ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

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

អច្ចបុរេជិនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

D122/1/2

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 (PTC16)

Before: **Judge PRAK Kimsan, President**
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Steven J. BWANA
Judge HUOT Vuthy

Date: **17 June 2015**

PUBLIC

DECISION ON MEAS MUTH'S APPEAL AGAINST THE INTERNATIONAL CO-INVESTIGATING JUDGE'S DECISION REFUSING ACCESS TO THE CASE FILE

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Fabienne TRUSSES

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 Denial of His Request to Access Case File and Participate in Judicial Investigation" (the "Appellant" and the "Appeal", respectively) filed in English on 17 December 2014 and in Khmer on 10 February 2015.[1]

1. On 29 August 2013, the Appellant, who is named as a suspect in the Second Introductory Submission Regarding the Revolutionary Army of Democratic Kampuchea (the "Introductory Submission"),[2] requested to have access to the Case 003 case file and be allowed to participate in the judicial investigation.[3] On 26 September 2013, he further sought access to the full Introductory Submission and supporting material[4] (altogether, the "Requests").

2. The International Co-Investigating Judge deferred his consideration of the Requests until a preliminary issue in respect of the Appellant's legal representation had been resolved,[5] which occurred on 30 June 2014.[6] Upon recognition of the Appellant's Co-Lawyers by the Pre-Trial Chamber, the International Co-Investigating Judge undertook to reconsider two decisions previously issued by the former Reserve International Co-Investigating Judge in respect of suspects' rights and the ECCC personal jurisdiction to prosecute the Appellant,[7] with a view to adjudicating the Requests.[8] On 28 November 2014, the International Co-Investigating Judge summoned the Appellant and his Co-Lawyers to appear before him on

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[1] D122/1/1.
[2] Second Introductory Submission Regarding the Revolutionary Army of Democratic Kampuchea, 20 November 2008, D1; Acting International Co-Prosecutor's Notice of Filing of the Second Introductory Submission, 7 September 2009, D1/1.
[3] MEAS Muth's Request to Access the Case File and Participate in the Judicial Investigation, 29 August 2013, D82.
[4] Request to be Provided with Full Introductory Submission and Supporting Material, 26 September 2013, D82/2.
[5] International Co-Prosecutor's Request that Appointment of Co-Lawyers Designate Be Rejected on the Basis of Irreconcilable Conflicts of Interest, 24 December 2012, D56/1; International Co-Investigating Judge's Letter Concerning Submission Filed by the Co-Lawyers Designate in CF03, 25 October 2013, D87. This solution was endorsed by the Pre-Trial Chamber. *See* 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, para. 13.
[6] 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, 30 June 2014, D56/19/36 (disposition) and 17 July 2014, D46/19/38 (reasons).
[7] *See* Notification of Suspect's Rights [Rule 21(1)(D)], 24 February 2012, D30 *and* Decision on Personal Jurisdiction and Investigative Policy Regarding Suspect, 2 May 2012, D48.
[8] Notification Concerning Suspect's Requests to Access the Case File and Participate in the Judicial Investigation (D82) and the Full Introductory Submission and Supporting Material (D82/2), 10 July 2014, D82/3, para. 16.

8 December 2014 for an initial appearance pursuant to Internal Rule 57 (the "Summons").[9] The International Co-Investigating Judge notified the Appellant that in case of being charged at the initial appearance, he would be granted access to the Case File and allowed to participate in the judicial investigation.[10] In these circumstances, the International Co-Investigating Judge considered that it would not be "judicially efficient" to rule on the Requests before 8 December 2014 or to reconsider the previous decisions issued by the former International Co-Investigating Judge at this stage.[11]

3. On 8 December 2014, the Appellant did not appear before the International Co-Investigating Judge, but his lawyers did. During the hearing, the Appellant's National Co-Lawyer made an oral request for access to the Case File.[12] The International Co-Investigating Judge orally denied the request, without providing any reason (the "Impugned Decision").[13] The Appellant notified his intention to appeal the Impugned Decision on 15 December 2014,[14] and filed his appeal brief in English on 17 December 2014 and in Khmer on 10 February 2015.

4. On 3 March 2015, the International Co-Investigating Judge charged the Appellant *in absentia* for a number of crimes alleged in the Introductory Submission.[15] The International Co-Investigating Judge held that "[w]ith the issuance of this 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 rights to access the case file, to take part in the judicial investigation, to confront witnesses or to move the [Co-Investigating Judges] to seise the [Pre-Trial Chamber] with requests for annulment of investigating action".[16] As such, the Appellant has effectively gained the relief he was seeking to the Pre-Trial Chamber, which was to "order the Co-Investigating Judges to allow the Defence to access the Case File and

[9] Summons to Initial Appearance, 28 November 2014, A66; Written Record of Service of Summons, 5 December 2014, A66/1; Summons of Lawyer, 28 November 2014, A67.
[10] Notification on Suspect's Requests to Access the Case File, Take Part in the Judicial Investigation, and to Strike ICP's Submissions, 28 November 2014, D82/5, paras 16-17.
[11] *Ibid.*
[12] Written Record of Initial Appearance, 11 December 2014, D122.
[13] *Ibid.*
[14] D122/1.
[15] Decision to Charge MEAS Muth *In Absentia*, 3 March 2015, D128 *and* Notification of Charges against MEAS Muth, 3 March 2015, D128.1.
[16] *Ibid*, para. 72.

participate in the judicial investigation".[17] The Appeal is therefore moot and should be dismissed as such, without determining its admissibility or merits.[18]

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, 17 June 2015

President | Pre-Trial Chamber

PRAK Kimsan **Olivier BEAUVALLET** **NEY Thol** **Steven J. BWANA** **HUOT Vuthy**

[17] Appeal, Relief Requested, para. B.
[18] *See, e.g.*, Case No. 002/19-09-2007-ECCC-TC/SC(25), Decision on KHIEU Samphân's Appeal against Decision to Hear Expert Witness Before Issuance of New Severance Decision, 28 June 2013, E264/1/2/2, para. 10.