

**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 TO RECLASSIFY AS PUBLIC HIS REQUEST TO RESCIND THE 10 DECEMBER 2014 ARREST WARRANT, HIS REPLY TO THE INTERNATIONAL CO-PROSECUTOR’S RESPONSE TO MEAS MUTH’S REQUEST TO RESCIND THE ARREST WARRANT ISSUED ON 10 DECEMBER 2014, THE 4 JUNE 2015 ARREST WARRANT, AND HIS URGENT REQUEST FOR A STAY OF EXECUTION OF THE 4 JUNE 2015 ARREST WARRANT AND TO CLASSIFY ALL RELATED FORTHCOMING SUBMISSIONS AS PUBLIC

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Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), pursuant to Rule 21 of the ECCC Internal Rules, hereby requests that *MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014*,¹ *MEAS Muth’s Reply to the International Co-Prosecutor’s Response to MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014*,² the 4 June 2015 *Arrest Warrant*,³ and *MEAS Muth’s Urgent Request for a Stay of Execution of the Arrest Warrant Issued on 4 June 2015 by Co-Investigating Judge Harmon Pending a Decision on the Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth In Absentia*⁴ be reclassified as Public. He further requests that all related forthcoming submissions be classified as Public.⁵ This Request is made necessary in the interests of transparency and to prevent misinformation. There have been recent media reports about the 10 December 2014 Arrest Warrant issued against Mr. MEAS Muth. In the interests of justice and to enable the public to understand the recently reclassified documents in their full and proper context, the above submissions must be reclassified as public. The Defence requests to file this Request in English only with the Khmer translation to follow, considering the delays currently facing the Interpretation and Translation Unit.⁶

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.⁷
2. On 3 March 2015, Co-Investigating Judge Harmon charged Mr. MEAS Muth *in absentia*, giving him the right to access the Case File and participate in the judicial investigation.⁸

¹ MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014, 10 March 2015, D130.

² MEAS Muth’s Reply to the International Co-Prosecutor’s Response to MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014, 7 April 2015, D130/2.

³ Arrest Warrant, 4 June 2015, C2.

⁴ MEAS Muth’s Urgent Request for a Stay of Execution of the Arrest Warrant Issued on 4 June 2015 by Co-Investigating Judge Harmon Pending a Decision on the Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth *In Absentia*, 5 June 2015, C2/1.

⁵ Such as Mr. MEAS Muth’s forthcoming Reply to the International Co-Prosecutor’s Response to MEAS Muth’s Urgent Request for a Stay of Execution of the Arrest Warrant Issued on 4 June 2015 by Co-Investigating Judge Harmon Pending a Decision on the Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth *In Absentia*, Mr. MEAS Muth’s forthcoming Response to the International Co-Prosecutor’s Request for Extension of Time to Respond to MEAS Muth’s Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth *In Absentia*, and Mr. MEAS Muth’s forthcoming Reply to the International Co-Prosecutor’s forthcoming Response to MEAS Muth’s Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth *In Absentia*.

⁶ See Email from the Interpretation and Translation Unit to the Defence, titled “RE: Translation request”, 26 June 2015.

⁷ Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008, D1.

3. On 10 March 2015, the Defence filed a request that all of its submissions to the OCIJ be reclassified as Public (“Reclassification Request”).⁹ On the same date, the Defence filed MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014. Although the Defence proposed that this document be classified as Public, it was classified as Confidential.
4. On 7 April 2015, the Defence filed MEAS Muth’s Reply to the International Co-Prosecutor’s Response to MEAS Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014. Although the Defence proposed that this document be classified as Public, it was classified as Confidential.
5. On 4 June 2014, Co-Investigating Judge Harmon issued a new Arrest Warrant for Mr. MEAS Muth.¹⁰ This document was classified as Confidential.
6. On 5 June 2015, the Defence filed MEAS Muth’s Urgent Request for a Stay of Execution of the Arrest Warrant Issued on 4 June 2015 by Co-Investigating Judge Harmon Pending a Decision on the Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth *In Absentia*. Although the Defence proposed that this document be classified as Public, it was classified as Confidential.
7. On 16 June 2015, Co-Investigating Judge Harmon issued a Decision on the Reclassification Request.¹¹ He reclassified as Public 39 of the Defence’s submissions along with an additional 63 related documents he deemed necessary to enable the public to “peruse the documents made available through this decision in their full and proper context.”¹² Included in the documents reclassified as Public are:
 - a. The Summonses to an Initial Appearance sent to Mr. MEAS Muth and his Co-Lawyers in November 2014 and related correspondence, including Mr. MEAS Muth’s Notice of Noncompliance with his Summons;¹³

⁸ Decision to Charge MEAS Muth *In Absentia*, 3 March 2015, D128.

⁹ MEAS Muth’s Request to Reclassify Documents as Public, 10 March 2015, D129.

¹⁰ Arrest Warrant, 4 June 2015, C2.

¹¹ Decision on MEAS Muth’s Request to Reclassify as Public with Public Annexes A and B and Confidential Annex C, 16 June 2015 (“Reclassification Decision”), D129/1.

¹² *Id.*, para. 15.

¹³ Summons of MEAS Mut[h] for Initial Appearance, 26 November 2014, A66; Written Record of Service of Summons of MEAS Mut[h] for Initial Appearance, 5 December 2014, A66/1; Summons of MEAS Mut[h]’s Co-Lawyers for the Initial Appearance of MEAS Mut[h], 28 November 2014, A67; Notice Concerning Mr. MEAS Muth’s Decision not to Recognize Summons, 3 December 2014, A67/1; MEAS Muth’s Decision Not to

- b. The 10 December 2014 Arrest Warrant;¹⁴ and
- c. Co-Investigating Judge Harmon's Decision to Charge MEAS Muth *In Absentia*.¹⁵

II. LAW AND ARGUMENT

8. Mr. MEAS Muth has the fundamental right to a transparent, fair, and public judicial process, which is recognized and protected under the Cambodian Constitution,¹⁶ the Agreement,¹⁷ the Establishment Law,¹⁸ Rule 21(1), and the International Covenant on Civil and Political Rights.¹⁹ While there is a need for confidentiality in the judicial investigation,²⁰ this need must be balanced against the interests of justice²¹ and the need to keep the public informed and educated as to the proceedings.²² For a recitation of the law and procedure applicable to Requests for Reclassification, Mr. MEAS Muth incorporates by reference paragraphs 1 to 5 of the Reclassification Request.
9. Mr. MEAS Muth's Request to rescind the 10 December 2014 Arrest Warrant, and its related Reply were not reclassified by Co-Investigating Judge Harmon in the Reclassification Decision because they were not included in the Reclassification Request, having been filed after the Request. However, like the other reclassified documents, these documents can be reclassified as Public without compromising the confidential nature or integrity of the judicial investigation. They relate to documents that were reclassified as public, including the 10 December 2014 Arrest Warrant itself, the preceding Summonses,

Recognize Summons, 3 December 2014, A67/1.1; Notification Concerning Notice Concerning Mr. MEAS Muth's Decision Not to Recognize Summons, 4 December 2014, A67/1/1; Notice Concerning Attendance at Scheduled Initial Appearance 8 December 2014, 5 December 2014, A67/2; Response to the Notice Concerning Attendance at Scheduled Initial Appearance 8 December 2014, 5 December 2014, A67/2/1; MEAS Muth's Application to Seize the Pre-Trial Chamber with a Request for Annulment of Summons to Initial Appearance, 15 December 2014, A77; MEAS Muth's Notice of Appeal against Co-Investigating Judge Harmon's Denial of his Application to Seize the Pre-Trial Chamber with a Request for Annulment of Summons to Initial Appearance, 19 December 2014, A77/1/1.

¹⁴ Arrest Warrant, 10 December 2014, C1.

¹⁵ Decision to Charge MEAS Muth *In Absentia*, 3 March 2015, D128.

¹⁶ Constitution of the Kingdom of Cambodia dated 24 September 1993 Modified by Kram dated 8 March 1999 promulgating the amendments to Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia which was adopted by the National Assembly on the 4th of March 1999, Art. 31.

¹⁷ 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, Art. 13(1).

¹⁸ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, Art. 33 new.

¹⁹ International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976 in accordance with Article 49, Art. 14(1).

²⁰ See ECCC Internal Rule 56(1).

²¹ See Practice Direction on the Filing of Documents, Art. 3.14.

²² See Practice Direction on the Classification and Management of Case-Related Information, Art. 1.2.

and the subsequent Decision to charge Mr. MEAS Muth *in absentia*. They do not contain any additional information that must be kept confidential.

10. The reclassified documents were made Public “in order for the public to be able to peruse the documents ... in their full and proper context...”²³ Mr. MEAS Muth’s Request to rescind the 10 December 2014 Arrest Warrant, and its related Reply *must* also be reclassified, otherwise the public *will not* have the full and proper context to the recently reclassified documents.
11. Although the new 4 June 2015 Arrest Warrant remains confidential, it and MEAS Muth’s Urgent Request to stay its execution pending a decision on his Appeal Against Co-Investigating Judge Harmon’s Decision to Charge MEAS Muth must be reclassified. There has recently been a flurry of media attention surrounding the recently reclassified documents.²⁴ Failure to reclassify *all* relevant documents causes confusion and misinformation. For example, in an 18 June 2015 article, the Cambodia Daily, discussing the 10 December 2014 Arrest Warrant, quoted the ECCC Chief of Security as stating that he had only received the Arrest Warrant “a week ago.”²⁵ It is highly likely that the ECCC Chief of Security was speaking of the new 4 June 2015 Arrest Warrant, yet if the public is unaware that this second Arrest Warrant has been issued, members of the public may come to the conclusion that the ECCC Chief of Security is lying.
12. Now that the reclassified documents are being discussed in the media, the United Nations is even “reviewing” them.²⁶ To promote transparency and ensure that a full and complete record is available for review, the new 4 June 2015 Arrest Warrant and *all* of the Defence submissions referred to herein (those already filed and forthcoming related submissions) must be reclassified.
13. Transparency is also necessary because the public may misunderstand Mr. MEAS Muth’s reaction to recent events, concluding that he does not recognize the authority of the

²³ Reclassification Decision, para. 15.

²⁴ See, e.g., Holly Robertson & Khuon Narim, *Gov’t Ignored Arrest Warrant for Accused War Criminal*, CAMBODIA DAILY, 18 June 2015; Holly Robertson, *UN to Review Documents Relating to Meas Muth*, CAMBODIA DAILY, 23 June 2015.

²⁵ Holly Robertson & Khuon Narim, *Gov’t Ignored Arrest Warrant for Accused War Criminal*, CAMBODIA DAILY, 18 June 2015.

²⁶ Holly Robertson, *UN to Review Documents Relating to Meas Muth*, CAMBODIA DAILY, 23 June 2015: “The U.N. plans to ‘review’ a slew of newly declassified documents that show that judicial police ignored an arrest warrant for Khmer Rouge navy commander and accused war criminal Meas Muth, according to the U.N.’s special expert on the Extraordinary Chambers in the Courts of Cambodia (ECCC).”

ECCC. In actuality, Mr. MEAS Muth has been acting through his Co-Lawyers, filing submissions in accordance with ECCC procedures. The public will better understand this if *all* the requested documents are reclassified as Public. The Defence does not consider any redaction to be necessary at this time, but should some of the forthcoming related submissions contain information that must be kept confidential, such information can be easily redacted.

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests that the Co-Investigating Judges:

- A. RECLASSIFY as Public MEAS Muth's Request to Rescind the Arrest Warrant Issued on 10 December 2014, MEAS Muth's Reply to the International Co-Prosecutor's Response to MEAS Muth's Request to Rescind the Arrest Warrant Issued on 10 December 2014, the 4 June 2015 Arrest Warrant, and MEAS Muth's Urgent Request for a Stay of Execution of the Arrest Warrant Issued on 4 June 2015 by Co-Investigating Judge Harmon Pending a Decision on the Appeal Against Co-Investigating Judge Harmon's Decision to Charge MEAS Muth *In Absentia*; and
- B. CLASSIFY as Public any forthcoming related submissions.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 26th day of **June, 2015**