



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

D120/2/1/4

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 (PTC25)

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

Date: 09 December 2015

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PUBLIC

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

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

**Co-Lawyers
for the Appellant**

ANG Udom
Michael G. KARNAVAS

Co-Lawyers for civil parties

HONG Kimsuon
KIM Mengkhy
MOCH Sovannary
SAM Sokong
TY Srinna
VEN Pov
Philippe CANONNE
Laure DESFORGES
FerdinandDJAMMEN-NZEPA

Nicole DUMAS
Isabelle DURAND
Françoise GAUTRY
Martine JACQUIN
Christine MARTINEAU
Barnabe NEKUI
Lyma NGUYEN
Nushin SARKARATI
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 Decision on MEAS Muth’s Motion to Strike the International Co-Prosecutor’s Supplementary Submission” (the “Appellant” and the “Appeal”, respectively) filed on 31 August 2015.¹

1. On 7 September 2009, the Case 003 judicial investigation was initiated based on the Co-Prosecutors’ 20 November 2008 Second Introductory Submission Regarding the Revolutionary Army of Kampuchea,² which was signed only by the International Co-Prosecutor.
2. On 31 October 2014, the International Co-Prosecutor (“ICP”) filed a Supplementary Submission.³ On 19 November 2014, the Appellant filed the Motion to Strike the Supplementary Submission.⁴
3. On 26 November 2014, the International Co-Investigating Judge summoned the Appellant for an initial appearance on 8 December 2014.⁵ Upon the Appellant’s refusal to attend the initial appearance and the Judicial Police’s failure to secure his attendance, the International Co-Investigating Judge charged the Appellant *in absentia* for Crimes against Humanity, violations of the 1956 Cambodian Penal Code and Grave Breaches of the Geneva Conventions of 1949.⁶
4. On 3 March 2015, the Appellant filed before the Pre-Trial Chamber (“PTC”) an Appeal against the Co-Investigating Judges’ constructive denial of his Motion to strike the ICP’s Supplementary Submission.⁷ Upon recognition of the Appellant’s change of status to a

¹ Case File No. 003/07-09-2009-ECCC/OCIJ, 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, 31 August 2015, D120/2/1/2.

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 MEAS Muth’s Motion to Strike the International Co-Prosecutor’s Supplementary Submission, 19 November 2014, D120/1.

⁵ Summons of MEAS Muth for Initial appearance, 26 November 2014, A66.

⁶ Decision to Charge Meas Muth *in absentia*, 3 March 2015, D128.

⁷ Meas Muth’s Appeal Against the Co-Investigating Judges Constructive Denial of Meas Muth’s Motion to Strike the Supplementary Submission, 3 March 2015, D120/1/1/1.

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Charged Person, the International Co-Investigating Judge informed, on 26 March 2015, that his earlier submissions were now under consideration.⁸

5. On 17 June 2015, the PTC issued a Decision on the Appeal against the Co-Investigating Judges' constructive denial of MEAS Muth's Motion to Strike the ICP's Supplementary Submission, stating, *inter alia*, that the time taken by the Co-Investigating Judges did not amount to a constructive denial of the Motion to Strike and dismissed the appeal as inadmissible.⁹
6. On 31 July 2015, His Majesty King Norodom Sihamoni of Cambodia signed the Appointment Letter appointing Judge Bohlander to the Office of International Co-Investigating Judge with immediate effect. Judge Bohlander and Judge Harmon were officially notified of this appointment on 20 August 2015.
7. On 5 August 2015, Judge Harmon issued the Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission.¹⁰
8. On 20 August 2015, the Appellant filed a Notice of Appeal.¹¹ After having filed a Request to the PTC to be permitted to file its Appeal in English with the Khmer translation to follow,¹² the Appeal was filed in English on 31 August 2015 and the Khmer translation followed.¹³
9. On 4 September 2015, the Appellant received an email from Filippo de Minicis, Legal Officer in the Office of the Co-Investigating Judges, sent on behalf of International Co-Investigating Judge Bohlander,¹⁴ stating that while acting in good faith, Judge Harmon

⁸ Response to MEAS Muth's Request for the Co-Investigating Judges to Act on his past Submissions, 26 March 2015, D132/1.

⁹ 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 2015, D120/1/1/2.

¹⁰ Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 5 August 2015, D120/2.

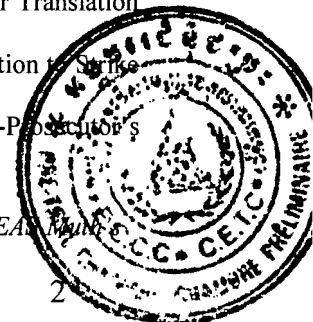
¹¹ MEAS Muth's Notice of Appeal Against Co-Investigating Judge Harmon's Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 20 August 2015, D120/2/1.

¹² MEAS Muth's Request to File Appeal Against Co-Investigating Judge Harmon's Decision on MEAS Muth's Motion to strike the International Co-Prosecutor's Supplementary Submission in English with Khmer Translation to follow, 25 August 2015, D120/2/1/1.

¹³ 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, 31 August 2015, D120/2/1/2.

¹⁴ Email from OCIJ to Defence, "Decision on MEAS Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission", 4 September 2015, D120/2/1/3.1.1.

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issued the Decision on Meas Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, without the necessary authority to do so due to his own appointment as International Co-Investigating Judge by His Majesty King Norodom Sihamoni of Cambodia.

10. On 11 September 2015, International Co-Investigating Judge issued the Re-Issued Decision on MEAS Muth's Motion to Strike the ICP's Supplementary Submission¹⁵, which was appealed by the Appellant on 22 September 2015.¹⁶
11. In light of the fact that Co-Investigating Judge Harmon issued the Decision against MEAS Muth's Motion to Strike the ICP's Supplementary Submission¹⁷ without the necessary authority, and that Co-Investigating Judge Bohlander Re-Issued a Decision on MEAS Muth's Motion to Strike the ICP's Supplementary Submission¹⁸, the Appeal 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, 09 December 2015

President

Pre-Trial Chamber



Kimsan Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy

¹⁵ Re-Issued Decision on MEAS Muth's motion to Strike the International Co-Prosecutor's Supplementary Submission, 11 September 2015, D120/3.

¹⁶ Meas Muth's Appeal against Co-Investigating Judge's Re-Issued Decision on Meas Muth's motion to Strike the International Co-Prosecutor's Supplementary Submission, 22 September 2015, D120/3/1/1.

¹⁷ Decision on Meas Muth's Motion to Strike the International Co-Prosecutor's Supplementary Submission, 5 August 2015, D120/2.

¹⁸ Re-Issued Decision on MEAS Muth's motion to Strike the International Co-Prosecutor's Supplementary Submission, 11 September 2015, D120/3.

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