



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិស័យក្នុងតុលាការកម្ពុជា

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

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Before: **The Co-Investigating Judges**
Date: **16 June 2015**
Language(s): **English [Original]**
Classification: **PUBLIC**

DECISION ON MEAS MUTH'S REQUEST TO RECLASSIFY AS PUBLIC WITH PUBLIC ANNEXES A AND B AND CONFIDENTIAL ANNEX C

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Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”);

Noting the Co-Prosecutors’ Second Introductory Submission, filed on 7 September 2009 (“Introductory Submission”);¹

Noting the International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, filed on 31 October 2014 (“Supplementary Submission”);²

Noting the judicial investigation relating to alleged violations of the **1956 Penal Code, Crimes against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949**, offences defined and punishable under Articles 3(new), 5, 6, 29 and 39 of the ECCC Law and Articles 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code;

Noting the *Decision to Charge Meas Muth* in absentia, filed on 3 March 2015 (“Decision to Charge”);³

Noting Rules 21, 56, and 72 of the ECCC Internal Rules (“Internal Rules”);

Noting Articles 1, 3, and 9 of the Practice Direction on the Classification and Management of Case-Related Information (“Practice Direction”);⁴

Considering *Meas Muth’s Request to Reclassify as Public*, filed on 10 March 2015 (“Request”);⁵

Noting the Disagreements registered on 7 and 22 February 2013 and 14 July 2014;

I. PROCEDURAL HISTORY

1. On 3 March 2015, the International Co-Investigating Judge (CIJ) charged MEAS Muth *in absentia* and notified him, *inter alia*, that his status had changed from “suspect” to “charged person.” As such, MEAS Muth would be able to exercise all rights to which charged persons are entitled under the Internal Rules.⁶
2. On 9 March 2015, the Defence filed a notice of appeal against the Decision to Charge.⁷

¹ Case File No. 003-D1, *Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008; Case File No. 003-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission*, 7 September 2009.

² Case File No. 003-D120, *International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003*, 31 October 2014.

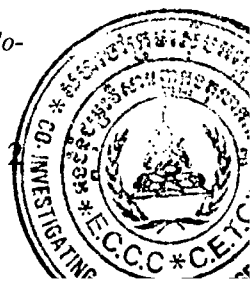
³ Case File No. 003-D128, *Decision to Charge Meas Muth* in absentia, 3 March 2015.

⁴ *Practice Direction on Classification and Management of Case-Related Information (rev. 2)*, 5 June 2014.

⁵ Case File No. 003-D129, *Meas Muth’s Request to Reclassify as Public*, 10 March 2015.

⁶ Decision to Charge, paras. 68, 72.

⁷ Case File No. 003-D128.1/1, *Appeal Register of MEAS Muth’s Notice of Appeal Against Co-Investigating Judge HARMON’s Notification of Charges Against MEAS Muth*, 9 March 2015.



3. On 10 March 2015, the Co-Lawyers for Meas Muth (“Defence”) filed the present Request.⁸

II. SUBMISSIONS

4. In the Request, the Defence ask that all its submissions to the Office of the Co-Investigating Judges (“OCIJ”), barring those addressing Meas Muth’s financial situation (“Requested Documents”), be re-classified as public in the interest of transparency. The Defence add that majority of the filings do not make reference to confidential Case File material and were classified as confidential only because Meas Muth had not been publicly named as a suspect by the Co-Investigating Judges (“CIJs”).⁹
5. The Defence add that it is in the interest of justice to reclassify the Requested Documents as public, since these documents are of public interest and will dispel inaccuracies reported in the press. Further, reclassification of the Requested Documents will allow the public to understand the work done by the Defence during the course of the investigation.¹⁰ The Requested Documents are listed in Annex A to the Request, along with one document that is requested to be made public with redactions, which is listed in Annex B and was filed with the proposed redactions.¹¹

III. APPLICABLE LAW

6. Internal Rule 21(1), in pertinent part, provides that:
- “1. 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.”
7. Internal Rule 56(1) provides that:
- “1. [...] [J]udicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality.”
8. Article 1 of the Practice Direction provides that:
- “1.1. This Practice Direction sets out rules for classification of case-related information and documents referred to in Article 2(d), unless otherwise determined by judicial decision.
- 1.2. The principle underlying this Practice Direction is the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.”
9. Article 3 of the Practice Direction provides that:

⁸ Request, p. 1.

⁹ Request, p.1 and para. 6.

¹⁰ Request, para. 6.

¹¹ Request, p. 1.



“3.1. In order to enable filing of documents in accordance with the levels of confidentiality indicated in Article 2(d), each subfolder category of the case file (as per the Practice Direction on Filing of Documents before the ECCC) will have a public, confidential and strictly confidential section. [...]

3.3. If a document to be filed consists of a portion which is public and a portion which is confidential or strictly confidential (e.g. a public filing with a confidential annex), the public portion of the document shall be filed in the public section of the case file, together with a sheet indicating the existence of a confidential or strictly confidential portion, as applicable. The confidential or strictly confidential portion shall be filed in the confidential or strictly confidential section of the case file, as applicable. [...]

10. Article 9 of the Practice Direction provides that:

“9.1. Documents or information can be re-classified (and placed in a section of the case file with a different level of confidentiality) only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate.

9.2. A public version of a confidential or strictly confidential document may be created for the purposes of placement in the public section of the case file, on instruction of the Co-Investigating Judges or a Chamber, as appropriate. The public version will be produced by:

- a. creating a copy of the original document
- b. redacting from the copy all confidential and strictly confidential information, as applicable, and
- c. submitting the redacted version to the Co-Investigating Judges or the Chamber for review and approval, prior to its placement in the public section of the case file.

A confidential version of a strictly confidential document may be created in similar manner.

9.3. If a public version of a confidential or strictly confidential document is to be prepared at the request of a party, any redactions shall be undertaken by the requesting party and submitted for approval in accordance with Article 9.2.(c).”

IV. DISCUSSION

11. The general principle of the confidentiality of judicial investigations set forth in Internal Rule 56(1) needs to be balanced with a charged person’s right to the transparency of the proceedings, enshrined in Internal Rule 21(1).¹² Consequently, if the reasons for classifying a document as confidential no longer exist, the CIJs may consider its reclassification as public.

12. Having reviewed the Requested Documents, the International CIJ finds that all but 15 documents can be reclassified from ‘confidential’ to ‘public’, without compromising the confidential nature and integrity of the judicial investigation.

¹² See Article 1.2 of the Practice Direction.



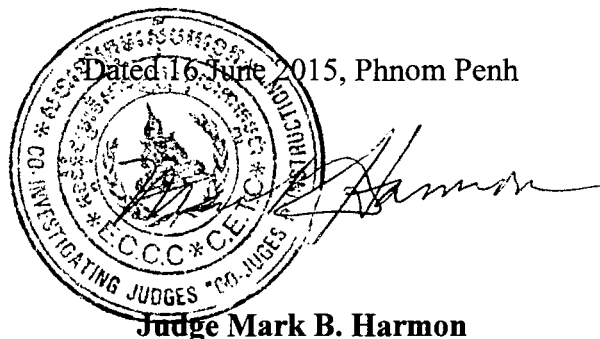
The list of documents that can be reclassified as public is contained in Annex A to this decision.

13. One document among the Requested Documents, listed in the second annex to the Request, contains information that remains confidential at this time. In accordance with Practice Direction 3.3 and 9.2, the International CIJ agrees with the proposed redaction of the confidential part of this document and reclassifies it as 'public' with the redaction. This document is identified as being redacted in Annex A.
14. The 15 documents that cannot be reclassified as public all pertain to the on-going investigation in Case 003 which are confidential, refer to other classified documents in the Case File, or contain identifying information about potential witnesses and victims. Consequently, in accordance with Internal Rule 56(1) and Practice Direction 1.2, the International CIJ does not consider it appropriate to reclassify these documents as 'public' at this time. These documents are listed in Confidential Annex C to this Decision.
15. Finally, the International CIJ notes that in order for the public to be able to peruse the documents made available through this decision in their full and proper context, certain related documents also need to be reclassified as 'public'. These additional documents provide relevant context to the Requested Documents and their reclassification will allow the public to have a better understanding of the judicial proceedings in Case 003. The International CIJ considers it appropriate, therefore, to reclassify these additional documents as 'public' at this time. These documents are listed in Annex B to this decision.
16. This Decision is issued in English with the Khmer translation to follow.

FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:

17. **ORDER** the reclassification of the documents in Annex A from confidential to public;
18. **ORDER** the reclassification of the documents in Annex B from confidential to public, with redactions as indicated in Annex B; and
19. **DENY** the reclassification from confidential to public of the documents in Confidential Annex C.

Dated 16 June 2015, Phnom Penh



Judge Mark B. Harmon

សមាជិកក្រុមស៊ើបអង្កេតអន្តរជាតិ
International Co-Investigating Judge
Co-juge d'instruction internationale