



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

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Before: **The Co-Investigating Judges**

Date: **16 May 2016**

Language(s): **English [Original]**

Classification: **PUBLIC**

ORDER FOR RECLASSIFICATION AS PUBLIC OF MEAS MUTH'S REQUEST FOR UNITED NATIONS ARCHIVE MATERIALS AND ENSUING CORRESPONDENCE WITH THE UNITED NATIONS

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I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 7 February 2013, 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 material of the negotiations between the United Nations and the Royal Government of Cambodia concerning the establishment of the ECCC and the drafting of the Establishment Law (“Archive Materials Request”).¹ An annex containing a list of potentially relevant materials, some of which were classified as strictly confidential, supplemented the request (“Archive Materials Request Annex”).²
3. On 1 February 2016, I granted the Archive Materials Request and began to prepare a request to the United Nations for the strictly confidential materials.³
4. On 25 February 2016, I wrote to the United Nations’ Under-Secretary-General for Legal Affairs, requesting access to the strictly confidential archive materials specified by the Defence in their annex to the Request (“International CIJ Letter”).
5. On 26 April 2016, the Under-Secretary-General for Legal Affairs informed me that the requested strictly confidential materials could not be disclosed as these materials are considered to be sensitive documents under the Secretary General’s Bulletin of 12 February 2007 on information sensitivity, classification and handling (ST/SGB/2007/6) (“USG Response”).⁴
6. On 3 May 2016, I informed the Defence that my request for strictly confidential materials had been denied and that without the United Nations’ authorisation I was unable to request provision of strictly confidential documents from the United Nations’ Archives. I also informed the Defence that I would continue my endeavours to obtain the non-classified documents listed in the Archive Materials Request Annex (“Archive Materials Notice”).⁵
7. On 12 May 2016, the Defence filed a request to reclassify as public the Archive Materials Request, the Archive Materials Request Annex, and the Archive Materials Notice and its annexes, which include the USG Response and three public documents sent as annexes to the USG Response (“Publication Request”).⁶

¹ 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.

² Case File No. 003-D170.2, *Annex: Potentially Relevant Folders in the UN Archives*, 10 November 2015.

³ Case File No. 003-D181, *Consolidated Decision on Meas Muth’s Requests on Personal Jurisdiction*, 1 February 2016, paras 31-37.

⁴ Case File No. 003-D181/1.1, *Letter from the United Nations’ Under-Secretary-General for Legal Affairs*, 26 April 2016.

⁵ Case File No. 003-D181/1, *Notice of Unsuccessful Attempt to Obtain Strictly Confidential United Nations’ Archive Materials*, 3 May 2016.

⁶ Case File No. 003-D198, *Meas Muth’s Request to Reclassify as Public His Request to Obtain the United Nations’ and Royal Government of Cambodia Archive Materials, the International Co-Investigating Judge’s Notice of Unsuccessful Attempt to Obtain Strictly Confidential United Nations’ Archive Materials, the United Nations’ Letter to the International Co-Investigating Judge and All Accompanying Annexes and Request to Place on the Case File and Make Public the International Co-Investigating Judge’s Letter to the United Nations Requesting Strictly Confidential Archive Materials*, 12 May 2016.



The Defence also requested the placement of the International CIJ Letter on the Case File, and that it be classified as public.

8. The International Co-Prosecutor informed my staff on 12 May 2016 by email that he did not oppose the Publication Request.

II. SUBMISSIONS

9. The Defence submit that the reclassification as public of the Archive Materials Request, the Archive Materials Request Annex, and the Archive Materials Notice and its annexes, and the placement on the Case File of the International CIJ Letter is in the interests of transparency and justice.⁷ The Defence contend that there is no compelling reason to keep these documents from the public, and that no party will be prejudiced by their publication.⁸

III. DISCUSSION

10. Pursuant to Internal Rule 56(1) and Article 5(1)(f) of the Practice Direction on the Classification and Management of Case-Related Information, decisions, orders and other findings of the CIJs are, in principle, confidential.
11. Pursuant to Article 3.14 of the Practice Direction on Filing Documents before the ECCC, the CIJs may reclassify any document on the Case File. If the reclassification affects one or more parties, these parties shall be given the opportunity to be heard on the matter. In any event, parties shall be notified of any reclassification.
12. The first consideration when deciding on a request for publication is whether publication may jeopardise the integrity of the investigation. Upon review of the filings that the Defence seek to be made public, I am satisfied that they do not contain references to evidence, potential sources, investigative leads, or other sensitive information.
13. In ruling on past requests for publication of confidential filings, I have denied publication when other documents related to these filings and necessary for their proper understanding could not be disclosed.⁹ In the case at hand, the filings that the Defence seek to have reclassified as public provide a sufficiently complete and understandable picture of the matter to which they relate: The filings requested include the Defence's request that the CIJs obtain access to certain strictly confidential documents in the United Nations' Archives, the International CIJ's efforts in that regard, the United Nations' refusal to disclose the documents and the reasons behind that refusal.
14. Further, I am satisfied that it is in the interest of justice that the United Nations' decision to withhold disclosure of the strictly confidential documents sought in the International CIJ Letter be made public.
15. Considering the nature of the documents subject of the Publication Request, I am also satisfied that their reclassification will neither prejudice nor affect other parties to Case 003.

⁷ Publication Request, p. 1, para. 10.

⁸ *Ibid.*, paras 11, 15, 17, 19, 21.

⁹ Case File No. 003-D183, *Decision on Meas Muth's Multiple Reclassification Requests*, 2 March 2016, paras 21-23.

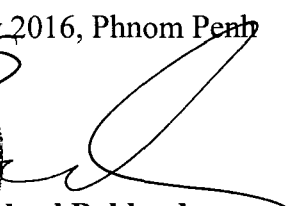


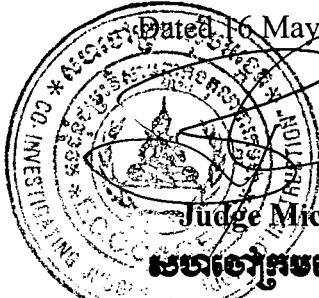
- 16. I will therefore proceed to reclassify as public the Archive Materials Request (as redacted by the Defence pursuant to Article 9.3 of the Practice Direction on the Classification and Management of Case-Related Information), the Archive Materials Request Annex, and the Archive Materials Notice and its annexes.
- 17. I will also place on the Case File the International CIJ Letter. The letter was sent to the Under-Secretary-General by mail. By an unfortunate oversight, the signed copy was not scanned before it was mailed on 25 February 2016. I will therefore place on the Case File the electronic, unsigned copy of the International CIJ Letter, the text of which I hereby certify is identical to the signed hard copy I sent to the Under-Secretary-General for Legal Affairs.
- 18. This decision is filed in English, with a Khmer translation to follow.

FOR THE FOREGOING REASONS, I:

- 19. **INSTRUCT** the Greffier to reclassify as public D170 (as redacted by the Defence and filed as an annex to D198); D181/1; D181/1.1; D181/1.2; D181/1.3; D181/1.4; and
- 20. **INSTRUCT** the Greffier to place on the Case File the International CIJ Letter as a public annex to this decision.

Dated 16 May 2016, Phnom Penh





Judge Michael Bohlander
សម្រេចស្រីបអន្តរជាតិ
International Co-Investigating Judge
Co-juge d’instruction international