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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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INTERNATIONAL CO-PROSECUTOR'S APPEAL OF THE PRE-TRIAL CHAMBER'S FAILURE TO SEND CASE 003 TO TRIAL AS REQUIRED BY THE ECCC LEGAL FRAMEWORK

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I. INTRODUCTION

1. The International Co-Prosecutor ("ICP") hereby appeals the failure of the Pre-Trial Chamber ("PTC") to conclude the pre-trial phase of Case 003 and forward the case to the Trial Chamber ("TC") for trial as mandated by the ECCC legal framework. It now falls to this Chamber, as the court of final instance, to correct this error of law and ensure the proper administration of justice in the circumstances of this case.

2. The ICP respectfully submits that law, logic and justice require the Supreme Court Chamber ("SCC") to find this appeal admissible and exercise its inherent authority to order that the case be forwarded to the TC for trial.

3. This appeal is warranted in the interests of justice for *all* parties and to ensure legal clarity and certainty that every judicial system requires. Denying admission of the appeal would relegate the case to perpetual judicial limbo. It would also deprive victims, living and dead, of their right to a fair and impartial judicial determination of Meas Muth's responsibility for his alleged crimes based on law and facts.

4. The ICP respectfully submits that this Chamber should order the case to proceed to trial for several reasons. Of paramount importance, the decision of all five PTC Judges that the Indictment is valid, or alternatively, operation of the default position, mandates that the case be sent forward for trial. As the issuance of two closing orders was not illegal, such issuance is no legal impediment to trial. The ECCC's legal framework not only allows, but envisions, that two conflicting closing orders would be issued based on its appointment of two equal, independent Co-Investigating Judges ("CIJs") and the establishment of a permissive dispute resolution mechanism. Given these features and no specific prohibition against issuing two conflicting closing orders, the assumption that there must be a single closing order fails to fully appreciate the unique nature of the ECCC framework.

5. Also, even if, *arguendo*, the issuance of two conflicting closing orders *did* constitute a violation of the ECCC legal framework, it was a procedural error that does not invalidate the Closing Orders or defeat the entire legal process. If any remedy was required, that remedy was provided by the PTC's consideration of the merits of each closing order. The suitable remedy for such a procedural error must be considered in light of several factors, including whether the issuance caused any demonstrably unfair outcome, material prejudice to Meas Muth, or abuse of process, as well as the seriousness of the charges, the social costs of preventing the case from proceeding to trial, the interests and rights of *all*

parties, and the proportionality of the remedy to the alleged harm.

6. Just as this Chamber has previously exercised its authority to dismiss a case, it has the corresponding authority to order that Case 003 proceed to trial. To argue otherwise is to argue that the United Nations ("UN") and Royal Government of Cambodia ("RGC") created an impotent judicial structure in which the Chamber of last instance has no authority to correct errors of law committed by lower Chambers or to enforce lawful, corrective action. The ICP submits the UN and RGC did not create such a system and it should not be interpreted in such a way by the judges of this Court.

II. PROCEDURAL HISTORY[1]

A. Investigation and Issuance of Closing Orders[2]

7. On 7 September 2009, the acting ICP submitted the Second Introductory Submission to the CIJs,[3] requesting a judicial investigation for crimes within the ECCC's jurisdiction, naming Meas Muth and Sou Met as suspects.[4]

8. On 29 April 2011, National Co-Investigating Judge ("NCIJ") You Bunleng and International Co-Investigating Judge ("ICIJ") Siegfried Blunk notified the Co-Prosecutors

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1 To assist the SCC, all authorities, pleadings and other documents referenced in this appeal, including those already on Case File 003, are filed as attachments (*per* Case 004/2-**E004/2/6** Decision on the Civil Party Lawyers' Request for Necessary Measures to be Taken by the Supreme Court Chamber to Safeguard the Civil Parties Fundamental Right to Legal Representation Before the Chamber in Case 004/2, 11 Aug 2020, para. 21 noting that "The Case File [...] remains unavailable even to the Supreme Court Chamber" as the case file was never transmitted from the PTC). The ICP submits that the SCC's access to all other case file material is an integral component of this Chamber's ability and responsibility to exercise its inherent jurisdiction and is required for the Chamber to comply with its mandate to make informed, reasoned decisions on issues before it. Nothing in law prohibits such access and the Chamber should, therefore, direct that Case File 003 be transferred to it for purposes of this appeal. Access would not violate confidentiality classifications, as the documents would remain confidential and are simply being considered by a Chamber of the same Court as the original classifying authority. To hold that the SCC cannot access these documents unless another Chamber allows it, would strip the SCC of its inherent authority and responsibility as a court of final instance. In other words, it would render the Chamber impotent to act in the interests of justice to ensure legal clarity and certainty. (Note that the ICP is not aware of any submissions by Meas Muth regarding the SCC's access to the case file. However, his recent request to the SCC to terminate the case and the accompanying table of authorities suggest that he is of the view the SCC has access to strictly confidential and confidential documents in Case 003. Or, if not, that the SCC should have access in order to exercise its inherent jurisdiction.)

2 This is a short summary of the most relevant procedural history. For more details regarding the investigative phase, please refer to **D266/2.2** Annex I: Procedural History (to the ICP's Appeal Against the Order Dismissing the Case Against Meas Muth), 8 Apr 2019.

3 **D1/1** Acting International Co-Prosecutor's Notice of Filing of the Second Introductory Submission, 7 Sep 2009, cover page.

4 **D1** Co-Prosecutors' Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 Nov 2008, para. 102. Sou Met later died and all allegations against him were dismissed (*see* **D86/3** Dismissal of Allegations against Sou Met, 2 Jun 2015).

that they considered the Case 003 judicial investigation concluded ("April 2011 Notice").[5] Thereafter, the NCIJ consistently maintained that the investigation was concluded, refusing to examine any document placed on the case file after 29 April 2011[6] despite the resumption of the investigation by Reserve ICIJ Laurent Kasper-Ansermet on 2 December 2011[7] and its continuation by ICIJs Mark Harmon[8] and Michael Bohlander,[9] successively.

9. On 24 February 2012, Reserve ICIJ Kasper-Ansermet notified Meas Muth that he was a suspect in an ongoing judicial investigation.[10]

10. After registering a disagreement between the CIJs, on 7 February 2013, the NCIJ sent the case file to the Co-Prosecutors pursuant to Internal Rule ("IR") 66(4).[11] The ICP returned the file, stating that the April 2011 Notice had lapsed when the ICIJ undertook a new investigative act, and the investigation was still open and "manifestly incomplete".[12]

11. On 31 October 2014, the ICP filed a supplementary submission that clarified the scope of the investigation and additionally seised the CIJs of forced marriage (including rape).[13]

12. On 14 December 2015, Meas Muth was charged in person by ICIJ Michael Bohlander.[14]

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5 **D13** Notice of Conclusion of Judicial Investigation, 29 Apr 2011.

6 *See* **D266** Order Dismissing the Case Against Meas Muth, 28 Nov 2018 ("Dismissal Order"), para. 2 ("The documents used in this Closing Order consist of the materials that were filed in the case file before 29 April 2011 when the two Co-Investigating Judges agreed to conclude the investigation. In order to ensure the transparency and the right of the Charged Person, we will not use the documents submitted into the case file after the date of the conclusion of the investigation."). *See also* fn. 17, *infra*, discussing the impact this had on the NCIJ's personal jurisdiction assessment.

7 **D28** Order on Resuming the Judicial Investigation, 2 Dec 2011, para. 8, Disposition. On 14 November 2011, the reserve ICIJ commenced his work following ICIJ Blunk's resignation in October 2011 (*see* **D266/2.1.150** *Press Release by the International Co-Investigating Judge*, 10 Oct 2011; **D266/2.1.151** *Press Release by the International Reserve Co-Investigating Judge*, 6 Dec 2011).

8 *See* **D54** Rogatory Letter, 7 Feb 2013; **D55** Rogatory Letter, 7 Feb 2013 (both authorising investigative acts in Case 003). *See also* **D266/2.1.153** *Press Release by the International Reserve Co-Investigating Judge*, 19 Mar 2012; **D266/2.1.148** *Mark Harmon Sworn in as International Co-Investigating Judge*, 26 Oct 2012.

9 For example, on 26 August 2015, Judge Bohlander issued three interoffice memoranda extending Case 003 Rogatory Letters authorising investigative acts (**D59.13**, **D89.11**, **D114.4**) immediately after his appointment (*see* **D266/2.1.145** *Appointment of New International Co-Investigating Judge and Reserve*, 24 Aug 2015).

10 **D30** Notification of Suspect's Rights [Rule 21(1)(D)], 24 Feb 2012.

11 **D52** Forwarding Order, 7 Feb 2013; Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 Jan 2015 ("Internal Rule(s)", "Rule(s)" or "IR(s)").

12 **D52/1** International Co-Prosecutor's Response to Forwarding Order of 7 February 2013, 8 Feb 2013, paras 3-7.

13 **D120** International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, 31 Oct 2014.

14 **D174** Written Record of Initial Appearance, 14 Dec 2015.

13. On 25 July 2017, the ICIJ forwarded the case file to the Co-Prosecutors after declaring the judicial investigation had concluded.[15] The Co-Prosecutors then filed Final Submissions.[16]

14. On 28 November 2018, the CIJs issued separate and conflicting closing orders. Whereas the NCIJ dismissed all charges against Meas Muth,[17] the ICIJ indicted him for genocide, crimes against humanity, grave breaches of the Geneva Conventions, and violations of the 1956 Cambodian Penal Code.[18]

B. Appeal of the Closing Orders and Subsequent Pre-Trial Litigation

15. Following the Parties' appeals of the closing orders,[19] the PTC issued its Considerations of those appeals on 7 April 2021.[20] Whilst the PTC "ha[d] not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits",[21] the five PTC Judges upheld the validity of the Indictment,[22] which they

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15 **D256** Forwarding Order Pursuant to Internal Rule 66(4), 25 Jul 2017; **D225** Notice of Conclusion of Judicial Investigation Against Meas Muth, 10 Jan 2017, para. 6; **D252** Second Notice of Conclusion of Judicial Investigation Against Meas Muth, 24 May 2017, paras 18-19.

16 **D256/6** [National Co-Prosecutor's] Final Submission Concerning Meas Muth Pursuant to Internal Rule 66, 14 Nov 2017, cover page; **D256/7** International Co-Prosecutor's Rule 66 Final Submission, 14 Nov 2017, cover page. *See also* **D256/11** Meas Muth's Response to the International Co-Prosecutor's Final Submission, 12 Apr 2018 ("Meas Muth's Final Submission Response"), cover page.

17 The NCIJ's withdrawal from the Case 003 investigation led him to disregard any document placed on the case file after 29 April 2011, ignoring seven years of investigative evidence collected specifically for the case. As reflected in the Dismissal Order, the NCIJ failed to consider criminal events and crime sites with which he was seised, including allegations relating to Toek Sap security centre, Ream area worksites and cooperatives, the purge of Division 117 and Sector 505 cadres in Kratie, purges of General Staff and other military divisions sent to S-21, and forced marriage and rape within the context of forced marriage. As a result, the NCIJ's personal jurisdiction assessment of the scale, gravity, scope and impact of the crimes for which Meas Muth could be held responsible was greatly diminished and he dismissed all the charges. *See* **D266** Dismissal Order, paras 2, 427-430; **D266/2** International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Meas Muth (D266), 8 Apr 2019 ("ICP's Dismissal Order Appeal"), paras 63-82; **D266/16.1 & D267/21.1** Transcript, 27 Nov 2019, 13.38.34-13.43.43 (Prosecution appellate submissions before the PTC); **D266/27 & D267/35** Considerations on Appeals Against Closing Orders, 7 Apr 2021 ("Considerations"), Opinion of Judges Olivier Beauvallet and Kang Jin Baik ("International Judges' Opinion"), paras 247-248.

18 **D267** Closing Order, 28 Nov 2018 ("Indictment"), pp. 256-264.

19 *See e.g.* **D266/2** ICP's Dismissal Order Appeal, cover page; **D267/3** National Co-Prosecutor's Appeal Against the International Co-Investigating Judge's Closing Order in Case 003, 5 Apr 2019, cover page; **D267/4** Meas Muth's Appeal Against the International Co-Investigating Judge's Indictment, 8 Apr 2019 ("Meas Muth's Indictment Appeal"), cover page; **D266/16.1 & D267/21.1** Transcript, 27 Nov 2019, cover page; **D266/17.1 & D267/22.1** Transcript, 28 Nov 2019, cover page; **D266/18.1 & D267/23.1** Transcript, 29 Nov 2019, cover page.

20 **D266/27 & D267/35** Considerations.

21 **D266/27 & D267/35** Considerations, para. 110.

22 **D266/27 & D267/35** Considerations, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy ("National Judges' Opinion"), paras 115 ("In light of aforesaid Internal Rule 77(13), the two Closing Orders are of the same value and *stand valid*" (emphasis added)), International Judges' Opinion, paras 119, 262, 284 ("the Indictment stands as it is substantively valid and in conformity with the ECCC legal framework"), 342-343 (finding there was a *de facto* unanimous finding: albeit for distinct reasons, the National and International Judges of the Chamber concurrently found the Indictment valid and unanimously upheld it), Disposition at p. 145 (EN).

reiterated on 10 June 2021.[23] In addition, two Judges found the Dismissal Order was incomplete and "marred with illegality" and was therefore invalid, null and void,[24] while the remaining three Judges held it was valid.[25]

16. Based primarily on the PTC's unanimous view that the Indictment was valid, the ICP prepared to file her pre-trial materials as required by the Internal Rules. However, the TC stated it would "not accept any communications from the parties" as it had not been notified of the PTC's Considerations and had not received the case file.[26]

17. On 19 April 2021, the ICP formally asked the CIJs to forward the case file to the TC pursuant to Rule 77(14),[27] which the CIJs denied on 20 May 2021, stating they had no jurisdiction to consider the request and that the Considerations provided "no clear direction" for a proper resolution of the case.[28] The CIJs further stated that should no other path be found to progress the case either to trial or termination, if asked to consider the issue in the future, they would not jointly or individually forward the case to the TC.[29]

18. In June 2021, both the ICP and Meas Muth filed requests asking the PTC to pronounce a final determination that would decisively conclude the pre-trial phase of Case 003 with legal certainty and clarity.[30] On 8 September 2021, the PTC found both requests to be inadmissible.[31] The PTC confirmed its Considerations and declared it had fulfilled all its duties in accordance with the ECCC legal framework.[32]

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23 **D269/4** Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 10 Jun 2021, para. 30.

24 **D266/27 & D267/35** Considerations, International Judges' Opinion, paras 119 (finding the Dismissal Order was incomplete and invalid because it ignored seven years of evidence and criminal allegations of which the NCIJ was duly seised), 250 ("the Dismissal Order, being an unfinished order, was marred with illegality, which rendered it null and void"), 251, 262, 284, 342, Disposition at p. 145 (EN).

25 **D266/27 & D267/35** Considerations, National Judges' Opinion, para. 115.

26 **D271/1.1.41** Email from TC Greffier Suy-Hong Lim entitled "Re Request for extension of time to file Rule 80 list of witnesses and experts", 27 Apr 2021 at 7:27 p.m., which was issued in response to the ICP's request for an extension of time to file her list of witnesses and experts pursuant to IR 80.

27 **D270** International Co-Prosecutor's Request to the Co-Investigating Judges to Forward Case File 003 to the Trial Chamber, 19 Apr 2021.

28 **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 25, 40.

29 **D270/7** CIJs' Refusal Decision, paras 35-37, 42, stating they would "as an *ultima ratio* and after all other jurisdictions have run their course," be open to considering "whether [they] have an exceptional jurisdiction of last resort to terminate the case" but "would much prefer not to be put in that position". *See also* para. 19.

30 **D271/1** International Co-Prosecutor's Request for Conclusion of the Pre-Trial Stage of the Case 003 Proceedings, 21 Jun 2021 ("ICP's PTC Conclusion Request"); **D272** Meas Muth's Request to Terminate, Seal, and Archive Case File 003, 17 Jun 2021 ("Meas Muth's Termination Request").

31 **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 Sep 2021 ("Consolidated PTC Decision"), para. 78, Disposition.

32 **D271/5 & D272/3** Consolidated PTC Decision, para. 76. Regarding its duties, s*ee* paras 64, 68.

19. On 16 September 2021, the CIJs informed the Parties that unless the ICP wished to seise the SCC with the case, the "only issue" still to be determined was whether the CIJs had residual jurisdiction to terminate the case.[33] The ICP informed the CIJs of her intention to appeal.[34]

III. APPLICABLE LAW

A. Admissibility of the Appeal

Inherent Jurisdiction

20. The ECCC Agreement states that:

> The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 [ICCPR], to which Cambodia is a party.[35]

21. IR 21(1) safeguards the rights and interests of all parties, providing in relevant part:

> The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations 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, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement. In this respect:
>
> a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. [...]

22. In Case 004/2, this Chamber exercised its inherent jurisdiction in the interests of justice and fairness, holding:

> [I]t is a general rule of law that it is undesirable for legal issues to remain unresolved. A final court, as the Supreme Court Chamber, has a duty to bring legal clarity and finality to such situations. Legal stalemates are indicative of failure of the judicial system to provide remedies. [...] The Supreme Court Chamber considers that it is its obligation as both the appellate Chamber and the Court of final instance to provide legal remedies and make final determination in cases where statutes or laws are silent or unclear. It is the

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33 **D273** Order to File Submissions on Residual Jurisdiction to Terminate Case 003, 16 Sep 2021 ("CIJs' Order for Termination Submissions"), paras 5-7, EN 01676518.

34 **D273/1** International Co-Prosecutor's Response to the Co-Investigating Judges' Request to Declare Whether She Intends to Seise the Supreme Court Chamber, 16 Sep 2021.

35 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 Jun 2003 ("ECCC Agreement"), art. 12(2). *See also* 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 Oct 2004 ("ECCC Law"), art. 33 new, which is a similarly worded provision and applies *mutatis mutandis* to the SCC, as set out in art. 37 new.

> function of a court to provide legal certainty to the parties.
>
> The Supreme Court thus deems it necessary to provide legal certainty and clarity to the crucial legal matters revealed in the Immediate Appeal that the ECCC legal compendium does not address specifically. [...] [T]he Chamber considers that resolution is a superior necessity and will therefore exercise its discretion in the interest of justice and fairness and admit the Immediate Appeal solely to ensure that legal certainty and finality are achieved in the determination of this case and to uphold the integrity of the institution of the ECCC.[36]

23. The PTC has held that when an appeal is filed under IR 21:

> The moving party must demonstrate that particular circumstances of its case require the Chamber's intervention at the stage where the appeal is filed to avoid irremediable damages to the fairness of proceedings or fundamental fair trial rights.[37]

24. Other international criminal tribunals have also recognised a Chamber's power to exercise its inherent jurisdiction to decide a matter in the absence of a specific statutory provision. This has included circumstances in which no court had the power to pronounce on the matter due to "legal impediments or practical obstacles" and when it was necessary to remedy possible gaps in legal proceedings or ensure that justice was not only done but was also *seen* to be done.[38]

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[36] Case 004/2-**E004/2/1/1/2** Decision on International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 10 Aug 2020 ("SCC Immediate Appeal Decision"), paras 64-65.

[37] *See e.g.* **D266/27 & D267/35** Considerations, para. 71 (unanimous); **D128/1/9** Considerations on Meas Muth's Appeal Against Co-Investigating Judge Harmon's Decision to Charge Meas Muth *In Absentia*, 30 Mar 2016, para. 20 (unanimous); Case 004-**D205/1/1/2** Decision on Yim Tith's Appeal Against the Decision Denying His Request for Clarification, 13 Nov 2014, para. 7. *See also* Case 002-**D345/5/11** Decision on Ieng Sary's Appeal Against Co-Investigating Judges' Order on Ieng Sary's Motion Against the Application of Command Responsibility, 9 Jun 2010, para. 11.

[38] **STL:** *In the Matter of El Sayed*, CH/AC/2010/02, Decision on Appeal of Pre-Trial Judge's Order Regarding Jurisdiction and Standing, Appeals Chamber, 10 Nov 2010, paras 45 ("[Inherent jurisdiction] can, in particular, be exercised when no other court has the power to pronounce on the incidental legal issues, on account of legal impediments or practical obstacles. The inherent jurisdiction is thus ancillary or incidental to the primary jurisdiction and is rendered necessary by the imperative need to ensure a good and fair administration of justice, including full respect for human rights, as applicable, of all those involved in the international proceedings over which the Tribunal has express jurisdiction."), 46, 48; **ICTY:** *Prosecutor v. Blagojević & Jokić*, IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojević's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, Trial Chamber, 3 Jul 2003, paras 112, 114 (affirming that while the Trial Chamber was not required to take further action, it had an overarching interest and commitment to ensure that "justice is not only done but justice is seen to be done" and therefore ordered special steps to be taken to fully represent the accused's interests); *Prosecutor v. Beqaj*, IT-03-66-T-R77, Judgement on Contempt Allegations, Trial Chamber, 27 May 2005, paras 9 ("The Tribunal's Chambers have consistently affirmed the Tribunal's inherent power, which exists independently of any statutory reference, [...] is necessary to ensure that the Tribunal's exercise of jurisdiction is not frustrated and its basic judicial functions are safeguarded."), 10-12 (and the jurisprudence cited), 13 ("judges of this Tribunal exercise the inherent power to take measures necessary to ensure the integrity of proceedings, which ultimately maintain respect for justice"); **ICTR:** *Barayagwiza v. The Prosecutor*, ICTR-97-19-AR72, Decision, Appeals

Exemptions from the Requirement to Exhaust Remedies

25. The European Court of Human Rights has found that although the European Convention on Human Rights provides that a matter may be referred to the Court only after all domestic remedies have been exhausted, when it comes to protecting human rights, the rule on exhaustion "must be applied with some degree of flexibility and without excessive formalism", as special circumstances may exempt an applicant from the obligation.[39]

26. The Inter-American Court of Human Rights has held that in cases involving the possible violation of certain protected rights, the rule of prior exhaustion is not required when resorting to available remedies would be ineffective or illusory.[40]

27. In the U.S., the Supreme Court and other federal courts have recognised exceptions to the "exhaustion doctrine"[41] to include situations in which the remedy would be inadequate because (i) the agency where relief would be sought is either shown to be biased or to have otherwise predetermined the issues before it;[42] (ii) pursuing the remedy would be futile;[43]

Chamber, 3 Nov 1999 ("*Barayagwiza* November 1999 Decision"), para. 76 ("It is generally recognised that courts have supervisory powers that may be utilised in the interests of justice [...]. The use of such supervisory powers serves three functions: to provide a remedy for the violation of the accused's rights; to deter future misconduct; and to enhance the integrity of the judicial process."); *The Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on Severance of André Rwamakuba and Amendments of the Indictment, Trial Chamber, 7 Dec 2004 ("*Karemera* Severance Decision"), para. 22.

39 *See e.g. Sejdovic v. Italy,* No. 56581/00, Judgment (Grand Chamber), 1 Mar 2006, paras 44-45, 55 (the Court dispensed with the obligation to seek a remedy, finding that the remedy "was bound to fail and there were objective obstacles to its use by the applicant", constituting "special circumstances"); *Akdivar and others v. Turkey*, No. 21893/93, Judgment (Grand Chamber), 16 Sep 1996, paras 66-67 (there is "no obligation to have recourse to remedies which are inadequate or ineffective", including an administrative practice that "is of such a nature as to make proceedings futile or ineffective"); *Vaney v. France*, No. 53946/00, Judgment, 30 Nov 2004, para. 53 (the exhaustion requirement was set aside as it would have locked the applicant into a "vicious circle" where the failure of one remedy would have forced him to pursue another one), followed by *Kaić and others v. Croatia*, No. 22014/04, Judgment, 17 Jul 2008, para. 32 and *Simaldone v. Italy*, No. 22644/03, Judgment, 31 Mar 2009, para. 44.

40 *Las Palmeras v. Colombia*, Judgment (Merits), 6 Dec 2001, paras 57-58 (National Police officers implicated in the events obstructed or refused to properly cooperate with the investigations; the Court stated that "it is not enough that such recourses exist formally; they must be effective; [...] remedies that, due to the [...] particular circumstances of any given case, prove illusory cannot be considered effective"); *Velásquez-Rodríguez v. Honduras*, Judgment (Merits), 29 Jul 1988, paras 68 ("when it is shown that remedies are denied for trivial reasons or without an examination of the merits, [...] resort to those remedies becomes a senseless formality"), 80 (concluding that "although there may have been legal remedies in Honduras that theoretically allowed a person detained by the authorities to be found, those remedies were ineffective in cases of disappearances because [...] the authorities against whom they were brought simply ignored them"); *Velásquez-Rodríguez v. Honduras*, Judgment (Preliminary Objections), 26 Jun 1987, para. 93 ("The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.").

41 A judicial doctrine that forbids a plaintiff from filing an action for judicial review before going through the appropriate administrative process. *See McKart v. U.S.*, 395 U.S. 185, 193 (1969).

42 *McCarthy v. Madigan et al.*, 503 U.S. 140, 148 (1992); *Gibson v. Berryhill,* 411 U.S. 564, 575 n. 14, 578-579 (1973).

43 *Mullins Coal Co. v. Clark,* 759 F.2d 1142, 1146 (4th Cir. 1985) ("A litigant need not exhaust administrative remedies where their pursuit would be a futile gesture.").

or (iii) exhaustion would cause irreparable injury.[44]

B. Standard of Appellate Review

28. The PTC has found that "it is well-established in international jurisprudence that, on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct".[45] The SCC has held that this "standard of correctness" means it must decide whether the Chamber "established the content of the applicable legal norms based in the appropriate sources of law and by employing rules of interpretation pertinent to those sources of law".[46] It must also assess whether the result reached was "precise and unambiguous".[47] Only errors of law that invalidate the decision will justify reversal or revision of the decision.[48]

C. The Permissive Nature of the ECCC Dispute Resolution Mechanism

29. Articles 5(4) and 7(1) of the ECCC Agreement state in relevant part:

> In case the co-investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed *unless* the judges or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.[49]
>
> *In case* the co-investigating judges [...] have made a request in accordance with Article 5, paragraph 4, [...] they shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.[50]

30. The ECCC Law provides in relevant part:

> The judges shall *attempt* to achieve unanimity in their decisions.[51]
>
> In the event of disagreement between the Co-Investigating Judges [...] [t]he investigation shall proceed *unless* the Co-Investigating Judges or one of them requests within thirty days that the difference shall be settled in accordance

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44 Robert Power, "Help is Sometimes Close at Hand: The Exhaustion Problem and the Ripeness Solution", 1987 University of Illinois Law Review 547, 590-592 ("Arguably, only those injuries that are peculiar, if not unique, and incapable of later redress fall within the exception. [...] the injury must be both unusual and irreparable in the more common sense that it cannot be corrected through a later reversal of the interim action. Irreparable injury, then, turns on the particularity and finality of harm. While the magnitude of harm may be relevant, its permanence is far more important.").

45 *See e.g.* Case 002-**D427/1/30** Decision on Ieng Sary's Appeal Against the Closing Order, 11 Apr 2011 ("Ieng Sary CO Decision"), para. 113.

46 Case 001-**F28** Appeal Judgement, 3 Feb 2012 ("*Duch* AJ"), para. 14.

47 Case 001-**F28** *Duch* AJ, para. 14.

48 Case 001-**F28** *Duch* AJ, para. 16.

49 ECCC Agreement, art. 5(4), emphasis added.

50 ECCC Agreement, art. 7(1), emphasis added.

51 ECCC Law, art. 14 new (1), emphasis added.

with the following provisions.[52]

31. Internal Rule 72 provides in relevant part:

> 1. In the event of disagreement between the Co-Investigating Judges, either or both of them *may* record the exact nature of their disagreement in a signed, dated document which shall be placed in a register of disagreements kept by the Greffier of the Co-Investigating Judges.
>
> 2. Within 30 (thirty) days, either Co-Investigating Judge *may* bring the disagreement before the Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration [...].[53]

D. The Impact of Procedural Errors on Criminal Proceedings

32. It is well settled in ECCC and international law that a procedural error does not automatically render the resulting action null and void.[54] Nor can it vitiate proceedings unless it is shown to cause a grossly unfair outcome that occasions a miscarriage of justice.[55] The SCC noted this practice in Case 002/01, stating:

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52 ECCC Law, art. 23 new, emphasis added.

53 IRs 72(1)-(2), emphasis added.

54 *See e.g.* IR 48 ("Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application."); Case 002-**D55/I/8** Decision on Nuon Chea's Appeal Against Order Refusing Request for Annulment, 26 Aug 2008, paras 33-42 (outside the narrow exceptions outlined in IRs 53(3) and 67(2), investigative or judicial actions will only be void for procedural defect where that defect has caused harm and it is determined that annulment is the appropriate remedy in the circumstances of the case); Case 002-**D263/2/6** Decision on Ieng Thirith's Appeal Against the Co-Investigating Judges' Order Rejecting the Request to Seise the Pre-Trial Chamber with a View to Annulment of All Investigations (D263/1), 25 Jun 2010, paras 24-26 (it is for the Chamber to determine the consequences, if any, of the procedural error on a case-by-case basis); **D20/4/4** Considerations of the Pre-Trial Chamber Regarding the International Co-Prosecutor's Appeal Against the Decision on Time Extension Request and Investigative Requests Regarding Case 003, 2 Nov 2011 ("Investigative Requests Considerations"), Opinion of Judges Lahuis and Downing, paras 9-11; IRMCT Rules of Procedure and Evidence, 4 Dec 2020, Rule 5(A) ("Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a Party at the earliest opportunity, the Chamber shall grant relief, *if* it finds that the alleged non-compliance *is proved* and that it has *caused material prejudice* to that Party." (emphasis added)); *Prosecutor v. Brdjanin*, IT-99-36, Decision on the Defence "Objection to Intercept Evidence", Trial Chamber, 3 Oct 2003, para. 63 (discussing ten factors that militated toward the admission of evidence even if, for argument's sake, it had been illegally obtained; *see particularly* factor 7); *Prosecutor v. Brima et al.*, SCSL-04-16-PT, Brima - Decision on Motion for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Statements, Trial Chamber (Judge Boutet), 2 Aug 2004, paras 19-24 (denying motion to exclude witness statements on the basis of failure by the Prosecution to disclose them in accordance with the applicable rules); *Prosecutor v. Furundžija*, IT-95-17/1, Decision on Motion of Defendant Anto Furundžija to Preclude Testimony of Certain Prosecution Witnesses, Trial Chamber (Judge Mumba), 29 Apr 1998 (denying motion to preclude the testimony of certain witnesses despite Prosecution's failure to comply with its disclosure obligations); Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia-Herzegovina v. Yugoslavia*), Decision on Preliminary Objections, 11 Jul 1996, para. 26.

55 *See e.g. Prosecutor v. Fofana & Kondewa,* SCSL-04-14-A, Judgment, Appeals Chamber, 28 May 2008, paras 35 (only procedural errors that occasion a miscarriage of justice vitiate proceedings; those that could be corrected or waived or ignored (as immaterial or inconsequential) without injustice to the parties would not be regarded as procedural errors occasioning a miscarriage of justice), 443 (case law at the *ad hoc* Tribunals recognises that errors such as a defect in the indictment may be "cured" if the Prosecution can

> As regards errors of a procedural nature, and in particular those regarding the exercise of discretion, [...] the Supreme Court Chamber will consider whether [prejudice to the appellant] has arisen in view of the proceedings as a whole, occasioning a miscarriage of justice. In other words, not all procedural errors will lead to a reversal of the judgement, but only procedural errors that resulted in a 'grossly unfair outcome in judicial proceedings'.[56]

33. In Case 004/2, this Chamber implicitly recognised that procedural errors are often non-fatal and curable. After recalling that when deciding appeals of the Case 004/2 closing orders, the PTC had explicitly found it had the power to issue a new or revised closing order that would serve as a basis for trial, the SCC stated:

> These explicit findings would lead a reasonable reader to conclude that the Pre-Trial Chamber was aware of its powers to go beyond declaring the illegality of the situation relating to issuance of two conflicting Closing Orders and to issue its own valid closing orders.[57]

34. Jurisprudence establishes that a Chamber's determination of what remedy is required, if any, for an alleged procedural error rests entirely on the facts of each case. The Chamber must balance the rights of the accused against other factors, including the gravity of the crimes and the public's interest in bringing to justice those responsible for serious violations of international law.[58]

35. The termination of proceedings is usually considered to be a "drastic remedy" that is disproportionate to the alleged harm suffered.[59] Courts have held that termination is

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demonstrate that the accused's ability to prepare his defence was not materially impaired); *Bagosora & Nsengiyumva v. The Prosecutor*, ICTR-98-41-A, Judgement, Appeals Chamber, 14 Dec 2011, paras 214-217 (noting the Trial Chamber had considered a number of factors to determine that the defects in the indictments did not render the trial unfair, finding the defects had been cured and had not materially impaired Nsengiyumva's ability to prepare his defence).

56 Case 002-**F36** Appeal Judgement, 23 Nov 2016 ("Case 002/01 AJ"), para. 100.

57 Case 004/2-**E004/2/1/1/2** SCC Immediate Appeal Decision, para. 61.

58 *See e.g. Ibrahim and others v. The United Kingdom*, Nos 50541/08, 50571/08, 505373/08 and 40351/09, Judgment (Grand Chamber), 13 Sep 2016, para. 252 ("general requirements of fairness [...] apply to all criminal proceedings, irrespective of the type of offence at issue [...] when determining whether the proceedings as a whole have been fair, the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration"). *See also Hudson v. Michigan*, 547 U.S. 586, 591 (2006) (the U.S. Supreme Court noted that suppressing evidence illegally obtained "generates 'substantial social costs'" and takes a "'costly toll' upon truth-seeking and law enforcement objectives"; there is therefore a "high obstacle" that must be met: it should only be excluded "where its deterrence benefits outweigh its 'substantial social costs'"). *See further* the jurisprudence cited in fns 113 (re. the interest of the international community in prosecuting persons charged with serious violations of international humanitarian law), 114-115 (re. the need to balance the rights of *all* parties, including the victims and prosecution), *infra*.

59 *See e.g. The Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU", Appeals Chamber, 8 Oct 2010, paras 55 (holding that a stay of proceedings is a drastic and exceptional remedy), 60; *Prosecutor v. D. Nikolić*, IT-94-

warranted only in *exceptional circumstances* such as abuse of process where it would be "odious" or "repugnant" to the administration of justice to allow the proceedings to continue, or where the rights of the accused were breached to the extent that a fair trial was rendered impossible.[60] Showing that a violation warrants termination requires a particularly high threshold of proof: the ECCC and other international criminal tribunals have all made clear that the threshold is met *only* when the accused suffered a *serious* mistreatment (such as inhuman, cruel or degrading treatment, or torture) or other *egregious* violation of his rights.[61]

E. The "Default Position" Underlying the ECCC's Legal Framework

36. Article 7(4) of the ECCC Agreement and article 23 new of the ECCC Law state, in relevant part:

> A decision of the Pre-Trial Chamber, against which there is no appeal, requires the affirmative vote of at least four judges. [...] If there is no majority, as required for a decision, the investigation or prosecution shall proceed.[62]

2-AR73, Decision on Interlocutory Appeal Concerning Legality of Arrest, Appeals Chamber, 5 Jun 2003 ("*Nikolić* Legality Decision"), para. 30 (aside from exceptional cases, "the remedy of setting aside jurisdiction will, in the Appeals Chamber's view, usually be disproportionate"), *followed by* Case 002-**D264/2/6** Decision on Ieng Thirith's Appeal Against the Co-Investigating Judges' Order Rejecting the Request for Stay of Proceedings on the Basis of Abuse of Process (D264/1), 10 Aug 2010 ("IT Abuse of Process Decision"), fn. 52; *Kajelijeli v. The Prosecutor*, ICTR-98-44A-A, Judgement, Appeals Chamber, 23 May 2005 ("*Kajelijeli* AJ"), para. 206. *See also The Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Édouard Karemera's Motion Relating to his Right to be Tried without Undue Delay, Trial Chamber, 23 Jun 2009 ("*Karemera* Undue Delay Decision"), paras 4, 6.

60 *The Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06-2690-Red2, Redacted Decision on the "Defence Application Seeking a Permanent Stay of the Proceedings", Trial Chamber, 7 Mar 2011, paras 165-166, 203-205 (finding that the alleged failings on the part of the prosecution could be addressed as part of the ongoing trial process); *The Prosecutor v. Ntaganda*, ICC-01/04-02/06-1883, Decision on Defence request for stay of proceedings with prejudice to the Prosecution, Trial Chamber, 28 Apr 2017, para. 20; *Karemera* Undue Delay Decision, para. 6; *The Prosecutor v. Kenyatta*, ICC-01/09-02/11-868-Red, Decision on Defence application for a permanent stay of the proceedings due to abuse of process, Trial Chamber, 5 Dec 2013, para. 14; *Prosecutor v. Kallon & Kamara,* SCSL-2004-15-AR72(E) & SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeals Chamber, 13 Mar 2004, para. 79. As explained by the PTC in Case 002-**D264/2/6** IT Abuse of Process Decision, para. 10: "The doctrine of abuse of process, originating within the common law system, is now accepted as part of international law and practice in order to ensure that *the most serious violations of conduct or procedures*, being entirely improper or illegal, are not permitted to negate the fair trial rights given to a charged person or accused before a court." (emphasis added).

61 *See e.g.* Case 002-**D264/2/6** IT Abuse of Process Decision, paras 24, 27; *Prosecutor v. Šešelj,* IT-03-67-T, Decision on Oral Request of the Accused for Abuse of Process, Trial Chamber, 10 Feb 2010, para. 22; *Prosecutor v. D. Nikolić,* IT-94-2-PT, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal, Trial Chamber, 9 Oct 2002, para. 114 (noting that on the facts of the case, the treatment of the accused was not of such an egregious nature that it caused a legal impediment to the exercise of jurisdiction over him), *upheld by Nikolić* Legality Decision, paras 2, 28, 33; *The Prosecutor v. Lubanga Dyilo,* ICC-01/ 04- 01/06-772, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, Appeals Chamber, 14 Dec 2006, para. 31; *Barayagwiza* November 1999 Decision, para. 75.

62 *See also* ECCC Agreement, arts 5(4), 6(4); ECCC Law, art. 20 new.

37. IR 72(d) provides, in relevant part:

> A decision of the [Pre-Trial] Chamber shall require the affirmative vote of at least four judges. This decision is not subject to appeal. If the required majority is not achieved before the Chamber, in accordance with Article 23 new of the ECCC Law, the default decision shall be that the order or investigative act done by one [CIJ] shall stand, or that the order or investigative act proposed to be done by one [CIJ] shall be executed.

38. IR 77(13) states:

> A decision of the [Pre-Trial] Chamber requires the affirmative vote of at least 4 (four) judges. This decision is not subject to appeal. If the required majority is not attained, the default decision of the Chamber shall be as follows:
>
> (a) As regards an appeal against or an application for annulment of an order or investigative action other than an indictment, that such order or investigative action shall stand.
>
> (b) As regards appeals against indictments issued by the Co-Investigating Judges, that the Trial Chamber be seised on the basis of the Closing Order of the Co-Investigating Judges.

39. IR 77(14) provides:

> All decisions under this Rule, including any dissenting opinions, shall be reasoned and signed by their authors. Such decisions shall be notified to the Co-Investigating Judges, the Co-Prosecutors and the other parties by the Greffier of the [Pre-Trial] Chamber. The Co-Investigating Judges shall immediately proceed in accordance with the decision of the [Pre-Trial] Chamber.

40. IR 79(1) states:

> The Trial Chamber shall be seised by an Indictment from the Co-Investigating Judges or the Pre-Trial Chamber.

41. In Case 004/2, this Chamber stated:

> [W]here unanimity is unattainable at any stages of the investigation and prosecution in the Pre-Trial process, there is a default position in favour of continuing the investigation or prosecution, whether with the Co-Investigating Judges or the Co-Prosecutors.[63]

[63] Case 004/2-**E004/2/1/1/2** SCC Immediate Appeal Decision, para. 62.

IV. ADMISSIBILITY

42. The ICP submits that this appeal is admissible pursuant to articles 12(2) of the ECCC Agreement, 33 new and 37 new of the ECCC Law, and Rule 21(1), which mandate that the ECCC conduct its proceedings with respect for the rights and interests of *all* parties and the due process of law, and in accordance with the fundamental principles of legal certainty, good and fair administration of justice and the duty of judges to resolve the issues before them.[64] As set out below, the circumstances of this case make intervention at this stage of the proceedings necessary in order to avoid irremediable damage to both the fairness of the proceedings and the fundamental fair trial rights of the parties.[65]

43. As this Chamber made clear in Case 004/2, when deciding the appeals of the CIJs' Closing Orders, the PTC was obliged to deliver a final ruling that set out the effect of all the findings made by the PTC Judges, including their unanimous decision on the validity of the Indictment and the operation of the default principle.[66] In Case 003, the parties extensively litigated the action required by the PTC's Considerations before asking the PTC to take decisive action to conclude the pre-trial phase of the case, but the PTC declared the requests inadmissible and stated it had already fulfilled its duty.[67] It further stated that it was now the CIJs' responsibility to comply immediately with the operative part of the Considerations.[68]

44. The CIJs have not forwarded Case 003 to the TC as required by the PTC's unanimous upholding of the Indictment's validity, nor have they done so based on the default position underlying the ECCC legal framework.[69]

45. Given the inaction of both the PTC and the CIJs, it is now crucial for the SCC to exercise its inherent jurisdiction to safeguard the interests of justice, maintain the integrity of the proceedings, and provide clarity to the situation. Several reasons underpin this request.

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64 *See* III.A. Inherent Jurisdiction section, *supra,* for details regarding the applicable law that, *inter alia*, holds that IR 21 provides a basis for appeal.

65 *See* para. 23, *supra*.

66 Case 004/2-**E004/2/1/1/2** SCC Immediate Appeal Decision, paras 60-61, 68. Nonetheless, in response to the Case 003 parties' requests to the PTC to issue such a final decision, the PTC stated that because it was the duty of each judge to rule alone and in good conscience, and because there was no text requiring the PTC to reach a unanimous decision, it was "legally incorrect to require a unanimous decision from a collegiate body on the basis of a chimeric legal obligation that was specifically incumbent upon the Co-Investigating Judges". *See* **D271/5 & D272/3** Consolidated PTC Decision, para. 68.

67 As set out in II. Procedural History, *supra*. *See also* **D271/5 & D272/3** Consolidated PTC Decision, paras 24-59 (summarising the views of Meas Muth and the ICP), 72, 76-78 (discussing the PTC's reasoning).

68 **D271/5 & D272/3** Consolidated PTC Decision, para. 72.

69 As fully discussed in V. Merits, *infra*.

46. First, the PTC and CIJs have repeatedly blamed each other for the procedural impasse that developed in this case as well as in Cases 004/2 and 004.[70] As the tit-for-tat exchanges have grown more heated, the situation has deteriorated to the point that it appears neither the PTC nor the CIJs are willing to listen to the other, perpetuating the impasse and threatening irremediable damage to the proper administration of justice in Case 003.

47. The breakdown has occurred on both sides. For example, the CIJs expressly stated in May 2021 that the Considerations provided "no clear direction" for a proper resolution of the case and they were unsure as to what the repercussions were for a finding that the issuance of two conflicting closing orders was illegal.[71] Despite this request for guidance, four months later when the PTC issued its decision responding to the *parties*' requests for clarification, the PTC maintained that it was up to the CIJs to process the case in accordance with IRs 77(13) and (14) and once again blamed the CIJs for the situation.[72]

48. The ICIJ has also demonstrated an unwillingness to take heed of the directive language the PTC Judges provided—despite their refusal to issue a final ruling—amidst their public reprimand of the CIJs. The PTC stated that one CIJ could validly act alone to conclude the judicial investigation and that the ICIJ's reinstatement allowed the OCIJ to carry out its duties to process the case.[73] Even more importantly, the unanimous Chamber questioned the ICIJ's reasoning for "declar[ing] himself, on *imaginary* legal grounds, unable to

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70 In Case 003, *see e.g.* **D266/27 & D267/35** Considerations, paras 106-109 (unanimous); **D270/7** CIJs' Refusal Decision, paras 8-14 (stating they had been twice "treated to the PTC's vitriolic language and thinly veiled insinuation of derailing the process in Cases 004/2 and 003", referencing national codes of judicial ethics and the general law of libel and slander, stating the PTC Judges had "without a shred of evidence other than their own skewed interpretation of events" made "the worst professional accusation that can be made against a judge", "alleging that we committed a criminal offence"), 25 (stating the PTC had chosen not to provide a final disposition, "instead preferring to pontificate again at length about our questionable moral character and legal incompetence"); **D271/5 & D272/3** Consolidated PTC Decision, paras 22 ("The Pre-Trial Chamber deplores the fact that these Judges, having disregarded their obligations, consider themselves victims upon discovering that their gross errors have been identified"), 74-76 (stating, *inter alia*, that "The Chamber underlines the embarrassing situation in which the Co-Investigating Judges are struggling to address the consequences of their malpractices and deliberate violation of the ECCC legal framework"; that the CIJs "had already ruled on 'the fate of the case' in the event it were to come back to them"; this was "the 'foregone situation' the Co-Investigating Judges [had] created in refusing to strictly follow the law"; questioning the reasoning of the ICIJ who "now declares himself, on imaginary legal grounds" unable to forward the case to the TC; and stating that the CIJs were "confused" and their malpractices had provoked such a failure that it now seemed insurmountable to "those who had caused it"). *See also* Case 004/2-**D359/24 &D360/33** Considerations on Appeal Against Closing Orders, 19 Dec 2019 ("Case 004/2 PTC Considerations"), paras 122-124 (unanimous); Case 004-**D381/45 & D382/43** Considerations on Appeals Against Closing Orders, 17 Sep 2021 ("Case 004 PTC Considerations"), paras 112-115 (unanimous).

71 **D270/7** CIJs' Refusal Decision, paras 17, 25.

72 **D271/5 & D272/3** Consolidated PTC Decision, para. 72. *See also* para. 68 (reasoning that it was legally incorrect to require a unanimous (final) decision from a collegiate body on the basis of "a chimeric legal obligation" that was specifically incumbent on the CIJs, who could act unilaterally).

73 **D271/5 & D272/3** Consolidated PTC Decision, paras 67, 72.

forward the case to the Trial Chamber" after ordering the case to trial.[74] This all indicates, without an express ruling, that the proper next step is for the ICIJ to unilaterally conclude the judicial investigation by forwarding the case to the TC.

49. However, the ICIJ did not take that step. Instead, the CIJs jointly asserted that, without a final ruling from the PTC to provide clarity, unless the ICP wished to seise the SCC, the only remaining course of action was to terminate the case.[75] Thus, the CIJs have pre-determined this issue, stating that "all relevant legal issues have been debated at length by the parties; there is no new aspect likely to arise" and the "only issue" left to be determined is their jurisdiction to terminate.[76]

50. In short, seeking a remedy from judges who have predetermined the issue would be illusory, would cause irreparable injury and a miscarriage of justice, and would send the parties into another circuitous cycle of litigation, as termination would give rise to an appeal to the PTC which has already stated it "may be expected to maintain similar views" on the issue it has already considered and on which it was unable to reach the supermajority required to render a decision.[77]

51. Without SCC intervention, the proceedings will remain in judicial limbo in the face of a valid indictment, causing irremediable damage to, and breaching the fair trial rights of, *all* the parties, particularly the thousands of victims who have waited four decades for a fair and impartial judicial determination of accountability. Such an outcome would be a denial of justice that is adverse to the mandate of this Court and the principles upon which this appeal is brought.

52. For all the foregoing reasons, the ICP submits that this appeal is admissible.

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74 **D271/5 & D272/3** Consolidated PTC Decision, para. 75 (emphasis added). *See also* para. 74, which seems to further indicate that the CIJs should have forwarded the case, but they refused to strictly follow the law.

75 The CIJs have stated they will neither jointly nor individually forward the case to the TC if the issue is brought back before them. *See* **D270/7** CIJs' Refusal Decision, paras 35-37, 42-43; **D273** CIJs' Order for Termination Submissions, paras 6-7.

76 **D270/7** CIJs' Refusal Decision, paras 35-37, 42-43; **D273** CIJs' Order for Termination Submissions, paras 5-7, EN 01676518. Note that the PTC shares the view that the CIJs have already determined the fate of the case. *See* **D271/5 & D272/3** Consolidated PTC Decision, para. 74 (detailing the incoherent practices of the CIJs and stating that the CIJs "have already ruled on 'the fate of the case' in the event it were to come back before them").

77 These factors constitute "special circumstances" that excuse any exhaustion of remedies requirement that may be in place, justifying SCC intervention at this stage in the process. *See* III.A. Exemptions from the Requirement to Exhaust Remedies, *supra*. *See also* **D271/5 & D272/3** Consolidated PTC Decision, para. 77.

V. MERITS

A. The Opposing Closing Orders Were Not Issued Illegally – The Case Proceeds to Trial

53. The case must proceed to trial based on the decision of all five PTC Judges that the Indictment is valid, or alternatively, by operation of the default position, as discussed below.[78] The issuance of conflicting closing orders due to irreconcilable differences does not negate this outcome. Such issuance is not prohibited within the unique ECCC legal framework. This is demonstrated by the equal and independent status of the CIJs and the permissive nature of the disagreement resolution mechanism adopted.[79] Indeed, such an outcome is implicitly envisioned by the ECCC Agreement, ECCC Law ("founding documents"), and the Internal Rules.

54. Each CIJ is equal and mandated to act independently.[80] The PTC's holding that only one closing order should have been issued[81] contravenes this independence. It requires, *a posteriori*, that one of the CIJs should have violated this duty of independence by acquiescing to his counterpart's diametrically opposed position. In the alternative, it places form over substance by requiring that the irreconcilable differences that necessitated two documents should be set forth in only one.

55. The founding documents anticipate disagreements yet do not make their settlement mandatory.[82] Rule 72 clearly stipulates that the resolution mechanism is permissive in nature: either CIJ, or both, *may* record the exact nature of their disagreement in a register, and within 30 days, *may* bring the said disagreement before the PTC.[83] The CIJs' prior actions in this case cannot be negated by the more recent contradictory interpretation of the PTC that makes an optional provision mandatory.[84]

56. Far from prohibiting the issuance of two closing orders where there are irreconcilable differences, the founding documents implicitly envision this scenario and provide the solution: the fundamental and determinative default position mandates that the

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78 *See* Sections V.C and V.D, *infra*.
79 *See* Section III.C, *supra*.
80 ECCC Agreement, arts 3(3), 5(3); ECCC Law, arts 10 new, 25.
81 **D266/27 & D267/35** Considerations, para. 104.
82 *See* Section III.C, *supra*, detailing the permissive (as opposed to mandatory) language regarding resolution of the CIJs' differences. *See also* **D262.2** Decision on Ao An's Urgent Request for Disclosure of Documents Relating to Disagreements, 18 Sep 2017, paras 13-18 (joint decision issued by the CIJs informing the parties in Cases 004/2, 003 and 004 of their views about issuing split COs); **D266/18.2** Transcript of Appeal Hearing Case 003, 29 Nov 2019, EN 01639978 (ICP's oral submission on the issue).
83 As detailed in para. 31, *supra*.
84 *See* **D266/27 & D267/35** Considerations, para. 104.

investigation shall proceed.[85] In this context, the RGC and the UN implicitly anticipated the current situation.

57. The likelihood of the issuance of two closing orders where, as here, there are irreconcilable differences, has already been recognised by this Chamber. In Case 004/2, the SCC found that the numerous disagreements between the CIJs spanning more than a decade made the issuance of conflicting closing orders "almost inevitable".[86] Case 003 is no different.[87] A disagreement between the CIJs was all the more likely in this case since the NCIJ effectively withdrew from the investigation after 29 April 2011.[88]

58. Thus, the ICP submits that the language of the Rules that refer to one closing order must be interpreted in light of the founding documents and other Rules, as discussed above, which anticipate disagreements that could result in the issuance of two conflicting closing orders. For example, Rule 67(1), which requires the CIJs to conclude the investigation by issuing a closing order, must be interpreted in this context and in conjunction with Rule 1(2), which provides that a reference to the CIJs includes both acting jointly and each acting individually. Meaning implicitly that each could issue a closing order.

59. An analysis of inquisitorial systems at both the national and international levels highlights the unique nature of this Court's legal framework which allows the issuance of two contrary closing orders. At the *national level*, there is no system in which two or more independent investigating judges of equal status work together on a case without a clear decision-making process to avoid procedural stalemates. In most civil law countries, which use investigating judges,[89] including Cambodia,[90] the judges routinely work alone and, as

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85 *See* paras 29-30, *supra*, detailing the provisions and the use of the mandatory language of "shall proceed". The same scenario holds true if a disagreement is brought to the PTC for resolution. In the case of an indictment, the investigation/case goes forward unless a supermajority dismisses it (*see* the provisions detailed in Section III.E, *supra,* and further discussion in Section V.D, *infra*).

86 Case 004/2-**E004/2/1/1/2** SCC Immediate Appeal Decision, para. 59 and *reiterated* at para. 62.

87 As set out in II. Procedural History, *supra*. *See also* **D267** Indictment, paras 5, 7, 15, 27 (disagreements were registered between the CIJs on 7 Feb 2013, 22 Feb 2013, 17 Jul 2014, 16 Jan 2017, and 17 Sep 2018, the last concerning the issuance of separate and opposing closing orders).

88 As detailed in II. Procedural History, para. 8 and fns 17, 24, *supra*.

89 About half of all civil law countries do not have the function of independent investigating judges in their legal framework. These include Andorra, Austria, Bosnia and Herzegovina, Brazil, Burundi, China (PRC), Chile, Colombia, Costa Rica, Croatia, Denmark, Democratic Republic of Congo, Finland, Guatemala, Honduras, Iceland, Italy, Japan, Kosovo, Latvia, Mexico, Nicaragua, Norway, Paraguay, Peru, Republic of North Macedonia, Republic of Korea, Russia, Romania, Serbia, Sweden, Switzerland, Taiwan (ROC), Turkey, Uruguay, and Venezuela.

90 The Cambodian Code of Criminal Procedure ("CCCP") does not envisage the assignment of more than one investigating judge per case file (Code of Criminal Procedure of the Kingdom of Cambodia, 7 Jun 2007). In case of a conflict of jurisdiction between investigating judges of different courts of first instance, art. 123 provides that the President of the Investigation Chamber settles the conflict. However, a case file may be withdrawn from an investigating judge and assigned to another for the good administration of justice (art.

a result, the law is silent about the possibility of designating more than one judge per case.[91] In countries where two or more investigating judges are assigned to work together on a complex case, one of the judges coordinates and ultimately decides the main issues, while the other provides assistance. Alternatively, the decision is made by the majority, or the judge who coordinates/presides has the deciding vote.

60. For example, in some tribunals in France, investigating judges are grouped within investigative pools where two or more investigating judges may be co-seised with the most serious or complex cases (including terrorism and international crimes). In such circumstances, one investigating judge is designated to be in charge of the investigation, coordinating and making decisions alone, such as the drafting and issuance of the closing order, while the other judge(s) simply assist him/her.[92] Algeria, Central African Republic, Guinea, and Gabon all have similar systems.[93] In Ivory Coast, orders — including closing

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53), and one investigating judge may also issue a rogatory letter authorising another judge to investigate on his/her behalf. This rogatory letter specifies the nature of investigative work to be done (arts 173-174).

91 *See e.g.* Criminal Procedure Codes of **Argentina**, 2 Aug 2019, arts 180, 188, 194, 196; **Belgium**, Titre préliminaire (as at 20 Dec 2019), art. 12bis; Livre premier (as at 20 Jul 2021), arts 55-56, 61, 62bis, 127; Livre II, Titre V (as at 19 Feb 2016), art. 540; **Benin**, 18 Mar 2013, arts 43, 86, 89; **Bolivia**, 25 Mar 1999, art. 54; **Burkina Faso**, 29 May 2019, arts 243-1, 243-3, 243-4, 261-2; **Chad**, as at 31 Aug 1994, arts 231-232; **Dominican Republic**, 2 Jul 2002, arts 63, 73, 379; **Estonia**, as at 7 May 2020, arts 21, 24; **Germany**, as at 11 Jul 2019, ss 162, 165, 169; **Greece**, 1 Jul 2019, arts 31(2), 246-247; **Guyana**, as at Mar 1998, arts 51, 65, 72; **Haiti**, 1935, arts 35, 48, 51; **Montenegro**, as at 1 Sep 2011, arts 276, 293; **Morocco**, as at 27 Oct 2011, arts 44, 52-55; **The Netherlands**, as at 1 Jul 2021, arts 59a, 63, 105, 110, 170, 172, 177, 182, 238; **Portugal**, as at 16 Aug 2021, arts 17, 142, 268, 288; **Republic of the Congo**, 13 Jan 1963, arts 581-582; **Slovenia**, as at 19 Jun 2020, arts 25, 171; **Spain**, as at 19 Jul 2021, arts 22-23, 303; **Tunisia**, as at 9 Jun 2017, art. 49.

92 **France:** Code of Criminal Procedure, as at 16 Sep 2021 ("FCCP"), arts 52-1 (*unofficial translation*: "[…] In some judicial tribunals, the investigating judges are grouped within investigation pools. The investigating judges who are part of investigating pools are […] exclusively competent for the investigations for which there is a co-seisin in furtherance of articles 83-1 and 83-2"), 83-1 (*unofficial translation*: "When the gravity or the complexity of the case justifies it, the investigation can be subject to a co-seisin […]. The president of the tribunal where an investigation pool exists, […] assigns, as the opening of the investigation, one or several investigating judges to be assistants to the judge in charge of the investigation."], 83-2 (*unofficial translation*: "In case of co-seisin, the investigating judge in charge of the investigation coordinates its conduct. He/she has alone the authority to seise the *judge responsible for the release and detention*, to order a statutory release and to issue the notice of the end of the investigation provided for in Article 175, and the closing order. However, this notice and this order may be cosigned by the co-seised judge or judges" (emphasis added)). *See also* B. Bouloc et al., *Procédure pénale*, 27th edition (2020), Dalloz, paras 595(a), 596(c); L. Belfanti, "Juge d'instruction – Le statut du juge d'instruction", Répertoire de droit pénal et de procédure pénale, Dalloz, Oct 2015, paras 316, 706; C. Guéry and P. Chambon, *Droit et pratique de l'instruction préparatoire*, 10th edition (2017), Dalloz Action, "Chapitre 112 – Désignation du juge d'instruction", para. 112.29.

93 **Algeria:** Code of Criminal Procedure, 2007, art. 70 *(unofficial translation*: "[…] Where the seriousness or complexity of the case so warrants, the public prosecutor may appoint, in addition to the investigating judge in charge of the investigation, one or more investigating judges, whom he or she shall designate […]. The judge in charge of the investigation shall coordinate the progress of the investigation and shall have sole authority to rule on judicial supervision and pre-trial detention and to issue the settlement order." (emphasis added)). **Central African Republic:** Code of Criminal Procedure, as at 15 Jan 2010, arts 53 *(unofficial translation*: "Where the seriousness or complexity of the case so warrants, the President of the Court of Appeal […] may appoint one or more investigating judges from his or her area of jurisdiction to assist the

orders — are decided by the co-investigating judges assigned; in the event of a tie, the coordinating investigating judge has the deciding vote.[94]

61. At the *international level*, the Special Criminal Court in the Central African Republic (another hybrid tribunal based on the civil law system) applies a clearly articulated mandatory disagreement mechanism, in sharp contrast to that of the ECCC. When disagreements arise between the equal national and international CIJs on the substance of the case, the *Chambre d'Accusation Spéciale* (the Special Indictment Chamber, on par with the PTC) composed of two international judges and one national judge, is *automatically* seised of the dispute, which is resolved by a majority decision issued within five days. The Special Indictment Chamber's decision is binding for both investigating judges.[95] This structure explicitly precludes any conflicting substantive orders by the co-investigating judges.

B. Opposing Closing Orders Are Not Null and Void Even if Their Simultaneous Issuance was Illegal – The Case Proceeds to Trial

62. The opposing Closing Orders do not preclude the case from proceeding to trial even assuming, *arguendo*, their simultaneous issuance was illegal. As noted above, it is well established across the international criminal tribunals, including the ECCC and

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investigating judge [...]. The judge in charge of the investigation shall coordinate the conduct of the investigation. However, the measures of detention, release, judicial supervision, and the settlement order shall be decided collectively. The coordinating judge alone shall be authorised to sign the relevant documents." (emphasis added)), 34(b). In **Guinea**, for complex cases, the law mentions that a pool of investigating judges can be established, but one judge still seems to be responsible for each investigation (New Code of Criminal Procedure, as at Feb 2016, arts 62, 153). In **Gabon**, the possibility of assigning two or more investigating judges for complex cases exists, but no provision explicitly states how the decisions are made (Code of Criminal Procedure, 5 Jul 2019, art. 92). In all logic, it should be specified in the order assigning the co-judges.

94 Code of Criminal Procedure, as at 13 Mar 2019, art. 102 *(unofficial translation*: "Where there are several investigating judges in a court, the president of the court shall designate the judge responsible for each investigation. He may also designate two or more investigating judges to act in a complex or serious case involving several charges. In this case, he shall appoint one of the investigating judges to coordinate the investigation. Each act of investigation is signed by the investigating judge who performs it. However, the orders are made collectively. *In the event of a tie, the coordinating investigating judge has the casting (deciding) vote.*" (emphasis added)).

95 **D271/1.1.36** Central African Republic, Loi Organique No. 15.003 Portant Création, Organisation et Fonctionnement de la Cour Pénale Spéciale, 3 Jun 2015, arts 11 (*unofficial translation*: "The Investigation Chamber is composed of three cabinets. Each cabinet includes one national judge and one international judge."), 12 (The Special Indictment Chamber, composed of three judges (two international and one national), rules on appeals against the orders issued by the investigating cabinets), 41 (the two investigating judges, national and international, simultaneously sign each decision regarding the substance of the case), 42 (*unofficial translation*: "In the event of disagreement between the investigation judges of the same cabinet, the points of divergence are recorded in a report and transmitted, through the Special Prosecutor, to the Special Indictment Chamber, which has five days to decide. The decision of the Special Indictment Chamber [...] is binding on the co-investigating judges.").

particularly this Chamber, that if a procedural error occurred, this does not automatically render the resulting Closing Orders null and void.[96] Rather, it fell within the PTC's jurisdiction, as the appellate Chamber at the pre-trial stage, to cure any defect through examination of the merits of each Closing Order, which, for differing reasons, confirmed the validity of the Indictment.[97] Indeed, only by considering the merits of each Closing Order could a lawful, logical, and just resolution of this case be achieved. The error the PTC committed, therefore, was not in considering the merits of each Closing Order; the error was in failing to send the case to trial as required by its finding that the Indictment was valid.

63. Should this Chamber disagree and move to its own consideration of an appropriate remedy, this assessment must consider a number of factors including, first and foremost, whether the issuance of two opposing closing orders occasioned a miscarriage of justice or, put another way, caused a grossly unfair outcome in the proceedings.[98] Other factors that must be considered include the gravity of the crimes charged, the social costs of preventing the case from proceeding, the interests and rights of all the parties, and the proportionality of any remedy to the alleged harm.[99] As detailed below, such an assessment can only conclude that Case 003 must proceed to trial.

The CIJs' procedural error did not cause any gross unfairness, material prejudice or abuse of process

64. It is settled law that not all pre-trial procedural errors prevent a case from proceeding.[100] As noted above, the SCC has recognised this explicitly and implicitly, holding in the Case 002/01 Appeal Judgment that only procedural errors that result in a "grossly unfair outcome in judicial proceedings" would require drastic intervention,[101] and in Case 004/2, that the PTC could have cured the irregular issuance of two closing orders by issuing its own valid closing order that would serve as a basis for trial.[102] Case 003 is distinguishable from Case 004/2. In addition to the default position which mandates trial, there is an Indictment which all five Judges found valid to serve as the basis for trial. The PTC

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96 *See* Section III.D, *supra*.
97 Case 004/2-**D359/24 &D360/33** Case 004/2 PTC Considerations, paras 52, 89. *See also* paras 32-33, *supra*.
98 *See* Section III.D, *supra*.
99 *See* Section III.D, *supra*.
100 *See* Section III.D, *supra*.
101 Case 002-**F36** Case 002/01 AJ, para. 100.
102 *See* Case 004/2-**E004/2/1/1/2** SCC Immediate Appeal Decision, para. 61 (set out in para. 33, *supra*). In Case 003, the PTC cured the non-fatal error by unanimously agreeing that the Indictment was valid, a decision within the meaning of IR 77(13) that sends the case to trial. Or, in the alternative, the fundamental and determinative default position sends the case to trial (*see* Section V.D, *infra*).

examined the merits of each Closing Order, thereby engaging in the same assessment it would have conducted if the CIJs had submitted their disagreement to the PTC for resolution pursuant to IR 72. That assessment ultimately concluded that the Indictment was valid, albeit for different reasons. There is, therefore, no grossly unfair outcome that would require the drastic remedy of terminating the proceedings.

65. In addition, there is nothing in the ECCC Agreement or ECCC Law that specifically prohibits the issuance of two conflicting closing orders.[103] Thus, the contested issue for the SCC's analysis hinges on the interpretation of the ECCC Internal Rules. Where, as here, the issuance of two conflicting closing orders constitutes a possible violation of those Rules,[104] international jurisprudence makes clear that a case is only prevented from moving forward if there is a showing of an error that caused material prejudice.[105] There is no such showing here. Nor can there be. Determining responsibility for serious crimes such as genocide and crimes against humanity in a fair and impartial trial that respects the rights of all parties would not materially prejudice Meas Muth. Nor can it be argued that being denied the windfall benefit of avoiding a judicial determination of criminal liability constitutes material prejudice. Such an argument is contrary to law, logic and justice. Indeed, Meas Muth has himself argued repeatedly that it is the failure to be afforded an opportunity to challenge the Indictment that constitutes prejudice.[106]

66. The circumstances of the case also show that the CIJs' issuance of two conflicting closing orders has not caused any egregious violation of Meas Muth's fair trial rights which would constitute an abuse of process warranting termination of the proceedings.[107] Nor is there any other basis to conclude any abuse of process warranting such relief. The proceedings have been conducted without undue delay in light of the legal and factual complexity of the case (including, *inter alia*, the number of crimes charged, the varying modes of responsibility, the geographic and temporal scope of the case, and the quantity of

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103 *See* Section V.A, *supra*.

104 As discussed in Section V.A, *supra*, the ICP submits that the issuance does not violate the Rules.

105 *See e.g.* the authorities cited in fns 54 and 55, *supra*.

106 *See e.g.* **D272** Meas Muth's Termination Request, paras 54, 71; **D267/27** Meas Muth's Supplement to his Appeal Against the International Co-Investigating Judge's Indictment, 5 May 2020, p. 1, paras 24, 50; **D267/4** Meas Muth's Indictment Appeal, paras 4, 42-43; **D256/11** Meas Muth's Final Submission Response, paras 19, 67; **D249/2** Meas Muth's Submission on the Budgetary Situation of the ECCC and its Impact on Case 003, 5 Jun 2017, paras 28-29.

107 *See* para. 35, *supra*.

evidence).[108] Moreover, Meas Muth is not now and has never been in ECCC custody, having lived freely for the entirety of the investigation with no meaningful restrictions on his personal freedom.[109] Indeed, a survey of other international criminal tribunals shows that judicial proceedings with lengths of a similar range to Case 003 have not been found unduly delayed despite the fact that the other accused were in custody.[110] In short, there are no violations caused by the CIJs' procedural error that would meet the very high threshold necessary to justify termination.[111]

Any remedy preventing the case from moving forward would be disproportionate to the alleged harm

67. On the facts of this case, the issuance of two opposing closing orders requires no remedial action. Assuming a remedy is required, the determination of what that remedy would be requires the Chamber to consider the gravity of the crimes and the high social costs incurred if such crimes were not adjudicated.[112] It must also maintain the correct balance between the rights of the accused and the essential interests of the Cambodian and international communities in prosecuting persons charged with the most serious international crimes, thereby ensuring that victims of crimes have a meaningful voice.[113] The rights of the parties must also be considered, including the victims and the prosecution as prescribed by IR 21(1).[114] Such interests have been recognised in French and

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108 For a full discussion of these factors and the jurisprudence upon which they are based, *see* **D272/1** International Co-Prosecutor's Response to Meas Muth's Request to Terminate, Seal and Archive Case File 003, 8 Jul 2021 ("ICP's Abuse of Process Response"), paras 4-16.

109 **D272/1** ICP's Abuse of Process Response, para. 13.

110 **D272/1** ICP's Abuse of Process Response, para. 16.

111 *See* Section III.D, *supra,* particularly para. 35.

112 *See* Section III.D, *supra,* particularly para. 34; Case 002-**D264/2/6** IT Abuse of Process Decision, para. 28; *Hudson v. Michigan*, 547 U.S. 586, 591 (2006).

113 Case 002-**D264/2/6** IT Abuse of Process Decision, para. 28. This is particularly clear in abuse of process claims that have been raised at the ICTY, ICTR and ICC. *See e.g. Nikolić* Legality Decision, paras 24 ("in cases of crimes such as genocide, crimes against humanity and war crimes which are universally recognised and condemned as such […], courts seem to find in the special character of these offences and, arguably, in their seriousness, a good reason for not setting aside jurisdiction"), 25-26, 30 ("The correct balance must therefore be maintained between the fundamental rights of the accused and the essential interests of the international community in the prosecution of persons charged with serious violations of international humanitarian law."); *Prosecutor v. Karadžić*, IT-95-5/18-AR73.4, Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement, Appeals Chamber, 12 Oct 2009, paras 49, 52-53 (recalling that "one of the fundamental aims of international criminal courts and tribunals is to end impunity and to ensure that serious violations of international humanitarian law are prosecuted and punished" and the facts that gave rise to the Appellant's expectations of impunity, even if proved, would not trigger the abuse of process justifying a stay of the proceedings); *Kajelijeli* AJ, para. 206; *Karemera* Undue Delay Decision, paras 8, 11. Following this approach would give significant weight to the main purpose of the ECCC, which is to bring to trial the senior leaders and those who were most responsible for the crimes committed during the DK regime against the Cambodian people (*see* ECCC Agreement, art. 1; ECCC Law, arts 1, 2 new).

114 IR 21(1). *See also* United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res 40/34 of 29 Nov 1985, Principle 4 ("Victims should be treated

Cambodian law, and by this Court and other international tribunals.[115] Sending Case 003 to trial strikes the correct balance; such important interests cannot be outweighed by a pre-trial procedural error that does not deprive Meas Muth of any of his lawful rights.

68. For all these reasons, in the circumstances of this case, termination would be disproportionate to the nature of the non-fatal pre-trial procedural error. Furthermore, if any remedial action is required, the PTC has taken that action by considering the merits of each closing order. The legal framework of this Court established by the ECCC Agreement, ECCC Law, and Internal Rules require that the case be sent to trial in accordance with the PTC's unanimous finding that the Indictment is valid or, in the alternative, the fundamental and determinative default position.

C. The Closing Order Indictment was Unanimously Found to be Valid – The Case Proceeds to Trial

69. In the PTC's Considerations, all five Judges concluded that the Indictment committing Meas Muth to trial was valid.[116] This unanimous finding constitutes a supermajority decision within the meaning of Rule 77(13); therefore, the ECCC legal framework mandates that the case must proceed to trial on the basis of the Indictment.[117]

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with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.").

115 **France:** CCP, article préliminaire; Conseil Constitutionnel, No. 95-360, 2 Feb 1995, para. 5; Pradel, *Manuel de Procédure Pénale* (14th edition), 1 Jul 2008, p. 141; **Cambodia:** CCCP, art. 4; **ECCC:** Case 002-**D411/3/6** Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 Jun 2011, para. 67 ("the Pre-Trial Chamber reads the Internal Rules in a manner that takes into account the nature, the extent, the modes of participation and founding elements of the alleged crimes *and the needs of the affected* community as expressed in ECCC's foundation instruments" (emphasis added)); Case 002-**E50/2/1/4** Decision on Immediate Appeals by Nuon Chea and Ieng Thirith on Urgent Applications for Immediate Release, 3 Jun 2011, para. 39 (noting that the "interpretative direction of Rule 21(1) does not [...] mean that Internal Rules are to be construed so as to automatically grant the Accused an advantage in every concrete situation arising on the interpretation of the Internal Rules"); Case 002-**E50/3/1/4** Decision on Immediate Appeal by Khieu Samphan on Application for Release, 6 Jun 2011, para. 30; Case 002-**F10/2** Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 Dec 2014, para. 12; **ICTY:** *Prosecutor v. Aleksovski*, IT-95-14/1, Decision on Prosecutor's Appeal on Admissibility of Evidence, Appeals Chamber, 16 Feb 1999, para. 25; **ICTR:** *The Prosecutor v. Zigiranyirazo*, ICTR-2001-73-T, Decision on the Prosecution Joint Motion for Re-Opening its Case and for Reconsideration of the 31 January 2006 Decision on the Hearing of Witness Michel Bagaragaza via Video-Link, Trial Chamber, 16 Nov 2006, para. 18; *Karemera* Severance Decision, para. 26; **ICC**: *Situation in the Democratic Republic of the Congo*, ICC-01/04-135tEN, Decision on the Prosecution's Application for Leave to Appeal the Chamber's Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, Pre-Trial Chamber, 31 Mar 2006, para. 38; *Situation in Uganda*, ICC-02/04-112, Decision on the Prosecution's Application for Leave to Appeal the Decision on Victims' Applications for Participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, Pre-Trial Chamber, 19 Dec 2007, para. 27.

116 *See* II. Procedural History, para. 15, *supra,* particularly the findings cited in fn. 22.

117 IRs 77(13),79(1), which are set out in paras 38, 40, *supra*.

70. The unanimity of this finding is not invalidated by the fact it was not included in the "joint disposition" section of the Considerations nor by the fact that the Judges arrived at this unanimous finding through different reasoning in separate signed opinions.[118] Indeed, even though the PTC unanimously confirmed that it could not reach a decision *based on common reasoning*, the Judges all reached a common understanding as to the ultimate finding that the Indictment is valid.[119]

71. International practice holds that common reasoning is not a prerequisite for a joint decision and that decisions and judgments can contain separate (concurring) opinions.[120] It would stand against law, logic and justice to ignore the express finding of all five Judges that the Indictment is valid. According to the ECCC legal framework, if a supermajority upholds

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118 The ICP respectfully disagrees with the PTC President's statement in Case 004/2 that "[o]nly the joint disposition part unanimously decided and signed by all 5 judges shall have the applicable effect" (Case 004/2-**D359/34 & D360/43** President's Memo concerning Notification of Pre-Trial Chamber's Considerations in Case 004/2, 29 Jan 2020, EN 01640437), and with the CIJs' view on the matter (**D270/7** CIJs' Refusal Decision, para. 23). The PTC has often made its mandatory decisions (including IR 78 default decisions) solely outside the confines of the unanimous Disposition. *See e.g.* **C2/4** Considerations of the Pre-Trial Chamber on Meas Muth's Urgent Request for a Stay of Execution of Arrest Warrant, 23 Sep 2015, paras 11-12, Disposition; **D20/4/4** Investigative Requests Considerations, paras 13-14, Disposition; **D11/2/4/4** Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill, 24 Oct 2011, paras 12-13, Disposition; Case 004-**D203/1/1/2** Considerations of the Pre-Trial Chamber on Yim Tith's Appeal Against the Decision Regarding his Request for Clarification that He Can Conduct His Own Investigation, 19 Jan 2015, paras 30-31, Disposition. In particular, in its Considerations regarding the Co-Prosecutors' disagreement on whether to seise the CIJs with Cases 003 and 004, the PTC's finding that the Introductory Submissions should be forwarded to the CIJs does not appear in the Disposition. *See* **D1/1.3** Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 Aug 2009 ("PTC Rule 71 Considerations"), para. 45 (as corrected in **D1/1.2** Corrigendum, 31 Aug 2009), Disposition at EN 00620551, FR 01616997, KH 00620604.

119 **D266/27 & D267/35** Considerations, para. 110, Disposition at p. 40 (EN).

120 *See e.g.* **ECCC:** ECCC Agreement, art. 4(2); ECCC Law, art. 14 new (2); IRs 101(2), 111(1); **ICTY:** *The Prosecutor v. Krnojelac*, IT-97-25-A, Judgment, Appeals Chamber, 17 Sep 2003, Separate Opinion of Judge Schomburg, pp. 1-6 (agreeing with the conclusions reached by the Appeals Chamber, but not with certain reasons given in the Judgment); *Prosecutor v. Kupreškić et al.*, IT-95-16, Separate Opinion of Judge David Hunt on Appeal by Dragan Papić Against Ruling to Proceed by Deposition, 15 Jul 1999, para. 2 ("I agree with the joint decision that the appeal should be allowed [...] I am unable to agree with all of the reasons given in the joint decision for that result. I now give my own reasons upon the issues raised in the appeal."); *Prosecutor v. Tadić*, IT-94-1, Separate Opinion of Judge Abi-Saab on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct 1995, para. 1; **ICTR:** *Kanyabashi v. The Prosecutor*, ICTR-96-15-A, Decision on the Defence Motion for Interlocutory Appeal on the Jurisdiction of Trial Chamber I, Appeals Chamber, 3 Jun 2009, Joint Separate and Concurring Opinion of Judge Wang Tieya and Judge Rafael Nieto-Navia, para. 1; *Ngeze & Nahimana v. The Prosecutor,* ICTR-99-52-A, Decision on the Interlocutory Appeals, Appeals Chamber, 5 Sep 2000, Separate Opinion of Judge Shahabuddeen, para. 1 ("I respectfully agree with the decision of the Appeals Chamber but propose to say something on a point on which there is some difference of opinion. The difference does not affect the outcome of the case"); **SCSL:** *Prosecutor v. Brima et al.*, SCSL-2004-16-AR73, Separate and Concurring Opinion of Justice Robertson on the Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, Appeals Chamber, 8 Dec 2005, para. 1. *See further sources in* **D271/1** ICP's PTC Conclusion Request, fn. 56 (re. other tribunals' statutory provisions for separate opinions to be appended to chambers' judgments).

the Indictment, the case must go to trial.[121]

72. This unanimous holding is in sharp contrast to the PTC's holding in Case 004/2 where the National Judges annulled the Indictment.[122] Having found the Case 003 Indictment valid, the National Judges were obligated to comply with the ECCC legal framework as exemplified by Rule 77(13) and join with the International Judges to forward this case to the TC for trial. Their failure to do so was an error of law.

73. The reasons provided by the National Judges for not doing so are contradictory and unconvincing. Contrary to their reasoning,[123] sending Case 003 to trial will not undermine the equal status of the CIJs. Such an action is simply a legal recognition that the Indictment is incompatible with the Dismissal Order and is dispositive within the ECCC legal framework on the basis that the only Closing Order that was upheld by at least a supermajority (and *a fortiori* by unanimity) is the Indictment.[124]

74. Nor, as they reason,[125] will sending the case to trial undermine Meas Muth's presumption of innocence. He will have a fair and transparent trial where his accountability will be determined by an impartial and independent panel of judges guided only by facts and law. His presumption of innocence will be safeguarded and protected during the trial.

75. For all the reasons mentioned herein, the required decisive action is to send this case to trial without delay. This is the only result that is consistent with the ECCC legal framework and the PTC's unanimous finding that the Indictment is valid.

D. The Closing Order Indictment Was Not Overturned by a Supermajority – The Case Proceeds to Trial

76. For argument's sake, albeit contrary to law and logic, even if this Chamber takes the view that there was no *de facto* unanimous finding that the Indictment is valid, the PTC was nonetheless obliged to transfer the case to the TC for trial, as the Indictment was not overturned by a supermajority of the PTC (and no supermajority upheld the validity of the Dismissal Order).

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121 ECCC Agreement, art. 7(4); ECCC Law, art. 23 new; IR 77 (13).

122 *See* Case 004/2-**D359/24 & D360/33** Case 004/2 PTC Considerations, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, paras 170-302, particularly para. 302(x) and Disposition ("The Closing Order (Indictment) was not done in line with the Agreement and the ECCC Law and shall be annulled. For these reasons, the National Judges of the Pre-Trial Chamber hereby decide to: uphold the Closing Order (Dismissal), Annul the Closing Order (Indictment)").

123 **D266/27** & **D267/35** Considerations, National Judges' Opinion, para. 116.

124 *See* II. Procedural History, para. 15, *supra*. *See also* discussion in Section V.D, *infra*.

125 **D266/27** & **D267/35** Considerations, National Judges' Opinion, para. 116.

77. As set out above, articles 5(4) and 7(4) of the ECCC Agreement, article 23 new of the ECCC Law, and IRs 77(13)(b) and 79(1)[126] required the PTC to seise the TC with the Indictment in keeping with what the PTC unanimously held to be the "fundamental and determinative" default position that the investigation shall proceed.[127] The PTC's International Judges rightly described this core principle as the "principle of continuation of the investigation and prosecution",[128] that removes any uncertainty when an indictment is not reversed.[129] The default position was accepted by both the RGC and the UN[130] and has been regularly applied by the ECCC Chambers, including by the National Judges of the PTC.[131] It must be interpreted in light of the object and purpose of the treaty between

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126 *See* Applicable Law, paras 29, 36, 38 and 40, *supra* (para. 29: ECCC Agreement, art. 5(4); para. 36: ECCC Agreement, art. 7(4), ECCC Law, art. 23 new; para. 38: IR 77(13)(b); para. 40: IR 79(1)).

127 **D266/27 & D267/35** Considerations, paras 94, 97, 98 (unanimous). *See also* Case 004/2-**D359/24 &D360/33** Case 004/2 PTC Considerations, paras 106-107, 111, 117 (unanimous); SCC statement in para. 41, *supra*.

128 **D266/27 & D267/35** Considerations, International Judges' Opinion, paras 256, 261; Case 004/2-**D359/24 &D360/33** Case 004/2 PTC Considerations, Opinion of Judges Baik and Beauvallet, para. 320; Case 004-**D381/45 & D382/43** Case 004 PTC Considerations, Opinion of Judges Kang Jin Baik and Olivier Beauvallet ("International Judges' Opinion"), paras 169, 174, 533, 538.

129 Case 004-**D381/45 & D382/43** Case 004 PTC Considerations, International Judges' Opinion, para. 174 ("the argument of a possible *lacuna* in the ECCC legal framework in relation to the legal repercussions of issuing conflicting closing orders finds no application in the present case [...] the alleged uncertainty is removed through a fair reading of the relevant legal texts [...] which uphold the principle of continuation of judicial investigation and prosecution. In addition, the International Judges clarify that pursuant to Internal Rule 77(13)(b), when an indictment is not reversed, it shall stand, the proceedings must be continued and the case must be transferred to trial").

130 On the same day that the UN first provided the Article 7(4) wording to the RGC, Hans Corell, Under Secretary General for Legal Affairs and Legal Counsel of the UN, recorded a conversation with Deputy Prime Minister Sok An, the RGC's chief negotiator, rejecting his call to have a supermajority requirement to approve the continuation of an investigation or prosecution. Hans Corell explained that the disagreement mechanism as drafted meant "you would need super majority to stop the investigation or prosecution" (*See* **D181/2.30** Letter from UN Secretary General to Prime Minister H.E. Hun Sen, 19 Apr 2000, Annexed Note from Hans Corell to Secretary general, Subject: Urgent call from Cambodia — Options to settle differences between investigating judges/prosecutors, 19 Apr 2000, EN 01326090). Hans Corell confirmed this position in March 2003 after the ECCC Agreement containing that same wording was agreed (**D181/2.36** Statement by Under Secretary General Hans Corell Upon Leaving Phnom Penh on 17 March 2003, 17 Mar 2003, EN 01326112). *See also* David Scheffer in M. Cherif Bassiouni (ed), "The Extraordinary Chambers in the Courts of Cambodia", International Criminal Law, Third Edition, Vol III, 2008, pp. 231, 246 (stating that under the supermajority rule, "[t]he only way the prosecution or investigation is halted is if the [PTC] decides by supermajority vote that it should end").

131 *See e.g.* **SCC:** Case 001-**F28** *Duch* AJ, para. 65 ("If, for example, the Pre-Trial Chamber decides that neither Co-Investigating Judge erred in proposing to issue an Indictment or Dismissal Order for the reason that a charged person is or is not most responsible, and if the Pre-Trial Chamber is unable to achieve a supermajority on the consequence of such a scenario, 'the investigation shall proceed.'"). *See further* analysis of this appeal judgment *in* **D267/10** International Co-Prosecutor's Response to Meas Muth's Appeal Against the International Co-Investigating Judge's Indictment (D267), 28 Jun 2019, paras 34-35. **PTC: D1/1.3** PTC Rule 71 Considerations, paras 16, 17, 26, 45 (unanimous), Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, paras 18-19 (where the PTC's National Judges disagreed with the way the preliminary investigations were started and carried out by the ICP in Cases 003 and 004 but, together with the International Judges, unanimously accepted the primacy of the principle of continuation of the investigation and prosecution); **D1/1.1** Annex II: Excerpt of the Considerations of the Pre-Trial Chamber Regarding the Disagreement between the Co-Prosecutors Pursuant to Internal Rule 71, 18 Aug 2009, Conclusion; Case 004/1-**A122/6.1/3** Decision on Im Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance, 15 Aug 2014, para. 14; **D117/1/1/2** Decision on Meas Muth's Appeal Against the

the UN and RGC to "[bring] to trial senior leaders of Democratic Kampuchea and those who were most responsible" for the DK crimes.[132]

78. In this context, it is clear that the "investigation or prosecution shall proceed" means simply "the case shall proceed" and includes the phase of seising the TC with an indictment.[133] Indeed, the default position must be respected throughout the ECCC proceedings, including after the completion of the appeals process before the PTC, whether one considers the transfer of the Indictment and case file to the TC to be part of the investigation or part of the prosecution.[134] Creating a system in which early disagreements were to be resolved in favour of proceeding but later disagreements on the same issue were to be resolved in favour of terminating proceedings would have been pointless, costly and time-consuming, with little prospect of going to trial.

79. The default position governed by IR 77(13)(b), which specifically relates to indictments, prevails as *lex specialis* over the general terms of IR 77(13)(a) regarding orders other than indictments.[135] Had the drafters of the IRs intended that a dismissal order would end the case absent a supermajority overturning it, they would have expressly stated so in IR 77(13)(b). Thus, the principle of continuation of the case requires that the TC be seised of the Indictment and the case must be tried.[136]

International Co-Investigating Judge's Order on Suspect's Request Concerning Summons Signed by One Co-Investigating Judge, 3 Dec 2014, para. 16.

132 ECCC Agreement, art. 1, as reflected in ECCC Law, art. 1.

133 In Case 002, the PTC unanimously held in a decision that pre-dated the SCC's holding in Case 001 that the phrase "the investigation shall proceed" incorporates the phase where an indictment seises the Trial Chamber. *See* Case 002-**D427/1/30** Ieng Sary CO Decision, para. 274 ("The [CIJs] are under no obligation to seise the [PTC] when they do not agree on an issue before them, the default position being that the 'investigation shall proceed' which is coherent with the approach taken by the [CIJs] in the current case.").

134 **D266/27 & D267/35** Considerations, para. 98 (unanimous) ("a principle as fundamental and determinative as the default position cannot be overridden or deprived of its fullest weight and effect by convoluted interpretative constructions"); Case 004/2-**D359/24 & D360/33** Case 004/2 PTC Considerations, para. 112 (unanimous). *See also* **D266/18.2** Transcript of Appeal Hearing Case 003, 29 Nov 2019, EN 01640004 (where the PTC asked the ICP whether, in its ordinary meaning, a transfer of the Indictment and case file to the TC is part of the investigation or part of the prosecution).

135 The Latin expression *lex specialis* refers to a doctrine relating to the interpretation of laws according to which a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*). It is a widely recognised interpretation mechanism, used internationally, including at the ECCC. *See e.g.* Case 001-**F28** *Duch* AJ, paras 298, 348. *See also* UNGA, Report of the International Law Commission, 58th session, 2006, para. 61; UNGA, Report of the International Law Commission, 56th session, 2004, para. 305; *Beagle Channel Arbitration (Argentina v. Chile)*, Report and Decision of the Court of Arbitration, 18 Feb 1977, paras 36, 38-39; *Brannigan and McBride v. United Kingdom*, Nos 14553/89 & 14554/89, Judgment, 25 May 1993, para. 76; *Nikolova v. Bulgaria*, No. 31195/96, Judgment, 25 Mar 1999, para. 69; C-96/00 Rudolf Gabriel, Judgment, 11 Jul 2002, 2002 ECR-I-06367, pp. 6398-99, paras 35-36 and p. 6404, para. 59.

136 *See* Case 001-**F28** *Duch* AJ para. 65, *citing* ECCC Law, art. 23*new*; ECCC Agreement, art. 7(4); IR 72(4)(d). Whilst this finding arises out of a discussion of the scenario where one or both of the CIJs has referred the question of a conflicting indictment and dismissal order to the PTC under IR 72, the substantive outcome is

80. Failing to respect the principle of continuation constitutes an error of law by the PTC Judges that caused "a manifestly unreasonable legal result, violating both international law and Cambodian law",[137] including the overriding principles that proceedings must comply with legality, fairness and effectiveness.

81. Although the PTC unanimously recalled the value of the default position to provide an effective way out of any possible procedural impasses caused by disagreements,[138] it failed to apply it to Case 003 by transferring the case file to the TC. In particular, against all logic and consistency, the National Judges failed to acknowledge not only that the Indictment was upheld unanimously (and *a fortiori* was not overturned by supermajority) but also that the Dismissal Order was not upheld by a supermajority and therefore the default decision required for the case to proceed.[139] Even in the unlikely situation where a dismissal order would stand in parallel to an indictment, the case would proceed to trial on the basis of that indictment, as this is precisely what the parties to the ECCC Agreement intended with this default position: proceedings should only be halted by a PTC supermajority.[140]

82. Finally, in Cambodian procedure, the causes of extinction of criminal action, beyond a dismissal or acquittal on the merits, are explicitly limited by article 7 of the Cambodian Code of Criminal Procedure to the death of the accused, the expiry of a statute of limitations, the grant of an amnesty, the abrogation of the law, and *res judicata.*[141] None of these apply to Case 003, and the SCC and TC have both held that the ECCC has no authority to order termination for any other reason.[142]

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equally applicable to the current situation where the PTC had been seised of appeals by the parties, since the manner in which the PTC had been seised of the same question – whether either judge erred in issuing his Dismissal Order or Indictment - is irrelevant.

137 **D266/27 & D267/35** Considerations, para. 98 (unanimous).

138 **D266/27 & D267/35** Considerations, paras 94, 97, 98 (unanimous).

139 **D266/27 & D267/35** Considerations, National Judges' Opinion, paras 115-118.

140 ECCC Agreement, art. 7(4). By its terms, this provision deals with the formal dispute resolution mechanism outlined in Article 23*new* of the ECCC Law and IR 72, and so it does not address the precise procedural situation in the present case. But it *does* address this situation *substantively*: two CIJs disagree as to whether proceedings should continue.

141 CCCP, art. 7.

142 Case 002-**E138/1/10/1/5/7** Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused Ieng Thirith, 14 Dec 2012, para. 38; Case 002-**E116** Decision on Nuon Chea Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), 9 Sep 2011, paras 16-17 (finding that ECCC proceedings may only be terminated under IR 89(1)(b) on one of the limited grounds set out in art. 7 of the CCCP).

VI. CONCLUSION

83. All PTC Judges, national and international, held that the Indictment against Meas Muth was legally valid, thereby inherently finding there was sufficient evidence to bring him to trial for genocide, crimes against humanity, grave breaches of the Geneva Conventions and crimes under the 1956 Cambodian Penal Code. ECCC law mandates that Case 003 be sent to trial on the basis of this unanimous holding as well as on the basis of the default position, which was triggered when the Indictment was not overturned by at least a supermajority. The PTC's failure to take the final step to properly conclude the pre-trial phase by sending Case 003 to trial constitutes an error of law that requires SCC intervention.

84. The PTC's finding that the issuance of two closing orders was illegal does not prevent the case from proceeding to trial. The finding itself erroneously disregards the ECCC's unique legal framework that not only allows but envisions the issuance of two closing orders where there are irreconcilable differences between CIJs with equal status. Even if the PTC's finding is accepted, the CIJs' illegal issuance constitutes a procedural error that the PTC cured, and which has caused no gross unfairness, no material prejudice, and no abuse of process that would warrant the termination of Case 003 by the SCC. Such a remedy would be entirely disproportionate to the alleged error and would disregard the interests of the victims and the entire global community to have such serious crimes publicly adjudicated before a fair and impartial trier of fact.

VII. RELIEF REQUESTED

85. For the foregoing reasons, the International Co-Prosecutor requests that the Supreme Court Chamber order that Case 003 be forwarded to the TC for trial.

Respectfully submitted,

Date	Name	Place	Signature
8 October 2021	Brenda J. HOLLIS International Co-Prosecutor	Phnom Penh