military invasion – to which MEAS Muth responded when he referred to sweeping away uncovered Vietnamese or other enemies.¹⁸⁵⁹ He was not agreeing or vowing to purge members of Division 164 or any other RAK unit.

¹⁸⁵⁰ Statement of the Minister of Foreign Affairs of Democratic Kampuchea, 31 December 1977, D69.1.5.

¹⁸⁵¹ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029.

¹⁸⁵² See e.g., Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713102-00713106.

¹⁸⁵³ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713104.

¹⁸⁵⁴ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713105.

¹⁸⁵⁵ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713107-00713108.

¹⁸⁵⁶ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713108.

¹⁸⁵⁷ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713108-00713109.

¹⁸⁵⁸ Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713111.

¹⁸⁵⁹ Telegram by MEAS Muth titled "Telegram 00 – Radio Band 354 – Respectfully Presented to the Office 870 Committee," 31 December 1977, D1.3.34.60, EN 00184995.

512. The ICP relies heavily on minutes from a 9 October 1976 General Staff meeting to support his claim that MEAS Muth knowingly and willingly participated in the RAK purge.¹⁸⁶⁰ The ICP ignores the context in which such meetings occurred.¹⁸⁶¹ That MEAS Muth may have appeared to praise the Party's policy of purging no-good elements does not mean he agreed to arrest or send soldiers to S-21, or purge the RAK. "Purging" did not only mean arrests or executions at S-21 or another security center. It also meant transfer to another unit or being sent to work or study.¹⁸⁶²
513. The ICP cites other General Staff meeting minutes that do not support his claim. He cites minutes from a 19 September 1976 meeting in which MEAS Muth reported on Division 164 but made no statements agreeing to purge the RAK.¹⁸⁶³ He cites minutes from three meetings that MEAS Muth did not attend. He cites a 1 March 1977 meeting at which he claims MEAS Muth reported on the ongoing purge of a platoon.¹⁸⁶⁴ MEAS Muth did not attend this meeting.¹⁸⁶⁵ He cites a 2 August 1976 meeting that MEAS Muth did not attend and speculates that Son Sen's statements regarding purging "undoubtedly [were] communicated to" him.¹⁸⁶⁶ He cites a 30 August 1976 meeting, which no one from Division 164 attended.¹⁸⁶⁷ These documents must be disregarded.

¹⁸⁶⁰ Final Submission, fns. 2040-43, 2129-30. *See also id.*, fns. 1131-34.

¹⁸⁶¹ *See supra* paras. 288, 303-04.

¹⁸⁶² Written Record of Interview of Khoem Yat, 23 May 2014, D54/97, EN 01074507: "After a purge (sweeping clean) in 1977, you were sent to work at Kang Keng Airport"; Written Record of Interview of Teng Sarim, 22 May 2014, D54/96, A4: "When the purge (sweeping clean) of the East Zone military began, they sent me to Kampong Chhnang Province and forced me to work at Kampong Chhnang Airport"; Written Record of Interview of Ieng Phan, 23 November 2009, D4.1.846, A14: "[I]f they discovered that someone one [*sic*] had inclinations toward former high-ranking LON Nol soldiers, that person would be removed from their position or sent to another location like an agricultural worksite to raise chickens, raise pigs, break rocks, plant cotton, etc. They were not allowed to work again inside the Khmer Rouge military framework. I never saw any killings of people discovered to have those inclinations." *See also* Military Meeting Minutes titled "Meeting of Secretaries and Deputy Secretaries of Division and Independent Regiments," 9 October 1976, D1.3.27.20, EN 00940354-00940355 (in which Son Sen instructs attendees about the Party's three purge principles, which include absolute purging, education, and refashioning, depending on the violation).

¹⁸⁶³ Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments," 19 September 1976, D1.3.27.18, EN 00195340-00195341. Final Submission, fn. 2040.

¹⁸⁶⁴ Final Submission, fn. 2040, citing Military Meeting Minutes titled "Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 1 March 1977, D1.3.27.26, EN 00933835. *See also* Final Submission, para. 98, fns. 291-93; fns. 1133, 1135-37.

¹⁸⁶⁵ *See supra* para. 305 for more information about this document.

¹⁸⁶⁶ Final Submission, fn. 1133.

¹⁸⁶⁷ Military Meeting Minutes titled "Minutes of the Meeting of Secretaries and Deputy Secretaries of Division and Independent Regiments," 30 August 1976, D1.3.27.13. Final Submission, fn. 2040. *See also* Final Submission, fn. 1131.

b. MEAS Muth did not have sole power to decide whether to arrest or kill Division 164 soldiers

514. The sources the ICP cites do not support his claim that only MEAS Muth had the power to decide to smash enemies within Division 164.¹⁸⁶⁸ The ICP cites unreliable witnesses Em Son and Chet Bunna, and unsupportive statements from Hieng Ret.¹⁸⁶⁹

515. **Em Son.** Em Son is unreliable.¹⁸⁷⁰ He claimed MEAS Muth had more power than Ta Mok (although Ta Mok was of a higher rank) and that Ta Mok could not release someone MEAS Muth had imprisoned, but MEAS Muth could release someone Ta Mok had imprisoned.¹⁸⁷¹ Em Son did not explain the basis for his claim. He later said it was only an example for comparison and he never saw MEAS Muth arrest anyone.¹⁸⁷² Yet, he claimed that what he said about MEAS Muth's power was general knowledge.¹⁸⁷³ To the best of the Defence's knowledge, no other witness made this claim regarding MEAS Muth's power compared to Ta Mok's. To the contrary, the evidence demonstrates that, unlike MEAS Muth, Ta Mok had tremendous power stretching across DK.¹⁸⁷⁴

516. **Chet Bunna.** Chet Bunna is unreliable.¹⁸⁷⁵ He claimed MEAS Muth had the power to arrest and kill soldiers and civilians in areas under his control, telling a story about MEAS Muth ordering the arrest of people whose cows were too skinny.¹⁸⁷⁶ Even if this story were credible, it does not indicate that only MEAS Muth could arrest or kill Division 164 soldiers.

517. **Hieng Ret.** Hieng Ret¹⁸⁷⁷ does not support the ICP's claim. He told a story about MEAS Muth allegedly scolding Nhan, the Regiment 63 commander, for killing someone without his permission.¹⁸⁷⁸ He did not say MEAS Muth had sole power to decide killings. He said MEAS Muth *and the Division 164 Committee* had to make decisions about killing

¹⁸⁶⁸ Final Submission, para. 332.

¹⁸⁶⁹ Final Submission, fn. 1143.

¹⁸⁷⁰ See *supra* paras. 236, 244, 349, and 416 for more information about this witness.

¹⁸⁷¹ Written Record of Interview of Em Son, 26 November 2013, D54/46, A43. Final Submission, fn. 1143.

¹⁸⁷² Written Record of Interview of Em Son, 27 November 2013, D54/47, A1.

¹⁸⁷³ Written Record of Interview of Em Son, 27 November 2013, D54/47, A2.

¹⁸⁷⁴ See *supra* paras. 169-70 and 172 regarding Ta Mok's roles and power in DK.

¹⁸⁷⁵ See *supra* paras. 186-88 for more information about this witness.

¹⁸⁷⁶ Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A9.

¹⁸⁷⁷ See *supra* para. 196 for more information about this witness.

¹⁸⁷⁸ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A120-22; DC-Cam Interview with Hieng Ret, 20 April 2007, D59/1/1.11a, EN 00974135. Final Submission, fn. 1143.

soldiers and that a similar decision had to be made by each lower-level Committee.¹⁸⁷⁹ Hieng Ret also claimed the Division 164 Committee did not have the authority to decide that battalion commanders should be killed; the General Staff had this authority.¹⁸⁸⁰

518. MEAS Muth could not solely determine which Division 164 soldiers would be punished for disloyalty or how they would be punished. The Division 164 Committee shared responsibility over Division 164, regarding all matters.¹⁸⁸¹ The General Staff and Standing/Military Committee had to approve the arrest or killing of Division 164 soldiers before any such actions could be taken.¹⁸⁸²

c. MEAS Muth did not order the arrests of Division 164 soldiers

519. The sources the ICP cites do not support his claims that MEAS Muth ordered the arrests of former Division 3 soldiers, Sector 37 and Battalion 386 soldiers, former East Zone soldiers, soldiers affiliated with the Lon Nol or foreign regimes, soldiers considered internal enemies, and other cadres,¹⁸⁸³ or that thousands of Division 164 members were imprisoned and enslaved, hundreds were executed or disappeared, and 67 were sent to S-21.¹⁸⁸⁴ The ICP relies on unreliable and unsupportive witnesses and documents.¹⁸⁸⁵ He also ignores relevant contextual evidence.

i. Former Division 3 soldiers

520. The ICP claims that 300-720 Division 3 soldiers detained by Vietnamese forces were purged upon their return by being sent to work units, and that their leaders disappeared.¹⁸⁸⁶ Only two of the witnesses he cites,¹⁸⁸⁷ Sorn Sot and Sath Chak, claim MEAS Muth had any authority over or involvement in this decision or that leaders disappeared. These witnesses are unreliable and do not support the ICP's claims.

¹⁸⁷⁹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A130.

¹⁸⁸⁰ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A130.

¹⁸⁸¹ See *supra* para. 212 regarding the Division 164 Committee.

¹⁸⁸² See *supra* paras. 169, 172, 211, and 213 regarding the Standing Committee's, Military Committee's, and General Staff's ultimate power over Division 164 and all Center Divisions.

¹⁸⁸³ Final Submission, paras. 108, 113-14, 116-18. See also *id.*, paras. 342-62.

¹⁸⁸⁴ Final Submission, para. 119.

¹⁸⁸⁵ Final Submission, fns. 317, 330-33, 339, 342, 346-51, 1182-83, 1185-87, 1201-09, 1222-23, 1249-50.

¹⁸⁸⁶ Final Submission, para. 342.

¹⁸⁸⁷ Final Submission, fns. 1182-83.

521. **Sorn Sot.** Sorn Sot is unreliable.¹⁸⁸⁸ He said MEAS Muth demoted soldiers in Ta Chy's group who were captured by the Vietnamese.¹⁸⁸⁹ He heard this story from Ta Chy after 1979 while they were driving motor-taxis together.¹⁸⁹⁰
522. **Sath Chak.** Sath Chak is unreliable.¹⁸⁹¹ The ICP misrepresents Sath Chak's statement that the Battalion 310 commander, Ham, disappeared and that other Battalion 310 commanders disappeared or were transferred.¹⁸⁹² Sath Chak's full statement was: "Some of them disappeared or were transferred to other places; however, I don't know clearly about this."¹⁸⁹³ He did not say only that leaders disappeared. He also said they were transferred elsewhere, and that he was unsure about it.

ii. Sector 37 and Battalion 386 soldiers

523. The ICP claims Norng Chhan was sent to S-21 "undoubtedly with the approval of MEAS Muth," and that MEAS Muth ordered the arrests and disarmament of former Battalion 386 leaders and cadres.¹⁸⁹⁴ The ICP supports his claim about Norng Chhan by referring to his arguments regarding S-21 and claiming MEAS Muth knew of S-21's existence, read S-21 confessions to cadres, and approved and actively participated in transferring people to S-21.¹⁸⁹⁵ See Section IV.C.11 for submissions on MEAS Muth's lack of responsibility for S-21 and people sent to it. Evidence on the Case File, which the ICP cites,¹⁸⁹⁶ indicates the General Staff ordered Norng Chhan's arrest, not MEAS Muth. The General Staff called Norng Chhan to work in Phnom Penh and then decided to arrest and transfer him to S-21.¹⁸⁹⁷

¹⁸⁸⁸ See *supra* para. 342 for more information about this witness.

¹⁸⁸⁹ Written Record of Interview of Sorn Sot, 14 July 2016, D114/260, A36-37. Final Submission, fn. 1182.

¹⁸⁹⁰ Written Record of Interview of Sorn Sot, 14 July 2016, D114/260, A38.

¹⁸⁹¹ See *supra* para. 192 for more information about this witness.

¹⁸⁹² Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A116. Final Submission, fn. 1183.

¹⁸⁹³ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A116.

¹⁸⁹⁴ Final Submission, paras. 350, 352.

¹⁸⁹⁵ Final Submission, fn. 1218.

¹⁸⁹⁶ Final Submission, para. 350, fns. 1219-21, 1224.

¹⁸⁹⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 June 2016, D114/277.2, 11.08.04-11.11.45 (Duch testified that the Party was suspicious of Norng Chhan so it re-assigned him from Division 164 to the General Staff in Phnom Penh), 11.17.05-11.19.30 (stating the Party put Norng Chhan under surveillance). See Final Submission, fn. 1224, citing an annotation on Chey Suon alias Non Suon alias Saen S-21 Confession, 1 November 1976, D4.1.26, KH 00006320-00006321 (the interrogator says "Your detention was decided on/by the Standing Committee of the Party Center").

524. The ICP cites several witnesses to support his claim that MEAS Muth ordered the arrest and disarmament of the former leadership of Battalion 386 and other cadres.¹⁸⁹⁸ Of the witnesses cited, only four claimed MEAS Muth ordered or carried out the arrests and disarmament.¹⁸⁹⁹ These witnesses are unreliable.
525. **Sorn Sot.** Sorn Sot is unreliable.¹⁹⁰⁰ He claimed MEAS Muth's men arrested Sector 37 soldiers¹⁹⁰¹ but did not know who they were.¹⁹⁰² His claim that MEAS Muth ordered the arrests of Sector 37 soldiers is based on speculation.¹⁹⁰³
526. **Ek Ny.** Ek Ny is unreliable.¹⁹⁰⁴ He claimed MEAS Muth arrested Norng Chhan and took him to be killed at Choeng Ek¹⁹⁰⁵ and that his special unit arrested traitors.¹⁹⁰⁶ Ek Ny based his statements on meetings at which MEAS Muth made announcements about Norng Chhan and others being traitors.¹⁹⁰⁷ Making announcements in meetings does not mean MEAS Muth was the person who ordered the arrests.
527. **Moul Chhin and Seng Sin.** Moul Chhin¹⁹⁰⁸ and Seng Sin¹⁹⁰⁹ are unreliable. Moul Chhin claimed MEAS Muth issued a demobilization order to his unit but did not attend the meeting MEAS Muth allegedly held.¹⁹¹⁰ Seng Sin claimed MEAS Muth read Norng Chhan's confession at a meeting and then sent the soldiers to work in production units.¹⁹¹¹

¹⁸⁹⁸ Final Submission, fns. 1222-23, 1230-32. *See also id.*, para. 108, fn. 317; para. 113, fns. 330-32.

¹⁸⁹⁹ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A5, 17; Written Record of Interview of Ek Ny, 23 November 2016, D114/282, A11; Written Record of Interview of Ek Ny, 2 June 2014, D54/103, A7-8; Written Record of Interview of Civil Party Meas Saran, 29 December 2014, D114/32, A90-93; Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A60-62.

¹⁹⁰⁰ *See supra* para. 342 for more information about this witness.

¹⁹⁰¹ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A17. Final Submission, fns. 1222, 317, 331-32.

¹⁹⁰² Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A69.

¹⁹⁰³ *See supra* para. 342.

¹⁹⁰⁴ *See supra* para. 251 for more information about this witness.

¹⁹⁰⁵ Written Record of Interview of Ek Ny, 23 November 2016, D114/282, A11. Final Submission, fn. 330.

¹⁹⁰⁶ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A14. Final Submission, fn. 1223.

¹⁹⁰⁷ *See e.g.*, Written Record of Interview of Ek Ny, 2 June 2014, D54/103, A7-8. Final Submission, fns. 332, 1223, 1232.

¹⁹⁰⁸ *See supra* para. 361 for more information about this witness.

¹⁹⁰⁹ *See supra* para. 451 for more information about this witness.

¹⁹¹⁰ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A90-93. Final Submission, fns. 1230, 1232.

¹⁹¹¹ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A60-62. Final Submission, fn. 1230.

iii. Former East Zone soldiers

528. The ICP claims that in early 1977, MEAS Muth approved the arrest of his deputy, Dim, who had come from the East Zone.¹⁹¹² The ICP cites only Duch's testimony about the general process through which Son Sen allegedly handled arrests and communicated with Division commanders.¹⁹¹³ Duch is unreliable.¹⁹¹⁴ The ICP also cites two annotated confessions in claiming that MEAS Muth received Dim's S-21 confession and discussed it with Son Sen.¹⁹¹⁵ There is insufficient evidence Son Sen authored the annotation on one confession; both annotations are one-sided communications.¹⁹¹⁶ Annotations stating that MEAS Muth will be invited to discuss a confession or should be contacted about a confession do not mean MEAS Muth was contacted and did discuss the confession.

529. The ICP claims that after Dim's arrest and interrogation MEAS Muth ordered the purge of 700-1000 East Zone cadres and soldiers within Division 164.¹⁹¹⁷ The ICP unlawfully cites the contents of Dim's confession to allege actions taken by MEAS Muth in response.¹⁹¹⁸ The witnesses the ICP cites claim that MEAS Muth announced in a meeting that East Zone soldiers were bad elements that had to be removed and sent for training and that East Zone soldiers were removed or arrested, sent to work units, or disappeared.¹⁹¹⁹ None of the witnesses said MEAS Muth *ordered* the removal of the East Zone soldiers. That a person disappeared does not mean the person was arrested or killed. As Hieng Ret noted, using Duch as an example, simply because someone disappeared does not mean he was arrested and killed; he could have been transferred to another position.¹⁹²⁰

530. Pak Sok is the only witness who said East Zone soldiers were taken to be killed.¹⁹²¹ He is unreliable¹⁹²² and contradicted himself. To DC-Cam, he claimed the East Zone

¹⁹¹² Final Submission, para. 357.

¹⁹¹³ Final Submission, fns. 1249-50.

¹⁹¹⁴ See *supra* paras. 175-77 for more information about this witness.

¹⁹¹⁵ Final Submission, para. 359, fn. 1256.

¹⁹¹⁶ See *supra* para. 511 for more information.

¹⁹¹⁷ Final Submission, para. 360.

¹⁹¹⁸ See *supra* paras. 156-64 regarding the use of torture-tainted evidence for this purpose.

¹⁹¹⁹ Final Submission, fns. 1262-65.

¹⁹²⁰ Written Record of Interview of Hieng Ret, 1 December 2016, D114/288, A63, 65.

¹⁹²¹ Final Submission, fns. 1262, 1268.

¹⁹²² See *supra* paras. 233-34 for more information about this witness.

soldiers were taken to be killed near Ream slope.¹⁹²³ To the Trial Chamber, he claimed he did not know where they were sent.¹⁹²⁴

531. The ICP claims that MEAS Muth purged Sector 37 and East Zone commanders to consolidate his power and authority and faced minimal risk of being implicated by the commanders because they were not from his network.¹⁹²⁵ The ICP cites no evidence to support his claims. They are wholly unsubstantiated. They must be disregarded.

iv. Soldiers affiliated with the Lon Nol regime

532. The ICP claims that MEAS Muth complied with Party policy and tried to identify and purge soldiers with ties to the Lon Nol regime.¹⁹²⁶ The cited witnesses confirm that any actions Division 164 may have taken against such soldiers were common to all Center Divisions and done at the instruction of the Party Center.¹⁹²⁷ The ICP cites Ou Dav in an effort to tie MEAS Muth to the Party's Lon Nol policy.¹⁹²⁸

533. **Ou Dav.** Ou Dav is unreliable.¹⁹²⁹ He told a story to OCIJ Investigators and the Trial Chamber about an incident on 17 April 1975 at Pochentong Airport in which Ta Mok, MEAS Muth, and Sou Met organized the arrest and killing of Lon Nol soldiers and pilots.¹⁹³⁰ He gave contradictory statements about this event. First, he said Ta Mok, Sou Met, and MEAS Muth arrived around 9 a.m.¹⁹³¹ and the soldiers and pilots were taken away around 10 a.m. or noon.¹⁹³² He said Ta Mok was in charge overall¹⁹³³ and told the Lon Nol soldiers and pilots to get onto trucks.¹⁹³⁴ He stated that Ta Mok said the soldiers and pilots were taken away to be smashed.¹⁹³⁵ When he appeared before the Trial

¹⁹²³ DC-Cam Interview with Pak Sok, 25 April 2007, D59/2/3.14a, EN 01185002.

¹⁹²⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 14.23.54-14.26.15.

¹⁹²⁵ Final Submission, para. 348.

¹⁹²⁶ Final Submission, paras. 344-45.

¹⁹²⁷ Final Submission, fns. 1187-89. *See e.g.*, Written Record of Interview of Pin Sam Aun, 18 April 2016, D114/198, A54-55 (Pin Sam Aun, of Division 310, attended an Olympic Stadium meeting in which Son Sen instructed that soldiers with family members affiliated with Lon Nol's government would be put aside because they could be revisionists).

¹⁹²⁸ Final Submission, fn. 1187.

¹⁹²⁹ *See supra* paras. 355 and 509 for more information about this witness.

¹⁹³⁰ Final Submission, fn. 1187.

¹⁹³¹ Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A30.

¹⁹³² Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A31.

¹⁹³³ Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A24-25.

¹⁹³⁴ Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A30. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 10 November 2016, D234/2.1.138, 15.36.34.

¹⁹³⁵ Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A34-35.

Chamber two years later, he could not recall making this statement.¹⁹³⁶ In the same OCIJ interview, he then said Sou Met and MEAS Muth arrived at 9 a.m., Ta Mok arrived later, and Sou Met and MEAS Muth were in direct command.¹⁹³⁷ In a later interview, Ou Dav again changed his story. He said when he arrived at the airport he saw MEAS Muth and afterward saw Sou Met and Ta Mok enter.¹⁹³⁸ Less than six months later, in a Case 004 interview, Ou Dav said he saw Ta Mok *only once in 1977* when he was in Phnom Penh for two days before going to the East Zone.¹⁹³⁹ He did not mention seeing Ta Mok at Pochentong Airport on 17 April 1975.

534. During his final OCIJ interview, the Legal Officer noted an unrelated contradiction in Ou Dav's statements. He had given two different stories about the death of his friend, Chantha.¹⁹⁴⁰ Ou Dav said he did not remember his first story.¹⁹⁴¹ He then said the true story about Chantha was what he had said most recently to the OCIJ,¹⁹⁴² indicating that his first story was false.

v. Soldiers affiliated with foreign countries

535. The ICP claims that MEAS Muth supported and implemented the CPK policy to purge internal enemies affiliated with foreign countries or accused of serving foreign interests¹⁹⁴³ by calling the Vietnamese the "hereditary enemy" or "enemy number one," internal enemies "enemy number two," and smashing anyone who refused to follow orders or kill Vietnamese.¹⁹⁴⁴ The ICP primarily cites unreliable statements from Pak Sok.¹⁹⁴⁵ He ignores relevant contextual and conflicting evidence.

536. The position toward Vietnam came from the Party Center and the historical Cambodian fear of Vietnamese aggression.¹⁹⁴⁶ Statements in Division 164 meetings about

¹⁹³⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 10 November 2016, D234/2.1.138, 15.36.34-15.40.15.

¹⁹³⁷ Written Record of Interview of Civil Party Ou Dav, 11 September 2014, D114/24, A40. *See also id.*, A41.

¹⁹³⁸ Written Record of Interview of Civil Party Ou Dav, 3 November 2014, D114/25, A9.

¹⁹³⁹ Written Record of Interview of Civil Party Ou Dav, 30 March 2015, D11/340/2, A36.

¹⁹⁴⁰ Written Record of Interview of Civil Party Ou Dav, 3 November 2014, D114/25, Q53.

¹⁹⁴¹ Written Record of Interview of Civil Party Ou Dav, 3 November 2014, D114/25, A53.

¹⁹⁴² Written Record of Interview of Civil Party Ou Dav, 3 November 2014, D114/25, A54 (this interview took place over two days).

¹⁹⁴³ Final Submission, paras. 361-62.

¹⁹⁴⁴ Final Submission, para. 363.

¹⁹⁴⁵ Final Submission, fn. 1277.

¹⁹⁴⁶ *See infra* para. 552 for more information.

Vietnamese or other enemies were required by the Party Center as part of the duty to disseminate the political line.¹⁹⁴⁷

537. **Pak Sok.** Pak Sok is unreliable.¹⁹⁴⁸ He claimed he was instructed to kill all Vietnamese persons, including babies.¹⁹⁴⁹ Other witnesses received no such instruction but were instructed to shoot or capture Vietnamese boats or people only when fired upon, and only if they were not refugees.¹⁹⁵⁰ Pak Sok also received this instruction.¹⁹⁵¹ Contrary to the ICP's claim, the failure to follow orders did not automatically mean execution.¹⁹⁵² It could mean being sent for education or refashioning.¹⁹⁵³

538. The ICP claims that people were interrogated with the aim of confirming that they were CIA, KGB, or Vietnamese agents, or identifying others, which was the "purpose of S-21 and the obsession of the CPK and RAK leadership."¹⁹⁵⁴ The ICP ignores relevant contextual evidence. The leaders of the CPK and RAK¹⁹⁵⁵ dictated the purpose behind and means with which enemies were located. The search for, arrest, and interrogation of people perceived to be affiliated with foreign regimes was not a policy or plan developed independently within Division 164. It came from the Party Center.¹⁹⁵⁶ Party Center subordinates, including MEAS Muth, were required to comply with the policy or faced purging and execution themselves.¹⁹⁵⁷

¹⁹⁴⁷ Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 2. *See supra* paras. 211, 213 and 289, regarding the Standing Committee and General Staff disseminating the Party lines and instructions to the lower levels.

¹⁹⁴⁸ *See supra* paras. 233-34 for more information about this witness.

¹⁹⁴⁹ Final Submission, fn. 1277.

¹⁹⁵⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.24.33-09.28.44, 09.35.00-09.36.50, 09.45.50, 09.50.04-09.52.25; Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A139-41; Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 10.47.04-10.50.48, 10.54.05.

¹⁹⁵¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.55.47-10.58.13.

¹⁹⁵² *See* Final Submission, para. 363, fn. 1277.

¹⁹⁵³ *See* Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A116, cited in footnote 1277 of the Final Submission.

¹⁹⁵⁴ Final Submission, para. 365.

¹⁹⁵⁵ *See supra* paras. 169-72 regarding Pol Pot's, Ta Mok's and Son Sen's senior roles in the Party and authority over the RAK.

¹⁹⁵⁶ *See e.g.*, Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Independent Regiments," 19 September 1976, D1.3.27.18, EN 00195348-00195349; Military Meeting Minutes titled "Secretaries and Deputy Secretaries of Divisions and Independent Regiments," 1 March 1977, D1.3.27.26, EN 00933838-00933841.

¹⁹⁵⁷ *See supra* paras. 211, 288, 303-04; Case 004/1 Closing Order, para. 40.

vi. Perceived traitors and their networks

539. The ICP claims that MEAS Muth was responsible for screening, arresting, and transferring Division 164 personnel perceived as internal enemies to be interrogated under torture at Wat Enta Nhien, Tuek Sap, and S-21, and purging their networks.¹⁹⁵⁸ The ICP fails to substantiate his claims. *See supra* Sections IV.C.5 and IV.C.11 for submissions regarding MEAS Muth's lack of responsibility for these sites and people sent to them.

540. The ICP claims that at least 67 Division 164 cadres were sent to S-21.¹⁹⁵⁹ None of the witnesses or documents he cites regarding specific Division 164 cadres¹⁹⁶⁰ indicate MEAS Muth decided to arrest, detain, or send them to S-21 or another security center. Reading confessions or names of traitors in meetings¹⁹⁶¹ does not equate to approving or carrying out their arrests, detentions, or executions.

541. One witness, Sam Phin, claimed MEAS Muth ordered his arrest.¹⁹⁶² Sam Phin is unreliable.¹⁹⁶³ He claimed MEAS Muth arrested him in late 1977 or early 1978.¹⁹⁶⁴ He said he was given a letter assigning him to a new work location.¹⁹⁶⁵ He did not know who signed it.¹⁹⁶⁶ He was taken to Office K-7 in Phnom Penh where KHIEU Samphân said a mistake had been made and returned him to Kampong Som.¹⁹⁶⁷ Sam Phin believed MEAS Muth arrested him because the driver who came to get him was from MEAS Muth's place.¹⁹⁶⁸ He said that in 1980 MEAS Muth joked that he had sent Sam Phin to a new work location but did not know why Sam Phin was treated like that.¹⁹⁶⁹ Sam Phin's claims indicate, at most, that MEAS Muth sent Sam Phin to work somewhere else.

542. The ICP cites a statement MEAS Muth purportedly made during a *Voice of America* interview in which he said some soldiers from his unit could have been sent to S-21

¹⁹⁵⁸ Final Submission, para. 346. *See also id.*, para. 118.

¹⁹⁵⁹ Final Submission, para. 347.

¹⁹⁶⁰ Final Submission, fns. 1201-09.

¹⁹⁶¹ *See e.g.*, Final Submission, para. 352, regarding MEAS Muth's alleged announcements of arrests of traitors.

¹⁹⁶² Final Submission, fn. 348.

¹⁹⁶³ *See supra* para. 412 for more information about this witness.

¹⁹⁶⁴ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A17.

¹⁹⁶⁵ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A17.

¹⁹⁶⁶ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A18.

¹⁹⁶⁷ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A17.

¹⁹⁶⁸ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A18.

¹⁹⁶⁹ Written Record of Interview of Sam Phin, 24 June 2014, D54/111, A23-24.

because the General Staff summoned people for trainings and then told the unit some people would not be returning.¹⁹⁷⁰ This interview was done by an external entity without judicial supervision for purposes other than a criminal trial. It is of little probative value.¹⁹⁷¹ If the CIJs accord it any probative value, they must consider that MEAS Muth's statement indicates the General Staff had authority over who was sent to S-21.¹⁹⁷²

vii. Deserters and defectors

543. The ICP claims that deserters or defectors were regularly arrested by MEAS Muth's men and executed.¹⁹⁷³ He cites unsupportive RAK statistical reports, meeting minutes from a 9 September 1976 General Staff meeting, and a telegram.¹⁹⁷⁴ The statistical reports list numbers of soldiers who "escaped" or "deserted"; they do not indicate these soldiers were executed.¹⁹⁷⁵ The meeting minutes relate to 40 combatants who planned to defect from Stung Hav.¹⁹⁷⁶ The minutes do not indicate these soldiers were arrested or executed; rather, Son Sen proposed sending them to work in food production.¹⁹⁷⁷ A 24 September 1976 telegram from Dim regarding five people who were arrested does not indicate these people were Division 164 soldiers deserting or defecting from the Division.¹⁹⁷⁸

544. The ICP also cites witness statements describing individual incidents in which soldiers allegedly ran away and were killed.¹⁹⁷⁹ These individual incidents do not indicate a Party Center or Division 164 policy to execute deserters or defectors. The ICP cites other witnesses who said people were arrested or MEAS Muth announced arrests in

¹⁹⁷⁰ Sok Khemara, *Tribunal Suspect Finds Court's Role 'Limited,'* VOA KHMER, 6 October 2011, D114/307.6, EN 00746176. Final Submission, fn. 1199.

¹⁹⁷¹ See *supra* para. 143 discussing the use of this type of evidence.

¹⁹⁷² Sok Khemara, *Tribunal Suspect Finds Court's Role 'Limited,'* VOA KHMER, 6 October 2011, D114/307.6, EN 00746176.

¹⁹⁷³ Final Submission, para. 343.

¹⁹⁷⁴ Final Submission, fn. 1185.

¹⁹⁷⁵ Division 164 Committee Statistics Report titled "List of Military Personnel," 30 July 1976, D22.2.4, EN 00950655; Division 164 Committee Statistics Report titled "List of Military Personnel," 28 August 1976, D22.2.5, EN 00950657; Division 164 Committee Statistics Report titled "List of Fighting Forces," 27 October 1976, D1.3.5.3, EN 00233989 (same as D54/24.2).

¹⁹⁷⁶ Military Meeting Minutes titled "Minutes of the meeting of comrades 164," 9 September 1976, D1.3.8.4, EN 00657355-00657356.

¹⁹⁷⁷ Military Meeting Minutes titled "Minutes of the meeting of comrades 164," 9 September 1976, D1.3.8.4, EN 00657356.

¹⁹⁷⁸ Telegram titled "Eleventh Telegram to Brother Mut about the Enemy Situation Along the Border," 24 September 1976, D4.1.699 (this document is the same as D1.3.34.11, cited in footnote 1185 of the Final Submission).

¹⁹⁷⁹ Final Submission, fn. 1186.

meetings.¹⁹⁸⁰ They did not say MEAS Muth ordered the arrests. Division 164 was under the total control of the Party Center, including regarding arrests and purges.¹⁹⁸¹ The Party Center ultimately decided arrests and had to approve arrests of implicated cadres before any such orders could be implemented.¹⁹⁸²

545. The ICP claims that instructions to follow the policy of purging internal enemies were given at Division 164 meetings¹⁹⁸³ and that MEAS Muth instructed cadres to search for and report enemies that had infiltrated the ranks.¹⁹⁸⁴ The ICP cites only Prum Sarat and Say Born to support his respective claims.¹⁹⁸⁵ These witnesses are insufficient support. Other witnesses said MEAS Muth did not discuss such issues in meetings.¹⁹⁸⁶

546. The ICP claims that the purge policy was “particularly brutally implemented” in Division 164 since soldiers were purged *en masse*.¹⁹⁸⁷ The ICP overreaches. Similar events occurred across DK. Thousands of people were forced to work at the Spean Spreng canal worksite in Banteay Meanchey Province in the Northwest Zone under IM Chaem’s direction.¹⁹⁸⁸ More than 2,000 people were executed at the Northwest Zone’s Phnom Trayoung sector-level security center, the head of which reported directly to IM Chaem.¹⁹⁸⁹ Despite these findings and finding, *inter alia*, that the crimes against humanity of murder, imprisonment, and enslavement occurred at these sites,¹⁹⁹⁰ the CIJs found that IM Chaem was neither a senior leader nor one of those most responsible for serious crimes committed across DK from 1975-1979.¹⁹⁹¹ Similar considerations regarding MEAS Muth’s roles and responsibilities exist here.

¹⁹⁸⁰ Final Submission, fns. 317, 330-33, 339, 342, 346-51.

¹⁹⁸¹ See *supra* paras. 211 and 241 regarding the Party’s control over Center Divisions and Autonomous Sectors.

¹⁹⁸² See *supra* para. 369.

¹⁹⁸³ Final Submission, para. 335.

¹⁹⁸⁴ Final Submission, para. 340.

¹⁹⁸⁵ Final Submission, fn. 1157, citing Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A115-16, 118-20. See also Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A110-11. Final Submission, fn. 1176, citing Written Record of Interview of Say Born, 14 August 2013, D54/17, A11-12.

¹⁹⁸⁶ See *supra* para. 316 discussing these witnesses.

¹⁹⁸⁷ Final Submission, para. 335.

¹⁹⁸⁸ Case 004/1 Closing Order, paras. 224, 230.

¹⁹⁸⁹ Case 004/1 Closing Order, paras. 189-90, 193.

¹⁹⁹⁰ Case 004/1 Closing Order, para. 306.

¹⁹⁹¹ Case 004/1 Closing Order, paras. 313-25.

d. There was no continuous purging of Division 164 cadres

547. The sources the ICP cites do not support his claim that official records show continuous purging of Division 164 cadres, with significant numbers purged each month.¹⁹⁹² The ICP cites unresponsive General Staff and DK documents.¹⁹⁹³
548. The ICP cites 1 March 1977 General Staff meeting minutes, from a meeting that MEAS Muth did not attend.¹⁹⁹⁴ He cites a 24 September 1976 telegram from Dim indicating the transfer of two combatants who committed desertion and the arrest of five people who fled to the forest, with no information as to why the five were considered to be enemies.¹⁹⁹⁵ He cites a DK government report regarding the 29 July 1976 arrest of four workers who entered an arsenal.¹⁹⁹⁶ This alleged arrest does not indicate a “purge” but rather the reasonable arrest of people who entered a military arsenal without authority. He cites minutes from a 9 September 1976 meeting between the General Staff and Division 164 at which the planned defection of 40 combatants is discussed.¹⁹⁹⁷ At most, these four documents indicate the purge (by transfer to another unit) of 42 people.
549. The ICP also cites statistical reports¹⁹⁹⁸ that do not support his claim. No indication is given in these reports as to why a soldier was “removed,” “withdrawn,” or “retired,” or what those terms meant. The ICP claims that the persons purged were identified by their biographies, implicated by prisoners tortured in security centers, were subordinates of arrested cadres, or had committed mistakes.¹⁹⁹⁹ He offers no evidence to support this claim. It must be wholly disregarded.

¹⁹⁹² Final Submission, para. 336.

¹⁹⁹³ Final Submission, fns. 1161-62.

¹⁹⁹⁴ Final Submission, fn. 1161, citing Military Meeting Minutes titled “Secretaries and Deputy Secretaries of Divisions and Independent Regiments,” 1 March 1977, D1.3.27.26. *See supra* para. 305 discussing these meeting minutes.

¹⁹⁹⁵ Telegram titled “Eleventh Telegram to Brother Mut about the Enemy Situation Along the Border,” 24 September 1976, D4.1.699 (this document is the same as D1.3.34.11, cited in footnote 1161 of the Final Submission).

¹⁹⁹⁶ Report titled “A Summary of Situations from 15 July to 31 August 1976,” 31 August 1976, D1.3.12.7, EN 00233963.

¹⁹⁹⁷ Military Meeting Minutes titled “Minutes of the meeting of comrades 164,” 9 September 1976, D1.3.8.4, EN 00657355-00657356. *See supra* para. 433 for more information about this meeting.

¹⁹⁹⁸ Final Submission, fn. 1162.

¹⁹⁹⁹ Final Submission, para. 336.

e. Conclusion

550. MEAS Muth did not knowingly or willingly participate in purging the RAK with Son Sen or other RAK members. There is insufficient evidence of MEAS Muth's intentions or actions regarding any purge of Division 164 or the RAK. The witness statements, telegrams, and other documents the ICP cites are unreliable or do not support his claims. The ICP ignores the atmosphere in which the CPK operated, which did not permit dissent. Even if the CIJs find the evidence sufficient, it does not elevate MEAS Muth to the category of "most responsible." Any purge-related actions undertaken by MEAS Muth were at the Party Center's instructions, limited to Division 164 and (briefly) to Division 117 and Sector 505.²⁰⁰⁰ They involved a relatively small number of people compared to the overall number of victims across DK from 1975-1979.²⁰⁰¹

10. Even if Division 164 captured, detained, or executed Vietnamese, Thais, or Westerners, such acts do not make MEAS Muth one of those "most responsible"

551. MEAS Muth was not responsible for captures, detentions, or executions of Vietnamese, Thais, or Westerners. The ICP ignores relevant historical and contextual evidence that weakens or negates his claims. He relies on witnesses and documentary evidence that are unreliable or unsupportive. Even if the CIJs find that the evidence supports a finding that MEAS Muth is responsible for acts against foreigners captured at sea, this would not elevate MEAS Muth to the category of "most responsible." The acts must be viewed against the entirety of the deaths and suffering caused by CPK policies in 1975-1979.²⁰⁰²

a. The capture, detention, or execution of Vietnamese nationals

i. CPK policy regarding Vietnam stemmed from the historical fear of a Vietnamese military invasion

552. The ICP ignores the historical context of the relations between DK and Vietnam. MEAS Muth did not devise the phrase "hereditary enemy" or the policy toward Vietnam.

²⁰⁰⁰ See *supra* Section IV.C.8 for submissions on MEAS Muth's deployment to Sector 505.

²⁰⁰¹ Case 004/1 Closing Order, paras. 317-18.

²⁰⁰² Case 004/1 Closing Order, paras. 317-18.

This phrase and policy, and accompanying instructions regarding national defence, came from the CPK senior leaders.²⁰⁰³ They stemmed from a long-standing fear that Vietnam would wholly take over DK territory.²⁰⁰⁴ The Party Center's position toward Vietnam and fear of a Vietnamese take-over was not new. It existed prior to and during the Lon Nol regime.²⁰⁰⁵ Prum Sarat²⁰⁰⁶ had heard the phrase "hereditary enemy" "since [he] was a child."²⁰⁰⁷ Meas Voeun²⁰⁰⁸ said Cambodia and Vietnam had been enemies since before he was born.²⁰⁰⁹ The fear that Vietnam would take over the DK's territory is demonstrated by the Party Center's nationwide instruction that, because Vietnam was a bigger country, units should not initiate fights with it but should only defend against attacks, and should not fire back if Vietnamese forces only fired a few shots.²⁰¹⁰ The CPK took lawful actions

²⁰⁰³ See e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 April 2016, D234/2.1.113, 09.12.52-09.14.47 (Prak Khan, an S-21 interrogator, testified that in study sessions Son Sen and Duch taught S-21 staff that the Vietnamese were the hereditary enemy of the CPK). See also Letter dated 11 January 1979 from the representative of Democratic Kampuchea to the United Nations addressed to the Secretary-General, Annex I titled "Statement dated 2 January 1979 by the Government of Democratic Kampuchea," UN Doc. No. A/34/59, S/13024, 12 January 1979, D1.3.23.1, EN 00078239 (describing Vietnam as the "hereditary enemy"); DK's Ministry of Foreign Affairs, Black Paper: Facts and Evidences of the Acts of Aggression and Annexation of Vietnam against Kampuchea, September 1978, D1.3.17.3 (a publication from the DK government detailing Vietnam's historical acts of aggression against Cambodia).

²⁰⁰⁴ See e.g., CPK Directive titled "Instructions of 870," 1978, D1.3.19.3, EN 00183995 (referring to the "aggressive, territory-swallowing Yuon"); Statement of the Government of Democratic Kampuchea to the Revolutionary Armed Forces and the People of Cambodia, 31 December 1977, D4.1.1029, EN 00713108 (referring to defeating the "territory-swallowing Vietnamese enemy"); CPK Magazine titled "Revolutionary Flag," Special Number, May-June 1978, D1.3.24.5, EN 00185333 (referring to attacking the "aggressive, territory-swallowing Yuon" and to the Vietnamese desire to take Kampuchean soil for themselves and bring Kampuchea into the Indochinese Federation).

²⁰⁰⁵ PHILIP SHORT, *POL POT: THE HISTORY OF A NIGHTMARE* 25, 207 (John Murray Publishers 2004), D54/74.1.20, EN 00396217, 00396407 (noting the historic Cambodian fear of a Vietnamese take-over of the country and the Lon Nol government's alleged massacre of Vietnamese civilians in an effort to defend against the "hereditary enemy"); MICHAEL VICKERY, *CAMBODIA: 1975-1982* 249 (South End Press 1984), D88.1.32, EN 00839125 (noting that partisan regimes for several generations inculcate a "hereditary enemy" mentality in their people, which was a practice characteristic of the Sihanouk and Lon Nol periods).

²⁰⁰⁶ See *supra* para. 191 for more information about this witness.

²⁰⁰⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.30.10-09.31.50 (Prum Sarat heard his grandfather use the phrase "hereditary enemy"), 09.34.44 (Prum Sarat's understanding was that this concept was Cambodian tradition).

²⁰⁰⁸ See *supra* para. 193 for more information about this witness.

²⁰⁰⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 10.05.35-10.08.43 (referring to the concept of "hereditary enemy," Meas Voeun stated that the Khmer and Vietnamese have been enemies for a very long time, since before he was born, and that the situation did not just happen in 1979).

²⁰¹⁰ CPK magazine titled "Revolutionary Flag," Issue 8, August 1975, D4.1.873, EN 00532685-00532686. This instruction was disseminated to the lower levels by CPK senior leaders such as Son Sen and Ta Mok. See e.g., Military Meeting Minutes titled "Minutes of Plenary Meeting of the 920th Division," 7 September 1976, D1.3.27.14, EN 00184781 (Son Sen instructs Division 920: "[T]oward Vietnam, we take the following stances: 1. We won't be the ones who make trouble. 2. But we must defend our territory absolutely and absolutely not let anyone either take it or violate it. 3. If Vietnam invades, we will ask them to withdraw, and if they do not withdraw, we will attack. Our direction is to fight both politically and militarily"); DC-Cam Interview with Meas Voeun, 11 December 2010, D59/1/1.36, EN 00849511 ("At the borders, [Ta Mok] gave instructions on enemies from outside. He said that 'we must defend our territory, and we must be patient; do not fight back

against a military invader. It did not create fear or hatred leading to any persecution of Vietnamese. *See infra* Section IV.D for submissions on the ICP's claims regarding genocide against the Vietnamese.

ii. Vietnamese were not detained or executed for persecutory reasons

553. Vietnamese were not detained or executed for persecutory reasons. Any such actions were based on national security and national defence concerns. The ICP claims that MEAS Muth supported and actively participated in the arrest, imprisonment, torture, and execution of Vietnamese nationals, ethnic Vietnamese, and people perceived to be Vietnamese.²⁰¹¹ The ICP makes a series of narrower claims about actions allegedly taken by MEAS Muth to contribute to the killing of Vietnamese. These claims are addressed below in turn. The ICP fails to substantiate them. At most, the evidence indicates MEAS Muth and Division 164 were defending DK against a Vietnamese invasion.

554. The ICP claims that MEAS Muth indoctrinated his soldiers on the Party's ideology regarding Vietnam and its status as the "hereditary enemy" and "enemy number one" of DK.²⁰¹² The ICP cites unreliable evidence from Pak Sok and unsupportive statements from Ek Ny and Mak Chhoeun.²⁰¹³ The ICP also ignores the military and historical context of the witness statements.

555. **Pak Sok.** Pak Sok is unreliable.²⁰¹⁴ He said he attended battalion- and regiment-level trainings in which the Vietnamese were described as the hereditary enemy and enemy number one, and that these ideas were taught to the lower levels during Division trainings, for which MEAS Muth was responsible.²⁰¹⁵ Considering Pak Sok's low rank²⁰¹⁶

when they fire off a few shots. Do not fight back. Remain calm. If they fire off few shots and we fire back, it means we will create a very big problem"); *Case of Nuon Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 10.05.16-10.11.57 (Mak Chhoeun confirms the policy and instructions from Son Sen and Ta Mok); *Case of Nuon Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 31 October 2016, D114/297.1.39, 14.45.05-15.51.00 (Ieng Phan confirms the policy and instructions from Son Sen and Ta Mok).

²⁰¹¹ Final Submission, para. 125.

²⁰¹² Final Submission, para. 131.

²⁰¹³ Final Submission, fns. 380-82.

²⁰¹⁴ *See supra* paras. 233-34 for more information about this witness.

²⁰¹⁵ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A32-34. Final Submission, fns. 380, 382. *See also* Final Submission, fns. 398, 400.

²⁰¹⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 09.24.43 (confirming that there was no one lower than him in rank).

and the Party's policy of secrecy,²⁰¹⁷ he would not have known at the time who was responsible for Division trainings. The language Pak Sok described and the attitude toward Vietnam came from the Party Center.²⁰¹⁸

556. **Ek Ny.** Ek Ny's²⁰¹⁹ testimony indicates a military purpose behind the Party's Vietnam policy. He claimed they had to "purge and destroy" Vietnamese from within the army, regardless of place of origin or age.²⁰²⁰ He also said Vietnamese had to be "smashed" because DK was fighting against Vietnam, which had taken Koh Kracheh Seh and Koh Poulo Wai, and the Vietnamese were invaders against whom the military had to defend.²⁰²¹

557. **Mak Chhoeun.** Mak Chhoeun's²⁰²² testimony also indicates a military purpose behind the Party's policy toward Vietnam. He was told to attack fishing boats that came deep into DK territorial waters, as opposed to staying close to the maritime border.²⁰²³ He said armed Vietnamese fishing motorboats frequently came into their territory.²⁰²⁴ The ICP cites only these statements.²⁰²⁵ Mak Chhoeun also said he would chase away unarmed boats and fire upon boats only if they fired first or did not retreat.²⁰²⁶ He said he received orders to allow Vietnamese refugee boats to continue their travel and not arrest them.²⁰²⁷

²⁰¹⁷ See *supra* para. 166 discussing the Party's policy of secrecy and the impact it has on the assessment of evidence.

²⁰¹⁸ See *supra* para. 552.

²⁰¹⁹ See *supra* para. 251 for more information about this witness.

²⁰²⁰ Written Record of Interview of Ek Ny, 25 November 2016, D114/284, A3-7. Final Submission, fn. 380.

²⁰²¹ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A11-12, 17.

²⁰²² See *supra* para. 350 for more information about this witness.

²⁰²³ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A18.

²⁰²⁴ Written Record of Interview of Mak Chhoeun, 22 October 2014, D114/19, A18.

²⁰²⁵ Final Submission, fn. 380.

²⁰²⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.02.24; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.24.33-09.28.44 (if Vietnamese boats entered beyond Koh Seh, they would chase them away and if they fired at the RAK soldiers, they would return fire); 09.50.04-09.52.25 (when fishing boats shot at them they would return fire; if the boats did not open fire, they would chase them away but would not shoot at them).

²⁰²⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.35.00-09.36.50 (stating that he never received any orders to fire upon or sink Vietnamese boats trying to flee to other countries), 09.45.50 (stating that the upper echelon's instruction was that Vietnamese people fleeing to another country were not considered the enemy).

558. The ICP claims that MEAS Muth required reports on captures of Vietnamese people,²⁰²⁸ citing several witness accounts.²⁰²⁹ The ICP overstates the evidence. Prum Sarat did not say MEAS Muth specifically required that Vietnamese captures be reported to him, only that arrests of Vietnamese soldiers and civilians were reported to the Division by radio.²⁰³⁰ He was referring to a general reporting process applicable to all matters.²⁰³¹ Pak Sok said the Division required detailed reports of arrests, including nationality.²⁰³² Given his rank,²⁰³³ his knowledge of the rationale for a reporting requirement would have been minimal.²⁰³⁴ Neak Yoeun said MEAS Muth ordered his battalion commander to capture Vietnamese fishing boats that fired upon their boat.²⁰³⁵ He claimed he heard that MEAS Muth ordered the battalion to do whatever it wanted with Vietnamese arrestees, who were then killed.²⁰³⁶ He speculated based on the hierarchy in his battalion.²⁰³⁷ Neak Yoeun was on a defence ship; he would not have known the decision-making or communication processes at the Division level.²⁰³⁸ None of these witnesses indicate the Party had a policy especially directed at the Vietnamese, rather than a policy directed at preventing trespassers of any nationality from entering DK waters.

559. Ek Ny claimed MEAS Muth ordered captured Vietnamese to be executed on the islands, rather than sent to the mainland, so as not to waste gasoline.²⁰³⁹ Ek Ny is unreliable.²⁰⁴⁰ He repeated this story in another interview, inaccurately saying that he

²⁰²⁸ Final Submission, para. 132.

²⁰²⁹ Final Submission, fns. 383-84.

²⁰³⁰ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A138-39. Final Submission, fn. 383.

²⁰³¹ See e.g., Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A141: "They reported via communication radio and the people at the communication radio location would enter the record into the daily lo[g], no matter what information it might be, so that it could be sent to MEAS Mut."

²⁰³² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.03.10-10.05.46, 11.03.07-11.06.59. Final Submission, fn. 384. See also Final Submission, fn. 390, citing Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A28.

²⁰³³ See *supra* paras. 233-34 for more information about this witness.

²⁰³⁴ See *supra* para. 166 discussing the Party's policy of secrecy and the impact it has on the assessment of evidence in Case 003.

²⁰³⁵ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, A16-21. Final Submission, fn. 384.

²⁰³⁶ Written Record of Interview of Neak Yoeun, 8 August 2014, D54/116, A36-42.

²⁰³⁷ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, A22. See *supra* para. 356 discussing this statement.

²⁰³⁸ Written Record of Interview of Neak Yoeun, 11 October 2014, D114/12, A6-7; Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A10.

²⁰³⁹ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29, 41. Final Submission, para. 132, fn. 385.

²⁰⁴⁰ See *supra* para. 251 for information about this witness.

spoke only about incidents that he knew.²⁰⁴¹ His story is based on hearsay from his unit chiefs.²⁰⁴² To the best of the Defence's knowledge, this story is not corroborated by other evidence on the Case File.

560. The ICP claims that MEAS Muth's enforcement of the Party's policy involved Division 164 executing Vietnamese soldiers, refugees, fishermen, and Khmer Krom.²⁰⁴³ The ICP cites unreliable and unsupportive statements from Ek Ny, Pak Sok, and Prak Sokha.²⁰⁴⁴ Ek Ny and Pak Sok claimed Vietnamese refugees were arrested and killed.²⁰⁴⁵ Ek Ny's statement is based on hearsay.²⁰⁴⁶ Pak Sok is unreliable.²⁰⁴⁷ Ek Ny also said Vietnamese fishermen were arrested, but did not say they were executed.²⁰⁴⁸ Prak Sokha said only that some Khmer Krom were sent to a mobile unit; he did not say they were executed.²⁰⁴⁹

561. Regarding Vietnamese refugees, witnesses confirm that Son Sen issued instructions that they were not to be arrested. Hieng Ret²⁰⁵⁰ said Son Sen instructed that Vietnamese refugees travelling to Thailand should be allowed to travel on and should not be arrested.²⁰⁵¹ Mak Chhoeun and Prum Sarat confirmed Hieng Ret's statement.²⁰⁵² Meas Vooun²⁰⁵³ similarly said Thai and Vietnamese refugees were returned home or allowed to travel onward to their destination,²⁰⁵⁴ and that he was ordered not to kill refugees.²⁰⁵⁵

²⁰⁴¹ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A63. Final Submission, fn. 3189.

²⁰⁴² Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A44.

²⁰⁴³ Final Submission, para. 133.

²⁰⁴⁴ Final Submission, fns. 386-88.

²⁰⁴⁵ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29; DC-Cam Interview with Pak Sok, 25 April 2007, D54/24.1, EN 00978576. Final Submission, fn. 386.

²⁰⁴⁶ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29: "They said that they took those refugees to make fertilizer for the durian trees."

²⁰⁴⁷ See *supra* paras. 233-34 for information about this witness.

²⁰⁴⁸ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A4. Final Submission, fn. 387.

²⁰⁴⁹ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A10. Final Submission, fn. 388.

²⁰⁵⁰ See *supra* para. 196 for more information about this witness.

²⁰⁵¹ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75.

²⁰⁵² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.35.00-09.36.50, 09.45.50; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 10.47.04-10.50.48, 10.54.05.

²⁰⁵³ See *supra* para. 193 for more information about this witness.

²⁰⁵⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55-14.15.24.

²⁰⁵⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 11.18.47-11.20.10, 11.23.04-11.24.54.

562. The ICP recounts a story from Mut Mao that in late 1978 a Vietnamese woman and two children captured at sea were killed near MEAS Muth's house.²⁰⁵⁶ Mut Mao is unreliable.²⁰⁵⁷ Much of her story is based on hearsay from messengers in MEAS Muth's office. She saw three Vietnamese people and Division 164 soldiers walk past her house.²⁰⁵⁸ She did not see or hear them being killed; she said only that she later saw two or three pits 30 meters from her house.²⁰⁵⁹ She did not know who the soldiers were; she heard they were from the Division's special unit.²⁰⁶⁰ She also heard that the people had been captured at sea²⁰⁶¹ and were with the CIA.²⁰⁶² Mut Mao did not say MEAS Muth was present during this alleged incident or was involved in the arrest or killing of these people. To the best of the Defence's knowledge, this story is not corroborated by other evidence on the Case File.

563. The ICP claims that MEAS Muth's responsibility for the capture, arrest, and execution of Vietnamese people is demonstrated by his reports to CPK senior leaders including Son Sen.²⁰⁶³ The ICP cites telegrams, reports, and meeting minutes to support his claim.²⁰⁶⁴ Of the documents the ICP cites, five of them are irrelevant:

- **D1.3.8.4:** there is no indication MEAS Muth attended this 9 September 1976 meeting between Son Sen and Division 164 or that anyone reported to Son Sen on the arrest at sea or execution of Vietnamese people.²⁰⁶⁵
- **D1.3.12.3:** this 22 February 1976 report to Son Sen is not about the arrest at sea or execution of Vietnamese people; it relates to the arrest of unidentified bandits in Veal Renh.²⁰⁶⁶

²⁰⁵⁶ Final Submission, para. 141.

²⁰⁵⁷ See *supra* paras. 266-68 for more information about this witness.

²⁰⁵⁸ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A39, 46, 55, 58.

²⁰⁵⁹ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A64-65.

²⁰⁶⁰ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A43; Written Record of Interview of Mut Mao, 13 March 2014, D54/72, A6.

²⁰⁶¹ Written Record of Interview of Mut Mao, 12 March 2014, D54/71, A61.

²⁰⁶² Written Record of Interview of Mut Mao, 13 March 2014, D54/72, A25.

²⁰⁶³ Final Submission, paras. 134, 137, 139-40.

²⁰⁶⁴ Final Submission, fns. 389, 394-96, 401, 403, 404-05.

²⁰⁶⁵ Military Meeting Minutes titled "Minutes of the meeting of comrades 164," 9 September 1976, D1.3.8.4. Final Submission, fn. 389.

²⁰⁶⁶ Military Report titled "Report from Mut to Brother 89," 22 February 1976, D1.3.12.3. Final Submission, fn. 389.

- **D1.3.34.11** (same as **D4.1.699**): this 24 September 1976 telegram from Dim is not about the arrest at sea or execution of Vietnamese people; it relates to the arrest of five unidentified people in Ream and Babos.²⁰⁶⁷ It is not a report from MEAS Muth to Son Sen.
- **D1.3.34.12**: this 27 September 1976 telegram from Dim is not about the arrest at sea or execution of Vietnamese people; it relates to the arrest of someone who was spying for unidentified bandits.²⁰⁶⁸ It is not a report from MEAS Muth to Son Sen.
- **D1.3.34.13**: this 6 October 1976 telegram from Dim to MEAS Muth is not related to the arrest at sea or execution of Vietnamese people; it relates to unidentified bandits and internal enemies.²⁰⁶⁹ It is not a report from MEAS Muth to Son Sen.

564. The ICP cites a 31 December 1977 telegram from MEAS Muth to Office 870 in which he, *inter alia*, vows to defend the country by sweeping uncovered enemy elements, whether Vietnamese or others, cleanly away without half measures.²⁰⁷⁰ The ICP ignores the context of the telegram.²⁰⁷¹ MEAS Muth responded to a call to defend DK against an invading military, not to persecute or commit genocide against the Vietnamese.²⁰⁷²

565. The ICP cites statements by MEAS Muth during a 3 August 1976 meeting between the Division 164 Committee and members of the Military Committee.²⁰⁷³ These statements do not support the ICP's claim that MEAS Muth is responsible for the capture, arrest, or execution of Vietnamese soldiers, refugees, fishermen, or Khmer Krom.²⁰⁷⁴ Nor is any reference to the "enemy" a reference to any crime or criminal intent by MEAS Muth or his subordinates.²⁰⁷⁵ MEAS Muth reported that the Vietnamese had not made any move, except to remove a buoy that Division 164 placed near Koh Seh as a border

²⁰⁶⁷ Telegram titled "Telegram 11 from Dim to Mut," 24 September 1976, D1.3.34.11. Final Submission, fn. 389.

²⁰⁶⁸ Telegram titled "Telegram 12 to Brother Mut," 27 September 1976, D1.3.34.12. Final Submission, fn. 389.

²⁰⁶⁹ Telegram titled "Telegram 16 from Dim to Brother Mut," 6 October 1976, D1.3.34.13. Final Submission, fn. 389.

²⁰⁷⁰ Telegram by MEAS Muth titled "Telegram 00 – Radio Band 354 – Respectfully Presented to the Office 870 Committee," 31 December 1977, D1.3.34.60. Final Submission, fn. 403. *See also* Final Submission, fns. 345, 2040.

²⁰⁷¹ *See supra* para. 511 discussing the context in which this telegram was sent.

²⁰⁷² *See supra* para. 511 discussing the DK's severance of diplomatic ties with Vietnam.

²⁰⁷³ Final Submission, fn. 394, citing Military meeting minutes titled "Minutes of meeting of the military work in Kampong Som," 3 August 1976, D1.3.8.3, EN 00234012.

²⁰⁷⁴ Final Submission, para. 133.

²⁰⁷⁵ Final Submission, para. 137.

marker.²⁰⁷⁶ He was reporting on national defence matters related to the maritime border between Vietnam and Cambodia and monitoring the Vietnamese navy. This report does not demonstrate persecutory behavior. The ICP claims that in a 9 October 1976 General Staff meeting, MEAS Muth and Dim agreed to execution policies aimed at the Vietnamese and other external enemies.²⁰⁷⁷ MEAS Muth's and other attendees' statements during this meeting are examples of toeing the Party line to avoid being branded an opponent of the revolution.²⁰⁷⁸ There was no other option but to proclaim agreement with Party policies.

b. The capture, detention, or execution of Thais and Westerners

566. The ICP claims that MEAS Muth actively participated in the persecution and execution of Thais and Westerners captured in DK territorial waters or on its islands.²⁰⁷⁹ He relies on unreliable witnesses and irrelevant or unresponsive documentary evidence. He fails to substantiate his claim.

i. MEAS Muth was not responsible for the arrest or execution of Thais

567. The sources the ICP cites do not support his claims that MEAS Muth issued a standing order to capture all foreign boats that entered DK waters and directly ordered the execution of Thais at the Cheng Heng (Durian I) plantation.²⁰⁸⁰ The ICP primarily cites unreliable statements by Ou Dav and Ek Ny.²⁰⁸¹ He also cites reports and other documents that do not support his claims.²⁰⁸²

568. **Ou Dav.** Ou Dav is unreliable.²⁰⁸³ He heard in meetings that the Party had ordered the capture of any foreign boat entering DK water, and that "Party" meant MEAS Muth.²⁰⁸⁴

²⁰⁷⁶ Military Meeting Minutes titled "Minutes of meeting of the military work in Kampong Som," 3 August 1976, D1.3.8.3, EN 00234012.

²⁰⁷⁷ Final Submission, para. 137. See Section IV.C.11 regarding MEAS Muth's responsibility for sending Vietnamese prisoners and others to S-21. See fn. 1862 regarding the different meanings of "purge."

²⁰⁷⁸ See *supra* paras. 213, 288, and 303-04 regarding General Staff meetings and the 9 October 1976 meeting, in particular.

²⁰⁷⁹ Final Submission, para. 143.

²⁰⁸⁰ Final Submission, paras. 144, 146.

²⁰⁸¹ Final Submission, fns. 413, 418.

²⁰⁸² Final Submission, fns. 414-17, 419.

²⁰⁸³ See *supra* paras. 355, 509, and 533-34 for more information about this witness and para. 142 regarding the use of Civil Party evidence.

²⁰⁸⁴ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A89-91.

The ICP cites only this claim to support his claim that MEAS Muth “issued a standing order” to capture all foreign boats that came into DK waters.²⁰⁸⁵ This claim is based on hearsay.²⁰⁸⁶

569. Other Division 164 witnesses said they received orders not to capture certain boats, such as refugee boats,²⁰⁸⁷ and that their orders were only to fire upon or capture armed boats that fired at them first. Mak Chhoeun believed the policy about only firing upon boats that fired first or did not retreat also applied to Thai boats.²⁰⁸⁸ Lay Bunhak²⁰⁸⁹ said Division 164 soldiers shot at boats only if fired upon.²⁰⁹⁰ Meas Voeun said his unit chased away Thai boats and returned fire only if fired upon.²⁰⁹¹

570. **Ek Ny.** Ek Ny is unreliable.²⁰⁹² He claimed MEAS Muth took Thais to the Cheng Heng Durian Plantation to be killed and later ordered units not to waste gasoline transporting Thais to the mainland.²⁰⁹³ The ICP cites only these statements to support his claim that MEAS Muth issued orders for the execution of Thais at the Cheng Heng Durian Plantation.²⁰⁹⁴ Shortly after 17 April 1975, Ek Ny stayed near the durian and coconut plantations.²⁰⁹⁵ He never saw any prisoners taken there or killed there.²⁰⁹⁶ He referred to only one incident in which three Thai boats were captured and the occupants were allegedly sent to the durian plantation; he was not involved in this incident.²⁰⁹⁷ Ek Ny heard island leaders say Thais were killed at the durian and coconut plantations.²⁰⁹⁸

²⁰⁸⁵ Final Submission, para. 144, fn. 413.

²⁰⁸⁶ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A91; Written Record of Interview of Ou Dav, 3 November 2014, D114/25, A10.

²⁰⁸⁷ See *supra* para. 561 for a discussion of the evidence regarding Vietnamese refugee boats.

²⁰⁸⁸ See *supra* para. 557 regarding these statements.

²⁰⁸⁹ See *supra* paras. 189-90 for more information about this witness.

²⁰⁹⁰ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A139-41. Although the Defence submits that this interview should be granted low probative value because of issues with the taking of the interview, if the CIJs consider it to be reliable, they must consider this statement. See *supra* para. 189 discussing this witness.

²⁰⁹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.08.07-14.10.55 (confirming that boats that came within 10-11 nautical kilometers of the coast would be captured and boats at other distances would be chased away and only fired upon if they fired first).

²⁰⁹² See *supra* para. 251 for more information about this witness.

²⁰⁹³ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29, 41.

²⁰⁹⁴ Final Submission, para. 146, fn. 418.

²⁰⁹⁵ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A30-31.

²⁰⁹⁶ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A38 (stating that he saw captured Thai and Vietnamese fishermen on Koh Tang).

²⁰⁹⁷ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29, 36.

²⁰⁹⁸ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A32. See also *id.*, A43.

He did not say MEAS Muth issued an order that Thais were to be executed at the Cheng Heng Durian Plantation.

571. The ICP also cites telegrams and reports regarding Thai boats to support his claim that MEAS Muth regularly reported to the Center about patrolling against foreign boats.²⁰⁹⁹ These documents do not support the ICP's claim:

- **D1.3.27.18:** the ICP cites minutes from a 19 September 1976 General Staff meeting at which MEAS Muth purportedly said 100-150 Thai fishing boats entered DK territorial waters and one boat had been captured.²¹⁰⁰ A report that one boat was captured does not indicate a standing order to capture all foreign boats.
- **D1.3.12.20:** the ICP cites a 12 August 1977 report regarding the arrest of five Thais in the Koh Kong area.²¹⁰¹ The ICP claims that this was a report from MEAS Muth to Son Sen.²¹⁰² There is no indication who created the report, which was purportedly based on a telephone call from MEAS Muth.²¹⁰³ The ICP claims this report shows the suspicion with which Thais were held by MEAS Muth and the CPK hierarchy.²¹⁰⁴ To the contrary, the report establishes legitimate national security concerns. The reporter noted that the Thais were two kilometers from Koh Kong, on a 175-hp boat with no fishing equipment, and that an airplane circled 2-3 kilometers overhead as the boat was brought in.²¹⁰⁵ Reasonably, Son Sen sought to determine where the boat came from and to prevent similar entries in the future.²¹⁰⁶

²⁰⁹⁹ Final Submission, paras. 144-45, fns. 414-17.

²¹⁰⁰ Military Meeting Minutes titled "Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Independent Regiments," 19 September 1976, D1.3.27.18, EN 00195340-00195341 (this document is the same as D114/27.1.5, which the ICP cites in the footnote). Final Submission, fn. 414.

²¹⁰¹ Military report titled "Report dated August 12, 1977 "via secret telephone," 12 August 1977, D1.3.12.20. Final Submission, fns. 415-16.

²¹⁰² Final Submission, para. 145.

²¹⁰³ Report titled "Reported on 12/8/77 by secret telephone about situation along the border with Thailand," 12 August 1977, D1.3.12.20.

²¹⁰⁴ Final Submission, para. 145.

²¹⁰⁵ Military report titled "Reported on 12/8/77 by secret telephone about situation along the border with Thailand," 12 August 1977, D1.3.12.20.

²¹⁰⁶ Military report titled "Reported on 12/8/77 by secret telephone about situation along the border with Thailand," 12 August 1977, D1.3.12.20 (with Son Sen's annotation asking Angkar to find the inside networks and the entry and exit). Final Submission, para. 145, fn. 416.

- **D54/11.1** (same as **D1.3.30.25**): the ICP cites a 1 April 1978 report to Son Sen.²¹⁰⁷ This report shows there was no CPK policy to persecute and execute Thais. The report discusses the March 1978 release of Thai detainees to their government.²¹⁰⁸

572. The ICP claims that MEAS Muth received detailed reports that his subordinates were executing Thai fishermen.²¹⁰⁹ He cites one report that he claims was from Dim, MEAS Muth's deputy secretary.²¹¹⁰ This report does not support the ICP's claim. The report is from Sim, not Dim. Sim commanded Division 164 PCF boats in Koh Kong.²¹¹¹ He reported that a 300-cc boat and a 400-cc boat were caught south of Koh Kong after they "entered further into our waters."²¹¹² Some occupants jumped into the water; others were killed.²¹¹³ He did not say who the occupants were,²¹¹⁴ how some were killed, or what occurred prior to the boats entering DK territory. This report is not a detailed report of executions. It is a report of a seizure of two boats in which some people were killed.

573. The ICP claims that many hundreds of Thais disappeared or were executed in MEAS Muth's area of responsibility during the DK period, including 58 Thais sent to S-21 from Kampong Som.²¹¹⁵ The ICP fails to substantiate these claims. *See* Section IV.F discussing the allegations regarding Thai victims. *See also infra* paragraphs 595-97 regarding S-21's documentation of people allegedly arrested in Kampong Som.

²¹⁰⁷ Military Report from Division 164, Political Section, titled "Secret Telephone dated 1 April 1978," 1 April 1978, D54/11.1. Final Submission, fn. 417.

²¹⁰⁸ Military Report from Division 164, Political Section, titled "Secret Telephone dated 1 April 1978," 1 April 1978, D54/11.1, EN 01147584.

²¹⁰⁹ Final Submission, para. 146.

²¹¹⁰ Report titled, "Report by secret telephone on 15 September 1977 to Brother Division Commander," 15 September 1977, D1.3.34.28. The ICP cites document number D118/207.2, which is not on the Case 003 Case File. The ICP's document has a slightly different English translation than D1.3.34.28. Final Submission, fn. 419.

²¹¹¹ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A14; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A33 (describing Sim as a company commander in Division 3).

²¹¹² Report titled, "Report by secret telephone on 15 September 1977 to Brother Division Commander," 15 September 1977, D1.3.34.28, EN 00233654.

²¹¹³ Report titled, "Report by secret telephone on 15 September 1977 to Brother Division Commander," 15 September 1977, D1.3.34.28, EN 00233654.

²¹¹⁴ The ICP claims that the boat occupants were fishermen, presumably because the English translation of the telegram indicates that the boat had "Kolain" in it, which the translator noted was "a name of a fishing instrument." Report titled, "Report by Secret Telephone, to Brother Division Commander," 15 September 1977, D1.3.34.28, EN 00233654. However, the origin or meaning of this word is not clear in the original Khmer report. The report does not make clear who the occupants were.

²¹¹⁵ Final Submission, para. 147, fns. 420-21.

ii. MEAS Muth was not responsible for the arrest or execution of Westerners

574. The sources the ICP cites do not support his claim that MEAS Muth is responsible for the arrest and execution of at least 10 Westerners captured in DK territorial waters, including some sent to S-21.²¹¹⁶ The ICP primarily cites unreliable statements from MEAS Muth, Duch, Robert Hamill, and Em Son.²¹¹⁷ He also cites unreliable documentary evidence. *See infra* paragraphs 595-97 regarding S-21’s documentation of people allegedly arrested in Kampong Som.

575. The ICP cites a statement purportedly from MEAS Muth to author David Kattenberg that Division 164 did not keep Westerners as long as people from other countries because Pol Pot and other Party senior leaders were afraid of them.²¹¹⁸ This interview was conducted by a non-ECCC entity without judicial supervision, for a purpose other than a criminal trial. It has little probative value.²¹¹⁹ If the CIJs accord the interview any probative value, they must consider that the ICP misrepresented MEAS Muth’s statements. MEAS Muth did not say Division 164 executed Westerners or that Westerners were dealt with quickly because CPK senior leaders were afraid of them. He said people from Phnom Penh picked up Westerners and leaders like Pol Pot and KHIEU Samphân, who were educated in France and Europe, might have been afraid they would know some of them.²¹²⁰

576. **Duch.** Duch is unreliable.²¹²¹ He said only four Westerners were sent to S-21.²¹²² Although he said Division 164 arrested them, he also said the General Staff or Standing

²¹¹⁶ Final Submission, paras. 148-49.

²¹¹⁷ Final Submission, fns. 422-25.

²¹¹⁸ Final Submission, para. 148, quoting Audio Recording of MEAS Muth Interview with David Kattenburg, April 2009, D54/16/1R, 00:43:52-00:46:09.

²¹¹⁹ *See supra* para. 143 discussing the use of this type of evidence.

²¹²⁰ Audio Recording of MEAS Muth Interview with David Kattenburg, April 2009, D54/16/1R, 00:43:15-00:45:57: “មុត្រះ នៃមែនទែន អត់មានកន្លែងឃុំទុកនៅកំពង់សោមទេ។ បើទុកយ៉ាងយូរ១អាទិត្យ ខាងភ្នំពេញ គេទៅយកហើយ។... មុត្រះ នៅកោះឬស្សីដូចគ្នា។ ហើយបើពួកអីរ៉ុប អត់យូរទេ ២ថ្ងៃ ឬក៏យ៉ាងយូរ--យ៉ាងយូរ ២ថ្ងៃខាងភ្នំពេញគេមកយក។... មុត្រះ តាមខ្ញុំគិតទេ ខ្ញុំប៉ាន់ប្រមាណថាមើលមេខ្មែរក្រហមប៉ុល ពតហ្នឹង ក៏ដោយ លោកខៀវ សំផន ក៏ដោយ សុទ្ធតែអ្នករៀននៅបារាំងអ្នករៀននៅអឺរ៉ុប ដូច្នោះខ្លាចគេប៉ះមិត្តភក្តិរបស់គាត់។ អាជ្ញាធរនេះ បើតាមខ្ញុំគិត ដែលល្អជាងគេ ឱកាសតឡូវ ទៅសួរលោកស្តី ឌុចនោះ។ បាទ។”

²¹²¹ *See supra* paras. 175-77 for more information about this witness.

²¹²² Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198221; *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 15 June 2009, D98/3.1.93, 09.39.35, 10.11.25-10.14.20;



Committee sent them to S-21.²¹²³ As Duch noted: “The right to arrest was vested with the people who had the right to smash.”²¹²⁴ To the extent his testimony has any probative value, it shows that Son Sen and the Party Center had the ultimate responsibility for the arrest or execution of foreigners.

577. **Robert Hamill.** Robert Hamill is unreliable. He is a Civil Party applicant in Cases 003 and 004 and was a Civil Party in Cases 001 and 002.²¹²⁵ He has a clear interest in the potential prosecution and conviction of MEAS Muth. Robert Hamill conducted his own investigations of the disappearance of his brother, Kerry Hamill, and interviewed MEAS Muth.²¹²⁶ He testified in Case 001.²¹²⁷ He was involved in a documentary film, *Brother Number One*, about his brother’s disappearance.²¹²⁸ He inaccurately claimed that MEAS Muth admitted that foreigners arrested at sea were sent to S-21.²¹²⁹ This claim was based on his interview with MEAS Muth.²¹³⁰ This interview was conducted by a non-ECCC entity without judicial supervision, for purposes other than a criminal trial. It is of little probative value.²¹³¹ According to the *Brother Number One* transcript, MEAS Muth said foreigners arrested at sea were sent to Phnom Penh.²¹³² He did not say they were sent to S-21.

Written Record of Interview of KAING Guek Eav, 7 August 2007, D1.3.33.3, EN 00147527. Final Submission, fn. 424.

²¹²³ Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198221 (stating that two of the Westerners were sent by Son Sen and two were sent by NUON Chea). *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 9 June 2016, D114/277.3, 15.10.43 (stating that two Americans were sent to Phnom Penh from Kampong Som and the Central Committee sent them to S-21); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 15 June 2009, D98/3.1.93, 09.39.35, 10.11.25-10.14.20 (stating that four Westerners were arrested by Division 164 and sent to S-21 through the General Staff or Standing Committee); Written Record of Interview of KAING Guek Eav, 7 August 2007, D1.3.33.3, EN 00147527 (stating that four Westerners were arrested in Cambodian waters by the naval unit and sent to NUON Chea).

²¹²⁴ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 15 June 2009, D98/3.1.93, 09.54.20-09.57.30.

²¹²⁵ Victim Unit Report on Civil Party Application of Robert Hamill, 22 April 2011, D11/2/1, EN 00681103. *See supra* para. 142 discussing the use of Civil Party evidence.

²¹²⁶ Written Record of Interview of Civil Party Robert Hamill, 20 March 2012, D37, EN 00791865-00791867.

²¹²⁷ Victim Unit Report on Civil Party Application of Robert Hamill, 22 April 2011, D11/2/1, EN 00681103; Transcript of *Brother Number One* (2011), D114/307.5, EN 01389343, 01389351 (referring to his Case 001 testimony).

²¹²⁸ *See e.g.*, Transcript of *Brother Number One* (2011), D114/307.5.

²¹²⁹ Written Record of Interview of Civil Party Robert Hamill, 20 March 2012, D37, EN 00791867 (stating that MEAS Muth said foreigners “should be sent to S-21”). Final Submission, fn. 424.

²¹³⁰ *See e.g.*, Transcript of *Brother Number One* (2011), D114/307.5, EN 01389355-01389356.

²¹³¹ *See supra* para. 143 discussing the use of this type of evidence. Robert Hamill indicated that he wanted to honor his brother’s memory and learn the truth of what happened to him. Transcript of *Brother Number One* (2011), D114/307.5, 01.05.57-01.06.15.

²¹³² Transcript of *Brother Number One* (2011), D114/307.5, 01.44.18-01.44.32.

578. **Em Son.** Em Son is unreliable.²¹³³ He claimed that Division 164 radio operators said MEAS Muth ordered a boat to be sent to Koh Tang to bring the American soldiers to the mainland.²¹³⁴ Em Son gave contradictory statements regarding this incident, some of which the OCIJ noted.²¹³⁵

579. The ICP also cites statements from David Kattenburg's book, *Foxy Lady: Truth, Memory & the Death of Western Yachtsmen in Democratic Kampuchea*, summarizing POW/MIA interviews in which former Division 164 members purportedly referred to the capture of foreigners at sea.²¹³⁶ The author cites four reports by the POW/MIA investigators.²¹³⁷ Neither the book nor the reports were written for the purposes of a criminal trial.²¹³⁸ The POW/MIA sources are not identified in the reports and many of their statements are based on hearsay.²¹³⁹

c. Conclusion

580. MEAS Muth was not responsible for nor did he participate in the persecution or execution of Vietnamese, Thais, or Westerners. The Standing Committee and General Staff made such decisions, which were jointly implemented by the Division 164 Committee. Relevant historical and contextual evidence indicates that any arrests or executions of Vietnamese were done to defend DK against acts of invasion and trespass by Vietnam. There was no standing order to capture all foreign boats that entered DK territorial waters. The Party Center instructed that refugees were allowed to travel on to their destinations and boats were not to be fired upon unless they first fired at RAK boats. The Party Center's policies addressed legitimate national security concerns regarding foreigners illegally entering DK territorial waters. Even if the CIJs find MEAS Muth was

²¹³³ See *supra* paras. 236, 244, 349, 416, and 515 for more information about this witness.

²¹³⁴ Written Record of Interview of Em Son, 28 November 2013, D54/48, A17-19. Final Submission, para. 149, fn. 425.

²¹³⁵ See *supra* para. 349 for more information about Em Son's contradictory statements.

²¹³⁶ Final Submission, fn. 424, citing DAVID KATTENBURG, *FOXY LADY: TRUTH, MEMORY & THE DEATH OF WESTERN YACHTSMEN IN DEMOCRATIC KAMPUCHEA* 159 (Key Publishing House, Inc., 2011), D88.1.17, EN 00916182.

²¹³⁷ DAVID KATTENBURG, *FOXY LADY: TRUTH, MEMORY & THE DEATH OF WESTERN YACHTSMEN IN DEMOCRATIC KAMPUCHEA* 275 (Key Publishing House, Inc. 2011), D88.1.17, EN 00916298. Three of the POW/MIA reports he cites are on the Case File: Stony Beach POW/MIA Report, November 2005, D4.1.758; Stony Beach POW/MIA Report, April 2006, D4.1.760; Stony Beach POW/MIA Report, February 2007, D4.1.761.

²¹³⁸ See *supra* para. 139 discussing the use of this type of evidence.

²¹³⁹ Stony Beach POW/MIA Report, November 2005, D4.1.758, EN 00387310-00387311; Stony Beach POW/MIA Report, April 2006, D4.1.760, EN 00387293; Stony Beach POW/MIA Report, February 2007, D4.1.761, EN 00387297.

responsible for such acts, the captures, detentions, or executions of foreign nationals in or around DK waters were not sufficiently grave to elevate him to the category of “most responsible.”

11. MEAS Muth was not one of those “most responsible” for people being sent to S-21

581. MEAS Muth was not responsible for people being sent to S-21 from Division 164 or Kampong Som. Attending General Staff meetings at which an S-21 representative was present does not mean MEAS Muth or the Division 164 Committee knew about the purpose and work of S-21. No documentary evidence indicates that MEAS Muth sent civilians or soldiers to S-21. Even if the CIJs find MEAS Muth is responsible for the 706 people who were sent to S-21 from Division 164 and Kampong Som, considering the total number of victims of S-21, 706 victims are not a sufficiently grave number to elevate him to the category of “most responsible.”

a. Interactions between MEAS Muth and S-21 representatives at General Staff meetings do not mean MEAS Muth knew what S-21 did

582. The sources the ICP cites do not support his claims that MEAS Muth participated in General Staff meetings with S-21 representatives or knew about S-21’s work.²¹⁴⁰ The ICP cites testimony from Duch, General Staff meeting minutes, and statements purportedly from MEAS Muth.²¹⁴¹ This evidence indicates that, at most, S-21 representatives attended a few General Staff meetings but did not discuss arrests, confessions, or torture.

583. **Duch.** Duch is unreliable.²¹⁴² His statements regarding S-21’s attendance at meetings with Division Secretaries nevertheless indicate that Division Secretaries would not have known the extent of S-21’s activities. Duch said his subordinate, Nun Huy, attended General Staff meetings but was only authorized to speak about matters such as production and internal logistical issues.²¹⁴³ Duch also said that only the general political line was discussed at these meetings, not specific arrests.²¹⁴⁴ Duch’s work was separate from that

²¹⁴⁰ Final Submission, para. 540. *See also id.*, para. 536.

²¹⁴¹ Final Submission, fns. 2017, 2036-39.

²¹⁴² *See supra* paras. 175-77 for more information about this witness.

²¹⁴³ Written Record of Interview of KAING Guek Eav, 18 February 2008, D4.1.1106, EN 00164330. Final Submission, fn. 2017.

²¹⁴⁴ Written Record of Interview of KAING Guek Eav, 18 February 2008, D4.1.1106, EN 00164330.

of the Divisions and Independent Regiments; they did not understand his work. “If I made [a] report of this particular confession or that confession, they would not have a clue of what I talked about. That’s why I did not attend [the 9 October 1976] meeting.”²¹⁴⁵ Such matters were reported in confidential meetings or telephone calls between Son Sen and Duch, not in large meetings with the Divisions and Independent Regiments.²¹⁴⁶

584. The ICP cites minutes from 2 August 1976 and 19 September 1976 General Staff meetings²¹⁴⁷ that indicate the limited authority of S-21 representatives in General Staff meetings. The S-21 representative reported on food production, internal enemy issues, health, and the Party situation.²¹⁴⁸ He did not report on arrests, confessions, or torture being conducted at S-21. Contrary to the ICP’s claim,²¹⁴⁹ there is no indication MEAS Muth or anyone from Division 164 attended either of these meetings. The ICP also cites minutes from a 1 March 1977 meeting at which Sou Met reported more than 50 “no-goods” had been sent to S-21.²¹⁵⁰ MEAS Muth did not attend this meeting.²¹⁵¹ Even if he did attend, the meeting minutes do not show that he would have known about S-21, its purpose, or the activities that occurred therein. There are two examples of General Staff meeting minutes in which individual Divisions reported to Son Sen about arrestees in Duch’s presence.²¹⁵² Duch said this type of meeting only occurred twice in his presence and only one meeting was reported.²¹⁵³

585. The ICP cites two unreliable interviews between journalists and MEAS Muth that he claims contain contradictory statements from MEAS Muth about S-21 and Division 164 arrests, first saying no one from Division 164 was arrested and then saying some were

²¹⁴⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 June 2016, D114/277.8, 15.25.33.

²¹⁴⁶ Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364071-00364072. *See also Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 27 May 2009, D98/1.2.6, 09.28.53.

²¹⁴⁷ Final Submission, fns. 2017, 2036-37.

²¹⁴⁸ *See e.g.*, Military Meeting Minutes titled “Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Independent Regiments,” 19 September 1976, D1.3.27.18, EN 00195344; Military Meeting Minutes titled “Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions, Secretaries and Deputy Secretaries of Regiments,” 2 August 1976, D1.3.27.10, EN 00656573-00656574.

²¹⁴⁹ Final Submission, para. 540, fn. 2036.

²¹⁵⁰ Military Meeting Minutes titled “Secretaries and Deputy Secretaries of Divisions and Independent Regiments,” 1 March 1977, D1.3.27.26, EN 00933834.

²¹⁵¹ *See supra* para. 305 regarding this meeting.

²¹⁵² Military Meeting Minutes titled “Minutes of Meeting with the Organization’s Office, 703 and S-21,” 9 September 1976, D1.3.27.15; Military Meeting Minutes titled “Note of Comrade Tall, Division 290 and 170,” 16 September 1976, D1.3.27.17.

²¹⁵³ Written Record of Interview of KAING Guek Eav, 18 February 2008, D4.1.1106, EN 00164328-00164329.

arrested by Duch but he does not know how many.²¹⁵⁴ D1.3.33.16 is a transcript of an interview²¹⁵⁵ in which the interviewers question MEAS Muth about an unidentified report.²¹⁵⁶ No audio recording of this interview is on the Case File. This document cannot be authenticated. D1.3.7.8 is a *Cambodia Daily* article containing a purported interview with MEAS Muth.²¹⁵⁷ No audio recording or transcript of this interview is on the Case File. These interviews were conducted by external entities without judicial supervision, for purposes other than a criminal trial. They are of little probative value.²¹⁵⁸

586. The ICP fails to link MEAS Muth to S-21. The evidence does not indicate that attendees at General Staff meetings were aware of the full extent of S-21's operations. S-21 representatives did not discuss arrests, torture, or confessions in the meetings. There is no evidence of meetings between MEAS Muth, the Division 164 and Kampong Som Autonomous Sector Committees, the General Staff, and anyone from S-21 at which arrests or transfers to S-21 of people from Division 164 or Kampong Som were discussed.

b. MEAS Muth was not responsible for Division 164, Kampong Som, or other prisoners sent to S-21

i. MEAS Muth did not play a key role in deciding who would be sent to S-21

587. The sources the ICP cites do not support his claim that MEAS Muth (and other Division Secretaries and unit heads) shared responsibility with the Center in determining who from Division 164 and Kampong Som would be arrested and sent to S-21.²¹⁵⁹ The ICP cites unreliable and irrelevant witness statements from Duch, Chhaom Se, Ham Ansi, Sao Sarun, Phy Phuon, Suong Sikoeun, and Saloth Ban.²¹⁶⁰ The ICP also cites documentary evidence unrelated to Division 164 or Kampong Som, which does not

²¹⁵⁴ Final Submission, fns. 2038-39, citing Transcript titled "Interview with Meas Muth, former secretary of central committee for Division 164," 20 July-2 August 2001, D1.3.33.16, EN 00089661-00089662; Erika Kinetz & Yun Samean, *Let Bygones be Bygones*, CAMBODIA DAILY, 1-2 March 2008, D1.3.7.8, EN 00165821.

²¹⁵⁵ Transcript titled "Interview with Meas Muth, former secretary of central committee for Division 164," 20 July-2 August 2001, D1.3.33.16 (this document is the same as D22.2.180).

²¹⁵⁶ Transcript titled "Interview with Meas Muth, former secretary of central committee for Division 164," 20 July-2 August 2001, D1.3.33.16, EN 00089661.

²¹⁵⁷ Erika Kinetz & Yun Samean, *Let Bygones be Bygones*, CAMBODIA DAILY, 1-2 March 2008, D1.3.7.8, EN 00165820-00165822.

²¹⁵⁸ See *supra* para. 143 for additional submissions on this type of evidence.

²¹⁵⁹ Final Submission, para. 539. See also *id.*, para. 106.

²¹⁶⁰ Final Submission, fns. 2030-31.

establish that MEAS Muth participated in decisions about whom from Division 164 and Kampong Som would be arrested and sent to S-21.²¹⁶¹

588. **Duch.** Duch is unreliable.²¹⁶² He made several claims about the process Son Sen would go through after Duch sent him a confession or list of names.²¹⁶³ He claimed that when someone in a unit was implicated in a confession, the confession or name would be sent to the head of the unit for comment, to inform the unit head of internal enemy activities and so the unit head could consider arresting the implicated person.²¹⁶⁴ It is unclear that he knew about this process during the DK regime.²¹⁶⁵ Duch only learned during Case 001 about the Standing/Central Committee's 30 March 1976 Directive on smashing.²¹⁶⁶ He also only learned during Case 001 that S-21 confessions were annotated.²¹⁶⁷ Any statements he makes regarding the Party's purge policy or purges are of little probative value.²¹⁶⁸ Should the CIJs nevertheless accord probative value to Duch's testimony, they must consider his testimony about the Standing Committee's and Son Sen's ultimate authority over arrests.

589. Duch said Son Sen had the ultimate decision-making authority over arrests and executions in Center Divisions.²¹⁶⁹ Even if Son Sen asked unit heads for comment or informed them of S-21 confessions,²¹⁷⁰ as Duch said: "all the decision[s] regarding the arrest, detention, and sent [*sic*] to S-21. Angkar made such a decision; Angkar here was Son Sen.... [R]egarding how people were arrested and detained, it was all decided by Son

²¹⁶¹ Final Submission, fns. 2032-34.

²¹⁶² See *supra* paras. 175-76, discussing the different types of information to which Duch was exposed during Case 001.

²¹⁶³ Final Submission, fn. 2030. See also *id.* fns. 311-12.

²¹⁶⁴ See *e.g.*, Written Record of Interview of KAING Guek Eav, 27 November 2008, D4.1.404, EN 00242932.

²¹⁶⁵ See *supra* paras. 175-76 regarding the ways in which Duch's knowledge evolved during his participation in ECCC proceedings.

²¹⁶⁶ See *supra* fn. 490.

²¹⁶⁷ Written Record of Interview of KAING Guek Eav, 11 November 2009, D4.1.860, EN 00403921.

²¹⁶⁸ See *e.g.*, Final Submission, para. 332, citing Duch's statement that purging was an important Party policy. See *id.*, fn. 1138, quoting Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A31.

²¹⁶⁹ See *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 30 April 2009, D98/3.1.86, 10.05.25 (Duch testified that the General Staff decided smashing regarding the Central Army); *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 27 May 2009, D98/1.2.6, 09.33.54-09.39.01 (Duch testified that S-21 confessions [related to Division 502] were delivered to Son Sen, who would give them to Sou Met, who would select some names *based on the decisions of the superior*, i.e. Son Sen); Central Committee Directive titled "Decision of the Central Committee Regarding a Number of Matters," 30 March 1976, D1.3.19.1, EN 00182809 (delegating to the General Staff the right to smash the Center military, inside and outside the ranks).

²¹⁷⁰ See Final Submission, fn. 2030. See also *id.*, fns. 311-12.

Sen.”²¹⁷¹ Similarly, Pol Pot and the Standing Committee had the ultimate decision-making authority over arrests and executions in Kampong Som Autonomous Sector.²¹⁷² These Sectors had no right to make their own decisions.²¹⁷³ MEAS Muth did not have the authority to make such decisions in Kampong Som Autonomous Sector because he was not a full-rights member of the Party.²¹⁷⁴ As Duch observed: “The person responsible for the unit in question ... was involved in the procedure *to an extent since he was invited to accept the decision.*”²¹⁷⁵

590. The ICP also cites several non-Division 164 witnesses.²¹⁷⁶ These witnesses are irrelevant to MEAS Muth. Chhaom Se, who briefly commanded the Division 801 Au Kanseng security office,²¹⁷⁷ did not know Duch or S-21,²¹⁷⁸ and based his statements about Division 801’s arrests of people implicated in confessions on hearsay and speculation.²¹⁷⁹ Ham Ansi, a member of a Sector 105 District Committee,²¹⁸⁰ said Sophea

²¹⁷¹ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 27 May 2009, D98/1.2.6, 11.31.10-11.37.20.

²¹⁷² Autonomous Sectors reported to and received instructions from the Standing Committee. Statute of the Communist Party of Kampuchea, January 1976, D1.3.22.1, Art. 8; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 June 2016, D114/277.4, 11.13.54-11.15.35 (Duch testified that all decisions over the Kampong Som independent sector had to be made by Office 870, not by the Southwest Zone). *See also* Case 002/01 Trial Judgement, paras. 216, 274.

²¹⁷³ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 30 April 2009, D98/3.1.86, 10.01.57-10.05.25. *See also* Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198219 (in practice, Pol Pot made the decision to arrest, Son Sen executed it, and Nuon Chea controlled it; the person responsible for the unit was involved to the extent he was invited to accept it); Written Record of Interview of Lohn Dos, 23 July 2009, D4.1.855, EN 00364072 (he understood that decisions to arrest implicated cadres were not made by Son Sen alone but also had to be approved by the Central Committee), 00364073 (only Pol Pot dared to order the purge of East Zone cadres).

²¹⁷⁴ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 30 April 2009, D98/3.1.86, 10.01.57-10.05.25.

²¹⁷⁵ Written Record of Interview of KAING Guek Eav, 24 June 2008, D1.3.33.4, EN 00198219 (emphasis added).

²¹⁷⁶ Final Submission, para. 539, fn. 2031.

²¹⁷⁷ Written Record of Interview of Chhaom Se, 8 May 2013, D55/5, A3.

²¹⁷⁸ Written Record of Interview of Chhaom Se, 8 May 2013, D55/5, A49-50.

²¹⁷⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2013, D98/3.1.20, 14.27.23 (stating “as a low-ranking personnel, I did not know much about what happened at the upper level and I had to focus on my tasks. I was supposed to know much about my own business, mind my own business.... I know something, but I just don’t know everything”); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2013, D98/3.1.20, 16.01.07 (regarding whether the Division Secretary had to wait for a decision from the Party Center before deciding a prisoner’s fate, he stated this “was part of the confidential policy, and I think we were not authorized to be informed”); Written Record of Interview of Chhaom Se, 8 May 2013, D55/5, A58 (he said military prisoners were sent directly to S-21 rather than first to his security office, but then stated “they did not tell me about that because it was their secret work”); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 11 January 2013, D98/3.1.20, 15.12.00-15.13.08 (explaining that “people could exchange [*sic*] during conversation, because people noted the disappearance of other colleagues. So we kept asking one another what happened to them. Then we learned about this information [that people were sent to Phnom Penh]”).

²¹⁸⁰ Written Record of Interview of Ham Ansi, 26 November 2008, D4.1.443, EN 00250749.

(the Sector 105 military chief) showed him confessions from the Center in which Division 920 soldiers implicated fellow soldiers and others.²¹⁸¹ He did not say Sophea or the Sector 105 Secretary decided whether implicated people would be arrested and sent to S-21. Sao Sarun, briefly the Sector 105 Secretary,²¹⁸² said Pol Pot told him the confession of a Sector 105 official had identified Sot as a traitor.²¹⁸³ He detained Sot and then had to seek Pol Pot's instructions as to where to send him.²¹⁸⁴ Phy Phuon, the head of administration for the Ministry of Foreign Affairs,²¹⁸⁵ said IENG Sary received confessions from Office 870 implicating CIA, KGB, or other aggressive forces.²¹⁸⁶ He also said Office 870 decided whom to take away,²¹⁸⁷ confirming the Center's ultimate authority over such decisions. Suong Sikoeun, chairman of information and propaganda for the Ministry of Foreign Affairs,²¹⁸⁸ recalled IENG Sary reading out some confessions²¹⁸⁹ and said Pol Pot had the power to make decisions and instruct other superiors²¹⁹⁰ and could make Ministry-related decisions without informing IENG Sary.²¹⁹¹ Saloth Ban (also called So Hong), Pol Pot's nephew and IENG Sary's deputy,²¹⁹² said the Ministry of Foreign Affairs received confessions²¹⁹³ but had no right

²¹⁸¹ Written Record of Interview of Ham Ansi, 26 November 2008, D4.1.443, EN 00250750. Final Submission, fn. 2031.

²¹⁸² See *supra* para. 504 for more information about this witness.

²¹⁸³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 June 2012, D98/1.2.33, 11.09.11-11.12.30. Final Submission, fn. 2031.

²¹⁸⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 June 2012, D98/1.2.33, 11.21.06-11.26.15.

²¹⁸⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 July 2012, D98/3.1.220, 14.40.30, 15.03.10-15.07.16; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 1 August 2012, D98/3.1.223, 11.45.24-11.47.17.

²¹⁸⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 30 July 2012, D98/3.1.221, 11.32.32-11.44.44. Final Submission, fn. 2031.

²¹⁸⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 30 July 2012, D98/3.1.221, 11.33.57, 11.41.06.

²¹⁸⁸ Written Record of Interview of Suong Sikoeun, 17 December 2007, D4.1.1130, EN 00223636; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 August 2012, D98/3.1.224, 15.57.05.

²¹⁸⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 August 2012, D98/3.1.198, 09.24.03-09.29.27. Final Submission, fn. 2031.

²¹⁹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 August 2012, D98/3.1.198, 10.11.46-10.13.27. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 August 2012, D98/3.1.243, 10.11.03-10.14.17, 10.57.47-10.59.15; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 August 2012, D98/3.1.244, 09.18.06-09.20.01.

²¹⁹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 August 2012, D98/3.1.198, 10.13.27-10.15.24.

²¹⁹² Written Record of Interview of Saloth Ban, 11 December 2007, D4.1.1126, EN 00223590-00223591; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 20 August 2012, D98/3.1.244, 09.48.24-09.50.20.

²¹⁹³ Written Record of Interview of Saloth Ban, 22 July 2009, D4.1.835, EN 00361013-00361014. Final Submission, fn. 2031.

to make decisions about executions.²¹⁹⁴ He said the Central Committee appointed Son Sen to oversee security,²¹⁹⁵ indicating the Center's authority over such matters.

591. The ICP also cites annotations on S-21 confessions.²¹⁹⁶ Of the eight annotated confessions the ICP cites, only two relate to MEAS Muth.²¹⁹⁷ The ICP claims that these two confessions prove MEAS Muth's receipt of S-21 confessions and participation in decisions relating to Division 164 cadres.²¹⁹⁸ He fails to substantiate his claim.²¹⁹⁹ It is not clear that one of the two annotated confessions were annotated by Son Sen.²²⁰⁰ Both annotations are one-sided statements. There is no evidence that MEAS Muth received the confessions. Neither of the two confessions indicate MEAS Muth decided whether people implicated in the confessions would be arrested or sent to S-21. The remaining six annotated confessions similarly indicate only that Son Sen ordered that a person should be sent a copy of a confession or that a copy was sent to someone.²²⁰¹ They do not indicate receipt of the copies or any subsequent action by the recipients.

592. The ICP cites a set of meeting minutes and statements from Duch regarding General Staff meetings in which Division Secretaries participated in decisions on arrests of their cadres.²²⁰² These documents relate solely to Divisions 290 and 170. They are relevant only to actions that occurred involving these two Divisions, the General Staff, and S-21.

593. The ICP cites letters from the Secretaries of Divisions 502 and 310 to Duch identifying people who had been or would be sent to S-21.²²⁰³ These letters are relevant only to assessing knowledge and actions taken by the heads of Divisions 502 and 310. There is no evidence MEAS Muth sent similar letters to S-21 regarding people from

²¹⁹⁴ Written Record of Interview of Saloth Ban, 22 July 2009, D4.1.835, EN 00361012.

²¹⁹⁵ Written Record of Interview of Saloth Ban, 22 July 2009, D4.1.835, EN 00361014.

²¹⁹⁶ Final Submission, fn. 2032.

²¹⁹⁷ Final Submission, fn. 2032, citing S-21 Confession of Hang Doeun alias Dim, 4 May 1977, D234/2.1.55, EN 00224085, and D1.3.18.1, EN 00187721; S-21 Confession of Kun Dim, 21 July 1977, D234/2.1.54, EN 00822359.

²¹⁹⁸ Final Submission, para. 540.

²¹⁹⁹ Final Submission, fn. 2035, citing Written Record of Interview of KAING Guek Eav, 21 October 2009, D4.1.766, EN 00398210.

²²⁰⁰ See *supra* para. 511 regarding these confessions.

²²⁰¹ Final Submission, fn. 2032, citing S-21 Confession of Sung Tuon alias Mao, 15 May 1977, D10.1.105, KH 00173999; S-21 Confession of Srei Sareuan, 19 October 1977, D1.3.1.10, EN 00824789; S-21 Confession of Nay Chap, 27 August 1977, D1.3.1.5, EN 00814489; S-21 Confession of Sieng Phon alias Pha, 28 October 1977, D4.1.35, EN 00842803; S-21 Confession of Yung Peou, 24 April 1977, D10.1.1, EN 00182829; S-21 Confession of Kung Kien alias Eung Vet, 23 May 1977, D1.3.18.4, EN 00822048.

²²⁰² Final Submission, para. 539, fn. 2033.

²²⁰³ Final Submission, fn. 2034.

Division 164 or Kampong Som. Duch said he never saw any documents with MEAS Muth's signature on them²²⁰⁴ or any documents related to purging by MEAS Muth.²²⁰⁵

ii. MEAS Muth was not responsible for 706 people being sent to S-21; even if he was, such responsibility would not make him one of those "most responsible"

594. The main source the ICP cites does not support his claim that MEAS Muth is responsible for sending 706 people to S-21.²²⁰⁶ The ICP primarily cites an S-21 prisoner list compiled by the OCIJ.²²⁰⁷ This list does not indicate who played a role in the arrests of prisoners. Simply stating that someone was arrested in or from Kampong Som, or at sea, does not mean MEAS Muth or Division 164 had any role in the arrest.

595. As Suos Thy indicated, the arrest sites recorded in S-21 biographies, and therefore in the OCIJ's prisoner list, do not necessarily accord with the actual locations of arrest. He was the S-21 staff member tasked with registering prisoners and recording their biographies upon arrival.²²⁰⁸ Regarding the arrests of people who had entered DK territorial waters and were listed as being from "Kampong Som," he said: "[This means] they were captured at sea by the military. They always wrote Kampong Som, even though the sea also bounded other provinces of Cambodia. Those captured were always marked as being from Kampong Som. And the reason I knew that was Hor person [*sic*] told me."²²⁰⁹ He later said, regarding the arrests of Vietnamese nationals: "[T]he arrest site was not exactly at Kampong Som. It was somewhere in the sea. And we – it was many places at sea, and we concluded it was at Kampong Som."²²¹⁰ Simply because a person –

²²⁰⁴ Written Record of Interview of KAING Guek Eav, 3 February 2016, D114/160, A9.

²²⁰⁵ Written Record of Interview of KAING Guek Eav, 2 February 2016, D114/159, A30, 32.

²²⁰⁶ Final Submission, para. 551 (101 cadres from Division 164 and other Zone and Sector Divisions; 21 former Lon Nol soldiers or Kampong Som officials; 73 Kampong Som civilians; 251 Kampong Som port workers; 194 Vietnamese or Khmer Krom; 58 Thais; and eight Westerners). *See also id.*, paras. 173-76, 542-50, fns. 2044-2127, detailing the different categories of alleged arrests and/or executions. Regarding the ICP's claim about MEAS Muth's arrest of people from Sector 505 (Final Submission, paras. 120-24, 550), *see* Section IV.C.8.

²²⁰⁷ Final Submission, fns. 2044-63, 2067-75, 2077-84, 2086, 2089-2114, 2116, 2119, 2121-27, 2131.

²²⁰⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 June 2016, D234/2.1.118, 09.35.22; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 June 2016, D234/2.1.119, 10.36.26, 13.59.53-14.03.04.

²²⁰⁹ Written Record of Interview of Suos Thy, 4 February 2015, D114/41, A9. *See also* Written Record of Interview of Suos Thy, 6 February 2015, D114/43, A12.

²²¹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 June 2016, D234/2.1.119, 09.52.09-09.55.08.

whether Vietnamese, Khmer Krom, Thai, or Western²²¹¹ – was listed as coming from Kampong Som or being arrested at sea does not mean he was arrested by Division 164 forces. Division 1 forces patrolling the waters along Koh Kong Province or the forces patrolling the waters along Kampot Province could have conducted the arrests.²²¹²

596. The position or occupation recorded in S-21 biographies, and therefore in the OCIJ's prisoner list, also does not necessarily accord with the person's actual position or occupation. Suos Thy said S-21 listed Vietnamese prisoners as "fishermen" because S-21 staff did not know the Vietnamese language and could not ask for more details, so "Hor decided to list those Vietnamese families who came from Kampong Som as fishermen."²²¹³ The same process was followed for Vietnamese people listed as "spies."²²¹⁴ He later added: "Hor would instruct me that for [Vietnamese] soldiers, they would be labeled as spies and if they were civilians from Kampong Som they would be labeled as fishermen. So then we would know where they came into the country, whether by sea at Kampong Som or whether by on [*sic*] land at Svay Rieng."²²¹⁵ Suos Thy never saw Thai fishermen at S-21.²²¹⁶ His testimony shows that the OCIJ cannot rely upon the position or occupation listed in an S-21 biography to assess a prisoner's status at the time of his arrest.

597. The ICP refers to several prisoners listed in the OCIJ's S-21 prisoner list as being from Kampong Som port or being port or fishery workers.²²¹⁷ He claims 250 Kampong Som port workers and 73 Kampong Som civilians were sent to S-21.²²¹⁸ Even if the arrest locations in the OCIJ's S-21 prisoner list are accurate, people arrested from Kampong Som port and port or fishery workers were not under MEAS Muth's control or his responsibility. They were under the control and responsibility of Thuch Rin (in the case of the port) or Launh (in the case of the fishery).²²¹⁹ These prisoner listings and numbers

²²¹¹ Final Submission, para. 551.

²²¹² See *supra* para. 227, discussing Division 1's control over Koh Kong Province and the limited coastline along which Division 164 operated.

²²¹³ Written Record of Interview of Suos Thy, 6 February 2015, D114/43, A21.

²²¹⁴ Written Record of Interview of Suos Thy, 6 February 2015, D114/43, A23.

²²¹⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 June 2016, D234/2.1.119, 15.30.04-15.31.42.

²²¹⁶ Written Record of Interview of Suos Thy, 5 February 2015, D114/42, A21-23.

²²¹⁷ See *e.g.*, Final Submission, fns. 2082, 2102.

²²¹⁸ Final Submission, para. 551.

²²¹⁹ Multiple witnesses say Thuch Rin controlled Kampong Som port and its approximately 6,000 workers. Written Record of Interview of Sam Komnith, 14 June 2016, D114/218, A18, 20, 27; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A2; Written Record of Interview of Neak Khoeurn, 24

are inapplicable to MEAS Muth. They cannot be relied upon to determine MEAS Muth's alleged responsibility for sending 706 people to S-21.

598. Even if the CIJs decide the evidence establishes MEAS Muth's responsibility for sending 706 people to S-21, this fact would not make him one of those most responsible for serious crimes committed across DK from 1975-1979. The OCIJ's S-21 prisoner list contains 15,101 names of people sent to S-21 from every part of DK.²²²⁰ Assuming MEAS Muth was responsible for sending 706 people to S-21, he would have been responsible for only 4.6% of the people sent to S-21.

c. Conclusion

599. MEAS Muth was not responsible for sending people to S-21 from Division 164 or Kampong Som, or other RAK units. There are no documents indicating MEAS Muth sent anyone to S-21 or discussed sending anyone to S-21. Evidence from non-Division 164 witnesses does not demonstrate MEAS Muth had S-21-related responsibilities in Division 164 or Kampong Som. Even if the CIJs find that the evidence establishes that MEAS Muth was responsible for sending 706 people to S-21, this number is not of sufficient gravity to elevate him to the category of "most responsible," given the overall number of people who were sent to S-21 from across DK.

12. Having a reputation for strictness or being mean does not make MEAS Muth one of those "most responsible"

600. A reputation for cruelty does not equate to enhanced criminal responsibility.²²²¹ As the CIJs observed regarding IM Chaem, in a system where "cruelty and horror were the norm," the evidence did not indicate that she significantly exceeded the norm in a way

March 2016, D114/195, A5-7, 12; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A40, 57; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A26, 28, 30; Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A199. Several witnesses say Launh controlled the fisheries unit. Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A30; Written Record of Interview of Chheng Chheang, 6 August 2016, D114/241, A10; Written Record of Interview of Hieng Ret, 29 November 2016, D114/286, A30.

²²²⁰ OCIJ S-21 Prisoner List, D114/230.1.1, July 2016.

²²²¹ Case 004/1 Closing Order, para. 324.

that in and of itself justified a finding that she was “most responsible.”²²²² The same is true here.

601. The ICP claims that MEAS Muth’s subordinates followed his orders because they respected and feared his matter-of-fact and meticulous nature.²²²³ The ICP cites only one witness, Yem Sam On.²²²⁴ He misrepresents Yem Sam On’s statements and ignores his limited probative value. Yem Sam On was outside of the country for most of the DK period.²²²⁵ He did not work directly with MEAS Muth.²²²⁶ He said MEAS Muth was meticulous and a man of his word.²²²⁷ He said soldiers feared MEAS Muth because of his military position.²²²⁸ He did not dare approach MEAS Muth because he was a commander.²²²⁹ Yem Sam On also said soldiers were not afraid MEAS Muth would mistreat or kill them.²²³⁰ Any fear of MEAS Muth was based on the fact that he was a military commander, not on his character or reputation.

602. The ICP claims that MEAS Muth was an authoritarian who strictly monitored his subordinates²²³¹ and was feared.²²³² He primarily cites unreliable and unresponsive statements from Soem Ny, Chet Bunna, Sok Vanna, Sorn Sot, Or Saran, and Pech Chim. The ICP misleadingly treats these individual opinions and statements as if they represent the entirety of the Division 164 personnel. To the extent these statements are relevant at all, their relevance is limited to assessing how the witnesses individually felt about MEAS Muth.

603. **Soem Ny.** Soem Ny is unreliable.²²³³ He claimed MEAS Muth cut a construction foreman on the forehead with an axe and that MEAS Muth would have sent a friend of Soem Ny’s to Ream for taking food and cigarettes if he knew about it.²²³⁴ His story is uncorroborated by other evidence on the Case File. Soem Ny contradicted himself about

²²²² Case 004/1 Closing Order, para. 324.

²²²³ Final Submission, para. 80.

²²²⁴ Final Submission, fn. 237.

²²²⁵ See *supra* para. 388 for more information about this witness.

²²²⁶ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A62.

²²²⁷ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A69.

²²²⁸ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A69.

²²²⁹ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A72.

²²³⁰ Written Record of Interview of Yem Sam On, 8 May 2014, D54/92, A69.

²²³¹ Final Submission, fn. 238.

²²³² Final Submission, paras. 84-85, fns. 256-59.

²²³³ See *supra* paras. 245 and 406-08 for more information about this witness.

²²³⁴ Written Record of Interview of Soem Ny, 13 November 2013, D54/37, A6, 26. Final Submission, fn. 238.

the alleged axe incident. He first claimed to DC-Cam that the construction foreman died after MEAS Muth hit him in the head with the axe.²²³⁵ Later in the same interview, he said the construction foreman survived and was fine.²²³⁶ To the OCIJ, he said the wound was not so serious.²²³⁷

604. **Chet Bunna.** Chet Bunna is unreliable.²²³⁸ He claimed he never saw anyone with MEAS Muth's character and attitude and said MEAS Muth was very strict.²²³⁹ He is motivated by animus toward MEAS Muth.²²⁴⁰
605. **Sok Vanna.** Sok Vanna is unreliable.²²⁴¹ He said MEAS Muth could easily beat or shoot someone for a mistake, claiming to have seen MEAS Muth beat someone unconscious.²²⁴² To the best of the Defence's knowledge, Sok Vanna's story is not corroborated by other evidence on the Case File.
606. **Sorn Sot.** Sorn Sot is unreliable.²²⁴³ He claimed that if soldiers did not follow MEAS Muth, "they would have been killed."²²⁴⁴ Sorn Sot speculated.
607. **Or Saran.** Or Saran does not support the ICP's claim. He was a medic in a battalion who was sent to the East Zone in 1977.²²⁴⁵ He claimed that MEAS Muth's subordinates avoided making "mistakes because all of them were scared."²²⁴⁶ He was referring to fear of life on a battlefield and self-criticism meetings,²²⁴⁷ not MEAS Muth.
608. **Pech Chim.** Pech Chim's evidence is irrelevant.²²⁴⁸ He claimed that, in 1974, Ta Mok scolded MEAS Muth for ordering the killing of an ammunition guard.²²⁴⁹ This incident pre-dates the ECCC's temporal jurisdiction.

²²³⁵ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332601.

²²³⁶ DC-Cam Interview with Soem Ny, 22 May 2011, D59/2/2.16a, EN 01332605.

²²³⁷ Written Record of Interview of Soem Ny, 13 November 2013, D54/37, A25.

²²³⁸ See *supra* paras. 186-88 for more information about this witness.

²²³⁹ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A20-21. Final Submission, fn. 238.

²²⁴⁰ See *supra* para. 188.

²²⁴¹ See *supra* para. 343 for more information about this witness.

²²⁴² Written Record of Interview of Sok Vanna, 16 October 2014, D114/16, A23-25. Final Submission, fns. 238, 258.

²²⁴³ See *supra* para. 342 for more information about this witness.

²²⁴⁴ Written Record of Interview of Sorn Sot, 23 March 2016, D114/194, A70. Final Submission, fn.256.

²²⁴⁵ Written Record of Interview of Or Saran, 7 December 2013, D54/41, A11, 20, 28.

²²⁴⁶ Written Record of Interview of Or Saran, 7 December 2013, D54/41, A8-10. Final Submission, fn. 257.

²²⁴⁷ Written Record of Interview of Or Saran, 7 December 2013, D54/41, A10.

²²⁴⁸ See *supra* para. 371 for more information about this witness.

609. Military subordinates following their superiors' orders and fearing their superiors are to be expected in a military structure. As Prum Sarat testified: "In general, between the soldiers and the commander, in all kinds of plans and work, they had to respect his orders. Regardless of the DK regime or any other regime, soldiers would have universally respect[ed] the orders from above."²²⁵⁰ That MEAS Muth's subordinates may have followed his orders and feared him is not indicative of any enhanced authority or responsibility on MEAS Muth's part. Being matter-of-fact, meticulous, an authoritarian, or even cruel, does not mean MEAS Muth was more responsible than any other Division commander for the serious crimes committed across DK from 1975-1979.

D. MEAS Muth did not commit genocide against Vietnamese people arrested at sea

610. Any arrests by Division 164 of Vietnamese nationals, ethnic Vietnamese, or people perceived to be Vietnamese entering DK waters were motivated by the duty to protect national security and defend DK against a Vietnamese invasion. Vietnamese were not arrested, detained, or executed for genocidal reasons. The ICP claims: **a.** MEAS Muth was aware of, disseminated, and implemented the Party's policy to destroy the Vietnamese as an ethnic group,²²⁵¹ and **b.** the Division 164 leadership promulgated throughout the Division a general policy of killing all Vietnamese, received reports on the capture of specific vessels, and issued orders to kill captured Vietnamese each time.²²⁵² The ICP makes narrower claims about actions allegedly taken by MEAS Muth to support and implement the Party's genocide policy.²²⁵³ He cites unreliable witnesses, hearsay evidence, and statements that do not support his claims. He ignores relevant contextual or conflicting evidence that weakens or negates his claims.

1. Neither MEAS Muth nor the Division 164 leadership promulgated to Division 164 a policy of killing all Vietnamese

611. The sources the ICP cites do not support his claims that MEAS Muth trained his soldiers on the Party's policy regarding Vietnam and its status as DK's "hereditary

²²⁴⁹ Written Record of Interview of Pech Chim, 28 August 2009, D4.1.786, EN 00381027-00381028. Final Submission, fn. 259.

²²⁵⁰ Written Record of Interview of Prum Sarat, 28 November 2016, D114/285, A58.

²²⁵¹ Final Submission, para. 781.

²²⁵² Final Submission, para. 782.

²²⁵³ Final Submission, paras. 782-98.

enemy” and “enemy number one,” and instructed Division members to kill all Vietnamese, including babies.²²⁵⁴ The ICP cites unreliable and unresponsive statements from Pak Sok and Ek Ny.²²⁵⁵ He ignores relevant contextual and conflicting evidence.

612. **Pak Sok.** Pak Sok is unreliable.²²⁵⁶ He said he attended trainings in which the Vietnamese were described as the “hereditary enemy” and “enemy number one” and that these ideas were taught to the lower level in Division trainings, for which MEAS Muth was responsible.²²⁵⁷ He claimed that in these trainings soldiers were told to kill all Vietnamese, even babies.²²⁵⁸ This claim contradicted his earlier testimony that, rather than killing all Vietnamese people as a matter of course, he was instructed to shoot at and sink armed boats only after they fired first.²²⁵⁹ Other Division 164 witnesses confirm they were instructed to shoot or capture Vietnamese boats or people only when fired upon.²²⁶⁰ They also said Son Sen instructed that Vietnamese refugees were not to be arrested.²²⁶¹

613. Pak Sok claimed MEAS Muth issued an order to kill some Vietnamese refugees.²²⁶² He later told the Trial Chamber that the order came from the Division through the chain of command and was implemented by soldiers on the islands.²²⁶³ He said this occurred before he joined the navy in 1976.²²⁶⁴ As the order was not issued directly to his unit,²²⁶⁵ he would not have known that MEAS Muth issued it. Pak Sok’s knowledge was limited. After he joined the navy, he was based in Ouchheuteal Beach port until the Vietnamese

²²⁵⁴ Final Submission, para. 783.

²²⁵⁵ Final Submission, fns. 3185-89.

²²⁵⁶ See *supra* paras. 233-34 for more information about this witness.

²²⁵⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 13.40.49-13.47.44; Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A32-34. Final Submission, fn. 3186.

²²⁵⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 13.35.23-13.38.32. Final Submission, fn. 3185.

²²⁵⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.55.47-11.00.37.

²²⁶⁰ See *supra* fn. 1950.

²²⁶¹ See *supra* para. 561.

²²⁶² DC-Cam Interview with Pak Sok, 25 April 2007, D54/24.1, EN 00978576. Final Submission, fn. 3187.

²²⁶³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 11.00.37-11.06.59.

²²⁶⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 11.03.07-11.06.59.

²²⁶⁵ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 11.03.07-11.06.59: “The situation was very chaotic. There were orders from the division; actually the division did not issue the orders directly to my unit. So the orders came down in hierarchical order from top to the bottom ... and then it was the soldiers who implemented the orders.... It was the time when I did not join Regiment 140 yet. The situation I described happened when I was in the regiment 622. Later on, in 1977, I was stationed at Ou Chheu Teal, the situation you described [regarding refugees being killed on islands] happened in Poulo Wai island.”

came in 1978.²²⁶⁶ He “did not go beyond [his] place.”²²⁶⁷ He illustrated the limitations of his knowledge through his repeated vague references to the general reporting hierarchy when the NUON Chea Defence asked him who specifically received or issued the order to Regiment 62 soldiers to kill the Vietnamese family.²²⁶⁸ *See infra* paragraph 645 for additional submissions regarding Pak Sok and his claims regarding the Vietnamese.

614. **Ek Ny.** Ek Ny does not support the ICP’s claim.²²⁶⁹ His statements demonstrate the military purpose behind the Party’s policy toward Vietnam. He claimed that the law from the upper level was that Vietnamese had to be absolutely smashed regardless of whether they were ordinary citizens or fishermen.²²⁷⁰ Ek Ny’s reference to “smash” referred to arresting the Vietnamese, not killing them.²²⁷¹ Despite the OCIJ Investigator’s attempt to lead Ek Ny by asking him whether Vietnamese detainees were smashed “because of racism,”²²⁷² Ek Ny said Vietnamese had to be “smashed” because DK was fighting Vietnamese invaders who had taken Koh Kracheh Seh and Koh Poulo Wai.²²⁷³

615. Ek Ny claimed MEAS Muth issued an order that captured Vietnamese people should not be sent to the mainland but should be executed on the islands to save gasoline.²²⁷⁴ This story is based on hearsay.²²⁷⁵

616. The ICP claims that Meas Voeun corroborates Pak Sok’s and Ek Ny’s testimony that Division 164 received orders to kill all Vietnamese.²²⁷⁶ He cites testimony from Meas Voeun that Divisions 1 and 164 received the same orders²²⁷⁷ and that there was an

²²⁶⁶ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A9.

²²⁶⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.41.42-10.45.27.

²²⁶⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 10.50.30-11.00.22.

²²⁶⁹ *See supra* para. 251 and *infra* para. 646 for more information about this witness and his unreliability on other matters.

²²⁷⁰ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A18. Final Submission, fn. 3188.

²²⁷¹ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A18: “It was the law ... that we had to absolutely smash... We had to arrest them all.”

²²⁷² Written Record of Interview of Ek Ny, 24 November 2016, D114/283, Q12.

²²⁷³ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A11-12, 17.

²²⁷⁴ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A41. Final Submission, fn. 3189. *See also* Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29.

²²⁷⁵ *See supra* para. 559.

²²⁷⁶ Final Submission, paras. 786-89.

²²⁷⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.02.24-14.03.43. Final Submission, fn. 3201.

instruction to smash Vietnamese people in DK who did not return to Vietnam.²²⁷⁸ The ICP misrepresents Meas Voeun's testimony. Meas Voeun was referring to 1970-1975 not 1975-1979.²²⁷⁹ He was responding to a question specifically limited to "Vietnamese within the country, not those who came in as refugees but *those who were living in Cambodia.*"²²⁸⁰ The question did not apply to Vietnamese people crossing maritime or land borders during the DK regime, as the deputy co-prosecutor confirmed.²²⁸¹ Earlier, Meas Voeun said there was no order to arrest Vietnamese refugees entering DK waters.²²⁸² He said the Vietnamese whom Division 1 fought in Koh Kong were considered enemies because of the fighting²²⁸³ and that he did not "smash" all Vietnamese captured at sea; he sent them to the upper echelon.²²⁸⁴ The ICP claims Meas Voeun tried to retreat from his testimony by claiming the plan was to gather in one place all Vietnamese living in DK, not to smash them.²²⁸⁵ Meas Voeun testified about the instructions he received from 1975 to 1979 regarding Vietnamese people in the country.²²⁸⁶ He did not retreat from his earlier testimony, which dealt with 1970-1975.

617. The ICP claims that a 1977 West Zone Congress confirmed a CPK policy to smash all Vietnamese.²²⁸⁷ He cites testimony from Meas Voeun about the topics discussed at the

²²⁷⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 15.57.30-15.58.47. Final Submission, fn. 3202.

²²⁷⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 15.57.30-15.58.47 (although the deputy co-prosecutor asked about the 1975-1979 period, Meas Voeun answered about events from 1970-1975), 16.00.12-16.03.41 (relating an incident in 1970 in which his nephews were sent to live in Tay Ninh in Vietnam and his Vietnamese uncle was arrested); *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.19.00-09.20.32 (confirming that he had been referring to events that occurred from 1970-1975).

²²⁸⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 15.57.30 (emphasis added).

²²⁸¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.27.18-09.29.08 ("I was still referring to the 'Yvon' living in Cambodia between 1975 and 1979. I was not yet talking of 'Yvon' refugees coming from the sea").

²²⁸² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55-14.15.24.

²²⁸³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.56.22-09.58.15.

²²⁸⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 10.07.02-10.08.43.

²²⁸⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.15.00-09.17.06. Final Submission, para. 789.

²²⁸⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.15.00-09.17.06 (internally, Vietnamese had to be gathered in one place; there was no plan to smash them), 09.24.04-09.25.26 (between 1975 and 1979 his instructions were to send captured Vietnamese to his upper echelon).

²²⁸⁷ Final Submission, paras. 790-91.

Congress and quotes from a *Revolutionary Flag* issue about the Congress.²²⁸⁸ The ICP overreaches. Meas Vooun said one topic of the Congress (which broadly concerned cooperatives) was about infiltrated enemies and Vietnamese tricks because Vietnam had a plan to attack DK and the two countries were in conflict.²²⁸⁹ The intention was to find and arrest infiltrated enemies within the army and cooperatives.²²⁹⁰ This intention does not equate to a plan or intent to kill all Vietnamese people. The *Revolutionary Flag* issue makes clear that the focus of the Congress was on cooperatives, not the country as a whole, the military, or the Vietnamese as an entire enemy group.²²⁹¹

618. The historical conflict between DK and Vietnam indicates that the Center's policy and instructions regarding Vietnam were based on national security and national defence. The concept of the Vietnamese as DK's "hereditary enemy" stemmed from a long-standing fear that Vietnam would take over the country, a fear enhanced by Vietnam's efforts to invade DK.²²⁹²

2. MEAS Muth did not issue orders to kill Vietnamese detainees on the spot or send them to the mainland to be killed

619. The sources the ICP cites do not support his claims that MEAS Muth was informed of specific incidents in which boats were captured or issued orders to kill Vietnamese detainees on the spot or send them to the mainland to be killed.²²⁹³ The ICP primarily cites unreliable and unresponsive statements from Pak Sok, Prum Sarat, and Meas Vooun.²²⁹⁴ He also cites individual accounts of captures and documentary evidence that does not support his claims.²²⁹⁵

²²⁸⁸ Final Submission, fns. 3205-11.

²²⁸⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.31.25-14.35.36.

²²⁹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.33.55-14.35.36.

²²⁹¹ See e.g., CPK Magazine entitled "Revolutionary Flag," Issue 8, August 1977, D10.1.59, EN 00399236: "It is imperative to prepare forces to attack, attack and smash the enemy and the no-good elements embedded inside and controlling the cooperatives. Use which forces to attack? This problem is not just in the West Zone; every Zone throughout the country is like this. Therefore, it cannot be ignored. It is imperative to see that the cooperatives are still controlled by the enemy and other classes. So then, this is why paddy still disappears, cattle still disappear, seed keeps on disappearing, the seedlings and plants are always bad. Why is this? This comes from the power-holding classes in the cooperatives not being the Party's worker-peasant class."

²²⁹² See *supra* para. 552 for more information.

²²⁹³ Final Submission, paras. 785, 796-97. See also *id.*, paras. 385-87.

²²⁹⁴ Final Submission, fns. 3190-98, 3221.

²²⁹⁵ Final Submission, fns. 3225-27.

620. **Pak Sok.** Pak Sok is unreliable.²²⁹⁶ He said the Division required reports of captures, including whether the people were Vietnamese refugees, Thai fishermen, or soldiers.²²⁹⁷ He also claimed the navy's crew received orders via radio that said "shoot them dead" or "send them to the mainland."²²⁹⁸ "To his knowledge," it was standard operating procedure that MEAS Muth issued orders to kill.²²⁹⁹ Any knowledge he might have had about reports to or orders from MEAS Muth was limited to 1975-1976 when he was with Regiment 62. In 1976, he joined the navy and was at Ouchheuteal Beach port until 1978, handling food supplies for ships.²³⁰⁰ Given Pak Sok's location and rank, his knowledge of such events or of the Division's "standard operating procedures" was minimal.²³⁰¹
621. Pak Sok claimed Vietnamese troops or boats were sent to the mainland.²³⁰² He did not know where Vietnamese were sent after they reached the mainland.²³⁰³ He also claimed there was an order from the upper echelon that, when fewer than 20 Vietnamese were captured at once, soldiers had to kill them immediately.²³⁰⁴ Pak Sok did not say what he meant by "upper echelon." He did not say that he saw or heard MEAS Muth issue this order. He claimed his battalion commander gave the order in meetings and that he never attended Division or regiment meetings because he was too low-level.²³⁰⁵ To the best of the Defence's knowledge, Pak Sok is the only witness who claims to have heard such an

²²⁹⁶ See *supra* paras. 233-34 for more information about this witness.

²²⁹⁷ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A28; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.03.10-10.05.46, 11.03.07-11.06.59. Final Submission, fns. 3190-91.

²²⁹⁸ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A1-2.

²²⁹⁹ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A3. Final Submission, para. 785.

²³⁰⁰ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A2; Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A9; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 11.03.07-11.06.59.

²³⁰¹ See *supra* para. 166 discussing the Party's policy of secrecy and its impact on the assessment of evidence in Case 003.

²³⁰² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 13.44.05-13.46.19; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.05.46-10.06.16. Final Submission, fn. 3195.

²³⁰³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.05.46-10.06.16.

²³⁰⁴ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A25; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 13.58.01-14.00.38. Final Submission, paras. 785, 796; fns. 3195-96, 3222.

²³⁰⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 14.06.30-14.08.22.

order. Prum Sarat and Meas Voeun never heard of any such order.²³⁰⁶ *See infra* paragraph 645 regarding Pak Sok's statements about captures of Vietnamese and other foreigners.

622. **Prum Sarat.** Prum Sarat does not support the ICP's claims. He was tasked with defending the maritime border from armed boats trespassing into DK's territory.²³⁰⁷ He heard over the radio that Vietnamese troops or boats were arrested.²³⁰⁸ He did not say people were killed on the spot or sent to the mainland to be killed.

623. **Meas Voeun.** Meas Voeun is unreliable.²³⁰⁹ His testimony regarding the capture at sea of Vietnamese people also does not support the ICP's claims. He said the Party policy was to counter Vietnamese attempts at invasion.²³¹⁰ He also said there was a plan to smash the Yuon enemy and infiltrated enemies.²³¹¹ He did not know whether they were smashed.²³¹² Meas Voeun later said there was no plan to smash Yuon; he sent captured Vietnamese and refugees to his upper level and did not know what happened to them.²³¹³ He also confirmed the order that refugees were not to be arrested.²³¹⁴ His statements relate only to Division 1. He did not know about Kampong Som's affairs.²³¹⁵

624. The ICP claims that witnesses and documents discuss specific examples of Vietnamese arrestees being killed at sea or at the Cheng Heng and Tuek Sap execution sites.²³¹⁶ The ICP cites Sam Saom, Pak Sok, Lak Saphan, Ek Ny, Chum Chy, Nhoung

²³⁰⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.59.56-10.04.01, 10.05.05-10.06.45; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 11.21.52-11.23.04.

²³⁰⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 09.58.08-09.59.56, 10.10.20-10.13.34, 13.55.27-13.56.33. Final Submission, fn. 3194.

²³⁰⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 15.49.55-15.53.04. Final Submission, fn. 3195.

²³⁰⁹ *See supra* para. 193 for more information about this witness.

²³¹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.15.00-09.17.06. Final Submission, fn. 3194.

²³¹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 13.42.26-13.45.57. Final Submission, fn. 3194.

²³¹² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 13.42.26-13.45.57.

²³¹³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 09.24.04-09.25.26; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.16.59-14.19.02. Final Submission, fn. 3195.

²³¹⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55-14.15.24.

²³¹⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 8 October 2012, D98/3.1.179, 13.34.07-13.35.14 (testifying about a telegram purportedly from MEAS Muth regarding the shooting of 120 Vietnamese people and a delay in releasing Thais).

²³¹⁶ Final Submission, para. 797. *See also id.*, para. 411.

Chrong, and Touch Soeuli.²³¹⁷ Most of these witnesses do not have first-hand knowledge of such killings. Sam Saom saw one captured Vietnamese boat being taken to Koh Tang and heard colleagues say the Vietnamese people had been executed; he speculated that this meant they were killed immediately or taken to the mainland and killed.²³¹⁸ Pak Sok claimed to have seen one incident in which three Vietnamese people were killed on Koh Poulo Wai.²³¹⁹ His claim that people were killed at a durian plantation is hearsay; he heard of killings from soldiers in his regiment.²³²⁰ Lak Saphan speculated about Tuek Sap; he did not know what it was used for during the DK regime.²³²¹ He only visited it after the regime fell.²³²² Ek Ny's statements are hearsay; he was not present during alleged executions on Koh Tang.²³²³ He heard Vietnamese refugees were sent to the durian plantation to become fertilizer.²³²⁴ Chum Chy heard about the alleged execution of Vietnamese refugees on Koh Poulo Wai from others.²³²⁵ Nhoung Chrong never saw the durian plantation; he heard about it from others.²³²⁶ Touch Soeuli also heard about the durian plantation from others; he did not know its location.²³²⁷ Sao Sam stated that the government assigned disabled soldiers and elderly to care for the trees at the durian plantation; he never heard of killings there.²³²⁸ See *infra* paragraphs 664 to 665 regarding the low probative value of the DK military report and US Department of Defense report the ICP cites.²³²⁹

625. The ICP cites a story from Mut Mao that, in late 1978, a Vietnamese woman and two children captured at sea were killed near MEAS Muth's house.²³³⁰ Mut Mao is unreliable.²³³¹ Much of her story is based on hearsay from Division 164 messengers.²³³²

²³¹⁷ Final Submission, fn. 3225. See also *id.*, fns. 1509, 1512.

²³¹⁸ Written Record of Interview of Sam Saom, 19 March 2015, D114/57, A26-28.

²³¹⁹ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A20.

²³²⁰ *Case of Nuon Chea et al.*, 002-19/09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.41.42-10.46.19. See also Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A35; Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A16.

²³²¹ Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, A4.

²³²² Written Record of Interview of Lak Saphan, 21 August 2014, D54/123, A8-9; Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, A7.

²³²³ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A33-34 (stating that he only captured boats).

²³²⁴ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A29, 32.

²³²⁵ Written Record of Interview of Chum Chy, 15 September 2016, D114/262, A49, 51.

²³²⁶ Written Record of Interview of Nhoung Chrong, 24 August 2010, D2/6, A40.

²³²⁷ Written Record of Interview of Touch Soeuli, 11 November 2010, D2/16, A32.

²³²⁸ Written Record of Interview of Sao Sam, 20 June 2014, D54/109, A17-18.

²³²⁹ Final Submission, fn. 3225.

²³³⁰ Final Submission, para. 797, fn. 3226. See also *id.*, para. 141.

²³³¹ See *supra* paras. 266-68 for more information about this witness.

See supra paragraphs 595 to 596 for submissions on the ICP's claim that Vietnamese detainees were sent to S-21.²³³³

626. The ICP claims that MEAS Muth once criticized a subordinate for killing someone without his permission and that, in MEAS Muth's absence, his deputies could issue orders to capture or kill.²³³⁴ The ICP overreaches. The evidence indicates that any orders to kill could only be issued by the Division 164 Committee after approval was obtained from the Party Center. *See supra* paragraph 517 for submissions on these claims. Even if these claims are credible, they do not demonstrate that MEAS Muth possessed genocidal intent regarding the Vietnamese.

3. There is insufficient evidence that hundreds or thousands of Vietnamese people were killed indiscriminately by Division 164

627. The sources the ICP cites do not support his claim that "hundreds or thousands" of Vietnamese people captured at sea were indiscriminately killed by Division 164.²³³⁵ The ICP primarily cites unreliable or unresponsive statements from Pak Sok, Ek Ny, Prum Sarat, and Ou Kim, as well as documentary evidence.²³³⁶ The ICP repeats a claim he made in Section VIII.B of his Final Submission. As explained *infra* in Section IV.F, he overreaches, citing unreliable and unresponsive evidence.

628. The ICP cites only Prum Sarat and Pak Sok to support his claims regarding the indiscriminate nature of the killings.²³³⁷ The ICP misrepresents and cherry picks from Prum Sarat's testimony. Prum Sarat said Vietnamese people trying to cross the waters east of Koh Tang were arrested.²³³⁸ He also said some Vietnamese refugees were arrested.²³³⁹ He was referring to single incidents²³⁴⁰ that he heard about from other

²³³² *See supra* para. 562 regarding Mut Mao's story.

²³³³ Final Submission, para. 797.

²³³⁴ Final Submission, para. 785.

²³³⁵ Final Submission, paras. 792, 796.

²³³⁶ Final Submission, fns. 3212-20.

²³³⁷ Final Submission, fn. 3221.

²³³⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 10.55.25-10.58.17. Final Submission, fn. 3221.

²³³⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 10.47.35-10.49.35.

²³⁴⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 10.55.25-10.58.17 and *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 10.47.35-10.49.35. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 15.49.55-15.53.04. Final Submission, fn. 3221.

soldiers.²³⁴¹ Prum Sarat said that there was a difference in outcome among the Vietnamese captured: Vietnamese refugees would be released, while Vietnamese soldiers or suspected combatants would be interrogated.²³⁴² Prum Sarat said he never knew of any principles, instructions, or orders to kill Vietnamese infants or civilians.²³⁴³ Prum Sarat also said Pol Pot's speech regarding one Cambodian smashing 30 "Yuon" referred to one DK soldier smashing 30 Vietnamese soldiers, not to smashing Vietnamese in general.²³⁴⁴ Prum Sarat and other witnesses contradict Pak Sok's claim that he only heard of an order to arrest refugees, not an order to let them go.²³⁴⁵ These witnesses confirm receiving orders from Son Sen and lower level commanders not to arrest refugees.²³⁴⁶

4. Conclusion

629. MEAS Muth did not intend to kill Vietnamese people captured by Division 164 and to destroy them as an ethnic group, nor did his orders and actions significantly contribute to a genocide of the Vietnamese. Relevant historical and contextual evidence indicates that Division 164 was defending DK territorial waters against military acts of invasion and trespass by Vietnam. MEAS Muth did not have genocidal intent or commit genocidal acts against the Vietnamese.

E. MEAS Muth is not responsible for any forced marriage or rape in the Kampong Som area; even if he was, the acts were not sufficiently grave to make him one of the persons most responsible for serious crimes committed across DK from 1975-1979

630. Forced marriage was not a crime against humanity under customary international law from 1975-1979.²³⁴⁷ Even if the CIJs find that forced marriage could be a crime against humanity, the evidence does not indicate that MEAS Muth is responsible for any such

²³⁴¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 10.12.20-10.13.34.

²³⁴² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 10.43.34-10.47.04 (confirming his DC-Cam statements).

²³⁴³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 27 January 2016, D234/2.1.93, 15.17.57-15.19.10.

²³⁴⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 26 January 2016, D234/2.1.92, 15.24.54-15.33.16.

²³⁴⁵ *See Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 January 2016, D114/297.1.21, 14.29.11-14.31.22. Final Submission, fn. 3221.

²³⁴⁶ *See supra* para. 561.

²³⁴⁷ *See supra* paras. 129-33 regarding the Defence's motion against the applicability of forced marriage as a crime against humanity.

marriages in Division 164 or Kampong Som. The ICP makes broad claims about forced marriage and rape and MEAS Muth's alleged role in the process, yet relies on few witnesses. He ignores or minimizes witnesses who chose to get married, were not punished for refusing to marry, or chose to consummate their marriages. He presents no evidence as to how many forced marriages occurred in areas under MEAS Muth's control. He fails to establish that the marriages were of a gravity equal to other crimes against humanity. Some witnesses claim they were afraid to refuse marriage. Fear is not a sufficiently grave factor to make the alleged acts a crime against humanity. Only one witness said she was physically punished for refusing to marry. She was not in an area under MEAS Muth's control. Even if the CIJs find that forced marriages or rape did occur in areas under MEAS Muth's control, and that the acts were a crime against humanity, responsibility for them does not make MEAS Muth one of those "most responsible."

1. MEAS Muth is not responsible for any forced marriage or rape that occurred in areas under his control

631. The ICP cites little evidence to support his claims regarding MEAS Muth's responsibility for forced marriages and rape in the Kampong Som area.²³⁴⁸ He fails to substantiate his claim that marriage in Kampong Som had unique features that were absent elsewhere in the country.²³⁴⁹ He claims marriage in Kampong Som was different because Division 164 had only one female battalion and therefore women came from Kampong Som cooperatives and worksites, or from outside of Kampong Som, to marry men in Division 164.²³⁵⁰ He cites no witness or documentary evidence to indicate how this situation differed from marriages in other parts of DK. The ICP admits throughout Section VIII.H of his Final Submission²³⁵¹ that some marriages in Kampong Som took place in similar ways as marriages across DK.

632. The ICP makes several broad claims regarding MEAS Muth and marriages in Kampong Som. He supports each claim with single sources that do not support his claim:

²³⁴⁸ Final Submission, Section VIII.H.4-5.

²³⁴⁹ Final Submission, para. 821.

²³⁵⁰ Final Submission, para. 821.

²³⁵¹ See e.g., Final Submission, paras. 827 (claiming that, "as in other parts of DK," the majority of couples did not know or see each other before the ceremony), 828 (claiming that the lack of advance notice to couples mirrored "patterns that were playing out across the country"), 835 (referring to "thousands of other victims across the country" who did not genuinely consent to their marriages).

- The ICP claims that, in at least one political training session, MEAS Muth and Nhan discussed the policy to increase marriages in Kampong Som.²³⁵² He cites only Liet Lan.²³⁵³ Liet Lan said, at the training session he attended, MEAS Muth and Nhan said that, to increase the population and satisfy people who had *asked* to get married, all pending marriage requests should be reviewed and people should be married.²³⁵⁴ The discussion related to requested marriages, not forced marriages. Liet Lan also said he believed the plan came from the upper echelon, not MEAS Muth, because such marriages also occurred in the countryside.²³⁵⁵
- The ICP claims that MEAS Muth instructed his subordinates to arrange and celebrate vow ceremonies.²³⁵⁶ He cites only Mak Chhoeun.²³⁵⁷ The ICP claims Mak Chhoeun told DC-Cam that MEAS Muth instructed him to get married.²³⁵⁸ The ICP misrepresents the evidence. Mak Chhoeun did not make this statement. His wife, Suon Vat, did.²³⁵⁹ She was present during the interview and answered questions throughout it.²³⁶⁰ She did not say why she thought MEAS Muth instructed her husband to get married. Mak Chhoeun said he and his wife chose to marry each other, explaining: “We knew each other. For instance soldiers in the transport unit knew each other. When I saw her I proposed to her and I asked her whether she loved me or not. She said she loved me. So, that’s how it went. If she did not love me, it’s up to her.”²³⁶¹
- The ICP claims that sometimes “there were so many couples” that people married someone other than their intended partner or misidentified their spouses.²³⁶² He

²³⁵² Final Submission, para. 822.

²³⁵³ Final Submission, fns. 3321-22.

²³⁵⁴ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A206.

²³⁵⁵ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A209.

²³⁵⁶ Final Submission, para. 825.

²³⁵⁷ Final Submission, fn. 3325.

²³⁵⁸ DC-Cam Interview with Mak Chhoeun, 18 May 2007, D59/1/1.7a, EN 00969949. Final Submission, fn. 3325.

²³⁵⁹ DC-Cam Interview with Mak Chhoeun, 18 May 2007, D59/1/1.7a, EN 00969949-00969950 (emphasis added): “Dany: Who gave instruction for you to get married? Vat: *Ta Mut*. Dany: *Ta Mut*? Vat: Yes!”

²³⁶⁰ See e.g., DC-Cam Interview with Mak Chhoeun, 18 May 2007, D59/1/1.7a, EN 00969932, 00969939, 00969942.

²³⁶¹ DC-Cam Interview with Mak Chhoeun, 18 May 2007, D59/1/1.7a, EN 00969950. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 12 December 2016, D234/2.1.141, 15.52.18-15.58.05 (stating that he and his wife saw each other before they got married and he requested that they get married; while there was no love relationship beforehand, before getting married they asked each other if they agreed to get married).

²³⁶² Final Submission, para. 826.

cites only Liet Lan.²³⁶³ Liet Lan's statement is hearsay. He heard this story from others.²³⁶⁴

- The ICP claims that the "large majority of the female soldiers" who got married did not dare refuse.²³⁶⁵ He cites only Sok Neang.²³⁶⁶ Sok Neang claimed that "[g]enerally, a woman dared not refuse."²³⁶⁷ Yet, she refused to marry and faced no consequences.²³⁶⁸ She said some couples requested and agreed to marry each other.²³⁶⁹
- The ICP claims that authorization had to be sought from the upper echelon for all matches, whether requested or not.²³⁷⁰ He cites only Liet Lan.²³⁷¹ Liet Lan's statements are only about his own experiences arranging marriages for men in his unit who asked to marry.²³⁷²

633. The ICP claims that "many couples who were forcibly married in the area under Meas Muth's control" received little to no advance notice of the marriage.²³⁷³ He cites five witnesses.²³⁷⁴ One of those, Sam Vuthy, did not get married.²³⁷⁵ The statements of four people do not indicate that "many" people received little to no advance notice of their marriage.

634. The ICP claims that, like thousands of victims across the country, the general atmosphere of terror meant that people forced to marry in Kampong Som did not genuinely consent and had to accept the marriage or face threats or punishment.²³⁷⁶ He

²³⁶³ Final Submission, fn. 3333.

²³⁶⁴ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A210; Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A7.

²³⁶⁵ Final Submission, para. 827.

²³⁶⁶ Final Submission, fn. 3336.

²³⁶⁷ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A45.

²³⁶⁸ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A45.

²³⁶⁹ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A46.

²³⁷⁰ Final Submission, para. 830.

²³⁷¹ Final Submission, fn. 3349.

²³⁷² Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A211-12, 215, 218-19, 221.

²³⁷³ Final Submission, para. 828.

²³⁷⁴ Final Submission, fns. 3342-44 (citing individual accounts from Liet Lan, Sam Vuthy, Svay Sameth, Nav Sokhan, and Meas Saran).

²³⁷⁵ Written Record of Interview of Sam Vuthy, 22 July 2015, D114/94, A105 (saying the Vietnamese invaded on the night of the ceremony).

²³⁷⁶ Final Submission, paras. 835-36.

cites 11 witnesses.²³⁷⁷ None of these witnesses said MEAS Muth issued threats or ordered punishment for a refusal to marry. The ICP does not assert that MEAS Muth did so. Yoem Sroeung claimed that soldiers who did not want to get married would be arrested and women would be removed from their units.²³⁷⁸ He relied on second-hand information.²³⁷⁹ He was always on the water²³⁸⁰ and did not indicate that he was married during the DK regime. Sok Neang recounted hearsay from other people, not her own experience.²³⁸¹ Teu Ry is the only witness who said she was physically punished for refusing to marry.²³⁸² Teu Ry was not in an area under Division 164's control. She is a Civil Party applicant who said she lived in Boeng Srei Village in Ou Chamnar Commune in Prey Nob District, where her unit chief attempted to have her get married but she refused,²³⁸³ and also that she was forced to be married in Koh Khyang Village in Ou Chrov Commune in Prey Nob District but refused.²³⁸⁴ She does not mention MEAS Muth or Division 164.²³⁸⁵ Neither Boeng Srei Village nor Koh Khyang Village are within Division 164's scope of operations.²³⁸⁶

635. Other witnesses refused to marry and did not face negative consequences. Lon Seng said a few arrangements were proposed to him and he refused them without punishment; some people were punished for refusing marriage, but some were not.²³⁸⁷ A female unit sent to a rubber plantation in Kampong Som all refused to get married and were sent back to Phnom Penh by Ta Mok.²³⁸⁸ Koem Men said he was asked for his opinion before marrying and that nothing would have happened if he or his wife refused to marry.²³⁸⁹

²³⁷⁷ Final Submission, fns. 3369-71, 3374.

²³⁷⁸ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A263, 266.

²³⁷⁹ See e.g., Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A259-60.

²³⁸⁰ Written Record of Interview of Yoem Sroeung, 27 July 2015, D114/95, A148, 183.

²³⁸¹ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A46. Final Submission, fn. 3370.

²³⁸² Final Submission, para. 836, fns. 3375-77.

²³⁸³ Written Record of Interview of Civil Party Teu Ry, 18 February 2015, D114/47, A20-22, 85-86, 97-107.

²³⁸⁴ Report of Victim Support Section on Civil Party Applicant Teu Ry, 30 August 2013, D11/336/1, EN 00974621-00974622.

²³⁸⁵ Written Record of Interview of Civil Party Teu Ry, 18 February 2015, D114/47; Report of Victim Support Section on Civil Party Applicant Teu Ry, 30 August 2013, D11/336/1.

²³⁸⁶ See *supra* para. 377 discussing Prey Nob District and Kampot Province.

²³⁸⁷ DC-Cam Interview with Lon Seng, 26 February 2012, D54/38.1, EN 01072395-01072396. He confirmed this interview in Written Record of Interview with Lon Seng, 4 December 2013, D54/38, A6-7.

²³⁸⁸ Written Record of Interview of Chum Roem, 29 January 2015, D114/38, A89-92, 106-07, 114. Final Submission, para. 838. There is no indication that this unit was in an area under Division 164's control. Written Record of Interview of Chum Roem, 29 January 2015, D114/38, A17 and 145 (stating that she never heard of MEAS Muth), 114 (stating that she was told that Ta Mok sent her unit back to Phnom Penh).

²³⁸⁹ Written Record of Interview of Koem Men, 3 September 2015, D114/113, A231, 236-38.

636. The ICP claims that, after marriage, couples were ordered to live together for a few days to consummate the marriage²³⁹⁰ and believed they would be punished, arrested, or killed if they did not consummate it.²³⁹¹ He cites five witnesses, none of whom support his claims.²³⁹² Although Liet Lan said he had to follow Nhan's orders and did not want to have sexual intercourse,²³⁹³ he agreed to have intercourse with his wife and thought she agreed as well.²³⁹⁴ Uk Sok said her husband did not touch her, she agreed to sleep with him, and they did not sleep together until they understood each other.²³⁹⁵ Nav Sokhan agreed to consummate her marriage and said she loved her husband although she did not know him in advance.²³⁹⁶ Meas Saran did not say MEAS Muth or a subordinate forced her to have sexual intercourse with her new husband, she said her husband would have forced her to do so if she refused.²³⁹⁷ Yoem Sroeng's statement that couples were monitored²³⁹⁸ is based on second-hand information.²³⁹⁹

637. Voluntary marriages occurred in Kampong Som.²⁴⁰⁰ The ICP admits as much.²⁴⁰¹ Despite this evidence, he does not meaningfully distinguish voluntary marriages from "forced" marriages when discussing the marriage process. He disingenuously treats all marriages as "forced" marriages.²⁴⁰² Nor does he give an estimate of how many marriages were "forced" in the Kampong Som area from 1975-1979. He fails to establish a policy of forced marriages in Kampong Som or that MEAS Muth was responsible for any such policy.

²³⁹⁰ Final Submission, para. 840.

²³⁹¹ Final Submission, para. 841.

²³⁹² Final Submission, fns. 3387-91.

²³⁹³ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A199-200.

²³⁹⁴ Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A193, 195.

²³⁹⁵ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A313-16.

²³⁹⁶ Written Record of Interview of Nav Sokhan, 7 September 2015, D114/117, A266, 312-13, 316-17.

²³⁹⁷ Written Record of Interview of Meas Saran, 29 December 2014, D114/32, A54-56.

²³⁹⁸ Written Record of Interview of Yoem Sroeng, 27 July 2015, D114/95, A259-62. Final Submission, fn. 3389.

²³⁹⁹ See *supra* para. 634 for more information about this witness.

²⁴⁰⁰ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A46; Written Record of Interview of Liet Lan, 11 August 2015, D114/103, A215, 218-19, 221; Written Record of Interview of Yoem Sroeng, 27 July 2015, D114/95, A252; Written Record of Interview of Sam Komnith, 12 July 2016, D114/234, A51.

²⁴⁰¹ See *e.g.*, Final Submission, paras. 830-31, 838.

²⁴⁰² See *e.g.*, Final Submission, paras. 831 (discussing the process of approval of a request to marry), 838 (claiming that participants in ceremonies included those forced to marry as well as others who "accepted" the situation or "voluntarily" married).

2. There is insufficient evidence that victims of forced marriage in Kampong Som Autonomous Sector suffered physical or mental trauma

638. The sources the ICP cites do not support his claims that victims experienced: **a.** physical distress at having to marry and have sex with someone they did not know or love; **b.** trouble accepting they were forcibly married and trying to conceal it; or **c.** separating or divorcing after 1979.²⁴⁰³ The ICP cites eight witnesses.²⁴⁰⁴ None of them support his claims.

639. The ICP cites two witnesses to support his claim that victims of forced marriage experienced physical distress.²⁴⁰⁵ Neither of these witnesses support this claim. Meas Saran said she feels hurt now because, *inter alia*, her marriage was arranged without informing her parents or siblings; she did not report feeling physical distress during the DK regime or today regarding her marriage.²⁴⁰⁶ Liet Lan said he was unhappy and surprised about having to get married; he did not report feeling physical distress.²⁴⁰⁷

640. The ICP cites only Nav Sokhan to support his claim that “[s]ome have trouble accepting today that they were forcibly married ... and have even tried to conceal it.”²⁴⁰⁸ Nav Sokhan did say she had not been married during the DK regime before saying she got married in 1977 or 1978.²⁴⁰⁹ Rather than trying to conceal her marriage, she may have simply been confused by the OCIJ Investigator’s questions.²⁴¹⁰ She said she loved her husband,²⁴¹¹ which does not indicate an intent to conceal her marriage.

641. The ICP claims that “[m]any” forcibly married couples separated or divorced after 1979,²⁴¹² implying that they separated or divorced as soon as possible. He cites five witnesses.²⁴¹³ None of these witnesses support his claim. Uk Sok indicated that she and

²⁴⁰³ Final Submission, para. 843.

²⁴⁰⁴ Final Submission, fns. 3393-95.

²⁴⁰⁵ Final Submission, para. 843, fn. 3393.

²⁴⁰⁶ Written Record of Interview of Meas Saran, 29 December 2014, D114/32, A114. Final Submission, fn. 3393.

²⁴⁰⁷ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A3, 5. Final Submission, fn. 3393.

²⁴⁰⁸ Final Submission, para. 843, fn. 3394.

²⁴⁰⁹ Written Record of Interview of Nav Sokhan, 7 September 2015, D114/117, A218-19, 249-51, 257.

²⁴¹⁰ Written Record of Interview of Nav Sokhan, 7 September 2015, D114/117, A249.

²⁴¹¹ Written Record of Interview of Nav Sokhan, 7 September 2015, D114/117, A317.

²⁴¹² Final Submission, para. 843.

²⁴¹³ Final Submission, fn. 3395.

her husband separated in 1979.²⁴¹⁴ Their separation was not intentional. They lived in separate places and escaped separately when the Vietnamese came in.²⁴¹⁵ Later, Uk Sok tried to find her husband but she could not.²⁴¹⁶ Liet Lan and Vun Bunna were married to each other and indicated that they divorced sometime between 1989 and 1992, 10 years after the DK regime.²⁴¹⁷ Koem Men did not say when he got divorced but said he was married in late 1977 or early 1978 and that he and his wife had three children,²⁴¹⁸ indicating that they were married for some time. Meas Saran said generally that people separated after the DK regime but did not say how she knew this.²⁴¹⁹ She also said some couples, like her aunt and uncle, are still living together.²⁴²⁰ Other witnesses who got married during the DK regime remained married afterward: Kim Hav;²⁴²¹ Svay Sameth;²⁴²² Sok Ren,²⁴²³ Om Eit;²⁴²⁴ and Nguon Lay.²⁴²⁵

3. Conclusion

642. MEAS Muth was not responsible for forced marriages or rapes in Kampong Som. There is no evidence as to how many alleged forced marriages occurred in areas under MEAS Muth's control. There is no evidence that any such marriages were of a gravity equal to other crimes against humanity. Even if the CIJs find that forced marriage constituted a crime against humanity from 1975-1979 and occurred in areas under MEAS Muth's control, similar acts occurred across the country. Responsibility for such acts does not elevate MEAS Muth to the category of "most responsible."

²⁴¹⁴ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A278.

²⁴¹⁵ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A311, 317-19, A337-38.

²⁴¹⁶ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A340-41, 344-46. *See also id.*, A359 (stating that she still misses her husband).

²⁴¹⁷ Written Record of Interview of Liet Lan, 24 October 2013, D54/29, A9; Written Record of Interview of Vun Bunna, 7 March 2017, D114/304, A147.

²⁴¹⁸ Written Record of Interview of Koem Men, 3 September 2015, D114/113, A225-26.

²⁴¹⁹ Written Record of Interview of Meas Saran, 29 December 2014, D114/32, A96.

²⁴²⁰ Written Record of Interview of Meas Saran, 29 December 2014, D114/32, A103.

²⁴²¹ Written Record of Interview of Kim Hav, 29 June 2016, D114/226, A133, 139.

²⁴²² Written Record of Interview of Svay Sameth, 28 May 2015, D114/78, A26-27.

²⁴²³ Written Record of Interview of Sok Ren, 13 January 2016, D114/155, A91-92.

²⁴²⁴ Written Record of Interview of Om Eit, 9 September 2015, D114/120, A23.

²⁴²⁵ Written Record of Interview of Nguon Lay, 16 November 2015, D114/139, A21, 139.

F. Even if crimes were committed in areas under MEAS Muth's control, and even if criminal responsibility could be ascribed to MEAS Muth, these crimes and numbers of victims were not sufficiently grave to render MEAS Muth a senior leader or one of those most responsible for serious crimes committed across DK from 1975-1979

643. The ICP overstates the evidence. Conceding that it is impossible to accurately ascertain the number of victims of crimes,²⁴²⁶ in estimating the number of victims, he: **a.** cites witnesses whose statements are based on hearsay or speculation; **b.** cites witness evidence that is of low probative value or does not support his claims; **c.** cites documentary evidence that is unreliable, of low probative value, or does not support his claims; **d.** overstates evidence; and **e.** ignores contextual evidence. The evidence in the Case File does not support the large victim numbers the ICP claims. Even if the CIJs find that the ICP's estimates of victim numbers are borne out by the evidence, this still would not elevate MEAS Muth to the level of a "senior leader" or one of those "most responsible."²⁴²⁷

1. There is insufficient evidence that over a thousand people were captured and killed by the DK navy at sea or in Kampong Som Autonomous Sector

644. The sources the ICP cites do not support his claim that over a thousand people, primarily Vietnamese and Thais, were captured at sea and killed by the DK navy at sea or in Kampong Som Autonomous Sector.²⁴²⁸ The ICP primarily cites speculative estimates of captures and killings by unreliable witnesses such as Pak Sok, Ek Ny, Ou Kim, Prum Sarat, and Moul Chhin.²⁴²⁹ He overstates the individual accounts of witnesses who claim to have witnessed captures of boats and ignores portions of their testimony that negates or weakens his claim.²⁴³⁰ He also cites documentary evidence – an interview with MEAS Muth conducted by David Kattenburg, US Department of Defense Reports, and DK military reports – that do not support his claim.²⁴³¹

²⁴²⁶ Final Submission, paras. 463, 504, 613.

²⁴²⁷ The numbers of victims of crimes in DK waters and in Kampong Som must be viewed against the entirety of deaths and suffering caused by CPK policies in 1975-1979. Case 004/1 Closing Order, paras. 317-18.

²⁴²⁸ Final Submission, paras. 402, 1091.

²⁴²⁹ Final Submission, fns. 1451, 1555-56, 1561, 1565, 1570.

²⁴³⁰ Final Submission, fns. 1360, 1422, 1428-30, 1438, 1475, 1530-31, 1557-58, 1562, 1569.

²⁴³¹ Final Submission, fns. 1358, 1425-27, 1464, 1472.

a. The estimates of killings and captures the ICP cites are speculative and unreliable

645. **Pak Sok.** Pak Sok is unreliable.²⁴³² He speculated that thousands of people were sent through Ouchheuteal port between 1975-1979 and that thousands of people, including Thai fishermen and Vietnamese refugees, were arrested and killed at sea, on the islands, or on the mainland.²⁴³³ Pak Sok's area of operation was limited. After being stationed on Koh Tang and Koh Poulo Wai, he worked in Ouchheuteal port from 1976 until 1978 for a regiment chairman handling food supplies for ships.²⁴³⁴ He was not on a boat or an island while he was stationed at Ouchheuteal.²⁴³⁵ Pak Sok could not tell the OCIJ how many times captures took place or how many refugees were captured by his unit each year.²⁴³⁶ He could only recall personally participating in three captures: one Vietnamese boat and two Thai fishing boats.²⁴³⁷ He told the OCIJ that he personally witnessed the killing of a captured Vietnamese family and that their bodies were subsequently used as fertilizer for a coconut tree, and that the Thais were either sent back to Thailand or to Ream to later work on Koh Ta Kiev.²⁴³⁸ During the Case 002/01 trial, Pak Sok changed his story. He testified that he only witnessed the capturing of Vietnamese boats once or twice and there were no incidents where harm was caused to the captured people.²⁴³⁹ He also testified that he did not know where people were taken beyond Kampong Som or where they were killed because his responsibility was limited to the port.²⁴⁴⁰ When confronted with his OCIJ interview, Pak Sok stated that he could not clearly recall the events in 1977 to 1978.²⁴⁴¹

²⁴³² See *supra* paras. 233-34 for more information about this witness.

²⁴³³ See Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A11-13. Final Submission, fns. 1451, 1560.

²⁴³⁴ Written Record of Interview of Pak Sok, 18 October 2013, D54/23, A2; Written Record of Interview of Pak Sok, 29 October 2013, D54/25, A9; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 09.53.36- 09.58.05.

²⁴³⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 09.53.36- 09.58.43.

²⁴³⁶ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A12.

²⁴³⁷ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A12.

²⁴³⁸ Written Record of Interview of Pak Sok, 19 October 2013, D54/25, A14, 16, 20.

²⁴³⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.37.31-10.41.42.

²⁴⁴⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.37.31-10.41.42.

²⁴⁴¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.41.42-10.45.27.

646. **Ek Ny.** Ek Ny is unreliable.²⁴⁴² He speculated that 1,200 to 1,300 Vietnamese and Thai people were arrested and killed at sea by the DK navy.²⁴⁴³ Ek Ny told the OCIJ that he only recalled seeing one capture of four Thai boats.²⁴⁴⁴ He would not have known of the total number of persons captured in DK waters or the fate of those who were captured. As for Vietnamese boats, he told the OCIJ that the frequency of captures varied: sometimes there were three to four boats per month, sometimes there were three to four boats per day.²⁴⁴⁵ He did not say that he saw Vietnamese being executed.²⁴⁴⁶ To the best of the Defence's knowledge, Ek Ny's statement that hundreds of Vietnamese bodies were buried under coconut trees on Koh Tang is not corroborated by other evidence on the Case File. As for the human remains purportedly found by Ek Ny on Koh Tang, these could have been the bodies of DK or American soldiers who died during clashes on the island in May 1975.²⁴⁴⁷

647. **Ou Kim.** Ou Kim is unreliable. His statements are based on speculation and unverifiable hearsay. Ou Kim speculated that 1,000 Thai and Vietnamese people were killed on Koh Poulo Wai, that more Thai boats were captured than Vietnamese refugee boats, and that on average, there were 30 people in each boat.²⁴⁴⁸ Ou Kim acknowledged to both DC-Cam and the OCIJ that his estimates would not be accurate.²⁴⁴⁹ He also told the OCIJ that some of his statements in his DC-Cam interview were based on second-

²⁴⁴² See *supra* paras. 251 and 410 for more information about this witness.

²⁴⁴³ Written Record of Interview of Ek Ny, 23 November 2016, D114/282, A58-61. Final Submission, fns. 1555-56.

²⁴⁴⁴ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A3.

²⁴⁴⁵ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A3.

²⁴⁴⁶ Written Record of Interview of Ek Ny, 24 November 2016, D114/283, A3.

²⁴⁴⁷ See Written Record of Interview of Iem Phong, 11 August 2015, D114/104, A151: "Yes, soldiers were already there [on Koh Tang], but they had fought American soldiers, and the Americans had taken them as prisoners of war and put them all in Vietnam. When we arrived there, we saw the traces of the battle, the aircraft that had crashed there, and pits where they had buried bodies." See also Written Record of Interview of Nob Phan, 12 September 2015, D114/122, A50: "When I worked on the island, I was told some personnel died during the fighting between Khmer Rouge soldiers and American soldiers. However, I do not know how they died and where the bodies were buried. While I was working on Koh Tang Island, I never saw any graves or skeletal remains." See also Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A152-56.

²⁴⁴⁸ Written Record of Interview of Ou Kim, 19 September 2015, D114/126, A36-37, A43-46. Final Submission, fn. 1561.

²⁴⁴⁹ DC-Cam Interview with Ou Kim, 3 March 2015, D220/1.2.1, EN 01375006: "Well, this is difficult to ascertain, and I am afraid that my calculation is not going to be accurate.... This is only an estimate." See also Written Record of Interview of Ou Kim, 19 September 2015, D114/126, Q-A34: "Q: On average, how many fisherman were aboard the Thai ships, and how many were aboard the Vietnamese boats? A34: I understand that the Court needs exact numbers, but I do not remember the numbers. I was not nearby, and I did not participate in studying this issue precisely."

hand knowledge.²⁴⁵⁰ Ou Kim did not participate in the capturing of boats, was not nearby when boats were captured, and “did not participate in studying this issue precisely.”²⁴⁵¹ Ou Kim’s statement that captured persons were killed on Koh Poulo Wai is unverifiable hearsay. He learned of killings from his fellow company members.²⁴⁵² He did “not know the details because that was the job of other people.”²⁴⁵³

648. **Prum Sarat.** Prum Sarat is unreliable.²⁴⁵⁴ He speculated that more than 100 people were arrested while he was stationed on Koh Poulo Wai.²⁴⁵⁵ He told the OCIJ that Division 164 did not seize Vietnamese boats often.²⁴⁵⁶ He only remembered witnessing two captures of Vietnamese boats and heard once about the seizure of a Thai fishing boat during his time on Koh Poulo Wai.²⁴⁵⁷ He did not participate in, see the capture of, or know how many people were on the Thai fishing boat. He only heard about it over the radio.²⁴⁵⁸ He did not hear of other seizures of Thai boats other than that one incident.²⁴⁵⁹ Prum Sarat’s knowledge of other captures of Vietnamese boats is based on what he heard over the radio.²⁴⁶⁰ He claimed to have kept a daily log of arrests about which he heard over the radio, but the logbook vanished at sea.²⁴⁶¹ He did not have first-hand knowledge of the fate of arrestees. He heard from colleagues and friends in Division 164 that arrestees were sent to S-21.²⁴⁶²

²⁴⁵⁰ Written Record of Interview of Ou Kim, 20 September 2015, D114/127, Q-A26-27: “Q: In the interview with the Documentation Center of Cambodia on Pages 21 and 25, you talked about searching captured persons and about five kilograms of gold collected from them. Where and in which year did this event happen? A26: Honestly, I did not learn about this first-hand, because I did not search them or collect their gold. Q: On Page 21 of the interview with the Documentation Center of Cambodia you also said that women hid gold inside their genitals. Can you provide more explanation? A27: I learned this from guards who patrolled the beach.”

²⁴⁵¹ Written Record of Interview of Ou Kim, 19 September 2015, D114/126, A28, 34.

²⁴⁵² Written Record of Interview of Ou Kim, 20 September 2015, D114/127, A30.

²⁴⁵³ Written Record of Interview of Ou Kim, 20 September 2015, D114/127, A33.

²⁴⁵⁴ See *supra* para. 191 for more information about this witness.

²⁴⁵⁵ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A129-32. Final Submission, fn. 1565.

²⁴⁵⁶ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, Q-A121: “Q. In your interview with the Documentation Center of Cambodia, on page 53 (English Version), and on page 44 (Khmer version) you made a statement about the seizure of Vietnamese boats. Did Division 164 often seize Vietnamese boats? A121: Not often.”

²⁴⁵⁷ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A121, 146.

²⁴⁵⁸ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A147-49.

²⁴⁵⁹ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A150.

²⁴⁶⁰ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A130.

²⁴⁶¹ Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A131. See also DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974206: “Sarāt: Some of them were refugees and some were youths in their commando uniforms. Dany: Did they wear Vietnamese army insignia? Sarāt: Well, they were Vietnamese soldiers.... We arrested and interrogated them. We released the refugees....”

²⁴⁶² Written Record of Interview of Prum Sarat, 29 April 2014, D54/87, A135.

649. **Moul Chhin.** Moul Chhin is unreliable.²⁴⁶³ He speculated that generally three to four boats were captured per day, and on average there were about six people on small boats and up to 20 to 30 people on larger boats.²⁴⁶⁴ While he claimed to have witnessed Vietnamese refugees and Thai fishermen being captured and taken to be killed on Koh Poulo Wai,²⁴⁶⁵ Sath Chak, who was stationed on the same island,²⁴⁶⁶ stated that boats were never taken to Koh Poulo Wai after being captured.²⁴⁶⁷
650. Son Sen ordered that Vietnamese refugees should be allowed to continue their journey to Thailand and not be arrested.²⁴⁶⁸ Meas Voeun testified that the same policy applied to Thais,²⁴⁶⁹ and that he never received orders to kill refugees.²⁴⁷⁰ As a matter of national security, if boats encroached into DK waters, they would be temporarily seized and the passengers would be interrogated.²⁴⁷¹ Some boats contained both combatants and civilians.²⁴⁷² Refugees would be released.²⁴⁷³ Those who were suspected of hiding their identity were arrested.²⁴⁷⁴ Boats were only fired upon by DK cadres if their boats were fired upon, or as warning shots to scare boats away from DK waters.²⁴⁷⁵ The DK

²⁴⁶³ See *supra* para. 361 for more information about this witness.

²⁴⁶⁴ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A39, 41-42. Final Submission, fn. 1570.

²⁴⁶⁵ Written Record of Interview of Moul Chhin, 29 January 2015, D114/40, A79, 84-85.

²⁴⁶⁶ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A21.

²⁴⁶⁷ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A80: "When the boats were captured they were never taken to our island."

²⁴⁶⁸ Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75: "SON Sen said if those Vietnamese were refugees to Thailand, we should not arrest them and we should let them travel on." See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.35.00-09.36.50 (stating that he never received any orders to fire upon or sink Vietnamese boats trying to flee to other countries), 09.45.50 (stating that the upper echelon's instruction was that Vietnamese people fleeing to another country were not considered the enemy).

²⁴⁶⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55.

²⁴⁷⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 3 February 2016, D234/2.1.96, 11.18.47-11.20.10, 11.23.04-11.24.54.

²⁴⁷¹ DC-Cam Interview with Prum Sarat, 19 May 2007, 19 May 2007, D59/1/1.8a, EN 00974206.

²⁴⁷² DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974206: "There were some boats entering our territory. When I went to check, they were the Vietnamese boats.... We arrested them.... Some of them were refugees and some were youths in their commando uniforms.... We arrested and interrogated them. We released the refugees. If they did not answer our questions and tried to hide their identity, we would send them to our security office."

²⁴⁷³ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974206; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.14.10.

²⁴⁷⁴ DC-Cam Interview with Prum Sarat, 19 May 2007, D59/1/1.8a, EN 00974206: "There were some boats entering our territory. When I went to check, they were the Vietnamese boats.... We arrested them.... Some of them were refugees and some were youths in their commando uniforms.... We arrested and interrogated them. We released the refugees. If they did not answer our questions and tried to hide their identity, we would send them to our security office."

²⁴⁷⁵ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A140; Written Record of Interview of Meas Voeun, 15 January 2014, D54/51, A19; Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A11, 23. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016,

government negotiated with the Thai government for the release of detainees.²⁴⁷⁶ The owners of Thai boats would also negotiate for the release of their crew with those who captured the boats.²⁴⁷⁷ The ICP ignores this evidence.

b. The ICP overstates the individual accounts of witnesses who claim to have seen captures of boats and ignores testimony that negates or weakens his claims

651. The ICP overstates Nop Hal's statement that he recalled seizing a Vietnamese boat near Koh Poulo Wai with around 16 people on it.²⁴⁷⁸ Nop Hal could only recall participating in the transportation of *one* Vietnamese boat.²⁴⁷⁹ He did not hear of any killings on Koh Tang and could not tell the OCIJ how many boats were seized on Koh Poulo Wai or any other DK island.²⁴⁸⁰

652. The ICP overstates Ing Chhon's statement that his unit arrested 23 Vietnamese people.²⁴⁸¹ Ing Chhon only recalled capturing 23 Vietnamese and did not know their fate after his unit sent them to Kampong Som.²⁴⁸² While he said that he participated in the capture of many boats, he did not remember the actual number, and speculated that it was less than 100.²⁴⁸³

653. The ICP overstates Dol Song's statement that he witnessed the arrest of 30 Thai fishermen who were brought to Koh Poulo Wai in 1977.²⁴⁸⁴ Dol Song said he *only* saw

D234/2.1.95, 14.09.34. *See also Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.09.34; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 13 December 2016, D114/297.1.47, 09.24.33-09.28.44 (if Vietnamese boats entered beyond Koh Seh, they would chase them away and if they fired at the RAK soldiers, they would return fire); 09.50.04-09.52.25 (stating that when fishing boats shot at them they would return fire; if the boats did not open fire, they would chase them away but would not shoot at them).

²⁴⁷⁶ Written Record of Interview of Lay Bunhak, 29 May 2014, D54/100, A165; Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A80: "[L]ater, there was a negotiation between Cambodian and Thai authorities in early 1977, and there was an exchange of those Thai fishermen on Koh Sdach Island."

²⁴⁷⁷ DC-Cam Interview with Ou Kim, 3 March 2015, D220/1.2.1, EN 01374987; Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A15; Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A106.

²⁴⁷⁸ Written Record of Interview of Nop Hal, 9 April 2014, D54/79, A8. Final Submission, fn. 1360.

²⁴⁷⁹ Written Record of Interview of Nop Hal, 9 April 2014, D54/79, A8.

²⁴⁸⁰ Written Record of Interview of Nop Hal, 9 April 2014, D54/79, A3-4, 24.

²⁴⁸¹ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A19. Final Submission fn. 1422.

²⁴⁸² Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A19, 32.

²⁴⁸³ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A20.

²⁴⁸⁴ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A41-49. Final Submission, fns. 1428, 1475.

this one arrest and did not see arrests at other places.²⁴⁸⁵ Contrary to what he stated in his interview with ADHOC, he did not witness any killings.²⁴⁸⁶ His evidence that Thais were killed is unverifiable hearsay. He heard this from soldiers on his island.²⁴⁸⁷

654. The ICP overstates Meu Ret's statement that he saw 10 Thai fishermen that had been captured and brought to Koh Ta Keav in 1976.²⁴⁸⁸ Meu Ret did not state that these fishermen were mistreated or killed. He told the OCIJ that the 10 Thai fishermen he observed being captured were not tied up and were walking around, picking up coconuts, and cooking food.²⁴⁸⁹ He also stated that he heard that negotiations were underway with the Thai Embassy for those captured Thais to return to Thailand.²⁴⁹⁰ The ICP ignores this part of Meu Ret's testimony.

655. The ICP overstates Nou Saroeun's statement that he saw 25 fishermen being taken to the Cheng Heng Durian Plantation.²⁴⁹¹ Nou Saroeun was working in a children's unit at the time he allegedly saw 25 Thai fishermen taken to a durian plantation for execution.²⁴⁹² Nou Saroeun did not see any executions being carried out. It is unlikely that killings would have been conducted near civilians given the CPK's policy of secrecy.²⁴⁹³ His evidence is unverifiable hearsay. He heard about killings from his unit chairman.²⁴⁹⁴

656. The ICP overstates Ou Dav's statement that his unit captured two fishing boats with approximately 15 Thais at some point after June 1975.²⁴⁹⁵ Ou Dav told the OCIJ that he was ordered not to kill people on the Thai boats and to keep them alive in order to exchange them for gasoline, and that he was not aware of any other captures in Kampong

²⁴⁸⁵ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A51.

²⁴⁸⁶ Written Record of Interview of Dol Song, 19 June 2013, D54/8, Q-A41, 46, 49: "Q: In your interview with ADHOC, you mentioned that you saw them kill 30 Thai people on a boat. Can you please describe that event? A41: This event happened while I was training with the navy. I saw Thai people who had been arrested and brought to an island.... Q: Can you describe the condition of those people when they were being arrested? A46: Their arms were tied. Soldiers on the island said they would kill those Thai people.... Q: How did they kill those fishermen? A49: I did not see the killing with my own eyes, but I knew that they were not killed by gunshot. They were beaten to death."

²⁴⁸⁷ Written Record of Interview of Dol Song, 19 June 2013, D54/8, A46.

²⁴⁸⁸ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A24. Final Submission, fn. 1429.

²⁴⁸⁹ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A24.

²⁴⁹⁰ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A24.

²⁴⁹¹ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A35-36. Final Submission, fn. 1430.

²⁴⁹² Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A34-36.

²⁴⁹³ See *supra* para. 166 discussing the CPK's policy of secrecy and the impact it has on the assessment of evidence.

²⁴⁹⁴ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A39.

²⁴⁹⁵ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A132-34, 150-52. Final Submission, fn. 1438.

Som.²⁴⁹⁶ He also noted that Thais on board were armed; some were in military uniform, indicating that there was a national security purpose behind the arrest of the vessels in DK waters.²⁴⁹⁷ The ICP ignores this evidence.

657. The ICP overstates Pen Sarin's OCP statement that he saw two groups of 15-20 Thai fishermen who were captured off Koh Tang and Koh Rong.²⁴⁹⁸ Pen Sarin is unreliable and his statements are unverifiable.²⁴⁹⁹ His OCP statement is also of little probative value because it was prepared by a party with an interest in the outcome of the proceedings.²⁵⁰⁰

658. The ICP overstates Hing Uch's statement that he observed the capture of Thai boats once or twice and Vietnamese boats three times.²⁵⁰¹ Hing Uch told the OCIJ that boats were captured "from time to time,"²⁵⁰² not that they were captured frequently. In his DC-Cam interview, he stated that he rarely saw Thai ships encroaching into DK waters, that there were instructions to let refugees continue their trip, and that if the refugees did not have enough rice, cadres would give them some.²⁵⁰³ The ICP ignores this evidence.

659. The ICP overstates Neak Yoeun's statement that he heard about the capture of Vietnamese boats every two or three months.²⁵⁰⁴ His statement is unreliable because it is hearsay. He never witnessed the capturing of Vietnamese boats or killings of Vietnamese people. He told the OCIJ he only saw one Thai boat docked in Kampong Som and that there were negotiations with the owners of the Thai boat to release the arrestees in exchange for goods.²⁵⁰⁵ The ICP ignores this evidence.

660. The ICP overstates Sao Sam's statement that he recalled seeing captured boats three times.²⁵⁰⁶ Sao Sam said he recalled seeing captured boats "about 3 times *only*."²⁵⁰⁷ He did

²⁴⁹⁶ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A106, 160.

²⁴⁹⁷ Written Record of Interview of Ou Dav, 11 September 2014, D114/24, A149-52.

²⁴⁹⁸ OCP Statement of Pen Sarin, 13 August 2008, D1.3.13.8, EN 00217561-00217562. Final Submission, fns. 1530-1531.

²⁴⁹⁹ See *supra* para. 413 for more information about this witness.

²⁵⁰⁰ See *supra* para. 141. See also Case 004/1 Closing Order, paras. 105-06.

²⁵⁰¹ Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A34. Final Submission, fn. 1557.

²⁵⁰² Written Record of Interview of Hing Uch, 23 April 2014, D54/82, A34.

²⁵⁰³ DC-Cam Interview with Hing Uch, 28 June 2007, D54/81.2, EN 01001406-01001407.

²⁵⁰⁴ Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A13-14. Final Submission, fn. 1558.

²⁵⁰⁵ Written Record of Interview of Neak Yoeun, 10 October 2014, D114/11, A16.

²⁵⁰⁶ Written Record of Interview of Sao Sam, 20 June 2014, D54/109, A16. Final Submission, fn. 1559.

²⁵⁰⁷ Written Record of Interview of Sao Sam, 20 June 2014, D54/109, A16 (emphasis added).

not hear about killings. He heard from soldiers in his unit that arrestees were later sent back to their respective countries by land.²⁵⁰⁸

661. The ICP overstates Meas Voeun's statement that he recalled capturing around 50-60 fishing boats and that only around 10 fishermen were captured because most of them jumped into the water.²⁵⁰⁹ This does not mean that those fishermen died. Ing Chhon stated that Thai boats had emergency equipment such as flotation devices and food.²⁵¹⁰ Meas Voeun said his unit never fired at fishermen that jumped into the water.²⁵¹¹ His unit would only fire at Thai boats if fired upon.²⁵¹² Meas Voeun also told the OCIJ in a subsequent interview that during his three-year stay on Koh Kong, he only remembered the capture of one Thai boat and two Vietnamese boats; the Thai boat was sent back to Thailand.²⁵¹³ Meas Voeun also confirmed that Son Sen's order not to arrest Vietnamese refugee boats also applied to Thai boats.²⁵¹⁴ The ICP ignores this evidence.

662. The ICP overstates Sath Chak's statement that he saw the navy capture boats fewer than 10 times on Koh Poulo Wai.²⁵¹⁵ Sath Chak acknowledged that he could not provide an accurate estimate of the number of times he witnessed such incidents.²⁵¹⁶ Sath Chak did not see or hear about killings of Thais or Vietnamese and never saw corpses floating around the island.²⁵¹⁷ He told the OCIJ that when boats were captured, they were never taken to Koh Poulo Wai.²⁵¹⁸ He also stated that if it was not necessary to capture boats, they would be set free.²⁵¹⁹ The ICP ignores this evidence.

²⁵⁰⁸ Written Record of Interview of Sao Sam, 20 June 2014, D54/109, A19.

²⁵⁰⁹ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A19-20. Final Submission, fn. 1562.

²⁵¹⁰ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A15.

²⁵¹¹ Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A23.

²⁵¹² Written Record of Interview of Meas Voeun, 16 January 2014, D54/52, A23.

²⁵¹³ Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A3.

²⁵¹⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55. See also Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A75: "SON Sen said if those Vietnamese were refugees to Thailand, we should not arrest them and we should let them travel on."

²⁵¹⁵ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A85. Final Submission, fn. 1569.

²⁵¹⁶ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A84.

²⁵¹⁷ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A86-87.

²⁵¹⁸ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A80.

²⁵¹⁹ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A79.

c. The documentary evidence the ICP cites is either unreliable, of low probative value, or does not support his claimed number of victims

663. **D54/16/1R.** MEAS Muth's interview with author David Kattenburg, wherein MEAS Muth purportedly stated that Vietnamese boats were captured about once every three months,²⁵²⁰ is unreliable and of low probative value. It was collected without judicial supervision and not for the purpose of a criminal trial.²⁵²¹ If the CIJs accord probative value to this interview, they must be careful not to take MEAS Muth's statements out of context. His statements indicate that there was a military purpose behind the captures.²⁵²²
664. **D4.1.754.** The US Department of Defense report claiming that in April or May 1975, DK forces captured a boat carrying more than 10 Vietnamese refugees,²⁵²³ is unreliable and of low probative value. It was collected by an entity external to the ECCC, without judicial supervision, and not for the purposes of a criminal trial.²⁵²⁴
665. **D54/11.1** (same as **D1.3.30.25**). The military report of 1 April 1978, wherein MEAS Muth reported that 120 Vietnamese people were captured and killed between 27 March 1978 and 30 March 1978,²⁵²⁵ does not support the ICP's claim. The report was issued at a time of intensifying fighting against Vietnam.²⁵²⁶ It does not specify if the 120 Vietnamese were soldiers or civilians. The second paragraph of the report indicates that there were ongoing negotiations between the DK government and Thai government over the release of Thai detainees,²⁵²⁷ corroborating the evidence of Meas Voenu,²⁵²⁸ Meu Ret,²⁵²⁹ Lay Bunhak,²⁵³⁰ Uy Nhik,²⁵³¹ and Hieng Ret.²⁵³² The ICP ignores this context.

²⁵²⁰ Audio Recording of Interview between MEAS Muth and David Kattenburg, April 2009, D54/16/1R, 00:35:30-00:39:33. Final Submission, fn. 1358.

²⁵²¹ See *supra* para. 143 regarding the use of this type of evidence.

²⁵²² See Final Submission, fn. 1358.

²⁵²³ US Department of Defense Report titled "Mayaguez Incident and Observations on Tang Island," December 1975, D4.1.754, EN 00387429. Final Submission, fn. 1472.

²⁵²⁴ See *supra* para. 139 regarding the use of this type of evidence.

²⁵²⁵ Military Report from Division 164, Political Section, titled "Secret Telephone dated 1 April 1978," 1 April 1978, D54/11.1, EN 01147584.

²⁵²⁶ See e.g., Telegram from the DK Ministry of Foreign Affairs titled "Message to Swedish-Kampuchea Friendship Association," 4 March 1978, D234/2.1.9, EN 00717585; Statement of the DK Ministry of Foreign Affairs, 31 December 1977, D69.1.5, EN 00282392; Linda Mathews, *Hanoi Girding for Offensive into Cambodia*, LOS ANGELES TIMES, 5 October 1978, D1.3.25.65.

²⁵²⁷ Military Report from Division 164, Political Section, titled "Secret Telephone dated 1 April 1978," 1 April 1978, D54/11.1, EN 01147584: "2. We failed to release the Thai prisoners as scheduled because some of their names did not correspond to the list given to our agents. Not the entire names but only the end of the names were spelled incorrectly. We could not contact each other for advice because the radio did not work. Based on

666. **D1.3.34.64.** The confidential telephone communication of 20 March 1978, wherein MEAS Muth purportedly reported that two Vietnamese motor boats with 76 people were captured at Koh Tang on 20 March 1978,²⁵³³ does not support the ICP's claim. The report does not indicate if the captured Vietnamese were soldiers or civilians and says nothing about their fate, other than that they were taken to the mainland.
667. **D1.3.8.4** (same as **D54/13.1**). The military meeting minutes of 9 September 1976, wherein it was reported that: **a.** on 5 September 1976, Division 164 came across a small boat with six people on board (five Thais and one Cambodian) and **b.** on 2 September 1976, 10 Thai fishing boats were captured off Koh Kong and Koh Sdech²⁵³⁴ does not support the ICP's claim. The report says nothing about the fate of the six people captured on 5 September 1976. As for the capture on 2 September 1976, the military meeting minutes indicate that seven of the crew members jumped into the sea and escaped capture.²⁵³⁵ As Ing Chhon recalled, Thai boats were equipped with emergency equipment such as flotation devices and food.²⁵³⁶ Nothing is said about the other crew members.

the information in the telegram from Comrade Launh and because of the slow transmission of messages, the handing over of the Thai soldiers was delayed until 31 March 1978...."

²⁵²⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 2 February 2016, D234/2.1.95, 14.10.55.

Written Record of Interview of Meas Voeun, 20 January 2014, D54/54, A3.

²⁵²⁹ Written Record of Interview of Meu Ret, 23 June 2013, D54/11, A24.

²⁵³⁰ DC-Cam Interview with Lay Bunhak, 20 May 2007, D59/1/1.9a, EN 00963735.

²⁵³¹ Written Record of Interview of Uy Nhik, 1 April 2014, D54/77, A19.

²⁵³² Written Record of Interview of Hieng Ret, 26 May 2014, D54/98, A80.

²⁵³³ Report titled "Confidential telephone communication on March 20, 1978," 20 March 1978, D1.3.34.64. Final Submission fn. 1427.

²⁵³⁴ Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657355. Final Submission fn. 1425.

²⁵³⁵ Military Meeting Minutes titled "Minutes of the Meeting of Comrades 164," 9 September 1976, D1.3.8.4, EN 00657355.

²⁵³⁶ Written Record of Interview of Ing Chhon, 11 November 2013, D54/34, A15.

2. There is insufficient evidence to establish a large number of victims of crimes in security centers, worksites, or cooperatives in Kampong Som Autonomous Sector

a. Wat Enta Nhien

668. The sources the ICP cites do not support his claim that over 500 to 1000 people were detained and killed at Wat Enta Nhien.²⁵³⁷ The ICP primarily cites unreliable, speculative, contradictory, and unsupportive statements from Nuon Yoem, Din Chin, Pauch Koy, and Sok Lang.²⁵³⁸ The ICP cites isolated sightings of prisoners at Wat Enta Nhien during 1975-1979 and OCIJ site identification reports that do not support his claim.²⁵³⁹

i. Witnesses who visited Wat Enta Nhien after 1979 are unreliable and contradictory

669. **Nuon Yoem.** Nuon Yoem is unreliable. He was young during the time of events, speculates, and contradicts Pauch Koy, Din Chin, and Soem Ny. Nuon Yoem speculated that he saw at most 1,000 corpses around Wat Enta Nhien after 1979.²⁵⁴⁰ Nuon Yoem was nine years old when he first visited Wat Enta Nhien in 1979 with his brother and sister, who are both deceased.²⁵⁴¹ He later participated in a cleanup of the pagoda with his mother, Din Chin,²⁵⁴² and Pauch Koy.²⁵⁴³ He claimed to have seen skeletal remains covering the grounds of the compound, in water jars and gasoline drums, near the bamboo grove, and 100 corpses shackled in the dining hall.²⁵⁴⁴ Pauch Koy, who was with Nuon Yoem when they entered the dining hall, did not mention any corpses lying on the ground,²⁵⁴⁵ only that bodies were found in individual spots and not in mass graves.²⁵⁴⁶

²⁵³⁷ Final Submission, para. 464: “[I]t can safely be stated that the numbers detained at Wat Enta Nhien far exceeded the estimated 500-1000 bodies found at the site immediately after the fall of the DK regime.... [N]ot every grave pit at the Wat Enta Nhien site was excavated in 1979, with new burial areas reportedly discovered at the site in 1992 and 2003. More may still remain undiscovered. Second, there must be added to those figures the prisoners who were released during and at the end of the DK regime, or later sent on to S-21 for execution.”

²⁵³⁸ Final Submission, fns. 1768, 1770-74, 1783-84, 1768, 1770-78.

²⁵³⁹ Final Submission, fns. 1676-79.

²⁵⁴⁰ Written Record of Interview of Nuon Yoem, 25 February 2014, D54/66, A13-14, 18, 22-30. Final Submission para. 462, fns. 1768, 1770-74, 1783.

²⁵⁴¹ Written Record of Interview of Nuon Yoem, 25 February 2014, D54/66, EN 00986324, A6-7.

²⁵⁴² Written Record of Interview of Nuon Yoem, 25 February 2014, D54/66, A15.

²⁵⁴³ Written Record of Interview of Nuon Yoem, 25 February 2014, D54/66, A25, 27.

²⁵⁴⁴ Written Record of Interview of Nuon Yoem, 25 February 2014, D54/66, A5, 14, 22-30.

²⁵⁴⁵ Site Identification Report, 15 December 2014, D114/30, EN 01049148-01049149.

²⁵⁴⁶ Site Identification Report, 29 December 2010, D2/22, EN 00634154.

Din Chin also did not see corpses in the dining hall.²⁵⁴⁷ Soem Ny, who observed Wat Enta Nhien in 1975-1979, did not see any water jars in the pagoda compound.²⁵⁴⁸

670. **Din Chin.** Din Chin is unreliable. She speculates and contradicts Pauch Koy. Din Chin speculated seeing 400-500 skulls on the pagoda grounds in 1979.²⁵⁴⁹ When confronted with Pauch Koy's statement that 200 bodies were dug up from pits in early 1980, she explained that Pauch Koy did not participate in the cleanup every day like she did.²⁵⁵⁰ She claimed that a woman named Yeay Pou would confirm this, but she is deceased.²⁵⁵¹ Unlike Pauch Koy, Din Chin did not see Vietnamese soldiers inside one of the monk houses at Wat Enta Nhien.²⁵⁵²

671. **Pauch Koy.** Pauch Koy does not support the ICP's claim. Apart from contradicting and impugning the credibility of Nuon Yoem's and Din Chin's claims,²⁵⁵³ he confirmed that no official records, pictures, or official exhumations of the site were made.²⁵⁵⁴ All bones were either cremated or stored in a stupa in the pagoda grounds.²⁵⁵⁵ Pauch Koy did not know how many skulls are left at the pagoda, but according to his son, there are only six.²⁵⁵⁶ Pauch Koy's statement that Wat Enta Nhien was used as a security center and killing field is hearsay. He heard this from Chum Pech, who is deceased.²⁵⁵⁷ Pauch Koy never visited Wat Enta Nhien during the DK period, did not know what types of persons were detained there, and did not know if anyone who had been detained there is still alive.²⁵⁵⁸ The probative value of his evidence is limited to what he observed in 1979. Pauch Koy is deceased,²⁵⁵⁹ so MEAS Muth will have no opportunity to examine him at trial and clarify his observations in 1979 in light of those of Din Chin and Nuon Yoem.

²⁵⁴⁷ Written Record of Interview of Din Chin, 24 February 2014, D54/65, A37, 39.

²⁵⁴⁸ Site Identification Report, 31 March 2015, D114/46, EN 01065179. *See infra* para. 678.

²⁵⁴⁹ Written Record of Interview of Din Chin, 24 February 2014, D54/65, A19. Final Submission, fns. 1768, 1770-78, 1784.

²⁵⁵⁰ Written Record of Interview of Din Chin, 24 February 2014, D54/65, A27.

²⁵⁵¹ Written Record of Interview of Din Chin, 24 February 2014, D54/65, A27.

²⁵⁵² Written Record of Interview of Din Chin, 24 February 2014, D54/65, A37, 39; Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A33.

²⁵⁵³ *See supra* paras. 669-70.

²⁵⁵⁴ Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A41. *See also* Site Identification Report, 29 December 2010, D2/22, EN 00634155.

²⁵⁵⁵ Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A41. *See also* Site Identification Report, 29 December 2010, D2/22, EN 00634155.

²⁵⁵⁶ Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A43.

²⁵⁵⁷ Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A17-18.

²⁵⁵⁸ Written Record of Interview of Pauch Koy, 28 July 2010, D2/4, A16-17; A46.

²⁵⁵⁹ Site Identification Report, 22 February 2014, D144/30, EN 01049149.

672. **Sok Lang.** Sok Lang does not support the ICP's claim. Sok Lang became a staff member of the Office of Cults and Religion in Sihanoukville in 1980.²⁵⁶⁰ He said that in 1981 or 1982, monks reported to him that they found the bones of seven bodies at Wat Enta Nhien.²⁵⁶¹ He wrote their reports down in a diary, but lost it.²⁵⁶² When he went to Wat Enta Nhien, the monks had already cremated the bodies.²⁵⁶³ When confronted with his prior statement that monks found 17 bodies, he claimed that seven of the bodies were soldiers found in uniform, while the other 10 bodies were from ordinary people who died of disease or hunger.²⁵⁶⁴ He did not mention large amounts of skeletal remains purportedly witnessed by Nuon Yoem, Din Chin, and Pauch Koy.

ii. Witnesses who saw or were detained at Wat Enta Nhien in 1975-1979 and OCIJ site identification reports do not support the ICP's claim

673. **Soem Ny.** Soem Ny does not support the ICP's claim. Soem Ny grew vegetables near Wat Enta Nhien before he was sent to the East Zone in late 1978.²⁵⁶⁵ He described Wat Enta Nhien as a "tempering site" rather than a prison, where those who committed minor crimes would be temporarily detained before being rehabilitated and released.²⁵⁶⁶ He saw prisoners regularly when they came to work at his farm and was able to speak with them.²⁵⁶⁷ To his knowledge, the prisoners were cadre: military, workers, and fishermen from the fishing unit.²⁵⁶⁸ He did not see female, child, Thai, Vietnamese, or Western prisoners during his time near Wat Enta Nhien.²⁵⁶⁹ Nor did he see graves near the pagoda.²⁵⁷⁰ When Soem Ny visited Wat Enta Nhien with the OCIJ in September 2014, the

²⁵⁶⁰ Written Record of Interview of Sok Lang, 25 August 2015, D114/111, A6.

²⁵⁶¹ Written Record of Interview of Sok Lang, 25 August 2015, D114/111, A6.

²⁵⁶² Written Record of Interview of Sok Lang, 25 August 2015, D114/111, A16.

²⁵⁶³ Written Record of Interview of Sok Lang, 25 August 2015, D114/111, A18.

²⁵⁶⁴ Written Record of Interview of Sok Lang, 25 August 2015, D114/111, A19-21.

²⁵⁶⁵ Written Record of Interview of Soem Ny, 7 November 2013, D54/31, A6-7, 9. *See also supra* paras. 245 and 406-08 for more information about this witness.

²⁵⁶⁶ DC-Cam Interview with Soem Ny, 22 May 2011, D54/30.1, EN 1070549; Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A17, 28.

²⁵⁶⁷ Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A6, 18.

²⁵⁶⁸ Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A21.

²⁵⁶⁹ Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A22-23, 27.

²⁵⁷⁰ Written Record of Interview of Soem Ny, 8 November 2013, D54/32, A29.

pagoda compound was filled with many new buildings and its appearance changed significantly from what he observed during the DK period.²⁵⁷¹

674. **Moul Chhin.** Moul Chhin does not support the ICP's claim. Moul Chhin was detained at Wat Enta Nhien for three days, shortly before the arrival of Vietnamese troops.²⁵⁷² When he was initially interviewed by the OCIJ, he said that nobody interrogated, mistreated, or shackled him there.²⁵⁷³ When he visited Wat Enta Nhien with the OCIJ, he changed his story. He recalled being shackled there with 20 other prisoners in the dining hall and wished to "correct [his] previous answer."²⁵⁷⁴ Even if Moul Chhin's account of being shackled with 20 prisoners were credible, it would not account for the graves and skeletal remains observed by Nuon Yoem, Din Chin, and Pauch Koy after 1979. Moul Chhin was at Wat Enta Nhien just before the arrival of the Vietnamese.²⁵⁷⁵ He did not mention graves or killings.

675. **Touch Soueli.** Touch Soueli does not support the ICP's claim. Touch Soueli worked near Wat Enta Nhien around 1977 and saw prisoners there while he was picking fruit.²⁵⁷⁶ Guards allowed him to enter the pagoda: "they were not all that strict."²⁵⁷⁷ He was able to casually walk around and pick up fruit and speak with the guards.²⁵⁷⁸ He told the OCIJ: "If there had been a lot of prisoners, they might have prohibited us from entering that place. However, if it was just three or four of me and my friends casually walking in, those persons were not scared, and we did not see many prisoners."²⁵⁷⁹ Touch Soueli did

²⁵⁷¹ Written Record of Interview of Soem Ny, 6 May 2014, D54/88, A9. *See also infra* para. 678.

²⁵⁷² Written Record of Interview of Moul Chhin, 26 January 2015, D114/39, EN 01079212-01079213; Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A159.

²⁵⁷³ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, Q-A161, 167: "Q: How were you treated during your detention at that pagoda? A161: They did not interrogate me or do anything to me there.... Q. Were you shackled? A167: At Wat Enta Nhean, I was not shackled."

²⁵⁷⁴ Written Record of Interview of Moul Chhin, 29 January 2015, D114/40, Q-A3: "In Answer 167 of your previous Written Record of interview, you said that when you were detained in Wat Enta Nhien Prison they did not shackle you, but at Tuek Sab Prison they chained your ankle. During the visit to Wat Enta Nhien Pagoda, you identified the room where they detained you. When we were in the dining hall, you told us that they shackled you with about other 20 prisoners there. Can you elaborate about this event? A3: I want to correct my previous answer. Actually, when I visited the dining hall in Wat Enta Nhien Pagoda with you, I suddenly recalled that they shackled me and another 20 prisoners with wooden shackles and iron bars."

²⁵⁷⁵ Written Record of Interview of Moul Chhin, 26 January 2015, D114/39, EN 01079212-01079213; Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A159. Final Submission, fn. 1677.

²⁵⁷⁶ Written Record of Interview of Touch Soeuli, 10 November 2010, D2/15, A27. *See* Final Submission, fn. 1676.

²⁵⁷⁷ Written Record of Interview of Touch Soeuli, 14 March 2016, D114/187, A26.

²⁵⁷⁸ Written Record of Interview of Touch Soeuli, 14 March 2016, D114/187, A27.

²⁵⁷⁹ Written Record of Interview of Touch Soeuli, 14 March 2016, D114/187, A31.

not believe that prisoners were killed at Wat Enta Nhien.²⁵⁸⁰ He speculated that people were later sent to Phnom Penh or other places to be killed.²⁵⁸¹

676. **December 2010 site identification report.** The OCIJ's December 2010 site identification report does not support the ICP's claim. The site identification report highlights the inconclusiveness of the investigation at Wat Enta Nhien. Massive changes had been made to the compound, making it impossible to determine with certainty its overall size and maximum capacity.²⁵⁸² The OCIJ Investigator remarked: "No extrapolations can be made so far by witness accounts in reference to the possible capacity of persons being detained during the operational time of this site."²⁵⁸³ There was "no information if and if so, how many detainees or 'light offenders' were possibly hold [sic] inside the whole compound and to [sic] how much numbers of detainees fluctuated over the time period or peaked at specific events."²⁵⁸⁴ The Investigator also noted that changes to the site and vegetation growth "would make any superficial investigative action/result unreliable. Any more invasive action is not possible at this stage."²⁵⁸⁵

677. **February 2014 site identification report.** The February 2014 site identification report does not support the ICP's claim. It too highlights the inconclusiveness of the investigation at Wat Enta Nhien. Prior to its field visit on 22 February 2014, the OCIJ tried to obtain documentary and witness evidence from authorities who might have held records relevant to its investigations at Wat Enta Nhien.²⁵⁸⁶ The Kampong Som City Hall and Ministry of Religion had no such records.²⁵⁸⁷ The site identification report also highlights the inconsistencies between Pauch Koy's, Din Chin's, and Nuon Yoem's accounts:

It is important to mention that unsolved questions remains between the accounts of witness POCH Koy (dead) and those of Ms. DIN CHUN and her son NUON YOEM. The account of witness POCH KOY lacks any reference to dead bodies found on the surface although NUON YOEM stated that he was in the presence PCOH [sic] KOY when he saw the dead bodies inside the dining hall.

²⁵⁸⁰ Written Record of Interview of Touch Soeuli, 10 November 2010, D2/15, A28.

²⁵⁸¹ Written Record of Interview of Touch Soeuli, 10 November 2010, D2/15, A28.

²⁵⁸² Site Identification Report, 29 December 2010, D2/22, EN 00634142.

²⁵⁸³ Site Identification Report, 29 December 2010, D2/22, EN 00634142.

²⁵⁸⁴ Site Identification Report, 29 December 2010, D2/22, EN 00634142.

²⁵⁸⁵ Site Identification Report, 29 December 2010, D2/22, EN 00634155.

²⁵⁸⁶ Site Identification Report, 15 December 2014, D114/30, EN 01049147-01049148.

²⁵⁸⁷ Site Identification Report, 15 December 2014, D114/30, EN 01049147-01049148.

POCH Koy refers to the presence of Vietnamese troops in 1979 which was not mentioned by witnesses DIN CHUN and NUON YOEM. It appears that all witnesses were at the site around the same team [*sic*]; possibly POCH Koy was there earlier.²⁵⁸⁸

As for the two grave pits identified by Din Chin and Nuon Yoem near their home, the Investigator remarked: “The surface of the soil does not give any indications today that there are two human graves underneath.”²⁵⁸⁹ The OCIJ did not disturb the soil, so no conclusions can be made as to anything allegedly buried underneath.²⁵⁹⁰

678. **September 2014 site identification report.** The September 2014 site identification report does not support the ICP’s claim. In May 2014, the OCIJ revisited Wat Enta Nhien with Soem Ny.²⁵⁹¹ In light of Soem Ny’s recollection, the OCIJ Investigator raised further doubts as to the credibility of Nuon Yoem’s, Din Chin’s, and Pak Sok’s accounts.²⁵⁹² He remarked:

An unsolved issue remains when comparing the statement of witness SOEM NY and witness NUON Yim in reference to the existence of water jars and buildings. Both witnesses referred to the same area in the upper part of the pagoda.... While NUON Yim spoke about seeing corpses on the ground and corpses in water jars and barrels in mid-1979, he did not make any reference to any wooden shacks.... Witness SEOM Ny did see shacks but did not see any water jars.... Another inconsistency occurs in reference to the existence of buildings (dining hall and temples).²⁵⁹³

b. Tuek Sap

679. The sources the ICP cites do not support his claim that the number of victims at Tuek Sap exceeds the 1,000 bodies found there after 1979.²⁵⁹⁴ The ICP primarily cites speculative estimates of the number of prisoners and killings by unreliable witnesses such as Chet Bunna, Prak Bunny, Lin Sarin, Ek Ny, and Pak Sok.²⁵⁹⁵ He cites accounts of witnesses who saw skeletal remains in the Tuek Sap area after 1979 that are speculative, unreliable, or do not support his claims.²⁵⁹⁶ The ICP also ignores contextual evidence

²⁵⁸⁸ Site Identification Report, 15 December 2014, D114/30, EN 01049148-01049149.

²⁵⁸⁹ Site Identification Report, 15 December 2014, D114/30, EN 01049155.

²⁵⁹⁰ Site Identification Report, 15 December 2014, D114/30, EN 01049155.

²⁵⁹¹ Site Identification Report, 12 February 2015, D114/46, EN 01065172, 01065180.

²⁵⁹² Site Identification Report, 12 February 2015, D114/46, EN 01065179.

²⁵⁹³ Site Identification Report, 12 February 2015, D114/46, EN 01065179.

²⁵⁹⁴ Final Submission, para. 505.

²⁵⁹⁵ Final Submission, fns. 1899, 1902, 1904, 1964.

²⁵⁹⁶ Final Submission, fns. 1899, 1901, 1969.

indicating that those buried in grave pits could have been Lon Nol or DK soldiers who died in clashes during the takeover of Kampong Som, or those who died from malaria or other illnesses.

i. The estimates of victims at Tuek Sap the ICP cites are speculative and unreliable

680. **Chet Bunna.** Chet Bunna is unreliable.²⁵⁹⁷ He speculated that Tuek Sap was a killing site because he claimed to have seen corpses floating in the Tuek Sap river once in a while.²⁵⁹⁸ To the best of the Defence's knowledge, no other evidence corroborates Chet Bunna's story. Nguon Lay swam the same river every day and never saw any corpses floating in it; he only saw the drowning of people on a boat that was hit by waves and sunk.²⁵⁹⁹ Chet Bunna's evidence on Tuek Sap is unverifiable hearsay. He heard from a soldier in his unit that 100 prisoners were detained with him at Tuek Sap and that only 20 were left when Vietnamese troops arrived.²⁶⁰⁰

681. **Prak Bunny.** Prak Bunny is unreliable.²⁶⁰¹ He speculated that many people were imprisoned at Tuek Sap and estimated that each month about 10 people from his unit were taken there.²⁶⁰² He has no first-hand knowledge of Tuek Sap during the DK period. He only worked at the coconut plantation and never saw prisoners being transported there.²⁶⁰³ He was 15 or 16 when he first heard about Tuek Sap from one of his colleagues in 1977.²⁶⁰⁴ His estimate of the number of victims at Tuek Sap, and assumption that it was a security center, appears to be based on what he saw there after January 1979.²⁶⁰⁵

682. **Lin Sarin.** Lin Sarin is unreliable. He speculated that people he saw being transported to Tuek Sap were killed: "I heard that people were taken to be killed in Tuek Sap. Therefore, I am sure people were taken to be killed in Tuek Sap."²⁶⁰⁶ Lin Sarin was about

²⁵⁹⁷ See *supra* paras. 186-88 for more information about this witness.

²⁵⁹⁸ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A24. Final Submission, fn. 1904.

²⁵⁹⁹ Written Record of Interview of Nguon Lay, 16 November 2015, D114/139, A132-34.

²⁶⁰⁰ Written Record of Interview of Chet Bunna, 29 April 2015, D114/66, A18.

²⁶⁰¹ See *supra* para. 424 for more information about this witness.

²⁶⁰² Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A99-100. Final Submission, fn. 1902.

²⁶⁰³ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A104.

²⁶⁰⁴ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A83-86.

²⁶⁰⁵ Written Record of Interview of Prak Bunny, 8 August 2016, D114/242, A93-94.

²⁶⁰⁶ Written Record of Interview of Lin Sarin, 19 August 2014, D54/121, A8, 22. Final Submission, fn. 1964.

eight or nine years old after the fall of Phnom Penh and had difficulty recalling the events in 1975-1979.²⁶⁰⁷ His knowledge of Tuek Sap is limited to what he heard from others.²⁶⁰⁸

683. **Ek Ny.** Ek Ny is unreliable.²⁶⁰⁹ He speculated that he saw 20 to 30 prisoners carrying timber around Tuek Sap.²⁶¹⁰ He did not know how many prisoners in total were detained at Tuek Sap because he was not allowed to go there.²⁶¹¹ Even if his account were credible, this would not add up to or account for the ICP's estimate that up to 100 detainees may have been held at Tuek Sap at any one time.²⁶¹²

684. **Pak Sok.** Pak Sok is unreliable.²⁶¹³ He claimed to have seen people detained at Tuek Sap once in a while and stated that he saw 50 to 60 prisoners there.²⁶¹⁴ Pak Sok was never detained at Tuek Sap²⁶¹⁵ and gave contradictory testimony about the types of prisoners detained there,²⁶¹⁶ indicating that he did not know what happened at Tuek Sap in 1975-1979. Even if Pak Sok's account were credible, the ICP overstates his evidence.

ii. The evidence of witnesses who found skeletal remains near Tuek Sap after 1979 does not support the ICP's claims

685. **Lak Saphan.** Lak Saphan is unreliable.²⁶¹⁷ According to Lak Saphan, Tuek Sap was used as a Lon Nol military barrack; he saw Lon Nol soldiers retreating from Tuek Sap when DK forces attacked it during the takeover of Kampong Som.²⁶¹⁸ He did not have any direct knowledge of what happened at Tuek Sap after it was taken over by DK forces.²⁶¹⁹ In May or June 1979, he walked past a durian plantation near Tuek Sap and

²⁶⁰⁷ Written Record of Interview of Lin Sarin, 19 August 2014, D54/121, A2-3, 6.

²⁶⁰⁸ Written Record of Interview of Lin Sarin, 19 August 2014, D54/121, A6, 8, 10, 12.

²⁶⁰⁹ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A26 (emphasis added). Final Submission, fn. 1899.

²⁶¹⁰ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A26. Final Submission, fn. 1899.

²⁶¹¹ Written Record of Interview of Ek Ny, 3 April 2014, D54/102, A26.

²⁶¹² Final Submission, para. 503.

²⁶¹³ See *supra* paras. 233-34 for more information about this witness.

²⁶¹⁴ *Case of NUON Chea et al.*, 002-19/09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 14.00.50-14.04.29; 14.11.49-14.14.44. Final Submission, fn. 1899.

²⁶¹⁵ *Case of NUON Chea et al.*, 002-19/09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 14.00.50-14.04.29.

²⁶¹⁶ See Written Record of Interview of Pak Sok, 22 October 2013, D54/27, A8-9. *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 14.09.06-14.11.49. See also *supra* para. 422.

²⁶¹⁷ See *supra* para. 624 for more information about this witness.

²⁶¹⁸ Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A2-3.

²⁶¹⁹ Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A4.

claimed to have seen graves underneath durian trees.²⁶²⁰ He speculated that he saw hundreds of graves there.²⁶²¹ He told the OCIJ he could not describe the clothes he saw in the graves at Tuek Sap,²⁶²² contradicting his interview on the previous day where he claimed that he could distinguish Thai, Vietnamese, and Cambodian remains at Tuek Sap based on their clothing.²⁶²³ His claim that people were executed at Tuek Sap is based on hearsay.²⁶²⁴

686. **Kuy Nen.** Kuy Nen is unreliable.²⁶²⁵ He speculated that civilians were taken from his cooperative to be killed at Tuek Sap in early 1976.²⁶²⁶ His knowledge of Tuek Sap in 1975-1979 is limited to what he heard from others.²⁶²⁷ He did not see prisoners at Tuek Sap in 1975-1979 because he was a fisherman and was not allowed to go ashore near it.²⁶²⁸ In 1980, he was appointed as a village chief by the Vietnamese authorities and was tasked with sweeping up the area and saw human remains and Lon Nol military uniforms.²⁶²⁹ He heard that during the takeover of Kampong Som, thousands of Lon Nol soldiers were executed at Tuek Sap.²⁶³⁰ The probative value of Kuy Nen's evidence is limited to what he witnessed after 1979. His evidence supports a conclusion that mass graves found in the Tuek Sap area could have been the remains of Lon Nol soldiers who died in clashes with DK forces during the takeover of Kampong Som.²⁶³¹

687. **Meng Soek.** Meng Soek is unreliable. He claimed to have seen bones and clothes in the Tuek Sap area but could not remember what year this was.²⁶³² His claim that Thai fishermen were killed at Tuek Sap is unverifiable hearsay. He never witnessed killings at Tuek Sap and heard about this from "unknown sources."²⁶³³ His claim also contradicts his

²⁶²⁰ Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A9-10. Final Submission, fn. 1969.

²⁶²¹ Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A10.

²⁶²² Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A14.

²⁶²³ Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, A7.

²⁶²⁴ Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A4, Final Submission, fn. 1955.

²⁶²⁵ See *supra* para. 424 for more information about this witness.

²⁶²⁶ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A5. Final Submission, fn. 1901.

²⁶²⁷ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A13-14, 19.

²⁶²⁸ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A12, 20, 22.

²⁶²⁹ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A5, 30.

²⁶³⁰ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A5.

²⁶³¹ Written Record of Interview of Iem Phong, 11 August 2015, D114/104, A34: "During the fight for Phnom Penh, my forces and Division 1 were engaged in combat at Tuek Sap, Kampong Som."

²⁶³² Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A11. Final Submission, fn. 1969.

²⁶³³ Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A15-16, 40.

description of the clothes he told the OCIJ he saw at Tuek Sap – soldiers’ clothes.²⁶³⁴ Meng Soek also speculated that bodies were buried in pits under durian trees near Tuek Sap because the durian trees he saw were dead.²⁶³⁵ He did not actually see bodies buried in those pits.²⁶³⁶

688. **Soeng Noch.** Soeng Noch does not support the ICP’s claim. He used to live at the Cheng Heng Coconut Plantation and his squad was assigned to tend to the durian plantations in 1976.²⁶³⁷ He told the OCIJ that he only saw armed soldiers at the durian plantation once and did not know of any killings taking place there.²⁶³⁸ His statement that people were killed there seems to be based on what he witnessed after 1979.²⁶³⁹ In 1980, he was ordered by the propaganda section to unearth pits at Tuek Sap and collect bones to “keep as evidence for the Court today.”²⁶⁴⁰ He unearthed only four to ten skulls plus other bones.²⁶⁴¹ He did not count how many pits were there and spent just one morning digging up the pits.²⁶⁴²

689. **Chen Laung.** Chen Laung is unreliable. His statements are based on unverifiable hearsay. He did not witness people being taken to Tuek Sap.²⁶⁴³ Chen Laung heard from others that people were taken to be killed there.²⁶⁴⁴ Those who told him this information are deceased.²⁶⁴⁵ After 1979, Chen Laung went to Tuek Sap to grow vegetables and claimed to have seen bones there.²⁶⁴⁶ He told the OCIJ that he saw a great number of graves but only a few bones.²⁶⁴⁷ Despite finding ammunition at Tuek Sap, he speculated that soldiers were not killed there, but rather, people who stole food were killed there.²⁶⁴⁸

²⁶³⁴ Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A25.

²⁶³⁵ Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A49.

²⁶³⁶ Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A48.

²⁶³⁷ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A262-73, 281.

²⁶³⁸ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A279-80.

²⁶³⁹ See Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A141.

²⁶⁴⁰ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A141-42.

²⁶⁴¹ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A143.

²⁶⁴² Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A159, 164.

²⁶⁴³ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A31.

²⁶⁴⁴ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A28-29, A43.

²⁶⁴⁵ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A32.

²⁶⁴⁶ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A33, 41. Final Submission, fn. 1969.

²⁶⁴⁷ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A37-38, 41.

²⁶⁴⁸ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A42-43.

This was his belief because other unnamed people told him this.²⁶⁴⁹ The grave sites Chen Laung witnessed have also been bulldozed and the land unearthed to build roads.²⁶⁵⁰

690. **Chheng Cheang.** Chheng Cheang is unreliable. His statements are based on unverifiable hearsay. He was a fishing technician in the fishing unit.²⁶⁵¹ He did not know what happened at Tuek Sap in 1975-1979.²⁶⁵² There was a rumor around his village that bodies were buried near Tuek Sap and that people went to look for gold there.²⁶⁵³

iii. The ICP ignores evidence that those buried in grave pits could have been Lon Nol or DK soldiers, or those who died from malaria or other illnesses

691. The ICP ignores evidence suggesting that grave pits and skeletal remains found in the Tuek Sap area after 1979 could have been those of Lon Nol or DK soldiers who died in clashes during the takeover of Kampong Som, or of those who died from malaria or other illnesses. Tuek Sap was a former Lon Nol military base before DK rule.²⁶⁵⁴ Before Division 3 was stationed in Kampong Som, there were clashes between DK forces and Lon Nol soldiers at Tuek Sap.²⁶⁵⁵ Witnesses who visited Tuek Sap after 1979 saw Lon Nol military uniforms among the skeletal remains.²⁶⁵⁶

692. Several witnesses also state that many people in the Kampong Som area fell ill and died from malaria.²⁶⁵⁷ Some were taken to Kampong Som hospital.²⁶⁵⁸ Meas Saran, a medic at Chamkar Chek Hospital in Kampong Som, stated that in 1975 there were so

²⁶⁴⁹ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A43.

²⁶⁵⁰ Written Record of Interview of Chen Laung, 25 July 2015, D114/96, A30.

²⁶⁵¹ Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A21-22, 121.

²⁶⁵² Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A117.

²⁶⁵³ Written Record of Interview of Chheng Cheang, 6 August 2016, D114/241, A118, 120.

²⁶⁵⁴ Site Identification Report, 23 July 2015, D114/99, EN 01125388; Site Identification Report, 28 June 2016, D114/227, EN 01301664; Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A2-3.

²⁶⁵⁵ Written Record of Interview of Witness Iem Phong, 11 August 2015, D114/104, A34. *See also* Written Record of Seng Sin, 24 June 2015, D114/89, Q-A21: "Q: Where were you on 17 April 1975? A21: I was at Toek Sap battlefield."

²⁶⁵⁶ Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A28-32; Written Record of Interview of Lak Saphan, 10 September 2014, D114/3, A2-3; Written Record of Interview of Meng Soek, 23 February 2016, D114/177, A25.

²⁶⁵⁷ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A38-39; Written Record of Interview of Or Saran, 26 April 2016, D114/202, A33; Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A129, 136-39; Written Record of Interview of Meas Saran, 21 August 2014, D54/117, A4-5, 24; Written Record of Interview of Lay Bunhak, 28 May 2014, D54/99, A31. *See also* Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A73.

²⁶⁵⁸ Written Record of Interview of Sath Chak, 14 March 2016, D114/186, A38-39; Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A129, 136-39.

many cases of malaria that all medics were deployed to Ouchheuteal.²⁶⁵⁹ Soeng Noch, who worked in a children's unit in the Cheng Heng Durian and Coconut Plantations told the OCIJ that almost all the children in his area suffered from malaria: "Some children died without the knowledge of their parents. Some parents knew and they took their children's bodies to bury them at other places. They buried their children at the coconut plantation because they lived there."²⁶⁶⁰

c. Stung Hav worksite

693. The sources the ICP cites do not support his claim that thousands of demobilized Division 164 cadres worked at Stung Hav in conditions that amounted to the crime of enslavement.²⁶⁶¹ The ICP primarily cites speculative estimates of the number of Stung Hav workers from Meas Im, Chet Bunna, Em Son, Pen Sarin, "Sieng", Prum Sambath, Uy Nhik, Sok Neang, Prak Sokha, Pres Mean, and Oem Sokhan.²⁶⁶² He also cites unresponsive statements from Long Phansy, Nong Net, and San Chuon.²⁶⁶³

i. The estimates of workers at Stung Hav the ICP cites are speculative and unreliable

694. **Meas Im.** Meas Im is unreliable.²⁶⁶⁴ He speculated that there were 800 workers at Stung Hav.²⁶⁶⁵ As MEAS Muth's brother, he did not swear an oath to tell the truth.²⁶⁶⁶ He demonstrated a character for untruthfulness when he told the OCIJ Investigator that "some of what [he] told [the DC-Cam interviewer] was true, some not true," because he was only having a "convivial chat" with the interviewer.²⁶⁶⁷

695. **Chet Bunna.** Chet Bunna is unreliable.²⁶⁶⁸ He speculated that demobilized forces were sent to Stung Hav from 1977 onwards.²⁶⁶⁹ He was sent to Stung Hav around 30

²⁶⁵⁹ Written Record of Interview of Meas Saran, 21 August 2014, D54/117, A1, 4.

²⁶⁶⁰ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A17, 73.

²⁶⁶¹ Final Submission, para. 613.

²⁶⁶² Final Submission, fns. 2412, 2414, 2416, 2482.

²⁶⁶³ Final Submission, fns. 2416, 2580-81.

²⁶⁶⁴ See *supra* para. 253 for more information about this witness.

²⁶⁶⁵ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A28-29; Written Record of Interview of Meas Im, 10 June 2016, D114/215, A54. Final Submission, fn. 2412.

²⁶⁶⁶ See Written Record of Interview of Meas Im, 10 June 2016, D114/215, EN 01333468; Rule 24(2).

²⁶⁶⁷ Written Record of Interview of Meas Im, 9 June 2016, D114/214, A6.

²⁶⁶⁸ See *supra* paras. 186-88 for more information about this witness.

²⁶⁶⁹ Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A19. Final Submission, fn. 2410.

September 1978, shortly before the arrival of the Vietnamese.²⁶⁷⁰ His knowledge of Stung Hav is limited to the short time he spent there. He would not have knowledge of when and how many Division 164 soldiers were sent to Stung Hav in 1975-1979.

696. **Em Son.** Em Son is unreliable.²⁶⁷¹ He speculated that he saw around 100 workers, including Chinese workers, at the Stung Hav port site.²⁶⁷² His knowledge of Stung Hav is limited: he drove Chinese workers there and picked them up in the evening to take them to Kampong Som port.²⁶⁷³ Em Son did not know how many worksites were in Stung Hav and could not describe the workers' living conditions.²⁶⁷⁴

697. **Pen Sarin.** Pen Sarin is unreliable.²⁶⁷⁵ He speculated that about 30 unskilled workers worked at a road project at Stung Hav.²⁶⁷⁶ Even if Pen Sarin's estimate were accurate, the ICP overstates the evidence. Pen Sarin told the OCIJ that the women's force did not work at the road project regularly: "They just came to help once in a while."²⁶⁷⁷ Pen Sarin is deceased, so MEAS Muth will never have an opportunity to challenge his statements.²⁶⁷⁸

698. **"Sieng".** "Sieng" is unreliable.²⁶⁷⁹ He speculated that there were about 100 people working in the quarry at Stung Hav.²⁶⁸⁰ Since he refused to give an interview to the OCIJ,²⁶⁸¹ his statement has not been tested by a disinterested party.

699. **Prum Sambath.** Prum Sambath is unreliable. He speculated that 100 workers were at Stung Hav when he was there shortly before the arrival of Vietnamese troops.²⁶⁸² He told the OCIJ that his entire unit was sent there, which consisted of only three people.²⁶⁸³

²⁶⁷⁰ Written Record of Interview of Chet Bunna, 16 June 2015, D114/86, A16.

²⁶⁷¹ See *supra* paras.236, 244, 349, 416, and 515 for more information about this witness.

²⁶⁷² Written Record of Interview of Em Son, 29 November 2013, D54/49, A41. Final Submission, fn. 2416.

²⁶⁷³ Written Record of Interview of Em Son, 29 November 2013, D54/49, A32, 36.

²⁶⁷⁴ Written Record of Interview of Em Son, 29 November 2013, D54/49, A34, 40.

²⁶⁷⁵ See *supra* para. 413 for more information about this witness.

²⁶⁷⁶ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A11. Final Submission, fn. 2418.

²⁶⁷⁷ Written Record of Interview of Pen Sarin, 26 August 2010, D2/7, A12.

²⁶⁷⁸ Consolidated Decision on the International Co-Prosecutor's First, Second, and Third Investigative Requests, 9 January 2016, D223, para. 101.

²⁶⁷⁹ See *supra* para. 218 for more information about this witness.

²⁶⁸⁰ OCP Interview with "Sieng," D1.3.13.11, EN 00217566. Final Submission, fn. 2416.

²⁶⁸¹ Consolidated Decision on the International Co-Prosecutor's First, Second, and Third Investigative Requests, 9 January 2016, D223, paras. 99-100.

²⁶⁸² Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A210, 226-28. Final Submission, fn. 2416.

²⁶⁸³ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A218, 227.

Prum Sambath could not remember which division he was in,²⁶⁸⁴ the battalion he was in,²⁶⁸⁵ or who assigned him to work at Stung Hav.²⁶⁸⁶

700. **Uy Nhik.** Uy Nhik is unreliable.²⁶⁸⁷ He speculated that around 100 people from Battalion 386 worked at the port dike in Stung Hav.²⁶⁸⁸ Uy Nhik's lack of credibility regarding Stung Hav is demonstrated by his contradictory evidence about seeing MEAS Muth at Stung Hav.²⁶⁸⁹
701. **Sok Neang.** Sok Neang is unreliable. She speculated that there were more than 200 people working at the fishing port.²⁶⁹⁰ She was a medic working in Stung Hav and acknowledged to the OCIJ that she could not estimate how many people worked at the Stung Hav port.²⁶⁹¹
702. **Prak Sokha.** Prak Sokha is unreliable.²⁶⁹² He speculated that there were two to three battalions working at Stung Hav and that there were 30-40 17 April people within his mobile unit.²⁶⁹³ He told DC-Cam he did not recall the events well.²⁶⁹⁴ The ICP primarily relies on Prak Sokha's DC-Cam interview,²⁶⁹⁵ which is not entitled to a presumption of relevance and reliability.²⁶⁹⁶
703. **Pres Mean.** The ICP overstates Pres Mean's evidence. Pres Mean was sent to Stung Hav in mid-1976, where he remained until 1979.²⁶⁹⁷ In his first interview with the OCIJ, he stated that there were "a lot of people" working with him at the rock-breaking site.²⁶⁹⁸

²⁶⁸⁴ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A17.

²⁶⁸⁵ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A19.

²⁶⁸⁶ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A233.

²⁶⁸⁷ See *supra* para. 252 for more information about this witness.

²⁶⁸⁸ Written Record of Interview of Uy Nhik, 1 April 2014, D54/77, A44-47. Final Submission, fn. 2416.

²⁶⁸⁹ See *supra* para. 252.

²⁶⁹⁰ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A40. Final Submission, fn. 2416.

²⁶⁹¹ Written Record of Interview of Sok Neang, 11 June 2015, D114/83, A8, 40.

²⁶⁹² See *supra* para. 439 for more information about this witness.

²⁶⁹³ DC-Cam Interview with Prak Sokha, 21 May 2011, D54/35.1, EN 00971214; Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A11. Final Submission, fn. 2842.

²⁶⁹⁴ DC-Cam Interview with Prak Sokha, 21 May 2011, D54/35.1, EN 00971214: "I do not recall it well, but there were many people."

²⁶⁹⁵ Final Submission, fns. 2413, 2395.

²⁶⁹⁶ See *supra* para. 140 regarding the use of this type of evidence.

²⁶⁹⁷ Written Record of Interview of Pres Mean, 25 June 2013, D54/12, A11-12.

²⁶⁹⁸ Written Record of Interview of Pres Mean, 25 June 2013, D54/12, A20. Final Submission, fn. 2416.

In his second interview with the OCIJ, he clarified that there were about 20 people working with him at the rock-breaking site in mid-1976.²⁶⁹⁹

704. **Oem Sokhan.** Oem Sokhan is unreliable. He speculated that there were about 110 people, including Chinese workers, working with him at Stung Hav and that all soldiers from all the islands were stationed in Stung Hav in 1977.²⁷⁰⁰ As a low-ranking soldier in the infantry unit,²⁷⁰¹ Oem Sokhan would not have known how many people worked at Stung Hav or how many soldiers from the islands were sent to work there.

ii. The evidence of witnesses detained at Stung Hav is unreliable and does not support the ICP's claims

705. **Long Phansy.** Long Phansy is unreliable.²⁷⁰² He speculated that his battalion had 100 to 200 military members and that he saw 20 to 30 prisoners at the Stung Hav jail when he was detained there.²⁷⁰³ He could not clearly remember when he was detained at Stung Hav or Tuek Sap and was not allowed to speak with other prisoners at the Stung Hav jail.²⁷⁰⁴ Long Phansy also speculated that Tuek Sap was under Division 164's jurisdiction: "This is just my conclusion."²⁷⁰⁵

706. **San Chuon.** San Chuon is unreliable. He speculated that there were hundreds of people working at Stung Hav and that there were around 10 prisoners at the Stung Hav jail when he was imprisoned there.²⁷⁰⁶ He could not remember when he worked at Stung Hav,²⁷⁰⁷ when he was arrested and jailed,²⁷⁰⁸ or the locations where he was arrested.²⁷⁰⁹ He guessed that he was arrested in 1978 and jailed at Stung Hav, but forgot the number of

²⁶⁹⁹ Written Record of Interview of Pres Mean, 26 June 2013, D54/13, A20.

²⁷⁰⁰ Written Record of Interview of Oem Sokhan, 24 February 2016, D114/178, A41, 67. Final Submission, fns. 2414, 2416.

²⁷⁰¹ Written Record of Interview of Oem Sokhan, 27 August 2015, D114/112, A41.

²⁷⁰² See *supra* para. 429 for more information about this witness.

²⁷⁰³ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A18, A34. Final Submission, fns. 2416, 2582.

²⁷⁰⁴ Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A49-50.

²⁷⁰⁵ See also *e.g.*, Written Record of Interview of Long Phansy, 20 May 2016, D114/208, A41.

²⁷⁰⁶ Written Record of Interview of San Chuon, 15 June 2016, D114/219, EN 01395464, A55. Final Submission, fns. 2416, 2581.

²⁷⁰⁷ Written Record of Interview of San Chuon, 15 June 2016, D114/219, A24.

²⁷⁰⁸ Written Record of Interview of San Chuon, 15 June 2016, D114/219, A34.

²⁷⁰⁹ Written Record of Interview of San Chuon, 15 June 2016, D114/219, A29.

prisoners arrested with him.²⁷¹⁰ He also stated that he did not understand the OCIJ's purpose in collecting both inculpatory and exculpatory evidence.²⁷¹¹

707. **Nong Net.** Nong Net is unreliable. He speculated that there were about 100 workers at Stung Hav and that there were approximately 50 other prisoners imprisoned with him.²⁷¹² He was sent to Stung Hav at the end of 1978, just one month before the arrival of Vietnamese troops.²⁷¹³ He and others arrested Hoeun, a manager of a construction site, and sent him to the military.²⁷¹⁴ According to Nong Net, Hoeun was released, and a soldier detained him and 50 others.²⁷¹⁵ Nong Net did not say if his detention was temporary or describe being in a jail.²⁷¹⁶ Even if Nong Net's account is credible, the ICP overstates his evidence.

d. Ream area worksites

708. The sources the ICP cites do not support his claim that thousands of laborers worked at worksites in Ream in conditions amounting to the crime of enslavement.²⁷¹⁷ The ICP cites several speculative estimates by unreliable witnesses of the numbers of workers at Ream area worksites. He also relies on the individual accounts of witnesses who worked in Ream area cooperatives that do not add up to or account for the victim numbers he claims. Even if thousands of people lived and worked in Ream, this would not elevate MEAS Muth to the level of a "senior leader" or one of those "most responsible." Similar worksites and cooperatives existed throughout DK.²⁷¹⁸

709. **Kang Sum.** Kang Sum is unreliable.²⁷¹⁹ He speculated that 3,000 people were working in rice fields near Kang Keng airport.²⁷²⁰ Kang Sum was drunk when he was interviewed by DC-Cam and had difficulty recalling events when he was interviewed by

²⁷¹⁰ Written Record of Interview of San Chuon, 15 June 2016, D114/219, A35, A55.

²⁷¹¹ Written Record of Interview of San Chuon, 15 June 2016, D114/219, A2.

²⁷¹² Written Record of Interview of Nong Net, 5 March 2014, D54/68, A29, 31, 34. Final Submission, fns. 2416, 2580.

²⁷¹³ Written Record of Interview of Nong Net, 5 March 2014, D54/68, A13.

²⁷¹⁴ Written Record of Interview of Nong Net, 5 March 2014, D54/68, A29, A34.

²⁷¹⁵ Written Record of Interview of Nong Net, 5 March 2014, D54/68, A34.

²⁷¹⁶ Written Record of Interview of Nong Net, 5 March 2014, D54/68, A34.

²⁷¹⁷ Final Submission, para. 674.

²⁷¹⁸ See *supra* para. 546 and *infra* para. 729.

²⁷¹⁹ See *supra* para. 225 for more information about this witness.

²⁷²⁰ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A168, 278. Final Submission, fn. 2724.

the OCIJ.²⁷²¹ Even after the OCIJ Investigator pressed Kang Sum to give answers consistent with his DC-Cam statements,²⁷²² he could not provide a clear chronology of his whereabouts in 1975-1979.²⁷²³

710. **Kuy Nen.** Kuy Nen is unreliable.²⁷²⁴ He speculated that thousands of people lived in cooperatives and that 800 to 1,000 people worked on the Bet Trang Dam project.²⁷²⁵ Kuy Nen was stationed in Babos Cooperative from April 1975 until the arrival of Vietnamese troops in 1979.²⁷²⁶ His knowledge of what happened in other cooperatives is unverifiable hearsay. He heard rumors that people were killed at a durian plantation from the wives of soldiers who were cooperative chairwomen.²⁷²⁷ His knowledge of the Bet Trang Dam project is limited, as he only worked there for one week.²⁷²⁸

711. **Moul Chhin.** Moul Chhin is unreliable.²⁷²⁹ He speculated that thousands of troops were demobilized and sent to different production units and that 300 people worked at the Bet Trang Dam project.²⁷³⁰ Moul Chhin was an ordinary combatant who speculated that MEAS Muth issued a demobilization order assigning troops to different production units.²⁷³¹ Given his penchant for speculation and reliance on second-hand knowledge,²⁷³²

²⁷²¹ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, A99.

²⁷²² Written Record of Interview of Kang Sum, 4 June 2015, D114/79, Q-A3, 99, 101, 106: "Q: If today I ask you the same questions as those of the DC-Cam, will you tell us the same as you told the DC-Cam? A3: Yes, I will.... Q: What you have told me does not reflect what you told the DC-Cam in March 2015. I have a problem understanding why you could remember things better when providing answers three months ago than now. A99: I was drunk at that time.... Q: I want to clarify with you again whether or not you will provide the same answers if I ask the same questions as those of the DC-Cam team who interviewed you? A101: I cannot remember. I cannot provide the same answers. I can remember only if I listen to my audio recorded statements at that time.... Q: I want to clarify with you that you are answering under oath, but now you seem to be answering with some concerns. May I ask you to recompose yourself and concentrate in answering my questions.... A106: I'm answering according to what I know."

²⁷²³ Written Record of Interview of Kang Sum, 4 June 2015, D114/79, Q-A 229.

²⁷²⁴ See *supra* paras. 424 and 686 for more information about this witness.

²⁷²⁵ Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A2, A41. Final Submission, fn. 2724.

²⁷²⁶ Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A2, A12.

²⁷²⁷ Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, Q-A2, 3, 4: "Q: How did all the people know that the Khmer Rouge took people to be killed [at the durian plantation]? A2: I learned that the Khmer Rouge took people to be killed there from the wife of a Khmer Rouge soldier. During that time, the wives of Khmer Rouge soldiers were the chairwomen of the cooperatives here. Babos Cooperative and Pu Theung Cooperative were here, and there were thousands of people in these two cooperatives including family members of the soldiers.... A3: For example, the chairwomen of these cooperatives would tell people, 'Those two or three families were taken to be killed at the durian plantation.'.... A4: They told these stories to people because they wanted to frighten them into not making any mistakes."

²⁷²⁸ Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A40.

²⁷²⁹ See *supra* para. 361 for more information about this witness.

²⁷³⁰ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A92; Written Record of Interview of Moul Chhin, 29 January 2015, D114/40, A21. Final Submission, fns. 2724, 2731, 2803.

²⁷³¹ Written Record of Interview of Moul Chhin, 17 December 2014, D114/31, A19, A93.

²⁷³² See *supra* paras. 361 and 649 describing instances where Moul Chhin engaged in speculation.

his estimate of the number of workers at the Bet Trang Dam project is unreliable. Even if the CIJs accord probative value to Moul Chhin's evidence, his estimate of the number of workers at the Bet Trang Dam project contradicts those of other witnesses.

712. **Prum Sambath.** Prum Sambath is unreliable.²⁷³³ He speculated that there were a "great number" of workers from his unit and other units at the Bet Trang Dam project.²⁷³⁴ Prum Sambath provided no number or range of numbers and told the OCIJ Investigator that he did not know the number of workers.²⁷³⁵

713. **Sao Men.** Sao Men is unreliable. She first told the OCIJ that there were "hundreds of people" at the Bet Trang Dam project because "[t]he queue of people waiting to get their meals was very long."²⁷³⁶ She later told the OCIJ that there were thousands of people there because there were two kitchens at the site with at least 200 to 300 workers in them.²⁷³⁷ When asked again to estimate the number of workers at the Bet Trang Dam project, she stated that there were hundreds of workers, but she did not count the number of kitchens.²⁷³⁸

714. **Thork Sen.** Thork Sen is unreliable. He speculated that there were "probably 150 children" in his unit working at the coconut plantation and that there were hundreds of people working at the Bet Trang Dam project.²⁷³⁹ Thork Sen began his OCIJ interview by apologizing if he said anything wrong: "I was very young at the time.... I did not know much about the country's situation."²⁷⁴⁰ Apart from speculating, his estimate of the

²⁷³³ See *supra* para. 699 for more information about this witness.

²⁷³⁴ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A194. Final Submission, fn. 2731.

²⁷³⁵ Written Record of Interview of Prum Sambath, 26 August 2015, D114/109, A194.

²⁷³⁶ Written Record of Interview of Sao Men, 5 August 2016, D114/239, A12. Final Submission, fn. 2729.

²⁷³⁷ Written Record of Interview of Sao Men, 5 August 2016, D114/239, Q-A26-28: "Q: Based on your estimate, approximately how many workers were taken away from Bet Trang Worksite? A26: So many people were taken away. Some were sent to different places, and some just disappeared. There were thousands of workers there. Even in one kitchen, there were up to two or three hundred workers. Q: Can you give an estimate? Were there one thousand or two thousand workers; how many thousands of workers were there? A27: There were two to three hundred workers in one kitchen, and there were many kitchens. Q: How many kitchens exactly were at Bet Trang Worksite? A28: There were two kitchens." Final Submission, fn. 2729.

²⁷³⁸ Written Record of Interview of Sao Men, 5 August 2016, D114/239, A46.

²⁷³⁹ Written Record of Interview of Thork Sen, 9 August 2016, D114/243, A24, 99. Final Submission, fns. 2724, 2731.

²⁷⁴⁰ Written Record of Interview of Thork Sen, 9 August 2016, D114/243, A9.

number of children working at the coconut plantation contradicts Prak Bunny, who stated that there were 50 children in each unit working at the coconut plantation.²⁷⁴¹

715. **Nguon Lay.** Nguon Lay is unreliable. He speculated there were hundreds or thousands of people working at the Bet Trang Dam project.²⁷⁴² Nguon Lay only went to the dam once to transport materials.²⁷⁴³

716. **Nhuong Chrong.** Nhuong Chrong is unreliable. He speculated that 500 to 600 workers were involved in dam construction.²⁷⁴⁴ He did not name the dam he identified to the OCIJ Investigator just before his interview.²⁷⁴⁵ He was not involved in dam construction and did not indicate when and how many times he witnessed workers at the site he identified.²⁷⁴⁶

717. **Phin Venh.** Phin Venh is unreliable. He made statements based on speculation and gave contradictory evidence. Phin Venh speculated that there were many people working at the Bet Trang Dam project and that there were 250 children in his children's unit working there.²⁷⁴⁷ Phin Venh provided no basis for his estimate and gave contradictory testimony. He was 15 or 16 when he worked at the Bet Trang Dam project but told the OCIJ that the oldest person in his children's unit was 14 years old.²⁷⁴⁸

718. **Soeng Noch.** Soeng Noch is unreliable.²⁷⁴⁹ He only worked at the Bet Trang Dam project for two or three days.²⁷⁵⁰ He first told the OCIJ that he did not know how many people worked at the Bet Trang Dam project.²⁷⁵¹ After being pressed by the OCIJ Investigator to provide an estimate, he speculated that there were about 400 to 500 people working there.²⁷⁵²

²⁷⁴¹ Written Record of Interview of Prank Bunny, 8 August 2016, D114/242, A31.

²⁷⁴² Written Record of Interview of Nguon Lay, 16 November 2015, D114/139, A106. Final Submission, fn. 2731.

²⁷⁴³ Written Record of Interview of Nguon Lay, 16 November 2015, D114/139, A102-04.

²⁷⁴⁴ Written Record of Interview of Nhuong Chrong, 24 August 2010, D2/6, A26. Final Submission, fn. 2731.

²⁷⁴⁵ Written Record of Interview of Nhuong Chrong, 24 August 2010, D2/6, A24-26.

²⁷⁴⁶ Written Record of Interview of Nhuong Chrong, 24 August 2010, D2/6, A28-29.

²⁷⁴⁷ Written Record of Interview of Phin Venh, 5 August 2016, D114/240, A11, 15, 24, 27, 46, 47. Final Submission fns. 2724, 2731.

²⁷⁴⁸ Phin Venh was born on 22 August 1960 and worked at the Bet Trang Dam project from 1975 to 1976. See Written Record of Interview of Phin Venh, 5 August 2016, D114/240, EN 01479300, A15, A25.

²⁷⁴⁹ See *supra* para. 440 for more information about this witness.

²⁷⁵⁰ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A198.

²⁷⁵¹ Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A189.

²⁷⁵² Written Record of Interview of Soeng Noch, 25 January 2016, D114/156, A191. Final Submission, fn. 2731.

719. **Suon Phar.** Suon Phar is unreliable. His statement is based on hearsay and speculation. Suon Phar speculated that 200 to 300 soldiers from his unit were demobilized and sent to work at the Kang Keng airport.²⁷⁵³ He told the OCIJ that he did not know why his unit was demobilized, but “heard that cadres from Sector 37 had collaborated with the enemy.”²⁷⁵⁴ He guessed as to the number of soldiers from his unit that were sent to the Kang Keng airport and did not say how many other people were working in the area.²⁷⁵⁵
720. **Khoem Yat.** Khoem Yat is unreliable. He made statements based on speculation and had poor memory. He speculated that 200 to 300 soldiers went to work at the Kang Keng airport and that other military personnel were sent to other locations.²⁷⁵⁶ His OCIJ interview abruptly ended and Khoem Yat was not questioned further as to what he saw or why he speculated that other military personnel were sent to other locations.²⁷⁵⁷ He indicated at the end of his interview that he had difficulty remembering events and agreed to be interviewed further.²⁷⁵⁸ Khoem Yat was never re-interviewed.
721. **Nub Phom.** Nub Phom is unreliable. He speculated that “[a]round 60-100 soldiers in my company were demobilised” and sent to Kang Keng to grow rice.²⁷⁵⁹ Nub Phom was not asked how he arrived at this number. Even if his estimate were accurate, it is insufficient to support the ICP’s claim that thousands of laborers worked at the Ream area worksites at any one time.²⁷⁶⁰
722. **Prak Sokha.** The ICP misrepresents Prak Sokha’s evidence. The ICP cites Prak Sokha as stating that approximately 650 people were in his mobile unit at Prek Chak.²⁷⁶¹ Prak Sokha did not say this. He stated that two full battalions were sent there and

²⁷⁵³ Written Record of Interview of Suon Phar, 10 September 2015, D114/121, A20, 22, 24. Final Submission, fn. 2731.

²⁷⁵⁴ Written Record of Interview of Suon Phar, 10 September 2015, D114/121, A21.

²⁷⁵⁵ Written Record of Interview of Suon Phar, 10 September 2015, D114/121, A24.

²⁷⁵⁶ Written Record of Interview of Khoem Yat, 23 May 2014, D54/97, A41. Final Submission, fn. 2724.

²⁷⁵⁷ Written Record of Interview of Khoem Yat, 23 May 2014, D54/97, EN 01074516: “The investigator’s comment: Unfortunately, we have to pause the interview because it is very late in the afternoon, and our group members have to return to Phnom Penh. The witness expressed his interest and agreed to be interviewed further in Phnom Penh.”

²⁷⁵⁸ Written Record of Interview of Khoem Yat, 23 May 2014, D54/97, A42.

²⁷⁵⁹ Written Record of Interview of Nub Phom, 26 October 2015, D114/135, A19. Final Submission, fn. 2724.

²⁷⁶⁰ Final Submission, para. 674.

²⁷⁶¹ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A4. Final Submission, fn. 2724.

described the general structure of a battalion, but did not provide a precise number or estimate.²⁷⁶² He also stated that the number of people in his unit varied.²⁷⁶³

723. **Hing Uch.** Hing Uch is unreliable.²⁷⁶⁴ He told DC-Cam that his entire unit was sent to the Kang Keng airfield to grow rice.²⁷⁶⁵ He later told the OCIJ that he did not know about any purges of cadre: “I was only a combatant. I did not know anything at all when anyone was removed from or assigned to any position.... I did not pay attention to all of the people who were moved. I cared only about my work.”²⁷⁶⁶
724. **Say Born.** Say Born is unreliable.²⁷⁶⁷ Acknowledging that he could not determine the exact number of laborers at the brick kiln near the Kang Keng airport, he speculated that there were more than 100 laborers there.²⁷⁶⁸ He only went there once in late 1975.²⁷⁶⁹ His estimate is likely based on what he heard from his friends who worked there.²⁷⁷⁰
725. **Nou Saroeun.** Nou Saroeun is unreliable.²⁷⁷¹ He speculated that there were hundreds of workers at the Bet Trang Dam project “because [he] saw the site was full of people in black uniforms.”²⁷⁷² He did not work at the Bet Trang Dam project because he was in a children’s unit.²⁷⁷³ He told the OCIJ that his unit sometimes cut grass near the Bet Trang Dam project,²⁷⁷⁴ but did not say how close he was to the site or how often he worked near it.
726. **Lon Seng.** Lon Seng is unreliable.²⁷⁷⁵ He speculated that 1,500 soldiers from the East Zone were demobilized and sent to a “Big Production Unit” in Put The.²⁷⁷⁶ Lon Seng told the OCIJ that he knew 1,500 soldiers from the East Zone were placed in the “Big

²⁷⁶² Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A4.

²⁷⁶³ Written Record of Interview of Prak Sokha, 13 November 2013, D54/36, A4.

²⁷⁶⁴ See *supra* para. 281 for more information about this witness.

²⁷⁶⁵ DC-Cam Interview with Hing Uch, 28 June 2007, D54/81.2, EN 01001396.

²⁷⁶⁶ Written Record of Interview of Hing Uch, 24 April 2014, D54/83, A7.

²⁷⁶⁷ See *supra* paras. 313 and 437 for more information about this witness.

²⁷⁶⁸ Written Record of Interview of Say Born, 14 August 2013, D54/17, A14. Final Submission, fn. 2724.

²⁷⁶⁹ Written Record of Interview of Say Born, 14 August 2013, D54/17, A14.

²⁷⁷⁰ Written Record of Interview of Say Born, 14 August 2013, D54/17, A14.

²⁷⁷¹ See *supra* para. 655 for more information about this witness.

²⁷⁷² Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A16. Final Submission, fn. 2731.

²⁷⁷³ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A13.

²⁷⁷⁴ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A14: “Sometimes we cut grass near that dam construction site.”

²⁷⁷⁵ See *supra* para. 194 for more information about this witness.

²⁷⁷⁶ Written Record of Interview of Lon Seng, 10 December 2013, D54/43, A19. Written Record of Interview of Lon Seng, 11 December 2013, D54/44, A6, A19, A22. Written Record of Interview of Lon Seng, 12 December 2013, D54/45, A13-16. Final Submission, fns. 2686, 2724, 2825.

Production Unit” because MEAS Muth announced that East Zone cadres had to be demobilized because they were bad elements.²⁷⁷⁷ Seng Sin’s statement – the only other source the ICP cites to support his claim about the “Big Production Unit” – does not corroborate Lon Seng’s story.²⁷⁷⁸ Seng Sin told the OCIJ he was sent to work in a production unit in Pra Bok village, not Put The.²⁷⁷⁹

727. **Uk Sok.** Uk Sok is unreliable.²⁷⁸⁰ She told the OCIJ that there were 20 children in the unit assigned to her.²⁷⁸¹ Uk Sok gave conflicting statements to the OCIJ and DC-Cam regarding who oversaw a Division 164 hospital,²⁷⁸² how many children were in her unit and how much food they received,²⁷⁸³ and whether people disappeared or were arrested from her cooperative.²⁷⁸⁴ She admitted to having memory problems.²⁷⁸⁵ Even if Uk Sok’s account were credible, the ICP overstates her evidence. Ten other women were assigned to look after Uk Sok’s children’s unit.²⁷⁸⁶ She told the OCIJ that the children’s work was not hard, and that some of the children went to school.²⁷⁸⁷

728. In addition to these speculative estimates, the ICP also cites Pak Sok, Sam Saom, Chet Bunna, and Civil Party applicants Nop Somaly and Yin Teng, who state that they were either engaged in agricultural work or dam construction in Ream.²⁷⁸⁸ None of these witnesses provide estimates of the number of workers in the areas in which they worked. That these witnesses worked in Ream area worksites, in addition to the witnesses addressed above, does not support the ICP’s claim.

²⁷⁷⁷ Written Record of Interview of Lon Seng, 11 December 2013, D54/44, A19, 22. Final Submission, fn. 2686.

²⁷⁷⁸ See Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A166. Final Submission, fn. 2686.

²⁷⁷⁹ Written Record of Interview of Seng Sin, 24 June 2015, D114/89, A140.

²⁷⁸⁰ See *supra* para. 438 for more information about this witness.

²⁷⁸¹ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A56. Final Submission, fn. 2724.

²⁷⁸² Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A83-89.

²⁷⁸³ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A102-03, 110-17.

²⁷⁸⁴ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A147-52.

²⁷⁸⁵ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A150-51.

²⁷⁸⁶ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A55.

²⁷⁸⁷ Written Record of Interview of Uk Sok, 25 February 2015, D114/53, A53, 55.

²⁷⁸⁸ *Case of NUON Chea et al.*, 002-19/09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.49.49-10.51.34; Written Record of Interview of Yin Teng, 7 October 2014, D114/6, A87-89, 158; Written Record of Interview of Sam Saom, 20 March 2015, D114/58, A48; Civil Party Application of Nop Somaly, 29 December 2013, D11/388, EN 01073730; Written Record of Interview of Chet Bunna, 28 April 2015, D114/65, A16. Final Submission, fns. 2729, 2731.

729. Even if 17,000 soldiers and civilians cultivated crops, as was reported to Son Sen on 19 September 1976,²⁷⁸⁹ this would not elevate MEAS Muth to a “senior leader” or one of those “most responsible.” Similar worksites existed throughout DK. Some had many thousands of laborers.²⁷⁹⁰ In Case 001, Dr. Etcheson testified that in 1975, “the Standing Committee decided that half a million people should be transferred to the Northwest Zone and put to work in agricultural cooperatives growing rice....”²⁷⁹¹ That worksites and cooperatives may have existed in areas under MEAS Muth’s control does not elevate him to the category of “most responsible.”

e. Alleged execution sites

730. The sources the ICP cites are insufficient to support his claim that two durian plantations, the Cheng Heng Durian Plantation (Durian I) and Ou Trav Durian Plantation (Durian II), and a former Lon Nol base known as the *Centre d’Instruction*, were used as execution sites during the DK regime.²⁷⁹² The ICP primarily cites the speculative accounts of witnesses who visited these sites after 1979 and saw skeletal remains there. None of these witnesses saw killings being carried out at these sites in 1975-1979. Each speculated that the grave sites they saw were execution sites because of the bones they saw there after 1979.

731. **Cheng Heng Durian Plantation (Durian I).** The ICP primarily cites speculative statements from Nou Saroeun and Lak Saphan, who saw skeletal remains at the Cheng Heng Durian Plantation after 1979,²⁷⁹³ and Pak Sok’s hearsay evidence,²⁷⁹⁴ to support his claim that the Cheng Heng Durian Plantation was used as an execution site.²⁷⁹⁵ Nou Saroeun did not witness any killings at the Cheng Heng Durian Plantation in 1975-1979.

²⁷⁸⁹ Military Meeting Minutes titled “Minutes of Meeting of Secretaries and Logistics [Chiefs] of Divisions and Regiments,” 19 September 1976, D1.3.27.18, EN 00195341. Final Submission, fns. 2727, 2729.

²⁷⁹⁰ See Case 002/01 Trial Judgement, para. 380; Case 004/1 Closing Order, para. 224.

²⁷⁹¹ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/TC, Transcript, 21 May 2009, E3/55, 15.59.39-16.03.29.

²⁷⁹² Final Submission, paras. 658-61.

²⁷⁹³ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A4, 46. Written Record of Interview of Lak Saphan, 21 August 2014, D54/123, A2-3, 12; Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A20. Final Submission, fns. 2929-31, 2933-37.

²⁷⁹⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.45.27-10.46.19: “I asked [Regiment 62 cadres] and those soldiers told me that the executions really happened.” Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A16. Final Submission, fns. 2938-39.

²⁷⁹⁵ Final Submission, para. 716.

He heard that killings took place there from his unit chairman.²⁷⁹⁶ Lak Saphan speculated that the Cheng Heng Durian Plantation was an execution site because there was a rumor in his village that people were taken to be killed there.²⁷⁹⁷ He told the OCIJ that he thought all the remains were gone because the site was cleared for farming, and that it would be difficult to track down the remains.²⁷⁹⁸ Pak Sok heard from other soldiers that executions were carried out at the Cheng Heng Durian Plantation.²⁷⁹⁹

732. **Ou Trav Durian Plantation (Durian II).** The ICP primarily cites speculative statements from Kuy Nen, Lak Saphan, and Pak Sok to support his claim that the Ou Trav Durian Plantation was used as an execution site.²⁸⁰⁰ Kuy Nen first visited the Ou Trav Durian Plantation after January 1979 and saw skeletal remains there.²⁸⁰¹ He never saw killings there but heard that it was a killing place from the wife of a DK soldier.²⁸⁰² Lak Saphan first went to the Ou Trav Durian Plantation in 1979.²⁸⁰³ He speculated that it was an execution site because he heard others in his area believed it to be such.²⁸⁰⁴

733. **Centre d'Instruction.** The ICP primarily cites speculative statements from Pak Sok, Sao Men, and Kuy Nen to support his assertion that a former Lon Nol barrack known as the *Centre d'Instruction*²⁸⁰⁵ was used as an execution site during the DK regime.²⁸⁰⁶ None of these witnesses have first-hand knowledge of what occurred at the *Centre d'Instruction* during 1975-1979.²⁸⁰⁷ In addition to these speculative accounts, the ICP cites Sngoun

²⁷⁹⁶ Written Record of Interview of Nou Saroeun, 15 August 2013, D54/18, A39, 43-44. Final Submission, fns. 2930-31.

²⁷⁹⁷ Written record of Interview of Lak Saphan, 21 August 2014, D54/123, A9: "This kind of information could not be hidden. People spread word from one to another. I can confirm that killings had taken place there because after I returned to my village, I visited that place and saw skulls there."

²⁷⁹⁸ Written Record of Interview of Lak Saphan, 21 August 2014, D54/123, A16.

²⁷⁹⁹ *Case of NUON Chea et al.*, 002-19/09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.45.27-10.46.19.

²⁸⁰⁰ Final Submission, fns. 2976, 2940-50, 2955-62.

²⁸⁰¹ Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A20; Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A1.

²⁸⁰² Written Record of Interview of Kuy Nen, 5 May 2014, D54/90, A2; Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A2, A3.

²⁸⁰³ Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, A4.

²⁸⁰⁴ Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, A10: "All the base people knew that there were two killing sites: OENG Krapum Phkar's durian plantation and the Tuek Sab durian plantation."

²⁸⁰⁵ Written Record of Interview of Lak Saphan, 9 September 2014, D114/2, Q-A12: "Did you ever hear of a place named C.I. [*Centre d'Instruction*]? A12: Yes, I did. C.I. was a former LON Nol military barracks [*sic*]."

²⁸⁰⁶ Final Submission, para. 661, fns. 2965-66, 2968-72.

²⁸⁰⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 16 December 2015, D114/297.1.20, 10.49.49 ("The soldier told me clearly that 'those 17 April People were ... killed at <Se-I (phonetic)> site"); Written Record of Interview of Pak Sok, 21 October 2013, D54/26, A29 ("According to what I was told by those military personnel, about three truckloads of people were taken to be killed there"); Written Record of

Noch, Kuy Nen, and Mom Meng, who saw skeletal remains there after 1979.²⁸⁰⁸ These witnesses may have seen skeletal remains around the *Centre d'Instruction*, but have no knowledge of what happened there in 1975-1979. The two sites identified to the OCIJ by Mom Meng have changed substantially. One was bulldozed to create a plantation while the other was affected by road construction and covered by high grass, making “it impossible to read the soil for any indication of a mass grave.”²⁸⁰⁹

3. Conclusion

734. The ICP fails to substantiate his claims that over a thousand people were arrested and killed by the DK navy, thousands of persons were detained and executed in security centers in Kampong Som Autonomous Sector, and at least 10,000 soldiers and civilians were enslaved in worksites and cooperatives in Stung Hav and Ream.²⁸¹⁰ At best, the evidence is inconclusive. Where witnesses provide ranges of numbers, conservative calculations must be made using the lowest estimate provided by the witnesses.²⁸¹¹ Even if the numbers alleged by the ICP are borne out by the evidence, these numbers must be viewed against the entirety of the suffering caused by CPK policies.

735. When compared to the total number of deaths from execution, displacement, starvation, forced labor, imprisonment, and insufficient public health services, the numbers of victims the ICP alleges are miniscule. For comparative purposes, in Case 004/1, the CIJs found, adopting conservative minimum thresholds, that IM Chaem was responsible for 2,000 to 10,800 victims of murder, hundreds and possibly thousands of victims of imprisonment, and thousands to tens of thousands of victims of enslavement.²⁸¹² This finding did not elevate her to the level of a “senior leader” or one of those “most responsible.” Neither does the number of victims alleged by the ICP in Case 003 render MEAS Muth a “senior leader” or one of those “most responsible.”

Interview of Sao Men, 5 August 2016, D114/239, A20 (“I heard that they took those people to C.I.”); Written Record of Interview of Kuy Nen, 3 May 2014, D54/89, A9 (“At that time it was commonly known to the villagers that when someone was arrested and taken from the Pu Thoeang Village Cooperative, they would be taken and killed at CI, but if someone was arrested from the village cooperative of Babos, they would be taken to be killed at Tuek Sap”).

²⁸⁰⁸ Written Record of Interview of Snguon Noch, 25 February 2016, D114/179, A60; Written Record of Interview of Kuy Nen, 8 May 2014, D54/91, A17; Written Record of Interview of Mom Meng, 11 September 2014, D114/4, A16-19, 21, 24. Final Submission, fns. 2973-78.

²⁸⁰⁹ Written Record of Investigation Action, 17 July 2013, D54/22, EN 00947624.

²⁸¹⁰ Final Submission, para. 1091.

²⁸¹¹ See Case 004/1 Closing Order, para. 218.

²⁸¹² Case 004/01 Closing Order, para. 320.

V. CONCLUSION

736. The CIJs should permanently stay the proceedings with full prejudice in light of the high probability that there will not be sufficient funding to provide for appellate review of the Closing Order, trial, and appeal, and MEAS Muth will have no procedural venue to challenge the charges against him should the proceedings at the ECCC simply cease due to a lack of funding.
737. Alternatively, the CIJs should issue a Dismissal Order.
738. MEAS Muth does not fall within the ECCC's jurisdiction because he was neither a senior leader nor one of those most responsible for serious crimes committed across DK from 1975-1979. He was not sufficiently high in the CPK hierarchy to have the authority or discretion to determine its policies or their implementation. He operated in a limited geographical area.
739. The ICP overreaches in making his claims, relying on dubious evidence: **a.** witnesses whose statements are based on hearsay or speculation or are tainted; **b.** witnesses whose statements do not support his claims; **c.** documentary evidence that is unreliable, of low probative value, or does not support his claims; and **d.** evidence obtained through the impermissible use of torture-tainted evidence. He misrepresents evidence, ignores relevant structural and contextual evidence that weakens or negates his claims, and relies heavily on the same unreliable witnesses to establish MEAS Muth's roles, authority, and involvement in alleged crimes.
740. No reasonable Trial Chamber would find that MEAS Muth was a "senior leader" or "most responsible" beyond a reasonable doubt based on the evidence in the Case File, even when viewed in the light most favorable to the ICP. When viewed against the backdrop of the entirety of suffering caused by CPK policies in DK between 1975-1979, any criminal responsibility that could be ascribed to MEAS Muth for crimes committed in DK waters, in Kampong Som, or in Sector 505 does not make him "most responsible."

Respectfully submitted,



ANG Udom


AVOCAT
ATTORNEY
AT LAW
KINGDOM OF CAMBODIA



Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 12th day of April 2018

