

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

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**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR CONCLUSION OF THE
PRE-TRIAL STAGE OF THE CASE 003 PROCEEDINGS**

TABLE OF AUTHORITIES

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ECCC LAW

Core Legal Documents

(ECCC Legal Compendium – not included)

1. Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003 (“ECCC Agreement”), arts 1, 4(2), 5(4), 7(4), 12(2).
2. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, with amendments as promulgated on 27 October 2004 (“ECCC Law”), arts 1, 14(2), 23 new, 33 new, 35 new.
3. Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (Rev. 9) (“Internal Rules”), as revised on 16 January 2015, rules 1(2), 11(5), 21, 22(1)(f), 23^{quater}(1)(e), 34(11), 67, 77(13)-(14), 78, 79(1), 80, 87(1), 89(1)(b), 98(3)-(4), 101(2), 108(4^{bis}), 111(1), 111(4).
4. Extraordinary Chambers in the Courts of Cambodia, Code of Judicial Ethics, as amended on 5 September 2008, art. 5(3). **(Authority 1)**

Jurisprudence

Supreme Court Chamber (SCC)

Case 002

5. Case 002-E176/2/1/4 Decision on Nuon Chea’s Appeal against the Trial Chamber’s Decision on Rule 35 Applications for Summary Action, 14 September 2012 (“SCC Rule 35 Decision”), para. 25. *(Exceeds 10 pages – excerpt attached)* **(Authority 2)**
6. 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 December 2012, para. 38. *(Exceeds 10 pages – excerpt attached)* **(Authority 3)**

Case 004/2

7. Case 004/2-E004/2/1/1/2 Decision on International Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 10 August 2020 (“SCC Decision”), paras 59-61, 64, 71. *(Exceeds 10 pages – excerpt attached)* **(Authority 4)**

Trial Chamber (TC)

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8. Case 002-E116 Decision on Nuon Chea Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), 9 September 2011, paras 16-17. **(Authority 5)**

Case 003

9. **D267/29.1.12** Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving Ao An, 3 April 2020.

Pre-Trial Chamber (PTC)*Case 001*

10. Case 001-**D99/3/42** Decision on Appeal Against Closing Order Indicting Kaing Guek Eav alias “Duch”, 5 December 2008, para. 38. (*Exceeds 10 pages – excerpt attached*) (**Authority 6**)

Case 002

11. Case 002-**D55/1/8** Decision on Nuon Chea’s Appeal Against Order Refusing Request for Annulment, 26 August 2008, para. 21. (*Exceeds 10 pages – excerpt attached*) (**Authority 7**)

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12. **D1/1.3** Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009 (“PTC Considerations on Co-Prosecutors’ Disagreement”), paras 17, 45, Disposition at EN 00620551, FR 01616997, KH 00620604 (as corrected in **D1/1.2** Corrigendum to the Considerations of the Pre-Trial Chamber Regarding the Disagreement between the Co-Prosecutors Pursuant to Internal Rule and Annex II, 31 August 2009 (“Corrigendum”)).
13. **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 October 2011, paras 12-13, Disposition.
14. **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 November 2011 (“PTC Investigative Requests Considerations”), paras 13-14, Disposition.
15. **C2/4** Considerations of the Pre-Trial Chamber on Meas Muth’s Urgent Request for a Stay of Execution of Arrest Warrant, 23 September 2015, paras 11-12, Disposition.
16. **D174/1/4** Considerations on Meas Muth’s Appeal Against the International Co-Investigating Judge’s Decision to Charge Meas Muth with Grave Breaches of the Geneva Conventions and National Crimes and to Apply JCE and Command Responsibility, 27 April 2016, para. 16.
17. **D266/20.1.10 & D267/25.1.10** Case 004/2-Interoffice Memorandum from PTC Judges Olivier Beauvallet and Kang Jin Baik entitled “Transfer of Case File 004/2”, 12 March 2020, para. 3.

18. **D266/20.1.11 & D267/25.1.11** Case 004/2-Memorandum from PTC President Prak Kimsan entitled “Re-Confirmation of the Decision on Case File 004/2”, 16 March 2020, paras 2-4.
19. **D266/24 & D267/32** Decision on Meas Muth’s Request for Clarification of the Pre-Trial Chamber’s Considerations on Appeals Against Closing Orders in Case 004/2, 3 November 2020, para. 31.
20. **D266/25** Decision on International Co-Prosecutor’s Request to File Additional Submissions on her Appeal of the Order Dismissing the Case Against Meas Muth, 3 November 2020, para. 31.
21. **D266/27 & D267/35** Considerations on Appeals Against Closing Orders, 7 April 2021 (“Considerations”), paras 83-84, 90, 94, 96-98, 100-101, 105-110, fn. 179, Disposition at EN 01666984, FR 01667141, KH 01667329, Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy (“National Judges’ Opinion”), paras 115-118, Disposition at EN 01666986, FR 01667144, KH 01667332, Opinion of Judges Olivier Beauvallet and Kang Jin Baik (“International Judges’ Opinion”), paras 119, 226-250, 255-262, 284, 339-340, 342-343, Disposition at EN 01667089, FR 01667264, KH 01667480.
22. **D269/4** Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 10 June 2021 (“PTC Civil Party Considerations”), para. 30; Opinion of Judges Prak Kimsan, Ney Thol and Huot Vuthy, para. 44.

Case 004

23. 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 January 2015, paras 30-31, Disposition. (*Exceeds 10 pages – excerpt attached*) (**Authority 8**)

Case 004/1

24. Case 004/1-**D308/3/1/20** Considerations on the International Co-Prosecutor’s Appeal of Closing Order (Reasons), 28 June 2018 (“Considerations on 004/1 Closing Order Appeal”), paras 28, 75. (*Exceeds 10 pages – excerpt attached*) (**Authority 9**)

Case 004/2

25. Case 004/2-**D359/24 & D360/33** Considerations on Appeals Against Closing Orders, 19 December 2019 (“Case 004/2 Considerations”), paras 30-54, 57, 68, 89, 95, 101, 106-107, 109-112, 114, 117, 119, 122-124, 163, fn. 188. (*Exceeds 10 pages – excerpt attached*) (**Authority 10**)
26. Case 004/2-**D359/34 & D360/43** President’s Memo concerning Notification of Pre-Trial Chamber’s Considerations in Case 004/2, 29 January 2020 (“PTC President’s 29 January 2020 Memo”), EN 01640437. (**Authority 11**)

Office of the Co-Investigating Judges (OCIJ)

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27. **D266** Order Dismissing the Case Against Meas Muth, 28 November 2018 (“Dismissal Order”).
28. **D267** Closing Order, 28 November 2018 (“Indictment”).
29. **D270/6** Decision on International Co-Prosecutor’s Request to File a Reply, 20 May 2021.
30. **D270/7** Decision on International Co-Prosecutor’s Request to Forward Case 003 to the Trial Chamber, 20 May 2021 (“CIJs’ Forwarding Decision”), paras 25, 38-39, Disposition at EN 01671507, FR 01672328, KH 01671536.

CAMBODIAN LAW

31. Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007 (“CCCP”), arts 7, 247, 350, 405, 439-441. (*Exceeds 10 pages – excerpt attached*) (**Authority 12**)

INTERNATIONAL LAW

Treaties and other Instruments

32. League of Nations, Statute of the Permanent Court of International Justice, 16 December 1920 (“PCIJ Statute”), as amended on 31 July 1926, arts 24-27, 29, 55. (*Exceeds 10 pages – excerpt attached*) (**Authority 13**)
33. Charter of the International Military Tribunal, London, 8 August 1945 (“London Charter”), arts 2, 4(a), 4(c). (*Exceeds 10 pages – excerpt attached*) (**Authority 14**)
34. Charter of the International Military Tribunal for the Far East, Tokyo, 19 January 1946 (“Charter of the IMTFE”), arts 2, 4(a)-(b). (*Exceeds 10 pages – excerpt attached*) (**Authority 15**)
35. Statute of the International Court of Justice, 18 April 1946 (“ICJ Statute”), arts 3(1), 23-26, 29, 31, 55(1)-(2). (**Authority 16**)
36. US Military Tribunal at Nuremberg, Military Government Ordinance No. 7: Organization and Powers of Certain Military Tribunals, 18 October 1946 (“Ordinance No. 7”), arts II(b), II(g), II(h). (**Authority 17**)
37. International Covenant on Civil and Political Rights, New York, 16 December 1966 (“ICCPR”), 999 UNTS 171, art. 14(3)(c). (*Not included – in ECCC Legal Compendium*)
38. Statute of the International Law Tribunal for the Law of the Sea (“ITLOS Statute”), Annex VI to the UN Convention on the Law of the Sea, 10 December 1982, arts 2, 13-15, 17, 29(1)-(2), 35-36. (**Authority 18**)

39. Statute of the Special Court for Sierra Leone, annexed to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone, Freetown, 16 January 2002, 2178 UNTS 137, art. 18. (*Not included – in ECCC Legal Compendium*)
40. Statute of the Special Tribunal for Lebanon, S/RES/1757 (2007), 30 May 2007, art. 23. (*Exceeds 10 pages – excerpt attached*) (**Authority 19**)
41. Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, September 2009, art. 23(2). (*Exceeds 10 pages – excerpt attached*) (**Authority 20**)
42. Statute of the International Criminal Tribunal for Rwanda, 31 January 2010, art. 22(2). (*Exceeds 10 pages – excerpt attached*) (**Authority 21**)
43. Statute of the International Residual Mechanism for Criminal Tribunals, S/RES/1966 (2010), Annex 1, 22 December 2010, art. 21(2). (*Exceeds 10 pages – excerpt attached*) (**Authority 22**)

Jurisprudence

International Military Tribunal for the Far East

44. *United States et al. v. Araki et al.*, Judgment, Concurring Opinion by the Honorable Mr. Justice Delfin Jaranilla, Member from the Republic of the Philippines, 1 November 1948, pp. 1, 35. (*Exceeds 10 pages – excerpt attached*) (**Authority 23**)

International Labour Organisation (ILO)

45. *In re Desgranges v. ILO*, Judgment No. 11, 12 August 1953. (**Authority 24**)

International Court of Justice (ICJ)

46. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, ICJ Reports 1996, Dissenting Opinion of Judge Higgins, paras 38-39. (*Exceeds 10 pages – excerpt attached*) (**Authority 25**)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

47. *Prosecutor v. Krnojelac*, IT-97-25-A, Appeals Chamber, Judgement, 17 September 2003, Separate Opinion of Judge Schomburg. (*Exceeds 10 pages – excerpt attached*) (**Authority 26**)
48. *Prosecutor v. Kupreškić et al.*, IT-95-16, Appeals Chamber, Separate Opinion of Judge David Hunt on Appeal by Dragan Papić Against Ruling to Proceed by Deposition, 15 July 1999, para. 2. (*Exceeds 10 pages – excerpt attached*) (**Authority 27**)
49. *Prosecutor v. Milutinović*, IT-99-37-AR65.3, Appeals Chamber, Decision Refusing Milutinović Leave to Appeal, 3 July 2003, para. 22. (**Authority 28**)

50. *Prosecutor v. Tadić*, IT-94-1, Appeals Chamber, Separate Opinion of Judge Abi-Saab on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 1. **(Authority 29)**

International Criminal Tribunal for Rwanda (ICTR)

51. *Kanyabashi v. The Prosecutor*, ICTR-96-15-A, Appeals Chamber, Decision on Defence Motion for Interlocutory Appeal of the Jurisdiction of Trial Chamber I, Joint Separate and Concurring Opinion of Judge Wang Tieya and Judge Rafael Nieto-Navia, 3 June 1999, para. 1. (*Exceeds 10 pages – excerpt attached*) **(Authority 30)**
52. *Ngeze & Nahimana v. The Prosecutor*, ICTR-99-52-A, Appeals Chamber, Decision on the Interlocutory Appeals, Separate Opinion of Judge Shahabuddeen, 5 September 2000, para. 1. (*Exceeds 10 pages – excerpt attached*) **(Authority 31)**

Special Court for Sierra Leone (SCSL)

53. *Prosecutor v. Brima et al.*, SCSL-2004-16-AR73, Appeals Chamber, 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, 8 December 2005, para. 1. **(Authority 32)**

REGIONAL AND FOREIGN DOMESTIC LAW

Treaties and other Instruments

54. Organization of American States (OAS), Statute of the Inter-American Court of Human Rights (“IACtHR Statute”), 1 October 1979, arts 4, 10, 23. **(Authority 33)**
55. African Union, Statute of the African Court of Justice and Human Rights, 1 July 2008 (“ACJHR Statute”), arts 3, 16-19, 21, 42(1)-(2). (*Exceeds 10 pages – excerpt attached*) **(Authority 34)**

Foreign Domestic Law

Belgium

56. Belgian Judicial Code, 10 October 1967, art. 5. (*Exceeds 10 pages – excerpt attached*) **(Authority 35)**

Central African Republic

57. Loi Organique No. 15.003 Portant Création, Organisation et Fonctionnement de la Cour Pénale Spéciale, 3 June 2015, arts 11, 12, 42. (*Exceeds 10 pages – excerpt attached*) **(Authority 36)**

France

58. French Civil Code, 1 January 2021, art. 4. (*Exceeds 10 pages – excerpt attached*) **(Authority 37)**
59. French Code of Criminal Procedure, 1 June 2021, art. 6. (*Exceeds 10 pages – excerpt attached*) **(Authority 38)**

OTHER DOCUMENTSPermanent Court of International Justice (PCIJ)

60. PCIJ, Advisory Committee of Jurists, *Procès-Verbaux* of the Proceedings of the Committee, 16 June-24 July 1920 (The Hague, 1920), p. 312. (*Exceeds 10 pages – excerpt attached*) **(Authority 39)**

United Nations (UN Documents)

61. UN Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, endorsed by General Assembly Res. 40/32, 29 November 1985 and 40/146, 13 December 1985, art. 2. (*Not included – in ECCC Legal Compendium*)

Books

62. **D267/10.1.50** David Scheffer in M. Cherif Bassiouni (ed), “The Extraordinary Chambers in the Courts of Cambodia”, *International Criminal Law*, Third Edition, Vol III, 2008, p. 246.

Miscellaneous

63. **D267/4.1.5** Letter from UN Secretary General to Prime Minister H.E. Hun Sen, 19 April 2000, Annexed Note from Hans Corell to Secretary General, Subject: Urgent call from Cambodia – Options to settle differences between investigating judges/prosecutors, 19 April 2000, EN 01614369.
64. **D181/2.36** Statement by Under-Secretary-General Hans Corell upon leaving Phnom Penh on 17 March 2003, 17 March 2003, EN 01326112.
65. Email from Brenda J. Hollis entitled “Request for extension of time to file Rule 80 list of witnesses and experts”, 22 April 2021 at 2.02pm *attaching* International Co-Prosecutor’s Request for Extension of the Rule 80(1) Deadline, 22 April 2021. (*Exceeds 10 pages – excerpt attached*) **(Authority 40)**
66. Email from Trial Chamber Greffier Suy-Hong Lim entitled “Re Request for extension of time to file Rule 80 list of witnesses and experts”, 27 April 2021 at 7.27pm. **(Authority 41)**