



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**  
Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះតុលាការកំពូល**  
Supreme Court Chamber  
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០៤/២/០៧-០៩-២០០៩-អ.វ.ត.ក/អ.ជ.ស.ដ/អ.ជ.ត.ក  
Case File/Dossier N°. 004/2/07-09-2009-ECCC/TC/SC

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 17-Jun-2020, 12:05  
CMS/CFO: Sann Rada

**Before:** Judge KONG Srim, President  
Judge Chandra Nihal JAYASINGHE  
Judge SOM Sereyvuth  
Judge Florence Ndepele MWACHANDE-MUMBA  
Judge MONG Monichariya  
Judge Maureen Harding CLARK  
Judge YA Narin

**Date:** 17 June 2020  
**Language(s):** Khmer/English  
**Classification:** PUBLIC

**DECISION ON MEAS MUTH’S REQUEST FOR LEAVE TO INTERVENE AND RESPOND TO THE INTERNATIONAL CO-PROSECUTOR’S IMMEDIATE APPEAL OF THE TRIAL CHAMBER’S EFFECTIVE TERMINATION OF CASE 004/2**

**Co-Lawyers for MEAS Muth**  
ANG Udom  
Michael G. KARNAVAS

**Co-Prosecutors**  
CHEA Leang  
Brenda J. HOLLIS

**Accused**  
MEAS Muth

**Co-Lawyers for AO An**  
MOM Luch  
Richard ROGERS  
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**Co-Lawyers for YIM Tith**  
SO Mosseny  
Suzana TOMANOVIC

**Civil Parties in Cases 004/2, 003 & 004**

**THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” or “ECCC”, respectively);

**BEING SEISED** of “MEAS Muth’s request for leave to intervene and respond to the International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/02” (“MEAS Muth’s Request for Leave to Intervene”);<sup>1</sup>

**RECALLING** the “International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2” (“Immediate Appeal”);<sup>2</sup>

**NOTING** that the International Co-Prosecutor contends that the Trial Chamber’s failure to act to commence the trial of AO An effectively terminated Case 004/2 against him, consequently triggering her Immediate Appeal pursuant to Rule 104(4)(a);

**ACCORDINGLY** that the Immediate Appeal has prompted the present request by MEAS MUTH for Leave to Intervene to the Immediate Appeal on the basis that it “invariably, will impact Case 003 [..]”, and for reasons of fairness, equity and in the interest of justice, seeks the opportunity to intervene to ensure legal certainty and judicial economy;<sup>3</sup>

**CONSIDERING** that filings in conjunction with the Immediate Appeal as envisaged by the Practice Direction and the procedural framework of the ECCC have been completed,<sup>4</sup> and that because of the anticipatory nature of MEAS Muth’s Request for Leave to Intervene, it is in the interests of expediency and judicial economy to issue the present decision without awaiting the filing deadlines for eventual responses to expire;

**HAVING FULLY CONSIDERED** MEAS Muth’s Request for Leave to Intervene;

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<sup>1</sup> MEAS Muth’s Request for leave to intervene and respond to the International Co-Prosecutor’s immediate Appeal of the Trial Chamber’s effective termination of Case 004/2, E004/2/2, 29 May 2020.

<sup>2</sup> International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2, 19 May 2020, E004/2/1.

<sup>3</sup> MEAS Muth’s Request for Leave to Intervene, paras 5-6.

<sup>4</sup> Immediate Appeal notified on 19 May 2020; AO An’s response to International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s effective termination of Case 004/2, transmitted on 14 May 2020 and notified on 26 May 2020, E004/2/1/1; International Co-Prosecutor’s Reply to AO An’s letter regarding her immediate appeal of the Trial Chamber’s effective termination of Case 004/2, E004/2/1/1/1, 26 May 2020.

**COGNISANT** that presently MEAS Muth's case is pending before the Pre-Trial Chamber and that the current request has the potential to pre-judge the outcome of the case;<sup>5</sup>

**CONSIDERING** that, under the ECCC legal framework and jurisprudence, the Pre-Trial Chamber's appellate jurisdiction shall not be circumvented by *any* party seeking to advance matters under its jurisdiction by concurrently invoking the appellate jurisdiction of the Supreme Court Chamber on the premise that the party has a legitimate interest;<sup>6</sup>

**CONCLUDES** that MEAS Muth's Request for Leave to Intervene may interfere with the jurisdiction of the Pre-Trial Chamber and pre-empt the outcome of his case before the Pre-Trial Chamber;

**HEREBY:**

**REJECTS** MEAS Muth's Request for Leave to Intervene.

**Phnom Penh, 17 June 2020**

**President of the Supreme Court Chamber**



**KONG Srim**

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<sup>5</sup> Whilst referencing the Immediate Appeal, MEAS Muth accepts the submission of the International Co-Prosecutor to the extent that the issues raised therein “[...] will carry *stare decisis* effect, setting...precedent for similar procedural circumstances likely to occur in Case 003 and 004”, para. 5, MEAS Muth's Request for Leave to Intervene *see also* Immediate Appeal, para. 61.

<sup>6</sup> Rule 76(7) states that “[s]ubject to any appeal, the Closing Order shall cure any defects in the judicial investigations”. The PTC's power is 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 PTC is responsible for ensuring, at the investigative stage, that the fundamental principles underlying the criminal procedure applicable before the ECCC are respected, *PTC Considerations*, 19 December 2019, D359/24 & D360/33, para. 52.