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មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé
..... Sann Rada



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

ព្រះរាជាណាចក្រកម្ពុជា
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

30 January 2015

H.E. Mr. Em Sam An
Secretary of State, Ministry of Interior
Chairman of the Security Commission for the ECCC

Dear Excellency Mr. Em Sam An:

My name is Mark B. Harmon and I serve as the International Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia (ECCC). The purpose of my letter is to bring to your attention that efforts to secure the attendance of two suspects, Im Chaem and Meas Mut, at initial appearance hearings at the ECCC have not been successful and that I intend to take additional steps, described hereinafter, that will result in their being charged with crimes falling within the jurisdiction of the Court.

In September 2009, the International Co-Prosecutor filed a request to the Co-Investigating Judges to open judicial investigations in Cases 003 and 004. The investigations conducted to date reveal that there exists clear and consistent evidence to partially charge both suspects with crimes falling within the jurisdiction of the ECCC.

As a matter of background, both Im Chaem and Meas Mut were summoned to the Court for their initial appearances and both suspects willfully failed to appear on the designated dates. As a consequence, arrest warrants (mandats d'amener) were issued for Im Chaem on 14 August 2014 and for Meas Mut on 10 December 2014. Immediately following the issuance of these arrest warrants, the Cambodian Judicial Police were requested to execute them pursuant to the relevant provisions of the Agreement Between the United Nations and the Royal Government of Cambodia, the Statute of the Tribunal, and the Internal Rules of the ECCC.¹ To date, neither arrest warrant has been executed.

On 17 October 2014, I met with the ECCC Judicial Police Liaison Officer, General Soleng Lor, to discuss the status of the outstanding arrest warrant for Im Chaem. He proposed that outreach programs be conducted in the area where the suspect resided as a condition to executing the arrest warrant. I reluctantly accepted his suggestion and between the 11th and 21st of November 2014, nine separate outreach programs were conducted in the provinces of Odder Meanchey, Battambang and Pailin (including one program in Samlot, the town where Meas Mut resides). Since the outreach programs were completed, more than two months have passed and neither arrest warrant has been executed.

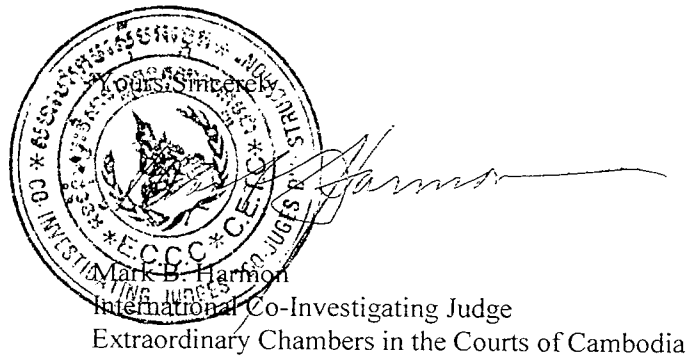
¹ Article 25 of the Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (Agreement); Article 25 New of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (Statute); and Rule 15 of the Internal Rules.



Because it is unclear when the arrest warrants will be executed, I have concluded that further delays will be inimical to the interests of justice as this could jeopardize the rights of the suspects under Article 14 of the International Convention on Civil and Political Rights (ICCPR)², including the right to participate in an investigation and the right to be tried without undue delay, and also adversely affect the rights of victims and the Cambodian people to obtain justice for the crimes committed during the period of Democratic Kampuchea. In order to protect the interests of the suspects and the Cambodian people, foster respect for the rule of law, ensure the proper functioning of the court, and bring the investigations to a timely conclusion, I have determined that the only prudent course of action to take, in the face of inaction by the Judicial Police, is to charge both suspects *in absentia*. I have reached this conclusion reluctantly but feel that I am left with no other choice. I foresee that taking this action will invite considerable public attention on the failure of the Judicial Police to discharge their responsibilities under the terms of the Agreement, however further delay creates an unacceptable risk to the rights of the suspects and the victims and will engender disrespect for both the rule of law and this Extraordinary Chamber of the Cambodian Courts.

I therefore wish to inform you that should either or both of the suspects fail to present themselves to the Court before 18 February 2015 or should they not be arrested by that date, I intend to issue public decisions charging them *in absentia*.

Please accept, your Excellency, the assurances of my highest consideration.

The image shows a circular official seal of the Extraordinary Chambers in the Courts of Cambodia (ECCC). The seal features a central emblem with a scale of justice and a sword, surrounded by text in Khmer and English. The English text includes 'CO-INVESTIGATING JUDGES' and 'ECCC'. A handwritten signature in black ink is written over the seal. Below the seal, the name 'Mark B. Harmon' and his title 'International Co-Investigating Judge' are printed, followed by 'Extraordinary Chambers in the Courts of Cambodia'.

Mark B. Harmon
International Co-Investigating Judge
Extraordinary Chambers in the Courts of Cambodia

² Cambodia acceded to the ICCPR on 26 May 1992. The applicability of Article 14 of the ICCPR to proceedings before the ECCC is explicitly set forth in Article 13 of the Agreement.