

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

FILING DETAILS

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**MEAS MUTH'S REQUEST FOR THE OCIJ'S CRITERIA CONCERNING "SENIOR
LEADERS OF DEMOCRATIC KAMPUCHEA AND THOSE WHO WERE MOST
RESPONSIBLE"**

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Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), pursuant Rule 21 of the ECCC Internal Rules (“Rules”), hereby requests the OCIJ to provide its criteria for determining who can be charged as a senior leader of Democratic Kampuchea or one of those who was most responsible and to place these criteria on the Case File. This would include: **a.** the criteria set out by Co-Investigating Judges You Bunleng and Siegfried Blunk; **b.** any other criteria that may have been set by Co-Investigating Judge Mark Harmon – in addition to or deviating from the criteria set by Co-Investigating Judges You Bunleng and Blunk; and **c.** all related legal memoranda prepared by the OCIJ. This Request is made necessary because the Defence, in the exercise of its due diligence obligations, may need to make submissions challenging any abuse of discretion by the OCIJ, as permitted by ECCC jurisprudence. The need for unfettered transparency is heightened in this instance due to the past documented irregularities within the OCIJ. This Request is admissible pursuant to Rule 21, which requires that “[t]he applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations *shall* be interpreted so as to always safeguard the interests of Suspects.... In this respect: a) ECCC proceedings shall be fair and transparent....” The Defence requests to file this Request in English with the Khmer translation to follow because the Interpretation and Translation Unit cannot timely complete the translation due to other priorities.¹

I. BACKGROUND

1. On 7 September 2009, the OCP initiated the judicial investigation of Mr. MEAS Muth based on the OCP’s 20 November 2008 Second Introductory Submission Regarding the Revolutionary Army of Kampuchea.²
2. On 29 April 2011, nearly 20 months after the judicial investigation commenced, Co-Investigating Judges You Bunleng and Blunk filed a Notice of Conclusion of the Judicial Investigation into Case 003.³
3. On or about 29 April 2011, the Head of the OCIJ Legal Unit, Ignacio Tredici, on behalf of the international OCIJ legal team, reportedly sent a letter to United Nations Secretary

¹ See Email from Interpretation and Translation Unit to Defence, “RE: translation request,” 17 October 2013.

² Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008, D56/3.1. According to Lawyer’s Recognition Decision Concerning All Civil Party Applications on Case File No. 003, 26 February 2013, D58, para. 3, this Introductory Submission was placed on the Case File on 7 September 2009 through Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission, 7 September 2009.

³ Notice of Conclusion of Judicial Investigation, 29 April 2011, D13.

General Ban Ki-moon, copying United Nations Under Secretary for Legal Affairs Patricia O'Brien and Co-Investigating Judge Blunk. In this letter, Mr. Tredici expressed the international OCIJ legal team's dissatisfaction with the Co-Investigating Judges' investigation into Case 003 and the decision to close the investigation, in their view, prematurely.⁴

4. On 18 August 2011, Co-Investigating Judge Blunk stated in an interview with the Phnom Penh Post:

For Cases 003 and 004 we have conducted an in-depth analysis of the origin and meaning of the term 'most responsible' and developed a set of criteria based on the ECCC Law, and the jurisprudence of international tribunals, especially the one for Sierra Leone because its jurisdiction was limited similarly to persons who bear 'the greatest responsibility.'⁵

5. On 2 September 2011, the International Co-Prosecutor filed a request that the Co-Investigating Judges' criteria for the determination on personal jurisdiction be placed on the Case 004 Case File.⁶
6. On 9 October 2011, Co-Investigating Judge Blunk resigned, citing the potential public perception that he may lack impartiality as a result of various public statements made by Cambodian government officials concerning Case 003.⁷
7. On 12 October 2011, Co-Investigating Judge You Bunleng issued a press release stating: "[W]e have been taking judicial investigation acts in the Cases 003 and 004, particularly performing the witness interviews and conducting some crime-site identifications... [These] judicial investigation acts are parts of common approach of both judges, that is *to focus investigation on the personal jurisdiction...*"⁸

⁴ See MEAS Muth's Request to be Provided with Correspondence from the Head of the OCIJ Legal Unit to the United Nations Secretary General and all Related Material and to Have This Material Placed on the Case File, 9 October 2013, no document number yet assigned.

⁵ Thomas Miller, *KRT Judge Talks Court Controversies*, PHNOM PENH POST, 18 August 2011, available at <http://www.phnompenhpost.com/national/krt-judge-talks-court-controversies>.

⁶ Case No. 004/07-09-2009-ECCC/OCIJ, International Co-Prosecutor's Request that the Co-Investigating Judge's Criteria for Determination of Personal Jurisdiction be Placed onto the Case File, 2 September 2011, D104. The Defence is unaware of whether the International Co-Prosecutor made a similar request in Case 003, since the Defence does not currently have access to the Case File.

⁷ OCIJ Press Release, *Press Release by the International Co-Investigating Judge*, 10 October 2011.

⁸ Press Release, *Statement of the National Co-Investigating Judge*, 12 October 2011 (emphasis added).

8. On 2 December 2011, Reserve International Co-Investigating Judge Laurent Kasper-Ansermet, acting alone, ordered the resumption of the judicial investigation of Case 003.⁹ He did this “considering that the investigations led thus far were not complete and the Co-Investigating Judges were not in a position to decide on a number of judicial matters.”¹⁰
9. On 3 February 2012, the Supreme Court Chamber issued its Appeal Judgement in Case 001.¹¹ The Supreme Court Chamber found that whether a person is a Khmer Rouge official is a jurisdictional issue, as the ECCC only has jurisdiction over Khmer Rouge officials.¹² It found that whether a person falls within the category of “senior leaders of Democratic Kampuchea and those who were most responsible” is a matter of investigatorial and prosecutorial policy for the OCP and OCIJ that is not justiciable before the Trial Chamber.¹³ It also found that “the Trial Chamber has the power to review the discretion of the Co-Investigating Judges and the Co-Prosecutors on the ground that they allegedly exercised their discretion under Articles 5(3) and 6(3) of the UN-RGC Agreement in bad faith or according to unsound professional judgement.”¹⁴
10. On 19 March 2012, the Reserve International Co-Investigating Judge tendered his resignation, effective 4 May 2012, citing Co-Investigating Judge You Bunleng’s active opposition to the investigation of Cases 003 and 004.¹⁵
11. On 26 April 2012, Stephen Heder, former OCIJ Investigator/Analyst¹⁶ published *The Personal Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia as Regards Khmer Rouge “Senior Leaders” and Others “Most Responsible” for Khmer Rouge Crimes: A History and Recent Developments*.¹⁷ Mr. Heder summarized at length

⁹ Order on Resuming the Judicial Investigation, 2 December 2011, D28.

¹⁰ See Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect, 2 May 2012, D48, para. 5.

¹¹ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28.

¹² *Id.*, para. 61.

¹³ *Id.*, paras. 62-79.

¹⁴ *Id.*, para. 80.

¹⁵ Press Release, *Press Release by the International Reserve Co-Investigating Judge*, 19 March 2012.

¹⁶ Mr. Heder may have held various positions within the OCIJ over the years. According to a December 2009 OCP filing, Mr. Heder was employed as an OCIJ Investigator and later “retain[ed] consultative status” with the OCIJ. See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ, Co-Prosecutors’ Request for Appointment of Experts, 14 December 2009, D281, para. 18.

¹⁷ Stephen Heder, *The Personal Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia as Regards Khmer Rouge “Senior Leaders” and Others “Most Responsible” for Khmer Rouge Crimes: A History and Recent Developments*, 26 April 2012, available at <http://www.cambodiatribunal.org/sites/default/files/reports/Final%20Revised%20Heder%20Personal%20Jurisdiction%20Review.120426.pdf>.

the negotiations for the establishment of the ECCC and concluded that “the most reasonable interpretation, legally speaking” of the ECCC’s personal jurisdiction is that it should include mid-level Khmer Rouge leaders.¹⁸

12. On 2 May 2012, “noting” the International Co-Prosecutor’s Request for the OCIJ’s criteria for determination of personal jurisdiction, Reserve International Co-Investigating Judge Kasper-Ansermet issued a decision on personal jurisdiction and investigative policy concerning Mr. MEAS Muth.¹⁹ The Reserve International Co-Investigating Judge found that personal jurisdiction over Mr. MEAS Muth was established based on the allegations in the Introductory Submission that Mr. MEAS Muth was Secretary of Division 164 and was responsible for control of the city of Kampong Som.²⁰ The Reserve International Co-Investigating Judge then turned to the OCIJ’s investigative policy. He stated that the criteria established by the OCIJ in Cases 001 and 002 remains valid.²¹ He stated that there were two criteria developed by international jurisprudence and retained by the OCIJ: the gravity of the crimes alleged and the level of responsibility of the Suspect, Charged Person, or Accused.²² He detailed factors relevant to each criterion and applied the criteria to Mr. MEAS Muth.²³
13. On 20 June 2012, Mark Harmon was appointed as International Co-Investigating Judge.²⁴
14. On 28 February 2013, the Co-Investigating Judges issued a press release. Co-Investigating Judge Harmon stated that he was continuing the investigation into Case 003: “Case 003 remains open and the investigation of the alleged crimes are proceeding.”²⁵

II. LAW AND ARGUMENT

15. The issue of whether Mr. MEAS Muth falls within the category of “senior leaders of Democratic Kampuchea and those who were most responsible” is a dispositive issue:²⁶ it

¹⁸ *Id.*, p. 42.

¹⁹ Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect, 2 May 2012, D48.

²⁰ *Id.*, para. 10.

²¹ *Id.*, para. 14.

²² *Id.*, para. 15.

²³ *Id.*, paras. 16-26.

²⁴ Press Release, *Deployment of New International Co-Investigating Judge*, 30 July 2012.

²⁵ OCIJ Press Release, *Statement by the Co-Investigating Judges Regarding Case 003*, 28 February 2013.

²⁶ While the Defence has referred to this issue in the past as a “jurisdictional issue,” this was for the purposes of highlighting its dispositive nature. See MEAS Muth’s Notification of Objection to Stephen Heder Having Any Further Involvement in Case 003 & Request for the Work Product of Stephen Heder, 9 October 2013 and MEAS Muth’s Notification of Objection to David Boyle Having Any Further Involvement in Case 003 &

goes to the heart of whether Mr. MEAS Muth will be prosecuted at the ECCC. While the Supreme Court Chamber has held that this is a matter of prosecutorial and investigatorial policy for the OCP and OCIJ, rather than a justiciable jurisdictional issue,²⁷ it nonetheless also held that this issue is subject to appellate review for abuse of discretion.²⁸ Because of the dispositive nature of this issue, for all intents and purposes it *effectively* amounts to a jurisdictional issue.²⁹

16. While the Supreme Court Chamber specifically referred to *the Trial Chamber* having the “the power to review the discretion of the Co-Investigating Judges,”³⁰ the Pre-Trial Chamber is entrusted with the power to do likewise in determining whether the Co-Investigating Judges exercised their discretion in bad faith or according to unsound professional judgement. The Pre-Trial Chamber could exercise this power if it is seized with **a.** an annulment application pursuant to Rule 76(2), or **b.** an appeal pursuant to Rule 21. If the Co-Investigating Judges abused their investigatorial discretion, this is not a

Request for the Work Product of David Boyle, 9 October 2013. The Defence is not alone in considering this effectively a jurisdictional matter. National Co-Prosecutor Chea Leang has stated that in her opinion “the named suspects in Case File 003 do not fall within the jurisdiction of the ECCC to be brought to trial.” Statement by the National Co-Prosecutor Regarding Case File 003, 10 May 2011. Co-Investigating Judges You Bunleng and Blunk focused their investigation on “personal jurisdiction” and former OCIJ Investigator Mr. Heder titled his article, which contained an introduction by current OCIJ Legal Office David Boyle, “*The Personal Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia as Regards Khmer Rouge ‘Senior Leaders’ and Others ‘Most Responsible’ for Khmer Rouge Crimes: A History and Recent Developments.*” See Press Release, *Statement of the National Co-Investigating Judge*, 12 October 2011; Stephen Heder, *The Personal Jurisdiction of the Extraordinary Chambers in the Courts of Cambodia as Regards Khmer Rouge “Senior Leaders” and Others “Most Responsible” for Khmer Rouge Crimes: A History and Recent Developments*, 26 April 2012, available at <http://www.cambodiatribunal.org/sites/default/files/reports/Final%20Revised%20Heder%20Personal%20Jurisdiction%20Review.120426.pdf>.

²⁷ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28, paras. 62-79.

²⁸ *Id.*, para. 80. Appellate review of discretionary decisions is common at the ECCC. See, e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC(SC), Co-Prosecutors’ Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, 7 November 2012, E163/5/1/1; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC64), Decision on IENG Sary’s Appeal against the Co-Investigating Judges’ Order Denying Request to Allow Audio/Video Recording of Meetings with IENG Sary at the Detention Facility, 11 June 2010, A371/2/12.

²⁹ Similarly, although the Supreme Court Chamber has relied upon the referral system at the ICTY as evidence that the term “most responsible” operates as prosecutorial and investigatorial policy rather than as a jurisdictional requirement, the referral system at the ICTY is a good example of the issue of “most responsible” having a dispositive effect. Although the Prosecution at the ICTY may request that a case to be referred to a national court and seek the appointment of a referral board to consider the issue, the Accused has the right to appeal this discretionary decision of the referral board. In the case of *Prosecutor v. Lukić & Lukić*, for example, the Accused Lukić argued that the Referral Board abused its discretion in deciding that he could be tried by a court in Bosnia and Herzegovina. The Appeals Chamber agreed, and Lukić was tried at the ICTY. See *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28, para. 71; *Prosecutor v. Lukić & Lukić*, IT-98-32/1-AR11bis.1, Decision on Milan Lukić’s Appeal Regarding Referral, 11 July 2007.

³⁰ *Case of KAING Guek Eav*, 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28, para. 80.

matter that should be left until the end of a lengthy, expensive, and emotional trial to determine.³¹

17. Pursuant to Rule 76(2), the Defence is entitled to apply for the annulment of investigative action containing procedural defects. The Pre-Trial Chamber has held that “a proven violation of a right ... recognized in the [International Covenant on Civil and Political Rights (“ICCPR”)], would qualify as a procedural defect and would harm the interests of a Charged Person. In such cases, the investigative or judicial action may be annulled.”³² If the Co-Investigating Judges have acted in bad faith or without sound professional judgement in exercising their investigatorial discretion, this would violate Mr. MEAS Muth’s right, guaranteed by the ICCPR to a fair trial. Mr. MEAS Muth would have the right to have the investigation annulled based on Rule 76(2).
18. Rule 21(1) requires the ECCC’s applicable law and Rules to be interpreted so as to always safeguard Mr. MEAS Muth’s interests.³³ The Pre-Trial Chamber in recognizing that Rule 21 requires a broad interpretation of the right to appeal,³⁴ has admitted an appeal based on Rule 21 alone, where the issue being appealed did not fall under the grounds for pre-trial appeals set out in Rule 74(3).³⁵ Supreme Court Chamber Judges Klonowiecka-Milart and Jayasinghe have rightly observed that strictly limiting interlocutory appeals “is inconsistent with the jurisprudence of the ECCC, the practice of all international criminal

³¹ See *Prosecutor v. Tadić*, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 6: “Would the higher interest of justice be served by a decision in favour of the accused, after the latter had undergone what would then have to be branded as an unwarranted trial. After all, in a court of law, common sense ought to be honoured not only when facts are weighed, but equally when laws are surveyed and a proper rule is selected.”

³² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC06), Decision on NUON Chea’s Appeal against Order Refusing Request for Annulment, 26 August 2008, D55/1/8, para. 40. See also *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC41), Decision on IENG Thirith’s Appeal against the Co-Investigating Judges’ Order rejecting the Request to Seize the Pre-Trial Chamber with a view to Annulment of all Investigations (D263/1), 25 June 2010, D263/2/6, para. 24.

³³ Rule 21(1) provides: “The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement.”

³⁴ See, e.g., *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC), Decision on IENG Sary’s Appeal against the Co-Investigating Judges’ Order Denying Request to Allow Audio/Video Recording of Meetings with IENG Sary at the Detention Facility, 11 June 2010, A371/2/12, para. 18 (emphasis added): “[c]onsidering the fair trial rights of the Appellant ... the Pre-Trial Chamber finds that Rule 21 requires it to interpret the Internal Rules in such a way that the Appeal is also admissible on the basis of Rule 21.”

³⁵ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC 71), Decision on IENG Sary’s Appeal against the Co-Investigating Judges’ Decision Refusing to Accept the Filings of IENG Sary’s Response to the Co-Prosecutors’ Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, D390/1/2/4, para. 13.

tribunals, the needs of a fair and expeditious trial and the rights of the accused.”³⁶ If the Co-Investigating Judges have acted in bad faith or without sound professional judgement in exercising their investigatorial discretion, this would violate Mr. MEAS Muth’s right, guaranteed by the ICCPR to a fair trial and could be appealed pursuant to Rule 21.

19. The Defence requires the Co-Investigating Judges’ criteria for determining who falls within the category of “senior leaders of Democratic Kampuchea and those who were most responsible” because it has reason to believe that these criteria could have shifted. Co-Investigating Judges You Bunleng and Blunk focused their investigation on personal jurisdiction and relied on certain criteria to determine whether Mr. MEAS Muth was one of the “senior leaders of Democratic Kampuchea and those who were most responsible.” They closed the judicial investigation in Case 003 but did not issue a Closing Order indicting Mr. MEAS Muth or dismissing the case. The fact that the investigation was closed without Mr. MEAS Muth ever having been charged indicates that Co-Investigating Judges You Bunleng and Blunk did not consider Mr. MEAS Muth a senior leader or someone who was most responsible. This would be consistent with the express policy position stated by National Co-Prosecutor Chea Leang.³⁷

20. After Co-Investigating Judges You Bunleng and Blunk decided to close the investigation, the Head of the OCIJ Legal Unit sent a letter to the United Nations Secretary General seeking the United Nations’ intervention in order to reopen the investigation. Shortly thereafter, Co-Investigating Judge Blunk resigned and Reserve International Co-Investigating Judge Kasper-Ansermet reopened the investigation. Reserve International Co-Investigating Judge Kasper-Ansermet apparently disagreed with his predecessor concerning whether Mr. MEAS Muth could be considered most responsible. Reserve International Co-Investigating Judge Kasper-Ansermet issued a decision deciding that Mr. MEAS Muth *could* be considered among those most responsible. Co-Investigating Judge Harmon is continuing to conduct the investigation reopened by Reserve International Co-Investigating Judge Kasper-Ansermet, which indicates that Co-

³⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC(SC), Decision on IENG Sary’s Appeal Against Trial Chamber’s Decision on IENG Sary’s Rule 89 Preliminary Objections (*Ne Bis in Idem* and Amnesty and Pardon), Dissenting Opinion of Judges Klonowiecka-Milart and Jayasinghe, 20 March 2012, E51/15/1/2.1, para. 1. This opinion has been cited approvingly by the OCP in Case 002. See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC(SC), Co-Prosecutors’ Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, 7 November 2012, E163/5/1/1, n. 28.

³⁷ See Statement by the National Co-Prosecutor Regarding Case File 003, 10 May 2011.

Investigating Judge Harmon too considers that Mr. MEAS Muth may be among those most responsible.

21. It would thus appear that the Co-Investigating Judges' criteria for determining who is a senior leader or most responsible may have shifted over time. To determine whether any such shift has occurred in bad faith (i.e. if the criteria have shifted in order to ensure a particular result), the Defence requires the criteria used by each Co-Investigating Judge, as well as all related legal memoranda prepared by the OCIJ. If the Defence considers that the OCIJ has abused its discretion, the Defence has a due diligence obligation³⁸ to request the Pre-Trial Chamber to review the matter. Since Co-Investigating Judge Blunk has referred publicly to the use of criteria, this request is not seeking confidential material. Moreover, any criteria identified and applied by any of the Co-Investigating Judges – past or present – should be disclosed since it does not constitute work-product. Transparency is essential to enable the Defence to determine what, if any, submissions it may need to make in the interest of justice. Part and parcel of this request are all legal memoranda prepared within the OCIJ reflecting the criteria identified by past and present Co-Investigating Judges. Such material would reflect whether a shift in the criteria has occurred at any time during the investigative period by any of the Co-Investigating Judges and, presumably, would include the attendant legal reasoning.
22. International Co-Investigating Judge Harmon recently issued a decision in Case 004 in which he explained his reasons for reversing an earlier decision issued by Reserve Co-Investigating Judge Kasper-Ansermet concerning a defence request access to the Case File. While the Defence does not agree with Co-Investigating Judge Harmon that Reserve Co-Investigating Judge Kasper-Ansermet abused his discretion in authorizing access the Case File, this Decision is a good example of a disagreement between a current and former Co-Investigating Judge in which transparent reasoning has been provided. The Defence appreciates that Co-Investigating Judge Harmon has publicly issued his reasons for departing from Reserve Co-Investigating Judge Kasper-Ansermet's

³⁸ *Black's Law Dictionary* defines due diligence as "[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." BLACK'S LAW DICTIONARY 468 (7th ed. 1999). The ICTY has stated that the purpose of according the accused certain rights under the ICTY Statute "was that the accused should exercise due diligence in utilizing them." JUDGE RICHARD MAY & MARIEKE WIERDA, INTERNATIONAL CRIMINAL EVIDENCE 306 (Transnational Publishers Inc., 2002), *discussing Prosecutor v. Tadić*, IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time Limit and Admission of Additional Evidence, 15 October 1998.



decision.³⁹ There is no reason that similar transparency cannot be provided concerning the OCIJ's criteria for determining "senior leaders of Democratic Kampuchea and those who were most responsible." The OCIJ should be especially sensitive to the need for transparency considering some of the dubious practices within the OCIJ that came to light after a publicly issued decision by the International Pre-Trial Chamber Judges.⁴⁰

III. RELIEF SOUGHT

WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the OCIJ to:

- A.** PROVIDE its criteria for determining whether Suspects may be considered "senior leaders of Democratic Kampuchea and those who were most responsible," including criteria set out and used by each Co-Investigating Judge; and
- B.** PLACE these criteria on the Case File.

Respectfully submitted,


ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 17th day of **October, 2013**

³⁹ See Case No. 004/07-09-2009-ECCC/OCIJ, Decision on the [REDACTED] Defence Requests to Access the Case File and Take Part in the Judicial Investigation, 31 July 2013, D121/4, paras. 45-49.

⁴⁰ In giving their opinion on an Appeal concerning the admissibility of a Civil Party application, International Pre-Trial Chamber Judges Katinka Lahuis and Rowan Downing publicly cited several discrepancies and irregularities by the OCIJ in its investigation activities in Case 003: the failure to inform suspects, the failure to provide information to victims and potential Civil Party applicants, not allowing the Civil Parties to access the Case File, failure to notify documents, and delays in registration of filed documents. See Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill, 24 October 2011, D11/2/4/4, paras. 3-11. Shortly thereafter, the OCIJ issued a press release "to avoid any speculation" due to a number of media articles reporting that the OCIJ had backdated and secretly modified documents. The OCIJ claimed that this speculation was based on "the minority opinion of the international judges [of the Pre-Trial Chamber]." The OCIJ insisted that it had not backdated or modified documents, but had followed a standard procedure for correcting a document that had been issued with some errors in reference numbers. OCIJ Press Release, *Statement of the Office of the Co-Investigating Judges*, 26 October 2011.