

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 003/07-09-2009-ECCC/OCIJ (PTC38) **Party Filing:** The Defence for MEAS Muth**Filed to:** The Pre-Trial Chamber**Original language:** ENGLISH**Date of document:** 14 July 2021**CLASSIFICATION****Classification of the document suggested by the filing party:****PUBLIC****Classification by OCIJ or Chamber:****សាធារណៈ/Public****Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

REQUEST FOR LEAVE TO REPLY TO THE INTERNATIONAL CO-PROSECUTOR'S RESPONSE TO MEAS MUTH'S REQUEST TO TERMINATE, SEAL, AND ARCHIVE CASE FILE 003

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ANG Udom

Michael G. KARNAVAS

Pre-Trial Chamber Judges:

Judge PRAK Kimsan

Judge NEY Thol

Judge HUOT Vuthy

Judge Olivier BEAUVALLET

Judge BAIK Kang Jin

Reserve Judge Steven J. BWANA

Reserve Judge PEN Pichsaly

Co-Prosecutors:

CHEA Leang

Brenda J. HOLLIS

All Civil Parties in Case 003

Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), pursuant to Article 8.4 of the Practice Direction on filing documents before the ECCC (“Practice Direction”) and the Pre-Trial Chamber’s (“PTC”) inherent powers, submits this Request for Leave to Reply to the International Co-Prosecutor’s (“ICP”) Response to MEAS Muth’s Request to Terminate, Seal, and Archive Case File 003¹ to correct the ICP’s woefully inaccurate and unwarranted misrepresentations of the Defence’s arguments. This Request is in keeping with the Defence’s due diligence obligations,² is in the interests of judicial economy, causes no appreciable delay to the proceedings, and is timely filed within five days of notification of the ICP’s Response in English.³ The Defence requests to file this Request in English with the Khmer translation to follow since the Interpretation and Translation Unit cannot complete the translation within the standard five-day deadline for replies.⁴

I. REQUEST FOR LEAVE TO REPLY

1. An unintentional misreading of a party’s submission, sloppiness in stating a party’s position, or failure to provide context for an assertion can amount to a misstatement or mischaracterization warranting a reply. This is such a situation. Indeed, the Response is so uncharacteristically specious and so replete with serious misrepresentations – which, regrettably, must be characterized as falsehoods – that it would appear that the otherwise principled ICP, before affixing her signature to what was authored by her staff, did not sufficiently review and appropriately consider the veracity of much of what is claimed and the personal innuendo directed at the Defence. Virtually every paragraph exudes deliberate mischaracterizations of the Defence’s position, misleading statements, and misinformation, giving the impression that the Defence deliberately and purposefully misrepresented the

¹ International Co-Prosecutor’s Response to MEAS Muth’s Request to Terminate, Seal and Archive Case File 003, 8 July 2021, D272/1 (“ICP’s Response”).

² Due diligence requires a Charged Person’s Co-Lawyers to do anything and everything to ensure that all fair trial rights are fully accorded to their client, including making all necessary legal and factual challenges, checking the veracity and accuracy of evidence gathered by the Co-Investigating Judges that is used against the Charged Person, and so on. ALASKA RULES OF PROF’L CONDUCT (2017-2018 ed.), Rule 1.3; *Id.*, Comment to Rule 1.3. *See also* Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia, Art. 7; Law on the Statutes of the Bar (1995), Art. 58; Rule 22(4).

³ The ICP’s Response was notified to the Defence on 9 July 2021. *See* Case File Officer Notification, [Filed by OCP] NEW DOCUMENT(S): CASE FILE No. 003 – ICP’s Response to Meas Muth’s Request to Terminate, Seal and Archive Case File 003, 9 July 2021.

⁴ Email from Interpretation and Translation Unit, “Re: Translation Request,” 13 July 2021. Although the ICP’s Response has only been notified in English, the Defence files this Request within standard five-day deadline under Article 8.4 of the Practice Direction to avoid any delay to the PTC’s deliberations.

law, facts, and procedural history of Case 003. To rectify this assault on the Defence's integrity, but more importantly, to clarify and correct any lingering misapprehensions as to what the Defence has argued, a reply – to which the Defence is entitled under Article 8.4 of the Practice Direction – is necessary and reasonable. Out of abundance of caution, and in deference to the PTC's email instructions that no replies would be entertained,⁵ leave to reply is sought.

2. The PTC may decide on the issues before it through written submissions *if* a reply is granted in lieu of an oral hearing pursuant to Article 8.4 of the Practice Direction.⁶ Given that the PTC found that a public hearing on the cross-appeals against the Closing Orders in Case 004 was not warranted⁷ – despite having provided one to the Parties in Cases 004/1, 004/2, and 003⁸ – it is only reasonable to assume that the PTC will not exercise its discretion to hold one on the cross-requests following its Considerations.
3. The PTC also has inherent authority to grant leave to reply “to be fully informed on the matter.”⁹ It *can* and *should* reconsider its email instruction that no replies would be entertained – as it did in granting the Defence's request for extension of time to respond to the ICP's Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings.¹⁰ Considering that the ICP's mischaracterizations and misrepresentations effectively constitute new arguments, practice and equity justify a reply.¹¹

⁵ Pre-Trial Chamber's Instructions to the Parties in Case File N° 003/07-09-2009-ECCC/OCIJ (PTC37), 29 June 2021.

⁶ Article 8.4 of the Practice Direction states: “A reply to a response shall only be permitted where there is to be no oral argument on the request, and such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying.”

⁷ *Case of YIM Tith*, 004/07-09-2009-ECCC/OCIJ (PTC61), Decision on Oral Hearing in Case 004, D381/41 & D382/40.

⁸ *See Case of IM Chaem*, 004/1/07-09-2009-ECCC/OCIJ (PTC50), Scheduling Order for the Pre-Trial Chamber's Hearing on Appeal Against Closing Order, 14 November 2017, D308/1/19; *Case of AO An*, 004/2/07-09-2009-ECCC/OCIJ (PTC60), Scheduling Order for the Pre-Trial Chamber's Hearing on Appeals against Closing Orders, 3 June 2019, D360/14 & D395/5; Scheduling Order for the Pre-Trial Chamber's Hearing on Appeals Against Closing Orders, 24 October 2019, D266/12.

⁹ This PTC has exercised its inherent authority to grant a leave to reply, even to a document styled as a “reply” by the ICP, to “be fully informed on the matter.” *See* Special PTC, 14-06-2016-ECCC/PTC, Public Redacted Decision on Neville Sorab's Appeal Against the Defence Support Section's Failure to Include His Application to be Placed on the List of Foreign Support Lawyers, 4 August 2016, Doc. No. 4, fn. 17.

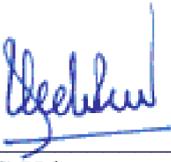
¹⁰ MEAS Muth's Request for an Extension of Time to Respond to the ICP's Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings, 25 June 2021, D271/2. Pre-Trial Chamber's Instructions to the Parties in Case File N° 003/07-09-2009-ECCC/OCIJ (PTC37), 29 June 2021.

¹¹ *See Prosecutor v. Kupreškić*, IT-95-16-A, Decision on the Motions of Appellants Vlatko Kupreškić, Drago Josipović, Zoran Kupreškić, and Mirjan Kupreškić to Admit Additional Evidence, 26 February 2001, para. 70.

4. Not granting a reply to correct the ICP's gross misrepresentations harms the fairness of the proceedings.¹² it risks leaving the false impression that the Defence argues that the PTC unanimously upheld the Indictment, acquiesces to a trial when one Co-Investigating Judge ("CIJ") indicts and the other dismisses, and seeks the dismissal of Case 003 *only if* the PTC cannot reach a supermajority to send the case to trial.¹³

WHEREFORE, for all the reasons stated herein and in the interests of justice, the PTC should GRANT the Defence's leave to reply.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 14th day of July, 2021

¹² *Id.*

¹³ ICP's Response, para. 2.