



## **ECCC Newsletter #3, 2011 Case 003 FAQ**

### **Frequently asked questions about Case 003**

This document has been prepared by the ECCC Public Affairs Section for the purpose of providing the general public information about the ongoing judicial proceedings. It is not an official document.

#### **What does it mean when the Co-Investigating Judges issued a notice of conclusion of investigation in Case 003?**

The issuance of a notice of conclusion of investigation is a procedural step, where the Co-Investigating judges formally notify the parties and the public that they consider the investigation initiated by the Co-Prosecutors Introductory Submission to be concluded.

Any victim who wishes to apply to become a civil party must submit an application within 15 days after the notice of conclusion of investigation. With regards to Case 003 the deadline is 18 May 2011.

#### **Does the notice of conclusion mean that the case is closed, and that a decision on whether or not the case will be sent for trial has been made?**

No, the notice is a procedural step, not a substantive judicial decision. Following the notice of conclusion of investigation, the Co-Prosecutors have 15 days to request any further investigative action they may deem necessary.

If the Co-Prosecutors request further investigative action, the Co-Investigating Judges must either carry out the requested investigative action or reject the request through a reasoned judicial decision.

#### **What happens if the Co-Investigative Judges reject request(s) for further investigative action?**

The Co-Prosecutors can appeal a rejection from the Co-Investigating Judges to the Pre-Trial Chamber within 30 days after a decision has been made by the Co-Investigating Judges.

The Pre-Trial Chamber has through its jurisprudence established that Co-Investigating Judges have broad discretion to decide requests for investigative actions, and the Pre-Trial Chamber can only overturn their decision if the appellant can demonstrate that the decision made by the Co-Investigating Judges was based on grave errors .

**What happens after requests for investigative actions have been carried out or rejected, or in case of appeals, when all appeals have been decided by the Pre-Trial Chamber?**

The Co-Investigating Judges will transfer the case file to the Co-Prosecutors, who will have 3 months to make their Final Submission to the Co-Investigating Judges. The Co-Prosecutors may in their Final Submission either request the Co-Investigating Judges to make indictments and send a case for trial, or to dismiss the case.

**What happens after the Co-Prosecutors have made their Final Submission?**

The Co-Investigating Judges, who are not bound by recommendations in the Co-Prosecutors' Final Submission, will issue a Closing Order. By definition, the Closing Order could be an Indictment sending the case for trial or a Dismissal Order, which would close the case.

**Is there any possibility to appeal the Closing Order?**

Yes, the Co-Prosecutors can appeal both kinds of Closing Orders to the Pre-Trial Chamber.

**Why have the Co-Investigating Judges not provided more information to the public about Case 003?**

Investigations before the ECCC are confidential by law. This is to protect both the integrity of the investigation, and to protect the presumption of innocence.

The legal system applied at the ECCC is based on a two-tiered system:

1. The investigations are confidential
2. If the investigations lead to indictments and trial, the trial will be conducted in public.

**How can the public trust that the investigation is credible and impartial when only limited public information has been made available?**

Investigations are confidential by law and the sole responsibility of the Investigating Judges. The public has no say in the investigations, and the public is not party to them. The Co-Prosecutors, representing the public interest, have as a party to the investigation an ample opportunity to examine whether the investigations were "credible and impartial" after the case has been forwarded to them, which has to be done on 2 occasions (during one of them, they can examine the investigations for a full 3 months before making their Final Submission).

When the whole investigative process has been completed, the Co-Investigating Judges will issue a Closing Order, which will either send the case for trial, or dismiss the case for lack of evidence or jurisdiction. The Closing Order will be a reasoned judicial decision, which will be made public. This way anyone can scrutinize and assess the work conducted by the Co-Investigating Judges.

**In Case 002, information on the scope of investigation was released prior to the**

**notice of conclusion of investigation. Why was no information on the scope of the investigation in Case 003 released before the notice of conclusion of investigation?**

The situation in Case 003 is different to that in Case 002. By the time the scope of the investigation in Case 002 was made public, all defendants had been arrested and charged with crimes, and the investigation had been ongoing for more than two years while the defendants were held in provisional detention. In such a situation the Co-Investigating Judges found that to release limited information about the scope of investigation would not compromise the investigation.

In Case 003 no one has at this point been formally charged with crimes or been arrested. Consequently, it would be difficult to make public the scope of investigation without incurring the risk of compromising the future legal process of this case.

**Are the names of alleged suspects in Cases 003 and 004 reported in media correct?**

By law, it is only the Co-Investigating Judges who can release information about the investigation to the public, including the name of defendants. The Co-Investigating Judges are the only official channel of information, so any other information alleged by named persons or anonymous sources should not be treated as facts.

The names of the alleged suspects in Case 003 and 004 reported in the media are therefore speculative.

**Why has the ECCC not actively invited Civil Parties to submit their applications in Case 003?**

The experience from Case 002 showed that a substantive number of the Civil Party applicants were deemed by the Co-Investigating Judges to fall outside of the scope of investigation, and hence their applications were rejected. Most of the rejected Civil Party Applications had been filed before the scope of the investigation had been made public.

Since the scope of investigation in Case 003 at this point has not been made public, it would be a risk that most Civil Party Applications filed would fall outside of the scope of the investigation. To encourage the filing of Civil Party Applications in a situation as such, could potentially lead to the creation of unrealistic expectations for victims who might want to file an application to become a Civil Party.