

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

FILING DETAILS

Case No: 003/07-09-2009-ECCC/OCIJ **Party Filing:** The Co-Lawyers

Filed to: The Office of Co-Investigating Judges **Original language:** ENGLISH

Date of document: 4 March 2013

CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC

**Classification by OCIJ
or Chamber:** PUBLIC [with Redactions]

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**LEAVE TO EXCEED PAGE LIMITATION
&
SUBMISSIONS OF THE CO-LAWYERS ON POTENTIAL CONFLICT OF
INTEREST IN REPRESENTATION OF MR. MEAS MUTH IN CASE 003**

REDACTED

Filed by:

The Co-Lawyers:
ANG Udom
Michael G. KARNAVAS

Distribution to:

**International Co-Investigating
Judge:**
Judge Mark B. HARMON

International Co-Prosecutor:
Andrew CAYLEY

Defence Support Section
Isaac ENDELEY

Copied to:
National Co-Investigating Judge:
Judge YOU Bunleng

National Co-Prosecutor:
CHEA Leang


LEAVE

Mr. ANG Udom and Mr. Michael G. KARNAVAS (“the Co-Lawyers”) hereby seek leave to exceed the page limitation in filing their Response to the International Co-Prosecutor’s Request that Appointment of Co-Lawyers Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest (“Request”).¹ Through this leave, the Co-Lawyers respectfully request an additional seven pages for their Response, while recognizing the necessity to keep within the designated page limitations set out in the Practice Directions.² In this instance, in light of the nature of the International Co-Prosecutor’s submissions and the significant reliance on case law from various jurisdictions, additional space was required to discuss and distinguish those cases as well as other cases related to the legal issues raised by the Request. Should this leave be denied, the Co-Lawyers respectfully request an extension of one day to redact and edit the Response attached hereto. Given the urgency of the legal issues involved in these submissions, the Co-Lawyers respectfully request permission to file in English only, with the Khmer version to follow as soon as possible, in accordance with Article 7.2 of the Practice Direction on the Filing of Documents.

Respectfully submitted,



ANG Udom

Michael G. KARNAVAS

Co-Lawyers

Signed in Phnom Penh, Kingdom of Cambodia on this 4th day of **March, 2013**

¹ International Co-Prosecutor’s Request that Appointment of Co-Lawyers Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest, 24 December 2012, D56/1.

² Practice Direction on Filing of Documents Before the ECCC, Art. 5.1.



RESPONSE

Mr. ANG Udom and Mr. Michael G. KARNAVAS (“the Co-Lawyers”) pursuant to the International Co-Investigating Judge’s Decision and Scheduling Order Concerning Request for Appointment of Co-Lawyers Designate (“Decision and Scheduling Order”)³ hereby respond to the International Co-Prosecutor’s Request that Appointment of Co-Lawyers Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest (“Request”).⁴ The Request was made by the International Co-Prosecutor with the National Co-Prosecutor merely copied to the Request. Presumably, the National Co-Prosecutor objects to or takes no position on the Request.⁵ Both Mr. IENG Sary and Mr. MEAS Muth have given their informed written consent to dual representation by the Co-Lawyers, as evidenced by the attached copies of the waivers of any conflict of interest.⁶ Mr. MEAS Muth has also provided written notice of his intention to invoke his right to remain silent in Case 002 (should he be summoned to give evidence) and Case 003 (should he be requested to be questioned by the Office of Co-Investigating Judges (“OCIJ”)).⁷ As discussed herein, save for the unproved assertions by the International Co-Prosecutor, there is neither a close factual nexus between the alleged conduct of Mr. IENG Sary and Mr. MEAS Muth, nor irreconcilable conflicts of interest militating against the assignment of the Co-Lawyers to Case 003. The Request should be dismissed.

I. PRELIMINARY REMARKS

1. Due to a synergy of unforeseen events and unintended consequences, none of which individually or together serve as an excuse, a lapse in diligence occurred resulting in the Co-Lawyers’ failure to timely respond to the Decision and Scheduling Order.⁸ The Co-

³ Decision and Scheduling Order Concerning Request For Appointment of Co-Lawyers Designate, 11 February 2013, D56/3. *See also* Re-Scheduling Order Concerning Request For Appointment of Co-Lawyers Designate, 28 February 2013, D56/4.

⁴ International Co-Prosecutor’s Request that Appointment of Co-Lawyers Designate be Rejected on the Basis of Irreconcilable Conflicts of Interest, 24 December 2012, D56/1.

⁵ International Co-Prosecutor Andrew C. Cayley has provided no explanation as to why National Co-Prosecutor Chea Lang did not sign the Request and was, instead, merely copied on it. Although it is within International Co-Prosecutor Cayley’s purview to act unilaterally, this does call into question why National Co-Prosecutor Chea Lang was only copied on the Request and has not signed it.

⁶ *See* Annex 1.

⁷ *See Id.*

⁸ As incredulous as it may seem, due to a series of technical glitches and mishaps, it was not until late 1 March 2013 that the Co-Lawyers actually became aware of the Request, while the Decision and Scheduling Order had been mistakenly overlooked as being another submission which did not seem to require immediate action. If past practices and behavior serve as indicators, the robust motion practice and timely filings in Case 002 by the Co-Lawyers do reflect due diligence and consciousness. Suffice it to say, although the failures in this instance

Lawyers deeply regret this lapse, while fully appreciating the International Co-Investigating Judge's latitude in granting the Co-Lawyers the opportunity to address the Request. The Co-Lawyers sincerely apologize for their oversight and the inconvenience to the International Co-Investigating Judge and the International Co-Prosecutor. The Co-Lawyers offer their utmost assurances that there was no intent to disregard the Decision and Scheduling Order.⁹

2. In supplementing the comprehensive letter sent to the OCIJ by Chief of Defence Support Section Mr. Isaac Endeley detailing his decision to assign the Co-Lawyers to represent Mr. MEAS Muth in Case 003,¹⁰ on 25 December 2012, the Co-Lawyers submitted copies of Mr. IENG Sary's and Mr. MEAS Muth's waivers of any conflict of interest and Mr. MEAS Muth's notice of intent to invoke his right to remain silent to the Witness and Expert Support Unit ("WESU").¹¹ The Co-Lawyers assumed that the waivers provided to the DSS and forwarded to WESU would have been disclosed to the Office of the Co-Prosecutors ("OCP") and the OCIJ. Needless to say, this assumption does not cure the Co-Lawyers' failure to provide the International Co-Investigating Judge with the requested information as ordered in the Decision and Scheduling Order.

II. ARGUMENT

3. In light of the manner in which the Request was structured and the arguments formulated, this Argument addresses the relevant paragraphs of the Request in a sequential order, paragraph by paragraph, as opposed to thematically by topics. As a result, repetition of some arguments was unavoidable.

A. Applicable Law: Conflicts of Interest and Waivers

4. In paragraphs 16 to 18 of the Request, the International Co-Prosecutor correctly outlines the applicable law on conflicts of interest as defined in the DSS Administrative Regulations, the Code of Ethics of the Bar Association of the Kingdom of Cambodia ("BAKC Code") and the French National Code of Professional Conduct for Lawyers ("French National Code") (which, of course, is not directly applicable at the ECCC,

are an aberration, the Co-Lawyers are cognizant that such failures are not justifications for omissions and commissions in dispatching their professional responsibilities.

⁹ To this end, the Co-Lawyers also wish to extend their sincerest gratitude to Mr. Endeley, not only for his letter to the OCIJ, but also for bringing to the Co-Lawyers' attention their oversight in not filing a timely response to the Decision and Scheduling Order.

¹⁰ Letter from Chief of Defence Support Section to OCIJ, 18 December 2012, D56, para. 3.

¹¹ Email from the Co-Lawyers to WESU titled "Meas Muth Notice", 25 December 2012.

though it may provide guidance as the BAKC Code presumably, but not necessarily, was inspired by the French National Code).¹² The Co-Lawyers, fully aware of their responsibilities as set out by the relevant Codes of Conduct, have proceeded with caution, diligence and professionalism.

The ECCC legal framework and the BAKC Code

5. Article 9.3 of the DSS Administrative Regulations permits Co-Lawyers to represent clients potentially affected by a conflict of interest when they have obtained the “full and informed” consent of those clients. The Co-Lawyers have obtained the full and informed consent of both Mr. IENG Sary and Mr. MEAS Muth, as evidenced by the attached waivers. Mr. MEAS Muth has also invoked his right to remain silent and refuses to testify in Case 002, as evidenced by the attached notice.
6. The Co-Lawyers have examined the alleged facts and charges, based on their extensive knowledge of Case 002 and Case 003, and have discussed the cases and any potential conflicts with Mr. IENG Sary and Mr. MEAS Muth, respectively. The alleged roles, functions and conduct of Mr. IENG Sary and Mr. MEAS Muth are not related or intertwined such that the Co-Lawyers’ defence of the two individuals would lead them to adopt different strategies than they would otherwise adopt or breach secrecy, or would impair the Co-Lawyers’ independence.¹³

The French National Code

7. In contrast to the *Cour de Cassation* decision cited in the Request, which involved a lawyer who represented a couple in a joint divorce application that was abandoned and then represented one spouse against the other in a subsequent divorce proceeding,¹⁴ here Mr. IENG Sary and Mr. MEAS Muth are neither co-Accused nor opposing parties. Both Mr. IENG Sary and Mr. MEAS Muth maintain that there is no connection or confluence between their alleged roles and acts such that a conflict of interest will arise.

¹² Although the BAKC Code may have been inspired by the French National Code, when one closely examines the two Codes, particularly with regard to who can become a member of the BAKC and the French Bar, there are distinct differences. The BAKC includes members who hold high political positions, yet have never attended law school or received legal training. The BAKC also includes members of the judiciary who are sitting judges and yet are also permitted to be members of the BAKC. While it may be convenient to look to the French National Code as inspiration for the BAKC, the French National Code cannot be transposed onto the BAKC nor can it be imported wholesale into ECCC proceedings.

¹³ See Request, paras. 18-19, *citing* French National Code of Professional Conduct for Lawyers, Arts. 4.1-4.2.

¹⁴ See *Id.*, para. 19.

International rules of procedure regarding conflicts of interest

8. In paragraphs 20 to 22 of the Request, the International Co-Prosecutor submits that the OCIJ should be guided by international procedural rules on conflicts of interest because the Internal Rules are silent on the issue. The International Co-Prosecutor correctly cites the Code of Professional Conduct for Defence Counsel of the International Criminal Tribunal for Rwanda (“ICTR”)¹⁵ and the Professional Code of Conduct for Counsel Appearing Before the International Criminal Tribunal for the Former Yugoslavia (“ICTY”).¹⁶
9. The International Co-Prosecutor incorrectly cites Article 8(6)(b)(ii) of the International Criminal Court Code of Professional Conduct (“ICC Code”), which purportedly permits continued representation despite a conflict of interest “only if such [client’s] consent, in the best judgement of Counsel, is unlikely to prejudice in any way the administration of justice.”¹⁷ The document attached in the accompanying Table of Authorities is a draft Code created by the International Bar Association, *not* the ICC Code.¹⁸ The ICC Code contains no such language. Article 16(3) of the ICC Code requires counsel to immediately inform all potentially affected clients of a conflict of interest and permits continued representation if counsel “[s]eek[s] the full and informed consent in writing of all potentially affected clients to continue representation.”¹⁹
10. The Co-Lawyers submit that at all times they have complied with international procedural rules to the extent they are applicable at the ECCC and in particular in the matter in question. They have obtained full and informed consent from Mr. IENG Sary and Mr. MEAS Muth and this consent, in the Co-Lawyers’ best judgement and good faith belief,

¹⁵ *Id.*, para. 22, quoting International Criminal Tribunal for Rwanda (“ICTR”) Code of Professional Conduct for Defence Counsel, Art. 9(5)(b)(ii), which permits continued representation if counsel obtains full and informed consent from all potentially affected clients and is able to fulfill all other obligations.

¹⁶ *Id.*, paras. 21-22, quoting Code of Professional Conduct for Counsel Appearing Before the International Tribunal, Art. 14(A), (E), which provides that counsel has a duty of loyalty to his clients and prohibits continued representation where there is a conflict of interest, even if the client consents, if “such consent is likely to irreversibly prejudice the administration of justice.”

¹⁷ *Id.*, para. 22, fn. 38.

¹⁸ *See Id.*, Table of Authorities, Authority 6, D56/1.1.6, which is the International Bar Association’s Code of Professional Conduct for Counsel Before the International Criminal Court. *See also* International Bar Association article titled “IBA Presents Code of Professional Conduct for Counsel Appearing Before the International Criminal Court”, 20 February 2003, available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=8e2880d3-234c-4398-841b-76b8ddf823e>.

¹⁹ ICC Code of Professional Conduct, ICC/ASP/4/Res. 1 (adopted on 2 December 2005, entered into force 1 January 2006), Art. 16(3)(b).

will not prejudice in any way the administration of justice. Both Mr. IENG Sary and Mr. MEAS Muth were fully informed of all the potential ramifications of having the Co-Lawyers representing them respectively, independent of each of their cases and with full respect for and adherence to their constitutionally guaranteed fair trial rights.

11. The International Co-Prosecutor cites several ICTY decisions relating to conflicts of interest in the representation of multiple clients.²⁰ These cases are distinguishable.
12. In *Mejakić et al.*, the Prosecution alleged a conflict of interest stemming from counsel's simultaneous representation of the Accused Mejakić and Mr. Prcać, who was an Accused in *Kvočka et al.*²¹ Mr. Mejakić was allegedly Mr. Prcać's direct superior. Mr. Mejakić was alleged to be the commander of the Omarska camp, and admitted to being in a position of authority at the camp and to having command over Mr. Prcać.²² The Appeals Chamber found that a conflict of interest existed because Mr. Prcać could be included on the Prosecution's witness list and could testify, if he so consented.²³ The Appeals Chamber found that this situation created a conflict of interest: it impacted counsel's obligations to consider the benefits Mr. Prcać might derive from cooperation with the Prosecution and to ensure that Mr. Mejakić's best interests are protected, which might include attempting to prevent Mr. Prcać from testifying or implicating Mr. Mejakić.²⁴
13. Here, in contrast, Mr. IENG Sary is not alleged to be Mr. MEAS Muth's direct superior. Indeed, both Mr. IENG Sary and Mr. MEAS Muth maintain that they had no superior-subordinate relationship during the relevant time period. Mr. MEAS Muth has invoked his right to remain silent in both Case 002 and Case 003. Mr. MEAS Muth does not consent to testify as a witness in Case 002. In accordance with the Cambodian Constitution, Mr. MEAS Muth cannot be compelled to testify.²⁵ Indeed, Deputy Co-Prosecutor William Smith stated when objecting to Duch being questioned in Case 002:

²⁰ Request, paras. 23-27.

²¹ See *Prosecutor v. Mejakić et al.*, IT-02-65-PT, Decision on Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Jovan Simić, 18 September 2003.

²² See *Prosecutor v. Mejakić et al.*, IT-02-65-AR73.1, Decision on Appeal by the Prosecution to Resolve Conflict of Interest Regarding Attorney Jovan Simić, 6 October 2004, paras. 12, 14.

²³ *Id.*, para. 13.

²⁴ *Id.*

²⁵ Article 31 of the Cambodian Constitution provides that the "Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights." Article 14(3)(g) of the International Covenant on Civil and Political Rights, which is incorporated in the Cambodian Constitution, guarantees an individual facing criminal charges the right not to incriminate himself.

“in relation to M-13, there has been no conviction for this – for this witness, *and there always remains a possibility of a prosecution, however unlikely.*”²⁶ Here, unlike other witnesses who have testified in Case 002, Mr. MEAS Muth *cannot* benefit from an Assurance of Non-Prosecution. Mr. MEAS Muth is currently under investigation by the International Co-Investigating Judge. The International Co-Prosecutor has publicly insisted on investigating and prosecuting Mr. MEAS Muth and, in the Second Introductory Submission, has called for his arrest. Thus, for all the reasons cited, there is no risk that the Co-Lawyers will examine (there is no cross-examination at the ECCC) Mr. MEAS Muth in Case 002 or, for that matter, Mr. IENG Sary in Case 003 should the case proceed to trial.

14. In *Prlić et al.*, the Appeals Chamber found a conflict of interest as a result of both Accused being charged with the same acts and the existence of “a relatively close superior-subordinate relationship.”²⁷ The Accused Stojić was alleged to have been the head of the Ministry of Defence and to have had *de jure* and *de facto* control over Herceg-Bosna / Croatian Defence Council (“HVO”) forces.²⁸ Mr. Stojić’s counsel, Željko Olujić, was also representing another Accused, Mr. Rajić, also known as Viktor Andrić, who was commander of the HVO’s Second Operational Group in the Central Bosnia Operative Zone.²⁹ Mr. Rajić was charged with criminal acts in Vareš and Stupni Do and was alleged to have had *de jure* and *de facto* control over HVO forces that were also under Mr. Stojić’s ultimate command.³⁰ Here, Mr. IENG Sary was not in a similar position of authority over Mr. MEAS Muth: he was neither a direct nor an indirect superior of Mr. MEAS Muth.

²⁶ Transcript, 3 April 2012, E1/58.1, p. 74. This objection was upheld by President Nil Nonn, who directed Duch that he could invoke his privilege against self-incrimination and choose not to answer incriminating questions. Transcript, 4 April 2012, E1/59.1, p. 9.

²⁷ *Prosecutor v. Prlić et al.*, IT-04-74-AR73.1, Decision on Appeal by Bruno Stojić Against Trial Chamber’s Decision on Request for Appointment of Counsel, 24 November 2004 (“*Prlić Appeals Chamber Decision on Request for Appointment of Counsel*”), para. 24. At the Accused’s initial hearing, Judge Orić raised concerns about conflicts of interest arising from the Accused’s requested counsels’ simultaneous representation of other clients (*Prosecutor v. Prlić et al.*, IT-04-74-PT, Decision on Requests for Appointment of Counsel, 30 July 2004 (“*Prlić Trial Chamber Decision on Requests for Appointment of Counsel*”), para. 3). The Prosecution also raised concerns about conflicts of interest arising from counsels’ simultaneous representation of multiple Accused (*Prlić Trial Chamber Decision on Requests for Appointment of Counsel*, para. 6).

²⁸ *Prlić Appeals Chamber Decision on Request for Appointment of Counsel*, para. 23.

²⁹ *Prosecutor v. Rajić*, IT-95-12-PT, Amended Indictment, 13 January 2004, para. 2.

³⁰ *Id.*

15. The Appeals Chamber recalled in *Prlić et al.* that “consent provided by a potentially affected client or former to remove a conflict of interest upon consultation with the counsel should generally be regarded as fully informed in the absence of an indication to the contrary.”³¹ Here, the International Co-Prosecutor has made *no* showing that either Mr. IENG Sary or Mr. MEAS Muth were less than fully informed when they gave their consent to the Co-Lawyers’ representation.
16. The International Co-Prosecutor incorrectly claims that the Trial Chamber in *Prlić et al.* “had found that a conflict of interest had created a situation where counsel ‘may be reluctant to pursue a line of defence, to adduce certain items in evidence, or to plead certain mitigating factors at the sentencing stage, in order to avoid prejudicing another client.’”³² It is apparent from the language in the Trial Chamber’s decision that the Trial Chamber was speaking hypothetically, not with reference to the specific lawyer in the matter at issue.³³ The Trial Chamber observed that “[p]ractically, counsel is the one who can fully evaluate the existence or a risk of conflict between clients: he knows who are his current and former clients, what information he received or is likely to receive from them and he is the one who has a full grasp of each case in which he has acted as a counsel.”³⁴ Similarly, here the Co-Lawyers have discussed the cases and any potential conflicts with Mr. IENG Sary and Mr. MEAS Muth and have fully evaluated the risk of any conflict of interest between the two individuals. The Co-Lawyers submit that no conflicts of interest exist or are likely to arise between Mr. IENG Sary and Mr. MEAS Muth. Both Mr. IENG Sary and Mr. MEAS Muth are aware of the respective theories of defence identified by the Co-Lawyers; have individually, exclusively and fully agreed with those respective theories; and have been apprised of the strategic and tactical means by which the Co-Lawyers intend to independently and very robustly represent them.

³¹ *Prlić Appeals Chamber Decision on Request for Appointment of Counsel*, para. 27.

³² Request, para. 25.

³³ See *Prlić Trial Chamber Decision on Requests for Appointment of Counsel*, Section II.A, where the Trial Chamber begins by discussing the general limits on an accused’s right to choose his own counsel (paras. 11-12), then defines a lawyer’s obligations under Rule 14 of the ICTY Code of Professional Conduct for Counsel Appearing Before the International Tribunal (paras. 13-14), before then providing examples of ways in which a conflict of interest may impact the conduct of a trial (para. 15).

³⁴ *Id.*, para. 14.

17. The Trial Chamber in *Prlić et al.* permitted simultaneous representation of the Accused Dr. Prlić and an Accused in another case, Martinović,³⁵ even though the charges against Dr. Prlić encompassed acts for which Martinović had been convicted and his appeal was pending.³⁶ The Trial Chamber found that this relationship was more remote than the alleged relationship between the Accused Stojić and Rajić: Martinović was a commander within the HVO and his unit was under the command of the HVO Main Staff, while Dr. Prlić was alleged to have been the Prime Minister of the Herceg-Bosna / HVO government.³⁷ The Trial Chamber found that “[w]hile, according to their indictments, a superior-subordinate relationship *does* exist between the two accused, the *apparent remoteness of one from the other in the alleged hierarchy ensures that the likelihood for potential conflict of interest between them is acceptably low.*”³⁸ Here, although the Co-Lawyers do not concede any superior-subordinate relationship between Mr. IENG Sary and Mr. MEAS Muth, any relationship demonstrated by the International Co-Prosecutor is remote. The risk of any conflict of interest is therefore acceptably low.
18. In *Gotovina*, a superior-subordinate relationship similar to that of the previous ICTY cases existed between the two clients and created an irreconcilable conflict of interest.³⁹ The Accused Gotovina (whose co-Accused, Čermak, was represented briefly by the International Co-Prosecutor)⁴⁰ was alleged to have been in military command of a district that included a garrison commanded by his co-Accused and alleged subordinate, Čermak.⁴¹ Čermak’s counsel, Čedo Prodanović and Jadranka Sloković, also represented

³⁵ Vinko Martinović, also known as Stela, was a sub-commander in the Croatian Defence Forces militia known as the Convicts’ Battalion. The battalion was commanded by his co-Accused, Mladen Naletilić, also known as Tuta, and fell under the HVO’s purview. See *Prosecutor v. Naletilić & Martinović*, IT-98-34-PT, Second Amended Indictment, 28 September 2001. As Mr. Stojić was alleged to have had *de jure* and *de facto* control over HVO forces, Mr. Martinović was, effectively, subordinate to Mr. Stojić.

³⁶ *Prlić* Trial Chamber Decision on Requests for Appointment of Counsel, para. 43. The Appeal Judgement in *Naletilić & Martinović* was rendered on 3 May 2006.

³⁷ *Id.*

³⁸ *Id.* (emphasis added). The Trial Chamber also permitted simultaneous representation of Accused Čorić and an Accused in another case, Ljubičić, where both Accused were charged with criminal acts alleged to have occurred in the same village. *Id.*, paras. 46-48. The Trial Chamber found the risk of a conflict of interest was “acceptably low” despite the facts that the criminal charges faced by the Accused were “partly similar,” the Accused were linked with a “quite remote” superior-subordinate relationship and a reading of the indictments indicated a risk of conflict of interest. *Id.*, para. 52.

³⁹ *Prosecutor v. Gotovina et al.*, IT-06-90-AR73.2, Decision on Ivan Čermak’s Interlocutory Appeal Against Trial Chamber’s Decision on Conflict of Interest of Attorney’s Čedo Prodanović and Jadranka Sloković, 29 June 2007 (“*Gotovina* Decision on Appeal of Conflict of Interest Decision”).

⁴⁰ *Prosecutor v. Čermak*, IT-06-90-T, Public Decision, 2 July 2010.

⁴¹ *Gotovina* Decision on Appeal of Conflict of Interest Decision, para. 25.

another individual, Ademi, in a criminal case in Croatia,⁴² who was alleged – and claimed – to have been Gotovina’s Chief of Staff and second-in-command.⁴³ Gotovina raised a conflict of interest in the course of responding to the Prosecution’s consolidated motion to amend and join the Indictments against Gotovina, Markač and Čermak. Gotovina alleged that Čermak’s counsel also represented an Accused awaiting trial in Croatia, Ademi, who was a critical witness to Gotovina’s defence.⁴⁴ The Prosecution *did not* raise this conflict of interest on its own *nor* did it take a position on Gotovina’s submission, thus effectively acknowledging that the Prosecution saw no conflict of interest that would require removal of the affected lawyers. It also merits noting that Gotovina’s co-counsel, Gregory Kehoe, worked for the Prosecution from 1995 to 1999 and was involved in investigating Operation Storm, the military conflict for which the Accused were subsequently criminally charged.⁴⁵ Although Mr. Kehoe was appointed to represent Gotovina more than one year before this decision, the Prosecution *did not* raise the issue of potential conflicts of interest with the Trial Chamber.⁴⁶ Gotovina’s other co-counsel, Payam Akhavan, served as a legal advisor for the Prosecution prior to representing Gotovina.⁴⁷ Again, the Prosecution did not raise a conflict of interest regarding Mr. Akhavan’s representation. This is but one example (although others are presented below) showing that challenges as to conflicts of interest at the ICTY seem to be highly situational and curiously selective, thus diminishing any reliance on these cases in arriving at a hard and fast rule of law to be applied at the ECCC.

19. The Trial Chamber in *Gotovina* found that there was a conflict of interest in the representation of Čermak and Ademi. Čermak appealed the decision, which was opposed by both the Prosecution and Gotovina.⁴⁸ The Appeals Chamber found that Ademi exercised a superior-subordinate role with respect to Čermak and, as a result, Čermak’s counsel were bound by a duty of loyalty to exclude any defence that would implicate

⁴² *Id.*

⁴³ *Id.*, paras. 22, 27.

⁴⁴ *Id.*, para. 3.

⁴⁵ See *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Ivan Čermak’s and Mladen Markač’s Joint Motion to Resolve Conflict of Interest Regarding Attorney Gregory Kehoe, 29 November 2007. See also Initial Indictment, IT-01-45-I, 21 May 2001.

⁴⁶ *Prosecutor v. Gotovina et al.*, IT-06-90-PT, Decision on Ivan Čermak’s and Mladen Markač’s Joint Motion to Resolve Conflict of Interest Regarding Attorney Gregory Kehoe, 29 November 2007.

⁴⁷ See Mr. Akhavan’s profile page on the McGill University website, available at <http://www.mcgill.ca/law/about/profs/akhavan-payam>.

⁴⁸ *Gotovina* Decision on Appeal of Conflict of Interest Decision, paras. 8-9, 14.

Ademi in the crimes with which Čermak is charged.⁴⁹ The Appeals Chamber affirmed the Trial Chamber's finding that Čermak risked being "considerably prejudiced" as a result of the dual representation because his counsel was limited in their defence strategies as a result of their duty of loyalty to Ademi and, therefore, would not serve Čermak's best interests.⁵⁰ Here, again, Mr. IENG Sary was not in a similar position of authority over Mr. MEAS Muth. Mr. IENG Sary was neither his direct nor an indirect superior; therefore, the Co-Lawyers will not be limited in their defence strategies with respect to either client.

20. In *Perišić*, the Deputy Registrar found an "acceptably low" possibility of a conflict of interest where, *inter alia*, there was a "remote" superior-subordinate relationship between the two clients and they were not charged with the same acts or omissions, although there was a nexus between their criminal charges related to Srebrenica, and the clients had provided written consent after being fully informed of the conflict.⁵¹ The Accused Perišić was alleged to have been the Chief of the General Staff of the Yugoslav Army,⁵² while his counsel's former client, Obrenović, was alleged to have been the Chief of Staff and Deputy Commander of the Zvornik Brigade.⁵³ Here, at most, the International Co-Prosecutor has alleged the existence of a "remote" superior-subordinate relationship between Mr. MEAS Muth and Mr. IENG Sary, although they maintain that they had no relationship or contact with each other during the relevant time period.
21. In addition to *Prlić et al.* and *Perišić*, there have been other instances at the ICTY where a lawyer has been permitted to simultaneously represent multiple Accused. For example, in *Mladić*, Branko Lukić was appointed to represent Mladić even though he had previously represented Accused Kvočka, Jokić and Stakić and was currently representing Accused Sreten Lukić.⁵⁴ Subsequently in *Mladić*, Miodrag Stojanović was appointed to represent Mladić even though he had previously represented Accused Jokić and Borovčanin.⁵⁵ Similarly, in *Popović*, Nenad Petrusić was assigned to represent the Accused Miletić

⁴⁹ *Id.*, para. 27.

⁵⁰ *Id.*, para. 28.

⁵¹ *Prosecutor v. Perišić*, IT-04-81-PT, Decision, 7 April 2006, p. 2. The Deputy Registrar issued this decision after Perišić requested the assignment to his case of a lawyer who had previously represented another Accused.

⁵² *Prosecutor v. Perišić*, IT-04-81, Second Amended Indictment, 26 September 2005, p. 2.

⁵³ *Prosecutor v. Obrenović*, IT-01-43, Initial Indictment, 16 March 2001, p 1-2; *Prosecutor v. Blagojević et al.*, IT-02-60-PT, Second Amended Indictment, 27 May 2002, p. 2-3.

⁵⁴ *Prosecutor v. Mladić*, IT-09-92-PT, Decision, 22 July 2011.

⁵⁵ *Prosecutor v. Mladić*, IT-09-92-PT, Decision, 23 February 2012.

despite his prior representation of Accused Kršić.⁵⁶ All of these Accused and their cases are connected to a particular overarching crime alleged to have resulted from a joint criminal enterprise, i.e., Srebrenica; characterized by the international community as perhaps the worst case of massacre or extermination in Europe since World War II, and for which the crime of genocide has been charged and, in some cases, convictions have been rendered.

22. In *Hadžihasanović & Kubura*, Rodney Dixon, who had worked as a legal advisor for the ICTY Prosecution for four years, was appointed by the Registry to represent the Accused Kubura. The Prosecution filed a motion requesting review of the Registry's decision appointing Mr. Dixon to the case. The Prosecution argued that his appointment would cause a conflict of interest because of his involvement "in relevant investigations and relevant prosecutions of the so-called flip-side cases such as *Blaškić, Kordić and Čerkez*, and *Čelebići*." The Trial Chamber dismissed the motion, finding that "working in part on the same factual basis alone does not create a conflict of interests" and that, although Mr. Dixon may have certain advantages as a result of his prior work, the Prosecution had not demonstrated the existence of a "real possibility of conflict of interest."⁵⁷ Here, the International Co-Prosecutor has similarly failed to demonstrate a real possibility of a conflict of interest.
23. In *Martić*, the Trial Chamber found no conflict of interest where the Prosecution alleged that the two potentially affected clients were co-perpetrators in a joint criminal enterprise.⁵⁸ The Trial Chamber found that "the fact that the accused and the suspect are charged as co-accused in the same case does not necessarily create a conflict of interest."⁵⁹ As both the Accused and the suspect had "independently discussed the conflict of interest with Counsel of choice" and both "clearly consent[ed]" to the dual representation,⁶⁰ the Trial Chamber found simultaneous representation to be

⁵⁶ *Prosecutor v. Popović et al.*, IT-05-88-T, Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić, 20 February 2007.

⁵⁷ *Prosecutor v. Hadžihasanović & Kubura*, IT-01-47-PT, Decision on the Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-counsel to the Accused Kubura, 26 March 2002, summary decision available at http://www.icty.org/x/file/Legal%20Library/jud_supplement/supp31bis-e/hadzihasanovic.htm.

⁵⁸ *Prosecutor v. Martić*, IT-95-11-PT, Decision on Appeal Against Decision of Registry, 2 August 2002, p. 3.

⁵⁹ *Id.*, p. 8.

⁶⁰ *Id.*, p. 7.

permissible.⁶¹ Similarly, here, although Mr. IENG Sary and Mr. MEAS Muth are not co-Accused, the International Co-Prosecutor does allege that they are part of the same joint criminal enterprise. Mr. IENG Sary and Mr. MEAS Muth have independently discussed any potential conflicts of interest with the Co-Lawyers. They have both clearly consented to being represented by the Co-Lawyers. There will be no prejudice to either of their defences and there is no conflict of interest.

Codes of conduct of domestic legal systems

24. In paragraphs 28 to 34 of the Request, the International Co-Prosecutor correctly cites the provisions of various domestic codes of conduct, including that of the United States. The Co-Lawyers respectfully submit that they are well-apprieved of and have considered their respective codes of conduct and ethics.⁶²
25. Rule 1.7(b) of the American Bar Association's Model Rules of Professional Conduct, cited by the International Co-Prosecutor, defines four conditions that must be met for an a lawyer to simultaneously represent clients with conflicting interests. These conditions are: (1) the lawyer reasonably believes that he will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed, written consent.⁶³ These four conditions have been met in this case. The Co-Lawyers reasonably believe they will be able to provide competent, diligent and robust representation to both Mr. IENG Sary and Mr. MEAS Muth without reservation or compromise to either client. Representation of

⁶¹ *Id.*, p. 8-9. In light of the Trial Chamber's decision, the Registry re-considered its decision and appointed the requested counsel to represent the Accused. See *Prosecutor v. Martić*, IT-95-11-PT, Decision, 18 December 2002, p. 1.

⁶² Mr. Karnavas has over 30 years of domestic and international criminal defence experience, has conducted many legal training and trial advocacy courses (including for the Cardozo Law School Intensive Trial Advocacy Program; the National Criminal Defense College, which is affiliated with the National Association of Criminal Defense Lawyers; and Leiden University's Grotius Center for International Legal Studies) and, while serving as President of the Association of Defence Counsel of the ICTY from 2006 to 2009, conducted several professional trainings, including ethics and professional conduct courses at international tribunals. See ECCC website, "Who's Who in the Courtroom", available at <http://www.eccc.gov.kh/en/person/mr-michael-karnavas>. See also Conference on "Hybrid Perspectives on the Legacies of the Extraordinary Chambers in the Courts of Cambodia (ECCC)", 13-14 September 2012, Brochure, available at http://www.eccc.gov.kh/sites/default/files/articles/legacybrochure_englisch_final.pdf.

⁶³ See Request, para. 32.

both Mr. IENG Sary and Mr. MEAS Muth is not prohibited by law.⁶⁴ Representation of both Mr. IENG Sary and Mr. MEAS Muth does not involve assertion of a claim by one client against the other client in the same litigation or proceeding. As stated *supra*, Mr. IENG Sary and Mr. MEAS Muth maintain that they have no connection or involvement in each other's alleged criminal acts. Finally, both Mr. IENG Sary and Mr. MEAS Muth have given their informed, written consent.

B. The existence of a close factual nexus between the alleged conduct of Mr. IENG Sary and Mr. MEAS Muth

Mr. IENG Sary and Mr. MEAS Muth are alleged to bear criminal responsibility for the same acts or omissions

26. In paragraphs 35 and 37 of the Request, the International Co-Prosecutor submits that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. In Case 002, the Co-Lawyers have emphatically pursued a line of defence demonstrating that Mr. IENG Sary had no involvement with S-21, as can be gleaned by the Defence's examination of certain witnesses, including Professor David Chandler,⁶⁵ the *doyen* of Cambodian history,⁶⁶ and Duch.⁶⁷ Mr. IENG Sary also maintains that he had no involvement in or responsibility for matters to do with national defence. Both Mr. IENG Sary and Mr. MEAS Muth state that they had no contact with or knowledge of each other's roles or alleged conduct. Their roles, functions and conduct were separate, discrete and distinct from 1975-1979.

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁴ See Letter from Chief of Defence Support Section to OCIJ, 18 December 2012, D56, para. 8.

⁶⁵ Transcript, 24 July 2012, E1/95.1, p. 63-66.

⁶⁶ PHILIP SHORT, *POL POT: HISTORY OF A NIGHTMARE* 290 (2004).

⁶⁷ See, e.g., Transcript, 9 April 2012, E1/61.1, p. 98-119.

28. In paragraphs 38 to 41 of the Request, the International Co-Prosecutor submits that [REDACTED]

[REDACTED]

[REDACTED] The International Co-Prosecutor is overstating the evidence.

29. [REDACTED]

[REDACTED]

⁶⁸ Request, para. 38.

⁶⁹ *Id.*, para. 39.

⁷⁰ *Id.*, para. 40.

⁷¹ *Id.*, para. 41.

[REDACTED]

[REDACTED]

30. [REDACTED]

31. The International Co-Investigating Judge in the Decision and Scheduling Order cited [REDACTED]

[REDACTED] These documents bear no independent *indicia* of reliability, accuracy, truthfulness or completeness. While the admission of hearsay evidence does not – generally – violate the Accused’s fair trial rights because the defence can cross-examine the witness and attempt to undermine the weight of the evidence,⁷⁸ concerning these documents there is *no* indication as to the

[REDACTED]

[REDACTED]

⁷⁶ *Id.*, p. 10.

⁷⁷ Decision and Scheduling Order, para. 22, [REDACTED]

⁷⁸ *Prosecutor v. Blaškić*, IT-95-14-T, Decision on the Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 21 January 1998, para. 12:

The right to cross-examination guaranteed by Article 21(4)(e) of the Statute applies to the witness testifying before the Trial Chamber and not to the initial declarant whose statement has been transmitted to the Trial Chamber by this witness. The Trial Chamber does, however, note that the

C. The appointment of the Co-Lawyers would not generate irreconcilable conflicts of interest

Ability to pursue lines of defence and cross-examination

33. In paragraph 43 of the Request, the International Co-Prosecutor submits that, as Mr. IENG Sary and Mr. MEAS Muth are alleged to be responsible for the same criminal acts or omissions, the Co-Lawyers would be unable to pursue certain lines of defence and cross-examination without potentially damaging one of the clients. As stated *supra*, the Co-Lawyers have examined the allegations against both clients and discussed those allegations with their clients. Mr. IENG Sary was not Mr. MEAS Muth's direct or indirect superior. There are no lines of questioning or defence that would bring either client into conflict with the other, cause the Co-Lawyers to change their strategy, or cause the Co-Lawyers to favor or disadvantage one client over the other.

34. In paragraph 44 of the Request, the International Co-Prosecutor submits that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Access to privileged information where interests conflict

35. In paragraph 45 of the Request, the International Co-Prosecutor submits that the Co-Lawyers may obtain privileged information from one client that relates to the other client, which could impact their ability to act in the best of both clients. The Co-Lawyers have discussed all potential issues that could create a conflict of interest with both Mr. IENG Sary and Mr. MEAS Muth. As indicated by their waivers, neither client possesses any knowledge that could impact the other client.⁸⁰ The Co-Lawyers further respectfully

⁸⁰ See IENG Sary's Waiver of Any Potential Conflict of Interest, 15 June 2012; MEAS Muth's Notice of Intent to Exercise Right to Remain Silent and Waiver of any Potential Conflict of Interest, 13 June 2012.

submit that speculation should not form the basis of the International Co-Investigating Judge's decision whether to confirm the appointment of the Co-Lawyers to Case 003.⁸¹

36. In paragraph 46 of the Request, the International Co-Prosecutor quotes statements from lawyer Željko Olujić, who was found to have a conflict of interest in the *Prlić et al.* case, that he would act as a “mediator” between his clients and would coordinate their defences, insinuating, perhaps unintentionally, that the Co-Lawyers subscribe to this clearly absurd and imbecilic notion. The International Co-Prosecutor provides no authority or justification from which to conclude that the Co-Lawyers intend to act as mediators between Mr. IENG Sary and Mr. MEAS Muth. While it may be profitable to be reminded of such instances, which serve as examples of utter ignorance of or disregard for binding ethical principles, invoking absurd and imbecilic comments by a lawyer in an unrelated matter to suggest the Co-Lawyers' like-mindedness, is inappropriate and excessive – even in the heat of combative advocacy. Lawyer Željko Olujić's statements as to how he would represent multiple clients have no bearing on how the Co-Lawyers intend to simultaneously represent Mr. IENG Sary and Mr. MEAS Muth.

Ability to properly advise on mitigating factors

37. In paragraphs 47 to 48 of the Request, the International Co-Prosecutor submits that mitigating factors may play a role in sentencing, as they did for the Accused Duch in Case 001. The Co-Lawyers submit that, in essence, Case 001 was effectively a plea hearing. It was not a trial in the manner of Case 002, where Mr. IENG Sary has mounted a vigorous defence against his criminal charges, or in the anticipated manner of Case 003, where Mr. MEAS Muth intends to fully challenge the charges placed against him and to strongly exercise his fair trial right to present a defence. The Trial Chamber's consideration of Duch's cooperation as a mitigating factor is irrelevant to either Case 002 or Case 003.

⁸¹ See *Prlić Appeals Chamber Decision on Request for Appointment of Counsel, Separate Opinion of Judge Florence Ndepele Mwachande Mumba*, p. 1 (emphasis added), concurring with the decision to dismiss the interlocutory appeal but finding: “The discussion of the possible scenarios for conflict of interest in the impugned decision hinge, in my view, on mere speculation. No iota of evidence was adduced to allow for the level of interference in the strategy of the Defence case as was pleaded by the Prosecution. Similarly, it is for the accused, and not the Chamber, to strategise the Defence case. *Accepting that every trial bears a potential for conflict of interest, a Chamber's intervention should be based on more than mere speculation in this important aspect of the rights of accused persons to a fair trial.*”

38. However, it does merit recalling that after Duch's trial the OCP requested a sentence of 40 years (which took into consideration his unlawful detention by the Cambodian military and applicable mitigating factors).⁸² During their closing statement, the OCP amended its sentencing submissions to state that no mitigating factors should be considered as Duch was now arguing for acquittal,⁸³ regardless of his prior cooperation. As Duch's International Co-Lawyer Francois Roux stated: "I regret I was -- that we hadn't stressed this co-operation that was so useful, that the Co-Prosecutors have not brought up this point which was so useful for justice."⁸⁴ The Trial Chamber imposed a 35-year sentence, with a 5-year reduction to account for Duch's time in military detention.⁸⁵ On appeal, the OCP requested the same sentence of 40 years.⁸⁶ The Supreme Court Chamber, unsatisfied with the quantity and quality of Duch's cooperation and finding that his sentence did not appropriately reflect the gravity of the crimes and his individual circumstances, increased his sentence to life imprisonment.⁸⁷
39. It further merits recalling that Mr. MEAS Muth is considered – at least by the International Co-Prosecutor – to be at the same level, if not higher, than Duch. At Mr. MEAS Muth's age (believed to be in his 70s), any sentence effectively amounts to a death-in-prison sentence. Duch's case was highly televised and discussed by the media; the facts and results are notorious. Mr. MEAS Muth is aware of the supposed mitigating sentence that Duch received as a result of his extensive cooperation and has been fully apprised of the positives and negatives of cooperation in Case 003. It was with full knowledge and deliberation, and after first being advised by DSS⁸⁸ and subsequently the Co-Lawyers, of his fair trial rights, that he signed the notice invoking his right to remain silent and refusing to testify in Case 002 or 003.
40. In paragraph 49 of the Request, the International Co-Prosecutor submits that the Co-Lawyers may need to advise their clients to accept responsibility for the charges against them or to give self-incriminating testimony. The Co-Lawyers re-affirm that both Mr. IENG Sary and Mr. MEAS Muth have categorically stated that they will not make

⁸² *Case of Kaing Guek Eav alias "Duch"*, Trial Judgement, 26 July 2010, E188, para. 569.

⁸³ *Id.*, para. 606.

⁸⁴ *Case of Kaing Guek Eav alias "Duch"*, Transcript, 26 November 2009, E1/81.1, p. 76-77.

⁸⁵ *Case of Kaing Guek Eav alias "Duch"*, Trial Judgement, 26 July 2010, E188, paras. 631-32.

⁸⁶ *Case of Kaing Guek Eav alias "Duch"*, Appeal Judgement, 3 February 2012, F28, para. 358.

⁸⁷ *Id.*, paras. 368, 383.

⁸⁸ See MEAS Muth's Notice of Intent to Exercise Right to Remain Silent and Waiver of any Potential Conflict of Interest, 13 June 2012.

statements to the OCIJ or the Trial Chamber about the criminal charges placed against them nor will they present self-incriminating testimony. There is thus no concern that the Co-Lawyers will need to advise them to do so.

41. In paragraph 50 of the Request, the International Co-Prosecutor submits that it may be in Mr. MEAS Muth's interest to establish that he acted under duress or on the basis of orders from the Standing Committee in any submissions on mitigation. The International Co-Prosecutor submits that any such submission could potentially incriminate Mr. IENG Sary. Again, the International Co-Investigating Judge should not base its decision on speculation by the International Co-Prosecutor. Both Mr. IENG Sary and Mr. MEAS Muth maintain that there was no superior-subordinate relationship between them such that Mr. MEAS Muth could argue duress or the defence of superior orders with regard to Mr. IENG Sary.

The clients' consent to the Co-Lawyers' representation

42. In paragraphs 51 to 53 of the Request, the International Co-Prosecutor submits that: **a.** the conflicts that would arise from the Co-Lawyers' dual representation of Mr. IENG Sary and Mr. MEAS Muth are "too numerous and pervasive" to be resolved by waivers;⁸⁹ **b.** the appointment of the Co-Lawyers to Mr. MEAS Muth's case would "irreparably harm the integrity of" Case 002 because he is scheduled to appear as a witness;⁹⁰ and **c.** the administration of justice would be "irreversibly prejudiced" because Mr. IENG Sary and Mr. MEAS Muth would be empowered to substantially delay future proceedings simply by withdrawing their consent and demanding the removal and replacement of the Co-Lawyers.⁹¹ The Co-Lawyers respectfully submit that the International Co-Prosecutor's submissions are unsubstantiated. Mr. MEAS Muth, as argued *supra*, cannot be compelled to give evidence in Case 002, especially if that evidence will be self-incriminating, as it clearly would be. All other assertions by the International Co-Prosecutor are pure speculation and are offered as a means of stifling Mr. MEAS Muth's ability to be represented by the counsel of his choice.

⁸⁹ Request, para. 51.

⁹⁰ *Id.*, para. 52.

⁹¹ *Id.*, para. 53.

43. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] As stated *supra*, Mr. MEAS Muth has filed a notice of intention to remain silent and will not testify as a witness, either in Case 003 or Case 002. Therefore, the Co-Lawyers will *neither* be required to cross-examine him, *nor* will they be in violation of the Rules by having contact with a potential witness in Case 002.

44. Finally, the International Co-Prosecutor's submission regarding arming Mr. IENG Sary and Mr. MEAS Muth with the "tactical means" to delay the proceedings is not a valid reason to reject the appointment of the Co-Lawyers to Case 003. This is a baseless accusation. The International Co-Prosecutor provides no evidence upon which any showing is made that the Co-Lawyers have in Case 002, or will in Case 003, engage in any "tactical" conduct that is questionable or unethical. In Case 002, Mr. IENG Sary revoked his waivers of his right to be present during the testimony of certain witnesses and Civil Parties in response to the Trial Chamber finding him fit to stand trial.⁹² This revocation *did not* delay the proceedings in Case 002, as Mr. IENG Sary was ordered to participate in the proceedings from the holding cell.⁹³ If the International Co-Prosecutor is of the opinion that the Co-Lawyers have engaged in tactical gamesmanship in Case 002 and / or are inclined to engaged in such conduct to circumvent the proceedings in either Case 002 or Case 003, then he should make appropriate submissions before the relevant Chambers and file complaints with the Co-Lawyers' respective Bar Associations.

III. CONCLUSION AND RELIEF REQUESTED

45. Mr. MEAS Muth has the fundamental fair trial right to mount a defence with the assistance of counsel of his choosing.⁹⁴ Mr. MEAS Muth has selected the Co-Lawyers to represent him, which DSS has approved. The Co-Lawyers have discussed with Mr. IENG Sary and Mr. MEAS Muth any potential conflicts of interests that might arise in

⁹² IENG Sary's Withdrawal of Waivers of Right to be Present, 3 December 2012, E237/2; IENG Sary's Notice of Withdrawal of Waivers of Right to be Present During the Testimony of Certain Witnesses and Civil Parties, 6 December 2012, E249.

⁹³ Transcript, 4 December 2012, E1/147.1, p. 17-19.

⁹⁴ Cambodian Constitution, Art. 38; Agreement, Art. 13(1); Establishment Law, Art. 35 new (d).

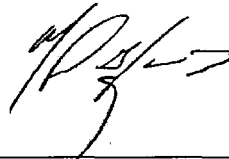
their cases as a result of the Co-Lawyers' dual representation. The Co-Lawyers, Mr. IENG Sary and Mr. MEAS Muth are satisfied that no actual or potential conflicts of interests exist between the two cases. The International Co-Prosecutor has not made a sufficient showing that irreconcilable conflicts of interest exist that merit denying the Co-Lawyers' appointment to Case 003.

WHEREFORE, for all the reasons stated herein, the Co-Lawyers respectfully request the International Co-Investigating Judge to **REJECT** the International Co-Prosecutors' Request and to **CONFIRM** the appointment of the Co-Lawyers to Case 003.

Respectfully submitted,



ANG Udom



Michael G. KARNAVAS

Co-Lawyers

Signed in Phnom Penh, Kingdom of Cambodia on this 4th day of **March, 2013**