

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

FILING DETAILS

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**MEAS MUTH'S REQUEST TO BE PROVIDED WITH ALL SUBMISSIONS FILED
BY THE OFFICE OF THE CO-PROSECUTOR IN JULY 2014**

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Co-Investigating Judges:

Judge YOU Bunleng

Judge Mark B. HARMON

Co-Prosecutors:

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All Civil Parties

Mr. MEAS Muth, through his Co-Lawyers (“the Defence”), hereby requests to be provided with all submissions filed by the Office of the Co-Prosecutors in Case 003 in July 2014. This Request is made necessary because the August 2014 Court Report states that “[d]uring the month of July the Co-Prosecutors ... filed three filings in Case 003,”¹ yet the Defence has been provided with only *one* submission filed by the International Co-Prosecutor in July.² The Defence has not been afforded the opportunity to review and respond to the other two submissions. If OCP submissions are ruled on without first considering the views of the Defence, this will violate Mr. MEAS Muth’s constitutional right³ to be heard.⁴ The right to respond is vital in making a record and perfecting errors for appeal. This right flows from the right to adversarial proceedings, including the right to equality of arms.⁵ The International Co-Investigating Judge has previously recognized that the principle of equality of arms requires that the Defence be provided with one of the submissions filed in July by the International Co-Prosecutor.⁶ Mr. MEAS Muth’s rights must similarly be respected concerning the other two submissions. Submissions filed by the parties are unlike Case File material that results from a *neutral* investigation by the Co-Investigating Judges. There must be an opportunity to respond to submissions filed by the Co-Prosecutors and Civil Parties, lest the Co-Investigating Judges be unduly influenced by these submissions without the benefit of the Defence’s position.

¹ Court Report, August 2014, Issue 76, p. 5, *available at* <http://www.eccc.gov.kh/sites/default/files/publications/Court%20Report%20August%202014.pdf>.

² International Co-Prosecutor’s Response to Notification Concerning the Suspect’s Requests to Access the Case File, Participate in the Judicial Investigation and Receive the Full Introductory Submission, 30 July 2014 [redacted version filed 6 August 2014], D82/3/3/1.1.

³ Article 31 of the Cambodian Constitution requires that “[t]he Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.” \

⁴ See Legal Digest of International Fair Trial Rights, OSCE, 2013, para. 6.5.1: “The principles of a fair hearing incorporate what some justice systems refer to as the rules of natural justice, including the concept of *audi alteram partem* (literally meaning “hear the other side”). This principle was found to be violated in *Hermoza v Peru*, where administrative authorities deprived the applicant of a hearing, those same authorities having made the decision to suspend him and, later, to discharge him from office. The need to hear the other side, whether in criminal or civil proceedings, is fundamental to and at the heart of the right to a fair hearing in Article 14(1) of the ICCPR and Article 6(1) of the ECHR.”

⁵ The Trial Chamber in Case 001 has confirmed that “the fundamental nature of [the equality of arms] principle is acknowledged in the Internal Rules...” *Case of KAIING Guek Eav*, 001/18-07-2007-ECCC/TC, Decision on IENG Sary’s Request to Make Submission in Response to the Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise, 3 July 2009, D288/6.90, para. 4. This principle is fundamental to various international human rights instruments, including the ICCPR, which, in accordance with Article 31 of the Cambodian Constitution, the ECCC must respect. According to Article 14(1) of the ICCPR: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal...”

⁶ See Second Notification Concerning the Possible Reconsideration of Two Decisions, 15 August 2014, D82/3/3/3, p. 3.

WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the Co-Investigating Judges to:

- a. PROVIDE the Defence with all submissions filed by the Office of the Co-Prosecutors in July 2014, and
- b. GRANT the Defence sufficient time to respond to these submissions, should the Defence consider responses necessary.

Respectfully submitted,



ANG Udom


AVOCAT
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Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this **21st** day of **August, 2014**