



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Royaume du Cambodge  
Nation Religion Roi

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

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: 23 July 2015

Language(s): English [Original]

Classification: PUBLIC

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):
..... 24 / 07 / 2015 .....
ម៉ោង (Time/Heure) : .....
..... 13:30 .....
បុគ្គលិកទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé
du dossier: SAMNARA

**DECISION ON MEAS MUTH'S REQUEST TO RECONSIDER THE  
DECISION ON MEAS MUTH'S REQUEST TO RECLASSIFY  
DOCUMENTS AS PUBLIC, WITH CONFIDENTIAL ANNEXES**

**Distribution:**

**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN

**Pre-Trial Chamber**  
**Civil Party Lawyers**

**Defence Lawyers**  
ANG Udom  
Michael G. KARNAVAS

HONG Kimsuon  
KIM Mengkhy  
MOCH Sovannary  
SAM Sokong  
TY Srinna  
VEN Pov  
  
Philippe CANONNE  
Laure DESFORGES  
Ferdinand DJAMMEN-  
NZEPA

Nicole DUMAS  
Isabelle DURAND  
Françoise GAUTRY  
Martine JACQUIN  
Christine MARTINEAU  
Barnabe NEKUI  
Lyma NGUYEN  
Nushin SARKARATI  
Fabienne TRUSSES



**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 Co-Investigating Judge Harmon to Reconsider His Decision on Meas Muth’s Request to Reclassify Documents as Public, with Confidential Annexes*, filed on 1 July 2015 (“Request”).<sup>6</sup>

**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

<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. 003-129/2, *Meas Muth’s Request To Co-Investigating Judge Harmon To Reconsider His Decision On Meas Muth’s Request To Reclassify Documents As Public, With Confidential Annexes*, 1 July 2015



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 Co-Lawyers for Meas Muth (“Defence”) filed a notice of appeal against the Decision to Charge.<sup>8</sup>
3. On 10 March 2015, the 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 issued the First Decision, granting the request in part and declined reclassification of certain documents specifically identified in Confidential Annex C.<sup>10</sup>
5. On 1 July 2015, the Defence filed the present Request for reconsideration of the decision to decline reclassification of 13 documents in Confidential Annex C of the First Decision.<sup>11</sup> The Defence also seek leave to file this Request in English only, with the Khmer translation to follow.<sup>12</sup>

## II. SUBMISSIONS

6. In the Request, the Defence argue that the International CIJ applied the criteria for reclassification from confidential to public in an overly restrictive manner and failed to give specific reasons as to why each of the 13 documents could not be made public, with redactions where necessary.<sup>13</sup>
7. The Defence submit that three documents requested in the Defence’s first request for reclassification,<sup>14</sup> D103/2, D103/3, and D103/4, were erroneously included in Confidential Annex C of the First Decision because either the documents were filed before the Pre-Trial Chamber or were already available in public redacted form. Accordingly, these three documents should be removed from Confidential Annex C.<sup>15</sup>

## III. DISCUSSION

8. The International CIJ incorporates by reference paragraphs 6 through 13 of the First Decision on applicable law, in the interest of brevity.
9. 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.
10. Rule 56(1) is unequivocal that judicial investigations are confidential. As a matter of principle then, all documents in the Case File of on-going investigations are classified as confidential by default when received for filing. In accordance with Internal Rule 56(1) and Practice Direction 1.2, the International CIJ considers all filings before the CIJs confidential, unless judicially determined to be appropriate

<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, paras 26-27.

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

<sup>13</sup> Request, paras 21-24, 26.

<sup>14</sup> Case File No. 003-129.1, *First Request Annex A*, 10 March 2015, p. 1.

<sup>15</sup> Request, para. 28.



for reclassification to 'public' in relation to specific documents. While certain documents may be reclassified as 'public' on a case-by-case basis, the International CIJ is under no obligation to give reasons as to why he maintains the confidential classification for any specific document.

11. With the Defence effectively withdrawing three documents from their First Request, the current Request for reconsideration pertains to a total of 13 documents.<sup>16</sup> The Defence has provided proposed redactions for 11 of these 13 documents, which it failed to do in its First Request, as required by Practice Direction 9.3.
12. Seven of the documents in the Request, D87/2/1.4, D87/2/1.5, D87/2/1.6, D87/2/1.8, D87/2/1.9, D120/1, and D120/1/1, relate to matters that the CIJs are seized of at this time. Since these matters are *sub judice*, these documents, and those relating to them, shall continue to remain confidential.
13. The remaining documents covered by the Request are: (i) A41.2, a letter to the International CIJ; (ii) D87/2/1.14 and D87/2/1.3/1, decisions on a Meas Muth request on the conduct of the ongoing investigations in Case 003; and (iii) D103/1.6 and D103/1.7, appeals to the PTC for annulment of investigations. The documents make reference to aspects of confidential aspects of the ongoing investigations in Case 003 and in the assessment of the International CIJ ought to remain confidential at this stage.
14. Turning finally to the Defence submission that three documents should be removed from Confidential Annex C of the First Decision, the International CIJ considers this request to be without merit. Of the three, D103/2 and D103/3 were denied for the reason that the International CIJ did not consider their reclassification to be within his authority. The remaining document, D103/4, the International CIJ declined its reclassification as 'public' in full, as was requested, while leaving the status of the previously released redacted document intact. Thus, the International CIJ finds no reason to reverse the First Decision with respect to these three documents.
15. This Decision is issued in English with the Khmer translation to follow.

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

16. **GRANT** leave to the Defence to file the Request in English only, with Khmer translation to follow; and

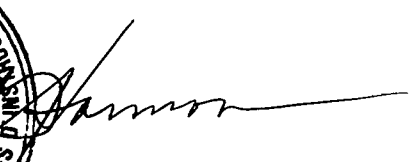

---

<sup>16</sup> Request, paras. 26-28.



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

Dated 23<sup>rd</sup> July 2015, Phnom Penh

Judge Mark B. Harmon  
 អ្នកជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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