



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

ឯកសារដើម

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SANN RADA

D128.1/1/11

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 003/07-09-2009-ECCC/OCIJ (PTC22)

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 03 February 2016

PUBLIC

DECISION ON MEAS MUTH'S APPEAL AGAINST CO-INVESTIGATING JUDGE HARMON'S NOTIFICATION OF CHARGES AGAINST MEAS MUTH

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia is seised of “MEAS Muth’s Appeal against Co-Investigating Judge Harmon’s Notification of Charges against MEAS Muth” (the “Appellant” and the “Appeal against the Notification of Charges”, respectively), filed on 12 June 2015.¹

1. On 7 September 2009, the Case 003 judicial investigation was initiated on the basis of the Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea of 20 November 2008 which was signed by the International Co-Prosecutor only.²
2. On 31 October 2014, the International Co-Prosecutor filed a Supplementary Submission.³
3. On 3 March 2015, the International Co-Investigating Judge charged the Appellant *in absentia* (“Decision to Charge *In Absentia*”).⁴ MEAS Muth was informed through the Annex of the Decision to Charge *In Absentia*, the Notification of Charges, that he was charged with Violations of the 1956 Cambodian Penal Code, Crimes against Humanity and Grave Breaches of the 1949 Geneva Conventions.⁵
4. On 9 March 2015, the Appellant filed a Notice of Appeal Against Co-Investigating Judge Harmon’s Notification of Charges against MEAS Muth.⁶ On 12 June 2015, the Appellant filed the Appeal against the Notification of Charges in English, and subsequently in Khmer on 17 June 2015.⁷

¹ MEAS Muth’s Appeal against the International Co-Investigating Judge Harmon’s Notification of Charges against MEAS Muth, 12 June 2015, D128.1/1/3 (“Appeal”).

² Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008, D1.

³ International Co-Prosecutor’s Supplementary Submission regarding Crime Sites Related to Case 003, 31 October 2014, D120.

⁴ Decision to Charge Meas Muth *In Absentia*, 3 March 2015, D128.

⁵ Notification of Charges against MEAS Muth, Annex to the Decision to Charge MEAS Muth *In Absentia*, 3 March 2015, D128.1.

⁶ MEAS Muth’s Notice of Appeal against Co-Investigating Judge Harmon’s Notification of Charges against MEAS Muth, 9 March 2015, D128.1/1.

⁷ Appeal.

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5. On 17 July 2015, the International Co-Prosecutor filed his Response to the Appeal⁸ and on the 11 August 2015, the Appellant filed its Reply to the International Co-Prosecutor's Response to the Appeal.⁹
6. On 14 December 2015, MEAS Muth appeared before the International Co-Investigating Judge. A Khmer version of the Written Record of Initial Appearance was filed on 15 December 2015 and the English version was subsequently put on the Case File on 11 January 2016.¹⁰ The International Co-Investigating Judge advised MEAS Muth that he was charged with Genocide, Crimes against Humanity, Grave Breaches of the 1949 Geneva Conventions and Violations of the 1956 Penal Code.¹¹ The International Co-Investigating Judge also informed MEAS Muth that some of the charges mentioned in the Decision to Charge *In Absentia* were rescinded and that the statement of charges considered in that Decision was therefore moot.¹² Furthermore, he notified MEAS Muth that two crimes alleged by the Co-Prosecutors would be given further legal characterisations.¹³
7. On 23 December 2015, the Appellant registered a Notice of Appeal against the International Co-Investigating Judges's Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to apply Command Responsibility¹⁴ and filed his Appeal against the International Co-Investigating Judges's Decision to Charge MEAS Muth with Grave Breaches of the Geneva Conventions and National Crimes and to apply JCE and Command Responsibility, on 6 January 2016.¹⁵
8. In light of the rescission of some charges and the addition of some legal characterizations of facts by the International Co-Investigating Judge during the Appellant's initial appearance,

⁸ International Co-Prosecutor's Response to MEAS Muth's Appeal Against the the International Co-Investigating Judge's Notification of Charges, 17 July 2015, D128.1/1/7.

⁹ MEAS Muth's Reply to International Co-Prosecutor's Response to Appeal Against Co-Investigating Judge Harmon's Notification of Charges Against MEAS Muth, 11 August 2015, D128.1/1/10.

¹⁰ Written Record of Initial Appearance, 14 December 2015, D174.

¹¹ *Ibid.*, p. 4-8.

¹² *Ibid.*, p. 10.

¹³ *Ibid.*, p. 3.

¹⁴ MEAS Muth's Notice of 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 Command Responsibility, 23 December 2015, D174/1.

¹⁵ 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, 6 January 2016, D174/1/1.

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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.

THEREFORE, THE PRE-TRIAL CHAMBER HEREBY UNANIMOUSLY:

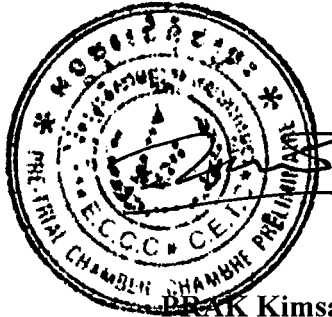
DISMISSES the Appeal as moot.

In accordance with Internal Rule 77(13), there is no possibility to appeal.

Phnom Penh, 03 February 2016

President

Pre-Trial Chamber



BAK Kimsan

Olivier BEAUVALLET

NEY Thol

Kang Jin BAIK

HUOT Vuthy