



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

Phnom Penh, 7 April 2021

PRESS RELEASE

Today, the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia issued its Considerations on the Appeals against the Co-Investigating Judges’ Closing Orders in Case 003. On 28 November 2018, the International Co-Investigating Judge issued his Closing Order (Indictment) sending MEAS Muth for trial, while on the same day, the National Co-Investigating Judge issued his Order Dismissing the Case against MEAS Muth (Dismissal Order).

Common Disposition, Unanimously Decided by the Pre-Trial Chamber

After a review of the Case File, the Pre-Trial Chamber found the Appeals of the National and International Co-Prosecutors admissible (paras 51 and 53, respectively, of the Considerations) while the Appeal of the Co-Lawyers for MEAS Muth was declared inadmissible pursuant to Internal Rules 74(3)(a) and 21 (paras 74 and 77).

As a preliminary issue, the Pre-Trial Chamber considered that the Co-Investigating Judges’ simultaneous issuance of the two conflicting Closing Orders was illegal, in violation of the ECCC legal framework (paras 78-109).

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

National Judges’ Opinion

In light of the Pre-Trial Chamber’s unanimous declaration of illegality concerning the issuance of the two conflicting Closing Orders and the fact that the Co-Investigating Judges did not refer their disagreements in the present case to the Pre-Trial Chamber, the National Judges of the Pre-Trial Chamber considered that the two Closing Orders of the Co-Investigating Judges possessed the same value and stood valid (paras 111-115).

Additionally, the National Judges considered that both Co-Investigating Judges enjoyed equal status and that, under the principle of presumption of innocence, the Pre-Trial Chamber should not be allowed to find that one Co-Investigating Judge’s act prevailed. Therefore, they opined that the two Closing Orders

maintained the same value and that Case File 003 against MEAS Muth should be held at the ECCC archives (paras 116-118).

International Judges' Opinion

Concerning the Appeal of the International Co-Prosecutor, the International Judges of the Pre-Trial Chamber upheld two appeal grounds related to the National Co-Investigating Judge's legal errors in deliberately failing to consider evidence placed on the Case File after 29 April 2011 (paras 227-244) and to decide on all the facts within his seisin (paras 245-248). The International Judges found that the Dismissal Order was consequently null and void for being an incomplete procedural document (paras 249-250) and declared the International Co-Prosecutor's remaining grounds of appeal moot (paras 251-252).

Concerning the validity of the Closing Orders, the International Judges clarified that, in case of unresolved discord between the Co-Investigating Judges on whether to issue an indictment or a dismissal order, the ECCC legal framework, through the principle of continuation of the prosecution, dictates that the indictment be issued as proposed (paras 257 and 261). Accordingly, the Dismissal Order, in addition to being substantively null and void, constituted an attempt to defeat this default position and was thus issued *ultra vires* (paras 262 and 284), while the Indictment remained substantively valid and in conformity with the applicable legal framework (paras 262 and 284).

After confirming that MEAS Muth was among the most responsible for the crimes committed by the Khmer Rouge (para. 340), the International Judges concluded that pursuant to Internal Rule 77(13) the Trial Chamber shall be seised of the International Co-Investigating Judge's Indictment (paras 342-343).

The Pre-Trial Chamber's decision is available at:

https://eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D266_27_EN.pdf

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