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

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Preliminaire

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

D266/25

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 003/07-09-2009-ECCC/OCIJ (PTC35)

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 3 November 2020

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PUBLIC

DECISION ON INTERNATIONAL CO-PROSECUTOR'S REQUEST TO FILE ADDITIONAL SUBMISSIONS ON HER APPEAL OF THE ORDER DISMISSING THE CASE AGAINST MEAS MUTH

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia is seised of the “Request to File Additional Submissions on her Appeal of the Order Dismissing the Case against MEAS Muth” filed by the International Co-Prosecutor on 26 August 2020 (“Request”).¹

I. PROCEDURAL HISTORY

1. On 28 November 2018, the International Co-Investigating Judge issued his “Closing Order”, indicting MEAS Muth (“Indictment”),² while the National Co-Investigating Judge issued his “Order Dismissing the Case Against MEAS Muth” (“Dismissal Order”)³ (collectively, “Closing Orders”). The Closing Orders were respectively filed in English and Khmer only, with translations to follow.

2. On 5 April 2019, the National Co-Prosecutor filed her appeal against the Indictment⁴ in Khmer. On 8 April 2019, the Co-Lawyers for MEAS Muth (“Co-Lawyers”) and the International Co-Prosecutor respectively filed appeals against the Indictment⁵ and the Dismissal Order⁶ in English.

3. On 19 December 2019, the Pre-Trial Chamber issued its “Considerations on the Appeals against the Closing Orders” (“Considerations”) in Case 004/2.⁷

4. On 12 March 2020, the International Judges of the Pre-Trial Chamber disseminated to the parties, copying the Pre-Trial Chamber, the Greffier of the Trial Chamber and the Acting Director and Deputy Director of the Office of Administration, an interoffice memorandum of the International Judges along with the

¹ Case No. 003/07-09-2009-ECCC/OCIJ (“Case 003”) (PTC35), International Co-Prosecutor’s Request to File Additional Submissions on her Appeal of the Order Dismissing the Case against MEAS Muth, 26 August 2020, D266/22 (“Request (D266/22)”).

² Case 003, Closing Order, 28 November 2018, D267.

³ Case 003, Order Dismissing the Case against MEAS Muth, 28 November 2018, D266.

⁴ Case 003, National Co-Prosecutor’s Appeal against the International Co-Investigating Judge’s Closing Order in Case 003, 5 April 2019, D267/3 (“National Co-Prosecutor’s Appeal against the Indictment (D267/3)”).

⁵ Case 003, MEAS Muth’s Appeal against the International Co-Investigating Judge’s Indictment, 8 April 2019, D267/4 (“MEAS Muth’s Appeal against the Indictment (D267/4)”).

⁶ Case 003, International Co-Prosecutor’s Appeal of the Order Dismissing the Case against MEAS Muth (D266), 8 April 2019, D266/2 (“International Co-Prosecutor’s Appeal against the Dismissal Order (D266/2)”).

⁷ Case No. 004/2/07-09-2009-ECCC-OCIJ (“Case 004/2”) (PTC60), Considerations on Appeals against Closing Orders, 19 December 2019, D359/24 and D360/33 (“Case 004/2 Considerations (D359/24 and D360/33)”).



appended Annexes related to the events within the Chamber since the issuance of the Considerations in Case 004/2, clarifying that the Pre-Trial Chamber has taken all the required administrative actions to transfer the Closing Order (Indictment) and the Case File 004/2 to the Trial Chamber.⁸

5. On 16 March 2020, the President of the Pre-Trial Chamber issued an interoffice memorandum asserting that only the unanimously decided portion of the Considerations shall have applicable effect.⁹

6. On 26 March 2020, the Co-Lawyers filed “MEAS Muth’s Request for Clarification of the Pre-Trial Chamber’s Considerations on Appeals against Closing Orders in Case 004/2” (“Request for Clarification”), pleading the Pre-Trial Chamber to (i) find the Request admissible and (ii) provide requested clarification concerning the Chamber’s Considerations.¹⁰

7. On 3 April 2020, the Judges of the Trial Chamber issued a joint public statement concerning Case 004/2 stating that it has no access to Case 004/2 without notification and transfer to the Trial Chamber (“Trial Chamber’s Statement”).¹¹ While the International Judges of the Trial Chamber considered that, under these unique circumstances, an argument could be made that their Chamber holds “inherent authority” to address certain matters, the National Judges stated that the matter was closed before the Pre-Trial Chamber and that “there will not be a trial of AO An now or in the future.”¹²

8. On 7 May 2020, the Co-Lawyers filed “MEAS Muth’s Supplement to His Appeal against the International Co-Investigating Judge’s Indictment” (“Supplement”) requesting the Pre-Trial Chamber to (i) find the Supplement

⁸ Case 004/2, Interoffice Memorandum of the International Judges Kang Jin BAIK and Olivier BEAUVALLET, 12 March 2020, D359/36 and D360/45.

⁹ Case 004/2, Interoffice Memorandum issued by Judge PRAK Kimsan, President of the Pre-Trial Chamber, 16 March 2020, D359/37 and D360/46.

¹⁰ Case 003, MEAS Muth’s Request for Clarification of the Pre-Trial Chamber’s Considerations on Appeals against Closing Orders in Case 004/2, 26 March 2020, D266/19 and D267/24 (“Request for Clarification (D266/19 and D267/24)”).

¹¹ ECCC Press Release, “Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving AO An”, 3 April 2020 (“Trial Chamber’s Statement”).

¹² Trial Chamber’s Statement.



admissible; (ii) declare the Closing Orders in Case 003 null and void; and (ii) permanently stay the proceedings in Case 003.¹³

9. On 10 August 2020, the Supreme Court Chamber issued its “Decision on the International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2” (“Supreme Court Chamber Decision in Case 004/2”), dismissing on its merits the Immediate Appeal, which was filed on 4 May 2020,¹⁴ and terminating Case 004/2.¹⁵

10. On 26 August 2020, the International Co-Prosecutor filed the Request, petitioning the Pre-Trial Chamber to (i) find the Request admissible¹⁶; (ii) ensure that the issue raised is resolved in a way that brings the required legal certainty, clarity and finality;¹⁷ (iii) and return the Case to the Co-Investigating Judges with the instructions to either issue one Closing Order or formally refer the disagreement to the Pre-Trial Chamber for final resolution.¹⁸

11. On 7 September 2020, the Co-Lawyers filed “MEAS Muth’s Response to the International Co-Prosecutor’s Request to File Additional Submissions on her Appeal of the Order Dismissing the Case against MEAS Muth” (“Response”).¹⁹ They submit in the Response that the Pre-Trial Chamber should (i) dismiss the International Co-Prosecutor’s Request as inadmissible; (ii) deny the relief sought; (iii) annul the illegal Closing Orders in Case 003; and (iv) instruct the Co-Investigating Judges to seal and archive Case 003.²⁰

¹³ Case 003, MEAS Muth’s Supplement to His Appeal against the International Co-Investigating Judge’s Indictment, 5 May 2020, D267/27 (“MEAS Muth’s Supplement (D267/27)”).

¹⁴ Case 004/2, International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 4 May 2020, E004/2/1.

¹⁵ Case 004/2, Decision on the International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 10 August 2020, E004/2/1/1/2 (“Case 004/2 Supreme Court’s Decision on Immediate Appeal (E004/2/1/1/2)”).

¹⁶ Request (D266/22), paras 9-10.

¹⁷ Request (D266/22), paras 11-12.

¹⁸ Request (D266/22), paras 13-17.

¹⁹ Case 003, MEAS Muth’s Response to the International Co-Prosecutor’s Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against MEAS Muth, 7 September 2020, D266/23 (“Response (D266/23)”).

²⁰ Response (D266/23), p. 12.



II. SUBMISSIONS

12. In her Request, the International Co-Prosecutor seeks from the Pre-Trial Chamber that it: (i) finds the Request admissible²¹; (ii) ensures that the issue raised is resolved in a way that brings the required legal certainty, clarity and finality;²² and (iii) returns the Case to the Co-Investigating Judges with the instructions to either issue one Closing Order or formally refer the disagreement to the Pre-Trial Chamber for final resolution.²³

13. Regarding the admissibility, the International Co-Prosecutor submits that her Request is admissible because the Supreme Court Chamber's Decision in Case 004/2, holding that neither Closing Order in Case 004/2 has legal effect, constitutes new, directly relevant, authoritative jurisprudence from the ECCC's court of final instance which could not have been foreseen and which should allow for additional arguments by the parties in Case 003.²⁴ Given that Supreme Court Chamber decisions are persuasive authority, the said Decision directly impacts the Chamber's deliberation in this Case and the Request must therefore be considered.²⁵

14. Further, it is also admissible to comport with the mandate of the ECCC to conduct its proceedings in accordance with principles of justice and fairness²⁶ and to avoid another judicial dilemma undermining the proper administration of justice and the fundamental duty of judges to resolve the issue before them.²⁷

15. On the merits, the International Co-Prosecutor first submits that currently there is no valid Closing Order, leaving the Case in an unjust and unacceptable judicial limbo which affords no judicial finality.²⁸ This is because, unless the Pre-Trial

²¹ Request (D266/22), paras 9-10.

²² Request (D266/22), paras 11-12.

²³ Request (D266/22), paras 13-17.

²⁴ Request (D266/22), paras 9-10.

²⁵ Request (D266/22), para. 9.

²⁶ Request (D266/22), para. 10 referring to *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea*, 10 August 2001, NS/RKM/1004/006, as amended 27 October 2004, Art. 33; *Internal Rules of the Extraordinary Chambers in the Court of Cambodia* (Rev.9), as revised 16 January 2015 ("Internal Rules"), Rule 21(1).

²⁷ Request (D266/22), para. 10 referring to Case 004/2 Considerations on Closing Orders Appeals (D359/24 and D360/33), para. 122.

²⁸ Request (D266/22), para. 11.



Chamber chooses to reverse their decision, it has held that the issuance of two Closing Orders was illegal and the Supreme Court Chamber subsequently rendered them to have no legal effect.²⁹ The International Co-Prosecutor emphasises the right of the Parties, the victims and the Cambodian public to a clear, certain and final judicial resolution.³⁰

16. Second, the International Co-Prosecutor submits that the most appropriate action is to remit the Case to the Co-Investigating Judges with a short timeframe and instructions that they either issue one single Closing Order or formally refer the disagreement to the Pre-Trial Chamber for resolution³¹ to avoid a “procedural stalemate that would hamper the effectiveness of proceedings”.³²

17. If the Co-Investigating Judges are unable to issue one Closing Order and thus refer their disagreement to the Pre-Trial Chamber, the International Co-Prosecutor argues that, as per the ECCC legal framework, the matter is to be resolved by the default position which would mean forwarding the Case File (including the Indictment) to the Trial Chamber for trial.³³ This would bring finality to the matter in accordance with the Supreme Court Chamber Decision in Case 004/02.³⁴

18. Third, the International Co-Prosecutor submits that no exceptional circumstances exist which would require the Pre-Trial Chamber to issue its own Closing Order.³⁵ However, if the Chamber chooses to follow this route, she argues that the same logic must be followed and the Case File (including the Indictment) must be forwarded to the Trial Chamber.³⁶ Whichever route is taken, the Pre-Trial Chamber holds a legal obligation to pronounce a legal decision on the matter in dispute.³⁷

²⁹ Request (D266/22), para. 11.

³⁰ Request (D266/22), para. 12.

³¹ Request (D266/22), para. 13.

³² Request (D266/22), para. 14.

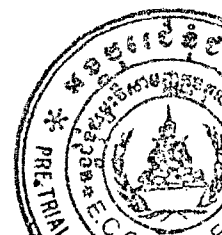
³³ Request (D266/22), para. 15.

³⁴ Request (D266/22), para. 15 *referring to* Case 004/2 Supreme Court’s Decision on Immediate Appeal (E004/2/1/1/2), para. 61.

³⁵ Request (D266/22), para. 13.

³⁶ Request (D266/22), paras 15-16.

³⁷ Request (D266/22), para. 16.



19. Fourth, the International Co-Prosecutor submits that the judges resolving the instant situation should follow the persuasive jurisprudence of the Supreme Court Chamber which held that personal jurisdiction is determined solely by whether the Suspect/Charged Person was a Khmer Rouge official.³⁸ The International Co-Prosecutor argues that personal jurisdiction is not an issue with regard to MEAS Muth.³⁹ She states that whether the Charged Person was among those most responsible is “[guidance to the Prosecutors and the Co-Investigating Judges] in the exercise of their independent discretion”,⁴⁰ concluding that an abuse of discretion, not jurisdictional analysis, must be applied to resolve the issue.⁴¹

20. In their Response, the Co-Lawyers submit that the Pre-Trial Chamber should (i) dismiss the International Co-Prosecutor’s Request as inadmissible; (ii) deny the relief sought; (iii) annul the illegal Closing Orders in Case 003; and (iv) instruct the Co-Investigating Judges to seal and archive Case 003⁴² because the International Co-Prosecutor’s Request is inadmissible,⁴³ the remedies advanced by the International Co-Prosecutor will not ensure certainty or finality in a timely manner,⁴⁴ and the International Co-Prosecutor misrepresents Supreme Court Chamber jurisprudence on personal jurisdiction.⁴⁵

21. First, the Co-Lawyers submit that the International Co-Prosecutor’s Request is inadmissible⁴⁶ because (i) the Request is untimely;⁴⁷ and (ii) the Request is unwarranted.⁴⁸

22. Regarding the argument that the Request is untimely, the Co-Lawyers submit that (i) contrary to the International Co-Prosecutor’s claim, the Supreme Court

³⁸ Request (D266/22), para. 17 referring to Case No.001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012, F28 (“Case 001 Appeal Judgement (F28)”), para. 79.

³⁹ Request (D266/22), para. 17.

⁴⁰ Request (D266/22), para. 17 quoting Case 001 Appeal Judgement (F28), paras 62-64, 74, 79.

⁴¹ Request (D266/22), para. 17.

⁴² Response (D266/23), p. 12.

⁴³ Response (D266/23), paras 2-11.

⁴⁴ Response (D266/23), paras 12-27.

⁴⁵ Response (D266/23), paras 28-30.

⁴⁶ Response (D266/23), para. 1.

⁴⁷ Response (D266/23), paras 2-7.

⁴⁸ Response (D266/23), paras 8-11.



Chamber Decision in Case 004/2 was not unforeseeable and unimaginable;⁴⁹ (ii) the International Co-Prosecutor had multiple opportunities to address the issues linked to the resolution of Case 003;⁵⁰ (iii) the International Co-Prosecutor argued at the Hearing in Case 003 that the issuance of contradictory Closing Orders is permissible under the ECCC legal framework and that the case proceeds to trial under Internal Rule 79(1) absent a Pre-Trial Chamber supermajority;⁵¹ (iv) when the Defence requested clarification from the Pre-Trial Chamber after its Considerations in Case 004/2 regarding the legal basis upon which the Pre-Trial Chamber Judges could separately consider the merits of illegal Closing Orders, the International Co-Prosecutor maintained that the Indictment automatically seized the Trial Chamber under Internal Rules 77(13)(b) and 79(1);⁵² (v) the International Co-Prosecutor averred that the illegal issuance of contradictory Closing Orders did not render them null and void and that the Trial Chamber must be seized when the Defence sought to supplement its Appeals in light of the Trial Chamber's Statement in Case 004/2 and the prospect of an unchallengeable Indictment hanging over MEAS Muth in perpetuity;⁵³ and (vi) the International Co-Prosecutor reverses her stance on the remedies available to the Pre-Trial Chamber in the instant Case and the legality of issuing two simultaneous closing orders after over 260 days following the Pre-Trial Chamber's Considerations in Case 004/2 and after the Supreme Court Chamber Decision in Case 004/2, which does not warrant additional submissions.⁵⁴

23. Regarding the argument that the Request is unwarranted, the Co-Lawyers submit that (i) the International Co-Prosecutor erroneously claims that additional submissions from the Parties are warranted;⁵⁵ (ii) the Supreme Court Chamber unambiguously held that the Pre-Trial Chamber's unanimous declaration that the issuance of contradictory Closing Orders was illegal renders them null, void, and of no legal effect, the "default positions" cannot be applied, and the Supreme Court

⁴⁹ Response (D266/23), para. 2.

⁵⁰ Response (D266/23), para. 3.

⁵¹ Response (D266/23), para. 4.

⁵² Response (D266/23), para. 5.

⁵³ Response (D266/23), para. 6.

⁵⁴ Response (D266/23), para. 7.

⁵⁵ Response (D266/23), para. 8.



Chamber considered that the Case should be terminated;⁵⁶ (iii) upon the Supreme Court Chamber Decision in Case 004/2, any uncertainty is removed and granting the International Co-Prosecutor's Request for further submissions would cause delay to the disposition of Case 003;⁵⁷ and (iv) the International Co-Prosecutor erroneously claims that her Request is admissible whereas the Supreme Court Chamber Decision in Case 004/2 raises no new issue and the Pre-Trial Chamber has been extensively briefed on the legal consequences of the illegal issuance of conflicting Closing Orders and the remedies available before that Decision was issued.⁵⁸

24. Second, the Co-Lawyers assert that the remedies advanced by the International Co-Prosecutor will not ensure certainty or finality in a timely manner because (i) issuing a revised Closing Order in a timely manner is impossible;⁵⁹ (ii) remitting Case 003 to the Co-Investigating Judges is impracticable;⁶⁰ (iii) the Pre-Trial Chamber cannot order the Co-Investigating Judges to refer their disagreement to it for resolution;⁶¹ and (iv) absent a valid Indictment, the "default position" cannot apply.⁶²

25. Concerning the argument that issuing a revised Closing Order in a timely manner is impossible, the Co-Lawyers submit, *inter alia*, that (i) it is unrealistic and unsound to argue that a revised Closing Order can be issued expeditiously because the Pre-Trial Chamber Judges have irreconcilable differences on the investigation and disposition of Case 003;⁶³ and (ii) should the Pre-Trial Chamber investigate Case 003, it will require considerable time and resources to review the evidence in the Case File, deliberate, and draft a revised closing order, which will delay the disposition of Case 003.⁶⁴

26. Concerning the argument that remitting Case 003 to the Co-Investigating Judges is impracticable, the Co-Lawyers submit that (i) the International Co-Prosecutor erroneously claims that the most appropriate remedy is to remit the Case to

⁵⁶ Response (D266/23), para. 9.

⁵⁷ Response (D266/23), para. 10.

⁵⁸ Response (D266/23), para. 11.

⁵⁹ Response (D266/23), paras 12-15.

⁶⁰ Response (D266/23), paras 16-21.

⁶¹ Response (D266/23), paras 22-23.

⁶² Response (D266/23), paras 24-27.

⁶³ Response (D266/23), para. 13.

⁶⁴ Response (D266/23), para. 14.



the Co-Investigating Judges⁶⁵ since remitting Case 003 to issue a single Closing Order “with a short, set time frame” is impractical given the unique procedural history of the case;⁶⁶ (ii) International Co-Investigating Judge Michael BOHLANDER’s new staff would necessitate training and time to familiarize with Case 003 which will cause delays;⁶⁷ (iii) the Pre-Trial Chamber would also have to consider instructing National Co-Investigating Judge YOU Bunleng to review the entire Case File in a short time, including evidence amounting to thousand of documents gathered after he and the International Co-Investigating Judge BLUNK closed their investigation in 2011;⁶⁸ (iv) unless National Co-Investigating Judge YOU Bunleng is instructed to review the entire Case File, it is unrealistic for the Co-Investigating Judges to reach an agreement and cosmetic revisions to be operated on a single closing order would not solve their prior judicial dilemma;⁶⁹ and (v) even if the Co-Investigating Judges were to agree on a common outcome, the Parties will appeal the revised Closing Order, which will cause additional delay until the Pre-Trial Chamber’s ultimate disposal of the Case, and if the Case is sent to trial, the trial would not commence before 2023.⁷⁰

27. As to the argument that the Pre-Trial Chamber cannot order the Co-Investigating Judges to refer their disagreement to it for resolution, the Co-Lawyers assert that (i) the International Co-Prosecutor erroneously claims that the Co-Investigating Judges must refer their disagreement to the Pre-Trial Chamber absent an agreement on a single Closing Order because the Co-Investigating Judges have the discretion to register their disagreement internally or refer it to the Pre-Trial Chamber under the ECCC legal framework and the Pre-Trial Chamber’s jurisprudence;⁷¹ and (ii) if the Parties to the ECCC Agreement and the drafters of the Internal Rules wished for a mandatory dispute resolution mechanism, they would have agreed to this explicitly.⁷²

⁶⁵ Response (D266/23), para. 16.

⁶⁶ Response (D266/23), para. 17 and footnote 50 referring to Request for Clarification (D266/19 and D267/24), paras 45-46; MEAS Muth’s Supplement (D267/27), paras 33-39.

⁶⁷ Response (D266/23), para. 18.

⁶⁸ Response (D266/23), para. 19.

⁶⁹ Response (D266/23), para. 20.

⁷⁰ Response (D266/23), para. 21.

⁷¹ Response (D266/23), para. 22.

⁷² Response (D266/23), para. 23.



28. Regarding their assertion that in the absence of a valid Indictment, the “default position” cannot apply, the Co-Lawyers submit that (i) the International Co-Prosecutor erroneously claims that when the Co-Investigating Judges are unable to issue a single closing order and refer their disagreement to the Pre-Trial Chamber, the Pre-Trial Chamber should resolve it by applying the “default position” and send Case 003 to trial absent a supermajority to the contrary;⁷³ (ii) the “default position” cannot apply when the Co-Investigating Judges issue contradictory Closing Orders, and this has been explained multiple times and confirmed by the Supreme Court Chamber;⁷⁴ (iii) the Supreme Court Chamber found that the International Co-Prosecutor’s claim that the “default position” applies absent a Pre-Trial Chamber supermajority in favour of dismissal “ignores [...] the unanimous finding of the Pre-Trial Chamber that the [conflicting] Closing Orders were the results of *unlawful and illegal actions*”, and the Supreme Court Chamber unequivocally held that a case cannot go to trial absent a valid Indictment;⁷⁵ and (iv) if the Co-Investigating Judges’ were to refer their disagreement to the Pre-Trial Chamber, it would only lead to an absurd and time-wasting exercise, because as there are no valid Closing Orders, the disagreement would become a *proposal* to issue an Indictment or a Dismissal Order, and if the Pre-Trial Chamber cannot reach a supermajority, “the investigation shall proceed.”⁷⁶

29. Lastly, the Co-Lawyers submit that the International Co-Prosecutor misrepresents the Supreme Court Chamber jurisprudence on personal jurisdiction because (i) the International Co-Prosecutor erroneously claims that personal jurisdiction is not at issue in the instant Case;⁷⁷ (ii) the Supreme Court Chamber found that both categories of Khmer Rouge officials under the jurisdiction of the ECCC must be “[...] *among those most responsible*”, and while the Supreme Court Chamber found that whether a Charged Person is “most responsible” is for the Co-Prosecutors and the Co-Investigating Judges to decide, it does not remove the requirement that this decision be based on “well-settled legal principles” ;⁷⁸ and (iii) the International Co-Prosecutor’s interpretation of personal jurisdiction belies the ECCC legal

⁷³ Response (D266/23), para. 24.

⁷⁴ Response (D266/23), para. 25.

⁷⁵ Response (D266/23), para. 26.

⁷⁶ Response (D266/23), para. 27.

⁷⁷ Response (D266/23), para. 28 and footnote 84 referring to Request (D266/22), para. 17.



framework and jurisprudence as well as her own Final Submission since personal jurisdiction has never hinged solely upon the Charged Person being a Khmer Rouge official.⁷⁹

III. DISCUSSION

30. The Pre-Trial Chamber is seised with the Appeals against the two conflicting Closing Orders in Case 003.⁸⁰ The proceedings, in this Case, are now closed and the Pre-Trial Chamber examines the arguments of the Parties and deliberates on the Appeals pursuant to Internal Rule 77.

31. At the outset, the Pre-Trial Chamber considers that the issuance of a decision by the Supreme Court Chamber in a different proceeding bears no direct impact on the pending Case, particularly in light of the Pre-Trial Chamber's position as the sole and ultimate jurisdiction for pre-trial matters.⁸¹

32. The Pre-Trial Chamber notes that the principles of justice and fairness have been strictly respected in this Case as the Appeals have been extensively briefed by written submissions and orally argued by the Parties during a three-day Hearing.⁸²

33. As to the speculation that the instant Case could lead to "another judicial dilemma undermining the proper administration of justice and the fundamental duty of judges to resolve the issue before them",⁸³ the Pre-Trial Chamber recalls its constant position that it does not rule on the basis of conjectures.⁸⁴

⁷⁸ Response (D266/23), para. 29.

⁷⁹ Response (D266/23), para. 30.

⁸⁰ National Co-Prosecutor's Appeal against the Indictment (D267/3); MEAS Muth's Appeal against the Indictment(D267/4); International Co-Prosecutor's Appeal against the Dismissal Order (D266/2).

⁸¹ See, e.g., Internal Rules 73, 76(4), 77(13), 72(4)(d). See also Case 004/2 Considerations on Closing Orders Appeals (D359/24 and D360/33), para. 49.

⁸² Case 003, Scheduling Order for the Pre-Trial Chamber's Hearing on Appeals against Closing Orders, 24 October 2019, D266/12.

⁸³ Request (D266/22), para. 10.

⁸⁴ See, e.g., Case No. 004/07-09-2009-ECCC/OCIJ (PTC11), Decision on YIM Tith's Appeal against the Decision Denying his Request for Clarification, 13 November 2014, D205/1/1/2, para. 8; Case No. 002/19-09-2007-ECCC/OCIJ (PTC01), Decision on Civil Party Participation in Provisional Detention Appeals, 20 March 2008, C11/53, para. 48.



34. The Pre-Trial Chamber finds that the Request is in fact calling for the Chamber's final disposition in the current proceedings, which will be issued in due time. There is no reason for the Pre-Trial Chamber to rule prematurely on a matter falling within the scope of ongoing Appeals.

35. Therefore, the Pre-Trial Chamber finds that the Request is inadmissible.

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

DENIES the Request as inadmissible.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 3 November 2020

Pre-Trial Chamber



[Handwritten signatures]
Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy

