



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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

Royaume du Cambodge  
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

Office of the Co-Investigating Judges  
Bureau des co-juges d'instruction

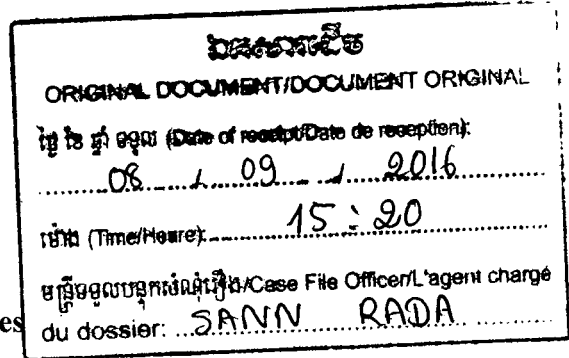
Case File No: 003/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 8 September 2016

Language(s): English [Original]

Classification: PUBLIC



**NOTICE OF PLACEMENT ON THE CASE FILE OF AVAILABLE RECORDS RELATING TO THE ESTABLISHMENT OF THE ECCC**

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## I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 7 and 22 February 2013, and 17 July 2014.
2. On 10 November 2015, the Meas Muth Defence (“Defence”) requested the CIJs to obtain and place on the Case File archive materials of the negotiations between the United Nations (“UN”) and the Royal Government of Cambodia (“RGC”) for the establishment of the ECCC (“Archive Materials Request”).<sup>1</sup> In an annex to the Archive Materials Request (“Defence Annex”), the Defence identified folders listed on the website of the United Nations Archives and Record Management (“UNARMS”) which they considered potentially relevant to the negotiations between the UN and the RGC. Three of the listed documents were identified by the Defence as having a *strictly confidential* classification, while the remaining documents were listed as having no access restrictions.<sup>2</sup>
3. On 1 February 2016, I granted the Archive Material Request.<sup>3</sup>
4. On 3 May 2016, I notified the Defence that I had requested access to the strictly confidential documents listed in the Defence Annex from the United Nations’ Under-Secretary General for Legal Affairs, but that my request had been denied because the documents sought were considered sensitive and thus could not be disclosed. I also informed the Defence that I would make efforts to obtain the unclassified documents listed in the Defence Annex.<sup>4</sup>

## II. EFFORTS MADE TO OBTAIN RELEVANT ARCHIVE MATERIALS FROM THE UNITED NATIONS

5. On 12 May 2016, I wrote a letter to UNARMS requesting information on the content of the unclassified folders listed in the Defence Annex. I further requested to be provided with a list of any classified and unclassified documents in their possession relating to the negotiations between the UN and the RGC for the establishment of the ECCC.<sup>5</sup>
6. On 20 May 2016, UNARMS responded, stating that some of the documents contained in the folders listed in the Defence Annex required screening before they could be disclosed. Some other documents were not classified and could thus be disclosed without any specific authorisation. With regard to the request for a list of other documents relating to the UN-RGC negotiations, UNARMS stated that they were willing to assist but requested more specific information on the nature of the documents sought.<sup>6</sup> On the same date, a Legal Officer from the Office of the Co-Investigating Judges (“OCIJ”) provided the additional information requested by UNARMS, including a timeline of the negotiations

<sup>1</sup> Case File No. 003-D170, *Meas Muth’s Request to Obtain and Place on the Case File the United Nations and Royal Government of Cambodia Archive Material concerning the Negotiations to Establish the ECCC*, 10 November 2015 (“Archive Materials Request”).

<sup>2</sup> See Archive Materials Request, para. 34, and Case File 003-D170.2, *Annex – Potentially Relevant Folders in the UN Archives*.

<sup>3</sup> Case File No. 003-D181, *Consolidated Decision on Meas Muth’s Requests on Personal Jurisdiction*, 1 February 2016, para. 45.

<sup>4</sup> Case File No. 003-D181/1, *Notice of Unsuccessful Attempt to Obtain Strictly Confidential United Nations’ Archive Materials*, 3 May 2016.

<sup>5</sup> Case File No. 003-D181/2.1, *12 May 2016 Letter to UNARMS*, 12 May 2016.

<sup>6</sup> Case File No. 003-D181/2.2, *Email from UNARMS*, 20 May 2016.



between the UN and the RGC (“Negotiations Timeline”), and requested provision of “*any record of the meetings, correspondence, and exchange of memoranda listed in the attachment to this email.*”<sup>7</sup>

7. On 25 May 2016, UNARMS emailed the OCIJ Legal Officer stating that they were reviewing the documents listed in the Defence Annex to determine which ones required permission to be disclosed. UNARMS also provided the OCIJ with information on the availability and classification of the records of the negotiations listed in the Negotiations Timeline. Some of these records could not be located by UNARMS, others were located and were listed as unclassified, while some other records were classified as *not disclosed* and required the UN’s authorisation to be disclosed to the OCIJ. UNARMS also stated that they were willing to assist the OCIJ in obtaining such authorisation and provided suggestions on how to best proceed on this matter.<sup>8</sup>
8. Following UNARMS’ suggested approach, on 14 June 2016 I wrote to the Chief of UNARMS requesting information on the content of a number of folders available on their website and identified in Annex A to my 14 June 2016 letter. I also requested provision of a number of documents relevant to the UN-RGC negotiations and identified in Annex B to the letter.<sup>9</sup>
9. Between 1 July and 16 August 2016, UNARMS made the unclassified documents listed in Annex A of the 14 June 2016 letter available to the OCIJ. UNARMS also informed the OCIJ that the United Nations’ Office for Legal Affairs (“OLA”) was reviewing the classified documents, which included all documents generated from 1997 onwards, since UN records remain classified for 20 years after their creation.<sup>10</sup> All the documents listed in Annex B to the 14 June 2016 Request were generated from 1998 onwards.
10. On 19 August 2016, I received a letter from the Assistant Secretary-General (“ASG”) in charge of OLA, dated 16 August 2016, who informed me that the majority of the documents listed in Annexes A and B to my 14 June 2016 letter were classified as *strictly confidential* and could not be disclosed. The ASG noted that a number of unclassified documents which were part of my request had already been made available by UNARMS. He also provided the OCIJ with a number of documents relating to the establishment of the ECCC and that were not subject to any restriction.<sup>11</sup>
11. Upon review of the documents provided to the OCIJ by UNARMS between 1 July and 16 August 2016, and those provided by OLA’s ASG with his 16 August 2016 letter, I have identified a number of records which contain references to the intended scope of the ECCC’s personal jurisdiction.

#### **FOR THE FOREGOING REASONS, I:**

<sup>7</sup> Case File No. 003-D181/2.3, *Email from Legal Officer Filippo de Minicis to UNARMS*, 20 May 2016.

<sup>8</sup> Case File No. 003-D181/2.4, *Email from UNARMS to Legal Officer Filippo de Minicis*, 26 May 2016.

<sup>9</sup> Case File No. 003-D181/2.5, *Letter to the Chief of UNARMS*, 14 June 2016.

<sup>10</sup> Case File No. 003-D181/2.6, *Email correspondence between UNARMS and Legal Officer Filippo de Minicis*.

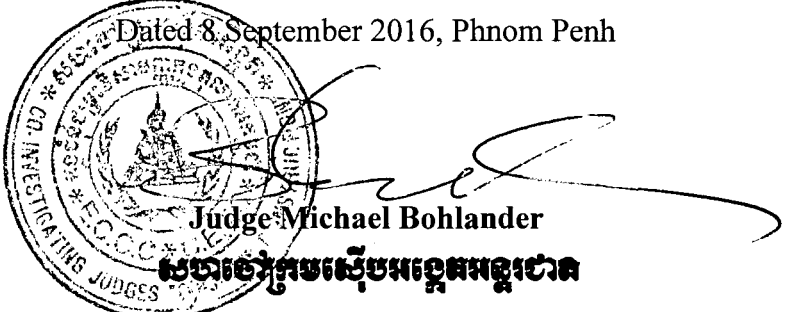
<sup>11</sup> Case File No. 003-D181/2.7, *Letter from the OLA’s ASG, with attachments*, 16 August 2016.



12. **INSTRUCT** the Greffier to place on Case File 003 the documents listed in the Annex to this decision.

This notice is filed in English, with a Khmer translation to follow.

Dated 8 September 2016, Phnom Penh



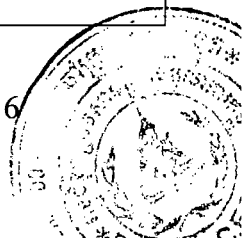
**Judge Michael Bohlander**  
**សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ**  
**International Co-Investigating Judge**  
**Co-juge d'instruction international**

**Annex to the Notice of Placement on the Case File of Available  
Records Relating to the Establishment of the ECCC**

#	Document name	Date	Author(s)	Source
D181/2.8	Letter from Secretary-General Annan to President of the Security Council	31 July 1998	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.9	Letter from Secretary-General Annan to President of the General Assembly	31 July 1998	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.10	Resolution adopted by the General Assembly: 53/145. Situation of human rights in Cambodia	9 December 1998	UN General Assembly	UN General Assembly
D181/2.11	Identical letters dated 21 January 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and the President of the Security Council	22 January 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.12	Identical letters dated 3 March 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and the President of the Security Council	3 March 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.13	Press briefing: Mr Hor Namhong	12 March 1999	Hor Namhong	Unknown
D181/2.14	Letter dated 15 March 1999 from Secretary-General Annan addressed to the President of the General Assembly	15 March 1999	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.15	Identical letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council. Attaches report by Group of Experts established under GA Res 52/135	16 March 1999	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.16	Letter dated 17 March 1999 from the Permanent Representative of Cambodia the United Nations addressed to the President of the Security Council	17 March 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN



D181/2.17	Letter from Secretary-General to Judge Lallah	17 March 1999	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.18	Letter from Secretary-General to Sir Ninian Stephen	17 March 1999	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.19	Letter from Secretary-General to Professor Steven R Ratner	17 March 1999	Secretary-General Kofi Annan	Presumably the Office of the Secretary-General
D181/2.20	Identical letters dated 17 March 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and the President of the Security Council	18 March 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.21	Letter dated 19 March 1999 from the Permanent Representative of Cambodia the United Nations addressed to the President of the Security Council	19 March 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.22	Identical letters dated 24 March 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and the President of the Security Council	24 March 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.23	Letter dated 19 April 1999 from the Permanent Representative of Cambodia the United Nations addressed to the President of the Security Council	19 April 1999	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN
D181/2.24	Situation of Human Rights in Cambodia – Report by Secretary General	20 September 1999	Secretary-General Kofi Annan	Executive Office of the Secretary-General
D181/2.25	Letter from Secretary-General to King Norodom Sihanouk for his birthday	22 October 1999	Secretary-General Kofi Annan	Executive Office of the Secretary-General
D181/2.26	Email from Sok An, President of the Group of Experts, to Kofi Annan, concerning the draft law creating the ECCC	12 January 2000	Sok An, Senior Minister	Ministry of State, Cambodian Permanent Mission to UN
D181/2.27	Letter from Ouch Borith, Permanent Representative of Cambodia to the United Nations, notifying the Secretary-General that a draft or establishing the ECCC has been finalized	18 January 2000	Ouch Borith, Permanent Representative of Cambodia to the United Nations	Cambodian Permanent Mission to UN



D181/2.28	Resolution Adopted By The General Assembly at the 83 <sup>rd</sup> plenary meeting on 17 December 1999 – 54/171. Situation of human rights in Cambodia	15 February 2000	General Assembly	General Assembly
D181/2.29	Letter from Hans Corell, Head of the UN Delegation, draft letter from the Secretary-General of the UN to Samdech Hun Sen, letter from Sok An to Hans Corell	21 March 2000	Hans Corell, Head of the UN Delegation	Hans Corell, Head of the UN Delegation, Sok An
D181/2.30	Letter from Kofi Annan to Samdech Hun Sen regarding the composition of the ECCC	19 April 2000	Secretary-General Kofi Annan	Executive Office of the Secretary-General
D181/2.31	Letter from Samdech Hun Sen to Kofi Annan regarding disagreements between the Co-Prosecutors and the Co-Investigating Judges	27 April 2000	Prime Minister Hun Sen	Cambodian Permanent Mission to UN
D181/2.32	Letters between Kofi Annan and Samdech Hun Sen about negotiations	28 June 2002, 29 July 2002, 12 July 2002, 18 July 2002, 19 August 2002	Secretary-General Kofi Annan; Prime Minister Hun Sen	various
D181/2.33	Letter from Samdech Hun Sen to Kofi Annan forwarded by Japanese Mission to UN	1 July 2002	Prime Minister Hun Sen	Japanese Mission to UN
D181/2.34	Resolution 57/228 adopted by the General Assembly about Khmer Rouge trials	27 February 2003	General Assembly	General Assembly
D181/2.35	-Note to the Secretary-General summarizing Sok An's position regarding the Khmer Rouge trials. -Non-paper summarizing the structure and functioning of the ECCC	6 January 2003	Hans Corell	unknown
D181/2.36	Statement by the United Nations Under-Secretary-General Hans Corell	17 March 2003	Hans Correl	unknown
D181/2.37	Note to the SG: Report to the General Assembly on Cambodia's ECCC	28 March 2003	Hans Corell; Iqbal Riza, Chef de Cabinet	various
D181/2.38	Report of the Secretary-General on Khmer Rouge trials	31 March 2003	Secretary-General Kofi Annan	Executive Office of the Secretary-General



D181/2.39	Letter from Jean-Marc de La Sabliere, French Ambassador, to Kofi Annan	30 April 2003	Jean-Marc de La Sabliere, French Ambassador	French Permanent Mission to the UN
D181/2.40	-Power from Kofi Annan to Hans Corell for signing the agreement between the UN and Cambodia concerning prosecution of the Khmer Rouge leaders. -Letter from Hans Corell to Sok An, Senior Minister in Charge of the Office of the Council of Ministers, concerning the signing of the agreement	16 May 2003	Secretary-General Kofi Annan; Hans Corell	
D181/2.41	-Resolution 57/228 adopted by the General Assembly about Khmer Rouge trials. -Annex: Draft agreement between the UN and Cambodia concerning prosecution of the Khmer Rouge leaders	22 May 2003	General Assembly	General Assembly

