

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

**FILING DETAILS**

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**INTERNATIONAL CO-PROSECUTOR'S RESPONSE TO  
NOTIFICATION CONCERNING THE SUSPECT'S REQUESTS TO ACCESS THE  
CASE FILE, PARTICIPATE IN THE JUDICIAL INVESTIGATION AND RECEIVE  
THE FULL INTRODUCTORY SUBMISSION**

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## I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) hereby responds to the International Co-Investigating Judge’s (“ICIJ”) “Notification Concerning Suspect’s Requests to Access the Case File and Participate in the Judicial Investigation (D82) and the Full Introductory Submission and Supporting Material (D82/2)” dated 10 July 2014 (“Notification”).<sup>1</sup>
2. Pursuant to Article 7.2 of the *Practice Direction on Filing*, the ICP seeks leave to file this submission in English only, with a Khmer translation to follow. On 24 July 2014 the ICP made an advanced application to file the submission in one language, on the basis that: a) the present matter involves an extensive procedural history and complex issues, making it impossible to file a response in both languages within the time provided (10 working days); and b) the Co-Prosecutors’ translation resources are currently stretched across a number of concurrent filings in different cases.<sup>2</sup> On 25 July 2014, the ICIJ accepted these reasons and instructed the ICP to formalise the request in the present submission.<sup>3</sup> The ICP respectfully requests the ICIJ to accept this filing in English only and informs the ICIJ that a Khmer translation can be filed on or before 6 August 2014.
3. The ICP has proposed a strictly confidential *ex-parte* classification for this submission. This is because the submission refers to and summarises a significant amount of evidentiary material to which the Suspect and his Co-lawyers currently do not have access. The ICP defers to the ICIJ on the issue of the classification and is prepared to file a proposed redacted version of this submission, should the ICIJ consider it appropriate.<sup>4</sup>

## II. PROCEDURAL HISTORY

4. On 24 February 2012, the Reserve International Co-Investigating Judge (“RICJ”) issued the “Notification of Suspect’s Rights [Rule 21 (I)(D)],” by which he informed Meas Muth (“the Suspect”) that: a) he is a named Suspect in this judicial investigation in relation to crimes set out in the Introductory Submission; and b) he has the rights to counsel, to access the Case File and to remain silent<sup>5</sup> (“Access Decision”). On 2 May 2012, the RICJ issued the “Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect Meas Mut” (“Jurisdiction Decision”) in which he found, based on the

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<sup>1</sup> **D82/3** Notification Concerning Suspect’s Requests to Access the Case File and Participate in the Judicial Investigation (D82) and the Full Introductory Submission and Supporting Material (D82/2), 10 July 2014.

<sup>2</sup> Email from Tarik Abdulhak, Senior Assistant Prosecutor, dated 24 July 2014.

<sup>3</sup> Email from Mr David Boyle, Legal Consultant, Office of the Co-Investigating Judges, 25 July 2014.

<sup>4</sup> Article 9.2 of the Practice Direction on the Classification and Management of Case-related Information.

<sup>5</sup> **D30** Notification of Suspect’s Rights [Rule 21(I)(D)], 24 February 2012 at paras 1-4.

evidence cited in the Case 003 Introductory Submission and further evidence collected during the investigation: a) that Meas Muth was a Khmer Rouge official and that personal jurisdiction of the ECCC over him is established in a sufficient and reliable manner;<sup>6</sup> and b) that Meas Muth may be considered one of the persons most responsible for the crimes committed during the period 17 April 1975 to 6 January 1979.<sup>7</sup>

5. On 18 December 2012, the Head of Defence Support Section informed the Co-Investigating Judges that the Suspect had selected Ang Udom and Michael Karnavas as his counsel and asked Co-Investigating Judges to note their assignment as Co-Lawyers for the Suspect.<sup>8</sup> On 24 December 2012, the International Co-Prosecutor requested that the assignment be rejected due to the existence of irreconcilable conflicts of interest.<sup>9</sup> On 29 August 2013 and 26 September 2013 respectively, the Co-Lawyers submitted “Meas Muth’s Request to Access the Case File and Take Part in the Judicial Investigation”<sup>10</sup> (“Access Request”) and the “Request to be Provided with the Full Introductory Submission and Supporting Material”<sup>11</sup> (“Supplementary Request”).
6. On 10 January 2014, the ICIJ granted the ICP’s request and rejected the Co-Lawyers’ assignment.<sup>12</sup> The Co-lawyers appealed this decision on 13 January 2014,<sup>13</sup> and on 30 June 2014 the Pre-Trial Chamber upheld the appeal, recognising Messrs Ang Udom and Michael Karnavas as Co-Lawyers for the Suspect.<sup>14</sup>
7. On 10 July 2014, the ICIJ issued the Notification, informing the parties that he is reconsidering the Access Decision and the Jurisdiction Decision with a view to

<sup>6</sup> **D48** Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect Meas Mut, 2 May 2012, paras 7-10

<sup>7</sup> *Ibid*, at para 27 and Dispositive of the Decision.

<sup>8</sup> **D56** Letter entitled “Assignment of Co-Lawyers to Represent Mr. Meas Muth, a Suspect in Case 003,” 18 December 2012.

<sup>9</sup> **D56/1** International Co-Prosecutor’s Request that Appointment of Co-lawyers Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest, 24 December 2014.

<sup>10</sup> **D82** Meas Muth’s Request to Access the Case File and Take Part in the Judicial Investigation, 29 August 2013.

<sup>11</sup> **D82/2** Request to be Provided with Full Introductory Submission and Supporting Material, 26 September 2013.

<sup>12</sup> **D56/18** Decision on the International Co-Prosecutors’ Request to Reject the Appointment of the Co-Lawyers for Meas Muth on the Basis of Irreconcilable Conflicts of Interest, 10 January 2014.

<sup>13</sup> **D56/19** Meas Muth’s Notice of Appeal against the Decision on the International Co-Prosecutors’ Request to Reject the Appointment of the Co-Lawyers for Meas Muth on the Basis of Irreconcilable Conflicts of Interest, 13 January 2014; **D56/19/24** Meas Muth’s Appeal Against Co-Investigating Judge Harmon’s Decision on the International Co-Prosecutor’s Request the Reject the Appointment of the Co-Lawyers for Meas Muth on the Basis of Irreconcilable Conflicts of Interest, 12 March 2014.

<sup>14</sup> **D56/19/36** Decision on Meas Muth’s Appeal against the International Co-Investigating Judge’s Decision Rejecting the Appointment of Ang Udom and Michael Karnavas as his Co-Lawyers, 30 June 2014.

adjudicating the Access Request and the Supplementary Request.<sup>15</sup> The ICIJ invited the parties to file observations on the reconsideration these Decisions.

### **III. MEAS MUTH'S STATUS AS A SENIOR LEADER / PERSON MOST RESPONSIBLE FOR DK CRIMES**

8. In the Jurisdiction Decision, applying the legal guidance provided in the Supreme Court Chamber's Appeal Judgment in Case 001, the RICJ held, on a *prima facie* basis,<sup>16</sup> that Meas Muth is a person "most responsible" for the crimes committed in Cambodia in the 1975 – 1979 period, thus addressing a non-justiciable issue of policy / investigatorial discretion.<sup>17</sup> In reaching his decision, the RICJ took into account the then available evidence and a range of considerations focusing on the gravity of crimes alleged against the Suspect<sup>18</sup> and the Suspect's level of responsibility.<sup>19</sup> The RICJ held that, given his conclusion that Meas Muth was a person "most responsible," it was not necessary, at that stage, to also consider whether the Suspect falls into the category of a senior leader of Democratic Kampuchea ("DK").<sup>20</sup>
9. The ICP submits that the Jurisdiction Decision was correct and fully supported by the evidence cited therein. The evidence gathered since the Jurisdiction Decision further supports the RICJ's findings, and also establishes that Meas Muth falls into the category of senior leaders of DK. This new evidence illustrates the high level of responsibility which Meas Muth held as a military and political leader, as well as the extent, scope and gravity of the crimes committed by Meas Muth and forces under his control. It also amounts to "clear and convincing evidence" that Meas Muth is responsible for the crimes alleged in this case. As such, Meas Muth should at this stage be charged with those crimes. An overview of the evidence which has been collected since the Jurisdiction Decision is provided in Sections II.A and II.B below.

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<sup>15</sup> **D82/3** Notification Concerning Suspect's Requests to Access the Case File and Participate in the Judicial Investigation (D82) and the Full Introductory Submission and Supporting Material (D82/2), 10 July 2014, at para 16.

<sup>16</sup> **D48** Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect Meas Mut, 2 May 2012, at para 13.

<sup>17</sup> *Ibid*, at paras 12-15, 27, and Dispositive of the Decision.

<sup>18</sup> *Ibid*, at paras 16-23.

<sup>19</sup> *Ibid*, at paras 24-27.

<sup>20</sup> *Ibid*, at para 28.

### *II.A. New Evidence of Meas Muth's Level of Authority*

10. Evidence received since the Jurisdiction Decision confirms that, as the Commander of Division 164 and Head of the DK Navy,<sup>21</sup> Meas Muth had authority over all Division 164 forces as well as responsibility for Cambodian territorial waters and islands.<sup>22</sup> He was appointed to this high military position in 1975 by Pol Pot, at a large meeting which was held at the Olympic Stadium and attended by numerous military divisions and regiments as well as members of the CPK Central Committee.<sup>23</sup> The evidence also confirms Meas Muth's position as Chairman of the Kampong Som Committee, which gave him authority over the entire administrative area, including cooperatives.<sup>24</sup>
11. Meas Muth exercised his authority over Division 164 by, *inter alia*: presiding over regular meetings with regimental and battalion commanders;<sup>25</sup> inspecting troops stationed on islands such as Koh Puolo Wai, Koh Rong and Koh Tang;<sup>26</sup> monitoring / receiving reports from his subordinate commanders;<sup>27</sup> conducting and supervising training sessions;<sup>28</sup> and assigning his subordinates to new positions.<sup>29</sup> The evidence shows that Meas Muth's orders were followed with a high degree of discipline.<sup>30</sup> He had

<sup>21</sup> **D54/51** Written Record of Interview of Meas Vooun at A9.

<sup>22</sup> **D54/53** Written Record of Interview of Meas Vooun at A25; **D54/35.1** Statement of Brak Sokha at ERN 00971211; **D54/52** Written Record of Interview of Meas Vooun at A1; **D54/51** Written Record of Interview of Meas Vooun at A18; **D54/7** Written Record of Interview of Dol Song at A16; **D59/1/1.11a** Statement of Hieng Ret at ERN 00974134; **D54.10** Written Record of Interview of Meu Ret at A12; **D54/23** Written Record of Interview of Pak Sok at A1; **D54/24** Written Record of Interview of Pak Sok at A16-A20.

<sup>23</sup> **D54/50** Written Record of Interview of Meas Vooun at A25-A26; **D54/51** Written Record of Interview of Meas Vooun at A1-A7; **D54/16/1R** Third Party Interview (David Kattenburg) with Meas Muth.

<sup>24</sup> **D54/47** Written Record of Interview of Em Sun at A28; **D54/31** Written Record of Interview of Soem Ny at A10-A11; **D59/1/1.12** Statement of Nop Hal at ERN 00968422; **D54/23** Written Record of Interview of Pak Sok at A11, A15; **D59/1/4.25** Statement of Long Ly at ERN 00970714; **D1.3.13.8** Statement of Pen Sarin at ERN 00217560.

<sup>25</sup> **D54/7** Written Record of Interview of Dol Song at A14-A15; **D54/31** Written Record of Interview of Soem Ny at A5-A6; see also **D56/29** Written Record of Interview of Liet Lan at A3, **D54.10** Written Record of Interview of Meu Ret at A12-A13, and **D54/34** Written Record of Interview of Ing Chhoeun at A40.

<sup>26</sup> **D59/1/1.8a** Statement of Prum Sarat at ERN 00974225; **D59/1/1.9a** Statement of Lay Bunhak at ERN 00963744.

<sup>27</sup> **D54/47** Written Record of Interview of Em Sun at A48-A49; **D54/48** Written Record of Interview of Em Sun at A22, A26, A32; **D54/49** Written Record of Interview of Em Sun at A48; **D54.10** Written Record of Interview of Meu Ret at A22; **D59/1/1.12** Statement of Nop Hal at 00968421-22; **D54/25** Written Record of Interview of Pak Sok at A19.

<sup>28</sup> **D54/17** Written Record of Interview of Say Born at A8-A13; **D54/33** Written Record of Interview of Ing Chhoeun at A15-A18; see also **D1.3.13.13** Statement of Touch Souley at ERN 00217574, **D54.10** Written Record of Interview of Meu Ret at A12, **D54/11** Written Record of Interview of Meu Ret at A28, **D59/1/1.8a** Written Record of Interview of Prum Sarat at ERN 00974185.

<sup>29</sup> **D4.1.801** Written Record of Interview of Seng Soeun at A27; **D59/1/1.7a** Statement of Ma Chhoeun at ERN 00969948.

<sup>30</sup> **D54/47** Written Record of Interview of Em Sun at A48 and A49; **D54/48** Written Record of Interview of Em Sun at A14-A18; **D54/49** Written Record of Interview of Em Sun at A42 and A44-A46; **D56/28**

the power and authority to discipline his subordinate commanders, including where killings were carried out without his prior approval.<sup>31</sup> Even after his reassignment to Phnom Penh / East Zone in 1978, he continued to issue orders to Division 164.<sup>32</sup>

12. Meas Muth exercised exclusive authority with respect to all movements of naval forces and vessels.<sup>33</sup> Among other things, naval unit commanders had no authority to make any decisions about the fate of captured civilian boats and could only act on the orders of the Division 164 Headquarters.<sup>34</sup>
13. As the Commander of a major RAK Division, Meas Muth reported directly to members of the Party Centre, including Son Sen, the DK Minister for Defence. Additional reports not cited in the Jurisdiction Decision illustrate Meas Muth's ongoing communications with the Party Centre in relation to: enemy activity,<sup>35</sup> investigations and arrests,<sup>36</sup> including the extraction of confessions from child prisoners,<sup>37</sup> personnel discipline / training,<sup>38</sup> clashes with Thai<sup>39</sup> American<sup>40</sup> and Vietnamese<sup>41</sup> forces; logistical and resourcing requirements;<sup>42</sup> the operation of the Division 164 hospital and the numbers of deaths therein;<sup>43</sup> and his commitment to the party policy on "sweeping away enemies."<sup>44</sup> Further evidence has also been collected regarding Meas Muth's attendance at General Staff meetings.<sup>45</sup>
14. As Commander of a Party Centre division, Meas Muth had a higher degree of authority

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Written Record of Interview of Liet Lan at A14; **D54/26** Written Record of Interview of Pak Sok at A24-A25.

<sup>31</sup> **D59/1/1.11a** Statement of Hieng Ret at ERN 00974135-36.

<sup>32</sup> **D59/1/1.11a** Statement of Hieng Ret at ERN 00974119-20; **D59/1/1.8a** Written Record of Interview of Prum Sarat at ERN 00974227-8.

<sup>33</sup> **D54.10** Written Record of Interview of Meu Ret at A25-A26.

<sup>34</sup> **D54/34** Written Record of Interview of Ing Chhoeun at A21-23.

<sup>35</sup> **D1.3.34.14** DK Military Telegram dated 6 October 1976 entitled "Brother Mut, Please Be Informed".

<sup>36</sup> **D1.3.14.2** DK Military Secret Telegram dated 13 July 1977 entitled "To: beloved Comrade Brother Mut"

**D1.3.34.15** DK Military Telegram dated 6 October 1976 entitled "Dear beloved and missed Brother Mut;"

**D1.3.12.3** DK Military Report dated 22 February 1976 entitled "To Brother 89"; **D.3.14.1** DK Military Telegram dated 11 June 1976 entitled "Dear respected Brother 89."

<sup>37</sup> **D1.3.34.12** DK Military Telegram dated 27 September 1976 entitled "To Brother Mut."

<sup>38</sup> **D1.3.14.2** DK Military Secret Telegram dated 13 July 1977 entitled "To: beloved Comrade Brother Mut."

**D1.3.34.13** DK Military Telegram dated 7 October 1976 entitled "Brother Mut please be informed."

**D1.3.34.27** DK Military Telegram dated 13 September 1977 entitled "Situation along the borders."

<sup>39</sup> **D1.3.12.2** DK Military Telegram dated 13 August 1976 entitled "Dear Brother 89 with respect."

<sup>40</sup> **D1.3.34.60** DK Military Telegram dated 31 December 1977 entitled "To Respected Office 870."

<sup>41</sup> **D1.3.34.13** DK Military Telegram dated 7 October 1976 entitled "Brother Mut please be informed;"

**D4.1.1020** DK Military Report dated 20 February 1976 entitled "To respected Brother 89"; **D1.3.34.14** DK Military Telegram dated 6 October 1976 entitled "Brother Mut, Please Be Informed".

<sup>43</sup> **D4.1.1020** DK Military Telegram dated 20 February 1976 entitled "To Respected Brother 89."

<sup>44</sup> **D1.3.34.60** DK Military Telegram dated 31 December 1977 entitled "To Respected Office 870."

<sup>45</sup> **D56/29** Written Record of Interview of Liet Lan at A3.

than divisional commanders at zone level, and the power to direct regional forces.<sup>46</sup> Newly collected evidence describes Meas Muth's transfer, together with a number of Division 164 forces, to the East Zone in 1978, where they coordinated other DK military units in the armed conflict with Vietnamese forces.<sup>47</sup> In November or December 1978, Meas Muth's forces attacked DK units who were retreating from combat.<sup>48</sup> The evidence also suggests that in addition to his pre-existing role as a senior leader of the RAK command, Meas Muth was Son Sen's deputy commander in the East Zone operations.<sup>49</sup>

15. Further evidence has been collected demonstrating Meas Muth's seniority as Commander of Division 3 (precursor to Division 164), in which role he had responsibility for commanding forces during attacks on Phnom Penh in early 1975.<sup>50</sup> This evidence is relevant as it shows the duration of his authority as a senior Khmer Rouge military commander.
16. Newly available evidence also indicates that Meas Muth had the authority to order marriages in his area of operations, and that some of the marriages conducted by Division 164 were forced.<sup>51</sup>

### ***II.B. New evidence of Meas Muth's Contribution to the JCE / Participation in Crimes***

17. Evidence collected since the Jurisdiction Decision confirms the fact that extensive purges took place within Division 164.<sup>52</sup> Division 164 soldiers and commanders were arrested and disappeared forever if they were accused of, *inter alia*, being traitors or CIA or KGB agents. Family members of the victims were also taken away.<sup>53</sup> Meas Muth had

<sup>46</sup> **D54/52** Written Record of Interview of Meas Voeun at A4; **D54/54** Written Record of Interview of Meas Voeun at A5, A6 and A10; **D54/50** Written Record of Interview of Meas Voeun at A6; see also **D59/1/4.23** Statement of Or Saran at ERN 00978675-6.

<sup>47</sup> **D56/29** Written Record of Interview of Liet Lan at A3; **D56/29** Written Record of Interview of Liet Lan at A17; **D54/8** Written Record of Interview of Dol Song at A15; **D59/1/4.23** Statement of Or Saran at ERN 00978674-5; **D54/50** Written Record of Interview of Meas Voeun at A6.

<sup>48</sup> **D54/50** Written Record of Interview of Meas Voeun at A5, see also A6.

<sup>49</sup> **D59/1/1.8a** Written Record of Interview of Prum Sarat at ERN 00974226-7; see also **D59/1/1.9a** Statement of Lay Bunhak at ERN 00963745, and **D59/1/1.11a** Statement of Hieng Ret at ERN 00974120.

<sup>50</sup> **D54/46** Written Record of Interview of Em Sun at A31, A33-35, A38 and A39; **D54/43** Written Record of Interview of Lon Seng at A4, A6-A7; see also **D54/35.1** Statement of Brak Sokha at ERN 00971209, and **D59/1/4.23** Statement of Or Saran at ERN 00978666.

<sup>51</sup> **D59/1/1.7a** Statement of Ma Chhoeun at ERN 00969949-50; **D54/29** Written Record of Interview of Liet Lan at A3-A6.

<sup>52</sup> **D59/1/4.23** Statement of Or Saran at ERN 00978676-7; See, for example **D54/26** Written Record of Pak Sok, at A33 - A36; **D54/27** Written Record of Interview of Pak Sok at A1-A6.

<sup>53</sup> **D54/8** Written Record of Interview of Dol Song at A3-A4.

knowledge of and was involved in these purges.<sup>54</sup> He had the authority to arrest troops and others under his area of responsibility.<sup>55</sup> He made announcements regarding arrests of commanders in meetings with his subordinates, which were then passed down the divisional chain of command.<sup>56</sup> Among those whose arrests were specifically ordered by Meas Muth are his deputy Chan (Chhan),<sup>57</sup> and Lonh, a member of Kampong Som Committee.<sup>58</sup> The evidence also indicates that, when higher ranking Division 164 cadres were arrested, scores of their subordinates were placed in forced labour camps for re-education.<sup>59</sup> Evidence of Meas Muth's participation in the purges of Division 164 personnel must be viewed in light of the surviving S-21 confessions which contain annotations indicating that his comments and follow up action were being sought in relation to ongoing investigations of cadres under his command.<sup>60</sup>

18. Evidence collected since the Jurisdiction Decision also confirms Meas Muth's extensive involvement in the purge of East Zone forces within Division 164, including: his attendance at a meeting where the CPK leaders announced a decision to purge the East Zone;<sup>61</sup> his announcement at a special meeting of Division 164 that East Zone soldiers were "bad elements that needed to be removed from the division;"<sup>62</sup> the arrest of Meas Muth's deputy Dim<sup>63</sup> and Division 164 commanders and soldiers who were originally

<sup>54</sup> **D54/7** Written Record of Interview of Dol Song at A6, A8; see also **D4.1.810** Written Record of Interview of Seng Soeun at A35, and **D54/11** Written Record of Interview of Meu Ret at A19-A22.

<sup>55</sup> **D54/7** Written Record of Interview of Dol Song at A16- A17; **D54/54** Written Record of Interview of Meas Voeun at A7; see also **D54/37** Written Record of Interview of Soem Ny at A6-A23.

<sup>56</sup> **D54/8** Written Record of Interview of Dol Song at A5-A9.

<sup>57</sup> **D54.10** Written Record of Interview of Meu Ret at A7-A8; **D59/1/1.12** Statement of Nop Hal at ERN 00968418.

<sup>58</sup> **D54/53** Written Record of Interview of Meas Voeun at A22-24, A26-A29; **D54/54** Written Record of Interview of Meas Voeun at A7; **D54/31** Written Record of Interview of Soem Ny at A10.

<sup>59</sup> **D54/20** Written Record of Interview of Sam Saom at A14; **D54/35** Written Record of Interview of Brak Sokha at A14, A17; **D54/36** Written Record of Interview of Brak Sokha at A1-A2

<sup>60</sup> **D1.3.17.6** Stephen Heder and Brian Tittmore *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, (War Crimes Research Office, Washington College of Law, American University and Coalition of International Justice) at ERN 00393619; **D1.3.18.1** S-21 Confession of Hang Doeun alias Dim, dated 15 May 1977; **D1.3.18.3** S21 Confession of Kun Dim dated 21 July 1977; **D4.1.1066** S-21 Confession of Paen Ham dated 24 May 1977.

<sup>61</sup> **D4.1.408** Written Record of Interview of Chhouk Rin *alias* Sok (correction) at ERN 00766393

<sup>62</sup> **D54/44** Written Record of Interview of Lon Seng at A19 and A23-A26 and A28; **D54/43** Written Record of Interview of Lon Seng at A1-A4.

<sup>63</sup> **D54/51** Written Record of Interview of Meas Voeun at A13; **D54/49** Written Record of Interview of Em Sun at A21; **D54/29** Written Record of Interview of Liet Lan at A19-A20; **D54/39** Written Record of Interview of Pen Vy at A10; **D54/8** Written Record of Interview of Dol Song at A12-14.



from the East Zone;<sup>64</sup> and Meas Muth's order that a large number of East Zone soldiers be sent to forced labour camps under the supervision of Division 164.<sup>65</sup>

19. Evidence collected since the Jurisdiction Decision confirms that Wat Enta Nhien was a Division 164 Security Centre<sup>66</sup> whose prisoners included Division 164 soldiers.<sup>67</sup> The evidence establishes Meas Muth's attendance at this crime site.<sup>68</sup> The new evidence also demonstrates that Meas Muth had authority over the Toek Sap Security Centre which was used to detain both Division 164 personnel and civilians who were considered serious offence prisoners.<sup>69</sup> Those who were sent to Toek Sap "never survived."<sup>70</sup> Some prisoners were transferred from Toek Sap to Phnom Penh (likely S-21).<sup>71</sup> Victims at Toek Sap included people of Khmer Krom ethnicity who were arrested because of their perceived connection with Vietnam.<sup>72</sup>
20. The new evidence also confirms that Stung Hav was used by Division 164 as a tempering / forced labour site and that some prisoners were also killed at this location.<sup>73</sup> Meas Muth visited this site,<sup>74</sup> and held meetings at his house which were attended by Stung Hav commanders.<sup>75</sup> He also presided over a large meeting in 1977, which was held within eyesight of Stung Hav. At this meeting he announced the existence of the CPK and Pol Pot as its leader, and stated that those who betrayed the Party, including supposed CIA and KGB agents, were to be "screened out" and rounded up.<sup>76</sup> He specifically announced that members of the Sector 37 Committee, his deputy Dim (referred to above), Chey

<sup>64</sup> **D54/8** Written Record of Interview of Dol Song at A17-A18; **D54/24.1** Statement of Pak Sok at ERN 00978576 and ERN 00978580; **D54/26** Written Record of Interview of Pak Sok at A33, A35.

<sup>65</sup> **D54/44** Written Record of Interview of Lon Seng at A6, A19; **D54/39** Written Record of Interview of Pen Vy at A2-A5.

<sup>66</sup> **D54/48** Written Record of Interview of Em Sun at A44, A51 and A52; **D54/32** Written Record of Interview of Pen Sarin at ERN 00217562; and **D54/26** Written Record of Interview of Pak Sok, at A6.

<sup>67</sup> **D54/48** Written Record of Interview of Em Sun at A52; **D54/25** Written Record of Interview of Pak Sok at A23-A25.

<sup>68</sup> **D54/32** Written Record of Witness Interview of Soem Ny at A34-A37.

<sup>69</sup> **D54/20** Written Record of Interview of Sam Saom at A10-A12; **D54/36** Written Record of Interview of Brak Sokha at A22; **D54/24.1** Statement of Pak Sok at ERN 00978576 and 00978579; **D54/27** Written Record of Interview of Pak Sok at A9-A11.

<sup>70</sup> **D54/36** Written Record of Interview of Brak Sokha at A7.

<sup>71</sup> **D54/20** Written Record of Interview of Sam Saom at A12.

<sup>72</sup> **D54/36** Written Record of Interview of Brak Sokha at A6, A10.

<sup>73</sup> **D54/36** Written Record of Interview of Brak Sokha at A22, A24-A28, A32 and A34.

<sup>74</sup> **D1.3.13.8** Statement of Pen Sarin at ERN 00217560; **D54/77** Written Record of Interview of Uy Nhik at A52.

<sup>75</sup> **D54/31** Written Record of Interview of Soem Ny at A6.

<sup>76</sup> **D54/13** Written Record of Interview of Pres Mean at A4-5, A10-A11.

Suon (DK Minister of Agriculture who was killed at S-21) and Sao Phim (East Zone Secretary who was purged under the orders of the Party Centre) were traitors.<sup>77</sup>

21. Newly available evidence confirms that Meas Mut instructed Division 164 naval units to seize civilian boats at sea and report such events upwards.<sup>78</sup> Acting on his orders, Division 164 forces arrested, detained and executed many Thai fishermen, Vietnamese “spies” and other foreigners at sea.<sup>79</sup> Meas Muth gave instructions that captured “intelligence agents” were to be arrested and sent to S-21.<sup>80</sup> He also ordered specific executions of captives.<sup>81</sup> Those captives who were not killed immediately were detained and transferred to the control of the Division 164 headquarters.<sup>82</sup> Some of the Thai captives were then imprisoned and subjected to forced labour on the mainland,<sup>83</sup> while all Vietnamese captives were executed pursuant to Meas Muth’s orders.<sup>84</sup> The number of Thai and Vietnamese civilians executed by Division 164 forces has been estimated to be in the thousands.<sup>85</sup> Meas Muth reported the capture of Thai and Vietnamese civilian boats to the Party Centre.<sup>86</sup> According to newly available evidence, Division 164 forces under Meas Muth’s command also took custody of Thai fishermen and Vietnamese civilians captured by the forces of West Zone’s Division 1.<sup>87</sup>
22. Recently collected evidence demonstrates that Meas Muth issued an order for the execution of two American marines who were captured following a battle which took place after Division 3 forces captured the American ship *the Mayaguez*.<sup>88</sup>

<sup>77</sup> **D54/12** Written Record of Interview of Pres Mean at A23, A25-A32; **D54/13** Written Record of Interview of Pres Mean at A2, A13.

<sup>78</sup> **D59/1/1.8a** Written Record of Interview of Prum Sarat at ERN 00974221.

<sup>79</sup> **D54/8** Written Record of Interview of Dol Song at A41-A49; **D59/1/1.11a** Statement of Hieng Ret at ERN 00974107; **D54/33** Written Record of Interview of Ing Chhoeun at A20; see also **D54/34** Written Record of Interview of Ing Chhoeun at A1-A5, A12, A15-A19, A27-A31, **D54/11** Written Record of Interview of Meu Ret at A3-A9, **D59/1/4.23** Statement of Or Saran at ERN 00978678, **D54/25** Written Record of Interview of Pak Sok at A20, A22, **D54/24.1** Statement of Pak Sok at ERN 00978573 and ERN 00978576-77, and **D1.3.13.8** Statement of Pen Sarin at ERN 00217561-2.

<sup>80</sup> **D59/1/1.8a** Written Record of Interview of Prum Sarat at ERN 00974222.

<sup>81</sup> **D54/25** Written Record of Interview of Pak Sok at A1-A4.

<sup>82</sup> **D54/34** Written Record of Interview of Ing Chhoeun at A21, A32; **D54/25** Written Record of Interview of Pak Sok at A6, A10; **D54/24.1** Statement of Pak Sok at ERN 00978573-74.

<sup>83</sup> **D54/24.1** Statement of Pak Sok at ERN 00978575.

<sup>84</sup> **D54/24.1** Statement of Pak Sok at ERN 00978576 and ERN 00978578.

<sup>85</sup> **D54/25** Written Record of Interview of Pak Sok at A11; **D54/26** Written Record of Interview of Pak Sok at A11-A13, and A23.

<sup>86</sup> **D54/52** Written Record of Interview of Meas Voeun at A13; **D54/51** Written Record of Interview of Meas Voeun at A22; **D4.1.1020** DK Military Report dated 20 February 1976.

<sup>87</sup> **D54/52** Written Record of Interview of Meas Voeun at A18, A24 and A35; **D54/53** Written Record of Interview of Meas Voeun at A12 and A16-A18; **D54/54** Written Record of Interview of Meas Voeun at A1.

<sup>88</sup> **D54/48** Written Record of Interview of Em Sun at A34.

23. Newly available evidence also indicates that several forced labour / re-education sites were operated by Division 164 or cooperative chairmen under the Division's command. These sites were located at: a) Bet Trang / Chamnaot Ream Commune; b) Kang Keng area; and c) Ream Commune. These areas are discussed briefly below:
- a. There were a number of forced labour sites in Bet Trang Commune / Chamnaot Ream Commune,<sup>89</sup> Prey Nob District.<sup>90</sup> The evidence suggests that hundreds<sup>91</sup> of people were sent to these sites, including children,<sup>92</sup> New People<sup>93</sup> and Chams.<sup>94</sup> The victims were forced to build dams and farm rice and other crops.<sup>95</sup> They were given insufficient food rations,<sup>96</sup> beaten,<sup>97</sup> and forced to work long hours (often into the night).<sup>98</sup> Some of the labourers died from diseases.<sup>99</sup> There were also continuous disappearances<sup>100</sup> of labourers,<sup>101</sup> many of whom are reported to have been killed at execution sites in Bet Trang<sup>102</sup> and at the nearby Durian Plantation (discussed below).<sup>103</sup> People "disappeared" for a variety of reasons, including sickness, "laziness," and not being able to undertake manual labour.<sup>104</sup>

<sup>89</sup> **D54/65** Written Record of Interview of Din Chun at A9; **D54/26** Written Record of Interview of Pak Sok A26-A29.

<sup>90</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991850.

<sup>91</sup> **D54/18** Written Record of Interview of Nou Saroeun at A16.

<sup>92</sup> **D54/18** Written Record of Interview of Nou Saroeun at A10.

<sup>93</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy ERN 00991850; **D1050/1**, VSS Report on Civil Party Application of Nap Somalay at ERN 00991870; **D54/18** Written Record of Interview of Nou Saroeun at A18; **D54/26** Written Record of Interview of Pak Sok at A26-A29.

<sup>94</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991851.

<sup>95</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991850; **D1050/1** VSS Report on Civil Party Application of at ERN 00991870; **D22/1998/1** VSS Report on Civil Party Application of Chan Soevun at ERN 00541435; **D54/35** Written Record of Interview of Brak Sokha at A17; **D54/18** Written Record of Interview of Nou Saroeun at A14.

<sup>96</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991850; **D1050/1** VSS Report on Civil Party Application of Nap Somalay at ERN 00991870; **D22/1998/1** VSS Report on Civil Party Application of Chan Soevun at ERN 00541435.

<sup>97</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991851.

<sup>98</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991850; **D1050/1** VSS Report on Civil Party Application of Nap Somalay at ERN 00991870.

<sup>99</sup> **D22/1998/1** VSS Report on Civil Party Application of Chan Soevun at ERN 00541435.

<sup>100</sup> **D1050/1** VSS Report on Civil Party Application of Nap Somalay at ERN 00991871; **D54/18** Written Record of Interview of Nou Saroeun at A15, A18.

<sup>101</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991851.; **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991851; **D54/26** Written Record of Interview of Pak Sok A26-A29; Written Record of Interview of Nou Saroeun at A18.

<sup>102</sup> **D11/371/1** VSS Report on Civil Party Application of Suon Doeun at ERN 00991626; **D11/384/1** VSS Report on Civil Party Application of Ouch Sakon at ERN 00991950; **D54/22** Written Record of Investigation Action at ERN 00947617-19; **D54/26** Written Record of Interview of Pak Sok at A26-A29.

<sup>103</sup> **D5/1049/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 00991851; **D54/19** Written Record of Interview of Nou Saroeun at A4.

<sup>104</sup> **D54/18** Written Record of Interview of Nou Saroeun at A15, A18.

- b. A number of forced labour sites<sup>105</sup> were operated in the vicinity of the Kang Keng airfield, which is located in the Prey Nob District, Kampong Som Province, near National Road 4.<sup>106</sup> These sites were managed by Division 164, personally inspected by Meas Muth,<sup>107</sup> and supervised by forces that reported to him.<sup>108</sup> The sites were used for the re-education of soldiers<sup>109</sup> (in some cases entire battalions<sup>110</sup> as well as purged East Zone forces<sup>111</sup>) and some civilians.<sup>112</sup> The individuals sent to these sites were accused of being “bad elements”<sup>113</sup> or “disobedient.”<sup>114</sup> One of the Kang Keng sites in Puth Te Village<sup>115</sup> was the base of a large production unit where thousands of former Khmer Republic soldiers and Division 164 forces were sent.<sup>116</sup> The evidence indicates that, at the Kang Keng worksites, labourers were forced to make bricks,<sup>117</sup> build dams,<sup>118</sup> farm rice,<sup>119</sup> and were subjected to inhumane conditions<sup>120</sup> including being underfed<sup>121</sup> and subjected to long working hours.<sup>122</sup>
- c. Several forced labour sites were located in the Ream area. In 1975, many people were forcibly transferred to villages in the Ream Commune<sup>123</sup> where thousands of people, including women, children, the elderly and the disabled were subjected to forced labour, regardless of their condition. The types of forced labour at these sites

<sup>105</sup> **D59/1/1.11a** Statement of Hieng Ret at ERN 00974121; **D54/43** Written Record of Interview of Lon Seng at A17-A19.

<sup>106</sup> **D54/43** Written Record of Interview of Lon Seng at A17-A19.

<sup>107</sup> **D54/17** Written Record of Interview of Say Born at A14-A15.

<sup>108</sup> **D54/20** Written Record of Interview of Sam Saom at A14; **D59/1/1.1/11a** Statement of Hieng Ret at ERN 00974121.

<sup>109</sup> **D54/17** Written Record of Witness Interview of Say Born at A15; **D54/35** Written Record of Interview of Brak Sokha at A17; **D54/43** Written Record of Interview of Lon Seng at A17-A19.

<sup>110</sup> **D59/1/1.14** Written Record of Interview of Hing Uch at ERN 01001391.

<sup>111</sup> **D2-16** Written Record of Interview of Touch Soeuli at A17-A21.

<sup>112</sup> **D54/17** Written Record of Interview of Say Born at A15; **D59/1/1.14** Statement of Hing Uch at ERN 01001391; **D59/1/1.1/11a** Statement of Hieng Ret at ERN 00974121.

<sup>113</sup> **D54/43** Written Record of Interview of Lon Seng at A17-A19.

<sup>114</sup> **D59/1/1.1/11a** Statement of Hieng Ret at ERN 00974121.

<sup>115</sup> **D54/43** Written Record of Interview of Lon Seng at A17-A19.

<sup>116</sup> **D54/43** Written Record of Interview of Lon Seng at A19; **D2-6** Written Record of Interview of Nhoung Chrong at A28.

<sup>117</sup> **D54/17** Written Record of Interview of Say Born at A14.

<sup>118</sup> **D2-6** Written Record of Interview of Nhoung Chrong at A27.

<sup>119</sup> **D54/20** Written Record of Interview of Sam Saom at A14; **D54/35** Written Record of Interview of Brak Sokha at A17.

<sup>120</sup> **D54/36** Written Record of Interview of Brak Sokha at A26-A28; **D2-6** Written Record of Interview of Nhoung Chrong at A28.

<sup>121</sup> **D54/20** Written Record of Interview of Sam Saom at A14; **D2-6** Written Record of Interview of Nhoung Chrong at A28.

<sup>122</sup> **D54/20** Written Record of Interview of Sam Saom at A14.

<sup>123</sup> **D11/373/1** VSS Report on Civil Party Application of Ung Chan Thea at ERN 00991658; **D11/387/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 0091850; **D11/385/1** VSS Report on Civil Party Application of Prum Samon at ERN 00991815.

included farming paddy fields, growing vegetables, carrying dirt and building dams, transporting firewood, and clearing coconut plots.<sup>124</sup> The labourers were given limited food rations and subjected to long working hours.<sup>125</sup> Many were executed,<sup>126</sup> including at a durian plantation discussed below. The local cooperatives in Ream reported to Division 164 and were under its control.<sup>127</sup> Ream was also used by Division 164 as a naval port, and part of Regiment 140 was stationed at the port.<sup>128</sup>

24. The evidence illustrates that Division 164 forces and local cadres carried out executions at two sites located within the Ream area. One of these has been described as a durian plantation,<sup>129</sup> which was located in Ream Village, Ream Commune, and which contains at least two mass graves.<sup>130</sup> The victims killed at this location included, among others, Thai and Vietnamese fishermen,<sup>131</sup> people who had made mistakes, those identified as traitors, disabled persons and those who performed their tasks poorly.<sup>132</sup> The evidence indicates that Regiment 62 of Division 164 executed people at this plantation.<sup>133</sup> The

<sup>124</sup> **D54/84** Written Record of Acts of Investigation, 24 January 2014 at ERN 00985281; **D11/373/1** VSS Report on Civil Party Application of Ung ChanThea, at ERN 00991658; **D11/385/1** VSS Report on Civil Party Application of Prum Samon at ERN 00991815; **D11/387/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 0091850; **D1.3.13.8** Statement of Pen Sarin at ERN 00217561; **D2/6** Written Record of Interview of Nhong Chrong at A24-A31; **D54/18** Written Record of Interview of Nou Saroeun at ERN A24-A26, A30.

<sup>125</sup> **D11/387/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 0091850

<sup>126</sup> See, for example, **D11/378/1** VSS Report on Civil Party Application of Din Kan at ERN 00991593, **D11/367/1** VSS Report on Civil Party Application of San Saret at ERN 00991577, and **D11/373/1** VSS Report on Civil Party Application of Ung ChanThea, at ERN 00991658-9.

<sup>127</sup> **D1.3.13.11** Statement of Sieng at ERN 00217565.

<sup>128</sup> **D54/8** Written Record of Interview of Dol Song at A23; **D54/17** Written Record of Interview of Say Born at ERN 00977271-2.

<sup>129</sup> **D54/18** Written Record of Interview of Nou Saroeun at A33-A34, A41, and A43; **D2/17** Written Record of Interview of In Saroeun at A7, A10-A14; **D11/375/1** VSS Report on Civil Party Application of Dom Khean at ERN 00991692; **D11/390/1** Pheng Kimla VSS Report on Civil Party Application of at ERN 00991375-6; **D11/373/1** VSS Report on Civil Party Application of Ung ChanThea at ERN 00991659; **D11/360/1** VSS Report on Civil Party Application of Keth Loch at ERN; **D11/376/1** VSS Report on Civil Party Application of Oeng Aun at ERN 0091709; **D11/374/1** VSS Report on Civil Party Application of Neak Sitha at ERN 00991675; **D11/370/1** VSS Report on Civil Party Application of Phan Rin at ERN 00991609-10; **D11/387/1** VSS Report on Civil Party Application of Sam Vuthy at ERN 0091852; **D11/385/1** VSS Report on Civil Party Application of Prum Samon at ERN 00991816.

<sup>130</sup> **D54/18** Written Record of Interview Nou Saroeun at A44, A46-A48; **D10.1.9** Sihanoukville Genocide Report, 15-17 December 1995 at ERN 00785445; **D54/22** Written Record of Acts of Investigation, 26 September 2013 at ERN 00947618-19.

<sup>131</sup> **D2/17** Written Record of Interview of In Saroeun at A10-A11, A15-A24, A27-A28, A43; **D54/18** Written Record of Interview of Nou Saroeun at A36-A39, A41-A43; **D54/22** Written Record of Investigation Action, dated 26 September 2013 at ERN 00947618-9; **D2/6** Written Record of Interview of Nhong Chrong at A42; **D54/26** Written Record of Interview of Pak Sok at A12-A13; **D2/16** Written Record of Interview of Touch Soleuli at A32.

<sup>132</sup> **D11/373/1** VSS Report on Civil Party Application of Ung ChanThea, at ERN 00991658; **D2/6** Written Record of Interview of Nhong Chrong at A40.

<sup>133</sup> **D2/6** Written Record of Interview of Nhong Chrong at A43- A44; **D54/26** Written Record of Interview of Pak Sok at A13.

second execution site identified thus far is a coconut plantation which is located in Ream (a short distance from the durian plantation) and which Regiment 62 used for executions of Vietnamese prisoners.<sup>134</sup>

#### **IV. ICP SUBMISSIONS IN RESPONSE TO THE NOTIFICATION**


25. While Section III contains only a general overview of the evidence collected since the Jurisdiction Decision, and while the investigation is ongoing, the ICP submits that the evidence available thus far on the Case File establishes with sufficient certainty that:
- a. Meas Muth was a member of the CPK Central Committee, a member of the RAK senior command, a participant in the work of the RAK General Staff, the Commander of Division 164 / DK Navy, and the Secretary of the Kampong Som region. He held most of these positions for the entire duration of the Khmer Rouge regime. He had direct access to, and regularly communicated with, the highest leaders of the CPK, including Pol Pot, Nuon Chea and Son Sen. Throughout the Khmer Rouge period he was entrusted with a high degree of military and political responsibility, including commanding thousands of troops, conducting military and security operations on the Cambodian coast, territorial waters, islands and in the East Zone, and administering the entire region of Kampong Som. He had and exercised the authority to decide on the life and death of thousands of individuals.
  - b. Meas Muth is responsible for grave crimes, including: i) killings of thousands of civilians, including Cambodian nationals and foreign citizens at execution sites (such as at durian and coconut plantations in the Kampong Som area), at sea and on the islands controlled by Division 164; ii) operation of at least two security centres (Wat Enta Nhien and Toek Sap) in which hundreds and possibly thousands of victims were unlawfully imprisoned, subjected to inhumane treatment and executed; iii) killings of prisoners of war; iv) imprisonment, torture and execution at S-21 of military personnel, cadres and civilians whose transfers to that prison he approved, facilitated or ordered; v) the enslavement and inhumane treatment of thousands of civilians and purged soldiers in forced labour and re-education sites, including those located at Stung Hav, Ream Commune, Bet Trang Commune and Kan Keng; and vi) deaths at these forced labour and re-education sites.

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<sup>134</sup> **D54/26** Written Record of Interview of Pak Sok at A11-A13.

26. Considering the above facts and evidence, the ICP submits that Meas Muth was both a senior leader of DK and a person most responsible for the crimes committed in Cambodia from 17 January 1975 to 6 January 1979.
27. The evidence discussed above also constitutes “clear and convincing evidence”<sup>135</sup> that Meas Muth is criminally responsible for the crimes alleged in the Introductory Submission, as clarified by the ICP’s subsequent submissions.<sup>136</sup> While the ICP notes that the charging of a suspect is a matter entirely within the discretion of the Co-Investigating Judges, the ICP submits that the evidential threshold has been reached at which Meas Muth should be summoned and charged with the crimes alleged in this case.
28. For the reasons stated above, the ICP:
- a. Respectfully submits that the ICIJ should hold that Meas Muth was both a senior leader of DK and a person most responsible for the crimes committed in Cambodia from 17 January 1975 to 6 January 1979;
  - b. Respectfully submits that there is clear and consistent evidence that Meas Muth is responsible for the crimes alleged in the Introductory Submission, as clarified in subsequent ICP submissions. Meas Muth should therefore now be charged, and will then be able to access the Case File.

Respectfully submitted,

Date	Name	Place	Signature
30 July 2014	Nicholas KOUMJIAN International Co-Prosecutor	Phnom Penh	

<sup>135</sup> Internal Rule 55(4).

<sup>136</sup> **D47/1** International Co-Prosecutor’s Response to Forwarding Order of 24 April 2012, 21 June 2012; **D102/1** International Co-Prosecutor’s Response to Forwarding Order Regarding Toek Sab Prison, 20 June 2014; **D105/1** International Co-Prosecutor’s Response to Forwarding Order Regarding Security Centres 808, 809 & 810, 1 July 2014; **D1/2/1** Response of International Co-Prosecutor to Request for Clarification, 16 February 2011.