

**FOR THE SUPREME COURT CHAMBER
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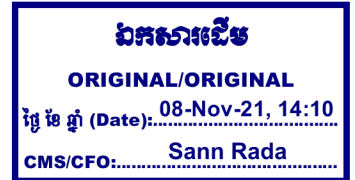
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**INTERNATIONAL CO-PROSECUTOR'S REPLY TO YIM TITH'S RESPONSE TO
HER APPEAL OF THE PRE-TRIAL CHAMBER'S FAILURE TO SEND CASE 004 TO
TRIAL AS REQUIRED BY THE ECCC LEGAL FRAMEWORK**

TABLE OF AUTHORITIES & CONFIDENTIAL DOCUMENTS

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TABLE OF AUTHORITIES

ECCC LAW

Core Legal Documents

(Not included – available in the ECCC Legal Compendium)

1. Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Phnom Penh, 6 June 2003 (“ECCC Agreement”), arts 1, 5(4), 7(4).
2. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended on 27 October 2004 (“ECCC Law”), arts 1, 2 new, 23 new, 35 new.
3. Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rule(s)”, “Rule(s)”, “IR(s)”), 1(2), 21, 67(5), 73, 74, 76(2) and (4), 77.

Jurisprudence

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4. Case 002/31-10-2019-ECCC/SC (03)-11 Decision on Khieu Samphan’s Application for Disqualification of Six Appeal Judges Who Adjudicated in Case 002/01, 14 July 2020, paras 63-64. *(Exceeds 10 pages – excerpt attached)* **(Authority 1A (English) & 1B (Khmer))**

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5. Case 002-E154/1/1/4 Decision on Ieng Sary’s Appeal Against the Trial Chamber’s Decision on its Senior Legal Officer’s Ex Parte Communications, 25 April 2012, paras 14-15. **(Authority 2A (English) & 2B (Khmer))**
6. Case 002-F36 Appeal Judgement, 23 November 2016, para. 112. *(Exceeds 10 pages – excerpt attached)* **(Authority 3A (English) & 3B (Khmer))**
7. Case 004/2-E004/2/1/1/2 Decision on International Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 10 August 2020 (“SCC Immediate Appeal Decision”), paras 51, 53, 61, 67-69, 71. *(Exceeds 10 pages – excerpt attached)* **(Authority 4A (English) & 4B (Khmer))**

Pre-Trial Chamber (PTC)***Case 004***

8. **D381/45 & D382/43** Considerations on Appeals Against Closing Orders, 17 September 2021, (“Considerations”), paras 73-79, p. 49 (disposition), Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, p. 56 (disposition), Opinion of Judges Kang Jin Baik and Olivier Beauvallet (“International Judges’ Opinion”), para. 520, p. 225 (disposition). **(Authority 5A (English) & 5B (Khmer))**

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9. **C11/29** Public Decision on the Co-Lawyers’ Urgent Application for Disqualification of Judge Ney Thol Pending the Appeal Against the Provisional Detention Order in the Case of Nuon Chea, 4 February 2008, paras 19-21. **(Authority 6A (English) & 6B (Khmer))**
10. **D390/1/2/4** Decision on Ieng Sary’s Appeal Against Co-Investigating Judges’ Decision Refusing to Accept the Filing of Ieng Sary’s Response to the Co-Prosecutors’ Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, para. 15. *(Exceeds 10 pages – excerpt attached)* **(Authority 7A (English) & 7B (Khmer))**
11. **A410/2/6** Decision on Appeal Against the Response of the Co-Investigating Judges on the Motion of Confidentiality, Equality and Fairness, 29 June 2011, para. 10. **(Authority 8A (English) & 8B (Khmer))**

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12. **D120/3/1/8** Considerations on Meas Muth’s Appeal Against the International Co-Investigating Judge’s Re-Issued Decision on Meas Muth’s Motion to Strike the International Co-Prosecutor’s Supplementary Submission, 26 April 2016, Opinion of Judges Beauvallet and Baik Regarding the Merit of the Appeal (“International Judges’ Motion to Strike Considerations”), paras 35-36, fn. 134. *(Exceeds 10 pages – excerpt attached)* **(Authority 9A (English) & 9B (Khmer))**
13. **D158/1** Decision on Meas Muth’s Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals Against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary, 28 April 2016, paras 17-18. *(Exceeds 10 pages – excerpt attached)* **(Authority 10A (English) & 10B (Khmer))**
14. **D266/27 & D267/35** Considerations on Appeals Against Closing Orders, 7 April 2021, (“Case 003 Considerations”), p. 40 (disposition), Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, p. 42 (disposition), Opinion of Judges Olivier Beauvallet and Kang Jin Baik

(“International Judges’ Opinion”), paras 132, 133, p. 145 (disposition). (*Exceeds 10 pages – excerpt attached*) **(Authority 11A (English) & 11B (Khmer))**

15. **D271/5 & D272/3** Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for Meas Muth Concerning the Proceedings in Case 003, 8 September 2021 (“Consolidated PTC Decision”), paras 67, 69, 72, 74, 76, 77, fn. 181, 186. (*Exceeds 10 pages – excerpt attached*) **(Authority 12A (English) & 12B (Khmer))**

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16. **D308/3/1/20** Considerations on the International Co-Prosecutor’s Appeal of Closing Order (Reasons), 28 June 2018, para. 33. (*Exceeds 10 pages – excerpt attached*) **(Authority 13A (English) & 13B (Khmer))**

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17. **D359/36 & D360/45** Interoffice Memorandum from Judges Olivier Beauvallet and Kang Jin Baik entitled “Transfer of Case File 004/2”, 12 March 2020, paras 27-28, 31. **(Authority 14)**

Office of the Co-Investigating Judges (OCIJ)

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18. **D109** Notification of Suspect’s Rights [Rule 21(1)(D)], 24 February 2012. (*Not Attached – Provided as Authority 39A & 39B of the ICP Appeal*)
19. **D185/1** Decision on Ta An’s Motion for Annulment of Investigative Action Pursuant to Internal Rule 76, 22 April 2014, para. 29, 33, fn. 37. **(Authority 15A (English) & 15B (Khmer))**
20. **D382** (Redacted) Closing Order (Indictment), 28 June 2019, paras 151, 992-1040, pp. 475-487. (*Exceeds 10 pages – excerpt attached*) **(Authority 16A (English) & 16B (Khmer))**
21. **D384** Order on Admissibility of Civil Party Applications, 28 June 2019, para. 2. **(Authority 17A (English) & 17B (Khmer))**

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22. **D87/2/1.7/1** Decision on Meas Muth’s Request for Clarification Concerning Crimes Against Humanity and the Nexus with Armed Conflict, 5 April 2016, para. 13. **(Authority 18A (English) & 18B (Khmer))**
23. **D181** Consolidated Decision on Meas Muth’s Requests on Personal Jurisdiction, 1 February 2016, para. 28. **(Authority 19A (English) & 19B (Khmer))**

24. **D270/7** Decision on International Co-Prosecutor’s Request to Forward Case File 003 to the Trial Chamber, 20 May 2021 (“CIJs’ Refusal Decision”), paras 19, 32, 36-38, 40, 42; (*Exceeds 10 pages – excerpt attached*) (**Authority 20A (English) & 20B (Khmer)**)
25. **D273** Order to File Submissions on Residual Jurisdiction to Terminate Case 003, 16 September 2021 (“Order for Termination Submissions”), paras 5-7, disposition at EN 01676518, KH 01676521. (*Not Attached – Provided as Authority 38A & 38B of the ICP Appeal*)

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26. Case 004/1-**D308/3** Closing Order (Reasons), 10 July 2017 (“Im Chaem Closing Order (Reasons)”), para. 10. (*Exceeds 10 pages – excerpt attached*) (**Authority 21A (English) & 21B (Khmer)**)

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27. Case 004/2-**D360** Closing Order (Indictment), 16 August 2018, paras 35-38. (*Exceeds 10 pages – excerpt attached*) (**Authority 22A (English) & 22B (Khmer)**)
28. Case 004/2-**D364** Memorandum from the Co-Investigating Judges entitled “Defence Request of 17 March 2020 to seal and archive Case File 004/2 – D363 (“Request”)”, 29 May 2020, p. 1. (**Authority 23A (English) & 23B (Khmer)**)

INTERNATIONAL LAW

Treaties and Other Instruments

29. Statute of the International Court of Justice, 18 April 1946, 33 UNTS 993, arts 38(1)(d), 59. (**Authority 24**)
30. International Covenant on Civil and Political Rights, New York, 16 December 1966 (“ICCPR”), 999 UNTS 171, art. 14(3)(c). (*Not included – available in the ECCC Legal Compendium*).
31. Rome Statute of the International Criminal Court, 17 July 1998 (“Rome Statute”), 2187 UNTS 90, art. 21(2), 67(1)(c). (*Not included – available in the ECCC Legal Compendium*)

Jurisprudence

International Court of Justice (ICJ)

32. *Barcelona Traction, Light and Power Company, Limited*, Preliminary Objections, Judgment, 24 July 1964, ICJ Reports 1964, Separate Opinion of Judge Tanaka, p. 65. (*Exceeds 10 pages*)

– excerpt attached) (**Authority 25**)

33. *South West Africa*, Second Phase, Judgment, 18 July 1966, ICJ Reports 1966, Separate Opinion of Judge Van Wyk, p. 67. (*Exceeds 10 pages – excerpt attached*) (**Authority 26**)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

34. *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement, Appeals Chamber, 24 March 2000, paras 107-108. (*Exceeds 10 pages – excerpt attached*) (**Authority 27**)
35. *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, Appeals Chamber, 21 July 2000, paras 189, 190. (*Exceeds 10 pages – excerpt attached*) (**Authority 28**)
36. *Prosecutor v. Galić*, IT-98-29-A, Judgement, Appeals Chamber, 30 November 2006, para. 117. (*Exceeds 10 pages – excerpt attached*) (**Authority 29**)
37. *Prosecutor v. Halilović*, IT-01-48-A, Decision on Defence Motion for Prompt Scheduling of Appeal Hearing, Appeals Chamber, 27 October 2006, para. 17. (**Authority 30**)
38. *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Judgement, Appeals Chamber, 17 December 2004, para. 1040. (*Exceeds 10 pages – excerpt attached*) (**Authority 31**)
39. *Prosecutor v. Šainović et al.*, IT-05-87-A, Judgement, Appeals Chamber, 23 January 2014, para. 1650. (*Exceeds 10 pages – excerpt attached*) (**Authority 32**)
40. *Prosecutor v. Šešelj*, IT-03-67-T, Decision on Oral Request of the Accused for Abuse of Process, Trial Chamber, 10 February 2010 (“Šešelj Abuse of Process Decision”), paras 29, 30. (*Exceeds 10 pages – excerpt attached*) (**Authority 33**)

International Criminal Tribunal for Rwanda (ICTR)

41. *The Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-A, Judgement, Appeals Chamber, 14 December 2015 (“Nyiramasuhuko AJ”), paras 360, 362, 364. (*Exceeds 10 pages – excerpt attached*) (**Authority 34**)
42. *Renzaho v. The Prosecutor*, ICTR-97-31-A, Judgement, Appeals Chamber, 1 April 2011, para. 238. (*Exceeds 10 pages – excerpt attached*) (**Authority 35**)
43. *The Prosecutor v. Rwamakuba*, ICTR-98-44C-PT, Decision on Defence Motion for Stay of Proceedings, Trial Chamber, 3 June 2005, para. 19. (*Exceeds 10 pages – excerpt attached*) (**Authority 36**)
44. *Semanza v. The Prosecutor*, ICTR-97-23-A, Decision, Appeals Chamber, 31 May 2000, para. 92. (*Exceeds 10 pages – excerpt attached*) (**Authority 37**)

Special Tribunal for Lebanon (STL)

45. *The Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Judgment, Trial Chamber, 18 August 2020, para. 966. (*Exceeds 10 pages – excerpt attached*) **(Authority 38)**

United Nations Human Rights Committee Documents

46. Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007 (“General Comment No. 32”), paras 26, 35 (*Exceeds 10 pages – excerpt attached*) **(Authority 39)**

REGIONAL AND FOREIGN DOMESTIC LAW

Treaties and Other Instruments

47. (European) Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, 213 UNTS 221 (as amended), art. 6(1). **(Authority 40)**
48. African (Banjul) Charter on Human and Peoples’ Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 7(1)(d). **(Authority 41)**
49. American Convention on Human Rights: “Pact of San José, Costa Rica”, San José, 22 November 1969, 1144 UNTS 143, art. 8(1). **(Authority 42)**

Jurisprudence

European Court of Human Rights (ECtHR)

50. *Abdoella v. The Netherlands*, No. 12728/87, Judgment, 25 November 1992, para. 24. (*Exceeds 10 pages – excerpt attached*) **(Authority 43)**
51. *Atanasovski v. the Former Yugoslav Republic of Macedonia*, No. 36815/03, Judgment, 14 January 2010, para. 38. (*Exceeds 10 pages – excerpt attached*) **(Authority 44)**
52. *Boddaert v. Belgium*, No. 12919/87, Judgment, 12 October 1992, para. 39. (*Exceeds 10 pages – excerpt attached*) **(Authority 45)**
53. *Buscemi v. Italy*, No. 29569/95, Judgment, 16 September 1999, para. 68, 69. (*Exceeds 10 pages – excerpt attached*) **(Authority 46)**
54. *Cossey v. The United Kingdom*, No. 10843/84, Judgment, 27 September 1990, para. 35. (*Exceeds 10 pages – excerpt attached*) **(Authority 47)**

55. *Frydlender v. France*, No. 30979/96, Judgment, 27 June 2000, para. 45. (*Exceeds 10 pages – excerpt attached*) (**Authority 48**)
56. *Kechev v. Bulgaria*, No. 13364/05, Judgment, 26 July 2012, para. 47. (*Exceeds 10 pages – excerpt attached*) (**Authority 49 - French**)
57. *Coëme and others v. Belgium*, Nos 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, Judgment, 22 June 2000, para. 140. (*Exceeds 10 pages – excerpt attached*) (**Authority 50**)
58. *Lavents v. Latvia*, No. 58442/00, Judgment, 28 November 2002, para. 119, 121. (**Authority 51**)
59. *Olujić v. Croatia*, No. 22330/05, Judgment, 5 February 2009, paras 59, 65, 68. (**Authority 52**)
60. *Rudnichenko v. Ukraine*, No. 2775/07, Judgment, 11 July 2013, paras. 116, 118. (**Authority 53**)
61. *Stanković and Trajković v. Serbia*, Nos 37194/08 and 37260/08, Judgment, 22 December 2015, para. 40(vi). (*Exceeds 10 pages – excerpt attached*) (**Authority 54**)
62. *Ștefănică and others v. Romania*, No. 38155/02, Judgment, 2 November 2010 (“Ștefănică”), paras 37-38. (*Exceeds 10 pages – excerpt attached*) (**Authority 55**)
63. *Ustyantsev v. Ukraine*, No. 3299/05, Judgment, 12 January 2012, para. 91. (*Exceeds 10 pages – excerpt attached*) (**Authority 56**)
64. *Unédic v. France*, No. 20153/04, Judgment, 18 December 2008, para. 74. (*Exceeds 10 pages – excerpt attached*) (**Authority 57 - French**)

OTHER DOCUMENTS

ECCC Public Pleadings

65. **D361** Yim Tith’s Request for Adequate Preparation Time, 16 June 2017, paras 16-29. (*Exceeds 10 pages – excerpt attached*) (**Authority 58A (English) & 58B (Khmer)**)
66. **D378/2.3** ICP’s Rule 66 Final Submission, Annex B – Procedural History, 4 June 2018, paras 1-3, 12, 16. (**Authority 59**)
67. **D386** Yim Tith’s Request to the Co-Investigating Judges to Immediately Terminate, Seal and Archive Case 004, 18 October 2021 (“Yim Tith’s Termination Request”), p. 1 (EN 01679367), paras 9-14, 16-17, 29, 40, 42, fn. 38. (*Exceeds 10 pages – excerpt attached*) (**Authority 60A (English) & 60B (Khmer)**)

ECCC Statements

68. ECCC Statement, *International Co-Investigating Judge Reinstated*, 24 April 2020. (**Authority 61A (English) & 61B (Khmer)**)

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69. **D314/1/8** Decision on Nuon Chea's and Ieng Sary's Appeal Against OCIJ Order on Requests to Summons Witnesses, 8 June 2010, para. 70. (*Exceeds 10 pages – excerpt attached*)
(Attachment C-62A (English) & 62B (Khmer))