



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាក្រុងកម្ពុជា

Royaume du Cambodge  
Nation Religion Roi

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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des co-juges d'instruction

Case File No: 004/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges  
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**DECISION ON AO AN'S SEVENTH REQUEST FOR  
INVESTIGATIVE ACTION**

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## I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 22 February 2013, 5 April 2013, and 22 January 2015.
2. On 23 November 2015, the Ao An Defence (“Defence”) filed the *Seventh Request for Investigative Action* (“Request”).<sup>1</sup>
3. On 25 August 2016, in the *Notice of Provisional Discontinuance Regarding Individual Allegations*, I informed the parties that I will not further investigate the allegations relating to crime sites in Sector 42 and Sector 43, but may resume the investigation if compelling circumstances present themselves.<sup>2</sup>

## II. SUBMISSIONS

4. The Request comprises three sub-requests for investigative action.
  - i. *Sub-request 1*
5. In the first sub-request, the Defence ask the CIJs to identify all Revolutionary Army of Kampuchea (“RAK”) and security forces operating in the territory of the Central (Old North) Zone at the time of the alleged purge (“Sub-request 1”).<sup>3</sup> The Defence specify that this includes all divisions/brigades, regiments, battalions, companies, and platoons of the Centre, Central (Old North) Zone, and Region 106 from State to village levels, and their respective compositions, command structures and *de jure/de facto* leadership.<sup>4</sup>
6. The Defence reason that Sub-request 1 will assist in identifying those most responsible for planning, ordering, implementing, and supervising the alleged purges of the Central (Old North) Zone, which will likely result in exculpatory evidence regarding the International Co-Prosecutor’s (“ICP”) allegation that Ao An led Southwest Zone cadre in the purges of the zone.<sup>5</sup> The Defence contend that zone military leaders retained control over a substantial number of troops stationed in their regions, and this led to tensions between the zones and the Centre,<sup>6</sup> which controlled Divisions and Independent Regiments capable of operating in more than one zone.<sup>7</sup> The Defence point to evidence that Region 106 forces coming from Siem Reap were present, and may have been conducting arrests, in the Central (Old North) Zone.<sup>8</sup>
7. The Defence request that the CIJs undertake five specific investigative actions which may assist an investigation of matters raised in Sub-request 1:
  - a. Identify and place on the Case File evidence relevant to this sub-request from Case 001 and Case 002;

<sup>1</sup> Case File No. 004-D277, *Seventh Request for Investigative Action*, 23 November 2015.

<sup>2</sup> Case File No. 004-D307/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016, paras 13-14.

<sup>3</sup> Request, para. 24.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, para. 26.

<sup>6</sup> *Ibid.*, para. 21.

<sup>7</sup> *Ibid.*, paras 22-23.

<sup>8</sup> *Ibid.*, para. 23.



- b. Identify and place on the Case File documents relevant to this sub-request in the Documentation Centre of Cambodia (“DC-Cam”) archives and other State and historical archives;
  - c. Identify and interview former members of the military forces in the Centre, Central (Old North) Zone, and Region 106 with regard to the command structure, leadership, and functions of their units and superiors;
  - d. Identify and collect any other evidence relevant to this sub-request; and
  - e. Identify and collect any other evidence of re-assignment or renaming of Centre and/or zone military units.<sup>9</sup>
8. In addition, the Defence ask the CIJs to interview witnesses and collect any other evidence of: (a) distinguishing features between the uniforms of the various RAK security forces; and (b) distinctions in the speech and/or accents of individuals from the Southwest Zone and other parts of Democratic Kampuchea.<sup>10</sup> The Defence submit that this may assist the CIJs with identifying forces operating in the territory of the Central (Old North) Zone during the alleged purges.<sup>11</sup>

*ii. Sub-request 2*

9. The second sub-request relates to the involvement of Region 106 military and security forces, Old North Zone military and security forces, and the Centre in the alleged purge of the Central (Old North) Zone.<sup>12</sup> The Defence submit that evidence on the Case File shows that the purge of the Central (Old North) Zone was conducted before Ao An and others from the Southwest Zone arrived.<sup>13</sup> The Defence point to evidence suggesting that military and security forces other than Southwest Zone cadre, including forces from autonomous Region 106, forces from the Old North Zone, and security personnel from the Centre, were used during the alleged purge.<sup>14</sup>
10. Regarding the involvement of Region 106 military and security forces, the Defence request that the CIJs undertake five specific investigative actions (“Sub-request 2.1”):
- a. Identify and interview former military personnel;
  - b. Identify and interview an individual named Tum;
  - c. Identify and interview other individuals who may have information about Tum;
  - d. Identify and interview any other individuals with relevant knowledge; and
  - e. Identify all other evidence, including documentary evidence, containing relevant information.<sup>15</sup>
11. Regarding the involvement of Old North Zone military and security forces in the alleged purge, the Defence suggest the following investigative actions (“Sub-request 2.2”):

<sup>9</sup> *Ibid.*, para. 24.

<sup>10</sup> *Ibid.*, para. 25.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, paras 31-33.

<sup>13</sup> *Ibid.*, para. 27.

<sup>14</sup> *Ibid.*, paras 27-30.

<sup>15</sup> *Ibid.*, para. 31.



- a. Place Alexander Hilton's research notes related to the alleged purge on the Case File;
  - b. Search for evidence of any relevant orders that Re Sim (alias Reap) may have received from Ke Pauk or any orders Re Sim may have given his subordinates;
  - c. Place a full copy of the S-21 confession of Re Sim in Khmer and a complete English translation on the Case File;
  - d. Identify and interview any other individuals with relevant knowledge; and
  - e. Identify all other evidence, including documentary evidence, containing relevant information.<sup>16</sup>
12. Regarding the involvement of the Centre in the alleged purge, the Defence suggest the following investigative actions ("Sub-request 2.3"):
- a. Identify Central (Old North) Zone cadre who may have been arrested by security forces sent directly from the Centre and any documents of such arrests, including orders and telegrams;
  - b. Identify any orders given by the Centre to Ke Pauk to purge the Central (Old North) Zone using military and security forces under his control; and
  - c. Identify and interview any individuals with relevant knowledge.<sup>17</sup>

*iii. Sub-request 3*

13. The third sub-request relates to Ke Pauk's control over, and responsibility for, the acts of military and security forces operating in the territory of the Central (Old North) Zone.<sup>18</sup> The Defence submit that there is evidence which places Ke Pauk at the centre of responsibility for the purge of the Central (Old North) Zone.<sup>19</sup> The Defence claim that Ke Pauk rose in the Democratic Kampuchea ("DK") hierarchy from Deputy Secretary of the Old North Zone to Secretary of the Central Zone, Commander in Chief of the Central Zone armed forces, member of the Communist Party of Kampuchea ("CPK") Central Committee, member of the Party Centre Military Committee, and possibly Deputy Chief of the General Staff of the RAK under Ta Mok.<sup>20</sup> The Defence also submit that Ke Pauk was among a restricted group of DK officials who possessed authority to "smash".<sup>21</sup>
14. The Defence request that the CIJs undertake the following investigative actions to assist with this sub-request:
- a. Locate and interview Kam Srey in relation to the military structure in the Central (Old North) Zone and Ke Pauk's control of the military and security forces in that zone;
  - b. Identify all documents located at S-21 and DC-Cam archives documenting Ke Pauk's involvement in arrests and interrogations related to the alleged purge;

<sup>16</sup> *Ibid.*, para. 32.

<sup>17</sup> *Ibid.*, para. 33.

<sup>18</sup> *Ibid.*, paras 35-41.

<sup>19</sup> *Ibid.*, para. 35.

<sup>20</sup> *Ibid.*, para. 36.

<sup>21</sup> *Ibid.*



- c. Identify and place on the Case File all meeting minutes regarding purges at which Ke Pauk would have been present in his various above-listed roles;
- d. Locate and place on the Case File the original versions of four documents which were partially reprinted in *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* (eds. Howard J. De Nike, et al.);
- e. Place on the Case File the book *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* (eds. Howard J. De Nike, et al.); and
- f. Locate and place on the Case File all interview notes and/or recordings from two interviews conducted by Steven Heder regarding Ke Pauk's role in the purge of the Old North Zone.<sup>22</sup>

### III. DISCUSSION

#### A. Standard for the assessment of investigative requests

15. The Pre-Trial Chamber previously stated that a party requesting investigative action “*must satisfy the two cumulative conditions [...] [n]amely, the request must:*

- (i) *identify the action to be taken or order to be made, as applicable, with sufficient precision (“the precision requirement”), and*
- (ii) *demonstrate in detail the reasons why the requested investigative action [...] is prima facie “relevant to ascertaining the truth” (“the prima facie relevance requirement”).*<sup>23</sup>

16. The precision requirement obliges the requesting party to be “*specific enough to give clear indications to the Co-Investigating Judges as to what they should search for*.”<sup>24</sup> Consequently, I am not required to grant general or speculative requests to look for exculpatory evidence.<sup>25</sup> Rather, the requesting party must point specifically towards the presence of the evidence that is sought.<sup>26</sup> For example, the PTC found that a request that does not clearly state the number of documents sought or their exact location within a collection of documents or archives fails to meet this test.<sup>27</sup>

17. The *prima facie* relevance requirement contains two sub-requirements. Firstly, the request must be “*relevant to the scope of the investigation pursuant to the limitations and parameters set by the Introductory and Supplementary Submissions.*”<sup>28</sup> Secondly, the request “*must detail why the requested information*

<sup>22</sup> *Ibid.*, para. 40.

<sup>23</sup> Case File No. 002-D365/2/17, *Decision on reconsideration of Co-Prosecutors' appeal against the Co-Investigating Judges order on request to place additional evidentiary material on the case file which assists in proving the charged persons' knowledge of the crimes* (“Reconsideration Decision”), 20 September 2010, para. 47.

<sup>24</sup> *Ibid.*, para. 48.

<sup>25</sup> *Ibid.*, paras 48, 51.

<sup>26</sup> Case File No. 002-D100/9/2, *Decision on the Appeal Against the Co-Investigative Judges Order on Nuon Chea's Second Request for Investigative Action*, 5 May 2010, para. 31; Case File No. 002-D164/4/13, *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Material Drive*, 18 November 2009, paras 38-39; Case File No. 002-D273/3/5, *Decision on Appeal Against OCIJ Order on Nuon Chea's Eighteenth Request for Investigative Action*, 10 June 2010, paras 19-20, 26, 29; Reconsideration Decision, paras 48, 73.

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

<sup>28</sup> *Ibid.*, para. 49.



is conducive to ascertaining the truth”.<sup>29</sup> This requires the requesting party to establish a *prima facie* nexus between the requested investigative action and a matter within the scope of the investigation.<sup>30</sup> Where the request concerns exculpatory evidence, the requesting party must demonstrate a *prima facie* reason that the investigative action may yield exculpatory evidence.<sup>31</sup>

**B. Sub-request 1: identify RAK and security forces operating in the Central (Old North) Zone**

*i. Requested investigative actions (c), (d), (e): identify military and security forces in the Central (Old North) Zone*

18. Throughout the judicial investigation, the Office of the Co-Investigating Judges (“OCIJ”) investigators have sought to identify which military or security forces played a role in relation to each of the alleged crime sites in the Third Introductory Submission (“3IS”), including their command structures.<sup>32</sup> A request to identify all RAK and other security forces which were operating in the territory of the Central (Old North) Zone during the alleged purge, without *prima facie* indications of their involvement thereof, is too unspecific and would require investigative actions in broad geographical areas, including locations that are not connected to any crime sites alleged in the 3IS. In the absence of *prima facie* indications that forces from outside Sector 41 were involved in any of the crimes alleged in the 3IS, such a broad investigation request fails to meet the precision requirement and would also not be an efficient use of the OCIJ’s resources.

*ii. Requested investigative action (a): Evidence from Case 001 & Case 002*

19. On 3 May 2011, following a review of the evidentiary material on Case File 002, the CIJs ordered the transfer of 1270 documents from Case File 002 to Case File 004, including many contemporaneous CPK documents.<sup>33</sup> Since then, the OCIJ has conducted a number of further reviews of Cases File 001, 002, 003, and the 3IS, and relevant documents have been placed on Case File 004.<sup>34</sup> I am unconvinced that a further review of Case Files 001 and 002 is necessary.

<sup>29</sup> *Ibid.*, para. 50.

<sup>30</sup> *Ibid.*, paras 50-51.

<sup>31</sup> Case File No. 002-D353/2/3, *Decision on the Ieng Thirith Defence Appeal Against ‘Order on Requests for Investigative Action by the Defence for Ieng Thirith’ of 15 March 2010*, 14 June 2010, para. 47.

<sup>32</sup> See Case File No. 004-D117/58, *Written Record of Interview of MUY Vanny*, 3 July 2014, ERN 01035842-01035844, A6-A18 (Wat Au Trakuon Security Centre); Case File No. 004-D219/315, *Written Record of Interview Witness SAT Pheap*, 18 May 2015, ERN 01111982, A152 (Wat Ta Meak Security Centre); Case File No. 004-D219/504, *Written Record of Interview witness SAT Pheap*, 17 September 2015, ERN 01167892-01167893, A49-A56 (Wat Ta Meah Security Centre); Case File No. 004-D219/731, *Written Record of Interview witness NHEM Chen*, 15 March 2016, ERN 01224107-01224108, 01224109-01224110, 01224115, A50-52, A68, A116-A117 (Wat Batheay Security Centre).

<sup>33</sup> Case File No. 004-D6, *Note on placement of documents from Case File 002 to Case File 004*, 3 May 2011; Case File No. 004-D6.1, *Annex: List of documents to be transferred from Case File 002 to Case File 004*, 3 May 2011.

<sup>34</sup> Case File No. 004-D219/702, *Written Record of Investigation Action*, 1 March 2016; Case File No. 004-D219/702.1, *Annex A*, 1 March 2016; Case File No. 004-D219/234, *Written Record of Investigation Action*, 24 March 2015; Case File No. 004-D219/487, *Written Record of Investigation Action*, 2 September 2015.



iii. *Requested investigative action (b): Documents from DC-Cam and other archives*

20. The OCIJ has reviewed the archive of DC-Cam for any documents relevant to the investigation in Case 004.<sup>35</sup> Following that review, the former International CIJ placed numerous documents relevant to the investigation onto the Case File.<sup>36</sup> Additionally, given the overlap between Case 002 and Case 004, almost all of the contemporaneous documentary evidence from the DC-Cam archive relevant to Case 004 has already been placed onto Case File 002, as explained in paragraph 19 above.<sup>37</sup>
21. The Defence also request the CIJs to search “*other state and historical archives*” without offering any further detail as to what archives they refer to. The OCIJ has already made efforts to obtain access to archives in Vietnam in Cases 003 and 004, but these efforts were unsuccessful.<sup>38</sup> Within Cambodia, as part of the investigation in Case 002 OCIJ investigators searched the National Archive of Cambodia for documents relevant to that investigation.<sup>39</sup> The OCIJ scanned 51 documents relating to matters of commerce and placed them on Case File 002.<sup>40</sup> In the absence of *prima facie* indications that the National Archive contains documents relevant to the investigation in Case 004, I am unconvinced that a further search of this archive would be fruitful.
22. The Defence fail to specify which other archives they request the CIJs to search. This part of the Request is therefore denied because it is insufficiently specific. In this regard, I note that the Defence is not prevented from conducting their own preliminary inquiries as to the existence of archives of documents from the DK era.<sup>41</sup>

<sup>35</sup> Case File No. 004-D123, *Rogatory Letter dated 06-03-2013*, 6 March 2015; Case File No. 004-D123/1, *Written Record of Acts of Investigations*, 16 May 2013.

<sup>36</sup> Case File No. 004-D123/1, *Written Record of Acts of Investigations*, 16 May 2013.

<sup>37</sup> Case File No. 004-D6, *Note on placement of documents from Case File 002 to Case File 004*, 3 May 2011; Case File No. 004-D6.1, *Annex: List of documents to be transferred from Case File 002 to Case File 004*, 3 May 2011.

<sup>38</sup> Case File No. 004-D181/4, *Rogatory Letter Completion Report*, 22 September 2016.

<sup>39</sup> Case File No. 002-D161, *Rogatory Letter for Documents at National Archive of Cambodia dated 27 January 2009*, 27 January 2009.

<sup>40</sup> Case File No. 004-D277/1.1, *Report of the Execution of Rogatory Letter, dated 04 February 2009*, 4 February 2009; Case File No. 004-D277/1.2, *List of telegrams and documents Scanned from originals held within the National Archive of Cambodia*, 19 March 2009; Case File No. 004-D277/1.3, *Written Record of providing and obtaining of documents*, 3 February 2009.

<sup>41</sup> Case File No. 004-D203/1, *Decision Regarding Yim Tith's Request For Clarification That He Can Conduct His Own Investigations*, 21 July 2014, paras 12-13; Case File No. 003-D173/1, *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, paras 11-12; Case File No. 002-D164/2, *Order on Joint Defence Request for Investigative Action to Seek Exculpatory Evidence in the Shared Material Drive*, 19 June 2009, para. 14; Case File No. 002-D365/2/10, *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place on Case File Additional Evidentiary Material which assists in proving the Charged Persons' Knowledge of the Crimes*, 15 June 2010, para. 12; Case File No. 002-D315/1/5, *Decision on the Appeal against Order on NUON CHEA's Requests for Investigative Action Relating to Foreign States and on the Appeal against the Order on the Requests for Investigative Actions relating to Foreign States, in Respect of the Denial of The Request for Witness Interviews by KHIEU SAMPHAN*, 7 June 2010, para. 15; Case File No. 002-D273/3/5, *Decision on Appeal against OCIJ Order of NUON Chea's Eighteenth Request for Investigative Action*, 10 June 2010, para. 29.



- iv. *Additional requested investigative action (a), (b): distinguishing uniforms or accents of different RAK and security forces*
23. Many OCIJ witnesses identify cadre from the Southwest Zone operating in the Central (Old North) Zone during the period of the alleged purge, and some do so by recognising different accents.<sup>42</sup> However, I am reluctant to place considerable weight on the identification of cadres by their accents and will not consider such evidence determinative in making findings on the origin of cadres in the Central (Old North) Zone. I also consider the request to investigate distinguishing accents or the uniforms of different military and security forces operating in the Central (Old North) Zone as too unspecific to satisfy the precision requirement.
24. Additionally, the submission that such an investigating would uncover exculpatory evidence is too speculative to warrant the resources required to interview, and in many cases re-interview, a large number of witnesses. Over the course of the investigation, the OCIJ has focused on investigating Ao An's participation in the alleged crimes through evidence indicating whether he exercised authority over the crime sites under investigation, for example by issuing or passing down orders. In this context, the exculpatory effect of possible evidence suggesting that some of the forces operating in the Central Zone had distinguishing accents or wore different uniforms is unclear.

**C. Sub-request 2.1: investigate the involvement of Region 106 military and security forces in the alleged purge of the Central (Old North) Zone**

25. The only evidence of forces from autonomous Region 106 having taken part in the alleged purge of the Central (Old North) Zone comes from OCIJ witness Orn Kim Eng, who told the OCIJ that security forces from Siem Reap were sent to Sector 41 in July or August 1977 in order to purge "*ordinary people*".<sup>43</sup> He said that Ke Pauk ordered that these forces be arrested and sent away in November or December 1977, and that they were subsequently replaced by forces from Phnom Penh.<sup>44</sup>
- i. *Requested investigative actions (a) & (d): identify and interview former military personnel and other individuals with relevant knowledge*
26. Following the filing of the Request, OCIJ investigators sought to obtain information on the involvement of Region 106 military and security forces in the alleged purge of the Central (Old North) Zone, but have not found any evidence beyond the Written Record of Interview ("WRI") of Orn Kim Eng indicating the involvement of these military units in the purge at relevant crime sites. OCIJ

<sup>42</sup> See for example: Case File No. 004-D219/606, *Written Record of Interview witness CHEA Kheang Thai*, 13 November 2015, ERN 01184886-01184887, A14; Case File No. 004-D219/582, *Written Record of Interview witness TOY Meach*, 3 November 2015, ERN 01179824, A28; Case File No. 004-D219/502, *Written Record of Interview of Civil Party Applicant MUOK Sengly*, 14 September 2015, ERN 01152370, A5; Case File No. 004-D219/288, *Written Record of Interview witness CHHEUN Lai Sim*, 24 April 2015, ERN 01111775, A28; Case File No. 004-D219/711, *Written Record of Interview of witness CHHORN Pech*, 28 February 2016, ERN 01216011, A18.

<sup>43</sup> Case File No. 004-D107/5, *Written Record of Interview of ORN Kim Eng*, 18 February 2012, ERN 00787224, 00787225, A3, A6; Case File No. 004-D117/66, *Written Record of Interview of ORN Kim Eng*, 27 August 2014, ERN 01040459-01040460, A3.

<sup>44</sup> Case File No. 004-D107/5, *Written Record of Interview of ORN Kim Eng*, 18 February 2012, ERN 00787225, 00787226, A6, A19; Case File No. 004-D117/66, *Written Record of Interview of ORN Kim Eng*, 27 August 2014, ERN 01040460, A7.





investigators questioned some witnesses about the involvement of forces from Siem Reap in the alleged purge of the Central Zone, but those witnesses said they had no knowledge of this.<sup>45</sup> The OCIJ attempted to conduct a further interview with witness Kuch Ra, who worked under the direct command of Ke Pauk,<sup>46</sup> and question him about the possible involvement of Region 106 military and security forces in the Central (Old North) Zone, but was advised by the Witness and Expert Support Section (“WESU”) that he was too unwell to be interviewed.<sup>47</sup>

27. The available evidence, therefore, albeit scarce it does not give any indication that Region 106 forces may have been involved in the purge. I am thus not inclined to further investigate the involvement of Region 106 military and security forces in the alleged purge of the Central (Old North) Zone.

*ii. Requested investigative action (b) & (c): identify and interview Tum and individuals who may have information about Tum*

28. Witness Orn Kim Eng claimed that Tum was one of the leaders who took charge of the military sent from Siem Reap to conduct the purge in the Central Zone.<sup>48</sup> The OCIJ attempted to identify and locate Tum, but those efforts were unsuccessful.<sup>49</sup>

*iii. Requested investigative action (e): identify all other relevant evidence, including documentary evidence, containing relevant information*

29. As explained in paragraph 28 above, the OCIJ has not been able to obtain any new evidence, beyond Orn Kim Eng’s WRI, pointing to the involvement of Region 106 military and security forces in the alleged purge of the Central (Old North) Zone. I do not consider it necessary to seek any further evidence relevant to the involvement of Region 106 military and security forces in the alleged purge of the Central (Old North) Zone.

**D. Sub-request 2.2: investigate the involvement of Old North Zone military and security forces in the alleged purge of the Central (Old North) Zone**

*i. Requested investigative action (a): place Alexander Hinton's research notes related to the alleged purge on the Case File*

30. On 21 June 2016, I formally requested Alexander Hinton to provide copies of his notes and research materials that formed the basis of his publication titled “*Why Did They Kill: Cambodia in the Shadow of Genocide*”.<sup>50</sup> I specifically requested

<sup>45</sup> Case File No. 004-D219/762, *Written record of interview witness SARAY Hean*, 19 May 2016, ERN 01309804, A103; Case File No. 004-D219/772, *Written Record of Interview of SAT Sim*, 31 May 2016, ERN 01309844, A100; Case File No. 004-D219/855, *Written Record of Interview witness NHEM Chen*, 27 October 2016, KH ERN 01344713-01344714, A242-243; Case File No. 004-D219/870, *Written Record of Interview witness RY Nhor*, 10 November 2016, KH ERN 01348890-01348891, A66-67; Case File No. 004-D219/871, *Written Record of Interview witness PIN Peou*, 22 November 2016, KH ERN 01352084, A73.

<sup>46</sup> Case File No. 004-D219/178, *Written Record of Interview Witness KUCH Ra*, 5 February 2015, ERN 01077011-01077012, A1.

<sup>47</sup> Case File No. 004-D219/874.1, *Letter from WESU regarding to KUCH Ra*, 29 November 2016.

<sup>48</sup> Case File No. 004-D117/66, *Written Record of Interview of ORN Kim Eng*, 27 August 2014, ERN 01040462-01040463, A16.

<sup>49</sup> Case File No. 004-D219/713, *Written Record of Investigation Action*, 18 January 2016.

<sup>50</sup> Case File No. 004-D6.1.943, *Book by Alexander HINTON entitled "Why did they kill?"*, published 2005 (filing date 31 December 2009).



information relevant to the purge of the Central (old North) Zone. On 2 July 2016, Alexander Hinton declined to provide his notes and research materials to the OCIJ on the basis that his “*research was carried out with human subject protections as required by U.S. universities / human subjects protections*”. The relevant correspondence is annexed to this Decision.<sup>51</sup>

31. Although I have the power under Internal Rules 60(3) and 61 to order coercive measures to obtain Alexander Hinton’s cooperation, I do not consider it appropriate to use them in these circumstances. Alexander Hinton resides outside of Cambodia, so the enforcement of any coercive measures would require several procedural steps, liaising with foreign national authorities, and would ultimately require a considerable amount of time. Furthermore, the research notes only supplement Alexander Hinton’s book, which is already on the Case File,<sup>52</sup> and so far there are no reasons to doubt the reliability of his research.

*ii. Requested investigative action (b): search for evidence of any relevant orders Re Sim (alias Reap) may have received from Ke Pauk or any other orders Re Sim may have given his subordinates*

32. According to Alexander Hinton, Reap was the commander of Division 174 in charge of the Phnom Bros (alternative spelling Phnom Pros) Execution Centre, who was sent to Tuol Sleng following a failed rebellion against Ke Pauk.<sup>53</sup> The ICP notes that Reap’s full name was Re Sim.<sup>54</sup> Beyond requesting Alexander Hinton’s notes and research materials (paragraphs 30-31), the OCIJ has been unable to locate any potential sources of evidence which may contain orders from Ke Pauk to Re Sim or from Re Sim to his subordinates.

*iii. Requested investigative action (c): place a full copy of the S-21 confession of Re Sim in Khmer and a full English translation on the Case File*

33. Given the absolute prohibition against the use of evidence obtained through torture,<sup>55</sup> it is OCIJ practice not to request full translations of S-21 confessions. The pages of the S-21 confession of Re Sim (alias Reap) that contain annotations have been scanned and placed on the Case File together with an English translation of the annotations.<sup>56</sup> A more complete copy of the confession has been

<sup>51</sup> Case File No. 004-D277/1.4, *OCIJ Correspondence with Alexander Hinton*, 2 July 2016.

<sup>52</sup> Case File No. 004-D6.1.943, *Book by Alexander HINTON entitled "Why did they kill?"*, published 2005 (filing date 31 December 2009).

<sup>53</sup> Case File No. 004-D6.1.943, *Book by Alexander HINTON entitled "Why did they kill?"*, published 2005 (filing date 31 December 2009), ERN 00431438, ERN 00431483-00431484.

<sup>54</sup> Request, footnote 65.

<sup>55</sup> Case File No. 002-D130/9/21, *Decision on Admissibility of the Appeal Against Co-Investigating Judges’ Order on Use of Statements which were or may have been Obtained by Torture*, 18 December 2009, paras 27, 30; Case File No. 001-E1/27.1, *Transcript of Proceedings – “Duch” Trial – 28 May 2009*, 28 May 2009, pp. 8-9; Case File No. 002-F26/12, *Decision on Objections to Document Lists full Reasons*, 31 December 2015, para. 34; Case File No. 001-E176, *Decision on Parties Request to Put Certain Documents before the Chamber Pursuant to Rule 87(2)*, 28 October 2009, para. 8; Case File 002-E1/129.1, [Corrected 2] *Transcript of hearing on the substance in Case 002 – 03 October 2012*, 3 October 2012, p. 74; Case File 002-E350/8, *Decision on evidence obtained through torture*, 5 February 2016, paras 20, 33-36, 49-62, 69-70; Case File 002-F26/12, *Decision on Objections to Document Lists full Reasons*, 31 December 2015, paras 32, 68.

<sup>56</sup> Case File No. 004-D6.1.1043, *R35 Colour Copy Excerpts from Confession of Re Sim alias Reap*, 25 September 1977.



scanned and placed on the Shared Materials Drive, however, I do not intend to place it on the Case File or obtain a translation.<sup>57</sup>

*iv. Requested investigative action (d): identify and interview any other individuals with relevant knowledge*

34. The OCIJ has not been able to identify any relevant leads regarding individuals who may have knowledge of the involvement of Old North Zone military and security forces in the alleged purge of the Central (Old North) Zone.

*v. Requested investigative action (e): identify other relevant evidence, including documentary evidence*

35. As mentioned above, the OCIJ has reviewed major document collections for any additional evidence relevant to Central Zone purge.<sup>58</sup> Relevant documents from Case Files 001, 002, 003, and 3IS were reviewed and subsequently placed on Case File 004.<sup>59</sup> I consider these investigative actions to be sufficient.

**E. Sub-request 2.3: investigate the involvement of the Centre in the alleged purge of the Central (Old North) Zone**

*i. Requested investigative action (a): identify Central (Old North) Zone cadre who may have been arrested by security forces sent directly from the Centre*

36. The OCIJ has reviewed the archives of the Tuol Sleng Genocide Museum and scanned all S-21 confessions and prisoner biographies potentially related to the Central Zone purge.<sup>60</sup> As explained above, the absolute prohibition against the use of evidence obtained through torture precludes any reliance on the contents of these confessions. However, the OCIJ has reviewed any annotations for relevance to the investigation and placed the relevant sections on the Case File.<sup>61</sup>

37. As noted above, the OCIJ has reviewed the archives at DC-Cam to search for documents relevant to the Central Zone purge and placed any such materials on the Case File.<sup>62</sup> Relevant documents from Case Files 001, 002, and 003 and 3IS were also reviewed and subsequently placed on Case File 004.<sup>63</sup>

38. I am unconvinced that any additional investigative actions would lead to new evidence of the Centre's involvement in the arrests of Central (Old North) Zone cadre.

<sup>57</sup> S-21 Confession of "R-35: Re Sim alias Reap, Secretary of Regiment 601, Division 174", ERN 01314910-01315026.

<sup>58</sup> See paras 19-21 above.

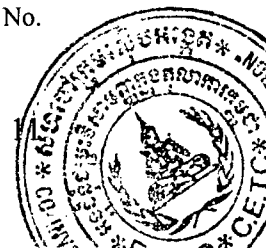
<sup>59</sup> Case File No. 004-D219/702, *Written Record of Investigation Action*, 1 March 2016; Case File No. 004-D219/702.1, *Annex A*, 1 March 2016.

<sup>60</sup> Case File No. 004-D173/1, *Written Record of Investigating Action*, 8 April 2016.

<sup>61</sup> Case File No. 004-D173/1, *Written Record of Investigating Action*, 8 April 2016; Case File No. 004-D219/833, *Written record of investigative action*, 20 September 2016; Case File No. 004-D219/833.1, *Annex A- Transfer from SMD to CF 004*, 20 September 2016.

<sup>62</sup> Case File No. 004-D123/1, *Written Record of Acts of Investigation*, 16 May 2013.

<sup>63</sup> Case File No. 004-D219/702, *Written Record of Investigation Action*, 1 March 2016; Case File No. 004-D219/702.1, *Annex A*, 1 March 2016.



ii. *Requested investigative action (b): Identify any orders given by the Centre to Ke Pauk to purge the Central (Old North) Zone using military and security forces under his control*

39. The OCIJ has not been able to identify any orders by the Centre to Ke Pauk relating to the alleged purge of the Central (Old North) Zone. However, a telegram from Ke Pauk to "Brother Pol" reporting, *inter alia*, on the enemy situation in the Old North Zone is on the Case File.<sup>64</sup> In addition, several WRIs on the Case File contain evidence in relation to Ke Pauk's role as Chairman of the Central (Old North) Zone.<sup>65</sup>

iii. *Requested investigative action (c): identify and interview any individuals with relevant knowledge*

40. The OCIJ has not been able to identify any further leads identifying individuals with knowledge of the involvement of the Centre in the alleged purge of the Central (Old North) Zone.

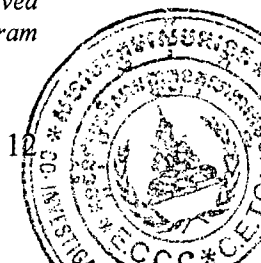
**F. Sub-request 3: investigate Ke Pauk's control over and responsibility for acts of military and security forces operating in the territory of the Central (Old North) Zone at the time of the alleged purge**

41. Before considering the Defence's specific requests, I note that a significant amount of evidence regarding Ke Pauk's role as secretary of the Central (Old North) Zone and his involvement in the purge is already on the Case File.<sup>66</sup>

<sup>64</sup> Case File No. 004-D1.3.30.2, *CPK Telegram by Pok entitled "Telegram 94 - Radio Band 1100 - With Respect to Beloved Brother Pol"*, 2 April 1976.

<sup>65</sup> Case File No. 004-D117/66, *Written Record of Interview of ORN Kim Eng*, 27 August 2014, ERN 01040459, 01040461, A2, A8-A9; Case File No. 004-D6.1.437, *Written Record of Interview of KÊ Un*, 13 January 2009, ERN 00283341, 00283346; Case File No. 004-D6.1.697, *Written Record of Interview of SUON Kanil dated 18-08-1009*, 18 August 2009, ERN 00384426-00384427; Case File No. 004-D6.1.707, *Written Record of Interview of SUON Kani dated 19-08-2009*, 19 August 2009, ERN 00390082; Case File No. 004-D6.1.646, *Written Record of Interview of SUON Kanil dated 21-08-2009*, 21 August 2009, ERN 00384690; Case File No. 004-D29, *Written Record of Interview of witness SUON Kanil*, 11 June 2011, ERN 00716230; Case File No. 004-D117/20, *Written Record of witness interview of LIM Seng*, 5 March 2013, ERN 00900988, 00900990, A2, A15.

<sup>66</sup> Case File No. 004-D117/66, *Written Record of Interview of ORN Kim Eng*, 27 August 2014, ERN 01040459, 01040461, A2, A8-A9; Case File No. 004-D6.1.437, *Written Record of Interview of KÊ Un*, 13 January 2009, ERN 00283341, 00283346; Case File No. 004-D6.1.697, *Written Record of Interview of SUON Kanil dated 18-08-1009*, 18 August 2009, ERN 00384426-00384427; Case File No. 004-D6.1.707, *Written Record of Interview of SUON Kanil dated 19-08-2009*, 19 August 2009, ERN 00390082; Case File No. 004-D6.1.646, *Written Record of Interview of SUON Kanil dated 21-08-2009*, 21 August 2009, ERN 00384690; Case File No. 004-D29, *Written Record of Interview of witness SUON Kanil*, 11 June 2011, ERN 00716230; Case File No. 004-D117/20, *Written Record of witness interview of LIM Seng*, 5 March 2013, ERN 00900988, 00900990, A2, A15; Case File 004-D219/731, *Written Record of Interview witness NHEM Chen dated 15/03/2016*, 15 March 2016, ERN 01224106-01224107, A40-42; Case File No. 004-D1.3.30.20, *DK Military Telegram by Nhim entitled "Telegram 63 - Radio Band 200 - Dear Beloved and Missed Angkar 870"*, 15 June 1978; Case File No. 004-D1.3.30.3, *DK Military Telegram by Comrade Pok entitled "Telegram 16 - To Respected and Loved Chief of 870"*, 30 April 1977; Case File No. 004-D1.3.30.2, *CPK Telegram by Pok entitled "Telegram 94 - Radio Band 1100 - With Respect to Beloved Brother Pol"*, 2 April 1976.



- i. *Requested investigative action (a): locate and interview Kam Srey in relation to the military structure in the Central (Old North) Zone and Ke Pauk's control of the military and security forces in that zone*
42. An OCIJ investigator located and interviewed Kam Srey, who identified himself as Kuch Ra.<sup>67</sup> The OCIJ attempted to re-interview this witness regarding the issues identified by the Defence, but was informed by WESU that he was too unwell to participate in an interview.<sup>68</sup>
- ii. *Requested investigative action (b): identify all documents located at S-21 and DC-Cam archives documenting Ke Pauk's involvement in arrests and interrogations related to the alleged purge*
43. The OCIJ has reviewed the archives at DC-Cam to identify any documents relevant to the Central Zone purge, but was unable to locate any additional contemporaneous documents regarding Ke Pauk's involvement in the alleged purge.<sup>69</sup> Several reviews of the DC-Cam archive were also conducted as part of the investigation in Case 002.<sup>70</sup> Relevant documents from Case Files 001, 002, and 003, and 3IS were subsequently reviewed and placed on Case File 004.<sup>71</sup> As mentioned above, the Case File already contains a significant amount of evidence regarding Ke Pauk's role as secretary of the Central (Old North) Zone and his involvement in the purge (above paragraph 41).
- iii. *Requested investigative action (c): identify and place on the Case File all meeting minutes regarding purges at which Ke Pauk would have been present*
44. Having reviewed the documentary evidence obtained during the investigation, the OCIJ has not been able to locate any meeting minutes regarding purges which indicate that Ke Pauk was likely present. I note that the Defence have not identified any other specific investigative action which may yield evidence relevant to Ke Pauk's involvement in the purge of the Central Zone.

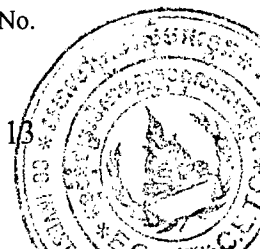
<sup>67</sup> Case File 004-D219/178, *Written Record of Interview Witness KUCH Ra*, 5 February 2015; Case File No. 004-D219/15, *Written Record of Investigation Action*, 18 September 2014.

<sup>68</sup> Case File No. 004-D219/874.1, *Letter from WESU regarding to KUCH Ra*, 29 November 2016.

<sup>69</sup> Case File No. 004-D123/1, *Written Record of Acts of Investigations*, 16 May 2013.

<sup>70</sup> Case File No. 002-D267, [*Corrected 1*] *Rogatory Letter for Documents at DC-Cam dated 30 September 2009*, 30 September 2009; Case File No. 002-D176, *Note by the Co-investigating Judges to place the document into case file 002*, 12 June 2009; Case File No. 002-D372/1, *CIJ' Note on placements of documents in Case File 002*, 10 May 2010; Case File No. 002-D248/5, *CIJ' Note on placements of documents in Case File 002*, 21 December 2009; Case File No. 002-D248/6, *CIJ' Note on placements of documents in Case File 002*, 6 January 2010; Case File No. 002-D251, *CIJ' Note on placements of documents in Case File 002*, 30 November 2009; Case File No. 002-D252, *CIJ' Note on placements of documents in Case File 002*, 4 December 2009; Case File No. 002-D299, [*Corrected 1*] *CIJ' Note on placements of documents in Case File 002*, 8 January 2010.

<sup>71</sup> Case File No. 004-D219/702, *Written Record of Investigation Action*, 1 March 2016; Case File No. 004-D219/702.1, *Annex A*, 1 March 2016.



iv. *Requested investigative action (d): locate and place on the Case File the original versions of:*

- *Doc 2.5.10: Report on the General Political Tasks of the Party in the Northern Zone for the First Quarter of 1977 (from the Notebook of a Zone Official);*
- *Doc 2.5.15: Report on the Activities of the Khmer Communist Party in 1977, November 8, 1977;*
- *Doc 2.5.24: Important Culprits (Arrested from 1976 to April 9, 1978); and*
- *Doc 2.5.26: Excerpts from the Minutes of the Conference of the Northern Zone, July 15 1977*

45. Excerpts of these documents were reprinted in *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary* (eds. Howard J. De Nike, et al.), and the relevant extracts are annexed to the Request.<sup>72</sup> Correspondence between the Trial Chamber and researchers Christopher Goscha and Philip Short suggests that the original documents are likely located at the People's Army Library in Hanoi, Vietnam.<sup>73</sup> The Trial Chamber has made numerous attempts to obtain a copy of another document in the same collection from the government of Vietnam.<sup>74</sup> The Trial Chamber also requested "*complete copies of any and all other original documents which had been reprinted in part or otherwise included in any form on the [Case File of the People's Revolutionary Tribunal]*".<sup>75</sup> To

<sup>72</sup> Case File No. 004-D277.1.9, Attachment 9: De Nike et al. (eds.), *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, (USA: University of Pennsylvania Press, 2000), pp. 387-388, 389-390, 397, 398-408, 410, 25 November 2015.

<sup>73</sup> Case File No. 002-E327/4/3, Trial Chamber Memorandum Entitled "*Decision on Co-Prosecutors' request to obtain a copy of 11 April 1977 standing committee minutes*", 17 March 2016, para. 5; Case File No. 002-E327/4/3.6, Annex 6: Trial Chamber Greffier e-mail correspondence with Mr. Philip Short, 6 February 2016; Case File No. 002-E327/4/3.7, Annex 7: Trial Chamber Greffier e-mail correspondence with Prof. Christopher Goscha, 25 January 2016; Case File No. 002-E327/4/2, Trial Chamber Memorandum entitled "*Request for information on OCIJ search for 11 April 1977 standing committee meeting minutes*", 17 November 2015.

<sup>74</sup> Reproduced in De Nike et al. (eds.), *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, 2000, University of Pennsylvania Press, Philadelphia, Doc 2.5.23 Excerpts from Minutes of April 11, 1977, Meeting of the Standing Committee of the Party Central Committee; Case File No. 002-E327/4/2, Trial Chamber Memorandum entitled "*Request for information on OCIJ search for 11 April 1977 standing committee meeting minutes*", 17 November 2015; Case File No. 002-E327/4/3, Trial Chamber Memorandum Entitled "*Decision on Co-Prosecutors' request to obtain a copy of 11 April 1977 standing committee minutes*", 17 March 2016; Case File No. 002-E327/4/4, Letter from the Trial Chamber to the government of Vietnam, 7 April 2016; Case File No. 002-E327/4/4/4, Letter from Mr. Miguel de SERPA SOARES, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel to Trial Chamber, 21 June 2016; Case File No. 002-E327/4/4.4, Letter from TC to Ministry of Foreign Affairs and International Cooperation, 12 May 2016; Case File No. 002-E327/4/4/5, Letter from Trial Chamber to His Excellency Sok An, Deputy Prime Minister, 25 August 2016; Case File No. 002-E327/4/4/6, Letter from Trial Chamber to Mr. Miguel de SERPA SOARES, United Nations Under Secretary-General for Legal Affairs, 25 August 2016; Case File No. 002-E327/4/4/5.2, Letter from DOA to His Excellency of Senior Minister of Foreign Affairs and International Cooperation, 30 August 2016.

<sup>75</sup> Case File No. 002-E327/4/4, Letter from the Trial Chamber to the government of Vietnam, 7 April 2016, ERN 01237457.



date, the Trial Chamber's requests remain unanswered by the government of Vietnam.<sup>76</sup>

46. Likewise, the OCIJ's efforts to obtain access to archives in Vietnam in Case 002, Case 003, and Case 004 were unsuccessful.<sup>77</sup> I thus concluded that Vietnam is not willing to cooperate with the ECCC.<sup>78</sup>

v. *Requested investigative action (e): place on the Case File the book Genocide in Cambodia: Documents from the trial of Pol Pot and Ieng Sary, (eds. Howard De Nike, et al.).*

47. The book *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, (edited by John B. Quigley, Howard De Nike, and Kenneth J. Robinson, contains translated copies of contemporaneous CPK documents relevant to the alleged purge of the Central (Old North) Zone and is therefore relevant to the Case 004 investigation. I will place a complete copy of this book on the Case File.

vi. *Requested investigative action (f): locate and place on the Case File all interview notes and/or recordings from two interviews conducted by Steven Heder regarding Ke Pauk's role in the purge of the Old North Zone*

48. On 28 June 2016, I formally requested Steven Heder to provide copies of his notes and recordings of interviews with Ke Pauk and Pich Cheang (alias Thau), which are cited in the analytical report titled *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Authority in Comparative Perspective*.<sup>79</sup> Thus far, I have not received a response. I therefore consider this avenue of enquiry fruitless and terminated.

49. I will place the above mentioned analytical report on the Case File. The correspondence between the OCIJ and Steven Heder is annexed to this Decision.<sup>80</sup>

#### FOR THE FOREGOING REASONS, I:

50. **INSTRUCT** the OCIJ Greffier to place on the Case File the book entitled *Genocide in Cambodia: Documents from the Trial of POL Pot and IENG Sary* (eds. Howard J. De Nike et al.);

51. **INSTRUCT** the OCIJ Greffier to place on the Case File the analytical report titled *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Authority in Comparative Perspective*;

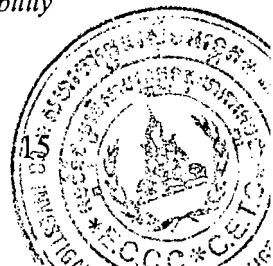
<sup>76</sup> Case File No. 002-E327/4/8, *Trial Chamber Memorandum Entitled "Request to the socialist republic of Vietnam for 11 April 1977 standing committee meeting minutes and case file of 1979 people's revolutionary tribunal in Phnom Penh"*, 28 November 2016, para. 8.

<sup>77</sup> Case File No. 004-D181/4, *Rogatory Letter Completion Report*, 22 September 2016; Case File 002-D292, *International Rogatory Letter to the Socialist Republic of Vietnam Dated 19-06-2008*, 19 June 2008; Case File No. 002-D292/1, *CIJ' Letter to Ministry of foreign affairs and international cooperation dated 19-06-2008*, 19 June 2008; Case File No. 002-D292/2, *CIJ' Letter to the Embassy of the Socialist Republic of Vietnam in Cambodia dated 03-12-2009*, 3 December 2009; Case File No. 002-E3/8351, *Report of completion of the Execution of Rogatory Letter*, 30 December 2009.

<sup>78</sup> Case File No. 004-D181/4, *Rogatory Letter Completion Report*, 22 September 2016.

<sup>79</sup> Case File No. 002-E190.1.398, *Analytical Report by Stephen HEDER entitled "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective"*, 1 March 2003, footnote 14.

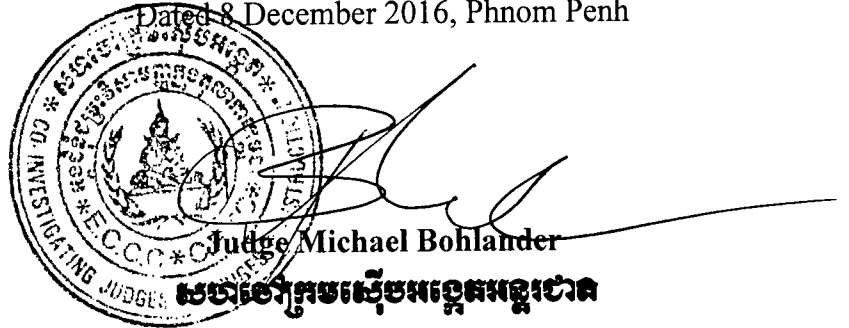
<sup>80</sup> Case File No. 004-D277/1.5, *Letter from ICIJ to Steven Heder*, 28 June 2016.



- 52. **INFORM** the Defence that the requested investigative actions have been performed in part, as set out above; and
- 53. **DENY** the remainder of the Request.

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

Dated 8 December 2016, Phnom Penh



Judge Michael Bohlander  
**ស៊េនាឡែកមីកែលហ្គឺនធីន**  
 International Co-Investigating Judge  
 Co-juge d'instruction international