

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**MEAS MUTH'S APPLICATION TO SEIZE THE PRE-TRIAL CHAMBER WITH A
REQUEST FOR ANNULMENT OF SUMMONS TO INITIAL APPEARANCE**

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All Civil Parties

Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), pursuant to Rule 76(2) of the ECCC Internal Rules (“Rules”), hereby requests the Co-Investigating Judges to seize the Pre-Trial Chamber with this request to annul the *Summons to Initial Appearance*.¹ This Application is made necessary because the Summons is invalid: it should have been issued jointly by both Co-Investigating Judges but was issued by Co-Investigating Judge Harmon alone. This procedural defect harms Mr. MEAS Muth because Co-Investigating Judge Harmon considers that Mr. MEAS Muth has violated a legally binding order, although he has not. Co-Investigating Judge Harmon intends to consider measures to force Mr. MEAS Muth to comply with this procedurally defective Summons. The Defence requests to file this Application in English with the Khmer translation to follow because the Interpretation and Translation Unit cannot timely complete the translation.²

I. BACKGROUND

1. On 7 and 22 February 2013, and on 17 July 2014, the Co-Investigating Judges filed disagreements. The nature of these disagreements is not known to the Defence, but Co-Investigating Judge Harmon informed the Defence that at least the first two disagreements were not brought before the Pre-Trial Chamber in accordance with the Rule 72 dispute settlement procedure.³
2. On 11 August 2014, Voice of America Khmer reported that a Suspect in Case 004 was summoned to the ECCC.⁴
3. On 13 August 2014, the Defence sent a letter to the Co-Investigating Judges requesting the legal reasoning of each Co-Investigating Judge concerning whether a summons issued by one of them alone would be valid. The Defence noted:
 - a. that the Co-Investigating Judges had recorded two disagreements (at the time, the Defence was unaware that a third disagreement had been recorded); that Judge You Bunleng had already forwarded the Case File to the Co-Prosecutors for their

¹ Summons to Initial Appearance, 28 November 2014, A66.

² See Email from Interpretation and Translation Unit to Defence, “RE: Translation Request”, 15 December 2014.

³ See Letter from Co-Investigating Judge Harmon to Defence, *Request for Information Concerning Disagreements Recorded on 7 February 2013 and 22 February 2013*, 22 July 2014, D82/3/2.

⁴ See Sok Khemara, *Additional Khmer Rouge Suspect to Appear at Tribunal Monday*, VOA Khmer, 11 August 2014, available at <http://www.voacambodia.com/content/additional-khmer-rouge-suspect-to-appear-at-tribunal-monday/2409141.html>.

Final Submission; and that the Co-Investigating Judges had not acted together on any decisions, orders, or correspondence issued in Case 003 (known to the Defence) since that time.

- b. that should Co-Investigating Judge Harmon decide to unilaterally summon Mr. MEAS Muth, the Defence would require *each* Co-Investigating Judge's legal reasoning concerning the validity of the summons in order to meaningfully advise Mr. MEAS Muth.
 - c. that the validity of a summons signed by only one Co-Investigating Judge is not clearly addressed by the Agreement, Establishment Law, or Internal Rules.
 - d. that in a past situation where the Co-Investigating Judges split, action by one Co-Investigating Judge was considered valid, but that situation was different because it involved a summons to witnesses and was therefore related to the continuation of the judicial investigation (unlike a summons to a Suspect).
 - e. that summoning Mr. MEAS Muth for the purpose of charging him is *not* related to whether the investigation will proceed and does not constitute investigative action.⁵
4. On 15 August 2014, the Pre-Trial Chamber issued a decision in Case 004 addressing the validity of a summons to a Suspect issued by one Co-Investigating Judge acting on his own ("PTC Case 004 Decision"). The Pre-Trial Chamber noted that the Co-Investigating Judges registered a disagreement concerning a summons and that the 30-day period to bring the disagreement before the Pre-Trial Chamber had elapsed, and:

In these circumstances, it is clear from the Agreement between the United Nations and the Royal Government of Cambodia for the establishment of the ECCC, the ECCC Law and the Internal Rules that the International Co-Investigating Judge could validly issue the Summons alone. Furthermore, the Pre-Trial Chamber previously confirmed that one Co-Prosecutor or Investigating Judge can act alone when a disagreement has been registered within the Office of the Co-Prosecutors or the Co-Investigating Judges, as appropriate, and the period for bringing a disagreement before the Pre-Trial Chamber has elapsed. It would be improper for the Pre-Trial Chamber to consider staying the execution of a Summons on the basis of an eventual application that will purpo[r]tedly challenge a rule that is

⁵ Letter from Case 003 Defence to OCIJ, *Request for information concerning the validity of a summons issued by one Co-Investigating Judge*, 13 August 2014 [notified 26 September 2014], D117.

expressed in clear terms in the ECCC legal compendium and the Pre-Trial Chamber's jurisprudence.⁶

5. On 26 September 2014, Co-Investigating Judge Harmon issued an Order finding that "[t]he validity of a summons to a Suspect signed by one Co-Investigating Judge is clearly expressed in the applicable law, and specifically in Articles 5 and 7 of the ECCC Agreement, Article 23 new of the ECCC Law and Internal Rule 72."⁷ He rejected the Defence's submission that summoning a Suspect was not an investigative action, explaining that Rule 72 applies to *all* actions by the Co-Investigating Judges performed during the course of the investigation. He referred the Defence to the redacted PTC Case 004 Decision. Co-Investigating Judge You Bunleng did not issue this Order jointly with Co-Investigating Judge Harmon or provide his own legal reasoning concerning the validity of a summons signed by one Co-Investigating Judge.
6. On 27 October 2014, the Defence appealed this Order. The Defence asserted *inter alia* that the Co-Investigating Judges must work together and issue summonses jointly; that the Agreement and Establishment Law do not provide for a summons to be issued by one Co-Investigating Judge alone in the case of a disagreement; and that Rule 72 cannot be relied on to allow one Co-Investigating Judge to issue a summons alone.⁸
7. On 28 November 2014, Co-Investigating Judge Harmon summoned Mr. MEAS Muth and his Co-Lawyers to an Initial Appearance scheduled for 8 December 2014.⁹ The Summons to Mr. MEAS Muth stated: "Should Meas Mut fail to appear on the specified date, further measures taken in accordance with the ECCC Internal Rules shall be considered."¹⁰
8. On 2 December 2014, the Defence met with Mr. MEAS Muth to discuss the Summons. Mr. MEAS Muth indicated that he did not consider the summons to be valid since it was issued by Co-Investigating Judge Harmon alone. The Defence prepared a Notice of Non-

⁶ 004/07-09-2009-ECCC/OCIJ (PTC09), Decision on [REDACTED] Urgent Request [REDACTED], 15 August 2014, A122/6.1/3, para. 14 (the Case 003 Case File number is D117/1.2).

⁷ Order on Suspect's Request Concerning Summons Signed by One Co-Investigating Judge, 26 September 2014, D117/1, para. 3.

⁸ MEAS Muth's Appeal Against the International Co-Investigating Judge's Order on Suspect's Request Concerning Summons Signed by One Co-Investigating Judge, 27 October 2014, D117/1/1.

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 Summons to Initial Appearance, 28 November 2014, A66.

Recognition of Summons to this effect, which Mr. MEAS Muth signed.¹¹ This Notice of Non-Recognition of Summons was filed the following day, 3 December 2014. Mr. MEAS Muth stated, *inter alia*:

This summons was issued by Co-Investigating Judge Harmon. Co-Investigating Judge You Bunleng's signature is not on the summons. I therefore do not consider it to be a valid summons from both Co-Investigating Judges.... My Co-Lawyers have informed me that you, Co-Investigating Judge Harmon, have recently decided on your own and without Co-Investigating Judge You Bunleng, to defer, yet again, a decision on whether you will grant my Defence team access to the Case File.... It appears that it is your position that in order for me to be afforded accesses to the Case File so I can fully enjoy my right to a defence and my right to assist in my own defence, I must comply with your summons. This *quid pro quo* is offensive. Complying with an invalid summons cannot be made a precondition to exercising my fair trial rights. My Defence team must be permitted to access the Case File and to participate in the judicial investigation immediately. This is the sort of conduct expected from a Prosecutor from an adversarial legal system, not from a Judge – from whatever system.¹²

9. On 3 December 2014, the Pre-Trial Chamber found the Defence's Appeal inadmissible, on the basis that there was no danger of irreparable harm to Mr. MEAS Muth's right to legal certainty and because the Pre-Trial Chamber has no jurisdiction to deal with hypothetical matters or provide advisory opinions.¹³
10. On 4 December 2014, Co-Investigating Judge Harmon issued a letter stating that he took note of Mr. MEAS Muth's Notice of Non-Recognition of Summons. Co-Investigating Judge Harmon stated that he considered the Summons to be valid and: "I therefore expect the Suspect to attend his initial appearance scheduled for 8 December 2014. Failure to do so will constitute a direct violation of a legally binding order. In that case, I will consider further measures available under the law applicable at the ECCC to ensure his attendance."¹⁴ Co-Investigating Judge Harmon also indicated that the Co-Lawyers were expected to appear at the Initial Appearance.¹⁵

¹¹ See Notice Concerning Mr. MEAS Muth's Decision not to Recognize Summons, 3 December 2014, A67/1; Notice of Non-Recognition of Summons, 2 December 2014, A67/1.1.

¹² Notice of Non-Recognition of Summons, 2 December 2014, A67/1.1 (internal citations omitted).

¹³ Decision on MEAS Muth's Appeal Against the International Co-Investigating Judge's Order on Suspect's Request Concerning Summons Signed by One Co-Investigating Judge, 3 December 2014, D117/1/1/2, paras. 15-16.

¹⁴ Response to the Notice Concerning Mr. MEAS Muth's Decision Not to Recognize Summons, Dated 3 December 2014 ("Letter"), 4 December 2014, A67/1/1 (quote, para. 5).

¹⁵ *Id.*, para. 6.

11. On 8 December 2014, National Co-Lawyer Ang Udom, Senior Legal Consultant Tanya Pettay, and Case Manager Mang Monika appeared before Co-Investigating Judge Harmon.¹⁶ Mr. MEAS Muth was not present. Co-Investigating Judge Harmon questioned whether the Defence had received his letter explaining that he, Co-Investigating Judge Harmon, considered the Summons to be valid. Mr. Ang Udom stated that the Defence had received the letter. Co-Investigating Judge Harmon asked whether, notwithstanding the letter, it was Mr. MEAS Muth's choice not to appear, to which Mr. Ang Udom explained that it was. Mr. Ang Udom then requested access to the Case File and requested to be informed as to why the National Co-Investigating Judge was not present. Co-Investigating Judge Harmon denied the request for the Case File and stated that the reason the National Co-Investigating Judge was not present was confidential. The Initial Appearance hearing was then adjourned.¹⁷

II. APPLICABLE LAW

A. Applications for annulment

12. Rule 48 states: "Investigative or judicial action may be annulled for procedural defect only where the defect infringes the rights of the party making the application."

13. Rule 76(2) states:

Where, at any time during the judicial investigation, the parties consider that any part of the proceedings is null and void, they may submit a reasoned application to the Co-Investigating Judges requesting them to seize the Chamber with a view to annulment. The Co-Investigating Judges shall issue an order accepting or refusing the request as soon as possible and, in any case, before the Closing Order. Such orders shall be subject to appeal in accordance with these IRs.

B. The Co-Investigating Judges' Obligation to Work Together and the Dispute Resolution Process

14. Article 5(4) of the Agreement provides:

The co-investigating judges shall cooperate with a view to arriving at a common approach to the investigation. In case the co-investigating judges are unable to agree whether to proceed with an investigation, the investigation shall proceed

¹⁶ See Notice Concerning Attendance at Scheduled Initial Appearance 8 December 2014, 5 December 2014, A67/2, in which International Co-Lawyer Michael G. Karnavas requested that Senior Legal Consultant Tanya Pettay appear in his stead due to other prior commitments, and Response to the Notice Concerning Attendance at Scheduled Initial Appearance 8 December 2014, Dated 5 December 2014 ("Notice"), 5 December 2014, A67/2/1, in which Co-Investigating Judge Harmon granted this request.

¹⁷ See Written Record of Initial Appearance, 11 December 2014, D122.

unless the judges or one of them requests within thirty days that the difference shall be settled in accordance with Article 7.

15. Article 23 new of the Establishment Law provides, *inter alia*:

All investigations shall be the joint responsibility of two investigating judges... In the event of disagreement between the Co-Investigating Judges the following shall apply:

The investigation shall proceed unless the Co-Investigating Judges or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions.

16. Rule 72(2)-(3) provides:

2. Within 30 (thirty) days, either Co-Investigating Judge may bring the disagreement before the Chamber by submitting a written statement of the facts and reasons for the disagreement to the Office of Administration, which shall immediately convene the Chamber and communicate the statements to its judges, with a copy to the other Co-Investigating Judge. If the disagreement relates to the Provisional Detention of a Charged Person, this period shall be reduced to 5 (five) days. The other Co-Investigating Judge may submit a response within 10 (ten) days. The written statement of the facts and reasons for the disagreement shall not be placed on the case file, except in cases referred to in sub-rule 4(b) below. The Greffier of the Co-Investigating Judges shall forward a copy of the case file to the Chamber immediately.

3. Throughout this dispute settlement period, the Co-Investigating Judges shall continue to seek consensus. However the action or decision which is the subject of the disagreement shall be executed, except for disagreements concerning:

- a) any decision that would be open to appeal by the Charged Person or a Civil Party under these IRs;
- b) notification of charges; or
- c) an Arrest and Detention Order,

in which case, no action shall be taken with respect to the subject of the disagreement until either consensus is achieved, the 30 (thirty) day period has ended, or the Chamber has been seised and the dispute settlement procedure has been completed, as appropriate.

III. STANDARD OF REVIEW FOR ANNULMENT APPLICATIONS

17. The Pre-Trial Chamber in Case 002 has held:

Internal Rule 76(2) provides for the Co-Investigating Judges to consider a 'request' 'to seise the Chamber' with an application for annulment. The sub-Rule does not provide for the Co-Investigating Judges to determine the merits of the application.... It is not for the Co-Investigating Judges to determine the

annulment application on its merits, this is the role of the Pre-Trial Chamber, which is made clear from Internal Rule 73(b).¹⁸

18. The Pre-Trial Chamber has further explained:

When considering an application under Internal Rule 76(2), the Co-Investigating Judges must only be formally satisfied that there is an application supported by a reasoned argument making assertions that there has been a procedural defect and that such defect infringes the rights of the party making the application.¹⁹

IV. APPLICATION

19. Co-Investigating Judge Harmon issued the Summons to Initial Appearance alone, without Co-Investigating Judge You Bunleng's signature or a Power Delegation Decision. A summons to a Suspect must be issued by the Co-Investigating Judges acting jointly. Article 5(4) of the Agreement and Article 23 new of the Establishment Law require the Co-Investigating Judges to cooperate and to conduct the investigation jointly.

20. Rule 1(2) states "unless otherwise specified, a reference in these IRs to the Co-Investigating Judges includes both of them acting jointly and each of them acting individually." This Rule provides guidance on how to interpret the Rules. It *does not* provide justification for the International Co-Investigating Judge to forsake his obligation to conduct the investigation jointly with the National Co-Investigating Judge.

21. The National Pre-Trial Chamber Judges explained (with respect to the Co-Prosecutors working together): "if none of the Co-Prosecutors delegates his or her power to another co-prosecutor, that co-prosecutor cannot act alone."²⁰ Assuredly, this also applies to the Co-Investigating Judges.²¹ There has been no indication that Co-Investigating Judge You Bunleng has delegated his power to sign summonses to Co-Investigating Judge Harmon.²² A summons for the purpose of charging a Suspect is not the type of action a Co-Investigating Judge can perform alone, considering that the Agreement and Establishment

¹⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC 41), Decision on IENG Thirith's Appeal against the Co-Investigating Judges' Order rejecting the Request to Seize the Pre-Trial Chamber with a View to Annulment of All Investigations (D263/1), 25 June 2010, D263/2/6, para. 16.

¹⁹ *Id.*, para. 18.

²⁰ Considerations of the Pre-Trial Chamber Regarding the International Co-Prosecutor's Appeal against the Decision on time Extension Request and Investigative Requests Regarding Case 003, Opinion of Judge Prak Kimsan, Judge Ney Thol, and Judge Huot Vuthy, 2 November 2011, D20/4/4, para. 4.

²¹ Since the relevant Articles of the Agreement applicable to Co-Prosecutors and the relevant Articles applicable to Co-Investigating Judges have nearly identical language. *See* Agreement, Arts. 5(4) and 6(4).

²² Rule 14(4) provides that such a power delegation decision must be made jointly: "Except for action that must be taken jointly under the ECCC Law and these IRs, the Co-Investigating Judges may delegate power to one of them, by a joint written decision, to accomplish such action individually."

Law require them to cooperate and act jointly. The hybrid nature of this Court, marrying national and international components that are intended to work together, requires this type of decision to be made jointly.

22. The Co-Investigating Judges are intended to work together because the Rules require “clear and consistent evidence” to charge a Suspect.²³ Should the Co-Investigating Judges disagree as to whether clear and consistent evidence exists, this would indicate that it does *not* exist; i.e. reasonable judges differ as to the interpretation of the evidence. In such a circumstance, it would be improper for one Co-Investigating Judge to issue a summons and to charge a Suspect on his own. Where there is any doubt as to whether the evidence is clear and consistent, the Cambodian Constitution requires such doubt to be resolved in favor of the Defence.²⁴
23. The Agreement and Establishment Law provide that if the Co-Investigating Judges are unable to agree on whether to proceed with an investigation, the investigation shall proceed unless the Co-Investigating Judges decide to submit their disagreement to the Pre-Trial Chamber to settle in accordance with the dispute settlement process set out in the Agreement and Establishment Law.²⁵
24. An investigation may proceed whether or not a Suspect is summoned. This is in contrast to a situation in which one Co-Investigating Judge considers that a *witness* should be summoned. This situation occurred in Case 002, where Co-Investigating Judge Lemonde acted alone to issue summonses to the King Father and certain government witnesses. The Pre-Trial Chamber rejected arguments that the action performed by Judge Lemonde was invalid because the summons had not been signed by his national counterpart.²⁶ Summoning a witness relates to the continuation of the investigation. If a witness is not

²³ Rule 55(4).

²⁴ Constitution of the Kingdom of Cambodia dated 24 September 1993 Modified by Kram dated 8 March 1999 promulgating the amendments to Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia, adopted by the National Assembly on 4 March 1999, Art. 38.

²⁵ Note that Co-Investigating Judge Harmon has stated that two of the present disagreements between himself and Co-Investigating Judge You Bunleng have not been forwarded to the Pre-Trial Chamber. It is unknown to the Defence whether either of these disagreements refers to summoning Mr. MEAS Muth. See Letter from Co-Investigating Judge Harmon to Defence, *Request for Information Concerning Disagreements Recorded on 7 February 2013 and 22 February 2013*, 22 July 2014, D82/3/2.

²⁶ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC 75), Decision on IENG Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30, para. 275, referring to *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC 50 and 51), Decision on NUON Chea ‘s and IENG Sary’s Appeal Against the Co-Investigating Judges’ Order on Requests to Summon Witnesses, 8 June 2010, D314/1/8.

summoned, the investigation cannot proceed with respect to collecting that witness's testimony.

25. Summoning a Suspect *may* relate to whether the investigation can proceed; for example, if a Co-Investigating Judge wishes to question a Suspect because he hopes to obtain information he considers necessary to the investigation. However, Mr. MEAS Muth has repeatedly informed the Co-Investigating Judges that he has no intention of answering any questions and will exercise his right to remain silent.²⁷ Co-Investigating Judge Harmon recognized this and stated that there would be no interview at the Initial Appearance.²⁸ Therefore, Co-Investigating Judge Harmon summoned Mr. MEAS Muth to charge him.²⁹
26. Summoning a Suspect for the purpose of charging him *does not* relate to whether the investigation will proceed. This is instead an act that relates to whether an eventual *trial* may proceed. The Agreement and Establishment Law do *not* address such a situation. The Cambodian Constitution requires doubt to be resolved in favor of Mr. MEAS Muth. Therefore, should there be doubt as to whether the phrase "the investigation" found in Article 5(4) of the Agreement and 23 new of the Establishment Law means "a trial," the Pre-Trial Chamber will be required to find that it does not. Although in Case 004, the Pre-Trial Chamber referred to Article 5(4) of the Agreement and Article 23 new of the Establishment Law when finding that a summons could be issued by one Co-Investigating Judge alone,³⁰ these Articles do not apply to the present situation because they do not address disagreements that do not relate to whether the investigation will continue.
27. Rule 72 covers disagreements broader than those addressed by Article 5(4) of the Agreement and Article 23 new of the Establishment Law. It is understandable that a

²⁷ Most recently, Mr. MEAS Muth stated this in his Notice of Non-Recognition of Summons, 2 December 2014, A67/1.1.

²⁸ Response to the Notice Concerning Mr. MEAS Muth's Decision Not to Recognize Summons, Dated 3 December 2014 ("Letter"), 4 December 2014, A67/1/1, para. 6: "[C]onsidering that no interview will be conducted during the hearing and having taken note of the Suspect's decision to exercise his right to remain silent, I consider that for the purpose of the initial appearance the presence of only one of the Co-Lawyers will suffice."

²⁹ All have Suspects in Cases 003 and 004 have been informed by Reserve International Co-Investigating Judge Kasper-Ansermet that they are suspects and are being investigated, so a summons to merely inform the Suspects of the investigation is a subterfuge. See Notification of Suspect's Rights [Rule 21(1)(D)], 24 February 2012, D30.

³⁰ 004/07-09-2009-ECCC/OCIJ (PTC09), Decision on [REDACTED] Urgent Request [REDACTED], 15 August 2014, A122/6.1/3, para. 14 (the Case 003 Case File number is D117/1.2).

detailed Rule should exist to explain the procedure in case of disagreements. However, the Rules were enacted to “consolidate applicable Cambodian procedure for proceedings before the ECCC and ... to adopt additional rules where these existing procedures do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application, or if there is a question regarding their consistency with international standards.”³¹ The Rules have no basis in applicable law when they go beyond what is provided for in the Agreement, Establishment Law, and Cambodian procedure. Rule 72(3) exceeds its authority where it provides that *all* actions or decisions which are the subject of a disagreement will be executed.³²

28. Rule 72(3) does not align with Article 5(4) of the Agreement and Article 23 new of the Establishment Law and cannot be relied upon to allow one Co-Investigating Judge to act on his own to summon Suspects. The Agreement and Establishment Law require that the Co-Investigating Judges work together. The Summons to Initial Appearance is in violation of Article 5(4) of the Agreement and Article 23 new of the Establishment Law and is therefore procedurally defective.

29. This procedural defect infringes Mr. MEAS Muth’s rights because Co-Investigating Judge Harmon considers that Mr. MEAS Muth has violated a legally binding order³³ and has stated that he will consider further measures to ensure Mr. MEAS Muth’s appearance.³⁴ Indeed, on 11 December 2014, Co-Investigating Judge Harmon issued an Order related to detention and bail, the first such order that has been made in Case 003.³⁵

³¹ Rules, preamble.

³² As an example of the internal inconsistency of this Rule, Rule 72 is also contradictory concerning arrests. It is unclear whether a proposed arrest order would be executed (as the default decision referred to in Rule 72(3) or 72(4)), or whether the presumption of freedom (also referred to in Rule 72(4)) would override this default decision and prevent its execution. It is also unclear whether the presumption of freedom would apply *only* if the disagreement is referred to the Pre-Trial Chamber (since this presumption is referred to only in Rule 72(4) but not in 72(3)). Rule 72 also contradicts Article 5(4) of the Agreement and Article 23 new of the Establishment Law where it allows the investigation to end in certain situations where the disagreement is not referred to the Pre-Trial Chamber. For example, if a Co-Investigating Judge were to order the investigation to be concluded, and if the other Co-Investigating Judge disagrees with this approach, but does not refer the matter to the Pre-Trial Chamber within 30 days, the application of Rule 72(3) would require the order to close the investigation to be executed.

³³ “Failure to [appear] will constitute a direct violation of a legally binding order.” Response to the Notice Concerning Mr. MEAS Muth’s Decision Not to Recognize Summons, Dated 3 December 2014 (“Letter”), 4 December 2014, A67/1/1, para. 5.

³⁴ *Id.*

³⁵ Zylab indicates that a strictly confidential order was issued by the OCIJ on 11 December 2014. This Order has document number C1. Documents with the “C” designation relate to detention and bail conditions. See Practice Direction for the Filing of Documents Before the ECCC, Rev. 8, Art. 1.3.



Mr. MEAS Muth cannot be forced to comply with a defective and invalid summons. The Summons to Initial Appearance must be annulled.

V. CONCLUSION

30. Co-Investigating Judge Harmon's Summons to Initial Appearance is procedurally defective because it was issued by Co-Investigating Judge Harmon alone. This procedural defect infringes Mr. MEAS Muth's rights because Co-Investigating Judge Harmon is considering measures to force Mr. MEAS Muth to comply with this invalid summons. The Co-Investigating Judges must therefore seize the Pre-Trial Chamber with this Request to annul the Summons to Initial Appearance.

WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the Co-Investigating Judges to SEIZE the Pre-Trial Chamber with a Request to annul the Summons to Initial Appearance.

Respectfully submitted,

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ANG Udom		Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 15th day of **December, 2014**