JURISPRUDENCE OF THE PRE-TRIAL CHAMBER OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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FOREWORD

Within the Extraordinary Chambers in the Courts of Cambodia whose mandate is to try senior leaders of Democratic Kampuchea and those most responsible for the crimes committed by that regime, the Pre-Trial Chamber was probably the least visible chamber.

Positioned between the investigative and the trial stages, the Pre-Trial Chamber was embedded between two major and discernible axes of the procedure. It discreetly issued its ultimate decision on 29 September 2021.

Whilst it is barely mentioned in the ECCC Agreement and the ECCC Law, it functioned intermittently at first, before being permanently established in Phnom Penh on 23 February 2010 in light of an increasing volume of pre-trial litigation. While its key mandate concerning the settlement of disagreements between Co-Prosecutors and Co-Investigating Judges remained marginal, the Chamber was asked to intervene on a variety of procedural issues through its appellate or annulment powers.

In 14 years of activity, the Pre-Trial Chamber covered all phases of the criminal investigation, from the preliminary investigation until the conclusion of the judicial investigation. It examined all areas of the criminal procedure: from appointment of co-lawyers and disqualification of judges to the theory of joint criminal enterprise; from the review of evidence admissibility or validity to provisional detention, etc. The rules governing its own jurisdiction and functioning, as the judges having final authority over the preliminary phase of proceedings, were analysed by the Chamber. The Pre-Trial Chamber thus issued over 260 judicial decisions.

Throughout the years, it became clear that a compilation of its case law was necessary, both to report on the Chamber's overall activity and to identify its highlights and, perhaps, a few issues for thought. It constitutes the core of its judicial legacy for those who have shaped it. The present work epitomizes the coherence of a procedural model developed over 10 years which, subject to the commentary of legal observers, is already applied in other tribunals. It lays the groundwork, or at a minimum, offers an exploration of criminal procedures, in particular for French-speaking hybrid judicial systems.

The following pages contain the names of the judges who have created this jurisprudence. The present compilation of public decisions, while conducted under the direction of the Judges, was made possible by the work of dozens of interns, consultants, and legal officers. The two undersigned Judges are immensely grateful for their work. Without them and their commitment to the dissemination of the law, this digest would never have been possible.

Phnom Penh, 19 October 2021,

Olivier BEAUVALLET BAIK Kang Jin

Pre-Trial Chamber Judges,

Extraordinary Chambers in the Courts of Cambodia

LIST OF PRE-TRIAL CHAMBER JUDGES SINCE ITS ESTABLISHMENT

Current Pre-Trial Chamber Judges

Judge PRAK Kimsan – President of the Chamber, Cambodia

Judge NEY Thol – Judge, Cambodia

Judge HUOT Vuthy – Judge, Cambodia

Judge BAIK Kang Jin – Judge, Republic of Korea

Judge Oliver BEAUVALLET – Judge, France

Judge PEN Pichsaly – Reserve Judge, Cambodia

Judge Steven J. BWANA – Reserve Judge, Tanzania

Former Pre-Trial Chamber Judges

Judge Chang-ho CHUNG – Republic of Korea

Judge Rowan DOWNING, Q.C. – Australia

Judge Katinka LAHUIS – The Netherlands

Judge Catherine MARCHI-UHEL – France

This Digest was developed and compiled thanks to the efforts of the numerous legal officers, consultants, and interns who worked at the Pre-Trial Chamber during the past 14 years. The following persons played an essential role in undertaking the final preparations prior to the Digest's publication:

Juliette ESNEAU, Léo JOLIVET, Hyuree KIM, Nathalie TRAN, as well as Sherine AL SHALLAH, Lucía BURILLO MICHÓ, Lauren McKINNEY, Charlotte RUZZICA-DE LA CHAUSSÉE, Yasuaki TAKEUCHI, Marie WILMET,

under the supervision of Judges Olivier BEAUVALLET and BAIK Kang Jin.

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2.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"The Pre-Trial Chamber notes that the ECCC, although it is part of the Cambodian court system, is a separate and independent court with no institutional connection to any other court in Cambodia. A judge of the ECCC is selected upon the basis of internationally agreed criteria and takes a separate and distinct judicial oath. In this respect the ECCC is a new internationalised court applying international norms and standards." (para. 30)
3.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[W]hether the ECCC 'holds indicia of an international court applying international law', […] as found by the Pre-Trial Chamber […], is 'a separately constituted, independent and internationalised court' as found by the Trial Chamber […], or rather is a domestic, Cambodian court as alleged by the Appellant does not […] impact the Impugned Order's finding that JCE is applicable before the ECCC. This is the case, in light of the clear terms of Articles 1 and 2 of the ECCC Law [...]." (para. 47) "The argument that the ECCC could not apply customary international law because it is a domestic court from a country adhering to a dualist system and lacks specific directives in the Constitution, legislation or national jurisprudence incorporating international customary law into domestic law […] runs contrary to the clear terms of Article 2 of the ECCC Law, which can only lead to the conclusion that the ECCC has jurisdiction to apply forms of responsibility recognized under customary international law at the relevant time." (para. 48)
4.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011	"The ECCC's status as national court […], or as an internationalized Court as earlier found by this Chamber and Trial Chamber is irrelevant to its jurisdiction in light of the clear terms of the ECCC Law. Since both the United Nations and the Cambodian's Royal Government have unambiguously agreed to grant the ECCC jurisdiction over the crimes charged in the Closing Order, such jurisdiction does not depend on the nature of the ECCC as a national or an internationalized tribunal, […]. Either way, the

	Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order	ECCC has jurisdiction to hear the crimes enumerated in the ECCC Law, and when applying international law, the Chamber is bound by the international principle of legality." (para. 99)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Taking into account its finding below that the ECCC is an internationalised court functioning separately from the Cambodian court structure, the Pre-Trial Chamber finds that the 'internal *ne bis in idem* principle' as enshrined in Article 14(7) of the ICCPR does not apply to the proceedings before the ECCC. In these circumstances, the Pre-Trial Chamber will seek guidance in the procedural rules established at the international level to determine if Ieng Sary's previous conviction by a national Cambodian court shall prevent the ECCC from exercising jurisdiction against him for the offences charged in the Closing Order." (para. 131) "[T]he nature of the ECCC as a court has no bearing on the ECCC's jurisdiction over the crimes and modes of liability enumerated in the ECCC Law, because this law grants such jurisdiction to the ECCC. This Law is carefully crafted and clearly provides that the ECCC can apply such crimes and modes of liability provided that such must have existed in law at the relevant time. Even if the ECCC were considered to be a simply domestic court, jurisdiction is not in question as long as a law that grants it exists and related requirements are met." (para. 212) "The ECCC was established by a joint agreement between the Royal Government of Cambodia and the United Nations, and Cambodia accepted the ECCC Agreement as the law of the land. The ECCC Law explicitly gives the Chambers jurisdiction to apply treaties recognised by Cambodia and customary international law, as long as the principle of legality is respected. Given its express reference to Article 15 of the ICCPR, there is no doubt that, insofar as international crimes are concerned, the principle of legality envisaged by the ECCC Law is the international principle of legality which allows for criminal liability over crimes that were either national or international in nature at the time they were committed. As the international principle of legality does not require that international crimes and modes of liability be implemented by domestic statutes in order for violators to be found guilty, the characterisation of the Cambodian legal system as monist or dualist has no bearing on the validity of the law applicable before the ECCC. Consequently, […] the nature of the ECCC as a court is irrelevant to its jurisdiction in light of the clear terms of the ECCC Law. The ECCC Law did not empower the Royal Government of Cambodia to prosecute senior leaders of the Democratic Kampuchea or those alleged to be mostly responsible for such international crimes. This was not necessary. The Royal Government of Cambodia was not only free to prosecute such crimes which occurred within its territorial jurisdiction, as a basic exercise of its jurisdiction, it was its obligation under international law to do so. Rather than using its pre-existing court structure, the Royal Government of Cambodia agreed with the United Nations to establish the ECCC for its international expertise and delegated its jurisdiction to hear these cases." (para. 213) "The Pre-Trial Chamber recalls its recurring conclusion that the ECCC is an internationalised court." (para. 215) "The Pre-Trial Chamber [...] adopted the approach of the *ad hoc* Tribunals in determining what constitutes a proper jurisdictional challenge. It considered that the ECCC 'is in a situation comparable to that of the *ad hoc* Tribunals' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the act for which an accused is charged […] [and] that body of law must be reflected in customary international law.'" (para. 217) "There are no compelling reasons put before the Pre-Trial Chamber from the Co-Lawyers to reconsider such conclusions about the nature of the ECCC as an internationalised court, the Pre-Trial Chamber confirms its previous findings as mentioned." (para. 221) "The extraordinary and specific nature of the ECCC as an internationalised court established by mutual agreement between the United Nations and the Cambodian authorities directs the Pre-Trial Chamber to examine the standard for the principle of legality to be applied before it by looking explicitly at its establishing instruments, the ECCC Law and Agreement." (para. 222) "The ECCC has no authority to review the legality, with regards to Cambodian law, of the extension of the statutes of limitations by the National Assembly, nor the decision of the Constitutional Council.

		Hence, Article 3 (new) of the ECCC Law in principle gives the ECCC jurisdiction over national crimes. However, as emphasised in the reasoning of Ground Three above, the ECCC 'shall exercise their jurisdiction in accordance with international standard of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights'. Therefore, the Pre-Trial Chamber shall, in the light of the arguments raised by the Co-Lawyers, determine whether the application of Article 3 (new) violates the principle of legality enshrined in Article 15(1) of the ICCPR." (para. 280) "The Pre-Trial Chamber does not so find. The Chamber notes that although the Human Rights Committee has determined that '[e]quality before courts and tribunals [. . .] requires that similar cases are dealt with in similar proceedings', it has not found that 'extraordinary' or 'special' courts with limited or selective jurisdiction are therefore, by their very nature, in violation of Article 14(1) of the ICCPR. Rather, as with any other courts, the important question has been 'whether they ensure compliance with the fair trial requirements of Article 14.' An examination of the ECCC Law and the Internal Rules leads to the conclusion that the ECCC does ensure such compliance. For example, the fair trial guarantees in Article 14 have been adopted almost verbatim in Article 35 (new) of the ECCC Law. In addition, other fair trial guarantees appear in Internal Rule 21, which highlights the 'fundamental principles' that apply before the ECCC to safeguard the interests of charged persons." (para. 290) "Furthermore, there are objective and reasonable grounds for the ECCC's limited personal and temporal jurisdiction as 'Extraordinary Chambers' in the Cambodian legal system. The Human Rights Committee has stated that under Article 14(1) of the ICCPR, '[i]f […] exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction.' The Pre-Trial Chamber finds that the decision to limit the ECCC jurisdiction was not made arbitrarily or by the Government of Cambodia alone, but was based on the recommendation of a Group of Experts and was affirmed by the United Nations. That decision was in line with a basic principle underlying international criminal law that those responsible for the most serious violations of individual human rights resulting in mass atrocities that amount to international crimes must be held accountable. In light of the nature of these crimes requiring mass mobilisation, planning and execution, it was reasonable for retribution and deterrence reasons to limit jurisdiction to punishment of senior leaders and those most responsible for the mass atrocities committed in a specific, short period of Cambodia's history. It is reasonable to set up a specially constituted court such as the ECCC to try alleged senior-level perpetrators for these types of crimes where the normal court system may not have the capability or resources for doing so in a fair and unbiased manner, or where there is a significant risk that such local trials could result in post-conflict instability. Finally, in light of the limited resources available to the ECCC, it was reasonable to devote this court's energies towards trial of those most responsible for the mass atrocities committed from 1975-1979." (para. 291)
6.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The wider aims and general tenor of the Internal Rules, as provided in IR21 can be found in the 'inherent specificity of ECCC, set out in the ECCC Law and Agreement.'" (para. 63) "In this context, it is noted accordingly that the Agreement provides that one of the fundamental principles for the establishment of ECCC is 'national reconciliation'. This guides the Judges and Chambers of ECCC to not only seek the truth about what happened in Cambodia, but also to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation." (para. 65) "The inherent and specific nature of the ECCC is that it has to deal not only with violations of the Cambodian law but also with international crimes and modes of liability." (para. 66)
7.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018	"[T]he ECCC is an independent entity *within* the Cambodian court structure and has no jurisdiction to judge the activities of other bodies. The Co-Investigating Judges and the Pre-Trial Chamber thus have no jurisdiction to rule upon decisions or actions of other courts within the Cambodian court system, and in holding that ordinary Cambodian courts have no jurisdiction to hear cases involving Khmer Rouge-era crimes, the Co-Investigating Judges overstepped their mandate." (para. 72)

	Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)	"[T]here is no referral procedure foreseen in the ECCC Law concerning cases of which the ECCC is already seised. Those cases cannot be transferred to domestic courts." (para. 74) "The Pre-Trial Chamber considers that Cambodia has inherent jurisdiction over all Khmer Rouge-era cases of which the ECCC is not seised. Prior to the establishment of the ECCC, the Royal Government of Cambodia was not only free, but even had an obligation under international law, to prosecute senior leaders of Democratic Kampuchea or those alleged to be mostly responsible for international crimes, as a basic exercise of its jurisdiction. In agreement with the United Nations, it only delegated jurisdiction to the ECCC over this one type of perpetrator, rather than using its pre-existing court structure. At the time of the ECCC's inception, Cambodian courts were indeed in the process of trying certain individuals who would meet (or could have met) the threshold for personal jurisdiction at the ECCC." (para. 75) "More importantly, […] the explicit text of the ECCC's founding instruments do not support the conclusion that the ECCC strips ordinary Cambodian courts of their inherent jurisdiction over all Khmer Rouge-era cases. […] Nothing in the applicable law suggests that the ECCC would have exclusive jurisdiction over other Khmer Rouge-era cases." (para. 76) "The available records of drafting history further support the conclusion that the ECCC did not strip ordinary Cambodian courts of their jurisdiction." (para. 77) "A close scrutiny of the available records of the negotiation history rather shows that the Royal Government of Cambodia considered that the appropriate forum for trials against a limited category of high-level perpetrators would be a special court assisted by the international community, with an international component and a limited mandate, for reasons pertaining to capacity, legitimacy and legacy. Nothing supports the finding that the limitation of the ECCC's personal jurisdiction could be interpreted as reflecting an intention on the part of the drafters of the ECCC Law and Agreement that other perpetrators would necessarily escape justice." (para. 78) "[T]he ECCC has no jurisdiction to judge the activities of other bodies, and the Co-Investigating Judges failed to refer to any specific law in deciding that ordinary Cambodian courts have no jurisdiction to hear cases involving Khmer Rouge-era crimes. While nothing in the ECCC's applicable law prevents the type of cases that would fall under its limited jurisdiction from reverting back to the jurisdiction of the ordinary Cambodian courts once it ceases to exist, determining whether domestic law prohibits or not further prosecutions is not the burden of the ECCC. The only relevant question before this Court is whether the ECCC's applicable law precludes national jurisdiction, which it does not." (para. 79) "Ordinary Cambodian courts inherently have full jurisdiction over matters of criminal justice." (para. 80) --- "The inability to reach a consensus in this Chamber on the ECCC's personal jurisdiction over IM Chaem must not prevent the serious allegations against her from being addressed before a national court, since Cambodia has inherent jurisdiction over all Khmer Rouge-era cases of which the ECCC is not or cannot be seised." (Opinion of Judges BAIK and BEAUVALLET, para. 340)
8.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"With regard to cases of which the ECCC is already seised, the Pre-Trial Chamber recalls that there is no referral procedure foreseen in the applicable law. Those cases cannot be transferred to domestic courts." (para. 56) "With respect to other cases, the Pre-Trial Chamber considers that Cambodia has inherent jurisdiction over all Khmer Rouge-era cases of which the ECCC is not seised. Prior to the establishment of the ECCC, the Royal Government of Cambodia was not only free, but even had an obligation under international law, to prosecute senior leaders of DK or those alleged to be most responsible for international crimes, as a basic exercise of its jurisdiction. At the time of the ECCC's inception, Cambodian courts were indeed in the process of trying certain individuals who would meet (or could have met) the threshold for personal jurisdiction at the ECCC." (para. 57) "In agreement with the United Nations, the Royal Government of Cambodia established the ECCC as a specialised court within the existing Cambodian court system and only delegated jurisdiction over senior leaders of Democratic Kampuchea and those most responsible. Articles 1 and 2(1) of the ECCC Agreement, mirrored by Articles 1 and 2*new* of the ECCC Law, expressly limit the personal jurisdiction of the ECCC to senior leaders of DK and those most responsible for certain crimes committed during

		the Khmer Rouge era. Nothing in the applicable law suggests that the ECCC would have exclusive jurisdiction over other Khmer Rouge-era cases. A close scrutiny of available records of the negotiation history supports the conclusion that the ECCC does not strip national courts of their jurisdiction. The limitation of the ECCC's personal jurisdiction cannot be interpreted as reflecting an intention on the part of the drafters of the ECCC Law and Agreement that other perpetrators would necessarily escape justice." (para. 58) "[T]he Pre-Trial Chamber notes that Article 12(1) of the Agreement and Internal Rule 2 mandate that the procedures before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure […] provides that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law also make it clear that ECCC organs must follow all existing procedures in force." (para. 95) "[B]y creating the ECCC, the Royal Government of Cambodia implemented at least part of its international law obligations to investigate and prosecute the Khmer Rouge-era crimes." (para. 110) "[T]he International Judges […] reject the National Co-Prosecutor's contention that the Royal Government of Cambodia is tantamount to the UN Security Council and may have 'influence on the scope of the personal jurisdiction and judicial affairs.'" (Opinion of Judges BAIK and BEAUVALLET, para. 651) "The International Judges do not find any legal basis that the Royal Government of Cambodia, as one of the two Parties who founded the Court, may wield unilateral power to redefine the meaning of personal jurisdiction and/or assert its 'influence' on the independent judicial functioning of the Court. The National Co-Prosecutor's reference to the ECCC's negotiation history only reflects the viewpoint of the Royal Government of Cambodia and fails to constitute a meaningful ground for the interpretation of the ECCC Agreement and the ECCC Law for the purpose of personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 652) "[T]he International Judges recall that the Preamble of the ECCC Agreement enshrines that 'the General Assembly recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security'. The International Judges are not convinced by the National Co-Prosecutor's contention that striking a balance between 'justice' and 'national reconciliation' leads to the conclusion that justice has been brought to the Case 004/2 victims through the trials of Cases 001 and 002." (Opinion of Judges BAIK and BEAUVALLET, para. 653) "It is evident from Article 1 of the ECCC Agreement that the purpose of the Agreement is to regulate the cooperation between the Royal Government of Cambodia and the United Nations *in bringing to trial* senior leaders of DK and those who were most responsible for the crimes. Therefore, the Preamble of the ECCC Agreement should be understood that the 'national reconciliation and stability, peace and security' are promoted as a consequence of justice by bringing to trial senior leaders and those who were most responsible, rather than compromising justice by creating an impunity gap and leaving the victims' voices unheard." (Opinion of Judges BAIK and BEAUVALLET, para. 654)
9.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were most responsible for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BEAUVALLET and BAIK, para. 258)
10.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were 'most responsible' for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BAIK and BEAUVALLET, para. 171) "[T]he International Judges consider the National Co-Prosecutor's contention—that the Royal Government of Cambodia is similar to the United Nations Security Council and may have an influence

		of the functioning of the ECCC—is erroneous and fully reject it. In this regard, the International Judges observe that the ECCC Agreement was stipulated and adopted by both the Royal Government of Cambodia and the United Nations following negotiations between the parties. Accordingly, as a party to the ECCC Agreement, the Royal Government of Cambodia is bound by its terms and must perform it in good faith. Neither the ECCC Agreement, nor any other applicable law prescribes that the Royal Government of Cambodia has unilateral power to 'influence on the scope of the personal jurisdiction and judicial affairs' of the Court. On the contrary, the principle of judicial independence—prescribed by both the ECCC Agreement and ECCC Law—imposes an obligation to respect and observe the independence of judiciary in the performance of their functions. The International Judges find that the National Co-Prosecutor's viewpoint on the ECCC's negotiating history—demonstrating only the Royal Government of Cambodia's 'idea for the ECCC Agreement'—does not offer a sufficient basis for the interpretation of the ECCC Agreement and ECCC Law regarding personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 493) "[T]he International Judges note that the Preamble of the ECCC Agreement affirms the United Nations General Assembly's recognition of 'the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security'. The International Judges consider the National Co-Prosecutor's assertion—that 'striking a balance between "justice" and "national reconciliation"' amounts to delivering justice to victims in Case 004 through the Cases 001 and 002 trials—to be flawed. Considering the ECCC Agreement's purpose prescribed in Article 1 of the ECCC Agreement together with its Preamble, the International Judges are of the view that 'national reconciliation, stability, peace and security' are ensured through 'justice' by bringing to trial senior leaders of DK and those who were 'most responsible' for the crimes. Noting the importance of justice to reconciliation, the International Judges observe that impunity, instead, may affect reconciliation for victims." (Opinion of Judges BAIK and BEAUVALLET, para. 494)

2. Applicable Law

i. *General*

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"As a further issue, the Pre-Trial Chamber must consider in order to indict, whether the offences of torture and homicide as described in the 1956 Penal Code are still punishable at this time." (para. 89) "In relation to torture, the Pre-Trial Chamber notes that Article 2 of the 1986 No. 27 Decree Law on Arrest, Police Custody, Provisional Detention, Release, Search in Home, On Property and On Individual ('No. 27 Decree Law') deals with a specific form of torture committed by police and other authorities against people under arrest or in custody. Article 49 of this law provides that any law which is contrary to it is abrogated. The Pre-Trial Chamber finds that the 1956 Penal Code provisions on torture are not abrogated because this is not contrary to the provisions in the No. 27 Decree Law and can therefore be applied despite this Decree Law." (para. 90) "The Pre-Trial Chamber finds that the provisions on torture in the 1956 Penal Code can still be applied as they are not contrary to the spirit of the 1992 UNTAC Criminal Code, and the crime of torture is therefore still punishable under the 1956 Penal Code. It is therefore possible to indict for the crime of torture under the 1956 Penal Code." (para. 93) "The provisions of the 1956 Penal Code providing for premeditated murder do not differ in their letter or spirit from the 1992 UNTAC Criminal Code provisions. Premeditated murder is still punishable under the UNTAC Criminal Code although there are apparently different views on the possible sentencing range. Once again, applying Article 73 of the 1992 UNTAC Criminal Code, the Pre-Trial Chamber finds that it is possible to charge with the domestic crime of premeditated murder." (para. 95)
2.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010	"The applicable criminal law at the relevant time is the Cambodian Penal Code of 1956." (para. 41) "[W]hether the ECCC 'holds indicia of an international court applying international law', […] as found by the Pre-Trial Chamber […], is 'a separately constituted, independent and internationalised court' as found by the Trial Chamber […], or rather is a domestic, Cambodian court as alleged by the Appellant does not […] impact the Impugned Order's finding that JCE is applicable before the ECCC. This is the case, in light of the clear terms of Articles 1 and 2 of the ECCC Law [...]." (para. 47)

	Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)	"The argument that the ECCC could not apply customary international law because it is a domestic court from a country adhering to a dualist system and lacks specific directives in the Constitution, legislation or national jurisprudence incorporating international customary law into domestic law […] runs contrary to the clear terms of Article 2 of the ECCC Law, which can only lead to the conclusion that the ECCC has jurisdiction to apply forms of responsibility recognized under customary international law at the relevant time." (para. 48)
3.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"[As] to foreseeability of criminal procedure, […] 'the Internal Rules […] form a self-contained regime of procedural law related to the unique circumstances of the ECCC'. […] [T]he applicable procedural law at the ECCC is not inexistent. […] Moreover, the Internal Rules were adopted prior to the commencement of the proceedings, and were therefore foreseeable. […] Khieu Samphân has failed to substantiate his contention that he has been prejudiced by the application of the Internal Rules […]." (para. 20)
4.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[U]nder Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, […] the 1956 Penal Code was in effect." (para. 170)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber finds that, as also found by the ECCC's Trial Chamber, 'the 1956 Penal Code was the applicable national law governing during the 1975 to 1979 period' and that the term 'international law' in Article 15(1) of the ICCPR is to mean both international treaty law and customary international law." (para. 227) "The Pre-Trial Chamber recalls that under Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, namely 17 April 1975 to 6 January 1979, the 1956 Penal Code was in effect." (para. 278)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[…] Article 12(1) of the ECCC Agreement and Internal Rule 2 require that the procedure before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure, *inter alia*, provides that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law all make it clear that ECCC organs must follow all existing procedures in force. The Chamber already determined that these provisions 'aim to guarantee the legality, fairness and effectiveness of ECCC proceedings.'" (para. 89) "The ECCC has demonstrated its ability to investigate facts of unprecedented gravity since those examined at the Nuremberg Trials, and this was made possible by the rigorous application of the ECCC's relevant texts, including certain norms enacted by the judges themselves in the form of the Internal Rules. This strict application of the texts ensured that proceedings remained fair and that the mechanism under the principle of continuation of the investigation and prosecution was set in motion. This mechanism was at the heart of the ECCC and carried international value for the signatories of the ECCC Agreement. It embodied ultimate legal value for judges and prosecutors, whether national or international, called upon to serve at the Court." (Opinion of Judges BAIK and BEAUVALLET, para. 533)

ii. *Amendments*

1.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The ECCC Agreement is an international treaty, which, in accordance with the principle of *pacta sunt servanda* codified under Article 26 of the Vienna Convention on the Law of the Treaties, binds the parties and must be performed in good faith. Consequently, the Agreement 'may be amended *by agreement between the parties'.* Therefore, the International Judges consider that any unilateral modification to the ECCC Agreement by one of the parties would violate the well-established *pacta sunt servanda* principle." (Opinion of Judges BEAUVALLET and BAIK, para. 194)

3. Interpretation

i. *Interpretation of the ECCC Legal Framework*

a. General

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber notes that the Internal Rules do not provide any explanation or criteria on how to apply each of these elements to the civil party applications. Under these circumstances, considering the specific nature of the ECCC, in its application of these elements of the Internal Rules to the Civil Party applications before it the Pre-Trial Chamber shall be guided by the principles established in the Agreement and the ECCC Law." (para. 58) "A general principle of the Agreement is found in its Article 2 which provides: 'The Vienna Convention on the Law of Treaties, and in particular it's Articles 26 and 27, [apply] to the Agreement.' Article 26 of the Vienna Convention provides that every treaty must be performed by its parties in good faith and Article 27 requires that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." (para. 59) "A more specific principle is enshrined in Article 12(2) of the Agreement and Article 33new of the ECCC Law which provide: 'if there is uncertainty regarding the interpretation or application [of the existing procedures], or if there is a question regarding their consistency with international standards, guidance may also be sought in procedural rules established at the international level.' The Pre-Trial Chamber observes that the International Criminal Court […] found that 'the provisions must be read in context and in accordance with its object and purpose' and that this principle 'applies to the Rules.' It explained that 'the context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety' and that 'its objects may be gathered from the Chapter of the law in which the particular section is included and its purposes from the wider aims of the law as may be gathered from its preamble and general tenor.' The Pre-Trial Chamber considers such guidance on the application of the rules appropriate." (para. 60)' "By way of its specific nature, 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." (para. 67) "The inherent nature of the ECCC is that although its Internal Rules are modelled after the Cambodian Procedural Code […] which was in turn modelled upon the French Law […], unlike the CPC or FL, which deal mainly with ordinary crimes and claims for individual reparations of measurable nature, the ECCC, […]is dealing not only with allegations about the most serious international crimes known to mankind but also with allegations of particular modes of liability which, when combined amount to alleged systematic and wide spread mass atrocities." (para. 68)
2.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against*	"The analysis of the International Judges draws on the rules of law to which the Pre-Trial Chamber ordinarily has regard – the ECCC law, national legal rules, the Code of Criminal Procedure of the Kingdom of Cambodia […], international jurisprudence and, *vis-à-vis* the particularities of the annulment procedure, the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 7)

	Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action	
3.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[T]he Undersigned Judges observe that the striking of a supplementary submission from the case file has not previously been addressed by the Pre-Trial Chamber. The analysis of the Undersigned Judges will therefore stem from the law to which it ordinarily refers, the ECCC law, national legal rules, the Cambodian CCP, international jurisprudence and, *vis-à-vis* the particularities of the annulment procedure for a supplementary submission the French CCP." (Opinion of Judges BEAUVALLET and BAIK, para. 9)
4.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber notes that Article 12(1) of the Agreement and Internal Rule 2 mandate that the procedures before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure […] provides that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law also make it clear that ECCC organs must follow all existing procedures in force. The Chamber finds that these provisions aim to guarantee the legality, fairness and effectiveness of ECCC proceedings." (para. 95)
5.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he law governing the ECCC does not necessarily resolve all the legal uncertainties that may arise regarding procedural and/or substantive matters. However, this law not only prescribes procedures applicable in case of *lacunae* in the legal framework, but also openly contemplates that disagreements may arise in the ECCC hybrid context and enacts specific procedures to handle and settle such disagreements in order to*, inter alia*, avoid procedural stalemates." (para. 90) "[W]hen the need arises to fill *lacunae* in the Internal Rules, the ECCC legal framework allows the Chamber to decide in accordance with Cambodian law and international law. In practice, due to the sparsity of the Cambodian courts' practice, the Chamber also seeks guidance from other inquisitorial systems of criminal procedure, especially the French Code of Criminal Procedure, which inspired the Cambodian criminal procedure. As for the international standards, the Chamber gives special attention to the sources that reflect the particularities of the inquisitorial system of criminal procedure, which the ECCC legal framework and Cambodian law espouse at the pre-trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 122) "[A]s a hybrid jurisdiction, the ECCC is guided by its Internal Rules, Cambodian law and international standards." (Opinion of Judges BEAUVALLET and BAIK, para. 151) "[T]he argument of a possible *lacunae* in the ECCC legal framework in relation to the legal repercussions of issuing conflicting closing orders finds no application in the present case. Even if the Pre-Trial Chamber was to appreciate that such incongruent situation was not envisaged in the ECCC legal framework, the alleged uncertainty is removed through a fair reading of the relevant legal texts, especially Articles 5(4) and 7(4) of the ECCC Agreement and Articles 20 and 23*new* of the ECCC Law 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." (Opinion of Judges BEAUVALLET and BAIK, para. 261)

6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[A]s is the case with any other legal systems, the law governing the ECCC does not necessarily resolve all the legal uncertainties that may arise regarding procedural and/or substantive matters. However, this law not only prescribes procedures applicable in case of *lacunae* in the legal framework, but also openly contemplates that disagreements may arise in the ECCC hybrid context and enacts specific procedures to handle and settle such disagreements in order to, *inter alia*, avoid procedural stalemates." (para. 96)

b. Divergence between Languages

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[T]he French version of Internal Rule 48, as well as the equivalent of this Rule in the Khmer, French and English versions of the CPC […] do not refer to an infringement of rights, but rather to a harmed interest. Seeking guidance in the CPC, the Pre-Trial Chamber will interpret 'an infringement of rights' as 'a harmed interest'." (para. 36)
2.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request for investigative action. The French version of Rule 55(10) is translated into English as 'the [rejection] order must be reasoned.' The Khmer version of Rule 55(10) reads the same as the English version ('reasons'). Rule 58(6) prescribes, in English, that an order rejecting a Charged Person's request for investigative action 'shall state the factual reasons for rejection.' The French version of Rule 58(6) does not contain the modifier 'factual' but rather contains the same wording as the French version of Rule 55(10). The French version of Rule 58(6) appears to be more consistent with Cambodian and French Law than the English version of Rule 58(6). The Pre-Trial Chamber shall proceed upon the basis of the French the Khmer versions of the rule." (para. 22)
3.	**17-02-2015-ECCC/PTC Special PTC** Doc. No. 2 17 June 2015 *Decision on Neville SORAB's Appeal against the Defence Support Section's Decision on His Application to be Placed on the List of Foreign Lawyers*	"[T]he Pre-Trial Chamber observes that the French, English and Khmer versions of the DSS Administrative Regulations all mirror the criteria set out in the French version of the Internal Rules, in that they require the applicant to 'have at least ten years working experience as a lawyer, prosecutor or judge, on some other *similar* capacity' […]. The criterion is described as follows in the English version of Article 2.2 of the DSS Administrative Regulations: 'In order to be included in the UNAKRT list as foreign co-lawyer, the candidate must fulfil each of the followings requirements: (iii) to have at least ten years working experience in criminal proceedings, as a lawyer, judge or prosecutor or in some other similar capacity'. The Khmer version of the same Rule also sets out the same requirements […]." (para. 11) "On the other hand, the English and Khmer versions of Rule 11(4)(c)(iii) of the Internal Rules do not exactly match the French version. For example, the English version states that the applicant must have 'at least 10 (ten) years working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in *some* other capacity' […]. The Khmer version employs similar wording […]." (para. 13) "The Pre-Trial Chamber finds that the English and Khmer versions of Rule 11(4)(c)(iii) of the Internal Rules are ambiguous, in that anyone having ten years working experience in criminal proceedings in whatever professional capacity, provided it relates to criminal proceedings, may apply to be placed on the List of Foreign Lawyers. Thus, any professional in criminal investigations having ten years working experience, all of which was acquired outside a law firm or a court, may apply to be admitted as a lawyer. However, in its French version, Rule 11(4)(c)(iii) is more clearly worded […]. (para. 14) "The Pre-Trial Chamber considers that in adopting its Administrative Regulations, the Defence Support Section had the authority to specify the type of working experience required for inclusion on the List of Lawyers – couched in vague terms in both the English and Khmer versions of the Administrative

		Regulations – so as to establish a clear framework for its decisions and avoid acting arbitrarily. The fact that the Defence Support Section elected to adopt the wording of the working experience criterion specifically included in the French version of the Internal Rules shows that its Regulations reflect not only the 'principles' but also the letter of Rule (11)(4) of the Internal Rules. In other words, the French version of the Internal Rules and all three versions of the DSS Administrative Regulations form a consistent and sufficiently clear legal framework. Thus, far from unduly altering the eligibility requirements under Rule 11(4)(c)(iii) of the Internal Rules, Regulation 2.2 of the DSS Administrative Regulations is consistent with them." (para. 15) "Further, the choice to adopt the wording in the French version of the Internal Rules in the Administrative Regulations is consistent with the rules of interpretation set out in Rule 21(1) of the Internal Rules […]. Now, the Pre-Trial Chamber considers that it is in the interests of suspects and charged persons to be defended by a lawyer whose experience closely matches the services he proposes to offer to the client." (para. 16)

c. Guidance from Ordinary Meaning, Context, Object and Purpose

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The location of IR23*bis*(1) is indicative of a general provision relating to the procedure for admission of civil party applications. It has to therefore be read in conjunction with [Internal Rules 21, 23, 23*ter*, 23*quater*, 23*quinquies*(3)(a), 80(2)]." (para. 61) "The Pre-Trial Chamber considers that the object and purpose of IR23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications." (para. 62) "The wider aims and general tenor of the Internal Rules, as provided in IR21 can be found in the 'inherent specificity of ECCC, set out in the ECCC Law and Agreement.'" (para. 63) "In this context, it is noted accordingly that the Agreement provides that one of the fundamental principles for the establishment of ECCC is 'national reconciliation'. This guides the Judges and Chambers of ECCC to not only seek the truth about what happened in Cambodia, but also to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation." (para. 65)
2.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"Firstly, the Pre-Trial Chamber focuses on the title and context of Internal Rule 56. The title of Internal Rule 56 is '[*p*]*ublic Information* by the Co-Investigating Judges'. The French and the Cambodian Code of Criminal Procedure, on which the Internal Rules are mainly based, do not contain any 'disclosure' related provisions and only provide on 'publicity' related issues, as well. Furthermore, the Pre-Trial Chamber recalls its finding that the Internal Rules must 'be read in context and in accordance with [their] object and purpose', and notes that Internal Rule 56 falls under sub-section 'C' of the Internal Rules, which is titled '*Judicial Investigations*'. The title and context of Internal Rule 56 are indicative of a specific provision relating to *publicity* of judicial *investigations*. Moreover, the Pre-Trial Chamber observes that Internal Rule 56 falls under Chapter 'III' of the Internal Rules, which is titled 'Procedure'. Its overall object, therefore, is to *regulate the 'proceedings'* for *publicity* of judicial *investigations*." (para. 28) "Secondly, the Pre-Trial Chamber takes a close look at the specific provisions of Internal Rule 56(2)(b) in order to find the meaning of the term 'non-parties' and whether it encompasses terms such as 'judicial bodies', or more specifically 'Trial Chamber'. […] [T]he use of the term 'non-parties' as an alternative to the term 'media' indicates that 'non-parties' must have equivalent levels of status and interest as those of the 'media', whose principal interest is to 'inform the public' and whose status is that of a person 'not involved in any way in the judicial proceedings'. Therefore, the term 'non-parties' cannot be construed to encompass terms such as 'judicial bodies' which, by definition, are involved in the judicial proceedings and whose principal mission is, not to inform the public, but rather to find the truth in cases before the ECCC. Whereas publicity is a principal requirement for *trial* hearings, this does not confer upon a trial Chamber an interest similar to that of the media. Furthermore, any reasonable reader would understand the term 'non-parties' within the context of the whole text of Internal Rule 56(2)(b) which warns the 'media or other non-parties' that non-respect, of any conditions imposed, may bring sanctions under Internal Rules 35 to 38, whose subjects are clearly not the judicial bodies of the ECCC. The Pre-Trial Chamber, therefore, concludes that the term 'non-parties' under

		Internal Rule 56(2)(b) does not encompass 'the ECCC' in general or the 'Trial Chamber' in particular." (para. 29) "Thirdly, the Pre-Trial Chamber observes that Internal Rules 56(2)(a) and (b), which provide on, either the 'issuance of information' or on the 'granting of access', should be read to *serve the same overall object and purpose* of Internal Rule 56, which is to regulate proceedings for 'publicity' of judicial investigations. Sub-rule 56(2)(b) cannot be read as regulating proceedings that serve an object and purpose different from that of sub-rule 56(2)(a). The Pre-Trial Chamber considers that ICP requests for disclosure are not aimed at *publicizing* the judicial investigations, but are rather premised on a necessity to produce evidence, before another judicial body of the ECCC, for the purposes of 'ascertaining the truth', hence *serving purposes other than the publicity*, as that provided for in Rule 56." (para. 30) "The Pre-Trial Chamber considers that the findings of the ICIJ are in concert with: i) the fundamental requirement set in Internal Rule 21 for a balancing of interests and rights involved in the proceedings before the ECCC; and with ii) a reading of the Rules in their 'context and in accordance with their object and purpose', as set in the ECCC Law and Agreement." (para. 33)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Preamble of the ECCC Agreement states that 'the [United Nations] General Assembly recognised the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security'. Having considered the plain meaning of the text, the International Judges find that this sentence places all the enumerated goals on an equal footing, rather than advocating for two arbitrarily singled-out objectives to be counterbalanced. […] Justice and reconciliation are, in the International Judges' view, not contradicting goals. Rather, justice is considered as a necessary condition for reconciliation." (Opinion of Judges BEAUVALLET and BAIK, para. 196) "Furthermore, in examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a dismissal order. First, in its ordinary meaning, a proposal to issue a dismissal order, the very antithesis of an indictment which makes the case move forward to trial, cannot be recognised as a separate investigative act. It is nothing more than a different characterisation of the National Co-Investigating Judge's disagreement on the issuance of the indictment, which must be resolved by the Internal Rule 72 disagreement settlement procedure. Second, the purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were most responsible for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BEAUVALLET and BAIK, para. 258)

d. Guidance from Drafting History

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The available records of drafting history further support the conclusion that the ECCC did not strip ordinary Cambodian courts of their jurisdiction." (para. 77)

e. Guidance from the Internal Rules

1.	**002 NUON Chea** PTC 06 D55/I/8	"The Internal Rules […] form a self-contained regime of procedural law related to the unique circumstances of the ECCC […]. They do not stand in opposition to the Cambodian Criminal Procedure Code ('CPC') but the focus of the ECCC differs substantially enough from the normal operation of

	26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	Cambodian criminal courts to warrant a specialized system. Therefore, the Internal Rules constitute the primary instrument to which reference should be made in determining procedures before the ECCC where there is a difference between the procedures in the Internal Rules and the CPC." (para. 14)
2.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[T]he Internal Rules do not specifically provide for alternative forms of detention." (para. 119) "Rule 65(1) provides, however, that a charged person may be released from detention by bail order, […]. The Pre-Trial Chamber, therefore, will interpret the Co-Lawyers' request for alternative detention as a request for release under the condition of hospitalization or house arrest." (para. 120)
3.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Internal Rules [and Cambodian law] do not provide a clear indication of what should be the scope of review by the Pre-Trial Chamber when seized of appeals against closing orders […]." (para. 28) "Considering the Internal Rules dealing with the role of the Pre-Trial Chamber as an appellate instance[,] and more specifically the time limits set out[,] the Pre-Trial Chamber finds that the scope of its review is limited to the issues raised by the appeal." (para. 29)
4.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Internal Rules do not explicitly define the expression 'investigative action'. However, its meaning can be inferred when reading together different provisions of the Internal Rules." (para. 23)
5.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"The Internal Rules do not explicitly define the expression 'investigative action'. However, its meaning can be inferred when reading together different provisions of the Internal Rules." (para. 18)
6.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"The Pre-Trial Chamber notes that the wording of the Internal Rules, the Agreement, and the rules of procedure established at the international level indicate that the right to an oral hearing at the pre-trial stage is not an absolute right." (para. 15) "The text of the Agreement suggests that the right of the accused to hearing shall be respected throughout the trial stage, it does not state the same for the pre-trial stage." (para. 16) "The wording of [Internal Rule 77(3)] indicates that it is for the Pre-Trial Chamber to decide whether to hold a hearing or not on appeal. A party's request for a hearing does not create an absolute obligation for the Pre-Trial Chamber to hold a hearing." (para. 19)

7.	**002 IENG Sary** PTC 28 D140/4/5 14 December 2009 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert*	"[I]nternal Rules appear to be silent as to whether a request for an additional expert pursuant to rule 31(10) is to be filed before or after the filing of an original expert report […]. However, the use of the term 'new' in this sentence leads one to understand that the necessity for additional expertise would usually arise after some examination has already been undertaken." (para. 15)
8.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"The question […] is how detailed the Co-Investigating Judges' reasons must be under Rule 55(10). Some guidance […] is found in the Rules." (para. 23)
9.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"There is no clear provision, in Internal Rule 76, to explicitly direct the other parties to respond to annulment applications. Article 253 of the Cambodian Code of Criminal Procedure ('CCCP') does not shed more light on this issue either. Further, Internal Rule 76(2) provides that appellate rights against such OCIJ orders are 'in accordance with these IRs.' [...] Lastly, there is no clear provision, in Internal Rule 76, to direct the Pre-Trial Chamber on how to proceed [...]. Faced with this lack of clarity and, having sought guidance from the fundamental principles of procedure before the ECCC, the Pre-Trial Chamber issued the [...] Instructions [...]." (para. 18) "[T]he fact that Internal Rule 77(2) expressly refers to the Rule 76(3) decisions suggests that, while Internal Rule 76 only articulates the overall annulment process, Internal Rule 77 is the rule that foresees the procedures for handling annulment applications. According to Internal Rule 77, the proceedings for handling appeals and applications are adversarial; in other words, the Internal Rules call for hearings or for responses and replies to be filed by the other parties." (para. 21)

f. Guidance from the Practice Directions

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber notes that a practice direction, even if it were to place such limitation upon the definition (which it does not) could not be seen as providing restrictive definition of what is provided in the Internal Rules or the ECCC law." (para. 46)

g. Guidance from Cambodian Criminal Law and Procedure

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"In [the Agreement and the ECCC Law] there is no direct provision for appeal against orders of provisional detention from the Co-Investigating Judges. Article 12(1) of the Agreement specifically provides that the procedure shall be in accordance with Cambodian Law. The Internal Rules specifically make provision for a right of appeal in respect of provisional detention orders, knowing that the [Cambodian Code of Criminal Procedure] makes such a provision with regards to *La Chambre d'instruction*. The Pre-Trial Chamber fulfils this role in the ECCC. Therefore, the manner in which the Pre-Trial Chamber must approach appeals on provisional detention orders is directed by Livre 4: L'Instruction, Titre 2: La Chambre d 'instruction." (para. 7)
2.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The jurisdiction of the Pre-Trial Chamber in the Internal Rules regarding provisional detention appeals was based on the jurisdiction of the Investigation Chamber. The Pre-Trial Chamber can therefore seek guidance for its functioning in the articles in the CPC prescribed for the Investigating Chambers. In the CPC, there is a provision [...] for the Civil Parties related to participation in appeals against detention orders. Reading Rule 23(1) in the light of the CPC means that the wording envisages participation of Civil Parties during the proceedings of the ECCC, including appeals against provisional detention orders." (para. 38) "According to Article 12 of the ECCC Agreement, there is an obligation for the Pre-Trial Chamber to see whether the CPC is consistent with international standards on this issue if the Pre-Trial Chamber is to seek guidance from the CPC." (para. 39)
3.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"Provisions of the CPC should only be applied where a question arises which is not addressed by the Internal Rules." (para. 15) "[T]he Internal Rules address sufficiently the annulment procedure and are therefore applicable." (para. 16) "[T]he French version of Internal Rule 48, as well as the equivalent of this Rule in the Khmer, French and English versions of the CPC […] do not refer to an infringement of rights, but rather to a harmed interest. Seeking guidance in the CPC, the Pre-Trial Chamber will interpret 'an infringement of rights' as 'a harmed interest'." (para. 36)
4.	**002 KHIEU Samphân** PTC 04 C26/I/31 15 October 2008 *Decision relating to Notice of Withdrawal of Appeal*	"[T]he Internal Rules do not address the issue of withdrawal of an appeal or discontinuation of proceedings by a party. The Cambodian Code of Criminal Procedure similarly does not provide direct guidance on this issue. However […] in practice, Cambodian Courts accept that an appellant has the right to withdraw his/her appeal before the closing of the debate between the parties. This also appears to be the practice followed by international and internationalised tribunals." (para. 10) "The Pre-Trial Chamber finds that a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties." (para. 11)
5.	**002 KHIEU Samphân** PTC 15 C26/5/5 24 December 2008 *Decision on KHIEU Samphân's Supplemental Application for Release*	"[T]he provisions of the CPC are not applicable as the Internal Rules clearly address the issue of the jurisdiction on applications for provisional release." (para. 17)
6.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision*	"In the [C]ambodian and French systems, it is assumed that a hearing will be held before any decision of the Investigative Chamber is taken. There seems to be no possibility to proceed without a hearing as the failure to respect the formalities associated with the hearing (*e.g.*, notification of the date) leads to the nullity of the decision. This differs from the procedures before the Pre-Trial Chamber of the ECCC, which are governed by the Internal Rules. The Internal Rules differ from the Code of Criminal Procedure of the Kingdom of Cambodia (CCP) in that these rules allow the Pre-Trial Chamber to decide on appeals, where it finds it necessary on basis of written submissions only." (para. 17)

	on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25	
7.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Agreement […], the [ECCC] Law […] and the Internal Rules do not define the standard of its review when seized of appeals against orders refusing requests for investigative actions." (para. 22) "The Cambodian Code of Criminal Procedure […], for its part, grants the Investigation Chamber jurisdiction to 'order additional investigative action which it deems useful' and generally gives broad powers to the Investigation Chamber when seized of an appeal […]." (para. 23) "The Pre-Trial Chamber observes that the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative actions but rather limit its role to deciding on appeals lodged against orders of the Co-Investigating Judges. This departure from the CPC is justified by the unique nature of the cases before the ECCC, which involve large scale investigations and extremely voluminous cases, and where the Pre-Trial Chamber has not been established and is not equipped to conduct investigations. As a decision on request for investigative action is a discretionary decision which involves questions of fact, the Pre-Trial Chamber considers that in the particular cases before the ECCC, the Co-Investigating Judges are in a best position to assess the opportunity of conducting a requested investigative action in light of their overall duties and their familiarity with the case files. In these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the Co-Investigating Judges when deciding on an appeal against an order refusing a request for investigative action." (para. 24)
8.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[Internal] Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request for investigative action. The French version of Rule 55(10) is translated into English as 'the [rejection] order must be reasoned.' The Khmer version of Rule 55(10) reads the same as the English version ('reasons'). Rule 58(6) prescribes, in English, that an order rejecting a Charged Person's request for investigative action 'shall state the factual reasons for rejection.' The French version of Rule 58(6) does not contain the modifier 'factual' but rather contains the same wording as the French version of Rule 55(10). The French version of Rule 58(6) appears to be more consistent with Cambodian and French Law than the English version of Rule 58(6). The Pre-Trial Chamber shall proceed upon the basis of the French the Khmer versions of the rule." (para. 22)
9.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Agreement, the ECCC Law and the Internal Rules do not afford protection against double jeopardy nor do they address the effect of a previous conviction on the proceedings before the ECCC. In accordance with Article 12 of the Agreement and Article 33 new of the ECCC Law, the Pre-Trial Chamber examines the CPC [...]." (para. 118)
10.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"As neither the ECCC legal compendium nor Cambodian Law addresses this issue, we note that the procedural rules established at the international level, similar to domestic jurisdictions, allow restrictions to be imposed on information that is disclosed to the defendant to protect interests such as the integrity of the investigation, the security of victims and witnesses and national or international security." (Opinion of Judges CHUNG and DOWNING, para. 29)

11.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 21) "[T]he *lacuna* in the Internal Rules calls for an examination of Cambodian law." (Opinion of Judges BEAUVALLET and BWANA, para. 23) "[T]he Internal Rules do not explicitly address the situation where such an initial appearance cannot take place. […] Cambodian law does provide some guidance […]." (Opinion of Judges BEAUVALLET and BWANA, para. 26)
12.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth In Absentia*	"The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 23) "[T]he *lacuna* in the Internal Rules calls for an examination of Cambodian law." (Opinion of Judges BEAUVALLET and BWANA, para. 25) "[T]he Internal Rules do not explicitly address the situation where such an initial appearance cannot take place. […] Cambodian law does provide some guidance […]." (Opinion of Judges BEAUVALLET and BWANA, para. 28)
13.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"The Pre-Trial Chamber is of the view that the notion of 'investigative action' in the meaning of Rule 74(3)(g) should be interpreted as to encompass the Supplementary Submission. This finding is also supported by […] the Cambodian Code of Criminal Procedure […]. The Co-Lawyers should have submitted a reasoned application to the Co-Investigating Judges requesting that they seise the Pre-Trial Chamber with a view to annulment pursuant to Rule 76(2)." (para. 31)
14.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"The question at stake here is how to interpret Internal Rule 55(2), according to which the Co-Investigative Judges shall only investigate the facts set out in an introductory submission or supplementary submission, in conjunction with Internal Rule 55(3)." (Opinion of Judges BEAUVALLET and BAIK, para. 75) "[…] Article 125 al. 2 of the Cambodian Code of Criminal Procedure is more precise […]. Accordingly, the Co-Investigating Judge shall inform the Co-Prosecutors where they have collected a certain level of evidence that amounts to 'facts' potentially of criminal nature." (Opinion of Judges BEAUVALLET and BAIK, para. 76) "[T]here is no time limit set neither in the Internal Rules, nor in the of Cambodian Code of Criminal Procedure, which set a clear deadline beyond which it would have been procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 87)
15.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021	"Article 12(1) of the ECCC Agreement and Internal Rule 2 provide that where in the course of proceedings a question arises which is not addressed by the ECCC legal texts, the Chambers shall decide in accordance with Cambodian law." (para. 38) "[…] Article 12(1) of the ECCC Agreement and Internal Rule 2 require that the procedure before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure, *inter alia*, provides that this Code 'aims at

	Considerations on Appeals against Closing Orders	defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law all make it clear that ECCC organs must follow all existing procedures in force. The Chamber already determined that these provisions 'aim to guarantee the legality, fairness and effectiveness of ECCC proceedings.'" (para. 83)
16.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"According to Article 12(1) of the ECCC Agreement and Internal Rule 2, if, in the course of the proceedings, a matter raised is not addressed by the texts of the ECCC, the Chambers must refer to Cambodian law. In this regard, the Pre-Trial Chamber recalls that Article 299 of the Cambodian Code of Criminal Procedure provides that '[w]hen the court has been seized with several related cases, it may issue an order to join them.'" (para. 15)

h. Guidance from French Criminal Procedure

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The Pre-Trial Chamber has […] taken into account the CPC, international jurisprudence and, in the light of the specifics of the annulment system, the French criminal procedure." (para. 32)
2.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber notes that the Cambodian system, on which the Internal Rules are based, is rather similar to the French system." (para. 25)
3.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber notes that the Cambodian system, on which the Internal Rules are based, is rather similar to the French system." (para. 20)
4.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]**	"[Internal] Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request for investigative action. The French version of Rule 55(10) is translated into English as 'the [rejection] order must be reasoned.' The Khmer version of Rule 55(10) reads the same as the English version ('reasons'). Rule 58(6) prescribes, in English, that an order rejecting a Charged Person's request for investigative action 'shall state the factual reasons for rejection.' The French version of Rule 58(6) does not contain the modifier 'factual' but rather contains the same wording as the French version of Rule 55(10). The French version of Rule 58(6) appears to be more consistent with Cambodian and

	Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010	French Law than the English version of Rule 58(6). The Pre-Trial Chamber shall proceed upon the basis of the French the Khmer versions of the rule." (para. 22)
5.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings*	"[L]ike Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […] the Internal Rules do not specifically provide a right for a charged person to respond to the final submission of the Co-Prosecutors." (para. 16) "At the time of the adoption of Article 246 […], Article 175 of the [French CPC], which serves as the model for Article 246, did not foresee the possibility for the defence of a charged person to submit observations in response to the Prosecution's Requisition […]. This reflected the traditional inquisitorial model which is a characteristic of a civil law system, such as that in place in the Kingdom of Cambodia. Article 175 of the French CPC has since been amended […] such that a charged person may submit observations in response to the Prosecution's Requisition. This amendment was made to the French CPC in order to allow for more balance between the parties during the investigative stage. This need for balance at the investigative stage has gained credence in systems with inquisitorial models because of the need to consider the rights of the accused at every stage in penal proceedings. […] [T]he Cambodian CPC has not been so amended. The general principle of equality of arms is, however, an important safeguard in penal proceedings and […] the decision […] to accept the Response to the Co-Prosecutors' Final Submission […] was not erroneous." (para. 17)
6.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[T]he Appellant's submission that […] under French law, an accused may now appeal against an indictment […] cannot justify a departure from the clearly established defined appealable matters set out in Internal Rule 74(3)(a)." (para. 15)
7.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 21) "[T]he French Code of Criminal Procedure, upon which the CCPC was inspired, provides some insight." (Opinion of Judges BEAUVALLET and BWANA, para. 25)
8.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth In Absentia*	"The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 23) "[T]he French Code of Criminal Procedure, upon which the CCPC was inspired, provides some insight." (Opinion of Judges BEAUVALLET and BWANA, para. 27)

9.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"[…] Internal Rules 55(4) and 57 do not provide for a definition of the placement under judicial investigation. Neither the ECCC legal framework, nor the Cambodian CCP, provide a definition of the charging process itself. French law, having influenced the Cambodian legal system, could be useful in the instant case, however articles […] of the French CCP […] do not define the concept either. All these provisions nonetheless strictly dictate the conditions to be fulfilled and the rights to which Charged Persons are entitled." (Opinion of Judges BEAUVALLET and BAIK, para. 11) "Similarly, article 267 of the Cambodian CCP, which contains a list of the orders by Investigating Judges which are appealable by the Charged Person, does not provide for an appeal against this process. Until a judicial reform was adopted on 15 June 2000, French law did not provide for any substantial review of the placement under investigation either." (Opinion of Judges BEAUVALLET and BAIK, para. 16)
10.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"In accordance with the French jurisprudence, it is established that when an investigating judge, or investigators acting upon a rogatory letter, come to the knowledge of new facts they can before any prior communication to the prosecutor proceed in emergency to elementary checks so that to assess the credibility of the information they gained. These checks can sometimes last for a few months." (Opinion of Judges BEAUVALLET and BAIK, para. 77) "[T]here is no time limit set neither in the Internal Rules, nor in the of Cambodian Code of Criminal Procedure, which set a clear deadline beyond which it would have been procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 86) "In the French procedural system, the criteria of an immediate transmission is broadly interpreted by the Court of Cassation." (Opinion of Judges BEAUVALLET and BAIK, para. 89)
11.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"As to whether alleged bias in conducting interviews would amount to a violation of an 'essential formality', the Pre-Trial Chamber previously held that a proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and harm the interests of a charged person. French jurisdictions have further recognised that the parties may be well-founded to request, if objective bias is proven and violation of the fairness of the proceedings established, the annulment of investigative actions performed by an investigative judge or investigator in breach of the impartiality requirement. In light of the foregoing, the Pre-Trial Chamber considers that a breach of impartiality, if proven, would amount to a cause of a substantive nullity." (para. 19)
12.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"[W]hile the Cambodian Code of Criminal Procedure does not prescribe any time limit for annulment applications, Article 175 of the French Code of Criminal Procedure expressly authorises the filing of annulment applications within three months from the forwarding order, when the suspect is not in detention." (para. 12)

i. Guidance from the Procedural Rules Established at the International level and International Standards

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53	"According to Article 12 of the ECCC Agreement, there is an obligation for the Pre-Trial Chamber to see whether the CPC is consistent with international standards on this issue if the Pre-Trial Chamber is to seek guidance from the CPC." (para. 39)

	20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	
2.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[A]ll decisions of judicial bodies are required to be reasoned as this is an international standard." (para. 21) "The Pre-Trial Chamber has […] taken into account the CPC, international jurisprudence and, in the light of the specifics of the annulment system, the French criminal procedure." (para. 32)
3.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"The Pre-Trial Chamber further observes that the ECCC constitutive documents, the Internal Rules and Cambodian law do not define the precise meaning of 'fitness to stand trial'. There is no indication either as to when psychiatric evaluation can be requested, or if the mental capacity of a charged person might be raised as an issue at the pre-trial stage. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 28) "The Pre-Trial Chamber notes that neither the Internal Rules nor Cambodian law specifies the prerequisites for a successful application for an order of examination by an expert. Therefore, the Pre-Trial Chamber will, again, seek guidance in the procedural rules established at the international level." (para. 37)
4.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an expert*	"[T]he ECCC constitutive documents, the Internal Rules, and Cambodian Law do not define the precise meaning of 'fitness to stand trial'. There is no indication either as to when a psychiatric evaluation can be requested, or if the mental capacity of a charged person might be raised at the pre-trial stage. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 20) "[N]either the Internal Rules nor Cambodian law specifies the prerequisites for a successful application for an order of examination by an expert. Therefore, the Pre-Trial Chamber will seek guidance in the procedural rules established at the international level." (para. 31)
5.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances the Pre-Trial Chamber will apply international standards." (para. 46) "[N]either the Internal Rules nor Cambodian law contain provisions related to the possibility to set out different legal offences for the same acts in an indictment. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 86)
6.	**002 KHIEU Samphân** PTC 15 C26/5/5 24 December 2008 *Decision on KHIEU Samphân's Supplemental Application for Release*	"The President finds that the procedure on provisional release provided for by the Internal Rules is in accordance with the procedural rules of international courts. International standards therefore do not require the inclusion of other possibilities for the Charged Person to request provisional release." (para. 18)
7.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26	"[T]he ECCC constitutive documents, the Internal Rules and Cambodian law do not specifically address the possibility that a charged person be released from provisional detention on the basis of health

	3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	considerations. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 79) "The jurisprudence of international tribunals indicates that a person might exceptionally be released on humanitarian grounds when his/her condition is 'incompatible with detention.'" (para. 80) "[…] Internal Rule 51(6), which implicitly provides for the possibility that a suspect be released from police custody when he/she 'has any health conditions that make him or her unsuitable for further custody,' refers to a threshold similar to the one developed by international tribunals for granting release from provisional detention." (para. 81)
8.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 41)
9.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 43)
10.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 40)
11.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 38)

12.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"The Pre-Trial Chamber notes that the wording of the Internal Rules, the Agreement, and the rules of procedure established at the international level indicate that the right to an oral hearing at the pre-trial stage is not an absolute right." (para. 15) "At the International Criminal Court (ICC), the Rules of Procedure and Evidence (RPE) provide that an appeal at the pre-trial stage is, unless the Appeals Chamber decides otherwise, determined on the basis of written submissions." (para. 20) "[Article 14 of the ICCPR] limits the right to a public hearing to where a 'determination of any criminal charge' is made against a Charged Person. The Pre-Trial Chamber when deciding appeals against refused requests for investigative actions does not determine any criminal charge." (para. 23) "The Pre-Trial Chamber finds that the provisions which apply to the ECCC where the Pre-Trial Chamber can decide on the basis of written submissions and therefore don't provide for an absolute right to a hearing are in accordance with the procedural rules established at the international level." (para. 24)
13.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances, the Pre-Trial Chamber will apply international standards." (para. 31) "The jurisprudence [...] is relevant in the context of the ECCC because it has been developed in a legal framework whose requirements for notice are comparable to the legal framework applicable at the ECCC, even though the ICTY does not utilize investigating judges." (para. 93)
14.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"The question […] is how detailed the Co-Investigating Judges' reasons must be under Rule 55(10)." (para. 23) "Some guidance is also found in […] the European Court of Human Rights […]." (para. 24) "Although this case law of the European Court of Human Rights and the ICTY relates to verdicts on guilt, their import is relevant to the pre-trial context at the ECCC." (para. 28)
15.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"[B]efore the ECCC there is no legal authorisation for a chamber to order the pre-trial freezing of assets, which is explicitly provided for in the Rome Statute and the ICC Rules of Procedure and Evidence […] the procedures related to the reparations scheme before the ICC reflect the treaty-based nature of the Rome system […] The position of the ECCC within the domestic court system of Cambodia is entirely unlike the legal foundation of the ICC. The differences in the legal framework and jurisdictional scope of the ICC and the ECCC with respect to reparations for victims are substantial and significant. […] In this matter the Pre-Trial Chamber is unable to seek guidance on the issue from the practice of the ICC. The Rome Statute and rules applicable before the ICC bear no resemblance to the relevant provisions in the governing documents of the ECCC." (para. 25) "There is no other provision in the Internal Rules or other law applicable before this Court that would, even broadly interpreted, suggest that the Civil Parties have an interest in lawfully obtained and unlawfully obtained assets of the charged persons that would permit seisure or the taking of measures to facilitate seisure by the Pre-Trial Chamber or Co-Investigating Judges." (para. 40)

16.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"[N]o disposition of the Internal Rules, or of the Cambodian Criminal Procedural Code, explicitly foresees the possibility to stay judicial proceedings where the violation of an accused or a charged person rights' is so serious as to jeopardize the integrity of the judicial proceedings. The Pre-Trial Chamber will thus turn to international standards to determine the standard of review applicable when examining whether there is an abuse of process." (para. 20)
17.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"Preventing testimony from witnesses that have been deemed conducive to ascertaining the truth may infringe upon the fairness of the trial. […] It is imperative that this Chamber *do its utmost* to ensure that the charged persons are provided with a fair trial." (Opinion of MARCHI-UHEL and DOWNING, para. 12)
18.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber finds that this standard of review is in line with the practice followed at international level." (para. 112) "The Pre-Trial Chamber finds 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 and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 113) "Considering that the CPC does not allow a resolution of the issue at hand, the Pre-Trial Chamber refers to Article 12 of the Agreement and Article 33 new of the ECCC Law which provide, in their first paragraph, that it shall seek guidance in procedural rules established at the international level and, in their second paragraph, that '[t]he 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 International Covenant on Civil and Political Rights, to which Cambodia is a party.'" (para. 125) "In the current case, the Pre-Trial Chamber shall first look at Article 14(7) of the ICCPR and, if the issue remains unresolved, refer to the procedural rules established at the international level." (para. 126) "The Pre-Trial Chamber finds that no international *ne bis in idem* protection exists under the ICCPR. Taking into account its finding below that the ECCC is an internationalised court functioning separately from the Cambodian court structure, the Pre-Trial Chamber finds that the 'internal *ne bis in idem* principle' as enshrined in Article 14(7) of the ICCPR does not apply to the proceedings before the ECCC. In these circumstances, the Pre-Trial Chamber will seek guidance in the procedural rules established at the international level to determine if Ieng Sary's previous conviction by a national Cambodian court shall prevent the ECCC from exercising jurisdiction against him for the offences charged in the Closing Order." (para. 131) "The Pre-Trial Chamber notes that absent any international *ne bis in idem* protection in Article 14(7), its task is not to determine whether an exception to the principle of *ne bis in idem* has crystallised in international law but whether the procedural rules established at the international level are sufficiently uniform for the Pre-Trial Chamber to seek guidance in them in order to resolve the issue at hand, namely whether the ECCC can exercise jurisdiction to try Ieng Sary for the indicted offences charged in the Closing Order." (para. 140)

		"As of the date of this decision, the Pre-Trial Chamber has not identified any case law from the ICC that interprets Article 20(3)(b) of the Rome Statute and the Co-Lawyers have not identified any case to support their interpretation of this provision. In these circumstances, the Pre-Trial Chamber will look at the rationale behind the adoption of the statutes of the *ad hoc* tribunals, the *travaux préparatoires* of the Rome Statute and the academic commentaries to determine whether the Rome Statute constitutes a departure from the rules of the *ad hoc* tribunal resulting in an inconsistency which shall be taken into consideration by the Pre-Trial Chamber in seeking guidance in these rules." (para. 141) "The Pre-Trial Chamber finds that the procedural rules established at the international level provide constituent guidance that an international or internationalised tribunal shall not exercise jurisdiction in respect of individuals that have already been tried for the same acts by national authorities unless it is established that the national proceedings were not conducted independently and impartially with regard to due process of law. The ECCC being in a similar position as these tribunals and considering that the reasons underlying the principle set out above are also relevant in the context of its proceedings, it will apply the same standard to determine the issue at hand." (para. 157) "The Pre-Trial Chamber observes that the ICTY jurisprudence has held that the explicit requirement of a nexus in the Nuremberg Charter and Nuremberg Principles was peculiar to that tribunal. [...] The Pre-Trial Chamber observes that, in general terms, it has to show caution in relying to ICTY findings where it discusses the state of customary international law because the cases before ICTY relate to a different point in time from that which is within ECCC's jurisdiction. Also, the Pre-Trial Chamber has to observe the difference between ICTY discussing the state of customary law for the purpose of finding an accurate definition of a crime as opposed to ICTY discussing the state of customary law for the purpose of determining whether a crime existed at a certain time." (para. 307)
19.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]here is no explicit provision in the Internal Rules or the ECCC Law that the injury must be personal. […] The Pre-Trial Chamber emphasizes that although, as instructed by the provisions of the Agreement and ECCC Law, it can seek guidance on the *principles* of the application of the rules established at international level, caution must be taken when seeking such guidance in relation to their *particular* application in practice of their *specific rules* which are not in all cases applicable to the ECCC Internal Rules. These do not provide the parties the same rights in the proceedings as in ECCC and do not necessarily apply to identical circumstances as those before ECCC." (para. 47)
20.	**Case 003 IM Chaem** PTC 04 D20/4/4 2 November 2011 *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*	"Insofar as international practice is concerned, we note that the [ICJ] has consitently considered that it 'should not penalise a defect in a procedural act which the applicant could easily remedy' and that international tribunals have refused to exclude evidence on the basis of procedural effects where it was found that no harm resulted from said defect. The underlying principle of this practice is that a party should not be deprived of his or her right of access to the Court on the basis of procedural formalities unless such measure is proportional to the aim it sought to achieve (*i.e.*, remedy the harm caused to the affected party)." (Opinion of Judges LAHUIS and DOWNING, para. 10)
21.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014	"As neither the ECCC legal compendium nor Cambodian Law addresses this issue, we note that the procedural rules established at the international level, similar to domestic jurisdictions, allow restrictions to be imposed on information that is disclosed to the defendant to protect interests such as the integrity of the investigation, the security of victims and witnesses and national or international security. Although there is no such things as a judicial investigation or an 'official case file' at the other

	Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation	international and internationalised tribunals, their rules of procedure and evidence all provide possibility to limit the disclosure obligations of the prosecution and therefore withhold evidence from the accused for a certain period of time, subject to judicial scrutiny, to protect the aforementioned interests." (Opinion of Judges CHUNG and DOWNING, para. 29)
22.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"International criminal tribunals have generally recognized that conflicts of interest may impair the effectiveness of representation by counsel and, therefore, jeopardize the overall fairness of the proceedings Given the Courts' inherent duty to ensure fairness of their proceedings it has been found that 'the issue of qualification, appointment and assignment of counsel when raised as matter of procedural fairness and proper administration of justice, is open to judicial scrutiny.' The Pre-Trial Chamber sees no error in the ICIJ seeking guidance in these principles when assessing his own jurisdiction, as a judicial body similarly bound to safeguard the fairness of his judicial investigation, to examine the issue of conflict of interest raised in the Request for Rejection." (para. 40) "Absent any clear guidance in the BAKC Code of Ethics and the DSS Administrative Regulations to determine if the particular situation at hand triggers a conflict of interest, the Pre-Trial Chamber finds that the ICIJ was correct in seeking guidance in the procedural rules established at the international level, where the rules in this respect have a wider consideration and represent relevant international standard. The ICIJ's approach did not depart from or contradict Cambodian law; it substantiated it by reference to rules that address the specific facts of this case, in accord with Article 23(3) of the Agreement, which provides that lawyers representing defendants before the ECCC are bound to apply 'recognized standards and ethics of the legal profession'." (para. 46)
23.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions*	"Seeking guidance in the procedural rules established at the international level, in accordance with Article 12(1) of the Agreement between the United Nations and the government of Cambodia for the establishment of the ECCC, Articles 23*new* and 33*new* of the ECCC Law and Internal Rule 2, the Pre-Trial Chamber notes, by analogy, that it is common practice at other tribunals of international character to dismiss motions or applications on the basis that they raise issues that have already been determined by a final decision binding upon the concerned parties (and are as such *res judicata*), unless presented in the context of requests for reconsideration. Therefore, the Pre-Trial Chamber holds that it may dismiss an appeal or application, without considering its formal admissibility under Internal Rules 73, 74 and/or 21 or its merits, when it raises an issue that is substantially the same (in fact and law) as a matter already examined by the Chamber in respect of the same party and upon which it could not reach a majority of four votes to issue a decision." (para. 20)
24.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"[P]ursuant to Internal Rule 72(1), disagreements between the Co-Investigating Judges are internal to their office, unless they are brought before the Pre-Trial Chamber for resolution. […] Pursuant to the rules established at the international level, '[judicial] deliberations are secret' and, as such, 'internal documents between the Judges who are shielded by the secrecy of deliberations or the confidentiality of correspondence are not intended for automatic disclosure to third parties'. Provision of information concerning the Co-Investigating Judges' disagreements is therefore strictly within the purview of their discretion." (para. 10)
25.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International*	"[…] Cambodian law cannot assist in determining whether sufficient efforts had been made to secure IM Chaem's presence at an initial appearance before the International Co-Investigating Judge decided to notify her of the charges in writing, through her lawyers. This *lacuna* in Cambodian law, when applied for the purposes of ECCC proceedings, reflects one of the particularities faced by internationalised criminal tribunals who lack their own law enforcement forces and rely upon State cooperation to execute arrest warrants. Pursuant to Article 12(1) of the Agreement, Article 23*new* of the ECCC Law and Internal Rule 2, the International Co-Investigating Judge was correct in seeking

	Co-Investigating Judge's Decision to Charge Her in Absentia	guidance in the procedural rules established at the international level." (Opinion of Judges BEAUVALLET and BWANA, para. 27) "[I]t was appropriate for the International Co-Investigating Judge to examine more generally the rules of other international tribunals on exceptional measures to advance proceedings at the pre-trial stage when an arrest warrant is not executed or a suspect cannot be notified, in person, of the charges." (Opinion of Judges BEAUVALLET and BWANA, para. 28) "[U]nlike the ECCC, none of the international criminal tribunals apply the inquisitorial system and conduct judicial investigations. […] [B]ecause the international tribunals do not have a procedural step equivalent to the '*mise en examen*' […] the rules of these tribunals cannot be applied *mutadis mutandis* at the ECCC. That said, the ECCC may seek guidance in the general principles set forth therein, particularly insofar as they provide for alternative ways to continue proceedings when an arrest warrant is not executed within a reasonable time. The Undersigned Judges emphasise that, given the present proceedings are not conducted *in absentia* and no hearing has been held in IM Chaem's absence, the purpose of reviewing international law here is not to examine whether *in absentia* proceedings are 'permissible' *per se*. Rather, the Undersigned Judges consider that the procedural rules established at the international level may provide guidance as to the conditions for charging a suspect without holding an initial appearance and alternative ways to notify charges." (Opinion of Judges BEAUVALLET and BWANA, para. 29) "[T]he procedural rules established at the international level provide useful guidance to resolve the present case, insofar as they determine the conditions for continuing proceedings without holding an initial appearance. Given that the principles do not conflict with Cambodian law but rather complement it to address the particularity of proceedings before the ECCC, the Co-Lawyers' argument that the International Co-Investigating Judge acted *ultra vires* in 'creating a new *in absentia* procedure for charging' is without merit. Likewise, the Undersigned Judges find that, contrary to the Co-Lawyers' assertion, the International Co-Investigating Judge did not have to refer the matter to the Plenary for a rule amendment; he had to decide on the matter before him first and then could, for future purposes, propose a rule amendment as clearly expressed by Internal Rule 2." (Opinion of Judges BEAUVALLET and BWANA, para. 40)
26.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"[…] Cambodian law cannot assist in determining whether sufficient efforts had been made to secure MEAS Muth's presence at an initial appearance before the International Co-Investigating Judge decided to notify him of the charges in writing, through his Co-Lawyers. This *lacuna* in Cambodian law, when applied for the purposes of ECCC proceedings, reflects one of the particularities faced by internationalised criminal tribunals who lack their own law enforcement forces and rely upon State cooperation to execute arrest warrants. Pursuant to Article 12(1) of the Agreement, Article 23*new* of the ECCC Law and Internal Rule 2, the International Co-Investigating Judge was correct in seeking guidance in the procedural rules established at the international level." (Opinion of Judges BEAUVALLET and BWANA, para. 29) "[I]t was appropriate for the International Co-Investigating Judge to examine more generally the rules of other international tribunals on exceptional measures to advance proceedings at the pre-trial stage when an arrest warrant is not executed or a suspect cannot be notified, in person, of the charges." (Opinion of Judges BEAUVALLET and BWANA, para. 30) "[U]nlike the ECCC, none of the international criminal tribunals apply the inquisitorial system and conduct judicial investigations. […] [B]ecause the international tribunals do not have a procedural step equivalent to the '*mise en examen*' […] the rules of these tribunals cannot be applied *mutadis mutandis* at the ECCC. That said, the ECCC may seek guidance in the general principles set forth therein, particularly insofar as they provide for alternative ways to continue proceedings when an arrest warrant is not executed within a reasonable time. The Undersigned Judges emphasise that, given the present proceedings are not conducted *in absentia* and no hearing has been held in MEAS Muth's absence, the purpose of reviewing international law here is not to examine whether *in absentia* proceedings are 'permissible' *per se*. Rather, the Undersigned Judges consider that the procedural rules established at the international level may provide guidance as to the conditions for charging a suspect without holding an initial appearance and alternative ways to notify charges." (Opinion of Judges BEAUVALLET and BWANA, para. 31) "[T]he procedural rules established at the international level provide useful guidance to resolve the present case, insofar as they determine the conditions for continuing proceedings without holding an initial appearance. Given that the principles do not conflict with Cambodian law but rather

		complement it to address the particularity of proceedings before the ECCC, the Co-Lawyers' argument that the International Co-Investigating Judge acted *ultra vires* because he 'created a new *in absentia* procedure for charging' is without merit. Likewise, the Undersigned Judges find that, contrary to the Co-Lawyers' assertion, the International Co-Investigating Judge did not have to refer the matter to the Plenary for a rule amendment; he had to decide on the matter before him first and then could, for future purposes, propose a rule amendment, as clearly expressed by Internal Rule 2." (Opinion of Judges BEAUVALLET and BWANA, para. 42)
27.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"The Pre-Trial Chamber found further guidance in the case law of the European Court of Human Rights and of the ICTY regarding the right to reasoned opinion, which it found relevant to the pre-trial context at the ECCC." (Opinion of Judges BEAUVALLET and BAIK, para. 60)
28.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the International Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193/76 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"The Pre-Trial Chamber agrees with the ICIJ that there is a *lacuna* in the applicable law as regards the procedure to be applied when requests for disclosure are brought before the OCIJ. Pursuant to Article 12(1) of the Agreement, Article 23*new* of the ECCC Law and Internal Rule 2, where the applicable law does not deal with a particular matter, guidance can be sought in the procedural rules established at the international level, having particular attention to the fundamental principles set out in Rule 21 and the applicable criminal procedural laws. The Pre-Trial Chamber notes that, in the Impugned Decision, the ICIJ sought guidance in the rules established at international level, and in French jurisprudence […]." (para. 32) "The Pre-Trial Chamber considers that the findings of the ICIJ are in concert with: i) the fundamental requirement set in Internal Rule 21 for a balancing of interests and rights involved in the proceedings before the ECCC; and with ii) a reading of the Rules in their 'context and in accordance with their object and purpose', as set in the ECCC Law and Agreement. Within this legal context, the ICIJ is correct that, to be legitimate, disclosure proceedings have to be carried out in a manner that ensures that: i) before a decision on disclosure is rendered, the parties to the investigation are allowed the possibility of an adversarial debate over disclosure requests; and that ii) the OCP is enabled to pursue its mandate to prosecute in Case 002, and the TC is assisted in fulfilling its mandate to find the truth in Case 002, within a reasonable time". (para. 33) "The Pre-Trial Chamber further observes […] that according to the standards established at international level, inequality in treatment is permissible if 'based on reasonable and objective grounds not entailing actual disadvantage or other unfairness.'" (para. 36)
29.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[…] Article 12(1) of the ECCC Agreement and Internal Rule 2 require that the procedure before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure, *inter alia*, provides that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law all make it clear that ECCC organs must follow all existing procedures in force. The Chamber already determined that these provisions 'aim to guarantee the legality, fairness and effectiveness of ECCC proceedings.'" (para. 83)

j. Guidance from Other Instruments

1.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"The *Code of Judicial Ethics* of the ECCC provides further guidance in this area." (para. 26) "Article 2.2 of the *Bangalore Principles of Judicial Conduct* states that a judge 'shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence […] in the impartiality of the judge and of the judiciary'." (para. 27)
2.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"The test for bias to be applied is that provided in Internal Rule 34(2), which refers both to actual bias and to apprehended bias." (para. 36) "The *Code of Judicial Ethics* of the ECCC provides further guidance in this area." (para. 38)
3.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Guidance can be sought from the general principles on victims as found in international law […]." (para. 32)
4.	**004/2 Civil Parties** PTC 58 D362/4 27 August 2018 *Decision on Civil Party Requests for Extension of Time and Page Limits*	"The Pre-Trial Chamber has specifically found that '[g]uidance can be sought from the general principles on victims as found in international law,' including the UN basic principles on victims." (para. 7)
5.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As a preliminary matter, the Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 34)

6.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As a preliminary matter, the Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) the ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 37)
7.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[T]he Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) the ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 35)

k. Guidance from Other Arena of Law

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Secondly, the Pre-Trial Chamber notes that the prohibition of torture arises in several arena of international law, and that care must be taken to avoid importing liability for torture under human rights law or war crimes law to crimes against humanity by means of analogy alone. Different iterations of torture may, however, serve as sources of guidance and contribute to make it accessible and foreseeable to an accused that the prohibited conduct can lead to criminal prosecution." (para. 341)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"As neither the ECCC legal compendium nor Cambodian Law addresses this issue, we note that the procedural rules established at the international level, similar to domestic jurisdictions, allow restrictions to be imposed on information that is disclosed to the defendant to protect interests such as the integrity of the investigation, the security of victims and witnesses and national or international security. […] From a human rights perspective, limitations on a procedural guarantee such as the right to access the case file are acceptable as long as (i) they serve a legitimate interest and (ii) that, in the light of the entirety of the proceedings, the defendant is not deprived of a fair hearing." (Opinion of Judges CHUNG and DOWNING, para. 28)

l. Reference to the Practice of the Pre-Trial Chamber

1.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of*	"[N]either the Internal Rules nor other ECCC regulations provide specific guidance as to the classification of a closing order or the extent of any redaction." (para. 23) "The Pre-Trial Chamber thus finds it useful to refer to the scope of the redactions in previous closing orders." (para. 24)

	the Closing Order (Reasons)	

m. Internal Rule 21

For jurisprudence concerning the ***Admissibility of Appeals under Fairness Considerations (Internal Rule 21)***, see VII.B.5. Admissibility under Fairness Considerations (Internal Rule 21)

1.	**002 NUON Chea** Special PTC 17 Doc. No. 2 19 January 2011 *Decision on Urgent Request to Consider Resumption of Detention Interviews*	"[T]he text of Internal Rule 68(3) appears to provide only for interviews of a 'Charged Person' […]. No other provision in the Internal Rules gives any indication as to the continuation of these interviews after the indictment being issued […]. However, Rule 21(2) states that '[a]ny coercive measures to which such a person may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities' and that such measure shall 'fully respect human dignity'[.]" (para. 5) "Recognizing the importance of the interviews provided for in Internal Rule 63(8) to exercise an oversight over provisional detention in order to ensure respect of the detainees' rights to be detained under humane and dignified conditions, the Pre-Trial Chamber acknowledged that the Accused, akin to the Charged Person, shall be interviewed periodically on their conditions of detention. This is particularly necessary in the light of the Accused's age and the ailments he alleges to suffer of." (para. 6) "[T]here is a *lacuna* in the Internal Rules as to who should conduct the interviews on the conditions of detention at the current stage of the proceedings […]." (para. 7) "[T]he Cambodian Code of Criminal Procedurel and the procedural rules established at the international level, from which it shall seek guidance in case of a *lacuna* in the Internal Rules pursuant to Rule 2, do not provide further guidance to determine the matter." (para. 8) "Having a particular attention to the fundamental principles set out in Rule 21, […], the Pre-Trial Chamber considers it appropriate under the current circumstances to forward the Request to the Trial Chamber which, at the current stage of the proceedings, will be in a better position to address it." (para. 9)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19)
3.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"There is no clear provision, in Internal Rule 76, to explicitly direct the other parties to respond to annulment applications. Article 253 of the Cambodian Code of Criminal Procedure ('CCCP') does not shed more light on this issue either. Further, Internal Rule 76(2) provides that appellate rights against such OCIJ orders are 'in accordance with these IRs.' [...] Lastly, there is no clear provision, in Internal Rule 76, to direct the Pre-Trial Chamber on how to proceed [...]. Faced with this lack of clarity and, having sought guidance from the fundamental principles of procedure before the ECCC, the Pre-Trial Chamber issued the [...] Instructions [...]." (para. 18) "The 3 September PTC Instructions are based on the fundamental principle, enshrined in Internal Rule 21(1)(a), that 'ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties.'" (para. 19)

4.	**004 YIM Tith** PTC 38 D344/1/6 25 July 2017 *Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)*	"[…] Internal Rule 21 sets principles for proceedings before the ECCC, as regards fairness and fundamental rights of parties, and it cannot be utilised to also interpret the strict requirements of the procedural Rules as regards validity of investigative actions." (Opinion of Judges BEAUVALLET and BAIK, para. 57)
5.	**004/2 Civil Parties** PTC 58 D362/4 27 August 2018 *Decision on Civil Party Requests for Extension of Time and Page Limits*	"Internal Rule 21(1) requires that the 'applicable ECCC Law, Internal Rules, [and] Practice Directions […] 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'." (para. 8)
6.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 21 provides a framework of interpretation for […] Internal Rules [23 and 23*bis*(1)] and states in its relevant parts that: The applicable ECCC Law, Internal Rules […] 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." (Opinion of Judges BEAUVALLET and BAIK, para. 57) "The International Judges further recall 'that the object and purpose of [Internal Rule] 23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC'. The International Judges consider that this interpretation is in accordance with the fundamental principles of the ECCC procedure enshrined in the Internal Rule 21(1), which aims at safeguarding the interests of the parties, and therefore, requires the Pre-Trial Chamber to protect the interests of both the Accused and the Victims." (Opinion of Judges BEAUVALLET and BAIK, para. 75)

ii. *Interpretation of Other Instruments*

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber notes that the text of Article 12 of the CPC provides that it applies to a person who has been 'acquitted'. Pursuant to recognized principles of interpretation, 'in construing statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity or inconsistency, but not farther.'" (para. 122) "The [...] Co-Lawyers have not shown that the ordinary sense of Article 12 was in any way inconsistent with the rest of the CPC. On the contrary, the Pre-Trial Chamber considers that expanding the scope of Article 12 to include convicted person, as suggested by the Co-Lawyers, would conflict with other provisions of the CPC, which allow proceedings to be reopened in cases of convictions." (para. 123) "Absent any absurdity or inconsistency with the rest of the CPC, the Pre-Trial Chamber shall adhere to the ordinary sense of Article 12, finding that it does not apply to convictions." (para. 124) "Absent any inconsistency or absurd result having been demonstrated, the Pre-Trial Chamber shall adhere to the grammatical and ordinary sense of the words used in the Decree, concluding that the amnesty granted to Ieng Sary was confined to the specific sentence pronounced in 1979." (para. 193)
2.	**003 MEAS MUTH** PTC 33 D253/1/8 13 December 2017	"The Pre-Trial Chamber has found that Article 15 of the CAT applies to proceedings before the ECCC and that its application has to be strict. It shall read Article 15 in accordance with the ordinary meaning of the terms of the CAT in their context and in the light of its object and purpose. The Pre-Trial Chamber concurs that 'the CAT defines its object and purpose in recognition of a person's inalienable human rights and inherent dignity.'" (para. 27)

	Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171	"A reading of Article 15 of the CAT and a review of the several drafts of the CAT, […] reveal that the term 'derivative' appeared only once in the first draft submitted by the International Association of Penal Law, which read 'obtained by means of torture or *any other evidence derived therefrom'* […]. It was not later or finally included, which, in the Pre-Trial Chamber's view, indicates that the final settlement of any issue whether specific statements are 'made as a result of torture' was left for the scrutiny of the judicial authorities whenever faced with concrete allegations. Therefore, any specific allegations that statements may fall within the ambit of the exclusionary rule of Article 15 of the CAT have to be addressed on a case by case basis through interpretation of the term 'made as a result of torture' in its context and in the light of its object and purpose, rather than by deciding whether Article 15 of the CAT applies to the 'derivative evidence' in general." (para. 35) "The Pre-Trial Chamber considers that, in its ordinary meaning, the term 'made as a result of' requires a certain degree of causation. It does not include every event that follows." (para. 37)

4. Miscellaneous

i. *Determination of Customary International Law*

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[W]hen determining the state of customary international law in relation to the existence of a crime or a form of individual responsibility, a court shall assess existence of 'common, consistent and concordant' state practice, or *opinio juris*, meaning that what States do and say represents the law. A wealth of state practice does not usually carry with it a presumption that *opinio juris* exists; '[n]ot only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it'. As it is, States by consent determine the content of international law, and judicial decisions clearly constitute 'subsidiary means for the determination of rules of law'. The Pre-Trial Chamber notes that it is unclear whether the 'general principles of the law recognized by civilized nations' should be recognized as a principal or auxiliary source of international law. However, such general principles have been taken into account, notably by the ICTY, when defining the elements of an international crime or the scope of a form of responsibility otherwise recognized in customary international law." (para. 53) "The Pre-Trial Chamber will not limit its assessment of whether *Tadić* incorrectly determined that JCE liability existed under customary international law (in 1992) to a review of the authorities the ICTY Appeals Chamber relied upon. Indeed, […] the statement in *Tadić* that customary international law permitted the application of the 'notion of common purpose' to crimes within the jurisdiction of the Tribunal 'is reinforced by the use made of the doctrine of common plan or enterprise in the […] instruments of the post-World War II tribunals' […]." (para. 57) "The States Parties to these international instruments recognized that persons responsible for the commission of international crimes are not limited to those who physically perpetrate such crimes. Instead, individuals will also be responsible when they intentionally participate in the formulation or execution of a common plan or enterprise involving the commission of such crimes. This constitutes undeniable support of the basic and systemic forms (JCE I & II) of JCE liability." (para. 58) "The Pre-Trial Chamber considers that the case law from the above-mentioned military tribunals offer an authoritative interpretation of their constitutive instruments and can be relied upon to determine the state of customary international law with respect to the existence of JCE as a form of criminal responsibility at the time relevant […]." (para. 60) "[The ILC] described the principle of international responsibility and punishment for crimes under international law recognized at Nuremberg as the 'cornerstone of international law'. […] Draft Codes of the ILC do not constitute state practice relevant to the determination of a rule of customary international law, but merely represent a subsidiary means for the determination of rules of law. However 'they may reflect legal considerations largely shared by the international community, and they may expertly identify rules of international law'." (para. 61) "The *Justice* and *RuSHA* judgements do not speak in terms of 'joint criminal enterprise'. However, the Pre-Trial Chamber finds that the legal elements applied by the Military Tribunal to determine the liability of the accused are sufficiently similar to those of JCE […] and constitute a valid illustration of

		the state of customary international law with respect to the basic form and systemic form of JCE (JCE I & II).” (para. 65) “In the light of the London Charter Control Council Law No 10, international cases and authoritative pronouncements, the Pre-Trial Chamber has no doubt that JCE I and JCE II were recognized forms of responsibility in customary international law at the time relevant for Case 002. This is the situation irrespective of whether it was appropriate for *Tadić* to rely on the ICC draft Statute and on the International Convention for the Suppression of Terrorist Bombing.” (para. 69) “The Pre-Trial Chamber also finds without merit the allegation that because the international jurisprudence relied upon in *Tadić* essentially refers to crimes committed during World War II and is based on military case law from North American and European Courts and the legal systems of Australia and Zambia, it ‘cannot be transposed to the territory of Asia’ and cannot apply *mutadis mutandis* to the ECCC and the Cambodian context.” (para. 73) “The Pre-Trial Chamber notes that the Nuremberg Charter and Control Council Law No. 10 do not specifically offer support for the extended form of JCE (JCE III). The Pre-Trial Chamber does not find that the two additional international instruments referred to by *Tadić*, which were not in existence at the time relevant to Case 002, could serve as a basis for establishing the customary law status of JCE III in 1975-1979.” (para. 78) “As to the international case law relied upon by *Tadić*, […] in the absence of a reasoned judgement in these cases, one cannot be certain of the basis of liability actually retained by the military courts.” (para. 79) “*Tadić* also relied on several cases brought before Italian Courts after World War II […]. These cases, in which domestic courts applied domestic law, do not amount to international case law and the Pre-Trial Chamber does not consider them as proper precedents for the purpose of determining the status of customary law in this area.” (para. 82) “The exact status of general principles of criminal law as primary or auxiliary sources of international law is unclear. However, a number of ICTY Appeals decisions state or imply that it is acceptable to have recourse to such principles in defining not only the elements of an international crime, but also the scope of a form of responsibility for an international crime. In *Tadić*, while considering that national legislation and case law cannot be relied upon as a source of international principles or rules to establish the customary law status of JCE, the Appeals Chamber did rely on national legislation and case law to conclude that the doctrine of JCE was rooted in the national law of many states. Various legal systems differ as to the *mens rea* required to attach criminal responsibility to an accused for crime carried out by another individual who acted in concert, but went beyond what the accused intended. This may explain why *Tadić* itself used multiple expressions conveying different shades of meaning when defining the required state of mind for JCE III.” (para. 84) “*Tadić* further emphasized that it only referred to national legislation and case law to show that the notion of common purpose upheld in international law has an underpinning in many national systems. However, in the area under discussion, these domestic sources could not be relied upon as irrefutable evidence of international principles or rules under the doctrine that general principles of law are recognised by the nations of the world; for this reliance to be permissible, most, if not all, countries must have adopted the same notion of common purpose. In *Tadić*, the court concluded that this was not the case.” (para. 85) “The appropriate process to assess the existence of the general principal of law is illustrated by the *Furundžija* and *Kunarac* Trial Judgements: ‘reference should not be made to one national legal system only, say that of common law or civil law’ to the exclusion of the other, although the distillation of a general principle does not require a comprehensive survey of all the legal systems of the world. It is also important to avoid ‘mechanical importation or transposition from national law into international criminal proceedings’.” (para. 86)
1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011	“While the Pre-Trial Chamber accepts that the practice of States need not be perfectly uniform to amount to general practice, it cannot be said that the 1968 Statute of Limitations Convention had passed a threshold level of acceptance in order to qualify as general practice.” (para. 309)

	Decision on IENG Sary's Appeal against the Closing Order	
2.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	"The Pre-Trial Chamber notes that, notwithstanding the rather low approval rate of both conventions at the UNGA, the position expressed by the governments and verbal acts during the negotiations can provide evidence of State practice. In particular, the Pre-Trial Chamber finds that it is proper to rely on the drafting history of the Statutory Limitations Convention to understand the abstaining and contrary States' stances motivations. Indeed, having conducted a thorough review of the preparatory works of the Economic and Social Forum's Commission on Human Rights and of the UNGA Joint Working Group, the Pre-Trial Chamber admits that they show significant support to broadening the definition of crimes against humanity by including genocide and apartheid and by removing the Nexus." (para. 56)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[N]o error transpired in applying Planning in the Closing Order (Indictment). […] [S]tate practice and *opinio juris* evidence that Planning is properly applicable as a mode of liability to all criminal acts (not only crimes against peace) as is demonstrated by, *inter alia,* (i) the Nuremberg Tribunal and (ii) the Cambodian Penal Code of 1956. Moreover, the International Judges are not convinced at this time that (iii) international instruments – which have no bearing on the crystallisation of Planning as a mode of liability (*e.g.*, the Genocide Convention or the Rome Statute) – may impact and abolish the existence of Planning within customary international law." (Opinion of Judges BAIK and BEAUVALLET, para. 583) "First, consistent with state practice and *opinio juris* within customary international law, […] Planning emerged as a mode of responsibility in the aftermath of World War II and was first enshrined in the Nuremberg Charter in 1945 – applicable to all crimes. The first paragraph of Article 6 of the Nuremberg Charter expressly mentions, in the context of individual criminal responsibility, a prohibition concerning crimes against peace, listing among proscribed conduct: '[…] planning, preparation, initiation […]'.The final paragraph in Article 6 […] reinforces this principle of Planning for all the crimes within the Tribunal's jurisdiction, articulating that: '[l]eaders, organisers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan'. Similarly, the Control Council Law No. 10 from 1945 enshrines criminal responsibility for individuals connected with plans or enterprises involving the commission of crimes." (Opinion of Judges BAIK and BEAUVALLET, para. 584)

ii. *General Principles of Law*

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"This Chamber has held that where constitute elements are not identical, domestic and international crimes are to be treated as distinct crimes. As such, rape as a domestic crime cannot simply be imported into international law as a crime against humanity by recourse to the general principles of law recognised by civilised nations. Rather, such principles may serve to assist in clarifying the *actus reus* and *mens rea* of rape once the existence of the chapeau elements for rape as a crime against humanity have already been established." (para. 153)

2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"An alternative source of international law is 'the general principles of law recognized by civilized nations'. [...] The Pre-Trial Chamber, therefore, finds that rape cannot simply be imported into international law as a crime against humanity in its own right by recourse to the general principles of law recognized by civilized nations. Consistent with ICTY jurisprudence, such principles may serve merely to assist in clarifying the *actus reus* and *mens rea* of rape once the existence of the crime has already been established." (para. 370)

iii. *Prohibition of Analogy* (Ejusdem Generis)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[W]hen looking at the plain meaning of 'other inhumane acts' the word 'other' imports an *ejusdem generis* rule of interpretation, whereby this category can only include acts which are 'inhumane' in the sense that they are of similar nature and gravity to those specifically enumerated: namely, murder, extermination, enslavement and deportation." (para. 160) "In finding that the doctrine of *ejusdem generis* is relevant for determining the content of 'other inhumane acts', the Pre-Trial Chamber emphasises that this is not in violation of the rule against analogy found in civil law jurisdictions. The Pre-Trial Chamber notes that applying crime by analogy to unregulated conduct (*analogia lexis*) is distinguishable from - as with 'other inhumane acts' - applying subcategory within a crime by analogy to another subcategory within that crime for purposes of clarifying the definition of that other subcategory. In the latter scenario, if the conduct at issue falls within the definition of the crime, then it is in fact *regulated* conduct, such that the rationale of the rule against analogy does not apply. This distinction is unavoidable when it is further considered that the category of 'other inhumane acts' as crimes against humanity was specifically designed as a residual crime to avoid *lacunae* in the law, and that the term is rendered meaningless without applying an *ejusdem generis* canon of construction. Thus, the rule against analogy is inapplicable to 'other inhumane acts.'" (para. 161)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The ECCC Law, as well as the Nuremberg Charter, the Tokyo Charter, Control Council No. 10, and the Nuremberg Principles, list certain acts that are deemed to be crimes against humanity including 'other inhumane acts.' The word 'other' imports an *ejusdem generis* rule of interpretation, whereby 'other inhumane acts' can only include acts which are both 'inhumane' and of a 'similar nature and gravity' to those specifically enumerated; namely, murder, extermination, enslavement and deportation." (para. 388) "In finding that the doctrine of *ejusdem generis* is relevant for determining the content of 'other inhumane acts', the Pre-Trial Chamber emphasises that this is not in violation of the rule against analogy found in civil law jurisdictions. Applying a crime by analogy to unregulated conduct (*analogia lexis*) is distinguishable from – as with 'other inhumane acts' – applying a subcategory within a crime by analogy to another subcategory within that crime for purposes of clarifying the definition of that other subcategory. In the latter scenario, if the conduct at issue falls within the definition of the crime, then it is in fact *regulated* conduct, such that the rationale of the rule against analogy does not apply. This distinction is unavoidable when it is further considered that the category of 'other inhumane acts' as crimes against humanity was specifically designed as a residual crime to avoid *lacunae* in the law, and that the term is rendered meaningless without applying an *ejusdem generis* canon of construction." (para. 389) "In the NMT jurisprudence judges used the doctrine of *ejusdem generis* to clarify whether the taking of property falls within the definition of crimes against humanity as an unenumerated act." (para. 390) "In addition to the use of the doctrine of *ejusdem generis* with respect to enumerated acts in the definition of crimes against humanity, the Pre-Trial Chamber notes that it is also clear from Nuremberg jurisprudence that the Tribunals, in routinely dealing with war crimes and crimes against humanity together, relied on the settled scope of war crimes under international law to inform the content of crimes against humanity, including 'other inhumane acts', against German nationals or civilian populations in occupied territories." (para. 391)

3.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"That said, 'not every denial of a human right was found to constitute a crime against humanity under post-World War II jurisprudence. Rather, the doctrine of *ejusdem generis* was used to interpret the charters of the tribunals to set 'clearly defined limits on types of acts,' which guarantees some degree of precision. The Undersigned Judges agree that this rule is important for it may function as a residual clause covering instances of inhuman behaviour that do not neatly fall under any of the other existing categories of crimes against humanity. Indeed, there is no need to look for traces of criminalization of each underlying act since 'other inhuman acts' already existed as a crime in law. A further requirement for criminality of each sub-category of inhuman behaviour would seriously undermine the important function of 'other inhumane acts' as crimes." (Opinion of Judges BAIK and BEAUVALLET, para. 10)

iv. *Interpretation and Legality*

1.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"That said, 'not every denial of a human right was found to constitute a crime against humanity under post-World War II jurisprudence. Rather, the doctrine of *ejusdem generis* was used to interpret the charters of the tribunals to set 'clearly defined limits on types of acts,' which guarantees some degree of precision. The Undersigned Judges agree that this rule is important for it may function as a residual clause covering instances of inhuman behaviour that do not neatly fall under any of the other existing categories of crimes against humanity. Indeed, there is no need to look for traces of criminalization of each underlying act since 'other inhuman acts' already existed as a crime in law. A further requirement for criminality of each sub-category of inhuman behaviour would seriously undermine the important function of 'other inhumane acts' as crimes." (Opinion of Judges BAIK and BEAUVALLET, para. 10) "In its quest to find the definition, as it existed in law prior to 1975-79, of the term 'other inhumane acts', the Pre-Trial Chamber relied on an elaborate list of sources explaining in detail the roots and the development in post-World War II jurisprudence of such definition, all of which were indicative that a general understanding of what type of acts were prohibited existed at the time relevant to ECCC's temporal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 11) "The principle of legality does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime or as to the meaning to be ascribed to particular ingredients of the crime." (Opinion of Judges BAIK and BEAUVALLET, para. 13)

5. Principle of Legality

i. *General*

a. Requirements (General)

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Article 33(2)(new) of the ECCC Law provides that the ECCC shall exercise its 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 International Covenant for Civil and Political Rights ('ICCPR'). Article 15(1) of the ICCPR sets out the principle of *nullum crimen sine lege* [...]. [...] [T]he ICTY Appeals Chamber identified four pre-conditions that any form of responsibility must satisfy in order for it to come within the International Tribunal's jurisdiction, which can be summarised as follows for the purpose of the ECCC proceedings: (i) it must be provided for in the [ECCC Law], explicitly or implicitly; (ii) it must have existed under customary international law at the relevant time; (iii) the law providing for that form of liability must have been sufficiently accessible at the relevant time to anyone who acted in such a way; (iv) such person must have been able to foresee that he could be held criminally liable for his actions if apprehended." (para. 43)

		"[S]ome ICTY decisions seem to imply that if a form of responsibility existed in customary international law at the relevant time, foreseeability and accessibility can be presumed. However, the Pre-Trial Chamber considers it safer to ascertain not only whether JCE existed under international criminal law, but also whether it was sufficiently accessible and foreseeable to the Charged Persons. As to the requirement of foreseeability, a charged person must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision. As to accessibility, reliance can be placed on a law which is based on custom. [...] [T]he question of whether JCE is a form of responsibility recognized in domestic law may be relevant when determining whether it was foreseeable to the Charged Person that his/her alleged conduct may entail criminal responsibility. However, it is not necessary that JCE also be punishable in domestic law in addition to being a recognized form of liability under customary international law for it to apply before the ECCC." (para. 45) "[W]hether the ECCC 'holds indicia of an international court applying international law', […] as found by the Pre-Trial Chamber […], is 'a separately constituted, independent and internationalised court' as found by the Trial Chamber […], or rather is a domestic, Cambodian court as alleged by the Appellant does not […] impact the Impugned Order's finding that JCE is applicable before the ECCC. This is the case, in light of the clear terms of Articles 1 and 2 of the ECCC law whose purpose is to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979." (para. 47) "The argument that the ECCC could not apply customary international law because it is a domestic court from a country adhering to a dualist system and lacks specific directives in the Constitution, legislation or national jurisprudence incorporating international customary law into domestic law […] runs contrary to the clear terms of Article 2 of the ECCC Law, which can only lead to the conclusion that the ECCC has jurisdiction to apply forms of responsibility recognized under customary international law at the relevant time." (para. 48) "In light of its finding that JCE I and II are forms of responsibility that were recognized in customary international law since the post-World War II international instruments and international military case law [...], as well as its earlier finding that these forms of liability have an underpinning in the Cambodian law [...], the Pre-Trial Chamber has no doubt that liability based on common purpose, design or plan was sufficiently accessible and foreseeable to the defendants." (para. 72) "The Pre-Trial Chamber is of the view that it does not need to decide whether a number of national systems, which can be regarded as representative of the world's major legal systems, recognise that a standard of *mens rea* lower than direct intent may apply in relation to crimes committed outside the common criminal purpose and amount to commission. Indeed, even if this were the case and the Chamber found that the third form of JCE was punishable in relation to international crimes, the Pre-Trial Chamber is not satisfied that such liability was foreseeable to the Charged Persons in 1975-1979, *i.e.*, that crimes falling outside the common criminal purpose but which were natural consequences of the realization of that purpose and foreseeable to them could trigger their responsibility as co-perpetrators. The Pre-Trial Chambers notes in this respect that, although it found that the basic and systemic forms of JCE (JCE I & II) had an underpinning in Cambodian law at the time relevant to Case 002, the core of this doctrine is the common criminal purpose and the intent shared by the members of the JCE that the crime(s) forming part of it be committed. JCE III purports to attach liability for crimes falling outside the common criminal purpose but which were natural consequences of the realization of that purpose and foreseeable to the accused. The Pre-Trial Chamber has not been able to identify in the Cambodian law, applicable at the relevant time, any provision that could have given notice to the Charged Persons that such extended form of responsibility was punishable as well. In such circumstances, the principle of legality requires the ECCC to refrain from relying on the extended form of JCE in its proceedings." (para. 87)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011	"[The] principle [of legality] is set out in Article 33(2) (new) of the ECCC Law […]." (para. 95) "The ECCC Law explicitly gives the Chambers jurisdiction to apply treaties recognized by Cambodia and customary international law, as long as it respects the principle of legality. Given its express reference to Article 15 of the ICCPR, there is no doubt that, in so far as international crimes are concerned, the principle of legality envisaged by the ECCC Law is the international principal of legality. The Trial Chamber has also found that the international principle of legality applies." (para. 96)

	Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order	"The Pre-Trial Chamber notes that in requiring, in the ECCC Law, the ECCC to directly apply treaty law and custom criminalizing the core international crimes and to exercise its jurisdiction regarding these crimes in accordance with the international principle of legality, Cambodia has followed the approach adopted by number of States which, following the language of the ICCPR and the ECHR, have included an exception for international crimes in their formulation of the principal of legality in national law. Also, even if this does not reflect a uniform or constant practice, a number of domestic courts have rendered decisions applying a different standard of the principle of legality for ordinary crimes and international crimes. As such, various States have applied directly international law based on treaty and/or custom without a specific provision in the domestic law criminalizing the conduct or, in some cases, generally incorporating international law. This approach is in line with the jurisprudence of the ECtHR which, like these national courts makes clear distinction between international crimes and ordinary crimes. Similarly, the *ad hoc* tribunals conduct prosecution of international crimes on the sole basis of customary law, under the condition that the international principle of legality is respected. This approach recognizes the role of both domestic and international jurisdictions for prosecuting international core crimes which, having gone through slow process of codification, have traditionally require reliance on international law." (para. 97) "As the international principle of legality does not require that international crimes and modes of liability be implemented by domestic statutes in order for violators to be found guilty, the characterisation of the Cambodian legal system as monist or dualist has no bearing on the validity of the law applicable before the ECCC." (para. 98) "The ECCC's status as national court […], or as an internationalized Court as earlier found by this Chamber and Trial Chamber is irrelevant to its jurisdiction in light of the clear terms of the ECCC Law. Since both the United Nations and the Cambodian's Royal Government have unambiguously agreed to grant the ECCC jurisdiction over the crimes charged in the Closing Order, such jurisdiction does not depend on the nature of the ECCC as a national or an internationalized tribunal, […]. Either way, the ECCC has jurisdiction to hear the crimes enumerated in the ECCC Law, and when applying international law, the Chamber is bound by the international principle of legality." (para. 99) "[T]he same reasoning applies to the modes of liability provided for in Article 29 (new) of the ECCC Law." (para. 100) "[T]he Pre-Trial Chamber recalls that the principle of legality applies 'both to the offences as well as to the forms of responsibility' charged in a Closing Order […], in order to fall within the subject matter jurisdiction of the ECCC, offences and modes of participation charged must: 1) 'be provided for in the [ECCC Law], explicitly or implicitly'; and 2) have been 'recognized under Cambodian or international law between 17 April 1975 and 6 January 1979.' As found by the ECCC Trial Chamber, '[t]he 1956 Penal Code was the applicable national law governing during the 1975 to 1979 period.' […] The Chamber may rely 'on conventional international law where a treaty is (i) unquestionably binding on the parties at the time of the alleged offence and (ii) not in conflict with or derogating from peremptory norms of international law. […] International tribunals have in practice nevertheless ascertained whether a treaty provision is also declaratory of custom.'" (para. 105) "In addition, the principle of legality requires that charged offences or modes of responsibility were 'sufficiently foreseeable and that the law providing for such liability was sufficiently accessible to the accused at the relevant time.'" (para. 106) "In so far as the accessibility requirement is concerned, [...] a mere lack of knowledge that an act is criminal does not suffice to protect defendants under the *nullum crimen sine lege* principle. [...] [T]he Pre-Trial Chamber considers that even in 1975, the knowledge that the alleged actions indicted under genocide and grave breaches of the Geneva Conventions III and IV were criminal was accessible [...], because of the treaties to which Cambodia was a party, the pre-existing customary nature of the law which those treaties codified, and the nature of the individual rights allegedly infringed." (para. 109) "The international principle of legality not only requires that the source of law criminalizing the alleged acts be accessible to the defendants, but also that the criminal consequences of the alleged acts be foreseeable." (para. 120) "[S]o long as the penalty given is within the maximum allowable under applicable law at the time of the crime, there is no violation of the principle of *nulla poena sine lege* as enshrined in Article 15(1) of the ICCPR." (para. 121)

		"[T]he principle of legality requires that it must determine whether there was a sufficiently specific definition of 'other inhumane acts' that existed under customary international law from 1975-1979 clarifying when certain conduct rises to the level of 'other inhumane acts' such that it was both foreseeable and accessible that it could be prosecuted as crimes against humanity." (para. 159) "[T]he principle of legality, in its *strict sense*, requires in order for the ECCC to have subject matter jurisdiction with respect of charged crimes, that they be provided for under the ECCC Law as well as have existed in international or national law at the time of the alleged criminal conduct such that charging them would be in compliance with the principle of legality." (para. 182) "There is no basis either under the plain language of Article 15(1) of the ICCPR for extending the principle of legality to govern conditions of prosecution beyond a retroactive change to the substance of the crimes or penalties between the time a crime is committed and prosecuted. […] [T]he principle of legality under Article 15(1) of the ICCPR does not 'refer directly to limitation periods […].' […] The underlying purposes of the principle of legality in safeguarding fairness and legal certainty require that it is sufficiently foreseeable and accessible to an accused that his or her conduct is criminal at the time of its commission. As the principle of legality, in its *strict sense*, does not require that it be sufficiently foreseeable or accessible to an accused that he or she may or may not be prosecuted depending on the applicable statute of limitations period and whether it is suspended or lifted in the future […]." (para. 183)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"As compliance with the principle of legality is a prerequisite for establishing ECCC's jurisdiction over the crimes and modes of liability provided in ECCC Law, [...] the Co-Lawyers challenge is found to be admissible pursuant to Internal Rule 74(3)(a). The principle of legality must be satisfied as a logical antecedent to establishing whether certain crimes and modes of liability existed at the time the crimes were allegedly [committed]. Therefore, those grounds of appeal alleging errors in relation to the standard of the principle of legality applied, amount to jurisdictional challenges." (para. 69) "[C]ompliance with the principle of legality is a pre-requisite for establishing the ECCC's jurisdiction over the crimes and modes of liability provided in the ECCC Law […]." (para. 209) "The principle of legality must be satisfied as a logical antecedent for the establishment of whether certain crimes and modes of liability existed at the relevant time. The Pre-Trial Chamber acknowledges that accessibility and foreseeability are elements of the principle of legality. […] Where the Co-Lawyers for Ieng Sary invite consideration of the subjective knowledge of Ieng Sary as to the state of international law, their request would require a factual determination which is not within the Pre-Trial Chamber's jurisdiction[.]" (para. 210) "Similarly, Ieng Sary's submission of lack of clarity concerning the requisite *mens rea* for command responsibility in 1975-79 imports detailed consideration of the elements or contours of the mode of liability, rather than its bare existence. It therefore does not fall within the ambit of Internal Rule 74(3)(a) as a jurisdictional challenge. Determinations as to the existence of armed conflict are factual in nature and not within the Pre-Trial Chamber's jurisdiction to examine." (para. 211) "[T]he nature of the ECCC as a court has no bearing on the ECCC's jurisdiction over the crimes and modes of liability enumerated in the ECCC Law, because this law grants such jurisdiction to the ECCC. This Law is carefully crafted and clearly provides that the ECCC can apply such crimes and modes of liability provided that such must have existed in law at the relevant time. Even if the ECCC were considered to be a simply domestic court, jurisdiction is not in question as long as a law that grants it exists and related requirements are met." (para. 212) "The ECCC was established by a joint agreement between the Royal Government of Cambodia and the United Nations, and Cambodia accepted the ECCC Agreement as the law of the land. The ECCC Law explicitly gives the Chambers jurisdiction to apply treaties recognised by Cambodia and customary international law, as long as the principle of legality is respected. Given its express reference to Article 15 of the ICCPR, there is no doubt that, insofar as international crimes are concerned, the principle of legality envisaged by the ECCC Law is the international principle of legality which allows for criminal liability over crimes that were either national or international in nature at the time they were committed. As the international principle of legality does not require that international crimes and modes of liability be implemented by domestic statutes in order for violators to be found guilty, the characterisation of the Cambodian legal system as monist or dualist has no bearing on the validity of the law applicable before the ECCC. Consequently, […] the nature of the ECCC as a court is irrelevant to its jurisdiction in light of the clear terms of the ECCC Law. The ECCC Law did not empower the Royal

		Government of Cambodia to prosecute senior leaders of the Democratic Kampuchea or those alleged to be mostly responsible for such international crimes. This was not necessary. The Royal Government of Cambodia was not only free to prosecute such crimes which occurred within its territorial jurisdiction, as a basic exercise of its jurisdiction, it was its obligation under international law to do so. Rather than using its pre-existing court structure, the Royal Government of Cambodia agreed with the United Nations to establish the ECCC for its international expertise and delegated its jurisdiction to hear these cases." (para. 213) "Pursuant to the ECCC Law, the ECCC is required to directly apply treaty law and custom criminalising the core international crimes and to exercise jurisdiction regarding these crimes in accordance with the international principle of legality, Cambodia has followed the approach adopted by a number of States which, following the language of ICCPR and the ECtHR, have included an exception for international crimes in their formulation of the principle of legality in national law. Also, even if this does not reflect a uniform or constant practice, a number of domestic courts have rendered decisions applying a different standard of the principle of legality for ordinary crimes and international crimes. As such, various States have applied directly international law based on treaty and/or custom without a specific provision in the domestic law specifically criminalizing the conduct, or in some cases, generally incorporating international law. This approach is also in line with the jurisprudence of the ECtHR which, like these national courts, makes a clear distinction between international crimes and ordinary crimes. Similarly, the *ad hoc* tribunals conduct prosecution of international crimes on the sole basis of customary law, under the condition that the international principle of legality is respected. This approach recognises the role of both domestic and international jurisdictions to prosecute international core crimes which, having gone through a slow process of codification, have traditionally required reliance on international law." (para. 214) "The Pre-Trial Chamber [...] adopted the approach of the *ad hoc* Tribunals in determining what constitutes a proper jurisdictional challenge. It considered that the ECCC 'is in a situation comparable to that of the *ad hoc* Tribunals' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the act for which an accused is charged […] [and] that body of law must be reflected in customary international law.'" (para. 217) "The extraordinary and specific nature of the ECCC as an internationalised court established by mutual agreement between the United Nations and the Cambodian authorities directs the Pre-Trial Chamber to examine the standard for the principle of legality to be applied before it by looking explicitly at its establishing instruments, the ECCC Law and Agreement." (para. 222) "[Article 33(new) of the ECCC Law and Article 15 of the ICCPR] are the only provisions referred to in the ECCC Law in relation to the principle of legality to be applied by the ECCC Chambers. The ECCC Law does not direct the ECCC Chambers to look at any other legal provisions in this respect [...]." (para. 225) "The Pre-Trial Chamber finds that the test to be applied for the standard of the principle of legality to be met before the ECCC is: 1) The criminal act or form of liability must be provided for in the ECCC law; 2)The criminal act or form of liability must have existed, by the time it was committed, under: a) national law, or b) international law, or c) it was criminal according to the general principles of law recognized by the community of nations at the time it was committed; 3) The penalty to be imposed for the criminal act or form of liability shall be the same or lighter (if subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty) than the one that was applicable at the time when the offence was committed." (para. 226) "[I]n relation to point (2) above, that in the ECCC, for the principle of legality to be met, it is sufficient to find that the criminal act or form of liability existed under one of the three sub points (a), (b) or (c). The Pre-Trial Chamber finds that, as also found by the ECCC's Trial Chamber, 'the 1956 Penal Code was the applicable national law governing during the 1975 to 1979 period' and that the term 'international law' in Article 15(1) of the ICCPR is to mean both international treaty law and customary international law. If it is found that the crime or mode of liability existed only in treaty law, the conditions to be met are that (i) the treaty was binding at the time of the alleged offence, and (ii) the treaty was not in conflict with or derogating from peremptory norms of international law. A finding that a State is already treaty-bound by a specific convention, and a tribunal applies a provision of that convention, irrespective of whether it is part of customary international law, would result in the conclusion that the principle of legality is satisfied. For a treaty to be binding on a State party, it is sufficient to find that the State party has ratified that treaty." (para. 227)

		"The Pre-Trial Chamber finds that the principle of legality applies to both 'the offences as well as to forms of responsibility' charged in a Closing Order issued by the [Co-Investigating Judges]' and that 'the scope of application of the principle of [legality, as enshrined in the ICCPR,] relates to all criminal offences, that is, to acts and omissions alike.'" (para. 228) "[T]he principle of legality requires compliance with the test for foreseeability and accessibility. At issue is the nature of the test to be applied for such requirement to be met at this stage of proceedings and for the purposes of the current appeal." (para. 229) "The Pre-Trial Chamber notes that the requirements of accessibility and foreseeability are in line with those asserted by other international courts of a regional nature such as the European Court of Human Rights." (para. 236) "The Pre-Trial Chamber considers that as far as the requirements of foreseeability and accessibility are concerned, at this stage of the proceedings, it shall only examine whether they pass the objective test as an examination of the subjective test would require a factual determination which is not within the Pre-Trial Chamber's jurisdiction. An objective test of accessibility and foreseeability is consistent both with the Pre-Trial Chambers' previous decisions and with the systemic division between the competencies of the Pre-Trial Chamber and the Trial Chamber as envisaged by the Internal Rules. Without applying the facts to the current case, the Pre-Trial Chamber shall examine merely whether the Co-Investigating Judges have adduced evidence that the Charged Persons were reasonably likely to have been aware of the state of law in relation to the crimes and modes of liability in question at the relevant time." (para. 237) "The Pre-Trial Chamber finds that for the standard of the principle of legality to be met in the ECCC the requirement for existence of the crime in domestic law is not absolute, it is rather optional. It is sufficient to find that the crime or mode of liability existed in one of the other bodies of law mentioned [national law, international law, general principles]." (para. 238) "The Pre-Trial Chamber examines [...], within the limits of the issues raised in this Ground of Appeal, whether the Co-Investigating Judges in the Closing Order found that the criminal acts or forms of liability with which Ieng Sary is indicted existed in law [...] and whether the Co-Investigating Judges have shown that the Accused was reasonably likely to have been aware of the state of law at the relevant time." (para. 240)
4.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"Article 15 of the ICCPR is a rule of important nature intended to guarantee the right to legality of those appearing before the ECCC. According to Article 15 of the ICCPR, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time it was committed. Given the important nature of the right to legality, the Pre-Trial Chamber has consistently taken the position that, for such right to be safeguarded, even if enumerated in the ECCC Law, criminal acts or forms of liability charged before the ECCC must have existed in law at the time within ECCC's temporal jurisdiction. As required by Article 12 of the Agreement, the Undersigned Judges note that the standards set out in Article 15 of the ICCPR relate, in effect, directly to ECCC's exercise of jurisdiction. With regards to exercise of jurisdiction, the Pre-Trial Chamber has held that it is incumbent upon courts to ascertain whether they have jurisdiction when they are seised. Moreover, it has found that challenges to such orders of the Co-Investigating Judges that confirm – either implicitly, or explicitly – ECCC's jurisdiction, can be brought at the pre-trial stage of proceedings and, give rise to a right of appeal under Internal Rule 74(3)(a)." (Opinion of Judges BAIK and BEAUVALLET, para. 1) "The principle of legality does not prevent a court, either at the national or international level, from determining an issue through a process of interpretation and clarification as to the elements of a particular crime or as to the meaning to be ascribed to particular ingredients of the crime." (Opinion of Judges BAIK and BEAUVALLET, para. 13)

5.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	"The Pre-Trial Chamber recalls that the principle of legality requires to examine whether there was a sufficiently specific definition of crimes against humanity under customary international law in 1975-1979 such that it was both foreseeable and accessible to the Appellant that he could be prosecuted for such crime absent a Nexus. Contrary to the Appellant's contention, there is no general requirement of 'long and consistent stream of judicial decisions, international instruments and domestic legislation' to establish foreseeability." (para. 64)

b. Accessibility

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[S]ome ICTY decisions seem to imply that if a form of responsibility existed in customary international law at the relevant time, foreseeability and accessibility can be presumed. However, the Pre-Trial Chamber considers it safer to ascertain not only whether JCE existed under international criminal law, but also whether it was sufficiently accessible and foreseeable to the Charged Persons. [...] As to accessibility, reliance can be placed on a law which is based on custom." (para. 45) "In light of its finding that JCE I and II are forms of responsibility that were recognised in customary international law since the post-World War II international instruments and international military case law [...], as well as its earlier finding that these forms of liability have an underpinning in the Cambodian law [...], the Pre-Trial Chamber has no doubt that liability based on a common purpose, design or plan was sufficiently accessible and foreseeable to the defendants." (para. 72)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"As to accessibility, reliance can be placed on a law which is based on custom' or general principles in addition to statute or treaty law as being sufficiently available to the charged person. 'Further, "[a]lthough the immorality or appalling character of an act is not a sufficient factor to warrant its criminalization [...] it may refute any claim by the Defence that it did not know of the criminal nature of the acts."'" (para. 106) "In so far as the accessibility requirement is concerned, [...] a mere lack of knowledge that an act is criminal does not suffice to protect defendants under the *nullum crimen sine lege* principle." (para. 109) "[A]lthough knowledge of the criminal nature of the alleged acts would not have been accessible to the Appellants in their domestic statutes, [...] the knowledge would still have been accessible to them by virtue of the treaties which Cambodia had signed. Neither Appellant has provided [...] a convincing reason, or any at all, as to why there should be a distinction between municipal and treaty-based law, for purposes of accessibility." (para. 110)

c. Foreseeability

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[S]ome ICTY decisions seem to imply that if a form of responsibility existed in customary international law at the relevant time, foreseeability and accessibility can be presumed. However, the Pre-Trial Chamber considers it safer to ascertain not only whether JCE existed under international criminal law, but also whether it was sufficiently accessible and foreseeable to the Charged Persons. As to the requirement of foreseeability, a charged person must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision. [...] [T]he question of whether JCE is a form of responsibility recognized in domestic law may be relevant when determining whether it was foreseeable to the Charged Person that his/her alleged conduct may entail criminal responsibility. However, it is not necessary that JCE also be punishable in domestic law in addition to being a recognized form of liability under customary international law for it to apply before the ECCC." (para. 45)
2.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"As to foreseeability of criminal procedure, […] 'the Internal Rules […] form a self-contained regime of procedural law related to the unique circumstances of the ECCC'. […] [T]he applicable procedural law at the ECCC is not inexistent. […] Moreover, the Internal Rules were adopted prior to the commencement of the proceedings, and were therefore foreseeable. […] Khieu Samphân has failed to substantiate his contention that he has been prejudiced by the application of the Internal Rules […]." (para. 20)
3.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"In addition, the principle of legality requires that charged offences or modes of liability were 'sufficiently foreseeable and that the law providing for such liability was sufficiently accessible to the accused at the relevant time.' 'As to the requirement of foreseeability, a charged person must be able to appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision." (para. 106) "[I]nternational treaty and customary law made it foreseeable that authors of genocide or grave breaches could be prosecuted and punished. Indeed, after the Nuremberg and Tokyo trials, it would have been foreseeable to any individual that criminal violations of international law would expose them to potential criminal liability. […] [S]o long as the penalty given is within the maximum allowable under applicable law at the time of the crime, there is no violation of the principle of *nulla poena sine lege* as enshrined in Article 15(1) of the ICCPR." (para. 121) "Given the fact that customary international law would allow for punishment that could include life imprisonment and even the death penalty for genocide and grave breaches of the Geneva Convention, the ECCC Law, […] does not expose the Appellants to a heavier penalty than the maximum penalty available under international law." (para. 122) "It is quite likely that the alleged perpetrators of these acts, committed at the height of the Khmer Rouge's power, did not foresee that they would ever be punished, as a political matter. Lack of foreseeability in this sense provides no defence under international law, however, when the underlying conduct was itself punishable." (para. 123)

ii. *Application of the Principle of Legality*

a. Domestic Crimes

For jurisprudence concerning the ***Statute of Limitations and Domestic Crimes***, see I.B.3.v. Statute of Limitations and Punishability

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"As a further issue, the Pre-Trial Chamber must consider in order to indict, whether the offences of torture and homicide as described in the 1956 Penal Code are still punishable at this time." (para. 89) "In relation to torture, the Pre-Trial Chamber notes that Article 2 of the 1986 No. 27 Decree Law on Arrest, Police Custody, Provisional Detention, Release, Search in Home, On Property and On Individual ('No. 27 Decree Law') deals with a specific form of torture committed by police and other authorities against people under arrest or in custody. Article 49 of this law provides that any law which is contrary to it is abrogated. The Pre-Trial Chamber finds that the 1956 Penal Code provisions on torture are not abrogated because this is not contrary to the provisions in the No. 27 Decree Law and can therefore be applied despite this Decree Law." (para. 90) "The Pre-Trial Chamber finds that the provisions on torture in the 1956 Penal Code can still be applied as they are not contrary to the spirit of the 1992 UNTAC Criminal Code, and the crime of torture is therefore still punishable under the 1956 Penal Code. It is therefore possible to indict for the crime of torture under the 1956 Penal Code." (para. 93) "The provisions of the 1956 Penal Code providing for premeditated murder do not differ in their letter or spirit from the 1992 UNTAC Criminal Code provisions. Premeditated murder is still punishable under the UNTAC Criminal Code although there are apparently different views on the possible sentencing range. Once again, applying Article 73 of the 1992 UNTAC Criminal Code, the Pre-Trial Chamber finds that it is possible to charge with the domestic crime of premeditated murder." (para. 95)
2.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"The applicable criminal law at the relevant time is the Cambodian Penal Code of 1956." (para. 41)
3.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[U]nder Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, […] the 1956 Penal Code was in effect." (para. 170)
4.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011	"The Pre-Trial Chamber recalls that under Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, namely 17 April 1975 to 6 January 1979, the 1956 Penal Code was in effect." (para. 278)

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b. Genocide

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[T]he crimes of genocide and grave breaches of the Geneva Conventions were already part of the international law applicable to Cambodia at the time of the alleged crimes." (para. 108) "[T]he Pre-Trial Chamber considers that even in 1975, the knowledge that the alleged actions indicted under genocide and grave breaches of the Geneva Conventions III and IV were criminal was accessible [...], because of the treaties to which Cambodia was a party, the pre-existing customary nature of the law which those treaties codified, and the nature of the individual rights allegedly infringed." (para. 109) "[T]he General Assembly Resolution and ICJ decision, in addition to the Genocide Convention, put individuals on notice that genocide was an international crime, which would expose violators to prosecution regardless of the deficiencies of a government's domestic laws […]." (para. 114) "[T]he definition of this crime of genocide has been universal, predictable, and constant […]. The accessibility of this definition is only reinforced by the fact that the […] Genocide Convention, […] calls on states to penalize individual breaches of the Convention." (para. 115) "As with genocide, the appalling nature of the offences constituting grave breaches of the Geneva Conventions helps establish the alleged acts as being *malum in se*, so inherently evil as to refute any claim that their perpetrators were unaware of the criminal nature of their acts." (para. 117) "In addition, the *jus cogens* nature of crimes of genocide and grave breaches of the Geneva Conventions alleged in the Closing Order is sufficient to justify prosecution, regardless of the specific provisions of Cambodia's domestic law. As the crimes indicted under genocide and grave breaches in the Closing Order, by their very nature, entail serious violations of fundamental Human Rights of their victims, […] they incur a State's duty to prosecute as part of an effective to the victims under Article 2(3) of the ICCPR […]." (para. 118) "[A]t all times relevant to the Impugned Order, the crimes of genocide […] and grave breaches of the 1949 Geneva Conventions […] retained in that order constituted crimes under international law. Thus, the ECCC has jurisdiction to try the Appellants […]." (para. 124)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[The] conclusion that the crime of Genocide existed in law at the relevant time is substantiated. The Genocide Convention was treaty law which was unquestionably binding on Cambodia, by its accession, at the time of the alleged offences in 1975-79." (para. 243) "Although the Genocide Convention was not implemented in Cambodian law during the period 1975-1979, it is governed by the principle of *pacta sunt servanda*. [...] Article 27 of the 1969 Vienna Convention on the Law of Treaties prohibits parties to a treaty from invoking internal law as justification for failure to perform their obligations. In addition, the *jus cogens* nature of the crime of genocide alleged in the Closing Order is sufficient to justify prosecution, regardless of the specific provisions of Cambodia's domestic law." (para. 244) "[T]he fact that Cambodia did not enact enabling legislation pursuant to its obligation under [...] the Genocide Convention does not relieve the Accused of liability. The enactment of enabling legislation is not a condition for a convention to become binding on its State parties, it is rather an obligation placed upon each State party to complete certain actions subsequent to the adoption of the treaty which has already become through the actions of the State by becoming a Party to the convention." (para. 245) "[T]he conclusion [...] that because the Genocide Convention was 'legally binding on Cambodia' it 'can be considered to have been sufficiently accessible to the Charged Persons as members of Cambodia's governing authorities' is correct and complies with the objective test for accessibility. The fact that genocide was criminal was also accessible to the Accused because of the pre-existing customary nature of the rule which the Genocide Convention codified and because of the nature of the rights allegedly infringed. In this respect, the Pre-Trial Chamber notes that the Genocide Convention was preceded in

		1946 by a Resolution of the General Assembly of the United Nations recognising genocide as an international crime and agrees that it would have been putting individuals on notice that they would be subject to prosecution and could not invoke their own domestic laws in defence to such charge." (para. 246) "Furthermore, the definition of this crime of genocide has been universal, predictable and constant, being defined identically in the Genocide Convention and the ECCC Law." (para. 248)

c. Crimes against Humanity

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"Following World War II, the definition and elements of crimes against humanity as an international crime were established under customary international law […]." (para. 130) "[I]t is true […] that […] the ILC was unable to adopt an agreed definition for crimes against humanity […]. However, the Pre-Trial Chamber does not consider that this indicates that a sufficient definition for crimes against humanity under customary international law was lacking from 1975-1979." (para. 131) "The Pre-Trial Chamber does not agree either that the failure of the international community since the Nuremberg Principles to enact a specialized convention for crimes against humanity indicates that a firm definition of crimes against humanity as a matter of customary international law was lacking […]. [E]ven if treaties are enacted they do not necessarily reflect the state of customary international law with respect of their subject matter at the time they are adopted." (para. 132) "[W]hile the *ad hoc* tribunals' jurisprudence has certainly played a role in fleshing out the contours of the elements of crimes against humanity as articulated in the Nuremberg Principles, the Pre-Trial Chamber does not consider that this fact indicates that the definition post-World War II was insufficiently clear. […] [T]he definition of crimes against humanity articulated in the Nuremburg Principles was sufficiently specific in the period under 1975-1979 under customary international law such that it was foreseeable and accessible […]." (para. 133) "[C]rimes against humanity were criminalised as a matter of customary international law from 1975-1979 as defined under the 1950 Nuremburg Principles." (para. 157)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[I]n 1946, the United Nations General Assembly unanimously affirmed the Nuremberg principles and in 1950 the International Law Commission codified the Nuremberg Principles pursuant to the General Assembly's Direction of 1947. These facts show that crimes against humanity, which are enumerated in the Nuremberg principles, had, by 1950, attained customary status, which is a strong indication that the requirements of accessibility and foreseeability are met. The Pre-Trial Chamber notes that Principle I of the Nuremberg Principles reads: 'any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.' In addition, in late 1950, the General Assembly resolved that the Nuremberg Principles be sent to the governments of Member States, and that any comments and observations made as a result would assist in the preparation of a future draft code of offences against the peace and security of mankind. The Pre-Trial Chamber notes that the definition of crimes against humanity in the Nuremberg Principles, which is similar to that in the ECCC Law, was sufficiently specific by 1975 under customary international law. The Pre-Trial Chamber finds that such circumstances, as the ones mentioned in the Closing Order, combined with the appalling nature of such crimes, would have been putting individuals on notice that they would be subject to prosecution for crimes against humanity." (para. 253)

d. Crimes against Humanity (Armed Conflict Requirement)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011	"[I]t is not clear, as a matter of customary international law, whether the armed conflict nexus requirement was severed prior to, or during, the temporal jurisdiction of the ECCC." (para. 137) "[A]t the time of its genesis, crimes against humanity required a nexus to armed conflict." (para. 139) "In sum, in the absence of clear state practice and *opinio juris* from 1975-1979 evidencing severance of the armed conflict nexus requirement for crimes against humanity under customary international

	Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order	law, the principle of *in dubio pro reo* dictates that any ambiguity must be resolved in the favor of the accused. Thus, […] from 1975-1979 the definition of crimes against humanity in customary international law included an armed conflict nexus requirement as articulated in the IMT Charter and Nuremberg Principles, such that there needs to be […] a link between the underlying acts charged as crimes against humanity and an armed conflict. […] [T]he necessary nexus to an armed conflict includes both international and internal armed conflicts. While the Trial Chamber did not reach this conclusion in the *Duch* Judgment, […] [this] was not specifically challenged by the accused […].” (para. 144)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	“The Pre-Trial Chamber recalls, as noted previously, that the definition of crimes against humanity was first codified in international law under Article 6(c) of the Nuremberg (IMT) Charter. Embedded within that definition is the so-called armed conflict nexus requirement [...] This requirement was also included in the Nuremberg Principles.” (para. 306) “The Pre-Trial Chamber observes that the ICTY jurisprudence has held that the explicit requirement of a nexus in the Nuremberg Charter and Nuremberg Principles was peculiar to that tribunal. [...] The Pre-Trial Chamber observes that, in general terms, it has to show caution in relying to ICTY findings where it discusses the state of customary international law because the cases before ICTY relate to a different point in time from that which is within ECCC's jurisdiction. Also, the Pre-Trial Chamber has to observe the difference between ICTY discussing the state of customary law for the purpose of finding an accurate definition of a crime as opposed to ICTY discussing the state of customary law for the purpose of determining whether a crime existed at a certain time. For the purposes of examining the issues raised in this Appeal, the Pre-Trial Chamber shall examine the state of customary international law in 1975-79 to the extent that it establishes or not the existence of a crime or form of liability at that time.” (para. 307) “[A]t the time of its genesis, crimes against humanity required a nexus to armed conflict.” (para. 308) “[I]t is not clear from the material available, whether the nexus was severed prior to, or during, the temporal jurisdiction of ECCC.” (para. 309) “[I]n the absence of clear State practice and *opinio juris*, this Chamber nonetheless remains unable to identify the crucial tipping point between 1968 and 1984 when the transition occurred. According to the principle of *in dubio pro reo*, any ambiguity such as this must be resolved in the favour of the accused.” (para. 310) “[T]he Pre-Trial Chamber determines that the definition of crimes against humanity in the Nuremberg Charter and Nuremberg Principles continued to apply in the period 1975 to 1979, such that a connection to crimes against peace or war crimes remained a necessary element. It is pertinent to note, however, that as war crimes are prohibited under customary international law both in international and internal contexts, the necessary nexus to armed conflict need not be international in character.” (para. 311)
3.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	“At the outset, the Pre-Trial Chamber notes that crimes against humanity were first developed as an extension of war crimes in the context of armed conflicts. The Pre-Trial Chamber recalls its finding that the laws of humanity' were firmly based in the laws and customs of war and that the drafters of the Nuremberg Charter, which codified crimes against humanity, ensured a connection to an armed conflict in order to avoid allegations that the resulting convictions went beyond that provided for under international customary and conventional law” (para. 35) “The Pre-Trial Chamber agrees that a cursory reading of the Nuremberg Charter and of its negotiating history, can lead to interpretations in both ways as to the nature, either jurisdictional or material, of the Nexus.” (para. 37) “The Pre-Trial Chamber indeed considers that a number of elements support the finding that the Nexus in the Nuremberg Charter was only jurisdictional in nature, such as the use of terms 'within the meaning of the Charter' or 'as defined by the Charter' […] the Pre-Trial Chamber finds significant that at least one of the four judges of the Nuremberg Tribunal made clear that no Nexus was required in the definition of crimes against humanity.” (para. 38) “If the drafters of Control Council Law No. 10 had wanted to limit the definition of crimes against humanity to acts committed before or during the war, or in connexion with an armed conflict, they would have written it.” (para. 41)

		"While it [the Nuremberg Tribunal] found that the Nexus requirement had to be proved, as correctly pointed out by the Appellant, it discussed it in jurisdictional rather than material terms and found that it lacked jurisdiction if not proved. In that sense the Tribunal stated that it 'can see no purpose nor mandate in the chartering legislation of this Tribunal requiring it to take jurisdiction of such [crimes committed before and wholly unconnected with the war]'." (para. 42) "[T]he Pre-Trial Chamber finds that it was reasonable to infer from the removal of the Nexus, combined with the Tribunal's findings in those cases, that the notion of crimes against humanity existed independently from that of armed conflict in the Nuremberg Charter. In particular, the Tribunal clearly stated that '[t]his law is not restricted to events of war. It envisages the protection of humanity at all times', that it 'has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law' and that Control Council Law No. 10 provided for the punishment of crimes where there is proof of 'conscious participation in systematic government organized or approved procedures amounting to atrocities […] against populations […]'." (para. 43) "Taken together, this jurisprudence represents the beginning of a tendency in national and international practice to attempt to distinguish crimes against humanity from ordinary crimes by requiring, instead of the war nexus, a link to some kind of authority." (para. 45) "The Pre-Trial Chamber recalls that genocide was a subset of crimes against humanity in 1948. […] the Pre-Trial Chamber does not find the Genocide Convention irrelevant to the determination of the Nexus. Although the Genocide Convention did not by itself change the general requirement of a connection to armed conflict other than genocide, the Pre-Trial Chamber concurs with the finding that it constituted a significant step in the recognition by the international community that in general 'international crimes can be committed against civilians in times of peace and war alike'." (para. 51) "[T]he Pre-Trial Chamber reiterates that, while the Statutory Limitations Convention and the Apartheid Convention may not have by themselves change the Nexus requirement for all crimes against humanity, they can be considered together relevant to the 'expansion of the content and legal status of crimes against humanity' and evidence of the 'continuing' 'progressive and consistent evolution of the definition of crimes against humanity which had severed the Nexus from their constitutive elements'." (para. 57) "[T]he Pre-Trial Chamber endorses the Supreme Court Chamber's finding that the jurisprudence of the European Court of Human Rights, as well as national legislation enacted prior to 1975 and a number of national court decisions, defined crimes against humanity with respect to conduct occurring prior to 1975 absent a Nexus." (para. 58) "The Pre-Trial Chamber recalls that the principle of legality requires to examine whether there was a sufficiently specific definition of crimes against humanity under customary international law in 1975-1979 such that it was both foreseeable and accessible to the Appellant that he could be prosecuted for such crime absent a Nexus. Contrary to the Appellant's contention, there is no general requirement of 'long and consistent stream of judicial decisions, international instruments and domestic legislation' to establish foreseeability." (para. 64) "Having concluded that a series of public international instruments and decisions clearly showed the gradual exclusion of the Nexus in customary international law starting from 1945, the Pre-Trial Chamber considers that the International Co-Investigating Judge properly found that it was foreseeable to the Appellant, if necessary by seeking legal advice, that he could be prosecuted for such crimes. The Pre-Trial Chamber further considers that the definition of crimes against humanity in 1975-1979 was sufficiently specific in the sense 'generally understood' which, combined with the appalling nature of such crimes, leaves no room for entertaining claims that an accused would not know of the criminal nature of the acts or of criminal responsibility for such acts." (para. 65)

e. Crimes against Humanity (Imprisonment)

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011	"[T]he ECCC Law specifically provides for 'imprisonment' as a crime against humanity in its own right in Article 5 and [...] imprisonment was not enumerated as a crime against humanity in the Nuremberg (IMT) and Tokyo (IMTFE) Charters." (para. 317)

	Decision on IENG Sary's Appeal against the Closing Order	"The Pre-Trial Chamber observes that the unlawful confinement of civilians has long been prohibited as an offence under the laws of war." (para. 320) "[O]n the basis of Control Council Law No. 10 and the post World War II jurisprudence, the Pre-Trial Chamber finds that 'imprisonment' arose as a crime against humanity in its own right under customary international law by 1975." (para. 327) "The Pre-Trial Chamber finds that the instruments adopted by most States before the temporal jurisdiction of the ECCC, albeit not criminalising an offence of illegal imprisonment, together with the jurisprudence post World War II, confirm that it was accessible and foreseeable to the accused that arbitrary imprisonment might entail criminal liability." (para. 331) "The Pre-Trial Chamber therefore finds that the offence of imprisonment as a crime against humanity not only existed in 1975-1979 but was also adequately specific in the sense 'generally understood,' which combined with the appalling nature of the crime, especially where committed in a widespread and systematic manner, leaves no room for entertaining claims that an accused would not know of the criminal nature of the acts or of criminal responsibility for such acts. It was therefore sufficiently accessible and foreseeable to the Accused that he could be held criminally responsible for arbitrarily imprisoning Cambodian citizens or citizens under his control in a widespread or systematic manner." (para. 332)

f. Crimes against Humanity (Torture)

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he ECCC Law specifically provides for 'torture' as a crime against humanity in its own right in Article 5 and [...] torture was not enumerated as a crime against humanity in the Nuremberg (IMT) Charter or the Nuremberg Principles." (para. 338) "Torture has long been prohibited as a violation of the laws of war." (para. 342) "[O]n the basis of Control Council Law No. 10 and the post World War II jurisprudence, torture arose as a crime against humanity in its own right under customary international law by 1975." (para. 351) "The prohibition, which is said to be absolute, was in 1975, enshrined in several human rights instruments, international and regional." (para. 353) "The Pre-Trial Chamber agrees that the Declaration on Torture codified the pre-existing customary law and finds that by 1975-1979, it was sufficiently clear under international customary law that torture as a crime against humanity, akin to a war crime, encompassed the two elements of i) inflicting severe pain or suffering on a person (physical or mental) ii) with a specific purpose of obtaining information or a confession, to punish or intimidate. The Pre-Trial Chamber takes no position on whether the Torture Convention constituted an evolution of the definition of torture by adding purposes for which acts of torture may be committed or merely codified customary law, as it finds that a sufficiently comprehensive definition of torture as a crime against humanity had arose by 1975 and that accordingly, such conduct was considered to be criminal in the sense generally understood and therefore foreseeable from that point in time. All of these combined with the appalling nature of crimes of torture committed in a widespread and systematic manner leaves no room for entertaining claims that an accused would not know of the criminal nature of the acts or of criminal responsibility for such." (para. 355)

g. Crimes against Humanity (Rape)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011	"The Pre-Trial Chamber concurs with the ICTY […] that '[r]ape is one of the worst sufferings a human being can inflict upon another.' The act of rape is abhorrent and deeply shocking to any reasonable human being. Rape constitutes a gross violation of the victim's physical integrity, in addition to inflicting lifelong and severe consequences upon the victim's mental well-being." (para. 150) "It is […] clear that rape was a war crime before 1975 […]." (para. 151)

	Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order	"This Chamber has held that where the constitutive elements are not identical, domestic and international crimes are to be treated as distinct crimes. As such, rape as a domestic crime cannot simply be imported into international law as a crime against humanity by recourse to the general principles of law recognised by civilised nations. Rather, such principles may serve to assist in clarifying the *actus reus* and *mens rea* of rape once the existence of the chapeau elements for rape as a crime against humanity have already been established." (para. 153) "[T]he OCIJ erred in charging rape as an enumerated crime against humanity from 1975-1979 under customary international law. […] However, the Pre-Trial Chamber agrees with the OCIJ that '[t]he facts characterized as crimes against humanity in the form of rape can additionally be categorized as crimes against humanity of other inhumane acts' and, therefore, are to be charged as such." (para. 154)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Article 5 of the ECCC Law also enumerates rape as a crime against humanity in its own right." (para. 362) "The Pre-Trial Chamber, after an examination of these sources used by the Co-Investigating Judges, observes that such sources do not explicitly support a proposition that by 1975 rape existed as a 'crime against humanity,' rather many of them condemn the act and occasionally give an indication as to its gravity." (para. 364) "Despite the explicit enumeration of rape in Article 5 of the ECCC Law, the Pre-Trial Chamber shall make its own assessment to determine whether there was a rationale for its inclusion by an examination of whether rape existed in fact in international law as a crime against humanity in its own right by 1975." (para. 366) "The Pre-Trial Chamber notes that the offence of rape has long been prohibited as a war crime, with its nascence dating back at least to the Lieber Code of 1863." (para. 367) "Prior to 1975, rape was criminalised as a crime against humanity only in Control Council Law No. 10, though examples of conviction for rape pursuant to this law were not provided to this Chamber, nor could the Chamber find any such examples." (para. 368) "An alternative source of international law is 'the general principles of law recognized by civilized nations.' The Pre-Trial Chamber finds that rape was near universally criminalised under the domestic criminal laws of states, albeit using varying definitions of rape. Indeed, this Chamber has been unable to locate an example of a legal system that failed to criminalise rape by 1975. However, rape as a crime against humanity is necessarily composed of *chapeau* elements common to all crimes against humanity, such as the requirement that the act form part of a 'widespread or systematic attack.' Rape as it is defined under domestic criminal codes does not contain such element. [...] The Pre-Trial Chamber, therefore, finds that rape cannot simply be imported into international law as a crime against humanity in its own right by recourse to the general principles of law recognized by civilized nations. Consistent with ICTY jurisprudence, such principles may serve merely to assist in clarifying the *actus reus* and *mens rea* of rape once the existence of the crime has already been established." (para. 370) "The Pre-Trial Chamber finds that by 1975 rape did not exist under international law in its own right as an enumerated crime against humanity. However, the Pre-Trial Chamber opines that the material facts pleaded in the Closing Order with respect to rape may potentially amount to the crime against humanity of an 'other inhumane act.'" (para. 371)

h. Crimes against Humanity (Other Inhumane Acts)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG*	"[T]he Pre-Trial Chamber notes that 'other inhumane acts' is *in itself* a crime under international law.'" (para. 156) "[T]he category of 'other inhumane acts' as crimes against humanity was criminalised as a matter of customary international law by 1975." (para. 157) "While Principle VI(c) [of the Nuremberg Principles] articulates specific acts that constitute crimes against the laws of humanity, it nevertheless provides a non-exhaustive list and includes 'other inhumane acts' as a residual category, in order to, in the spirit of the Martens Clause, avoid creating an opportunity for evasion of the laws of humanity." (para. 158)

	Thirith against the Closing Order	"[T]he principle of legality requires that it must determine whether there was a sufficiently specific definition of 'other inhumane acts' that existed under customary international law from 1975-1979 clarifying when certain conduct rises to the level of 'other inhumane acts' such that it was both foreseeable and accessible that it could be prosecuted as crimes against humanity." (para. 159) "[W]hen looking at the plain meaning of 'other inhumane acts' the word 'other' imports an *ejusdem generis* rule of interpretation, whereby this category can only include acts which are 'inhumane' in the sense that they are of similar nature and gravity to those specifically enumerated: namely, murder, extermination, enslavement and deportation." (para. 160) "[I]t is further considered that the category of 'other inhumane acts' as crimes against humanity was specifically designed as a residual crime to avoid *lacunae* in the law, and that the term is rendered meaningless without applying an *ejusdem generis* canon of construction. Thus, the rule against analogy is inapplicable to 'other inhumane acts.'" (para. 161) "[The Nuremberg] Tribunals […] relied upon the settled scope of war crimes under international law to inform the content of crimes against humanity, including 'other inhumane acts.' […]." (para. 162) "[B]y 1975 it was foreseeable that inhumane acts criminalized by the international laws of war could similarly be criminalised under customary international law as crimes against humanity. Thus, the definition of 'other inhumane acts' was likely to encompass acts that would amount to serious violations or breaches of [various] instruments." (para. 163) "[F]rom 1975-1979, provided that the requisite chapeau and *mens rea* existed, an impugned act or omission constituted an 'other inhumane act' as a crime against humanity where it was of a similar nature and gravity to the enumerated crimes against humanity of murder, extermination, enslavement or deportation, such that: 1) it seriously affected the life or liberty of persons, including inflicting serious physical or mental harm on persons or 2) was otherwise linked to an enumerated crime against humanity. In determining what constitutes 'inhumane' conduct, reference could be made to 1) serious breaches of international law regulating armed conflict from 1975-1979 […] or 2) serious violations of the fundamental human rights norms protected under international law at the relevant time." (para. 164) "[T]his definition of the *actus reus* for 'other inhumane acts' under customary international law was sufficiently specific such that it was accessible and foreseeable to the Appellant that certain types of conduct outside of murder, extermination, enslavement or deportation would be criminalised as crimes against humanity." (para. 165) "With respect of the final matter of whether the OCIJ erred in charging forced marriage, sexual violence and enforced disappearances under the aforementioned definition of 'other inhumane acts', the Pre-Trial Chamber finds that this constitutes a mixed question of law and fact. As such, it is not a jurisdictional issue that may be determined by the Pre-Trial Chamber pursuant to Internal Rule 74(3)(a), but is one for the Trial Chamber to decide at trial." (para. 166)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Pre-Trial Chamber concurs with the ICTY Trial Chamber in *Blagojević* that '[i]t should be stressed that other inhumane acts is *in itself* a crime under international law.' To require that each sub-category of 'other inhumane acts' entail individual criminal responsibility under international law, is to render the category of 'other inhumane acts' otiose; that is, the conduct would have to amount to a crime in its own right, regardless of whether or not it also amounts to a crime as an 'other inhumane act.' The requirements of the principle of legality attach to the entire category of 'other inhumane acts' and not to each sub-category thereof." (para. 378) "[T]he reference, as quoted in the Closing Order, to the Trial Chamber judgment in Case 001 supports a conclusion that the notion of 'other inhumane acts' existed in law as a crime against humanity since 1945 including: Article 6(c) of the Nuremberg Charter, Article 5(c) of the Tokyo Charter and Article II of Control Council Law No. 10." (para. 380) "The Pre-Trial Chamber notes, in addition, that the Nuremberg Charter was in 1945 appended to the London Agreement between France, the USSR, the UK and the USA and that by the end of 1945, nineteen other States had subsequently acceded to the Charter. 'Other inhuman acts' is thus based in treaty law which amount to evidence of the *opinio juris* of those signatory states. The subsequent

		inclusion of 'other inhumane acts' in Article 5(c) of the Tokyo Charter and Article II(1)(c) of Control Council Law No. 10, are relevant as examples of State practice." (para. 381) "Th[e] unanimous endorsement by 1946 by the international community of the Nuremberg Charter and Judgment is a significant indication that by that time criminality for commission of 'other inhumane acts' as 'crimes against humanity' arose as a customary rule of international law." (para. 382) "[T]he requirement of specification will be satisfied where the definition of the crime allows individuals to determine in advance whether certain conduct will or will not fall within its parameters. For obvious reasons, this is especially problematic in the case of a residual category of crime such as 'other inhumane acts." (para. 384) "The ECCC Law does not explicitly provide a definition for 'other inhumane acts', neither has this Chamber found examples of an explicit definition of 'other inhumane acts' in national law or in custom before 1975. For the objective test of accessibility and foreseeability to be met, it is sufficient to find that the notion of the criminal act was clear in the sense 'generally understood' without the necessity to refer to written law. The notion of 'other inhumane acts' was listed in law as a crime against humanity before 1975. Its explicit definition appeared for the first time in law in Article 7 of the Statute of the International Criminal Court [...]." (para. 385) "This first explicit definition of the notion 'other inhumane act' in the ICC Statute does not represent the first time the meaning of 'other inhumane acts' was generally understood, it merely clarifies the objective elements of some of the underlying offences, by making explicit notions that before such definition were only implicit and could therefore be determined only by way of interpretation. [...] [D]ifferences may be discerned between the ICC definition and that laid down in customary international law prior to 1975. Indeed the roots of such definition can be found in the post World War II jurisprudence." (para. 386) "[T]he [...] discussion of the elements of 'other inhumane acts,' as they appear in the post World War II jurisprudence, is purely necessary to establish whether the offence was sufficiently specific by 1975." (para. 387) "The ECCC Law, as well as the Nuremberg Charter, the Tokyo Charter, Control Council No. 10, and the Nuremberg Principles, list certain acts that are deemed to be crimes against humanity including 'other inhumane acts.' The word 'other' imports an *ejusdem generis* rule of interpretation, whereby 'other inhumane acts' can only include acts which are both 'inhumane' and of a 'similar nature and gravity' to those specifically enumerated; namely, murder, extermination, enslavement and deportation." (para. 388) "[T]he Pre-Trial Chamber finds that, by 1975-1979, provided that the requisite *chapeau* and *mens rea* elements existed, an impugned act or omission constituted an 'other inhumane act' as a crime against humanity where it was of a *similar nature and gravity* to the enumerated crimes against humanity of murder, extermination, enslavement or deportation such that: 1) it seriously affected the life or liberty of persons, including *inflicting serious physical or mental harm on persons* or 2) was otherwise *linked to an enumerated crime against humanity*. In this respect it was foreseeable that acts prohibited by the international regulation of armed conflict *on the basis of being inhumane would similarly be prohibited as a crime against humanity*. The definition of 'other inhumane acts' was likely to encompass acts that would amount to serious violations or grave breaches of, *inter alia*, the 1899 Hague Regulations, the 1907 Hague Regulations, the 1929 Geneva Convention and the 1949 Geneva Conventions provided that they would meet the other requirements specific to these instruments." (para. 395) "[A]lthough by 1975 the articulation of the contours of the elements of other inhumane acts as crimes against humanity was not always clear or complete in accordance with our understanding of them today, the principle that an individual may be held criminally responsible for committing crimes which are 'similar in nature and gravity' to the other listed crimes against humanity was established and generally understood." (para. 396) "The Pre-Trial Chamber finds that the crime against humanity of 'other inhumane acts' not only existed in law by 1975 but it was also both foreseeable and accessible to Ieng Sary that he could be indicted for such crimes perpetrated in the period of time 1975-1979." (para. 398)

i. Crimes against Humanity (Forced Marriage)

1.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"The Pre-Trial Chamber, as well as the Trial Chamber, has found that 'other inhumane acts' were established as crimes against humanity under customary international law before 1975. The conduct underlying the crime of 'other inhumane acts' need not itself have had the status of a crime against humanity. The Pre-Trial Chamber has previously ruled that 'other inhumane acts' is in itself a crime under international law and that it is accordingly unnecessary to establish that each of the sub-categories alleged to fall within the ambit of this offence were criminalized. Rather, the principle of legality attaches to the entire category of 'other inhumane acts' and not to each sub-category of this offence." (Opinion of Judges BAIK and BEAUVALLET, para. 9) "The other acts not found in the instruments constitute a broad range of breaches of fundamental individual rights including 'rights to property, a fair trial, equal protection of the law, citizenship, work, education, *marriage*, privacy and freedom of movement.' That said, 'not every denial of a human right was found to constitute a crime against humanity under post-World War II jurisprudence. Rather, the doctrine of *ejusdem generis* was used to interpret the charters of the tribunals to set 'clearly defined limits on types of acts,' which guarantees some degree of precision. The Undersigned Judges agree that this rule is important for it may function as a residual clause covering instances of inhuman behaviour that do not neatly fall under any of the other existing categories of crimes against humanity. Indeed, there is no need to look for traces of criminalization of each underlying act since 'other inhuman acts' already existed as a crime in law. A further requirement for criminality of each sub-category of inhuman behaviour would seriously undermine the important function of 'other inhumane acts' as crimes." (Opinion of Judges BAIK and BEAUVALLET, para. 10) "The Undersigned Judges conclude that although by 1975 the articulation of the contours of the elements of other inhumane acts as crimes against humanity was not always clear or complete in accordance with our understanding of them today, the principle that an individual may be held criminally responsible for committing crimes which are 'similar in nature and gravity' to the other listed crimes against humanity was established and generally understood and was both accessible and foreseeable to the Accused." (Opinion of Judges BAIK and BEAUVALLET, para. 12) "It was clear that conduct of forcing people to act against their will in a way or another could fall under the definition of 'other inhumane acts' by judicial clarification based on the use of the doctrine of *ejusdem generis* on a case by case basis." (Opinion of Judges BAIK and BEAUVALLET, para. 13) "[A]s the ECCC's Supreme Court Chamber has recalled, antecedents to crimes against humanity, dating back to 1868-1907, made reference to 'violations of the [...] "*laws of humanity*",' and to 'violation[s] of [...] *elementary laws of humanity*'. The Supreme Court Chamber stated that 'the juxtaposition of "laws and customs of war" and "laws of humanity" clearly presupposed that the crimes so envisaged would result from offending against *two different legal regimes*.' In the *plain-text reading* of the Undersigned Judges, the phrase 'other inhumane acts' found in Article 6(c) of the Nuremberg Charter does not include the word 'criminal', it rather contains the word 'inhumane'. According to post-World War II jurisprudence also, when addressing the issue of crimes against humanity as violations of international law, the judges stated that '[t]he charge, in brief, is that of conscious participation in a nation-wide government- organized system of cruelty and injustice, in violation of the laws of war *and of humanity*.' (Opinion of Judges BAIK and BEAUVALLET, para. 17)

j. Crimes against Humanity (Enforced Disappearance)

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Undersigned Judges endorse the Supreme Court Chamber's holding that enforced disappearances had not yet crystallised into a discrete category of crimes against humanity in 1975-1979, and that such conduct may qualify as other inhumane acts under Article 5 of the ECCC Law if it satisfies the elements of that crime. They also concur that 'stipulating elements of enforced disappearance […] as though they constituted separate categories of crimes against humanity [is] anachronistic and legally incorrect'. Rather, the only relevant guiding issue, as explicitly held by the Supreme Court Chamber, is whether the conduct in question fulfils the definition of other inhumane acts, considering the specific circumstances of the case at hand." (Opinion of Judges BAIK and BEAUVALLET, para. 272)

k. Grave Breaches of the Geneva Conventions

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[T]he crimes of genocide and grave breaches of the Geneva Conventions were already part of the international law applicable to Cambodia at the time of the alleged crimes." (para. 108) "[T]he Pre-Trial Chamber considers that even in 1975, the knowledge that the alleged actions indicted under genocide and grave breaches of the Geneva Conventions III and IV were criminal was accessible [...], because of the treaties to which Cambodia was a party, the pre-existing customary nature of the law which those treaties codified, and the nature of the individual rights allegedly infringed." (para. 109) "[T]he language of the Geneva Conventions of 1949 was accessible […] and made clear that any violations of the Grave Breaches provisions would be criminally prosecutable." (para. 116) "The Geneva Conventions […] codified pre-existing customary international law. […] As with genocide, the appalling nature of the offences constituting grave breaches of the Geneva Conventions helps establish the alleged acts as being *malum in se*, so inherently evil as to refute any claim that their perpetrators were unaware of the criminal nature of their acts." (para. 117) "In addition, the *jus cogens* nature of crimes of genocide and grave breaches of the Geneva Conventions alleged in the Closing Order is sufficient to justify prosecution, regardless of the specific provisions of Cambodia's domestic law. As the crimes indicted under genocide and grave breaches in the Closing Order, by their very nature, entail serious violations of fundamental Human Rights of their victims, […] they incur a State's duty to prosecute as part of an effective to the victims under Article 2(3) of the ICCPR […]." (para. 118) "[A]t all times relevant to the Impugned Order, the crimes of genocide […] and grave breaches of the 1949 Geneva Conventions […] retained in that order constituted crimes under international law. Thus, the ECCC has jurisdiction to try the Appellants […]." (para. 124)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"It is clear that the Geneva Conventions were treaty law which was unquestionably binding on Cambodia, by its accession, at the time of the alleged offences in 1975-79. [...] The Pre-Trial Chamber also notes that all of the four Geneva Conventions contain a provision explicitly providing that grave breaches of the Conventions merit universal, mandatory criminal jurisdiction among the contracting states. In addition, the *jus cogens* nature of crimes of grave breaches of the Geneva Conventions alleged in the Closing Order is sufficient to justify prosecution, regardless of the specific provisions of Cambodia's domestic law." (para. 256) "As far as accessibility and foreseeability are concerned, [...] the Co-Investigating Judges' conclusion [...] that because the grave breaches Conventions were 'legally binding on Cambodia' it 'can be considered to have been sufficiently accessible to the Charged Persons as members of Cambodia's governing authorities' is also correct. The Pre-Trial Chamber notes that the Geneva Conventions explicitly prohibit and identify offences listed in Article 6 of the ECCC Law and the Closing Order as criminal offences. The fact that Grave Breaches were criminal was also accessible to the Accused because of the pre-existing customary nature of the rule which the Geneva Conventions codified and the nature of the rights allegedly infringed." (para. 257)

l. Superior Responsibility

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG*	"[T]he doctrine of superior responsibility as articulated under Article 29 (new) of the ECCC Law existed as a matter of customary international law by 1975. Although the articulation of the contours of the fundamental elements of the doctrine was not always clear or complete in accordance with our understanding of them today, and the application of those elements to the specific facts in the post World War II cases was at times inconsistent and incomplete, nevertheless, the principle that a superior may be held criminally responsible with respect of crimes committed by subordinates where there is a superior/subordinate relationship with effective control; the *mens rea* of actual or constructive knowledge; and the *actus reus* of failure to act were established. This overview supports the view that the doctrine was also applied in some cases after the second world war to non-military superiors.

	Thirith against the Closing Order	However, the Chamber takes no position in the present appeal as to whether as a matter of customary law by 1975 the doctrine of superior responsibility also applied to civilians." (para. 230) "[S]uperior responsibility applied as a matter of customary international law […] not only with respect of war crimes, but also on charges of crimes against humanity." (para. 231) "In light of the post-World War II international case law […] and the serious nature of crimes against humanity, it was both foreseeable and accessible to Ieng Thirith that she could be prosecuted as a superior, whether military or non-military, for crimes against humanity perpetrated by her subordinates from 1975-1979." (para. 232)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[The] conclusion that all modes of liability existed in law at the time of the alleged offences is substantiated." (para. 260) "[F]or the foreseeability and accessibility test to be complied with in the ECCC it will apply the international standard for the principle of legality, therefore the fact that the notion of command responsibly existed in customary international law is a strong indication thereof." (para. 263) "The Pre-Trial Chamber [...] agrees with the findings of the Trial Chamber in relation to superior responsibility in [...] Judgment in Case 001 that: 1) 'the Nuremberg-era tribunals found that the failure of a superior to carry out his duty to control his subordinates' criminal conduct could lead to individual criminal responsibility;' 2) that, as cited from the ICTY's Appeals' Chamber Decision of 16 July 2003, although Additional Protocol I was adopted in 1977, its Articles 86 and 87 were only declaring the existing position, and not constituting it; and 3) that jurisprudence from the Nuremberg-era tribunals also indicate that superior responsibility was not confined to military commanders under customary international law during the 1975 to 1979 period." (para. 418) "In [...] order for an individual accused to be held liable for the criminal conduct of a subordinate under Article 29 (new) pursuant to the doctrine of superior responsibility, three elements must be demonstrated to exist. First, 'there must have been a superior-subordinate relationship between the accused and the person who committed the crime' with effective command and control or authority and control; second, 'the accused must have known, or had reason to know, that the crime was about to be or had been committed' referred to as the *mens rea* element of actual or constructive knowledge; and third, 'the accused must have failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator' or the *actus reus* by omission element." (para. 420) "[T]he evolution of individual criminal responsibility pursuant to the doctrine of superior responsibility as a customary international law norm was foreshadowed by events in the aftermath of World War I." (para. 421) "However, it was only in the aftermath of World War II that international prosecutions based on the doctrine of superior responsibility were actually carried out. While the doctrine was not expressly provided for under the Nuremberg (IMT) Charter, the Tokyo (IMTFE) Charter or in Control Council Law No. 10, a number of cases of German and Japanese superiors tried before the IMTFE and the Allied military commissions or tribunals articulated and applied the doctrine." (para. 423) "[T]he doctrine of superior responsibility as articulated under Article 29 (new) of the ECCC Law existed as a matter of customary international law by 1975. Although the articulation of the contours of fundamental elements of the doctrine was not always clear or complete in accordance with our understanding of them today, and the application of those elements to the specific facts in the post World War II cases was at times inconsistent and incomplete, nevertheless, the principle that a superior may be held criminally responsible with respect to crimes committed by subordinates where there is a superior/subordinate relationship with effective control; the *mens rea* of actual or constructive knowledge; and the *actus reus* of failure to act was established." (para. 458) "[T]he doctrine of superior responsibility was understood not to be strictly limited to military commanders, but it was also extended to include non-military superiors. Therefore, this jurisprudence indicates that the exact nature of one's role or function as a superior and whether it is *de jure* or *de facto* is less important than the degree of command or authority exercised over one's subordinates." (para. 459) "[T]he doctrine of superior responsibility as charged in the Closing Order with respect to Ieng Sary existed as a matter of customary international law from 1975-1979. In light of the post-World War II

		international case law cited above and the serious nature of the crimes, it was both foreseeable and accessible to Ieng Sary that he could be prosecuted as a superior, whether military or non-military, for such crimes perpetrated by his subordinates from 1975-1979." (para. 460)

m. Joint Criminal Enterprise (JCE)

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"The *Tadić* Appeals Judgement was the first decision of an International Tribunal to trace the existence and evolution of the doctrine of JCE in customary international law. It found that 'the consistency and cogency of the case law and the treaties [it] referred to […], as well as their consonance with the general principles on criminal responsibility laid down both in the Statute and general international criminal law and in national legislation, warrant the conclusion that case law reflects customary rules of international criminal law." (para. 54) "[T]he Pre-Trial Chamber concurs with the approach in *Tadić* that the development of the forms of responsibility applicable to violations of international criminal law has to be seen in light of the very nature of such crimes, often carried out by groups of individuals acting in pursuance of a common criminal design. […] These crimes differ from ordinary crimes not only in scale but also due to the fact that they often take place during conflict. In contrast to ordinary crimes, which are usually perpetrated by an individual or small group of individuals, these crimes are often only made possible by the involvement of state organs pursuing criminal policies and using all available means to those criminal ends." (para. 55) "The Pre-Trial Chamber will not limit its assessment of whether *Tadić* incorrectly determined that JCE liability existed under customary international law (in 1992) to a review of the authorities the ICTY Appeals Chamber relied upon. Indeed, […] the statement in *Tadić* that customary international law permitted the application of the 'notion of common purpose' to crimes within the jurisdiction of the Tribunal 'is reinforced by the use made of the doctrine of common plan or enterprise in the […] instruments of the post-World War II tribunals' […]." (para. 57) "The States Parties to these international instruments recognized that persons responsible for the commission of international crimes are not limited to those who physically perpetrate such crimes. Instead, individuals will also be responsible when they intentionally participate in the formulation or execution of a common plan or enterprise involving the commission of such crimes. This constitutes undeniable support of the basic and systemic forms (JCE I & II) of JCE liability." (para. 58) "The Pre-Trial Chamber considers that the case law from the above-mentioned military tribunals offer an authoritative interpretation of their constitutive instruments and can be relied upon to determine the state of customary international law with respect to the existence of JCE as a form of criminal responsibility at the time relevant […]." (para. 60) "[The ILC] described the principle of international responsibility and punishment for crimes under international law recognized at Nuremberg as the 'cornerstone of international law'. […] Draft Codes of the ILC do not constitute state practice relevant to the determination of a rule of customary international law, but merely represent a subsidiary means for the determination of rules of law. However, 'they may reflect legal considerations largely shared by the international community, and they may expertly identify rules of international law'." (para. 61) "The *Justice* and *RuSHA* judgements do not speak in terms of 'joint criminal enterprise'. However, the Pre-Trial Chamber finds that the legal elements applied by the Military Tribunal to determine the liability of the accused are sufficiently similar to those of JCE […] and constitute a valid illustration of the state of customary international law with respect to the basic form and systemic form of JCE (JCE I & II)." (para. 65) "In the light of the London Charter Control Council Law No 10, international cases and authoritative pronouncements, the Pre-Trial Chamber has no doubt that JCE I and JCE II were recognized forms of responsibility in customary international law at the time relevant for Case 002. This is the situation irrespective of whether it was appropriate for *Tadić* to rely on the ICC draft Statute and on the International Convention for the Suppression of Terrorist Bombing." (para. 69) "In light of its finding that JCE I and II are forms of responsibility that were recognized in customary international law since the post-World War II international instruments and international military case

		law as discussed above, as well as its earlier finding that these forms of liability have an underpinning in the Cambodian law concept of co-authorship applicable at the time, the Pre-Trial Chamber has no doubt that liability based on common purpose, design or plan was sufficiently accessible and foreseeable to the defendants." (para. 72) "Having reviewed the authorities relied upon by *Tadić* in relation to the extended form of JCE (JCE III) the Pre-Trial Chamber is of the view that they do not provide sufficient evidence of consistent state practice or *opinio juris* at the time relevant to Case 002. The Pre-Trial Chamber concludes that JCE III was not recognized as form of responsibility applicable to violations of international humanitarian law […]." (para. 77) "The Pre-Trial Chamber notes that the Nuremberg Charter and Control Council Law No. 10 do not specifically offer support for the extended form of JCE (JCE III). The Pre-Trial Chamber does not find that the two additional international instruments referred to by *Tadić*, which were not in existence at the time relevant to Case 002, could serve as a basis for establish the customary law status of JCE III in 1975-1979." (para. 78) "As to the international case law relied upon by *Tadić*, […] in the absence of a reasoned judgement in these cases, one cannot be certain of the basis of liability actually retained by the military courts." (para. 79) "*Tadić* also relied on several cases brought before Italian Courts after World War II […]. These cases, in which domestic courts applied domestic law, do not amount to international case law and the Pre-Trial Chamber does not consider them as proper precedents for the purpose of determining the status of customary law in this area." (para. 82) "[T]he Pre-Trial Chamber does not find that the authorities relied upon in *Tadić*, and as result those relied upon in the Impugned Order, constitute a sufficiently firm basis to conclude that JCE III formed part of customary international law at the time relevant to Case 002." (para. 83) "The Pre-Trial Chamber is of the view that it does not need to decide whether a number of national systems, which can be regarded as representative of the world's major legal systems, recognise that a standard of *mens rea* lower than direct intent may apply in relation to crimes committed outside the common criminal purpose and amount to commission. Indeed, even if this were the case and the Chamber found that the third form of JCE was punishable in relation to international crimes, the Pre-Trial Chamber is not satisfied that such liability was foreseeable to the Charged Persons in 1975-1979, *i.e.*, that crimes falling outside the common criminal purpose but which were natural consequences of the realization of that purpose and foreseeable to them could trigger their responsibility as co-perpetrators. The Pre-Trial Chambers notes in this respect that, although it found that the basic and systemic forms of JCE (JCE I & II) had an underpinning in Cambodian law at the time relevant to Case 002, the core of this doctrine is the common criminal purpose and the intent shared by the members of the JCE that the crime(s) forming part of it be committed. JCE III purports to attach liability for crimes falling outside the common criminal purpose but which were natural consequences of the realization of that purpose and foreseeable to the accused. The Pre-Trial Chamber has not been able to identify in the Cambodian law, applicable at the relevant time, any provision that could have given notice to the Charged Persons that such extended form of responsibility was punishable as well. In such circumstances, the principle of legality requires the ECCC to refrain from relying on the extended form of JCE in its proceedings." (para. 87)

n. Planning

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[N]o error transpired in applying Planning in the Closing Order (Indictment). […] [S]tate practice and *opinio juris* evidence that Planning is properly applicable as a mode of liability to all criminal acts (not only crimes against peace) as is demonstrated by, *inter alia,* (i) the Nuremberg Tribunal and (ii) the Cambodian Penal Code of 1956. Moreover, the International Judges are not convinced at this time that (iii) international instruments – which have no bearing on the crystallisation of Planning as a mode of liability (*e.g.*, the Genocide Convention or the Rome Statute) – may impact and abolish the existence of Planning within customary international law." (Opinion of Judges BAIK and BEAUVALLET, para. 583) "First, consistent with state practice and *opinio juris* within customary international law, […] Planning emerged as a mode of responsibility in the aftermath of World War II and was first enshrined in the

		Nuremberg Charter in 1945 – applicable to all crimes. The first paragraph of Article 6 of the Nuremberg Charter expressly mentions, in the context of individual criminal responsibility, a prohibition concerning crimes against peace, listing among proscribed conduct: '[…] planning, preparation, initiation […]'.The final paragraph in Article 6 […] reinforces this principle of Planning for all the crimes within the Tribunal's jurisdiction, articulating that: '[l]eaders, organisers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan'. Similarly, the Control Council Law No. 10 from 1945 enshrines criminal responsibility for individuals connected with plans or enterprises involving the commission of crimes." (Opinion of Judges BAIK and BEAUVALLET, para. 584) "Planning was retained as one of the modes of responsibility to convict accused persons for crimes against humanity at the Nuremberg Tribunal, which confirms that this mode of liability was properly in force by 1975-1979, as articulated in Article 6 of the Nuremberg Charter. […] [E]ven if the word 'planning' is not always explicitly used in the aforementioned instruments, the conduct referred to – such as participating in the formulation or design of a common plan or conspiracy – falls within the scope of the definition of Planning that was crystallised by the *ad hoc* Tribunals and the ECCC's jurisprudence." (Opinion of Judges BAIK and BEAUVALLET, para. 585) "Consequently, the International Judges concur with the findings of the Trial Chamber and the Supreme Court Chamber that the provisions of Article 29*new* of ECCC Law – including Planning as a mode of responsibility – properly qualify as customary international law recognised since the Nuremberg cases of 1945 and has been reaffirmed ever since." (Opinion of Judges BAIK and BEAUVALLET, para. 586) "Second […] the Cambodian Penal Code of 1956, one source of law directly binding on the ECCC, explicitly criminalises the planning and preparation of a criminal conduct. The 1956 Penal Code evidences the existence of Planning as a proper mode of responsibility in 1975-1979, as well as its foreseeability and accessibility to the Accused." (Opinion of Judges BAIK and BEAUVALLET, para. 587) "Third, concerning the absence of Planning in certain international instruments, the International Judges find that the Genocide Convention does not impact the existence of Planning and is otherwise irrelevant because that Convention is aimed at articulating the underpinnings of genocide only, without a focus on modes of liability in the context of customary international law. Moreover, the Rome Statute (including the absence of Planning in certain sections) is not a binding instrument at the ECCC; its provisions do not always reflect customary international law and cannot impact the existence of Planning within customary international law, originally from the Nuremberg Tribunal." (Opinion of Judges BAIK and BEAUVALLET, para. 588)

o. Statute of Limitations

For jurisprudence on the ***Statute of Limitations,*** see I.B.3.v. Statute of Limitations and Punishability

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"There is no basis either under the plain language of Article 15(1) of the ICCPR for extending the principle of legality to govern conditions of prosecution beyond a retroactive change to the substance of the crimes or penalties between the time a crime is committed and prosecuted. […] [T]he principle of legality under Article 15(1) of the ICCPR does not 'refer directly to limitation periods […].' […] The underlying purposes of the principle of legality in safeguarding fairness and legal certainty require that it is sufficiently foreseeable and accessible to an accused that his or her conduct is criminal at the time of its commission. As the principle of legality, in its *strict sense*, does not require that it be sufficiently foreseeable or accessible to an accused that he or she may or may not be prosecuted depending on the applicable statute of limitations period and whether it is suspended or lifted in the future […]." (para. 183)

2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[The] principle of legality is respected where the charged crimes are provided for under the ECCC Law as well where they have existed in national or international law at the time of the alleged criminal conduct. Here, the Co-Lawyers acknowledge that the indicted crimes of homicide, torture and religious persecution set out in Article 3 (new) were criminalised in 1975-1979 and do not dispute that prosecution for these crimes was foreseeable in 1975-1979." (para. 281) "As noted by the international Judges in the Trial Chamber in Case 001, the principle of legality under Article 15(1) of the ICCPR does not 'refer directly to limitation periods. [It does] not unequivocally interpret the scope of international fair trial principles in relation to the retroactive consideration or repeal of statutes of limitations.' The Pre-Trial Chamber notes however that the ECtHR has considered that the reactivation of a criminal action which had already become subject of limitation might violate the principle of foreseeability inherent to the principle of legality enshrined in Article 15(1). This is not the case however, where the extension of the statute of limitations occurs before its expiry. [...]The Pre-Trial Chamber considers that the extension of the statute of limitation before its expiry is a matter of State policy and does not trigger any issue with regards to the principle of legality." (para. 282) "The Pre-Trial Chamber observes that the 10 year period prescription for the national crimes provided for in the 1956 Penal Code had elapsed by the time the ECCC Law was adopted, in 2001. The ECCC Law only provides for an extension of the statute of limitation for the future, without explicitly addressing the issue of whether the crimes were time-barred at the time and thus the law had the effect of reopening cases after the expiry of the statute of limitation or whether the prescription has been tolled." (para. 284) "The underlying principle of statutes of limitations is to provide for a time frame within which criminal proceedings must be instituted. As such, it presupposes that judicial institutions operate effectively, so proceedings can be instituted. State practice contains several examples where statutes of limitation were suspended on the basis that the judicial institutions were not functioning, notably as a result of an ongoing conflict or a dictatorship regime. Suspension of statutes of limitations when judicial institutions are not functioning is also perceived as being necessary to protect the victims' right to reparation of serious violations of human rights resulting from crimes such as the ones subject to the jurisdiction of the ECCC, through prosecution of the authors of the crimes. The Pre-Trial Chamber therefore agrees with and adopts the Trial Chamber unanimous finding that statutes of limitation do not run where the judicial institutions are not functioning." (para. 285) "The Pre-Trial Chamber further agrees with and adopts the finding of the three-Judge majority of the Trial Chamber Cambodian Judges that 'from 1979 until 1982, the judicial system of the People's Republic of Kampuchea did not function at all' and, 'until the Kingdom of Cambodia was created by the promulgation of its Constitution on 24 September 1993, a number of historical and contextual considerations significantly impeded domestic prosecutorial and investigative capacity'. It is observed that the Trial Chamber majority Judges attributed the lack of national judicial capacity between 1979 until 1982 to 'the destruction of the judicial system by the Democratic Kampuchea regime' of which the accused is alleged to be one of the senior leaders and acknowledged that 'a lengthy period was needed to re-establish a judicial system and to educate lawyers, prosecutors and judges'. They further state that domestic prosecution and investigation of the crimes allegedly committed by the Democratic Kampuchea regime was impeded between 1982 and 1993 by the ongoing civil war waged by the Khmer Rouge, who were occupying part of the country and still considered as one of its representative by the international community, and the resulting difficulty in achieving peace while bringing the responsible of crimes committed during the DK era to justice. The Pre-Trial Chamber agrees with and adopts the consequent conclusion of the Cambodian Judges in the Trial Chamber in their opinion that 'the limitation period with respect to the domestic crimes […] started to run, at the earliest, on 24 September 1993'. It further notes that the accused cannot benefit from the passage of time for such period where he is alleged to be in part responsible for the incapacity of the judicial system to conduct investigation and prosecution." (para. 286) "The Pre-Trial Chamber finds that the 10 year statute of limitation of the 1956 Penal Code, which started to run on 24 September 1993, had not expired in 2001. Therefore, the extension by the National Assembly in 2001 and 2004, respectively for 20 and then 30 years, did not violate the principle of legality." (para. 287)

B. Jurisdiction of the ECCC

1. Temporal, Geographical Jurisdiction

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Co-Lawyers complain about the Co-Investigating Judges considering acts that fall outside the temporal jurisdiction of the ECCC, which represents an argument related to issues of fact and law that are better addressed at trial. Having thus observed, the Pre-Trial Chamber notes, that discussion of issues outside of the time of indictment can be relevant as to the context and continuation of conduct." (para. 88)

2. Personal Jurisdiction

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he ECCC has a limited jurisdiction for two specific categories being the senior leaders of the Democratic Kampuchea and those most responsible for the crimes within ECCC's jurisdiction." (para. 66)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The determination of whether IM Chaem was among 'those most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. However, the discretion of the Co-Investigating Judges in making this determination is a judicial one and does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms 'senior leaders' and 'those who were most responsible' represent the limits of the ECCC's personal jurisdiction. While the flexibility of these terms inherently requires some margin of appreciation on the part of the Co-Investigating Judges, this discretion is not unlimited and does not exclude control by the appellate court. Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that IM Chaem does not fall into the "most responsible" category, and thus does not fall under the Court's personal jurisdiction, pursuant to the standard of review applicable to discretionary decisions." (para. 20) "The determination that there is no personal jurisdiction is not unreviewable, and the Pre-Trial Chamber, as an appellate chamber, must be able to review the findings that led to it, including those regarding the existence of crimes or the likelihood of IM Chaem's criminal responsibility." (para. 26) "Pursuant to Article 2 *new* of the ECCC Law and the Preamble of the ECCC Agreement, the ECCC is a specialised court established within the existing Cambodian court system. Articles 1 and 2(1) of the ECCC Agreement, mirrored by Articles 1 and 2 *new* of the ECCC Law, expressly address the personal jurisdiction of the ECCC and limit it to senior leaders of Democratic Kampuchea and those most responsible for certain crimes committed during the Khmer Rouge era. Nothing in the applicable law suggests that the ECCC would have exclusive jurisdiction over other Khmer Rouge-era cases." (para. 76) --- "At the outset, the Undersigned Judges recall that, for the purpose of determining the ECCC's personal jurisdiction, the identification of those who were amongst the 'most responsible' entails the assessment of both the gravity of the crimes alleged or charged and the level of responsibility of the suspect. In the Undersigned Judges' view, this assessment must be done from both a quantitative and

		a qualitative perspective. There is no exhaustive list of factors to be considered in undertaking this review; nor is there a mathematical threshold for casualties, or a filtering standard in terms of positions in the hierarchy. The determination of personal jurisdiction rather requires a case-by-case assessment, taking into account the general context and the personal circumstances of the suspect." (Opinion of Judges BAIK and BEAUVALLET, para. 321) "The Undersigned Judges recall that the assessment of the gravity of alleged or charged crimes relies on factors such as, *inter alia*, the number of victims, the geographic and temporal scope and manner in which they were allegedly committed, as well as the number of separate incidents. The nature and scale of the alleged or charged crimes, as well as their impact on the victims, are also indicators of the gravity of the given conduct." (Opinion of Judges BAIK and BEAUVALLET, para. 327) "In this regard, the Undersigned Judges note that the death toll is not the only indicator of victim numbers or the impact of criminal conduct. […] The Co-Investigating Judges' decision to rely on a conservative minimum threshold, rather than appreciating, on a balance of probabilities, the range of victim numbers, as well as the varied conduct, scope and impact on direct and indirect victims, resulted in an incomplete assessment of the gravity of IM Chaem's actions." (Opinion of Judges BAIK and BEAUVALLET, para. 330) "The Undersigned Judges finally consider that the exclusion by the Co-Investigating Judges of certain legal characterisations, such as the crimes against humanity of extermination and other inhumane acts by enforced disappearances, […] left unnoticed the specific *mens rea* of the Charged Person and the particular injury caused by those acts, and failed to appreciate their overall impact on the victims. Indeed, while those crimes might be based on the same underlying facts as the crime of murder, their inherent nature, scale and additional suffering caused to the victims are substantially different. The Undersigned Judges thus consider that multiple characterisations do enhance IM Chaem's overall responsibility." (Opinion of Judges BAIK and BEAUVALLET, para. 331) "The Undersigned Judges recall that the level of responsibility of a suspect may be evaluated on the basis of considerations such as the level of participation in the crimes, the hierarchical rank or position, including the number of subordinates and hierarchical echelons above, and the permanence of the position." (Opinion of Judges BAIK and BEAUVALLET, para. 332) "At the outset, the Undersigned Judges observe that the 'obvious initial filtering effect' of a person's formal position in the hierarchy, as applied by the Co-Investigating Judges, should not automatically exclude those at lower levels who are directly implicated in the most serious atrocities." (Opinion of Judges BAIK and BEAUVALLET, para. 334) "In particular, the Undersigned Judges consider it necessary to take into account the full extent of IM Chaem's *de jure* positions throughout Democratic Kampuchea." (Opinion of Judges BAIK and BEAUVALLET, para. 335) "The Undersigned Judges note that IM Chaem also had significant *de facto* roles and responsibilities that clearly exceeded those of the average district secretary." (Opinion of Judges BAIK and BEAUVALLET, para. 336) "Furthermore, the Undersigned Judges take into consideration the fact that IM Chaem, as per her own admissions, was part of the inner circle of the Khmer Rouge hierarchy." (Opinion of Judges BAIK and BEAUVALLET, para. 337) "The Undersigned Judges finally underline IM Chaem's own admission that she was 'continually promoted to a leading level' in her career and 'always chosen to be a leader'." (Opinion of Judges BAIK and BEAUVALLET, para. 338) "[T]he Undersigned Judges find IM Chaem to be amongst the most responsible and thus to fall under the ECCC's personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 339)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019	"The […] personal jurisdiction is confined to senior leaders and those who were most responsible for the crimes. […] [A]lthough the term most responsible is not defined in the ECCC Agreement or Law, guidance for its interpretation can be discerned by looking to international jurisprudence, in light of the object and purpose of the Court's founding instruments. […] [I]nternational jurisprudence establishes that the identification of those falling into this most responsible category includes a

	Considerations on Appeals against Closing Orders	quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect." (para. 140) "The assessment of the gravity of the alleged or charged crimes relies on factors such as, *inter alia*: the number of victims; the geographic and temporal scope and manner in which they were allegedly committed; the number of separate incidents; their nature and scale; and their impact on the victims. The evaluation of a suspect's level of responsibility includes considerations such as, but not limited to, his or her level of participation in the crimes, the hierarchical rank or position (including the number of subordinates and hierarchical echelons above), the permanence of his or her position and the *de facto* roles and responsibilities of the suspect." (para. 141) "Moreover, the determination of personal jurisdiction requires a tailored scope of evidential scrutiny. […] [T]he Pre-Trial Chamber, faced with a personal jurisdictional challenge regarding those who were most responsible, should consider a limited scope of evidence which is strictly required to assess the express question of personal jurisdiction at the pre-trial phase. […] [T]he Pre-Trial Chamber must limit its evaluation to matters material to the determination of personal jurisdiction – the gravity of crimes and/or the level of responsibility of the Accused." (para. 144) "[A]ccordingly […] a challenge to personal jurisdiction regarding those who were most responsible should be aimed at the gravity of crimes and/or the level of responsibility of the Accused. Challenges involving the criminal liability of the Accused beyond this limitation, including contours of crimes or modes of liability, cannot be framed as challenges to personal jurisdiction and are inadmissible." (para. 145) "[T]he determination of whether a person falls among those most responsible is a discretionary judicial decision; left in the hands of the Co-Investigating Judges, this discretion is properly exercised when executed in accordance with well-settled legal principles." (Opinion of Judges BAIK and BEAUVALLET, para. 347) "[A]lthough the term of those who were most responsible is not defined in the ECCC Agreement or Law, its proper interpretation—in light of the object and purpose of the Court's founding instruments—may be discerned by examining the relevant international jurisprudence." (Opinion of Judges BAIK and BEAUVALLET, para. 350) "[T]he […] 'narrow' interpretation […] based on the ECCC's negotiation history and/or statements by the negotiating parties [is] […] only a supplementary means of interpretation under Article 32 of the Vienna Convention to be employed where the interpretation under Article 31 leaves the meaning ambiguous or obscure or leads to an absurd or unreasonable result. This is not the case here." (Opinion of Judges BAIK and BEAUVALLET, para. 351) "The International Judges uphold, as multiple ECCC Chambers have held, that international jurisprudence establishes that the identification of persons falling into those most responsible involves a quantitative and qualitative assessment of (i) the gravity of the crimes alleged or charged and (ii) the level of responsibility of the suspect. […] [T]here is no exhaustive list of factors to be considered in undertaking this review nor is there a filtering standard in terms of positions in the hierarchy or a mathematical threshold for casualties. Rather, assessing personal jurisdiction requires a case-by-case assessment, taking into account the general context and the personal circumstances of the suspect." (Opinion of Judges BAIK and BEAUVALLET, para. 352) "[T]he considerations which may be properly assessed in determining the gravity of alleged crimes have been well-delineated and implicate factors such as, *inter alia*, the nature and scale of the alleged or charged crimes, their impact on the victims, the number of victims, the geographic and temporal scope and manner in which they were allegedly committed, as well as the number of separate incidents. The geographic scope of the crime is one of the multiple factors, but not a determinative one." (Opinion of Judges BAIK and BEAUVALLET, para. 551) "[T}here is no mathematical threshold for casualties which evidence must surpass in assessing the gravity of the crimes for determining the personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 555) "[T]he evaluation of a suspect's level of responsibility includes considerations such as, but not limited to, his or her level of participation in the crimes, his or her hierarchical rank or position, including the number of subordinates and hierarchical echelons above, the permanence of his or her position and

		his or her *de facto* roles and responsibilities. The […] 'narrow understanding' of personal jurisdiction that only encompasses Khmer Rouge officials who were indispensable in setting and implementing CPK policy and who had a comparatively more significant position in the CPK and role in the most serious crimes, is too limited and wrongly diverges from the well-established approach." (Opinion of Judges BAIK and BEAUVALLET, para. 353) "[T]he International Judges […] consider that the interpretation of the term most responsible is well-established and clear. The International Judges thus find no merit in the […] argument that the International Co-Investigating Judge should have applied the narrowest legal definition of those most responsible under *in dubio pro reo*." (Opinion of Judges BAIK and BEAUVALLET, para. 354) "[T]urning to the purported error of the International Co-Investigating Judge in comparing AO An to IM Chaem and Duch, the International Judges find that the International Co-Investigating Judge did not err in assessing AO An's level of responsibility and/or the gravity of the crimes, including in the comparison with certain Khmer Rouge officials (and not explicitly others). […] [W]hile the assessment of whether a suspect was among the most responsible may include comparison to other Khmer Rouge officials, comparisons to every known Khmer Rouge official are not required or necessary. Moreover, IM Chaem and Duch were Khmer Rouge officials whose personal jurisdiction issues as one of those most responsible were litigated before at the Chambers of the ECCC; this thereby makes an objective analysis of the existence of crimes and the likelihood of criminal responsibility possible." (Opinion of Judges BAIK and BEAUVALLET, para. 358) "[C]omparison to other Khmer Rouge officials is only one of a multitude of factors which the International Co-Investigating Judge properly considered." (Opinion of Judges BAIK and BEAUVALLET, para. 359)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Co-Investigating Judges' findings on whether or not a person is among those 'most responsible' is a discretionary decision, which must be examined according to the standard of review applicable to discretionary decisions." (para. 44) "[T]he discretion enjoyed by the Co-Investigating Judges in making determination of the ECCC's personal jurisdiction is a judicial one that does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms 'senior leaders' and 'most responsible' represent the limits of the ECCC's personal jurisdiction of which legal determination rests with the judicial bodies of the ECCC." (para. 45) "As the Pre-Trial Chamber has previously held, while the Co-Investigating Judges have some discretion in ascertaining the ECCC's personal jurisdiction, their discretion in making determination as to whether or not a person falls within the categories of 'senior leaders' and 'most responsible' is not unlimited and may be subject to this Chamber's appellate judicial review. The Pre-Trial Chamber examines whether this personal jurisdiction requirement was given appropriate legal effect by the Co-Investigating Judges in the ECCC context." (para. 46) "In this light, the Pre-Trial Chamber has determined that the Co-Investigating Judges' finding that a person falls or does not fall within the ECCC's personal jurisdiction may be reversed at a party's request when this party demonstrates that such finding was: (i) based on an incorrect interpretation of the governing law (error of law) invalidating the decision, and/or (ii) based on a patently incorrect conclusion of fact (error of fact) occasioning a miscarriage of justice, and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion to force the conclusion that the Judges failed to exercise their discretion judiciously." (para. 47) "[T]he Pre-Trial Chamber reaffirms that when the Chamber finds, upon its appellate review of the Co-Investigating Judges' closing order, that the errors and/or abuses alleged by the parties were indeed committed by the Co-Investigating Judges, the Chamber may remit the decision back to the Co-Investigating Judges for reconsideration or substitute it with its own decision and issue a new or revised closing order." (para. 48) "Regarding personal jurisdiction challenges, the Pre-Trial Chamber recalls that the ECCC's personal jurisdiction is confined to 'senior leaders' and to 'those who were most responsible' for the crimes within the ECCC's jurisdiction. The Chamber further notes that although the term 'most responsible' is not defined by the ECCC Agreement or the ECCC Law, guidance for its interpretation can be discerned by looking*, inter alia*, to international jurisprudence in light of the object and purpose of the Court's founding instruments. As numerous Chambers of the ECCC have found, international jurisprudence

		establishes that the identification of those falling into the 'most responsible' category includes a quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect, which necessarily involves mixed questions of law and facts." (para. 65) "In this regard, the Chamber notes that while as a general principle, mixed questions of law and facts are non-jurisdictional in nature and should be dealt with primarily at trial, personal jurisdiction is an 'absolute jurisdictional element', which should be subject to an effective right of pre-trial appeal. In the instant case, the effectiveness of this right is entwined with the rationale behind the right of appeal granted by sub-rule 74(3)(a), which aims to promote the orderly and efficient administration of justice by allowing the defence to avoid a trial for which the Court has no jurisdiction over and by preventing a waste of resources." (para. 67) "Conversely, the Chamber finds that since the determination of the ECCC's personal jurisdiction intrinsically involves mixed questions of law and facts, the right to appeal against orders making such determination can only be effective if the defence engages with those mixed questions in the appeal it brings before the Pre-Trial Chamber." (para. 68) "[W]hen facing challenges to personal jurisdiction regarding 'those who were most responsible', this Chamber shall limit its evaluation to matters crucial to the determination and assessment of personal jurisdiction – that is, the gravity of crimes and/or level of responsibility of the accused. Accordingly, this Chamber has already concluded that a challenge to personal jurisdiction regarding 'those who were most responsible' is admissible insofar as it is aimed at the gravity of crimes and/or level of responsibility of the accused. The Pre-Trial Chamber reaffirms that challenges involving matters beyond this limitation cannot be framed as challenges to personal jurisdiction and are thus inadmissible on such basis pursuant to Internal Rule 74(3)(a) alone." (para. 69) --- "[T]he scope of the ECCC's personal jurisdiction is set forth in the ECCC Agreement, signed between the United Nations and the Royal Government of Cambodia." (Opinion of Judges BEAUVALLET and BAIK, para. 194) "[T]here is no legal basis upon which the Cambodian Government could, as one of the two parties to the ECCC Agreement, unilaterally redefine the meaning of the ECCC's personal jurisdiction or assert its 'influence' on the independent judicial functioning of this Court." (Opinion of Judges BEAUVALLET and BAIK, para. 195) "[T]he issue of personal jurisdiction, constituting an 'absolute jurisdictional element' and an issue of general importance to the ECCC's jurisprudence and legacy, has to be addressed at this stage of the pre-trial phase." (Opinion of Judges BEAUVALLET and BAIK, para. 285) "The International Judges reaffirm that for the purpose of determining the ECCC's personal jurisdiction, the identification of those who were among the 'most responsible' entails the quantitative and the qualitative assessment of both the gravity of the crimes alleged or charged, and the level of responsibility of the suspect. There is no exhaustive list of factors to be considered in undertaking this review; nor a mathematical threshold for casualties, or a filtering standard in terms of positions in the hierarchy. The determination of personal jurisdiction rather requires a case-by-case assessment, taking into account the general context and the personal circumstances of the suspect." (Opinion of Judges BEAUVALLET and BAIK, para. 286) "The International Judges recall that the assessment of the gravity of alleged or charged crimes relies on factors such as, *inter alia*, the number of victims, the geographic and the temporal scope and the manner in which they were allegedly committed, the number of separate incidents, the nature and the scale of the alleged or charged crimes as well as their impact on the victims." (Opinion of Judges BEAUVALLET and BAIK, para. 287) "The criminal acts characterising genocide were committed on a large scale with the *mens rea* to destroy in whole or in part a specific national or ethnic group, resulting in a devastating impact on this target population. […] [T]he criminal intent constituting genocide, by its firm resolution to destroy a human group as such, is exceptionally serious. This plurality of considerations is an element that the International Judges will take into consideration." (Opinion of Judges BEAUVALLET and BAIK, para. 293)

		"The described acts constitutive of crimes against humanity of extermination were committed following a widespread and systematic pattern of open-ended capture-and-kill policy. In addition, some of the Vietnamese and the Thai captured […] were invariably subject to torture to extract incriminating confessions. These findings constitute strong indicators of the gravity of MEAS Muth's actions." (Opinion of Judges BEAUVALLET and BAIK, para. 294) "While […] death toll is an indicator, among others, to consider in assessing the impact of criminal conduct, […] an accurate and precise number of victims is not required at this pre-trial stage […]. Hence, it is sufficient that the International Co-Investigating Judge establishes, on a balance of probabilities, a reasonable estimate of the number of victims." (Opinion of Judges BEAUVALLET and BAIK, para. 293) "The International Judges reaffirm that the level of responsibility of a suspect may be evaluated on the basis of considerations such as the level of participation in the crimes, the hierarchical rank or position, including the number of subordinates and hierarchical echelons above, and the permanence of the position." (Opinion of Judges BEAUVALLET and BAIK, para. 300) "The International Judges consider that the Charged Person's participation with the highest-ranking leaders of the DK's armed forces in a criminal enterprise with murderous and annihilating consequences for the population is indicative of a sufficiently serious level of responsibility to place him among the most responsible. Further, MEAS Muth's contribution was of key importance in the successful implementation of those policies in his area of responsibility. The International Judges are of the view that without MEAS Muth's contribution to the implementation of the CPK policies, the number of casualties and victims resulting from crimes in Kampong Som area, at sea, and in the East Zone would have been much lower. Moreover, the International Judges hold that the International Co-Investigating Judge correctly found that by virtue of his different roles, MEAS Muth co-perpetrated homicides, planned and gave orders for the commission of multiple serious alleged or charged crimes." (Opinion of Judges BEAUVALLET and BAIK, para. 331) "With respect to the National Co-Investigating Judge's assessment of MEAS Muth's level of responsibility, the International Judges reaffirm that his refusal to make findings on the Charged Person's criminal responsibility constitutes an error of law since such findings are an indispensable element in the personal jurisdiction determination in relation to MEAS Muth." (Opinion of Judges BEAUVALLET and BAIK, para. 333) "In examining the arguments put forward by the National Co-Investigating Judge, the International Judges recall that the factors to consider when assessing the level of responsibility for crimes under the jurisdiction of the ECCC have already been established in the jurisprudence of the Court. Such factors include the level of participation in the crimes, the hierarchical rank or position, including the number of subordinates and hierarchical echelons above, and the permanence of the position." (Opinion of Judges BEAUVALLET and BAIK, para. 334) "[I]t has been recognised in international jurisprudence that different forms of contribution and acts can be indicative of participation in a crime, in addition to physical or direct participation." (Opinion of Judges BEAUVALLET and BAIK, para. 335)
5.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"The Pre-Trial Chamber has on numerous occasions recalled that 'the discretion of the Co-Investigating Judges in making this determination [on personal jurisdiction] is a judicial one and does not permit arbitrary action but should rather be exercised with well settled legal principles.'" (para. 20)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021	"The determination of whether YIM Tith was among those 'most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. However, the Pre-Trial Chamber has consistently held that the discretion of the Co-Investigating Judges in making this determination is a judicial one that does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms 'senior leaders' and 'those who were most

	Considerations on Appeals against Closing Orders	responsible' represent the limits of the ECCC's personal jurisdiction. While the flexibility of these terms inherently requires some margin of appreciation on the part of the Co-Investigating Judges, this discretion is not unlimited and does not exclude control by the appellate court. Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that YIM Tith falls or does not fall under the Court's personal jurisdiction pursuant to the standard of review applicable to discretionary decisions." (para. 34) "Concerning the personal jurisdiction issues, the Pre-Trial Chamber notes that the personal jurisdiction of the ECCC is confined to 'senior leaders' and to 'those who were most responsible' for the crimes. Further, the Chamber observes that although the term "most responsible" is not defined by the ECCC Agreement or the ECCC Law, guidance for its interpretation can be discerned by looking, *inter alia*, to international jurisprudence in light of the object and purpose of the Court's founding instruments. As multiple ECCC Chambers have found, international jurisprudence establishes that the identification of those falling into the 'most responsible' category includes a quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect. Accordingly, when facing challenges to personal jurisdiction regarding 'those who were most responsible', the Pre-Trial Chamber shall limit its evaluation to matters crucial to the determination and assessment of personal jurisdiction – that is, the gravity of crimes and/or level of responsibility of the accused. The Pre-Trial Chamber reaffirms that challenges involving matters beyond this limitation cannot be framed as challenges to personal jurisdiction and are thus inadmissible under Internal Rule 74(3)(a)." (para. 53) "[F]or the purpose of determining the ECCC's personal jurisdiction, the identification of 'those most responsible' entails a quantitative and qualitative assessment of (i) the gravity of the crimes alleged or charged and (ii) the level of responsibility of the suspect. In assessing the gravity of the crimes, factors such as the number of victims, the geographic and temporal scope of the crimes, the manner in which the crimes were allegedly committed and the number of separate incidents may be considered. In determining the level of responsibility of a suspect, considerations such as his or her level of participation in the crimes may be relied on, along with other factors as his or her hierarchical rank or position, including the number of subordinates and hierarchical echelons above, the permanence of his or her position and his or her *de facto* roles and responsibilities." (Opinion of Judges BAIK and BEAUVALLET, para. 222) "Whereas the considerations referred to in Case 004/1, such as the person's formal position in the hierarchy, the relative gravity of the person's own actions and the degree to which the suspect was able to contribute to policies and/or their implementation, may be part of this assessment, the International Judges reiterate that there is no exhaustive list of factors to be considered; nor is there a mathematical threshold for casualties, or a filtering standard in terms of positions in the hierarchy. Rather, the determination of personal jurisdiction requires a case-by-case assessment, taking into account the general context and the personal circumstances of the suspect. Accordingly, the alleged deviation from the considerations listed in Case 004/1 or from other cases, does not amount to an error in law as the determination of personal jurisdiction is case-specific and the criteria non-exhaustive." (Opinion of Judges BAIK and BEAUVALLET, para. 223) "[E]ven though a JCE may be 'broadly construed' and include multiple people, such as 'other trusted Southwest Cadre', this would not automatically lead to a finding of personal jurisdiction over all of them, as the assessment of 'those most responsible' is based on the myriad of factors described above and would moreover depend on the type and severity of the contribution to the crimes. An evaluation of these different factors, that included but was not limited to YIM Tith's liability under JCE (in terms of his individual contribution), considered in the context of the DK regime, led the International Co-Investigating Judge to conclude that there is 'no doubt that YIM Tith is subject to the Court's jurisdiction'." (Opinion of Judges BAIK and BEAUVALLET, para. 229) "The International Judges further consider that the evidence firmly establishes YIM Tith's membership and significant contribution to JCEs A, B and C. Moreover, the fact that YIM Tith was not a member of the Central or Standing Committee and did not formulate CPK policies is not, by itself, sufficient to preclude the finding that YIM Tith was amongst the 'most responsible'." (Opinion of Judges BAIK and BEAUVALLET, para. 475) "[A] reasonable trier of fact could find that a close personal relationship serves as corroborative context supporting other evidence demonstrating an individual's exercise of authority. For the purpose of assessing the ECCC's personal jurisdiction, the relevant inquiry is whether the individual is among those 'most responsible', which 'requires a case-by-case assessment, taking into account the general context

		and the personal circumstances of the suspect.' The International Judges consider that this can be demonstrated by evidence that a family relationship, as a matter of fact, augmented or facilitated the exercise of responsibility by the suspect in question. Accordingly, the International Judges reject the Co-Lawyers' argument that evidence, *inter alia*, of *Ta* Mok and YIM Tith travelling together throughout the Southwest Zone inspecting worksites and were seen attending meetings together constitute 'irrelevant factors', considering such evidence goes directly to an assessment of whether YIM Tith himself exercised authority and control, in actual practice, in the areas concerned." (Opinion of Judges BAIK and BEAUVALLET, para. 253) "As previously held, while the assessment of whether a suspect was amongst the 'most responsible' may include comparison to other Khmer Rouge officials, comparisons to every known Khmer Rouge official are not required or necessary." (Opinion of Judges BAIK and BEAUVALLET, para. 292) "[T]he relevant overarching jurisdictional question is whether YIM Tith falls within the category of 'most responsible' and, as part of this assessment, in addition to assessing the gravity of the crimes, the suspect's level of responsibility shall be considered. The latter inquiry is informed by considerations including, *inter alia*, YIM Tith's hierarchical rank or position and the permanence of his positions, though it must be recalled and stressed that there is no filtering standard in terms of positions in the hierarchy." (Opinion of Judges BAIK and BEAUVALLET, para. 294) "The International Co-Investigating Judge's inability to make exact findings as to the dates and duration of YIM Tith's *de jure* positions would, in any event, only implicate one of multiple factors in the holistic assessment of his level of responsibility. The International Judges find that, in this instance, these factors are not fundamentally determinative." (Opinion of Judges BAIK and BEAUVALLET, para. 297) "[T]he fact that YIM Tith was not a member of the Central or Standing Committee and did not formulate CPK policies is not, by itself, sufficient to preclude the finding that YIM Tith was amongst the 'most responsible'." (Opinion of Judges BAIK and BEAUVALLET, para. 475)

3. Subject-Matter Jurisdiction

i. *General*

1.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"The Court observes that in accordance with Article 29 of [the ECCC Law] the term 'committed' includes committing, planning, instigating, ordering, aiding and abetting as well as superior criminal responsibility." (para. 24)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he nature of the ECCC as a court has no bearing on the ECCC's jurisdiction over the crimes and modes of liability enumerated in the ECCC Law, because this law grants such jurisdiction to the ECCC. This Law is carefully crafted and clearly provides that the ECCC can apply such crimes and modes of liability provided that such must have existed in law at the relevant time. Even if the ECCC were considered to be a simply domestic court, jurisdiction is not in question as long as a law that grants it exists and related requirements are met." (para. 212) "The ECCC was established by a joint agreement between the Royal Government of Cambodia and the United Nations, and Cambodia accepted the ECCC Agreement as the law of the land. The ECCC Law explicitly gives the Chambers jurisdiction to apply treaties recognised by Cambodia and customary international law, as long as the principle of legality is respected. Given its express reference to Article 15 of the ICCPR, there is no doubt that, insofar as international crimes are concerned, the principle of legality envisaged by the ECCC Law is the international principle of legality which allows for criminal liability over crimes that were either national or international in nature at the time they were committed. As the international principle of legality does not require that international crimes and modes of liability be implemented by domestic statutes in order for violators to be found guilty, the characterisation of the Cambodian legal system as monist or dualist has no bearing on the validity of

		the law applicable before the ECCC. Consequently, […] the nature of the ECCC as a court is irrelevant to its jurisdiction in light of the clear terms of the ECCC Law. The ECCC Law did not empower the Royal Government of Cambodia to prosecute senior leaders of the Democratic Kampuchea or those alleged to be mostly responsible for such international crimes. This was not necessary. The Royal Government of Cambodia was not only free to prosecute such crimes which occurred within its territorial jurisdiction, as a basic exercise of its jurisdiction, it was its obligation under international law to do so. Rather than using its pre-existing court structure, the Royal Government of Cambodia agreed with the United Nations to establish the ECCC for its international expertise and delegated its jurisdiction to hear these cases." (para. 213) "The Pre-Trial Chamber recalls that under Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, namely 17 April 1975 to 6 January 1979, the 1956 Penal Code was in effect." (para. 278)
3.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The inherent and specific nature of the ECCC is that it has to deal not only with violations of the Cambodian law but also with international crimes and modes of liability. These crimes and modes of liability include: genocide, which is directed towards whole groups and not just individuals; crimes against humanity which are acts committed as part of a 'widespread and systematic attack' against the population; the modes of liability of joint criminal enterprise, command responsibility planning, instigating, ordering, aiding, and abetting, which if proven, greatly increase the gravity and seriousness of the crimes even more by way of confirming that mass atrocities were committed in an organized manner and may have targeted not only specific groups or specific crime sites but even the whole of the population throughout the country." (para. 66)
4.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The scope of subject matter jurisdiction […] is limited to the crimes listed under Articles 3*new* to 8 of the ECCC Law. The [SCC] has held that 'in order for charged offences and modes of participation to fall within the ECCC's subject matter jurisdiction, they must: (i) 'be provided for in the [ECCC Law], explicitly or implicitly'; and (ii) have existed under Cambodian or international law between 17 April 1975 and 6 January 1979.'" (para. 136) "[T]he Pre-Trial Chamber recalls that appeals which: 1) 'challenge [...] the very existence of a form of responsibility or its recognition under [...] law at the time relevant to the indictment'; or 2) argue that a mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings." (para. 137) "Appeal grounds contesting substantive crimes were found to raise admissible subject matter jurisdiction challenges 'where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality'." (para. 138) "In contrast […] challenges relating to the specific contours of a mode of liability or substantive crime 'are matters to be addressed at trial' and, therefore, inadmissible. Thus, challenges relating to whether the elements of a crime or a mode of liability actually existed in reality – as opposed to legally at the time of the alleged criminal conduct – are matters to be addressed at trial. Concerning alleged defects in the form of the indictment, such issues are 'clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC [L]aw.'" (para. 139)

ii. *Crimes within the Jurisdiction of the Court*

For jurisprudence on the ***Application of the Principle of Legality***, see I.A.5.ii. Application of the Principle of Legality

a. Domestic Crime of Torture

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Pre-Trial Chamber notes that there is a divergence between the Declaration on Torture and the CAT on the specific purpose for which the acts must be carried out to be considered as torture." (para. 65) "According to the jurisprudence of the ICTY, the definition of torture in the CAT can be seen as being declaratory of custom." (para. 66) "In light of the CAT, the following elements can be considered as part of the international definition of torture: - An act inflicting severe pain or suffering, whether physical or mental, - The act must be intentional, and - The act must be carried out with the purpose of obtaining information or a confession, to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person." (para. 67) "The elements of the crime of torture [under Cambodian Law] can be identified as follows: - To commit acts of torture on another person - For one of the following purposes: (i) to obtain, under pain, information useful for the commission of a felony or a misdemeanour *or* (ii) out of reprisal *or* (iii) out of barbarity." (para. 62) "[T]he definition of torture stated in the 1956 Penal Code contains two alternative mental elements not included in the international definition […]." (para. 72)

b. Genocide

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[T]he definition of this crime of genocide has been universal, predictable, and constant […]. The accessibility of this definition is only reinforced by the fact that the […] Genocide Convention, […] calls on states to penalize individual breaches of the Convention." (para. 115) "As with genocide, the appalling nature of the offences constituting grave breaches of the Geneva Conventions helps establish the alleged acts as being *malum in se*, so inherently evil as to refute any claim that their perpetrators were unaware of the criminal nature of their acts." (para. 117) "In addition, the *jus cogens* nature of crimes of genocide and grave breaches of the Geneva Conventions alleged in the Closing Order is sufficient to justify prosecution, regardless of the specific provisions of Cambodia's domestic law. As the crimes indicted under genocide and grave breaches in the Closing Order, by their very nature, entail serious violations of fundamental Human Rights of their victims, […] they incur a State's duty to prosecute as part of an effective to the victims under Article 2(3) of the ICCPR […]." (para. 118)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Furthermore, the definition of this crime of genocide has been universal, predictable and constant, being defined identically in the Genocide Convention and the ECCC Law." (para. 248)

3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he International Co-Investigating Judge did not err in applying the elements of genocide because: (i) the Closing Order (Indictment) identified and defined the protected group (the Cham) as such; and (ii) the Closing Order (Indictment) presented sufficiently serious and corroborative evidence that AO An possessed the specific intent required for genocide." (Opinion of Judges BAIK and BEAUVALLET, para. 618) "First, turning to the issue of defining the Cham protected group as such, the International Judges affirm the essential nature of this requirement which is enshrined within Article 2 of the Genocide Convention and Article 4 of the ECCC Law which delineate protected groups as 'national, ethnical, racial or religious group[s], as such'. The perpetrator's destructive intent must be based specifically on the victim's membership in the group, not on the individuality of the victim. It follows that the protected group must have a particular identity and be defined as such by its common characteristics rather than a lack thereof. A protected group cannot be defined by negative criteria." (Opinion of Judges BAIK and BEAUVALLET, para. 619) "In the instant case, […] the International Co-Investigating Judge did not err and identified the Cham as such, including as a distinct entity targeted for their specific religious and ethnic characteristics." (Opinion of Judges BAIK and BEAUVALLET, para. 620) "It is evident from the Closing Order (Indictment) that the CPK objective to create a 'politically and ideologically pure party and society' or to establish a 'classless, atheist and ethnically homogenous society' was to be achieved through the targeting of positively identified groups, including the Cham. […] [T]his objective was not achieved through negative identification, such as 'non-Khmer'." (Opinion of Judges BAIK and BEAUVALLET, para. 621) "The Closing Order (Indictment) identified the Cham people as a 'distinct ethnic and religious group within Cambodia'; it referred to the group's particular and 'common characteristics' which are distinguishable from the Khmer majority as demonstrated by, *inter alia*, their religion, language, and culture. Subsequently, the Closing Order (Indictment) identified the CPK policy (and its implementation) of targeting the Cham on the basis of these criteria through, for example, arrests, transfers and killings. In addition, the Closing Order (Indictment) detailed AO An's alleged role in the targeting of the Cham. […] the above cannot be defined as or otherwise constitute the purported negative approach to identifying the protected group – the Cham." (Opinion of Judges BAIK and BEAUVALLET, para. 622) "Second, turning to […] the purported failure of the International Co-Investigating Judge to demonstrate specific genocidal intent, the International Judges recall that the *mens rea* for genocide requires 'not only proof of the intent to commit the underlying act, but also proof of the specific intent to destroy the group, in whole or in part'. This specific intent is also known as genocidal intent, *dolus specialis* or special intent." (Opinion of Judges BAIK and BEAUVALLET, para. 623) "[B]y its nature, intent is not usually susceptible to direct proof' and instead must be inferred from relevant facts and circumstances such as, *inter alia*, 'the general context, the perpetration of other culpable acts systematically directed at the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group or the repetition of destructive and discriminatory acts.'" (Opinion of Judges BAIK and BEAUVALLET, para. 624) "The International Judges are unpersuaded, at this stage of the proceedings, that 'to prove an individual's state of mind by inference, it must be the only reasonable inference available on the evidence'." (Opinion of Judges BAIK and BEAUVALLET, para. 625) "[I]f the inference on the genocidal intent drawn from evidence by the International Co-Investigating Judge is sufficiently reasonable, the standard of proof at this stage would be met. The mere fact that he did not consider the other allegedly 'reasonable' inference does not constitute a failure to demonstrate the genocidal intent in the Closing Order (Indictment)." (Opinion of Judges BAIK and BEAUVALLET, para. 626) "Bearing in mind this evidentiary standard applicable in pre-trial proceedings, the International Judges find that the International Co-Investigating Judge presented a sufficiently reasonable inference that AO An possessed the requisite specific intent (including, *inter alia*, beyond mere knowledge of the crimes committed against the Cham)." (Opinion of Judges BAIK and BEAUVALLET, para. 627)

4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"It is generally accepted in the jurisprudence that there is no hierarchy among the most serious crimes before international or hybrid jurisdictions. On the other hand, it is equally accepted that the criminal intent constituting genocide, by its firm resolution to destroy a human group as such, is exceptionally serious." (Opinion of Judges BEAUVALLET and BAIK, para. 293)
5.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Article 2 of the Genocide Convention and, correspondingly, Article 4 of the ECCC Law protect national, ethnical, racial or religious groups ('protected groups'), as such. The International Judges observe that the four protected groups are not defined in the Genocide Convention or the ECCC Law, and enjoy no generally accepted definition. In the absence of such a definition, the *ad-hoc* tribunals and the ECCC have recognised that each of the protected groups must be assessed in light of a particular political, social, historical and cultural context and employed a case-by-case approach, consulting both objective and subjective criteria in assessing whether a specific group enjoys protection." (Opinion of Judges BAIK and BEAUVALLET, para. 185) "Accordingly, with respect to the International Co-Investigating Judge's alleged failure to (correctly) identify the legal elements of genocide, the International Judges find that his reference to a 'case-by-case test to determine whether a victim (or targeted group) falls within one of the protected groups' is appropriate and in accordance with settled jurisprudence. However, while subjective criteria may be considered, a *purely* subjective approach to the identification of the protected group has been rejected as insufficient or not in accordance with the object and purpose of the Genocide Convention to protect relatively stable and permanent groups." (Opinion of Judges BAIK and BEAUVALLET, para. 186) "[T]he International Co-Investigating Judge did not err in identifying the Khmer Krom as a protected group under the Genocide Convention as he relied on both objective and subjective criteria. While the International Co-Investigating Judge relied heavily on subjective criteria, such as the CPK's perception of the Khmer Krom, the International Judges consider that this accords with the recognised case-by-case approach." (Opinion of Judges BAIK and BEAUVALLET, para. 189) "Allegations that the International Co-Investigating Judge failed to set out other legal requirements, *inter alia*, 'that it is inappropriate to legally characterize a single ethnic group in general terms' where multiple national and ethnic groups have been targeted (*i.e.*, negatively), are without merit. The International Co-Investigating Judge found that the targeted group cannot be defined negatively and that where more than one group is targeted, the elements of genocide must be satisfied in relation to each group." (Opinion of Judges BAIK and BEAUVALLET, para. 190) "[W]ith respect to the International Co-Investigating Judge's alleged failure to identify the material facts and underlying evidence of the Khmer Krom's status as a protected group, the International Judges first observe that the International Co-Investigating Judge relied on witness and documentary evidence in his findings on the Khmer Krom identity, history and CPK policy on the Khmer Krom and that the 'legal findings' on the genocide of the Khmer Krom are based on the factual findings throughout the Indictment. Second, as indicated, the International Co-Investigating Judge positively identified the Khmer Krom by their distinct traits and perception of racial similarity to the Vietnamese, rather than relying on a negative definition (such as non-Khmer)." (Opinion of Judges BAIK and BEAUVALLET, para. 191) "The *mens rea* of the crime of genocide is 'the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'. Referred to as specific intent or *dolus specialis*, the underlying acts listed in Article II of the Genocide Convention and Article 4 of the ECCC Law must be committed with the specific intent to destroy the protected group in whole or in part, as such. The wording 'as such' indicates that the targeting of the victim on account of membership of the group alone (discriminatory intent) does not suffice. Rather, there must be intent to destroy the protected group as a separate and distinct entity." (Opinion of Judges BAIK and BEAUVALLET, para. 192) "[I]t is widely accepted that in assessing evidence of genocidal intent, a Chamber should consider whether 'all of the evidence, taken together, demonstrates a genocidal mental state.' In the absence of direct evidence, genocidal intent may be inferred from the facts and circumstances of the crimes, such as the general context, the scale of the atrocities, the perpetration of other culpable acts systematically directed against the same group, the systematic targeting of victims on account of their membership of a particular group, the repetition of destructive and discriminatory acts, the existence

		of a plan or policy or the display of intent through public speeches or in meetings. This defeats the Co-Lawyers' claim that the International Co-Investigating Judge erred by failing to set out 'any direct evidence that YIM Tith held the specific intent.'" (Opinion of Judges BAIK and BEAUVALLET, para. 197)

c. Crimes against Humanity (General)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"Thus, […] from 1975-1979 the definition of crimes against humanity in customary international law included an armed conflict nexus requirement as articulated in the IMT Charter and Nuremberg Principles, such that there needs to be […] a link between the underlying acts charged as crimes against humanity and an armed conflict. […] [T]he necessary nexus to an armed conflict includes both international and internal armed conflicts. While the Trial Chamber did not reach this conclusion in the *Duch* Judgment, […] [this] was not specifically challenged by the accused […]." (para. 144)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Pre-Trial Chamber determines that the definition of crimes against humanity in the Nuremberg Charter and Nuremberg Principles continued to apply in the period 1975 to 1979, such that a connection to crimes against peace or war crimes remained a necessary element. It is pertinent to note, however, that as war crimes are prohibited under customary international law both in international and internal contexts, the necessary nexus to armed conflict need not be international in character." (para. 311)
3.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	"[T]he Pre-Trial Chamber endorses the Supreme Court Chamber's finding that the jurisprudence of the European Court of Human Rights, as well as national legislation enacted prior to 1975 and a number of national court decisions, defined crimes against humanity with respect to conduct occurring prior to 1975 absent a Nexus." (para. 58)

d. Crimes against Humanity (Murder)

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The required material elements for the crimes of murder, as a crime against humanity, and wilful killing as a grave breach of the Geneva Convention is (i) the death of the victim(s) and (ii) the death resulted from an act or omission of the accused or his subordinate." (para. 80) "As for the mental element of these crimes, an 'intent to kill or to cause grievous bodily harm or inflict serious injury in the reasonable knowledge that the attack was likely to result in death' is required." (para. 81) "Neither international law nor Articles 5 and 6 of the ECCC Law indicate that premeditation is required for the crimes of murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions. […] [H]omicide without premeditation is customary for murder in international law." (para. 82)

e. Crimes against Humanity (Extermination)

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The elements of extermination as a crime against humanity were set out by the Supreme Court Chamber in Case 002 […]." (Opinion of Judges BAIK and BEAUVALLET, para. 255) "The Undersigned Judges recall that the elements of extermination do not include a requirement that the *mens rea* be formed prior to the commission of the relevant acts. As with the specific intent for the crime of genocide, the question is not whether the necessary intent was formed prior to the commission of the acts, but whether the perpetrators possessed it at the moment of commission of the crime of extermination. At most, proof of premeditation can be evidence of the intent, but it cannot be required to establish intent. Therefore, in holding that there were no reasonable grounds to believe that killings at Phnom Trayoung Security Centre amounted to extermination because it was unclear whether they were carried out with *ex ante* intent to kill on a massive scale, the Co-Investigating Judges erroneously introduced an additional legal element into the *mens rea* of the crime." (Opinion of Judges BAIK and BEAUVALLET, para. 258) "The Undersigned Judges recall that the assessment of the massiveness requirement must be done on a case-by-case basis, taking into account the circumstances in which the killings occurred, with relevant factors including, *inter alia*, the time and place of killings, the selection of victims, the manner of targeting the victims and whether the killings were aimed at a collective group or individual victims. Separate killing incidents may be aggregated for the purpose of meeting the massiveness requirement if they are considered to be part of the same operation. This massiveness requirement is inherent in both the *actus reus* and *mens rea* of extermination and, as such, those factors are also relevant for the establishment of the intent to kill on a massive scale." (Opinion of Judges BAIK and BEAUVALLET, para. 260) "[T]he *mens rea* can be inferred from circumstance […]." (Opinion of Judges BAIK and BEAUVALLET, para. 262)

f. Crimes against Humanity (Torture)

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he crime against humanity of torture has been defined as any act causing severe pain or suffering, whether physical or mental (*actus reus*), that is intentionally inflicted upon a person (*mens rea*), by or at the instigation of a public official, for such purposes as obtaining information or a confession, punishment, or intimidation." (Opinion of Judges BAIK and BEAUVALLET, para. 190)

g. Crimes against Humanity (Persecution)

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he crime of persecution can be defined as the deliberate perpetration of an act or omission which discriminates in fact and denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*), with the intent to discriminate on political, racial or religious grounds (*mens rea*)." (Opinion of Judges BAIK and BEAUVALLET, para. 148)

h. Crimes against Humanity (Other Inhumane Acts)

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[F]rom 1975-1979, provided that the requisite chapeau and *mens rea* existed, an impugned act or omission constituted an 'other inhumane act' as a crime against humanity where it was of a similar nature and gravity to the enumerated crimes against humanity of murder, extermination, enslavement or deportation, such that: 1) it seriously affected the life or liberty of persons, including inflicting serious physical or mental harm on persons or 2) was otherwise linked to an enumerated crime against humanity. In determining what constitutes 'inhumane' conduct, reference could be made to 1) serious breaches of international law regulating armed conflict from 1975-1979 […] or 2) serious violations of the fundamental human rights norms protected under international law at the relevant time." (para. 164)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Pre-Trial Chamber concurs with the ICTY Trial Chamber in *Blagojević* that '[i]t should be stressed that other inhumane acts is *in itself* a crime under international law.' To require that each sub-category of 'other inhumane acts' entail individual criminal responsibility under international law, is to render the category of 'other inhumane acts' otiose; that is, the conduct would have to amount to a crime in its own right, regardless of whether or not it also amounts to a crime as an 'other inhumane act.' The requirements of the principle of legality attach to the entire category of 'other inhumane acts' and not to each sub-category thereof." (para. 378) "The ECCC Law does not explicitly provide a definition for 'other inhumane acts', neither has this Chamber found examples of an explicit definition of 'other inhumane acts' in national law or in custom before 1975 [...]." (para. 385) "The ECCC Law, as well as the Nuremberg Charter, the Tokyo Charter, Control Council No. 10, and the Nuremberg Principles, list certain acts that are deemed to be crimes against humanity including 'other inhumane acts.' The word 'other' imports an *ejusdem generis* rule of interpretation, whereby 'other inhumane acts' can only include acts which are both 'inhumane' and of a 'similar nature and gravity' to those specifically enumerated; namely, murder, extermination, enslavement and deportation." (para. 388) "[T]he Pre-Trial Chamber finds that, by 1975-1979, provided that the requisite *chapeau* and *mens rea* elements existed, an impugned act or omission constituted an 'other inhumane act' as a crime against humanity where it was of a *similar nature and gravity* to the enumerated crimes against humanity of murder, extermination, enslavement or deportation such that: 1) it seriously affected the life or liberty of persons, including *inflicting serious physical or mental harm on persons* or 2) was otherwise *linked to an enumerated crime against humanity*. In this respect it was foreseeable that acts prohibited by the international regulation of armed conflict *on the basis of being inhumane would similarly be prohibited as a crime against humanity*. The definition of 'other inhumane acts' was likely to encompass acts that would amount to serious violations or grave breaches of, *inter alia*, the 1899 Hague Regulations, the 1907 Hague Regulations, the 1929 Geneva Convention and the 1949 Geneva Conventions provided that they would meet the other requirements specific to these instruments." (para. 395)
3.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"The list of elements of the crime of 'other inhumane acts' includes that an act or omission of the accused or of his subordinate: (i) caus[ed] serious bodily or mental harm or constitut[ed] a serious attack on human dignity; and (ii) [was] performed deliberately with the intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim at the time of the act or omission. Acts or omissions must be of a nature and gravity similar to other enumerated crimes against humanity." (Opinion of Judges BAIK and BEAUVALLET, para. 15) "[S]everity of particular conduct is assessed on a case-by-case basis with due regard to the individual circumstances of each case. These may include 'the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, including age, sex and health, as well as physical, mental and moral effects of the act upon the victim.' While criminality of particular acts may provide a general indication of their gravity, it is not a *determinative* indicator, or the sole factor taken into account." (Opinion of Judges BAIK and BEAUVALLET, para. 16) "At this stage of proceedings when investigations are still ongoing, it is premature to undertake any comparisons because an assessment, whether the alleged acts are of a severe nature, can only be

		undertaken once any alleged circumstances, pointing at severity, are first proved to have existed." (Opinion of Judges BAIK and BEAUVALLET, para. 18) "The crime against humanity of 'other inhumane acts' alleged in the Supplementary Submission, falls within ECCC's jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 19)
4.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The proposed charges […] included the crime against humanity of other inhumane acts, which the jurisprudence of the ECCC has defined as a residual offence intended to criminalise conduct 'similar in gravity' to other enumerated crimes against humanity, including 'detention in brutal and deplorable living conditions'. The Undersigned Judges consider the scrutiny of living conditions in detention to be an inherent aspect of the investigation into allegations of crimes committed at security centre." (Opinion of Judges BAIK and BEAUVALLET, para. 203) "The Undersigned Judges endorse the Supreme Court Chamber's holding that enforced disappearances had not yet crystallised into a discrete category of crimes against humanity in 1975-1979, and that such conduct may qualify as other inhumane acts under Article 5 of the ECCC Law if it satisfies the elements of that crime. They also concur that 'stipulating elements of enforced disappearance […] as though they constituted separate categories of crimes against humanity [is] anachronistic and legally incorrect'. Rather, the only relevant guiding issue, as explicitly held by the Supreme Court Chamber, is whether the conduct in question fulfils the definition of other inhumane acts, considering the specific circumstances of the case at hand." (Opinion of Judges BAIK and BEAUVALLET, para. 272) "The requirement that persons have enquired as to the victim's whereabouts and the authorities have refused to disclose information is not a legal element of the crime against humanity of other inhumane acts." (Opinion of Judges BAIK and BEAUVALLET, para. 275) "[T]he assessment of the gravity of the prohibited act must be case specific. Although it need not have been expressly criminalised under international law, 'an inhumane act reaching the gravity of other crimes against humanity usually will also violate the broad tenets of human rights'. Of particular relevance are the rights to life, liberty and security of person, and the prohibition of cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention or exile, and arbitrary interference with privacy, family, home or correspondence. The relevant conduct must in fact cause serious physical or mental suffering or constitute a serious attack on human dignity. The seriousness is to be assessed in light of circumstances such as the nature of the act or omission, its duration and/or repetition, as well as the personal circumstances of and the physical, mental and moral effects upon the victim(s)." (Opinion of Judges BAIK and BEAUVALLET, para. 277) "Based on these circumstances, the Undersigned Judges find that acts of enforced disappearances must be considered as being of extreme gravity and as violating international human rights standards. This conclusion is supported by pre- and post-1975 instruments and jurisprudence, and by the fact that enforced disappearance has more recently been criminalised under international law. The circumstances evinced in the Closing Order (Reasons) with regard to Spean Sreng Canal Worksite also provide sufficient evidence that the conduct in question caused serious mental suffering and constituted an attack on human dignity, thereby reaching the level of gravity necessary to constitute other inhumane acts. The Undersigned Judges indeed observe that such conduct is comparable to that of enumerated crimes against humanity, such as imprisonment and deportation, in terms of the rights involved (*e.g.,* right to life, liberty and security of person) and the impact on the victims (*e.g.*, uncertainty, fear, separation from families and homes)." (Opinion of Judges BAIK and BEAUVALLET, para. 279)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he International Judges find no reason to deviate from their prior determinations on forced marriage." (Opinion of Judges BAIK and BEAUVALLET, para. 605) "The […] Co-Lawyers' submissions […] contradict well-established law because: (i) other inhumane acts existed as a crime within customary international law prior to and during 1975-1979; (ii) there is no need to establish forced marriage as a separate criminal act (or to rely on human rights law to do so); and (iii) forced marriage may fall within the accepted definition of other inhumane acts and this case-by-case analysis would occur in-depth at trial. […] [I]t is sufficient to establish that the overarching category of other inhumane acts was a crime under customary international law and that, as such, its elements were foreseeable and accessible to the Accused." (Opinion of Judges BAIK and BEAUVALLET, para. 606)

		"First, the International Judges reaffirm here the well-settled law that the crime of other inhumane acts had attained customary international law status by the requisite and relevant time period of 1975-1979. This is supported by evidence of *opinio juris* and state practice, such as the inclusion of this norm in treaty law since 1945 and its application in post-World War II cases. Subsequent tribunals have confirmed the customary nature of other inhumane acts and in their assessment, relied on sources predating 1975." (Opinion of Judges BAIK and BEAUVALLET, para. 607) "Multiple Chambers within the ECCC have held that it was foreseeable and accessible that other inhumane acts were punishable as a crime against humanity by 1975. Applying the notion of *ejusdem generis* (of the same kind), the Pre-Trial Chamber found that the elements of the crime of other inhumane acts were sufficiently clear and specific by 1975. It was established and generally understood 'that an individual may be held criminally responsible for committing crimes which are 'similar in nature and gravity' to the other listed crimes against humanity.'" (Opinion of Judges BAIK and BEAUVALLET, para. 608) "Considering the above […] the underlying acts or sub-categories within other inhumane acts (such as forced marriage) do not have to be criminalised because the principle of legality 'attaches to the entire category of "other inhumane acts" and not to each sub-category of this offence.' To require that the underlying conduct of forced marriage must be criminalised, would render the concept of other inhumane acts as a residual category of crimes against humanity ineffective and futile." (Opinion of Judges BAIK and BEAUVALLET, para. 609) "Second, as there is no requirement to establish forced marriage as a distinct crime, the International Co-Investigating Judge's purported error in relying on human rights law is irrelevant and without merit." (Opinion of Judges BAIK and BEAUVALLET, para. 610) "Third, examining the alleged conduct underpinning forced marriage includes an assessment of whether the facts are of a similar nature and gravity to other enumerated crimes under other inhumane acts. This question must be considered on a case-by-case basis with due regard for the individual circumstances of the case. Factors to consider in analysing the similar nature and gravity to other enumerated crimes may include, *inter alia*, 'the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, including age, sex and health, as well as physical, mental and moral effects of the act upon the victim.' […] [T]his analysis requires an in-depth assessment of the totality of the evidence which is best left to trial." (Opinion of Judges BAIK and BEAUVALLET, para. 611) "Therefore, the International Judges find that the International Co-Investigating Judge did not err and that other inhumane acts existed as a crime under customary international law in 1975-1979 and the relevant elements of the crime were foreseeable and accessible to the Accused." (Opinion of Judges BAIK and BEAUVALLET, para. 612)

i. Grave Breaches of the Geneva Conventions (Wilful Killing)

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The required material elements for the crimes of murder, as a crime against humanity, and wilful killing as a grave breach of the Geneva Convention is (i) the death of the victim(s) and (ii) the death resulted from an act or omission of the accused or his subordinate." (para. 80) "As for the mental element of these crimes, an 'intent to kill or to cause grievous bodily harm or inflict serious injury in the reasonable knowledge that the attack was likely to result in death' is required." (para. 81) "Neither international law nor Articles 5 and 6 of the ECCC Law indicate that premeditation is required for the crimes of murder as a crime against humanity and wilful killing as a grave breach of the Geneva Conventions. […] [H]omicide without premeditation is customary for murder in international law." (para. 82)

iii. *Modes of Liability*

a. Superior Responsibility

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"In other words, in order for an individual accused to be held liable for the criminal conduct of a subordinate under Article 29 (new) pursuant to the doctrine of superior responsibility, three elements must be demonstrated to exist. First, 'there must have been a superior-subordinate relationship between the accused and the person who committed the crime' with effective command and control or authority and control; second, 'the accused must have known, or had reason to know, that the crime was about to be or had been committed' - referred to as the *mens rea* element of actual or constructive knowledge; and third, 'the accused must have failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator' - referred to the *actus reus* by omission element." (para. 191)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In [...] order for an individual accused to be held liable for the criminal conduct of a subordinate under Article 29 (new) pursuant to the doctrine of superior responsibility, three elements must be demonstrated to exist. First, 'there must have been a superior-subordinate relationship between the accused and the person who committed the crime' with effective command and control or authority and control; second, 'the accused must have known, or had reason to know, that the crime was about to be or had been committed' referred to as the *mens rea* element of actual or constructive knowledge; and third, 'the accused must have failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator' or the *actus reus* by omission element." (para. 420)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he International Co-Investigating Judge did not err in applying superior responsibility […]. […] [T]he International Judges affirm that (i) the ECCC Chambers sufficiently established that superior responsibility existed within customary international law in 1975-1979 – demonstrating state practice and *opinio juris*. Further […] (ii) applying superior responsibility is not contingent on whether charges against civilians under superior responsibility are linked to an international armed conflict but, rather, centers on the responsibility of the individual." (Opinion of Judges BAIK and BEAUVALLET, para. 592) "First, the International Judges uphold the Chamber's prior findings and concur with the ECCC Chambers concerning the existence of superior responsibility within customary international law and dismiss the argument of purportedly insufficient evidence. Examining the ECCC cases and the law, the International Judges uphold that superior responsibility existed as a mode of liability within customary international law in 1975-1979. The International Judges find no reason to deviate from the settled jurisprudence in the instant case." (Opinion of Judges BAIK and BEAUVALLET, para. 593) "Second, the International Judges are not persuaded that 'charges against civilians under superior responsibility must be linked to an international armed conflict'. […] [W]hether alleged acts transpired within an international armed conflict merely affects the characteristics of crimes; superior responsibility hinges not on the connection between an accused and the armed conflict or even on the existence of the conflict but, rather, centers on the responsibility of the individual, including, *inter alia*, a person's role within a hierarchy, knowledge, obligations and/or failure to act." (Opinion of Judges BAIK and BEAUVALLET, para. 594)

b. Joint Criminal Enterprise (JCE)

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"[J]oint criminal enterprise is one possible mode of liability to describe a factual situation where crimes are committed jointly by two or more perpetrators." (para. 114). "Three types of joint criminal enterprise are distinguished. […] The basic form (JCE 1) exists where the participants act on the basis of a common design or enterprise, sharing the same intent to commit a crime. The systematic form (JCE 2) exists where the participants are involved in a criminal plan that is implemented in an institutional framework […]. The extended form (JCE 3) exists where one of the participants engages in acts that go beyond the common plan but those acts constitute a natural and foreseeable consequence of the realization of the common plan. The objective elements (*actus reus*) are the same for all three forms of joint criminal enterprise, namely: (i) a common plan, (ii) involving a plurality of persons, and (iii) an individual contribution to the execution of the common plan. The

		subjective element (*mens rea*) varies according to the form of joint criminal enterprise applied. JCE 1 requires a shared intent to perpetrate the crime. JCE 2 requires personal knowledge of the system of ill-treatment. JCE 3 requires an intention to participate in the criminal purpose and to contribute to the commission of a crime by the group with responsibility arising for extraneous crimes where the participant could foresee their on commission and willingly took the risk." (para. 132) **"**[T]he significance and exclusivity of the notion of joint criminal enterprise, […] lies in its conceptual underpinning. […] Joint criminal enterprise liability has a subjective focus on the common purpose and the intent of the participant. Thus, if Duch were to be indicted as a participant in a joint criminal enterprise, the perception of the level and extent of his responsibility would differ from the description of his responsibility in the Closing Order." (para. 136)
2.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"JCE is one 'mode of liability to describe factual situation where crimes are committed jointly by two or more perpetrators […] [is] relevant to determining whether this mode of liability can be applied before the ECCC'. [...] [T]hree categories of JCE are distinguished and derive from the ICTY Appeals Chamber's interpretation of the post-Second World War jurisprudence on 'common plan' liability. The basic form of JCE (JCE I) exists where the participants act on the basis of a common design or enterprise, sharing the same intent to commit a crime. The systemic form (JCE II) exists where the participants are involved in a criminal plan that is implemented in an institutional framework, such as an internment camp, involving an organized system of ill-treatment. [...] JCE II is a variant of JCE I. The extended form (JCE III) exists where one of the participants engages in acts that go beyond the common plan but those acts constitute a natural and foreseeable consequence of the realisation of the common plan." (para. 37) "The objective elements (*actus reus*) are the same for all three forms of JCE, namely: (i) a common plan ([...] the plan in question must amount to or involve the commission of a crime within the jurisdiction of the court), (ii) involving a plurality of persons, and (iii) an individual contribution by the charged person or the accused to the execution of the common plan. [...] [A]lthough the accused need not have performed any part of the *actus reus* of the perpetrated crime, it is required that he/she has 'participated in furthering the common purpose at the core of the JCE'. Not every type of conduct would amount to a significant enough contribution to entail the individual criminal responsibility of the accused based on his/her participation in a JCE." (para. 38) "The subjective element (*mens rea*) varies according to the form of JCE. JCE I requires a shared intent to perpetrate the crime(s). JCE II requires personal knowledge of the system of ill-treatment and the intent to further it. JCE III requires an intention to participate in the criminal plan or purpose of the JCE and to contribute to its execution, 'with responsibility arising for extraneous crimes where the accused could foresee their commission and willingly took that risk' —in other words, 'being aware that such crime was a possible consequence of the execution of that enterprise, and with that awareness, [deciding] to participate in that enterprise'." (para. 39) "[T]he concept of JCE as a form of criminal responsibility in international law is a unique concept. JCE combines features from different legal traditions and has been applied and shaped by actors from varying legal backgrounds." (para. 40) "In spite of its unique nature, the concept of JCE, at least in its basic and systemic forms (JCE II) resembles accountability in traditional civil law in that it treats as co-perpetrators not only those who physically perform the *actus reus* of the crime, but also those who possess the *mens rea* for the crime and participate or contribute to its commission. In this sense, JCE has an underpinning in Cambodian law. The applicable criminal law at the relevant time is the Cambodian Penal Code of 1956. [...] This is not to say that 'participation in JCE' and 'co-perpetration' under the 1956 Cambodian Penal Code are exactly the same. While both require the shared intent by participants that the crime be committed, participation in a JCE, even if it has to be significant, would appear to embrace situations where the accused may be more remote from the actual perpetration of the *actus reus* of the crime than the direct participation required under domestic law. This is also not to say, contrary to what one of the Appellants alleges that participation in JCE is 'more severe' form of liability than the domestic form of 'co-perpetration'." (para. 41) "[It is argued that] the basis for the second form of JCE was ambiguous. The argument is based on the consideration that JCE II could be treated as either a sub-category of JCE I if it is interpreted narrowly, or as an extension of liability akin to JCE III if interpreted in a broad sense. JCE II rather resembles JCE III and thus [...] such ambiguity does not exist [...] and that reference in *Tadić* to the *mens rea* requirement to prove knowledge by the accused of the nature of the system does not mean that mere knowledge

		is sufficient. *Tadić* also requires 'intent to further the common concerted design to ill-treat inmates'." (para. 71)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he International Co-Investigating Judge did not err in applying JCE because: (i) JCE existed in customary international law by 1975 […]; and (ii) the International Co-Investigating Judge was not required to adopt co-perpetration as an alternative mode of liability because the Rome Statute is not binding on the ECCC and its provisions regarding co-perpetration do not reflect customary international law." (Opinion of Judges BAIK and BEAUVALLET, para. 575) "First, […] JCE I as alleged in the Closing Order (Indictment) existed under customary international law by 1975. As the underlying legal concepts of JCE trace back to the Nuremberg-era documents and Judgments, the International Judges dismiss the assertions that JCE was 'judicially created' at the ICTY to address 'the unique circumstances facing the Tribunal.' Instead, the International Judges uphold the detailed and extensive analysis of customary international law by multiple Chambers of the ECCC and reaffirm the finding that JCE is applicable at the ECCC in the instant case." (Opinion of Judges BAIK and BEAUVALLET, para. 576) "[In determining the state of customary international law in relation to the existence of a mode of liability 'a court shall assess the existence of 'common, consistent and concordant' state practice, [and] *opinio juris*'. […] [T]his requirement is met." (Opinion of Judges BAIK and BEAUVALLET, para. 577) "[I]n previous judgments and decisions, the ECCC Chambers carried out a 'careful, reasoned review' of *ad hoc* tribunal holdings on JCE (and abstained from adopting JCE III from ICTY), rather than adopting them in their totality. The ECCC Chambers independently reviewed post-World War II instruments and jurisprudence, and appropriately attached particular weight to the Nuremberg Charter, Control Council Law No. 10 and relevant post-World War II war crimes cases. […] [T]herefore […] the jurisprudence relied on by Chambers of the ECCC satisfies the 'ICJ's requirements for [customary international law]' and the International Co-Investigating Judge did not err in relying on JCE." (Opinion of Judges BAIK and BEAUVALLET, para. 578) "Second, the International Judges are not persuaded that the International Co-Investigating Judge erred by ignoring purportedly 'widespread and consistent State practice that JCE is not [customary international law]' or by failing to adopt the ICC's doctrine of co-perpetration – involving the element of essential contribution – as an alternative mode of liability. […] the Rome Statute is not a binding instrument here. Moreover […] the statutory interpretation of a crime or mode of liability by ICC Chambers does not necessarily reflect customary international law. […] [T]he ICC's interpretation of Article 25(3)(a) as requiring that the perpetrator must have a *de minimus* level of control over the crime by virtue of his or her essential contribution to [the crime] ('control over the crime theory') is one such instance where the ICC has interpreted its own statute rather than existing customary international law. Thus, as the principle of *lex mitior* only concerns laws binding upon the Court, the International Co-Investigating Judge did not err in applying JCE here." (Opinion of Judges BAIK and BEAUVALLET, para. 579)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he correct legal standard applicable to the participation of an accused in the implementation of the common purpose of a JCE is that the accused's contribution must be 'significant, but not necessarily indispensable.' The determination of a significant contribution should 'always be based on an assessment of activities of the accused.' The accused's particular contributions 'should not be assessed in isolation' and '[t]he significance of a contribution to the JCE is to be determined on a case-by-case basis, taking into account a variety of factors including the position of the [a]ccused, the level and efficiency of the participation, and any efforts to prevent crimes'." (Opinion of Judges BAIK and BEAUVALLET, para. 437) "The relevant inquiry was whether YIM Tith's activities, assessed in their totality (and not merely his statements), met the threshold of a 'significant' contribution, as opposed to a 'necessary or substantial' contribution." (Opinion of Judges BAIK and BEAUVALLET, para. 438)

c. Application of Joint Criminal Enterprise to Domestic Crimes

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"In spite of its unique nature, the concept of JCE, at least in its basic and systemic forms (JCE I & II) resembles accountability in traditional civil law in that it treats as co-perpetrators not only those who physically perform the *actus reus* of the crime, but also those who possess the *mens rea* for the crime and participate or contribute to its commission. In this sense, JCE has an underpinning in Cambodian law. The applicable criminal law at the relevant time is the Cambodian Penal Code of 1956. [...] This is not to say that 'participation in JCE' and 'co-perpetration' under the 1956 Cambodian Penal Code are exactly the same. While both require the shared intent by participants that the crime be committed, participation in a JCE, even if it has to be significant, would appear to embrace situations where the accused may be more remote from the actual perpetration of the *actus reus* of the crime than the direct participation required under domestic law. This is also not to say, contrary to what one of the Appellants alleges that participation in JCE is 'more severe' form of liability than the domestic form of 'co-perpetration'." (para. 41) "JCE, at least in its basic and systemic forms, resembles the form of co-perpetration under the applicable Cambodian law, but is not the same. They both treat as co-perpetrators not only those who physically perform the *actus reus* of the crime, but also those who possess the *mens rea* for the crime and contribute to or participate in its realization. However, participation in a JCE, even if such participation must be more than significant and not purely immaterial, embraces situations where the accused may be more remote from the actual perpetration of the *actus reus* of the crime than those foreseen by the direct participation required under domestic law. The argument [...] does not therefore support its allegation that the Impugned Order errs in determining that the ECCC can only apply JCE to international crimes." (para. 101) "Article 29 of the ECCC law, which lists forms of individual responsibility applicable before the ECCC, does not differentiate between national crimes defined in Article 3(new) and international crimes defined in Articles 4-7. This, however, is not determinative of the issue in focus. Like Article 1 of the same law, the purpose of Article 29 is to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for these international crimes and crimes under Cambodian penal law, defined by Article 3(new), that were committed between 17 April 1975 and 6 January 1979. The Pre-Trial Chamber is of the view that both the domestic form of co-perpetration and participation in a JCE are modes of responsibility which fall within the purpose of Article 29 of the ECCC Law and are forms of commission. […] [N]one of the arguments raised by the parties [...] demonstrate that the Impugned Order is in error in considering that JCE, a form of liability recognized in customary international law, shall apply to international crimes rather than domestic crimes." (para. 102)

iv. *Amnesty and Pardon*

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[T]he meaning of the word 'amnesty' cannot necessarily be found by applying a grammatical interpretation […]. [T]he use of the Khmer word for amnesty is used inconsistently." (para. 57) "[T]he validity of the amnesty [for genocide] is uncertain." (para. 58) "[T]he issues related to *ne bis in idem* and the possible effects of the Royal Decree do not manifestly or evidently prevent conviction by the ECCC. As consequence, the Pre-Trial Chamber finds that the Co-Investigating Judges could use their discretion in this case to order provisional detention." (para. 63)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber considers [...] that amnesty is perceived as a potential 'bar to prosecution', akin to the issue of *ne bis in idem*. A pardon can potentially have a similar effect. [...] [T]he Pre-Trial Chamber therefore finds that these issues are jurisdictional." (para. 66) "Although the exact meaning of the term 'amnesty' remains unclear under Cambodian Law, the text of the Decree indicates that the amnesty that was granted to Ieng Sary, assuming it was legally valid, is attached to his sentence to death and confiscation of properties pronounced by the PRT in 1979. Contrary to the Co-Lawyers' submissions, there is no indication that the amnesty covered 'any sentence related to a conviction based on the acts at issue in the 1979 trial.'" (para. 191) "The fact that the death penalty had been abolished by the time the RPA was granted does not support this interpretation either. [...] Logic dictates that a death sentence would be converted to a term in

		prison, otherwise all the individuals sentenced to death for having committed the most serious crimes would suddenly walk free. The Co-Lawyers also overlook the fact that the sentence for confiscation of Ieng Sary's property was still in force, which, in itself, contradicts their assertion that the amnesty would be 'redundant' if it only applied to the sentence pronounced by the PRT. [...] This is not the meaning of the Decree, which, when referring to an amnesty from future prosecution, is clear, as it is for the amnesty from prosecution under the 1994 Law." (para. 192) "Absent any inconsistency or absurd result having been demonstrated, the Pre-Trial Chamber shall adhere to the grammatical and ordinary sense of the words used in the Decree, concluding that the amnesty granted to Ieng Sary was confined to the specific sentence pronounced in 1979. In the context where it is related to a sentence, the sole effect of the amnesty was to 'abolish' and 'forget' the 1979 sentence, thus ensuring that it would not be put into effect. It had no effect on the possibility to institute future prosecutions as the amnesty was not related to the 'acts' allegedly committed." (para. 193) "The Pre-Trial Chamber has previously found that the 1979 trial and the resulting conviction and sentence are not a bar to the present proceedings against Ieng Sary on the basis of the *ne bis in idem* principle. Considering that the amnesty is solely attached to the invalid sentence pronounced in 1979, it bears no effect on the jurisdiction of the ECCC to try Ieng Sary for the crimes charged in the Closing Order." (para. 194) "The Pre-Trial Chamber previously found in its Decision on Provisional Detention that the second amnesty 'can be interpreted as meaning that the Charged Person "will not be proceeded against" in respect of the sentence given or breach of the [1994 Law]'. It also found, on a preliminary basis, that 'the offences mentioned in this Law are not within the jurisdiction of the ECCC'." (para. 195) "The 1994 Law was adopted following an alleged failure of the 'Democratic Kampuchea' group to respect [...] the 'Paris Agreement', which was meant to bring peace and national reconciliation in the context of the civil war that continued to wage after the overthrow of the Khmer Rouge regime by the Vietnamese forces. This Law declares the 'Democratic Kampuchea' group and its armed forces as 'outlaws' and orders the confiscation of its properties where obtained under certain circumstances." (para. 196) "[T]he 1994 Law created new offences and penalties to take into account the specific context [...] but did not create an autonomous criminal law regime to prosecute members of the Democratic Kampuchea group for any criminal act under existing criminal law. Any prosecution of an offence not criminalized under the 1994 Law, be it committed by members of the Democratic Kampuchea group or not, would therefore continue to be subject to existing law." (para. 197) "The crimes charged in the Closing Order, namely genocide, crimes against humanity, grave breaches of the Geneva Conventions, and homicide, torture and religious persecution as national crimes, are not criminalised under the 1994 Law and would therefore continue to be prosecuted under existing law, be it domestic or international criminal law, even if perpetrated by alleged members of the Democratic Kampuchea group." (para. 199) "A plain reading of the text of the Decree in conjunction with the 1994 Law leads the Pre-Trial Chamber to conclude that the amnesty, in the case of Ieng Sary, only prevented his prosecution for the offences against State security set out in Article 4 and, arguably, for the offence of being a member of the Democratic Kampuchea group, assuming that such an offence was criminalised under Articles 1 and 2. There is no indication that the Decree was to cover any offence whatsoever committed by Ieng Sary, irrespective of its source. There is no indication either that it intended to cover acts of genocide, crimes against humanity and grave breaches of the Geneva Conventions." (para. 200) "The interpretation of the Decree proposed by the Co-Lawyers for Ieng Sary, which would grant Ieng Sary an amnesty for all crimes committed during the Khmer Rouge era, including all crimes charged in the Closing Order, not only departs from the text of the Decree, read in conjunction with the 1994 Law, but is also inconsistent with the international obligations of Cambodia. Insofar as genocide, torture and grave breaches of the Geneva Conventions are concerned, the grant of an amnesty, without any prosecution and punishment, would infringe upon Cambodia's treaty obligations to prosecute and punish the authors of such crimes, as set out in the Genocide Convention, the Convention against Torture and the Geneva Conventions. Cambodia, which has ratified the ICCPR, also had and continues to have an obligation to ensure that victims of crimes against humanity which, by definition, cause serious violations of human rights, were and are afforded an effective remedy. This obligation would

		generally require the State to prosecute and punish the authors of violations. The grant of an amnesty, which implies abolition and forgetfulness of the offence for crimes against humanity, would not have conformed with Cambodia's obligation under the ICCPR to prosecute and punish authors of serious violations of human rights or otherwise provide an effective remedy to the victims. As there is no indication that the King (and others involved) intended not to respect the international obligations of Cambodia when adopting the Decree, the interpretation of this document proposed by the Co-Lawyers is found to be without merit." (para. 201)

v. *Statute of Limitations and Punishability*

a. Domestic Crimes

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"As a further issue, the Pre-Trial Chamber must consider in order to indict, whether the offences of torture and homicide as described in the 1956 Penal Code are still punishable at this time." (para. 89) "In relation to torture, the Pre-Trial Chamber notes that Article 2 of the 1986 No. 27 Decree Law on Arrest, Police Custody, Provisional Detention, Release, Search in Home, On Property and On Individual ('No. 27 Decree Law') deals with a specific form of torture committed by police and other authorities against people under arrest or in custody. Article 49 of this law provides that any law which is contrary to it is abrogated. The Pre-Trial Chamber finds that the 1956 Penal Code provisions on torture are not abrogated because this is not contrary to the provisions in the No. 27 Decree Law and can therefore be applied despite this Decree Law." (para. 90) "The Pre-Trial Chamber finds that the provisions on torture in the 1956 Penal Code can still be applied as they are not contrary to the spirit of the 1992 UNTAC Criminal Code, and the crime of torture is therefore still punishable under the 1956 Penal Code. It is therefore possible to indict for the crime of torture under the 1956 Penal Code." (para. 93) "The provisions of the 1956 Penal Code providing for premeditated murder do not differ in their letter or spirit from the 1992 UNTAC Criminal Code provisions. Premeditated murder is still punishable under the UNTAC Criminal Code although there are apparently different views on the possible sentencing range. Once again, applying Article 73 of the 1992 UNTAC Criminal Code, the Pre-Trial Chamber finds that it is possible to charge with the domestic crime of premeditated murder." (para. 95)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"There is no basis either under the plain language of Article 15(1) of the ICCPR for extending the principle of legality to govern conditions of prosecution beyond a retroactive change to the substance of the crimes or penalties between the time a crime is committed and prosecuted. […] [T]he principle of legality under Article 15(1) of the ICCPR does not 'refer directly to limitation periods […].' […] The underlying purposes of the principle of legality in safeguarding fairness and legal certainty require that it is sufficiently foreseeable and accessible to an accused that his or her conduct is criminal at the time of its commission. As the principle of legality, in its *strict sense*, does not require that it be sufficiently foreseeable or accessible to an accused that he or she may or may not be prosecuted depending on the applicable statute of limitations period and whether it is suspended or lifted in the future […]." (para. 183)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter." (para. 76) "The Pre-Trial Chamber recalls that under Article 3 (new) of the ECCC Law, the ECCC has jurisdiction to try accused persons for homicide, torture and religious persecution to try accused persons for homicide, torture and religious persecution under the 1956 Penal Code. During the period of the temporal jurisdiction of the ECCC, namely 17 April 1975 to 6 January 1979, the 1956 Penal Code was in effect. 'Article 109 of the 1956 Penal Code establishes a ten year limitation period for felonies, five years for misdemeanours and one year for petty offences. These run from the date of the commission and are interrupted by judicially-ordered investigations.' 'On a plain reading of Articles 109 to 114 of the 1956 Penal Code [...], in the absence of any act of investigation or prosecution which interrupted the limitations period in relation to the domestic crimes', this period expired ten years after the indictment period, namely between 17 April 1985 to 6 January 1989. Finally, 'Article 3 and Article 3 (new), which were promulgated in 2001 and 2004 respectively, added an initial 20 years and

		subsequently 30 years to the limitation period, thus extending this total period to 40 years'." (para. 278) "By Article 3 and 3 (new) of the ECCC Law, the National Assembly of Cambodia has extended the statute of limitations for the national crimes of murder, torture and religious persecutions as defined in the 1956 Penal Code, applicable during the temporal jurisdiction of the ECCC, of 20 and then 30 years. The legality of this extension under Cambodian law was confirmed by the Constitutional Council on 12 February 2001." (para. 279) "The ECCC has no authority to review the legality, with regards to Cambodian law, of the extension of the statutes of limitations by the National Assembly, nor the decision of the Constitutional Council. Hence, Article 3 (new) of the ECCC Law in principle gives the ECCC jurisdiction over national crimes. However, [...] the ECCC 'shall exercise their jurisdiction in accordance with international standard of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights'. Therefore, the Pre-Trial Chamber shall, in the light of the arguments raised by the Co-Lawyers, determine whether the application of Article 3 (new) violates the principle of legality enshrined in Article 15(1) of the ICCPR." (para. 280) "The Pre-Trial Chamber has previously found that the principle of legality is respected where the charged crimes are provided for under the ECCC Law as well where they have existed in national or international law at the time of the alleged criminal conduct." (para. 281) "As noted by the international Judges in the Trial Chamber in Case 001, the principle of legality under Article 15(1) of the ICCPR does not 'refer directly to limitation periods. [It does] not unequivocally interpret the scope of international fair trial principles in relation to the retroactive consideration or repeal of statutes of limitations.' The Pre-Trial Chamber notes however that the ECtHR has considered that the reactivation of a criminal action which had already become subject of limitation might violate the principle of foreseeability inherent to the principle of legality enshrined in Article 15(1). This is not the case however, where the extension of the statute of limitations occurs before its expiry. [...]The Pre-Trial Chamber considers that the extension of the statute of limitation before its expiry is a matter of State policy and does not trigger any issue with regards to the principle of legality." (para. 282) "The Pre-Trial Chamber observes that the 10 year period prescription for the national crimes provided for in the 1956 Penal Code had elapsed by the time the ECCC Law was adopted, in 2001. The ECCC Law only provides for an extension of the statute of limitation for the future, without explicitly addressing the issue of whether the crimes were time-barred at the time and thus the law had the effect of reopening cases after the expiry of the statute of limitation or whether the prescription has been tolled." (para. 284) "The underlying principle of statutes of limitations is to provide for a time frame within which criminal proceedings must be instituted. As such, it presupposes that judicial institutions operate effectively, so proceedings can be instituted. State practice contains several examples where statutes of limitation were suspended on the basis that the judicial institutions were not functioning, notably as a result of an ongoing conflict or a dictatorship regime. Suspension of statutes of limitations when judicial institutions are not functioning is also perceived as being necessary to protect the victims' right to reparation of serious violations of human rights resulting from crimes such as the ones subject to the jurisdiction of the ECCC, through prosecution of the authors of the crimes. The Pre-Trial Chamber therefore agrees with and adopts the Trial Chamber unanimous finding that statutes of limitation do not run where the judicial institutions are not functioning." (para. 285) "The Pre-Trial Chamber further agrees with and adopts the finding of the three-Judge majority of the Trial Chamber Cambodian Judges that 'from 1979 until 1982, the judicial system of the People's Republic of Kampuchea did not function at all' and, 'until the Kingdom of Cambodia was created by the promulgation of its Constitution on 24 September 1993, a number of historical and contextual considerations significantly impeded domestic prosecutorial and investigative capacity'. It is observed that the Trial Chamber majority Judges attributed the lack of national judicial capacity between 1979 until 1982 to 'the destruction of the judicial system by the Democratic Kampuchea regime' of which the accused is alleged to be one of the senior leaders and acknowledged that 'a lengthy period was needed to re-establish a judicial system and to educate lawyers, prosecutors and judges'. They further state that domestic prosecution and investigation of the crimes allegedly committed by the Democratic Kampuchea regime was impeded between 1982 and 1993 by the ongoing civil war waged by the Khmer Rouge, who were occupying part of the country and still considered as one of its representative by the international community, and the resulting difficulty in achieving peace while bringing the responsible

		of crimes committed during the DK era to justice. The Pre-Trial Chamber agrees with and adopts the consequent conclusion of the Cambodian Judges in the Trial Chamber in their opinion that 'the limitation period with respect to the domestic crimes […] started to run, at the earliest, on 24 September 1993'. It further notes that the accused cannot benefit from the passage of time for such period where he is alleged to be in part responsible for the incapacity of the judicial system to conduct investigation and prosecution." (para. 286) "The Pre-Trial Chamber finds that the 10 year statute of limitation of the 1956 Penal Code, which started to run on 24 September 1993, had not expired in 2001. Therefore, the extension by the National Assembly in 2001 and 2004, respectively for 20 and then 30 years, did not violate the principle of legality." (para. 287) "The Pre-Trial Chamber does not find that the Co-Investigating Judges' decision to confirm jurisdiction with respect to domestic crimes charged under the 1956 Penal Code is in violation of Ieng Sary's right to equality before the law because the extension of the statute of limitations under Article 3 (new) of the ECCC Law only applies when those crimes are charged at the ECCC." (para. 288)
4.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"The fact that the Trial Chamber failed to reach such agreement does not mean that *the ECCC,* as opposed to simply the *Trial Chamber of the ECCC,* cannot apply or has no jurisdiction over national crimes: 'The absence of the required majority consequently creates a barrier to the *continuation of the prosecution* of the Accused for domestic crimes *before the Trial Chamber* of the ECCC.' In addition, the Pre-Trial Chamber makes note of the fact that the Trial Chamber did find in the Judgment in Case 001 that '*the crimes charged in the Amended Closing Order [- which included the national crimes -] are within the scope of the subject-matter, temporal and territorial jurisdiction of the ECCC*.'" (para. 50) "Although, in the Closing Order in Case 002, the Co-Investigating Judges could not agree as to the applicability of Article 3*new*, the Pre-Trial Chamber did, on appeal, find that ECCC has jurisdiction over national crimes and, on that ground, endeavoured to address *the defect* in the Closing Order by pointing at existing facts. The lack of facts that would allow one chamber to legally characterise them as national crimes – as prescribed in Article 3(new) of the ECCC Law - in one case against one defendant does not mean that Article 3(new) can not be applied in another case against another defendant, provided such facts exist. While the ECCC has jurisdiction over national crimes, in order to ensure equal treatment before the ECCC, Article 3(new) of the ECCC Law has to be applied in the same manner to all those subject to it. This means that the guilt of all those brought to trial before the ECCC on account of charges for, allegedly, having committed national crimes, can only be evaluated where facts to that effect have been discovered by the investigation and properly laid out in the indictment in a way that allows for their correct legal characterisation." (para. 52)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Article 109 of the 1956 Penal Code establishes a ten-year limitations period for felonies, five years for misdemeanours and one year for petty offences. These run from the date of commission of the crime and are interrupted by judicially-ordered acts of investigation or prosecution. In the absence of any such act, the limitations period in relation to the domestic crimes charged in this case expired, at the latest, ten years after the conclusion of the indictment period, namely on 6 January 1989." (Opinion of Judges BAIK and BEAUVALLET, para. 599) "However […] the Pre-Trial Chamber in Case 002 unanimously found that the ECCC's jurisdiction to prosecute national crimes committed during 1975-1979 is not barred by the statute of limitations. […] 'The underlying principle of statutes of limitations is to provide for a time frame within which criminal proceedings must be instituted. As such, it presupposes that judicial institutions operate effectively, so proceedings can be instituted.' The Chamber accordingly adopted the Trial Chamber's 'unanimous finding [in Case 001] that statutes of limitation do not run where the judicial institutions are not functioning.' Since it has been established 'that between 1975 and 1979, there was no legal or judicial system in Cambodia, and accordingly that no criminal investigations or prosecutions were possible during that period […] the limitation period therefore did not commence between these dates.'" (Opinion of Judges BAIK and BEAUVALLET, para. 600) "With respect to the period subsequent to the fall of the Khmer Rouge, the Pre-Trial Chamber further adopted the findings of the three Cambodian Trial Chamber Judges that 'from 1979 until 1982, the judicial system of the People's Republic of Kampuchea did not function at all' as it had been destroyed by the DK regime, and that from 1982 'until the Kingdom of Cambodia was created by the promulgation of its Constitution on 24 September 1993, a number of historical and contextual considerations', including, *inter alia*, civil war, the ongoing peace process and the continuing international recognition of the Khmer Rouge as Cambodia's government, 'significantly impeded domestic prosecutorial and

		investigative capacity'. As a result, the ten-year statutory limitations period for domestic crimes provided for in the 1956 Penal Code started to run, at the earliest, on 24 September 1993. Hence, it would have expired in 2003, barring any interruption." (Opinion of Judges BAIK and BEAUVALLET, para. 601) "However, Article 3 of the ECCC Law promulgated in 2001 purported to extend the statute of limitations for domestic crimes within the Court's jurisdiction by 20 years, while Article 3*new*, adopted as an amendment to the ECCC Law in 2004, increased the extension to 30 additional years. […] [A]lthough the reinstatement of the right to prosecute after the statute of limitations has already elapsed might violate Article 15(1) of the ICCPR and the principle of legality, the extension of the statute of limitations before its expiry is a matter of state policy and does not violate the principle of legality. Accordingly, since the ten-year statute of limitations for domestic crimes had not expired before Article 3 of the ECCC Law extended it in 2001, 'the extension by the National Assembly in 2001 and 2004, respectively for 20 and then 30 years, did not violate the principle of legality'." (Opinion of Judges BAIK and BEAUVALLET, para. 602) "[T]herefore […] the national crimes for which AO An has been charged are not statute barred" (Opinion of Judges BAIK and BEAUVALLET, para. 603)

b. Grave Breaches of the Geneva Conventions

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"At the outset, [...] the Co-Investigating Judges' Closing Order indicted the Charged Person for Grave Breaches, which amounts to a confirmation of ECCC's jurisdiction [...]. The Co-Lawyers' challenge against this confirmation of jurisdiction is based on an assertion that the domestic statutory limitation period applies also to international crimes. The Geneva Conventions, which are the applicable law under Article 6 of the ECCC Law, provide that war crimes are not subject to any statute of limitations, which indicates that there is no statute of limitations applicable. The submission to the contrary is without merit. As the Appellant makes no jurisdictional challenge, the ground is inadmissible." (para. 73)

4. ECCC Jurisdiction: Miscellaneous

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption'" (para. 25) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27)
2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'." (para. 28) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary

	Eleventh Request for Investigative Action	jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 30)
3.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'." (para. 25) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 28)
4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'." (para. 24) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27)
5.	**002 IENG Sary** Special PTC 06 Doc. No. 5 29 March 2010 *Decision on IENG Sary's Rule 35 Application for Judge Marcel LEMONDE's Disqualification*	"The immunities in respect of the international judges of the ECCC and the national judges of the ECCC come about by the operation of Article 19 and Article 20 respectively of the Agreement between the United Nation[s] and the Royal Govern[ment] of Cambodia […]. Sim[ilar] provisions are included in the Law of the Establishment of the [ECCC]." (para. 8) "There is no prescribed jurisdiction for any of the Chambers of the ECCC to deal with disciplinary matters in respect of any of the judges of the ECCC. The only jurisdiction for considering behavior of judges in their own cases is the provision in Internal Rule 34 which prescribes the jurisdiction for applications filed for disqualification of judges when a judge has in any case a personal or financial interest or concerning which the judge has, or has had, any association which objectively give rise to appearance of bias." (para. 11) "The Pre-Trial Chamber has found no provisions in the Cambodian Code of Criminal Procedure concerning jurisdiction on alleged acts of judges amounting to interference with the administration of justice where behaviour of judges in their own cases is involved." (para. 12) "[T]here are no provisions in procedural rules established at the international level […] and [no] jurisprudence from international tribunals which provides for jurisdiction to sanction judges for behaviour amounting to interference with the administration of justice." (para. 13) "As the Application seeks the disqualification of [a judge] as a sanction pursuant to Internal Rule 35 based on behaviour of the judge in his cases qualified by the Co-Lawyers as amounting to interference with the administration of justice it is therefore not admissible." (para. 14) "This application is an attempt by the Co-Lawyers to expand the jurisdiction of the ECCC, which is rejected." (para. 15)
6.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014	"The jurisdiction of the BAKC to act upon complaints related to conflicts of interest, however, does not exclude all possibility for ECCC judicial bodies to also address the issues when fairness of the proceedings before them is at stake." (para. 39)

	Decision on MEAS Muth's appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer	"The ICIJ's power to review the DSS's decision on assignment of counsel is not only inherent to his duty to ensure fairness of the proceedings, but it also is echoed in the rules governing proceedings before the ECCC. Indeed, a conflict of interest is certainly a legitimate reason for an ECCC judicial body not to admit counsel to represent defendant before the ECCC under Article 21(1) of the ECCC Agreement or to remove him or her under Article 7 of the DSS Administrative Regulations. The concurrent jurisdiction of the BAKC to deal with complaints in respect of conflicts of interest under disciplinary procedure does not undermine the ECCC's jurisdiction to address issues of conflict of interest if '[they] affect, or [are] likely to affect the right of the accused to a fair and expeditious trial or the integrity of the proceedings.' In practical terms, ECCC judicial bodies are in the best position to examine conflicts of interest that may impair fairness of their proceedings given their familiarity with the cases." (para. 40)

II. FAIR TRIAL RIGHTS

For more jurisprudence on the ***Rights of Victims***, see VI.E. Rights of the Victims and Civil Parties

For more jurisprudence on the ***Evidence Obtained in Violation of Rights***, see IV.5.iii. Evidence Obtained in Violation of Rights

For more jurisprudence on the ***Admissibility of Appeals under Consideration of Fairness/Inherent Jurisdiction***, see VII.B.5. Admissibility under Fairness Considerations (Internal Rule 21)

For more jurisprudence on the ***Interpretation of the Rules in light of Internal Rule 21***, see I.A.3.ii.m. Internal Rule 21

A. General and Miscellaneous

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"The Pre-Trial Chamber is of the view that it can only take a violation of [Article 9 of the ICCPR] into account when the organ responsible for the violation was connected to an organ of the ECCC, or had been acting on behalf of any organ of the ECCC or in concert with organs of the ECCC." (para. 15)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"Decision of fact in one case provide no decision in respect of another case. […] Each case before the Pre-Trial Chamber is determined upon the evidence before it in that case. […] There can therefore be no conclusion that the right to a fair trial of the Charged Person will be overlooked or neglected by the predetermination of facts." (para. 12)
3.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights […]. Amongst these are the rights to be informed of the charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 33)
4.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights [...]. Amongst these are the rights to be informed of charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 25)
5.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU*	"[A] decision not to release a charged person should be based on an assessment of whether public interest requirements [...] outweigh the need to ensure respect of a charged person's right to liberty. To balance these competing interests, proportionality must be taken into account. It is generally recognized that 'a measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use more lenient measure, it must be applied.'" (para. 91)

	Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order	
6.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"Any measure imposed as a restriction on the rights of a charged person found in Rule 21(1) must be 'strictly limited to the needs of the proceedings.'" (para. 37) "[A]lthough not all Charged Persons made or joined in the Request, due to the fact that the right expressed in this decision is a fair trial right, the right expressed in this decision shall extend to the defence teams of the other charged persons currently detained in the Detention Facility […]." (para. 42)
7.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"To the extent that an alleged violation of an international instrument or treaty-applicable in Cambodia relates to a right that can be applied within the framework of this Court, Internal Rule 21 provides that the rights of persons before this Court, including victims, shall be safeguarded." (para. 27)
8.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"For the purpose of this court the provisions of Article 14 and 15 of the [ICCPR] are applicable at all stages of proceedings before the ECCC. Further, Article 14 of the ICCPR provides for overriding rights which will transcend local procedures declared and followed. The provisions of Articles 14 and 15 of the ICCPR are also reflected in Internal Rule 21." (para. 13) "The overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a)." (para. 14) "Under Articles 33 new and 35 new of the [ECCC Law], and Internal Rule 21, the Charged Person is entitled to number of guarantees including the right to fair trial." (para. 20) "This Chamber is not only duty bound to respect the rights laid down in Internal Rule 21 but it also attaches great importance to the respect of human rights and to proceedings that fully respect proper processes of the law. The Pre-Trial Chamber concurs with the views expressed in other tribunals according to which 'the issue of respect for due process of law encompasses more than merely the duty to ensure fair trial for the accused' and also includes, in particular, 'how the Parties have been conducting themselves in the context of a particular case.'" (para. 21)
9.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG*	"It is imperative that this Chamber *do its utmost* to ensure that the charged persons are provided with a fair trial." (Opinion of Judges MARCHI-UHEL and DOWNING, para. 12)

	Sary's Appeal against OCIJ Order on Requests to Summons Witnesses	
10.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety." (para. 23)
11.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Pursuant to Internal Rule 21, the Pre-Trial Chamber has a duty to ensure that proceedings before the ECCC are fair. This, in part, involves people in similar position being treated equally before the court. The fundamental principles of the procedure before the ECCC, enshrined in Internal Rule 21, require that the law shall be interpreted so as to always '*safeguard the interests of all*' the parties involved, that care must be taken to 'preserve a *balance* between the rights of the parties' and that 'proceedings before the ECCC shall be brought to a conclusion within a *reasonable time*.'" (para. 35)
12.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying his Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19)
13.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam*, to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings pursuant to Internal Rules 55(10), 58(6), 74 and 76." (Opinion of Judges BEAUVALLET and BAIK, para. 13)

14.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"The Pre-Trial Chamber recalls the DSS' obligations pursuant to Internal Rule 21(1), […] accordingly cautions the Section to be diligently and continuously conscious of the fair trial rights of the Accused in their budget planning and the assessment of Fee Claims by the Defence." (para. 14)
15.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Turning to the Co-Lawyers' allegation concerning the Court's financial uncertainty, the Pre-Trial Chamber observes that the Co-Lawyers fail to sufficiently demonstrate that a fair trial driven by law is unlikely due to insufficient funding at this stage of the proceedings. Accordingly, the Chamber finds that the right of the Accused to procedural fairness at the present stage is not at risk to be irremediably infringed." (para. 167)

B. Fair Trial Rights

1. Specific Rights and Principles

i. *Principle of Adversarial Proceedings*

For jurisprudence on the ***Conduct of the Proceedings***, see VII.D. Conduct of Proceedings before the Pre-Trial Chamber

1.	**002 KHIEU Samphân** PTC 24 and 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"[T]he [principle] of conducting an adversarial proceeding is not violated by dismissing a request for hearing on an appeal. The principles relating to adversarial proceedings provide for an adverse argument to be put and to be answered. This can also be achieved through written submissions. The Internal Rules specifically permit matters to be considered on the basis of written submission and the Practice Directions provide for the option of a reply to a response which ensures that, in the absence of a hearing, the party is given the opportunity to provide its adversarial argument." (para. 27)
2.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[T]he Closing Order marks the conclusion of the judicial investigation. In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety. An adversarial debate is possible at various stages of the proceedings including in inquisitorial systems, such as the Cambodian CPC and the Internal Rules. The fact that the Indictment was issued without the Appellant responding to the Final Submission clearly means that the final part of the procedure was not entirely adversarial in his case, but does not mean that the Indictment was not preceded by any adversarial hearing […]. The various appeals by the parties have enabled the Chamber to ensure that all parties […] were heard on numerous issues of law and fact during the judicial investigation. Thus, the fact that the Appellant was not able to respond to the Final Submission does mean that the investigation was unfair. Finally, the procedure governing the upcoming trial phase is entirely adversarial." (para. 23)
3.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to […] ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties […]." (Opinion of Judges CHUNG and DOWNING, para. 19)
4.	**003 MEAS Muth** PTC 14 D82/4/2 25 February 2015 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of His Motion to Strike, to Access the Case File and to Participate in the Investigation*	"[T]he Pre-Trial Chamber notes that the International Co-Investigating Judge, although he refused to strike the International Co-Prosecutor's Response to the Reconsideration Notification from the Case File, assured that it would not be considered until the end of the judicial investigation and after giving the Appellant the opportunity to consult the Case File and to be heard on the issue. Hence, the Appellant's misgivings of a prejudice resulting from the consideration of the International Co-Prosecutor's Response to the Reconsideration Notification without his input have now been resolved." (para. 17)

5.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"The [...] Instructions are based on the fundamental principle, enshrined in Internal Rule 21(1)(a), that 'ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties.' The principle of adversarial proceedings relates directly to the requirements for a fair trial, as foreseen by Article 14 of the [ICCPR], and 'requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent.' Further, it is noted that Internal Rule 21 does not foresee any exception to the rule that ECCC proceedings shall be adversarial. In this regard, the Pre-Trial Chamber has explicitly stated, that: '*Ex parte* communication shall be strictly limited so as to ensure the rights of the parties in proceedings before the ECCC which, according to Internal Rule 21.1(a) shall be fair and adversarial and preserve a balance between the rights of the parties [...].'" (para. 19) "Furthermore, the fact that Internal Rule 77(2) expressly refers to the Rule 76(3) decisions suggests that, while Internal Rule 76 only articulates the overall annulment process, Internal Rule 77 is the rule that foresees the procedures for handling annulment applications. According to Internal Rule 77, the proceedings for handling appeals and applications are adversarial; in other words, the Internal Rules call for hearings or for responses and replies to be filed by the other parties." (para. 21) "[I]t is emphasised that the request for leave to file the proposed submission at this time is specifically grounded in Internal Rule 21(1)(a) seeking a right to fair and equal (in terms of adversarial) proceedings. In this sense, IM Chaem seeks to be heard in proceedings to which other parties (to the investigation) have been granted a right to be heard." (para. 28) "Therefore, the Pre-Trial Chamber has taken into account the following reasons in favour of accepting Im Chaem's proposed Submission: i) the PTC has already granted the right to be heard in these proceedings to the other parties in Case 004, including the OCP and Civil Parties; ii) IM Chaem's proposed submission does not put forward new or different arguments from those already advanced by AO An; iii) IM Chaem's submission in these proceedings is late due to factors beyond her control; iv) IM Chaem acted diligently as soon as she acquired knowledge of the current proceedings; v) AO An has not explicitly objected to IM Chaem's request (within the legal deadline for such response); and vi) the OCP does not object to the admissibility of IM Chaem's Submission." (para. 29) "For all the above mentioned reasons, and based on: i) the provisions of Internal Rule 39(4)(b) which give the Chamber the authority to use its discretion to recognize the validity of actions executed after the expiration of a time limit; and ii) on the provisions of Internal Rule 21 which dictates that proceedings before the ECCC have to be fair and adversarial; The Pre-Trial Chamber has decided to allow IM Chaem's proposed Submission in support of AO An's Application." (para. 30)
6.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Pre-Trial Chamber recalls that Internal Rule 21(1)(a) mandates that proceedings before the ECCC shall be fair and adversarial and preserve a balance between the rights of the parties. In particular, ECCC proceedings shall guarantee the separation so prosecutorial and adjudicatory powers. It is the role of the Pre-Trial Chamber to safeguard such separation of powers and procedural fairness." (para. 36)

ii. *Principle of Equal Treatment before the Law and Equality before the Law*

1.	**002 Civil Parties** PTC 03 C22/I/46 1 July 2008 *Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties in IENG Sary's Appeal against Provisional Detention Order*	"Parties have different positions in the criminal proceedings and these positions even vary in the different stages of the proceedings. The Internal Rules contain certain rules which reflect those different positions." (para. 3) "During the hearing no new argument have been raised except for a reference to a principle that all Parties should be treated in the same way. The Pre-Trial Chamber finds that no such general principle exists with respect to the length of oral submissions. Even if it did, such a principle would simply mean that as far their position is equal, Civil Parties should be treated in the same way." (para. 4)
2.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings*	"The principle of equal treatment before the law cannot be construed to imply that an error in one case should be repeated in a future case, even if the error in question is beneficial to the Charged Person." (para. 15) "Having found that the Co-Investigating Judges did not err in accepting the filing of a response by the Co-Lawyers […] in Case 001, the Pre-Trial Chamber notes that, the Co-Investigating Judges principled objection to the filing of the Response to the Final Submission by the Co-Lawyers of Ieng Sary would, if left intact, result in unequal treatment before the law to the detriment of the Charged Person Ieng Sary." (para. 19)
3.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[L]ike Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […], the Internal Rules do not specifically grant a charged person the right to respond to the Co-Prosecutors' final submission. In [D390/1/2/4], the Pre-Trial Chamber noted that the traditionally inquisitorial French civil law system, which served as a model for the Cambodian CPC, had since been amended […] in order to allow for more balance between the parties at the investigative stage. The Chamber also considered that, despite the absence of an express grant of the right for a charged person to respond to the Co-Prosecutors' final submission, to the extent that the Co-Investigating Judges are bound by […] Internal Rules 21(1)(a) and (b), their decision to accept Charged Person KAING Guek Eav's Response to the Co-Prosecutors Final Submission […] was not erroneous. It further considered that in instructing their Greffiers to reject Ieng Sary's Response to the Co-Prosecutors' Final Submission, the Co-Investigating Judges failed to respect the guarantee to the Charged Person of the right to equality of arms with the prosecution and the right to equality treatment before the law." (para. 19) "In contrast [to Ieng Sary], prior to the issuance of the Indictment, the Co-Lawyers for the Appellant took no action to preserve their rights. […] [N]ow that the Indictment has been issued, it ill behoves the Appellant's Co-Lawyers to invoke the infringement of their right to respond to the Final Submission in requesting that the Pre-Trial Chamber adopt a broad interpretation of their right to appeal against it so as to ensure the fairness of the proceedings. Despite the Co-Lawyers's lack of diligence, if the Pre-Trial Chamber were satisfied that the Appellant's fair trial right might be jeopardised by the dismissal of the Appeal, it would accept to consider the Appeal admissible based on a broad interpretation of Internal Rule 21(1) and would proceed to consider it on the merits. That is not so." (para. 21) "[T]he Closing Order marks the conclusion of the judicial investigation. In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety. An adversarial debate is possible at various stages of the proceedings including in inquisitorial systems, such as the Cambodian CPC and the Internal Rules. The fact that the Indictment was issued without the Appellant responding to the

		Final Submission clearly means that the final part of the procedure was not entirely adversarial in his case, but does not mean that the Indictment was not preceded by any adversarial hearing […]. The various appeals by the parties have enabled the Chamber to ensure that all parties […] were heard on numerous issues of law and fact during the judicial investigation. Thus, the fact that the Appellant was not able to respond to the Final Submission does mean that the investigation was unfair. Finally, the procedure governing the upcoming trial phase is entirely adversarial." (para. 23)
4.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber does not find that the Co-Investigating Judges' decision to confirm jurisdiction with respect to domestic crimes charged under the 1956 Penal Code is in violation of Ieng Sary's right to equality before the law because the extension of the statute of limitations under Article 3 (new) of the ECCC Law only applies when those crimes are charged at the ECCC." (para. 288) "In the context where Article 3 (new) of the ECCC generally applies to all individuals falling within the jurisdiction of the ECCC, the Pre-Trial Chamber considers that Ieng Sary's challenge to the ECCC's subject matter jurisdiction with respect to domestic crimes under the 1956 Penal Code on the basis of an alleged unequal treatment amounts to challenging the ECCC's limited personal and temporal jurisdiction with respect to those crimes. Under Article 2 (new) of the ECCC Law, the ECCC has jurisdiction over '*senior leaders of Democratic Kampuchea and those who were most responsible'* for the crimes and serious violations of Cambodian laws related to crimes […] that were committed during the period *from 17 April 1975 to 6 January 1979*.' Thus, the question before the Pre-Trial Chamber is whether this subscribed jurisdiction results in the ECCC being out of compliance with its obligations under Article 33 (new) of the ECCC Law, which stipulates that the exercise of jurisdiction by the ECCC shall be 'in accordance with international standards of justice, fairness and due process of law, as set out in Article 14' of the ICCPR. Specifically, whether it violates Article 14(1) of the ICCPR which requires that '[a]ll persons shall be equal before the courts and tribunals', and unfairly discriminates against the accused." (para. 289) "The Pre-Trial Chamber does not so find. The Chamber notes that although the Human Rights Committee has determined that '[e]quality before courts and tribunals […] requires that similar cases are dealt with in similar proceedings', it has not found that 'extraordinary' or 'special' courts with limited or selective jurisdiction are therefore, by their very nature, in violation of Article 14(1) of the ICCPR. Rather, as with any other courts, the important question has been 'whether they ensure compliance with the fair trial requirements of Article 14.' An examination of the ECCC Law and the Internal Rules leads to the conclusion that the ECCC does ensure such compliance. For example, the fair trial guarantees in Article 14 have been adopted almost verbatim in Article 35 (new) of the ECCC Law. In addition, other fair trial guarantees appear in Internal Rule 21, which highlights the 'fundamental principles' that apply before the ECCC to safeguard the interests of charged persons." (para. 290) "Furthermore, there are objective and reasonable grounds for the ECCC's limited personal and temporal jurisdiction as 'Extraordinary Chambers' in the Cambodian legal system. The Human Rights Committee has stated that under Article 14(1) of the ICCPR, '[i]f […] exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction.' The Pre-Trial Chamber finds that the decision to limit the ECCC jurisdiction was not made arbitrarily or by the Government of Cambodia alone, but was based on the recommendation of a Group of Experts and was affirmed by the United Nations. That decision was in line with a basic principle underlying international criminal law that those responsible for the most serious violations of individual human rights resulting in mass atrocities that amount to international crimes must be held accountable. In light of the nature of these crimes requiring mass mobilisation, planning and execution, it was reasonable for retribution and deterrence reasons to limit jurisdiction to punishment of senior leaders and those most responsible for the mass atrocities committed in a specific, short period of Cambodia's history. It is reasonable to set up a specially constituted court such as the ECCC to try alleged senior-level perpetrators for these types of crimes where the normal court system may not have the capability or resources for doing so in a fair and unbiased manner, or where there is a significant risk that such local trials could result in post-conflict instability. Finally, in light of the limited resources available to the ECCC, it was reasonable to devote this court's energies towards trial of those most responsible for the mass atrocities committed from 1975-1979." (para. 291) "The Pre-Trial Chamber finds that the ECCC Law, including Article 3 (new) applies equally to any individual who meets the requirements, established on objective and reasonable criteria, to fall under the personal and temporal jurisdiction of the ECCC." (para. 292)

5.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Pursuant to Internal Rule 21, the Pre-Trial Chamber has a duty to ensure that proceedings before the ECCC are fair. This, in part, involves people in similar position being treated equally before the court. […] Keeping this in mind and considering the unusual number of appeals before it, the Pre-Trial Chamber […] has identified a number of fundamental errors which are relevant to all the rejected Civil Party Applicants. The Pre-Trial Chamber finds that a significant injustice would occur to the rejected civil parties who did not raise the errors identified by the Pre-Trial Chamber. The Pre-Trial Chamber has […] determined, in the interests of justice, to join all the Appeals filed against the impugned Orders also in order to allow the examination, in its decisions of the common and fundamental errors identified in all the impugned Orders and after considering the conclusions drawn therefrom, to make a fresh review, on the basis of these findings, in respect of all those Civil Party Applications that were rejected by the Co-Investigating Judges and who have appealed." (para. 35)
6.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"While the ECCC has jurisdiction over national crimes, in order to ensure equal treatment before the ECCC, Article 3(new) of the ECCC Law has to be applied in the same manner to all those subject to it. This means that the guilt of all those brought to trial before the ECCC on account of charges for, allegedly, having committed national crimes, can only be evaluated where facts to that effect have been discovered by the investigation and properly laid out in the indictment in a way that allows for their correct legal characterisation." (para. 52)
7.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"Finally, the Pre-Trial Chamber finds no merit in the Appellant's arguments that denying the requested information violates his rights to equality before the law and to prepare a defence. As recalled above, disagreements between the Co-Investigating Judges are confidential, not only to the Appellant, but as a rule. There is therefore no difference of treatment with other suspects in the same case who, similarly, do not have access to disagreements, nor any automatic right of access that would stem from a right to prepare a defence. […] In this respect, the Pre-Trial Chamber notes that the Appellant is named in the Introductory Submission but has not been formally charged. […] The Appellant has not demonstrated that providing him access to privileged information about the disagreement on these decisions is necessary, at this stage, to defend himself against the crimes alleged in the Introductory Submission." (para. 12)
8.	**14-06-2016-ECCC/PTC Special PTC** Doc. No. 4 4 August 2016 *Decision on Neville SORAB's Appeal against the Defence Support Section's Failure to Consider His Application to be Placed on the List of Foreign Lawyers*	"The Pre-Trial Chamber considers that any reasonable reader would conceive that Rule 11(5) does set deadlines for *all* appeals. For the purposes of examining admissibility of appeals under Rule 11(5), the first point of time to be determined is that when the DSS 'receives an Application'. […] If the [Defence Support Section ('DSS')] does not examine an application within the required thirty day period, the remedy provided by Rule 11(5) to expectant applicants is that they, similarly to those applicants who receive a decision, can file appeals to the Pre-Trial Chamber 'within 15 (fifteen) days', but in this instance - since there is no decision – 'of […] the end of the 30 (thirty) day period', within which the DSS had to decide. In cases of non-examination, Applicants can appeal within 45 (forty five) days from the day when the DSS receives an Application. As also suggested by the DSS, the Pre-Trial Chamber considers that this reading, of Rule 11(5) appeal deadlines, is also in full compliance with the principle of equality of persons before the law." (para. 10)
9.	**004 YIM Tith** PTC 29 D193/91/7	"[A]ccording to the standards established at international level, inequality in treatment is permissible if 'based on reasonable and objective grounds not entailing actual disadvantage or other unfairness.'" (para. 36)

	15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"The Pre-Trial Chamber first notes that […] the former ICIJ considered Yim Tith to be a 'Suspect', and AO An and Im Chaem to be 'Charged Persons'. […] [I]t is not contested that the ICIJs have consistently treated all 'Suspects' […] the same, because none of them were granted participatory rights in the investigation, until they became 'Charged Persons.' […] The specified difference in treatment is based on reasonable and objective grounds and, […] does not put Yim Tith at a disadvantageous or unfair position *vis a vis* other 'Suspects'." (para. 37)

iii. *Principle of Equality of Arms*

1.	**002 IENG Sary** PTC 08 A162/III/6 28 August 2008 *Decision on IENG Sary's Appeal against Letter concerning Request for Information concerning Legal Officer David BOYLE*	"[N]either Internal Rule 73(c) nor 74(3) allows the Charged Person to appeal against the Decision of the Co-Investigating Judges [refusing to provide information]. Therefore, the Pre-Trial Chamber has, on the basis of these rules, no jurisdiction over the Appeal." (para. 17) "Internal Rule 74(2) allows the Co-Prosecutors to appeal against all *orders*. Since the Decision of the Co-Investigating Judges does not constitute an order, no issue as to the principle of equality of arms arises." (para. 18)
2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The terms of Internal Rule 23(3) require a decision to be made and once made in the affirmative, a Civil Party acquire[s] a number of rights under the Internal Rules [...]. […] The granting of such rights of participation is a most serious matter given the effect of participation in the investigative stage of the proceedings and the role provided for a Civil Party to support the prosecution, as provided for in Internal Rule 23(1)(a). Given the effect upon the issue of equality of arms that such support may have and the effect of being able to request investigative action, any decision whereby a person is admitted to the case file cannot be taken lightly." (Opinion of Judges PRAK and DOWNING, para. 7)

3.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings*	"[L]ike Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […] the Internal Rules do not specifically provide a right for a charged person to respond to the final submission of the Co-Prosecutors." (para. 16) "At the time of the adoption of Article 246 […], Article 175 of the [French CPC], which serves as the model for Article 246, did not foresee the possibility for the defence of a charged person to submit observations in response to the Prosecution's Requisition […]. Article 175 of the French CPC has since been amended […] such that a charged person may submit observations in response to the Prosecution's Requisition. This amendment in order to allow for more balance between the parties during the investigative stage. This need for balance at the investigative stage has gained credence in systems with inquisitorial models because of the need to consider the rights of the accused at every stage in penal proceedings. […] [T]he Cambodian CPC has not been so amended. The general principle of equality of arms is, however, an important safeguard in penal proceedings and […] the decision […] to accept the Response to the Co-Prosecutors' Final Submission […] was not erroneous." (para. 17) "As the Co-Prosecutors have the right to file a Final Submission in excess of fifteen pages, which is recognised in Internal Rule 66, to categorically deny a request for more than a fifteen page response to a submission that is not subject to page limits would be to ignore the fact that the Final Submission is unlike other filings before the ECCC." (para. 21) "[T]he Pre-Trial Chamber finds that the actions of the Co-Investigating Judges have infringed upon the fair trial protections provided […] by Internal Rule 21, in particular by failing to respect […] equality of arms and equal treatment before the law." (para. 23)
4.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[L]ike Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […], the Internal Rules do not specifically grant a charged person the right to respond to the Co-Prosecutors' final submission. In [D390/1/2/4], the Pre-Trial Chamber noted that the traditionally inquisitorial French civil law system, which served as a model for the Cambodian CPC, had since been amended […] in order to allow for more balance between the parties at the investigative stage. The Chamber also considered that, despite the absence of an express grant of the right for a charged person to respond to the Co-Prosecutors' final submission, to the extent that the Co-Investigating Judges are bound by […] Internal Rules 21(1)(a) and (b), their decision to accept Charged Person KAING Guek Eav's Response to the Co-Prosecutors Final Submission […] was not erroneous. It further considered that in instructing their Greffiers to reject Ieng Sary's Response to the Co-Prosecutors' Final Submission, the Co-Investigating Judges failed to respect the guarantee to the Charged Person of the right to equality of arms with the prosecution and the right to equality treatment before the law." (para. 19) "In contrast [to IENG Sary], prior to the issuance of the Indictment, the Co-Lawyers for the Appellant took no action to preserve their rights. […] [N]ow that the Indictment has been issued, it ill behoves the Appellant's Co-Lawyers to invoke the infringement of their right to respond to the Final Submission in requesting that the Pre-Trial Chamber adopt a broad interpretation of their right to appeal against it so as to ensure the fairness of the proceedings. Despite the Co-Lawyers's lack of diligence, if the Pre-Trial Chamber were satisfied that the Appellant's fair trial right might be jeopardised by the dismissal of the Appeal, it would accept to consider the Appeal admissible based on a broad interpretation of Internal Rule 21(1) and would proceed to consider it on the merits. That is not so." (para. 21) "The fact that the Indictment was issued without the Appellant responding to the Final Submission clearly means that the final part of the procedure was not entirely adversarial in his case, but does not mean that the Indictment was not preceded by any adversarial hearing […]. The various appeals by the parties have enabled the Chamber to ensure that all parties […] were heard on numerous issues of law and fact during the judicial investigation. Thus, the fact that the Appellant was not able to respond to the Final Submission does mean that the investigation was unfair. Finally, the procedure governing the upcoming trial phase is entirely adversarial." (para. 23)
5.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to […] ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties […]." (Opinion of Judges CHUNG and DOWNING, para. 19)

	the Decision Denying his Requests to Access the Case File and Take Part in the Judicial Investigation	"The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto […]. To be given full effect, these rights should be afforded to all parties at the earliest opportunity, absent any competing legitimate interest. The Internal Rules indeed provide that they are available to the Co-Prosecutors from the beginning of the judicial investigation and to civil party applicants from the moment they file an application to be admitted as Civil Parties. The Internal Rules further provide that they can be exercised 'at any time during an investigation'. A coherent reading of the Internal Rules requires that similar to other parties, individuals who face a possibility of being indicted, as they are subject to prosecution, be afforded the opportunity to participate in the judicial investigation as early as possible." (Opinion of Judges CHUNG and DOWNING, para. 20) "Individuals named in an Introductory Submission are at particular risk of being ultimately indicted. […] The principle of equality of arms, enshrined in Article 14(3) of the ICCPR and reproduced in Internal Rule 21(1)(a), requires that they are afforded a reasonable opportunity to present their case under conditions that do not place them at a *substantial disadvantage vis-à-vis* the other parties. […] In the context of the ECCC, a difference in timing for participation in the judicial investigation and access to case file between the Co-Prosecutors, the Civil Parties and the civil party applicants, on the one hand, and the Suspect, on the other hand, may be legally justified by their different status and serve legitimate interests, notably to protect the integrity of the judicial investigation. However, this situation may, over time, create an imbalance, real or perceived, between the ability of the parties to state their case that would be difficult to remedy or compensate by any procedural safeguards. When individuals are specifically targeted by the Prosecution and the Civil Parties or civil party applicants are themselves afforded the possibility to influence the outcome of the investigation through, *inter alia,* requests for investigative actions and to construct their claim for collective and moral reparations, such individuals should be given the opportunity to know the allegations against them, counter these and influence the judicial investigation in the same manner as the other parties. Therefore, individuals named in an Introductory Submission, because they are 'subject to prosecution', shall be afforded the rights attached to the status of Charged Person, irrespective of the fact [that] they have not been formally charged by the Co-Investigating Judges and summoned for [an] initial appearance." (Opinion of Judges CHUNG and DOWNING, para. 21) "As such, no procedural safeguard could at this stage remedy the difference in treatment between the parties, and TA An's ability to point towards exculpatory evidence and put forward his position in order to influence the Co-Investigating Judges' decision to either dismiss the case or issue an indictment may be impaired." (Opinion of Judges CHUNG and DOWNING, para. 27) "[T]here may be legitimate reasons to delay access to the case file, restrict the information that is made available to counsel or limit the communication of information to TA An at this stage of the proceedings." (Opinion of Judges CHUNG and DOWNING, para. 29)
6.	**003 MEAS Muth** PTC 11 D56/19/16 19 February 2014 *Second Decision on Requests for Interim Measures*	"[W]ithout access to the evidentiary documents relied upon by the International Co-Investigating […] the Co-Lawyers are not in a position to meaningfully challenge the factual conclusions reached in the said decision. They are also placed at significant disadvantage *vis-à-vis* the Co-Prosecutors in the current appellate proceedings […]. The Pre-Trial Chamber therefore finds it necessary for the Co-Lawyers to be given access to the Case File […] to avoid that a right of appeal […] becomes meaningless or ineffective and to ensure fairness of the appellate process through equality of arms. […] [I]t is in the interest of justice to exercise its inherent jurisdiction to order, as an *interim* measure […] the Co-Investigating Judges to grant the Co-Lawyers access to the Case File […], subject to any limitation that they may consider necessary to avoid any prejudice to the judicial investigation or the security of witnesses and taking into consideration that the Co-Lawyers are bound by an obligation of confidentiality in respect of such access." (para. 15)
7.	**003 MEAS Muth** PTC 14 D82/4/2 25 February 2015 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of His Motion to Strike, to Access the Case File and to*	"[T]he Pre-Trial Chamber notes that the International Co-Investigating Judge, although he refused to strike the International Co-Prosecutor's Response to the Reconsideration Notification from the Case File, assured that it would not be considered until the end of the judicial investigation and after giving the Appellant the opportunity to consult the Case File and to be heard on the issue. Hence, the Appellant's misgivings of a prejudice resulting from the consideration of the International Co-Prosecutor's Response to the Reconsideration Notification without his input have now been resolved." (para. 17)

	Participate in the Investigation	
8.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"The Pre-Trial Chamber is also not convinced that the established rights to a fair trial, to the equality of arms and to the presumption of innocence are at risk of being irremediably damaged […]. The Chamber considers that the mere mention of the Appellant's name, functions or role in Case 002 is inevitable, due to overlapping facts and evidence, and that it does not constitute a breach of fairness or reversal of the burden of proof in the distinct case at hand." (para. 24)
9.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Pre-Trial Chamber recalls that Internal Rule 21(1)(a) mandates that proceedings before the ECCC shall be fair and adversarial and preserve a balance between the rights of the parties. In particular, ECCC proceedings shall guarantee the separation of prosecutorial and adjudicatory powers. It is the role of the Pre-Trial Chamber to safeguard such separation of powers and procedural fairness." (para. 36)
10.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"With regards to the other Defence argument, that failure to admit the Appeal would itself constitute a breach because the Co-Prosecutors may appeal all orders of the CIJs under Rule 74(2), the Pre-Trial Chamber notes that, at the ECCC, it is the applicable rules that set different procedural rights to appeal by each party, and the case-by-case examination of appeals, for admissibility under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties." (para. 19) "The Chamber observes, however that, apart from making reference to an 'imposition of procedural constraints' and to a 'premature curtailment of the opportunity "to make proper enquiries",' the Defence has not demonstrated how the Appellant's right to adequate time is harmed concretely in the instant case." (para. 20) "Regarding the Defence allegation for unfairness due to the judge's '*risk*' of promoting the interests of the ICP over those of the defence, which, according to the Defence, illustrates procedural inequality in this case, the Chamber notes the CIJ's unequivocal statements that, '[i]t is the very nature of the mechanism at the ECCC and the ICP's onus of proof that the ICP has a 'head start' on the investigation' and that '[o]nce the case is before the OCIJ the *Prosecution's right to participate in or carry out investigations is no stronger than that of the Defence or any other party*'. In any event, unless evidence is provided to rebut the Judge's presumption of impartiality, the Pre-Trial Chamber shall not entertain any claims that the ICP's interests *may* have been promoted." (para. 31) "The Pre-Trial Chamber is not convinced that the rights to adequate time, equality of arms and procedural fairness will be irremediably damaged if it does not intervene at this stage […]." (para. 35)
11.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for*	"[T]he Pre-Trial Chamber is not convinced that the rights to an effective defence, expeditious trial, equality of arms and the fairness and integrity of the proceedings will be irremediably damaged if the Chamber does not intervene at this stage. Therefore, the Co-Lawyers have not met the threshold for admissibility under Internal Rule 21." (para. 11) "The Pre-Trial Chamber, thus, finds the Co-Lawyer's Urgent Request inadmissible and consequently, denies the Co-Lawyers' request that the Chamber invoke its inherent jurisdiction to immediately stay the planned budget reductions until it decides on their Urgent Request." (para. 12)

	Continuation of AO An's Defence Team Budget	
12.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Procedural differences between the appellate rights of the Co-Prosecutors and an Accused do not, *per se,* violate the principle of equality of arms." (para. 143)

iv. *Principle of* In Dubio Pro Reo

1.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 19)
2.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 17)
3.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[I]n the absence of clear state practice and *opinio juris* from 1975-1979 evidencing severance of the armed conflict nexus requirement for crimes against humanity under customary international law, the principle of *in dubio pro reo* dictates that any ambiguity must be resolved in favour of the accused. Thus, the Pre-Trial Chamber finds that from 1975-1979, the definition of crimes against humanity under customary international law included an armed conflict nexus requirement [...]." (para. 144)
4.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011	"[I]n the absence of clear State practice and *opinio juris*, this Chamber nonetheless remains unable to identify the crucial tipping point between 1968 and 1984 when the transition occurred. According to the principle of *in dubio pro reo*, any ambiguity such as this must be resolved in the favour of the accused." (para. 310)

	Decision on IENG Sary's Appeal against the Closing Order	
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]here is no need to examine further the Co-Lawyers' arguments relating to the principle of *in dubio pro reo*, which is primarily a rule of proof and not of legal interpretation." (Opinion of Judges BAIK and BEAUVALLET, para. 328) "Second, turning to *in dubio pro reo*, the International Judges affirm that this principle is primarily a rule of evidentiary proof and not a rule of legal interpretation and consider that the interpretation of the term most responsible is well-established and clear. The International Judges thus find no merit in the Co-Lawyers' argument that the International Co-Investigating Judge should have applied the narrowest legal definition of those most responsible under *in dubio pro reo*." (Opinion of Judges BAIK and BEAUVALLET, para. 354)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he situation in which two independent judges issue contradictory decisions on whether to indict does not entail the application of *in dubio pro reo* principle because the principle stems from the presumption of innocence according to which MEAS Muth remains innocent even after being indicted and will remain as such until proven guilty." (para. 77)
7.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"While the International Judges agree with the Co-Lawyers that the Co-Investigating Judges erred in law by issuing two separate and conflicting Closing Orders since this was impermissible under ECCC law as previously explained, the International Judges are not convinced that this course of action violated the principle of *in dubio pro reo* and YIM Tith's fair trial rights." (Opinion of Judges BAIK and BEAUVALLET, para. 161) "In addition, the International Judges reject the contention that the Co-Investigating Judges were bound to apply the principle of *in dubio pro reo* after they reached opposing assessments of the Court's personal jurisdiction over YIM Tith. Firstly, the Chamber has stressed that the Co-Investigating Judges were obliged to refer their disagreement to the Pre-Trial Chamber, rather than shielding the matter from its intervention if they could not agree on a course of action consistent with the default position. Secondly, the principle of *in dubio pro reo* is primarily a rule of evidentiary proof and not a rule of legal interpretation." (Opinion of Judges BAIK and BEAUVALLET, para. 163)

v. *Principle of Legality*

For jurisprudence on the ***Principle of Legality***, see I.A.5.Principle of Legality

vi. *Principle of* Ne Bis in Idem

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"The principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted. The principle of ne bis in idem, which derives from civil law, is similar to the concept of double jeopardy which is more frequently used in common law. The principle of *ne bis in idem* has been interpreted as meaning that the accused 'shall not be tried twice for the same crime'." (para. 41) "The Internal Rules of the ECCC make no direct provision in respect of the doctrine of *ne bis in idem*." (para. 42) "The Pre-Trial Chamber notes that the principle is defined differently in the provisions in Cambodian law and at the international level. This is reflected in the consideration of what constitutes the 'same crime'. Under Cambodian law the 'same crime' is provided as the 'same act'. The ICCPR prohibits successive trials for the 'same offence'." (para. 43)

		"The principle of *ne bis in idem* can be seen as very narrowly related to the doctrine of *res judicata* as the consequence of this doctrine is that no one can be convicted again for the same charges after a decision has become final. Article 12 of the CPC, [...] may be regarded as an example of the application of the doctrine of *res judicata*." (para. 47) "Since the Charged Person is not charged specifically with genocide the Pre-Trial Chamber finds that the current prosecution might be for different 'offences'." (para. 51) "The Pre-Trial Chamber finds that the characterisation given by the Co-Investigating Judges, although sufficient to inform the Charged Person of the charges against him, is too vague to allow proper consideration of whether the current prosecution is for the same 'acts' as those 'acts' upon which the charges brought in 1979 were based to specify such 'acts' at the commencement of the investigation by the Co-Investigating Judges is not possible or proper. In the event of there being an indictment of the Charged Person, 'the material facts and their legal characterisation' will be set out by the Co-Investigating Judges upon the issuance of the Closing Order at the conclusion of the investigation." (para. 52) "Therefore, when applying the *ne bis in idem* principle in the various proposed ways, the Pre-Trial Chamber finds it is not, at this stage of the proceedings, manifest or evident that the 1979 trial and conviction would prevent conviction by the ECCC. The points may crystallise upon the indictment of the Charged Person, at which stage the precise charges and material facts, relied upon will be known." (para. 53)
2.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"[N]either the Internal Rules nor Cambodian law contain provisions related to the possibility to set out different legal offences for the same acts in the indictment." (para. 86) "The jurisprudence of the *ad hoc* international tribunals holds that it is permissible in international criminal proceedings to include in indictments different legal offences in relation to the same acts." (para. 87) "[I]ncluding more than one legal offence in relation to the same acts in an indictment does not inherently threaten the *ne bis in idem* principle because it does not involve the actual assignment of liability and punishment." (para. 88)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber has previously stated that '[t]he principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted' and that '[t]he principle of *ne bis in idem* has been interpreted as meaning that the accused "shall not be tried twice for the same crime"'. As such and in the context of an appeal against provisional detention, the Pre-Trial Chamber has previously considered the principle of *ne bis in idem* as being a jurisdictional issue." (para. 61) "In [...] the civil law system, the extinguishment of a criminal cause of action due to *res judicata*, a concept closely related to the principle of *ne bis in idem*, shall normally lead to the issuance of a dismissal order by the investigating judge. By sending Ieng Sary to trial, the Co-Investigating Judges implicitly rejected his request to ascertain the extinguishment of the criminal action against him, thus confirming the jurisdiction of the ECCC to try him. Concluding otherwise would deprive Ieng Sary from exercising his right of appeal on a jurisdictional issue that was properly raised before the Co-Investigating Judges but upon which the latter failed to make a judicial determination." (para. 62) "[A]mnesty is perceived as a potential 'bar to prosecution', akin to the issue of *ne bis in idem*. A pardon can potentially have a similar effect. [...] [T]he Pre-Trial Chamber therefore finds that these issues are jurisdictional." (para. 66) "[T]he Agreement, the ECCC Law and the Internal Rules do not afford protection against double jeopardy nor do they address the effect of a previous conviction on the proceedings before the ECCC. In accordance with Article 12 of the Agreement and Article 33 new of the ECCC Law, the Pre-Trial Chamber examines the CPC [...]." (para. 118) "The principle of *ne bis in idem* is enshrined as a fundamental right in Article 14(7) of the ICCPR [...]." (para. 127)

		"The Pre-Trial Chamber finds that the protection offered by Article 14(7) of the ICCPR has solely a domestic effect." (para. 128) "The limit of the protection offered by Article 14(7) is explained by the fact that a State has no obligation to recognize a foreign judgment unless it has agreed to do so through an international convention specific to this effect [...]. Acknowledging the limit of Article 14(7), the Human Rights Committee said in this respect that this should not 'undermine efforts by States to prevent retrial for the same criminal offence through international conventions.'" (para. 129) "[T]he scope of Article 14(7) is very limited as it applies to the same 'offence', namely the same legal characterization of the acts, while the international protection focuses on the 'conduct' of the accused, thus taking into account for the application of the *ne bis in idem* principle the fact that international proceedings might trigger legal characterisation that differ from the domestic ones." (para. 130) "The Pre-Trial Chamber finds that no international *ne bis in idem* protection exists under the ICCPR. Taking into account its finding below that the ECCC is an internationalised court functioning separately from the Cambodian court structure, the Pre-Trial Chamber finds that the 'internal *ne bis in idem* principle' as enshrined in Article 14(7) of the ICCPR does not apply to the proceedings before the ECCC. In these circumstances, the Pre-Trial Chamber will seek guidance in the procedural rules established at the international level to determine if Ieng Sary's previous conviction by a national Cambodian court shall prevent the ECCC from exercising jurisdiction against him for the offences charged in the Closing Order." (para. 131) "The Pre-Trial Chamber notes that absent any international *ne bis in idem* protection in Article 14(7), its task is not to determine whether an exception to the principle of *ne bis in idem* has crystallised in international law but whether the procedural rules established at the international level are sufficiently uniform for the Pre-Trial Chamber to seek guidance in them in order to resolve the issue at hand, namely whether the ECCC can exercise jurisdiction to try Ieng Sary for the indicted offences charged in the Closing Order." (para. 140) "The rationale for the adoption of a specific provision on *ne bis in idem* in the statutes of the *ad hoc* tribunals stems from the fact that the creation of international or internationalised tribunals increase the risk of putting the accused under double jeopardy as, by definition, these tribunals have jurisdiction over international crimes which are subject to universal jurisdiction. Absent any existing international *ne bis in idem* protection, there was therefore a need for recognition of such principle which is recognized under various forms in different legal systems and traditionally serves a dual purpose of protecting the individual against the harassment of the state and being an important guarantee for legal certainty." (para. 142) "However, these interests have to be balanced with the interest of the international community and victims in insuring that those responsible for the commission of international crimes are properly prosecuted." (para. 143) "The Pre-Trial Chamber finds that the procedural rules established at the international level provide constituent guidance that an international or internationalised tribunal shall not exercise jurisdiction in respect of individuals that have already been tried for the same acts by national authorities unless it is established that the national proceedings were not conducted independently and impartially with regard to due process of law. The ECCC being in a similar position as these tribunals and considering that the reasons underlying the principle set out above are also relevant in the context of its proceedings, it will apply the same standard to determine the issue at hand." (para. 157) "The Pre-Trial Chamber further finds that only fundamental defects in the national proceedings would justify the ECCC to exercise jurisdiction." (para. 158) "[T]he 1979 trial *in absentia* against Ieng Sary, the Pre-Trial Chamber finds that although there might have been the intention to prosecute, convict, and sentence Ieng Sary, the 1979 trial was not conducted by an impartial and independent tribunal with regard to due process requirements. Consequently, the prosecution, conviction, and sentencing of Ieng Sary in 1979 by the PRT bar neither the jurisdiction of the ECCC over Ieng Sary, nor any of the charges in the Closing Order." (para. 175)

vii. *Principle of the Presumption of Innocence*

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that a Charged Person can spend in provisional detention is very specific. The Rules make clear how these limits are set, that in the case when a Charged Person is detained, the stakes are higher, as the right to liberty of a person still presumed innocent is in question. Therefore, an analysis of what steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary." (para. 45)
2.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"Article 35(new) of the ECCC Law and Internal Rule 21(1)(d) mandate that the Charged Person shall be presumed innocent until proved guilty. These provisions reflect and refer to international standards as enshrined in Article 14(2) of the [ICCPR]. Furthermore, Article 9(3) of the ICCPR provides that 'it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." (para. 90) "Internal Rule 65 shall be read in light of these principles, which dictate that a decision not to release a charged person should be based on an assessment of whether public interest requirements as set out in Internal Rule 63(3)(b), notwithstanding the presumption of innocence, outweigh the need to ensure respect of a charged person's right to liberty. To balance these competing interests, proportionality must be taken into account. It is generally recognized that 'a measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use more lenient measure, it must be applied.'" (para. 91)
3.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"[N]otwithstanding the presumption of innocence, the charges against the Charged Person are of a more serious nature than those against Duch. While Duch may be seen as having cooperated with the Court, the Charged Person appears to have exercised his rights." (para. 48)
4.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"KHIEU Samphân [alleges] that there is a public presumption of his culpability […] because of the publication of a 'Case Information Sheet' on the ECCC website […]. Even if those allegations were well-founded, they would have no bearing on the judicial proceedings and would not in any way constitute such serious and egregious violations of the rights of the defence as to warrant a stay of the proceedings." (para. 23)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber observes that the Co-Investigating Judges could not agree on a legal reasoning on the issue as to whether the accused can be sent for trial for the national crimes. However, they [...] did agree on the conclusion to send the accused for trial for the national crimes. This course of action [...] does not amount to a violation of the accused's right to be presumed innocent nor to an *ultra vires* decision for failure to have followed the disagreement procedure provided for in Internal Rule 72. The Co-Investigating Judges are under no obligation to seise the Pre-Trial Chamber when they do not agree on an issue before them, the default position being that the 'investigation shall proceed' [...]." (para. 274)

6.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public certain Defence Submissions to the Pre-Trial Chamber*	"With regards to [the] document […], it does not relate to facts of the judicial investigation and […] it relates entirely to questions of law on proceedings before the PTC. Despite the fact that the integrity of the investigations is not compromised, its publication is not warranted in the interests of justice because keeping it confidential does not harm the interests of Meas Muth or undermine the presumption of innocence. The interests of the public to be informed are served by the fact that the decisions of the Chamber are public in full or with redactions as directed by Internal Rule 78." (para. 10) "In respect of [another] document […], it raises legal issues relating to procedural matters, therefore, publicity of such document is not necessary to protect any interests of [Charged Person] in light of his presumption of innocence and other defence rights." (para. 13)
7.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"The Pre-Trial Chamber is also not convinced that the established rights to a fair trial, to the equality of arms and to the presumption of innocence are at risk of being irremediably damaged […]. The Chamber considers that the mere mention of the Appellant's name, functions or role in Case 002 is inevitable, due to overlapping facts and evidence, and that it does not constitute a breach of fairness or reversal of the burden of proof in the distinct case at hand." (para. 24)
8.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30) "Incidentally, the Pre-Trial Chamber notes that the Co-Lawyers took the liberty to comment on the Closing Order (Reasons) to the press after its issuance. More importantly, IM Chaem herself issued a number of public statements in interviews she gave to the press." (para. 32) "In light of the foregoing, the Pre-Trial Chamber considers that the damage caused by a dismissal order to IM Chaem's right to be presumed innocent and to her reputation remains uncertain and hypothetical." (para. 33)
9.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber has also dismissed claims that disclosure orders violate the Charged Person's right to presumption of innocence irreparably." (para. 18)
10.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal*	"[T]here is a *lacuna* in the applicable law as regards the procedure to be applied when requests for disclosure are brought before the OCIJ. […] The Pre-Trial Chamber notes that, in the Impugned Decision, the ICIJ sought guidance in the rules established at international level, and in French jurisprudence, and found: 1) that according to international human rights jurisprudence, 'the right to presumption of innocence does not prohibit the disclosure'; 2) that 'it is fair to say that disclosure between separate criminal proceedings concerning different accused […] has been authorised' by the [ICTY]; and 3) that, according to the French Court of Cassation: '(i) there is no legal provision that

	against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)	prohibits the use of evidence obtained in an investigation into another criminal proceeding that may contribute to the ascertainment of the truth, on the condition that the disclosure is of an adversarial nature and the documents are subjected to discussion by the parties; and (ii) the confidentiality of the investigation does not obstruct the disclosure or use of evidence obtained in the investigation in another criminal proceeding that may contribute to the ascertainment of the truth in that proceeding'; 'jurisprudence does not require that disclosure be permitted only in exceptional cases'; and 'the bar for disclosure is set low – the evidence need only to contribute to the "ascertainment of the truth'", a principle also subscribed of the law before the ECCC in Internal Rules 85(1), 87(4) and 91(3).'" (para. 32) "The Pre-Trial Chamber considers that the findings of the ICIJ are in concert with: i) the fundamental requirement set in Internal Rule 21 for a balancing of interests and rights involved in the proceedings before the ECCC; and with ii) a reading of the Rules in their 'context and in accordance with their object and purpose', as set in the ECCC Law and Agreement. Within this legal context, the ICIJ is correct that, to be legitimate, disclosure proceedings have to be carried out in a manner that ensures that: i) before a decision on disclosure is rendered, the parties to the investigation are allowed the possibility of an adversarial debate over disclosure requests; and that ii) the OCP is enabled to pursue its mandate to prosecute in Case 002, and the TC is assisted in fulfilling its mandate to find the truth in Case 002, within a reasonable time". (para. 33)
11.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he situation in which two independent judges issue contradictory decisions on whether to indict does not entail the application of *in dubio pro reo* principle because the principle stems from the presumption of innocence according to which MEAS Muth remains innocent even after being indicted and will remain as such until proven guilty. Consequently, the Chamber does not deem its intervention necessary in order to avoid any irreparable harm to the Accused's fair trial rights and finds that the broadening of MEAS Muth's right of appeal through Internal Rule 21 is not warranted in this case." (para. 77)
12.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"While the International Judges agree with the Co-Lawyers that the Co-Investigating Judges erred in law by *issuing* two separate and conflicting Closing Orders since this was impermissible under ECCC law as previously explained, the International Judges are not convinced that this course of action violated the principle of *in dubio pro reo* and YIM Tith's fair trial rights." (Opinion of Judges BAIK and BEAUVALLET, para. 161) "The International Judges recall that the instant proceedings are in the pre-trial stage, which does not involve any determination of guilt or innocence, and also the Pre-Trial Chamber's prior finding that the presumption of innocence is sufficiently safeguarded as, pursuant to Internal Rule 98(4), a conviction at trial requires the affirmative vote of at least four judges, and without the required majority, 'the default decision shall be that the Accused is acquitted.'" (Opinion of Judges BAIK and BEAUVALLET, para. 162)

viii. *Protection against Torture*

For jurisprudence on ***Torture-Tainted Evidence***, see IV.B.5.iii. Evidence obtained in Violation of Rights

ix. *Right of Access to Justice*

For jurisprudence on ***Victims' Right to Access to Justice,*** see VI.E. Rights of Victims and Civil Parties

1.	**003 MEAS MUTH** PTC 11 D56/19/16 19 February 2014 *Second Decision on Requests for Interim Measures*	"The Pre-Trial Chamber adopts the finding of the Appeals Chamber of the Special Tribunal for Lebanon in the matter of *El Sayed* that the right of access to justice, which has acquired the status of *jus cogens*, may require that a judicial authority grants access to documents that are necessary to exercise a right before the Court. In particular, the Appeals Chamber has found that a request to have access to documents in order to support a claim before a Court or to exercise a right shall be granted 'if necessary to avoid a real risk that, if it is declined, the applicant will suffer an injustice that clearly outweighs the opposing interests' and only to 'the extent required for that purpose.'" (para. 14)

		"The Pre-Trial Chamber therefore finds it necessary for the Co-Lawyers to be given access to the Case File […] to avoid that a right of appeal […] becomes meaningless of ineffective and to ensure fairness of the appellate process through equality of arms. […] [I]t is in the interest of justice to exercise its inherent jurisdiction to order, as an *interim* measure […] the Co-Investigating Judges to grant the Co-Lawyers access to the Case File […], subject to any limitation that they may consider necessary to avoid any prejudice to the judicial investigation or the security of witnesses and taking into consideration that the Co-Lawyers are bound by an obligation of confidentiality in respect of such access." (para. 15)

x. *Right of Public Access to Judicial Proceedings*

For jurisprudence on the ***Confidentiality and Information of the Public***, see VI.E. Rights of Victims and Civil Parties, IV.B.6. Confidentiality of the Judicial Investigation and VII.D.2 Transparency, Expeditiousness and Integrity of the Proceedings

1.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"While agreeing that, in principle, and as also enshrined in the applicable international conventions, public access to judicial proceedings constitutes a fundamental fair trial right, the Pre-Trial Chamber notes that the provisions of the specific Internal Rules clearly provide on who, under which circumstances, and at which stage of the proceedings has authority to make public statements in relation to an ongoing proceeding." (para. 31)

xi. *Right to Effective Remedy*

For jurisprudence on the ***Victims' Right to Effective Remedy***, see VI.E.2.v. Right to Effective Remedy

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 39) "[E]ven if discredit or embarrassment would have been the issue […] this does not, by itself, render the existing remedies ineffective." (para. 40) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UN HRC] can be used as guidance." (para. 41) "Where a domestic procedure is still pending, the UN HRC will either suspend its admissibility procedure or declare the communication inadmissible. With respect to the burden of proof in such cases, if an applicant submits that certain remedies are ineffective or futile or would be unreasonably long, then he must provide *prima facie* evidence to sustain his/her allegations. The UN HRC has noted that 'mere doubts as to the effectiveness of remedies do not absolve the authors from the obligation to exhaust them', and that the applicants must submit sufficient or relevant information concerning the case law of the court which is alleged to represent an ineffective remedy in order to enable the Committee to consider and conclude on the matter." (para. 42) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 44)

		"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 45) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 48)
2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 42) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UN HRC] can be used as guidance." (para. 43) "Where a domestic procedure is still pending, the UN HRC will either suspend its admissibility procedure or declare the communication inadmissible. With respect to the burden of proof in such cases, if an applicant submits that certain remedies are ineffective or futile or would be unreasonably long, then he must provide *prima facie* evidence to sustain his/her allegations. The UN HRC has noted that 'mere doubts as to the effectiveness of remedies do not absolve the authors from the obligation to exhaust them', and that the applicants must submit sufficient or relevant information concerning the case law of the court which is alleged to represent an ineffective remedy in order to enable the Committee to consider and conclude on the matter." (para. 44) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 46) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 47) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 50)
3.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 39) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UN HRC] can be used as guidance." (para. 40) "Where a domestic procedure is still pending, the UN HRC will either suspend its admissibility procedure or declare the communication inadmissible. With respect to the burden of proof in such cases, if an applicant submits that certain remedies are ineffective or futile or would be unreasonably long, then he must provide *prima facie* evidence to sustain his/her allegations. The UN HRC has noted that 'mere doubts as to the effectiveness of remedies do not absolve the authors from the obligation to exhaust them', and that the applicants must submit sufficient or relevant information concerning the case law of the court which is alleged to represent an ineffective remedy in order to enable the Committee to consider and conclude on the matter." (para. 41) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 43) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 44) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 47)

4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 37) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UN HRC] can be used as guidance." (para. 38) "Where a domestic procedure is still pending, the UN HRC will either suspend its admissibility procedure or declare the communication inadmissible. With respect to the burden of proof in such cases, if an applicant submits that certain remedies are ineffective or futile or would be unreasonably long, then he must provide *prima facie* evidence to sustain his/her allegations. The UN HRC has noted that 'mere doubts as to the effectiveness of remedies do not absolve the authors from the obligation to exhaust them', and that the applicants must submit sufficient or relevant information concerning the case law of the court which is alleged to represent an ineffective remedy in order to enable the Committee to consider and conclude on the matter." (para. 39) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 41) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 42) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 45)

xii. *Right to an Independent and Impartial Tribunal*

For jurisprudence on ***Impartiality and Independence***, see III.C. Disqualification Proceedings, III.D. Misconduct and Interference with the Administration of Justice and IV.C.3.iii. Independence and Impartiality of Experts

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"The Pre-Trial Chamber notes that 'the starting point for any determination of […] a claim [of bias] is that 'there is a presumption of impartiality which attaches to a Judge'. 'This presumption derives from their oath to the office and their qualifications for their appointment […], and places a high burden on the party moving for the disqualification to displace that presumption'." (para. 15) "[T]his presumption of impartiality applies to the Judges of the ECCC. (para. 16) "The jurisprudence of the international tribunals is consistent in the test for bias applied here […] 'A judge is not impartial if it is shown that actual bias exists. There is an appearance of bias if: - A Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification is automatic; or - The circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.'" (para. 20) "The reasonable observer in this test must be 'an informed person, with knowledge of all of the relevant circumstances, including the traditions of integrity and impartiality that form part of the background and […] that impartiality is one of the duties that Judges swear to uphold'." (para. 21)
2.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 45) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 48)

	Person's Eleventh Request for Investigative Action	
3.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 47) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 50)
4.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 44) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 47)
5.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 42) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 45)
6.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"[A] judge's work is to render decisions and unavoidably one of the parties may not be satisfied. This does not, by itself, raise grounds for disqualification, but rather for appeals or for exhaustion of other existing legal remedies during the pre-trial, trial and appellate stages of proceedings." (para. 24)
7.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *Decision on IENG Thirith's Appeal against the Co-Investigating Judges' Order Rejecting*	"[T]here is an inherent systemic conflict, given that the Co-Investigating Judges are determining allegations concerning the conduct of either or both of them. In addition, there is no discretionary issue involved and the parties are contesting a judicial determination made by the Co-Investigating Judges." (para. 17) "[O]n a matter of fairness to redress any adverse perceptions from the systemic conflict, such matters shall be considered afresh. As a consequence, it is appropriate to proceed as though the appellant directly seised the Pre-Trial Chamber with the Abuse of Process Request with its supporting material at first instance." (para. 18)

	the Request for Stay of Proceedings on the basis of Abuse of Process (D264/1)	"The Pre-Trial Chamber is cognisant of the fact that in cases containing allegations of violations that result mainly from a lack of impartiality or integrity of Judge or his office, such as the one it is seised of, no direct evidence may be available, especially when it comes to prove the intention of the author of such violation. The assertions by the Appellant may be thus impossible to prove absent an admission by the person said to be biased, or reliance on circumstantial evidence. Any inference made on circumstantial evidence, as to the judge's intent, must be the only possible conclusion arising from the evidence presented." (para. 26)
8.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings*	"The right to be tried by a fair and impartial tribunal is protected by Article 14 of the ICCPR. The Pre-Trial Chamber has previously held that a proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and would harm the interests of a charged person. In such cases the investigative or judicial action may be annulled." (para. 28) "The fact that a person is an expert in their field and that they have, over the course of their career, expressed opinions based on their academic research and knowledge of a particular subject, without more, does not render them a biased or partial employee of the Office of the Co-Investigating Judges." (para. 33)
9.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber examines whether the 1979 Trial was conducted independently and impartially with regard to due process of law." (para. 161) "The guarantee of an independent tribunal entails that the judges shall be free from external pressures and interference. In particular, it is generally understood as comprising the [...] requirements [...] expressed by the Human Rights Committee in its Observation no. 32 pertaining to Article 14 of the ICCPR [...]." (para. 163) "In respect of the guarantee of impartiality, the jurisprudence of the ECCC and other international tribunals has consistently held that the requirement of impartiality is violated if a Judge is actually biased or where there is an appearance of bias. An appearance of bias is established if '(a) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if a Judge's decision will lead to the promotion of a cause in which he or she is involved; or (b) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.' The reasonable observer in this test must be 'an informed person, with knowledge of all of the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and appraised also of the fact that impartiality is one of the duties that Judges swear to uphold.'" (para. 164) "Considering that the PRT was created by the executive branch, which i) named members or employees of the government in positions of judges and ii) asserted the guilt of the only two accused to be tried in the Decree creating the tribunal, the Pre-Trial Chamber finds that the PRT did not present sufficient guarantees of the separation of powers to ensure that judges would be free from external pressure and interference. The circumstances of the creation of the PRT and the appointment of its members are indeed indicative of a lack of separation of power between the executive, legislative and judiciary

		branches in Cambodia in 1979, at the end of the Khmer Rouge era, which resulted in the creation of a tribunal that did not meet the required guarantee of independence." (para. 168) "[S]everal members of the PRT were not impartial. Through their statements, either out of court or by presenting evidence against the accused, some members of the PRT showed actual bias. In addition, the way PRT members conducted the proceedings, notably by allowing the types of witnesses statements mentioned above in the absence of cross-examination, by allowing the proceedings to continue *in absentia* with defence counsel who not only failed to ensure effective representation of the accused but also acted against them, and by pronouncing the guilt of the accused, for alleged crimes of such magnitude, after a five day trial and a few hours deliberations, demonstrate a failure of the judiciary to maintain a balance between the rights of both parties. In the circumstances described above, the failure of the members of the PRT to fulfil their obligation to ensure that the proceedings were conducted fairly and that the rights of the parties were respected contributes to demonstrate a lack of impartiality." (para. 174) "On the basis of the above facts of the 1979 trial *in absentia* against Ieng Sary, the Pre-Trial Chamber finds that although there might have been the intention to prosecute, convict, and sentence Ieng Sary, the 1979 trial was not conducted by an impartial and independent tribunal with regard to due process requirements. Consequently, the prosecution, conviction, and sentencing of Ieng Sary in 1979 by the PRT bar neither the jurisdiction of the ECCC over Ieng Sary, nor any of the charges in the Closing Order." (para. 175)
10.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"[A] proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and harm the interests of a charged person. […] [A] breach of impartiality, if proven, would amount to a cause of a substantive nullity." (para. 19)
11.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"[A] proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and harm the interests of a charged person and that a breach of impartiality by an investigative judge or investigator, if proven, would amount to a cause of a substantive nullity of the investigative actions performed by them. The Pre-Trial Chamber has defined the appropriate standard to be applied in respect of bias and emphasises that there is a high threshold to reach in order to rebut the presumption of impartiality. It is for the applicant to adduce sufficient evidence to satisfy the Pre-Trial Chamber of the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias." (para. 14) "[T]he practice of confronting witnesses or civil parties to other narratives or incriminating evidence on the record is a legitimate investigative practice, which actually aims to test the inculpatory evidence on the record and thus does not demonstrate any bias. The Pre-Trial Chamber finally does not identify any misconduct in the established practice of having a witness confirming or infirming previous statements, and does not find any misrepresentation by the Investigator of the evidence at his disposition when confronting it to witnesses." (para. 19) "[T]he presumption of reliability attached to written records of interview is not rebutted when the Investigator asked the witness to repeat relevant information given before the interview, during screening questions, or during a break. It is actually an appropriate investigative practice, which does not evince any bias, to have witnesses repeating information given off-the-record, solicited or not, for the purpose of having an accurate record of their evidence." (para. 22) "The Pre-Trial Chamber […] recalls the unfettered discretion of Co-Investigating Judges in the conduct of interviews and considers it reasonable for an investigator to confront interviewees to other evidence on the record without specifying each and every reference, especially in light of confidentiality and witness protection constraints." (para. 38)

12.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"In any event, unless evidence is provided to rebut the Judge's presumption of impartiality, the Pre-Trial Chamber shall not entertain any claims that the ICP's interests may have been promoted." (para. 31)

xiii. *Right to be Informed of Charges*

1.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights […]. Amongst these are the rights to be informed of the charges against them […]. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 33)
2.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights [...]. Amongst these are the rights to be informed of charges against them [...]. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 25)
3.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"International standards require that an indictment set out the material facts of the case with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence. The indictment should articulate each charge specifically and separately, and identify the particular acts in a satisfactory manner. If an accused is charged with alternative forms of participation, the indictment should set out each form charged." (para. 47) "[The level of particularity required in indictments] necessarily depends upon the alleged proximity of the accused to those events." (para. 48) "The addition of legal offences at this stage of the proceedings does not affect the right of the Charged Person to be informed of the charges provided for in Article 35(new) of the ECCC Law, as he will have the opportunity to present his defence on these specific offences during the trial." (para. 106) "The procedure for judicial investigations at the ECCC set out in the Internal Rules is designed to ensure fairness to the Charged Person in terms of notice of the scope and nature of the acts under investigation for which he may be indicted. […] [T]he Charged Person has the right to be informed of the charges at the investigative stage to such an extent that he is able to exercise the rights accorded to him during the investigation […]." (para. 138) "Rule 21(1)(d) is deemed to apply from the time of the arrest and, thus, at the investigation stage […]." (para. 140)
4.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included. […] [A]ccording to international standards, the Charged Person must be informed of any and all separate charges against him/her as soon as they are justified 'to such an extent that he/she is able to exercise the rights accorded to him/her during the investigation, including the right to request investigative action pursuant to Internal Rule 58(6).'" (para. 26)

	[PUBLIC REDACTED] *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	
5.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included. […] [A]ccording to international standards, the Charged Person must be informed of any and all separate charges against him/her as soon as they are justified 'to such an extent that he/she is able to exercise the rights accorded to him/her during the investigation, including the right to request investigative action pursuant to Internal Rule 58(6)." (para. 22)
6.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included. […] [A]ccording to international standards, the Charged Person must be informed of any and all separate charge against him/her as soon as they are justified 'to such an extent that he/she is able to exercise the rights accorded to him/her during the investigation, including the right to request action pursuant to Internal Rule 58(6)'." (para. 22)
7.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Internal Rules 53 and 67 provide the legal framework for informing a charged person of the charges against him/her. [...] [T]he Cambodian Criminal Procedure Code [...] contains a similar provision in Article 44 [and] Article 247. The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances, the Pre-Trial Chamber will apply international standards." (para. 31) "International standards provide that, in the determination of charges against him/her, the accused shall be entitled to a fair hearing and, more specifically, to be informed of the nature and cause of the charges against him/her and to have adequate time and facilities for the preparation of his/her defence. This right 'translates into an obligation on the Prosecution to plead in the indictment the material facts underpinning the charges'. 'The pleadings in an indictment will therefore be sufficiently particular when [they] concisely [set] out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the nature and cause of the charges against him/her to enable him/her to prepare a defence' effectively and efficiently. The Prosecution [...] is not required to plead the evidence by which it intends to prove the material facts, and the materiality of a particular fact is dependent upon the nature of the Prosecution case." (para. 32) "Where the indictment, as the primary accusatory instrument, fails to plead with sufficient specificity the material aspects of the Prosecution case, it suffers from a material defect. [...] [The ICTY and ICTR] Appeals Chambers have taken a strict approach on the degree of specificity of material facts which should be pleaded in an indictment." (para. 33) "Considering that both international standards and Article 35(new) of the ECCC law require specificity in the indictment […] it is in the interest of fairness to declare admissible the grounds of appeal that raise the issue of notice of charges in relation to the modes of liability alleged against the charged person." (para. 34) "The Pre-Trial Chamber recalls that the right to receive notice of charges is a fundamental right of a charged person. The right to notice arises upon arrest and is meant in part to ensure the Charged Person's ability to fully participate in the investigation. The Pre-Trial Chamber considers that a comparison between the respective terms of Internal Rules 53(1)(a)(b) and 67(2) show that, while only summary of the facts and type of offence alleged are required at the stage of the Introductory Submission, a more complete 'description of the material facts' and their legal characterization is required in the Closing Order. Internal Rules 55(2) and (3) stipulate that 'the Co-Investigating Judges

		shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission' and shall not investigate new facts coming to their knowledge during the investigation unless such facts are limited to aggravating circumstances relating to an existing Submission, or until they receive a Supplementary Submission from the OCP. When read in light of a charged person's fundamental rights recalled above the Pre-Trial Chamber concludes that particulars of facts summarized in the Introductory Submission can validly and in fact must be pleaded in the Closing Order so as to provide the Defence sufficient notice of the charges based on which the Trial shall proceed." (para. 92) "[T]he ICTY has specified what material facts must be pleaded in an indictment where the accused is alleged to have committed the crimes in question by participating in a JCE. The jurisprudence [...] is relevant in the context of the ECCC [...]. However, the Pre-Trial Chamber must still determine whether all such requirements are applicable at the Introductory Submission stage or only at the Closing Order stage. Firstly, ICTY cases consider that the existence of the JCE is a material fact which must be pleaded. In addition, the indictment must specify a number of matters which were identified [...] in *Krnojelac* [...]: (a) the nature or purpose of the joint criminal enterprise [...], (b) the time at which or the period over which the enterprise is said to have existed, (c) the identity of those engaged in the enterprise [...], and (d) the nature of the participation by the accused in that enterprise. [...]" (para. 93) "The nature of the participation by the accused in the JCE must be specified and, where the nature of the participation is to be established by inference, the Prosecution must identify in the indictment the facts and circumstances from which the inference is sought to be drawn. In this respect, [...] while ICTY jurisprudence seems to leave open to the Prosecution the possibility of either pleading the *required mens rea* in terms or by pleading the specific facts from which such *mens rea* is to be inferred, in case the Prosecution actually intends to rely upon the 'conduct of the accused' to establish that the accused possessed the required *mens rea*, then such conduct must have been pleaded as material fact in the indictment. As rightly noted [...] in *Milutinović et al*., 'since *mens rea* is almost always matter of inference from facts and circumstances established by the evidence, the emphasis on pleading the facts on which the Prosecution will rely to establish the requisite *mens rea* signifies the importance attached by the Appeals Chamber to ensuring that the indictment informs the accused clearly of the nature and cause of the charges against him.'" (para. 94) "[F]or the Charged Person to exercise her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of full investigation. Thus, while it is [...] preferable for an Introductory Submission alleging the accused's responsibility as a participant in a JCE to also refer to the particular form(s) (basic or systemic) of JCE envisaged, the OCP are not precluded from doing so in the Final Submission. At the latest, the Co-Investigating Judges may refer to the particular form(s) of participation in their Closing Order." (para. 95) "As to the alleged members of the JCE, while the OCP failed to name other members than the Charged Persons, the Pre-Trial Chamber would expect the Co-Investigating Judges to provide specific names of any other members of the alleged JCE, identified in the course of the investigation, in their Closing Order where applicable. As to the alleged nature of the participation of the Charged Persons, the Pre-Trial Chamber is of the view that the OCP could have provided more particulars with regard to the nature of each Appellant's participation in the alleged JCE. This however does not amount to lack of notice at this stage of the proceedings so long as the Closing Order, were it to indict any of the Appellants and assert their participation in a JCE as a mode of commission, contains the specific aspects of the conduct of the accused from which the OCIJ considers that their respective participation in the JCE and/or required *mens rea* is to be inferred." (para. 97)
8.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG*	"Although further particulars might eventually be required for the accused to be put on sufficient notice of the nature and cause of the charge against them, this can be done before the Trial Chamber and shall not prevent the Pre-Trial Chamber, at this stage of the proceedings, to maintain the charges for crimes against humanity, while adding the 'existence of a nexus between the underlying acts and the armed conflict' to the 'Chapeau' requirements in [...] the Closing Order." (para. 148)

	Thirith against the Closing Order	
9.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19)
10.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"[N]otification of charges is done directly to the concerned person as this is normally the first time that he or she becomes aware of the proceedings. […] That said, the Undersigned Judges find that notification to the Co-Lawyers was legitimate and appropriate in the exceptional circumstances of the present case. […] It is also noted that the objective of notifying IM Chaem of the charges has been achieved through notifying her Co-Lawyers." (Opinion of Judges BEAUVALLET and BWANA, para. 43) "[Notification through *via* the media] is envisaged when the location of the suspect is unknown, not when he or she is represented by counsel." (Opinion of Judges BEAUVALLET and BWANA, para. 44) "[T]he International Co-Investigating Judge did not err in deciding to charge IM Chaem without holding an initial appearance under Internal Rule 57 and to notify her of the charges against her in written document served on the Co-Lawyers. This exceptional procedure was a lawful and appropriate way to address the present situation, which is unusual and unprecedented and therefore unforeseen in the law applicable at the ECCC." (Opinion of Judges BEAUVALLET and BWANA, para. 45)
11.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"[N]otification of charges is done directly to the concerned person as this is normally the first time that he or she becomes aware of the proceedings. […] That said, the Undersigned Judges find that notification to the Co-Lawyers was legitimate and appropriate in the exceptional circumstances of the present case. […] It is also noted that the objective of notifying MEAS Muth of the charges has been achieved through notifying his Co-Lawyers." (Opinion of Judges BEAUVALLET and BWANA, para. 46) "[T]he International Co-Investigating Judge did not err in deciding to charge MEAS Muth without holding an initial appearance under Internal Rule 57 and to notify him of the charges against him in written document served on the Co-Lawyers. This exceptional procedure was a lawful and appropriate way to address the present situation, which is unusual and unprecedented and therefore unforeseen in the law applicable at the ECCC." (Opinion of Judges BEAUVALLET and BWANA, para. 47)
12.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam*, to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings […]." (Opinion of Judges BEAUVALLET and BAIK, para. 13) "[T]he placement under judicial investigation is the act through which the Co-Investigating Judges, after informing the person of the facts of which they have been seized and their legal characterization at that stage of the proceedings, notify the Charged person of the existence of clear and consistent evidence indicating that he or she might be criminally responsible for committing those crimes. The suspect subsequently becomes a Charged Person who has access to the case file and can take part in the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 14)

13.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to seize the Pre-Trial chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Failure to append violates the rights of the Charged Person to notice of the body of evidence laid against him. Be that as it may, the Undersigned Judges do not consider annulment of the written record [of interview which refers to the missing document] to be the proper or warranted remedy in this instance. Procedural defect in fact arises from the absence of a document on record and not from an inherent defect which would justify annulment of the investigative action. The written record of interview which refers to the missing document is not vitiated." (Opinion of Judges BEAUVALLET and BAIK, para. 258) "The Undersigned Judges hereby invite the International Co-Investigating Judge to regularise *ex officio* the proceedings by appending the identification results to the written record of witness interview. Failing this, it will rest with parties to request investigative action, from which appeal lies in case of refusal." (Opinion of Judges BEAUVALLET and BAIK, para. 259)
14.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"[T]he Pre-Trial Chamber has previously found that the lack of details of facts in an Introductory Submission, do not '*amount to a lack of notice at this stage of the proceedings* so long as the Closing Order [...] contains the specific aspects of the conduct of the accused.' '[F]or the Charged Person to exercise [his/] her right to participate in the investigation, *the notice requirement must apply to the Introductory Submission to some degree*. However, the *level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission*, *because the OCP makes its Introductory Submission without the benefit of a full investigation*." (Opinion of Judges BEAUVALLET and BAIK, para. 95)
15.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The notification of charges is […] left to the discretion of the Co-Investigating Judges, who may charge any person named in the prosecutorial submissions or unnamed people. The only criterion for charging is whether, in their opinion, 'there is clear and consistent evidence indicating that such person may be criminally responsible for the commission of a crime'. The charging process, in the inquisitorial system, is thus a judicial decision through which the suspect is not only officially notified of the crimes for which he or she is under investigation, but also informed that there is a certain level of evidence gathered against him or her. It is further through the notification of charges that the suspect is put in a position to answer allegations and prepare a defence, such that he or she is able to play an active role in the proceedings and to exercise his or her rights. From a prosecutorial standpoint, the charging process also brings clarity as to which charges, among the initial allegations, have been retained." (Opinion of Judges BAIK and BEAUVALLET, para. 109) "'[I]n a civil law system, only facts which have been charged beforehand can be considered for indictment' and 'the charging process [is] a requirement for subsequent indictment'." (Opinion of Judges BAIK and BEAUVALLET, para. 110)
16.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[I]n accordance with Internal Rule 67(2), the indictment shall contain a description of the material facts and their legal characterisation by the Co-Investigating Judges. The indictment must consistently set out the material facts of the case with enough detail to inform an Accused of the nature and cause of the charges against him/her to enable him/her to prepare a defence effectively and efficiently." (Opinion of Judges BAIK and BEAUVALLET, para. 182)

xiv. *Right to Translation of Documents*

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009	"[T]he Charged person has, pursuant to Internal Rule 21(1)(d), the right to be informed of the charges brought against him. However, neither the ECCC Law nor the Internal Rules provide charged persons an explicit right to receive all documents contained in their Case File into their own language or that of their lawyer(s). The fact that a language is one of the three official languages of the Court does not amount, in itself, to a right for the Charged Person to have all documents contained in his case file translated into this language." (para. 40)

	Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties	"[J]urisprudence of international tribunals has repeatedly held that a defendant's right to translation of documents into a language he or she understands does not extend to all documents in his/her case file, even in the case where a defendant is self-represented." (para. 41) "[T]he right for the Co-Lawyers to have access to the Case File during the investigation does not mean that all the material collected should automatically be translated into their language." (para. 42) "[D]epending on the specific circumstances of a case, translation of document(s) might be necessary to ensure that a charged person is able to exercise his/her rights during the investigation. By deciding that 'the key requirement is to allow a charged person to have "knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events"', the Co-Investigating Judges have set out a standard that shall ensure respect of the Charged Person's rights and thus ensure the fairness of the proceedings at this stage." (para. 43) "International jurisprudence has recognized that providing a defendant with an interpreter is an adequate substitute for provision of the translation of certain documents." (para. 47) "[T]he ICTY and ICTR have found that exculpatory material shall be made available to the defendant in a language he or she understands for the defendant to be able to prepare his or her defence." (para. 49) "The Pre-Trial Chamber finds that the Charged Person's rights safeguarded in Internal Rule 21 are not violated. The Translation Oder is in accordance with international standards in respect of translation rights. The provision of translator for a multilingual defence team ensures that all necessary linguistic requirements are properly met for this stage of the proceedings before the ECCC. The Pre-Trial Chamber therefore finds that Internal Rule 21 does not force it to interpret the Internal Rules in such way that the Appeal against the Translation Order should be declared admissible." (para. 50)
2.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"[T]he Charged person has, pursuant to Internal Rule 21(1)(d), the right to be informed of the charges brought against him. However, neither the ECCC Law nor the Internal Rules provide charged persons an explicit right to receive all documents contained in their Case File into their own language or that of their lawyer(s). The fact that a language is one of the three official languages of the Court does not amount, in itself, to a right for the Charged Person to have all documents contained in his case file translated into this language." (para. 34) "[J]urisprudence of international tribunals has repeatedly held that a defendant's right to translation of documents into a language he or she understands does not extend to all documents in his or her case file, even in the case where a defendant is self-represented." (para. 35) "[D]epending on the specific circumstances of a case, translation of document(s) might be necessary to ensure that a charged person is able to exercise his/her rights during the investigation. By deciding that 'the key requirement is to allow a charged person to have "knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events"', the Co-Investigating Judges have set out a standard that shall ensure respect of the Charged Person's rights and thus ensure the fairness of the proceedings at this stage." (para. 36) "International jurisprudence has recognized that providing a defendant with an interpreter is an adequate substitute for provision of the translation of certain documents." (para. 41) "[T]he ICTY and ICTR have found that exculpatory material shall be made available to the defendant in a language he or she understands for the defendant to be able to prepare his or her defence." (para. 43) "The Pre-Trial Chamber finds that the Charged Person's rights safeguarded in Internal Rule 21 are not violated. The Translation Oder is in accordance with international standards in respect of translation rights. The provision of translator for a multilingual defence team ensures that all necessary linguistic requirements are properly met for this stage of the proceedings before the ECCC. The Pre-Trial Chamber therefore finds that Internal Rule 21 does not force it to interpret the Internal Rules in such way that the Appeal against the Translation Order should be declared admissible." (para. 44)
3.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010	"Whatever was raised from the Co-Lawyers of the Charged Person regarding translation rights during other stages of the proceedings cannot lead to other findings, as the requirements during the pre-trial phase are of different nature specifically regarding translation rights." (para. 22)

	Decision on KHIEU Samphân's Appeal against the Order on the Request for Annulment for Abuse of Process	
4.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[T]he co-lawyers of the charged persons have made requests for orders that relate to matter that may be deemed necessary for the conduct of the investigation, such as request for translation. Such requests are not requests for investigative action and do not have as their purpose the establishment of the truth. The translations […], which relate to the ability of the co-lawyers to prepare their defence, might, depending on the circumstances of the case, be necessary to ensure that a charged person is able to exercise his/her rights during the investigation." (para. 46)
5.	**002 KHIEU Samphân** Special PTC 16 Doc. No. 2 15 December 2010 *Decision on Request for Translation of All Documents Used in Support of the Closing Order*	"In the decisions and orders made by the Pre-Trial Chamber concerning translation rights the Chamber has upheld […], the characterisation given by the Co-Investigating Judges of a closing order as requiring, at issuance, 'special attention to be paid to the notification of the "accusation" to the [Charged Person].' This special attention is paid in light of the right of a charged person to be informed promptly, in a language which he understands in detail, of the nature and cause of the accusation against him." (para. 7) "[T]he Closing Order must be readable in the French language, including by permitting the reader to refer to footnotes in the French language that contain the correct page references to French language documents on the Case File." (para. 8) "[T]he Pre-Trial Chamber considers that the element of proof on which the indictment may rely are, unlike the footnotes themselves, materials that support the factual and legal findings of the Co-Investigating Judges and they will be considered by the Trial Chamber in due course." (para. 9) "[T]he right of the accused to have the documents that are elements of proof on which the indictment relies translated into the French language is not a right to have all such documents translated immediately or even prior to the commencement of the trial. […] [W]hile the Accused has a right to the translation of such documents, members of the defence team of the Accused are required to usefully cooperate with the translation process. […] [F]or the charged person to 'have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events […]' […] is the 'key requirement' […] which must be met as the parties, the administration of the ECCC, the chambers and the ITU consider the rights of the Accused and the fact that the Accused does not have the right to translation of every document on the case file into his language and/or that of his counsel. […] [U]seful cooperation by all members of the defence team includes a requirement for such members (i) to collaborate internally by optimising their linguistic capacity, (ii) to assess and transmit to CMS their consequent translation priorities and, (iii) to collaborate actively with CMS in managing translation priorities. […] [I]n order to protect the fair trial rights of the Accused, including by avoiding unnecessary delays, the parties are instructed to consider how to avoid unnecessary requests for translation into a third language." (para. 10) "[I]t is incumbent upon the Co-lawyers to make a choice by identifying and prioritising translation requests internally and with the ITU of those materials that are needed for translation at this time to allow for trial preparation, as the Pre-Trial Chamber is not an appropriate body to give such directions

		to the ITU and particularly since the Co-Lawyers alone know the strategy they intend to follow." (para. 11)
6.	**002 IENG Thirith** Special PTC 14 Doc. No. 2 17 December 2010 *Decision on Defence Notification of Errors in Translations*	"[T]he possible extent of translation errors in the written records of witness interview on the Case 002 file should be investigated at this stage of the proceedings." (para. 9) "The Pre-Trial Chamber orders the ITU to review the accuracy of the English and French translations […]." (para. 10) "Given that the Co-Lawyers have not demonstrated any prejudice to the Accused, and […] the resources […] and the workload of the ITU, […] the above […] constitutes adequate relief. [T]he Co-Lawyers […], with the resources available to them, […] should endeavour to identify and bring to the attention of the appropriate section of the ECCC any translation errors […]." (para. 11) "The Pre-Trial Chamber remains seised […] to the extent that it will, […] report the results of the ITU's review to the parties in due course." (para. 12)
7.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"[T]here is no absolute right to receive French translations of all documents. […] French translations must be provided for the following: the Closing Order, the evidentiary material in support thereof, the Introductory Submission and Final Submission, and all judicial decisions and orders." (para. 11) "[T]he right to French translations of all party submissions […] is limited to those submissions which pertain to requests and appeals directly concerning the defence team which has requested to receive documents in that language. It does not apply to all 'documents filed by the parties'." (para. 12) "[T]he temporary absence of translations can be resolved, on the one hand, by using the linguistic resources within each team […]. On the other hand, KHIEU Samphân's defence team can avail itself of the services of a translator […]. Finally, his team can request that untranslated documents which it identifies as essential for its work be translated on a priority basis." (para. 13) "[W]ith the exception of the Closing Order and the Final Submission, […] the temporary absence of translations […] would not, were it to be established, amount to a sufficiently serious or egregious violation […] as to warrant a stay of the proceedings." (para. 14) "[W]here specific translation issues are identified, they could be raised on a case-by-case basis in the course of the trial. Moreover, it is open to the Defence to request the validation of any translations it considers erroneous. [T]he mere possibility that there would be translation errors […] is not sufficiently serious as to amount to an egregious violation […] that would warrant a stay of the proceedings." (para. 16)
8.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	**"**Regarding the translation into French of the Indictment […] it must necessarily include the footnotes. As for the time frame […] it must be such as to allow the Appellant to effectively exercise his right to appeal." (para. 25) "Ideally, translation […] of all those documents […] referenced in the indictment should be available at the same time as the Indictment itself. This is not possible […] and […] owing to the limited scope of the Pre-Trial Chamber's jurisdiction, this requirement […] is not warranted." (para. 26) "The Pre-Trial Chamber has […] rejected the […] argument that for the sake of fairness, it must broaden the scope of its jurisdiction on account of the absence of a French translation of the footnotes in the Indictment and the evidence underpinning it." (para. 27)
9.	**004 YIM Tith** PTC 61 D382/13 26 September 2019 *Decision on YIM Thith's Request that the Pre-Trial Chamber Order the Urgent Provision of an Accurate*	"[T]he Pre-Trial Chamber considers, with lament, the […] issuance of two separate Closing Orders with their length and complexity as well as the scope and significance of the factual and legal issues raised therein in only one of the working languages of the ECCC and the palpable inaccuracies observed in the English translation of the National Co-Investigating Judge's Dismissal Order." (para. 8) "The Pre-Trial Chamber recalls its obligations under Internal Rule 21 and Article 33 *new* of the ECCC law and therefore finds it justified to suspend the time limit for the Parties' appeals against the Closing Orders in Case 004 until the Interpretation and Translation Unit duly completes its revision and files a corrected English translation of the National Co-Investigating Judge's Dismissal Order" (para. 10)

	English Translation of the Order Dismissing the Case against YIM Tith and Suspend the Closing Order Appeal Time Limits	

xv. *Right to be Present*

For jurisprudence concerning the ***Waiver of the Right to be Present,*** see II.B.2. Waiver of Rights

For jurisprudence concerning the ***Charging Procedure* in Absentia**, see IV.B.4.ii.c. Charging and Notification of the Charges in the Absence of the Charged Person

1.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"*In absentia* means 'in the absence of'. In law, this latin expression is generally used to designate 'trial *in absentia*', *i.e.*, the determination of the guilt or innocence of an accused and the imposition of penalty in his or her absence. Firstly, it is emphasised that the proceedings in the present case are currently at the pre-trial stage and the charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence. Hence, any reference to procedural rules regulating trials *in absentia* must be made with circumspection, taking into account the difference in the stage of proceedings and the impact on the defendant. Secondly, the mere use of the expression '*in absentia*' in the present case is inapposite […]." (Opinion of Judges BEAUVALLET and BWANA, para. 13)
2.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"*In absentia* means 'in the absence of'. In law, this latin expression is generally used to designate 'trial *in absentia*', *i.e.*, the determination of the guilt or innocence of an accused and the imposition of penalty in his or her absence. Firstly, it is emphasised that the proceedings in the present case are currently at the pre-trial stage and the charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence. Hence, any reference to procedural rules regulating trials *in absentia* must be made with circumspection, taking into account the difference in the stage of proceedings and the impact on the defendant. Secondly, the mere use of the expression '*in absentia*' in the present case is inapposite […]. (Opinion of Judges BEAUVALLET and BWANA, para. 15)

xvi. *Right to be Tried in a Reasonable Time (without Undue Delay)*

For jurisprudence concerning ***Expeditiousness in the Conduct of Proceedings***, see VII.D.ii. Hearings before the Pre-Trial Chamber and VII.D.2.vii. *Amicus Curiae*

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"[…] Rule 34 provides for a number of procedural possibilities for determining an application for disqualification. In this case the Pre-Trial Chamber finds that it has sufficient information to decide on the application, and it is in the interests of justice to proceed expeditiously to consider the matter without holding a public hearing or calling for written *amicus curiae* briefs. Furthermore, in the interests of justice, the Pre-Trial Chamber will not examine the question of possible technical defects in the application itself." (para. 8)

2.	**001 Duch** PTC 02 D99/3/5 11 September 2008 *Decision on Trial Chamber Request to Access the Case File*	"The Pre-Trial Chamber notes that […] the Co-Prosecutors filed a Notice of Appeal against the Closing Order […]. Consequently, this Case File has been forwarded to the Pre-Trial Chamber in accordance with Internal Rule 69(1)." (para. 6) "The Trial Chamber has acknowledged that 'it will not be formally seized of the case until the decision of the Pre-Trial Chamber on the appeal against the Closing Order' and has recognized the confidential nature of the Case File at the current stage of proceedings." (para. 7) "Taking into consideration the observations of the Parties and the nature of the issues under appeal the Pre-Trial Chamber finds that granting the requested access to the Case File would enable the Trial Chamber to commence preparatory work and would assist in ensuring a fair and expeditious trial." (para. 8)
3.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber notes that Internal Rule 63(7) provides, in relation to the length of time allowed for provisional detention, that 'no more than 2 (two) such extensions may be ordered' and that Internal Rule 21(4) provides, in relation to due diligence, that '[p]roceedings before the ECCC shall be brought to a conclusion within a reasonable time'. 'Proceedings before the ECCC' include judicial investigations. While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that a Charged Person can spend in provisional detention is very specific." (para. 55) "International tribunals have considered that the right to be tried within reasonable time requires judicial authorities to ensure that the length of provisional detention is reasonable in light of the circumstances of each case." (para. 57) "The reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 61)
4.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"We would foresee problems in including the new facts that the International Co-Prosecutor wants to be investigated in the Case File 002 investigation. Given that the Co-Investigating Judges have conducted the investigation in Case File 002 for almost two years, during which time four (4) Charged Persons have been kept in provisional detention, adding new facts of the scope contained within the New Submissions would risk delaying the proceedings and, as a consequence, might infringe upon the Charged Persons' right to be tried within a reasonable time." (Opinion of Judges DOWNING and LAHUIS, para. 28)
5.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the request to Seek Exculpatory Evidence in the Shared Materials Drive*	"[I]t is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. […] [T]he requirement that a request for investigative action be sufficiently precise and relevant is deemed to ensure that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time, enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected." (para. 43) "[T]he Defence […] have an obligation to proceed in manner that will not delay the proceedings notably by ensuring that their requests are specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated." (para. 44)
6.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek*	"[I]t is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. […] [T]he requirement that a request for investigative action be sufficiently precise and relevant is deemed to ensure that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time, enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected." (para. 44)

	Exculpatory Evidence in the Shared Materials Drive	"[T]he Defence […] have an obligation to proceed in manner that will not delay the proceedings notably by ensuring that their requests are specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated." (para. 45)
7.	**002 NUON Chea** PTC 46 D300/1/7 28 July 2010 *Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284*	"The Chamber is also satisfied that accused's right of 'undue delay' has not been invoked against him but instead the CIJs have balanced the necessity that 'proceedings [...] be brought to a conclusion within a reasonable time' with the potential value of the evidence which in their view 'does not appear indispensable at this time'. There is also no suggestion by the Appellant that this evidence would impact upon the issuance of the Closing Order which is evidenced by their acknowledgment that '[a]ny untimely information from the target institutions could be made available to the parties for use at trial'." (para. 22)
8.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The underlying rationale for the precision and *prima facie '*relevance requirements as applied to requests for investigative action has been articulated by this Chamber as ensuring that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected. The opportunity to make any request pursuant to Rule 55(10) is contingent upon the performance by the requesting party of its general obligation 'to proceed in manner that will not delay the proceedings'. In furtherance of this objective, the Co-Investigating Judges and this Chamber have stated that in the context of requests for investigative action, the requests must be specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated.'" (para. 53) "The Pre-Trial Chamber finds that the same considerations are pertinent in the context of a request for an order to be made pursuant to Rule 55(10). The Pre-Trial Chamber is cognisant that in the same way that requests for investigative action must be precise and relevant to avoid undue delay, a request for an order for placement of evidence on the Case File that is not sufficiently precise or for which the underlying evidence is irrelevant may also risk causing undue delay in the proceedings or may cause infringement of the fair trial rights of the charged persons." (para. 54)
9.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"Even though the Accused does indeed have the right to be tried within a reasonable time, the Judges are still duty bound to ensure, at the various stages of the proceedings, that the proceedings are not slowed down by any delay that is not warranted by procedural requirements or the exercise of the respective rights of the parties. […] [I]t has not been established how the alleged delays would be unreasonable, and […] taking three years altogether to complete the judicial investigation in such an extensive case is not excessive. The alleged violations are therefore not sufficiently serious or egregious to warrant a stay of the proceedings." (para. 22)
10.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[Article 33 (new) of the ECCC Law, Internal Rule 21(4) and Article 14(3) of the ICCPR] highlight that one of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness and expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 75) "At this stage, the Co-Investigating Judges have concluded their extensive investigations […], issued the Impugned Order indicting the Appellants, and forwarded the case against the accused […] to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage. Furthermore, allegations of defects in the indictment may be raised […] at trial." (para. 76) "Furthermore, […] objections to jurisdiction are fundamental. […] The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the

		proceedings as possible. However, the Pre-Trial Chamber does not find that considering the Appellants' jurisdictional objections at the close of the Co-Investigating Judges investigation and prior to the commencement of trial undermines expediency. Rather, consideration at this time supports the expeditious conduct of the proceedings by safeguarding against an outcome in which '[s]uch a fundamental matter as […] jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 82)
11.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[Article 33 (new) of the ECCC Law, Internal Rule 21(4) and Article 14(3) of the ICCPR] highlight that one of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness and expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 50) "At this stage, the Co-Investigating Judges have concluded their extensive investigations […], have issued the Closing Order indicting the Accused, and forwarded the case against him […] to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage as allegations of defects in the indictment may be raised […] at trial." (para. 51) "Furthermore, […] objections to jurisdiction are fundamental. […] The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. The Pre-Trial Chamber finds that considering the Appellants' jurisdictional objections at the close of the judicial investigation and prior to the commencement of trial would not undermine expedition. Rather, such consideration at this time supports the expeditious conduct of the proceedings by providing a safeguard against an outcome in which '[s]uch a fundamental matter as […] jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 56)
12.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and 76, 112-115, 142, 157, 164, 165 and 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Pursuant to Internal Rule 21, the Pre-Trial Chamber has a duty to ensure that proceedings before the ECCC are fair. […] The fundamental principles of the procedure before the ECCC, enshrined in Internal Rule 21, require that the law shall be interpreted so as to always '*safeguard the interests of all*' the parties involved, that care must be taken to 'preserve a balance between the rights of the parties' and that 'proceedings before the ECCC shall be brought to conclusion within a *reasonable time*.'" (para. 35)
13.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The ICIJ's power to review the DSS's decision on assignment of counsel is not only inherent to his duty to ensure fairness of the proceedings, but it also is echoed in the rules governing proceedings before the ECCC. Indeed, a conflict of interest is certainly a legitimate reason for an ECCC judicial body not to admit counsel to represent defendant before the ECCC under Article 21(1) of the ECCC Agreement or to remove him or her under Article 7 of the DSS Administrative Regulations. The concurrent jurisdiction of the BAKC to deal with complaints in respect of conflicts of interest under disciplinary procedure does not undermine the ECCC's jurisdiction to address issues of conflict of interest if '[they] affect, or [are] likely to affect the right of the accused to a fair and expeditious trial or the integrity of the proceedings.' In practical terms, ECCC judicial bodies are in the best position to examine conflicts of interest that may impair fairness of their proceedings given their familiarity with the cases." (para. 40) "The Pre-Trial Chamber appreciates that in cases of mass atrocity crimes such as the ones heard before the ECCC, given the complexity and length of the proceedings as well as the need to deliver justice within a reasonable time, the interests of justice may require that conflicts of interest be anticipated and prevented from materializing. At the same time, the Court must remain cognizant of the defendants' fundamental right to be represented by counsel of their own choosing. Balancing these competing interests and in the light of the procedural rules established at the international level, the Pre-Trial Chamber finds that ECCC judicial bodies may only disallow representation of defendant by

		counsel who has, in the past, represented another defendant before the ECCC in a substantially related case if there is a real risk that the interests of the new client become materially adverse to that of the former client." (para. 57)
14.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"Article 12(2) of the Agreement provides that the ECCC shall exercise its jurisdiction in accordance with Article 14 of the ICCPR." (Opinion of Judges BEAUVALLET and BAIK, para. 31) "According to consistent case-law, […] Article 14 of the ICCPR applies at all stages of the proceedings before the ECCC, including the pre-trial stage. The starting point for assessing the reasonable duration of criminal proceedings is when the suspect was officially notified that he would be prosecuted even if he was not formally charged until later." (Opinion of Judges BEAUVALLET and BAIK, para. 35) "The Pre-Trial Chamber has previously addressed a Charged Person's right to a fair trial without undue delay in the context of requests for investigative action. Under those circumstances, the Pre-Trial Chamber has explained that the relevant factors to consider include the 'age and state of health of the Charged Persons […] the effect of delay on evidence and witness testimony, and the overall length of the investigation […].' Further, the Pre-Trial Chamber explained that it has the duty to 'balance the right to be tried without *undue delay* with the general necessity for the investigation and judicial processes to advance' […] The protection of that right must be interpreted and balanced with the fundamental purpose of the Tribunal which is […] 'to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law international humanitarian law and custom and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.' This entails balancing the rights of the accused with the ends of justice. Thus, the duty to ensure fairness and the expeditiousness of trial proceedings should be balanced with the need to ascertain the truth about the crimes with which the accused has been charged, as well as with the general principle of proper administration of justice." (Opinion of Judges BEAUVALLET and BAIK, para. 36) "The Undersigned Judges acknowledge and concur with the European Court of Human Rights (ECtHR) that the assessment must be conducted 'in the light of the circumstances of the case, regard being had to […], in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities'. The reasonableness of the length of the proceedings must be assessed in each instance according to the particular circumstances. Thus, […] the Undersigned Judges will therefore consider the following factors: (1) the complexity of the case, (2) the conduct of the applicant, and (3) the conduct of the relevant authorities." (Opinion of Judges BEAUVALLET and BAIK, para. 37) "[W]hen evaluating the reasonableness of the length of pre-trial detention, a case by case analysis must be conducted. The particular features of each case have to be taken into consideration. Thus, the particulars of the case must be looked at in isolation, rather than in comparison." (Opinion of Judges BEAUVALLET and BAIK, para. 40) "In light of the [ECtHR] case law […], the particulars to be considered include, *inter alia*, the number of charges, the number of people involved in the proceedings, such as defendants and witnesses, the volume of evidence, the international dimension of the case and the complexity of facts and law." (Opinion of Judges BEAUVALLET and BAIK, para. 41) "The ECtHR has considered the conduct of the accused extensively in its jurisprudence. Factors relevant to the analysis include whether the Accused's conduct contributed substantially to the length of the proceedings, and whether he showed dilatory conduct or otherwise upset the proper conduct of the trial." (Opinion of Judges BEAUVALLET and BAIK, para. 44) "The ECtHR has explained that the 'reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case taken as a whole'. Therefore, the Undersigned Judges will consider the conduct of the relevant authorities throughout the entire proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 46)
15.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International*	"However, the Pre-Trial Chamber broadly interprets Internal Rules 75(1) and 75(3) in light of Internal Rule 21(4), which provides that proceedings shall be brought to a conclusion within a reasonable time. Therefore, although the Notice of Appeal and Appeal were not formally within a time limit as it has not yet begun to run, the Pre-Trial Chamber accepts that they were filed in accordance with the rules." (para. 14)

	Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session	
16.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"[T]he ICIJ is correct that, to be legitimate, disclosure proceedings have to be carried out in a manner that ensures that: i) before a decision on disclosure is rendered, the parties to the investigation are allowed the possibility of an adversarial debate over disclosure requests; and that ii) the OCP is enabled to pursue its mandate to prosecute in Case 002, and the TC is assisted in fulfilling its mandate to find the truth in Case 002, within a reasonable time." (para. 33)
17.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber recalls that, pursuant to Internal Rule 21(4), proceedings before the ECCC shall be brought to a conclusion 'within a reasonable time.' This principle is reflected in Article 35 *new* of the ECCC Law and is paramount in Article 14(3)(c) of the [ICCPR]. While there is no explicit deadline in the Internal Rules, it is incumbent upon the Co-Investigating Judges to issue closing orders within a reasonable time." (para. 28) "The Pre-Trial Chamber is overall not convinced that an eighteen-month drafting process for the Closing Order (Reasons) is reasonable. The Pre-Trial Chamber takes into consideration the limited complexity of the case […], the fact that the investigation was concluded within nine and a half months from the Notification of Charges and that the intent to dismiss the case had been expressed since […] 2015, as well as the age and state of health of the Charged Person, witnesses and victims. By contrast, the Pre-Trial Chamber underlines that, pursuant to Internal Rule 66(5), the Co-Prosecutors had three months […] to file their reasoned final submission, and that the Defence was provided with one month to respond. It further finds relevant to note – although comparisons are of limited assistance when assessing the reasonableness of delays on a case-by-case basis – that the Closing Orders in Cases 001 and 002 were issued within three and eight months respectively […]." (para. 30)
18.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"[T]he Pre-Trial Chamber is not convinced that the rights to an effective defence, expeditious trial, equality of arms and the fairness and integrity of the proceedings will be irremediably damaged if the Chamber does not intervene at this stage. Therefore, the Co-Lawyers have not met the threshold for admissibility under Internal Rule 21." (para. 11) "The Pre-Trial Chamber, thus, finds the Co-Lawyer's Urgent Request inadmissible and consequently, denies the Co-Lawyers' request that the Chamber invoke its inherent jurisdiction to immediately stay the planned budget reductions until it decides on their Urgent Request." (para. 12)
19.	**004/2 AO An** PTC 60 D359/24 and D360/33	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. […] [W]hile the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since

	19 December 2019 *Considerations on Appeals against Closing Orders*	this principle, with its counterpart in Article 35 *new* of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the [ICCPR]." (para. 61) "The Pre-Trial Chamber acknowledges that the drafting process for the Closing Order in Case 004/2 (16 months) had been shorter than that in Case 004/1 (18 months), while the complexity of the case and volume of the record in Case 004/2 is more significant. Nevertheless, […] this period remains excessive in comparison with the Closing Orders issued in Cases 001 and 002, with a period of three and eight months, respectively, after the closure of the investigations." (para. 71)
20.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. The International Judges of the Pre-Trial Chamber, the reviewing court at the investigation stage, consider that while the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since this principle, with its counterpart in Article 35*new* of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the ICCPR." (Opinion of Judges BEAUVALLET and BAIK, para. 135) "[T]he Co-Investigating Judges' forwarding of the Case File to the Co-Prosecutors two months after the issuance of the Second Rule 66(1) Notification in this case constitutes an excessive delay." (Opinion of Judges BEAUVALLET and BAIK, para. 144) "The International Co-Investigating Judges issued the Indictment […] more than 18 months after having issued his Second Rule 66(1) Notification […]." (Opinion of Judges BEAUVALLET and BAIK, para. 145) "Having given due consideration to the complexity of Case 003 and the volume of its record, […] the Co-Investigating Judges failed to issue the Closing Orders within a reasonable time in this case. […] [T]he difficulties listed […] fail to provide any justification for such delay since […] the issues concerning staff and translations were foreseeable […] and thus the delays could have been mitigated." (Opinion of Judges BEAUVALLET and BAIK, para. 147) "[T]he Co-Investigating Judges' separate issuance of two conflicting Closing Orders […] in only one of the working languages […] has instigated further undue delays […]." (Opinion of Judges BEAUVALLET and BAIK, para. 148)
21.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. While the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since this principle, with its counterpart in Article 35new of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the ICCPR." (para. 73) "[T]he International Co-Investigating Judge issued the Indictment on 28 June 2019, thereby terminating the investigation more than 21 months after having issued the Second Rule 66(1) Notification, which concluded the judicial investigation on 5 September 2017." (para. 74) "The Pre-Trial Chamber recalls the Chamber's previous finding in Cases 004/1 and 004/2 that periods of 18 and 16 months, respectively, for issuing the Closing Orders after the conclusion of the investigations were excessive, in comparison especially with the Closing Orders issued in Cases 001 and 002 within periods of three and eight months, respectively." (para. 75) "Having given due consideration to the complexity of Case 004 and the volume of its record, compared with Cases 001, 002, 003, 004/1 and 004/2, the Pre-Trial Chamber finds that the Co-Investigating Judges failed to issue the Closing Orders within a reasonable time in this case. Further, the Pre-Trial Chamber considers that the difficulties listed in the annexes to the Indictment fail to provide any justification for such delay since, inter alia, the issues concerning staff and translations were foreseeable from their previous experience in other Cases before the ECCC and, thus, the delays could have been mitigated." (para. 76) "The Pre-Trial Chamber also finds that the Co-Investigating Judges' separate issuance of two conflicting Closing Orders, each over 300 pages, in only one of the working languages of the ECCC is not only in violation of Article 7 of the Practice Directions on Filing of Documents before the ECCC, but, more significantly, has instigated further undue delays in the Case 004 proceedings, which could have been avoided by a strict adherence to the ECCC's legal framework." (para. 77)

		"Notwithstanding excessive length of the delay which could have been mitigated in this case, the Chamber is not convinced that the delay in this case 'so seriously erode[d] the fairness of the proceedings that it would be oppressive to continue' and that it merits a broadening of Internal Rule 74(3) in light of Internal Rule 21." (para. 78)

xvii. *Right to Have Adequate Time and Facilities for the Preparation of One's Defence*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The right to have adequate time for the preparation of a defence is provided for in Article 35 (new) of the ECCC Law, with reference to, and in accordance with, Article 14 of the ICCPR." (para. 46) "[T]his fundamental right is a 'fair trial' right, aimed at providing a Charged Person with adequate time to prepare for trial. The purpose of an interview is to put questions to the Charged Person about what he knows himself and not for the Charged Person to respond to the accusations against him. The Charged Person can use his right to remain silent and by using this avoid providing evidence against himself. The right to have adequate time to prepare for trial does therefore not apply to the preparation for an interview." (para. 47) "The Pre-Trial Chamber finds that [Internal Rule 58(1), which provides that '[w]hen a Charged Person has a lawyer, the Co-Investigating Judges shall summon the lawyer at least 5 (five) days before the interview takes place [during which] the lawyer may consult the case file',] means that the Co-Lawyers have at least a period of five days to prepare for an interview. The Pre-Trial Chamber notes that the national Co-Lawyer was summoned in accordance with this provision and therefore had the time provided in the Internal Rules to prepare for the interview." (para. 49)
2.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights […]. Amongst these are the rights to be informed of the charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 33)
3.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights [...]. Amongst these are the rights to be informed of charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 25)
4.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"International standards require that an indictment set out the material facts of the case with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence." (para. 47)
5.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG*	"[N]owhere in the laws applicable before the ECCC or in the jurisprudence of international courts […] is provided that 'information on the procedure and protocol used by the investigating authorities during the investigations' has to be put at the disposal of the defence in order to facilitate the preparation of a defence." (para. 30) "[T]he right to adequate facilities for the preparation of someone's defence includes apart from the right to communicate with one's lawyer also the opportunity of the accused to acquaint himself with

	Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture	the results of the investigations, and reasonable time for preparation of the defence. […] [T]he term 'results of the investigations' means the product of investigations, such as documents and records in the case file and not information on the procedure followed by investigating authorities in analysing the evidence that they have collected." (para. 31) "The rationale of the analysis will become apparent when a Closing Order either indicting the Charged Person or dismissing the case is issued at the conclusion of the investigation. Where a Closing Order is issued, Internal Rule 67(4) requires that reasons for any decision to send a Charged Person to trial or to dismiss the case are to be given." (para. 32) "After the issuance of a closing order, if there is an indic[t]ment of their client, the Co-Lawyers of the Charged Person have time to prepare their defence for the trial phase by examining the evidence which is available to them." (para. 33) "Internal Rule 87 also gives to the Charged Person the possibility to object to the admissibility of evidence during the trial stage." (para. 34)
6.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"International standards provide that, in the determination of charges against him/her, the accused shall be entitled to a fair hearing and, more specifically, to be informed of the nature and cause of the charges against him/her and to have adequate time and facilities for the preparation of his/her defence." (para. 32) "The Pre-Trial Chamber recalls that the right to receive notice of charges is a fundamental right of a charged person. The right to notice arises upon arrest and is meant in part to ensure the Charged Person's ability to fully participate in the investigation." (para. 92) "[F]or the Charged Person to exercise her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree." (para. 95)
7.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"Article 14(3) of the ICCPR provides that a person facing criminal charges enjoys certain minimum guarantees, including the right to have adequate time and facilities to prepare his defence and to communicate with counsel of his own choosing. The Pre-Trial Chamber is specifically directed to take into account Article 14 of the ICCPR by the operation of Article 13 of the Agreement and by Article 35 new of the ECCC Law." (para. 27) "[T]he absence of explicit authority to use [audio/video recording] equipment does not mean that it falls outside the scope of actions that are implicitly authorized by the ICCPR. Such a narrow interpretation of the rights of the accused is not compatible with the purpose of fair trial guarantees." (para. 31) "It is an inevitable result of this right and its underlying purpose that the issue of whether a request […] is necessary for adequate preparation, must be assessed on a case-by-case basis in light of the circumstances. Adjudging adequacy and necessity requires evaluation and not mere reliance on the fact that certain facilities or a certain amount of time had been provided." (para. 32) "[T]here are several factors specific to the pre-trial proceedings of the Charged Person that must be assessed in determining whether the use of audio/video equipment falls within the fair trial rights of the Charged Person […]. The fact that a charged person resides in the Detention Facility pursuant to a provisional detention order does not take away his right to adequately prepare his defence. In complex cases, preparing defence may necessarily encompass many courses of action. A measure that facilitates the preparation of the defence, including by enabling communication between counsel and a charged person, may not be unduly restricted because a charged person resides in the Detention Facility." (para. 33) "The Pre-Trial Chamber is persuaded that if the recording is necessary, it is a facility under Article 14(3)(b) of the ICCPR. The Defence has demonstrated to the satisfaction of the Pre-Trial Chamber that the recordings are necessary for effective communication with counsel and trial preparation. In light of the foregoing, the Pre-Trial Chamber finds that the use of audio/video recording equipment for the purpose of preparing the pre-trial defence of the Charged Person constitutes a facility for the preparation of the defence. Likewise, the use of audio/video recording equipment in the

		manner specified in the Request is a facility for communication between the Charged Person and counsel. An assessment of the circumstances of this particular case reveals that permitting recordings will ensure that the Charged Person has adequate facilities at his disposal. It is only with the provision of adequate facilities for trial preparation and with the means for effective communication in place that this court can maintain that the fair trial rights of the Charged Person are fully respected." (para. 35) "[T]he Co-Investigating Judges committed an error of law by failing to consider that the fair trial rights of the Appellant protected by Rule 21 had been adversely affected by the refusal to permit the defence team of the Charged Person to take recording equipment into the Detention Facility." (para. 39) "Whilst the Pre-Trial Chamber has found that the Impugned Order deprived the Appellant of his fair trial rights and cannot stand, the Pre-Trial Chamber is mindful of the need to protect against abuse of the right to bring audio/video equipment into the Detention Facility and all products thereof. […] [R]estrictions shall apply […]." (para. 41)
8.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[T]he co-lawyers of the charged persons have made requests for orders that relate to matter that may be deemed necessary for the conduct of the investigation, such as request for translation. Such requests are not requests for investigative action and do not have as their purpose the establishment of the truth. The translations […], which relate to the ability of the co-lawyers to prepare their defence, might, depending on the circumstances of the case, be necessary to ensure that a charged person is able to exercise his/her rights during the investigation." (para. 46)
9.	**002 KHIEU Samphân** Special PTC 16 Doc. No. 2 15 December 2010 *Decision on Request for Translation of All Documents Used in Support of the Closing Order*	"[F]or the charged person to 'have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events […]' […] is the 'key requirement' […] which must be met as the parties, the administration of the ECCC, the chambers and the ITU consider the rights of the Accused and the fact that the Accused does not have the right to translation of every document on the case file into his language and/or that of his counsel. […] [U]seful cooperation by all members of the defence team includes a requirement for such members (i) to collaborate internally by optimising their linguistic capacity, (ii) to assess and transmit to CMS their consequent translation priorities and, (iii) to collaborate actively with CMS in managing translation priorities. […] [I]n order to protect the fair trial rights of the Accused, including by avoiding unnecessary delays, the parties are instructed to consider how to avoid unnecessary requests for translation into a third language." (para. 10) "[I]t is incumbent upon the Co-lawyers to make a choice by identifying and prioritising translation requests internally and with the ITU of those materials that are needed for translation at this time to allow for trial preparation, as the Pre-Trial Chamber is not an appropriate body to give such directions to the ITU and particularly since the Co-Lawyers alone know the strategy they intend to follow." (para. 11)
10.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying*	"In addition, we consider that affording TA An the opportunity to participate in the investigation and to have access to the case file, subject to possible limitations, is necessary, at this stage, to protect his fundamental right to a fair trial. […] TA An is also subject to 'criminal charges' within the meaning of human rights law and, as such, entitled to the protection of Article 14 of the ICCPR. It is recalled that human rights law 'favours a "substantive", rather than a "formal", conception of "charge" [and] impels the Court to look behind the appearances and examine the realities of the procedure in question in order to determine whether there has been a "charge"'. […] In the present case, TA An has been officially notified by a competent authority […]. He is therefore entitled to the right to have adequate

	his Requests to Access the Case File and Take Part in the Judicial Investigation	time and facilities to prepare his defence, as set out in Article 14(3)(b) of the ICCPR, in addition to the right to be treated as equal before the Court, […].” (Opinion of Judges CHUNG and DOWNING, para. 25) “[T]he right to prepare a defence […] concretely entitles TA An ‘to have knowledge of and comment on the observations filed and the evidence adduced by the other party’ before a decision to indict him is taken, if this is eventually the case. Contrary to the Defence’s assertion, this does not mean that TA An is automatically entitled to have access to the case file, as human rights law, which focuses on the overall fairness of the proceedings, does not set a specific time when access to the case file must be provided to a person subject to criminal charges. Rather, it calls for an examination of the actions that are being taken by the Co-Investigating Judges at this time and the impact these may ultimately have on the course of the proceedings when considering the need to give TA An access to the case file. […] Given the central role played by the judicial investigation in ECCC’s proceedings, access to the case file and opportunity to participate in the judicial investigation must be provided to TA An sufficiently prior to any decision being made on whether to issue an indictment against him, so as to allow him to get a real possibility to review all the evidence contained in the case file and be in a position where he may meaningfully request the collection of exculpatory evidence and state his position.” (Opinion of Judges CHUNG and DOWNING, para. 26) “[T]here may be legitimate reasons to delay access to the case file, restrict the information that is made available to counsel or limit the communication of information to TA An at this stage of the proceedings.” (Opinion of Judges CHUNG and DOWNING, para. 29)
11.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth’s Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth’s Submissions to the [Office of the Co-Investigating Judges*]	“The right to prepare a defence includes the right of an accused to acquaint him/herself with the ‘results of the investigation’ which consists of ‘documents and records placed in the case file.’ Notedly, the right to acquaint oneself with the ‘results of the investigation’ does not include a right to be notified with *any* work product of a particular staff member. In the event that the work product of a particular staff member would fall under the definition ‘document or record placed in the case file’ – *i.e.*, records of investigations or interview reports prepared as directed by the Co-Investigating judges in their rogatory letters - it is only once the Co-Lawyers are granted access to the Case File, that they will be able to see *concrete* records of the investigation and, only then, would they be able to identify from the contents of concrete documents anything that, in their opinion, may be inappropriate or irregular so as to warrant an application for annulment.” (para. 19)
12.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An’s Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges’ Disagreement of 5 April 2013*	“Finally, the Pre-Trial Chamber finds no merit in the Appellant’s arguments that denying the requested information violates his rights to equality before the law and to prepare a defence. As recalled above, disagreements between the Co-Investigating Judges are confidential, not only to the Appellant, but as a rule. There is therefore no difference of treatment with other suspects in the same case who, similarly, do not have access to disagreements, nor any automatic right of access that would stem from a right to prepare a defence. […] In this respect, the Pre-Trial Chamber notes that the Appellant is named in the Introductory Submission but has not been formally charged. […] The Appellant has not demonstrated that providing him access to privileged information about the disagreement on these decisions is necessary, at this stage, to defend himself against the crimes alleged in the Introductory Submission.” (para. 12)
13.	**003 MEAS MUTH** PTC 16 D122/1/2 17 June 2015 *Decision on MEAS Muth’s Appeal against the International Co-Investigating Judge’s Decision Refusing Access to the Case File*	“[T]he International Co-Investigating Judge charged the Appellant *in absentia* for a number of crimes alleged in the Introductory Submission. The International Co-Investigating Judge held that ‘[w]ith the issuance of its decision, MEAS Muth’s status shall change from ‘suspect’ to ‘charged person’ and, as such, he will be able to exercise all the rights to which charged persons are entitled under the Internal Rules’, including ‘the right to access the case file, to take part in the judicial investigation, to conform witnesses or to move the [Co-Investigating Judges] to seise the [Pre-Trial Chamber] with requests for investigating action’. As such, the Appellant has effectively gained the relief he was seeking to the Pre-Trial Chamber, which was to ‘order the International Co-Investigating Judge to allow the Defence to access the Case File and participate in the judicial investigation’. The Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits.” (para. 4)

14.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam*, to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings pursuant to Internal Rules 55(10), 58(6), 74 and 76. The right to have access to the case file, through a lawyer, are reserved for 'Charged Persons', who are considered to be 'parties to the proceedings' before the ECCC, pursuant to Internal Rules 55(6), 55(11), and to the definition of 'parties' in the Glossary to the Internal Rules. Having been granted access to the case file, the Charged Person is also entitled to take part in the judicial investigation, to request that the Co-Investigating Judges undertake investigative action pursuant to Internal Rule 55(10), question witnesses or go to a site pursuant to Internal Rule 58(6), order expertise or appoint additional experts pursuant to Internal Rules 58(6) and 31(10), and they may apply to have the Co-Investigating Judges seise the Pre-Trial Chamber with requests for annulment of investigative action pursuant to Internal Rule 76(2)." (Opinion of Judges BEAUVALLET and BAIK, para. 13)
15.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Chamber observes, however that, apart from making reference to an 'imposition of procedural constraints' and to a 'premature curtailment of the opportunity "to make proper enquiries",' the Defence has not demonstrated how the Appellant's right to adequate time is harmed concretely in the instant case." (para. 20) "[W]ith regards to the Defence's arguments to sustain a proposition that if the appeal is not admitted now, the harm, if any cannot be repaired at later stages of the proceedings, the Pre-Trial Chamber considers that the reference to Internal Rule 76(7) - concerning any issues of *procedural defect* during investigations - is not directly related to the argument for any lack of adequate time to make *investigative requests* before the OCIJ forwards, pursuant to Internal Rule 66(4), the case file to the Co-Prosecutors. The Chamber further notes that the Defence has already filed 51 other motions, including annulment applications, and still has the opportunity to do so before a Closing Order is issued." (para. 21) "The Pre-Trial Chamber observes that, according to [Internal Rule 66(1)], the deadline of fifteen days to request further investigative action applies after a 'notification' of conclusion of the investigation, no matter whether the notification is the 'first', or a 'second' one issued after completion of supplementary investigations." (para. 25) "The Pre-Trial Chamber considers that, pursuant to Internal Rule 66(1), fifteen days from the date of notification of the Second Notice of Conclusion must have been granted to the parties to review the *newly collected* evidence." (para. 27) "Regarding the Defence allegation for unfairness due to the judge's '*risk*' of promoting the interests of the ICP over those of the defence, which, according to the Defence, illustrates procedural inequality in this case, the Chamber notes the CIJ's unequivocal statements that, '[i]t is the very nature of the mechanism at the ECCC and the ICP's onus of proof that the ICP has a 'head start' on the investigation' and that '[o]nce the case is before the OCIJ the *Prosecution's right to participate in or carry out investigations is no stronger than that of the Defence* or any other party'. In any event, unless evidence is provided to rebut the Judge's presumption of impartiality, the Pre-Trial Chamber shall not entertain any claims that the ICP's interests *may* have been promoted." (para. 31) "The Pre-Trial Chamber is not convinced that the rights to adequate time, equality of arms and procedural fairness will be irremediably damaged if it does not intervene at this stage […]." (para. 35)
16.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal*	"The notification of charges is […] left to the discretion of the Co-Investigating Judges, who may charge any person named in the prosecutorial submissions or unnamed people. The only criterion for charging is whether, in their opinion, 'there is *clear and consistent evidence* indicating that such person may be criminally responsible for the commission of a crime'. The charging process, in the inquisitorial system, is thus a judicial decision through which the suspect is not only officially notified of the crimes for which he or she is under investigation, but also informed that there is a certain level of evidence gathered against him or her. It is further through the notification of charges that the suspect is put in a position to answer allegations and prepare a defence, such that he or she is able to play an active role in the

	of Closing Order (Reasons)	proceedings and to exercise his or her rights. From a prosecutorial standpoint, the charging process also brings clarity as to which charges, among the initial allegations, have been retained." (Opinion of Judges BAIK and BEAUVALLET, para. 109)
17.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber […] previously affirmed the right to adequate time to prepare one's defence, by recalling that, under Internal Rule 66(1), the deadline of fifteen days during which the parties may request further investigative action shall apply after 'a *notification* of conclusion of the investigation, no matter whether the notification is the 'first', or a 'second' one issued after completion of supplementary investigations.'" (para. 63) "The issuance of two Closing Orders is a novel situation before the ECCC. The Chamber considers it necessary to adopt an expanded interpretation of Internal Rule 74(3) in light of Internal Rule 21 because the issuance of two Closing Orders is unforeseen in the Internal Rules and may require a resolution prior to trial to prevent irremediable impact on the fair trial rights of the Accused. This includes consideration of an accused's ability to prepare and the overarching fairness of the trial proceedings." (para. 149)
18.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he International Judges reaffirm the right of the parties to adequate time to prepare by recalling that under Internal Rule 66(1), the period of 15 days during which the parties may request additional investigative action must apply after a notification of conclusion of the investigation 'no matter whether the notification is the "first", or a "second" one issued after completion of supplementary investigations.' […] [C]ontrary to the International Co-Investigating Judge's furtive declaration in a footnote of his Closing Order, the Co-Investigating Judges are without authority to determine or provide their consideration as to whether such period is necessary and that, consequently and more significantly, such period is not for the Co-Investigating Judges to 'grant'." (Opinion of Judges BEAUVALLET and BAIK, para. 141)

xviii. *Right to Legal Assistance and Representation*

For jurisprudence concerning the ***Defence Support Section Decisions on Appointment of Counsels***, ***Proceedings under Internal Rule 11*** or ***Conflicts of Interests***, see III.E. Decisions concerning the Defence Support Section

For jurisprudence concerning *the* ***Waiver of the Right to Legal Assistance***, see II.B.2 Waiver of Rights

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"The Pre-Trial Chamber has further examined whether the Charged Person was defended by a lawyer of his choice [...]. [T]he Charged Person made it clear that he wanted the assistance of an international lawyer as well as a national lawyer […]. Although it was not clear from the record of the adversarial hearing, the Co-Lawyers and the Co-Prosecutors made clear to the Pre-Trial Chamber that the international lawyer was present and that he was allowed to defend the Charged Person through the national lawyer. Therefore, the right of the Charged Person was not violated [...]." (para. 11)
2.	**002 KHIEU Samphân** PTC 04 C26/I/25 23 April 2008 *Decision on Application to Adjourn Hearing on Provisional Detention Appeal*	"Internal Rule 21(1)(d) provides in part that the Charged Person has the right to be defended by a lawyer of his choice. By Internal Rule 22, a Charged Person has the right to choose from amongst national and foreign lawyers who are included on a list as provided in Internal Rule 11(2)(d)." (para. 7) "The refusal of the International Co-Lawyer to continue to act is a constructive withdrawal from the appeal and has a direct and adverse effect upon the fundamental right of the Charged Person to be represented before the Pre-Trial Chamber." (para. 9) "[T]he Charged Person has been placed in a position where he is unable to exercise this fundamental right. The Pre-Trial Chamber therefore granted the request for an adjournment." (para. 10) "His refusal to continue to act in this appeal was first announced on the day of the hearing and has resulted in his client not being able to have his appeal heard promptly. This violated the Charged Person's fundamental right to a timely hearing and the representation of a lawyer of his choice, which are internationally recognized rights applicable before the ECCC." (para. 11)

		"The structure of the Internal Rules recognizes the need for collaboration between the national and foreign co-lawyer. Internal Rule 21(1) effectively directs this. In this way, linguistic and legal issues may be fully addressed by a team of lawyers representing a charged person. The alternative, if such collaboration is not possible, is for the Charged Person to make a request for a new lawyer to represent him." (para. 12) "As a consequence of the behaviour of the International Co-Lawyer […] a warning is given to him pursuant to Internal Rule 38(1) as he has abused the processes of the Pre-Trial Chamber and the rights of the Charged Person." (para. 15)
3.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights […]. Amongst these are the rights to be informed of the charges against them, to prepare their defence and to defend themselves." (para. 33) "[A] charged person's capacity to cooperate with his counsel is of particular relevance during the investigative stage of the proceedings." (para. 34)
4.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights [...]. Amongst these are the rights to be informed of charges against them, to prepare their defence and to defend themselves." (para. 25) "[A] charged person's capacity to cooperate with his counsel is of particular relevance during the investigative stage of the proceedings." (para. 26)
5.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphân's Appeal against the Order on the Request for Annulment for Abuse of Process*	"The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person have submitted that the Charged Person has the right to be defended by lawyer of his or her choice, the right for the lawyer of the Charged Person's choice, the right to have access to the judicial investigation case file and the right to effective representation. […] It is observed that the Co-Lawyers limit their submissions in the appeal to the effects of the Translation Order and fail to explain how the other enumerated rights have been affected." (para. 23)
6.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"Article 14(3) of the ICCPR provides that a person facing criminal charges enjoys certain minimum guarantees, including the right to have adequate time and facilities to prepare his defence and to communicate with counsel of his own choosing. The Pre-Trial Chamber is specifically directed to take into account Article 14 of the ICCPR by the operation of Article 13 of the Agreement and by Article 35 new of the ECCC Law." (para. 27) "[T]here are several factors specific to the pre-trial proceedings of the Charged Person that must be assessed in determining whether the use of audio/video equipment falls within the fair trial rights of the Charged Person […]. The fact that a charged person resides in the Detention Facility pursuant to a provisional detention order does not take away his right to adequately prepare his defence. In complex cases, preparing defence may necessarily encompass many courses of action. A measure that facilitates the preparation of the defence, including by enabling communication between counsel and a charged person, may not be unduly restricted because a charged person resides in the Detention Facility." (para. 33) "The Pre-Trial Chamber is persuaded that if the recording is necessary, it is a facility under Article 14(3)(b) of the ICCPR. The Defence has demonstrated to the satisfaction of the Pre-Trial Chamber that the recordings are necessary for effective communication with counsel and trial preparation. In light of the foregoing, the Pre-Trial Chamber finds that the use of audio/video recording equipment for the purpose of preparing the pre-trial defence of the Charged Person constitutes a

		facility for the preparation of the defence. Likewise, the use of audio/video recording equipment in the manner specified in the Request is a facility for communication between the Charged Person and counsel. An assessment of the circumstances of this particular case reveals that permitting recordings will ensure that the Charged Person has adequate facilities at his disposal. It is only with the provision of adequate facilities for trial preparation and with the means for effective communication in place that this court can maintain that the fair trial rights of the Charged Person are fully respected." (para. 35) "[T]he Co-Investigating Judges committed an error of law by failing to consider that the fair trial rights of the Appellant protected by Rule 21 had been adversely affected by the refusal to permit the defence team of the Charged Person to take recording equipment into the Detention Facility." (para. 39) "Whilst the Pre-Trial Chamber has found that the Impugned Order deprived the Appellant of his fair trial rights and cannot stand, the Pre-Trial Chamber is mindful of the need to protect against abuse of the right to bring audio/video equipment into the Detention Facility and all products thereof. […] [R]estrictions shall apply […]." (para. 41)
7.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he way PRT members conducted the proceedings, notably by allowing the types of witnesses statements […] in the absence of cross-examination, by allowing the proceedings to continue *in absentia* with defence counsel who not only failed to ensure effective representation of the accused but also acted against them, and by pronouncing the guilt of the accused, for alleged crimes of such magnitude, after a five day trial and a few hours deliberations, demonstrate a failure of the judiciary to maintain a balance between the rights of both parties. In the circumstances described above, the failure of the members of the PRT to fulfil their obligation to ensure that the proceedings were conducted fairly and that the rights of the parties were respected contributes to demonstrate a lack of impartiality." (para. 174) "[T]he 1979 trial was not conducted by an impartial and independent tribunal with regard to due process requirements. Consequently, the prosecution, conviction, and sentencing of Ieng Sary in 1979 by the PRT bar neither the jurisdiction of the ECCC over Ieng Sary, nor any of the charges in the Closing Order." (para. 175)
8.	**003 Special PTC 01** Doc. No. 3 15 December 2011 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"The Pre-Trial Chamber agrees that the timing for these [representation] rights to be available depends on how the investigation develops. This is a matter within the discretion of the Co-Investigating Judges as they are in charge of the investigations. […] [I]n Cambodia similar to many national procedural systems and to the international courts, it is the authority in charge of an investigation that has the obligation to make sure, once person *is brought before them*, that he/she is informed, prior to being questioned, in a language that he/she understands that he/she has amongst other rights, the right to be assisted by counsel of his/her choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it. This means that the right to legal representation is the Suspect's *own* right for him/her *own free will*. It is not for anybody else to decide on behalf of the Suspect in this respect. The Suspect may choose to defend him/herself in person. Where the suspect informs the Judge or Chamber before which he/she appears that he/she has engaged Counsel, then he/she has to file a power of attorney with the Registry and where the Counsel meets the requirements he/she can act on behalf of the suspect. Suspects who are indigent shall be assigned Counsel, provided 'the interests of justice so demand.' Although the directives for such assignments are set out by the Registrar, they have to be *approved by the judges*. It is the Judges who may, 'if [they] decide that it is in the interests of justice,' instruct the *Registrar to ass[i]gn a coun[s]el* to represent the interests of the accused." (para. 11) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
9.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber*	"[T]he Co-Lawyers, […] were advised […] that they were not yet recognised by the Co-Investigating Judges, notwithstanding that they had already been recognised in Case 002 pursuant to Internal Rule 22. […] As a result, the Co-Lawyers have not been notified of any document in relation to the Application of their client […], hence impairing the Appellant's right to legal representation." (Opinion of Judges DOWNING and LAHUIS, para. 3)

	regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL	
10.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"The Pre-Trial Chamber agrees that the timing for these [representation] rights to be available depends on how the investigation develops. This is a matter within the discretion of the Co-Investigating Judges as they are in charge of the investigations. […] [I]n Cambodia similar to many national procedural systems and to the international courts, it is the authority in charge of an investigation that has the obligation to make sure, once person is *brought before them*, that he/she is informed, prior to being questioned, in a language that he/she understands that he/she has amongst other rights, the right to be assisted by counsel of his/her choice or to be assigned legal assistance without payment if the suspect does not have sufficient means to pay for it. This means that the right to legal representation is the Suspect's *own* right for him/her *own free will*. It is not for anybody else to decide on behalf of the Suspect in this respect. The Suspect may choose to defend him/herself in person. Where the suspect informs the Judge or Chamber before which he/she appears that he/she has engaged Counsel, then he/she has to file a power of attorney with the Registry and where the Counsel meets the requirements, he/she can act on behalf of the suspect. Suspects who are indigent shall be assigned Counsel, provided 'the interests of justice so demand.' Although the directives for such assignments are set out by the Registrar, they have to be *approved by the judges*. It is the Judges who may, 'if [they] decide that it is in the interests of justice,' instruct the *Registrar to assign a counsel* to represent the interests of the accused." (para. 11) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 004, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 004 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
11.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19)
12.	**003 MEAS Muth** PTC 11 D56/19/8 31 January 2014 *Decision on Requests for Interim Measures*	"The Pre-Trial Chamber notes that the Impugned Decision has not been notified directly to MEAS Muth; that the Head of the DSS appears to have informed MEAS Muth by phone of the outcome of the Impugned Decision but it is unclear whether further information or advice were provided; and that MEAS Muth has not been able to discuss the Impugned Decision nor the approach to be taken with the Co-Lawyers due to an order suspending communications between them. As a result, the notice of appeal was filed by the Co-Lawyers on MEAS Muth's behalf, but without being able to seek his instructions. The Pre-Trial Chamber considers that before the proceedings go any further in this matter, it must first ascertain whether MEAS Muth wants to pursue the Appeal initiated on his behalf and ensure that he is given the necessary means to make such a decision. In particular prior to deciding whether he wants to pursue the Appeal, MEAS Muth must receive appropriate information and legal advice in order to make an informed decision as to whether he wishes to continue to be represented by the Co-Lawyers in the light of the International Co-Investigating Judge s findings in the Impugned Decision." (para. 10) "MEAS Muth's fundamental right to be represented by counsel of his own choosing entails that his current choice of counsel must be respected and not interfered with, unless it is demonstrated that limitation of this right is necessary to protect a legitimate interest and proportionate in the circumstances." (para. 11)

		"The Pre-Trial Chamber considers that there is no legal basis to direct the DSS to provide independent advice to MEAS Muth in respect of the outstanding issue of his legal representation as it has not been demonstrated that the Co-Lawyers cannot act on behalf of MEAS Muth for the purpose of the current appellate proceedings. In particular, the Pre-Trial Chamber notes that the Impugned Decision concludes that because of the Co-Lawyers' duty of loyalty to IENG Sary, 'it is reasonably foreseeable that conflict of interest could arise and that the Co-Lawyers Designate *may not be* in a position to advise the Suspect on, and to pursue, *lines of defence'* should they continue to represent MEAS Muth in respect of his defence against the criminal allegations against him in Case 003. This finding does not, in and of itself, entail that the Co-Lawyers would have any conflict of *interest in the context of the current appellate proceedings when*, for instance, informing MEAS Muth of the International Co-Investigating Judge's findings, discussing the impact they may have on his defence and the possibility to challenge them informing MEAS Muth of his rights exploring the various options available to him in respect of his legal representation and providing him legal advice thereto Insofar as the International Co-Prosecutor asserts that the Co-Lawyers would not act independently because 'their personal interests are directly affected by the [Impugned] Decision', the Pre-Trial Chamber recalls that absent any evidence to the contrary, it is presumed that the Co-Lawyers will abide by their professional and ethical obligations when providing such information or advice, including to act in the best interest of their client. In the event of MEAS Muth considering that the Co-Lawyers are not in the best position to fully address all his concerns with respect to his legal representation and his possible defence strategies, it would be incumbent upon him to inform the DSS and seek additional or separate legal advice." (para. 13) "The Pre-Trial Chamber considers that it is of fundamental importance for MEAS Muth to be able to communicate with the lawyers of his choice in order to get the information and advice necessary to decide whether he wants to pursue the Appeal. […] Article 14(3)(b) of the [ICCPR] clearly states that the right to be represented by counsel of own choosing includes the right to communicate with the said counsel. The Pre-Trial Chamber notes that no reasons were given by the Co-Investigating Judge when he ordered the suspension of communications in the first place so the continuing limitation on MEAS Muth's fundamental right is not justified by any legitimate interest. […] Absent any provision in the ECCC legal compendium or in Cambodian law dealing with its power to order the interim measure sought by the Co-Lawyers, the Pre-Trial Chamber finds it necessary, in order to ensure fairness of the proceedings and respect of MEAS Muth's fundamental right to communicate with counsel of his own choosing, to use its inherent jurisdiction to lift, in part, the Order Suspending Communications and to allow communications between the Co-Lawyers and MEAS Muth for the purpose of the appellate proceedings against the Impugned Decision." (para. 15)
13.	**Special PTC** **10-07-2013-ECCC/PTC** Doc. No. 8 6 February 2014 **[PUBLIC REDACTED]** *Decision on the "Appeal against Dismissal of Richard ROGERS' Application to be Placed on the List of Foreign Co-Lawyers"*	"[W]hile Article 1.5 of the DSS Regulations provides the DSS with the authority to 'determine whether the prerequisites *enumerated in the Internal Rules and [the] Administrative Regulations* are satisfied by the candidates' and consequently, to 'approve candidates for inclusion in the list either *fully or provisionally*,' it does not give or imply any 'inherent' or discretionary power to the DSS to add or to look for other prerequisites, which are not *enumerated in the Internal Rules and the Administrative Regulations*, and/or to use them as reasons or grounds to deny inclusion in the list of lawyers to those who would otherwise meet the criteria and requirements that are enumerated in law." (para. 72) "There is no power vested in the DSS to deny inclusion of lawyer on the list of lawyers on the basis of an alleged *conflict of interest*. […] Conflict of interest issues are not part of the criteria and/or requirements enumerated under the matrix of laws applicable to the process of making determinations on applications for inclusion of applicant in the list either. Therefore the provisions of Article 1.7 cannot be used, […] to add 'inherent' powers on the part of the DSS in the process of making determinations on applications for inclusion in the list." (para. 73) "Under no circumstances does the law state that issues of conflict of interest should be considered by the DSS in the process of making determinations on applications for inclusion in the list." (para. 74) "[I]n general conflict of interest issues may arise in the course of (or after, but not before) the process of *engagement and assignment of lawyers to suspects, charged persons or accused which process must be seen as separate from the process of making determinations for the inclusion of applicant lawyers in the List*. The rationale behind this separation is because a conflict of interest does not arise in vacuum. A lawyer's duty toward his client(s), be these current or former clients, to act in the *client(s)'s best interest arises when a particular lawyer is actually selected by and/or assigned to identifiable client(s) whose interest(s)* must be safeguarded." (para. 75)

		"At the ECCC, assignment of a lawyer to a client derives from the selection of a lawyer by a Suspect, Charged Person or an Accused and the selection of the lawyer is to be made freely and under the supervision of the ECCC. During the selection process, the role of the Head of DSS is that of a *facilitator*." (para. 76) "According to Part C of the DSS Regulations, the role of the DSS is that of a facilitator between the Suspect, Charged Person or Accused and the lawyer and the BAKC and the 'ECCC.'" (para. 77) "Article 9 of the DSS Regulations does not require any action on the part of the DSS, it rather puts the obligation to act on the lawyer. […] In any event, it is the ECCC judicial bodies, and not the DSS, who has the power to decide on requests of lawyers for withdrawal from a case in which they are assigned or on removal of lawyers who are no longer eligible to defend clients before ECCC." (para. 78) "[I]ssues of 'conflict of interest' are, primarily, subject to the client-lawyer relationship and to the obligations of a lawyer to adhere to the recognised standards and ethics of the legal profession. The DSS has no role to play, under the law, in this respect, except for its obligation to inform the Suspect, Charged Person or Accused in order to assist them '*to make an informed choice as to legal representation*' which, *does not mean interference with such choice*. [footnote redacted] […] [I]n general terms, in the event where it is apparent, in the selection process, that the selected lawyer is not aware of the potential existence of any conflict of interest in relation to *identifiable potential* client(s), the extent of what the Head of DSS could do is to, immediately, *inform the concerned lawyer* of his/her *opinion* about the potential existence of such an issue and of the […] relevant provisions […]. The lawyer can, then, in a conscientious and honest manner and with an independent mind, decide whether to take action in conformity with the relevant legal provisions. In any event the *potential* client(s) whose interest and potential representation may be at issue can also freely decide to not select or to revoke selection of a lawyer, under which circumstances no one can force him/her to have that lawyer assigned to represent him/her. The Head of DSS has no statutory power, under the applicable laws, to make any determinations related to conflict of interest issues in the process of the assignment of lawyers to represent Suspects, Charged Persons or Accused before the ECCC." (para. 79) "The Pre-Trial Chamber […] has found no specification in law that would even imply the existence of ethical conflict […] as a requirement, prerequisite or even a consideration, in respect of the inclusion in the list of lawyers." (para. 83)
14.	**003 MEAS MUTH** PTC 11 D56/19/14 11 February 2014 *Decision on Co-Lawyer's Request to Stay the Order for Assignment of Provisional Counsel to MEAS Muth*	"Although the assignment of provisional counsel may, for a certain period of time, limit MEAS Muth's fundamental right to be represented by counsel of his own choosing, the International Co-Investigating Judge found that this measure is justified by the need to avoid that MEAS Muth be unrepresented […]. This decision falls within the purview of the Co-Investigating Judges' jurisdiction and the Pre-Trial Chamber has no authority to stay its execution in the present context unless it is demonstrated that a right of appeal against the Impugned Decision would become ineffective." (para. 18) "Absent any evidence to the contrary, it is to be presumed that the provisional lawyers, if assigned, will abide by their professional and ethical obligations and respect the terms of their provisional assignment […]." (para. 19)
15.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"Internal Rule 11(6) applies to appeals against decisions of the Head of the DSS on 'assignment of lawyers to indigent persons *based on the criteria set out in the Defence Support Section administrative regulations*' […], which concern experience and qualification of counsel but do not include any consideration of conflict of interest. The role of the DSS, when appointing counsel to an indigent suspect or charged person before the ECCC, is limited to examining whether the criteria and requirements set forth in the DSS Administrative Regulations are fulfilled. As previously held by the Pre-Trial Chamber '[t]he Head of DSS has no statutory power, under the applicable laws, to make any determinations related to conflict of interest issues in the process of the assignment of lawyers to represent Suspects, Charged Persons, or Accused before the ECCC.' Consequently, a judicial review of the DSS administration decision under Internal Rule 11(6) was not an avenue to address the issue of conflicts of interest raised in the Request for Rejection." (para. 29) "Having rejected the International Co-Prosecutor objection to the admissibility of the Appeal on the basis of Internal Rule 11(6), the Pre-Trial Chamber will now determine whether decision rejecting the appointment of counsel issued, in first instance, by the ICIJ is open to appellate scrutiny under Internal Rule 21." (para. 30)

		"This Appeal raises an issue concerning the Appellant's right to counsel of choice. […] Since the Appellant has chosen to be represented by the Co-Lawyers, and that the Head of the DSS has appointed them, after having found that they meet the requirements under the ECCC legal assistance scheme, the Impugned Decision, by removing the Co-Lawyers, impairs the Appellant's right to counsel of choice. The Co-Lawyers' assertion that this limitation is not legally justified warrants appellate scrutiny as the 'appointment to act as defence counsel could and should only be revoked when its purpose - that is, to ensure that the accused will be adequately defended and the proceedings properly conducted - is seriously endangered.' In this respect, the Pre-Trial Chamber notes that requests for certification to appeal decisions rejecting the appointment of counsel have generally been granted at the [ICTY]." (para. 32) "The Pre-Trial Chamber therefore finds the Appeal admissible under Internal Rule 21." (para. 33) "International criminal tribunals have generally recognized that conflicts of interest may impair the effectiveness of representation by counsel and, therefore, jeopardize the overall fairness of the proceedings Given the Courts' inherent duty to ensure fairness of their proceedings it has been found that 'the issue of qualification appointment and assignment of counsel when raised as matter of procedural fairness and proper administration of justice, is open to judicial scrutiny.' […] The ICIJ's power to review the DSS's decision on assignment of counsel is not only inherent to his duty to ensure fairness of the proceedings, but it also is echoed in the rules governing proceedings before the ECCC. Indeed, a conflict of interest is certainly a legitimate reason for an ECCC judicial body not to admit counsel to represent defendant before the ECCC under Article 21(1) of the ECCC Agreement or to remove him or her under Article 7 of the DSS Administrative Regulations. The concurrent jurisdiction of the BAKC to deal with complaints in respect of conflicts of interest under disciplinary procedure does not undermine the ECCC's jurisdiction to address issues of conflict of interest if '[they] affect, or [are] likely to affect the right of the accused to a fair and expeditious trial or the integrity of the proceedings.' In practical terms, ECCC judicial bodies are in the best position to examine conflicts of interest that may impair fairness of their proceedings given their familiarity with the cases." (para. 40) "There is no real risk that the Co-Lawyers' representation of the Appellant would place them in a position that would undermine their retainer with IENG Sary, nor place them in a precarious situation to choose between the interest of their past and current clients in such a way that would render them ineffective counsel for the Appellant. The possibility of conflict of interest in this case is too hypothetical and speculative to jeopardize the interests of justice or outweigh the Appellant right to be represented by counsel of his own choosing." (para. 69)
16.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"In absentia means 'in the absence of'. In law, this latin expression is generally used to designate 'trial *in absentia*', *i.e.*, the determination of the guilt or innocence of an accused and the imposition of penalty in his or her absence. Firstly, it is emphasised that the proceedings in the present case are currently at the pre-trial stage and the charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence. Hence, any reference to procedural rules regulating trials *in absentia* must be made with circumspection, taking into account the difference in the stage of proceedings and the impact on the defendant. Secondly, the mere use of the expression '*in absentia*' in the present case is inapposite […]. (Opinion of Judges BEAUVALLET and BWANA, para. 13)
17.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[W]ith regards to the Co-Lawyers' argument regarding the 'four and a half month delay' in the assignment of Mr. Richard ROGERS as AO An's International Co-Lawyer, the Pre-Trial Chamber notes that the Accused was at all times represented by the Cambodian lawyer of his choosing […] and finds that the Accused fails to demonstrated any irremediable harm to his right to counsel." (para. 166)
18.	**004 YIM TITH** PTC 61 D382/41 18 March 2021	"[T]he Chamber considers inappropriate the DSS' reference to a need to strike a 'balance' between the rights of the defendant and the transparent administration of public funds, insofar as this implies that budgetary considerations may be balanced against a defendant's rights to an effective legal representation. The Chamber recalls the DSS' obligation pursuant to Internal Rule 21(1) to interpret the applicable Administrative Regulations so as to always safeguard the interests of the Accused and,

	Decision on YIM Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision	accordingly, urges the DSS to allocate resources on the basis of what is necessary and reasonable for YIM Tith's effective defence." (para. 17)

xix. *Right to Legal Certainty*

1.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber considers that it is in the interests of 'ensur[ing] legal certainty' to expressly review and, as applicable, restate the requirements developed in its previous jurisprudence that guide its decision in the instant appeal." (para. 44)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"The underlying purposes of the principle of legality in safeguarding fairness and legal certainty require that it is sufficiently foreseeable and accessible to an accused that his or her conduct is criminal at the time of its commission." (para. 183)
3.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19)
4.	**004 AO An** PTC 07 D190/1/2 30 September 2014	"When the Pre-Trial Chamber could not decide on an issue raised before it, re-examination of a matter that is substantially the same, in fact and law, through a renewed application or appeal filed by the same party, would be contrary to the principles of legal certainty and judicial economy, and more generally against the interests of justice as it would not advance the proceedings but rather risk causing delays." (para. 20)

	Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions	
5.	**004 YIM TITH** PTC 11 D205/1/1/2 13 November 2014 *Decision on YIM Tith's Appeal against the Decision Denying His Request for Clarification*	"The right to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions." (para. 8)
6.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"The Pre-Trial Chamber held that '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues be they actually arise, out of their factual and contextual background' and found that it 'has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 6)
7.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"[T]he Pre-Trial Chamber has found that it has no jurisdiction to entertain requests for clarification of the Internal Rules *in general.* Where scenarios envisaged in parties' motions are *hypothetical* or, even if such scenarios were to materialise, but it is *unclear what prejudice the requesting party would concretely suffer*, '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 14)
8.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"The Pre-Trial Chamber notes the International Co-Prosecutor's submission that, since no Khmer translation of the Impugned Order has yet been notified, the Notice of Appeal and Appeal were filed within the time limit applicable under Internal Rules 20(3) and 75(1), and Article 8.5 of the Practice direction. Recalling that all judicial decisions shall be at least provided in Khmer and one other language and that translation of all judicial decisions and orders should be systematic in the interests of the good administration of justice, the Pre-Trial Chamber expresses its concern that decisions delivered in English only and not diligently followed by Khmer translation give rise to legal uncertainty. In the particular context of the ECCC, where judicial decisions have to be provided in the official language to trigger the running of time limits, the parties may find themselves forced to file appeals before time limits start to run in order to safeguard their interests, or may wait indefinitely until the issuance of a translated decision. However, the Pre-Trial Chamber broadly interprets Internal Rules 75(1) and 75(3) in light of Internal Rule 21(4), which provides that proceedings shall be brought to a conclusion within

		a reasonable time. Therefore, although the Notice of Appeal and Appeal were not formally within a time limit as it has not yet begun to run, the Pre-Trial Chamber accepts that they were filed in accordance with the rules." (para. 14)
9.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"The Pre-Trial Chamber observes that both the Impugned Decisions and the former ICIJ's Decisions address the disclosure requests by, in principle, applying the same balancing process […]. In the Pre-Trial Chamber's view, each of ICIJs specific considerations […] do not represent new disclosure criteria, […] they rather represent underlying considerations aimed at ultimately ensuring that, in deciding in favour of or against disclosure, the ICIJ complies with his two 'primary responsibilities' […]. Therefore, the Pre-Trial Chamber finds no merit in the Defence's consistency argument." (para. 24)
10.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"[T]he Practice Direction on Classification provides that the principle underlying classification 'is the need to balance the confidentiality of judicial investigations and other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.'" (para. 27) "The Pre-Trial Chamber is aware of the necessity to balance the various interests at stake, including those of the charged person and of the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 28) "[T]he investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. These interests should be balanced with the necessity to 'ensure legal certainty and transparency of proceedings'." (para. 36)
11.	**004/2 AO An** PTC 60 D359/29 and D360/38 9 March 2020 *Decision on the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearing Held before the Pre-Trial Chamber*	"The Pre-Trial Chamber recalls that pursuant to Article 26 of the [Agreement] and Article 45 new of the [ECCC Law], the official working languages of the Extraordinary Chambers and the Pre-Trial Chamber are Khmer, English and French." (para. 9) "The Pre-Trial Chamber further recalls its obligation to ensure legal certainty and transparency of proceedings under Internal Rule 21(1), and considers that Internal Rule 97, which instructs that the 'proceedings shall be fully transcribed and recorded using appropriate audiovisual means, under the supervision of the Greffier' and that '[a]n application to correct the transcript may be made in writing to the [Chamber]', is applicable to the proceedings before the Pre-Trial Chamber." (para. 10) "Accurate transcripts of proceedings are critical to ensuring the ECCC's judicial record integrity, and unilateral changes to the French transcript would compromise its integrity as the official record of the proceedings in French." (para. 13) "However, in light of each Party's limited resources to conduct a full review, the potential vast number and the seriousness of interpretation errors in the French transcripts of the Hearing in Case 004 and in

		due consideration of the Pre-Trial Chamber's obligations to safeguard the integrity and the transparency as well as the fairness of the proceedings before it, the Chamber finds that the current procedure, which requires each Party to submit a Request for Verification of each and every error places undue burden on the Parties and that a full review and correction of the interpretation errors by the ITU is duly called for." (para. 14)
12.	**003 MEAS Muth** PTC 35 D266/24 and D267/32 3 November 2020 *Decision on MEAS Muth's Request for Clarification of the Pre-Trial Chamber Considerations on Appeals against Closing Orders in Case 004/2*	"[T]he Pre-Trial Chamber specifies that, while the ECCC legal framework does not explicitly foresee such possibility, the judicial chambers of the ECCC may provide legal guidance or clarification on a judicial decision where the interests of justice so require. The Chamber further recalls that it will not admit requests for clarification which are 'aimed at obtaining clarification from the [Pre-Trial Chamber] of previously given reasoning in a decision with which the Charged Person does not agree' because a judicial decision is definitive and is not to be elaborated further upon." (para. 30) "In examining the Case and the Request at hand, the Pre-Trial Chamber finds that the Considerations in Case 004/2 provided the legal certainty and transparency required for a judicial decision emanating from the Chamber under the specific circumstances of that case. The Pre-Trial Chamber finds that the judicial efficiency dictates that proceedings in Case 003 must progress and that the Request may not be entertained at this very final stage of the pre-trial phase." (para. 31)
13.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[C]onsidering the interests of the accused and victims as well as the necessity of legal certainty and transparency of proceedings, allowing subject matter jurisdiction challenges concerning only points of law, as defined in prior decisions, is sufficient to safeguard the accused's effective right to appeal at the pre-trial stage – that is, to ensure that he or she is not sent to trial for crimes for which the Court has no jurisdiction over. Conversely, the Chamber finds that since the determination of the ECCC's personal jurisdiction intrinsically involves mixed questions of law and facts, the right to appeal against orders making such determination can only be effective if the defence engages with those mixed questions in the appeal it brings before the Pre-Trial Chamber." (para. 68)
14.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 21 provides a framework of interpretation for […] Internal Rules [23 and 23*bis*(1)] and states in its relevant parts that: The applicable ECCC Law, Internal Rules […] 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." (Opinion of Judges BEAUVALLET and BAIK, para. 57)

xx. *Right to Liberty*

For jurisprudence concerning the ***Safety Measures,*** see V. Safety Measures

1.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"Both the adversarial hearing and the opportunity to appeal its outcome, give the Charged Person the possibility to have the lawfulness of his detention reviewed by a court, a right provided for by Article 9 of the [ICCPR]. Moreover, article 9 of the ICCPR requires that such review is 'without delay'. It is therefore not understood how the Co-Lawyers can conclude that the speediness of making a decision leads to neglecting or overlooking fundamental notions of fair trial." (para. 11)
2.	**002 IENG Thirith** PTC 16 C20/5/10 29 January 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order*	"Recognising the importance of the Appeals, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal." (para. 6)
3.	**002 IENG Sary** PTC 17 C22/5/10 29 January 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order*	"Recognising the importance of the Appeals, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal." (para. 6)
4.	**002 KHIEU Samphân** PTC 15 C26/5/13 6 February 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order*	"Recognising the importance of the two Appeals, which both relate to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on these Appeals." (para. 7)
5.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that a Charged Person can spend in provisional detention is very specific. The Rules make clear how these limits are set, that in the case when a Charged Person is detained, the stakes are higher, as the right to liberty of a person still presumed innocent is in question. Therefore, an analysis of what steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary." (para. 45) "Guidance can be sought in the practice of the [ECHR] which has determined a standard of 'special diligence' on the part of national authorities when undertaking investigations. Where grounds given by the national judicial authorities are found by the court to justify continued detention, the Court will then ascertain whether the national authorities displayed diligence in the conduct of their proceedings." (para. 47)

		"[T]he gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions to be undertaken, and in view of the scope and current development in the investigations, the Co-Investigating Judges used their discretion to order the extension of provisional detention reasonably." (para. 49)
6.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"Article 9(3) of the ICCPR provides that 'it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." (para. 90) "Internal Rule 65 shall be read in light of these principles, which dictate that a decision not to release a charged person should be based on an assessment of whether public interest requirements as set out in Internal Rule 63(3)(b), notwithstanding the presumption of innocence, outweigh the need to ensure respect of a charged person's right to liberty. To balance these competing interests, proportionality must be taken into account. It is generally recognized that 'a measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use more lenient measure, it must be applied.'" (para. 91)
7.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"Provisional detention is an exception to the right to liberty and the general rule that a person not be provisionally detained." (para. 34)
8.	**003 MEAS Muth** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"As its name [in French: mandat d'amener] indicates, the purpose of the Arrest Warrant is to bring MEAS Muth before the International Co-Investigating Judge for a hearing which will examine the *possibility* of his provisional detention pursuant to Internal Rule 63. Accordingly, at the hearing which will be adversarial, MEAS Muth will be at liberty to make any submission he sees fit before a decision is taken on his provisional detention. [T]herefore, the principles stated in Internal Rule 21(2) and, more generally, the rights of the Defence, are fully safeguarded. Such being the case, we do not consider that execution of the Arrest Warrant before adjudication of the Appeal against the Decision to Charge MEAS Muth would impair the fairness of the proceedings or infringe MEAS Muth's right to liberty." (Opinion of Judges BEAUVALLET and BWANA, para. 16)

xxi. *Right to Privacy*

1.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"[T]he wording of Article 17 of the ICCPR is such that it permits interference with privacy, as long as it is not 'arbitrary' or 'unlawful.' The term 'unlawful' means that no interference can take place, except in cases envisaged by the law. The expression 'arbitrary interference' can also extend to interference provided for under the law and the concept of 'arbitrariness' is intended to guarantee that even interference provided for by law should be reasonable in the particular circumstances. The Pre-Trial Chamber firstly […] notes that […] there is no clear evidence of harm caused by the disclosure to Meas Muth's privacy and reputation. Secondly, the Pre-Trial Chamber notes that the Impugned Order is issued by a competent judicial body, based on law, through an adversarial process, and is reasonably decided in pursuance of the legitimate aim of cooperating with the truth finding mission of another judicial body of the ECCC, hence not arbitrary." (para. 19)

2.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber observes that the Request to redact AO An's address in the Closing Order (Indictment) is closely related to the right to privacy and, more generally, to the protection of the interests of the charged person, as enshrined in Internal Rule 21. While the law before the ECCC does not explicitly refer to the protection of privacy and reputation, the Pre-Trial Chamber acknowledges the concerns expressed by the Co-Lawyers regarding the consequences of the publication of AO An's current address for his right to privacy. The Pre-Trial Chamber further finds that the redaction in the Closing Order (Indictment) of the domicile of the Charged Person, of which the mention is not a requirement under Internal Rule 67(2), would not have any impact on the other interests at stake, namely the need to ensure transparency, the integrity of proceedings, and the Court's purposes of education and legacy." (para. 11)

xxii. *Right to Remain Silent*

For jurisprudence concerning the ***Waiver of the Right to Remain Silent,*** see II.B.2. Waiver of Rights

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"It is apparent that the Charged Person was only informed of his right to remain silent at the commencement of the initial hearing he attended […]. This matter would have raised an issue as to what is meant by the phrase 'at every stage of the proceedings' had the Co-Lawyers for the Charged Person not advised the Chamber in this manner." (para. 10)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"[D]uring the adversarial hearing, the Charged Person was not questioned, but was given the opportunity to respond to the request of the Co-Prosecutors, an opportunity he seized. There was no questioning and this was not the purpose of the meeting. The mention of his right to remain silent was therefore not necessary." (para. 40)
3.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The purpose of an interview is to put questions to the Charged Person about what he knows himself and not for the Charged Person to respond to the accusations against him. The Charged Person can use his right to remain silent and by using this avoid providing evidence against himself." (para. 47) "[B]oth the lawyer for the Charged Person and the Charged Person himself requested a postponement of the interview. Such a request cannot be seen as an attempt to invoke the right to remain silent." (para. 54)
4.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber further finds that it cannot be concluded that the Co-Investigating Judges draw any adverse inference against the Charged Person from the fact that she has chosen to exercise her right to remain silent." (para. 68)
5.	**003 MEAS Muth** PTC 35 D266/14 and D267/19 20 November 2019	"NOTING that the Co-Lawyers for MEAS Muth […] filed 'MEAS Muth's Notice of Intent to Exercise Right to Remain Silent and Waiver of Right to Attend Hearings on the Appeals against the Closing Orders'; […] NOTING that the Co-Lawyers submit their Request [to dispense with personal Appearance at the Hearing on the Appeals against the Closing Orders] with a supporting medical certificate to dispense

	Decision on MEAS Muth's Request to Dispense with Personal Appearance at the Hearing on the Appeals against the Closing Orders	with personal appearance of MEAS Muth both in person and by video link at the hearing […] for reasons of his advanced age and poor health; CONSIDERING the rights of the Charged Persons and the fairness of the proceedings pursuant to Internal Rule 21; THEREFORE, […] GRANTS the Request" (p. 2)

xxiii. *Right to Reputation*

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The right to reputation protects individuals against 'unlawful attacks' on their reputation, *i.e.*, 'untrue allegations made intentionally.'" (para. 62)
2.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"[T]he Pre-Trial Chamber finds no merit in the Appellant's interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring him an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of his reputation. The Pre-Trial Chamber underlines that the ECCC legal framework, particularly under Internal Rule 56, gives a broad discretion to the Co-Investigating Judges in handling confidentiality issues and granting limited access to the judicial investigations. The Appellant has failed to show any compelling circumstances warranting the Pre-Trial Chamber's intervention in these matters." (para. 23)
3.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"[T]he Pre-Trial Chamber first recalls that it has already found no merit in the interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring the Charged Persons an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of their reputation." (para. 18) "[T]he Pre-Trial Chamber finds, […] that the wording of Article 17 of the ICCPR is such that it permits interference with privacy, as long as it is not 'arbitrary' or 'unlawful.' The term 'unlawful' means that no interference can take place, except in cases envisaged by the law. The expression 'arbitrary interference' can also extend to interference provided for under the law and the concept of 'arbitrariness' is intended to guarantee that even interference provided for by law should be reasonable in the particular circumstances. The Pre-Trial Chamber firstly recalls that the applicable law does not confer upon Charged Persons an 'inherent right' to the protection of reputation and notes that, in any event, there is no clear evidence of harm caused by the disclosure to Meas Muth's privacy and reputation. Secondly, the Pre-Trial Chamber notes that the Impugned Order is issued by a competent judicial body, based on law, through an adversarial process, and is reasonably decided in pursuance of the legitimate aim of cooperating with the truth finding mission of another judicial body of the ECCC, hence not arbitrary." (para. 19)
4.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018	"[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30)

	Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)	"Incidentally, the Pre-Trial Chamber notes that the Co-Lawyers took the liberty to comment on the Closing Order (Reasons) to the press after its issuance. More importantly, IM Chaem herself issued a number of public statements in interviews she gave to the press." (para. 32) "In light of the foregoing, the Pre-Trial Chamber considers that the damage caused by a dismissal order to IM Chaem's right to be presumed innocent and to her reputation remains uncertain and hypothetical." (para. 33)
5.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"While the law before the ECCC does not explicitly refer to the protection of privacy and reputation, the Pre-Trial Chamber acknowledges the concerns expressed by the Co-Lawyers regarding the consequences of the publication of AO An's current address for his right to privacy. The Pre-Trial Chamber further finds that the redaction in the Closing Order (Indictment) of the domicile of the Charged Person, of which the mention is not a requirement under Internal Rule 67(2), would not have any impact on the other interests at stake, namely the need to ensure transparency, the integrity of proceedings, and the Court's purposes of education and legacy." (para. 11)

2. Waiver of Rights

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"[T]he Co-Lawyers for the Charged Person advised the Chamber that they consider that the Co-Investigating Judges complied with the requirement to inform the Charged Person of his right to remain silent […]. We […] find that any right to request annulment of the proceedings based on this procedural defect has been waived by the Charged Person." (para. 10)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"A question raised by the appeal is whether the Charged Person's decision to proceed with the adversarial hearing without the assistance of a lawyer may be regarded as a legally valid waiver of the right to legal assistance." (para. 14) "Internal Rule 63(1) does not specifically mention the possibility of a waiver, in contrast to Rule 58(2) of the Internal Rules, relating to *interviews* of a Charged Person." (para. 16) "The PTC finds that Internal Rule 58(2) does not apply to the adversarial hearing on provisional detention." (para. 17) "[T]he possibility of the waiver of the right to a lawyer during the adversarial hearing can be inferred from Rule 63(1). According to this Rule, a Charged Person without a lawyer shall be advised of his right to have one and can therefore waive this right." (para. 18) "The Pre-Trial Chamber infers from [the jurisprudence of the *ad hoc* tribunals] that, for a waiver to be valid, it should be unequivocal and voluntary. To be voluntary, a waiver should be informed, knowing and intelligent." (para. 26) "The Pre-Trial Chamber finds that the stage of the proceedings determines the information required to constitute an informed waiver. In the case of questioning, it is clear that proceeding without a lawyer could result in discriminatory evidence being elicited improperly." (para. 30) "In order to knowingly and intelligently waive his right to a lawyer, the Charged Person must be able to make a rational appreciation of the effects of proceeding without a lawyer." (para. 31) "The Pre-Trial Chamber considers that the Charged Person, who is educated and who in the past held a high political position, armed with the information provided […], had a rational and fully informed appreciation of the consequences of proceeding without a lawyer." (para. 37)

		"[T]he Pre-Trial Chamber finds that, when taking the requirements of the waiver and the circumstances of this case into account, the Charged Person's waiver was unequivocal and voluntary, and therefore valid." (para. 39)
3.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The fact that the risk of conflict of interest in case of consecutive representation is more remote commands the application of a higher threshold of evidence to remove counsel in these circumstances, as reflected by the language used in provisions regarding consecutive representation in the codes of conduct of international and internationalised tribunals. Similarly, other international institutions and domestic jurisdictions require a 'significant,' 'real' or 'serious' risk of conflict of interest to remove counsel when consecutive representation is involved. It also justifies giving more weight to the consent or waiver provided by the concerned clients when assessing the existence of a conflict of interest or the possibility that it may be waived. In this respect, it is noted that provisions addressing consecutive representation of defendants at the ICTR, SCSL, and ICC specifically provide for the possibility of the concerned clients to consent to representation in this particular situation. The same principle is reflected in a number of other international and domestic jurisdictions." (para. 54)
4.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"As to the waiver of the right to be present, the Undersigned Judges note that the rules established at the international level require the accused to have previously been notified of the proceedings and to explicitly, and in writing, give the waiver. Under the rules of international tribunals, an implicit waiver will not be sufficient for the court to decide to further proceed in the absence of the accused; the court would still need to take all reasonable steps to ensure the presence of the accused. There is a distinction to be made between the conditions under which exceptional measures can be taken under the rules of international criminal tribunals following a failure to execute an arrest warrant and the conditions that must be met to ensure that the right under human rights law to be present at trial is respected. The former are more stringent than the latter. That said, absent an express waiver, the jurisprudence of human rights bodies remains useful to determine whether the tribunal has taken all reasonable steps to notify the accused of the proceedings […]." (Opinion of Judges BEAUVALLET and BWANA, para. 37) "Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant." (Opinion of Judges BEAUVALLET and BWANA, para. 38) "There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her." (Opinion of Judges BEAUVALLET and BWANA, para. 39)
5.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal*	"As to the waiver of the right to be present, the Undersigned Judges note that the rules established at the international level require the accused to have previously been notified of the proceedings and to explicitly, and in writing, give the waiver. Under the rules of international tribunals, an implicit waiver will not be sufficient for the court to decide to further proceed in the absence of the accused; the court would still need to take all reasonable steps to ensure the presence of the accused. There is a distinction to be made between the conditions under which exceptional measures can be taken under the rules of international criminal tribunals following a failure to execute an arrest warrant and the

	against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia	conditions that must be met to ensure that the right under human rights law to be present at trial is respected. The former are more stringent than the latter. That said, absent an express waiver, the jurisprudence of human rights bodies remains useful to determine whether the tribunal has taken all reasonable steps to notify the accused of the proceedings […].” (Opinion of Judges BEAUVALLET and BWANA, para. 39) “Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant.” (Opinion of Judges BEAUVALLET and BWANA, para. 40) “There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her.” (Opinion of Judges BEAUVALLET and BWANA, para. 41)
6.	**003 MEAS Muth** PTC 35 D266/14 and D267/19 20 November 2019 *Decision on MEAS Muth's Request to Dispense with Personal Appearance at the Hearing on the Appeals against the Closing Orders*	“NOTING that the Co-Lawyers for MEAS Muth […] filed 'MEAS Muth's Notice of Intent to Exercise Right to Remain Silent and Waiver of Right to Attend Hearings on the Appeals against the Closing Orders'; […] NOTING that the Co-Lawyers submit their Request [to dispense with personal Appearance at the Hearing on the Appeals against the Closing Orders] with a supporting medical certificate to dispense with personal appearance of MEAS Muth both in person and by video link at the hearing […] for reasons of his advanced age and poor health; CONSIDERING the rights of the Charged Persons and the fairness of the proceedings pursuant to Internal Rule 21; THEREFORE, […] GRANTS the Request” (p. 2)

3. Fitness to Stand Trial

For jurisprudence on the ***Appointment of Experts to Evaluate the Charged Person's Fitness to Stand Trial***, see IV.C.3. Expertise under Internal Rules 31 and 32

1.	**002 IENG Sary** PTC 03 C22/I/49 2 July 2008 *Written Version of Oral Decision of 30 June 2008 on the Co-Lawyers' Request to Adjourn the Hearing on the Jurisdictional Issues*	“The mere fact that they noticed that the Charged Person was not able to fully understand the very complicated jurisdictional issues, is not sufficient to lead to the conclusion at this stage that the Pre-Trial Chamber should appoint an expert to examine his mental capacity in respect of these proceedings.” (para. 7)

2.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"The Pre-Trial Chamber finds that the scope of Internal Rule 32 which notably provides that an expert can be appointed 'for any other reasons' is sufficiently broad to encompass the Co-Lawyers' Request [to appoint a psychiatric expert]." (para. 27) "The Pre-Trial Chamber further observes that the ECCC constitutive documents, the Internal Rules and Cambodian law do not define the precise meaning of 'fitness to stand trial'. There is no indication either as to when psychiatric evaluation can be requested, or if the mental capacity of a charged person might be raised as an issue at the pre-trial stage. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 28) "[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights […]. Amongst these are the rights to be informed of the charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 33) "As the enjoyment of these rights requires that a charged person has a level of mental and physical capacity, […] the issue of a charged person's capacity to effectively participate in the proceedings is triggered from the very moment an individual is charged with a crime before the ECCC. […] [A] charged person's capacity to cooperate with his counsel is of particular relevance during the investigative stage of the proceedings." (para. 34) "[C]harged persons are in principle entitled to have their capacity to exercise their procedural rights effectively during the investigation and pre-trial phase evaluated by an expert if their request is properly justified. In this respect, the Pre-Trial Chamber finds that the Request is not premature […]." (para. 35) "The Pre-Trial Chamber notes that neither the Internal Rules nor Cambodian law specifies the prerequisites for a successful application for an order of examination by an expert. Therefore, the Pre-Trial Chamber will, again, seek guidance in the procedural rules established at the international level." (para. 37) "The Pre-Trial Chamber will therefore review the Appeal by determining whether there is an adequate reason to question the Charged Person's capacity to participate, with the assistance of his Co-Lawyers, in the proceedings and sufficiently exercise his rights during the investigation." (para. 41)
3.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[T]he scope of Internal Rule 32 […] is sufficiently broad to encompass the Co-Lawyers' request [for the appointment of an expert to evaluate his capacity to participate in the investigation]." (para. 19) "[T]he ECCC constitutive documents, the Internal Rules, and Cambodian Law do not define the precise meaning of 'fitness to stand trial'. [T]here is no indication either as to when a psychiatric evaluation can be requested, or if the mental capacity of a charged person might be raised at the pre-trial stage. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 20) "[F]rom the beginning of a judicial investigation before the ECCC, charged persons enjoy procedural rights [...]. Amongst these are the rights to be informed of charges against them, to prepare their defence and to defend themselves. A number of provisions in the Internal Rules also confirm that charged persons are given the opportunity to play an active role during the investigative phase of the proceedings before the ECCC." (para. 25) "As the enjoyment of these rights requires that a charged person has a level of mental and physical capacity, […] the issue of a charged person's capacity to effectively participate in the proceedings is triggered from the very moment an individual is charged with a crime before the ECCC. […] [A] charged person's capacity to cooperate with counsel is of particular relevance during the investigative stage of the proceedings." (para. 26) "[C]harged persons are in principle entitled to have their capacity to exercise their procedural rights effectively during the investigation and pre-trial phase evaluated by an expert if their request is properly justified." (para. 27)

		"[T]he Pre-Trial Chamber will review the Appeal by determining whether there is an adequate reason to question the Charged Person's capacity to participate, with the assistance of his Co-Lawyers, in the proceedings and sufficiently exercise his rights during the investigation." (para. 35) "Although […] the experts were not specialists in psychiatry nor psychology, their reports all lead to the conclusion that the Charged Person's capacities are not significantly affected […]." (para. 39) "The Pre-Trial Chamber notes that the Charged Person made collected, relevant, well-structured and comprehensible statements during hearings […]. The Charged Person's conduct […] does not provide any reason to question the opinion expressed by the cardiologists." (para. 41) "[T]he Charged Person's subjective complaints about his mental capacities do not detract from this conclusion or in themselves justify the appointment of an additional expert." (para. 42)

4. Death of Charged Person

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as his Co-Lawyer*	"Under Cambodian law, '[n]atural persons shall acquire legal capacity by birth, and shall lose it by death'. 'Personal rights' may only be exercised during the lifetime of an individual and are not inheritable. Absent of any injury before IENG Sary's passing, his heirs do not have right of action to claim prejudice on his behalf." (para. 63) "In these circumstances, the Pre-Trial Chamber can only identify a potential interest on behalf of IENG Sary's next of kin to preserve their memory of the deceased, based on principles set forth in French and Human Rights case law which do not appear to contradict Cambodian law." (para. 64) "The remote interests of IENG Sary's next of kin in the proceedings before the ECCC could potentially place the Co-Lawyers in situation of conflict of interest if there is concrete indication that the Appellant intends to raise a line of defence aimed at shifting the blame for the crimes alleged in the Second Introductory Submission on IENG Sary such that the Co-Lawyers may be exposed to undermining the defence they have put forward on IENG Sary's behalf." (para. 65)

C. Abuse of Process

For jurisprudence concerning ***Stay of Proceedings***, see VII.B.9.ii. Stay Ordered by the Pre-Trial Chamber

1. General

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"The Co-Lawyers set out […] their arguments as to why the more than eight years of prior detention violates both the relevant provisions of Cambodian law and applicable human rights law, as contained in Article 9 of the ICCPR, with reference to […] the abuse of process doctrine." (para. 13) "The Pre-Trial Chamber is of the view that it can only take a violation of this Article into account when the organ responsible for the violation was connected to an organ of the ECCC, or had been acting on behalf of any organ in the ECCC or in concert with organs of the ECCC." (para. 15)
2.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"The Abuse of Process Request and […] Appeal are based upon the inherent jurisdiction of the Court to ensure a person is accorded a fair trial. 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." (para. 10) "[T]here is an inherent systemic conflict, given that the Co-Investigating Judges are determining allegations concerning the conduct of either or both of them. In addition, there is no discretionary issue involved and the parties are contesting a judicial determination made by the Co-Investigating Judges." (para. 17) "[O]n a matter of fairness to redress any adverse perceptions from the systemic conflict, such matters shall be considered afresh. As a consequence, it is appropriate to proceed as though the appellant directly seised the Pre-Trial Chamber with the Abuse of Process Request with its supporting material at first instance." (para. 18) "The Pre-Trial Chamber is cognisant of the fact that in cases containing allegations of violations that result mainly from a lack of impartiality or integrity of Judge or his office, such as the one it is seised of, no direct evidence may be available, especially when it comes to prove the intention of the author of such violation. The assertions by the Appellant may be thus impossible to prove absent an admission by the person said to be biased, or reliance on circumstantial evidence. Any inference made on circumstantial evidence, as to the judge's intent, must be the only possible conclusion arising from the evidence presented." (para. 26)

2. Distinction with Annulment

For jurisprudence concerning the ***Annulment***, see VII. C. Annulment

1.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"Whilst the Annulment Appeal and the Abuse of Process Appeal are each based upon similar grounds of appeal, the consequences of the applications are different, with an annulment resulting in material being expunged from the case file, as opposed to a permanent stay of the proceedings being the relief in respect of finding of an abuse of process." (para. 1) "The Pre-Trial Chamber notes that when an application for annulment is granted, the investigative or judicial action(s) declared null and void is (or are) expunged from the material on the case file. Consequently, if the entire investigation is annulled, all the material will be expunged from the case file, which leads to a consequence which must be differentiated from that of a stay of proceedings for abuse of process. Both procedures apply different standards and result in different consequences. If an annulment is ordered, even of the entire investigation, there is nothing to prevent a new investigation from placing new material, which is untainted by those defects, on the case file. In the case of stay of proceedings, the whole proceedings would cease because the abuse has been found to

		be so egregious as to damage the integrity of the entire process there will no longer be any case to answer." (para. 27)
2.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"Reparation of procedural irregularities calls for annulment procedure, not a stay of proceedings on the basis of the abuse of process doctrine as it is requested in the present case." (para. 31)

3. Admissibility of Applications for a Stay of Proceedings for Abuse of Process

1.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"[T]he Request for Stay of Proceedings could be considered as a request for an 'Order' under Internal Rule 55(10), as it is a request for an order in respect of the 'conduct of the proceedings', adopting the broadest understanding of the word 'conduct'. The Pre-Trial Chamber has already ruled on a possible inconsistency between Internal Rules 74(3)(b) and 55(10), and such a request would therefore not be open to appeal by the Charged Person." (para. 12) "It would have been equally open to the Co-Investigating Judges to consider the 'Request for the Stay of Proceedings' within the general ambit of an application falling within Article 33 New of the [ECCC Law]. For the purpose of this court the provisions of Articles 14 and 15 of the [ICCPR] are applicable at all stages of proceedings before the ECCC. Further, Article 14 of the ICCPR provides for overriding rights which will transcend local procedures declared and followed. The provisions of Articles 14 and 15 of the ICCPR are also reflected in Internal Rule 21." (para. 13) "Noting that Cambodian law does not provide for an abuse of procedure mechanism, the Pre-Trial Chamber is bound to follow international practice, relevant treaties and conventions of application. […] The overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a). […] [T]his appeal raises a serious issue of fairness and the Pre-Trial Chamber therefore has jurisdiction to consider it." (para. 14)
2.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"Rule 21(1)(a) of the Internal Rules provides that 'ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties'. […] In [D264/2/6], '[n]oting that Cambodian law does not provide for an abuse of procedure mechanism' and relying on international practice, the Chamber held that '[t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceeding'. The Chamber held that it had jurisdiction to consider the appeal as it raised a serious issue of fairness, and considered it as though it had been directly seised thereof at first instance." (para. 5) "Deciding whether the Chamber has jurisdiction to consider the Application means determining if the Application raises serious issues of fairness which must be addressed in order to guarantee the right to a fair trial under Rule 21(1)(a) of the Internal Rules and in respect of which there would be no other course of redress." (para. 6) "[T]he Chamber must, assuming the allegations have merit, determine whether the alleged violations could raise issues of fairness of a sufficiently serious and egregious nature as to warrant a stay of the proceedings for abuse of process. If it turned out that such is not the case, it would not be necessary to consider the allegations on the merits." (para. 8)

		"[N]one of the allegations […] raises serious issues of fairness or is sufficiently egregious or serious to warrant a stay of the proceedings for abuse of process, even if they were well-founded. Therefore, there is no need to consider those allegations on the merits." (para. 24)

4. Standard of Review and Merits of Applications for a Stay of Proceedings for Abuse of Process

1.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"[N]o disposition of the Internal Rules, or of the Cambodian Criminal Procedural Code, explicitly foresees the possibility to stay judicial proceedings where the violation of an accused or a charged person rights' is so serious as to jeopardize the integrity of the judicial proceedings. The Pre-Trial Chamber will thus turn to international standards to determine the standard of review applicable when examining whether there is an abuse of process." (para. 20) "[T]he Pre-Trial Chamber agrees with previous international jurisprudence according to which in order to invoke the abuse of process doctrine, 'it needs to be clear that the rights of the Accused have been egregiously violated.' The Pre-Trial Chamber is cognisant of the fact that in cases containing allegations of violations that result mainly from a lack of impartiality or integrity of Judge or his office, such as the one it is seised of, no direct evidence may be available, especially when it comes to prove the intention of the author of such violation. The assertions by the Appellant may be thus impossible to prove absent an admission by the person said to be biased, or reliance on circumstantial evidence. Any inference made on circumstantial evidence, as to the judge's intent, must be the only possible conclusion arising from the evidence presented. Ultimately, the power to stay proceedings on that basis is a discretionary power involving the judicial assessment that the violations of the rights of the charged person or the accused are of such an egregious nature as to impede the exercise of jurisdiction." (para. 26) "[T]he Pre-Trial Chamber will have to consider whether the Appellant suffered a serious mistreatment or if there was any other egregious violation of his right. The Pre-Trial Chamber will need to be satisfied that the alleged misconduct results in a violation of the Charged Person's rights to a fair trial and that this violation is of such an egregious nature that the Pre-Trial Chamber must permanently stay the proceedings." (para. 27) "The stay of the proceedings, which is an extreme measure, should […] apply only to an exceptional and very serious case of violations of the rights of the Charged Person which cannot be rectified or contravene the court's sense of justice. It is only in exceptional cases of *egregious violations* where such remedy could be deemed proportionate; this is the reason why a particularly high threshold is used when determining whether the alleged violations exists and whether it can be considered sufficiently serious to warrant such remedy. In that regard and in the context of the ECCC, the Pre-Trial Chamber has a discretionary power to strike a correct balance between the fundamental rights of the Charged Person and the interests of the international and national communities in the prosecution of persons charged with serious violations of international humanitarian law and national law." (para. 28) "[O]nly a proven case of egregious violations could form a basis for an assessment by the Pre-Trial Chamber of the need to stay proceedings for abuse of process, not the *presumed* truth of allegations made by former staff member of the Court that are considered by the Co-Lawyers to amount to a violation of the rights of the Charged Person that can justify such an extreme remedy as a stay of proceedings." (para. 33) "The […] evidence adduced […] does not further satisfy the particularly high threshold that applies in reviewing allegations of abuse of process." (para. 36) "As the appropriate mechanisms for dealing with an interference in the administration of justice are pr[e] scribed by Internal Rule 35, […] such an interference could only lead to a stay of proceedings for abuse of process if it was so egregious that it could not be remedied by the provisions established in Internal Rule 35(2)" (para. 38)
2.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011	"[The Pre-Trial Chamber] held that 'in order to invoke the abuse of process doctrine, it needs to be clear that the rights of the Accused have been egregiously violated' and that 'the power to stay proceedings on that basis is a discretionary power involving the judicial assessment that the violations of the rights of the charged person or the accused are of such an egregious nature as to impede the

	Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process	exercise of jurisdiction'. It also noted that '[t]he stay of the proceedings, which is an extreme measure, should indeed apply only to an exceptional and very serious case of violations of the rights of the Charged Person which cannot be rectified or contravene the court's sense of justice. It is only in exceptional cases of egregious violations where such remedy could be deemed proportionate'. The Chamber therefore used a particular high threshold in determining whether the Appellant had suffered a serious mistreatment or whether there was any other egregious violation of his rights." (para. 7) "[W]ith the exception of the Closing Order and the Final Submission, […] the temporary absence of translations […] would not, were it to be established, amount to a sufficiently serious or egregious violation […] as to warrant a stay of the proceedings." (para. 14) "[W]here specific translation issues are identified, they could be raised on a case-by-case basis in the course of the trial. Moreover, it is open to the Defence to request the validation of any translations it considers erroneous. [T]he mere possibility that there would be translation errors […] is not sufficiently serious as to amount to an egregious violation […] that would warrant a stay of the proceedings." (para. 16) "Even though the Accused does indeed have the right to be tried within a reasonable time, the Judges are still duty bound to ensure, at the various stages of the proceedings, that the proceedings are not slowed down by any delay that is not warranted by procedural requirements or the exercise of the respective rights of the parties. […] [I]t has not been established how the alleged delays would be unreasonable, and […] taking three years altogether to complete the judicial investigation in such an extensive case is not excessive. The alleged violations are therefore not sufficiently serious or egregious to warrant a stay of the proceedings." (para. 22) "KHIEU Samphân [alleges] that there is a public presumption of his culpability […] because of the publication of a 'Case Information Sheet' on the ECCC website […]. Even if those allegations were well-founded, they would have no bearing on the judicial proceedings and would not in any way constitute such serious and egregious violations of the rights of the defence as to warrant a stay of the proceedings." (para. 23)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Co-Lawyers submit that the cumulative impact of fair trial violations undermines the integrity of proceedings in a manner so egregious and irreparable as to render a fair trial impossible and that the International Co-Investigating Judge erred or abused his discretion in failing to dismiss or stay the case to safeguard the fairness and integrity of proceedings and AO An's rights. […] In light of these alleged cumulative errors, the Co-Lawyers submit that the only appropriate remedy is a permanent stay of proceedings or a dismissal of the case against AO An." (para. 162) "[W]ithout any demonstration of alleged fair trial right violations, the Pre-Trial Chamber finds that the Co-Lawyers' argument concerning the cumulative impact of fair trial rights violations and their request for a permanent stay or dismissal as a remedy is without merit." (para. 168) "Here, the Co-Lawyers raise fair trial issues that have already been litigated and, at this juncture, fail to provide sufficient basis for reconsideration. […] Accordingly, the Pre-Trial Chamber finds that no intervention is necessary now to avoid irremediable harm to fair trial rights." (para. 164) --- "Turning to the purported violation of AO An's rights to equality before the law and courts, and certain fair trial guarantees, including: the right to be presumed innocent, the right to be tried by a fair and competent tribunal, the right to be informed promptly and in detail of the nature and cause of the charges and the right to be tried without undue delay and the principle of legal certainty, the International Judges consider that these arguments presuppose the confirmation of both Closing Orders. Having determined that only the Closing Order (Indictment) stands, the International Judges find no merit in these arguments." (Opinion of Judges BAIK and BEAUVALLET, para. 327)

III. POWERS OF THE PRE-TRIAL CHAMBER

A. General

1. Jurisdiction over the Investigation Stage

1.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"The Chamber notes that the Application is not an appeal or a request for annulment, over which it would have had jurisdiction under Rule 73 of the Internal Rules. However, Rule 21(1)(a) of the Internal Rules provides that 'ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties'. […] In [D264/2/6], '[n]oting that Cambodian law does not provide for an abuse of procedure mechanism' and relying on international practice, the Chamber held that '[t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceeding'. The Chamber held that it had jurisdiction to consider the appeal as it raised a serious issue of fairness, and considered it as though it had been directly seised thereof at first instance." (para. 5) "In this case, the Chamber notes that having issued the Closing Order, the Co-Investigating Judges are no longer seised of the case file, and that seised of the appeals against the Closing Order, the Pre-Trial Chamber has sole jurisdiction to deal with the case file at this stage of the proceedings, and to consider applications such as the present Application. Deciding whether the Chamber has jurisdiction to consider the Application means determining if the Application raises serious issues of fairness which must be addressed in order to guarantee the right to a fair trial under Rule 21(1)(a) of the Internal Rules and in respect of which there would be no other course of redress." (para. 6)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"While there is no explicit deadline in the Internal Rules, it is incumbent upon the Co-Investigating Judges to issue closing orders within a reasonable time. The Pre-Trial Chamber, as the control body at the judicial investigation stage, deems it necessary to address this issue." (para. 28)
3.	**003 MEAS Muth** PTC 35 D266/25 3 November 2020 *Decision on International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against MEAS Muth*	"At the outset, the Pre-Trial Chamber considers that the issuance of a decision by the Supreme Court Chamber in a different proceeding bears no direct impact on the pending Case, particularly in light of the Pre-Trial Chamber's position as the sole and ultimate jurisdiction for pre-trial matters." (para. 31)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"In prior rulings, the Pre-Trial Chamber has affirmed the responsibilities and powers it is vested with within the ECCC legal system. It clearly emerges, notably from Internal Rule 73(a), that the Chamber's jurisdiction encompasses an appellate function. The Chamber has further clarified that its appellate function empowers it to determine the law that governs the pre-trial stage of proceedings in an authoritative and final manner. The Chamber has also found that in the specific case of appeals against closing orders, it has the power to issue a new or revised closing order, including an indictment pursuant to Internal Rule 79(1)." (Opinion of Judges BEAUVALLET and BAIK, para. 121) "In this regard, the Pre-Trial Chamber has consistently held that when the need arises to fill *lacunae* in the Internal Rules, the ECCC legal framework allows the Chamber to decide in accordance with Cambodian law and international law. In practice, due to the sparsity of the Cambodian courts' practice, the Chamber also seeks guidance from other inquisitorial systems of criminal procedure, especially the French Code of Criminal Procedure, which inspired the Cambodian criminal procedure.

		As for the international standards, the Chamber gives special attention to the sources that reflect the particularities of the inquisitorial system of criminal procedure, which the ECCC legal framework and Cambodian law espouse at the pre-trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 122) "[T]he Internal Rules bestow the Pre-Trial Chamber with a general jurisdiction over 'orders' and 'decisions' of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BAIK, para. 123)
5.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"In accordance with Article 12(1) of the ECCC Agreement and Article 261 of the Cambodian Code of Criminal Procedure, the Pre-Trial Chamber, in its capacity of Cambodian Investigating Chamber within the ECCC, has final jurisdiction in the pre-trial investigation phase, including over any request related to the pre-trial stage, after the Office of the Co-Investigating Judges is unseised." (para. 69)

2. Authority and Powers at the Closing Order Stage

For jurisprudence concerning the ***Authority and Powers of the Pre-Trial Chamber at the Closing Order Stage***, see IV.D.7. Authority of the Pre-Trial Chamber at the Closing Order Stage

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Chamber […] has so far exercised diverse powers including: appellate review of alleged errors of law, fact and discretion; determination of issues of general significance for the ECCC's jurisprudence and legacy; inherent powers or inherent jurisdiction; and an ancillary investigative power derived, in the case of *lacunae* in the ECCC Internal Rules, from the role of the Cambodian Investigation Chamber. The Pre-Trial Chamber may use some or all of these different powers […]." (para. 32) "[T]he first three powers listed above are well-established in the Pre-Trial Chamber's and within the international criminal tribunals' jurisprudence. While the fourth power – the ancillary investigative power – had until now been used sparingly by the Chamber and in limited procedural contexts, the exceptional circumstances of this case justifies its broader use by the Chamber." (para. 33) "[T]he powers that the Pre-Trial Chamber may deem necessary to use as a second-instance investigating court […] [are] derived from the appellate function exercised at the judicial investigation stage in domestic civil law legal systems, such as those in force in Cambodia and in France […]." (para. 34) "The Pre-Trial Chamber, while reiterating that it may play the role of the Cambodian Investigation Chamber in the ECCC legal system when the circumstances so require, also recalls that 'harmonious relations between an investigating judge and an Investigation Chamber necessarily require the respect of each party's prerogatives.' Against this backdrop, the Chamber deplores the Office of the Co-Investigating Judges' persistent practice of avoiding the Pre-Trial Chamber's intervention to settle disputes between the Co-Investigating Judges […] as well as their obstinacy in rejecting any control by the appellate court […]." (para. 35) "The Chamber will now articulate the powers it may use in this case as a second-instance investigating court while reviewing the actions and findings of the Co-Investigating Judges." (para. 37) "With due regard to the ECCC's *sui generis* mechanism and mandate, the Pre-Trial Chamber considers that the judicial system and structure of the ECCC is, *inter alia*, clearly modelled along the lines of an inquisitorial system of criminal procedure, as provided for by the Cambodian Code of Criminal Procedure, which in turn draws its inspiration from the French Code of Criminal Procedure." (para. 38) "In this regard, the Chamber notes that Article 55 of the Cambodian Code of Criminal Procedure provides that '[t]here is a Chamber within the Court of Appeal which is called the Investigation Chamber' and that, as in many other inquisitorial systems, the Investigation Chamber is an essential

		and integral part of the pre-trial stage of a proceeding." (para. 39) "As a body akin to the Cambodian Investigation Chamber, the ECCC Pre-Trial Chamber's power of review can be derived, under the ECCC legal system, from Article 261 of the Cambodian Code of Criminal Procedure, stating that: '*[e]very time it is seized, the Investigation Chamber shall examine the regularity and assure itself of the proper conduct of the proceedings*. If the Investigation Chamber finds grounds for annulling all or part of the proceedings, it may, on its own motion, annul such proceedings. The Investigation Chamber shall act in compliance with Article 280 (Effect of Annulment) of this Code.' […] Similar provisions can be found in numerous codes of criminal procedure in other inquisitorial systems, including France." (para. 40) "Regardless of its designation – the second-instance Investigation Chamber, Accusation Chamber, or Pre-Trial Chamber – the present Chamber forms a final jurisdiction over the pre-trial stage at the ECCC." (para. 41) "In this regard, the Pre-Trial Chamber refers to eminent authors who notably stated: '[t]he Investigation Chamber can be defined as an Appeal Court's Chamber […] whose mission is not only to know about appeals against first instance jurisdiction's decisions, *i.e.*, the investigating judges […], but also to constantly monitor the regularity of investigation and to assume a supervisory role with the investigating judges, whose mistakes the Chamber shall remedy. In that sense, it may be considered as the high court for investigation.'" (para. 42) "The Pre-Trial Chamber notes that other comparable oversight mechanisms exist in other hybrid courts […]." (para. 43) "In light of the foregoing, the Pre-Trial Chamber specifies that the functions it may perform within the ECCC legal system include that of the Investigation Chamber, which comprises both appellate jurisdiction over the investigating judge's acts and decisions, and a second-instance investigating jurisdiction." (para. 44) **"**The Chamber notes that, independent of any exceptional circumstances, its jurisprudence is filled with examples of instances in which the Chamber has had to exercise, as other international judicial bodies, powers which are not necessarily explicitly stated, yet still compatible with functions entrusted to it by the ECCC legal texts." (para. 45) "With respect […] to the case at hand, the Pre-Trial Chamber notes that its power of review as a second-instance investigative chamber may comprise of (i) the Investigation Chamber's powers to purge any irregularities in the procedures it is seised of before sending the Case to trial; (ii) the Investigation Chamber or the ECCC's Pre-Trial Chamber's power, in the instances it is seised, to entirely review and revise a case including to correct any of the investigating judges' erroneous legal qualifications and to note all the legal circumstances linked to the facts; and (iii) *the right to review and revise the work of the investigating judges in proceeding to any necessary operations for the sake of the manifestation of the truth.* In other words, the power of review enables such Chamber to holistically address all the acts related to the case that the prosecution or the investigating judge has or should have done for the instruction to be complete and legal." (para. 47) "[T]he Pre-Trial Chamber emphasises that when it is seised of the final investigation procedure, 'the subject matter jurisdiction of the Investigating Chamber is general, as opposed to specific. The entire case is referred to it and not only the disposition of an order.' Consequently, the Investigation Chamber possesses a power of review allowing it to complete the investigation through supplementary investigative acts and to assess the regularity of the procedure, when the circumstances do so require." (para. 48) **"**The Pre-Trial Chamber considers that when it acts as the ECCC's Investigative Chamber, it exercises the ultimate authority over the investigation phase. The Chamber recalls that one of the important purposes of the Pre-Trial Chamber is thus to assess the entirety of the investigation phase and to issue the final determinations in this regard. The Pre-Trial Chamber retains broad substantive jurisdiction over matters of which it may be seised and holds expansive powers to assess the integrity of an investigation and the substance of the case in safeguarding the principle of impartiality." (para. 49) "The Pre-Trial Chamber considers that the exercise of its review power as Investigation Chamber is intended, first and foremost, to ensure that the conditions for the issuance of the closing order and the preparatory investigation are in accordance with the ECCC Internal Rules 21 and 76, and Article 261

		of the Cambodian Code of Criminal Procedure. Accordingly, in appeals against closing orders, there are many preliminary issues which the Pre-Trial Chamber may need to consider before addressing the merits of the parties' submissions, including what the Pre-Trial Chamber has identified over the years as issues of general significance for the ECCC's jurisprudence and legacy, and/or its inherent powers when considering a closing order." (para. 50) "In this regard, the Pre-Trial Chamber is, *inter alia*, and regardless of specific attributions set in Internal Rules 71 to 78, required to ensure that '[t]he applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations [are] 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' throughout the pre-trial stage. The Chamber thus has inherent jurisdiction to examine 'due diligence displayed in the Co-Investigating Judge's conduct', where it constitutes 'a relevant factor when considering victims' rights in the proceedings'. The Chamber also has inherent jurisdiction 'to determine incidental issues which arise as a direct consequence of the procedures of which [it is] seised', in instances where statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter. Such inherent jurisdiction is rendered necessary by the imperative need to ensure good and fair administration of justice." (para. 51) "[T]he Chamber's power of review can be grasped in Internal Rule 76(7) which states that '[s]ubject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation'. This power of review is so important and determinative that '[n]o issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber'. As a consequence, the Pre-Trial Chamber is responsible for ensuring, at the investigation stage, that the fundamental principles underlying the criminal procedure applicable before the ECCC are respected." (para. 52)

3. Determination of Issues of General Significance to the Court

1.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	*"*[…] [C]ivil party admissibility and procedural fairness, are of general significance to the practice and jurisprudence of the ECCC and international criminal law. Errors relating to civil party admissibility and procedural fairness 'impinge upon ability of [the ECCC] to meet its obligation in search for truth in all proceedings.' Therefore, we issue this Opinion in an effort 'to avoid uncertainty and ensure respect for the values of consistency and coherence in the application of the law.' (Opinion of Judges DOWNING and CHUNG, para. 2)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he ECCC is an independent entity *within* the Cambodian court structure and has no jurisdiction to judge the activities of other bodies. The Co-Investigating Judges and the Pre-Trial Chamber thus have no jurisdiction to rule upon decisions or actions of other courts within the Cambodian court system, and in holding that ordinary Cambodian courts have no jurisdiction to hear cases involving Khmer Rouge-era crimes, the Co-Investigating Judges overstepped their mandate." (para. 72) "This being said, the Pre-Trial Chamber, as an appellate chamber, deems it necessary to consider the issue raised as one of general significance for the ECCC's jurisprudence and legacy." (para. 73)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges find that there is no basis in this Appeal upon which they could revise the International Co-Investigating Judge's Indictment." (Opinion of Judges BEAUVALLET and BAIK, para. 192) "Nonetheless, the International Judges recall that the Pre-Trial Chamber has the power to, *inter alia*, address issues of general significance for the ECCC's jurisprudence and legacy that fall outside of its scope of appellate review. Such power is discretionary." (Opinion of Judges BEAUVALLET and BAIK, para. 193)

		"[T]he issue of personal jurisdiction, constituting an 'absolute jurisdictional element' and an issue of general importance to the ECCC's jurisprudence and legacy, has to be addressed at this stage of the pre-trial phase." (Opinion of Judges BEAUVALLET and BAIK, para. 285)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Notwithstanding the summary dismissal, the International Judges reaffirm the discretionary power to, *inter alia*, address issues of general significance for the ECCC's jurisprudence and legacy. Accordingly, the International Judges find it appropriate to clarify two issues raised by the National Co-Prosecutor […]." (Opinion of Judges BAIK and BEAUVALLET, para. 492)

4. Inherent Jurisdiction

For jurisprudence concerning the ***Admissibility of Appeals under Fairness Considerations***, see VII.B.5. Admissibility of Appeals under Fairness Considerations (Internal Rule 21)

1.	**002 NUON Chea & KHIEU Samphân** PTC 47 and 53 D364/1/6 1 July 2011 *Decision on the reconsideration of the Admissibility of Civil Party Applications*	"In its previous jurisprudence the Pre-Trial Chamber has applied the following test for reconsideration: '25. The Application for Reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decisions. The Appeals Chamber of the ICTY has held that a Chamber may always reconsider a decision it has previously made not only because of a change of circumstances but also where it is realized that the previous decision was erroneous or that it has caused an injustice. This has been described as an inherent power and is particularly important for a judicial body of last resort like the Pre-Trial Chamber. A change of circumstances may include new facts or arguments. The standard for reconsideration has also been described as follows a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice'" (para. 6)
2.	**003 Special PTC 01** 15 December 2011 Doc. No. 3 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […]." (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
3.	**004 Special PTC 01** 20 February 2012 Doc. No. 3 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective*	"The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalised Tribunals […]." (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 004, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating

	Representation of Suspects in Case 004	Judges in case 004 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
4.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[W]e refer [..] to the Pre-Trial Chambers considerations […] regarding its inherent jurisdiction to also examine due diligence by the Co-Investigating Judges. […] [T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)
5.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[W]e refer [..] to the Pre-Trial Chambers considerations […] regarding its inherent jurisdiction to also examine due diligence by the Co-Investigating Judges. […] [T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)
6.	**003 MEAS MUTH** PTC 11 D56/19/8 31 January 2014 *Decision on Requests for Interim Measures*	"The Pre-Trial Chamber considers that it is of fundamental importance for MEAS Muth to be able to communicate with the lawyers of his choice in order to get the information and advice necessary to decide whether he wants to pursue the Appeal. […] Article 14(3)(b) of the [ICCPR] clearly states that the right to be represented by counsel of own choosing includes the right to communicate with the said counsel. The Pre-Trial Chamber notes that no reasons were given by the Co-Investigating Judge when he ordered the suspension of communications in the first place so the continuing limitation on MEAS Muth's fundamental right is not justified by any legitimate interest. […] Absent any provision in the ECCC legal compendium or in Cambodian law dealing with its power to order the interim measure sought by the Co-Lawyers, the Pre-Trial Chamber finds it necessary, in order to ensure fairness of the proceedings and respect of MEAS Muth's fundamental right to communicate with counsel of his own choosing, to use its inherent jurisdiction to lift, in part, the Order Suspending Communications and to allow communications between the Co-Lawyers and MEAS Muth for the purpose of the appellate proceedings against the Impugned Decision." (para. 15)
7.	**003 MEAS MUTH** PTC 11 D56/19/14 11 February 2014 *Decision on Co-Lawyer's Request to Stay the Order for Assignment of Provisional Counsel to MEAS Muth*	"Absent any statutory provision in the ECCC legal compendium or Cambodian Law expressly granting the Pre-Trial Chamber jurisdiction to stay the execution of an order issued by the Co-Investigating Judges pending resolution of appellate proceedings, the Co-Lawyers ask the Pre-Trial Chamber to use its 'inherent jurisdiction' to grant the Request for Stay on the basis that 'it is intrinsically related to the forthcoming Appeal of the Impugned Decision'. The Pre-Trial Chamber previously found that, in instances where its statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter, it possesses an inherent jurisdiction 'to determine incidental issues which arise as a direct consequence of the procedures of which [it is] seized by reason of the matter falling under [its] primary jurisdiction'. The inherent jurisdiction is 'ancillary or incidental to the primary jurisdiction and is rendered necessary by the imperative need to ensure a good and fair administration of justice.' […] Concretely, the Pre-Trial Chamber must examine if the immediate execution of the Order would render MEAS Muth's right to appeal the Impugned Decision, if any, ineffective or would otherwise affect the fairness of the appellate process." (para. 16) "Although the assignment of provisional counsel may, for a certain period of time, limit MEAS Muth's fundamental right to be represented by counsel of his own choosing, the International Co-Investigating Judge found that this measure is justified by the need to avoid that MEAS Muth be unrepresented […]. This decision falls within the purview of the Co-Investigating Judges' jurisdiction and the Pre-Trial Chamber has no authority to stay its execution in the present context unless it is demonstrated that a right of appeal against the Impugned Decision would become ineffective." (para. 18)

8.	**003 MEAS MUTH** PTC 11 D56/19/16 19 February 2014 *Second Decision on Requests for Interim Measures*	"The Pre-Trial Chamber therefore finds that it is necessary for the Co-Lawyers to be given access to the Case File […] to avoid that a right of appeal […] becomes meaningless of ineffective and to ensure fairness of the appellate process through equality of arms. […] [I]t is in the interest of justice to exercise its inherent jurisdiction to order, as an *interim* measure […] the Co-Investigating Judges to grant the Co-Lawyers access to the Case File […], subject to any limitation that they may consider necessary to avoid any prejudice to the judicial investigation or the security of witnesses and taking into consideration that the Co-Lawyers are bound by an obligation of confidentiality in respect of such access." (para. 15)
9.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance*	"[A]bsent any provision in the ECCC legal compendium or Cambodian law, [the Pre-Trial Chamber] may, using its 'inherent jurisdiction', stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve fairness of the appellate process." (para. 10) "[W]here it is not seised of any appeal or application [for annulment] challenging the validity of the Summons, it is [doubtful] that the Pre-Trial Chamber would have jurisdiction to stay the execution of the Summons." (para. 11)
10.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"The Pre-Trial Chamber previously held in the absence of a relevant provision in the Internal Rules, the ECCC Law and Cambodian law, that it may exercise its 'inherent jurisdiction' to order suspension of the execution of an order issued by the Co-Investigating Judge(s) so as to ensure that a right of appeal does not become meaningless or to preserve the fairness of the appellate process. Moreover, the Pre-Trial Chamber emphasised that for an appellant's request for a stay of execution of an impugned act or order to succeed, it must be established that execution of such an act or order 'would have a direct impact on the appellate proceedings of which it is [seised]', adding that the following three conditions must also be met: 'a. there is good cause for the requested suspension; b. the duration of the requested suspension is reasonable; and c. the appeal itself has reasonable prospects of success on its merits.' The Pre-Trial Chamber held that it has no jurisdiction to order suspension of the execution of an order of the Co-Investigating Judges if the first condition is not satisfied. Accordingly, the Pre-Trial Chamber found that a request for a stay of execution of an order which has no impact on the appellate proceedings of which it was seised does not fall within the purview of its jurisdiction, and is, therefore, inadmissible.' (Opinion of Judges BEAUVALLET and BWANA, para. 8) "We note that there is a fundamental distinction between the inherent jurisdiction *of the ECCC* and its own jurisdiction, as an appellate chamber sitting within the ECCC judicial system. Were the Pre-Trial Chamber to consider, at first instance, any incidental matter arising from the jurisdiction of the ECCC, […] it would then be usurping the authority of the Co-Investigating Judges and perhaps that of the other Chambers of the ECCC. Accordingly, for a motion brought at first instance to fall within the ambit of the Pre-Trial Chamber's inherent jurisdiction, it is required that it relates directly to appellate proceedings of which the Pre-Trial Chamber is seised." (Opinion of Judges BEAUVALLET and BWANA, para. 11) "Accordingly, we would find a request for a stay of execution admissible only where it may affect the fairness of appellate proceedings brought before it or imperil an acknowledged right to appeal." (Opinion of Judges BEAUVALLET and BWANA, para. 13)
11.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"At the outset, the Pre-Trial Chamber finds that it has no jurisdiction to entertain the Appellant's request for clarification of the disagreement process under Internal Rule 72. […] The Pre-Trial Chamber notes that the Appellant does not ask the Pre-Trial Chamber to overturn or annul any specific decision where this procedure had been applied […], but rather seeks to obtain an advisory opinion from the Pre-Trial Chamber on the legality of the procedure itself. Whereas the International Co-Investigating Judge found it appropriate to explain his understanding of Internal Rule 72 […], the Pre-Trial Chamber finds that the Appellant's challenge to this interpretation, formulated in general terms, does not fall within the ambit of Internal Rule 21." (para. 9) "Provision of information concerning the Co-Investigating Judges' disagreements is therefore strictly within the purview of their discretion. The Pre-Trial Chamber shall not interfere with the exercise of this discretion unless it is demonstrated that, in the exceptional circumstances of the case, the lack of information about a disagreement impairs the Appellant's fair trial rights, in which case the Pre-Trial Chamber may consider appropriate remedy." (para. 10)

		"Absent any indication to the contrary, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure that they act in compliance with the requirements set forth in Article 5(4) of the Agreement, 23*new* of the ECCC Law and Internal Rule 72. There is no indication in the present case disclosing a lack of compliance with these legal requirements by the International Co-Investigating Judge in issuing the Four Decisions so the Appellant's argument that he is not being investigated by a tribunal established by law is unfounded." (para. 11) "The Appellant has not demonstrated that providing him access to privileged information about the disagreement on these decisions is necessary, at this stage, to defend himself against the crimes alleged in the Introductory Submission." (para. 12)
12.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public certain Defence Submissions to the Pre-Trial Chamber*	"Internal Rule 9(5) directs that the documents on the database shall only be made available to the public in accordance with the terms of the applicable ECCC practice directions. Article 5.1(h) of the Practice Direction on Classification of Documents provides that filings to the Pre-Trial Chamber are in principle confidential until the Pre-Trial Chamber has decided on the matter. According to Article 9.1 of the same direction, documents can be re-classified only pursuant to an order of the Co-Investigating Judges or a Chamber, 'as appropriate.' Article 3.14 of the Practice Direction on Filings states that a Chamber seised of a case may reclassify documents 'when required in the interests of justice.' Therefore, the Pre-Trial Chamber considers, it has primary jurisdiction to decide, where it sees it fit, on reclassification of filings brought before it […]." (para. 5)
13.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"The Pre-Trial Chamber has previously found that, in instances where statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter, it has inherent jurisdiction 'to determine *incidental issues which arise as a direct consequence of the procedures of which [it is] [seised]*'. […] Presently, the Pre-Trial Chamber is not yet seised with any Closing Order in Case 003. Accordingly, the clarification sought does not fall within the purview of the Pre-Trial Chamber's inherent jurisdiction." (para. 11) "In the past, the Pre-Trial Chamber has used inherent jurisdiction to review matters relating to '*upcoming appeals'* in circumstances where it was seised of allegations that non-observance of '*specific* rights' of the parties may render their *statutory appeal rights* ineffective. As such, conditions for use of inherent jurisdiction, in advance of any primary jurisdiction materializing, include: i) *a statutory appellate right* must exist; and ii) enjoyment of such statutory appellate right *may become ineffective* due to *infringement of specific fundamental* rights." (para. 12) "[T]he Pre-Trial Chamber has found that it has no jurisdiction to entertain requests for clarification of the Internal Rules *in general.* Where scenarios envisaged in parties' motions are *hypothetical* or, even if such scenarios were to materialise, but it is *unclear what prejudice the requesting party would concretely suffer*, '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 14)
14.	**004 YIM Tith** PTC 46 D361/4/1/3 19 July 2017 *Decision on YIM Tith's Request for Suspension of D361/4 Deadline Pending Resolution of Appeal Proceedings*	"The Pre-Trial Chamber recalls that it may use its inherent jurisdiction to stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve the fairness of the appellate process. The Pre-Trial Chamber, however, will not entertain requests to stay an order based on prospective applications or appeals that Co-Lawyers intend to bring before it and will not consider their merits. In the present case, only a notice of appeal has been filed before the Greffier of the Office of the Co-Investigating Judges. The Pre-Trial Chamber is thus not actually seised of an appeal and can neither exercise its appellate jurisdiction nor assess the Suspension Request on the basis of reasons set forth in the prospective appeal." (para. 4) "Besides, while the Pre-Trial Chamber acknowledges the existence of concurrent deadlines, it finds that the Applicant has not shown any exceptional circumstances justifying to suspend the Impugned Decision before submitting their appeal. In particular, it is not established that the compliance with the deadline set for filing investigative action requests would defeat the purpose of the eventual appeal or create an irreversible situation, such as the implementation of the Impugned Decision would have a direct impact on the effectiveness or fairness of the appellate proceedings." (para. 5)

15.	**004/1 IM Chaem** PTC 50 D308/3/1/8 29 August 2017 *Decision on the National Civil Party Co-Lawyer's Request regarding the Filing of Response to the Appeal against the Closing Order and Invitation to File Submissions*	"In particular, at the investigation stage, while Civil Party applicants are collectively assimilated to parties and enjoy Civil Party rights pursuant to Internal Rule 23*bis*(2), they may exercise participatory rights only '*until rejected*'. In the present circumstances, having been rejected and having failed to appeal the Rejection Order, the Civil Party applicants represented by the National Civil Party Co-Lawyer can no longer be legally considered as parties to the proceedings and thus cannot exercise the procedural prerogative to file a response to the Appeal." (para. 11) "Nonetheless, the Pre-Trial Chamber acknowledges the particularities of the case and the fact that the Rejection Order is intrinsically linked to the Closing Order dismissing the case as a whole. It also finds that, considering the significance of the issues raised in the Closing Order and in the Appeal, the interests of justice favours affording the National Civil Party Co-Lawyer an opportunity to express the views of Civil Party applicants he represents, especially if his submissions are limited to the specific issue of the position of the ECCC within the Cambodian Legal System […]." (para. 12) "[T]he Pre-Trial Chamber, relying on its inherent jurisdiction and on Internal Rule 33, invites the […] Co-Lawyer to file submissions […]." (para. 13)
16.	**004/2 AO An** PTC 60 D359/17 & D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"Internal Rule 21 protects fundamental principles of fairness in the proceedings before the ECCC, and reflects the fair trial requirements that the ECCC is duty-bound to apply pursuant to Article 13(1) of the ECCC Agreement, Article 35 *new* of the ECCC Law and Article 14(3) of the [ICCPR]. The Chamber has held that these principles 'may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial' by admitting appeals under Internal Rule 21 or broadly construing the specific provisions of the Internal Rules which grant it jurisdiction. Such admissibility may apply in the rare instances where the particular facts of a case raise issues of fundamental rights or serious issues of procedural fairness." (para. 5) "However, the Pre-Trial Chamber has consistently emphasised that Internal Rule 21 does not open an automatic avenue for appeal, even when an appeal raises fair trial issues. Internal Rule 21, moreover, does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the applicant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 6)
17.	**003 MEAS Muth** PTC 35 D267/33 3 November 2020 *Decision on MEAS Muth's Supplement to His Appeal against the International Co-Investigating Judge's Indictment*	"With regard to the argument raised in the Supplement that the Pre-Trial Chamber needs to invoke its inherent power to determine issues incidental to the present case in view of safeguarding good and fair administration of justice, the Pre-Trial Chamber, while reaffirming its ability to exercise such power, finds that the circumstances in the present instance, where another ECCC Chamber competent on the trial phase issued a public statement in another case ["a document deprived of judicial force, in a different proceeding [which] has neither immediate nor direct impact on the pending Case" (para. 32)], do not warrant that such power be exercised." (para. 34)

5. Role of the Cambodian Investigation Chamber

See also IV.D.7. Authority of the Pre-Trial Chamber at Closing Order Stage

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of*	"In the Agreement […] and the [ECCC Law], there is no direct provision for appeal against orders of provisional detention from the Co-Investigating Judges. Article 12(1) of the Agreement specifically provides that the procedure shall be in accordance with Cambodian Law. The Internal Rules specifically make provision for a right of appeal in respect of provisional detention orders, knowing that [the Cambodian Code of Criminal Procedure] makes such a provision with regards to *La Chambre d'instruction*. The Pre-Trial Chamber fulfils this role in the ECCC. Therefore, the manner in which the Pre-Trial Chamber must approach appeals on provisional detention orders is directed by *Livre 4: L'Instruction, Titre 2: La Chambre d 'instruction*." (para. 7)

	KAING Guek Eav alias "Duch"	
2.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The jurisdiction of the Pre-Trial Chamber in the Internal Rules regarding provisional detention appeals was based on the jurisdiction of the Investigation Chamber. The Pre-Trial Chamer can therefore seek guidance for its functioning in the articles in the [Cambodian Code of Criminal Procedure] prescribed for the Investigating Chambers." (para. 38)
3.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	**"**The Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC. […] [T]he [Cambodian Code of Criminal Procedure] […] generally […] gives broad powers to the Investigation Chamber when seized of an appeal." (para. 41)
4.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[T]he Pre-Trial Chamber recalls that 'two investigating judges, one Cambodian and another foreign [...] shall follow existing procedures in force.' Thus, the Co-Investigating Judges are seised of the judicial investigation at the ECCC and jointly responsible for its proper conduct. Consequently, the Chamber, in spite of its powers as the equivalent of the Cambodian Investigation Chamber, intervenes only as the second instance court in order to verify due process, in accordance with the applicable rules." (para. 64) "In accordance with Article 12(1) of the ECCC Agreement and Article 261 of the Cambodian Code of Criminal Procedure, the Pre-Trial Chamber, in its capacity of Cambodian Investigating Chamber within the ECCC, has final jurisdiction in the pre-trial investigation phase, including over any request related to the pre-trial stage, after the Office of the Co-Investigating Judges is unseised." (para. 69)

6. Investigative Powers of the Pre-Trial Chamber

For jurisprudence concerning the ***Authority and Powers of the Pre-Trial Chamber at the Closing Order Stage***, see IV.D.7. Authority of the Pre-Trial Chamber at the Closing Order Stage

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence." (para. 37)
2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009	"When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence." (para. 40)

	Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action	
3.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence." (para. 37)
4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence." (para. 35)
5.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber observes that the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative actions but rather limit its role to deciding on appeals lodged against orders of the Co-Investigating Judges. This departure from the CPC is justified by the unique nature of the cases before the ECCC, which involve large scale investigations and extremely voluminous cases, and where the Pre-Trial Chamber has not been established and is not equipped to conduct investigations. As a decision on request for investigative action is a discretionary decision which involves questions of fact, the Pre-Trial Chamber considers that in the particular cases before the ECCC, the Co-Investigating Judges are in a best position to assess the opportunity of conducting a requested investigative action in light of their overall duties and their familiarity with the case files. In these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the Co-Investigating Judges when deciding on an appeal against an order refusing a request for investigative action." (para. 24)

7. Limits of Pre-Trial Chamber's Jurisdiction

i. *General and Miscellaneous*

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of*	"The question is whether previous actions by other than ECCC judicial authorities have caused a violation of [Article 9 of the ICCPR] entailing consequences for decisions taken by organs of the ECCC such as the Co-Investigating Judges and the Pre-Trial Chamber itself. The Pre-Trial Chamber is of the view that it can only take a violation of this Article into account when the organ responsible for the violation was connected to an organ of the ECCC, or had been acting on behalf of any organ of the ECCC or in concert with organs of the ECCC." (para. 15)

	KAING Guek Eav alias "Duch"	"The question of the relationship between the ECCC and the Military Court is therefore relevant to a consideration of whether the Co-Investigating Judges and the Pre-Trial Chamber have any jurisdiction to inquire into the legality of the prior detention". (para. 16) "The Agreement, the ECCC Law, the Internal Rules and Cambodian law do not explicitly or implicitly give any jurisdiction to the Co-Investigating Judges or the Pre-Trial Chamber to rule upon matter related to decisions or actions of the investigating judges of […] any […] court within the Cambodian court system. The jurisdiction of the Pre-Trial Chamber and other organs of the ECCC is expressly limited to the subject matter of the ECCC Law." (para. 17) "As the ECCC has no direct relationship to the Military Court, it has no direct jurisdiction to review the actions of that Court of the compliance of those actions with Cambodian law. There is similarly no evidence that the Military Court acted on behalf of the ECCC in detaining the Charged Person, or of any concerted action between any organ of the ECCC and the Military Court." (para. 21) "[I]t is submitted that […] 'financial compensation should be paid […] as a reparation for both the eight years plus he has spent in provisional detention and also for the harm he has suffered as a result of the violation of his entitlement to trial within a reasonable time […]." (para. 62) "[I]t is inappropriate for the Chamber to make such statements […] when another judicial body may well become [seised] of this case for trial […]." (para. 63)
2.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"At issue is the scope of Internal Rule 23(1) [...]. The question raised is whether this includes the possibility of Civil Parties to participate in the appeal against the Provisional Detention Order […]." (para. 35) "[T]he inclusion of Civil Parties in proceedings is in recognition of the stated pursuit of national reconciliation. The Pre-Trial Chamber has no jurisdiction to examine the Internal Rules in full regarding victim participation, but merely to examine the issue as outlined above." (para. 37) "The jurisdiction of the Pre-Trial Chamber in the Internal Rules regarding provisional detention appeals was based on the jurisdiction of the Investigation Chamber. The Pre-Trial Chamber can therefore seek guidance for its functioning in the articles in the CPC prescribed for the Investigating Chambers." (para.38)
3.	**002 Civil Parties** PTC 03 C22/I/41 24 June 2008 *Decision on Admissibility of Civil Party General Observations*	"The Pre-Trial Chamber does not have jurisdiction to consider objections to the ECCC Practice Directions […]." (para. 5)
4.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Cambodian Code of Criminal Procedure […], for its part, grants the Investigation Chamber jurisdiction to 'order additional investigative action which it deems useful' and generally gives broad powers to the Investigation Chamber when [seised] of an appeal […]." (para. 23) "The Pre-Trial Chamber observes that the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative actions but rather limit its role to deciding on appeals lodged against orders of the Co-Investigating Judges. This departure from the CPC is justified by the unique nature of the cases before the ECCC, which involve large scale investigations and extremely voluminous cases, and where the Pre-Trial Chamber has not been established and is not equipped to conduct investigations. As a decision on a request for investigative action is a discretionary decision which involves questions of fact, the Pre-Trial Chamber considers that in the particular cases before the ECCC, the Co-Investigating Judges are in a best position to assess the opportunity of conducting a requested investigative action in light of their overall duties and their familiarity with the case files. In these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the Co-Investigating Judges when deciding on an appeal against an order refusing a request for investigative action." (para. 24)

5.	**002 IENG Sary** Special PTC 06 Doc. No. 5 29 March 2010 *Decision on IENG Sary's Rule 35 Application for Judge Marcel LEMONDE's Disqualification*	"There is no prescribed jurisdiction for any of the Chambers of the ECCC to deal with disciplinary matters in respect of any of the judges of the ECCC." (para. 11)
6.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"The Pre-Trial Chamber […] has no authority to review the constitutionality of [the ECCC] law." (para. 98)
7.	**004/2 AO An** PTC 44 D351/2/3 6 September 2017 *Decision on AO An's Appeal against Internal Rule 66(4) Forwarding Order*	"The Pre-Trial Chamber observes that the Appeal against the Forwarding Order does not fall within its subject-matter jurisdiction under Internal Rule 74. Furthermore, while Internal Rule 21 may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial, it does not provide an automatic avenue for appeals raising arguments based on fair trial rights. The appellant must demonstrate that, in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent irremediable damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 8)

ii. *Advisory Opinions and Speculation*

For jurisprudence concerning the ***Timing of Appeals***, see VII.C.2.iii. Timing of Appeals

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The Co-Lawyers asserted that difficulties may arise in the future if the number of Civil Parties increases. The Pre-Trial Chamber has reflected upon the implications of its decision for the future. In exercising its jurisdiction, the Pre-Trial Chamber cannot speculate on facts that may or may not be presented to it in the future, as its jurisdiction is limited to only matters that have occurred and not those that may occur." (para. 48)
2.	**002 IENG Sary** PTC 60 D345/5/11 9 June 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order on IENG Sary's Motion against the Application of Command Responsibility*	"At this point, it is speculative as to what, if any, consideration the Co-Investigating Judges will give to the jurisdiction of the ECCC in respect of command responsibility. The Co-Investigating Judges are not obliged to give declaratory decisions […] and the Pre-Trial Chamber will not provide advisory opinions and cannot fetter the exercise of the discretions of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order." (para. 11)

3.	**004 YIM TITH** PTC 11 D205/1/1/2 13 November 2014 *Decision on YIM Tith's Appeal against the Decision Denying His Request for Clarification*	"The Pre-Trial Chamber finds that the Appellant has not demonstrated in the present case that the Impugned Decision, by refusing to provide clarification on the law, jeopardizes his fair trial rights. […] [T]he scenario envisaged […] is hypothetical at this stage. Even if this scenario was to materialise, it is unclear what prejudice the Appellant would concretely suffer. The rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions." (para. 8)
4.	**004 YIM Tith** PTC 14 4 December 2014 D212/1/2/2 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"The Pre-Trial Chamber held that '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues be they actually arise, out of their factual and contextual background' and found that it 'has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 6)
5.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"The Pre-Trial Chamber has emphasised that Internal Rule 21 does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions." (para. 8) "At the outset, the Pre-Trial Chamber finds that it has no jurisdiction to entertain the Appellant's request for clarification of the disagreement process under Internal Rule 72. […] The Pre-Trial Chamber notes that the Appellant does not ask the Pre-Trial Chamber to overturn or annul any specific decision where this procedure had been applied […], but rather seeks to obtain an advisory opinion from the Pre-Trial Chamber on the legality of the procedure itself. Whereas the International Co-Investigating Judge found it appropriate to explain his understanding of Internal Rule 72 […], the Pre-Trial Chamber finds that the Appellant's challenge to this interpretation, formulated in general terms, does not fall within the ambit of Internal Rule 21." (para. 9)
6.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"Finally, the Pre-Trial Chamber recalls that it has no jurisdiction to deal with hypothetical matters and notes that the impact of potential future disclosure in Case 002 on the Appellant's rights under Internal Rule 21 remains, at this stage, purely speculative." (para. 24)
7.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to*	"As far as any request for broad interpretation of Internal Rule 74(3)(a), *without reference made to the infringement of any specific fundamental right*, is concerned, the Pre-Trial Chamber has found that it has no jurisdiction to entertain requests for clarification of the Internal Rules *in general.* Where scenarios envisaged in parties' motions are *hypothetical* or, even if such scenarios were to materialise, but it is *unclear what prejudice the requesting party would concretely suffer*, '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 14)

	Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary	
8.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber recalls that it has no jurisdiction to deal with hypothetical matters […]." (para. 18)
9.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces*	"As previously observed, the fact that the appeal concerns a definition of crimes against humanity which will be used to determine the allegations against the Appellant is purely hypothetical, as is the need to expedite a potential appeal on related issues in the closing order. The Pre-Trial Chamber reiterates that it will not provide advisory opinion and cannot fetter the exercise of the discretion of the Co-Investigating Judges in respect of their decisions to be expressed in a closing order." (para. 16)
10.	**004/2 Civil Parties** PTC 60 D359/39 and D360/48 17 July 2020 *Decision on Civil Party Lawyers' Request for Necessary Measures to be Taken by the Pre-Trial Chamber to Safeguard the Rights of Civil Parties to Case 004/2*	"Concerning the Request [to order that, henceforth, Parties, chamber and all other bodies of the ECCC must distribute all communications and filings concerning Case 004/2 proceedings to Case 004/2 Civil Party Lawyers unless and until the ECCC has officially recognised Civil Party Lead Co-Lawyers in Case 004/2], the Chamber considers that objections to possible non-action are speculative, unripe and must thus be rejected." (para. 19)
11.	**003 MEAS Muth** PTC 35 D266/25 3 November 2020 *Decision on International Co-Prosecutor's Request to File Additional*	"[T]he Pre-Trial Chamber recalls its constant position that it does not rule on the basis of conjectures." (para. 33)

	Submissions on Her Appeal of the Order Dismissing the Case against MEAS Muth	
12.	**003 MEAS Muth** PTC 35 D266/25 3 November 2020 *Decision on International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against MEAS Muth*	"The proceedings, in this Case, are now closed and the Pre-Trial Chamber examines the arguments of the Parties and deliberates on the Appeals pursuant to Internal Rule 77." (para. 30) "As to the speculation that the instant Case could lead to 'another judicial dilemma undermining the proper administration of justice and the fundamental duty of judges to resolve the issue before them', the Pre-Trial Chamber recalls its constant position that it does not rule on the basis of conjectures." (para. 33) "The Pre-Trial Chamber finds that the Request is in fact calling for the Chamber's final disposition in the current proceedings which will be issued in due time. There is no reason for the Pre-Trial Chamber to rule prematurely on a matter falling within the scope of ongoing Appeals." (para. 34).
13.	**003 MEAS Muth** PTC 35 D267/33 3 November 2020 *Decision on MEAS Muth's Supplement to His Appeal against the International Co-Investigating Judge's Indictment*	"The proceedings, in this Case, are now closed and the Pre-Trial Chamber examines the arguments of the Parties and deliberates on the Appeals pursuant to Internal Rule 77. (para. 31) […] The Pre-Trial Chamber finds that the Supplement is in fact calling for the Chamber's final disposition in the current proceedings, which will be issued in due time There is no reason for the Pre-Trial Chamber to rule prematurely on a matter falling within the scope of ongoing Appeals. (para. 35) Therefore, the Pre-Trial Chamber finds that the Supplement is inadmissible." (para. 36)
14.	**003 MEAS Muth** PTC 35 D266/24 and D267/32 3 November 2020 *Decision on MEAS Muth's Request for Clarification of the Pre-Trial Chamber Considerations on Appeals against Closing Orders in Case 004/2*	"The proceedings in this case are now closed and the Pre-Trial Chamber examines the arguments of the Parties and deliberates on the Appeals pursuant to Internal Rule 77. (para. 27) […] The Pre-Trial Chamber considers that the Request is in fact calling for the Chamber's final disposition in the current proceedings, which will be issued in due time. There is no reason for the Pre-Trial Chamber to rule prematurely on a matter falling within the scope of ongoing Appeals. (para. 33) Therefore, the Pre-Trial Chamber finds that the Request is inadmissible." (para. 34)
15.	**004 YIM Tith** PTC 61 D382/41 18 March 2021 *Decision on YIM Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision*	"Moreover, the Chamber recalls that it does not provide advisory opinions and that any dispute related to a final decision on renumeration may be raised under the relevant procedure at a later stage." (para. 11)

iii. *Evidence at the Pre-Trial Stage*

For jurisprudence concerning the ***Evidentiary Matters in Investigation***, see IV.B.5. Evidence Matters

1.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which were or May Have been Obtained by Torture*	"The Pre-Trial Chamber […] notes that it has, in general, no jurisdiction to review matters related to admissibility of evidence as such. According to the Internal Rules, the matter of admissibility of evidence arises at the trial stage of the criminal proceedings. Similarly, the Cambodian Code of Criminal Procedure provides very few rules regarding admissibility of evidence and these concern the trial stage of the proceedings when the trial judges are given broad discretion in deciding whether or not to admit evidence." (para. 20)
2.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which were or May Have been Obtained by Torture*	"The Pre-Trial Chamber […] notes that it has, in general, no jurisdiction to review matters related to admissibility of evidence as such. According to the Internal Rules, the matter of admissibility of evidence arises at the trial stage of the criminal proceedings. Similarly, the Cambodian Code of Criminal Procedure provides very few rules regarding admissibility of evidence and these concern the trial stage of the proceedings when the trial judges are given broad discretion in deciding whether or not to admit evidence." (para. 18)
3.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber […] notes that it has, in general, no jurisdiction to review matters related to methods used for evaluation or admissibility of evidence by the Co-Investigating Judges as they undertake their task of searching to the truth. According to Internal Rule 87 the matter of admissibility of evidence arises at the trial stage of the criminal proceeding if a Closing Order is used sending the Charged Person to trial. Similarly, Article 321 of the Cambodian Code of Criminal Procedure provides on the admissibility of evidence at the trial stage. Such rules give the trial judges broad discretion to decide whether or not to admit evidence." (para. 24)

iv. *Lack of Power to Seize Assets*

4.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions*	"Internal Rule 113 does not give the Civil Parties the right to initiate enforcement of reparations at the pre-trial stage of a criminal proceeding. Internal Rule 23 *quinquies* specifies that reparations can only be awarded against a convicted person. As reparations can only be awarded against a convicted person, reparations cannot be *enforced* against an unindicted, untried and unconvicted person. It is outside the jurisdiction of this Chamber to take measures to enforce a potential award of reparations prior to such time as the competent chamber has determined guilt following a trial upon indicted charges, recorded a conviction and determined an award of reparations, if any. While, as described below, the Civil Parties have an interest in the assets of the charged persons, neither the interest itself nor any right in respect of such interest has crystallised. Pursuant to the framework of this Court, the fact that no interest or right has crystallised is dispositive. Granting the request relief would place the

	concerning All Properties Owned by the Charged Persons	Pre-Trial Chamber and the Co-Investigating Judges in the position of acting beyond our collective jurisdiction." (para. 23) "The Pre-Trial Chamber […] will not consider appeal grounds which require speculation […]. This Chamber does not have jurisdiction to make orders that fall outside the competence of this Court, as reflected in its governing law. […] The judiciary is limited by their jurisdiction and cannot expand jurisdiction on the basis of obligations of the State as a party to the ICCPR. To do otherwise would be to act outside of the law." (para. 32) "Pursuant to the [ECCC Law], the only power of the Court to seise assets that have been unlawfully acquired, or more specifically acquired by criminal conduct, rests with the Trial Chamber." (para. 35) "An award for reparations, if made by the Trial Chamber, may include associated costs to be borne by the convicted person. This may require access to the assets of such a person. [...] This Court is not vested with the authority to take measures to preserve the assets of any charged person for any purpose. [...] The ECCC is not seised of jurisdiction to award damages or compensation. As this Court cannot award this relief, it is also not equipped with the procedural tools used by other courts to take measures aimed at preserving assets for possible future disposition." (para. 39)

v. *Termination of the Judicial Investigation*

1.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[A]s a matter of principle, one Co-Investigating Judge can validly act alone. […] [W]hile the Co-Investigating Judges have the unilateral power to terminate the judicial investigation alone in accordance with the ECCC's applicable law, the Pre-Trial Chamber does not have this ability." (para. 67)

8. Relationship to Other Chambers

1.	**003 MEAS Muth** PTC 35 D266/25 3 November 2020 *Decision on International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against MEAS Muth*	"At the outset the Pre-Trial Chamber considers that the issuance of a decision by the Supreme Court Chamber in a different proceeding bears no direct impact on the pending Case, particularly in light of the Pre-Trial Chamber's position as the sole and ultimate jurisdiction for pre-trial matters." (para. 31)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The Supreme Court Chamber […] demonstrated its appreciation of the careful separation of powers etched in the ECCC's judicial architecture. Just as the Supreme Court Chamber exercises unquestionable final competence over the trial and appellate stages, the Pre-Trial Chamber exercises the ultimate authority over the investigative pre-trial phase, a power derived from its role as the ECCC's Investigative Chamber, forming a 'final jurisdiction over the pre-trial stage at the ECCC' from which no appeal is possible." (Opinion of Judges BEAUVALLET and BAIK, para. 267) "Consequently, it is beyond doubt that the Supreme Court Chamber would have no competence to overturn a dismissal order or an indictment that has been upheld or not reversed by virtue of a Pre-Trial

		Chamber decision. As Internal Rule 76(7) ordains, '[s]ubject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation. *No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber*.' The International Judges strongly reject the proposition that the legal status of a pre-trial document could be altered post hoc by the Supreme Court Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 268) "Nor did the Supreme Court Chamber have the competence to bind the Pre-Trial Chamber as to what the default decision of the Pre-Trial Chamber was under Internal Rule 77(13). Such contravention of the ECCC's judicial separation of powers would have drastic consequences for the proper functioning of the ECCC." (Opinion of Judges BEAUVALLET and BAIK, para. 269) "In sum, the Pre-Trial Chamber's legal pronouncements of pre-trial questions – including, *inter alia*, the validity or the nullity of pre-trial documents and the operation of Internal Rule 77(13) – are binding and supreme. Its pronouncements are not subject to appeal and may not be changed post hoc by another ECCC judicial body." (Opinion of Judges BEAUVALLET and BAIK, para. 270) "It is beyond doubt that the Supreme Court Chamber, notwithstanding its status as the final court at the trial and appellate stage, has no authority to terminate ECCC proceedings while at the pre-trial investigative stage." (Opinion of Judges BEAUVALLET and BAIK, para. 278) "Furthermore, the Supreme Court Chamber may not and cannot terminate the proceedings on account of pre-trial procedural defects as is made clear by the ECCC Internal Rules and the entire logic of the ECCC separation of judicial powers. Nor did the Supreme Court Chamber have the competence to void, *post hoc*, any Closing Order in Case 004/2 after it was not overturned by the operation of the Pre-Trial Chamber's default decision. Finally, the Supreme Court Chamber could not have terminated Case 004/2 which, on its logic, remained in the pre-trial investigative phase and had no valid closing orders." (Opinion of Judges BEAUVALLET and BAIK, para. 282) "Given the careful separation of judicial competence under the ECCC legal framework and the fallacies in reasoning identified above, there is simply no legal basis for the Pre-Trial Chamber to adopt the Supreme Court Chamber's Case 004/2 position as controlling or even persuasive jurisprudence for Case 003. The International Judges, therefore, consider that the Supreme Court Chamber's Case 004/2 holding is not a license for the Pre-Trial Chamber to automatically terminate all the remaining cases with conflicting closing orders. Each case must be carefully examined on its own merits." (Opinion of Judges BEAUVALLET and BAIK, para. 283)
3.	**004 YIM Tith** PTC 61 D381/44 21 July 2021 *Decision on International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against YIM Tith*	"The Pre-Trial Chamber considers that the issuance of a decision by the Supreme Court Chamber in a different proceeding bears no direct impact on the pending Case, particularly in light of the Pre-Trial Chamber's position as the sole and ultimate jurisdiction for pre-trial matters." (para. 19)

9. Miscellaneous

i. *Consideration* Ex Officio

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76,	"As a preliminary note, I stress that I have *ex officio* considered the use of presumptions by the Co-Investigating Judges in this Opinion […]." (Opinion of Judge MARCHI-UHEL, para. 38)

	112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"In light of these errors, the Undersigned Judges deem it necessary to examine *ex officio* whether the allegations of crimes […] were properly addressed […]." (Opinion of Judges BEAUVALLET and BAIK, para. 215) "The Undersigned Judges further note, *ex officio*, […] that the Co-Investigating Judges acknowledged 'reports of prisoners who disappeared and were never seen again'." (Opinion of Judges BAIK and BEAUVALLET, para. 281)

ii. Post Facto *Approval*

1.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"Lastly, the Pre-Trial Chamber takes note that the International Co-Investigating Judge, despite no longer having jurisdiction over Case 004/2, issued a redacted version of the Closing Order (Indictment) to ensure the protection of witnesses. The Pre-Trial Chamber would have ordered the International Co-Investigating Judge, pursuant to its decision, to undertake such redactions. Consequently, it *post facto* approves the redaction of protected witnesses' names." (para. 13)

iii. *Joinder*

For jurisprudence concerning ***Joinder and Consolidated Appeals***, see VII.D.2.vi.b. Joinder and Consolidated Appeals

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Article 299 of the Cambodian Code of Criminal Procedure provides that '[w]hen the court has been seised with several related cases, it may issue an order to join them.'" (para. 25) "In [this] case […] the Pre-Trial Chamber is not seised with several related cases. Rather, [it] is seised of one case with conflicting Closing Orders, which created a number of different, but all related, Appeal proceedings. Considering the Chamber's power to issue an order to join several related cases and its obligation to ensure fair and expeditious administration of justice, the Chamber finds that a joinder in this case is inevitably called for." (para. 26)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber is not seised with several related cases. Rather, it is seised of one case characterised by the issuance of two conflicting Closing Orders, giving rise to different but related appeal proceedings. Considering the Chamber's power to issue an order to join several related cases, its obligation to ensure fair and expeditious administration of justice, and the approach previously adopted in Case 004/2, the Pre-Trial Chamber finds that a joinder is warranted in Case 003." (para. 39)

B. Expressed Jurisdiction of the Pre-Trial Chamber

1.	**003 Special PTC 01** Doc. No. 3 15 December 2011 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77*bis* of the Internal Rules." (para. 6)
2.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** Decision on Defence *Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77*bis* of the Internal Rules." (para. 6)

1. Settlement of Disagreements under Internal Rules 71 and 72

See VII.A. Settlement of Disagreements

2. Appeals against Decisions of the Co-Investigating Judges under Internal Rule 74

See VII.B. Appeals (General)

3. Annulment under Internal Rule 76

See VII.C. Annulment

C. Disqualification Proceedings

1. Jurisdiction of the Pre-Trial Chamber

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"The jurisdiction of the Pre-Trial Chamber is defined by Internal Rule 34.2" (para. 9)
2.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"The remedy envisaged in Internal Rule 34 […] is judicial disqualification, which requires the moving party to demonstrate that the judge in question possesses an objective appearance of bias. […] [T]he Pre-Trial Chamber is not required to act where this burden is not met. The Chamber has no jurisdiction under the Internal Rules to undertake […] a general inquiry, and no power to order an investigation on any allegations of partiality or bias which are not supported by sufficient evidence. To find otherwise would displace the heavy evidentiary burden upon the applicant necessary to rebut the presumption of impartiality." (para. 10)
3.	**002 IENG Sary** Special PTC 01 Doc. No. 7 9 December 2009 *Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"[Internal Rule 34(2) and 34(5)] together mean that the Pre-Trial Chamber has jurisdiction to consider the Application [for disqualification]." (para. 10)
4.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"Considering [Internal Rules 34(2) and 34(5)] together, the Pre-Trial Chamber finds it has jurisdiction to consider the Application [for disqualification]." (para. 10)

2. Right of the Parties pursuant to Internal Rule 34

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 45) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 48)
2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 42) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 45)
3.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 44) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 47)
4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 42) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 45)

3. Admissibility under Internal Rule 34

i. *Requirements under Internal Rule 34(3)*

a. General

1.	**002 IENG Sary** Special PTC Doc. No. 3 22 September 2009 *Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE*	"Internal Rule 34 deals with the disqualification or recusal of a 'judge' and explicitly provides the grounds for the admissibility of an application for disqualification." (para. 13)
2.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"The obligations of a party filing an application for disqualification of a judge are set out in Internal Rule 34(3) […]." (para. 23)

b. Requirement that the Application "Clearly Indicate the Grounds"

1.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"Rule 34(3) requires the applicant to clearly indicate the grounds for an application for disqualification of a judge." (para. 22)
2.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]** *Decision on Application for Disqualification of Judge YOU Bunleng*	"[P]ursuant to Internal Rule 34(3), an application for disqualification is inadmissible if it does not 'clearly indicate the grounds.'" (para. 25) "[A]n assessment of whether an application for disqualification clearly indicates the grounds occurs prior to and is distinct from an assessment of the merits of the application. To satisfy the clarity requirement for admissibility purposes, an application need only identify a ground(s) for disqualification with sufficient clarity to enable the relevant Chamber to conduct a proper review of the merits of the ground(s)." (para. 26) "Internal Rule 34(3) does not require the supporting evidence to have arisen out of the same case before the ECCC, or any case before the ECCC in fact. Internal Rule 34(2) requires that the ground(s) for disqualification, including the supporting evidence, be 'in' or 'concern' [the case at hand]." (para. 27)

c. Timing of the Application

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"[T]he evidence adduced on behalf of the Charged Person was available well before his arrest […]. The Chamber therefore questions the compliance with the requirement in Rule 34(3) that the application for disqualification should be filed 'as soon as the party becomes aware of the grounds in question'." (para. 4)
2.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"Without reaching any conclusion on the evidence, the Pre-Trial Chamber finds that a party may present past apparently disparate evidence which is seen as contextually relevant for the first time as a result of more recent events. In order to fall within the purview of Internal Rule 34(3) they present such evidence as soon as the context becomes apparent to them as founding or supporting a ground which they advance." (para. 20)
3.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"The Pre-Trial Chamber considers that the Co-Lawyers took action as soon as they became aware of one of the grounds for the Application. Although there is no provision in Rule 34 for a party to seek explanation from the judge concerned prior to filing an application for disqualification, it was not unreasonable for the Co-Lawyers to first seek an explanation from [the Judge] prior to filing the Application. […] [S]tatements of a person as quoted by the press do not amount to reliable evidence. In this case it would not tend to prove that a party was aware of grounds for disqualification at a particular time. Accordingly, the Application […] is timely pursuant to Rule 34(3). As no Closing Order has yet been made, the application is also timely pursuant to Rule 34(4)(a)." (para. 13)
4.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"The Pre-Trial Chamber considers that the Co-Lawyers for the charged persons took action as soon as they became aware of one of the grounds for the applications. […] As no Closing Order has yet been made, these applications are also timely pursuant to Internal Rule 34(4)(a)." (para. 25)
5.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 *Decision on Application for Disqualification of Judge YOU Bunleng*	"[A]n application for disqualification must be filed 'as soon as the party becomes aware of the grounds in question' and 'submitted […] before the Closing Order.'" (para. 12) "The Pre-Trial Chamber must first determine the 'grounds' of the Application within the meaning of Internal Rule 34(3). The Pre-Trial Chamber considers that there is no legal difference between the words 'causes' in Article 557 of the Code of Criminal Procedure of the Kingdom of Cambodia and 'grounds' in Internal Rule 34(3)." (para. 15) "Internal Rule 34(3) does not state that an application for disqualification shall be filed as soon as the party becomes aware of the 'supporting evidence' […]. Rather, Internal Rule 34(3) states that an

		application for disqualification shall be filed as soon as the party becomes aware of the 'grounds' […].” (para. 18) “Internal Rule 34(3) will often require a party to file the application as soon as s/he becomes aware of the supporting evidence in question. The Pre-Trial Chamber also considers that, under Internal Rule 34(3), a party may become aware of some of the 'supporting evidence' before s/he 'becomes aware' of the ground(s) for disqualification.” (para. 19) “The Pre-Trial Chamber will not always admit 'past evidence' provided by an applicant as 'supporting evidence' in an application for disqualification. Otherwise, the timeliness requirement in Internal Rule 34(3) would become meaningless and there would be no limit to how far into the past an applicant could reach. The Pre-Trial Chamber will decide the admissibility of such past evidence on a case by case basis in accordance with the Internal Rules.” (para. 20)

d. Requirement that All Supporting Evidence be Filed with the Application

1.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	“All evidence relied on by the applicant is to be provided upon the filing of an application for disqualification, as required by Internal Rule 34(3).” (para. 22)
2.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	“All evidence relied on by the applicant is to be provided upon the filing of an application for disqualification.” (para. 18)
3.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	“Pursuant to Internal Rule 34(3), a party who files an application for disqualification of a judge shall provide supporting evidence. A charge of partiality must be supported by factual basis and it is for the applicant to provide the relevant supporting material.” (para. 27) “It is for applicants to decide which course of action to follow to obtain the evidence that can 'readily be obtained' to support an application and draw conclusions from the Pre-Trial decisions to provide the required evidence to the Pre-Trial Chamber.” (para. 28) “An applicant may very well bring further evidence before the Pre-Trial Chamber in support of their application if the said evidence became available after filing the application. There are no provisions in the Internal Rules providing the basis of a right for the Pre-Trial Chamber to undertake an inquiry in respect of an application under Internal Rule 34. Contrary to the right of inquiry provided for in Internal Rule 35[(2)]. Rule 34(3) prescribes that a party shall provide supporting evidence, preferably all evidence available, for the determination of the motion.” (para. 44)
4.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]**	“[T]he additional supporting evidence […] could not have been obtained before the Application was filed […] because [it was not] publicly available […]. […] The Pre-Trial Chamber finds that the Addendum is admissible as it was filed in a timely manner.” (para. 29)

	Decision on Application for Disqualification of Judge YOU Bunleng	

ii. *Miscellaneous*

1.	**002 IENG Sary** Special PTC 06 Doc. No. 5 29 March 2010 *Decision on IENG Sary's Rule 35 Application for Judge Marcel LEMONDE's Disqualification*	"There is no prescribed jurisdiction for any of the Chambers of the ECCC to deal with disciplinary matters in respect of any of the judges of the ECCC. The only jurisdiction for considering behaviour of judges in their own cases is the provision in Internal Rule 34 which prescribes the jurisdiction for applications filed for disqualification of judges when a judge has in any case a personal or financial interest or concerning which the judge has, or has had, any association which objectively give rise to appearance of bias." (para. 11) "As the Application seeks the disqualification of [a judge] as a sanction pursuant to Internal Rule 35 based on behaviour of the judge in his cases qualified by the Co-Lawyers as amounting to interference with the administration of justice it is therefore not admissible." (para. 14) "This application is an attempt by the Co-Lawyers to expand the jurisdiction of the ECCC, which is rejected." (para. 15)
2.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"[T]here is an inherent systemic conflict, given that the Co-Investigating Judges are determining allegations concerning the conduct of either or both of them. In addition, there is no discretionary issue involved and the parties are contesting a judicial determination made by the Co-Investigating Judges." (para. 17) "[O]n a matter of fairness to redress any adverse perceptions from the systemic conflict, such matters shall be considered afresh. As a consequence, it is appropriate to proceed as though the appellant directly seised the Pre-Trial Chamber with the Abuse of Process Request with its supporting material at first instance." (para. 18)

4. Test for Bias

i. *General*

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"The Pre-Trial Chamber notes that 'the starting point for any determination of a claim [of bias] is that 'there is a presumption of impartiality which attaches to a Judge'. 'This presumption derives from their oath to the office and their qualifications for their appointment […], and places a high burden on the party moving for the disqualification to displace that presumption'." (para. 15) "[T]his presumption of impartiality applies to the Judges of the ECCC." (para. 16) "It is for the Appellant to adduce sufficient evidence to satisfy the Pre-Trial Chamber that the Judge in question can be objectively perceived to be biased. There is a high threshold to reach in order to rebut the presumption of impartiality" (para. 19) "The jurisprudence of the international tribunals is consistent in the test for bias applied here […] 'A judge is not impartial if it is shown that actual bias exists. There is an appearance of bias if: - A Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification is automatic; or - The circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.'" (para. 20)

		"The reasonable observer in this test must be 'an informed person, with knowledge of all of the relevant circumstances, including the traditions of integrity and impartiality that form part of the background and […] that impartiality is one of the duties that Judges swear to uphold'." (para. 21)
2.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"The jurisprudence of the ECCC and other international tribunals has consistently held that the requirement of impartiality is violated not only where a Judge is actually biased, but also where there is an appearance of bias. An appearance of bias is established if (a) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of the case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved; or (b) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias." (para. 5) "The reasonable observer […] must be 'an informed person, with knowledge of all of the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and appraised also of the fact that impartiality is one of the duties that Judges swear to uphold'. […] [T]he starting point for any determination of an allegation of partiality is a presumption of impartiality, which attaches to the ECCC Judges based on their oath of office and the qualifications for their appointment." (para. 6) "The moving party bears the burden of displacing that presumption, which imposes a high threshold. The reason for this high threshold is that while any real or apparent bias on the part of a Judge undermines confidence in the administration of justice, it would be equally a threat to the interests of the impartial and fair administration of justice if judges were to be disqualified on the basis of unfounded and unsupported allegations of bias. The decisive question is whether a perception of lack of impartiality is objectively justified. A mere feeling or suspicion of bias by the accused is insufficient; what is required is an objectively justified apprehension of bias, based on knowledge of all the relevant circumstances." (para. 7)
3.	**002 IENG Sary** Special PTC 01 Doc. No. 7 9 December 2009 *Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"[I]n an application for disqualification of a judge, 'the burden of proof lies entirely with the applicant'. The impartiality of a judge is to be presumed until there is proof to the contrary." (para. 15) "The Pre-Trial Chamber, in [C11/29], has set out the law applicable in cases of disqualification. The test for bias to be applied is that provided in Internal Rule 34(2), which refers both to actual bias and to apprehended bias." (para. 16)
4.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"The Pre-Trial Chamber has set out the law relating to disqualification of judges in its decision concerning an application for disqualification of Judge Ney Thol. The test for bias to be applied is that provided in Internal Rule 34(2), which refers both to actual bias and to apprehended bias." (para. 24) "The *Code of Judicial Ethics* of the ECCC provides further guidance in this area." (para. 26) "Article 2.2 of the *Bangalore Principles of Judicial Conduct* states that a judge 'shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence […] in the impartiality of the judge and of the judiciary'." (para. 27)
5.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"The Pre-Trial Chamber has set out the law relating to disqualification of judges in its decision concerning an application for disqualification of Judge Ney Thol […]. The test for bias to be applied is that provided in Internal Rule 34(2), which refers both to actual bias and to apprehended bias." (para. 14) "The *Code of Judicial Ethics* of the ECCC [and the *Bangalore Principles of Judicial Conduct*] provid[e] further guidance in this area. The Code of Judicial Ethics of the International Criminal Court contains identical provisions." (paras 16-17)
6.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07	"The test for bias to be applied is that provided in Internal Rule 34(2), which refers both to actual bias and to apprehended bias." (para. 36)

	Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"The Code of Judicial Ethics of the ECCC provides further guidance in this area." (para. 38) "Following the ECCC jurisprudence, the starting point for any determination of an allegation of partiality is a presumption of impartiality, which attaches to the ECCC Judges based on their oath of office and the qualifications for their appointment." (para. 42) "The party alleging existence of bias under Internal Rule 34 bears the burden of displacing that presumption, which imposes a high threshold, by presenting sufficient evidence to support their claim." (para. 43) "[T]he threshold to reverse the presumption of impartiality is high and in this case, it cannot be overturned merely by alleging a difference of opinion as a basis for disqualification." (para. 53) "'[M]atters which are ordinarily insufficient to require recusal are "speculation, beliefs, conclusions, suspicions, opinion and similar non-factual matters".' Judicial disqualification requires the moving party to demonstrate that the judge concerned possesses an objective bias or that there is an appearance of bias. […] [T]he threshold to reverse the presumption of impartiality of a Judge is high and it follows that the Pre-Trial Chamber is not required to act when the burden of proof is not met." (para. 63)
7.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"[W]here an applicant claims bias, the applicant has the burden to overcome a presumption of the Judge's impartiality […]." (para. 31) "[I]t is equally applicable where an applicant alleges partiality as a basis for an application under Rule 76(2). It is for the applicant under this rule to prove the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias." (para. 32)
8.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]** *Decision on Application for Disqualification of Judge YOU Bunleng*	"In [its previous jurisprudence], the Pre-Trial Chamber set out the law governing a consideration of the merits of an application for disqualification […]." (para. 32) "[T]he starting point for any determination of an allegation of bias is the presumption of impartiality that attaches to a judge, and the Applicant bears the burden of displacing that presumption, which imposes a high threshold." (para. 34)

ii. *Attribution*

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"[T]he allegation that staff members possibly have paid money to a superior cannot lead to the conclusion that these staff members can influence the Judges to manipulate the outcome of the procedure, and therefore affect the independence and impartiality of the court or the judges. The nature of this allegation is too remote to draw such a conclusion without additional facts." (para. 50)

2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he allegation that staff members possibly have paid money to a superior cannot lead to the conclusion that these staff members influence the Judges to manipulate the outcome of the procedure, and therefore affect the independence and impartiality of the court or the judges." (para. 52)
3.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he allegations that staff members possibly have paid money to a superior cannot lead to the conclusion that these staff members influence the Judges to manipulate the outcome of the procedure, and therefore affect the independence and impartiality of the court or the judges." (para. 47)
4.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he allegations that staff members possibly have paid money to a superior cannot lead to the conclusion that these staff members influence the Judges to manipulate the outcome of the procedure, and therefore affect the independence and impartiality of the court or the judges." (para. 49)
5.	**002 IENG Sary** Special PTC Doc. No. 3 22 September 2009 *Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE*	"[Internal Rule 34] is strictly to be applied when the allegations are made against judges and do not apply to staff members." (para. 14) "[T]he procedural rules established at the international level regarding disqualification apply exclusively to judges and do not extend to the staff members of a court. [D]ecisions of international tribunals related to court officers indicate that their lack of impartiality may bring for the disqualification of the judge with whom they are associated, not of the officer him or herself. Disqualification of a judge in these circumstances may be possible when the 'objective test for bias' is met by the applicant. [T]he procedure for disqualification set out in Internal Rule 34 is in accordance with the procedural rules established at the international level." (para. 15) "[T]he role and functions of investigators or legal officers are distinct from those of the Co-Investigating Judges. Pursuant to the [Agreement], the [ECCC Law] and the Internal Rules, the Co-Investigating Judges have sole authority and responsibility to conduct the judicial investigation and determine what they will rely upon in their decisions and orders." (para. 20)
6.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for*	"For an act to be grounds for disqualification of a judge, it must be an act attributable to that one judge, and not to several. Accordingly, those acts of the Co-Investigating Judges done jointly cannot be used as grounds for disqualification of one judge." (para. 21) "On the basis of the lack of cooperation between the Co-Investigating Judges or any disagreement between the Judges the Pre-Trial Chamber further cannot draw any conclusion considering the impartiality of a judge." (para. 22)

	Disqualification of Judge Marcel LEMONDE	
7.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"In respect of the Co-Lawyers submission that actions of OCIJ's *staff members* taint the independence and impartiality of the Co-Investigating Judges themselves, the Pre-Trial Chamber has already considered that 'the argument is without merit' and that '[t]he role and functions of [staff members] are distinct from those of the Co-Investigating Judges [who, pursuant to the applicable law] have *sole authority* and responsibility to conduct the judicial investigation[…]. In these circumstances, the independence and impartiality of the Co-Investigating Judges safeguard the fair trial rights of the Charged Person.'" (para. 22)

5. Evidence of Bias

i. *General*

1.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"A charge of partiality must be supported by a factual basis. The mere fact that a judge has been subjected to press criticism does not require the judge's disqualification. Although public confidence may be as much shaken by publicized inferences of bias that are false as by those that are true, disqualification applications have typically ignored 'rumours, innuendos, and erroneous information published as fact in the newspapers and threats or other attempts to intimidate the judge.' Other matters which are ordinarily insufficient to require recusal are 'speculation, beliefs, conclusions, suspicions, opinion, and similar non-factual matters', as well as 'reports in the media purporting to be factual, such as quotes attributed to the judge or others, but which are in fact false or materially inaccurate or misleading.'" (para. 8) "In applying the test to determine whether the circumstances would lead 'a reasonable observer properly informed' to reasonably apprehend bias, the Chamber finds that such a reasonable and properly informed observer would take into account the international Pre-Trial Chamber Judges' oath of office and the qualifications for their appointment, their response to the Motion, the response of the United Nations to [the public] allegation at the time, the factual underpinnings of these allegations, and the context in which they were made." (para. 12)
2.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"The Pre-Trial Chamber is cognisant of the fact that in cases containing allegations of violations that result mainly from a lack of impartiality or integrity of a Judge or his office, […] no direct evidence may be available, especially when it comes to prove the intention of the author of such a violation. The assertions […] may be thus impossible to prove absent an admission by the person said to be biased, or reliance on circumstantial evidence. Any inference made on circumstantial evidence, as to the judge's intent, must be the only possible conclusion arising from the evidence presented." (para. 26)

ii. *Examples of Insufficient Evidence of Bias*

a. Alleging Bias on the basis of a Judge's Decisions

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"Furthermore, the Defence has not referred to any authority […] that a judge's analysis in a different case could suggest bias in the case currently being heard. The Defence has not demonstrated that the opinions expressed in one case can give rise to any appearance of bias in another case. It is also important to note that Nuon Chea is not alleged to have been involved, or mentioned by Judge Ney Thol, in any previous case." (para. 31)
2.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"Where allegations of bias are made on the basis of a Judge's decisions, it is insufficient merely to allege error, if any, on a point of law. What must be shown is that the rulings are, or would reasonably be perceived as, attributable to a pre-disposition against the applicant, and not genuinely related to the application of law, on which there may be more than one possible interpretation, or to the assessment of the relevant facts." (para. 9)
3.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"[T]he conduct of a judge is driven by the rules and the circumstances of a case and […] 'many factors affect the timing of decision'." (para. 33) "[T]he Pre-Trial Chamber […] 'has the duty to examine the content of the judicial decisions cited as evidence of bias' and […] 'the purpose of that review is not to detect error, but rather to determine whether such errors, if any, demonstrate that the judge or judges are actually biased, or that there is an appearance of bias based on the objective test'. The Pre-Trial Chamber further observes that 'error, if any, on a point of law is insufficient: what must be shown is that the rulings are, or would reasonably be perceived as, attributable to a pre-disposition against the applicant, and not genuinely related to the application of law (on which there may be more than one possible interpretation) or to the assessment of the relevant facts'." (para. 34) "[A] judge's work is to render decisions, and unavoidably one of the parties may not be satisfied. This does not, by itself, raise grounds for disqualification but rather for appeals or for exhaustion of other existing legal remedies during the pre-trial, trial and appellate stage of the proceedings." (para. 35)
4.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"The Pre-Trial Chamber observes that it 'has the duty to examine the content of the judicial decisions cited as evidence of bias' and that 'the purpose of the review is not to detect error, but rather to determine whether such errors, if any, demonstrate that the judge or judges are actually biased, or that there is an appearance of bias based on the objective test'. The Pre-Trial Chamber further observes that 'error, if any, on a point of law is insufficient. What must be shown is that the rulings are, or would reasonably be perceived as, attributable to a pre-disposition against the applicant, and not genuinely related to the application of law (on which there may be more than one possible interpretation) or to the assessment of the relevant facts'." (para. 23)

		"[A] judge's work is to render decisions and unavoidably one of the parties may not be satisfied. This does not, by itself, raise grounds for disqualification, but rather for appeals or for exhaustion of other existing legal remedies during the pre-trial, trial and appellate stages of proceedings." (para. 24)
5.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"[W]here allegations of bias are made on the basis of a Judge's decision, it is insufficient merely to allege error, if any, on a point of law. What must be shown is that the rulings are, or would reasonably be perceived as, attributable to a pre-disposition against the applicant and not genuinely related to the application of law, on which there may be more than one possible interpretation, or to the assessment of the relevant facts." (para. 45)
6.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]** *Decision on Application for Disqualification of Judge YOU Bunleng*	"Dissatisfaction [with a judicial decision] does not, by itself, 'raise grounds for disqualification but rather for appeals or for exhaustion of other existing legal remedies during the pre-trial, trial and appellate stage of the proceedings.'" (para. 38)

b. Alleging Bias on the basis of the Positions Held by a Judge

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"The Pre-Trial Chamber considers that Judge Ney Thol's does not occupy his position as a Pre-Trial Chamber Judge […] in the capacity of an RCAF officer, but in his personal capacity. Judge Ney Thol has been appointed in accordance with Articles 3.3 and 7.2 of the Agreement and Article 10(new) of the ECCC Law." (para. 24) "[T]he position of Judge Ney Thol as President of the Military Tribunal and the conclusions drawn from this position do not therefore reach the required threshold of evidence required to rebut the presumption of impartiality." (para. 26)

c. Alleging Bias on the basis of External Influence and Affiliation with a Political Party

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"[T]he mere fact that a judge was a member of a political party does not give rise to the necessary inference that his decisions are politically motivated or influenced. When a judge takes his oath of office it is assumed that they disabuse their minds of any irrelevant personal beliefs or predispositions." (para. 28) "Much of the evidence produced […] is that of commentary from third parties and relates in general terms to […] the Cambodian judiciary as a whole, and not just Judge Ney Thol. These general observations and assertions are no evidence in respect of an apprehension of bias by Judge Ney Thol in this case" (para. 32) "No evidence adduced […] is demonstrative of any instruction from a political party having been given to Judge Ney Thol or of him acting at the behest of […] any other person." (para. 33)

		"Considering the high threshold to be reached by the Defence, the quality of the evidence submitted does not reach the standard to allow the conclusion that Judge Ney Thol acted upon the instruction of any political organisation or that he was politically motivated. There could be no such apprehension of bias by an objective observer informed of all relevant circumstances of the matters put before the Pre-Trial Chamber." (para. 34)
2.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]** *Decision on Application for Disqualification of Judge YOU Bunleng*	"The Pre-Trial Chamber finds that the general claims […] against the Cambodian judiciary do not establish that Judge You in particular appears to lack independence or impartiality, and therefore do not rebut the presumption of impartiality that attaches to Judge You by virtue of his appointment as a judicial officer of the ECCC." (para. 42) "The Pre-Trial Chamber notes that nowhere in the Application does the Applicant try to explain how Judge You's prior decision not to sign the letters is connected to the Royal Government of Cambodia's subsequent 'active […] interference […].' The Application merely asserts that Judge You's decision and the Government's 'active interference' are 'consistent' with each other. The Pre-Trial Chamber dismisses this bare assertion […]." (para. 45)

d. Alleging Bias on the basis of Words Attributed to a Judge

1.	**002 IENG Sary** Special PTC 01 Doc. No. 7 9 December 2009 *Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"The physical context in which [the Judge] is said to have uttered the words attributed to him, a private meeting held with the OCIJ staff, renders them less indicative of partiality or the appearance thereof than the same words spoken by a judge in a public area. […] English […] is not his first or working language […] [t]he words allegedly being spoken can therefore not be interpreted as having their full meaning in English." (para. 22) "The evidence is even further weakened if the words were said in jest […]." (para. 23) "The nature of a judicial investigation is that it is an ongoing process of obtaining an evaluating evidence, with a conclusion being reached to either indict or dismiss in respect of matters charged. […] By finally forming an opinion on the investigations it is not likely and cannot be expected that the Co-Investigating Judges do not have a preference as to the nature of the evidence to be found, as they must have an idea by now of the conclusions they might reach based on all the evidence collected." (para. 24) "An expression of such preference by an Investigating Judge to his or her staff must further be distinguished from an explicit instruction or direction to judicial investigators to search only for inculpatory evidence and exclude exculpatory evidence from the investigation." (para. 25)
2.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"[T]he evidence supporting the application is not very strong. The evidence is even further weakened if the words were said in jest […]. Judge Lemonde was speaking in English, which is neither his first nor his working language." (para. 29) "[T]he statements of Judge Lemonde as quoted by the press do not amount to reliable evidence." (para. 30)
3.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"Considering all these circumstances […] the evidence supporting the application on this point is insufficient. Further evidence from other witnesses could have been sought to provide corroboration to the statement [providing an account of alleged comments made by the Judge]." (para. 19)

4.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"[S]tatements of a person as quoted by the press do not amount to reliable evidence." (para. 51)
5.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"The Pre-Trial Chamber has also […] held that statements of a person as quoted by the press do not amount to reliable evidence […]." (para. 38)

e. Alleging Bias on the basis of Internal Affairs

1.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"[T]he Judge's expression of his opinion with respect to the evaluation of a staff member cannot be construed by an informed person, who has knowledge of all of the relevant circumstances, as the existence of bias, which shall lead to the disqualification of this Judge, unless evidence is adduced to show that this fact is related to the case and affects the defence's rights to a fair trial." (para. 52) "[…] [T]he Pre-Trial Chamber does not see how the policy regarding access to an internal database of the OCIJ could exemplify the existence of objective or subjective bias against the Charged Persons." (para. 59)

6. Other Matters in Disqualification Proceedings

i. *Hearing in Disqualification Proceedings*

For jurisprudence concerning ***Hearings in General***, see also VII.D.2.ii. Hearings before the Pre-Trial Chamber

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention*	"Rule 34 provides for a number of procedural possibilities for determining an application for disqualification. In this case the Pre-Trial Chamber finds that it has sufficient information to decide on the application, and it is in the interests of justice to proceed expeditiously to consider the matter without holding a public hearing or calling for written *amicus curiae* briefs. Furthermore, in the interests of justice, the Pre-Trial Chamber will not examine the question of possible technical defects in the application itself." (para. 8)

	Order in the Case of NUON Chea	
2.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"The procedure prescribed in Internal Rule 34(7) [...] envisages a written decision by the Chamber, based on the application for disqualification and the submissions by the Judge. It does not envisage a hearing. The Pre-Trial Chamber has previously found that where it has sufficient information to decide on the application, and it is in the interests of justice to proceed expeditiously to consider the matter, it may do so without holding a public hearing. Other international tribunals also routinely decide similar applications on the basis of written proceedings alone. The Chamber considers it in the interests of justice to proceed expeditiously and to decide the Motion without holding a public hearing. Transparency of proceedings will be ensured by the re-classification of all filings in relation to this Motion as public." (para. 2)
3.	**002 IENG Sary** Special PTC 01 Doc. No. 7 9 December 2009 *Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"No provision is made for an oral hearing, or a written reply, in Internal Rule 34(7). All supporting evidence relied on by the applicant must be filed with the application for disqualification, as required by Internal Rule 34(3)." (para. 14)
4.	**002 KHIEU Samphân** Special PTC 02 Doc. No. 7 14 December 2009 *Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"No provision is made for an oral hearing, or a written reply, in Internal Rule 34(7). All supporting evidence relied on by the applicant must be filed with the application for disqualification, as required by Internal Rule 34(3)." (para. 22) "[I]n an application for disqualification of a judge, 'the burden of proof lies entirely with the applicant'. The impartiality of a judge is to be presumed until there is proof to the contrary. Evidence to displace the presumption must be adduced at the time of the application. The Application is therefore inadmissible in so far as it requests an oral hearing." (para. 23)
5.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"Internal Rule 34(7) envisages a written decision by the Chamber and not a hearing. Further, as required by Internal Rule 34(3), all supporting evidence must be filed with the application for disqualification and the burden of proof to displace the presumption of impartiality of a Judge lies entirely on the applicant and evidence to be adduced *at the time* of the application." (para. 32) "The Pre-Trial Chamber also previously held that where it has sufficient information to decide on the application and it is in the interests of justice to proceed expeditiously it may consider the matter without holding a public hearing." (para. 33) "As previously found, the Pre-Trial Chamber finds that transparency of proceedings will be ensured by the re-classification of all filings in relation to the applications as public." (para. 34) "Contrary to the Co-Lawyers' assertions, supporting evidence must be provided at the same time as the application. They have the burden to prove the alleged lack of impartiality. It is not for a judicial body, seized of an application to investigate on behalf of the applicant by way of a public hearing, or ensure sufficiency of the evidence presented in support of an application filed by a party through a hearing. As it is not for the Pre-Trial Chamber to conduct the case for the applicants, the request for an oral hearing is dismissed [.]" (para. 35)
6.	**002 NUON Chea** Special PTC 09	"It is clear from the Application that the Applicant's requests for an investigation and a public hearing depend on a finding by the Pre-Trial Chamber that 'further corroborative material may be useful in

	Doc. No. 8 10 September 2010 **[PUBLIC REDACTED]** *Decision on Application for Disqualification of Judge YOU Bunleng*	reaching its decision.' Since the Pre-Trial Chamber decides not to make such a finding, the Applicant's requests will not be further considered […]." (para. 11)

ii. *Stay of Proceedings in Disqualification Proceedings*

For jurisprudence concerning ***Stay of Proceedings***, see VII.B.9.ii. Stay Ordered by the Pre-Trial Chamber

For jurisprudence concerning ***Stay of Proceedings on the basis of Abuse of Process***, see II.C. Abuse of Process

1.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister Hun Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"Pursuant to Internal Rule 34(5), disqualification applications do not stay proceedings. A judge may, however, step down voluntarily." (para. 3)

iii. *Investigation of Allegations of Partiality by the Pre-Trial Chamber*

1.	**002 NUON Chea** Special PTC 04 Doc. No. 4 23 March 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE*	"The Pre-Trial Chamber has no power to order any investigation of allegations of partiality which are not supported by sufficient evidence." (para. 20)
2.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"There are no provision in the Internal Rules providing the basis of a right for the Pre-Trial Chamber to undertake an inquiry in respect of an application under Internal Rule 34. Contrary to the right of inquiry provided for in Internal Rule 35[(2)]. Rule 34(3) prescribes that a party shall provide supporting evidence, preferably all evidence available, for the determination of the motion." (para. 44)
3.	**002 NUON Chea** Special PTC 09 Doc. No. 8 10 September 2010	"As the Applicant notes, the Pre-Trial Chamber has previously held that it does not have the power 'to order any investigation of allegations of partiality which are not supported by sufficient evidence.' (para. 9)

	Decision on Application for Disqualification of Judge YOU Bunleng	"It is clear from the Application that the Applicant's requests for an investigation and a public hearing depend on a finding by the Pre-Trial Chamber that 'further corroborative material may be useful in reaching its decision.' Since the Pre-Trial Chamber decides not to make such a finding, the Applicant's requests will not be further considered […]." (para. 11)

iv. *Role of the Co-Prosecutors in Disqualification Proceedings*

For jurisprudence concerning the ***Role of the Co-Prosecutors,*** see III.D.3.i.b. Co-Prosecutors, IV.A.1.i. Role of the Co-Prosecutors, IV.A.2.i.a. Role of the Co-Prosecutors, VII.B.2.i.b. Co-Prosecutors

1.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"[T]he Co-Prosecutors have no standing as of right in respect of this kind of application. If the Pre-Trial Chamber considers the Co-Prosecutors may be an interested party, they may participate or they may be otherwise called upon to assist by commenting or filing submissions in cases where the Chamber feels it appropriate to have views expressed." (para. 20)

D. Misconduct and Interference with the Administration of Justice

1. Interference with the Administration of Justice

i. *Admissibility*

a. Jurisdiction and Scope of Review of the Pre-Trial Chamber

2.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"The Pre-Trial Chamber has jurisdiction to hear this matter pursuant to Internal Rule 73(c) […]." (para. 18) "In addition, the Pre-Trial Chamber may hear and make determinations on allegations of interference with the administration of justice *proprio motu* pursuant to Internal Rule 35(2) […]." (para. 20)

b. Requests for Investigation on Interference with the Administration of Justice under Internal Rules 55(10) and 58(6)

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 28) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 29)
2.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 25) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 26) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 27)

		"Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 28) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 29) "The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 30)
3.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 28) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 29) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 30) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 31) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 32)
4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 24) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 25) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 26) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does

		not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 28)

c. Disqualification of Judge for Interference with the Administration of Justice under Internal Rule 35

1.	**002 IENG Sary** Special PTC 06 Doc. No. 5 29 March 2010 *Decision on IENG Sary's Rule 35 Application for Judge Marcel LEMONDE's Disqualification*	"The immunities in respect of the international judges of the ECCC and the national judges of the ECCC come about by the operation of Article 19 and Article 20 respectively of the Agreement between the United Nation[s] and the Royal Govern[ment] of Cambodia […]. Sim[ilar] provisions are included in the Law of the Establishment of the [ECCC]." (para. 8) "There is no prescribed jurisdiction for any of the Chambers of the ECCC to deal with disciplinary matters in respect of any of the judges of the ECCC. The only jurisdiction for considering behaviour of judges in their own cases is the provision in Internal Rule 34 which prescribes the jurisdiction for applications filed for disqualification of judges when a judge has in any case a personal or financial interest or concerning which the judge has, or has had, any association which objectively give rise to appearance of bias." (para. 11) "The Pre-Trial Chamber has found no provisions in the Cambodian Code of Criminal Procedure concerning jurisdiction on alleged acts of judges amounting to interference with the administration of justice where behaviour of judges in their own cases is involved." (para. 12) "[T]here are no provisions in procedural rules established at the international level […] and [no] jurisprudence from international tribunals which provides for jurisdiction to sanction judges for behaviour amounting to interference with the administration of justice." (para. 13) "As the Application seeks the disqualification of [a judge] as a sanction pursuant to Internal Rule 35 based on behaviour of the judge in his cases qualified by the Co-Lawyers as amounting to interference with the administration of justice it is therefore not admissible." (para. 14) "This application is an attempt by the Co-Lawyers to expand the jurisdiction of the ECCC, which is rejected." (para. 15)

ii. *Standard of Review*

1.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"The judges of the [ECCC] must consider their obligation to act when an action taken by an individual threatens the administration of justice. Every judge of the ECCC is bound by Article 1 of the Code of Judicial Ethics, which states that '[j]udges shall uphold the independence of their office and the authority of the ECCC and shall conduct themselves accordingly in carrying out their judicial functions'. Once a judge is satisfied that information before him or her establishes a reason to believe that an interference as defined in the Internal Rules may have occurred, the exercise of judicial discretion is curtailed. The judge no longer has broad discretion on the question of the next step to be taken. In this regard, the exercise of judicial discretion is not at all comparable to the discretion otherwise exercised by the CIJs and judges of this Chamber when faced with other types of requests or appeals based on certain requests, such as request made pursuant to Internal Rule 55(10)." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 11)

iii. *Merits of and Standard of Proof Required for Applications under Internal Rule 35*

1.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"Given the demonstrable similarities between the provisions regarding the interference with the administration of justice in proceedings before the ECCC and ICTY, the Pre-Trial Chamber has drawn upon the approach adopted by the ICTY […]." (para. 32) "The *mens rea* element of Internal Rule 35 requires that the perpetrator of the interference committed the act *knowingly and wilfully*. This Chamber has previously observed that '[i]n establishing the *mens rea* it must be demonstrated that the accused acted willingly and with the knowledge that his conduct was likely to deter or influence a witness or potential witness'." (para. 35) "There are three distinct standards of proof that require attention when considering an interference with the administration of justice pursuant to Internal Rule 35. These standards are (i) reason to believe; (ii) sufficient grounds; and (iii) beyond reasonable doubt. The *reason to believe* standard is expressed in Internal Rule 35(2), which provides three courses of action when the 'Co-Investigating Judges or the Chamber have *reason to believe* that a person may have committed any of the acts' listed in Internal Rule 35(1). The *sufficient grounds* standard must be satisfied to instigate proceedings, deal with the matter summarily, or refer the matter to the authorities of Cambodia or the United Nations. The *beyond reasonable doubt* standard of proof must be satisfied before sanctions can be imposed on an individual for a violation of Internal Rule 35(1)." (para. 36) "The Internal Rules fail to define these differing standards of proof, however, they can be distinguished according to the stage of inquiry. The *reason to believe* standard is an extremely low threshold and merely invokes inquiry by the CIJs or a Chamber. The broad nature of this threshold is emphasised by the inclusion of *may* in Internal Rule 35(2). A finding that there is reason to believe does not require or involve determination as to the merits of an allegation or suspicion of interference. The finding that the reason to believe standard has been met does, however, require the CIJs or Chamber to have concluded that there exists a material basis or *reason* that is the foundation of their *belief*. This material basis or *reason* shall be established based on an examination of the allegation or suspicion, which examination may be subjective in nature." (para. 37) "The second standard of proof, *sufficient grounds*, has been most accurately described by the ICTY Appeals Chamber. The Appeals Chamber observed that the *sufficient grounds* standard 'requires the Trial Chamber only to establish whether the evidence before it gives rise to a *prima facie* case of contempt of the Tribunal and not to make final finding on whether contempt has been committed'. The Pre-Trial Chamber has previously noted with approval the comparison between the *sufficient grounds* and *prima facie* thresholds." (para. 38) "The *beyond reasonable doubt* standard of proof must be satisfied in order to impose sanctions on an individual for violation of Internal Rule 35(1). This is the universally accepted standard of proof in criminal matters." (para. 39) --- "[T]he CIJs conclude […] that they 'will *leave it* to the Pre-Trial Chamber, […] to determine whether it should order such investigations under Rule 35(2) […]'. This deferral of responsibility is unsatisfactory. Internal Rule 35(6) provides the Pre-Trial Chamber with jurisdiction to hear and determine appeals on decisions made by the CIJs regarding alleged violations of Internal Rule 35(1). In addition, Internal Rule 35(2) empowers the Pre-Trial Chamber to take action independently […], however, the Internal Rules provide no basis upon which the CIJs can reject an investigative request or an application pursuant to Internal Rule 35 and instead refer or defer the matter to the Pre-Trial Chamber. [A] determination pursuant to Internal Rule 35 is in no way connected to the stage of proceedings […]." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 4) "As a result of the repeated failure of the CIJs to act, we are of the view that given the grave nature of the allegations of interference the Pre-Trial Chamber must intervene. [T]he CIJs must act pursuant to Internal Rule 35(2) when they have 'reason to believe that a person may have committed any of the acts set out in sub-rule 1'. The CIJs will only have jurisdiction to act when an allegation of conduct in violation of Internal Rule 35(1) is sufficient so as to provide them with a 'reason to believe' that an individual 'may' have commented the alleged act. It is important to note that the term 'may' lowers the threshold test 'reason to believe'. In contemplating a possible interference, the CIJs need only possess a 'reason to believe' that an act prohibited by Internal Rule 35(1)(a)-(g) 'may' have occurred. This low threshold can be contrasted with the 'sufficient grounds' test that is marginally higher and the

		ultimate criminal justice standard of 'beyond reasonable doubt' that must be satisfied to find an individual in violation of Internal Rule 35(1)." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 5) "[…] [N]o reasonable trier of fact could have failed to consider that the above-mentioned facts and their sequence constitute a reason to believe that one or more members of the RGC may have knowingly and wi[l]fully interfered with witnesses […]. This finding stands irrespective of whether the witnesses […] may or may not have had more than one reason not to appear to testify. […] The context in which this statement was made greatly contributed to the belief that it may amount to an interference or reflect other efforts to prevent the testimony […]." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 6) "[I]t is important to note that this is not a final determination as to whether this alleged conduct has or has not occurred, it is merely a finding that there is reason to believe that interference may have taken place and therefore, there is a sufficient basis upon which further action is warranted, including by application of the course of action provided in Internal Rule 35(2)(b)." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 7) "[T]he most suitable course of action would be to 'conduct further investigations to ascertain whether there are sufficient grounds for instigating proceedings' pursuant to Internal Rule 35(2)(b). In the event of reaching majority decision with regards to the necessity of an investigation the Pre-Trial Chamber would have been faced with the question of methodology. In our view, the most appropriate course of action would have been for the Pre-Trial Chamber to conduct the investigation. This is because, although the OCIJ is the natural investigative body within the ECCC, they have repeatedly refused to investigate this matter and may not, in these circumstances be the body most suitable to conduct an investigation into these allegations of interference." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 8) "An interference with the administration of justice may imply disregard for the independence of the judiciary. Given the serious nature of these allegations and the origin from which the alleged interferences may have emanated, we note that if an investigation were to have met with non-cooperation from any party the Chamber may have utilised Internal Rule 35(2)(c) as last resort. This provision provides that when the CIJs or Chambers have a reason to believe that a person may have committed an act of interference described in Internal Rule 35(1), they may 'refer the matter to the appropriate authorities of the Kingdom of Cambodia or the United Nations'." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 9) "[T]he Chamber is under an obligation to ensure that the integrity of the proceedings is preserved." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 10) "The judges of the [ECCC] must consider their obligation to act when an action taken by an individual threatens the administration of justice. Every judge of the ECCC is bound by Article 1 of the Code of Judicial Ethics, which states that '[j]udges shall uphold the independence of their office and the authority of the ECCC and shall conduct themselves accordingly in carrying out their judicial functions'. Once a judge is satisfied that information before him or her establishes a reason to believe that an interference as defined in the Internal Rules may have occurred, the exercise of judicial discretion is curtailed. The judge no longer has broad discretion on the question of the next step to be taken. In this regard, the exercise of judicial discretion is not at all comparable to the discretion otherwise exercised by the CIJs and judges of this Chamber when faced with other types of requests or appeals based on certain requests, such as request made pursuant to Internal Rule 55(10)." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 11) "Preventing testimony from witnesses that have been deemed conducive to ascertaining the truth may infringe upon the fairness of the trial. […] It is imperative that this Chamber *do its utmost* to ensure that the charged persons are provided with a fair trial." (Opinion of Judges DOWNING and MARCHI-UHEL, para. 12)
2.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber*	"The Pre-Trial Chamber finds that the International Co-Prosecutor's right to make public comment or to express public opinion in relation to the judicial investigations carried out by the Co-Investigating judges is not provided in law, it is rather limited by the provisions of the Internal Rules of the ECCC, with which limitations he has an obligation to comply. The justification for his actions which he addresses in the appeal do not excuse the action of the International Prosecutor and ignore the discretion of the Co-Investigating Judges regarding their publication of information during the stage of the judicial investigations. While agreeing that, in principle, and as also enshrined in the applicable

	regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003	international conventions, public access to judicial proceedings constitutes a fundamental fair trial right, the Pre-Trial Chamber notes that the provisions of the specific Internal Rules clearly provide on who, under which circumstances, and at which stage of the proceedings has authority to make public statements in relation to an ongoing proceeding." (para. 31) "Further, where the International Co-Prosecutor is of the opinion that information regarding judicial investigations should be published he should have requested the Co-Investigating Judges to do so and if refused such order could be appealed to the Pre-Trial Chamber." (para. 33)
3.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written Records of Witnesses' Interviews*	"[D]etermining the existence of interference with the administration of justice requires proof of a criminal offence […]. Moreover, far from violating the Applicant's rights, opening an investigation into interference is aimed at ensuring that the proceedings against her are fair." (Opinion of Judges BEAUVALLET and BAIK, para. 52)

iv. *Decisions under Internal Rule 35*

a. Order or Decision under Internal Rule 35

1.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"[O]n 15 January 2009 the Co-Investigating Judges put the Co-Lawyers […] on notice that it is for the judges to decide when and how to disclose confidential case file material. [T]his letter does not represent a ruling within the meaning of the term as provided for in Article 3.12 of the ECCC Practice Direction on Filing Documents." (para. 39) "[W]ithin the meaning of the provisions of Internal Rule 56, it is correct to conclude that the Co-Lawyers, by proceeding to publish in their website case file documents without first seeking the approval of the relevant judicial authority for each document, acted in defiance of the general rule of confidentiality of investigations and of the recognized standards and ethics of the legal profession. However, the finding of Co-Investigating Judges that the Co-Lawyers acted in direct defiance of the 15 January 2009 'decision' and consequently this breach may be sanctioned under Internal Rule 35 is not correct." (para. 43) "The Co-Investigating Judges' letter of 15 January 2009 does not represent an 'order', and the existence of an 'order' and its subsequent 'violation' are essential prerequisites for Internal Rule 35 to then be applied in instances of disclosure of confidential information. Therefore, the Confidentiality Order is found to not represent a 'decision under Internal Rule 35'." (para. 44)

b. Appeal against Decision under Internal Rule 35

1.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International*	"[O]nce read in context and in conjunction with Internal Rule 73, it is clear that Internal Rule 74(2) foresees the rights of appeal of the Co-Prosecutors in relation to such Orders of the Co-Investigating Judges Orders that are related to the criminal investigation. The nature of the impugned Order [ordering a party or an officer of the court to retract information] is not such that purely related to the criminal investigation, it rather relates to an action from one of the officers of the court. Therefore, the Appeal under Internal Rule 74(2) would represent an incorrect mixture of the factual situation and the legal provision upon which the International Co-Prosecutor rely to establish jurisdiction for the Appeal." (para. 16) "The Pre-Trial Chamber observes that neither the Internal Rules nor the Cambodian Code of Criminal Procedure give any indication as to the legal basis for an appeal against an order ordering a party or an officer of the court to retract information." (para. 17)

	Co-Prosecutor's Public Statement regarding Case 003	"The Order of the Co-Investigating Judges holds that the International Co-Prosecutor acted partly without legal basis and further breached the Rule of confidentiality as mentioned in Internal Rule 56(1). The legal basis for this order […] can be found in Internal Rule 35. Internal Rule 35(1) dealing with the interference in the administration of justice uses the words 'including any person who' and is not limited to the actions specifically mentioned in this part of the rule, they are examples of the types of matters falling within the class of actions which may amount to an interference with the administration of justice. Acting without legal basis and breaching confidentiality as prescribed by law must be seen as wilful interference in the administration of justice. The Co-Investigating Judges being in charge of judicial investigations were entitled to make an order concerning, even a perceived, breach of confidentiality to the International Co-Prosecutor as they could deal with the matter summarily as prescribed in Internal Rule 35(2)." (para. 27) "As Internal Rule 35(6) provides for a right of appeal against such orders the International Co-Prosecutor's appeal is admissible under this Internal Rule. Considering the personal background of the Order, as apparently being based on Internal Rule 35, there is no issue of whether the International Prosecutor is allowed to act alone in filing the appeal." (para. 28) "As previously found, the Pre-Trial Chamber shall determine whether the Co-Investigating Judges committed an error of law or fact or abused their discretion by issuing the Retraction Order." (para. 29)

2. Misconduct pursuant to Internal Rule 38

1.	**002 KHIEU Samphân** PTC 04 C26/I/25 23 April 2008 *Decision on Application to Adjourn Hearing on Provisional Detention Appeal*	"The refusal of the International Co-Lawyer to continue to act is a constructive withdrawal from the appeal and has a direct and adverse effect upon the fundamental right of the Charged Person to be represented before the Pre-Trial Chamber." (para. 9) "[T]he Charged Person has been placed in a position where he is unable to exercise this fundamental right. The Pre-Trial Chamber therefore granted the request for an adjournment […]." (para. 10) "His refusal to continue to act in this appeal was first announced on the day of the hearing and has resulted in his client not being able to have his appeal heard promptly. This violated the Charged Person's fundamental right to a timely hearing and the representation of a lawyer of his choice, which are internationally recognised rights applicable before the ECCC." (para. 11) "As a consequence of the behaviour of the International Co-Lawyer […] a warning is given to him pursuant to Internal Rule 38(1) as he has abused the processes of the Pre-Trial Chamber and the rights of the Charged Person." (para. 15)
2.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"[W]ithin the meaning of the provisions of Internal Rule 56, it is correct to conclude that the Co-Lawyers, by proceeding to publish in their website case file documents without first seeking the approval of the relevant judicial authority for each document, acted in defiance of the general rule of confidentiality of investigations and of the recognized standards and ethics of the legal profession." (para. 43) "[T]he Confidentiality Order, […] where it provides for the Co-Lawyers to '[c]ease posting information […]' represents a type of order not subject to appeal before the Pre-Trial Chamber […]." (para. 45) "[T]his part of the Order, which reads: 'if this content is not removed […] said lawyers […] will thus expose themselves to legal consequences' represents a warning within the meaning of the term as provided for in Internal Rule 38(1)." (para. 47) "[T]his part of the Order does not represent a 'disciplinary action by BACK' as provided for in Internal Rule 38(3). Pursuant to Internal Rule 38, 'warnings' are not subject to appeal before the Pre-Trial Chamber." (para. 48)
3.	**002 IENG Sary** PTC 56 D367/1/5 7 June 2010	"[U]nlike Internal Rule 38, Internal Rule 35 does not foresee a necessary warning prior to imposing sanction against a counsel […]." (para. 10) "Internal Rule 38 does not foresee a right to appeal a warning prescribed prior to imposing sanctions and […] procedural defects potentially attaching to such warnings can only be challenged as part of an appeal against a subsequent sanction imposed pursuant to Internal Rule 38. […] [T]he Appeal is

	Decision on Appeal against the Co-Investigating Juges' Order issuing Warnings under Internal Rule 38	premature, in so far as no sanction has been imposed against counsel at this stage and may even become moot if no sanction is imposed in the future." (para. 11)

3. Proceedings under Internal Rules 35 and 38

i. *Role of the Parties*

a. Civil Parties

1.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"[T]his appellate procedure relates to conduct foreseen in Internal Rules 35 and 38 and as such this procedure differs in its purpose and scope from appellate criminal proceedings related to safeguards for the rights of parties of specific criminal cases. The role of the Civil Parties, as foreseen by the ECCC Internal Rules relates to specific criminal proceedings only and is designed to allow victims of crimes within ECCC jurisdiction to support the prosecution and to seek collective and moral reparations. As the Co-Prosecutors have no standing in this procedure, inviting the Civil Parties to support them is not possible for the current Appeal. Claims for reparation are not relevant in this appeal to provide standing for Civil Parties." (para. 32)

b. Co-Prosecutors

1.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"[T]his Appeal relates to an Order of the Co-Investigating Judges finding the Co-Lawyers responsible for conduct in breach of the principle of confidentiality of investigations, finding that such conduct may be sanctioned under Internal Rules 35 and 38. Internal Rules 35 and 38 address respectively conduct that is in 'Interference with the Administration of Justice' and that which represents 'Misconduct of Lawyer'. The role of the Prosecutor does not necessarily extend to cases related to the conduct included in Internal Rules 35 and 38." (para. 13) "The role of the Co-Prosecutors of the ECCC in the Internal Rules is strictly related to the ongoing cases and investigations of crimes within the jurisdiction of the ECCC. The [ECCC Law] provides a list of the crimes under the jurisdiction of the ECCC. The conduct which is subject of the Co-Investigating Judges' Confidentiality Order does not appear in that list of crimes. The Pre-Trial Chamber finds that the role of Co-Prosecutors does not automatically extend to procedures related to interference with the administration of justice and/or misconduct of lawyer." (para. 14) "The Pre-Trial Chamber notes that the Cambodian Criminal Procedure Code does not provide on proceedings related to conduct that constitutes 'contempt of court.' The Internal Rules do not specify who may be considered as parties to contempt of court cases. The Pre-Trial Chamber needs therefore to seek guidance in procedural rules established at the international level." (para. 16) "The Pre-Trial Chamber finds that the role of an investigator in contempt of court proceedings may be given to the Prosecutor during first instance proceedings. This procedure before the Pre-Trial Chamber is an appellate procedure." (para. 20) "The ECCC Internal Rules do not foresee role for the Co-Prosecutors in cases of appeals against orders issued under Internal Rules 35 and/or 38. Seeking guidance in the Rules of ICTY, ICTR and ICC as mentioned before, which do not foresee role for the Prosecutor at the appellate stage of such proceedings, the Pre-Trial Chamber observes that this finding is in accordance with international procedures." (para. 25) "The Pre-Trial Chamber finds that the Co-Prosecutors are not automatically a party and that in this Appeal it will not be assisted by the Co-Prosecutors being joined as a party." (para. 26)

ii. *Hearing*

For jurisprudence concerning ***Hearings in General***, see VII.D.2.ii. Hearings before the Pre-Trial Chamber

1.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"Internal Rule 77(1) provides for a different procedure in relation to the initial procedural steps to be followed when Appeals provided for in Internal Rule 73(c) are filed. Internal Rule 77(1) directs that for such Appeals the initial step is to inform the authority that rendered the appealed decision and to request it to provide any relevant documents, if necessary. This different treatment by sub-Rule 77(1) of appeals under sub-Rule 73(c) is deliberate and addresses the distinct nature of such appeals compared to other appeals within the jurisdiction of the Pre-Trial Chamber." (para. 34) "The Pre-Trial Chamber shall, as a general rule, consider these appeals on the basis of written submissions. Considering the specific nature of the current appellate procedure particularly that no opposing party has standing and, as the Pre-Trial Chamber has no questions which may be answered during a hearing, it rejects the request for an oral hearing." (para. 36)

iii. *Stay of Proceedings*

For jurisprudence concerning the ***Stay of Proceedings***, see VII.B.9.ii. Stay Ordered by the Pre-Trial Chamber

For jurisprudence concerning the ***Stay of Proceedings on the basis of Abuse of Process***, see II.C. Abuse of Process

1.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"As the appropriate mechanisms for dealing with an interference in the administration of justice are proscribed by Internal Rule 35, […] such an interference could only lead to a stay of proceedings for abuse of process if it was so egregious that it could not be remedied by the provisions established in Internal Rule 35(2)" (para. 38)

E. Decisions concerning the Defence Support Section (Including Decisions on Appeals under Internal Rule 11)

For jurisprudence concerning the ***Right to Legal Assistance and Representation***, see II.B.xviii. Rights to Legal Assistance and Representation

1. Appeals against Decision of the Defence Support Section (DSS)

i. *Appeals under Internal Rule 11(5)*

a. Admissibility of Appeals under Internal Rule 11(5)

1.	**Special PTC** **10-07-2013-ECCC/PTC** Doc. No. 8 6 February 2014 **[PUBLIC REDACTED]** *Decision on the "Appeal against Dismissal of Richard ROGERS' Application to be Placed on the List of Foreign Co-Lawyers"*	"Considering that the Appeal is filed by Mr. Rogers in his personal and professional capacity *as a lawyer* and that it 'flows from the *DSS decision to deny [his] request to be placed on the [list of lawyers]*,' the Pre-Trial Chamber finds that the Appeal is within its jurisdiction, as prescribed in Internal Rule 73(c), and admissible under Internal Rule 11(5)." (para. 55)
2.	**004 Other Appeals** PTC 18 19 February 2015 D198/3/1/2 *Decision of the Pre-Trial Chamber on SON Arun's Appeal against the Decision of the Office of the Co-Investigating Judges related to the Recognition of Lawyer*	"Pursuant to Internal Rule 11(5), the Pre-Trial Chamber has jurisdiction over appeals against decisions of the DSS related to 'requests to be placed on the lists of lawyers.' […] Son Arun is a lawyer who is already representing clients before the ECCC and pursuant to the provisions of the Internal Rules and DSS Administrative Regulations in respect of requests from lawyers for inclusion in the DSS list of lawyers, the Pre-Trial Chamber considers that the Recognition Request is not a request for random placement in the DSS list of lawyers. Therefore, the Recognition Request does not fall within the ambit of Internal Rule 11(5) and, consequently, decisions relating to it are not under the appellate jurisdiction of the Pre-Trial Chamber." (para. 21)
3.	**14-06-2016-ECCC/PTC** **Special PTC** Doc. No. 4 4 August 2016 *Decision on Neville SORAB's Appeal against the Defence Support Section's Failure to Consider His Application to be Placed on the List of Foreign Lawyers*	"The Pre-Trial Chamber considers that any reasonable reader would conceive that Rule 11(5) does set deadlines for *all* appeals. For the purposes of examining admissibility of appeals under Rule 11(5), the first point of time to be determined is that when the DSS 'receives an Application'. It is, then, clear from Rule 11(5) that once it has received an application, the DSS has thirty days to decide on it. If the DSS examines and application and decides to refuse it, it is clear that the appeal deadline starts running from the moment an applicant receives notice of that decision and ends 'within 15 (fifteen) days'. If the DSS does not examine an application within the required thirty day period, the remedy provided by Rule 11(5) to expectant applicants is that they, similarly to those applicants who receive a decision, can file appeals to the Pre-Trial Chamber 'within 15 (fifteen) days', but in this instance - since there is no decision – 'of […] the end of the 30 (thirty) day period', within which the DSS had to decide. In cases of non-examination, Applicants can appeal within 45 (forty five) days from the day when the DSS receives an Application. As also suggested by the DSS, the Pre-Trial Chamber considers that this reading, of Rule 11(5) appeal deadlines, is also in full compliance with the principle of equality of persons before the law." (para. 10) "[T]he Appellant filed the Appeal […] late and […] without providing any reasons for the delay, as required by Rule 39 and Article 9 of the Practice Direction on Filing. Lastly, even if the Appellant were right, in that he was faced with a non-examination – of the Application by the DSS – the deadline to appeal also expired […] forty five days from […] when the DSS received the Application." (para. 12)

b. Scope and Standard of Review

1.	**Special PTC** **10-07-2013-ECCC/PTC** Doc. No. 8 6 February 2014 **[PUBLIC REDACTED]** *Decision on the "Appeal against Dismissal of Richard ROGERS' Application to be Placed on the List of Foreign Co-Lawyers"*	"The Pre-Trial Chamber notes that the Appeal is filed against a decision issued by an *administrative body* within the ECCC, such being the Head of the DSS, and that this appellate proceeding represents a judicial review of an administrative decision. The Pre-Trial Chamber notes that this is the first appeal filed before it against a decision of this nature and that the Agreement, the ECCC Law, the Internal Rules or the Cambodian laws do not provide any guidance on the standard for a judicial review of administrative decisions. Under such circumstances, guidance may be sought from the practice established at international level. The Pre-Trial Chamber has previously compared the role of the DDOA and the DSS within the ECCC with that of the Registrar in other international tribunals. Therefore, the Pre-Trial Chamber finds it appropriate to seek guidance from those decisions of the judicial bodies of the international tribunals that review the Registrar's administrative decisions where related to similar circumstances such as those of the instant Appeal. […] The Pre-Trial Chamber shall, therefore review the decision of the Head of DSS by examining whether he has: a) complied with the relevant legal requirements; b) observed the basic rules of natural justice or acted with procedural fairness; c) took into account irrelevant material or failed to take into account relevant material; or d) reached conclusion that no reasonable person could have reached on the material before him." (para. 56) "The Pre-Trial Chamber further finds that it has the power to *quash* the decision of the Head of DSS where it finds that he has failed to comply with the law, to act transparently fairly and expeditiously, to take into account relevant material, or to act reasonably." (para. 57)
2.	**17-02-2015-ECCC/PTC** **Special PTC** Doc. No. 2 17 June 2015 *Decision on Neville SORAB's Appeal against the Defence Support Section's Decision on His Application to be Placed on the List of Foreign Lawyers*	"In considering an appeal lodged under Rule 11(5) of the Internal Rules, the Pre-Trial Chamber must determine whether the Head of the Defence Support Section: 'a) Complied with the relevant legal requirements; b) Observed the basic rules of natural justice or acted with procedural fairness; c) Took into account irrelevant material or failed to take into account relevant material; or d) Reached a conclusion that no reasonable person could have reached on the material before him.'" (para. 8)

ii. *Appeals under Internal Rule 11(6)*

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"Internal Rule 11(6) applies to appeals against decisions of the Head of the DSS on 'assignment of lawyers to indigent persons *based on the criteria set out in the Defence Support Section administrative regulations*' […], which concern experience and qualification of counsel but do not include any consideration of conflict of interest. The role of the DSS, when appointing counsel to an indigent suspect or charged person before the ECCC, is limited to examining whether the criteria and requirements set forth in the DSS Administrative Regulations are fulfilled. As previously held by the Pre-Trial Chamber '[t]he Head of DSS has no statutory power, under the applicable laws, to make any determinations related to conflict of interest issues in the process of the assignment of lawyers to represent Suspects, Charged Persons, or Accused before the ECCC.' Consequently, a judicial review of the DSS administration decision under Internal Rule 11(6) was not an avenue to address the issue of conflicts of interest raised in the Request for Rejection." (para. 29)
2.	**004 Other Appeals** PTC 18 19 February 2015 D198/3/1/2 *Decision of the Pre-Trial Chamber on SON Arun's Appeal against the*	"[T]he Pre-Trial Chamber finds that the Appeal was filed outside the legally prescribed period. The Appellant's failure to respect the legally prescribed deadline for filing would lead, pursuant to Internal Rule 39(1), to the invalidity of the action of filing of the Appeal." (para. 19) "Having made these findings, the Pre-Trial Chamber takes note however of the more substantive allegation made by the Appellant that the Suspect's fundamental right to be defended by a lawyer of his own choosing may be at stake. Therefore, having noted this allegation and pursuant to Internal

	Decision of the Office of the Co-Investigating Judges related to the Recognition of Lawyer	Rule 39(4)(b), despite its lateness, the Pre-Trial Chamber finds it fit to recognize the validity of the action of the filing of the Appeal […].” (para. 20) “Pursuant to Internal Rule 11(6), decisions of the DSS, in relation to matters similar to those as the subject of the Recognition Request, are appealable only before the Co-Investigating Judges and the Co-Investigating Judges decisions on appeal are final and binding because Internal Rule 11(6) provides in explicit terms that ‘no further appeal shall be allowed.’ By appealing against the DSS decision before the OCIJ, the Appellant has already exhausted the only legal remedy available. The applicable law, explicitly, does not allow for another appellate review of the final decision of the OCIJ by another judicial body. Therefore, the Appellant cannot bring another appeal before the Pre-Trial Chamber to impugn the ICIJ’s final decision.” (para. 23) “Further, based on the fact that the Suspect, as an indigent person, has not ‘appeared before this Chamber’, and pursuant to Internal Rule 11(6), the Pre-Trial Chamber finds that the Appellant was correct to file his First Appeal before the OCIJ, rather than before this Chamber.” (para. 24)

iii. *Appeals under Internal Rule 21*

a. Admissibility

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth’s Appeal against the International Co-Investigating Judge’s Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	“[…] [A] judicial review of the DSS administration decision under Internal Rule 11(6) was not an avenue to address the issue of conflicts of interest raised in the Request for Rejection.” (para. 29) “Having rejected the International Co-Prosecutor’s objection to the admissibility of the Appeal on the basis of Internal Rule 11(6), the Pre-Trial Chamber will now determine whether decision rejecting the appointment of counsel issued, in first instance, by the ICIJ is open to appellate scrutiny under Internal Rule 21.” (para. 30) “This Appeal raises an issue concerning the Appellant’s right to counsel of choice. […] Since the Appellant has chosen to be represented by the Co-Lawyers, and that the Head of the DSS has appointed them, after having found that they meet the requirements under the ECCC legal assistance scheme, the Impugned Decision, by removing the Co-Lawyers, impairs the Appellant’s right to counsel of choice. The Co-Lawyers’ assertion that this limitation is not legally justified warrants appellate scrutiny as the ‘appointment to act as defence counsel could and should only be revoked when its purpose - that is, to ensure that the accused will be adequately defended and the proceedings properly conducted - is seriously endangered.’ In this respect, the Pre-Trial Chamber notes that requests for certification to appeal decisions rejecting the appointment of counsel have generally been granted at the [ICTY].” (para. 32) “The Pre-Trial Chamber therefore finds the Appeal admissible under Internal Rule 21.” (para. 33)
2.	**004 Other Appeals** PTC 18 19 February 2015 D198/3/1/2 *Decision of the Pre-Trial Chamber on SON Arun’s Appeal against the Decision of the Office of the Co-Investigating Judges related to the Recognition of Lawyer*	“[T]he Pre-Trial Chamber finds that the Appeal was filed outside the legally prescribed period. The Appellant’s failure to respect the legally prescribed deadline for filing would lead, pursuant to Internal Rule 39(1), to the invalidity of the action of filing of the Appeal.” (para. 19) “Having made these findings, the Pre-Trial Chamber takes note however of the more substantive allegation made by the Appellant that the Suspect’s fundamental right to be defended by a lawyer of his own choosing may be at stake. Therefore, having noted this allegation and pursuant to Internal Rule 39(4)(b), despite its lateness, the Pre-Trial Chamber finds it fit to recognise the validity of the action of the filing of the Appeal […].” (para. 20)
3.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An’s Urgent Request for*	“[T]he dispute [concerning Defence budget reduction] falls squarely within the scope of the dispute resolution procedure pursuant to the LAS, to which the Co-Lawyers have agreed to be bound. The Chamber notes that, pursuant to Internal Rule 11(2)(a)(iii) and 11(2)(h), the DSS monitors and assesses the fulfilment of the Co-Lawyers’ contracts with the Accused, and authorises corresponding remunerations in accordance with the LAS, which is an administrative regulation that was adopted in accordance with Internal Rule 4. The Chamber, thus, considers that the guarantees in the present legal framework are sufficient to ensure respect of AO An’s fair trial rights.” (para. 8)

	Continuation of AO An's Defence Team Budget	

b. Standard of Review

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The Appeals Chamber of the ICTY held in *Gotovina* that decisions on assignment of counsel involve the exercise of discretion, which is reviewed under deferential standard. The Pre-Trial Chamber finds no reason in this case to depart from this principle. Thus, the Impugned Decision may only be overturned if the Pre-Trial Chamber finds the decision to be (1) based on an incorrect interpretation of governing law; (2) based on patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of ICIJ's discretion." (para. 35)

2. Inclusion of Foreign Lawyers in the List of Counsels

i. *Procedure for Inclusion of Foreign Lawyers in the List of Counsels*

1.	**Special PTC 10-07-2013-ECCC/PTC** Doc. No. 8 6 February 2014 **[PUBLIC REDACTED]** *Decision on the "Appeal against Dismissal of Richard ROGERS' Application to be Placed on the List of Foreign Co-Lawyers"*	"The legal provision in the Internal Rules that is directly relevant to the decision making process by a Head of DSS on applications for inclusion in the DSS List is Internal Rule 11. Other relevant provisions are found in by-laws, such as the [DSS Regulations] and the [DSS Guidelines]. Having made these observations, the Pre-Trial Chamber emphasises that, pursuant to Internal Rule 4, the provisions of administrative regulations must be consistent with the Internal Rules." (para. 60) "The Pre-Trial Chamber further observes that the relevant *standards for the list of lawyers* are contained in […] the DSS Regulations and the definition of the criteria for inclusion in the list are further explained in more detail in […] the DSS Guidelines." (para. 62) "[T]he Internal Rules and the DSS Regulations and Guidelines provide details on *the steps of the decision making procedure* in relation to applications for inclusion in the DSS List which are summarised below. The main principle for the procedure, found in Internal Rule 11(4)(a) requires that 'the procedure for inclusion in such lists shall be *fair, transparent and expeditious*.' According to Internal Rule 11(2)(d) the *compilation and maintenance of the list* shall be done by the DSS 'after c*onsultations between the [DSS] and the BACK*' and, according to paragraph 2.20 of the DSS Guidelines, 'there is no need to get the agreement of the UNAKRT Head of Personnel before including an individual in the list.' The DSS Regulations, Article 1.5, provide that 'the [DSS] shall determine whether the prerequisites *enumerated in the Internal Rules and these Administrative Regulations* are satisfied by the candidates and *shall approve* candidates for inclusion in the list either fully or *provisionally*.' The DSS Guidelines provide more details on the steps of the *process of review of applications*. The steps of such a review process include a 'first review' and 'second review' before a decision is made. The Pre-Trial Chamber notes in particular that both the first and second reviews are made by the DSS in order to determine whether an applicant has sufficient experience and knowledge to be included in the list and that, at the end of *each* review, where the applicant is successful, *the Admissions Matrix has to be updated* and the applicant is marked as 'DSS Approved.'" (para. 63) "The Pre-Trial Chamber further notes that the application is forwarded to the BAKC once an applicant has successfully passed the DSS 'document and qualification review' stage. In any event, the *authorisation by the BAKC* for foreign lawyers *must* be done '*before they may act on behalf of a client* at the ECCC.' […] The Pre-Trial Chamber notes that it is the BAKC and *not the DSS* who is vested with the *role of the decision maker* at this stage. […] The authorisation by the BAKC for purposes of registration 'will depend on the sufficiency of *qualifications* of the foreign lawyer.' The *[DSS] will immediately inform the applicant* of the decision of the Bar Council.' (para. 64)

		"[I]t is clear from the Impugned Decision that the Appellant meets all the criteria set out in Internal Rule 11(4). […] [T]his conclusion by the Head of DSS in the Impugned Decision mandated him […] to include the Appellant in the list as 'DSS Approved.' […] Following such conclusion, the only legally proscribed next steps in the process are: 1) 'Form 15: Acceptance Letter' should be sent to the Applicant, and 2) 'Form 19: List of Lawyers should be updated and the applicant marked as "DSS Approved".' As the Appellant had also already been registered with the BAKC he had satisfied all the requirements under Internal Rule 11 necessary for *final and permanent* inclusion in the List of Foreign Co-Lawyers." (para. 66)

ii. *Requirements for Inclusion of Foreign Lawyers in the List of Counsels*

a. Qualifications

1.	**17-02-2015-ECCC/PTC Special PTC** Doc. No. 2 17 June 2015 *Decision on Neville SORAB's Appeal against the Defence Support Section's Decision on His Application to be Placed on the List of Foreign Lawyers*	"At the outset, the Pre-Trial Chamber observes that, in themselves, the Internal Rules do not set out qualifications for foreign lawyers seeking to defend indigent suspects, charged persons or accused before the ECCC; rather, it authorises the Defence Support Section to define those qualifications, in accordance with Rule 11(4) of the Internal Rules. […] It is thus clear that the Defence Support Section was not only authorised but also required to adopt administrative regulations setting out the criteria for inclusion in the List of Lawyers. The issue here is whether the Defence Support Section exceeded its authority under Rule 11(4)(c)(iii) of the Internal Rules." (para. 10) "[T]he Pre-Trial Chamber observes that the French, English and Khmer versions of the DSS Administrative Regulations all mirror the criteria set out in the French version of the Internal Rules, in that they require the applicant to 'have at least ten years working experience as a lawyer, prosecutor or judge, on some other *similar* capacity' […]. The criterion is described as follows in the English version of Article 2.2 of the DSS Administrative Regulations: 'In order to be included in the UNAKRT list as foreign co-lawyer, the candidate must fulfil each of the followings requirements: (iii) to have at least ten years working experience in criminal proceedings, as a lawyer, judge or prosecutor or in some other similar capacity'. The Khmer version of the same Rule also sets out the same requirements […]." (para. 11) "On the other hand, the English and Khmer versions of Rule 11(4)(c)(iii) of the Internal Rules do not exactly match the French version. For example, the English version states that the applicant must have 'at least 10 (ten) years working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in *some* other capacity' […]. The Khmer version employs similar wording […]." (para. 13) "Further, the choice to adopt the wording in the French version of the Internal Rules in the Administrative Regulations is consistent with the rules of interpretation set out in Rule 21(1) of the Internal Rules […]. Now, the Pre-Trial Chamber considers that it is in the interests of suspects and charged persons to be defended by a lawyer whose experience closely matches the services he proposes to offer to the client." (para. 16) "In conclusion, Mr SORAB wrongly submits that the Defence Support Section ought to have verified whether he satisfied the requirement of having ten years working experience in criminal proceedings in *any* capacity. Of course, the functions in question do not have to be the same as those of a lawyer, judge or prosecutor, otherwise it would make no sense to refer to other functions. Be that as it may, the functions claimed by the applicant must be akin to those of a lawyer, judge or prosecutor applying to be included on the Defence Support Section's List of Foreign Lawyers." (para. 17) "[T]he pedagogical or developmental nature of an internship clearly differs from the actual work that a professional would perform when dealing with the same legal or procedural issues. Accordingly, it was not unreasonable for the Defence Support Section to omit that part of Mr SORAB's earlier working experience in computing his working experience for the purposes of Regulation 2.2 of the DSS Administrative Regulations." (para. 21) "Considering that, on its face, the Defence Support Section Decision shows that, in assessing Mr SORAB's experience, the Defence Support Section did not simply rely on the date, July 2004, when the applicant obtained his first law degree, but also took into account each of the functions he performed, the Chamber finds that the starting point it chose for computing Mr SORAB's working experience did not adversely affect his application for inclusion on the List of Lawyers." (para. 24)

b. Conflict of Interest and Inclusion in the List of Counsels

1.	**Special PTC 10-07-2013-ECCC/PTC** Doc. No. 8 6 February 2014 **[PUBLIC REDACTED]** *Decision on the "Appeal against Dismissal of Richard ROGERS' Application to be Placed on the List of Foreign Co-Lawyers"*	"[W]hile Article 1.5 of the DSS Regulations provides the DSS with the authority to 'determine whether the prerequisites *enumerated in the Internal Rules and [the] Administrative Regulations* are satisfied by the candidates' and consequently, to 'approve candidates for inclusion in the list either *fully or provisionally*,' it does not give or imply any 'inherent' or discretionary power to the DSS to add or to look for other prerequisites, which are *not enumerated in the Internal Rules and the Administrative Regulations*, and/or to use them as reasons or grounds to deny inclusion in the list of lawyers to those who would otherwise meet the criteria and requirements that are enumerated in law." (para. 72) "There is no power vested in the DSS to deny *inclusion of lawyer on the list of lawyers on the basis of an alleged conflict of interest*. […] Conflict of interest issues are not part of the criteria and/or requirements enumerated under the matrix of laws applicable to the process of making determinations on applications for inclusion of applicant in the list either. Therefore the provisions of Article 1.7 cannot be used, […] to add 'inherent' powers on the part of the DSS in the process of making determinations on applications for inclusion in the list." (para. 73) "Under no circumstances does the law state that issues of conflict of interest should be considered by the DSS in the process of making determinations on applications for inclusion in the list." (para. 74) "[I]n general conflict of interest issues may arise in the course of (or after, but not before) the process of *engagement and assignment of lawyers to suspects, charged persons or accused which process must be seen as separate from the process of making determinations for the inclusion of applicant lawyers in the List*. The rationale behind this separation is because a conflict of interest does not arise in vacuum. A lawyer's duty toward his client(s), be these current or former clients, to act in the *client(s)'s best interest* arises when a *particular* lawyer is actually selected by and/or *assigned* to *identifiable* client(s) whose *interest(s)* must be safeguarded." (para. 75) "At the ECCC, assignment of a lawyer to a client derives from the selection of a lawyer by a Suspect, Charged Person or an Accused and the selection of the lawyer is to be made *freely* and under the supervision of the ECCC. During the selection process, the role of the Head of DSS is that of a *facilitator*." (para. 76) "According to Part C of the DSS Regulations, the role of the DSS is that of a *facilitator* between the Suspect, Charged Person or Accused and the lawyer and the BAKC and the 'ECCC.'" (para. 77) "Article 9 of the DSS Regulations does not require any action on the part of the DSS, it rather puts the obligation to act on the lawyer. […] In any event, it is the ECCC judicial bodies, and not the DSS, who has the power to decide on requests of lawyers for withdrawal from a case in which they are assigned or on removal of lawyers who are no longer eligible to defend clients before ECCC." (para. 78) "[I]ssues of 'conflict of interest' are, primarily, subject to the client-lawyer relationship and to the obligations of a lawyer to adhere to the recognised standards and ethics of the legal profession. The DSS has no role to play, under the law, in this respect, except for its obligation to inform the Suspect, Charged Person or Accused in order to assist them 'to make an *informed choice* as to legal representation' which, *does not mean interference* with such *choice.* […] [I]n general terms, in the event where it is apparent, in the selection process, that the selected lawyer is not aware of the potential existence of any conflict of interest in relation to *identifiable potential* client(s), the extent of what the Head of DSS could do is to, immediately, *inform the concerned lawyer* of his/her *opinion* about the potential existence of such an issue and of the […] relevant provisions […]. The lawyer can, then, in a conscientious and honest manner and with an independent mind, decide whether to take action in conformity with the relevant legal provisions. In any event the *potential* client(s) whose interest and potential representation may be at issue can also freely decide to not select or to revoke selection of a lawyer, under which circumstances no one can force him/her to have that lawyer assigned to represent him/her. The Head of DSS has *no statutory power*, under the applicable laws, to make any determinations related to conflict of interest issues in the process of the *assignment* of lawyers to represent Suspects, Charged Persons or Accused before the ECCC." (para. 79) "The Pre-Trial Chamber […] has found no specification in law that would even imply the existence of ethical conflict […] as a requirement, prerequisite or even a consideration, in respect of the inclusion in the list of lawyers." (para. 83)

3. Assignment of Defence Counsel and Conflict of Interest

i. *Jurisdiction over Allegations of Conflict of Interest*

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The rules applicable before the ECCC envisage that conflicts of interest arising from the representation of defendants before the ECCC may, to some extent, be considered by the BAKC, given that the lawyers appearing before the ECCC are subject to its authority and bound by its Statute. Complaints before the BAKC in respect of conflicts of interest may lead to disciplinary proceedings. The jurisdiction of the BAKC to act upon complaints related to conflicts of interest, however, does not exclude all possibility for ECCC judicial bodies to also address the issues when fairness of the proceedings before them is at stake." (para. 39) "International criminal tribunals have generally recognized that conflicts of interest may impair the effectiveness of representation by counsel and, therefore, jeopardize the overall fairness of the proceedings. Given the Courts' inherent duty to ensure fairness of their proceedings it has been found that 'the issue of qualification appointment and assignment of counsel when raised as matter of procedural fairness and proper administration of justice, is open to judicial scrutiny.' […] The ICIJ's power to review the DSS's decision on assignment of counsel is not only inherent to his duty to ensure fairness of the proceedings, but it also is echoed in the rules governing proceedings before the ECCC. Indeed, a conflict of interest is certainly a legitimate reason for an ECCC judicial body not to admit counsel to represent defendant before the ECCC under Article 21(1) of the ECCC Agreement or to remove him or her under Article 7 of the DSS Administrative Regulations. The concurrent jurisdiction of the BAKC to deal with complaints in respect of conflicts of interest under disciplinary procedure does not undermine the ECCC's jurisdiction to address issues of conflict of interest if '[they] affect, or [are] likely to affect the right of the accused to a fair and expeditious trial or the integrity of the proceedings.' In practical terms, ECCC judicial bodies are in the best position to examine conflicts of interest that may impair fairness of their proceedings given their familiarity with the cases." (para. 40)

ii. *Determination of Conflict of Interest*

1.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The DSS Administrative Regulations and the BAKC Code of Ethics both prevent counsel from representing a client when he or she has conflict of interest. These rules and regulations, however, do not provide explicit guidance on whether the facts in the present case give rise to a conflict of interest." (para. 42) "Indeed, the DSS Administrative Regulations prohibit counsel from representing a defendant before the ECCC when they have a conflict of interest, for instance where their duty to put the client's interests first is compromised. The DSS Administrative Regulations, however, does not identify which situations place counsel in conflict of interest." (para. 43) "Similarly, Article 25 of the BAKC Code of Ethics prevents lawyers from representing clients in a number of situations where it is presumed that they will not be able to act in the best interests of their client as a direct result of representing another client with adverse interests. These rules, however, focus on private matters in which the two clients seeking to be represented by the same counsel may be 'opposing parties' in the proceedings […]." (para. 44) "By contrast, international tribunals have developed specific rules to assess whether concurrent and consecutive representation in criminal proceedings arising from the same armed conflict gives rise to conflicts of interest and affects fairness of the proceedings." (para. 45) "Absent any clear guidance in the BAKC Code of Ethics and the DSS Administrative Regulations to determine if the particular situation at hand triggers a conflict of interest, the Pre-Trial Chamber finds that the ICIJ was correct in seeking guidance in the procedural rules established at the international level, where the rules in this respect have a wider consideration and represent relevant international standard. The ICIJ's approach did not depart from or contradict Cambodian law; it substantiated it by reference to rules that address the specific facts of this case, in accord with Article 23(3) of the Agreement, which provides that lawyers representing defendants before the ECCC are bound to apply 'recognized standards and ethics of the legal profession'." (para. 46)

		"The test for determining if counsel is allowed to represent a new client before an international or internationalized criminal tribunal when representation of former client has ended is expressed in significantly different terms in the procedure established at the international level, including at the ICTY. The test in these circumstances is not whether counsel's judgment is likely to be affected by representation of another client, […] but whether 'the matter is the same or substantially related to another matter in which counsel or his firm had formerly represented another client' […] and the interests of the client are materially adverse to the interests of the former client […]. In case of consecutive representation, it is the fact that the interests of the present and former clients are materially adverse that creates a risk that the counsel's judgment be negatively affected; otherwise, there is no reason to expect that counsel's judgement would be affected by the representation of a former client." (para. 52) "[T]he Pre-Trial Chamber emphasises that the scope of counsel's obligations toward a client is more limited after termination of the retainer such that a conflict of interest is less likely to arise when representation of client has ended. Whereas counsel's duty of confidentiality remains unaffected by the end of the retainer, the survival of the obligation is highly controversial. Clearly, after termination of the mandate of representation, counsel has no longer duty to act in the best interests of a former client. At most, in criminal matters, counsel may be prevented from causing prejudice to a former client by undermining the work performed on his or her behalf. The rationale for this ethical duty is twofold. First, the retainer creates an expectation for the client that counsel will not later undermine the work for which he or she has been hired. Secondly, the fact that counsel acts against a former client may create 'an appearance of impropriety' which may cause the public to lose confidence in the justice system. The obligation of loyalty, as so defined, may persist after the client's death if the specific interests that counsel had previously been retained to represent continue to exist." (para. 53) "The fact that the risk of conflict of interest in case of consecutive representation is more remote commands the application of a higher threshold of evidence to remove counsel in these circumstances, as reflected by the language used in provisions regarding consecutive representation in the codes of conduct of international and internationalised tribunals. Similarly, other international institutions and domestic jurisdictions require a 'significant,' 'real' or 'serious' risk of conflict of interest to remove counsel when consecutive representation is involved. It also justifies giving more weight to the consent or waiver provided by the concerned clients when assessing the existence of a conflict of interest or the possibility that it may be waived. In this respect, it is noted that provisions addressing consecutive representation of defendants at the ICTR, SCSL, and ICC specifically provide for the possibility of the concerned clients to consent to representation in this particular situation. The same principle is reflected in a number of other international and domestic jurisdictions." (para. 54) "[T]he ICIJ committed an error of law in grounding his decision on the principles set forth by the ICTY in cases involving concurrent representation of two defendants and, to a large extent, applying the test set forth in Article 14(D)(i) of the ICTY Code of Conduct, given the fact that IENG Sary has now passed away. Not only does the 'reasonable foresight' test applied by the ICIJ find no support in the jurisprudence of the ICTY for cases involving consecutive representation, but the 'reasonable foresight' test uses much lower standard than the one set forth in the rules established at the international level in these circumstances, which requires 'real,' 'significant' or 'serious' risk of conflict of interest. As reflected by the jurisprudence of the ICTY, the fact that two defendants are prosecuted for the same criminal acts or in respect of the same events, even if there is an alleged relation of superior-subordinate relationship between the two, does not necessarily render their interests materially adverse. Their interest would only be adverse if one of the defendants intends to shift the blame on the other or otherwise seeks to implicate the other in the alleged crimes. This situation may be difficult to anticipate at the early stage of the proceedings, where the lines of defence of each defendant are still undefined or unknown. The Pre-Trial Chamber appreciates that in cases of mass atrocity crimes such as the ones heard before the ECCC, given the complexity and length of the proceedings as well as the need to deliver justice within a reasonable time, the interests of justice may require that conflicts of interest be anticipated and prevented from materializing. At the same time, the Court must remain cognizant of the defendants' fundamental right to be represented by counsel of their own choosing. Balancing these competing interests and in the light of the procedural rules established at the international level, the Pre-Trial Chamber finds that ECCC judicial bodies may only disallow representation of defendant by counsel who has, in the past, represented another defendant before the ECCC in a substantially related case if there is a real risk that the interests of the new client become materially adverse to that of the former client. In conducting this assessment, the Court should not speculate about the defence strategies that may or may not be adopted; it must examine whether there is concrete evidence that the two defendants intend to present defences that are adverse or otherwise implicate each other in the alleged crimes. In this regard, the Court shall give due

		consideration to any statement or consent given by the concerned client(s), which may be indicative of the way they perceive their own interests or of the way they anticipate to build their defence. Finally, the Pre-Trial Chamber emphasises that the decision to remove counsel is not mechanical and requires a holistic examination of the circumstances of the case, and a balancing of factors to ultimately determine whether the interest of justice warrants limiting the defendant's right to counsel of choice." (para. 57) "It is noted that the parties do not dispute the ICIJ's conclusion that there is a factual nexus between the crimes alleged against the Appellant in the Second Introductory Submission and the crimes for which IENG Sary was formerly prosecuted in Case 002. Hence, it is sufficient for the Pre-Trial Chamber to examine whether the interests of the Appellant are 'materially adverse' to those of IENG Sary, or if there is real risk, based on concrete evidence, that they so become, before examining whether the circumstances of the case warrant disallowing the Co-Lawyers to represent the Appellant." (para. 58) "The remote interests of IENG Sary's next of kin in the proceedings before the ECCC could potentially place the Co-Lawyers in situation of conflict of interest if there is concrete indication that the Appellant intends to raise a line of defence aimed at shifting the blame for the crimes alleged in the Second Introductory Submission on IENG Sary such that the Co-Lawyers may be exposed to undermining the defence they have put forward on IENG Sary's behalf." (para. 65) "There is no real risk that the Co-Lawyers' representation of the Appellant would place them in a position that would undermine their retainer with IENG Sary, nor place them in a precarious situation to choose between the interest of their past and current clients in such a way that would render them ineffective counsel for the Appellant. The possibility of conflict of interest in this case is too hypothetical and speculative to jeopardize the interests of justice or outweigh the Appellant right to be represented by counsel of his own choosing." (para. 69)

IV. INVESTIGATION BEFORE THE ECCC

A. Opening of the Investigation

1. Exercise of Public Action and Preliminary Investigations

For jurisprudence concerning ***Disagreements between the Co-Prosecutors***, see VII. A. Settlement of Disagreements

i. *Role of the Co-Prosecutors*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"Pursuant to the ECCC Law, the Co-Prosecutors 'are responsible for the conduct of the prosecutions' while the Co-Investigating Judges are 'responsible for the conduct of investigations'. By filing Introductory and Supplementary Submissions, the Co-Prosecutors define the scope of the judicial investigation, as appears from Internal Rules 53 and 55(2) and (3)." (Opinion of Judges DOWNING and LAHUIS, para. 5)
2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"Read together, Internal Rule 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such order or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submission. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative action for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 17) "[B]efore the ECCC the responsibility for deciding to expand an investigation beyond the scope of initial and existing supplementary submissions solely rests with the Co-Prosecutors […]." (para. 18) "Internal Rule 55(3) restricts the scope of the investigation to that defined by the initial and supplementary submissions. Whereas in the instant case, if new facts which the CIJs consider as exceeding this scope come to their attention during an investigation, they shall, unless the facts in question are limited to aggravating circumstances relating to an existing Introductory or Supplementary Submission, refer them to the Co-Prosecutors, who have sole responsibility for filing Supplementary Submissions. They shall not investigate such facts unless they receive a Supplementary Submission in relation to these facts." (para. 30) "While in principle, the Co-Prosecutors can file a supplementary submission until the Closing Order and accordingly expand the scope of the investigations as defined by the Introductory Submission and if any, earlier Supplementary Submission(s), the scope of the investigation cannot be said to be 'undefined' until the issuance of the Closing Order. The scope of the investigation is defined at any moment until the issuance of the Closing Order by the above-mentioned filings by the Co-Prosecutors." (para. 48) "The procedural system in place at the ECCC, resulting both from the ECCC Law and the Internal Rules, provides for Co-Prosecutors solely responsible for exercising the public action for crimes within the jurisdiction of the ECCC, at their own discretion or on the basis of a complaint, conducting preliminary investigations and, opening a judicial investigation by sending an Introductory Submission to the CIJs, if they have reasons to believe that crimes within the jurisdiction of the ECCC have been committed. As already indicated in the present decision, the CIJs responsible for conducting the judicial investigation are not only restricted to investigating crimes for which the ECCC has jurisdiction but are

		also limited to investigating the facts as set out in Introductory and/ or Supplementary Submissions." (para. 51) "The Pre-Trial Chamber is cognizant of the fact that the current scope of the investigation, as defined by the Introductory and Supplementary Submissions, may not reflect the full dimension of crimes committed by the Khmer Rouge […] during the relevant period. As indicated earlier, under the law applicable before the ECCC, the Co-Prosecutors have sole responsibility for determining the scope of the judicial investigation, and it is not for the Pre-Trial Chamber to comment […]." (para. 60)
3.	**002 Civil Parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"[…] ECCC Law and the Internal Rules both provide that the Co-Prosecutors are solely responsible for exercising the public action for crimes within the jurisdiction of the ECCC, either at their own discretion or in response to a complaint. They are endowed with the responsibility to conduct preliminary investigations and open a judicial investigation by sending an Introductory Submission to the CIJs if they have reasons to believe that crimes within the jurisdiction of the ECCC have been committed. […] The Co-Prosecutors are clearly the party responsible for determining the scope of the investigation." (para. 38)
4.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"[T]he Pre-Trial Chamber finds that a close reading of Rules 56 and 66 supports, the finding […] that […] the obligations of Co-Prosecutors under Internal Rule 54 explicitly apply *only* during the phase of the preliminary investigation and do not extend to the stage of the judicial investigation which is the stage the case was when the Public Statement was made." (para. 23) "Further, Internal Rule 56 provides that, during the judicial investigation stage, it is only the Co-Investigating Judges who have the responsibility and legal authority to ensure that essential information is made available to the public […]." (para. 25) "The Pre-Trial Chamber finds that the International Co-Prosecutor's right to make public comment or to express public opinion in relation to the judicial investigations carried out by the Co-Investigating [J]udges is not provided in law, it is rather limited by the provisions of the Internal Rules of the ECCC, with which limitations he has an obligation to comply." (para. 31) "[T]he International Co-Prosecutor […] is hereby reminded that the Internal Rules do not require or oblige him to provide a [general] summary […] to the public." (para. 32) "Further, where the International Co-Prosecutor is of the opinion that information regarding judicial investigations should be published he should have requested the Co-Investigating Judges to do so and if refused such order could be appealed to the Pre-Trial Chamber." (para. 33)
5.	**003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"The matter of how the two Co-Prosecutors work together is, in our view, an internal issue of the independent Office of the Co-Prosecutors. […] Where no issue has been raised to the contrary, the outside world can expect the Co-Prosecutors to work together and are therefore assumed to be aware of the actions of the other. […] It is not for the Co-Investigating Judges, or anybody else, to take up a supervisory role of the Office of the Co-Prosecutors." (Opinion of Judges LAHUIS and DOWNING, para. 8)

6.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"At the ECCC, similar to Cambodian Law, the responsibility to prosecute–or initiate criminal action–is vested with the Co-Prosecutors. Legally speaking, they do so by filing an Introductory Submission 'either against one or more named persons or against unknown persons', which automatically triggers the opening of a judicial investigation into crimes for which they allege that the named suspects, if any, may be responsible." (Opinion of Judges CHUNG and DOWNING, para. 18)
7.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"At the outset, the Pre-Trial Chamber notes that 'provided the alleged *crimes* fall within the jurisdiction of the ECCC, the Co-Investigating Judges and Co-Prosecutors have a *wide discretion* to perform their *statutory duties*.' The Co-Prosecutors statutory duty under the ECCC regime goes to the extent of issuing an Introductory Submission if they 'have reason to believe that *crimes* within the jurisdiction of the ECCC have been committed.' Where they make such finding during their *preliminary investigations*, the Co-Prosecutors shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges. The Pre-Trial Chamber observes that it is apparent from the legal framework at the ECCC that the Co-Prosecutors' primary focus of their preliminary investigations is to determine whether evidence indicates that c*rimes* under ECCC's jurisdiction have been committed, the *identification of suspects* being a secondary or optional focus." (para. 38)
8.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"[T]he Office of the Co-Prosecutors is responsible for mounting the prosecution, it goes without saying that it has standing to intervene in any matter relating to the conduct of the investigation, including matters concerning the arrest of charged persons." (Opinion of Judges BEAUVALLET and BWANA, para. 5)
9.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Co-Investigating Judges are thus barred from investigating facts which fall outwith the Introductory Submission. Internal Rule 55(3) provides: 'If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission.' Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission. Any fact unmentioned in the Introductory Submission, save where the investigation is subsequently extended by a Supplementary Submission, therefore falls outwith the jurisdiction of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 9) "Such a separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system." (Opinion of Judges BEAUVALLET and BWANA, para. 10)
10.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016	"[T]he separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system. […] The tasks assigned to each of them are clearly defined. The fact that the International Co-Prosecutor clarified the scope of the Introductory Submission assists the Co-Investigating Judges in respecting [Rule 55(2)], when investigating the facts

	Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission	falling within the scope of the Introductory and Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 21)
11.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Co-Prosecutors propound but do not determine legal characterisation." (Opinion of Judges BEAUVALLET and BAIK, para. 226)
12.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"The Undersigned Judges also find that the separation of the tasks assigned to the CPs and to the CIJs is a fundamental feature, inherent to the inquisitorial system. As stated in Internal Rule 55(2): '[t]he [CIJs] shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission [by the CPs].' The tasks assigned to each of them are clearly defined. The fact that the ICP clarified the scope of the investigation assists the CIJs in respecting this Rule when investigating the facts falling within that scope." (Opinion of Judges BEAUVALLET and BAIK, para. 83)
13.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he Office of the Co-Prosecutors of the ECCC has the ability and 'bears the responsibility' to initiate prosecution in the national courts […]." (Opinion of Judges BAIK and BEAUVALLET, para. 529)

ii. *Confidentiality of Preliminary Investigations*

For jurisprudence concerning the ***Confidentiality of Judicial Investigation***, see IV.B.6. Confidentiality of Judicial Investigation

For jurisprudence concerning ***Victims' Right to Information***, see VI.E.2.iii. Information, Access to Case File and Notification of Documents

For jurisprudence concerning ***Transparency in the Conduct of Proceedings***, see VII.D.2. Transparency, Expeditiousness and Integrity of the Proceedings

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"Internal Rule 78, concerning the Publication of Pre-Trial Chamber Decisions, provides that '[a]ll decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation'." (para. 50) "Pursuant to Internal Rule 78, the Pre-Trial Chamber may determine that a decision shall not be published in full, if doing so would compromise the integrity of a preliminary or judicial investigation." (para. 52)
2.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"[T]he Pre-Trial Chamber finds that a close reading of Rules 56 and 66 supports, the finding in […] the Retraction Order that '[…] the International Co-Prosecutor had no legal basis for issuing item A of the Public Statement,' as the obligations of Co-Prosecutors under Internal Rule 54 explicitly apply ***only*** during the phase of the *preliminary* investigation and do not extend to the stage of the *judicial* investigation which is the stage the case was when the Public Statement was made." (para. 23) "[P]ursuant to Internal Rule 54, the Co-Prosecutor's duty to inform the public of the ongoing proceedings is limited to only i) providing an objective summary of the information contained in the Introductory, Supplementary and Final Submissions; and ii) correcting any false or misleading information, *provided that the case is still under preliminary investigation*." (para. 24) "Further, Internal Rule 56 provides that, during the judicial investigation stage, it is only the Co-Investigating Judges who have the responsibility and legal authority to ensure that essential information is made available to the public […]." (para. 25) "The Pre-Trial Chamber finds that the International Co-Prosecutor's right to make public comment or to express public opinion in relation to the judicial investigations carried out by the Co-Investigating judges is not provided in law, it is rather limited by the provisions of the Internal Rules of the ECCC, with which limitations he has an obligation to comply. The justification for his actions which he addresses in the appeal do not excuse the action of the International Prosecutor and ignore the discretion of the Co-Investigating Judges regarding their publication of information during the stage of the judicial investigations. While agreeing that, in principle, and as also enshrined in the applicable international conventions, public access to judicial proceedings constitutes a fundamental fair trial right, the Pre-Trial Chamber notes that the provisions of the specific Internal Rules clearly provide on who, under which circumstances, and at which stage of the proceedings has authority to make public statements in relation to an ongoing proceeding." (para. 31) "[T]he International Co-Prosecutor […] is hereby reminded that the Internal Rules do not require or oblige him to provide a [general] summary […] to the public." (para. 32)
3.	**003 MEAS Muth** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of*	"As to the Filings to the Pre-Trial Chamber, the Chamber previously indicated that when deciding on their classification, it considers 'the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court'." (para. 9)

	Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber	
4.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public certain Defence Submissions to the Pre-Trial Chamber*	"Article 3.12 of the Practice Direction on Filing of Documents before the ECCC and Article 5(h) of the Practice Direction on Classification provide that documents filed by the parties to the Pre-TrialChamber are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise. [In D56/19/20], the Pre-Trial Chamber distilled the conditions for publication of documents filed before it during the judicial investigation as follows: 'The Chamber previously indicated that when deciding on the classification or reclassification of documents filed by the parties, it considers "the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court" […].'" (para. 7)
5.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"Internal Rule 78 provides that all decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 2) "As such, in principle, the publicity of Chamber's decisions is required by Internal Rule 78 and Article 4(e) of the Practice Direction on Classification and Management of Case File Information. Therefore, the content of decisions or opinions which does not jeopardize the integrity of investigations should not be redacted." (Opinion of Judges BEAUVALLET and BWANA, para. 3) "We consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above mentioned principle." (Opinion of Judges BEAUVALLET and BWANA, para. 4)
6.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"Internal Rule 78 provides that all decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 2) "As such, in principle, the publicity of Chamber's decisions is required by Internal Rule 78 and Article 4(e) of the Practice Direction on Classification and Management of Case File Information. Therefore, the content of decisions or opinions which does not jeopardize the integrity of investigations should not be redacted." (Opinion of Judges BEAUVALLET and BWANA, para. 3) "We consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above mentioned principle." (Opinion of Judges BEAUVALLET and BWANA, para. 4)
7.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"We, the Undersigned Judges, have already explained our understanding of the of publicity principle enshrined in Internal Rule 78. This Rule provides that all decisions and default decisions of the Pre-Trial Chamber, including any opinions shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BAIK para. 1) "We therefore consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above mentioned principle. We reserve the right to release, when appropriate, public (redacted) versions of our opinions accordingly even if not systematically announced." (Opinion of Judges BEAUVALLET and BAIK para. 2)

iii. *Impact of Disagreements between the Co-Prosecutors*

For jurisprudence concerning the ***Disagreements between the Co-Prosecutors in General***, see VII.A. Settlement of Disagreements

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"Article 6(4) of the Agreement provides that the Co-Prosecutors shall cooperate with a view to arriving at a common approach to the prosecutions. As discussed in paragraph 16 of the Considerations of the Pre-Trial Chamber, one of the Co-Prosecutors can act without the consent of the other if neither of them brings the disagreement before the Pre-Trial Chamber within thirty days. When a disagreement is brought before the Pre-Trial Chamber, a Co-Prosecutor can still proceed with the contested action pending a decision of the Pre-Trial Chamber unless one of the specific matters of concern identified in Internal Rule 71(3) is involved. A preliminary investigation pursuant to Internal Rule 50(1) is not one of these matters." (Opinion of Judges DOWNING and LAHUIS, para. 3) "It is observed that Internal Rule 53(1) provides that '[i]f the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation'. By contrast, Internal Rule 50(1) provides that '[t]he Co-Prosecutors may conduct preliminary investigations to determine whether evidence indicates that crimes within the jurisdiction of the ECCC have been committed'. Internal Rule 53(1) uses the obligatory 'shall', as opposed to the discretionary 'may', as is found in Internal Rule 50(1). In light of these provisions, we are of the opinion that there is no discretion to be exercised by the Co-Prosecutors under Internal Rule 53(1), contrary to what is asserted by the National Co-Prosecutor. Once the conclusion is drawn that there is 'reason to believe that crimes within the jurisdiction of the ECCC have been committed', then the Co-Prosecutors are obliged to open a judicial investigation by sending an Introductory Submission." (Opinion of Judges DOWNING and LAHUIS, para. 23)

2. Opening of Judicial Investigation

i. *Introductory Submission*

a. Role of the Co-Prosecutors

1.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"ECCC Law and the Internal Rules both provide that the Co-Prosecutors are solely responsible for exercising the public action for crimes within the jurisdiction of the ECCC, either at their own discretion or in response to complaint. They are endowed with the responsibility to conduct preliminary investigations and open a judicial investigation by sending an Introductory Submission to the CIJs if they have reasons to believe that crimes within the jurisdiction of the ECCC have been committed. […] The Co-Prosecutors are clearly the party responsible for determining the scope of the investigation." (para. 38)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access*	"At the ECCC, similar to Cambodian Law, the responsibility to prosecute - or initiate criminal action - is vested with the Co-Prosecutors. Legally speaking, they do so by filing an Introductory Submission 'either against one or more named persons or against unknown persons', which automatically triggers the opening of a judicial investigation into crimes for which they allege that the named suspects, if any, may be responsible." (Opinion of Judges CHUNG and DOWNING, para. 18)

	the Case File and Take Part in the Judicial Investigation	

b. Conditions of Issuance

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"It is observed that Internal Rule 53(1) provides that '[i]f the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation'. By contrast, Internal Rule 50(1) provides that '[t]he Co-Prosecutors may conduct preliminary investigations to determine whether evidence indicates that crimes within the jurisdiction of the ECCC have been committed'. Internal Rule 53(1) uses the obligatory 'shall', as opposed to the discretionary 'may', as is found in Internal Rule 50(1). In light of these provisions, we are of the opinion that there is no discretion to be exercised by the Co-Prosecutors under Internal Rule 53(1), contrary to what is asserted by the National Co-Prosecutor. Once the conclusion is drawn that there is 'reason to believe that crimes within the jurisdiction of the ECCC have been committed', then the Co-Prosecutors are obliged to open a judicial investigation by sending an Introductory Submission." (Opinion of Judges DOWNING and LAHUIS, para. 23) "Pursuant to Internal Rule 53(1), the Co-Prosecutors shall open a judicial investigation by filing an Introductory Submission, as defined in paragraph 6 above, if 'they have reason to believe that crimes within the jurisdiction of the ECCC have been committed'. There is no other procedural requirement specified in the Internal Rules or in Cambodian Law for filing an Introductory Submission." (Opinion of Judges DOWNING and LAHUIS, para. 25)
2.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"Pursuant to Internal Rule 53(2), an Introductory Submission 'shall be accompanied by the case file and any other material of evidentiary value in the possession of the Co-Prosecutors, including any evidence that in the actual knowledge of the Co-Prosecutors may be exculpatory'. The expression 'case file' is defined in the Glossary of the Internal Rules as referring to 'all the written (procès-verbaux) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachment thereto at all stages of the proceedings, including the record of proceedings before the Chambers'. When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 32)
3.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"Pursuant to Internal Rule 53(2), an Introductory Submission 'shall be accompanied by the case file and any other material of evidentiary value in the possession of the Co-Prosecutors, including any evidence that in the actual knowledge of the Co-Prosecutors may be exculpatory'. The expression 'case file' is defined in the Glossary of the Internal Rules as referring to 'all the written (procès-verbaux) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachment thereto at all stages of the proceedings, including the record of proceedings before the Chambers'. When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 33)
4.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's*	"Internal Rule 53(1) lays down the conditions for issuance of an Introductory Submission." (para. 33) "The Pre-Trial Chamber notes that the provisions governing Introductory Submissions are found at Internal Rule 53. In brief, Internal Rule 53 sets forth two species of rule for an Introductory Submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of said Submission. Thus, the Introductory Submission shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes; d) the name of any person to be investigated, if applicable, and;

	Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action	e) the date and signature of both Co-Prosecutors." (para. 36) "The first part of Internal Rule 53(1) lays down further condition for validity which may be inferred from the following excerpt: 'If the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons.' The condition is instead substantive." (para. 37) "The Pre-Trial Chamber notes that Internal Rule 53(1) makes explicit that non-compliance with the Rule renders the Submission null and void; the provision draws no distinction between formal or substantive conditions and is therefore applicable to both." (para. 38) "[The Pre-Trial Chamber] must adjudge whether, upon filing the Introductory Submission, the International Co-Prosecutor satisfied the substantive conditions laid down by Internal Rule 53(1), *viz.* whether he rightly had 'reason to believe' that the crime of religious persecution may have been committed." (para. 40) "Upon consideration of the factual allegations [in] the Introductory Submission […] the Pre-Trial Chamber takes the view that, at the time of filing his Introductory Submission, the International Co-Prosecutor had reason to believe that the crime of persecution […] may have been committed." (para. 46) "The Pre-Trial Chamber notes that the International Co-Investigating Judge recalled that the legal characterisation of the facts will be determined upon conclusion of the judicial investigation. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' Decision, including in respect of the legal characterisations, should they be adopted." (para. 47)
5.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Co-Lawyers dispute that the Co-Investigating Judges were duly seised with regard to forced marriage on the ground that the international Co-Prosecutor has not stated the nexus first between forced marriage and the attack and second between forced marriage and the armed conflict. Therefrom the Undersigned Judges conclude that their analysis must concern the criteria for initiation of a judicial investigation of forced marriage. They must adjudge whether, upon filing the Introductory and Supplementary Submissions, the conditions laid down by Internal Rule 53(1) were satisfied, namely whether the International Co-Prosecutor rightly had reason to believe that the crime of forced marriage as the crime against humanity of other inhumane acts may have been committed." (Opinion of Judges BEAUVALLET and BAIK, para. 218) "The Undersigned Judges recall that the provisions governing introductory and supplementary Submissions are found at Internal Rule 53. Internal Rule 53 sets forth two species of rule for a submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of an introductory submission. Thus, it shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes; d) the name of any person to be investigated, if applicable, and; e) the date and signature of both Co-Prosecutors." (Opinion of Judges BEAUVALLET and BAIK, para. 219) "By contrast, the first part of Internal Rule 53(1) lays down a further condition for validity which may be inferred from the following excerpt; 'If the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons'. This condition is instead substantive. The Undersigned Judges recall that Internal Rule 53(1) makes explicit that non-compliance with the Rule renders the Submission null and void; the provision draws no distinction between forma or substantive conditions." (Opinion of Judges BEAUVALLET and BAIK, para. 220)

c. Precision of the Introductory Submission

For jurisprudence concerning the ***Right to be Informed of Charges***, see II.B.1.xiii. Right to be Informed of Charges

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"It is the facts set out in the Introductory and Supplementary Submissions that define the scope of a judicial investigation […]. An Introductory or Supplementary Submission is to refer to specific facts concerning alleged criminal acts, the legal categorisation of which has led the Co-Prosecutors to have reason to believe that crimes within the jurisdiction of the ECCC have been committed. It shall be precise enough and set out specific criminal acts, defined by their time and location." (Opinion of Judges DOWNING and LAHUIS, para. 7) "An Introductory Submission so broad that it would include all the legal offences within the jurisdiction of the ECCC committed throughout Cambodia between 17 April 1975 and 6 January 1979, without any reference to precise factual situations, would not be specific enough to meet the requirements of Internal Rule 53(1)." (Opinion of Judges DOWNING and LAHUIS, para. 8) "Pursuant to Internal Rule 53(1), the Co-Prosecutors shall open a judicial investigation by filing an Introductory Submission, as defined in paragraph 6 above, if 'they have reason to believe that crimes within the jurisdiction of the ECCC have been committed'. There is no other procedural requirement specified in the Internal Rules or in Cambodian Law for filing an Introductory Submission." (Opinion of Judges DOWNING and LAHUIS, para. 25)
2.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"The Pre-Trial Chamber recalls that the right to receive notice of charges is a fundamental right of a charged person. The right to notice arises upon arrest and is meant in part to ensure the Charged Person's ability to fully participate in the investigation. The Pre-Trial Chamber considers that a comparison between the respective terms of Internal Rules 53(1)(a)(b) and 67(2) show that, while only summary of the facts and type of offence alleged are required at the stage of the Introductory Submission, a more complete 'description of the material facts' and their legal characterization is required in the Closing Order. Internal Rules 55(2) and (3) stipulate that 'the Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission' and shall not investigate new facts coming to their knowledge during the investigation unless such facts are limited to aggravating circumstances relating to an existing Submission, or until they receive a Supplementary Submission from the OCP. When read in light of a charged person's fundamental rights recalled above the Pre-Trial Chamber concludes that particulars of facts summarized in the Introductory Submission can validly and in fact must be pleaded in the Closing Order so as to provide the Defence sufficient notice of the charges based on which the Trial shall proceed." (para. 92) "[T]he ICTY has specified what material facts must be pleaded in an indictment where the accused is alleged to have committed the crimes in question by participating in a JCE. The jurisprudence [...] is relevant in the context of the ECCC [...]. However, the Pre-Trial Chamber must still determine whether all such requirements are applicable at the Introductory Submission stage or only at the Closing Order stage. Firstly, ICTY cases consider that the existence of the JCE is a material fact which must be pleaded. In addition, the indictment must specify a number of matters which were identified [...] in *Krnojelac* [...]: (a) the nature or purpose of the joint criminal enterprise [...], (b) the time at which or the period over which the enterprise is said to have existed, (c) the identity of those engaged in the enterprise [...], and (d) the nature of the participation by the accused in that enterprise. [...]" (para. 93) "[F]or the Charged Person to exercise her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of full investigation. Thus, while it is [...] preferable for an Introductory Submission alleging the accused's responsibility as a participant in a JCE to also refer to the particular form(s) (basic or systemic) of JCE envisaged, the OCP are not precluded from doing so in the Final Submission. At the latest, the Co-Investigating Judges may refer to the particular form(s) of participation in their Closing Order." (para. 95) "As to the alleged nature of the participation of the Charged Persons, the Pre-Trial Chamber is of the view that the OCP could have provided more particulars with regard to the nature of each Appellant's participation in the alleged JCE. This however does not amount to lack of notice at this stage of the

		proceedings so long as the Closing Order, were it to indict any of the Appellants and assert their participation in a JCE as a mode of commission, contains the specific aspects of the conduct of the accused from which the OCIJ considers that their respective participation in the JCE and/or required *mens rea* is to be inferred." (para. 97)
3.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"Such Introductory Submission may, *if applicable*, contain names *of identified* suspects. Again, the contents of the Introductory Submission is sufficient for anyone to comprehend how the Co-Prosecutors exercised their discretion." (para. 41)
4.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Pre-Trial Chamber notes that the provisions governing Introductory Submissions are found at Internal Rule 53. In brief, Internal Rule 53 sets forth two species of rule for an Introductory Submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of said Submission. Thus, the Introductory Submission shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes; d) the name of any person to be investigated, if applicable, and; e) the date and signature of both Co-Prosecutors." (para. 36)
5.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Imprecision as to the facts in the Introductory Submission does not preclude judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 152) "The Undersigned Judges recall that the provisions governing introductory and supplementary Submissions are found at Internal Rule 53. Internal Rule 53 sets forth two species of rule for a submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of an introductory submission. Thus, it shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes; d) the name of any person to be investigated, if applicable, and; e) the date and signature of both Co-Prosecutors." (Opinion of Judges BEAUVALLET and BAIK, para. 219) "That the co-investigating judges are barred from opening a judicial investigation of their own motion entails that the Introductory Submission set fort the facts *sub judice*. That being said, the Undersigned Judges are of the view that the Co-Lawyers have misconstrued the level of detail required of introductory and supplementary submissions. The *summary* of the facts and the type of offence(s) alleged do not signify at this juncture in the proceedings that all of the elements of crimes and the nexuses between them be established by the Co-Prosecutors. In fact, the precision required is not as high as that required of a closing order under Internal Rule 67(2). Were it not so the judicial investigation would be redundant; the precise purpose of said investigation is to ascertain or rule out the reasons which warranted its initiation. The Undersigned Judges consider that the nexuses between the underlying acts and the constituent elements of the chapeau of the crime against humanity need not be substantiated at the stage of initiation of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 221)

6.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action Related to Wat Ta Meak*	"[I]mprecision as to the facts in the Introductory Submission does not preclude judicial investigation and that it rests with the Co-Investigating Judges to elicit circumstances of their commission […]." (Opinion of Judges BEAUVALLET and BAIK, para. 60) "[T]he Pre-Trial Chamber has previously found that the lack of details of facts in an Introductory Submission, do not 'amount to a lack of notice at this stage of the proceedings so long as the Closing Order [...] contains the specific aspects of the conduct of the accused.' '[F]or the Charged Person to exercise [his/]her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of a full investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 95)
7.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"Internal Rules 53(1)(a)-(b) requires that CP Submissions set out only a summary of the facts and the type of offence(s) alleged. There is no requirement, in Rule 53, that CP Submissions have to set out criminal allegations 'with limited geographical boundaries,' as the Defence puts it. As regards the rights of Charged Persons for specificity of CP Submissions, the Pre-Trial Chamber has previously found that the lack of more details of facts in an Introductory Submission, do 'not amount to a lack of notice at this stage of the proceedings'. Furthermore, 'for the Charged Person to exercise [his/]her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of a full investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 39)

d. Language

For jurisprudence concerning ***Translation Rights***, see II.B.1.xiv. Right to Translation of Documents

1.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"[T]here is no absolute right to receive French translations of all documents. […] French translations must be provided for the following: the Closing Order, the evidentiary material in support thereof, the Introductory Submission and Final Submission, and all judicial decisions and orders." (para. 11)

e. Legal Characterisation

1.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"The Pre-Trial Chamber has further stated that, while the legal characterizations proposed by the Co-Prosecutors do 'not extend the scope of the investigation', they can serve to understand whether the Prosecutor had 'reason to believe' that a certain alleged crime may have been committed – even though 'the Introductory Submission contains no specific factual allegations' – if allegations made in the 'Crimes' part and in the part detailing the possible forms of liability give rise to such legal characterization." (Opinion of Judges BEAUVALLET and BAIK, para. 47)

f. Difference between Introductory and Supplementary Submissions

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"In light of Internal Rules 53(1), 55(2), 55(3) and the definition provided in the Glossary, we find that the choice between filing an Introductory Submission or a Supplementary Submission is, at this stage, left to the discretion of the Co-Prosecutors. In the current case, where the International Co-Prosecutor wants to open a judicial investigation into both new facts and facts overlapping with an ongoing investigation in order to cover the criminal responsibility of new suspects, there is no legal provision which should prevent him from filing a new Introductory Submission, even if some facts are, to some extent, already being investigated in another case." (Opinion of Judges DOWNING and LAHUIS, para. 27) "We would foresee problems in including the new facts that the International Co-Prosecutor wants to be investigated in the Case File 002 investigation. Given that the Co-Investigating Judges have conducted the investigation in Case File 002 for almost two years, during which time four (4) Charged Persons have been kept in provisional detention, adding new facts of the scope contained within the New Submissions would risk delaying the proceedings and, as a consequence, might infringe upon the Charged Persons' right to be tried within a reasonable time. It is further noted that including new suspects in an investigation opened almost two years ago might violate the new suspects' rights, as they would not have been given the opportunity to participate actively in the prior investigative proceedings." (Opinion of Judges DOWNING and LAHUIS, para. 28) "In light of the potential problems which may have been raised by filing additional Supplementary Submissions, issues which should have also been taken into consideration by the International Co-Prosecutor, we find the reasoning supporting the argument that the New Submissions are not necessary, as set out by the National Co-Prosecutor, not sufficient to block forwarding the New Submissions to the Co-Investigating Judges." (Opinion of Judges DOWNING and LAHUIS, para. 29)
2.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The sole difference between a supplementary submission and an introductory submission is that the former post-dates the latter, which it supplements. Hence, that the Co-Investigating Judges are seised of facts concerning an armed conflict or an attack by virtue of an introductory submission and facts concerning the underlying acts by virtue of a supplementary submission is no impediment to the characterisation of a crime against humanity, if any." (Opinion of Judges BEAUVALLET and BAIK, para. 222)

ii. *Supplementary Submissions*

a. Conditions of Issuance

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"There is no clear indication in the Internal Rules as to the conditions for filing a Supplementary Submission. While Internal Rule 55(3) suggests that the Co-Prosecutors can add new facts to an ongoing investigation by filing a Supplementary Submission, the Internal Rules do not prevent them from choosing to rather file a new Introductory Submission. In this regard, we note that the last sentence of IR 55(3), which mentions that '[w]here such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission', is to be seen as a limitation on the power of the Co-Investigating Judges to independently extend the scope of the investigation to new facts rather than an obligation for the Co-Prosecutors to proceed by a Supplementary Submission." (Opinion of Judges DOWNING and LAHUIS, para. 26)

		"In light of Internal Rules 53(1), 55(2), 55(3) and the definition provided in the Glossary, we find that the choice between filing an Introductory Submission or a Supplementary Submission is, at this stage, left to the discretion of the Co-Prosecutors. In the current case, where the International Co-Prosecutor wants to open a judicial investigation into both new facts and facts overlapping with an ongoing investigation in order to cover the criminal responsibility of new suspects, there is no legal provision which should prevent him from filing a new Introductory Submission, even if some facts are, to some extent, already being investigated in another case." (Opinion of Judges DOWNING and LAHUIS, para. 27) "We would foresee problems in including the new facts that the International Co-Prosecutor wants to be investigated in the Case File 002 investigation. Given that the Co-Investigating Judges have conducted the investigation in Case File 002 for almost two years, during which time four (4) Charged Persons have been kept in provisional detention, adding new facts of the scope contained within the New Submissions would risk delaying the proceedings and, as a consequence, might infringe upon the Charged Persons' right to be tried within a reasonable time. It is further noted that including new suspects in an investigation opened almost two years ago might violate the new suspects' rights, as they would not have been given the opportunity to participate actively in the prior investigative proceedings." (Opinion of Judges DOWNING and LAHUIS, para. 28) "In light of the potential problems which may have been raised by filing additional Supplementary Submissions, issues which should have also been taken into consideration by the International Co-Prosecutor, we find the reasoning supporting the argument that the New Submissions are not necessary, as set out by the National Co-Prosecutor, not sufficient to block forwarding the New Submissions to the Co-Investigating Judges." (Opinion of Judges DOWNING and LAHUIS, para. 29)
2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"[…] [T]he sole reason the Co-Prosecutors' First Request did not include the words 'Supplementary Submission' in the title related to a [REDACTED] view that the CIJs were already seized of the facts regarding the Khmer Krom set forth in that filing. In light of the above-mentioned [REDACTED] […], there were more avenues open to the Co-Prosecutors that the one they chose: (i) filing a request for investigative action of the facts relating to the Khmer Krom based on Internal Rule 55(10) and making explicit that in the event the CIJs considered that the facts in question fell outside the scope of the Initial Submission, the filing was to be considered a formal 'Supplementary Submission'; (ii) filing a 'non ambiguous' Supplementary Submission to be on the safe side; (iii) [REDACTED] or (iv) filing a request for investigating action and, in the event, as in the instant case, of its rejection by the CIJs, filing a Supplementary Submission." (para. 13) "[…] [N]otification to the parties by the CIJs that they consider that the investigation has been concluded opens a delay for parties to request further investigative action. The Internal Rules do not expressly foresee the possibility for the Co-Prosecutors to file a Supplementary Submission at that stage, but they do not exclude it either." (para. 14) "Read together, Internal Rule 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such order or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submission. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative action for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 17) "[B]efore the ECCC the responsibility for deciding to expand an investigation beyond the scope of initial and existing supplementary submissions solely rests with the Co-Prosecutors […]." (para. 18) "Internal Rule 55(3) restricts the scope of the investigation to that defined by the initial and supplementary submissions. Whereas in the instant case, if new facts which the CIJs consider as exceeding this scope come to their attention during an investigation, they shall, unless the facts in question are limited to aggravating circumstances relating to an existing Introductory or Supplementary Submission, refer them to the Co-Prosecutors, who have sole responsibility for filing Supplementary Submissions. They shall not investigate such facts unless they receive a Supplementary Submission in relation to these facts." (para. 30)

		"While in principle, the Co-Prosecutors can file a supplementary submission until the Closing Order and accordingly expand the scope of the investigations as defined by the Introductory Submission and if any, earlier Supplementary Submission(s), the scope of the investigation cannot be said to be 'undefined' until the issuance of the Closing Order. The scope of the investigation is defined at any moment until the issuance of the Closing Order by the above-mentioned filings of the Co-Prosecutors." (para. 48) "The Pre-Trial Chamber is cognizant of the fact that the current scope of the investigation, as defined by the Introductory and Supplementary Submissions, may not reflect the full dimension of crimes committed by the Khmer Rouge […] during the relevant period. As indicated earlier, under the law applicable before the ECCC, the Co-Prosecutors have sole responsibility for determining the scope of the judicial investigation, and it is not for the Pre-Trial Chamber to comment […]." (para. 60)
3.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"According to the Glossary for the Rules, a supplementary submission refers to a 'written submission by the Co-Prosecutors requesting the Co-Investigating Judges to issue an order or undertake further action in an ongoing investigation'. *Prima facie*, the exact wording of the definition tends to suggest that only requests requiring the Co-Investigating Judges to undertake a positive action, whether by issuing an order or by furthering ongoing investigations, can be defined as supplementary submissions." (Opinion of Judges BEAUVALLET and BAIK, para. 13) "The Undersigned Judges are of the view that the formalities of Rule 53(1) also apply to supplementary submissions […]. Except for Rule 53 which refers exclusively to introductory submissions, Rules 54, 55(2), 55(3), 55(4), 63(3)(a), 66*bis*(1) and Rule 71(3) all refer to both the Introductory and Supplementary Submissions. Given that these submissions altogether define the scope of the investigation and have to be considered as a whole, the Undersigned Judges consider that these formal conditions apply to both." (Opinion of Judges BEAUVALLET and BAIK, para. 16) "Rule 53(3) provides that the formalities in sub rule (1)(a)-(e) shall be strictly complied with or the Introductory Submission shall be null and void. As previously stated […] by the Pre-Trial Chamber, Rule 53(1) also lays down an additional condition for validity which may be inferred from the following excerpt: '[i]f the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons'. This condition is substantive." (Opinion of Judges BEAUVALLET and BAIK, para. 17) "[A] supplementary submission is valid if the formalities of Rule 53(1)(a)-(e) are complied with and if the Co-Prosecutors have reason to believe that further crimes within the jurisdiction of the ECCC have been committed." (Opinion of Judges BEAUVALLET and BAIK, para. 18)
4.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Co-Lawyers dispute that the Co-Investigating Judges were duly seised with regard to forced marriage on the ground that the international Co-Prosecutor has not stated the nexus first between forced marriage and the attack and second between forced marriage and the armed conflict. Therefrom the Undersigned Judges conclude that their analysis must concern the criteria for initiation of a judicial investigation of forced marriage. They must adjudge whether, upon filing the Introductory and Supplementary Submissions, the conditions laid down by Internal Rule 53(1) were satisfied, namely whether the International Co-Prosecutor rightly had reason to believe that the crime of forced marriage as the crime against humanity of other inhumane acts may have been committed." (Opinion of Judges BEAUVALLET and BAIK, para. 218) "The Undersigned Judges recall that the provisions governing introductory and supplementary Submissions are found at Internal Rule 53. Internal Rule 53 sets forth two species of rule for a submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of an introductory submission. Thus, it shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes; d) the name of any person to be investigated, if applicable, and; e) the date and signature of both Co-Prosecutors." (Opinion of Judges BEAUVALLET and BAIK, para. 219) "By contrast, the first part of Internal Rule 53(1) lays down a further condition for validity which may be inferred from the following excerpt; 'If the Co-Prosecutors have reason to believe that crimes within the jurisdiction of the ECCC have been committed, they shall open a judicial investigation by sending

		an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons'. This condition is instead substantive. The Undersigned Judges recall that Internal Rule 53(1) makes explicit that non-compliance with the Rule renders the Submission null and void; the provision draws no distinction between formal or substantive conditions." (Opinion of Judges BEAUVALLET and BAIK, para. 220) "The Undersigned Judges are of the view that said Submissions show that the International Co-Prosecutor had reason to believe that forced marriage was one of the means whereby the CPK attacked the population by implementing policies which fundamentally altered Cambodian society and resulted, *inter alia*, in inhumane living conditions." (Opinion of Judges BEAUVALLET and BAIK, para. 223) "Accordingly, the Undersigned Judges find that internal Rule 53(1) conditions are satisfied and that at the time of filing the Supplementary Submission, the International Co-Prosecutor had reason to believe that forced marriage as the crime against humanity of other inhumane acts, as defined by Article 5 of the ECCC Law, may have been committed. The Undersigned Judges further point out that the legal characterisation of the facts will be determined by the Co-Investigating Judge upon conclusion of the judicial investigation – determination from which appeal lies. The Co-Prosecutors propound but do not determine legal characterisation. Various facts were brought before the Co-Investigating Judges with whom their legal characterisation will rest, as will the establishment of any nexus between the various elements of the crimes at the Closing Order stage. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' order including in respect of the legal characterisations. Accordingly, the Forced Marriage Application for annulment is hereby dismissed." (Opinion of Judges BEAUVALLET and BAIK, para. 226)
5.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"There exists a distinction between the portion of the Fourth Supplementary Submission which clarifies the scope of the investigation, by explaining facts that are considered to fall within the scope of the Introductory Submission, and the second portion which includes new facts." (Opinion of Judges BEAUVALLET and BAIK, para. 81) "[W]hile the formality requirements of Internal Rule 53(1) apply to the second part of the Fourth Supplementary Submission, the fact that the first part is filed for clarification purposes only is not a ground to argue for procedural invalidity of the Fourth Supplementary Submission. In any event, by ascertaining already included facts, the first part of this Submission, and the Corrected Fourth Supplementary Submission for that matter, satisfy all the formal conditions of Rule 53(1)." (Opinion of Judges BEAUVALLET and BAIK, para. 82)

b. Precision of the Supplementary Submissions

For jurisprudence concerning the ***Right to be Informed of Charges***, see II.B.1.xiii. Right to be Informed of Charges

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"It is the facts set out in the Introductory and Supplementary Submissions that define the scope of a judicial investigation […]. An Introductory or Supplementary Submission is to refer to specific facts concerning alleged criminal acts, the legal categorisation of which has led the Co-Prosecutors to have reason to believe that crimes within the jurisdiction of the ECCC have been committed. It shall be precise enough and set out specific criminal acts, defined by their time and location." (Opinion of Judges DOWNING and LAHUIS, para. 7)
2.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's*	"The Undersigned Judges recall that the provisions governing introductory and supplementary Submissions are found at Internal Rule 53. Internal Rule 53 sets forth two species of rule for a submission to be valid. In its second part, Internal Rule 53(1) prescribes a number of conditions as to the form of an introductory submission. Thus, it shall contain the following information: a) a summary of the facts; b) the type of offence(s) alleged; c) the relevant provisions of the law that defines and punishes the crimes;

	Appeal against Decision on Nine Applications to Seize the Pre-Trial chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge	d) the name of any person to be investigated, if applicable, and; e) the date and signature of both Co-Prosecutors." (Opinion of Judges BEAUVALLET and BAIK, para. 219) "That the co-investigating judges are barred from opening a judicial investigation of their own motion entails that the Introductory Submission set fort the facts *sub judice*. That being said, the Undersigned Judges are of the view that the Co-Lawyers have misconstrued the level of detail required of introductory and supplementary submissions. The *summary* of the facts and the type of offence(s) alleged do not signify at this juncture in the proceedings that all of the elements of crimes and the nexuses between them be established by the Co-Prosecutors. In fact, the precision required is not as high as that required of a closing order under Internal Rule 67(2). Were it not so the judicial investigation would be redundant; the precise purpose of said investigation is to ascertain or rule out the reasons which warranted its initiation. The Undersigned Judges consider that the nexuses between the underlying acts and the constituent elements of the chapeau of the crime against humanity need not be substantiated at the stage of initiation of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 221) "The Undersigned Judges further note that a supplementary submission does not rehearse all of the facts and considerations advanced in the introductory submission since the body of the Co-Prosecutors' submissions are laid before the Co-Investigating Judges for consideration. The sole difference between a supplementary submission and an introductory submission is that the former post-dates the latter, which it supplements. Hence, that the Co-Investigating Judges are seised of facts concerning an armed conflict or an attack by virtue of an introductory submission and facts concerning the underlying acts by virtue of a supplementary submission is no impediment to the characterisation of a crime against humanity, if any." (Opinion of Judges BEAUVALLET and BAIK, para. 222)
3.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"Internal Rules 53(1)(a)-(b) requires that CP Submissions set out only a summary of the facts and the type of offence(s) alleged. There is no requirement, in Rule 53, that CP Submissions have to set out criminal allegations 'with limited geographical boundaries,' as the Defence puts it. As regards the rights of Charged Persons for specificity of CP Submissions, the Pre-Trial Chamber has previously found that the lack of more details of facts in an Introductory Submission, do 'not amount to a lack of notice at this stage of the proceedings'. Furthermore, 'for the Charged Person to exercise [his/]her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of a full investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 39)

c. Supplementary Submission Clarifying the Scope of the Investigation

1.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[T]he Undersigned Judges observe that the striking of a supplementary submission from the case file has not previously been addressed by the Pre-Trial Chamber. The analysis of the Undersigned Judges will therefore stem from the law to which it ordinarily refers, the ECCC law, national legal rules, the Cambodian CCP, international jurisprudence and, *vis-à-vis* the particularities of the annulment procedure for a supplementary submission the French CCP." (Opinion of Judges BEAUVALLET and BAIK, para. 9) "[A] distinction has to be made between the portion of the Supplementary Submission which clarifies the scope of the investigation, explaining which facts are considered to fall within the scope of the Introductory Submission, and the second portion which relates to the inclusion of new facts and legal characterisation […]." (Opinion of Judges BEAUVALLET and BAIK, para. 11) "To a certain extent, whilst the validity of the acts of judicial investigation based upon the Introductory Submission depends on whether the facts under investigation are new, the validity of the Supplementary Submission does not depend upon such determination. The Undersigned Judges will thus focus on the validity of the Supplementary Submission to the extent that it reaffirms clarifications previously submitted and not only seises the Co-Investigating Judges of new facts." (Opinion of Judges BEAUVALLET and BAIK, para. 12)

		"[A] supplementary submission is valid if the formalities of Rule 53(1)(a)-(e) are complied with and if the Co-Prosecutors have reason to believe that further crimes within the jurisdiction of the ECCC have been committed." (Opinion of Judges BEAUVALLET and BAIK, para. 18) "[T]he superfluous and redundant feature of the clarifications part of the submission has no effect on its validity." (Opinion of Judges BEAUVALLET and BAIK, para. 20) "The fact that the International Co-Prosecutor clarified the scope of the Introductory Submission assists the Co-Investigating Judges in respecting [Rule 55(2)], when investigating the facts falling within the scope of the Introductory and Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 21)
2.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"There exists a distinction between the portion of the Fourth Supplementary Submission which clarifies the scope of the investigation, by explaining facts that are considered to fall within the scope of the Introductory Submission, and the second portion which includes new facts." (Opinion of Judges BEAUVALLET and BAIK, para. 81) "[W]hile the formality requirements of Internal Rule 53(1) apply to the second part of the Fourth Supplementary Submission, the fact that the first part is filed for clarification purposes only is not a ground to argue for procedural invalidity of the Fourth Supplementary Submission. In any event, by ascertaining already included facts, the first part of this Submission, and the Corrected Fourth Supplementary Submission for that matter, satisfy all the formal conditions of Rule 53(1)." (Opinion of Judges BEAUVALLET and BAIK, para. 82)

d. Supplementary Submission Signed by One Co-Prosecutor

For jurisprudence on the ***Possibility for One Co-Prosecutor to Act Alone***, see VII.A.2.i. Co-Prosecutors

1.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[T]he Rules establish a procedure concerning the settlement of disagreements between the two Co-Prosecutors, as provided by the Agreement (Articles 6(4) and 7) and the ECCC Law (Article 20(new))." (Opinion of Judges BEAUVALLET and BAIK, para. 25) "Articles 6(1) and (4) of the Agreement, Articles 20(new) of the ECCC Law and Rule 71(3) clearly indicate that one Co-Prosecutor can act without the consent of the other Co-Prosecutor if neither one of them brings the disagreement before the Pre-Trial Chamber within specific time limit. With regard specifically to supplementary submissions, Rule 71(3)(b) provides explicitly that no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the thirty day period has ended, or the Chamber has been seised and the dispute settlement procedure has been completed." (Opinion of Judges BEAUVALLET and BAIK, para. 26) "In the present case, the National Co-Prosecutor did not seise the Pre-Trial Chamber with the disagreement pursuant to Rule 71(2) within the prescribed timeline. As provided by the Rules, the National Co-Prosecutor could have brought the disagreement to the Pre-Trial Chamber but refused to do so. In accordance with precedent, the Undersigned Judges find that the International Co-Prosecutor could file the Supplementary Submission alone after the thirty day period had ended or the disagreement procedure set forth in Rule 71 had been complied with. The Undersigned Judges are of the view that it does not exceed the disagreement procedure as it was contemplated by the drafters of the Agreement and the Law." (Opinion of Judges BEAUVALLET and BAIK, para. 27)

B. General Principles Governing Judicial Investigation

1. Scope of Judicial Investigation

i. *Scope of Judicial Investigation (General)*

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The scope of the investigation is defined by Internal Rules 53(1) and (2), and 55(1), (2) and (3) […]." (para. 34) "Reading Internal Rule 55(1) and (2) in conjunction with Internal Rule 53(1), the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission […]. Internal Rule 55(3) indicates that the Co-Investigating Judges are also seized of the circumstances surrounding the act mentioned in the Introductory or a Supplementary Submission. The circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation are not considered as being new facts and are thus part of the investigation. The Co-Investigating Judges are guided by the legal characterisation proposed by the Co-Prosecutors to define the scope of their investigation." (para. 35) "The Co-Investigating Judges have no jurisdiction to investigate acts unless they are requested to do so by the Co-Prosecutors, as confirmed by Internal Rule 55(3). […] [P]ursuant to Internal Rule 55(3), new facts alleged in the Final Submission are not part of the judicial investigation." (para. 36) "[The Pre-Trial Chamber] is bound by the same rules as the Co-Investigating Judges, and, notably, by the scope of the investigation." (para. 44) "The S-21 JCE did not form part of the factual basis for the investigation and for this reason the Pre-Trial Chamber will not add it to the Closing Order […]." (para. 141)
2.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"By filing Introductory and Supplementary Submissions, the Co-Prosecutors define the scope of the judicial investigation, as appears from Internal Rules 53 and 55(2) and (3)." (Opinion of Judges DOWNING and LAHUIS, para. 5) "It is the facts set out in the Introductory and Supplementary Submissions that define the scope of a judicial investigation […]." (Opinion of Judges DOWNING and LAHUIS, para. 7) "After having compared the New Submissions with the First Introductory Submission and its Supplementary Submissions, we conclude that the New Submissions refer to both new facts as well as facts that overlap with the ones already encompassed in the scope of the judicial investigation in Case File 002. Pursuant to Internal Rule 55(2), these new facts could not be investigated by the Co-Investigating Judges until a new Introductory or a Supplementary Submission was filed by the Co-Prosecutors." (Opinion of Judges DOWNING and LAHUIS, para. 22)
3.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The [Shared Materials Drive ('SMD')] is a database accessed by all Parties and sections of the Court […] that contains […] documents […] which had not been analysed yet but are asserted to be potentially relevant to the trials before the ECCC." (para. 27) "When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 32) "[T]he documents on the SMD do not fall under Internal Rule 53(2). The Co-Prosecutor acted fairly by making this material available for perusal by the Co-Investigating Judges and the parties. This did not, by itself, create an obligation for the Co-Investigating Judges to review the documents on the SMD as it was clearly not part of the Introductory Submission or of any Supplementary Submission." (para. 34)
4.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24	"The [Shared Materials Drive ('SMD')] is a database accessed by all Parties and sections of the Court […] that contains […] documents […] which had not been analysed yet but are asserted to be potentially relevant to the trials before the ECCC." (para. 28)

	D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 33) "[T]he documents on the SMD do not fall under Internal Rule 53(2). The Co-Prosecutor acted fairly by making this material available for perusal by the Co-Investigating Judges and the parties. This did not, by itself, create an obligation for the Co-Investigating Judges to review the documents on the SMD as it was clearly not part of the Introductory Submission or of any Supplementary Submission." (para. 35)
5.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"Read together, Internal Rule 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such order or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submission. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative action for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 17) "[B]efore the ECCC the responsibility for deciding to expand an investigation beyond the scope of initial and existing supplementary submissions solely rests with the Co-Prosecutors […]." (para. 18) "Internal Rule 55(3) restricts the scope of the investigation to that defined by the initial and supplementary submissions. Whereas in the instant case, if new facts which the CIJs consider as exceeding this scope come to their attention during an investigation, they shall, unless the facts in question are limited to aggravating circumstances relating to an existing Introductory or Supplementary Submission, refer them to the Co-Prosecutors, who have sole responsibility for filing Supplementary Submissions. They shall not investigate such facts unless they receive a Supplementary Submission in relation to these facts." (para. 30) "While in principle, the Co-Prosecutors can file a supplementary submission until the Closing Order and accordingly expand the scope of the investigations as defined by the Introductory Submission and if any, earlier Supplementary Submission(s), the scope of the investigation cannot be said to be 'undefined' until the issuance of the Closing Order. The scope of the investigation is defined at any moment until the issuance of the Closing Order by the above-mentioned filings of the Co-Prosecutors." (para. 48) "The Pre-Trial Chamber is cognizant of the fact that the current scope of the investigation, as defined by the Introductory and Supplementary Submissions, may not reflect the full dimension of crimes committed by the Khmer Rouge […] during the relevant period. As indicated earlier, under the law applicable before the ECCC, the Co-Prosecutors have sole responsibility for determining the scope of the judicial investigation, and it is not for the Pre-Trial Chamber to comment […]." (para. 60)
6.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative actions of such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 11) "ECCC Law and the Internal Rules both provide that the Co-Prosecutors are solely responsible for exercising the public action for crimes within the jurisdiction of the ECCC, either at their own discretion or in response to complaint. They are endowed with the responsibility to conduct preliminary investigations and open a judicial investigation by sending an Introductory Submission to the CIJs if they have reasons to believe that crimes within the jurisdiction of the ECCC have been committed. The CIJs are responsible for conducting the judicial investigation. The investigation is restricted to crimes for which the ECCC has jurisdiction and further limited to the facts as set out in the Introductory and or Supplementary Submissions. In contrast to Cambodian Law, a victim who wishes to be joined as a Civil Party before the ECCC may only do so by way of intervention, joining ongoing proceedings that fall within the scope of the Introductory and Supplementary Submissions. This is the current framework under which all investigations must operate. Therefore, whilst paragraphs (2), (3) and (10) of Internal Rule 55 grant a Civil Party Applicant the right to request the CIJs to make orders or undertake

		investigative action for the conduct of the investigation, the right is restricted to the aforementioned scope. Given this framework the Pre-Trial Chamber finds the Appellants can not successfully claim that the Prosecutors' response is not supported by the CPC or the Internal Rules. The Co-Prosecutors are clearly the party responsible for determining the scope of the investigation. The investigation itself must formulate the elements of the crimes alleged and the liability of the Charged Persons so they are able to be included within the Closing Order." (para. 38)
7.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"Before the ECCC, the scope of an investigation is determined by the submissions made by the Co-Prosecutors, being the Introductory Submission or any Supplementary Submission. In considering requests made under Internal Rule 55(10), the Co-Investigating Judges are restricted by Internal Rule 55(2), which limits their investigation to those facts set out in the Introductory Submission or a Supplementary Submission. If a request for investigative action concerns facts that are outside the scope of the facts set out in the Introductory Submission or a Supplementary Submission (such facts being 'new facts') the Co-Investigating Judges do not have the authority to grant the request. If a request made to the Co-Investigating concerns new facts to the attention of the Co-Prosecutors. The Co-Investigating Judges may not investigate unless the Co-Prosecutors submit a Supplementary Submission with respect to the new facts. Internal Rules 55(3) and 55(10) read together limit the power of the Co-Investigating Judges to grant a request to only those matters that fall within the scope of the investigation as shaped by the Introductory Submission or any Supplementary Submission." (para. 14)
8.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he scope of the investigation […] is broader than the [crimes for which the charged persons have been charged] since the scope of the investigation […] extends to all facts, referred to in [the Introductory and Supplementary] submission, provided that these facts assist in investigating a) the jurisdictional elements necessary to establish whether the factual situations […] constitute crimes within the jurisdiction of the ECCC, or b) the mode of liability of the Suspects named in the Introductory Submission." (Opinion of Judge MARCHI-UHEL, para. 32) "In the context of civil party participation, during the judicial investigation, the scope of the investigation is relevant in particular to determine whether investigative actions can be undertaken by the Co-Investigating Judges on their own initiative or upon request by a party. During the investigative stage of proceedings, a civil party may request the Co-Investigating Judges to undertake an investigative action which it deems necessary for the conduct of the investigation, even if it goes beyond the material facts alleged by the Co-Prosecutors as underlying the crimes charged, provided it remains within the broader scope of the investigation as determined by the Co-Prosecutors. In contrast to the relatively wide range of matters that fall within the scope of the judicial investigation which may be the subject of a request for investigative action, the admissibility of a civil party application is strictly dependant on his or her ability to establish that the harm suffered is direct consequence of at least one of the crimes charged." (Opinion of Judge MARCHI-UHEL, para. 33)
9.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"[O]nly consideration of the Introductory Submission and its annexes will determine whether the subsequent investigations and impugned acts were within the scope of the matter laid before the Co-Investigating Judges. If outwith the scope, the investigations will be unsubstantiated." (Opinion of Judges BEAUVALLET and BWANA, para. 4) "It would be incorrect to maintain that since no specific mention is at all made of the facts allegedly committed at the sites in question, they fall manifestly outwith the matter laid before the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 6) "Internal Rule 55(2) sets forth the relevant provisions: 'The Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission'. These sole facts are the subject of the judicial investigation, with which the Co-Investigating Judges are charged." (Opinion of Judges BEAUVALLET and BWANA, para. 8) "The Co-Investigating Judges are thus barred from investigating facts which fall outwith the Introductory Submission. Internal Rule 55(3) provides: 'If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission.' Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission. Any fact unmentioned in the Introductory Submission, save where the investigation is subsequently extended by a Supplementary Submission,

		therefore falls outwith the jurisdiction of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 9) "Such a separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system." (Opinion of Judges BEAUVALLET and BWANA, para. 10) "There is no specific legal definition of ['new facts'] which is the offspring of judicial interpretation of the aforementioned provisions. The International Judges consider a 'new fact' to denote an event which arose or came to light subsequent to the Introductory Submission." (Opinion of Judges BEAUVALLET and BWANA, para. 11) "The delineation of the parameters of the judicial investigation is a particularity of the inquisitorial system and a matter extraneous to international jurisprudence." (Opinion of Judges BEAUVALLET and BWANA, para. 12) "The International Judges further note that the Co-Investigating Judges are bound by the matter before them for determination […], meaning that a duty is cast on the Co-Judges to investigate all of the facts with which they are seised by way of an Introductory Submission. Ultimately, the Co-Investigating Judges are duty-bound to investigate all of the facts, but only those facts which are laid before them." (Opinion of Judges BEAUVALLET and BWANA, para. 13) "Otherwise put, the Co-Investigating Judge's investigation is limited by the alleged criminal acts defined by the Co-Prosecutors. However, it rests with the Judge to elicit the circumstances of their commission, and the *locus in quo* in particular. Imprecision as to the facts in the Introductory Submission does not preclude judicial investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 14) "That a crime site is unmentioned in the Submissions, whether Introductory or Supplementary, is not sufficient to determine whether the acts allegedly committed there, or perhaps even the acts committed in an unspecified location, fall within the sphere of said *sub judice* matter. In short, the *locus in quo* is a circumstance which identifies the location of the fact, but is not factor *per se*." (Opinion of Judges BEAUVALLET and BWANA, para. 19) "The International Judges must therefore consider whether, even if unmentioned in the Introductory Submission, the acts committed in the sites in question fall within the matter before the Co-Investigating Judges for determination. […] Before they make ruling, the International Judges must, therefore, engage in a careful and meticulous scrutiny of the Introductory Submission to ascertain or rule out that the sites at issue are encompassed by the crime base, as defined in the International Co-Prosecutor's Introductory Submission." (Opinion of Judges BEAUVALLET and BWANA, para. 20) "That the International Co-Prosecutor was unapprised of such evidence at the time of filing the Introductory Submission does not mean that the facts are not included in the matter laid before the Co-Investigating Judges. Although unapprised of all of the loci in quo, the International Co-Prosecutor had reason to believe that the crimes with which he seised the Co-Investigating Judges had been perpetrated not only at the sites mentioned in the Introductory Submission but at further sites, which it rested with the Co-Investigating Judges to discover. […] At issue here are not new facts but evidence duly gathered in the course of the judicial investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 32) "In sum, International Judges consider that the content of the statements taken by the Reserve Co-Investigating Judge, far from constituting new facts, amounts instead to evidence duly gathered in the course of the investigation with which the investigating judges were tasked." (Opinion of Judges BEAUVALLET and BWANA, para. 55)
10.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International*	"[T]he separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system. […] The tasks assigned to each of them are clearly defined. The fact that the International Co-Prosecutor clarified the scope of the Introductory Submission assists the Co-Investigating Judges in respecting [Rule 55(2)], when investigating the facts falling within the scope of the Introductory and Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 21)

	Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission	
11.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Recharacterisation of the charges must not affect the ambit of the initial matter laid before an investigating judge, as circumscribed by an introductory submission." (Opinion of Judges BEAUVALLET and BAIK, para. 145) "The Undersigned Judges take the view that only consideration of the Introductory Submission and its annexes will determine whether the subsequent investigations and impugned acts were within the scope of the matter laid before the Co-Investigating Judges. If outwith the scope, the investigation will be unsubstantiated." (Opinion of Judges BEAUVALLET and BAIK, para. 150) "[I]t rests with the Judge to elicit the circumstances of their occurrence, in particular and the *locus in quo*, and the time of and persons involved in their commission. Imprecision as to the facts in the Introductory Submission does not preclude judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 152) "The Undersigned Judges must therefore consider whether, even if unmentioned in the Introductory Submission, the [concerned acts] fall within the matter before the Co-Investigating Judges for determination. It is self-evident that to fall within the ambit of the judicial investigation, the [concerned acts] must form part of the factual allegations advanced by the International Co-Prosecutor. Before it makes a ruling, the Undersigned Judges must, therefore, engage in careful and meticulous scrutiny of the Introductory Submission to ascertain or rule out that the sites at issue are encompassed by the crime base, as defined in the International Co-Prosecutor's Introductory Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 153) "The Co-Lawyers dispute that the Co-Investigating Judges were duly seised with regard to forced marriage on the ground that the international Co-Prosecutor has not stated the nexus first between forced marriage and the attack and second between forced marriage and the armed conflict. Therefrom the Undersigned Judges conclude that their analysis must concern the criteria for initiation of a judicial investigation of forced marriage. They must adjudge whether, upon filing the Introductory and Supplementary Submissions, the conditions laid down by Internal Rule 53(1) were satisfied, namely whether the International Co-Prosecutor rightly had reason to believe that the crime of forced marriage as the crime against humanity of other inhumane acts may have been committed." (Opinion of Judges BEAUVALLET and BAIK, para. 218) "That the co-investigating judges are barred from opening a judicial investigation of their own motion entails that the Introductory Submission set fort the facts *sub judice*." (Opinion of Judges BEAUVALLET and BAIK, para. 221) "The sole difference between a supplementary submission and an introductory submission is that the former post-dates the latter, which it supplements. Hence, that the Co-Investigating Judges are seised of facts concerning an armed conflict or an attack by virtue of an introductory submission and facts concerning the underlying acts by virtue of a supplementary submission is no impediment to the characterisation of a crime against humanity, if any." (Opinion of Judges BEAUVALLET and BAIK, para. 222) "The Undersigned Judges are of the view that said Submissions show that the International Co-Prosecutor had reason to believe that forced marriage was one of the means whereby the CPK attacked the population by implementing policies which fundamentally altered Cambodian society and resulted, *inter alia*, in inhumane living conditions." (Opinion of Judges BEAUVALLET and BAIK, para. 223) "Accordingly, the Undersigned Judges find that internal Rule 53(1) conditions are satisfied and that at the time of filing the Supplementary Submission, the International Co-Prosecutor had reason to believe that forced marriage as the crime against humanity of other inhumane acts, as defined by article 5 of the ECCC Law, may have been committed. The Undersigned Judges further point out that the legal characterisation of the facts will be determined by the Co-Investigating Judge upon conclusion of the

		judicial investigation – determination from which appeal lies. The Co-Prosecutors propound but do not determine legal characterisation. Various facts were brought before the Co-Investigating Judges with whom their legal characterisation will rest, as will the establishment of any nexus between the various elements of the crimes at the Closing Order stage. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' order including in respect of the legal characterisations. Accordingly, the Forced Marriage Application for annulment is herby dismissed." (Opinion of Judges BEAUVALLET and BAIK, para. 226)
12.	**004 AO An** PTC 27 D299/3/2 14 December 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng*	"The Pre-Trial Chamber has stated that the scope of the Co-Investigating Judges' judicial investigation is defined by Internal Rules 53(1) and (2), and 55(1), (2) and (3). […] The Co-Investigating Judges are thus barred from investigating facts which fall outside the Introductory Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 47) "A 'new fact' 'denote[s] an event which arose or came to light subsequent to the Introductory Submission.' Any new fact unmentioned or unrelated to the Introductory Submission falls outside the jurisdiction of the Co-Investigating Judges, unless a Supplementary Submission extends the scope of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 48) "The Pre-Trial Chamber has previously noted that 'the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission', and, more significantly, that 'the Co-Investigating Judges are also seized of the circumstances surrounding the acts mentioned in the Introductory or a Supplementary Submission'. The Pre-Trial Chamber has defined such surrounding circumstances as '[t]he circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation'. […] [T]hose circumstances are 'not considered as being new facts and are thus parts of the investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 49) "[A]s regard locations that are not explicitly mentioned in the Introductory Submission, 'the *locus in quo* is a circumstance which identifies the location of the fact, but is not a fact *per se'*. While the Co-Investigating Judges' investigation is limited by the alleged criminal acts defined by the Co-Prosecutors', 'it rests with the [Judges] to elicit the circumstances of their commission, and the *locus in quo* in particular. Furthermore, without knowing all the crime sites, the International Co-Prosecutor had reason to believe that the crimes, of which the Co-Investigating Judges are seised by the Introductory Submission, were committed not only in the places explicitly mentioned in the Introductory Submission, but also in other locations that the Co-Investigating Judges are tasked to discover." (Opinion of Judges BEAUVALLET and BAIK, para. 50) "[W]hen locations, that are unmentioned in the Introductory Submission, contribute to the determination of the alleged crime's legal characterization by identifying and fleshing out the facts of the alleged crime, the facts regarding those sites are not new facts requiring a supplementary submission. Rather, they constitute surrounding circumstances relating to facts that fall squarely within the scope of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 51) "Furthermore, 'the Introductory Submission *and its annexes*' are both equally examined when analyzing whether the investigative actions of the Co-Investigating Judges fall within the scope of the judicial investigation. […] Thus, facts provided in evidence, attached to an Introductory Submission, fall squarely within the scope of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 52)
13.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action Related to Wat Ta Meak*	"The Pre-Trial Chamber has stated that 'the scope of the investigation is defined by Internal Rules 53(1) and (2), and 55(1), (2) and (3)' and that: Reading Internal Rule 55(1) and (2) in conjunction with Internal Rule 53(1), the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission, as it is the case in Cambodian law. Internal Rule 55(3) indicates that the Co-Investigating Judges are also seized of the circumstances surrounding the acts mentioned in the Introductory or a Supplementary Submission. The circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation are not considered as being new facts and are thus part of the investigation. The Co-Investigating Judges are guided by the legal characterisation proposed by the Co-Prosecutors to define the scope of their investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 46) "The Pre-Trial Chamber has further stated that, while the legal characterizations proposed by the Co-Prosecutors do 'not extend the scope of the investigation', they can serve to understand whether the Prosecutor had 'reason to believe' that a certain alleged crime may have been committed – even

		though 'the Introductory Submission contains no specific factual allegations' – if allegations made in the 'Crimes' part and in the part detailing the possible forms of liability give rise to such legal characterization." (Opinion of Judges BEAUVALLET and BAIK, para. 47) "The Undersigned Judges recall that, pursuant to Internal Rule 55(2), the Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission. Internal Rule 55(3) further provides that, if new facts come to the knowledge of the Co-Investigating Judges during an investigation, they shall inform the Co-Prosecutors. The Cambodian Code of Criminal Procedure includes similar dispositions in its Article 125 al. 2." (Opinion of Judges BEAUVALLET and BAIK, para. 56) "Albeit there is no clear description as to what a new fact is, either in the Internal Rules or in Cambodian Code of Criminal Procedure, the Co-Lawyers submit that 'the alleged crimes relating to Wat Ta Meak are new facts' and that '[t]he meaning of "facts set out" is clear: only those facts explicitly detailed in an introductory submission (or supplementary submission) can be considered to fall within the scope of a judicial investigation'." (Opinion of Judges BEAUVALLET and BAIK, para. 57) "The Undersigned Judges consider that a 'new fact' is to denote an event which arose or came to light subsequent to the Introductory Submission. The Pre-Trial Chamber has previously analysed the scope of the investigations through the examination of the core of an introductory submission and its footnoted attachment. In that sense, the fact that a location has been identified in the course of the investigation does not necessarily mean that it is a new fact but can be equally seen as the revelation of the circumstances surrounding facts that fall within the scope of the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 58) "[I]mprecision as to the facts in the Introductory Submission does not preclude judicial investigation and that it rests with the Co-Investigating Judges to elicit circumstances of their commission […]." (Opinion of Judges BEAUVALLET and BAIK, para. 60) "The Undersigned Judges further recall that it is the consideration of both the Introductory Submission and its annexes which determine whether the judicial investigations are within the scope of the matter laid before the Co-Investigating Judges. The Introductory Submission must a fortiori also be read […] as a whole […]." (Opinion of Judges BEAUVALLET and BAIK, para. 61) "The question at stake here is how to interpret Internal Rule 55(2), according to which the Co-Investigative Judges shall only investigate the facts set out in an introductory submission or supplementary submission, in conjunction with Internal Rule 55(3)." (Opinion of Judges BEAUVALLET and BAIK, para. 75) "Article 125 al. 2 of the Cambodian Code of Criminal Procedure is more precise […]. Accordingly, the Co-Investigating Judge shall inform the Co-Prosecutors where they have collected a certain level of evidence that amounts to 'facts' potentially of criminal nature." (Opinion of Judges BEAUVALLET and BAIK, para. 76) "In accordance with the French jurisprudence, it is established that when an investigating judge, or investigators acting upon a rogatory letter, come to the knowledge of new facts they can before any prior communication to the prosecutor proceed in emergency to elementary checks so that to assess the credibility of the information they gained. These checks can sometimes last for a few months." (Opinion of Judges BEAUVALLET and BAIK, para. 77) "The Undersigned Judges consider that this discretion of the Co-Investigating Judges does not contradict Internal Rule 55(2). The Co-Investigating Judges can perform preliminary checks before bringing some evidence for the Co-Prosecutors to decide whether they have 'reason to believe' that facts suceptible to be qualified as a criminal offenses exist. As to what extend the Co-Investigating Judges can proceed, the Undersigned Judges consider those preliminary checks performed by the Co-Investigating Judge, or on his behalf, can not aim at confirming a level of probability higher than a 'reason to believe' without amounting to a procedural defect." (Opinion of Judges BEAUVALLET and BAIK, para. 78)
14.	**004 YIM Tith** PTC 38 D344/1/6 25 July 2017	"The Pre-Trial Chamber has stated that the scope of the Co-Investigating Judges' judicial investigation is defined by Internal Rules 53(1) and (2), and 55(1), (2) and (3)." (Opinion of Judges BEAUVALLET and BAIK, para. 23)

	Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)	"The Pre-Trial Chamber has previously considered that 'the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission', and that 'the Co-Investigating Judges are also seized of the circumstances surrounding the acts mentioned in the Introductory or a Supplementary Submission'. The Pre-Trial Chamber has defined such surrounding circumstances as '[t]he circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation'. The Pre-Trial Chamber has further stated that those circumstances are 'not considered as being new facts and are thus part of the investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 24) "The Undersigned Judges find that, the ICP's explicit intention was to seise the OCIJ with allegations of forced marriages in the whole district. This is clear by the general mention of Sangkae as a district 'in the Battambang province.'" (Opinion of Judges BEAUVALLET and BAIK, para. 32) "The Undersigned Judges consider that the fact that Reang Kesei Pagoda is singled out […] is not an indication that the ICP intended to limit the geographical scope of the investigation to that particular site. Rather, the specific mention of Reang Kesei Pagoda […] consist in the ICP providing an example to illustrate his general allegations […]." (Opinion of Judges BEAUVALLET and BAIK, para. 33) "The Undersigned Judges find that, at that stage, when the ICP filed the Second Supplementary Submission the title, of the criminal allegations […], had to be read together with the contents of all these paragraphs which actually describe the scope of the investigations he seized the OCIJ with." (Opinion of Judges BEAUVALLET and BAIK, para. 36) "The Undersigned Judges consider that the phrase 'current Sangkae District' […] has to be read within the context of the whole sentence it appertains […]. All these sentences read together, explain the circumstances under which the alleged forced marriages in the Sangkae District of the DK time may have happened, […] and obviously do not aim at limiting the geographical scope of the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 38) "Manifest typographical mistake in the text of the Second Supplementary Submission having been established, the Undersigned Judges shall now consider what effect it may have on the regularity of OCIJ's investigative actions post the date of the filing of the Second Supplementary Submission and those leading to the Forwarding Order. In other words, the Chamber shall examine whether the typographical mistake in question lead the OCIJ to carry out investigative actions into facts that may fall out with the scope of investigations." (Opinion of Judges BEAUVALLET and BAIK, para. 40)
15.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"The Pre-Trial Chamber has stated that the scope of the CIJs' judicial investigation is defined by Internal Rules 53(1) and (2), and 55(1), (2) and (3). Internal Rule 55(2) states: 'The [CIJs] shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.' The CIJs are thus barred from investigating facts which fall outside the Introductory Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 24) "The Pre-Trial Chamber has previously noted that 'the [CIJs] have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission' and, more significantly, that 'the [CIJs] are also seized of the circumstances surrounding the acts mentioned in the Introductory or a Supplementary Submission'. The Pre-Trial Chamber has defined such surrounding circumstances as '[t]he circumstances in which the alleged crime was committed and that contribute to the determination of its legal characterisation'. The Pre-Trial Chamber has further noted that those circumstances are 'not considered as being new facts and are thus parts of the investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 25) "Only consideration of the Introductory and subsequent Supplementary Submissions as well as of the annexed evidences, on which the Co-Prosecutors' […] summary of alleged facts is based, will determine whether the subsequent investigations and impugned acts were within the scope of the matter laid before the CIJs. If outwith the scope, the procedural validity of such investigations is questionable." (Opinion of Judges BEAUVALLET and BAIK, para. 26) "It is self-evident that to fall within the ambit of the judicial investigation, the acts allegedly committed at KHD site must form part of the factual allegations advanced by the CPs. Before issuing a ruling, the Undersigned Judges must, therefore, engage in careful and meticulous scrutiny of the prosecutorial Submissions to ascertain, or rule out, that the site at issue is encompassed by the crime base as defined by the ICP." (Opinion of Judges BEAUVALLET and BAIK, para. 27)

		"[I]nasmuch as the circumstances which came to light in the course of interviews of witnesses conducted pursuant to a rogatory letter remain connected to the facts specified in the Introductory Submission, they duly fall within the matter placed before the CIJs." (Opinion of Judges BEAUVALLET and BAIK, para. 45) "The Undersigned Judges also find that the separation of the tasks assigned to the CPs and to the CIJs is a fundamental feature, inherent to the inquisitorial system. As stated in Internal Rule 55(2): '[t]he [CIJs] shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission [by the CPs].' The tasks assigned to each of them are clearly defined. The fact that the ICP clarified the scope of the investigation assists the CIJs in respecting this Rule when investigating the facts falling within that scope." (Opinion of Judges BEAUVALLET and BAIK, para. 83)
16.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he Co-Investigating Judges are seised of facts (*in rem*) and not of persons (*in personam*) […]." (para. 36) "According to Internal Rule 53(1), the Co-Prosecutors shall open a judicial investigation 'by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons.' Pursuant to Internal Rule 55(2), '[t]he Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.' The Co-Investigating Judges are therefore bound by the matter before them for determination, but also have a duty to investigate all the facts of which they are seised, which means that they have to rule on all these facts at the time of the closing order and not only on those that were formally charged." (para. 37) --- "[P]ursuant to Internal Rule 55(2), the Co-Investigating Judges shall investigate all, but only, the facts of which they were seised, *i.e.*, the facts which are alleged in an introductory and any supplementary submissions. Whether particular allegations fall within the scope of the matter laid before the Co-Investigating Judges can only be determined by consideration of these introductory and supplementary submissions and their annexes, with the guidance of the legal characterisations proposed by the Co-Prosecutors. In other words, the Co-Investigating Judges may not charge a suspect with crimes falling outside the scope of the judicial investigation, and they cannot be requested to expand the charges at the time of a closing order through a Co-Prosecutor's final submission. Likewise, the Pre-Trial Chamber cannot expand the scope of the charges on the basis of allegations tardily raised in an appeal against a closing order." (Opinion of Judges BAIK and BEAUVALLET, para. 128) "At the outset, the Undersigned Judges recall that whether particular allegations and related investigations fall within the scope of the matter laid before the Co-Investigating Judges can only be determined by consideration of the introductory and supplementary submissions and their annexes." (Opinion of Judges BAIK and BEAUVALLET, para. 170)
17.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he scope of the judicial investigation is controlled by the allegations as set out in the Introductory and Supplementary Submissions. In order to determine whether the criminal charges in the Indictment exceed the scope of the investigation, the International Judges will first need to determine the facts included in the seisin, which necessitates a careful reading of the Third Introductory Submission and the various Supplementary Submissions filed in Case 004 […]." (Opinion of Judges BAIK and BEAUVALLET, para. 208) "The International Judges hold that facts outside the scope of a judicial investigation may nevertheless be relied upon by the Co-Investigating Judges to the extent that they are relevant to facts within the scope of the case for the specific purpose of assessing the accused's responsibility as part of the personal jurisdiction determination (although these outside facts could not serve as an independent basis for criminal charges for trial)." (Opinion of Judges BAIK and BEAUVALLET, para. 406)

ii. *Forwarding Order under Internal Rule 55(3)*

1.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Co-Investigating Judges are thus barred from investigating facts which fall outwith the Introductory Submission. Internal Rule 55(3) provides: 'If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission.' Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission. Any fact unmentioned in the Introductory Submission, save where the investigation is subsequently extended by a Supplementary Submission, therefore falls outwith the jurisdiction of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 9)
2.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action Related to Wat Ta Meak*	"The Undersigned Judges recall that, pursuant to Internal Rule 55(2), the Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission. Internal Rule 55(3) further provides that, if new facts come to the knowledge of the Co-Investigating Judges during an investigation, they shall inform the Co-Prosecutors. The Cambodian Code of Criminal Procedure includes similar dispositions in its Article 125 al. 2." (Opinion of Judges BEAUVALLET and BAIK, para. 56) "The question at stake here is how to interpret Internal Rule 55(2), according to which the Co-Investigative Judges shall only investigate the facts set out in an introductory submission or supplementary submission, in conjunction with Internal Rule 55(3)." (Opinion of Judges BEAUVALLET and BAIK, para. 75) "Article 125 al. 2 of the Cambodian Code of Criminal Procedure is more precise […]. Accordingly, the Co-Investigating Judge shall inform the Co-Prosecutors where they have collected a certain level of evidence that amounts to 'facts' potentially of criminal nature." (Opinion of Judges BEAUVALLET and BAIK, para. 76) "In accordance with the French jurisprudence, it is established that when an investigating judge, or investigators acting upon a rogatory letter, come to the knowledge of new facts they can before any prior communication to the prosecutor proceed in emergency to elementary checks so that to assess the credibility of the information they gained. These checks can sometimes last for a few months." (Opinion of Judges BEAUVALLET and BAIK, para. 77) "The Undersigned Judges consider that this discretion of the Co-Investigating Judges does not contradict Internal Rule 55(2). The Co-Investigating Judges can perform preliminary checks before bringing some evidence for the Co-Prosecutors to decide whether they have 'reason to believe' that facts susceptible to be qualified as a criminal offenses exist. As to what extend the Co-Investigating Judges can proceed, the Undersigned Judges consider those preliminary checks performed by the Co-Investigating Judge, or on his behalf, can not aim at confirming a level of probability higher than a 'reason to believe' without amounting to a procedural defect." (Opinion of Judges BEAUVALLET and BAIK, para. 78) "[Internal Rule 55(3)] does not explicitly cast any timeline within which the Co-Investigating Judges have to issue a forwarding order." (Opinion of Judges BEAUVALLET and BAIK, para. 85) "[T]here is no time limit set neither in the Internal Rules, nor in the of Cambodian Code of Criminal Procedure, which set a clear deadline beyond which it would have been procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 87) "In the French procedural system, the criteria of an immediate transmission is broadly interpreted by the Court of Cassation." (Opinion of Judges BEAUVALLET and BAIK, para. 89)
3.	**004 YIM Tith** PTC 38	"Internal Rule 55(3) reads: '[i]f during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to

	D344/1/6 25 July 2017 *Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)*	aggravating circumstances relating to an existing submission'. This disposition does not explicitly cast any timeline within which the Co-Investigating Judges have to issue a forwarding order when faced with new facts." (Opinion of Judges BEAUVALLET and BAIK, para. 53) "Similarly to Internal Rule 55(3), [Article 125 of the Cambodian Criminal Code] does not stipulate any deadline binding the Co-Investigating Judges to issue their forwarding order, nor does it provide any guidance on how to assess its timeliness." (Opinion of Judges BEAUVALLET and BAIK, para. 54) "[T]here is no time limit set in the applicable law setting a clear deadline beyond which forwarding orders would be considered procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 55) "In the French procedural system, the criterion of an immediate transmission is broadly interpreted by the Court of Cassation." (Opinion of Judges BEAUVALLET and BAIK, para. 56) "Internal Rule 21 sets principles for proceedings before the ECCC, as regards fairness and fundamental rights of parties, and it cannot be utilised to also interpret the strict requirements of the procedural Rules as regards validity of investigative actions." (Opinion of Judges BEAUVALLET and BAIK, para. 57)

iii. *Identification of Suspects by the Co-Investigating Judges (Internal Rule 55(4))*

For jurisprudence concerning the ***Power of the Co-Investigating Judges to Charge Suspects***, see IV.B.4.i. Co-Investigating Judges'Power to Charge Suspects under Internal Rule 55(4)

iv. *Decision to Reduce the Scope of Judicial Investigation (Internal Rule 66*bis*)*

1.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"First, the International Judges find that the International Co-Investigating Judge did not reduce the scope of the investigation nor deprive victims of their right to meaningfully participate by the Severance Order. The Severance Order only 'duplicated and collected' the same factual allegations from Case 004 to form the new Case 004/2, including the charged crimes against AO An." (Opinion of Judges BAIK and BEAUVALLET, para. 74) "Turning to the Co-Lawyers' contention that the International Co-Investigating Judge violated Internal Rule 66*bis* by failing to consult the Civil Parties 'in advance of the severance order' or that the Severance Order did not 'include any reasoned decision' on the potential impact on the Civil Parties, […] [t]he plain language of [Internal Rule 66*bis*] applies to the reduction of the scope of the judicial investigation—a legal mechanism wholly dissimilar from severance. The International Judges thus find that Internal Rule 66*bis*(1), (2) and (3) are not applicable to severance orders." (Opinion of Judges BAIK and BEAUVALLET, para. 75)
2.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges further observe that pursuant to Internal Rule 23*ter*(2), '[w]hen the Civil Party is represented by a lawyer, his or her rights are exercised through the lawyer', and note that under Internal Rule 74(4)(i), the Civil Parties may appeal against the Co-Investigating Judges' decision 'reducing the scope of judicial investigation under [Internal Rule 66*bis*].'" (Opinion of Judges BEAUVALLET and BAIK, para. 83) "Most significantly, the Co-Lawyers did not exercise their explicitly prescribed right under Internal Rule 74(4)(i) to appeal against the Internal Rule 66*bis* Decision. […] In light of the foregoing, the International Judges find that the Co-Lawyers failed to exercise the victims' right to participate in this regard in a timely manner." (Opinion of Judges BEAUVALLET and BAIK, para. 86) "Concerning the Co-Lawyers' claim on alleged prejudice resulting from the reduction of the scope of the Civil Party admissibility pursuant to the Internal Rule 66*bis* Decision, the International Judges affirm that the facts excluded on the basis of Internal Rule 66*bis* invoked by a Civil Party applicant may still form the basis of a decision of admissibility, if they fulfil the remaining conditions of admissibility under Internal Rules 23*bis*(1) and (4)." (Opinion of Judges BEAUVALLET and BAIK, para. 87)
3.	**004 YIM Tith** PTC 62 D384/7	"Pursuant to Internal Rule 66*bis*(1), 'the Co-Investigating Judges may, at the time of notification of conclusion of investigation, decide to reduce the scope of judicial investigation by excluding certain facts set out in an Introductory Submission or any Supplementary Submission(s).' In accordance with

	29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	Internal Rule 66*bis*(3), the Co-Investigating Judges shall determine the effect of such a decision 'on the status of the Civil Parties and on the right of Civil Party applicants to participate in the judicial investigation.'" (Opinion of Judges BAIK and BEAUVALLET, para. 87)

v. *Recharacterisation of Charges*

For jurisprudence concerning the ***Characterisation of the Charges***, see IV.B.4.iv. Charges

1.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Recharacterisation of the charges must not affect the ambit of the initial matter laid before an investigating judge, as circumscribed by an introductory submission." (Opinion of Judges BEAUVALLET and BAIK, para. 145)

2. Co-Investigating Judges' Role and Duties in Judicial Investigation

i. *Role and Powers of the Co-Investigating Judges*

a. Responsibility of the Co-Investigating Judges to Conduct Judicial Investigation

1.	**002 IENG Sary** Special PTC Doc. No. 3 22 September 2009 *Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE*	"[T]he role and functions of investigators or legal officers are distinct from those of the Co-Investigating Judges. Pursuant to the [Agreement], the [ECCC Law] and the Internal Rules, the Co-Investigating Judges have sole authority and responsibility to conduct the judicial investigation and determine what they will rely upon in their decisions and orders." (para. 20)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The procedural regime adopted by the ECCC provides that upon filing of an Introductory Submission by the Co-Prosecutors, the Co-Investigating Judges perform a judicial investigation into inculpatory and exculpatory evidence, which ultimately leads them to either dismiss the case or issue an indictment committing the accused for trial. When an indictment is issued, the case file containing all the evidence collected during the judicial investigation is transferred to the Trial Chamber and constitutes the basis of the trial, as the parties are not allowed to conduct their own investigation. The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto […]." (Opinion of Judges CHUNG and DOWNING, para. 20)

3.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"[U]nlike the international tribunals where investigations are carried out by the parties, the investigations at the ECCC are carried out by judicial authorities, such as the Co-Investigating Judges, who are required by law to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory'. As such, the Co-Investigating Judges have wide discretion in conducting the investigation and, as a necessary corollary, in conducting witness and civil party interviews in a way conducive to ascertaining the truth." (para. 16)

b. Distinction with the Co-Prosecutors

1.	**003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"The matter of how the two Co-Prosecutors work together is, in our view, an internal issue of the independent Office of the Co-Prosecutors. […] Where no issue has been raised to the contrary, the outside world can expect the Co-Prosecutors to work together and are therefore assumed to be aware of the actions of the other. […] It is not for the Co-Investigating Judges, or anybody else, to take up a supervisory role of the Office of the Co-Prosecutors." (Opinion of Judges LAHUIS and DOWNING, para. 8)
2.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"[I]t is important to keep in mind that under the ECCC legal regime, distinct from the common law system, it is the Co-Investigating Judges, not the Co-Prosecutors, who *have the ultimate power to decide whether to indict persons* or not and that, in exercising such power, they 'are *not bound* by the Co-Prosecutors' submissions.' Although they must seek the advice of the Co-Prosecutors before charging *anyone that is unnamed* in the Introductory Submission, the ultimate *power to send anyone to trial* rests with the Co-Investigating Judges. Under these circumstances, the discretion initially used by the Co-Prosecutors in deciding whom *to suspect and to lay preliminary charges against* is ultimately overtaken by the by the Co-Investigating Judges, at the end of the judicial investigation, in deciding whom *to indict, if at all,* in the event that: 1) the acts in question amount to crimes within the jurisdiction of the ECCC, and that 2) from the number of those identified as the perpetrators of those acts, they choose to indict only a limited number of persons." (para. 43)
3.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Co-Investigating Judges are thus barred from investigating facts which fall outwith the Introductory Submission. Internal Rule 55(3) provides: 'If, during an investigation, new facts come to the knowledge of the Co-Investigating Judges, they shall inform the Co-Prosecutors, unless the new facts are limited to aggravating circumstances relating to an existing submission.' Where such new facts have been referred to the Co-Prosecutors, the Co-Investigating Judges shall not investigate them unless they receive a Supplementary Submission. Any fact unmentioned in the Introductory Submission, save where the investigation is subsequently extended by a Supplementary Submission, therefore falls outwith the jurisdiction of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 9) "Such a separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system." (Opinion of Judges BEAUVALLET and BWANA, para. 10)

4.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[T]he separation of the tasks assigned to the Co-Prosecutors and to the Co-Investigating Judges is a fundamental feature inherent to the inquisitorial system. […] The tasks assigned to each of them are clearly defined. The fact that the International Co-Prosecutor clarified the scope of the Introductory Submission assists the Co-Investigating Judges in respecting [Rule 55(2)], when investigating the facts falling within the scope of the Introductory and Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 21)
5.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"The Undersigned Judges also find that the separation of the tasks assigned to the CPs and to the CIJs is a fundamental feature, inherent to the inquisitorial system. As stated in Internal Rule 55(2): '[t]he [CIJs] shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission [by the CPs].' The tasks assigned to each of them are clearly defined. The fact that the ICP clarified the scope of the investigation assists the CIJs in respecting this Rule when investigating the facts falling within that scope." (Opinion of Judges BEAUVALLET and BAIK, para. 83)

c. Discretion and Independence of the Co-Investigating Judges in the Conduct of Investigation

1.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[P]ursuant to Internal Rule 55(5), the Co-Investigating Judges may, in the conduct of their investigation, 'take any investigative action conducive to ascertaining the truth'. They are independent in the way they conduct their investigation." (para. 63)
2.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"It is observed that, pursuant to Internal Rule 55(5), the Co-Investigating Judges may, in the conduct of their investigation 'take any investigative action conducive to ascertaining the truth.' They are independent in the way they conduct their investigation." (para. 72)
3.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017	"[U]nlike the international tribunals where investigations are carried out by the parties, the investigations at the ECCC are carried out by judicial authorities, such as the Co-Investigating Judges, who are required by law to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory'. As such, the Co-Investigating Judges have wide discretion in conducting the

	Decision on AO An's Application to Annul Written Records of Interview of Three Investigators	investigation and, as a necessary corollary, in conducting witness and civil party interviews in a way conducive to ascertaining the truth." (para. 16)
4.	**004 YIM Tith** PTC 45 D360/1/1/6 26 October 2017 *Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004*	"[Internal Rule 60(1)] confirms the Co-Investigating Judges' broad discretion as to how they want to collect evidence, through an interview taken by themselves, by delegated investigators upon a rogatory letter, or by any other investigative action conducive to ascertaining the truth." (para. 8) "The Application concerns the transfer of evidence legally admitted in judicial proceedings, […] and falls under the Co-Investigating Judges' discretion to take any investigative action conducive to ascertaining the truth. The Co-Investigating Judges are neither bound to take interviews pursuant to Internal Rule 60 nor required to obtain testimonial evidence through confidential interviews conducted by themselves." (para. 10)
5.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges recall that a judicial investigation is not a discretionary exercise. Rather, the Co-Investigating Judges are required to operate in accordance with the applicable law and exercise their entrusted powers with caution. Article 23*new* of the ECCC Law unambiguously dictates that the Co-Investigating Judges 'shall follow existing procedures in force.' Therefore, the Co-Investigating Judges are obliged to conduct their judicial investigation within the ECCC legal framework in which the Pre-Trial Chamber situates as a reviewing court and duly contributes with its jurisprudence." (Opinion of Judges BEAUVALLET and BAIK, para. 138) "The International Judges further recall that the procedure of the Office of the Co-Investigating Judges shall be in accordance with Cambodian law pursuant to Article 12(1) of the ECCC Agreement, and reaffirm that the applicable law before the ECCC and the Cambodian Code of Criminal Procedure shall be strictly interpreted as instructed by Article 1 of that Code […]." (Opinion of Judges BEAUVALLET and BAIK, para. 139) "[D]ecisions to undertake – or, as in the present case, not to undertake – any investigative act fall within the remit of the Co-Investigating Judges' appreciation. However, their appreciation is not unlimited as it must be exercised according to well-settled legal principles and may be subject to the Pre-Trial Chamber's appellate judicial review." (Opinion of Judges BEAUVALLET and BAIK, para. 240)

d. Authority and Powers of the Co-Investigating Judges

1.	**002 IENG Sary** PTC 05 A104/II/7 30 April 2008 *Decision on Appeal concerning Contact between the Charged Person and His Wife*	"Rule 55(5) is sufficiently broad in its scope to give the Co-Investigating Judges jurisdiction to limit contacts between the Charged Person and any other person in the interest of the investigation." (para. 14) "This jurisdiction of the Co-Investigating Judges is however limited by Internal Rule 21(2) […]." (para. 15) "These findings are in accordance with the practice at international tribunals which has established clear distinction between (i) the segregation of detained person from all or some of the other detained persons for the purpose of preserving the order in the prison and the security of the detainees and (ii) the restriction of communication and contact between a detained person and any other person to avoid any prejudice to the outcome of the proceedings. The rules applicable at the International Criminal Court (ICC) at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for the Rwanda (ICTR) state that judicial authorities have jurisdiction in the latter case, but not in the former." (para. 16)

2.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"Internal Rule 56 provides that, during the judicial investigation stage, it is only the Co-Investigating Judges who have the responsibility and legal authority to ensure that essential information is made available to the public […]." (para. 25)
3.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"The Pre-Trial Chamber has stated that the Co-Investigating Judges' investigations are conducted independently and that the Pre-Trial Chamber will not dictate the 'methodology or nature of an investigation which falls within the Co-Investigating Judges' discretionary power, unless and until it is satisfied that *an* investigative act impacts upon *due process or other rights* of the Charged Persons. It would be *inappropriate to extend the concept of constructive refusal* such that the Pre-Trial Chamber would *scrutinize the adequacy* of investigative actions performed by the [Co-Investigating Judges] as such an extension would see this Chamber intruding into the investigative discretion vested in the [Co-Investigating Judges] by Internal Rule 55(5).'" (para. 15)
4.	**003 MEAS Muth** PTC 25 D120/2/1/4 9 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"In light of the fact that Co-Investigating Judge Harmon issued the Decision against MEAS Muth's Motion to Strike the ICP's Supplementary Submission without the necessary authority [due to Judge Bohlander's appointment as International Co-Investigating Judge by His Majesty King Norodom Sihamoni of Cambodia], and that Co-Investigating Judge Bohlander Re-Issued a Decision on MEAS Muth's Motion to Strike the ICP's Supplementary Submission, the Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits." (para. 11)
5.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The placement under judicial Investigation of a person is a discretionary power of the Co-Investigating Judges but can only be done providing that a specific condition is met. Pursuant to Internal Rule 55(4), Co-Investigating Judges have the discretionary power to charge a suspect or any other person, whether named in the Introductory Submission or not, provided that there is *clear and consistent* evidence indicating that such a person may be criminally responsible for the commission of a crime referred to in an Introductory or Supplementary submission. A substantive condition may be inferred from this Rule." (Opinion of Judges BEAUVALLET and BAIK, para. 12) "The placement under investigation by the Co-Investigating Judges cannot be appealed. Indeed a Judge's mandate consists of two components: the *imperium* and the *juridictio*. Only the latter is appealable. The use of the words 'power' and to 'inform', in Internal Rules 55(4) and 57(1), in relation to the placement under judicial investigation, suggests that the charging process falls within the Judge's imperium which is therefore not appealable." (Opinion of Judges BEAUVALLET and BAIK, para. 15)

	National Crimes and to Apply JCE and Command Responsibility	
6.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The Undersigned Judges further point out that the legal characterisation of the facts will be determined by the Co-Investigating Judge upon conclusion of the judicial investigation – determination from which appeal lies. The Co-Prosecutors propound but do not determine legal characterisation. Various facts were brought before the Co-Investigating Judges with whom their legal characterisation will rest, as will the establishment of any nexus between the various elements of the crimes at the Closing Order stage. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' order including in respect of the legal characterisations. Accordingly, the Forced Marriage Application for annulment is hereby dismissed." (Opinion of Judges BEAUVALLET and BAIK, para. 226)
7.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"From the history of investigations, it is clear that the International Investigating Judge is acting upon the allegations and suggestions made by the ICP in the Supplementary Submission. The Supreme Court Chamber has found that, as far as jurisdiction is concerned, the Co-Investigating Judges have no discretion to exercise. Had the ICIJ found that the Supplementary Submission was defective, with respect to allegations into acts of forced marriage, it would have either declared lack of jurisdiction or, as the Pre-Trial Chamber has found, it would have submitted an application under Internal Rule 76(1) for annulment, at least in part, of the Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 6)
8.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he Co-Investigating Judges are seised of facts (*in rem*) and not of persons (*in personam*) […]." (para. 36) "The Pre-Trial Chamber recalls that the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office." (para. 50)
9.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In Case 004/1, the Pre-Trial Chamber recalled that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office'." (para. 80)
10.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021	"The International Judges recall that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office' […]." (Opinion of Judges BEAUVALLET and BAIK, para. 155)

	Considerations on Appeals against Closing Orders	

e. Delegation of Powers

1.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview*	"[D]elegates executing rogatory letters shall act under the supervision of the Co-Investigating Judges. Therefore, it is up to the Co-Investigating Judges to give instructions to the investigators, even *ultra legem*, to record witness interviews for instance." (para. 24) "This being said, these discretionary instructions issued by the Co-Investigative Judges do not supersede the applicable law. In other words, the non-compliance with the memoranda would not constitute a procedural defect if not contradicting the Internal Rules, the Cambodian Code of Criminal Procedure or any other relevant legal disposition." (para. 25)
2.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"[I]nasmuch as the circumstances which came to light in the course of interviews of witnesses conducted pursuant to a rogatory letter remain connected to the facts specified in the Introductory Submission, they duly fall within the matter placed before the CIJs." (Opinion of Judges BEAUVALLET and BAIK, para. 45) "The Undersigned Judges observe that the only requirements, set by Internal Rule 62(2), concern: clarity of 'the nature of the investigative work', which 'must relate directly to the crime under investigation'; and the time limit for compliance with the Rogatory Letter. The first sentence of Rule 62(2), which requires that '[a] Rogatory Letter shall not be issued in general form', has to be read in conjunction with the rest of this paragraph and cannot be interpreted to add a non-existent requirement 'for clarity as regards the geographical locations to be investigated' […]." (Opinion of Judges BEAUVALLET and BAIK, para. 47) "In other terms, the prohibition to issue rogatory letters in general form intends to ensure the OCIJ leads, directly or through the delegates acting under his supervision, the judicial investigation within scope. The fact that the ICIJ exercises his discretion to issue amendments to his Rogatory Letters, from time to time, does not mean that he is setting limits to geographical locations to be investigated, and most importantly, it does not import any new requirement under Internal Rule 62. This is rather an indication that he is exercising his direction to lead the judicial investigation in accordance with Rule 62." (Opinion of Judges BEAUVALLET and BAIK, para. 48)
3.	**004 YIM TITH** PTC 45 D360/1/1/6 26 October 2017 *Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004*	"[Internal Rule 60(1)] confirms the Co-Investigating Judges' broad discretion as to how they want to collect evidence, through an interview taken by themselves, by delegated investigators upon a rogatory letter, or by any other investigative action conducive to ascertaining the truth." (para. 8)
4.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and*	"There is thus no provision in the applicable law before the ECCC prohibiting the Co-Investigating Judges from requesting assistance or gathering information from other institutions, including from the Victims Support Section, which is specifically tasked with assisting victims in submitting civil party applications under the Judges' supervision." (para. 18) "Turning to the nature of the assistance requested from the Victims Support Section, the Pre-Trial Chamber does not consider that the questioning of civil party applicants requested by the former International Co-Investigating Judge can be characterised as a delegation of the power to conduct formal interviews, which are subject to the procedural requirements of Internal Rules 23(4) and 59. It is evident that that the former International Co-Investigating Judge did not treat or intend to treat the questioning of applicants by the Victims Support Section as formal civil party interviews." (para. 19)

	Associated Investigative Products in Case 004	"[T]he Pre-Trial Chamber considers that the Victims Support Section did not undertake any delegated investigative action in place of the Co-Investigating Judges, in the sense of Internal Rules 55(9), 59(6) and 62, but instead properly assisted victims in submitting civil party applications, under the former International Co-Investigating Judge's supervision, pursuant to Internal Rule 12*bis*(1)(b)." (para. 21)

f. Appointment of Reserve Co-Investigating Judges

1.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"The procedure for the *appointment of a new* international Co-Investigating Judge is ongoing. This procedure is, in our opinion, not related to the standing of the Reserve International Co-Investigating Judge KASPER-ANSERMENT to temporarily replace Judge BLUNK in his capacity as the Reserve International Co-Investigating Judge. Following an absence of the appointed International Co-Investigating Judge and *in the meantime,* pursuant to the applicable law in ECCC, in order to ensure that court proceedings go on timely and smoothly, the functions of the International Co-Investigating Judge shall be undertaken by the Reserve International Co-Investigating Judge." (Opinion of Judges DOWNING and CHUNG, para. 33) "Article 26 of the ECCC law is clear as it provides that where a Co-Investigating Judge is absent, which includes instances of resignation, the reserve Co-Investigating Judge shall perform the functions of the absent Co-Investigating Judge. […] Unlike the case of the reserve Judges of the Chambers or of the Investigating Judges who act in the regular Cambodian Courts, in the case of the reserve Co-Investigating Judge in the ECCC the applicable law does not set any other conditions or require any other formalities […] for the temporary replacement […] of a Co-Investigating Judge by the Reserve Co-Investigating Judge during his/her absence." (Opinion of Judges DOWNING and CHUNG, para. 34) "We are of the opinion that the actions of the Reserve International Co-Investigating Judge who is *temporarily* replacing and acting in the stead of the absent International Co-Investigating Judge are legaly valid until a new International Co-Investigating Judge is duly appointed to *permanently* replace the former International Co- Investigating Judge who resigned […]." (Opinion of Judges DOWNING and CHUNG, para. 45)
2.	**004/19-01-2012-ECCC/PTC** 23 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"The procedure for the *appointment of a new* international Co-Investigating Judge is ongoing. This procedure is, in our opinion, not related to the standing of the Reserve International Co-Investigating Judge KASPER-ANSERMENT to temporarily replace Judge BLUNK in his capacity as the Reserve International Co-Investigating Judge. Following an absence of the appointed International Co-Investigating Judge and *in the meantime,* pursuant to the applicable law in ECCC, in order to ensure that court proceedings go on timely and smoothly, the functions of the International Co-Investigating Judge shall be undertaken by the Reserve International Co-Investigating Judge." (Opinion of Judges DOWNING and CHUNG, para. 31) "Article 26 of the ECCC law is clear as it provides that where a Co-Investigating Judge is absent, which includes instances of resignation, the reserve Co-Investigating Judge shall perform the functions of the absent Co-Investigating Judge. […] Unlike the case of the reserve Judges of the Chambers or of the Investigating Judges who act in the regular Cambodian Courts, in the case of the reserve Co-Investigating Judge in the ECCC the applicable law does not set any other conditions or require any other formalities […] for the temporary replacement […] of a Co-Investigating Judge by the Reserve Co-Investigating Judge during his/her absence." (Opinion of Judges DOWNING and CHUNG, para. 32)
1.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Article 5(5) of the ECCC Agreement and Article 26(4) of the ECCC Law set forth the required formalities for a Reserve International Co-Investigating Judge's appointment. Further, Article 5(6) of the ECCC Agreement and Article 26(2) of the ECCC Law state that the Reserve Co-Investigating Judges shall replace the appointed Co-Investigating Judges in their absence. More specifically, Article 27*new* (3) of the ECCC law provides that '[i]n the event of the absence of the foreign Co-Investigating Judge, he or she shall be replaced by the reserve foreign Co-Investigating Judge.'" (Opinion of Judges BEAUVALLET and BAIK, para. 234) "The International Judges accordingly find that unlike the Reserve International Judges of the Trial Chamber or the Supreme Court Chamber who must be expressly designated by the President of the relevant Chamber 'on a case-by-case basis […] to replace a foreign judge if that judge is unable to continue sitting', there is no additional procedural requirement, other than an initial appointment, for a Reserve International Co-Investigating Judge to undertake the duties incumbent upon that function." (Opinion of Judges BEAUVALLET and BAIK, para. 235)

ii. *Co-Investigating Judges' Decisions*

a. Co-Investigating Judges' Duty to Pronounce Decision

See IV.B.2.iii. Judicial and Ethical Duties of the Co-Investigating Judges

b. Reasoned Decisions

See IV.B.2.f. Duty to Provide Reasoned Decisions

c. Notification of Decisions

1.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"On repeated occasions, lawyers for the civil party applicants, despite having filed a power of attorney, have not been notified of any document filed in Case 003 [...]. [...] [N]o instruction was given to the case file officer to notify the Appellant's lawyers of any document related to the appeal they have filed on his behalf. This course of action is in contradiction with the general approach taken in Case 002 whereby a decision on the recognition of lawyers for civil party applicants was made upon the filing of a power of attorney prior to any other action being taken with regards to a civil party applicant and all subsequent documents filed were notified to the lawyer, in compliance with Internal Rules 46(1) and 23*ter*(2), as well as Cambodian and international practices. It remains unexplained why the Co-Investigating Judges considered that the Appellant's lawyers needed further recognition by them, especially given the Cambodian lawyer enjoys a *de jure* right to act immediately upon filing of a power of attorney and the international counsel has been accredited and recognized as the co-lawyer of a civil party in case 002 [...]. In our view, this decision is very broad and, read in conjunction with Internal Rule 22(2)(a), provides that once recognised, the foreign lawyer 'shall enjoy the rights and privilege before the ECCC as a national lawyer'. In any event, if the Co-Investigating Judges considered that recognition is necessary for lawyers, such decision shall be taken prior to dealing with the application filed on behalf of their client so as to not circumvent the possibility allowed by the Internal Rules for civil party applicants to be assisted by lawyers. We are of the view that, by their course of action, the Co-Investigating Judges have deprived some civil party applicants [...] of the fundamental right to legal representation." (Opinion of Judges DOWNING and LAHUIS, para. 7) "The Internal Rules and the Practice Directions on Filing of Documents before the ECCC direct that the Greffier and/or Case File Officer shall i) record in a written report the means of notification used, the time, date and place of service, as well as any other relevant circumstances; ii) use their best endeavours to obtain acknowledgement of receipt, which shall be appended to the report of notification; and iii) complete the 'Acknowledgement of Service' form, whereby the Case File Officer or Designated Officer shall confirm service of the document on its recipient." (Opinion of Judges DOWNING and LAHUIS, para. 8) "While it is expected [...] that documents submitted by the parties or applicants in the proceedings are filed, notified and placed in the case file upon their receipt by the Greffier of the Office of the Co-Investigating Judges from the Case File Officer, significant unexplained delays in processing documents and placing these in the case file have been noted in Case 003. [...] We emphasise the importance of court officers fulfilling their duty to process documents as soon as they are submitted in order to ensure that the case file is up to date and that deadlines are honoured. Delays in filing documents may adversely impact on the exercise of rights provided to parties or applicants in the proceedings under the Internal Rules, as this seems to have occurred in the present case whereby the filing of the Appellant's civil party application a few minutes before rejecting it may be seen as an attempt to prevent him from exercising his right to have access to the case file and to participate in the judicial investigation. [...] [T]he civil party applications [...] in this case are also complaints and, as such, had to be immediately forwarded to the Co-Prosecutors for their action under Internal Rule 49(2)." (Opinion of Judges DOWNING and LAHUIS, para. 9) **"**[E]nsuring that documents submitted by the parties are filed and properly notified to those entitled to receive notification is the very first and necessary step to ensure fairness of the proceedings." (Opinion of Judges DOWNING and LAHUIS, para. 11)

		"The modifications made to the Impugned Order are so fundamental that they affect its very substance. [...] These modifications could not be made by way of a corrigendum, especially where an appeal has been lodged against the order and raises some of the very defects the Modified Order intends to cure. Therefore, the Modified Order has to be seen as a totally different order from the Impugned Order, which has been removed from the case file and replaced by a new order. The consequence is that the Impugned Order no longer exists." (Opinion of Judges DOWNING and LAHUIS, para. 15) "Therefore, we consider that the Appeal is moot, as the Impugned Order no longer exists." (Opinion of Judges DOWNING and LAHUIS, para. 15)
2.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"[T]he Internal Rules and the Practice Directions on Filing of Documents before the ECCC direct that the Greffier and/or Case File Officer shall i) record in a written report the means of notification used, the time, date and place of service, as well as any other relevant circumstances; ii) use their best endeavours to obtain acknowledgement of receipt, which shall be appended to the report of notification; and iii) complete the 'Acknowledgement of Service' form, whereby the Case File Officer or Designated Officer shall confirm service of the document on its recipient." (Opinion of Judges DOWNING and LAHUIS, para. 9) "According to Internal Rule 46(1) '[a]ll orders of the Co-Investigating Judges [...] shall be notified to the parties or their lawyers, if any, either orally or at their last known address, by the Greffier [...] using appropriate means.' [...] [T]he Order [...] shall have been, at the very least, notified to the Appellant's Lawyers and, if a decision was made to also notify the Appellant by service of a hard copy, sufficient proof of notification should have been secured. The requirement of notification is meant to ensure that the knowledge of documents filed in the course of proceedings is directly provided to all those affected by these proceedings. This formality is not only essential to the integrity of the proceedings, it is also a vital principle of fairness and of due process as it prevents a judicial body from operating in secret from parties and individuals affected by its decisions. In this case, the notification has very concrete legal consequence as it triggers both the capacity to exercise the right to pre-trial appeal against the Co-Investigating Judges' Order and the start of the calculation of the time limits for filing of documents which applies to pre-trial appeals and impacts on their validity." (Opinion of Judges DOWNING and LAHUIS, para. 11) "[T]he absence of notification of the Order [...] and the absence of a clear evidence of notification to the Appellant himself is a procedural defect that infringes upon the Appellant's fundamental rights. [...] [F]rom the moment of the effective notification [...] a right of appeal [...] will arise and the time limits for filing an appeal will then start to run." (Opinion of Judges DOWNING and LAHUIS, para. 12)
3.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"Internal Rule 46 [...] provides no exception to the rule that 'all' orders of the Co-Investigating Judges shall be notified to the 'parties'. [...] The Pre-Trial Chamber finds that, pursuant to Internal Rule 46, the ICIJ was required to notify the Defence with the Impugned Decisions." (para. 29) "[S]ince the lack of notification has not caused any prejudice, the Pre-Trial Chamber holds that the lack of conformity with the requirements of Internal Rule 46, does not amount to a procedural defect warranting annulment." (para. 46)

d. Reconsideration of the Co-Investigating Judges' Decisions

For jurisprudence concerning the ***Reconsideration of Co-Investigating Judges' Decisions Ordered by the Pre-Trial Chamber***, see VII.C.11. Remedies

1.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG*	"[I]t is possible for the Co-Investigating Judges to reconsider their previous decisions. In its previous jurisprudence, the Pre-Trial Chamber has applied the following test for reconsideration: '25. […] The Appeals Chamber of the ICTY has held that a Chamber may "always reconsider a decision it has previously made, not only because of a *change of circumstances* but also where it is realized that the *previous decision was erroneous* or that it has *caused an injustice*.'" (Opinion of Judges DOWNING and CHUNG, para. 46)

	on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72	
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The Pre-Trial Chamber has previously recognised the inherent power of ECCC judicial bodies to reconsider their previous decisions when there is a change of circumstances or where it is realised that the previous decision was erroneous or that it has caused an injustice. While reconsideration can be done *proprio motu*, principles of natural justice and procedural fairness require that any party or other concerned individual whose rights or interests may be affected be accorded the right to be heard prior to such decision being made." (Opinion of Judges CHUNG and DOWNING, para. 9)

iii. *Co-Investigating Judges' Duties*

a. Judicial and Ethical Duties of the Co-Investigating Judges

1.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"Absent any indication to the contrary, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure that they act in compliance with the requirements set forth in Article 5(4) of the Agreement, 23*new* of the ECCC Law and Internal Rule 72. There is no indication in the present case disclosing a lack of compliance with these legal requirements by the International Co-Investigating Judge in issuing the Four Decisions so the Appellant's argument that he is not being investigated by a tribunal established by law is unfounded." (para. 11)
2.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on her Motion to Reconsider and Vacate Her Summons Dated 29 July 2014*	"[In] absence of any contrary indication, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure they act in compliance with the requirements in Article 5(4) of the Agreement, Article 23 new of the ECCC Law and Internal Rule 72." (para. 29) "Instead, the Rules provide that both Co-Investigating Judges have the power and duty to ensure that actions taken by one of them are within the scope of disagreements or subject to a delegation of authority. They are presumed to fulfil these obligations and act in accordance with their ethical duties." (para. 30)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The judicial duty to pronounce, based on the law, a decision on a matter in dispute (*jurisdictio*) lies at the heart of a judge's highest responsibility and function. As such, pronouncements adjudicating and settling matters in dispute enjoy a legal obligatory nature and effect (*imperium*), unlike the submissions made by parties." (para. 122)

b. Principle of the Joint Conduct of Judicial Investigations by the Co-Investigating Judges

For jurisprudence concerning the ***Disagreements between the Co-Investigating Judges***, see VII.A. Settlement of Disagreements

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber recalls […] that a judicial investigation is not a discretionary exercise. The Co-Investigating Judges are obliged to conduct their judicial investigation within the ECCC legal framework […]. They are required to operate in accordance with the applicable law and to exercise their entrusted powers with caution. […] Article 23 *new* of the ECCC Law unambiguously dictates that the Co-Investigating Judges conducting the investigation 'shall follow existing procedures in force' and not at their leisure. […] [T]he procedure of the Office of Co-Investigating Judges is governed by Cambodian law. In this regard, Article 1 of the Cambodian Code of Criminal Procedure provides that '[t]he purpose of the Code of Criminal Procedure is to set out the *rules to be observed and to apply rigorously* in order to clearly determine the existence of a criminal offense' […]. Accordingly, the Code of Criminal Procedure, and the law applicable to the ECCC, is strictly interpreted." (para. 68) "[T]he joint conduct of investigations by the National and International Co-Investigating Judges is a primary fundamental legal principle at the ECCC, as Article 5(1) of the ECCC Agreement states: 'There shall be one Cambodian and one international investigating judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.'" (para. 103) "The ECCC Law [Art. 14(1)] strengthens this fundamental principle by providing that '[t]he judges shall attempt to achieve unanimity in their decisions.' More significantly, Article 23*new* of the ECCC Law not only reiterates this principle, but also provides further indications on how the principle is to be implemented by explicitly requiring that '[a]ll investigations shall be the joint responsibility of two investigating judges, one Cambodian and another foreign, hereinafter referred to as Co-Investigating Judges, and shall follow existing procedures in force.' The Chamber finds that this provision means that the Co-Investigating Judges must conduct the investigations jointly and in accordance with the legal provisions applicable at the ECCC. The Chamber further notes that this provision mirrors Article 1 of the Cambodian Code of Criminal Procedure, providing that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of a criminal offense.'" (para. 104) "Both the Cambodian law and the international law applying to the ECCC require that the efforts to investigate and prosecute [the] crimes be genuine, meaning that ECCC organs must ensure the effective investigation and prosecution of crimes falling within the ECCC's jurisdiction by complying with all existing procedures in force." (para. 110) "One way in which the Royal Government of Cambodia and the United Nations secured effective justice in the ECCC context was by making sure that procedures were available not only to handle disagreements arising in the course of investigations and prosecutions, but also to conclusively resolve such disagreements in order to avoid procedural stalemates that would, *inter alia*, hamper the effectiveness of proceedings. These procedures are underlined and ultimately governed by the default position prescribed, *inter alia*, by Article 5(4) of the ECCC Agreement, unambiguously providing that when '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 […] that the difference shall be settled'." (para. 111) "The judicial duty to pronounce, based on the law, a decision on a matter in dispute (*jurisdictio*) lies at the heart of a judge's highest responsibility and function. As such, pronouncements adjudicating and settling matters in dispute enjoy a legal obligatory nature and effect (*imperium*), unlike the submissions made by parties. […] [T]he judge cannot refrain from adjudicating the matter before him or her and from arriving at a conclusion that effectively decides this matter. The Pre-Trial Chamber notes that, at the ECCC, the Co-Investigating Judges *jointly* assume such judicial office. When their disagreements prevent them from arriving at a common final determination of a case of which they are seised, the Judges must still perform their judicial duty and function by following the procedures available within the ECCC legal system to settle disagreements between them and ensure that a final determination of the matters falling within their jurisdiction is attained." (para. 122)

2.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[T]he Pre-Trial Chamber recalls that 'two investigating judges, one Cambodian and another foreign [...] shall follow existing procedures in force.' Thus, the Co-Investigating Judges are seised of the judicial investigation at the ECCC and jointly responsible for its proper conduct." (para. 64)
3.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber firstly recalls the importance of the joint responsibility of the two Co-Investigating Judges in conducting judicial investigations at the ECCC, as Article 14*new*(1) of the ECCC Law, in relevant part, states that '[these] judges shall attempt to achieve unanimity in their decisions.'" (para. 85) "First, the Pre-Trial Chamber recalls that the joint conduct of investigations by the National and the International Co-Investigating Judges is a primary fundamental legal principle at the ECCC, as Article 5(1) of the ECCC Agreement provides that '[t]here shall be one Cambodian and one international investigating judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.'" (para. 98) "The ECCC Law strengthens this fundamental principle as Article 14*new*(1) of this Law mandates that '[t]he judges shall attempt to achieve unanimity in their decisions.' Article 23*new* of the ECCC Law specifies how the principle must be implemented by requiring that '[a]ll investigations shall be the joint responsibility of two investigating judges, one Cambodian and another foreign, hereinafter referred to as Co-Investigating Judges, and shall follow existing procedures in force.' The Pre-Trial Chamber has held that this provision, which mirrors Article 1 of the Cambodian Code of Criminal Procedure, providing that the Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of a criminal offense', dictates that the Co-Investigating Judges must conduct the investigations jointly and in compliance with the law applicable at the ECCC." (para. 99) "The Pre-Trial Chamber reaffirms that in any such situations, the Co-Investigating Judges' actions must always be within their individual capacity and performed according to the cooperation principle upheld by Article 5(4) of the ECCC Agreement, reflecting the equal status of the National and the International Co-Investigating Judges in the ECCC hybrid system. The Chamber further reiterates that the Co-Investigating Judges are obliged, under the ECCC legal framework, to continue to seek a common position during the disagreement process. The ECCC legal system was designed and is structured to manage the joint conduct of judicial investigations by the Co-Investigating Judges who may thus reach an agreement at any stage of the investigation of cases of which they are seised. The crystallisation of any disagreements between them about such cases is permissible, but only insofar as it complies with existing procedures in force and remains coherent with the default position intrinsic to the ECCC legal system, which provides an effective way out of any possible procedural impasses." (para. 106) "[T]he Chamber recalls that the Co-Investigating Judges have a judicial duty to decide on matters in dispute of which they are seised. When their disagreement prevents them from arriving at a common final determination of such matters, they must still discharge this joint judicial duty by following the procedures available in the ECCC legal system to make sure that a conclusive determination of the matters within their jurisdiction is attained." (para. 111)

c. Duty to Conduct an Investigation and to Investigate All the Facts

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order*	"Reading Internal Rule 55(1) and (2) in conjunction with Internal Rule 53(1), the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission." (para. 35)

	Indicting KAING Guek Eav alias "Duch"	
2.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber agrees with the Co-Investigating Judges that they do not have an obligation to establish the truth of 'manifestly irrelevant matters.' The Pre-Trial Chamber also agrees that in order for the investigators to establish the truth, they shall 'focus solely on the seised matters upon which the truth is required.'" (para. 60)
3.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The International Judges further note that the Co-Investigating Judges are bound by the matter before them for determination […], meaning that a duty is cast on the Co-Judges to investigate all of the facts with which they are seised by way of an Introductory Submission. Ultimately, the Co-Investigating Judges are duty-bound to investigate all of the facts, but only those facts which are laid before them." (Opinion of Judges BEAUVALLET and BWANA, para. 13) "Otherwise put, the Co-Investigating Judge's investigation is limited by the alleged criminal acts defined by the Co-Prosecutors. However, it rests with the Judge to elicit the circumstances of their commission, and the *locus in quo* in particular. Imprecision as to the facts in the Introductory Submission does not preclude judicial investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 14) "That a crime site is unmentioned in the Submissions, whether Introductory or Supplementary, is not sufficient to determine whether the acts allegedly committed there, or perhaps even the acts committed in an unspecified location, fall within the sphere of said *sub judice* matter. In short, the *locus in quo* is a circumstance which identifies the location of the fact, but is not factor *per se*." (Opinion of Judges BEAUVALLET and BWANA, para. 19)
4.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"It is clear under the Internal Rules that the Co-Investigating Judges have an obligation to conduct a judicial investigation when seised of an introductory submission and to reach a conclusion that the case should either be dismissed or sent to trial." (Opinion of Judges BEAUVALLET and BWANA, para. 23)
5.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's*	"It is clear under the Internal Rules that the Co-Investigating Judges have an obligation to conduct a judicial investigation when seised of an introductory submission and to reach a conclusion that the case should either be dismissed or sent to trial." (Opinion of Judges BEAUVALLET and BWANA, para. 25)

	Decision to Charge MEAS Muth in Absentia	
6.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"From the history of investigations, it is clear that the International Investigating Judge is acting upon the allegations and suggestions made by the ICP in the Supplementary Submission. The Supreme Court Chamber has found that, as far as jurisdiction is concerned, the Co-Investigating Judges have no discretion to exercise. Had the ICIJ found that the Supplementary Submission was defective, with respect to allegations into acts of forced marriage, it would have either declared lack of jurisdiction or, as the Pre-Trial Chamber has found, it would have submitted an application under Internal Rule 76(1) for annulment, at least in part, of the Supplementary Submission." (Opinion of Judges BEAUVALLET and BAIK, para. 6) "Having been seised with crimes within ECCC's jurisdiction, the OCIJ is obliged by law to conduct investigations, in order to 'ascertain the truth'." (Opinion of Judges BEAUVALLET and BAIK, para. 19)
7.	**004 AO An** PTC 27 D299/3/2 14 December 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng*	"The Pre-Trial Chamber has previously noted that 'the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission', and, more significantly, that 'the Co-Investigating Judges are also seized of *the circumstances surrounding the acts mentioned* in the Introductory or a Supplementary Submission'. The Pre-Trial Chamber has defined such surrounding circumstances as '[t]he circumstances in which *the alleged crime was committed and that contribute to the determination of its legal characterisation*'. […] [T]hose circumstances are 'not considered as being new facts and are thus parts of the investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 49)
8.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"Reading Internal Rule 55(1) and (2) in conjunction with Internal Rule 53(1), the Co-Investigating Judges have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission, as it is the case in Cambodian law." (Opinion of Judges BEAUVALLET and BAIK, para. 46)
9.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"The Pre-Trial Chamber has previously noted that 'the [CIJs] have a duty to investigate all the facts alleged in the Introductory Submission or any Supplementary Submission' […]." (Opinion of Judges BEAUVALLET and BAIK, para. 25)
10.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International*	"According to Internal Rule 53(1), the Co-Prosecutors shall open a judicial investigation 'by sending an Introductory Submission to the Co-Investigating Judges, either against one or more named persons or against unknown persons.' Pursuant to Internal Rule 55(2), '[t]he Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.' The Co-Investigating Judges are therefore bound by the matter before them for determination, but also have a duty to investigate all the facts of which they are seised, which means that they have to rule on

	Co-Prosecutor's Appeal of Closing Order (Reasons)	all these facts at the time of the closing order and not only on those that were formally charged." (para. 37)
11.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges recall that pursuant to Internal Rule 55(5), 'in the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth.' The International Judges clarify that a duty is cast on the Co-Investigating Judges to take the necessary investigative acts to ascertain the truth throughout the conduct of the judicial investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 241)

d. Duty to Investigate Exculpatory Evidence

For jurisprudence on the ***Notion of Exculpatory Evidence***, see IV.5.iv.b. Notion of Exculpatory Evidence

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial […]. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 35) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 36) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 39)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial […]. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 36) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 37) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the

		Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 40)
3.	**002 IENG Sary** Special PTC 01 Doc. No. 7 9 December 2009 *Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE*	"The nature of a judicial investigation is that it is an ongoing process of obtaining and evaluating evidence, with a conclusion being reached to either indict or dismiss in respect of matters charged. […] By finally forming an opinion on the investigations it is not likely and cannot be expected that the Co-Investigating Judges do not have a preference as to the nature of the evidence to be found, as they must have an idea by now of the conclusions they might reach based on all the evidence collected." (para. 24) "An expression of such preference by an Investigating Judge to his or her staff must further be distinguished from an explicit instruction or direction to judicial investigators to search only for inculpatory evidence and exclude exculpatory evidence from the investigation." (para. 25)
4.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"The Pre-Trial Chamber agrees […] that the relevant test is whether the document in question is, in and of itself, conducive to ascertaining the truth, rather than whether it is more conducive to ascertaining the truth than other elements already on the case file." (para. 17) "[…] To support his challenge, the Appellant relies on this Chamber's finding in the SMD Decision that the that the CIJ's reliance on the 'principle of sufficiency' to avoid the collection and assessment of exculpatory material amounts to a legal error. The Pre-Trial Chamber agrees with the Appellant's interpretation of the SMD Decision in so far as exculpatory material is concerned. Were the Request to contain *prima facie* reasons to believe that [REDACTED] possesses information of an exculpatory nature for the Charged Person, the CIJs would have had an obligation to grant the Request […]." (para. 26)
5.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[T]he Co-Investigating Judges have a duty to investigate exculpatory evidence." (para. 46) "The correct standard of proof requires the Appellant to demonstrate a *prima facie* reason for the Co-Investigating Judges to believe that one or more of the [REDACTED] may possess exculpatory evidence. […] [T]he determinative factor is whether the Co-Investigating Judges are satisfied that the Appellant has demonstrated a *prima facie* reason for the Co-Investigating Judges to believe that the investigative action may yield exculpatory evidence." (para. 47)
6.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"The Undersigned Judges recall that the Co-Investigating Judges 'have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, [they] have to review […] materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence'. The determinative factor is thus whether the Co-Investigating Judges are satisfied that the requesting party has demonstrated a *prima facie* reason to believe that the action sought may yield exculpatory evidence. It is not enough to refer to the documents as 'relevant' and 'necessary to the defence' and merely assert that they contain exculpatory evidence without any further explanation as to how they may suggest innocence or mitigate the personal responsibility." (Opinion of Judges BEAUVALLET and BAIK, para. 30)
7.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Chamber recalls the impartial nature of the Co-Investigating Judges' mandate and the purpose of judicial investigation. Pursuant to Internal Rule 55(5), the Co-Investigating Judges are obliged to conduct their investigation impartially, 'whether the evidence is inculpatory or exculpatory' to ascertain the truth The Chamber emphasises that the instant proceedings are in the pre-trial stage, which does not involve any determination of guilt or innocence. The Pre-Trial Chamber finds that the presumption of innocence is sufficiently safeguarded as, pursuant to Internal Rule 98(4), a *conviction* at trial requires the affirmative vote of at least four judges, and without the required majority, 'the

		default decision shall be that the Accused is acquitted.'" (Opinion of Judges BAIK and BEAUVALLET, para. 163)
8.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Internal Rule 55(5) also obliges the Co-Investigating Judges to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory.' In other words, the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate both inculpatory and exculpatory evidence. Accordingly, as the Pre-Trial Chamber has previously found, the Co-Investigating Judges have a 'preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not.'" (Opinion of Judges BEAUVALLET and BAIK, para. 241)

e. Due Diligence of the Co-Investigating Judges

For jurisprudence concerning the ***Length of Provisional Detention***, see V.B. Provisional Detention

1.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 59) "[T]he gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and […] in view of the scope and current stage of the investigations, the Co-Investigating Judges reasonably exercised their discretion to order the extension of the provisional detention." (para. 61)
2.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber considers that the due diligence displayed in the Co-Investigating Judge's conduct is a relevant factor when considering victims' rights in the proceedings." (para. 51)
3.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[…] [T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)
4.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012	"[T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)

	Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary	
5.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"The Pre-Trial Chamber previously stressed the importance of informing the victims and considered that 'due diligence displayed in the Co-Investigating Judge's [*sic*] conduct is a relevant factor when considering victims' rights in the proceedings.' It further held that, even though the 'Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, […] such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected throughout the proceedings.'" (para. 35)
6.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In this regard, the Pre-Trial Chamber is, *inter alia*, and regardless of specific attributions set in Internal Rules 71 to 78, required to ensure that '[t]he applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations [are] 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' throughout the pre-trial stage. The Chamber thus has inherent jurisdiction to examine 'due diligence displayed in the Co-Investigating Judge's conduct', where it constitutes 'a relevant factor when considering victims' rights in the proceedings'." (para. 51)
7.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 21(1)(c) stipulates that '[t]he ECCC *shall* ensure that victims are kept informed and that their rights are respected *throughout* the proceedings.' Accordingly, in performing their obligations to properly and timely keep victims informed, the Co-Investigating Judges must exercise due diligence in safeguarding the interests and rights of victims, *throughout* the entirety of the investigative phase." (Opinion of Judges BAIK and BEAUVALLET, para. 102)

f. Duty to Provide Reasoned Decisions

1.	**002 IENG Sary** PTC 05 A104/II/7 30 April 2008 *Decision on Appeal concerning Contact between the Charged Person and His Wife*	"It is clear from the practice at international tribunals that limitation of contact has to be ordered by reasoned decision. From this reasoning it must be clear which interest is protected and any limitation should be based upon the protection of such interest." (para. 17)
2.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008	"[A]ll decisions of judicial bodies are required to be reasoned as this is an international standard. A Co-Investigating Judges' order on a request to seize the Pre-Trial Chamber must therefore state the reasons for accepting or rejecting such request." (para. 21)

	Decision on NUON Chea's Appeal against Order Refusing Request for Annulment	
3.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"[In A104/II/7, the] Pre-Trial Chamber […] stated that 'limitation of contact has to be ordered by a reasoned decision' and that 'it must be clear which interest is protected and any limitation should be based upon the protection of such interest.'" (para. 12)
4.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"The Pre-Trial Chamber finds that 'an authority is obliged to justify its activities by giving reasons for its decisions'." (para. 64) "[T]he Co-Investigating Judges are not obliged to indicate a view on all the factors [on the conditions of Rule 63(3)] as the obligation to state reasons only indicates that they set out the legal grounds and facts taken into account before coming to a decision." (para. 66)
5.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Co-Investigating Judges' decision to either dismiss acts or indict the Charged Person shall be reasoned as specifically provided by Internal Rule 67(4). […] [I]t is an international standard that all decisions of judicial bodies are required to be reasoned." (para. 38) "The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances, the Pre-Trial Chamber will apply international standards." (para. 46) "International standards require that an indictment set out the material facts of the case with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence. The indictment should articulate each charge specifically and separately, and identify the particular acts in a satisfactory manner. If an accused is charged with alternative forms of participation, the indictment should set out each form charged." (para. 47) "[The level of particularity required in indictments] necessarily depends upon the alleged proximity of the accused to those events." (para. 48) "According to the requirement in Internal Rule 67(4), a Closing Order must be reasoned. […] [T]he Co-Investigating Judges failed to reason why the […] proposal to include the allegation of a joint criminal enterprise […] was rejected. In addition, they did not explain the chosen characterisation of the facts in terms of the modes of liability." (para. 115)
6.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[P]ursuant to Internal Rule 63(7), the Co-Investigating Judges are obliged to give reasons for an extension order. The Pre-Trial Chamber, in [D55/I/8] found that 'all decisions of judicial bodies are required to be reasoned, as this is an international standard.' A Co-Investigating Judges' order on extension of detention must therefore state the reasons for extension." (para. 21) "The Co-Investigating Judges extended the detention by reinstating the existing reasons for detention in the previous […] decision and by giving […] new inculpatory evidence. The Co-Investigating Judges are collecting inculpatory and exculpatory evidence in their investigations. The Pre-Trial Chamber concludes that the Co-Investigating Judges did not find exculpatory evidence […]. [T]he Co-Investigating Judges correctly fulfilled their obligation of reasoning […]." (para. 22) "The Co-Investigating Judges did not reason in their Extension Order how the risks that substantiated initial detention still exist. In this respect, the Order […] lacks sufficient reasoning. The Pre-Trial Chamber shall therefore undertake its own analysis on whether the conditions under Rule 63(3)(b) are still applicable." (para. 30)

		"[T]he Co-Investigating Judges should have referred to the fact that no new circumstances were raised in the appeal against the Order of Extension of Provisional Detention and this would have been sufficient to reason for the rejection of this request. In this respect, the Order of the Co-Investigating Judges was not sufficiently reasoned and before-mentioned reasoning will be substituted in the Extension Order." (para. 54)
7.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"The Pre-Trial Chamber notes that the problems raised by the Defence in relation to the translation and the delays in the provisional detention appeal were not part of the arguments raised in support of the application for release but only mentioned to explain the background of their Request for Release. As no argument has been put before the Co-Investigating Judges in relation to the translation issue or the alleged delays in the provisional detention appeal, the Pre-Trial Chamber finds the Defence's argument that the Order Refusing Release is insufficiently reasoned to be unfounded." (para. 27) "The Pre-Trial Chamber considers that it would have been preferable for the Co-Investigating Judges to give more details about the evidence they have gathered which supports their conclusion that there continue to be well founded reasons to believe that the Charged Person may have committed the crimes with which he has been charged." (para. 137)
8.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The Pre-Trial Chamber finds that, in so far as it provides reasons for its decision to reject each of the Civil Parties in question and refers both to the scope of the investigation and the applications in question, the Second Impugned Order cannot be said to show a lack of compassion or disrespect for the victims." (para. 46) "The terms of Internal Rule 23(3) authorised the making of only one decision by the Co-Investigating Judges, in respect of which, should it not be in the affirmative, a reasoned decision must be provided. An appeal right is provided in such cases." (Opinion of Judges PRAK and DOWNING, para. 8)
9.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"Detailed reasons were not required to be provided by the CIJs due to lack of clarity, confusion, and vagueness of the Request." (para. 21)
10.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[T]he further argument that the Impugned Order fails to reason why it dismissed the argument that *Tadić* 'forms an insufficient precedent in international criminal law to rely on JCE' is substantiated, and the Impugned Order is indeed insufficiently reasoned in this respect. However, such deficiency is incapable of reversing the finding that JCE I and II are applicable before the ECCC [...]." (para. 73)

11.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request for investigative action. The French version of Rule 55(10) is translated into English as 'the [rejection] order must be reasoned.' The Khmer version of Rule 55(10) reads the same as the English version ('reasons'). Rule 58(6) prescribes, in English, that an order rejecting a Charged Person's request for investigative action 'shall state the factual reasons for rejection.' The French version of Rule 58(6) does not contain the modifier 'factual' but rather contains the same wording as the French version of Rule 55(10). The French version of Rule 58(6) appears to be more consistent with Cambodian and French Law than the English version of Rule 58(6). The Pre-Trial Chamber shall proceed upon the basis of the French the Khmer versions of the rule." (para. 22) "The question before the Pre-Trial Chamber is how detailed the Co-Investigating Judges' reasons must be under Rule 55(10). Some guidance to answering this question is found in the Rules. First, for the Charged Person's right to appeal under Rule 74(3)(b) to be meaningful, s/he must know why the Co-Investigating Judges rejected his/her request. This requires the Co-Investigating Judges to reason their rejection with sufficient detail to disclose the basis of a decision and thus place the Charged Person in a position to be able to decide whether and against which of the Co-Investigating Judges' reasons an appeal may be brought and to draw appropriate submissions in support of any appeal. Second, Rule 77(14) requires the Pre-Trial Chamber to issue a 'reasoned' decision on an appeal against the Co-Investigating Judges' exercise of discretion under Rule 55(10). The Pre-Trial Chamber is prevented from affirming the Co-Investigating Judges' exercise of discretion to reject a request if the Pre-Trial Chamber does not know why the Co-Investigating Judges rejected it. This also requires the Co-Investigating Judges to reason its rejection with sufficient detail to allow the Pre-Trial Chamber to conduct an effective appellate review." (para. 23) "[C]ase law of the European Court of Human Rights and the ICTY […] is relevant to the pre-trial context at the ECCC. Both the party whose request is rejected by the Co-Investigating Judges and the Pre-Trial Chamber need to know the reasons for rejection in sufficient detail in order to permit an appellant to decide whether or not to appeal and on what basis such appeal should be founded, and for the Pre-Trial Chamber to be able to determine whether or not the Co-Investigating Judges erred." (para. 28) "The Pre-Trial Chamber considers that the Co-Investigating Judges' conclusion that 'information' already exists on the case file is 'formulated in such way' that the Appellant 'could legitimately complain' that she does not know the reasons for the conclusion. The Pre-Trial Chamber also considers that such an insufficiently reasoned conclusion does not enable the Pre-Trial Chamber to discharge its task of 'carrying out an effective review' of the conclusion and prevents it from 'identifying' a proper exercise of the Co-Investigating Judges' discretion." (para. 29) "The Co-Investigating Judges have the discretion – reviewable by the Pre-Trial Chamber upon an admissible appeal - to determine the degree of specific detail that is required by the legal framework of the ECCC. The Co-Investigating Judges must be guided in their discretion by the purposes of the requirement in Rule 55(10) to issue a reasoned rejection of a request […]. The Pre-Trial Chamber does not take the position that the Co-Investigating Judges should have exhaustively presented every detail of all the 'information already existing on the Case File.' Rather, […] the Co-Investigating Judges should have provided, at a minimum, a representative sample of such information, including, where appropriate, the relevant Document numbers. If a Document number is not available, then the Co-Investigating Judges must provide sufficient details on the source, location, and content of a representative sample of information already on the case file." (para. 30)
12.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged*	"It is a fundamental right that parties know the reasons for a decision. This permits a party to know the basis of a decision, placing an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of a decision for so that a proper and pertinent response may be considered." (para. 24) "No appellate court can provide […] reasoned decision when the rationale and logic of the decision appealed is not itself disclosed […]." (para. 25) "The matter is remitted to the Co-Investigating Judges for their reconsideration on this issue alone and the provision of the reasons for any rejection of the request according to law." (para. 26) "[T]he Pre-Trial Chamber shall not further consider the other grounds of appeal as this would necessarily require speculation as to the reasons for the rejection of the Request." (para. 27)

	Persons' Knowledge of the Crimes	
13.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	"Internal Rule 55(10) states than an order rejecting a request shall 'set out reasons for a rejection' and shall be subject to appeal. Inferred from this rule is the practical expectation that the CIJs are only required to respond to direct requests in party's submission. The CIJs are under no obligation to address general complaints if the complaint it not directly incorporated into a particular defence request. The Pre-Trial Chamber must determine whether the CIJs have responded to the Request and provided valid reasons in respect of such requests, as required by Internal Rule 55(10)." (para. 21)
14.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"The Pre-Trial Chamber notes that it has previously held that the Co-Investigating Judges are obliged to justify their activities by giving reasons for their decisions." (para. 27) "The Closing Order, read as a whole, sets out in significant detail matters of fact and law in respect of the Accused sufficient to give rise to 'well founded reason to believe' that he may have committed the crimes specified. This is in addition to the reasoning of the Pre-Trial Chamber, incorporated by the Co-Investigating Judges in […] the Closing Order." (para. 31) "Internal Rule 68 does not preclude the incorporation of specific reasoning from previous decisions by reference." (para. 32)
15.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he Pre-Trial Chamber notes that it has recognized the requirement for judicial bodies to provide reasoned decisions as an international standard. […] [T]he Pre-Trial Chamber has found that although the Co-Investigating Judges are not required to 'indicate a view on all the factors considered in their decision making process', it is important that all parties concerned know the reasons for a decision. The Chamber considered this necessary in order to place 'an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of decision so that a proper and pertinent response may be considered.' An 'aggrieved party' will be any person who may have a right of appeal, and may include an accused person as well as a rejected Applicant. Reasons are also necessary for the Pre-Trial Chamber to be able to conduct an effective appellate review pursuant to Rule 77(14)." (para. 38) "[I]n general, a judicial decision must, implicitly disclose the material which has been taken into account by the judges when making a decision. This will ensure that parties having been unsuccessful in their application can be assured that the facts submitted and their submissions in respect of the law have been properly and fully taken into account. Each applicant to be joined as a Civil Party has a right to have their individual application considered and to a demonstration that this has occurred, even if the decision is provided in short and tabular form. It is further noted that whilst the appeal procedure provided for under Internal Rule 23*bis*[(2)], is by of an 'expedited' or summary appeal, the consideration by the Co-Investigating Judges of an application to be joined as a Civil Party is not to be considered in such manner. While understanding the unusual volume of work before the Co-Investigating Judges and the requirement for consideration of the matters 'within a reasonable time' the Pre-Trial Chamber notes that, in the case of the rejected applicants, more detailed reasons than the ones provided in the orders were warranted." (para. 39) "[A]n order rejecting the admissibility of civil party application must be reasoned. […] Notwithstanding the revisions that have been made to the Internal Rules, the requirement to provide a reasoned decision remains and attaches to any order or decision for which party has a right of appeal. This requirement exists, in part to facilitate an appeal by the applicant whose application was rejected. Such applicant must be informed, in sufficient detail of the reason(s) for the rejection and may thus decide

		whether or not to appeal and on what ground. This requirement also enables the appellate body to conduct an effective appellate review." (Opinion of Judge MARCHI-UHEL, para. 14)
16.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"In the latter case the Co-Investigating Judges determine whether the Pre-Trial Chamber was duly seised, doing so by reasoned order from which appeal lies. The Pre-Trial Chamber has consistently held that an order of the Co-Investigating Judges ruling on a request to seise the Pre-Trial Chamber with a view to annulment must state the reasons for seizing the Pre-Trial Chamber or for declining to do so." (para. 18)
17.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"Internal Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request to make an order or undertake investigative action. Internal Rule 58(6) also provides, with regards to requests for investigations or for expertise, that the Co-Investigating Judges shall state the factual reasons in case of rejection. The Pre-Trial Chamber clarified in the past, with regards to decisions on investigation requests, that Internal Rule 74(3)(b) requires, to be meaningful, sufficient detail to place the Charged Person in a position to be able to decide whether to lodge an appeal and to draw appropriate submissions. The Pre-Trial Chamber found further guidance in the case law of the European Court of Human Rights and of the ICTY regarding the right to reasoned opinion, which it found relevant to the pre-trial context at the ECCC. The Undersigned Judges consider that these principles should apply mutatis mutandis to challenges regarding expert requests under Internal Rules 31(10) and 74(3)(d)." (Opinion of Judges BEAUVALLET and BAIK, para. 60)
18.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"The Impugned Order […] is an order on disclosure modalities which falls under the broad discretion of the Co-Investigating Judges, pursuant to Internal Rule 56, to handle confidentiality issues and disclose judicial investigations. […] [T]here is no specific onus for the Co-Investigating Judges to provide reasoned disclosure orders under the applicable provisions concerning investigation before the ECCC." (para. 38)
19.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"The Pre-Trial Chamber further recalls its jurisprudence relevant to the requirement for reasoned decisions, stating that it is an international standard that all decisions of judicial bodies are required to be reasoned." (para. 21) "[T]he Co-Investigating Judges 'are not obliged to indicate a view on all the factors [in the specific Internal Rule] as the obligation to state reasons only indicates that they set out the legal grounds and facts taken into account before coming to a decision'." (para. 22) "[T]he Pre-Trial Chamber firstly recalls that the standards set for reasoning of decisions do not require explicit 'acknowledgment of parties' filings' […]." (para. 25) "[In D309/6], the Pre-Trial observed: 'by contrast with the express obligation to set out reasons for the rejection of investigative actions under Rule 55(10), [...] there is no specific onus for the Co-Investigating Judges to provide reasoned disclosure orders under the applicable provisions concerning investigations before the ECCC.'" (para. 23) "In that decision, the Pre-Trial Chamber also made a finding that: 'the [ICIJ] gave sufficient reasons when holding in the Impugned Order that it has 'reviewed the list of witnesses and their disclosed material' and that the ICIJ assigned special disclosure measures to some witnesses 'owing to the confidential and sensitive nature of the ongoing investigations'." (para. 24)

20.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Pre-Trial Chamber considers that the Defence fails to particularise specific issues requiring further clarification or lack reasoning. In fact, throughout the appeal, the Defence itself identifies that numerous reasons were provided in the Impugned Decision by appealing the various 'errors of fact'. The Pre-Trial Chamber concludes that the Defence has not demonstrated a violation of the Appellant's right to reasoned decisions, either." (para. 33)
21.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"Internal Rule 67(4) expressly requires that '[t]he Closing Order shall state the reasons for the decision', and it is 'a fundamental right that parties know the reasons for a decision'. […] The Pre-Trial Chamber considers that it is its duty as an appellate court to determine whether the issuance of a two-fold Closing Order is compliant with Internal Rule 67(4)." (para. 32) "While delivering reasons at a later date may in certain circumstances fulfil the obligation to issue reasoned decisions, the Pre-Trial Chamber finds that this approach cannot apply to closing orders, in view of the explicit requirement set out in Internal Rule 67(4) and the specificities of this procedural act, which officially concludes the judicial investigation. The Pre-Trial Chamber recalls that the Co-Investigating Judges are immediately *functus officio* after having signed the disposition of a closing order." (para. 33) "Furthermore, the Pre-Trial Chamber does not find that, in the present case, the interests of the Charged Person and victims under Internal Rules 21(1) and (4) were better protected by the issuance of two separate orders, despite the Co-Investigating Judges deeming this necessary to comply with the principle of speedy proceedings and to respect the Charged Person's right to have the outcome of the proceedings determined as soon as possible." (para. 34)
22.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to "indicate a view on all the factors" considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BAIK and BEAUVALLET, para. 84) "In conclusion, the International Co-Investigating Judge's explanations were specific and, importantly, included reference to the details of the application rejected. The International Judges therefore consider that Annex B, read in conjunction with the Impugned Order, disclosed the material taken into account by the International Co-Investigating Judge when making his decision and that this demonstrates that each individual application had been 'properly and fully taken into account'. The International Judges find that the Impugned Order and related Annex B are sufficiently reasoned, allowing each applicant to file an appeal of the rejection of his or her application." (Opinion of Judges BAIK and BEAUVALLET, para. 90)
23.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to 'indicate a view on all the factors' considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BEAUVALLET and BAIK, para. 92) "In conclusion, the International Co-Investigating Judge provided sufficient explanation, with specific references to the details of concerned applications, in rejecting the applicants listed in Annex E of the Appeal. The International Judges consider that a conjunct reading of the Admissibility Order and its Annex B sufficiently discloses the material taken into account by the International Co-Investigating Judge in making his decision and thereby establishes that each individual application had been 'properly and fully taken into account'. Therefore, the International Judges find that the Admissibility

		Order and related Annex B are sufficiently reasoned, allowing each applicant to file an appeal against the rejection of his or her application." (Opinion of Judges BEAUVALLET and BAIK, para. 98)
24.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to 'indicate a view on all the factors' considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BAIK and BEAUVALLET, para. 97) "In [Case 002], the Chamber considered that more detailed reasoning was required in respect of the rejected Civil Party applications because the Co-Investigating Judges' reasons were limited to a 'maximum' of two sentences, containing five to fifteen words each and were not specific to each application." (Opinion of Judges BAIK and BEAUVALLET, para. 98)

g. Duties concerning Victims

For jurisprudence concerning ***Victims' Rights***, see VI.E. Rights of Victims and Civil Parties

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber considers that the due diligence displayed in the Co-Investigating Judge's conduct is a relevant factor when considering victims' rights in the proceedings." (para. 51) "While the Pre-Trial Chamber has previously found that 'many factors affect the timing of decisions' and it acknowledges that the Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, it notes that such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected *throughout* the proceedings.' The Pre-Trial Chamber emphasizes that Internal Rule 21(1)(c) does not leave room for interpretation, it does not say 'as soon as possible' or 'in any event, before the end of the judicial investigation.' Specific provision in the Internal Rules of the necessity to keep the Victims informed throughout the proceedings is necessary also because, pursuant to the Internal Rules, unlike the lawyers of the parties to the proceedings, the legal representatives of the Victims do not have an automatic right of access to the case file therefore they are fully dependent on the information they get from the Co-Investigating Judges." (para. 52) "The Pre-Trial Chamber further notes that the Co-Investigating Judges, pursuant to the requirement in Internal Rule 21 to safeguard the interests of all parties, should have taken into consideration also the fact that Internal Rules were amended in respect of the possibility of victims to be admitted as civil parties in the trial phase. […] [T]he system was redesigned so that the decision on admissibility of a Victims' application to become a Civil Party became solely within the jurisdiction of the Co-Investigating Judges with an appeal to the Pre-Trial Chamber. This fact makes the necessity for proper and timely information to be provided to the victims throughout the pre-trial phase significantly more compelling than before." (para. 53) --- "Since civil party status should only be afforded, at the pre-trial stage, to applicants who can demonstrate the appropriate causal link between the harm and crime charged and, on appeal, for which an accused is indicted in the Closing Order, it was not possible for the Co-Investigating Judges to know with certainty, prior to the issuance of the Closing Order, precisely which applicants would be found admissible and which would not. […] [T]he very conduct of an impartial judicial investigation means that it is not possible to know in advance exactly which offenses will form part of any indictment. The factual parameters of the offenses for which a charged person may be indicted will move, which will cause the civil party lawyers to supplement the applications of their clients as the target is moving. This moving target is shared by the Co-Investigating Judges. If civil parties choose to file an application at an early stage of the investigation, they may still file supplementary materials in support of their application. […] The task of the civil party lawyers may be difficult, but the process is not unfair as the civil party lawyers have several opportunities to present the best case possible for their clients at different stages of the investigation, including as the judicial investigation neared completion. […] [T]he

		complaints […] as to […] information […] should have been dismissed." (Opinion of Judge MARCHI-UHEL, para. 22)
2.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"It was determined that […] proper and timely information shall be provided to victims all through the pre-trial stage of proceedings. During the stage of the judicial investigation, this obligation is directly incumbent upon the Co-Investigating Judges, as they are responsible under the Internal Rules for conducting such investigation and accordingly possess an informed knowledge of the scope and factual parameters of it." (Opinion of Judges DOWNING and LAHUIS, para. 10)
3.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"It was determined that […] proper and timely information shall be provided to victims all through the pre-trial stage of proceedings. During the stage of the judicial investigation, this obligation is directly incumbent upon the Co-Investigating Judges, as they are responsible under the Internal Rules for conducting such investigation and accordingly possess an informed knowledge of the scope and factual parameters of it." (Opinion of Judges DOWNING and LAHUIS, para. 11)
4.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As the International Judges have previously held, 'in performing their obligations to properly and timely keep victims informed, the Co-Investigating Judges must exercise due diligence in safeguarding the interests and rights of victims, *throughout* the entirety of the investigative phase.'" (Opinion of Judges BAIK and BEAUVALLET, para. 111) "[T]he International Judges do not consider that [the Co-Investigating Judges' doubts about jurisdiction] constitutes a valid reason to leave victims in the dark about the matters under investigation in light of the Co-Investigating Judges' mandatory duty to keep victims informed under Internal Rule 21(1)(c). In the two-year period between the opening of the judicial investigation concerning YIM Tith and the August 2011 Press Release, it was incumbent on the Co-Investigating Judges to disclose information so that interested victims may begin to adequately prepare Civil Party applications." (Opinion of Judges BAIK and BEAUVALLET, para. 112) "In sum, although the International Judges find that the Co-Investigating Judges breached their obligations to timely keep victims informed, the prejudice which can be said to result therefrom would appear to be minimal. The multi-year period of time that transpired for victims to prepare Civil Party applications would appear to mitigate, if not eliminate as a practical matter, any prejudice that may have been caused by the Co-Investigating Judges' delay in disclosing investigative information." (Opinion of Judges BAIK and BEAUVALLET, para. 115) "In view of the violation […], the International Judges would have been prepared to consider supplementary information submitted by Civil Party applicants to support their application that was discovered late as a direct result of the Co-Investigating Judges' failure to keep the victims timely informed." (Opinion of Judges BAIK and BEAUVALLET, para. 117)

h. Absence of Duty to Divulge Every Detail of Investigation

1.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010	"Any determination as to credibility of documents during the pre-trial stage is made by the Co-Investigating Judges. […] The Co-Investigating Judges have many obligations during the course of the judicial investigation, but they are not obliged to 'clarify' or 'explain' the particulars of evidence gathering, including from specific sources." (para. 25)

	Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings	"[T]he Co-Investigating Judges are under no obligation to divulge every detail of the judicial investigation, in particular if such explanations would require identifying the work product and identity of particular staff members." (para. 31)

iv. *End of the Jurisdiction of the Co-Investigating Judges*

2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"Once the decision is made under Internal Rule 23 the Co-Investigating Judges are *functus officio*, that is, they have exhausted their power in this regard." (Opinion of Judges PRAK and DOWNING, para. 9)
3.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"In this case, the Chamber notes that having issued the Closing Order, the Co-Investigating Judges are no longer seised of the case file, and that seised of the appeals against the Closing Order, the Pre-Trial Chamber has sole jurisdiction to deal with the case file at this stage of the proceedings, and to consider applications such as the present Application." (para. 6)
4.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018	"The Pre-Trial Chamber recalls that the Co-Investigating Judges are immediately *functus officio* after having signed the disposition of a closing order." (para. 33)

	Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)	
5.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the Office of the Co-Investigating Judges has been *functus officio* regarding the investigation in Case 004/2 since the issuance of the Closing Orders. While the Pre-Trial Chamber is seised with the present application, no other judicial office is formally seised of the case, in the sense of Article 3.14 of the Practice Direction on Filing, as no appeal has been filed yet. The Pre-Trial Chamber nonetheless observes that the purpose of the urgent Request would be defeated if not addressed expeditiously and that, in the present case, Article 9.1 of the Practice Direction on Classification should be interpreted in light of Internal Rule 21, so as to safeguard the interests of the parties. The Pre-Trial Chamber thus finds it appropriate to exercise its inherent jurisdiction, as the appellate body at the pre-trial stage and in the absence of specific disposition, to rule on the Request in the interests of justice." (para. 6)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Furthermore, the International Judges recall that when an admissible appeal against the Co-Investigating Judges' closing order is filed and brought before the Pre-Trial Chamber, not just the disposition of a specific order or decision, but the entire case file is referred to it and the Chamber thus gains authority over the whole case file. From that stage, the Co-Investigating Judges are no longer seised of the case in dispute and thereby divested of any authority over all aspects of the investigation of the case. The jurisdiction of the Pre-Trial Chamber, including its broad powers, is accordingly activated as soon as it is seised of an appeal against a closing order. The Pre-Trial Chamber has further found that such understanding of the appeal process against the Co-Investigating Judges' closing orders is consistent with the features of the inquisitorial model of criminal procedure prescribed by the ECCC legal texts." (Opinion of Judges BEAUVALLET and BAIK, para. 126) "[T]he Office of the Co-Investigating Judges can only be seised of a submission filed by the Office of the Co-Prosecutors. Further, the Office of the Co-Investigating Judges is *functus officio* immediately after the issuance of a closing order, except for the administrative functions explicitly set forth in the ECCC legal framework. The International Judges reiterate that the Pre-Trial Chamber, as the Cambodian Investigation Chamber of the ECCC and pursuant to Article 12(1) of the ECCC Agreement and Article 261 of the Cambodian Code of Criminal Procedure, is the final jurisdiction of the investigation, including the jurisdiction over any request related to the pre-trial stage after the Office of the Co-Investigating Judges is unseised." (Opinion of Judges BEAUVALLET and BAIK, para. 132) "[T]he Office of the Co-Investigating Judges was no longer seised of Case 004/2 following the issuance of their closing orders in that case, and therefore did not have the authority to issue decisions or orders regarding Case File 004/2, including the Order to Seal and Archive." (Opinion of Judges BEAUVALLET and BAIK, para. 133)
7.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"In accordance with Article 12(1) of the ECCC Agreement and Article 261 of the Cambodian Code of Criminal Procedure, the Pre-Trial Chamber, in its capacity of Cambodian Investigating Chamber within the ECCC, has final jurisdiction in the pre-trial investigation phase, including over any request related to the pre-trial stage, after the Office of the Co-Investigating Judges is unseised." (para. 69)

3. Parties' Role in the Judicial Investigation

i. *Participation of the Parties*

For jurisprudence concerning ***Specific Requests during Investigation***, see IV.C. Specific Requests by the Parties

For jurisprudence concerning ***Appeals in General***, see VII.B. Appeals (General)

For jurisprudence concerning ***Annulment***, see VII.C. Annulment

a. General

1.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto, notably i) to request the Co-Investigating Judges to 'make such orders or undertake such investigative action as they consider useful for the conduct of the investigation'; ii) to request the Co-Investigating Judges 'to interview [them], question witnesses, go to a site, order expertise or collect other evidence on [their] behalf'; iii) to appeal against a number of decisions of the Co-Investigating Judges that are subject to appellate scrutiny or contest appeals lodged by other parties; and iv) to request annulment of investigative acts affected by procedural defects. To be given full effect, these rights should be afforded to all parties at the earliest opportunity, absent any competing legitimate interest. The Internal Rules indeed provide that they are available to the Co-Prosecutors from the beginning of the judicial investigation and to civil party applicants from the moment they file an application to be admitted as Civil Parties. The Internal Rules further provide that they can be exercised 'at any time during an investigation'. A coherent reading of the Internal Rules requires that similar to other parties, individuals who face a possibility of being indicted, as they are subject to prosecution, be afforded the opportunity to participate in the judicial investigation as early as possible." (Opinion of Judges CHUNG and DOWNING, para. 20)

b. Participation of the Co-Prosecutors in Judicial Investigation

For jurisprudence concerning the ***Role of the Co-Prosecutors***, see III.C.6.iv. Role of the Co-Prosecutors in Disqualification Proceedings, III.D.3.i.b. The Co-Prosecutors, IV.A.1.i. Role of the Co-Prosecutors, IV.A.2.i.a. Role of the Co-Prosecutors, VII.B.2.i.b. The Co-Prosecutors

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"[B]efore the ECCC the responsibility for deciding to expand an investigation beyond the scope of initial and existing supplementary submissions solely rests with the Co-Prosecutors […]." (para. 18) "Internal Rule 55(3) restricts the scope of the investigation to that defined by the initial and supplementary submissions. Whereas in the instant case, if new facts which the CIJs consider as exceeding this scope come to their attention during an investigation, they shall, unless the facts in question are limited to aggravating circumstances relating to an existing Introductory or Supplementary Submission, refer them to the Co-Prosecutors, who have sole responsibility for filing Supplementary Submissions. They shall not investigate such facts unless they receive a Supplementary Submission in relation to these facts." (para. 30) "While in principle the Co-Prosecutors can file a supplementary submission until the Closing Order and accordingly expand the scope of the investigations as defined by the Introductory Submission and if any, earlier Supplementary Submission(s), the scope of the investigation cannot be said to be 'undefined' until the issuance of the Closing Order. The scope of the investigation is defined at any moment until the issuance of the Closing Order by the above-mentioned filings of the Co-Prosecutors." (para. 48) "The procedural system in place at the ECCC, resulting both from the ECCC Law and the Internal Rules, provides for Co-Prosecutors solely responsible for exercising the public action for crimes within the jurisdiction of the ECCC, at their own discretion or on the basis of a complaint, conducting preliminary investigations and, opening a judicial investigation by sending an Introductory Submission to the CIJs, if they have reasons to believe that crimes within the jurisdiction of the ECCC have been committed. As already indicated in the present decision, the CIJs responsible for conducting the judicial investigation are not only restricted to investigating crimes for which the ECCC has jurisdiction but are

		also limited to investigating the facts as set out in Introductory and/ or Supplementary Submissions." (para. 51) "The Pre-Trial Chamber is cognizant of the fact that the current scope of the investigation, as defined by the Introductory and Supplementary Submissions, may not reflect the full dimension of crimes committed by the Khmer Rouge […] during the relevant period. As indicated earlier, under the law applicable before the ECCC, the Co-Prosecutors have sole responsibility for determining the scope of the judicial investigation, and it is not for the Pre-Trial Chamber to comment […]." (para. 60)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto, notably i) to request the Co-Investigating Judges to 'make such orders or undertake such investigative action as they consider useful for the conduct of the investigation'; ii) to request the Co-Investigating Judges 'to interview [them], question witnesses, go to a site, order expertise or collect other evidence on [their] behalf'; iii) to appeal against a number of decisions of the Co-Investigating Judges that are subject to appellate scrutiny or contest appeals lodged by other parties; and iv) to request annulment of investigative acts affected by procedural defects. To be given full effect, these rights should be afforded to all parties at the earliest opportunity, absent any competing legitimate interest. The Internal Rules indeed provide that they are available to the Co-Prosecutors from the beginning of the judicial investigation […]. The Internal Rules further provide that they can be exercised 'at any time during an investigation'." (Opinion of Judges CHUNG and DOWNING, para. 20)
3.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"Regarding the Defence allegation for unfairness due to the judge's '*risk*' of promoting the interests of the ICP over those of the defence, which, according to the Defence, illustrates procedural inequality in this case, the Chamber notes the CIJ's unequivocal statements that, '[i]t is the very nature of the mechanism at the ECCC and the ICP's onus of proof that the ICP has a 'head start' on the investigation' and that '[o]nce the case is before the OCIJ the *Prosecution's right to participate in or carry out investigations is no stronger than that of the Defence* or any other party'. In any event, unless evidence is provided to rebut the Judge's presumption of impartiality, the Pre-Trial Chamber shall not entertain any claims that the ICP's interests *may* have been promoted." (para. 31) "The Pre-Trial Chamber is not convinced that the rights to adequate time, equality of arms and procedural fairness will be irremediably damaged if it does not intervene at this stage […]." (para. 35)
4.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"While the decision to charge a suspect is taken *ex parte*, the Co-Prosecutors have a right to participate in the investigation. The Internal Rules provide them with various means to intervene in the course of the proceedings, including by requesting the Co-Investigating Judges to 'make such orders or undertake such investigative action as they consider useful for the conduct of the investigation', pursuant to Internal Rule 55(10). (Opinion of Judges BAIK and BEAUVALLET, para. 113) "It was therefore open to the Co-Prosecutors to request additional charges by way of requests for investigative action at any time during the judicial investigation and to raise any appeal against rejection orders – either explicit or implicit, on the basis of constructive denial – pursuant to Internal Rules 55(10) and 74(2)." (Opinion of Judges BAIK and BEAUVALLET, para. 114) "In the present case, the Undersigned Judges conclude that the Co-Prosecutors failed to make use of their right to intervene in due course and that the International Co-Prosecutor cannot simply argue, at this stage, that the charges do not reflect his expectations." (Opinion of Judges BAIK and BEAUVALLET, para. 115)

c. Participation of the Victims and Civil Parties in Judicial Investigation and Access to Case File

For jurisprudence concerning the ***Rights of the Victims and the Civil parties to Participate in the Judicial Investigation and to Have Access to the Case File,*** see VI.E.2.iii. Information, Access to Case File and Notification of Documents

1.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011	"[N]o civil party applicant has been in a position to effectively exercise the right to participate in the judicial investigation expressly provided for in the Internal Rules […]. As such we consider that the rights of the victims have been ignored thus far to their detriment. We also emphasise that by being allowed under the Internal Rules to participate in the judicial investigation in various ways, victims, as complainants or civil party applicants, may bring important information pertaining to the facts under

	[PUBLIC REDACTED] *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	investigation, including the role the Suspects may have played in the alleged crimes. Refusing them the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality." (Opinion of Judges DOWNING and LAHUIS, para. 5) "Internal Rule 23*bis*(2), when read in conjunction with Internal Rule 55(6) and (11), gives civil party applicants the rights to have access to the case file, through their lawyers, from the moment the application is filed until the rejection of such application becomes final." (Opinion of Judges DOWNING and LAHUIS, para. 6)
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto, notably i) to request the Co-Investigating Judges to 'make such orders or undertake such investigative action as they consider useful for the conduct of the investigation'; ii) to request the Co-Investigating Judges 'to interview [them], question witnesses, go to a site, order expertise or collect other evidence on [their] behalf'; iii) to appeal against a number of decisions of the Co-Investigating Judges that are subject to appellate scrutiny or contest appeals lodged by other parties; and iv) to request annulment of investigative acts affected by procedural defects. To be given full effect, these rights should be afforded to all parties at the earliest opportunity, absent any competing legitimate interest. The Internal Rules indeed provide that they are available […] to civil party applicants from the moment they file an application to be admitted as Civil Parties. The Internal Rules further provide that they can be exercised 'at any time during an investigation'." (Opinion of Judges CHUNG and DOWNING, para. 20)

d. Participation of the Defence in Judicial Investigation and Access to Case File

For jurisprudence concerning ***Charging Matters***, see IV.B.4. Charging Matters

For jurisprudence concerning the ***Rights of the Defence***, see II. Fair Trial Rights

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"[T]he right for the Co-Lawyers to have access to the Case File during the investigation does not mean that all the material collected should automatically be translated into their language." (para. 42)
2.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"The Pre-Trial Chamber recalls that the right to receive notice of charges is a fundamental right of a charged person. The right to notice arises upon arrest and is meant in part to ensure the Charged Person's ability to fully participate in the investigation." (para. 92) "[F]or the Charged Person to exercise her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of full investigation. Thus, while it is [...] preferable for an Introductory Submission alleging the accused's responsibility as a participant in a JCE to also refer to the particular form(s) (basic or systemic) of JCE envisaged, the OCP are not precluded from doing so in the Final Submission. At the latest, the Co-Investigating Judges may refer to the particular form(s) of participation in their Closing Order." (para. 95)
3.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014	"[T]he Internal Rules reserve the rights to participate in the judicial investigation and to have access to the case file, through a lawyer, to 'Charged Persons', who are considered to be 'parties to the proceedings' before the ECCC." (Opinion of Judges CHUNG and DOWNING, para. 14)

	Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation	"[T]he Internal Rules are not entirely clear in their definitions of 'Charged Person', 'Suspect' and the exact meaning and consequences of the 'charging' process envisaged in Internal Rules 55(4) and 57." (Opinion of Judges CHUNG and DOWNING, para. 15) "[W]e consider that the interpretation […] whereby a suspect named in an Introductory Submission is considered to be a 'Charged Person', shall prevail." (Opinion of Judges CHUNG and DOWNING, para. 16) "The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto, notably i) to request the Co-Investigating Judges to 'make such orders or undertake such investigative action as they consider useful for the conduct of the investigation'; ii) to request the Co-Investigating Judges 'to interview [them], question witnesses, go to a site, order expertise or collect other evidence on [their] behalf'; iii) to appeal against a number of decisions of the Co-Investigating Judges that are subject to appellate scrutiny or contest appeals lodged by other parties; and iv) to request annulment of investigative acts affected by procedural defects. To be given full effect, these rights should be afforded to all parties at the earliest opportunity, absent any competing legitimate interest. The Internal Rules indeed provide that they are available to the Co-Prosecutors from the beginning of the judicial investigation and to civil party applicants from the moment they file an application to be admitted as Civil Parties. The Internal Rules further provide that they can be exercised 'at any time during an investigation'. A coherent reading of the Internal Rules requires that similar to other parties, individuals who face a possibility of being indicted, as they are subject to prosecution, be afforded the opportunity to participate in the judicial investigation as early as possible." (Opinion of Judges CHUNG and DOWNING, para. 20) "Individuals named in an Introductory Submission are at particular risk of being ultimately indicted. […] The principle of equality of arms, enshrined in Article 14(3) of the ICCPR and reproduced in Internal Rule 21(1)(a), requires that they are afforded a reasonable opportunity to present their case under conditions that do not place them at a *substantial disadvantage vis-à-vis* the other parties. […] In the context of the ECCC, a difference in timing for participation in the judicial investigation and access to case file between the Co-Prosecutors, the Civil Parties and the civil party applicants, on the one hand, and the Suspect, on the other hand, may be legally justified by their different status and serve legitimate interests, notably to protect the integrity of the judicial investigation. However, this situation may, over time, create an imbalance, real or perceived, between the ability of the parties to state their case that would be difficult to remedy or compensate by any procedural safeguards. When individuals are specifically targeted by the Prosecution and the Civil Parties or civil party applicants are themselves afforded the possibility to influence the outcome of the investigation through, *inter alia,* requests for investigative actions and to construct their claim for collective and moral reparations, such individuals should be given the opportunity to know the allegations against them, counter these and influence the judicial investigation in the same manner as the other parties. Therefore, individuals named in an Introductory Submission, because they are 'subject to prosecution', shall be afforded the rights attached to the status of Charged Person, irrespective of the fact tha[t] they have not been formally charged by the Co-Investigating Judges and summoned for [an] initial appearance." (Opinion of Judges CHUNG and DOWNING, para. 21) "In addition, we consider that affording TA An the opportunity to participate in the investigation and to have access to the case file, subject to possible limitations, is necessary, at this stage, to protect his fundamental right to a fair trial. […] TA An is also subject to 'criminal charges' within the meaning of human rights law and, as such, entitled to the protection of Article 14 of the ICCPR. It is recalled that human rights law 'favours a "substantive", rather than a "formal", conception of "charge" [and] impels the Court to look behind the appearances and examine the realities of the procedure in question in order to determine whether there has been a "charge"'. […] In the present case, TA An has been officially notified by a competent authority […]. He is therefore entitled to the right to have adequate time and facilities to prepare his defence, as set out in Article 14(3)(b) of the ICCPR, in addition to the right to be treated as equal before the Court, […]." (Opinion of Judges CHUNG and DOWNING, para. 25) "[T]he right to prepare a defence […] concretely entitles TA An 'to have knowledge of and comment on the observations filed and the evidence adduced by the other party' before a decision to indict him is taken, if this is eventually the case. Contrary to the Defence's assertion, this does not mean that TA An is automatically entitled to have access to the case file, as human rights law, which focuses on the overall fairness of the proceedings, does not set a specific time when access to the case file must be provided to a person subject to criminal charges. Rather, it calls for an examination of the actions that are being taken by the Co-Investigating Judges at this time and the impact these may ultimately have on the course of the proceedings when considering the need to give TA An access to the case file. […]

		Given the central role played by the judicial investigation in ECCC's proceedings, access to the case file and opportunity to participate in the judicial investigation must be provided to TA An sufficiently prior to any decision being made on whether to issue an indictment against him, so as to allow him to get a *real* possibility to review all the evidence contained in the case file and be in a position where he may meaningfully request the collection of exculpatory evidence and state his position." (Opinion of Judges CHUNG and DOWNING, para. 26) "[T]here may be legitimate reasons to delay access to the case file, restrict the information that is made available to counsel or limit the communication of information to TA An at this stage of the proceedings." (Opinion of Judges CHUNG and DOWNING, para. 29)
4.	**003 MEAS MUTH** PTC 11 D56/19/16 19 February 2014 *Second Decision on Requests for Interim Measures*	"The Pre-Trial Chamber adopts the finding of the Appeals Chamber of the Special Tribunal for Lebanon in the matter of *El Sayed* that the right of access to justice, which has acquired the status of *jus cogens*, may require that a judicial authority grants access to documents that are necessary to exercise a right before the Court. In particular, the Appeals Chamber has found that a request to have access to documents in order to support a claim before a Court or to exercise a right shall be granted 'if necessary to avoid a real risk that, if it is declined, the applicant will suffer an injustice that clearly outweighs the opposing interests' and only to 'the extent required for that purpose.'" (para. 14) "The Pre-Trial Chamber therefore finds it necessary for the Co-Lawyers to be given access to the Case File […] to avoid that a right of appeal […] becomes meaningless of ineffective and to ensure fairness of the appellate process through equality of arms. […] [I]t is in the interest of justice to exercise its inherent jurisdiction to order, as an *interim* measure […] the Co-Investigating Judges to grant the Co-Lawyers access to the Case File […], subject to any limitation that they may consider necessary to avoid any prejudice to the judicial investigation or the security of witnesses and taking into consideration that the Co-Lawyers are bound by an obligation of confidentiality in respect of such access." (para. 15)
5.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"[I]t is only once the Co-Lawyers are granted access to the Case File, that they will be able to see *concrete* records of the investigation and, only then, would they be able to identify from the contents of concrete documents anything that, in their opinion, may be inappropriate or irregular so as to warrant an application for annulment." (para. 19)
6.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"Internal Rules 55(4) and 57 do not provide for a definition of the placement under judicial investigation. […] Neither the ECCC legal framework, nor the Cambodian CCP, provide a definition of the charging process itself. French law, having influenced the Cambodian legal system, could be useful in the instant case, however articles […] of the French CCP […] do not define the concept either. All these provisions nonetheless strictly dictate the conditions to be fulfilled and the rights to which Charged Persons are entitled." (Opinion of Judges BEAUVALLET and BAIK, para. 11) "The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam,* to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings […]." (Opinion of Judges BEAUVALLET and BAIK, para. 13) "[T]he placement under judicial investigation is the act through which the Co-Investigating Judges, after informing the person of the facts of which they have been seized and their legal characterization at that stage of the proceedings, notify the Charged person of the existence of clear and consistent evidence indicating that he or she might be criminally responsible for committing those crimes. The suspect subsequently becomes a Charged Person who has access to the case file and can take part in the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 14)

7.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"[T]he Pre-Trial Chamber has previously found that the *lack of details of facts in an Introductory Submission, do not 'amount to a lack of notice at this stage of the proceedings* so long as the Closing Order [...] contains the specific aspects of the conduct of the accused.' '[F]or the Charged Person to exercise [his/] her right to participate in the investigation, *the notice requirement must apply to the Introductory Submission to some degree*. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of a full investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 95)
8.	**004/2 AO An** PTC 36 D343/4 26 April 2017 *Decision on Appeal against the Decision on AO An's Tenth Request for Investigative Action*	"[U]nlike at the international tribunals where investigations are carried out by the parties, at the ECCC the investigations are carried out by *judicial* authorities, such as the Investigating Judges, who are required by law to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory.' Whereas in those other legal systems, the applicable rules require *the parties* to disclose evidence to each other, at the ECCC, the Investigating *Judges* have wide discretion in deciding what investigative action is useful for the conduct of the investigation and what evidence is placed in the Case File. It is important to recall that, at the ECCC, evidence for use at trial is placed on the Case File, which is the only procedural record, and while the rules allow for the parties to file requests for investigative action to the OCIJ, there are no rules providing for any procedural right to request disclosure. Therefore, any law and practice, relevant to disclosure before those other international tribunals, is not comparable to the law and practice, relevant to Defence's participation in the investigation and access to the Case File, at the ECCC." (Opinion of Judges BEAUVALLET and BAIK, para. 29)
9.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"Internal Rules 53(1)(a)-(b) requires that CP Submissions set out only a summary of the facts and the type of offence(s) alleged. There is no requirement, in Rule 53, that CP Submissions have to set out criminal allegations 'with limited geographical boundaries,' as the Defence puts it. As regards the rights of Charged Persons for specificity of CP Submissions, the Pre-Trial Chamber has previously found that the lack of more details of facts in an Introductory Submission, do 'not amount to a lack of notice at this stage of the proceedings'. Furthermore, 'for the Charged Person to exercise [his/]her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of a full investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 39)
10.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"It is further through the notification of charges that the suspect is put in a position to answer allegations and prepare a defence, such that he or she is able to play an active role in the proceedings and to exercise his or her rights. From a prosecutorial standpoint, the charging process also brings clarity as to which charges, among the initial allegations, have been retained." (Opinion of Judges BAIK and BEAUVALLET, para. 109)

ii. *Investigations and Enquiries by the Parties*

a. Impermissible Investigations by the Parties

1.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal*	"The Co-Investigating Judges are familiar with and often remind parties of the feature of the ECCC context whereby the parties cannot interview the persons they propose to be called as witnesses." (para. 39)

	against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010	
2.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"When an indictment is issued, the case file containing all the evidence collected during the judicial investigation is transferred to the Trial Chamber and constitutes the basis of the trial, as the parties are not allowed to conduct their own investigation." (Opinion of Judges CHUNG and DOWNING, para. 20)
3.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"[T]here is no provision in the applicable laws which authorises parties or non-parties to accomplish investigative action in place of the Co-Investigating Judges who are in charge of the judicial investigation. Moreover, in respect of parties, the Pre-Trial Chamber has also concurred with the Co-Investigating Judges by emphasising that 'the capacity of the parties to intervene is thus *limited to such preliminary inquiries as are strictly necessary for the effective exercise of their right to request investigative action'* drawing the Co-Lawyers' attention to the provisions of Internal Rules 35 (interferences with administration of justice) and 38 (misconduct of a lawyer) where and as applicable. Attention is also drawn to the fact that the provisions of Internal Rule 35 apply to 'any person.'" (para. 46)
4.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment. In accordance with Internal Rule 48, consideration of an application for annulment requires the determination of: 1) whether a procedural irregularity exists; and, 2) where such a defect is found to exist, whether it is prejudicial to the applicant." (para. 16) "[T]he Pre-Trial Chamber considers that the Victims Support Section did not undertake any delegated investigative action in place of the Co-Investigating Judges, in the sense of Internal Rules 55(9), 59(6) and 62, but instead properly assisted victims in submitting civil party applications, under the former International Co-Investigating Judge's supervision, pursuant to Internal Rule 12*bis*(1)(b)." (para. 21) "Accordingly, no procedural defect has been established that would justify the annulment of Requests and associated investigative products. Any concern relating to the reliability of the supplementary information sought would not affect the validity of the civil party applications as such, but merely their probative value, which is to be fully assessed at a later stage." (para. 22)

b. Permissible Enquiries by the Parties

1.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal*	"It was submitted that the prior action of the [Co-Prosecutors] in collecting the […] documents was to be categorised as an investigative action and therefore impermissible." (para. 10) "[T]here has been no offensive conduct by the Appellants in respect of them making any impermissible investigation. […] They have not made an investigation, rather, their action amounted to the request for admission of documents which had been the subject of identification as a result of permissible enquiries of public sources and not investigation. Such enquiries are expressly authorised by the

	against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes	Co-Investigating Judges […]. If the requested documents were only discoverable by enquiry of non public sources this may have amounted to an investigation." (para. 12)
2.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person do not appear to have undertaken any preliminary enquiry as to whether [REDACTED] may be in possession of such documents. More importantly, unlike the request to interview […] which explained why the Appellant believed that [REDACTED] would be in a position to provide useful contextual information […] the Request does not provide any reason […]." (para. 29)

4. Charging Matters

For jurisprudence concerning the ***Right to be Informed of Charges***, see II.B.1.xiii. Right to be Informed of Charges

i. *Co-Investigating Judges' Power to Charge Suspects under Internal Rule 55(4)*

1.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"Internal Rule 55(4) explicitly provides that individuals named in an Introductory Submission may be formally charged without the Co-Investigating Judges having first to determine whether there is 'clear and consistent evidence' that they may be criminally responsible for the commission of a crime referred to in the Introductory Submission which is not the case for individuals who are not named." (Opinion of Judges CHUNG and DOWNING, para. 18) "[T]he Co-Investigating Judges' delay in taking any formal action under either Internal Rules 57 or 67 appears to be the consequence of the threshold they have adopted for laying out charges pursuant to Internal Rule 55(4). In this regards, the current International Co-Investigating Judge has explained that TA An has not yet formally been charged as he has not made a determination as to whether there is 'clear *and* consistent evidence' that he may be responsible for the crimes alleged in the Introductory Submission. The International Co-Investigating Judge thereby elected to apply the same standard as the one specifically set out in Internal Rule 55(4) *for individuals who are not named in an Introductory Submission*, *i.e* for individuals in respect of whom the Co-Prosecutors have not already expressed reasons to believe that they may have committed crimes within the jurisdiction of the ECCC, which is not the case with TA An. This standard is almost as stringent as that required to issue an indictment before the ECCC, and is similar to the threshold required to issue an indictment before other international or internationalized tribunals. It may therefore cause the decision to formally lay charges to be taken at an advanced stage of the investigation. […] [G]iven the fact that he is named in the Introductory Submission and absent any indication that he is no longer subject to prosecution, TA An is a 'Charged Person' within the definition of the Internal Rules." (Opinion of Judges DOWNING and CHUNG, para. 24)
2.	**003 MEAS Muth** PTC 13 D117/1/1/2 3 December 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's*	"As to the threshold for charging, it is explicitly set out in Internal Rule 55(4). Whether this threshold is met or not in a particular case is a question of fact that cannot be examined in the abstract." (para. 16)

	Order on Suspects Request concerning Summons Signed by One Co-Investigating Judge	
3.	**004 YIM Tith** PTC 14 4 December 2014 D212/1/2/2 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"As to the threshold for charging, it is explicitly set out in Internal Rule 55(4). Whether this threshold is met or not in a particular case is question of fact that cannot be examined in the abstract." (para. 7)
4.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"[T]he charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence." (Opinion of Judges BEAUVALLET and BWANA, para. 13)
5.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"[T]he charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence." (Opinion of Judges BEAUVALLET and BWANA, para. 15)
6.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"Internal Rules 55(4) and 57 do not provide for a definition of the placement under judicial investigation. Neither the ECCC legal framework, nor the Cambodian CCP, provide a definition of the charging process itself. French law, having influenced the Cambodian legal system, could be useful in the instant case, however articles […] of the French CCP […] do not define the concept either. All these provisions nonetheless strictly dictate the conditions to be fulfilled and the rights to which Charged Persons are entitled." (Opinion of Judges BEAUVALLET and BAIK, para. 11) "The placement under judicial Investigation of a person is a discretionary power of the Co-Investigating Judges but can only be done providing that a specific condition is met. Pursuant to Internal Rule 55(4), Co-Investigating Judges have the discretionary power to charge a suspect or any other person, whether named in the Introductory Submission or not, provided that there is *clear and consistent* evidence indicating that such a person may be criminally responsible for the commission of a crime referred to in an Introductory or Supplementary submission. A substantive condition may be inferred from this Rule." (Opinion of Judges BEAUVALLET and BAIK, para. 12) "The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam,* to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the

	Responsibility	charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings […].” (Opinion of Judges BEAUVALLET and BAIK, para. 13) “[T]he placement under judicial investigation is the act through which the Co-Investigating Judges, after informing the person of the facts of which they have been seized and their legal characterization at that stage of the proceedings, notify the Charged person of the existence of clear and consistent evidence indicating that he or she might be criminally responsible for committing those crimes. The suspect subsequently becomes a Charged Person who has access to the case file and can take part in the investigation.” (Opinion of Judges BEAUVALLET and BAIK, para. 14) “The placement under investigation by the Co-Investigating Judges cannot be appealed. Indeed a Judge’s mandate consists of two components: the *imperium* and the *juridictio*. Only the latter is appealable. The use of the words ‘power’ and to ‘inform’, in Internal Rules 55(4) and 57(1), in relation to the placement under judicial investigation, suggests that the charging process falls within the Judge’s imperium which is therefore not appealable.” (Opinion of Judges BEAUVALLET and BAIK, para. 15)
7.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith’s Consolidated Appeal against the Co-Investigating Judge’s Consolidated Decision on YIM Tith’s Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor’s Request for Disclosure (D193/72) and against the International Co-Investigating Judge’s Consolidated Decision on International Co-Prosecutor’s Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	“Internal Rule 55(4) does not set a time requirement for when to charge Suspects named in the Introductory Submission. Depending on the stage of proceedings, such matter rests within the discretion of the investigating judge. More specifically, pursuant to Internal Rule 55(4), Co-Investigating Judges have the discretionary power to charge a person against whom there is clear and consistent evidence indicating that such a person may be criminally responsible for the commission of a crime referred to in an Introductory or Supplementary submission.” (para. 40)
8.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor’s Appeal of Closing Order (Reasons)*	“Under Internal Rule 55(4), the Co-Investigating Judges may further charge ‘any other persons [who] may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission, even where such persons were not named in the submission.’ In other words, in the same case, the same criminal allegation can be charged against a named suspect, as identified in the prosecutorial submissions, and against an unknown person whose identity may be revealed by the investigations conducted by the Co-Investigating Judges. If a severance occurs, the same factual allegation may be duplicated in the newly established case, inasmuch as it concerns the ‘severed’ person, while also remaining in the original case if it involves other named suspect(s) or unknown person(s) who may be identified in the course of the investigation.” (para. 38) “Internal Rule 55(4) further clarifies the reasons for which the Co-Investigating Judges may decide to charge for the commission of a crime […].” (Opinion of Judges BAIK and BEAUVALLET, para. 108) “The notification of charges is […] left to the discretion of the Co-Investigating Judges, who may charge any person named in the prosecutorial submissions or unnamed people. The only criterion for charging is whether, in their opinion, ‘there is *clear and consistent evidence* indicating that such person may be criminally responsible for the commission of a crime’.” (Opinion of Judges BAIK and BEAUVALLET, para. 109)

ii. *Charging Process*

For jurisprudence concerning the ***Right to be Informed of Charges***, see II.B.1.xiii. Right to be Informed of Charges

a. Initial Appearance and Notification of the Charges

1.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"Although the Co-Investigating Judges enjoy certain discretion in their decision to formally notify of charges a person named in an introductory submission, no explanation has ever been provided by the Co-Investigating Judges in the case file or otherwise as to why their practice in Case 003 differs from the preceding cases and why Suspects have not been notified of such status in the investigation." (Opinion of Judges DOWNING and LAHUIS, para. 3)
2.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"Internal Rule 57 sets the principle that a suspect should be notified of the charges against him or her when they appear for the first time before the Co-Investigating Judges, i.e, at his or her initial appearance. [A]n initial appearance shall be held in the presence of the suspect." (Opinion of Judges BEAUVALLET and BWANA, para. 20)
3.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"Internal Rule 57 sets the principle that a suspect should be notified of the charges against him or her when they appear for the first time before the Co-Investigating Judges, *i.e.*, at his or her initial appearance. [A]n initial appearance shall be held in the presence of the suspect." (Opinion of Judges BEAUVALLET and BWANA, para. 22)
4.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"Internal Rules 55(4) and 57 do not provide for a definition of the placement under judicial investigation. Neither the ECCC legal framework, nor the Cambodian CCP, provide a definition of the charging process itself. French law, having influenced the Cambodian legal system, could be useful in the instant case, however articles […] of the French CCP […] do not define the concept either. All these provisions nonetheless strictly dictate the conditions to be fulfilled and the rights to which Charged Persons are entitled." (Opinion of Judges BEAUVALLET and BAIK, para. 11) "The placement under judicial Investigation of a person is a discretionary power of the Co-Investigating Judges but can only be done providing that a specific condition is met. Pursuant to Internal Rule 55(4), Co-Investigating Judges have the discretionary power to charge a suspect or any other person, whether named in the Introductory Submission or not, provided that there is *clear and consistent* evidence indicating that such a person may be criminally responsible for the commission of a crime referred to in an Introductory or Supplementary submission. A substantive condition may be inferred from this Rule." (Opinion of Judges BEAUVALLET and BAIK, para. 12)

	Apply JCE and Command Responsibility	"The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam,* to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings […]." (Opinion of Judges BEAUVALLET and BAIK, para. 13) "The placement under investigation by the Co-Investigating Judges cannot be appealed. Indeed a Judge's mandate consists of two components: the *imperium* and the *juridictio*. Only the latter is appealable. The use of the words 'power' and to 'inform', in Internal Rules 55(4) and 57(1), in relation to the placement under judicial investigation, suggests that the charging process falls within the Judge's imperium which is therefore not appealable." (Opinion of Judges BEAUVALLET and BAIK, para. 15)
5.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"Internal Rule 57(1), which mirrors Article 143 of the Cambodian Code of Criminal Procedure, deals with the process of charging […]." (Opinion of Judges BAIK and BEAUVALLET, para. 107) "The notification of charges is […] left to the discretion of the Co-Investigating Judges, who may charge any person named in the prosecutorial submissions or unnamed people. The only criterion for charging is whether, in their opinion, 'there is *clear and consistent evidence* indicating that such person may be criminally responsible for the commission of a crime'. The charging process, in the inquisitorial system, is thus a judicial decision through which the suspect is not only officially notified of the crimes for which he or she is under investigation, but also informed that there is a certain level of evidence gathered against him or her. It is further through the notification of charges that the suspect is put in a position to answer allegations and prepare a defence, such that he or she is able to play an active role in the proceedings and to exercise his or her rights. From a prosecutorial standpoint, the charging process also brings clarity as to which charges, among the initial allegations, have been retained." (Opinion of Judges BAIK and BEAUVALLET, para. 109) "'[I]n a civil law system, only facts which have been charged beforehand can be considered for indictment' and 'the charging process [is] a requirement for subsequent indictment'." (Opinion of Judges BAIK and BEAUVALLET para. 110) "These findings reflect the wording of Internal Rule 67(1), pursuant to which a closing order can indict 'a Charged Person', and mirror the law governing Cambodian and French criminal procedure." (Opinion of Judges BAIK and BEAUVALLET, para. 111) "Accordingly, the Undersigned Judges consider that a suspect has first to be charged before being indicted. The fact that the Co-Lawyers made legal arguments regarding allegations at crime sites other than those formally charged does not alleviate this procedural requirement […]." (Opinion of Judges BAIK and BEAUVALLET, para. 112)

b. Summons to Initial Appearance

1.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance*	"[A]bsent any provision in the ECCC legal compendium or Cambodian law, [the Pre-Trial Chamber] may, using its 'inherent jurisdiction', stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve fairness of the appellate process. […] [F]or a request to stay to be granted, it must be established that implementation of the act or order that the applicant seeks to stay 'would have a direct impact on the appellate proceedings of which it is seized.' Furthermore, for a request for stay to be granted, it must meet the following three conditions: 'a. there is a good cause for the requested suspension; b. the duration of the requested suspension is reasonable; and c. the appeal itself has reasonable prospects of success on its merits.'" (para. 10) "[W]here it is not seised of any appeal or application challenging the validity of the Summons, it is doub[t]ful that the Pre-Trial Chamber would have jurisdiction to stay the execution of the Summons." (para. 11) "[G]iven the interests at stake and in order to avoid […] prejudice, the Pre-Trial Chamber has examined whether the announced intention of the Co-Lawyers to challenge the validity of the Summons […] through an application for annulment requires that it stays the execution of the Summons. The Pre-Trial Chamber finds that a stay, should [it] have jurisdiction to order it, would not be warranted in the present circumstances, for two main reasons." (para. 12)

		"Firstly, the Co-Lawyers have not established that IM Chaem would suffer any 'irremediable' prejudice if she appears before the International Co-Investigating Judge for the purpose of being notified of the charges against her and the Summons is subsequently annulled. There is no obligation for IM Chaem to make any statement during the initial appearance and should the Summons and/or the decision on charging be subsequently annulled, they will be void and without any effect, as if they never existed. IM Chaem will then be placed in the same situation as she was before." (para. 13) "Secondly, […] the ground raised […] for challenging the validity of the Summons, *i.e.*, that the International Co-Investigating Judge does not have the power to issue a summons alone, is, *prima facie*, without merits. The Co-Investigating Judges have confirmed that they have registered a disagreement in respect of the Summons and that the 30 day time period to bring it before the Pre-Trial Chamber has elapsed. In these circumstances, it is clear from the Agreement between the United Nations and the Royal Government of Cambodia for the establishment of the ECCC, the ECCC Law and the Internal Rules that the International Co-Investigating Judge could validly issue the Summons alone. Furthermore, the Pre-Trial Chamber previously confirmed that one Co-Prosecutor or Investigating Judge can act alone when a disagreement has been registered within the Office of the Co-Prosecutors or the Co-Investigating Judges, as appropriate, and the period for bringing a disagreement before the Pre-Trial Chamber has elapsed. It would be improper for the Pre-Trial Chamber to consider staying the execution of a Summons on the basis of an eventual application that will purportedly challenge a rule that is expressed in clear terms in the ECCC legal compendium and the Pre-Trial Chamber's jurisprudence." (para. 14)
2.	**003 MEAS Muth** PTC 13 D117/1/1/2 3 December 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Order on Suspects Request concerning Summons Signed by One Co-Investigating Judge*	"[A] summons issued by one Co-Investigating Judge for the purpose of charging is valid where the disagreement procedure set forth in Internal Rule 72 has been complied with and the 30 day time period to bring it before the Pre-Trial Chamber has elapsed. As to the threshold for charging, it is explicitly set out in Internal Rule 55(4). Whether this threshold is met or not in a particular case is a question of fact that cannot be examined in the abstract." (para. 16)
3.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"[A] summons issued by one investigating judge for the purpose of charging under Internal Rule 57 is valid if the disagreement procedure set forth in Internal Rule 72 has been complied with. As to the threshold for charging, it is explicitly set out in Internal Rule 55(4). Whether this threshold is met or not in a particular case is question of fact that cannot be examined in the abstract." (para. 7)
4.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on Her Motion to Reconsider and*	"[A] summons issued by one Co-Investigating Judge for the purpose of charging is valid where the disagreement procedure set forth in Internal Rule 72 has been complied with and the 30 day time period to bring it before the Pre-Trial Chamber has elapsed." (para. 24)

	Vacate Her Summons Dated 29 July 2014	

c. Charging and Notification of the Charges in the Absence of the Charged Person

1.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"*In absentia* means 'in the absence of'. In law, this latin expression is generally used to designate 'trial *in absentia*', *i.e.*, the determination of the guilt or innocence of an accused and the imposition of penalty in his or her absence. Firstly, it is emphasised that the proceedings in the present case are currently at the pre-trial stage and the charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence. Hence, any reference to procedural rules regulating trials *in absentia* must be made with circumspection, taking into account the difference in the stage of proceedings and the impact on the defendant. Secondly, the mere use of the expression '*in absentia*' in the present case is inapposite […]. (Opinion of Judges BEAUVALLET and BWANA, para. 13) "Under Cambodian law, which allows judgment to be passed in the absence of the accused, trials are not considered to be *in absentia* when the accused has knowledge of the proceedings." (Opinion of Judges BEAUVALLET and BWANA, para. 14) "The same holds true at the international level." (Opinion of Judges BEAUVALLET and BWANA, para. 15) "Likewise, under human rights law […]." (Opinion of Judges BEAUVALLET and BWANA, para. 16) "[T]he present situation calls for an examination *in concreto* of the charging procedure by the Co-Investigating Judge." (Opinion of Judges BEAUVALLET and BWANA, para. 18) "The rules set no pre-conditions for the Co-Investigating Judges to decide to charge a suspect named in an Introductory Submission nor any procedural step that would be required to be taken before a decision to charge is made. In this respect, it is noted that the International Co-Investigating Judge previously held that he must first be satisfied that there is sufficient evidence before deciding to charge a suspect even if named in an introductory submission. However, it was clear that this determination would be made *ex parte* and that the suspect will only participate in the proceedings after being formally charged at an initial appearance." (Opinion of Judges BEAUVALLET and BWANA, para. 19) "Internal Rule 57 sets the principle that a suspect should be notified of the charges against him or her when they appear for the first time before the Co-Investigating Judges, *i.e*, at his or her initial appearance. [A]n initial appearance shall be held in the presence of the suspect." (Opinion of Judges BEAUVALLET and BWANA, para. 20) "The Internal Rules do not make an initial appearance a pre-condition for the Co-Investigating Judges to *decide* to charge a suspect and clearly express that this decision is independent from the actual notification of the charges, which happens thereafter. It is clear from Internal Rules 55(4) and 57 that the decision to charge a suspect named in an introductory submission is taken *ex parte* by the Co-Investigating Judges, or one of them in case of disagreement between them. The suspect has no right to be heard prior to this decision being made. At the initial appearance, the suspect is simply *notified* of the charges. In this respect, the Undersigned Judges note that the opportunity for the 'Charged Person' to make a statement does not entail that he or she may be heard prior to a decision to charge being made. Rather, the statement envisaged in paragraph 1 of Internal Rule 57 is the first opportunity for the Charged Person to present his or her account of the facts as part of the judicial investigation. The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure. This conclusion is supported by the constant practice of the ECCC, including in this case, where defendants appearing for the first time before the Co-Investigating Judges (or one of them) were first informed that they had been charged for a number of criminal acts and then asked to make a statement, without any debate about whether they should be charged." (Opinion of Judges BEAUVALLET and BWANA, para. 21) "The […] procedural rules at the ECCC do not regulate the procedure for charging a suspect who has refused to appear before the Court and whose presence could not be secured by coercive means, insofar as this conclusion relates to the *notification* of charges." (Opinion of Judges BEAUVALLET and BWANA, para. 22)

		"In turn, there can be no doubt that the inability to hold an initial appearance pursuant to Internal Rule 57 does not halt the proceedings. It is clear under the Internal Rules that the Co-Investigating Judges have an obligation to conduct a judicial investigation when seised of an introductory submission and to reach a conclusion that the case should either be dismissed or sent to trial." (Opinion of Judges BEAUVALLET and BWANA, para. 23) "[A]n initial appearance is not a pre-condition for charging a suspect before the ECCC but the Internal Rules do not explicitly address the situation where such an initial appearance cannot take place." (Opinion of Judges BEAUVALLET and BWANA, para. 26) "[T]he procedural rules established at the international level allow for exceptional measures to be taken in order to advance proceedings at the pre-trial stage when: i) a person has waived expressly and in writing his or her right to be present; or ii) when all reasonable steps have been taken to secure his or her appearance before the competent court and to inform him or her of the charges, but these efforts have been unsuccessful, as held by the International Co-Investigating Judge." (Opinion of Judges BEAUVALLET and BWANA, para. 36) "As to the waiver of the right to be present, the Undersigned Judges note that the rules established at the international level require the accused to have previously been notified of the proceedings and to explicitly, and in writing, give the waiver. Under the rules of international tribunals, an implicit waiver will not be sufficient for the court to decide to further proceed in the absence of the accused; the court would still need to take all reasonable steps to ensure the presence of the accused. There is a distinction to be made between the conditions under which exceptional measures can be taken under the rules of international criminal tribunals following a failure to execute an arrest warrant and the conditions that must be met to ensure that the right under human rights law to be present at trial is respected. The former are more stringent than the latter. That said, absent an express waiver, the jurisprudence of human rights bodies remains useful to determine whether the tribunal has taken all reasonable steps to notify the accused of the proceedings […]." (Opinion of Judges BEAUVALLET and BWANA, para. 37) "Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant." (Opinion of Judges BEAUVALLET and BWANA, para. 38) "There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her." (Opinion of Judges BEAUVALLET and BWANA, para. 39) "[N]otification of charges is done directly to the concerned person as this is normally the first time that he or she becomes aware of the proceedings. […] That said, the Undersigned Judges find that notification to the Co-Lawyers was legitimate and appropriate in the exceptional circumstances of the present case. […] It is also noted that the objective of notifying IM Chaem of the charges has been achieved through notifying her Co-Lawyers." (Opinion of Judges BEAUVALLET and BWANA, para. 43) "[Notification through via the media] is envisaged when the location of the suspect is unknown, not when he or she is represented by counsel." (Opinion of Judges BEAUVALLET and BWANA, para. 44)

		"[T]he International Co-Investigating Judge did not err in deciding to charge IM Chaem without holding an initial appearance under Internal Rule 57 and to notify her of the charges against her in written document served on the Co-Lawyers. This exceptional procedure was a lawful and appropriate way to address the present situation, which is unusual and unprecedented and therefore unforeseen in the law applicable at the ECCC." (Opinion of Judges BEAUVALLET and BWANA, para. 45)
2.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"*In absentia* means 'in the absence of'. In law, this latin expression is generally used to designate 'trial *in absentia*', *i.e.*, the determination of the guilt or innocence of an accused and the imposition of penalty in his or her absence. Firstly, it is emphasised that the proceedings in the present case are currently at the pre-trial stage and the charging procedure under Internal Rule 55(4) does not involve any determination of guilt or innocence. Hence, any reference to procedural rules regulating trials *in absentia* must be made with circumspection, taking into account the difference in the stage of proceedings and the impact on the defendant. Secondly, the mere use of the expression '*in absentia*' in the present case is inapposite […]." (Opinion of Judges BEAUVALLET and BWANA, para. 15) "Under Cambodian law, which allows judgment to be passed in the absence of the accused, trials are not considered to be *in absentia* when the accused has knowledge of the proceedings." (Opinion of Judges BEAUVALLET and BWANA, para. 16) "The same holds true at the international level." (Opinion of Judges BEAUVALLET and BWANA, para. 17) "Likewise, under human rights law […]." (Opinion of Judges BEAUVALLET and BWANA, para. 18) "[T]he present situation calls for an examination *in concreto* of the charging procedure by the Co-Investigating Judge." (Opinion of Judges BEAUVALLET and BWANA, para. 20) "The rules set no other pre-conditions for the Co-Investigating Judges to decide to charge a suspect named in an Introductory Submission nor any procedural step that would be required to be taken before a decision to charge is made. In this respect, it is noted that the International Co-Investigating Judge previously held that he must first be satisfied that there is sufficient evidence before deciding to charge a suspect even if named in an introductory submission. However, it was clear that this determination would be made *ex parte* and that the suspect will only participate in the proceedings after being formally charged at an initial appearance." (Opinion of Judges BEAUVALLET and BWANA, para. 21) "Internal Rule 57 sets the principle that a suspect should be notified of the charges against him or her when they appear for the first time before the Co-Investigating Judges, *i.e*, at his or her initial appearance. [A]n initial appearance shall be held in the presence of the suspect." (Opinion of Judges BEAUVALLET and BWANA, para. 22) "The Internal Rules do not make an initial appearance a pre-condition for the Co-Investigating Judges to *decide* to charge a suspect and clearly express that this decision is independent from the actual notification of the charges, which happens thereafter. It is clear from Internal Rules 55(4) and 57 that the decision to charge a suspect named in an introductory submission is taken *ex parte* by the Co-Investigating Judges, or one of them in case of disagreement between them. The suspect has no right to be heard prior to this decision being made. At the initial appearance, the suspect is simply *notified* of the charges. In this respect, the Undersigned Judges note that the opportunity for the 'Charged Person' to make a statement does not entail that he or she may be heard prior to a decision to charge being made. Rather, the statement envisaged in paragraph 1 of Internal Rule 57 is the first opportunity for the Charged Person to present his or her account of the facts as part of the judicial investigation. The Undersigned Judges note that the Internal Rules reflect Cambodian law and the French Code of Criminal Procedure. This conclusion is supported by the constant practice of the ECCC, including in this case, where defendants appearing for the first time before the Co-Investigating Judges (or one of them) were first informed that they had been charged for a number of criminal acts and then asked to make a statement, without any debate about whether they should be charged." (Opinion of Judges BEAUVALLET and BWANA, para. 23) "The […] procedural rules at the ECCC do not regulate the procedure for charging a suspect who has refused to appear before the Court and whose presence could not be secured by coercive means, insofar as this conclusion relates to the *notificatio*n of charges." (Opinion of Judges BEAUVALLET and BWANA, para. 24)

		"In turn, there can be no doubt that the inability to hold an initial appearance pursuant to Internal Rule 57 does not halt the proceedings. It is clear under the Internal Rules that the Co-Investigating Judges have an obligation to conduct a judicial investigation when seised of an introductory submission and to reach a conclusion that the case should either be dismissed or sent to trial." (Opinion of Judges BEAUVALLET and BWANA, para. 25) "[A]n initial appearance is not a pre-condition for charging a suspect before the ECCC but the Internal Rules do not explicitly address the situation where such an initial appearance cannot take place." (Opinion of Judges BEAUVALLET and BWANA, para. 28) "[T]he procedural rules established at the international level allow for exceptional measures to be taken in order to advance proceedings at the pre-trial stage when: i) a person has waived expressly and in writing his or her right to be present; or ii) when all reasonable steps have been taken to secure his or her appearance before the competent court and to inform him or her of the charges, but these efforts have been unsuccessful, as held by the International Co-Investigating Judge." (Opinion of Judges BEAUVALLET and BWANA, para. 38) "As to the waiver of the right to be present, the Undersigned Judges note that the rules established at the international level require the accused to have previously been notified of the proceedings and to explicitly, and in writing, give the waiver. Under the rules of international tribunals, an implicit waiver will not be sufficient for the court to decide to further proceed in the absence of the accused; the court would still need to take all reasonable steps to ensure the presence of the accused. There is a distinction to be made between the conditions under which exceptional measures can be taken under the rules of international criminal tribunals following a failure to execute an arrest warrant and the conditions that must be met to ensure that the right under human rights law to be present at trial is respected. The former are more stringent than the latter. That said, absent an express waiver, the jurisprudence of human rights bodies remains useful to determine whether the tribunal has taken all reasonable steps to notify the accused of the proceedings […]." (Opinion of Judges BEAUVALLET and BWANA, para. 39) "Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant." (Opinion of Judges BEAUVALLET and BWANA, para. 40) "There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her." (Opinion of Judges BEAUVALLET and BWANA, para. 41) "[N]otification of charges is done directly to the concerned person as this is normally the first time that he or she becomes aware of the proceedings. […] That said, the Undersigned Judges find that notification to the Co-Lawyers was legitimate and appropriate in the exceptional circumstances of the present case. […] It is also noted that the objective of notifying MEAS Muth of the charges has been achieved through notifying his Co-Lawyers." (Opinion of Judges BEAUVALLET and BWANA, para. 46) "[T]he International Co-Investigating Judge did not err in deciding to charge MEAS Muth without holding an initial appearance under Internal Rule 57 and to notify him of the charges against him in written document served on the Co-Lawyers. This exceptional procedure was a lawful and appropriate

		way to address the present situation, which is unusual and unprecedented and therefore unforeseen in the law applicable at the ECCC." (Opinion of Judges BEAUVALLET and BWANA, para. 47)

iii. *Suspect and Charged Person Status*

1.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"[T]he Internal Rules reserve the rights to participate in the judicial investigation and to have access to the case file, through a lawyer, to 'Charged Persons', who are considered to be 'parties to the proceedings' before the ECCC." (Opinion of Judges CHUNG and DOWNING, para. 14) "[T]he Internal Rules are not entirely clear in their definitions of 'Charged Person', 'Suspect' and the exact meaning and consequences of the 'charging' process envisaged in Internal Rules 55(4) and 57." (Opinion of Judges CHUNG and DOWNING, para. 15) "[W]e consider that the interpretation […] whereby a suspect named in an Introductory Submission is considered to be a 'Charged Person', shall prevail." (Opinion of Judges CHUNG and DOWNING, para. 16) "[T]he statuses of 'Suspect' and 'Charged Person' are not defined in relation to each other, so there is no indication that they would be mutually exclusive. Indeed, an individual could possibly fall within both definitions for a certain period of time which, in turn, would entitle him or her not only to the more limited rights of 'Suspects' but also to those afforded to 'Charged Persons'. […] In concluding whether an individual qualifies as a 'Charged Person' or not the issue at stake is whether he or she is 'subject to prosecution'. Obviously, an individual who has been formally charged by the Co-Investigating Judges during an initial appearance is 'subject to prosecution' but this is not a prerequisite. The meaning of 'subject to prosecution' is broader. It refers to someone against whom a criminal action has been initiated." (Opinion of Judges CHUNG and DOWNING, para. 17) "Internal Rule 55(4) explicitly provides that individuals named in an Introductory Submission may be formally charged without the Co-Investigating Judges having first to determine whether there is 'clear and consistent evidence' that they may be criminally responsible for the commission of a crime referred to in the Introductory Submission which is not the case for individuals who are not named. […] Given that they are 'subject to prosecution', individuals named in an Introductory Submission automatically fall within the ambit of the definition of 'Charged Person' as set out in the Glossary of the Internal Rules, unless and until the Co-Investigating Judges decide that they no longer are. […] Internal Rule 55(4) does not require that the Co-Investigating Judges make any decision that there is sufficient evidence for an individual *already named* in an Introductory Submission to be considered as a 'Charged Person', given that this requirement relates only to those who *are not named* […]. Internal Rule 57(1) does not suggest either that an initial appearance is a prerequisite for being considered a 'Charged Person'; rather, […] it confirms that an individual named in an Introductory Submission is already considered as such." (Opinion of Judges CHUNG and DOWNING, para. 18) "[A] concrete examination of the rights attached to the status of 'Charged Person' requires giving precedence to the expression 'subject to prosecution' over the formal process of charging, in order to ensure respect of the fundamental principles governing proceedings before the ECCC, set out in Internal Rule 21. These fundamental principles, in particular, are to safeguard the interests of Suspects and Charged Persons; ensure legal certainty and transparency of proceedings; ensure that ECCC proceedings are fair and adversarial and preserve a balance between the rights of the parties; and ensure that every person suspected or prosecuted is informed of any charges brought against him/her and of the right to be defended by a lawyer of his/her choice." (Opinion of Judges CHUNG and DOWNING, para. 19) "The judicial investigation is led by the Co-Investigating Judges but the parties are allowed to actively participate thereto […]. A coherent reading of the Internal Rules requires that similar to other parties, individuals who face a possibility of being indicted, as they are subject to prosecution, be afforded the opportunity to participate in the judicial investigation as early as possible." (Opinion of Judges CHUNG and DOWNING, para. 20) "Individuals named in an Introductory Submission are at particular risk of being ultimately indicted. […] The principle of equality of arms, enshrined in Article 14(3) of the ICCPR and reproduced in Internal Rule 21(1)(a), requires that they are afforded a reasonable opportunity to present their case under conditions that do not place them at a *substantial disadvantage vis-à-vis* the other parties. […] When

		individuals are specifically targeted by the Prosecution and the Civil Parties or civil party applicants are themselves afforded the possibility to influence the outcome of the investigation through, *inter alia,* requests for investigative actions and to construct their claim for collective and moral reparations, such individuals should be given the opportunity to know the allegations against them, counter these and influence the judicial investigation in the same manner as the other parties. Therefore, individuals named in an Introductory Submission, because they are 'subject to prosecution', shall be afforded the rights attached to the status of Charged Person, irrespective of the fact tha[t] they have not been formally charged by the Co-Investigating Judges and summoned for [an] initial appearance." (Opinion of Judges DOWNING and CHUNG, para. 21) "This interpretation reflects the rules applied in a number of domestic jurisdictions of civil law tradition […]." (Opinion of Judges DOWNING and CHUNG, para. 22) "An individual named in an Introductory Submission is a 'Charged Person' from the moment the Introductory Submission is filed with the Co-Investigating Judges, unless a decision is taken by the Co-Investigating Judges that he or she is no longer subject to prosecution." (Opinion of Judges DOWNING and CHUNG, para. 23) "[T]he Co-Investigating Judges' delay in taking any formal action under either Internal Rules 57 or 67 appears to be the consequence of the threshold they have adopted for laying out charges pursuant to Internal Rule 55(4). In this regards, the current International Co-Investigating Judge has explained that TA An has not yet formally been charged as he has not made a determination as to whether there is 'clear *and* consistent evidence' that he may be responsible for the crimes alleged in the Introductory Submission. The International Co-Investigating Judge thereby elected to apply the same standard as the one specifically set out in Internal Rule 55(4) *for individuals who are not named in an Introductory Submission*, *i.e* for individuals in respect of whom the Co-Prosecutors have not already expressed reasons to believe that they may have committed crimes within the jurisdiction of the ECCC, which is not the case with TA An. This standard is almost as stringent as that required to issue an indictment before the ECCC, and is similar to the threshold required to issue an indictment before other international or internationalized tribunals. It may therefore cause the decision to formally lay charges to be taken at an advanced stage of the investigation. […] [G]iven the fact that he is named in the Introductory Submission and absent any indication that he is no longer subject to prosecution, TA An is a 'Charged Person' within the definition of the Internal Rules." (Opinion of Judges DOWNING and CHUNG, para. 24)
2.	**004 YIM Tith** PTC 06 D192/1/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation*	*"*The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)
3.	**004 YIM Tith** PTC 10 D186/3/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on

	Requests to Access the Case File and to Take Part in the Investigation	this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)
4.	**004 YIM Tith** PTC 13 A157/2/1/2 21 November 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeal against the Decision Denying His application to the Co-Investigative Judges Requesting Them to Seize the Pre-Trial Chamber with a View to Annul the Judicial Investigation*	"Notwithstanding whether the admissibility of the Appeal is argued under Internal Rule 74 and 76 or Internal Rule 21, the Pre-Trial Chamber notes that, at the heart of the admissibility arguments lies the issue of *whether the Appellant, being a Suspect named in the Introductory Submission, is entitled to file motions,* be these applications or appeals, seeking procedural rights such as: 1) submitting applications to the Co-Investigating Judges requesting them to seize the Pre-Trial Chamber with a view to annulment and 2) appealing against the orders or decisions of the Co-Investigating Judges refusing such applications." (para. 20) "[T]he issue of standing, or whether a motion is properly raised, 'has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their *examination of admissibility* for the motions.'" (para. 21) "The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal." (para. 22)
5.	**004 YIM Tith** PTC 15 D203/1/1/2 19 January 2015 *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*	"[T]he Appellant *does come back to his recurring objections related to the very issue of his status* in the proceedings as an individual 'subject to prosecution' by repeating his *previous arguments, made in the Urgent Motion Appeal* […]. In considering the admissibility of the Urgent Motion Appeal, Judges PRAK, HUOT and NEY held that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules cannot lodge appeals under the Internal Rules. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules, *in the light of Internal Rule 21*, found that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' […] and opined that, at this stage of the proceedings, *the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged* Persons. The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue." (para. 29)
6.	**003 MEAS MUTH** PTC 16 D122/1/2 17 June 2015 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Refusing Access to the Case File*	"[T]he International Co-Investigating Judge charged the Appellant *in absentia* for a number of crimes alleged in the Introductory Submission. The International Co-Investigating Judge held that '[w]ith the issuance of its decision, MEAS Muth's status shall change from 'suspect' to 'charged person' and, as such, he will be able to exercise all the rights to which charged persons are entitled under the Internal Rules', including 'the right to access the case file, to take part in the judicial investigation, to conform witnesses or to move the [Co-Investigating Judges] to seise the [Pre-Trial Chamber] with requests for investigating action'. As such, the Appellant has effectively gained the relief he was seeking to the Pre-Trial Chamber, which was to 'order the International Co-Investigating Judge to allow the Defence to access the Case File and participate in the judicial investigation'. The Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits." (para. 4)
7.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016	"Internal Rules 55(4) and 57 do not provide for a definition of the placement under judicial investigation. Neither the ECCC legal framework, nor the Cambodian CCP, provide a definition of the charging process itself. French law, having influenced the Cambodian legal system, could be useful in the instant case, however articles […] of the French CCP […] do not define the concept either. All these provisions nonetheless strictly dictate the conditions to be fulfilled and the rights to which Charged Persons are entitled." (Opinion of Judges BEAUVALLET and BAIK, para. 11)

	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	"The placement under judicial investigation is also an act giving rise to certain rights for the Charged person. It is a way for the Co-Investigating Judges, who are seised *in rem* and not *in personam,* to involve the Charged Person in the judicial investigation. The Charged Person is fully informed of the charges against him or her as required under Internal Rule 21(d), and can from that moment onwards play an active role in the proceedings […]." (Opinion of Judges BEAUVALLET and BAIK, para. 13) "[T]he placement under judicial investigation is the act through which the Co-Investigating Judges, after informing the person of the facts of which they have been seized and their legal characterization at that stage of the proceedings, notify the Charged person of the existence of clear and consistent evidence indicating that he or she might be criminally responsible for committing those crimes. The suspect subsequently becomes a Charged Person who has access to the case file and can take part in the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 14)
8.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"[A]ccording to the standards established at international level, inequality in treatment is permissible if 'based on reasonable and objective grounds not entailing actual disadvantage or other unfairness.'" (para. 36) "The Pre-Trial Chamber first notes that […] the former ICIJ considered Yim Tith to be a 'Suspect', and Ao An and Im Chaem to be 'Charged Persons'. […] [I]t is not contested that the ICIJs have consistently treated all 'Suspects' […] the same, because none of them were granted participatory rights in the investigation, until they became 'Charged Persons.' […] The specified difference in treatment is based on reasonable and objective grounds and, […] does not put Yim Tith at a disadvantageous or unfair position *vis a vis* other 'Suspects'." (para. 37) "Internal Rule 55(4) does not set a time requirement for when to charge Suspects named in the Introductory Submission. […] [A]part from merely asserting, that it took a long time for the ICIJ to charge Yim Tith […] the Defence does not offer evidence showing ICIJ's abuse of discretion for the alleged late charging." (para. 40)
9.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"It is further through the notification of charges that the suspect is put in a position to answer allegations and prepare a defence, such that he or she is able to play an active role in the proceedings and to exercise his or her rights. From a prosecutorial standpoint, the charging process also brings clarity as to which charges, among the initial allegations, have been retained." (Opinion of Judges BAIK and BEAUVALLET, para. 109)

iv. *Charges*

a. Legal Characterisation of the Facts

For jurisprudence concerning the ***Power of the Pre-Trial Chamber to Issue a Revised Closing Order***, see IV.D.7. Authority of the Pre-Trial Chamber at Closing Order Stage

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Co-Investigating Judges are bound by the […] provisions of Internal Rule 67 when they issue a Closing Order […]." (para. 32) "The Closing Order is the decision by which the Co-Investigating Judges shall conclude their judicial investigation. Pursuant to Internal Rule 67(3) and (4), they shall decide on the acts they were requested to investigate." (para. 33) "Internal Rule 67 directs that when issuing a Closing Order, the Co-Investigating Judges shall decide on all, but only, the facts that were part of their investigation, either dismissing them for one of the reasons expressed in paragraph 3 of this Rule or sending the Charged Person to trial on the basis of these acts. This decision does not involve the exercise of any discretionary power; when circumstances as prescribed in Internal Rule 67(3) are present, the Charged Person should be indicted in relation to these acts. This position is further confirmed by Article 247 of the Code of Criminal Procedure of the Kingdom of Cambodia […]." (para. 37) "[T]he facts […] found during the investigation are decisive for the legal characterisation when issuing a Closing Order, irrespective of how they have initially been qualified by the Co-Prosecutors." (para. 39) "The Internal Rules do not indicate in which circumstances the Pre-Trial Chamber can add offences or modes of liability in a Closing Order. Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial: 'The Trial Chamber shall be seized by an indictment from the Co-Investigating Judges or the Pre-Trial Chamber'. In the Glossary of the Internal Rules, the word 'Indictment' is defined as 'a Closing Order by the Co-Investigating Judges, or the Pre-Trial Chamber, committing a Charged Person for trial'." (para. 40) "The Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC. Although the CPC does not specifically mention how the Investigation Chamber should proceed when it is seized of an appeal seeking to add legal offences or a mode of liability in an indictment, generally it gives broad powers to the Investigation Chamber when seized of an appeal." (para. 41) "When seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall 'investigate the case by itself'." (para. 42) "The rules set out in the CPC do not suggest that the Investigation Chamber is bound by the legal characterisation given by the Investigating Judge but rather indicate that it is empowered to decide on the appropriate legal characterisation of the acts." (para. 43) "In light of Internal Rule 79(1) and the provisions of the CPC, the Pre-Trial Chamber finds that it is empowered to decide independently on the legal characterisation when deciding whether to include in the Closing Order the offences and mode of liability requested by the Co-Prosecutors. It is bound by the same rules as the Co-Investigating Judges and, notably, by the scope of the investigation." (para. 44) "The Pre-Trial Chamber is bound by the system of the Closing Order […] since any amendments to the Closing Order are limited by the scope of the Appeal and the grounds set out in the Appeal Brief." (para. 96) "The Pre-Trial Chamber can add [crimes] as far as the facts in the Closing Order that were part of the investigation are sufficient to do so." (para. 97)
2.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final*	"The Pre-Trial Chamber recognises that, should a charged person be indicted in the Closing Order, the trial will provide an opportunity for the charged person to challenge the characterisation of the charges, as described in the Closing Order. However, it is certainly understandable that a charged person may wish to have his or her submissions in response to those offered by the Co-Prosecutors in the Final Submission taken into consideration by the Co-Investigating Judges before they issue the Closing Order, which determines whether or not the charged person faces trial and on what charges. Furthermore, before this key step in the ECCC proceedings, the Co-Investigating Judges can only benefit from receiving submissions both of the OCP and of the Co-Lawyers. This is even more so because the Co-Investigating Judges are not bound by the Co-Prosecutors' Final Submission. The Pre-Trial Chamber observes that a judicial body is never bound by the submissions of one party. As such, the Pre-Trial Chamber does not think that the submissions made by the Co-Prosecutors to the effect that the defence should not be given the opportunity to respond because the Final Submissions are not binding on the Co-Investigating Judges are persuasive. Finally, the fact that the Defence may appeal certain

	Submission and Additional Observations, and Request for Stay of the Proceedings	aspects of the Closing Order cannot be substituted for the right to respond to the Final Submission. The Pre-Trial Chamber notes that the Co-Lawyers are limited in the matters that they may appeal from the Closing Order." (para. 18)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Whether the facts stated in the indictment can actually be characterised as murder, torture and religious persecution under the 1956 Penal Code is ultimately a question of legal characterisation that is to be determined by the Trial Chamber and bears no effect, at this stage, on the jurisdiction of the ECCC to send the accused for trial in relation to these crimes." (para. 296)
4.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"[T]he applicable law does not oblige the Co-Investigating Judges to make a legal characterization of the facts they discover during the investigation. Such obligation only arises upon the issue of a Closing Order, if any." (para. 52)
5.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Pre-Trial Chamber notes that the International Co-Investigating Judge recalled that the legal characterisation of the facts will be determined upon conclusion of the judicial investigation. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' Decision, including in respect of the legal characterisations, should they be adopted." (para. 47)
6.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"[T]he charges during the investigation stage are provisional, as the charges set out in the Written Record of Initial Appearance constitute *potential* legal characterization of facts under investigation which will be finally determined in the Closing Order. […] Up until the Closing Order, the Co-Investigation Judges can modify the legal characterization of facts. It is only at the Closing Order stage that the Co-Investigating Judges have to make a decision with respect to the final characterization of the facts, either by dismissing the case or by issuing the indictment." (Opinion of Judges BEAUVALLET and BAIK, para. 22) "In this context, the Undersigned Judges recall that the Co-Investigating Judges will give due consideration to legal issues related to crimes and modes of responsibility, as may be necessary, in the drafting of the Closing Order, which is appealable. At this point, it is only possible to speculate as to what, if any, consideration the Co-Investigating Judges may give to the jurisdiction of the ECCC with respect to certain crimes or modes of responsibility." (Opinion of Judges BEAUVALLET and BAIK, para. 23)

	Command Responsibility	
7.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Recharacterisation of the charges must not affect the ambit of the initial matter laid before an investigating judge, as circumscribed by an introductory submission." (Opinion of Judges BEAUVALLET and BAIK, para. 145) "The Undersigned Judges further point out that the legal characterisation of the facts will be determined by the Co-Investigating Judge upon conclusion of the judicial investigation – determination from which appeal lies. The Co-Prosecutors propound but do not determine legal characterisation. Various facts were brought before the Co-Investigating Judges with whom their legal characterisation will rest, as will the establishment of any nexus between the various elements of the crimes at the Closing Order stage. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' order including in respect of the legal characterisations. Accordingly, the Forced Marriage Application for annulment is hereby dismissed." (Opinion of Judges BEAUVALLET and BAIK, para. 226)
8.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"It was […] open to the Co-Prosecutors to request additional charges by way of requests for investigative action at any time during the judicial investigation and to raise any appeal against rejection orders – either explicit or implicit, on the basis of constructive denial – pursuant to Internal Rules 55(10) and 74(2)." (Opinion of Judges BAIK and BEAUVALLET, para. 114) "In the present case, the Undersigned Judges conclude that the Co-Prosecutors failed to make use of their right to intervene in due course and that the International Co-Prosecutor cannot simply argue, at this stage, that the charges do not reflect his expectations." (Opinion of Judges BAIK and BEAUVALLET, para. 115) "[P]ursuant to Internal Rule 55(2), the Co-Investigating Judges shall investigate all, but only, the facts of which they were seised, *i.e.*, the facts which are alleged in an introductory and any supplementary submissions. Whether particular allegations fall within the scope of the matter laid before the Co-Investigating Judges can only be determined by consideration of these introductory and supplementary submissions and their annexes, with the guidance of the legal characterisations proposed by the Co-Prosecutors. In other words, the Co-Investigating Judges may not charge a suspect with crimes falling outside the scope of the judicial investigation, and they cannot be requested to expand the charges at the time of a closing order through a Co-Prosecutor's final submission. Likewise, the Pre-Trial Chamber cannot expand the scope of the charges on the basis of allegations tardily raised in an appeal against a closing order." (Opinion of Judges BAIK and BEAUVALLET, para. 128)

b. Principle of *Ne Bis In Idem* – Double Jeopardy

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"The principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted. The principle of *ne bis in idem*, which derives from civil law, is similar to the concept of double jeopardy which is more frequently used in common law. The principle of *ne bis in idem* has been interpreted as meaning that the accused 'shall not be tried twice for the same crime'." (para. 41) "The Internal Rules of the ECCC make no direct provision in respect of the doctrine of *ne bis in idem*." (para. 42) "The Pre-Trial Chamber notes that the principle is defined differently in the provisions in Cambodian law and at the international level. This is reflected in the consideration of what constitutes the 'same crime'. Under Cambodian law the 'same crime' is provided as the 'same act'. The ICCPR prohibits successive trials for the 'same offence'." (para. 43) "The principle of *ne bis in idem* can be seen as very narrowly related to the doctrine of *res judicata* as the consequence of this doctrine is that no one can be convicted again for the same charges after a

		decision has become final. Article 12 of the CPC, [...] may be regarded as an example of the application of the doctrine of *res judicata*." (para. 47) "Since the Charged Person is not charged specifically with genocide the Pre-Trial Chamber finds that the current prosecution might be for different 'offences'." (para. 51) "The Pre-Trial Chamber finds that the characterisation given by the Co-Investigating Judges, although sufficient to inform the Charged Person of the charges against him, is too vague to allow proper consideration of whether the current prosecution is for the same 'acts' as those 'acts' upon which the charges brought in 1979 were based. To specify such 'acts' at the commencement of the investigation by the Co-Investigating Judges is not possible or proper. In the event of there being an indictment of the Charged Person, 'the material facts and their legal characterisation' will be set out by the Co-Investigating Judges upon the issuance of the Closing Order at the conclusion of the investigation." (para. 52) "Therefore, when applying the *ne bis in idem* principle in the various proposed ways, the Pre-Trial Chamber finds it is not, at this stage of the proceedings, manifest or evident that the 1979 trial and conviction would prevent conviction by the ECCC. The points may crystallise upon the indictment of the Charged Person, at which stage the precise charges and material facts, relied upon will be known." (para. 53)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber has previously stated that '[t]he principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted' and that '[t]he principle of *ne bis in idem* has been interpreted as meaning that the accused "shall not be tried twice for the same crime"'. As such and in the context of an appeal against provisional detention, the Pre-Trial Chamber has previously considered the principle of *ne bis in idem* as being a jurisdictional issue." (para. 61) "In [...] the civil law system, the extinguishment of a criminal cause of action due to *res judicata*, a concept closely related to the principle of *ne bis in idem*, shall normally lead to the issuance of a dismissal order by the investigating judge. By sending Ieng Sary to trial, the Co-Investigating Judges implicitly rejected his request to ascertain the extinguishment of the criminal action against him, thus confirming the jurisdiction of the ECCC to try him. Concluding otherwise would deprive Ieng Sary from exercising his right of appeal on a jurisdictional issue that was properly raised before the Co-Investigating Judges but upon which the latter failed to make a judicial determination." (para. 62) "The Pre-Trial Chamber considers [...] that amnesty is perceived as a potential 'bar to prosecution', akin to the issue of *ne bis in idem*. A pardon can potentially have a similar effect. [...] [T]he Pre-Trial Chamber therefore finds that these issues are jurisdictional." (para. 66) "[T]he Agreement, the ECCC Law and the Internal Rules do not afford protection against double jeopardy nor do they address the effect of a previous conviction on the proceedings before the ECCC. In accordance with Article 12 of the Agreement and Article 33 new of the ECCC Law, the Pre-Trial Chamber examines the CPC [...]." (para. 118) "The principle of *ne bis in idem* is enshrined as a fundamental right in Article 14(7) of the ICCPR [...]." (para. 127) "The Pre-Trial Chamber finds that the protection offered by Article 14(7) of the ICCPR has solely a domestic effect." (para. 128) "The limit of the protection offered by Article 14(7) is explained by the fact that a State has no obligation to recognize a foreign judgment unless it has agreed to do so through an international convention specific to this effect [...]. Acknowledging the limit of Article 14(7), the Human Rights Committee said in this respect that this should not 'undermine efforts by States to prevent retrial for the same criminal offence through international conventions.'" (para. 129) "[T]he scope of Article 14(7) is very limited as it applies to the same 'offence', namely the same legal characterization of the acts, while the international protection focuses on the 'conduct' of the accused, thus taking into account for the application of the *ne bis in idem* principle the fact that international proceedings might trigger legal characterisation that differ from the domestic ones." (para. 130)

		"The Pre-Trial Chamber finds that no international *ne bis in idem* protection exists under the ICCPR. Taking into account its finding below that the ECCC is an internationalised court functioning separately from the Cambodian court structure, the Pre-Trial Chamber finds that the 'internal *ne bis in idem* principle' as enshrined in Article 14(7) of the ICCPR does not apply to the proceedings before the ECCC. In these circumstances, the Pre-Trial Chamber will seek guidance in the procedural rules established at the international level to determine if Ieng Sary's previous conviction by a national Cambodian court shall prevent the ECCC from exercising jurisdiction against him for the offences charged in the Closing Order." (para. 131) "The Pre-Trial Chamber notes that absent any international *ne bis in idem* protection in Article 14(7), its task is not to determine whether an exception to the principle of *ne bis in idem* has crystallised in international law but whether the procedural rules established at the international level are sufficiently uniform for the Pre-Trial Chamber to seek guidance in them in order to resolve the issue at hand, namely whether the ECCC can exercise jurisdiction to try Ieng Sary for the indicted offences charged in the Closing Order." (para. 140) "The rationale for the adoption of a specific provision on *ne bis in idem* in the statutes of the *ad hoc* tribunals stems from the fact that the creation of international or internationalised tribunals increase the risk of putting the accused under double jeopardy as, by definition, these tribunals have jurisdiction over international crimes which are subject to universal jurisdiction. Absent any existing international *ne bis in idem* protection, there was therefore a need for recognition of such principle which is recognized under various forms in different legal systems and traditionally serves a dual purpose of protecting the individual against the harassment of the state and being an important guarantee for legal certainty." (para. 142) "However, these interests have to be balanced with the interest of the international community and victims in insuring that those responsible for the commission of international crimes are properly prosecuted." (para. 143) "The Pre-Trial Chamber finds that the procedural rules established at the international level provide constituent guidance that an international or internationalised tribunal shall not exercise jurisdiction in respect of individuals that have already been tried for the same acts by national authorities unless it is established that the national proceedings were not conducted independently and impartially with regard to due process of law. The ECCC being in a similar position as these tribunals and considering that the reasons underlying the principle set out above are also relevant in the context of its proceedings, it will apply the same standard to determine the issue at hand." (para. 157) "The Pre-Trial Chamber further finds that only fundamental defects in the national proceedings would justify the ECCC to exercise jurisdiction." (para. 158) "The Pre-Trial Chamber examines whether the 1979 Trial was conducted independently and impartially with regard to due process of law." (para. 161) "[T]he 1979 trial *in absentia* against Ieng Sary, the Pre-Trial Chamber finds that although there might have been the intention to prosecute, convict, and sentence Ieng Sary, the 1979 trial was not conducted by an impartial and independent tribunal with regard to due process requirements. Consequently, the prosecution, conviction, and sentencing of Ieng Sary in 1979 by the PRT bar neither the jurisdiction of the ECCC over Ieng Sary, nor any of the charges in the Closing Order." (para. 175)

c. Cumulative Charging

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"[N]either the Internal Rules nor Cambodian law contain provisions related to the possibility to set out different legal offences for the same acts in the indictment." (para. 86) "The jurisprudence of the *ad hoc* international tribunals holds that it is permissible in international criminal proceedings to include in indictments different legal offences in relation to the same acts." (para. 87)

		"[I]ncluding more than one legal offence in relation to the same acts in an indictment does not inherently threaten the *ne bis in idem* principle because it does not involve the actual assignment of liability and punishment." (para. 88)

d. Miscellaneous: Crimes Charged

For jurisprudence concerning the ***Crimes before the ECCC***, see I.B.3.ii. Crimes within the Jurisdiction of the Court

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"To determine if the domestic crimes are subsumed by the international offences set out in the Indictment, the Pre-Trial Chamber will examine whether the domestic crimes contain constitutive elements that are not included in the international crimes. The Pre-Trial Chamber is only required to compare the elements of the domestic crimes with the underlying elements of the international crimes, leaving aside the contextual elements of crimes against humanity and grave breaches of the Geneva Conventions. As stated by the Appeals Chambers of the [ICTY and ICTR], 'an element is materially distinct from another if it requires proof of a fact not required by the other'." (para. 59) "The broader definition [of torture contained in the CAT] will be applied by the Pre-Trial Chamber for the purpose of determining whether the domestic definition contains elements that are not included in the international definition. Using a broader definition of the international crime is, on the current issue, in the interest of the Charged Person." (para. 66) "[T]he crime of homicide without intent to kill as codified in Article 503 of the Penal Code in the Indictment […] is subsumed by the international crimes" (para. 83) "[T]he domestic crimes of torture and premeditated murder are not subsumed by the international crimes." (para. 85)
2.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included." (para. 26)
3.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included." (para. 22)
4.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"[O]nly where the factual elements are exactly the same one can assert that other crimes are included in the charge and where the elements differ, the other crimes are not included." (para. 22)

5.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"This Chamber has held that where constitute elements are not identical, domestic and international crimes are to be treated as distinct crimes." (para. 153) "The OCIJ were not in a situation comparable to the Judges of the Trial Chamber in Case No. 001 who, in the absence of the required majority, had no option procedurally but to discontinue prosecution for such crimes […]. By including domestic charges in the Impugned Order in spite of their disagreement, the OCIJ clearly confirmed jurisdiction over such crimes." (para. 178)
6.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In another context, the Pre-Trial Chamber has previously considered whether domestic crimes and international crimes may be considered synonymous. The Pre-Trial Chamber indicated that where the constitutive elements are not identical, domestic and international crimes are to be treated as distinct crimes." (para. 370)

5. Evidence Matters

For jurisprudence concerning the ***Evidential Standards at the Introductory Submission Stage***, see IV.A.2.i. Introductory Submission

For jurisprudence concerning the ***Evidential Standard at the Closing Order Stage***, see IV.D.5. Evidential Standard at Closing Order Stage

i. *Case File*

For jurisprudence concerning the ***Parties' Access to Case File***, see IV.B.3.1. Participation of the Parties and VI.E.2.iii. Information, Access to Case File and Notification of Documents

For jurisprudence concerning the ***Annulment and Exclusion of Evidence from Case File***, see VII.C.5. Scope of Annulment

For jurisprudence concerning the ***Access and Transfer of the Case File to the Trial Chamber***, see IV.D.10. Transfer of the Case File to the Trial Chamber and Archiving Case

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"Pursuant to Internal Rule 53(2), an Introductory Submission 'shall be accompanied by the case file and any other material of evidentiary value in the possession of the Co-Prosecutors, including any evidence that in the actual knowledge of the Co-Prosecutors may be exculpatory'. The expression 'case file' is defined in the Glossary of the Internal Rules as referring to 'all the written (procès-verbaux) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachment thereto at all stages of the proceedings, including the record of proceedings before the Chambers'. When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 32)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009	"Pursuant to Internal Rule 53(2), an Introductory Submission 'shall be accompanied by the case file and any other material of evidentiary value in the possession of the Co-Prosecutors, including any evidence that in the actual knowledge of the Co-Prosecutors may be exculpatory'. The expression 'case file' is defined in the Glossary of the Internal Rules as referring to 'all the written (procès-verbaux) of investigative action undertaken in the course of a Preliminary Investigation or a Judicial Investigation, together with all applications by parties, written decisions and any attachment thereto at all stages of the proceedings, including the record of proceedings before the Chambers'. When read in conjunction with the definition of 'case file' set out in the glossary, the expression 'any other material of evidentiary

	Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive	value in the possession of the Co-Prosecutors' set out in Internal Rule 53(2) appears to refer to documents other than those described in the definition of 'case file' that the Co-Prosecutor considers to constitute evidence as these either support their Introductory Submission or are of exculpatory nature." (para. 33)
3.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"The Pre-Trial Chamber notes that when an application for annulment is granted, the investigative or judicial action(s) declared null and void is (or are) expunged from the material on the case file. Consequently, if the entire investigation is annulled, all the material will be expunged from the case file, which leads to a consequence which must be differentiated from that of a stay of proceedings for abuse of process. Both procedures apply different standards and result in different consequences. If an annulment is ordered, even of the entire investigation, there is nothing to prevent a new investigation from placing new material, which is untainted by those defects, on the case file. In the case of stay of proceedings, the whole proceedings would cease because the abuse has been found to be so egregious as to damage the integrity of the entire process there will no longer be any case to answer." (para. 27)
4.	**004/2 AO An** PTC 36 D343/4 26 April 2017 *Decision on Appeal against the Decision on AO An's Tenth Request for Investigative Action*	"[A]t the ECCC, the Investigating *Judges* have wide discretion in deciding what investigative action is useful for the conduct of the investigation and what evidence is placed in the Case File. It is important to recall that, at the ECCC, evidence for use at trial is placed on the Case File, which is the only procedural record, and while the rules allow for the parties to file requests for investigative action to the OCIJ, there are no rules providing for any procedural right to request disclosure. Therefore, any law and practice, relevant to disclosure before those other international tribunals, is not comparable to the law and practice, relevant to Defence's participation in the investigation and access to the Case File, at the ECCC." (Opinion of Judges BEAUVALLET and BAIK, para. 29)
5.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber recalls that the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office." (para. 50)
6.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In Case 004/1, the Pre-Trial Chamber recalled that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office'." (para. 80)
7.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges recall that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office' […]." (Opinion of Judges BEAUVALLET and BAIK, para. 155)

ii. *Evaluation and Admissibility of the Evidence*

a. Evaluation and Admissibility of the Evidence at the Pre-Trial Stage

1.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"The Pre-Trial Chamber further notes that it has, in general, no jurisdiction to review matters related to admissibility of evidence as such. According to the Internal Rules, the matter of admissibility of evidence arises at the trial stage of the criminal proceedings. Similarly, the Cambodian Code of Criminal Procedure provides very few rules regarding admissibility of evidence and these concern the trial stage of the proceedings when the trial judges are given broad discretion in deciding whether or not to admit evidence." (para. 20)
2.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"The Pre-Trial Chamber further notes that it has, in general, no jurisdiction to review matters related to admissibility of evidence as such. According to the Internal Rules, the matter of admissibility of evidence arises at the trial stage of the criminal proceedings. Similarly, the Cambodian Code of Criminal Procedure provides very few rules regarding admissibility of evidence and these concern the trial stage of the proceedings when the trial judges are given broad discretion in deciding whether or not to admit evidence." (para. 18)
3.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber further notes that it has, in general, no jurisdiction to review matters related to methods used for evaluation or admissibility of evidence by the Co-Investigating Judges as they undertake their task of searching to the truth. According to Internal Rule 87 the matter of admissibility of evidence arises at the trial stage of the criminal proceeding if a Closing Order is used sending the Charged Person to trial. Similarly, Article 321 of the Cambodian Code of Criminal Procedure provides on the admissibility of evidence at the trial stage. Such rules give the trial judges broad discretion to decide whether or not to admit evidence." (para. 24) "[N]owhere in the laws applicable before the ECCC or in the jurisprudence of international courts […] is provided that 'information on the procedure and protocol used by the investigating authorities during the investigations' has to be put at the disposal of the defence in order to facilitate the preparation of a defence." (para. 30) "The rationale of the analysis will become apparent when a Closing Order either indicting the Charged Person or dismissing the case is issued at the conclusion of the investigation. Where a Closing Order is issued, Internal Rule 67(4) requires that reasons for any decision to send a Charged Person to trial or to dismiss the case are to be given." (para. 32) "After the issuance of a closing order, if there is an indic[t]ment of their client, the Co-Lawyers of the Charged Person have time to prepare their defence for the trial phase by examining the evidence which is available to them." (para. 33)
4.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting*	"Any determination as to credibility of documents during the pre-trial stage is made by the Co-Investigating Judges." (para. 25)

	IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings	
5.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"[A]nnulment would not be the only remedy available for the alleged shortcomings. The circumstances in which evidence is obtained, including the reliability of the interviews in light of the nature of the questions asked to the witnesses and civil parties, will be fully assessed at the closing order stage, including eventually by the Pre-Trial Chamber, and, should the case go to trial, by the Trial Chamber." (para. 45)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he Co-Lawyers' argument that DC-Cam's interview activities led to 'potentially-contaminated testimony' is unsubstantiated and speculative. […] Lastly, at any subsequent trial, the Co-Lawyers would be afforded the opportunity to cross-examine witnesses, allowing them to probe the credibility or alleged 'contamination' of witness testimony, and, hence, the Pre-Trial Chamber's intervention is not called for at this stage." (para. 71)

b. Principle of Freedom of Evidence

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The gathering of evidence before the ECCC is ruled by the principle of freedom of evidence, which is peculiar to the civil law system. In other words, all evidence is admissible as provided under Internal Rule 87. Furthermore, all evidence generally has the same probative value. Article 23*new* of the ECCC Law reflects this principle by establishing that '[t]he Co-Investigating Judges shall conduct investigations on the basis of information *obtained from any institution*'. Article 321 of the Cambodian Code of Criminal Procedure moreover states that, unless provided otherwise by law, all evidence is admissible in criminal cases and the court has to consider the value of the evidence submitted for its examination, according to the judge's personal conviction. Article 427 of the French Code of Criminal Procedure equally provides that offences may be proved by any mode of evidence and that the judge decides according to his or her personal conviction." (para. 44) "[T]he Co-Investigating Judges freely evaluate the probative value of the evidence collected during the investigation, and […] the applicable law before the ECCC does not prescribe rules with regard to the assessment of the sufficiency of the evidence for the charges. There are in fact no grounds for distinguishing statements based on their provenance. All evidence is admissible and generally enjoys the same legal presumption of reliability, provided it has been legally collected." (para. 51) "[I]t is an error of law, in an inquisitorial system based on written proof, to make general assertions as

		to the value of certain categories of evidence, thus creating a hierarchy of evidence based on its nature rather than on its substance, and to consequently give less weight to evidence collected by other entities for strictly formal reasons. The only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges." (para. 52) "[W]hile the probative value of particular items in isolation may be minimal, the very fact that they have some relevance means that they must be available for consideration." (para. 53) "In other words, the legally incorrect hierarchisation of evidence imposed by the Co-Investigating Judges, denying the presumption of reliability and generally giving less weight to civil party applications, may be such as to reveal serious flaws in the conduct of the judicial investigation pursuant to Internal Rule 55(9). Furthermore, this hierarchisation would have the consequence of limiting the effectiveness of the victims' right of access to the courts, in the sense of Article 33 *new* of the ECCC Law, Internal Rule 21 and the United Nations General Assembly's Resolutions on Basic Principles of Justice for Victims, despite the ECCC being among the first internationalised tribunals to have granted victims a role in proceedings." (para. 56) "[I]t is incorrect to assess the probative value of evidence based on its provenance, rather than on its intrinsic value, and to generally hierarchise categories of evidence." (para. 58)
2.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"[T]he gathering of evidence during the investigation is ruled by the principle of freedom of evidence, pursuant to which all evidence is admissible and generally has the same probative value. Article 23*new* of the ECCC Law reflects this principle by establishing that '[t]he Co-Investigating Judges shall conduct investigations on the basis of information *obtained from any institution*'. Internal Rule 55(5), in turn, expressly authorises the Co-Investigating Judges to 'take any investigative action conducive to ascertaining the truth' and to '[s]eek information and assistance from any State, the United Nations or any other intergovernmental or non-government organization, or other sources that they deem appropriate.' (para. 17) "There is thus no provision in the applicable law before the ECCC prohibiting the Co-Investigating Judges from requesting assistance or gathering information from other institutions, including from the Victims Support Section, which is specifically tasked with assisting victims in submitting civil party applications under the Judges' supervision." (para. 18)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Pursuant to Internal Rule 67, the sole duty of the Co-Investigating Judges is to issue a closing order of indictment or dismissal, depending on the content of the evidence in the Case File. In doing so, the Co-Investigating Judges have the duty to take into consideration all the evidence and cannot arbitrarily disregard or depreciate certain categories of evidence before they have been debated by the parties." (para. 73) "The Co-Investigating Judges' attempt to explain their methodology of hierarchisation of evidence is thus […] superfluous, unnecessary and legally incorrect." (para. 74) "[T]he ECCC is guided by its Internal Rules and Cambodian law. Internal Rule 87 clearly states that, 'unless provided otherwise in these IRs, all evidence is admissible'. This notion is reflected in Article 321 of the Cambodian Code of Criminal Procedure that clearly enshrines the principle of freedom of evidence and its corollary of the judge's personal conviction. The gathering of evidence at the ECCC is thus undoubtedly governed by the principle of freedom of evidence, which is peculiar to most civil law systems. […] subject to any annulment proceedings, all evidence is admissible and generally has the same probative value. […] [O]nly express provisions contained in the above-mentioned legal instruments would allow to derogate from this principle." (para. 76) "Article 23*new* of the ECCC Law indicates that the 'Co-Investigating Judges shall conduct investigations on the basis of information obtained from any institutions.' This […] excludes any subjective categorisation of evidence based on its provenance and emphasises that all evidence, unless prescribed specifically by the law, enjoy the same legal presumption of probative value, provided it has been legally collected." (para. 77) "[T]he Co-Investigating Judges disregarded the principle of freedom of evidence and arbitrarily established a pyramidal classification of evidence, when no relevant legal provision allows this. The evidence gathered by their Office was placed at the top of the pyramid and predominantly relied upon to issue the Closing Orders. […] the Co-Investigating Judges considered that it presents strong

		procedural safeguards and is thus entitled to a presumption of relevance and reliability, while evidence collected by external entities do not enjoy such a presumption. […] evidence such as interviews conducted by the Co-Prosecutor's Office, certain DC-CAM reports or documents and civil party applications, were granted less or no probative value." (para. 79) "In Case 004/1, the Pre-Trial Chamber recalled that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office'. The Pre-Trial Chamber reaffirms that it is an error of law to make general assertions regarding the predetermined value of defined categories of evidence with regards to others, particularly when based on its provenance rather than on its essence. At this stage, '[t]he only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges'." (para. 80) "[W]hile the probative value of particular items of evidence in isolation may appear, *prima facie*, to be minimal, the very fact that they have some relevance means that they must be available for consideration. The interviews conducted by the Co-Prosecutors, the civil party applications and the DC-CAM documents remain on the Case File despite the Co-Investigating Judges' findings on their limited probative value, and could be taken into consideration at the trial stage." (para. 82) --- "While insisting on his evidentiary hierarchy […] the International Co-Investigating Judge […] acknowledged that his approach to evidence assessment did not usurp proper assessment; he conceded that there was no intent 'to create a theoretical hierarchy in the sense of largely overcome formal rules of evidence, nor was such a rigid hierarchy applied when assessing the evidence.' Thus […] if the International Co-Investigating Judge's version of what constitutes a 'principle' governing the evaluation of evidence was not applied in assessing the evidence, then it holds no practical function or importance. The International Co-Investigating Judge's purpose to 'take out' the 'mathematical' common factor is an approach divorced from the reality of a case-by-case assessment of evidence – without impact in the instant case." (Opinion of Judges BAIK and BEAUVALLET, para. 375) "[T]he International Co-Investigating Judge, contrary to his assertions, engaged in a free and full evaluation of evidence – including scrutinizing the evidentiary substance, regardless of form or provenance, and without referring to his unworkable hierarchy of evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 376) "[T]he International Judges recall that evidence gathering at the ECCC is ruled by the principle of freedom of evidence and find no ground in the […] contentions that the International Co-Investigating Judge's finding on meetings or communications between AO An and zone level cadres must be supported by documentary evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 484)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The principle of freedom of evidence and, its corollary, the principle of the judge's personal conviction are enshrined in Article 321 of the Cambodian Code of Criminal Procedure and Internal Rule 87(1) […]." (Opinion of Judges BEAUVALLET and BAIK, para. 151) "[T]he gathering of evidence at the ECCC during the investigation stage is governed by the principle of freedom of evidence, which is peculiar to the civil law system. Consequently, subject to any annulment proceedings or express provisions to the contrary, all evidence is admissible and generally enjoys the same probative value at the pre-trial stage of the ECCC's proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 152) "Article 23*new* of the ECCC Law, […] excludes any subjective categorisation of evidence based on its provenance and indicates that all evidence, unless prescribed specifically by the law, enjoy the same legal presumption of probative value, if legally collected. Other hybrid jurisdictions have also adopted a civil law model of criminal procedure with a similar evidentiary approach." (Opinion of Judges BEAUVALLET and BAIK, para. 153) "The International Judges recall that 'the entire Case File is under the judicial supervision of the Co-Investigating Judges, not only the evidence produced by their Office', and reaffirm that it is an error of law to make general assertions and predeterminations at the pre-trial stage as to the value of certain categories of evidence, thus creating a hierarchy of evidence based on the formal provenance, rather than the substance, of the evidence. […] [I]n light of Internal Rule 67, 'the only relevant criterion for the evaluation of evidence' at the pre-trial stage, is 'the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient

		evidence for the charges.' Moreover, at the closing order stage of the ECCC's proceedings, the sole duty of the Co-Investigating Judges, pursuant to Internal Rule 67, is to issue a closing order of indictment or dismissal, based on their assessment of the content of the evidence in the case file. In light of their obligation to take into consideration all the evidence in the case file, the Co-Investigating Judges may not arbitrarily disregard or depreciate entire categories of evidence before each individual piece of the evidence has been fully debated by the parties at the adversarial trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 155) "[B]oth Co-Investigating Judges committed an error of law by readopting the hierarchical and formalistic categorisation of evidence based on its provenance, rather than its substance, which […] is incorrect within the ECCC legal framework and unsubstantiated in the inquisitorial investigating legal system." (Opinion of Judges BEAUVALLET and BAIK, para. 156) "[W]hile the probative value of particular items of evidence in isolation may appear, *prima facie*, minimal, the very fact that they have some relevance means that they must be available for consideration. Indeed, a comprehensive review of all evidence in a case file may enable identification and analysis of, *inter alia*, patterns or contexts of crimes that are typical of mass criminality, which may, in turn, affect the initial probative value assessment of certain evidence by, for instance, corroboration." (Opinion of Judges BEAUVALLET and BAIK, para. 157)
5.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"As the Pre-Trial Chamber has repeatedly stressed, '[a]ll evidence is admissible and generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' […] The probative value of hearsay, as with all forms of evidence, varies based on its nature and substance and will ultimately 'depend upon the infinitely variable circumstances which surround hearsay evidence.'" (Opinion of Judges BAIK and BEAUVALLET, para. 235)

c. Presumption of Reliability of Investigative Actions

1.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview*	"[A]udio- or video-recording of witness interviews is not mandatory. In this connection, the Pre-Trial Chamber recalls the principle concerning the presumption of reliability which attaches to investigative action, including interviews of witness. The presumption is rebuttable and a movant may challenge the veracity of an interview by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (para. 22)
2.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"At the outset, the Pre-Trial Chamber recalls the presumption of reliability which attaches to investigative action. This presumption is rebuttable and the veracity of an interview may be challenged by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (para. 20)
3.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the*	"At the outset, the Pre-Trial Chamber recalls the presumption of reliability attached to investigative action, which is rebuttable, and the wide discretion of Co-Investigating Judges in conducting the investigation and in conducting witness and civil party interviews in a way conducive to ascertaining the truth." (para. 13) "While the Pre-Trial Chamber acknowledges some uncertainty concerning the sources of evidence used by the Investigator during those interviews, it recalls that the onus rests with the movant to prove

	Investigative Material Produced by Paolo STOCCHI	that the presumption of reliability no longer applies. In this case, based on the excerpts presented in the Application, it would be highly speculative to infer that actual 'interviews' in the sense of Internal Rule 24, exceeding mere initial contact or preliminary information, were conducted and not recorded, in breach of Internal Rule 55(7), or that site visits failed to be adequately recorded pursuant to Internal Rule 55(8)." (para. 23) "The Pre-Trial Chamber further considers that the existence of off-the-record conversations, even if proven, would not affect the validity of the impugned interviews but merely their probative value. The Pre-Trial Chamber therefore finds that the presumption of reliability has not been rebutted and that no procedural defect has been established that would justify the annulment of the impugned interviews." (para. 24) "The Pre-Trial Chamber considers that such investigative action [(attending a lecture)] was performed in accordance with Internal Rule 55(5), pursuant to which the Co-Investigating Judges may take 'any investigative action conducive to ascertaining the truth', and that it is not affected by any defect." (para. 26)

d. Reliability of Charged Person' Statements

For jurisprudence concerning the ***Interviews of the Charged Person***, see IV.B.7. Miscellaneous: Interview of the Charged Person

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Undersigned Judges further recall the Supreme Court Chamber's holding that an accused person's inculpatory statements, corroborated by other evidence, can be relied on in the judicial process. The Undersigned Judges thus consider that the public statements of the Charged Person provide a sufficient evidentiary basis in view of the applicable standard of proof at the pre-trial stage. Indeed, IM Chaem is the best witness to provide information regarding her own roles and responsibilities in the Southwest Zone, and her statements regarding her role and relationships were relied upon by the Co-Investigating Judges elsewhere in the Closing Order (Reasons)." (Opinion of Judges BAIK and BEAUVALLET, para. 294)

e. Reliability of Civil Party Evidence

For jurisprudence concerning the ***Civil Parties***, see VI.B. Civil Parties and VI.F. Witnesses and Civil Party Applicants Interviews

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber finds it particularly problematic to generally preclude civil party applications from any presumption of reliability and to afford them 'little, if any, probative value' on the basis of the circumstances surrounding their recording. The ECCC is the first court trying mass international crimes that provides an opportunity for victims to participate directly in the criminal proceedings as civil parties. Pursuant to Internal Rule 23 *bis*, for a civil party action to be admissible, the applicant shall 'demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.' Civil party applications, which are filed with the aim of contributing to the judicial investigations, thus necessarily warrant thoughtful consideration by the Co-Investigating Judges." (para. 54) "Therefore, if they were to deny *prima facie* the presumption of reliability for civil party applications and afford them less weight than other evidence collected by their Office, the Co-Investigating Judges – either themselves or through rogatory letters – would be bound to hear every applicant as a witness, considering that they possess information conducive to ascertaining the truth. In fact, victims and civil party applicants have first-hand information about the relevant facts, and the credibility of their evidence should be evaluated on a case-by-case basis. The fact that they have a personal interest in the outcome of the case should not automatically lead to the assumption that their evidence is less credible." (para. 55) "In other words, the legally incorrect hierarchisation of evidence imposed by the Co-Investigating Judges, denying the presumption of reliability and generally giving less weight to civil party

		applications, may be such as to reveal serious flaws in the conduct of the judicial investigation pursuant to Internal Rule 55(9). Furthermore, this hierarchisation would have the consequence of limiting the effectiveness of the victims' right of access to the courts, in the sense of Article 33 *new* of the ECCC Law, Internal Rule 21 and the United Nations General Assembly's Resolutions on Basic Principles of Justice for Victims, despite the ECCC being among the first internationalised tribunals to have granted victims a role in proceedings." (para. 56) "[I]t is incorrect to assess the probative value of evidence based on its provenance, rather than on its intrinsic value, and to generally hierarchise categories of evidence." (para. 58)
2.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"Accordingly, no procedural defect has been established that would justify the annulment of Requests and associated investigative products. Any concern relating to the reliability of the supplementary information sought would not affect the validity of the civil party applications as such, but merely their probative value, which is to be fully assessed at a later stage." (para. 22)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Co-Investigating Judges disregarded the principle of freedom of evidence and arbitrarily established a pyramidal classification of evidence, when no relevant legal provision allows this. The evidence gathered by their Office was placed at the top of the pyramid and predominantly relied upon to issue the Closing Orders. […] the Co-Investigating Judges considered that it presents strong procedural safeguards and is thus entitled to a presumption of relevance and reliability, while evidence collected by external entities do not enjoy such a presumption. […] evidence such as interviews conducted by the Co-Prosecutor's Office, certain DC-CAM reports or documents and civil party applications, were granted less or no probative value." (para. 79) "The Pre-Trial Chamber finds it particularly problematic to generally preclude civil party applications from any presumption of reliability and to afford them 'little if any probative value' on the basis of the circumstances surrounding their recording. […] victims and civil party applicants may have first-hand information about the relevant facts. The credibility of their evidence should be evaluated on a case-by-case basis and not automatically be considered as unreliable *per se*. The fact that they have a personal interest in the outcome of the case should not automatically lead to the assumption that their evidence is less credible. […] The interpretation of the Co-Investigating Judges is consequently baseless in law and senseless as it would, to ensure probative value, require them to interview every single civil party applicant, which would exacerbate the delay in the proceedings." (para. 81) "[W]hile the probative value of particular items of evidence in isolation may appear, *prima facie*, to be minimal, the very fact that they have some relevance means that they must be available for consideration. The interviews conducted by the Co-Prosecutors, the civil party applications and the DC-CAM documents remain on the Case File despite the Co-Investigating Judges' findings on their limited probative value, and could be taken into consideration at the trial stage." (para. 82)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[V]ictims and civil party applicants may have first-hand information about the facts relevant to the investigation before the ECCC. The credibility of their evidence, therefore, should be evaluated on a case-by-case basis, and not automatically be regarded as intrinsically unreliable. The fact that they have a personal interest in the outcome of the case should not lead to the assumption that their evidence is less credible. The International Judges reaffirm that the Co-Investigating Judges' such hierarchisation limits the effectiveness of the victims' right of access to the courts and is contrary to Article 137 of the Cambodian Code of Criminal Procedure, which explicitly states that there is no formal requirement for the civil party to intervene at the investigation stage." (Opinion of Judges BEAUVALLET and BAIK, para. 159) "The International Judges accordingly consider that the International Co-Investigating Judge's formalistic approach of denying *prima facie* the presumption of reliability for civil party applications and vesting them with less weight than other evidence collected by their Office is not only legally incorrect within the ECCC legal framework, but also practically unsound and inappropriate under

		Internal Rule 21(4) as the Co-Investigating Judges would be bound to interview each civil party applicant individually in order to ensure probative value and safeguard the victims' access to the ECCC, creating delays in the proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 160)

f. Reliability of Witness Evidence

For jurisprudence concerning ***Witness Interviews***, see VI.F. Witnesses and Civil Party Applicants Interviews

1.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to seize the Pre-Trial chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The [Investigating] Judge is advised only to record interviews of particularly vulnerable persons but not duty-bound. Nonetheless, Internal Rule 55(7) casts a duty on the Co-Investigating Judges to make a written record of every interview. Discharge of such duty to make a written record consistent with the interviewee's statement is further ensured by the reading back of the statement to the said person and his or her signing and fingerprinting of each page." (Opinion of Judges BEAUVALLET and BAIK, para. 232) "The aforegoing Internal Rules on the duty to make a written record of witness interviews mirror Articles 93 and 115 of the Cambodian Code of Criminal Procedure […]." (Opinion of Judges BEAUVALLET and BAIK, para. 233) "The Undersigned Judges share the view of the Trial Chamber that the practice followed in Cambodia does not require written records of interviews to be verbatim records. It suffices for an official from the Office of the Co-Investigating Judges to make a report of the relevant statements given by the interviewee. The Internal Rules mandate that said person read over and sign or fingerprint each page, thereby ensuring that the written record is consistent with his or her statements." (Opinion of Judges BEAUVALLET and BAIK, para. 239) "Accordingly, the Undersigned Judges do not consider the non-verbatim nature of such a written record to constitute an irregularity. Furthermore, save where wilful distortion of the statements is proven, the presumption of reliability which attaches to investigative action, as aforementioned, means that the written record is presumed to reflect the answers given." (Opinion of Judges BEAUVALLET and BAIK, para. 240) "In the view of the Undersigned Judges, no doubt is cast on the reliability of the witness' evidence by the mere fact that, as the audio-recording makes apparent, the investigator told the witness that he would repeat a question as the answer had not been taken down, making his intention to do so known to the witness. The Undersigned Judges incline to the view that rather than showing that the investigator knowingly and wilfully distorted the witness' answers, that excerpt of the recording shows that the investigator endeavoured to make an accurate record of the witness' statements by asking that the answer be repeated so as to be accurately taken down. Accordingly, the Undersigned Judges find that procedural defect is not established." (Opinion of Judges BEAUVALLET and BAIK, para. 241) "According to the aforementioned presumption of regularity which attaches to investigative action, the written record is presumed to reflect the answers provided by the witness and the mere fact of not being able to compare them with the recording does nothing to refute the presumption. The Undersigned Judges find that the procedural defect alleged in respect of this interview is not established. (Opinion of Judges BEAUVALLET and BAIK, para. 249) "The Undersigned Judges consider that the fact that the investigator stated that the witness did recall the sites and his experiences there and that during the visit the witness imparted details which he did not when interviewed casts no doubt so as to refute the presumption of reliability which attaches to the report. The Co-Lawyers have not, in this instance, identified anything to refute the presumption." (Opinion of Judges BEAUVALLET and BAIK, para. 253)
2.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded*	"[T]he Internal Rules do not mandate the recording of witness interviews. Internal Rule 25(1), which makes provision for the recording of interviews where possible, concerns only the interview of a Suspect or Charged Person." (para. 19) "Hence the recording of witness interviews is left to the unfettered discretion of the Co-Investigating Judges, who are advised to record interviews of particularly vulnerable persons but not duty-bound. Internal Rule 55(7) only casts a duty on the Co-Investigating Judges to make a written record of every interview." (para. 20)

	Written Records of Interview	"[A]udio- or video-recording of witness interviews is not mandatory. In this connection, the Pre-Trial Chamber recalls the principle concerning the presumption of reliability which attaches to investigative action, including interviews of witness. The presumption is rebuttable and a movant may challenge the veracity of an interview by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (para. 22) "In the present case, the fact that the impugned witness interviews were not recorded does not of itself refute the presumption of reliability which attaches to the interviews. Provided that written records of the interviews were made pursuant to Internal Rule 55(7), and having regard to the foregoing principles, the Pre-Trial Chamber does not find the procedural defect established." (para. 23)
3.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"At the outset, the Pre-Trial Chamber recalls the presumption of reliability which attaches to investigative action. This presumption is rebuttable and the veracity of an interview may be challenged by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (para. 20)
4.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"The Pre-Trial Chamber further considers that the existence of off-the-record conversations, even if proven, would not affect the validity of the impugned interviews but merely their probative value. The Pre-Trial Chamber therefore finds that the presumption of reliability has not been rebutted and that no procedural defect has been established that would justify the annulment of the impugned interviews." (para. 24)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[W]hile alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue. In the latter case, the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony. (Opinion of Judges BAIK and BEAUVALLET, para. 381) "[T]he International Judges recall that '[a]ll evidence […] generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' […] [T]here is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources and that uncorroborated evidence from a single witness may support a conviction even at the trial stage. Although […] the standard of 'sufficiently serious and corroborative evidence' itself refers to corroboration […] the reference […] to 'corroborative evidence' addresses the concept of whether *an overall evidentiary basis exists to substantiate the underlying charges*, not whether each material finding is supported by two or more pieces of evidence. […] [A]lthough corroboration is not *per se* required, the fact that witness testimony is corroborated by other evidence may be an important factor in evaluating its reliability." (Opinion of Judges BAIK and BEAUVALLET, para. 426) "As the probative value of evidence depends on many factors, the International Judges decline to impose a blanket requirement that evidence from witnesses challenged as 'non-credible' be corroborated […]. In assessing the evidence, a Co-Investigating Judge may exercise his discretion on a case-by-case basis and find that additional corroborative evidence is needed before accepting that an individual fact is sufficiently substantiated." (Opinion of Judges BAIK and BEAUVALLET, para. 427)

		"[In this case], […] the International Judges observe that some […] accounts are provided by witnesses with a unique exposure to events or demonstrate a high level of specific detail such as to permit a reasonable trier of fact to make appropriate findings at the closing order stage." (Opinion of Judges BAIK and BEAUVALLET, para. 428)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he Co-Lawyers' argument that DC-Cam's interview activities led to 'potentially-contaminated testimony' is unsubstantiated and speculative. In particular, the Co-Lawyers do not demonstrate any specific error in the International Co-Investigating Judge's assessment of the credibility and probative value of interview evidence, including those relying upon DC-Cam statements as a basis for questioning. Further, the Pre-Trial Chamber has upheld the practice of confronting witnesses with other evidence on the record as a 'legitimate investigative practice'. Moreover, the Chamber notes that, had the Co-Lawyers considered any Written Records of Interviews to be 'contaminated', they could have submitted an application for annulment under Internal Rule 76. Lastly, at any subsequent trial, the Co-Lawyers would be afforded the opportunity to cross-examine witnesses, allowing them to probe the credibility or alleged 'contamination' of witness testimony, and, hence, the Pre-Trial Chamber's intervention is not called for at this stage." (para. 71) "The International Judges recall that 'while alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.' In the latter case, 'the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding.'" (Opinion of Judges BAIK and BEAUVALLET, para. 233) "It must be recalled that conclusory allegations which merely express disagreement with the factual conclusions reached or which vaguely assert an error in an unsubstantiated manner may be summarily dismissed by the Chamber, since such allegations do not discharge the burden of demonstrating specific errors of fact or law on appeal. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony." (Opinion of Judges BAIK and BEAUVALLET, para. 234) "[T]here is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources at the pre-trial stage." (Opinion of Judges BAIK and BEAUVALLET, para. 235) "Moreover, recalling that there is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources at the pre-trial stage […]." (Opinion of Judges BAIK and BEAUVALLET, para. 314) "[A] fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony." (Opinion of Judges BAIK and BEAUVALLET, para. 454)

g. Corroboration

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[A]s a matter of law […] corroboration of evidence is not required, though it is one of many important factors in assessing the reliability of evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 425) "[T]he International Judges recall that '[a]ll evidence […] generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' […] [T]here is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources and that uncorroborated evidence from a single witness may support a conviction even at the trial stage. Although […] the standard of 'sufficiently serious and corroborative evidence' itself refers to corroboration […] the reference […] to 'corroborative evidence' addresses the concept of whether *an overall evidentiary basis exists to substantiate the underlying charges*, not whether each material finding is supported by two or more pieces of evidence. […] [A]lthough corroboration is not *per se* required, the fact that witness testimony is corroborated by other evidence may be an important factor in evaluating its reliability." (Opinion of Judges BAIK and BEAUVALLET, para. 426)

		"As the probative value of evidence depends on many factors, the International Judges decline to impose a blanket requirement that evidence from witnesses challenged as 'non-credible' be corroborated […]. In assessing the evidence, a Co-Investigating Judge may exercise his discretion on a case-by-case basis and find that additional corroborative evidence is needed before accepting that an individual fact is sufficiently substantiated." (Opinion of Judges BAIK and BEAUVALLET, para. 427) "[In this case], […] the International Judges observe that some […] accounts are provided by witnesses with a unique exposure to events or demonstrate a high level of specific detail such as to permit a reasonable trier of fact to make appropriate findings at the closing order stage." (Opinion of Judges BAIK and BEAUVALLET, para. 428)
2.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]here is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources at the pre-trial stage." (Opinion of Judges BAIK and BEAUVALLET, para. 235) "Moreover, recalling that there is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources at the pre-trial stage […]." (Opinion of Judges BAIK and BEAUVALLET, para. 314) "The International Judges reaffirm that there is no requirement of corroboration in assessing evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 319) "[C]orroboration is not *per se* required […]." (Opinion of Judges BAIK and BEAUVALLET, para. 405)

h. Admissibility and Reliability of Hearsay Evidence

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"It is well-settled […] that hearsay evidence is admissible and may be relied on. Indeed, the International Co-Investigating Judge has 'broad discretion' to rely on hearsay evidence. The probative value of hearsay, as with all forms of evidence, varies based on its nature and substance and will ultimately 'depend upon the infinitely variable circumstances which surround hearsay evidence.' […] [I]t is for the [Appellant] to demonstrate that no reasonable trier of fact could have relied upon the hearsay evidence in reaching a specific finding." (Opinion of Judges BAIK and BEAUVALLET, para. 433) "Although the Co-Lawyers contend that the Supreme Court Chamber's case law bars the use of anonymous or double hearsay to establish a finding beyond reasonable doubt, the International Judges recall […] that the standard of proof at the closing order stage is lower than at trial. In addition, the International Judges recall that '[a]ll evidence is admissible and generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' The International Judges accordingly reject the Co-Lawyers' submission to the extent it argues that anonymous or second-degree hearsay cannot, as a matter of law, support sufficient charges." (Opinion of Judges BAIK and BEAUVALLET, para. 434) "[In this case], the International Judges observe that the International Co-Investigating Judge expressly explained that he adopted a 'cautious approach' to hearsay evidence and detailed the factors he took into account in relying on uncorroborated hearsay." (Opinion of Judges BAIK and BEAUVALLET, para. 435) "Moreover […] the International Judges note that [for] some examples […] the hearsay evidence is supported by direct and probative circumstantial evidence from other witnesses who mutually corroborate the facts at issue. In yet other examples, the circumstances and substance of the hearsay at issue are sufficiently probative for a reasonable trier of fact to rely on the evidence to make a finding at the closing order stage." (Opinion of Judges BAIK and BEAUVALLET, para. 436) "In light of the foregoing, the International Judges hold that the Co-Lawyers fail in demonstrating that the International Co-Investigating Judge erred in his approach to hearsay evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 437) "[N]otwithstanding the unnecessary and improper 'conservative' calculation of victim numbers, the International Judges are not persuaded by the […] contention that the International Co-Investigating

		Judge engaged in an approach 'based on guesswork' or that he failed to provide sufficient evidence of alleged victim numbers […]." (Opinion of Judges BAIK and BEAUVALLET, para. 553) "The International Judges find it clear that the number of victims alleged […] are rooted in and derived from the evidence – not any purported 'guesswork'. The International Judges consider particularly the Closing Order (Indictment), Annex IV – Cham Victims: this detailed chart […] delineates the evidentiary source from which he based the victim numbers, including […] district, village and commune alleged, the identity of the witness, the precise question posed and the exact response concerning the explicit number of Cham victims described." (Opinion of Judges BAIK and BEAUVALLET, para. 554) "[T]here is no mathematical threshold for casualties which evidence must surpass in assessing the gravity of the crimes for determining the personal jurisdiction. Consequently, the Co-Lawyers' allegation that 'there is insufficient evidence to support the [International Co-Investigating Judge's] calculations of victim numbers' must be dismissed." (Opinion of Judges BAIK and BEAUVALLET, para. 555)
2.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"It is well-settled that hearsay evidence is admissible before the ECCC and may be relied on. As previously affirmed, the International Co-Investigating Judge has 'broad discretion' to rely on hearsay evidence. The probative value of hearsay, as with all forms of evidence, varies based on its nature and substance and will ultimately 'depend upon the infinitely variable circumstances which surround hearsay evidence.'" (Opinion of Judges BAIK and BEAUVALLET, para. 235) "[T]he International Judges recall that it is well-settled that hearsay evidence is admissible and find no error in the International Co-Investigating Judge's reliance on this evidence in support of his finding." (Opinion of Judges BAIK and BEAUVALLET, para. 280)

i. Admissibility of Evidence and Cumulative Effect

1.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber finds that the requirements for the Co-Prosecutors to have the press articles admitted on the basis of the cumulative effect of like evidence cannot be significantly less stringent than admission on other based. The failure of the Co-Prosecutors to meet the threshold requirements related to relevance in the context of Rule 55(10) requests, that is *prima facie* relevance, […] cannot be overcome by noting that other courts have found that certain 'evidence, viewed in isolation, may not be sufficient to satisfy the obligation of proof on the Prosecution' but that the cumulative effect of the evidence must be taken into account." (para. 91)

iii. *Evidence Obtained in Violation of Rights*

For jurisprudence concerning ***Fair Trial Rights***, see II. Fair Trial Rights

For jurisprudence concerning ***Annulment***, see VII.C. Annulment

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008	"When a right was violated in obtaining evidence, such evidence, in national and international law, is not considered inadmissible automatically. '[R]ather […] the manner and surrounding circumstances in which evidence is obtained, as well as its reliability and effect on the integrity of the proceedings, will determine its admissibility'. The Pre-Trial Chamber finds it has to take these factors into account when deciding on annulment as an effective remedy for a violation." (para. 41)

	Decision on NUON Chea's Appeal against Order Refusing Request for Annulment	
2.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"The Pre-Trial Chamber observes that the Internal Rules give the Charged Person the possibility to object to admissibility of evidence during the trial stage. Reference is made to Internal Rule 87." (para. 26) "The Pre-Trial Chamber further notes that the established procedure before the Trial Chamber for evaluation of evidence for trial is in accordance with the international standards of law and safeguards the fair trial rights of the Charged Person. Similar to the discretion granted to judges in other international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The 'law' applicable in Cambodia includes international instruments such as the Convention against Torture." (para. 27) "Article 15 of the CAT is to be strictly applied. There is no room for a determination of the truth or for use otherwise of any statement obtained through torture." (para. 30)
3.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"The Pre-Trial Chamber observes that the Internal Rules give the Charged Person the possibility to object to admissibility of evidence during the trial stage. Reference is made to Internal Rule 87." (para. 24) "The Pre-Trial Chamber further notes that the established procedure before the Trial Chamber for evaluation of evidence for trial is in accordance with the international standards of law and safeguards the fair trial rights of the Charged Person. Similar to the discretion granted to judges in other international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The 'law' applicable in Cambodia includes international instruments such as the Convention against Torture." (para. 25) "Article 15 of the CAT is to be strictly applied. There is no room for a determination of the truth or for use otherwise of any statement obtained through torture." (para. 28)
4.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"After the issuance of a closing order, if there is an indic[t]ment of their client, the Co-Lawyers of the Charged Person have time to prepare their defence for the trial phase by examining the evidence which is available to them." (para. 33) "Similar to the discretion granted to judges in other international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The law applicable in Cambodia includes international instruments such as the Convention against Torture (CAT)." (para. 35) "Article 15 of the CAT is to be strictly applied. There is no room for determination of the truth or for use otherwise of any statement obtained through torture." (para. 38)
5.	**003 MEAS MUTH** PTC 33 D253/1/8 13 December 2017 *Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171*	"The Pre-Trial Chamber has found that Article 15 of the CAT applies to proceedings before the ECCC and that its application has to be strict. It shall read Article 15 in accordance with the ordinary meaning of the terms of the CAT in their context and in the light of its object and purpose. The Pre-Trial Chamber concurs that 'the CAT defines its object and purpose in recognition of a person's inalienable human rights and inherent dignity.'" (para. 27) "[T]he rationales behind Article 15's exclusionary rule '[include] the public policy objective of removing any incentive to undertake torture anywhere in the world by discouraging law enforcement agencies from resorting to the use of torture. Furthermore, confessions and other information extracted under torture or ill-treatment are not considered reliable enough as a source of evidence in any legal proceeding. Finally, their admission violates the rights of due process and a fair trial.'" (para. 28)

		"The Pre-Trial Chamber considers that, generally, the term 'investigative lead' is not encompassed within the ordinary meaning of evidence. An investigative lead does not prove or disprove any alleged fact concerning the crimes under judicial investigation." (para. 30) "The information merely served as a starting point to search for potential witnesses, absent any verification of quality or reliability of the witnesses, and in fact did not directly lead to the WRIs in question. In this regard, the Pre-Trial Chamber concurs that 'during the course of the investigation, the Co-Investigating Judges need not rule out any hypothesis and it is not necessary for them to believe the assertions in the confessions to be true in order to use them to develop new avenues for searching out the truth, without this affecting the integrity of the proceedings.'" (para. 31) "Therefore, Pre-Trial Chamber finds that such use of the Information from the S-21 biographies does not amount to 'invocation as *evidence*' within the ordinary meaning of the phrase, as in Article 15 of the CAT read in accordance with the internationally accepted standard for interpretation." (para. 32) "The Pre-Trial Chamber notes that the instant case does involve charges of torture. The information was used as a lead to identify and locate new witnesses because they were likely to have independent knowledge of events relevant to the charges of torture, which in turn may contribute to finding the truth of torture allegations. Therefore, the exclusion of the investigative lead by encompassing it as 'evidence' in the present case runs contrary to the object and purpose of Article 15 of the CAT as it would compromise the very rationale behind it." (para. 33) "[T]he final settlement of any issue whether specific statements are 'made as a result of torture' was left for the scrutiny of the judicial authorities whenever faced with concrete allegations. Therefore, any specific allegations that statements may fall within the ambit of the exclusionary rule of Article 15 of the CAT have to be addressed on a case by case basis through interpretation of the term 'made as a result of torture' in its context and in the light of its object and purpose, rather than by deciding whether Article 15 of the CAT applies to the 'derivative evidence' in general." (para. 35) "In this vein, the Pre-Trial Chamber agrees with the finding of the Trial Chamber that an international standard concerning the 'torture-derived evidence' has not yet been established." (para. 36) "The Pre-Trial Chamber considers that, in its ordinary meaning, the term 'made as a result of' requires a certain degree of causation. It does not include every event that follows. […] The information was only extracted from the cover page of an S-21 biography that is not related to the contents of the S-21 confession, which is presumed to have been made under torture. In these circumstances, the degree of causation is not sufficient […]." (para. 37) "The […] argument that the use of torture-tainted evidence to obtain torture-derived evidence impermissibly expands Article 15's narrow exception and frustrates its deterrent purpose fails in the instant case. First, the interpretation of the phrase 'statement […] made as a result of a torture in Article 15 of the CAT is not related to the exception of the Article. Secondly, the Co-Lawyers' broad interpretation beyond the ordinary meaning of the phrase goes against the rationale behind Article 15 of the CAT if the investigation of the torture allegation is hindered and those who are accused of torture are protected by the interpretation." (para. 38)
6.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber recalls that, if a piece of evidence is deemed procedurally defective and infringes the parties' rights, the Co-Investigating Judges cannot simply disregard it without referring it to the Pre-Trial Chamber for annulment under Internal Rule 76(1). In the interests of the proper administration of justice, the Co-Investigating Judges should therefore have seised the Pre-Trial Chamber, before the issuance of the Closing Order (Reasons), of a reasoned application for annulment of torture-tainted evidence on the Case File that they considered null and void and intended to disregard." (para. 47)
7.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018	"The Pre-Trial Chamber recalls that Article 15 of the CAT, which provides that 'any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made', applies strictly to proceedings before the ECCC." (para. 23)

	Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview	"With regards to the use of torture-tainted statements, the Pre-Trial Chamber concurs with the Supreme Court Chamber's finding that the exclusionary rule covers the reproduction of extorted information through witness testimony, for instance by confronting a witness with it, to prove the truth of its content or imply that it might be helpful." (para. 24) "References to torture-tainted statements in questioning witnesses must be assessed on a case-by-case basis to determine whether they were made in violation of Article 15 of the CAT." (para 25). "The Trial Chamber also held that certain objective information contained on confessions which were not obtained through torture are not covered by the exclusionary rule; this includes information recorded during registration at the security center or on the cover page of a confession, such as the identity of the detainee and dates of arrest, incarceration and/or execution. Whether they were obtained by torture is a matter of proof." (para. 26) "The Pre-Trial Chamber also concurs with the Trial Chamber that questions using S-21 biographies or confessions are permissible insofar as torture-tainted statements are not put as assertions of fact and focus instead on the knowledge of the witness. Information contained in a torture-tainted statement may be used for the purpose of determining resulting actions, for example as evidence of the cause of an action taken following a confession, such as proof of further arrests triggered by the disclosure of names." (para. 27) "Whether statements were made 'as a result of torture' shall be addressed on a case-by-case basis, in the light of the object and purpose of Article 15 of the CAT, and requires a certain degree of causation." (para. 28) "[T]he above-mentioned torture-tainted statements were not used by the investigators to establish the truth of their content, or to imply that reliance was being placed on the truth of the confession when confronting the witnesses. Rather, they focused on the knowledge of the witnesses. The Pre-Trial Chamber thus find their use permissible." (para. 35) "[T]he Pre-Trial Chamber considers that the confession […] was used 'against a person accused of torture as evidence that the statement was made', which is permitted by the limited exception clause of Article 15 of the CAT." (para. 39)
8.	**004 YIM Tith** PTC 53 D372/1/7 27 September 2018 *Decision on YIM Tith's Application to Annul Evidence Made as a Result of Torture*	"The Pre-Trial Chamber recalls that Article 15 of the CAT, which provides that 'any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made', applies strictly to proceedings before the ECCC." (para. 20) "Nonetheless, Article 15 of the CAT does not mandate the sweeping exclusion of the whole documentation surrounding the interrogation of torture victims. The Pre-Trial Chamber has found that some information contained in S-21 confessions that is not tainted by torture does not fall under the exclusionary rule, and is hence permissible as evidence, including information originating from persons other than the torture victim, and objective information such as the identity of the detainee and dates of arrest, incarceration and/or execution. Considering that these uses of such confessions are legitimate, the mere presence of torture-tainted material on the Case File, regardless of where the confession was taken and whether or not the Applicant was charged for the crime of torture at that location, cannot amount to a violation of Article 15 of the CAT." (para. 21) "The Pre-Trial Chamber […] considers that no procedural defect or prejudice – which remains hypothetical as long as information falling under the exclusionary rule is not 'invoked' as evidence, within the ordinary meaning of the phrase – has been demonstrated. Accordingly, the Pre-Trial Chamber does not find the mere placement of torture-tainted evidence onto the Case File defective and dismisses the request to annul the S-21 Confessions." (para. 22) "The Pre-Trial Chamber recalls that the exclusionary rule covers the reproduction of extorted information though witness testimony, for instance by confronting a witness with it, to prove the truth of its content or imply that it might be truthful." (para. 23) "Nonetheless, questions using S-21 biographies or confessions are permissible insofar as torture-tainted statements are not put as assertions of fact and focus instead on the knowledge of the witness. Information contained in a torture-tainted statement may be used for the purpose of

		determining resulting actions, for example as evidence of the cause of an action taken following a confession, such as proof of further arrests triggered by the disclosure of names." (para. 24) "The Pre-Trial Chamber further previously held that the use of information contained in S-21 biographies as investigative leads does not amount to invocation as 'evidence' within the ordinary meaning of Article 15 of the CAT. Whether statements were made 'as a result of torture' shall be addressed on a case-by-case basis, in light of the object and purpose of Article 15 of the CAT, and requires a certain degree of causation." (para. 25) "The above-mentioned torture-tainted statements were not put as assertions of fact, nor were they used by the investigators to establish the truth of their content, or to imply that reliance was being placed on the truth of the confessions when confronting the witnesses. Rather, the investigators focused on the independent knowledge of the witnesses. Therefore, the Pre-Trial Chamber finds the use of these statements permissible." (para. 30)

iv. *Other Evidentiary Matters*

a. Notion of Exculpatory Evidence

1.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"The Undersigned Judges concur with the ICTR Appeals Chamber's standard […] that 'whether [the] information "may suggest the innocence or mitigate the guilt of the accused" must depend on an evaluation of whether there is any possibility, in light of the submissions of the parties, that the information could be relevant to the defence of the accused. […] [T]his standard of review is consistent, and not lower than, presenting 'a *prima facie* showing of its probable exculpatory nature." (Opinion of Judges BEAUVALLET and BAIK, para. 48)

b. Principle of Sufficiency of Evidence

For jurisprudence concerning the ***Principle of Sufficiency of Evidence***, see IV.C.1.iii.d. Sufficiency of Evidence

c. Notion of Interviews

1.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"[T]he Internal Rules do not set any definition for interviews, but rather only spell out some conditions according to which they must be performed. In that sense, Internal Rule 24 does not help in determining whether the telephone call in question amounts to an interview but, instead, it can help determine its procedural regularity, in the event that it amounts to an interview." (Opinion of Judges BEAUVALLET and BAIK, para. 59) "The Undersigned Judges do not consider that a brief telephone call to check the spelling accuracy of a single word necessarily amounts to an interview. The Undersigned Judges recall that the goal of that phone call was not to collect additional evidence. It rather was to verify whether 'a spelling error in the original Khmer and the English translation', as regards the name of an already alleged crime location, had occurred." (Opinion of Judges BEAUVALLET and BAIK, para. 60) "[W]hile Internal Rule 24 sets a clear legal framework for the conduct of witness interviews, it does not explicitly prohibit other ways of interacting with witnesses in order to verify any information they may have. […] The Undersigned Judges find no provision in the Internal Rules which specifically governs such type of contacts. The Defence's suggestion that the telephone call in question amounts to a formal and substantive interview is, therefore, pure speculation." (Opinion of Judges BEAUVALLET and BAIK, para. 62) "The Undersigned Judges, having reviewed the disputed record, find that its title mirrors the nature of the action recorded therein, which could in no way be seen as an interview. Therefore, Internal Rule 24 does not govern the regularity of that record." (Opinion of Judges BEAUVALLET and BAIK, para. 65)

d. Notion of Investigative Lead

1.	**003 MEAS MUTH** PTC 33 D253/1/8 13 December 2017 *Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171*	"The Pre-Trial Chamber considers that, generally, the term 'investigative lead' is not encompassed within the ordinary meaning of evidence. An investigative lead does not prove or disprove any alleged fact concerning the crimes under judicial investigation." (para. 30) "[T]he Pre-Trial Chamber concurs that 'during the course of the investigation, the Co-Investigating Judges need not rule out any hypothesis and it is not necessary for them to believe the assertions in the confessions to be true in order to use them to develop new avenues for searching out the truth, without this affecting the integrity of the proceedings.'" (para. 31)

6. Confidentiality of Judicial Investigation

For jurisprudence concerning the ***Transparency in the Conduct of Proceedings***, see VII.D.2. Transparency, Expeditiousness and Integrity of the Proceedings

For jurisprudence concerning the ***Confidentiality of Preliminary Investigations***, see IV.A.1.ii. Confidentiality of Preliminary Investigations

For jurisprudence concerning the ***Confidentiality of Disagreements***, see VII.A.1.iii. Confidentiality of Disagreement

i. *Principle of the Confidentiality of Judicial Investigation*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Pre-Trial Chamber notes that, pursuant to Internal Rule 71(2), the 'written statement of the facts and reasons for the disagreement shall not be placed on the case file'. Internal Rule 54 provides that 'Introductory, Supplementary and Final Submissions filed by the Co-Prosecutors shall be confidential documents'. Internal Rule 56(1) further provides that '[i]n order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality'. In accordance with these provisions, all the documents related to the Disagreement have been classified by the Pre-Trial Chamber as 'strictly confidential'." (para. 46) "The Pre-Trial Chamber further notes that contrary to the spirit of this obligation of confidentiality, the Office of the Co-Prosecutors issued a public 'Statement of the Co-Prosecutors' on 8 December 2008. […] By so doing, the Co-Prosecutors have drawn the attention of the media and the public to the fact that new suspects might be prosecuted, generating a great deal of interest and giving an indirect notice to the potential suspects that there might be further prosecutions." (para. 47) "The Pre-Trial Chamber notes that Article 7(1) of the Agreement and Article 20(new) (7) of the ECCC Law provide that a decision on a disagreement between the Co-Prosecutors 'shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Prosecutors'. By contrast, Internal Rule 71(4)(a) provides that the judgement 'shall be handed down *in camera*'. Sub-paragraph (d) of the same rule further provides that '[t]he greffier of the Chamber shall forward such decisions to the Director of the Office of Administration, who shall notify the Co-Prosecutors', without mentioning that the decision shall be published." (para. 49) "In addition, Internal Rule 78, concerning the Publication of Pre-Trial Chamber Decisions, provides that '[a]ll decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation'." (para. 50) "Regarding the confidentiality and publication of a decision on a disagreement, the Pre-Trial Chamber notes that the Articles of the Agreement and ECCC Law, when compared with the Internal Rules, appear inconsistent with respect to whether a decision on a disagreement shall be published. It is noted that the Agreement does not specify to whom and when a decision shall be published. The Agreement,

		ECCC Law and Internal Rules all provide that the Director of Administration shall notify the Co-Prosecutors of the decision on a disagreement. This should be done immediately, as the above-mentioned provisions prescribe that the Co-Prosecutors shall immediately proceed in accordance with the decision." (para. 51) "Pursuant to Internal Rule 78, the Pre-Trial Chamber may determine that a decision shall not be published in full, if doing so would compromise the integrity of a preliminary or judicial investigation. The current Disagreement relates to the forwarding of Introductory Submissions to the Co-Investigating Judges for the opening of new judicial investigations. Given the press releases already issued by the Co-Prosecutors concerning their Disagreement, the publication of a redacted version of the Considerations of the Pre-Trial Chamber will not have an adverse impact upon the confidentiality of the investigation that may be undertaken by the Co-Investigating Judges. Therefore, the Pre-Trial Chamber suggests that the Director of the Office of Administration of the Court publish the redacted version of these Considerations, attached in Annex I." (para. 52) "The Pre-Trial Chamber notes that publication of the Considerations of the Pre-Trial Chamber is at the discretion of the Director of the Office of Administration. The New Submissions might be forwarded to the Co-Investigating Judges by the International Co-Prosecutor alone before any publication of the Considerations of the Pre-Trial Chamber. For the purpose of filing the Introductory Submissions by the International Prosecutor alone, an Excerpt is attached to these Considerations in Annex II." (para. 53)
2.	**003 MEAS MUTH** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber*	"It follows from [Internal Rule 56] that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings." (para. 6)
3.	**003 MEAS Muth** PTC 19 D131/1 4 August 2015 *Decision on MEAS Muth's Request to Reclassify as Public All Defence Submissions to the Pre-Trial Chamber*	"It follows from [Internal Rule 56] that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings." (para. 3)
4.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public Certain Defence Submissions to the Pre-Trial Chamber*	"The principles governing disclosure of information to the public during judicial investigations at the ECCC are set forth in Internal Rule 56 […]. It follows from this provision that proceedings during a judicial investigation, *i.e*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seized of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 6)
5.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018	"[T]he investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. These interests should be balanced with the necessity to 'ensure legal certainty and transparency of proceedings'." (para. 36)

	Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)	
6.	**004/1 IM Chaem** PTC 56 D313/2 26 June 2018 *Decision on IM Chaem's Request for Reclassification of Selected Documents from Case File 004/1*	"[P]ursuant to Internal Rule 56(1), 'judicial investigations shall not be conducted in public.' First, the investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. Second, decisions, orders and other findings of the Co-Investigating Judges are confidential. Third, filings to the Pre-Trial Chamber are in principle confidential until the Chamber has decided on the matter." (para. 4)
7.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the investigation remains confidential until its conclusion, in order to protect its integrity and the interests of the parties. The Pre-Trial Chamber is further aware of the necessity, when ruling on matters of re-classification and redactions after the conclusion of the investigation, to balance the various interests at stake including those of the charged person and the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 10)

ii. *Confidentiality of Judicial Investigation and Defence Rights*

For jurisprudence concerning the ***Charged Person's Rights***, see II. Fair Trial Rights

1.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"In particular, the Pre-Trial Chamber finds no merit in the Appellant's interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring him an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of his reputation. The Pre-Trial Chamber underlines that the ECCC legal framework, particularly under Internal Rule 56, gives a broad discretion to the Co-Investigating Judges in handling confidentiality issues and granting limited access to the judicial investigations. The Appellant has failed to show any compelling circumstances warranting the Pre-Trial Chamber's intervention in these matters." (para. 23)
2.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's*	"[T]he Pre-Trial Chamber first recalls that it has already found no merit in the interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring the Charged Persons an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of their reputation." (para. 18)

	Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)	
3.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"[T]he applicable law does not confer to the Charged Persons an 'inherent right' to integrity in the conduct of the investigations." (para. 34)
4.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30) "Incidentally, the Pre-Trial Chamber notes that the Co-Lawyers took the liberty to comment on the Closing Order (Reasons) to the press after its issuance. More importantly, IM Chaem herself issued a number of public statements in interviews she gave to the press." (para. 32) "In light of the foregoing, the Pre-Trial Chamber considers that the damage caused by a dismissal order to IM Chaem's right to be presumed innocent and to her reputation remains uncertain and hypothetical." (para. 33)

iii. *Confidentiality of Judicial Investigation and Victims Rights*

For jurisprudence concerning the ***Victims' Right to Information***, see VI.E.2.iii. Information, Access to Case File and Notification of Documents

iv. *Communication to the Public*

1.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"[T]he Pre-Trial Chamber finds that a close reading of Rules 56 and 66 supports, the finding in […] the Retraction Order that '[…] the International Co-Prosecutor had no legal basis for issuing item A of the Public Statement,' as the obligations of Co-Prosecutors under Internal Rule 54 explicitly apply *only* during the phase of the *preliminary* investigation and do not extend to the stage of the *judicial* investigation which is the stage the case was when the Public Statement was made." (para. 23) "[P]ursuant to Internal Rule 54, the Co-Prosecutor's duty to inform the public of the ongoing proceedings is limited to only i) providing an objective summary of the information contained in the Introductory, Supplementary and Final Submissions; and ii) correcting any false or misleading information, *provided that the case is still under preliminary investigation*." (para. 24) "Further, Internal Rule 56 provides that, during the judicial investigation stage, it is only the Co-Investigating Judges who have the responsibility and legal authority to ensure that essential information is made available to the public […]." (para. 25) "The Order of the Co-Investigating Judges holds that the International Co-Prosecutor acted partly without legal basis and further breached the Rule of confidentiality as mentioned in Internal Rule 56(1). The legal basis for this order […] can be found in Internal Rule 35. Internal Rule 35(1) dealing with the interference in the administration of justice uses the words 'including any person who' and is not limited to the actions specifically mentioned in this part of the rule, they are examples of the types of matters falling within the class of actions which may amount to an interference with the administration of justice. Acting without legal basis and breaching confidentiality as prescribed by law must be seen

		as willful interference in the administration of justice. The Co-Investigating Judges being in charge of judicial investigations were entitled to make an order concerning, even a perceived, breach of confidentiality to the International Co-Prosecutor as they could deal with the matter summarily as prescribed in Internal Rule 35(2).” (para. 27) “The Pre-Trial Chamber finds that the International Co-Prosecutor’s right to make public comment or to express public opinion in relation to the judicial investigations carried out by the Co-Investigating judges is not provided in law, it is rather limited by the provisions of the Internal Rules of the ECCC, with which limitations he has an obligation to comply. The justification for his actions which he addresses in the appeal do not excuse the action of the International Prosecutor and ignore the discretion of the Co-Investigating Judges regarding their publication of information during the stage of the judicial investigations. While agreeing that, in principle, and as also enshrined in the applicable international conventions, public access to judicial proceedings constitutes a fundamental fair trial right, the Pre-Trial Chamber notes that the provisions of the specific Internal Rules clearly provide on who, under which circumstances, and at which stage of the proceedings has authority to make public statements in relation to an ongoing proceeding.” (para. 31) “[T]he International Co-Prosecutor […] is hereby reminded that the Internal Rules do not require or oblige him to provide a [general] summary […] to the public.” (para. 32) “Further, where the International Co-Prosecutor is of the opinion that information regarding judicial investigations should be published he should have requested the Co-Investigating Judges to do so and if refused such order could be appealed to the Pre-Trial Chamber.” (para. 33)
2.	**003 MEAS MUTH** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth’s Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber*	“At the outset, the Pre-Trial Chamber recalls the paramount principles governing disclosure of information to the public during judicial investigations at the ECCC, set forth in Internal Rule 56 […] It follows from this provision that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges’ discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings.” (para. 6)
3.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth’s Request to Reclassify as Public Certain Defence Submissions to the Pre-Trial Chamber*	“The principles governing disclosure of information to the public during judicial investigations at the ECCC are set forth in Internal Rule 56 […]. It follows from this provision that proceedings during a judicial investigation, *i.e*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges’ discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seized of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges’ decision on classification of information concerning their judicial investigation.” (para. 6)

v. *Classification*

1.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request*	“The Pre-Trial Chamber is mindful of ‘the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purpose of education and legacy’. […] On the basis of the principles noted above and taking note of the particular issues raised in this Appeal, the Pre-Trial Chamber has determined that, notwithstanding the classifications suggested by the parties, this decision shall be a public decision.” (para. 1)

	for Investigative Actions concerning All Properties Owned by the Charged Persons	
2.	**003 MEAS MUTH** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber*	"At the outset, the Pre-Trial Chamber recalls the paramount principles governing disclosure of information to the public during judicial investigations at the ECCC, set forth in Internal Rule 56 […] It follows from this provision that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seized of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 6) "[D]ocuments filed to or generated by the Co-Investigating Judges […] are in principle confidential, unless the Co-Investigating Judges decide to make them public, in full or in a redacted form. In turn, documents filed by the parties to the Pre-Trial Chamber […] are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise, whereas decisions of the Pre-Trial Chamber shall be published 'except where the Chamber decides that it would be contrary to the integrity of […] the Judicial Investigation'. When seized of an appeal, the Pre-Trial Chamber may also reclassify Co-Investigating Judges' Documents '[w]here required in the interests of justice'." (para. 7) "As to the Co-Investigating Judges' Documents, the Pre-Trial Chamber will generally not entertain requests for their reclassification while the judicial investigation is still ongoing, considering that it falls within the ambit of the Co-Investigating Judges' discretion to release information concerning the judicial investigation at this stage and that their familiarity with the case places them in a better position to assess any prejudice that may be cause by such release. The Pre-Trial Chamber will consider reclassifying as 'public' Co-Investigating Judges Documents only in exceptional circumstances, upon demonstration by the requesting party that the interests of justice require disclosing the concerned information to the public at this stage of the proceedings, for instance where publication of information is necessary to ensure that parties or participants in the proceedings are not deprived of a right or otherwise suffer prejudice." (para. 8) "As to the Filings to the Pre-Trial Chamber, the Chamber previously indicated that when deciding on their classification, it considers 'the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court'. Concretely, the Chamber examines whether the filing contains information concerning 'the conduct of the judicial investigation', including information about its scope and subject, evidence contained in the case file, victims complaints, applications to become civil party, identity and contact details of witnesses, victims or civil parties who have requested that their identity not be revealed at that stage and requests for investigative actions, in addition to medical or health related information. […] Unless the information concerning the judicial investigation has been made public by the Co-Investigating Judges, the Pre-Trial Chamber treats it has 'confidential'. If a filing contains confidential information, the Pre-Trial Chamber classifies it as 'confidential' and it is incumbent upon the party requesting publication to submit a redacted version for the Chamber's review, in application of the criteria set out above." (para. 9)
3.	**003 MEAS Muth** PTC 19 D131/1 4 August 2015 *Decision on MEAS Muth's Request to Reclassify as Public All Defence Submissions to the Pre-Trial Chamber*	"The paramount principles governing disclosure of information to the public during judicial investigations at the ECCC, set forth in Internal Rule 56 […]. It follows from this provision that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seised of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 3) "In application of the principles set out above, Articles of 3.12 of the Practice Direction on Filing of Documents before the ECCC and Article 4(f) and 5(h) of the Practice Direction on Classification provide that documents filed by parties to the Pre-Trial Chamber are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise. […] [T]he Pre-Trial Chamber distilled the conditions for publication of documents filed before it during the judicial investigation [in Case 003 D56/19/20]." (para. 4)

4.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public Certain Defence Submissions to the Pre-Trial Chamber*	"Internal Rule 9(5) directs that the documents on the database shall only be made available to the public in accordance with the terms of the applicable ECCC practice directions. Article 5.1(h) of the Practice Direction on Classification of Documents provides that filings to the Pre-Trial Chamber are in principle confidential until the Pre-Trial Chamber has decided on the matter. According to Article 9.1 of the same direction, documents can be re-classified only pursuant to an order of the Co-Investigating Judges or a Chamber, 'as appropriate.' Article 3.14 of the Practice Direction on Filings states that a Chamber seised of a case may reclassify documents 'when required in the interests of justice.' Therefore, the Pre-Trial Chamber considers, it has primary jurisdiction to decide, where it sees it fit, on reclassification of filings brought before it […]." (para. 5) "The principles governing disclosure of information to the public during judicial investigations at the ECCC are set forth in Internal Rule 56 […]. It follows from this provision that proceedings during a judicial investigation, *i.e*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seized of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 6) "Article 3.12 of the Practice Direction on Filing of Documents before the ECCC and Article 5(h) of the Practice Direction on Classification provide that documents filed by the parties to the Pre-Trial Chamber are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise. [In D56/19/20], the Pre-Trial Chamber distilled the conditions for publication of documents filed before it during the judicial investigation as follows: 'The Chamber previously indicated that when deciding on the classification or reclassification of documents filed by the parties, it considers "the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court". Concretely, the Chamber examines whether the filing contains information concerning "the conduct of the judicial investigation", including information about its scope and subject, evidence contained in the case file, victims complaints, applications to become civil party, identity and contact details of witnesses, victims or civil parties who have requested that their identity not be revealed at that stage and requests for investigative actions, in addition to medical or health related information. Discussions on procedural issues and legal arguments contained in appeals or applications filed to the Pre-Trial Chamber are generally not considered to be information concerning the judicial investigation. Unless the information concerning the judicial investigation has been made public by the Co-Investigating Judges, the Pre-Trial Chamber treats it as "confidential". If a filing contains confidential information, the Pre-Trial Chamber classifies it as "confidential" and it is incumbent upon the party requesting publication to submit a redacted version for the Chamber's review, in application of the criteria set out above.'" (para. 7) "The Chamber has also stated that, until the issuance of a Closing Order and the determination of any appeal against the Closing Order, it may re-classify a document based on the Chamber's consideration of the factors and that, in doing so, it will give the filing *party an opportunity to be heard* in circumstances in which the Chamber has determined that an objective observer could reasonably view the re-classification as compromising one of the factors. The Chamber '*may [also] re-classify information as 'Public' that is contained within a 'Confidential' or 'Strictly Confidential' document by, for example, reproducing such information in a public order or decision*.' Coming to the classification of its own decision, the Chamber notes that it is ruled by different principles. Internal Rule 78 directs that decisions shall be public in full with some limited exceptions […]." (para. 8) "[T]he Pre-Trial Chamber notes that [the document] is a filing and also part of the written (rather than oral) adversarial debate before the Chamber, therefore, according to the applicable law it is, in principle, confidential unless and until the Chamber has ruled a decision on the issue. Further, even if the debate over this appeal were oral, publicity is not warranted since none of the exceptions under Rule 77(6) apply because a decision on this appeal would not bring the case to an end and it does not raise jurisdictional issues either. In addition, and most importantly, this document discusses at length evidence and civil party applications relating to investigations in Case File 003, which are confidential at the moment, therefore its publication compromises the integrity of the investigation. The public

		interest for information on this proceeding is served by the fact that the Chamber's decision on this appeal will be public or public redacted if and where necessary." (para. 9) "With regards to [another] document […], it does not relate to facts of the judicial investigation and […] it relates entirely to questions of law on proceedings before the PTC. Despite the fact that the integrity of the investigations is not compromised, its publication is not warranted in the interests of justice because keeping it confidential does not harm the interests of Meas Muth or undermine the presumption of innocence. The interests of the public to be informed are served by the fact that the decisions of the Chamber are public in full or with redactions as directed by Internal Rule 78." (para. 10) "Regarding [another] document […], the Pre-Trial Chamber notes that, at the time of the present decision, it had not yet ruled on the matter. Therefore, the Request for Reclassification is denied without prejudice to Meas Muth's right to reapply for reclassification in accordance with the applicable rules." (para. 11) "Turning to [another] document […], this document raises issues of fairness of proceedings and relating to the law on procedural requirements for notification of charges. Even if the standards for transparency of appellate proceedings warranted a reclassification […], the fact that the related PTC decision […] is made public negates any necessity to do so." (para. 12) "In respect of [another] document […], it raises legal issues relating to procedural matters, therefore, publicity of such document is not necessary to protect any interests of [Charged Person] in light of his presumption of innocence and other defence rights." (para. 13)
5.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"The Pre-Trial Chamber notes that, pursuant to Article 9.1 of the Practice Direction on Classification, documents can be reclassified only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate. Pursuant to Article 3.12 of the Practice Direction on Filing,'[u]ntil the issuance of a Closing Order and the determination of any appeal against the Closing Order, the Co-Investigating Judges and the Pre-Trial Chamber, as appropriate, shall consider whether the proposed classification is appropriate and, if not, determine what is the appropriate classification'. Article 3.14 of the Practice Direction on Filing further provides that a Chamber seised of a case may reclassify documents '[w]hen required in the interests of justice'. The Pre-Trial Chamber thereby considers that it has primary jurisdiction to decide on the Request for Reclassification and finds it admissible." (para. 10) "[D]ecisions, orders and other findings of the Co-Investigating Judges are confidential. The Pre-Trial Chamber may reclassify those documents as public, if necessary with redactions." (para. 22) "[N]either the Internal Rules nor other ECCC regulations provide specific guidance as to the classification of a closing order or the extent of any redaction." (para. 23) "[T]he Practice Direction on Classification provides that the principle underlying classification 'is the need to balance the confidentiality of judicial investigations and other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.'" (para. 27) "The Pre-Trial Chamber is aware of the necessity to balance the various interests at stake, including those of the charged person and of the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 28) "[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30) "The Pre-Trial Chamber previously stressed the importance of informing the victims and considered that 'due diligence displayed in the Co-Investigating Judge's [*sic*] conduct is a relevant factor when considering victims' rights in the proceedings.' It further held that, even though the 'Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, […] such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected throughout the proceedings.'" (para. 35)

		"[T]he investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. These interests should be balanced with the necessity to 'ensure legal certainty and transparency of proceedings'." (para. 36) "Assuming *arguendo* that the nature of the decision can be considered in the determination of the document's classification, the content of the decision and its impact on the interests at stake are nevertheless more relevant factors in this assessment. The transparency of the proceedings cannot be guaranteed without making public, when the investigation is closed, the main contents and the key reasoning of the final decision." (para. 37) "The Pre-Trial Chamber finds that a public closing order is the appropriate way to contribute to the transparency of justice, the legacy of the ECCC and to the fundamental objectives of education and the pursuit of justice. In line with the Co-Investigating Judges' practice, the Pre-Trial considers it necessary to limit the redactions in the Closing Order (Reasons) to the names and addresses of individuals under protective measures pursuant to Internal Rule 29(3), or whose request for such measures is still pending." (para. 39)
6.	**004/1 IM Chaem** PTC 56 D313/2 26 June 2018 *Decision on IM Chaem's Request for Reclassification of Selected Documents from Case File 004/1*	"[P]ursuant to Internal Rule 56(1), 'judicial investigations shall not be conducted in public.' First, the investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. Second, decisions, orders and other findings of the Co-Investigating Judges are confidential. Third, filings to the Pre-Trial Chamber are in principle confidential until the Chamber has decided on the matter." (para. 4) "[T]he Pre-Trial Chamber may reclassify those documents as public, with redactions *if necessary*. The principle underlying the classification 'is the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.' Reclassification proceedings can be initiated by a filing party, but this is not required. Moreover, the Pre-Trial Chamber enjoys significant discretion over that assessment." (para. 5) "[P]ursuant to Article 12(2) of the Practice Direction on Classification and Management of Case-Related Information, the 'last judicial office seised of a case shall undertake a review of the security classifications of records in the case file.' Aware of its duties, the Pre-Trial Chamber may indeed have to undertake such review […]." (para. 9)
7.	**004/1 IM Chaem** PTC 57 D314/2 28 June 2018 *Decision on the International Co-Prosecutor's Request for Reclassification of Submissions on Appeal against the Closing Order (Reasons)*	"Recalling that the principle underlying the classification 'is the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy'[.]" (para. 7) "Recalling the need to ensure the witness protection and the relevant list of protected persons[.]" (para. 8)
8.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the investigation remains confidential until its conclusion, in order to protect its integrity and the interests of the parties. The Pre-Trial Chamber is further aware of the necessity, when ruling on matters of re-classification and redactions after the conclusion of the investigation, to balance the various interests at stake including those of the charged person and the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 10) "The Pre-Trial Chamber observes that the Request to redact AO An's address in the Closing Order (Indictment) is closely related to the right to privacy and, more generally, to the protection of the interests of the charged person, as enshrined in Internal Rule 21. While the law before the ECCC does not explicitly refer to the protection of privacy and reputation, the Pre-Trial Chamber acknowledges the concerns expressed by the Co-Lawyers regarding the consequences of the publication of AO An's current address for his right to privacy. The Pre-Trial Chamber further finds that the redaction in the Closing Order (Indictment) of the domicile of the Charged Person, of which the mention is not a requirement under Internal Rule 67(2), would not have any impact on the other interests at stake,

		namely the need to ensure transparency, the integrity of proceedings, and the Court's purposes of education and legacy." (para. 11)
9.	**004/2 AO An** PTC 60 D359/22 and D360/31 18 December 2019 *Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 004/2*	"NOTING that, pursuant to Article 9(1) of the Practice Direction on the Classification and Management of Case-Related Information, documents can be re-classified and placed in a section of the case file with a different level of confidentiality only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate" (p. 1) "NOTING that […] the Co-Investigating Judges […] concluded the investigation and thereby became *functus officio*" (p. 1) "DECLARING that it finds appropriate […] to reclassify documents in Case File 004/2 that are related to the investigation phase subsequently after the issuance of its public Decision on the Appeals against the Closing Orders in Case 004/2, notably to fully respect the principle of the confidentiality of the judicial investigation enshrined in Internal Rule 56(1)" (pp. 1-2)

vi. *Disclosure*

a. Requests for Disclosure

1.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"[W]hile Internal Rule 56(1) gives broad discretion to the Co-Investigating Judges to handle *confidentiality of investigations* issues, Rule 56(2) is not relevant for decisions on 'disclosure' of investigative documents to other 'judicial bodies', including the Trial Chamber." (para. 27) "Its overall object, therefore, is to *regulate the 'proceedings'* for *publicity* of judicial *investigations*." (para. 28) "The Pre-Trial Chamber, therefore, concludes that the term 'non-parties' under Internal Rule 56(2)(b) does not encompass 'the ECCC' in general or the 'Trial Chamber' in particular." (para. 29) "The Pre-Trial Chamber considers that ICP requests for disclosure are not aimed at *publicizing* the judicial investigations, but are rather premised on a necessity to produce evidence, before another judicial body of the ECCC, for the purposes of 'ascertaining the truth', hence *serving purposes other than the publicity*, as that provided for in Rule 56." (para. 30) "Therefore, the Pre-Trial Chamber concludes that, proceedings on disclosures, as those requested by the ICP, based on the instructions of the Trial Chamber, are not regulated by Internal Rule 56(2)(b)." (para. 31) "The Pre-Trial Chamber agrees with the ICIJ that there is a *lacuna* in the applicable law as regards the procedure to be applied when requests for disclosure are brought before the OCIJ. […] The Pre-Trial Chamber notes that, in the Impugned Decision, the ICIJ sought guidance in the rules established at international level, and in French jurisprudence, and found: 1) that according to international human rights jurisprudence, 'the right to presumption of innocence does not prohibit the disclosure'; 2) that 'it is fair to say that disclosure between separate criminal proceedings concerning different accused […] has been authorised' by the [ICTY]; and 3) that, according to the French Court of Cassation: '(i) there is no legal provision that prohibits the use of evidence obtained in an investigation into another criminal proceeding that may contribute to the ascertainment of the truth, on the condition that the disclosure is of an adversarial nature and the documents are subjected to discussion by the parties; and (ii) the confidentiality of the investigation does not obstruct the disclosure or use of evidence obtained in the investigation in another criminal proceeding that may contribute to the ascertainment of the truth in that proceeding'; 'jurisprudence does not require that disclosure be permitted only in exceptional cases'; and 'the bar for disclosure is set low – the evidence need only to contribute to the "ascertainment of the truth"', a principle also subscribed of the law before the ECCC in Internal Rules 85(1), 87(4) and 91(3).'" (para. 32) "The Pre-Trial Chamber considers that the findings of the ICIJ are in concert with: i) the fundamental requirement set in Internal Rule 21 for a balancing of interests and rights involved in the proceedings before the ECCC; and with ii) a reading of the Rules in their 'context and in accordance with their object and purpose', as set in the ECCC Law and Agreement. Within this legal context, the ICIJ is correct that,

		to be legitimate, disclosure proceedings have to be carried out in a manner that ensures that: i) before a decision on disclosure is rendered, the parties to the investigation are allowed the possibility of an adversarial debate over disclosure requests; and that ii) the OCP is enabled to pursue its mandate to prosecute in Case 002, and the TC is assisted in fulfilling its mandate to find the truth in Case 002, within a reasonable time". (para. 33)

b. Orders on Disclosure

1.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"The ECCC legal framework, particularly under Internal Rule 56, gives a broad discretion to the Co-Investigating Judges in handling confidentiality issues, and granting limited access to the judicial investigations." (para. 20) "The Pre-Trial Chamber observes that the Impugned Order is an order on modalities of disclosure of investigation material, linked to the Co-Investigating Judges' responsibility to conduct investigations under Article 5(1) of the Agreement and 23 *new* of the ECCC Law and to handle confidentiality issues under Rule 56. By contrast, Rule 79(6)(b) of the Internal Rules expressly confers to the Trial Chamber the authority to order 'by reasoned decision [[…] that all or part of the hearing be held *in camera*' if it 'considers that a public hearing would be prejudicial to public order, or to give effect to protective measures'. The Pre-Trial Chamber underlines that the International Co-Investigating Judge is not involved in this procedure, which concerns the trial proceedings exclusively. It is therefore the Trial Chamber's duty to make findings as to whether the public order justifies derogation from the principle of publicity set forth in Internal Rule 79(6) for the reasons provided in the Impugned Order, and not for the International Co-Investigating Judge to rebut any presumption." (para. 35) "The Impugned Order […] is an order on disclosure modalities which falls under the broad discretion of the Co-Investigating Judges, pursuant to Internal Rule 56, to handle confidentiality issues and disclose judicial investigations. [T]here is no specific onus for the Co-Investigating Judges to provide reasoned disclosure orders under the applicable provisions concerning investigation before the ECCC." (para. 38) "The Pre-Trial Chamber recalls that the Impugned Order is an order related to the disclosure of confidential material which, as such, falls under the Co-Investigating Judges' broad discretion to handle confidentiality issues pursuant to Internal Rule 56." (para. 41) "The Pre-Trial Chamber cannot find any support in the contention that the consideration of the principle of publicity of trial hearings should have been, at this stage, part of the Co-Investigating Judges' discretionary test for deciding whether to maintain the confidentiality of judicial investigations under Rule 56." (para. 48) "The assessment of the good cause to derogate from the general principle of the publicity of trial proceedings, based on international human rights provisions and international tribunals' jurisprudence, thus clearly falls under the Trial Chamber's prerogatives." (para. 50)
2.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"[In D309/6], the Pre-Trial observed: 'by contrast with the express obligation to set out reasons for the rejection of investigative actions under Rule 55(10), [...] *there is no specific onus for the Co-Investigating Judges to provide reasoned disclosure orders under the applicable provisions concerning investigations before the ECCC*.'" (para. 23) "In that decision, the Pre-Trial Chamber also made a finding that: 'the [ICIJ] gave *sufficient reasons* when holding in the Impugned Order that it *has 'reviewed the list of witnesses and their disclosed material'* and that the ICIJ assigned special disclosure measures to some witnesses 'owing to the confidential and sensitive nature of the ongoing investigations'." (para. 24)
3.	**004/2 AO An** PTC 36 D343/4 26 April 2017 *Decision on Appeal against the Decision on*	"[U]nlike at the international tribunals where investigations are carried out by the parties, at the ECCC the investigations are carried out by *judicial* authorities, such as the Investigating Judges, who are required by law to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory.' Whereas in those other legal systems, the applicable rules require *the parties* to disclose evidence to each other, at the ECCC, the Investigating *Judges* have wide discretion in deciding what investigative action is useful for the conduct of the investigation and what evidence is placed in the Case File. It is important to recall that, at the ECCC, evidence for use at trial is placed on the Case File,

	AO An's Tenth Request for Investigative Action	which is the only procedural record, and while the rules allow for the parties to file requests for investigative action to the OCIJ, there are no rules providing for any procedural right to request disclosure. Therefore, any law and practice, relevant to disclosure before those other international tribunals, is not comparable to the law and practice, relevant to Defence's participation in the investigation and access to the Case File, at the ECCC." (Opinion of Judges BEAUVALLET and BAIK, para. 29) "Whereas the rules applicable before the international tribunals stipulate that some 'witness statements' must be subject to disclosure, no such rules exist or apply within the ECCC's legal context. The Undersigned Judges recall that, at the ECCC, regardless whether the sought information concerns witness statements, the only criteria a party, requesting investigative action, has to satisfy are: (i) the precision and (ii) the *prima facie* relevance requirements. The Pre-Trial Chamber has established that 'it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation'. Furthermore, where a request for investigative action is also based on the Co-Investigating Judges duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence, it is not sufficient for the Defence to only refer to the documents as 'relevant' and 'necessary to the defence' and merely assert that they contain exculpatory evidence without any further explanation as to how they may suggest innocence or mitigate the personal responsibility of a Charged Person." (Opinion of Judges BEAUVALLET and BAIK, para. 30)

c. Appeals against Disclosure Decisions

1.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber notes that, in making considerations, in the disclosure decisions, for modalities of the allowed disclosure, the ICIJ's function is limited to providing learned guidance to the Trial Chamber which, in turn, has exclusive jurisdiction to issue decisions on closed session testimonies." (para. 14) "The Pre-Trial Chamber finds that, in making considerations, in disclosure decisions, for modalities of the allowed disclosures, the ICIJ does not 'act in accordance with the principles of [Internal] Rule 29' […]. According to Internal Rule 29, the CIJs may order measures to ensure the protection of victims and witnesses. The 'protective measures' and the 'modalities of disclosure' are aimed at safeguarding substantially different values and interests because, on the one hand, modalities of disclosure are aimed at maintaining confidentiality of judicial investigations in order to 'preserve the rights and interests of the parties', and on the other hand, protective measures are aimed at protecting victims and witnesses when there is a risk of serious danger to their life and health, or to that of their families. While the ICIJ's decision allowing disclosure are necessitated by a legitimate obligation to cooperate in the truth finding process of another *judicial body* of the ECCC, ICIJ's considerations on what would be the most appropriate modalities for the allowed disclosures, are guided by the requirement to safeguard the confidentiality of investigations set in Internal Rule 56. Accordingly, the term 'protective measures' in Internal Rule 74(3)(h) has to be read in the light of the provisions of Internal Rule 29(4) and (8). Any request for 'modalities of disclosures' by the ICIJ, for the attention of the Trial Chamber, is dictated by the ICIJ's obligation under Internal Rule 56 to preserve the confidentiality of investigations, and is not subject to pre-trial appeal." (para. 15) "Therefore, the Pre-Trial Chamber does not find any 'relationship', between 'protective measures' and 'ICIJ's decisions' on disclosure, or modalities thereof, such that would make appeals against such decisions fall within the ambit of Internal Rule 74(3)(h)." (para. 16) "The Pre-Trial Chamber has also dismissed claims that disclosure orders violate the Charged Person's right to presumption of innocence irreparably." (para. 18)
2.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55,*	"[T]he Defence has not demonstrated further that Ao An has a right to appeal against disclosure decisions." (para. 31)

	D193/57, D193/59 and D193/61	

7. Miscellaneous: Interview of the Charged Person

1.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"The Pre-Trial Chamber finds that Internal Rule 58(2) does not apply to the adversarial hearing on provisional detention. An adversarial hearing is distinct in its purpose from an interview of a Charged Person. An adversarial hearing gives the Charged Person the opportunity to respond to the request of, and the arguments made by, the Co-Prosecutors. An interview is held as part of investigations by the Co-Investigating Judges to find the truth and therefore aimed at obtaining a statement from the Charged Person, a statement that could be used as evidence against him. While Rule 58 of the Internal Rules may be interpreted to apply to any questioning of a Charged Person, irrespective of the procedure, it does not apply in this case, since the Charged Person was not questioned during his adversarial hearing. Thus the requirement of Rule 58 of the Internal Rules for a waiver of the right to a lawyer to be separately recorded in writing signed by the Charged Person do not apply in this case." (para. 17)
2.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The purpose of an interview is to put questions to the Charged Person about what he knows himself and not for the Charged Person to respond to the accusations against him. The Charged Person can use his right to remain silent and by using this avoid providing evidence against himself. The right to have adequate time to prepare for trial does therefore not apply to the preparation for an interview." (para. 47)

C. Specific Requests by the Parties

For jurisprudence concerning the ***Presumption of Reliability of Investigative Actions***, see IV.B.5.ii.c. Presumption of Reliability of Investigative Actions

For jurisprudence concerning ***Impermissible Investigative Action by the Parties and Permissible Enquiries***, see IV.B.3.ii. Investigations and Enquiries by the Parties

1. Requests for Investigative Action under Internal Rules 55(10) and 58(6)

i. *Admissibility – Appeals against Decisions on Requests for Investigative Action (Internal Rules 74(3)(b) and 74(4)(a))*

a. General

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"As the Appeal is based on Internal Rule 74(3)(b), the Pre-Trial Chamber shall determine whether it is lodges against an order of the Co-Investigating Judges 'refusing [a request] for investigative action allowed under these IRs'." (para. 20) "The Internal Rules do not explicitly define the expression 'investigative action'. However, its meaning can be inferred when reading together different provisions of the Internal Rules." (para. 23) "The Pre-Trial Chamber considers that the process of ascertaining the truth necessarily involves the collection of information. In civil law systems, this is, indeed, described as being the purpose of judicial investigation. In the French system, investigative actions are described as being acts by which an investigating judge searches for evidence. The Pre-Trial Chamber notes that the Cambodian system, on which the Internal Rules are based, is rather similar to the French system." (para. 25) "Another indication that investigative actions are aimed to collect information can be found in Internal Rule 62, which deals with the possibility for the Co-Investigating Judges to delegate their power to undertake investigative actions to ECCC investigators or the judicial police." (para. 27) "[R]equests for investigative actions should be interpreted as being requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 28) "The Translation Order does not constitute an action that aims at collecting information. Furthermore, it is noted that the Co-Investigating Judges were not requested to undertake any action themselves, which is characteristic of an investigative action […]." (para. 30) "The Pre-Trial Chamber finds that the Appeal is not lodged against an order refusing a request for investigating action. It does not fall within the ambit of appealable matters set out in Internal Rule 74(3)(b)." (para. 31)
2.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"The Internal Rules do not explicitly define the expression 'investigative action'. However, its meaning can be inferred when reading together different provisions of the Internal Rules." (para. 18) "The Pre-Trial Chamber considers that the process of ascertaining the truth necessarily involves the collection of information. In civil law systems, this is, indeed, described as being the purpose of judicial investigation. In the French system, investigative actions are described as being acts by which an investigating judge searches for evidence. The Pre-Trial Chamber notes that the Cambodian system, on which the Internal Rules are based, is rather similar to the French system." (para. 20) "Another indication that investigative actions are aimed to collect information can be found in Internal Rule 62, which deals with the possibility for the Co-Investigating Judges to delegate their power to undertake investigative actions to ECCC investigators or the judicial police." (para. 22)

		"[R]equests for investigative actions should be interpreted as being requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 23) "The Translation Order does not constitute an action that aims at collecting information. Furthermore, it is noted that the Co-Investigating Judges were not requested to undertake any action themselves, which is characteristic of an investigative action […]." (para. 25) "The Pre-Trial Chamber finds that the Appeal is not lodged against an order refusing a request for investigating action. It does not fall within the ambit of appealable matters set out in Internal Rule 74(3)(b)." (para. 26)
3.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"The phrase 'as provided in Rule 74' used in Internal Rule 73(a), read in conjunction with the contents of Internal Rule 74(3)(b), provides that two prerequisites have to be fulfilled for Internal Rule 73(a) to become operative. First, there must be a request which is 'allowed under the Internal Rules' and second, such request has to have been 'refused' by the Co-Investigating Judges." (para. 21) "According to the Internal Rules, permitted requests for investigative action include requests submitted to the Co-Investigating Judges pursuant to Internal Rules 55(10) and 58(6). […] Internal Rules 55(10) and 58(6) may be employed to address only such alleged factual situations that correspond to acts 'within the jurisdiction of ECCC'. Internal Rules 55(10) and 58(6) must be read in conjunction with sub-rule 1 of Internal Rule 55[.]" (para. 24) "The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 25) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 26) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 28) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 29)
4.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that pursuant to Internal Rule 73 it has jurisdiction over appeals filed against such categories of decisions of the Co-Investigating Judges 'as provided for in Internal Rule 74'. Internal Rule 74(3)(b) grants to the Charged Person the right to file appeals against such orders of the Co-Investigating Judges that refuse 'requests for investigative actions allowed under these Internal Rules'. The phrase 'as provided in Rule 74' used in Internal Rule 73(a), read in conjunction with the contents of Internal Rule 74(3)(b), provides that two prerequisites have to be fulfilled for Internal Rule 74(a) to become operative. First, there must be a request which is 'allowed under the Internal Rules' and second, such request has to have been 'refused' by the Co-Investigating Judges." (para. 21) "According to the Internal Rules, permitted requests for investigative action include requests submitted to the Co-Investigating Judges pursuant to Internal Rules 55(10) and 58(6). […] Internal Rules 55(10) and 58(6) may be employed to address only such alleged factual situations that correspond to

		acts 'within the jurisdiction of ECCC'. Internal Rules 55(10) and 58(6) must be read in conjunction with sub-rule 1 of Internal Rule 55[.]" (para. 24) "The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 25) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 26) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 27) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 28) "[Internal Rule 35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 29)
5.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that pursuant to Internal Rule 73 it has jurisdiction over appeals filed against such categories of decisions of the Co-Investigating Judges 'as provided for in Internal Rule 74'. Internal Rule 74(3)(b) grants to the Charged Person the right to file appeals against such orders of the Co-Investigating Judges that refuse 'requests for investigative actions allowed under these Internal Rules'. The phrase 'as provided in Rule 74' used in Internal Rule 73(a), read in conjunction with the contents of Internal Rule 74(3)(b), provides that two prerequisites have to be fulfilled for Internal Rule 74(a) to become operative. First, there must be a request which is 'allowed under the Internal Rules' and second, such request has to have been 'refused' by the Co-Investigating Judges." (para. 24) "According to the Internal Rules, permitted requests for investigative action include requests submitted to the Co-Investigating Judges pursuant to Internal Rules 55(10) and 58(6). […] Internal Rules 55(10) and 58(6) may be employed to address only such alleged factual situations that correspond to acts 'within the jurisdiction of ECCC'. Internal Rules 55(10) and 58(6) must be read in conjunction with sub-rule 1 of Internal Rule 55[.]" (para. 27) "The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 28) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 29) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary

		jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 30) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 31) "Internal Rule [35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 32)
6.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber notes that pursuant to Internal Rule 73 it has jurisdiction over appeals filed against such categories of decisions of the Co-Investigating Judges 'as provided for in Internal Rule 74'. Internal Rule 74(3)(b) grants to the Charged Person the right to file appeals against such orders of the Co-Investigating Judges that refuse 'requests for investigative actions allowed under these Internal Rules'. The phrase 'as provided in Rule 74' used in Internal Rule 73(a), read in conjunction with the contents of Internal Rule 74(3)(b), provides that two prerequisites have to be fulfilled for Internal Rule 74(a) to become operative. First, there must be a request which is 'allowed under the Internal Rules' and second, such request has to have been 'refused' by the Co-Investigating Judges." (para. 20) "According to the Internal Rules, permitted requests for investigative action include requests submitted to the Co-Investigating Judges pursuant to Internal Rules 55(10) and 58(6). […] Internal Rules 55(10) and 58(6) may be employed to address only such alleged factual situations that correspond to acts 'within the jurisdiction of ECCC'. Internal Rules 55(10) and 58(6) must be read in conjunction with sub-rule 1 of Internal Rule 55[.]" (para. 23) "The Pre-Trial Chamber notes that the jurisdiction of the ECCC comes from the Agreement and the Law on the Establishment of the ECCC, being the instruments that instituted the ECCC. Such instruments refer only to the 'Crimes Committed during the Period of Democratic Kampuchea'. The Agreement or the Law on the Establishment of the ECCC do not refer anywhere to 'acts' that would constitute 'interference in the administration of justice' or 'corruption' […]." (para. 24) "Internal Rules 55(10) and 58(6) may not be used as legal basis for a request for investigative action on a factual situation that may suggest interference with the administration of justice or corruption in the ECCC." (para. 25) "The Pre-Trial Chamber further notes that 'acts' that would constitute 'interference in the administration of justice' are considered in Internal Rule 35. According to the Preamble of the Internal Rules, their purpose is not to define the powers of the ECCC […]." (para. 26) "Internal Rule 35 […] represents an effort to address a 'particular matter', as provided for in the Preamble of the Internal Rules, in order to safeguard the procedures before the ECCC from inappropriate action that may call into question the fairness of the proceedings. Internal Rule 35 does not establish an additional primary jurisdiction for the ECCC, which would clearly be beyond the scope of the Internal Rules. The power given to Co-Investigating Judges or Chambers to deal with acts that may constitute 'interference with the administration of justice' clearly represents a form of ancillary jurisdiction for the ECCC which is not related to that referred to in Internal Rules 55(10) and 58(6)." (para. 27) "[Internal Rule 35] does not provide for the initiation of investigative action upon request by a party. It rather leaves the matter under the discretion of the Co-Investigating Judges or the Chambers. Consequently, Internal Rule 35 cannot provide a basis for the requested investigative action and therefore for the appeal lodged under 74(3)(b)." (para. 28)
7.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek*	"The Pre-Trial Chamber observes that pursuant to Internal Rule 74(3)(b), a charged person may appeal against orders of the Co-Investigating Judges refusing requests for investigative actions allowed under the Internal Rules." (para. 15) "[T]he Pre-Trial Chamber found that 'requests for investigative actions should be interpreted as being requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth.'" (para. 18)

	Exculpatory Evidence in the Shared Materials Drive	"The Request, in its essence, sought that the documents made available by the Office of the Co-Prosecutors and the Co-Investigating Judges through the [Shared Materials Drive] be analysed by the Co-Investigating Judges in order for them to identify potential exculpatory evidence and, eventually, place it in the Case File. […] [T]aking into account its purpose, the Request can be seen as a request for investigative action. The Order refusing such request is thus appealable under Internal Rule 74(3)." (para. 19)
8.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber observes that pursuant to Internal Rule 74(3)(b), a charged person may appeal against orders of the Co-Investigating Judges refusing requests for investigative actions allowed under the Internal Rules." (para. 16) "[T]he Pre-Trial Chamber found that 'requests for investigative actions should be interpreted as being requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth.'" (para. 19) "The Request, in its essence, sought that the documents made available by the Office of the Co-Prosecutors and the Co-Investigating Judges through the [Shared Materials Drive] be analysed by the Co-Investigating Judges in order for them to identify potential exculpatory evidence and, eventually, place it in the Case File. […] [T]aking into account its purpose, the Request can be seen as a request for investigative action. The Order refusing such request is thus appealable under Internal Rule 74(3)." (para. 20)
9.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[T]aking into account its purpose, the Request [concerning the exclusion of evidence obtained by torture from the case file] is not a 'request for investigative action' within the ambit of Internal Rule 74(3)(b) and as defined by the Pre-Trial Chamber in [A190/I/20] as requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 18)
10.	**002 IENG Sary** PTC 29 D171/4/5 22 December 2009 *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Constructive Denial of IENG Sary's Third Request for Investigative Action*	"[T]aking into account its purpose, the Request [concerning the placement of information on the Case File] is not a 'request for investigative action' within the ambit of Internal Rule 74(3)(b) […]. Requests for investigative action are to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 8)
11.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were*	"[T]aking into account its purpose, the Request [concerning the exclusion of evidence obtained by torture from the case file] is not a 'request for investigative action' within the ambit of Internal Rule 74(3)(b) and as defined by the Pre-Trial Chamber in [A190/I/20] as requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 16)

	or May Have Been Obtained by Torture	
12.	**002 NUON Chea** PTC 44 D253/3/5 6 April 2010 *Decision on Appeal against NUON Chea's Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action*	"This Chamber has interpreted requests for investigative action as 'being requests for action to be performed by the Co-Investigating Judges, or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth.'" (para. 8) "[I]n spite of the fact that both […] Requests are labelled by the Appellant as requests for investigative action and, in the absence of objection by the OCP as to their nature in this respect, the Pre-Trial Chamber is of the view that neither […] amounts to a request for investigative action under Internal Rule 55(10)." (para. 9) "[T]he Sixteenth Request merely asks the OCIJ to identify all material already on the Case File originating from […] Vietnam […] and verify the chain of custody for and authenticity of each specific item. The Appellant acknowledges that he does not even know whether the Case File contains any such material […], the Sixteenth Request does not pertain to *collecting information* conducive to ascertaining the truth and therefore […] [the Order] is not appealable pursuant to Internal Rule 74(3)(b)." (para. 10) "[T]he Pre-Trial Chamber is not satisfied that the […] Request actually aims at *collecting Information* conducive to ascertaining the truth, [e]specially in light of the statement from the Appellant […] [which] implies that the Defence would challenge all such material, irrespective of whether the results of the requested action supported the existence of doubts […]." (para. 12)
13.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"This Chamber has interpreted requests for investigative action as 'being requests for action to be performed by the CIJs or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth.'" (para. 7)
14.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber observes that, taking into account their purpose, the Requests [concerning the identification and reliance upon evidence obtained though torture] are not 'requests for investigative action' within the ambit of Internal Rule 74(3)(b) and as defined by the Pre-Trial Chamber in [A190/I/20]. They are not requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 23)
15.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges*	"The Pre-Trial Chamber has already ruled […] on a possible inconsistency between Internal Rule 74(3)(b) and Internal Rule 55(10) which, according to the then-Appellant, would provide a charged person with the right to appeal both orders of the OCIJ refusing requests for investigative action and those rejecting requests to make such orders necessary for the conduct of the investigation. It ruled that '[a]ny inconsistency that may derive from a suggested general possibility to appeal under Internal Rule 55(10) and the limited possibility to appeal for the Charged Person under Internal Rule 74(3)(b) cannot lead to conclusions as drawn by the Co-Lawyers on the admissibility of this Appeal.' Having reviewed the grounds for pre-trial appeals provided by Internal Rules 55(10) and 74(3), the Pre-Trial Chamber is of the view that none of them actually provide legal basis for pre-trial appeal for lack of notice." (para. 29)

	Order on Joint Criminal Enterprise (JCE)	
16.	**002 IENG Sary** PTC 65 A372/2/7 8 June 2010 *Decision on IENG Sary's appeal against the Co-Investigating Judges' rejection of IENG Sary's Third Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order*	"The Request is in respect of future action which may or may not be undertaken by the Co-Investigating Judges and seeks to fetter or control the manner and form by which they will exercise their discretion." (para. 2) "The Request does not fall under Internal Rule 55(10), as it does not seek either an order or an investigatory action." (para. 4)
17.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"Internal Rule 55(10), in relevant part, envisages the following two types of requests which a charged person may put to the CIJs at any time during the investigation, *i.e.*, 'to make such orders' and 'to undertake such investigating actions' as they consider necessary for the conduct of the investigation. Contrary to the second type of requests, the first type does not imply seeking information that would contribute to the establishment of the truth. The distinction is important because, although Internal Rule 74(3)(b) clearly opens the possibility for the charged persons to appeal orders from the CIJs refusing requests for investigative action, it does not give the right for the charged person to appeal a rejection by the CIJs of a request to 'make such orders' envisaged by Internal Rule 55(10). […] [R]equests to place a document on the case file, such as requests to translate documents, does not amount to a request for investigative action. […] Internal Rule 74(3)(b) provides no avenue for the Appeal in so far as the autobiography sought to be placed on the Case File is concerned." (para. 9)
18.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[A] request to interview an individual qualifies as a request for 'investigative action' within the meaning of [Internal] Rule 74(3)(b)." (para. 6)
19.	**002 NUON Chea** PTC 66 D356/2/9 1 July 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Appeal against the Co-Investigating Judges' Order Rejecting Request for a Second Expert Opinion*	"[T]hese sub-requests, which are not directly related to Internal Rule 31(10), they do not fall under Internal Rule 55(10) either, as they do not seek an investigative action that falls within the ambit of Internal Rule 55(1), but rather represent a fishing exercise by the Defence in order to prepare for cross-examination. For an appeal to be found admissible under Internal Rule 74(3)(b), two prerequisites have to be fulfilled: first, there must be a request which is 'allowed under the Internal Rules' and second, such request has to have been 'refused' by the Co-Investigating Judges." (para. 14)
20.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010	"Internal Rule 74(3)(b) requires that the Appeal satisfy the following three cumulative conditions in order to be found admissible: 1) the Appellant must have submitted a request for investigative action to the Co-Investigating Judges; 2) such request must be allowed under the Internal Rules; 3) such request must have been refused by the Co-Investigating Judges." (para. 9)

	Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphân's Real Activity'	"The Appellant requested the Co-Investigating Judges to search for, identify, analyse documents located in the Shared Materials Drive […] that are not already on the case file and to place those documents on the case file that the Co-Investigating Judges consider are conducive to ascertaining the truth. [S]uch a request can be considered a request for investigative action within the meaning of Internal Rule 74(3)(b)." (para. 10)
21.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"The Appellants have not demonstrated that the requested investigative action is allowed under the Internal Rules. The Internal Rules do not provide for expansion of an investigation by a Civil Party. The Internal Rules do not provide for expansion of an investigation through a Supplementary Submission that would permit the Civil Parties to request: (i) a full investigative action concerning properties owned by the charged persons, (ii) preservation measures for any such properties, or (iii) identification of any transferred properties. […] Since the Civil Parties lack standing to make the Request, the Appeal is inadmissible on the basis of Internal Rule 74(4)(a)." (para. 16)
22.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	"The Pre-Trial Chamber has previously found that requests for investigative actions should be interpreted as 'being requests for action to be performed by the Co-Investigating Judges with the purpose of collecting information conducive to ascertaining the truth.' The Co-Lawyers for the Charged Person request that the CIJs disclose the methodology employed by Mr Ysa and re-interview all the witnesses previously interviewed by him for [his book]. These requests would require the CIJs to conduct interviews with either Mr Ysa or the relevant witnesses. The interviews would be performed by the CIJs for the purpose of ascertaining the reliability of the evidence and could be classified as requests for investigative action under Internal Rule 55(10). Therefore these parts of the Appeal are admissible under Internal Rule 74(3)(b)." (para. 10)
23.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[A] request for an order to place evidence on the Case File is not a request for investigative action made pursuant to [Internal] Rule 55(10) but rather is a request for an order 'necessary for the conduct of the investigation' pursuant to [Internal] Rule 55(10)." (para. 7) "For example, the co-lawyers of the charged persons have made requests for orders that relate to matter that may be deemed necessary for the conduct of the investigation, such as request for translation. Such requests are not requests for investigative action and do not have as their purpose the establishment of the truth." (para. 46)

24.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"We note that the right to appeal under Internal Rule 74(3)(b) is reserved to a 'Charged Person', as is the right to request investigative actions under Internal Rule 55(10). […] We consider that the particular circumstances of this case call for a broad interpretation of the right to appeal under Internal Rule 74(3)(b), in the light of the fundamental principles set out in Internal Rule 21." (Opinion of Judges CHUNG and DOWNING, para. 5)
25.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions*	"Although the present Appeal challenges a decision by the ICIJ denying three specific requests for investigative actions, the argumentation set forth thereto concerns the Appellant's 'right' to file requests for investigation, irrespective of their content. […] The Pre-Trial Chamber notes that these arguments are of a general nature and purely speculative as there is no assertion being made that any of the Three Requests for Investigative Actions concerned by the present Appeal seeks interviews of witnesses for whom there is concrete reason to fear that they may become unavailable or otherwise justifying a pressing need to undertake the requested investigation. The Appellant does not otherwise argue that the ICIJ's refusal to decide on the Three Requests for Investigative Actions, *at this stage*, concretely impairs his fair trial rights. The Pre-Trial Chamber further notes that the Appeal does not bring any new fact or circumstances but rather reiterates arguments that were already put forward in the Participation Appeal. Therefore, the Pre-Trial Chamber finds that the Appeal seeks to bring before the Pre-Trial Chamber the same issue, in fact and law, that it has already examined in its Appeal Considerations (*i.e.*, the Appellant's right to participate in the judicial investigation) and upon which it could not attain a supermajority of four votes to issue a decision." (para. 19) "Seeking guidance in the procedural rules established at the international level, in accordance with Article 12(1) of the Agreement between the United Nations and the government of Cambodia for the establishment of the ECCC, Articles 23*new* and 33*new* of the ECCC Law and Internal Rule 2, the Pre-Trial Chamber notes, by analogy, that it is common practice at other tribunals of international character to dismiss motions or applications on the basis that they raise issues that have already been determined by a final decision binding upon the concerned parties (and are as such *res judicata*), unless presented in the context of requests for reconsideration. Therefore, the Pre-Trial Chamber holds that it may dismiss an appeal or application, without considering its formal admissibility under Internal Rules 73, 74 and/or 21 or its merits, when it raises an issue that is substantially the same (in fact and law) as a matter already examined by the Chamber in respect of the same party and upon which it could not reach a majority of four votes to issue a decision." (para. 20)
26.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"The Pre-Trial Chamber recalls that, pursuant to Internal Rule 74(3)(b), a charged person may appeal against orders refusing requests for investigative actions, which should be interpreted as being 'requests for action to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth.' The Pre-Trial Chamber observes that the Impugned Order relates to Disclosure Requests which, in essence, do not aim to collect evidence in the case at hand but rather to disclose evidentiary material to other judicial bodies of the ECCC and parties appearing before them. The Appeal therefore does not fall within the Pre-Trial Chamber's subject-matter jurisdiction under Internal Rule 74(3)(b)." (para. 22)
27.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"[T]he Appeal is admissible under Internal Rule 74(3)(b), since the Seventh Request was filed under Internal Rules 21, 55(10) and 58(6) and asked the Co-Investigating Judges to undertake actions aimed at collecting information." (para. 8)

b. Standing in Requests for Investigative Action

For jurisprudence concerning the ***Standing for Appeals in General***, see VII.B.2.i. Standing

1.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[T]he possibility to appeal from orders of the Co-Investigating Judges is limited for the Charged Person whereas the Co-Prosecutors can appeal all such orders. Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under Internal Rule 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 19)
2.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[T]he possibility to appeal from orders of the Co-Investigating Judges is limited for the Charged Person whereas the Co-Prosecutors can appeal all such orders. Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under Internal Rule 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 17)
3.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The First Appeal is filed pursuant to Internal Rule 74(4)(a) according to which Civil Parties may appeal against orders by the CIJs refusing requests for investigative action allowed under the Rules, and Internal Rule 55(10) pursuant to which at any time during an investigation, a Civil Party may request the CIJs to make such orders or undertake such investigative action as he/she considers necessary for the conduct of the investigation. The Pre-Trial Chamber considers that both Internal Rules apply to Civil Party Applicants as well as Civil Parties, unless their civil party application has been declared inadmissible by a final decision." (para. 16) "Read together, Internal Rules 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such orders or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submissions. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative actions for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 17)
4.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to*	"[B]oth [Internal Rule 74(4)(a) and Internal Rule 55(10)] apply to civil party applicants as well as civil parties, unless their civil party application has been declared inadmissible by a final decision." (para. 10) "Taken together, Internal Rules 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such orders or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submissions. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for

	Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action	requesting investigative actions of such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 11)

c. Timing of Requests for Investigative Actions

For jurisprudence concerning the ***Timing of Appeals in General***, see VII.B.2.iii. Timing of Appeals

For jurisprudence concerning the ***Notice of Conclusion of Judicial Investigation***, see IV.D.2.i. Notice of Conclusion under Internal Rule 66(1)

1.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[T]here is no such limitation [forbidding requests after the closure of the investigation] placed upon any party […] under [Internal] Rule 55(10) […]. [Internal] Rule 66(1) expressly provides '[…] 15 […] days to request further investigative action'." (para. 13) "The Co-Lawyers […] further raised […] the adverse effect upon the rights of the Charged Persons […] to request further investigative action consequent upon the admission of the […] documents […]. It is not for the Pre-Trial Chamber to dispose of this […] because the decision to grant or not an extension of time to file requests for investigative action belongs in the first instance to the Co-Investigating Judges." (para. 14) "[A]ll the Parties […] have had access to public source documents at all times […]. Complaint cannot now be made that the opportunity which was open […] for at least two years and was not used, no longer exists." (para. 15)
2.	**004/1 IM Chaem** PTC 32 D296/4 15 September 2016 *Decision on IM Chaem's Request for Confirmation on the Scope of the AO An's Annulment Application regarding All Unrecorded Interviews*	"The Pre-Trial Chamber further takes into consideration that the investigation concerning the Applicant has been concluded since 18 December 2015 and that the AO An's Application has been filed since 4 February 2016. Internal Rule 66(1) allows 15 days to request any investigative action from the conclusion of the investigation, which was extended to a further 15 days from the issuance of the Severance Order on 5 February 2016. The Pre-Trial Chamber thus considers the Request to be untimely." (para. 8)
3.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Pre-Trial Chamber observes that, according to [Internal Rule 66(1)], the deadline of fifteen days to request further investigative action applies after a 'notification' of conclusion of the investigation, no matter whether the notification is the 'first', or a 'second' one issued after completion of supplementary investigations." (para. 25)

4.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"Furthermore, requests submitted to the Co-Investigating Judges are subject to Internal Rule 55(10), which provides that 'at any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigating Judges to make such orders or undertake such investigative action as they consider useful.'" (para. 70) "The Pre-Trial Chamber first notes that this text does not authorise the filing of requests insofar as the judicial investigation came to an end on 7 April 2021, with the issuance of the Considerations in Case 003." (para. 71)

ii. *Standard of Review of Decisions on Requests for Investigative Action*

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"[T]he Co-Investigating Judges have a broad discretion when deciding on requests for investigative actions." (para. 21) "The Pre-Trial Chamber notes that the Agreement […], the [ECCC] Law […] and the Internal Rules do not define the standard of its review when seized of appeals against orders refusing requests for investigative actions." (para. 22) "The Cambodian Code of Criminal Procedure […], for its part, grants the Investigation Chamber jurisdiction to 'order additional investigative action which it deems useful' and generally gives broad powers to the Investigation Chamber when seized of an appeal […]." (para. 23) "The Pre-Trial Chamber observes that the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative actions but rather limit its role to deciding on appeals lodged against orders of the Co-Investigating Judges. This departure from the CPC is justified by the unique nature of the cases before the ECCC, which involve large scale investigations and extremely voluminous cases, and where the Pre-Trial Chamber has not been established and is not equipped to conduct investigations. As a decision on request for investigative action is a discretionary decision which involves questions of fact, the Pre-Trial Chamber considers that in the particular cases before the ECCC, the Co-Investigating Judges are in a best position to assess the opportunity of conducting a requested investigative action in light of their overall duties and their familiarity with the case files. In these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the Co-Investigating Judges when deciding on an appeal against an order refusing a request for investigative action." (para. 24) "[T]he Appeals Chambers of international tribunals have very limited scope of review when dealing with appeals against discretionary decisions of a first instance jurisdiction." (para. 25) "Seeking guidance in the jurisprudence of international tribunals, the Pre-Trial Chamber finds that the review of the Order is limited to the extent of determining whether the Co-Investigating Judges properly exercised their discretion, by applying the test set out [in the ICTY case of *Milošević v. Prosecutor*]. It is not for the Pre-Trial Chamber to replace its view for that of the Co-Investigating Judges." (para. 26)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in*	"[T]he Co-Investigating Judges have a broad discretion when deciding on requests for investigative actions." (para. 22) "The Pre-Trial Chamber notes that the Agreement […], the [ECCC] Law […] and the Internal Rules do not define the standard of its review when seized of appeals against orders refusing requests for investigative actions." (para. 23) "The Cambodian Code of Criminal Procedure […], for its part, grants the Investigation Chamber jurisdiction to 'order additional investigative action which it deems useful' and generally gives broad powers to the Investigation Chamber when seized of an appeal […]." (para. 24)

	the Shared Materials Drive	"The Pre-Trial Chamber observes that the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative actions but rather limit its role to deciding on appeals lodged against orders of the Co-Investigating Judges. This departure from the CPC is justified by the unique nature of the cases before the ECCC, which involve large scale investigations and extremely voluminous cases, and where the Pre-Trial Chamber has not been established and is not equiped to conduct investigations. As a decision on request for investigative action is a discretionary decision which involves questions of fact, the Pre-Trial Chamber considers that in the particular cases before the ECCC, the Co-Investigating Judges are in a best position to assess the opportunity of conducting a requested investigative action in light of their overall duties and their familiarity with the case files. In these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the Co-Investigating Judges when deciding on an appeal against an order refusing a request for investigative action." (para. 25) "[T]he Appeals Chambers of international tribunals have very limited scope of review when dealing with appeals against discretionary decisions of a first instance jurisdiction." (para. 26) "Seeking guidance in the jurisprudence of international tribunals, the Pre-Trial Chamber finds that the review of the Order is limited to the extent of determining whether the Co-Investigating Judges properly exercised their discretion, by applying the test set out [in the ICTY case of *Milošević v. Prosecutor*]. It is not for the Pre-Trial Chamber to replace its view for that of the Co-Investigating Judges." (para. 27)
3.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"'[T]he 'exercise of discretion will be overturned if the challenged decision was (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion. Absent an error of law or a clearly erroneous factual finding, then, the scope of appellate review is quite limited […].'" (para. 11) "'[I]t is not for the Pre-Trial Chamber to replace its view for that of the Co-Investigating Judges.'" (para. 12) "The new assertions amount to a post factum attempt to justify and ground the request made to the CIJs. These are not matters the Pre-Trial Chamber can or will take into account. These assertions cannot be considered on appeal when an appellate chamber is considering the proper exercise of discretion in the making of the original decision. It is noted that the Pre-Trial Chamber cannot substitute its discretion for that of the CIJs." (para. 24)
4.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"[D]ecisions (or orders) on requests for investigative actions are discretionary and […] such decisions may be overturned if the Appellant demonstrates that the challenged decision was (1) based on an incorrect interpretation of governing law […]; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse by the CIJ's discretion." (para. 13) "To successfully appeal […] the Impugned Order, the Appellant needs to show that each of the […] basis for the decision are erroneous, or, if he only makes such demonstration in relation to some of these basis, he needs to show that the remaining ones do not support the Impugned Order." (para. 16)
5.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"The Pre-Trial Chamber recalls that an order by the Co-Investigating Judges on a request for investigative action is discretionary. For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the Appellant must demonstrate that the Impugned Order is: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. It is further noted that not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. An error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 8) "The Appeal challenges the Order 'principally' under the first standard of appellate review […]. Nevertheless, the Pre-Trial Chamber will determine the Appeal on the basis of the three standards of appellate review." (para. 9)

6.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphân's Real Activity'*	"[A]n order by the Co-Investigating Judges on a request for investigative action is discretionary. For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the Appellant must demonstrate that the impugned Order is: (1) based on an incorrect interpretation of the governing law; (2) based on a patently incorrect conclusion of fact; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. The Pre-Trial Chamber further recalls that not all errors will cause it to set aside a decision or order of the Co-Investigating Judges. The Pre-Trial Chamber will set aside a decision or order under Internal Rule 74(3)(b) when an error committed by the Co-Investigating Judges is determinative of the exercise of their discretion leading to the appealed decision or order being made." (para. 13)
7.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"The Pre-Trial Chambers notes the following points in respect of the CIJs when they are considering requests for investigative action: 1. The CIJs have broad a discretion; 2. In the absence of any precise criteria in the Internal Rules, the CIJs have discretion to decide on the usefulness or the opportunity to accomplish any investigative action, even when requested by a party; 3. Even if an investigative action is denied during the judicial investigation, it remains possible that it may be ordered at later stage by the Trial Chamber; 4. Unlike the Cambodian Code of Criminal Procedure ('CPC'), the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative action but rather limit its role to determining appeals; 5. In so far as a decision on a request for investigative action involves questions of fact, the CIJs are in the best position to assess the request in light of their familiarity with the case files. It is inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the CIJs." (para. 14) "[S]uch decisions may only be overturned if the Appellant demonstrates that the challenged decision was: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the CIJs' discretion." (para. 15) "These three grounds form the only basis upon which the Pre-Trial Chamber can remit a decision back to the CIJs for re-consideration. Not every error of law or fact will invalidate the exercise of a discretion and lead to the reversal of an order. The onus is upon the Appellant to demonstrate that the error of law or fact actually invalidated the decision or led to a miscarriage of justice." (para. 16) "[…] [T]he CIJs have a broad discretion when deciding on requests for investigative actions and are in the best position to assess whether to proceed or not in light of their overall duties and their familiarity with the case files. Thus, in these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the CIJs." (para. 31)
8.	**002 NUON Chea** PTC 46 D300/1/7 28 July 2010 *Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284*	"[T]he 'exercise of discretion will be overturned if the challenged decision was (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of […] discretion. Absent an error of law or a clearly erroneous factual finding, then, the scope of appellate review is quite limited: […] the decision below will stand unless it was so unreasonable as to force the conclusion that the Trial Chamber failed to exercise its discretion judiciously." (para. 14) "'[I]t is not for the Pre-Trial Chamber to replace its view for that of the Co-Investigating Judges'." (para. 15) "[The Pre-Trial] Chamber applied this test in initially remitting the matter to the CIJs upon finding an error of law. The Chamber is satisfied that the CIJs have reconsidered the […] Request as directed and applied the correct principle under international law […]." (para. 19)
9.	**002 IENG Thirith** PTC 61 D361/2/4	"[T]he 'exercise of discretion will be overturned if the challenged decision was (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or

	27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	unreasonable as to constitute an abuse of the Trial Chamber's discretion. Absent an error of law or clearly erroneous factual finding, then, the scope of appellate review is quite limited [.]" (para. 15) "'[I]t is not for the Pre-Trial Chamber to replace its view for that of the Co-Investigating Judges.'" (para. 16) "The Pre-Trial Chamber is not required to reconsider the merits of the submissions unless it is demonstrated there has been some error on behalf of the CIJs. Thus, it must consider the basis of the Appeal ground that the decision of the OCIJs is not sufficiently reasoned. If sufficient reasoning cannot be found then the Pre-Trial Chamber will be in position to rule whether there has been an error of law which will invalidate the CIJs decision." (para. 40)
10.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 15) "The Pre-Trial Chamber further recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary as, in light of their overall duties and their familiarity with the case files, they are best able to assess whether the request is indeed conducive to ascertaining the truth. For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the Appellant must demonstrate that the impugned order is: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. Not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. The error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 16) --- "[T]he applicable standard of review is the 'relevance [of the investigative request] within the scope of the investigation to ascertain the truth' and that limiting it to investigating 'matters deemed to be probative' would be an error of law. […] [T]he relevance to the scope of the investigation has yet to be determined by the limitations and parameters set by the Introductory and Supplementary Submissions and that only certain limited contextual elements falling outside the temporal scope of the alleged crimes have been found to satisfy the relevant requirement." (Opinion of Judges BEAUVALLET and BAIK, para. 34) "[D]ecisions must be read as a whole to ascertain what was in the mind of the Co-Investigating Judges […]." (Opinion of Judges BEAUVALLET and BAIK, para. 36)
11.	**004/2 AO An** PTC 33 D276/1/1/3 16 March 2017 *Decision on Appeal against the Decision on AO An's Sixth Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 11) "The Pre-Trial Chamber further recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary as, in light of their overall duties and their familiarity with the case files, they are best able to assess whether the request is indeed conducive to ascertaining the truth. Not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. The error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 12)
12.	**004/2 AO An** PTC 35 D320/1/1/4 16 March 2017 *Decision on Appeal against Decision on AO*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 9) "The Pre-Trial Chamber further recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary as, in light of their overall duties and their familiarity with the case

	An's Twelfth Request for Investigative Action	files, they are best able to assess whether the request is indeed conducive to ascertaining the truth. For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the Appellant must demonstrate that the impugned order is: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. Not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. The error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 10)
13.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned, if they are: a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 9) "The Pre-Trial Chamber further recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary. For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the Appellant must demonstrate that the impugned order is: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. Not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. The error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 10)
14.	**004/2 AO An** PTC 36 D343/4 26 April 2017 *Decision on Appeal against the Decision on AO An's Tenth Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion. The Pre-Trial Chamber further recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary as, in light of their overall duties and their familiarity with the case files, they are best able to assess whether the request is indeed conducive to ascertaining the truth. For the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges, an error must have been fundamentally determinative of the exercise of discretion leading to the appealed decision being made." (para. 12)
15.	**004 YIM Tith** PTC 52 D365/3/1/5 13 February 2018 *Decision on the International Co-Prosecutor's Appeal of Decision on Request for Investigative Action regarding Sexual Violence at Prison No.8 and in Bakan District*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are (i) based on an error of law invalidating the decision; (ii) based on an error of fact occasioning a miscarriage of justice; or (iii) so unfair or unreasonable as to constitute an abuse of the judges' discretion. Those criteria apply to the merits of the impugned order." (para. 14) "For the Pre-Trial Chamber to overturn the Co-Investigating Judges' exercise of discretion, the appellant must demonstrate that the impugned order is: (i) based incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. Not all errors will cause the Pre-Trial Chamber to set aside the decision of the Co-Investigating Judges. The error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision being made." (para. 15)

iii. *Merits of Requests for Investigative Action*

For jurisprudence concerning the ***Co-Investigating Judges' Duty to Investigate Exculpatory Evidence***, see IV.B.2.iii.d. Duty to Investigate Exculpatory Evidence

a. General

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009	"[T]he Co-Investigating Judges have a broad discretion when deciding on requests for investigative actions. In this regard, Internal Rule 55(5) provides that '[i]n the conduct of judicial investigations the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth'. […] [T]he Co-Investigating Judges 'are independent in the way they conduct their investigation'. As such, and in the absence of any precise criteria in the Internal Rules, the Co-Investigating Judges have discretion to decide on the usefulness or the opportunity to accomplish any investigative action, even

	Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive	when it is requested by party. This is merely question of fact. In other words, the parties can suggest, but not oblige, the Co-Investigating Judges to undertake investigative actions. It is further noted that even if an investigative action is denied during the judicial investigation, it remains possible that this action be ordered at a later stage by the Trial Chamber." (para. 21) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature, the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the material contained in the [Shared Materials Drive]." (para. 39)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"[T]he Co-Investigating Judges have a broad discretion when deciding on requests for investigative actions. In this regard, Internal Rule 55(5) provides that '[i]n the conduct of judicial investigations the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth'. […] [T]he Co-Investigating Judges 'are independent in the way they conduct their investigation'. As such, and in the absence of any precise criteria in the Internal Rules, the Co-Investigating Judges have discretion to decide on the usefulness or the opportunity to accomplish any investigative action, even when it is requested by party. This is merely question of fact. In other words, the parties can suggest, but not oblige, the Co-Investigating Judges to undertake investigative actions. It is further noted that even if an investigative action is denied during the judicial investigation, it remains possible that this action be ordered at a later stage by the Trial Chamber." (para. 22) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature, the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the material contained in the [Shared Materials Drive]." (para. 40)
3.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[…] [M]ere reference to an individual's name and general position […] during the DK does not amount to a *prima facie* reason to believe that the individual may have exculpatory evidence or information that is relevant to ascertaining the truth." (para. 34) "[T]he Co-Investigating Judges may not reject a request under Rule 55(10) solely or primarily because the investigation is in its final stages. […] The Co-Investigating Judges may rely, in part, on the latter stage of an investigation in combination with other valid reasons to reject a request." (para. 36) "[T]he standard the Co-Investigating Judges were obliged to apply in determining the Request under [Internal] Rule 55(10) is whether the Appellant demonstrated a *prima facie* reason for Co-Investigating Judges to believe that one or more of the [REDACTED] possesses the information that is relevant to ascertaining the truth." (para. 38) "[I]t is not an improper exercise of discretion for the Co-Investigating Judges to conclude that an individual who held relatively low position in the Ministry is, absent a *prima facie* reason to the contrary, 'not likely to provide sufficient details' on the role and responsibilities of the Appellant during her tenure as Minister […]." (para. 42) "[…] The Pre-Trial Chamber considers it to be within within the discretion of the Co-Investigating Judges to reject the request to interview the individual given that the Appellant did not provide any other information about him or her that might demonstrate *prima facie* reason to accept the request." (para. 43) "[…] [T]he determinative factor is whether the Co-Investigating Judges are satisfied that the Appellant has demonstrated a *prima facie* reason for the Co-Investigating Judges to believe that the investigative action may yield exculpatory evidence." (para. 47)
4.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to*	"[T]he Co-Investigating Judges have correctly stated 'the Co-Investigating Judges reiterate that they perform their own legal analysis of the requested documents to determine whether that they may be conducive to ascertaining the truth'." (para. 21)

	Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes	
5.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"The Pre-Trial Chambers notes the following points in respect of the CIJs when they are considering requests for investigative action: 1. The CIJs have a broad discretion; 2. In the absence of any precise criteria in the Internal Rules, the CIJs have discretion to decide on the usefulness or the opportunity to accomplish any investigative action, even when requested by a party; 3. Even if an investigative action is denied during the judicial investigation, it remains possible that it may be ordered at later stage by the Trial Chamber; 4. Unlike the Cambodian Code of Criminal Procedure ('CPC'), the Internal Rules do not grant the Pre-Trial Chamber the power to order additional investigative action but rather limit its role to determining appeals; 5. In so far as a decision on a request for investigative action involves questions of fact, the CIJs are in the best position to assess the request in light of their familiarity with the case files. It is inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the CIJs." (para. 14)
6.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"[T]he Pre-Trial Chamber notes that the considerations before the Chamber in this Appeal are the same if the Request is characterized as a request brought pursuant to Internal Rule 59(5) or as a request brought pursuant to Internal Rule 55(10)." (para. 13) "Whilst the requested action is detailed in form, in order to be granted it must relate to an investigative action allowed under the Internal Rules. A request for investigative action may be granted by the Co-Investigating Judges if the subject matter of the request is within the scope of the investigation. Before the ECCC, the scope of an investigation is determined by the submissions made by the Co-Prosecutors, being the Introductory Submission or any Supplementary Submission. In considering requests made under Internal Rule 55(10), the Co-Investigating Judges are restricted by Internal Rule 55(2), which limits their investigation to those facts set out in the Introductory Submission or a Supplementary Submission. If a request for investigative action concerns facts that are outside the scope of the facts set out in the Introductory Submission or a Supplementary Submission (such facts being 'new facts') the Co-Investigating Judges do not have the authority to grant the request. If a request made to the Co-Investigating concerns new facts to the attention of the Co-Prosecutors. The Co-Investigating Judges may not investigate unless the Co-Prosecutors submit a Supplementary Submission with respect to the new facts. Internal Rules 55(3) and 55(10) read together limit the power of the Co-Investigating Judges to grant a request to only those matters that fall within the scope of the investigation as shaped by the Introductory Submission or any Supplementary Submission." (para. 14) "The Pre-Trial Chamber finds that the restriction imposed by Internal Rule 55(3) on the Co-Investigating Judges applies to requests made by Civil Parties." (para. 15)
7.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the*	"The Pre-Trial Chamber recalls that the Internal Rules limit the purview of the Co-Investigating Judges to matters that are within the scope of the investigation. As such, the Pre-Trial Chamber expects that a request will not be granted even in part if it does not contain an explanation by the party making the request as to how the evidence to be placed on the Case File or the investigative act to be performed fit within the scope of the investigation." (para. 16) "As has been noted in previous decisions, the Co-Investigating Judges are, 'in light of their overall duties and their familiarity with the case files' best able to assess whether the request is indeed conducive to ascertaining the truth and 'to give reasons for their decision,' thereby fulfilling their obligation to issue reasoned orders pursuant to Rule 55(10). Familiarity with the Case File weighs as heavily in favour of discretion by the Co-Investigating Judges in the case of requests for orders pursuant to Rule 55(10) as in the case of requests for investigative action." (para. 55) "The Internal Rules contemplate that the Co-Investigating Judges may reject requests brought under [Internal] Rule 55(10). [Internal] Rule 55(10) states that the Co-Investigating Judges will issue a rejection order in response to a request for investigative action if they 'do not agree with the request.'

	Charged Persons' Knowledge of the Crimes	The Pre-Trial Chamber expects that this exercise of discretion by the Co-Investigating Judges may manifest itself in various ways. The following is merely a discussion of possible manifestations of the exercise of this discretion and is not exhaustive." (para. 56) "The exercise of discretion by the Co-Investigating Judges is present at all stages of consideration of the request. First, the Co-Investigating Judges enjoy discretion in the assessment of the threshold requirements for consideration. For example, this Chamber has held that '[t]he Co-Investigating Judges are entitled to decide whether the necessary specific and clear description of document's relevance to an investigation has been established […] [i]f the Co-Investigating Judges find that relevance has not been established, the Co-Investigating Judges may refuse to investigate.' Second the Pre-Trial Chamber has found that the satisfaction of the threshold requirements of precision and *prima facie* relevance is not a sufficient reason, alone, to conclude that the Co-Investigating Judges have committed an error or to compel them to grant a request for investigative action or for an order to place evidence on the Case File. The Co-Investigating Judges may decide not to grant request made pursuant to [Internal] Rule 55(10) because they might have already performed the action identified in the request and therefore it would be a proper exercise of their discretion to reject the request as duplicative although the threshold requirements have been met. A request might satisfy the first prong of the *prima facie* relevance requirement as a threshold matter. The Co-Investigating Judges possess the discretion to determine whether the request is conducive to ascertaining the truth, taking into account such things as the present stage of the investigation. In this respect, the Pre-Trial Chamber has found that the Co-Investigating Judges have discretion when 'considering what they view as being relevantly within the scope of their investigation to ascertain the truth' and therefore 'it is not unreasonable for the Co-Investigating Judges to have reduced and refined the matters in respect of which they are now investigating.'" (para. 57) "The Pre-Trial Chamber agrees with the Co-Investigating Judges that they do not have an obligation to establish the truth of 'manifestly irrelevant matters.' The Pre-Trial Chamber also agrees that in order for the investigators to establish the truth, they shall 'focus solely on the seised matters upon which the truth is required.'" (para. 60) "This Chamber has previously held that all requests for investigative action and for orders for placement of documents on the Case File must (i) be sufficiently precise so as to permit the Co-Investigating Judges to understand the precise action to be taken, and (ii) contain submissions by the requesting party as to the relevance and purpose of the action on the basis of the request only. Further, the Pre-Trial Chamber has affirmed that the Co-Investigating Judges shall not be required to infer the specific action to be taken nor the nexus between the requested action and a matter within the scope of the investigation. The Co-Investigating Judges have discretion in the determinations made in respect of precision and *prima facie* relevance and further have discretion to consider whether granting the request is conducive to ascertaining the truth." (para. 69)
8.	**004/2 AO An** PTC 35 D320/1/1/4 16 March 2017 *Decision on Appeal against Decision on AO An's Twelfth Request for Investigative Action*	"[P]ursuant to Internal Rule 55(5), the Co-Investigating Judges 'may take any investigative action conducive to ascertaining the truth'. The Undersigned Judges further recall that the Co-Investigating Judges are independent in the way they conduct their investigation and have a broad discretion in assessing requests for investigative action. In particular, while they have a duty to investigate exculpatory evidence, they retain the discretion to decide on the usefulness or the opportunity to execute any investigative action, even when requested by a party. In other words, the Co-Investigating Judges cannot be expected to work for a party or on a specific narrative. The parties can only suggest, but not command them, to undertake investigative actions." (Opinion of Judges BAIK and BEAUVALLET, para. 26) "The Co-Lawyers's contention that the Co-Investigating Judges would have an obligation to 'pursue investigative leads capable of supporting defences', 'investigate on behalf of the Defence' or 'conduct the requested actions' is misplaced." (Opinion of Judges BAIK and BEAUVALLET, para. 27) "With regards to the *prima facie* standard applying to the relevance requirement, […] whether the information 'may suggest the innocence or mitigate the guilt of the accused' must depend on an evaluation of whether there is any possibility, in light of the submissions of the parties, that the information could be relevant to the defence of the accused." (Opinion of Judges BAIK and BEAUVALLET, para. 29) "[T]he Co-Investigating Judges have a broad discretion in the subject matter and […], at an advanced stage of the investigation, it is not unreasonable for them to make 'decisions that […] will be considering what they view as being relevant'. It is equally reasonable for them to take into account,

		especially after several years of investigations, the material in their possession to assess the *prima facie* exculpatory value of the evidence sought and to satisfy themselves of the point in issue. As such, the International Co-Investigating Judge properly relied on former investigative actions into other ECCC Case Files, DC-Cam archives and National Archive of Cambodia, to hold that he already had on the case file evidence regarding the CPK economic policy and matters of commerce, as well as 'clear and consistent evidence that [the Appellant] held responsibility over economic affairs', and to conclude that additional searches would not yield further relevant evidence." (Opinion of Judges BAIK and BEAUVALLET, para. 35)
9.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"The Undersigned Judges recall that the Co-Investigating Judges 'have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, [they] have to review […] materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence'. The determinative factor is thus whether the Co-Investigating Judges are satisfied that the requesting party has demonstrated a *prima facie* reason to believe that the action sought may yield exculpatory evidence. It is not enough to refer to the documents as 'relevant' and 'necessary to the defence' and merely assert that they contain exculpatory evidence without any further explanation as to how they may suggest innocence or mitigate the personal responsibility." (Opinion of Judges BEAUVALLET and BAIK, para. 30) "The Undersigned Judges recognise that the standard for granting investigative requests is not whether the requests are time consuming or difficult but, as stated above, whether they satisfy the precision and *prima facie* relevance requirements. The Undersigned Judges, however, also recall that Co-Investigating Judges have a broad discretion in assessing requests for investigative action and that they retain the discretion to decide on the usefulness or the opportunity to execute any investigative action, and this even when the threshold requirements have been met. The International Co-Investigating Judge thus does not have any duty to exhaust all means at his disposal to collect relevant documents, but only, in discharging his duty to ascertaining the truth, to determine whether the requested material is useful for the conduct of investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 37) "The Undersigned Judges, recalling the broad discretion of the Co-Investigating Judges to assess requests for investigative action in light of their familiarity with the case file […]." (Opinion of Judges BEAUVALLET and BAIK, para. 43)

b. Specificity and Relevance of Requests for Investigative Action

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber finds that it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. This allows the Co-Investigating Judges to assess whether the Request is relevant to ascertaining the truth and to give reasons for their decision. As stated by the Co-Investigating Judges, the requirement that a request for investigative action be sufficiently precise and relevant is deemed to ensure that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time, enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected." (para. 43) "[T]he Defence […] have an obligation to proceed in manner that will not delay the proceedings notably by ensuring that their requests are specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated." (para. 44)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in*	"The Pre-Trial Chamber finds that it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. This allows the Co-Investigating Judges to assess whether the Request is relevant to ascertaining the truth and to give reasons for their decision. As stated by the Co-Investigating Judges, the requirement that a request for investigative action be sufficiently precise and relevant is deemed to ensure that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time, enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected." (para. 44)

	the Shared Materials Drive	"[T]he Defence […] have an obligation to proceed in manner that will not delay the proceedings notably by ensuring that their requests are specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated." (para. 45)
3.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"[I]t is well established that it is not the role of the court, whether it be a court at first instance or an appeal court, to proceed otherwise than on the basis of the material before it when an application or request is made. The court cannot speculate as to what party may or may not have additionally intended to put before it or what else may have been relevant to its considerations and then search it out. The court looks at the clear understanding of the words of the party in submission and does not speculate as to what may or may not have been otherwise meant by those words." (para. 19) "Detailed reasons were not required to be provided by the CIJs due to lack of clarity, confusion, and vagueness of the Request." (para. 21) "The new assertions amount to a post factum attempt to justify and ground the request made to the CIJs. These are not matters the Pre-Trial Chamber can or will take into account. These assertions cannot be considered on appeal when an appellate chamber is considering the proper exercise of discretion in the making of the original decision. It is noted that the Pre-Trial Chamber cannot substitute its discretion for that of the CIJs." (para. 24)
4.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"[…] [A]lthough in possession of the original Khmer version of the autography […], the Defence for the Charged Person seem to have omitted to proceed to any analysis of the autobiography in its possession. […] By failing to make use of its national Khmer resources and to analyse the content […], and by choosing to speculate on its potential import, the terms of the Request lend support to the Impugned Order's challenged finding." (para. 19) "The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person do not appear to have undertaken any preliminary enquiry as to whether [REDACTED] may or may not be in possession of such documents. More importantly, […] the Request does not provide any reason as to why the Appellant believes that [REDACTED] may be in possession of relevant documents." (para. 29)
5.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[…] [T]he Pre-Trial Chamber doubts that the Appellant acted diligently by omitting to include the 'further details […]' in the Request. In the Appeal, the Appellant explains that '[…] so as to preserve […] confidentiality. This is an important component of the protection of witnesses […].' The Appellant does not explain why she could not have included this explanation in the Request, or why she could not have included the alleged confidential details in a strictly confidential annex to the Request pursuant to Article 3 of the Practice Direction 'Filing of Documents before the ECCC.'" (para. 19) "The Appellant is correct that a request for investigative action under [Internal] Rule 55(10) to interview an individual is not required to include the individual's current contact details […]. The Co-Investigating Judges' [stated] that: 'Mere reference to a name and alleged employment during the time period under investigation is a narrow basis upon which an assessment can be made as to whether to interview an individual.' The Pre-Trial Chamber agrees with this statement to the extent that mere reference to an individual's name and general position in or under the Ministry during DK does not amount to a *prima facie* reason to believe that the individual may have exculpatory evidence or information that is relevant to ascertaining the truth." (para. 34) "The Co-Investigating Judges are familiar with and often remind parties of the feature of the ECCC context whereby the parties cannot interview the persons they propose to be called as witnesses. […] It is apparent from the context that the Co-Investigating Judges used the phrase 'expected evidence' to mean that, based on the information in the possession of the Appellant, the Appellant should have identified the areas of the Introductory or Supplementary Submissions that she has reasons to believe the [REDACTED] are in a position to testify about and the basis of such belief." (para. 39) "[…] [T]he Co-Investigating Judges did not err by relying, in part, on the fact that the Appellant failed to provide the 'expected evidence' of the individuals." (para. 40) "[…] The Pre-Trial Chamber considers it to be within the discretion of the Co-Investigating Judges to reject the request to interview the individual given that the Appellant did not provide any other information about him or her that might demonstrate a *prima facie* reason to accept the request." (para. 43)

6.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphân's Real Activity'*	"The Pre-Trial Chamber recalls that a Request under Internal Rule 55(10): '[S]hall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary […].'" (para. 21) "The effect of these two cumulative conditions of Internal Rule 55(10) is that it would be a proper exercise of the Co-Investigating Judges' discretion to reject a request that satisfies only one of those conditions." (para. 22) "[T]he Request is not 'specific enough to give clear indications to the Co-Investigating Judges as to what they should search for." (para. 37) "Requesting the Co-Investigating Judges to search for, identify and analyse elusive documents, lacking specific description of content and location, is inconsistent with the Appellant 'obligation to proceed in a manner that will not delay the proceedings.'" (para. 39)
7.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	"The CIJs are under no obligation to address general complaint if the complaint [is] not directly incorporated into a particular defence request." (para. 21) "The Pre-Trial Chamber determines that in order for this ground of appeal to be successful the Appellant must demonstrate a valid reason why disclosure of the book's methodology is necessary as well as valid reasons for the Pre-Trial Chamber to believe Mr Ysa may have been too influential and interfered with the administration of justice. These reasons must be persuasive enough for the Pre-Trial Chamber to rule against the exercise of discretion afforded to the CIJs under Internal Rule 55(10)." (para. 27)
8.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber recalls that the Internal Rules limit the purview of the Co-Investigating Judges to matters that are within the scope of the investigation. As such, the Pre-Trial Chamber expects that a request will not be granted even in part if it does not contain an explanation by the party making the request as to how the evidence to be placed on the Case File or the investigative act to be performed fit within the scope of the investigation." (para. 16) "The Pre-Trial Chamber first addressed the requirements of precision and relevance in the context of [Internal] Rule 55(10) requests in the [Shared Materials Drive ('SMD')] Decision [D164/4/1/3]. The SMD Decision [D164/4/1/3] concerned request made by the defence of Ieng Sary for an order for investigatory measures and placement of materials on the Case File. Due to the requirement inherent in the request that the Co-Investigating Judges undertake investigation and analysis of the materials on the shared materials drive and identify potential exculpatory evidence for eventual placement on the Case File, the Pre-Trial Chamber concluded that 'taking into account its purpose, the [underlying request] can be seen as request for investigative action.' The Pre-Trial Chamber found that: a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. This allows the Co-Investigating Judges to assess whether the Request is relevant to ascertaining the truth and to give reasons for their decision." (para. 45) "In order for a request made to the Co-Investigating Judges pursuant to [Internal] Rule 55(10) to be considered validly made the party making the request must satisfy the two cumulative conditions articulated in the SMD Decision [D164/4/1/3]. Namely, the request must (i) identify the action to be taken or order to be made, as applicable, with sufficient precision ('the precision requirement'), and (ii) demonstrate in detail the reasons why the requested investigative action or action resulting from an order made pursuant [Internal] Rule 55(10), as applicable, is *prima facie* 'relevant to ascertaining the truth' ('the *prima facie* requirement'). The failure of a requesting party to satisfy one of these requirements, although the other might have been met, constitutes a valid and sufficient reason for the Co-Investigating Judges to reject the request. In making any determination on whether to grant a request made pursuant to [Internal] Rule 55(10), it is the obligation initially on the Co-Investigating Judges, and then on the Pre-Trial Chamber in the case of an appeal, to balance, at each stage, the

		relevant factors taking into consideration the exercise of judicial discretion, the fundamental principles enunciated in Internal Rule 21 and the fair trial rights provided for in the [ICCPR].” (para. 47) “The Pre-Trial Chamber notes that the precision requirement obliges the requesting party to identify the investigative action or other action to be accomplished by an order, as applicable, with sufficient precision and, in the case of an investigative action, to be ‘specific enough to give clear indications to the Co-Investigating Judges as to what they should search for.’ The Pre-Trial Chamber has previously noted that the Co-Investigating Judges are under no obligation to go on ‘fishing expeditions’ as imprecise requests that require such interpretation by the Co-Investigating Judges may unduly delay proceedings or affect the charged persons’ right to fair trial. In the context of previous appeals concerning placement of evidence on the Case File, the Pre-Trial Chamber has found that a request that does not clearly state the number of documents or their exact location within collections of documents or archives, fails to meet the precision requirement. This lack of precision in a request is inconsistent with the obligation of the parties to proceed in manner that will not delay the proceedings. […] The Pre-Trial Chamber recognises that the degree of precision required will vary depending on the circumstances of the particular request. While determining whether the precision requirement has been met, the Co-Investigating Judges may consider factors including the breadth of the request and whether identifying information and the whereabouts of pertinent evidence and or persons have been specified in the request.” (para. 48) “In respect of the *prima facie* relevance requirement, the Pre-Trial Chamber notes that this threshold condition comprises two discrete sub-requirements. The first sub-requirement is that a request for investigative action must be relevant to the scope of the investigation pursuant to the limitations and parameters set by the Introductory and Supplementary Submissions. A request may satisfy this sub-requirement by seeking information that falls within the temporal and geographical scope of the facts and crimes alleged in the Introductory and any Supplementary Submissions. Alternatively, a request may satisfy this sub-requirement by seeking information that bears on the criminal responsibility and culpability of the Charged Person, jurisdictional elements of the alleged crimes or certain other contextual elements. The Pre-Trial Chamber notes that the manner in which the scope of the investigation is considered by the Co-Investigating Judges when making a determination on the *prima facie* relevance requirement may be distinct from the Co-Investigating Judges’ ultimate determination of whether the request falls within the scope of the investigation when considered on the merits.” (para. 49) “The second sub-requirement of *prima facie* relevance is that a request for investigative action must detail why the requested information is conducive to ascertaining the truth or detail why the requested action that is the subject of an order is conducive to ascertaining the truth. To meet this requirement, a request for investigative action must make out a *prima facie* nexus between the information sought through the requested action and a matter within the scope of the investigation, including, but not limited to the crimes alleged against the charged person. It is not enough for a requesting party to merely assert that the object of the investigative action is relevant or necessary or contains exculpatory material without any further explanation. The Pre-Trial Chamber has upheld orders of the Co-Investigating Judges that denied requests made pursuant to [Internal] Rule 55(10) because the requesting party did not explain why the persons who were the subjects of the request should be subject to investigative action. The requesting party must specify why the individuals in question are sought. The converse is also true: it is not sufficient for the party making the request to describe the information they expect to obtain if the request is granted. The party must set forth in detail the *prima facie* reasons why the specific information that is expected, which varies according to each request, directly relates to the charges against the charged person. If the requesting party fails to do this, the Co-Investigating Judges may reject the request as inadequate.” (para. 50) “This sub-requirement ensures that the Co-Investigating Judges understand the potential benefits from the material sought. It is contrary to the role of the Co-Investigating Judges to expect them to speculate as to the factual and legal bases for any requested action. In order to properly exercise their discretion in determining whether granting a request is conducive to ascertaining the truth, the Co-Investigating Judges must be provided, together with the request, with the nexus between the request and matter within the scope of the investigation.” (para. 51) “As with the precision requirement, the Pre-Trial Chamber notes that the degree of detail needed to satisfy the second prong of the *prima facie* relevance requirement depends on the particular circumstances of each case. Factors that may be considered include the accessibility of pertinent information to the requesting party and his or her capacity to analyse it. The Co-Investigating Judges may also consider whether the requesting party took the opportunity to conduct ‘preliminary inquiries

		as are strictly necessary for the effective exercise of their right to request investigative action. Whilst the parties must abide by the limitations inherent in the ECCC procedural framework, the Co-Investigating Judges may take into account the performance or non-performance by a requesting party of permissible preliminary inquiries where such inquiries could have contributed to the satisfaction of the second prong of the *prima facie* relevance requirement. As demonstrated by this review of principles from prior orders of the Co-Investigating Judges and decisions of the Pre-Trial Chamber, the Co-Investigating Judges are necessarily making a determination that requires them to consider the totality of the circumstances and arrive at a fact-specific finding as to whether the second prong of the *prima facie* relevance requirement has been met." (para. 52) "The underlying rationale for the precision and 'relevance requirements as applied to requests for investigative action has been articulated by this Chamber as ensuring that proceedings are not unduly delayed and that the Charged Person's right to be tried within a reasonable time enshrined in Article 14 of the ICCPR and in Internal Rule 21(4), is respected. The opportunity to make any request pursuant to [Internal] Rule 55(10) is contingent upon the performance by the requesting party of its general obligation 'to proceed in manner that will not delay the proceedings'. In furtherance of this objective, the Co-Investigating Judges and this Chamber have stated that in the context of requests for investigative action, the requests must be specific enough to give clear indications to the Co-Investigating Judges as to what they should search for and for what reasons this should be investigated.'" (para. 53) "Furthermore, it is important that these requirements be satisfied in the initial request, rather than in submissions on appeal, because although exceptions may exist given the particular circumstances of an appeal, the provision on appeal of more precise descriptions and additional details on the relevance of the request will not generally assist the requesting party. The Pre-Trial Chamber must consider that such information was not before the Co-Investigating Judges in the first instance when they examined the request to determine whether granting the request would be conducive to ascertaining the truth." (para. 55) "The exercise of discretion by the Co-Investigating Judges is present at all stages of consideration of the request. First, the Co-Investigating Judges enjoy discretion in the assessment of the threshold requirements for consideration. For example, this Chamber has held that '[t]he Co-Investigating Judges are entitled to decide whether the necessary specific and clear description of document's relevance to an investigation has been established […] [i]f the Co-Investigating Judges find that relevance has not been established, the Co-Investigating Judges may refuse to investigate.' Second the Pre-Trial Chamber has found that the satisfaction of the threshold requirements of precision and *prima facie* relevance is not a sufficient reason, alone, to conclude that the Co-Investigating Judges have committed an error or to compel them to grant a request for investigative action or for an order to place evidence on the Case File. The Co-Investigating Judges may decide not to grant request made pursuant to [Internal] Rule 55(10) because they might have already performed the action identified in the request and therefore it would be a proper exercise of their discretion to reject the request as duplicative although the threshold requirements have been met. A request might satisfy the first prong of the *prima facie* relevance requirement as a threshold matter. The Co-Investigating Judges possess the discretion to determine whether the request is conducive to ascertaining the truth, taking into account such things as the present stage of the investigation. In this respect, the Pre-Trial Chamber has found that the Co-Investigating Judges have discretion when 'considering what they view as being relevantly within the scope of their investigation to ascertain the truth' and therefore 'it is not unreasonable for the Co-Investigating Judges to have reduced and refined the matters in respect of which they are now investigating.'" (para. 57) "The Pre-Trial Chamber agrees with the Co-Investigating Judges that they do not have an obligation to establish the truth of 'manifestly irrelevant matters.' The Pre-Trial Chamber also agrees that in order for the investigators to establish the truth, they shall 'focus solely on the seised matters upon which the truth is required.'" (para. 60) "This Chamber has previously held that all requests for investigative action and for orders for placement of documents on the Case File must (i) be sufficiently precise so as to permit the Co-Investigating Judges to understand the precise action to be taken, and (ii) contain submissions by the requesting party as to the relevance and purpose of the action on the basis of the request only. Further, the Pre-Trial Chamber has affirmed that the Co-Investigating Judges shall not be required to infer the specific action to be taken nor the nexus between the requested action and a matter within the scope of the investigation. The Co-Investigating Judges have discretion in the determinations made

		in respect of precision and *prima facie* relevance and further have discretion to consider whether granting the request is conducive to ascertaining the truth." (para. 69)
9.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"[A] request for investigative action may satisfy the *prima facie* relevance requirements by seeking information that falls within the temporal and geographical scope of the alleged facts and crimes, or by seeking information that bears on the criminal responsibility, jurisdictional elements of the crimes or 'certain other contextual elements'. […] [T]he relevance to the scope of the investigation has yet to be determined by the limitations and parameters set by the Introductory and Supplementary Submissions and that only certain limited contextual elements falling outside the temporal scope of the alleged crimes have been found to satisfy the relevant requirement." (Opinion of Judges BEAUVALLET and BAIK, para. 34) "[T]he International Co-Investigating Judge correctly referred to Internal Rules 55(1), 55(5) and 67(1) as requiring him to investigate the allegations in the Introductory and Supplementary Submissions, in the view of issuing Closing Order, and to take investigative action conducive to ascertaining the truth." (Opinion of Judges BEAUVALLET and BAIK, para. 35) "In these circumstances, the Undersigned Judges find that the error identified does not invalidate the decision, since it did not lead the International Co-Investigating Judge to improperly 'exclude' of 'refuse' to investigate the evidence sought. The International Co-Investigating Judge rather exercised his discretion in refusing investigative action on the basis that he was in possession of adequate material to satisfy himself of a point in issue or that he would address this issue by continuing to collect witnesses' statements instead of an expertise." (Opinion of Judges BEAUVALLET and BAIK, para. 40) "[I]f the Co-Investigating Judge's discretion does not give him the right to apply a restrictive standard, it does give him discretion to assess the request in light of his familiarity with the investigation and the case file. In the present case, the International Co-Investigating Judge rightly relied on the factual circumstances of the case, illustrated by evidence already on the case file, to conclude that the evidence sought would not in and of itself fulfil the *prima facie* exculpatory requirement." (Opinion of Judges BEAUVALLET and BAIK, para. 43) "The Undersigned Judges concur with the ICTR Appeals Chamber's standard […] that 'whether [the] information "may suggest the innocence or mitigate the guilt of the accused" must depend on an evaluation of whether there is any possibility, in light of the submissions of the parties, that the information could be relevant to the defence of the accused. […] [T]his standard of review is consistent, and not lower than, presenting 'a *prima facie* showing of its probable exculpatory nature." (Opinion of Judges BEAUVALLET and BAIK, para. 48)
10.	**004/2 AO An** PTC 33 D276/1/1/3 16 March 2017 *Decision on Appeal against the Decision on AO An's Sixth Request for Investigative Action*	"The Pre-Trial Chamber has determined that two conditions have to be satisfied for requests to be granted by the Co-Investigative Judges: (i) the precision requirement and (ii) the relevance requirement. The Pre-Trial Chamber previously established that 'it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation'." (para. 17) "[T]he degree of precision required may vary depending on the circumstance of each particular request. When determining whether the precision requirement has been met, the Co-Investigating Judges may consider elements that include the breadth of the request and whether identifying information and the whereabouts of pertinent evidence and/or persons are specified." (para. 18) "The Pre-Trial Chamber previously found that the party requesting the investigative action must 'explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. This allows the Co-Investigating Judges to assess whether the Request is relevant to ascertaining the truth and to give reasons for their decision'. Concretely, The Pre-Trial Chamber found that 'a request for investigative action may satisfy the *prima facie* relevance requirement by seeking information that falls within the temporal and geographical scope of the alleged facts and crimes, or by seeking information that bears on the criminal responsibility, jurisdictional elements of the crimes or "certain other contextual elements"'." (para. 19) "[The precision and relevance] requirements are cumulative. The failure of a requesting party to meet any one of these cumulative obligations, although the others may have been met, constitutes a valid and sufficient reason for the Co-Investigative Judges to reject the request." (para. 20)

		"The Pre-Trial Chamber recalls that even if a request is sufficiently precise and relevant, it will not necessarily be granted. An error must have been fundamentally determinative of the exercise of the discretion leading to the appealed decision. Internal Rule 55(5) provides that '[i]n the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth.' In [C20/5/18], the Pre-Trial Chamber acknowledged that the Co-Investigating Judges 'are independent in the way they conduct their investigation'. The Pre-Trial Chamber also found in the absence of any precise criteria in the Internal Rules, the Co-Investigating Judges have the discretion to decide on the usefulness or the opportunity to execute any investigative action, even when it is requested by a party. In other words, the parties can suggest but not command the Co-Investigating Judges to undertake investigative actions. It is further noted that even if an investigative action is denied during the judicial investigation, it remains possible that this action be ordered at a later stage by the Trial Chamber." (para. 21) "In this light, the Pre-Trial Chamber clarified that 'if the Co-Investigating Judge's discretion does not give him the right to apply a restrictive standard, it does give him discretion to assess the request in light of his familiarity with the investigation and the case file'." (para. 22) "Internal Rule 55(10), which is of broader interpretation, assigns to the moving party the burden of establishing their request as useful for the conduct of the investigation. Due to the Defence's ability to request further investigative actions, Internal Rule 58(6) requires the Defence to give grounds for its application with statement of factual reasons for its justification." (para. 23) "The Undersigned Judges recall that it is the inherent power of the investigat[ing] judges in civil law systems to solely conduct the investigations, and have the discretion to determine if any of the parties have specific information detailing why the requested information is conducive to ascertaining the truth to request." (Opinion of Judges BEAUVALLET and BAIK, para. 45)
11.	**004/2 AO An** PTC 35 D320/1/1/4 16 March 2017 *Decision on Appeal against Decision on AO An's Twelfth Request for Investigative Action*	"The Pre-Trial Chamber has determined that two cumulative conditions have to be satisfied for requests to be granted by the Co-Investigative Judges: (i) the precision requirement and (ii) the *prima facie* relevance requirement. It established that 'it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation'." (para. 13)
12.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"The Pre-Trial Chamber has held that two cumulative conditions have to be satisfied for requests to be granted by the Co-Investigative Judges: (i) the precision requirement and (ii) the *prima facie* relevance requirement. It established that 'it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation'. The Pre-Trial Chamber recalls that a decision by the Co-Investigating Judges on a request for investigative action is discretionary as, in light of their overall duties and their familiarity with the case files, they are best able to assess whether the request is indeed conducive to ascertaining the truth." (para. 13) "The Undersigned Judges recall that proposed witnesses do not have to be specifically named. A request tending to expand interviews to unnamed and unlocated people may thus rightly meet the precision requirement." (Opinion of Judges BEAUVALLET and BAIK, para. 25) "It is not enough to refer to the documents as 'relevant' and 'necessary to the defence' and merely assert that they contain exculpatory evidence without any further explanation as to how they may suggest innocence or mitigate the personal responsibility." (Opinion of Judges BEAUVALLET and BAIK, para. 30)
13.	**004/2 AO An** PTC 36 D343/4 26 April 2017	"Whereas the rules applicable before the international tribunals stipulate that some 'witness statements' must be subject to disclosure, no such rules exist or apply within the ECCC's legal context. The Undersigned Judges recall that, at the ECCC, regardless whether the sought information concerns witness statements, the only criteria a party, requesting investigative action, has to satisfy are: (i) the precision and (ii) the *prima facie* relevance requirements. The Pre-Trial Chamber has established that 'it is implicit from the text of Internal Rule 55(10), which shall be read in conjunction with Internal

	Decision on Appeal against the Decision on AO An's Tenth Request for Investigative Action	Rule 58(6), that a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation'. Furthermore, where a request for investigative action is also based on the Co-Investigating Judges duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence, it is not sufficient for the Defence to only refer to the documents as 'relevant' and 'necessary to the defence' and merely assert that they contain exculpatory evidence without any further explanation as to how they may suggest innocence or mitigate the personal responsibility of a Charged Person." (Opinion of Judges BEAUVALLET and BAIK, para. 30)
14.	**004 YIM Tith** PTC 52 D365/3/1/5 13 February 2018 *Decision on the International Co-Prosecutor's Appeal of Decision on Request for Investigative Action regarding Sexual Violence at Prison No.8 and in Bakan District*	"Internal Rule 55(1) addresses the right of parties to request investigative actions […]." (para. 16) "The Pre-Trial Chamber has determined that two cumulative conditions have to be satisfied for requests to be granted by the Co-Investigating Judges: (i) the precision requirement and (ii) the *prima facie* relevance requirement. A party who files a request under Internal Rule 55(1) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation." (para. 17)

c. Consultation of the Parties

1.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[T]here is no provision in the ECCC Law, Agreement, or Internal Rules that explicitly imposes a duty on the Co-Investigating Judges to consult a requesting party prior to conducting investigative acts. Nevertheless 'The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall always be interpreted so as to always safeguard the interests of Suspects, Charged Person, Accused and Victims. […] In this respect: a) ECCC proceedings shall be fair […]'[.] The ECCC Agreement also requires the Co-Investigating Judges to exercise their jurisdiction in accordance with Articles 14-15 of the [ICCPR]." (para. 18) "[…] [T]he Pre-Trial Chamber declines to opine in this decision on whether and to what extent the Co-Investigating judges are under a duty to consult a requesting party under [Internal] Rule 55(10) or [Internal] Rule 58(6)." (para. 19)

d. Sufficiency of Evidence

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. […]. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 35) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 36)

		"In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 39)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. […]. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 36) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 37) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 40)
3.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"The Pre-Trial Chamber agrees […] that the relevant test is whether the document in question is, in and of itself, conducive to ascertaining the truth, rather than whether it is more conducive to ascertaining the truth than other elements already on the case file." (para. 17) "[…] To support his challenge, the Appellant relies on this Chamber's finding in the SMD Decision that the that the CIJ's reliance on the 'principle of sufficiency' to avoid the collection and assessment of exculpatory material amounts to a legal error. The Pre-Trial Chamber agrees with the Appellant's interpretation of the SMD Decision in so far as exculpatory material is concerned. Were the Request to contain *prima facie* reasons to believe that [REDACTED] possesses information of an exculpatory nature for the Charged Person, the CIJs would have had an obligation to grant the Request […]." (para. 26)
4.	**002 NUON Chea** PTC 46 D300/1/7 28 July 2010 *Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284*	"[T]he CIJs have not avoided their responsibility on the basis of the so-called 'principal of sufficiency' […]. As a starting point, the CIJs are not required to investigate every request or obtain every piece of evidence. […] [Internal Rule 55(5)] provides the CIJs with discretion in undertaking investigative action. The rejection of an investigative request on the basis of the 'principle of sufficiency' amounts to an abuse of discretion when it is asserted a means of avoiding investigative action the CIJs otherwise deem necessary to ascertaining the truth. In addition, this so called principle would also qualify as an abuse of discretion if the CIJs refused to investigate or obtain evidence that was *prima facie* exculpatory in nature." (para. 21) "[I]t is well within the CIJs discretion to refuse investigative action on the basis that they are in possession of adequate material to satisfy themselves of a point in issue." (para. 26)
5.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision*	"[T]he Co-Investigating Judges have a broad discretion in the subject matter and […], at an advanced stage of the investigation, it is not unreasonable for them 'to have reduced and refined the matters in respect of which they are now investigating' […]. It was equally reasonable for the International Co-Investigating Judge to take into account, after several years of investigations, the sufficiency of the material in his possession to assess the *prima facie* exculpatory value of the evidence sought and to satisfy himself of the point in issue, without making untimely factual determinations." (Opinion of Judges BEAUVALLET and BAIK, para. 57)

	on AO An's Fifth Request for Investigative Action	

e. Right to Non-Disclosure

1.	**002 NUON Chea** PTC 46 D300/1/7 28 July 2010 *Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284*	"This Chamber informed the CIJs that it is for the ICRC to exercise its right to non-disclosure and the right should not preclude a request for material being made." (para. 17)

2. Appeal against Decisions concerning other Requests under Internal Rule 55(10)

i. *General*

1.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"Internal Rule 55(10), in relevant part, envisages the following two types of requests which a charged person may put to the CIJs at any time during the investigation, *i.e.*, 'to make such orders' and 'to undertake such investigating actions' as they consider necessary for the conduct of the investigation. Contrary to the second type of requests, the first type does not imply seeking information that would contribute to the establishment of the truth. The distinction is important because, although Internal Rule 74(3)(b) clearly opens the possibility for the charged persons to appeal orders from the CIJs refusing requests for investigative action, it does not give the right for the charged person to appeal a rejection by the CIJs of a request to 'make such orders' envisaged by Internal Rule 55(10). […] [R]equests to place a document on the case file, such as requests to translate documents, does not amount to a request for investigative action. […] Internal Rule 74(3)(b) provides no avenue for the Appeal in so far as the autobiography sought to be placed on the Case File is concerned." (para. 9)
2.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"Furthermore, requests submitted to the Co-Investigating Judges are subject to Internal Rule 55(10), which provides that 'at any time during an investigation, the Co-Prosecutors, a Charged Person or a Civil Party may request the Co-Investigating Judges to make such orders or undertake such investigative action as they consider useful.'" (para. 70) "The Pre-Trial Chamber first notes that this text does not authorise the filing of requests insofar as the judicial investigation came to an end on 7 April 2021, with the issuance of the Considerations in Case 003." (para. 71)

ii. *Request to Place Evidence on Case File*

1.	**002 IENG Sary** PTC 29 D171/4/5 22 December 2009 *Decision on IENG Sary's Appeal against the Co-Investigating Judges'*	"[T]aking into account its purpose, the Request [concerning the placement of information on the Case File] is not a 'request for investigative action' within the ambit of Internal Rule 74(3)(b) […]. Requests for investigative action are to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 8)

	Constructive Denial of IENG Sary's Third Request for Investigative Action	
2.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[T]he Co-Investigating Judges have correctly stated 'the Co-Investigating Judges reiterate that they perform their own legal analysis of the requested documents to determine whether that they may be conducive to ascertaining the truth'." (para. 21)
3.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphân's Real Activity'*	"Internal Rule 74(3)(b) requires that the Appeal satisfy the following three cumulative conditions in order to be found admissible: 1) the Appellant must have submitted a request for investigative action to the Co-Investigating Judges; 2) such request must be allowed under the Internal Rules; 3) such request must have been refused by the Co-Investigating Judges." (para. 9) "The Appellant requested the Co-Investigating Judges to search for, identify, analyse documents located in the Shared Materials Drive […] that are not already on the case file and to place those documents on the case file that the Co-Investigating Judges consider are conducive to ascertaining the truth. [S]uch a request can be considered a request for investigative action within the meaning of Internal Rule 74(3)(b)." (para. 10)
4.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[A] request for an order to place evidence on the Case File is not a request for investigative action made pursuant to [Internal] Rule 55(10) but rather is a request for an order 'necessary for the conduct of the investigation' pursuant to Rule 55(10)." (para. 7) "The Pre-Trial Chamber recalls that the Internal Rules limit the purview of the Co-Investigating Judges to matters that are within the scope of the investigation. As such, the Pre-Trial Chamber expects that a request will not be granted even in part if it does not contain an explanation by the party making the request as to how the evidence to be placed on the Case File or the investigative act to be performed fit within the scope of the investigation. Without further information from the Co-Investigating Judges, the Appellants could not be certain why the Request had been granted in part but not in full." (para. 16) "The Pre-Trial Chamber recalls that decisions on requests for orders made pursuant to [Internal] Rule 55(10) are discretionary." (para. 36) "The standard used by the Co-Investigating Judges, termed 'relevant within the scope of the investigation to ascertain the truth,' is not an inappropriate standard for use by the Co-Investigating Judges in considering requests for placement of evidence on the Case File." (para. 40) "In [D313/2/2], the Pre-Trial Chamber found that it was not persuaded […] that the Co-Investigating Judges should have employed a different standard or criterion such as whether the document is conducive to ascertaining the truth and that to do otherwise constituted an error of law." (para. 42) "In [D313/2/2], the Pre-Trial Chamber found that the application by the Co-Investigating Judges of the standard of 'relevan[t] within the scope of the investigation' when seised with a request made pursuant to [Internal] Rule 55(10), was not an inappropriate limitation on the performance by the Co-Investigating Judges of their duty to ascertain the truth. Further, the Co-Investigating Judges have discretion to accept or reject a request even if the request relates to a matter that is relevant within the scope of the investigation. The Pre-Trial Chamber has explicitly recognised in [D313/2/2] that the

		decision of the Co-Investigating Judges is a discretionary decision. The Pre-Trial Chamber considers that its consideration and dismissal in [D313/2/2] of the Co-Prosecutors' arguments concerning the Co-Investigating Judges use of 'relevance within the scope of the investigation to ascertain the truth' as a criterion for requests to place evidence on the Case File, […] apply in the instant case." (para. 43) "The Pre-Trial Chamber first addressed the requirements of precision and relevance in the context of [Internal] Rule 55(10) requests in the [Shared Materials Drive ('SMD')] Decision [D164/4/13]. […] Due to the requirement inherent in the request that the Co-Investigating Judges undertake investigation and analysis of the materials on the shared materials drive and identify potential exculpatory evidence for eventual placement on the Case File, the Pre-Trial Chamber concluded that 'taking into account its purpose, the [underlying request] can be seen as request for investigative action.' The Pre-Trial Chamber found that: a party who files a request under Internal Rule 55(10) shall identify specifically the investigative action requested and explain the reasons why he or she considers the said action to be necessary for the conduct of the investigation. This allows the Co-Investigating Judges to assess whether the Request is relevant to ascertaining the truth and to give reasons for their decision." (para. 45) "The Pre-Trial Chamber has held that requests for orders for placement of materials on the Case File, if not coupled with an inherent request for an investigation to be performed such as through an analysis of the materials or the identification of exculpatory evidence, are not properly characterised as requests for investigative action, but rather as requests for orders pursuant to [Internal] Rule 55(10). The requirements for precision and relevance […] apply to requests made pursuant to [Internal] Rule 55(10) which have as their purpose the establishment of the truth, including those made for orders necessary for the conduct of the investigation. Not every request for an order made pursuant to [Internal] Rule 55(10) is a request for an order for placement of evidence on the Case File. Requests for orders not related to placement of evidence on the Case File may concern matters that are necessary for the conduct of the investigation but that are not related to the establishment of the truth. […] The express extension in this decision of the requirements of precision and relevance to orders made pursuant to [Internal] Rule 55(10) is limited to orders that have as their purpose the realization of an act or action that is taken for the purpose of establishing the truth. For all other requests for orders brought pursuant to [Internal] Rule 55(10) the Pre-Trial Chamber considers that the discretion of the Co-Investigating Judges to assess the sufficiency of and merits of each request on a case by case basis is undisturbed." (para. 46) "The Pre-Trial Chamber finds that the same considerations are pertinent in the context of a request for an order to be made pursuant to [Internal] Rule 55(10). The Pre-Trial Chamber is cognisant that in the same way that requests for investigative action must be precise and relevant to avoid undue delay, a request for an order for placement of evidence on the Case File that is not sufficiently precise or for which the underlying evidence is irrelevant may also risk causing undue delay in the proceedings or may cause infringement of the fair trial rights of the charged persons." (para. 54) "The standard that was approved [for the admission of evidence to the Case File] is simply 'relevance within the scope of the investigation to ascertain the truth.' […] If evidence that is relevant within the scope of the investigation is the subject of a request before the Co-Investigating Judges, the Co-Investigating Judges may not at the stage of meeting the threshold for consideration of placement on the Case File, adopt an unduly restrictive standard that functions to exclude such material. If, instead, the Co-Investigating Judges determine that, in the exercise of their discretion, they will not consider such evidence for placement though the request describing the same meets the threshold requirements, including through the application of the proper standard, the Co-Investigating Judges must provide the Co-Prosecutors with the reasoning for excluding each such press article." (para. 61) "In [D313/2/2] the Pre-Trial Chamber emphasised that the decisions made by the Co-Investigating Judges in respect of requests made pursuant to [Internal] Rule 55(10) are discretionary. This discretion does not give the Co-Investigating Judges the right to unduly narrow or restrict the possibility of admission at the threshold stage through the use of an unduly restrictive standard. Nor does it allow the Co-Investigating Judges to reject a request that it finds meets the threshold requirements for admission and then fail to provide reasons why each aspect of the Request, in this case, each document, was rejected. It does, however, give the Co-Investigating Judges discretion to assess the request in light of their familiarity with the investigation and the Case File." (para. 62) "This Chamber has previously held that all requests for investigative action and for orders for placement of documents on the Case File must (i) be sufficiently precise so as to permit the Co-Investigating Judges to understand the precise action to be taken, and (ii) contain submissions by

		the requesting party as to the relevance and purpose of the action on the basis of the request only. Further, the Pre-Trial Chamber has affirmed that the Co-Investigating Judges shall not be required to infer the specific action to be taken nor the nexus between the requested action and a matter within the scope of the investigation. The Co-Investigating Judges have discretion in the determinations made in respect of precision and *prima facie* relevance and further have discretion to consider whether granting the request is conducive to ascertaining the truth." (para. 69)
5.	**004 YIM Tith** PTC 47 D347/2/1/4 25 October 2017 *Decision on YIM Tith's Appeal of the Decision on Request to Place Materials on Case File 004*	"The Pre-Trial Chamber observes that the Appeal [requesting to overturn the decision to place materials on the Case File] does not fall within its subject-matter jurisdiction under Internal Rule 74." (para. 8)

3. Expertise under Internal Rules 31 and 32

For jurisprudence concerning ***Fitness to Stand Trial***, see II.B.3. Fitness to Stand Trial

i. *Admissibility*

a. Appointment of Additional Expert and Re-Examination

1.	**002 IENG Sary** PTC 28 D140/4/5 14 December 2009 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert*	"Internal Rule 31(10) provides for two situations where additional experts can be appointed. The first situation is to conduct an examination which has not previously been conducted. The second situation refers to the re-examination of a matter already the subject of an expert report." (para. 11) "[…] The Pre-Trial Chamber finds that the request made by the Co-Lawyers was therefore not within the ambit of the first situation referred to in Internal Rule 31(10), as the experts had already been appointed and the request was not related to what was then the 'conduct of a new examination'." (para. 12) "As for the second situation under Internal Rule 31 (10) in respect of an appointment of an additional expert 'to re-examine a matter already subject to an expert report' the Pre-Trial Chamber finds that as the request and the appeal based upon the rejection of such request predate the expert report there is no legal basis for the request." (para. 13) "Considering Internal Rule 74(3)(e), the jurisdiction of the Pre-Trial Chamber to determine appeals is limited to the refusal of 'requests for additional expert investigation allowed under these Internal Rules'. The Pre-Trial Chamber finds that the appeal is not admissible as the request before the Co-Investigati[ng] Judges was not validly made under Internal Rule 31(10) and was thus made without legal basis." (para. 14)
2.	**002 IENG Sary** PTC 55 D140/9/5 28 June 2010 **[PUBLIC REDACTED]** *Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying His Request for Appointment of an Additional [REDACTED]*	"The Pre-Trial Chamber observes that the Second Appeal is submitted 'pursuant to Rules 31(10) and 74(3)(e)' and refers to a request for the 'appointment of an additional [REDACTED] expert to re-examine the subject matter' of an existing expert report. The Pre-Trial Chamber has found [in D140/4/5] that the 'Internal Rules permit the defence to seek the appointment of an expert to re-examine a matter now the subject of an expert report.'" (para. 14)

	Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam	
3.	**002 NUON Chea** PTC 66 D356/2/9 1 July 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Appeal against the Co-Investigating Judges' Order Rejecting Request for a Second Expert Opinion*	"[T]he 'Internal Rules permit the defence to seek the appointment of an expert to re-examine a matter now the subject of an expert report.'" (para. 15)

b. Appointment of Psychiatric Expert

1.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[C]harged persons are in principle entitled to have their capacity to exercise their procedural rights effectively during the investigation and pre-trial phase evaluated by an expert if their request is properly justified." (para. 27)

c. Timing of the Request

1.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"[C]harged persons are in principle entitled to have their capacity to exercise their procedural rights effectively during the investigation and pre-trial phase evaluated by an expert if their request is properly justified. In this respect, the Pre-Trial Chamber finds that the Request is not premature […]." (para. 35)
2.	**002 IENG Sary** PTC 28 D140/4/5 14 December 2009 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert*	"Internal Rules appear to be silent as to whether a request for an additional expert pursuant to rule 31(10) is to be filed before or after the filing of an original expert report, particularly where the rules speak of appointing 'additional experts to conduct new examinations'. However, the use of the term 'new' in this sentence leads one to understand that the necessity for additional expertise would usually arise after an examination has already been undertaken." (para. 15) "[A]ccording to Cambodian law, it is not usual to appoint additional or contra-expert before the filing of the report of an expert." (para. 16) "[T]he provisions in the Internal Rules are in accordance with those established at the international level." (para. 18) "The Pre-Trial Chamber considers that the provisions in the Internal Rules still permit the defence to seek the appointment of an expert to re-examine a matter, now the subject of an expert report. Further it is noted that the report can be challenged before the Trial Chamber. In addition the Trial Chamber

		may, where it considers that a new investigation is necessary, at any time order additional investigations. The Pre-Trial Chamber therefore finds that no fundamental rights of the defence are harmed by declaring the appeal inadmissible at this stage of the proceedings." (para. 22)
3.	**002 NUON Chea** PTC 66 D356/2/9 1 July 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Appeal against the Co-Investigating Judges' Order Rejecting Request for a Second Expert Opinion*	"[…] Were the Co-Lawyers unhappy with the way their Sixth Request was interpreted or determined by the Co-Investigating Judges […], the Co-Lawyers had the option, at that time, to further and clearly explain to the Co-Investigating Judges the real purpose of their Sixth Request or to specifically ask the Co-Investigating Judges to appoint additional [REDACTED] experts to conduct new [REDACTED] investigations pursuant to Internal Rule 31(10). The Co-Lawyers choose not to take advantage of such opportunity at that time and cannot almost one year later, challenge by way of a new request the [REDACTED] experts' report on grounds of alleged 'flaws in methodology' and of lack of impartiality of the experts. They have not […] demonstrated why they could not raise their concern […] following the issuance of that order." (para. 23) "[…] [T]he Co-Investigating Judges exercised their discretion correctly in finding that the new defence request to appoint an expert […] has been filed too late in the course of the investigative proceedings." (para. 24) "[W]ere the Co-Lawyers concerned about the impartiality of the experts […], the right time to address the issue was when the Co-Investigating Judges issued the Order appointing them. Secondly, the issue of impartiality of experts is rather related to the weigh that may be given to the expert report, […] the judges are not bound by the expert report, and […] the complaint […] is immature, because the Co-Investigating Judges have not yet issued a decision or order which shows what weigh they may give to the report. In addition, […] the experts may still be called to give evidence and be cross-examined during trial." (para. 27)

ii. *Standard of Review and Merits*

a. General

1.	**002 IENG Sary** PTC 55 D140/9/5 28 June 2010 **[PUBLIC REDACTED]** *Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying His Request for Appointment of an Additional [REDACTED] Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam*	"The Pre-Trial Chamber observes that the Second Appeal is submitted 'pursuant to [Internal] Rules 31(10) and 74(3)(e)' and refers to a request for the 'appointment of an additional [REDACTED] expert to re-examine the subject matter' of an existing expert report. The Pre-Trial Chamber has found that the 'Internal Rules permit the defence to seek the appointment of an expert to re-examine a matter now the subject of an expert report.'" (para. 14) "The Internal Rules are silent in relation to the standard of review for appeals […] on requests submitted by the parties under Internal Rules 55(10) and 31(10). Requests submitted by the parties under Internal Rule 31(10) like those submitted under Internal Rule 55(10) aim at asking the Co-Investigating Judges to order or take action(s) which they consider necessary for the conduct of the investigation. In [D164/4/13], the Pre-Trial Chamber, seeking guidance in the jurisprudence of international tribunals, found that the review of such orders is limited to the extent of determining whether the Co-Investigating Judges properly exercised their discretion, by applying the test set out […] in the case of *Milosevic v. Prosecutor* [before the Appeals Chamber of the ICTY]." (para. 16) "Further guidance from the jurisprudence of international tribunals demonstrates that the same test is applied when reviewing appeals related to orders on requests similar to requests as those submitted under Internal Rule 31(10)." (para. 17)
2.	**002 NUON Chea** PTC 66 D356/2/9 1 July 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea's Appeal against the Co-Investigating Judges' Order Rejecting*	"The Internal Rules are silent in relation to the standard of review for appeals against Co-Investigating Judges' Orders on requests submitted by the parties under Internal Rules 55(10) and 31(10). Requests submitted by the parties under Internal Rule 31(10) like those submitted under Internal Rule 55(10) aim at asking the Co-Investigating Judges to order or take action(s) which they consider necessary for the conduct of the investigation. In [D164/4/13], the Pre-Trial Chamber […] found that the review of such orders is limited to the extent of determining whether the Co-Investigating Judges properly exercised their discretion, by applying the test set out in […] *Milošević v. Prosecutor* [before the Appeals Chamber of the ICTY]." (para. 17) "[T]he same test is applied when reviewing appeals related to orders on requests similar to requests as those submitted under Internal Rule 31(10)." (para. 18)

	Request for a Second Expert Opinion	

b. Psychiatric Expert

1.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"The Pre-Trial Chamber notes that neither the Internal Rules nor Cambodian law specifies the prerequisites for a successful application for an order of examination by an expert. Therefore, the Pre-Trial Chamber will, again, seek guidance in the procedural rules established at the international level." (para. 37) "The Pre-Trial Chamber will therefore review the Appeal by determining whether there is an adequate reason to question the Charged Person's capacity to participate, with the assistance of his Co-Lawyers, in the proceedings and sufficiently exercise his rights during the investigation." (para. 41)
2.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[T]he Pre-Trial Chamber will review the Appeal by determining whether there is an adequate reason to question the Charged Person's capacity to participate, with the assistance of his Co-Lawyers, in the proceedings and sufficiently exercise his rights during the investigation." (para. 35) "[T]he Charged Person's subjective complaints about his mental capacities do not detract from this conclusion or in themselves justify the appointment of an additional expert." (para. 42)

c. Timing of the Decision

1.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"Pursuant to Internal Rule 31(10), 'request[s] [to appoint an expert] shall be ruled upon by the Co-Investigating Judges or the Chambers as soon as possible and in any event at the end of the investigation' (emphasis added). Contrary to what seems to be the Co-Investigating Judges' position, the two conditions are cumulative and do not allow the Co-Investigating Judges to choose either to give ruling as soon as possible or to give a ruling before the end of the investigation." (para. 21) "The Pre-Trial Chamber considers that by its nature, the Co-Lawyers' Request requires timely attention. The Pre-Trial Chamber notes by analogy that Article 170 of the Cambodian Code of Criminal Procedure allows charged persons to seize the Investigative Chamber directly when an investigating judge fails to issue an order responding to request to appoint an expert within thirty days." (para. 22) "The Pre-Trial Chamber considers that with the passage of time, the failure of the Co-Investigating Judges to decide on the Request makes it impossible for the Charged Person to obtain the benefit which he sought." (para. 23)

iii. *Independence and Impartiality of Experts*

For jurisprudence concerning the ***Impartiality and Independence***, see II.B.1.xii. Right to an Independent and Imaprtial Tribunal, III.C. Disqualification Proceedings, III.D. Misconduct and Interference with the Administration of Justice

1.	**002 IENG Sary** PTC 55 D140/9/5 28 June 2010 **[PUBLIC REDACTED]** *Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying His*	"[T]he examples used by the Co-Lawyers […] represent observations of a general nature rather than concrete evidence specifically related to the case in question. The Appellant does not satisfy the Pre-Trial Chamber that the Co-Investigating Judges abused their discretion in determining in their First Order that there is no evidence which could raise reasonable doubts as to the impartiality or competence of the expert." (para. 20) "[T]he *Dordević* trial [before the Appeals Chamber of the ICTY] demonstrates that the threshold for specificity of evidence that must be used to confirm partiality of experts in international practice is set higher than asserted by the Co-Lawyers […]. Given the high threshold and the failure to provide

	Request for Appointment of an Additional [REDACTED] Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam	evidence to demonstrate actual or perceived bias, […] the Co-Investigating Judges were correct […].” (para. 22)
2.	**002 NUON Chea** PTC 66 D356/2/9 1 July 2010 **[PUBLIC REDACTED]** *Decision on NUON Chea’s Appeal against the Co-Investigating Judges’ Order Rejecting Request for a Second Expert Opinion*	“[W]ere the Co-Lawyers concerned about the impartiality of the experts […], the right time to address the issue was when the Co-Investigating Judges issued the Order appointing them. Secondly, the issue of impartiality of experts is rather related to the weigh that may be given to the expert report, […] the judges are not bound by the expert report, and […] the complaint […] is immature, because the Co-Investigating Judges have not yet issued a decision or order which shows what weigh they may give to the report. In addition, […] the experts may still be called to give evidence and be cross-examined during trial.” (para. 27) “[A]ttempts made to allege [p]artiality of an expert on grounds of prior associations that are not directly related to the particular case before the Co-Investigating Judges represent an overgeneralization and unsubstantiated claim and do not reach the threshold of sufficient specificity for such a claim to be confirmed.” (para. 28)

D. Conclusion of the Judicial Investigation

1. The Co-Investigating Judges' Duty to Seek and Consider Exculpatory Evidence

1.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. In this respect, the Internal Rules indicate that the Co-Investigating Judges first have to conclude their investigation, which means that they have accomplished all the acts they deem necessary to ascertaining the truth in relation to the facts set out in the Introductory and Supplementary Submissions, before assessing whether the charges are sufficient to send the Charged Person to trial or whether they shall dismiss the case. This latter step is done only after the Co-Investigating Judges have notified the parties that their judicial investigation is closed, the parties had the opportunity to present additional requests for investigative actions and the Co-Prosecutors have filed their final submissions requesting the Co-Investigating Judges either to indict the Charged Person or to dismiss the case. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 35) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 36)
2.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. In this respect, the Internal Rules indicate that the Co-Investigating Judges first have to conclude their investigation, which means that they have accomplished all the acts they deem necessary to ascertaining the truth in relation to the facts set out in the Introductory and Supplementary Submissions, before assessing whether the charges are sufficient to send the Charged Person to trial or whether they shall dismiss the case. This latter step is done only after the Co-Investigating Judges have notified the parties that their judicial investigation is closed, the parties had the opportunity to present additional requests for investigative actions and the Co-Prosecutors have filed their final submissions requesting the Co-Investigating Judges either to indict the Charged Person or to dismiss the case. Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 36) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 37)

2. Conclusion of Judicial Investigation under Internal Rule 66

i. *Notice of Conclusion under Internal Rule 66(1)*

a. General

1.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"The Pre-Trial Chamber interprets Internal Rules 66(1), 67(1) and 76(2) in light of Internal Rule 21(1) and considers that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it." (para. 11)
2.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"The Pre-Trial Chamber further recently held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 8)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[U]nder a combined reading of Internal Rules 66(1), 67(1) and 76(2), and in light of Internal Rule 21(1), '"the judicial investigation" is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it.' This interpretation is in line with the Cambodian Code of Criminal Procedure and the rights of the parties under Internal Rule 66 concerning any procedural defects in the investigation or requests for additional investigative acts prior to the termination of investigation. (Opinion of Judges BEAUVALLET and BAIK, para. 231) "[T]he 2011 Rule 66(1) Notification could not be considered a valid legal or procedural impediment to the resumption of Case 003 investigation since such a notification could not conclude a judicial investigation; only a closing order can." (Opinion of Judges BEAUVALLET and BAIK, para. 232)

b. Further Requests by the Parties

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on*	"[…] [T]he sole reason the Co-Prosecutors' First Request did not include the words 'Supplementary Submission' in the title related to a [REDACTED] view that the CIJs were already seized of the facts regarding the Khmer Krom set forth in that filing. In light of the above-mentioned [REDACTED] […], there were more avenues open to the Co-Prosecutors that the one they chose: (i) filing a request for investigative action of the facts relating to the Khmer Krom based on Internal Rule 55(10) and making explicit that in the event the CIJs considered that the facts in question fell outside the scope of the Initial Submission, the filing was to be considered a formal 'Supplementary Submission'; (ii) filing a 'non ambiguous' Supplementary Submission to be on the safe side; (iii) [REDACTED] or (iv) filing a request for investigating action and, in the event, as in the instant case, of its rejection by the CIJs, filing a Supplementary Submission." (para. 13) "[…] [N]otification to the parties by the CIJs that they consider that the investigation has been concluded opens a delay for parties to request further investigative action. The Internal Rules do not expressly foresee the possibility for the Co-Prosecutors to file a Supplementary Submission at that stage, but they do not exclude it either." (para. 14)

	Admissibility of Civil Party Applications	
2.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"[T]here is no such limitation [forbidding requests after the closure of the investigation] placed upon any party […] under [Internal] Rule 55(10) […]. [Internal] Rule 66(1) expressly provides '[…] 15 […] days to request further investigative action'." (para. 13) "The Co-Lawyers further raised […] the adverse effect upon the rights of the Charged Persons […] to request further investigative action consequent upon the admission of the […] documents […]. It is not for the Pre-Trial Chamber to dispose of this […] because the decision to grant or not an extension of time to file requests for investigative action belongs in the first instance to the Co-Investigating Judges." (para. 14) "[A]ll the parties […] have had access to public source documents at all times […]. Complaint cannot now be made that the opportunity which was open […] for at least two years and was not used, no longer exists." (para. 15)
3.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Pursuant to the Internal Rules, the notification of a Notice of Conclusion of the investigation triggers a 15 day time limit for victims to submit Civil Party Applications […]. [T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis.* In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia,* a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available." (Opinion of Judges DOWNING and LAHUIS, para. 8)
4.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Pre-Trial Chamber notes that the International Co-Investigating Judge recalled that the legal characterisation of the facts will be determined upon conclusion of the judicial investigation. Thereupon, it will rest with the parties to seek, if need be, a remedy in respect of the Co-Investigating Judges' Decision, including in respect of the legal characterisations, should they be adopted." (para. 47)
5.	**004/1 IM Chaem** PTC 32 D296/4 15 September 2016 *Decision on IM Chaem's Request for Confirmation on the Scope of the AO An's Annulment Application regarding all Unrecorded Interviews*	"The Pre-Trial Chamber further takes into consideration that the investigation concerning the Applicant has been concluded since 18 December 2015 and that the AO An's Application has been filed since 4 February 2016. Internal Rule 66(1) allows 15 days to request any investigative action from the conclusion of the investigation, which was extended to a further 15 days from the issuance of the Severance Order on 5 February 2016. The Pre-Trial Chamber thus considers the Request to be untimely." (para. 8)

6.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Pre-Trial Chamber observes that, according to [Internal Rule 66(1)], the deadline of fifteen days to request further investigative action applies after a 'notification' of conclusion of the investigation, no matter whether the notification is the 'first', or a 'second' one issued after completion of supplementary investigations." (para. 25) "The Pre-Trial Chamber considers that, pursuant to Internal Rule 66(1), fifteen days from the date of notification of the Second Notice of Conclusion must have been granted to the parties to review the *newly collected* evidence." (para. 27)
7.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"The Pre-Trial Chamber further recently held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 8)
8.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[U]nder Internal Rule 23*bis*(2), '[a] Victim who wishes to be joined as a Civil Party shall submit such application in writing no later than fifteen (15) days after the Co-Investigating Judges notify the parties of the conclusion of the judicial investigation pursuant to [Internal Rule] 66(1).' The Co-Investigating Judges notified the closure of the investigation against AO An twice, on 16 December 2016 and 29 March 2017, respectively. The International Judges recall the Chamber's previous finding that the Co-Investigating Judges committed a procedural error in failing to grant the parties fifteen days from the date of the Second Notice of Conclusion to request further investigative actions. The International Judges consider that this holding applies equally to Civil Parties and, consequently, victims had the right to apply as Civil Parties fifteen days from the Second Notice of Conclusion." (Opinion of Judges BAIK and BEAUVALLET, para. 110)
9.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[U]nder a combined reading of Internal Rules 66(1), 67(1) and 76(2), and in light of Internal Rule 21(1), '"the judicial investigation" is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it.' This interpretation is in line with the Cambodian Code of Criminal Procedure and the rights of the parties under Internal Rule 66 concerning any procedural defects in the investigation or requests for additional investigative acts prior to the termination of investigation. (Opinion of Judges BEAUVALLET and BAIK, para. 231) "[T]he 2011 Rule 66(1) Notification could not be considered a valid legal or procedural impediment to the resumption of Case 003 investigation since such a notification could not conclude a judicial investigation; only a closing order can." (Opinion of Judges BEAUVALLET and BAIK, para. 232)
10.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[T]he Co-Investigating Judges committed a procedural error in failing to grant the parties 15 days from the date of the Second Notice of Conclusion to request further investigative actions. The International Judges consider that this holding applies equally to Civil Parties and, consequently, victims had the right to apply as Civil Parties 15 days from the Second Notice of Conclusion." (Opinion of Judges BAIK and BEAUVALLET, para. 114)

ii. *Forwarding Order under Internal Rule 66(4)*

1.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO An'S Application to Annul the Entire Investigation*	"The Pre-Trial Chamber further agrees with the ICIJ, that it was not necessary to wait until the determination of this Appeal to forward the case to the Co-Prosecutors. The issue raised in the Appeal, regarding the interpretation on the binding nature of opinions by Pre-Trial Chamber Judges, is not determinative to the Impugned Decision and to the final submissions by parties. Moreover, as the ICP also states, the Pre-Trial Chamber notes that Internal Rules 66(1)-(4) require that only appeals against decisions rejecting requests for investigative action be heard before the issuance of a Rule 66(4) Forwarding Order. Annulment requests, on the other hand, can be disposed of 'before the Closing Order'. Therefore, the procedural fairness was not put at stake when the ICIJ issued the Forwarding Order." (para. 20)
2.	**004/2 AO An** PTC 44 D351/2/3 6 September 2017 *Decision on AO An's Appeal against Internal Rule 66(4) Forwarding Order*	"The Pre-Trial Chamber observes that the Appeal against the Forwarding Order does not fall within its subject-matter jurisdiction under Internal Rule 74. Furthermore, while Internal Rule 21 may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial, it does not provide an automatic avenue for appeals raising arguments based on fair trial rights. The appellant must demonstrate that, in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent *irremediable damage* to the fairness of the proceedings or the appellant's fair trial rights." (para. 8) "[T]he Appellant has not demonstrated that his asserted rights under Internal Rule 21 would be at risk of being irremediably impaired if the Forwarding Order is not reversed. The consequence of a potential annulment of the entire investigation would precisely be the cancellation and removal from the case file of the alleged illegal evidence, thus securing the basic rights of the Appellant. In these circumstances, the Pre-Trial Chamber finds that the right of the Appellant to procedural fairness at the present stage of the investigation, with regards to the content of final submissions and definition of his case strategy is not at risk of being irremediably infringed, especially in light of the Forwarding Order which expressly provided that he 'will [...] be given adequate time to respond' to the Co-Prosecutors' final submissions." (para. 9)

3. Final Submission of the Co-Prosecutors (Internal Rule 66)

i. *Scope*

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"[P]ursuant to Internal Rule 55(3), new facts alleged in the Final Submission are not part of the judicial investigation." (para. 36)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"In other words, the Co-Investigating Judges may not charge a suspect with crimes falling outside the scope of the judicial investigation, and they cannot be requested to expand the charges at the time of a closing order through a Co-Prosecutor's final submission." (Opinion of Judges BAIK and BEAUVALLET, para. 128)

ii. *Required Level of Particularity*

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[F]or the Charged Person to exercise her right to participate in the investigation, the notice requirement must apply to the Introductory Submission to some degree. However, the level of particularity demanded in an indictment cannot be directly imposed upon the Introductory Submission, because the OCP makes its Introductory Submission without the benefit of full investigation. Thus, while it is [...] preferable for an Introductory Submission alleging the accused's responsibility as a participant in a JCE to also refer to the particular form(s) (basic or systemic) of JCE envisaged, the OCP are not precluded from doing so in the Final Submission. At the latest, the Co-Investigating Judges may refer to the particular form(s) of participation in their Closing Order." (para. 95)

iii. *Translations*

1.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"[T]here is no absolute right to receive French translations of all documents. […] French translations must be provided for the following: the Closing Order, the evidentiary material in support thereof, the Introductory Submission and Final Submission, and all judicial decisions and orders." (para. 11) "[T]he right to French translations of all party submissions […] is limited to those submissions which pertain to requests and appeals directly concerning the defence team which has requested to receive documents in that language. It does not apply to all 'documents filed by the parties'." (para. 12) "[T]he temporary absence of translations can be resolved, on the one hand, by using the linguistic resources within each team […]. On the other hand, KHIEU Samphân's defence team can avail itself of the services of a translator […]. Finally, his team can request that untranslated documents which it identifies as essential for its work be translated on a priority basis." (para. 13) "[W]ith the exception of the Closing Order and the Final Submission, […] the temporary absence of translations […] would not, were it to be established, amount to a sufficiently serious or egregious violation […] as to warrant a stay of the proceedings." (para. 14) "[W]here specific translation issues are identified, they could be raised on a case-by-case basis in the course of the trial. Moreover, it is open to the Defence to request the validation of any translations it considers erroneous. [T]he mere possibility that there would be translation errors […] is not sufficiently serious as to amount to an egregious violation […] that would warrant a stay of the proceedings." (para. 16)

iv. *Response to the Final Submission*

1.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional*	"[Like] Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […] the Internal Rules do not specifically provide a right for a charged person to respond to the final submission of the Co-Prosecutors. The Co-Investigating Judges are nonetheless bound by [Internal] Rule 21(1)(a) and 21(1)(b), which provides that ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties and that persons who find themselves in similar situation and prosecuted for the same offences shall be treated according to the same rules." (para. 16) "At the time of the adoption of Article 246 […], Article 175 of the [French CPC], which serves as the model for Article 246, did not foresee the possibility for the defence of a charged person to submit observations in response to the Prosecution's Requisition […]. This reflected the traditional inquisitorial model which is a characteristic of a civil law system, such as that in place in the Kingdom of Cambodia. Article 175 of the French CPC has since been amended […] such that a charged person may submit observations in response to the Prosecution's Requisition. This amendment in order to allow for more balance between the parties during the investigative stage. This need for balance at the investigative stage has gained credence in systems with inquisitorial models because of the need to consider the

	Observations, and Request for Stay of the Proceedings	rights of the accused at every stage in penal proceedings. […] [T]he Cambodian CPC has not been so amended. The general principle of equality of arms is, however, an important safeguard in penal proceedings and […] the decision […] to accept the Response to the Co-Prosecutors' Final Submission […] was not erroneous." (para. 17) "The Pre-Trial Chamber recognizes that, should a charged person be indicted in the Closing Order, the trial will provide an opportunity for the charged person to challenge the characterisation of the charges, as described in the Closing Order. However, it is certainly understandable that a charged person may wish to have his or her submissions in response to those offered by the Co-Prosecutors in the Final Submission taken into consideration by the Co-Investigating Judges before they issue the Closing Order, which determines whether or not the charged person faces trial and on what charges. Furthermore, before this key step in the ECCC proceedings, the Co-Investigating Judges can only benefit from receiving submissions both of the OCP and of the Co-Lawyers. This is even more so because the Co-Investigating Judges are not bound by the Co-Prosecutors' Final Submission. The Pre-Trial Chamber observes that a judicial body is never bound by the submissions of one party. As such, the Pre-Trial Chamber does not think that the submissions made by the Co-Prosecutors to the effect that the defence should not be given the opportunity to respond because the Final Submissions are not binding on the Co-Investigating Judges are persuasive. Finally, the fact that the Defence may appeal certain aspects of the Closing Order cannot be substituted for the right to respond to the Final Submission. The Pre-Trial Chamber notes that the Co-Lawyers are limited in the matters that they may appeal from the Closing Order." (para. 18) "Having found that the Co-Investigating Judges did not err in accepting the filing of a response by the Co-Lawyers […] in Case 001, the Pre-Trial Chamber notes that, the Co-Investigating Judges principled objection to the filing of the Response to the Final Submission by the Co-Lawyers of Ieng Sary would, if left intact, result in unequal treatment before the law to the detriment of the Charged Person Ieng Sary." (para. 19) "[T]he Co-Lawyers explained […] that there are exceptional circumstances leading them to seek leave to file a longer response than as allowed by the Practice Direction. […] [T]hey are responding to a 931-page filing […] led them to ask for an extension […] in order to meaningfully respond to the Co-Prosecutors and abide by their due diligence obligations to the Charged Person. [T]he Pre-Trial Chamber agrees that the length of the Final Submission is a valid reason for the Co-Lawyers to cite in seeking leave to file a response in excess of fifteen pages." (para. 20) "As the Co-Prosecutors have the right to file a Final Submission in excess of fifteen pages, which is recognised in Internal Rule 66, to categorically deny a request for more than a fifteen page response to a submission that is not subject to page limits would be to ignore the fact that the Final Submission is unlike other filings before the ECCC." (para. 21)
2.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[L]ike Article 246 of the Code of Criminal Procedure of the Kingdom of Cambodia […], the Internal Rules do not specifically grant a charged person the right to respond to the Co-Prosecutors' final submission. In its Decision on the Appeal against the Refusal to Accept Ieng Sary's Response to the Final Submission, the Pre-Trial Chamber noted that the traditionally inquisitorial French civil law system, which served as a model for the Cambodian CPC, had since been amended […] in order to allow for more balance between the parties at the investigative stage. The Chamber also considered that, despite the absence of an express grant of the right for a charged person to respond to the Co-Prosecutors' final submission, to the extent that the Co-Investigating Judges are bound by […] Internal Rules 21(1)(a) and (b), their decision to accept Charged Person KAING Guek Eav's Response to the Co-Prosecutors Final Submission […] was not erroneous. It further considered that in instructing their Greffiers to reject leng Sary's Response to the Co-Prosecutors' Final Submission, the Co-Investigating Judges failed to respect the guarantee to the Charged Person of the right to equality of arms with the prosecution and the right to equality treatment before the law." (para. 19) "In contrast [to IENG Sary], prior to the issuance of the Indictment, the Co-Lawyers for the Appellant took no action to preserve their rights. […] [N]ow that the Indictment has been issued, it ill behoves the Appellant's Co-Lawyers to invoke the infringement of their right to respond to the Final Submission in requesting that the Pre-Trial Chamber adopt a broad interpretation of their right to appeal against it so as to ensure the fairness of the proceedings. Despite the Co-Lawyers' lack of diligence, if the Pre-Trial Chamber were satisfied that the Appellant's fair trial right might be jeopardised by the dismissal of the Appeal, it would accept to consider the Appeal admissible based on a broad interpretation of Internal Rule 21(1) and would proceed to consider it on the merits. That is not so." (para. 21)

		"[T]he Closing Order marks the conclusion of the judicial investigation. In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety. An adversarial debate is possible at various stages of the proceedings including in inquisitorial systems, such as the Cambodian CPC and the Internal Rules. The fact that the Indictment was issued without the Appellant responding to the Final Submission clearly means that the final part of the procedure was not entirely adversarial in his case, but does not mean that the Indictment was not preceded by any adversarial hearing […]. The various appeals by the parties have enabled the Chamber to ensure that all parties […] were heard on numerous issues of law and fact during the judicial investigation. Thus, the fact that the Appellant was not able to respond to the Final Submission does mean that the investigation was unfair. Finally, the procedure governing the upcoming trial phase is entirely adversarial." (para. 23)

4. Closing Order (Internal Rule 67)

For jurisprudence concerning the ***Charges***, see IV.B.4. Charging Matters

i. *General*

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Co-Investigating Judges are bound by the […] provisions of Internal Rule 67 when they issue a Closing Order […]." (para. 32) "The Closing Order is the decision by which the Co-Investigating Judges shall conclude their judicial investigation. Pursuant to Internal Rule 67(3) and (4), they shall decide on the acts they were requested to investigate." (para. 33) "Internal Rule 67 directs that when issuing a Closing Order, the Co-Investigating Judges shall decide on all, but only, the facts that were part of their investigation, either dismissing them for one of the reasons expressed in paragraph 3 of this Rule or sending the Charged Person to trial on the basis of these acts. This decision does not involve the exercise of any discretionary power; when circumstances as prescribed in Internal Rule 67(3) are present, the Charged Person should be indicted in relation to these acts. This position is further confirmed by Article 247 of the Code of Criminal Procedure of the Kingdom of Cambodia […]." (para. 37) "[T]he facts […] found during the investigation are decisive for the legal characterisation when issuing a Closing Order, irrespective of how they have initially been qualified by the Co-Prosecutors." (para. 39)
2.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[T]he Closing Order marks the conclusion of the judicial investigation. In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety." (para. 23)
3.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Co-Investigating Judges thus made an attempt to explain their methodology by exposing the principles underpinning their reasoning, aiming at supporting their subsequent factual findings." (para. 41) "Such considerations are, however, not envisaged by the ECCC Law, the Internal Rules or the Cambodian Code of Criminal Procedure and may be, in the Pre-Trial Chamber's view, unnecessary and superfluous. The sole duty of the Co-Investigating Judges, pursuant to Internal Rule 67, is to issue a dismissal order if, *inter alia*, there is not 'sufficient evidence […] of the charges.'" (para. 42)

4.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"The Pre-Trial Chamber interprets Internal Rules 66(1), 67(1) and 76(2) in light of Internal Rule 21(1) and considers that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it." (para. 11)
5.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"The Pre-Trial Chamber further recently held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 8)
6.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Pursuant to Internal Rule 67, the sole duty of the Co-Investigating Judges is to issue a closing order of indictment or dismissal, depending on the content of the evidence in the Case File." (para. 73)
7.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Moreover, at the closing order stage of the ECCC's proceedings, the sole duty of the Co-Investigating Judges, pursuant to Internal Rule 67, is to issue a closing order of indictment or dismissal, based on their assessment of the content of the evidence in the case file. In light of their obligation to take into consideration all the evidence in the case file, the Co-Investigating Judges may not arbitrarily disregard or depreciate entire categories of evidence before each individual piece of the evidence has been fully debated by the parties at the adversarial trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 155) "[U]nder a combined reading of Internal Rules 66(1), 67(1) and 76(2), and in light of Internal Rule 21(1), '"the judicial investigation" is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it.' This interpretation is in line with the Cambodian Code of Criminal Procedure and the rights of the parties under Internal Rule 66 concerning any procedural defects in the investigation or requests for additional investigative acts prior to the termination of investigation. (Opinion of Judges BEAUVALLET and BAIK, para. 231) "[T]he 2011 Rule 66(1) Notification could not be considered a valid legal or procedural impediment to the resumption of Case 003 investigation since such a notification could not conclude a judicial investigation; only a closing order can." (Opinion of Judges BEAUVALLET and BAIK, para. 232) "First, the International Judges recall that pursuant to Internal Rule 55(2), Article 125 of the Cambodian Code of Criminal Procedure and the Pre-Trial Chamber's consistent jurisprudence in this regard, when issuing a closing order, the Co-Investigating Judges shall decide whether to dismiss or indict for all, but only, the allegations that they are seised of in the Introductory and the Supplementary Submissions. The International Judges reaffirm that this decision does not entail the exercise of any discretionary power." (Opinion of Judges BEAUVALLET and BAIK, para. 246) "In particular, it is difficult to understand how a case with no valid closing order can be legally 'terminated'." (Opinion of Judges BEAUVALLET and BAIK, para. 277)

8.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that at the closing order stage of proceedings, the authoritative document is the Indictment and not any prior submissions from the Office of the Co-Prosecutors." (Opinion of Judges BAIK and BEAUVALLET, para. 64)

ii. *Validity*

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The International Judges […] address the validity of each Closing Order." (Opinion of Judges BAIK and BEAUVALLET, para. 317) "[T]he two Closing Orders […] are not identical in their conformity with the applicable law before the ECCC and […] only the Indictment is valid." (Opinion of Judges BAIK and BEAUVALLET, para. 318) "The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he *investigation shall proceed*' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 319) "[T]his principle of continuation of judicial investigation governs the issue at hand." (Opinion of Judges BAIK and BEAUVALLET, para. 320) "[T]he settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 […] [applies] to the procedure of *issuing* the closing order before the conclusion of the investigation." (Opinion of Judges BAIK and BEAUVALLET, para. 321) "In the case at hand, neither of the Co-Investigating Judges referred the disagreement to the Pre-Trial Chamber […]. Consequently, the investigation or prosecution shall proceed. […] where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' means that the indictment must be issued as proposed." (Opinion of Judges BAIK and BEAUVALLET, para. 322) "[I]n examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a closing order (dismissal)." (Opinion of Judges BAIK and BEAUVALLET, para. 323) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Closing Order (Indictment) […] is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Closing Order (Dismissal) has no legal basis." (Opinion of Judges BAIK and BEAUVALLET, para. 324) "Accordingly, […] the National Co-Investigating Judge's […] Closing Order (Dismissal) is *ultra vires* and […] void; the International Co-Investigating Judge's Closing Order (Indictment) stands." (Opinion of Judges BAIK and BEAUVALLET, para. 326)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Case 003 contains an incomplete hence invalid Dismissal Order ignoring seven years of evidence and criminal allegations of which the National Co-Investigating Judge was duly seised. This unfinished Order is invalid and void on this account alone. The International Judges consequently find that the Dismissal Order is null, that the Indictment stands and that the prosecution shall proceed." (Opinion of Judges BEAUVALLET and BAIK, para. 119) "[T]he National Co-Investigating Judge willingly committed a series of errors of law by ignoring the evidence placed onto the Case File after 29 April 2011 and a number of factual allegations of which he

		was seised. […] [T]hese violations of his obligations, which are fundamentally determinative of his assessment of the case, invalidate the Dismissal Order, which, in effect, constitutes an unfinished order and cannot be considered a valid closing order in the meaning of Internal Rule 67." (Opinion of Judges BEAUVALLET and BAIK, para. 249) "[T]he Dismissal Order, being an unfinished order, was marred with illegality, which rendered it null and void." (Opinion of Judges BEAUVALLET and BAIK, para. 250) "The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 255) "[T]his principle of continuation of judicial investigation governs the issue at hand. While the settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 may not be applied to the procedures *after* the issuance of a closing order, it does not preclude application to the procedure of *issuing* the closing order before the conclusion of the investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 256) "In this specific situation where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' − being the applicable default position in case of unresolved discord between the Co-Investigating Judges− means that the indictment must be issued as proposed." (Opinion of Judges BEAUVALLET and BAIK, para. 257) "Furthermore, in examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a dismissal order." (Opinion of Judges BEAUVALLET and BAIK, para. 258) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Indictment, despite his erroneous agreement on the issuance of a simultaneous Dismissal Order by his colleague, is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Dismissal Order has no legal basis." (Opinion of Judges BEAUVALLET and BAIK, para. 259) "The International Judges reaffirm that a closing order of the Office of the Co-Investigating Judges must be a single decision. They further underline that in the present circumstances, referral of disagreements between the Co-Investigating Judges before the Pre-Trial Chamber is mandatory and that they have no other means of settling their dispute when they fail to uphold their obligation to reach a common position concerning a closing order. The International Judges consider that the issuance of the conflicting Dismissal Order by the National Co-Investigating Judge without referral to the Pre-Trial Chamber is a brazen attempt to entirely circumvent this essential and mandatory requirement, thwarting the ECCC founding legal texts. In particular, Articles 5 and 7 of the ECCC Agreement explicitly provide instructions on the National Co-Investigating Judge's required conduct and the outcome of any disagreement between the Co-Investigating Judges. Therefore, the International Judges find that the issuance of the Dismissal Order, as an attempt to avoid the compulsory disagreement procedure, is legally flawed and shall accordingly be considered null and void." (Opinion of Judges BEAUVALLET and BAIK, para. 260) "Accordingly, the International Judges find that the two Closing Orders in question are not identical in their conformity with the applicable law before the ECCC. The International Judges recall that for reasons stated previously, the Dismissal Order is void and conclude that the National Co-Investigating Judge's issuance of the Dismissal Order is *ultra vires* and, therefore, void, as it constitutes an attempt to defeat the default position enshrined in the ECCC legal framework. On the other hand, the International Co-Investigating Judge's Indictment stands as it remains in conformity with the said position." (Opinion of Judges BEAUVALLET and BAIK, para. 262) "In particular, it is difficult to understand how a case with no valid closing order can be legally 'terminated'." (Opinion of Judges BEAUVALLET and BAIK, para. 277)

		"[D]espite the simultaneous issuance of the Closing Orders, the Indictment stands as it is substantively valid and in conformity with the ECCC legal framework, including the default position applicable in case of disagreement […]." (Opinion of Judges BEAUVALLET and BAIK, para. 284) "[O]n account of its substantive defects and the impermissible manner through which it was issued, the Dismissal Order is both intrinsically and extrinsically null and void." (Opinion of Judges BEAUVALLET and BAIK, para. 284) "[T]he Dismissal Order […] is null and void as an unfinished legal document and by entirely circumventing the essential and mandatory framework of the ECCC. Thus, it cannot reasonably be considered as carrying any legal effect." (Opinion of Judges BEAUVALLET and BAIK, para. 342)
3.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Furthermore, the International Judges are not persuaded by the Co-Lawyers' argument that the 'obvious consequence' of the Pre-Trial Chamber's finding in Case 004/2 is that both unlawfully-issued Closing Orders are null and void. In Case 004/2, the Pre-Trial Chamber unanimously condemned the Co-Investigating Judges' *agreement* to vest themselves with authority to issue split Closing Orders. This *illegal agreement*, which sought to tactically 'shield their disagreements from the most effective dispute settlement mechanism available under the ECCC legal framework to ensure a way out of procedural stalemates', was in contravention of the essential logic of the ECCC legal framework, considering the Pre-Trial Chamber's *raison d'être*. But the fact that *certain actions* of the Co-Investigating Judges in producing the Closing Orders were illegal cannot 'logically' lead to such a sweeping conclusion without a reasoned demonstration as to why that particular procedural illegality would result in the complete vitiation of the two Closing Orders in question." (Opinion of Judges BAIK and BEAUVALLET, para. 164) "The International Judges further note that the Chamber is seised of Appeals submitted pursuant to Internal Rule 74, which are distinct from applications for annulment under Internal Rule 76. The regimes for annulment and appeals are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges, involving different standards of judicial review by the Pre-Trial Chamber. Indeed, Internal Rule 76(4) provides that '[t]he Chamber may declare an application for annulment inadmissible' where it 'relates to an order that is open to appeal'. More fundamentally, nothing in the text of Internal Rule 67(2) requires both Closing Orders to be annulled or overturned. By its terms, Internal Rule 67(2) addresses the legal consequences stemming from the absence of certain information in the *contents* of the Indictment, and not the legal consequences of agreeing to issue two separate closing orders. Accordingly, the International Judges reject the Co-Lawyers' contention that a correct interpretation of Internal Rule 67(2) in light of Internal Rule 76(5) would mandate that the effect of the Pre-Trial Chamber's unanimous finding in Case 004/2 is that both Closing Orders are null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 165) "Regarding the Co-Lawyers' assertion that it is 'trite law' in both civil law and common law jurisdictions that a procedural illegality in the issuance process results in the order's nullification, the International Judges are not convinced that it is a general principle of law that a procedural illegality automatically and always results into nullity." (Opinion of Judges BAIK and BEAUVALLET, para. 166) "In conclusion, while the International Judges decline to overturn both conflicting Closing Orders against YIM Tith on the basis of the illegality of the issuance, the International Judges reaffirm that despite the illegal issuance of the two conflicting Closing Orders, the Indictment stands whereas the Dismissal is invalid as follows, in accordance with the default position." (Opinion of Judges BAIK and BEAUVALLET, para. 167) "The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 168) "[T]he two Closing Orders in question are not identical in their conformity with the applicable law before the ECCC. The International Judges recall that for reasons stated previously, the Dismissal is void and conclude that the National Co-Investigating Judge's issuance of the Dismissal is *ultra vires* and, therefore, void, as it constitutes an attempt to defeat the default position enshrined in the ECCC legal framework. On the other hand, the International Co-Investigating Judge's Indictment stands as it remains in conformity with the said position." (Opinion of Judges BAIK and BEAUVALLET, para. 175)

		"[O]n account of the impermissible manner through which it was issued, the Dismissal is null and void. In essence, the International Judges conclude that, despite the simultaneous issuance of the Closing Orders, the Indictment stands as it is substantively valid and in conformity with the ECCC legal framework, including the default position applicable in case of disagreement between the Co-Investigating Judges and which aims to bring to trial senior leaders of the DK and those 'most responsible' for the crimes committed by the Khmer Rouge." (Opinion of Judges BAIK and BEAUVALLET, para. 176) "The International Judges recall that despite the Co-Investigating Judges' illegal course of action to evade the disagreement settlement procedure and issue two Closing Orders simultaneously, the Indictment is valid as it is in conformity with the ECCC legal framework. On the contrary, the International Judges reaffirm that, for reasons stated previously, the issuance of the Dismissal has been deemed to be an attempt to defeat the default position enshrined in the ECCC legal framework and is thus *ultra vires*. Accordingly, the International Judges declare the International Co-Prosecutor's Appeal moot as it concerns the Dismissal which is null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 510) "The International Judges reaffirm that while the International Co-Investigating Judge's Indictment stands as it remains in conformity with the ECCC legal framework, the National Co-Investigating Judge's Dismissal is *ultra vires* and void." (Opinion of Judges BAIK and BEAUVALLET, para. 515) "[T]he Dismissal […] is null and void by circumventing the essential and mandatory legal framework of the ECCC. Thus, it cannot reasonably be considered to exert any legal effect." (Opinion of Judges BAIK and BEAUVALLET, para. 521)

iii. *Duty to Issue Closing Order within a Reasonable Time*

For jurisprudence concerning the ***Right to be Tried within a Reasonable Time***, see II.B.1.xvi. Right to be Tried in a Reasonable Time (without Undue Delay)-Expeditiousness of the proceedings

For jurisprudence concerning the ***Co-Investigating Judges' Duties during Judicial Investigation***, see IV.B.2.iii.Co-Investigating Judges' Duties

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"While there is no explicit deadline in the Internal Rules, it is incumbent upon the Co-Investigating Judges to issue closing orders within a reasonable time." (para. 28)
2.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. […] [W]hile the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since this principle, with its counterpart in Article 35 *new* of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the [ICCPR]." (para. 61) "The Pre-Trial Chamber acknowledges that the drafting process for the Closing Order in Case 004/2 (16 months) had been shorter than that in Case 004/1 (18 months), while the complexity of the case and volume of the record in Case 004/2 is more significant. Nevertheless, […] this period remains excessive in comparison with the Closing Orders issued in Cases 001 and 002, with a period of three and eight months, respectively, after the closure of the investigations." (para. 71)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021	"The International Co-Investigating Judges issued the Indictment […] more than 18 months after having issued his Second Rule 66(1) Notification […]." (Opinion of Judges BEAUVALLET and BAIK, para. 145)

	Considerations on Appeals against Closing Orders	"Having given due consideration to the complexity of Case 003 and the volume of its record, […] the Co-Investigating Judges failed to issue the Closing Orders within a reasonable time in this case. […] [T]he difficulties listed […] fail to provide any justification for such delay since […] the issues concerning staff and translations were foreseeable […] and thus the delays could have been mitigated." (Opinion of Judges BEAUVALLET and BAIK, para. 147) "[T]he Co-Investigating Judges' separate issuance of two conflicting Closing Orders […] in only one of the working languages […] has instigated further undue delays […]." (Opinion of Judges BEAUVALLET and BAIK, para. 148)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. While the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since this principle, with its counterpart in Article 35*new* of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the ICCPR." (para. 73) "[T]he International Co-Investigating Judge issued the Indictment on 28 June 2019, thereby terminating the investigation more than 21 months after having issued the Second Rule 66(1) Notification, which concluded the judicial investigation on 5 September 2017." (para. 74) "The Pre-Trial Chamber recalls the Chamber's previous finding in Cases 004/1 and 004/2 that periods of 18 and 16 months, respectively, for issuing the Closing Orders after the conclusion of the investigations were excessive, in comparison especially with the Closing Orders issued in Cases 001 and 002 within periods of three and eight months, respectively." (para. 75) "Having given due consideration to the complexity of Case 004 and the volume of its record, compared with Cases 001, 002, 003, 004/1 and 004/2, the Pre-Trial Chamber finds that the Co-Investigating Judges failed to issue the Closing Orders within a reasonable time in this case. Further, the Pre-Trial Chamber considers that the difficulties listed in the annexes to the Indictment fail to provide any justification for such delay since, *inter alia*, the issues concerning staff and translations were foreseeable from their previous experience in other Cases before the ECCC and, thus, the delays could have been mitigated." (para. 76) "The Pre-Trial Chamber also finds that the Co-Investigating Judges' separate issuance of two conflicting Closing Orders, each over 300 pages, in only one of the working languages of the ECCC is not only in violation of Article 7 of the Practice Directions on Filing of Documents before the ECCC, but, more significantly, has instigated further undue delays in the Case 004 proceedings, which could have been avoided by a strict adherence to the ECCC's legal framework." (para. 77) "Notwithstanding excessive length of the delay which could have been mitigated in this case, the Chamber is not convinced that the delay in this case 'so seriously erode[d] the fairness of the proceedings that it would be oppressive to continue' and that it merits a broadening of Internal Rule 74(3) in light of Internal Rule 21." (para. 78)

iv. *Duty to Issue a Decision on All Facts*

For jurisprudence concerning the ***Co-Investigating Judges' Duties during the Judicial Investigation***, see IV.B.2.iii.Co-Investigating Judges' Duties

For jurisprudence concerning the ***Scope of the Judicial Investigation***, see IV.B.1. Scope of Judicial Investigation

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"Internal Rule 67 directs that when issuing a Closing Order, the Co-Investigating Judges shall decide on all, but only, the facts that were part of their investigation, either dismissing them for one of the reasons expressed in paragraph 3 of this Rule or sending the Charged Person to trial on the basis of these acts. This decision does not involve the exercise of any discretionary power; when circumstances as prescribed in Internal Rule 67(3) are present, the Charged Person should be indicted in relation to these acts. This position is further confirmed by Article 247 of the Code of Criminal Procedure of the Kingdom of Cambodia […]." (para. 37)

		"[T]he facts […] found during the investigation are decisive for the legal characterisation when issuing a Closing Order, irrespective of how they have initially been qualified by the Co-Prosecutors." (para. 39)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"Pursuant to Internal Rule 55(2), '[t]he Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission.' The Co-Investigating Judges are therefore bound by the matter before them for determination, but also have a duty to investigate all the facts of which they are seised, which means that they have to rule on all these facts at the time of the closing order and not only on those that were formally charged." (para. 37) [P]ursuant to Internal Rule 55(2), the Co-Investigating Judges have the obligation to investigate *in rem* all the material facts set out in the prosecutorial submissions. The Co-Investigating Judges further have the duty to make a decision, in the closing order, with respect to each of the facts of which they have been validly seised." (Opinion of Judges BAIK and BEAUVALLET, para. 116) "[P]ursuant to Internal Rule 55(2), the Co-Investigating Judges shall investigate all, but only, the facts of which they were seised, *i.e.*, the facts which are alleged in an introductory and any supplementary submissions. Whether particular allegations fall within the scope of the matter laid before the Co-Investigating Judges can only be determined by consideration of these introductory and supplementary submissions and their annexes, with the guidance of the legal characterisations proposed by the Co-Prosecutors. In other words, the Co-Investigating Judges may not charge a suspect with crimes falling outside the scope of the judicial investigation, and they cannot be requested to expand the charges at the time of a closing order through a Co-Prosecutor's final submission. Likewise, the Pre-Trial Chamber cannot expand the scope of the charges on the basis of allegations tardily raised in an appeal against a closing order." (Opinion of Judges BAIK and BEAUVALLET, para. 128) "The duty of Co-Investigating Judges to investigate all allegations of which they are seised also creates a duty, in conjunction with Internal Rule 67(1), to give a proper legal determination on every such allegation at the time of the closing order, and the Co-Investigating Judges remain seised of any facts for which they fail to exercise this duty. The decision to indict a charged person or dismiss a case does not involve the exercise of any discretionary power. Moreover, the Undersigned Judges recall that Internal Rule 67(4) requires that a closing order be reasoned." (Opinion of Judges BAIK and BEAUVALLET, para. 129) "At the outset, the Undersigned Judges recall that whether particular allegations and related investigations fall within the scope of the matter laid before the Co-Investigating Judges can only be determined by consideration of the introductory and supplementary submissions and their annexes." (Opinion of Judges BAIK and BEAUVALLET, para. 170) "The Co-Investigating Judges have a duty to investigate and rule upon all allegations of which they were duly seised, pursuant to Internal Rules 55(2) and 67(1) […]." (Opinion of Judges BAIK and BEAUVALLET, para. 213)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Moreover, at the closing order stage of the ECCC's proceedings, the sole duty of the Co-Investigating Judges, pursuant to Internal Rule 67, is to issue a closing order of indictment or dismissal, based on their assessment of the content of the evidence in the case file. In light of their obligation to take into consideration all the evidence in the case file, the Co-Investigating Judges may not arbitrarily disregard or depreciate entire categories of evidence before each individual piece of the evidence has been fully debated by the parties at the adversarial trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 155) "The International Judges recall that pursuant to Internal Rule 55(5), 'in the conduct of judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth.' The International Judges clarify that a duty is cast on the Co-Investigating Judges to take the necessary investigative acts to ascertain the truth *throughout* the conduct of the judicial investigation. Internal Rule 55(5) also obliges the Co-Investigating Judges to 'conduct their investigation impartially, whether the evidence is inculpatory or exculpatory.' In other words, the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate both inculpatory and exculpatory evidence. Accordingly, as the Pre-Trial Chamber has previously found, the Co-Investigating Judges have a 'preliminary obligation to first conclude their investigation before assessing whether the case shall go

		to trial or not.' Therefore, the International Judges stress that the Co-Investigating Judges have a fundamental obligation to fully investigate the case and to consider the totality of the evidence in the case file. In addition, the International Judges recall that the Co-Investigating Judges may not disregard pieces of evidence, if deemed procedurally defective and infringing the parties' rights, without referring it to the Pre-Trial Chamber for annulment under Internal Rule 76(1)." (Opinion of Judges BEAUVALLET and BAIK, para. 241) "Therefore, the International Judges find that the National Co-Investigating Judge was not permitted to rely on his discretion to disregard evidence collected after 29 April 2011 […]." (Opinion of Judges BEAUVALLET and BAIK, para. 242) "[P]ursuant to Internal Rule 55(2), Article 125 of the Cambodian Code of Criminal Procedure and the Pre-Trial Chamber's consistent jurisprudence in this regard, when issuing a closing order, the Co-Investigating Judges shall decide whether to dismiss or indict for all, but only, the allegations that they are seised of in the Introductory and the Supplementary Submissions. The International Judges reaffirm that this decision does not entail the exercise of any discretionary power." (Opinion of Judges BEAUVALLET and BAIK, para. 246)

v. *Reasons of Closing Order*

For jurisprudence concerning the ***Co-Investigating Judges' Duty to Provide Reasoned Decisions***, see IV.B.2.f. Duty to Provide Reasoned Decisions

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Co-Investigating Judges' decision to either dismiss acts or indict the Charged Person shall be reasoned as specifically provided by Internal Rule 67(4). […] [I]t is an international standard that all decisions of judicial bodies are required to be reasoned." (para. 38) "The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances, the Pre-Trial Chamber will apply international standards." (para. 46) "International standards require that an indictment set out the material facts of the case with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence. The indictment should articulate each charge specifically and separately, and identify the particular acts in a satisfactory manner. If an accused is charged with alternative forms of participation, the indictment should set out each form charged." (para. 47) "The international tribunals' jurisprudence has drawn distinctions on the level of particularity required in indictments depending on the alleged mode of liability, as the materiality of such facts as the identity of the victim, the place and date of the events for which the accused is alleged to be responsible and the description of the events themselves, necessarily depends upon the alleged proximity of the accused to those events." (para. 48) "When alleging that the accused personally carried out the acts underlying the crime in question, the identity of the victim, the place and approximate date of the alleged criminal acts, and the means by which they were committed shall be set out 'with the greatest precision'. In cases where personal participation is alleged, the nature or scale of the alleged crimes may render it impracticable to particularise the identity of every victim or the dates of commission. Where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the commission of the alleged crimes, the 'particular acts' or 'the particular course of conduct' on the part of the accused which forms the basis for the charges in question must be identified. An allegation of superior responsibility requires that not only what is alleged to have been the superior's own conduct, but also what is alleged to have been the conduct of those persons for whom the superior bears responsibility be specified with as many particulars as possible. Joint criminal enterprise as a form of criminal responsibility is required to be specified in the indictment." (para. 49) "[I]nternational standards require specificity in the indictment and Article 35(new) of the ECCC Law provides that the accused shall be informed in detail of the nature and cause of the charges […]." (para. 50)

		"The Co-Investigating Judges provided no reasoning as to why they considered that the international offences constitute a higher legal classification than the domestic offences. The Co-Investigating Judges similarly do not mention the factual basis on which they rely […]." (para. 56) "The Pre-Trial Chamber finds that the Co-Investigating Judges failed to 'state the reasons for the decision' and therefore did not comply with the requirements of Internal Rule 67(4) and international standards." (para. 57) "According to the requirement in Internal Rule 67(4), a Closing Order must be reasoned. […] [T]he Co-Investigating Judges failed to reason why the […] proposal to include the allegation of a joint criminal enterprise […] was rejected. In addition, they did not explain the chosen characterisation of the facts in terms of the modes of liability." (para. 115)
2.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The rationale of the analysis will become apparent when a Closing Order either indicting the Charged Person or dismissing the case is issued at the conclusion of the investigation. Where a Closing Order is issued, Internal Rule 67(4) requires that reasons for any decision to send a Charged Person to trial or to dismiss the case are to be given." (para. 32) "After the issuance of a closing order, if there is an indic[t]ment of their client, the Co-Lawyers of the Charged Person have time to prepare their defence for the trial phase by examining the evidence which is available to them." (para. 33)
3.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Internal Rules 53 and 67 provide the legal framework for informing a charged person of the charges against him/her. [...] [T]he Cambodian Criminal Procedure Code [...] contains a similar provision in Article 44 [and] Article 247. The Internal Rules and the CPC provide no further guidance for the way in which the Closing Order should be reasoned. In these circumstances, the Pre-Trial Chamber will apply international standards." (para. 31) "International standards provide that, in the determination of charges against him/her, the accused shall be entitled to a fair hearing and, more specifically, to be informed of the nature and cause of the charges against him/her and to have adequate time and facilities for the preparation of his/her defence. This right 'translates into an obligation on the Prosecution to plead in the indictment the material facts underpinning the charges'. 'The pleadings in an indictment will therefore be sufficiently particular when [they] concisely [set] out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the nature and cause of the charges against him/her to enable him/her to prepare a defence' effectively and efficiently. The Prosecution [...] is not required to plead the evidence by which it intends to prove the material facts, and the materiality of a particular fact is dependent upon the nature of the Prosecution case." (para. 32) "Where the indictment, as the primary accusatory instrument, fails to plead with sufficient specificity the material aspects of the Prosecution case, it suffers from a material defect. [...] [The ICTY and ICTR] Appeals Chambers have taken a strict approach on the degree of specificity of material facts which should be pleaded in an indictment." (para. 33) "The Pre-Trial Chamber considers that a comparison between the respective terms of Internal Rules 53(1)(a)(b) and 67(2) show that, while only summary of the facts and type of offence alleged are required at the stage of the Introductory Submission, a more complete 'description of the material facts' and their legal characterization is required in the Closing Order. Internal Rules 55(2) and (3) stipulate that 'the Co-Investigating Judges shall only investigate the facts set out in an Introductory Submission or a Supplementary Submission' and shall not investigate new facts coming to their knowledge during the investigation unless such facts are limited to aggravating circumstances relating to an existing Submission, or until they receive a Supplementary Submission from the OCP. When read in light of a charged person's fundamental rights recalled above the Pre-Trial Chamber concludes that particulars of facts summarized in the Introductory Submission can validly and in fact must be pleaded in the Closing Order so as to provide the Defence sufficient notice of the charges based on which the Trial shall proceed." (para. 92)

		"[T]he ICTY has specified what material facts must be pleaded in an indictment where the accused is alleged to have committed the crimes in question by participating in a JCE. The jurisprudence [...] is relevant in the context of the ECCC [...]. However, the Pre-Trial Chamber must still determine whether all such requirements are applicable at the Introductory Submission stage or only at the Closing Order stage. Firstly, ICTY cases consider that the existence of the JCE is a material fact which must be pleaded. In addition, the indictment must specify a number of matters which were identified [...] in *Krnojelac* [...]: (a) the nature or purpose of the joint criminal enterprise [...], (b) the time at which or the period over which the enterprise is said to have existed, (c) the identity of those engaged in the enterprise [...], and (d) the nature of the participation by the accused in that enterprise. [...]" (para. 93) "The nature of the participation by the accused in the JCE must be specified and, where the nature of the participation is to be established by inference, the Prosecution must identify in the indictment the facts and circumstances from which the inference is sought to be drawn. In this respect, the Pre-Trial Chamber notes that, while ICTY jurisprudence seems to leave open to the Prosecution the possibility of either pleading the required *mens rea* in terms or by pleading the specific facts from which such *mens rea* is to be inferred, in case the Prosecution actually intends to rely upon the 'conduct of the accused' to establish that the accused possessed the required *mens rea*, then such conduct must have been pleaded as material fact in the indictment. As rightly noted [...] in *Milutinović et al*., 'since *mens rea* is almost always matter of inference from facts and circumstances established by the evidence, the emphasis on pleading the facts on which the Prosecution will rely to establish the requisite *mens rea* signifies the importance attached by the Appeals Chamber to ensuring that the indictment informs the accused clearly of the nature and cause of the charges against him.'" (para. 94) "At the latest, the Co-Investigating Judges may refer to the particular form(s) of participation in their Closing Order." (para. 95) "As to the alleged members of the JCE, while the OCP failed to name other members than the Charged Persons, the Pre-Trial Chamber would expect the Co-Investigating Judges to provide specific names of any other members of the alleged JCE, identified in the course of the investigation, in their Closing Order where applicable. As to the alleged nature of the participation of the Charged Persons, the Pre-Trial Chamber is of the view that the OCP could have provided more particulars with regard to the nature of each Appellant's participation in the alleged JCE. This however does not amount to lack of notice at this stage of the proceedings so long as the Closing Order, were it to indict any of the Appellants and assert their participation in a JCE as a mode of commission, contains the specific aspects of the conduct of the accused from which the OCIJ considers that their respective participation in the JCE and/or required *mens rea* is to be inferred." (para. 97)
4.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"However, the Pre-Trial Chamber shall not address issues pertaining to defects in the indictment but limits its analysis to determine if the lack of specification in the indictment in relation to national crimes shall prevent the ECCC from exercising jurisdiction and thus prevent the accused from being sent to trial for these crimes." (para. 293) "Reading the Closing Order as a whole, the Pre-Trial Chamber understands that the charges for the national crimes are based on the facts set out in the paragraphs dealing with the corresponding underlying crime as genocide, crimes against humanity or grave breaches of the Geneva Convention. […] Whether the facts stated in the indictment can actually be characterised as murder, torture and religious persecution under the 1956 Penal Code is ultimately a question of legal characterisation that is to be determined by the Trial Chamber and bears no effect, at this stage, on the jurisdiction of the ECCC to send the accused for trial in relation to these crimes." (para. 296)
5.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal*	"Internal Rule 67(4) expressly requires that '[t]he Closing Order shall state the reasons for the decision', and it is 'a fundamental right that parties know the reasons for a decision'. […] The Pre-Trial Chamber considers that it is its duty as an appellate court to determine whether the issuance of a two-fold Closing Order is compliant with Internal Rule 67(4)." (para. 32) "While delivering reasons at a later date may in certain circumstances fulfil the obligation to issue reasoned decisions, the Pre-Trial Chamber finds that this approach cannot apply to closing orders, in view of the explicit requirement set out in Internal Rule 67(4) and the specificities of this procedural

	of Closing Order (Reasons)	act, which officially concludes the judicial investigation. The Pre-Trial Chamber recalls that the Co-Investigating Judges are immediately *functus officio* after having signed the disposition of a closing order." (para. 33) "Furthermore, the Pre-Trial Chamber does not find that, in the present case, the interests of the Charged Person and victims under Internal Rules 21(1) and (4) were better protected by the issuance of two separate orders, despite the Co-Investigating Judges deeming this necessary to comply with the principle of speedy proceedings and to respect the Charged Person's right to have the outcome of the proceedings determined as soon as possible." (para. 34)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[A]ll decisions from judicial bodies need to be reasoned as per international standards. More specifically, Internal Rule 67(4) and 247 of the Cambodian Code of Criminal Procedure stipulate that closing orders ought to be reasoned. […] '[A]s an appellate Chamber, [the Pre-Trial Chamber] must be able to review the findings that led to [the determination on the lack of personal jurisdiction], including those regarding the existence of crimes or the likelihood of [a suspect's] criminal responsibility.'" (Opinion of Judges BEAUVALLET and BAIK, para. 298) "[A] closing order dismissing the case against a suspect on personal jurisdiction basis shall contain factual and legal findings, such as determinations refuting the legal qualifications of the alleged crimes as set forth in the Introductory and the Supplementary Submissions and the modes of liability upon which criminal responsibility is alleged." (Opinion of Judges BEAUVALLET and BAIK, para. 299)
7.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[I]n accordance with Internal Rule 67(2), the indictment shall contain a description of the material facts and their legal characterisation by the Co-Investigating Judges. The indictment must consistently set out the material facts of the case with enough detail to inform an Accused of the nature and cause of the charges against him/her to enable him/her to prepare a defence effectively and efficiently." (Opinion of Judges BAIK and BEAUVALLET, para. 182) "'[T]he presumption that the Co-Investigating Judges have evaluated all the evidence and need not mention every piece of evidence on the Case File, as long as there is no indication that they completely disregarded any particular piece of evidence. This presumption may be rebutted when evidence which is clearly relevant to the findings is not addressed by their reasoning.'" (Opinion of Judges BAIK and BEAUVALLET, para. 236)

vi. *Language of Closing Order*

For jurisprudence concerning the ***Translation Rights in general***, see II.B.1.xiv. Right to Translation of Documents

1.	**002 KHIEU Samphân** Special PTC 16 Doc. No. 2 15 December 2010 *Decision on Request for Translation of All Documents Used in Support of the Closing Order*	"In the decisions and orders made by the Pre-Trial Chamber concerning translation rights the Chamber has upheld […], the characterisation given by the Co-Investigating Judges of a closing order as requiring, at issuance, 'special attention to be paid to the notification of the "accusation" to the [Charged Person].' This special attention is paid in light of the right of a charged person to be informed promptly, in a language which he understands in detail, of the nature and cause of the accusation against him." (para. 7) "[T]he Closing Order must be readable in the French language, including by permitting the reader to refer to footnotes in the French language that contain the correct page references to French language documents on the Case File." (para. 8) "[T]he Pre-Trial Chamber considers that the element of proof on which the indictment may rely are, unlike the footnotes themselves, materials that support the factual and legal findings of the Co-Investigating Judges and they will be considered by the Trial Chamber in due course." (para. 9) "[T]he right of the accused to have the documents that are elements of proof on which the indictment relies translated into the French language is not a right to have all such documents translated immediately or even prior to the commencement of the trial." (para. 10)

2.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"[T]here is no absolute right to receive French translations of all documents. […] French translations must be provided for the following: the Closing Order, the evidentiary material in support thereof, the Introductory Submission and Final Submission, and all judicial decisions and orders." (para. 11) "[T]he right to French translations of all party submissions […] is limited to those submissions which pertain to requests and appeals directly concerning the defence team which has requested to receive documents in that language. It does not apply to all 'documents filed by the parties'." (para. 12) "[T]he temporary absence of translations can be resolved, on the one hand, by using the linguistic resources within each team […]. On the other hand, KHIEU Samphân's defence team can avail itself of the services of a translator […]. Finally, his team can request that untranslated documents which it identifies as essential for its work be translated on a priority basis." (para. 13) "[W]ith the exception of the Closing Order and the Final Submission, […] the temporary absence of translations […] would not, were it to be established, amount to a sufficiently serious or egregious violation […] as to warrant a stay of the proceedings." (para. 14) "[W]here specific translation issues are identified, they could be raised on a case-by-case basis in the course of the trial. Moreover, it is open to the Defence to request the validation of any translations it considers erroneous. [T]he mere possibility that there would be translation errors […] is not sufficiently serious as to amount to an egregious violation […] that would warrant a stay of the proceedings." (para. 16)
3.	**004 YIM Tith** PTC 61 D382/3 19 July 2019 *Decision on YIM Tith's Request for Extension of Deadline for Notice of Appeal of Closing Orders in Case 004*	"The Pre-Trial Chamber considers that the Parties should be able to review both Closing Orders in a language they fully understand before making any decision regarding any appeals." (para. 7)

vii. *Classification of Closing Order*

1.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"The Pre-Trial Chamber notes that, pursuant to Article 9.1 of the Practice Direction on Classification, documents can be reclassified only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate. Pursuant to Article 3.12 of the Practice Direction on Filing,'[u]ntil the issuance of a Closing Order and the determination of any appeal against the Closing Order, the Co-Investigating Judges and the Pre-Trial Chamber, as appropriate, shall consider whether the proposed classification is appropriate and, if not, determine what is the appropriate classification'. Article 3.14 of the Practice Direction on Filing further provides that a Chamber seised of a case may reclassify documents '[w]hen required in the interests of justice'. The Pre-Trial Chamber thereby considers that it has primary jurisdiction to decide on the Request for Reclassification and finds it admissible." (para. 10) "The Pre-Trial Chamber recalls that Internal Rule 21(1) provides for an interpretation of the ECCC rules and regulations in favour of the interests of the charged persons and the victims, as well as the transparency of proceedings. […] Any exception to the publicity of proceedings must be in accordance with Article 14 of the International Covenant, 'to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice'. Neither the exceptions to the principle of public trials set forth in Article 14 of the International Covenant, nor the reasons put forth by the Co-Investigating Judges, provide for limitations to the publicity of a closing order." (para. 21) "[D]ecisions, orders and other findings of the Co-Investigating Judges are confidential. The Pre-Trial Chamber may reclassify those documents as public, if necessary with redactions." (para. 22) "[N]either the Internal Rules nor other ECCC regulations provide specific guidance as to the classification of a closing order or the extent of any redaction." (para. 23)

		"[T]he Practice Direction on Classification provides that the principle underlying classification 'is the need to balance the confidentiality of judicial investigations and other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.'" (para. 27) "The Pre-Trial Chamber is aware of the necessity to balance the various interests at stake, including those of the charged person and of the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 28) "[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30) "The Pre-Trial Chamber previously stressed the importance of informing the victims and considered that 'due diligence displayed in the Co-Investigating Judge's [*sic*] conduct is a relevant factor when considering victims' rights in the proceedings.' It further held that, even though the 'Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, […] such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected throughout the proceedings.'" (para. 35) "[T]he investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. These interests should be balanced with the necessity to 'ensure legal certainty and transparency of proceedings'." (para. 36) "Assuming *arguendo* that the nature of the decision can be considered in the determination of the document's classification, the content of the decision and its impact on the interests at stake are nevertheless more relevant factors in this assessment. The transparency of the proceedings cannot be guaranteed without making public, when the investigation is closed, the main contents and the key reasoning of the final decision." (para. 37) "The Pre-Trial Chamber finds that a public closing order is the appropriate way to contribute to the transparency of justice, the legacy of the ECCC and to the fundamental objectives of education and the pursuit of justice. In line with the Co-Investigating Judges' practice, the Pre-Trial considers it necessary to limit the redactions in the Closing Order (Reasons) to the names and addresses of individuals under protective measures pursuant to Internal Rule 29(3), or whose request for such measures is still pending." (para. 39)
2.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the investigation remains confidential until its conclusion, in order to protect its integrity and the interests of the parties. The Pre-Trial Chamber is further aware of the necessity, when ruling on matters of re-classification and redactions after the conclusion of the investigation, to balance the various interests at stake including those of the charged person and the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 10) "The Pre-Trial Chamber observes that the Request to redact AO An's address in the Closing Order (Indictment) is closely related to the right to privacy and, more generally, to the protection of the interests of the charged person, as enshrined in Internal Rule 21. While the law before the ECCC does not explicitly refer to the protection of privacy and reputation, the Pre-Trial Chamber acknowledges the concerns expressed by the Co-Lawyers regarding the consequences of the publication of AO An's current address for his right to privacy. The Pre-Trial Chamber further finds that the redaction in the Closing Order (Indictment) of the domicile of the Charged Person, of which the mention is not a requirement under Internal Rule 67(2), would not have any impact on the other interests at stake, namely the need to ensure transparency, the integrity of proceedings, and the Court's purposes of education and legacy." (para. 11)

5. Evidential Standard at Closing Order Stage

For jurisprudence concerning ***Evidence Matters***, see IV.B.5. Evidence Matters

i. *Sufficient Charges*

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he standard applying at the trial stage is higher than the standard that should be applied at the judicial investigation stage. Pursuant to Internal Rule 67, the test for issuing closing orders is the existence of 'sufficient evidence […] of the charges'." (para. 61) "While the notion of 'sufficient charges' that the Co-Investigating Judges must consider to indict or dismiss a case is difficult to objectify, it is clear that the legal requirements for judicial proceedings progress incrementally from a 'mere possibility' to a 'probability' or 'plausibility' of guilt during the investigation, to evidence of such guilt beyond reasonable doubt at the trial stage. The Pre-Trial Chamber further considers that 'sufficient charges' corresponds a *minima* to Internal Rule 55(4)'s 'clear and consistent evidence' indicating that a person may be criminally responsible for the commission of a crime, and thus indicted by the Co-Investigating Judges." (para. 62)
2.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In accordance with Internal Rule 67, the test for issuing closing orders is the existence of 'sufficient evidence' in link with the charges." (para. 84) "[T]he notion of 'sufficient charges' corresponds *a minima* to Internal Rule 55(4)'s 'clear and consistent evidence', indicating that a person may be criminally responsible for the commission of a crime, when charging a suspect or indicting a charged person." (para. 85) --- "[T]he International Judges recall that 'pursuant to Internal Rule 67, the test for issuing closing orders is the existence of "sufficient evidence […] of the charges'. At this pre-trial stage, it is sufficient for the International Co-Investigating Judge to present 'serious and corroborative evidence'." (Opinion of Judges BAIK and BEAUVALLET, para. 364) "[I]n the Closing Order (Indictment) at hand, the International Co-Investigating Judge […] did not explicitly address the standard […]. This oversight […] undermines the clarity of his judicial reasoning." (Opinion of Judges BAIK and BEAUVALLET, para. 365) "Nonetheless […] [a c]loser examination demonstrates that the International Co-Investigating Judge did not deviate from the established standard in overall implementation and […] applied the correct standard of proof—the existence of 'sufficient evidence […] of the charges' […]." (Opinion of Judges BAIK and BEAUVALLET, para. 366) "[T]he International Judges recall that '[a]ll evidence […] generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' […] [T]here is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources and that uncorroborated evidence from a single witness may support a conviction even at the trial stage. Although […] the standard of 'sufficiently serious and corroborative evidence' itself refers to corroboration […] the reference […] to 'corroborative evidence' addresses the concept of whether *an overall evidentiary basis exists to substantiate the underlying charges*, not whether each material finding is supported by two or more pieces of evidence. […] [A]lthough corroboration is not *per se* required, the fact that witness testimony is corroborated by other evidence may be an important factor in evaluating its reliability." (Opinion of Judges BAIK and BEAUVALLET, para. 426) "Although the Co-Lawyers contend that the Supreme Court Chamber's case law bars the use of anonymous or double hearsay to establish a finding beyond reasonable doubt, the International Judges recall […] that the standard of proof at the closing order stage is lower than at trial. In addition, the International Judges recall that '[a]ll evidence is admissible and generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' The International Judges accordingly reject the

		Co-Lawyers' submission to the extent it argues that anonymous or second-degree hearsay cannot, as a matter of law, support sufficient charges." (Opinion of Judges BAIK and BEAUVALLET, para. 434)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he nature of the decision and the stage of the proceedings affect the standard of evidence. While Internal Rule 67 dictates that the test for the Co-Investigating Judges' issuance of closing orders is the existence of 'sufficient evidence […] of the charges', the Trial Chamber and the Supreme Court Chamber, for entering and affirming conviction, are bound by the standard of 'beyond a reasonable doubt', which is distinct from and higher than that of 'sufficient evidence' applied at the pre-trial stage of the proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 163) "While there is no provision in the applicable law before the ECCC that specifically provides the standard of proof for the determination of 'sufficient charges' under Internal Rule 67 and the notion of 'sufficient charges' that the Co-Investigating Judges must consider to indict or dismiss a case is difficult to objectify, the International Judges recall that 'the legal standards required for a decision progress incrementally throughout the judicial proceedings from a 'mere possibility' to a 'probability' or 'plausibility' of guilt during the investigation, to evidence of such guilt beyond reasonable doubt at the trial stage.' […] [T]he standard of 'sufficient charges' for the issuance of a closing order corresponds *a minima* to the requirement of 'clear and consistent evidence', indicating that a person may be criminally responsible for the commission of a crime, for charging a suspect pursuant to Internal Rule 55(4). Accordingly, the International Judges reiterate that this standard is applicable to the instant case." (Opinion of Judges BEAUVALLET and BAIK, para. 165)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"As the Pre-Trial Chamber has repeatedly stressed, '[a]ll evidence is admissible and generally enjoys the same legal presumption of reliability' and that the 'only relevant criterion should be the impact that the substance of the evidence may have on the personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.' It is well-settled that hearsay evidence is admissible before the ECCC and may be relied on. As previously affirmed, the International Co-Investigating Judge has 'broad discretion' to rely on hearsay evidence. The probative value of hearsay, as with all forms of evidence, varies based on its nature and substance and will ultimately 'depend upon the infinitely variable circumstances which surround hearsay evidence.' Moreover, there is no legal requirement that a witness' evidence on material facts needs to be corroborated by evidence from other sources at the pre-trial stage." (Opinion of Judges BAIK and BEAUVALLET, para. 235) "'[T]he presumption that the Co-Investigating Judges have evaluated all the evidence and need not mention every piece of evidence on the Case File, as long as there is no indication that they completely disregarded any particular piece of evidence. This presumption may be rebutted when evidence which is clearly relevant to the findings is not addressed by their reasoning." (Opinion of Judges BAIK and BEAUVALLET, para. 236) "The International Judges recall that the nature of the decision and the stage of the proceedings affect the standard of evidence. Internal Rule 67, which governs the applicable standard of proof at the pre-trial stage, dictates that the test for the Co-Investigating Judges' issuance of closing orders is the existence of 'sufficient evidence […] of the charges'. While this standard is difficult to precisely quantify, the Pre-Trial Chamber has consistently observed that 'the legal standards required for a decision progress incrementally throughout the judicial proceedings from a "mere possibility" to a "probability" or "plausibility" of guilt during the investigation, to evidence of such guilt beyond reasonable doubt at the trial stage.'" (Opinion of Judges BAIK and BEAUVALLET, para. 238) "The 'only relevant criterion', as recalled above, is the 'personal conviction of the Co-Investigating Judges regarding whether there is sufficient evidence for the charges.'" (Opinion of Judges BAIK and BEAUVALLET, para. 239)

ii. *Quantification of the Number of Victims*

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he Co-Investigating Judges sought, throughout their review of the evidence, to establish an accurate and precise number of victims for each uncharged crime site. The Undersigned Judges consider this requirement unjustified, particularly in view of the evidential standard applicable at the pre-trial stage of proceedings. They recall that it may be impractical to insist on a high degree of specificity in cases of mass crimes, and that it is not necessary that the precise number of victims be known. The uncertainty regarding the exact number of victims indeed does not preclude the conclusion that crimes were committed at a concrete place and at a concrete point in time." (Opinion of Judges BAIK and BEAUVALLET, para. 214) "[T]he Undersigned Judges consider that the Co-Investigating Judges erred in requiring that the number of victims be precisely determined." (Opinion of Judges BAIK and BEAUVALLET, para. 218) "The Undersigned Judges reiterate that the Co-Investigating Judges erred in requiring that a precise number of deaths be established." (Opinion of Judges BAIK and BEAUVALLET, para. 228) "The Undersigned Judges, recalling that standard of evidence at this stage does not require the establishment of a specific number of victims, consider that it was not necessary to determine an exact 'proportion' of victims […]." (Opinion of Judges BAIK and BEAUVALLET, para. 244)
2.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Bearing in mind the evidential standard applicable at the pre-trial stage of the proceedings, […] it is unnecessary for the International Co-Investigating Judge to determine an accurate and precise number of victims and to detail its methodology to do so. […] [A] reasonable estimate of the number or the reference to 'many killings' seems more adequate." (para. 86) --- "[N]otwithstanding the unnecessary and improper 'conservative' calculation of victim numbers, the International Judges are not persuaded by the […] contention that the International Co-Investigating Judge engaged in an approach 'based on guesswork' or that he failed to provide sufficient evidence of alleged victim numbers […]." (Opinion of Judges BAIK and BEAUVALLET, para. 553) "The International Judges find it clear that the number of victims alleged […] are rooted in and derived from the evidence – not any purported 'guesswork'. The International Judges consider particularly the Closing Order (Indictment), Annex IV – Cham Victims: this detailed chart […] delineates the evidentiary source from which he based the victim numbers, including […] district, village and commune alleged, the identity of the witness, the precise question posed and the exact response concerning the explicit number of Cham victims described." (Opinion of Judges BAIK and BEAUVALLET, para. 554) "[T]here is no mathematical threshold for casualties which evidence must surpass in assessing the gravity of the crimes for determining the personal jurisdiction. Consequently, the Co-Lawyers' allegation that 'there is insufficient evidence to support the [International Co-Investigating Judge's] calculations of victim numbers' must be dismissed." (Opinion of Judges BAIK and BEAUVALLET, para. 555)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"While the International Judges observe that the Co-Investigating Judges have a duty to ascertain the truth, they also acknowledge that the passage of time and the objective difficulty to quantify casualties constitute obstacles to the determination of precise numbers of victims. The International Judges reiterate that bearing in mind the evidentiary standard applicable at the ECCC's pre-trial stage of the proceedings, while the number of victims is one of the elements taken into account to assess the gravity of the crimes in determining the ECCC's personal jurisdiction, it is unnecessary for the Co- Investigating Judges to determine a precise number of victims and to detail a method to this effect. Further, the International Judges recall that it may be impractical and artificial to insist on a high degree of specificity in cases of mass crimes. The uncertainty regarding the exact number of victims does not preclude the conclusion that the crimes within the ECCC's jurisdiction were committed at a concrete place and at a concrete point in time." (Opinion of Judges BEAUVALLET and BAIK, para. 167) "Accordingly, the International Judges reaffirm that for the purpose of ascertaining the ECCC's personal jurisdiction at the pre-trial stage, a 'reasonable estimate' of the victim numbers or the reference to 'many killings' suffices and is more appropriate." (Opinion of Judges BEAUVALLET and BAIK, para. 168) "While […] death toll is an indicator, among others, to consider in assessing the impact of criminal

		conduct, […] an accurate and precise number of victims is not required at this pre-trial stage […]. Hence, it is sufficient that the International Co-Investigating Judge establishes, on a balance of probabilities, a reasonable estimate of the number of victims." (Opinion of Judges BEAUVALLET and BAIK, para. 296)

6. Simultaneous Issuance of Conflicting Closing Orders

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Chamber stresses […] the fundamental differences that exist, in function and authority, between the Parties' submissions and the judicial decisions issued by Judges, such as closing orders. Independent of the question of whether the filing of separate and opposing Final Submissions by the Co-Prosecutors is permitted within the ECCC legal system, […] the Co-Investigating Judges committed a gross error of law in this case by finding that the ECCC legal framework authorises the issuance of separate and opposing Closing Orders." (para. 98) "[T]he Co-Investigating Judges' issuance of split Closing Orders violated the very foundations of the ECCC legal system." (para. 102) "In light of the above, the Pre-Trial Chamber finds that, in the case of disagreement related to matters that must be determined by a closing order under Internal Rule 67, the ECCC legal framework allows only two courses of action pursuant to Article 23*new* of the ECCC Law and Internal Rule 72(3). The Co-Investigating Judges are obliged either to reach a tacit or express consensus on those matters, or to refer their disagreement on such matters to the Pre-Trial Chamber." (para. 120) "[T]he legal texts governing the ECCC proceedings, when seen in this light, contain no significant ambiguity. Internal Rule 67(1) clearly stipulates that '[t]he Co-Investigating Judges *shall conclude* the investigation by issuing *a* Closing Order, *either* indicting a Charged Person […], *or* dismissing the case.' The Glossary of the Internal Rules adds that a 'Closing Order refers to *the* final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, *whether* Indictment *or* Dismissal Order.' These provisions make it clear that a closing order of the Co-Investigating Judge is a single decision and offer no legal bases to contend that the ECCC legal framework allows the issuance of split closing orders. As such, the interpretative clause of Internal Rule 1(2) – indicating that, in the Rules, the singular includes the plural, and a reference to the Co-Investigating Judges 'includes both of them acting jointly and each of them acting individually' – does not offer a sufficient legal basis to override or undermine core principles of the ECCC Agreement, such as the default position, or to claim a power to act when the effects of the exercise of such power would conflict with those principles. The rule on strict construction of penal statutes further prevents any arbitrary interpretations in this sense." (para. 121) "The Pre-Trial Chamber therefore rejects the Co-Investigating Judges' reasoning on the purported legal permissibility of issuing two separate and opposing closing orders at the ECCC. […] [T]he Judges also conflated the distinctive character of a judicial decision with the filing of Parties' submissions. The judicial duty to pronounce, based on the law, a decision on a matter in dispute (*jurisdiction*) lies at the heart of a judge's highest responsibility and function. As such, pronouncements adjudicating and settling matters in dispute enjoy a legal obligatory nature and effect (*imperium*), unlike the submissions made by the parties. However, the judge cannot refrain from adjudicating the matter before him or her and from arriving at a conclusion that effectively decides this matter. […] [A]t the ECCC, the Co-Investigating Judges *jointly* assume such judicial office. When their disagreements prevent them from arriving at a common final determination of a case of which they are seised, the Judges must still perform their judicial duty and function by following the procedures available […] and ensure that a final determination of the matters falling within their jurisdiction is attained." (para. 122) "[T]he Pre-Trial Chamber stresses that the errors committed by the Co-Investigating Judges in this case undermine the very foundations of the hybrid system and proper functioning of the ECCC. […] The Chamber considers that the Co-Investigating Judges' malpractice has in this case jeopardised the whole system upheld by the Royal Government of Cambodia and the United Nations. […] More than a blatant legal error, violating of the fundamental principles of the ECCC legal system, the Pre-Trial Chamber considers that the Co-Investigating Judges' unlawful actions may well amount to a denial of justice, especially since this Chamber is unable to exclude that they may have wilfully intended to defeat the purpose of the default position in this case and deliberately sought to frustrate the authority of the Pre-Trial Chamber." (para. 123)

		"After ten years of investigation into crimes among the most atrocious and brutal committed during the twentieth century, the Pre-Trial Chamber strongly deplores and condemns the legal predicament that the Co-Investigating Judges' unlawful actions precipitated upon the current ECCC proceeding. The Chamber notes with regret that never, to its knowledge, has there been criminal cases in the history of any national and international legal systems that concluded with the simultaneous issuance of two contrary decisions emanating from one single judicial office." (para. 124) "[T]he International Judges recall that the Co-Investigating Judges' agreement on the simultaneous issuance of conflicting Closing Orders amounts to an error in law." (Opinion of Judges BAIK and BEAUVALLET, para. 315) "[T]he Co-Investigating Judges erroneously […] issue[d] separate and contradicting Closing Orders." (Opinion of Judges BAIK and BEAUVALLET, para. 316) "The International Judges […] address the validity of each Closing Order." (Opinion of Judges BAIK and BEAUVALLET, para. 317) "[T]he two Closing Orders […] are not identical in their conformity with the applicable law before the ECCC and […] only the Indictment is valid." (Opinion of Judges BAIK and BEAUVALLET, para. 318) "The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he *investigation shall proceed*' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 319) "[T]his principle of continuation of judicial investigation governs the issue at hand." (Opinion of Judges BAIK and BEAUVALLET, para. 320) "[T]he settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 […] [applies] to the procedure of *issuing* the closing order before the conclusion of the investigation." (Opinion of Judges BAIK and BEAUVALLET, para. 321) "In the case at hand, neither of the Co-Investigating Judges referred the disagreement to the Pre-Trial Chamber […]. Consequently, the investigation or prosecution shall proceed. […] where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' means that the indictment must be issued as proposed." (Opinion of Judges BAIK and BEAUVALLET, para. 322) "[I]n examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a closing order (dismissal)." (Opinion of Judges BAIK and BEAUVALLET, para. 323) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Closing Order (Indictment) […] is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Closing Order (Dismissal) has no legal basis." (Opinion of Judges BAIK and BEAUVALLET, para. 324) "Accordingly, […] the National Co-Investigating Judge's […] Closing Order (Dismissal) is *ultra vires* and […] void; the International Co-Investigating Judge's Closing Order (Indictment) stands." (Opinion of Judges BAIK and BEAUVALLET, para. 326)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Chamber stresses […] that fundamental differences exist, in function and authority, between parties' submissions and judicial decisions reached by judges, such as closing orders. Independent of the question of whether the filing of separate final submissions by the Co-Prosecutors is permitted in the ECCC legal system, […] the Co-Investigating Judges committed a gross error of law in this case by finding that the ECCC legal framework permits the issuance of separate and opposing Closing Orders." (para. 88) "[T]he ECCC legal framework does not permit the issuance of conflicting closing orders." (para. 89)

		"[T]he Co-Investigating Judges' issuance of conflicting Closing Orders violated the very foundations of the ECCC legal system." (para. 91) "In light of the foregoing principles, the Pre-Trial Chamber has found that where a disagreement relates to matters that must be determined by a closing order under Internal Rule 67, the ECCC legal framework allows only two courses of action pursuant to Article 23*new* of the ECCC Law and Internal Rule 72(3). The Co-Investigating Judges are obliged either to reach a tacit, or express consensus on those matters or to refer their disagreement on such matters to the Pre-Trial Chamber." (para. 102) "Further, the Pre-Trial Chamber reaffirms that the ECCC's legal texts leave no significant ambiguity in this respect: Internal Rule 67(1) clearly stipulates that '[t]he Co-Investigating Judges *shall conclude* the investigation by issuing *a* Closing Order, *either* indicting a Charged Person […], *or* dismissing the case.' The Glossary of the Internal Rules adds that a 'Closing Order refers to *the* final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, *whether* Indictment *or* Dismissal Order.'" (para. 103) "It follows from these provisions that a closing order of the Co-Investigating Judges is a single decision. As such, Internal Rule 1(2) – stating that in the Rules, the singular includes the plural, and a reference to the Co-Investigating Judges 'includes both of them acting jointly and each of them acting individually' – does not offer a sufficient legal basis to override or undermine core principles of the ECCC Agreement, such as the default position, and the rule on strict construction of penal laws further prevents any interpretations in this sense." (para. 104) "[T]he Co-Investigating Judges have a judicial duty to decide on matters in dispute of which they are seised. When their disagreement prevents them from arriving at a common final determination of such matters, they must still discharge this joint judicial duty by following the procedures available in the ECCC legal system to make sure that a conclusive determination of the matters within their jurisdiction is attained." (para. 105) "[B]y issuing contradicting Closing Orders instead of referring their related disagreement to the Pre-Trial Chamber or abiding by the default position, the Co-Investigating Judges committed errors that undermine the foundations of the hybrid system and proper functioning of the ECCC." (para. 106) "Overall, the Pre-Trial Chamber considers that the Co-Investigating Judges' errors have jeopardised the whole system upheld by the Royal Government of Cambodia and the United Nations. More than a violation of the fundamental principles of the ECCC legal framework, the Chamber is of the view that the Co-Investigating Judges' *mauvaises pratiques* may amount to a denial of justice, especially since the Chamber is unable to exclude that they may have intended to defeat the default position and frustrate the authority of the Pre-Trial Chamber. The Chamber further notes that more than an isolated example, their actions in this case confirm a pattern that the Co-Investigating Judges have apparently adopted in dealing with all the final cases on the ECCC's docket." (para. 108) "The Chamber once more notes with regret that never, to its knowledge, has there been criminal cases in the history of other national and international legal systems that concluded with the simultaneous issuance of two contrary decisions emanating from one single judicial office. After ten years of investigation into crimes among the most atrocious and brutal committed during the twentieth century, the Pre-Trial Chamber can only condemn once again the legal predicament that the Co-Investigating Judges' unlawful actions precipitated upon yet another ECCC proceeding." (para. 109) --- "The International Judges recall that the Co-Investigating Judges' agreement on the simultaneous issuance of conflicting Closing Orders amounts to an error in law." (Opinion of Judges BEAUVALLET and BAIK, para. 253) "The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 255)

		"[T]his principle of continuation of judicial investigation governs the issue at hand. While the settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 may not be applied to the procedures *after* the issuance of a closing order, it does not preclude application to the procedure of *issuing* the closing order before the conclusion of the investigation. As stated by the Pre-Trial Chamber in a previous decision, in case one of the Co-Investigating Judges proposes to issue an indictment and the other disagrees, either or both of them can bring the disagreement before the Pre-Trial Chamber pursuant to Internal Rule 72. The International Judges further recall the Supreme Court Chamber's finding that '[i]f […] 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"'." (Opinion of Judges BEAUVALLET and BAIK, para. 256) "In this specific situation where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' − being the applicable default position in case of unresolved discord between the Co-Investigating Judges− means that the indictment must be issued as proposed." (Opinion of Judges BEAUVALLET and BAIK, para. 257) "Furthermore, in examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a dismissal order. First, in its ordinary meaning, a proposal to issue a dismissal order, the very antithesis of an indictment which makes the case move forward to trial, cannot be recognised as a separate investigative act. It is nothing more than a different characterisation of the National Co-Investigating Judge's disagreement on the issuance of the indictment, which must be resolved by the Internal Rule 72 disagreement settlement procedure. Second, the purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were most responsible for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BEAUVALLET and BAIK, para. 258) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Indictment, despite his erroneous agreement on the issuance of a simultaneous Dismissal Order by his colleague, is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Dismissal Order has no legal basis." (Opinion of Judges BEAUVALLET and BAIK, para. 259) "The International Judges reaffirm that a closing order of the Office of the Co-Investigating Judges must be a single decision. They further underline that in the present circumstances, referral of disagreements between the Co-Investigating Judges before the Pre-Trial Chamber is mandatory and that they have no other means of settling their dispute when they fail to uphold their obligation to reach a common position concerning a closing order. The International Judges consider that the issuance of the conflicting Dismissal Order by the National Co-Investigating Judge without referral to the Pre-Trial Chamber is a brazen attempt to entirely circumvent this essential and mandatory requirement, thwarting the ECCC founding legal texts. In particular, Articles 5 and 7 of the ECCC Agreement explicitly provide instructions on the National Co-Investigating Judge's required conduct and the outcome of any disagreement between the Co-Investigating Judges. Therefore, the International Judges find that the issuance of the Dismissal Order, as an attempt to avoid the compulsory disagreement procedure, is legally flawed and shall accordingly be considered null and void." (Opinion of Judges BEAUVALLET and BAIK, para. 260) "Further, the International Judges hold the view that the argument of a possible *lacunae* in the ECCC legal framework in relation to the legal repercussions of issuing conflicting closing orders finds no application in the present case. Even if the Pre-Trial Chamber was to appreciate that such incongruent situation was not envisaged in the ECCC legal framework, the alleged uncertainty is removed through a fair reading of the relevant legal texts, especially Articles 5(4) and 7(4) of the ECCC Agreement and Articles 20 and 23*new* of the ECCC Law 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." (Opinion of Judges BEAUVALLET and BAIK, para. 261)

		"Accordingly, the International Judges find that the two Closing Orders in question are not identical in their conformity with the applicable law before the ECCC. The International Judges recall that for reasons stated previously, the Dismissal Order is void and conclude that the National Co-Investigating Judge's issuance of the Dismissal Order is *ultra vires* and, therefore, void, as it constitutes an attempt to defeat the default position enshrined in the ECCC legal framework. On the other hand, the International Co-Investigating Judge's Indictment stands as it remains in conformity with the said position." (Opinion of Judges BEAUVALLET and BAIK, para. 262) "The Pre-Trial Chamber unanimously condemned the Co-Investigating Judges' *agreement* to vest themselves with authority to issue split Closing Orders. This *illegal agreement*, which sought to tactically 'shield their disagreements from the most effective dispute settlement mechanism available under the ECCC legal framework to ensure a way out of procedural stalemates', was in contravention of the essential logic of the ECCC legal framework, considering the Pre-Trial Chamber's *raison d'être*. But the fact that *certain actions* of the Co-Investigating Judges in producing the Closing Orders were illegal cannot 'logically' lead to such a sweeping conclusion without a reasoned demonstration as to why that particular procedural illegality would result in the complete vitiation of the two Closing Orders in question." (Opinion of Judges BEAUVALLET and BAIK, para. 273) "[D]espite the simultaneous issuance of the Closing Orders, the Indictment stands as it is substantively valid and in conformity with the ECCC legal framework, including the default position applicable in case of disagreement […]." (Opinion of Judges BEAUVALLET and BAIK, para. 284)
3.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[T]he Chamber refers to its constant analysis of the illegality of the situation caused by two conflicting Closing Orders being issued at the same time […]." (para. 63)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber also finds that the Co-Investigating Judges' separate issuance of two conflicting Closing Orders, each over 300 pages, in only one of the working languages of the ECCC is not only in violation of Article 7 of the Practice Directions on Filing of Documents before the ECCC, but, more significantly, has instigated further undue delays in the Case 004 proceedings, which could have been avoided by a strict adherence to the ECCC's legal framework." (para. 77) "[…] Article 12(1) of the ECCC Agreement and Internal Rule 2 require that the procedure before the ECCC must be in accordance with both Cambodian law and international standards. In this respect, Article 1(1) of the Cambodian Code of Criminal Procedure, *inter alia*, provides that this Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.' Articles 20*new*, 23*new*, 33*new* and 37*new* of the ECCC Law all make it clear that ECCC organs must follow all existing procedures in force. The Chamber already determined that these provisions 'aim to guarantee the legality, fairness and effectiveness of ECCC proceedings.'" (para. 89) "[A]s a preliminary matter, that fundamental differences exist, in function and authority, between parties' submissions and judicial decisions reached by judges, such as closing orders. Independent of the question of whether the filing of separate final submissions by the Co-Prosecutors is permitted in the ECCC legal system, the Chamber finds that the Co-Investigating Judges committed a gross error of law in this case by finding that the ECCC legal framework permits the issuance of separate and opposing Closing Orders." (para. 94) "[T]he ECCC legal framework does not permit the issuance of conflicting closing orders." (para. 95) "[T]he Co-Investigating Judges' issuance of conflicting Closing Orders violated the very foundations of the ECCC legal system." (para. 97) "[W]here a disagreement relates to matters that must be determined by a closing order under Internal Rule 67, the ECCC legal framework allows only two courses of action pursuant to Article 23*new* of the

		ECCC Law and Internal Rule 72(3). The Co-Investigating Judges are obliged either to reach a tacit or express consensus on those matters or to refer their disagreement on such matters to the Pre-Trial Chamber." (para. 108) "[T]he ECCC's legal texts leave no significant ambiguity in this respect: Internal Rule 67(1) clearly stipulates that '[t]he Co-Investigating Judges *shall conclude* the investigation by issuing *a* Closing Order, *either* indicting a Charged Person […], *or* dismissing the case.' The Glossary of the Internal Rules adds that a Closing Order 'refers to *the* final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, *whether* Indictment *or* Dismissal Order.'" (para. 109) "[A] closing order of the Co-Investigating Judges is a single decision. As such, Internal Rule 1(2) – stating that in the Rules, the singular includes the plural, and a reference to the Co-Investigating Judges 'includes both of them acting jointly and each of them acting individually' – does not offer a sufficient legal basis to override or undermine core principles of the ECCC Agreement, such as the default position, and the rule on strict construction of penal laws further prevents any interpretations in this sense." (para. 110) "[T]he Chamber recalls that the Co-Investigating Judges have a judicial duty to decide on matters in dispute of which they are seised. When their disagreement prevents them from arriving at a common final determination of such matters, they must still discharge this joint judicial duty by following the procedures available in the ECCC legal system to make sure that a conclusive determination of the matters within their jurisdiction is attained." (para. 111) "[B]y issuing contradicting Closing Orders instead of referring their related disagreement to the Pre-Trial Chamber or abiding by the default position, the Co-Investigating Judges committed errors that undermine the foundations of the hybrid system and proper functioning of the ECCC." (para. 112) "Overall, the Pre-Trial Chamber considers that the Co-Investigating Judges' errors have jeopardised the whole system upheld by the Royal Government of Cambodia and the United Nations. More than a violation of the fundamental principles of the ECCC legal framework, the Chamber is of the view that the Co-Investigating Judges' *mauvaises pratiques* may amount to a denial of justice, especially since the Chamber is unable to exclude that they may have intended to defeat the default position and frustrate the authority of the Pre-Trial Chamber." (para. 114) "The Chamber once more notes with regret that never, to its knowledge, have there been criminal cases in the history of other national and international legal systems that concluded with the simultaneous issuance of two contrary decisions emanating from one single judicial office. After ten years of investigation into crimes among the most atrocious and brutal committed during the twentieth century, the Pre-Trial Chamber can only condemn once again the legal predicament that the Co-Investigating Judges' unlawful actions precipitated upon yet another ECCC proceeding." (para. 115) "While the International Judges agree with the Co-Lawyers that the Co-Investigating Judges erred in law by *issuing* two separate and conflicting Closing Orders since this was impermissible under ECCC law as previously explained, the International Judges are not convinced that this course of action violated the principle of *in dubio pro reo* and YIM Tith's fair trial rights." (Opinion of Judges BAIK and BEAUVALLET, para. 161) "Furthermore, the International Judges are not persuaded by the Co-Lawyers' argument that the 'obvious consequence' of the Pre-Trial Chamber's finding in Case 004/2 is that both unlawfully-issued Closing Orders are null and void. In Case 004/2, the Pre-Trial Chamber unanimously condemned the Co-Investigating Judges' *agreement* to vest themselves with authority to issue split Closing Orders. This *illegal agreement*, which sought to tactically 'shield their disagreements from the most effective dispute settlement mechanism available under the ECCC legal framework to ensure a way out of procedural stalemates', was in contravention of the essential logic of the ECCC legal framework, considering the Pre-Trial Chamber's *raison d'être*. But the fact that *certain actions* of the Co-Investigating Judges in producing the Closing Orders were illegal cannot 'logically' lead to such a sweeping conclusion without a reasoned demonstration as to why that particular procedural illegality would result in the complete vitiation of the two Closing Orders in question." (Opinion of Judges BAIK and BEAUVALLET, para. 164) "In this specific situation where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed'—being the applicable

		default position in case of unresolved discord between the Co-Investigating Judges—means that the indictment must be issued as proposed." (Opinion of Judges BAIK and BEAUVALLET, para. 170) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Indictment, despite his erroneous agreement on the issuance of a simultaneous Dismissal by his colleague, is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Dismissal has no legal basis." (Opinion of Judges BAIK and BEAUVALLET, para. 172) "[A] closing order of the Office of the Co-Investigating Judges must be a single decision. They further underline that in the present circumstances, referral of disagreements between the Co-Investigating Judges before the Pre-Trial Chamber is mandatory and that they have no other means of settling their dispute when they fail to uphold their obligation to reach a common position concerning a closing order." (Opinion of Judges BAIK and BEAUVALLET, para. 173) "[T]he 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. Even if the Pre-Trial Chamber was to appreciate that such incongruent situation was not envisaged in the ECCC legal framework, the alleged uncertainty is removed through a fair reading of the relevant legal texts, especially Articles 5(4) and 7(4) of the ECCC Agreement and Articles 20 and 23*new* of the ECCC Law 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." (Opinion of Judges BAIK and BEAUVALLET, para. 174) "The International Judges recall that despite the Co-Investigating Judges' illegal course of action to evade the disagreement settlement procedure and issue two Closing Orders simultaneously, the Indictment is valid as it is in conformity with the ECCC legal framework. On the contrary, the International Judges reaffirm that, for reasons stated previously, the issuance of the Dismissal has been deemed to be an attempt to defeat the default position enshrined in the ECCC legal framework and is thus *ultra vires*. Accordingly, the International Judges declare the International Co-Prosecutor's Appeal moot as it concerns the Dismissal which is null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 510) "While the Co-Investigating Judges' agreement to issue the two separate and opposing Closing Orders violated the foundational legal framework of this Tribunal, the International Judges conclude that the Indictment stands whereas the Dismissal is invalid." (Opinion of Judges BAIK and BEAUVALLET, para. 518

7. Authority of the Pre-Trial Chamber at Closing Order Stage

For jurisprudence concerning the ***Authority and Powers of the Pre-Trial Chamber in General***, see III. Powers of the Pre-Trial Chamber

i. *Authority of the Pre-Trial Chamber*

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Chamber […] has so far exercised diverse powers, including: appellate review of alleged errors of law, fact and discretion; determination of issues of general significance for the ECCC's jurisprudence and legacy; inherent powers or inherent jurisdiction; and an ancillary investigative power derived, in the case of *lacunae* in the ECCC Internal Rules, from the role of the Cambodian Investigation Chamber. The Pre-Trial Chamber may use some or all of these different powers […]." (para. 32) "[T]he first three powers listed above are well-established in the Pre-Trial Chamber's and within the international criminal tribunals' jurisprudence. While the fourth power – the ancillary investigative power – had until now been used sparingly by the Chamber and in limited procedural contexts, the exceptional circumstances of this case justifies its broader use by the Chamber." (para. 33) "[T]he powers that the Pre-Trial Chamber may deem necessary to use as a second-instance investigating court […] [are] derived from the appellate function exercised at the judicial investigation stage in domestic civil law legal systems, such as those in force in Cambodia and in France […]."

		(para. 34) "The Pre-Trial Chamber, while reiterating that it may play the role of the Cambodian Investigation Chamber in the ECCC legal system when the circumstances so require, also recalls that 'harmonious relations between an investigating judge and an Investigation Chamber necessarily require the respect of each party's prerogatives.' Against this backdrop, the Chamber deplores the Office of the Co-Investigating Judges' persistent practice of avoiding the Pre-Trial Chamber's intervention to settle disputes between the Co-Investigating Judges […]as well as their obstinacy in rejecting any control by the appellate court […]." (para. 35) "The Chamber will now articulate the powers it may use in this case as a second-instance investigating court while reviewing the actions and findings of the Co-Investigating Judges." (para. 37)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber is the only judicial entity legally entitled to review the Co-Investigating Judges' closing order itself as well as the legal consequences of it." (para. 66) --- "The Chamber has also found that in the specific case of appeals against closing orders, it has the power to issue a new or revised closing order, including an indictment pursuant to Internal Rule 79(1)." (Opinion of Judges BEAUVALLET and BAIK, para. 121) "The International Judges note that the scope and the nature of the Pre-Trial Chamber's review powers are subject to its obligation under Internal Rule 76(7) […]. The International Judges consider that as '[n]o issues concerning […] procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber', this provision, in light of Internal Rule 21(1), provides the presumption that all actions shall be undertaken to preserve the rights of the accused and other parties before a closing order becomes final. Hence, when the Pre-Trial Chamber is called upon on an appeal against the Co-Investigating Judges' closing order, the Chamber is vested with the authority to review whether the issuance of the closing order and the preparatory investigation comply with all the provisions and the procedures in force within the ECCC legal framework, especially Internal Rules 21 and 76 as well as the terms of Article 261 of the Cambodian Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BAIK, para. 124) "The International Judges observe that while there is no specific provision that provides the Pre-Trial Chamber with necessary tools to fulfil such important obligation and the ECCC Agreement appears to contemplate the Pre-Trial Chamber solely as a disagreement settlement mechanism, the Internal Rules explicitly endow the Chamber with additional powers and, *inter alia*, the appellate jurisdiction over the closing orders. Consequently, the International Judges consider that the Internal Rules not only allow, but direct it to exercise the broad powers of the Cambodian Investigating Chamber, through the application of Article 12 of the ECCC Agreement, Internal Rule 2 as well as Articles 1(2) and 55 of the Cambodian Code of Criminal Procedure, in order to safeguard the rights of the accused and other parties during the investigation and guarantee remedy to violations of parties' rights when deemed necessary." (Opinion of Judges BEAUVALLET and BAIK, para. 125) "Furthermore, the International Judges recall that when an admissible appeal against the Co-Investigating Judges' closing order is filed and brought before the Pre-Trial Chamber, not just the disposition of a specific order or decision, but the entire case file is referred to it and the Chamber thus gains authority over the whole case file. From that stage, the Co-Investigating Judges are no longer seised of the case in dispute and thereby divested of any authority over all aspects of the investigation of the case. The jurisdiction of the Pre-Trial Chamber, including its broad powers, is accordingly activated as soon as it is seised of an appeal against a closing order. The Pre-Trial Chamber has further found that such understanding of the appeal process against the Co-Investigating Judges' closing orders is consistent with the features of the inquisitorial model of criminal procedure prescribed by the ECCC legal texts." (Opinion of Judges BEAUVALLET and BAIK, para. 126)

ii. *Powers of the Pre-Trial Chamber at Closing Order Stage*

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"With due regard to the ECCC's *sui generis* mechanism and mandate, the Pre-Trial Chamber considers that the judicial system and structure of the ECCC is, *inter alia*, clearly modelled along the lines of an inquisitorial system of criminal procedure, as provided for by the Cambodian Code of Criminal Procedure, which in turn draws its inspiration from the French Code of Criminal Procedure." (para. 38) "In this regard, the Chamber notes that Article 55 of the Cambodian Code of Criminal Procedure provides that '[t]here is a Chamber within the Court of Appeal which is called the Investigation Chamber' and that, as in many other inquisitorial systems, the Investigation Chamber is an essential and integral part of the pre-trial stage of a proceeding." (para. 39) "As a body akin to the Cambodian Investigation Chamber, the ECCC Pre-Trial Chamber's power of review can be derived, under the ECCC legal system, from Article 261 of the Cambodian Code of Criminal Procedure, stating that: *[e]very time it is seized, the Investigation Chamber shall examine the regularity and assure itself of the proper conduct of the proceedings*. If the Investigation Chamber finds grounds for annulling all or part of the proceedings, it may, on its own motion, annul such proceedings. The Investigation Chamber shall act in compliance with Article 280 (Effect of Annulment) of this Code. […] Similar provisions can be found in numerous codes of criminal procedure in other inquisitorial systems, including France." (para. 40) "Regardless of its designation – the second-instance Investigation Chamber, Accusation Chamber, or Pre-Trial Chamber – the present Chamber forms a final jurisdiction over the pre-trial stage at the ECCC." (para. 41) "In this regard, the Pre-Trial Chamber refers to eminent authors who notably stated: [t]he Investigation Chamber can be defined as an Appeal Court's Chamber […] whose mission is not only to know about appeals against first instance jurisdiction's decisions, *i.e*., the investigating judges […], but also to constantly monitor the regularity of investigation and to assume a supervisory role with the investigating judges, whose mistakes the Chamber shall remedy. In that sense, it may be considered as the high court for investigation." (para. 42) "The Pre-Trial Chamber notes that other comparable oversight mechanisms exist in other hybrid courts […]." (para. 43) "In light of the foregoing, the Pre-Trial Chamber specifies that the functions it may perform within the ECCC legal system include that of the Investigation Chamber, which comprises both appellate jurisdiction over the investigating judge's acts and decisions, and a second-instance investigating jurisdiction." (para. 44) **"**The Chamber notes that, independent of any exceptional circumstances, its jurisprudence is filled with examples of instances in which the Chamber has had to exercise, as other international judicial bodies, powers which are not necessarily explicitly stated, yet still compatible with functions entrusted to it by the ECCC legal texts." (para. 45) "With respect […] to the case at hand, the Pre-Trial Chamber notes that its power of review as a second-instance investigative chamber may comprise of (i) the Investigation Chamber's powers to purge any irregularities in the procedures it is seised of before sending the Case to trial; (ii) the Investigation Chamber or the ECCC's Pre-Trial Chamber's power, in the instances it is seised, to entirely review and revise a case including to correct any of the investigating judges' erroneous legal qualifications and to note all the legal circumstances linked to the facts; and (iii) *the right to review and revise the work of the investigating judges in proceeding to any necessary operations for the sake of the manifestation of the truth.* In other words, the power of review enables such Chamber to holistically address all the acts related to the case that the prosecution or the investigating judge has or should have done for the instruction to be complete and legal." (para. 47) "[T]he Pre-Trial Chamber emphasises that when it is seised of the final investigation procedure, 'the subject matter jurisdiction of the Investigating Chamber is general, as opposed to specific. The entire case is referred to it and not only the disposition of an order.' Consequently, the Investigation Chamber possesses a power of review allowing it to complete the investigation through supplementary investigative acts and to assess the regularity of the procedure, when the circumstances do so require." (para. 48)

		"The Pre-Trial Chamber considers that when it acts as the ECCC's Investigative Chamber, it exercises the ultimate authority over the investigation phase. The Chamber recalls that one of the important purposes of the Pre-Trial Chamber is thus to assess the entirety of the investigation phase and to issue the final determinations in this regard. The Pre-Trial Chamber retains broad substantive jurisdiction over matters of which it may be seised and holds expansive powers to assess the integrity of an investigation and the substance of the case in safeguarding the principle of impartiality." (para. 49) "The Pre-Trial Chamber considers that the exercise of its review power as Investigation Chamber is intended, first and foremost, to ensure that the conditions for the issuance of the closing order and the preparatory investigation are in accordance with the ECCC Internal Rules 21 and 76, and Article 261 of the Cambodian Code of Criminal Procedure. Accordingly, in appeals against closing orders, there are many preliminary issues which the Pre-Trial Chamber may need to consider before addressing the merits of the parties' submissions, including what the Pre-Trial Chamber has identified over the years as issues of general significance for the ECCC's jurisprudence and legacy, and/or its inherent powers when considering a closing order." (para. 50) "In this regard, the Pre-Trial Chamber is, *inter alia*, and regardless of specific attributions set in Internal Rules 71 to 78, required to ensure that '[t]he applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations [are] 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' throughout the pre-trial stage. The Chamber thus has inherent jurisdiction to examine 'due diligence displayed in the Co-Investigating Judge's conduct', where it constitutes 'a relevant factor when considering victims' rights in the proceedings'. The Chamber also has inherent jurisdiction 'to determine incidental issues which arise as a direct consequence of the procedures of which [it is] seised', in instances where statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter. Such inherent jurisdiction is rendered necessary by the imperative need to ensure good and fair administration of justice." (para. 51) "[T]he Chamber's power of review can be grasped in Internal Rule 76(7) which states that '[s]ubject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation'. This power of review is so important and determinative that '[n]o issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber'. As a consequence, the Pre-Trial Chamber is responsible for ensuring, at the investigation stage, that the fundamental principles underlying the criminal procedure applicable before the ECCC are respected." (para. 52)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber has recognised that it may perform at least three distinct interventions at the closing order stage of proceedings – namely, primarily (i) the review of admissible appeals filed by parties to the proceedings, and incidentally (ii) the review of the Co-Investigating Judges' findings reached in the closing order and of the investigative acts performed in the case, and (iii) the exercise of an ancillary investigative power to complement, where necessary, the investigation through supplementary actions." (Opinion of Judges BEAUVALLET and BAIK, para. 127) "The Pre-Trial Chamber has an explicit jurisdiction to entertain admissible appeals filed against closing orders pursuant to Internal Rules 67(5), 73(a) and 74. The Chamber has determined that the scope of its review for such appeals is limited to the issues raised by the appeals as well as by the internationally established standards for the appellate review of errors of law, fact, and discretion alleged by parties to international criminal proceedings against judicial rulings of lower-instance bodies. The Chamber has also found that in accordance with internationally recognised standards of appellate review, it retains the inherent jurisdiction to address issues of 'general significance' for the ECCC's jurisprudence and/or legacy." (Opinion of Judges BEAUVALLET and BAIK, para. 128) "The Pre-Trial Chamber has emphasised that its jurisdiction differs from that of most other appellate bodies in the international criminal justice system, for, when it is seised of appeals against the Co-Investigating Judges' closing orders, it may also conduct, in parallel, a *proprio motu* review of the Co-Investigating Judges' findings and all the investigative acts performed in the case by the Co-Investigating Judges and the Co-Prosecutors. The Chamber has noted that similar powers are entrusted to equivalent hybrid bodies, such as the *Chambre africaine extraordinaire d'Accusation* within the Dakar Court of Appeals and the Central African Republic's Special Accusation Chamber. Within the ECCC legal framework, the Pre-Trial Chamber may, upon its seisin of an appeal against a closing order, perform such intervention pursuant to Article 12 of the ECCC Agreement and Internal Rule 2, Internal Rules 67(5), 73(a), 74, 76(7) and 79(1), and Articles 55 and 261 of the Cambodian Code of Criminal Procedure. These two latter provisions define the jurisdiction of the Investigation Chamber within the Cambodian Court of Appeal, which plays an essential function at the pre-trial stage of

		proceedings in Cambodian law. […] Relatedly, the Pre-Trial Chamber's jurisprudence has upheld the view that: [t]he Investigation Chamber can be defined as an Appeal Court's Chamber […] whose mission is not only to know about appeals against first instance jurisdiction's decisions, *i.e.*, the investigating judges […], but also to […] monitor the regularity of investigations and to assume a supervisory role with the investigating judges, whose mistakes the Chamber shall remedy. In that sense, it may be considered as the high court for investigation." (Opinion of Judges BEAUVALLET and BAIK, para. 129) "The Pre-Trial Chamber has affirmed that upon its seisin of an appeal against the Co-Investigating Judges' closing order, the Chamber may also, pursuant to Article 12 of the ECCC Agreement and Internal Rule 2, Internal Rules 76(2), (3) and 7, and 79(1), and Article 55 of the Cambodian Code of Criminal Procedure, undertake any actions that derive from the authority of the Cambodian Investigation Chamber, including investigative acts in seeking and ascertaining the truth. Accordingly, the Pre-Trial Chamber has found that the Chamber's aforesaid review powers can be complemented by any supplementary acts that are required to complete the investigation, and/or by any acts that are necessary to correct procedural irregularities in the proceeding and/or implement the Chamber's own decisions – including, where appropriate, altering the closing order originally issued by the Co-Investigating Judges. The International Judges recall that similar investigative courts in other domestic inquisitorial legal systems are vested with comparable powers at the closing phase of the pre-trial stage of proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 130)
3.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 36)

8. Appeals against Closing Order

For jurisprudence concerning ***Appeals in General***, see VII.B. Appeals (General)

i. *Admissibility of Appeals against Closing Order*

a. Appeals Lodged by the Co-Prosecutors

For jurisprudence concerning the ***Co-Prosecutors' Rights of Appeal,*** see VII.B.2.i.b. Co-Prosecutors

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Appeal was filed in accordance with Internal Rules 74 and 75 and is therefore admissible." (para. 25)
2.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber recalls that, pursuant to Internal Rule 67(5), '[t]he [closing] order is subject to appeal as provided in Rule 74.' Furthermore, in accordance with Internal Rule 74(2), '[t]he Co-Prosecutors may appeal against all orders by the Co-Investigating Judges.'" (para. 25) "The determination that there is no personal jurisdiction is not unreviewable, and the Pre-Trial Chamber, as an appellate chamber, must be able to review the findings that led to it, including those regarding the existence of crimes or the likelihood of IM Chaem's criminal responsibility." (para. 26)

3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[P]ursuant to Internal Rules 67(5) and Internal Rule 74(2), the Closing Order (Indictment) is subject to appeal because the Co-Prosecutors may appeal all orders by the Co-Investigating Judges." (para. 127) "[P]ursuant to Internal Rules 67(5) and Internal Rule 74(2), the Closing Order (Dismissal) is subject to appeal because the Co-Prosecutors may appeal all orders by the Co-Investigating Judges." (para. 129) --- "The Co-Prosecutors may appeal against all orders issued by the Co-Investigating Judges." (Opinion of Judges BAIK and BEAUVALLET, para. 680)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[P]ursuant to Internal Rules 67(5), 74(2) and 73(a), the Indictment is subject to appeal, the Co-Prosecutors have a general right to appeal all orders by the Co-Investigating Judges, and the Pre-Trial Chamber has jurisdiction over such appeal." (para. 51) "[P]ursuant to Internal Rules 67(5), 74(2) and 73(a), the Dismissal Order is subject to appeal, the Co-Prosecutors have a general right to appeal all orders by the Co-Investigating Judges, and the Pre-Trial Chamber has jurisdiction over such appeal." (para. 53)
5.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The National Co-Prosecutor appeals the International Co-Investigating Judge's Indictment under Internal Rules 67(5), 73(a) and 74(2)." (para. 38) "Noting that the Co-Prosecutors may appeal against all orders by the Co-Investigating Judges, the Pre-Trial Chamber finds the National Co-Prosecutor's Appeal admissible." (para. 39) "The International Co-Prosecutor appeals the National Co-Investigating Judge's Dismissal under Internal Rules 67(5) and 74(2)." (para. 40) "The Chamber observes that the Co-Prosecutors may appeal against all orders by the Co-Investigating Judges. Accordingly, the International Co-Prosecutor's Appeal is admissible." (para. 41) --- "[T]he International Judges observe that the Co-Prosecutors may appeal against all orders by the Co-Investigating Judges and reiterate that the National Co-Prosecutor's Appeal is admissible." (Opinion of Judges BAIK and BEAUVALLET, para. 490) "The International Judges note that the Co-Prosecutors may appeal against all orders by the Co-Investigating Judges." (Opinion of Judges BAIK and BEAUVALLET, para. 510)

b. Appeals Lodged by the Charged Persons under Internal Rule 74(3)(a) (Jurisdictional Challenges)

For jurisprudence concerning ***Jurisdictional Appeals in General,*** see VII.B.3.i. Appeals against Orders or Decisions Confirming the Jurisdiction of the ECCC (Internal Rule 74(3)(a))

1.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"[A]ccording to Internal Rule 74, not all orders of the Co-Investigating Judges can be appealed by all of the parties. Indeed, while the Co-Prosecutors may, under Internal Rule 74(2), appeal against all orders issued by the Co-Investigating Judges, the Charged Persons or the Accused may appeal only those orders and decisions enumerated under Internal Rule 74(3). An indictment is not on that list. Nevertheless, […] although the Accused may not appeal against the indictment itself, the Pre-Trial Chamber is of the view that, to the extent that it confirms the jurisdiction of the ECCC, it is clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges. Therefore, the question for the Pre-Trial Chamber is to determine whether, […] the Appellant […] has the right to appeal against the Indictment 'in its entirety', given that the Indictment generally confirms the ECCC's Trial Chamber jurisdiction to try him. This would amount to adding the indictment to the list of appealable Co-Investigating Judges' orders and decisions enumerated in the Internal Rules. Clearly, such an interpretation is not consistent with the approach adopted by the Internal Rules […]. Internal Rule 74(3)(a) also does not allow the Appellant to appeal against procedural irregularities in the investigation." (para. 14)

		"[T]he Appellant's submission that […] under French law, an accused may now appeal against an indictment […] cannot justify a departure from the clearly established defined appealable matters set out in Internal Rule 74(3)(a)." (para. 15)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held […] that only jurisdictional challenges may be raised under that rule. In determining what constitutes a proper jurisdictional challenge, the Pre-Trial Chamber considered that the ECCC 'is in a situation comparable to that of the *ad hoc* tribunals' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the acts for which an accused is charged. […] [and] that body of law must be reflected in customary international law. Consequently, the Pre-Trial Chamber adopted the approach of the *ad hoc* tribunals, such that appeals that 1) 'challenge […] the very existence of form of responsibility or its recognition under customary law at the time relevant to the indictment'; or 2) argue that mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings. However, 'challenges relating to the specific contours of […] a form of responsibility, are matters to be addressed at trial.'" (para. 60) "The Pre-Trial Chamber finds that the same approach applies with respect of grounds of appeal at the pre-trial phase contesting the substantive crimes charged under Articles 3 (new) - 8 of the ECCC Law. Such appeals only raise admissible subject matter jurisdiction challenges where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment and that its application would result in a violation of the principle of legality." (para. 61) "However, 'challenges relating to the specific contours of a substantive crime […] are matters to be addressed at trial.' For example, challenges to the specific definition and application of elements of crimes charged are inadmissible at the pre-trial phase. Furthermore, challenges as to whether the elements of a charged crime actually existed in reality as opposed to legally at the time of the alleged criminal conduct is inadmissible. This is because such challenges often involve factual or mixed questions of law and fact determinations to be made at trial upon hearing and weighing all the evidence." (para. 62) "Finally, with respect of challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such these arguments may be brought before the Trial Chamber to be considered on the merits at trial; however, they do not demonstrate the ECCC's lack of jurisdiction." (para. 63) "[Alleging] that the Co-Investigating Judges failed to properly plead as a factual matter the existence of a legal duty to act and its basis in domestic law as an element of superior responsibility, […] raises an alleged defect in the form of the indictment rather than a jurisdictional challenge and is therefore inadmissible. […] Appeal with respect of insufficient evidentiary sources; failure to properly apply the facts; and failure to provide the legal characterization of the facts for charges under the 1956 Cambodia Penal Code constitute inadmissible challenges alleging defects in the form of the indictment." (para. 64) "The Pre-Trial Chamber […] has limited jurisdiction to hear appeals against the Closing Order at this stage under Internal Rule 74(3) with respect of fair trial issues." (para. 65) "The issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter." (para. 67) "[…] Internal Rule 67 governs the issuance of a Closing Order by the Office of the Co-Investigating Judges at the conclusion of their investigations. As noted previously, Internal Rule 67(5) explicitly provides that, upon issuance of a Closing Order '[t]he order is subject to appeal as provided in Rule 74.' No other Internal Rule is listed in Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not address grounds of pre-trial appeals; rather it lays out the fundamental principles governing proceedings before the ECCC." (para. 70)

		"With respect of the final matter of whether the OCIJ erred in charging forced marriage, sexual violence and enforced disappearances under the aforementioned definition of 'other inhumane acts', the Pre-Trial Chamber finds that this constitutes a mixed question of law and fact. As such, it is not a jurisdictional issue that may be determined by the Pre-Trial Chamber pursuant to Internal Rule 74(3)(a), but is one for the Trial Chamber to decide at trial." (para. 166)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[P]ursuant to Internal Rule 67(5), the Closing Order is subject to appeal as provided in Internal Rule 74. Internal Rule 74 stipulates the grounds of appeal that may be raised by the parties before the Pre-Trial Chamber and, relevant to the present Appeal, Internal Rule 74(3)(a) states that 'the Charged Person or the Accused may appeal against the following orders or decisions of the Co-Investigating Judges [...] confirming the jurisdiction of the ECCC.' (para. 44) "In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held that only jurisdictional challenges may be raised under that rule. In determining what constitutes a proper jurisdictional challenge, the Pre-Trial Chamber considered that the ECCC 'is in a situation comparable to that of the *ad hoc* tribunals,' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the acts for which an accused is charged. [...] [and] that body of law must be reflected in customary international law.' Consequently, the Pre-Trial Chamber adopted the approach that appeals that: 1) 'challenge [...] the very existence of a form of responsibility or its recognition under [...] law at the time relevant to the indictment'; or 2) argue that a mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings. However, 'challenges relating to the specific contours of [...] a form of responsibility are matters to be addressed at trial.'" (para. 45) "The Pre-Trial Chamber finds that the same approach applies with respect to grounds of appeal at the pre-trial phase contesting the substantive crimes charged [...]. Such appeals only raise admissible subject matter jurisdiction challenges where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality. The Pre-Trial Chamber notes that 'challenges relating to the specific contours of a substantive crime [...] are matters to be addressed at trial.' For instance, challenges to the specific definition and application of elements of crimes charged are inadmissible at the pre-trial phase. Furthermore, challenges as to whether the elements of a charged crime actually existed in reality as opposed to legally at the time of the alleged criminal conduct are inadmissible. This is because such challenges often involve factual or mixed questions of law and fact determinations to be made at trial upon hearing and weighing the relevant evidence." (para. 46) "Finally, with respect to challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such, these arguments may be brought before the Trial Chamber to be considered on the merits at trial and such do not demonstrate the ECCC's lack of jurisdiction." (para. 47) "The Pre-Trial Chamber has previously stated that '[t]he principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted' and that '[t]he principle of *ne bis in idem* has been interpreted as meaning that the accused "shall not be tried twice for the same crime"'. As such and in the context of an appeal against provisional detention, the Pre-Trial Chamber has previously considered the principle of *ne bis in idem* as being a jurisdictional issue." (para. 61) "In [...] the civil law system, the extinguishment of a criminal cause of action due to *res judicata*, a concept closely related to the principle of *ne bis in idem*, shall normally lead to the issuance of a dismissal order by the investigating judge. By sending Ieng Sary to trial, the Co-Investigating Judges implicitly rejected his request to ascertain the extinguishment of the criminal action against him, thus confirming the jurisdiction of the ECCC to try him. Concluding otherwise would deprive Ieng Sary from

		exercising his right of appeal on a jurisdictional issue that was properly raised before the Co-Investigating Judges but upon which the latter failed to make a judicial determination." (para. 62) "The Pre-Trial Chamber considers [...] that amnesty is perceived as a potential 'bar to prosecution', akin to the issue of *ne bis in idem*. A pardon can potentially have a similar effect. [...] [T]he Pre-Trial Chamber therefore finds that these issues are jurisdictional." (para. 66) "As compliance with the principle of legality is a prerequisite for establishing ECCC's jurisdiction over the crimes and modes of liability provided in ECCC Law, [...] the Co-Lawyers challenge is found to be admissible pursuant to Internal Rule 74(3)(a). The principle of legality must be satisfied as a logical antecedent to establishing whether certain crimes and modes of liability existed at the time the crimes were allegedly commit[t]ed. Therefore, those grounds of appeal alleging errors in relation to the standard of the principle of legality applied, amount to jurisdictional challenges." (para. 69) "At the outset, [...] the Co-Investigating Judges' Closing Order indicted the Charged Person for Grave Breaches, which amounts to a confirmation of ECCC's jurisdiction [...]. The Co-Lawyers' challenge against this confirmation of jurisdiction is based on an assertion that the domestic statutory limitation period applies also to international crimes. The Geneva Conventions, which are the applicable law under Article 6 of the ECCC Law, provide that war crimes are not subject to any statute of limitations, which indicates that there is no statute of limitations applicable. The submission to the contrary is without merit. As the Appellant makes no jurisdictional challenge, the ground is inadmissible." (para. 73) "The issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter." (para. 76) "[T]he Co-Lawyers [...] argue that an allegedly erroneous definition of the crime may have made the Co-Investigating Judges to wrongfully assume jurisdiction. The Pre-Trial Chamber finds that these complaints are arguments relating to the pleading practice and the form of the indictment and do not represent admissible jurisdictional challenges." (para. 80) "[T]he Co-Lawyers argue upon the very existence in law in 1975-79 of certain categories of the crimes against humanity, which represent arguments that go to the very essence of the test for compliance with the principle of legality and, as such, represent admissible jurisdictional challenges." (para. 84) "[T]he Co-Lawyers allege that the Co-Investigating Judges made an erroneous definition of crimes or elements of crimes. The Pre-Trial Chamber finds that these arguments relate to the pleading practice and do not represent jurisdictional challenges." (para. 85) "[T]he Co-Lawyers' argument is related to the contours of elements of the crime and therefore to the pleading practice and does not represent a jurisdictional challenge." (para. 86) "The Co-Lawyers allegation [...] that the Co-Investigating Judges made an incorrect characterization of facts allegedly proving elements of a crime does not represent a jurisdictional challenge either." (para. 87) "[T]he Co-Lawyers complain about the Co-Investigating Judges considering acts that fall outside the temporal jurisdiction of the ECCC, which represents an argument related to issues of fact and law that are better addressed at trial. Having thus observed, the Pre-Trial Chamber notes, that discussion of issues outside of the time of indictment can be relevant as to the context and continuation of conduct." (para. 88) "[T]he Co-Lawyers[' argument] that the Co-Investigating Judges' pleading lacks sufficient specification do not represent jurisdictional challenges either as they relate to issues of fact and law." (para. 89) "[T]he Pre-Trial Chamber shall not examine or take a position on Co-Lawyers arguments [...] as these arguments relate specifically to the way how Co-Investigating Judges defined rape rather than to its very existence in law in 1975-79." (para. 90) "[T]he Co-Lawyers do not challenge the existence in law of 'forcible transfers,' they rather challenge its wrong classification by the Co-Investigating Judges as an element of one or another crime, which is an argument that goes to the pleading practice and therefore does not represent an admissible jurisdictional challenge." (para. 91)

		"[T]he Co-Lawyers [...] contest the way in which the Co-Investigating Judges define, apply or set out the requirements for the crimes or elements of the crimes. The Pre-Trial Chamber finds that these are challenges related to alleged defects in the indictment or the pleading practice which can be properly advanced and argued during the course of the trial." (para. 93) "[T]he Co-Lawyers allege an error on mixed issues of fact and law by the Co-Investigating Judges. They do not challenge the confirmation of ECCC's jurisdiction over JCE I, but rather the way in which the Co-Investigating Judges reach their conclusion. The Pre-Trial Chamber does not find this ground to fall within the ambit of Internal Rule 74(3)(a)." (para. 95) "[T]he Co-Lawyers argue that the Co-Investigating Judges erred in applying [...] modes of responsibility to the facts set out in the indictment, or that the elements of these modes of liability were improperly defined. These do not amount to jurisdictional challenges but are rather allegations for defect in pleading of the indictment. No challenge to an indictment under Internal Rule 67(2) claiming it to be void for procedural defect (for failure to set out a description of the material facts and their legal characterisation) may be brought before the Pre-Trial Chamber. Internal Rules 80*bis* and 89 set out the procedure for such a challenge. These are matters solely in the jurisdiction of the Trial Chamber." (para. 97) "[C]hallenging the existence of command responsibility as a mode of liability under customary international law at the time of commission of the crimes enumerated in the Closing Order represents a jurisdictional challenge." (para. 100) "[L]ack of specificity in the indictment, does not raise a jurisdictional challenge under Rule 74(3)(a)." (para. 101) "[T]he argument that there was no consistent state practice to hold non-military superiors accountable for the acts of their subordinates in 1975-79, represents an admissible jurisdictional challenge. [...] [M]ixed issues of fact and law and such issues of the contours of modes of liability, as opposed to their very existence, do not represent jurisdictional challenges." (para. 102) "The principle of legality must be satisfied as a logical antecedent for the establishment of whether certain crimes and modes of liability existed at the relevant time. The Pre-Trial Chamber acknowledges that accessibility and foreseeability are elements of the principle of legality. […] Where the Co-Lawyers for Ieng Sary invite consideration of the subjective knowledge of Ieng Sary as to the state of international law, their request would require a factual determination which is not within the Pre-Trial Chamber's jurisdiction[.]" (para. 210) "Similarly, Ieng Sary's submission of lack of clarity concerning the requisite *mens rea* for command responsibility in 1975-79 imports detailed consideration of the elements or contours of the mode of liability, rather than its bare existence. It therefore does not fall within the ambit of Internal Rule 74(3)(a) as a jurisdictional challenge. Determinations as to the existence of armed conflict are factual in nature and not within the Pre-Trial Chamber's jurisdiction to examine." (para. 211)
4.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The notion of a jurisdictional challenge is generally understood to be a plea against the Court's competence *rationae personae*, *materiae*, *temporis* and *loci*. Internal Rule 74(3) affords the Charged Person or Accused with a limited right to appeal only those orders and decisions specifically enumerated under the provision. […] It follows from […] Internal Rule 74(3)(a) that the Closing Order (Indictment) is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 135) "[T]he Pre-Trial Chamber recalls that appeals which: 1) 'challenge […] the very existence of a form of responsibility or its recognition under […] law at the time relevant to the indictment'; or 2) argue that a mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings." (para. 137) "Appeal grounds contesting substantive crimes were found to raise admissible subject matter jurisdiction challenges 'where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality'." (para. 138)

		"[C]hallenges relating to the specific contours of a mode of liability or substantive crime 'are matters to be addressed at trial' and, therefore, inadmissible. Thus, challenges relating to whether the elements of a crime or a mode of liability actually existed in reality – as opposed to legally at the time of the alleged criminal conduct – are matters to be addressed at trial." (para. 139) "The Pre-Trial Chamber held [in Case 004/1] that when there is a prior finding of no personal jurisdiction, this may be reviewable; further, that 'as an appellate chamber, [i]t must be able to review the findings that led to it, including those regarding the existence of crimes or the likelihood [of the Accused's] criminal responsibility.' [...] [I]n Case 004/1, distinguishable from the instant case, those findings were made in relation to an Appeal lodged under Internal Rule 74(2) by the International Co-Prosecutor who may appeal against all orders and decisions; the issue did not involve the enumerated provisions under 74(3) for the Accused [...]." (para. 142) "The Pre-Trial Chamber does not consider that a similar approach applies to appeals filed pursuant to Internal Rule 74(3)(a) challenging the personal jurisdiction over the Accused. Procedural differences between the appellate rights of the Co-Prosecutors and an Accused do not, *per se*, violate the principle of equality of arms. [...] [I]t was clearly the intent of drafters to provide different procedural rights to appeal to the parties under Internal Rule 74. This provision articulating the enumerated rights would become meaningless if an accused could challenge anything implicating 'criminal liability', including the contours of crimes of modes of liability under the guise of personal jurisdiction." (para. 143) "[A] challenge to personal jurisdiction regarding those who were most responsible should be aimed at the gravity of crimes and/or the level of responsibility of the Accused. Challenges involving the criminal liability of the Accused beyond this limitation, including contours of crimes or modes of liability, cannot be framed as challenged to personal jurisdiction and are inadmissible." (para. 145) "[T]he scope of the International Co-Investigating Judge's discretion to determine personal jurisdiction (Ground 2) and the interpretation of those most responsible (Ground 3) each directly impact the Court's ability to exercise jurisdiction. Grounds 2 and 3 therefore constitute jurisdictional challenges." (para. 150) "Under Internal Rule 74(3)(a), the Pre-Trial Chamber finds that Grounds 4-7 are admissible as personal jurisdiction challenges because the alleged improper 'application of the standard of proof' (Ground 4), 'hierarchy of evidence' (Ground 5), AO An's role within the CPK (Ground 6) and the sufficiency of gravity concerning charged crimes (Ground 7) are material in determining personal jurisdiction." (para. 151) "The Pre-Trial Chamber finds that Grounds 8, 9, 11, 12(i) and 15(i) constitute valid jurisdictional challenges as they challenge the Court's compliance with the principle of legality, a pre-requisite for establishing the ECCC's jurisdiction over the crimes and modes of liability in the ECCC Law." (para. 153) "The Chamber recalls that '[t]he issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter.' Thus, Ground 13 is an admissible appeal ground at this pre-trial stage of the proceedings." (para. 154) "Ground 16(ii) alleging that the International Co-Investigating Judge did not demonstrate that the Cham were positively identified and targeted 'as such' implicates the gravity of crimes. Ground 16(iii) challenging the International Co-Investigating Judge's application of the *mens rea* for genocide to the Accused, including specific genocidal intent, implicates AO An's responsibility for the crimes. The Chamber, therefore, considers these Grounds admissible as proper personal jurisdiction challenges." (para. 155) "The Pre-Trial Chamber finds that Grounds 12(ii), 14, 15(ii) and 16(i) are inadmissible. These Grounds challenge the contours of crimes and modes of liability and their application in reality rather than their existence in law at the time relevant to the Indictment." (para. 157)
5.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021	"The Pre-Trial Chamber notes that the Indictment is subject to appeal pursuant to Internal Rule 67(5) and that the Pre-Trial Chamber has jurisdiction over appeals filed pursuant to Internal Rule 74. The Chamber also notes that Internal Rule 74(3) allows a charged person or an accused to lodge only limited types of pre-trial appeals, including appeals filed under sub-rule 74(3)(a) against the Co-Investigating Judges' orders 'confirming the jurisdiction of the ECCC'. This Chamber determined that the broadening of this right of appeal through Internal Rule 21 is ascertained on a case-by-case basis and granted only in exceptional cases." (para. 55)

	Considerations on Appeals against Closing Orders	"The parties' right to appeal and the admissible grounds for pre-trial appeals are governed by Internal Rule 74. As exposed below, the Pre-Trial Chamber has declared that an appeal filed by a charged person or an accused is admissible under Internal Rule 74(3)(a) if it pertains, *inter alia*, to: (i) subject matter jurisdiction under sub-rule 74(3)(a); (ii) personal jurisdiction under sub-rule 74(3)(a); and/or (iii) exceptional fair trial rights issues, examined case-by-case, which may require the broadening of the right of appeal afforded by sub-rule 74(3)(a) in light of Internal Rule 21." (para. 63) "Firstly, the notion of jurisdictional challenge is generally understood to be a plea against the ECCC's competence *rationae personae*, *materiae*, *temporis* and/or *loci*, as defined by Articles 2*new* to 8 of the ECCC Law. As previously stated, Internal Rule 74(3) affords the Charged Person or Accused a right to appeal only those orders and decisions enumerated under this provision. These include, pursuant to sub-rule 74(3)(a), orders or decisions of the Co-Investigating Judges 'confirming the jurisdiction of the ECCC'. On this basis, the Pre-Trial Chamber has determined that an indictment is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 64) "Regarding personal jurisdiction challenges, the Pre-Trial Chamber recalls that the ECCC's personal jurisdiction is confined to 'senior leaders' and to 'those who were most responsible' for the crimes within the ECCC's jurisdiction. The Chamber further notes that although the term 'most responsible' is not defined by the ECCC Agreement or the ECCC Law, guidance for its interpretation can be discerned by looking, *inter alia*, to international jurisprudence in light of the object and purpose of the Court's founding instruments. As numerous Chambers of the ECCC have found, international jurisprudence establishes that the identification of those falling into the 'most responsible' category includes a quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect, which necessarily involves mixed questions of law and facts." (para. 65) "[W]hile as a general principle, mixed questions of law and facts are non-jurisdictional in nature and should be dealt with primarily at trial, personal jurisdiction is an 'absolute jurisdictional element', which should be subject to an effective right of pre-trial appeal. In the instant case, the effectiveness of this right is entwined with the rationale behind the right of appeal granted by sub-rule 74(3)(a), which aims to promote the orderly and efficient administration of justice by allowing the defence to avoid a trial for which the Court has no jurisdiction over and by preventing a waste of resources." (para. 67) "[C]onsidering the interests of the accused and victims as well as the necessity of legal certainty and transparency of proceedings, allowing subject matter jurisdiction challenges concerning only points of law, as defined in prior decisions, is sufficient to safeguard the accused's effective right to appeal at the pre-trial stage – that is, to ensure that he or she is not sent to trial for crimes for which the Court has no jurisdiction over. Conversely, the Chamber finds that since the determination of the ECCC's personal jurisdiction intrinsically involves mixed questions of law and facts, the right to appeal against orders making such determination can only be effective if the defence engages with those mixed questions in the appeal it brings before the Pre-Trial Chamber." (para. 68) "[W]hen facing challenges to personal jurisdiction regarding 'those who were most responsible', this Chamber shall limit its evaluation to matters crucial to the determination and assessment of personal jurisdiction – that is, the gravity of crimes and/or level of responsibility of the accused. Accordingly, this Chamber has already concluded that a challenge to personal jurisdiction regarding 'those who were most responsible' is admissible insofar as it is aimed at the gravity of crimes and/or level of responsibility of the accused. The Pre-Trial Chamber reaffirms that challenges involving matters beyond this limitation cannot be framed as challenges to personal jurisdiction and are thus inadmissible on such basis pursuant to Internal Rule 74(3)(a) alone." (para. 69) "The Co-Lawyers […] contend that the International Co-Investigating Judge's interpretation of Internal Rule 77(13) – to the effect that both Closing Orders or only the Indictment would stand should the Pre-Trial Chamber fail to uphold one of them by supermajority – implicitly confirmed the ECCC's personal jurisdiction over MEAS Muth. The Pre-Trial Chamber observes, at the outset, that this argument touches upon the issues already settled […]. The Chamber further notes that Ground A only challenges, […] an International Co-Investigating Judge's opinion, speculating on matters within the Pre-Trial Chamber's sole purview and therefore in itself does not affect the proceedings nor MEAS Muth's rights. Consequently, the Chamber finds that this Ground cannot be admitted as a valid personal jurisdiction challenge under Internal Rule 74(3)(a)." (para. 74)

		"The Chamber notes that the Co-Lawyers' Ground B rather addresses a situation where, in their view, the discrepancies between the two Closing Orders of legal and factual findings therein with respect to whether MEAS Muth falls within the ECCC's personal jurisdiction evidence doubt on key jurisdictional issues that the International Co-Investigating Judge should have addressed by referring to the principle of *in dubio pro reo* in his assessment of the law governing the Court's jurisdiction. Therefore, the Pre-Trial Chamber finds that this challenge cannot be framed and admitted as a valid challenge to personal jurisdiction under Internal Rule 74(3)(a)." (para. 77)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"At the outset, the Pre-Trial Chamber observes that Chapter II of the ECCC Law defines the personal, temporal and subject matter jurisdiction of the ECCC. The Chamber notes that pursuant to Internal Rule 74(3), a charged person or an accused may appeal only against the Co-Investigating Judges' orders and decisions listed in this provision. Specifically, Internal Rule 74(3)(a) prescribes that the orders or decisions of the Co-Investigating Judges that may be challenged include those 'confirming the jurisdiction of the ECCC'. In this regard, the Pre-Trial Chamber recalls that an indictment is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 51) "Accordingly, an appeal of the accused against the indictment is admissible if it relates, *inter alia*, to: (i) subject matter jurisdiction under Internal Rule 74(3)(a); (ii) personal jurisdiction under Internal Rule 74(3)(a); or (iii) exceptional fair trial rights issues, examined case-by-case, which may merit the broadening of Internal Rule 74(3)(a) in light of Internal Rule 21." (para. 52) "Concerning the personal jurisdiction issues, the Pre-Trial Chamber notes that the personal jurisdiction of the ECCC is confined to 'senior leaders' and to 'those who were most responsible' for the crimes. Further, the Chamber observes that although the term 'most responsible' is not defined by the ECCC Agreement or the ECCC Law, guidance for its interpretation can be discerned by looking, *inter alia*, to international jurisprudence in light of the object and purpose of the Court's founding instruments. As multiple ECCC Chambers have found, international jurisprudence establishes that the identification of those falling into the 'most responsible' category includes a quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect. Accordingly, when facing challenges to personal jurisdiction regarding 'those who were most responsible', the Pre-Trial Chamber shall limit its evaluation to matters crucial to the determination and assessment of personal jurisdiction – that is, the gravity of crimes and/or level of responsibility of the accused. The Pre-Trial Chamber reaffirms that challenges involving matters beyond this limitation cannot be framed as challenges to personal jurisdiction and are thus inadmissible under Internal Rule 74(3)(a)." (para. 53) "The Pre-Trial Chamber recalls its ruling in Case 004/2 where it held that the challenges concerning the same substantive legal issues—identification of targeted 'group' and specific genocidal intent—implicate the gravity of crimes and the responsibility for crimes and, thus, are 'admissible as proper personal jurisdiction challenges'." (para. 59) "[W]hile Ground 3 [concerning the Co-Investigating Judge's alleged exceeding of the factual scope of the investigation] may not be deemed as a proper personal jurisdictional challenge, it raises issues of fair trial rights and the legality of the ECCC pre-trial procedure warranting intervention by the Pre-Trial Chamber. In this respect, the Chamber considers that sending an indictment against YIM Tith to the Trial Chamber with criminal counts beyond the temporal scope of the investigation would 'irreparably harm the fair trial rights of the accused', thus justifying a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21. Accordingly, the Pre-Trial Chamber finds that Ground 3 is admissible under a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21." (para. 62) "The Chamber considers that the International Co-Investigating Judge's alleged reliance on YIM Tith's membership in JCEs as a relevant consideration in determining YIM Tith as among those 'most responsible' is directly tied to the ECCC's ability to exercise personal jurisdiction. Accordingly, the Pre-Trial Chamber finds that, under Internal Rule 74(3)(a), Ground 4 is an admissible personal jurisdiction challenge." (para. 64) "The Pre-Trial Chamber considers that the alleged factual and legal errors relating to YIM Tith's authority, positions, roles and contributions to alleged JCEs in the Southwest and Northwest Zones are directly material in determining personal jurisdiction. Therefore, the Chamber finds that Ground 5 in its entirety is admissible as personal jurisdiction challenges under Internal Rule 74(3)(a)." (para. 66) "The Pre-Trial Chamber finds that Grounds 2.1 and 2.3 raise inadmissible purported defects in the form of the Indictment, which are 'clearly non-jurisdictional in nature'. Moreover, the Chamber recalls its

		ruling in Case 004/2, where it found inadmissible the appeal grounds which 'challenge the contours of crimes and modes of liability and their application in reality rather than their existence in law at the time relevant to the Indictment.' The Chamber notes that the Co-Lawyers' Appeal does not challenge the existence of superior responsibility in law, which could implicate the Court's ability to exercise jurisdiction, but whether the International Co-Investigating Judge applied all the indicative factors of effective control and supported it with sufficient evidence or whether he acknowledged the alleged causation requirement and provided an evidentiary basis for the causal link. The Pre-Trial Chamber considers it to be a challenge to the 'application in reality' of effective control and causation requirement, which 'should be addressed at trial.'" (para. 82)

c. Timing of Jurisdictional Challenges

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[I]t is not clear that the provisional detention orders for the Appellants *confirm* the ECCC's jurisdiction with respect of the crimes charged against them. The primary purpose of a provisional detention order is to 'set out the legal grounds and factual basis for detention'. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions; determined that there were well-founded reasons to believe that the Appellants may have committed the alleged crimes; and found that, for various reasons, detention would be necessary in the course of the Office of the Co-Investigating Judges' investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect of the crimes alleged to have been committed and those challenged on jurisdictional grounds in these Appeals, this argument is unpersuasive and in no way determinative." (para. 78) "[U]nder Internal Rule 67, at the conclusion of their investigations and issuance of the Closing Order, the Co-Investigating Judges makes their final determinations with respect of the legal characterisation of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC. In doing so '[t]he Co-Investigating Judges are not bound by the Co-Prosecutors submissions' in the course of the investigations. As such, it was not given at the time of the rendering of the provisional detention orders that the crimes alleged by the Co-Prosecutors would be crimes for which the Appellants would eventually be indicted at the conclusion of the Co-Investigating Judges investigations. […] Under the terms of Internal Rule 67 it would have been reasonable for the Appellants to assume that the provisional detention orders did not confirm jurisdiction and that it would be efficient to raise any subject matter jurisdiction objections following the final conclusions on jurisdiction by the Co-Investigating Judges in the Closing Order." (para. 79) "[E]ven if the Pre-Trial Chamber was persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as they see fit.' Here the Pre-Trial Chamber finds that for the following reasons, it would be in the interests of justice to allow the Appellants' jurisdictional objections to the Impugned Order even though one may argue that they should have appealed the provisional detention orders on these grounds […]." (para. 80) "[I]t may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules themselves or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors." (para. 81) "Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging the breach of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to the Appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. However, the Pre-Trial Chamber does not find that considering the Appellants' jurisdictional objections at the close of the Co-Investigating Judges investigation and prior to the commencement of trial undermines expediency. Rather, consideration at this time supports the expeditious conduct of proceedings by safeguarding against an outcome in which '[s]uch a fundamental matter as […]

		jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 82) "In sum, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the Appellants' grounds of appeal raising jurisdictional objections against the Impugned Order at this time. Failure to do so based on the argument that the Appellants are time barred from raising appeals that are permitted according to a plain language reading of the Internal Rules, by relying instead on a questionable interpretation of the Internal Rules so as preclude appeals of this type on mere procedural grounds may result in fundamental unfairness to the Appellants." (para. 83)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber does not find convincing the Co-Prosecutors' argument that the Closing Order is such that it re-confirms the jurisdiction of ECCC and that therefore the Appellants cannot raise jurisdictional challenges at this stage of the proceedings. The Pre-Trial Chamber notes that it is not clear whether the provisional detention order for the Accused represents an order confirming ECCC's jurisdiction with respect to the crimes charged. The primary purpose of a provisional detention order is to 'set out the legal grounds and factual basis for detention'. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions, determined that there were well-founded reasons to believe that the Appellant may have committed the alleged crimes and found that, for various reasons, detention would be necessary in the course of the investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect to the crimes alleged to have been committed and those challenged on jurisdictional grounds in this Appeal, this argument is not persuasive and in no way determinative." (para. 52) "The Pre-Trial Chamber observes that under Internal Rule 67, at the conclusion of their investigations and issuance of the Closing Order, the Co-Investigating Judges make their final determinations with respect to the legal characterization of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC. In doing so, '[t]he Co-Investigating Judges are not bound by the Co-Prosecutors' submissions' in the course of the investigations. As such, it was not clear at the time of the rendering of the provisional detention orders that the crimes alleged by the Co-Prosecutors would be crimes for which the Appellant would eventually be indicted at the conclusion of the judicial investigations. Under the terms of Internal Rule 67, it would have been reasonable for the Appellant to assume that the provisional detention orders did not confirm jurisdiction, and that it would be proper to raise any subject matter jurisdiction objections following the final conclusions on jurisdiction by the Co-Investigating Judges in the Closing Order." (para. 53) "In the event that the Pre-Trial Chamber is persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, at the request of a concerned party or on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as [it sees] fit.' In the circumstances of the current Appeal, the Pre-Trial Chamber finds that, for the following reasons, it would be in the interests of justice to allow the Appellant's jurisdictional objections, if any, to the Closing Order even though one may argue that he should have appealed the provisional detention orders on these grounds 'within 10 (ten) days from the date that notice of the decision or order was received.'" (para. 55) "As noted above, it may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing the Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors. Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging breaches of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. The Pre-Trial Chamber finds that considering the Appellant's jurisdictional objections at the close of the judicial investigation and prior to the commencement of trial would not undermine expedition. Rather, such consideration at this time supports the expeditious conduct of proceedings by providing a safeguard against an

		outcome in which '[s]uch a fundamental matter as [...] jurisdiction [...] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 56) "Finally, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation, the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the merits of any grounds of appeal raising admissible jurisdictional challenges against the Closing Order at this time." (para. 57)

d. Appeals Lodged by the Charged Persons Alleging Defects in the Form of Indictment

1.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"Finally, with respect of challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such these arguments may be brought before the Trial Chamber to be considered on the merits at trial; however, they do not demonstrate the ECCC's lack of jurisdiction." (para. 63) "[Alleging] that the Co-Investigating Judges failed to properly plead as a factual matter the existence of a legal duty to act and its basis in domestic law as an element of superior responsibility, […] raises an alleged defect in the form of the indictment rather than a jurisdictional challenge and is therefore inadmissible. […] Appeal with respect of insufficient evidentiary sources; failure to properly apply the facts; and failure to provide the legal characterization of the facts for charges under the 1956 Cambodia Penal Code constitute inadmissible challenges alleging defects in the form of the indictment." (para. 64)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"Finally, with respect to challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such, these arguments may be brought before the Trial Chamber to be considered on the merits at trial and such do not demonstrate the ECCC's lack of jurisdiction." (para. 47) "[T]he Co-Lawyers argue that the Co-Investigating Judges erred in applying [...] modes of responsibility to the facts set out in the indictment, or that the elements of these modes of liability were improperly defined. These do not amount to jurisdictional challenges but are rather allegations for defect in pleading of the indictment. No challenge to an indictment under Internal Rule 67(2) claiming it to be void for procedural defect (for failure to set out a description of the material facts and their legal characterisation) may be brought before the Pre-Trial Chamber. Internal Rules 80*bis* and 89 set out the procedure for such a challenge. These are matters solely in the jurisdiction of the Trial Chamber." (para. 97)
3.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Concerning alleged defects in the form of the indictment, such issues are 'clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC [L]aw.' [...] [N]othing in ECCC Law 'suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such, these arguments may be brought before the Trial Chamber to be considered on the merits at trial [...].'" (para. 139) "The Pre-Trial Chamber recalls that challenges to alleged defects in the form of the Indictment are clearly non-jurisdictional in nature. This is evident in the Co-Lawyers' challenges to Ground 10 (vagueness of 'other CPK cadres' or improperly charged geographical scope) and Ground 17 (failure to include genocide in delineating JCE's common purpose). Thus, such defects in the form of the Indictment are inadmissible at this pre-trial stage of the proceedings." (para. 156)

4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"As for purported defects in the form of the indictment, the Chamber emphasises that such challenges are 'clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC [L]aw.' Instead, these arguments may be brought before the Trial Chamber to be considered on the merits at trial." (para. 54) "The Pre-Trial Chamber observes that an issue of defect in the Indictment is clearly non-jurisdictional in nature and would not be admissible […]." (para. 58) "The Pre-Trial Chamber finds that Grounds 2.1 and 2.3 raise inadmissible purported defects in the form of the Indictment, which are 'clearly non-jurisdictional in nature'." (para. 82)

e. Admissibility of Appeals by the Charged Persons under Internal Rule 21

For jurisprudence concerning the ***Admissibility of Appeals under Internal Rule 21***, see VII.B.5. Admissibility of Appeals under Fairness Considerations (Internal Rule 21)

1.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"The Pre-Trial Chamber will determine whether the facts and circumstances of the Appeals require that it adopt a broader interpretation of the Charged Person's right of appeal in order to ensure the fairness of the proceedings." (para. 18)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"Internal Rule 67 governs the issuance of a Closing Order by the Office of the Co-Investigating Judges at the conclusion of their investigations. As noted previously, Internal Rule 67(5) explicitly provides that, upon issuance of a Closing Order '[t]he order is subject to appeal as provided in Rule 74.' No other Internal Rule is listed in Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not address grounds of pre-trial appeals; rather it lays out the fundamental principles governing proceedings before the ECCC." (para. 70) "The Pre-Trial Chamber has previously held that in light of Article 33 (new) of the ECCC Law, which provides that 'trials are fair' and conducted 'with full respect for the rights of the accused', and of Article 14 of the [ICCPR], which is 'applicable at all stages of proceedings before the ECCC, […] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings as provided in Internal Rule 21(1)(a).' Therefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found that it has competence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of charged persons' right to appeal in light of Internal Rule 21." (para. 71) "[T]he Pre-Trial Chamber […] did not hold that as a general rule it will automatically have competence under Internal Rule 74(3) or Internal Rule 21 to consider any grounds of appeal in which an Appellant raises matters implicating the fairness of the proceedings. Rather, the Pre-Trial Chamber carefully considered, in each case, whether, on balance, 'the facts and circumstances' of the appeals required a broader interpretation of the right of appeal." (para. 73) "[O]ne of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness *and* expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 75) "At this stage, the Co-Investigating Judges have concluded their extensive investigations carried out over the course of three years, issued the Impugned Order indicting the Appellants, and forwarded the case against the accused, as laid out in the indictment, to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage." (para. 76)

3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber, as noted above, finds that pursuant to Internal Rule 67(5), the Closing Order is subject to appeal as provided in Rule 74. No other Internal Rule is listed under Internal Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not specifically lay out grounds for pre-trial appeals; rather it sets the fundamental principles governing proceedings before the ECCC. Accordingly, under the express terms of the Internal Rules, the Pre-Trial Chamber finds that no appeals against the Closing Order are admissible pursuant to Internal Rule 21.Where appeals filed against an Indictment under Internal Rule 74 raise matters which cannot be rectified by the Trial Chamber, and not allowing the possibility to appeal at this stage would irreparably harm the fair trial rights of the accused, Internal Rule 21 may, on a case by case basis, warrant application to broaden the scope of Internal Rule 74. It will not otherwise be applied." (para. 48) "The Pre-Trial Chamber has previously held that in light of Article 33 (new) of the ECCC Law, [...] and of Article 14 of the [ICCPR], which is 'applicable at all stages of proceedings before the ECCC, [...] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a).' Therefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found that it has competence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Persons' right to appeal in light of Internal Rule 21. The Pre-Trial Chamber has found that it had competence to consider an appeal against the Office of the Co-Investigating Judges' denial of Ieng Thirith's request for a stay of proceedings on the basis of the abuse of process [and] that it had competence to consider appeals raising the issue of whether the Charged Person received sufficient notice of the charges of JCE as a mode of liability [...] [.] That being said, the Pre-Trial Chamber emphasises that in both decisions, it did not hold that as a general rule it will automatically have competence under Internal Rule 74(3) or Internal Rule 21 to consider any grounds of appeal in which an Appellant raises matters implicating the fairness of the proceedings. Rather, the Pre-Trial Chamber carefully considered, on a case by case basis, whether, on balance, 'the facts and circumstances' of the appeals required a broader interpretation of the right of appeal." (para. 49) "In the circumstances of this Appeal, the Pre-Trial Chamber does not find that the facts and circumstances require that it should find the appeal admissible under a broad interpretation of Internal Rule 74(3)(a) or under Internal Rule 21. [...] [Article 33 (new) of the ECCC Law, Internal Rule 21(4) and Article 14(3) of the ICCPR] highlight that one of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness *and* expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 50) "At this stage, the Co-Investigating Judges have concluded their extensive investigations carried out over the course of three years, have issued the Closing Order indicting the Accused, and forwarded the case against him, as laid out in the indictment, to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage as allegations of defects in the indictment may be raised by Ieng Sary at trial." (para. 51)
4.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In relation to an appeal lodged under Internal Rule 21, the Pre-Trial Chamber has held, in previous cases, that 'in light of Article 33 (new) of the ECCC Law, which provides that "trials are fair" and conducted "with full respect for the rights of the accused", and of Article 14 of the ICCPR, which is "applicable to all stages of proceedings before the ECCC, […] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a)."' The Chamber noted '[t]herefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found it has competence to consider grounds raised by the [Accused] that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Persons' [*sic*] right to appeal in light of Internal Rule 21.' Further, it is at times appropriate to adopt a broad interpretation of the notion of jurisdiction, especially in situations where the issue at hand is unforeseen in the Internal Rules and where immediate resolution is required to prevent a harmful impact on the proceedings." (para. 146) "Still, the Pre-Trial Chamber has consistently emphasised that Internal Rule 21 does not provide an automatic avenue for appeal even where an appeal raises fair trial issues; the moving party must demonstrate that the particular circumstances require the Chamber's intervention at the stage where the appeal was filed to avoid irremediable damage to the fairness of the proceedings or to fundamental fair trial rights. In the instant case, the Pre-Trial Chamber will consider on a case-by-case basis, whether the conditions require a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21. Specifically, when appeals filed against an Indictment under Internal Rule 74 raises a matter which

		cannot be rectified by the Trial Chamber and denying an appeal would 'irreparably harm the fair trial rights of the accused', Internal Rule 21 may warrant a broadening of Internal Rule 74 on a case-by-case basis." (para. 147) "The issuance of two Closing Orders is a novel situation before the ECCC. The Chamber considers it necessary to adopt an expanded interpretation of Internal Rule 74(3) in light of Internal Rule 21 because the issuance of two Closing Orders in unforeseen in the Internal Rules and may require a resolution prior to trial to prevent irremediable impact on the fair trial rights of the Accused. This includes consideration of an accused's ability to prepare and the overarching fairness of the trial proceedings." (para. 149) "Lastly, without any demonstration of alleged fair trial right violations, the Pre-Trial Chamber finds that the Co-Lawyers' argument concerning the cumulative impact of fair trial rights violations and their request for a permanent stay or dismissal as a remedy is without merit. The Pre-Trial Chamber dismisses Ground 18 as inadmissible." (para. 168)
5.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"In this respect, the Pre-Trial Chamber recalls that when an appeal filed against an indictment under Internal Rule 74(3) raises a matter which cannot be rectified by the Trial Chamber and denying the appeal would 'irreparably harm the fair trial rights of the accused', Internal Rule 21 may warrant a broadening of Internal Rule 74(3)." (para. 72) "[T]he broadening of this right of appeal through Internal Rule 21 is not warranted in this case given that the Pre-Trial Chamber already clarified the law governing the matter at stake and considering that the purpose of Ground A is, in essence, to seek the correction of an inconsequential speculation that has no prejudicial effect on MEAS Muth's rights." (para. 74) "Furthermore, the Co-Lawyers challenge the International Co-Investigating Judge's failure to conclude that the Dismissal Order prevails over the Indictment according to the principle of *in dubio pro reo*, which has already been determined as an issue that falls outside his jurisdiction. In addition, the Chamber considers that the situation in which two independent judges issue contradictory decisions on whether to indict does not entail the application of *in dubio pro reo* principle because the principle stems from the presumption of innocence according to which MEAS Muth remains innocent even after being indicted and will remain as such until proven guilty. Consequently, the Chamber does not deem its intervention necessary in order to avoid any irreparable harm to the Accused's fair trial rights and finds that the broadening of MEAS Muth's right of appeal through Internal Rule 21 is not warranted in this case." (para. 77)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The Chamber reaffirms that since 'the issuance of two Closing Orders is unforeseen in the Internal Rules and may require a resolution prior to trial to prevent irremediable impact on the fair trial rights of the Accused', Internal Rule 74(3) should be interpreted broadly in light of Internal Rule 21. Accordingly, the Pre-Trial Chamber finds this Appeal admissible under a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21." (para. 45) "Regarding an appeal filed under Internal Rule 21, the Pre-Trial Chamber recalls that to ensure the fairness of the proceedings, as provided in Internal Rule 21(1)(a), 'where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found it has competence to consider grounds raised by the [Accused] that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Persons' [*sic*] right to appeal in light of Internal Rule 21.' Nevertheless, the Pre-Trial Chamber reaffirms, as the International Co-Prosecutor acknowledges, that Internal Rule 21 does not open an automatic avenue for appeal even where an appeal raises fair trial rights issues. 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 damage to the fairness of proceedings or fundamental fair trial rights. In particular, the Chamber recalls that when an appeal lodged against an indictment under Internal Rule 74(3) raises a matter which cannot be rectified by the Trial Chamber and denying the appeal would 'irreparably harm the fair trial rights of the accused', Internal Rule 21 may warrant a broadening of Internal Rule 74(3). Accordingly, the Chamber will assess whether the circumstances of the present case merit an extensive interpretation of Internal Rule 74(3) in light of Internal Rule 21." (para. 55) "[W]hile Ground 3 [concerning the Co-Investigating Judge's alleged exceeding of the factual scope of the investigation] may not be deemed as a proper personal jurisdictional challenge, it raises issues of fair trial rights and the legality of the ECCC pre-trial procedure warranting intervention by the Pre-Trial Chamber. In this respect, the Chamber considers that sending an indictment against YIM Tith to the

		Trial Chamber with criminal counts beyond the temporal scope of the investigation would 'irreparably harm the fair trial rights of the accused', thus justifying a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21. Accordingly, the Pre-Trial Chamber finds that Ground 3 is admissible under a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21." (para. 62) "[C]oncerning the alleged invalidity of the Third Introductory Submission, the Pre-Trial Chamber […] unanimously concluded that the action of the International Co-Prosecutor shall be executed and that the International Co-Prosecutor shall forward the Third Introductory Submission to the Co-Investigating Judges to open a judicial investigation in Case 004. Therefore, this sub-ground is summarily dismissed." (para. 69) "[R]egarding the leak of the confidential Third Introductory Submission in May 2011, while the Pre-Trial Chamber considers it regrettable, there is no demonstration of specific prejudice from the leak on YIM Tith's fair trial rights […] and thus the Co-Lawyers have not satisfied their burden to justify the Pre-Trial Chamber's intervention to prevent irremediable damage meeting the applicable threshold for admissibility." (para. 70) "[T]he Co-Lawyers' argument that DC-Cam's interview activities led to 'potentially-contaminated testimony' is unsubstantiated and speculative. In particular, the Co-Lawyers do not demonstrate any specific error in the International Co-Investigating Judge's assessment of the credibility and probative value of interview evidence, including those relying upon DC-Cam statements as a basis for questioning. Further, the Pre-Trial Chamber has upheld the practice of confronting witnesses with other evidence on the record as a 'legitimate investigative practice'. Moreover, the Chamber notes that, had the Co-Lawyers considered any Written Records of Interviews to be 'contaminated', they could have submitted an application for annulment under Internal Rule 76. Lastly, at any subsequent trial, the Co-Lawyers would be afforded the opportunity to cross-examine witnesses, allowing them to probe the credibility or alleged 'contamination' of witness testimony, and, hence, the Pre-Trial Chamber's intervention is not called for at this stage." (para. 71) "Fourth, the Pre-Trial Chamber summarily dismisses YIM Tith's alleged belated access to the Case File, since the issue has previously been litigated and rejected, nor has a sufficient basis for reconsideration been shown by the Co-Lawyers." (para. 72) "Having considered the undue delay which occurred in Case 004, the Pre-Trial Chamber stresses that Internal Rule 21 does not open an automatic avenue for appeal even where an appeal raises fair trial rights issues. Notwithstanding excessive length of the delay which could have been mitigated in this case, the Chamber is not convinced that the delay in this case 'so seriously erode[d] the fairness of the proceedings that it would be oppressive to continue' and that it merits a broadening of Internal Rule 74(3) in light of Internal Rule 21. Similarly, the Pre-Trial Chamber considers that the Co-Lawyers' arguments concerning the overall duration of Case 004, alleged periods of unjustified inactivity, potential deterioration and unavailability of witness evidence and other related complaints do not sufficiently demonstrate, individually or cumulatively, that a fair trial by the Trial Chamber is impossible or the proceedings in the present case are irremediably vitiated." (para. 78)

f. Appeals lodged by the Civil Parties under Internal Rule 74(4)(f)

1.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Pursuant to Internal Rules 67(5) and 74(4)(f), the Co-Lawyers for Civil Parties may appeal against a dismissal order from the Co-Investigating Judges where the Co-Prosecutors have appealed." (para. 43) "Pursuant to Internal Rule 74(4)(f), the Co-Lawyers for Civil Parties may challenge a dismissal order where the Co-Prosecutors appealed. The International Judges observe that the International Co-Prosecutor challenged the Dismissal in the present case, allowing Civil Party applicants to appeal before the Chamber against the impugned order." (Opinion of Judges BAIK and BEAUVALLET, para. 514)

ii. *Scope and Standard of Review*

For jurisprudence concerning the ***Authority and Powers of the Pre-Trial Chamber at Closing Order Stage***, see IV.D.7. Authority of the Pre-Trial Chamber at Closing Order Stage

1.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"The Internal Rules [and Cambodian law] do not provide a clear indication of what should be the scope of review by the Pre-Trial Chamber when seized of appeals against closing orders, and, more particularly, whether its examination should be limited to issues raised by the appealing party." (para. 28) "The Pre-Trial Chamber notes the particular nature of the Closing Order […]. Considering the Internal Rules dealing with the role of the Pre-Trial Chamber as an appellate instance, and more specifically the time limits set out, the Pre-Trial Chamber finds that the scope of its review is limited to the issues raised by the Appeal." (para. 29) "The Internal Rules do not indicate in which circumstances the Pre-Trial Chamber can add offences or modes of liability in a Closing Order. Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial: 'The Trial Chamber shall be seized by an indictment from the Co-Investigating Judges or the Pre-Trial Chamber'. In the Glossary of the Internal Rules, the word 'Indictment' is defined as 'a Closing Order by the Co-Investigating Judges, or the Pre-Trial Chamber, committing a Charged Person for trial'." (para. 40) "The Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC. Although the CPC does not specifically mention how the Investigation Chamber should proceed when it is seized of an appeal seeking to add legal offences or a mode of liability in an indictment, generally it gives broad powers to the Investigation Chamber when seized of an appeal […]." (para. 41) "When seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall 'investigate the case by itself'." (para. 42) "The rules set out in the CPC do not suggest that the Investigation Chamber is bound by the legal characterisation given by the Investigating Judge but rather indicate that it is empowered to decide on the appropriate legal characterisation of the acts." (para. 43) "In light of Internal Rule 79(1) and the provisions of the CPC, the Pre-Trial Chamber finds that it is empowered to decide independently on the legal characterisation when deciding whether to include in the Closing Order the offences and mode of liability requested by the Co-Prosecutors. It is bound by the same rules as the Co-Investigating Judges and, notably, by the scope of the investigation." (para. 44) "The Pre-Trial Chamber is bound by the system of the Closing Order […] since any amendments to the Closing Order are limited by the scope of the Appeal and the grounds set out in the Appeal Brief." (para. 96) "The Pre-Trial Chamber can add [crimes] as far as the facts in the Closing Order that were part of the investigation are sufficient to do so." (para. 97)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[W]here an order by the Co-Investigating Judges […] 'addresses jurisdictional matters, it involves no discretion for the OCIJ'. As such, the Pre-Trial Chamber does not apply the deferential standard of review applicable to discretionary decisions by the Co-Investigating Judges. Rather, the Pre-Trial Chamber will reverse a decision or order confirming jurisdiction where 'the [OCIJ] committed a specific error of law or fact invalidating the decision or weighed relevant considerations or irrelevant considerations in an unreasonable manner.' It is well-established in international jurisprudence that, on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal holdings are correct and alleged errors of fact are determined under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 86) "Although further particulars might eventually be required for the accused to be put on sufficient notice of the nature and cause of the charge against them, this can be done before the Trial Chamber and shall not prevent the Pre-Trial Chamber, at this stage of the proceedings, to maintain the charges

		for crimes against humanity, while adding the 'existence of a nexus between the underlying acts and the armed conflict' to the 'Chapeau' requirements in [...] the Closing Order." (para. 148)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In [D99/3/42], the Pre-Trial Chamber [...] found: '[...] the scope of its review is limited to the issues raised by the Appeal.'" (para. 104) "The Pre-Trial Chamber finds that in the case it grants a jurisdictional challenge, it can consequently reduce the number of charges against the Charged Person and send him for trial, when it is just to do so. Where necessary, the Pre-Trial Chamber may add reasons to those provided by the Co-Investigating Judges in the Closing Order." (para. 108) "The Pre-Trial Chamber observes that the Cambodian Code of Criminal Procedure does not provide anything that would assist the Pre-Trial Chamber in finding what are its powers when deciding on an appeal such as the one before it. [...] This circumstance is understandable given the fact that ECCC has been vested with powers of an extraordinary nature in comparison with regular Cambodian courts." (para. 109) "[W]here a jurisdictional challenge is grounded on the basis of an alleged violation of the principle of legality, it may also be required to examine errors of fact as far as such concern the objective test for issues of foreseeability and accessibility of crimes or modes of liability by the Accused. The Pre-Trial Chamber acknowledges that clarity, accessibility and foreseeability are elements of the principle of legality and that there may be aspects of the Appeal that may cause the Pre-Trial Chamber to consider issues beyond those relating to bare jurisdiction. The Pre-Trial Chamber finds that it can, only to that extent, review the Closing Order for any specific error of fact. Where the Co-Lawyers invite consideration of the subjective knowledge of the Accused as to the state of international law, their request would require a factual determination which is outside the jurisdiction of the Pre-Trial Chamber. Such factual determinations are within the jurisdiction of the Trial Chamber, any such issues can be challenged at trial." (para. 111) "The Pre-Trial Chamber finds that this standard of review is in line with the practice followed at international level." (para. 112) "The Pre-Trial Chamber finds 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 and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 113)
4.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The determination of whether IM Chaem was among 'those most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. […] Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that IM Chaem does not fall into the 'most responsible' category, and thus does not fall under the Court's personal jurisdiction, pursuant to the standard of review applicable to discretionary decisions." (para. 20) "A discretionary decision may be reversed where it was: (1) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (2) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 21) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, 'Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial'. Moreover, '[t]he Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC', and '[w]hen seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall "investigate the case by itself."' (para. 22)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33	"The determination of whether [a person] was among those most responsible, and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. However, the discretion of the Co-Investigating Judges in making this determination is a judicial one that does not permit arbitrary

	19 December 2019 *Considerations on Appeals against Closing Orders*	action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms senior leaders and those who were most responsible represent the limits of the ECCC's personal jurisdiction. While the flexibility of these terms inherently requires some margin of appreciation on the part of the Co-Investigating Judges, this discretion is not unlimited and does not exclude control by the appellate court. Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination [in this case] […] pursuant to the standard of review applicable to discretionary decisions." (para. 28) "A discretionary decision may be reversed where it was: (i) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (ii) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 29) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 30) "[T]he determination of personal jurisdiction requires a tailored scope of evidential scrutiny. Unlike the Trial Chamber considering the guilt or innocence of an accused by weighing the trial evidence in its totality, the Pre-Trial Chamber, faced with a personal jurisdictional challenge regarding those who were most responsible, should consider a limited scope of evidence which is strictly required to assess the express question of personal jurisdiction at the pre-trial phase. Consequently, in considering the instant issue, the Pre-Trial Chamber must limit its evaluation to matters material to the determination of personal jurisdiction—the gravity of crimes and/or the level of responsibility of the Accused." (para. 144) --- "[A]lthough the determination on personal jurisdiction is a discretionary decision, the discretion of the Co-Investigating Judges in making this determination does not permit arbitrary action, especially since the terms senior leaders and those who were most responsible represent the limits of the ECCC's personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 333) "The Pre-Trial Chamber's Case 004/1 holding regarding the limits of this discretion […] still holds true […]." (Opinion of Judges BAIK and BEAUVALLET, para. 334) "[W]hile alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue. In the latter case, the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony. (Opinion of Judges BAIK and BEAUVALLET, para. 381)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Co-Investigating Judges' findings on whether or not a person is among those 'most responsible' is a discretionary decision, which must be examined according to the standard of review applicable to discretionary decisions." (para. 44) "[T]he discretion enjoyed by the Co-Investigating Judges in making determination of the ECCC's personal jurisdiction is a judicial one that does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms 'senior leaders' and 'most responsible' represent the limits of the ECCC's personal jurisdiction of which legal determination rests with the judicial bodies of the ECCC." (para. 45) "As the Pre-Trial Chamber has previously held, while the Co-Investigating Judges have some discretion in ascertaining the ECCC's personal jurisdiction, their discretion in making determination as to whether or not a person falls within the categories of 'senior leaders' and 'most responsible' is not unlimited and may be subject to this Chamber's appellate judicial review. The Pre-Trial Chamber examines

		whether this personal jurisdiction requirement was given appropriate legal effect by the Co-Investigating Judges in the ECCC context." (para. 46) "In this light, the Pre-Trial Chamber has determined that the Co-Investigating Judges' finding that a person falls or does not fall within the ECCC's personal jurisdiction may be reversed at a party's request when this party demonstrates that such finding was: (i) based on an incorrect interpretation of the governing law (error of law) invalidating the decision, and/or (ii) based on a patently incorrect conclusion of fact (error of fact) occasioning a miscarriage of justice, and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion to force the conclusion that the Judges failed to exercise their discretion judiciously." (para. 47) "[T]he Pre-Trial Chamber reaffirms that when the Chamber finds, upon its appellate review of the Co-Investigating Judges' closing order, that the errors and/or abuses alleged by the parties were indeed committed by the Co-Investigating Judges, the Chamber may remit the decision back to the Co-Investigating Judges for reconsideration or substitute it with its own decision and issue a new or revised closing order." (para. 48) --- "The Pre-Trial Chamber has an explicit jurisdiction to entertain admissible appeals filed against closing orders pursuant to Internal Rules 67(5), 73(a) and 74. The Chamber has determined that the scope of its review for such appeals is limited to the issues raised by the appeals as well as by the internationally established standards for the appellate review of errors of law, fact, and discretion alleged by parties to international criminal proceedings against judicial rulings of lower-instance bodies." (Opinion of Judges BEAUVALLET and BAIK, para. 128)
7.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The determination of whether YIM Tith was among those 'most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. However, the Pre-Trial Chamber has consistently held that the discretion of the Co-Investigating Judges in making this determination is a judicial one that does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms 'senior leaders' and 'those who were most responsible' represent the limits of the ECCC's personal jurisdiction. While the flexibility of these terms inherently requires some margin of appreciation on the part of the Co-Investigating Judges, this discretion is not unlimited and does not exclude control by the appellate court. Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that YIM Tith falls or does not fall under the Court's personal jurisdiction pursuant to the standard of review applicable to discretionary decisions." (para. 34) "A discretionary decision may be reversed where it was: (i) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (ii) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion to force the conclusion that the Judges failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 35) "The Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 36) --- "The International Judges recall that 'while alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.' In the latter case, 'the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding.'" (Opinion of Judges BAIK and BEAUVALLET, para. 233) "It must be recalled that conclusory allegations which merely express disagreement with the factual conclusions reached or which vaguely assert an error in an unsubstantiated manner may be summarily dismissed by the Chamber, since such allegations do not discharge the burden of demonstrating specific errors of fact or law on appeal. Specifically as to witness evidence, the presence of

		inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony." (Opinion of Judges BAIK and BEAUVALLET, para. 234)

9. Annulment of Closing Order

1.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"Internal Rule 76 gives a number of indications that applications for annulment of the Closing Order are not prescribed under this Rule. […] Internal Rule 76(2) excludes instances for filing of annulment applications, or for the Co-Investigating Judges deciding on annulment applications, after the issuance of Closing Orders. Hence, procedurally speaking, annulment applications after the Closing Order are not prescribed by the Rules. Furthermore, even in the absence of the provision in Rule 76(2), according to Internal Rule 76(4) the Pre-Trial Chamber may not admit annulment applications that 'relate to an order that is open to appeal.'" (para. 18) "MEAS Muth has access to the Case File of the investigation. As such, the Defence has ample opportunity to detect, before the issuance of Closing Orders, any irregularities occurring during the investigative proceedings and also have explicit procedural rights to request annulment of such irregularities." (para. 20)
2.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The International Judges further note that the Chamber is seised of Appeals submitted pursuant to Internal Rule 74, which are distinct from applications for annulment under Internal Rule 76. The regimes for annulment and appeals are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges, involving different standards of judicial review by the Pre-Trial Chamber. Indeed, Internal Rule 76(4) provides that '[t]he Chamber may declare an application for annulment inadmissible' where it 'relates to an order that is open to appeal'. More fundamentally, nothing in the text of Internal Rule 67(2) requires both Closing Orders to be annulled or overturned. By its terms, Internal Rule 67(2) addresses the legal consequences stemming from the absence of certain information in the *contents* of the Indictment, and not the legal consequences of agreeing to issue two separate closing orders. Accordingly, the International Judges reject the Co-Lawyers' contention that a correct interpretation of Internal Rule 67(2) in light of Internal Rule 76(5) would mandate that the effect of the Pre-Trial Chamber's unanimous finding in Case 004/2 is that both Closing Orders are null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 165)

10. Transfer of Case File to the Trial Chamber and Archiving Case

i. *Trial Chamber's Access to Case File before Conclusion of Investigation*

1.	**001 Duch** PTC 02 D99/3/5 11 September 2008 *Decision on Trial Chamber Request to Access the Case File*	"The Pre-Trial Chamber notes that […] the Co-Prosecutors filed a Notice of Appeal against the Closing Order […]. Consequently, this Case File has been forwarded to the Pre-Trial Chamber in accordance with Internal Rule 69(1)." (para. 6) "The Trial Chamber has acknowledged that 'it will not be formally seized of the case until the decision of the Pre-Trial Chamber on the appeal against the Closing Order' and has recognized the confidential nature of the Case File at the current stage of proceedings." (para. 7) "Taking into consideration the observations of the Parties and the nature of the issues under appeal the Pre-Trial Chamber finds that granting the requested access to the Case File would enable the Trial Chamber to commence preparatory work and would assist in ensuring a fair and expeditious trial." (para. 8)

2.	**002 IENG Sary** Special PTC 11 Doc. No. 2 16 November 2010 *Decision on IENG Sary's Request to the Pre-Trial Chamber to Forbid the Trial Chamber from Accessing the Case File until it is Seized with the Case*	"[T]he Co-Lawyers have not demonstrated to the Pre-Trial Chamber that Judge Nonn's pre-trial access to the case file 'for the purposes of advance preparation for trial' risks compromising the fairness of the pre-trial or trial proceedings. It is therefore unnecessary for the Pre-Trial Chamber to decide whether or not and to what extent Internal Rule 21(1) allows it to restrict the Trial Chamber's right of access to the case file pursuant to Internal Rule 69(3)." (para. 4)
3.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"[W]hile Internal Rule 56(1) gives broad discretion to the Co-Investigating Judges to handle *confidentiality of investigations* issues, Rule 56(2) is not relevant for decisions on 'disclosure' of investigative documents to other 'judicial bodies', including the Trial Chamber." (para. 27) "Its overall object, therefore, is to *regulate the 'proceedings'* for *publicity* of judicial *investigations*." (para. 28) "The Pre-Trial Chamber, therefore, concludes that the term 'non-parties' under Internal Rule 56(2)(b) does not encompass 'the ECCC' in general or the 'Trial Chamber' in particular." (para. 29) "The Pre-Trial Chamber considers that ICP requests for disclosure are not aimed at *publicizing* the judicial investigations, but are rather premised on a necessity to produce evidence, before another judicial body of the ECCC, for the purposes of 'ascertaining the truth', hence *serving purposes other than the publicity*, as that provided for in [Internal] Rule 56." (para. 30) "Therefore, the Pre-Trial Chamber concludes that, proceedings on disclosures, as those requested by the ICP, based on the instructions of the Trial Chamber, are not regulated by Internal Rule 56(2)(b)." (para. 31) "The Pre-Trial Chamber agrees with the ICIJ that there is a *lacuna* in the applicable law as regards the procedure to be applied when requests for disclosure are brought before the OCIJ. […] The Pre-Trial Chamber notes that, in the Impugned Decision, the ICIJ sought guidance in the rules established at international level, and in French jurisprudence, and found: 1) that according to international human rights jurisprudence, 'the right to presumption of innocence does not prohibit the disclosure'; 2) that 'it is fair to say that disclosure between separate criminal proceedings concerning different accused […] has been authorised' by the [ICTY]; and 3) that, according to the French Court of Cassation: '(i) there is no legal provision that prohibits the use of evidence obtained in an investigation into another criminal proceeding that may contribute to the ascertainment of the truth, on the condition that the disclosure is of an adversarial nature and the documents are subjected to discussion by the parties; and (ii) the confidentiality of the investigation does not obstruct the disclosure or use of evidence obtained in the investigation in another criminal proceeding that may contribute to the ascertainment of the truth in that proceeding'; 'jurisprudence does not require that disclosure be permitted only in exceptional cases'; and 'the bar for disclosure is set low – the evidence need only to contribute to the "ascertainment of the truth'", a principle also subscribed of the law before the ECCC in Internal Rules 85(1), 87(4) and 91(3).'" (para. 32) "The Pre-Trial Chamber considers that the findings of the ICIJ are in concert with: i) the fundamental requirement set in Internal Rule 21 for a balancing of interests and rights involved in the proceedings before the ECCC; and with ii) a reading of the Rules in their 'context and in accordance with their object and purpose', as set in the ECCC Law and Agreement. Within this legal context, the ICIJ is correct that, to be legitimate, disclosure proceedings have to be carried out in a manner that ensures that: i) before a decision on disclosure is rendered, the parties to the investigation are allowed the possibility of an adversarial debate over disclosure requests; and that ii) the OCP is enabled to pursue its mandate to prosecute in Case 002, and the TC is assisted in fulfilling its mandate to find the truth in Case 002, within a reasonable time". (para. 33)

ii. *Transfer of Case File to the Trial Chamber*

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Pursuant to Internal Rule 77(13)(b), where the required majority is not attained, the default decision of the Chamber, as regards appeals against indictments, shall be that 'the Trial Chamber be seised on the basis of the Closing Order of the Co-Investigating Judges.' As the International Judges have found that the National Co-Investigating Judge's Closing Order (Dismissal) is *ultra vires*, void and without legal effect and given that the required majority has not been attained, the default decision must be that the International Co-Investigating Judge's Closing Order (Indictment) be forwarded to the Trial Chamber so that it shall be seised of the Indictment." (Opinion of Judges BAIK and BEAUVALLET, para. 685) "In light of the clear terms of Internal Rule 77(13)(b), the inability of the Pre-Trial Chamber to reach a decision by a majority of at least four judges does not prevent the Indictment, along with the supporting Case File, from being transmitted to the Trial Chamber so that it may commence trial proceedings against AO An. Consistent with this provision, the Greffier of the Pre-Trial Chamber will forward the present Considerations, the International Co-Investigating Judge's Closing Order (Indictment) and the remaining Case File onward to the Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 687)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he 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." (Opinion of Judges BEAUVALLET and BAIK, para. 261)
3.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Therefore, the International Judges conclude that pursuant to Internal Rule 77(13)(b), as the required majority of at least 4 (four) affirmative votes to reverse an indictment was not attained, the default decision of the Chamber shall be that 'the Trial Chamber be seised on the basis of the Closing Order of the Co-Investigating Judges.'" (Opinion of Judges BAIK and BEAUVALLET, para. 522) "Consequently, the Trial Chamber shall be seised on the basis of the International Co-Investigating Judge's Indictment. The International Judges clarify that by virtue of Internal Rule 77(14), the present Considerations with the appended Opinions shall be notified to the Co-Investigating Judges, the Co-Prosecutors, the Co-Lawyers and the Civil Parties in the present case. Furthermore, the Co-Investigating Judges shall immediately proceed in accordance with the present Considerations." (Opinion of Judges BAIK and BEAUVALLET, para. 523)

iii. *Order to Seal and Archive Case*

1.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges note that […] the Co-Investigating Judges issued the 'Order Sealing and Archiving Case File 004/2' […] in response to the 'Request to Seal and Archive Case File 004/02' from the Co-Lawyers […]." (Opinion of Judges BEAUVALLET and BAIK, para. 131) "At the outset, the International Judges recall that the Office of the Co-Investigating Judges can only be seised of a submission filed by the Office of the Co-Prosecutors. Further, the Office of the Co-Investigating Judges is *functus officio* immediately after the issuance of a closing order, except for the administrative functions explicitly set forth in the ECCC legal framework. The International Judges reiterate that the Pre-Trial Chamber, as the Cambodian Investigation Chamber of the ECCC and pursuant to Article 12(1) of the ECCC Agreement and Article 261 of the Cambodian Code of Criminal Procedure, is the final jurisdiction of the investigation, including the jurisdiction over any request related to the pre-trial stage after the Office of the Co-Investigating Judges is unseised." (Opinion of Judges BEAUVALLET and BAIK, para. 132) "The International Judge recall that by virtue of Article 12(2) of the Practice Direction on Classification and Management of Case-Related Information, '[t]he last judicial office seised of a case shall undertake a review of the security classification of records in the case file.' The International Judges find that the last judicial office seised of Case 004/2 being either the Pre-Trial Chamber or the Supreme Court

		Chamber, the Office of the Co-Investigating Judges was no longer seised of Case 004/2 following the issuance of their closing orders in that case, and therefore did not have the authority to issue decisions or orders regarding Case File 004/2, including the Order to Seal and Archive." (Opinion of Judges BEAUVALLET and BAIK, para. 133) "Accordingly, the International Judges find that the Office of the Co-Investigating Judges issued the Order to Seal and Archive Case 004/2 despite no longer having jurisdiction over the case." (Opinion of Judges BEAUVALLET and BAIK, para. 134)

V. SAFETY MEASURES

A. Warrants

1. General

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[Internal Rule 63(3)] gives the Co-Investigating Judges a discretionary power to order provisional detention. When considering whether to apply this power, the Co-Investigating Judges had to comply with fundamental international rights and norms." (para. 13) "[I]n light of [Article 9 of the UDHR and Article 9(4) of the ICCPR], […] the issuance of an arrest or detention order would not be lawful if any circumstance could be foreseen which would evidently or manifestly prevent a conviction by the Trial Chamber." (para. 16)
2.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"AO An is charged with the most serious of crimes […]. Moreover […] the acts implicated were directly or indirectly related to the deaths of tens of thousands of people. He faces a heavy sentence of imprisonment for these charges." (Opinion of Judges BAIK and BEAUVALLET, para. 689) "In view of the foregoing, […] the reasoning of the International Co-Investigating Judge was undermined by two serious errors." (Opinion of Judges BAIK and BEAUVALLET, para. 690) "In considering that no security measure was necessary, the International Co-Investigating Judge committed a first error. Indeed, it is advisable to avoid putting any pressure on witnesses, especially those who have benefited from a letter of guarantee issued by the Co-Investigating Judge. It is also necessary to bring AO An to justice. Finally, in view of the disturbance to public order, both national and international, caused by acts so detrimental to humanity that they cannot be subject to statutory limitation, a measure of provisional detention or another security measure available to the International Co-Investigating Judge was imperative." (Opinion of Judges BAIK and BEAUVALLET, para. 691) "To claim to rely on the procedural uncertainty caused by the intentional joint violation of the applicable law by the Co-Investigating Judges [issuance of two conflicting Closing Orders] is tantamount to committing further errors in law, especially when the International Co-Investigating Judge fails to consider other security measures which are available to him." (Opinion of Judges BAIK and BEAUVALLET, para. 692) "Pursuant to Internal Rule 44 and the facts on the record, the International Judges find that the International Co-Investigating Judge erred in failing to properly consider the issuance of an arrest warrant." (Opinion of Judges BAIK and BEAUVALLET, para. 693)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[P]ursuant to Internal Rule 44 and the facts on the record, the International Judges find that the International Co-Investigating Judge erred by failing to properly consider the issuance of an arrest warrant." (Opinion of Judges BEAUVALLET and BAIK, para. 358)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The International Co-Investigating Judge, in the Indictment, considered that provisional detention of YIM Tith pending trial was not a necessary measure to avert any of the risk factors under Internal Rule 63(3)(b) and that 'the procedural uncertainty resulting from the opposing closing orders' was a further reason against ordering detention. Pursuant to Internal Rule 44 and the facts on the record, the International Judges find that the International Co-Investigating Judge erred by failing to properly consider the issuance of an arrest warrant." (Opinion of Judges BAIK and BEAUVALLET, para. 520)

2. Execution of Arrest Warrant

1.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"The […] procedural rules at the ECCC do not regulate the procedure for charging a suspect who has refused to appear before the Court and whose presence could not be secured by coercive means, insofar as this conclusion relates to the *notificatio*n of charges. The Internal Rules provide that the Co-Investigating Judges may secure the presence of a suspect at an initial appearance by issuing a summons, an arrest warrant or an arrest and detention order. They further provide that summons shall be complied with and arrests warrants executed by the Judicial Police. Pursuant to Internal Rule 45(3), '[t]he Judicial Police shall notify the Co-Investigating Judges or the Chambers of any difficulty in performing their mission.' Ultimately, the Agreement and the ECCC Law provide that the [Cambodian Government] shall provide assistance to the Co-Investigating Judges to, *inter alia*, execute arrests warrants. There is no further provision addressing the situation where an arrest warrant is not executed through the assistance of the [Government]." (Opinion of Judges BEAUVALLET and BWANA, para. 22) "Cambodian law cannot assist in determining whether sufficient efforts had been made to secure IM Chaem's presence at an initial appearance before the International Co-Investigating Judge decided to notify her of the charges in writing, through her lawyers. This *lacuna* in Cambodian law, when applied for the purposes of ECCC proceedings, reflects one of the particularities faced by internationalised criminal tribunals who lack their own law enforcement forces and rely upon State cooperation to execute arrest warrants." (Opinion of Judges BEAUVALLET and BWANA, para. 27) "Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant." (Opinion of Judges BEAUVALLET and BWANA, para. 38) "There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her." (Opinion of Judges BEAUVALLET and BWANA, para. 39)
2.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"The […] procedural rules at the ECCC do not regulate the procedure for charging a suspect who has refused to appear before the Court and whose presence could not be secured by coercive means, insofar as this conclusion relates to the *notification* of charges. The Internal Rules provide that the Co-Investigating Judges may secure the presence of a suspect at an initial appearance by issuing a summons, an arrest warrant or an arrest and detention order. They further provide that summons shall be complied with and arrests warrants executed by the Judicial Police. Pursuant to Internal Rule 45(3), '[t]he Judicial Police shall notify the Co-Investigating Judges or the Chambers of any difficulty in performing their mission.' Ultimately, the Agreement and the ECCC Law provide that the [Cambodian Government] shall provide assistance to the Co-Investigating Judges to, *inter alia*, execute arrests warrants. There is no further provision addressing the situation where an arrest warrant is not executed through the assistance of the [Government]." (Opinion of Judges BEAUVALLET and BWANA, para. 24) "Cambodian law cannot assist in determining whether sufficient efforts had been made to secure MEAS Muth's presence at an initial appearance before the International Co-Investigating Judge decided to notify him of the charges in writing, through his lawyers. This *lacuna* in Cambodian law, when applied for the purposes of ECCC proceedings, reflects one of the particularities faced by

		internationalised criminal tribunals who lack their own law enforcement forces and rely upon State cooperation to execute arrest warrants." (Opinion of Judges BEAUVALLET and BWANA, para. 29) "Regarding the sufficiency of measures taken to secure the arrest of the accused and notify him or her of the charges, the Undersigned Judges note that the requirement to proceed in the absence of the accused is not that the national authorities have taken all reasonable measures, but rather that the tribunal itself has taken all reasonable measures. In the context of international tribunals, it is recognised that the difficulty in executing an arrest warrant may come from lack of cooperation of the State in whose territory or under whose jurisdiction and control the concerned person resides or was last known to be. Reasonable steps in these circumstances include attempts to secure the concerned State's cooperation which may fall short of actually obtaining it. Significantly, the tribunal is not required to await for an official report from the national law enforcement authorities to proceed. Rather, the absence of a report by the State authorities after a reasonable time is deemed a failure to execute an arrest warrant." (Opinion of Judges BEAUVALLET and BWANA, para. 40) "There are no specific requirements under international law to determine if reasonable steps have been taken to secure the presence of the accused; each case shall be examined in the light of the totality of the circumstances. In this respect, the Undersigned Judges note that publication of the indictment in the media is envisaged only when the whereabouts are unknown or the accused is absconding; it is not required for instance when the accused is represented by counsel that he or she has appointed. Further, the court may consider that 'certain established facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution', even if he or she has not been formally notified of the charges against him or her." (Opinion of Judges BEAUVALLET and BWANA, para. 41)

3. Stay of Execution of Warrant

1.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"We consider that the Defence's claim that the International Co-Prosecutor has insufficient interest to respond to the Request for a Stay of Execution should be rejected. As the Office of the Co-Prosecutors is responsible for mounting the prosecution, it goes without saying that it has standing to intervene in any matter relating to the conduct of the investigation, including matters concerning the arrest of charged persons. Moreover, Internal Rule 74(2) provides that the Co-Prosecutors may appeal any order of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 5) "Internal Rule 7(11) provides: 'Pending the outcome of the proceedings before the Chamber under this Rule, and unless the Chamber orders otherwise, the Co-Investigating Judges may continue their investigation, where applicable.' Article 275 of the Cambodian Code of Criminal Procedure provides to the same effect, as do the rules of procedure of international criminal tribunals. Accordingly, an appeal does not have a suspensive effect on ongoing investigation proceedings, unless the Chamber decides otherwise or a specific provision explicitly provides." (Opinion of Judges BEAUVALLET and BWANA, para. 7) "We note that there is a fundamental distinction between the inherent jurisdiction *of the ECCC* and its own jurisdiction, as an appellate chamber sitting within the ECCC judicial system. Were the Pre-Trial Chamber to consider, at first instance, any incidental matter arising from the jurisdiction of the ECCC, […] it would then be usurping the authority of the Co-Investigating Judges and perhaps that of the other Chambers of the ECCC. Accordingly, for a motion brought at first instance to fall within the ambit of the Pre-Trial Chamber's inherent jurisdiction, it is required that it relates directly to appellate proceedings of which the Pre-Trial Chamber is seised." (Opinion of Judges BEAUVALLET and BWANA, para. 11) "Accordingly, we would find a request for a stay of execution admissible only where it may affect the fairness of appellate proceedings brought before it or imperil an acknowledged right to appeal." (Opinion of Judges BEAUVALLET and BWANA, para. 13) "In the present case, the Defence is not arguing that the execution of the Arrest Warrant could affect the appellate proceedings before the Pre-Trial Chamber. Instead, it contends that if the Arrest Warrant is executed before the Chamber determines the lawfulness of the Charging Decision, MEAS Muth could possibly be detained on the basis of a decision that is invalid. Insofar as the Request for a Stay of

		Execution does not concern the issue of charging, but rather of provisional detention – a matter which the Pre-Trial Chamber is not seised – we consider that it does not fall within the purview of the Pre-Trial Chamber's inherent jurisdiction." (Opinion of Judges BEAUVALLET and BWANA, para.14) "In this instance, the rules governing admissibility of a request for a stay of execution have been clearly set out by the Pre-Trial Chamber, such that Internal Rule 21 does not provide an alternative remedy." (Opinion of Judges BEAUVALLET and BWANA, para. 15) "As its name [in French: mandate d'amener] indicates, the purpose of the Arrest Warrant is to bring MEAS Muth before the International Co-Investigating Judge for a hearing which will examine the *possibility* of his provisional detention pursuant to Internal Rule 63. Accordingly, at the hearing which will be adversarial, MEAS Muth will be at liberty to make any submission he sees fit before a decision is taken on his provisional detention. [T]herefore, the principles stated in Internal Rule 21 (2) and, more generally, the rights of the Defence, are fully safeguarded. Such being the case, we do not consider that execution of the Arrest Warrant before adjudication of the Appeal against the Decision to Charge MEAS Muth would impair the fairness of the proceedings or infringe MEAS Muth's right to liberty." (Opinion of Judges BEAUVALLET and BWANA, para.16) "We consider that the Request for a Stay of Execution does not fall within the Pre-Trial Chamber jurisdiction. It is therefore inadmissible." (Opinion of Judges BEAUVALLET and BWANA, para. 17)

B. Provisional Detention

1. General

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[Internal Rule 63(3)] gives the Co-Investigating Judges a discretionary power to order provisional detention. When considering whether to apply this power, the Co-Investigating Judges had to comply with fundamental international rights and norms." (para. 13) "[I]n light of [Article 9 of the UDHR and Article 9(4) of the ICCPR], […] the issuance of an arrest or detention order would not be lawful if any circumstance could be foreseen which would evidently or manifestly prevent a conviction by the Trial Chamber." (para. 16)
2.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"Provisional detention is an exception to the right to liberty and the general rule that a person not be provisionally detained." (para. 34)

2. Conditions for Provisional Detention under Internal Rule 63

i. *Well-Founded Reasons to Believe (Internal Rule 63(3)(a))*

1.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"The Pre-Trial Chamber observes that the Internal Rules do not explain what constitutes well founded reason. In this regard, the PTC notes that the French version of the IR uses '*raison plausibles*' for the term 'well founded reason', a term that corresponds with the term used in Article 5 of the European Convention of Human Rights." (para. 43) "The Pre-Trial Chamber will, as the ICC had done, interpret the words 'well founded reason' by seeking guidance in the above-mentioned jurisprudence of the ECHR. This means that the Pre-Trial Chamber has to decide whether facts or information exist which should satisfy an objective observer that the person concerned may have committed the offence." (para. 46) "Rule 63(3)(a) of the Internal Rules requires furthermore that this well founded reason is related to the belief that the Charged Person '*may have committed the crime or crimes as specified in the Introductory Submission*'. In accordance with Article 29 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia of 27 October 2004, the term 'committed' includes planning, instigating, ordering, aiding and abetting, or committing and superior criminal responsibility." (para. 47)
2.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber notes that it would have been preferable for the Co-Investigating Judges to give more details about the evidence they have gathered which supports their conclusion that there continue to be well-founded reasons to believe that the Charged Person may have committed the crimes with which she has been charged. It is implicit from the Extension Order that the Co-Investigating Judges have taken into consideration the relevant material contained in the Case File […]. The Pre-Trial Chamber finds that this was sufficient for the Co-Investigating Judges to conclude that there were well founded reasons to believe that the Charged Person may have committed the crimes for which she has been charged at the time the extension of provisional detention was ordered." (para. 25)

		"The Pre-Trial Chamber notes that evidence of potential exculpatory nature had been placed on the Case File before the Extension Order was issued. This evidence does not undermine the Pre-Trial Chamber's previous conclusion that the Co-Investigating Judges were justified to find that there are well-founded reasons to believe that the Charged Person may be responsible for the crimes against humanity for which she has been placed under judicial investigation." (para. 29)
3.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"In examining whether there are well-founded reasons to believe that the Charged Person may have committed the crime or crimes mentioned in the Introductory Submission, the Pre-Trial Chamber will decide whether facts or information exist which would satisfy an objective observer that the person concerned may have committed the offences." (para. 21) "As the Order […] was based on crimes more limited in their scope than the ones identified in the Introductory Submission, the Pre-Trial Chamber will use this limited scope to review the Order." (para. 23) "The Court observes that in accordance with Article 29 of [the ECCC Law] the term 'committed' includes committing, planning, instigating, ordering, aiding and abetting as well as superior criminal responsibility." (para. 24) "There are well-founded reasons to believe that the Charged Person was, in her capacity as Minister of Social Affairs, in a position to prevent the enslavement and other inhuman acts to which the civilian population was allegedly subjected and that she failed to do so. The Charged Person might therefore be responsible for these alleged crimes of enslavement and other inhuman acts which, in the context of a widespread or systematic attack against the civilian population can be characterized as crimes against humanity." (para. 40) "[A]ny concern expressed by the Co-Lawyers as to whether the Co-Investigating Judges disregarded the presumption of innocence is resolved by the analysis that this Chamber has undertaken." (para. 42)
4.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber finds that the 'well founded reasons' that would satisfy an objective observer that the Charged Person may have been responsible for, or committed, the alleged crimes specified in the Introductory Submission not only exist […], but are, at present, also supported by additional evidence." (para. 31)
5.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber, having looked at the case file afresh, notes that it found that there are recent statements and documents […] which constitute evidence of an exculpatory [footnote redated] and inculpatory [footnote redacted] nature. After an examination of the totality of the evidence, the Pre-Trial Chamber did not find that the new exculpatory evidence would undermine, at this time, the conclusion that well-founded reasons exist." (para. 27) "The Pre-Trial Chamber finds that the 'well founded reasons' that would satisfy an objective observer that the Charged Person may have been responsible for, or committed, the alleged crimes specified in the Introductory Submission not only exist, […] but are, at present, also supported by additional evidence." (para. 28)

ii. *Grounds for Necessity (Internal Rule 63(3)(b))*

a. Necessity to Prevent Pressure on Witnesses or Victims, Collusion and to Preserve Evidence or Prevent the Destruction of Evidence (Internal Rules 63(3)(b)(i) and (ii))

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"[Internal Rules 63(3)(b)(i) and 63(3)(b)(ii) related to prevention of collusion, protection of witnesses, and preservation of evidence] will be analysed together since they are supported by the same arguments. In fact, the statements made by the witnesses […] can be considered as evidence [...]." (para. 30) "In the particular context of the events that happened at S-21, the mere presence of the Charged Person in society can exert pressure on witnesses and prevent them from testifying." (para. 32) "This has to be put in the social context prevailing in Cambodia, where measures to protect witnesses may be limited and weapons easily accessible. Therefore, the witnesses' willingness to testify is already fragile, and the balance could be easily upset by the release of the Charged Person." (para. 33) "Moreover, the testimonies of the few witnesses of S-21 events are crucial to the investigation and, eventually to the trial. It is essential that they are not in any fear or suffering […]." (para. 36)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"These two grounds for provisional detention can be analysed together since they are supported by the same argument. In fact, the statements made by witnesses can be considered as 'evidence' within the meaning of Internal Rule 63(3)(b)(ii)." (para. 59) "[T]he Charged Person occupied senior positions within the Khmer Rouge movement. The Pre-Trial Chamber that certain influence is necessarily attached to such a senior position, influence which can still be applied today." (para. 62)
3.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"[Grounds under Internal Rules 63(3)(b)(i) and (ii)] can be analysed together since they are supported by the same arguments. The statements made by witnesses can be considered as 'evidence' within the meaning of Internal Rule 63(3)(b)(ii)." (para. 43) "[A] degree of influence is necessarily attached to […] senior positions and involvement in political movements. This influence does not stop when one no longer occupies such positions and therefore can still be exerted today." (para. 45) "The Charged Person continues to enjoy support […]." (para. 46) "The Charged Person has publicly displayed hostility to those who suggested that the former senior leaders of the Democratic Kampuchea regime should be put on trial and to those deemed to have spoken about her alleged role in this regime." (para. 48) "[T]he Charged Person's past actions and behaviour in themselves display a concrete risk that she could use her influence to interfere with witnesses and victims. It might also influence witnesses' fear of testifying […]." (para. 51) "[A]t this stage of the proceedings where the witnesses have not been heard, the Pre-Trial Chamber finds that detention is a necessary measure to prevent the Charged Person from exerting pressure on witnesses or victims and destroying evidence." (para. 52)
4.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[The first and second grounds in Internal Rule 63(3)(b)] can be analysed together since they are supported by the same arguments. The statements made by witnesses are considered 'evidence' within the meaning of Internal Rule 63(3)(b)(ii)." (para. 95) "[A] degree of influence is necessarily attached to such senior positions and involvement in political movements. This influence does not stop when one no longer occupies such positions and can therefore still be exerted today." (para. 97)

		"Despite [his influence], the Pre-Trial Chamber has not found evidence of any past actions and/or behaviour of the Charged Person which in themselves would display a concrete risk that he might use that influence to interfere with witnesses and victims." (para. 99) "The Pre-Trial Chamber therefore finds that detention is not necessary measure to prevent the Charged Person from exerting pressure on witnesses or victims and destroying evidence." (para. 100)
5.	**001 Duch** PTC 02 D99/3/42 5 December 2008 *Decision on Appeal against Closing Order Indicting KAING Guek Eav alias "Duch"*	"[A]s the investigation […] has ended, all the available evidence has been part of the investigation. The grounds related to the witnesses and victims and the preservation of evidence are therefore no longer relevant as possible grounds to consider ordering provisional detention." (para. 146)
6.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"The Pre-Trial Chamber finds that the passage of time has not eliminated the risk of pressure towards witnesses or collusion. On the contrary, the risk is more critical at this stage of the investigations when more records from the case file are available. The level of knowledge of the Charged Person about identity and details of witnesses and civil parties has increases compared with the time when he was initially detained. […] Thus, […] there is fresh evidence in the case file upon which the Pre-Trial Chamber finds that the Charged Person exerted pressure […]." (para. 31)
7.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber notes that the Charged Person has access, through her lawyers, to evidence containing details on her possible role within the Democratic Kampuchea regime. The Co-Investigating Judges mentioned in their Extension Order that 'many of these witnesses might be re-interviewed during the investigation, and, in their statements, have given other leads and named other potential witnesses who have not yet been interviewed at this stage of the investigation.' The Pre-Trial Chamber finds that the Co-Investigating Judges were justified to conclude that there is still need to prevent that pressure be exercised on witnesses and victims." (para. 41) "The Pre-Trial Chamber further notes the Charged Person's behaviour during the hearing […]." (para. 42)
8.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"These two grounds for provisional detention can be analysed together since they are supported by the same arguments. The statements made by witnesses are considered evidence within the meaning of Internal Rule 63(3)(b)(ii)." (para. 40) "The Pre-Trial Chamber notes that the whole Case File has been made available to the Charged Person, including the names of Civil Parties and potential witnesses. There appears to be limited number of remaining witnesses who can directly testify to the Charged Person's involvement in the alleged crimes. Some of these witnesses have not yet been interviewed by the Co-Investigating Judges." (para. 44) "[A] degree of influence is necessarily attached to […] senior positions and involvement in political movements. This influence does not stop when one no longer occupies such positions and this influence can therefore still be exerted today." (para. 45) "In these circumstances, the Pre-Trial Chamber considers that the Charged Person has some ability to organise others to place pressure on witnesses and Victims." (para. 46) "The Pre-Trial Chamber finds that the Article […] is not sufficient to support the Co-Investigating Judges' conclusion that there is a concrete risk that the Charged Person may exercise pressure on Victims or witnesses. The Pre-Trial Chamber has not found evidence of any past actions and or behaviour of the Charged Person which in themselves would display a concrete risk that he might use that influence to interfere with witnesses and Victims or that he would destroy evidence." (para. 48)

		"The Pre-Trial Chamber therefore finds that detention is not a necessary measure to prevent the Charged Person from exerting pressure on witnesses or Victims and destroying evidence. Thus, the conditions set out in Internal Rule 63(3)(b)(i) and (ii) are not met." (para. 49)
9.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[T]he history of an intimidating attitude on the part of the Charged Person combined with the fact that witnesses can still be interviewed between the closure of the investigation up until the closing order and during trial, justifies the conclusion that there is still a need to prevent possible pressure that may be exercised on witnesses and victims by the Charged Person if released." (para. 35)

b. Necessity to Ensure the Presence of the Charged Person during the Proceedings (Internal Rule 63(3)(b)(iii))

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"Now facing the possibility of being sentenced to life imprisonment, there is a risk that he will disappear again. Moreover, the fact that he will be tried publicly before his victims and their relatives, for the crimes he is charged with, could provide an additional incentive for him to abscond." (para. 39)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"[I]n view of the gravity of the charges, the Charged Person could face a sentence of imprisonment from five years to life if he is found guilty." (para. 65) "Although the risk of flight cannot be evaluated solely on the basis of the gravity of the crimes and possible sentence, the Pre-Trial Chamber observes that in this case other factors are to be taken into account." (para. 66) "Whether or not the Charged Person is in possession of a passport does not change his opportunity to cross the border; it only changes the way in which the border might be crossed." (para. 67) "The Pre-Trial Chamber further observes that the Charged Person's residence is located in an area well known as a former Khmer Rouge centre of support. The Chamber finds it likely that contacts of the Charged Person in the region are well known within the border area and may have contacts on both sides, contributing to the Charged Person's possibilities to flee." (para. 68)
3.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"[I]n view of the gravity of the charges, the Charged Person could face a sentence of imprisonment from five years to life if she is found guilty." (para. 53) "[U]ntil 1996, the Charged Person lived […] very close to the Thai border. […] [T]he Charged Person has connections […]. These contacts are likely to be in position to assist the Charged Person should she wish to flee. […] It is also more than likely that these influential persons are well-known in the region, on both sides of the border, contributing to the Charged Person's possibility to flee." (para. 54) "[B]oth the Charged Person and her husband travelled abroad frequently. […] The Charged Person is likely to have allies in foreign countries who would be capable of assisting her in travelling abroad." (para. 55) "Considering that significant expenses are necessarily associated with these past travels, it can be inferred that the Charged Person has the financial means […] to facilitate her escape." (para. 56) "While […] the Charged Person could have attempted to flee before, the situation is no longer the same now that she is under investigation before the ECCC." (para. 58)

4.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[I]n view of the gravity of the charges, the Charged Person could face sentence of imprisonment from five years to life if he is found guilty." (para. 101) "[T]he Charged Person lived in Pailin […] located very close to the Thai border […]. [T]he Charged Person has connections in Pailin […]. These contacts are likely to be in position to assist the Charged Person should he wish to flee. […] It is also more than likely that these influential persons are well-known in the region on both sides of the border, contributing to the Charged Person possibilities to flee." (para. 102) "The Pre-Trial Chamber also notes that after the collapse of the Democratic Kampuchea regime both the Charged Person and his wife travelled abroad frequently. Considering that significant expenses are necessarily associated with these past travels, it can be inferred that the Charged Person either has the financial means or access to such means, to facilitate his escape." (para. 103) "Considering his former political position, the Charged Person has allies in foreign countries that would be capable of assisting him in travelling abroad." (para 105)
5.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[I]n view of the gravity of the charges, the Charged Person could face a sentence of imprisonment from five years to life if he is found guilty. Nothing […] on the case file since [the] previous decision on provisional detention leads to a conclusion that the circumstances have changed." (para. 33)
6.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"Regarding the power of the ECCC Chambers to issue arrest warrants, the Pre-Trial Chamber finds that the existence of judicial police and authority to issue arrest warrants of the ECCC does nothing to reassure this Court that the risk of flight is nonexistent. The Pre-Trial Chamber further finds that when risk of flight is being discussed the issue is not to give the benefit of the doubt to the Charged Person and check the possibilities to ensure his presence in case he will flee and not appear in court." (para. 39) "The Pre-Trial Chamber shall not consider the Co-Lawyers argument that the Charged Person is so well known that it is unlikely that he will flee unnoticed, because the issue in these proceedings is not to assess whether the Charged person may flee noticed or unnoticed, but rather whether he may flee." (para. 40) "The Pre-Trial Chamber repeats that, in view of the gravity of the charges, the Charged Person could face sentence of imprisonment from five years to life, if found guilty. Nothing presently placed on the case file leads to a conclusion that the circumstances have changed. Moreover, the new evidence added in the case file adds to the arguments supporting a connection between the alleged acts and the Charged Person, thus putting greater pressure on him." (para. 42)
7.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"The risk of an Accused fleeing increases following an indictment, as an Accused faces the fact of an imminent trial rather than the mere possibility of a future trial. The Pre-Trial Chamber has noted previously that if convicted the Accused may be sentenced to a term of imprisonment from five years to life, in view of the gravity of the charges he faces." (para. 36)

c. Necessity to Protect the Security of the Charged Person's (Internal Rule 63(3)(b)(iv))

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"[Victims and their relatives] have been awaiting justice for more than thirty years and their reaction could be one of violence if they were to learn that the Charged Person had been released, even if such liberty might be temporary." (para. 43) "The Pre-Trial Chamber finds no relevant information to suggest that the threat to the Charged Person's safety has diminished with time. Now that the Charged Person's identity has been made public, his safety is more at risk than ever." (para. 47) "Because of the nature of this decision, exercise of common sense is appropriate. The Pre-Trial Chamber considers that provisional detention is a necessary measure to protect the Charged Person's safety." (para. 48)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"[T]he Pre-Trial Chamber observes that [the fact that for almost ten years there have been no acts of violence in protest against the liberty of the Charged Person] could be placed in the context of the impunity that reigned for almost thirty years. Moreover, the Charged Person's house was already guarded. The necessity of these guards is an indication to the Pre-Trial Chamber that there has not been a peaceful reintegration as asserted by the Co-Lawyers and indeed proves that the Charged Person himself feared for his safety." (para. 72)
3.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"The fact that the Charged Person resided in Phnom Penh for the last ten years without any acts of violence in protest against his liberty or attempted acts of revenge is of limited relevance. Such non-interference should be placed in the context of the impunity that reigned for almost 30 years, which could apply in particular for this Charged Person who was granted royal pardon and amnesty […]." (para. 108) "Taking reported threats made against Duch during the first public hearing of the Pre-Trial Chamber into consideration, the Pre-Trial Chamber finds that, after establishing well founded reasons to believe that the Charged Person may have committed crimes which are related to the crimes with which Duch is charged, this aggression could also be vented towards this Charged Person." (para. 109)
4.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[T]he Co-Lawyer's assertion that the Charged Person has been peacefully re-integrated into Cambodian society for almost ten years […] could be placed in context of the impunity that reigned for almost thirty years. Moreover, the Charged Person's house was already guarded. The necessity of these guards is an indication to the Pre-Trial Chamber that there has been a peaceful reintegration […] and indeed proves that the Charged Person himself feared for his safety." (para. 36)
5.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"[T]he Charged Person is a well-known former political figure in Cambodia and considered one of the leaders of the Democratic Kampuchea (DK) regime. As former Head of State of DK, the Charged Person was nearly lynched […]." (para. 53) "[E]motional reactions displayed by the Victims show […] that the proceedings before the ECCC could lead to a resurfacing of anxieties amongst Victims who suffer from post-traumatic stress and 'a rise in the negative social consequences that may accompany them.' These reactions indicate that the release of the Charged Person might degenerate into violence directed against him." (para. 57)
6.	**002 IENG Sary** PTC 32 C22/9/14	"[N]otwithstanding the presumption of innocence, the charges against the Charged Person are of a more serious nature than those against Duch. While Duch may be seen as having cooperated with the Court, the Charged Person appears to have exercised his rights." (para. 48)

	30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"[A]n anticipated sentencing of Duch cannot be considered as a change in circumstance for the purposes of this appellate procedure as it has not yet happened." (para. 49)
7.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	**"**The Co-Lawyers argue […] that the Charged Person's medical condition and need for ongoing medical treatment makes the conclusion that if released she will be able to abscond unrealistic. The Pre-Trial Chamber does not find this argument convincing because, given the connections and possibilities that she has, the Charged Person, if released, would be able to find alternative adequate medical treatment elsewhere." (para. 37) "[I]n view of the gravity of the charges, the Charged Person could face a sentence of imprisonment from five years to life if found guilty. Nothing placed on the case file up to now leads to a conclusion that the circumstances have changed. Moreover, new evidence […] adds to the arguments supporting a connection between the alleged acts and the Charged Person, thus putting greater pressure on her." (para. 38)
8.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"The Co-Investigating Judges found that since there has been no change in the circumstances, detention is still a necessary measure to protect the security of the Charged Person and to preserve public order." (para. 28) "The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly." (para. 29) "Besides the passage of time, which was dismissed by the Pre-Trial Chamber as a mitigating factor […], it is noted that the Defence did not provide evidence […] to support their contention that the Charged Person would be secure were he released." (para. 34)
9.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"The indictment of the Accused leads to a conclusion that the public is now more interested in and concerned with the events of 1975-79 - this consideration militates against the preservation of public order and renders the maintenance of the Accused in provisional detention necessary. Any public disorder could, in addition, threaten the security of the Accused." (para. 38)

d. Necessity to Preserve Public Order (Internal Rule 63(3)(b)(v))

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"[Although] the Charged person was at liberty between 1979 and 1999 […] the situation is different today, now that the Charged person's identity is well-known, that he has publicly admitted [certain facts] and that the process of justice has started. Because of the different circumstances, there is no justification to rely on the past to assert that public order will not be disrupted if the Charged Person were to be released." (para. 55)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008	"The Internal Rules do not contain an interpretation of this ground. Having reference to Article 12 of the Agreement […], the Pre-Trial Chamber observes that the Statutes and Rules of the international criminal tribunals do not contain a similar ground. Article 21(3) of the Rome Statute of the ICC reads: 'the application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights […]". Considering the domestic resonance of this ground and

	Decision on Appeal against Provisional Detention Order of NUON Chea	article 21(3) of the Rome Statute, the Pre-Trial Chamber finds it appropriate to seek guidance from the case-law of the ECHR." (para. 75) "The Pre-Trial Chamber finds that the passage of time has not diminished the impact of the Democratic Kampuchea regime on society." (para. 77) "Hundreds of people, including members of the public and representatives of the press, non-governmental organisations and the international community, came to attend the hearings. This interest is demonstrative of the fact that the trials, even in the pre-trial phase […] are still a matter of great concern today for the Cambodian population and the international community." (para. 79) "[P]erceived threat to security is not illusory. This is firstly demonstrated by everyday disturbances or even violent crimes, of which the Pre-Trial Chamber takes notice as facts of common knowledge. Secondly, the example of [...] riots [...] points towards the potential for politically motivated instability." (para. 80)
3.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"As reasoned in previous decisions of the Pre-Trial Chamber, to satisfy this ground 'facts capable of showing that the accused's release would actually disturb public order must exist. In addition detention will continue to be legitimate only if public order remains actually threatened […]'." (para. 64) "[A]lthough specific evidence is required to support an actual risk that public order may be disrupted if the Charged Person is released, this assessment necessarily involves a measure of prediction, particularly in the context of the crimes falling within the jurisdiction of the ECCC ." (para. 65) "[T]he passage of time has not diminished the impact of the Democratic Kampuchea regime on society. [A] proportion of the population […] suffers from post-traumatic stress disorder. [T]he commencement of judicial activities […] may […] 'lead to the resurfacing of anxieties […]'." (para. 66) "[T]he crimes committed […] are still a matter of concern for Cambodian society, and for humanity […]." (para. 67) "[H]earings […] have generated a great deal of interest amongst the Cambodian population and press, as well as the international community. […] This interest is demonstrative of the fact that the proceedings […] are still a matter of great concern today […]." (para. 68) "Before she was arrested, the Charged Person was not clearly identified as a potential suspect […]." (para. 69) "[T]he perceived threat to society is not illusory. This […] demonstrated by everyday disturbances or even violent crimes […] [and] the anti-Thai riots […]." (para. 70) "[T]he Charged Person has publicly shown her hostility […]. It is possible to envisage that the Charged Person will issue further statements that […] will have the potential to affect public order, notably if they were to be issued after the Charged Person's release from provisional detention." (para. 71)
4.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[T]o satisfy this ground 'facts capable of showing that the accused's release would actually disturb public order must exist. In addition, detention will continue to be legitimate only if public order remains actually threatened […]'. The Pre-Trial Chamber notes the difference between the standard of 'facts capable of showing', and the standard asserted by the Co-Lawyers, namely that the 'facts show'." (para. 111) "[A]lthough specific evidence is required to support an actual risk that public order may be disrupted if the Charged Person is released, this assessment necessarily involves a measure of prediction particularly in the context of the crimes falling within the jurisdiction of the ECCC." (para. 112) "The Pre-Trial Chamber finds that the passage of time has not diminished the impact of the Democratic Kampuchea regime on society. It is believed that proportion of the population that lived through this period from 1975 to 1979 suffers from post-traumatic stress disorder. Specialists have stated that the commencement of judicial activities before the ECCC 'may pose a fresh risk to the Cambodian society'. It may 'lead to the resurfacing of anxieties and a rise in the negative social consequences that may accompany them'." (para 113)

		"The hearings before the Pre-Trial Chamber, including that of the Charged Person have generated a great deal of interest amongst the Cambodian population and press, as well as the international community. […] This interest is demonstrative of the fact that the proceedings, even in the pre-trial phase against senior leaders and those most responsible for the crimes committed during the Kampuchea Democratic period from 1975 to 1979 are still a matter of great concern today for the Cambodian population and the international community." (para. 115)
5.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"The passage of time has not diminished the impact of the Democratic Kampuchea regime on society. It is believed that a proportion of the population that lived through this period from 1975 to 1979 suffers from post-traumatic stress disorder. [T]he commencement of judicial activities before the ECCC 'may pose a fresh risk to the Cambodian society'. It may 'lead to the resurfacing of anxieties and a rise in the negative social consequences that may accompany them'." (para. 39) "The hearings […] generated a great deal of interest […]. This interest is demonstrative of the fact that the trials […] are still a matter of great concern […]." (para. 41) "[T]he perceived threat to security is still not illusory [and is] demonstrated by everyday disturbances or even violent crimes, of which the Pre-Trial Chamber takes notice as facts of common knowledge [and by] the example of the anti-Thai riots […]." (para. 42)
6.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"Taking into account the statements made by the Victims and their reactions […], the fact that it is believed that a portion of the population […] suffers from post-traumatic stress disorder, and the fragile context of Cambodian society today, […] the Pre-Trial Chamber finds that there are facts capable of showing that the release of the Charged Person would actually disrupt public order." (para. 63)
7.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"The Co-Investigating Judges found that since there has been no change in the circumstances, detention is still a necessary measure to protect the security of the Charged Person and to preserve public order." (para. 28) "The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly." (para. 29) "The Pre-Trial Chamber observes that the Co-Lawyers did not put forward any supporting documentation for their arguments in relation to the stability and/or psychological health of the Cambodian population […]." (para. 38)

3. Orders on Provisional Detention

i. *Initial Orders on Provisional Detention*

a. Jurisdiction of the Co-Investigating Judges and the Pre-Trial Chamber

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional*	"The decision of the Co-Investigating Judges on provisional detention is given pursuant to Rule 63(2) of the Internal Rules from which an appeal may be made, according to Internal Rule 63(4), to the Pre-Trial Chamber. The nature of this appeal is not defined in the Internal Rules." (para. 6) "According to, and as provided in the Internal Rules, the Co-Investigating Judges have jurisdiction to decide on provisional detention and release, and the Pre-Trial Chamber has jurisdiction to decide on appeals against these decisions." (para. 17)

	Detention Order of KAING Guek Eav alias "Duch"	

b. Hearing before Order on Provisional Detention

For jurisprudence concerning ***Hearings in General***, see VII.D.2.ii. Hearings before the Pre-Trial Chamber

1.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"According to Rule 63(1) of the Internal Rules, the Co-Investigating Judges may order the provisional detention of a Charged Person after an adversarial hearing." (para. 13) "An adversarial hearing is necessary before ordering provisional detention. The adversarial hearing gives a Charged Person the opportunity to respond to the Co-Prosecutors' request to have such an order issued. After hearing the submission of the parties, the Co-Investigating Judges may order the provisional detention of the Charged Person." (para. 32)

ii. *Appeals against Order on Provisional Detention*

a. Admissibility

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"In [the Agreement and the ECCC Law] there is no direct provision for appeal against orders of provisional detention from the Co-Investigating Judges. Article 12(1) of the Agreement specifically provides that the procedure shall be in accordance with Cambodian Law. The Internal Rules specifically make provision for a right of appeal in respect of provisional detention orders, knowing that the [Cambodian Code of Criminal Procedure] makes such a provision with regards to *La Chambre d'instruction*. The Pre-Trial Chamber fulfils this role in the ECCC. Therefore, the manner in which the Pre-Trial Chamber must approach appeals on provisional detention orders is directed by *Livre 4: L'Instruction, Titre 2: La Chambre d 'instruction*." (para. 7)
2.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The jurisdiction of the Pre-Trial Chamber in the Internal Rules regarding provisional detention appeals was based on the jurisdiction of the Investigation Chamber. The Pre-Trial Chamber can therefore seek guidance for its functioning in the articles in the CPC prescribed for the Investigating Chambers. In the CPC, there is a provision [...] for the Civil Parties related to participation in appeals against detention orders. Reading Rule 23(1) in the light of the CPC means that the wording envisages participation of Civil Parties during the proceedings of the ECCC, including appeals against provisional detention orders." (para. 38) "According to Article 12 of the ECCC Agreement, there is an obligation for the Pre-Trial Chamber to see whether the CPC is consistent with international standards on this issue if the Pre-Trial Chamber is to seek guidance from the CPC." (para. 39)
3.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention*	"The Accused may appeal against any orders or decisions of the Co-Investigating Judges relating to provisional detention. The Pre-Trial Chamber […] confirmed its acceptance of the separate filing of the Appeal and of the Jurisdiction Appeal, taking into account 'the very different subject matters of these Appeals and the fact that, consequently, where deemed necessary, different procedural steps may be applied'." (para. 16)

b. Scope and Standard of Review

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"The nature of [an appeal against a provisional detention order] is not defined in the Internal Rules." (para. 6) "In the Agreement […] and the [ECCC Law], there is no direct provision for appeal against orders of provisional detention from the Co-Investigating Judges. Article 12(1) of the Agreement specifically provides that the procedure shall be in accordance with Cambodian Law. The Internal Rules specifically make provision for a right of appeal in respect of provisional detention orders, knowing that [the Cambodian Code of Criminal Procedure] makes such a provision with regards to *La Chambre d'instruction*. The Pre-Trial Chamber fulfils this role in the ECCC. Therefore, the manner in which the Pre-Trial Chamber must approach appeals on provisional detention orders is directed by *Livre 4: L'Instruction, Titre 2: La Chambre d 'instruction*." (para. 7) "Reading the Internal Rules in relation to these Articles of the Cambodian Code of Criminal Procedure [involves] an examination of: a. the procedures of the Co-Investigating Judges prior to the Order being issued; b. the exercise of discretion by the Co-Investigating Judges to consider the application of Internal Rule 63(3); c. the sufficiency of the facts for reaching the conclusion under 63(3) of the Internal Rules; d. whether the circumstances on which the Order was based still exist today; and e. any additional issues not otherwise dealt with which are the subject of specific grounds of appeal." (para. 8)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"The PTC will review the Provisional Detention Order […] by an examination of: a. the procedure of the Co-Investigating Judges prior to the Order being issued; b. the sufficiency of the facts for ordering provisional detention under Internal Rule 63(3); c. whether the circumstances on which the Order was based still exist today; and d. the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3)." (para. 9)
3.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[T]he Pre-Trial Chamber will review the Provisional Detention Order […] by an examination of: a. the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3); b. the sufficiency of the facts for ordering provisional detention under Internal Rule 63(3); c. whether the circumstances on which the Order was based still exist today; and d. hospitalisation as an alternative form of detention." (para. 9) "In considering the Appeal, the Pre-Trial Chamber will undertake its own analysis, applying the standard set out in Internal Rule 63(3)." (para. 68) "In examining whether there is such well founded reason, [as required in Rule 63(3)(a)], the Pre-Trial Chamber will decide whether facts or information exists which would satisfy an objective observer that the person concerned may have committed the offences." (para. 71) "As the Provisional Detention Order of the Co-Investigating Judges was based on crimes more limited in scope than the ones identified in the Introductory Submission, the Pre-Trial Chamber will use this limited scope to examine the Order." (para. 73)
4.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"The Pre-Trial Chamber will review the Provisional Detention Order […] to decide (i) whether there are well-founded reasons to believe that the Charged Person may have committed the crimes with which she has been charged pursuant to Internal Rule 63(3)(a), and (ii) whether provisional detention is a necessary measure pursuant to the criteria set out in Rule 63(3)(b)." (para. 13) "[T]he Pre-Trial Chamber has ruled: The Pre-Trial Chamber will review the Provisional Detention Order […] by an examination of: a. the procedure of the Co-Investigating Judges prior to the Order being issued; b. the sufficiency of the facts for ordering provisional detention under Internal Rule 63(3); c. whether the circumstances on which the Order was based still exist today; and d. the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3)." (para. 15)

		"[T]he Pre-Trial Chamber will undertake its own analysis, applying the standard set out in Internal Rule 63(3)." (para. 18) "In deciding if the grounds for provisional detention as set out in Rule 63(3) are met, the Pre-Trial Chamber has taken into account the written pleadings of the Parties and their oral submissions, the evidence they have submitted and the whole Case File of the Co-Investigating Judges up to the date of the hearing. Only the material contained in the Case File available during the hearing will therefore be considered." (para. 20) "As the Order […] was based on crimes more limited in their scope than the ones identified in the Introductory Submission, the Pre-Trial Chamber will use this limited scope to review the Order." (para. 23)

iii. *Extension of Provisional Detention*

a. Conditions for Extending Provisional Detention

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[T]he extension of provisional detention may only be ordered where it is established that the conditions set out in Internal Rule 63(a) are still met notwithstanding the passage of time and taking into consideration the results of the judicial investigation." (para. 22) "[T]he threshold used for extending detention is the satisfaction of an objective observer that the Charged Person may have been responsible for or committed the alleged crimes specified in the Introductory Submission." (para. 24) "The ECCC Internal Rules that apply in this regard are […] Internal Rule 63(7) [and] Internal Rule 21(4) […]. While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that a Charged Person can spend in provisional detention is very specific. The Rules make clear how these limits are set, that in the case when a Charged Person is detained, the stakes are higher, as the right to liberty of a person still presumed innocent is in question. Therefore, an analysis of what steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary." (para. 45)
2.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber observes that in their Response, the Co-Prosecutors asserted that the ground mentioned in Internal Rule 63(3)(b)(iv) […] is now satisfied." (para. 46) "As far as this can be seen as a request to insert a new ground to the Extension Order, the Co-Prosecutors' request is not granted. The Pre-Trial Chamber observes that each of the four grounds upon which the Co-Investigating Judges have ordered the extension of provisional detention individually justify the conclusion that provisional detention is a necessary measure. In these circumstances, and as this issue was raised in response to an appeal lodged by the Charged Person and therefore not fully discussed within the Appeal, the Pre-Trial Chamber does not consider it necessary to analyse the additional ground as requested by the Co-Prosecutors." (para. 47) "The reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 61) "The Pre-Trial Chamber finds that the Co-Investigating Judges properly exercised their discretion in ordering the extension of provisional detention as the duration of this detention is reasonable in light of the crimes that are being investigated and the actions they have undertaken." (para. 67)
3.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order*	"The Co-Investigating Judges found in their Extension Order that because there has been no change in the circumstances detention is still a necessary measure to ensure the presence of the Charged Person during the proceedings, to protect the security of the Charged Person and to preserve public order." (para. 33) "The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly." (para. 34)

	on Extension of Provisional Detention	"[A]n anticipated sentencing of Duch cannot be considered as a change in circumstance for the purposes of this appellate procedure as it has not yet happened." (para. 49) "[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 59) "[T]he gravity and nature of the crimes with which the Charged Person is charged require large scale-investigative actions which have been undertaken, and […] in view of the scope and current stage of the investigations, the Co-Investigating Judges reasonably exercised their discretion to order the extension of the provisional detention." (para. 61)
4.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"In the Extension Order, the Co-Investigating Judges […] considered whether the conditions under Internal Rule 63(3)(b) still remain satisfied. The Co-Investigating Judges found […] that because there has been no change in the circumstances and because the defence has not put forward anything indicating the contrary, detention is still a necessary measure to prevent the Charged Person from exerting pressure on any witness or victims, to preserve evidence, to ensure the presence of the Charged Person during the proceedings and to preserve public order." (para. 30) "The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly." (para. 31) "[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 48)
5.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"The Co-Investigating Judges found that since there has been no change in the circumstances, detention is still a necessary measure to protect the security of the Charged Person and to preserve public order." (para. 28) "The Pre-Trial Chamber finds that in applying this standard the Co-Investigating Judges acted correctly." (para. 29) "[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in concluding their investigation are factors that shall be taken into consideration when exercising discretionary powers to extend provisional detention." (para. 44) "[T]he gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and that in view of the scope and current stage of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably." (para. 47)
6.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal against the Closing Order*	"The Accused have not lodged an appeal against the detention order […] issued within their Closing Order. There is no new circumstance except the confirmation of the indictment by the Pre-Trial Chamber, which reinforced the well founded reasons to believe that the Accused may have committed the crimes charged in the indictment and the necessity to maintain him in provisional detention […]." (para. 29)

b. Length of Provisional Detention

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional*	"The release from provisional detention due to the mere fact of the length of such detention should only be considered when it would clearly exceed any likely sentence that may be given." (para. 25) "[I]t is submitted that […] financial compensation should be paid […] as a reparation for both the eight years plus he has spent in provisional detention and also for the harm he has suffered as a result of the violation of his entitlement to trial within a reasonable time […]." (para. 62)

	Detention Order of KAING Guek Eav alias "Duch"	"[I]t is inappropriate for the Chamber to make such statements […] when another judicial body may well become seized of this case for trial […]." (para. 63)
2.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[T]he nexus between the length of time a defendant spends in detention and the diligence displayed in the conduct of investigations is a relevant factor when considering continuation of detention or release." (para. 44) "While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that the Charged Person can spend in provisional detention is very specific. The Rules make clear how these limits are set, that in the case when a Charged Person is detained, the stakes are higher, as the right to liberty of a person still presumed innocent is in question. Therefore, an analysis of what steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary." (para. 45)
3.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber notes that Internal Rule 63(7) provides, in relation to the length of time allowed for provisional detention, that 'no more than 2 (two) such extensions may be ordered' and that Internal Rule 21(4) provides, in relation to due diligence, that '[p]roceedings before the ECCC shall be brought to a conclusion within a reasonable time'. 'Proceedings before the ECCC' include judicial investigations. While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that a Charged Person can spend in provisional detention is very specific." (para. 55) "International tribunals have considered that the right to be tried within reasonable time requires judicial authorities to ensure that the length of provisional detention is reasonable in light of the circumstances of each case." (para. 57) "The reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 61)
4.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"[T]he nexus between the length of time a defendant spends in detention and the diligence displayed in the conduct of investigations is a relevant factor when considering continuation of detention or release." (para. 68) "[T]he following criteria should be examined when considering whether the length of provisional detention is reasonable: '1) the effective length of the detention; 2) the length of the detention in relation to the nature of the crime; 3) the physical and psychological consequences of the detention on the detainee; 4) the complexity of the case and the investigations; 5) the conduct of the entire procedure.'" (para. 69) "[I]n relation to the conduct of the authorities, […] the length of detention would be proportional to the circumstances of a case if 'the organs of the Court have acted swiftly and that at no moment were proceedings dormant' or if 'the investigation into the crimes has been ongoing and conducted in a reasonable manner.'" (para. 70) "[T]he Co-Investigating Judges were justified to conclude that the duration of the Charged Person's provisional detention is reasonable in light of the crimes that are being investigated and the actions the Co-Investigating Judges have undertaken." (para. 75)
5.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 59) "[T]he gravity and nature of the crimes with which the Charged Person is charged require large scale-investigative actions which have been undertaken, and […] in view of the scope and current stage of the investigations, the Co-Investigating Judges reasonably exercised their discretion to order the extension of the provisional detention." (para. 61)

6.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in conducting their investigation are factors that shall be taken into consideration when exercising the discretionary power to extend provisional detention." (para. 48) "The Pre-Trial Chamber finds that the gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and that in view of the scope and current stage of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably." (para. 50)
7.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"[T]he reasonableness of the length of detention and the diligence of the Co-Investigating Judges in concluding their investigation are factors that shall be taken into consideration when exercising discretionary powers to extend provisional detention." (para. 44) "[T]he gravity and nature of the crimes with which the Charged Person is charged require large-scale investigative actions which have been undertaken, and that in view of the scope and current stage of the investigations, the Co-Investigating Judges used their discretion to order the extension of the provisional detention reasonably." (para. 47)
8.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[W]hen evaluating the reasonableness of the length of pre-trial detention, a case by case analysis must be conducted. The particular features of each case have to be taken into consideration. Thus, the particulars of the case must be looked at in isolation, rather than in comparison." (Opinion of Judges BEAUVALLET and BAIK, para. 40) "In light of the [ECtHR] case law […], the particulars to be considered include, *inter alia*, the number of charges, the number of people involved in the proceedings, such as defendants and witnesses, the volume of evidence, the international dimension of the case and the complexity of facts and law." (Opinion of Judges BEAUVALLET and BAIK, para. 41)

c. Provisional Detention Following Indictment

1.	**002 NUON Chea and IENG Thirith** PTC 145 & PTC 146 D427/2/13 and D427/3/13 21 January 2011 *Decision on IENG Thirith's and NUON Chea's Appeals against the Closing Order: Reasons for Continuation of Provisional Detention*	"Pursuant to sub-rule 68(2), once an appeal is lodged against the Indictment, no matter what the nature of the appeal is, 'the effect of the detention or bail order of the Co-Investigating Judges shall continue until there is decision from the Pre-Trial Chamber.'" (para. 4) "[T]he confirmation of the indictment by the Pre-Trial Chamber […] reinforces the well founded reasons to believe that the Accused may have committed the crimes charged in the indictment. It also reinforces the necessity to maintain NUON Chea in provisional detention to ensure his presence at trial, protect his security, preserve public order and avert the risk of the Accused exerting pressure on witnesses or victims or destroying evidence if released […]. The Pre-Trial Chamber considers that the reasons given by the Co-Investigating Judges to order that the Accused remain in provisional detention, which it adopts, justify that […] the provisional detention of the Accused pursuant to Internal Rule 68(3) continue until they are brought before the Trial Chamber." (para. 5)
2.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011	"The Pre-Trial Chamber, in light of its previous decisions relating to provisional detention, and the submissions of the parties, will review the Closing Order's extension of Ieng Sary's provisional detention by an examination of:

	Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention	a. Whether the Co-Investigating Judges provided 'a specific, reasoned decision included in the Closing Order' (Internal Rule 68(1)); b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b)); and c. The Accused's request for release on bail, or house arrest." (para. 24)
3.	**002 IENG Sary** PTC 75 D427/1/27 24 January 2011 *Decision on IENG Sary's Appeal against the Closing Order: Reasons for Continuation of Provisional Detention*	"Pursuant to sub-rule 68(2), once an appeal is lodged against the indictment, no matter what the nature of the appeal is, 'the effect of the detention or bail order of the Co-Investigating Judges shall continue until there is a decision from the Pre-Trial Chamber.'" (para. 4) "[T]here is no new circumstance since the issuance of the Closing Order […] except the confirmation of the indictment by the Pre-Trial Chamber, which reinforces well founded reasons to believe that the Accused may have committed the crimes charged in the indictment and the necessity to maintain him in provisional detention […]." (para. 6)

iv. *Appeals against Order on Extension of Provisional Detention*

a. Jurisdiction of the Pre-Trial Chamber

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[Internal Rules 73, 74(3) and 63(7)] provide the Pre-Trial Chamber jurisdiction over the Appeal against the Order on Extension of Provisional Detention." (para. 13)

b. Scope and Standard of Review

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"The Pre-Trial Chamber will examine whether there are still well-founded reasons to believe that the Charged Person may have committed crimes specified in the Introductory Submission, although the Charged Person did not contest this." (para. 14) "The Pre-Trial Chamber will further examine the issues raised in the Appeal and finally […] whether the Co-Investigating Judges have exercised their discretion reasonably." (para. 15) "[T]he extension of provisional detention may only be ordered where it is established that the conditions set out in Internal Rule 63(a) are still met notwithstanding the passage of time and taking into consideration the results of the judicial investigation." (para. 22) "[T]he threshold used for extending detention is the satisfaction of an objective observer that the Charged Person may have been responsible for or committed the alleged crimes specified in the Introductory Submission." (para. 24) "[T]he nexus between the length of time a defendant spends in detention and the diligence displayed in the conduct of investigations is a relevant factor when considering continuation of detention or release." (para. 44) "While the limit set for the progress of investigations is that the time spent is 'reasonable', the limit set for the time that the Charged Person can spend in provisional detention is very specific. The Rules make clear how these limits are set, that in the case when a Charged Person is detained, the stakes are higher, as the right to liberty of a person still presumed innocent is in question. Therefore, an analysis of what

		steps have been taken by the investigation authorities and to what degree they affect the situation of the Charged Person is continuously necessary." (para. 45)
2.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber will review the Extension Order by an examination of: (i) the sufficiency of evidence to conclude that there are well-founded reasons to believe that the Charged Person may have committed the crimes with which she has been charged pursuant to Internal Rule 63(3)(a) at the time the Extension Order was issued and at present; (ii) whether, in light of the arguments raised by the Co-Lawyers, provisional detention is still a necessary measure pursuant to the criteria set out in Rule 63(3)(b); (iii) the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3), including the reasonableness of the length of provisional detention; and (iv) the request for release on bail." (para. 15)
3.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"The Pre-Trial Chamber will review the Extension Order by an examination of: i) the regularity of the procedure prior to the making of the Extension Order; ii) the sufficiency of evidence to conclude that there are well founded reasons to believe that the Charged Person may have committed the crimes with which he has been charged pursuant to Internal Rule 63(3)(a) at the time the Extension Order was issued and at present; iii) whether, in light of the arguments raised by the Co-Lawyers, provisional detention is still a necessary measure pursuant to the criteria set out in Rule 63(3)(b); and iv) the exercise of discretion by the Co-Investigating Judges in applying Internal Rule 63(3)." (para. 97) "Internal Rule 21(2) provides that '[a]ny coercive measures to which [a Charged Person] may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities.' […] [T]he condition set out in Internal Rule 63(3)(a) must always be present with the passage of time and the progress of the judicial investigation for ordering the extension of the Charged Person's detention. When seised of an appeal against the extension of provisional detention, the Pre-Trial Chamber has to verify whether the Co-Investigating Judges could conclude that there continue to be well founded reasons to believe that the Charged Person may have committed the crimes for which he has been placed under judicial investigation in light of the continuing investigation. It has also to ensure that these reasons still exist today. For this purpose, the Pre-Trial Chamber shall examine the Case File up until the date of the hearing, which is the last opportunity for the parties to present their observations on the evidence contained in the Case File. The Pre-Trial Chamber finds this examination necessary as the Co-Investigating Judges have a duty to collect inculpatory as well as exculpatory evidence during their continuing investigation, such evidence being periodically added to the Case File." (para. 111)
4.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber […] will review the Extension Order by an examination of: a. Well founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a); b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b); c. Due diligence in the conduct of investigation; d. Request for release on bail." (para. 16) "[T]he Pre-Trial Chamber notes that in the Extension Order the Co-Investigating Judges have conducted a fresh review of the evidence on the Case File including both inculpatory and exculpatory evidence, taken into consideration the relevant material contained in the Case File and concluded that well founded reasons still exist." (para. 28) "The Pre-Trial Chamber therefore finds that the Co-Investigating Judges […] exercised their discretion correctly in concluding that the 'well founded' reasons still exist." (para. 29)
5.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG*	"The Pre-Trial Chamber, […] will review the Extension Order by an examination of: a. Well founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a); b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b); c. Due diligence in the conduct of investigation; Request for release on bail." (para. 13)

	Thirith's Appeal against Order on Extension of Provisional Detention	
6.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber […] will review the Extension Order by an examination of: a. Well founded reasons to believe that the Charged Person may have committed the crimes specified in the Introductory Submission (Internal Rule 63(3)(a); b. Grounds that would make detention a necessary measure (Internal Rule 63(3)(b); c. Due diligence in the conduct of investigation; d. Request for release on bail." (para. 13)

v. *Miscellaneous*

1.	**002 NUON Chea** Special PTC 17 Doc. No. 2 19 January 2011 *Decision on Urgent Request to Consider Resumption of Detention Interviews*	"[T]here is a *lacuna* in the Internal Rules as to who should conduct the interviews on the conditions of detention at the current stage of the proceedings where the Pre-Trial Chamber has just confirmed the continuation of the detention […] and issued its Decision on the appeal […] against the Closing Order. By way of its decision, the Trial Chamber becomes seized of the case file, the Pre-Trial Chamber remaining only seized of providing reasons for its decisions on the appeals against the Closing Order and the appeals by the civil party applicants." (para. 7) "Having a particular attention to the fundamental principles set out in Rule 21, […], the Pre-Trial Chamber considers it appropriate under the current circumstances to forward the Request to the Trial Chamber which, at the current stage of the proceedings, will be in a better position to address it." (para. 9)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[I]t is not clear that the provisional detention orders for the Appellants *confirm* the ECCC's jurisdiction with respect of the crimes charged against them. The primary purpose of a provisional detention order is to 'set out the legal grounds and factual basis for detention'. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions; determined that there were well-founded reasons to believe that the Appellants may have committed the alleged crimes; and found that, for various reasons, detention would be necessary in the course of the Office of the Co-Investigating Judges' investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect of the crimes alleged to have been committed and those challenged on jurisdictional grounds in these Appeals, this argument is unpersuasive and in no way determinative." (para. 78) "[U]nder Internal Rule 67, at the conclusion of their investigations and issuance of the Closing Order, the Co-Investigating Judges makes their final determinations with respect of the legal characterisation of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC. In doing so '[t]he Co-Investigating Judges are not bound by the Co-Prosecutors submissions' in the course of the investigations. As such, it was not given at the time of the rendering of the provisional detention orders that the crimes alleged by the Co-Prosecutors would be crimes for which the Appellants would eventually be indicted at the conclusion of the Co-Investigating Judges investigations. […] Under the terms of Internal Rule 67 it would have been reasonable for the Appellants to assume that the provisional detention orders did not confirm jurisdiction and that it would be efficient to raise any subject matter jurisdiction objections following the final conclusions on jurisdiction by the Co-Investigating Judges in the Closing Order." (para. 79) "[E]ven if the Pre-Trial Chamber was persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as they see fit.' Here the Pre-Trial Chamber finds that for the following reasons, it would be in the interests of justice to allow the Appellants' jurisdictional objections to the Impugned Order even though one may

		argue that they should have appealed the provisional detention orders on these grounds […].” (para. 80) “[I]t may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules themselves or in any other applicable law at the ECCC that the phrase ‘confirming the jurisdiction’ in Internal Rule 74(3)(a) precludes appealing Co-Investigating Judges’ orders or decisions ‘re-confirming’ ECCC jurisdiction as alleged by the Co-Prosecutors.” (para. 81) “Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging the breach of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to the Appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. However, the Pre-Trial Chamber does not find that considering the Appellants’ jurisdictional objections at the close of the Co-Investigating Judges investigation and prior to the commencement of trial undermines expediency. Rather, consideration at this time supports the expeditious conduct of proceedings by safeguarding against an outcome in which ‘[s]uch a fundamental matter as […] jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial’.” (para. 82) “In sum, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the Appellants’ grounds of appeal raising jurisdictional objections against the Impugned Order at this time. Failure to do so based on the argument that the Appellants are time barred from raising appeals that are permitted according to a plain language reading of the Internal Rules, by relying instead on a questionable interpretation of the Internal Rules so as preclude appeals of this type on mere procedural grounds may result in fundamental unfairness to the Appellants.” (para. 83)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary’s Appeal against the Closing Order*	“[I]t is not clear whether the provisional detention order for the Accused represents an order confirming ECCC’s jurisdiction with respect to the crimes charged. The primary purpose of a provisional detention order is to ‘set out the legal grounds and factual basis for detention’. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions, determined that there were well-founded reasons to believe that the Appellant may have committed the alleged crimes and found that, for various reasons, detention would be necessary in the course of the investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect to the crimes alleged to have been committed and those challenged on jurisdictional grounds in this Appeal, this argument is not persuasive and in no way determinative.” (para. 52)
4.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	“[A]t the time of charging, the Co-Investigating Judges must examine if the conditions for ordering provisional detention or bail under Internal Rules 63(3)(b) and 65 exist and accordingly determine whether they may order provisional detention, bail or that the Charged Person remain at liberty.” (Opinion of Judges BEAUVALLET and BAIK, para. 350) “[T]he International Judges find that the Co-Investigating Judges, before the issuance of their Closing Orders, failed to scrutinise whether the Voluntary Assurances given by MEAS Muth were duly honoured, and thus to properly consider orders of provisional detention or bail with necessary conditions imposed to ensure the presence of MEAS Muth during the proceedings and the protection of others in accordance with the Internal Rules 63 and 65.” (Opinion of Judges BEAUVALLET and BAIK, para. 354) “More importantly, the International Judges find that the International Co-Investigating Judge, in his issuance of the Indictment, failed to clearly establish the legal framework in accordance with the Internal Rules.” (Opinion of Judges BEAUVALLET and BAIK, para. 355) “The International Co-Investigating Judge, in the Indictment, firstly erroneously concluded that no security measure was necessary. The International Judges note that MEAS Muth is charged with the most serious of crimes, namely genocide, crimes against humanity, and murder for which he faces a heavy sentence of imprisonment, and consider that it is imperative to bring MEAS Muth to justice. The International Judges recall that no undue burden shall be placed on the witnesses, especially those

		who were given a letter of assurance from the Co-Investigating Judge pursuant to Internal Rule 28. Given the grave nature of the acts, so detrimental to humanity that statutory limitation is inapplicable, and the serious disturbance brought to the public order of both national and international society, the International Judges find that a provisional detention of or other security measures that were at the International Co-Investigating Judge's disposal against MEAS Muth was duly called for." (Opinion of Judges BEAUVALLET and BAIK, para. 356) "Secondly, the International Co-Investigating Judge failed to properly assess the risk factors under Internal Rule 63(3)(b). In this regard, the International Judges note the fact that MEAS Muth had acquired a new passport in 2016 and travelled to Thailand since then, without notifying the Co-Investigating Judges, against his voluntary commitment to remain at the disposal of the ECCC as well as his voluntary assurances in this regard given to the International Co-Investigating Judge." (Opinion of Judges BEAUVALLET and BAIK, para. 357) "Accordingly, pursuant to Internal Rule 44 and the facts on the record, the International Judges find that the International Co-Investigating Judge erred by failing to properly consider the issuance of an arrest warrant." (Opinion of Judges BEAUVALLET and BAIK, para. 358)

4. Conditions of Detention

i. *ECCC Detention Facility*

1.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"[T]he ECCC Detention Facility is under the authority of the Royal Government of Cambodia and subject to Cambodian law […]. In accordance with Cambodian law, the Chief of Detention is in charge of the daily administration and operation of the ECCC Detention Facility, including the security. […] The fact that [rules setting out the conditions of detention at the ECCC Facility] have not yet been officially adopted […] does not deprive the Chief of Detention of his authority over the ECCC Detention Facility under the rules currently applied to detainees within the Cambodian prison system." (para. 26) "[D]etainees are normally not kept separately in Cambodian prisons […]. In certain circumstances, the Chief of Detention has the authority to segregate a detainee from all or some of the other detained persons for the purpose of preserving order in the prison and the security of the detainees […]." (para. 27) "Internal Rule 55 gives jurisdiction to the Co-Investigating Judges to limit contact between the detainees in the interest of the investigation. In the absence of any other legal disposition giving them authority over the ECCC Detention Facility, the Co-Investigating Judges have no power to set out the conditions of detention at the ECCC Detention Facility, which shall remain under the authority of the Chief of Detention." (para. 28)
2.	**002 IENG Sary** PTC 05 A104/II/7 30 April 2008 *Decision on Appeal concerning Contact between the Charged Person and His Wife*	"The Pre-Trial Chamber also notes that the ECCC Provisional Detention Facility is under the authority of the Royal Government of Cambodia and subject to Cambodian law." (para. 10)

ii. *Conditions of Detention and Prisoners' Rights*

a. General

1.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010	"Rule 1 of the Detention Facility Rules is sufficiently broad in its scope to permit the Co-Investigating Judges to consider the Request [to allow recording of meetings at the Detention Facility]. Rule 1 of the Detention Facility Rules contemplates that matters related to detention may be varied in individual

	[PUBLIC REDACTED] *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	cases and explicitly provides that the Co-Investigating Judges are an appropriate body to make such determinations." (para. 29) "In [A104/II/7 concerning visitation rights], this Chamber found that in the exercise of its discretion the Co-Investigating Judges are limited by Rule 21(2). Any measure imposed as a restriction on the rights of a charged person found in Rule 21(1) must be 'strictly limited to the needs of the proceedings.'" (para. 37)

b. Interview on Conditions of Detention

1.	**002 NUON Chea** Special PTC 17 Doc. No. 2 19 January 2011 *Decision on Urgent Request to Consider Resumption of Detention Interviews*	"Internal Rule 68(3) provides for an interview of the Charged Person on his or her conditions of detention every four months by the Co-Investigating Judges […]." (para. 4) "[T]he text of Internal Rule 68(3) appears to provide only for interviews of a 'Charged Person', which refers to a person subject to prosecution during the period between the Introductory Submission and the Indictment or dismissal of the case, and these interviewed shall be conducted by the Co-Investigating Judges. No other provision in the Internal Rules gives any indication as to the continuation of these interviews after the indictment being issued, nor of any other form of oversight of the provisional detention after that time. However, Rule 21(2) states that '[a]ny coercive measures to which such a person may be subjected shall be taken by or under the effective control of the competent ECCC judicial authorities' and that such measure shall 'fully respect human dignity'[.]" (para. 5) "Recognizing the importance of the interviews provided in Internal Rule 63(8) to exercise an oversight over provisional detention in order to ensure respect of the detainees' rights to be detained under humane and dignified conditions, the Pre-Trial Chamber acknowledged that the Accused, akin to the Charged Person, shall be interviewed periodically on their conditions of detention. This is particularly necessary in the light of the Accused's age and the ailments he alleged to suffer of." (para. 6) "[T]here is a *lacuna* in the Internal Rules as to who should conduct the interviews on the conditions of detention at the current stage of the proceedings where the Pre-Trial Chamber has just confirmed the continuation of the detention […] and issued its Decision on the appeal […] against the Closing Order. By way of its decision, the Trial Chamber becomes seized of the case file, the Pre-Trial Chamber remaining only seized of providing reasons for its decisions on the appeals against the Closing Order and the appeals by the civil party applicants." (para. 7) "Having a particular attention to the fundamental principles set out in Rule 21, […], the Pre-Trial Chamber considers it appropriate under the current circumstances to forward the Request to the Trial Chamber which, at the current stage of the proceedings, will be in a better position to address it." (para. 9)

c. Limitation of Contact, Segregation

1.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"In [A104/II/7] […] the Pre-Trial Chamber found that contact between detainees at the ECCC Detention Facility can only be limited by the Co-Investigating Judges as a 'necessary and proportional measure to protect the interests of the investigation.' The Pre-Trial Chamber further stated that 'limitation of contact has to be ordered by a reasoned decision' and that 'it must be clear which interest is protected and any limitation should be based upon the protection of such interest.'" (para. 12) "[T]he Pre-Trial Chamber also found that since the alleged crimes were committed thirty years ago […], 'it [was] not clear […] how limiting contact […] protects the interest of the investigation." (para. 13) "The [jurisprudence of the PTC is] in accordance with the position adopted by the International Criminal Court […] in […] *Prosecutor v. Katanga and Chui* […] where a Single Judge of the Pre-Trial Chamber found that measures 'to restrict the communication and contact' between two co-accused 'constitute an important restriction of the rights provided for by the detention regime set forth in the Regulations

		[…], and therefore they can be imposed if the requirements of necessity and proportionality are met.'" (para. 14) "[T]he European Commission of Human Rights has found that 'it is a serious measure to exclude a prisoner from all or almost all contact with normal prison society for a long period.'" (para. 15) "In light of the jurisprudence from the International Criminal Court, the European Court of Human Rights and the European Commission for Human Rights, the Pre-Trial Chamber considers that limitation of contacts can only be ordered to prevent pressure on witnesses or victims when there is evidence reasonably capable of showing that there is a concrete risk that the charged person might collude with other charged persons to exert such pressure while in detention. With the passage of time, the threshold becomes higher as the investigation progresses and the risk necessarily decreases." (para. 21) "[T]he mere fact that provisional detention was considered to be a necessary measure to prevent the Charged Person from exerting pressure on witnesses and victims does not lead to the conclusion that the Charged Persons might collude, while in detention, to exert such pressure. The basis of detention to prevent a charged person from exerting pressure on witnesses or victims is the fact that if not detained, this person would be in proximity to witnesses and victims and those with whom he or she could directly arrange to exert such pressure." (para. 22) "[D]etainees are normally not kept separately in Cambodian prisons […]. In certain circumstances, the Chief of Detention has the authority to segregate a detainee from all or some of the other detained persons for the purpose of preserving order in the prison and the security of the detainees […]." (para. 27) "Internal Rule 55 gives jurisdiction to the Co-Investigating Judges to limit contact between the detainees in the interest of the investigation. In the absence of any other legal disposition giving them authority over the ECCC Detention Facility, the Co-Investigating Judges have no power to set out the conditions of detention at the ECCC Detention Facility, which shall remain under the authority of the Chief of Detention." (para. 28)
2.	**002 IENG Sary** PTC 05 A104/II/7 30 April 2008 *Decision on Appeal concerning Contact between the Charged Person and His Wife*	"The Pre-Trial Chamber considers that two different types of decision might have the effect of segregation: i) an order of segregation issued by the Chief of the Provisional Detention Facility pursuant to his authority set out in the applicable detention rules and ii) an order limiting contacts between a detainee and any other detainee issued by the Co-Investigating Judges." (para. 11) "[T]he Chief of the ECCC Provisional Detention Facility […] has sole jurisdiction to order segregation on the basis of the Cambodian Law and the draft Detention Rules of the ECCC […]." (para. 12) "Rule 55(5) is sufficiently broad in its scope to give the Co-Investigating Judges jurisdiction to limit contacts between the Charged Person and any other person in the interest of the investigation." (para. 14) "This jurisdiction of the Co-Investigating Judges is however limited by Internal Rule 21(2) […]." (para. 15) "These findings are in accordance with the practice at international tribunals which has established clear distinction between (i) the segregation of detained person from all or some of the other detained persons for the purpose of preserving the order in the prison and the security of the detainees and (ii) the restriction of communication and contact between a detained person and any other person to avoid any prejudice to the outcome of the proceedings. The rules applicable at the International Criminal Court (ICC) at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for the Rwanda (ICTR) state that judicial authorities have jurisdiction in the latter case, but not in the former." (para. 16) "It is clear from the practice at international tribunals that limitation of contact has to be ordered by reasoned decision. From this reasoning it must be clear which interest is protected and any limitation should be based upon the protection of such interest." (para. 17)

		"[T]he long duration of the measures imposed since the investigation […], without proper justification, affects the Charged Person's right to be treated with humanity and must therefore cease." (para. 21)

d. Audio and Visual Recordings in Detention Facility

1.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"[T]here are several factors specific to the pre-trial proceedings of the Charged Person that must be assessed in determining whether the use of audio/video equipment falls within the fair trial rights of the Charged Person […]. The fact that a charged person resides in the Detention Facility pursuant to a provisional detention order does not take away his right to adequately prepare his defence. In complex cases, preparing defence may necessarily encompass many courses of action. A measure that facilitates the preparation of the defence, including by enabling communication between counsel and a charged person, may not be unduly restricted because a charged person resides in the Detention Facility." (para. 33) "The Pre-Trial Chamber is persuaded that if the recording is necessary, it is a facility under Article 14(3)(b) of the ICCPR. The Defence has demonstrated to the satisfaction of the Pre-Trial Chamber that the recordings are necessary for effective communication with counsel and trial preparation. In light of the foregoing, the Pre-Trial Chamber finds that the use of audio/video recording equipment for the purpose of preparing the pre-trial defence of the Charged Person constitutes a facility for the preparation of the defence. Likewise, the use of audio/video recording equipment in the manner specified in the Request is a facility for communication between the Charged Person and counsel. An assessment of the circumstances of this particular case reveals that permitting recordings will ensure that the Charged Person has adequate facilities at his disposal. It is only with the provision of adequate facilities for trial preparation and with the means for effective communication in place that this court can maintain that the fair trial rights of the Charged Person are fully respected." (para. 35) "[T]he Co-Investigating Judges committed an error of law by failing to consider that the fair trial rights of the Appellant protected by Rule 21 had been adversely affected by the refusal to permit the defence team of the Charged Person to take recording equipment into the Detention Facility." (para. 39) "Whilst the Pre-Trial Chamber has found that the Impugned Order deprived the Appellant of his fair trial rights and cannot stand, the Pre-Trial Chamber is mindful of the need to protect against abuse of the right to bring audio/video equipment into the Detention Facility and all products thereof. […] [R]estrictions shall apply […]." (para. 41) "[A]lthough not all Charged Persons made or joined in the Request, due to the fact that the right expressed in this decision is a fair trial right, the right expressed in this decision shall extend to the defence teams of the other charged persons currently detained in the Detention Facility […]." (para. 42)

iii. *Appeals concerning Conditions of Detention*

a. Admissibility

1.	**002 IENG Sary** PTC 05 A104/II/4 21 March 2008 *Decision on the Admissibility of the Appeal Lodged by IENG Sary on Visitation Rights*	"[T]he assertions made by the Co-Lawyers can be seen as a complaint against a coercive measure taken by the Co-Investigating Judges that, in its effects, may not fully respect the human dignity of the Charged Person." (para. 9) "As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, the Pre-Trial Chamber finds that this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules." (para. 10)
2.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008	"In [A104/II/4] the Pre-Trial Chamber previously found […]: '[…] the assertion made by the Co-Lawyers can be seen as a complaint against a coercive measure […] that, in its effects, may not fully respect the human dignity of the Charged Person. As a matter involving the right to respect human dignity and

	Decision on NUON Chea's Appeal concerning Provisional Detention Conditions	taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, […] this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules.'" (para. 9) "The current Appeal is lodged against what is, in its effect, a segregation order issued by the Co-Investigating Judges. […] The Pre-Trial Chamber finds, for the reasons expressed in its previous decision, that the Appeal falls within the scope of Internal Rule 74(3)(f)." (para. 10)
3.	002 IENG Sary PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"[W]hether an item […] can be brought in and out of the Detention Facility by members of a defence team and used during their meetings with their client in pre-trial detention, forms part of the modalities of […] detention. Any aspect of the modalities of pre-trial detention thus shall be under the effective control of the competent ECCC judicial authorities and strictly limited to the needs of the proceedings. To the extent that it adjudicates one specific aspect of the modalities of the pre-trial detention of the Charged Person, […] the Impugned Order amounts to an order 'relating to provisional detention' in [...] Internal Rule 74(3)(f) and is thus appealable by the Charged Person." (para. 11) "Considering the fair trial rights of the Appellant, including pursuant to Article 13 of the Agreement, Article 35 new of the ECCC Law and Article 14(3) of the ICCPR, the Pre-Trial Chamber finds that Rule 21 requires it to interpret the Internal Rules in such a way that the Appeal [concerning the authorisation of recording of meetings at the Detention Facility] is also admissible on the basis of Rule 21." (para. 18) "Finally, Rule 1 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Courts of Cambodia provides that '[t]he application of these rules to individual cases may be varied by order of the ECCC Co-Investigating Judges or the ECCC Chambers.' The Pre-Trial Chamber finds that the Appeal is also admissible on this basis." (para. 19)

b. Standard of Review

1.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"The Pre-Trial Chamber has articulated the […] standard of review applicable to appeals related to discretionary decisions […]. The Pre-Trial Chamber wishes to clarify that not every error of law or fact with invalidate the exercise of discretion by the Co-Investigating Judges and lead to a reversal of an order. The onus is on the Appellant to demonstrate that (i) the error of law invalidated the decision, (ii) the error of fact occasioned a miscarriage of justice, or (iii) that the decision or order is so unreasonable as to force the conclusion that the Co-Investigating Judges failed to exercise discretion judiciously." (para. 22)

5. Bail and Release

i. *Conditions for Bail and Release*

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"The release from provisional detention due to the mere fact of the length of such detention should only be considered when it would clearly exceed the any likely sentence that may be given." (para. 25) "[T]he conditions of Rule 63(3)(a) and all of the five grounds set out in Rule 63(3)(b) have been met, though any one of these would have been sufficient to justify the provisional detention […]. In these circumstances, […] the Charged Person cannot be released on bail, for any one of the conditions proposed by the Charged Person are outweighed by the necessity for his provisional detention." (para. 59) "[E]ven if the Charged Person were to be put under house arrest, there may still be high risks to his personal safety. […] This reason is sufficient, in itself […] to reject the Charged Person's request to be

		released on bail." (para. 60)
2.	**002 NUON Chea** PTC 01 C11/54 20 March 2008 *Decision on Appeal against Provisional Detention Order of NUON Chea*	"The PTC finds that, in the instant case, the conditions of Rule 63(3)(a) and all of the five grounds set out in Rule 63(3)(b) have been met, though any one of these would have been sufficient to justify the provisional detention of the Charged Person. […] The Pre-Trial Chamber considers that the Charged Person cannot be released on bail, for any of the conditions proposed by the Charged Person are outweighed by the necessity for his provisional detention." (para. 83)
3.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"[T]he conditions of Rule 63(3)(a) and the grounds set forth in Rule 63(3)(b)(i), (ii), (iii) and (v) have been met, though any one of these would have been sufficient to justify the provisional detention […]. This means that provisional detention is a necessary measure […]. In these circumstances, the Pre-Trial Chamber considers that the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person are outweighed by the necessity for her provisional detention." (para. 74)
4.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber has decided […] that 'the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person […] are outweighed by the necessity for her provisional detention'." (para. 70)
5.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"Internal Rule 64(1), when read together with Internal Rule 64(2), directs that a Charged Person shall be released 'where the requirements of Provisional Detention set out in Rule 63 above are no longer satisfied.' In the context of a Release Appeal, where the Defence seeks to put an end to a valid provisional detention order in force, in principle, […] it is for the Defence, in this instance, to demonstrate that the conditions set out in Internal Rule 63(3) are no longer satisfied." (para. 21) "[T]he Co-Lawyers did not raise any change in circumstances in relation to the condition set out in Internal Rule 63(3)(a). […] [T]he Co-Investigating Judges had no obligation to reason more extensively their conclusion that there are still well founded reasons to believe that the Charged Person may have committed the crimes for which he has been placed under investigation." (para. 36) "Article 35(new) of the ECCC Law and Internal Rule 21(1)(d) mandate that the Charged Person shall be presumed innocent until proved guilty. These provisions reflect and refer to international standards as enshrined in Article 14(2) of the [ICCPR]. Furthermore, Article 9(3) of the ICCPR provides that 'it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial." (para. 90) "Internal Rule 65 shall be read in light of these principles, which dictate that a decision not to release a charged person should be based on an assessment of whether public interest requirements as set out in Internal Rule 63(3)(b), notwithstanding the presumption of innocence, outweigh the need to ensure respect of a charged person's right to liberty. To balance these competing interests, proportionality must be taken into account. It is generally recognized that 'a measure in public international law is proportional only when 1) it is suitable, 2) necessary and when 3) its degree and scope remain in a reasonable relationship to the envisaged target. Procedural measures should never be capricious or excessive. If it is sufficient to use more lenient measure, it must be applied.'" (para. 91) "The Pre-Trial Chamber considers that provisional detention continues to be not only an adequate but also a necessary measure in order to ensure the Charged Person's security and preserve public order. The reasons on the basis of which the Pre-Trial Chamber found that the grounds mentioned in Internal Rules 63(3)(b)(iv) and (v) were still met indicate high risks for the Charged Person's security and for

		public order. No measure other than provisional detention would be sufficient to overcome these risks. As reasoned above, the length of provisional detention remains reasonable in light of the crimes that are being investigated and the actions the Co-Investigating Judges have undertaken." (para. 92)
6.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber has decided on this same request […], stating that 'the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person […] are outweighed by the necessity for her provisional detention." (para. 52) "As the request for bail contains no additional submissions the Pre-Trial Chamber rejects the request for release on bail without further reasoning." (para. 53)
7.	**002 KHIEU Samphân** PTC 36 C26/9/12 30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	"[T]he request for release is outweighed by the necessity for the Charged Person's detention." (para. 49)

ii. *Alternative Conditions of Detention*

a. General

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[T]he Internal Rules do not specifically provide for alternative forms of detention." (para. 119) "Rule 65(1) provides, however, that a charged person may be released from detention by bail order, under imposed conditions necessary to ensure the presence of the charged person during the proceedings and the protection of others. The Pre-Trial Chamber, therefore, will interpret the Co-Lawyers' request for alternative detention as a request for release under the condition of hospitalization or house arrest." (para. 120) "[T]he conditions of Rule 63(3)(a) and three grounds set out in Rule 63(3)(b) have been met, though any one of these alone would have been sufficient to justify the provisional detention of the Charged Person. This means that provisional detention is necessary measure to ensure the security of the Charged Person, to ensure the presence of the Charged Person during the proceedings and to preserve public. In these circumstances, the Charged Person cannot be released on bail, since any one of the conditions proposed by the Charged Person are outweighed by the necessity for his provisional detention." (para. 121) "Even if the Charged Person were to be hospitalised or put under house arrest, there may still be high risks to his personal safety." (para. 122) "There is no evidence of an immediate need for long-term hospitalisation and the ECCC Detention Facility is properly equipped to provide medical assistance as required." (para. 123)

b. House Arrest or Detention at Hospital

1.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010	"The Pre-Trial Chamber notes that […] 'the conditions of Internal Rule 63(3)(b) are still met. Any one of these conditions alone would have been sufficient to justify the continuation of the provisional detention of the Charged Person. The conditions proposed by the Charged Person are outweighed by the necessity for his provisional detention.'" (para 64)

	[PUBLIC REDACTED] *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	

c. Health Considerations

1.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"[T]he ECCC constitutive documents, the Internal Rules and Cambodian law do not specifically address the possibility that a charged person be released from provisional detention on the basis of health considerations. As prescribed in Article 12 of the Agreement, the Pre-Trial Chamber will therefore seek guidance in procedural rules established at the international level." (para. 79) "In light of the jurisprudence of international tribunals and Internal Rule 51(6), the Pre-Trial Chamber considers that only when there is evidence that his/her health condition is 'incompatible with detention' may a charged person be released from provisional detention on humanitarian grounds." (para. 82) "[E]ither the Charged Person's condition is incompatible with detention or it is not. Only the first situation would justify his release on humanitarian grounds." (para. 83)

iii. *Applications for Release*

a. General

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[T]he ECCC 'Internal Rules do not specifically provide for alternative forms of detention'. [T]he Defence initially presented their suggestion for release as part of its Objections to the notification of the Co-Investigating Judges for extension of provisional detention. This procedure is governed by Internal Rule 63(7). According to Internal Rule 63(7), the only party that can give an opinion on the matter is the Defence. Internal Rule 64 gives the Defence the right to specifically apply for release and for the Prosecution to have the right to give its opinion in respect of such application, which is not the case when the procedure under Internal Rule 63(7) is applied. Had the Co-Investigating Judges considered the suggestion to release, […] as part of their Objections pursuant to Internal Rule 63(7), the right of the Co-Prosecutors to give their opinion on such request would have been infringed." (para. 52) "The request to release the Charged Person should be read as a request for bail orders, as provided for in Internal Rule 65. […] [T]he Co-Lawyers did not submit anything new to their submissions in the appeal against the Order of Provisional Detention. […] [T]he Co-Investigating Judges should have referred to the fact that no new circumstances were raised in the appeal against the Order of Extension of Provisional Detention and this would have been sufficient to reason for the rejection of this request. In this respect, the Order of the Co-Investigating Judges was not sufficiently reasoned and before-mentioned reasoning will be substituted in the Extension Order." (para. 54)

b. Admissibility

1.	**002 KHIEU Samphân** PTC 15 C26/5/5 24 December 2008 *Decision on KHIEU Samphân's Supplemental Application for Release*	"Pursuant to Internal Rule 64(2), applications for release shall be filed to the Co-Investigating Judges and are subject to appeal before the Pre-Trial Chamber." (para. 12) "The Internal Rules do not grant the President of the Pre-Trial Chamber jurisdiction to provisionally release a charged person." (para. 14) "The President finds that the procedure on provisional release provided for by the Internal Rules is in accordance with the procedural rules of international courts. International standards therefore do not require the inclusion of other possibilities for the Charged Person to request provisional release." (para. 18)

c. Standard of Review

1.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"Internal Rule 64(1), when read together with Internal Rule 64(2), directs that a Charged Person shall be released 'where the requirements of Provisional Detention set out in Rule 63 above are no longer satisfied.' In the context of a Release Appeal, where the Defence seeks to put an end to a valid provisional detention order in force, in principle, […] the Pre-Trial Chamber finds that it is for the Defence, in this instance, to demonstrate that the conditions set out in Internal Rule 63(3) are no longer satisfied." (para. 21) "[T]he Pre-Trial Chamber will review the Order Refusing release by an examination of: i. the regularity of the procedure prior to the issuance of the Order Refusing Release; ii. whether, in light of the arguments raised by the Co-Lawyers, the requirements of Internal Rule 63(3)(a) and (b) are no longer met; iii. the exercise of discretion by the Co-Investigating Judges in denying the Request for Release; and iv. the request for release on bail." (para. 22) "The Pre-Trial Chamber will review the conclusion of the Co-Investigating Judges pertaining to each of these four grounds in order to determine whether they are still met. The third ground mentioned in Internal Rule 63(3)(b)(iii) - to ensure the presence of the Charged Person during the proceeding - will not be analysed as it was not part of the Co-Investigating Judges' Order Refusing Release and no arguments have been raised in this regard by the parties." (para. 39) "[T]he following criteria should be examined when considering whether the length of provisional detention is reasonable: '1) the effective length of the detention; 2) the length of the detention in relation to the nature of the crime; 3) the physical and psychological consequences of the detention on the detainee; 4) the complexity of the case and the investigations; 5) the conduct of the entire procedure.'" (para. 69) "Considering its finding that two of the grounds on the basis of which the Co-Investigating Judges have ordered provisional detention are no longer met, the Pre-Trial Chamber shall set aside the reasoning of the Co-Investigating Judges pertaining to the request for release on bail and review the request *de novo*." (para. 89)

VI. WITNESSES, VICTIMS AND CIVIL PARTIES

A. Definition of Victim

1.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"In relation to the definition of 'victim' and 'direct consequence', […] the Co-Investigating Judges' erroneous interpretations contradict the established meaning and definition of such terms in both domestic and international law." (Opinion of Judges CHUNG and DOWNING, para. 15) "First, we stress that the word 'direct' modifies 'consequence', not 'victim'. In fact, […] the definition of 'victim' in the Glossary of the Internal Rules provides, without more, that 'a victim is a natural person or legal entity that has suffered harms as a result of the commission of any crime.' This conforms with *the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law* and Serious Violations of International Humanitarian Law which incorporates both 'direct' and 'indirect' victims within the single term 'victim'. Similarly, the *Lubanga* Appeals and Trial Chambers and the STL Pre-Trial Judge have focused on causality, rather than the categorization of the victim as 'indirect' or 'direct'. The French system, upon which the Cambodian system is based, also permits 'indirect' victim civil parties." (Opinion of Judges CHUNG and DOWNING, para. 16) "Moreover, we note that the Co-Investigating Judges' interpretation of the 'direct consequence' requirement excludes any 'indirect' victim whose injury resulted from a causal chain including 'intermediaries'. Yet, a person may be *charged*, *indicted*, *convicted* and *sentenced* for the harm caused to 'third party' or 'indirect' victims. Indeed, the ICTY Appeals Chamber determined that harm to 'third parties' may be considered in sentencing, even where there is no blood relationship, under the presumption that 'the accused knew that his victim did not live cut off from the world but had established bonds with others.' Thus we find that reparations and civil party status should, *at minimum*, be available to those whose injury may also form the basis for an accused's conviction and/or sentence. To consider otherwise is an absurd result undermining the purposes of civil party participation under the Rules, the ECCC Law, the Agreement and international law. Even assuming for the sake of argument that the Co-Investigating Judges' interpretation of the 'direct consequence' requirement did in fact adhere to the plain language, the plain language of the Internal Rules and Practice Directions cannot be interpreted so as to lead to an absurd result. Further, we note that, in the interests of justice and fairness, to what extent 'indirect' victims should be admitted and what presumptions of injury may be applied depends on the unique circumstances of an individual case." (Opinion of Judges CHUNG and DOWNING, para. 17) "Finally, we consider that a direct causality requirement ensures that a person is not charged, indicted, tried, convicted, sentenced, or held civilly accountable for conduct for which he cannot be held responsible. Indeed, the presence of other intervening factors, unrelated to the crime itself, but causally related to the injury, may prevent a finding that an injury is more likely than not a 'direct consequence' of a crime. Therefore, the 'direct consequence' requirement only excludes from admission as civil parties those *victims* who cannot prove that their injury by *direct* causal chain, is more likely than not the *consequence of the crime* alleged against a Charged Person." (Opinion of Judges CHUNG and DOWNING, para. 18) "The term 'direct consequence' cannot be interpreted in a manner that excludes civil party applicants who are not 'direct' or 'immediate' victims. To what extent 'indirect' or 'third party' victims may be admitted, however, must be determined on a case-by-case basis, depending on the scope and nature of the crimes alleged." (Opinion of Judges CHUNG and DOWNING, para. 19)

B. Civil Parties

1. Purpose of Civil Party Action

i. *General*

2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The terms of Internal Rule 23(3) require a decision to be made and once made in the affirmative, a Civil Party acquired a number of rights under the Internal Rules, including the following: (i) becomes a party to the criminal proceedings – IR 23(3)(a); (ii) can be afforded protective measures – IR 23(3)(b); (iii) can be represented by lawyers – IR 23(4); (iv) can be questioned in the presence of their lawyer - IR 23(3)(a); (v) can request investigative actions – IR 55(10); (vi) can lodge appeals – IR 74(4); (vii) can participate as a party in appeals generally; (viii) can support the prosecution – IR 23(1)(a); and (ix) can make a claim for moral and collective reparations – IR 23(1)(b). The granting of such rights of participation is a most serious matter given the effect of participation in the investigative stage of the proceedings and the role provided for a Civil Party to support the prosecution, as provided for in Internal Rule 23(1)(a). Given the effect upon the issue of equality of arms that such support may have and the effect of being able to request investigative action, any decision whereby a person is admitted to the case file cannot be taken lightly." (Opinion of Judges PRAK and DOWNING, para. 7)
3.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he purpose of Civil Party action before ECCC is: a) to participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and b) to seek collective and moral reparations as provided in Internal Rule 23 *quinquies*." (para. 96)
4.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"[…] [T]he purpose of civil party action at the ECCC is, in part […], to seek reparations. However, and just as importantly, they are also positioned in, and entitled by, the Internal Rules to participate throughout the proceedings in support of the Prosecution." (Opinion of Judges DOWNING and CHUNG, para. 24)
5.	**003 Civil Parties** PTC 36 D269/4 10 June 2021	"The International Judges recall that pursuant to Internal Rule 23(1)(a), the purpose of Civil Party action before the ECCC is to 'participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution', and reaffirm that in accordance with the Preamble of the ECCC Agreement, the Judges and the Chambers of the ECCC must pay special attention

	Considerations on Appeal against Order on the Admissibility of Civil Party Applicants	and assure a meaningful participation for the victims of the crimes committed." (Opinion of Judges BEAUVALLET and BAIK, para. 83)

ii. *Participation in the Proceedings*

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he role of the Civil Parties at trial is limited to the following: as members of a consolidated group, they may summon witnesses who are not on the list provided by the Co-Prosecutors, they may be heard through the Civil Party Co-Lead Lawyers by the Trial Chamber, and may be allowed to ask questions or to object to the continued hearing of the testimony of any witnesses, if they consider that such testimony is not conducive to ascertaining the truth. As far as the rights of the Civil Parties in proceedings go in ECCC, they do not have direct effect on decisions that would directly and adversely affect the position of the Accused, such as whether to prosecute or not, they do not explicitly have say in possible amendments to the charges or in relation to decisions on joint or separate trials or on guilt." (para. 97)
2.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"We note that the purpose of civil party action at the ECCC is in part and as our colleagues have pointed out in their Opinions, to seek reparations. However, and just as importantly, they are also positioned in, and *entitled* by, the Internal Rules to participate throughout the proceedings in support of the Prosecution." (Opinion of Judges CHUNG and DOWNING, para. 24) "The Internal Rules do not stipulate that civil parties can only participate and seek reparations in *one* case, or in relation to *one* defendant. […] Civil party interests in participating and seeking reparations may well be distinct in a *new* case against *new* persons, 'who carried out distinct roles and responsibilities', even if the underlying crime site remains the same. It is important to remember that civil party action is a personal action brought against named individuals alleged to have caused harm to the victim by their actions." (Opinion of Judges CHUNG and DOWNING, para.28)
3.	**004/1 IM Chaem** PTC 50 D308/3/1/8 29 August 2017 *Decision on the National Civil Party Co-Lawyer's Request regarding the Filing of Response to the Appeal against the Closing Order and Invitation to File Submission*	"While the Pre-Trial Chamber is cognisant of the participatory rights of the Civil Party, including the right to respond and reply to other parties' submissions on appeal and generally to 'support[] the prosecution', it notes that such procedural prerogative is available solely to Civil Parties who actually take part in the proceedings. In particular, at the investigation stage, while Civil Party applicants are collectively assimilated to parties and enjoy Civil Party rights pursuant to Internal Rule 23*bis*(2), they may exercise participatory rights only '*until rejected*'. In the present circumstances, having been rejected and having failed to appeal the Rejection Order, the Civil Party applicants represented by the National Civil Party Co-Lawyer can no longer be legally considered as parties to the proceedings and thus cannot exercise the procedural prerogative to file a response to the Appeal." (para. 11) "Nonetheless, the Pre-Trial Chamber acknowledges the particularities of the case and the fact that the Rejection Order is intrinsically linked to the Closing Order dismissing the case as a whole. It also finds that, considering the significance of the issues raised in the Closing Order and in the Appeal, the interests of justice favours affording the National Civil Party Co-Lawyer an opportunity to express the views of Civil Party applicants he represents, especially if his submissions are limited to the specific issue of the position of the ECCC within the Cambodian Legal System […]." (para. 12) "[T]he Pre-Trial Chamber, relying on its inherent jurisdiction and on Internal Rule 33, invites the […] Co-Lawyer to file submissions […]." (para. 13)

iii. *Reparations*

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165 & 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he only right the Civil Parties have in the case of convictions, which may directly affect the rights of the Accused, is that to seek in a 'single submission' 'in relation to each award, the single specific mode of implementation' of the award which *may* include an 'order that the costs of the award shall be borne by the convicted person.'" (para. 99)

iv. *Balance with the Rights of the Accused*

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he moral and collective nature of representation before the Trial Chamber and simplified purpose of civil party action at trial before ECCC do not support any concerns that a possible admission of larger number of people as Civil Parties may have an adverse effect on the rights of the accused." (para. 97) "[T]he only right the Civil Parties have in the case of convictions, which may directly affect the rights of the Accused, is that to seek in a 'single submission' 'in relation to each award, the single specific mode of implementation' of the award which *may* include an 'order that the costs of the award shall be borne by the convicted person.' The issue is not one in relation to the cost of the award, but rather the fact that Civil Party has a right, as member of collective class, to request moral reparations. This is right which flows from the fact of joinder in the proceedings and is not an issue to be balanced against the position of the accused." (para. 99)
2.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 23(1)—defining the purpose of Civil Party action—provides: The purpose of Civil Party action before the ECCC is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and b) Seek collective and moral reparations, as provided in Rule 23*quinquies.*" (Opinion of Judges BAIK and BEAUVALLET, para. 58)

2. Admissibility of Civil Party Application

i. *Procedure*

a. Admissibility: Requirements of Internal Rule 23*bis*(1)

1.	**Case 003 Civil Parties** PTC 05 D11/3/4/2 13 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant CHUM Neou*	"[T]he Co-Investigating Judges have found in the Impugned Order that the injury alleged by the Appellant was not sufficient to meet the requirements of Internal Rule 23*bis*(1)b for the reason that the Applicant 'failed to demonstrate that the alleged physical injury was caused directly by the alleged crime'. In reaching this conclusion, the Co-Investigating Judges not only departed from their previous jurisprudence, they also ignored the decisions of the Pre-Trial Chamber on the matter. They interpreted Internal Rule 23*bis*(1)b anew specifically stating that they were not bound by previous decisions of the Co-Investigating Judges and could apply Internal Rule 23*bis*(1) 'in the manner considered to be correct.'" (Opinion of Judges CHUNG and DOWNING, para. 15) "Internal Rule 23*bis*(1)b provides that in order to be admitted as a civil party before the ECCC, a victim 'must demonstrate as a *direct consequence* of at least one of the crimes alleged against the Charged Person that he or she has in fact suffered physical material or psychological injury upon which a claim of collective and moral reparation might be based'. The use of the expression direct consequence entails that there must be a causal link between the injury and a crime alleged […] [T]his terminology does not mean that the civil party applicant must be a 'direct victim' of the alleged crime." (Opinion of Judges CHUNG and DOWNING, para. 19) "The Pre-Trial Chamber adopted the finding of the ICC Appeal Chamber in the *Lubanga* Case and confirmed the conclusion of the Co-Investigating Judges in Case 002 that under Internal Rule 23*bis*(1) the injury must be personal but that it does not necessarily have to be direct. It also found that the Co-Investigating Judges interpretation of the notion of 'injury' under Internal Rule 23*bis*(1)b was too restrictive in that it should have applied a broader presumption of injury taking into account the nature of victimization for crimes such as those falling under the jurisdiction of the ECCC, the nature and extent of such injury and the fact Internal Rule 23*bis*(1) involves considerations of 'injury upon which a claim of collective and moral reparations might be based'. The Pre-Trial Chamber concluded in its decisions related to admissibility of Civil Party applications in Case 002 that a presumption of psychological harm shall apply not only when the alleged crimes were committed against members of the family of the immediate victim but also against members of the same persecuted group or community as the immediate victim." (Opinion of Judges CHUNG and DOWNING, para. 24)
2.	**003 Other** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"[…] In relation to the category of victims admissible as civil parties at the ECCC, […] the harm suffered by the applicant does not necessarily have to be immediate but it must be personal. The direct consequence requirement 'emphasised the link between the crime and the injury suffered, rather than the intended target of the criminal act'." (para. 12) "[T]he presence of other intervening factors, unrelated to the crime itself, but causally related to the injury may prevent a finding that an injury is more likely than not a 'direct consequence' of a crime. Therefore, the 'direct consequence' requirement only excludes from admission as civil parties those *victims* who cannot prove that their injury, by *direct* causal chain, is more likely than not the consequence of *the crime* alleged against the Charged Person." (Opinion of Judges CHUNG and DOWNING, para. 18) "The term 'direct consequence' cannot be interpreted in a manner that excludes civil party applicants who are not 'direct' or 'immediate' victims. To what extent 'indirect' or 'third party' victims may be admitted, however, must be determined on a case-by-case basis, depending on the scope and nature of the crimes alleged." (Opinion of Judges CHUNG and DOWNING, para. 19)

b. General and Miscellaneous

1.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Pursuant to the Internal Rules, the notification of a Notice of Conclusion of the investigation triggers a 15 day time limit for victims to submit Civil Party Applications […]. [T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis.* In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia,* a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available." (Opinion of Judges DOWNING and LAHUIS, para. 8) "We consider that the Co-Investigating Judges have the obligation, when seised of an application to become a civil party, to decide on the substance of such application. The Co-Investigating Judges appear to be of the same opinion as they have examined and decided upon the merit of the Appellant's Application. As a consequence, when the information necessary to appraise the substance of victim application to become a civil party in a case before the ECCC is not yet available, the Co-Investigating Judges or the Pre-Trial Chamber should reserve their decision on this matter until such information becomes available in the course of the investigation, as required by the Internal Rules. To act otherwise would lead to a premature rejection of the civil party applications and defeat the whole admissibility regime established for victims under the ECCC Internal Rules." (Opinion of Judges DOWNING and LAHUIS, para. 11)
2.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis.* In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia,* a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available." (Opinion of Judges DOWNING and LAHUIS, para. 8) "We consider that the Co-Investigating Judges have the obligation, when seised of an application to become a civil party, to decide on the substance of such application. The Co-Investigating Judges appear to be of the same opinion as they have examined and decided upon the merit of the Appellant's Application. As a consequence, when the information necessary to appraise the substance of victim application to become a civil party in a case before the ECCC is not yet available, the Co-Investigating Judges or the Pre-Trial Chamber should reserve their decision on this matter until such information becomes available in the course of the investigation, as required by the Internal Rules. To act otherwise would lead to a premature rejection of the civil party applications and defeat the whole admissibility regime established for victims under the ECCC Internal Rules." (Opinion of Judges DOWNING and LAHUIS, para. 12)
3.	**Case 003 Civil Parties** PTC 05 D11/3/4/2 13 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant CHUM Neou*	"[W]hilst the appeal procedure provided for under Internal Rule 23*bis*(2) is by of an expedited or summary appeal, the consideration by the Co-Investigating Judges of an application to be joined as a Civil Party is not to be considered in such a manner. While understanding the unusual volume of work before the Co-Investigating Judges and the requirement for consideration of the matters within a reasonable time we note that in this case rejecting applicant more detailed reasons than the ones provided in the order were warranted." (Opinion of Judges CHUNG and DOWNING, para. 30)
4.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications […]." (Separate Opinion of Judges CHUNG and DOWNING, para. 4)

5.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications […]." (Opinion of Judges CHUNG and DOWNING, para. 4)
6.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[U]nder Internal Rule 23*bis*(2), '[a] Victim who wishes to be joined as a Civil Party shall submit such application in writing no later than fifteen (15) days after the Co-Investigating Judges notify the parties of the conclusion of the judicial investigation pursuant to IR 66(1).' The Co-Investigating Judges notified the closure of the investigation against AO An twice, on 16 December 2016 and 29 March 2017, respectively. The International Judges recall the Chamber's previous finding that the Co-Investigating Judges committed a procedural error in failing to grant the parties fifteen days from the date of the Second Notice of Conclusion to request further investigative actions. The International Judges consider that this holding applies equally to Civil Parties and, consequently, victims had the right to apply as Civil Parties fifteen days from the Second Notice of Conclusion." (Opinion of Judges BAIK and BEAUVALLET, para. 110)

ii. *Requirements*

a. Applicable Law

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The location of IR23*bis*(1) is indicative of a general provision relating to the procedure for admission of civil party applications. It has to therefore be read in conjunction with [Internal Rules 21, 2, 23*ter*, 23*quater*, 23*quinquies*(3)(a), 80(2)]." (para. 61)
2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As a preliminary matter, the Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 34)
3.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As a preliminary matter, the Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) the ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 37) "The International Judges further recall 'that the object and purpose of [Internal Rule] 23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC'. The International Judges consider that this interpretation is in accordance with the fundamental principles of the ECCC procedure enshrined in the Internal Rule 21(1), which aims at safeguarding the interests of the parties,

		and therefore, requires the Pre-Trial Chamber to protect the interests of both the Accused and the Victims." (Opinion of Judges BEAUVALLET and BAIK, para. 75)

b. Requirements (General)

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber notes that the elements of IR23*bis*(1) include the following: - The existence of a causal link between the crimes and the injury; Injury; Proof of identification; Level of proof." (para. 57) "The Pre-Trial Chamber considers that the object and purpose of IR23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications." (para. 62) "The inherent nature of the ECCC is that although its Internal Rules are modelled after the Cambodian Procedural Code […] which was in turn modelled upon the French Law […], unlike the CPC or FL, which deal mainly with ordinary crimes and claims for individual reparations of measurable nature, the ECCC, […] is dealing not only with allegations about the most serious international crimes known to mankind but also with allegations of particular modes of liability which, when combined amount to alleged systematic and wide spread mass atrocities. The direct events in respect of such mass atrocities could be argued to have caused collective injury of a nature that cannot be measured in respect of any one individual alone but only seen in the context of collective damage caused to the whole of society or directed parts thereof." (para. 68) "Before the ECCC a civil claimant has no right to individual and material compensatory damages, but rather may make claim only for collective and moral reparations. […] Collective reparations also stem from collective injury which has an individual effect as well. It would be unrealistic to see the injury caused from alleged mass atrocities only on individual basis because it encompasses individual parameters. Mass atrocities result from systematic and widespread implementation of policies directed towards the whole of the community as well as particular groups and individuals within the community. Whilst there will be claims for individual injury, the individual applications to be joined as Civil Party must be seen in the special circumstances of the conflict. The cultural and social background of Cambodia must be considered. In addition, it must also be kept in mind that in the period 1975-79 the whole social structure was dramatically changed […]." (para. 70) "Pursuant to Internal Rule 23(1), when considering the admissibility of the Civil Party application, the Pre-Trial Chamber shall be satisfied that facts alleged in support of the application are *more likely than not to be true*." (para. 94) --- "The first requirement concerns jurisdiction. […] [C]ivil parties may only participate in proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution." (Opinion of Judge MARCHI-UHEL, para. 27) "The second requirement is that the injury alleged must be the direct consequence of the offence or crime alleged against a charged person(s). […] The second requirement reflects the requirements for eligibility as civil party according to traditional civil law notions that have been partially adopted and applied at the ECCC. As such, the comparison with the ICC Rules and practice is not determinative. […] [A]t the ECCC, the prosecution has sole authority to delimit the scope of all potential criminal proceedings against a suspect in each case by filing an Introductory and Supplementary Submissions at the investigative stage and prosecutes within the confines of the indictment at the trial stage and beyond. As a consequence, a civil party application, to be found admissible, has to fall within the ambit of the crimes the Co-Prosecutors have elected to prosecute and that are ultimately part of the Indictment issued by the Co-Investigating Judges. The second requirement is thus consistent with the purpose of a civil party action at the ECCC, which is to support the prosecution. Furthermore, the fact that the cost of moral and collective reparations that may be awarded to the civil parties shall be borne by the convicted person is an additional reason for civil party status to be restricted to those victims whose applications are found to relate to those crimes of which a charged person may ultimately be convicted." (Opinion of Judge MARCHI-UHEL, para. 28) "The two requirements for admissibility are cumulative. If a civil party alleges an injury as a direct consequence of a crime charged but it is determined that the ECCC has no jurisdiction over the crime

		in question, the civil party application is inadmissible, unless the conduct that allegedly caused the injury also forms part of another crime for which the ECCC has jurisdiction. Equally, if the civil party applicant alleges an injury as a direct consequence of crime falling within the jurisdiction of the ECCC but for which no indictment has been issued by the Co-Investigating Judges, the civil party application is inadmissible." (Opinion of Judge MARCHI-UHEL, para. 29) "In the context of civil party participation, during the judicial investigation, the *scope of the investigation* is relevant in particular to determine whether investigative actions can be undertaken by the Co-Investigating Judges on their own initiative or upon request by a party. During the investigative stage of proceedings, a civil party may request the Co-Investigating Judges to undertake an investigative action which it deems necessary for the conduct of the investigation, even if it goes beyond the material facts alleged by the Co-Prosecutors as underlying the crimes charged, provided it remains within the broader scope of the investigation as determined by the Co-Prosecutors. In contrast to the relatively wide range of matters that fall within the scope of the judicial investigation which may be the subject of a request for investigative action, the admissibility of a civil party application is strictly dependant on his or her ability to establish that the harm suffered is direct consequence of at least one of the crimes charged." (Opinion of Judge MARCHI-UHEL, para. 33)
2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The Appellants argue that Internal Rule 23(1)(a) […] does not limit civil party participation to those within the scope of the prosecutorial investigation. While it is correct that Internal Rule 23(1)(a) merely limits civil party participation to victims of crimes within the jurisdiction of the ECCC, this argument […] ignores the additional requirement that for a civil party action to be admissible the applicant must demonstrate that he or she has suffered injury as a direct consequence of at least one of the crimes alleged against the charged person(s)." (para. 28) "[B]oth Internal Rule 23(2) […]and Internal Rule 23*bis*(1)(b) […] provide that for a civil party action to be admissible, the Civil Party Applicant shall *inter alia* demonstrate that he or she has suffered injury as a direct consequence of at least one of the crimes alleged against the Charged Person(s)." (para. 29)
3.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As the Pre-Trial Chamber has previously noted, the legal elements comprising Internal Rule 23*bis*(1) include the following: (a) the existence of a causal link between the crimes and the injury; (b) injury; and (c) proof of identification. Internal Rule 23*bis*(1) also prescribes the relevant level of proof by which these elements must be established." (para. 33) "In terms of the level of proof by which the above elements must be established, pursuant to Internal Rule 23*bis*(1), the Pre-Trial Chamber must, in evaluating the materials submitted as part of a Civil Party application, be 'satisfied that facts alleged in support of the application are more likely than not to be true.'" (para. 38)
4.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As the Pre-Trial Chamber has previously noted, the legal elements comprising Internal Rule 23*bis*(1) include the following: (a) the existence of a causal link between the crimes and the injury; (b) injury; and (c) proof of identification. Internal Rule 23*bis*(1) also prescribes the relevant level of proof by which these elements must be established." (para. 36) "Concerning the level of proof by which the above elements must be established, pursuant to Internal Rule 23*bis*(1), the Pre-Trial Chamber must, in evaluating the materials submitted as part of a Civil Party application, be 'satisfied that facts alleged in support of the application are more likely than not to be true.'" (para. 41)
5.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order*	"Internal Rule 23*bis*(1) sets out the criteria for admitting a Civil Party applicant […]." (para. 33) "[T]he legal elements comprising Internal Rule 23*bis*(1) include the following: (a) the existence of a causal link between the crimes and the injury; (b) injury; and (c) proof of identification. Internal Rule 23*bis*(1) also prescribes the relevant level of proof by which these elements must be established." (para. 34)

	on the Admissibility of Civil Party Applicants	"[T]he Pre-Trial Chamber considers that (i) the ECCC Agreement; (ii) the ECCC Law; (iii) Internal Rules 21, 23, 23*bis*, 23*ter*, 23*quater*, 23*quinquies* and 114; and (iv) the Practice Direction on Victim Participation form part of the applicable context in interpreting the criteria for Civil Party admissibility. Guidance may also be sought from the general principles on victims in international law." (para. 35) "Concerning the level of proof by which the above elements must be established, pursuant to Internal Rule 23*bis*(1), the Pre-Trial Chamber must, in evaluating the materials submitted as part of a Civil Party application, be 'satisfied that facts alleged in support of the application are more likely than not to be true'." (para. 39) "[T]he Chamber stated that 'the object and purpose of [Internal Rule] 23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications'." (Opinion of Judges BAIK and BEAUVALLET, para. 61)

c. Requirement of a "Causal Link"

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Internal Rule 23*bis*(1)(b) does not require a causal link between the harm and the facts investigated, it explicitly requires a causal link between the harm and any of the *crimes alleged*. Crimes being the legal characterizations of the facts investigated, the term 'crimes' cannot be identified or replaced with the term 'facts'. […] It is the legal characterization of the investigated factual situations, and not the investigated factual situations themselves, that should have been considered by the Co-Investigating Judges when reviewing Civil Party applications pursuant to Internal Rule 23*bis*(1)(b)." (para. 42) "Internal Rule 23*bis*(1)(6) provides that the injury has to be the direct consequence of 'crimes alleged against the Charged Person.'" (para. 71) "[W]here there are allegations for the CPK policies being implemented *throughout* Cambodia by way of the Accused allegedly participating in a joint criminal enterprise (or acting together in other forms of liability), the Civil Party Applicants do not necessarily have to relate their injury to only one crime site or even to only those crime sites identified in the part of the Closing Order […] as the crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia. […] Therefore injury caused to communities or specific groups must also be seen to relate to the Accused acting in concert so as to implement the CPK policies throughout Cambodia. Injury caused by the actions of the Accused together to individual victims is part of the collective and immeasurable damage caused to the targeted groups and communities to which the individual victims may belong. In this context, the nature of the responsibility of the Accused in respect of which the injury must to be proven takes on collective parameters." (para. 72) "Internal Rule 23*bis*(1)(b) […] prescribe[s] that the causal link should be established with the crimes alleged against 'the Charged Person', that is, each individual 'Charged Person.'" (para. 73) "In the Closing Order […] the Co-Investigating Judges […] state that the Accused made and implemented policies for the *whole of Cambodia*. The Pre-Trial Chamber finds that where Civil Party Appellants state that they have suffered from the implementation of policies but in areas other than those chosen to be investigated, they shall be considered for admission as Civil Parties." (para. 77) "The admission as a civil party in respect of mass atrocity crimes should therefore be seen in the context of dealing with wide spread and systematic actions resulting from the implementation of nation wide policies in respect of which the individual liability alleged against each of the accused also takes collective dimensions due to allegations for acting together as part of a joint criminal enterprise." (para. 78) "[A]lthough the Grave Breaches of the Geneva Conventions with which the Accused are also indicted […] are, by definition, crimes directed against persons, the way the pertaining facts have been legally characterized in the Closing Order, may lead, […] to the conclusion that it is likely that such crimes at times have also been of systematic nature […] or to have had […] a collective effect […]." (para. 79) "The Pre-Trial Chamber shall examine whether injury alleged by Civil Party applicants relates to any of the crimes alleged against the Accused as charged in the Closing Order." (para. 82)

		"Under the Internal Rules, a 'victim' is a natural person who has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC. Any victim may file a complaint with the Co-Prosecutors pursuant to Rule 49(2). A 'civil party' is a victim whose application to become a civil party has been declared admissible by the Co-Investigating Judges or the Pre-Trial Chamber. […] Not all [victims] meet the requirements to consider their respective civil party application admissible. This is particularly so when the crime(s) they alleged to have caused their respective harm is not a crime for which the accused are indicted […]. [The Majority's] interpretation of the Internal Rules relevant to the admissibility of civil party applications is in my view contrary to both the spirit and the letter of the rules in question and amounts to admitting civil party applicants who are not even alleging that they suffered harm as a result of at least one of the crimes for which the accused are indicted." (Opinion of Judge MARCHI-UHEL, para. 3) "Admitting civil parties who do not allege suffering harm from at least one crime for which the accused are indicted […] is in my view not only against the spirit and the letter of the Internal Rules but it also brings with it number of risks, *i.e.*, 1) undermining the role of the consolidated group of civil parties in the trial, […]; 2) delaying the process […]; 3) frustrating the civil parties who met the requirements of admissibility […]; and 4) also frustrating the civil party wrongly admitted […]." (Opinion of Judge MARCHI-UHEL, para. 4) "[T]here are other avenues in the Internal Rules to address the interest of victims who do not meet the requirements of admissibility as civil parties. First of all, the Co-Investigating Judges have and the Pre-Trial Chamber recognized that it is plausible that they suffered harm as a direct consequence of at least one crime within the jurisdiction of the ECCC. Second, in respect of the Applicants which find could not be admitted as civil parties, I have endeavoured […] to address each of the crimes alleged […]. This is not only with view to provide reasoned opinion but also to give recognition to the suffering reported by these Applicants. Finally, […] in the event that the trial leads to conviction […], measures envisaged by Internal Rule 12*bis*(3) aim at addressing the broader interest of 'victims' and are not limited to civil parties. Indeed, this rule entrusts the Victim Support Section to develop and implement programs and measures other than those of a legal nature addressing the broader interest of victims, including where appropriate in collaboration with governmental and non-governmental entities external to the ECCC. […] I have no doubt that the non-judicial measures in question may have a broader scope and benefit to the victims in parallel to the judicial process, including to those who do not qualify as civil parties. I am convinced that the avenue offered by Internal Rule 12*bis*(3) is, in respect of victims who do not even allege having suffered harm as a direct consequence of at least one crime for which the accused are indicted, one appropriate avenue for addressing the suffering(s) of this class of victims." (Opinion of Judge MARCHI-UHEL, para. 5) "[T]he link that must be made by the civil party applicants is to a crime charged and not to (ii) the broader scope of the investigation, (ii) facts for which the judicial investigation has already been opened, or (iii) facts under investigation." (Opinion of Judge MARCHI-UHEL, para. 34) "I have no doubt that the killings for which the accused are indicted for the crime against humanity of murder committed in execution sites and security centres are limited to those committed in the sites listed […].Therefore, I find that an applicant can only succeed in his or her appeal if he or she provides sufficient information to make it plausible that the alleged murder occurred at one of the specific sites or during one of the events listed in the Indictment." (Opinion of Judge MARCHI-UHEL, para. 46) "As a result of the inherently subjective nature of the exercise of and importance placed upon religion by individuals, and especially as viewed by others, I will consider the merits of an appeal […] by determining whether there is any information before the Pre-Trial Chamber to cause me to have reason to believe that an applicant is not genuine in making a statement concerning the harm he suffered as a result of the prohibition of Buddhism, as charged by the Co-Investigating Judges. If I have no reason to believe that an applicant is not genuine in such an assertion, I will conclude that it is plausible that he is direct victim of the crime of persecution as charged because it is plausible that he suffered psychological harm as a direct consequence of the prohibition of Buddhism […]." (Opinion of Judge MARCHI-UHEL, para. 50) "I am of the view that the Co-Investigating Judges erred in rejecting civil party applications alleging forms of persecutions related to the treatment of Chams other than their forcible transfer on the basis of geographical limits which both the relevant Supplementary Submission and the Indictment only establish in relation to forced transfers." (Opinion of Judge MARCHI-UHEL, para. 55)

2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In respect of the existence of a causal link, a Civil Party applicant must demonstrate that the injury was a direct consequence of the crimes alleged against the Charged Person. While the injury must be personal to the applicant, the requirement of injury as a direct consequence of the offence does not restrict the admissibility of Civil Parties to direct victims but can also include indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Thus, ECCC jurisprudence recognises both direct victims and indirect victims. A direct victim refers to 'the category of persons whose rights were violated or endangered by the crime charged.' Indirect victims are persons who 'personally suffered injury as a direct result of the crime committed against the direct victim.'" (para. 35) --- "Internal Rule 23*bis*(1)(b) concerns the admission of Civil Party applications and provides that a Civil Party applicant must 'demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury'. The International Judges observe that this Internal Rule requires a causal link between the 'alleged crimes' and the 'injury' suffered by the applicant. The Pre-Trial Chamber has previously found that while 'Internal Rule 23*bis*(1)(b) does not require a causal link between the harm and the facts investigated, it explicitly requires a causal link between the harm and any of *the crimes alleged*.' Consequently, the harm suffered by a Civil Party applicant must be connected to crimes charged in the Closing Order (Indictment) in order to be considered for admissibility at this stage of the proceedings." (Opinion of Judges BAIK and BEAUVALLET, para. 56) "The meaning of Internal Rule 23*bis*(1)(b) has been further clarified by the Pre-Trial Chamber. While noting the robust partial dissent in Case 002, the International Judges observe that: '[t]he Pre-Trial Chamber considers that the object and purpose of IR23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications'. In the context of Case 002, where multiple Accuse[d] were implicated, the Chamber observed that while 'the facts investigated are limited to certain areas or crime sites, the legal characterizations of such facts, […] include crimes […] committed by the Charged Persons by acting in a joint criminal enterprise together and with others against the population and "*throughout* the country.'" As noted, 'the Victims before ECCC, especially in case 002, are in a different position from those before domestic courts and even from those in ECCC's case 001'. Consequently, in Case 002, the Chamber held that Civil Party applicants did not have to relate their injury to only those crime sites identified in the Closing Order 'as the crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia' with those offenses 'including crimes against humanity, genocide, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the 1969 Penal Code'." (Opinion of Judges BAIK and BEAUVALLET, para. 57) "The International Judges observe that the multiple Accuse[d] in Case 002 were indicted for crimes committed *throughout* Cambodia. In contrast with Case 002, AO An is indicted for crimes committed in the *Central Zone* only […]." (Opinion of Judges BAIK and BEAUVALLET, para. 58) "The International Judges consider that, at this stage of the proceedings where the Closing Order has already been issued, the authoritative document is the Closing Order (Indictment)—not any prior submissions from the Office of the Co-Prosecutors. In that sense, the International Judges consider that the causal link that must be made by the Civil Party applicants is to a crime alleged and not to '(i) the broader scope of the investigation, (ii) facts for which the judicial investigation has already been opened, or (iii) facts under investigation.'" (Opinion of Judges BAIK and BEAUVALLET, para. 59) "It is reasonably concluded, at this stage of the proceedings, that to be admissible a Civil Party applicant must demonstrate, as a direct consequence of at least one of the crimes charged, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based." (Opinion of Judges BAIK and BEAUVALLET, para. 60) "Contrary to the Co-Lawyers' allegations, Civil Party applicants that have suffered injury, which is not derived from crimes alleged in the Central Zone, do not meet the causal link requirement under Internal Rule 23*bis*(1)(b)." (Opinion of Judges BAIK and BEAUVALLET, para. 61)
3.	**003 Civil Parties** PTC 36 D269/4 10 June 2021	"With respect to the existence of a causal link, a Civil Party applicant must demonstrate that the injury was a direct consequence of the crimes alleged against the Charged Person. While the injury must be personal to the applicant, the requirement of injury as a direct consequence of the offence does not restrict the admissibility of Civil Parties to direct victims but can also include indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Thus, the

	Considerations on Appeal against Order on the Admissibility of Civil Party Applicants	ECCC jurisprudence recognises both direct victims and indirect victims. A direct victim refers to 'the category of persons whose rights were violated or endangered by the crime charged.' Indirect victims are persons who 'personally suffered injury as a direct result of the crime committed against the direct victim.'" (para. 38) "Internal Rule 23*bis*(1)(b) concerns the admission of Civil Party applications, and provides that a Civil Party applicant must 'demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury'. The International Judges observe that this Internal Rule requires a causal link between the 'crimes alleged' and the 'injury' suffered by the applicant. The Pre-Trial Chamber has previously found that while 'Internal Rule 23*bis*(1)(b) does not require a causal link between the harm and the facts investigated, it explicitly requires a causal link between the harm and any of *the crimes alleged*.' Consequently, the harm suffered by a Civil Party applicant must be connected to crimes charged in the Indictment in order to be considered for admissibility at this stage of the proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 58) "The meaning of Internal Rule 23*bis*(1)(b) has been further clarified by the Pre-Trial Chamber. While noting the robust partial dissent in Case 002, the International Judges observe that: '[t]he Pre-Trial Chamber considers that the object and purpose of [Internal Rule] 23*bis*(1) is not there to restrict or limit the notion of victim or civil party action in the ECCC. It rather is to set criteria for admissibility of civil party applications'. In the context of Case 002, where multiple Accuseds were implicated, the Chamber observed that while 'the facts investigated are limited to certain areas or crime sites, the legal characteri[s]ations of such facts, […] include crimes […] committed by the Charged Persons by acting in a joint criminal enterprise together and with others against the population and "*throughout* the country"'. As noted by the Pre-Trial Chamber, 'the Victims before ECCC, especially in case 002, are in a different position from those before domestic courts and even from those in ECCC's case 001'. Consequently, in Case 002, the Chamber held that Civil Party applicants did not have to relate their injury to only those crime sites identified in the Closing Order 'as the crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia' with those offenses 'including crimes against humanity, genocide, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the 1969 Penal Code'." (Opinion of Judges BEAUVALLET and BAIK, para. 59) "However, the International Judges observe that multiple Accuseds were indicted for crimes committed *throughout* Cambodia in Case 002, in contrast with Case 003 in which MEAS Muth is indicted for crimes committed in Kampong Som Autonomous Sector, in the waters and islands off the coasts of DK and crimes committed in the context of the purges of Divisions 117, 164, 310 and 502, only." (Opinion of Judges BEAUVALLET and BAIK, para. 60) "The International Judges recall that at the closing order stage, the only authoritative document establishing the scope of the Trial Chamber's seisin is the indictment and not any prior submissions from the Office of the Co-Prosecutors. In that sense, the International Judges consider that the causal link that must be made by the Civil Party applicants is to a crime alleged within the Trial Chamber's seisin and not to '(i) the broader scope of the investigation, (ii) facts for which the judicial investigation has already been opened, or (iii) facts under investigation.'" (Opinion of Judges BEAUVALLET and BAIK, para. 61) "Therefore, it is reasonable to conclude that at this stage of the proceedings, to be admissible, a Civil Party applicant must demonstrate that as a direct consequence of at least one of the crimes charged, he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based." (Opinion of Judges BEAUVALLET and BAIK, para. 62) "Contrary to the Co-Lawyers' allegations, the International Judges therefore find that Civil Party applicants who have suffered injury that is not derived from the crimes mentioned in the Indictment do not meet the causal link requirement under Internal Rule 23*bis*(1)(b)." (Opinion of Judges BEAUVALLET and BAIK, para. 63) "Regarding the issue of whether the harm suffered by a Civil Party applicant needs to be linked to one of the crime sites of the closing order, the International Judges recall that Internal Rule 23*bis*(1)(b) requires the injury to be a direct consequence of at least one of the crimes charged and that Civil Party applicants who suffered an injury that is not derived from crimes alleged located in Kampong Som region or in the waters and islands off the coast of DK or related to the above-mentioned purges do

		not meet the causal link requirement under Internal Rule 23*bis*(1)(b).” (Opinion of Judges BEAUVALLET and BAIK, para. 73) “Therefore, while the harm suffered by a Civil Party applicant should be linked to a crime the Accused has been charged for in the Indictment, it need not be connected to a specific crime site from the Indictment in order to fulfil the Internal Rule 23*bis*(1)(b) causal link requirement.” (Opinion of Judges BEAUVALLET and BAIK, para. 74) “Therefore, the International Judges find that under this Ground of Appeal, applicants alleging harm from a charged crime that did not occur at one of the specified crimes sites in the Indictment but resulted from the implementation of the CPK policies in MEAS Muth’s area of authority should be admitted.” (Opinion of Judges BEAUVALLET and BAIK, para. 77)
4.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	“[V]ictims participating as Civil Party applicants in the ECCC proceedings need to establish a link to a particular defendant’s crime.” (Opinion of Judges BAIK and BEAUVALLET, para. 495)
5.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	“With respect to the existence of a causal link, a Civil Party applicant must demonstrate that the injury was a direct consequence of the crimes alleged against the Charged Person. While the injury must be personal to the applicant, the requirement of injury as a direct consequence of the offence does not restrict the admissibility of Civil Parties to direct victims but can also include indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Thus, ECCC jurisprudence recognises both direct victims and indirect victims. A direct victim refers to ‘the category of persons whose rights were violated or endangered by the crime charged.’ Indirect victims are persons who ‘personally suffered injury as a direct result of the crime committed against the direct victim.’” (para. 36) --- “Internal Rule 23*bis*(1)(b) concerns the admission of Civil Party applications and provides that a Civil Party applicant must ‘demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury’. The International Judges observe that this Internal Rule requires a causal link between the ‘injury’ and ‘any of the crimes alleged’. Consequently, the harm suffered by a Civil Party applicant must be connected to crimes charged in the Indictment in order to be considered for admissibility at this stage of the proceedings.” (Opinion of Judges BAIK and BEAUVALLET, para. 60) “[I]n Case 002, the Pre-Trial Chamber held that Civil Party applicants did not have to relate their injury to only those crime sites identified in the Closing Order ‘as the crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia’ with those offences ‘including crimes against humanity, genocide, grave breaches of the Geneva Conventions of 12 August 1949 and violations of the [1956] Penal Code’.” (Opinion of Judges BAIK and BEAUVALLET, para. 61) “[T]he circumstances in Case 002 differ from the present Case. Specifically, the International Judges note that in Case 002 multiple Accused were indicted for crimes committed throughout Cambodia. In contrast, in the instant Case, YIM Tith is indicted for crimes committed in the Northwest Zone and the six crime sites in the Southwest Zone only.” (Opinion of Judges BAIK and BEAUVALLET, para. 62) “The International Judges further note that the causal link that must be demonstrated by the Civil Party applicants is to a crime alleged and not to ‘(i) the broader scope of the investigation, (ii) facts for which the judicial investigation has already been opened, or (iii) facts under investigation.’” (Opinion of Judges BAIK and BEAUVALLET, para. 64) “The International Judges reaffirm that, at this stage of the proceedings, to be admissible a Civil Party applicant must show that as a direct consequence of at least one of the crimes charged, he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.” (Opinion of Judges BAIK and BEAUVALLET, para. 65)

		"[…] Civil Party applicants that have suffered injury, which is not derived from crimes charged in the Indictment, do not meet the causal link requirement under Internal Rule 23*bis*(1)(b)." (Opinion of Judges BAIK and BEAUVALLET, para. 67) "[…] Internal Rule 23*bis*(1)(b) requires a nexus between the injury and the alleged crimes, including in relation to indirect victims." (Opinion of Judges BAIK and BEAUVALLET, para. 72) "[T]he injury described by a Civil Party applicant must be connected to the […] crimes provided in the Indictment." (Opinion of Judges BAIK and BEAUVALLET, para. 74) "The International Judges reaffirm that the mere membership in the same targeted group elsewhere, without any connection to the Northwest Zone or the six crime sites in the Southwest Zone, does not suffice." (Opinion of Judges BAIK and BEAUVALLET, para. 75) "[U]nder Internal Rule 23*bis*(1)(b), for the application to be admissible, a Civil Party applicant must 'demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury'. The Pre-Trial Chamber has found that 'the harm suffered by a civil party applicant must be connected to crimes charged in the Indictment in order to be considered for admissibility at this stage of the proceedings.'" (Opinion of Judges BAIK and BEAUVALLET, para. 76)

d. Requirement of an "Injury"

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he use by the Co-Investigating Judges of a 'hierarchy of crimes', especially in relation to psychological injury […] cannot be applied when measuring psychological harm caused by crimes such as the ones alleged […]. An isolated event in itself may not cause harm but, when put within the context of the mass atrocities alleged, it assumes other dimensions: the level of fear that may come from witnessing events and/or knowledge of the existence and implementation of the CPK policies is readily understandable. The fact that a person, 30 years after what occurred, still remembers witnessing certain events and recalls emotional distress shows the high intensity of the effect those events had on the person." (para. 45) "[W]ith regards to psychological harm, the Co-Investigating Judges have applied a presumption of familial kinship using as legal basis Article 3.2 of the Practice Direction that 'psychological injury may include the death of kin who were the victim of such crimes.' The Pre-Trial Chamber considers that this is an inclusive definition which was erroneously applied as an exclusive […]. Furthermore, the Pre-Trial Chamber notes that there is no such limitation placed upon the definition of 'psychological injury' in the applicable Internal Rules or the ECCC Law. The Pre-Trial Chamber notes that a practice direction, even if it were to place such limitation upon the definition (which it does not) could not be seen as providing restrictive definition of what is provided in the Internal Rules or the ECCC law." (para. 46) "[T]here is no explicit provision in the Internal Rules or the ECCC Law that the injury must be personal. […] While agreeing with the use of the term personal to qualify injury, the Pre-Trial Chamber considers that were applying the term 'personal' for assessment of 'psychological harm' the Co-Investigating Judges should have done this within the context of the mass atrocities alleged […]." (para. 47) "Psychological injury should have been considered within the specific context of the Cambodian society in general and especially of its nature and organization during the period of the CPK regime. The way in which this society was organized, differs from the way other societies are organized. It could also be said that even within a country the way in which different groups or communities of the society are organized differs from each other. Such differences cannot be ignored. Where 'the next of kin' relationship is the only close relationship identified by the Co-Investigating Judges, considering the nature of the crimes alleged, a much broader range of people should have been identified as presumed to have suffered injury as a consequence of crimes committed against a person, or they could have been considered as a matter for independent proof. This is particularly so in respect of the alleged involvement of the Accused in making and implementing policies to the effect of both genocide and crimes against humanity. […] Events such as the occurrence of isolated incidents of violence or disappearance of friends and neighbours, as well as relatives, can make it more than likely that a person has suffered psychological injury once such isolated occurrences are seen within the context of the mass atrocities allegedly having been committed in widespread and systematic manner, in the whole country as a consequence of the implementation of the CPK policies. Considering such circumstances,

		it is likely that persons have also suffered injury collectively. Such arises from and is evident in the very nature of the crimes alleged such as genocide and crimes against humanity, which are serious violations of international humanitarian law." (para. 49) "Internal Rule 23*bis*(1)(b) provides that the injury must be physical, material or psychological. […] [I]njury must be personal and […] it does not necessarily have to be direct [and] psychological injury includes mental disorders or psychiatric trauma such as post-traumatic stress disorder. In relation to psychological injury, […] it [is] essential to place the considerations of victimization also within the social and cultural context relevant at the time when the alleged crimes occurred in Cambodia. Particular care needs to be taken with this to ensure that the position of civil party applicants is considered within the correct context. Such context will be country and culture specific." (para. 83) "[T]he very nature of the *societal and cultural context at the time when the alleged crimes occurred* requires another and wider consideration of the matter of victimization. This is particularly so in respect of the alleged […] policies that affected whole groups and communities, even the whole Cambodian society. Under such circumstances, relationships of dependency are relevant, as are relationships of people within close knit village communities […]. […] [T]he mere knowledge of the fate of another human who is a direct victim of crimes committed resulting from the implementation of policies to that effect must be more than not likely to be psychologically disturbing to any person of ordinary sensibility. Such disturbance flows not just from seeing such crimes being committed but also from the implied and constant threat generated by such occurrences that can reasonably be expected to instil fear on the others that this could also be their fate due to them belonging to the same targeted group or community as the direct victim of a crime committed as part of the implementation of the CPK policies." (para. 86) "To a large extent it is reasonable to presume that, due to the implementation of the CPK Policies throughout Cambodia, people with no previous relationship of any kind, but who were part of the same targeted group or community, had to rely upon each other for their very survival." (para. 87) "[T]he degree of relationship between a Civil Party applicant with the immediate victim is not dependent only on a presumption of familial kinship but may also extend to the fact of an applicant belonging to the same persecuted group or community as the immediate victim. When the indirect victim is a member of a group or community targeted by the implementation of CPK policies, no distinction between what happened to the individual and the collective can be made." (para. 88) "Therefore, the Pre-Trial Chamber, for those applicants alleging psychological injury who are not in a position to substantiate close relationship with the immediate victim, shall, where appropriate, apply a presumption of collective injury in its assessment of civil party applications in case 002. The presumption of collective injury derives from the very nature of the source of such injury, these being crimes like genocide or crimes against humanity which, as mentioned above, are, by definition, crimes directed against groups or the population. The Pre-Trial Chamber understands that the only way to make collective injury tangible is by means of individual examples which are capable of showing the nature and depth of the damage caused to the collective. By presumption of collective injury, the Pre-Trial Chamber means that as long as a civil party applicant submits that he she was *member of the same targeted group or community* as the direct victim and such is more likely than not to be true, psychological harm suffered by the indirect victim arises out of the harm suffered by the direct victim, brought about by the commission of crimes which represent grave violations of international humanitarian law […]." (para. 93) --- "I find however that the Co-Investigating Judges erred in finding that the applications of witnesses of crimes charged will be rejected unless they have witnessed events of an exceedingly violent and shocking nature. I am not satisfied that witnesses of events underlying the crimes charged but other than of an exceedingly violent and shocking nature may under no circumstances qualify as civil parties. Indeed, this class of applicants should be able to choose to adduce evidence to establish that it is plausible that they suffered psychological injury as a direct consequence of the crime committed against the immediate victim." (Opinion of Judge MARCHI-UHEL, para. 38) "[T]he Applicant must adduce evidence to establish that it is plausible that he or she suffered psychological injury as a direct consequence of the crime committed against the immediate victims." (Opinion of Judge MARCHI-UHEL, para. 39)

		"I am of the view that members of the family of the immediate victim are presumed to have suffered psychological injury as a result of the crime committed against their relative." (Opinion of Judge MARCHI-UHEL, para. 40) "[T]he presumption which benefits direct family members of the immediate victim is refutable. The defence or the Co-Prosecutors may, in principle, adduce evidence in support of the non-existence of psychological harm alleged by any civil party applicant." (Opinion of Judge MARCHI-UHEL, para. 64) "The fact that the population was left in an extremely vulnerable state shall be taken into consideration when assessing whether it is plausible that an individual applicant has suffered harm as result of a crime committed against an immediate victim." (Opinion of Judge MARCHI-UHEL , para. 66) "I acknowledge the particular bond of affection between members of the extended family in the context of Cambodian culture where members of the extended family tend to live together or close to each other and very often provide support to each other. […] The same holds true for some communities where people live together as a group, have very close ties and sometimes even share their resources. While I do not endorse the very broad notion of 'community' upon which the Majority has based its opinion, I have accepted a few applicants who, for instance, have described being part of a small community sharing the belief in forest spirits, burying their dead in forest burials and holding various ceremonies together and have alleged suffering from crimes committed against members of their community. […] I find it plausible that members of the extended family of the immediate victim of (a) crime(s) for which the accused are indicted, or of his/her community in Cambodia may have suffered psychological harm as a result of such crime. The fact that an applicant takes the time and makes the effort to submit an application to become a civil party for the purpose of obtaining 'moral reparation' knowing that he or she will not receive a financial compensation, means that the applicant remains, even more than 30 years after the commission of the alleged crimes, deeply affected by them." (Opinion of Judge MARCHI-UHEL, para. 67) "I deem it appropriate to […] accept that there is a presumption that where crimes charged in the Indictment have been committed against members of the applicant's family - direct or extended - defined as including parents, children, siblings, grand-parents, in-laws, uncles and aunts and cousins, such crimes have caused a psychological harm to the applicant. I will also apply a presumption of psychological harm in those instances where the applicants allege to be part of a community with close ties and allege to have suffered harm as a result of crime committed against member of his or her community." (Opinion of Judge MARCHI-UHEL, para. 68) "I will assess individual cases on the basis of the information provided by the applicant as to the existence of a bond of affection or dependency with the immediate victim, such as a statement of the applicant describing the bonds or other evidence adduced to that effect. As the nature of relationship with an individual is subjective, I find it appropriate to rely on the statement of the applicant in this respect, which I considered sufficient to establish, *prima facie*, a bond of affection." (Opinion of Judge MARCHI-UHEL, para. 70) "I further find that the presumption of psychological harm should equally apply to members of the extended family and of the community of the immediate victim as there is, in my view no distinction to be made between the other crimes charged in the Indictment and the crimes of forced marriages. In the context prevailing in Cambodia at the time and in light of the societal relationships in the Cambodian society, I find it plausible that any person who is deemed to have a bond of affection with an immediate victim of forced marriage may have suffered personal psychological harm as a result of such crime." (Opinion of Judge MARCHI-UHEL, para. 71)
2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In terms of injury, Internal Rule 23*bis*(1)(b) provides that the injury must be physical, material or psychological. Physical injury 'denotes biological damage, anatomical or functional' and 'may be described as a wound, mutilation, disfiguration, disease, loss or dysfunction of organs, or death.' Material injury 'refers to a material object's loss of value, such as complete or partial destruction of personal property, or loss of income.' Finally, psychological injury may 'include[] mental disorders or psychiatric trauma, such as post-traumatic stress disorder.'" (para. 36) "Under Internal Rule 23*bis*(1)(b), a Civil Party applicant must further 'demonstrate […] that he or she has in fact suffered physical, material or psychological injury.' In Case 002, the Pre-Trial Chamber considered the nature and extent of psychological injury suffered in the context of mass atrocities committed throughout Cambodia and extended the presumption of psychological injury to indirect

		victims who did not have a familial relationship with the direct victim but who were part of the same targeted group. […] Following this observation, the Chamber held that 'for those applicants alleging psychological injury who are not in a position to substantiate a close relationship with the immediate victim, [it] shall, where appropriate, apply a presumption of collective injury' in its assessment of Civil Party applications." (Opinion of Judges BAIK and BEAUVALLET, para. 63) "In the present case, the International Judges affirm that an indirect victim may claim psychological injury even in the absence of a familial relationship with the direct victim through his or her membership within the same targeted group or community." (Opinion of Judges BAIK and BEAUVALLET, para. 64) "However, the International Judges recall that Internal Rule 23*bis*(1)(b) requires a nexus between the *injury* and the *alleged crimes*, including in relation to indirect victims." (Opinion of Judges BAIK and BEAUVALLET, para. 65) "The International Judges therefore conclude that the nexus requirement in Internal Rule 23*bis*(1)(b) dictates that the presumption of collective injury, in the present case, extends to those Civil Party applicants who can relate their injury to the alleged crimes committed against direct victims in the Central Zone. Mere membership of the same targeted group elsewhere, without any connection to the Central Zone, does not suffice." (Opinion of Judges BAIK and BEAUVALLET, para. 68)
3.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In terms of injury, Internal Rule 23*bis*(1)(b) provides that the injury must be physical, material or psychological. Physical injury 'denotes biological damage, anatomical or functional' and 'may be described as a wound, mutilation, disfiguration, disease, loss or dysfunction of organs, or death.' Material injury 'refers to a material object's loss of value, such as complete or partial destruction of personal property, or loss of income.' Finally, psychological injury may '[include] mental disorders or psychiatric trauma, such as post-traumatic stress disorder.'" (para. 39) --- "Under Internal Rule 23*bis*(1)(b), a Civil Party applicant must further 'demonstrate […] that he or she has in fact suffered physical, material or psychological injury'. In Case 002, the Pre-Trial Chamber considered the nature and the extent of psychological injuries suffered in the context of mass atrocities committed throughout Cambodia, and extended the presumption of psychological injury to indirect victims who did not have a familial relationship with the direct victim but who were part of the same targeted group." (Opinion of Judges BEAUVALLET and BAIK, para. 66) "Following this observation, the Chamber held that 'for those applicants alleging psychological injury who are not in a position to substantiate a close relationship with the immediate victim, [it] shall, where appropriate, apply a presumption of collective injury' in its assessment of Civil Party applications." (Opinion of Judges BEAUVALLET and BAIK, para. 67) "In the present case, the International Judges affirm that an indirect victim may claim psychological injury even in the absence of a familial relationship with the direct victim through his or her membership within the same targeted group or community." (Opinion of Judges BEAUVALLET and BAIK, para. 68) "However, the International Judges recall that Internal Rule 23*bis*(1)(b) requires a nexus between the *injury* and the *alleged crimes*, including in relation to indirect victims." (Opinion of Judges BEAUVALLET and BAIK, para. 69) "[I]t follows that the injury described by a Civil Party applicant must be connected to the aforementioned crimes contained in the Indictment." (Opinion of Judges BEAUVALLET and BAIK, para. 71) "The International Judges, therefore, conclude that the nexus requirement in Internal Rule 23*bis*(1)(b) dictates that the presumption of collective injury, in the present case, extends to those Civil Party applicants who can relate their injury to the alleged crimes committed against direct victims in the Kampong Som region, territories and waters off the cost of DK and the Division purges, as laid out in the Indictment. Indeed, the '[m]ere membership of the same targeted group elsewhere, without any connection to [these areas], does not suffice.'" (Opinion of Judges BEAUVALLET and BAIK, para. 72)

4.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In terms of injury, Internal Rule 23*bis*(1)(b) provides that the injury must be physical, material or psychological. Physical injury 'denotes biological damage, anatomical or functional' and 'may be described as a wound, mutilation, disfiguration, disease, loss or dysfunction of organs, or death.' Material injury 'refers to a material object's loss of value, such as complete or partial destruction of personal property, or loss of income.' Finally, psychological injury may '[include] mental disorders or psychiatric trauma, such as post-traumatic stress disorder.'" (para. 37) "Pursuant to Internal Rule 23*bis*(1)(b), a Civil Party applicant must 'demonstrate […] that he or she has in fact suffered physical, material or psychological injury.' In Case 002, the Pre-Trial Chamber considered the nature and extent of psychological injury suffered in the context of mass atrocities committed throughout Cambodia and extended the presumption of psychological injury to indirect victims who did not have a familial relationship with the direct victim but who were part of the same targeted group." (Opinion of Judges BAIK and BEAUVALLET, para. 69) "[T]he Chamber held that 'for those applicants alleging psychological injury who are not in a position to substantiate a close relationship with the immediate victim, [it] shall, where appropriate, apply a presumption of collective injury' in its assessment of Civil Party applications." (Opinion of Judges BAIK and BEAUVALLET, para. 70) "[T]he International Judges reaffirm that an indirect victim may claim psychological injury, even in the absence of a familial relationship with the direct victim, through his or her membership within the same targeted group or community." (Opinion of Judges BAIK and BEAUVALLET, para. 71)

e. Proof of Identification

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber shall apply a flexible approach in relation to the requirement […] for all applicants to clearly prove their identity […] and accept as proof of identity also statements issued in form or the other from the village elder or the communal chiefs." (para. 95)
2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In respect of the requirement for all applicants to clearly prove their identity, the Pre-Trial Chamber has previously endorsed a flexible approach, which includes, for example, accepting as proof of identity statements issued from the village elder or the communal chiefs." (para. 37)
3.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order*	"Regarding the requirement for all applicants to clearly prove their identity, the Pre-Trial Chamber has previously endorsed a flexible approach, which includes, for example, accepting as proof of identity statements issued from the village elder or the communal chiefs." (para. 40)

	on the Admissibility of Civil Party Applicants	
4.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Regarding the requirement for all applicants to clearly prove their identity, the Pre-Trial Chamber has previously endorsed a flexible approach, which includes, for example, accepting as proof of identity statements issued from the village elder or the communal Chiefs." (para. 38)

f. Sufficient Information and Standard of Sufficiency

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Pursuant to Internal Rule 23(1), when considering the admissibility of the Civil Party application, the Pre-Trial Chamber shall be satisfied that facts alleged in support of the application are *more likely than not to be true*." (para. 94)
2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Pursuant to Internal Rule 23*bis*(4), all Civil Party applications must contain sufficient information to allow verification of their compliance with the Internal Rules. In particular, 'the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.' Considering that the object and purpose of these rules is not to 'restrict or limit the notion of victim or civil party action in the ECCC' but to set baseline criteria for admissibility, the Pre-Trial Chamber has endorsed a 'flexible approach' in relation to the requirement for all applicants to clearly prove their identity." (Opinion of Judges BAIK and BEAUVALLET, para. 94) "In accordance with Internal Rule 23*bis*(1), when considering the admissibility of Civil Party applications, 'the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.' The International Judges observe that, in the Impugned Order, the International Co-Investigating Judge found certain circumstantial factors mitigated the required degree of proof of harm, including: (a) the passage of time; (b) the capacity to identify and record psychological health impact; and (c) the capacity to provide proof of ownership and of income due to forced movement of the population. The International Judges consider that this flexible approach to documentary evidence and proving identity is appropriate considering the particular cultural and social background of Cambodia and the practical extent of available evidence in the wake of the mass atrocities alleged in this case." (Opinion of Judges BAIK and BEAUVALLET, para. 95)
3.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"In this regard, the International Judges recall that pursuant to Internal Rule 23*bis*(4), all Civil Party applications must contain 'sufficient information' to allow verification of their compliance with the Internal Rules. While reaffirming the Pre-Trial Chamber's 'flexible approach' in relation to the requirement for all applicants to clearly prove their identity, the International Judges note that the Co-Lawyers did not proffer any legal or factual submissions in their Appeal establishing that the applications of the Civil Party applicants identified in Annex B of their Appeal fulfil the legal requirements of admissibility under Internal Rules 23*bis*(1) and (4)." (Opinion of Judges BEAUVALLET and BAIK, para. 87)

		"The International Judges recall that pursuant to Internal Rule 23*bis*(4), all Civil Party applications must contain sufficient information to allow verification of their compliance with Internal Rules. In particular, 'the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.' Considering that the object and purpose of these rules is not to 'restrict or limit the notion of victim or civil party action in the ECCC', but to set baseline criteria for admissibility, the Pre-Trial Chamber has endorsed a 'flexible approach' in relation to the requirement for all applicants to clearly prove their identity." (Opinion of Judges BEAUVALLET and BAIK, para. 105) "In accordance with Internal Rule 23*bis*(1), when considering the admissibility of Civil Party applications, 'the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.' The International Judges observe that in his Admissibility Order, the International Co-Investigating Judge found that certain circumstantial factors mitigated the required degree of proof of harm, including: (a) the passage of time; (b) the capacity to identify and record psychological health impact; and (c) the capacity to provide proof of ownership and of income due to forced movement of the population. The International Judges consider that this flexible approach to documentary evidence and proving identity is appropriate considering the particular cultural and social background of Cambodia and the practical extent of available evidence in the wake of the mass atrocities alleged in this case." (Opinion of Judges BEAUVALLET and BAIK, para. 106)
4.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Concerning the level of proof by which the above elements must be established, pursuant to Internal Rule 23*bis*(1), the Pre-Trial Chamber must, in evaluating the materials submitted as part of a Civil Party application, be 'satisfied that facts alleged in support of the application are more likely than not to be true'." (para. 39) "Pursuant to Internal Rule 23*bis*(4), all Civil Party applications must contain sufficient information to allow verification of their compliance with the Internal Rules. In particular, 'the application must provide details of the status as a Victim, specify the alleged crime and attach any evidence of the injury suffered, or tending to show the guilt of the alleged perpetrator.' Considering that the object and purpose of these rules is not to 'restrict or limit the notion of victim or civil party action in the ECCC' but to set baseline criteria for admissibility, the Pre-Trial Chamber has endorsed a 'flexible approach' in relation to the requirement for all applicants to clearly prove their identity." (Opinion of Judges BAIK and BEAUVALLET, para. 109) "In accordance with Internal Rule 23*bis*(1), when considering the admissibility of Civil Party applications, 'the Co-Investigating Judges shall be satisfied that facts alleged in support of the application are more likely than not to be true.' The International Judges observe that, in the Impugned Order, the International Co-Investigating Judge found certain circumstantial factors mitigated the required degree of proof of harm, including: (a) the passage of time; (b) the capacity to identify and record psychological health impact; and (c) the capacity to provide proof of ownership and of income due to forced movement of the population. The International Judges consider that this flexible approach to documentary evidence and proving identity is appropriate considering the particular cultural and social background of Cambodia and the practical extent of available evidence in the wake of the mass atrocities alleged in this Case." (Opinion of Judges BAIK and BEAUVALLET, para. 110)

3. Miscellaneous

i. *Reliability and Probative Value of Civil Party Applications*

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber finds it particularly problematic to generally preclude civil party applications from any presumption of reliability and to afford them 'little, if any, probative value' on the basis of the circumstances surrounding their recording. The ECCC is the first court trying mass international crimes that provides an opportunity for victims to participate directly in the criminal proceedings as civil parties. Pursuant to Internal Rule 23 *bis*, for a civil party action to be admissible, the applicant shall 'demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.' Civil party applications, which are filed with the aim of contributing to the judicial investigations, thus necessarily warrant thoughtful consideration by the Co-Investigating Judges." (para. 54)

		"Therefore, if they were to deny *prima facie* the presumption of reliability for civil party applications and afford them less weight than other evidence collected by their Office, the Co-Investigating Judges – either themselves or through rogatory letters – would be bound to hear every applicant as a witness, considering that they possess information conducive to ascertaining the truth. In fact, victims and civil party applicants have first-hand information about the relevant facts, and the credibility of their evidence should be evaluated on a case-by-case basis. The fact that they have a personal interest in the outcome of the case should not automatically lead to the assumption that their evidence is less credible." (para. 55)
2.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"Any concern relating to the reliability of the supplementary information sought would not affect the validity of the civil party applications as such, but merely their probative value, which is to be fully assessed at a later stage." (para. 22)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[V]ictims and civil party applicants may have first-hand information about the facts relevant to the investigation before the ECCC. The credibility of their evidence, therefore, should be evaluated on a case-by-case basis, and not automatically be regarded as intrinsically unreliable. The fact that they have a personal interest in the outcome of the case should not lead to the assumption that their evidence is less credible. The International Judges reaffirm that the Co-Investigating Judges' such hierarchisation limits the effectiveness of the victims' right of access to the courts and is contrary to Article 137 of the Cambodian Code of Criminal Procedure, which explicitly states that there is no formal requirement for the civil party to intervene at the investigation stage." (Opinion of Judges BEAUVALLET and BAIK, para. 159) "The International Judges accordingly consider that the International Co-Investigating Judge's formalistic approach of denying *prima facie* the presumption of reliability for civil party applications and vesting them with less weight than other evidence collected by their Office is not only legally incorrect within the ECCC legal framework, but also practically unsound and inappropriate under Internal Rule 21(4) as the Co-Investigating Judges would be bound to interview each civil party applicant individually in order to ensure probative value and safeguard the victims' access to the ECCC, creating delays in the proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 160)

ii. *Impact of Severance Order on Civil Party Admissibility*

1.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"First, the International Judges find that the International Co-Investigating Judge did not reduce the scope of the investigation nor deprive victims of their right to meaningfully participate by the Severance Order. The Severance Order only 'duplicated and collected' the same factual allegations from Case 004 to form the new Case 004/2, including the charged crimes against AO An." (Opinion of Judges BEAUVALLET and BAIK, para. 74) "Turning to the Co-Lawyers' contention that the International Co-Investigating Judge violated Internal Rule 66*bis* by failing to consult the Civil Parties 'in advance of the severance order' or that the Severance Order did not 'include any reasoned decision' on the potential impact on the Civil Parties, […] [t]he plain language of [Internal Rule 66*bis*] applies to the reduction of the scope of the judicial investigation—a legal mechanism wholly dissimilar from severance. The International Judges thus find that Internal Rule 66*bis*(1), (2) and (3) are not applicable to severance orders." (Opinion of Judges BEAUVALLET and BAIK, para. 75)

2.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[T]urning to the Co-Lawyers' contention that the International Co-Investigating Judge violated Internal Rule 66*bis* by failing to consult the Civil Parties 'in advance of the severance order' or that the Severance Order did not 'include any reasoned decision' on the potential impact on the Civil Parties, these arguments must fail as this provision is irrelevant." (para. 128) "The plain language of [Internal Rule 66*bis*] applies to the reduction of the scope of the judicial investigation—a legal mechanism wholly dissimilar from severance. The International Judges thus find that Internal Rule 66*bis*(1), (2) and (3) are not applicable to severance orders." (Opinion of Judges BAIK and BEAUVALLET, para. 129)

iii. *Impact of Decision to Reduce the Scope of the Investigation*

1.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges further observe that pursuant to Internal Rule 23*ter*(2), '[w]hen the Civil Party is represented by a lawyer, his or her rights are exercised through the lawyer', and note that under Internal Rule 74(4)(i), the Civil Parties may appeal against the Co-Investigating Judges' decision 'reducing the scope of judicial investigation under [Internal Rule 66*bis*].'" (Opinion of Judges BEAUVALLET and BAIK, para. 83) "Most significantly, the Co-Lawyers did not exercise their explicitly prescribed right under Internal Rule 74(4)(i) to appeal against the Internal Rule 66*bis* Decision. […] In light of the foregoing, the International Judges find that the Co-Lawyers failed to exercise the victims' right to participate in this regard in a timely manner." (Opinion of Judges BEAUVALLET and BAIK, para. 86) "Concerning the Co-Lawyers' claim on alleged prejudice resulting from the reduction of the scope of the Civil Party admissibility pursuant to the Internal Rule 66*bis* Decision, the International Judges affirm that the facts excluded on the basis of Internal Rule 66*bis* invoked by a Civil Party applicant may still form the basis of a decision of admissibility, if they fulfil the remaining conditions of admissibility under Internal Rules 23*bis*(1) and (4)." (Opinion of Judges BEAUVALLET and BAIK, para. 87)
2.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Pursuant to Internal Rule 66*bis*(1), 'the Co-Investigating Judges may, at the time of notification of conclusion of investigation, decide to reduce the scope of judicial investigation by excluding certain facts set out in an Introductory Submission or any Supplementary Submission(s).' In accordance with Internal Rule 66*bis*(3), the Co-Investigating Judges shall determine the effect of such a decision 'on the status of the Civil Parties and on the right of Civil Party applicants to participate in the judicial investigation.'" (Opinion of Judges BAIK and BEAUVALLET, para. 87) "In conclusion, the International Judges find that the International Co-Investigating Judge did not impermissibly limit the geographic scope of Civil Party admissibility or cause prejudice to the Appellants." (Opinion of Judges BAIK and BEAUVALLET, para. 92)

iv. *Impact of the Issuance of Two Conflicting Closing Orders*

1.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The National Co-Investigating Judge's Order on Civil Parties (National) does not preclude the future participation of Civil Parties who have been found admissible in future proceedings against AO An. In rejecting all Civil Party applications in Case 004/2, the National Co-Investigating Judge gave as his sole and exclusive reason the dismissal of all charges against AO An. The International Judges recall, however, that the National Co-Investigating Judge's Closing Order (Dismissal) is *ultra vires*, void and without legal effect, and further that the Closing Order (Indictment) stands and has been legally forwarded to the Trial Chamber by virtue of Internal Rule 77(13)(b)." (Opinion of Judges BAIK and BEAUVALLET, para. 114) "The validity of the Order on Civil Parties (National), which is expressly founded on the reasoning of the Closing Order (Dismissal), is inherently and inextricably tied to the legal validity of the Closing Order (Dismissal) itself. Given that the National Co-Investigating Judge's issuance of his Closing Order (Dismissal) has no legal basis in the ECCC's fundamental framework and is void *ab initio*, the International Judges find that the Order on Civil Parties (National) is also void and cannot be ascribed legal effect. Accordingly, the Order on Civil Parties (International) endures as the remaining operative Order on the admissibility of Civil Parties in Case 004/2." (Opinion of Judges BAIK and BEAUVALLET, para. 115)

		"[T]he International Judges recall that '[u]nless and until rejected, Civil Party applicants may exercise Civil Party rights' […]." (Opinion of Judges BAIK and BEAUVALLET, para. 116)
2.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The validity of the National Co-Investigating Judge's Order on Civil Party Applications' Admissibility, which expressly relies on the findings of the Dismissal Order, is necessarily and inextricably tied to the legal validity of the Dismissal Order itself. Given that the National Co-Investigating Judge's Dismissal Order is void *ab initio* and that its issuance has no legal basis in the ECCC's fundamental framework, the International Judges find that the Order on Civil Party Applications' Admissibility is also void and cannot be ascribed legal effect. Accordingly, the International Co-Investigating Judge's Admissibility Order stands as a sole valid order determining the admissibility of Civil Parties in Case 003. Furthermore, the National Co-Investigating Judge's Order on Civil Party Applications' Admissibility does not preclude the participation of Civil Parties who have been found admissible in future proceedings against MEAS Muth." (Opinion of Judges BEAUVALLET and BAIK, para. 110)

C. Co-Investigating Judges' Order on Civil Party Admissibility

1. Reasoned Decision

For jurisprudence concerning the ***Duty of the Co-Investigating Judges to Provide a Reasoned Decision in General***, see IV.B.2.iii.f. Duty to Provide Reasoned Decisions

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The Pre-Trial Chamber finds that, in so far as it provides reasons for its decision to reject each of the Civil Parties in question and refers both to the scope of the investigation and the applications in question, the Second Impugned Order cannot be said to show a lack of compassion or disrespect for the victims." (para. 46) "The terms of Internal Rule 23(3) authorised the making of only one decision by the Co-Investigating Judges, in respect of which, should it not be in the affirmative, a reasoned decision must be provided. An appeal right is provided in such cases. The Internal Rules do not provide for a two part process. The Civil Party must make the application with the details, as provided for in Internal Rule 23(5). They have no other opportunity to make submissions, thus their application, in effect, contains their submissions. To this extent the submissions represent an expression of the right of the Civil Party Applicant to be heard in respect of an application. The reason for the notification to the Co-Prosecutors and the Charged Person(s) of an application to the Co-Prosecutors and the Charged Person is for them to be able to respond, if so advised, to the application." (Opinion of Judges PRAK and DOWNING, para. 8)
2.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he Pre-Trial Chamber notes that it has recognized the requirement for judicial bodies to provide reasoned decisions as an international standard. […] [T]he Pre-Trial Chamber has found that although the Co-Investigating Judges are not required to 'indicate a view on all the factors considered in their decision making process', it is important that all parties concerned know the reasons for a decision. The Chamber considered this necessary in order to place 'an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of decision so that a proper and pertinent response may be considered.' An 'aggrieved party' will be any person who may have a right of appeal, and may include an accused person as well as a rejected Applicant. Reasons are also necessary for the Pre-Trial Chamber to be able to conduct an effective appellate review pursuant to Rule 77(14)." (para. 38) "[I]n general, a judicial decision must, implicitly disclose the material which has been taken into account by the judges when making a decision. This will ensure that parties having been unsuccessful in their application can be assured that the facts submitted and their submissions in respect of the law have been properly and fully taken into account. Each applicant to be joined as a Civil Party has a right to have their individual application considered and to a demonstration that this has occurred, even if the decision is provided in short and tabular form. It is further noted that whilst the appeal procedure provided for under Internal Rule 23*bis*[(2)], is by of an 'expedited' or summary appeal, the consideration by the Co-Investigating Judges of an application to be joined as a Civil Party is not to be considered in such manner. While understanding the unusual volume of work before the Co-Investigating Judges and the requirement for consideration of the matters 'within a reasonable time' the Pre-Trial Chamber notes that, in the case of the rejected applicants, more detailed reasons than the ones provided in the orders were warranted." (para. 39) "[A]n order rejecting the admissibility of civil party application must be reasoned. […] Notwithstanding the revisions that have been made to the Internal Rules, the requirement to provide a reasoned decision remains and attaches to any order or decision for which party has a right of appeal. This requirement exists, in part to facilitate an appeal by the applicant whose application was rejected. Such applicant must be informed, in sufficient detail of the reason(s) for the rejection and may thus decide whether or not to appeal and on what ground. This requirement also enables the appellate body to conduct an effective appellate review." (Opinion of Judge MARCHI-UHEL, para. 14) "The Co-Investigating Judges were not required to make specific reference to the submissions in each Victim Information Form and in any supplementary information related to each Applicant." (Opinion of Judge MARCHI-UHEL, para. 16)

3.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to "indicate a view on all the factors" considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BAIK and BEAUVALLET, para. 84) "In conclusion, the International Co-Investigating Judge's explanations were specific and, importantly, included reference to the details of the application rejected. The International Judges therefore consider that Annex B, read in conjunction with the Impugned Order, disclosed the material taken into account by the International Co-Investigating Judge when making his decision and that this demonstrates that each individual application had been 'properly and fully taken into account'. The International Judges find that the Impugned Order and related Annex B are sufficiently reasoned, allowing each applicant to file an appeal of the rejection of his or her application." (Opinion of Judges BAIK and BEAUVALLET, para. 90)
4.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to 'indicate a view on all the factors' considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BEAUVALLET and BAIK, para. 92) "In conclusion, the International Co-Investigating Judge provided sufficient explanation, with specific references to the details of concerned applications, in rejecting the applicants listed in Annex E of the Appeal. The International Judges consider that a conjunct reading of the Admissibility Order and its Annex B sufficiently discloses the material taken into account by the International Co-Investigating Judge in making his decision and thereby establishes that each individual application had been 'properly and fully taken into account'. Therefore, the International Judges find that the Admissibility Order and related Annex B are sufficiently reasoned, allowing each applicant to file an appeal against the rejection of his or her application." (Opinion of Judges BEAUVALLET and BAIK, para. 98)
5.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges recall that 'the requirement for judicial bodies to provide reasoned decisions […] [is] an international standard'. First, the International Judges consider that a reasoned decision is required for the parties to effectively exercise their right to appeal under Internal Rule 74. In its previous decisions, the Chamber found that while 'the Co-Investigating Judges are not required to 'indicate a view on all the factors' considered in their decision making process, it is important that all parties concerned know the reasons for a decision.' This allows the parties to make an informed decision on whether to appeal or not and on what grounds." (Opinion of Judges BAIK and BEAUVALLET, para. 97) "In [Case 002], the Chamber considered that more detailed reasoning was required in respect of the rejected Civil Party applications because the Co-Investigating Judges' reasons were limited to a 'maximum' of two sentences, containing five to fifteen words each and were not specific to each application." (Opinion of Judges BAIK and BEAUVALLET, para. 98)

2. Timing

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against*	"Internal Rule 23*bis* (2) specifically provides that the CIJs 'may reject Civil Party applications at any time until the date of the closing order'. In that it is based on the assessment by the CIJs that the Appellants did not establish that their alleged injury was a direct consequence of one of the crimes charged and, in light of the absence of filing of a Supplementary Submission by the Co-Prosecutors in relation to the new facts raised by the applications, the Second Impugned Order cannot be said to be premature. While in principle, the Co-Prosecutors can file a supplementary submission until the Closing Order and accordingly expand the scope of the investigations as defined by the Introductory Submission and if any, earlier Supplementary Submission(s), the scope of the investigation cannot be said to be 'undefined' until the issuance of the Closing Order. The scope of the investigation is defined at any

	Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications	moment until the issuance of the Closing Order by the above-mentioned filings of the Co-Prosecutors." (para. 48) "We note that the previous regime did not prescribe that any decision be taken by the CIJs to declare a civil party application admissible. By contrast, it provided the possibility for the CIJs to declare a civil party application inadmissible. In spite of this situation, the Internal Rules provide for a number of rights attaching to Civil Parties at the investigating stage. […] By comparison, under Cambodian law Article 139 of the Code of Criminal Procedure provides that the investigative judge confirms the reception of a complaint with an application to become a Civil Party in an order, and much like the previous ECCC regime, it does not require a decision to admit such applicants as Civil Parties at the investigating stage." (Opinion of Judges NEY, MARCHI-UHEL and HUOT, para. 6) "[…] The new regime uses the term 'may reject', thus providing the CIJs with the possibility of ejecting a civil party application at any time before the Closing Order, however, they are under no obligation to do so until the Closing Order is actually made. […] Once the Closing Order stage is reached, they are required to determine the admissibility of all outstanding civil party application by a separate order." (Opinion of Judges NEY, MARCHI-UHEL and HUOT, para. 7) "[…] By treating the Civil Party Applicants as 'Civil Parties', while reserving the right foreseen by Internal Rule 23(3) to declare such application inadmissible, the CIJs aimed at providing them and their lawyers access to confidential information contained in the Case File, and at granting them the rights attaching to Civil Parties according to the Internal Rules during the course of the investigation, such as requesting investigative actions […] and the rights attaching to the interview of a civil party […]." (Opinion of Judges NEY, MARCHI-UHEL and HUOT, para. 8) "The terms of Internal Rule 23(3) authorised the making of only one decision by the Co-Investigating Judges, in respect of which, should it not be in the affirmative, a reasoned decision must be provided. An appeal right is provided in such cases. The Internal Rules do not provide for a two part process. The Civil Party must make the application with the details, as provided for in Internal Rule 23(5). They have no other opportunity to make submissions, thus their application, in effect, contains their submissions. To this extent the submissions represent an expression of the right of the Civil Party Applicant to be heard in respect of an application. The reason for the notification to the Co-Prosecutors and the Charged Person(s) of an application to the Co-Prosecutors and the Charged Person is for them to be able to respond, if so advised, to the application." (Opinion of Judges PRAK and DOWNING, para. 8) "Once the decision is made under Internal Rule 23 the Co-Investigating Judges are *functus officio*, that is, they have exhausted their power in this regard. The Co-Investigating Judges are not authorised to make a second decision or to revisit and reconsider the decision." (Opinion of Judges PRAK and DOWNING, para. 9) "In the instant matter there is a determination of the rights of the Civil Party appellants, to remain a party to the proceeding. This is a fundamental determination of rights within the proceeding. The procedures and determination must be fair, with the process clear and the expressed rules applied. Article 14.1 of the ICCPR will apply in such instances where the decision will be determinative of the rights and obligations concerned in a 'suit at law'. […] Whilst the instant matter is not clearly with a final determination of a claim, it is a determination of the right of the person to make a claim and thus remain as a Civil Party. In respect of a civil suit such a right is basic to the action itself and must be considered in respect of the specific nature of civil claims made before the ECCC." (Opinion of Judges PRAK and DOWNING, para. 12) "We are thus of the opinion that the decision made to reject the Civil Parties, once admitted, as they have been in these instances, cannot be reconsidered or the subject of a further decision by the Co-Investigating Judges and they should retain their status as Civil Parties in the proceeding leaving it to the Trial Chamber, in the event of an indictment of any of the Charged Persons, to ultimately determine whether an order for collective and moral reparations should or should not be made in their favour on the basis of its findings at trial." (Opinion of Judges PRAK and DOWNING, para. 16) "We are aware that the absence of a super majority of votes on the merits of this ground of appeal will, pursuant to Internal Rule 77(13)(a), result in a decision that the Second Impugned Order remaining undisturbed on this ground. As such, we would note that there is nothing in the Internal Rules to prevent the applicants resubmitting their civil party applications should they believe that their

		circumstances and claims falling within the scope of the investigation have not been initially properly expressed." (Opinion of Judges PRAK and DOWNING, para. 17)
2.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"First, all issues raised in the Appeal shall be examined before a conclusion can be reached by judges that the rights of the Appellant have not been infringed upon by the rejection of his civil party application. Second, new facts have been introduced in the Third Introductory Submission and, in any event, this has no impact on the admissibility of civil party applications pursuant to Internal Rule 23*bis*. Third, the discussion on whether there is, at this point in time, any 'Charged Person' in Case 004 is as such immaterial to determining the Appeal given that the Co-Investigating Judges have an obligation to decide on the substance of a civil party application, as they did in the current case. As emphasized above, any alleged impediment to making such a determination at a given time should necessarily lead to the conclusion that the decision on the admissibility of civil party applicants shall be postponed until all relevant information is available." (Opinion of Judges DOWNING and LAHUIS, para. 13)

3. Notification of Order

1.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"[T]he Internal Rules and the Practice Direction on Filing of Documents before the ECCC direct that the Greffier and/or Case File Officer shall: i) record in a written report the means of notification used, the time, date and place of service, as well as any other relevant circumstances; ii) use their best endeavours to obtain acknowledgement of receipt, which shall be appended to the report of notification; and iii) complete the 'Acknowledgement of Service' form, whereby the Case File Officer or Designated Officer shall confirm service of the document on its recipient." (Opinion of Judges DOWNING and LAHUIS, para. 9) "According to Internal Rule 46(1) '[a]ll orders of the Co-Investigating Judges […] shall be notified to the parties or their lawyers, if any, either orally or at their last known address, by the Greffier […] using an appropriate means.' As pointed out above, the Order in Case 004 shall have been, at the very least, notified to the Appellant's Lawyers and, if a decision was made to also notify the Appellant by service of a hard copy, sufficient proof of notification should have been secured. The requirement of notification is meant to ensure that the knowledge of documents filed in the course of proceedings is directly provided to all those affected by these proceedings. This formality is not only essential to the integrity of the proceedings, it is also a vital principle of fairness and of due process as it prevents a judicial body from operating in secret from parties and individuals affected by its decisions. In this case, the notification has very concrete legal consequences as it triggers both the capacity to exercise the right to pre-trial appeal against the Co-Investigating Judges' Order and the start of the calculation of the time limits for filing of documents which applies to pre-trial appeals and impacts on their validity." (Opinion of Judges DOWNING and LAHUIS, para. 11) "In our opinion, the absence of notification of the Order in Case 004 to the Appellant's Lawyers and the absence of a clear evidence of notification to the Appellant himself is a procedural defect that infringes upon the Appellant's fundamental rights. Considering that the Appeal is, as a consequence, directed against the Order in Case 003 and not against the Order issued for Case 004, which contains different reasons for the rejection of the Application than those expressed in the Order in Case 003, it would be contrary to the interests of justice and fundamentally unfair to the Appellant to consider the merit of this Appeal. However, we note that from the moment of the effective notification of the Order in Case 004 to the Appellant and the Co-Lawyers acting on his behalf, a right of appeal against this Order will arise and the time limits for filing an appeal will then start to run. […]." (Opinion of Judges DOWNING and LAHUIS, para. 12)

4. Reconsideration

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010	"The terms of Internal Rule 23(3) authorised the making of only one decision by the Co-Investigating Judges, in respect of which, should it not be in the affirmative, a reasoned decision must be provided. An appeal right is provided in such cases. The Internal Rules do not provide for a two-part process. The Civil Party must make the application with the details, as provided for in Internal Rule 23(5). They have no other opportunity to make submissions, thus their application, in effect, contains their submissions. To this extent the submissions represent an expression of the right of the Civil Party Applicant to be

	[PUBLIC REDACTED] *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	heard in respect of an application. The reason for the notification to the Co-Prosecutors and the Charged Person(s) of an application to the Co-Prosecutors and the Charged Person is for them to be able to respond, if so advised, to the application." (Opinion of Judges PRAK and DOWNING, para. 8) "Once the decision is made under Internal Rule 23 the Co-Investigating Judges are *functus officio*, that is, they have exhausted their power in this regard. The Co-Investigating Judges are not authorised to make a second decision or to revisit and reconsider the decision." (Opinion of Judges PRAK and DOWNING, para. 9) "We are thus of the opinion that the decision made to reject the Civil Parties, once admitted, as they have been in these instances, cannot be reconsidered or the subject of a further decision by the Co-Investigating Judges and they should retain their status as Civil Parties in the proceeding leaving it to the Trial Chamber, in the event of an indictment of any of the Charged Persons, to ultimately determine whether an order for collective and moral reparations should or should not be made in their favour on the basis of its findings at trial." (Opinion of Judges PRAK and DOWNING, para. 16)
2.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"[A] single dictionary definition is insufficient to justify reconsideration of the legal standards and reasoning of express and clear ECCC jurisprudence emanating from the Co-Investigating Judges and Chambers and concerning the same or similar matters and parties." (Opinion of Judges DOWNING and CHUNG, para. 10) "We confirm that the Co-Investigating Judges […] are not absolutely bound by previous decisions. Such reconsideration of previous decisions, including reconsideration of the legal standards and reasoning of prior decisions, should only be done, however, when there has been a change in circumstances, where a decision is erroneous, or where it causes injustice. This standard limiting reconsideration […] protects against arbitrary determinations and seeks to ensure predictability of judicial outcome. […] '[C]onsistency, certainty and predictability in law is generally recognized in national jurisdictions, both common and civil law, as well as before international tribunals.' This is particularly true in those areas of ECCC and international law and procedure that are still developing, such as civil party participation, where 'the need for those appearing before the [ECCC] to be certain of the regime […] is even more pronounced.'" (Opinion of Judges DOWNING and CHUNG, para. 11)

D. Appeals against Order on Civil Party Admissibility

1. Jurisdiction of the Pre-Trial Chamber and Admissibility

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"Internal Rule 77*bis*, adopted on 9 February 2010 requires the Appellant to reason why the CIJs are alleged to have erred in fact and/or law in determining the admissibility of the civil party application pursuant to Internal Rule 23*bis*, which only entered into force on 19 February 2010, thus after the filing of the Second Appeal. However, the Pre-Trial Chamber notes that the new rule merely codifies the obvious requirement already spelled out by the Pre-Trial Chamber's jurisprudence." (para. 27)
2.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Internal Rules 74(4)(b) and 77*bis* respectively allow civil party applicants to appeal before the Pre-Trial Chamber against orders by the Co-Investigating Judges declaring a civil party application inadmissible and prescribe that such appeal shall be filed within 10 days of the notification of the order on admissibility. Under Internal Rule 77*bis*, the Pre-Trial Chamber has jurisdiction to consider alleged errors of fact and/or law made by the Co-Investigating Judges in their determination of the admissibility of a civil party application pursuant to Internal Rule 23*bis,* which means that pre-trial appeals under Internal Rules 74(4)(b) and 77*bis* are admissible insofar as they challenge the consideration by the Co-Investigating Judges of a civil party application and/or the way the Co-Investigating Judges generally managed the civil party admissibility regime provided for victims under the ECCC legal framework." (Opinion of Judges DOWNING and LAHUIS, para. 2) "Ground 2 is inadmissible as it is directed against the conduct of the judicial investigation by the Co-Investigating Judges and does not challenge the Impugned Order nor any other order by the Co-Investigating Judges and thus does not fall under any of the matters contemplated by Internal Rule 74(4)." (Opinion of Judges DOWNING and LAHUIS, para. 4)
3.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Internal Rules 74(4)(b) and 77*bis* respectively allow civil party applicants to appeal before the Pre-Trial Chamber against orders by the Co-Investigating Judges declaring a civil party application inadmissible and prescribe that such appeal shall be filed within 10 days of the notification of the order on admissibility. Under Internal Rule 77*bis*, the Pre-Trial Chamber has jurisdiction to consider alleged errors of fact and/or law made by the Co-Investigating Judges in their determination of the admissibility of a civil party application pursuant to Internal Rule 23*bis,* which means that pre-trial appeals under Internal Rules 74(4)(b) and 77*bis* are admissible insofar as they challenge the consideration by the Co-Investigating Judges of a civil party application and/or the way the Co-Investigating Judges generally managed the civil party admissibility regime provided for victims under the ECCC legal framework." (Opinion of Judges DOWNING and LAHUIS, para. 2) "Ground 2 is inadmissible as it is directed against the conduct of the judicial investigation by the Co-Investigating Judges and does not challenge the Impugned Order nor any other order by the Co-Investigating Judges and thus does not fall under any of the matters contemplated by Internal Rule 74(4)." (Opinion of Judges DOWNING and LAHUIS, para. 4)
4.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal*	*"*[…] [C]ivil party admissibility and procedural fairness, are of general significance to the practice and jurisprudence of the ECCC and international criminal law. Errors relating to civil party admissibility and procedural fairness 'impinge upon ability of [the ECCC] to meet its obligation in search for truth in all proceedings.' Therefore, we issue this Opinion in an effort 'to avoid uncertainty and ensure respect for the values of consistency and coherence in the application of the law.'" (Opinion of Judges DOWNING and CHUNG, para. 2)

	against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS	"Internal Rules 77*bis* and 74(4)(b), respectively, allow civil party applicants to appeal orders by the Co-Investigating Judges declaring a civil party application inadmissible to the Pre-Trial Chamber. […] Under Internal Rule 77*bis*, the Pre-Trial Chamber has jurisdiction to consider errors of fact and/or law made by the Co-Investigating Judges in the determination of the admissibility of civil party applications. Thus, pre-trial appeals under Internal Rules 74(4)(b) and 77*bis* are admissible insofar as they challenge the consideration by the Co-Investigating Judges of a civil party application." (Opinion of Judges DOWNING and CHUNG, para. 4) "As regards the jurisdiction of the Pre-Trial Chamber, we consider that the First, Second, Third and Fourth Grounds of appeal are admissible pursuant to Internal Rules 74(4)(b) and 77*bis* as they challenge the Impugned Order […]. The Fifth and Sixth Grounds, however, are inadmissible as they are directed against the conduct of the judicial investigation by the Co-Investigating Judges. These Grounds do not directly challenge the Impugned Order, or any other order by the Co-Investigating Judges, and thus do not fall under any of the matters contemplated by Internal Rule Internal Rules 74(4)." (Opinion of Judges DOWNING and CHUNG, para. 6)
5.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The Pre-Trial Chamber recalls that pursuant to Internal Rule 74(4)(b), 'Civil Parties may appeal against […] orders by the Co-Investigating Judges […] declaring a Civil Party application inadmissible'. Internal Rule 77*bis* provides that the appeal shall be filed '[w]ithin 10 days of the notification of the decision on admissibility'." (para. 31)

2. Standard of Review

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"An Appellant seeking to overturn a decision from the CIJs shall demonstrate that the challenged decision was: (i) based on an incorrect interpretation of governing law; or (ii) based on a patently incorrect conclusion of fact; or (iii) where the decision in question is a discretionary one, that it was so unfair or unreasonable as to constitute an abuse by the CIJ's discretion." (para 21)
2.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"The Appellant's alleged violations of rights are examined according to the standards of review on appeal accepted by the Pre-Trial Chamber, namely that 'on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct and alleged errors of fact are reviewed under standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.'" (Opinion of Judges DOWNING and LAHUIS, para. 5) "[W]e refer also to the Pre-Trial Chambers considerations […] regarding its inherent jurisdiction to also examine due diligence by the Co-Investigating Judges. […] '[…] [T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)

3.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"The Appellant's alleged violations of rights are examined according to the standards of review on appeal accepted by the Pre-Trial Chamber, namely that 'on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct and alleged errors of fact are reviewed under standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.'" (Opinion of Judges DOWNING and LAHUIS, para. 5) "[W]e refer also to the Pre-Trial Chambers considerations […] regarding its inherent jurisdiction to also examine due diligence by the Co-Investigating Judges. […] '[…] [T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)
4.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Internal Rule 77*bis* permits the Chamber to reverse on appeal orders of the Co-Investigating Judges on admissibility of civil party applicants if it finds that the Co-Investigating Judges committed an error of fact and/or of law. The Pre-Trial Chamber 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 and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.'" (para. 34) "Pursuant to Internal Rule 21, the Pre-Trial Chamber has a duty to ensure that proceedings before the ECCC are fair. This, in part, involves people in similar position being treated equally before the court. The fundamental principles of the procedure before the ECCC, enshrined in Internal Rule 21, require that the law shall be interpreted so as to always '*safeguard the interests of all*' the parties involved, that care must be taken to 'preserve a *balance* between the rights of the parties' and that 'proceedings before the ECCC shall be brought to conclusion within a *reasonable time*.' Keeping this in mind and considering the unusual number of appeals before it, the Pre-Trial Chamber […] has identified a number of fundamental errors which are relevant to all the rejected Civil Party Applicants. The Pre-Trial Chamber finds that a significant injustice would occur to the rejected civil parties who did not raise the errors identified by the Pre-Trial Chamber. The Pre-Trial Chamber has […] determined, in the interests of justice, to join all the Appeals filed against the impugned Orders also in order to allow the examination, in its decisions of the common and fundamental errors identified in all the impugned Orders and after considering the conclusions drawn therefrom, to make a fresh review, on the basis of these findings, in respect of all those Civil Party Applications that were rejected by the Co-Investigating Judges and who have appealed." (para. 35) --- "I am of the view that the *de novo* review on appeal undertaken by the Majority is not warranted." (Opinion of Judge MARCHI-UHEL, para. 2) "As the […] Indictment is more detailed than the […] Introductory Submission, […] I have […] considered the merits of the appeal by each Applicant by reviewing the specific situation of each Applicant in light of the crimes […] in the Indictment […]. The Co-Investigating Judges also had the authority […] to narrow the crimes charged from those that were recommended by the Co-Prosecutors. […] This narrowing from the Introductory Submission to the Indictment will impact the admissibility of the application in question." (Opinion of Judge MARCHI-UHEL, para. 11) "[T]he standard of review […] permits the Pre-Trial Chamber to consider not only whether the Co-Investigating Judges have committed an error of law or an error of fact but also any mixed error of law and fact in their interpretation of admissibility criteria and the application of such criteria." (Opinion of Judge MARCHI-UHEL, para. 12)
5.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil*	"Pursuant to Rule 77*bis*, the Pre-Trial Chamber has jurisdiction to consider errors of fact and/or law made by the Co-Investigating Judges in decisions concerning the admissibility of civil party applications. On appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (Opinion of Judges DOWNING and CHUNG, para. 7)

	Party Applicant *Mr Timothy Scott* *DEEDS*	
6.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 77*bis* requires Appellants seeking to overturn an order from the Co-Investigating Judges on the admissibility of Civil Party applicants to demonstrate that the challenged decision was based on an error of law and/or fact. The Pre-Trial Chamber recalls that on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, while alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 28)
7.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 77*bis* requires Appellants seeking to overturn an order from the Co-Investigating Judges on the admissibility of Civil Party applicants to demonstrate that the challenged decision was based on an error of law and/or fact. The Pre-Trial Chamber recalls that on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, while alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 31)
8.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 77*bis* requires Appellants seeking to overturn an order from the Co-Investigating Judges on the admissibility of Civil Party applicants to demonstrate that the challenged decision was based on an error of law and/or fact. The Pre-Trial Chamber recalls that on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, while alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 29)

3. Right of the Defence to Appeal against Order on Civil Party Admissibility

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The Pre-Trial Chamber finds that according to Internal Rule 23(3) it is the decision of the Co--Investigating Judges to approve the applications of the Civil Parties. There is no possibility for the Charged Person to appeal this decision. The Pre-Trial Chamber therefore has no jurisdiction to determine whether the Co-Investigating Judges' assessment was not made in accordance with the Rules, as is asserted by the Co-Lawyers." (para. 47)

E. Rights of Victims and Civil Parties

1. General

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The Pre-Trial Chamber finds that, in so far as it provides reasons for its decision to reject each of the Civil Parties in question and refers both to the scope of the investigation and the applications in question, the Second Impugned Order cannot be said to show a lack of compassion or disrespect for the victims." (para. 46) "We accept that a provisional status may not meet the requirement of certainty foreseen by Internal Rule 21(1), but it is clearly more favourable to the victims than a conservative decision to deny them any right to participate in the proceeding until such time as the rules foresaw determination of their status, which under the regime then applicable could have been delayed until the trial stage, or until such time as the CIJs – without legal basis in the Rules – formally and positively declared them admissible. […] We find that the said approach made the participation of Civil Party Applicants more meaningful than a more conservative approach would have, without prejudicing the rights of the Charged Persons. […] From the moment the CIJs had completed their analysis of whether the Appellants established that their alleged injury was the direct consequence of at least one of the crimes charged and found in the negative, they had an obligation to reject the civil party application in order to preserve the rights of the Charged Persons." (Opinion of Judges NEY, MARCHI-UHEL and HUOT, para. 11) "In the instant matter there is a determination of the rights of the Civil Party appellants, to remain a party to the proceeding. This is a fundamental determination of rights within the proceeding. The procedures and determination must be fair, with the process clear and the expressed rules applied. Article 14.1 of the ICCPR will apply in such instances where the decision will be determinative of the rights and obligations concerned in a 'suit at law'. […] Whilst the instant matter is not clearly with a final determination of a claim, it is a determination of the right of the person to make a claim and thus remain as a Civil Party. In respect of a civil suit such a right is basic to the action itself and must be considered in respect of the specific nature of civil claims made before the ECCC." (Opinion of Judges PRAK and DOWNING, para. 12)
2.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"[T]he Co-Lawyers, […] were advised […] that they were not yet recognised by the Co-Investigating Judges, notwithstanding that they had already been recognised in Case 002 pursuant to Internal Rule 22. […] As a result, the Co-Lawyers have not been notified of any document in relation to the Application of their client […], hence impairing the Appellant's right to legal representation." (Opinion of Judges DOWNING and LAHUIS, para. 3)
3.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)

4.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he due diligence displayed in the Co-Investigating Judges' conduct is a relevant factor when considering victims' rights in the proceedings. Therefore, examination of what steps have been taken by the Co-Investigating Judges and to what degree they affect the situation of the victims [was found] necessary.'" (Opinion of Judges DOWNING and LAHUIS, para. 6)
5.	**004/2 Civil Parties** PTC 58 D362/4 27 August 2018 *Decision on Civil Party Requests for Extension of Time and Page Limits*	"The Pre-Trial Chamber has specifically found that '[g]uidance can be sought from the general principles on victims as found in international law,' including the UN basic principles on victims. These principles emphasise that victims should have fair and effective access to justice, and that victims should be allowed to present their 'views and concerns […] at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.'" (para. 7) "[F]ailing to extend this short deadline under the current circumstances – where the Civil Party Co-Lawyers have thousands of clients whose applications were denied at the same time – would impede victims' meaningful participation, in violation of Internal Rule 21 and international principles safeguarding victims' interests. An extension is necessary to allow the Civil Party Co-Lawyers to adequately consult with their clients whose interests are affected by the Admissibility Order in order to prepare any appeals." (para. 9)
6.	**004 Civil Parties** PTC 62 D384/4 22 August 2019 *Decision on Civil Party Co-Lawyers' Urgent Requests for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004*	"The Pre-Trial Chamber reaffirms that victims should be afforded with fair and effective access to justice and that they should be allowed to present their 'views and concerns […] at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.'" (para. 5) "[F]ailing to extend this short deadline in circumstances where Civil Party Co-Lawyers have hundreds of clients whose applications are simultaneously denied, would impede victims' meaningful participation, in violation of Internal Rule 21(1) and international principles safeguarding their interests." (para. 6)
7.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[V]ictims and civil party applicants may have first-hand information about the facts relevant to the investigation before the ECCC. The credibility of their evidence, therefore, should be evaluated on a case-by-case basis, and not automatically be regarded as intrinsically unreliable. The fact that they have a personal interest in the outcome of the case should not lead to the assumption that their evidence is less credible. The International Judges reaffirm that the Co-Investigating Judges' such hierarchisation limits the effectiveness of the victims' right of access to the courts and is contrary to Article 137 of the Cambodian Code of Criminal Procedure, which explicitly states that there is no formal requirement for the civil party to intervene at the investigation stage." (Opinion of Judges BEAUVALLET and BAIK, para. 159) "The […] International Co-Investigating Judge's formalistic approach of denying *prima facie* the presumption of reliability for civil party applications and vesting them with less weight than other evidence collected by their Office is not only legally incorrect within the ECCC legal framework, but also practically unsound and inappropriate under Internal Rule 21(4) as the Co-Investigating Judges would be bound to interview each civil party applicant individually in order to ensure probative value and safeguard the victims' access to the ECCC, creating delays in the proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 160)
8.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019	"[T]he International Judges are unpersuaded that the Court's exercise of personal jurisdiction […] in Case 004/2 will lengthen the time and spend money unnecessarily." (Opinion of Judges BAIK and BEAUVALLET, para. 653)

	Considerations on Appeals against Closing Orders	"[…] While […] it takes time and resources to ensure that justice is served, disregarding the plight of the victims in Case 004/2 cannot be considered a feasible or reasonable means of achieving 'national reconciliation'. Each individual victim is entitled to access the mechanisms of justice and to prompt redress for the harm they have suffered." (Opinion of Judges BAIK and BEAUVALLET, para. 655)
9.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[P]ursuing reconciliation at the expense of justice to all the DK regime victims, including those in Case 004, will be contrary to their rights of access to justice and redress and may impede on the facilitation of a reconciliation process itself." (Opinion of Judges BAIK and BEAUVALLET, para. 496)

2. Participation

i. *Standing and Appealable Decisions and Orders*

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"At issue is the scope of Internal Rule 23(1) [...]. The question raised is whether this includes the possibility of Civil Parties to participate in the appeal against the Provisional Detention Order […]." (para. 35) "The Pre-Trial Chamber finds that the text of Internal Rule 23(1)(a) is clear in its wording that Civil Parties can participate in all criminal proceedings, which includes the procedure related to appeals against provisional detention before the Pre-Trial Chamber. [Internal Rules 21(1)(a), 23, 63(1)(a), 74(4), 77 and the Glossary of the Internal Rules] make it clear that Civil Parties have active rights to participate starting from the investigative phase of the procedure." (para. 36) "[T]he inclusion of Civil Parties in proceedings is in recognition of the stated pursuit of national reconciliation." (para. 37) "Reading Rule 23(1) in the light of the CPC means that the wording envisages participation of Civil Parties during the proceedings of the ECCC, including appeals against provisional detention orders." (para. 38) "According to Article 12 of the ECCC Agreement, there is an obligation for the Pre-Trial Chamber to see whether the CPC is consistent with international standards on this issue if the Pre-Trial Chamber is to seek guidance from the CPC." (para. 39) "The Pre-Trial Chamber finds that Internal Rule 23(1), when read to include civil party participation in proceedings of appeals against detention orders, is consistent with the international guidelines set out [the UN Victims Declaration, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law* and Serious Violations of International Humanitarian Law]. Furthermore, it is consistent with procedural rules of the international tribunals mentioned [ICC, UNTAET, Provisional Code of Criminal Procedure of Kosovo]. Considering this international practice, civil party participation during the detention phase must in addition be regarded as generally complying with fair trial principles. In general, it is further accepted that Civil Parties may have an interest in the outcome of an appeal against a detention order." (para. 40) "[T]here is no provision for the Civil Parties to participate in the adversarial hearing before the Co-Investigating Judges [regarding provisional detention under Internal Rule 63(1)] […]. Where an investigation is commenced by the Co-Prosecutors on the basis of a complaint, there is no procedure for the complainant to be informed of whether this has been followed by a judicial investigation. By operation of the Internal Rules, any prospective Civil Party will first become aware of any judicial investigations against a specific Charged Person upon the notification of the issuing of a provisional detention order, as is provided for in Internal Rule 46. Thus civil party participation is only possible and provided for in the Internal Rule 23(3) from and after the commencement of a judicial investigation, and, in effect, after an order has been made under Rule 63. Where a Charged Person has made an appeal against a provisional detention order, as provided for in Internal Rule 63(4), the Civil Parties will

		have the right to 'participate', as at this point the appeal forms part of the 'criminal proceedings', as provided for in Internal Rule 23(1)." (para. 41) "The contents of the submissions of the Civil Parties disclosed their awareness of their duty to only address relevant issues regarding the interests of the Civil Parties in the issues dealt with. This does not foreclose the possibility that the Civil Parties will in the future be encouraged or required to join their submissions where they share the same views in order to preserve the efficiency of the proceedings." (para. 46)" "Unlike the ICC Statute, the Internal Rules provide that once admitted, a Civil Party may participate in all stages of the proceedings according to Internal Rule 23(4). There is no need to show any special interest in any stage of the proceeding [...]." (para. 49)
2.	**002 Civil Parties** PTC 03 C22/I/46 1 July 2008 *Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties in IENG Sary's Appeal against Provisional Detention Order*	"Parties have different positions in the criminal proceedings and these positions even vary in the different stages of the proceedings. The Internal Rules contain certain rules which reflect those different positions." (para. 3) "During the hearing no new argument have been raised except for a reference to a principle that all Parties should be treated in the same way. The Pre-Trial Chamber finds that no such general principle exists with respect to the length of oral submissions. Even if it did, such a principle would simply mean that as far their position is equal, Civil Parties should be treated in the same way." (para. 4) "Related to jurisdictional issues, the Pre-Trial Chamber considers that the Civil Parties have a direct interest which is separate from that of the Prosecution. If the Pre-Trial Chamber were to determine that there is no right to commence a criminal action against the Charged Person, the result might be that the Civil Parties have no possibility left to claim their damages as civil parties. This is different from the right of the Civil Parties to be heard in respect of the appeal against the detention order, as a decision by the Pre-Trial Chamber to grant the appeal would still enable civil parties to claim damages in the main trial." (para. 5)
3.	**002 NUON Chea** PTC 06 D55/I/13 25 February 2009 *Decision on Civil Party Co-Lawyers' Joint Request for Reconsideration*	"The Pre-Trial Chamber determines each case upon its merits and the issues raised therein. The Civil Parties are thus allowed to raise the issue of the applicability of the Internal Rules whenever they deem it necessary to do so." (para. 12)
4.	**002 IENG Sary** PTC 18 D138/1/8 13 July 2009 *Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigation"*	"[T]his appellate procedure relates to conduct foreseen in Internal Rules 35 and 38 and as such this procedure differs in its purpose and scope from appellate criminal proceedings related to safeguards for the rights of parties of specific criminal cases. The role of the Civil Parties, as foreseen by the ECCC Internal Rules, relates to specific criminal proceedings only and is designed to allow victims of crimes within ECCC jurisdiction to support the prosecution and to seek collective and moral reparations. As the Co-Prosecutors have no standing in this procedure, inviting the Civil Parties to support them is not possible for the current Appeal. Claims for reparation are not relevant in this appeal to provide standing for Civil Parties." (para. 32)
5.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against*	"The First Appeal is filed pursuant to Internal Rule 74(4)(a) according to which Civil Parties may appeal against orders by the CIJs refusing requests for investigative action allowed under the Rules, and Internal Rule 55(10) pursuant to which at any time during an investigation, a Civil Party may request the CIJs to make such orders or undertake such investigative action as he/she considers necessary for the conduct of the investigation. The Pre-Trial Chamber considers that both Internal Rules apply to Civil Party Applicants as well as Civil Parties, unless their civil party application has been declared inadmissible by a final decision." (para. 16)

	Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications	"Read together, Internal Rules 55(3) and 55(10) show that while Civil Parties and Civil Party Applicants may request the CIJs to make such orders or undertake such investigative action as they consider necessary for the conduct of the investigation, the scope of the investigation is defined by the Introductory and Supplementary Submissions. The Pre-Trial Chamber is of the view that the restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative actions for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 17) "[U]nlike under Cambodian criminal procedure, 'a victim who wishes to be joined as a Civil Party may only do so *by way of intervention […]*'." (para. 30). "[T]he restriction imposed by Internal Rule 55(3) on the CIJs, who can only investigate new facts that are limited to aggravating circumstances relating to an existing submission, or for which the Co-Prosecutors have filed a Supplementary Submission, equally applies to Civil Parties and Civil Party Applicants, who can bring new facts to the attention of the CIJs or the Co-Prosecutors, but have no standing for requesting investigative actions for such facts unless these are included by the Co-Prosecutors in a Supplementary Submission." (para. 48) "The […] ECCC law, whose purpose is to bring to trial senior leaders of DK […] also indirectly recognizes the participation of victims to the proceedings since it acknowledges the possibility for victims to appeal a decision of the Trial Chamber before the Supreme Court of the ECCC." (para. 50) "During the investigation and within its scope, they [civil party applicants] can request such orders and investigative actions they deem necessary for the conduct of the investigation. The admissibility of their application during the investigation is strictly dependant on their capacity to establish that their alleged injury is a direct consequence of one or more crime(s) alleged by the Co-Prosecutors against the Charged Person(s). Once the Closing Order, if any, is final and any challenge brought to the CIJ's decision on the admissibility of civil party applications has been disposed of then at the trial stage and beyond the admitted Civil Parties comprise a single, consolidated group. In enacting the above-mentioned right for 'victims' to appeal foreseen in the ECCC Law, the Internal Rules provide for Civil Party Applicants and Civil Parties the right to appeal a limited number of decisions of the CIJs, and the right for Civil Parties to appeal decisions of the Trial Chamber in respect of their civil interests where the Co-Prosecutors have appealed." (para. 51) "The participation of victims before the ECCC is not unlimited. It provides the possibility for victims alleging injuries as a direct consequence of crimes alleged against the Charged Persons to effectively become part of the ECCC proceedings at the investigating stage and beyond. This is less than under Cambodian law, since a victim who wishes to be joined as a Civil Party before the ECCC may only do so by way of intervention, joining ongoing proceedings and within the scope determined by the Co-Prosecutors' Introductory and Supplementary Submissions." (para. 52) --- "We accept that a provisional status may not meet the requirement of certainty foreseen by Internal Rule 21(1), but it is clearly more favourable to the victims than a conservative decision to deny them any right to participate in the proceeding until such time as the rules foresaw determination of their status, which under the regime then applicable could have been delayed until the trial stage, or until such time as the CIJs – without legal basis in the Rules – formally and positively declared them admissible. […] We find that the said approach made the participation of Civil Party Applicants more meaningful than a more conservative approach would have, without prejudicing the rights of the Charged Persons. […] From the moment the CIJs had completed their analysis of whether the Appellants established that their alleged injury was the direct consequence of at least one of the crimes charged and found in the negative, they had an obligation to reject the civil party application in order to preserve the rights of the Charged Persons." (Opinion of Judges NEY, MARCHI-UHEL and HUOT, para. 11)
6.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010	"The Pre-Trial Chamber finds that the restriction imposed by Internal Rule 55(3) on the Co-Investigating Judges applies to requests made by Civil Parties." (para. 15) "The Appellants have not demonstrated that the requested investigative action is allowed under the Internal Rules. The Internal Rules do not provide for expansion of an investigation by a Civil Party. The

	Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons	Internal Rules do not provide for expansion of an investigation through a Supplementary Submission that would permit the Civil Parties to request: (i) a full investigative action concerning properties owned by the charged persons, (ii) preservation measures for any such properties, or (iii) identification of any transferred properties. [...] Since the Civil Parties lack standing to make the Request, the Appeal is inadmissible on the basis of Internal Rule 74(4)(a)." (para. 16) "It is noted that the inability of the Civil Parties to make a claim or request as a party having an interest in unlawfully obtained property and assets accords with the division of powers and rights between the respective parties to proceedings before this Court. […] The Civil Parties support the Co-Prosecutors at other stages of the proceedings, in particular to assist in establishing the truth relevant to the determination of the guilt or innocence of an accused person. Confiscation of unlawfully obtained assets, if any is part of the sentence and is not linked to reparations or the role of the Civil Parties." (para. 37)
7.	**002 Civil Parties** PTC 147 A410/2/6 29 June 2011 *Decision on Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness*	"The Pre-Trial Chamber notes that pursuant to Internal Rule 74, not all orders of the Co-Investigating Judges can be appealed by all of the parties and that the Civil Party can only appeal against those orders and decisions enumerated under Internal Rule 74(4)." (para. 9)
8.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"[T]he Co-Investigating Judges committed a procedural error in failing to grant the parties 15 days from the date of the Second Notice of Conclusion to request further investigative actions. The International Judges consider that this holding applies equally to Civil Parties and, consequently, victims had the right to apply as Civil Parties 15 days from the Second Notice of Conclusion." (Opinion of Judges BAIK and BEAUVALLET, para. 114)

ii. *Participation through Lawyers*

1.	**002 Civil Parties** PTC 03 C22/I/54 3 July 2008 *Written Version of Oral Decision of 1 July 2008 on the Civil Party's Request to Address the Court in Person*	"The Pre-Trial Chamber finds that the Civil Party is not permitted to address the Court in person. The system of the Internal Rules is clear. Specific provisions are contained in the Internal Rules for the pre-trial phase regarding the Civil Parties and their lawyers. Internal Rule 77(10) prescribes that only lawyers for civil parties have the right to make brief oral observations during pre-trial appeals." (para. 3)
2.	**002 Civil Parties** PTC 03 C22/I/68 28 August 2008 *Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person*	"The Pre-Trial Chamber cited Internal Rules 23(7), 77(4) and 77(10) which refer to the participation by civil parties through their lawyers, and noted with reference to fair trial principles that the Defence should be aware of the contents of the civil parties' oral submissions in advance of the hearing. […] The Pre-Trial Chamber therefore found that the Internal Rules should be read to provide that Civil Parties who have elected to be represented by a lawyer shall make their brief observations related to the appeal through their lawyers." (para. 9) "In [C22/I/41], the Pre-Trial Chamber stated: 'Previously, the Pre-Trial Chamber directed that a Civil Party is not permitted to speak in person and reasoned this by reference to Internal Rule 77(10) […].'" (para. 12)

		"The Pre-Trial Chamber was advised that the Civil Party […] had dismissed her lawyer. […] In [C22/I/54], a majority of the Pre-Trial Chamber ruled that the Civil Party was not permitted to address the Court in person. The majority stated: 'The system of the Internal Rules is clear. Specific provisions are contained in the Internal Rules for the pre-trial phase regarding the Civil Parties and their lawyers. Internal Rule 77(10) prescribes that only lawyers for civil parties have the right to make brief oral observations during pre-trial appeals.' Judge Rowan Downing appended a dissenting opinion, stating that there appeared to be a conflict between Internal Rule 23 and 77(10). In this particular instance, where the Civil Party had dismissed her lawyer, Judge Downing would have been prepared to allow her to address the Court on the jurisdictional issues, since one possible effect of a decision on the appeal could be the extinguishment of the right to bring a claim against the Charged Person." (para. 13)

iii. *Information, Access to Case File and Notification of Documents*

For jurisprudence concerning the ***Confidentiality of the Investigation***, see IV.B.6. Confidentiality of Judicial Investigation

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"The Pre-Trial Chamber considers that the due diligence displayed in the Co-Investigating Judge's conduct is a relevant factor when considering victims' rights in the proceedings." (para. 51) "While the Pre-Trial Chamber has previously found that 'many factors affect the timing of decisions' and it acknowledges that the Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, it notes that such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected *throughout* the proceedings.' The Pre-Trial Chamber emphasizes that Internal Rule 21(1)(c) does not leave room for interpretation, it does not say 'as soon as possible' or 'in any event, before the end of the judicial investigation.' Specific provision in the Internal Rules of the necessity to keep the Victims informed throughout the proceedings is necessary also because, pursuant to the Internal Rules, unlike the lawyers of the parties to the proceedings, the legal representatives of the Victims do not have an automatic right of access to the case file therefore they are fully dependent on the information they get from the Co-Investigating Judges." (para. 52) "The Pre-Trial Chamber further notes that the Co-Investigating Judges, pursuant to the requirement in Internal Rule 21 to safeguard the interests of all parties, should have taken into consideration also the fact that Internal Rules were amended in respect of the possibility of victims to be admitted as civil parties in the trial phase. […] [T]he system was redesigned so that the decision on admissibility of a Victims' application to become a Civil Party became solely within the jurisdiction of the Co-Investigating Judges with an appeal to the Pre-Trial Chamber. This fact makes the necessity for proper and timely information to be provided to the victims throughout the pre-trial phase significantly more compelling than before." (para. 53) --- "Since civil party status should only be afforded, at the pre-trial stage, to applicants who can demonstrate the appropriate causal link between the harm and crime charged and, on appeal, for which an accused is indicted in the Closing Order, it was not possible for the Co-Investigating Judges to know with certainty, prior to the issuance of the Closing Order, precisely which applicants would be found admissible and which would not. […] [T]he very conduct of an impartial judicial investigation means that it is not possible to know in advance exactly which offenses will form part of any indictment. The factual parameters of the offenses for which a charged person may be indicted will move, which will cause the civil party lawyers to supplement the applications of their clients as the target is moving. This moving target is shared by the Co-Investigating Judges. If civil parties choose to file an application at an early stage of the investigation, they may still file supplementary materials in support of their application. […] The task of the civil party lawyers may be difficult, but the process is not unfair as the civil party lawyers have several opportunities to present the best case possible for their clients at different stages of the investigation, including as the judicial investigation neared completion. […] [T]he complaints […] as to […] information […] should have been dismissed." (Opinion of Judge MARCHI-UHEL, para. 22)

2.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"As emphasised by the Pre-Trial Chamber in [Case 002 D404/2/4], the disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis*. In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia*, a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available. In contrast to their previous practice in Case 002 and despite the specific and directed framework established by the Internal Rules, especially the right to apply to become civil parties in cases before the ECCC, the Co-Investigating Judges have offered no explanation whatsoever for not giving the victims, as potential civil party applicants and complainants, any information about the judicial investigation conducted in Case 003." (Opinion of Judge LAHUIS and DOWNING, para. 4) "We take note that no civil party applicant has been in a position to effectively exercise the right to participate in the judicial investigation expressly provided for under the Internal Rules and that this situation appears to result, to a significant extent, from the lack of information surrounding the investigation in Case 003. As such, we consider that the rights of the victims have been ignored thus far to their detriment. We also emphasise that by being allowed under Internal Rules to participate in the judicial investigation in various ways, victims as complainants or civil party applicants, may bring important information pertaining to the facts under investigation, including the role the Suspects may have played in the alleged crimes. Refusing them the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality." (Opinion of Judge LAHUIS and DOWNING, para. 5)
3.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"[The] belated filing of the Application [on the Case File] may be perceived as an attempt to prevent the Appellant's Co-Lawyers from having access to the Case File in Case 004." (Opinion of Judges DOWNING and LAHUIS, para. 2) "[The] Appellant's Application was filed, dealt with and rejected by the Co-Investigating Judges without him having been provided with any information about the scope of the investigation, thus impairing his ability to effectively exercise his right to make and substantiate his Application to become a civil party under Internal Rule 23*bis.* In particular, no information whatsoever about the scope of the investigation was available to the public, the victims and potential civil parties, including the Appellant, at the moments the Appellant filed his Application and Appeal. In particular, after he had filed his Application, the Appellant had not been given access to the Case File, nor had been provided, in any other way, information about the scope of the investigation prior to his Application apparently being rejected […]. [T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise their right to file an application to become a civil party under Internal Rule 23*bis*. If the Co-Investigating Judges considered that it was too early to disclose the scope of their investigation […], then the Internal Rules required them to wait until such information is indeed disclosed and civil party applications lodged before them are adequately supplemented accordingly prior to deciding on the merits of these applications, as they did for the Appellant's Application. Acting otherwise amounts in our view to a premature rejection of the Application and defeats the whole regime established for victims under the ECCC Internal Rules. Given the premature rejection of the Application and the fact that the Appellant was not afforded any possibility to supplement his Application in the light of the information that was subsequently disclosed […], we are of the view that nothing would prevent him from submitting a new application should he consider it appropriate on the basis of the information that is now available. These conclusions are made regardless of whether or not the Appellant's Application satisfies, as currently based, the criteria to be admitted as a civil party in Case 004 pursuant to Internal Rule 23*bis*." (Opinion of Judges DOWNING and LAHUIS, para. 5) "[T]he fact that the Co-Investigating Judges consider that the ECCC may not have personal jurisdiction to prosecute the persons named as alleged perpetrators or accomplices in the Third Introductory Submission does not discharge them from their obligation to undertake investigative actions concerning the facts imputed to these persons in the Third Introductory Submission in order to fulfil the requirements of their obligation to investigate in a complete and impartial manner all the facts set out in the Third Introductory Submissions, as directed by Internal Rule 55(1). In this respect, we recall that victims, as either complainants and/or civil party applicants, can exercise rights and participate in judicial investigations conducted before the ECCC, which may consequently bring forward information conducive to ascertaining the truth, including information that may prove relevant or determinative in assessing the personal jurisdiction of the Court over the persons designated by name in the Introductory Submission. Hence, when a judicial investigation has been opened, as in Case 004, the

		Co-Investigating Judges shall, as a matter of principle, afford the victims the possibility to effectively and efficiently file complaints and/or civil party applications and more generally to participate in the investigation if they meet the legal requirements set out in Internal Rule 23*bis*." (Opinion of Judges DOWNING and LAHUIS, para. 6)
4.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Pursuant to the Internal Rules, the notification of a Notice of Conclusion of the investigation triggers a 15 day time limit for victims to submit Civil Party Applications […]. [T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis.* In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia,* a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available." (Opinion of Judges DOWNING and LAHUIS, para. 8) "We also take note that no civil party applicant has been in a position to effectively exercise the right to participate in the judicial investigation expressly provided for under the Internal Rules and that this situation appears to result, to significant extent, from the lack of information surrounding the investigation in Case 003. As such, we consider that the rights of the victims have been ignored thus far to their detriment. We also emphasise that by being allowed under the Internal Rules to participate in the judicial investigation in various ways, victims, as complainants or civil party applicants, may bring important information pertaining to the facts under investigation, including the role the Suspects may have played in the alleged crimes. Refusing them the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality." (Opinion of Judges DOWNING and LAHUIS, para. 9) "As general matter, the Pre-Trial Chamber has emphasized that provisions of the Internal Rules related to confidentiality of the judicial investigation, which restrict the information that the Co-Investigating Judges can publicly disclose, shall at all times be read in conjunction with the fundamental principles governing the conduct of proceedings before the ECCC, which, *inter alia*, command 'that victims are kept informed and that their rights are respected *throughout* the proceedings'. It was determined that this fundamental guarantee afforded to victims leaves no room for interpretation and entails that proper and timely information shall be provided to victims all through the pre-trial stage of proceedings. During the stage of the judicial investigation, this obligation is directly incumbent upon the Co-Investigating Judges, as they are responsible under the Internal Rules for conducting such investigation and accordingly possess an informed knowledge of the scope and factual parameters of it." (Opinion of Judges DOWNING and LAHUIS, para. 10) "Internal Rule 23*bis*(2), when read in conjunction with Internal Rule 55(6) and (11), gives civil party applicants the rights to have access to the case file, through their lawyers, from the moment the application is filed until the rejection of such application becomes final." (Opinion of Judges DOWNING and LAHUIS, para. 12)
5.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he disclosure of sufficient information about the scope of the investigation, in a timely manner, is essential to permit victims to exercise the rights provided to them under Internal Rule 23*bis.* In particular, for victims to apply to become civil parties in a case, they have to demonstrate, *inter alia,* a link between the injury suffered and at least one of the crimes alleged against a charged person. Such a demonstration cannot be made when no information whatsoever is available." (Opinion of Judges DOWNING and LAHUIS, para. 8) "We also take note that no civil party applicant has been in a position to effectively exercise the right to participate in the judicial investigation expressly provided for under the Internal Rules and that this situation appears to result, to significant extent, from the lack of information surrounding the investigation in Case 004. As such, we consider that the rights of the victims have been ignored thus far to their detriment. We also emphasise that by being allowed under the Internal Rules to participate in the judicial investigation in various ways, victims, as complainants or civil party applicants, may bring important information pertaining to the facts under investigation, including the role the Suspects may have played in the alleged crimes. Refusing them the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality." (Opinion of Judges DOWNING and LAHUIS, para. 10) "As general matter, the Pre-Trial Chamber has emphasized that provisions of the Internal Rules related to confidentiality of the judicial investigation, which restrict the information that the Co-Investigating

		Judges can publicly disclose, shall at all times be read in conjunction with the fundamental principles governing the conduct of proceedings before the ECCC, which, *inter alia*, command 'that victims are kept informed and that their rights are respected *throughout* the proceedings'. It was determined that this fundamental guarantee afforded to victims leaves no room for interpretation and entails that proper and timely information shall be provided to victims all through the pre-trial stage of proceedings. During the stage of the judicial investigation, this obligation is directly incumbent upon the Co-Investigating Judges, as they are responsible under the Internal Rules for conducting such investigation and accordingly possess an informed knowledge of the scope and factual parameters of it." (Opinion of Judges DOWNING and LAHUIS, para. 11) "Internal Rule 23*bis*(2), when read in conjunction with Internal Rule 55(6) and (11), gives civil party applicants the rights to have access to the case file, through their lawyers, from the moment the application is filed until the rejection of such application becomes final." (Opinion of Judges DOWNING and LAHUIS, para. 13)
6.	**Case 003 Civil Parties** PTC 05 D11/3/4/2 13 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant CHUM Neou*	"Although Internal Rule 46(1) provides that the Co-Investigating Judges orders shall be notified to the parties or their lawyers, we consider in light of the larger context in which the Co-Investigating Judges repeatedly abstained from notifying documents to lawyers for civil party applicants in Case 003, that this course of action may be perceived as an attempt to impair the Appellant's right to legal representation." (Opinion of Judges CHUNG and DOWNING, para. 2) "[W]e find that the total absence of information about the scope of the investigation disclosed by the Co-Investigating Judges has impaired the Appellants ability to effectively exercise the right to make and substantiate the Application to become a civil party under Internal Rule 23*bis*, participate in the judicial investigation as a right under the Internal Rules. We recall that, by being allowed under the Internal Rules to participate in the judicial investigation in various ways, victims, as complainants or civil party applicants, may bring important information pertaining to the facts under investigation, including the role suspects may have played in the alleged crimes. Refusing to victims the possibility to participate in the investigation can deprive the Co-Investigating Judges of significant information in the search for the truth, leading to an incomplete investigation and raising doubts about its impartiality." (Opinion of Judges CHUNG and DOWNING, para. 4) "We note that the proper placement of the Application and its related documents in the Case File and their effective notification *prior to* the issuance of the Impugned Order were required under the Internal Rules [55(6) and 22*bis*(2)] and international standards." (Opinion of Judges CHUNG and DOWNING, para. 6)
7.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"[W]e express our continued concern that the civil party applicants, through their lawyers, have not been given access to the case file. We also condemn the procedure by which the Impugned Order and its underlying application have been notified on the same day. […] [S]uch procedure violates the Rules and the fundamental principle of procedural fairness. Finally, we again remind the Co-Investigating Judges of their duty to sufficiently inform the public not only for purposes of transparency, but also to enable victims to apply, as is their right, to be complainants and/or civil parties." (Opinion of Judges DOWNING and CHUNG, para. 21) "[W]e note that the purpose of civil party action at the ECCC is, in part […], to seek reparations. However, and just as importantly, they are also positioned in, and *entitled* by, the Internal Rules to participate throughout the proceedings in support of the Prosecution." (Opinion of Judges DOWNING and CHUNG, para. 24) "[T]he provision in the Internal Rules for the representation of the civil parties collectively is a procedural regime adopted in the interests of efficiency and expeditiousness. […] [I]t is for the Trial Chamber, subject to Supreme Court Chamber review, not the Co-Investigating Judges or Pre-Trial Chamber, to determine what procedures and safeguards will be applied to ensure a fair and expeditious trial." (Opinion of Judges DOWNING and CHUNG, para. 25) "In relation to the investigations and pre-trial phase, we consider that unfounded rejection of civil party applicants […] may result in appeals, motions for reconsideration, decisions on reconsideration and further applications. Such unfounded rejection thereby threatens to impede the proceedings." (Opinion of Judges DOWNING and CHUNG, para. 26) "Moreover, we note that […] the Co-Prosecutors and Co-Investigating Judges have a 'very difficult decision' in considering whether to take further investigative action and/or expand the scope of an

		investigation. They must assess the impact of a supplementary submission or further investigative action on closure of a case, ensure that the investigations are concluded in a *reasonable* time without *undue* delay, and in turn, prevent the infringement of any party's rights. Such difficult assessments cannot be made until all requests for further investigations are made. Indeed, civil parties and civil party applicants have the right to request further investigations, rejections of which may be appealed to the Pre-Trial Chamber. Yet, until access to the case file is granted, requests by civil parties for further investigations cannot be made, at least not adequately. Thus it is the interest of an expeditious and efficient investigation overall to admit civil parties as appropriate, or at minimum, provide applicants the rights of civil parties until formal rejection as required in Internal Rules 23*bis*(2), at earliest possible stage." (Opinion of Judges DOWNING and CHUNG, para. 27) "Finally, the Internal Rules do not stipulate that civil parties can only participate and seek reparations in *one* case, or in relation to *one* defendant. [C]ivil party interests in participating and seeking reparations may well be distinct in a *new* case against *new* persons, 'who carried out distinct roles and responsibilities,' even if the underlying crime site remains the same. It is important to remember that civil party action is a personal action brought against named individuals alleged to have caused harm to the victim by their actions." (Opinion of Judges DOWNING and CHUNG, para. 28)
8.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"The Pre-Trial Chamber previously stressed the importance of informing the victims and considered that 'due diligence displayed in the Co-Investigating Judge's [*sic*] conduct is a relevant factor when considering victims' rights in the proceedings.' It further held that, even though the 'Co-Investigating Judges were bound by specific provisions of the Internal Rules on confidentiality of investigations and therefore were restricted in respect of information they could make public, […] such specific provisions should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and that their rights are respected throughout the proceedings.'" (para. 35)
9.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 21(1)(c) stipulates that '[t]he ECCC *shall* ensure that victims are kept informed and that their rights are respected *throughout* the proceedings.' Accordingly, in performing their obligations to properly and timely keep victims informed, the Co-Investigating Judges must exercise due diligence in safeguarding the interests and rights of victims, *throughout* the entirety of the investigative phase." (Opinion of Judges BAIK and BEAUVALLET, para. 102) "Although certain provisions of the Internal Rules governing the confidentiality of investigations serve to restrict the information that the Co-Investigating Judges can publicly disclose, these provisions 'should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC' of which Rule 21(1)(c) forms an integral part. As the Pre-Trial Chamber has recognised, victims are fully dependent on the information released by the Co-Investigating Judges to guide their participation in ECCC proceedings at the pre-trial stage, as they do not have an automatic right of access to the case file." (Opinion of Judges BAIK and BEAUVALLET, para. 103) "The International Judges do not consider that [doubt about the jurisdictional reach of the Court] constitutes a valid reason to leave victims in the dark about the matters under investigation in light of the Co-Investigating Judges' mandatory duty to keep victims informed under Internal Rule 21(1)(c). The International Judges recall that victims may bring forward information relevant to assessing the personal jurisdiction of the Court, in particular, the role that suspects may have played in relation to the alleged crimes. In the two-year period between the opening of AO An's judicial investigation and the […] Press Release, it was incumbent on the Co-Investigating Judges to disclose information so that interested victims may begin to adequately prepare Civil Party applications." (Opinion of Judges BAIK and BEAUVALLET, para. 107) "Furthermore, the International Judges recall that, previously in Case 002, the Pre-Trial Chamber found that the Co-Investigating Judges had failed to provide information to victims in a timely manner—where their first public disclosure about the investigation was issued on 5 November 2009, approximately two years after Case File 002 was created on 19 September 2007. The similar two-year delay in this case likewise gives rise to a violation of Internal Rule 21(1)(c), especially in the absence of valid justification for the delay." (Opinion of Judges BAIK and BEAUVALLET, para. 108)

		"In sum, although the International Judges find that the Co-Investigating Judges breached their obligations to timely keep victims informed, the prejudice which can be said to result therefrom would appear to be minimal. The multi-year period of time that transpired for victims to prepare Civil Party applications would appear to mitigate, if not eliminate as a practical matter, any prejudice that may have been caused by the Co-Investigating Judges' delay in disclosing investigative information." (Opinion of Judges BAIK and BEAUVALLET, para. 111)
10.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"As the International Judges have previously held, 'in performing their obligations to properly and timely keep victims informed, the Co-Investigating Judges must exercise due diligence in safeguarding the interests and rights of victims, *throughout* the entirety of the investigative phase.'" (Opinion of Judges BAIK and BEAUVALLET, para. 111) "[T]he International Judges do not consider that [the Co-Investigating Judges' doubts about jurisdiction] constitutes a valid reason to leave victims in the dark about the matters under investigation in light of the Co-Investigating Judges' mandatory duty to keep victims informed under Internal Rule 21(1)(c). In the two-year period between the opening of the judicial investigation concerning YIM Tith and the August 2011 Press Release, it was incumbent on the Co-Investigating Judges to disclose information so that interested victims may begin to adequately prepare Civil Party applications." (Opinion of Judges BAIK and BEAUVALLET, para. 112) "In sum, although the International Judges find that the Co-Investigating Judges breached their obligations to timely keep victims informed, the prejudice which can be said to result therefrom would appear to be minimal. The multi-year period of time that transpired for victims to prepare Civil Party applications would appear to mitigate, if not eliminate as a practical matter, any prejudice that may have been caused by the Co-Investigating Judges' delay in disclosing investigative information." (Opinion of Judges BAIK and BEAUVALLET, para. 115) "In view of the violation […], the International Judges would have been prepared to consider supplementary information submitted by Civil Party applicants to support their application that was discovered late as a direct result of the Co-Investigating Judges' failure to keep the victims timely informed." (Opinion of Judges BAIK and BEAUVALLET, para. 117)

iv. *Fair Determination*

1.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"In the instant case, the Civil Parties were not informed of the view taken by the Co-Investigating Judges in respect of the investigation, of the timing of any subsequent decision or given an opportunity to make further submissions directed to the issues as they may have then been. To deny a person an opportunity to make submissions before such a fundamental decision to terminate given rights, were such a decision to have been permitted, would be, in any event, a clear denial of the right to a fair determination of the matter." (Opinion of Judges DOWNING and PRAK, para. 10) "It is clear that the right to a fair determination of a matter, whether it be in a criminal matter or a civil suit, or, as in this instance, a civil action within a criminal matter, is a right protected by Article 14.1 of the [ICCPR]" (Opinion of Judges DOWNING and PRAK, para. 11) "The Pre-Trial Chamber is specifically directed to take into account Article 14 of the ICCPR by the operation of Article 13 of the Agreement between the United Nations and the Royal Government of Cambodia establishing the ECCC and by Article 33 new of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia. In the instant matter there is a determination of the rights of the Civil Party appellants, to remain a party to the proceeding. This is a fundamental determination of rights within the proceeding. The procedures and determination must be fair, with the process clear and the expressed rules applied. Article 14.1 of the ICCPR will apply in such instances where the decision will be determinative of the rights and obligations concerned in a 'suit at law'. […] Whilst the instant matter is not clearly with a final determination of a claim, it is a determination of the right of the person to make a claim and thus remain as a Civil Party. In respect of a civil suit such a right is basic to the action itself and must be considered in respect of the specific nature of civil claims made before the ECCC." (Opinion of Judges DOWNING and PRAK, para. 12) "A fair hearing or determination of a matter will involve not only a right to know the case one has to answer and a right to be heard, but also a right to procedural fairness. Procedural fairness in this regard

		will include a transparent and authorised procedure where the rights and obligations are properly provided, expressed and applied. In this way there is certainty in the expectation that a matter will be dealt with in a predictable, proper and defined manner. It is not for a court or judges, without any authorisation, to change stated procedures as a matter of expediency or for any other unauthorised reason. This is fundamentally procedurally unfair. Any action taken in respect of such unauthorised procedure is void." (Opinion of Judges DOWNING and PRAK, para. 13)
2.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"In our opinion, Internal Rule 23*bis*(2), when read in conjunction with Internal Rule 55(6) and (11), gives civil party applicants the rights to have access to the case file, through their lawyers, from the moment the application is filed until the rejection of such application becomes final. In the absence of any reason or explanation provided by the Co-Investigating Judges for not giving the Appellant's lawyers access to the case file at this stage and given the importance for the lawyers of having access to the case file in order to lodge their appeal, we are in favour of granting their Request to access the case file and, as such, that they be granted leave to file further submissions on the Appeal after having accessed the case file. However, considering that the Pre-Trial Chamber could not assemble a majority of four votes, no decision could be reached on the Request." (Opinion of Judge LAHUIS and DOWNING, para. 6)

v. *Right to Effective Remedy*

1.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"The right to an effective remedy, which is meant to protect victims, is a right that applies subsequent to a finding of a violation. No such finding of a violation can be made in the pre-trial stage of a criminal proceeding." (para. 29) "The Pre-Trial Chamber observes that the Human Rights Committee has recognised that in certain cases, the right to an effective remedy may entail interim or provisional measures. […] An applicant for interim measures must demonstrate that they would have a right to a claim and that irreparable damage to such claim will result if the requested measures are not provided for and implemented. […] As the Appellant has not demonstrated that interim measures, on the basis of an existing interest should be granted, the Appeal is not admissible on the basis of the obligations of this Court pursuant to the ICCPR and Internal Rule 21." (para. 31)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The interpretation of the Decree proposed by the Co-Lawyers for Ieng Sary, which would grant Ieng Sary an amnesty for all crimes committed during the Khmer Rouge era, including all crimes charged in the Closing Order, not only departs from the text of the Decree, read in conjunction with the 1994 Law, but is also inconsistent with the international obligations of Cambodia. Insofar as genocide, torture and grave breaches of the Geneva Conventions are concerned, the grant of an amnesty, without any prosecution and punishment, would infringe upon Cambodia's treaty obligations to prosecute and punish the authors of such crimes, as set out in the Genocide Convention, the Convention against Torture and the Geneva Conventions. Cambodia, which has ratified the ICCPR, also had and continues to have an obligation to ensure that victims of crimes against humanity which, by definition, cause serious violations of human rights, were and are afforded an effective remedy. This obligation would generally require the State to prosecute and punish the authors of violations. The grant of an amnesty, which implies abolition and forgetfulness of the offence for crimes against humanity, would not have conformed with Cambodia's obligation under the ICCPR to prosecute and punish authors of serious violations of human rights or otherwise provide an effective remedy to the victims. As there is no indication that the King (and others involved) intended not to respect the international obligations of Cambodia when adopting the Decree, the interpretation of this document proposed by the Co-Lawyers is found to be without merit." (para. 201)

3. Reparations

1.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"The Appellants misunderstand the application of the right to reparations. There is no provision under applicable law or interest of a Civil Party or any other party that permits the Co-Investigating Judges to undertake investigative action for a matter that is not within the scope of the investigation as delimited by the Co-Prosecutors. Furthermore, the Appellants cannot, by framing the right to reparations as a fundamental right under Internal Rule 21, succeed in expanding the class of persons subject to making reparations from convicted persons to those who are charged persons. The Pre-Trial Chamber finds that a plain reading of the Internal Rules leaves no room for doubt as to the class of persons who may be subject to reparations." (para. 20) "The Civil Parties only have the right to the possibility of an award of reparations made by a competent chamber against a convicted person. The Civil Parties have a right to seek reparations, not a guarantee of the receipt of reparations. […] It is the right to seek reparations, not the right to reparations, that may be protected by the Pre-Trial Chamber pursuant to Internal Rule 21." (para. 21) "Contrary to the assertions of the Appellants, Internal Rule 113 does not give the Civil Parties the right to initiate enforcement of reparations at the pre-trial stage of a criminal proceeding. Internal Rule 23*quinquies* specifies that reparations can only be awarded against a convicted person. As reparations can only be awarded against a convicted person, reparations cannot be *enforced* against an unindicted, untried and unconvicted person. It is outside the jurisdiction of this Chamber to take measures to enforce a potential award of reparations prior to such time as the competent chamber has determined guilt following a trial upon indicted charges, recorded a conviction and determined an award of reparations, if any. While, as described below, the Civil Parties have an interest in the assets of the charged persons, neither the interest itself nor any right in respect of such interest has crystallised. Pursuant to the framework of this Court, the fact that no interest or right has crystallised is dispositive. Granting the request relief would place the Pre-Trial Chamber and the Co-Investigating Judges in the position of acting beyond our collective jurisdiction." (para. 23) "The Pre-Trial Chamber notes that the right to the possibility of an award of reparations as provided for in the Internal Rules is very much more limited than the reparations scheme of the ICC. The ability of the competent chamber of the ECCC to award reparations, being limited to collective and moral reparations, is narrower than the grant of authority to order reparations authorized in Article 75 of the Rome Statute. Furthermore, before the ECCC there is no legal authorisation for a chamber to order the pre-trial freezing of assets, which is explicitly provided for in the Rome Statute and the ICC Rules of Procedure and Evidence. The ECCC legal framework does not grant any organ of the Court jurisdiction to enforce a reparation award." (para. 25) "Pursuant to the [ECCC Law], the only power of the Court to seise assets that have been unlawfully acquired, or more specifically acquired by criminal conduct, rests with the Trial Chamber." (para. 35) "There must be a judgment leading to a conviction before a sentence comprised of imprisonment and confiscation, if any, can be ordered. This capacity naturally resides with the trier of fact, the Trial Chamber, and not with the Pre-Trial Chamber. [...] [T]he requirement that confiscated property be returned to the State means that the Appellants are not the sole holder of an interest in unlawfully obtained assets. The State is the future recipient of unlawfully obtained assets and proceeds, the Appellants cannot claim to have cognizable interest that supports the request for investigative action. To set aside the Impugned Order in favour of the Appellants in respect of unlawfully obtained assets would (i) potentially favour the interests of the Civil Parties above those of the State without justification, (ii) presume the guilt of the charged persons, and (iii) pre-judge the decision of the Trial Chamber to award reparations and/or order confiscation, in the event of a conviction following a trial on an indictment." (para. 36) "An award for reparations, if made by the Trial Chamber, may include associated costs to be borne by the convicted person. This may require access to the assets of such a person. [...] This Court is not vested with the authority to take measures to preserve the assets of any charged person for any purpose. [...] The ECCC is not seised of jurisdiction to award damages or compensation. As this Court cannot award this relief, it is also not equipped with the procedural tools used by other courts to take measures aimed at preserving assets for possible future disposition." (para. 39)

F. Witnesses and Civil Party Applicants Interviews

For jurisprudence concerning the ***Reliability of Witness Evidence***, see IV.B.5.ii.e. Reliability of Witness Evidence

1. Conduct of Civil Party Applicants Interview

1.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[W]hile civil party applicants are interviewed by the investigating judge in the ordinary course under the civil law system, Internal Rule 59 […] permits an interview by the Co-Investigating Judges but does not require it. Furthermore, the scope of the facts that potentially fall within the ECCC's jurisdiction renders it impossible for the Co-Investigating Judges to investigate all facts […]. I therefore dismiss any argument that the Co-Investigating Judges committed an error of law because they did not interview every civil party applicant." (Opinion of Judge MARCHI-UHEL, para. 19)
2.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"There is thus no provision in the applicable law before the ECCC prohibiting the Co-Investigating Judges from requesting assistance or gathering information from other institutions, including from the Victims Support Section, which is specifically tasked with assisting victims in submitting civil party applications under the Judges' supervision." (para. 18) "Turning to the nature of the assistance requested from the Victims Support Section, the Pre-Trial Chamber does not consider that the questioning of civil party applicants requested by the former International Co-Investigating Judge can be characterised as a delegation of the power to conduct formal interviews, which are subject to the procedural requirements of Internal Rules 23(4) and 59. It is evident that that the former International Co-Investigating Judge did not treat or intend to treat the questioning of applicants by the Victims Support Section as formal civil party interviews." (para. 19) "[T]he Pre-Trial Chamber considers that the Victims Support Section did not undertake any delegated investigative action in place of the Co-Investigating Judges, in the sense of Internal Rules 55(9), 59(6) and 62, but instead properly assisted victims in submitting civil party applications, under the former International Co-Investigating Judge's supervision, pursuant to Internal Rule 12*bis*(1)(b)." (para. 21)

2. Conduct of Witness Interview

1.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to*	"In the several interviews where the witness was given the opportunity to correct, add or amend their prior statements, many took the opportunity to do so. Given this fact, the Pre-Trial Chamber does not consider it was an oppressive interview technique to read the witnesses prior statement […] and that this technique would taint the evidence obtained by the CIJs." (para. 28) "The Pre-Trial Chamber recalls that if the Appellant is indicted and presented for trial she would have the right to ask for the Trial Chamber to summons the witnesses and challenge the evidence at trial. […] The Pre-Trial Chamber finds that by allowing witnesses the opportunity to change their statements and the fact that few witnesses seemed to disagree with their statements, there is little to suggest the methodology behind [the book] would affect the probative value of the evidence for inclusion on the Case File." (para. 29) "The Pre-Trial Chamber finds that the Request puts the CIJs' on notice about the Appellant's concerns with the reliability of the evidence and its probative value. It notes that these considerations remain the CIJs' discretion. The reliability of the methodology may be interrogated at trial. The Pre-Trial Chamber does not find that the Charged Person rights will be violated by allowing the evidence to

	Re-Interview Certain Witnesses	remain on the Case File. Notwithstanding this finding, the Pre-Trial Chamber finds it appropriate to ensure that the fair trial rights of the Appellant are protected, should she be indicted, to order that she is provided by the CIJs with the list of witness interviews at which Mr Ysa was present." (para. 35) "As a general principle, good investigative practice involves the use of non-leading questions. The Pre-Trial Chamber posits it would not be appropriate in all circumstances to base a witness interview on a prior statement not given under oath, however, the Chamber finds that the CIJs adequately distinguished the current situation from those circumstances. The […] interview took place under oath and […] many witnesses took the opportunity to vary or comment on their previous statements. The CIJs restate that the Closing Order is the appropriate place for them to exercise their discretion and afford the appropriate level of probative value to this evidence. The Appellants fail to acknowledge the ability of the Charged Person to challenge the evidence at the trial stage […]." (para. 41)
2.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"There are indeed no prescribed requirements on pain of nullity, in the Internal Rules and other instruments applicable before the ECCC, including in Cambodian and French law, regarding the nature and form of questions asked during witness interviews. The Internal Rules only provide for substantial requirements such as the duty on the Co-Investigating Judges to make a written record of every interview, to take the oath of the witness before being interviewed, to establish whether the witness has a relationship with the Charged Person or a Civil Party, and to have the written record of interview signed or finger-printed by the interviewee. The format of questioning and conduct of witness and civil party interviews is thus left to the unfettered discretion of the Co-Investigating Judges." (para. 18) "As to whether alleged bias in conducting interviews would amount to a violation of an 'essential formality', the Pre-Trial Chamber previously held that a proven violation of a right of the charged person recognized in the ICCPR would qualify as a procedural defect and harm the interests of a charged person. […] In light of the foregoing, the Pre-Trial Chamber considers that a breach of impartiality, if proven, would amount to a cause of a substantive nullity." (para. 19) "The practice of confronting witnesses or civil parties to other narratives or evidence on the record, as well as to public statements of the charged person himself, is a legitimate investigative practice and does not evince any biased approach. The Pre-Trial Chamber actually considers that this practice to confront the interviewee with incriminating testimonies amounts to an exculpatory practice, since it objectively results in challenging the inculpatory evidence on the record." (para. 21) "The Pre-Trial Chamber particularly stresses that records of interviews have to be read as a whole to assess their regularity and that it exercises the utmost caution when examining excerpts of the investigators' work and questions isolated from the rest of the impugned interviews. […] The Pre-Trial Chamber also cannot identify any indicia of bias in the established investigative practice of having a witness confirm previous statements." (para. 22) "For the same reasons, the Pre-Trial Chamber is not convinced that the three investigators exceeded their discretion by not following up on certain leads or not testing inculpatory statements, such as to demonstrate to the requisite standard any bias or appearance of bias. […] The alleged absence of follow up or exploration of the basis for inculpatory assertions or alleged inconsistencies, in addition to not being established, is also rather related to the assessment of credibility and reliability of the evidence, which will be performed at a later stage. The Pre-Trial Chamber further considers that, in the present case, excerpts of records spotting the choice of investigators to explore certain leads in details, and not other leads preferred by the Applicant, do not constitute sufficient indicia of bias in light of their knowledge of evidence on the case file, this especially when a witness has already been interviewed at length." (para. 23) "Finally, the Pre-Trial Chamber […] recalls, in particular, the absence of obligation to keep record and disclose such conversations, as well as the presumption of regularity attached to written records of interview which has not be rebutted in the present case. The existence of off-record conversations, even if proven, would indeed not affect the validity of the interview but merely its probative value." (para. 24) "[A]n Internal Rule 48 annulment would not the only remedy available for the alleged shortcomings. The circumstances in which evidence is obtained, including the reliability of the interviews in light of the nature of the questions asked to the witnesses and civil parties, will be fully assessed at the closing order stage, including eventually by the Pre-Trial Chamber, and, should the case go to trial, by the Trial Chamber." (para. 25)

3.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"[T]he Internal Rules do not set any definition for interviews, but rather only spell out some conditions according to which they must be performed. In that sense, Internal Rule 24 does not help in determining whether the telephone call in question amounts to an interview but, instead, it can help determine its procedural regularity, in the event that it amounts to an interview." (Opinion of Judges BEAUVALLET and BAIK, para. 59) "The Undersigned Judges do not consider that a brief telephone call to check the spelling accuracy of a single word necessarily amounts to an interview. The Undersigned Judges recall that the goal of that phone call was not to collect additional evidence. It rather was to verify whether 'a spelling error in the original Khmer and the English translation', as regards the name of an already alleged crime location, had occurred." (Opinion of Judges BEAUVALLET and BAIK, para. 60) "[W]hile Internal Rule 24 sets a clear legal framework for the conduct of witness interviews, it does not explicitly prohibit other ways of interacting with witnesses in order to verify any information they may have. […] The Undersigned Judges find no provision in the Internal Rules which specifically governs such type of contacts. The Defence's suggestion that the telephone call in question amounts to a formal and substantive interview is, therefore, pure speculation." (Opinion of Judges BEAUVALLET and BAIK, para. 62) "The Undersigned Judges, having reviewed the disputed record, find that its title mirrors the nature of the action recorded therein, which could in no way be seen as an interview. Therefore, Internal Rule 24 does not govern the regularity of that record." (Opinion of Judges BEAUVALLET and BAIK, para. 65)
4.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"The Pre-Trial Chamber recalls that there are no prescribed requirements on pain of nullity, in the applicable law before the ECCC, regarding the nature and form of questions asked during witness interviews, and that the format of questioning and conduct of witness and civil party interviews is left to the unfettered discretion of the Co-Investigating Judges. The Pre-Trial Chamber further stresses that records of interviews have to be read as a whole to assess their regularity and that it will exercise the utmost caution when examining isolated excerpts of an investigator's work." (para. 16) "[T]he Pre-Trial Chamber is not convinced that the Investigator exceeded his discretion by not following up on certain leads or not testing inculpatory statements, such as to demonstrate any bias or appearance of bias to the requisite standard. Excerpts of records where the Investigator chose to explore certain leads in details, and not other leads preferred by the Applicant, do not constitute sufficient indicia of partiality, especially in light of the Investigator's knowledge of evidence already on the case file." (para. 17) "The alleged feeding of 'preconceptions' of the case corresponds in fact to instances where the Investigator directed the interview to topics relevant to the Charged Person and to the crime base, after a series of open questions, and does not evince any biased approach. The Pre-Trial Chamber also summarily dismisses the argument that the Investigator's practice of thanking interviewees after answering a question would support the showing that he was, in fact, expressing gratitude to them for 'giving the answer he wants'." (para. 18) "[T]he practice of confronting witnesses or civil parties to other narratives or incriminating evidence on the record is a legitimate investigative practice, which actually aims to test the inculpatory evidence on the record and thus does not demonstrate any bias. The Pre-Trial Chamber finally does not identify any misconduct in the established practice of having a witness confirming or infirming previous statements, and does not find any misrepresentation by the Investigator of the evidence at his disposition when confronting it to witnesses." (para. 19) "Internal Rule 25 concerns audio and video-recording and does not impose any obligation on the Office of the Co-Investigating Judges to record interviews of persons other than a Suspect or Charged Person. By contrast, Internal Rule 55(7) does cast a duty on the Co-Investigating Judges to make a written record of every interview, while Internal Rule 55(8) provides that Greffiers shall accompany the Co-Investigating Judges during site visits and make a written record. Article 115 of the Cambodian Code of Criminal Procedure similarly provides that '[a] written record shall be established for every interrogation. The record shall accurately reflect the responses of the relevant person.' The Pre-Trial Chamber previously held, however, that this duty does not encompass an obligation to keep record of initial contact with witnesses or of 'screening' questions asked before the interview pursuant to Internal Rule 24." (para. 21)

		"[T]he presumption of reliability attached to written records of interview is not rebutted when the Investigator asked the witness to repeat relevant information given before the interview, during screening questions, or during a break. It is actually an appropriate investigative practice, which does not evince any bias, to have witnesses repeating information given off-the-record, solicited or not, for the purpose of having an accurate record of their evidence." (para. 22) "While the Pre-Trial Chamber acknowledges some uncertainty concerning the sources of evidence used by the Investigator during those interviews, it recalls that the onus rests with the movant to prove that the presumption of reliability no longer applies. In this case, based on the excerpts presented in the Application, it would be highly speculative to infer that actual 'interviews' in the sense of Internal Rule 24, exceeding mere initial contact or preliminary information, were conducted and not recorded, in breach of Internal Rule 55(7), or that site visits failed to be adequately recorded pursuant to Internal Rule 55(8)." (para. 23) "The Pre-Trial Chamber further considers that the existence of off-the-record conversations, even if proven, would not affect the validity of the impugned interviews but merely their probative value. The Pre-Trial Chamber therefore finds that the presumption of reliability has not been rebutted and that no procedural defect has been established that would justify the annulment of the impugned interviews." (para. 24) "The Pre-Trial Chamber recalls that, while Internal Rule 24 sets a clear legal framework for the conduct of witness interviews, it does not give any definition of what amounts to an interview and does not explicitly prohibit other ways of interacting with witnesses in order to verify any information they may have." (para. 28) "In the present case, […] the meeting was duly scheduled and aimed at collecting more evidence about the criminal allegations involving the Applicant. The Pre-Trial Chamber further notes that the meeting […] was conducted face-to-face by two staff members of the Office of the Co-Investigating Judges, that it took place in the very premises of the ECCC, and that it lasted two hours and twenty minutes. It also stresses that the impugned written record of investigative action explicitly states that the staff members of the Office of the Co-Investigating Judges were conducting an '*off-the-record interview*' […]." (para. 29) "In light of these circumstances, the Pre-Trial Chamber considers that the off-the-record meeting […], amounts to an interview in the sense of Internal Rule 24." (para. 30) "The Pre-Trial Chamber recalls that Internal Rules 24, 55 and 60 provide for substantial requirements for witness interviews, such as the duty for the Co-Investigating Judges to make a written record of every interview, which mirrors Article 115 of the Cambodian Code of Criminal Procedure, as well as the duties to take the oath of the witness before being interviewed, to establish whether he or she has a relationship with the Charged Person or a Civil Party or to have the written record of interview signed or finger-printed by the interviewee." (para. 31) "The Pre-Trial Chamber […] recalls the unfettered discretion of Co-Investigating Judges in the conduct of interviews and considers it reasonable for an investigator to confront interviewees to other evidence on the record without specifying each and every reference, especially in light of confidentiality and witness protection constraints." (para. 38) "The Pre-Trial Chamber, however, finds […] that the conversation of the Investigator […] constitutes no more than an initial contact aiming at determining whether the witness is able to give information on the topic(s) of the intended interview. It recalls that there is no obligation to keep record of such initial contact in the form prescribed by Internal Rules 24 and 55(7), and certainly no breach of Internal Rule 25(2), which deals with reasons for not audio or video-recording a Suspect or Charged Person's interview." (para. 39) "[T]he practice in Cambodia does not require records of interviews to be verbatim records but only to accurately reflect the responses of the interviewee […]. It is actually a prescription of Internal Rule 55(7) to have the interviewee read over the record before signing it, thereby ensuring that it is consistent with his or her statements, and a good investigative practice to record any comment made during such reading." (para. 40) "Internal Rule 36(1) on false testimony provides that the Co-Investigating Judges may 'remind a witness of their duty to tell the truth and the consequences that may result from failure to do so.'

		Confrontations between witnesses, explicitly provided for in Article 153 of the Cambodian Code of Criminal Procedure, are also legitimately used by the Co-Investigating Judges who, pursuant to Internal Rule 55(5), 'may take any investigative action conducive to ascertaining the truth.' It was thus proper for the Investigator, when confronted to apparent contradictions in the evidence, to remind interviewees of their oath or of the possibility to organise a confrontation." (para. 42) "Finally, while the Pre-Trial Chamber agrees that certain comments from the Investigator may, out of context, seem to express an opinion on the evidence or the sincerity of the witness, it finds those isolated excerpts insufficient to establish any bullying or intimidation. Rather, having reviewed each impugned interview and the Investigator's work as a whole, it considers that it was not inappropriate for the Investigator, taking into account factors such as the willingness of the witness to cooperate, former statements or positions allegedly held during Democratic Kampuchea, to insist or repeat questions to obtain complete answers or to confront the witness with contradicting or incriminating evidence on the record. A full reading of the same impugned interviews actually reveals that the Investigator, when coming to sensitive issues, did not try to intimidate but rather to build trust with the interviewees." (para. 43) "[A]nnulment would not be the only remedy available for the alleged shortcomings. The circumstances in which evidence is obtained, including the reliability of the interviews in light of the nature of the questions asked to the witnesses and civil parties, will be fully assessed at the closing order stage, including eventually by the Pre-Trial Chamber, and, should the case go to trial, by the Trial Chamber." (para. 45)

3. Written Record of Witness Interview

1.	**003 MEAS Muth** PTC 28 **D165/2/26** 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"The [Investigating] Judge is advised only to record interviews of particularly vulnerable persons but not duty-bound. Nonetheless, Internal Rule 55(7) casts a duty on the Co-Investigating Judges to make a written record of every interview. Discharge of such duty to make a written record consistent with the interviewee's statement is further ensured by the reading back of the statement to the said person and his or her signing and fingerprinting of each page." (Opinion of Judges BEAUVALLET and BAIK, para. 232) "The aforegoing Internal Rules on the duty to make a written record of witness interviews mirror Articles 93 and 115 of the Cambodian Code of Criminal Procedure […]." (Opinion of Judges BEAUVALLET and BAIK, para. 233) "The Undersigned Judges share the view of the Trial Chamber that the practice followed in Cambodia does not require written records of interviews to be verbatim records. It suffices for an official from the Office of the Co-Investigating Judges to make a report of the relevant statements given by the interviewee. The Internal Rules mandate that said person read over and sign or fingerprint each page, thereby ensuring that the written record is consistent with his or her statements." (Opinion of Judges BEAUVALLET and BAIK, para. 239) "Accordingly, the Undersigned Judges do not consider the non-verbatim nature of such a written record to constitute an irregularity. Furthermore, save where wilful distortion of the statements is proven, the presumption of reliability which attaches to investigative action, as aforementioned, means that the written record is presumed to reflect the answers given." (Opinion of Judges BEAUVALLET and BAIK, para. 240) "In the view of the Undersigned Judges, no doubt is cast on the reliability of the witness' evidence by the mere fact that, as the audio-recording makes apparent, the investigator told the witness that he would repeat a question as the answer had not been taken down, making his intention to do so known to the witness. The Undersigned Judges incline to the view that rather than showing that the investigator knowingly and wilfully distorted the witness' answers, that excerpt of the recording shows that the investigator endeavoured to make an accurate record of the witness' statements by asking that the answer be repeated so as to be accurately taken down. Accordingly, the Undersigned Judges find that procedural defect is not established." (Opinion of Judges BEAUVALLET and BAIK, para. 241) "According to the aforementioned presumption of regularity which attaches to investigative action, the written record is presumed to reflect the answers provided by the witness and the mere fact of not being able to compare them with the recording does nothing to refute the presumption. The

		Undersigned Judges find that the procedural defect alleged in respect of this interview is not established. (Opinion of Judges BEAUVALLET and BAIK, para. 249) "The Undersigned Judges consider that the fact that the investigator stated that the witness did recall the sites and his experiences there and that during the visit the witness imparted details which he did not when interviewed casts no doubt so as to refute the presumption of reliability which attaches to the report. The Co-Lawyers have not, in this instance, identified anything to refute the presumption." (Opinion of Judges BEAUVALLET and BAIK, para. 253)
2.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written Records of Witnesses' Interviews*	"[C]ontrary to the provisions of Internal Rules 55(7), 55(9) and 62, the Written Record of Interview […] is not signed by the witness concerned and pre-dates the Rogatory Letter […] authorising the interview of the witness. It therefore fails to meet the requirements of a written record of interview." (Opinion of Judges BEAUVALLET and BAIK, para. 50) "The Co-Lawyers fail to point to any concrete evidence on the case file – apart from suspicion of tampering and lack of impartiality on the part of the investigators – as proof of some procedural irregularity. […] [T]his [is] insufficient ground to rebut the presumption of reliability of written records of witness interviews. […] [T]he circumstances surrounding the witness interviews will be among the elements considered at a later stage during the assessment of evidence by the Co-Investigating Judges, and, where necessary, by the Pre-Trial Chamber and the Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 54)
3.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"The Undersigned Judges find that the CIJs also have the discretion to check through a witness interview or through 'any investigative action conducive to ascertaining the truth' in order to clarify any uncertainty about the correct name of [a place]." (Opinion of Judges BEAUVALLET and BAIK, para. 66) "The Undersigned Judges deem that uncertainty about names of locations due to translation errors is always a possibility and may, sometimes, lead to confusion if left unclarified." (Opinion of Judges BEAUVALLET and BAIK, para. 67)
4.	**004 YIM TITH** PTC 45 D360/1/1/6 26 October 2017 *Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004*	"[Internal Rule 60(1)] confirms the Co-Investigating Judges' broad discretion as to how they want to collect evidence, through an interview taken by themselves, by delegated investigators upon a rogatory letter, or by any other investigative action conducive to ascertaining the truth." (para. 8) "[T]he Application concerns the transfer of evidence legally admitted in judicial proceedings, […] and falls under the Co-Investigating Judges' discretion to take any investigative action conducive to ascertaining the truth. The Co-Investigating Judges are neither bound to take interviews pursuant to Internal Rule 60 nor required to obtain testimonial evidence through confidential interviews conducted by themselves." (para. 10)

4. Audio or Video Record of Witness Interview

1.	**003 MEAS Muth** PTC 28 **D165/2/26** 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by*	"The Internal Rules do not mandate the recording of witness interviews. Internal Rule 25(1) provides: 'Whenever possible, when the Co-Prosecutors or Co-Investigating Judges question a Suspect or Charged Person, in addition to the written record of the interview, it shall be audio or video-recorded'. The Internal Rule which makes provision for the recording of interviews where possible does not, therefore, concern witness interviews. Internal Rule 25(4), which governs witness interviews, reads: 'The Co-Prosecutors or Co-Investigating Judges *may choose* to follow the procedure in this Rule when questioning other persons than those mentioned above [suspect or charged person], in particular where the use of such procedures could assist in reducing any subsequent traumatisation of a victim of sexual or gender violence, a child, an elderly person or a person with disabilities in providing their evidence'[emphasis added]." (Opinion of Judges BEAUVALLET and BAIK, para. 231) "Hence the recording of witness interviews is left to the unfettered discretion of the Investigating Judge. The Judge is advised only to record interviews of particularly vulnerable persons but not duty-bound. Nonetheless, Internal Rule 55(7) casts a duty on the Co-Investigating Judges to make a written

	the International Co-Investigating Judge	record of every interview. Discharge of such duty to make a written record consistent with the interviewee's statement is further ensured by the reading back of the statement to the said person and his or her signing and fingerprinting of each page." (Opinion of Judges BEAUVALLET and BAIK, para. 232) "This procedure, moreover, the Undersigned Judges note, accords with the previous rulings of the Trial Chamber, which on a number of occasions has affirmed that audio-recording is not mandatory: […]." (Opinion of Judges BEAUVALLET and BAIK, para. 234) "Accordingly, the Undersigned Judges see that audio- or video-recording of witness interviews is not mandatory. In this connection, the Undersigned Judges recall the principle concerning the presumption of reliability which attaches to investigative action, including interviews of witness. The presumption is rebuttable and the Undersigned Judges concur with the Trial Chamber, which has stated that a movant may, nonetheless, challenge the veracity of an interview by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (Opinion of Judges BEAUVALLET and BAIK, para. 235) "That the interviews of Witnesses […] were not recorded does not of itself refute the presumption of reliability which attaches to the interviews. Since written records of the witness interviews in their entirety were made, and having regard to the aforegoing principles, the Undersigned Judges do not find the procedural defect established." (Opinion of Judges BEAUVALLET and BAIK, para. 235) "[T]he Undersigned Judges note that at issue is the initiation of contact between an investigator and a witness in prospect of interview. In this respect, the Undersigned Judges see no provision of the Internal Rules which specifically governs such contact. [..] No duty cast on investigators foresees the audio- or video-recording of such initial contact." (Opinion of Judges BEAUVALLET and BAIK, para. 242) "Internal Rule 60 mirrors Article 153 of the Cambodian Code of Criminal Procedure, which makes provision for an Investigating Judge to take statements from any person whom they consider conducive to ascertaining the truth. Determination of the conduciveness of a person's statements entails confirmation of the person's identity, a cursory appraisal of his or her knowledge in connection with the facts of the case, and scheduling of the interview. A decision whether to question a witness is made after such contact and confirmation of identity, whose recording is not required by law. The Undersigned Judges consider, moreover, that it could in practice be counter-productive to make an audio- or video- recording of initial contact with witnesses as it could alarm them and deter them from giving evidence. That the recording of such initial contact is not mandatory does not violate the rights of the defence since investigators proceed under the oversight of the Co-Investigating Judges and in accordance with their instructions pursuant to Internal Rule 62. The Undersigned Judges recall the presumption of reliability which attaches to investigative action and the fact that the onus rests with the movant to prove that the presumption no longer applies. Lastly, the Undersigned Judges would note that the audio- or video- recording of interviews has long since not been governed by specific instructions, and therefore, such recording of initial contact with witnesses is even less so." (Opinion of Judges BEAUVALLET and BAIK, para. 243) "Internal Rule [55(8)] mandates a written record of a Co-Investigating Judges' site visit but in no way prescribes its audio- or video- recording. The Co-Investigating Judges must provide a detailed report to apprise the parties of the circumstances of the [site] visit. This modus operandi is consonant with the practice of countries which follow an inquisitorial model. The Undersigned Judges consider that, in accordance with Internal Rule 55(8), where the investigator provides a written record of investigative action on the site visit with the witness, the rights of the movant are not in any way violated." (Opinion of Judges BEAUVALLET and BAIK, para. 247) "The Undersigned Judges note that the movant is at liberty to avail himself of the site identification report describing the witness and investigator's visit. As the preceding analysis makes clear, a written record of investigative action is the sole mandatory requirement and no procedural defect ensues from the absence of recording." (Opinion of Judges BEAUVALLET and BAIK, para. 251)
2.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's*	"[T]he Internal Rules do not mandate the recording of witness interviews. Internal Rule 25(1), which makes provision for the recording of interviews where possible, concerns only the interview of a Suspect or Charged Person." (para. 19) "Hence the recording of witness interviews is left to the unfettered discretion of the Co-Investigating Judges, who are advised to record interviews of particularly vulnerable persons but not duty-bound.

	Application to Annul Non-Audio-Recorded Written Records of Interview	Internal Rule 55(7) only casts a duty on the Co-Investigating Judges to make a written record of every interview." (para. 20) "[A]udio- or video-recording of witness interviews is not mandatory. In this connection, the Pre-Trial Chamber recalls the principle concerning the presumption of reliability which attaches to investigative action, including interviews of witness. The presumption is rebuttable and a movant may challenge the veracity of an interview by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true." (para. 22) "In the present case, the fact that the impugned witness interviews were not recorded does not of itself refute the presumption of reliability which attaches to the interviews. Provided that written records of the interviews were made pursuant to Internal Rule 55(7), and having regard to the foregoing principles, the Pre-Trial Chamber does not find the procedural defect established." (para. 23)

G. Protection of Victims and Witnesses

1.	**002 Civil Parties** PTC 03 C22/I/57 8 July 2008 *Decision on Civil Party Request for Protective Measures related to Appeal against Provisional Detention Order*	"Civil Parties have made clear that they have an interest in not having their names made public during the hearing. Before the hearing, the Pre-Trial Chamber was not informed of and was not aware of an interest of any other party in revealing the identities of the Civil Parties." (para. 3) "It was therefore decided before the hearing that the names of the Civil Parties mentioned in the Request would be kept confidential during the hearing as requested." (para. 4)
2.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"In light of the jurisprudence from the International Criminal Court, the European Court of Human Rights and the European Commission for Human Rights, the Pre-Trial Chamber considers that limitation of contacts can only be ordered to prevent pressure on witnesses or victims when there is evidence reasonably capable of showing that there is a concrete risk that the charged person might collude with other charged persons to exert such pressure while in detention. With the passage of time, the threshold becomes higher as the investigation progresses and the risk necessarily decreases." (para. 21) "[T]he mere fact that provisional detention was considered to be a necessary measure to prevent the Charged Person from exerting pressure on witnesses and victims does not lead to the conclusion that the Charged Persons might collude, while in detention, to exert such pressure. The basis of detention to prevent a charged person from exerting pressure on witnesses or victims is the fact that if not detained, this person would be in proximity to witnesses and victims and those with whom he or she could directly arrange to exert such pressure." (para. 22)
3.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"Preventing testimony from witnesses that have been deemed conducive to ascertaining the truth may infringe upon the fairness of the trial. […] It is imperative that this Chamber do its utmost to ensure that the charged persons are provided with a fair trial." (Opinion of MARCHI-UHEL and DOWNING, para. 12)
4.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"[P]ursuant to Internal Rule 79(6)(b), the Trial Chamber has exclusive competence to order, by reasoned decision that all or part of the hearing to be heard in closed session. […] [I]t is for the Trial Chamber to decide if a witness should testify in closed session at trial and that this prerogative to conduct proceedings is independent from the Co-Investigating Judges' discretion to release confidential information from ongoing investigations." (para. 28)
5.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's*	"The Pre-Trial Chamber notes that, in making considerations, in the disclosure decisions, for modalities of the allowed disclosure, the ICIJ's function is limited to providing learned guidance to the Trial Chamber which, in turn, has exclusive jurisdiction to issue decisions on closed session testimonies." (para. 14) "The Pre-Trial Chamber finds that, in making considerations, in disclosure decisions, for modalities of the allowed disclosures, the ICIJ does not 'act in accordance with the principles of [Internal] Rule 29'

	Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)	[…]. According to Internal Rule 29, the CIJs may order measures to ensure the protection of victims and witnesses. The 'protective measures' and the 'modalities of disclosure' are aimed at safeguarding substantially different values and interests because, on the one hand, modalities of disclosure are aimed at maintaining confidentiality of judicial investigations in order to 'preserve the rights and interests of the parties', and on the other hand, protective measures are aimed at protecting victims and witnesses when there is a risk of serious danger to their life and health, or to that of their families. While the ICIJ's decision allowing disclosure are necessitated by a legitimate obligation to cooperate in the truth finding process of another *judicial body* of the ECCC, ICIJ's considerations on what would be the most appropriate modalities for the allowed disclosures, are guided by the requirement to safeguard the confidentiality of investigations set in Internal Rule 56. Accordingly, the term 'protective measures' in Internal Rule 74(3)(h) has to be read in the light of the provisions of Internal Rule 29(4) and (8). Any request for 'modalities of disclosures' by the ICIJ, for the attention of the Trial Chamber, is dictated by the ICIJ's obligation under Internal Rule 56 to preserve the confidentiality of investigations, and is not subject to pre-trial appeal." (para. 15)
6.	**004/1 IM Chaem** PTC 54 D304/6/4 8 June 2018 *Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission*	"Coming to the redaction of all evidence gathered from witnesses or civil party applicants, the Pre-Trial Chamber finds that it is of utmost importance to ensure the security of the victims and witnesses." (para. 23)

VII. PROCEEDINGS BEFORE THE PRE-TRIAL CHAMBER

A. Settlement of Disagreements

1. Settlement Procedure under Internal Rules 71 and 72

i. *General*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Pre-Trial Chamber observes that [Articles 6(1), 6(4) and 7 of the Agreement, Articles 16 and 20(new) of the ECCC Law and Internal Rule 71] indicate that it was foreseen, from the time the Agreement was concluded, that disagreements might arise between the two Co-Prosecutors, however, there is a stated aim that they shall cooperate. Articles 6(1) and (4) of the Agreement, Articles 16 and 20(new) of the ECCC Law and Internal Rule 71(3) clearly indicate that one Co-Prosecutor can act without the consent of the other Co-Prosecutor if neither one of them brings the disagreement before the Pre-Trial Chamber within a specific time limit. It is further observed that only in cases of matters of major concern specifically identified in the Internal Rules would a disagreement prevent one Co-Prosecutor from proceeding with a given action pending a decision by the Pre-Trial Chamber. Amongst these matters of major concern is the filing of Introductory Submissions, which is currently at issue." (para. 16)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber observes that the Co-Investigating Judges could not agree on a legal reasoning on the issue as to whether the accused can be sent for trial for the national crimes. However, they [...] did agree on the conclusion to send the accused for trial for the national crimes. This course of action [...] does not amount to a violation of the accused's right to be presumed innocent nor to an *ultra vires* decision for failure to have followed the disagreement procedure provided for in Internal Rule 72. The Co-Investigating Judges are under no obligation to seise the Pre-Trial Chamber when they do not agree on an issue before them, the default position being that the 'investigation shall proceed' [...]." (para. 274)
3.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"[T]he Internal Rules establish a procedure to deal with situations where there is a disagreement between the two Co-Prosecutors, as foreseen in the Agreement […] (Articles 6(4) and 7) and [ECCC Law] (Article 20(new). The Internal Rules indicate that the use of the procedure provided to settle disagreements is not mandatory but rather optional. In other words, it is a matter of discretion as to whether the disagreement procedure is utilised by either or both Co-Prosecutors and to what extent a matter is taken. In that sense, Internal Rule 71(1) provides that '[i]n the event of a disagreement between the Co-Prosecutors, either or both of them *may* record the exact nature of their disagreement in a signed and dated document which shall be placed in a register of disagreements kept by the Greffier of the Co-Prosecutors' […]. By use of the word 'may', a discretion to record the disagreement is provided and no obligation arises to do so. […] Again, there is a discretion whether or not to bring the disagreement before the Pre-Trial Chamber and no obligation arises from this rule, as previously stated by the Pre-Trial Chamber." (Opinion of Judges LAHUIS and DOWNING, para. 3) "The purpose of recording a disagreement is to provide evidence of the date of registration, the precise nature of the disagreement and the fact that the disagreement was considered of such a nature that it could be regarded as being possibly introduced to the formal dispute resolution mechanism. The proof of the date of registration is required, as the next formal step of placing the disagreement before the Pre-Trial Chamber, through the Office of Administration, is limited to a period of thirty days after such record being made. After this time, the right to bring the disagreement forward ends and the disagreement must be taken to have lapsed. As such, there would be no reason or power to force a Co-Prosecutor to record a disagreement if he or she does not want to bring the matter further." (Opinion of Judges LAHUIS and DOWNING, para. 4) "[I]f no disagreement is registered, the action can continue as a valid action. If one of the Co-Prosecutors does not agree with a particular course of action proposed by the other and no disagreement is formally registered, it must be assumed that the disagreement was not considered such to be in need of formal resolution." (Opinion of Judges LAHUIS and DOWNING, para. 7)
4.	**003 MEAS Muth** PTC 35	"[T]he Pre-Trial Chamber firstly recalls the importance of the joint responsibility of the two Co-Investigating Judges in conducting judicial investigations at the ECCC […]." (para. 79)

	D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he joint conduct of investigations by the National and the International Co-Investigating Judges is a primary fundamental legal principle at the ECCC, as [provided in] Article 5(1) of the ECCC Agreement […]." (para. 92) "The ECCC Law strengthens this fundamental principle […]. Article 23*new* of the ECCC Law […], which mirrors Article 1 of the Cambodian Code of Criminal Procedure, […] dictates that the Co-Investigating Judges must conduct the investigations jointly and in compliance with the law applicable at the ECCC." (para. 93) "The Pre-Trial Chamber has further clarified that '[t]he Co-Investigating Judges are under no obligation to seise the Pre-Trial Chamber when they do not agree on an issue before them' insofar as they agree on a course of action that is 'coherent' with the 'default position' embedded in the ECCC framework, 'being that the "investigation shall proceed"'. Relatedly, the Chamber observed that Article 23*new* of the ECCC Law specifies Article 5(4) of the ECCC Agreement, by stipulating that '[i]n 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'. Internal Rule 72(4)(d), which governs the settlement of disagreements between the Co-Investigating Judges by the Pre-Trial Chamber, reinforces this fundamental position […]." (para. 94)
5.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[A]s is the case with any other legal systems, the law governing the ECCC does not necessarily resolve all the legal uncertainties that may arise regarding procedural and/or substantive matters. However, this law not only prescribes procedures applicable in case of *lacunae* in the legal framework, but also openly contemplates that disagreements may arise in the ECCC hybrid context and enacts specific procedures to handle and settle such disagreements in order to, *inter alia*, avoid procedural stalemates. Under the ECCC Agreement, the primary function that is entrusted to the Pre-Trial Chamber is precisely to provide for an effective mechanism to conclusively resolve disagreements between the Co-Prosecutors and between the Co-Investigating Judges." (para. 96)

ii. *Role of the Pre-Trial Chamber*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Agreement, the ECCC Law and the Internal Rules do not provide a clear indication as to how the Pre-Trial Chamber is to settle disagreements between the Co-Prosecutors. Internal Rules 71(4)(a) and (b) merely provide a mechanism by which the Pre-Trial Chamber may call upon the Co-Prosecutors to assist it through a hearing or by the production of documents. The position of the Pre-Trial Chamber in this matter is unique, with no other tribunal of its nature having a duty to resolve disputes between Co-Prosecutors." (para. 20) "Pursuant to Article 6 of the Agreement, the role of the Pre-Trial Chamber in this instance is to 'settle a difference' between the Co-Prosecutors who 'are unable to agree whether to proceed with a prosecution'. For this purpose, Internal Rule 71(1) provides that the Co-Prosecutors shall '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-Prosecutors'. Internal Rule 71(2) further indicates that the Co-Prosecutor who decides to seise the Pre-Trial Chamber shall submit 'a written statement of the facts and reasons for the disagreement'." (para. 23) "In light of these provisions, the Pre-Trial Chamber finds that the scope of its review is limited to settling the specific issues upon which the Co-Prosecutors disagree. To this end, the Pre-Trial Chamber shall only consider the facts and reasons raised before it by the Co-Prosecutors. Pursuant to Internal Rule 71(2), these shall be set out in the Written Statement of the International Co-Prosecutor and the Response of the National Co-Prosecutor. In addition to the information they provided in these submissions, the Co-Prosecutors were asked by the Pre-Trial Chamber to provide further clarification on their disagreement by the Directions to Provide Further Particulars dated 24 April 2009. In these circumstances, the Pre-Trial Chamber shall also take into consideration the facts and reasons set out in the Responses and Replies to the Directions filed by both Co-Prosecutors." (para. 24) "Although the Pre-Trial Chamber is assisted by the arguments put forward by the International Co-Prosecutor, the International Co-Prosecutor does not bear any burden of persuasion to convince the Pre-Trial Chamber that the New Submissions shall be forwarded to the Co-Investigating Judges for

		judicial investigation or that the arguments raised by the National Co-Prosecutor shall be rejected." (para. 26) "Articles 6(1) and (4) of the Agreement and Articles 16 and 20 (new) (3) of the ECCC Law indicate that the International Co-Prosecutor could have forwarded the New Introductory Submissions after having given thirty days notice to the National Co-Prosecutor, if no disagreement had been put before the Pre-Trial Chamber. It was thus unexpected that the Disagreement was brought by the International Co-Prosecutor, who explained his understanding of the reasons why the National Co-Prosecutor objects to his decision to file the New Submissions. Although the proper procedure would have been for the National Co-Prosecutor, who raises objections to forwarding the New Submissions, to file her Written Statement first, the way the Disagreement was brought before it will not affect the way the Pre-Trial Chamber shall consider the matter." (para. 27)
2.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion OF Pre-Trial Chamber Judges DOWNING AND CHUNG ON THE Disagreement between the Co-Investigating judges pursuant to Internal Rule 72*	"We find that the Pre-Trial Chamber has jurisdiction over the subject of the Disagreement as it is related to the admissibility of a proposed Order 'to proceed with an investigation' which pursuant to [Article] 7 of the ECCC Agreement 'shall be settled forthwith by a Pre-Trial Chamber of *five* judges." (Opinion of Judges DOWNING and CHUNG, para. 13)
3.	**004/19-01-2012-ECCC/PTC** 23 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING AND CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"We find that the Pre-Trial Chamber has jurisdiction over the subject of the Disagreement as it is relates to the admissibility of a Proposed 'Rogatory Letter on the continuation of the judicial investigation […]' which pursuant to [Article] 7 of the ECCC Agreement 'shall be settled forthwith by a Pre-Trial Chamber of *five* judges." (Opinion of Judges DOWNING and CHUNG, para. 11)

iii. *Confidentiality of Disagreement*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Pre-Trial Chamber notes that, pursuant to Internal Rule 71(2), the 'written statement of the facts and reasons for the disagreement shall not be placed on the case file'. Internal Rule 54 provides that 'Introductory, Supplementary and Final Submissions filed by the Co-Prosecutors shall be confidential documents'. Internal Rule 56(1) further provides that '[i]n order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality'. In accordance with these provisions, all the documents related to the Disagreement have been classified by the Pre-Trial Chamber as 'strictly confidential'." (para. 46) "The Pre-Trial Chamber further notes that contrary to the spirit of this obligation of confidentiality, the Office of the Co-Prosecutors issued a public 'Statement of the Co-Prosecutors' on 8 December 2008. […] By so doing, the Co-Prosecutors have drawn the attention of the media and the public to the fact that new suspects might be prosecuted, generating a great deal of interest and giving an indirect notice to the potential suspects that there might be further prosecutions." (para. 47) "The Pre-Trial Chamber notes that Article 7(1) of the Agreement and Article 20(new) (7) of the ECCC Law provide that a decision on a disagreement between the Co-Prosecutors 'shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Prosecutors'. By contrast, Internal Rule 71(4)(a) provides that the judgement 'shall be handed down

		in camera'. Sub-paragraph (d) of the same rule further provides that '[t]he greffier of the Chamber shall forward such decisions to the Director of the Office of Administration, who shall notify the Co-Prosecutors', without mentioning that the decision shall be published." (para. 49) "In addition, Internal Rule 78, concerning the Publication of Pre-Trial Chamber Decisions, provides that '[a]ll decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation'." (para. 50) "Regarding the confidentiality and publication of a decision on a disagreement, the Pre-Trial Chamber notes that the Articles of the Agreement and ECCC Law, when compared with the Internal Rules, appear inconsistent with respect to whether a decision on a disagreement shall be published. It is noted that the Agreement does not specify to whom and when a decision shall be published. The Agreement, ECCC Law and Internal Rules all provide that the Director of Administration shall notify the Co-Prosecutors of the decision on a disagreement. This should be done immediately, as the above-mentioned provisions prescribe that the Co-Prosecutors shall immediately proceed in accordance with the decision." (para. 51) "Pursuant to Internal Rule 78, the Pre-Trial Chamber may determine that a decision shall not be published in full, if doing so would compromise the integrity of a preliminary or judicial investigation. The current Disagreement relates to the forwarding of Introductory Submissions to the Co-Investigating Judges for the opening of new judicial investigations. Given the press releases already issued by the Co-Prosecutors concerning their Disagreement, the publication of a redacted version of the Considerations of the Pre-Trial Chamber will not have an adverse impact upon the confidentiality of the investigation that may be undertaken by the Co-Investigating Judges. Therefore, the Pre-Trial Chamber suggests that the Director of the Office of Administration of the Court publish the redacted version of these Considerations, attached in Annex I." (para. 52) "The Pre-Trial Chamber notes that publication of the Considerations of the Pre-Trial Chamber is at the discretion of the Director of the Office of Administration. The New Submissions might be forwarded to the Co-Investigating Judges by the International Co-Prosecutor alone before any publication of the Considerations of the Pre-Trial Chamber. For the purpose of filing the Introductory Submissions by the International Prosecutor alone, an Excerpt is attached to these Considerations in Annex II." (para. 53)
2.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"[P]ursuant to Internal Rule 72(1), disagreements between the Co-Investigating Judges are internal to their office, unless they are brought before the Pre-Trial Chamber for resolution. Pursuant to Internal Rule 72(2), the written statement of the facts and reasons for the disagreement shall not be placed on the investigation case file, except where the disagreement is brought before the Pre-Trial Chamber for resolution and relates to a decision against which a party to the proceedings would have the right to appeal. The underpinning consideration for exclusion of written records of disagreement from the case file is that they form part of the deliberations between the Co-Investigating Judges. Pursuant to the rules established at the international level, '[judicial] deliberations are secret' and, as such, 'internal documents between the Judges who are shielded by the secrecy of deliberations or the confidentiality of correspondence are not intended for automatic disclosure to third parties'. Provision of information concerning the Co-Investigating Judges' disagreements is therefore strictly within the purview of their discretion. The Pre-Trial Chamber shall not interfere with the exercise of this discretion unless it is demonstrated that, in the exceptional circumstances of the case, the lack of information about a disagreement impairs the Appellant's fair trial rights, in which case the Pre-Trial Chamber may consider appropriate remedy." (para. 10) "As recalled above, disagreements between the Co-Investigating Judges are confidential, not only to the Appellant, but as a rule." (para. 12)
3.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's*	"[T]he applicable rules do not provide for the parties to access disagreements and, therefore, challenge the power of a Co-Investigating Judge to act alone. Rather, Internal Rule 72 clearly grants the power to a Co-Investigating Judge to act alone when the time period for bringing a disagreement for resolution before the Pre-Trial Chamber has elapsed. […] [A]ny disagreement does not withdraw the case from the disagreeing Co-Investigating Judge, who may raise objections if necessary. Indeed, the Pre-Trial Chamber has previously held, in the present case, that a summons issued by one Co-Investigating Judge for the purpose of charging is valid where the disagreement procedure set forth in Internal Rule 72 has been complied with and the 30 day time period to bring it before the Pre-Trial Chamber has elapsed." (para. 24)

	Decision on Her Motion to Reconsider and Vacate Her Summons Dated 29 July 2014	"The provision of information concerning disagreements of Co-Investigating Judges is strictly within the purview of their discretion. Further, the Pre-Trial Chamber 'shall not interfere with this discretion unless it is demonstrated, in the exceptional circumstances of the case, the lack of information about the disagreement impairs the Appellant's fair trial rights.' […] [A]bsent of any contrary indication, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure they act in compliance with the requirements in Article 5(4) of the Agreement, Article 23*new* of the ECCC Law and Internal Rule 72." (para. 29) "[T]he applicable rules are clear that a Co-Investigating Judge can act alone if the disagreement procedure is followed. They are also clear that disagreements are internal to the Office of the Co-Investigating Judges and not accessible to the parties, unless they are brought for resolution before the Pre-Trial Chamber. The applicable rules therefore do not envisage that the power of one Co-Investigating Judge to act alone would be subject to the parties' scrutiny, unless there is evidence that the legal requirements for unilateral action have not been complied with. Instead, the Rules provide that both Co-Investigating Judges have the power and duty to ensure that actions taken by one of them are within the scope of disagreements or subject to a delegation of authority. They are presumed to fulfil these obligations and act in accordance with their ethical duties." (para. 30) "To generally allow the parties to get access to disagreements upon allegation that they want to examine the competence of one Co-Investigating Judge to act alone would compromise the principle of confidentiality of the disagreement procedure and […] change its very nature. The guarantees in place are sufficient to ensure respect of the right to a competent tribunal." (para. 31)

iv. *Reasoned Decisions*

1.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"We are bound to provide a reasoned consideration of the matter before us in a proper and judicial manner." (Opinion of Judges DOWNING and CHUNG, para. 15)
2.	**004/19-01-2012-ECCC/PTC** 23 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"We are bound to provide a reasoned consideration of the matter before us in a proper and judicial manner." (Opinion of Judges DOWNING and CHUNG, para. 13)

v. *Waiver of Disagreement Procedure*

1.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"[T]he International Prosecutor has submitted before the Co-Investigating Judges that he always provides his submissions to the National Prosecutor to enable her to form an opinion on the matter before filing. We find that this behaviour sufficiently allows for the National Co-Prosecutor to exercise her right to trigger the formal dispute resolution mechanism provided for in the Internal Rules. In addition, the International Co-Prosecutor submitted in the Appeal that in this case the National Co-Prosecutor stated that she would not file a disagreement before he filed the Four Requests. It can therefore be considered that the National Co-Prosecutor has waived her right to use the formal dispute resolution mechanism." (Opinion of Judges LAHUIS and DOWNING, para. 6)

2. Possibility to Act Alone

i. *Co-Prosecutors*

1.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"Articles 6(1) and (4) of the Agreement, Articles 16 and 20(new) of the ECCC Law and Internal Rule 71(3) clearly indicate that one Co-Prosecutor can act without the consent of the other Co-Prosecutor if neither one of them brings the disagreement before the Pre-Trial Chamber within a specific time limit. It is further observed that only in cases of matters of major concern specifically identified in the Internal Rules would a disagreement prevent one Co-Prosecutor from proceeding with a given action pending a decision by the Pre-Trial Chamber. Amongst these matters of major concern is the filing of Introductory Submissions, which is currently at issue." (para. 16) "Article 6(4) of the Agreement provides that the Co-Prosecutors shall cooperate with a view to arriving at a common approach to the prosecutions. As discussed in paragraph 16 of the Considerations of the Pre-Trial Chamber, one of the Co-Prosecutors can act without the consent of the other if neither of them brings the disagreement before the Pre-Trial Chamber within thirty days. When a disagreement is brought before the Pre-Trial Chamber, a Co-Prosecutor can still proceed with the contested action pending a decision of the Pre-Trial Chamber unless one of the specific matters of concern identified in Internal Rule 71(3) is involved. A preliminary investigation pursuant to Internal Rule 50(1) is not one of these matters." (Opinion of Judges DOWNING and LAHUIS, para. 3)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber further recalls its previous determination regarding the disagreement between the Co-Prosecutors pursuant to Internal Rule 71(2) whereby the Pre-Trial Chamber was seised with a disagreement between the national and international Co-Prosecutors concerning the submissions of two new Introductory Submissions to the Co-Investigating Judges for judicial investigation. [...] As such, the fact that there was a disagreement did not render the recommendation of the international Co-Prosecutor invalid." (para. 276)
3.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal*	"[I]n principle, the Internal Rules provide the possibility for one of the Co-Prosecutors to act alone. In that sense, Internal Rule 1(2) provides in its relevant part that 'a reference in these IRs to the Co-Prosecutors includes both of them acting jointly *and each of them acting individually, whether directly or through delegation*, as specified in these IR' […]. Internal Rule 13, […] mak[es] clear that one prosecutor can act alone 'directly' within the meaning of Internal Rule 1(2) if the rules applicable in case of a disagreement are followed. […] Hence, the main issue to decide upon is whether conditions are set out in the Internal Rules for one Co-Prosecutor to act alone when the other disagrees with the proposed course of action and whether the non-respect of these conditions may have consequences on the validity of an action undertaken alone." (Opinion of Judges LAHUIS and DOWNING, para. 2)

	against the Decision on Time Extension Request and Investigative Requests regarding Case 003	"Where a disagreement is registered and during the period of dispute settlement, the rules expressly provide that the action which is the subject of the disagreement shall generally be executed. The only exceptions set out in the Internal Rules are major issues concerning an Introductory Submission, a Supplementary Submission relating to new crimes, a Final Submission or a decision relating to an appeal. Only when these actions are subject of a recorded disagreement it is prescribed that no action will be taken until either consensus is achieved, the 30-day period has ended or the Pre-Trial Chamber has been seised and the dispute settlement procedure has been completed as appropriate. Following from this system, in all other cases than the mentioned exceptions, an action taken by one of the Co-Prosecutors will be continued until there is a decision of the Pre-Trial Chamber to stop it. Hence, even where a disagreement is recorded and brought before the Pre-Trial Chamber, this has, in general, no effect on the continuation of the action." (Opinion of Judges LAHUIS and DOWNING, para. 5) "[I]f no disagreement is registered, the action can continue as a valid action. If one of the Co-Prosecutors does not agree with a particular course of action proposed by the other and no disagreement is formally registered, it must be assumed that the disagreement was not considered such to be in need of formal resolution." (Opinion of Judges LAHUIS and DOWNING, para. 7)
4.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[T]he Rules establish a procedure concerning the settlement of disagreements between the two Co-Prosecutors, as provided by the Agreement (Articles 6(4) and 7) and the ECCC Law (Article 20(new))." (Opinion of Judges BEAUVALLET and BAIK, para. 25) "Articles 6(1) and (4) of the Agreement, Articles 20(new) of the ECCC Law and Rule 71(3) clearly indicate that one Co-Prosecutor can act without the consent of the other Co-Prosecutor if neither one of them brings the disagreement before the Pre-Trial Chamber within specific time limit. With regard specifically to supplementary submissions, Rule 71(3)(b) provides explicitly that no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the thirty day period has ended, or the Chamber has been seised and the dispute settlement procedure has been completed." (Opinion of Judges BEAUVALLET and BAIK, para. 26) "In the present case, the National Co-Prosecutor did not seise the Pre-Trial Chamber with the disagreement pursuant to Rule 71(2) within the prescribed timeline. As provided by the Rules, the National Co-Prosecutor could have brought the disagreement to the Pre-Trial Chamber but refused to do so. In accordance with precedent, the Undersigned Judges find that the International Co-Prosecutor could file the Supplementary Submission alone after the thirty-day period had ended or the disagreement procedure set forth in Rule 71 had been complied with. The Undersigned Judges are of the view that it does not exceed the disagreement procedure as it was contemplated by the drafters of the Agreement and the Law." (Opinion of Judges BEAUVALLET and BAIK, para. 27)

ii. *Co-Investigating Judges*

1.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[I]n the case of requests for investigative action made to the Co-Investigating Judges and as appealed to the Pre-Trial Chamber, actions taken or requests granted by only one investigating judge have been upheld." (para. 275) "The Pre-Trial Chamber further recalls its previous determination regarding the disagreement between the Co-Prosecutors pursuant to Internal Rule 71(2) whereby the Pre-Trial Chamber was seised with a disagreement between the national and international Co-Prosecutors concerning the submissions of two new Introductory Submissions to the Co-Investigating Judges for judicial investigation. [...] As such, the fact that there was a disagreement did not render the recommendation of the international Co-Prosecutor invalid." (para. 276)
2.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of Her*	"The Co-Investigating Judges have confirmed that they have registered a disagreement in respect of the Summons and that the 30 day time period to bring it before the Pre-Trial Chamber has elapsed. In these circumstances, it is clear from the Agreement between the United Nations and the Royal Government of Cambodia for the establishment of the ECCC, the ECCC Law and the Internal Rules that the International Co-Investigating Judge could validly issue the Summons alone. Furthermore, the Pre-Trial Chamber previously confirmed that one Co-Prosecutor or Investigating Judge can act alone when a disagreement has been registered within the Office of the Co-Prosecutors or the Co-Investigating Judges, as appropriate, and the period for bringing a disagreement before the Pre-

	Summons to an Initial Appearance	Trial Chamber has elapsed." (para. 14)
3.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"[A] summons issued by one investigating judge for the purpose of charging under Internal Rule 57 is valid if the disagreement procedure set forth in Internal Rule 72 has been complied with." (para. 7)
4.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on Ta An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"The Agreement, ECCC Law and Internal Rules provide that one Co-Investigating Judge can validly act alone if the requirements of the disagreement procedure have been complied with. In the present case, there was no need to ensure that the 30-day settlement period had elapsed before the International Co-Investigating Judge could issue the Four Decisions, given that none of them fall within the ambit of paragraphs (a) to (c) of Internal Rule 72(3). Prior to issuing the Four Decisions, the International Co-Investigating Judge was only required to inform his national counterpart of the proposed course of action, for him to be allowed to state his views and, possibly, bring the disagreement for resolution before the Pre-Trial Chamber. In this respect, the Pre-Trial Chamber notes that the ECCC legal framework gives a broad discretion to the Co-Investigating Judges as to how they handle their disagreements and communicate with each other. Putting disagreements on record is helpful to show that the procedure set forth in Internal Rule 72 has been followed, but it is not mandatory. Absent any indication to the contrary, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure that they act in compliance with the requirements set forth in Article 5(4) of the Agreement, 23*new* of the ECCC Law and Internal Rule 72. There is no indication in the present case disclosing a lack of compliance with these legal requirements by the International Co-Investigating Judge in issuing the Four Decisions so the Appellant's argument that he is not being investigated by a tribunal established by law is unfounded." (para. 11)
5.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on Her Motion to Reconsider and Vacate Her Summons Dated 29 July 2014*	"[T]he applicable rules do not provide for the parties to access disagreements and, therefore, challenge the power of a Co-Investigating Judge to act alone. Rather, Internal Rule 72 clearly grants the power to a Co-Investigating Judge to act alone when the time period for bringing a disagreement for resolution before the Pre-Trial Chamber has elapsed. […] [A]ny disagreement does not withdraw the case from the disagreeing Co-Investigating Judge, who may raise objections if necessary. Indeed, the Pre-Trial Chamber has previously held, in the present case, that a summons issued by one Co-Investigating Judge for the purpose of charging is valid where the disagreement procedure set forth in Internal Rule 72 has been complied with and the 30 day time period to bring it before the Pre-Trial Chamber has elapsed." (para. 24) "[T]he applicable rules are clear that a Co-Investigating Judge can act alone if the disagreement procedure is followed. They are also clear that disagreements are internal to the Office of the Co-Investigating Judges and not accessible to the parties, unless they are brought for resolution before the Pre-Trial Chamber. The applicable rules therefore do not envisage that the power of one Co-Investigating Judge to act alone would be subject to the parties' scrutiny, unless there is evidence that the legal requirements for unilateral action have not been complied with. Instead, the Rules provide that both Co-Investigating Judges have the power and duty to ensure that actions taken by one of them are within the scope of disagreements or subject to a delegation of authority. They are presumed to fulfil these obligations and act in accordance with their ethical duties." (para. 30) "To generally allow the parties to get access to disagreements upon allegation that they want to examine the competence of one Co-Investigating Judge to act alone would compromise the principle of confidentiality of the disagreement procedure and […] change its very nature. The guarantees in place are sufficient to ensure respect of the right to a competent tribunal." (para. 31)
6.	**003 MEAS Muth** PTC 21	"[T]he applicable rules are clear that a Co-Investigating Judge can act alone if the disagreement procedure is followed. […] [T]he present legal framework contains sufficient checks and balances to

	D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth* in Absentia	ensure that any unilateral actions are taken in accordance with the law. […] [T]he Internal Rules not only envisage, but allow, a Co-Investigating Judge to make decisions alone, as a validly constituted Court." (para. 34)
7.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber previously recognised […] the ability and validity of one Co-Investigating Judge to act alone, especially where his colleague has retreated from continuing the investigation. The Chamber stated, with the utmost clarity, that '[t]he Agreement, the ECCC Law and the Internal Rules provide that one Co-Investigating Judge can validly act alone if the requirements of the disagreement procedure have been complied with.' The Chamber added that the '[ECCC] framework contains sufficient checks and balances to ensure that unilateral actions are taken in accordance with the law.'" (para. 105) "[The Co-Investigating Judges' actions must be, at all times, within their individual capacity and performed in accordance with the cooperation principle stipulated by Article 5(4) of the ECCC Agreement, which also reflects the equal status of the National and the International Co-Investigating Judges within the ECCC hybrid system. […] [T]he Co-Investigating Judges must […] continue to seek a common position during [any] disagreement process. The ECCC legal system has been carefully designed and is structured to ensure the joint conduct and execution of judicial investigations by the two Co-Investigating Judges. These Judges may […] reach an agreement at any stage of the investigation of cases of which they are seised." (para. 114) "Article 5(4) of the ECCC Agreement, Article 23*new* of the ECCC Law and Internal Rule 72(3) clearly indicate that […] one Co-Investigating Judge may act without the consent of the other Judge where neither of them brings [a] formalised disagreement before the Pre-Trial Chamber within the prescribed time limit. This Co-Investigating Judge may […] proceed with the contested decision once the required time limit has elapsed." (para. 116)
8.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 255)
9.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber firstly recalls the importance of the joint responsibility of the two Co-Investigating Judges in conducting judicial investigations at the ECCC, as Article 14*new*(1) of the ECCC Law, in relevant part, states that '[these] judges shall attempt to achieve unanimity in their decisions.'" (para. 85) "First, the Pre-Trial Chamber recalls that the joint conduct of investigations by the National and the International Co-Investigating Judges is a primary fundamental legal principle at the ECCC, as Article 5(1) of the ECCC Agreement provides that '[t]here shall be one Cambodian and one international investigating judge serving as co-investigating judges. They shall be responsible for the conduct of investigations.'" (para. 98) "The ECCC Law strengthens this fundamental principle as Article 14*new*(1) of this Law mandates that '[t]he judges shall attempt to achieve unanimity in their decisions.' Article 23*new* of the ECCC Law specifies how the principle must be implemented by requiring that '[a]ll investigations shall be the joint responsibility of two investigating judges, one Cambodian and another foreign, hereinafter referred to as Co-Investigating Judges, and shall follow existing procedures in force.' The Pre-Trial Chamber has held that this provision, which mirrors Article 1 of the Cambodian Code of Criminal Procedure, providing that the Code 'aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of a criminal offense', dictates that the Co-Investigating Judges must conduct the investigations jointly and in compliance with the law applicable at the ECCC." (para. 99)

		"The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 168)

3. Default Position

1.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule 72(4)(d) instructs that 'in accordance with Article 23 new of the ECCC Law, the default decision shall be that the order or investigative act done *by* one Co-Investigating Judge shall stand, or that the order or investigative act proposed to be done by one Co-Investigating Judge shall be executed.' In the current case this means that the Proposed Rogatory Letter shall be executed." (Opinion of Judges DOWNING and CHUNG, para. 50)
2.	**004/19-01-2012-ECCC/PTC** 23 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule 72(4)(d) instructs that 'in accordance with Article 23 new of the ECCC Law, the default decision shall be that the order or investigative act done *by* one Co-Investigating Judge shall stand, or that the order or investigative act proposed to be done by one Co-Investigating Judge shall be executed.' In the current case this means that the Proposed Rogatory Letter shall be executed." (Opinion of Judges DOWNING and CHUNG, para. 38)
3.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"Where the Co-Prosecutors cannot reach a common approach, notwithstanding the nature of the difference, Article 6(4) of the Agreement and Article 20 (second and third paragraph) of the ECCC Law direct that 'the prosecution *shall proceed*' unless the Co-Prosecutors or one of them requests within thirty days that the difference shall be settled by the Pre-Trial Chamber." (para. 40) "Where the difference is brought before the Pre-Trial Chamber and there is no majority, as required for a decision, Article 7(4) of the Agreement and Article 20 (seventh paragraph) of the ECCC Law direct that the investigation or prosecution *shall proceed*.' Unless the Co-Prosecutors reach a common approach, the end result, under any circumstances, is that the Introductory Submission shall be submited to the Co-Investigating Judges in order to open a judicial investigation." (para. 41)
4.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing*	"The International Judges first recall that one Co-Investigating Judge may validly issue an indictment by acting alone. The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he *investigation shall proceed*' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 319)

	Orders	"[T]his principle of continuation of judicial investigation governs the issue at hand." (Opinion of Judges BAIK and BEAUVALLET, para. 320) "[T]he settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 […] [applies] to the procedure of *issuing* the closing order before the conclusion of the investigation." (Opinion of Judges BAIK and BEAUVALLET, para. 321) "In the case at hand, neither of the Co-Investigating Judges referred the disagreement to the Pre-Trial Chamber […]. Consequently, the investigation or prosecution shall proceed. […] where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' means that the indictment must be issued as proposed." (Opinion of Judges BAIK and BEAUVALLET, para. 322) "[I]n examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a closing order (dismissal)." (Opinion of Judges BAIK and BEAUVALLET, para. 323) "The International Judges, thus, find that the International Co-Investigating Judge's issuance of the Closing Order (Indictment) […] is procedurally in conformity with the applicable law before the ECCC, whereas the National Co-Investigating Judge's issuance of the Closing Order (Dismissal) has no legal basis." (Opinion of Judges BAIK and BEAUVALLET, para. 324) "Accordingly, […] the National Co-Investigating Judge's […] Closing Order (Dismissal) is *ultra vires* and […] void; the International Co-Investigating Judge's Closing Order (Indictment) stands." (Opinion of Judges BAIK and BEAUVALLET, para. 326)
5.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, […] provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 255) "[T]his principle of continuation of judicial investigation governs the issue at hand. […] The International Judges further recall the Supreme Court Chamber's finding that '[i]f […] 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"'." (Opinion of Judges BEAUVALLET and BAIK, para. 256) "In this specific situation where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed' – being the applicable default position in case of unresolved discord between the Co-Investigating Judges– means that the indictment must be issued as proposed." (Opinion of Judges BEAUVALLET and BAIK, para. 257) "Furthermore, in examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a dismissal order. First, in its ordinary meaning, a proposal to issue a dismissal order, the very antithesis of an indictment which makes the case move forward to trial, cannot be recognised as a separate investigative act. It is nothing more than a different characterisation of the National Co-Investigating Judge's disagreement on the issuance of the indictment, which must be resolved by the Internal Rule 72 disagreement settlement procedure. Second, the purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were most responsible for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BEAUVALLET and BAIK, para. 258) "Accordingly, the International Judges find that the two Closing Orders in question are not identical in their conformity with the applicable law before the ECCC. The International Judges recall that for reasons stated previously, the Dismissal Order is void and conclude that the National Co-Investigating Judge's issuance of the Dismissal Order is *ultra vires* and, therefore, void, as it constitutes an attempt to defeat the default position enshrined in the ECCC legal framework. On the other hand, the

		International Co-Investigating Judge's Indictment stands as it remains in conformity with the said position." (Opinion of Judges BEAUVALLET and BAIK, para. 262)
6.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"One way in which the Royal Government of Cambodia and the United Nations secured effective justice in the ECCC context was by making sure that procedures were available not only to handle disagreements arising in the course of investigations and prosecutions, but also to effectively resolve such disagreements in order to avoid procedural stalemates that would, *inter alia*, hamper the effectiveness of the ECCC's proceedings. At the pre-trial stage, these procedures are underlined and ultimately governed by the aforesaid 'default position' prescribed, *inter alia*, by Article 5(4) of the ECCC Agreement, which unambiguously states that when '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 […] that the difference shall be settled' by the Pre-Trial Chamber." (para. 103) "[A] principle as fundamental and determinative as the default position cannot be overridden or deprived of its fullest weight and effect by interpretative constructions taking advantage of possible ambiguities in the ECCC Law and Internal Rules to render this core principle of the ECCC Agreement meaningless. Concluding otherwise would lead to a manifestly unreasonable legal result, violating both international law and Cambodian law." (para. 104) "[B]y issuing contradicting Closing Orders instead of referring their related disagreement to the Pre-Trial Chamber or abiding by the default position, the Co-Investigating Judges committed errors that undermine the foundations of the hybrid system and proper functioning of the ECCC." (para. 112) --- "The International Judges further note Article 5(4) of the ECCC Agreement and Article 23*new* of the ECCC Law, which provide that in the event of a disagreement between the Co-Investigating Judges, '[t]he investigation shall proceed' unless the Co-Investigating Judges or one of them refers their disagreement to the Pre-Trial Chamber." (Opinion of Judges BAIK and BEAUVALLET, para. 168) "The International Judges observe that this principle of continuation of judicial investigation governs the issue at hand. While the settlement procedure of disagreements between the Co-Investigating Judges provided by Internal Rule 72 may not be applied to the procedures *after* the issuance of a closing order, it does not preclude application to the procedure of *issuing* the closing order before the conclusion of the investigation. As stated by the Pre-Trial Chamber in a previous decision, in case one of the Co-Investigating Judges proposes to issue an indictment and the other disagrees, either or both of them can bring the disagreement before the Pre-Trial Chamber pursuant to Internal Rule 72. The International Judges further recall the Supreme Court Chamber's finding that '[i]f […] 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"'." (Opinion of Judges BAIK and BEAUVALLET, para. 169) "In this specific situation where one of the Co-Investigating Judges proposes to issue an indictment and the other Co-Investigating Judge disagrees, 'the investigation shall proceed'—being the applicable default position in case of unresolved discord between the Co-Investigating Judges—means that the indictment must be issued as proposed." (Opinion of Judges BAIK and BEAUVALLET, para. 170) "Furthermore, in examining the meaning of 'the investigation shall proceed', the International Judges find that no one may reasonably interpret this language, in its ordinary meaning and in light of its object and purpose, to include the issuance of a dismissal order. First, in its ordinary meaning, a proposal to issue a dismissal order, the very antithesis of an indictment which makes the case move forward to trial, cannot be recognised as a separate investigative act. It is nothing more than a different characterisation of the National Co-Investigating Judge's disagreement on the issuance of the indictment, which must be resolved by the Internal Rule 72 disagreement settlement procedure. Second, the purpose of the ECCC Agreement and the ECCC Law is to *bring to trial* senior leaders of DK and those who were 'most responsible' for the crimes. It is reasonably inferred from the language of Articles 5(4), 6(4) and 7 of the ECCC Agreement, Articles 20*new* and 23*new* of the ECCC Law and Internal Rules 13(5), 14(7), 71 and 72 that the key object of the disagreement settlement mechanism is to prevent a deadlock from derailing the proceedings from moving to trial." (Opinion of Judges BAIK and BEAUVALLET, para. 171)

4. Avoidance of the Disagreement Settlement Procedure

1.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"At the outset, the Chamber considers that the issue of whether the Co-Investigating Judges are obliged to refer their disagreement to the Pre-Trial Chamber under Internal Rule 72 is governed by the overriding principle that ECCC proceedings must comply with the legality, fairness and effectiveness requirements under the ECCC legal framework. In this case, the requirement of effective criminal justice is worthy of particular attention by this Chamber." (para. 109) One way in which the Royal Government of Cambodia and the United Nations secured effective justice in the ECCC context was by making sure that procedures were available not only to handle disagreements arising in the course of investigations and prosecutions, but also to conclusively resolve such disagreements in order to avoid procedural stalemates that would, inter alia, hamper the effectiveness of proceedings. These procedures are underlined and ultimately governed by the default position prescribed, inter alia, by Article 5(4) of the ECCC Agreement, unambiguously providing that when '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 […] that the difference shall be settled'." (para. 111) "In this case, the Chamber considers that the issue of whether the Co-Investigating Judges had the prerogative to issue split Closing Orders instead of referring their disagreement to the Pre-Trial Chamber, depends on whether their failure to follow the disagreement settlement procedure provided for by Internal Rule 72 has circumvented the practical effect of the default position underlying the whole ECCC legal system. In this respect, the Chamber stresses that 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, taking advantage of possible ambiguities in the ECCC Law and Internal Rules to render this core principle of the ECCC Agreement meaningless. Concluding otherwise would lead to a manifestly unreasonable legal result, violating both Cambodian law and international law." (para. 112) "In any of these situations, the Chamber stresses that the Co-Investigating Judges' actions must be, at all times, within their individual capacity and performed in accordance with the cooperation principle stipulated by Article 5(4) of the ECCC Agreement, which also reflects the equal status of the National and the International Co-Investigating Judges within the ECCC hybrid system. Further, the Chamber emphasises that the Co-Investigating Judges must, under the ECCC legal framework, continue to seek a common position during the disagreement process. The ECCC legal system has been carefully designed and is structured to ensure the joint conduct and execution of judicial investigations by the two Co-Investigating Judges. These Judges may thus reach an agreement at any stage of the investigation of cases of which they are seised. The crystallisation of any disagreements between them about such cases is also permissible, but only insofar as it complies with the existing procedures in force and remains coherent with the default position that is intrinsic to the ECCC legal system and which provides an effective way out of any possible procedural impasses." (para. 114) "The Chamber notes that when the disagreement is so critical that one of the Co-Investigating Judges wishes to halt the implementation of his colleague's decision, this Judge's only available legal recourse is to bring the disagreement before the Pre-Trial Chamber, which is explicitly and specifically empowered to settle the differences between the Co-Investigating Judges. To trigger this effective disagreement resolution mechanism, the Co-Investigating Judge(s) must submit, in writing, a statement of the facts and reasons for the disagreement. The ECCC's applicable laws endow the Pre-Trial Chamber with the necessary power to conclusively resolve the matters in dispute between the two equal Co-Investigating Judges and determine whether or not the disputed decision should be carried out. In cases where the Pre-Trial Chamber cannot achieve the supermajority vote to conclusively settle the disagreement, the ECCC legal framework provides that the matter is then resolved by the default position, stipulating that the investigation must proceed." (para. 117) "Conversely, the law applying at the ECCC clearly contemplates that, despite their genuine efforts to reach a compromise or find a consensus, the two equal National and International Co-Investigating Judges may still be unable to agree on a common position. The Chamber considers that, in such a case, and where the matter in dispute or the prolonged disagreement over an issue jeopardises the effectiveness of the judicial investigation, the ECCC legal framework does not permit that the disagreement between the Co-Investigating Judges be entrenched or be shielded from the dispute resolution mechanism." (para. 119)

		"In light of the above, the Pre-Trial Chamber finds that, in the case of disagreements related to matters that must be determined by a closing order under Internal Rule 67, the ECCC legal framework allows only two courses of action pursuant to Article 23new of the ECCC Law and Internal Rule 72(3). The Co-Investigating Judges are obliged either to reach a tacit or express consensus on those matters, or to refer their disagreement on such matters to the Pre-Trial Chamber." (para. 120) "In conclusion, the Pre-Trial Chamber stresses that the errors committed by the Co-Investigating Judges in this case undermine the very foundations of the hybrid system and proper functioning of the ECCC. Despite the crucial and sensitive nature of the matter at stake, the Co-Investigating Judges have allowed themselves to issue the split Closing Orders with remarkably minimal reasoning to justify their action, recalling simply one of their prior decisions. The Chamber finds it especially disturbing that the split Closing Orders were issued on the same day, in one language only, with an explicit declaration by the two Judges that they agreed on the unlawful issuance of separate and conflicting Closing Orders. The Chamber considers that the Co-Investigating Judges' malpractice has in this case jeopardised the whole legal system upheld by the Royal Government of Cambodia and the United Nations. It is astonishing to observe that the Judges were fully "aware of the problem" that the issuance of split Closing Orders would cause, notably on appeal. Yet, they nonetheless decided to shield their disagreements from the most effective dispute settlement mechanism available under the ECCC legal framework to ensure a way out of procedural stalemates. More than a blatant legal error, violating the most fundamental principles of the ECCC legal system, the Pre-Trial Chamber considers that the Co-Investigating Judges' unlawful actions may well amount to a denial of justice, especially since this Chamber is unable to exclude that the Co-Investigating Judges may have wilfully intended to defeat the purpose of the default position in this case and deliberately sought to frustrate the authority of the Pre-Trial Chamber." (para. 123)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he law governing the ECCC does not necessarily resolve all the legal uncertainties that may arise regarding procedural and/or substantive matters. However, this law not only prescribes procedures applicable in case of *lacunae* in the legal framework, but also openly contemplates that disagreements may arise in the ECCC hybrid context and enacts specific procedures to handle and settle such disagreements in order to*, inter alia*, avoid procedural stalemates. Under the ECCC Agreement, the primary function that is entrusted to the Pre-Trial Chamber is precisely to provide for an effective mechanism to conclusively resolve disagreements between the Co-Prosecutors and between the Co-Investigating Judges. As stressed above, the Co-Investigating Judges have wilfully decided to evade this mechanism and, instead, issued separate and opposing Closing Orders with the full knowledge of the problems that their action would be causing for the ensuing proceedings within the ECCC legal system." (para. 90) "As a general matter, the Pre-Trial Chamber considers that the issue of whether the Co-Investigating Judges are obliged to refer their disagreement to this Chamber under Internal Rule 72 is governed by the overriding principle that ECCC proceedings must comply with the legality, fairness and effectiveness requirements of the ECCC legal framework." (para. 96) "One way in which the Royal Government of Cambodia and the United Nations secured effective justice in the ECCC context was by making sure that procedures were available not only to handle disagreements arising in the course of investigations and prosecutions, but also to effectively resolve such disagreements in order to avoid procedural stalemates that would, *inter alia*, hamper the effectiveness of the ECCC's proceedings. At the pre-trial stage, these procedures are underlined and ultimately governed by the aforesaid 'default position' prescribed, *inter alia*, by Article 5(4) of the ECCC Agreement, which unambiguously states that when '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 […] that the difference shall be settled' by the Pre-Trial Chamber." (para. 97) "[T]he issue of whether the Co-Investigating Judges have the prerogative to issue conflicting closing orders, instead of referring their disagreement to this Chamber, hinges on whether their avoidance of the disagreement settlement procedure provided for under Internal Rule 72 circumvents or not the practical effect of the default position intrinsic to the ECCC legal system. In this respect, the Chamber has stressed that a principle as fundamental and determinative as the default position cannot be overridden or deprived of its fullest weight and effect by interpretative constructions taking advantage of possible ambiguities in the ECCC Law and Internal Rules to render this core principle of the ECCC Agreement meaningless. Concluding otherwise would lead to a manifestly unreasonable legal result, violating both international law and Cambodian law." (para. 98)

		"The Chamber recalls that depending on the particular circumstances of each case, the procedures available to the Co-Investigating Judges may range from the tacit toleration of an act or decision taken by the other Judge, to the registration of a disagreement, or referral of a disagreement to the Pre-Trial Chamber over a contested act or decision pursuant to Internal Rule 72." (para. 99) "[I]n any such situations, the Co-Investigating Judges' actions must always be within their individual capacity and performed according to the cooperation principle upheld by Article 5(4) of ECCC Agreement, reflecting the equal status of the National and the International Co-Investigating Judges in the ECCC hybrid system. The Chamber further reiterates that the Co-Investigating Judges are obliged, under the ECCC legal framework, to continue to seek a common position during the disagreement process. The ECCC legal system was designed and is structured to manage the joint conduct of judicial investigations by the Co-Investigating Judges who may thus reach an agreement at any stage of the investigation of cases of which they are seised. The crystallisation of any disagreements between them about such cases is permissible, but only insofar as it complies with existing procedures in force and remains coherent with the default position intrinsic to the ECCC legal system, which provides an effective way out of any possible procedural impasses." (para. 100) "Ultimately, the Pre-Trial Chamber reiterates that when the National and the International Co-Investigating Judges are unable to agree on a common position, and where the matter in dispute between them, or their prolonged disagreement over an issue, jeopardises the effectiveness of the judicial investigation, the ECCC legal framework does not permit that such disagreement be entrenched or sheltered from an effective resolution. The Chamber thus affirms its previous holding that where the disagreement settlement procedure provided for by Internal Rule 72 emerges as the only remaining course of action available to the Co-Investigating Judges to prevent the occurrence of a procedural stalemate and to safeguard the legality, fairness and effectiveness of a judicial investigation conducted at the ECCC, the Co-Investigating Judges must trigger this procedural mechanism by referring their disagreement to the Pre-Trial Chamber." (para. 101) "In light of the foregoing principles, the Pre-Trial Chamber has found that where a disagreement relates to matters that must be determined by a closing order under Internal Rule 67, the ECCC legal framework allows only two courses of action pursuant to Article 23*new* of the ECCC Law and Internal Rule 72(3). The Co-Investigating Judges are obliged either to reach a tacit, or express consensus on those matters or to refer their disagreement on such matters to the Pre-Trial Chamber." (para. 102) "Further, the Pre-Trial Chamber reaffirms that the ECCC's legal texts leave no significant ambiguity in this respect: Internal Rule 67(1) clearly stipulates that '[t]he Co-Investigating Judges *shall conclude* the investigation by issuing *a* Closing Order, *either* indicting a Charged Person […], *or* dismissing the case.' The Glossary of the Internal Rules adds that a 'Closing Order refers to *the* final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, *whether* Indictment *or* Dismissal Order.'" (para. 103) "It follows from these provisions that a closing order of the Co-Investigating Judges is a single decision. As such, Internal Rule 1(2) – stating that in the Rules, the singular includes the plural, and a reference to the Co-Investigating Judges 'includes both of them acting jointly and each of them acting individually' – does not offer a sufficient legal basis to override or undermine core principles of the ECCC Agreement, such as the default position, and the rule on strict construction of penal laws further prevents any interpretations in this sense." (para. 104) "[T]he Co-Investigating Judges have a judicial duty to decide on matters in dispute of which they are seised. When their disagreement prevents them from arriving at a common final determination of such matters, they must still discharge this joint judicial duty by following the procedures available in the ECCC legal system to make sure that a conclusive determination of the matters within their jurisdiction is attained." (para. 105) "[B]y issuing contradicting Closing Orders instead of referring their related disagreement to the Pre-Trial Chamber or abiding by the default position, the Co-Investigating Judges committed errors that undermine the foundations of the hybrid system and proper functioning of the ECCC." (para. 106) "Overall, the Pre-Trial Chamber considers that the Co-Investigating Judges' errors have jeopardised the whole system upheld by the Royal Government of Cambodia and the United Nations. More than a violation of the fundamental principles of the ECCC legal framework, the Chamber is of the view that the Co-Investigating Judges' *mauvaises pratiques* may amount to a denial of justice, especially since the Chamber is unable to exclude that they may have intended to defeat the default position and

		frustrate the authority of the Pre-Trial Chamber. The Chamber further notes that more than an isolated example, their actions in this case confirm a pattern that the Co-Investigating Judges have apparently adopted in dealing with all the final cases on the ECCC's docket." (para. 108) "The Chamber once more notes with regret that never, to its knowledge, has there been criminal cases in the history of other national and international legal systems that concluded with the simultaneous issuance of two contrary decisions emanating from one single judicial office. After ten years of investigation into crimes among the most atrocious and brutal committed during the twentieth century, the Pre-Trial Chamber can only condemn once again the legal predicament that the Co-Investigating Judges' unlawful actions precipitated upon yet another ECCC proceeding." (para. 109) --- "The International Judges reaffirm that a closing order of the Office of the Co-Investigating Judges must be a single decision. They further underline that in the present circumstances, referral of disagreements between the Co-Investigating Judges before the Pre-Trial Chamber is mandatory and that they have no other means of settling their dispute when they fail to uphold their obligation to reach a common position concerning a closing order. The International Judges consider that the issuance of the conflicting Dismissal Order by the National Co-Investigating Judge without referral to the Pre-Trial Chamber is a brazen attempt to entirely circumvent this essential and mandatory requirement, thwarting the ECCC founding legal texts. In particular, Articles 5 and 7 of the ECCC Agreement explicitly provide instructions on the National Co-Investigating Judge's required conduct and the outcome of any disagreement between the Co-Investigating Judges. Therefore, the International Judges find that the issuance of the Dismissal Order, as an attempt to avoid the compulsory disagreement procedure, is legally flawed and shall accordingly be considered null and void." (Opinion of Judges BEAUVALLET and BAIK, para. 260)
3.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Ultimately, the Pre-Trial Chamber reiterates that when the National and the International Co-Investigating Judges are unable to agree on a common position, and where the matter in dispute between them, or their prolonged disagreement over an issue, jeopardises the effectiveness of the judicial investigation, the ECCC legal framework does not permit that such disagreement be entrenched or sheltered from an effective resolution. The Chamber thus affirms its previous holding that where the disagreement settlement procedure provided for by Internal Rule 72 emerges as the only remaining course of action available to the Co-Investigating Judges to prevent the occurrence of a procedural stalemate and to safeguard the legality, fairness and effectiveness of a judicial investigation conducted at the ECCC, the Co-Investigating Judges must trigger this procedural mechanism by referring their disagreement to the Pre-Trial Chamber." (para. 107) --- "The International Judges recall that despite the Co-Investigating Judges' illegal course of action to evade the disagreement settlement procedure and issue two Closing Orders simultaneously, the Indictment is valid as it is in conformity with the ECCC legal framework. On the contrary, the International Judges reaffirm that, for reasons stated previously, the issuance of the Dismissal has been deemed to be an attempt to defeat the default position enshrined in the ECCC legal framework and is thus *ultra vires*." (Opinion of Judges BAIK and BEAUVALLET, para. 510) "The International Judges consider that the issuance of the conflicting Dismissal by the National Co-Investigating Judge without referral to the Pre-Trial Chamber is a brazen attempt to entirely circumvent this essential and mandatory requirement, thwarting the ECCC founding legal texts. In particular, Articles 5 and 7 of the ECCC Agreement explicitly provide instructions on the National Co-Investigating Judge's required conduct and the outcome of any disagreement between the Co-Investigating Judges. Therefore, the International Judges find that the issuance of the Dismissal, as an attempt to avoid the compulsory disagreement procedure, is legally flawed and shall accordingly be considered null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 173)

B. Appeals (General)

1. General

i. *Appellate Function of the Pre-Trial Chamber*

For jurisprudence concerning the ***Powers of the Pre-Trial Chamber,*** See III. Powers of the Pre-Trial Chamber

1.	**003 Special PTC 01** 15 December 2011 Doc. No. 3 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77*bis* of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9)
2.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77*bis* of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"In prior rulings, the Pre-Trial Chamber has affirmed the responsibilities and powers it is vested with within the ECCC legal system. It clearly emerges, notably from Internal Rule 73(a), that the Chamber's jurisdiction encompasses an appellate function. The Chamber has further clarified that its appellate function empowers it to determine the law that governs the pre-trial stage of proceedings in an authoritative and final manner." (Opinion of Judges BEAUVALLET and BAIK, para. 121) "[T]he Internal Rules bestow the Pre-Trial Chamber with a general jurisdiction over 'orders' and 'decisions' of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BAIK, para. 123)

ii. *Distinction with Annulment*

For jurisprudence concerning the ***Annulment Procedure***, see VII.C.3. Annulment Procedure

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Internal Rules provide for a number of orders that can be appealed to the Pre-Trial Chamber by charged persons. The list is exhaustive and the Pre-Trial Chamber has jurisdiction to decide only on appeals against the mentioned orders and decisions. Other orders of the Co-Investigating Judges are subject to control through the annulment procedure, which ensures that a charged person may request that proceeding affected by procedural defect which infringes his/her rights be annulled. The Pre-Trial Chamber observes that this procedure is different from the appeal procedure and therefore requires different actions from the Co-Lawyers to lead the issue before the Pre-Trial Chamber." (para. 33)
2.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"The Internal Rules provide for a number of orders that can be appealed to the Pre-Trial Chamber by charged persons. The list is exhaustive and the Pre-Trial Chamber has jurisdiction to decide only on appeals against the mentioned orders and decisions. Other orders of the Co-Investigating Judges are subject to control through the annulment procedure, which ensures that a charged person may request that proceeding affected by procedural defect which infringes his/her rights be annulled. The Pre-Trial Chamber observes that this procedure is different from the appeal procedure and therefore requires different actions from the Co-Lawyers to lead the issue before the Pre-Trial Chamber." (para. 28)
3.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[T]he regimes for annulment and appellate review are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges." (Opinion of Judges CHUNG and DOWNING, para. 2) "The annulment procedure, which is specific to the inquisitorial system, has been specifically crafted to cure *procedural defects* affecting investigative acts accomplished by the investigative authority in its search for the truth, *i.e.,* generally involving the gathering of evidence, when these procedural irregularities harm the interests of a party. […] When a procedural irregularity affects their validity, these acts, which are not open to appeal, can be annu[l]led and, as a result, removed from the case file so the trial court is not tainted by the evidence collected or the investigative act executed in contravention with procedural requirements." (Opinion of Judges CHUNG and DOWNING, para. 3) "By contrast, decisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file. The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications, and thereby decide afresh substantive legal issue. Rather, if the International Co-Investigating Judge had been of the view that the Orders were flawed for substantive errors of fact or law, he may have envisaged the possibility of reconsidering them, after having heard the affected parties." (Opinion of Judges CHUNG and DOWNING, para. 4)

iii. *Appeals and Resubmission of Requests*

1.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber notes that the correct procedure for the parties to challenge the nature of the answer given in an order is an appeal against it and not subsequent request reiterating the initial request which was addressed in the order." (para. 20)

2. Admissibility of Appeals

i. *Standing*

a. General

1.	**003 Special PTC 01** Doc. No. 5 4 October 2012 *Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"The issue of standing, or whether a motion is properly raised, has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their examination of admissibility for motions before entering into the merits. The number of decisions from authorities that follow the same approach, other than those of this Chamber, is overwhelming." (para. 4)
2.	**004 AO An** PTC 08 D185/1/1/2 13 October 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Annulment Motion*	"The issue of standing, or whether a motion is properly raised, 'has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their examination of admissibility for motions before entering into the merits.'" (para. 13)
3.	**004 YIM Tith** PTC 13 A157/2/1/2 21 November 2014 *Considerations of the Pre-Trial Chamber on*	"[T]he issue of standing, or whether a motion is properly raised, 'has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their *examination of admissibility* for the motions.'" (para. 21)

	YIM Tith's Appeal against the Decision Denying His application to the Co-Investigative Judges Requesting them to Seize the Pre-Trial Chamber with a View to Annul the Judicial Investigation	
4.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"[A]t the ECCC, it is the applicable rules that set different procedural rights to appeal by each party, and the case-by-case examination of appeals, for admissibility under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties." (para. 19)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber previously found that, at the ECCC, the applicable rules set different procedural rights to appeal by each party: 'the case-by-case examination of appeals for admissibility, under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties.'" (para. 143)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[A]t the ECCC, the applicable rules set different procedural rights of appeal for each party and 'the case-by-case examination of appeals for admissibility, under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties.'" (para. 71)

b. Co-Prosecutors

For jurisprudence concerning the ***Co-Prosecutors' Role***, see III.C.6.iv. Role of the Co-Prosecutors in Disqualification Proceedings, III.D.3.i.b. Co-Prosecutors, IV.A.1.i. Role of the Co-Prosecutors, IV.A.2.i.a. Role of the Co-Prosecutors, IV.3.i.b. Participation of the Co-Prosecutors in Judicial Investigation, III.D.3.i. Co-Prosecutors

1.	**002 IENG Sary** PTC 08 A162/III/6 28 August 2008 *Decision on IENG Sary's Appeal against Letter concerning Request for Information concerning Legal Officer David BOYLE*	"Internal Rule 74(2) allows the Co-Prosecutors to appeal against all *orders*. Since the Decision of the Co-Investigating Judges does not constitute an order, no issue as to the principle of equality of arms arises." (para. 18)
2.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8	"[T]he Co-Prosecutors have no standing as of right in respect of this kind of application [for disqualification]. If the Pre-Trial Chamber considers the Co-Prosecutors may be an interested party, they may participate or they may be otherwise called upon to assist by commenting or filing submissions in cases where the Chamber feels it appropriate to have views expressed." (para. 20)

	15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	
3.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"[O]nce read in context and in conjunction with Internal Rule 73, it is clear that Internal Rule 74(2) foresees the rights of appeal of the Co-Prosecutors in relation to such Orders of the Co-Investigating Judges Orders that are related to the criminal investigation. The nature of the impugned Order [ordering a party or an officer of the court to retract information] is not such that purely related to the criminal investigation, it rather relates to an action from one of the officers of the court. Therefore, the Appeal under Internal Rule 74(2) would represent an incorrect mixture of the factual situation and the legal provision upon which the International Co-Prosecutor rely to establish jurisdiction for the Appeal." (para. 16) "The Pre-Trial Chamber observes that neither the Internal Rules nor the Cambodian Code of Criminal Procedure give any indication as to the legal basis for an appeal against an order ordering a party or an officer of the court to retract information." (para. 17) "The Order of the Co-Investigating Judges holds that the International Co-Prosecutor acted partly without legal basis and further breached the Rule of confidentiality as mentioned in Internal Rule 56(1). The legal basis for this order […] can be found in Internal Rule 35. Internal Rule 35(1) dealing with the interference in the administration of justice uses the words 'including any person who' and is not limited to the actions specifically mentioned in this part of the rule, they are examples of the types of matters falling within the class of actions which may amount to an interference with the administration of justice. Acting without legal basis and breaching confidentiality as prescribed by law must be seen as wilful interference in the administration of justice. The Co-Investigating Judges being in charge of judicial investigations were entitled to make an order concerning, even a perceived, breach of confidentiality to the International Co-Prosecutor as they could deal with the matter summarily as prescribed in Internal Rule 35(2)." (para. 27) "As Internal Rule 35(6) provides for a right of appeal against such orders the International Co-Prosecutor's appeal is admissible under this Internal Rule. Considering the personal background of the Order, as apparently being based on Internal Rule 35, there is no issue of whether the International Prosecutor is allowed to act alone in filing the appeal." (para. 28) "As previously found, the Pre-Trial Chamber shall determine whether the Co-Investigating Judges committed an error of law or fact or abused their discretion by issuing the Retraction Order." (para. 29)
4.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"We consider that the Defence's claim that the International Co-Prosecutor has insufficient interest to respond to the Request for a Stay of Execution should be rejected. As the Office of the Co-Prosecutors is responsible for mounting the prosecution, it goes without saying that it has standing to intervene in any matter relating to the conduct of the investigation, including matters concerning the arrest of charged persons. Moreover, Internal Rule 74(2) provides that the Co-Prosecutors may appeal any order of the Co-Investigating Judges." (Opinion of Judges BEAUVALLET and BWANA, para. 5)
5.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"With regards to the other Defence argument, that failure to admit the Appeal would itself constitute a breach because the Co-Prosecutors may appeal all orders of the CIJs under Rule 74(2), the Pre-Trial Chamber notes that, at the ECCC, it is the applicable rules that set different procedural rights to appeal by each party, and the case-by-case examination of appeals, for admissibility under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties." (para. 19)

6.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber recalls that, pursuant to Internal Rule 67(5), '[t]he [closing] order is subject to appeal as provided in Rule 74.' Furthermore, in accordance with Internal Rule 74(2), '[t]he Co-Prosecutors may appeal against all orders by the Co-Investigating Judges.'" (para. 25)
7.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[P]ursuant to Internal Rules 67(5) and Internal Rule 74(2), the Closing Order (Indictment) is subject to appeal because the Co-Prosecutors may appeal all orders by the Co-Investigating Judges." (para. 127) "[P]ursuant to Internal Rules 67(5) and Internal Rule 74(2), the Closing Order (Dismissal) is subject to appeal because the Co-Prosecutors may appeal all orders by the Co-Investigating Judges." (para. 129) "The Co-Prosecutors may appeal against all orders issued by the Co-Investigating Judges." (Opinion of Judges BAIK and BEAUVALLET, para. 680)
8.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[P]ursuant to Internal Rules 67(5), 74(2) and 73(a), the Indictment is subject to appeal, the Co-Prosecutors have a general right to appeal all orders by the Co-Investigating Judges, and the Pre-Trial Chamber has jurisdiction over such appeal." (para. 51) "[P]ursuant to Internal Rules 67(5), 74(2) and 73(a), the Dismissal Order is subject to appeal, the Co-Prosecutors have a general right to appeal all orders by the Co-Investigating Judges, and the Pre-Trial Chamber has jurisdiction over such appeal." (para. 53) "[P]rocedural differences between the Co-Prosecutors' and the accused's rights of appeal do not, *per se*, constitute a breach of fairness. […] More importantly, at the ECCC, the applicable rules set different procedural rights of appeal for each party and 'the case-by-case examination of appeals for admissibility, under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties.'" (para. 71)

c. Defence

1.	**002 IENG Sary** PTC 08 A162/III/6 28 August 2008 *Decision on IENG Sary's Appeal against Letter concerning Request for Information concerning Legal Officer David BOYLE*	"[N]either Internal Rule 73(a) nor 74(3) allows the Charged Person to appeal against the Decision of the Co-Investigating Judges [refusing to provide information]. Therefore, the Pre-Trial Chamber has, on the basis of these rules, no jurisdiction over the Appeal." (para. 17) "Internal Rule 74(2) allows the Co-Prosecutors to appeal against all *orders*. Since the Decision of the Co-Investigating Judges does not constitute an order, no issue as to the principle of equality of arms arises." (para. 18)
2.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber further notes that there is no other specific provision in the Internal Rules allowing the Charged Person to appeal the Translation Order before the Pre-Trial Chamber." (para. 32) "The Internal Rules provide for a number of orders that can be appealed to the Pre-Trial Chamber by charged persons. The list is exhaustive and the Pre-Trial Chamber has jurisdiction to decide only on appeals against the mentioned orders and decisions. Other orders of the Co-Investigating Judges are subject to control through the annulment procedure, which ensures that a charged person may request that proceeding affected by procedural defect which infringes his/her rights be annulled. The Pre-Trial Chamber observes that this procedure is different from the appeal procedure and therefore requires different actions from the Co-Lawyers to lead the issue before the Pre-Trial Chamber." (para. 33)

3.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009 *Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber further notes that there is no other specific provision in the Internal Rules allowing the Charged Person to appeal the Translation Order before the Pre-Trial Chamber." (para. 27) "The Internal Rules provide for a number of orders that can be appealed to the Pre-Trial Chamber by charged persons. The list is exhaustive and the Pre-Trial Chamber has jurisdiction to decide only on appeals against the mentioned orders and decisions. Other orders of the Co-Investigating Judges are subject to control through the annulment procedure, which ensures that a charged person may request that proceeding affected by procedural defect which infringes his/her rights be annulled. The Pre-Trial Chamber observes that this procedure is different from the appeal procedure and therefore requires different actions from the Co-Lawyers to lead the issue before the Pre-Trial Chamber." (para. 28)
4.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[T]he possibility to appeal from orders of the Co-Investigating Judges is limited for the Charged Person whereas the Co-Prosecutors can appeal all such orders. Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 19)
5.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[T]he possibility to appeal from orders of the Co-Investigating Judges is limited for the Charged Person whereas the Co-Prosecutors can appeal all such orders. Any inconsistency that may derive from a suggested general possibility to appeal under 55(10) and the limited possibility to appeal for the Charged Person under 74(3)(b) cannot lead to the conclusions as drawn by the Defence [that Internal Rule 55(10) should be interpreted so that it provides for the right to interlocutory appeal against rejection of both general requests and requests for investigative action and that it should prevail in accordance with the principle of *in dubio pro reo*]." (para. 17)
6.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Pursuant to Internal Rule 74(3), a charged person may appeal against nine categories of orders or decisions made by the OCIJ." (para. 18)
7.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal*	"[A]ccording to Internal Rule 74, not all orders of the Co-Investigating Judges can be appealed by all of the parties. Indeed, while the Co-Prosecutors may, under Internal Rule 74(2), appeal against all orders issued by the Co-Investigating Judges, the Charged Persons or the Accused may appeal only those orders and decisions enumerated under Internal Rule 74(3). An indictment is not on that list. Nevertheless, […] although the Accused may not appeal against the indictment itself, the Pre-Trial Chamber is of the view that, to the extent that it confirms the jurisdiction of the ECCC, it is clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges. Therefore, the

	against the Closing Order	question for the Pre-Trial Chamber is to determine whether, […] the Appellant […] has the right to appeal against the Indictment 'in its entirety', given that the Indictment generally confirms the ECCC's Trial Chamber jurisdiction to try him. This would amount to adding the indictment to the list of appealable Co-Investigating Judges' orders and decisions enumerated in the Internal Rules. Clearly, such an interpretation is not consistent with the approach adopted by the Internal Rules […]. Internal Rule 74(3)(a) also does not allow the Appellant to appeal against procedural irregularities in the investigation." (para. 14) "[T]he Appellant's submission that […] under French law, an accused may now appeal against an indictment […] cannot justify a departure from the clearly established defined appealable matters set out in Internal Rule 74(3)(a)." (para. 15)
8.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"We note that the right to appeal under Internal Rule 74(3)(b) is reserved to a 'Charged Person', as is the right to request investigative actions under Internal Rule 55(10). However, the present Appeal specifically challenges the interpretation of the notion of 'Charged Person' adopted by the International Co-Investigating Judge […]. […] We consider that the particular circumstances of this case call for a broad interpretation of the right to appeal under Internal Rule 74(3)(b), in the light of the fundamental principles set out in Internal Rule 21." (Opinion of Judges CHUNG and DOWNING, para. 5)
9.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"The Co-Lawyers submit that this Appeal is made by Meas Muth, *through his Co-Lawyers*. […] [P]ursuant to *their professional oath* and *in the absence of any order to the contrary* issued by the ECCC, the Co-Lawyers are obliged to '*conduct the case* to finality.' […] At present, the e*ligibility of the Co-Lawyers to defend Meas Muth remains practically* impugned – which does not mean removed - on grounds of conflict of interest until the ECCC has *finally* found otherwise." (para. 6)
10.	**004 YIM Tith** PTC 06 D192/1/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)
11.	**004 YIM Tith** PTC 10 D186/3/1/2 31 October 2014	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a

	Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying his Requests to Access the Case File and to Take Part in the Investigation	different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)
12.	**004 YIM Tith** PTC 13 A157/2/1/2 21 November 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeal against the Decision Denying His application to the Co-Investigative Judges Requesting them to Seize the Pre-Trial Chamber with a View to Annul the Judicial Investigation*	"Notwithstanding whether the admissibility of the Appeal is argued under Internal Rules 74 and 76 or Internal Rule 21, the Pre-Trial Chamber notes that, at the heart of the admissibility arguments lies the issue of *whether the Appellant, being a Suspect named in the Introductory Submission, is entitled to file motions,* be these applications or appeals, seeking procedural rights such as: 1) submitting applications to the Co-Investigating Judges requesting them to seize the Pre-Trial Chamber with a view to annulment and 2) appealing against the orders or decisions of the Co-Investigating Judges refusing such applications." (para. 20) "[T]he issue of standing, or whether a motion is properly raised, 'has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their *examination of admissibility* for the motions.'" (para. 21) "The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal." (para. 22)
13.	**004 YIM Tith** PTC 15 D203/1/1/2 19 January 2015 *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*	"[T]he Appellant does *come back to his recurring objections related to the very issue of his status* in the proceedings as an individual 'subject to prosecution' by repeating his *previous arguments, made in the Urgent Motion Appeal* […].[…] In considering the admissibility of the Urgent Motion Appeal, Judges PRAK, HUOT and NEY held that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules cannot lodge appeals under the Internal Rules. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules, *in the light of Internal Rule 21*, found that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' […] and opined that, at this stage of the proceedings, *the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged* Persons. The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue." (para. 29)
14.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"The Pre-Trial Chamber considers that AO An has standing to file submissions regarding an appeal filed in Case 004, to which he is a party, notwithstanding the issues this appeal raises. […] The Pre-Trial Chamber further observes that the jurisprudence cited by the International Co-Prosecutor, in fact, supports the principle that a party has standing to file submissions in the case that concerns him or her. In the three decisions cited, where found to lack standing, the applicant was either not a party at all to the case or a suspect willing to file an appeal related to the reconsideration of a decision initially filed in another case. By contrast, in the present case, the applicant is a charged person, with all the rights attached to this quality who as a party in Case 004 has filed submissions in response to an appeal regularly filed in Case 004 against a decision issued in the same case." (para. 17)

15.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"[T]he Defence has not demonstrated further that Ao An has a right to appeal against disclosure decisions." (para. 31)
16.	**004 YIM TITH** PTC 55 D377/1/1/3 19 October 2018 *Decision on YIM Tith's Appeal of the Decision on YIM Tith's Request for Correction of Translation Errors in Written Records of Interview*	"Internal Rules 73 and 74 set out the explicit jurisdiction of the Pre-Trial Chamber with Rule 74(3) […] providing an exhaustive list of the types of orders and decisions of the Co-Investigating Judges that can be appealed against by a charged person." (para. 10)
17.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Internal Rule 74(3) affords the Charged Person or Accused with a limited right to appeal only those orders and decisions specifically enumerated under the provision. […] Internal Rule 74(3)(a) […] provides that '[t]he Charged Person or the Accused may appeal against […] orders or decisions of the Co-Investigating Judges: a) confirming the jurisdiction of the ECCC [...].' It follows […] that the Closing Order (Indictment) is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 135) "[A]t the ECCC, the […] rules set different procedural rights to appeal by each party: 'the case-by-case examination of appeals for admissibility, under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties.' […] [I]t was clearly the intent of drafters to provide differing procedural rights to appeal to the parties under Internal Rule 74. This provision […] would become meaningless if an accused could challenge anything implicating 'criminal liability', including the contours of crimes or modes of liability under the guise of personal jurisdiction." (para. 143)

d. Civil Parties

For jurisprudence concerning the ***Standing of Civil Parties***, see VI.E.2.i. Standing and Appealable Decisions and Orders

e. Other

1.	**003 Special PTC 01** Doc. No. 3 15 December 2011 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"[T]he right to legal representation is the Suspect's *own* right for him/her to choose to exercise it or not on his/her *own free will*. It is not for anybody else to decide on behalf of the Suspect in this respect. The Suspect may choose to defend him/herself in person. Where the suspect informs the Judge or Chamber before which he/she appears that he/she has engaged Counsel, then he/she has to file a power of attorney with the Registry and where the Counsel meets the requirements he/she can act on behalf of the suspect. Suspects who are indigent shall be assigned Counsel, provided 'the interests of justice so demand.' Although the directives for such assignments are set out by the Registrar, they have to be *approved by the judges*. It is the Judges who may, 'if [they] decide that it is in the interests of justice,' *instruct* the *Registrar to ass[i]gn a coun[s]el* to represent the interests of the accused.' The position and functions of the Registrar in ICTY appear to be similar to those of the DOA/DDOA in ECCC in that they are there to enable the Chambers to 'accomplish their mission.'" (para. 11) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating

		Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
2.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"[T]he right to legal representation is the Suspect's *own* right for him/her to choose to exercise it or not on his/her *own free will*. It is not for anybody else to decide on behalf of the Suspect in this respect. The Suspect may choose to defend him/herself in person. Where the suspect informs the Judge or Chamber before which he/she appears that he/she has engaged Counsel, then he/she has to file a power of attorney with the Registry and where the Counsel meets the requirements he/she can act on behalf of the suspect. Suspects who are indigent shall be assigned Counsel, provided 'the interests of justice so demand.' Although the directives for such assignments are set out by the Registrar, they have to be *approved by the judges*. It is the Judges who may, 'if [they] decide that it is in the interests of justice,' *instruct* the *Registrar to ass[i]gn a coun[s]el* to represent the interests of the accused.' The position and functions of the Registrar in ICTY appear to be similar to those of the DOA/DDOA in ECCC in that they are there to enable the Chambers to 'accomplish their mission.'" (para. 11) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 004 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
3.	**003 Special PTC 01** Doc. No. 5 4 October 2012 *Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"In its Decision on the DSS Request for a Stay in Case 003 [Doc. No. 3], the Pre-Trial Chamber decided that the Request is inadmissible. It noted that motion or requests filed before the Pre-Trial Chamber have to be 'properly raised,' that the Request for Stay referred mainly to the 'Defence,' which term is introduced as 'the DSS' and not 'Counsel representing anyone before the ECCC;' and that the DSS is part of the Office of Administration which is 'there to enable the Chambers to "ac[c]omplish their mission".' […] [T]he issue of whether a representative of a particular unit of the Administration of the Court has standing as of right to appear or to bring motions before the Chamber in order to seek relief in proceedings to which they are not parties is one of the issues to be assessed for admissibility purposes before entering into the merits of a motion. The issue of standing, or whether a motion is properly raised, has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals'" in their examination of admissibility for motions before entering into the merits. The number of decisions from authorities that follow the same approach, other than those of this Chamber, is overwhelming." (para. 4)

ii. *Appealable Decisions and Orders*

a. Notion of Decisions and Orders

1.	**002 IENG Sary** PTC 08 A162/III/6 28 August 2008 *Decision on IENG Sary's Appeal against Letter concerning Request for Information concerning Legal Officer David BOYLE*	"Internal Rule 74(2) allows the Co-Prosecutors to appeal against all *orders*. Since the Decision of the Co-Investigating Judges does not constitute an order, no issue as to the principle of equality of arms arises." (para. 18)
2.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal*	"The Co-Investigating Judges decided that only the Charged Person's ability to instruct counsel was an issue since he refused to participate in interviews." (para. 15) "As a result, the Charged Person has been denied the possibility of having his mental capacity to participate in his defence during the investigation examined by an expert. The Co-Investigating Judges' decision amounts to a refusal of the entire Application. Such a refusal can be appealed against under Internal Rule 74(3)(d)." (para. 16)

	regarding Appointment of an Expert	
3.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"The Pre-Trial Chamber has previously held that a memorandum from the Office of the Co-Investigating Judges constitutes a decision from the Co-Investigating Judges." (Opinion of Judges PRAK and DOWNING, para. 6)
4.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Pursuant to Internal Rule 74(3), a charged person may appeal against nine categories of orders or decisions made by the OCIJ. [T]he OCP firstly object that the impugned Order is not an 'order' or a 'decision'. Instead they submit that it is a mere 'declaration' of the applicable law […] not appealable. […] [N]ot only does the title of the Impugned Order indicate that it is an 'order', its content is directed at addressing the applicability of JCE as a form of liability before the ECCC. Accordingly, the form and substance of the Impugned Order indicate that it is more than a mere 'declaration,' and amounts to an 'order' or 'decision' for the purposes of Internal Rule 74." (para. 18)
5.	**002 IENG Sary** PTC 65 A372/2/7 8 June 2010 *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Rejection of IENG Sary's Third Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order*	"The basis of the Appeal is not present. There was no decision, no matter how characterized, in respect of which an appeal can be made. The Request is in respect of a future action which may or may not be undertaken by the Co-Investigating Judges and seeks to fetter or control the manner and form by which they will exercise their discretion." (para. 2)
6.	**14-06-2016-ECCC/PTC Special PTC** Doc. No. 4 4 August 2016 *Decision on Neville SORAB's Appeal against the Defence Support Section's Failure to Consider his Application to be Placed on the List of Foreign Lawyers*	"Furthermore, it is noted that the DSS email […] has all the indicia of a 'decision' issued by the DSS rejecting the Application, since it was: i) issued by the Head of the DSS; ii) it noted that the DSS had '*considered* [the Appellant's] request'; and iii) reiterated the insufficiency of experience on the part of the Appellant as reason for rejecting the Application, 'at [that] time'. It is also noted that, when it issued this Decision, the DSS was already in possession of the Appellant's table that contained experience, 'which was not previously considered' back in 2015." (para. 11)

7.	**004 YIM Tith** PTC 41 D306/17.1/1/9 30 June 2017 *Decision on YIM Tith's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regard to a State's or Regime's own Armed Forces*	"The Pre-Trial Chamber considers that both the title and the form and substance of the Impugned Notification suggest that it does not amount to a 'decision' appealable under Internal Rule 74(3)(a), but rather to an opinion from which declaratory relief is sought. (para. 15) "The title, content, and use of terms such as 'a matter of principle' or 'in the abstract' therefore strongly suggest that the Impugned Notification is merely an advisory opinion regarding a disagreement on the applicable law, the resolution of which the Pre-Trial Chamber does not consider essential at this stage of the determination of allegations in Case 004. Indeed, since it is a mixed issue of law and fact, absent any specific factual basis, it is only possible to speculate as to what consideration, if any, the Co-Investigating Judges may give to an attack by a state or organisation against its own armed forces in the drafting of the closing order, which is appealable." (para. 17) "[T]he Pre-Trial Chamber concludes that the Impugned Notification does not constitute an appealable 'decision' within the meaning of Internal Rule 74(3). Furthermore, the Pre-Trial Chamber considers that the relief sought by the Co-Lawyers is declaratory and that the impact of any ruling it would make on the issue at state with regards to the charges would be speculative. There is thus no need to examine whether [the] interpretation of 'attack against the civilian population' in the context of crimes against humanity with regard to a State's or regime's own armed forces constitutes a jurisdictional challenge under Internal Rule 74(3)(a)." (para. 18)
8.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces*	"The Pre-Trial Chamber considers that both the title and the form and substance of the Impugned Notification suggest that it does not amount to a 'decision' appealable under Internal Rule 74(3)(a), but rather to an opinion from which declaratory relief is sought." (para. 12) "In particular, the Pre-Trial Chamber notes that the International Co-Investigating Judge did not explicitly indicate in the Impugned Notification whether he will apply his legal conclusions to the present case, either during the investigation or when determining the allegations against the charged person. Rather, he made findings 'as a matter of principle', called for submissions 'in the abstract as a question of law', with the aim to 'benefit international criminal law as a whole'." (para. 13) "The title, content, and use of terms such as 'a matter of principle' or 'in the abstract' therefore strongly suggest that the Impugned Notification is merely an advisory opinion regarding a disagreement on the applicable law, the resolution of which the Pre-Trial Chamber does not consider essential at this stage of the determination of allegations in Case 004. Indeed, since it is a mixed issue of law and fact, absent any specific factual basis, it is only possible to speculate as to what consideration, if any, the Co-Investigating Judges may give to an attack by a state or organisation against its own armed forces in the drafting of the closing order, which is appealable." (para. 14) "[T]he Pre-Trial Chamber concludes that the Impugned Notification does not constitute an appealable 'decision' within the meaning of Internal Rule 74(3). Furthermore, the Pre-Trial Chamber considers that the relief sought by the Co-Lawyers is declaratory and that the impact of any ruling it would make on the issue at state with regards to the charges would be speculative. There is thus no need to examine whether the interpretation of 'attack against the civilian population' in the context of crimes against humanity with regard to a State's or regime's own armed forces constitutes a jurisdictional challenge under Internal Rule 74(3)(a)." (para. 15)
9.	**003 MEAS Muth** PTC 32 D191/18/1/8 18 July 2017 *Decision on MEAS Muth' Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regard to a State's or Regime's Own Armed Forces*	"[T]he Pre-Trial Chamber recalls that it held in Cases 004 and 004/2 [in D306/17.1/1/9 and D347.1/1/7] that impugned notifications on the interpretation of the civilian population element of crimes against humanity did not constitute appealable 'decisions' within the meaning of Internal Rule 74(3) that the relief sought in those cases was declaratory and that the impact of any ruling it would make on the issue at stake with regards to the charges would be speculative. […] [T]he Pre-Trial Chamber would have found the present Appeal inadmissible on the same grounds." (para. 16)

10.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber is the only judicial entity legally entitled to review the Co-Investigating Judges' closing order itself as well as the legal consequences of it. In this case, the Pre-Trial Chamber considers that the challenged parts of the Indictment are where the International Co-Investigating Judge provided his observations on the validity of his own unprecedented action. Therefore, the Chamber finds that these are mere speculations, expressed beyond his judicial mandate, which have no judicial effect and thus are not a judicial decision or order subject to an appeal under Internal Rule 74." (para. 66)

b. Constructive Refusal

1.	**002 IENG Sary** PTC 03 C22/I/49 2 July 2008 *Written Version of Oral Decision of 30 June 2008 on the Co-Lawyers' Request to Adjourn the Hearing on the Jurisdictional Issues*	"[I]t may be possible to appeal against the failure of the Co-Investigating Judges to determine a request, since the conduct of the Co-Investigating Judges may be interpreted to amount to a constructive refusal of an application." (para. 5)
2.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"Pursuant to Internal Rule 31(10), 'request[s] [to appoint an expert] shall be ruled upon by the Co-Investigating Judges or the Chambers as soon as possible and in any event at the end of the investigation' (emphasis added). Contrary to what seems to be the Co-Investigating Judges' position, the two conditions are cumulative and do not allow the Co-Investigating Judges to choose either to give ruling as soon as possible or to give a ruling before the end of the investigation." (para. 21) "The Pre-Trial Chamber considers that by its nature, the Co-Lawyers' Request requires timely attention. The Pre-Trial Chamber notes by analogy that Article 170 of the Cambodian Code of Criminal Procedure allows charged persons to seize the Investigative Chamber directly when an investigating judge fails to issue an order responding to request to appoint an expert within thirty days." (para. 22) "The Pre-Trial Chamber considers that with the passage of time, the failure of the Co-Investigating Judges to decide on the Request makes it impossible for the Charged Person to obtain the benefit which he sought." (para. 23) "The Pre-Trial Chamber finds that the failure of the Co-Investigating Judges to rule on the Request as soon as possible, in circumstances where delay in making decision deprives the Charged Person of the possibility of obtaining the benefit he seeks, amounts to constructive refusal of the application, which can be appealed under Internal Rule 74(3)(d)." (para. 24)
3.	**002 IENG Sary** PTC 29 D171/4/5 22 December 2009 *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Constructive Denial of IENG Sary's Third Request for Investigative Action*	"[I]n relation to requests for investigative action the Code of Criminal Procedure of the Kingdom of Cambodia hold other similar provisions for the failure of the judges to make decisions under Article 133 [...]." (para. 7) "[T]aking into account its purpose, the Request is not a 'request for investigative action' within the ambit of Internal Rule 74(3)(b) [...]. Requests for investigative action are to be performed by the Co-Investigating Judges or, upon delegation, by the ECCC investigators or the judicial police, with the purpose of collecting information conducive to ascertaining the truth." (para. 8) "[T]he Appeal is not seeking something which deprives the Charged Person of the possibility of obtaining the benefit he seeks which can be appealed under Internal Rule 74(3)(b). The Pre-Trial Chamber finds that it would be improper to use the notion of constructive refusal to f[i]nd a right of appeal where no substantive right exists in any event, as the request made was not one falling within the right of the Charged Person to make under the laws applicable to the ECCC or its Internal Rules." (para. 9)

4.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber finds that notwithstanding the fact that the Order itself does not formally refer to the First Request, the Co-Investigating Judges' formal letter […] to the Co-Lawyers makes it clear that it was their intention to respond to their First Request in the Order. Further, without entering into the substantial contents of the Order, the Pre-Trial Chamber observes, as also noted by the Co-Lawyers, that the First Request was actually addressed in the Order. Therefore, as far as the First Request is concerned, the Pre-Trial Chamber finds that there is no constructive refusal from the Co-Investigating Judges." (para. 17)
5.	**002 IENG Sary** PTC 60 D345/5/11 9 June 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order on IENG Sary's Motion against the Application of Command Responsibility*	"[T]his Appeal is related to a decision of the Co-Investigating Judges to 'not make a decision' and not to a decision confirming the jurisdiction of the ECCC. The Co-Lawyers assert that the Co-Investigating Judges' refusal to address the Motions at this stage, results in a constructive denial […]. [T]he Internal Rules [d]o not oblige the Co-Investigating Judges to decide on this matter before the Closing Order. However, at this stage of the proceedings a Closing Order is imminent, and if the Closing Order confirms the jurisdiction of the ECCC over Command Responsibility, the Charged Person may consider the effect of Internal Rule 67 (5) when read in conjunction with Internal Rule 74(3) (a). At this point, it is speculative as to what, if any, consideration the Co-Investigating Judges will give to the jurisdiction of the ECCC in respect of command responsibility. The Co-Investigating Judges are not obliged to give declaratory decisions […] and the Pre-Trial Chamber will not provide advisory opinions and cannot fetter the exercise of the discretions of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order. […] [N]o fundamental rights of the Charged Person are harmed by declaring the appeal inadmissible at this stage of the proceedings and Internal Rule 21 does not compel the Pre-Trial Chamber to render the appeal inadmissible." (para. 11)
6.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"The Pre-Trial Chamber first considered the concept of constructive refusal in a July 2008 decision, where it stated that it is possible to appeal against a Co-Investigating Judge's failure to determine a request, since the conduct may be interpreted to amount to a constructive refusal of a request. The Pre-Trial Chamber has clarified that the failure of the Co-Investigating Judges to rule on a request 'as soon as possible, *in circumstances* where a delay in making a decision *deprives the Charged Person of the possibility of obtaining the benefit he seeks*, amounts to a constructive refusal of the application, which *can be appealed against under Internal Rule 74(3),' provided that the request is allowed under the Internal Rules.* In respect of requests *not allowed* under the Internal Rules, the Pre-Trial Chamber has stated that it would be improper to use constructive refusal as a basis for an appeal of a denied or unmet request. However, in relation to *particular appeals* filed against constructive refusal of a *request that is not expressly allowed under the Internal Rules but which may relate to fundamental rights of the parties*, the Pre-Trial Chamber has considered examining 'whether *Internal Rule 21* requires that it adopts a broader interpretation of the [..] right to appeal in order to ensure that proceedings are fair and the rights […] are safeguarded.' The Pre-Trial Chamber has stated that the *Co-Investigating Judges' investigations are conducted independently* and that the Pre-Trial Chamber will not dictate the 'methodology or nature of an investigation which falls within the Co-Investigating Judges' discretionary power, unless and until it is satisfied that an investigative act impacts upon *due process or other rights.*' In the following cases, the Pre-Trial Chamber has found that it will not interfere with the Co-Investigating Judges' discretion in decision-making: (i) where the Co-Investigating Judges have taken sufficient action in pursuing an investigative action but were unsuccessful in completing the request; (ii) where the Co-Investigating Judges are not obliged by the Internal Rules to decide a matter before a particular time, but the issuance of such a decision will occur imminently; (iii) where 'taking into account their purpose, the requests are not requests for investigative action within the ambit of Internal Rule 74(3); and (iv) where the fundamental rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework.'" (para. 10) "It is to be noted that, notwithstanding the observations below, the Pre-Trial Chamber is of the view that for a matter to be considered as being appealable on the basis of constructive refusal alone more than a reasonable time must have pas[sed] since the request was made. This is not the case in respect of all of the matters currently before the Pre-Trial Chamber, with the exception of the request for access to the case file. Notwithsta[n]ding, it is appropriate to also examine the legal foundation of each request in respect of a claimed right to relief under Internal Rule 21." (para. 11)

		"[…] It would be *inappropriate to extend the concept of constructive refusal* such that the Pre-Trial Chamber would *scrutinize the adequacy* of investigative actions performed by the [Co-Investigating Judges] as such an extension would see this Chamber intruding into the investigative discretion vested in the [Co-Investigating Judges] by Internal Rule 55(5).'" (para. 15)
7.	**003 MEAS Muth** PTC 10/1 D87/2/3 09 September 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of MEAS Muth's Request to Access the Case File and to Participate in the Judicial Investigation*	"Considering the grounds on which the Appeal is filed and the relief requested and noting, as described in the procedural history above, that the ICIJ is in the process of actively considering the Request, the Pre-Trial Chamber finds that the argument that the ICIJ has *constructively refused* the Request fails. In these circumstances, the Appeal, as formulated, is moot." (para. 11)
8.	**004 AO An** PTC 12 A117/2/2 22 October 2014 *Decision on Appeal against Constructive Dismissal of TA An's Fourth Request for Investigative Action*	"The Pre-Trial Chamber recalls that the notion of constructive refusal has been developed by the Chamber to cover situations where the Co-Investigating Judges fail to rule on a request within the set legal deadline, when applicable, or where the Co-Investigating Judges' delay in making their decision could deprive the requesting party of the benefit sought." (para. 8) "The Pre-Trial Chamber finds that the present case does not display a delay in the Co-Investigating Judges' consideration of the Fourth Request; rather, the ICIJ has decided not to entertain the Fourth Request at this stage, on the basis of his previous finding that the Appellant is not entitled to file requests for investigative actions. […]. […] In these circumstances, the constructive refusal doctrine does not apply and any challenge to the course of action adopted by the ICIJ must be directed against the Notification and/or the Three Request Decision. In this respect, the Pre-Trial Chamber notes that the Appeal, in essence, seeks to challenge the ICIJ decision not to place the Fourth Request on the case file and, more generally, his 'policy' not to entertain the Appellant's requests for investigative actions, expressed in the Notification and the Three Requests Decision. The Pre-Trial Chamber finds that the Appeal is tantamount to an appeal against the Notification and its admissibility will therefore be examined in this context." (para. 9) "The Pre-Trial Chamber finds that the constructive refusal doctrine, which has been applied by the Pre-Trial Chamber to cover exceptional situations where the inaction of the Office of the Co-Investigating Judges or the delay in acting may cause prejudice, cannot be used to circumvent the time limit to appeal under the Internal Rules. The mischaracterisation of the Appeal is therefore not a good cause to accept its filing out of time, absent any further justification being provided by the Appellant." (para. 11)
9.	**003 MEAS Muth** PTC 14 D82/4/2 25 February 2015 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of His Motion to Strike, to Access the Case File and to Participate in the Investigation*	"The Pre-Trial Chamber notes that the International Co-Investigating Judge has decided on the Motion to Strike on 28 November 2014 and on the Requests to Access the Case File on 8 December 2014. The Appeal, which sought to challenge a 'constructive denial' of these requests due to the passage of time is therefore moot." (para. 17)
10.	**003 MEAS Muth** PTC 18 D120/1/1/2	"MEAS Muth does not challenge a decision of the Co-Investigating Judges but rather argues that their delay in deciding on his Motion to Strike amounts to a constructive denial of the said motion and opens a possibility to appeal. The Pre-Trial Chamber recalls that pursuant to Internal Rules 73 and 74, it has

	17 June 2016 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	jurisdiction to hear appeals against 'decisions' or 'orders' issued by the Co-Investigating Judges. However, the Pre-Trial Chamber previously considered that a request filed by a party that has remained unanswered by the Co-Investigating Judges may be deemed to have been rejected when the Co-Investigating Judges have (i) failed to rule on it within the set legal deadline, if applicable; or (ii) delayed making their decision so as to deprive the party of the possibility of obtaining the benefit sought. When a request or application is deemed to have been denied by the Co- Investigating Judges, the requesting party may seize the Pre-Trial Chamber provided that the matter falls within the ambit of its jurisdiction *rationae materiae*." (para. 7) "When the rules do not set a time limit for the Co-Investigating Judges to issue a decision, a mere delay in considering a request does not amount to constructive refusal. For the inaction of the Co-Investigating Judges to be interpreted as a refusal, it must be demonstrated that the request, by its nature, required 'timely attention' lest it would become meaningless. As the Chamber recently recalled, 'the constructive refusal doctrine […] has been applied by the Pre-Trial Chamber to cover *exceptional situations* where the inaction of the Office of the Co-Investigating Judges or the delay in acting may cause prejudice' […] or the delay in acting may cause prejudice'. Indeed, the only case where the Pre-Trial Chamber admitted an appeal against a constructive refusal concerns [the Co-Investigating Judges' decision to defer their consideration of a request to appoint a psychiatric expert to evaluate IENG Sary's fitness to participate in his defence to a later stage of the proceedings in Case 002 A189/I/8]. All further attempts to seize the Pre-Trial Chamber without a decision being first issued by the Co-Investigating Judges have been unsuccessful. In particular, the Pre-Trial Chamber found that there was no constructive refusal where i) the applicable procedural rules do not envisage a decision on the matter at that stage of the proceedings and the issue can be brought before the Chamber later without violating the appellant's fair trial rights (*e.g.*, issues that are to be addressed in a Closing Order but that parties sought to resolve in advance through declaratory relief); ii) the appellant had 'not demonstrated that his asserted rights are at risk of being *irremediably impaired*; iii) the rules provide for an adequate remedy, which remains available at a later stage, to address the alleged violation of rights or irregularities in the investigation , hence the appellant's fair trial rights are sufficiently protected by the existing legal framework (*e.g.*, the possibility to file an application for annulment pursuant to Internal Rule 76); iv) the Co-Investigating Judges indicated that they were in the process of considering the request or application; and v) the Co-Investigating Judges gave a valid reason for deferring their decision on the matter." (para.8) "In the present case, […] [t]he Pre-Trial Chamber finds that although MEAS Muth seeks to obtain an immediate relief, the Co-Investigating Judges' delay in considering the Motion to Strike does not amount to a constructive refusal, for two reasons." (para. 9) "Firstly, it is clear from the record that the Co-Investigating Judges have not denied the Motion to Strike; rather, the International Co-Investing Judge has deferred his decision until MEAS Muth becomes a party to the proceedings and, as such, is allowed to file submissions before the Co-Investigating Judges." (para. 10) "Secondly, MEAS Muth has not demonstrated that the deferral of a decision on his Motion to Strike would ultimately deprive him of the benefit which he seeks. Proceedings that are found to be null and void may be annulled and removed from the case file up until the issuance of a Closing Order. Hence, an appropriate remedy remains available at a later stage to remove the Supplementary Submission from the case file should it be found to be invalid. […] It is emphasised that when no decision has been issued in first instance, the Pre-Trial Chamber can only be seized of the matter if it can be inferred from the circumstances of the case that the Co-Investigating Judges have, in effect, denied a request filed to them. The fact that a delay in considering a request may prolong the investigation does not indicate that the Co-Investigating Judges have dismissed it. In any event, the investigation is ongoing on a number of factual allegations set out in the Introductory Submission and there is no indication at this stage that it is delayed by the investigating into the additional crimes set out in the Supplementary Submission." (para. 11)

iii. *Timing of Appeals*

For jurisprudence concerning the ***Timing of Requests under Internal Rules 31 and 32***, see IV.C.3.i.c. Timing of the Request

For jurisprudence concerning the ***Timing of Applications under Internal Rules 34 and 35***, see III.C.3.c. Timing of the Application

a. Expiration and Extension of Time to File Appeals

1.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File which assists in proving the Charged Persons' Knowledge of the Crimes*	"[T]he Pre-Trial Chamber received the Notice of Intention to be heard from the Co-Lawyers of KHIEU Samphan out of time, but the Pre-Trial Chamber decided, without request, to accept the notice to ensure that the fair trial rights of the Charged Person KHIEU Samphan were observed." (para. 5) "[T]he decision to grant or not an extension of time to file requests for investigative action belongs in first instance to the Co-Investigating Judges." (para. 14)
2.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphan's Real Activity'*	"[C]ontrary to Article 7 of the Practice Direction 'Filing of Documents before the ECCC,' the Khmer version of the Appeal was filed outside this time limit. The Pre-Trial Chamber exercised its discretion under Internal Rule 39(4)(b) to recognise the validity of the filing of the Appeal, notwithstanding that the Khmer version of the Appeal was filed after the expiration of the time limit prescribed by Internal Rule 75(3). No party is to be penalised as consequence of legitimate difficulties with obtaining the translation of a document." (para. 7)
3.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphan's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"KHIEU Samphân has not appealed the Order […] and […] he has therefore not exhausted the means of redress available to him in this regard. Accordingly, he can no longer invoke his alleged inability to access the case file as a ground to seek termination of the proceedings, now that the time limit for appeal has elapsed. It ill behoves him to now complain when he had such appeal right." (para. 17)
4.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG*	"[E]ven if the Pre-Trial Chamber was persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as they see fit.' Here the Pre-Trial Chamber finds that for the following reasons, it would be in the interests of justice to allow the Appellants' jurisdictional objections to the Impugned Order even though one may argue that they should have appealed the provisional detention orders on these grounds […]." (para. 80)

	Thirith against the Closing Order	"[I]t may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules themselves or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors." (para. 81) "Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging the breach of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to the Appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. However, the Pre-Trial Chamber does not find that considering the Appellants' jurisdictional objections at the close of the Co-Investigating Judges investigation and prior to the commencement of trial undermines expediency. Rather, consideration at this time supports the expeditious conduct of proceedings by safeguarding against an outcome in which '[s]uch a fundamental matter as […] jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 82) "In sum, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the Appellants' grounds of appeal raising jurisdictional objections against the Impugned Order at this time. Failure to do so based on the argument that the Appellants are time barred from raising appeals that are permitted according to a plain language reading of the Internal Rules, by relying instead on a questionable interpretation of the Internal Rules so as preclude appeals of this type on mere procedural grounds may result in fundamental unfairness to the Appellants." (para. 83)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In the event that the Pre-Trial Chamber is persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, at the request of a concerned party or on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as [it sees] fit.' In the circumstances of the current Appeal, the Pre-Trial Chamber finds that, for the following reasons, it would be in the interests of justice to allow the Appellant's jurisdictional objections, if any, to the Closing Order even though one may argue that he should have appealed the provisional detention orders on these grounds 'within 10 (ten) days from the date that notice of the decision or order was received.'" (para. 55) "As noted above, it may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing the Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors. Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging breaches of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. The Pre-Trial Chamber finds that considering the Appellant's jurisdictional objections at the close of the judicial investigation and prior to the commencement of trial would not undermine expedition. Rather, such consideration at this time supports the expeditious conduct of proceedings by providing a safeguard against an outcome in which '[s]uch a fundamental matter as [...] jurisdiction [...] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 56) "Finally, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation, the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the merits of any grounds of appeal raising admissible jurisdictional challenges against the Closing Order at this time." (para. 57)

6.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"[T]he International Co-Prosecutor has […] registered a disagreement prior to filing the Appeal in order to meet the conditions set out by the Co-Investigating Judges in the Impugned Order. The Appeal was filed before the 30 day period from the moment the disagreement was registered had elapsed. We consider that the registration of a disagreement by the International Co-Prosecutor was done under protest and agree with him, for the reasons expressed above, that it was not necessary. In these circumstances, we find it appropriate to disregard the registration of a disagreement […]. We are therefore of the view that the Appeal was validly filed and is admissible." (Opinion of Judges LAHUIS and DOWNING, para. 12)
7.	**004 AO An** PTC 12 A117/2/2 22 October 2014 *Decision on Appeal against Constructive Dismissal of Ta An's Fourth Request for Investigative Action*	"Pursuant to Internal Rule 39(4)(b), the Pre-Trial Chamber 'may, at the request of the concerned party or on [its] own motion […] recognise the validity of any action executed after the expiration of a time limit prescribed in these IRs on such terms, if any as they see fit.' Absent any request for an extension of time from the Appellant, the Pre-Trial Chamber shall examine if the circumstances of the present case warrants that it recognises the validity of the Appeal filed out of time." (para. 10) "The Pre-Trial Chamber finds that the constructive refusal doctrine, which has been applied by the Pre-Trial Chamber to cover exceptional situations where the inaction of the Office of the Co-Investigating Judges or the delay in acting may cause prejudice, cannot be used to circumvent the time limit to appeal under the Internal Rules. The mischaracterisation of the Appeal is therefore not a good cause to accept its filing out of time, absent any further justification being provided by the Appellant." (para. 11)
8.	**004 YIM Tith** PTC 15 D203/1/1/2 19 January 2015 *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*	"The phrase 'as they see fit' in Internal Rule 39(4)(b) provides the Co-Investigating Judges and Chambers with *wide discretion* in considering whether to 'recognize the validity of any action executed after the expiration of a time limit prescribed in the IRs.' Further, Article 9 of the Practice Direction on Filing of Documents requires that the party making such a request shall *indicate the reasons* for the delay. The Pre-Trial Chamber has considered the '*sufficiency*' *of the reasons* provided for the late filing on case by case basis […]." (para. 17) "In the past, the Pre-Trial Chamber was satisfied with the […] explanation that 'the Court Management Section could not provide them with the translation before expiration of the deadline […] due to five *national holidays*' *falling within the translation period*. In another decision, the Pre-Trial Chamber stressed that '[n]o party is to be penalised as a consequence of *legitimate difficulties with obtaining the translation* of a document.' The Pre-Trial Chamber has also granted requests for extension of time to file pleadings by considering '1) the number of ECCC holidays within the time in which the Co-Prosecutors must file their Response; 2) the *lack of adequate interpretation and translation* during that time; 3) the *need to present detailed and factual legal arguments*.' In contrast, this Chamber has rejected extension of time requests when the 'requested time period [was] excessive in view of the time periods previously set for submissions'." (para. 18) "On point, the international and internationalised tribunals have accepted as good reasons to accept late filings also the *lack of objection from the counterparty* or the *absence due to sudden illness of a member* in the lawyers' team." (para. 19) "The Pre-Trial Chamber has accepted late filings *also in the 'interests of justice' when fair trial rights at are stake*." (para. 20) "The Pre-Trial Chamber observes that the Co-Lawyers' explanations for its late filing of the Appeal are based on *delays* […] which […] came into existence *after the deadline for filing the Appeal had expired*. Notwithstanding this, taking into account that the Co-Lawyers suggest […] that *fair trial rights of the Appellant are at* stake; that the *counterparties, having not replied to the Appeal, are assumed to not object* acceptance of this late filing; that the lateness is not excessive but rather *minimal* and *does not cause delays in the disposal of the Appeal*, the Pre-Trial Chamber finds it in the interests of justice to grant the request and to recognize the validity of the Appeal despite of the lateness in filing." (para. 21)

		"[A]bsent the existence of the other exceptional circumstances counted above, given the lack of due diligence shown by the Defence, the Pre-Trial Chamber would not have entertained the request for recognition of validity of the late filing of this Appeal." (para. 23)
9.	**004 Other Appeals** PTC 18 D198/3/1/2 19 February 2015 *Decision of the Pre-Trial Chamber on SON Arun's Appeal against the Decision of the Office of the Co-Investigating Judges Related to the Recognition of Lawyer*	"[T]he Pre-Trial Chamber finds that the Appeal was filed outside the legally prescribed period. The Appellant's failure to respect the legally prescribed deadline for filing would lead, pursuant to Internal Rule 39(1), to the 'invalidity of' the action of filing of the Appeal." (para. 19) "Having made these findings, the Pre-Trial Chamber takes note, however, of the more substantive allegation made by the Appellant that the Suspect's fundamental right to be defended by a lawyer of his own choosing may be at stake. Therefore, having noted this allegation and pursuant to Internal Rule 39(4)(b), despite its lateness, the Pre-Trial Chamber finds it fit to recognize the validity of the action of the filing of the Appeal […]." (para. 20)
10.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"The Pre-Trial Chamber notes the International Co-Prosecutor's submission that, since no Khmer translation of the Impugned Order has yet been notified, the Notice of Appeal and Appeal were filed within the time limit applicable under Internal Rules 20(3) and 75(1), and Article 8.5 of the Practice Direction. Recalling that all judicial decisions shall be at least provided in Khmer and one other language and that translation of all judicial decisions and orders should be systematic in the interests of the good administration of justice, the Pre-Trial Chamber expresses its concern that decisions delivered in English only and not diligently followed by Khmer translation give rise to legal uncertainty. In the particular context of the ECCC, where judicial decisions have to be provided in the official language to trigger the running of time limits, the parties may find themselves forced to file appeals before time limits start to run in order to safeguard their interests, or may wait indefinitely until the issuance of a translated decision. However, the Pre-Trial Chamber broadly interprets Internal Rules 75(1) and 75(3) in light of Internal Rule 21(4), which provides that proceedings shall be brought to a conclusion within a reasonable time. Therefore, although the Notice of Appeal and Appeal were not formally within a time limit as it has not yet begun to run, the Pre-Trial Chamber accepts that they were filed in accordance with the rules." (para. 14)
11.	**004 YIM Tith** PTC 48 D338/1/1/3 11 August 2017 *Decision on International Co-Prosecutor's Appeal of Decision on Request for Investigative Action*	"The filing of the Appeal […] was done nine days after the expiration of the thirty days permitted by Internal Rule 75(3) which, pursuant to Internal Rule 39(1), leads to the invalidity of its filing." (para. 5) "The Pre-Trial Chamber considers that, in this case, no good cause has been shown to justify acceptance of the filing of the Appeal after the prescribed deadline. The ICP has not brought any request for extension of time, nor has he replied to the Defence's Response. The Pre-Trial Chamber cannot thus possibly deduce any acceptable reason to derogate from the time limit set in Internal Rule 75(3)." (para. 6)
12.	**004/2 Civil Parties** PTC 58 D362/4 27 August 2018 *Decision on Civil Party Requests for Extension of Time and Page Limits*	"The Pre-Trial Chamber has specifically found that '[g]uidance can be sought from the general principles on victims as found in international law,' including the UN basic principles on victims. These principles emphasise that victims should have fair and effective access to justice, and that victims should be allowed to present their 'views and concerns […] at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.'" (para. 7) "[F]ailing to extend this short deadline under the current circumstances – where the Civil Party Co-Lawyers have thousands of clients whose applications were denied at the same time – would impede victims' meaningful participation, in violation of Internal Rule 21 and international principles safeguarding victims' interests. An extension is necessary to allow the Civil Party Co-Lawyers to adequately consult with their clients whose interests are affected by the Admissibility Order in order to prepare any appeals." (para. 9)
13.	**004 Civil Parties** PTC 62 D384/4 22 August 2019	"The Pre-Trial Chamber reaffirms that victims should be afforded with fair and effective access to justice and that they should be allowed to present their 'views and concerns […] at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.'" (para. 5)

	Decision on Civil Party Co-Lawyers' Urgent Requests for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004	"[F]ailing to extend this short deadline in circumstances where Civil Party Co-Lawyers have hundreds of clients whose applications are simultaneously denied, would impede victims' meaningful participation, in violation of Internal Rule 21(1) and international principles safeguarding their interests." (para. 6)

b. Premature and Speculative Appeals

For jurisprudence concerning ***Advisory Opinions of the Pre-Trial Chamber***, see III.A.8.ii. Advisory Opinions and Speculation

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The Co-Lawyers asserted that difficulties may arise in the future if the number of Civil Parties increases. The Pre-Trial Chamber has reflected upon the implications of its decision for the future. In exercising its jurisdiction, the Pre-Trial Chamber cannot speculate on facts that may or may not be presented to it in the future, as its jurisdiction is limited to only matters that have occurred and not those that may occur." (para. 48)
2.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphan's Appeal against the Order on the Request for Annulment for Abuse of Process*	"As far as the Application addresses whether the rights during the trial phase can be applied during the pre-trial phase, the Pre-Trial Chamber does not find it fit to examine this further as the order subject to the requested annulment is only addressing the issue of translation during the pre-trial phase." (para. 22)
3.	**002 IENG Sary** PTC 60 D345/5/11 9 June 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order on IENG Sary's Motion against the Application of Command Responsibility*	"At this point, it is speculative as to what, if any, consideration the Co-Investigating Judges may give to the jurisdiction of the ECCC in respect of command responsibility. The Co-Investigating Judges are not obliged to give declaratory decisions […] and the Pre-Trial Chamber will not provide advisory opinions and cannot fetter the exercise of the discretions of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order." (para. 11)
4.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All*	"Contrary to the assertions of the Appellants, Internal Rule 113 does not give the Civil Parties the right to initiate enforcement of reparations at the pre-trial stage of a criminal proceeding. Internal Rule 23 *quinquies* specifies that reparations can only be awarded against a convicted person. As reparations can only be awarded against a convicted person, reparations cannot be *enforced* against an unindicted, untried and unconvicted person. It is outside the jurisdiction of this Chamber to take measures to enforce a potential award of reparations prior to such time as the competent chamber has determined guilt following a trial upon indicted charges, recorded a conviction and determined an award of reparations, if any. While, as described below, the Civil Parties have an interest in the assets of the charged persons, neither the interest itself nor any right in respect of such interest has crystallised. Pursuant to the framework of this Court, the fact that no interest or right has crystallised is dispositive.

	Properties Owned by the Charged Persons	Granting the request relief would place the Pre-Trial Chamber and the Co-Investigating Judges in the position of acting beyond our collective jurisdiction." (para. 23) "The Pre-Trial Chamber […] will not consider appeal grounds which require speculation […]. This Chamber does not have jurisdiction to make orders that fall outside the competence of this Court, as reflected in its governing law. […] The judiciary is limited by their jurisdiction and cannot expand jurisdiction on the basis of obligations of the State as a party to the ICCPR. To do otherwise would be to act outside of the law." (para. 32)
5.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"[T]he investigations are ongoing and […] the applicable law does not oblige the Co-Investigating Judges, at this stage of the proceedings before an Indictment is issued, if any, to make declaratory statements or decide as to the criteria employed in selecting whom *to indict,* if at all." (para. 34) "[T]he Request is premature and that Internal Rule 21 does not compel it to render the Appeal admissible on grounds of constructive refusal." (para. 35) "[T]he Pre-Trial Chamber notes that the investigations in Case 003 are still ongoing and that the applicable law does not oblige the Co-Investigating Judges to make a legal characterization of the facts they discover during the investigation. Such obligation only arises upon the issue of a Closing Order, if any." (para. 52) "Therefore, the Pre-Trial Chamber finds that the Request is premature and as such does not warrant the admissibility of the Appeal on grounds of constructive refusal or otherwise pursuant to Internal Rule 21." (para. 53) "[T]he Pre-Trial Chamber finds that this Motion is premature as the Internal Rules do not oblige the Co-Investigating Judges to decide or to make declaratory statements on jurisdictional matters before they issue a Closing Order, if any." (para. 56)
6.	**004 YIM TITH** PTC 11 D205/1/1/2 13 November 2014 *Decision on YIM Tith's Appeal against the Decision Denying his Request for Clarification*	"The Pre-Trial Chamber finds that the Appellant has not demonstrated in the present case that the Impugned Decision, by refusing to provide clarification on the law, jeopardizes his fair trial rights. […] [T]he scenario envisaged […] is hypothetical at this stage. Even if this scenario was to materialise, it is unclear what prejudice the Appellant would concretely suffer. The rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions." (para. 8)
7.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"The Pre-Trial Chamber held that '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues be they actually arise, out of their factual and contextual background' and found that it 'has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 6)
8.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on TA An's Appeal against the Decision Rejecting His Request for Information*	"The Pre-Trial Chamber has emphasised that Internal Rule 21 does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions." (para. 8) "At the outset, the Pre-Trial Chamber finds that it has no jurisdiction to entertain the Appellant's request for clarification of the disagreement process under Internal Rule 72. […] The Pre-Trial Chamber notes that the Appellant does not ask the Pre-Trial Chamber to overturn or annul any specific decision where this procedure had been applied […], but rather seeks to obtain an advisory opinion from the Pre-Trial Chamber on the legality of the procedure itself. Whereas the International Co-Investigating Judge found it appropriate to explain his understanding of Internal Rule 72 […], the Pre-Trial Chamber

	concerning the Co-Investigating Judges' Disagreement of 5 April 2013	finds that the Appellant's challenge to this interpretation, formulated in general terms, does not fall within the ambit of Internal Rule 21." (para. 9)
9.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"Finally, the Pre-Trial Chamber recalls that it has no jurisdiction to deal with hypothetical matters and notes that the impact of potential future disclosure in Case 002 on the Appellant's rights under Internal Rule 21 remains, at this stage, purely speculative." (para. 24)
10.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"[A]ny ruling it would make with regard to the charges and the potential crimes would be speculative. In this context, the Undersigned Judges recall that the Co-Investigating Judges will give due consideration to legal issues related to crimes and modes of responsibility, as may be necessary, in the drafting of the Closing Order, which is appealable. At this point, it is only possible to speculate as to what, if any, consideration the Co-Investigating Judges may give to the jurisdiction of the ECCC with respect to certain crimes or modes of responsibility." (Opinion of Judges BEAUVALLET and BAIK, para. 23) "[T]he Undersigned Judges will not provide advisory opinions and cannot fetter the exercise of discretion of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order. The sole exception where declaratory relief has been provided was the Decision on the Appeals against the Co-Investigative Judges Order on Joint Criminal enterprise [D97/14/15], and that was only necessary because joint criminal enterprise had not been expressly provided for, either in the Agreement, or in the Law, and therefore, for the purpose of giving sufficient notice to the Accused, pursuant to Internal Rule 21, relief was mandatory. The present circumstances are, however, not comparable, since all the crimes and modes of liability discussed are expressly mentioned in the Agreement and the Law, and/or have already been dealt with extensively by the Pre-Trial Chamber and the Trial Chamber. Therefore, the Undersigned Judges consider that it should not address the legal issues related to crimes and modes of responsibility at this stage of the proceedings and that the Appellant's fair trial rights are not violated." (Opinion of Judges BEAUVALLET and BAIK, para. 24) "The Undersigned Judges are of the view that ruling on these issues at this stage would not promote judicial efficiency […]. In light of the PTC jurisprudence, the Undersigned Judges thus suggest that these issues, could be raised if the Co-Lawyers deem it necessary, at the close of the judicial investigation and prior to the commencement of trial, if any, not in the course of the investigation when the challenged crimes and modes of liability have not yet been definitively determined." (Opinion of Judges BEAUVALLET and BAIK, para. 25)
11.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"As far as any request a for broad interpretation of Internal Rule 74(3)(a), *without reference made to the infringement of any specific fundamental right*, is concerned, the Pre-Trial Chamber has found that it has no jurisdiction to entertain requests for clarification of the Internal Rules *in general.* Where scenarios envisaged in parties' motions are *hypothetical* or, even if such scenarios were to materialise, but it is *unclear what prejudice the requesting party would concretely suffer*, '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 14)

12.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber recalls that it has no jurisdiction to deal with hypothetical matters […]." (para. 18)
13.	**004 YIM Tith** PTC 41 D306/17.1/1/9 30 June 2017 *Decision on YIM Tith's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regard to a State's or Regime's Own Armed Forces*	"The Pre-Trial Chamber considers that both the title and the form and substance of the Impugned Notification suggest that it does not amount to a 'decision' appealable under Internal Rule 74(3)(a), but rather to an opinion from which declaratory relief is sought. (para. 15) "The title, content, and use of terms such as 'a matter of principle' or 'in the abstract' therefore strongly suggest that the Impugned Notification is merely an advisory opinion regarding a disagreement on the applicable law, the resolution of which the Pre-Trial Chamber does not consider essential at this stage of the determination of allegations in Case 004. Indeed, since it is a mixed issue of law and fact, absent any specific factual basis, it is only possible to speculate as to what consideration, if any, the Co-Investigating Judges may give to an attack by a state or organisation against its own armed forces in the drafting of the closing order, which is appealable." (para. 17) "[T]he Pre-Trial Chamber concludes that the Impugned Notification does not constitute an appealable 'decision' within the meaning of Internal Rule 74(3). Furthermore, the Pre-Trial Chamber considers that the relief sought by the Co-Lawyers is declaratory and that the impact of any ruling it would make on the issue at state with regards to the charges would be speculative. There is thus no need to examine whether the interpretation of 'attack against the civilian population' in the context of crimes against humanity with regard to a State's or regime's own armed forces constitutes a jurisdictional challenge under Internal Rule 74(3)(a)." (para. 18) "The Pre-Trial Chamber recalls that Internal Rule 21 does not open an automatic avenue for appeal even where an appeal raises fair trial issues, and that the appellant must demonstrate that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings or to the Appellant's fundamental rights. In the present case, the Pre-Trial Chamber is not convinced that exceptional circumstances require its intervention. As previously observed, the claim that the Appeal concerns a definition of crimes against humanity which is being applied to the investigation, and will be used to determine the allegations against the Appellant, is purely hypothetical, as is the need to expedite a potential appeal on related issues in the closing order. The Pre-Trial Chamber reiterates that it will not provide advisory opinion and cannot fetter the exercise of the discretion of the Co-Investigating Judges in respect of their decisions to be expressed in a closing order." (para. 19) "Accordingly, the Pre-Trial Chamber finds the Appeal inadmissible." (para. 20)
14.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in*	"[T]he Impugned Notification does not constitute an appealable 'decision' within the meaning of Internal Rule 74(3). Furthermore, the Pre-Trial Chamber considers that the relief sought by the Co-Lawyers is declaratory and that the impact of any ruling it would make on the issue at stake with regards to the charges would be speculative." (para. 15) "As previously observed, the fact that the appeal concerns a definition of crimes against humanity which will be used to determine the allegations against the Appellant is purely hypothetical, as is the need to expedite a potential appeal on related issues in the closing order. The Pre-Trial Chamber reiterates that it will not provide advisory opinion and cannot fetter the exercise of the discretion of the Co-Investigating Judges in respect of their decisions to be expressed in a closing order." (para. 16)

	the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces	
15.	**004 YIM Tith** PTC 55 D377/1/1/3 19 October 2018 *Decision on YIM Tith's Appeal of the Decision on YIM Tith's Request for Correction of Translation Errors in Written Records of Interview*	"Internal Rule 21 […] does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the applicant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 11)
16.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"[T]he Pre-Trial Chamber has consistently emphasised that Internal Rule 21 does not open for an automatic avenue for appeal, even when an appeal raises fair trial issues. Internal Rule 21, moreover, does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the applicant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 6)

iv. *Filing of Notice of Appeal, Appeal Brief and Submissions*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The Co-lawyers filed their appeal brief directly with the Pre-Trial Chamber […] contrary to Rule 75 which provides that Notice of Appeal should be made to the Greffier of the Co-Investigating Judges. However, since the appeal brief was accepted by the Greffier of the Pre-Trial Chamber at the time, the Pre-Trial Chamber finds that this technical defect should not result in the Appeal being declared inadmissible." (para. 8)
2.	**002 Civil Parties** PTC 105 D424/3/2 6 October 2010 *Decision on Civil Parties' Request for Extension of Page Limit for Appeal against Order on the Admissibility of Civil Party Applicants from Current Residents of Siem Reap Province*	"It is not optional for civil party lawyers to file a notice of appeal before filing an appeal and before filing any request for extension of page limits for such appeal. […] Notwithstanding the failure […] to comply with the requirements […], the Pre-Trial Chamber will not penalise the individual civil party applicants for this failure of counsel." (para. 1)
3.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010	"[T]his Appeal is filed against a decision of the Co-Investigating Judges which is disclosed in a Greffier's Notice of Deficient Filing. Although the applicable law does not specifically grant the Charged Persons the right to appeal against a Notice of Deficient Filing, […] Internal Rule 21 requires that the Pre-Trial Chamber adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the fair trial rights of the Charged Person are safeguarded in this particular instance. As this is a matter involving the principles of 'equal treatment before the law' and 'equality of arms', taking into

	Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings	account the Chamber's duty as prescribed under Internal Rule 21, and the particular circumstances of this Appeal, the Pre-Trial Chamber found this Appeal admissible." (para. 13)
4.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings*	"The Pre-Trial Chamber observes that the Co-Lawyers did not file a Notice of Appeal against the Stay Order prior to filing the Appeal. The Co-Lawyers are reminded that Rule 75 requires all parties to file a notice of appeal to the [G]reffier of the Co-Investigating Judges prior to filing an appeal to the Pre-Trial Chamber." (para. 11)
5.	**003 MEAS Muth** PTC 11 D56/19/16 19 February 2014 *Second Decision on Requests for Interim Measures*	"[I]n principle, submissions on appeal shall include arguments on both admissibility and merits. In exceptional circumstances, the Pre-Trial Chamber may direct the parties to file submissions on admissibility first, where the Chamber considers that it would serve the interests of justice, notably by expediting proceedings, and not cause any prejudice to the parties." (para. 11)

v. *Obligation to Mention the Legal Basis of the Appeal*

1.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the*	"[T]he Co-Lawyers […] adopted in advance, in its entirety and unconditionally, Ieng Thirith's Appeal. The legal basis for the Appeal […] is therefore that mentioned in Ieng Thirith's Appeal, which fact is sufficient for the Pre-Trial Chamber to consider that the Co-Lawyers […] fulfilled their obligation of mentioning the legal basis." (para. 13)

	Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture	

3. Admissibility of Appeals under Internal Rule 74

i. *Appeals against Orders or Decisions Confirming the Jurisdiction of the ECCC (Internal Rule 74(3)(a))*

For jurisprudence concerning the ***Standard of Review of Jurisdictional Challenges***, see VII.B.10.iii. Non-Discretionary Decisions

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[C]hallenges to jurisdiction in domestic civil law systems do not generally include the very existence and applicability of a specific form of responsibility. This is the case as the forms of responsibility are well-established and defined. […] In Cambodian Law, as in French Law for instance, a court must ascertain whether it has temporal and territorial jurisdiction over facts brought before it as well as material jurisdiction for the crimes charged. A court must declare itself incompetent when seized of crimes over which only higher court has jurisdiction. By contrast issues of jurisdiction do not include disputes or challenges to the applicability of forms of liability which are usually considered at a later stage by the trial court. The judicial organs of the [ICC] do not appear to have yet considered challenges against the very existence of form of liability to be jurisdictional issue. This is again understandable given how comprehensively Article 25 of Rome Statute defines the forms of responsibility and also the fact that the Statute only applies to crimes committed after its entry into force." (para. 22) "[A]t the *ad hoc* tribunals […] challenges relating to the specific contours of a substantive crime, or to a form of responsibility, are matters to be addressed at trial. However, a challenge to the very existence of a form of responsibility or its recognition under customary law at the time relevant to the indictment are considered jurisdictional challenges and can be brought in a preliminary motion during the pre-trial phase of proceedings, giving rise to a right of appeal. […] Accordingly, the jurisprudence of both *ad hoc* tribunals is clear that an appeal by an accused claiming a form of responsibility, including the accused participation in a JCE, does not fall within the Tribunal's jurisdiction or within customary international law, is properly characterized as a motion challenging jurisdiction." (para. 23) "[T]he ECCC is in a situation comparable to that of the *ad hoc* tribunals. […] While […] the Impugned Order does not expressly confirm that the ECCC has jurisdiction to apply the JCE forms of responsibility, […] it does so implicitly, in that it expressly relies on the ICTY case law treating as jurisdictional the question of whether a form of liability is recognized in customary international law." (para. 24) "[T]he Impugned Order is appealable pursuant to Internal Rule 74(3)(a)." (para. 25) "The Pre-Trial Chamber is of the view that Internal Rule 74(3)(a) referred to […] as the legal basis for the present Appeal is inadequate […] because the issue […], being whether the Introductory Submission and the Impugned Order provide sufficient notice of the charges against the Appellant in relation to JCE I and III, is clearly not a jurisdictional issue." (para. 27) "Internal Rules 74(3)(a) and 89(1) open the possibility of raising jurisdictional challenges before the Pre-Trial Chamber and the Trial Chamber. […] [T]he Trial Chamber has determined […] that it is not bound by decisions of the Pre-Trial Chamber. Thus, disposing of the jurisdictional issues […] at this stage will not necessarily preserve judicial time and resources. However, the interests in preservation of judicial resources and acceleration of legal and procedural processes do not outweigh the reasons cited above to reject the preliminary objections raised […]." (para. 35)
2.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011	"[A]ccording to Internal Rule 74, not all orders of the Co-Investigating Judges can be appealed by all of the parties. Indeed, while the Co-Prosecutors may, under Internal Rule 74(2), appeal against all orders issued by the Co-Investigating Judges, the Charged Persons or the Accused may appeal only those orders and decisions enumerated under Internal Rule 74(3). An indictment is not on that list. Nevertheless, […] although the Accused may not appeal against the indictment itself, the Pre-Trial

	Decision on KHIEU Samphan's Appeal against the Closing Order	Chamber is of the view that, to the extent that it confirms the jurisdiction of the ECCC, it is clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges. Therefore, the question for the Pre-Trial Chamber is to determine whether, […] the Appellant […] has the right to appeal against the Indictment 'in its entirety', given that the Indictment generally confirms the ECCC's Trial Chamber jurisdiction to try him. This would amount to adding the indictment to the list of appealable Co-Investigating Judges' orders and decisions enumerated in the Internal Rules. Clearly, such an interpretation is not consistent with the approach adopted by the Internal Rules […]. Internal Rule 74(3)(a) also does not allow the Appellant to appeal against procedural irregularities in the investigation." (para. 14) "[T]he Appellant's submission that […] under French law, an accused may now appeal against an indictment […] cannot justify a departure from the clearly established defined appealable matters set out in Internal Rule 74(3)(a)." (para. 15)
3.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held […] that only jurisdictional challenges may be raised under that rule. In determining what constitutes a proper jurisdictional challenge, the Pre-Trial Chamber considered that the ECCC 'is in a situation comparable to that of the *ad hoc* tribunals' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the acts for which an accused is charged. […] [and] that body of law must be reflected in customary international law. Consequently, the Pre-Trial Chamber adopted the approach of the *ad hoc* tribunals, such that appeals that 1) 'challenge […] the very existence of form of responsibility or its recognition under customary law at the time relevant to the indictment'; or 2) argue that mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings. However, 'challenges relating to the specific contours of […] a form of responsibility, are matters to be addressed at trial.'" (para. 60) "The Pre-Trial Chamber finds that the same approach applies with respect of grounds of appeal at the pre-trial phase contesting the substantive crimes charged under Articles 3 (new) - 8 of the ECCC Law. Such appeals only raise admissible subject matter jurisdiction challenges where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment and that its application would result in a violation of the principle of legality." (para. 61) "However, 'challenges relating to the specific contours of a substantive crime […] are matters to be addressed at trial.' For example, challenges to the specific definition and application of elements of crimes charged are inadmissible at the pre-trial phase. Furthermore, challenges as to whether the elements of a charged crime actually existed in reality as opposed to legally at the time of the alleged criminal conduct is inadmissible. This is because such challenges often involve factual or mixed questions of law and fact determinations to be made at trial upon hearing and weighing all the evidence." (para. 62) "Finally with respect of challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such these arguments may be brought before the Trial Chamber to be considered on the merits at trial; however, they do not demonstrate the ECCC's lack of jurisdiction." (para. 63) "[Alleging] that the Co-Investigating Judges failed to properly plead as a factual matter, the existence of a legal duty to act and its basis in domestic law as an element of superior responsibility, […] raises an alleged defect in the form of the indictment rather than a jurisdictional challenge and is therefore inadmissible. […] Appeal with respect of insufficient evidentiary sources; failure to properly apply the facts; and failure to provide the legal characterization of the facts for charges under the 1956 Cambodia Penal Code constitute inadmissible challenges alleging defects in the form of the indictment." (para. 64) "The Pre-Trial Chamber […] has limited jurisdiction to hear appeals against the Closing Order at this stage under Internal Rule 74(3) with respect of fair trial issues." (para. 65)

		"The issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter." (para. 67) "Internal Rule 67 governs the issuance of a Closing Order by the Office of the Co-Investigating Judges at the conclusion of their investigations. As noted previously, Internal Rule 67(5) explicitly provides that, upon issuance of a Closing Order '[t]he order is subject to appeal as provided in Rule 74.' No other Internal Rule is listed in Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not address grounds of pre-trial appeals; rather it lays out the fundamental principles governing proceedings before the ECCC." (para. 70) "[I]t is not clear that the provisional detention orders for the Appellants *confirm* the ECCC's jurisdiction with respect of the crimes charged against them. The primary purpose of a provisional detention order is to 'set out the legal grounds and factual basis for detention'. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions; determined that there were well-founded reasons to believe that the Appellants may have committed the alleged crimes; and found that, for various reasons, detention would be necessary in the course of the Office of the Co-Investigating Judges' investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect of the crimes alleged to have been committed and those challenged on jurisdictional grounds in these Appeals, this argument is unpersuasive and in no way determinative." (para. 78) "[U]nder Internal Rule 67, at the conclusion of their investigations and issuance of the Closing Order, the Co-Investigating Judges makes their final determinations with respect of the legal characterisation of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC. In doing so '[t]he Co-Investigating Judges are not bound by the Co-Prosecutors submissions' in the course of the investigations. As such, it was not given at the time of the rendering of the provisional detention orders that the crimes alleged by the Co-Prosecutors would be crimes for which the Appellants would eventually be indicted at the conclusion of the Co-Investigating Judges investigations. […] Under the terms of Internal Rule 67 it would have been reasonable for the Appellants to assume that the provisional detention orders did not confirm jurisdiction and that it would be efficient to raise any subject matter jurisdiction objections following the final conclusions on jurisdiction by the Co-Investigating Judges in the Closing Order." (para. 79) "[E]ven if the Pre-Trial Chamber was persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as they see fit.' Here the Pre-Trial Chamber finds that for the following reasons, it would be in the interests of justice to allow the Appellants' jurisdictional objections to the Impugned Order even though one may argue that they should have appealed the provisional detention orders on these grounds […]." (para. 80) "[I]t may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules themselves or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors." (para. 81) "Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging the breach of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to the Appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. However, the Pre-Trial Chamber does not find that considering the Appellants' jurisdictional objections at the close of the Co-Investigating Judges investigation and prior to the commencement of trial undermines expediency. Rather, consideration at this time supports the expeditious conduct of proceedings by safeguarding against an outcome in which '[s]uch a fundamental matter as […] jurisdiction […] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 82)

		"In sum, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the Appellants' grounds of appeal raising jurisdictional objections against the Impugned Order at this time. Failure to do so based on the argument that the Appellants are time barred from raising appeals that are permitted according to a plain language reading of the Internal Rules, by relying instead on a questionable interpretation of the Internal Rules so as preclude appeals of this type on mere procedural grounds may result in fundamental unfairness to the Appellants." (para. 83) "With respect of the final matter of whether the OCIJ erred in charging forced marriage, sexual violence and enforced disappearances under the aforementioned definition of 'other inhumane acts', the Pre-Trial Chamber finds that this constitutes a mixed question of law and fact. As such, it is not a jurisdictional issue that may be determined by the Pre-Trial Chamber pursuant to Internal Rule 74(3)(a), but is one for the Trial Chamber to decide at trial." (para. 166)
4.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[P]ursuant to Internal Rule 67(5), the Closing Order is subject to appeal as provided in Internal Rule 74. Internal Rule 74 stipulates the grounds of appeal that may be raised by the parties before the Pre-Trial Chamber and, relevant to the present Appeal, Internal Rule 74(3)(a) states that 'the Charged Person or the Accused may appeal against the following orders or decisions of the Co-Investigating Judges [...] confirming the jurisdiction of the ECCC.' (para. 44) "In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held that only jurisdictional challenges may be raised under that rule. In determining what constitutes a proper jurisdictional challenge, the Pre-Trial Chamber considered that the ECCC 'is in a situation comparable to that of *the ad hoc* tribunals,' as opposed to domestic civil law systems, where the terms of the statutes with respect to the crimes and modes of liability that may be charged are very broad, where the applicable law is open-ended, and where 'the principle of legality demands that the Tribunal apply the law which was binding at the time of the acts for which an accused is charged. [...] [and] that body of law must be reflected in customary international law.' Consequently, the Pre-Trial Chamber adopted the approach that appeals that: 1) 'challenge [...] the very existence of a form of responsibility or its recognition under [...] law at the time relevant to the indictment'; or 2) argue that a mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings. However, 'challenges relating to the specific contours of [...] a form of responsibility are matters to be addressed at trial.'" (para. 45) "The Pre-Trial Chamber finds that the same approach applies with respect to grounds of appeal at the pre-trial phase contesting the substantive crimes charged [...]. Such appeals only raise admissible subject matter jurisdiction challenges where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality. The Pre-Trial Chamber notes that 'challenges relating to the specific contours of a substantive crime [...] are matters to be addressed at trial.' For instance, challenges to the specific definition and application of elements of crimes charged are inadmissible at the pre-trial phase. Furthermore, challenges as to whether the elements of a charged crime actually existed in reality as opposed to legally at the time of the alleged criminal conduct are inadmissible. This is because such challenges often involve factual or mixed questions of law and fact determinations to be made at trial upon hearing and weighing the relevant evidence." (para. 46) "Finally, with respect to challenges alleging defects in the form of the indictment, the Pre-Trial Chamber finds that they are clearly non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Internal Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal, temporal and subject matter jurisdiction of the ECCC. Nothing in the ECCC Law or Internal Rules suggests that alleged defects in the form of the indictment raise matters of jurisdiction. As such, these arguments may be brought before the Trial Chamber to be considered on the merits at trial and such do not demonstrate the ECCC's lack of jurisdiction." (para. 47) "The Pre-Trial Chamber does not find convincing the Co-Prosecutors' argument that the Closing Order is such that it re-confirms the jurisdiction of ECCC and that therefore the Appellants cannot raise jurisdictional challenges at this stage of the proceedings. The Pre-Trial Chamber notes that it is not clear whether the provisional detention order for the Accused represents an order confirming ECCC's jurisdiction with respect to the crimes charged. The primary purpose of a provisional detention order

		is to 'set out the legal grounds and factual basis for detention'. As such, the provisional detention orders at issue noted the crimes and factual allegations submitted by the Co-Prosecutors in their Introductory Submissions, determined that there were well-founded reasons to believe that the Appellant may have committed the alleged crimes and found that, for various reasons, detention would be necessary in the course of the investigations. While it may be argued that in so doing, the Co-Investigating Judges implicitly confirmed the subject matter jurisdiction of the ECCC with respect to the crimes alleged to have been committed and those challenged on jurisdictional grounds in this Appeal, this argument is not persuasive and in no way determinative." (para. 52) "The Pre-Trial Chamber observes that under Internal Rule 67, at the conclusion of their investigations and issuance of the Closing Order, the Co-Investigating Judges make their final determinations with respect to the legal characterization of the acts alleged by the Co-Prosecutors and determine whether they amount to crimes within the jurisdiction of the ECCC. In doing so, '[t]he Co-Investigating Judges are not bound by the Co-Prosecutors' submissions' in the course of the investigations. As such, it was not clear at the time of the rendering of the provisional detention orders that the crimes alleged by the Co-Prosecutors would be crimes for which the Appellant would eventually be indicted at the conclusion of the judicial investigations. Under the terms of Internal Rule 67, it would have been reasonable for the Appellant to assume that the provisional detention orders did not confirm jurisdiction, and that it would be proper to raise any subject matter jurisdiction objections following the final conclusions on jurisdiction by the Co-Investigating Judges in the Closing Order." (para. 53) "In the event that the Pre-Trial Chamber is persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, at the request of a concerned party or on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as [it sees] fit.' In the circumstances of the current Appeal, the Pre-Trial Chamber finds that, for the following reasons, it would be in the interests of justice to allow the Appellant's jurisdictional objections, if any, to the Closing Order even though one may argue that he should have appealed the provisional detention orders on these grounds 'within 10 (ten) days from the date that notice of the decision or order was received.'" (para. 55) "As noted above, it may not have been clear to the Appellants that the provisional detention orders confirmed jurisdiction under the terms of Internal Rules 63 and 74(3)(a). In addition, it is also not made explicit by the Internal Rules or in any other applicable law at the ECCC that the phrase 'confirming the jurisdiction' in Internal Rule 74(3)(a) precludes appealing the Co-Investigating Judges' orders or decisions 're-confirming' ECCC jurisdiction as alleged by the Co-Prosecutors. Furthermore, as noted by the Co-Prosecutors, objections to jurisdiction are fundamental. This is reflected in the fact that jurisdictional appeals, unlike appeals alleging breaches of fair trial rights, are expressly singled out as one of the limited grounds of appeal available to appellants in pre-trial proceedings pursuant to Internal Rule 74(3)(a). The Pre-Trial Chamber agrees that the ECCC Law and Internal Rules stipulate that proceedings before the ECCC shall be conducted expeditiously and that such a fundamental matter as jurisdiction should be disposed of as early in the proceedings as possible. The Pre-Trial Chamber finds that considering the Appellant's jurisdictional objections at the close of the judicial investigation and prior to the commencement of trial would not undermine expedition. Rather, such consideration at this time supports the expeditious conduct of proceedings by providing a safeguard against an outcome in which '[s]uch a fundamental matter as [...] jurisdiction [...] [is] kept for decision at the end of a potentially lengthy, emotional and expensive trial'." (para. 56) "Finally, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation, the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the merits of any grounds of appeal raising admissible jurisdictional challenges against the Closing Order at this time." (para. 57) "The Pre-Trial Chamber has previously stated that '[t]he principle of *ne bis in idem* provides that a court may not institute proceedings against a person for a crime that has already been the object of criminal proceedings and for which the person has already been convicted or acquitted' and that '[t]he principle of *ne bis in idem* has been interpreted as meaning that the accused "shall not be tried twice for the same crime"'. As such and in the context of an appeal against provisional detention, the Pre-Trial Chamber has previously considered the principle of *ne bis in idem* as being a jurisdictional issue." (para. 61)

		"In [...] the civil law system, the extinguishment of a criminal cause of action due to *res judicata*, a concept closely related to the principle of *ne bis in idem*, shall normally lead to the issuance of a dismissal order by the investigating judge. By sending Ieng Sary to trial, the Co-Investigating Judges implicitly rejected his request to ascertain the extinguishment of the criminal action against him, thus confirming the jurisdiction of the ECCC to try him. Concluding otherwise would deprive Ieng Sary from exercising his right of appeal on a jurisdictional issue that was properly raised before the Co-Investigating Judges but upon which the latter failed to make a judicial determination." (para. 62) "The Pre-Trial Chamber considers [...] that amnesty is perceived as a potential 'bar to prosecution', akin to the issue of *ne bis in idem*. A pardon can potentially have a similar effect. [...] [T]he Pre-Trial Chamber therefore finds that these issues are jurisdictional." (para. 66) "As compliance with the principle of legality is a prerequisite for establishing ECCC's jurisdiction over the crimes and modes of liability provided in ECCC Law, [...] the Co-Lawyers challenge is found to be admissible pursuant to Internal Rule 74(3)(a). The principle of legality must be satisfied as a logical antecedent to establishing whether certain crimes and modes of liability existed at the time the crimes were allegedly commit[t]ed. Therefore, those grounds of appeal alleging errors in relation to the standard of the principle of legality applied, amount to jurisdictional challenges." (para. 69) "At the outset, [...] the Co-Investigating Judges' Closing Order indicted the Charged Person for Grave Breaches, which amounts to a confirmation of ECCC's jurisdiction [...]. The Co-Lawyers' challenge against this confirmation of jurisdiction is based on an assertion that the domestic statutory limitation period applies also to international crimes. The Geneva Conventions, which are the applicable law under Article 6 of the ECCC Law, provide that war crimes are not subject to any statute of limitations, which indicates that there is no statute of limitations applicable. The submission to the contrary is without merit. As the Appellant makes no jurisdictional challenge, the ground is inadmissible." (para. 73) "The issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter." (para. 76) "[T]he Co-Lawyers [...] argue that an allegedly erroneous definition of the crime may have made the Co-Investigating Judges to wrongfully assume jurisdiction. The Pre-Trial Chamber finds that these complaints are arguments relating to the pleading practice and the form of the indictment and do not represent admissible jurisdictional challenges." (para. 80) "[T]he Co-Lawyers argue upon the very existence in law in 1975-79 of certain categories of the crimes against humanity, which represent arguments that go to the very essence of the test for compliance with the principle of legality and, as such, represent admissible jurisdictional challenges." (para. 84) "[T]he Co-Lawyers allege that the Co-Investigating Judges made an erroneous definition of crimes or elements of crimes. The Pre-Trial Chamber finds that these arguments relate to the pleading practice and do not represent jurisdictional challenges." (para. 85) "[T]he Co-Lawyers' argument is related to the contours of elements of the crime and therefore to the pleading practice and does not represent a jurisdictional challenge." (para. 86) "The Co-Lawyers allegation [...] that the Co-Investigating Judges made an incorrect characterization of facts allegedly proving elements of a crime does not represent a jurisdictional challenge either." (para. 87) "[T]he Co-Lawyers complain about the Co-Investigating Judges considering acts that fall outside the temporal jurisdiction of the ECCC, which represents an argument related to issues of fact and law that are better addressed at trial. Having thus observed, the Pre-Trial Chamber notes, that discussion of issues outside of the time of indictment can be relevant as to the context and continuation of conduct." (para. 88) "[T]he Co-Lawyers' argument] that the Co-Investigating Judges' pleading lacks sufficient specification do not represent jurisdictional challenges either as they relate to issues of fact and law." (para. 89) "[T]he Pre-Trial Chamber shall not examine or take a position on Co-Lawyers arguments [...] as these arguments relate specifically to the way how Co-Investigating Judges defined rape rather than to its very existence in law in 1975-79." (para. 90)

		"[T]he Co-Lawyers do not challenge the existence in law of 'forcible transfers,' they rather challenge its wrong classification by the Co-Investigating Judges as an element of one or another crime, which is an argument that goes to the pleading practice and therefore does not represent an admissible jurisdictional challenge." (para. 91) "[T]he Co-Lawyers [...] contest the way in which the Co-Investigating Judges define, apply or set out the requirements for the crimes or elements of the crimes. The Pre-Trial Chamber finds that these are challenges related to alleged defects in the indictment or the pleading practice which can be properly advanced and argued during the course of the trial." (para. 93) "[T]he Co-Lawyers allege an error on mixed issues of fact and law by the Co-Investigating Judges. They do not challenge the confirmation of ECCC's jurisdiction over JCE I, but rather the way in which the Co-Investigating Judges reach their conclusion. The Pre-Trial Chamber does not find this ground to fall within the ambit of Internal Rule 74(3)(a)." (para. 95) "[T]he Co-Lawyers argue that the Co-Investigating Judges erred in applying [...] modes of responsibility to the facts set out in the indictment, or that the elements of these modes of liability were improperly defined. These do not amount to jurisdictional challenges but are rather allegations for defect in pleading of the indictment. No challenge to an indictment under Internal Rule 67(2) claiming it to be void for procedural defect (for failure to set out a description of the material facts and their legal characterisation) may be brought before the Pre-Trial Chamber. Internal Rules 80*bis* and 89 set out the procedure for such a challenge. These are matters solely in the jurisdiction of the Trial Chamber." (para. 97) "[C]hallenging the existence of command responsibility as a mode of liability under customary international law at the time of commission of the crimes enumerated in the Closing Order represents a jurisdictional challenge." (para. 100) "[L]ack of specificity in the indictment, does not raise a jurisdictional challenge under Rule 74(3)(a)." (para. 101) "[T]he argument that there was no consistent state practice to hold non-military superiors accountable for the acts of their subordinates in 1975-79, represents an admissible jurisdictional challenge. [...] [M]ixed issues of fact and law and such issues of the contours of modes of liability, as opposed to their very existence, do not represent jurisdictional challenges." (para. 102) "The principle of legality must be satisfied as a logical antecedent for the establishment of whether certain crimes and modes of liability existed at the relevant time. The Pre-Trial Chamber acknowledges that accessibility and foreseeability are elements of the principle of legality. […] Where the Co-Lawyers for Ieng Sary invite consideration of the subjective knowledge of Ieng Sary as to the state of international law, their request would require a factual determination which is not within the Pre-Trial Chamber's jurisdiction[.]" (para. 210) "Similarly, Ieng Sary's submission of lack of clarity concerning the requisite *mens rea* for command responsibility in 1975-79 imports detailed consideration of the elements or contours of the mode of liability, rather than its bare existence. It therefore does not fall within the ambit of Internal Rule 74(3)(a) as a jurisdictional challenge. Determinations as to the existence of armed conflict are factual in nature and not within the Pre-Trial Chamber's jurisdiction to examine." (para. 211)
5.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the*	"The Pre-Trial Chamber notes that the issue of the *definition* of crimes is one that limits the exercise of jurisdiction by the ECCC. Bearing in mind the purpose and nature of the *ultimate part of this request* - where the Co-Lawyers seek to file submissions arguing upon the very existence in law in 1975-79 of an element of the crimes against humanity - the Pre-Trial Chamber considers that such arguments go to the very essence of the test for compliance with the principle of legality and, as such, depending on how they are put before the ECCC, may represent jurisdictional challenges." (para. 25)

	Co-Investigating Judges]	
6.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on Her Motion to Reconsider and Vacate Her Summons Dated 29 July 2014*	"In interpreting Internal Rule 74(3)(a), the Pre-Trial Chamber has previously held that only jurisdictional challenges may be raised under this rule. The […] question to be resolved is whether the Impugned Decision is a decision confirming the jurisdiction of the ECCC." (para. 20) "[A]s long as a disagreement is not raised before the Pre-Trial Chamber, the fact that some orders or decisions are apparently operated under the guidance of one Co-Investigating Judge only is not a matter of jurisdictional challenge." (para. 24)
7.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"The notion of jurisdictional challenge is generally understood to be a plea against the court's competence *rationae personae*, *materiae, temporis* and *loci*. The international tribunals, however, have in some instances adopted a broader definition, to take into account the fact that i) the tribunals operate in a framework where the applicable law is less detailed than in domestic jurisdictions and has often not been subject to earlier interpretation. And ii) they lack a centralised structure and rather operate as a self-contained system, which may result in fundamental issues being left unresolved until the very end of the proceedings. In *Tadić*, the Appeals Chamber of the ICTY held that 'jurisdiction is not merely an ambit or sphere (better described in this case as "competence"); it is basically – as is visible from the Latin origin of the word itself, jurisdiction – a legal power, hence necessarily a legitimate power, "to state the law" (*dire le droit*) within this ambit, in an authoritative and final manner'. Adopting a broad interpretation of the notion of 'jurisdiction', the ICTY Appeals Chamber found in *Tadić* that a challenge to the legality of the foundation of the tribunal amounts to an objection based on lack of jurisdiction. At the ECCC, this Chamber has admitted, under Internal Rule 74(3)(a), appeals challenging a Co-Investigating Judges decision that was found to have, implicitly, confirmed ECCC's jurisdiction over modes of liability." (para. 22) "Taking into account the fundamental principles set out in Internal Rule 21 […] the Pre-Trial Chamber finds it appropriate in the present case to adopt a broad interpretation of the right to appeal under Internal Rule 74(3)(a) and to examine the Appeal's admissibility in light of the definition of 'jurisdiction' set out by the ICTY Appeals Chamber in *Tadić*." (para. 23) "Given that the Impugned Decision examines the legal power of the International Co-Investigating Judge in circumstances where he identified a *lacuna* in the law applicable before the ECCC, the Pre-Trial Chamber finds that it amounts to a decision 'confirming the jurisdiction of the ECCC' when interpreted broadly." (para. 24)
8.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge HARMON's Decision to Charge MEAS Muth* in Absentia	"[A]s long as a disagreement is not raised before the Pre-Trial Chamber, the facts that some orders or decisions are issued by one Co-Investigating Judge acting alone is not a matter of jurisdictional challenge." (para. 24) "The notion of jurisdictional challenge is generally understood to be a plea against the court's competence *rationae personae*, *materiae*, *temporis* and *loci*. The international tribunals, however, have in some instances adopted a broader definition, to take into account the fact that i) the tribunals operate in a framework where the applicable law is less detailed than in domestic jurisdictions and has often not been subject to earlier interpretation. And ii) they lack a centralised structure and rather operate as a self-contained system, which may result in fundamental issues being left unresolved until the very end of the proceedings. In *Tadić*, the Appeals Chamber of the ICTY held that 'jurisdiction is not merely an ambit or sphere (better described in this case as "competence"); it is basically – as is visible from the Latin origin of the word itself, jurisdiction – a legal power, hence necessarily a legitimate power, "to state the law" (*dire le droit*) within this ambit, in an authoritative and final manner'. Adopting a broad interpretation of the notion of 'jurisdiction', the ICTY Appeals Chamber found in *Tadić* that a challenge to the legality of the foundation of the tribunal amounts to an objection based on lack of jurisdiction. At the ECCC, this Chamber has admitted, under Internal Rule 74(3)(a), appeals challenging a Co-Investigating Judges decision that was found to have, implicitly, confirmed ECCC's jurisdiction over modes of liability." (para. 27)

		"Taking into account the fundamental principles set out in Internal Rule 21 […] the Pre-Trial Chamber finds it appropriate in the present case to adopt a broad interpretation of the right to appeal under Internal Rule 74(3)(a) and to examine the Appeal's admissibility in light of the definition of 'jurisdiction' set out by the ICTY Appeals Chamber in *Tadić*." (para. 28) "Given that the Impugned Decision examines the legal power of the International Co-Investigating Judge in circumstances where he identified a *lacuna* in the law applicable before the ECCC, the Pre-Trial Chamber finds that it amounts to a decision 'confirming the jurisdiction of the ECCC' when interpreted broadly." (para. 29)
9.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"In interpreting Rule 74(3)(a), the Pre-Trial Chamber has previously held that 'only jurisdictional challenges may be raised under that Rule'. […] Consequently, the Pre-Trial Chamber stated that appeals which 'challenge the very existence of form of responsibility or its recognition under […] law at the time relevant to the indictment', as well as those challenging 'the existence in law of a crime and its elements at the time relevant to the indictment' are jurisdictional challenges." (para. 23) "The Pre-Trial Chamber has also held that it was appropriate to adopt a broad interpretation of the right to appeal under Rule 74(3)(a) when the Co-Investigating Judges addressed a situation not contemplated by the Rules. The Pre-Trial Chamber found this appropriate in light of Rule 21 […]." (para. 24) "Nonetheless, the Pre-Trial Chamber notes that alleged defects in the form of the indictment and appeals against procedural irregularities in the investigation are 'non-jurisdictional in nature and are therefore inadmissible at the pre-trial stage of the proceedings in light of the plain meaning of Rule 74(3)(a) and Chapter II of the ECCC Law, which outlines the personal temporal and subject matter jurisdiction of the ECCC'." (para. 25) "The Pre-Trial Chamber notes that the Impugned Decision constitutes refusal to strike the International Co-Prosecutor's Supplementary Submission. […] [T]he Impugned Decision does not 'confirm' the ECCC jurisdiction *rationae personae*, *materiae*, *temporis* or *loci*. Therefore, the Pre-Trial Chamber finds the Appeal inadmissible pursuant to Rule 74(3)(a)." (para. 27)
10.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The placement under investigation by the Co-Investigating Judges cannot be appealed. Indeed, a Judge's mandate consists of two components: the *imperium* and the *juridictio*. Only the latter is appealable. The use of the words 'power' and to 'inform', in Internal Rules 55(4) and 57(1), in relation to the placement under judicial investigation, suggests that the charging process falls within the Judge's *imperium* which is therefore not appealable." (Opinion of Judges BEAUVALLET and BAIK, para. 15) "[T]he placement under investigation which occurred during the Appellant's initial appearance does not constitute an appeable decision confirming the jurisdiction of the ECCC within the meaning of Internal Rule 74(3)(a)." (Opinion of Judges BEAUVALLET and BAIK, para. 17) "In view of the lack of provision in the ECCC legal compendium with regard to charging someone *despite his absence at the initial* appearance, the Pre-Trial Chamber [in D128/1/9] found the Appeal admissible under 74(3)(a), when interpreted broadly, in order to fill the gap in the legal provisions. Unlike in those exceptional circumstances created by a *lacuna* in the applicable law, the placement under investigation of the Appellant during his initial appearance […] was specifically regulated by relevant provisions of the Internal Rules. No intervention of the Pre-Trial Chamber to ensure legal certainty is required since there is no *lacuna* in the applicable law of the ECCC in this regard." (Opinion of Judges BEAUVALLET and BAIK, para. 21)
11.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of*	"Article 15 of the ICCPR is a rule of important nature intended to guarantee the right to legality of those appearing before the ECCC. […] As required by Article 12 of the Agreement, the Undersigned Judges note that the standards set out in Article 15 of the ICCPR relate, in effect, directly to ECCC's exercise of jurisdiction. […] Moreover, it has found that challenges to such orders of the Co-Investigating Judges that confirm – either implicitly, or explicitly – ECCC's jurisdiction, can be brought at the pre-trial stage of proceedings and, give rise to a right of appeal under Internal Rule 74(3)(a)." (Opinion of Judges BEAUVALLET and BAIK, para. 1)

	Investigative Action concerning Forced Marriage	
12.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	"Challenges to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in violation of the principle of legality, raise admissible subject matter jurisdiction challenges." (para. 12) "[A]rguments related to the existence in law in 1975-1979 of a Nexus are 'arguments that go to the very essence of the test for compliance with the principle of legality and, as such, represent admissible jurisdictional challenges.' Bearing in mind that Internal Rule 74(3)(a) does not limit jurisdictional challenges to appeals from closing orders, the Pre-Trial Chamber finds that deciding the issue at this stage is appropriate in order to narrow the scope of any future appeal against a closing order." (para. 14)
13.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces*	"Challenges to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality, raise admissible subject matter jurisdiction challenges." (para. 11) "In order to determine the admissibility of the Appeal, the Pre-Trial Chamber will ascertain whether the Impugned Notification constitute an appealable 'decision' within the meaning of Internal Rule 74(3) and, in the affirmative, whether it is admissible under Internal Rule 74(3)(a) as an order confirming the jurisdiction of the ECCC. Alternatively, it will consider whether it is admissible under Internal Rule 21." (para. 11)
14.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul Investigative Action and Orders relating to Kang Hort Dam*	"The Pre-Trial Chamber has previously accepted appeals against *sui generis* charging on the basis that it amounted to a 'jurisdictional challenge' pursuant to Internal Rule 74(3)(a) mostly to safeguard the interests of the Charged Person and ensure legal certainty and fair and adversarial proceedings, in exceptional circumstances." (Opinion of Judges BEAUVALLET and BAIK, para. 89) "The Undersigned Judges agree that a decision to charge can fall within the scope of an action or order open to annulment rather than being appealed, in accordance with Internal Rule 76(5)." (Opinion of Judges BEAUVALLET and BAIK, para. 90)
15.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The notion of a jurisdictional challenge is generally understood to be a plea against the Court's competence *rationae personae*, *materiae*, *temporis* and *loci*. Internal Rule 74(3) affords the Charged Person or Accused with a limited right to appeal only those orders and decisions specifically enumerated under the provision. […] It follows from […] Internal Rule 74(3)(a) that the Closing Order (Indictment) is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 135) "[T]he Pre-Trial Chamber recalls that appeals which: 1) 'challenge […] the very existence of a form of responsibility or its recognition under […] law at the time relevant to the indictment'; or 2) argue that a mode of responsibility was 'not applicable to a specific crime' at the time relevant to the indictment; and 3) demonstrate that its 'application would infringe upon the principle of legality' raise acceptable subject matter jurisdiction challenges that may be brought in the pre-trial phase of the proceedings." (para. 137)

		"Appeal grounds contesting substantive crimes were found to raise admissible subject matter jurisdiction challenges 'where there is a challenge to the very existence in law of a crime and its elements at the time relevant to the indictment, which if applied would result in a violation of the principle of legality'." (para. 138) "[C]hallenges relating to the specific contours of a mode of liability or substantive crime 'are matters to be addressed at trial' and, therefore, inadmissible. Thus, challenges relating to whether the elements of a crime or a mode of liability actually existed in reality – as opposed to legally at the time of the alleged criminal conduct – are matters to be addressed at trial." (para. 139) "The Pre-Trial Chamber held [in Case 004/1] that when there is a prior finding of no personal jurisdiction, this may be reviewable; further, that 'as an appellate chamber, [it] must be able to review the findings that led to it, including those regarding the existence of crimes or the likelihood [of the Accused's] criminal responsibility.' [...] [I]n Case 004/1, distinguishable from the instant case, those findings were made in relation to an Appeal lodged under Internal Rule 74(2) by the International Co-Prosecutor who may appeal against all orders and decisions; the issue did not involve the enumerated provisions under 74(3) for the Accused [...]." (para. 142) "The Pre-Trial Chamber does not consider that a similar approach applies to appeals filed pursuant to Internal Rule 74(3)(a) challenging the personal jurisdiction over the Accused. Procedural differences between the appellate rights of the Co-Prosecutors and an Accused do not, *per se*, violate the principle of equality of arms. [...] [I]t was clearly the intent of drafters to provide different procedural rights to appeal to the parties under Internal Rule 74. This provision articulating the enumerated rights would become meaningless if an accused could challenge anything implicating 'criminal liability', including the contours of crimes of modes of liability under the guise of personal jurisdiction." (para. 143) "[A] challenge to personal jurisdiction regarding those who were most responsible should be aimed at the gravity of crimes and/or the level of responsibility of the Accused. Challenges involving the criminal liability of the Accused beyond this limitation, including contours of crimes or modes of liability, cannot be framed as challenged to personal jurisdiction and are inadmissible." (para. 144) "[T]he scope of the International Co-Investigating Judge's discretion to determine personal jurisdiction (Ground 2) and the interpretation of those most responsible (Ground 3) each directly impact the Court's ability to exercise jurisdiction. Grounds 2 and 3 therefore constitute jurisdictional challenges." (para. 150) "Under Internal Rule 74(3)(a), the Pre-Trial Chamber finds that Grounds 4-7 are admissible as personal jurisdiction challenges because the alleged improper 'application of the standard of proof' (Ground 4), 'hierarchy of evidence' (Ground 5), AO An's role within the CPK (Ground 6) and the sufficiency of gravity concerning charged crimes (Ground 7) are material in determining personal jurisdiction." (para. 151) "The Pre-Trial Chamber finds that Grounds 8, 9, 11, 12(i) and 15(i) constitute valid jurisdictional challenges as they challenge the Court's compliance with the principle of legality, a pre-requisite for establishing the ECCC's jurisdiction over the crimes and modes of liability in the ECCC Law." (para. 153) "The Chamber recalls that '[t]he issue of the ability of the ECCC to prosecute national crimes, which are subject to a statute of limitations, is a jurisdictional matter.' Thus, Ground 13 is an admissible appeal ground at this pre-trial stage of the proceedings." (para. 154) "Ground 16(ii) alleging that the International Co-Investigating Judge did not demonstrate that the Cham were positively identified and targeted 'as such' implicates the gravity of crimes. Ground 16(iii) challenging the International Co-Investigating Judge's application of the *mens rea* for genocide to the Accused, including specific genocidal intent, implicates AO An's responsibility for the crimes. The Chamber, therefore, considers these Grounds admissible as proper personal jurisdiction challenges." (para. 155) "The Pre-Trial Chamber finds that Grounds 12(ii), 14, 15(ii) and 16(i) are inadmissible. These Grounds challenge the contours of crimes and modes of liability and their application in reality rather than their existence in law at the time relevant to the Indictment." (para. 157)

16.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The Pre-Trial Chamber notes that the Indictment is subject to appeal pursuant to Internal Rule 67(5) and that the Pre-Trial Chamber has jurisdiction over appeals filed pursuant to Internal Rule 74. The Chamber also notes that Internal Rule 74(3) allows a charged person or an accused to lodge only limited types of pre-trial appeals, including appeals filed under sub-rule 74(3)(a) against the Co-Investigating Judges' orders 'confirming the jurisdiction of the ECCC'. This Chamber determined that the broadening of this right of appeal through Internal Rule 21 is ascertained on a case-by-case basis and granted only in exceptional cases." (para. 55) "The parties' right to appeal and the admissible grounds for pre-trial appeals are governed by Internal Rule 74. As exposed below, the Pre-Trial Chamber has declared that an appeal filed by a charged person or an accused is admissible under Internal Rule 74(3)(a) if it pertains, *inter alia*, to: (i) subject matter jurisdiction under sub-rule 74(3)(a); (ii) personal jurisdiction under sub-rule 74(3)(a); and/or (iii) exceptional fair trial rights issues, examined case-by-case, which may require the broadening of the right of appeal afforded by sub-rule 74(3)(a) in light of Internal Rule 21." (para. 63) "Firstly, the notion of jurisdictional challenge is generally understood to be a plea against the ECCC's competence *rationae personae*, *materiae*, *temporis* and/or *loci*, as defined by Articles 2*new* to 8 of the ECCC Law. As previously stated, Internal Rule 74(3) affords the Charged Person or Accused a right to appeal only those orders and decisions enumerated under this provision. These include, pursuant to sub-rule 74(3)(a), orders or decisions of the Co-Investigating Judges 'confirming the jurisdiction of the ECCC'. On this basis, the Pre-Trial Chamber has determined that an indictment is 'clearly subject to appeal on jurisdictional issues decided by the Co-Investigating Judges.'" (para. 64) "Regarding personal jurisdiction challenges, the Pre-Trial Chamber recalls that the ECCC's personal jurisdiction is confined to 'senior leaders' and to 'those who were most responsible' for the crimes within the ECCC's jurisdiction. The Chamber further notes that although the term 'most responsible' is not defined by the ECCC Agreement or the ECCC Law, guidance for its interpretation can be discerned by looking, *inter alia*, to international jurisprudence in light of the object and purpose of the Court's founding instruments. As numerous Chambers of the ECCC have found, international jurisprudence establishes that the identification of those falling into the 'most responsible' category includes a quantitative and qualitative assessment of both the gravity of the crimes (alleged or charged) and the level of responsibility of the suspect, which necessarily involves mixed questions of law and facts." (para. 65) "[W]hile as a general principle, mixed questions of law and facts are non-jurisdictional in nature and should be dealt with primarily at trial, personal jurisdiction is an 'absolute jurisdictional element', which should be subject to an effective right of pre-trial appeal. In the instant case, the effectiveness of this right is entwined with the rationale behind the right of appeal granted by sub-rule 74(3)(a), which aims to promote the orderly and efficient administration of justice by allowing the defence to avoid a trial for which the Court has no jurisdiction over and by preventing a waste of resources." (para. 67) "[C]onsidering the interests of the accused and victims as well as the necessity of legal certainty and transparency of proceedings, allowing subject matter jurisdiction challenges concerning only points of law, as defined in prior decisions, is sufficient to safeguard the accused's effective right to appeal at the pre-trial stage – that is, to ensure that he or she is not sent to trial for crimes for which the Court has no jurisdiction over. Conversely, the Chamber finds that since the determination of the ECCC's personal jurisdiction intrinsically involves mixed questions of law and facts, the right to appeal against orders making such determination can only be effective if the defence engages with those mixed questions in the appeal it brings before the Pre-Trial Chamber." (para. 68) "[W]hen facing challenges to personal jurisdiction regarding 'those who were most responsible', this Chamber shall limit its evaluation to matters crucial to the determination and assessment of personal jurisdiction – that is, the gravity of crimes and/or level of responsibility of the accused. Accordingly, this Chamber has already concluded that a challenge to personal jurisdiction regarding 'those who were most responsible' is admissible insofar as it is aimed at the gravity of crimes and/or level of responsibility of the accused. The Pre-Trial Chamber reaffirms that challenges involving matters beyond this limitation cannot be framed as challenges to personal jurisdiction and are thus inadmissible on such basis pursuant to Internal Rule 74(3)(a) alone." (para. 69) "The Co-Lawyers […] contend that the International Co-Investigating Judge's interpretation of Internal Rule 77(13) – to the effect that both Closing Orders or only the Indictment would stand should the Pre-Trial Chamber fail to uphold one of them by supermajority – implicitly confirmed the ECCC's

		personal jurisdiction over MEAS Muth. The Pre-Trial Chamber observes, at the outset, that this argument touches upon the issues already settled […]. The Chamber further notes that Ground A only challenges, […] an International Co-Investigating Judge's opinion, speculating on matters within the Pre-Trial Chamber's sole purview and therefore in itself does not affect the proceedings nor MEAS Muth's rights. Consequently, the Chamber finds that this Ground cannot be admitted as a valid personal jurisdiction challenge under Internal Rule 74(3)(a)." (para. 74) "The Chamber notes that the Co-Lawyers' Ground B rather addresses a situation where, in their view, the discrepancies between the two Closing Orders of legal and factual findings therein with respect to whether MEAS Muth falls within the ECCC's personal jurisdiction evidence doubt on key jurisdictional issues that the International Co-Investigating Judge should have addressed by referring to the principle of *in dubio pro reo* in his assessment of the law governing the Court's jurisdiction. Therefore, the Pre-Trial Chamber finds that this challenge cannot be framed and admitted as a valid challenge to personal jurisdiction under Internal Rule 74(3)(a)." (para. 77)

ii. *Appeals against Orders or Decisions Refusing Request for Investigative Action Allowed under the Internal Rules (Internal Rules 74(3)(b) and 74(4)(a))*

For jurisprudence concerning ***Appeals against Decisions on Requests for Investigative Action*****,** see IV.C.1. Requests for Investigative Action under Internal Rules 55 (10) and 58(6)

iii. *Appeals against Orders or Decisions Refusing Requests for Expert Reports Allowed under the Internal Rules (Internal Rules 74(3)(d) and 74(4)(d))*

For jurisprudence concerning ***Requests for Experts*****,** see IV.C.3. Expertise under Internal Rules 31 and 32

1.	**002 IENG Sary** PTC 10 A189/I/8 21 October 2008 *Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert*	"The Pre-Trial Chamber finds that the failure of the Co-Investigating Judges to rule on the Request [to appoint an expert] as soon as possible, in circumstances where delay in making decision deprives the Charged Person of the possibility of obtaining the benefit he seeks, amounts to constructive refusal of the application, which can be appealed under Internal Rule 74(3)(d)." (para. 24)
2.	**002 NUON Chea** PTC 07 D54/V/6 22 October 2008 *Decision on NUON Chea's Appeal regarding Appointment of an Expert*	"[T]he Charged Person has been denied the possibility of having his mental capacity to participate in his defence during the investigation examined by an expert. The Co-Investigating Judges' decision amounts to a refusal of the entire Application. Such a refusal can be appealed against under Internal Rule 74(3)(d)." (para. 16)
3.	**004 AO An** PTC 24 D260/1/1/3 16 June 2016 *Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action*	"Internal Rule 55(10) requires the Co-Investigating Judges to 'set out the reasons for [their] rejection' of a request to make an order or undertake investigative action. Internal Rule 58(6) also provides, with regards to requests for investigations or for expertise, that the Co-Investigating Judges shall state the factual reasons in case of rejection. The Pre-Trial Chamber clarified in the past, with regards to decisions on investigation requests, that Internal Rule 74(3)(b) requires, to be meaningful, sufficient detail to place the Charged Person in a position to be able to decide whether to lodge an appeal and to draw appropriate submissions. The Pre-Trial Chamber found further guidance in the case law of the European Court of Human Rights and of the ICTY regarding the right to reasoned opinion, which it found relevant to the pre-trial context at the ECCC. The Undersigned Judges consider that these principles should apply *mutatis mutandis* to challenges regarding expert requests under Internal Rules 31(10) and 74(3)(d)." (Opinion of Judges BEAUVALLET and BAIK, para. 60)

iv. *Appeals against Orders or Decisions Refusing Requests for Additional Expert Investigation Allowed under the Internal Rules (Internal Rules 74(3)(e) and 74(4)(e))*

For jurisprudence concerning ***Requests for Experts***, see IV.C.3. Expertise under Internal Rules 31 and 32

1.	**002 IENG Sary** PTC 28 D140/4/5 14 December 2009 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert*	"[…] The Pre-Trial Chamber finds that the request made by the Co-Lawyers was therefore not within the ambit of the first situation referred to in Internal Rule 31(10) as the experts had already been appointed and the request was not related to what was then the 'conduct of a new examination'." (para. 12) "As for the second situation under Internal Rule 31 (10) in respect of an appointment of an additional expert 'to re-examine a matter already subject to an expert report' the Pre-Trial Chamber finds that as the request and the appeal based upon the rejection of such request predate the expert report there is no legal basis for the request." (para. 13) "Considering Internal Rule 74(3)(e), the jurisdiction of the Pre-Trial Chamber to determine appeals is limited to the refusal of 'requests for additional expert investigation allowed under these Internal Rules'. The Pre-Trial Chamber finds that the appeal is not admissible as the request before the Co-Investigati[ng] Judges was not validly made under Internal Rule 31(10) and was thus made without legal basis." (para. 14)
2.	**002 IENG Sary** PTC 55 D140/9/5 28 June 2010 **[PUBLIC REDACTED]** *Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying His Request for Appointment of an Additional [REDACTED] Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam*	"The Pre-Trial Chamber observes that the Second Appeal is submitted 'pursuant to Rules 31(10) and 74(3)(e)' and refers to a request for the 'appointment of an additional [REDACTED] expert to re-examine the subject matter' of an existing expert report. The Pre-Trial Chamber has found [in D140/4/5] that the 'Internal Rules permit the defence to seek the appointment of an expert to re-examine a matter now the subject of an expert report'." (para. 14)

v. *Appeals against Orders or Decisions relating to Provisional Detention or Bail (Internal Rule 74(3)(f))*

For jurisprudence concerning the ***Appeals against Orders on Provisional Detention and Bail***, see V.B.3.ii. Appeals against Order on Provisional Detention, V.B.3.iv. Appeals against Order on Extension of Provisional Detention and V.B.4.iii. Appeals concerning Conditions of Detention

1.	**002 IENG Sary** PTC 05 A104/II/4 21 March 2008 *Decision on the Admissibility of the Appeal Lodged by IENG Sary on Visitation Rights*	"[T]he assertions made by the Co-Lawyers can be seen as a complaint against a coercive measure taken by the Co-Investigating Judges that, in its effects, may not fully respect the human dignity of the Charged Person." (para. 9) "As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, the Pre-Trial Chamber finds that this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules." (para. 10)

2.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"In [A104/II/4] the Pre-Trial Chamber previously found […]: '[…] the assertion made by the Co-Lawyers can be seen as a complaint against a coercive measure […] that, in its effects, may not fully respect the human dignity of the Charged Person. As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, […] this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules.'" (para. 9) "The current Appeal is lodged against what is, in its effect, a segregation order issued by the Co-Investigating Judges. […] The Pre-Trial Chamber finds, for the reasons expressed in its previous decision, that the Appeal falls within the scope of Internal Rule 74(3)(f)." (para. 10)
3.	**002 IENG Sary** PTC 152 D427/5/10 21 January 2011 *Decision on IENG Sary's Appeal against the Closing Order's Extension of his Provisional Detention*	"The Accused may appeal against any orders or decisions of the Co-Investigating Judges relating to provisional detention. The Pre-Trial Chamber […] confirmed its acceptance of the separate filing of the Appeal and of the Jurisdiction Appeal, taking into account 'the very different subject matters of these Appeals and the fact that, consequently, where deemed necessary, different procedural steps may be applied'." (para. 16)
4.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"[W]hether an item […] can be brought in and out of the Detention Facility by members of a defence team and used during their meetings with their client in pre-trial detention, forms part of the modalities of […] detention. Any aspect of the modalities of pre-trial detention thus shall be under the effective control of the competent ECCC judicial authorities and strictly limited to the needs of the proceedings. To the extent that it adjudicates one specific aspect of the modalities of the pre-trial detention of the Charged Person, […] the Impugned Order amounts to an order 'relating to provisional detention' in [...] Internal Rule 74(3)(f) and is thus appealable by the Charged Person." (para. 11) "Considering the fair trial rights of the Appellant, including pursuant to Article 13 of the Agreement, Article 35 new of the ECCC Law and Article 14(3) of the ICCPR, the Pre-Trial Chamber finds that Rule 21 requires it to interpret the Internal Rules in such a way that the Appeal [concerning the authorisation of recording of meetings at the Detention Facility] is also admissible on the basis of Rule 21." (para. 18) "Finally, Rule 1 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Courts of Cambodia provides that '[t]he application of these rules to individual cases may be varied by order of the ECCC Co-Investigating Judges or the ECCC Chambers.' The Pre-Trial Chamber finds that the Appeal is also admissible on this basis." (para. 19)

vi. *Appeals against Orders or Decisions Refusing Application to Seise the Pre-Tiral Chamber for Annulment of Investigative Action (Internal Rules 74(3)(g) and 74(4)(g))*

For jurisprudence concerning the ***Annulment Procedure***, see VII.C.3 Annulment Procedure

For jurisprudence concerning ***Appeals against Orders or Decisions Refusing Application to Seise the Pre-Trial Chamber for Annulment of Investigative Action under Internal Rules 74(3)(g) and 74(4)(g)***, see VII.C.6. Appeals under Internal Rules 74(3)(g) and 74(4)(g)

1.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *Decision on IENG Thirith's Appeal against the Co-Investigating Judges' Order Rejecting the Request to Seise the Pre-Trial Chamber with*	"The Appeal is filed pursuant to Internal Rule 76(2) providing for a right of appeal when a request to seise the Pre-Trial Chamber with an application for annulment is refused. The Annulment Appeal is contemplated in Internal Rule 74(3)(g) and is admissible." (para. 11)

	a View to Annulment of All Investigations (D263/1)	
2.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"Internal Rule 74(3)(g) lays down the appeals procedure. The Pre-Trial Chamber has previously held that the parties raising annulment must first submit a reasoned application to the Co-Investigating Judges requesting them to seise the Pre-Trial Chamber." (para. 13)
3.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"The Pre-Trial Chamber is of the view that the notion of 'investigative action' in the meaning of Rule 74(3)(g) should be interpreted as to encompass the Supplementary Submission. This finding is also supported by […] the Cambodian Code of Criminal Procedure […]. The Co-Lawyers should have submitted a reasoned application to the Co-Investigating Judges requesting that they seise the Pre-Trial Chamber with a view to annulment pursuant to Rule 76(2)." (para. 31) "While the Motion to Strike was not filed as an annulment application to seise the Chamber, the Pre-Trial Chamber finds that it is in the interests of justice to interpret the annulment procedure broadly in this case pursuant to Rule 21." (para. 33) "The Pre-Trial Chamber finds that the Impugned Decision amounts to a decision 'refusing an application to seise the Chamber for annulment' in the meaning of Rule 74(3)(g), when interpreted broadly considering first of all the importance of such a submission and its impact on the investigation. […] The Motion to Strike is an application seeking annulment of part of the proceedings. Rule 76(2) should have been applied and consequently the seisin of the Pre-Trial Chamber with a view to annulment should have been considered. As mentioned by the International Co-Investigating Judge, '[t]here is no provision in the Internal Rules allowing the Co-Investigating Judges to strike an introductory or supplementary submission from the Case File'. Rule 73(b) has vested the right to annul part of the proceedings only in the Pre-Trial Chamber. Should the Co-Investigating Judges consider that any part of the proceedings is null and void, they can, pursuant to Rule 76(1) submit a reasoned application to the Pre-Trial Chamber." (para. 34) "[A] broad interpretation of Rule 74(3)(g) is necessary given that the Impugned Decision examines the validity and potential annulment of the Supplementary Submission. Therefore, exceptional and particular facts and circumstances of the case at stake mandate that the Pre-Trial Chamber admit the Appeal pursuant to a broad interpretation of Rule 74(3)(g), read in light of Rule 21." (para. 35)
4.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International*	"The Pre-Trial Chamber is in principle seised in respect of annulment by virtue of an order of the Co-Investigating Judges, issued of their own motion pursuant to Internal Rule 76(1); a motion for annulment brought by the parties acting pursuant to Internal Rule 76(2); or an appeal entered under internal Rule 74(3)(g) against a decision of the Co-Investigating Judges declining to refer an application for annulment." (para. 20)

	Co-Investigating Judge	
5.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO AN'S Application to Annul the Entire Investigation*	"Faced with appeals, brought under Internal Rule 74(3)(g) against OCIJ decisions issued pursuant to Internal Rule 76(2), the Pre-Trial Chamber had occasions to introduce the 'arguable case' criterion when defining the test which the CIJs must satisfy and considered that OCIJ's 'determination as to whether a case is "arguable" amounts precisely to ascertaining that the request is not "manifestly unfounded" within the meaning of Internal Rule 76(4). A request is "manifestly unfounded" only where it is particularly *evident or very apparent* that it has no legal or factual foundation and hence no prospect of success. Further, the Chamber recalls that the [CIJs] must assess only whether the request *prima facie* or *on the face of it* sets forth a "reasoned argument" which asserts procedural defect and prejudice, but [must] not adjudge the grounds advanced in the request for annulment.' Hence, 'a determination that an "arguable case" was made presupposes only that the [CIJs] satisfy themselves that: (1) the request *prima facie* sets forth a reasoned argument; and (2) the request is not manifestly unfounded.'" (para. 13) "Pursuant to the Pre-Trial Chamber's jurisprudence, the OCIJs' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 14)

vii. *Appeals against Orders or Decisions relating to Protective Measures (Internal Rules 74(3)(h) and 74(4)(h))*

For jurisprudence concerning the ***Protection of Victims and Witnesses***, see VI.G. Protection of Victims and Witnesses

1.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber notes that, in making considerations, in the disclosure decisions, for modalities of the allowed disclosure, the ICIJ's function is limited to providing learned guidance to the Trial Chamber which, in turn, has exclusive jurisdiction to issue decisions on closed session testimonies." (para. 14) "The Pre-Trial Chamber finds that, in making considerations, in disclosure decisions, for modalities of the allowed disclosures, the ICIJ does not 'act in accordance with the principles of [Internal] Rule 29' […]. According to Internal Rule 29, the CIJs may order measures to ensure the protection of victims and witnesses. The 'protective measures' and the 'modalities of disclosure' are aimed at safeguarding substantially different values and interests because, on the one hand, modalities of disclosure are aimed at maintaining confidentiality of judicial investigations in order to 'preserve the rights and interests of the parties', and on the other hand, protective measures are aimed at protecting victims and witnesses when there is a risk of serious danger to their life and health, or to that of their families. While the ICIJ's decision allowing disclosure are necessitated by a legitimate obligation to cooperate in the truth finding process of another judicial body of the ECCC, ICIJ's considerations on what would be the most appropriate modalities for the allowed disclosures, are guided by the requirement to safeguard the confidentiality of investigations set in Internal Rule 56. Accordingly, the term 'protective measures' in Internal Rule 74(3)(h) has to be read in the light of the provisions of Internal Rule 29(4) and (8). Any request for 'modalities of disclosures' by the ICIJ, for the attention of the Trial Chamber, is dictated by the ICIJ's obligation under Internal Rule 56 to preserve the confidentiality of investigations, and is not subject to pre-trial appeal." (para. 15) "Therefore, the Pre-Trial Chamber does not find any 'relationship', between 'protective measures' and 'ICIJ's decisions' on disclosure, or modalities thereof, such that would make appeals against such decisions fall within the ambit of Internal Rule 74(3)(h)." (para. 16) "The Pre-Trial Chamber has also dismissed claims that disclosure orders violate the Charged Person's right to presumption of innocence irreparably." (para. 18)

viii. *Appeals against Orders or Decision Declaring a Civil Party Application Admissible or Inadmissible (Internal Rules 74(3)(i) and 74(4)(b))*

For jurisprudence concerning ***Appeals against Order on Civil Party Admissibility***, see VI.D. Appeals against Order on Civil Party Admissibility

1.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"[C]ivil party admissibility and procedural fairness, are of general significance to the practice and jurisprudence of the ECCC and international criminal law. Errors relating to civil party admissibility and procedural fairness 'impinge upon ability of [the ECCC] to meet its obligation in search for truth in all proceedings.' Therefore, we issue this Opinion in an effort 'to avoid uncertainty and ensure respect for the values of consistency and coherence in the application of the law.' (Opinion of Judges DOWNING and CHUNG, para. 2) "Internal Rules 77*bis* and 74(4)(b), respectively, allow civil party applicants to appeal orders by the Co-Investigating Judges declaring a civil party application inadmissible to the Pre-Trial Chamber. […] Under Internal Rule 77*bis*, the Pre-Trial Chamber has jurisdiction to consider errors of fact and/or law made by the Co-Investigating Judges in the determination of the admissibility of civil party applications. Thus, pre-trial appeals under Internal Rules 74(4)(b) and 77*bis* are admissible insofar as they challenge the consideration by the Co-Investigating Judges of a civil party application." (Opinion of Judges DOWNING and CHUNG, para. 4) "As regards the jurisdiction of the Pre-Trial Chamber, we consider that the First, Second, Third and Fourth Grounds of appeal are admissible pursuant to Internal Rules 74(4)(b) and 77*bis* as they challenge the Impugned Order […]. The Fifth and Sixth Grounds, however, are inadmissible as they are directed against the conduct of the judicial investigation by the Co-Investigating Judges. These Grounds do not directly challenge the Impugned Order, or any other order by the Co-Investigating Judges, and thus do not fall under any of the matters contemplated by Internal Rule 74(4)(b)." (Opinion of Judges DOWNING and CHUNG, para. 6)
2.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"We note that the Application relates to orders declaring civil party applications admissible. As such, the Orders are subject to appeal under Internal Rules 74(3)(i) and 74(2) by the Co-Prosecutors and 'the Charged Person or the Accused', respectively. Pursuant to Internal Rule 76(4), a request for annulment relating to 'an order that is open to appeal' is inadmissible, irrespective of the fact that the party requesting the annulment or the Co-Investigating Judges may not be themselves entitled to appeal the order. The reason for that rule on admissibility is that the regimes for annulment and appellate review are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges." (Opinion of Judges CHUNG and DOWNING, para. 2)

ix. *Appeals against Orders or Decision Reducing the Scope of Judicial Investigation under Internal Rule 66*bis *(Internal Rules 74(3)(j) and 74(4)(i))*

For jurisprudence concerning the ***Reduction of the Scope of the Judicial Investigation***, see IV.B.1.iv. Decision to Reduce the Scope of Judicial Investigation (Internal Rule 66*bis*))

1.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The International Judges further observe that pursuant to Internal Rule 23*ter*(2), '[w]hen the Civil Party is represented by a lawyer, his or her rights are exercised through the lawyer', and note that under Internal Rule 74(4)(i), the Civil Parties may appeal against the Co-Investigating Judges' decision 'reducing the scope of judicial investigation under [Internal Rule 66*bis*].'" (Opinion of Judges BEAUVALLET and BAIK, para. 83) "Most significantly, the Co-Lawyers did not exercise their explicitly prescribed right under Internal Rule 74(4)(i) to appeal against the Internal Rule 66*bis* Decision. […] In light of the foregoing, the International Judges find that the Co-Lawyers failed to exercise the victims' right to participate in this regard in a timely manner." (Opinion of Judges BEAUVALLET and BAIK, para. 86) "Concerning the Co-Lawyers' claim on alleged prejudice resulting from the reduction of the scope of the Civil Party admissibility pursuant to the Internal Rule 66*bis* Decision, the International Judges affirm that the facts excluded on the basis of Internal Rule 66*bis* invoked by a Civil Party applicant may still

		form the basis of a decision of admissibility, if they fulfil the remaining conditions of admissibility under Internal Rules 23*bis*(1) and (4).” (Opinion of Judges BEAUVALLET and BAIK, para. 87)

4. Admissibility of Appeals under Internal Rules 11(5) and (6), 35(6), 38(3) and 77*bis*

For jurisprudence concerning the ***Admissibility of Appeals under Internal Rule 11***, see III.E.3.i. Admissibility (Appeals under Internal Rule 11(5) and III.E.4.i. Admissibility (Appeals under Internal Rule 11(6)

For jurisprudence concerning the ***Admissibility of Appeals under Internal Rules 35 and 38***, see III.D.iv.b. Appeal against Decision under Internal Rule 35

For jurisprudence concerning the ***Admissibility of Appeals under Internal Rule 77bis,*** see VI.D. Appeals against Order on Civil Party Admissibility

5. Admissibility of Appeals under Fairness Considerations (Internal Rule 21)

For jurisprudence concerning ***Fair Trial Rights***, see II. Fair Trial Rights

For jurisprudence concerning the ***Inherent Jurisdiction of the Pre-Trial Chamber***, see III.A.4. Inherent Jurisdiction

i. *Legal Principle*

1.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	“An appeal may be admissible under Internal Rule 21 if a party alleges the infringement of the exercise of a right protected by Internal Rule 21.” (para. 19) “To the extent that an alleged violation of an international instrument or treaty-applicable in Cambodia relates to a right that can be applied within the framework of this Court, Internal Rule 21 provides that the rights of persons before this Court, including victims, shall be safeguarded.” (para. 27) “In order to set aside the Impugned Order […] the Pre-Trial Chamber considers that the Appellants must demonstrate a cognizable interest, even if it is a contingent interest.” (para. 34)
2.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	“For the purpose of this court the provisions of Article 14 and 15 of the [ICCPR] are applicable at all stages of proceedings before the ECCC. Further, Article 14 of the ICCPR provides for overriding rights which will transcend local procedures declared and followed. The provisions of Articles 14 and 15 of the ICCPR are also reflected in Internal Rule 21.” (para. 13) “The overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a).” (para. 14) “Under Articles 33 new and 35 new of the [ECCC Law], and Internal Rule 21, the Charged Person is entitled to number of guarantees including the right to a fair trial.” (para. 20) “This Chamber is not only duty bound to respect the rights laid down in Internal Rule 21 but it also attaches great importance to the respect of human rights and to proceedings that fully respect proper processes of the law. The Pre-Trial Chamber concurs with the views expressed in other tribunals according to which ‘the issue of respect for due process of law encompasses more than merely the duty to ensure fair trial for the accused’ and also includes, in particular, ‘how the Parties have been conducting themselves in the context of a particular case.’” (para. 21)
3.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011	“The Pre-Trial Chamber will determine whether the facts and circumstances of the Appeals require that it adopt a broader interpretation of the Charged Person’s right of appeal in order to ensure the fairness of the proceedings.” (para. 18)

	Decision on KHIEU Samphan's Appeal against the Closing Order	
4.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"The Pre-Trial Chamber has previously held that in light of Article 33 (new) of the ECCC Law, which provides that 'trials are fair' and conducted 'with full respect for the rights of the accused', and of Article 14 of the [ICCPR], which is 'applicable at all stages of proceedings before the ECCC, […] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings as provided in Internal Rule 21(1)(a).' Therefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found that it has competence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of charged persons' right to appeal in light of Internal Rule 21." (para. 71) "[T]he Pre-Trial Chamber […] did not hold that as a general rule it will automatically have competence under Internal Rule 74(3) or Internal Rule 21 to consider any grounds of appeal in which an Appellant raises matters implicating the fairness of the proceedings. Rather, the Pre-Trial Chamber carefully considered, in each case, whether, on balance, 'the facts and circumstances' of the appeals required a broader interpretation of the right of appeal." (para. 73)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber, as noted above, finds that pursuant to Internal Rule 67(5), the Closing Order is subject to appeal as provided in Rule 74. No other Internal Rule is listed under Internal Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not specifically lay out grounds for pre-trial appeals; rather it sets the fundamental principles governing proceedings before the ECCC. Accordingly, under the express terms of the Internal Rules, the Pre-Trial Chamber finds that no appeals against the Closing Order are admissible pursuant to Internal Rule 21. Where appeals filed against an Indictment under Internal Rule 74 raise matters which cannot be rectified by the Trial Chamber, and not allowing the possibility to appeal at this stage would irreparably harm the fair trial rights of the accused, Internal Rule 21 may, on a case by case basis, warrant application to broaden the scope of Internal Rule 74. It will not otherwise be applied." (para. 48) "The Pre-Trial Chamber has previously held that in light of Article 33 (new) of the ECCC Law, [...], and of Article 14 of the [ICCPR], which is 'applicable at all stages of proceedings before the ECCC, [...] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a).' Therefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found that it has competence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Person['s] right to appeal in light of Internal Rule 21. The Pre-Trial Chamber has found that it had competence to consider an appeal against the Office of the Co-Investigating Judges' denial of Ieng Thirith's request for a stay of proceedings on the basis of the abuse of process [and] that it had competence to consider appeals raising the issue of whether the Charged Person received sufficient notice of the charges of JCE as a mode of liability [...] [.] That being said, the Pre-Trial Chamber emphasises that in both decisions, it did not hold that as a general rule it will automatically have competence under Internal Rule 74(3) or Internal Rule 21 to consider any grounds of appeal in which an Appellant raises matters implicating the fairness of the proceedings. Rather, the Pre-Trial Chamber carefully considered, on a case by case basis, whether, on balance, 'the facts and circumstances' of the appeals required a broader interpretation of the right of appeal." (para. 49)
6.	**002 Civil Parties** PTC 147 A410/2/6 29 June 2011 *Decision on Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness*	"[U]nlike Internal Rule 74, Rule 21 does not address grounds for pre-trial appeals, rather it lays out the f[un]damental principles governing proceedings before the ECCC. While the Pre-Trial Chamber has found, where the facts and circumstances of an appeal required it, that it has comp[e]tence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74 through liberal interpretation of the right to appeal in light of Internal Rule 21, it did not hold as a general rule that it will automatically have competence under Internal Rule 21 to consider grounds of appeal whereby an Appellant raises matters implicating the fairness of the proceedings. On the contrary, resort to Internal Rule 21 to declare an appeal admissible has been exceptional, and only in cases where the particular facts and circumstances required broader interpretation of the right to appeal." (para. 10)

7.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on TA An's Appeal against the Decision Denying his Requests to Access the Case File and Take Part in the Judicial Investigation*	"[Internal Rules 73(c) and 74(3)(b)] shall be interpreted in light of the fundamental principles expressed in Internal Rule 21 […]. The Pre-Trial Chamber has previously considered that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement [...], 35*new* of the ECCC Law and 14(3) of the ICCPR, may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness', by either adopting a broad interpretation of a specific provision granting a right to appeal or even by assuming jurisdiction over appeals that did not fall within its explicit jurisdiction, on the basis of Internal Rule 21." (Opinion of Judges CHUNG and DOWNING, para. 4)
8.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"Determination of the admissibility of an appeal […] shall therefore not be limited to a strict examination of the rules granting the Pre-Trial Chamber jurisdiction to hear appeals over certain decisions of the Co-Investigating Judges which are specifically listed, but rather take into account the general principles of the appellate process expressed thereof. In this respect, the Pre-Trial Chamber has previously held that where the particular facts and circumstances of a case required, it may assume jurisdiction under Internal Rule 21 over appeals that do not fall within its explicit jurisdiction but raise issues of fundamental rights or 'serious issue[s] of fairness.'" (para. 31)
9.	**004 YIM Tith** PTC 06 D192/1/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber previously held that the fundamental principles expressed under Internal Rule 21, which reflect the fair trial requirement that the ECCC is bound to apply […], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness', by either adopting a broad interpretation of a specific provision granting a right to appeal or even by assuming jurisdiction over appeals that did not fall within its explicit Jurisdiction, on the basis of Internal Rule 21." (para. 30)
10.	**004 YIM Tith** PTC 10 D186/3/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber previously held that the fundamental principles expressed under Internal Rule 21, which reflect the fair trial requirement that the ECCC is bound to apply […], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness', by either adopting a broad interpretation of a specific provision granting a right to appeal or even by assuming jurisdiction over appeals that did not fall within its explicit Jurisdiction, on the basis of Internal Rule 21." (para. 30)

11.	**004 YIM TITH** PTC 11 D205/1/1/2 13 November 2014 *Decision on YIM Tith's Appeal against the Decision Denying his Request for Clarification*	"The Pre-Trial Chamber previously held that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement between the United Nations and the Royal Government of Cambodia, 35*new* of the ECCC Law and 14(3) of the ICCPR, may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness', by assuming jurisdiction over appeals that did not fall within its explicit jurisdiction, on the basis of Internal Rule 21. The Pre-Trial Chamber recalls that Internal Rule 21 does not provide an automatic avenue for appeals raising arguments based on fair trial rights. For the Pre-Trial Chamber to exercise appellate jurisdiction under Internal Rule 21, the appellant must demonstrate that in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent an irremediable damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 7)
12.	**003 MEAS Muth** PTC 13 D117/1/1/2 3 December 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Order on Suspects Request concerning Summons Signed by One Co-Investigating Judge*	"The Pre-Trial Chamber previously held that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement […], Article 35*new* of the ECCC Law and Article 14 of the [ICCPR], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness' under Internal Rule 21. This being said, Internal Rule 21 does not provide an automatic avenue for appeals raising arguments based on fair trial rights; for the Pre-Trial Chamber to exercise appellate jurisdiction under the said rule, the appellant must demonstrate that in the particular circumstances of the case, the Pre-Trial Chamber's intervention is necessary to prevent an *irremediable damage* to the fairness of the proceedings or the appellant's fair trial rights. […] The Pre-Trial Chamber held that '*[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues be they actually arise*, out of their factual and contextual background' and found that it 'has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 15)
13.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"The Pre-Trial Chamber previously held that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement […], Article 35*new* of the ECCC Law and Article 14 of the [ICCPR], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness' under Internal Rule 21. This being said, Internal Rule 21 does not provide an automatic avenue for appeals raising arguments based on fair trial rights. For the Pre-Trial Chamber to exercise appellate jurisdiction under the said rule, the appellant must demonstrate that in the particular circumstances of the case, the Pre-Trial Chamber's intervention is necessary to prevent an irremediable damage to the fairness of the proceedings or the appellant's fair trial rights. […] The Pre-Trial Chamber held that '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues be they actually arise, out of their factual and contextual background' and found that it 'has no jurisdiction to deal with hypothetical matters or provide advisory opinions'." (para. 6)
14.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on TA An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"The Pre-Trial Chamber previously held that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement […], Article 35*new* of the ECCC Law and Article 14(3) of the [ICCPR], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case required, the Pre-Trial Chamber has admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness' under Internal Rule 21. This being said, Internal Rule 21 does not provide an automatic avenue for appeals raising arguments based on fair trial rights; for the Pre-Trial Chamber to exercise appellate jurisdiction under the said rule, the appellant must demonstrate that in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent an irremediable damage to the fairness of the proceedings or the appellant's fair trial rights. The Pre-Trial Chamber has emphasised that Internal Rule 21 does not

		provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions." (para. 8)
15.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"The Pre-Trial Chamber previously held that the fundamental principles stated in [Internal Rule 21], which reflect the fair trial requirements that the ECCC is duty-bound to apply pursuant to Article 13(1) of the Agreement between the United Nations and Royal Government of Cambodia, Article 35 new of the ECCC Law and Article 14(3) of the International Covenant on Civil and Political Rights may warrant that it adopt a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. In the rare instances where the particular facts of a case raised issues of fundamental rights or serious issues of procedural fairness, the Pre-Trial Chamber admitted appeals under Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. In exceptional cases, for the Pre-Trial Chamber to entertain an appeal under Rule 21, the Appellant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid irremediable damage to the fairness of the investigation proceedings or to the Appellant's fundamental rights." (Opinion of Judges BEAUVALLET and BWANA, para. 9)
16.	**004 IM Chaem** PTC 20 D236/1/1/8 9 December 2015 *Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on her Motion to Reconsider and Vacate her Summons Dated 29 July 2014*	"Internal Rule 21 does not provide an automatic avenue for appeals based on fair trial rights. For the Pre-Trial Chamber to exercise appellate jurisdiction under Internal Rule 21, the Appellant must demonstrate that in the particular circumstances of the case at hand, the Pre-Trial Chamber's intervention is necessary to prevent an irremediable damage to the fairness of the proceedings or the appellant's fair trial rights. Similarly, Internal Rule 21 cannot be used to allow as admissible an application for which there is a defined framework but the application does not meet the concerned requirements for admissibility." (para. 28)
17.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge her* in Absentia	"The Pre-Trial Chamber previously held that the fundamental principles stated in this Rule, which reflect the fair trial requirements that the ECCC is duty-bound to apply […] may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. In the rare instances where the particular facts of a case raised issues of fundamental rights or serious issues of procedural fairness, the Pre-Trial Chamber has admitted appeals under Internal Rule 21 or has broadly construed the specific provisions of the Internal Rules which grant it jurisdiction. That said, the Pre-Trial Chamber has frequently recalled that Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the appellant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 17)
18.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth* in Absentia	"The Pre-Trial Chamber previously held that the fundamental principles stated in this Rule, which reflect the fair trial requirements that the ECCC is duty-bound to apply […] may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. In the rare instances where the particular facts of a case raised issues of fundamental rights or serious issues of procedural fairness, the Pre-Trial Chamber has admitted appeals under Internal Rule 21 or has broadly construed the specific provisions of the Internal Rules which grant it jurisdiction. That said, the Pre-Trial Chamber has frequently recalled that Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the appellant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 20)
19.	**004 AO An** PTC 25 D284/1/4 31 March 2016	"The Pre-Trial Chamber has previously held that the fundamental principles expressed in Internal Rule 21, which reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the Agreement […], Article 35 *new* of the ECCC Law and Article 14(3) of the [ICCPR], may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial and that a balance is preserved between the rights of the parties. Where the particular facts and circumstances of a case have required, the Pre-Trial Chamber has

	Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60	admitted appeals raising issues of fundamental rights or 'serious issue[s] of fairness' under Internal Rule 21. However, Internal Rule 21 does not provide an automatic avenue for appeals raising arguments based on fair trial rights. For the Pre-Trial Chamber to exercise appellate jurisdiction under the said rule the appellant must demonstrate that in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent irremediable damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 21)
20.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"The Pre-Trial Chamber has previously held that, the fundamental principles stated in Rule 21 reflect the fair trial requirements that the ECCC is duty bound to apply, pursuant to Article 13(1) of the Agreement […], Article 35 (new) of the ECCC Law and Article 14 of the [ICCPR]. It has further held on multiple occasions that these principles may warrant adopting liberal interpretation of a right to appeal to ensure that the proceedings are fair and adversarial." (para. 32)
21.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"The Pre-Trial Chamber previously held that the fundamental principles stated in this Rule, which reflect the fair trial requirements that the ECCC is duty-bound to apply pursuant to Article 13(1) of the Agreement […], Article 35 new of the ECCC Law and Article 14(3) of [ICCPR], may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. However, the Pre-Trial Chamber has frequently recalled that Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. For the Pre-Trial Chamber to entertain an appeal under a broad interpretation of Internal Rule 74 in light of Rule 21, the appellant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (Opinion of Judges BEAUVALLET and BAIK, para. 19)
22.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"The Pre-Trial Chamber has previously found that, in instances where statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter, it has inherent jurisdiction 'to determine *incidental issues which arise as a direct consequence of the procedures of which [it is] seized*'. […] Presently, the Pre-Trial Chamber is not yet seized with any Closing Order in Case 003. Accordingly, the clarification sought does not fall within the purview of the Pre-Trial Chamber's inherent jurisdiction." (para. 11) "In the past, the Pre-Trial Chamber has used inherent jurisdiction to review matters relating to '*upcoming appeals'* in circumstances where it was seised of allegations that non-observance of '*specific* rights' of the parties may render their *statutory appeal rights* ineffective. As such, conditions for use of inherent jurisdiction, in advance of any primary jurisdiction materializing, include: i) *a statutory appellate right* must exist; and ii) enjoyment of such statutory appellate right *may become ineffective* due to *infringement of specific fundamental* rights." (para. 12) "[T]he Pre-Trial Chamber has found that it has no jurisdiction to entertain requests for clarification of the Internal Rules *in general.* Where scenarios envisaged in parties' motions are *hypothetical* or, even if such scenarios were to materialise, but it is *unclear what prejudice the requesting party would concretely suffer*, '[t]he rights to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual

		background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions.'" (para. 14)
23.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"The Pre-Trial Chamber makes reference to the provisions of Internal Rule 21 and recalls that it has previously held that Internal Rule 21 does not provide an automatic avenue for appeals raising fair trial rights issues. For the Pre-Trial Chamber to exercise appellate jurisdiction under the said Internal Rule, the appellant must demonstrate that, in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent irremediable damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 17)
24.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193/76 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"The Pre-Trial Chamber makes reference to the provisions of Rule 21 and recalls that it has previously held that Internal Rule 21 does not provide an automatic avenue for admissibility of appeals raising fair trial rights issues. For the Pre-Trial Chamber to exercise appellate jurisdiction under the said rule, the appellant must demonstrate that, in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent irremediable damage to the fairness of the proceedings or to the appellant's fair trial rights." (para. 20)
25.	**004 YIM Tith** PTC 41 D306/17.1/1/9 30 June 2017 *Decision on YIM Tith's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population in the Context of Crimes against Humanity with regard to a State's or*	"The Pre-Trial Chamber recalls that Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues, and that the appellant must demonstrate that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings or to the appellant's fundamental rights." (para. 19)

	Regime's Own Armed Forces	
26.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces*	"The Pre-Trial Chamber recalls that Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues, and that the appellant must demonstrate that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings or to the appellant's fundamental rights." (para. 16)
27.	**004/2 AO An** PTC 44 D351/2/3 6 September 2017 *Decision on AO An's Appeal against Internal Rule 66(4) Forwarding Order*	"The Pre-Trial Chamber observes that the Appeal against the Forwarding Order does not fall within its subject-matter jurisdiction under Internal Rule 74. Furthermore, while Internal Rule 21 may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial, it does not provide an automatic avenue for appeals raising arguments based on fair trial rights. The appellant must demonstrate that, in the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent *irremediable* damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 8)
28.	**004 YIM Tith** PTC 47 D347/2/1/4 25 October 2017 *Decision on YIM Tith's Appeal of the Decision on Request to Place Materials on Case File 004*	"The Pre-Trial Chamber observes that the Appeal [requesting to overturn the decision place materials on the Case File] does not fall within its subject-matter jurisdiction under Internal Rule 74. It further recalls that while Internal Rule 21 may warrant that it adopts a liberal interpretation of the right to appeal in order to ensure that the proceedings are fair and adversarial, it does not provide an automatic avenue for appeals raising arguments based on fair trial rights. The appellant must demonstrate that, In the particular circumstances of the case at stake, the Pre-Trial Chamber's intervention is necessary to prevent *irremediable damage* to the fairness of the proceedings or the appellant's fair trial rights." (para. 8)
29.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Pre-Trial Chamber notes […] that Internal Rule 21 does not create an automatic avenue for appeals. As regards the jurisprudence […], the Chamber […] concluded that for the purposes of considering admissibility of appeals under Internal Rule 21, it 'shall examine whether, in the particular circumstances of [a] case, its intervention at this stage is necessary to prevent irremediable infringement of Yim Tith's rights to legal certainty, equality and procedural fairness.' With regards to the other Defence argument, that failure to admit the Appeal would itself constitute a breach because the Co-Prosecutors may appeal all orders of the CIJs under Rule 74(2), the Pre-Trial Chamber notes that, at the ECCC, it is the applicable rules that set different procedural rights to appeal by each party, and the case-by-case examination of appeals, for admissibility under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties. […] Internal Rule 21 does not create an *automatic* avenue for appeals." (para. 19)
30.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"Internal Rule 21 protects fundamental principles of fairness in the proceedings before the ECCC, and reflects the fair trial requirements that the ECCC is duty-bound to apply pursuant to Article 13(1) of the ECCC Agreement, Article 35 *new* of the ECCC Law and Article 14(3) of the [ICCPR]. The Chamber has held that these principles 'may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial' by admitting appeals under Internal Rule 21 or broadly construing the specific provisions of the Internal Rules which grant it jurisdiction. Such admissibility may apply in the rare instances where the particular facts of a case raise issues of fundamental rights or serious issues of procedural fairness." (para. 5)

		"However, the Pre-Trial Chamber has consistently emphasised that Internal Rule 21 does not open for an automatic avenue for appeal, even when an appeal raises fair trial issues. Internal Rule 21, moreover, does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the applicant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 6)
31.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In relation to an appeal lodged under Internal Rule 21, the Pre-Trial Chamber has held, in previous cases, that 'in light of Article 33 (new) of the ECCC Law, which provides that "trials are fair" and conducted "with full respect for the rights of the accused", and of Article 14 of the ICCPR, which is "applicable to all stages of proceedings before the ECCC, […] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a)."' The Chamber noted '[t]herefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found it has competence to consider grounds raised by the [Accused] that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Persons' [*sic*] right to appeal in light of Internal Rule 21.' Further, it is at times appropriate to adopt a broad interpretation of the notion of jurisdiction, especially in situations where the issue at hand is unforeseen in the Internal Rules and where immediate resolution is required to prevent a harmful impact on the proceedings." (para. 146) "Still, the Pre-Trial Chamber has consistently emphasised that Internal Rule 21 does not provide an automatic avenue for appeal even where an appeal raises fair trial issues; the moving party must demonstrate that the particular circumstances require the Chamber's intervention at the stage where the appeal was filed to avoid irremediable damage to the fairness of the proceedings or to fundamental fair trial rights. In the instant case, the Pre-Trial Chamber will consider on a case-by-case basis, whether the conditions require a broad interpretation of Internal Rule 74(3) in light of Internal Rule 21. Specifically, when appeals filed against an Indictment under Internal Rule 74 raises a matter which cannot be rectified by the Trial Chamber and denying an appeal would 'irreparably harm the fair trial rights of the accused', Internal Rule 21 may warrant a broadening of Internal Rule 74 on a case-by-case basis." (para. 147)
32.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"This Chamber determined that the broadening of this right of appeal through Internal Rule 21 is ascertained on a case-by-case basis and granted only in exceptional cases." (para. 55) "Turning to the relationship of the right to pre-trial appeal with Internal Rule 21, the Pre-Trial Chamber previously held that in light of Article 33*new* of the ECCC Law, providing that 'trials are fair' and conducted 'with full respect for the rights of the accused', and Article 14 of the [ICCPR], applied to all stages of ECCC's proceedings, '[t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a).' The Chamber hence noted that 'where the facts and circumstances of an appeal require it', the Pre-Trial Chamber 'has competence to consider grounds raised by the [accused] that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a Charged Persons' [*sic*] right to appeal in light of Internal Rule 21.'" (para. 70) "[P]rocedural differences between the Co-Prosecutors' and the accused's rights of appeal do not, *per se*, constitute a breach of fairness. […] More importantly, at the ECCC, the applicable rules set different procedural rights of appeal for each party and 'the case-by-case examination of appeals for admissibility, under Internal Rule 21, is precisely aimed at safeguarding the rights of all parties.' […] Internal Rule 21 does not open an automatic avenue for appeal even where an appeal raises fair trial rights issues. 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 damage to the fairness of proceedings or fundamental fair trial rights." (para. 71) "In this respect, the Pre-Trial Chamber recalls that when an appeal filed against an indictment under Internal Rule 74(3) raises a matter which cannot be rectified by the Trial Chamber and denying the appeal would 'irreparably harm the fair trial rights of the accused', Internal Rule 21 may warrant a broadening of Internal Rule 74(3)." (para. 72)

ii. *Appeals Admissible under Fairness Considerations*

1.	**002 IENG Sary** PTC 05 A104/II/4 21 March 2008 *Decision on the Admissibility of the Appeal Lodged by IENG Sary on Visitation Rights*	"[T]he assertions made by the Co-Lawyers can be seen as a complaint against a coercive measure taken by the Co-Investigating Judges that, in its effects, may not fully respect the human dignity of the Charged Person." (para. 9) "As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, the Pre-Trial Chamber finds that this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules." (para. 10)
2.	**002 NUON Chea** PTC 09 C33/I/7 26 September 2008 *Decision on NUON Chea's Appeal concerning Provisional Detention Conditions*	"In [A104/II/4] the Pre-Trial Chamber previously found […]: '[…] the assertion made by the Co-Lawyers can be seen as a complaint against a coercive measure […] that, in its effects, may not fully respect the human dignity of the Charged Person. As a matter involving the right to respect human dignity and taking into account its duty as prescribed in Rule 21(1) of the Internal Rules, […] this appeal falls within the scope of Rule 74(3)(f) of the Internal Rules.'" (para. 9) "The current Appeal is lodged against what is, in its effect, a segregation order issued by the Co-Investigating Judges. […] The Pre-Trial Chamber finds, for the reasons expressed in its previous decision, that the Appeal falls within the scope of Internal Rule 74(3)(f)." (para. 10)
3.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Considering that both international standards and Article 35(new) of the ECCC law require specificity in the indictment […] it is in the interest of fairness to declare admissible the grounds of appeal that raise the issue of notice of charges in relation to the modes of liability alleged against the charged person." (para. 34)
4.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"The overriding consideration in all proceedings before the ECCC is the fairness of the proceedings as provided in Internal Rule 21.1 a) […]." (para. 10) "The Pre-Trial Chamber is cognizant of the possibility for the Appellant to present evidence during trial. However if, as alleged […], the document whose placement is sought on the case file indeed contains exculpatory evidence, its analysis could lead to the exclusion of charges, even partially, and/or specific modes of liability in the closing order, in relation to which the Appellant would not have to present a defence […], such allegation could have serious consequences on the right […] to a fair trial and should therefore be examined on the merits now. The Appellant further alleges that the CIJs applied a double standard […]. Given the seriousness of the allegation of partiality, and its possible consequences on the right of the Charged Person to a fair trial, […] it is appropriate to also consider this […] on the merits." (para. 11)
5.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual*	"Considering the fair trial rights of the Appellant, including pursuant to Article 13 of the Agreement, Article 35 new of the ECCC Law and Article 14(3) of the ICCPR, the Pre-Trial Chamber finds that Rule 21 requires it to interpret the Internal Rules in such a way that the Appeal [concerning the authorisation of recording of meetings at the Detention Facility] is also admissible on the basis of Rule 21." (para. 18)

	Recording of Meetings with IENG Sary at the Detention Facility	
6.	**002 IENG Thirith** PTC 42 D264/2/6 10 August 2010 *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)*	"The Abuse of Process Request and […] Appeal are based upon the inherent jurisdiction of the Court to ensure a person is accorded a fair trial. 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." (para. 10) "[T]he Request for Stay of Proceedings could be considered as a request for an 'Order' under Internal Rule 55(10), as it is a request for an order in respect of the 'conduct of the proceedings', adopting the broadest understanding of the word 'conduct'. The Pre-Trial Chamber has already ruled on a possible inconsistency between Internal Rules 74(3)(b) and 55(10), and such a request would therefore not be open to appeal by the Charged Person." (para. 12) "It would have been equally open to the Co-Investigating Judges to consider the 'Request for the Stay of Proceedings' within the general ambit of an application falling within Article 33 New of the [ECCC Law]. For the purpose of this court the provisions of Article 14 and 15 of the [ICCPR] are applicable at all stages of proceedings before the ECCC. Further, Article 14 of the ICCPR provides for overriding rights which will transcend local procedures declared and followed. The provisions of Articles 14 and 15 of the ICCPR are also reflected in Internal Rule 21." (para. 13) "Noting that Cambodian law does not provide for an abuse of procedure mechanism, the Pre-Trial Chamber is bound to follow international practice, relevant treaties and conventions of application. […] The overriding consideration in all proceedings before the ECCC is the fairness of the proceedings, as provided in Internal Rule 21(1)(a). […] [T]his appeal raises a serious issue of fairness and the Pre-Trial Chamber therefore has jurisdiction to consider it." (para. 14)
7.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	"[T]he Co-Lawyers' request to receive a list of all interviews where Mr Ysa was present and details of the role he played in the interviews, as well as the request to identify the interviews where persons other than the ones mentioned in the Written Record […] were present, affect the Charged Person's ability to summons and question witnesses at trial under Internal Rules 80, 84(1) and 87(4) of the ECCC. These actions affect the Charged Person's fundamental right under Internal Rule 21 and under Article 14 of the [ICCPR]." (para. 13)
8.	**002 IENG Sary** PTC 71 D390/1/2/4 20 September 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and*	"[T]his Appeal is filed against a decision of the Co-Investigating Judges which is disclosed in a Greffier's Notice of Deficient Filing. Although the applicable law does not specifically grant the Charged Persons the right to appeal against a Notice of Deficient Filing, […] Internal Rule 21 requires that the Pre-Trial Chamber adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the fair trial rights of the Charged Person are safeguarded in this particular instance. As this is a matter involving the principles of 'equal treatment before the law' and 'equality of arms', taking into account the Chamber's duty as prescribed under Internal Rule 21, and the particular circumstances of this Appeal, the Pre-Trial Chamber found this Appeal admissible." (para. 13)

	Request for Stay of the Proceedings	
9.	**002 IENG Thirith** Special PTC 14 Doc. No. 2 17 December 2010 *Decision on Defense Notification of Errors in Translations*	"The Notification does not explain how the […] translation errors compromise the fairness of the pre-trial or trial proceedings. […] [D]uring the trial proceedings the parties will have the opportunity to contest the admissibility and probative value of evidence. […] [A]ll judges of the ECCC are competent to detect and correct any factual errors caused by mistranslations so as to avoid incorrect legal finding. Notwithstanding these matters, the Pre-Trial Chamber recognizes that […] it would facilitate the efficiency of proceedings if some of the possible translation errors were detected and corrected sooner rather than later. Given that the commencement of trial […] is some months away, the Pre-Trial Chamber considers that it is in an appropriate position now to examine the merits of the Notification. The Notification is accepted as admissible under Internal Rule 21." (para. 6)
10.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyers*	"Having rejected the International Co-Prosecutor objection to the admissibility of the Appeal on the basis of Internal Rule 11(6), the Pre-Trial Chamber will now determine whether decision rejecting the appointment of counsel issued, in first instance, by the ICU is open to appellate scrutiny under Internal Rule 21." (para. 30) "Determination of the admissibility of an appeal […] shall therefore not be limited to a strict examination of the rules granting the Pre-Trial Chamber jurisdiction to hear appeals over certain decisions of the Co-Investigating Judges which are specifically listed, but rather take into account the general principles of the appellate process expressed thereof. In this respect, the Pre-Trial Chamber has previously held that where the particular facts and circumstances of a case required, it may assume jurisdiction under Internal Rule 21 over appeals that do not fall within its explicit jurisdiction but raise issues of fundamental rights or 'serious issue[s] of fairness.'" (para. 31) "This Appeal raises an issue concerning the Appellant's right to counsel of choice. […] Since the Appellant has chosen to be represented by the Co-Lawyers, and that the Head of the DSS has appointed them, after having found that they meet the requirements under the ECCC legal assistance scheme, the Impugned Decision, by removing the Co-Lawyers, impairs the Appellant's right to counsel of choice. The Co-Lawyers' assertion that this limitation is not legally justified warrants appellate scrutiny as the 'appointment to act as defence counsel could and should only be revoked when its purpose - that is, to ensure that the accused will be adequately defended and the proceedings properly conducted - is seriously endangered.' In this respect, the Pre-Trial Chamber notes that requests for certification to appeal decisions rejecting the appointment of counsel have generally been granted at the [ICTY]." (para. 32) "The Pre-Trial Chamber therefore finds the Appeal admissible under Internal Rule 21." (para. 33)
11.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge her* in Absentia	"[T]he International Co-Investigating Judge sought to address a situation that he considered to be unforeseen in the rules that govern proceedings before the ECCC. It is therefore not surprising that the Impugned Decision does not fit squarely within the ECCC Internal Rules, which set out the Pre-Trial Chamber's appellate jurisdiction. It is further noted that the decision has been taken *proprio motu*, so these appellate proceedings are the first opportunity for the parties to present their views on the matter, which must be resolved as early as possible as it may impact the continuation of proceedings […]. Taking into account the fundamental principles set out in Internal Rule 21 […] the Pre-Trial Chamber finds it appropriate in the present case to adopt a broad interpretation of the right to appeal under Internal Rule 74(3)(a) and to examine the Appeal's admissibility in light of the definition of 'jurisdiction' set out by the ICTY Appeals Chamber in *Tadić*." (para. 23) "Given that the Impugned Decision examines the legal power of the International Co-Investigating Judge in circumstances where he identified a *lacuna* in the law applicable before the ECCC, the Pre-Trial Chamber finds that it amounts to a decision 'confirming the jurisdiction of the ECCC' when interpreted broadly." (para. 24)
12.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the*	"[T]he International Co-Investigating Judge sought to address a situation that he considered to be unforeseen in the rules that govern proceedings before the ECCC. It is therefore not surprising that the Impugned Decision does not fit squarely within the ECCC Internal Rules, which set out the Pre-Trial Chamber's appellate jurisdiction. It is further noted that the decision has been taken *proprio motu*, so these appellate proceedings are the first opportunity for the parties to present their views on the matter, which must be resolved as early as possible as it may impact the continuation of proceedings […]. Taking into account the fundamental principles set out in Internal Rule 21 […] the Pre-Trial Chamber finds it appropriate in the present case to adopt a broad interpretation of the right to appeal

	International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia	under Internal Rule 74(3)(a) and to examine the Appeal's admissibility in light of the definition of 'jurisdiction' set out by the ICTY Appeals Chamber in *Tadić.*" (para. 28) "Given that the Impugned Decision examines the legal power of the International Co-Investigating Judge in circumstances where he identified a *lacuna* in the law applicable before the ECCC, the Pre-Trial Chamber finds that it amounts to a decision 'confirming the jurisdiction of the ECCC' when interpreted broadly." (para. 29)
13.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"The Pre-Trial Chamber has also held that it was appropriate to adopt a broad interpretation of the right to appeal under Rule 74(3)(a) when the Co-Investigating Judges addressed a situation not contemplated by the Rules. The Pre-Trial Chamber found this appropriate in light of Rule 21 […]." (para. 24) "While the Motion to Strike was not filed as an annulment application to seise the Chamber, the Pre-Trial Chamber finds that it is in the interests of justice to interpret the annulment procedure broadly in this case pursuant to Rule 21." (para. 33) "The Pre-Trial Chamber finds that the Impugned Decision amounts to a decision 'refusing an application to seise the Chamber for annulment' in the meaning of Rule 74(3)(g), when interpreted broadly considering first of all the importance of such a submission and its impact on the investigation. […] The Motion to Strike is an application seeking annulment of part of the proceedings. Rule 76(2) should have been applied and consequently the seisin of the Pre-Trial Chamber with a view to annulment should have been considered. As mentioned by the International Co-Investigating Judge, '[t]here is no provision in the Internal Rules allowing the Co-Investigating Judges to strike an introductory or supplementary submission from the Case File'. Rule 73(b) has vested the right to annul part of the proceedings only in the Pre-Trial Chamber. Should the Co-Investigating Judges consider that any part of the proceedings is null and void, they can, pursuant to Rule 76(1) submit a reasoned application to the Pre-Trial Chamber." (para. 34) "[A] broad interpretation of Rule 74(3)(g) is necessary given that the Impugned Decision examines the validity and potential annulment of the Supplementary Submission. Therefore, exceptional and particular facts and circumstances of the case at stake mandate that the Pre-Trial Chamber admit the Appeal pursuant to a broad interpretation of Rule 74(3)(g), read in light of Rule 21." (para. 35)
14.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The issuance of two Closing Orders is a novel situation before the ECCC. The Chamber considers it necessary to adopt an expanded interpretation of Internal Rule 74(3) in light of Internal Rule 21 because the issuance of two Closing Orders is unforeseen in the Internal Rules and may require a resolution prior to trial to prevent irremediable impact on the fair trial rights of the Accused. This includes consideration of an accused's ability to prepare and the overarching fairness of the trial proceedings." (para. 149)

iii. *Appeals Inadmissible under Fairness Considerations*

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber finds that the Charged Person's rights safeguarded in Internal Rule 21 are not violated. The Translation Order is in accordance with international standards in respect of translation rights. The provision of translator for a multilingual defence team ensures that all necessary linguistic requirements are properly met for this stage of the proceedings before the ECCC. The Pre-Trial Chamber therefore finds that Internal Rule 21 does not force it to interpret the Internal Rules in such way that the Appeal against the Translation Order should be declared admissible." (para. 50)
2.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009	"The Pre-Trial Chamber finds that the Charged Person's rights safeguarded in Internal Rule 21 are not violated. The Translation Oder is in accordance with international standards in respect of translation rights. The provision of translator for a multilingual defence team ensures that all necessary linguistic requirements are properly met for this stage of the proceedings before the ECCC. The Pre-Trial

	Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties	Chamber therefore finds that Internal Rule 21 does not force it to interpret the Internal Rules in such a way that the Appeal against the Translation Order should be declared admissible." (para. 44)
3.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber will examine whether Internal Rule 21 requires that it adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the interests of the Charged Person for legal certainty, transparency and fairness of proceedings are safeguarded." (para. 33) "[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 34) "[T]he Charged Person may, during trial proceedings, ask for cross-examination of witnesses if they have serious concerns regarding written evidence. When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence. Further, the Supreme Court Chamber may revise a final judgement on the grounds that 'it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified.'" (para. 37) "[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 39) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 41) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 44) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 45) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 48)
4.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber will examine whether Internal Rule 21 requires that it adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the interests of the Charged Person for legal certainty, transparency and fairness of proceedings are safeguarded." (para. 36) "[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 37) "[T]he Charged Person may, during trial proceedings, ask for cross-examination of witnesses if they have serious concerns regarding written evidence. When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence. Further, the Supreme Court Chamber may revise a final judgement on the grounds that 'it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified'." (para. 40) "[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 42) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court

		do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 43) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 46) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 47) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 50) "[T]he Charged Person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework […]." (para. 53)
5.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"The Pre-Trial Chamber will examine whether Internal Rule 21 requires that it adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the interests of the Charged Person for legal certainty, transparency and fairness of proceedings are safeguarded." (para. 33) "[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 34) "[T]he Charged Person may, during trial proceedings, ask for cross-examination of witnesses if they have serious concerns regarding written evidence. When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence. Further, the Supreme Court Chamber may revise a final judgement on the grounds that 'it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified'." (para. 37) "[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 39) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 40) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 43) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 44) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 47) "[T]he Charged Person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework […]." (para. 50)
6.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's*	"The Pre-Trial Chamber will examine whether Internal Rule 21 requires that it adopt a broader interpretation of the Charged Person's right to appeal in order to ensure that the interests of the Charged Person for legal certainty, transparency and fairness of proceedings are safeguarded." (para. 31) "[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 32)

	Eleventh Request for Investigative Action	"[T]he Charged Person may, during trial proceedings, ask for cross-examination of witnesses if they have serious concerns regarding written evidence. When deciding on the admissibility of evidence before it, each Chamber has the inherent power to carry out additional investigation where issues of fair trial arise in relation to any piece of evidence. Further, the Supreme Court Chamber may revise a final judgement on the grounds that 'it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified'." (para. 35) "[I]t cannot be concluded, in the absence of stated facts, that local institutions do not possess the required capacity or impartiality to deal with the matter." (para. 37) "[T]he standard set at the international level for finding national remedies remain ineffective is rigorous. While the rules or jurisprudence of the *ad hoc* tribunals or the International Criminal Court do not provide much guidance in this respect, given that they have primary jurisdiction in relation to the respective national jurisdictions, the case law of the [UNHCR] can be used as guidance." (para. 38) "[T]he other possibilities of complaint or remedy available to the Co-Lawyers under the Internal Rules and Cambodian Law sufficiently safeguard the interests of the Charged Person." (para. 41) "[T]he right of the Charged Person to an independent and impartial tribunal […] is guaranteed in the ECCC establishing instruments, the Internal Rules and in the international Instruments to which the Royal Cambodian Government is a party." (para. 42) "Internal Rule 34 is available to the parties to address any concerns related to the specific holding or bias of certain Judges on a case by case basis." (para. 45) "[T]he Charged Person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework […]." (para. 48)
7.	**002 IENG Sary** Special PTC Doc. No. 3 22 September 2009 *Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE*	"[Internal Rule 34] do[es] not apply to staff members." (para. 14) "The Pre-Trial Chamber will examine whether Internal Rule 21 requires a broader interpretation of the Charged Person's right to file an application for disqualification in order to ensure fairness of the proceedings during the investigation." (para. 18) "[T]he Pre-Trial Chamber finds that the provisions for disqualification of judges, together with the procedure for annulment, are sufficient to protect the fair trial rights of the Charged Person. […] Internal Rule 21 does not force it to interpret the Internal Rules in such a way that the Application should be declared admissible." (para. 22)
8.	**002 IENG Sary** PTC 28 D140/4/5 14 December 2009 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert*	"The Pre-Trial Chamber considers that the provisions in the Internal Rules still permit the defence to seek the appointment of an expert to re-examine a matter, now the subject of an expert report. Further it is noted that the report can be challenged before the Trial Chamber. In addition the Trial Chamber may, where it considers that a new investigation is necessary, at any time order additional investigations. The Pre-Trial Chamber therefore finds that no fundamental rights of the defence are harmed by declaring the appeal inadmissible at this stage of the proceedings." (para. 22)
9.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were*	"The Pre-Trial Chamber shall examine whether Internal Rule 21 requires that it adopts a broader interpretation of the Charged Person's rights to appeal in order to ensure that the proceedings are fair and expeditious." (para. 25) "The Pre-Trial Chamber observes that the Internal Rules give the Charged Person the possibility to object to admissibility of evidence during the trial stage. Reference is made to Internal Rule 87." (para. 26) "The Pre-Trial Chamber further notes that the established procedure before the Trial Chamber for evaluation of evidence for trial is in accordance with the international standards of law and safeguards the fair trial rights of the Charged Person. Similar to the discretion granted to judges in other

	or May Have Been Obtained by Torture	international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The 'law' applicable in Cambodia includes international instruments such as the Convention against Torture." (para. 27) "Article 15 of the CAT is to be strictly applied. There is no room for a determination of the truth or for use otherwise of any statement obtained through torture." (para. 30) "[T]he Charged Person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework […]. Internal Rule 21 does not oblige it to interpret the Internal Rules in such a way that the appeal should be declared admissible." (para. 31)
10.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"The Pre-Trial Chamber shall examine whether Internal Rule 21 requires that it adopts a broader interpretation of the Charged Person's rights to appeal in order to ensure that the proceedings are fair and expeditious." (para. 23) "The Pre-Trial Chamber observes that the Internal Rules give the Charged Person the possibility to object to admissibility of evidence during the trial stage. Reference is made to Internal Rule 87." (para. 24) "The Pre-Trial Chamber further notes that the established procedure before the Trial Chamber for evaluation of evidence for trial is in accordance with the international standards of law and safeguards the fair trial rights of the Charged Person. Similar to the discretion granted to judges in other international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The 'law' applicable in Cambodia includes international instruments such as the Convention against Torture." (para. 25) "Article 15 of the CAT is to be strictly applied. There is no room for a determination of the truth or for use otherwise of any statement obtained through torture." (para. 28) "[T]he Charged person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework […]. Internal Rule 21 does not oblige it to interpret the Internal Rules in such a way that the appeal should be declared admissible." (para. 29)
11.	**002 NUON Chea** PTC 44 D253/3/5 6 April 2010 *Decision on Appeal against NUON Chea's Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action*	"The Pre-Trial Chamber will consider whether the facts and circumstances of the present appeal require the adoption of a broader interpretation of the Charged Person's right to appeal in order to ensure that the proceedings are fair. […] [H]ad the Defence undertaken itself the review of the material on the Case File […], the Appellant could have asked the OCIJ for further specifics […] or even for further investigative action to that end. […] [T]his option is unlikely to remain open […] at the investigative stage because the OCIJ notified the parties that the investigation concluded. […] However, once the Closing Order is issued, […] he could then challenge the authenticity of the material in question before the Trial Chamber. Therefore, […] it is not required to admit the Appeal on the basis of Internal Rule 21(1)(d)." (para. 11) "The Pre-Trial Chamber does not believe that fairness requires it to admit the Appeal under Internal Rule 21(1)(d). […] [W]ere the Appellant to have actual doubts as to the authenticity of materials relied upon by the OCIJ in the Closing Order due to their source and/or chain of custody, he retains the opportunity to challenge such authenticity before the Trial Chamber." (para. 13)
12.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on*	"[T]he right to adequate facilities for the preparation of someone's defence includes apart from the right to communicate with one's lawyer also the opportunity of the accused to acquaint himself with the results of the investigations, and reasonable time for preparation of the defence. […] [T]he term 'results of the investigations' means the product of investigations, such as documents and records in the case file and not information on the procedure followed by investigating authorities in analysing the evidence that they have collected." (para. 31) "The rationale of the analysis will become apparent when a Closing Order either indicting the Charged Person or dismissing the case is issued at the conclusion of the investigation. Where a Closing Order is issued, Internal Rule 67(4) requires that reasons for any decision to send a Charged Person to trial or to dismiss the case are to be given." (para. 32)

	Evidence Obtained through Torture	"After the issuance of a closing order, if there is an indic[t]ment of their client, the Co-Lawyers of the Charged Person have time to prepare their defence for the trial phase by examining the evidence which is available to them." (para. 33) "Similar to the discretion granted to judges in other international tribunals, the Trial Chamber of the ECCC is granted the discretion to reject requests for evidence (analogous to excluding evidence presented) when such is 'not allowed under the law'. The law applicable in Cambodia includes international instruments such as the Convention Against Torture (CAT)." (para. 35) "Article 15 of the CAT is to be strictly applied. There is no room for determination of the truth or for use otherwise of any statement obtained through torture." (para. 38) "The Pre-Trial Chamber finds that the Charged Person's rights provided for in Internal Rule 21 are sufficiently safeguarded by the existing legal framework, as reasoned above. The Pre-Trial Chamber therefore finds that Internal Rule 21 does not oblige it to interpret the Internal Rules in such way that the Appeal should be declared admissible." (para. 39)
13.	**002 IENG Sary** PTC 65 A372/2/7 8 June 2010 *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Rejection of IENG Sary's Third Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order*	"There is no right under Internal Rule 21(1)(d), or any possible interpretation or construction thereof, which would provide the basis of an appeal of the refusal of the Co-Investigating Judges to consider a request in respect of a contingent prospective exercise of discretion." (para. 4)
14.	**002 IENG Sary** PTC 60 D345/5/11 9 June 2010 *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order on IENG Sary's Motion against the Application of Command Responsibility*	"[T]his Appeal is related to a decision of the Co-Investigating Judges to 'not make a decision' and not to a decision confirming the jurisdiction of the ECCC. The Co-Lawyers assert that the Co-Investigating Judges' refusal to address the Motions at this stage, results in a constructive denial […]. [T]he Internal Rules [d]o not oblige the Co-Investigating Judges to decide on this matter before the Closing Order. However, at this stage of the proceedings a Closing Order is imminent, and if the Closing Order confirms the jurisdiction of the ECCC over Command Responsibility, the Charged Person may consider the effect of Internal Rule 67 (5) when read in conjunction with Internal Rule 74(3) (a). At this point, it is speculative as to what, if any, consideration the Co-Investigating Judges will give to the jurisdiction of the ECCC in respect of command responsibility. The Co-Investigating Judges are not obliged to give declaratory decisions […] and the Pre-Trial Chamber will not provide advisory opinions and cannot fetter the exercise of the discretions of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order. […] [N]o fundamental rights of the Charged Person are harmed by declaring the appeal inadmissible at this stage of the proceedings and Internal Rule 21 does not compel the Pre-Trial Chamber to render the appeal inadmissible." (para. 11)
15.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphan's Real Activity'*	"[T]here have been no requests to the Co-Investigating Judges under Internal Rules 55(10) or 58(6) to place some or all of the documents […]. These are new requests set out in the prayer for relief on appeal in respect of which the Pre-Trial Chamber has no jurisdiction. They are inadmissible under Internal Rule 74(3)(b)." (para. 11) "Internal Rule 21(1) cannot be applied […] to permit the Appellant to avoid the procedures established by Internal Rules 55(10) and 58(6). The Appellant bears the sole responsibility for the consequences that his failure to follow these procedures may have […]." (para. 12)
16.	**002 Civil Parties** PTC 57 D193/5/5	"[T]he Appellants cannot, by framing the right to reparations as a fundamental right under Internal Rule 21, succeed in expanding the class of persons subject to making reparations from convicted persons to those who are charged persons. The Pre-Trial Chamber finds that the plain reading of the

	4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	Internal Rules leaves no room for doubt as to the class of persons who may be subject to reparations." (para. 20) "It is the right to seek reparations, not the right to reparations, that may be protected by the Pre-Trial Chamber pursuant to Internal Rule 21." (para. 21) "To the extent that an alleged violation of an international instrument or treaty applicable in Cambodia relates to a right that can be applied within the framework of this Court, Internal Rule 21 provides that the rights of persons before this Court, including victims, shall be safeguarded." (para. 27) "The Pre-Trial Chamber observes that the Human Rights Committee has recognised that in certain cases, the right to an effective remedy may entail interim or provisional measures […] An applicant for interim measures must demonstrate that they would have a right to a claim and that irreparable damage to such claim will result if the requested measures are not provided for and implemented. […] As the Appellant has not demonstrated that interim measures, on the basis of an existing interest should be granted, the Appeal is not admissible on the basis of the obligations of this Court pursuant to the ICCCPR and Internal Rule 21." (para. 31) "The Pre-Trial Chamber finds it appropriate to examine whether Internal Rule 21, interpreted broadly, provides a basis for admissibility." (para. 33) "Since the Internal Rules and ECCC Law do not give the Civil Parties the sole right to unlawfully obtained assets and proceeds, the Appellant cannot claim to have a cognizable interest that supports the request for investigative action." (para. 36) "It is noted that the inability of the Civil Parties to make a claim or request as a party having an interest in unlawfully obtained property and assets accords with the division of powers and rights between the respective parties to proceedings before this Court. […] The Civil Parties support the Co-Prosecutors at other stages of the proceedings, in particular to assist in establishing the truth relevant to the determination of the guilt or innocence of an accused person. Confiscation of unlawfully obtained assets, if any is part of the sentence and is not linked to reparations or the role of the Civil Parties. […] [T]he Appellants lack standing to make the Request. For this reason, the Appeal is inadmissible on the basis of Internal Rule 21." (para. 37) "[T]he Civil Parties' rights […] are sufficiently safeguarded by the existing legal framework." (para. 41)
17.	**002 IENG Sary** Special PTC 11 Doc. No. 2 16 November 2010 *Decision on IENG Sary's Request to the Pre-Trial Chamber to Forbid the Trial Chamber from Accessing the Case File until it is Seized with the Case*	"[T]he Co-Lawyers have not demonstrated to the Pre-Trial Chamber that Judge Nonn's pre-trial access to the case file 'for the purposes of advance preparation for trial' risks compromising the fairness of the pre-trial or trial proceedings. It is therefore unnecessary for the Pre-Trial Chamber to decide whether or not and to what extent Internal Rule 21(1) allows it to restrict the Trial Chamber's right of access to the case file pursuant to Internal Rule 69(3)." (para. 4)
18.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphan's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"Deciding whether the Chamber has jurisdiction to consider the Application means determining if the Application raises serious issues of fairness which must be addressed in order to guarantee the right to a fair trial under Rule 21(1)(a) of the Internal Rules and in respect of which there would be no other course of redress." (para. 6) "[N]one of the allegations […] raises serious issues of fairness or is sufficiently egregious or serious to warrant a stay of the proceedings for abuse of process, even if they were well-founded. Therefore, there is no need to consider those allegations on the merits." (para. 24)

19.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphan's Appeal against the Closing Order*	"In its Decision on the Appeal against the Refusal to Accept Ieng Sary's Response to the Final Submission, the Pre-Trial Chamber […] considered that, despite the absence of an express grant of the right for a charged person to respond to the Co-Prosecutors' final submission, to the extent that the Co-Investigating Judges are bound by […] Internal Rules 21(1)(a) and (b), their decision to accept Charged Person KAING Guek Eav's Response to the Co-Prosecutors Final Submission […] was not erroneous. It further considered that in instructing their Greffiers to reject Ieng Sary's Response to the Co-Prosecutors' Final Submission, the Co-Investigating Judges failed to respect the guarantee to the Charged Person of the right to equality of arms with the prosecution and the right to equality treatment before the law." (para. 19) "In contrast [to Ieng Sary], prior to the issuance of the Indictment, the Co-Lawyers for the Appellant took no action to preserve their rights. […] [T]he Pre-Trial Chamber is of the view that, now that the Indictment has been issued, it ill behoves the Appellant's Co-Lawyers to invoke the infringement of their right to respond to the Final Submission in requesting that the Pre-Trial Chamber adopt a broad interpretation of their right to appeal against it so as to ensure the fairness of the proceedings. Despite the Co-Lawyers' lack of diligence, if the Pre-Trial Chamber were satisfied that the Appellant's fair trial right might be jeopardised by the dismissal of the Appeal, it would accept to consider the Appeal admissible based on a broad interpretation of Internal Rule 21(1) and would proceed to consider it on the merits. That is not so. For the reasons stated below, the Chamber is not satisfied that the Appeal demands such an interpretation." (para. 21) "[W]ith respect to [the ground relating to evidence obtained by torture, in D130/10/12] the Chamber satisfied itself that the applicable procedure before the Trial Chamber and the decisions of the Trial Chamber enabled the Charged Person's rights under Internal Rule 21 to be sufficiently safeguarded. […] [T]he Appellant's rights are safeguarded in that he will have the benefit of that established precedent at trial." (para. 22) "[T]he Closing Order marks the conclusion of the judicial investigation. In order to assess the fairness of this pre-trial procedure, the various investigative actions cannot be viewed only in isolation but rather against the backdrop of the proceedings in their entirety. […] The fact that the Indictment was issued without the Appellant responding to the Final Submission clearly means that the final part of the procedure was not entirely adversarial in his case, but does not mean that the Indictment was not preceded by any adversarial hearing […]. The various appeals by the parties have enabled the Chamber to ensure that all parties […] were heard on numerous issues of law and fact during the judicial investigation. Thus, the fact that the Appellant was not able to respond to the Final Submission does mean that the investigation was unfair. Finally, the procedure governing the upcoming trial phase is entirely adversarial." (para. 23) "[The Appellant] contends that he was not provided with all the investigative materials to enable him to prepare his Defence. […] The Appellant invokes infringement of his right to receive a translation […]." (para. 24) "[T]he Chamber ordered the Interpretation and Translation Unit to translate […] and granted the Appellant 15 calendar days to make any additional arguments […]. The Appellant made no additional submissions […]. The Chamber is not satisfied that, in addition to the measures set out above, the circumstances are such as to require it to broaden the Appellant's right to appeal against the Indictment." (para. 25) "The Pre-Trial Chamber has […] rejected the […] argument that for the sake of fairness, it must broaden the scope of its jurisdiction on account of the absence of a French translation of the footnotes in the Indictment and the evidence underpinning it." (para. 27)
20.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"The Pre-Trial Chamber […] has limited jurisdiction to hear appeals against the Closing Order at this stage under Internal Rule 74(3) with respect of fair trial issues." (para. 65) "Internal Rule 67 governs the issuance of a Closing Order by the Office of the Co-Investigating Judges at the conclusion of their investigations. As noted previously, Internal Rule 67(5) explicitly provides that, upon issuance of a Closing Order '[t]he order is subject to appeal as provided in Rule 74.' No other Internal Rule is listed in Rule 67 as providing a basis for an appeal against a Closing Order. Furthermore, unlike Internal Rule 74, Rule 21 does not address grounds of pre-trial appeals; rather it lays out the fundamental principles governing proceedings before the ECCC." (para. 70)

		"The Pre-Trial Chamber has previously held that in light of Article 33 (new) of the ECCC Law, […] and of Article 14 of the International Covenant on Civil and Political Rights […], which is 'applicable at all stages of proceedings before the ECCC, […] [t]he overriding consideration in all proceedings before the ECCC is the fairness of the proceedings as provided in Internal Rule 21(1)(a).' Therefore, where the facts and circumstances of an appeal require it, the Pre-Trial Chamber has found that it has competence to consider grounds raised by the Appellants that are not explicitly listed under Internal Rule 74(3) through a liberal interpretation of a charged persons' right to appeal in light of Internal Rule 21." (para. 71) "[T]he Pre-Trial Chamber emphasizes that […] it did not hold that as a general rule it will automatically have competence under Internal Rule 74(3) or Internal Rule 21 to consider any grounds of appeal in which the Appellant raises matters implicating the fairness of the proceedings. Rather, the Pre-Trial Chamber carefully considered […] whether, on balance, 'the facts and circumstances' of the appeals required a broader interpretation of the right of appeal." (para. 73) "[Article 33 (new) of the ECCC Law, Internal Rule 21(4) and Article 14(3) of the ICCPR] highlight that one of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness and expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 75) "At this stage, […] the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal […]." (para. 76)
21.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In the circumstances of this Appeal, the Pre-Trial Chamber does not find that the facts and circumstances require that it should find the appeal admissible under a broad interpretation of Internal Rule 74(3)(a) or under Internal Rule 21. [...] [Article 33 (new) of the ECCC Law, Internal Rule 21(4) and Article 14(3) of the ICCPR] highlight that one of the rights enjoyed by the Appellants is the right to an expeditious trial. As such, the 'duty to ensure the fairness and expeditiousness of trial proceedings entails a delicate balancing of interests.'" (para. 50) "At this stage, the Co-Investigating Judges have concluded their extensive investigations carried out over the course of three years, have issued the Closing Order indicting the Accused, and forwarded the case against him, as laid out in the indictment, to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage as allegations of defects in the indictment may be raised by Ieng Sary at trial." (para. 51)
22.	**002 Civil Parties** PTC 147 A410/2/6 29 June 2011 *Decision on Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness*	"[R]esort to Internal Rule 21 to declare an appeal admissible has been exceptional, and only in cases where the particular facts and circumstances required a broader interpretation of the right to appeal." (para. 10) "While the Pre-Trial Chamber has acknowledged some difficulties the Co-Lawyers may have faced representing an important number of clients, with limited financial and/or material [resources], […] it has taken a number of measures to ensure that civil party lawyers were given all possibilities to present the best case for their clients […]." (para. 11) "Therefore, the Pre-Trial Chamber does not find that the facts and circumstances of the current case require that it finds the Appeal admissible under a broad interpretation of Internal Rule 21." (para. 12)
23.	**003 Special PTC 01** Doc. No. 3 15 December 2011 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"The Request does not address whether it is expressly or impliedly within the jurisdiction of the Pre-Trial Chamber." (para. 5) "Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77[*bis*] of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental

		exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […][.]" (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore, out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
24.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"The Request does not address whether it is expressly or impliedly within the jurisdiction of the Pre-Trial Chamber." (para. 5) "Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77[*bis*] of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […][.]" (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 004, the matters of legal representation rest directly with them and are therefore, out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 004 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
25.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"We note that the right to appeal under Internal Rule 74(3)(b) is reserved to a 'Charged Person', as is the right to request investigative actions under Internal Rule 55(10). However, the present Appeal specifically challenges the interpretation of the notion of 'Charged Person' adopted by the International Co-Investigating Judge […]. We consider that the particular circumstances of this case call for a broad interpretation of the right to appeal under Internal Rule 74(3)(b), in the light of the fundamental principles set out in Internal Rule 21." (Opinion of Judges CHUNG and DOWNING, para. 5)
26.	**004 YIM Tith** PTC 06 D192/1/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons." (para. 31)

	Co-Investigating Judge's Decisions Denying his Requests to Access the Case File and to Take Part in the Investigation	"As the Pre-Trial Chamber has not reach a decision on the Appeal, Internal Rule 77(13) dictates that the Impugned Decisions shall stand." (para. 32)
27.	**004 YIM Tith** PTC 10 D186/3/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying his Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31) "As the Pre-Trial Chamber has not reach a decision on the Appeal, Internal Rule 77(13) dictates that the Impugned Decisions shall stand." (para. 32)
28.	**004 YIM TITH** PTC 11 D205/1/1/2 13 November 2014 *Decision on YIM Tith's Appeal against the Decision Denying His Request for Clarification*	"The Pre-Trial Chamber finds that the Appellant has not demonstrated in the present case that the Impugned Decision, by refusing to provide clarification on the law, jeopardizes his fair trial rights. [T]he scenario envisaged […] is hypothetical at this stage. Even if this scenario was to materialise, it is unclear what prejudice the Appellant would concretely suffer. The right to legal certainty and transparency of proceedings do not require that judicial bodies settle legal issues before they actually arise, out of their factual and contextual background. The Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions." (para. 8)
29.	**004 YIM Tith** PTC 14 D212/1/2/2 4 December 2014 *Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge*	"The Pre-Trial Chamber notes that although the Request for Clarification sought an advisory opinion on a hypothetical question, the ICIJ has elected to entertain it as he considered that the Appellant Co-Lawyers were misunderstanding an 'important aspect of judicial investigations at the ECCC'. […] As recalled by the ICIJ in the Impugned Decision, the Pre-Trial Chamber previously held that a summons issued by one investigating judge for the purpose of charging under Internal Rule 57 is valid if the disagreement procedure set forth in Internal Rule 72 has been complied with. […] In these circumstances, the Pre-Trial Chamber finds that the Appellant's argument that the ICIJ interpretation of the law set forth in the Impugned Decision impairs his right to legal certainty is without merits." (para. 7)
30.	**004 AO An** PTC 16 D208/1/1/2 22 January 2015 *Decision on TA An's Appeal against the Decision Rejecting His Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013*	"At the outset, the Pre-Trial Chamber finds that it has no jurisdiction to entertain the Appellant's request for clarification of the disagreement process under Internal Rule 72. […] The Pre-Trial Chamber notes that the Appellant does not ask the Pre-Trial Chamber to overturn or annul any specific decision where this procedure had been applied […], but rather seeks to obtain an advisory opinion from the Pre-Trial Chamber on the legality of the procedure itself. Whereas the International Co-Investigating Judge found it appropriate to explain his understanding of Internal Rule 72 […], the Pre-Trial Chamber finds that the Appellant's challenge to this interpretation, formulated in general terms, does not fall within the ambit of Internal Rule 21." (para. 9) "Provision of information concerning the Co-Investigating Judges' disagreements is therefore strictly within the purview of their discretion. The Pre-Trial Chamber shall not interfere with the exercise of this discretion unless it is demonstrated that, in the exceptional circumstances of the case, the lack of information about a disagreement impairs the Appellant's fair trial rights, in which case the Pre-Trial Chamber may consider appropriate remedy." (para. 10)

		"Absent any indication to the contrary, it is presumed that the Co-Investigating Judges, in light of their judicial and ethical duties, ensure that they act in compliance with the requirements set forth in Article 5(4) of the Agreement, 23*new* of the ECCC Law and Internal Rule 72. There is no indication in the present case disclosing a lack of compliance with these legal requirements by the International Co-Investigating Judge in issuing the Four Decisions so the Appellant's argument that he is not being investigated by a tribunal established by law is unfounded." (para. 11) "The Appellant has not demonstrated that providing him access to privileged information about the disagreement on these decisions is necessary, at this stage, to defend himself against the crimes alleged in the Introductory Submission." (para. 12)
31.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"We note that there is a fundamental distinction between the inherent jurisdiction *of the ECCC* and its own jurisdiction, as an appellate chamber sitting within the ECCC judicial system. Were the Pre-Trial Chamber to consider, at first instance, any incidental matter arising from the jurisdiction of the ECCC, […], it would then be usurping the authority of the Co-Investigating Judges and perhaps that of the other Chambers of the ECCC. Accordingly, for a motion brought at first instance to fall within the ambit of the Pre-Trial Chamber's inherent jurisdiction, it is required that it relates directly to appellate proceedings of which the Pre-Trial Chamber is seised." (Opinion of Judges BEAUVALLET and BWANA, para. 11) "Accordingly, we would find a request for a stay of execution admissible only where it may affect the fairness of appellate proceedings brought before it or imperil an acknowledged right to appeal." (Opinion of Judges BEAUVALLET and BWANA, para. 13) "In the present case, the Defence is not arguing that the execution of the Arrest Warrant could affect the appellate proceedings before the Pre-Trial Chamber. Instead, it contends that if the Arrest Warrant is executed before the Chamber determines the lawfulness of the Charging Decision, MEAS Muth could possibly be detained on the basis of a decision that is invalid. Insofar as the Request for a Stay of Execution does not concern the issue of charging, but rather of provisional detention – a matter which the Pre-Trial Chamber is not seised – we consider that it does not fall within the purview of the Pre-Trial Chamber's inherent jurisdiction." (Opinion of Judges BEAUVALLET and BWANA, para.14). "In this instance, the rules governing admissibility of a request for a stay of execution have been clearly set out by the Pre-Trial Chamber, such that Internal Rule 21 does not provide an alternative remedy." (Opinion of Judges BEAUVALLET and BWANA, para. 15) "As its name [in French: mandat d'amener] indicates, the purpose of the Arrest Warrant is to bring MEAS Muth before the International Co-Investigating Judge for a hearing which will examine the *possibility* of his provisional detention pursuant to Internal Rule 63. Accordingly, at the hearing which will be adversarial, MEAS Muth will be at liberty to make any submission he sees fit before a decision is taken on his provisional detention. [...] [T]herefore, the principles stated in Internal Rule 21 (2) and, more generally, the rights of the Defence, are fully safeguarded. Such being the case, we do not consider that execution of the Arrest Warrant before adjudication of the Appeal against the Decision to Charge MEAS Muth would impair the fairness of the proceedings or infringe MEAS Muth's right to liberty." (Opinion of Judges BEAUVALLET and BWANA, para. 16) "We consider that the Request for a Stay of Execution does not fall within the Pre-Trial Chamber jurisdiction. It is therefore inadmissible." (Opinion of Judges BEAUVALLET and BWANA, para. 17)
32.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth* in Absentia	"[T]he applicable rules are clear that a Co-Investigating Judge can act alone if the disagreement procedure is followed. […] [T]he present legal framework contains sufficient checks and balances to ensure that any unilateral actions are taken in accordance with the law. […] [T]he Internal Rules not only envisage, but allow, a Co-Investigating Judge to make decisions alone, as a validly constituted Court. […] [T]he Co-Lawyers have failed to demonstrate that the Impugned Decision, by being signed by one Co-Investigating Judge, jeopardises MEAS Muth' fair trial rights." (para. 34) "Therefore, the Pre-Trial Chamber finds […] the Appeal inadmissible pursuant to Internal Rule 21." (para. 35)

33.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"In particular, the Pre-Trial Chamber finds no merit in the Appellant's interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring him an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of his reputation. The Pre-Trial Chamber underlines that the ECCC legal framework, particularly under Internal Rule 56, gives a broad discretion to the Co-Investigating Judges in handling confidentiality issues and granting limited access to the judicial investigations. The Appellant has failed to show any compelling circumstances warranting the Pre-Trial Chamber's intervention in these matters." (para. 23) "The Chamber considers that the mere mention of the Appellant's name, functions or role in Case 002 is inevitable, due to overlapping facts and evidence, and that it does not constitute a breach of fairness or reversal of the burden of proof in the distinct case at hand. Finally, the Pre-Trial Chamber recalls that it has no jurisdiction to deal with hypothetical matters and notes that the impact of potential future disclosure in Case 002 on the Appellant's rights under Internal Rule 21 remains, at this stage, purely speculative." (para. 24)
34.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"[T]he Internal Rules regulate the situation at hand and there are no exceptional circumstances requiring the Pre-Trial Chamber's intervention." (Opinion of Judges BEAUVALLET and BAIK, para. 20) "In view of the lack of provision in the ECCC legal compendium with regard to charging someone *despite his absence at the initial* appearance, the Pre-Trial Chamber [in D128/1/9] found the Appeal admissible under 74(3)(a), when interpreted broadly, in order to fill the gap in the legal provisions. Unlike in those exceptional circumstances created by a *lacuna* in the applicable law, the placement under investigation of the Appellant during his initial appearance […] was specifically regulated by relevant provisions of the Internal Rules. No intervention of the Pre-Trial Chamber to ensure legal certainty is required since there is no *lacuna* in the applicable law of the ECCC in this regard." (Opinion of Judges BEAUVALLET and BAIK, para. 21) "[T]he charges during the investigation stage are provisional, as the charges set out in the Written Record of Initial Appearance constitute *potential* legal characterization of facts under investigation which will be finally determined in the Closing Order." (Opinion of Judges BEAUVALLET and BAIK, para. 22) "[A]ny ruling it would make with regard to the charges and the potential crimes would be speculative. […] [T]he Co-Investigating Judges will give due consideration to legal issues related to crimes and modes of responsibility, as may be necessary, in the drafting of the Closing Order, which is appealable." (Opinion of Judges BEAUVALLET and BAIK, para. 23) "[T]he Undersigned Judges will not provide advisory opinions and cannot fetter the exercise of discretion of the Co-Investigating Judges in respect of their decisions to be expressed in the Closing Order. […] [A]ll the crimes and modes of liability discussed are expressly mentioned in the Agreement and the Law, and/or have already been dealt with extensively by the Pre-Trial Chamber and the Trial Chamber. Therefore the Undersigned Judges consider that it should not address the legal issues related to crimes and modes of responsibility at this stage of the proceedings and that the Appellant's fair trial rights are not violated." (Opinion of Judges BEAUVALLET and BAIK, para. 24) "The Undersigned Judges are of the view that ruling on these issues at this stage would not promote judicial efficiency […]. In light of the PTC jurisprudence, the Undersigned Judges thus suggest that these issues, could be raised if the Co-Lawyers deem it necessary, at the close of the judicial investigation and prior to the commencement of trial, if any, not in the course of the investigation when the challenged crimes and modes of liability have not yet been definitively determined. Given that the parties are seeking declaratory relief from the Pre-Trial Chamber in advance of a Closing Order and that the matter could be brought before the Chamber later without violating the appellant's fair trial rights, the Undersigned Judges do not consider that a broad interpretation of the right to Appeal in light of Internal Rule 21 should be favoured in the present case." (Opinion of Judges BEAUVALLET and BAIK, para. 25)
35.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016	"[T]he Request [for clarification] does not represent a scenario where an enjoyment of procedural rights may become ineffective or affect MEAS Muth's fundamental rights." (para. 22)

	Decision on MEAS Muth's Request for the Pre-Trial Chamber to take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary	
36.	**004 YIM Tith** PTC 29 D193/91/7 15 February 2017 *Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193/76 and D193/77) and the International Co-Prosecutor's Request for Disclosure (D193/72) and against the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75)*	"The Pre-Trial Chamber observes that both the Impugned Decisions and the former ICIJ's Decisions address the disclosure requests by, in principle, applying the same balancing process […]. In the Pre-Trial Chamber's view, each of ICIJs specific considerations […] do not represent new disclosure criteria, […] they rather represent underlying considerations aimed at ultimately ensuring that, in deciding in favour of or against disclosure, the ICIJ complies with his two 'primary responsibilities' […]. Therefore, the Pre-Trial Chamber finds no merit in the Defence's consistency argument." (para. 24) "The Pre-Trial Chamber first notes that […] the former ICIJ considered Yim Tith to be a 'Suspect', and Ao An and Im Chaem to be 'Charged Persons'. […] [I]t is not contested that the ICIJs have consistently treated all 'Suspects' […] the same, because none of them were granted participatory rights in the investigation, until they became 'Charged Persons.' […] The specified difference in treatment is based on reasonable and objective grounds and, […] does not put Yim Tith at a disadvantageous or unfair position vis a vis other 'Suspects'." (para. 37) "Internal Rule 55(4) does not set a time requirement for when to charge Suspects named in the Introductory Submission. […] [A]part from merely asserting, that it took a long time for the ICIJ to charge Yim Tith […] the Defence does not offer evidence showing ICIJ's abuse of discretion for the alleged late charging." (para. 40)
37.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"[T]he Pre-Trial Chamber first recalls that it has already found no merit in the interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring the Charged Persons an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of their reputation. The Pre-Trial Chamber has also dismissed claims that disclosure orders violate the Charged Person's right to presumption of innocence irreparably. […] In the Pre-Trial Chamber's view the mere fact that the ICIJ allows disclosure of documents does not suffice to conclude that that MEAS Muth's rights will be irreparably damaged during trial proceedings, given the Trial Chamber's competence, to conduct any part of the proceedings *in camera*, under Internal Rules 29(4)(e) and 79(6)(b)." (para. 18)
38.	**004 YIM Tith** PTC 41 D306/17.1/1/9 30 June 2017	"The Pre-Trial Chamber recalls that Internal Rule 21 does not open an automatic avenue for appeal even where an appeal raises fair trial issues, and that the appellant must demonstrate that the particular circumstances of the case require the Chamber's intervention to avoid irremediable damage to the fairness of the investigation or proceedings or to the Appellant's fundamental rights. In the

	Decision on YIM Tith's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population in the Context of Crimes against Humanity with regard to a State's or Regime's Own Armed Forces	present case, the Pre-Trial Chamber is not convinced that exceptional circumstances require its intervention. As previously observed, the claim that the Appeal concerns a definition of crimes against humanity which is being applied to the investigation, and will be used to determine the allegations against the Appellant, is purely hypothetical, as is the need to expedite a potential appeal on related issues in the closing order. The Pre-Trial Chamber reiterates that it will not provide advisory opinion and cannot fetter the exercise of the discretion of the Co-Investigating Judges in respect of their decisions to be expressed in a closing order." (para. 19) "Accordingly, the Pre-Trial Chamber finds the Appeal inadmissible." (para. 20)
39.	**004/2 AO An** PTC 42 D347.1/1/7 30 June 2017 *Decision on AO An's Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces*	"In the present case, the Pre-Trial Chamber is not convinced that exceptional circumstances require its intervention. As previously observed, the fact that the appeal concerns a definition of crimes against humanity which will be used to determine the allegations against the Appellant is purely hypothetical, as is the need to expedite a potential appeal on related issues in the closing order. The Pre-Trial Chamber reiterates that it will not provide advisory opinion and cannot fetter the exercise of the discretion of the Co-Investigating Judges in respect of their decisions to be expressed in a closing order." (para. 16)
40.	**004/2 AO An** PTC 44 D351/2/3 6 September 2017 *Decision on AO An's Appeal against Internal Rule 66(4) Forwarding Order*	"The Pre-Trial Chamber observes that the Appeal against the Forwarding Order does not fall within its subject-matter jurisdiction under Internal Rule 74." (para. 8) "In the present case, the Appellant has not demonstrated that his asserted rights under Internal Rule 21 would be at risk of being irremediably impaired if the Forwarding Order is not reversed." (para. 9)
41.	**004 YIM Tith** PTC 47 D347/2/1/4 25 October 2017 *Decision on YIM Tith's Appeal of the Decision on Request to Place Materials on Case File 004*	"The Pre-Trial Chamber observes that the Appeal [requesting to overturn the decision place materials on the Case File] does not fall within its subject-matter jurisdiction under Internal Rule 74." (para. 8) "In the present case, the Appellant has not demonstrated that his rights under Internal Rule 21 would be at risk of being irremediably impaired if the Impugned Decision is not reversed. The Pre-Trial Chamber considers that no irremediable damage to the appellant's fair trial rights arises from the mere placement of inculpatory evidence on the Case File. It is indeed, at this stage, only possible to speculate whether the Co-Investigating Judges will rely on the material placed onto Case File 004 in the drafting of the closing order, which is appealable. […] The Pre-Trial Chamber thus finds the alleged harm hypothetical and the Appeal inadmissible." (para. 9)
42.	**004 YIM Tith** PTC 46 D361/4/1/10 13 November 2017 *Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time*	"The Chamber observes, however that, apart from making reference to an 'imposition of procedural constraints' and to a 'premature curtailment of the opportunity "to make proper enquiries",' the Defence has not demonstrated how the Appellant's right to adequate time is harmed concretely in the instant case." (para. 20) "Regarding the Defence allegation for unfairness due to the judge's '*risk*' of promoting the interests of the ICP over those of the defence, which, according to the Defence, illustrates procedural inequality in this case, the Chamber notes the CIJ's unequivocal statements that, '[i]t is the very nature of the mechanism at the ECCC and the ICP's onus of proof that the ICP has a 'head start' on the investigation' and that '[o]nce the case is before the OCIJ the *Prosecution's right to participate in or carry out investigations is no stronger than that of the Defence* or any other party'. In any event, unless evidence

		is provided to rebut the Judge's presumption of impartiality, the Pre-Trial Chamber shall not entertain any claims that the ICP's interests *may* have been promoted." (para. 31) "The Pre-Trial Chamber is not convinced that the rights to adequate time, equality of arms and procedural fairness will be irremediably damaged if it does not intervene at this stage […]." (para. 35)
43.	**004 YIM TITH** PTC 55 D377/1/1/3 19 October 2018 *Decision on YIM Tith's Appeal of the Decision on YIM Tith's Request for Correction of Translation Errors in Written Records of Interview*	"Internal Rule 21 protects fundamental principles of fairness in the proceedings before the ECCC, and reflects the fair trial requirements that the ECCC is duty bound to apply pursuant to Article 13(1) of the ECCC Agreement, Article 35 *new* of the ECCC Law and Article 14(3) of the International Covenant on Civil and Political Rights. The Pre-Trial Chamber has held that these principles 'may warrant adopting a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial' by admitting appeals under Internal Rule 21 or broadly construing the specific provisions of the Internal Rules which grant it jurisdiction. Such admissibility may apply in the rare instances where the particular facts of a case raise issues of fundamental rights or serious issues of procedural fairness, but Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. Internal Rule 21 moreover does not provide an avenue for the Chamber to resolve hypothetical questions or provide advisory opinions. For the Pre-Trial Chamber to entertain an appeal under Internal Rule 21, the applicant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation or proceedings, or to the appellant's fundamental rights." (para. 11) "The Pre-Trial Chamber recalls that an appellant alleging that an appeal is admissible under Internal Rule 21 must demonstrate that the situation at issue does not fall within the applicable rules. In other words, 'this rule cannot be invoked to render admissible a request for which an established regime exists, but which does not satisfy the relevant admissibility requirements.' The Pre-Trial Chamber notes that the Appeal makes no attempt at making this preliminary demonstration, and the Chamber declines to undertake a *proprio motu* analysis of the potential admissibility, or inadmissibility, of this Appeal pursuant to any other regulation" (para. 13) "However, assuming *arguendo* that this first prong of the admissibility test under Internal Rule 21 were established, the Pre-Trial Chamber is nevertheless of the view that the second prong of this test has not been sufficiently demonstrated. Although the Appeal alleges violations of procedural fairness and the Appellant's fair trial rights, recourse to Internal Rule 21 is not automatic. The Pre-Trial Chamber, having considered the reasoning in the Impugned Decision leading to the rejection of part of the Request, is not convinced that the Appellant has established any serious violations warranting the Chamber's intervention under Internal Rule 21" (para. 14) "Thus, the Pre-Trial Chamber finds the Appeal inadmissible under Internal Rule 21." (para. 15)
44.	**004/2 AO An** PTC 60 D359/17 and D360/26 2 September 2019 *Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget*	"[T]he Pre-Trial Chamber is not convinced that the rights to an effective defence, expeditious trial, equality of arms and the fairness and integrity of the proceedings will be irremediably damaged if the Chamber does not intervene at this stage. Therefore, the Co-Lawyers have not met the threshold for admissibility under Internal Rule 21." (para. 11) "The Pre-Trial Chamber, thus, finds the Co-Lawyer's Urgent Request inadmissible and consequently, denies the Co-Lawyers' request that the Chamber invoke its inherent jurisdiction to immediately stay the planned budget reductions until it decides on their Urgent Request." (para. 12)
45.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Lastly, without any demonstration of alleged fair trial right violations, the Pre-Trial Chamber finds that the Co-Lawyers' argument concerning the cumulative impact of fair trial rights violations and their request for a permanent stay or dismissal as a remedy is without merit. The Pre-Trial Chamber dismisses Ground 18 as inadmissible." (para. 168)
46.	**004 YIM TITH** PTC 61 D382/41 18 March 2021	"The Pre-Trial Chamber recalls that the fundamental principles expressed in Internal Rule 21 reflect the fair trial requirements that the ECCC is bound to apply pursuant to Article 13(1) of the ECCC Agreement, Article 35*new* of the ECCC Law, and Article 14(3) of the International Covenant on Civil and Political Rights. In relation to appeals lodged under Internal Rule 21 the Pre-Trial Chamber has held

	Decision on YIM Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision	that the principles expressed in this Rule may warrant the adoption of a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. In rare instances where the particular facts and circumstances of the case so require the Chamber may admit appeals under Internal Rule 21 directly or through a broad interpretation of the specific provisions of the Internal Rules which grant it jurisdiction." (para. 8) "However, the Pre-Trial Chamber has equally emphasised that Internal Rule 21 does not open an automatic avenue for appeal even where the appeal raises fair trial issues. Nor does Internal Rule 21 grant the Pre-Trial Chamber jurisdiction to deal with hypothetical matters or to provide advisory opinions. For the Chamber to entertain an appeal under Internal Rule 21, the burden is on the appellant to demonstrate that the situation at hand does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid irremediable damage to the fairness of the proceedings or the appellant's fair trial rights." (para. 9) "In the present case the Pre-Trial Chamber is not persuaded that the Co-Lawyers have met either of the requirements for admissibility under Internal Rule 21. (para. 10) "In light of the above, the Pre-Trial Chamber holds that the Co-Lawyers have failed to demonstrate that the situation at hand does not fall within the applicable rules or that the Chamber's intervention is required to avoid irremediable damage to YIM Tith's fair trial rights. Accordingly, the Pre-Trial Chamber finds the Urgent Request inadmissible." (para. 15)
47.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he broadening of this right of appeal through Internal Rule 21 is not warranted in this case given that the Pre-Trial Chamber already clarified the law governing the matter at stake and considering that the purpose of Ground A is, in essence, to seek the correction of an inconsequential speculation that has no prejudicial effect on MEAS Muth's rights." (para. 74) "Furthermore, the Co-Lawyers challenge the International Co-Investigating Judge's failure to conclude that the Dismissal Order prevails over the Indictment according to the principle of *in dubio pro reo*, which has already been determined as an issue that falls outside his jurisdiction. In addition, the Chamber considers that the situation in which two independent judges issue contradictory decisions on whether to indict does not entail the application of *in dubio pro reo* principle because the principle stems from the presumption of innocence according to which MEAS Muth remains innocent even after being indicted and will remain as such until proven guilty. Consequently, the Chamber does not deem its intervention necessary in order to avoid any irreparable harm to the Accused's fair trial rights and finds that the broadening of MEAS Muth's right of appeal through Internal Rule 21 is not warranted in this case." (para. 77)

6. Admissibility under Other Considerations

i. *Consideration of the Interests of Justice*

1.	**002 IENG Sary** Special PTC Doc. No. 3 22 September 2009 *Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE*	"The Pre-Trial Chamber is not convinced that the Application was filed as soon as the Defence became aware of the grounds for disqualification […] as required by Internal Rule 34(3). Considering that the Co-Prosecutors have not made any submissions on this issue […], the Pre-Trial Chamber finds that it is in the interest of justice to decide on the admissibility of the Application." (para. 12)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011	"[E]ven if the Pre-Trial Chamber was persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as they see fit.' Here the Pre-Trial Chamber finds that for the following reasons, it would be in the interests of justice to allow the Appellants' jurisdictional objections to the Impugned Order even though one may

	Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order	argue that they should have appealed the provisional detention orders on these grounds […][.]" (para. 80) "In sum, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the Appellants' grounds of appeal raising jurisdictional objections against the Impugned Order at this time. Failure to do so based on the argument that the Appellants are time barred from raising appeals that are permitted according to a plain language reading of the Internal Rules, by relying instead on a questionable interpretation of the Internal Rules so as preclude appeals of this type on mere procedural grounds may result in fundamental unfairness to the Appellants." (para. 83)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"In the event that the Pre-Trial Chamber is persuaded that the Co-Investigating Judges did confirm the ECCC's subject matter jurisdiction in the provisional detention orders within the meaning of Rule 74(3)(a), the Pre-Trial Chamber recalls that it may, at the request of a concerned party or on its own motion, 'recognise the validity of any action executed after the expiration of a time limit prescribed in these Internal Rules on such terms, if any, as [it sees] fit.' In the circumstances of the current Appeal, the Pre-Trial Chamber finds that, for the following reasons, it would be in the interests of justice to allow the Appellant's jurisdictional objections, if any, to the Closing Order even though one may argue that he should have appealed the provisional detention orders on these grounds 'within 10 (ten) days from the date that notice of the decision or order was received.'" (para. 55) "Finally, in light of the lack of any provision in the Internal Rules on the effect of a provisional detention order or pertaining to re-confirmation, the nature of jurisdictional objections, and the early stage of the proceedings, the Pre-Trial Chamber considers that it is in the interests of justice to consider the merits of any grounds of appeal raising admissible jurisdictional challenges against the Closing Order at this time." (para. 57)
4.	**003 Other** PTC 06 D26/1/3 15 November 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Decision of Refiling of Three Investigative Requests*	"When determining whether a late filing should be accepted in the interest of justice, judicial bodies generally take into account on the one hand, the importance of filings for the rights of the filing party or, more broadly, the importance of the information it contains for determining an issue before them, and on the other hand, the prejudice that may be caused to the other parties by accepting a late filing. As the procedural rules established at the international level are in line with the general principle set out in Internal Rule 21(1)(a) that ECCC proceedings shall preserve a balance between the rights of the parties, they can provide guidance when appraising the validity of late filings before the ECCC. Indeed, the Pre-Trial Chamber has previously accepted filings despite procedural irregularities on the basis that it was in the interest of justice to do so." (Opinion of Judges LAHUIS and DOWNING, para. 9)
5.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"In our opinion, the absence of notification of the Order in Case 004 to the Appellant's Lawyers and the absence of a clear evidence of notification to the Appellant himself is a procedural defect that infringes upon the Appellant's fundamental rights. Considering that the Appeal is, as a consequence, directed against the Order in Case 003 and not against the Order issued for Case 004, which contains different reasons for the rejection of the Application than those expressed in the Order in Case 003, it would be contrary to the interests of justice and fundamentally unfair to the Appellant to consider the merit of this Appeal. However, we note that from the moment of the effective notification of the Order in Case 004 to the Appellant and the Co-Lawyers acting on his behalf, a right of appeal against this Order will arise and the time limits for filing an appeal will then start to run. […]." (Opinion of Judges DOWNING and LAHUIS, para. 12)
6.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against*	"When the Pre-Trial Chamber could not decide on an issue raised before it, re-examination of a matter that is substantially the same, in fact and law, through a renewed application or appeal filed by the same party, would be contrary to the principles of legal certainty and judicial economy, and more generally against the interests of justice as it would not advance the proceedings but rather risk causing delays." (para. 20)

	International Co-Investigating Judge's Decision Denying Requests for Investigative Actions	
7.	**004 YIM Tith** PTC 15 D203/1/1/2 19 January 2015 *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*	"The Pre-Trial Chamber has accepted late filings *also in the 'interests of justice' when fair trial rights at are stake*." (para. 20)
8.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the Office of the Co-Investigating Judges has been *functus officio* regarding the investigation in Case 004/2 since the issuance of the Closing Orders. While the Pre-Trial Chamber is seised with the present application, no other judicial office is formally seised of the case, in the sense of Article 3.14 of the Practice Direction on Filing, as no appeal has been filed yet. The Pre-Trial Chamber nonetheless observes that the purpose of the urgent Request would be defeated if not addressed expeditiously and that, in the present case, Article 9.1 of the Practice Direction on Classification should be interpreted in light of Internal Rule 21, so as to safeguard the interests of the parties. The Pre-Trial Chamber thus finds it appropriate to exercise its inherent jurisdiction, as the appellate body at the pre-trial stage and in the absence of specific disposition, to rule on the Request in the interests of justice." (para. 6)

ii. *Consideration of the Interest in the Preservation of Judicial Time and Resources*

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"Internal Rules 74(3)(a) and 89(1) open the possibility of raising jurisdictional challenges before the Pre-Trial Chamber and the Trial Chamber. […] [T]he Trial Chamber has determined […] that it is not bound by decisions of the Pre-Trial Chamber. Thus, disposing of the jurisdictional issues […] at this stage will not necessarily preserve judicial time and resources. However, the interests in preservation of judicial resources and acceleration of legal and procedural processes do not outweigh the reasons cited above to reject the preliminary objections raised […]." (para. 35)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"At this stage, the Co-Investigating Judges have concluded their extensive investigations […], issued the Impugned Order indicting the Appellants, and forwarded the case against the accused […] to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage. Furthermore, allegations of defects in the indictment may be raised […] at trial." (para. 76)

3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"At this stage, the Co-Investigating Judges have concluded their extensive investigations […], have issued the Closing Order indicting the Accused, and forwarded the case against him […] to the Trial Chamber. As such, the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage as allegations of defects in the indictment may be raised […] at trial." (para. 51)

iii. *Consideration of Issues of General Significance*

For jurisprudence concerning the ***Pre-Trial Chamber's jurisdiction over Issues of General Significance***, see III.A.3. Determination of Issues of General Significance to the Court

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"[T]he ECCC is an independent entity *within* the Cambodian court structure and has no jurisdiction to judge the activities of other bodies. The Co-Investigating Judges and the Pre-Trial Chamber thus have no jurisdiction to rule upon decisions or actions of other courts within the Cambodian court system, and in holding that ordinary Cambodian courts have no jurisdiction to hear cases involving Khmer Rouge-era crimes, the Co-Investigating Judges overstepped their mandate." (para. 72) "This being said, the Pre-Trial Chamber, as an appellate chamber, deems it necessary to consider the issue raised as one of general significance for the ECCC's jurisprudence and legacy." (para. 73)
2.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[T]he Chamber […] has so far exercised diverse powers including: appellate review of alleged errors of law, fact and discretion; determination of issues of general significance for the ECCC's jurisprudence and legacy; inherent powers or inherent jurisdiction; and an ancillary investigative power derived, in the case of *lacunae* in the ECCC Internal Rules, from the role of the Cambodian Investigation Chamber. The Pre-Trial Chamber may use some or all of these different powers ." (para. 32) "The Pre-Trial Chamber considers that the exercise of its review power as Investigation Chamber is intended, first and foremost, to ensure that the conditions for the issuance of the closing order and the preparatory investigation are in accordance with the ECCC Internal Rules 21 and 76, and Article 261 of the Cambodian Code of Criminal Procedure. Accordingly, in appeals against closing orders, there are many preliminary issues which the Pre-Trial Chamber may need to consider before addressing the merits of the parties' submissions, including what the Pre-Trial Chamber has identified over the years as issues of general significance for the ECCC's jurisprudence and legacy, and/or its inherent powers when considering a closing order." (para. 50)
3.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"The International Judges find that there is no basis in this Appeal upon which they could revise the International Co-Investigating Judge's Indictment." (Opinion of Judges BEAUVALLET and BAIK, para. 192) "Nonetheless, the International Judges recall that the Pre-Trial Chamber has the power to, *inter alia*, address issues of general significance for the ECCC's jurisprudence and legacy that fall outside of its scope of appellate review. Such power is discretionary." (Opinion of Judges BEAUVALLET and BAIK, para. 193) "[T]he issue of personal jurisdiction, constituting an 'absolute jurisdictional element' and an issue of general importance to the ECCC's jurisprudence and legacy, has to be addressed at this stage of the pre-trial phase." (Opinion of Judges BEAUVALLET and BAIK, para. 285)

7. Waiver and Withdrawal of Appeals

i. *Withdrawal of Appeals*

a. General

1.	**002 KHIEU Samphân** PTC 04 C26/I/31 15 October 2008 *Decision relating to Notice of Withdrawal of Appeal*	"[T]he Internal Rules do not address the issue of withdrawal of an appeal or discontinuation of proceedings by a party. The Cambodian Code of Criminal Procedure similarly does not provide direct guidance on this issue. However, […] in practice, Cambodian Courts accept that an appellant has the right to withdraw his/her appeal before the closing of the debate between the parties. This also appears to be the practice followed by international and internationalised tribunals." (para. 10) "The Pre-Trial Chamber finds that a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties." (para. 11)
2.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he Appellant sent directly to the Presiding Judge of the Pre-Trial Chamber a document in which she expressed the will to 'withdraw all legal associations from the ECCC' […]. […] [T]he Greffiers of the Pre-Trial Chamber informed the Appellant that the document could not be considered as a formal withdrawal of her Appeal and that, should she wish to formally abandon the Appeal, she had to follow, with the Greffiers of the Chamber, a formal procedure notifying the Chamber, in explicit and specific terms, her express and voluntary will to do, in compliance with [the Practice Direction on Filing]. […] The Pre-Trial Chamber finds that the Document is not in compliance with the Internal Rules and the Practice Direction on Filing and that therefore the Chamber is effectively seised of the Appeal." (para. 7)
3.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"[T]he Appellant sent directly to the Presiding Judge of the Pre-Trial Chamber a document in which she expressed the will to 'withdraw all legal associations from the ECCC' […]. […] [T]he Greffiers of the Pre-Trial Chamber informed the Appellant that the Document could not be considered as a formal withdrawal of her Appeal and that, should she wish to formally abandon the Appeal, she had to follow, with the Greffiers of the Chamber, a formal procedure notifying the Chamber, in explicit and specific terms, her express and voluntary will to do, in compliance with [the Practice Direction on Filing]. […] The Pre-Trial Chamber finds that the Document is not in compliance with the Internal Rules and the Practice Direction on Filing and that therefore the Chamber is effectively seized of the Appeal." (para. 6)
4.	**004 AO An** PTC 03 D121/2/3 12 April 2013 *Decision on Notice of Withdrawal of Appeal against the Constructive Dismissal of TA An's Request for Access to the Case File*	"The Pre-Trial Chamber previously found, on the basis of Cambodian and international practice, that 'a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties'." (para. 2)
5.	**004 YIM Tith** PTC 22 D229/3/1/4 2 June 2016 *Decision on YIM Tith's Notice of Withdrawal of Appeal against the*	"The Pre-Trial Chamber recalls that, on the basis of Cambodian and international practice, 'a party has the right to withdraw an appeal without seeking leave until the conclusion of the debate between the parties'. In the present case, the Co-Lawyers have filed their Notice to Withdrawal before a decision was made under Rule 77(3)(b) of the Internal Rules, hence before the conclusion of the debates on appeal. The Co-Lawyers are therefore allowed to withdraw the Appeal without seeking leave." (para. 9)

	International Co-Investigating Judge's Decision on Urgent Requests to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02	

b. Constructive Withdrawal

1.	**002 KHIEU Samphân** PTC 04 C26/I/25 23 April 2008 *Decision on Application to Adjourn Hearing on Provisional Detention Appeal*	"The refusal of the International Co-Lawyer to continue to act is a constructive withdrawal from the appeal and has a direct and adverse effect upon the fundamental right of the Charged Person to be represented before the Pre-Trial Chamber." (para. 9)

ii. *Waiver of Appeals Rights*

1.	**002 IENG Sary** PTC 03 C22/I/74 17 October 2008 *Decision on Appeal against Provisional Detention Order of IENG Sary*	"[S]ubmissions made before the Pre-Trial chamber in the current Appeal cannot result in the waiver of the right to raise at a later stage any arguments pursuant to [Internal Rule 74(3)(a)]." (para. 20) "[T]he issues which are raised in this Appeal can, according to the Internal Rules concerning proceedings before the Trial Chamber, be raised and addressed fully at later stages of the proceedings because these issues can require the termination of the prosecution. Not raising these issues in full before the Pre-Trial Chamber at this stage of the proceedings can therefore not be seen as a waiver to challenge them." (para. 23)

8. Dismissal of Appeals

i. *Summary Dismissal of Unfounded and Unsubstantiated Appeals and Arguments*

1.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphan's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"As no argument has been put before the Co-Investigating Judges in relation to the translation issue or the alleged delays in the provisional detention appeal, the Pre-Trial Chamber finds the Defence's argument that the Order refusing Release is insufficiently reasoned to be unfounded." (para. 27)
2.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals*	"The Pre-Trial Chamber is of the view that arguments of a party which do not have the potential to cause the impugned decision to be reversed or revised may be dismissed immediately […] and need not be considered on the merits. With requirements as to form, an appealing party is expected to provide precise references to relevant transcript pages or paragraphs in the decision being challenged. The Pre-Trial Chamber will not give detailed consideration to submissions which are obscure, contradictory, or vague, or if they suffer from other formal and obvious insufficiencies. Thus, in principle, the Appeals chamber will dismiss, without providing detailed reasons, those submissions which are evidently unfounded." (para. 22)

	against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications	"The Pre-Trial Chamber is of the view that this ground of appeal is deficient in that it merely amounts to an assertion without articulating a specific error, or without referring to a specific finding of the Second Impugned Order or of the Introductory Submission. As such, it does not have the potential to cause the impugned decision to be reversed or revised and will be dismissed without being considered on the merits." (para. 43)
3.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphan's Appeal against the Order on the Request for Annulment for Abuse of Process*	"The Pre-Trial Chamber notes that the Co-Lawyers for the Charged Person have submitted that the Charged Person has the right to be defended by lawyer of his or her choice, the right for the lawyer of the Charged Person's choice, the right to have access to the judicial investigation case file and the right to effective representation. […] It is observed that the Co-Lawyers limit their submissions in the appeal to the effects of the Translation Order and fail to explain how the other enumerated rights have been affected." (para. 23) "The Co-Lawyers further submit that annulment of the Translation Order would give rise to annulment of all investigative and prosecutorial actions under the abuse of process doctrine. However, the Co-Lawyers fail to make reasoned submissions as to how the doctrine might apply in this instance […]." (para. 24)
4.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"[…] [T]he Appeal contains no submissions on whether and to what extent fairness or the ICCPR (or any other national or international law) imposes on the Co-Investigating Judges a duty to consult […]. It is not for the Pre-Trial Chamber to substitute such absence on appeal." (para. 19) "The third and final reason why the Pre-Trial Chamber declines to answer the questions of whether and to what extent the Co-Investigating Judges were under a duty to consult the Appellant is that the Appellant has not demonstrated to the Pre-Trial Chamber a *prima facie* reason for it to believe that consultations, if they occurred, would have caused the Co-Investigating Judges - exercising their discretion - to accept the Request." (para. 20) "The Appellant […] attempt to 'support' such serious allegations [of partiality] by citing and quoting from a pending application under Rule 34(2). The Pre-Trial Chamber considers this approach to be highly inappropriate." (para. 52)
5.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"The Pre-Trial Chamber notes that it has addressed only matters raised in the Application which could be considered as being the basis of allegations of bias or the appearance of bias. The Pre-Trial Chamber has not considered submissions irrelevant to these considerations." (para. 67)
6.	**002 IENG Sary** PTC 55 D140/9/5 28 June 2010 **[PUBLIC REDACTED]** *Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying his Request for Appointment of an Additional [REDACTED] Expert to Re-Examine*	"[…] [T]hese issues were not raised in the Second Request submitted to the Co-Investigating Judges, therefore the Co-Investigating Judges were under no obligation to address such concerns in the Second Order." (para. 23) "[…] [T]he Co-lawyers do not further develop this argument, therefore it does not find it necessary to consider it." (para. 26)

	the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam	
7.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphan's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"The Chamber notes that a number of the Defence arguments are either vague or insufficiently substantiated. The Chamber is under no obligation to respond to such arguments […]." (para. 9) "The Chamber notes that the Defence argument is general in nature and that it fails to identify any particular translation errors which may have resulted in serious of egregious violation of his rights. The Chamber further notes that where specific translation issues are identified, they could be raised on a case-by-case basis in the course of the trial. Moreover, it is open to the Defence to request the validation of any translations it considers erroneous." (para.16) "[H]e has failed to properly support the alleged errors and has failed to substantiate his argument. The Pre-Trial Chamber thus cannot consider this issue on the merits." (para. 21)
8.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[T]he brevity and lack of development of the Appellant's jurisdictional challenge of the Impugned Order for charging national crimes prevent it from being able to properly consider the merits of this ground of appeal. […] [A]n appeal against the Closing Order is the opportunity for an accused to challenge the legal findings on jurisdiction made by the OCIJ. The Appellant purports to do this without developing any legal argument and without reference to any law." (para. 179) "[M]erely stating a fact related to [a previous] decision […] is not an acceptable substitute for any kind of reference to, exploration of or determination concerning the views contained in […] the decision […]." (para. 181) "[T]he lack of development by the Appellant of her jurisdictional challenge […] prevents the Chamber from being able to properly consider the merits of this ground of appeal." (para. 182)
9.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he Pre-Trial Chamber is under no obligation to consider those arguments that are plainly without merit or that are not properly pleaded by the Co-Lawyers […]." (Opinion of Judge MARCHI-UHEL, para. 7)
10.	**004 AO An** PTC 08 D185/1/1/2 13 October 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Annulment Motion*	"To sustain such contention, the Defence reiterate substantially the same arguments as those put forward in their Appeal against the Decision on Access and Participation on which the Pre-Trial Chamber could not attain the supermajority of votes necessary for a decision on the Appeal, the default decision being that the ICIJ's Decision stands. In addition to this, the ICIJ rejected a request for the reconsideration of the Decision on Access and Participation. Under these circumstances and considering that the five Judges of the Pre-Trial Chamber would follow their previous opinions on the matter of standing as the underlying issues for the separate opinions expressed remain, the current Appeal would trigger the same result for the Appellant *i.e.*, that the Impugned Decision would stand by application of Internal Rule 77(13). As already noted in the Decision on the Appeal PTC 07, this situation renders the Appeal pointless and creates a potential for endless litigation." (para. 14)

		"Adopting its observations already made in its Decision on Appeal PTC 07, the Pre-Trial Chamber decides to dismiss the Appeal, without consideration of its admissibility under Internal Rules 73, 74 and 21 or its merits." (para. 15)
11.	**003 MEAS MUTH** PTC 22 D128.1/1/11 3 February 2016 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Notification of Charges against MEAS Muth*	"In light of the recission of some charges and the addition of some legal characterisation of facts by the International Co-Investigating Judge during the Appellant's initial appearance, the Notification of Charges which MEAS Muth appealed is no longer an accurate account of the charges against him. The Co-Investigating Judge has informed MEAS Muth of these changes. Therefore, the charges as laid during the Appellant's initial appearance constitute the definitive version of the charges against him at this time. Considering the fact that MEAS Muth has filed a new Appeal against the charges as notified during his initial appearance, the Appeal against the Notification of Charges is therefore moot, and should be dismissed as such, without determining its admissibility or merits." (para. 8)
12.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"[T]he second prong of the Appeal requesting the revocation of 'all previous orders and decisions on the disclosure of Case 004 materials into Case 002, which were based on the errors raised in this [A]ppeal' is impermissibly vague. The Pre-Trial Chamber […] cannot be expected to consider a party's contention if it does not provide precise references to the findings it challenges and arguments to its support. This part of the Appeal is therefore summarily dismissed." (para. 18)
13.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[R]e-litigation of identical challenges to alleged procedural defects in investigation is improper – this must be summarily dismissed." (Opinion of Judges BAIK and BEAUVALLET, para. 417) "[T]he International Judges summarily dismiss the National Co-Prosecutor's Appeal in its entirety for failure to demonstrate any articulable or substantiated errors in the impugned Closing Order (Indictment)." (Opinion of Judges BAIK and BEAUVALLET, para. 648) "[T]he arguments of a party, which do not have the potential to cause the impugned decision to be reversed or revised may be dismissed immediately and need not be considered on the merits. The National Co-Prosecutor makes submissions on the overarching historical background or context, puts forth alternative readings of the evidence and merely asserts her understanding or interpretations of senior leaders or those most responsible under personal jurisdiction. The International Judges cannot find any possibility in the submissions to cause the impugned decision to be reversed or revised and, accordingly, summarily dismiss the Appeal in its entirety." (Opinion of Judges BAIK and BEAUVALLET, para. 649) "Notwithstanding this summary dismissal, as the National Co-Prosecutor raises two issues […], the International Judges exercise their inherent jurisdiction to address these matters in the interests of justice." (Opinion of Judges BAIK and BEAUVALLET, para. 650) "[T]he Pre-Trial Chamber previously held that arguments without the potential to reverse or revise the impugned decision may be dismissed immediately. It is incumbent upon a party to provide precise references to transcript pages or paragraphs in the decision being challenged; the International Judges recall that the Pre-Trial Chamber 'will not give detailed consideration to submissions which are obscure, contradictory, or vague, or if they suffer from other formal and obvious insufficiencies.'" (Opinion of Judges BAIK and BEAUVALLET, para. 567)
14.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order*	"Notwithstanding the Co-Lawyers' failure to properly raise the errors, under Internal Rule 21, the International Judges find that it safeguards the interests of victims to exceptionally consider Annex D as the Central Zone falls squarely within the territorial scope of this case making it *prima facie* relevant and erroneous exclusions may have occurred." (Opinion of Judges BAIK and BEAUVALLET, para. 77)

	on the Admissibility of Civil Party Applicants	
15.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"It must be recalled that conclusory allegations which merely express disagreement with the factual conclusions reached or which vaguely assert an error in an unsubstantiated manner may be summarily dismissed by the Chamber, since such allegations do not discharge the burden of demonstrating specific errors of fact or law on appeal. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony." (Opinion of Judges BAIK and BEAUVALLET, para. 234) "[T]he arguments of a party that do not have the potential to cause the impugned decision to be reversed or revised may be dismissed without analysis of their substance. The International Judges further reaffirm that they will not consider in detail allegations which are obscure, vague or suffer from other formal and obvious insufficiencies." (Opinion of Judges BAIK and BEAUVALLET, para. 490) "[T]he National Co-Prosecutor's Appeal fails to clearly identify and substantiate any reviewable errors in the International Co-Investigating Judge's Indictment. The International Judges thus find that the present submissions do not have a capability to cause the reversal or revision of the impugned decision and summarily dismiss the Appeal in its entirety." (Opinion of Judges BAIK and BEAUVALLET, para. 491) "Notwithstanding the summary dismissal, the International Judges reaffirm the discretionary power to, *inter alia*, address issues of general significance for the ECCC's jurisprudence and legacy. Accordingly, the International Judges find it appropriate to clarify two issues raised by the National Co-Prosecutor […]." (Opinion of Judges BAIK and BEAUVALLET, para. 492) "For the foregoing reasons, the International Judges summarily dismiss the National Co-Prosecutor's Appeal as it failed to demonstrate any articulable or substantiated errors in the Indictment." (Opinion of Judges BAIK and BEAUVALLET, para. 517)

ii. Res Judicata *and Relitigation*

For jurisprudence concerning ***Reconsideration of Decisions***, see VII.C.11. Remedies

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"Since the Co-Lawyers have presented no new arguments in this regard, the Pre-Trial Chamber considers the Application for Annulment, insofar as it concerns the Initial Appearance and Adversarial Hearing, has already been decided in the Appeal against Provisional Detention. The Application for Annulment, insofar as it covers these matters, is therefore inadmissible." (para. 30)
2.	**002 NUON Chea** PTC 06 D55/I/13 25 February 2009 *Decision on Civil Party Co-Lawyers' Joint Request for Reconsideration*	"The Pre-Trial Chamber notes that the Co-Lawyers […] are not asking the Pre-Trial Chamber to reconsider the conclusions […] but rather seek to modify a legal reasoning. The Co-Lawyers do not contend that the decision itself is erroneous or unjust." (para. 10) "The jurisprudence of international courts on reconsideration is solely dealing with reconsidering the outcome of a decision. The background for reconsideration of the outcome of a decision is the principle of *res judicata* which can lead to the execution of an erroneous or unjust decision where there is no right of further appeal or review. The reasoning of a decision is not subject to *res judicata* as the reasoning itself cannot be executed or enforced." (para. 11)
3.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphan's Appeal*	"The Pre-Trial Chamber notes that in dealing with the admissibility of the Appeal against the Translation Order, it examined whether the Translation Order violated any interests protected by Internal Rule 21 in order to identify whether the Pre-Trial Chamber would be compelled to declare the appeal admissible under the Rule. The Pre-Trial Chamber therefore did not give any final decision on the Translation Order itself which would be subject to *res judicata*. It merely concluded that the appeal is inadmissible and the Translation Order in any event is not subject to appeal even when applying

	against the Order on the Request for Annulment for Abuse of Process	Internal Rule 21. This decision of the Pre-Trial Chamber therefore does not affect the admissibility of the current Application for Annulment." (para. 13) "The Pre-Trial Chamber observes that this finding was made specifically regarding translation rights during the pre-trial stage of the proceedings. Whatever was raised from the Co-Lawyers of the Charged Person regarding translation rights during other stages of the proceedings cannot lead to other findings, as the requirements during the pre-trial phase are of a different nature specifically regarding translation rights." (para. 22)
4.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained through Torture*	"The Pre-Trial Chamber notes that the correct procedure for the parties to challenge the nature of the answer given in an order is an appeal against it and not a subsequent request reiterating the initial request which was addressed in the order." (para. 20)
5.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[I]n the civil law system, the extinguishment of a criminal cause of action due to *res judicata*, a concept closely related to the principle of *ne bis in idem*, shall normally lead to the issuance of a dismissal order by the investigating judge. By sending Ieng Sary to trial, the Co-Investigating Judges implicitly rejected his request to ascertain the extinguishment of the criminal action against him, thus confirming the jurisdiction of the ECCC to try him. Concluding otherwise would deprive Ieng Sary from exercising his right of appeal on a jurisdictional issue that was properly raised before the Co-Investigating Judges but upon which the latter failed to make a judicial determination." (para. 62) "[T]he Pre-Trial Chamber has, to a limited extent, previously examined the issues of amnesty and pardon [...]. [...] It thus made a preliminary determination of these issues [...], with the limited information available at the time, on the basis of the initial charges and by using a substantially higher threshold of review [...]. In addition, [...] the Pre-Trial Chamber made it clear that Ieng Sary would not be prevented to raising the issues at a later stage of the proceedings. In these circumstances, it cannot be considered, as argued by the Co-Prosecutors, that a final determination as to whether the Royal Decree would bar prosecution of Ieng Sary before the ECCC has previously been made by the Pre-Trial Chamber. As the matter has not reached finality, Ieng Sary is not barred by *res judicata* from raising the issues of amnesty and pardon before the Pre-Trial Chamber." (para. 67)
6.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"The facts forming the foundation of the Heder and Boyle Request are repetitious […]. Absent of new facts, the Pre-Trial Chamber will not consider this request further." (para. 18)
7.	**004 AO An** PTC 07 D190/1/2 30 September 2014	"Although the present Appeal challenges a decision by the ICIJ denying three specific requests for investigative actions, the argumentation set forth thereto concerns the Appellant's 'right' to file requests for investigation, irrespective of their content. […] The Pre-Trial Chamber notes that these arguments are of a general nature and purely speculative as there is no assertion being made that any

	Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions	of the Three Requests for Investigative Actions concerned by the present Appeal seeks interviews of witnesses for whom there is concrete reason to fear that they may become unavailable or otherwise justifying a pressing need to undertake the requested investigation. The Appellant does not otherwise argue that the ICIJ's refusal to decide on the Three Requests for Investigative Actions, at this stage, concretely impairs his fair trial rights. The Pre-Trial Chamber further notes that the Appeal does not bring any new fact or circumstances but rather reiterates arguments that were already put forward in the Participation Appeal. Therefore, the Pre-Trial Chamber finds that the Appeal seeks to bring before the Pre-Trial Chamber the same issue, in fact and law, that it has already examined in its Appeal Considerations (*i.e.*, the Appellant's right to participate in the judicial investigation) and upon which it could not attain a supermajority of four votes to issue a decision." (para. 19) "Seeking guidance in the procedural rules established at the international level, in accordance with Article 12(1) of the Agreement between the United Nations and the government of Cambodia for the establishment of the ECCC, Articles 23*new* and 33*new* of the ECCC Law and Internal Rule 2, the Pre-Trial Chamber notes, by analogy, that it is common practice at other tribunals of international character to dismiss motions or applications on the basis that they raise issues that have already been determined by a final decision binding upon the concerned parties (and are as such *res judicata*), unless presented in the context of requests for reconsideration. Therefore, the Pre-Trial Chamber holds that it may dismiss an appeal or application, without considering its formal admissibility under Internal Rules 73, 74 and/or 21 or its merits, when it raises an issue that is substantially the same (in fact and law) as a matter already examined by the Chamber in respect of the same party and upon which it could not reach a majority of four votes to issue a decision." (para. 20)
8.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[R]e-litigation of identical challenges to alleged procedural defects in investigation is improper – this must be summarily dismissed." (Opinion of Judges BAIK and BEAUVALLET, para. 417)

iii. *Appeal Moot*

1.	**003 MEAS Muth** PTC 08 D56/11/6/2 27 septembre 2013 *Decision on Appeal against the Office of the Co-Investigating Judges' Constructive Denial of MEAS Muth's Appeal against Determination of Claim of Indigence and Decision on Request for Remuneration of Counsel under the ECCC's Legal Assistance Scheme*	"[A]s the Co-Investigating Judges […] determined the Indigence Appeal and, furthermore, since the Decision on the Indigence Appeal addresses all matters raised in the Indigence Appeal, determining such in favour of the Applicant, it is abundantly clear that the PTC Appeal is, in all matters raised, now moot." (para. 15) "Further, the Pre-Trial Chamber, having found the PTC Appeal moot, does not see it necessary or appropriate to engage in an evaluation concerning the admissibility of the PTC Appeal." (para. 16)
2.	**002 IENG Sary** PTC 56 D367/1/5 7 June 2010 *Decision on Appeal against the Co-Investigating Juges'*	"Internal Rule 38 does not foresee a right to appeal a warning prescribed prior to imposing sanctions and […] procedural defects potentially attaching to such warnings can only be challenged as part of an appeal against a subsequent sanction imposed pursuant to Internal Rule 38. […] [T]he Appeal is premature, in so far as no sanction has been imposed against counsel at this stage and may even become moot if no sanction is imposed in the future." (para. 11)

	Order issuing Warnings under Internal Rule 38	
3.	**002 IENG Sary** PTC 70 D381/1/2 15 September 2010 *Decision on IENG Sary's Appeal against the Co-Investigating Judges' Constructive Denial of IENG Sary's Two Applications to Seise the Pre-Trial Chamber with Requests for Annulment*	"The Pre-Trial Chamber finds the Appeal inadmissible because the subject matter of the Appeal is moot in light of the Order." (para. 2)
4.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"The modifications made to the Impugned Order are so fundamental that they affect its very substance. [...] These modifications could not be made by way of a corrigendum, especially where an appeal has been lodged against the order and raises some of the very defects the Modified Order intends to cure. Therefore, the Modified Order has to be seen as a totally different order from the Impugned Order, which has been removed from the case file and replaced by a new order. The consequence is that the Impugned Order no longer exists." (Opinion of Judges DOWNING and LAHUIS, para. 14) "Therefore, we consider that the Appeal is moot, as the Impugned Order no longer exists." (Opinion of Judges DOWNING and LAHUIS, para. 15)
5.	**003 MEAS Muth** PTC 11 D56/19/38 17 July 2014 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyer*	"The Pre-Trial Chamber considers that the matter raised in the Request for Clarification, which was filed during the deliberation stage of the Appeal, is resolved by the disposition of the Appeal and does not require separate examination at this stage. Any outstanding issue as to the Co-Lawyer's standing to file submissions on behalf of the Appellant before the issuance of the present decision will be addressed through an examination of the Appeal on Filings." (para. 20)
6.	**003 MEAS Muth** PTC 12 D103/4 20 August 2014 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Continuing Refusal to Place MEAS Muth's Submissions on the Case File and to Act upon them*	"The Pre-Trial Chamber notes that its decision […] has removed the reason for the ICIJ's initial refusal […]. The ICIJ acknowledged that the submissions are now part of the Case File […] thereby resolving the issue […]. The decision that the Appeal sought to challenge […] are therefore no longer in force. In these circumstances, the Appeal, as formulated, is moot." (para. 19)

7.	**003 MEAS Muth** PTC 10/1 D87/2/3 09 September 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of MEAS Muth's Request to Access the Case File and to Participate in the Judicial Investigation*	"Considering the grounds on which the Appeal is filed and the relief requested and noting, as described in the procedural history above, that the ICIJ is in the process of actively considering the Request, the Pre-Trial Chamber finds that the argument that the ICIJ has *constructively refused* the Request fails. In these circumstances, the Appeal, as formulated, is moot." (para. 11)
8.	**003 MEAS MUTH** PTC 16 D122/1/2 17 June 2015 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Refusing Access to the Case File*	"[T]he International Co-Investigating Judge charged the Appellant *in absentia* for a number of crimes alleged in the Introductory Submission. The International Co-Investigating Judge held that '[w]ith the issuance of its decision, MEAS Muth's status shall change from 'suspect' to 'charged person' and, as such, he will be able to exercise all the rights to which charged persons are entitled under the Internal Rules', including 'the right to access the case file, to take part in the judicial investigation, to conform witnesses or to move the [Co-Investigating Judges] to seise the [Pre-Trial Chamber] with requests for investigating action'. As such, the Appellant has effectively gained the relief he was seeking to the Pre-Trial Chamber, which was to 'order the International Co-Investigating Judge to allow the Defence to access the Case File and participate in the judicial investigation'. The Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits." (para. 4)
9.	**003 MEAS Muth** PTC 25 D120/2/1/4 9 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"In light of the fact that Co-Investigating Judge Harmon issued the Decision against MEAS Muth's Motion to Strike the ICP's Supplementary Submission without the necessary authority [due to Judge Bohlander's appointment as International Co-Investigating Judge by His Majesty King Norodom Sihamoni of Cambodia], and that Co-Investigating Judge Bohlander Re-Issued a Decision on MEAS Muth's Motion to Strike the ICP's Supplementary Submission, the Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits." (para. 11)
10.	**003 MEAS MUTH** PTC 22 D128.1/1/11 3 February 2016 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Notification of Charges against MEAS Muth*	"In light of the recission of some charges and the addition of some legal characterisation of facts by the International Co-Investigating Judge during the Appellant's initial appearance, the Notification of Charges which MEAS Muth appealed is no longer an accurate account of the charges against him. The Co-Investigating Judge has informed MEAS Muth of these changes. Therefore, the charges as laid during the Appellant's initial appearance constitute the definitive version of the charges against him at this time. Considering the fact that MEAS Muth has filed a new Appeal against the charges as notified during his initial appearance, the Appeal against the Notification of Charges is therefore moot, and should be dismissed as such, without determining its admissibility or merits." (para. 8)
11.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The International Judges recall that despite the Co-Investigating Judges' illegal course of action to evade the disagreement settlement procedure and issue two Closing Orders simultaneously, the Indictment is valid as it is in conformity with the ECCC legal framework. On the contrary, the International Judges reaffirm that, for reasons stated previously, the issuance of the Dismissal has been deemed to be an attempt to defeat the default position enshrined in the ECCC legal framework and is thus *ultra vires*. Accordingly, the International Judges declare the International Co-Prosecutor's Appeal moot as it concerns the Dismissal which is null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 510)

		"The International Judges reaffirm that while the International Co-Investigating Judge's Indictment stands as it remains in conformity with the ECCC legal framework, the National Co-Investigating Judge's Dismissal is *ultra vires* and void. In light of the foregoing, the International Judges declare that the Co-Lawyers for Civil Parties' Appeal against the Dismissal is moot." (Opinion of Judges BAIK and BEAUVALLET, para. 515) "With respect to the International Co-Prosecutor's Appeal and the Civil Parties' Appeal, each addressing the Dismissal, the International Judges declare these Appeals moot given that the Dismissal is *ultra vires* and, thus, null and void, deprived of legal effect." (Opinion of Judges BAIK and BEAUVALLET, para. 517)

iv. *Matters Raised for the First Time on Appeal*

1.	**002 NUON Chea/Civil Parties** PTC 01 C11/53 20 March 2008 *Decision on Civil Party Participation in Provisional Detention Appeals*	"The effect of [the] participation of the Civil Parties in an appeal against a provisional detention order is that the Charged Person is confronted with matters which may not have been previously submitted at the adversarial hearing before the Co-Investigating Judges. This […] could cause an imbalance in the procedures and the right to a fair trial […]." (para. 42) "The Internal Rules provide the Pre-Trial Chamber with the means of ensuring that any apparent imbalance or unfairness can be addressed. A Charged Person is permitted to respond to submissions made by any Civil Parties. It is provided by Internal Rule 77(4) that all parties, and this will include the Civil Parties, must file written submissions with the Greffier of the Pre-Trial Chamber before hearing on the appeal. At all times the Pre-Trial Chamber can allow the Charged Person to provide written or oral submissions in response where the interests of the Charged Person are involved, even when new issues are raised during the hearing. In this way, the interests of the Charged Person can be protected without having a prescriptive procedure adopted which can potentially cause problems, […]. The Pre-Trial Chamber is additionally guided by the provisions of Internal Rule 21(1)(a) […]." (para. 43) "[T]he right of the Charged Person to a fair trial is therefore sufficiently guaranteed in the Internal Rules and balanced with the rights of Civil Parties to written and oral participation […]." (para. 44) "In the instant case, the Charged Person was confronted with the fact that the Civil Parties could make oral submissions after the Co-Lawyers made their initial submissions during the hearing. Prior to the hearing, the Civil Parties did not file written submissions. […] The Pre-Trial Chamber requested the lawyers of the Civil Parties to deliver copies of the written versions of their oral submissions. […] The Pre-Trial Chamber decided to continue the hearing of the appeal with the participation of the Civil Parties with agreement from all parties. The contents of the submissions of the Civil Parties disclosed their awareness of their duty to only address relevant issues regarding the interests of the Civil Parties in the issues dealt with. […] The rights of the Charged Person were preserved by permitting him to make further written submissions addressing the ability of the Civil Parties to be heard [and] to respond to the submissions of the Civil Parties during his initial oral submissions. The rights of the Charged Person to a fair hearing were thus balanced and protected and not violated […]." (para. 46)
2.	**002 IENG Thirith** PTC 16 C20/5/18 11 May 2009 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"[Internal Rule 75(4)] is part of due process principles to be applied in appellate procedures as it is necessary to ensure that other parties are able to respond on the issues raised in an appeal. Considering that no reasoning for the request was set out in the Appeal Brief and the request was made with only a reference to a previously-made request on which the Pre-Trial Chamber had already decided, the Pre-Trial Chamber finds that the Oral Request for Release is inadmissible. In reaching this conclusion, the Pre-Trial Chamber has taken into consideration the fact that this oral request was not advised to the Parties prior to the hearing and that no reason was given to explain why the issue was raised at the latest possible instance." (para. 72)
3.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU*	"As to the alleged irregularity of the procedure, the Pre-Trial Chamber recalls: […] h. […] the Pre-Trial Chamber noted that Internal Rule 75(4) barred the Defence from raising additional matters of fact or law which are not already set out in the written submission on appeal." (para. 28)

	Samphan's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order	
4.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"The new assertions amount to a post factum attempt to justify and ground the request made to the CIJs. These are not matters the Pre-Trial Chamber can or will take into account. These assertions cannot be considered on appeal when an appellate chamber is considering the proper exercise of discretion in the making of the original decision. It is noted that the Pre-Trial Chamber cannot substitute its discretion for that of the CIJs." (para. 24)
5.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber notes that no appeal was lodged to this effect and without such being lodged, and a determination being made as to its admissibility under the Internal Rules, there is no right to present such an appeal, orally, as a response to the Appeal." (para. 16)
6.	**002 KHIEU Samphân** PTC 63 D370/2/11 7 July 2010 *Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphan's Real Activity'*	"[T]here have been no requests to the Co-Investigating Judges under Internal Rules 55(10) or 58(6) to place some or all of the documents […]. These are new requests set out in the prayer for relief on appeal in respect of which the Pre-Trial Chamber has no jurisdiction. They are inadmissible under Internal Rule 74(3)(b)." (para. 11)
7.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the*	"[F]iling an appeal from the denial of a request pursuant to Rule 55(10) is not an opportunity to supplement an original request for the Pre-Trial Chamber to then consider. In previous decisions, this Chamber has not 'reconsider[ed] [a request] on the merits' when presented with new arguments on appeal. However, in the unique circumstances of this appeal, […] it shall, in this case, consider the additional submissions of all parties in determining whether to grant the Appeal." (para. 75) "A submission on appeal is not an opportunity to make new arguments or refine the original request." (para. 84)

	Charged Persons' Knowledge of the Crimes	

9. Effects of Appeals

For jurisprudence concerning the ***Stay of Proceedings for Abuse of Process***, see II.C. Abuse of Process

i. *Lack of Suspensive Effect of Appeals*

1.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphan's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"As an appeal does not stay the proceedings, an order shall be considered valid and effective until decision is made on appeal." (para. 29)
2.	**003 MEAS MUTH** PTC 11 D56/19/14 11 February 2014 *Decision on Co-Lawyer's Request to Stay the Order for Assignment of Provisional Counsel to MEAS Muth*	"The Pre-Trial Chamber recalls that Internal Rule 77(11) provides that '[p]ending the outcome of proceedings before the [Pre-Trial] Chamber under this Rule and unless the Chamber orders otherwise the Co-Investigating Judges may continue their investigation, where applicable'. The Cambodian Code of Criminal Procedure contains a similar provision in its Article 275. A similar rule also applies at other international and internationalised tribunals. Therefore, the Pre-Trial Chamber finds that orders of the Co-Investigating Judges are immediately enforceable unless otherwise ordered by the Pre-Trial Chamber, as more amply discussed below, or a statutory provision explicitly provides for an automatic stay. The filing of a request for stay is no exception to this rule. Concluding otherwise would allow the parties to halt proceedings on their own motion, against the explicit provision of Internal Rule 77(11) and the interests of justice more generally." (para. 14)
3.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"Internal Rule 7(11) provides: 'Pending the outcome of the proceedings before the Chamber under this Rule, and unless the Chamber orders otherwise, the Co-Investigating Judges may continue their investigation, where applicable.' Article 275 of the Cambodian Code of Criminal Procedure provides to the same effect, as do the rules of procedure of international criminal tribunals. Accordingly, an appeal does not have a suspensive effect on ongoing investigation proceedings, unless the Chamber decides otherwise or a specific provision explicitly provides." (Opinion of Judges BEAUVALLET and BWANA, para. 7)

ii. *Stay Ordered by the Pre-Trial Chamber*

1.	**003 Special PTC 01** Doc. No. 3 15 December 2011 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and*	"The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […] [.]" (para. 8) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating

	for Measures pertaining to the Effective Representation of Suspects in Case 003	Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
2.	**004 Special PTC 01** Doc. No. 3 20 February 2012 **[PUBLIC REDACTED]** *Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004*	"The Request does not address whether it is expressly or impliedly within the jurisdiction of the Pre-Trial Chamber." (para. 5) "Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77[*bis*] of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […][.]" (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 004, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 004 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
3.	**003 Special PTC 01** Doc. No. 3 15 December 2011 *Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"The Request does not address whether it is expressly or impliedly within the jurisdiction of the Pre-Trial Chamber." (para. 5) "Pursuant to the Internal Rules, the expressed jurisdiction of the Pre-Trial Chamber includes: settlement of Disagreements between the Co-Prosecutors, settlement of Disagreements between the Co-Investigating Judges, appeals against decisions of the Co-Investigating Judges, as provided in Rule 74, applications to annul investigative action as provided in Rule 76, and the appeals provided for in Rules 11(5) and (6), 35(6), 38(3) and 77*bis* of the Internal Rules. The DSS Request does not refer or fall within any of these provisions." (para. 6) "The Pre-Trial Chamber has previously invoked its inherent jurisdiction to admit appeals related to requests for stay of proceedings and, where special circumstances warranted so, it also reviewed such requests afresh, when issues of fairness of the proceedings have been put before it. An incidental exercise of inherent jurisdiction is in conformity with the practice before other international or internationalized Tribunals […]." (para. 8) "The Pre-Trial Chamber could invoke its inherent jurisdiction on a case by case basis provided an appeal or a related request is not only related to fundamental issues but also that it has been properly raised." (para. 9) "As it is the Co-Investigating Judges who are those seized with and in charge of the pending criminal investigations in case 003, the matters of legal representation rest directly with them and are therefore out of Pre-Trial Chamber's jurisdiction. The fact that some of the orders made by the Co-Investigating Judges in case 003 have been appealed before the Pre-Trial Chamber does not change this finding." (para. 13)
4.	**003 MEAS MUTH** PTC 11 D56/19/14 11 February 2014	"The Pre-Trial Chamber recalls that Internal Rule 77(11) provides that '[p]ending the outcome of proceedings before the [Pre-Trial] Chamber under this Rule and unless the Chamber orders otherwise the Co-Investigating Judges may continue their investigation, where applicable'. The Cambodian Code of Criminal Procedure contains a similar provision in its Article 275. A similar rule also applies at other international and internationalised tribunals. Therefore, the Pre-Trial Chamber finds that orders of the Co-Investigating Judges are immediately enforceable unless otherwise ordered by the Pre-Trial

	Decision on Co-Lawyer's Request to Stay the Order for Assignment of Provisional Counsel to MEAS Muth	Chamber, as more amply discussed below, or a statutory provision explicitly provides for an automatic stay. The filing of a request for stay is no exception to this rule. Concluding otherwise would allow the parties to halt proceedings on their own motion, against the explicit provision of Internal Rule 77(11) and the interests of justice more generally." (para. 14) "Absent any statutory provision in the ECCC legal compendium or Cambodian Law expressly granting the Pre-Trial Chamber jurisdiction to stay the execution of an order issued by the Co-Investigating Judges pending resolution of appellate proceedings, the Co-Lawyers ask the Pre-Trial Chamber to use its 'inherent jurisdiction' to grant the Request for Stay on the basis that 'it is intrinsically related to the forthcoming Appeal of the Impugned Decision'. The Pre-Trial Chamber previously found that, in instances where its statutory provisions do not expressly or by necessary implication contemplate its power to pronounce on a matter, it possesses an inherent jurisdiction 'to determine incidental issues which arise as a direct consequence of the procedures of which [it is] seized by reason of the matter falling under [its] primary jurisdiction'. The inherent jurisdiction is 'ancillary or incidental to the primary jurisdiction and its rendered necessary by the imperative need to ensure a good and fair administration of justice.' […] Concretely, the Pre-Trial Chamber must examine if the immediate execution of the Order would render MEAS Muth's right to appeal the Impugned Decision, if any, ineffective or would otherwise affect the fairness of the appellate process." (para. 16) "Although the assignment of provisional counsel may, for a certain period of time, limit MEAS Muth's fundamental right to be represented by counsel of his own choosing, the International Co-Investigating Judge found that this measure is justified by the need to avoid that MEAS Muth be unrepresented […]. This decision falls within the purview of the Co-Investigating Judges' jurisdiction and the Pre-Trial Chamber has no authority to stay its execution in the present context unless it is demonstrated that a right of appeal against the Impugned Decision would become ineffective." (para. 18)
5.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance*	"[T]he Pre-Trial Chamber advises that it has exceptionally decided to consider the Request for Stay, although only filed in English, in order to avoid a state of uncertainty in respect of the Summons […] that had to be executed on the day […]." (para. 9) "[A]bsent any provision in the ECCC legal compendium or Cambodian law, [the Pre-Trial Chamber] may, using its 'inherent jurisdiction', stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve fairness of the appellate process. […] [F]or a request to stay to be granted, it must be established that implementation of the act or order that the applicant seeks to stay 'would have a direct impact on the appellate proceedings of which it is seized.' Furthermore, for a request for stay to be granted, it must meet the following three conditions: 'a. there is a good cause for the requested suspension; b. the duration of the requested suspension is reasonable; and c. the appeal itself has reasonable prospects of success on its merits.'" (para. 10) "[W]here it is not seised of any appeal or application challenging the validity of the Summons, it is doub[t]ful that the Pre-Trial Chamber would have jurisdiction to stay the execution of the Summons." (para. 11) "[G]iven the interests at stake and in order to avoid […] prejudice, the Pre-Trial Chamber has examined whether the announced intention of the Co-Lawyers to challenge the validity of the Summons […] through an application for annulment requires that it stays the execution of the Summons. The Pre-Trial Chamber finds that a stay, should [it] have jurisdiction to order it, would not be warranted in the present circumstances, for two main reasons." (para. 12) "Firstly, the Co-Lawyers have not established that IM Chaem would suffer any 'irremediable' prejudice if she appears before the International Co-Investigating Judge for the purpose of being notified of the charges against her and the Summons is subsequently annulled. There is no obligation for IM Chaem to make any statement during the initial appearance and should the Summons and/or the decision on charging be subsequently annulled, they will be void and without any effect, as if they never existed. IM Chaem will then be placed in the same situation as she was before." (para. 13) "Secondly, […] the ground raised […] for challenging the validity of the Summons, *i.e.*, that the International Co-Investigating Judge does not have the power to issue a summons alone, is, *prima facie*, without merits. The Co-Investigating Judges have confirmed that they have registered a disagreement in respect of the Summons and that the 30 day time period to bring it before the Pre-Trial Chamber has elapsed. In these circumstances, it is clear from the Agreement between the United Nations and the Royal Government of Cambodia for the establishment of the ECCC, the ECCC Law and the Internal Rules that the International Co-Investigating Judge could validly issue the Summons alone.

		Furthermore, the Pre-Trial Chamber previously confirmed that one Co-Prosecutor or Investigating Judge can act alone when a disagreement has been registered within the Office of the Co-Prosecutors or the Co-Investigating Judges, as appropriate, and the period for bringing a disagreement before the Pre-Trial Chamber has elapsed. It would be improper for the Pre-Trial Chamber to consider staying the execution of a Summons on the basis of an eventual application that will purportedly challenge a rule that is expressed in clear terms in the ECCC legal compendium and the Pre-Trial Chamber's jurisprudence." (para. 14)
6.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant*	"Internal Rule 7(11) provides: 'Pending the outcome of the proceedings before the Chamber under this Rule, and unless the Chamber orders otherwise, the Co-Investigating Judges may continue their investigation, where applicable.' Article 275 of the Cambodian Code of Criminal Procedure provides to the same effect, as do the rules of procedure of international criminal tribunals. Accordingly, an appeal does not have a suspensive effect on ongoing investigation proceedings, unless the Chamber decides otherwise or a specific provision explicitly provides." (Opinion of Judges BEAUVALLET and BWANA, para. 7) "The Pre-Trial Chamber previously held in the absence of a relevant provision in the Internal Rules, the ECCC Law and Cambodian law, that it may exercise its 'inherent jurisdiction' to order suspension of the execution of an order issued by the Co-Investigating Judge(s) so as to ensure that a right of appeal does not become meaningless or to preserve the fairness of the appellate process. Moreover, the Pre-Trial Chamber emphasised that for an appellant's request for a stay of execution of an impugned act or order to succeed, it must be established that execution of such an act or order 'would have a direct impact on the appellate proceedings of which it is seised', adding that the following three conditions must also be met: 'a. there is good cause for the requested suspension; b. the duration of the requested suspension is reasonable; and c. the appeal itself has reasonable prospects of success on its merits.' The Pre-Trial Chamber held that it has no jurisdiction to order suspension of the execution of an order of the Co-Investigating Judges if the first condition is not satisfied. Accordingly, the Pre-Trial Chamber found that a request for a stay of execution of an order which has no impact on the appellate proceedings of which it was seised does not fall within the purview of its jurisdiction, and is, therefore, inadmissible.' (Opinion of Judges BEAUVALLET and BWANA, para. 8) "The Pre-Trial Chamber previously held that the fundamental principles stated in [Internal Rule 21], which reflect the fair trial requirements that the ECCC is duty-bound to apply pursuant to Article 13(1) of the Agreement between the United Nations and Royal Government of Cambodia, Article 35 new of the ECC Law and Article 14(3) of the International Covenant on Civil and Political Rights may warrant that it adopt a liberal interpretation of the right to appeal to ensure that the proceedings are fair and adversarial. In the rare instances where the particular facts of a case raised issues of fundamental rights or serious issues of procedural fairness, the Pre-Trial Chamber admitted appeals under Internal Rule 21 does not open an automatic avenue for appeal, even where an appeal raises fair trial issues. In exceptional cases, for the Pre-Trial Chamber to entertain an appeal under Rule 21, the Appellant must demonstrate that the situation at issue does not fall within the applicable rules and that the particular circumstances of the case require the Chamber's intervention to avoid *irremediable* damage to the fairness of the investigation proceedings or to the Appellant's fundamental rights." (Opinion of Judges BEAUVALLET and BWANA, para. 9) "We note that there is a fundamental distinction between the inherent jurisdiction of the ECCC and its own jurisdiction, as an appellate chamber sitting within the ECCC judicial system. Were the Pre-Trial Chamber to consider, at first instance, any incidental matter arising from the jurisdiction of the ECCC, […] it would then be usurping the authority of the Co-Investigating Judges and perhaps that of the other Chambers of the ECCC. Accordingly, for a motion brought at first instance to fall within the ambit of the Pre-Trial Chamber's inherent jurisdiction, it is required that it relates directly to appellate proceedings of which the Pre-Trial Chamber is seised." (Opinion of Judges BEAUVALLET and BWANA, para. 11) "Accordingly, we would find a request for a stay of execution admissible only where it may affect the fairness of appellate proceedings brought before it or imperil an acknowledged right to appeal." (Opinion of Judges BEAUVALLET and BWANA, para. 13) "In the present case, the Defence is not arguing that the execution of the Arrest Warrant could affect the appellate proceedings before the Pre-Trial Chamber. Instead, it contends that if the Arrest Warrant is executed before the Chamber determines the lawfulness of the Charging Decision, MEAS Muth could possibly be detained on the basis of a decision that is invalid. Insofar as the Request for a Stay of Execution does not concern the issue of charging, but rather of provisional detention – a matter which

		the Pre-Trial Chamber is not seised – we consider that it does not fall within the purview of the Pre-Trial Chamber's inherent jurisdiction." (Opinion of Judges BEAUVALLET and BWANA, para. 14) "As to admissibility of the Appeal under Internal 21, we note that this rule cannot be invoked to render admissible a request for which an established regime exists, but which does not satisfy the relevant admissibility requirement. In this instance, the rules governing admissibility of a request for a stay of execution have been clearly set out by the Pre-Trial Chamber, such that Internal Rule 21 does not provide an alternative remedy." (Opinion of Judges BEAUVALLET and BWANA, para. 15) "As its name [in French: mandat d'amener] indicates, the purpose of the Arrest Warrant is to bring MEAS Muth before the International Co-Investigating Judge for a hearing which will examine the possibility of his provisional detention pursuant to Internal Rule 63. Accordingly, at the hearing which will be adversarial, MEAS Muth will be at liberty to make any submission he sees fit before a decision is taken on his provisional detention. [T]herefore, the principles stated in Internal Rule 21 (2) and, more generally, the rights of the Defence, are fully safeguarded. Such being the case, we do not consider that execution of the Arrest Warrant before adjudication of the Appeal against the Decision to Charge MEAS Muth would impair the fairness of the proceedings or infringe MEAS Muth's right to liberty." (Opinion of Judges BEAUVALLET and BWANA, para. 16) "We consider that the Request for a Stay of Execution does not fall within the Pre-Trial Chamber jurisdiction. It is therefore inadmissible." (Opinion of Judges BEAUVALLET and BWANA, para. 17)
7.	**004 YIM Tith** PTC 46 D361/4/1/3 19 July 2017 *Decision on YIM Tith's Request for Suspension of D361/4 Deadline Pending Resolution of Appeal Proceedings*	"The Pre-Trial Chamber recalls that it may use its inherent jurisdiction to stay an order issued by the Co-Investigating Judge(s) so as to avoid that a right to appeal becomes ineffective or to preserve the fairness of the appellate process. The Pre-Trial Chamber, however, will not entertain requests to stay an order based on prospective applications or appeals that Co-Lawyers intend to bring before it and will not consider their merits. In the present case, only a notice of appeal has been filed before the Greffier of the Office of the Co-Investigating Judges. The Pre-Trial Chamber is thus not actually seised of an appeal and can neither exercise its appellate jurisdiction nor assess the Suspension Request on the basis of reasons set forth in the prospective appeal." (para. 4) "Besides, while the Pre-Trial Chamber acknowledges the existence of concurrent deadlines, it finds that the Applicant has not shown any exceptional circumstances justifying to suspend the Impugned Decision before submitting their appeal. In particular, it is not established that the compliance with the deadline set for filing investigative action requests would defeat the purpose of the eventual appeal or create an irreversible situation, such as the implementation of the Impugned Decision would have a direct impact on the effectiveness or fairness of the appellate proceedings." (para. 5)

10. Scope and Standard of Review of Appeals (General)

For jurisprudence concerning the ***Standard of Review of Requests for Stay on the basis of Abuse of Process***, see II.C.4. Standard of Review and merits of Applications for a Stay of Proceedings for Abuse of Process

For jurisprudence concerning the ***Standard of Review of Appeals against Administrative Decisions***, see III.E.3.ii. Scope and Standard of Review

For jurisprudence concerning the ***Standard of Review of Requests for Investigative Action***, see IV.C.1.ii. Standard of Review of Decisions and Requests for Investigative Action

For jurisprudence concerning the ***Standard of Review of Requests for Placement of Evidence on Case File***, see IV.C.2.ii. Request to Place Evidence on Case File

For jurisprudence concerning the ***Standard of Review of Expert Requests***, see IV.C.3.ii. Standard of Review and Merits

For jurisprudence concerning the ***Standard of Review of Appeals against Closing Orders***, see IV.D.8.ii. Scope and Standard of Review

For jurisprudence concerning the ***Standard of Review of Appeals concerning Provisional Detention and Bail***, see V.B.3.ii.b. Scope and Standard of Review (Appeals against Order on Provisional Detention), V.B.3.iv.b Scope and Standard of Review (Appeals against Order on Extension of Provisional Detention), V.B.4.iii.b Standard of Review (Appeals concerning Conditions of Detention

For jurisprudence concerning the ***Standard of Review of Appeals against Order on Civil Party Admissibility***, see VI.D.2. Standard of Review

For jurisprudence concerning the ***Standard of Review of Appeals under Internal Rule 74(3)(g) (Appeal against the Co-Investigating Judges' Refusal to Seise the Pre-Trial Chamber with Annulment)***, see VII.C.6.ii. Standard of Review (Appeals under Internal Rule 74(3)(g))

i. *General*

1.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"The Pre-Trial Chamber has the obligation and the authority under the applicable law to take such approaches of a general nature in relation to particular categories of appeals under its jurisdiction, where it finds this necessary and appropriate." (para. 15) "The Pre-Trial Chamber notes that the procedure is not driven by the parties and therefore it is not obliged to address all the arguments raised. If reasons of a general character are found to be decisive for a decision, the Pre-Trial Chamber has an obligation to the parties to inform them for reasons of transparency and fairness." (para. 29)
2.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"The Pre-Trial Chamber finds that this standard of review is in line with the practice followed at international level." (para. 112) "The Pre-Trial Chamber finds 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 and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 113)
3.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[D]ecisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file." (Opinion of Judges DOWNING and CHUNG, para. 4)

4.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[D]ecisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file." (Separate Opinion of Judges CHUNG and DOWNING, para. 4)
5.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge her in Absentia*	"Pursuant to the Pre-Trial Chamber's established jurisprudence, 'Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion'." (para. 29)
6.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"Pursuant to the Pre-Trial Chamber's established jurisprudence, 'Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion'." (para. 36)
7.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"Pursuant to the Pre-Trial Chamber's jurisprudence, Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 19)
8.	**004/2 AO An** PTC 33 D276/1/1/3 16 March 2017 *Decision on Appeal against the Decision on AO An's Sixth Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 11)
9.	**004/2 AO An** PTC 35 D320/1/1/4 16 March 2017	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 9)

	Decision on Appeal against Decision on AO An's Twelfth Request for Investigative Action	
10.	**004/2 AO An** PTC 34 D277/1/1/4 3 April 2017 *Decision on Appeal against Decision on AO An's Seventh Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned, if they are: a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 9)
11.	**003 MEAS Muth** PTC 30 D87/2/1.7/1/1/7 10 April 2017 *Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*	"Pursuant to the Pre-Trial Chamber's jurisprudence, Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 16)
12.	**004/2 AO An** PTC 36 D343/4 26 April 2017 *Decision on Appeal against the Decision on AO An's Tenth Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 12)
13.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO AN'S Application to Annul the Entire Investigation*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the OCIJs' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 14)
14.	**004 YIM Tith** PTC 52 D365/3/1/5 13 February 2018 *Decision on the International Co-Prosecutor's Appeal of Decision on Request for Investigative Action*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the Co-Investigating Judges' decisions may be overturned if they are (i) based on an error of law invalidating the decision; (ii) based on an error of fact occasioning a miscarriage of justice; or (iii) so unfair or unreasonable as to constitute an abuse of the judges' discretion. Those criteria apply to the merits of the impugned order." (para. 14)

	regarding Sexual Violence at Prison No.8 and in Bakan District	
15.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"[W]hile alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue. In the latter case, the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony. (Opinion of Judges BAIK and BEAUVALLET, para. 381)
16.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The International Judges recall that 'while alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.' In the latter case, 'the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding.'" (Opinion of Judges BAIK and BEAUVALLET, para. 233)
17.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"Internal Rule 77*bis* requires Appellants seeking to overturn an order from the Co-Investigating Judges on the admissibility of Civil Party applicants to demonstrate that the challenged decision was based on an error of law and/or fact. The Pre-Trial Chamber recalls that on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, while alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 29)

ii. *Discretionary Decisions*

1.	**002 NUON Chea** PTC 58 D273/3/5 10 June 2010 **[PUBLIC REDACTED]** *Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action*	"[D]ecisions (or orders) on requests for investigative actions are discretionary and […] such decisions may be overturned if the Appellant demonstrates that the challenged decision was (1) based on an incorrect interpretation of governing law […]; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse by the CIJ's discretion." (para. 13) "To successfully appeal […] the Impugned Order, the Appellant needs to show that each of the […] bases for the decision are erroneous, or, if he only makes such demonstration in relation to some of these bas[es], he needs to show that the remaining ones do not support the Impugned Order." (para. 16)
2.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance*	"[S]uch decisions may only be overturned if the Appellant demonstrates that the challenged decision was: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the CIJs' discretion." (para. 15) "These three grounds form the only basis upon which the Pre-Trial Chamber can remit a decision back to the CIJs for re-consideration. Not every error of law or fact will invalidate the exercise of a discretion and lead to the reversal of an order. The onus is upon the Appellant to demonstrate that the error of law or fact actually invalidated the decision or led to a miscarriage of justice." (para. 16)

	Requests for Investigative Action	
3.	**002 IENG Sary, NUON Chea, KHIEU Samphân** PTC 67 D365/2/17 27 September 2010 *Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"The Pre-Trial Chamber recalls that decisions on requests for orders made pursuant to Rule 55(10) are discretionary. The Pre-Trial Chamber's review of discretionary decisions is limited to whether the Co-Investigating Judges have properly exercised their discretion. The following standard of review, formulated by the Appeals Chamber of the [ICTY], has been established as the test before the ECCC. Discretionary decisions of the Co-Investigating Judges may only be overturned if the Appellant demonstrates that the challenged order or decision was (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion. Not every error of law or fact will invalidate the exercise of discretion by the Co-Investigating Judges and lead to a reversal of an order or decision. The onus is on the Appellant to demonstrate that (i) the error of law invalidated the decision, (ii) the error of fact occasioned a miscarriage of justice, or (iii) that the decision or order is so unreasonable as to force the conclusion that the Co-Investigating Judges failed to exercise discretion judiciously." (para. 36)
4.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"A discretionary decision may be reversed where it was: (1) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (2) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 21) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, 'Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial'. Moreover, '[t]he Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC', and '[w]hen seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall "investigate the case by itself".'" (para. 22)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The determination of whether [a person] was among those most responsible, and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. However, the discretion of the Co-Investigating Judges in making this determination is a judicial one that does not permit arbitrary action, but should rather be exercised in accordance with well-settled legal principles. In this regard, the terms senior leaders and those who were most responsible represent the limits of the ECCC's personal jurisdiction. While the flexibility of these terms inherently requires some margin of appreciation on the part of the Co-Investigating Judges, this discretion is not unlimited and does not exclude control by the appellate court. Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination [in this case] […] pursuant to the standard of review applicable to discretionary decisions." (para. 28) "A discretionary decision may be reversed where it was: (i) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (ii) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 29) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis

		for the trial." (para. 30) "[T]he determination of personal jurisdiction requires a tailored scope of evidential scrutiny. Unlike the Trial Chamber considering the guilt or innocence of an accused by weighing the trial evidence in its totality, the Pre-Trial Chamber, faced with a personal jurisdictional challenge regarding those who were most responsible, should consider a limited scope of evidence which is strictly required to assess the express question of personal jurisdiction at the pre-trial phase. Consequently, in considering the instant issue, the Pre-Trial Chamber must limit its evaluation to matters material to the determination of personal jurisdiction—the gravity of crimes and/or the level of responsibility of the Accused." (para. 144) --- "[A]lthough the determination on personal jurisdiction is a discretionary decision, the discretion of the Co-Investigating Judges in making this determination does not permit arbitrary action, especially since the terms senior leaders and those who were most responsible represent the limits of the ECCC's personal jurisdiction." (Opinion of Judges BAIK and BEAUVALLET, para. 333) "The Pre-Trial Chamber's Case 004/1 holding regarding the limits of this discretion […] still holds true […]." (Opinion of Judges BAIK and BEAUVALLET, para. 334) "[W]hile alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue. In the latter case, the burden is on the appellant to show that no reasonable trier of fact could have found and relied on the challenged evidence in the fact-finding. Specifically as to witness evidence, the presence of inconsistencies does not *per se* require a reasonable trier of fact to reject the testimony as unreliable, as a fact-trier can 'reasonably accept certain parts of a witness's testimony and reject others' after having considered the whole of the testimony. (Opinion of Judges BAIK and BEAUVALLET, para. 381)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Co-Investigating Judges' findings on whether or not a person is among those 'most responsible' is a discretionary decision, which must be examined according to the standard of review applicable to discretionary decisions." (para. 44) "In this light, the Pre-Trial Chamber has determined that the Co-Investigating Judges' finding that a person falls or does not fall within the ECCC's personal jurisdiction may be reversed at a party's request when this party demonstrates that such finding was: (i) based on an incorrect interpretation of the governing law (error of law) invalidating the decision, and/or (ii) based on a patently incorrect conclusion of fact (error of fact) occasioning a miscarriage of justice, and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion to force the conclusion that the Judges failed to exercise their discretion judiciously." (para. 47)
7.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"A discretionary decision may be reversed where it was: (i) based on an incorrect interpretation of the governing law (*i.e.*, an error of law) invalidating the decision; (ii) based on a patently incorrect conclusion of fact (*i.e.*, an error of fact) occasioning a miscarriage of justice; and/or (iii) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion to force the conclusion that the Judges failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 35) "The Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 36)

iii. *Non-Discretionary Decisions*

1.	**002 IENG Thirith, IENG Sary, KHIEU Samphân and Civil Parties** PTC 35, 37, 38 and 39 D97/14/15, D97/15/9, D97/16/10 and D97/17/6 20 May 2010 *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE)*	"[I]nsofar as the Impugned Order addresses jurisdictional matters, it involves no discretion for the OCIJ. However, the criteria applicable to alleged errors of law, that is alleging an 'incorrect interpretation of governing law' applies as well to the errors of law alleged by the present Appeals." (para. 36)
2.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"[W]here an order by the Co-Investigating Judges […] 'addresses jurisdictional matters, it involves no discretion for the OCIJ'. As such, the Pre-Trial Chamber does not apply the deferential standard of review applicable to discretionary decisions by the Co-Investigating Judges. Rather, the Pre-Trial Chamber will reverse a decision or order confirming jurisdiction where 'the [OCIJ] committed a specific error of law or fact invalidating the decision or weighed relevant considerations or irrelevant considerations in an unreasonable manner.' It is well-established in international jurisprudence that, on appeal, alleged errors of law are reviewed *de novo* to determine whether the legal holdings are correct and alleged errors of fact are determined under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 86)
3.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[W]here a jurisdictional challenge is grounded on the basis of an alleged violation of the principle of legality, it may also be required to examine errors of fact as far as such concern the objective test for issues of foreseability and accessibility of crimes or modes of liability by the Accused. The Pre-Trial Chamber acknowledges that clarity, accessibility and foreseeability are elements of the principle of legality and that there may be aspects of the Appeal that may cause the Pre-Trial Chamber to consider issues beyond those relating to bare jurisdiction. The Pre-Trial Chamber finds that it can, only to that extent, review the Closing Order for any specific error of fact. Where the Co-Lawyers invite consideration of the subjective knowledge of the Accused as to the state of international law, their request would require a factual determination which is outside the jurisdiction of the Pre-Trial Chamber. Such factual determinations are within the jurisdiction of the Trial Chamber, any such issues can be challenged at trial." (para. 111) "The Pre-Trial Chamber finds that this standard of review is in line with the practice followed at international level." (para. 112) "The Pre-Trial Chamber finds 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 and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue." (para. 113)

11. Remedies

i. *General*

1.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[D]ecisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file." (Opinion of Judges DOWNING and CHUNG, para. 4)
2.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[D]ecisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file." (Separate Opinion of Judges CHUNG and DOWNING, para. 4)

ii. *Overturning of Decisions*

1.	**002 KHIEU Samphân** PTC 15 C26/5/5 24 December 2008 *Decision on KHIEU Samphan's Supplemental Application for Release*	"The President observes that pursuant to Internal Rule 77(13), an order of the Co-Investigating Judges can only be annulled or overturned by an affirmative decision of four judges of the Pre-Trial Chamber." (para. 13)
2.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 39)
3.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 40)

4.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010*	"The error of law committed by the Co-Investigating Judges would require the Pre-Trial Chamber to overturn the Co-Investigating Judges' Order if there were no other valid reason for their Order. As is explained below, the Pre-Trial Chamber decides that there are other valid reasons for the Co-Investigating Judges' Order. Therefore, the Pre-Trial Chamber will not overturn the Co-Investigating Judges' Order due to this error of law." (para. 31)

iii. *Remitting the Case to the Co-Investigating Judges for Reconsideration*

1.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 and 25 D164/4/3 and D164/3/3 20 August 2009 *Decision on "Request for an Oral Hearing" on the Appeals PTC 24 and 25*	"The Pre-Trial Chamber notes that, as a general rule, it would consider this particular category of appeals against Co-Investigating Judges' Orders refusing requests for investigative actions on the basis of written submissions alone. This approach derives from the confidential nature of the investigation as provided for in Internal Rule 56. The Pre-Trial Chamber observes that unless a request for investigative action has been finally rejected, the potential for such investigative action to be undertaken by the Co-Investigating Judges remains effective. In deciding on the appeal the order can be quashed by the Pre-Trial Chamber, and sent back for reconsideration or with an order to undertake the requested investigative action. This action then forms part of the investigations, which are, as a general rule, confidential. The Pre-Trial Chamber, therefore, rejects the request for a hearing." (para. 5)
2.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"It is a fundamental right that parties know the reasons for a decision. This permits a party to know the basis of a decision, placing an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of a decision for so that a proper and pertinent response may be considered." (para. 24) "No appellate court can provide […] reasoned decision when the rationale and logic of the decision appealed is not itself disclosed […]." (para. 25) "The matter is remitted to the Co-Investigating Judges for their reconsideration on this issue alone and the provision of the reasons for any rejection of the request according to law." (para. 26) "[T]he Pre-Trial Chamber shall not further consider the other grounds of appeal, as this would necessarily require speculation as to the reasons for the rejection of the Request." (para. 27)
3.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance*	"[Decisions on Requests for Investigative Action] may only be overturned if the Appellant demonstrates that the challenged decision was: (4) based on an incorrect interpretation of governing law; (5) based on a patently incorrect conclusion of fact; or (6) so unfair or unreasonable as to constitute an abuse of the CIJs' discretion." (para. 15) "These three grounds form the only basis upon which the Pre-Trial Chamber can remit a decision back to the CIJs for re-consideration. Not every error of law or fact will invalidate the exercise of a discretion and lead to the reversal of an order. The onus is upon the Appellant to demonstrate that the error of law or fact actually invalidated the decision or led to a miscarriage of justice." (para. 16) "[…] [T]he CIJs have a broad discretion when deciding on requests for investigative actions and are in the best position to assess whether to proceed or not in light of their overall duties and their familiarity

	Requests for Investigative Action	with the case files. Thus, in these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the CIJs." (para. 31)
4.	**002 NUON Chea** PTC 46 D300/1/7 28 July 2010 *Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284*	"This Chamber applied this test in initially remitting the matter to the CIJs upon finding an error of law. The Chamber is satisfied that the CIJs have reconsidered the […] Request as directed and applied the correct principle under international law […]." (para. 19) "On the basis that the CIJs have corrected the error of law, had made investigations producing evidence relating to the information sought, […], the Pre-Trial Chamber rejects the Appeal which is supplemented by the Further Submissions." (para. 20)
5.	**002 NUON Chea and IENG Sary** PTC 50 and 51 D314/1/12 and D314/2/10 9 September 2010 **[PUBLIC REDACTED]** *Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses*	"The CIJs provide no explanation or basis upon which they reach their conclusion. These unsupported assertions fail to convince us that the CIJs have actually reconsidered the Requests as directed." (Opinion of MARCHI-UHEL and DOWNING, para. 1)
6.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"We further note that given all the procedural irregularities that occurred in this case, reconsideration of the Appellant's Application according to law should be seriously considered by the Co-Investigating Judges, after having followed the proper procedure […]." (Opinion of Judges DOWNING and LAHUIS, para. 12)
7.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"The errors committed by the Co-Investigating Judges have rendered the whole determination of the Appellant's Application unfair and accordingly we consider that the Impugned Order should be annulled and the matter should be remitted to the Co-Investigating Judges […]." (Opinion of Judges DOWNING and LAHUIS, para. 14)
8.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal*	"The errors committed by the Co-Investigating Judges have rendered the whole determination of the Appellant's Application unfair and accordingly we consider that the Impugned Order should be annulled and the matter should be remitted to the Co-Investigating Judges […]." (Opinion of Judges DOWNING and LAHUIS, para. 15)

	against Order on the Admissibility of Civil Party Applicant SENG Chan Theary	
9.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on TA An's Appeal against the Decision Denying his Requests to Access the Case File and Take Part in the Judicial Investigation*	"The Pre-Trial Chamber has previously recognised the inherent power of ECCC judicial bodies to reconsider their previous decisions when there is a change of circumstances or where it is realised that the previous decision was erroneous or that it has caused an injustice. While reconsideration can be done *proprio motu*, principles of natural justice and procedural fairness require that any party or other concerned individual whose rights or interests may be affected be accorded the right to be heard prior to such decision being made." (Opinion of Judges CHUNG and DOWNING, para. 9)
10.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The determination of whether IM Chaem was among 'those most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. […] Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that IM Chaem does not fall into the 'most responsible' category, and thus does not fall under the Court's personal jurisdiction, pursuant to the standard of review applicable to discretionary decisions." (para. 20) "A discretionary decision may be reversed where it was: (1) based on an incorrect interpretation of the governing law (*i.e.* an error of law) invalidating the decision; (2) based on a patently incorrect conclusion of fact (*i.e.* an error of fact) occasioning a miscarriage of justice; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 21) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, 'Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial'. Moreover, '[t]he Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC', and '[w]hen seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall "investigate the case by itself".'" (para. 22)
11.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 30)
12.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber reaffirms that when the Chamber finds, upon its appellate review of the Co-Investigating Judges' closing order, that the errors and/or abuses alleged by the parties were indeed committed by the Co-Investigating Judges, the Chamber may remit the decision back to the Co-Investigating Judges for reconsideration or substitute it with its own decision and issue a new or revised closing order." (para. 48)

iv. *Substitution of Reasoning*

1.	**002 NUON Chea** PTC 13 C9/4/6 4 May 2009 *Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea*	"[P]ursuant to Internal Rule 63(7), the Co-Investigating Judges are obliged to give reasons for an extension order. The Pre-Trial Chamber, in [D55/I/8] found that 'all decisions of judicial bodies are required to be reasoned, as this is an international standard.' A Co-Investigating Judges' order on extension of detention must therefore state the reasons for extension […]." (para. 21) "The Co-Investigating Judges extended the detention by reinstating the existing reasons for detention in the previous […] decision and by giving […] new inculpatory evidence. The Co-Investigating Judges are collecting inculpatory and exculpatory evidence in their investigations. The Pre-Trial Chamber concludes that the Co-Investigating Judges did not find exculpatory evidence […]. [T]he Co-Investigating Judges correctly fulfilled their obligation of reasoning […]." (para. 23) "The Co-Investigating Judges did not reason in their Extension Order how the risks that substantiated initial detention still exist. In this respect, the Order […] lacks sufficient reasoning. The Pre-Trial Chamber shall therefore undertake its own analysis on whether the conditions under Rule 63(3)(b) are still applicable." (para. 30) "[T]he Co-Investigating Judges should have referred to the fact that no new circumstances were raised in the appeal against the Order of Extension of Provisional Detention and this would have been sufficient to reason for the rejection of this request. In this respect, the Order of the Co-Investigating Judges was not sufficiently reasoned and before-mentioned reasoning will be substituted in the Extension Order." (para. 54)
2.	**002 IENG Sary** PTC 25 D164/3/6 12 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. […] Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 35) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 36) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 39)
3.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 D164/4/13 18 November 2009 *Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive*	"The Pre-Trial Chamber notes that the Co-Investigating Judges have a duty, pursuant to Internal Rule 55(5), to investigate exculpatory evidence. To fulfil this obligation, the Co-Investigating Judges have to review documents or other materials when there is a *prima facie* reason to believe that they may contain exculpatory evidence. This review shall be undertaken before the Co-Investigating Judges decide to close their investigation, regardless of whether the Co-Investigating Judges might have, or not have, sufficient evidence to send the case to trial. […] Inculpatory and exculpatory evidence shall equally be considered when the Co-Investigating Judges make their decision to either send the case for trial or dismiss it." (para. 36) "By reasoning that 'an investigating judge may close a judicial investigation once he has determined that there is sufficient evidence to indict Charged Person', the Co-Investigating Judges have overlooked this preliminary obligation to first conclude their investigation before assessing whether the case shall go to trial or not. This first step is necessary to ensure that the Co-Investigating Judges have fulfilled

		their obligation to seek and consider exculpatory evidence, which shall equally be sent to the Trial Chamber." (para. 37) "In the absence of any specific indication that any document and/or video on the [Shared Materials Drive] may be of exculpatory nature the Pre-Trial Chamber finds that the obligation to investigate exculpatory evidence does not, in itself, oblige the Co-Investigating Judges to review all the materials contained in the [Shared Materials Drive]. In these circumstances, the error of law made by the Co-Investigating Judges shall not lead the Pre-Trial Chamber to overturn the Order and grant the Request but the reasoning of the Co-Investigating Judges in this regard shall be substituted by that of the Pre-Trial Chamber." (para. 40)
4.	**002 IENG Sary** PTC 45 D300/2/2 5 May 2010 *Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284*	"[I]t is well established that it is not the role of the court, whether it be court at first instance or an appeal court, to proceed otherwise than on the basis of the material before it when an application or request is made. The court cannot speculate as to what party may or may not have additionally intended to put before it or what else may have been relevant to its considerations and then search it out. The court looks at the clear understanding of the words of the party in submission and does not speculate as to what may or may not have been otherwise meant by those words." (para. 19) "Detailed reasons were not required to be provided by the CIJs due to lack of clarity, confusion, and vagueness of the Request." (para. 21) "The new assertions amount to a post factum attempt to justify and ground the request made to the CIJs. These are not matters the Pre-Trial Chamber can or will take into account. These assertions cannot be considered on appeal when an appellate chamber is considering the proper exercise of discretion in the making of the original decision. It is noted that the Pre-Trial Chamber cannot substitute its discretion for that of the CIJs." (para. 24)
5.	**002 Civil parties** PTC 52 D310/1/3 21 July 2010 **[PUBLIC REDACTED]** *Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons Named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action*	"[Decisions on requests for investigative action] may only be overturned if the Appellant demonstrates that the challenged decision was: (1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the CIJs' discretion." (para. 15) "These three grounds form the only basis upon which the Pre-Trial Chamber can remit a decision back to the CIJs for re-consideration. Not every error of law or fact will invalidate the exercise of a discretion and lead to the reversal of an order. The onus is upon the Appellant to demonstrate that the error of law or fact actually invalidated the decision or led to a miscarriage of justice." (para. 16) "[…] [T]he CIJs have a broad discretion when deciding on requests for investigative actions and are in the best position to assess whether to proceed or not in light of their overall duties and their familiarity with the case files. Thus, in these circumstances, it would be inappropriate for the Pre-Trial Chamber to substitute the exercise of its discretion for that of the CIJs." (para. 31)
6.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"[T]he Pre-Trial Chamber finds that the situation described above led the Co-Investigating Judges to issue an order that lacks reasoning. The Pre-Trial Chamber shall therefore [...] conduct its own analysis [...]. As a result, it shall substitute its reasoning to that of the Co-Investigating Judges." (para. 277)
7.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The determination of whether IM Chaem was among 'those most responsible', and therefore falls within the personal jurisdiction of the ECCC, is a discretionary decision. […] Accordingly, the Pre-Trial Chamber will review the Co-Investigating Judges' determination that IM Chaem does not fall into the 'most responsible' category, and thus does not fall under the Court's personal jurisdiction, pursuant to the standard of review applicable to discretionary decisions." (para. 20) "A discretionary decision may be reversed where it was: (1) based on an incorrect interpretation of the governing law (*i.e.* an error of law) invalidating the decision; (2) based on a patently incorrect conclusion of fact (*i.e.* an error of fact) occasioning a miscarriage of justice; and/or (3) so unfair or unreasonable as to constitute an abuse of the Co-Investigating Judges' discretion and to force the

		conclusion that they failed to exercise their discretion judiciously. In other words, it must be established that there was an error or abuse which was fundamentally determinative of the Co-Investigating Judges' exercise of discretion." (para. 21) "In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, 'Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised Closing Order that will serve as a basis for the trial'. Moreover, '[t]he Pre-Trial Chamber has previously decided that it fulfils the role of the Cambodian Investigation Chamber in the ECCC', and '[w]hen seized of a dismissal order as a consequence of an appeal lodged by the Prosecution or a civil party, the Investigation Chamber shall "investigate the case by itself".'" (para. 22)
8.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"In the context of discretionary decisions, the Pre-Trial Chamber will normally remit the decision back to the Co-Investigating Judges for reconsideration, and will substitute its decision only in exceptional circumstances. In the specific case of appeals against closing orders, Internal Rule 79(1) suggests that the Pre-Trial Chamber has the power to issue a new or revised closing order that will serve as a basis for the trial." (para. 30)
9.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"[T]he Pre-Trial Chamber reaffirms that when the Chamber finds, upon its appellate review of the Co-Investigating Judges' closing order, that the errors and/or abuses alleged by the parties were indeed committed by the Co-Investigating Judges, the Chamber may remit the decision back to the Co-Investigating Judges for reconsideration or substitute it with its own decision and issue a new or revised closing order." (para. 48)

v. *Miscellaneous*

1.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"The Co-Investigating Judges have confused the situation by themselves publicly repeating major parts of the confidential information directed to be retracted by them. By doing so their order is, substantially, without any practical effect, as their disclosure of the information must be taken to be an exercise of their discretion to do so, but it has rendered their retraction order itself nugatory and thus of no effect." (Opinion of Judges DOWNING and LAHUIS, para. 1) "[O]rdering a retractation would be without meaning as its effect would conflict with the substance of the retractation order itself, as the information remain in the public domain. We consider it to be in the best interest of justice to grant the Appeal partly to the extent that the disposition of the Order remains without effect." (Opinion of Judges DOWNING and LAHUIS, para. 2)

C. Annulment

1. Exclusive Jurisdiction of the Pre-Trial Chamber

1.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Pre-Trial Chamber has sole jurisdiction over applications to annul investigative action." (para. 16)
2.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"The Pre-Trial Chamber stresses that pursuant to Rule 73(b) it has sole jurisdiction over applications to annul investigative action." (para. 29)
3.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests referred by the International Co-Investigating Judge*	"The Pre-Trial Chamber is in principle seised in respect of annulment by virtue of an order of the Co-Investigating Judges, issued of their own motion pursuant to Internal Rule 776(1); a motion for annulment brought by the parties acting pursuant to Internal Rule 76(2); or an appeal entered under internal Rule 74(3)(g) against a decision of the Co-Investigating Judges declining to refer an application for annulment." (para. 20) "The exclusive jurisdiction vested in the Pre-Trial Chamber over applications to annul investigative action under Internal Rules 73(b) and 76(4) bars the inquiry incumbent on Co-Investigating Judges under Internal Rule 76(2) from exceeding the admissibility examination which the Chamber itself undertakes. The need to ensure impartiality of the preliminary judicial investigation mandates that adjudication of any defect may void proceedings be the purview of the Pre-Trial Chamber and not of the Co-Investigating Judges, whose precise task is to steer the investigations and see them through to completion." (para. 37)
4.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment." (para. 14)

	Interview of Three Investigators	

2. Purpose of Annulment

1.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 34)
2.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 37)
3.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 34)
4.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"[T]he Internal Rules give the Charged Person the ability to address any concerns related to irregularity of proceedings in handling of evidence by means of provisions on the annulment procedure during the investigative stage […] and objection to admissibility of evidence during the trial stage." (para. 32)
5.	**002 IENG Thirith** PTC 26 D130/9/21 18 December 2009	"Internal Rule 76 provides an opportun[i]ty for a party to request the Co-Investigating Judges to annul an investigative action. It is further noted that this provision is aimed to exclude the evidence in its totality." (para. 22)

	Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture	
6.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"Internal Rule 76 provides an opportun[i]ty for a party to request the Co-Investigating Judges to annul an investigative action. It is further noted that this provision is aimed to exclude the evidence in its totality." (para. 20)
7.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"Whilst the Annulment Appeal and the Abuse of Process Appeal are each based upon similar grounds of appeal, the consequences of the applications are different, with an annulment resulting in material being expunged from the case file, as opposed to a permanent stay of the proceedings being the relief in respect of finding of an abuse of process." (para. 1) "[T]he annulment procedure, as applied [...] 'is not designed to nullify investigations in general [...] but is designed to nullify those portions of the proceedings that harm the Charged Person's interests which have to be specified.'" (para. 24) "The Pre-Trial Chamber notes that when an application for annulment is granted, the investigative or judicial action(s) declared null and void is (or are) expunged from the material on the case file. Consequently, if the entire investigation is annulled, all the material will be expunged from the case file, which leads to a consequence which must be differentiated from that of a stay of proceedings for abuse of process. Both procedures apply different standards and result in different consequences. If an annulment is ordered, even of the entire investigation, there is nothing to prevent a new investigation from placing new material, which is untainted by those defects, on the case file. In the case of stay of proceedings, the whole proceedings would cease because the abuse has been found to be so egregious as to damage the integrity of the entire process there will no longer be any case to answer." (para. 27)
8.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment Pursuant to Internal Rule 76(1)*	"The annulment procedure, which is specific to the inquisitorial system, has been specifically crafted to cure *procedural defects* affecting investigative acts accomplished by the investigative authority in its search for the truth, *i.e.*, generally involving the gathering of evidence, when these procedural irregularities harm the interests of a party. For example, investigative acts such as charged person's interviews, hearing of witnesses, rogatory letters, expert reports, search and seizures may be annulled where a formal requirement has not been observed or where the act was executed in contravention with the law. When a procedural irregularity affects their validity, these acts, which are not open to appeal, can be annul[l]ed and, as a result, removed from the case file so the trial court is not tainted by the evidence collected or the investigative act executed in contravention with procedural requirements." (Opinion of Judges DOWNING and CHUNG, para. 3) "By contrast, decisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file. The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties,

		such as orders on the admissibility of civil party applications, and thereby decide afresh substantive legal issue. Rather, if the International Co-Investigating Judge had been of the view that the Orders were flawed for substantive errors of fact or law, he may have envisaged the possibility of reconsidering them, after having heard the affected parties." (Opinion of Judges DOWNING and CHUNG, para. 4)
9.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"The annulment procedure, which is specific to the inquisitorial system, has been specifically crafted to cure *procedural defects* affecting investigative acts accomplished by the investigative authority in its search for the truth, *i.e.*, generally involving the gathering of evidence, when these procedural irregularities harm the interests of a party. For example, investigative acts such as charged person's interviews, hearing of witnesses, rogatory letters, expert reports, search and seizures may be annulled where a formal requirement has not been observed or where the act was executed in contravention with the law. When a procedural irregularity affects their validity, these acts, which are not open to appeal, can be annul[l]ed and, as a result, removed from the case file so the trial court is not tainted by the evidence collected or the investigative act executed in contravention with procedural requirements." (Opinion of Judges DOWNING and CHUNG, para. 3) "By contrast, decisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file. The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications, and thereby decide afresh substantive legal issue. Rather, if the International Co-Investigating Judge had been of the view that the Orders were flawed for substantive errors of fact or law, he may have envisaged the possibility of reconsidering them, after having heard the affected parties." (Opinion of Judges DOWNING and CHUNG, para. 4)
10.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"The International Judges further note that the Chamber is seised of Appeals submitted pursuant to Internal Rule 74, which are distinct from applications for annulment under Internal Rule 76. The regimes for annulment and appeals are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges, involving different standards of judicial review by the Pre-Trial Chamber. Indeed, Internal Rule 76(4) provides that '[t]he Chamber may declare an application for annulment inadmissible' where it 'relates to an order that is open to appeal'. More fundamentally, nothing in the text of Internal Rule 67(2) requires both Closing Orders to be annulled or overturned. By its terms, Internal Rule 67(2) addresses the legal consequences stemming from the absence of certain information in the *contents* of the Indictment, and not the legal consequences of agreeing to issue two separate closing orders. Accordingly, the International Judges reject the Co-Lawyers' contention that a correct interpretation of Internal Rule 67(2) in light of Internal Rule 76(5) would mandate that the effect of the Pre-Trial Chamber's unanimous finding in Case 004/2 is that both Closing Orders are null and void." (Opinion of Judges BAIK and BEAUVALLET, para. 165)

3. Annulment Procedure

i. *Applicable Law*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[T]he Internal Rules address sufficiently the annulment procedure and are therefore applicable." (para. 16) "The Pre-Trial Chamber has […] taken into account the CPC, international jurisprudence and, in the light of the specifics of the annulment system, the French criminal procedure." (para. 32)

2.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings*	"Internal Rule 48 is directive of matters being annulled for procedural defect only." (para. 15)
3.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge Harmon's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The analysis of the International Judges draws on the rules of law to which the Pre-Trial Chamber ordinarily has regard – the ECCC law, national legal rules, the Code of Criminal Procedure of the Kingdom of Cambodia […], international jurisprudence and, *vis-à-vis* the particularities of the annulment procedure, the French Code of Criminal Procedure." (Opinion of Judges BEAUVALLET and BWANA, para. 7)
4.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Internal Rule 73(b) establishes the exclusive jurisdiction of the Pre-Trial Chamber to dispose of requests for annulment: […]." (para. 32) "Internal Rule 76(2) casts a screening role on the Co-Investigating Judges in annulment proceedings: Where […] the parties consider that any part of the proceedings is null and void, they may submit a reasoned application to the Co-Investigating Judges requesting them to seise the Chamber with a view to annulment. The Co-Investigating Judges shall issue an order accepting or refusing the request as soon as possible […]." (para. 33) "Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to adjudge the admissibility of requests for annulment: The Chamber may declare an application for annulment inadmissible where the application: does not set out sufficient reasons; relates to an order that is open to appeal; or is manifestly unfounded. […]." (para. 34) "Internal Rule 48 provides:

		Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application." (para. 35)

ii. *General: Two-Tiered Procedure*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"Parties considering that any part of the proceedings is null and void will have to submit a reasoned application to the Co-Investigating Judges first, requesting them to seize the Pre-Trial Chamber." (para. 16) "There is no provision in the Internal Rules stating that the Pre-Trial Chamber can declare investigative action null and void on its own initiative. The Pre-Trial Chamber is therefore bound by the application made by the party." (para. 35)
2.	**002 IENG Thirith** PTC 61 D361/2/4 27 August 2010 *Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses*	"The Pre-Trial Chamber views the request to exclude all interviews […] as a request for annulment of evidence. Investigative or judicial action may be annulled for procedural defect where the defect infringes the rights of the party making the application. The procedure to follow for an alleged procedural defect is contained in Internal Rule 76(2) […]." (para. 11) "[T]he Co-Lawyers […] have not availed themselves of this procedure. They are therefore not entitled to request such relief without a formal application for annulment having been filed. The Appeal in this respect is inadmissible." (para. 12)
3.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ*	"The Pre-Trial Chamber cannot declare investigative actions null and void on its own initiative. It is bound by the application made by the party, which shall state which part of the proceedings is null and void and provide grounds for making such an assertion. Annulment pursuant to Internal Rule 76(2) is 'not designed to nullify investigations in general [...] but is designed to nullify those portions of the proceedings that harm the Charged Person's interests which have to be specified.'" (para. 22)

	Rejection of a Stay of the Proceedings	
4.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of her Summons to an Initial Appearance*	"[T]he Internal Rules require applications for annulment to be first filed with the Co-Investigating Judges who shall decide whether to seise the Pre-Trial Chamber." (para. 11)
5.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"Internal Rule 74(3)(g) lays down the appeals procedure. The Pre-Trial Chamber has previously held that the parties raising annulment must first submit a reasoned application to the Co-Investigating Judges requesting them to seise the Pre-Trial Chamber." (para. 13) "The Pre-Trial Chamber notes that the motion was not submitted to the Co-Investigating Judges and is, hence, inadmissible." (para. 14) "The Pre-Trial Chamber has sole jurisdiction over applications to annul investigative action." (para. 16) "Such applications for annulment may be brought before the Pre-Trial Chamber by the Co-Investigating Judges acting on their own motion pursuant to Internal Rule 76(1) or by the parties, in accordance with Internal Rule 76(2)." (para. 17)
6.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[A]pplications for annulment may be brought before the Pre-Trial Chamber by the Co-Investigating Judges acting on their own motion pursuant to Rule 76(1) or by the parties, in accordance with Rule 76(2)." (para. 36)
7.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written Records of Witnesses' Interviews*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment." (Opinion of Judges BEAUVALLET and BAIK, para. 41)
8.	**004 YIM TITH** PTC 45 D360/1/1/6 26 October 2017	"The Pre-Trial Chamber recalls that Internal Rule 76(2) casts a screening role in annulment proceedings on the Co-Investigating Judges [...]." (para. 5)

	Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004	

iii. *Test before the Co-Investigating Judges*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"The Pre-Trial Chamber finds that all decisions of judicial bodies are required to be reasoned as this is an international standard. A Co-Investigating Judges' order on a request to seize the Pre-Trial Chamber must therefore state the reasons for accepting or rejecting such request." (para. 21) "The Co-Investigating Judges have to examine a request on the following two grounds: i) the presence of a procedural defect; and ii) where there is such procedural defect, the defect must cause an infringement of the rights of the party making the application." (para. 23)
2.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"Internal Rule 76(2) provides for the Co-Investigating Judges to consider a 'request' to 'seise the Chamber' with an application for annulment. The sub-Rule does not provide for the Co-Investigating Judges to determine the merits of the application, which is clearly the task they have undertaken and stated to be their intention when referring to the consideration of 'the merits of the Defence claims in this case'. It is not for the Co-Investigating Judges to determine the annulment application on its merits, this is the role of the Pre-Trial Chamber, which is made clear from Internal Rule 73(b)." (para. 16) "The standard of proof to be applied by the Co-Investigating Judges when deciding whether to seise or not the Pre-Trial Chamber with an annulment application is not specified in the Internal Rules. The Pre-Trial Chamber has however specified the test to be applied by the Co-Investigating Judges [...], namely that the Co-Investigating Judges should consider whether there is reasoned application that there has been: (i) a procedural defect; and (ii) such 'defect infringes the rights of the party making the application.' The Co-Investigating Judges have indeed applied the correct test as laid out by the Pre-Trial Chamber, however to the wrong standard of proof, since the Co-Investigating Judges were to determine only whether there was an arguable case and not examine the merits of the application. When considering an application under Internal Rule 76(2), the Co-Investigating Judges must only be formally satisfied that there is an application supported by a reasoned argument making assertions that there has been a procedural defect and that such defect infringes the rights of the party making the application. Where the Co-Investigating Judges apply the correct standard, and the application, as in the instant case, is directed to the personal conduct of a Co-Investigating Judge, there is no requirement for the judge in question to disqualify himself from reviewing the application, because such review is as to form alone and any consideration of the merit of the application is for the Pre-Trial Chamber." (para. 18) "[I]t is appropriate to consider this matter as if the Co-Investigating Judges had seised the Pre-Trial Chamber with the Annulment Request at first instance. The Pre-Trial Chamber shall not consider this matter on the basis of the Annulment Appeal but on the basis of the Annulment Request and its supporting material." (para. 20)
3.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts*	"Internal Rule 76(2) provides for the Co-Investigating Judges to consider a request to seise the Chamber with an application for annulment. It does not provide for the Co-Investigating Judges to determine the merits of the application […]. It is the responsibility of the Pre-Trial Chamber to determine the annulment application on its merits which is made clear from Internal Rule 73(b)." (para. 18) "The standard of proof applicable to an annulment application is not specified in the Internal Rules. […] [T]he Co-Investigating Judges shall consider whether there is a reasoned application that there has been: (i) a procedural defect; and (ii) that such 'defect infringes the rights of the party making the application.' […] The applicable standard of proof […] requires the Co-Investigating Judges to determine only whether there was an arguable case and not examine the merits of the application. […] [W]hen considering an application under Internal Rule 76(2), the Co-Investigating Judges must only be formally satisfied that there is an application supported by a reasoned argument making assertions that there

	Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings	has been a procedural defect and that such defect infringes the rights of the party making the application." (para. 19)
4.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"Such applications for annulment may be brought before the Pre-Trial Chamber by the Co-Investigating Judges acting on their own motion pursuant to Internal Rule 76(1) or by the parties, in accordance with Internal Rule 76(2)." (para. 17) "In the latter case, the Co-Investigating Judges determine whether the Pre-Trial Chamber was duly seised, doing so by reasoned order from which appeal lies. The Pre-Trial Chamber has consistently held that an order of the Co-Investigating Judges ruling on a request to seise the Pre-Trial Chamber with a view to annulment must state the reasons for seizing the Pre-Trial Chamber or for declining to do so." (para. 18) "The Pre-Trial Chamber has held that the Co-Investigating Judges must consider such an application in two respects: first, as to whether the application identifies a procedural defect, and second, as to whether the application identifies the prejudice caused by such defect to the applicant. The Pre-Trial Chamber delineated the parameters of the assessment to be undertaken by the Co-Investigating Judges when it identified the test which must be applied in considering such an application. The Pre-Trial Chamber held that 'the Co-Investigating Judges were to determine only whether there was an arguable case and not examine the merits of the application'. Specifically, the Pre-Trial Chamber determined that in considering an application for annulment founded on Internal Rule 76(2), the Co-Investigating Judges need only be satisfied that the application advances a reasoned argument alleging procedural defect and prejudice." (para. 19) "[I]t behoved the International Co-Investigating Judge to satisfy himself that the arguments advanced in the applications could be sustained before the Pre-Trial Chamber, by setting out the alleged procedural defects and the ensuing prejudice, if any, to the charged person." (para. 20)
5.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"[A]pplications for annulment may be brought before the Pre-Trial Chamber by the Co-Investigating Judges acting on their own motion pursuant to Rule 76(1) or by the parties, in accordance with Rule 76(2). In the latter case, the Co-Investigating Judges determine whether the Pre-Trial Chamber should be seised of the request. The Pre-Trial Chamber has consistently held that an order of the Co-Investigating Judges ruling on a request to seise the Pre-Trial Chamber with a view to annulment must state the reasons for seizing the Pre-Trial Chamber or for declining to do so." (para. 36) "The Pre-Trial Chamber has held that the Co-Investigating Judges must consider such an application in two respects: first, as to whether the application identifies a procedural defect, and second, as to whether the application identifies the prejudice caused by such defect to the applicant. The Pre-Trial Chamber delineated the parameters of the assessment to be undertaken by the Co-Investigating Judges when it identified the test which must be applied in considering such an application. The Pre-Trial Chamber held that 'the Co-Investigating Judges were to determine only whether there was an arguable case and not examine the merits of the application'. Specifically, the Pre-Trial Chamber determined that in considering an application for annulment founded on Rule 76(2), the Co-Investigating Judges need only be satisfied that the application advances a reasoned argument alleging procedural defect and prejudice." (para. 37)
6.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016	"The Pre-Trial Chamber recalls that Internal Rule 21(1)(a) mandates that proceedings before the ECCC shall be fair and adversarial and preserve a balance between the rights of the parties. In particular, ECCC proceedings shall guarantee the separation of prosecutorial and adjudicatory powers. It is the

	Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge	role of the Pre-Trial Chamber to safeguard such separation of powers and procedural fairness." (para. 36) "The exclusive jurisdiction vested in the Pre-Trial Chamber over applications to annul investigative action under Internal Rules 73(b) and 76(4) bars the inquiry incumbent on Co-Investigating Judges under Internal Rule 76(2) from exceeding the admissibility examination which the Chamber itself undertakes. The need to ensure impartiality of the preliminary judicial investigation mandates that adjudication of any defect may void proceedings be the purview of the Pre-Trial Chamber and not of the Co-Investigating Judges, whose precise task is to steer the investigations and see them through to completion." (para. 37) "Therefore in accordance with Internal Rule 48 and the jurisprudence of the Chamber, the Co-Investigating Judges must consider applications to seise the Pre-Trial chamber in two respects: first, as to whether the application identifies a procedural defect, and second, as to whether the application identifies the prejudice caused by such defect to the applicant. Whilst the criterion is established and generally accepted by the parties, the ambit of the Co-Investigating Judges' appraisal of such applications is a sticking-point. Indeed, the Internal Rules are silent as to the standard of proof for seising the Pre-Trial Chamber with an application for annulment. Furthermore, although the Pre-Trial Chamber does not allow the Co-Investigating Judges to determine the merits of an application for annulment, it nonetheless requires that their order be sufficiently reasoned and that it state 'the reasons for seising the Pre-Trial Chamber or for declining to do so'." (para. 38) "The Pre-Trial Chamber had occasion to introduce the 'arguable case' criterion when defining the test which the Co-Investigating Judges must satisfy. The concept […] must, at this juncture, be made plain." (para. 39) "The Pre-Trial Chamber considers that determination as to whether a case is: 'arguable' amounts precisely to ascertaining that the request is not 'manifestly unfounded' within the meaning of Internal Rule 76(4). A request is 'manifestly unfounded' only where it is particularly *evident* or *very apparent* that it has no legal or factual foundation and hence no prospect of success. […] The Co-Investigating Judges' analysis is therefore to be distinguished from that undertaken by the Pre-Trial Chamber, whose determination as to whether the reasoning of the request is 'sufficient' entails a qualitative criterion." (para. 40) "Having regard to Internal Rule 76(2) construed in the light of Internal Rule 76(4), the Chamber holds that a determination that an 'arguable case' was made presupposes only that the Co-Investigating Judges satisfy themselves that: (1) the request *prima facie* sets forth a reasoned argument; and (2) the request is not manifestly unfounded." (para. 41) "Accordingly, the Chamber finds unpersuasive the International Co-Prosecutor's interpretation of Internal Rule 76(2) in its expansion of the 'screening role' of the Co-Investigating Judges to a 'meaningful gatekeeping function'. Such interpretation is *ultra* the instruments and previous decisions of the ECCC. The Pre-Trial Chamber is not a mere court of appellate jurisdiction in annulment proceedings: instead, as aforementioned, it is vested with exclusive jurisdiction to hear and determine requests for annulment." (para. 42) "The Pre-Trial Chamber is of the further opinion that the terms of the Impugned Decision may invite the inference that the International Co-Investigating Judge strayed beyond the realms of his authority by inquiring as to whether the procedural defect and ensuing prejudice were identified 'with sufficient specificity so as to permit identification of the investigative acts to be annulled' and whether the submissions advanced were 'logically consistent, reasoned and raise an arguable contention'. The International Co-Investigating Judge's interpretation of the 'arguable case' requirement as entailing that he satisfy himself of the 'logic' or 'consistency' of submissions appears more restrictive than the criterion on which the Chamber relies, in as much as such interpretation could give rise to a determination as to the merits of the submissions." (para. 43) "Whilst, moreover, it rests with the applicant to state the documents for annulment, their appraisal falls within the exclusive jurisdiction of the Pre-Trial Chamber, which specifies which documents are null and void only upon making a finding of procedural defect and prejudice." (para. 44) "For all these reasons, the Pre-Trial Chamber takes the view that the International Co-Investigating Judge's modus operandi has exceeded his screening role in annulment proceedings." (para. 45)

7.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to annul Written Records of Interview of Three Investigators*	"In accordance with Internal Rule 48, consideration of an application for annulment requires two steps: 1) determining whether a procedural irregularity exists; and 2) where such a defect is found to exist, determining whether it is prejudicial to the applicant. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (para. 15) "[A] distinction may be established between procedural defects which are explicitly foreseen by a legal provision and substantive procedural defects which are not explicitly prescribed. Substantive nullities may indeed be established when a breach of an 'essential' or 'substantial' formality has harmed the interests of the party it concerns, the determination of which is left to the judges and assessed on a case-by-case basis. Essential formalities correspond to rules of criminal procedure, including requirements pertaining to the guarantee of a fair trial and rights of the defence provided for in Internal Rule 21 and Article 14 of the ICCPR, which are *fundamental* for the investigative action to serve its intended purpose. Substantive nullities thus aim to sanction serious procedural irregularities." (para. 17)
8.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO AN'S Application to Annul the Entire Investigation*	"In accordance with Internal Rule 48 and the jurisprudence of the Pre-Trial Chamber, the CIJs must consider applications to seise the Pre-Trial Chamber with a view to annulment in two respects: first, as to whether the application identifies a procedural defect, and second, as to whether the application identifies the prejudice caused by such defect to the applicant." (para. 12) "Faced with appeals, brought under Internal Rule 74(3)(g) against OCIJ decisions issued pursuant to Internal Rule 76(2), the Pre-Trial Chamber had occasions to introduce the 'arguable case' criterion when defining the test which the CIJs must satisfy and considered that OCIJ's 'determination as to whether a case is "arguable" amounts precisely to ascertaining that the request is not "manifestly unfounded" within the meaning of Internal Rule 76(4). A request is "manifestly unfounded" only where it is particularly *evident or very apparent* that it has no legal or factual foundation and hence no prospect of success. Further, the Chamber recalls that the [CIJs] must assess only whether the request *prima facie* or *on the face of it* sets forth a "reasoned argument" which asserts procedural defect and prejudice, but [must] not adjudge the grounds advanced in the request for annulment.' Hence, "a determination that an "arguable case" was made presupposes only that the [CIJs] satisfy themselves that: (1) the request *prima facie* sets forth a reasoned argument; and (2) the request is not manifestly unfounded." (para. 13) "The Pre-Trial Chamber concurs with ICIJ's findings and conclusion in the Impugned Decision in that by challenging only ICIJ's legal view, as opposed to challenging parts of the investigation, the Co-Lawyers have failed to put forward a legally or factually founded argument for a procedural defect." (para. 17)
9.	**004 YIM TITH** PTC 45 D360/1/1/6 26 October 2017 *Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004*	"The Pre-Trial Chamber recalls that Internal Rule 76(2) casts a screening role in annulment proceedings on the Co-Investigating Judges, who must satisfy themselves that an 'arguable case' exists in the sense that the request for referral sets forth a *prima facie* reasoned argument identifying a procedural defect and prejudice and is not manifestly unfounded." (para. 5)

iv. *Test before the Pre-Trial Chamber*

a. General

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against*	"[Internal Rule 76(4)] means that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: i) does not set out sufficient reasons; ii) relates to an order that is open to appeal; or iii) is manifestly unfounded." (para. 25)

	Order Refusing Request for Annulment	
2.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphan's Appeal against the Order on the Request for Annulment for Abuse of Process*	"In [D55/I/8], the Pre-Trial Chamber found that an application for annulment may be declared inadmissible where the application i) does not set out sufficient reasons, ii) relates to an order which is open to appeal or iii) is manifestly unfounded." (para. 9)
3.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"The Appeal is filed pursuant to Internal Rule 76(2) providing for a right of appeal when a request to seise the Pre-Trial Chamber with an application for annulment is refused. The Annulment Appeal is contemplated in Internal Rule 74(3)(g) and is admissible." (para. 11) "It is not for the Co-Investigating Judges to determine the annulment application on its merits, this is the role of the Pre-Trial Chamber, which is made clear from Internal Rule 73(b)." (para. 16) "In respect of the procedure provided for in Internal Rule 76(2), the Pre-Trial Chamber has previously found [...] that since there is no provision in the Internal Rules stating that the Pre-Trial Chamber can declare investigative action null and void on its own initiative, the Pre-Trial Chamber is bound by the application made by the party, which shall state which part of the proceedings is null and void and provide grounds for making such an assertion." (para. 22) "It is indeed for the Pre-Trial Chamber to appreciate the consequences on the entirety of the case of particular procedural defect, in accordance with Internal Rule 76(5) [...]." (para. 25)
4.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"Pursuant to Internal Rule 76(4), '[t]he Chamber may declare an application for annulment inadmissible where the application: does not set out sufficient reasons; relates to an order that is open to appeal; or is manifestly unfounded.'" (Opinion of Judges DOWNING and CHUNG, para. 1)
5.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"Pursuant to Internal Rule 76(4), '[t]he Chamber may declare an application for annulment inadmissible where the application: does not set out sufficient reasons; relates to an order that is open to appeal; or is manifestly unfounded.'" (Opinion of Judges DOWNING and CHUNG, para. 1)
6.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications*	"Internal Rule 76(4) provides that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: (a) does not set out sufficient reasons; (b) relates to an order that is open to appeal; (c) or is manifestly unfounded." (para. 21) "Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment (i) specified the parts of the proceedings which are prejudicial to the rights and interests of the appellant; (ii) made plain the prejudice; and, if so, (iii) adduced evidence to sustain the allegations." (para. 22)

	for Annulment of Investigative Action	
7.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"Rule 76(4) then provides that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: (a) does not set out sufficient reasons; (b) relates to an order that is open to appeal; or (c) is manifestly unfounded." (para. 39) "Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial to the rights and interests of MEAS Muth; (ii) has clearly articulated the prejudice; and when necessary, (iii) adduced evidence to sustain the allegations." (para. 40)
8.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"Internal Rule 76(4) directs that the Chamber may declare an application for annulment inadmissible where the application: i) does not set out sufficient reasons; ii) relates to an order that is open to appeal; or iii) is manifestly unfounded. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial to the rights and interests of the appellant; (ii) has clearly articulated the prejudice; and (iii) where necessary, has adduced sufficient evidence to sustain the allegations." (para. 31) "The Pre-Trial Chamber first notes that the Forced Marriage Application does not relate to any order that is open to appeal. Secondly, the Pre-Trial Chamber finds that AO An has articulated the alleged prejudice clearly by arguing that all investigative actions relating to forced marriage violate his fundamental right in accordance with the principle of legality expressed in Article 15 of the ICCPR, to be tried only for criminal offences on account of acts that constituted crimes in law at the time of their commission. […] Lastly, with respect to the third prong for admissibility, which is optional in that the burden of proving the allegations made in an application depends on the nature of the allegations, the Pre-Trial Chamber finds that, in the instant case, since the application articulates prejudice by alleging errors in law, no evidence is necessary to sustain the allegations." (para. 32)
9.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons." (para. 55)
10.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written*	"The Pre-Trial Chamber has jurisdiction, under Internal Rule 76(4), over the admissibility of applications for annulment, and may declare an application inadmissible where it: (a) relates to an order that is open to appeal; (b) is manifestly unfounded; or (c) does not set out sufficient reasons." (para. 20)

	Records of Witnesses' Interviews	
11.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment specified the parts of the proceedings which are prejudicial to the rights and interests of the applicant, made plain the prejudice, and, if so, adduced evidence to sustain the allegations. The annulment application needs to be specific as to which portions of the investigative or judicial actions are procedurally defective and harm the charged person's interests." (para. 9) "The Pre-Trial Chamber, which cannot be expected to consider a party's contention if it does not provide precise references, considers the request vague. It will nonetheless, in the interests of justice and expediency, consider the general contentions as raised in the Application and, wherever appropriate, require further submissions." (para. 12)
12.	**004 AO An** PTC 27 D299/3/2 14 December 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng*	"Internal Rule 76(4) directs that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: i) does not set out sufficient reasons; ii) relates to an order that is open to appeal; or iii) is manifestly unfounded. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial to the rights and interests of the applicant; (ii) has clearly articulated the prejudice; and (iii) where necessary, has adduced sufficient evidence to sustain the allegations." (para. 16) "The Pre-Trial Chamber is of the further view that the reasoning set forth in the application is sufficient since it contains logically consistent submissions underpinned by legal reasoning, whose grounds are set forth or by factual material pinpointed in the case file." (para. 17)
13.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: specified the parts of the proceedings which are prejudicial to the rights and interests of the applicant; made plain the prejudice; and, if so, adduced evidence to sustain the allegations." (para. 15) "The Pre-Trial Chamber is satisfied that the conditions of Internal Rule 76(4) are met. The contested investigative actions, the impugned Forwarding Order and Supplementary Submission do not concern any order that is open to appeal under the rules. Nothing in the application suggests that it is evidently or very apparently unfounded in fact or in law such as to deprive it of any prospect of success. The Chamber is of the further view that the reasoning set forth in the application is sufficient since it contains logically consistent submissions, underpinned by legal reasoning, whose grounds are set forth, or by factual material pinpointed in the case file." (para. 16)
14.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons." (para. 8)
15.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017	"Internal Rule 76(4) directs that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: i) does not set out sufficient reasons; ii) relates to an order that is open to appeal; or iii) is manifestly unfounded. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial

	Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam	to the rights and interests of the appellant; (ii) clearly articulated the prejudice; and (iii) where necessary, adduced sufficient evidence to sustain the allegations." (para. 7) "The Chamber is of the further view that the reasoning set forth in the Application is sufficient since it contains logically consistent submissions, underpinned by legal reasoning, whose grounds are set forth, or by factual material pinpointed in the Case File. The Pre-Trial Chamber therefore finds the Application admissible." (para. 8) --- "The Undersigned Judges agree that a decision to charge can fall within the scope of an action or order open to annulment rather than being appealed, in accordance with Internal Rule 76(5)." (Opinion of Judges BEAUVALLET and BAIK, para. 90)
16.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons. The Pre-Trial Chamber is satisfied that, in the present case, the conditions of Internal Rule 76(4) are met and that the portions of the proceedings which are challenged are sufficiently specified through the annex to the Application." (para. 7)
17.	**004 YIM TITH** PTC 45 D360/1/1/6 26 October 2017 *Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal is manifestly unfounded, or does not set out sufficient reasons." (para. 5)
18.	**003 MEAS MUTH** PTC 33 D253/1/8 13 December 2017 *Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171*	"Internal Rule 76(4) directs that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: (i) does not set out sufficient reasons; (ii) relates to an order that is open to appeal; or (iii) is manifestly unfounded. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial to the rights and interests of the applicant; (ii) clearly articulated the prejudice; and (iii) where necessary, adduced sufficient evidence to sustain the allegations." (para. 11) "[T]he reasoning set forth in the Application is sufficient since it contains logically consistent submissions, underpinned by legal reasoning, whose grounds are set forth, or by factual material pinpointed in the case file." (para. 12)
19.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal; is manifestly unfounded; or does not set out sufficient reasons." (para. 10)
20.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal, is manifestly unfounded, or does not set out sufficient reasons." (para. 7)

	Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004	"The Pre-Trial Chamber further recently held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 8)
21.	**004 YIM Tith** PTC 53 D372/1/7 27 September 2018 *Decision on YIM Tith's Application to Annul Evidence Made as a Result of Torture*	"Internal Rule 76(4) vests the Pre-Trial Chamber with jurisdiction to determine the admissibility of an application for annulment, which it may declare inadmissible where the application relates to an order that is open to appeal, is manifestly unfounded, or does not set out sufficient reasons. The Pre-Trial Chamber is satisfied that the Application is sufficiently reasoned, does not concern any order open to appeal, and is not manifestly unfounded such that it would be deprived of any prospect of success." (para. 9)

b. Decision Open to Appeal

1.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"We note that the Application relates to orders declaring civil party applications admissible. As such, the Orders are subject to appeal under Internal Rules 74(3)(i) and 74(2) by the Co-Prosecutors and 'the Charged Person or the Accused', respectively. Pursuant to Internal Rule 76(4), a request for annulment relating to 'an order that is open to appeal' is inadmissible, irrespective of the fact that the party requesting the annu[l]ment or the Co-Investigating Judges may not be themselves entitled to appeal the order. The reason for that rule on admissibility is that the regimes for annulment and appellate review are mutually exclusive and apply to different categories of legal actions taken by the Co-Investigating Judges." (Opinion of Judges DOWNING and CHUNG, para. 2) "The annulment procedure, which is specific to the inquisitorial system, has been specifically crafted to cure *procedural defects* affecting investigative acts accomplished by the investigative authority in its search for the truth, *i.e.*, generally involving the gathering of evidence, when these procedural irregularities harm the interests of a party. […] When a procedural irregularity affects their validity, these acts, which are not open to appeal, can be annul[l]ed and, as a result, removed from the case file so the trial court is not tainted by the evidence collected or the investigative act executed in contravention with procedural requirements." (Opinion of Judges DOWNING and CHUNG, para. 3) "By contrast, decisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file. The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications, and thereby decide afresh substantive legal issue. Rather, if the International Co-Investigating Judge had been of the view that the Orders were flawed for substantive errors of fact or law, he may have envisaged the possibility of reconsidering them, after having heard the affected parties." (Opinion of Judges DOWNING and CHUNG, para. 4)
2.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"Pursuant to Internal Rule 76(4), a request for annulment relating to 'an order that is open to appeal' is inadmissible, irrespective of the fact that the party requesting the annu[l]ment or the Co-Investigating Judges may not be themselves entitled to appeal the order. The reason for that rule on admissibility is that the regimes for annulment and appellate review are mutually exclusive and apply to different categories of legal action taken by the Co-Investigating Judges." (Separate Opinion of Judges CHUNG and DOWNING, para. 2) "The annulment procedure, which is specific to the inquisitorial system, has been specifically crafted to cure *procedural defects* […], when these procedural irregularities harm the interests of a party.

		When a procedural irregularity affects their validity, these acts, which are not open to appeal, can be annulled and, as a result, removed from the case file so the trial is not tainted by the evidence collected or the investigative act executed in contravention with procedural requirements." (Separate Opinion of Judges CHUNG and DOWNING, para. 3) "By contrast, decisions determining the rights and obligations of the parties are subject to appellate scrutiny. They can be overturned by the Pre-Trial Chamber when the Co-Investigating Judges 'committed specific error of law or fact invalidating the decision[,] weighed relevant considerations or irrelevant considerations in an unreasonable manner' or committed a discernible error in the exercise of their discretion. On appeal, the Pre-Trial Chamber decides on the remedy sought and, even if quashed, the decision is not expunged from the case file. The exclusion of the decisions open to appeal from the annulment procedure means that the Co-Investigating Judges cannot use Internal Rule 76 to request the Pre-Trial Chamber to annul decisions determining the rights and obligations of the parties, such as orders on the admissibility of civil party applications […]. Rather, if the International Co-Investigating Judge had been of the view that the Orders were flawed for substantive errors of fact or law, he may have envisaged the possibility of reconsidering them, after having heard the affected parties." (Separate Opinion of Judges CHUNG and DOWNING, para. 4)
3.	**003 MEAS Muth** PTC 27 D158/1 28 April 2016 *Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary*	"The Pre-Trial Chamber observes that Internal Rule 76 gives a number of indications that applications for annulment of the Closing Order are not prescribed under this Rule. Firstly, as the Defence also notes, Internal Rule 76(2) excludes instances for filing of annulment applications, or for the Co-Investigating Judges deciding on annulment applications, after the issuance of Closing Orders. Hence, procedurally speaking, annulment applications after the Closing Order are not prescribed by the Rules. Furthermore, even in the absence of the provision in Rule 76(2), according to Internal Rule 76(4) the Pre-Trial Chamber may not admit annulment applications that 'relate to an order that is open to appeal'." (para. 18)

c. Sufficient Reasons

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"Internal Rule 76(2) […] provides that an applicant for annulment is obliged to state which part of the proceedings is null and void and provide grounds for making such assertion." (para. 35)
2.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh*	"According to [Internal Rule 76(2) and 76(4)], the existence of 'sufficient reasons' is a prerequisite for the admission and processing of a request for annulment. While the Internal Rules do not elaborate on the meaning of 'sufficient reasons for annulment', the Pre-Trial Chamber has previously explained […] that an applicant for annulment is obliged to state which part of the proceedings is null and void and provide reasons for such an assertion." (para. 36)

	Request for Investigative Action	
3.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"According to [Internal Rule 76(2) and 76(4)], the existence of 'sufficient reasons' is a prerequisite for the admission and processing of a request for annulment. While the Internal Rules do not elaborate on the meaning of 'sufficient reasons for annulment', the Pre-Trial Chamber has previously explained […] that an applicant for annulment is obliged to state which part of the proceedings is null and void and provide reasons for such an assertion." (para. 39)
4.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"According to [Internal Rule 76(2) and 76(4)], the existence of 'sufficient reasons' is a prerequisite for the admission and processing of a request for annulment. While the Internal Rules do not elaborate on the meaning of 'sufficient reasons for annulment', the Pre-Trial Chamber has previously explained […] that an applicant for annulment is obliged to state which part of the proceedings is null and void and provide reasons for such an assertion." (para. 36)
5.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"According to [Internal Rule 76(2) and 76(4)], the existence of 'sufficient reasons' is a prerequisite for the admission and processing of a request for annulment. While the Internal Rules do not elaborate on the meaning of 'sufficient reasons for annulment', the Pre-Trial Chamber has previously explained […] that an applicant for annulment is obliged to state which part of the proceedings is null and void and provide reasons for such an assertion." (para. 34)
6.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"[T]he annulment procedure, as applied [...] 'is not designed to nullify investigations in general [...] but is designed to nullify those portions of the proceedings that harm the Charged Person's interests which have to be specified.' An annulment application therefore needs to be reasoned, specific as to which investigative or judicial actions are procedurally defective and, when applicable, prove the harmed interest. In the latter situation, if the annulment of all investigative or judicial actions is requested, the applicant must prove the existence of a procedural defect that has harmed their interests in the entire case." (para. 24)
7.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010	"[T]he Pre-Trial Chamber does not think that the requirement in an annulment application, to specify which acts or actions must be declared void and removed from the Case File, can be avoided by blaming the Co-Investigating Judges for not complying […] with requests of the variety made by the Co-Lawyers. […] [T]he Co-Investigating Judges are under no obligation to divulge every detail of the judicial investigation, in particular if such explanations would require identifying the work product and identity of particular staff members." (para. 31)

	Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen Heder & David Boyle and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings	
8.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[T]he International Co-Investigating Judge did not demonstrate in his Application how the interests of a party have been harmed by the error allegedly committed by his predecessor in his decision to admit civil party applications in Case 004 prior to charging any Suspect. The vague assertion […] that 'a failure to remedy this procedural defect could have negative consequences in respect of the on-going investigation in Case File 004' is insufficient in this regard. The International Co-Investigating Judge's finding that the annulment of the Orders would not in any way affect the ability of the civil party applicants to exercise the rights afforded to Civil Parties during the judicial investigation further suggests that the annulment does not intend to remedy any harm that may have been caused to the Suspects. Rather, it appears *prima facie* that it is the annulment itself that may cause prejudice to the Civil Parties, as it would result in the decision admitting their application to become Civil Parties being annulled." (Opinion of Judges DOWNING and CHUNG, para. 7)
9.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[T]he International Co-Investigating Judge did not demonstrate in his Application how the interests of a party have been harmed by the error allegedly committed by his predecessor in his decision to admit civil party applications in Case 004 prior to charging any Suspect. The vague assertion […] that 'a failure to remedy this procedural defect could have negative consequences in respect of the on-going investigation in Case File 004' is insufficient in this regard. The International Co-Investigating Judge's finding that the annulment of the Orders would not in any way affect the ability of the civil party applicants to exercise the rights afforded to Civil Parties during the judicial investigation further suggests that the annulment does not intend to remedy any harm that may have been caused to the Suspects. Rather, it appears *prima facie* that it is the annulment itself that may cause prejudice to the Civil Parties, as it would result in the decision admitting their application to become Civil Parties being annulled." (Opinion of Judges DOWNING and CHUNG, para. 7)
10.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written Records of Witnesses' Interviews*	"[T]he Application for Annulment […] sets out sufficient reasons. Indeed, the Co-Lawyers put forward legally reasoned arguments and clearly identified factual elements in the case file in demonstrating the procedural defects stemming from the alleged falsification and the prejudice caused to the Applicant." (para. 21)
11.	**004 AO An** PTC 30 D292/1/1/4	"Internal Rule 76(4) directs that the Pre-Trial Chamber may declare an application for annulment inadmissible where it: i) relates to an order that is open to appeal ii) is manifestly unfounded; or iii) does not set out sufficient reasons. Accordingly, the Pre-Trial Chamber shall ascertain whether the

	15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	application for annulment specified the parts of the proceedings which are prejudicial to the rights and interests of the Applicant, made plain the prejudice, and, if so and where necessary, adduced sufficient evidence to sustain the allegations." (para. 12) "The Pre-Trial Chamber is satisfied that the conditions of Internal Rule 76(4) are met. The Pre-Trial Chamber first notes that the Impugned Decisions are not open to appeal under the Internal Rules. Furthermore, the Pre-Trial Chamber considers that nothing in the application suggests that it is evidently or very apparently unfounded in fact or in law such as to deprive it of any prospect of success. The Pre-Trial Chamber is of the further view that the reasoning set forth in the Application is sufficient since it contains logically consistent submissions underpinned by legal reasoning, whose grounds are set forth, or by factual material pinpointed in the case file." (para. 13)
12.	**004 YIM Tith** PTC 38 D344/1/6 25 July 2017 *Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)*	"Internal Rule 76(4) directs that the Pre-Trial Chamber may declare an application for annulment inadmissible where the application: i) does not set out sufficient reasons; ii) relates to an order that is open to appeal; or iii) is manifestly unfounded. Accordingly, the Pre-Trial Chamber shall ascertain whether the application for annulment: (i) specified the parts of the proceedings which are prejudicial to the rights and interests of the appellant; (ii) clearly articulated the prejudice; and (iii) where necessary, adduced sufficient evidence to sustain the allegations." (para. 5) "The Pre-Trial Chamber is satisfied that the conditions of Internal Rule 76(4) are met. […] Nothing in the application suggests that it is evidently unfounded in fact or in law such as to deprive it of any prospect of success. The Chamber is of the further view that the reasoning set forth in the application is sufficient since it contains logically consistent submissions, underpinned by legal reasoning, whose grounds are set forth, or by factual material pinpointed in the case file." (para. 6)

v. *Miscellaneous*

a. Standing

1.	**004 YIM Tith** PTC 06 D192/1/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying his Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is *specif*ically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)
2.	**004 YIM Tith** PTC 10 D186/3/1/2 31 October 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying his Requests to Access the Case File and to Take Part in the Investigation*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules 74 and 76, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber's Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeals." (para. 31)

3.	**004 YIM Tith** PTC 13 A157/2/1/2 21 November 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeal against the Decision Denying His Application to the Co-Investigative Judges requesting them to seize the Pre-Trial Chamber with a View to Annul the Judicial Investigation*	"Notwithstanding whether the admissibility of the Appeal is argued under Internal Rule 74 and 76 or Internal Rule 21, the Pre-Trial Chamber notes that, at the heart of the admissibility arguments lies the issue of *whether the Appellant, being a Suspect named in the Introductory Submission, is entitled to file motions,* be these applications or appeals, seeking procedural rights such as: 1) submitting applications to the Co-Investigating Judges requesting them to seize the Pre-Trial Chamber with a view to annulment and 2) appealing against the orders or decisions of the Co-Investigating Judges refusing such applications." (para. 20) "[T]he issue of standing, or whether a motion is properly raised, 'has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' in their *examination of admissibility* for the motions.'" (para. 21) "The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules 74 and 76. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules 74 and 76, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Person' adopted by the ICIJ in the Impugned Decisions, and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons. The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal." (para. 22)
4.	**003 MEAS Muth** PTC 15 D103/5/2 23 January 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Appeal against the Co-Investigating Judge's Constructive Refusal to Seise the Pre-Trial Chamber with Two Annulment Applications*	"The Pre-Trial Chamber stated that '[t]he issue of standing "has been previously considered by the Pre-Trial Chamber and it is also part of the jurisprudence of other international tribunals' *in their examination of admissibility for motions* before entering into the merits."'" (para. 14) "The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under the Internal Rules given that he has not been officially notified of the charges against him pursuant to the procedure set forth in the Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Persons' adopted by the ICIJ so far and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons." (para. 15)
5.	**003 MEAS Muth** PTC 17 A77/1/1/2 24 February 2015 *Considerations of the Pre-Trial Chamber on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Denial of His Application to Seize the Pre-Trial Chamber with a Request for Annulment of Summons to Initial Appearance*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under the Internal Rules given that he has not been officially notified of the charges against him pursuant to the procedure set forth in the Internal Rule 57. Judges PRAK, HUOT and NEY hold that the Appellant, being neither a 'Charged Person' nor an 'Accused' under the Internal Rules, cannot lodge appeals under Internal Rules. By contrast, Judges CHUNG and DOWNING, adopting a different interpretation of Internal Rules, in the light of Internal Rule 21, find that the Appellant has standing to bring such appeals, given that what is specifically challenged is the interpretation of the notion of 'Charged Persons' adopted by the ICIJ so far and opine that, at this stage of the proceedings, the Appellant's fundamental fair trial rights mandate that he be granted the same procedural rights as those provided for Charged Persons." (para. 24)

b. Timing

6.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"The Internal Rules do not set explicit time limit for the filing of annulment applications after the notification of conclusion of judicial investigation. In contrast with Internal Rule 66(1), which provides that requests for investigative action shall be filed within 15 days from the notification of conclusion of investigation, Internal Rule 76(2) set forth that annulment applications can be submitted 'at any time during the judicial investigation' and shall be resolved 'before the Closing Order'. The Pre-Trial Chamber interprets Internal Rules 66(1), 67(1) and 76(2) in light of Internal Rule 21(1) and considers that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it." (para. 11) "[L]imiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors pursuant to Internal Rule 66(4) and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 12)
7.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004*	"The Pre-Trial Chamber further recently held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the filing of annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 8)
8.	**004 YIM Tith** PTC 53 D372/1/7 27 September 2018 *Decision on YIM Tith's Application to Annul Evidence Made as a Result of Torture*	"The Pre-Trial Chamber […] held, under a combined reading of Internal Rules 66(1), 67(1) and 76(2) and in light of Internal Rule 21(1), that the 'judicial investigation' is officially concluded by the issuance of the Closing Order, and not at the time the Co-Investigating Judges notify the parties of their intent to conclude it. Limiting the annulment applications between the forwarding of the Case File to the Co-Prosecutors and the issuance of the Closing Order would deprive the Charged Person of a remedy for procedural defects that may occur during this period." (para. 10)

c. Waiver

1.	**001 Duch** PTC 01 C5/45 3 December 2007 *Decision on Appeal against Provisional Detention Order of KAING Guek Eav alias "Duch"*	"[T]he Co-Lawyers for the Charged Person advised the Chamber that they consider that the Co-Investigating Judges complied with the requirement to inform the Charged Person of his right to remain silent […] the Charged Person exercised this right during his hearings and interviews and […] voluntarily delivered written statements to the Co-Investigating Judges. Following questions asked by the Pre-Trial Chamber, the Co-Lawyers also made clear that they would not request annulment of the proceedings because of this issue. We therefore find that any right to request annulment […] based on this procedural defect has been waived […]." (para. 10)

d. Other Admissibility Considerations

1.	**004/1 IM Chaem** PTC 32 D296/4 15 September 2016	"[P]ursuant to Internal Rules 74 and 76, a charged person may only seise the Pre-Trial Chamber of appeals and of applications concerning procedural defects. The *sui generis* Request lodged by the Co-Lawyers is neither an appeal nor an annulment application, but rather aims at confirming the evidence gathered in the case. In these circumstances, there is no procedural basis to intervene" (para. 7)

	Decision on IM Chaem's Request for Confirmation on the Scope of the AO An's Annulment Application regarding all Unrecorded Interviews	
2.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview*	"The Pre-Trial Chamber, which cannot be expected to consider a party's contention if it does not provide precise references, considers the request vague. It will nonetheless, in the interests of justice and expediency, consider the general contentions as raised in the Application and, wherever appropriate, require further submissions." (para. 12)
3.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO AN'S Application to Annul the Entire Investigation*	"In the instant Application, the Co-Lawyers raise in essence the same as their conclusive argument in the previous appeal, but the relief requested is now differently termed as a request for the annulment of the entire investigation. An application for annulment of the entire investigation is not the proper avenue for challenging ICIJ's alleged errors in law made in decisions rejecting requests for investigation." (para. 18)

e. Response to Annulment Application

1.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"There is no clear provision, in Internal Rule 76, to explicitly direct the other parties to respond to annulment applications. […] Internal Rule 74(4) does not provide the Civil Parties with a statutory appeal right against those OCIJ Orders, issued under Rule 76(2), that *approve* requests for referral of applications to the Pre-Trial Chamber. As far as the Co-Prosecutors' are concerned, while the Internal Rules give them unlimited rights to appeal against all OCIJ Orders, even if they appealed the OCIJ's Referral Decision, all they could address (via such appeal) is whether the ICIJ applied the test for referral of the application to the PTC correctly. Therefore, an appellate right under Internal Rule 76(2) does not translate into a right or obligation, on the part of the OCP, to respond to the merits of the application itself. Lastly, there is no clear provision, in Internal Rule 76, to direct the Pre-Trial Chamber on how to proceed - *i.e.*, whether to inform the other parties of such applications or whether to allow or direct the other parties to respond to an application - once the OCIJ has seised the PTC with annulment applications, pursuant to Internal Rule 76(2) - upon a party's request. Faced with this lack of clarity and, having sought guidance from the fundamental principles of procedure before the ECCC, the Pre-Trial Chamber issued […] Instructions, directing: […] that: 'Once the Application is filed before the Pre-Trial Chamber, or the set deadline for its filing has expired, the order of proceedings on the application shall be governed by the general provisions of Internal Rule 77. As usual, the language, time and page limit requirements for submissions by the parties in relation to this application proceeding shall be governed by the provisions of the Practice Direction on Filings before the ECCC'." (para. 18) "Furthermore, the fact that Internal Rule 77(2) expressly refers to the Rule 76(3) decisions suggests that, while Internal Rule 76 only articulates the overall annulment process, Internal Rule 77 is the rule that foresees the procedures for handling annulment applications. According to Internal Rule 77, the proceedings for handling appeals and applications are adversarial; in other words, the Internal Rules call for hearings or for responses and replies to be filed by the other parties." (para. 21) "In addition to the above, the Pre-Trial Chamber has consistently expressed, at least an expectation that it will hear from the other parties in relation to annulment or similar applications." (para. 22)

2.	**004 AO An** PTC 23 D263/1/5 15 December 2016 *Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak*	"The Pre-Trial Chamber recalls that it has sole jurisdiction over annulment applications and that it is the only forum where the annulment process is to be addressed. Furthermore, the practice of giving the parties an opportunity to respond to annulment applications is firmly embedded in the applicable law. Based on Rules 73(b), 76 and 77, governing the proceedings on annulment applications, read in light of Internal Rule 21(1)(a), the Pre-Trial Chamber has consistently granted the opportunity of adversarial debate and expected that all parties involved will take advantage of it." (para. 11) "[T]he Pre-Trial Chamber considers that a right to appeal against Orders of the Co-Investigating Judges under Internal Rule 76(2) does not also translate into a right or obligation, for the parties, to respond to the merits of the application itself." (para. 12)

4. Merits

i. *General*

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[T]he French version of Internal Rule 48, as well as the equivalent of this Rule in the Khmer, French and English versions of the CPC […] do not refer to an infringement of rights, but rather to a harmed interest. Seeking guidance in the CPC, the Pre-Trial Chamber will interpret an 'infringement of rights' as 'a harmed interest'." (para. 36) "For certain procedural defects, annulment is prescribed in the text of the relevant provisions." (para. 37) "[A] proven violation of a right of the Charged Person, recognized in the ICCPR, would qualify as a procedural defect and would harm the interests of a Charged Person. In such cases, the investigative action may be annulled." (para. 40) "When a right was violated in obtaining evidence, such evidence, in national and international law, is not considered inadmissible automatically. '[R]ather […] the manner and surrounding circumstances in which evidence is obtained, as well as its reliability and effect on the integrity of the proceedings, will determine its admissibility'. The Pre-Trial Chamber finds it has to take these factors into account when deciding on annulment as an effective remedy for a violation." (para. 41) "[W]here a procedural defect would not be prescribed void in the text of the relevant provision, and where there has been no violation of a right recognized in the ICCPR, the party making the application will have to demonstrate that its interests were harmed by the procedural defect." (para. 42)
2.	**002 NUON Chea** PTC 21 D158/5/1/15 18 August 2009 *Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action*	"Pursuant to [Internal Rules 48, 76 and 87], irregularly obtained evidence can be excluded from the case file where a procedural defect has been identified in relation to the way evidence has been obtained or handled and where it is established that such defect infringes the rights of a party to the proceedings […]." (para. 35)
3.	**002 IENG Thirith** PTC 19 D158/5/4/14 25 August 2009 *Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's*	"Pursuant to [Internal Rules 48, 76 and 87], irregularly obtained evidence can be excluded from the case file where a procedural defect has been identified in relation to the way evidence has been obtained or handled and where it is established that such defect infringes the rights of a party to the proceedings […]." (para. 38)

	Eleventh Request for Investigative Action	
4.	**002 IENG Sary** PTC 20 D158/5/3/15 25 August 2009 *Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"Pursuant to [Internal Rules 48, 76 and 87], irregularly obtained evidence can be excluded from the case file where a procedural defect has been identified in relation to the way evidence has been obtained or handled and where it is established that such defect infringes the rights of a party to the proceedings […]." (para. 35)
5.	**002 KHIEU Samphân** PTC 22 D158/5/2/15 27 August 2009 *Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action*	"Pursuant to [Internal Rules 48, 76 and 87], irregularly obtained evidence can be excluded from the case file where a procedural defect has been identified in relation to the way evidence has been obtained or handled and where it is established that such defect infringes the rights of a party to the proceedings […]." (para. 33)
6.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings*	"Internal Rule 48, as set out above, requires that the person making the application for annulment demonstrate, the existence of a procedural defect that has resulted in an infringement of rights. The Pre-Trial Chamber has determined that the phrase 'an infringement of rights,' as referred to in Internal Rule 48, may also be described as 'a harmed interest.' […] [A] violation of the charged person's rights under the ICCPR or the Internal Rules is considered a procedural defect that creates a harmed interest and can thus lead to an annulment. Alternatively, where a procedural detect is not prescribed as void in the Internal Rules and where there has been no violation of rights under the ICCPR, the applicant must prove the existence of a procedural defect that has harmed their interests in order to satisfy the threshold for annulment." (para. 21) "The right to be tried by a fair and impartial tribunal is protected by Article 14 of the ICCPR. The Pre-Trial Chamber has previously held that a proven violation of right of the charged person recognised in the ICCPR would qualify as a procedural defect and would harm the interests of a charged person. In such cases the investigative or judicial action may be annulled." (para. 28)
7.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011	"[T]he Internal Rules […] generally envisage that a procedural defect would not necessarily lead to the nullity of an impugned action. The harm suffered by the affected party shall be taken into consideration and the latter may even waive the right to request annulment and thus regularise the proceedings. Insofar as international practice is concerned, we note that the [ICJ] has consistently considered that it 'should not penalise a defect in a procedural act which the applicant could easily remedy' and that

	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	international tribunals have refused to exclude evidence on the basis of procedural effects where it was found that no harm resulted from said defect. The underlying principle of this practice is that a party should not be deprived of his or her right of access to the Court on the basis of procedural formalities unless such measure is proportional to the aim it sought to achieve (*i.e.*, remedy the harm caused to the affected party)." (Opinion of Judges LAHUIS and DOWNING, para. 10)
8.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"In our opinion, the absence of notification of the Order in Case 004 to the Appellant's Lawyers and the absence of a clear evidence of notification to the Appellant himself is a procedural defect that infringes upon the Appellant's fundamental rights." (Opinion of Judges DOWNING and LAHUIS, para. 12)
9.	**004 Civil Parties** PTC 04 D165/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[T]he Internal Rules explicitly provides that 'Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application', unless the rules explicitly provide that given procedural defect automatically renders the act null and void. The underlying rationale is to avoid delaying the course of justice for procedural errors that do not affect the interests of any party or more generally the good administration of justice." (Opinion of Judges DOWNING and CHUNG, para. 6)
10.	**003 Civil Parties** PTC 09 D79/1 12 November 2013 *Decision on Application for Annulment pursuant to Internal Rule 76(1)*	"[T]he Internal Rules explicitly provides that 'Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application', unless the rules explicitly provide that given procedural defect automatically renders the act null and void. The underlying rationale is to avoid delaying the course of justice for procedural errors that do not affect the interests of any party or more generally the good administration of justice." (Opinion of Judges DOWNING and CHUNG, para. 6)
11.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"The Pre-Trial Chamber recalls that examination of an application for annulment requires: (1) consideration, in the first place, of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant." (para. 25) "Annulment is foreseen under Internal Rule 48 […]. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (para. 26)
12.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016	"Pursuant to Rule 48, a judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application. In light of its consistent jurisprudence, if a defect is identified […], the Undersigned Judges will then assess whether the defect in the Supplementary Submission harms MEAS Muth's interests." (Opinion of Judges BEAUVALLET and BAIK, para. 7)

	Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission	
13.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"Annulment is foreseen under Internal Rule 48, which provides: 'Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'. Accordingly, a procedural irregularity which is not prejudicial to an applicant does not result in annulment." (para. 33) "Under Article 252 of the CCCP, '[p]roceedings shall also be null and void if the violation of any substantial rule or procedure stated in this Code or any provisions concerning criminal procedure affects the interests of the concerned party. For instance, rules and procedures of important nature are those which intend to guarantee the rights of the defence.' In this respect, the Pre-Trial Chamber has found that 'a proven *violation of a right of the Charged Person*, recognized in the ICCPR, would qualify as a procedural defect and would harm the interests of a Charged Person. In such cases, the investigative or judicial action may be annulled'." (para. 34) --- "The ongoing investigations into the acts alleged in the Supplementary Submissions do not violate AO An's right to legality, under Article 15 of the ICCPR, hence, no procedural defect that harms his interests exists to warrant nullity of such proceedings." (Opinion of Judges BEAUVALLET and BAIK, para. 19)
14.	**003 MEAS Muth** PTC 28 D165/2/26 13 September 2016 *Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge*	"Failure to append violates the rights of the Charged Person to notice of the body of evidence laid against him. Be that as it may, the Undersigned Judges do not consider annulment of the written record [of interview which refers to the missing document] to be the proper or warranted remedy in this instance. Procedural defect in fact arises from the absence of a document on record and not from an inherent defect which would justify annulment of the investigative action. The written record of interview which refers to the missing document is not vitiated." (Opinion of Judges BEAUVALLET and BAIK, para. 258)
15.	**004/1 IM Chaem** PTC 28 D298/2/1/3 27 October 2016 *Considerations on IM Chaem's Application for Annulment of Transcripts and Written Records of Witnesses' Interviews*	"[I]n accordance with Internal Rule 48, consideration of an application for annulment requires two successive steps: 1) in the first place, determining whether a procedural irregularity exists; and 2) subsequently, where such a defect is found to exist, determining whether it is prejudicial to the applicant. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (Opinion of Judges BEAUVALLET and BAIK, para. 42) "[C]ontrary to the provisions of Internal Rules 55(7), 55(9) and 62, the Written Record of Interview […] is not signed by the witness concerned and pre-dates the Rogatory Letter […] authorising the interview of the witness. It therefore fails to meet the requirements of a written record of interview." (Opinion of Judges BEAUVALLET and BAIK, para. 50) "[T]he Written Record of Interview […] amounts to evidence relating to the investigation into the interference [with the administration of justice] and not to the International Co-Prosecutor's charges in Case File No. 004/1. Therefore, no prejudice is caused to the Applicant." (Opinion of Judges BEAUVALLET and BAIK, para. 51)

		"[D]etermining the existence of interference with the administration of justice requires proof of a criminal offence, whereas the applicable standard in regard to annulment requires proof of both a procedural irregularity and prejudice. The mere opening of an investigation into interference is not capable of establishing such a procedural irregularity or prejudice […]. Moreover, far from violating the Applicant's rights, opening an investigation into interference is aimed at ensuring that the proceedings against her are fair." (Opinion of Judges BEAUVALLET and BAIK, para. 52) "The Co-Lawyers fail to point to any concrete evidence on the case file – apart from suspicion of tampering and lack of impartiality on the part of the investigators – as proof of some procedural irregularity. […] [T]his [is] insufficient ground to rebut the presumption of reliability of written records of witness interviews. […] [T]he circumstances surrounding the witness interviews will be among the elements considered at a later stage during the assessment of evidence by the Co-Investigating Judges, and, where necessary, by the Pre-Trial Chamber and the Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 54) "[T]he undersigned Judges recall that an Internal Rule 48 annulment is not the only remedy available and that the circumstances surrounding the recording of the testimony will be fully considered at the closing order stage, including eventually by the Pre-Trial Chamber, and, should the case go to trial, by the Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 59)
16.	**004 AO An** PTC 31 D296/1/1/4 30 November 2016 *Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview*	"In the present case, the fact that the impugned witness interviews were not recorded does not of itself refute the presumption of reliability which attaches to the interviews. Provided that written records of the interviews were made pursuant to Internal Rule 55(7), and having regard to the foregoing principles, the Pre-Trial Chamber does not find the procedural defect established." (para. 23) "[D]elegates executing rogatory letters shall act under the supervision of the Co-Investigating Judges. Therefore, it is up to the Co-Investigating Judges to give instructions to the investigators, even *ultra legem*, to record witness interviews for instance." (para. 24) "This being said, these discretionary instructions issued by the Co-Investigative Judges do not supersede the applicable law. In other words, the non-compliance with the memoranda would not constitute a procedural defect if not contradicting the Internal Rules, the Cambodian Code of Criminal Procedure or any other relevant legal disposition." (para. 25) "[T]he Pre-Trial Chamber is not convinced that unique circumstances […] justify, under a broad interpretation of Internal Rule 21, restrictions to the Co-Investigating Judges' discretion or the annulment of all non-audio-recorded witness interviews. In particular, the allegation […] is highly speculative and not capable of rebutting the presumption of reliability or establishing a procedural defect." (para. 26)
17.	**004 AO An** PTC 27 D299/3/2 14 December 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng Wat Angkuonh Dei and Charges relating to Tuol Beng*	"'Annulment is foreseen under Internal Rule 48, which provides: 'Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'. Accordingly, a procedural irregularity which is not prejudicial to an applicant does not result in annulment.'" (para. 14) "Internal Rule 76(5) further provides: 'Where the Chamber decides to annul an investigative action, it shall decide whether the annulment affects other actions or orders'. The final step, once prejudice is established, concerns the identification of the parts of the proceedings to be annulled. Where one of the three elements is not established, annulment cannot proceed and the subsequent assessment need not be undertaken." (para. 15)
18.	**004 AO An** PTC 23 D263/1/5 15 December 2016	"Annulment is foreseen under Internal Rule 48, which provides that '[i]nvestigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'." (Opinion of Judges BEAUVALLET and BAIK, para. 43)

	Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak	"Accordingly, examination of an application for annulment requires: (1) consideration, in the first place, of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant. A procedural irregularity which is not prejudicial to an applicant does not result in annulment." (Opinion of Judges BEAUVALLET and BAIK, para. 44) "The Co-Investigating Judges can perform preliminary checks before bringing some evidence for the Co-Prosecutors to decide whether they have 'reason to believe' that facts *susceptible to be qualified as a criminal offenses* exist. As to what extend the Co-Investigating Judges can proceed, the Undersigned Judges consider those preliminary checks performed by the Co-Investigating Judge, or on his behalf, can not aim at confirming a level of probability higher than a 'reason to believe' without amounting to a procedural defect." (Opinion of Judges BEAUVALLET and BAIK, para. 78) "[T]here is no time limit set neither in the Internal Rules, nor in the of Cambodian Code of Criminal Procedure, which set a clear deadline beyond which [the forwarding order] would have been procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 87)
19.	**004 AO An** PTC 30 D292/1/1/4 15 February 2017 *Decision of AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61*	"The Pre-Trial Chamber recalls that annulment is foreseen under Internal Rule 48, which provides '[investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'. Accordingly, a procedural irregularity which is not prejudicial to an applicant does not result in annulment." (para. 19) "Internal Rule 46 [...] provides no exception to the rule that 'all' orders of the Co-Investigating Judges shall be notified to the 'parties'. [...] The Pre-Trial Chamber finds that, pursuant to Internal Rule 46, the ICIJ was required to notify the Defence with the Impugned Decisions." (para. 29) "[S]ince the lack of notification has not caused any prejudice, the Pre-Trial Chamber holds that the lack of conformity with the requirements of Internal Rule 46, does not amount to a procedural defect warranting annulment." (para. 35)
20.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment." (para. 14) "In accordance with Internal Rule 48, consideration of an application for annulment requires two steps: 1) determining whether a procedural irregularity exists; and 2) where such a defect is found to exist, determining whether it is prejudicial to the applicant. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (para. 15) "[A] distinction may be established between procedural defects which are explicitly foreseen by a legal provision and substantive procedural defects which are not explicitly prescribed. Substantive nullities may indeed be established when a breach of an 'essential' or 'substantial' formality has harmed the interests of the party it concerns, the determination of which is left to the judges and assessed on a case-by-case basis. Essential formalities correspond to rules of criminal procedure, including requirements pertaining to the guarantee of a fair trial and rights of the defence provided for in Internal Rule 21 and Article 14 of the ICCPR, which are *fundamental* for the investigative action to serve its intended purpose. Substantive nullities thus aim to sanction serious procedural irregularities." (para. 17) "With regards to the first set of nullities, the Pre-Trial Chamber observes that the Application is not based on any explicit legal provision. There are indeed no prescribed requirements on pain of nullity, in the Internal Rules and other instruments applicable before the ECCC, including in Cambodian and French law, regarding the nature and form of questions asked during witness interviews." (para. 18) "As to whether alleged bias in conducting interviews would amount to a violation of an 'essential formality', the Pre-Trial Chamber previously held that a proven violation of a right of the charged person recognized in the ICCPR would qualify as a procedural defect and harm the interests of a charged person. French jurisdictions have further recognised that the parties may be well-founded to request, if objective bias is proven and violation of the fairness of the proceedings established, the annulment of investigative actions performed by an investigative judge or investigator in breach of the impartiality requirement. In light of the foregoing, the Pre-Trial Chamber considers that a breach of impartiality, if proven, would amount to a cause of a substantive nullity." (para. 19) "At the outset, the Pre-Trial Chamber recalls the presumption of reliability which attaches to investigative action. This presumption is rebuttable and the veracity of an interview may be challenged

		by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true. The Pre-Trial Chamber has further defined the appropriate standard to be applied in respect of bias in applications under Internal Rule 34 and held that it was equally applicable where an applicant alleges partiality as a basis for an annulment application under Internal Rule 76(2). It emphasises that there is 'a high threshold to reach in order to rebut the presumption of impartiality' and that it is for the applicant 'to adduce sufficient evidence to satisfy the Pre-Trial Chamber' of 'the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias'." (para. 20) "The practice of confronting witnesses or civil parties to other narratives or evidence on the record, as well as to public statements of the charged person himself, is a legitimate investigative practice and does not evince any biased approach." (para. 21) "The Pre-Trial Chamber also cannot identify any indicia of bias in the established investigative practice of having a witness confirm previous statements." (para. 22) "[T]he Pre-Trial Chamber is not convinced that the three investigators exceeded their discretion by not following up on certain leads or not testing inculpatory statements, such as to demonstrate to the requisite standard any bias or appearance of bias. […] [E]xcerpts of records spotting the choice of investigators to explore certain leads in details, and not other leads preferred by the Applicant, do not constitute sufficient indicia of bias in light of their knowledge of evidence on the case file, this especially when a witness has already been interviewed at length." (para. 23) "The existence of off-record conversations, even if proven, would indeed not affect the validity of the interview but merely its probative value." (para. 24)
21.	**004 YIM Tith** PTC 38 D344/1/6 25 July 2017 *Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)*	"Annulment is foreseen under Internal Rule 48 which provides that '[investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'." (para. 7) "Accordingly, examination of an application for annulment requires: (1) consideration, in the first place of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant. A procedural irregularity which is not prejudicial to an applicant does not result in annulment." (para. 8) --- "The Undersigned Judges thus find that there is no time limit set in the applicable law setting a clear deadline beyond which forwarding orders would be considered procedurally defective." (Opinion of Judges BEAUVALLET and BAIK, para. 55) "[A]nnulment is not warranted because the ICIJ's investigative actions that led to the Forwarding Order […] are within the geographical scope of the investigation […]." (Opinion of Judges BEAUVALLET and BAIK, para. 58)
22.	**004 YIM Tith** PTC 39 D345/1/6 11 August 2017 *Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam*	"Annulment is foreseen under Internal Rule 48, which provides that '[i]nvestigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application.'" (para. 9) "Accordingly, examination of an application for annulment requires: (1) consideration, in the first place, of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant. A procedural irregularity which is not prejudicial to an applicant does not result in annulment." (para. 10) --- "The Undersigned Judges consider that because the First Supplementary Submission predates all the impugned investigative actions, no grounds exist for their annulment on the basis that they are outside the scope of investigations." (Opinion of Judges BEAUVALLET and BAIK, para. 33) "The Undersigned Judges recall that examination of an application for annulment requires: (1) consideration, in the first place, of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant. As no procedural defect has been identified,

		the Undersigned Judges will not entertain the claim for infringement of the Charged Person's rights." (Opinion of Judges BEAUVALLET and BAIK, para. 74)
23.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment. In accordance with Internal Rule 48, consideration of an application for annulment requires two steps: 1) determining whether a procedural irregularity exists; and 2) where such a defect is found to exist, determining whether it is prejudicial to the applicant. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (para. 12) "The Pre-Trial Chamber further recalls the established distinction between procedural defects, which are explicitly foreseen by a legal provision, and substantive procedural defects, which are not explicitly prescribed and aim to sanction serious procedural irregularities in case of breach of an 'essential' or 'substantial' formality. As to whether alleged bias in conducting interviews would amount to a violation of an 'essential formality', the Pre-Trial Chamber previously held that a proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and harm the interests of a charged person and that a breach of impartiality by an investigative judge or investigator, if proven, would amount to a cause of a substantive nullity of the investigative actions performed by them. The Pre-Trial Chamber has defined the appropriate standard to be applied in respect of bias and emphasises that there is a high threshold to reach in order to rebut the presumption of impartiality. It is for the applicant to adduce sufficient evidence to satisfy the Pre-Trial Chamber of the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias." (para. 14) "The Pre-Trial Chamber recalls that there are no prescribed requirements on pain of nullity, in the applicable law before the ECCC, regarding the nature and form of questions asked during witness interviews, and that the format of questioning and conduct of witness and civil party interviews is left to the unfettered discretion of the Co-Investigating Judges. The Pre-Trial Chamber further stresses that records of interviews have to be read as a whole to assess their regularity and that it will exercise the utmost caution when examining isolated excerpts of an investigator's work." (para. 16) "[T]he Pre-Trial Chamber is not convinced that the Investigator exceeded his discretion by not following up on certain leads or not testing inculpatory statements, such as to demonstrate any bias or appearance of bias to the requisite standard. Excerpts of records where the Investigator chose to explore certain leads in details, and not other leads preferred by the Applicant, do not constitute sufficient indicia of partiality, especially in light of the Investigator's knowledge of evidence already on the case file." (para. 17) "The alleged feeding of 'preconceptions' of the case corresponds in fact to instances where the Investigator directed the interview to topics relevant to the Charged Person and to the crime base, after a series of open questions, and does not evince any bi[a]sed approach. The Pre-Trial Chamber also summarily dismisses the argument that the Investigator's practice of thanking interviewees after answering a question would support the showing that he was, in fact, expressing gratitude to them for 'giving the answer he wants'." (para. 18) "[T]he practice of confronting witnesses or civil parties to other narratives or incriminating evidence on the record is a legitimate investigative practice, which actually aims to test the inculpatory evidence on the record and thus does not demonstrate any bias. The Pre-Trial Chamber finally does not identify any misconduct in the established practice of having a witness confirming or infirming previous statements, and does not find any misrepresentation by the Investigator of the evidence at his disposition when confronting it to witnesses." (para. 19) "[T]he presumption of reliability attached to written records of interview is not rebutted when the Investigator asked the witness to repeat relevant information given before the interview, during screening questions, or during a break. It is actually an appropriate investigative practice, which does not evince any bias, to have witnesses repeating information given off-the-record, solicited or not, for the purpose of having an accurate record of their evidence." (para. 22) "The Pre-Trial Chamber further considers that the existence of off-the-record conversations, even if proven, would not affect the validity of the impugned interviews but merely their probative value. The Pre-Trial Chamber therefore finds that the presumption of reliability has not been rebutted and that no procedural defect has been established that would justify the annulment of the impugned interviews." (para. 24)

		"After having carefully reviewed the impugned written record of investigative action, the Pre-Trial Chamber concludes that it is affected by several procedural defects which, cumulatively, are substantial and invalidate the part of the document summarising the interview […]. In particular, neither the formal requirements of Internal Rules 24(1) and (3) nor those of Internal Rule 55(7) have been observed." (para. 33) "The Pre-Trial Chamber, recalling that substantive nullities may be established when a breach of an 'essential' or 'substantial' formality has harmed the interests of the party it concerns, finds that the procedural defects identified above are substantive and that they rebut the presumption of regularity attached to written records of investigation." (para. 34) "The Pre-Trial Chamber […] recalls the unfettered discretion of Co-Investigating Judges in the conduct of interviews and considers it reasonable for an investigator to confront interviewees to other evidence on the record without specifying each and every reference, especially in light of confidentiality and witness protection constraints." (para. 38) "The Pre-Trial Chamber, however, finds […] that the conversation of the Investigator […] constitutes no more than an initial contact aiming at determining whether the witness is able to give information on the topic(s) of the intended interview. It recalls that there is no obligation to keep record of such initial contact in the form prescribed by Internal Rules 24 and 55(7), and certainly no breach of Internal Rule 25(2), which deals with reasons for not audio or video-recording a Suspect or Charged Person's interview." (para. 39) "[A]nnulment would not be the only remedy available for the alleged shortcomings. The circumstances in which evidence is obtained, including the reliability of the interviews in light of the nature of the questions asked to the witnesses and civil parties, will be fully assessed at the closing order stage, including eventually by the Pre-Trial Chamber, and, should the case go to trial, by the Trial Chamber." (para. 45)
24.	**003 MEAS MUTH** PTC 33 D253/1/8 13 December 2017 *Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171*	"Annulment is foreseen under Internal Rule 48, which provides that '[i]nvestigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application'." (para. 13) "Accordingly, examination of an application for annulment requires: (1) consideration, in the first place, of procedural defect; and (2) subsequently, where such defect is established, the existence of prejudice to the applicant. A procedural irregularity which is not prejudicial to an applicant does not result in annulment." (para. 14)
25.	**003 MEAS Muth** PTC 34 D257/1/8 24 July 2018 *Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment. In accordance with Internal Rule 48, consideration of an application for annulment requires two steps: 1) determining whether a procedural irregularity exists; and 2) where such a defect is found to exist, determining whether it is prejudicial to the applicant. Accordingly, a procedural irregularity which is not prejudicial to the applicant does not entail annulment." (para. 14)
26.	**004 YIM Tith** PTC 51 D370/1/1/6 20 August 2018 *Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and*	"Internal Rule 73(b) establishes the Pre-Trial Chamber's sole jurisdiction over applications for annulment. In accordance with Internal Rule 48, consideration of an application for annulment requires the determination of: 1) whether a procedural irregularity exists; and, 2) where such a defect is found to exist, whether it is prejudicial to the applicant." (para. 16) "[T]he Pre-Trial Chamber considers that the Victims Support Section did not undertake any delegated investigative action in place of the Co-Investigating Judges, in the sense of Internal Rules 55(9), 59(6) and 62, but instead properly assisted victims in submitting civil party applications, under the former International Co-Investigating Judge's supervision, pursuant to Internal Rule 12*bis*(1)(b)." (para. 21)

	Associated Investigative Products in Case 004	"Accordingly, no procedural defect has been established that would justify the annulment of Requests and associated investigative products. Any concern relating to the reliability of the supplementary information sought would not affect the validity of the civil party applications as such, but merely their probative value, which is to be fully assessed at a later stage." (para. 22)
27.	**004 YIM Tith** PTC 53 D372/1/7 27 September 2018 *Decision on YIM Tith's Application to Annul Evidence Made as a Result of Torture*	"The Pre-Trial Chamber […] considers that no procedural defect or prejudice – which remains hypothetical as long as information falling under the exclusionary rule is not 'invoked' as evidence, within the ordinary meaning of the phrase – has been demonstrated. Accordingly, the Pre-Trial Chamber does not find the mere placement of torture-tainted evidence onto the Case File defective and dismisses the request to annul the S-21 Confessions." (para. 22) "The above-mentioned torture-tainted statements were not put as assertions of fact, nor were they used by the investigators to establish the truth of their content, or to imply that reliance was being placed on the truth of the confessions when confronting the witnesses. Rather, the investigators focused on the independent knowledge of the witnesses. Therefore, the Pre-Trial Chamber finds the use of these statements permissible." (para. 30)

ii. *Basis of Bias*

1.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"Under Internal Rule 48, for an investigative or judicial action to be annulled, the Charged Person must prove the existence of the alleged procedural defects that resulted in an infringement upon her rights. The Pre-Trial Chamber will interpret 'an infringement of rights', as referred to in Internal Rule 48, as 'a harmed interest'. The Pre-Trial Chamber has previously considered […] that as such, a violation of the Charged Person's rights under the ICCPR or Internal Rules is considered a procedural defect that creates harmed interest and can thus lead to an annulment. Alternatively, where a procedural defect is not prescribed as void in the Internal Rules and where there has been no violation of rights under the ICCPR, the applicant must prove the existence of a procedural defect that has harmed their interests in order to satisfy the threshold for annulment." (para. 21) "[I]f the annulment of all investigative or judicial actions is requested, the applicant must prove the existence of a procedural defect that has harmed their interests in the entire case. When violation of the Charged Person's rights under the ICCPR or Internal Rules is proven, the procedural defect creates a harmed interest and will lead to annulment of that specific investigative or judicial action, although the Pre-Trial Chamber has the discretion to appreciate the consequences of this annulment on the entirety of the case." (para. 24) "[W]here an applicant claims bias, the applicant has the burden to overcome a presumption of the Judge's impartiality […]." (para. 31) "[I]t is equally applicable where an applicant alleges partiality as basis for an application under Rule 76(2). It is for the applicant under this rule to prove the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias. In the present case, the applicant is contending that lack of impartiality, *i.e.*, bias, is a procedural defect; therefore sufficient evidence must be adduced to reverse the presumption of impartiality of Judge Lemonde. In that context, if the alleged bias is proven, it could lead to a procedural defect and the Pre-Trial Chamber will have to examine which judicial or investigative actions are concerned by the allegation of partiality and what are the consequences of the defect, *i.e.*, bias, on the overall case considering that the investigations performed by the OCIJ were approved, unless otherwise proven by the national Co-Investigating Judge." (para. 32) "[T]he allegations […] that the OCIJ violated his obligation to act independently under, in particular, Internal Rules 21 and 55(2) [i]f proven […] would amount to a procedural defect, which does amount to a violation of rights." (para. 39) "[T]he Pre-Trial Chamber does not find that a policy regarding access to an internal database of the OCIJ could exemplify the existence of a procedural defect that harms the interests of the Charged Person." (para. 49)

2.	**004/2 AO An** PTC 37 D338/1/5 11 May 2017 *Decision on AO An's Application to Annul Written Records of Interview of Three Investigators*	"[A] proven violation of a right of the charged person recognized in the ICCPR would qualify as a procedural defect and harm the interests of a charged person. […] [A] breach of impartiality, if proven, would amount to a cause of a substantive nullity." (para. 19) "At the outset, the Pre-Trial Chamber recalls the presumption of reliability which attaches to investigative action. This presumption is rebuttable and the veracity of an interview may be challenged by establishing that the content of a written record had been altered and by showing that the presumption no longer holds true. The Pre-Trial Chamber has further defined the appropriate standard to be applied in respect of bias in applications under Internal Rule 34 and held that it was equally applicable where an applicant alleges partiality as a basis for an annulment application under Internal Rule 76(2). It emphasises that there is 'a high threshold to reach in order to rebut the presumption of impartiality' and that it is […] for the applicant 'to adduce sufficient evidence to satisfy the Pre-Trial Chamber' of 'the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias'." (para. 20) "The practice of confronting witnesses or civil parties to other narratives or evidence on the record, as well as to public statements of the charged person himself, is a legitimate investigative practice and does not evince any biased approach." (para. 21) "The Pre-Trial Chamber also cannot identify any indicia of bias in the established investigative practice of having a witness confirm previous statements." (para. 22) "[T]he Pre-Trial Chamber is not convinced that the three investigators exceeded their discretion by not following up on certain leads or not testing inculpatory statements, such as to demonstrate to the requisite standard any bias or appearance of bias. […] [E]xcerpts of records spotting the choice of investigators to explore certain leads in details, and not other leads preferred by the Applicant, do not constitute sufficient indicia of bias in light of their knowledge of evidence on the case file, this especially when a witness has already been interviewed at length." (para. 23) "The existence of off-record conversations, even if proven, would indeed not affect the validity of the interview but merely its probative value." (para. 24)
3.	**004 YIM Tith** PTC 40 D351/1/4 25 August 2017 *Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI*	"[A] proven violation of a right of the charged person recognised in the ICCPR would qualify as a procedural defect and harm the interests of a charged person and that a breach of impartiality by an investigative judge or investigator, if proven, would amount to a cause of a substantive nullity of the investigative actions performed by them. The Pre-Trial Chamber has defined the appropriate standard to be applied in respect of bias and emphasises that there is a high threshold to reach in order to rebut the presumption of impartiality. It is for the applicant to adduce sufficient evidence to satisfy the Pre-Trial Chamber of the existence of a procedural defect and either actual (or objective) bias or apprehended (or subjective) bias." (para. 14) "[T]he practice of confronting witnesses or civil parties to other narratives or incriminating evidence on the record is a legitimate investigative practice, which actually aims to test the inculpatory evidence on the record and thus does not demonstrate any bias. The Pre-Trial Chamber finally does not identify any misconduct in the established practice of having a witness confirming or infirming previous statements, and does not find any misrepresentation by the Investigator of the evidence at his disposition when confronting it to witnesses." (para. 19) "[T]he presumption of reliability attached to written records of interview is not rebutted when the Investigator asked the witness to repeat relevant information given before the interview, during screening questions, or during a break. It is actually an appropriate investigative practice, which does not evince any bias, to have witnesses repeating information given off-the-record, solicited or not, for the purpose of having an accurate record of their evidence." (para. 22) "The Pre-Trial Chamber […] recalls the unfettered discretion of Co-Investigating Judges in the conduct of interviews and considers it reasonable for an investigator to confront interviewees to other evidence on the record without specifying each and every reference, especially in light of confidentiality and witness protection constraints." (para. 38)

5. Scope of Annulment

1.	**002 KHIEU Samphân** PTC 30 D197/5/8 4 May 2010 *Decision on KHIEU Samphan's Appeal against the Order on the Request for Annulment for Abuse of Process*	"It goes without further reasoning that the annulment procedure […] is not designed to nullify investigations in general, […] but is designed to nullify those portions of the proceedings that harm the Charged Person's interests which have to be specified. Where the Appeal seeks the annulment in general of all investigative and prosecutorial actions it is therefore denied." (para. 24)
2.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"[T]he annulment procedure, as applied [...] 'is not designed to nullify investigations in general [...] but is designed to nullify those portions of the proceedings that harm the Charged Person's interests which have to be specified.' [...] [I]f the annulment of all investigative or judicial actions is requested, the applicant must prove the existence of a procedural defect that has harmed their interests in the entire case. When violation of the Charged Person's rights under the ICCPR or Internal Rules is proven, the procedural defect creates a harmed interest and will lead to annulment of that specific investigative or judicial action, although the Pre-Trial Chamber has the discretion to appreciate the consequences of this annulment on the entirety of the case." (para. 24) "It is indeed for the Pre-Trial Chamber to appreciate the consequences on the entirety of the case of particular procedural defect, in accordance with Internal Rule 76(5) [...]." (para. 25) "[I]n a case where a party requests the annulment of substantial or several parts of the proceedings, this might, in effect, lead to the annulment of all investigations depending of the extent of the harmed interest. Further, the annulment of 'any part of the proceedings' may, when the harmed interest has serious consequences on the proceedings or other investigative or judicial actions, have consequences on the entirety of the proceedings. The Pre-Trial Chamber will make such determination as to the remedy to apply following a proven procedural defect on case by case basis." (para. 26) "The Pre-Trial Chamber notes that when an application for annulment is granted, the investigative or judicial action(s) declared null and void is (or are) expunged from the material on the case file. Consequently, if the entire investigation is annulled, all the material will be expunged from the case file, which leads to a consequence which must be differentiated from that of a stay of proceedings for abuse of process. Both procedures apply different standards and result in different consequences. If an annulment is ordered, even of the entire investigation, there is nothing to prevent a new investigation from placing new material, which is untainted by those defects, on the case file. In the case of stay of proceedings, the whole proceedings would cease because the abuse has been found to be so egregious as to damage the integrity of the entire process there will no longer be any case to answer." (para. 27) "In that context, if the alleged bias is proven, it could lead to a procedural defect and the Pre-Trial Chamber will have to examine which judicial or investigative actions are concerned by the allegation of partiality and what are the consequences of the defect, *i.e.*, bias, on the overall case considering that the investigations performed by the OCIJ were approved, unless otherwise proven by the national Co-Investigating Judge." (para. 32)
3.	**002 IENG Sary** PTC 72 D402/1/4 30 November 2010 *Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment*	"In light of Rule 76(2) which provides that the Chamber shall decide whether annulment affects other actions or orders and in consideration of the serious consequences on the proceedings or investigative and/or judicial actions, the Pre-Trial Chamber will make such determination as to the remedy to apply following a proven procedural defect on a case by case basis." (para. 23)

	of All Investigative Acts Performed by or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings	
4.	**003 MEAS Muth** PTC 20 D134/1/10 23 December 2015 *Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action*	"Internal Rule 76(5) further provides: 'Where the Chamber decides to annul an investigative action, it shall decide whether the annulment affects other actions or orders'. The final step, once prejudice is established, concerns the identification of the parts of the proceedings to be annulled. Where one of the three cumulative elements is not established, annulment cannot proceed and the subsequent assessment need not be undertaken." (para. 27)
5.	**004 AO An** PTC 21 D257/1/8 17 May 2016 *Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage*	"'The final step, once prejudice is established, concerns the identification of the parts of the proceedings to be annulled.' Furthermore, Internal Rule 76(5) provides: 'Where the Chamber decides to annul an investigative action, it shall decide whether the annulment affects other actions or orders'." (para. 34) "[A]lthough the annulment of the Supplementary Submission […] is not part of the relief sought in the Application, the request for its nullity is implied given the statement in the Application that 'the Supplementary Submission is an unlawful attempt to expand the Court's jurisdiction' and also by virtue of requesting annulment of all investigative actions consequent upon it. Therefore, in its review of the grounds of the Application, the Undersigned Judges shall examine the regularity of, not only the investigative actions taken in isolation, but also of the Supplementary Submission, in its relevant parts." (Opinion of Judges BEAUVALLET and BAIK, para. 7)
6.	**004 YIM Tith** PTC 38 D344/1/6 25 July 2017 *Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1)*	"The Pre-Trial Chamber has stated that '[w]hen a violation of the Charged Person's rights under the ICCPR or Internal Rules is proven, the procedural defect creates a harmed interest and will *lead to annulment of that specific investigative or judicial action*, although the Pre-Trial Chamber has the *discretion to appreciate the consequences of this annulment on the entirety of the case*' and that '[i]t is indeed for the Pre-Trial Chamber to appreciate the consequences on the entirety of the case *of a particular procedural defect*, in accordance with Internal Rule 76(5)'." (Opinion of Judges BEAUVALLET and BAIK, para. 64) "The Undersigned Judges recall that neither the investigative actions set out in Annex A, nor the Forwarding Order have been found as procedurally defective, therefore no annulment is warranted for these parts of the investigation. The remaining grief against the Fourth Supplementary Submission and the investigative actions set out in Annex B is based on the Co-Lawyers' sole suggestion that they are defective due to being the product of allegedly defective Annex A actions and Forwarding Order. Since the annulment of the latter is not warranted, the Undersigned Judges find that the precondition under Internal Rule 76(5) for annulment of 'other actions or orders' is not met." (Opinion of Judges BEAUVALLET and BAIK, para. 65)

		"The Undersigned Judges recall that neither the impugned investigative actions, nor the Forwarding Order or Fourth Supplementary Submission have been found as procedurally defective, therefore no annulment is warranted for these parts of the investigation. The remaining grief against the Charges is based on the Co-Lawyers' sole suggestion that they are defective because they are supported by the allegedly defective investigative actions, Forwarding Order and Fourth Supplementary Submission. Since the annulment of the latter is not warranted, the Undersigned Judges find that the precondition under Internal Rule 76 for annulment of 'other actions or orders' is not met." (Opinion of Judges BEAUVALLET and BAIK, para. 70)

6. Appeals under Internal Rules 74(3)(g) and 74(4)(g)

For jurisprudence concerning ***Appeals against Orders or Decisions Refusing Application to Seise the Pre-Trial Chamber for Annulment of Investigative Action under Internal Rules 74(3)(g) and 74(4)(g)***, see VII.B.3.vi. Appeals against Orders or Decisions Refusing Application to Seise the Pre-Trial Chamber for Annulment of Investigative Action (Internal Rules 74(3)(g) and 74(3)(g))

i. *Admissibility*

1.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"Rule 74(3)(g) provides that the Charged Person may appeal against decisions of the Co-Investigating Judges regarding refusal to seise the Chamber with annulment of 'investigative action'. It follows, therefore, that a Charged Person may only appeal that which he was permitted to seek annulment of before the Co-Investigating Judge. Rule 48, which governs annulments for procedural defect provides: 'Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application.'" (para. 30) "While the Motion to Strike was not filed as an annulment application to seise the Chamber, the Pre-Trial Chamber finds that it is in the interests of justice to interpret the annulment procedure broadly in this case pursuant to Rule 21." (para. 33) "The Pre-Trial Chamber finds that the Impugned Decision amounts to a decision 'refusing an application to seise the Chamber for annulment' in the meaning of Rule 74(3)(g), when interpreted broadly considering first of all the importance of such a submission and its impact on the investigation. […] The Motion to Strike is an application seeking annulment of part of the proceedings. Rule 76(2) should have been applied and consequently the seisin of the Pre-Trial Chamber with a view to annulment should have been considered. As mentioned by the International Co-Investigating Judge, '[t]here is no provision in the Internal Rules allowing the Co-Investigating Judges to strike an introductory or supplementary submission from the Case File'. Rule 73(b) has vested the right to annul part of the proceedings only in the Pre-Trial Chamber. Should the Co-Investigating Judges consider that any part of the proceedings is null and void, they can, pursuant to Rule 76(1) submit a reasoned application to the Pre-Trial Chamber." (para. 34) "[A] broad interpretation of Rule 74(3)(g) is necessary given that the Impugned Decision examines the validity and potential annulment of the Supplementary Submission. Therefore, exceptional and particular facts and circumstances of the case at stake mandate that the Pre-Trial Chamber admit the Appeal pursuant to a broad interpretation of Rule 74(3)(g), read in light of Rule 21." (para. 35)

ii. *Standard of Review*

1.	**004/2 AO An** PTC 43 D350/1/1/4 5 September 2017 *Decision on Appeal against the Decision on AO AN'S Application to*	"Pursuant to the Pre-Trial Chamber's jurisprudence, the OCIJs' decisions may be overturned if they are a) based on an error of law invalidating the decision; b) based on an error of fact occasioning a miscarriage of justice; or c) so unfair or unreasonable as to constitute an abuse of the judges' discretion." (para. 14)

	Annul the Entire Investigation	

D. Conduct of Proceedings before the Pre-Trial Chamber

1. Powers and Duties of the Pre-Trial Chamber

1.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"[E]very court possesses the inherent power to control the proceedings during the course of the trial." (para. 28)
2.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"The Pre-Trial Chamber […] is committed to the strict application of the law and the rejection of arbitrariness." (para. 19) "[T]he Pre-Trial Chamber performed its duty to exercise judicial oversight over the first instance judges, through strict application of the law." (para. 20) "[T]he Pre-Trial Chamber has always applied the utmost prudence in exercising its jurisdiction during the pre-trial phase […]." (para. 21) "The Pre-Trial Chamber reiterates its firm intention to perform its duties impartially and in accordance with the law, until they are fulfilled." (para. 23) "[T]he Pre-Trial Chamber recalls that it is a collegial organ where decisions are taken in accordance with the law set out in the ECCC Agreement, the ECCC Law and the Internal Rules." (para. 68)

2. Transparency, Expeditiousness and Integrity of the Proceedings

i. *Duty of the Pre-Trial Chamber*

1.	**004/2 AO An** PTC 60 D359/29 and D360/38 9 March 2020 *Decision on the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearing held before the Pre-Trial Chamber*	"The Pre-Trial Chamber further recalls its obligation to ensure legal certainty and transparency of proceedings under Internal Rule 21(1) […]." (para. 10) "[I]n due consideration of the Pre-Trial Chamber's obligations to safeguard the integrity and the transparency as well as the fairness of the proceedings before it, the Chamber finds that the current procedure […] is duly called for." (para. 14)

ii. *Hearings before the Pre-Trial Chamber*

For jurisprudence concerning ***Hearings in Disqualification Proceedings under Internal Rule 34,*** see III.C.6.i. Hearing in Disqualification Proceedings

For jurisprudence concerning ***Hearings before Order on Provisional Detention***, see V.B.3.i.b. Hearing before Order on Provisional Detention

1.	**002 IENG Thirith** PTC 02 C20/I/27 9 July 2008 *Decision on Appeal against Provisional Detention Order of IENG Thirith*	"Before the hearing, the Pre-Trial Chamber requested that written outlines of oral submissions should, if possible, be provided as an aid to the court interpreters. The Pre-Trial Chamber will only take into account what was actually stated orally. The documents mentioned above have only been used to assist the judges in listening to the oral submissions. The documents will not be part of the Case File." (para. 8) "[T]he Defence is authorised to refer to authorities in order to respond to the arguments raised by the Co-Prosecutors and […] Civil Parties, which were filed after the Defence's Appeal Brief. The new authorities were provided to the other Parties and the judges at the hearing. The Co-Prosecutors and the Civil Parties were able to respond to these during the hearing […]." (para. 9) "[T]he Co-Lawyers attempted to file [a document]. This document was rejected by the Greffier […]. [T]he document was submitted for filing after the hearing, without leave, and in circumstances where the other Parties would not have had an opportunity to reply or comment […]." (para. 10)
2.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"The Pre-Trial Chamber notes that the wording of the Internal Rules, the Agreement, and the rules of procedure established at the international level indicate that the right to an oral hearing at the pre-trial stage is not an absolute right." (para. 15) "The text of the Agreement suggests that the right of the accused to hearing shall be respected throughout the trial stage, it does not state the same for the pre-trial stage." (para. 16) "In the C[a]mbodian and French systems, it is assumed that a hearing will be held before any decision of the Investigative Chamber is taken. There seems to be no possibility to proceed without a hearing as the failure to respect the formalities associated with the hearing (*e.g.*, notification of the date) leads to the nullity of the decision. This differs from the procedures before the Pre-Trial Chamber of the ECCC, which are governed by the Internal Rules. The Internal Rules differ from the Code of Criminal Procedure of the Kingdom of Cambodia (CCP) in that these rules allow the Pre-Trial Chamber to decide on appeals, where it finds it necessary on basis of written submissions only." (para. 17) "The wording of [Internal Rule 77(3)] indicates that it is for the Pre-Trial Chamber to decide whether to hold a hearing or not on appeal. A party's request for a hearing does not create an absolute obligation for the Pre-Trial Chamber to hold a hearing." (para. 19) "At the International Criminal Court (ICC), the Rules of Procedure and Evidence (RPE) provide that an appeal at the pre-trial stage is, unless the Appeals Chamber decides otherwise, determined on the basis of written submissions." (para. 20) "[Article 14 of the ICCPR] limits the right to a public hearing to where a 'determination of any criminal charge' is made against a Charged Person. The Pre-Trial Chamber when deciding appeals against refused requests for investigative actions does not determine any criminal charge." (para. 23) "The Pre-Trial Chamber finds that the provisions which apply to the ECCC where the Pre-Trial Chamber can decide on the basis of written submissions and therefore don't provide for an absolute right to a hearing are in accordance with the procedural rules established at the international level." (para. 24) "[T]he [principle] of conducting an adversarial proceeding is not violated by dismissing a request for hearing on an appeal. The principles relating to adversarial proceedings provide for an adverse argument to be put and to be answered. This can also be achieved through written submissions. The Internal Rules specifically permit matters to be considered on the basis of written submission and the Practice Directions provide for the option of a reply to a response which ensures that, in the absence of a hearing, the party is given the opportunity to provide its adversarial argument." (para. 27)

		"The Pre-Trial Chamber reiterates that appeals against orders denying requests for investigative action may reveal information in relation to the conduct of the investigation and, as such, need to be considered as confidential. Each appeal in respect of requests for investigative action shall also be examined individually to assess the need for confidentiality, having in mind the need not to disclose information that could jeopardise the ongoing investigations." (para. 30)
3.	**002 IENG Sary** PTC 05 A104/II/7 30 April 2008 *Decision on Appeal concerning Contact between the Charged Person and His Wife*	"[T]he matter is sufficiently argued by the Parties and […] an oral hearing is therefore not required. The Pre-Trial Chamber will determine the appeal on the basis of the written submissions in accordance with Rule 77 of the Internal Rules read in conjunction with the Practice Direction ECCC/O1/2007/Rev.1 […]." (para. 8)
4.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[T]he President of the Pre-Trial Chamber received a letter […] informing him that international counsel would not be available to attend the hearing on that date. On the basis of the information contained in the letter, the Pre-Trial Chamber decided […] to proceed on the basis of written submissions and to cancel the hearing." (para. 6)
5.	**002 KHIEU Samphân** PTC 11 A190/I/8 4 November 2008 *Decision on KHIEU Samphân's Request for a Public Hearing*	"In accordance with Rule 77(6), a *public* hearing is particularly appropriate where the case may be brought to an end by the Pre-Trial Chamber's decision. While this Rule is framed around the assumption that a hearing date has been set, it may also be used as guidance in determining which matters in principle require oral argument." (para. 7) "The Pre-Trial Chamber recognises that one of the primary bases for holding a public hearing is to allow public scrutiny of the fairness of the proceedings. Both the Appeal and the Response of the Co-Prosecutors have been published on the ECCC website as it is in the interests of justice for the proceedings in the Appeal to be made public. The Co-Lawyers for the Charged Person raise the argument that as a consequence of the Pre-Trial Chamber's analysis of the merits of the Appeal, the case should end and the Charged Person should be released. The public therefore has an interest in the oral arguments as well. The Pre-Trial Chamber considers further that it is not likely that the confidentiality of the judicial investigation would be compromised by holding a public hearing." (para. 8)
6.	**002 IENG Thirith** PTC 16 C20/5/10 29 January 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order*	"Recognising the importance of the Appeals, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal." (para. 6)
7.	**002 IENG Sary** PTC 17 C22/5/10 29 January 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of*	"Recognising the importance of the Appeals, which relates to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on the Appeal." (para. 6)

	Written Submissions and Scheduling Order	
8.	**002 KHIEU Samphân** PTC 15 C26/5/13 6 February 2009 *Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order*	"Recognising the importance of the two Appeals, which both relate to the liberty of the Charged Person, and considering that the Defence has requested to be heard orally, the Pre-Trial Chamber considers it appropriate to hold a hearing before deciding on these Appeals." (para. 7)
9.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order*	"As to the alleged irregularity of the procedure, the Pre-Trial Chamber recalls: […] h. […] the Pre-Trial Chamber noted that Internal Rule 75(4) barred the Defence from raising additional matters of fact or law which are not already set out in the written submission on appeal. Given that it considered that the statements of the Defence must be seen as a refusal to participate further in an oral hearing, the Pre-Trial Chamber decided to determine the Appeal on the basis of written submissions and allowed the Defence to file a reply to the Co-Prosecutors' Response within seven days." (para. 28)
10.	**002 IENG Thirith, KHIEU Samphân, NUON Chea** PTC 24 and 25 D164/4/3 and D164/3/3 20 August 2009 *Decision on "Request for an Oral Hearing" on the Appeals PTC 24 and 25*	"The Pre-Trial Chamber notes that, as a general rule, it would consider this particular category of appeals against Co-Investigating Judges' Orders refusing requests for investigative actions on the basis of written submissions alone. This approach derives from the confidential nature of the investigation as provided for in Internal Rule 56. The Pre-Trial Chamber observes that unless a request for investigative action has been finally rejected, the potential for such investigative action to be undertaken by the Co-Investigating Judges remains effective. In deciding on the appeal the order can be quashed by the Pre-Trial Chamber, and sent back for reconsideration or with an order to undertake the requested investigative action. This action then forms part of the investigations, which are, as a general rule, confidential. The Pre-Trial Chamber, therefore, rejects the request for a hearing." (para. 5)
11.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"The fact that submissions will be made available to the public and that the present decision is filed as a public document adequately answers the transparency and publicity concern expressed by the Appellant." (para. 8)
12.	**002 KHIEU Samphân** PTC 104 D427/4/15 21 January 2011 *Decision on KHIEU Samphân's Appeal*	"The Pre-Trial Chamber finds that an oral hearing is not required, as all the matters at issue can be determined on the basis of the detailed filings of the parties." (para. 10)

	against the Closing Order	
13.	**003 MEAS Muth** PTC 10 D87/2/2 23 April 2014 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges*]	"Having considered the ample written submissions made in the Appeal, absent of any response filed by the Co-Prosecutors or Civil Parties, the Pre-Trial Chamber does not consider it necessary to hear oral arguments in this case." (para. 7)
14.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions*	"Internal Rule 77(3)(b) provides that '[t]he Pre-Trial Chamber may, after considering the views of the parties, decide to determine an appeal […] on the basis of the written submissions of the parties only'. Having considered the ample written submissions made by the Appellant and absent any response filed by the Co-Prosecutors or any civil parties, the Pre-Trial Chamber does not consider it necessary to hear oral arguments in this case and hereby renders its decision on the Appeal." (para. 17)
15.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"Having considered the written submission made by the Appellant and response filed by International Co-Prosecutor, the Pre-Trial Chamber does not consider it necessary to hear oral arguments in this case […]." (para. 15)
16.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"[P]ursuant to Internal Rule 79(6)(b), the Trial Chamber has exclusive competence to order, by reasoned decision that all or part of the hearing to be heard in closed session. […] [I]t is for the Trial Chamber to decide if a witness should testify in closed session at trial and that this prerogative to conduct proceedings is independent from the Co-Investigating Judges' discretion to release confidential information from ongoing investigations." (para. 28) "The assessment of the good cause to derogate from the general principle of the publicity of trial proceedings, based on international human rights provisions and international tribunals' jurisprudence, thus clearly falls under the Trial Chamber's prerogatives." (para. 50)

17.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"Having considered the ample written submissions made on behalf of TA An and absent any response filed by the Co-Prosecutors or any civil parties the Pre-Trial Chamber does not consider it necessary to hear oral arguments in this case and hereby renders its conclusion on the Appeal." (para. 14)
18.	**003 MEAS Muth** PTC 14 D82/4/2 25 February 2015 *Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of His Motion to Strike, to Access the Case File and to Participate in the Investigation*	"Internal Rule 77(3)(b) provides that '[t]he Pre-Trial Chamber may, after considering the views of the parties, decide to determine an appeal […] on the basis of the written submissions of the parties only'. Having considered the ample written submissions made by the Appellant and absent any response filed by the Co-Prosecutors or the lawyers for civil parties or civil party applicants, the Pre-Trial Chamber does not consider it necessary to hear oral arguments in this case and hereby renders its conclusions on the Appeal." (para. 16)
19.	**004/1 IM Chaem** PTC 54 D304/6/4 8 June 2018 *Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission*	"With regard to the reclassification of the hearings held *in camera*, the Pre-Trial Chamber finds that the fact that the hearings took place in closed session does not automatically result in the transcripts remaining off the public record. Court management and document classification are governed by different legal instruments and have different purposes. Classification is governed by the relevant Practice Direction, while hearings are governed by the Internal Rules." (para. 28) "The Pre-Trial Chamber stresses that: '[w]ritten records, transcripts, and audio/visual recordings of hearings held *in camera*' are 'in principle confidential' unless a different classification is ordered by a Court decision. Therefore, no decision on the classification of written transcripts of hearings held *in camera* is final since such classification may be modified by a court decision. This reasoning also applies to the classification of the audio/video records of those hearings." (para. 29)
20.	**004 YIM TITH** PTC 61 D382/40 18 March 2021 *Decision on Oral Hearing in Case 004*	"The Pre-Trial Chamber recalls its broad discretion, pursuant to Internal Rule 77(3)(b), to decide an appeal or application on the basis of the written submissions of the parties only. Having duly considered the Parties' views, the Pre-Trial Chamber decides to proceed and determine the appeals against the Closing Orders in Case 004 on the basis of the written submissions only." (para. 7)
21.	**004 YIM TITH** PTC 61 D382/41 18 March 2021 *Decision on YIM Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision*	"In particular, the Chamber notes the DSS' misplaced reliance on the current Completion Plan and information obtained from the Office of Administration, informing its speculative view that there will be no hearing in Case 004. The Chamber reiterates that it is within the sole competence of the Pre-Trial Chamber to decide whether an oral hearing on the Case 004 Closing Order Appeals will be held." (para. 16)

iii. *Communication and Confidentiality*

For jurisprudence concerning the ***Confidentiality of the Preliminary Investigations***, see IV.A.1.ii. Confidentiality of Preliminary Investigations

For jurisprudence concerning the ***Confidentiality of the Judicial Investigation***, see IV.B.6. Confidentiality of Judicial Investigation

For jurisprudence concerning the ***Confidentiality of Disagreement Proceedings***, see VII.A.1.iii. Confidentiality of Disagreement

For jurisprudence concerning the ***Publicity of Pre-Trial Chamber Decisions***, see VII.D.3.v. Publicity of Decisions

a. General

1.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"[P]ursuant to Internal Rule 54, the Co-Prosecutor's duty to inform the public of the ongoing proceedings is limited to only i) providing an objective summary of the information contained in the Introductory, Supplementary and Final Submissions; and ii) correcting any false or misleading information, *provided that the case is still under preliminary investigation*." (para. 24) "Further, Internal Rule 56 provides that, during the judicial investigation stage, it is only the Co-Investigating Judges who have the responsibility and legal authority to ensure that essential information is made available to the public […]." (para. 25)
2.	**003 MEAS MUTH** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber*	"It follows from [Internal Rule 56] that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings." (para. 6)
3.	**003 MEAS Muth** PTC 19 D131/1 4 August 2015 *Decision on MEAS Muth's Request to Reclassify as Public All Defence Submissions to the Pre-Trial Chamber*	"It follows from [Internal Rule 56] that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings." (para. 3)
4.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016	"The principles governing disclosure of information to the public during judicial investigations at the ECCC are set forth in Internal Rule 56 […]. It follows from this provision that proceedings during a judicial investigation, *i.e*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose

	Decision on MEAS Muth's Request to Reclassify as Public certain Defence Submissions to the Pre-Trial Chamber	information concerning the judicial investigation to the public at this stage of the proceedings. When seized of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 6)
5.	**004 AO An** PTC 25 D284/1/4 31 March 2016 *Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60*	"In particular, the Pre-Trial Chamber finds no merit in the Appellant's interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring him an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of his reputation. The Pre-Trial Chamber underlines that the ECCC legal framework, particularly under Internal Rule 56, gives a broad discretion to the Co-Investigating Judges in handling confidentiality issues and granting limited access to the judicial investigations. The Appellant has failed to show any compelling circumstances warranting the Pre-Trial Chamber's intervention in these matters." (para. 23)
6.	**003 MEAS Muth** PTC 31 D100/32/1/7 15 February 2017 *Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 and D100/29)*	"[T]he Pre-Trial Chamber first recalls that it has already found no merit in the interpretation of Articles 83 and 121 of the Cambodian Code of Criminal Procedure and of Internal Rules 21 and 56(1) as conferring the Charged Persons an 'inherent right' to integrity in the conduct of the investigations, to a confidential investigation or to the protection of their reputation." (para. 18) "[T]he applicable law does not confer to the Charged Persons an 'inherent right' to the protection of the reputation […]." (para. 19)
7.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"[A] charged person does not have 'an "inherent right" to integrity in the conduct of the investigations, to confidential investigation or to the protection of [his or her] reputation.'" (para. 30) "Incidentally, the Pre-Trial Chamber notes that the Co-Lawyers took the liberty to comment on the Closing Order (Reasons) to the press after its issuance. More importantly, IM Chaem herself issued a number of public statements in interviews she gave to the press." (para. 32) "In light of the foregoing, the Pre-Trial Chamber considers that the damage caused by a dismissal order to IM Chaem's right to be presumed innocent and to her reputation remains uncertain and hypothetical." (para. 33)

b. Classification of Documents

1.	**002 IENG Sary** PTC 03 Doc. No. 5 30 November 2009 *Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of the Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING*	"The Chamber considers it in the interests of justice to proceed […] without holding a public hearing. Transparency of proceedings will be ensured by the re-classification of all filings in relation to this Motion as public." (para. 2)
2.	**002 IENG Sary and IENG Thirith** Special PTC 05 and 07 Docs Nos 6 and 8 15 June 2010 *Decision on IENG Sary's and on IENG Thirith Applications under Rule 34 to Disqualify Judge Marcel LEMONDE*	"As previously found, the Pre-Trial Chamber finds that transparency of proceedings will be ensured by the re-classification of all filings in relation to the applications as public." (para. 34)
3.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"Although reclassification of a document may be done by the Pre-Trial Chamber when seised of a case, it is in principle the judicial body with whom the document was filed who shall decide on its classification. Given that the […] Request was filed with, and classified by, the Co-Investigating Judges and that the latter are still seised of the judicial investigation […], the Pre-Trial Chamber considers that the proper procedure would be for the International Co-Prosecutor to first request the Co-Investigating Judges to reclassify the document before seising the Pre-Trial Chamber of the matter." (para. 12)
4.	**003 MEAS Muth** PTC 11 D56/19/20 27 February 2014 *Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber*	"[D]ocuments filed to or generated by the Co-Investigating Judges […] are in principle confidential, unless the Co-Investigating Judges decide to make them public, in full or in a redacted form. In turn, documents filed by the parties to the Pre-Trial Chamber […] are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise, whereas decisions of the Pre-Trial Chamber shall be published 'except where the Chamber decides that it would be contrary to the integrity of […] the Judicial Investigation'. When seized of an appeal, the Pre-Trial Chamber may also reclassify Co-Investigating Judges' Documents '[w]here required in the interests of justice'." (para. 7) "As to the Co-Investigating Judges' Documents, the Pre-Trial Chamber will generally not entertain requests for their reclassification while the judicial investigation is still ongoing, considering that it falls within the ambit of the Co-Investigating Judges' discretion to release information concerning the judicial investigation at this stage and that their familiarity with the case places them in a better position to assess any prejudice that may be cause by such release. The Pre-Trial Chamber will consider reclassifying as 'public' Co-Investigating Judges Documents only in exceptional circumstances, upon demonstration by the requesting party that the interests of justice require disclosing the concerned information to the public at this stage of the proceedings, for instance where publication of information

		is necessary to ensure that parties or participants in the proceedings are not deprived of a right or otherwise suffer prejudice." (para. 8) "As to the Filings to the Pre-Trial Chamber, the Chamber previously indicated that when deciding on their classification, it considers 'the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court'." (para. 9)
5.	**003 MEAS Muth** PTC 19 D131/1 4 August 2015 *Decision on MEAS Muth's Request to Reclassify as Public All Defence Submissions to the Pre-Trial Chamber*	"The paramount principles governing disclosure of information to the public during judicial investigations at the ECCC, set forth in Internal Rule 56 […]. It follows from this provision that proceedings during the judicial investigation, *i.e.*, until the issuance of a closing order in its final form, are in principle confidential and that it falls within the purview of the Co-Investigating Judges' discretion to disclose information concerning the judicial investigation to the public at this stage of the proceedings. When seised of an appeal during the judicial investigation, the Pre-Trial Chamber is bound by the same principles and shall give deference to the Co-Investigating Judges' decision on classification of information concerning their judicial investigation." (para. 3) "In application of the principles set out above, Articles of 3.12 of the Practice Direction on Filing of Documents before the ECCC and Article 4(f) and 5(h) of the Practice Direction on Classification provide that documents filed by parties to the Pre-Trial Chamber are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise. […] [T]he Pre-Trial Chamber distilled the conditions for publication of documents filed before it during the judicial investigation in [Case 003 D56/19/20]." (para. 4)
6.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public certain Defence Submissions to the Pre-Trial Chamber*	"Internal Rule 9(5) directs that the documents on the database shall only be made available to the public in accordance with the terms of the applicable ECCC practice directions. Article 5.1(h) of the Practice Direction on Classification of Documents provides that filings to the Pre-Trial Chamber are in principle confidential until the Pre-Trial Chamber has decided on the matter. According to Article 9.1 of the same direction, documents can be re-classified only pursuant to an order of the Co-Investigating Judges or a Chamber, 'as appropriate.' Article 3.14 of the Practice Direction on Filings states that a Chamber seised of a case may reclassify documents 'when required in the interests of justice.' Therefore, the Pre-Trial Chamber considers, it has primary jurisdiction to decide, where it sees it fit, on reclassification of filings brought before it […]." (para. 5) "Article 3.12 of the Practice Direction on Filing of Documents before the ECCC and Article 5(h) of the Practice Direction on Classification provide that documents filed by the parties to the Pre-Trial Chamber are classified as 'confidential' unless the Pre-Trial Chamber decides otherwise. [In D56/19/20], the Pre-Trial Chamber distilled the conditions for publication of documents filed before it during the judicial investigation as follows: 'The Chamber previously indicated that when deciding on the classification or reclassification of documents filed by the parties, it considers "the interest of justice, the integrity of the preliminary investigation and/or the judicial investigation, fair trial rights, public order, transparency and any protective measures authorized by the Court" […].'" (para. 7)
7.	**004/1 IM Chaem** PTC 49 D309/2/1/7 8 June 2018 *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*	"[T]he Practice Direction on Classification provides that the principle underlying classification 'is the need to balance the confidentiality of judicial investigations and other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.'" (para. 27) "The Pre-Trial Chamber is aware of the necessity to balance the various interests at stake, including those of the charged person and of the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 28) "[T]he investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. These interests should be balanced with the necessity to 'ensure legal certainty and transparency of proceedings'." (para. 36)
8.	**004/1 IM Chaem** PTC 54 D304/6/4	"[F]ilings to the Pre-Trial Chamber are in principle confidential until the Chamber has decided on the matter. However, the Pre-Trial Chamber may reclassify those documents as public, with redactions, if necessary […]." (para. 15)

	8 June 2018 *Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission*	"[T]he Pre-Trial Chamber finds that a document can be reclassified pursuant to a Chamber's decision. Such a proceeding can be initiated by a filing party, but this is not required. In other words, the Court, in the meaning of the Practice Direction on Classification, can act *proprio motu* and enjoys significant discretion on that matter." (para. 25) "Therefore, the Pre-Trial Chamber will consider whether it is appropriate, according to the Practice Direction on Classification, to also reconsider the current status of a few related documents produced at the time of the appeal proceedings […]." (para. 26) "The fact that this prosecutorial request was formulated as a counterdemand does not prevent the Pre-Trial Chamber from exercising its discretion as to the classification of records it has generated and classified on its own." (para. 27) "With regard to the reclassification of the hearings held *in camera*, the Pre-Trial Chamber finds that the fact that the hearings took place in closed session does not automatically result in the transcripts remaining off the public record. Court management and document classification are governed by different legal instruments and have different purposes. Classification is governed by the relevant Practice Direction, while hearings are governed by the Internal Rules." (para. 28) "The Pre-Trial Chamber stresses that: '[w]ritten records, transcripts, and audio/visual recordings of hearings held *in camera*' are 'in principle confidential' unless a different classification is ordered by a Court decision. Therefore, no decision on the classification of written transcripts of hearings held *in camera* is final since such classification may be modified by a court decision. This reasoning also applies to the classification of the audio/video records of those hearings." (para. 29)
9.	**004/1 IM Chaem** PTC 56 D313/2 26 June 2018 *Decision on IM Chaem's Request for Reclassification of Selected Documents from Case File 004/1*	"[P]ursuant to Internal Rule 56(1), 'judicial investigations shall not be conducted in public.' First, the investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties. Second, decisions, orders and other findings of the Co-Investigating Judges are confidential. Third, filings to the Pre-Trial Chamber are in principle confidential until the Chamber has decided on the matter." (para. 4)
10.	**004/1 IM Chaem** PTC 57 D314/2 28 June 2018 *Decision on the International Co-Prosecutor's Request for Reclassification of Submissions on Appeal against the Closing Order (Reasons)*	"Recalling that the principle underlying the classification 'is the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy'[.]" (para. 7) "Recalling the need to ensure the witness protection and the relevant list of protected persons[.]" (para. 8)
11.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the investigation remains confidential until its conclusion, in order to protect its integrity and the interests of the parties. The Pre-Trial Chamber is further aware of the necessity, when ruling on matters of re-classification and redactions after the conclusion of the investigation, to balance the various interests at stake including those of the charged person and the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 10)

12.	**004/2 AO An** PTC 60 D359/22 and D360/31 18 December 2019 *Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 004/2*	"NOTING that, pursuant to Article 9(1) of the Practice Direction on the Classification and Management of Case-Related Information, documents can be re-classified and placed in a section of the case file with a different level of confidentiality only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate;" (p. 1) "NOTING that […] the Co-Investigating Judges […] concluded the investigation and thereby became *functus officio.*" (p. 1) "DECLARING that it finds appropriate […] to reclassify documents in Case File 004/2 that are related to the investigation phase subsequently after the issuance of its public Decision on the Appeals against the Closing Orders in Case 004/2, notably to fully respect the principle of the confidentiality of the judicial investigation enshrined in Internal Rule 56(1);" (pp. 1-2)
13.	**004/2 AO An** PTC D359/38 and D360/47 12 June 2020 *Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 004/2*	"NOTING that, pursuant to Article 9(1) of the Practice Direction on the Classification and Management of Case-Related Information, documents can be re-classified and placed in a section of the case file with a different level of confidentiality only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate" (p. 1)
14.	**003 MEAS Muth** PTC 35 D266/26 and D267/34 3 November 2020 *Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 003*	"NOTING that, pursuant to Article 9(1) of the Practice Direction on the Classification and Management of Case-Related Information, documents can be re-classified and placed in a section of the case file with a different level of confidentiality only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate." (p. 2) "DECLARING that it finds appropriate for the Pre-Trial Chamber to reclassify documents in Case File 003 that are related to the investigation phase subsequently after the issuance of its public decision on the Appeals against the Closing Orders in Case 003, notably to fully respect the principle of confidentiality of the judicial investigation, enshrined in Internal Rule 56(1)." (pp. 2-3)

c. Redactions

1.	**004/1 IM Chaem** PTC 54 D304/6/4 8 June 2018 *Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission*	"Coming to the redaction of all evidence gathered from witnesses or civil party applicants, the Pre-Trial Chamber finds that it is of utmost importance to ensure the security of the victims and witnesses." (para. 23)
2.	**004/2 AO An** PTC 59 D360/3 5 September 2018 *Decision on AO An's Urgent Request for Redaction and Interim Measures*	"The Pre-Trial Chamber recalls that the Office of the Co-Investigating Judges has been *functus officio* regarding the investigation in Case 004/2 since the issuance of the Closing Orders. While the Pre-Trial Chamber is seised with the present application, no other judicial office is formally seised of the case, in the sense of Article 3.14 of the Practice Direction on Filing, as no appeal has been filed yet. The Pre-Trial Chamber nonetheless observes that the purpose of the urgent Request would be defeated if not addressed expeditiously and that, in the present case, Article 9.1 of the Practice Direction on Classification should be interpreted in light of Internal Rule 21, so as to safeguard the interests of the parties. The Pre-Trial Chamber thus finds it appropriate to exercise its inherent jurisdiction, as the appellate body at the pre-trial stage and in the absence of specific disposition, to rule on the Request in the interests of justice." (para. 6)

		"The Pre-Trial Chamber recalls that the investigation remains confidential until its conclusion, in order to protect its integrity and the interests of the parties. The Pre-Trial Chamber is further aware of the necessity, when ruling on matters of re-classification and redactions after the conclusion of the investigation, to balance the various interests at stake including those of the charged person and the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice." (para. 10) "The Pre-Trial Chamber observes that the Request to redact AO An's address in the Closing Order (Indictment) is closely related to the right to privacy and, more generally, to the protection of the interests of the charged person, as enshrined in Internal Rule 21. While the law before the ECCC does not explicitly refer to the protection of privacy and reputation, the Pre-Trial Chamber acknowledges the concerns expressed by the Co-Lawyers regarding the consequences of the publication of AO An's current address for his right to privacy. The Pre-Trial Chamber further finds that the redaction in the Closing Order (Indictment) of the domicile of the Charged Person, of which the mention is not a requirement under Internal Rule 67(2), would not have any impact on the other interests at stake, namely the need to ensure transparency, the integrity of proceedings, and the Court's purposes of education and legacy." (para. 11)

iv. *Transcripts of the Proceedings*

1.	**004/2 AO An** PTC 60 D359/29 and D360/38 9 March 2020 *Decision on the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearing held before the Pre-Trial Chamber*	"The Pre-Trial Chamber further recalls its obligation to ensure legal certainty and transparency of proceedings under Internal Rule 21(1), and considers that Internal Rule 97, which instructs that the 'proceedings shall be fully transcribed and recorded using appropriate audiovisual means, under the supervision of the Greffier' and that '[a]n application to correct the transcript may be made in writing to the [Chamber]', is applicable to the proceedings before the Pre-Trial Chamber." (para. 10) "[A]ccurate transcripts of proceedings are critical to ensuring the ECCC's judicial record integrity, and unilateral changes to the French transcript would compromise its integrity as the official record of the proceedings in French." (para. 13) "However, in light of each Party's limited resources to conduct a full review, the potential vast number and the seriousness of interpretation errors in the French transcripts of the Hearing in Case 004 and in due consideration of the Pre-Trial Chamber's obligations to safeguard the integrity and the transparency as well as the fairness of the proceedings before it, the Chamber finds that the current procedure, which requires each Party to submit a Request for Verification of each and every error places undue burden on the Parties and that a full review and correction of the interpretation errors by the ITU is duly called for." (para. 14)

v. *Languages of the Proceedings*

For jurisprudence concerning ***Translation Rights***, see II.B.1.xiv. Right to Translation of Documents

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The fact that a language is one of the three official languages of the Court does not amount, in itself, to a right for the Charged Person to have all documents contained in his case file translated into this language." (para. 40)
2.	**002 IENG Sary** PTC 12 A190/II/9 20 February 2009	"The fact that a language is one of the three official languages of the Court does not amount, in itself, to a right for the Charged Person to have all documents contained in his case file translated into this language." (para. 34)

	Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties	
3.	**004 IM Chaem** PTC 09 A122/6.1/3 15 August 2014 *Decision on IM Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance*	"[T]he Pre-Trial Chamber advises that it has exceptionally decided to consider the Request for Stay, although only filed in English, in order to avoid a state of uncertainty in respect of the Summons […] that had to be executed on the day […]." (para. 9)
4.	**004 AO An** PTC 26 D309/6 20 July 2016 *Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session*	"Recalling that all judicial decisions shall be at least provided in Khmer and one other language and that translation of all judicial decisions and orders should be systematic in the interests of the good administration of justice, the Pre-Trial Chamber expresses its concern that decisions delivered in English only and not diligently followed by Khmer translation give rise to legal uncertainty. In the particular context of the ECCC, where judicial decisions have to be provided in the official language to trigger the running of time limits, the parties may find themselves forced to file appeals before time limits start to run in order to safeguard their interests, or may wait indefinitely until the issuance of a translated decision. However, the Pre-Trial Chamber broadly interprets Internal Rules 75(1) and 75(3) in light of Internal Rule 21(4), which provides that proceedings shall be brought to a conclusion within a reasonable time. Therefore, although the Notice of Appeal and Appeal were not formally within a time limit as it has not yet begun to run, the Pre-Trial Chamber accepts that they were filed in accordance with the rules." (para. 14)
5.	**004/2 AO An** PTC 60 D359/29 and D360/38 9 March 2020 *Decision on the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearing held before the Pre-Trial Chamber*	"The Pre-Trial Chamber recalls that pursuant to Article 26 of the [Agreement] and Article 45 new of the [ECCC Law], the official working languages of the Extraordinary Chambers and the Pre-Trial Chamber are Khmer, English and French." (para. 9) "The Pre-Trial Chamber further recalls its obligation to ensure legal certainty and transparency of proceedings under Internal Rule 21(1), and considers that Internal Rule 97, which instructs that the 'proceedings shall be fully transcribed and recorded using appropriate audiovisual means, under the supervision of the Greffier' and that '[a]n application to correct the transcript may be made in writing to the [Chamber]', is applicable to the proceedings before the Pre-Trial Chamber." (para. 10) "[A]ccurate transcripts of proceedings are critical to ensuring the ECCC's judicial record integrity, and unilateral changes to the French transcript would compromise its integrity as the official record of the proceedings in French." (para. 13) "However, in light of each Party's limited resources to conduct a full review, the potential vast number and the seriousness of interpretation errors in the French transcripts of the Hearing in Case 004 and in due consideration of the Pre-Trial Chamber's obligations to safeguard the integrity and the transparency as well as the fairness of the proceedings before it, the Chamber finds that the current procedure, which requires each Party to submit a Request for Verification of each and every error places undue burden on the Parties and that a full review and correction of the interpretation errors by the ITU is duly called for." (para. 14)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"Internal Rule 21(4) requires the proceedings be brought to a conclusion 'within a reasonable time'. The International Judges of the Pre-Trial Chamber, the reviewing court at the investigation stage, consider that while the Internal Rules do not set out a specific deadline for issuing a closing order, the Co-Investigating Judges are nevertheless obliged to issue closing orders within a reasonable time, since this principle, with its counterpart in Article 35*new* of the ECCC Law, is a fundamental principle enshrined in Article 14(3)(c) of the ICCPR." (Opinion of Judges BEAUVALLET and BAIK, para. 135) "[T]he Co-Investigating Judges' forwarding of the Case File to the Co-Prosecutors two months after the issuance of the Second Rule 66(1) Notification in this case constitutes an excessive delay." (Opinion of Judges BEAUVALLET and BAIK, para. 144)

		"The International Co-Investigating Judges issued the Indictment […] more than 18 months after having issued his Second Rule 66(1) Notification […]." (Opinion of Judges BEAUVALLET and BAIK, para. 145) "Having given due consideration to the complexity of Case 003 and the volume of its record, […] the Co-Investigating Judges failed to issue the Closing Orders within a reasonable time in this case. […] [T]he difficulties listed […] fail to provide any justification for such delay since […] the issues concerning staff and translations were foreseeable […] and thus the delays could have been mitigated." (Opinion of Judges BEAUVALLET and BAIK, para. 147) "[T]he Co-Investigating Judges' separate issuance of two conflicting Closing Orders […] in only one of the working languages […] has instigated further undue delays […]." (Opinion of Judges BEAUVALLET and BAIK, para. 148)

vi. *Related Persons, Issues and Cases*

a. Intervention of Third Parties and Other Charged Persons

1.	**001 IENG Sary** PTC 02 D99/3/19 6 October 2008 *Decision on IENG Sary's Request to Make Submissions on the Application of the Theory of Joint Criminal Enterprise in the Co-Prosecutor's Appeal of the Closing Order against KAING Guek Eav "Duch"*	"The Internal Rules do not provide a right for a third party to intervene in a Case File and make submissions on issues raised by an appeal, nor does the Cambodian Code of Criminal Procedure." (para. 9) "Under the Internal Rules only a party to a Case File namely 'the Co-Prosecutors the Charged Person/Accused and Civil Parties', can claim a right to be heard before the Pre-Trial Chamber makes a decision on an appeal. This can be inferred from Internal Rules 77(3) and (10), which provide that the Pre-Trial Chamber can decide on an appeal 'on the basis of the written submissions of the parties only' or, if there is a hearing, that 'the Co-Prosecutors and the lawyers for the parties may present brief observations.'" (para. 10) "The Pre-Trial Chamber considers that it is inherent to courts where several proceedings are pending that a decision in one case on a legal issue will guide the court in future similar cases where no new circumstances or arguments are raised. It does not result from that situation that charged persons have the right to intervene in a case file to which they are not parties to submit their views on an issue." (para. 14)
2.	**002 KHIEU Samphân** PTC 27 D130/10/12 27 January 2010 *Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture*	"[A]lthough the Charged Person was not one of the parties that made or joined in the Request, due to its general nature, the related Order equally affects the position of the Charged Person who is therefore entitled to appeal it." (para. 14)
3.	**002 IENG Sary** PTC 31 D130/7/3/5 10 May 2010 *Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification*	"The Pre-Trial Chamber further observes that the Order is of general application, thus affecting all the Charged Persons in case 002, no matter whether the Co-Lawyers for the Charged Person filed a related request or not, or whether the request was refer[r]ed to in the Order, the Charged Person has standing to appeal the Order." (para. 18)

	of and Reliance on Evidence Obtained through Torture	
4.	**002 IENG Sary** PTC 64 A371/2/12 11 June 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility*	"[A]lthough not all Charged Persons made or joined in the Request, due to the fact that the right expressed in this decision is a fair trial right, the right expressed in this decision shall extend to the defence teams of the other charged persons currently detained in the Detention Facility […]." (para. 42)
5.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning All Properties Owned by the Charged Persons*	"It is noted that four parties to the Appeal were not party to the Request and are noted as being amongst those parties who have 'joined' in order to participate in the Appeal. As no objection has been made by any other party and these parties clearly have an interest in the Appeal, the Pre-Trial Chamber permits these parties to join the Appeal." (para. 5)
6.	**002 KHIEU Samphân** Special PTC 15 Doc. No. 2 12 January 2011 *Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process*	"The Chamber further notes that it has been seized of the issue of the alleged violation of the principle of legality in the course of the appeals against the Closing Order lodged by the other three accused in this case […]. It will therefore address this issue in the upcoming decision on these appeals, recalling that any decision on this issue would in any event benefit to all accused in this case." (para. 19)
7.	**002 IENG Thirith and NUON Chea** PTC 145 and 146 D427/2/15 and D427/3/15 15 February 2011 *Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order*	"The Pre-Trial Chamber [...] is separately seised of the appeal against the Impugned Order of the accused Ieng Sary who also challenges the ECCC's jurisdiction over national crimes on the basis of the same errors [...]. Contrary to the Appellant in the current appeal, Ieng Sary elaborates a reasoning to support his arguments [...]. As the jurisdictional issues that may be appealed at this stage are fundamental, the Pre-Trial Chamber considers that it must apply its holdings with regard to them to all accused in Case No. 002. As such, the Pre-Trial Chamber finds that the charges for national crimes must also be upheld pursuant to its conclusions on this issue in its Decision on Ieng Sary's Appeal against the Closing Order." (para. 184)
8.	**004 AO An** PTC 21 D257/1/8 17 May 2016	"[I]t is emphasised that the request for leave to file the proposed submission at this time is specifically grounded in Internal Rule 21(1)(a) seeking a right to fair and equal (in terms of adversarial) proceedings. In this sense, IM Chaem seeks to be heard in proceedings to which other parties (to the investigation) have been granted a right to be heard." (para. 28)

	Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage	"Therefore, the Pre-Trial Chamber has taken into account the following reasons in favour of accepting Im Chaem's proposed Submission: i) the PTC has already granted the right to be heard in these proceedings to the other parties in Case 004, including the OCP and Civil Parties; ii) IM Chaem's proposed submission does not put forward new or different arguments from those already advanced by AO An; iii) IM Chaem's submission in these proceedings is late due to factors beyond her control; iv) IM Chaem acted diligently as soon as she acquired knowledge of the current proceedings; v) AO An has not explicitly objected to IM Chaem's request (within the legal deadline for such response); and vi) the OCP does not object to the admissibility of IM Chaem's Submission." (para. 29) "For all the above mentioned reasons, and based on: i) the provisions of Internal Rule 39(4)(b) which give the Chamber the authority to use its discretion to recognize the validity of actions executed after the expiration of a time limit; and ii) on the provisions of Internal Rule 21 which dictates that proceedings before the ECCC have to be fair and adversarial; The Pre-Trial Chamber has decided to allow IM Chaem's proposed Submission in support of AO An's Application." (para. 30)
9.	**004/1 IM Chaem** PTC 32 D296/4 15 September 2016 *Decision on IM Chaem's Request for Confirmation on the Scope of the AO An's Annulment Application regarding All Unrecorded Interviews*	"The Pre-Trial Chamber recalls that the Applicant is no longer a party to Case 004. The issue raised in the Request, made in the framework of Case 004/1, is genuine in the sense that it potentially relates to a decision to be taken in Case 004 upon a request for annulment of evidence identical in both cases. However, the situation is such that the Applicant has no standing to make requests in Case 004 following the Severance Order […]." (para. 6)
10.	**003 MEAS Muth** PTC 35 D267/8 7 June 2019 *Decision on Case 003 Defence's Urgent Request to Access the Case 004/2 Appeal Hearings*	"CONSIDERING that MEAS Muth's Defence is not a party in the instant case and consequently its presence is not permitted in the courtroom during the hearing on appeals against Closing Orders in Case 004/2[.]" (p. 1)

b. Joinder and Consolidated Appeals

1.	**002 KHIEU Samphân** PTC 11 A190/I/20 20 February 2009 *Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties*	"The Pre-Trial Chamber denies the request of the Co-Prosecutors to decide this Appeal together with the appeal […] lodged by the Charged Person Ieng Sary, as the arguments raised in the two appeals are different and the Parties could not respond to these arguments." (para. 11)
2.	**002 KHIEU Samphân** PTC 14 and 15 C26/5/26 3 July 2009 **[PUBLIC REDACTED]** *Decision on KHIEU*	"Considering the relationship between the two Appeals, they will be treated in a common decision in order to avoid repetition, although each will be addressed specifically." (para. 13)

	Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order	
3.	**004 YIM TITH** PTC 61 D382/19 30 October 2019 *Decision on YIM Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004*	"[T]he Pre-Trial Chamber recalls Internal Rules 67(1) and 74, and notes the conflicting nature of the two Closing Orders in Case 004, which may consequently require application of different procedural steps in handling submissions of appeal against each of these Closing Orders. The Chamber thus considers that authorising the filing of a consolidated appeal against both Closing Orders is not appropriate and finds that the Parties should address each Closing Order individually." (para. 12)
4.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"Pursuant to Internal Rule 21, the Pre-Trial Chamber has a duty to ensure that proceedings before the ECCC are fair. This, in part, involves people in similar position being treated equally before the court. The fundamental principles of the procedure before the ECCC, enshrined in Internal Rule 21, require that the law shall be interpreted so as to always '*safeguard the interests of all*' the parties involved, that care must be taken to 'preserve a *balance* between the rights of the parties' and that 'proceedings before the ECCC shall be brought to conclusion within a *reasonable time*.' Keeping this in mind and considering the unusual number of appeals before it, the Pre-Trial Chamber […] has identified a number of fundamental errors which are relevant to all the rejected Civil Party Applicants. The Pre-Trial Chamber finds that a significant injustice would occur to the rejected civil parties who did not raise the errors identified by the Pre-Trial Chamber. The Pre-Trial Chamber has […] determined, in the interests of justice, to join all the Appeals filed against the impugned Orders also in order to allow the examination, in its decisions of the common and fundamental errors identified in all the impugned Orders and after considering the conclusions drawn therefrom, to make a fresh review, on the basis of these findings, in respect of all those Civil Party Applications that were rejected by the Co-Investigating Judges and who have appealed." (para. 35) "[G]iven the (i) common interests of many of the Applicants, (ii) the fact that the admissibility regime […] applies equally to all applications, and (iii) especially in light of the practice of the Co-Lawyers who chose to incorporate by reference the appellate arguments made in other appeals […], I concur with the Majority that it is appropriate to issue one Opinion dealing with these common grounds and to issue in the form of annexes further reasons pertaining to the specific case of each Applicant, in order to ensure that the legal and factual considerations of each application and/or appeal are adequately addressed. […] To ensure equality of treatment to all applicants who have appealed their rejection to become civil party and coherent approach in the management of the admissibility regime for civil parties, I have reviewed all individual applications in the light of my conclusions on the common grounds." (Opinion of Judge MARCHI-UHEL, para. 7)
5.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"Article 299 of the Cambodian Code of Criminal Procedure provides that '[w]hen the court has been seised with several related cases, it may issue an order to join them.'" (para. 25) "In [this] case […] the Pre-Trial Chamber is not seised with several related cases. Rather, [it] is seised of one case with conflicting Closing Orders, which created a number of different, but all related, Appeal proceedings. Considering the Chamber's power to issue an order to join several related cases and its obligation to ensure fair and expeditious administration of justice, the Chamber finds that a joinder in this case is inevitably called for." (para. 26)
6.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021	"[T]he Pre-Trial Chamber is not seised with several related cases. Rather, it is seised of one case characterised by the issuance of two conflicting Closing Orders, giving rise to different but related appeal proceedings. Considering the Chamber's power to issue an order to join several related cases, its obligation to ensure fair and expeditious administration of justice, and the approach previously adopted in Case 004/2, the Pre-Trial Chamber finds that a joinder is warranted in Case 003." (para. 39)

	Considerations on Appeals against Closing Orders	
7.	**004 YIM Tith** PTC 61 D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	"Article 12(1) of the ECCC Agreement and Internal Rule 2 provide that where in the course of proceedings a question arises, which is not addressed by the ECCC legal texts, the Chambers shall decide in accordance with Cambodian law. In this respect, the Pre-Trial Chamber recalls that Article 299 of the Cambodian Code of Criminal Procedure states that '[w]hen the court has been seised with several related cases, it may issue an order to join them.'" (para. 31) "In this case, the Pre-Trial Chamber is not seised with several related cases. Rather, it is seised of one case characterised by the issuance of two conflicting Closing Orders, giving rise to different but related appeal proceedings. Considering the Chamber's power to issue an order to join several related cases, its obligation to ensure fair and expeditious administration of justice, and the approach previously adopted in Case 004/2 and Case 003, the Pre-Trial Chamber finds that a joinder is warranted in Case 004." (para. 32) "Consequently, the Pre-Trial Chamber orders a joinder of the appeal proceedings in this case and will jointly address the Appeals against both Closing Orders in these Considerations." (para. 33)

c. Severance

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"Under Internal Rule 55(4), the Co-Investigating Judges may further charge 'any other persons [who] may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission, even where such persons were not named in the submission.' In other words, in the same case, the same criminal allegation can be charged against a named suspect, as identified in the prosecutorial submissions, and against an unknown person whose identity may be revealed by the investigations conducted by the Co-Investigating Judges. If a severance occurs, the same factual allegation may be duplicated in the newly established case, inasmuch as it concerns the 'severed' person, while also remaining in the original case if it involves other named suspect(s) or unknown person(s) who may be identified in the course of the investigation." (para. 38) "In sum, only facts can be severed." (para. 39) "The Pre-Trial Chamber therefore considers that, by ordering 'the severance of [IM] Chaem from Case 004', the Co-Investigating Judges implicitly severed all criminal allegations brought against IM Chaem, but did not sever the person, […]. The Pre-Trial Chamber draws three consequences from this. Firstly, all criminal allegations against IM Chaem have been duplicated and collected in Case 004/1, with no allegations against her remaining in Case 004. Secondly, the impugned order does constitute a closing order in the context of the ECCC, within the meaning of Internal Rule 67(3)(a), and not just an order on lack of jurisdiction. Thirdly, all criminal allegations in the Introductory and Supplementary Submissions, including those duplicated in Case 004/1 against IM Chaem, also remain in Case 004, against other known or unknown persons, and will require a final decision by the Co-Investigating Judges at the time of the closing order in the latter case." (para. 40)
2.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The plain language of [Internal Rule 66*bis*] applies to the reduction of the scope of the judicial investigation—a legal mechanism wholly dissimilar from severance. The International Judges thus find that Internal Rule 66*bis*(1), (2) and (3) are not applicable to severance orders." (Opinion of Judges BAIK and BEAUVALLET, para. 75)

3.	**004 YIM Tith** PTC 62 D384/7 29 September 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"The plain language of [Internal Rule 66*bis*] applies to the reduction of the scope of the judicial investigation—a legal mechanism wholly dissimilar from severance. The International Judges thus find that Internal Rule 66*bis*(1), (2) and (3) are not applicable to severance orders." (Opinion of Judges BAIK and BEAUVALLET, para. 129)

vii. Amicus Curiae

1.	**002 NUON Chea** PTC 01 C11/29 4 February 2008 *Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provisional Detention Order in the Case of NUON Chea*	"Rule 34 provides for a number of procedural possibilities for determining an application for disqualification. In this case the Pre-Trial Chamber finds that it has sufficient information to decide on the application, and it is in the interests of justice to proceed expeditiously to consider the matter without holding a public hearing or calling for written *amicus curiae* briefs. Furthermore, in the interests of justice, the Pre-Trial Chamber will not examine the question of possible technical defects in the application itself." (para. 8)
2.	**002 NUON Chea** PTC 09 C33/I/6 13 August 2008 *Decision on Request for Leave to File Amicus Curiae Brief*	"The Pre-Trial Chamber finds that through the submissions of the Parties […] and in the light of its examination of similar issues in a previous case, the Chamber is sufficiently informed in order to determine the appeal. In these circumstances it would be undesirable to risk delaying the proceedings by receiving an *amicus curiae* brief and responses thereto by the Parties." (para. 3)
3.	**002 IENG Sary** PTC 12 A190/II/6 10 September 2008 *Decision on Request for Leave to File Amicus Curiae Brief*	"The Pre-Trial Chamber finds that through the submissions of the Parties, the Chamber is sufficiently informed in order to determine the appeal. In these circumstances it would be undesirable to risk delaying the proceedings by receiving an *amicus curiae* brief and responses thereto by the Parties." (para. 3)
4.	**002 IENG Sary, IENG Thirith, NUON Chea and KHIEU Samphân** PTC 19, 20, 21 and 22 D158/5/4/13, D158/5/3/14, D158/5/1/14, and D158/5/2/14 4 August 2009 *Decision on Request for Leave to File Amicus Curiae Brief*	"The Pre-Trial Chamber finds that through the submissions of the Parties, the Chamber is sufficiently informed in order to decide on the Appeal. The Pre-Trial Chamber further finds that it would be undesirable to risk delaying the proceedings by receiving an *amicus curiae* brief and responses thereto by the Parties." (para. 3)

3. Decisions of the Pre-Trial Chamber

i. *Applicable Law*

1.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[T]he Pre-Trial Chamber recalls that it is a collegial organ where decisions are taken in accordance with the law set out in the ECCC Agreement, the ECCC Law and the Internal Rules." (para. 68)

ii. *Supermajority Rule*

1.	**002 KHIEU Samphân** PTC 15 C26/5/5 24 December 2008 *Decision on KHIEU Samphân's Supplemental Application for Release*	"The Internal Rules provide that decisions on pre-trial appeals and applications shall be made by the Pre-Trial Chamber as a whole. The President observes that pursuant to Internal Rule 77(13), an order of the Co-Investigating Judges can only be annulled or overturned by an affirmative decision of four judges of the Pre-Trial Chamber." (para. 13) "The Internal Rules […] clearly reflect the Agreement […] where […] it is envisaged that decisions will be made by a forum of national and international judges." (para. 15)
2.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Pre-Trial Chamber further notes that the affirmative vote of at least four judges of the Pre-Trial Chamber is required to reach a decision to block the execution of a decision which is the subject of a disagreement between the Co-Prosecutors. If this super-majority is not reached, the default decision is that the Introductory Submissions will be forwarded to the Co-Investigating Judges for judicial investigation." (para. 17) "Pursuant to Articles 6 (1) and (4) and 7(4) of the Agreement, Articles 16 and 20 (new) of the ECCC Law and Internal Rule 71(4)(c), the New Introductory Submissions will be forwarded to the Co-Investigating Judges unless at least four judges of the Pre-Trial Chamber are satisfied that the arguments raised by the National Co-Prosecutor shall preclude the forwarding of the New Submissions." (para. 26) "After extensive deliberations, the Pre-Trial Chamber has not reached a super-majority of votes on a decision concerning this Disagreement. It has unanimously decided on how to express the approach taken by the Chamber in these 'Considerations of the Pre-Trial Chamber'. As Internal Rule 71(4)(d) provides that decisions on disagreements shall be reasoned and in order to ensure transparency, the Pre-Trial Chamber finds it necessary to express the opinions of its various members, which are attached to these Considerations." (para. 44) "As the Pre-Trial Chamber has not reached a decision on the Disagreement brought before it, Internal Rule 71(4)(c) provides that the action of the International Co-Prosecutor shall be executed. In the current case, this means that the International Co-Prosecutor shall, pursuant to Internal Rule 53(1), forward the New Introductory Submissions to the Co-Investigating Judges to open judicial investigations." (para. 45) --- "The three other judges are of the opinion that it is not necessary to file new Introductory Submissions. This being, in their view, a sufficient reason to block the forwarding of the New Submissions, they consider that it is not necessary to discuss the other arguments raised by the National Co-Prosecutor. Considering this position of the three other judges, a discussion by only two judges on the other arguments raised by the National Co-Prosecutor would not serve any purpose, as this will not allow

		the Pre-Trial Chamber to attain a majority of four votes on a decision on the Disagreement." (Opinion of Judges DOWNING and LAHUIS, para. 30)
3.	**002 Civil Parties** PTC 47 and 48 D250/3/2/1/5 and D274/4/5 27 April 2010 **[PUBLIC REDACTED]** *Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications*	"After extensive deliberations, the Pre-Trial Chamber has not reached a super-majority of votes on the merits of this ground of appeal. As a consequence, pursuant to Internal Rule 77(13)(a) it has been unanimously decided that the Second Impugned Order will remain undisturbed on that ground. In order to ensure transparency, the Pre-Trial Chamber finds it necessary to express the opinions of its various members, which are attached to the present decision." (para. 56) "We are aware that the absence of a super majority of votes on the merits of this ground of appeal will, pursuant to Internal Rule 77(13)(a), result in a decision that the Second Impugned Order remaining undisturbed on this ground. As such, we would note that there is nothing in the Internal Rules to prevent the applicants resubmitting their civil party applications should they believe that their circumstances and claims falling within the scope of the investigation have not been initially properly expressed." (Opinion of Judges PRAK and DOWNING, para. 17)
4.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Request […] nor on the issue issues raised in the Appeal or even on an approach to deal with the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 12) "As the Pre-Trial Chamber has not reached decision on the Appeal, Internal Rule 77(13) dictates that the Impugned Order shall stand. The same rationale shall apply to the Request […] which, in the absence of the affirmative vote of at least four Judges, cannot be granted." (para. 13)
5.	**003 MEAS Muth** PTC 03 D14/1/3 24 October 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003*	"The Pre-Trial Chamber notes that whereas three of its Judges opine that the Retraction Order should be confirmed in its totality and therefore the Appeal rejected, two of its Judges reason, and vote, that the Order should be only partly upheld as its disposition remains without effect and therefore, in so far the Appeal should be partly granted. Pursuant to Article 14(2) of the ECCC Law and Internal Rule 77(14), these partially and separate opinions are attached to this decision and shall be notified to the parties. Further, pursuant to Internal Rule 77(13) and as the Chamber has not reached the required majority of affirmative votes of at least 4 (four) judges, the Retraction Order of the Co-Investigating Judges shall stand." (para. 34)
6.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Decision on*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the merits of the Appeal nor on its admissibility. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 13) "As the Pre-Trial Chamber has not reached a decision on the Appeal, Internal Rule 77(13) dictates that the Impugned Order shall stand." (para. 14)

	Time Extension Request and Investigative Requests regarding Case 003	
7.	**004 Civil Parties** PTC 02 D5/2/4/3 14 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the issues raised in the Appeal and the Request for access to the case file or even on an approach to deal with the Appeal and the Request. Given that Internal Rule 77(14) provides that the Chamber's decisions shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 9) "As the Pre-Trial Chamber has not reached a decision on the Appeal and the Request, Internal Rule 77(13)(a) dictates that the Order of the Co-Investigating Judges shall stand. The same rationale shall apply to the Request for access to the Case File which, in the absence of the affirmative vote of at least four Judges, cannot be granted." (para. 10)
8.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 8) "As the Pre-Trial Chamber has not reached decision on the Appeal Internal Rule 77(13) dictates that the Impugned Order shall stand." (para. 9) "Although the Impugned Order stands because the Pre-Trial Chamber could not reach a decision on the Appeal, we note that it remains possible for the Co-Investigating Judges to use their judicial discretion to reconsider this Order, taking into account the considerations in this Opinion and any other relevant considerations as necessary." (Opinion of Judges DOWNING and LAHUIS, para. 14)
9.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 7) "As the Pre-Trial Chamber has not reached decision on the Appeal Internal Rule 77(13) dictates that the Impugned Order shall stand." (para. 8) "Although the Impugned Order stands because the Pre-Trial Chamber could not reach a decision on the Appeal, we note that it remains possible for the Co-Investigating Judges to use their judicial discretion to reconsider this Order, taking into account the considerations in this Opinion and any other relevant considerations as necessary." (Opinion of Judges DOWNING and LAHUIS, para. 15)
10.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions*	"Should the Chamber consider the present Appeal, it is to be presumed that its five members would follow their previous opinion and each reach the same conclusion, which would trigger the same result for the Appellant, *i.e.*, that the Impugned Decision would stand by application of Internal Rule 77(13). This situation renders the Appeal pointless and creates a potential for endless litigation. The Pre-Trial Chamber emphasises that the supermajority rule and the default position envisaged by the Internal Rules are unique features of the ECCC, which may result in the Chamber not being able to reach a decision on a specific issue." (para. 20)
11.	**004 AO An** PTC 08	"To sustain such contention, the Defence reiterate substantially the same arguments as those put forward in their Appeal against the Decision on Access and Participation on which the Pre-Trial

	D185/1/1/2 13 October 2014 *Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Annulment Motion*	Chamber could not attain the supermajority of votes necessary for a decision on the Appeal, the default decision being that the ICIJ's Decision stands. In addition to this, the ICIJ rejected a request for the reconsideration of the Decision on Access and Participation. Under these circumstances and considering that the five Judges of the Pre-Trial Chamber would follow their previous opinions on the matter of standing as the underlying issues for the separate opinions expressed remain, the current Appeal would trigger the same result for the Appellant *i.e.*, that the Impugned Decision would stand by application of Internal Rule 77(13). As already noted in the Decision on the Appeal PTC 07, this situation renders the Appeal pointless and creates a potential for endless litigation." (para. 14) "Adopting its observations already made in its Decision on Appeal PTC 07, the Pre-Trial Chamber decides to dismiss the Appeal, without consideration of its admissibility under Internal Rules 73, 74 and 21 or its merits." (para. 15)
12.	**004 YIM Tith** PTC 13 A157/2/1/2 21 November 2014 *Considerations of the Pre-Trial Chamber on YIM Tith's Appeal against the Decision Denying His application to the Co-Investigative Judges Requesting Them to Seize the Pre-Trial Chamber with a View to Annul the Judicial Investigation*	"The Pre-Trial Chamber is divided on the issue of whether the Appellant has standing to bring appeals under Internal Rules, given that he has not been officially notified of the charges against him pursuant to the procedure set forth in Internal Rule 57. […] The Pre-Trial Chamber Judges remain divided in their opinions and maintain their respective interpretations on this issue which is central to these Appeals. Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal." (para. 22) "As the Pre-Trial Chamber has not reached a decision on the Appeal, Internal Rule 77(13) dictates that the Impugned Decision shall stand." (para. 23)
13.	**004/2 Civil Parties** PTC 58 D362/6 30 June 2020 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"While the decision of the Pre-Trial Chamber in respect of the admissibility of the Appeals is expressed in the preceding paragraphs, the Chamber, upon deliberation, has not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Pursuant to Internal Rule 77(14), the Opinions of the various members of the Pre-Trial Chamber are attached to these Considerations." (para. 39) "Internal Rule 77(13)(a) provides that where the required majority is not attained, the default decision of the Chamber, as regards an appeal against an order, shall be that such order shall stand. Consequently, the International Judges hereby find that the International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants stands. Accordingly, the International Judges hold that all Civil Parties who have been found admissible by the International Co-Investigating Judge have the right to participate in future proceedings against AO An." (Opinion of Judges BAIK and BEAUVALLET, para. 118)
14.	**003 Civil Parties** PTC 36 D269/4 10 June 2021 *Considerations on Appeal against Order on the Admissibility of Civil Party Applicants*	"While the decision of the Pre-Trial Chamber in respect of the admissibility of the Appeal is expressed in the preceding paragraphs, the Chamber, upon deliberation, has not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Pursuant to Internal Rule 77(14), the Opinions of the various members of the Pre-Trial Chamber are attached to these Considerations." (para. 42) "Internal Rule 77(13)(a) provides that where the required majority is not attained, the default decision of the Chamber, as regards an appeal against an order, shall be that such order shall stand. Consequently, the International Judges hereby find that the International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants stands. Accordingly, the International Judges hold that all Civil Parties who have been found admissible by the International Co-Investigating Judge have the right to participate in future proceedings against MEAS Muth." (Opinion of Judges BEAUVALLET and BAIK, para. 112)
15.	**004 YIM Tith** PTC 61	"While the decision of the Pre-Trial Chamber in respect of the admissibility of the Appeals and the illegal character of the Co-Investigating Judges' agreement to issue separate Closing Orders is

	D381/45 and D382/43 17 September 2021 *Considerations on Appeals against Closing Orders*	expressed in the preceding paragraphs, the Chamber, upon deliberation, has not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Pursuant to Internal Rule 77(14), the Opinions of the various members of the Pre-Trial Chamber are attached to these Considerations." (para. 116) "[T]he 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. Even if the Pre-Trial Chamber was to appreciate that such incongruent situation was not envisaged in the ECCC legal framework, the alleged uncertainty is removed through a fair reading of the relevant legal texts, especially Articles 5(4) and 7(4) of the ECCC Agreement and Articles 20 and 23*new* of the ECCC Law 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." (Opinion of Judges BAIK and BEAUVALLET, para. 174) "Therefore, the International Judges conclude that pursuant to Internal Rule 77(13)(b), as the required majority of at least 4 (four) affirmative votes to reverse an indictment was not attained, the default decision of the Chamber shall be that 'the Trial Chamber be seised on the basis of the Closing Order of the Co-Investigating Judges.'" (Opinion of Judges BAIK and BEAUVALLET, para. 522) "The Chamber was not able to decide on each of the Closing Orders with five unanimous votes. But that was not the duty of its judges, which is to rule personally and publicly on the issues before them. It is wholly unreasonable to expect the Pre-Trial Chamber to issue a unanimous decision where the principle of continuation provides the legal framework for the solution." (Opinion of Judges BAIK and BEAUVALLET, para. 538) "At this stage, there is no doubt that the Indictments are valid. There is no doubt that the principle of continuation of the investigation and prosecution applies to Case 004, as it did to Case 003 before it." (Opinion of Judges BAIK and BEAUVALLET, para. 539)

iii. *Unanimity*

1.	**004/1 IM Chaem** PTC 50 D308/3/1/20 28 June 2018 *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*	"The Pre-Trial Chamber has not attained the required majority of four affirmative votes to reach a decision based on common reasoning. Pursuant to Internal Rule 77(14), the opinions of its various members are attached to these Considerations." (para. 81) "[T]he Pre-Trial Chamber unanimously hereby: […] DECLARES that the Closing Order (Reasons) dismissing the charges against IM Chaem shall stand." (Disposition) "The inability to reach a consensus in this Chamber on the ECCC's personal jurisdiction over IM Chaem must not prevent the serious allegations against her from being addressed before a national court, since Cambodia has inherent jurisdiction over all Khmer Rouge-era cases of which the ECCC is not or cannot be seised." (Opinion of Judges BAIK and BEAUVALLET, para. 340)
2.	**003 MEAS Muth** PTC 35 D266/27 and D267/35 7 April 2021 *Considerations on Appeals against Closing Orders*	"While the decision of the Pre-Trial Chamber in respect of the admissibility of the Appeals and the illegal character of the Co-Investigating Judges' agreement to issue separate Closing Orders is expressed in the preceding paragraphs, the Chamber, upon deliberation, has not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Pursuant to Internal Rule 77(14), the Opinions of the various members of the Pre-Trial Chamber are attached to these Considerations." (para. 110) "[T]here is a *de facto* unanimous finding of the Pre-Trial Chamber in the present case: albeit for distinct reasons as explained in the separate Opinions appended to the Considerations, the National and the International Judges of the Chamber have concurrently found the Indictment valid." (Opinion of Judges BEAUVALLET and BAIK, para. 342) "Therefore, the International Judges conclude that pursuant to Internal Rule 77(13), the required majority of at least 4 (four) affirmative votes is attained in the present appeal proceedings against the opposite Closing Orders and that the Pre-Trial Chamber upholds, as a matter of fact, the Indictment by

		unanimity. Consequently, the Trial Chamber shall be seised on the basis of the International Co-Investigating Judge's Indictment. The International Judges clarify that by virtue of Internal Rule 77(14), the present Considerations with the appended Opinions shall be notified to the Co-Investigating Judges, the Co-Prosecutors, the Accused and the Civil Parties in the present case. Furthermore, the Co-Investigating Judges shall immediately proceed in accordance with the present Considerations, namely the decision reached by unanimity by the Pre-Trial Chamber." (Opinion of Judges BEAUVALLET and BAIK, para. 343)
3.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003*	"[T]he Pre-Trial Chamber recalls that it is a collegial organ where decisions are taken in accordance with the law set out in the ECCC Agreement, the ECCC Law and the Internal Rules. In other words, unlike the rules applicable to the Office of the Co-Prosecutors and the Office of Co-Investigating Judges, the Chamber is under no obligation to render a unanimous decision. On the contrary, it is the duty of each judge to rule alone and in good conscience, and to give the reasons for his or her personal opinion. There is no text requiring the Pre-Trial Chamber to reach a unanimous decision and Internal Rule 77(14) runs counter the arguments put forward by the Applicants. It is therefore legally incorrect to require a unanimous decision from a collegiate body on the basis of a chimeric legal obligation which was specifically incumbent upon the Co-Investigating Judges. Their failure to do so jeopardised the functioning of the ECCC, in particular by preventing the Pre-Trial Chamber to settle the disagreement pursuant to Internal Rule 72, thereby obstructing the legal presumptions attached to it, including the interpretative rules of the Pre-Trial Chamber decisions or considerations." (para. 68)

iv. *Reasoned Decisions*

For jurisprudence concerning the ***Duty of the Co-Investigating Judges to Provide Reasoned Decisions***, see IV.B.2.iii.f. Duty to Provide Reasoned Decisions

For jurisprudence concerning ***Reasons of the Closing Order***, see IV.D.4.v. Reasons of Closing Order

For jurisprudence concerning ***Reasons of Orders on Civil Party Admissibility***, see VI.C.1. Reasoned Decision

1.	**002 NUON Chea** PTC 06 D55/I/8 26 August 2008 *Decision on NUON Chea's Appeal against Order Refusing Request for Annulment*	"[A]ll decisions of judicial bodies are required to be reasoned as this is an international standard." (para. 21)
2.	**002 IENG Thirith** PTC 33 C20/9/15 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber has decided on this same request […], stating that 'the Charged Person cannot be released on bail, as any of the conditions proposed by the Charged Person […] are outweighed by the necessity for her provisional detention." (para. 52) "As the request for bail contains no additional submissions the Pre-Trial Chamber rejects the request for release on bail without further reasoning." (para. 53)
3.	**002 IENG Thirith** PTC 62 D353/2/3 14 June 2010 **[PUBLIC REDACTED]** *Decision on the IENG Thirith Defence Appeal against 'Order on*	"The question before the Pre-Trial Chamber is how detailed the Co-Investigating Judges' reasons must be under Rule 55(10). Some guidance to answering this question is found in the Rules. First, for the Charged Person's right to appeal under Rule 74(3)(b) to be meaningful, s/he must know why the Co-Investigating Judges rejected his/her request. This requires the Co-Investigating Judges to reason their rejection with sufficient detail to disclose the basis of a decision and thus place the Charged Person in a position to be able to decide whether and against which of the Co-Investigating Judges' reasons an appeal may be brought and to draw appropriate submissions in support of any appeal. Second, Rule 77(14) requires the Pre-Trial Chamber to issue a 'reasoned' decision on an appeal against the Co-Investigating Judges' exercise of discretion under Rule 55(10). The Pre-Trial Chamber is

	Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010	prevented from affirming the Co-Investigating Judges' exercise of discretion to reject a request if the Pre-Trial Chamber does not know why the Co- Investigating Judges rejected it. This also requires the Co-Investigating Judges to reason its rejection with sufficient detail to allow the Pre-Trial Chamber to conduct an effective appellate review." (para. 23)
4.	**002 NUON Chea** PTC 67 D365/2/10 15 June 2010 *Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes*	"It is a fundamental right that parties know the reasons for a decision. This permits a party to know the basis of a decision, placing an aggrieved party in a position to be able to determine whether to appeal, and upon what grounds. Equally a respondent to any appeal has a right to know the reasons of a decision for so that a proper and pertinent response may be considered." (para. 24) "No appellate court can provide […] reasoned decision when the rationale and logic of the decision appealed is not itself disclosed […]." (para. 25) "The matter is remitted to the Co-Investigating Judges for their reconsideration on this issue alone and the provision of the reasons for any rejection of the request according to law." (para. 26) "[T]he Pre-Trial Chamber shall not further consider the other grounds of appeal as this would necessarily require speculation as to the reasons for the rejection of the Request." (para. 27)
5.	**003 Civil Parties** PTC 02 D11/2/4/4 24 October 2011 **[PUBLIC REDACTED]** *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Request […] nor on the issue issues raised in the Appeal or even on an approach to deal with the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 12)
6.	**Case 003 MEAS Muth** PTC 04 D20/4/4 2 November 2011 *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*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the merits of the Appeal nor on its admissibility. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 13)
7.	**003/16-12-2011-ECCC/PTC** 10 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges*	"We are bound to provide a reasoned consideration of the matter before us in a proper and judicial manner." (Opinion of Judges DOWNING and CHUNG, para. 15)

	pursuant to Internal Rule 72	
8.	**004/19-01-2012-ECCC/PTC** 23 February 2012 *Opinion of Pre-Trial Chamber Judges DOWNING and CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72*	"We are bound to provide a reasoned consideration of the matter before us in a proper and judicial manner." (Opinion of Judges DOWNING and CHUNG, para. 13)
9.	**003 Civil Parties** PTC 01 D11/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 8)
10.	**004 Civil Parties** PTC 01 D5/1/4/2 28 February 2012 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 7)
11.	**003 Civil Parties** PTC 07 D11/4/4/2 14 February 2013 *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the issues raised in the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations." (para. 9)
12.	**003 MEAS MUTH** PTC 23 C2/4 23 September 2015 *Considerations of the Pre-Trial Chamber on*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to these Considerations" (para. 11)

	MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant	
13.	**003 MEAS Muth** PTC 29 D174/1/4 27 April 2016 *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*	"Despite its efforts, the Pre-Trial Chamber has not attained the required majority of four affirmative votes in order to reach a decision on the admissibility of the Appeal. Given that Internal Rule 77(14) provides that the Chamber's decision shall be reasoned, the opinions of its various members are attached to this Consideration." (para. 16)

v. *Publicity of Decisions*

For jurisprudence concerning the ***Confidentiality of the Preliminary Investigations***, see IV.A.1.ii. Confidentiality of Preliminary Investigations

For jurisprudence concerning the ***Confidentiality of the Judicial Investigation***, see IV.B.6. Confidentiality of Judicial Investigation

For jurisprudence concerning the ***Confidentiality of Disagreement Proceedings***, see VII.A.1.iii. Confidentiality of Disagreement

For jurisprudence concerning ***Communication and Confidentiality***, see VII.D.2.iii. Communication and Confidentiality

1.	**002 Civil Parties** PTC 57 D193/5/5 4 August 2010 *Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning all Properties Owned by the Charged Persons*	"The Pre-Trial Chamber is mindful of 'the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purpose of education and legacy'. […] On the basis of the principles noted above and taking note of the particular issues raised in this Appeal, the Pre-Trial Chamber has determined that, notwithstanding the classifications suggested by the parties, this decision shall be a public decision." (para. 1)
2.	**003 MEAS Muth** PTC 24 D147/1 19 February 2016 *Decision on MEAS Muth's Request to Reclassify as Public Certain Defence*	"[I]n principle, the publicity of Chamber's decisions is required by Internal Rule 78 and Article 4(e) of the Practice Direction on Classification and Management of Case File Information. Therefore, such content of decisions or opinions which does not jeopardize the integrity of investigations should not be redacted." (Opinion of Judges BEAUVALLET and BAIK, para. 20) "We consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above-mentioned principle." (Opinion of Judges BEAUVALLET and BAIK, para. 21)

	Submissions to the Pre-Trial Chamber	
3.	**004 IM Chaem** PTC 19 D239/1/8 1 March 2016 *Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her in Absentia*	"Internal Rule 78 provides that all decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 2) "As such, in principle, the publicity of Chamber's decisions is required by Internal Rule 78 and Article 4(e) of the Practice Direction on Classification and Management of Case File Information. Therefore, the content of decisions or opinions which does not jeopardize the integrity of investigations should not be redacted." (Opinion of Judges BEAUVALLET and BWANA, para. 3) "We consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above-mentioned principle." (Opinion of Judges BEAUVALLET and BWANA, para. 4) "Committed to the principle of publicity of the Pre-Trial Chamber's decisions as set forth in Internal Rule 78, we reserve the right to release, when appropriate, a public (redacted) version of this Opinion." (Opinion of Judges BEAUVALLET and BWANA, para. 5)
4.	**003 MEAS Muth** PTC 21 D128/1/9 30 March 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth in Absentia*	"Internal Rule 78 provides that all decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BWANA, para. 2) "As such, in principle, the publicity of Chamber's decisions is required by Internal Rule 78 and Article 4(e) of the Practice Direction on Classification and Management of Case File Information. Therefore, the content of decisions or opinions which does not jeopardize the integrity of investigations should not be redacted." (Opinion of Judges BEAUVALLET and BWANA, para. 3) "We consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above-mentioned principle." (Opinion of Judges BEAUVALLET and BWANA, para. 4) "Committed to the principle of publicity of the Pre-Trial Chamber's decisions as set forth in Internal Rule 78, we reserve the right to release, when appropriate, a public (redacted) version of this Opinion." (Opinion of Judges BEAUVALLET and BWANA, para. 5)
5.	**003 MEAS Muth** PTC 26 D120/3/1/8 26 April 2016 *Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission*	"We, the Undersigned Judges, have already explained our understanding of the of publicity principle enshrined in Internal Rule 78. This Rule provides that all decisions and default decisions of the Pre-Trial Chamber, including any opinions shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation." (Opinion of Judges BEAUVALLET and BAIK para. 1) "We therefore consider that any decision of the Chamber related to classification, diverging from the publicity principle set in Internal Rule 78, must be taken with sufficient authority to reverse the above-mentioned principle. We reserve the right to release, when appropriate, public (redacted) versions of our opinions accordingly even if not systematically announced." (Opinion of Judges BEAUVALLET and BAIK para. 2)

vi. *Reconsideration of Decisions*

1.	**002 Civil Parties** PTC 03 C22/I/68 28 August 2008 *Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person*	"[T]he Pre-Trial Chamber stated that the Application for Reconsideration should at this stage be read as a request to reopen the hearing to hear the Civil Party." (para. 3) "The Application for Reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decisions. The Appeals Chamber of the ICTY has held that a Chamber may 'always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice.' This has been described as an inherent power and is particularly important for a judicial body of last resort like the Pre-Trial Chamber. A change of circumstances may include new facts or arguments. The standard for reconsideration has also been described as follows: 'a Chamber has inherent discretionary power to reconsider previous interlocutory decision in exceptional cases "if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice."'" (para. 25) "The existence of a Dissenting Opinion does not in itself justify reconsideration." (para. 28)
2.	**001 IENG Sary** PTC 02 D99/3/41 3 December 2008 *Decision on IENG Sary's Motion for Reconsideration of Ruling on the Filing of a Motion in the DUCH Case File*	"The Pre-Trial Chamber has previously determined that it may reconsider its decisions only if a change of circumstances which may include new facts or arguments, is presented or if an unexpected result leading to an injustice has been caused." (para. 6)
3.	**002 NUON Chea** PTC 06 D55/I/13 25 February 2009 *Decision on Civil Party Co-Lawyers' Joint Request for Reconsideration*	"In its 'Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person', [C22/I/68], the Pre-Trial Chamber stated that an application for reconsideration 'may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decision'. It further found, on the basis of the jurisprudence of the international tribunals, that it has an inherent power to reconsider a decision it has previously made because of a change of circumstances or when it realises that the previous decision was erroneous or that it has caused an injustice." (para. 9) "The Pre-Trial Chamber notes that the Co-Lawyers […] are not asking the Pre-Trial Chamber to reconsider the conclusions […] but rather seek to modify a legal reasoning. The Co-Lawyers do not contend that the decision itself is erroneous or unjust." (para. 10) "The jurisprudence of international courts on reconsideration is solely dealing with reconsidering the outcome of a decision. The background for reconsideration of the outcome of a decision is the principle of *res judicata* which can lead to the execution of an erroneous or unjust decision where there is no right of further appeal or review. The reasoning of a decision is not subject to *res judicata* as the reasoning itself cannot be executed or enforced." (para. 11)
4.	**002 Disagreement** 001/18-11-2008-ECCC/PTC 18 August 2009 *Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71*	"The Pre-Trial Chamber notes that, pursuant to Internal Rule 71(2), the 'written statement of the facts and reasons for the disagreement shall not be placed on the case file'. Internal Rule 54 provides that 'Introductory, Supplementary and Final Submissions filed by the Co-Prosecutors shall be confidential documents'. Internal Rule 56(1) further provides that '[i]n order to preserve the rights and interests of the parties, judicial investigations shall not be conducted in public. All persons participating in the judicial investigation shall maintain confidentiality'. In accordance with these provisions, all the documents related to the Disagreement have been classified by the Pre-Trial Chamber as 'strictly confidential'." (para. 46) "The Pre-Trial Chamber further notes that contrary to the spirit of this obligation of confidentiality, the Office of the Co-Prosecutors issued a public 'Statement of the Co-Prosecutors' on 8 December 2008. […] By so doing, the Co-Prosecutors have drawn the attention of the media and the public to the fact that new suspects might be prosecuted, generating a great deal of interest and giving an indirect notice to the potential suspects that there might be further prosecutions." (para. 47)

		"The Pre-Trial Chamber notes that Article 7(1) of the Agreement and Article 20(new) (7) of the ECCC Law provide that a decision on a disagreement between the Co-Prosecutors 'shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Prosecutors'. By contrast, Internal Rule 71(4)(a) provides that the judgement 'shall be handed down *in camera*'. Sub-paragraph (d) of the same rule further provides that '[t]he greffier of the Chamber shall forward such decisions to the Director of the Office of Administration, who shall notify the Co-Prosecutors', without mentioning that the decision shall be published." (para. 49) "In addition, Internal Rule 78, concerning the Publication of Pre-Trial Chamber Decisions, provides that '[a]ll decisions and default decisions of the Chamber, including any dissenting opinions, shall be published in full, except where the Chamber decides that it would be contrary to the integrity of the Preliminary Investigation or to the Judicial Investigation'." (para. 50) "Regarding the confidentiality and publication of a decision on a disagreement, the Pre-Trial Chamber notes that the Articles of the Agreement and ECCC Law, when compared with the Internal Rules, appear inconsistent with respect to whether a decision on a disagreement shall be published. It is noted that the Agreement does not specify to whom and when a decision shall be published. The Agreement, ECCC Law and Internal Rules all provide that the Director of Administration shall notify the Co-Prosecutors of the decision on a disagreement. This should be done immediately, as the above-mentioned provisions prescribe that the Co-Prosecutors shall immediately proceed in accordance with the decision." (para. 51) "Pursuant to Internal Rule 78, the Pre-Trial Chamber may determine that a decision shall not be published in full, if doing so would compromise the integrity of a preliminary or judicial investigation. The current Disagreement relates to the forwarding of Introductory Submissions to the Co-Investigating Judges for the opening of new judicial investigations. Given the press releases already issued by the Co-Prosecutors concerning their Disagreement, the publication of a redacted version of the Considerations of the Pre-Trial Chamber will not have an adverse impact upon the confidentiality of the investigation that may be undertaken by the Co-Investigating Judges. Therefore, the Pre-Trial Chamber suggests that the Director of the Office of Administration of the Court publish the redacted version of these Considerations, attached in Annex I." (para. 52) "The Pre-Trial Chamber notes that publication of the Considerations of the Pre-Trial Chamber is at the discretion of the Director of the Office of Administration. The New Submissions might be forwarded to the Co-Investigating Judges by the International Co-Prosecutor alone before any publication of the Considerations of the Pre-Trial Chamber. For the purpose of filing the Introductory Submissions by the International Prosecutor alone, an Excerpt is attached to these Considerations in Annex II." (para. 53)
5.	**002 KHIEU Samphân** PTC 24 and PTC 25 D164/4/9 and D164/3/5 20 October 2009 *Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25*	"In [C22/I/68], the Pre-Trial Chamber found that an application for reconsideration 'may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decision.' It further found, on the basis of the jurisprudence of the international tribunals, that it has the inherent power to reconsider a decision it has previously rendered because of a change of circumstances or when it finds that the previous decision was erroneous or that it has caused an injustice." (para. 12)
6.	**002 IENG Sary** PTC 32 C22/9/14 30 April 2010 **[PUBLIC REDACTED]** *Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention*	"The Pre-Trial Chamber will not discuss the arguments raised […] where they oppose previous findings of the Pre-Trial Chamber where no new arguments have been raised […]. The Pre-Trial Chamber finds that previous findings are not subject to any further discussion unless the requirements for reconsideration of decisions are met." (para. 54)
7.	**002 KHIEU Samphân** PTC 36 C26/9/12	"The Pre-Trial Chamber finds that previous findings are not subject to further discussion unless the requirements for reconsideration are met." (para. 30)

	30 April 2010 **[PUBLIC REDACTED]** *Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention*	
8.	**002 IENG Thirith** PTC 41 D263/2/6 25 June 2010 *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)*	"[T]he Pre-Trial Chamber will not reconsider its earlier decisions unless new evidence is adduced which warrants reversing the presumption of impartiality attached to Judge Lemonde." (para. 33)
9.	**002 IENG Sary** PTC 75 D427/1/30 11 April 2011 *Decision on IENG Sary's Appeal against the Closing Order*	"There are no compelling reasons put before the Pre-Trial Chamber from the Co-Lawyers to reconsider such conclusions about the nature of the ECCC as an internationalised court, the Pre-Trial Chamber confirms its previous findings as mentioned." (para. 221)
10.	**002 Civil Parties** PTC 73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 and PTC 76, 112-115, 142, 157, 164, 165, 172 D404/2/4 and D411/3/6 24 June 2011 *Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications*	"[T]he test used for the review of these Civil Party applications by both the Co-Investigating Judges and the Pre-Trial Chamber was erroneous […]." (para. 113) "[T]he Civil Party applicants […] have had the chance to bring before the Pre-Trial Chamber supplementary documentation which they were not given the opportunity to do before." (para. 114) "Upon the request for reconsideration […] and the reasons thereon, the Pre-Trial Chamber considers that there is sufficient cause for the reconsideration of its decision […]." (para. 115)
11.	**002 NUON Chea & KHIEU Samphân** PTC 47 and 53 D364/1/6 1 July 2011 *Decision on the Reconsideration of the Admissibility of Civil Party Applications*	"In its previous jurisprudence the Pre-Trial Chamber has applied the following test for reconsideration: 25.The Application for Reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decisions. The Appeals Chamber of the ICTY has held that a Chamber may always reconsider a decision it has previously made not only because of a change of circumstances but also where it is realized that the previous decision was erroneous or that it has caused an injustice. This has been described as an inherent power and is particularly important for a judicial body of last resort like the Pre-Trial Chamber. A change of circumstances may include new facts or arguments. The standard for reconsideration has also been described as follows a Chamber has inherent discretionary power to reconsider a previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice'" (para. 6)

		"In relation to the request of the Khmer Krom Applicants having found that the previous decisions on such applications applied the wrong legal criteria in finding them inadmissible, the Majority considers that there is sufficient cause for reconsideration of the previous decisions on these Civil Party applications. These applications shall be reviewed pursuant to the admissibility test applied by the Majority of the Pre-Trial Chamber […]." (para. 9) "The Majority considers that the general arguments raised by the Co-Lawyers in respect of the admissibility of their clients civil party applications are insufficient to determine the matter in the light of the admissibility criteria set out by the Pre-Trial Chamber in its Decisions on Civil Party Appeals. The mere assertion by a lawyer that his or her client was victim of persecution is not sufficient in and of itself for an applicant to be admitted on this basis. Therefore, the Majority considers it appropriate to review and assess *de novo* the individual applications to determine whether the applicants allege having suffered harm as a result of a crime that forms part of one of the five policies put in place by the Khmer Rouge as it has done in its Decisions on Civil Party Appeals." (para. 10) "[T]he Co-Investigating Judges reasons for rejecting this Applicant were that she offered no proof of a direct link between the alleged injury and the facts under Investigation. The Majority finds that this clear error in the reasoning of the Co-Investigating Judges for this rejection warrants the reconsideration of the application of Civil Party applicant D22/-288 afresh on the basis of the general considerations of the majority of the Pre-Trial Chamber […]." (para. 11)
12.	**003 Special PTC 01** Doc. No. 5 4 October 2012 *Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003*	"In [C22/I/68], the Pre-Trial Chamber has applied the following test for reconsideration: '25. The Application for Reconsideration may only succeed if there is a legitimate basis for the Pre-Trial Chamber to reconsider its previous decisions. The Appeals Chamber of the ICTY has held that a Chamber may "always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice." This has been described as an inherent power and is particularly important for a judicial body of last resort like the Pre-Trial Chamber. A change of circumstances may include new facts or arguments. The standard for reconsideration has also been described as follows: 'a Chamber has inherent discretionary power to reconsider previous interlocutory decision in exceptional cases 'if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent injustice.'" (para. 3) "The Pre-Trial Chamber finds that there were no errors of law in its original decision, that there is no injustice and there are no changed circumstances which would cause it to reconsider the Decision. […] It would be inappropriate for it to reconsider the Decision, especially under the circumstances when it has already observed that the Requestor, as part of the Administration of the ECCC and a non party, has no standing to bring motions or appear before this Chamber." (para. 11)
13.	**004 AO An** PTC 05 D121/4/1/4 15 January 2014 *Considerations of the Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation*	"The Pre-Trial Chamber has previously recognised the inherent power of ECCC judicial bodies to reconsider their previous decisions when there is a change of circumstances or where it is realised that the previous decision was erroneous or that it has caused an injustice. While reconsideration can be done *proprio motu*, principles of natural justice and procedural fairness require that any party or other concerned individual whose rights or interests may be affected be accorded the right to be heard prior to such decision being made." (Opinion of Judges CHUNG and DOWNING, para. 9)
14.	**004 AO An** PTC 07 D190/1/2 30 September 2014 *Decision on Ta An's Appeal against International*	"The Pre-Trial Chamber further notes that the Appeal does not bring any new fact or circumstances but rather reiterates arguments that were already put forward in the Participation Appeal. Therefore, the Pre-Trial Chamber finds that the Appeal seeks to bring before the Pre-Trial Chamber the same issue, in fact and law, that it has already examined in its Appeal Considerations (*i.e.*, the Appellant's right to participate in the judicial investigation) and upon which it could not attain a supermajority of four votes to issue a decision." (para. 19)

	Co-Investigating Judge's Decision Denying Requests for Investigative Actions	"Should the Chamber consider the present Appeal, it is to be presumed that its five members would follow their previous opinion and each reach the same conclusion, which would trigger the same result for the Appellant, *i.e.*, that the Impugned Decision would stand by application of Internal Rule 77(13). This situation renders the Appeal pointless and creates a potential for endless litigation. The Pre-Trial Chamber emphasises that the supermajority rule and the default position envisaged by the Internal Rules are unique features of the ECCC, which may result in the Chamber not being able to reach a decision on a specific issue." (para. 20) "When the Pre-Trial Chamber could not decide on an issue raised before it, re-examination of a matter that is substantially the same, in fact and law, through a renewed application or appeal filed by the same party, would be contrary to the principles of legal certainty and judicial economy, and more generally against the interests of justice as it would not advance the proceedings but rather risk causing delays. Seeking guidance in the procedural rules established at the international level, in accordance with Article 12(1) of the Agreement between the United Nations and the government of Cambodia for the establishment of the ECCC, Articles 23*new* and 33*new* of the ECCC Law and Internal Rule 2, the Pre-Trial Chamber notes, by analogy, that it is common practice at other tribunals of international character to dismiss motions or applications on the basis that they raise issues that have already been determined by a final decision binding upon the concerned parties (and are as such *res judicata*), unless presented in the context of requests for reconsideration. Therefore, the Pre-Trial Chamber holds that it may dismiss an appeal or application, without considering its formal admissibility under Internal Rules 73, 74 and/or 21 or its merits, when it raises an issue that is substantially the same (in fact and law) as a matter already examined by the Chamber in respect of the same party and upon which it could not reach a majority of four votes to issue a decision." (para. 20)
15.	**004/2 AO An** PTC 60 D359/24 and D360/33 19 December 2019 *Considerations on Appeals against Closing Orders*	"The Co-Lawyers submit that the cumulative impact of fair trial violations undermines the integrity of proceedings in a manner so egregious and irreparable as to render a fair trial impossible and that the International Co-Investigating Judge erred or abused his discretion in failing to dismiss or stay the case to safeguard the fairness and integrity of proceedings and AO An's rights. […] In light of these alleged cumulative errors, the Co-Lawyers submit that the only appropriate remedy is a permanent stay of proceedings or a dismissal of the case against AO An." (para. 162) "Here, the Co-Lawyers raise fair trial issues that have already been litigated and, at this juncture, fail to provide sufficient basis for reconsideration. […] Accordingly, the Pre-Trial Chamber finds that no intervention is necessary now to avoid irremediable harm to fair trial rights." (para. 164) "[W]ithout any demonstration of alleged fair trial right violations, the Pre-Trial Chamber finds that the Co-Lawyers' argument concerning the cumulative impact of fair trial rights violations and their request for a permanent stay or dismissal as a remedy is without merit." (para. 168) --- "Turning to the purported violation of AO An's rights to equality before the law and courts, and certain fair trial guarantees, including: the right to be presumed innocent, the right to be tried by a fair and competent tribunal, the right to be informed promptly and in detail of the nature and cause of the charges and the right to be tried without undue delay and the principle of legal certainty, the International Judges consider that these arguments presuppose the confirmation of both Closing Orders. Having determined that only the Closing Order (Indictment) stands, the International Judges find no merit in these arguments." (Opinion of Judges BAIK and BEAUVALLET, para. 327)

vii. *Execution of Pre-Trial Chamber Decisions*

1.	**003 MEAS Muth** PTC 37 and 38 D271/5 and D272/3 8 September 2021 *Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS*	"[T]he Co-Investigating Judges were notified of the operative part of the Pre-Trial Chamber's Considerations and are responsible for processing the case in accordance with Internal Rules 77(13) and (14). By having notified its Considerations, the Pre-Trial Chamber effectively fulfilled its duty. It is now the Co-Investigating Judges' responsibility to comply with the Considerations immediately." (para. 72)

	Muth concerning the Proceedings in Case 003	

LIST OF CITED DECISIONS

CASE 001 DECISIONS (DUCH)

PTC01 – Decision on Appeal against Provisional Detention Order of KAING Guek Eav *alias* "Duch", 3 December 2007, C5/45 (Duch)

PTC02 – Decision on Trial Chamber Request to Access the Case File, 11 September 2008, D99/3/5 (Duch)

PTC02 – Decision on IENG Sary's Request to Make Submissions on the Application of the Theory of Joint Criminal Enterprise in the Co-Prosecutor's Appeal of the Closing Order against KAING Guek Eav "Duch", 6 October 2008, D99/3/19 (IENG Sary)

PTC02 – Decision on IENG Sary's Motion for Reconsideration of Ruling on the Filing of a Motion in the Duch Case File, 3 December 2008, D99/3/41 (IENG Sary)

PTC02 – Decision on Appeal against Closing Order Indicting KAING Guek Eav *alias* "Duch", 5 December 2008, D99/3/42 (Duch)

CASE 002 DECISIONS (IENG SARY, IENG THIRITH, KHIEU SAMPHÂN, NUON CHEA)

PTC01 – Public Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge NEY Thol Pending the Appeal against the Provision Detention Order in the Case of NUON Chea, 4 February 2008, C11/29 (NUON Chea)

PTC01 – Decision on Civil Party Participation in Provisional Detention Appeals, 20 March 2008, C11/53 (NUON Chea/Civil Parties)

PTC01 – Decision on Appeal against Provisional Detention Order of NUON Chea, 20 March 2008, C11/54 (NUON Chea)

PTC02 - Decision on Appeal against Provisional Detention Order of IENG Thirith, 9 July 2008, C20/I/27 (IENG Thirith)

PTC03 – Decision on Admissibility of Civil Party General Observations, 24 June 2008, C22/I/41 (Civil Parties)

PTC03 – Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties in IENG Sary's Appeal against Provisional Detention Order, 1 July 2008, C22/I/46 (Civil Parties)

PTC03 – Written Version of Oral Decision of 30 June 2008 on the Co-Lawyers' Request to Adjourn the Hearing on the Jurisdictional Issues, 2 July 2008, C22/I/49 (IENG Sary)

PTC03 – Written Version of Oral Decision of 1 July 2008 on the Civil Party's Request to Address the Court in Person, 3 July 2008, C22/I/54 (Civil Parties)

PTC03 – Decision on Civil Party Request for Protective Measures Related to Appeal against Provisional Detention Order, 8 July 2008, C22/I/57 (Civil Parties)

PTC03 – Decision on Application for Reconsideration of CIvil Party's Right to Address Pre-Trial Chamber in Person, 28 August 2008, C22/I/68 (Civil Parties)

PTC03 – Decision on Appeal against Provisional Detention Order of IENG Sary, 17 October 2008, C22/I/74 (IENG Sary)

PTC04 – Decision on Application to Adjourn Hearing on Provisional Detention Appeal, 23 April 2008, C26/I/25 (KHIEU Samphân)

PTC04 – Decision relating to Notice of Withdrawal of Appeal, 15 October 2008, C26/I/31 (KHIEU Samphân)

PTC05 – Decision on the Admissibility of the Appeal Lodged by IENG Sary on Visitation Rights, 21 March 2008, A104/II/4 (IENG Sary)

PTC05 – Decision on Appeal concerning Contact between the Charged Person and His Wife, 30 April 2008, A104/II/7 (IENG Sary)

PTC06 – Decision on NUON Chea's Appeal against Order Refusing Request for Annulment, 26 August 2008, D55/I/8 (NUON Chea)

PTC06 – Decision on Civil Party Co-Lawyers' Joint Request for Reconsideration, 25 February 2009, D55/I/13 (NUON Chea)

PTC07 – Decision on NUON Chea's Appeal regarding Appointment of an Expert, 22 October 2008, D54/V/6 (NUON Chea)

PTC08 – Decision on IENG Sary's Appeal against Letter concerning Request for Information concerning Legal Officer David BOYLE, 28 August 2008, A162/III/6 (IENG Sary)

PTC09 – Decision on NUON Chea's Appeal concerning Provisional Detention Conditions, 26 September 2008, C33/I/7 (NUON Chea)

PTC09 – Decision on Request for Leave to File *Amicus Curiae* Brief, 13 August 2008, C33/I/6 (NUON Chea)

PTC10 – Decision on IENG Sary's Appeal regarding the Appointment of a Psychiatric Expert, 21 October 2008, A189/I/8 (IENG Sary)

PTC11 – Decision on KHIEU Samphan's Request for a Public Hearing, 4 November 2008, A190/I/8 (KHIEU Samphân)

PTC11 – Decision on KHIEU Samphan's Appeal against the Order on Translation Rights and Obligations of the Parties, 20 February 2009, A190/I/20 (KHIEU Samphân)

PTC12 – Decision on Request for Leave to File *Amicus Curiae* Brief, 10 September 2008, A190/II/6 (IENG Sary)

PTC12 – Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties, 20 February 2009, A190/II/9 (IENG Sary)

PTC13 – Decision on Appeal against Order on Extension of Provisional Detention of NUON Chea, 4 May 2009, C9/4/6 (NUON Chea)

PTC15 – Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order, 6 February 2009, C26/5/13 (KHEU Samphân)

PTC14 and 15 – Decision on KHIEU Samphân's Appeal against Order Refusing Request for Release and Extension of Provisional Detention Order, 3 July 2009, C26/5/26 (KHIEU Samphân) [PUBLIC REDACTED]

PTC15 – Decision on KHIEU Samphân's Supplemental Application for Release, 24 December 2008, C26/5/5 (Decision by the President of the Pre-Trial Chamber) (KHIEU Samphân)

PTC16 – Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order, 29 January 2009, C20/5/10 (IENG Thirith)

PTC16 – Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention, 11 May 2009, C20/5/18 (IENG Thirith) [PUBLIC REDACTED]

PTC17 – Decision on Co-Prosecutors' Request to Determine the Appeal on the basis of Written Submissions and Scheduling Order, 29 January 2009, C22/5/10 (IENG Sary)

PTC18 – Decision on Admissibility on "Appeal against the Co-Investigating Judges' Order on Breach of Confidentiality of the Judicial Investigations", 13 July 2009, D138/1/8 (IENG Sary)

PTC19 – Decision on Request for Leave to File *Amicus Curiae* Brief, 4 August 2009, D158/5/4/13; PTC20, Decision on Request for Leave to File *Amicus Curiae* Brief, 4 August 2009, D158/5/3/14; PTC21, Decision on Request for Leave to File *Amicus Curiae* Brief, 4 August 2009, D158/5/1/14; PTC22, Decision on Request for Leave to File *Amicus Curiae* Brief, 4 August 2009, D158/5/2/14 (IENG Sary; IENG Thirith; NUON Chea and KHIEU Samphân)

PTC19 – Decision on the Appeal of the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action, 25 August 2009, D158/5/4/14 (IENG Thirith)

PTC20 – Decision on the Charged Person's Appeal against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action, 25 August 2009, D158/5/3/15 (IENG Sary)

PTC21 – Decision on Appeal against the Co-Investigating Judges' Order on the Charged Person's Eleventh Request for Investigative Action, 18 August 2009, D158/5/1/15 (NUON Chea)

PTC22 – Decision on the Appeal by the Charged Person against the Co-Investigating Judges' Order on NUON Chea's Eleventh Request for Investigative Action, 27 August 2009, D158/5/2/15 (KHIEU Samphân)

PTC24 – Decision on "Request for an Oral Hearing" on the Appeals PTC 24 and 25, 20 August 2009, D164/4/3; PTC25 – Decision on "Request for an Oral Hearing" on the Appeals PTC 24 and 25, 20 August 2009, D164/3/3 (IENG Thirith, NUON Chea, KHIEU Samphân)

PTC24 – Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25, 20 October 2009, D164/4/9 (KHIEU Samphân); PTC 25, Decision on Request to Reconsider the Decision on Request for an Oral Hearing on the Appeals PTC 24 and PTC 25, 20 October 2009, D164/3/5 (KHIEU Samphân)

PTC24 – Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 18 November 2009, D164/4/13 (IENG Thirith, KHIEU Samphân, NUON Chea)

PTC25 – Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 12 November 2009, D164/3/6 (IENG Sary)

PTC26 – Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture, 18 December 2009, D130/9/21 (IENG Thirith)

PTC27 – Decision on Admissibility of the Appeal against Co-Investigating Judges' Order on Use of Statements Which Were or May Have Been Obtained by Torture, 27 January 2010, D130/10/12 (KHIEU Samphân)

PTC28 – Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order on Request for Additional Expert, 14 December 2009, D140/4/5 (IENG Sary) [PUBLIC REDACTED]

PTC29 – Decision on IENG Sary's Appeal against the Co-Investigating Judges' Constructive Denial of IENG Sary's Third Request for Investigative Action, D171/4/5 (IENG Sary)

PTC30 – Decision on KHIEU Samphan's Appeal against the Order on the Request for Annulment for Abuse of Process, 4 May 2010, D197/5/8 (KHIEU Samphân)

PTC31 – Decision on Admissibility of IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests concerning the OCIJ's Identification of and Reliance on Evidence Obtained Through Torture, 10 May 2010, D130/7/3/5 (IENG Sary)

PTC32 – Decision on IENG Sary's Appeal against Order on Extension of Provisional Detention, 30 April 2010, C22/9/14 (IENG Sary) [PUBLIC REDACTED]

PTC33 – Decision on IENG Thirith's Appeal against Order on Extension of Provisional Detention, 30 April 2010, C20/9/15 (IENG Thirith) [PUBLIC REDACTED]

PTC35 – Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/14/15 (IENG Sary); PTC 37 – Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/17/6 (Civil Parties); PTC 38 – Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/15/9 (IENG Thirith); PTC 39 – Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE), 20 May 2010, D97/16/10 (KHIEU Samphân)

PTC36 – Decision on KHIEU Samphân's Appeal against Order on Extension of Provisional Detention, 30 April 2010, C26/9/12 (KHIEU Samphân) [PUBLIC REDACTED]

PTC41 – 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 June 2010, D263/2/6 (IENG Thirith)

PTC42 – 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 August 2010, D264/2/6 (IENG Thirith)

PTC44 – Decision on Appeal against OCIJ Order on NUON Chea's Sixteenth (D253) and Seventeenth (D265) Requests for Investigative Action, 6 April 2010, D253/3/5 (NUON Chea)

PTC45 – Decision on IENG Sary's Appeal against OCIJ Order on Requests D153, D172, D173, D174, D178 & D284, 5 May 2010, D300/2/2 (IENG Sary)

PTC46 – Decision on NUON Chea's Appeal against OCIJ Order on Direction to Reconsider Requests D153, D172, D173, D174, D178 and D284, 28 July 2010, D300/1/7 (NUON Chea)

PTC47 and 48 – Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications, 27 April 2010, D250/3/2/1/5 (Civil Parties) [PUBLIC REDACTED]; PTC47 and 48 – Decision on Appeals against Co-Investigating Judges' Combined Order D250/3/3 Dated 13 January 2010 and Order D250/3/2 Dated 13 January 2010 on Admissibility of Civil Party Applications, 27 April 2010, D274/4/5 (Civil Parties) [PUBLIC REDACTED]

PTC47 and 53 – Decision on the Reconsideration of the Admissibility of Civil Party Applications, 1 July 2011, D364/1/6 (Civil Parties)

PTC50 and 51 – Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summon Witnesses, 9 September 2010, D314/1/12 and D314/2/10 (IENG Sary, NUON Chea) [PUBLIC REDACTED]

PTC52 – Decision on Appeal of Co-Lawyers for Civil Parties against Order Rejecting Request to Interview Persons named in the Forced Marriage and Enforced Disappearance Requests for Investigative Action, 21 July 2010, D310/1/3 (Civil Parties) [PUBLIC REDACTED]

PTC55 – Decision of IENG Sary's Appeal against the Co-Investigating Judges' Order Denying His Request for Appointment of an Additional [REDACTED] Expert to Re-Examine the Subject Matter of the Expert Report Submitted by Ms. Ewa TABEAU and Mr. THEY Kheam, 28 June 2010, D140/9/5 (IENG Sary) [PUBLIC REDACTED]

PTC56 – Decision on Appeal against the Co-Investigating Judges' Order Issuing Warnings under Internal Rule 38, 7 June 2010, D367/1/5 (IENG Sary)

PTC57 – Decision on Appeal of Co-Lawyers for Civil Parties against Order on Civil Parties' Request for Investigative Actions concerning all Properties Owned by the Charged Persons, 4 August 2010, D193/5/5 (Civil Parties)

PTC58 – Decision on Appeal against OCIJ Order on NUON Chea's Eighteenth Request for Investigative Action, 10 June 2010, D273/3/5 (NUON Chea) [PUBLIC REDACTED]

PTC60 – Decision on IENG Sary's Appeal against Co-Investigating Judges' Order on IENG Sary's Motion against the Application of Command Responsibility, 9 June 2010, D345/5/11 (IENG Sary)

PTC61 – Decision on Defence Appeal against Order on IENG Thirith Defence Request for Investigation into Mr. Ysa OSMAN's Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses, 27 August 2010, D361/2/4 (IENG Thirith)

PTC62 – Decision on the IENG Thirith Defence Appeal against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010, 14 June 2010, D353/2/3 (IENG Thirith) [PUBLIC REDACTED]

PTC63 – Decision on the Appeal against the 'Order on the Request to Place on the Case [File] the Documents relating to Mr. KHIEU Samphân's Real Activity', 7 July 2010, D370/2/11 (KHIEU Samphân)

PTC64 – Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Visual Recording of Meetings with IENG Sary at the Detention Facility, 11 June 2010, A371/2/12 (IENG Sary) [PUBLIC REDACTED]

PTC65 – Decision on IENG Sary's Appeal against the Co-Investigating Judges' Rejection of IENG Sary's Third Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order, 8 June 2010, A372/2/7 (IENG Sary)

PTC66 – Decision on NUON Chea's Appeal against the Co-Investigating Judges' Order Rejecting Request for a Second Expert Opinion, 1 JulY 2010, D356/2/9 (NUON Chea) [PUBLIC REDACTED]

PTC67 – Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes, 15 June 2010, D365/2/10 (NUON Chea)

PTC67 – Decision on Reconsideration of Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File Which Assists in Proving the Charged Persons' Knowledge of the Crimes, 27 September 2010, D365/2/17 (IENG Sary, NUON Chea, KHIEU Samphân)

PTC70 – Decision on IENG Sary's Appeal against the Co-Investigating Judges' Constructive Denial of IENG Sary's Two Applications to Seise the Pre-Trial Chamber with Requests for Annulment, 15 September 2010, D381/1/2 (IENG Sary)

PTC71 – Decision on IENG Sary's Appeal against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, D390/1/2/4 (IENG Sary)

PTC72 – Decision on IENG Sary's Appeal against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with A Request for Annulment of All Investigative Acts Performed By or with the Assistance of Stephen HEDER & David BOYLE and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center Of Cambodia & Expedited Appeal against the OCIJ Rejection of a Stay of the Proceedings, 30 November 2010, D402/1/4 (IENG Sary)

PTC73, 74, 77-103, 105-111, 116-141, 143-144, 148-151, 153-156, 158-163, 166-171 – Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D404/2/4 (Civil Parties); PTC76, 112-115, 142, 157, 164, 165 and 172 – Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D411/3/6 (Civil Parties)

PTC75 – Decision on IENG Sary's Appeal against the Closing Order: Reasons for Continuation of Provisional Detention, 24 January 2011, D427/1/27 (IENG Sary)

PTC75 –Decision on IENG Sary's Appeal against the Closing Order, 11 April 2011, D427/1/30 (IENG Sary)

PTC104 – Decision on KHIEU Samphân's Appeal against the Closing Order, 21 January 2011, D427/4/15 (KHIEU Samphân)

PTC105 – Decision on Civil Parties' Request for Extension of Page Limit for Appeal against Order on the Admissibility of Civil Party Applicants from Current Residents of Siem Reap Province, 6 October 2010, D424/3/2 (Civil Parties)

PTC145 and 146 – Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order, 15 February 2011, D427/2/15 and D427/3/15 (IENG Thirith, NUON Chea)

PTC145 and 146 – Decision on IENG Thirith's and NUON Chea's Appeals against the Closing Order: Reasons for Continuation of Provisional Detention, 21 January 2011, D427/3/13 and D427/2/13 (IENG Thirith, NUON Chea)

PTC147 – Decision on Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness, 29 June 2011, A410/2/6 (Civil Parties)

PTC152 – Decision on IENG Sary's Appeal against the Closing Order's Extension of His Provisional Detention, 21 January 2011, D427/5/10 (IENG Sary)

CASE 003 DECISIONS (MEAS MUTH)

PTC01 – Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary, 28 February 2012, D11/1/4/2 (Civil Parties)

PTC02 – Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMILL, 24 October 2011, D11/2/4/4 (Civil Parties) [PUBLIC REDACTED]

PTC03 – Considerations of the Pre-Trial Chamber regarding the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Order on International Co-Prosecutor's Public Statement regarding Case 003, 24 October 2011, D14/1/3 (MEAS Muth)

PTC04 – 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, D20/4/4 (MEAS Muth)

PTC05 – Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant CHUM Neou, 13 February 2013, D11/3/4/2 (Civil Parties)

PTC07 – Considerations of the Pre-Trial Chamber regarding the International Appeal against Order on the Admissibility of Civil Party Applicant Mr Timothy Scott DEEDS, 14 February 2013, D11/4/4/2 (Civil Parties)

PTC08 – Decision on Appeal against the Office of the Co-Investigating Judges' Constructive Denial of MEAS Muth's Appeal against Determination of Claim of Indigence and Decision on Request for Remuneration of Counsel Under the ECCC's Legal Assistance Scheme, 27 September 2013, D56/11/6/2 (MEAS Muth)

PTC09 – Decision on Application for Annulment pursuant to Internal Rule 76(1), 12 November 2013, D79/1 (Civil Parties)

PTC10 – Decision on MEAS Muth's Appeal against the Co-Investigating Judges Constructive Denial of Fourteen of MEAS Muth's Submissions to the [Office of the Co-Investigating Judges], 23 April 2014, D87/2/2 (MEAS Muth)

PTC10/1 – Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of MEAS Muths's Request to Access the Case File and to Participate in the Judicial Investigation, 9 September 2014, D87/2/3 (MEAS Muth)

PTC11 – Decision on Requests for Interim Measures, 31 January 2014, D56/19/8 (MEAS Muth)

PTC11 – Decision on Co-Lawyer's Request to Stay the Order for Assignment of Provisional Counsel to MEAS Muth, 11 February 2014, D56/19/14 (MEAS Muth)

PTC11 – Second Decision on Requests for Interim Measures, 19 February 2014, D56/19/16 (MEAS Muth)

PTC11 – Decision on Request by MEAS Muth's Defence for Reclassification as Public of All Conflict of Interest Filings and All Other Defence Submissions before the Pre-Trial Chamber, 27 February 2014, D56/19/20 (MEAS Muth)

PTC11 – Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision Rejecting the Appointment of ANG Udom and Michael KARNAVAS as His Co-Lawyers, 17 July 2014, D56/19/38 (MEAS Muth)

PTC12 – Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Continuing Refusal to Place MEAS Muth's Submissions on the Case File and to Act upon Them, 20 August 2014, D103/4 (MEAS Muth)

PTC13 – Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Order on Suspects Request concerning Summons Signed by One Co-Investigating Judge, 3 December 2014, D117/1/1/2 (MEAS Muth)

PTC14 – Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of His Motion to Strike, to Access the Case File and to Participate in the Investigation, 25 February 2015, D82/4/2 (MEAS Muth)

PTC15 – Considerations of the Pre-Trial Chamber on MEAS Muth's Appeal against the Co-Investigating Judge's Constructive Refusal to Seize the Pre-Trial Chamber with Two Annulment Applications, 23 January 2015, D103/5/2 (MEAS Muth)

PTC16 – Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Decision Refusing Access to the Case File, 17 June 2015, D122/1/2 (MEAS Muth)

PTC17 – Considerations of The Pre-Trial Chamber on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Denial of His Application to Seize the Pre-Trial Chamber with A Request for Annulment of Summons to Initial Appearance, 24 February 2015, A77/1/1/2 (MEAS Muth)

PTC18 – Decision on MEAS Muth's Appeal against the Co-Investigating Judges' Constructive Denial of MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 17 June 2016, D120/1/1/2 (MEAS Muth)

PTC19 – Decision on MEAS Muth's Request to Reclassify as Public all Defence Submissions to the Pre-Trial Chamber, 4 August 2015, D131/1 (MEAS Muth)

PTC20 – Decision on MEAS Muth's Appeal against Co-Investigating Judge HARMON's Decision on MEAS Muth's Applications to Seise the Pre-Trial Chamber with Two Applications for Annulment of Investigative Action, 23 December 2015, D134/1/10 (MEAS Muth)

PTC21 – Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision to Charge MEAS Muth *in Absentia*, 30 March 2016, D128/1/9 (MEAS Muth)

PTC22 – Considerations on MEAS Muth's Appeal against International Co-Investigating Judge HARMON's Notification of Charges against MEAS Muth, 3 February 2016, D128.1/1/11 (MEAS Muth)

PTC23 – Considerations of the Pre-Trial Chamber on MEAS Muth's Urgent Request for a Stay of Execution of Arrest Warrant, 23 September 2015, C2/4 (MEAS Muth)

PTC24 – Decision on MEAS Muth's Request to Reclassify as Public Certain Defence Submissions to the Pre-Trial Chamber, 19 February 2016, D147/1 (MEAS Muth)

PTC25 – Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge HARMON's Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 9 December 2015, D120/2/1/4 (MEAS Muth)

PTC26 – Considerations on MEAS Muth's Appeal against the International Co-Investigating Judge's Re-Issued Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 26 April 2016, D120/3/1/8 (MEAS Muth)

PTC27 – Decision on MEAS Muth's Request for the Pre-Trial Chamber to Take a Broad Interpretation of the Permissible Scope of Appeals against the Closing Order & to Clarify the Procedure for Annulling the Closing Order, or Portions Thereof, if Necessary, 28 April 2016, D158/1 (MEAS Muth)

PTC28 – Decision related to (1) MEAS Muth's Appeal against Decision on Nine Applications to Seize the Pre-Trial Chamber with Requests for Annulment and (2) the Two Annulment Requests Referred by the International Co-Investigating Judge, 13 September 2016, D165/2/26 (MEAS Muth)

PTC29 – 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, D174/1/4 (MEAS Muth)

PTC30 – Decision on MEAS Muth's Appeal against the International Co-Investigating Judge's Decision on MEAS Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict, 10 April 2017, D87/2/1.7/1/1/7 (MEAS Muth)

PTC31 – Decision on MEAS Muth's Appeal against International Co-Investigating Judge's Consolidated Decision on the International Co-Prosecutor's Requests to Disclose Case 003 Documents into Case 002 (D100/25 AND D100/29), 15 February 2017, D100/32/1/7 (MEAS Muth)

PTC32 – Decision on MEAS Muth' Appeal against the Notification on the Interpretation of 'Attack against the Civilian Population' in the Context of Crimes against Humanity with regards to a State's or Regime's Own Armed Forces, 18 July 2017, D191/18/1/8 (MEAS Muth)

PTC33 – Decision on MEAS Muth's Request for Annulment of D114/164, D114/167, D114/170, and D114/171, 13 December 2017, D253/1/8 (MEAS Muth)

PTC34 – Decision on MEAS Muth's Application for the Annulment of Torture-Derived Written Records of Interview, 24 July 2018, D257/1/8 (MEAS Muth)

PTC35 – Decision on Case 003 Defence's Urgent Request to Access the Case 004/2 Appeal Hearings, 7 June 2019, D267/8 (MEAS Muth)

PTC35 – Decision on MEAS Muth's Request to Dispense with Personal Appearance at the Hearing on the Appeals against the Closing Orders, 20 November 2019, D266/14 and D267/19 (MEAS Muth)

PTC35 – Decision on MEAS Muth's Request for Clarification of the Pre-Trial Chamber Considerations on Appeals against Closing Orders in Case 004/2, 3 November 2020, D266/24 and D267/32 (MEAS Muth)

PTC35 – 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, D266/25 (MEAS Muth)

PTC35 – Decision on MEAS Muth's Supplement to His Appeal against the International Co-Investigating Judge's Indictment, 3 November 2020, D267/33 (MEAS Muth)

PTC35 – Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 003, 3 November 2020, D266/26 and D267/34 (MEAS Muth)

PTC35 – Considerations on Appeals against Closing Orders, 7 avril 2021, D266/27 and D267/35 (MEAS Muth)

PTC36 – Considerations on Appeal against Order on the Admissibility of Civil Party Applicants, 10 June 2021, D269/4 (Civil Parties)

PTC37 and 38 – Consolidated Decision on the Requests of the International Co-Prosecutor and the Co-Lawyers for MEAS Muth concerning the Proceedings in Case 003, 8 September 2021, D271/5 and D272/3 (MEAS Muth)

CASE 004 DECISIONS (AO AN, IM CHAEM, YIM TITH)

PTC01 – Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary, 28 February 2012, D5/1/4/2 (Civil Parties)

PTC02 – Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert HAMIL, 14 February 2012, D5/2/4/3 (Civil Parties)

PTC03 – Decision on Notice of Withdrawal of Appeal against the Constructive Dismissal of Ta An's Request for Access to the Case File, 12 April 2013, D121/2/3 (AO An)

PTC04 – Decision on Application for Annulment pursuant to Internal Rule 76(1), 12 November 2013, D165/1 (Civil Parties)

PTC05 – Considerations of The Pre-Trial Chamber on Ta An's Appeal against the Decision Denying His Requests to Access the Case File and Take Part in the Judicial Investigation, 15 January 2014, D121/4/1/4 (AO An)

PTC06 – Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation, 31 October 2014, D192/1/1/2 (YIM Tith)

PTC07 – Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Requests for Investigative Actions, 30 September 2014, D190/1/2 (AO An)

PTC08 – Decision on Ta An's Appeal against International Co-Investigating Judge's Decision Denying Annulment Motion, 13 October 2014, D185/1/1/2 (AO An)

PTC09 – Decision on IM Chaem's Urgent Request to Stay the Execution of Her Summons to an Initial Appearance, 15 August 2014, A122/6.1/3 (IM Chaem)

PTC10 – Considerations of the Pre-Trial Chamber on YIM Tith's Appeals against the International Co-Investigating Judge's Decisions Denying His Requests to Access the Case File and to Take Part in the Investigation, 31 October 2014, D186/3/1/2 (YIM Tith)

PTC11 – Decision on YIM Tith's Appeal against the Decision Denying His Request for Clarification, 13 November 2014, D205/1/1/2 (YIM Tith)

PTC12 – Decision on Appeal against Constructive Dismissal of Ta An's Fourth Request for Investigative Action, 22 October 2014, A117/2/2 (AO An)

PTC13 – Considerations of the Pre-Trial Chamber on YIM Tith's Appeal against the Decision Denying His Application to the Co-Investigating Judges Requesting Them to Seise the Pre-Trial Chamber with a View to Annul the Judicial Investigation, 21 November 2014, A157/2/1/2 (YIM Tith)

PTC14 – Decision on YIM Tith's Appeal against the International Co-Investigating Judge's Clarification on the Validity of a Summons Issued by One Co-Investigating Judge, 4 December 2014, D212/1/2/2 (YIM Tith)

PTC15 – 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, D203/1/1/2 (YIM Tith)

PTC16 – Decision on Ta An's Appeal against the Decision Rejecting his Request for Information concerning the Co-Investigating Judges' Disagreement of 5 April 2013, 22 January 2015, D208/1/1/2 (AO An)

PTC18 – Decision of the Pre-Trial Chamber on SON Arun's Appeal against the Decision of the Office of the Co-Investigating Judges related to the Recognition of Lawyer, 19 February 2015, D198/3/1/2 (Other Appeals)

PTC19 – Considerations on IM Chaem's Appeal against the International Co-Investigating Judge's Decision to Charge Her *in Absentia*, 01 March 2016, D239/1/8 (IM Chaem)

PTC20 – Decision on IM Chaem's Appeal against the International Co-Investigating Judge's Decision on Her Motion to Reconsider and Vacate Her Summons Dated 29 July 2014, 9 December 2015, D236/1/1/8 (IM Chaem)

PTC21 – Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigative Action concerning Forced Marriage, 17 May 2016, D257/1/8 (AO An)

PTC22 – Decision on YIM Tith's Notice to Withdrawal of Appeal against the International Co-Investigating Judge's Decision on Urgent Requests to Reconsider the Disclosure of Case 004 Witness Statements in Case 002/02, 2 June 2016, D229/3/1/4 (YIM Tith)

PTC23 – Considerations on AO An's Application for Annulment of Investigative Action related to Wat Ta Meak, 15 December 2016, D263/1/5 (AO An)

PTC24 – Considerations on Appeal against Decision on AO An's Fifth Request for Investigative Action, 16 June 2016, D260/1/1/3 (AO An)

PTC25 – Decision on Appeal against Order on AO An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60, 31 March 2016, D284/1/4 (AO An)

PTC26 – Decision on International Co-Prosecutor's Appeal concerning Testimony at Trial in Closed Session, 20 July 2016, D309/6 (AO An)

PTC27 – Considerations on AO An's Application to Seise the Pre-Trial Chamber with a View to Annulment of Investigation of Tuol Beng and Wat Angkuonh Dei and Charges relating to Tuol Beng, 14 December 2016, D299/3/2 (AO An)

PTC29 – Decision on YIM Tith's Consolidated Appeal against the Co-Investigating Judge's Consolidated Decision on YIM Tith's Requests for Reconsideration of Disclosure (D193/76 and D193/77) and the International Co-Investigating Judge's Consolidated Decision on International Co-Prosecutor's Requests to Disclose Case 004 Document to Case 002 (D193/70, D193/72, D193/75), 15 February 2017, D193/91/7 (YIM Tith)

PTC30 – Decision on AO An's Application to Annul Decisions D193/55, D193/57, D193/59 and D193/61, 15 February 2017, D292/1/1/4 (AO An)

PTC31 – Decision on AO An's Application to Annul Non-Audio-Recorded Written Records of Interview, 30 November 2016, D296/1/1/4 (AO An)

PTC38 – Considerations on YIM Tith's Application to Annul the Investigation into Forced Marriage in Sangkae District (Sector 1), 25 July 2017, D344/1/6 (YIM Tith)

PTC39 – Considerations on YIM Tith's Application to Annul the Investigative Action and Orders relating to Kang Hort Dam, 11 August 2017, D345/1/6 (YIM Tith)

PTC40 – Decision on YIM Tith's Application to Annul the Investigative Material Produced by Paolo STOCCHI, 25 August 2017, D351/1/4 (YIM Tith)

PTC45 – Decision on YIM Tith's Application to Annul the Placement of Case 002 Oral Testimonies onto Case File 004, 26 October 2017, D360/1/1/6 (YIM Tith)

PTC46 – Decision on YIM Tith's Request for Suspension of D361/4 Deadline Pending Resolution of Appeal Proceedings, 19 July 2017, D361/4/1/3 (YIM Tith)

PTC46 – Decision on YIM Tith's Appeal against the Decision on YIM Tith's Request for Adequate Preparation Time, 13 November 2017, D361/4/1/10 (YIM Tith)

PTC47 – Decision on YIM Tith's Appeal of the Decision on Request to Place Materials on Case File 004, 25 October 2017, D347/2/1/4 (YIM Tith)

PTC48 – Decision on International Co-Prosecutor's Appeal of Decision on Request for Investigative Action, 11 August 2017, D338/1/1/3 (YIM Tith)

PTC51 – Decision on YIM Tith's Application to Annul the Requests for and Use of Civil Parties' Supplementary Information and Associated Investigative Products in Case 004, 20 August 2018, D370/1/1/6 (YIM Tith)

PTC52 – Decision on the International Co-Prosecutor's Appeal of Decision on Request for Investigative Action regarding Sexual Violence at Prison No.8 and in Bakan District, 13 February 2018, D365/3/1/5 (YIM Tith)

PTC53 – Decision on YIM Tith's Application to Annul Evidence Made as a Result of Torture, 27 September 2018, D372/1/7 (YIM Tith)

PTC55 – Decision on YIM Tith's Appeal of the Decision on YIM Tith's Request for Correction of Translation Errors in Written Records of Interview, 19 October 2018, D377/1/1/3 (YIM TIth)

PTC61 – Decision on YIM Tith's Request for Extension of Deadline for Notice of Appeal of Closing Orders in Case 004, 19 July 2019, D382/3 (YIM Tith)

PTC61 – Decision on YIM Thith's Request that the Pre-Trial Chamber Order the Urgent Provision of an Accurate English Translation of the Order Dismissing the Case against YIM Tith and Suspend the Closing Order Appeal Time Limits, 26 September 2019, D382/13 (YIM Tith)

PTC61 – Decision on YIM Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004, 30 October 2019, D382/19 (YIM Tith)

PTC61 – Decision on Oral Hearing in Case 004, 18 March 2021, D382/40 (YIM Tith)

PTC61 – Decision on YIM Tith's Urgent Request for Dismissal of the Defence Support Section's Action Plan Decision, 18 March 2021, D381/42 and D382/41 (YIM Tith)

PTC61 – Decision on International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against YIM Tith, 21 July 2021, D381/44 (YIM Tith)

PTC61 – Considerations on Appeals against Closing Orders, 17 September 2021, D381/45 and D382/43 (YIM Tith)

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PTC37 – Decision on AO An's Application to Annul Written Records of Interview of Three Investigators, 11 May 2017, D338/1/5 (AO An)

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PTC43 – Decision on Appeal against the Decision on AO AN'S Application to Annul the Entire Investigation, 5 September 2017, D350/1/1/4 (AO An)

PTC44 – Decision on AO An's Appeal against Internal Rule 66(4) Forwarding Order, 6 September 2017, D351/2/3 (AO An)

PTC58 – Decision on Civil Party Requests for Extension of Time and Page Limits, 27 August 2018, D362/4 (Civil Parties)

PTC58 – Considerations on Appeal against Order on the Admissibility of Civil Party Applicants, 30 June 2020, D362/6 (Civil Parties)

PTC59 – Decision on AO An's Urgent Request for Redaction and Interim Measures, 5 September 2018, D360/3 (AO An)

PTC60 – Decision on AO An's Urgent Request for Continuation of AO An's Defence Team Budget, 2 September 2019, D359/17 and D360/26 (AO An)

PTC60 – Decision on the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearing held before the Pre-Trial Chamber, 9 March 2020, D359/29 and D360/38 (AO An)

PTC60 – Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 004/2, 18 December 2019, D359/22 and D360/31 (AO An)

PTC60 – Considerations on Appeals against Closing Orders, 19 December 2019, D359/24 and D360/33 (AO An)

PTC60 – Decision on the Pre-Trial Chamber's Reclassification of Documents in Case File 004/2, 12 June 2020, D359/38 and D360/47 (AO An)

PTC60 – Decision on Civil Party Lawyers' Request for Necessary Measures to be Taken by the Pre-Trial Chamber to Safeguard the Rights of Civil Parties to Case 004/2, 17 July 2020, D359/39 and D360/48 (Civil Parties)

SPECIAL PTC CASES

Case 002 Special PTC – Decision on the Charged Person's Application for Disqualification of Drs. Stephen HEDER and David BOYLE, 22 September 2009, Doc. No. 3 (IENG Sary)

Case 002 Special PTC01 – Decision on IENG Sary's Application to Disqualify Co-Investigating Judge Marcel LEMONDE, 9 December 2009, Doc. No. 7 (IENG Sary)

Case 002 Special PTC02 – Decision on KHIEU Samphân's Application to Disqualify Co-Investigating Judge Marcel LEMONDE, 14 December 2009, Doc. No. 7 (KHIEU Samphân)

Case 002 Special PTC03 - Decision on IENG Sary's Request for Appropriate Measures concerning Certain Statements by Prime Minister HUN Sen Challenging the Independence of Pre-Trial Judges Katinka LAHUIS and Rowan DOWNING, 30 November 2009, Doc. No. 5 (IENG Sary)

Case 002 Special PTC04 – Decision on NUON Chea's Application for Disqualification of Judge Marcel LEMONDE, 23 March 2010, Doc. No. 4 (NUON Chea) [PUBLIC REDACTED]

Case 002 Special PTC05 – Decision on IENG Sary's and on IENG Thirith['s] Applications under Rule 34 to Disqualify Judge Marcel LEMONDE, 15 June 2010, Doc. No. 8 (IENG Thirith and IENG Sary)

Case 002 Special PTC06 – Decision on IENG Sary's Rule 35 Application for Judge Marcel LEMONDE's Disqualification, 29 March 2010, Doc. No. 5 (IENG Sary)

Case 002 Special PTC07 – Decision on IENG Sary's and on IENG Thirith['s] Applications under Rule 34 to Disqualify Judge Marcel LEMONDE, 15 June 2010, Doc. No. 6 (IENG Thirith and IENG Thirith)

Case 002 Special PTC09 – Decision on Application for Disqualification of Judge YOU Bunleng, 10 September 2010, Doc. No. 8 (NUON Chea) [PUBLIC REDACTED]

Case 002 Special PTC11 – Decision on IENG Sary's Request to the Pre-Trial Chamber to Forbid the Trial Chamber from Accessing the Case File until it is Seised with the Case, 16 November 2010, Doc. No. 2 (IENG Sary)

Case 002 Special PTC16 – Decision on Request for Translation on All Documents used in Support of the Closing Order, 15 December 2010, Doc. No. 2 (KHIEU Samphân)

Case 002 Special PTC14 – Decision on Defence Notification of Errors in Translation, 17 December 2010, Doc. No. 2 (IENG Thirith)

Case 002 Special PTC15 – Decision on KHIEU Samphân's Interlocutory Application for an Immediate and Final Stay of Proceedings for Abuse of Process, 12 January 2011, Doc. No. 2 (KHIEU Samphân)

Case 002 Special PTC17 – Decision on Urgent Request to Order Resumption of Detention Interviews, 19 January 2011, Doc. No. 2 (NUON Chea)

Case 003 Special PTC01 – Decision on Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003, 15 December 2011, Doc. No. 3 [PUBLIC REDACTED]

Case 003 Special PTC01 – Decision on Motion for Reconsideration of the Decision on the Defence Support Section Request for a Stay in Case 003 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 003, 4 October 2012, Doc. No. 5

Case 004 Special PTC01 – Decision on Defence Support Section Request for a Stay in Case 004 Proceedings before the Pre-Trial Chamber and for Measures pertaining to the Effective Representation of Suspects in Case 004, 20 February 2012, Doc. No. 3 [PUBLIC REDACTED]

Special PTC 10-07-2013-ECCC/PTC – Decision on the "Appeal against Dismissal of Richard RORGERS' Application to be Placed on the List of Foreign Co-Lawyers", 6 February 2014, Doc. No. 8 [PUBLIC REDACTED]

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DISAGREEMENTS

Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71, 18 August 2009, Disagreement No. 001/18-11-2008-ECCC/PTC

Opinion of Pre-Trial Chamber Judges DOWNING AND CHUNG on the Disagreement between the Co-Investigating Judges pursuant to Internal Rule 72, 10 February 2012, Case File N° 003/16-12-2011-ECCC/PTC

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