

ក្រុមបេធាវីការពារក្តី មាស មុត
MEAS MUTH DEFENCE TEAM
EQUIPE DE DEFENSE DE MEAS MUTH

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

13 August 2014



To: Judge **YOU Bunleng**
 Judge **Mark HARMON**
 Co-Investigating Judges

Re: Request for information concerning the validity of a summons issued by one Co-
 Investigating Judge

Dear Co-Investigating Judges,

We respectfully request information concerning the validity of any summons issued by one Co-
 Investigating Judge for the purpose of charging Mr. MEAS Muth.

Your Honors have recorded at least two Disagreements concerning Case 003.¹ Judge You Bunleng has already forwarded the Case File to the Co-Prosecutors for their Final Submission without Mr. MEAS Muth having been charged,² and Your Honors have not acted together on any decisions, orders, or correspondence issued in Case 003 (known to the Defence) since that time.

Should Judge Harmon unilaterally summon Mr. MEAS Muth (as it would appear has happened in Case 004³), we would require each Co-Investigating Judge's legal reasoning concerning the validity of the summons. We cannot meaningfully advise Mr. MEAS Muth without this legal reasoning. An appeal may be necessary and the Pre-Trial Chamber will be hindered in deciding on an appeal if the underlying decision lacks reasoning.⁴

The validity of a summons signed by only one Co-Investigating Judge is not clearly addressed by the Agreement, Establishment Law, and Internal Rules. There have been two

¹ See 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), 16 July 2014, D82/3. This Notification refers to Disagreements filed on 7 and 22 February 2013.

² See Statement by the Co-Investigating Judges Regarding Case 003, 28 February 2013.

³ 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>.

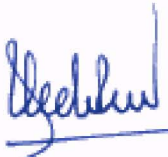


⁴ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC), Decision on the IENG Thirith Defence Appeal Against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010, 14 June 2010, D353/2/3, para. 29, where the Pre-Trial Chamber found that lack of a reasoned decision prevented the Pre-Trial Chamber from discharging its duty to carry out an effective review of the decision and prevented it from identifying whether the OCIJ had properly exercised its discretion.

circumstances in Case 002 where the Co-Investigating Judges have split, neither of which is on point. First, Co-Investigating Judge Lemonde acted alone to issue summons 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.⁵ However, that situation was different because summoning the government witnesses related to the judicial investigation and the Agreement and Establishment Law direct that in the event of a Disagreement *the investigation shall proceed*.⁶ Summoning Mr. MEAS Muth for the purpose of charging him is *not* related to whether the investigation will proceed; it does not constitute investigative action. Second, the Co-Investigating Judges split about whether to charge the Accused with National Crimes, but *they jointly agreed* to include National Crimes in the Closing Order and to leave the matter to the Trial Chamber to resolve.⁷ This is not applicable to a situation where only one Co-Investigating Judge issues a summons to a suspect.

To date, the Pre-Trial Chamber has yet to be called on to resolve a disagreement between the Co-Investigating Judges that did not involve the question of whether the prosecution⁸ or investigation shall proceed.

We would appreciate an expedited response so we can diligently carry out our professional and ethical obligations as counsel for Mr. MEAS Muth.

Respectfully requested,




ANG Udom **Michael G. KARNAVAS**
 Co-Lawyers for Mr. MEAS Muth

⁵ 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.

⁶ Agreement, Art. 5(4); Establishment Law, Art. 23 new.

⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Closing Order, 15 September 2010, D427, para. 1574; *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, paras. 272-77.

⁸ The Pre-Trial Chamber was called on to decide whether Introductory Submissions could be filed to open Cases 003 and 004. 001/18-11-2008-ECCC/PTC, Considerations of the Pre-Trial Chamber Regarding the Disagreement Between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009. Article 6(4) of the Agreement and Article 20 new of the Establishment Law provide that in the event of a Disagreement the prosecution shall proceed.