



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the
Courts of Cambodia

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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des Co-Juges d'Instruction
សំណុំរឿងព្រហ្មទណ្ឌ
Criminal Case File / Dossier pénal
លេខ/No: 003/07-09-2009-ECCC-OCIJ

កំណត់ហេតុនៃការបច្ច័យ
ខួនលើដំបូង
Written Record of Initial
Appearance
Procès-Verbal d'Interrogatoire
de Première Comparution

On 14 December 2015, at 9.30 am, the Initial Appearance of Mr MEAS Muth took place in Battambang in the presence of the following:

International Co-Investigating Judge Michael Bohlander

Greffier: Chhay Chanlyda

Suspect: Mr Meas Muth

For the defence of Mr Meas Muth:
Mr Ang Udom, National Co-Lawyer
Mr Michael G. Karnavas, International Co-Lawyer
Ms Chhouk Kimmao, Case Manager

OCIJ staff:
Phillip Weiner, Legal Officer
Max Galler, Legal Officer

Sokhalay Saur, sworn Interpreter at the ECCC
Nhet Sok Heng, Public Affairs Assistant at the ECCC
Mark Peters, Chief of ICT at the ECCC

ឯកសារបកប្រែ
TRANSLATION/TRADUCTION
ថ្ងៃ ខែ ឆ្នាំ (Date): 11-Jan-2016, 15:54
CMS/CFO: Sann Rada

Mr Meas Muth was also accompanied by his son, [REDACTED].

Those present were informed that the Initial Appearance was being audio/video recorded.

The personal data were confirmed by Mr MEAS Muth as follows:

Name:	MEAS Muth
Date of birth:	10 August 1938
Place of birth:	Po Village, Srae Khnong Commune, Chhuk District, Kampot Province
Nationality:	Cambodian
Occupation:	Retired farmer
Father's name:	[REDACTED] ([REDACTED])
Mother's name:	[REDACTED] ([REDACTED])
Name of spouse:	[REDACTED] ([REDACTED])
Number of children:	4

He declared that he is able to read, write, and understand Khmer but that he is not able to read, write, or understand English or French. Therefore, the original of this Written Record of Initial Appearance is transcribed into Khmer by Greffier Chhay Chanlyda.

Mr MEAS Muth was advised that

- he had the right to remain silent and that no adverse inference may be drawn from his exercise of that right,
- he was free to make a statement before or after the notification of the charges,
- he had the right to legal representation, and that
- he could consult with his co-lawyers before making any such statement.

Neither the suspect nor his co-lawyers elected to make a statement or to submit observations at this time.

The ICIJ advised the suspect of the alleged criminal acts of which the CIJs have been seized by the Office of the Co-Prosecutors ("OCP") through two submissions. These submissions are:

- the Co-Prosecutors' Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, dated 20 November 2008 ("the IS"), and
- the International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, dated 31 October 2014 ("the SS").

The suspect is alleged to be responsible for those criminal acts either as a senior leader of Democratic Kampuchea or as one of those most responsible for them.

The ICIJ informed MEAS Muth that the alleged criminal acts set out in the IS and SS have been given the following legal characterisation by the OCP:

- **Violation of Articles 209, 210, 500, 501, 503, 504, 505, 506, 507, and 508 of the 1956 Penal Code** (Homicide, Torture and Persecution);
- **Crimes Against Humanity** (Murder, Extermination, Enslavement, Imprisonment, Torture, Rape, Persecution on political, racial and religious grounds, and Other Inhumane Acts); and
- **Grave Breaches of the Geneva Conventions of 1949** (Wilful Killing, Wilfully Causing Great Suffering or Serious Injury to Body or Health, Unlawful Deportation or Transfer, and Unlawful Confinement of a Civilian).

The ICIJ advised MEAS Muth that the ICIJ was not bound by the legal characterisation as chosen by the OCP.

Accordingly, the ICIJ further advised MEAS Muth that, based on the evidence so far on the Case File, two crimes alleged by the OCP will be given further legal characterisations:

- Crimes carried out by the Navy of Democratic Kampuchea (DK Navy) in waters and on islands claimed by Democratic Kampuchea , at paragraphs 59 to 61 of the IS as well as paragraphs 15 and 17 of the SS will be additionally characterised as genocide pursuant to the **Convention on the Prevention and Punishment of the Crime of Genocide of 1948**; and
- The underlying acts for the charges other inhumane acts (forced marriage), at paragraphs 20 to 24 of the SS, will be additionally characterised to include rape.

These offences are defined and punishable under Articles 3 (new), 4, 5, 6, 29 and 39 of the ECCC Law.

MEAS Muth was advised that, at this time, there is clear and consistent evidence indicating that he may be criminally responsible for the commission of crimes, from at least 17 April 1975 to 6 January 1979, referred to in the IS and SS, as follows:

1. At various security centres, primarily S-21 Security Centre aka Tuol Sleng – IS paragraph 43, and 65 to 66.
2. Against members of Divisions 164, 502, 117, and 310 – IS paragraphs 44 to 54, 65, 66 and 86c as well as SS paragraphs 12 to 14.
3. At Wat Enta Nhlen Security Centre – IS paragraphs 55 to 57 and 86c.
4. At Stung Hav worksite – IS paragraphs 58 and 86c.
5. Crimes committed by the DK Navy in waters and on islands claimed by Democratic Kampuchea – IS paragraphs 59 to 61 as well as SS paragraphs 15 and 17.
6. At the Ream area co-operative including but not limited to:
 - a. worksites at Kang Keng and Bet Trang,
 - b. the Durian Plantation Execution Site, and
 - c. the Toek Sap Security Centre.

7. In Kampong Som – SS paragraphs 20-24.

MEAS Muth was advised that he is charged, in particular, in his former capacities as

- a member of the Military General Staff,
- the Commander of Division 164 which included the DK Navy,
- and the highest civilian authority of the Kampong Som Autonomous Zone.

Genocide

The ICIJ advised MEAS Muth that there is clear and consistent evidence that he may be responsible for Genocide committed against the Vietnamese on the islands claimed by Democratic Kampuchea, particularly, but not limited to Koh Tral and Koh Poh Lo Wai. This relates to paragraphs 59 to 61 of the IS as well as paragraphs 15 and 17 of the SS.

The ICIJ advised MEAS Muth that he may be responsible for genocide by killing members of that national and ethnic group through the modes of liability of commission via

- Joint Criminal Enterprise (“JCE I”);
- in the alternative through planning or ordering;
- and in the further alternative through superior responsibility,

and that he is charged accordingly.

Crimes against Humanity

The ICIJ advised MEAS Muth that there is clear and consistent evidence indicating that he may be criminally responsible for Crimes against Humanity committed as part of a widespread or systematic attack targeting a civilian population on national, political, ethnical, racial or religious grounds.

The ICIJ advised MEAS Muth that he is charged with the following Crimes against Humanity at the following sites:

- 1) Security Centres, primarily S-21 – IS paragraph 43, and 65 to 66.

Crimes: murder, extermination, imprisonment, torture, other inhumane acts (inhumane treatment and attacks on human dignity due to the conditions of detention), and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries through the underlying offences of murder, extermination, imprisonment, torture and other inhumane acts (inhumane treatment and attacks on human dignity due to the conditions of detention).

Modes of Liability:

- commission via JCE I;
- in the alternative through planning or ordering, and,
- in the further alternative through, superior responsibility.

- 2) Purges of Divisions 164, 502, 310 and 117 – IS paragraphs 44 to 54, 65, 66 and 86c as well as SS paragraphs 12 to 14.

Crimes: murder, extermination, imprisonment, and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries through the underlying offences of murder, extermination and imprisonment.

Modes of Liability relating to Divisions 164 and 117:

- commission via JCE I;
- in the alternative through planning or ordering, and,
- in the further alternative through, superior responsibility.

Modes of liability relating to Divisions 502 and 310:

- commission via JCE I and, in the alternative,
- planning.

- 3) Wat Enta Nhien security centre – IS paragraphs 55 to 57 and 86c.

Crimes: murder, extermination, enslavement, imprisonment, torture, other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention), and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries through the underlying offences of murder, extermination, enslavement, imprisonment, torture and other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention).

Modes of Liability:

- commission via JCE I,
- in the alternative through planning or ordering,
- and, in the further alternative, through superior responsibility.

- 4) Stung Hav work site – IS paragraphs 58 and 86c.

Crimes: murder, enslavement, imprisonment, other inhumane acts (forced labour and inhumane treatment) and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign

countries through the underlying offences of murder, enslavement, imprisonment and other inhumane acts (forced labour and inhumane treatment).

Modes of Liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

- 5) Crimes committed by the DK Navy in waters and on islands claimed by Democratic Kampuchea – IS paragraphs 59 to 61 as well as SS paragraphs 15 and 17.

Crimes: murder, extermination, other inhumane acts (inhumane treatment, enforced disappearances), and persecution on political and racial grounds against foreigners, primarily Thai and Vietnamese people through the underlying offences of murder, extermination and other inhumane acts (inhumane treatment, enforced disappearances).

Modes of Liability:

- commission via JCE I, in the alternative
- through planning or ordering, and,
- in the further alternative, through superior responsibility.

- 6) Ream area co-operative – IS paragraphs 82, 86a as well as SS paragraphs 6 to 11, 16, 18, 19.

- a. Worksites at Kang Keng and Bet Trang:

Crimes: enslavement, imprisonment, other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention, forced labour), and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries, and on racial grounds against foreigners, primarily Thai and Vietnamese people through the underlying offences of enslavement, imprisonment and other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention, forced labour).

Modes of Liability:

- commission via JCE I ,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

- b. The Durian Plantation Execution Site:

Crimes: murder, extermination, other inhumane acts (enforced

disappearances) and persecution, on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries, and on racial grounds against foreigners, primarily Thai and Vietnamese people through the underlying offences of murder, extermination and other inhumane acts (enforced disappearances).

Modes of Liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

c. The Toek Sap Security Centre:

Crimes: murder, extermination, enslavement, imprisonment, other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention, forced labour) and persecution on political grounds against “bad elements”, “internal enemies” and people with ties to the former regime or foreign countries, and on racial grounds against foreigners, primarily Thai and Vietnamese people through the underlying offences of murder, extermination, enslavement, imprisonment and other inhumane acts (inhumane treatment, enforced disappearances, attacks on human dignity due to conditions of detention, forced labour).

Modes of Liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

7) Forced Marriages and related sexual crimes in Kampong Som, the IS paragraphs 20-24

Crimes: other inhumane acts (through forced marriages and rape).

Modes of Liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

Grave Breaches of the Geneva Conventions

The ICIJ advised MEAS Muth that there is clear and consistent evidence that he may be responsible for Grave Breaches of the Geneva Conventions committed against the Thai and Vietnamese in the course of the international armed conflict between the Democratic

Kampuchea (“DK”) and the Kingdom of Thailand from March 1975 to July 1978 and between the DK and the Republic of Vietnam from 17 April 1975 to 6 January 1979, respectively.

The ICIJ advised MEAS Muth that he may be responsible for the following grave breaches at the following sites through the modes of liability listed therein:

- 1) Security Centres, primarily S-21 – IS paragraph 43, and 65 to 66.

Crimes: unlawful confinement of civilians, willful killing, willfully causing great suffering or serious injury to body or health, and torture.

Modes of liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

- 5) Crimes committed by the DK Navy in waters and on islands claimed by Democratic Kampuchea – IS paragraphs 59 to 61 as well as SS paragraphs 15 and 17.

Crimes: unlawful confinement of civilians, willful killing, willfully causing great suffering or serious injury to body or health, and torture.

Modes of liability:

- commission via JCE I,
- in the alternative through planning or ordering, and,
- in the further alternative, through superior responsibility.

Violation of Articles 501 and 506 of the 1956 Penal Code

The ICIJ advised MEAS Muth that there is clear and consistent evidence indicating that he may be criminally responsible for violations of Articles 501 and 506 of the 1956 Penal Code.

The ICIJ advised MEAS Muth that he is charged with the crime of Premeditated Murder, committed at the following sites through the listed modes of liability:

- 1) Security Centres, primarily S-21 via commission (co-perpetration), and, in the alternative, planning or ordering.
- 2) Purges of Divisions:
 - a. 164 and 117 via commission (co-perpetration), and, in the alternative, planning or ordering.
 - b. 502 and 310 via commission (co-perpetration) and, in the alternative, planning.
- 3) Wat Enta Nhien Security Centre via commission (co-perpetration), and, in the alternative, planning or ordering.

- 4) Stung Hav worksite via commission (co-perpetration), and, in the alternative, planning or ordering.
- 5) Crimes committed by the DK Navy in waters and on islands claimed by Democratic Kampuchea via commission (co-perpetration), and, in the alternative, planning or ordering.
- 6) The Durian Plantation Execution Site and the Toek Sap Security Centre located in the Ream area via commission (co-perpetration), and, in the alternative, planning or ordering.

The Joint Criminal Enterprise

There is clear and consistent evidence that a joint criminal enterprise existed, from at least 17 April 1975 to 06 January 1979, and its members included, but were not limited to: Son Sen, Sou Met, Chhit Choeun *aka* Ta Mok, Meas Muth, heads of the Party Centre Military Divisions and senior members of the RAK General Staff, all of whom shared the common criminal purpose of implementing the following CPK policies through the commission of crimes under ECCC jurisdiction:

- 1) the establishment and operation of “cooperatives” and forced labor worksites;
- 2) the “reeducation” of 'bad elements' and killing of 'enemies' both inside and outside the military;
- 3) the targeting of specific groups, in particular persons of Vietnamese and Thai ethnicity or nationality (real or perceived) including those current or former military personnel, civilians and foreigners traveling within DK territory; and
- 4) the forced marriage of civilians and members of the RAK.

The ICIJ clarified that the JCE as formulated by him marks a reduction in scope and membership from the one charged in the Decision of 3 March 2015.

Indication of crime sites not to be investigated further

The ICIJ announced that he was currently considering not investigating the following allegations further and will invite the parties in due course to make representations on the matter:

- 1) S-22 Security Centre – paragraph 46 of the IS.
- 2) Kampong Chhnang Airport Construction Site – paragraph 47 of the IS.
- 3) Vietnam, except the islands claimed by Democratic Kampuchea and the eastern border – paragraph 62 of the IS.
- 4) Prison 810 – paragraph 63 and 64 of the IS.
- 5) Other unidentified security centres operated by the RAK – paragraph 65 of the IS.
- 6) Stung Tauch execution site – paragraph 66 of the IS.

- 7) RAK involvement in the purges of the Central Zone, the New North Zone and the East Zone – paragraph 66 of the IS.

The hearing was paused from 10.11am and reconvened at 10.21am.

Charges to be rescinded

The ICIJ announced that the following charges, laid in absentia on 3 March 2015 (“3 March decision”), are rescinded:

- 1) The charge of torture at Wat Enta Nhien pursuant to Article 500 of the 1956 Cambodian Penal Code listed at paragraph four of the 3 March decision. This relates to allegations at paragraphs 55 to 57 and paragraph 86c of the IS.
- 2) The charge of premeditated homicide in relation to the civilian cadres of Sector 505 in Kratie Province listed at paragraph 3(c) of the 3 March decision. This relates to paragraphs 12 to 14 of the SS.
- 3) The charges of all crimes against humanity in relation to the civilian cadres of Sector 505 in Kratie Province listed at paragraph 7(c) of the 3 March decision. This relates to paragraphs 12 to 14 of the SS.
- 4) All charges of grave breaches of the Geneva Conventions in relation to the purges of those regarded as enemies and traitors in Kampong Som listed at paragraph 10(a) of the 3 March decision. This relates to paragraphs 61, 86c and 86d of the IS.
- 5) All charges of grave breaches of the Geneva Conventions in relation to the purges in Kratie Province of both Division 117 and Sector 505 cadres listed at paragraph 10(b) of the 3 March decision. This relates to paragraphs 12-14 of the SS.
- 6) All charges of grave breaches of the Geneva Conventions in relation to foreigners, other than the Vietnamese and Thai nationals, listed at paragraph 10(c) of the 3 March decision. This relates to paragraphs 61 and 93 of the IS.
- 7) All charges of persecution on “ethnic” grounds listed at paragraph 7 of the 3 March decision. This relates to paragraphs 59 to 61 and 93 of the IS.

The ICIJ further announced that the modes of liability of instigating and otherwise aiding and abetting are rescinded for all international and domestic crimes charged from the 3 March decision.

The ICIJ announced that the arrest warrant dated 10 December 2014 is moot and that the arrest warrant of 4 June 2015 was rescinded.

Meas Muth was advised that the charges as laid in this initial appearance represent the definitive version of the charges against him at this time. The statement of charges in the 3 March Decision charging him in absentia is therefore moot.

The ICIJ also advised MEAS Muth that he may, before the end of the investigation, decide to charge MEAS Muth with additional crimes based on allegations in the IS, SS, or any future submissions from the OCP should he become satisfied that there is clear and consistent evidence indicating that MEAS Muth may be responsible for such crimes. He would then be summoned to a further appearance and given sufficient time to prepare his defence.

The ICIJ informed MEAS Muth that at all times during the judicial investigation, he has the right to request that the ICIJ issue any order or undertake any investigative action that he considers useful for the conduct of the investigation as provided in Internal Rules 55(10) and 58(6). He was further informed that he will be given a reasonable period of time to review the case file and to participate in the investigation. His lawyers have the right to consult the original case file, subject to reasonable limitations to ensure the continuity of the proceedings, as provided in Internal Rule 55(11).

The ICIJ advised MEAS Muth that he will not be placed in provisional detention at this time but must remain at the disposal of the ECCC.

Meas Muth declared that he voluntarily accepts weekly control visits by the police to his residence. He further declared that his only passport expired five years ago. Meas Muth agreed that he will inform the CIJ when he wishes to leave the country for medical treatment and when he returns.

Meas Muth stated that, if there is a medical emergency, he may have to leave for Thailand urgently. If that is the case his counsel will notify the CIJs as soon as they become aware.

The ICIJ declared that he would make an order to that effect to the Judicial Police of the ECCC in due course.

MEAS Muth declared that he currently resides at: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

The ICIJ advised MEAS Muth that he must notify the ICIJ of any change of address. The ICIJ further advised MEAS Muth that under Rule 57(3)(b) of the Internal Rules, all service or notification at the last address provided will be deemed to be valid.

MEAS Muth agreed to have documents served on him by e-mail to one or more of his Co-Lawyers.

The original of the audio-video recording of this Initial Appearance was sealed in the presence of MEAS Muth and his Co-Lawyers. Following the hearing, the recording will be unsealed in Phnom Penh, in the presence of either MEAS Muth's counsel or their chosen representative, and a copy will be made, sealed, and provided to counsel or their representative.

Meas Muth waived the reading back aloud of this Written Record of Initial Appearance in Khmer.

MEAS Muth had no objections and agreed to sign the Written Record of Initial Appearance.

A copy of this Written Record of Initial Appearance was provided to MEAS Muth in Khmer.

The Initial Appearance concluded at 10.42am.

**Judge Michael Bohlander
International
Co-Investigating Judge**

**Meas Muth
Charged Person**

Signature

Signature / Thumbprint

**Michael G. Karnavas
International Lawyer of
Meas Muth**

**Ang Udom
National Lawyer of
Meas Muth**

Signature

Signature

**Sokhalay Saur
Interpreter**

**Chhay Chanlyda
Greffier**

Signature

Signature