



PROTECTIVE MEASURES

The Rules and Procedure Committee of the Extraordinary Chambers in the Courts of Cambodia (ECCC),

CONSIDERING the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian law of Crimes committed during the Period of Democratic Kampuchea, signed on 6 June 2003 (hereinafter referred to as ‘the Agreement’),

CONSIDERING the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia with inclusion of the amendments as promulgated on 27 October 2004 (hereinafter referred to as ‘ECCC Law’)

CONSIDERING the Internal Rules of the ECCC, adopted by the Plenary Session of Judges on 12 June 2007 and signed into force on 19 June 2007,

ACTING in accordance with Rule 20(3) of the ECCC Internal Rules, which entitles the Rules and Procedure Committee to adopt Practice Directions relating to the functioning of the ECCC, subject to review in the subsequent Plenary Session,

HEREBY ISSUE this Practice Direction on protective measures (hereinafter referred to as ‘the Practice Direction ECCC/03/2007’):

Article 1. General Considerations

- 1.1. Orders for protective measures shall be made by the Co-Investigating Judges or the Chambers, on their motion or at the request of any party or his or her lawyer, in accordance with Rules 28 and 29 of Internal Rules.
- 1.2. Protective measures may be ordered by the Co-Investigating Judges or the Chambers to protect victims, as complainants or civil parties, and witnesses.
- 1.3. When the Co-investigating Judges or the Chambers order protective measures to protect the security of victims or witnesses, they shall respect the fundamental principles applicable during the ECCC proceedings, in particular:
 - a) the needs of victims and witnesses;
 - b) the rights of the suspect, charged person or accused; and
 - c) the fairness of the proceedings.

- 1.4. Before ordering such measures, the Co-Investigating Judges or the Chambers shall undertake a full assessment of the relevant facts. In particular, in determining whether such measures are appropriate, they shall look at their proportionality to the risk.
- 1.5. In determining the appropriate protective measures, the Co-Investigating Judges or the Chambers shall seek to obtain the consent of the person in respect of whom protective measures are sought. They shall seek to inform the person, his or her lawyer, of the protective measures envisioned and their effects.

Article 2. Procedures for implementing protective measures

- 2.1. Requests for protective measures made under Internal Rule 29(3) by the parties or their lawyers, shall be in writing and shall be deposited with the greffier of the Office of Co-Investigating Judges or the Chambers, as appropriate, through the Case File Officer.
- 2.2. A request affecting a particular witness or victim shall be served on that witness or victim or his or her lawyer or Witness/Expert Support Unit or Victim Unit as appropriate according to the provisions of Rule 46 of the Internal Rules.
- 2.3. The Co-Investigating Judges or the Chambers shall consult with the Victims Unit or the Witness/Expert Support Unit, depending on the case. They may also, where appropriate, consult with the person concerned (represented by his or her legal representative, if necessary), the Co-Prosecutors, the Security Section and the suspect, charged person or accused and their lawyer.
- 2.4. The Co-Investigating Judges or the Chambers may, on their own motion or by request, hold an *in camera* hearing to determine whether to order protective measures. They may decide to use remote means to permit the participation of the interested party or parties.
- 2.5. The Victims Unit or the Witness/Expert Support Unit may raise any questions to the Co-Investigating Judges or the Chambers, as appropriate, related to imposition of protective measures, or their modification, setting out their reasons in writing.
- 2.6. When the Co-Investigating Judges or Chambers order protective measures, any documentation relating to such order shall be recorded in a classified register separate from the case file and maintained by the greffiers of the Co-Investigating Judges or the Chambers, as appropriate. Authorization to access the register shall only be granted by decision of the Co-Investigating Judges or the Chambers.

Article 3. Scope of Protective Measures

- 3.1. In addition to the measures listed in Internal Rule 29(4), the Co-Investigating Judges or the Chamber may order the following protective measures:
- a. Ordering the written record or the record of specific parts of the proceedings be placed under seal;
 - b. Forbidding public access to specific material from the case file or access to the classified register which identifies the protected person;
 - c. Ordering measures aimed at physically protecting the protected person, in particular by providing a safe residence inside or outside Cambodia pursuant to Relocation Agreements;
 - d. In addition to Internal Rule 29(4)(b), to redact from the record all other information that could potentially identify the protected person or other information which would permit his or her identification or location.
- 3.2. The Co-Investigating Judges or the Chambers may use the following electronic methods in order to put in place protective measures, in particular during confrontation procedures or judgement hearings:
- a. Distortion of the protected person's voice and/or physical features;
 - b. Use of audiovisual means, in particular videoconferencing or closed-circuit television;
 - c. Use of only audio modes of communication;
 - d. All other electronic means which permit the protection of the protected person.
- 3.3. The Co-Investigating Judges or the Chambers, as appropriate, shall ascertain that, prior to providing any element of proof, the protected person is informed that his or her testimony or identity may be revealed at a later point during another case according to the provisions outlined in section 4 of this Practice Direction.

Article 4. Variation of protective measures

- 4.1. Protective measures once ordered shall continue to apply *mutatis mutandis* throughout the entire proceedings in the case concerned and in relation to any other proceedings before the court and shall continue until they are cancelled or modified pursuant to the provisions of this Practice Direction.
- 4.2. When the Co-Prosecutors discharge such disclosure obligations as foreseen in the Internal Rules in subsequent proceedings, they shall respect the protective measures as previously ordered by the Co-Investigating Judges or the Chambers and shall inform the defence to whom such disclosure is being made of these protective measures.

- 4.3. The Co-Investigating Judges or the Chambers may vary orders for protective measures on their own motion, or at the request of one of the parties. Any application to vary a protective measure shall be made to the Co-Investigating Judges or the Chambers which is seized of the matter. If necessary, that Chamber shall ask the parties and the greffiers of the Co-Investigating Judges or the Chambers, as applicable, through the Case File Officer all relevant information from the proceedings in which the protective measure was first ordered.
- 4.4. In order to vary a protective order, the procedure of Article 2 of this Practice Direction shall be applied. The Co-Investigating Judges or seized Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the application to rescind, vary or augment the protective measures has been made.

Article 5. Final considerations

The provisions of this Practice Direction are complementary to the provisions of the Agreement, the ECCC Law, the Internal Rules and the Supplementary Agreement on Safety and Security.