



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

Phnom Penh, 28 November 2018

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត

**OFFICE OF THE CO-INVESTIGATING JUDGES
BUREAU DES CO-JUGES D'INSTRUCTION**

**CO-INVESTIGATING JUDGES ISSUE TWO
SEPARATE CLOSING ORDERS IN THE CASE AGAINST MEAS MUTH
Case No. 003/07-09-2009-ECCC/OCIJ**

Today, the Co-Investigating Judges issued two separate Closing Orders in the case against Meas Muth, due to a disagreement about whether Meas Muth is subject to the ECCC's personal jurisdiction as a senior leader or one of the persons most responsible for crimes committed during the period of Democratic Kampuchea.

The National Co-Investigating Judge is of the view that Meas Muth does not fall under the ECCC's personal jurisdiction under either category and dismisses the case against Meas Muth for that reason. In reaching that decision, he considered the degree of participation by Meas Muth and the gravity of the crimes, and other factors such as the substance of the ECCC Law and Agreement as well as the intentions of their drafters.

The International Co-Investigating Judge is of the view that Meas Muth is subject to the ECCC's personal jurisdiction as one of the most responsible persons, and that there is sufficient evidence to indict him for the genocide of the Vietnamese, crimes against humanity, war crimes as well as premeditated homicide under Cambodian law. Some charges could not be substantiated during the investigation and were accordingly dismissed.

Both Judges filed their Closing Order in their own working language with a translation to follow as soon as possible. However, they each provide a summary of their reasons in both languages, to ensure the public is adequately informed of the outcome until the full translations are filed. The summaries are attached to this press release, and both Judges refer to them for more details.

Both Judges also made separate decisions on the admissibility of civil party applications.

The full text of the public redacted versions of the two Closing Orders can be found here:
Closing Order by National Co-Investigating Judge: <https://www.eccc.gov.kh/km/node/40729>
Closing Order by International Co-Investigating Judge:
<https://www.eccc.gov.kh/en/document/court/closing-order-case-003-against-meas-muth-international-co-investigating-judge>

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SUMMARY BY THE NATIONAL CO-INVESTIGATING JUDGE

In determining whether or not MEAS Muth falls within the jurisdiction of the ECCC, the National Co-Investigating Judge considered the evidence and documents placed on case file 003, obtained by judicial investigation and transferred from case files 001 and 002.

As held previously in Cases 004/1 and 004/2, two elements are for consideration: the seriousness of the crimes and the level of participation of MEAS Muth. The National Co-Investigating Judge does not deny that serious crimes occurred as revealed publicly in Cases 001 and 002; rather, in the context of selective personal jurisdiction, the level of the accused’s participation shall be given decisive weight which also provides for a standard of equal treatment among suspects.

Evidence shows that MEAS Muth was commander of the Division 3 which became DK Central Division 164 in charge of the Navy in the area of islands in Kampong Som, while Division 1 controlled the area in Koh Kong Province. Being the commander, his main responsibility was political affairs.

Based on available evidence, it is doubtful that MEAS Muth was a deputy in the General Staff. If this was true, he held such position only for a month before the fall of the DK regime in January 1979. He was not member of the Central Committee, but merely an assistant member without the right to vote on important decisions.

MEAS Muth attended meetings with Son Sen and other division secretaries to report on division work, including purge of enemies. In all the meetings he attended, he supported the policies of the DK; however, there is no evidence indicating any plans or initiatives to suppress his subordinates or civilians in the areas allegedly controlled by Division 164. Direct telegrams from Division 164 to the Centre reveal that MEAS Muth was not the only official in Division 164 who had the power to address SON Sen or the Central Committee directly.

Navy issues arising within the scope of State sovereignty that DK put *under the direct control of the* Central Committee. Because the National Armed Forces had the duty to defend the nation from being encroached by foreign enemies, Division 164 *absolutely needed* to follow the Central Committee orders. No one dared to oppose them; otherwise, their lives would have been unavoidably at risk.

To follow this strict policy, MEAS Muth, as the evidence demonstrates, cooperated with S-21 to arrest and transfer enemies to S-21. Evidence indicates that there were more than 5,000 soldiers of more than 12,000 victims died or killed in S-21. Of them, there were not many soldiers from Division 164.

In summary, his position and roles are much more in line with facilitation, and not active participation in policy-making, given that Division 164 dealt with protection of sea territory under the direct control of the Central Committee. His participation was neither proximate to nor active in the commission of the crimes. The National Co-Investigating Judge concluded that the ECCC does not have personal jurisdiction over MEAS Muth and dismissed all allegations against him accordingly.

SUMMARY BY THE INTERNATIONAL CO-INVESTIGATING JUDGE

The International Co-Investigating Judge found that the ECCC have personal jurisdiction over Meas Muth as one of the persons most responsible for the crimes committed during the regime of Democratic Kampuchea (“DK”). He was a Khmer Rouge official during the time of the Court’s temporal jurisdiction and during the period when the alleged offences attributed to him occurred. While Meas Muth was not a senior leader as such, he was very close to the senior leadership level due to his position as (i) Commander of Division 164 which entailed being Commander of the DK Navy, one of the three branches of the DK Armed Forces, and responsibility for the territorial waters of DK (ii) reserve member of the General Staff Committee and as one of Son Sen’s deputies, and (iii) a reserve member of the Central Committee from late 1978. Meas Muth is among those most responsible because of the combination of his rank and scope of authority in the hierarchy of the DK, and based on the character and magnitude of his crimes. This finding bears comparison with the other charged or convicted persons. Meas Muth held an elevated role in the DK hierarchy, working at the highest level of the DK military command structure below the national political leadership. He was called upon to implement purges of the Revolutionary Army of Kampuchea (“RAK”) beyond his main theatre of operations in Kampong Som and his duties as the Commander of the DK Navy. In addition to Meas Muth’s elevated formal position, the gravity of his actions and the severity of their impact, described in detail in the Closing Order, justify the conclusion that he was one of the most responsible persons.

The main charges that must be levelled at Meas Muth, and which alone put him solidly within the bracket of personal jurisdiction, are those of the genocide of the Vietnamese as well as the extermination of the Thai captured by the DK Navy in the waters and islands off the DK coast. Meas Muth turned these waters into a giant trap for anyone who entered them. Meas Muth did not encourage the exercise of restraint by his subordinates, quite the contrary: his orders to kill were open-ended. The Vietnamese were invariably killed and it was only by chance that some of the captured Thai evaded death by being traded for commodities. At a very conservative calculation, a minimum of 1,200 Thai and 3,276 Vietnamese were killed during the DK Navy’s capture operations under Meas Muth’s reign, but very likely many more. The casualty numbers only depended on how many Thai and Vietnamese who entered the waters were captured; in other words, had more been captured, more would have been killed. The grisly manner of the disposal of their bodies and the utter contempt for the dignity of the victims’ remains, through their use as fertiliser for durian trees as ordered by Meas Muth, surpasses the “normal” high level of cruelty of the DK Regime.

Meas Muth is, however, also responsible for a number of crimes against humanity, war crimes, and domestic crimes as set out in detail in the Closing Order, in particular his major role in the purges of the RAK Divisions 117, 164, 310 and 502, and the oversight and organisation of worksites and security centres in Kampong Som, namely Bet Trang and Kang Keng, Stung Hav, Toek Sap, Wat Enta Nhien, the Durian Plantation, and for the crime of forced marriage. The minimum number of victims killed in the RAK purges that can be attributed to Meas Muth, based both on referrals to S-21 and on-site killings, is 2,152. While the number of victims killed at the Kampong Som crime sites cannot be fully and accurately distinguished between sites, Meas Muth himself reported at the time that his overall work force in all of Kampong Som numbered 17,000 people. Apart from this statement, the evidence would have allowed for a minimum calculation of only 2,000 people under forced labour at the sites actually charged. However, in the context of personal jurisdiction it is permissible to use the full number across all of Kampong Som as an indicator of his overall reach and position. Given that the evidence supports the conclusion that of those 17,000 only a small minority would have been active soldiers of the over 8,000 soldiers making up Division 164, beyond a few hundred disabled soldiers and children, but allowing nonetheless for a generous larger precautionary deduction of 2,000 soldiers from that number, a minimum of 15,000 still remains of people who, based on the totality of the crime site evidence, were subjected to forced labour under appalling conditions.

In sum, both the position and conduct of Meas Muth mark him out as a major player in the DK structure and as a willing and driven participant in the brutal implementation of its criminal and inhuman policies. He should stand trial for his crimes.