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

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

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

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

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**DECISION ON THE INTERNATIONAL CO-PROSECUTOR’S
REQUEST TO PLACE CPK MATERIALS ON CASE FILE 004**

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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, 22 January 2015, and 21 October 2015.
2. On 9 December 2015, I charged Yim Tith with genocide of the Khmer Krom, crimes against humanity, grave breaches of the Geneva Conventions of 1949, and violations of the 1956 Penal Code in the Southwest and Northwest Zones through various modes of liability including by participation in joint criminal enterprises (“JCEs”).¹
3. On 14 March 2016, I charged Ao An with genocide of the Cham, crimes against humanity, and violations of the 1956 Penal Code in the Central Zone through various modes of liability including by participation in a JCE.²
4. On 2 September 2016, the International Co-Prosecutor (“ICP”) filed a request for investigative action seeking the placement of 43 documents and two sets of video clips (“Documents”) on Case File 004 (“Request”).³ The annex to the Request itemises the Documents and describes them in detail (“ICP Annex”).⁴
5. On 5 September 2016, the Yim Tith Defence received notification of the Request in both Khmer and English and the ICP Annex in only English.⁵
6. On 8 September 2016, the Yim Tith Defence requested me to clarify that the deadline to respond to the Request would be 10 days after the ICP Annex was filed in Khmer, or in the alternate, to set the deadline to 23 September 2016 (“Clarification Request”).⁶
7. On 12 September 2016, the ICP responded that he did not object to the 23 September 2016 extension requested by the Yim Tith Defence.⁷ On 13 September 2016, in response to the Clarification Request, I set a deadline of 23 September 2016 for the Yim Tith Defence to respond to the Request.⁸
8. On 14 September 2016, the Yim Tith Defence requested that the CIJs order the Co-Prosecutors to provide the CIJs and the Yim Tith Defence, by 16 September 2016, with: (i) the dates on which they came into possession of the Documents;

¹ Case File No. 004-D281, *Written Record of Initial Appearance of Yim Tith*, 9 December 2015, pp. 5-16.

² Case File No. 004-D303, *Written Record of Further Appearance of Ao An*, 14 March 2016, pp. 4-9.

³ Case File No. 004-D322, *International Co-Prosecutor’s Request for Investigative Action to Place CPK Policy Materials onto Case File 004*, 2 September 2016.

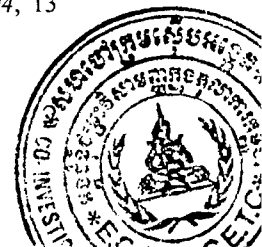
⁴ Case File No. 004-D322.2, *Annex A (Confidential) CPK Policy Materials for Placement onto Case File 004*, 2 September 2016.

⁵ Case File No. 004-D322/1, *YIM Tith’s Request for Clarification of the Time Limit to Respond to the International Co-Prosecutor’s Request for Investigative Action to Place CPK Policy Materials onto Case File 004*, 8 September 2016, p. 1, fns 1, 3.

⁶ *Ibid.*, p. 2.

⁷ Case File No. 004-D322/2, *International Co-Prosecutor Response to YIM Tith’s Request for Clarification of the Time Limit to Respond to the International Co-Prosecutor’s Request for Investigative Action to Place CPK Policy Materials onto Case File 004*, 12 September 2016, paras 2, 5.

⁸ Case File No. 004-D322/3, *Decision on YIM Tiths Request with Respect to the Deadline to Respond to the International Co-Prosecutor’s Request to Place CPK Policy Materials on Case File 004*, 13 September 2016, para. 10.



and (ii) access to the Khmer and English versions of the Documents ("Information Request").⁹

9. On 14 September 2016, my office informed the parties by email that no responses to the Information Request would be permitted as I had all the necessary information to rule on the request.
10. On 15 September 2016, the Yim Tith Defence filed an addendum to the Information Request specifying which of the Documents, and in which language, they were unable to access¹⁰ and attached an annex ("Defence Annex"), listing the Documents and in what language(s) they sought access.¹¹
11. On 16 September 2016, in answer to the Information Request, I instructed the ICP to provide the Yim Tith Defence with a confidential copy of the files listed in the Defence Annex together with the requested translations. I also vacated the 23 September 2016 deadline for the Yim Tith Defence's response to the Request and set a new deadline for the Yim Tith Defence to file any response within ten days from the date of receipt from the ICP of the files specified in the Defence Annex. I denied the Yim Tith Defence's request to be provided with the dates on which the Co-Prosecutors came into possession of the Documents.¹²
12. On 18 October 2016, the Yim Tith Defence notified me by email that they had received the files listed in the Defence Annex from the ICP, as per my 16 September 2016 Order. A copy of the Defence's email is annexed to this Decision.¹³
13. On 28 October 2016, the Yim Tith Defence filed a response to the Request objecting to the placement of a number of the Documents on the Case File ("Response").¹⁴
14. On 18 November 2016, the ICP filed a reply to the Response ("Reply").¹⁵
15. The Ao An Defence did not file any response to the Request.

⁹ Case File No. 004-D322/4, *YIM Tith's Request for Further Information and Documents with Respect to the International Co-Prosecutor's Request for Investigative Action to Place CPK Policy Materials onto Case File 004 (D322)*, 14 September 2016, p. 2.

¹⁰ Case File No. 004-D322/5, *Addendum to YIM Tith's Request for Further Information and Documents with Respect to the International Co-Prosecutor's Request for Investigative Action to Place CPK Policy Materials onto Case File 004 (D322)*, 15 September 2016 ("Addendum").

¹¹ Case File No. 004-D322/5.2, *Annex - Table of Documents Requested by the ICP for Placement onto Case File 004*, 15 September 2016.

¹² Case File No. 004-D322/6, *Decision on YIM Tith's Request for Further Information and Documents Regarding the International Co-Prosecutor's Request to Place CPK Policy Materials on Case File 004*, 16 September 2016, paras 18, 20, 22.

¹³ Case File No. 004-D322/8.2, *Annex B: Email from Tomas Hamilton to Michael Bohlander and You Bunleng re: Yim Tith's Response to ICP Investigative Request D322*, 18 October 2016.

¹⁴ Case File No. 004-D322/7, *Yim Tith's response to the international co-prosecutor's request for investigative action to place CPK policy materials onto case file 004 (D322)*, 28 October 2016, p. 14.

¹⁵ Case File No. 004-D322/7/1, *International Co-Prosecutor's Reply to Yim Tith's Response to the International Co-Prosecutor's Request for Investigative Action to Place CPK Policy Materials onto Case File 004 (D322)*, 18 November 2016.



II. SUBMISSIONS

A. Request

16. The ICP requests the CIJs to place the Documents in the ICP Annex on Case File 004.¹⁶ The ICP submits that the Documents are relevant to the investigations of alleged crimes committed by Ao An and Yim Tith as they concern the four Communist Party of Kampuchea (“CPK”) policies in effect during the Democratic Kampuchea (“DK”) regime, namely: (i) the establishment and operation of cooperatives and worksites; (ii) the re-education of ‘bad elements’ and killing of enemies; (iii) the targeting of specific groups; and (iv) the regulation of marriage through the forced marriage of inhabitants in the Central and Northwest Zones.¹⁷
17. The ICP submits that the Documents provide greater detail than the evidence already on the Case File of the evolution of CPK policies and their implementation on the ground, and that the Documents provide insight into how these policies resulted in crimes. Certain documents are relevant to the genocidal intent behind the killings of Khmer Krom because they reveal the CPK’s policy towards enemies, including those seen as sympathetic to the Vietnamese. The Documents also reveal the relentless drive to produce as much rice as possible and the laborious work the people were subjected to. Finally, the Documents provide evidence of an international armed conflict with Vietnam, which is relevant to the charges of grave breaches of the Geneva Conventions.¹⁸
18. The Documents include, *inter alia*, issues of CPK-published magazines *Revolutionary Flag* and *Revolutionary Youth* and transcripts of interviews with Nuon Chea.¹⁹ The ICP Annex identifies and describes each Document and outlines the ICP’s views as to each individual Document’s relevance.²⁰

B. Response

19. The Yim Tith Defence object to the Request on the basis that the Documents are not *prima facie* relevant to the allegations against Yim Tith. Specifically, documents pre-dating 17 April 1975 do not have any relevance to the commission of crimes during the ECCC’s temporal jurisdiction, do not directly relate to the crimes charged against Yim Tith and, at best, merely provide an over-simplified explanation of Cambodian history from 1972 to 1979.²¹
20. The Yim Tith Defence challenge the ICP’s characterisation of certain documents as propaganda material, and submit that the ICP has failed to demonstrate how the lack of acknowledgement in the propaganda material of the suffering of the population indicates that those conditions were the result of an intentional policy.²²
21. The Yim Tith Defence argue that the Documents referring to “the Vietnamese” have no discernible link to the Khmer Krom and therefore do not provide

¹⁶ Request, paras 1, 10.

¹⁷ Request, paras 1-3, 10.

¹⁸ Request, paras 4-8.

¹⁹ Request, para. 3.

²⁰ Request, para. 3; ICP Annex.

²¹ Response, paras 9-14, in relation to Documents 1-5 in the ICP Annex.

²² Response, paras 15-18, in relation to Documents 15, 29, 32, and 39-45 in the ICP Annex.



evidence of Yim Tith's alleged genocidal intent.²³ The Yim Tith Defence also submit that the ICP's description of Document 41 in the ICP Annex is factually incorrect.²⁴

22. The Yim Tith Defence have no objection to Documents 28 and 35 in the ICP Annex being placed on the Case File as the references to the Khmer Krom in those documents are exculpatory.²⁵
23. The Yim Tith Defence note that Document 44 in the ICP Annex, the OCIJ S-21 Prisoner List, already exists on the Case File.²⁶
24. As for Document 45 in the ICP Annex, which is a list of 1606 S-21 prisoners not included in the OCIJ S-21 Prisoner List but for whom contemporaneous S-21 records exist on Case File 002 ("ICP S-21 Prisoner List"), the Yim Tith Defence submit that Case 004 does not need a fully comprehensive list of every S-21 prisoner throughout the entire jurisdictional period. This is because the OCIJ already conducted a review of S-21 contemporaneous records to produce its own list, the CIJs' role is not to produce a historical archive, and the ICP has not established why the ICP S-21 Prisoner List is relevant to Case 004 given that the S-21 Security Centre is not an alleged crime site in Case 004.²⁷
25. Finally, the Yim Tith Defence state that adding 14 more copies of *Revolutionary Flag* and *Revolutionary Youth* magazines to the Case File is repetitive, because there are already approximately 35 issues of the two publications on the Case File, and the requested issues cover roughly the same time period.²⁸

C. Reply

26. The ICP replies that the Documents are relevant to demonstrating the existence of the alleged common criminal plan and are therefore central to the question of Yim Tith's criminal responsibility.²⁹ Therefore, material that evidences the scope, motivations, and objectives of the common criminal purpose shared by the CPK leadership are relevant to determining whether Yim Tith shared that common criminal purpose.³⁰
27. While documents may pre-date the temporal jurisdiction of the ECCC, they nonetheless provide an understanding of the evolution of policies that applied during the time period under investigation, which is directly relevant to Yim Tith's criminal responsibility.³¹
28. The lack of acknowledgement in CPK propaganda material of the population's suffering corroborates other evidence on the Case File demonstrating that the difficult conditions faced by the population was a matter the DK regime wilfully overlooked to continue implementing its policies.³²

²³ Response, paras 22, 30, in relation to Documents 9, 23, 29, 30, 34, 36, 37, 38, 40, 42, and 43 of the ICP Annex.

²⁴ Response, paras 25-56.

²⁵ Response, paras 27-29.

²⁶ Response para. 34; ICP Annex, Document 44.

²⁷ Response, paras 35-39.

²⁸ Response, paras 40-41 in relation to Documents 1, 3, 23, 26, and 31 of the ICP Annex.

²⁹ Reply, para. 5.

³⁰ Reply, paras 3-4.

³¹ Reply, para. 5.

³² Reply, para. 6.



29. Documents evidencing the DK regime's hostility towards Vietnam are highly relevant to the treatment of the Khmer Krom given that evidence on the Case File demonstrates that the CPK perceived the Khmer Krom as being loyal to Vietnam.³³ Evidence of the specific genocidal intent of Yim Tith's co-perpetrators regarding the Khmer Krom is also relevant given that Yim Tith is charged with genocide through his participation in a JCE.³⁴
30. The ICP submits that the ICP S-21 Prisoner List is relevant as purges form an important part of Case 004. Therefore, evidence of what happened to purged cadres following their arrests, and evidence of the vast scale of the killings are relevant to establishing Yim Tith's awareness of the killing campaign.³⁵
31. The ICP submits that additional issues of *Revolutionary Flag* and *Revolutionary Youth* magazines contain detailed nuances about the CPK policies that allow a better understanding of the party's views and the messages being communicated to the people implementing its policies.³⁶

III. DISCUSSION

A. Standard for the assessment of investigative requests

32. The Pre-Trial Chamber ("PTC") has previously stated that a party requesting investigative action under Internal Rule 55(10) "*must satisfy two cumulative conditions [...] namely, 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").*³⁷
33. 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*".³⁸ In other words, the requesting party must point specifically towards the presence of the evidence that is sought.³⁹ For example, the PTC found that a

³³ Reply, para. 7.

³⁴ Reply, para. 9.

³⁵ Reply, para. 11.

³⁶ Reply, para. 12.

³⁷ 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*, 27 September 2010 ("Reconsideration Decision"), para. 47.

³⁸ Reconsideration Decision, para. 48.

³⁹ 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, para. 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; Reconsideration Decision, paras 48, 73; Case File No. 002-D164/3/6, *Decision on the Appeal From the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*, 12 November 2009, para. 43.



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.⁴⁰

34. 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.*”⁴¹ The scope may be defined by the temporal and geographical scope of the facts and crimes alleged, or alternatively may be information that bears on the criminal responsibility or culpability of charged persons, the jurisdictional elements of alleged crimes, or certain other contextual elements.⁴² Information bearing on criminal responsibility may include evidence regarding the commission of crimes, the modes of liability employed, and the establishment of the criminal plan alleged in the Introductory Submission.⁴³ Secondly, the request “*must detail why the requested information is conducive to ascertaining the truth.*”⁴⁴ 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.⁴⁵

35. The CIJs enjoy a broad discretion when deciding on the usefulness or the opportunity to carry out investigative action requested by a party.⁴⁶

B. Analysis of the Request

36. In this Decision I refer to each of the Documents by their numbers in the ICP Annex.

37. I am satisfied that the Request meets the precision requirement. The ICP Annex specifically identifies and describes each of the Documents requested to be placed on the Case File. I will now assess whether the Request meets the *prima facie* relevance requirement with respect to each of the Documents.

i. Documents 1 to 32, 34 to 40, and 42 to 43

38. I am satisfied that Documents 1 to 32, 34 to 40, and 42 to 43 meet the *prima facie* relevance requirement. The Documents provide evidence of the development and evolution of the CPK policies⁴⁷ leading up to, and during the period under investigation in Case 004 and the messages being communicated across the regime in order to implement the policies in the various Zones.⁴⁸ These documents fall within the scope of the Case 004 investigation as a contextual element of Ao

⁴⁰ Reconsideration Decision, para. 48.

⁴¹ Case File No. 004-D216/1, Decision on International Co-Prosecutor’s Investigative Request D216, 24 October 2016, para. 9; Reconsideration Decision, para. 49.

⁴² Reconsideration Decision, para. 49.

⁴³ Reconsideration Decision, footnote 126.

⁴⁴ Reconsideration Decision, para. 50.

⁴⁵ Reconsideration Decision, paras. 50-51.

⁴⁶ 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, 20 September 2010, para. 36; Case File No. 002-D164/4/13, Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 18 November 2009, paras 22, 25.

⁴⁷ The policies, as enumerated by the ICP in the Request, to which these Documents are relevant are: (i) the establishment and operation of cooperatives and worksites; (ii) the re-education of ‘bad elements’ and killing of enemies; (iii) the targeting of specific groups; and (iv) the regulation of marriage through the forced marriage of inhabitants in the Central and Northwest Zones.

⁴⁸ Documents 1-27, 31-32, 34-36, 39-40, 42-43.



An and Yim Tith's criminal responsibility. They also appear relevant to the common criminal plan alleged in the Third Introductory Submission.⁴⁹

39. Many of the documents are also relevant to the existence of an international armed conflict with Vietnam and provide temporal indicators of Vietnamese incursions into Cambodian territory, both of which appear relevant to the charges of grave breaches of the Geneva Conventions against Yim Tith.⁵⁰ Several documents relate to the CPK's perception of its enemies, including those believed to be sympathisers of Vietnam, such as the Khmer Krom, and are thus relevant to the allegations in Case 004.⁵¹
40. Two of the documents provide a more complete and/or correct version of documents already on the Case File and should be added to the Case File for the sake of completeness of the record.⁵²
41. I do not agree with the Yim Tith Defence that documents pre-dating 17 April 1975⁵³ are irrelevant to the allegations against Yim Tith. As the Yim Tith Defence note, the fact that a document pre-dates ECCC jurisdiction is not a reason to exclude it *per se*.⁵⁴ Provided the documents are contextually relevant to the Case 004 allegations, which I am satisfied they are in this instance based on the reasons provided by the ICP, their placement on the Case File is warranted.
42. Similarly, I am satisfied that the documents which the ICP submits constitute CPK propaganda are contextually relevant and I reject the Yim Tith Defence's objection to that material.⁵⁵ While, as the Yim Tith Defence note, it may not be possible to solely rely upon such documents as proof of the DK regime's intention to cause the population's suffering, this does not render the documents irrelevant, particularly given they are contemporaneous records relevant to the CPK party's policies.
43. The Yim Tith Defence object to material cited by the ICP as being relevant to the genocidal intent against the Khmer Krom.⁵⁶ The Yim Tith Defence specifically cite several documents that are CPK party publications which describe the measures to be taken to defeat enemies of the DK regime including the 'Vietnamese' or 'Yvon' and their spies. The Yim Tith Defence note that these documents do not expressly refer to the Khmer Krom, nor do they evince, on the face of it, a policy of targeting the Khmer Krom.⁵⁷ While the Yim Tith Defence's observation is correct in respect of those documents, I agree with the ICP that the material need not specifically refer to the Khmer Krom or to Yim Tith's participation in order to be relevant to the Case 004 investigation. Given the Khmer Krom were allegedly perceived by the CPK to be loyal to Vietnam,⁵⁸

⁴⁹ See Case File No.004-D1, *Third Introductory Submission*, 20 November 2008, paras 6-9, 16-17.

⁵⁰ Documents 28, 30, 34-36, 38.

⁵¹ Documents 1, 9, 14, 17, 21, 23, 24, 26, 28, 31, 34, 35, 36-40, 42-43.

⁵² Documents 29 and 37.

⁵³ The Defence specifically highlight Documents 1 to 5 in the ICP Annex in this regard and note their belief that Documents 7 and 8 may also pre-date 17 April 1975.

⁵⁴ Response, para 10.

⁵⁵ Response, paras 15-18.

⁵⁶ Response, paras 19-30.

⁵⁷ Response, para. 21, in respect of Documents 9, 23, 29, 30, 34, 36, 37, 38, 40, 42, and 43 of the ICP Annex.

⁵⁸ Case File No. 004-D65, *Co-Prosecutor's Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011, para. 11.



evidence of the CPK's policy towards the Vietnamese is also *prima facie* relevant to the Case 004 allegations regarding the Khmer Krom.⁵⁹

44. Finally, I do not consider it unnecessary or repetitive to place further issues of the *Revolutionary Flag* and *Revolutionary Youth* magazines on the Case File. I agree with the ICP that the additional issues demonstrate the nuances in CPK policies as they evolved over time and are contextually relevant in that regard.
45. I am satisfied that the placement of the above documents on the Case File, as set out in Annex A to this Decision, will not delay the investigation, nor will it impinge upon the rights of charged persons in Case 004.

ii. Document 45

46. Document 45 is the ICP S-21 Prisoner List compiled by the Office of the Co-Prosecutors. The list names 1,606 individuals who are not included in the OCIJ S-21 Prisoner List, but for whom the ICP submits contemporaneous records exist on the Case File indicating that they were also detained at S-21. The ICP submits the ICP S-21 Prisoner List is relevant as it provides, combined with the OCIJ S-21 Prisoner List which is already on the Case File,⁶⁰ the most accurate and comprehensive compilation of S-21 prisoner names available to date.⁶¹
47. The OCIJ S-21 Prisoner List contains the names of 15,101 individuals.⁶² The list was compiled by an OCIJ analyst following a comprehensive review over 24 months of contemporaneous documents collected from Tuol Sleng Genocide Museum and the Documentation Centre of Cambodia.⁶³ I am satisfied that, based on the robust and rigorous methodology employed by the OCIJ analyst in compiling the list,⁶⁴ the OCIJ S-21 Prisoner List provides a sufficiently reliable list for the purposes of the Case 004 investigation.
48. The ICP submits broadly that the entire ICP S-21 Prisoner List provides evidence of what happened to purged cadres in S-21 but does not indicate more specifically the extent to which this list is relevant to the Case 004 investigations. The ICP S-21 Prisoner List is not a primary source of evidence, but rather the ICP's compilation of names based on contemporaneous records. If the list is to be relied upon as evidence in Case 004, it would require a full review of each of the 1,606 entries in the list and the underlying contemporaneous documents to determine whether any of the names bear any relevance to Case 004. I am informed that a review of that nature would take significant time and resources which would otherwise be allocated to more useful and pressing investigative actions by the OCIJ. Moreover, given S-21 is not a crime site in Case 004, and the OCIJ S-21 Prisoner List already identifies 15,101 individuals, I am unpersuaded that the addition of 1,606 individuals will affect the question of Yim Tith or Ao An's alleged criminal responsibility.

⁵⁹ Case File No. 004-D1, *Third Introductory Submission*, 20 November 2008, paras 7-8, 11, 16-17; Case File No. 004-D281, *Written Record of Initial Appearance*, 9 December 2015, pp. 5-7.

⁶⁰ See Case File No. 004-D219/825.1.2, *OCIJ S-21 Prisoner List*, 13 September 2016.

⁶¹ ICP Annex, Document 45.

⁶² Case File No. 004-D219/825.1.2, *OCIJ S-21 Prisoner List*, 13 September 2016.

⁶³ Case File No. 004-D219/825.1.1, *Written Record of Investigation Action*, 30 June 2016, p. 1.

⁶⁴ For a description of the OCIJ analysts methodology, see Case File No. 004-D219/825.1.1, *Written Record of Investigation Action*, 30 June 2016, pp. 1-2.



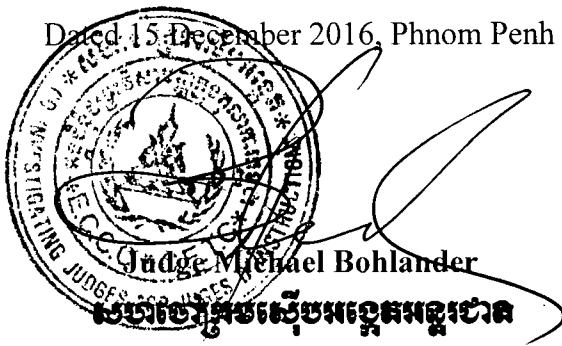
49. Therefore, in light of the low relevance of the ICP S-21 Prisoner List to the Case 004 investigation, and the time and resources that would be required to verify the information contained therein to rely on the list as evidence, I deny the request to place the list on the Case File.
- iii. Documents 33, 41, and 44
50. Documents 33, 41 and 44 are already on Case File 004.⁶⁵ The Request is therefore moot with respect to those documents.

FOR THE FOREGOING REASONS, I:

51. **NOTE** that the Request is moot with respect to Documents 33, 41, and 44;
52. **DENY** the Request with respect to Document 45;
53. **GRANT** the remainder of the Request; and
54. **INSTRUCT** the OCIJ Greffier to place the documents listed in Annex A on Case File 004.

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

Dated 15 December 2016, Phnom Penh



Judge Michael Bohlander
អ្នកចាត់តាំងសម្រេចសាលាដំបូង
International Co-Investigating Judge
Co-juge d’instruction international

⁶⁵ See Case File No. 004-D1.3.26.1, *Official Statement by the Ministry of Foreign Affairs of Democratic Kampuchea to the United Nations*, 22 April 1978 (regarding Document 33); Case File No. 004-D240R, *Enemies of the People, Additional Footage: KHUON describes the plan*, 2011 (regarding Document 41); Case File No. 004-D219/825.1.2, *OCIJ S-21 Prisoner List*, 13 September 2016 (regarding Document 44).