

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 003/07-09-2009-ECCC/OCIJ (PTC37) **Party Filing:** The Defence for MEAS Muth**Filed to:** The Pre-Trial Chamber**Original language:** ENGLISH**Date of document:** 25 June 2021**CLASSIFICATION****Classification of the document
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**MEAS MUTH'S REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO
THE INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR CONCLUSION OF
THE PRE-TRIAL STAGE OF THE CASE 003 PROCEEDINGS**

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Michael G. KARNAVAS

PTC 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”), hereby requests a five-day extension of time for his response to the International Co-Prosecutor’s Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings (“ICP’s Request”).¹ This Request is made necessary to cogently and comprehensively respond to the complex issues raised by the ICP based on the Pre-Trial Chamber’s (“PTC”) Considerations.²

I. LAW AND ARGUMENT

1. Mr. MEAS Muth is entitled to an *effective* response.³ Generally, this means affording him adequate time and facilities for the preparation of his defence and having Co-Lawyers with the capacity to act with all due diligence in protecting his fair trial rights.⁴ Specifically, in this instance, it means affording Mr. MEAS Muth adequate time and facilities to file his response to the ICP’s Request. Alarming, the prescribed 10-day time limit for responses under Article 8.3 of the Practice Direction falls appreciably short of meaningfully affording Mr. MEAS Muth an effective response given the complexity of the issues raised by the ICP based on the PTC’s Considerations.

¹ International Co-Prosecutor’s Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings, 21 June 2021, D271/1. The ICP’s Request was notified to the Defence on 23 June 2021, making the deadline for the Response 5 July 2021 under Article 8.3 of the Practice Direction on Filing Documents before the ECCC. *See* Case File Officer Notification, “[Filed by OCP] NEW DOCUMENT(S): CASE FILE No. 003 – (International Co-Prosecutor’s Request for Conclusion of the Pre-Trial Stage of the Case 003,” 23 June 2021.

² Considerations on Appeals Against Closing Orders, 7 April 2021, D266/27 & D267/35 (“PTC’s Considerations”).

³ The Cambodian Constitution and ECCC framework – which incorporate the international standards of justice in the International Covenant on Civil and Political Rights – guarantee that Charged Persons and Accused are afforded *effective* submissions. *See* Constitution of the Kingdom of Cambodia dated 21 September 1993 Modified by Kram dated 8 March 1999 promulgating the amendments to Articles 11, 12, 13, 18, 22, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia which was adopted by the National Assembly on the 4th of March 1999 (“Cambodian Constitution”), Arts. 31, 38; Agreement, Arts. 12(2), 13(1); Establishment Law, Arts. 33 new, 35 new (b), (d); Rule 21(1); International Covenant on Civil and Political Rights, adopted 16 December 1966, entered into force on 23 March 1976, 999 U.N.T.S. 171 (“ICCPR”), Art. 14(3)(b), (d). *See also* *Case of AO An*, 004/2/07-09-2009-ECCC/OCIJ, Decision on Civil Party Requests for Extension of Time and Page Limits, 27 August 2018, D362/4, para. 10; *Prosecutor v. Stanišić & Župljanin*, IT-08-91-A, Decision on Mićo Stanišić’s and Stojan Župljanin’s Motions Seeking Variation of Time and Word Limits to File Appeal Briefs, 4 June 2013, p. 2, 4; *Prosecutor v. Sainović et al.*, IT-05-87-A, Decision on Joint Request for Extension of Time to File Respondent’s Brief, 27 July 2009, p. 4. *Marpa Zeeland B.V. & Metal Welding B.V. v. The Netherlands*, ECtHR App. No. 46300/99, 9 November 2004, para. 51.

⁴ 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).

2. The Herculean task posed by the prescribed 10-day time limit is informed by the complexity of the issues raised by the ICP based on the PTC's Considerations and the volume and variety of sources cited in her Request:
- a. *Issues raised in the ICP's Request:* Based on the PTC's unanimous findings and separate opinions, the ICP raises several complex issues of law, including whether: (i) the PTC erred in law and "occasioned manifest injustice" by failing to provide a final determination "decisively conclud[ing] the pre-trial stage of Case 003" (and the consequence of that legal error);⁵ (ii) the PTC unanimously concluded that the Indictment is valid;⁶ (iii) the PTC is obliged to send Case 003 to trial when the PTC Judges did not "reach[] a common understanding as to the ultimate decision;"⁷ and alternatively, (iv) the PTC is obliged to seize the Trial Chamber with the Indictment under Rule 77(13).⁸
 - b. *Volume and variety of sources:* While the volume and variety of sources cited in the ICP's Request do not inform as to the strength of her arguments, they do inform on the necessary research and analysis required by the Defence in responding. The ICP's 16-page Request has 97 footnotes with references to 66 authorities, including: (i) the Agreement, Establishment Law, Internal Rules, and the ECCC Code of Judicial Ethics; (ii) relevant procedural history in Case 003; (iii) ECCC jurisprudence from Cases 001, 002, and 004/2; (iv) statutes and jurisprudence from the *ad hoc* tribunals, post-World War II tribunals, the International Court of Justice, and the International Tribunal for Law of the Sea; (v) domestic law from the Central African Republic and France; and (vi) UN documents.⁹
3. To fulfill its ethical and professional duty of diligence in protecting Mr. MEAS Muth's fair trial rights,¹⁰ and draft an effective response, the Defence must review and analyze all authority cited by the PTC Judges in their Considerations and the ICP in her Request, research the law, review the Case File, take instructions from Mr. MEAS Muth, and craft

⁵ ICP's Request, paras. 12-17.

⁶ *Id.*, para. 18.

⁷ *Id.*, paras. 18-21.

⁸ *Id.*, paras. 22-31.

⁹ International Co-Prosecutor's Request for Conclusion of the Pre-Trial Stage off the Case 003 Proceedings Table of Authorities, 21 June 2021, D271/1.1.



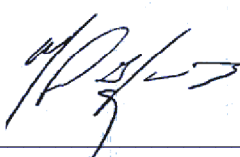
¹⁰ *See supra* fn. 4.



cogent arguments. These tasks cannot be done to the highest standard necessary to protect Mr. MEAS Muth's fair trial rights within the 10-day time limit under the Practice Direction, which, under ordinary circumstances, may be sufficient to respond.

4. The PTC has authority under Rule 39(2) to "set the time limits" for submissions "taking into account the circumstances of the case" and authority under Rule 39(4)(a) to "extend any time limits set by them." The PTC also has the discretion to accept documents filed outside the applicable time limits under Article 8.5 of the Practice Direction.
5. The relief sought will not delay the conclusion of the pre-trial proceedings, which the Defence also seeks in its Request to Terminate, Seal, and Archive Case File 003.¹¹ Given the 13 years of investigation and pre-trial proceedings, the unprecedented features of these proceedings, and the impact the PTC's decision will have on Mr. MEAS Muth's fate and the ECCC's legacy, the near imperceptible additional time sought manifestly advances the interest of justice, warranting the PTC to sagely exercise its discretion in granting the modest relief sought so as to safeguard Mr. MEAS Muth's fair trial rights and interests.¹²
6. No Party will be prejudiced by the relief sought, especially since the Defence does not object to the ICP being granted a commensurate extension of time to respond to the Defence's Request to Terminate, Seal, and Archive Case File 003.¹³

Respectfully submitted,

 _____ ANG Udom	 _____ Michael G. KARNAVAS	 _____ Michael G. KARNAVAS
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Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this **25** day of **June, 2021**

¹¹ MEAS Muth's Request to Terminate, Seal, and Archive Case File 003, 17 June 2021, D272.

¹² Rule 21(1).

¹³ Presumably, due to the scope, volume, and complexity of the issues by the Defence in its Request to Terminate, Seal, and Archive Case 003, she would also benefit from modest a modest extension for her response. The Civil Parties have not made submissions on the legal effect of the PTC's Considerations in Case 003 and thus will not be prejudiced by the relief sought.

