



**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

**អង្គបុរេជំនុំជម្រះ**

Pre-Trial Chamber  
Chambre Preliminaire

D269/4

*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 (PTC36)

**THE PRE-TRIAL CHAMBER**

**Before:**

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

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**CONSIDERATIONS ON APPEAL AGAINST ORDER ON THE ADMISSIBILITY OF CIVIL PARTY APPLICANTS**

**Co-Prosecutors**

CHEA Leang  
Brenda HOLLIS

**MEAS Muth Defence**

ANG Udom  
Michael G. KARNAVAS

**Lawyers for Civil Parties and Civil Party Applicants**

HONG Kimsuon  
KIM Mengkhy  
MOCH Sovannary  
SAM Sokong  
TY Srinna  
VEN Pov  
Philippe CANONNE  
Laure DESFORGES  
Ferdinand DJAMMEN-NZEPA

Nicole DUMAS  
Isabelle DURAND  
Françoise GAUTRY  
Martine JACQUIN  
Christine MARTINEAU  
Barnabe NEKUI  
Lyma NGUYEN  
Nushin SARKARATI  
Fabienne TRUSSES



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**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the “Appeal against Order on the Admissibility of Civil Party Applicants”, filed by the Civil Party Co-Lawyers (“Co-Lawyers”) on 7 March 2019 (“Appeal” or “Co-Lawyers Appeal”).<sup>1</sup>

## I. PROCEDURAL HISTORY

1. On 20 November 2008, the International Co-Prosecutor signed the Second Introductory Submission (“Introductory Submission”), requesting that a judicial investigation be conducted regarding factual allegations which could trigger the responsibility of SOU Met and MEAS Muth for crimes within the jurisdiction of the ECCC.<sup>2</sup>

2. On the same day, the International Co-Prosecutor brought a disagreement before the Pre-Trial Chamber, pursuant to Internal Rule 71(2),<sup>3</sup> reporting that the National Co-Prosecutor disagreed with prosecuting new crimes identified in the additional submissions.<sup>4</sup> On 18 August 2009, the Pre-Trial Chamber issued its Considerations on this disagreement concluding that the Chamber was unable to reach the required majority to render a decision on the disagreement and that therefore, pursuant to Internal Rules 74(1) and 53(1), the International Co-Prosecutor shall forward the Introductory Submission to the Co-Investigating Judges to open judicial investigations.<sup>5</sup>

3. On 7 September 2009, the Acting International Co-Prosecutor filed the Introductory Submission requesting the Co-Investigating Judges to initiate the judicial investigation against MEAS Muth, among others, as part of Case 003, in relation to a number of allegations of crimes against humanity, genocide and violations of the Penal Code of the Kingdom of Cambodia of 1956 (“1956 Penal Code”) and submitted the Case

<sup>1</sup> Case 003/07-09-2009-ECCC/OCIJ (“Case 003”), Appeal against Order on the Admissibility of Civil Party Applicants, 7 March 2019, notified in Khmer on 8 April 2019, D269/3 (“Co-Lawyers Appeal (D269/3)”).

<sup>2</sup> Case 003, Co-Prosecutors’ Second Introductory Submission regarding the Revolutionary Army of Kampuchea, 20 November 2008, D1 (“Second Introductory Submission (D1)”).

<sup>3</sup> *Internal Rules of the Extraordinary Chambers in the Courts of Cambodia* (Rev.9), as revised 16 January 2015 (“Internal Rules”) 71(2).

<sup>4</sup> Disagreement 001/18-11-2008-ECCC/PTC, International Co-Prosecutor’s Written Statement of Facts and Reasons for Disagreement pursuant to Rule 71(2), 20 November 2008, Doc. No. 1.

<sup>5</sup> Disagreement 001/18-11-2008-ECCC/PTC, Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71, 18 August 2009, D1/1.3, para. 45.



File to the Co-Investigating Judges.<sup>6</sup> Further allegations were submitted in a supplementary submission filed on 31 October 2014 (“Supplementary Submission”).<sup>7</sup>

4. On 29 April 2011, the Co-Investigating Judges notified the Co-Prosecutors that they considered the Case 003 judicial investigation concluded (“2011 Internal Rule 66(1) Notification”).<sup>8</sup> On 9 October 2011, the International Co-Investigating Judge resigned<sup>9</sup> and on 2 December 2011, the Reserve International Co-Investigating Judge ordered the resumption of the judicial investigation.<sup>10</sup>

5. Since the beginning of the investigation, 646 people have filed applications to become Civil Parties.<sup>11</sup>

6. In the course of the investigations into Case 003, the Office of the Co-Investigating Judges was informed that 18 applicants to Case 003 were deceased,<sup>12</sup> and no filings were made to continue these civil actions on behalf of the deceased. In addition, one applicant withdrew his application.<sup>13</sup>

7. On 29 April 2011, 27 July 2011 and 9 September 2011, the Co-Investigating Judges declared the Civil Party applications of SENG Chanthary, Robert HAMILL, CHUM Neou and Timothy Scott DEEDS inadmissible.<sup>14</sup> The applicants appealed the

<sup>6</sup> Case 003, Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission, 7 September 2009, D1/1.

<sup>7</sup> Case 003, International Co-Prosecutor’s Supplementary Submission regarding Crime Sites related to Case 003, 31 October 2014, D120 (“Supplementary Submission (D120)”).

<sup>8</sup> Case 003, Notice of Conclusion of Judicial Investigation, 29 April 2011, D13 (“2011 Internal Rule 66(1) Notification (D13)”).

<sup>9</sup> See ECCC Press Release, “Press Release by the International Co-Investigating Judge”, 10 October 2011, [https://www.eccc.gov.kh/sites/default/files/documents/court/2012-12-24%2016%3A37/E189\\_3\\_1\\_1.1.3\\_EN.pdf](https://www.eccc.gov.kh/sites/default/files/documents/court/2012-12-24%2016%3A37/E189_3_1_1.1.3_EN.pdf) (last accessed 10 June 2021).

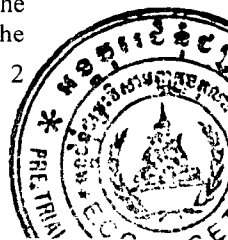
<sup>10</sup> Case 003, Order on Resuming the Judicial Investigation, 2 December 2011, D28.

<sup>11</sup> Case 003, Order on Admissibility of Civil Party Applications, 28 November 2018, D269 (“Admissibility Order (D269)”), para. 2.

<sup>12</sup> Case 003, Interoffice Memorandum from Victims Support Section to the Office of the Co-Investigating Judges on Deceased Civil Parties, Annex D to Admissibility Order (D269), 9 January 2018, D269.4; Case 003, Victims Support Section’s List of Deceased Civil Parties in Case 002 who Joined Case 003 and 004, Annex E to Admissibility Order (D269), 28 November 2018, D269.5; Case 003, Table of Deceased Civil Parties, Annex 2 to Decision on Civil Party Applicants’ Requests for Protective Measures, 28 April 2017, D246.2; Case 004/1/07-09-2009-ECCC/OCIJ, Order on Admissibility of Civil Party Applications, 22 February 2017, D307, para. 7.

<sup>13</sup> Case 003, Letter from the Office of the Co-Investigating Judges’ Greffier to Lawyers SAM Sokong and Nushin SARKARATI concerning the Withdrawal of Mr DY Dany from Case Files 003, 004 and 004/2, 9 January 2018, D11/587/3.

<sup>14</sup> Case 003, Order on the Admissibility of the Civil Party Application of SENG Chanthary, 29 April 2011, D11/1/3 (“Order on the Admissibility of SENG Chanthary (D11/1/3)”); Case 003, Order on the Admissibility of the Civil Party Application of Rob HAMILL, 29 April 2011, D11/2/3 (“Order on the



Co-Investigating Judges' Orders.<sup>15</sup> On 24 October 2011, 28 February 2012, 13 and 14 February 2013, the Pre-Trial Chamber issued its Considerations regarding the appeals from the four applicants, declaring that the Chamber was unable to reach the required majority to render a decision on the appeals.<sup>16</sup> On 15 November 2011, SENG Chantheary withdrew her application,<sup>17</sup> which was acknowledged by the Greffier of the Office of the Co-Investigating Judges by letter on 29 May 2014.<sup>18</sup> On 24 February 2012, 15 March 2012 and 3 April 2012, the Reserve International Co-Investigating Judge reconsidered the applications of Robert HAMILL, Timothy Scott DEEDS and CHUM Neou, and granted the applicants civil party status.<sup>19</sup>

8. On 3 April 2012, the Reserve International Co-Investigating Judge further admitted six applicants as Civil Parties.<sup>20</sup>

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Admissibility of Rob HAMILL (D11/2/3)"); Case 003, Order on the Admissibility of the Civil Party Application of CHUM Neou, 27 July 2011, D11/3/3 ("Order on the Admissibility of CHUM Neou (D11/3/3)"); Case 003, Order on the Admissibility of the Civil Party Application of Timothy Scott DEEDS, 9 September 2011, D11/4/3 ("Order on the Admissibility of Timothy Scott DEEDS (D11/4/3)").

<sup>15</sup> Case 003, Appeal against Order on the Admissibility of the Civil Party Application of SENG Chantheary 18 May 2011, D11/1/4/1; Case 003, Appeal against Order on the Admissibility of Civil Party Applicant Mr Robert HAMILL, 23 May 2011, D11/2/4/2; Case 003, Appeal against Order on the Admissibility of Civil Party Applicant Ms CHUM Neou, 15 August 2011, D11/3/4/1; Case 003, Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS (D11/4/3), 3 October 2011, D11/4/4/1.

<sup>16</sup> Case 003 (PTC02), Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL, 24 October 2011, D11/2/4/4, paras 12-13; Case 003 (PTC01), Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chantheary, 28 February 2012, D11/1/4/2, paras 8-9; Case 003 (PTC05), Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant CHUM Neou, 13 February 2013, D11/3/4/2, paras 10-11; Case 003 (PTC07), Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Timothy Scott DEEDS, 14 February 2013, D11/4/4/2, paras 9-10.

<sup>17</sup> Case 003, Letter from Lawyers SAM Sokeng and Emmanuel JACOMY to the Office of the Co-Investigating Judges' Greffier regarding the Withdrawal of Applicant SENG Chantheary, 3 March 2014, D11/1/5.

<sup>18</sup> Case 003, Letter from the Office of the Co-Investigating Judges' Greffier to Lawyer CHOUNG Chou-Ngy concerning the Withdrawal of Ms SENG Chantheary from Case Files 003 and 004, 29 May 2014, D11/1/6; Case 003, Letter from the Office of the Co-Investigating Judges' Greffier to Lawyer SAM Sokong concerning the Withdrawal of Ms SENG Chantheary from Case Files 003 and 004, 29 May 2014, D11/1/7; Case 003, Letter from the Office of the Co-Investigating Judges' Greffier to Lawyer Emmanuel JACOMY concerning the Withdrawal of Ms SENG Chantheary from Case Files 003 and 004, 29 May 2014, D11/1/8.

<sup>19</sup> Case 003, Order on the Reconsideration of the Admissibility of the Civil Party Application of Robert HAMILL, 24 February 2012, D11/2/5/1, paras 36-37; Case 003, Order on the Reconsideration of the Admissibility of the Civil Party Application of Timothy Scott DEEDS, 15 March 2012, D11/4/5, paras 34-35; Case 003, Order on the Reconsideration of the Admissibility of the Civil Party Application of CHUM Neou, 3 April 2012, D11/3/5, paras 31-32.

<sup>20</sup> Case 003, Order on the Admissibility of the Civil Party Application of SENG Sopheap, 3 April 2012, D11/8/3, para. 23; Case 003, Order on the Admissibility of the Civil Party Application of CHE Heap, 3 April 2012, D11/39/3, para. 27; Case 003, Order on the Admissibility of the Civil Party Application of



9. On 24 February 2012, the Reserve International Co-Investigating Judge notified SOU Met and MEAS Muth that they were suspects in Case 003 and informed them of their right to legal representation of their choice and to access to the Case File.<sup>21</sup>
10. MEAS Muth's case was subject to a series of confidential disagreements between the Co-Investigating Judges (registered on 7 February 2013, 22 February 2013, 17 July 2014, 16 January 2017 and 17 September 2018).<sup>22</sup> None of these disagreements were brought before the Pre-Trial Chamber.
11. On 22 October 2013, the Co-Investigating Judges notified the Parties that SOU Met had died<sup>23</sup> and, subsequently, the proceedings against SOU Met were terminated on 2 June 2015.<sup>24</sup>
12. On 3 March 2015, the International Co-Investigating Judge charged MEAS Muth *in absentia* ("Decision to Charge *in Absentia*")<sup>25</sup> and detailed the charges in an annex to the Decision ("Notification of Charges")<sup>26</sup> against which the Co-Lawyers for MEAS Muth appealed on 16 June 2015<sup>27</sup> and 12 June 2015,<sup>28</sup> respectively. On 3 February 2016 and 30 March 2016, the Pre-Trial Chamber issued its decision and considerations on these appeals.<sup>29</sup>

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KHIEU Khan, 3 April 2012 D11/214/3, para. 24; Case 003, Order on the Admissibility of the Civil Party Application of THORNG Channa, 3 April 2012, D11/243/3, para. 15; Case 003, Order on the Admissibility of the Civil Party Application of OM Mon, 3 April 2012, D11/305/3, para. 15; Case 003, Order on the Admissibility of the Civil Party Application of LY Mourn, 3 April 2012, D11/308/3, para. 15.

<sup>21</sup> Case 003, Notification of Suspect's Rights [Rule 21(1)(d)], 24 February 2012, D30 (regarding MEAS Muth), paras 1, 4; Case 003, Notification of Suspect's Rights [Rule 21(1)(d)], 24 February 2012, D31 (regarding SOU Met), paras 1, 4.

<sup>22</sup> Case 003, Closing Order, 28 November 2018, D267 ("Indictment (D267)"), paras 5, 7, 15, 27.

<sup>23</sup> Case 003, Notification of the Death of a Suspect in Case File 003, 22 October 2013, D86.

<sup>24</sup> Case 003, Dismissal of Allegations against SOU Met, 2 June 2015, D86/3.

<sup>25</sup> Case 003, Decision to Charge MEAS Muth *in Absentia*, 3 March 2015, D128.

<sup>26</sup> Case 003, Notification of Charges against MEAS Muth, dated 3 March 2015 and filed 12 September 2018, D128.1.

<sup>27</sup> Case 003, MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision to Charge MEAS Muth *in Absentia*, 16 June 2015, D128/1/3.

<sup>28</sup> Case 003, MEAS Muth's Appeal against Co-Investigating Judge HARMON's Notification of Charges against MEAS Muth, 12 June 2015, D128.1/1/3.

<sup>29</sup> Case 003 (PTC22), Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Notification of Charges against MEAS Muth, 3 February 2016, D128.1/1/11; Case 003 (PTC21), Considerations on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision to Charge MEAS Muth *in Absentia*, 30 March 2016, D128/1/9.



13. On 14 December 2015, at MEAS Muth's initial appearance, the International Co-Investigating Judge revised certain charges against him,<sup>30</sup> informed him of additional legal characterisations of genocide and rape, and charged him with additional counts of crimes against humanity, grave breaches of the Geneva Conventions and violations of Articles 501 and 506 of the 1956 Penal Code.<sup>31</sup> The International Co-Investigating Judge announced that (i) the arrest warrant dated 10 December 2014 was moot and the arrest warrant of 4 June 2015 was rescinded; and that (ii) the statement of charges in 3 March 2015 Decision to Charge *in Absentia* was moot and the charges laid at the initial appearance represented the definitive version of the charges against MEAS Muth at this time.<sup>32</sup> The International Co-Investigating Judge issued a public statement announcing these charges on the same day.<sup>33</sup>

14. On 16 March 2016, the International Co-Investigating Judge informed the Parties that he was inclined to exclude certain facts from the investigation and requested the Parties' views on the matter ("Request for Comments").<sup>34</sup> On 24 August 2016, after receiving comments from the Co-Lawyers for MEAS Muth<sup>35</sup> and the International Co-Prosecutor,<sup>36</sup> the International Co-Investigating Judge issued a Notice of Provisional Discontinuance regarding Individual Allegations ("Notice of Provisional

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<sup>30</sup> See Case 003, Written Record of Initial Appearance of MEAS Muth, 14 December 2015, D174 ("Written Record of Initial Appearance (D174)"), p. 10 (The International Co-Investigating Judge announced that the following charges were rescinded: 1) torture at Wat Enta Nhien pursuant to Article 500 of the 1956 Cambodia Penal Code; 2) premeditated homicide in relation to the civilian cadres of Sector 505 in Kratie Province; 3) all crimes against humanity in relation to the civilian cadres of Sector 505 in Kratie Province; 4) grave breaches of the Geneva Conventions in relation to the purges of those regarded as enemies and traitors in Kampong Som; 5) grave breaches of the Geneva Conventions in relation to the purges in Kratie Province of both Division 117 and Sector 505 cadres; 6) grave breaches of the Geneva Conventions in relation to foreigners, other than the Vietnamese and Thai nationals; and 7) persecution on "ethnic" grounds).

<sup>31</sup> Written Record of Initial Appearance (D174), pp. 2-9.

<sup>32</sup> Written Record of Initial Appearance (D174), p. 10.

<sup>33</sup> See ECCC Press Release, "Statement of the International Co-Investigating Judge regarding Case 003", 14 December 2015, <https://eccc.gov.kh/sites/default/files/media/ECCC%20PR%2014%20Dec%202015%20En.pdf> (last accessed 10 June 2021).

<sup>34</sup> Case 003, Request for Comments regarding Alleged Facts Not to be Investigated Further, 16 March 2016, D184 ("Request for Comments (D184)").

<sup>35</sup> Case 003, MEAS Muth Defence Team's Response to the Request for Comments regarding Alleged Facts Not to be Investigated Further (D184), 18 March 2016, D184/1.

<sup>36</sup> Case 003, International Co-Prosecutor's Response to the International Co-Investigating Judge's Request for Comments regarding Alleged Facts Not to be Investigated Further, 29 April 2016, D184/2.





Discontinuance”).<sup>37</sup> The Co-Lawyers did not respond to the Request for Comments or to the Notice of Provisional Discontinuance.

15. On 22 November 2016, the International Co-Investigating Judge issued his Notification pursuant to Internal Rule 66bis(2) (“Internal Rule 66bis(2) Notification”)<sup>38</sup> in which he formally notified the Parties of his intention to further exclude certain alleged facts, and invited the Parties to file submissions within 15 days from the Notification.<sup>39</sup> On 24 November 2016, the International Co-Prosecutor filed his Response to the Internal Rule 66bis(2) Notification.<sup>40</sup> The Co-Lawyers and the Co-Lawyers for MEAS Muth did not respond to the Notification.

16. On 10 January 2017, the International Co-Investigating Judge issued his Decision to reduce the scope of the investigation by excluding alleged facts pursuant to Internal Rule 66bis (“Internal Rule 66bis Decision”).<sup>41</sup> No appeals were filed against this Decision.

17. On 10 January 2017, the International Co-Investigating Judge issued a first notice of conclusion of the judicial investigation.<sup>42</sup>

18. On 30 November 2016 and 31 January 2017, the International Co-Investigating Judge ordered legal representation for all Civil Party applicants.<sup>43</sup>

19. On 28 April 2017, the International Co-Investigating Judge rejected all requests for protective measures made by the Civil Party applicants to Case 003.<sup>44</sup>

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<sup>37</sup> Case 003, Notice of Provisional Discontinuance regarding Individual Allegations, 24 August 2016, D184/3 (“Notice of Provisional Discontinuance (D184/3)”).

<sup>38</sup> Case 003, Notification pursuant to Internal Rule 66bis(2), 22 November 2016, D184/4 (“Internal Rule 66bis(2) Notification (D184/4)”).

<sup>39</sup> Internal Rule 66bis(2) Notification (D184/4), paras 8-9.

<sup>40</sup> Case 003, International Co-Prosecutor’s Response to the International Co-Investigating Judge’s “Notification pursuant to Internal Rule 66bis(2)”, 24 November 2016, D184/4/1.

<sup>41</sup> Case 003, Decision to Reduce the Scope of Judicial Investigation pursuant to Internal Rule 66bis, 10 January 2017, D226 (“Internal Rule 66bis Decision (D226)”).

<sup>42</sup> Case 003, Notice of Conclusion of Judicial Investigation against MEAS Muth, 10 January 2017, D225.

<sup>43</sup> Case 003, Order on the Assignment of Lawyers for All Civil Party Applicants, 30 November 2016, D218; Case 003, Order on the Assignment of Lawyers for All Other Civil Party Applicants, 31 January 2017, D230.

<sup>44</sup> Case 003, Decision on Civil Party Applicants’ Requests for Protective Measures, 28 April 2017, D246.



20. On 24 May 2017, the International Co-Investigating Judge issued a second notice of conclusion of the judicial investigation.<sup>45</sup>

21. On 14 November 2017, the National Co-Prosecutor filed a final submission requesting that all allegations be dismissed,<sup>46</sup> while, on the same day, the International Co-Prosecutor filed a final submission requesting MEAS Muth be indicted and sent to trial.<sup>47</sup>

22. On 28 November 2018, the International Co-Investigating Judge issued his Closing Order, indicting MEAS Muth (“Indictment”),<sup>48</sup> while the National Co-Investigating Judge issued his Order Dismissing the Case against MEAS Muth (“Dismissal Order”)<sup>49</sup> (collectively, “Closing Orders”). The Closing Orders were respectively filed in English and Khmer only, with translations to follow.

23. On the same day of 28 November 2018, the National Co-Investigating Judge issued his “Order on Civil Party Applications” (“Order on Civil Party Applicants’ Admissibility”) in which he dismissed 642 Civil Party applications in Case 003 that were filed after 14 May 2011, the date of which he considered as the deadline for Civil Party applications following the conclusion of the investigation on 29 April 2011.<sup>50</sup> The National Co-Investigating Judge’s Order did not specifically examine the admissibility of each of the Civil Party applications.<sup>51</sup> On this day, the International Co-Investigating Judge issued a separate Order on Admissibility of Civil Party Applicants (“Admissibility Order”), declaring as admissible the Civil Party applications listed in Annex A to the Order, while rejecting as inadmissible the Civil Party applications listed in Annex B to the Order.<sup>52</sup> The International Co-Investigating Judge explained that he reassessed and,

<sup>45</sup> Case 003, Second Notice of Conclusion of Judicial Investigation against MEAS Muth, 24 May 2017, D252.

<sup>46</sup> Case 003, Final Submission concerning MEAS Muth pursuant to Internal Rule 66, 14 November 2017, D256/6, para. 37.

<sup>47</sup> Case 003, International Co-Prosecutor’s Rule 66 Final Submission, 14 November 2017, D256/7.

<sup>48</sup> Indictment (D267).

<sup>49</sup> Case 003, Order Dismissing the Case against MEAS Muth, 28 November 2018, D266 (“Dismissal Order (D266)”).

<sup>50</sup> Case 003, Order on the Civil Party Applications, 28 November 2018, D268 (“Order on Civil Party Applicants’ Admissibility (D268)”), paras 9-11.

<sup>51</sup> Order on Civil Party Applicants’ Admissibility (D268), para. 10.

<sup>52</sup> Admissibility Order (D269), paras 49-50; Case 003, List of Civil Party Application Admissible, Annex A to Admissibility Order (D269), 28 November 2018, D269.1 (“Annex A of Admissibility Order (D269.1)”); Case 003, List of Civil Party Application Inadmissible, Annex B to Admissibility Order (D269), 28 November 2018, D269.2 (“Annex B of Admissibility Order (D269.2)”).



where necessary, reconsidered the admissibility findings made on 24 February 2012, 15 March 2012 and 3 April 2012 by the Reserve International Co-Investigating Judge “in light of the advancement of the investigation.”<sup>53</sup>

24. On 21 January 2019, the Co-Lawyers filed an urgent Request for an extension of time and pages to appeal the Civil Party Admissibility Decisions and for permission to submit their appeals in a single language with translations to follow.<sup>54</sup>

25. On 6 February 2019, the Khmer translations of the Indictment and of Annex B of the Admissibility Order were notified.<sup>55</sup>

26. On 8 February 2019, the Pre-Trial Chamber granted the time and page extension request, extending the filing deadline to 30 days from the notification in Khmer of the Indictment and Annex B of the Admissibility Order, increasing the page limit for appeal submissions to 45 pages in English or French or 90 pages in Khmer, and permitting the Co-Lawyers to file in a single language, English or Khmer, with translations to follow.<sup>56</sup>

27. On 15 March 2019, the corrected English translation of the National Co-Investigating Judge’s Dismissal Order was notified.<sup>57</sup>

28. On 7 March 2019, the Co-Lawyers filed to the Pre-Trial Chamber the “Appeal against Order on the Admissibility of Civil Party Applicants”.<sup>58</sup> In their Appeal, the Co-Lawyers submit that the Admissibility Order errs in law and fact and requests, *inter alia*, that the Admissibility Order be overturned, and that the Pre-Trial Chamber reconsider the admissibility of the rejected Civil Party applications.<sup>59</sup> None of the Parties submitted responses to the Co-Lawyers Appeal.

<sup>53</sup> Admissibility Order (D269), para. 5.

<sup>54</sup> Case 003, Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 003, dated 18 January 2019 and filed on 21 January 2019, D269/1.

<sup>55</sup> Case 003, Email of Notification from Case File Officer dated 6 February 2019 regarding the Khmer translation of documents D267 and D269.2.

<sup>56</sup> Case 003, Decision on Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and in Pages to Appeal the Civil Party Admissibility Decisions in Case 003, 8 February 2019, D269/2 (“Decision on Civil Party Co-Lawyers’ Urgent Request for Extension of Time and Pages Limit (D269/2)”), p. 3.

<sup>57</sup> Case 003, Email of Notification from Case File Officer dated 6 February 2019 regarding the English translation of document D266.

<sup>58</sup> Co-Lawyers Appeal (D269/3).

<sup>59</sup> Co-Lawyers Appeal (D269/3), paras 60-61.



29. On 5 December 2018, the Co-Lawyers for MEAS Muth filed a notice of appeal against the International Co-Investigating Judge's Indictment.<sup>60</sup> On 7 February 2019, the International Co-Prosecutor filed a notice of appeal against the National Co-Investigating Judge's Dismissal Order.<sup>61</sup> On 14 February 2019, the National Co-Prosecutor filed a notice of appeal against the International Co-Investigating Judge's Indictment.<sup>62</sup> The Parties filed submissions on appeal and various responses<sup>63</sup> and oral arguments on the appeals against the Closing Orders were heard *in camera* on 27, 28 and 29 November 2019.<sup>64</sup>

30. On 7 April 2021, the Pre-Trial Chamber issued its Considerations on Appeals against the Closing Orders, concluding *inter alia* that the Co-Investigating Judges' issuance of the two conflicting Closing Orders was illegal, violating the legal framework of the ECCC, and that it had not assembled the required majority to decide based on common reasoning on the merits of the appeals on Closing Orders.<sup>65</sup> The National Judges of the Pre-Trial Chamber found that both Closing Orders were equally valid and that the Case File against MEAS Muth should be sent to the ECCC archives.<sup>66</sup> The International Judges found that the National Co-Investigating Judge's Dismissal Order

<sup>60</sup> Case 003, MEAS Muth's Notice of Appeal against the International Co-Investigating Judge's Closing Order, 5 December 2018, D267/1.

<sup>61</sup> Case 003, International Co-Prosecutor's Notice of Appeal against the Order Dismissing the Case against MEAS Muth (D266), 7 February 2019, D266/1.

<sup>62</sup> Case 003, National Co-Prosecutor's Notice of Appeal against the ICIJ's Closing Order (Indictment), 14 February 2019, D267/2.

<sup>63</sup> Case 003, National Co-Prosecutor's Appeal against the International Co-Investigating Judge's Closing Order in Case 003, 5 April 2019, D267/3; Case 003, International Co-Prosecutor's Appeal of the Order Dismissing the Case against MEAS Muth (D266), 8 April 2019, D266/2; Case 003, MEAS Muth's Appeal against the International Co-Investigating Judge's Indictment, 8 April 2019, D267/4; Case 003, MEAS Muth's Response to the International Co-Prosecutor's Appeal of the Dismissal Order, 24 June 2019, D266/5; Case 003, International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 003 Indictment, 14 June 2019, D267/9; Case 003, International Co-Prosecutor's Response to MEAS Muth's Appeal against the International Co-Investigating Judge's Indictment (D267), 28 June 2019, D267/10; Case 003, International Co-Prosecutor's Reply to MEAS Muth's Response to the Appeal of the Order Dismissing the Case against MEAS Muth (D266), dated 9 August 2019 and filed 16 August 2019, D267/11; Case 003, MEAS Muth's Reply to the International Co-Prosecutor's Response to MEAS Muth's Appeal against the International Co-Investigating Judge's Indictment, 19 August 2019, D266/7 and D267/12.

<sup>64</sup> The public session of the Hearing included the Introduction and the reading of the Case Report on 27 November 2019 as well as the Questions by the Judges to the Parties on 29 November 2019. *See* Case 003 Transcript of Appeal Hearing of 27 November 2019 (CS), D266/16.1 and D267/21.1; Case 003 Transcript of Appeal Hearing of 28 November 2019 (CS), D266/17.1 and D267/22.1; Case 003 Transcript of Appeal Hearing of 29 November 2019 (CS), D266/18.1 and D267/23.1; Case 003 Transcript of Appeal Hearing of 29 November 2019, D266/18.2 and D267/23.2.

<sup>65</sup> Case 003 (PTC35), Considerations on Appeals against Closing Orders, 7 April 2021, D266/27 & D267/35 ("Considerations on Appeals against Closing Orders (D266/27 & D267/35)"), p. 40.

<sup>66</sup> Considerations on Appeals against Closing Orders (D266/27 & D267/35), pp. 41-42.



was null and void and issued *ultra vires*, that the International Co-Investigating Judge's Indictment was valid, and that MEAS Muth should be sent for trial before the Trial Chamber in application of the principle of continuation of prosecution.<sup>67</sup>

## II. STANDARD OF REVIEW

31. Internal Rule 77*bis* requires Appellants seeking to overturn an order from the Co-Investigating Judges on the admissibility of Civil Party applicants to demonstrate that the challenged decision was based on an error of law and/or fact.<sup>68</sup> The Pre-Trial Chamber recalls that on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, while alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.<sup>69</sup>

## III. ADMISSIBILITY

32. The Co-Lawyers appeal the International Co-Investigating Judge's Order pursuant to Internal Rule 77*bis*, and argue that the Appeal is timely and conforms to the page-limit.<sup>70</sup>

33. The Pre-Trial Chamber recalls that pursuant to Internal Rule 74(4)(b), "Civil Parties may appeal against [...] orders by the Co-Investigating Judges [...] declaring a Civil Party application inadmissible".<sup>71</sup> Internal Rule 77*bis* provides that the appeal shall

<sup>67</sup> Considerations on Appeals against Closing Orders (D266/27 & D267/35), paras 261-262, 284, 342-343.

<sup>68</sup> Internal Rule 77*bis*. See also Case 004/2/07-09-2009-ECCC/OCIJ ("Case 004/2") (PTC58), Considerations on Appeal against Order on the Admissibility of Civil Party Applicants, 30 June 2020, D362/6 ("Case 004/2 Considerations on Civil Party Appeal (D362/6)"), para. 28; Case 002/19-09-2007-ECCC/OCIJ ("Case 002"), Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D404/2/4 ("Case 002 Decision on Civil Party Appeals (D404/2/4)"), para. 34; Case 002, Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D411/3/6 ("Case 002 Decision on Civil Party Appeals (D411/3/6)"), para. 34.

<sup>69</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 28; Case 004/2 (PTC60), Considerations on Appeals against Closing Orders, 19 December 2019, D359/24 & D360/33, para. 381 referring to Case 002 (PTC75), Decision on IENG Sary's Appeal against the Closing Order, 11 April 2011, D427/1/30, para. 113; Case 002, Appeal Judgement, 23 November 2016, F36, paras 89-90; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 34; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 34.

<sup>70</sup> Co-Lawyers Appeal (D269/3), paras 6-7.

<sup>71</sup> Internal Rule 74(4)(b). See also Case 002 Decision on Civil Party Appeals (D404/2/4), para. 33; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 33.



be filed “[w]ithin 10 days of the notification of the decision on admissibility”.<sup>72</sup> The Chamber considers that the Appeal was submitted in compliance with its instructions, recalling its Decision to exceptionally grant the Co-Lawyers a 30-day extension to file their Appeal.<sup>73</sup> Accordingly, the Chamber finds that the Appeal is admissible.

#### IV. LEGAL PRINCIPLES OF CIVIL PARTY ADMISSIBILITY

34. In assessing the Co-Lawyers Appeal, the Pre-Trial Chamber considers it appropriate to recall the legal principles governing admissibility of Civil Party applications before the ECCC.

35. Internal Rule 23*bis*(1) sets out the criteria for admitting a Civil Party applicant:

In order for Civil Party action to be admissible, the Civil Party applicant shall:

- a) be clearly identified; and
- b) demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.

When considering the admissibility of the Civil Party application, the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.

36. As the Pre-Trial Chamber has previously noted,<sup>74</sup> the legal elements comprising Internal Rule 23*bis*(1) include the following: (a) the existence of a causal link between the crimes and the injury; (b) injury; and (c) proof of identification. Internal Rule 23*bis*(1) also prescribes the relevant level of proof by which these elements must be established. The Chamber will, in the course of its review of the Appeal, discuss specific legal aspects of these elements and the level of proof as relevant to assessing the

<sup>72</sup> Internal Rule 77*bis*. See also Case 002 Decision on Civil Party Appeals (D404/2/4), para. 33; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 33.

<sup>73</sup> Decision on Civil Party Co-Lawyers’ Urgent Request for Extension of Time and Pages Limit (D269/2) (The Pre-Trial Chamber granted the Co-Lawyers to file the Appeal, 45 pages in English or French, or 90 pages in Khmer, within 30 days from the notification in Khmer of the Annex B of the Admissibility Order (D269) and of the Indictment (D267). The Khmer translations of the Annex B of the Admissibility Order (D269) and of the Indictment (D267) were notified on 6 February 2019. The Civil Parties filed their Appeal on 7 March 2019).

<sup>74</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 33; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 57; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 57.



Co-Lawyers' appeal submissions. In this section, the Chamber provides the following general observations.

37. As a preliminary matter, the Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) the ECCC Law; (iii) Internal Rules 21, 23, *23bis*, *23ter*, *23quater*, *23quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility.<sup>75</sup> Guidance may also be sought from the general principles on victims in international law.<sup>76</sup>

38. With respect to the existence of a causal link, a Civil Party applicant must demonstrate that the injury was a direct consequence of the crimes alleged against the Charged Person.<sup>77</sup> While the injury must be personal to the applicant, the requirement of injury as a direct consequence of the offence does not restrict the admissibility of Civil Parties to direct victims but can also include indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim.<sup>78</sup> Thus, the ECCC jurisprudence recognises both direct victims and indirect victims. A direct victim refers to “the category of persons whose rights were violated or endangered by the crime charged.”<sup>79</sup> Indirect victims are persons who “personally suffered injury as a direct result of the crime committed against the direct victim.”<sup>80</sup>

<sup>75</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 34; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 31; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 31.

<sup>76</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 34; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 32; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 32 (*referring to Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res. 40/34, 29 November 1985 (“1985 Victims Principles”) and *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res. 60/147, 21 March 2006, UN Doc. A/RES/60/147 (“2005 Victims Principles”)).

<sup>77</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 35; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 71; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 71.

<sup>78</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 35; Case 001/18-07-2007-ECCC/SC (“Case 001”), Appeal Judgement, 3 February 2012, F28 (“Case 001 Appeal Judgment (F28)”), para. 418; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 83; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 83.

<sup>79</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 35; Case 001 Appeal Judgment (F28), para. 416.

<sup>80</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 35; Case 001 Appeal Judgment (F28), para. 418.



39. In terms of injury, Internal Rule 23*bis*(1)(b) provides that the injury must be physical, material or psychological.<sup>81</sup> Physical injury “denotes biological damage, anatomical or functional” and “may be described as a wound, mutilation, disfiguration, disease, loss or dysfunction of organs, or death.”<sup>82</sup> Material injury “refers to a material object’s loss of value, such as complete or partial destruction of personal property, or loss of income.”<sup>83</sup> Finally, psychological injury may “[include] mental disorders or psychiatric trauma, such as post-traumatic stress disorder.”<sup>84</sup>

40. Regarding the requirement for all applicants to clearly prove their identity, the Pre-Trial Chamber has previously endorsed a flexible approach,<sup>85</sup> which includes, for example, accepting as proof of identity statements issued from the village elder or the communal chiefs.<sup>86</sup>

41. Concerning the level of proof by which the above elements must be established, pursuant to Internal Rule 23*bis*(1), the Pre-Trial Chamber must, in evaluating the materials submitted as part of a Civil Party application, be “satisfied that facts alleged in support of the application are more likely than not to be true.”<sup>87</sup>

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<sup>81</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 36; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 83; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 83.

<sup>82</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 36; Case 001 Appeal Judgment (F28), para. 415.

<sup>83</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 36; Case 001 Appeal Judgment (F28), para. 415.

<sup>84</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 83; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 83; Case 001 Appeal Judgment (F28), para. 415.

<sup>85</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 37.

<sup>86</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 95; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 95.

<sup>87</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 38; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 94; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 94.





**V.MERITS**

42. While the decision of the Pre-Trial Chamber in respect of the admissibility of the Appeal is expressed in the preceding paragraphs, the Chamber, upon deliberation, has not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Pursuant to Internal Rule 77(14), the Opinions of the various members of the Pre-Trial Chamber are attached to these Considerations.



**VI. DISPOSITION**

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


- **DECLARES** that it has not assembled an affirmative vote of at least 4 judges for a decision based on common reasoning on the merits.


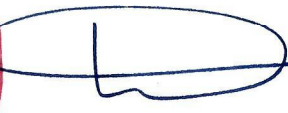



In accordance with Internal Rule 77*bis*, the present Decision is not subject to appeal.

In accordance with Internal Rule 77(14), this Decision shall be notified to the Co-Investigating Judges, the Co-Prosecutors and other Parties, by the Greffier of the Pre-Trial Chamber.

**Phnom Penh, 10 June 2021**

**Pre-Trial Chamber**



**PRAK Kimsan Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy**

Judges PRAK Kimsan, NEY Thol and HUOT Vuthy append their opinion.

Judges Olivier BEAUVALLET and Kang Jin BAIK append their opinion.



**VII. OPINION OF JUDGES PRAK KIMSAN, NEY THOL  
AND HUOT VUTHY**

43. Regarding Civil Party applications, the Pre-Trial Chamber's National Judges would like to express their further opinion as follows.

44. The Pre-Trial Chamber's National Judges are of the view that the two Closing Orders are of the same value and stand valid and that Case File 003 against the Charged Person MEAS Muth should be held at the ECCC Archives.

45. Pursuant to Internal Rule 23*bis*, the Pre-Trial Chamber's National Judges find that **all** civil party applicants shall be rejected.

46. Therefore, the Pre-Trial Chamber's National Judges hereby decide to reject all Civil Party applications in Case 003.

**Phnom Penh, 10 June 2021**



**President PRAK Kimsan**



**Judge NEY Thol**



**Judge HUOT Vuthy**



## VIII. OPINION OF JUDGES OLIVIER BEAUVALLET AND KANG JIN BAIK

### A. GROUND 1: ALLEGED ERROR OF LAW AND FACT BY IDENTIFYING ONLY THOSE CRIMES COMMITTED IN THE KAMPONG SOM AUTONOMOUS SECTOR OR IN THE WATERS AND ISLANDS OFF THE COAST OF DEMOCRATIC KAMPUCHEA AS RELEVANT TO THE NEXUS REQUIREMENT UNDER INTERNAL RULE 23BIS(1)(B)

#### 1. Submissions

47. Under Ground 1, the Co-Lawyers submit that the International Co-Investigating Judge erred in law and fact by finding that the nexus requirement under Internal Rule 23bis(1)(b) is met only by the victims of crimes committed in the areas identified in the Kampong Som Autonomous Sector or in the waters and islands off the coast of Democratic Kampuchea (“DK”) while he should have admitted (i) the victims of policies and crimes alleged against MEAS Muth that were implemented across Cambodia as part of the Joint Criminal Enterprise (“JCE”);<sup>88</sup> (ii) the victims of specific targeted groups who suffered from a collective injury that extended beyond the areas identified in the Admissibility Order;<sup>89</sup> and (iii) the victims directly linked to crimes alleged in the Indictment occurring in Kampong Som Autonomous Sector.<sup>90</sup>

48. First, the Co-Lawyers submit that the International Co-Investigating Judge, in his Admissibility Order, erred by focusing exclusively on crimes committed in the Kampong Som Autonomous Sector or in the waters and islands off the DK coasts, despite the allegations that MEAS Muth participated in a national JCE.<sup>91</sup> The Co-Lawyers contend that as it was made clear by the Pre-Trial Chamber in Case 002, Internal Rule 23bis(1)(b) explicitly requires Civil Party applicants to show a link between the “injury” and “the alleged crimes” which constitute the “legal characteri[s]ation of the facts investigated”, rather than the facts investigated themselves.<sup>92</sup> Therefore, in instances of widespread or systematic attacks against the

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<sup>88</sup> Co-Lawyers Appeal (D269/3), paras 20-30.

<sup>89</sup> Co-Lawyers Appeal (D269/3), paras 31-37.

<sup>90</sup> Co-Lawyers Appeal (D269/3), paras 38-40.

<sup>91</sup> Co-Lawyers Appeal (D269/3), para. 20.

<sup>92</sup> Co-Lawyers Appeal (D269/3), paras 20-21 *referring to* Case 002 Decision on Civil Party Appeals (D404/2/4), para. 42.



population, especially when the crimes and policies were implemented throughout Cambodia, Civil Party applicants do not necessarily have to relate their injury to only one crime site or even to only those crime sites identified in a closing order.<sup>93</sup>

49. The Co-Lawyers argue that the Pre-Trial Chamber's position in Case 002 applies equally in Case 003 because MEAS Muth participated in a national JCE whose goal was the implementation of Communist Party of Kampuchea ("CPK") policies throughout Cambodia.<sup>94</sup> The Co-Lawyers contend that the Indictment, the Introductory and the Supplementary Submissions "are replete with allegations of [MEAS] Muth's participation in a national JCE that encompass alleged crimes beyond those solely committed within the Kampong Som Autonomous Region and the waters and islands off the coast of DK, including his key role in purging East Zone cadres and cadres located in Kratie".<sup>95</sup> They further assert that the national JCE was implemented *via* a network of regional enterprises, including the regions under MEAS Muth's command.<sup>96</sup> In support of these contentions, the Co-Lawyers refer to, *inter alia*, the allegations of MEAS Muth's heavy involvement in the development of national policies<sup>97</sup> and frequent correspondence with "top leaders" of the CPK, including POL Pot,<sup>98</sup> as well as his "significant contribution" to the four nationwide policies at a regional level,<sup>99</sup> including through the identification of "enemies or traitors" among the Revolutionary Army of Kampuchea ("RAK") and the purge of "all undesirable elements".<sup>100</sup> The Co-Lawyers further observe that based on MEAS Muth's "elevated role in the DK hierarchy", which was "significantly higher [...] than [AO] An" as defined in the Indictment, the International Co-Investigating Judge concluded in his Indictment that MEAS Muth's level of responsibility "clearly surpass[es] those of [AO] An, [IM] Cheam, and [KAING] Guek Eav alias Duch."<sup>101</sup>

<sup>93</sup> Co-Lawyers Appeal (D269/3), para. 22 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), paras 72, 78.

<sup>94</sup> Co-Lawyers Appeal (D269/3), para. 23.

<sup>95</sup> Co-Lawyers Appeal (D269/3), para. 27.

<sup>96</sup> Co-Lawyers Appeal (D269/3), para. 23.

<sup>97</sup> Co-Lawyers Appeal (D269/3), para. 23 referring to Second Introductory Submission (D1), para. 88.

<sup>98</sup> Co-Lawyers Appeal (D269/3), para. 23 referring to Second Introductory Submission (D1), paras 92-93.

<sup>99</sup> Co-Lawyers Appeal (D269/3), para. 25 referring to Second Introductory Submission (D1), paras 33-34; Supplementary Submission (D120), paras 20-24; Indictment (D267), paras 171, 566-568, 570.

<sup>100</sup> Co-Lawyers Appeal (D269/3), para. 26 referring to Second Introductory Submission (D1), paras 4, 33.

<sup>101</sup> Co-Lawyers Appeal (D269/3), para. 24 referring to Indictment (D267), paras 460, 461.



50. Therefore, the Co-Lawyers assert that the International Co-Investigating Judge erred by focusing exclusively on crimes committed in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK to determine Civil Party admissibility, “[d]espite the manifest ‘collective dimensions’ of [MEAS] Muth’s liability” and should have instead considered crimes committed outside of those regions where they also formed part of the national JCE to which MEAS Muth allegedly belonged.<sup>102</sup> The Co-Lawyers thus request that the Pre-Trial Chamber admits the Appellants in Annexes C and D of their Appeal who suffered harm as a direct consequence of the implementation of the national JCE.<sup>103</sup>

51. Second, the Co-Lawyers submit that the International Co-Investigating Judge erred in limiting the geographic scope of Civil Party admissibility to the victims living in areas over which MEAS Muth had administrative control because the members of specific targeted communities and groups outside these areas also suffered harm from collective injury.<sup>104</sup> The Co-Lawyers assert that the Pre-Trial Chamber recognised a “presumption of collective injury” extending to members of the same persecuted group or community when mass atrocity crimes are alleged without any requirement of physical proximity between the members.<sup>105</sup> The Co-Lawyers further allege that the ECCC’s endorsement of a “collective injury” principle comports with international practice,<sup>106</sup> as this notion is recognised by the International Criminal Court,<sup>107</sup> the 1985 and 2005 United Nations’ Basic Principles<sup>108</sup> and numerous human rights bodies, such

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<sup>102</sup> Co-Lawyers Appeal (D269/3), para. 28.

<sup>103</sup> Co-Lawyers Appeal (D269/3), paras 29-30 (The Co-Lawyers refer to rejected Civil Party applicants that have suffered harm as a consequence of the four policies implemented to advance the national JCE, including KEO Theary (11-VSS-00030), SAM Sitha (13-VSS-00370), SENG Kheang (15-VSS-00138), SE Sokhorn (17-VSS-00021), TAN Sok (11-VSS-00120); *referring to* Case 003, Civil Party Applicants Harmed Resulting from Targeting, Annex C to the Co-Lawyers Appeal (D269/3), 7 March 2019, D269/3.2.3 (“Annex C to Co-Lawyers Appeal (D269/3.2.3)”); Case 003, Civil Party Applicants Harmed Resulting from Other Policies of the JCE, Annex D to Co-Lawyers Appeal (D269/3), 7 March 2019, D269/3.2.5 (“Annex D to Co-Lawyers Appeal (D269/3.2.5)”)).

<sup>104</sup> Co-Lawyers Appeal (D269/3), para. 31.

<sup>105</sup> Co-Lawyers Appeal (D269/3), para. 32 *referring to* Case 002 Decision on Civil Party Appeals (D404/2/4), paras 83-93.

<sup>106</sup> Co-Lawyers Appeal (D269/3), para. 33.

<sup>107</sup> Co-Lawyers Appeal (D269/3), para. 33 *referring to* International Criminal Court, *Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, ICC-01/04-01/06-1432, Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 11 July 2008, para. 35.

<sup>108</sup> Co-Lawyers Appeal (D269/3), para. 33 *quoting* 1985 Victims Principles, Annex A.1; 2005 Victims Principles, Preamble.



as the African Commission of Human and Peoples' Rights and the Inter-American Court of Human Rights.<sup>109</sup>

52. The Co-Lawyers recall that MEAS Muth is responsible for attacks in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK targeting specific groups or communities,<sup>110</sup> and contend that as per the Pre-Trial Chamber's reasoning, "a presumption of collective injury arising from the harm suffered by direct victims in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK extends to *all* members of these specifically targeted groups or communities irrespective of their locations."<sup>111</sup> They assert that while the International Co-Investigating Judge acknowledges the principle of collective injury in the Admissibility Order, he nevertheless "erroneously imposes a requirement that those with shared membership in the targeted group or community be physically located in the Kampong Som Autonomous Sector or the waters and islands off the coast of DK".<sup>112</sup>

53. Therefore, the Co-Lawyers request that the Pre-Trial Chamber overturns the Admissibility Order and admits as Civil Parties the Appellants in Annex C of their Appeal who provided sufficient information to show their membership in one or more of the specifically targeted groups or communities identified in the submissions.<sup>113</sup>

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<sup>109</sup> Co-Lawyers Appeal (D269/3), para. 33 *referring to* African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/03, 25 November 2009, para. 248; UN Committee on Economic, Social and Cultural Rights, General Comment 21: Art. 15(1)(a) (*Right of Everyone to Take Part in Cultural Life*), 43<sup>rd</sup> session, 21 December 2009, U.N. Doc. E/C.12/GC/21, para. 37; Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment (Merits and Reparations), 27 June 2012, Series C, Report No. 245, paras 231-232, 284.

<sup>110</sup> According to the Co-Lawyers, the different groups or communities targeted include persons of Vietnamese and Thai ethnicities, "new people", former Khmer Republic and LON Nol associates, CPK cadres seen as traitorous, Khmer Krom, and suspected CIA and KGB "spies", *see* Co-Lawyers Appeal (D269/3), para. 34 *referring to* Indictment (D267), paras 190, 273, 277, 279, 349-350, 390, 413, 419; Second Introductory Submission (D1), paras 53-54, 59-60; Supplementary Submission (D120), para. 6.

<sup>111</sup> Co-Lawyers Appeal (D269/3), para. 34.

<sup>112</sup> Co-Lawyers Appeal (D269/3), para. 35 *referring to* Admissibility Order (D269), para. 33.

<sup>113</sup> Co-Lawyers Appeal (D269/3), paras 36-37 (The Co-Lawyers refer to rejected Civil Party applicants that have suffered harm as a consequence of being a member of a targeted group or community, including LENG Nan (11-VSS-00070), VEN Vân (11-VSS-00276), CHHUN Yean (11-VSS-00143), TENG Vannak (15-VSS-00139), PÈN Hoern (11-VSS-00094), PANG Srey (13-VSS-00730), TOUCH Chhy (17-VSS-00026), MAK Vanna (13-VSS-00734), SUNG Seang (15-VSS-00137), HEM Chaut (15-VSS-00136), NÂN Yem (13-VSS-00601), MEY Saveoun (11-VSS-00042), CHEA Marie (17-VSS-00001), YANN Nhâr (11-VSS-00262), LONG Phan (11-VSS-00182), SEK Phalla (14-VSS-00163)); Annex C to Co-Lawyers Appeal (D269/3.2.3).



54. Third, the Co-Lawyers submit that the International Co-Investigating Judge erred by finding inadmissible Civil Party applicants who suffered harms derived from policies and crimes imputable to MEAS Muth within the Kampong Som Autonomous Sector whereas in the Admissibility Order, he contemplated the admission of applicants whose alleged harm did not necessarily stem from crimes committed specifically in the locations identified in the submissions or the Indictment.<sup>114</sup> The Co-Lawyers argue that due to MEAS Muth's position as Secretary of Kampong Som Autonomous Sector and, therefore, his administrative authority over that area,<sup>115</sup> the Civil Party applicants detailed in Annex B of their Appeal who suffered harms within that sector, although not at specific crime sites mentioned in the Indictment, as a result of crimes alleged against MEAS Muth, should be declared admissible as "the location of [these] Appellants' harms within the crime sites and region enumerated in the [Indictment] provides an additional linkage between their harms and [MEAS] Muth's criminal activities."<sup>116</sup>

## 2. Discussion

### a. Applicable Law

55. Stating the purpose of Civil Party action, Internal Rule 23(1) provides:

The purpose of Civil Party action before the ECCC is to:

- a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and
- b) Seek collective and moral reparations, as provided in Rule 23quinquies.

56. Dealing with applications and admission of Civil Parties, Internal Rule 23bis(1) provides:

In order for Civil Party action to be admissible, the Civil Party applicant shall:

- a) be clearly identified; and

<sup>114</sup> Co-Lawyers Appeal (D269/3), para. 38 referring to Admissibility Order (D269), para. 35.

<sup>115</sup> Co-Lawyers Appeal (D269/3), para. 39.

<sup>116</sup> Co-Lawyers Appeal (D269/3), para. 40 (emphasis omitted) referring to KONG Sâmnanng (11-VSS-00301), PRUM Samon (14-VSS-00017), ON Daravuth (17-VSS-00043), HENG Navy (14-VSS-00014), MAO Sophâl (14-VSS-00012) in Case 003, Civil Party Applicants Harmed by Conduct at Crime Sites within the Scope of Case 003, Annex B to Co-Lawyers Appeal (D269/3), 7 March 2019, D269/3.2.2.





- b) demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.

When considering the admissibility of the Civil Party application, the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.

57. Internal Rule 21 provides a framework of interpretation for the above-mentioned Internal Rules and states in its relevant parts that:

The applicable ECCC Law, Internal Rules [...] shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings.

b. Ground 1(1)

58. Internal Rule 23*bis*(1)(b) concerns the admission of Civil Party applications, and provides that a Civil Party applicant must “demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury”.<sup>117</sup> The International Judges observe that this Internal Rule requires a causal link between the “crimes alleged” and the “injury” suffered by the applicant.<sup>118</sup> The Pre-Trial Chamber has previously found that while “Internal Rule 23*bis*(1)(b) does not require a causal link between the harm and the facts investigated, it explicitly requires a causal link between the harm and any of *the crimes alleged*.”<sup>119</sup> Consequently, the harm suffered by a Civil Party applicant must be connected to crimes charged in the Indictment in order to be considered for admissibility at this stage of the proceedings.<sup>120</sup>

59. The meaning of Internal Rule 23*bis*(1)(b) has been further clarified by the Pre-Trial Chamber. While noting the robust partial dissent in Case 002,<sup>121</sup> the International Judges observe that: “[t]he Pre-Trial Chamber considers that the object and

<sup>117</sup> Internal Rule 23*bis*(1)(b).

<sup>118</sup> Internal Rule 23*bis*(1)(b). *See also* Case 002 Decision on Civil Party Appeals (D404/2/4), para. 42; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 42.

<sup>119</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), paras 42, 71; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 42, 71.

<sup>120</sup> *See* Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 56.

<sup>121</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), Separate and Partially Dissenting Opinion of Judge Catherine MARCHI-UHEL (“Case 002 Decision on Civil Party Appeals (D404/2/4), Opinion of Judge MARCHI-UHEL”), paras 3-5.



purpose of [Internal Rule] 23bis(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications”.<sup>122</sup> In the context of Case 002, where multiple Accuseds were implicated, the Chamber observed that while “the facts investigated are limited to certain areas or crime sites, the legal characteri[s]ations of such facts, [...] include crimes [...] committed by the Charged Persons by acting in a joint criminal enterprise together and with others against the population and ‘*throughout* the country’”.<sup>123</sup> As noted by the Pre-Trial Chamber, “the Victims before ECCC, especially in case 002, are in a different position from those before domestic courts and even from those in ECCC’s case 001”.<sup>124</sup> Consequently, in Case 002, the Chamber held that Civil Party applicants did not have to relate their injury to only those crime sites identified in the Closing Order “as the crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia”<sup>125</sup> with those offenses “including crimes against humanity, genocide, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the 1969 Penal Code”.<sup>126</sup>

60. In this case, the Co-Lawyers refer extensively to the Pre-Trial Chamber’s prior holdings in Case 002.<sup>127</sup> However, the International Judges observe that multiple Accuseds were indicted for crimes committed *throughout* Cambodia in Case 002,<sup>128</sup> in contrast with Case 003 in which MEAS Muth is indicted for crimes committed in Kampong Som Autonomous Sector, in the waters and islands off the coasts of DK and crimes committed in the context of the purges of Divisions 117, 164, 310 and 502, only.<sup>129</sup> Indeed, the Indictment defined and limited the geographical and the material scope of the case in the following manner: “[MEAS] Muth was the primary person

<sup>122</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 62; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 62.

<sup>123</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 42; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 42.

<sup>124</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 69; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 69.

<sup>125</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 72; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 72.

<sup>126</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 71; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 71.

<sup>127</sup> Co-Lawyers Appeal (D269/3), paras 21-22.

<sup>128</sup> See, e.g., Case 002 Decision on Civil Party Appeals (D404/2/4), paras 74-75; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 74-75.

<sup>129</sup> See Indictment (D267), pp. 256-264. See also Admissibility Order (D269), paras 36-37.



responsible for implementing CPK polic[ies] *in his area of authority*”<sup>130</sup> and “when instructed [in relation to purges of Divisions in support of the CPK targeting policy], outside that area”,<sup>131</sup> as part of a JCE with SON Sen, SOU Met, Ta Mok and other senior RAK cadres who shared the common purpose of implementing, between 17 April 1975 and 6 January 1979, the said policies.<sup>132</sup> Accordingly, the International Judges consider that the circumstances identified by the Pre-Trial Chamber in Case 002 are not prevalent in the instant case and, therefore, find irrelevant the Co-Lawyers’ arguments related to Case 002 holdings.

61. In addition, the Co-Lawyers argue that Civil Parties across Cambodia should have been admitted and make repeated reference to allegations made in the Introductory and the Supplementary Submissions in support of this contention.<sup>133</sup> The International Judges recall that at the closing order stage, the only authoritative document establishing the scope of the Trial Chamber’s seisin is the indictment and not any prior submissions from the Office of the Co-Prosecutors.<sup>134</sup> In that sense, the International Judges consider that the causal link that must be made by the Civil Party applicants is to a crime alleged within the trial chamber’s seisin and not to “(i) the broader scope of the investigation, (ii) facts for which the judicial investigation has already been opened, or (iii) facts under investigation.”<sup>135</sup>

62. Therefore, it is reasonable to conclude that at this stage of the proceedings, to be admissible, a Civil Party applicant must demonstrate that as a direct consequence of at least one of the crimes charged, he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.<sup>136</sup>

<sup>130</sup> Indictment (D267), para. 565 (emphasis added).

<sup>131</sup> Indictment (D267), para. 568.

<sup>132</sup> Indictment (D267), para. 562.

<sup>133</sup> Co-Lawyers Appeal (D269/3), paras 23, 25-26.

<sup>134</sup> See Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 59. See also Internal Rule 67(1) (“The Co-Investigating Judges shall conclude the investigation by issuing a Closing Order, either indicting a Charged Person and sending him or her to trial, or dismissing the case. The Co-Investigating Judges are not bound by the Co-Prosecutors’ submissions”).

<sup>135</sup> See Case 004/2 Consideration on Civil Party Appeal (D362/6), para. 59 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), Opinion of Judge MARCHI-UHEL, para. 34.

<sup>136</sup> Internal Rule 23bis(1)(b). See also Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 60.



63. The International Judges observe that the Indictment charges MEAS Muth for various crimes committed in limited geographical areas<sup>137</sup> and that the impugned Order appropriately limits the admissibility of Civil Party applicants to those “who have suffered harm in the Kampong Som region or in the waters and islands off the coast of DK between 17 April 1975 and 6 January 1979” or “in the context of the purges of Divisions 117, 164, 310 and 502” in accordance with these specific charges.<sup>138</sup> Contrary to the Co-Lawyers’ allegations,<sup>139</sup> the International Judges therefore find that Civil Party applicants who have suffered injury that is not derived from the crimes mentioned in the Indictment do not meet the causal link requirement under Internal Rule 23*bis*(1)(b).

64. Finally, the International Judges consider that the majority of the inadmissible Civil Party applicants highlighted in the Co-Lawyers’ submissions and those listed in Annex C (targeted groups)<sup>140</sup> and Annex D (JCE) of their Appeal<sup>141</sup> may have suffered from the mass atrocities, which transpired during the Khmer Rouge regime. However, the International Judges find that most described events do not correspond to alleged crimes in Case 003, as defined in the Indictment. Consequently, the International Co-Investigating Judge did not err in law by limiting the geographical and the material scope and by considering only the victims of crimes committed in the Kampong Som region or in the waters and islands off the coast of DK or in the context of the purges of Divisions 117, 164, 310 and 502, thereby rejecting the applicants listed in Annexes C and D of the Co-Lawyers Appeal that are not linked to the alleged crimes in these aforementioned contexts. To the contrary, the International Judges recall that extending Civil Party action against the Accused beyond the alleged crimes committed in the identified scope would be improper and unfair, derogating from the nexus requirement under Internal Rule 23*bis*.<sup>142</sup>

65. However, upon review of these Annexes of the Co-Lawyers Appeal, the International Judges find that an error was committed in relation to applicant LONG Rân (11-VSS-00138) who was found inadmissible in the Admissibility Order but whose brother was victim of the purge of Division 310 linked to criminal allegations for which

<sup>137</sup> See Indictment (D267), pp. 256-264.

<sup>138</sup> Admissibility Order (D269), paras 36-37.

<sup>139</sup> Co-Lawyers Appeal (D269/3), paras 20-28, 30.

<sup>140</sup> Annex C to Co-Lawyers Appeal (D269/3.2.3).

<sup>141</sup> Annex D to Co-Lawyers Appeal (D269/3.2.5).

<sup>142</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 55.



MEAS Muth is committed for trial. The International Judges find that the International Co-Investigating Judge erred in fact in his decision of admissibility in relation to this applicant who, in reality, meets the nexus requirement under Internal Rule 23*bis* and should have been admitted for the reasons stated in Annex of the present Opinion. Accordingly, Ground 1(1) is upheld in relation to LONG Rân (11-VSS-00138) and dismissed for the remaining applicants.

c. Ground 1(2)

66. Under Internal Rule 23*bis*(1)(b), a Civil Party applicant must further “demonstrate [...] that he or she has in fact suffered physical, material or psychological injury”.<sup>143</sup> In Case 002, the Pre-Trial Chamber considered the nature and the extent of psychological injuries suffered in the context of mass atrocities committed throughout Cambodia,<sup>144</sup> and extended the presumption of psychological injury to indirect victims who did not have a familial relationship with the direct victim but who were part of the same targeted group.<sup>145</sup> The Pre-Trial Chamber observed that:

[T]he mere knowledge of the fate of another human who is a direct victim of crimes committed resulting from the implementation of policies to that effect must be more than not likely to be psychologically disturbing to any person of ordinary sensibility. Such disturbance flows not just from seeing such crimes being committed but also from the implied and constant threat generated by such occurrences that can reasonably be expected to instill fear on the others that this could also be their fate due to them belonging to the same targeted group or community as the direct victim of a crime committed as part of the implementation of the CPK policies.<sup>146</sup>

67. Following this observation, the Chamber held that “for those applicants alleging psychological injury who are not in a position to substantiate a close relationship with the immediate victim, [it] shall, where appropriate, apply a presumption of collective injury” in its assessment of Civil Party applications.<sup>147</sup>

<sup>143</sup> Internal Rule 23*bis*(1)(b).

<sup>144</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 86; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 86.

<sup>145</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), paras 83-93; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 83-93.

<sup>146</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 86; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 86.

<sup>147</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 93; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 93.



68. In the present case, the International Judges affirm that an indirect victim may claim psychological injury even in the absence of a familial relationship with the direct victim through his or her membership within the same targeted group or community.<sup>148</sup> The International Judges observe that the International Co-Investigating Judge has, in fact, adopted this approach, as the relevant section of the Admissibility Order concludes:

[P]sychological harm encompasses harm suffered by a direct victim as a direct result of a crime, or by an indirect victim as a result of the crimes committed against, or the harm suffered by, a direct victim. *Indirect victims may suffer such harm regardless of the absence of a familial relationship with the direct victim where they were both members of the same targeted group or the same community, or where the indirect victim was otherwise affected by the harm suffered by the direct victim.*<sup>149</sup>

69. On this basis, the Co-Lawyers allege that “a presumption of collective injury arising from the harm suffered by direct victims in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK extends to *all* members of these specifically targeted groups or communities irrespective of their locations.”<sup>150</sup> However, the International Judges recall that Internal Rule 23*bis*(1)(b) requires a nexus between the *injury* and the *alleged crimes*,<sup>151</sup> including in relation to indirect victims.

70. In contrast with Case 002, the crimes alleged against MEAS Muth are limited in geographical and material scope to the Kampong Som Autonomous Sector and the waters and islands off the coast of DK, as well as to the purges of Divisions 117, 164, 310 and 502.<sup>152</sup> In particular, the Indictment describes the targeting of specific groups as follows:

[B]etween 17 April 1975 and lasting until at least 6 January 1979, [MEAS] Muth [...] and other senior RAK cadres shared the common purpose of implementing the [four] CPK policies.

[...]

[MEAS] Muth made a further significant contribution to the CPK policy targeting specific groups perceived as potential threats or being disloyal to the DK Regime, in particular, CPK cadres accused of ‘traitorous activities’, ‘17 April people’, soldiers from the East Zone, and the Vietnamese and Thai,

<sup>148</sup> See Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 64.

<sup>149</sup> Admissibility Order (D269), para. 33 (emphasis added).

<sup>150</sup> Co-Lawyers Appeal (D269/3), para. 34.

<sup>151</sup> Internal Rule 23*bis*(1)(b).

<sup>152</sup> See Indictment (D267), pp. 256-264. See also Indictment (D267), paras 217-455.



by *inter alia* denouncing these groups as traitors and/or enemies, ordering them to be identified arrested and killed, and supporting the purge of these specific groups *in his areas of authority*, and when specifically instructed to do so, *outside that area*.<sup>153</sup>

71. As noted earlier, it follows that the injury described by a Civil Party applicant must be connected to the aforementioned crimes contained in the Indictment. Conversely, the Co-Lawyers argue that *all* Civil Party applicants alleging injury as members of a specifically targeted group are admissible, even when the injury did not result from the targeting of a member of a specific group in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK, or during the purges of Divisions 117, 164, 310 and 502.<sup>154</sup> For example, the Co-Lawyers describe Civil Party applicant PANG Srey who was forcibly relocated with her family, described as “new people”, from Phnom Penh to Kampot Province and whose father, a former LON Nol soldier, was taken to and killed at Kraing Ta Chan Detention Center in Takeo Province.<sup>155</sup> While the International Judges agree that these events may have caused suffering and may be related to the policies implemented throughout Cambodia during the Khmer Rouge regime, the alleged injury did not result from the targeting of former military personnel and “new people” in the Kampong Som region or the waters and islands off the coast of DK nor related to the purges mentioned above and, as such, is not imputable to MEAS Muth.

72. The International Judges, therefore, conclude that the nexus requirement in Internal Rule 23*bis*(1)(b) dictates that the presumption of collective injury, in the present case, extends to those Civil Party applicants who can relate their injury to the alleged crimes committed against direct victims in the Kampong Som region, territories and waters off the cost of DK and the Division purges, as laid out in the Indictment.<sup>156</sup> Indeed, the “[m]ere membership of the same targeted group elsewhere, without any

<sup>153</sup> Indictment (D267), paras 562, 568 (emphasis added). The International Judges observe that “his area of authority” refers to Kampong Som region, the islands and waters off the DK coast, while “outside that area” refers to the purges of Divisions 117, 164, 310 and 502.

<sup>154</sup> Co-Lawyers Appeal (D269/3), para. 37 (“Appellants listed in Annex C (Harm to Civil Party Applicants Resulting from Targeting) have all provided information sufficient to show their membership in one or more of the specifically targeted groups or communities identified in the submissions. *On this basis*, the [Pre-Trial Chamber] should overturn the Admissibility Order and admit these Appellants as Civil Parties” (emphasis added)).

<sup>155</sup> Co-Lawyers Appeal (D269/3), para. 36(6).

<sup>156</sup> See Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 68.



connection to [these areas], does not suffice.”<sup>157</sup> While the International Judges observe that the majority of the inadmissible Civil Party applicants highlighted in the Co-Lawyers’ submissions and those listed in Annex C of their Appeal<sup>158</sup> may have suffered psychological injury as a result of their invoked membership in a specifically targeted group, their injury does not relate to the “alleged crimes” in this case. Consequently, the International Judges find that the International Co-Investigating Judge did not err in law when rejecting these applicants. Accordingly, Ground 1(2) of the Appeal is dismissed.

d. Ground 1(3)

73. Regarding the issue of whether the harm suffered by a Civil Party applicant needs to be linked to one of the crime sites of the closing order, the International Judges recall that Internal Rule 23bis(1)(b) requires the injury to be a direct consequence of at least one of the crimes charged and that Civil Party applicants who suffered an injury that is not derived from crimes alleged located in Kampong Som region or in the waters and islands off the coast of DK or related to the above-mentioned purges do not meet the causal link requirement under Internal Rule 23bis(1)(b).<sup>159</sup> The International Judges reiterate that:

Internal Rule 23bis(1)(b) does not require a causal link between the harm and the facts investigated, it explicitly requires a causal link between the harm and [...] the crimes alleged. Crimes being the legal characteri[s]ations of the facts investigated [...]. While the facts investigated are limited to certain areas or crime sites, the legal characteri[s]ations of such facts [...] include [...] mass atrocities [...]. *It is the legal characteri[s]ation of the investigated factual situations, and not the investigated factual situations themselves, that should [be] considered by the Co-Investigating Judges when reviewing Civil Party applications pursuant to Internal Rule 23bis(1)(b).*<sup>160</sup>

74. Therefore, while the harm suffered by a Civil Party applicant should be linked to a crime the Accused has been charged for in the Indictment, it need not be connected to

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<sup>157</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 68.

<sup>158</sup> See Co-Lawyers Appeal (D269/3), para. 36(1)-(6). See also Annex C to Co-Lawyers Appeal (D269/3.2.3).

<sup>159</sup> See *supra* para. 63.

<sup>160</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 42; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 42 (emphasis added).





a specific crime site from the Indictment in order to fulfil the Internal Rule 23bis(1)(b) causal link requirement.

75. The International Judges further recall “that the object and purpose of [Internal Rule] 23bis(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC”.<sup>161</sup> The International Judges consider that this interpretation is in accordance with the fundamental principles of the ECCC procedure enshrined in the Internal Rule 21(1), which aims at safeguarding the interests of the parties, and therefore, requires the Pre-Trial Chamber to protect the interests of both the Accused and the Victims.

76. In the instant case, the International Judges observe that as correctly stated by the International Co-Investigating Judge, to meet the causal link requirement under Internal Rule 23bis(1)(b), a Civil Party applicant must firstly show harm derived from the implementation of one of the four Khmer Rouge policies either at a location within the aforementioned area or in the context of the purges of Divisions 117, 164, 310 and 502;<sup>162</sup> secondly, that the implementation of these policies led to genocide, crimes against humanity, war crimes and/or domestic crimes under Article 3<sup>new</sup> of the ECCC Law; and thirdly, that any such crime may be imputed to MEAS Muth.<sup>163</sup>

77. Therefore, the International Judges find that under this Ground of Appeal, applicants alleging harm from a charged crime that did not occur at one of the specified crime sites in the Indictment but resulted from the implementation of the CPK policies in MEAS Muth’s area of authority<sup>164</sup> should be admitted. In this regard, the International Judges note that both the International Co-Investigating Judge in his Indictment and the International Judges in their Considerations on Appeals against Closing Orders found MEAS Muth to have, *inter alia*, authority over the Kampong Som region – an area encompassing, at least, Kampong Som town, Stung Hav District, Prey Nob District and

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<sup>161</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 62; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 62.

<sup>162</sup> See Admissibility Order (D269), paras 36-38.

<sup>163</sup> See Admissibility Order (D269), paras 36-38.

<sup>164</sup> See Indictment (D267), paras 564-568.



the islands off the DK coasts –<sup>165</sup> in his capacity of Kampong Som Autonomous Sector Secretary as well as Division 164 Commander.<sup>166</sup>

78. Upon review of the relevant part of Annex B of the Co-Lawyers Appeal in light of Internal Rule 23*bis*(1)(b)'s causal link requirement concerning crimes allegedly committed in Kampong Som region, the International Judges find that the International Co-Investigating Judge erred in his decision of admissibility on three Civil Party applicants, and consider that as exposed in Annex of the present Opinion, the following victims should have been admitted: ON Daravuth (17-VSS-00043); OUCH Sakom (14-VSS-00016); and KONG Sâmngang (11-VSS-00301).<sup>167</sup>

79. Furthermore, upon examination of Annexes C and D of the Co-Lawyers Appeal which purportedly contain Civil Party applications only relevant to Appeal Grounds 1(1) and 1(2), the International Judges note that another Civil Party applicant, VUONG Kim Snguon (11-VSS-00293), fulfils Rule 23*bis*(1)(b)'s causal link requirement concerning the crimes allegedly committed in Kampong Som region. The International Judges therefore find that the Co-Investigating Judge erred in his decision of admissibility on this Civil Party applicant and consider that he should have been admitted as stated in Annex of the present Opinion. Consequently, Ground 1(3) of the Co-Lawyers Appeal is upheld for these four applicants and dismissed for the remaining applicants.

## **B. GROUND 2: ALLEGED ERROR RELATED TO PREJUDICE ARISING FROM THE INTERNAL RULE 66*BIS* DECISION**

### **1. Submissions**

80. The Co-Lawyers, in their second Ground of Appeal, submit that despite his own repeated statements that the Internal Rule 66*bis* Decision would not impact the admissibility of Civil Party applicants, the International Co-Investigating Judge limited

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<sup>165</sup> See Admissibility Order (D269), paras 36-38. See also Indictment (D267), paras 160, 426, 446 (mentioning Kampong Som Town), paras 355-402 (examining crimes alleged in Stung Hav District) and paras 403, 446 (referring to crimes alleged in Prey Nob District, including at Ou Oknha Heng); Annex A of Admissibility Order (D269.1) in which the International Co-Investigating Judge admitted Civil Party applicants who suffered harm from crimes committed in Prey Nob District, Kampong Som Province (see, e.g., KETH Loch (13-VSS-00727) finding “disappearance of Applicant’s father from a *durian plantation in Prey Nob District, Kampong Som Province*”; VONG Nhen (11-VSS-00296) finding that she was enslaved and subject to inhumane living conditions “in *Prey Nop District*”) (emphasis added)).

<sup>166</sup> See Considerations on Appeals against Closing Orders (D266/27 & D267/35), Opinion of Judges BEAUVALLET and BAIK, paras 315-324; Indictment (D267), paras 159-161.

<sup>167</sup> See Annex.



the geographic scope of admissibility to the Kampong Som Autonomous Sector and the waters and islands off the coast of DK.<sup>168</sup> In their views, the International Co-Investigating Judge thereby erroneously rejected and caused severe prejudice to the Civil Party applicants identified in Annex B of the Appeal,<sup>169</sup> who suffered harms as a consequence of the crimes alleged at Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site because these applicants would have otherwise been found admissible prior to the Internal Rule 66*bis* Decision.<sup>170</sup>

81. The Co-Lawyers contend that the International Co-Investigating Judge's decision to place geographic restrictions on admissibility of Civil Party applicants effectively denies otherwise previously qualified Civil Party applicants' right to meaningfully participate in the Case 003 proceedings,<sup>171</sup> and add that his interpretation of the impact of the reduction of judicial investigation's scope runs counter to the rights of victims and the fundamental principles of the ECCC, which require that the Court takes a broad view of Civil Party admissibility and safeguard the interests and the rights of the victims.<sup>172</sup>

82. Therefore, the Co-Lawyers request the Pre-Trial Chamber to find that the International Co-Investigating Judge erred by rejecting the Civil Party applicants identified in Annex B of their Appeal who suffered harms as a consequence of crimes occurring at Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site, which were excluded by the Internal Rule 66*bis* Decision.<sup>173</sup>

## 2. Discussion

83. The International Judges recall that pursuant to Internal Rule 23(1)(a), the purpose of Civil Party action before the ECCC is to "participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution", and reaffirm that in accordance with the Preamble of the ECCC

<sup>168</sup> Co-Lawyers Appeal (D269/3), para. 42.

<sup>169</sup> Applicants AUN Han (13-VSS-00452); KONG Siek (16-VSS-00054); MANN Rây (13-VSS-00453); NEANG Lay (13-VSS-00499); NGOV Nhâ (13-VSS-00602); OM Nieng (14-VSS-004129); SOK Pich (13-VSS-00517); and SUO Yim (11-VSS-00130).

<sup>170</sup> Co-Lawyers Appeal (D269/3), paras 41-47.

<sup>171</sup> Co-Lawyers Appeal (D269/3), paras 43-45.

<sup>172</sup> Co-Lawyers Appeal (D269/3), para. 46.

<sup>173</sup> Co-Lawyers Appeal (D269/3), para. 47.



Agreement, the Judges and the Chambers of the ECCC must pay special attention and assure a meaningful participation for the victims of the crimes committed.<sup>174</sup> The International Judges further observe that pursuant to Internal Rule 23*ter*(2), “[w]hen the Civil Party is represented by a lawyer, his or her rights are exercised through the lawyer”, and note that under Internal Rule 74(4)(i), the Civil Parties may appeal against the Co-Investigating Judges’ decision “reducing the scope of judicial investigation under [Internal Rule 66*bis*].”

84. Regarding the Co-Lawyers’ submission on alleged prejudice caused from the reduction of the scope of the judicial investigation pursuant to the Internal Rule 66*bis* Decision, the International Judges recall Internal Rule 66*bis*(5), which provides that the evidence relating to excluded facts may still be relied upon insofar as it is relevant to the remaining facts, and note that the impugned excluded facts – allegations relating to Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site – were not imputed to MEAS Muth<sup>175</sup> and proceedings concerning these facts were terminated with Internal Rule 66*bis* Decision.<sup>176</sup> Furthermore, the International Judges consider that the Co-Lawyers’ such submission is untimely and misplaced in their Appeal for the following reasons.

85. The International Judges firstly observe that with respect to the International Co-Investigating Judge’s Internal Rule 66*bis* Decision, the Co-Lawyers were duly informed of and given appropriate opportunities to meaningfully participate in the proceedings. On 16 March 2016, the International Co-Investigating Judge, in his Request for Comments, informed the Parties that he was inclined to exclude certain facts from the investigation and requested their views on the matter.<sup>177</sup> Upon receiving comments from the Co-Lawyers for MEAS Muth and the International Co-Prosecutor, the International Co-Investigating Judge issued the Notice of Provisional Discontinuance of certain factual allegations he was seized of on 24 August 2016.<sup>178</sup> In his Internal Rule 66*bis*(2) Notification of 22 November 2016, the International Co-Investigating Judge formally notified the Parties of his intention to exclude certain

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<sup>174</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 65.

<sup>175</sup> These facts concerned the legal and factual authority of SOU Met, *see* Introductory Submission, paras 47, 66, 73-74.

<sup>176</sup> Internal Rule 66*bis* Decision (D226), paras 4, 13. *See also* Indictment (D267), para. 580.

<sup>177</sup> Request for Comments (D184).

<sup>178</sup> Notice of Provisional Discontinuance (D184/3).



alleged facts and invited them to file submissions within 15 days from the Notification.<sup>179</sup> On 10 January 2017, the International Co-Investigating Judge issued his Internal Rule 66*bis* Decision in which he assured that the exclusion of facts “will not affect the status of Civil Parties or the right of the Civil Party applicants to participate in the judicial investigation.”<sup>180</sup> Lastly, the International Co-Investigating Judge, in his Admissibility Order, explicitly stated that the “[f]acts excluded on the basis of Internal Rule 66*bis* alleged by Civil Party applicant may still form the basis of a decision of admissibility, should they fulfil the remaining conditions.”<sup>181</sup>

86. The International Judges note that the Co-Lawyers did not file any submissions in response to the Request for Comments, the Notice of Provisional Discontinuance or the Internal Rule 66*bis*(2) Notification. Most significantly, the Co-Lawyers did not exercise their explicitly prescribed right under Internal Rule 74(4)(i) to appeal against the Internal Rule 66*bis* Decision. Consequently, the International Co-Investigating Judge’s decision to reduce the scope of the judicial investigation in Case 003 directly precluded the excluded facts related to Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site<sup>182</sup> from forming the basis for charges against MEAS Muth pursuant to Rule 66*bis*(5). The International Judges consider that the Co-Lawyers’ prompt intervention, demonstrating the alleged negative impact of the reduction of the scope of the judicial investigation on the victims’ rights to participate would have been beneficial in assuring the interests and the rights of the victims in this case. In light of the foregoing, the International Judges find that the Co-Lawyers failed to exercise the victims’ right to participate in this regard in a timely manner.

87. Concerning the Co-Lawyers’ claim on alleged prejudice resulting from the reduction of the scope of the Civil Party admissibility pursuant to the Internal Rule 66*bis* Decision, the International Judges affirm that the facts excluded on the basis of Internal Rule 66*bis* invoked by a Civil Party applicant may still form the basis of a decision of admissibility, if they fulfil the remaining conditions of admissibility under Internal Rules 23*bis*(1) and (4).<sup>183</sup> In this regard, the International Judges recall that pursuant to Internal

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<sup>179</sup> Internal Rule 66*bis*(2) Notification (D184/4), paras 8, 9.

<sup>180</sup> Internal Rule 66*bis* Decision (D226), para. 12.

<sup>181</sup> See Admissibility Order (D269), para. 39.

<sup>182</sup> Internal Rule 66*bis* Decision (D226), paras 4, 13.

<sup>183</sup> See *supra* paras 34-41.



Rule 23bis(4), all Civil Party applications must contain “sufficient information” to allow verification of their compliance with the Internal Rules.<sup>184</sup> While reaffirming the Pre-Trial Chamber’s “flexible approach” in relation to the requirement for all applicants to clearly prove their identity,<sup>185</sup> the International Judges note that the Co-Lawyers did not proffer any legal or factual submissions in their Appeal establishing that the applications of the Civil Party applicants identified in Annex B of their Appeal fulfil the legal requirements of admissibility under Internal Rules 23bis(1) and (4). In other words, the Co-Lawyers failed to provide sufficient information demonstrating, *inter alia*, the existence of causal link between the crimes *within* the Co-Investigating Judges’ seisin in Case 003 as reduced by the Internal Rule 66bis Decision and the injuries of the applicants. Nonetheless, the International Judges undertook a careful examination of the information provided by the victims identified in Annex B of the Co-Lawyers Appeal,<sup>186</sup> in order to safeguard the interests and the rights of the victims.

88. Upon a thorough review of the applications and the additionally provided information, the International Judges find that the International Co-Investigating Judge did not err in rejecting the victims identified in Annex B of the Appeal<sup>187</sup> who suffered harm as a consequence of crimes occurring at Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site since these applicants suffered harm from crimes committed outside the seisin of the Co-Investigating Judges in Case File 003 as reduced by the Internal Rule 66bis Decision. Therefore, Ground 2 of the Appeal is dismissed.

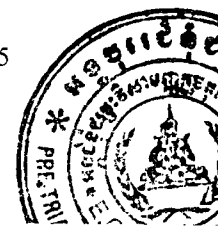
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<sup>184</sup> Internal Rule 23bis(4). See also *Practice Direction on Victim Participation*, 02/2007/Rev.1, as amended 27 October 2008 (“Practice Direction on Victim Participation”), Arts. 3.2, 3.5, 3.6.

<sup>185</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 94; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 95; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 95.

<sup>186</sup> In examining the Civil Party applications, the International Judges reviewed victim information forms, any attachments and where available, supplementary information, summary reports, written records of interview and transcripts of in-court testimony given by the applicant before the ECCC.

<sup>187</sup> These applicants are: AUN Han (13-VSS-00452); KONG Siek (16-VSS-00054); MANN Rây (13-VSS-00453); NEANG Lay (13-VSS-00499); NGOV Nhâ (13-VSS-00602); OM Nieng (14-VSS-004129); SOK Pich (13-VSS-00517); and SUO Yim (11-VSS-00130).



**C. GROUND 3: ALLEGED ERROR OF FAILURE TO PROVIDE  
A REASONED ORDER FOR THE REJECTIONS OF  
CIVIL PARTY APPLICATIONS**

**1. Submissions**

89. Under Ground 3, the Co-Lawyers allege that the International Co-Investigating Judge erred in law by failing to provide reasoned decisions for the rejection of Civil Party applications.<sup>188</sup> They argue that the Admissibility Order fails to meet the minimum standards required to respect the principles of legality<sup>189</sup> according to which the Co-Investigating Judges must “implicitly disclose the material which has been taken into account by the judges when making a decision.”<sup>190</sup> They contend that without the Civil Party applicants being informed of the reasoning, the right to appellate review provided by the Internal Rules is rendered meaningless.<sup>191</sup>

90. The Co-Lawyers aver that the Pre-Trial Chamber previously set out these minimum standards for a reasoned decision concerning Civil Party application rejections in Case 002.<sup>192</sup> They assert that the International Co-Investigating Judge, in his Admissibility Order, rejected “an overwhelming proportion” of Civil Party applications “*en masse* without proper individual consideration”,<sup>193</sup> and as in Case 002, used reasoning, or lack thereof, which are “limited to a few short, recycled statements”<sup>194</sup> as he rejects “nearly 99 percent of the Appellants on [...] generic grounds”, including: (i) described facts falling outside of the scope of the Case File; (ii) not showing that it was more likely than not to be true that the applicant suffered harm from a charged crime; or (iii) described facts not relating to any matter which would permit the applicant to be joined as a Civil Party.<sup>195</sup> The Co-Lawyers further contend that this lack of specificity does not allow Civil Party applicants to meaningfully exercise their appeal rights.<sup>196</sup>

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<sup>188</sup> Co-Lawyers Appeal (D269/3), paras 48-51.

<sup>189</sup> Co-Lawyers Appeal (D269/3), para. 48 *referring to, inter alia*, Case 002 Decision on Civil Party Appeals (D411/3/6), paras 37-38.

<sup>190</sup> Co-Lawyers Appeal (D269/3), para. 48 *quoting* Case 002 Decision Civil Party Appeals (D411/3/6), para. 39.

<sup>191</sup> Co-Lawyers Appeal (D269/3), para. 48.

<sup>192</sup> Co-Lawyers Appeal (D269/3), paras 48-49 *referring to* Case 002 Decision on Civil Party Appeals (D411/3/6); Case 002 Decision on Admissibility Order Appeals (D404/2/4).

<sup>193</sup> Co-Lawyers Appeal (D269/3), para. 50.

<sup>194</sup> Co-Lawyers Appeal (D269/3), para. 50.

<sup>195</sup> Co-Lawyers Appeal (D269/3), para. 50 *referring to* Annex B of Admissibility Order (D269.2).

<sup>196</sup> Co-Lawyers Appeal (D269/3), para. 50.



91. The Co-Lawyers therefore request the Pre-Trial Chamber to overturn the Admissibility Order for the applicants listed in Annex E of the Appeal whose applications were rejected on the grounds described above in the absence of a reasoned order.<sup>197</sup>

## 2. Discussion

92. The International Judges recall that “the requirement for judicial bodies to provide reasoned decisions [...] [is] an international standard”.<sup>198</sup> First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74.<sup>199</sup> In its previous decisions, the Chamber found that while “the Co-Investigating Judges are not required to ‘indicate a view on all the factors’ considered in their decision making process, it is important that all parties concerned know the reasons for a decision.”<sup>200</sup> This allows the parties to make an informed decision on whether to appeal or not and on what grounds.<sup>201</sup>

93. In Case 002, the Pre-Trial Chamber considered the level of detail required in the Co-Investigating Judges’ reasoning when admitting or rejecting Civil Party applications, finding that:

[I]n general, a judicial decision must, (*sic*) implicitly disclose the material which has been taken into account by the judges when making a decision. This will ensure that parties having been unsuccessful in their application can

<sup>197</sup> Co-Lawyers Appeal (D269/3), para. 51 *referring to* Civil Party Applicants Found Inadmissible on Inadequate Grounds, Annex E to Co-Lawyers Appeal (D269/3), 7 March 2019, D269/3.2.7.

<sup>198</sup> Case 004/2 Consideration on Civil Party Appeal (D362/6), para. 84; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 38; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 38 *referring to* Case 002 (PTC06), Decision on NUON Chea’s Appeal against Order Refusing Request for Annulment, 26 August 2008, D55/1/8, para. 21.

<sup>199</sup> Case 004/2 Consideration on Civil Party Appeal (D362/6), para. 84. *See also* Internal Rule 74 (“Grounds for Pre-Trial Appeals”). In particular, Internal Rule 74(4)(b) states that “Civil Parties may appeal against” the Co-Investigating Judges’ orders “declaring a Civil Party application inadmissible”.

<sup>200</sup> Case 004/2 Consideration on Civil Party Appeal (D362/6), para. 84; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 38; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 38 *referring to* Case 002 (PTC03), Decision on Appeal against Provisional Detention Order of IENG Sary, 17 October 2008, C22/1/73, para. 66; Case 002 (PTC67), Decision on Co-Prosecutors Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Providing the Charged Persons’ Knowledge of the Crimes, 15 June 2010, D365/2/10, para. 24. *See also* Case 002 (PTC62), Decision on the IENG Thirith Defence Appeal against ‘Order on Requests for Investigative Action by the Defence for IENG Thirith’ of 15 March 2010, 14 June 2010, D353/2/3, para. 23.

<sup>201</sup> Case 004/2 Consideration on Civil Party Appeal (D362/6), para. 84; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 38; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 38; Case 002 (PTC 46), Decision on Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284 (NUON Chea’s Twelfth Request for Investigative Action), 14 July 2010, D300/1/5, para. 41.





be assured that the facts submitted and their submissions in respect of the law have been properly and fully taken into account. Each applicant to be joined as a Civil Party has a right to have their individual application considered and to a demonstration that this has occurred, even if the decision is provided in a short and tabular form.<sup>202</sup>

94. In that case, the Pre-Trial Chamber considered that more detailed reasoning was required in respect of the rejected Civil Party applicants because the Co-Investigating Judges' reasons were limited to short statements (5-15 words) - a "maximum" of two sentences per rejection and not specific to each application.<sup>203</sup> The Chamber concluded that the Co-Investigating Judges committed a "significant error in law" in insufficiently addressing the basis of rejection concerning the Civil Party applicants.<sup>204</sup>

95. In the present case, the International Judges observe that the International Co-Investigating Judge, in his Admissibility Order, sets out the legal principles and criteria that he applied in determining the admissibility of Civil Party applications.<sup>205</sup> These principles include the type of victim and harm relevant to admissible Civil Party applications, the causal link required between the harm suffered and the crimes alleged against the Charged Person, the standard of proof and sufficiency of information.<sup>206</sup> In addition, he defines the scope of Civil Party admissibility on the basis of the Indictment against MEAS Muth, explaining that the "applicants who have suffered harm in the Kampong Som region or in the waters and islands off the coast of DK between 17 April 1975 and 6 January 1979 will be admitted on two conditions."<sup>207</sup> The related Annexes provide additional information with respect to the admissibility of each individual Civil

<sup>202</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 39; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 39.

<sup>203</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), paras 37, 39; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 37, 39.

<sup>204</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), paras 39-40; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 39-40.

<sup>205</sup> Admissibility Order (D269).

<sup>206</sup> Admissibility Order (D269), paras 16-35, 40-48.

<sup>207</sup> Admissibility Order (D269), paras 36-39 (The International Co-Investigating Judge further explains that the two further conditions applicants must satisfy are that: (i) "the harm suffered by the applicant must derive from the alleged implementation of one of the following policies either at a location within the aforementioned area or in the context of the purges of Divisions 117, 164, 310 and 502"; and (ii) "there must be evidence that the implementation of these policies may have amounted to": genocide; one or more of the crimes against humanity listed in Article 5 of the ECCC Law namely imprisonment, murder, extermination, enslavement torture, other inhumane acts or persecution; war crimes or domestic crimes).



Party applicant.<sup>208</sup> The International Judges consider that the Admissibility Order shall be read in conjunction with the Annexes.

96. While the Co-Lawyers allege that the International Co-Investigating Judge “rejected an overwhelming proportion of [Civil Party applications] *en masse* without proper individual consideration”,<sup>209</sup> the International Judges find that Annex B of the Admissibility Order,<sup>210</sup> in fact, clearly indicates that the International Co-Investigating Judge individually considered each application. The International Judges note that the table includes, *inter alia*, the relevant document numbers and sufficient reasoning for the inadmissibility findings.

97. As opposed to merely stating that “the necessary causal link between the alleged harm and the facts under investigation was not established” or that “the Civil Party applicants did not provide sufficient information in their applications to verify compliance with Rules 23*bis*(1) and (4)” as in Case 002,<sup>211</sup> the International Co-Investigating Judge, in Annex B of the Admissibility Order under the column “Reasons for the Inadmissibility Finding”,<sup>212</sup> demonstrates the basis of his conclusion. More specifically, he articulates the specific information that he primarily considered and provides his conclusion that the “facts described fall outside the scope of the case file” or that “it was not shown that it is more likely than not to be true that the applicant suffered as a consequence of one of the crimes charged” on the basis of his examination of the facts recounted in each individual application, including the alleged crimes as well as their location and time frame.<sup>213</sup>

<sup>208</sup> Annex A of Admissibility Order (D269.1); Annex B of Admissibility Order (D269.2).

<sup>209</sup> Co-Lawyers Appeal (D269/3), para. 50.

<sup>210</sup> Annex B of Admissibility Order (D269.2).

<sup>211</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 37; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 37.

<sup>212</sup> Annex B of Admissibility Order (D269.2).

<sup>213</sup> See, e.g., *inter alia*, Annex B of Admissibility Order (D269.2), p. 8 [AM Kim Lun] (International Co-Investigating Judge’s consideration of AM Kim Lun’s application: “murder of Applicant’s uncles at Tboung Khmum District, Kampong Cham Province in 1976; disappearance of her younger sister from Kratie Province in 1977; enslavement and inhumane living conditions of Applicant in Kratie Province”, and his conclusion that while it is “recognised that these are traumatising events, they do not relate to any matter which would permit the admission of the Applicant to be joined as a Civil Party, as they fall outside the scope of the Case”). See also, e.g., Annex B of Admissibility Order (D269.2), p. 8 [DUK Nhat] (International Co-Investigating Judge’s examination of DUK Nhat’s application: “the murder of her uncle’s family and her two cousins and her enslavement in Dambae District Kampong Cham Province in 1977, Phnom Penh in 1978 and Kratie Province”, and his conclusion that “[w]hilst this is traumatising, it cannot be established that it is more likely than not to be true that she suffered as a consequence of one of



98. In conclusion, the International Co-Investigating Judge provided sufficient explanation, with specific references to the details of concerned applications, in rejecting the applicants listed in Annex E of the Appeal. The International Judges consider that a conjunct reading of the Admissibility Order and its Annex B sufficiently discloses the material taken into account by the International Co-Investigating Judge in making his decision and thereby establishes that each individual application had been “properly and fully taken into account”.<sup>214</sup> Therefore, the International Judges find that the Admissibility Order and related Annex B are sufficiently reasoned, allowing each applicant to file an appeal against the rejection of his or her application. Accordingly, Ground 3 is dismissed.

**D. GROUND 4: ALLEGED ERROR BY REJECTING CIVIL PARTY APPLICATIONS FOR FAILURE TO PROVIDE SUFFICIENT INFORMATION**

**1. Submissions**

99. The Co-Lawyers, in their fourth Ground of Appeal, submit that the International Co-Investigating Judge erred in law and fact by rejecting the Civil Party applications of the victims identified in Annex F of their Appeal<sup>215</sup> on the basis that (i) the applicant falls “outside the temporal scope of the case file” (ground for denial 5); (ii) the application contains insufficient time frames or locations (ground for denial 6); or (iii) the testimony cannot be reconciled with evidence or is inconsistent (ground for denial 7), as the required standard of proof and sufficiency of information were met by these applicants.<sup>216</sup>

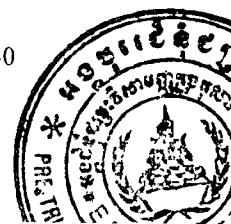
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the crimes charged”); Annex B of Admissibility Order (D269.2), p. 22 [CHEA Pren] (International Co-Investigating Judge’s review of CHEA Pren’s application: “[b]eing forced to carry out hard labour at various locations [within Pursat Province]; the inadequate medical care and inhumane living conditions she went through in Bakan District, Pursat Province, throughout the DK Regime; the imprisonment of her family member at Trach Kraol Prison, Bakan District, in 1978 (these facts were clarified during the interview of the Applicant in Case 004)”, and his conclusion that “[w]hilst it is recognised that these are traumatising events, the facts provided by the Applicant do not relate to any matter which would permit her to be joined as a Civil Party”).

<sup>214</sup> Case 002 Decision on Civil Party Appeals (D404/2/4), para. 39; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 39.

<sup>215</sup> See Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds, Annex F to Co-Lawyers Appeal (D269/3), 7 March 2019, D269/3.2.9.

<sup>216</sup> Co-Lawyers Appeal (D269/3), paras 52-59.



100. The Co-Lawyers firstly contend that with respect to Internal Rules 23*bis*(1) and (4) as well as Article 3.2 of the Practice Direction on Victim Participation,<sup>217</sup> information provided by Civil Party application is “deemed sufficient when it allows the [Co-Investigating Judges] to be satisfied that the facts alleged are more likely than not to be true.”<sup>218</sup> They further argue that the object and purpose of Internal Rule 23*bis*, as the Pre-Trial Chamber has recognised, is to set criteria for admissibility of Civil Party applications and not to restrict or limit the concept of Civil Party action at the ECCC,<sup>219</sup> and that the location of this Rule, within the General Provisions sub-section of the Procedure section of the Internal Rules, indicates that it must be read in conjunction with Internal Rule 21, which sets out the fundamental duty to safeguard the interests of the victims and ensure legal certainty and transparency.<sup>220</sup>

101. Regarding the required proof of harm for Civil Party applicants, the Co-Lawyers assert that “the Co-Investigating Judges must determine whether there are *prima facie* credible grounds indicating that the applicant suffered harm related to the facts under investigation on the basis of the elements in the case file.”<sup>221</sup>

102. Concerning the factors that mitigate the required proof of harm for Civil Party applicants, the Co-Lawyers firstly note the Pre-Trial Chamber’s findings that due to the gravity of the crimes addressed at the ECCC, “it would be unrealistic to see the injury caused from alleged mass atrocities only on an individual basis because it encompasses individual parameters”, and that “individual applications to be joined as a Civil Party must be seen in the special circumstances of the conflict”, acknowledging that mass atrocities stem from systematic and widespread policies directed towards particular groups and individuals, as well as an entire community.<sup>222</sup>

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<sup>217</sup> Co-Lawyers Appeal (D269/3), paras 52-53 referring to Practice Direction on Victim Participation, Art. 3.2.

<sup>218</sup> Co-Lawyers Appeal (D269/3), para. 53 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), para. 94.

<sup>219</sup> Co-Lawyers Appeal (D269/3), para. 54 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), para. 62.

<sup>220</sup> Co-Lawyers Appeal (D269/3), para. 54 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), para. 61.

<sup>221</sup> Co-Lawyers Appeal (D269/3), para. 55.

<sup>222</sup> Co-Lawyers Appeal (D269/3), para. 55 referring to Case 002 Decision on Civil Party Appeals (D404/2/4), para. 70.



103. In addition to the three factors recognised by the International Co-Investigating Judge in his Order on Admissibility,<sup>223</sup> the Co-Lawyers aver that the Co-Investigating Judges' violation of Internal Rule 21(1)(c) serves as an additional mitigating factor that should be considered when determining the sufficiency of Appellants' evidence.<sup>224</sup> In support, they argue that the Co-Investigating Judges failed to keep the victims, who do not have access to the Case File and are thus fully dependent on the information released by the Co-Investigating Judges, properly and timely informed throughout the proceedings, as the Judges did not disclose the relevant crime sites to the victims until two and a half years after the filing of the Introductory Submission, and thereby hindered the Appellants' ability to conduct timely investigations, properly analyse relevant evidence and provide details concerning relevant harm.<sup>225</sup>

104. In light of the above, the Co-Lawyers request the Pre-Trial Chamber to overturn the International Co-Investigating Judge's findings of inadmissibility for victims rejected under grounds related to the sufficiency and the quality of information and consequently, grant these victims Civil Party status.<sup>226</sup>

## 2. Discussion

105. The International Judges recall that pursuant to Internal Rule 23*bis*(4), all Civil Party applications must contain sufficient information to allow verification of their compliance with Internal Rules.<sup>227</sup> In particular, "the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator."<sup>228</sup> Considering that the object and purpose of these rules is not to "restrict or limit the notion of victim or civil party action in the ECCC", but to set baseline criteria for admissibility,<sup>229</sup> the Pre-Trial

<sup>223</sup> See Admissibility Order (D269), para. 41.

<sup>224</sup> Co-Lawyers Appeal (D269/3), para. 57.

<sup>225</sup> Co-Lawyers Appeal (D269/3), para. 57.

<sup>226</sup> Co-Lawyers Appeal (D269/3), paras 58-59.

<sup>227</sup> Internal Rule 23*bis*(4). See also Practice Direction on Victim Participation, Arts. 3.2, 3.5, 3.6.

<sup>228</sup> Internal Rule 23*bis*(4).

<sup>229</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 94; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 62; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 62.



Chamber has endorsed a “flexible approach” in relation to the requirement for all applicants to clearly prove their identity.<sup>230</sup>

106. In accordance with Internal Rule 23*bis*(1), when considering the admissibility of Civil Party applications, “the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.”<sup>231</sup> The International Judges observe that in his Admissibility Order, the International Co-Investigating Judge found that certain circumstantial factors mitigated the required degree of proof of harm, including: (a) the passage of time; (b) the capacity to identify and record psychological health impact; and (c) the capacity to provide proof of ownership and of income due to forced movement of the population.<sup>232</sup> The International Judges consider that this flexible approach to documentary evidence and proving identity is appropriate considering the particular cultural and social background of Cambodia and the practical extent of available evidence in the wake of the mass atrocities alleged in this case.<sup>233</sup>

107. Upon a careful examination of the Co-Lawyers Appeal and a thorough review of the information provided by the victims<sup>234</sup> identified in Annex F of their Appeal,<sup>235</sup> the

<sup>230</sup> Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 94; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 95; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 95.

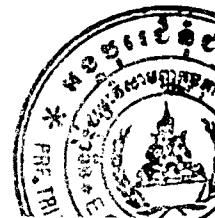
<sup>231</sup> Internal Rule 23*bis*(1). *See also* Case 004/2, Considerations on Civil Party Appeal (D362/6), para. 95; Case 002 Decision on Civil Party Appeals (D404/2/4), para. 94; Case 002 Decision on Civil Party Appeals (D411/3/6), para. 94.

<sup>232</sup> Admissibility Order (D269), para. 41.

<sup>233</sup> *See* Case 004/2 Considerations on Civil Party Appeal (D362/6), para. 95; Case 002 Decision on Civil Party Appeals (D404/2/4), paras 83, 95; Case 002 Decision on Civil Party Appeals (D411/3/6), paras 83, 95.

<sup>234</sup> In examining the Civil Party applications, the International Judges reviewed victim information forms, any attachments and where available, supplementary information, summary reports, written records of interview and transcripts of in-court testimony given by the Applicant before the ECCC.

<sup>235</sup> For example, regarding YAN San’s application (11-VSS-00178), the International Co-Investigating Judge concluded that “[t]he Applicant described the enslavement, forced marriage and inhumane living conditions at Mondulkiri Province. Whilst it is recognised that these are traumatising events, they do not relate to any matter which would permit the Applicant to be joined as a Civil Party as they fall outside of the scope of the Case. Her husband and son’s disappearances in 1973 and 1974 respectively fall outside of the temporal scope of the Case”, Annex B of Admissibility Order (D269.2). p. 8. Therefore, the International Co-Investigating Judge did not err in dismissing the application due to facts falling outside of the geographical and the temporal scope of the case. Related to CHEA Marie (17-VSS-00001), the International Co-Investigating Judge found that “[t]he Applicant described [...] enslavement [...] in Baray District, Kampong Thom Province (unspecified timeframe), murder of Applicant’s aunt’s relatives (unspecified time and location) and disappearance of other family 2 members (unspecified time and location).” The Applicant solely provided details of harm suffered in Kampong Thom Province, which is outside the geographical and the material scope of the case, but did not provide any information related to harms suffered by relatives that could place these events within the temporal or the geographical scope of the case. Therefore, the International Co-Investigating Judge did not err in concluding that “[w]hilst this is traumatising, the Applicant does not establish that it is more likely than not to be true that she suffered as a consequence of one of the crimes charged”, Annex B of Admissibility Order (D269.2), p. 18.



International Judges find that the International Co-Investigating Judge did not err in his assessment of whether it is “more likely than not to be true” that the applicant suffered harm from crimes included in the seisin of the Co-Investigating Judges in Case 003. Therefore, Ground 4 of the Appeal is dismissed.

### E. CONCLUSION

108. The International Judges deem it necessary to clarify the impact of the two conflicting Closing Orders on the admissibility of Civil Party applicants before reviewing their findings on the instant Appeal.

109. The National Co-Investigating Judge, in his Order on Civil Party Applicants’ Admissibility,<sup>236</sup> confirms that four Civil Party applicants have been rejected.<sup>237</sup> In

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Regarding SOEUNG Khien (11-VSS-00214), the International Co-Investigating Judge considered the Applicant’s application, describing: “enslavement and inhumane living conditions of the Applicant and the Applicant’s family [in] [...] Pursat Province throughout the DK regime; murder of Applicant’s children in 1978; death of Applicant’s parents-in-law due to starvation in July 1978; murder of Applicant’s wife and Applicant’s children between 1978 and 1979; persecution of Khmer Krom”, and noted inconsistencies between the Victim Information Form and the Supplementary Information. While the International Co-Investigating Judge did not specify the inconsistencies, the International Judges’ review of the relevant documents indicate that material inconsistencies exist with respect to the deaths of the Applicant’s children – whether they were murdered at either Ta Sok pagoda or Prey Roneam Khang Khraom in 1978 (Victim Information Form) or died from starvation in Phsar Andaet Cooperative in the year that “[h]e does not remember” (Supplementary Information). Furthermore, the described harms occurred in Pursat Province. Therefore, the International Co-Investigating Judge did not err in concluding that “[w]hilst it is recognised that these are traumatising events, they do not relate to any matter which would permit the Applicant to be joined as a Civil Party, as they fall out of the scope of the Case”, Annex B of Admissibility Order (D269.2), p. 22. With respect to PROM Sâ’n’s application (11-VSS-00264), the International Co-Investigating Judge noted that the Applicant described “the disappearance of various family members in Seam Reap Province” and his “enslavement in Takeo” with inconsistencies between the Victim Information Form (facts occurring from 1975) and the Supplementary Information (facts occurring from 1976 after deportation from Vietnam). In support of their argument that there are no material inconsistencies, the Co-Lawyers highlight that the Applicant lived in Takeo Province on 17 April 1975 and was ordered to live in Office 21 at a later unspecified point in time before 1977 (Victim Information Form) and that the Applicant was enslaved and forced to work at Kus Commune Cooperative in Takeo Province at an unspecified time (Supplementary Information). However, given that the described harms occurred in Seam Reap and Takeo Provinces, the International Co-Investigating did not err in concluding that “the Applicant does not establish that it is more likely than not to be true that he suffered as a consequence of one of the crimes charged”, Annex B of Admissibility Order (D269.2), p. 24. Concerning LONG Chhoeum (11-VSS-00308), the International Co-Investigating Judge considered that the Applicant described: “forced labour at various locations in Battambang Province throughout the DK regime, the imprisonment and murder of his father in Battambang Province in July 1977” and noted that “[w]hile the Supplementary Information [...] mentions that his marriage was forced, the original application is silent on whether it was forced or not and the Case 004 interview of the Applicant revealed that the wedding was consensual.” Since the described harms occurred in Battambang Province, the International Co-Investigating Judge did not err in concluding that “[w]hilst it is recognised that these are traumatising events, the facts provided by the Applicant do not relate to any matter which would permit him to be joined as Civil Party”, Annex B of Admissibility Order (D269.2), p. 21.

<sup>236</sup> Order on Civil Party Applicants’ Admissibility (D268).

<sup>237</sup> Order on Civil Party Applicants’ Admissibility (D268), para. 4 referring to Order on the Admissibility of SENG Chantheary (D11/1/3); Order on the Admissibility of Rob HAMILL (D11/2/3); Order on the



addition, he concludes that all Civil Party applications that were filed past 14 May 2011 are dismissed, claiming that since the judicial investigation in Case 003 was concluded on 29 April 2011,<sup>238</sup> these applications were submitted past the deadline under Internal Rule 23bis(2)<sup>239</sup> – within 15 days from the 2011 Internal Rule 66(1) Notification<sup>240</sup> that informed the Parties of the conclusion of the judicial investigation in Case 003.

110. The validity of the National Co-Investigating Judge's Order on Civil Party Applications' Admissibility, which expressly relies on the findings of the Dismissal Order,<sup>241</sup> is necessarily and inextricably tied to the legal validity of the Dismissal Order itself. Given that the National Co-Investigating Judge's Dismissal Order is void *ab initio* and that its issuance has no legal basis in the ECCC's fundamental framework,<sup>242</sup> the International Judges find that the Order on Civil Party Applications' Admissibility is also void and cannot be ascribed legal effect. Accordingly, the International Co-Investigating Judge's Admissibility Order stands as a sole valid order determining the admissibility of Civil Parties in Case 003. Furthermore, the National Co-Investigating Judge's Order on Civil Party Applications' Admissibility does not preclude the participation of Civil Parties who have been found admissible in future proceedings against MEAS Muth.

111. Therefore, for the foregoing reasons, the International Judges of the Pre-Trial Chamber hereby decide that the Civil Party Appeal is admissible and dismiss Grounds 1(2), 2, 3 and 4. The International Judges uphold in part and dismiss in part Grounds 1(1) and 1(3). The International Judges find that the International Co-Investigating Judge erred in his decision on admissibility under Grounds 1(1) and 1(3) because five Civil Party applications and related documents should have been admitted in Case 003 (as reasoned in Annex of the present Opinion).<sup>243</sup> The following

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Admissibility of CHUM Neou (D11/3/3); Order on the Admissibility of Timothy Scott DEEDS (D11/4/3). *See also* Order on Civil Party Applicants' Admissibility (D268), para. 6, explaining that Civil Party applicant SENG Chantheary withdrew her application.

<sup>238</sup> Order on Civil Party Applicants' Admissibility (D268), para. 2. *See also* Dismissal Order (D266), paras 2, 8, 39, 41, 359.

<sup>239</sup> Order on Civil Party Applicants' Admissibility (D268), paras 9, 11.

<sup>240</sup> 2011 Internal Rule 66(1) Notification (D13).

<sup>241</sup> Order on Civil Party Applicants' Admissibility (D268), para. 9 *referring to* Dismissal Order (D266), para. 18.

<sup>242</sup> *See* Considerations on Appeals against Closing Orders (D266/27 & D267/35), Opinion of Judges BEAUVALLET and BAIK, paras 249-250, 284, 342.

<sup>243</sup> *See supra* paras 65 and 78-79.





five Civil Party applicants should have been admitted: LONG Rân (11-VSS-00138); ON Daravuth (17-VSS-00043); OUCH Sakom (14-VSS-00016); KONG Sâmnam (11-VSS-00301); and VUONG Kim Snguon (11-VSS-00293).<sup>244</sup>

**Internal Rule 77(13)(a)**

112. Internal Rule 77(13)(a) provides that where the required majority is not attained, the default decision of the Chamber, as regards an appeal against an order, shall be that such order shall stand. Consequently, the International Judges hereby find that the International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants stands. Accordingly, the International Judges hold that all Civil Parties who have been found admissible by the International Co-Investigating Judge<sup>245</sup> have the right to participate in future proceedings against MEAS Muth.

**Phnom Penh, 10 June 2021**



**Judge Olivier BEAUVALLET**



**Judge Kang Jin BAIK**

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<sup>244</sup> See Annex.

<sup>245</sup> Annex A of Admissibility Order (D269.1).

