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Kingdom of Cambodia

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Office of the Co-Investigating Judges Bureau des co-juges d'instruction

Case File No: 003/07-09-2009-ECCC-OCIJ

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Before:

The Co-Investigating Judges

Date:

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CONFIDENTIAL

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ORDER ON SUSPECT'S REQUEST CONCERNING SUMMONS SIGNED BY ONE CO-INVESTIGATING JUDGE

Distribution: **Co-Prosecutors** Civil Party Lawyers CHEA Leang **HONG Kimsuon** Ferdinand DJAMMEN-Nicholas KOUMJIAN KIM Mengkhy **NZEPA** Nicole DUMAS MOCH Sovannary SAM Sokong Isabelle DURAND Lawyers for Suspects TY Srinna Françoise GAUTRY ANG Udom **VEN Pov** Martine JACQUIN Michael KARNAVAS Christine MARTINEAU Barnabe NEKUI Lyma NGUYEN Philippe CANONNE Annie DELAHAIE Nushin SARKARATI Laure DESFORGES Fabienne TRUSSES



Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 ("ECCC Law");

Noting the Co-Prosecutors' Second Introductory Submission, filed on 7 September 2009;¹

Noting the judicial investigation relating to alleged violations of the 1956 Penal Code, Crimes against Humanity and Grave Breaches of the Geneva Conventions of 12 August 1949, offences defined and punishable under Articles 3(new), 5, 6, 29 and 39 of the ECCC Law and Articles 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code;

Noting Articles 5 and 7 of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, dated 6 June 2003 ("ECCC Agreement");

Noting Article 23 new of the ECCC Law;

Noting Rules 1, 41, 55 and 72 of the ECCC Internal Rules ("Internal Rules");

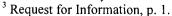
Considering Meas Muth's Request for Information Concerning the Validity of a Summons Issued by one Co-Investigating Judge ("Request for Information");²

Noting the Disagreements registered on 7 and 22 February 2013;

SUBMISSIONS

- 1. The Request for Information raises questions concerning the validity of any summons issued by one Co-Investigating Judge for the purpose of charging Meas Muth ("Suspect"). Submitting that the "validity of a summons signed by only one Co-Investigating Judge is not clearly addressed by the Agreement, Establishment Law, and Internal Rules", the Suspect's Lawyers request each Co-Investigating Judge's legal reasoning concerning the validity of the summons in order to meaningfully advise the Suspect, especially in case of any appeal before the Pre-Trial Chamber ("PTC").³
- 2. The Request for Information also distinguishes previous PTC decisions in Case 002 confirming the validity of investigative action taken by one judge, notably on the basis that "summoning Mr. MEAS Muth for the purpose of charging him is not

² Case File No. 003-D117, Meas Muth's Request for Information Concerning the Validity of a Summons Issued by one Co-Investigating Judge, dated 13 August 2014.





¹ Case File No. 003-D1, Co-Prosecutors' Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008; Case File No. 003-D1/1, Acting International Co-Prosecutor's Notice of Filing of the Second Introductory Submission, 7 September 2009.

related to whether the investigation will proceed; it does not constitute investigative action".⁴

DISCUSSION

- 3. The 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. The Suspect's Lawyers submission that the summonsing of a suspect for initial appearance is not an investigative action, and therefore not falling under the umbrella of Internal Rule 72, is unfounded. The International CIJ has addressed this issue in Case 004, where he found that "Internal Rule 72, which regulates disagreements between the CIJs, clearly applies to all actions performed by the CIJs in the conduct of the investigation", and concluded that "[i]nternal Rule 72 makes no exception or distinction in relation to summonses of suspects for an initial appearance."
- 4. This principle has been unequivocally confirmed by the Pre-Trial Chamber, which concluded that the International CIJ's power to issue a valid summons to a Suspect alone "is expressed in clear terms in the ECCC legal compendium and the Pre-Trial Chamber's jurisprudence."

FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:

- 5. **CONFIRM** that pursuant to the applicable law, a summons to a suspect issued by one Co-Investigating Judge is valid and binding.
- 6. **INSTRUCT** the OCIJ Greffier to provide redacted copies of D212/1 and A122/6.1/3, issued in Case File 004 and cited in this Decision, to the Suspect's Lawyers.

öten ber 2014, Phnom Penh

្សីល្អថ្មខ៍ Mark B. Harmon សចាទៅគ្របស្វើចអខ្មេតអន្តរបាន

International Co-Investigating Judge Co-juge d'instruction international

⁴ Request for Information, p. 2.

⁵ See also Case File No. 004-D212/1, International Co-Investigating Judge's Clarification on Validity of Summons Signed by One of the Co-Investigating Judges, 1 September 2014 ("Clarification on Validity of Summons"), para. 11.

⁶ Clarification on Validity of Summons, para. 9.

⁷ Case File No. 004-A122/6.1/3, Decision on [Redacted] Urgent Request [Redacted], 15 August 2014, para. 14.