



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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: **3 July 2015**  
Language(s): **English [Original]**  
Classification: **PUBLIC**

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

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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 ;<sup>1</sup>

**Noting** the International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, filed on 31 October 2014;<sup>2</sup>

**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”);<sup>3</sup>

**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”);<sup>4</sup>

**Noting** *Decision on Meas Muth’s Request to Reclassify as Public with Public Annexes A and B and Confidential Annex C*, issued on 16 June 2015 (“First Decision”);<sup>5</sup>

**Considering** *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*, filed on 26 June 2015 (“Request”).<sup>6</sup>

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

<sup>1</sup> 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.

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

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

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

<sup>5</sup> Case File No. 003-D129/1, *Decision on Meas Muth’s Request to Reclassify as Public with Public Annexes A and B and Confidential Annex C*, 16 June 2015.

<sup>6</sup> Case File No. 003-142, *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*, 26 June 2015.



## 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.<sup>7</sup>
2. On 9 March 2015, the Defence filed a notice of appeal against the Decision to Charge.<sup>8</sup>
3. On 10 March 2015, the Co-Lawyers for Meas Muth (“Defence”) filed the first request for the reclassification of certain Defence submissions from confidential to public.<sup>9</sup>
4. On 16 June 2015, the International CIJ granted the request in part and reclassified the documents listed in Annexes A and B of the First Decision, and declined reclassification of documents listed in Confidential Annex C.<sup>10</sup>
5. On 26 June 2015, the Defence filed the present Request for reclassification of four specific submissions related to the arrest warrants issued against Meas Muth and classification of all its forthcoming submissions as public.<sup>11</sup> The Defence also request to file this Request in English only, with the Khmer translation to follow.<sup>12</sup>

## II. SUBMISSIONS

6. In the Request, the Defence ask to have the following submissions, (1) *Meas Muth’s Request to Rescind the 10 December 2014 Arrest Warrant*,<sup>13</sup> (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*,<sup>14</sup> (3) *Arrest Warrant* of 4 June 2015,<sup>15</sup> (4) *Meas Muth’s Urgent Request for a Stay of Execution of the 4 June 2015 Arrest Warrant and to Classify All Related Forthcoming Submissions as Public*,<sup>16</sup> and (5) all forthcoming submissions, reclassified as public by the Office of the Co-Investigating Judges (“OCIJ”) in the interest of transparency and to prevent misinformation.<sup>17</sup>
7. The Defence note that it had proposed for each of these filings to be classified as public, but they were classified as confidential.<sup>18</sup> The Defence add that the reclassification of these documents is necessitated by the First Decision which

<sup>7</sup> Decision to Charge, paras. 68, 72.

<sup>8</sup> 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.

<sup>9</sup> Case File No. 003-D129, *Meas Muth’s Request to Reclassify as Public*, 10 March 2015 (“First Request”).

<sup>10</sup> First Decision, paras 18-20.

<sup>11</sup> Request, p. 1, paras 3-6.

<sup>12</sup> Request, p. 1.

<sup>13</sup> Case File No. 003-D130, *Meas Muth Request to Rescind the 10 December 2014 Arrest Warrant*, 10 March 2015.

<sup>14</sup> Case File No. 003-D130/2, *Meas Muth Reply to the International Co-Prosecutor’s Response to Meas Muth’s Request to Rescind the Arrest Warrant Issued on 10 December 2014*, 26 May 2015.

<sup>15</sup> Case File No. 003-C2, *Arrest Warrant*, 4 June 2015.

<sup>16</sup> Case File No. 003-C2/1, *Meas Muth’s Urgent Request for a Stay of Execution of the 4 June 2015 Arrest Warrant and to Classify All Related Forthcoming Submissions as Public*, 5 June 2015 (“Request for Stay”).

<sup>17</sup> Request, p. 1.

<sup>18</sup> Request, paras 3-6.



made public documents pertaining to the summons and charging of Meas Muth.<sup>19</sup> The Defence also incorporate by reference submissions in paragraphs 1 through 5 of the First Request.<sup>20</sup>

8. The Defence submit 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.<sup>21</sup> They request that all forthcoming related submissions be classified as public in order to promote transparency and ensure full and complete record of the material that is available for review.<sup>22</sup>

### III. DISCUSSION

9. The International CIJ incorporates, by reference, paragraphs 8 through 13 of the First Decision, in the interest of brevity.
10. As a preliminary matter, the International CIJ notes the communication between the Defence and the translation unit of the ECCC, and accepts that awaiting the Khmer translation of the Request would have caused undue delay.
11. Having reviewed the four requested documents, the International CIJ finds that all, but the Request for Stay, can be reclassified from 'confidential' to 'public', without compromising the confidential nature and integrity of the judicial investigation. The Request for Stay was filed before the Pre-Trial Chamber and is as such outside the purview of the CIJs.
12. 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 documents made public by this decision 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. All documents made public by this decision are listed in Annex A.
13. In accordance with Internal Rule 56(1) and Practice Direction 1.2, the International CIJ considers that all filings before the CIJs are confidential unless judicially determined to be appropriate for reclassification to 'public.' Prospective classification all forthcoming related filings by the Defence as 'public' is inconsistent with the applicable law on classification of documents.
14. This Decision is issued in English with the Khmer translation to follow.

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

15. **GRANTS** leave to the Defence to file the present Request in English only with Khmer translation to follow;

<sup>19</sup> Request, para. 7.

<sup>20</sup> Request, para. 8.

<sup>21</sup> Request, paras 11-12.

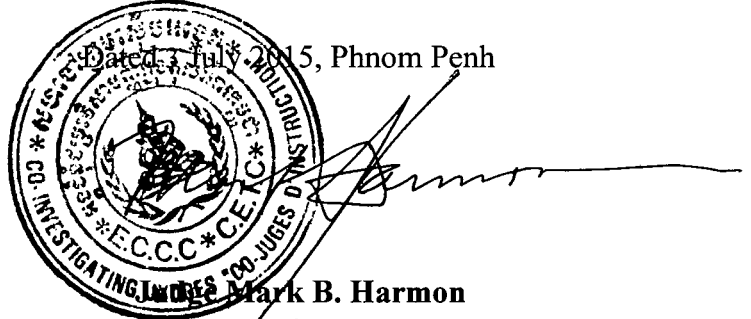
<sup>22</sup> Request, para. 12.



16. **ORDER** the reclassification of the documents in Annex A from confidential to public; and

17. **DENY** the Request in all other respects.

Dated: July 2015, Phnom Penh



Mark B. Harmon

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