

BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 003/07-09-2009-ECCC/OCIJ (PTC35) **Party Filing:** The Defence for MEAS Muth

Filed to: Co-Investigating Judges **Original language:** ENGLISH

Date of document: 29 April 2021

CLASSIFICATION

Classification of the document suggested by the filing party: **PUBLIC**

Classification by OCIJ or Chamber: សាធារណៈ/Public



Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

MEAS MUTH’S URGENT REQUEST FOR AN EXTENSION OF TIME TO RESPOND TO INTERNATIONAL CO-PROSECUTOR’S REQUEST TO CO-INVESTIGATING JUDGES TO FORWARD CASE FILE 003 TO THE TRIAL CHAMBER

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All Civil Parties in Case 003

Mr. MEAS Muth, through his Co-Lawyers (“The Defence”), hereby urgently requests a one-week extension of time for his response to the International Co-Prosecutor’s Request to the Co-Investigating Judges (“OCIJ”) to Forward Case File 003 to the Trial Chamber (“ICP’s Request”).¹ This Request is made necessary to allow sufficient time to cogently and comprehensively respond to the issues raised by the Pre-Trial Chamber (“PTC”) in its Considerations in Case 003 and by the ICP in her Request. Given the urgency of this Request, the Defence requests to file it in English with a Khmer translation to follow.

I. BACKGROUND

1. The PTC issued its Considerations in Case 003 on 7 April 2021, unanimously declaring that “the Co-Investigating Judges’ issuance of Two Conflicting Closing Orders was illegal, violating the legal framework of the ECCC.”² The PTC did not attain the required supermajority to reach a common decision on the merits and attached the separate opinions of the National and International PTC Judges.³
2. The National PTC Judges considered that Case File 003 “should be held at the ECCC archives,” because the CIJs enjoy equal status and the presumption of innocence “does not allow the Pre-Trial Chamber to rule that any act of any Co-Investigating Judge has preponderance.”⁴
3. The International PTC Judges considered that Case File 003 must be forwarded to the Trial Chamber because the Dismissal Order “is null and void as an unfinished legal document,” “there is a *de jure* unanimous finding” by the PTC that the Indictment is valid, and, having been notified under Rule 77(14) of the Considerations, the CIJs must “immediately proceed” in accordance with the PTC’s unanimous decision.”⁵
4. On 19 April 2021, the ICP requested the OCIJ to forward Case File 003 to the Trial Chamber “to effectuate the unanimous agreement of the PTC Judges that the Case 003

¹ International Co-Prosecutor’s Request to the Co-Investigating Judges to Forward Case File 003 to the Trial Chamber, 19 April 2021, notified in English and Khmer on 25 April 2021, D270 (“ICP’s Request”).

² Considerations on Appeals Against Closing Orders, 7 April 2021, D266/27 & D267/35 (“Case 003 Considerations”), p. 40.

³ Case 003 Considerations, p. 39.

⁴ *Id.*, paras. 115-18.

⁵ *Id.*, paras. 342-343.

Indictment is valid.”⁶ The ICP’s Request was notified on 25 April 2021, making the response due on 5 May 2021.⁷

II. LAW AND ARGUMENT

5. Mr. MEAS Muth is entitled to an *effective* response.⁸ Generally, this means affording him adequate time and facilities for the preparation of his defence and having Co-Lawyers with the capacity to act with all due diligence in protecting his fair trial rights.⁹ Specifically, in this instance, it means affording Mr. MEAS Muth adequate time and facilities to file his response to the ICP’s Request. Alarming, the prescribed 10-day deadline for responses under the Practice Direction on Filing Documents before the ECCC (“Practice Direction”)¹⁰ falls appreciably short of meaningfully affording Mr. MEAS Muth an effective response given the complexity of the issues raised by the PTC’s Considerations.
6. To fulfill its ethical and professional duty of diligence in protecting Mr. MEAS Muth’s fair trial rights,¹¹ and draft an effective response, the Defence must review and analyze all authority cited by the PTC Judges in their Considerations and the ICP in her Request, research the law, review the Case File, take instructions from Mr. MEAS Muth, and craft cogent arguments. These tasks cannot be done to the highest standard necessary to protect

⁶ ICP’s Request, para. 2.

⁷ Email from CHANLYDA Chhay entitled “re: Deadline,” 26 April 2021 (Attachment 1).

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

⁹ Due diligence requires a Charged Person’s Co-Lawyers to do anything and everything to ensure that all fair trial rights are fully accorded to their client, including making all necessary legal and factual challenges, checking the veracity and accuracy of evidence gathered by the Co-Investigating Judges that is used against the Charged Person, and so on. ALASKA RULES OF PROF’L CONDUCT (2017-2018 ed.), Rule 1.3; *Id.*, Comment to Rule 1.3. See also Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia, Art. 7; Law on the Statutes of the Bar (1995), Art. 58; Rule 22(4).


¹⁰ Practice Direction, Art. 8.3.

¹¹ See *supra* fn. 9.


Mr. MEAS Muth's fair trial rights within the time limits under the Practice Direction, given that the Defence is understaffed.¹²

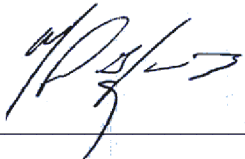
7. The CIJs have authority under Rule 39(2) to "set the time limits" for submissions "taking into account the circumstances of the case." The CIJs also have authority under Rule 39(4)(a) to "extend any time limits set by them."
8. Granting this modest request for a one-week extension will not prejudice the Parties nor unduly delay the proceedings, given the complexity of the matter under determination. To the contrary, the additional time requested will allow the Defence fully and concisely brief the CIJs on the complex issues raised by the PTC Judges and the ICP.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this **29** day of **April, 2021**

¹² MEAS Muth's request to DSS to recruit senior legal consultant is still pending. Other than the Co-Lawyers, the Defence consists of a Phnom Penh-based case manager and a senior legal consultant working remotely.

