

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 003/07-09-2009-ECCC/OCIJ (PTC35) **Party Filing:** International Co-Prosecutor

Filed to: Pre-Trial Chamber

Original Language: English

Date of Document: 9 September 2019

CLASSIFICATION

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

Classification by PTC: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



**INTERNATIONAL CO-PROSECUTOR'S RESPONSE TO PRE-TRIAL CHAMBER'S
NOTICE TO THE PARTIES REGARDING THE HEARING OF THE APPEALS OF
CLOSING ORDERS IN CASE 003**

Filed by:

Brenda J. HOLLIS
International Co-Prosecutor
(Reserve)

Copied to:

CHEA Leang
National Co-Prosecutor

Distributed to:

Pre-Trial Chamber

Judge PRAK Kimsan, President

Judge Olivier BEAUVALLET

Judge NEY Thol

Judge Kang Jin BAIK

Judge HUOT Vuthy

Co-Lawyers for MEAS Muth

ANG Udom

Michael G. KARNAVAS

**All Civil Party Lawyers
in Case 003**

SUBMISSION

1. On 5 September 2019, the Pre-Trial Chamber (“PTC”) issued an e-mail notice¹ stating their intention to conduct a hearing in relation to the appeals² of the Closing Orders³ in Case 003 in addition to requesting information from the parties as to the suitability of the dates proposed and the time required to make submissions.
2. The International Co-Prosecutor (Reserve) (“ICP”) informs the PTC that she will be available for the hearing on the dates proposed, between 25 and 29 November 2019.
3. The ICP requests three and a half hours for presenting her appeal and two hours to respond to the submissions of other parties.
4. Despite the recent PTC decision to hold the 004/2 hearing *in camera*, except for the reading in public of a report on the case,⁴ the ICP requests that the entire hearing on the Case 003 appeals be public. Rule 77(6) provides that the PTC may decide that all or part of a hearing “be held in public, *in particular* where the case may be brought to an end by its decision, including appeals or applications concerning jurisdiction or bars to jurisdiction, if the Chamber considers that it is in the interests of justice and it does not affect public order or any protective measures authorized by the court.”⁵
5. Meas Muth explicitly requested in his appeal that the hearing be public, as it is “in the interests of justice, in the interests of Mr. Meas Muth, the interests of all Cambodians, the interests of the international community (particularly, the donor countries who finance the ECCC) and the interests of the ECCC, which is expected to be a model court for Cambodians to learn from

¹ Pre-Trial Chamber’s Notice to the parties by e-mail, 5 September 2019, 3:33 p.m.

² **D267/3** National Co-Prosecutor’s Appeal against the International Co-Investigating Judge’s Closing Order in Case 003, 5 April 2019; **D267/4** Meas Muth’s Appeal against the International Co-Investigating Judge’s Indictment, 8 April 2019; **D266/2** International Co-Prosecutor’s Appeal of the Order Dismissing the Case against Meas Muth (D266), 8 April 2019.

³ **D266** Order Dismissing the Case against Meas Muth, 28 November 2018 (“Dismissal Order”); **D267** Closing Order, 28 November 2018 (“Indictment”).

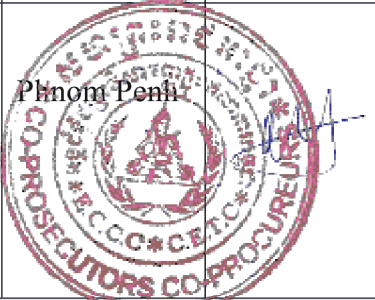
⁴ *Case 004/2-D360/14* Scheduling Order for the Pre-Trial Chamber’s Hearing on Appeals Against Closing Orders, 3 June 2019, p.2 [“Decides that the hearing will be held in public until the report on the case is read in full by the bench and *in camera* after”]; *Case 004/2-D360/16* Report of the Case and Appeals (Redacted), VI-Conclusion [“The Pre-Trial Chamber has provided this brief report on the case and the current appeal proceedings in the interests of justice and transparency, while still recognising the principle of maintaining confidentiality at the pre-trial stage”].

⁵ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015, Rule 77(6) (emphasis added).

and emulate".⁶ The ICP agrees with the Defence that a public hearing would neither prejudice any party nor disturb public order.

6. Holding a public hearing will demonstrate that the ECCC is proceeding in a transparent, proper, deliberative fashion, hearing and considering the submissions of the parties prior to making any decision. There will be considerable public attention and public comment on the disposition of this case regardless of whether the proceedings are public. A public hearing will therefore ensure that any public comment on the case is based on fact rather than speculation. Given the complexity of the procedure (cross-appeals), a public hearing will foster better public understanding of the ultimate disposition of the case, whatever it may be.
7. In contrast to the situation at the time the PTC held its hearing in Case 004/1, both the Indictment and the Dismissal Order are already entirely public in substance,⁷ so there is no risk of violating protective measures or orders of confidentiality. The fact that a portion of the Case File 003 is currently classified as confidential, including the written submissions on these appeals, this could easily be remedied by the PTC prior or at the time of the hearing. Further, following the logic of the PTC's unanimous decision in Case 004/1, the transcripts and video recordings of any *in camera* hearings in Case 003 would eventually be made public in any event.⁸ Given this, it is preferable that the hearing itself be public at the time when public interest will be greatest and when a public hearing will constitute the most visible commitment to transparency on the part of the ECCC.

Respectfully submitted

Date	Name	Place	Signature
9 September 2019	William SMITH International Deputy Co-Prosecutor for Brenda J. HOLLIS International Co-Prosecutor (Reserve)	Phnom Penh	

⁶ **D267/4** Meas Muth's Appeal against the International Co-Investigating Judge's Indictment, 8 April 2019, para. 12.

⁷ The public versions of the Indictment and Dismissal Order contain very limited redactions of identifying information of witnesses. None of the redactions affect the substance or disposition of the Closing Orders.

⁸ *Case 004/1-D304/6/4* Decision on Im Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018 [reclassifying as public, *inter alia*, written transcripts and audio and video recordings of the Pre-Trial Chamber hearings in Case 004/1].