



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Royaume du Cambodge  
Nation Religion Roi

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des Tribunaux cambodgiens

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des co-juges d'instruction

<b>ឯកសារដើម</b>	
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Case File No: 003/07-09-2009-ECCC-OCLJ

Before: **The Co-Investigating Judges**  
Date: **22 August 2018**  
Language(s): **English [Original]**  
Classification: **PUBLIC**

**DECISION ON MEAS MUTH'S REQUEST FOR LEAVE TO SUPPLEMENT HIS  
RESPONSE TO THE INTERNATIONAL CO-PROSECUTOR'S FINAL  
SUBMISSION**

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## I. PROCEDURAL HISTORY

1. Disagreements between the Co-Investigating Judges ("CIJs") in this case were registered on 7 February 2013, 22 February 2013, 17 July 2014, and 16 January 2017.
2. On 12 April 2018, the Defence for Meas Muth ("Defence") filed *Meas Muth's Response to the International Co-Prosecutor's Final Submission* ("Response").<sup>1</sup>
3. On 6 August 2018, the Defence submitted *Meas Muth's Request for Leave to Supplement His Response to the International Co-Prosecutor's Final Submission* ("Request").<sup>2</sup> A public redacted version was filed on 7 August 2018.
4. The International Co-Prosecutor ("ICP") filed his response to the Request (the "ICP's Response") on 20 August 2018, requesting that it also be reclassified as public, with any necessary redactions, and that the Request be dismissed.<sup>3</sup>
5. The National Co-Prosecutor did not respond to the question from my office regarding whether she intended to respond to the Request.
6. On 16 August 2018, two Closing Orders were filed in Case 004/2.<sup>4</sup>

## II. SUBMISSIONS

7. The Defence submit that the Pre-Trial Chamber's ("PTC") holdings in its *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)* in Case 004/1 filed 29 June 2018<sup>5</sup> present newly discovered information which it must be allowed to address in Case 003 to avoid prejudicing Meas Muth.<sup>6</sup>
8. The Defence argue in essence that:<sup>7</sup>
  1. the PTC erred in its criticism of the Co-Investigating Judges' ("CIJs") approach to the methodology of evaluating the evidence ("Point A");<sup>8</sup>
  2. the PTC and CIJs incorrectly relied on the Case 002 Closing Order to establish the standard of proof required for an indictment;<sup>9</sup> and
  3. the CIJs should determine personal jurisdiction based on the gravity of charged crimes only.<sup>10</sup>
9. The Defence therefore request leave to supplement Meas Muth's response to the ICP's final submission.<sup>11</sup>

<sup>1</sup> Case File No. 003-D256/11, *Meas Muth's Response to the International Co-Prosecutor's Final Submission*, 12 April 2018.

<sup>2</sup> Case File No. 003-D256/12, *Meas Muth's Request for Leave to Supplement His Response to the International Co-Prosecutor's Final Submission*, 6 August 2018.

<sup>3</sup> Case File No. 003-D256/13, *International Co-Prosecutor's Response to Meas Muth's Request for Leave to Supplement His Response to the International Co-Prosecutor's Final Submission*, 20 August 2018, paras 17-18.

<sup>4</sup> Case File No. 004/2-D359, *ដីកាសម្រេចលើកលែងចោទប្រកាន់ លោក ពាន*, 16 August 2018; Case File No. 004/2-D360, *Closing Order (Indictment)*, 16 August 2018.

<sup>5</sup> Case File No. 004/1-D308/3/1/20, *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*, 29 June 2018.

<sup>6</sup> Request, paras 13-14, 22.

<sup>7</sup> *Ibid.*, para. 12.

<sup>8</sup> *Ibid.*, paras 16-17.

<sup>9</sup> *Ibid.*, para. 19 b.

<sup>10</sup> *Ibid.*, para. 21 b.

<sup>11</sup> *Ibid.*, p. 11.



10. Reference is made to the text of the ICP's Response for the details of the ICP's arguments.<sup>12</sup>

### III. DISCUSSION

#### *The Request*

11. The Request is moot in part and for the remainder there is no need for any further submissions by the Defence beyond the summary arguments in the Request.
12. The Closing Order by the International CIJ in Case 004/2 declined to follow the PTC's criticism of the evidentiary considerations.<sup>13</sup> That of the National CIJ did not adopt it, either. Point A is thus moot. Any further argument from the parties in this context, if necessary, is properly raised in an eventual appeal before the PTC against the Closing Order.
13. Regarding the need to adopt a new standard for an indictment based on the nature of the crimes, the length of the proceedings and the likelihood of insufficient funding, the Defence already dealt with the matter through a sufficiently detailed analysis in the Response.<sup>14</sup> There is no need for any further argument on that issue in order to give the CIJs an understanding of the gist of the Defence's views.
14. Finally, the CIJs have relied – and will rely – on *charged crimes only*, for the purpose of establishing the gravity aspect of personal jurisdiction if and when indicting a charged person. In Case 004/1, the argument was that *even if* the remaining crimes had been charged, the threshold would not have been reached.<sup>15</sup> In any event, Internal Rule 66*bis* (5) makes it plain that even if facts are excluded from the investigation and can no longer be used as a basis for charges, they may be used for other purposes relevant for the remaining facts. Furthermore, nothing prevents the Defence from contesting such use on an appeal to the PTC. There is no need for any further argument on the matter.

#### *The Response*

15. The ICP was sent a draft copy of the ICP's Response with one intended redaction in fn. 35 on 22 August 2018 by the Greffier of the Office of the Co-Investigating Judges ("Greffier"), and approved the proposed redaction.<sup>16</sup> The redaction was accordingly carried out directly by the Greffier. The redacted version of the ICP's Response is attached as an Annex to this decision.<sup>17</sup>

<sup>12</sup> ICP's Response, paras 6–17.

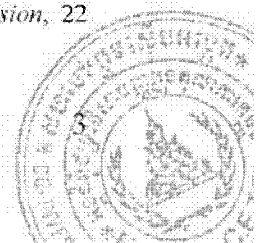
<sup>13</sup> Case File No. 004/2-D360, *Closing Order (Indictment)*, 16 August 2018, paras 35–38.

<sup>14</sup> Response, paras 82–108, referenced in note 77 of the Request.

<sup>15</sup> Case File No. 004/1-D308/3, *Closing Order (Reasons)*, 10 July 2017, paras 246, 313.

<sup>16</sup> Case File No. 003-D256/14.1, *Annex 1: Email exchange between Chhay Chanlyda and Nicholas Koumjian of 22 August 2018*, 22 August 2018.

<sup>17</sup> Case File No. 003-D256/14.2, *Annex 2: [Redacted] International Co-Prosecutor's Response to Meas Muth's Request for Leave to Supplement His Response to the International Co-Prosecutor's Final Submission*, 22 August 2018.



**FOR THE FOREGOING REASONS, I:**

16. **DECLARE** Point A of the Request moot;
17. **DENY** the remainder of the Request; and
18. **ORDER** the Greffier to file the public redacted version of the Response as contained in Annex 2.

This decision is filed in English, with a Khmer translation to follow.

Dated 22 August 2018, Phnom Penh



**Judge Michael Bohlander**

**សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ**

**International Co-Investigating Judge**

**Co-juge d'instruction international**