



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

C22/5/33

អង្គបុរេជំនុំជម្រះ

PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC17)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 30 March 2009

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PUBLIC

DECISION ON IENG SARY'S EXPEDITED REQUEST FOR AN ORDER TO CALMETTE HOSPITAL TO IMMEDIATELY DISCLOSE MEDICAL RECORDS AND A LIST OF TREATING PHYSICIANS FOR MR. IENG SARY

Co-Prosecutors

CHEA Leang
Robert PETIT
YET Chakriya
William SMITH
TAN Senarong
Anees AHMED

ឯកសារចម្លងត្រឹមត្រូវតាមច្បាប់ដើម	
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Charged Person

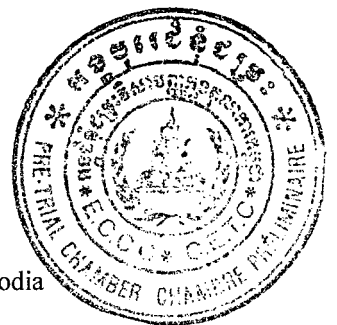
IENG Sary

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Co-Lawyers for the Defence

Mr. ANG Udom
Mr. Michael G. KARNAVAS



1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes “IENG Sary’s Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. Ieng Sary” (“the Request”), filed on 3 March 2009.

I. PROCEDURAL BACKGROUND

2. By their Request, the Co-Lawyers ask the Pre-Trial Chamber “to issue an Order to Calmette Hospital to provide the following information [...]:
 - (a) All medical records pertaining to Mr. IENG Sary from his repeated hospital admissions and from the daily reports of Mr. NETH Phalla;
 - (b) A list of all physicians who have treated Mr. IENG Sary during his hospital admissions including information on the specific role of each physician in treating Mr. IENG Sary; and
 - (c) Information on the members, structure and authority of *The Committee*, vis-à-vis the treating physicians mentioned in the hospital reports which appears to take any substantive decisions on the treatment provided to Mr. IENG Sary.”¹
3. In the Request, the Co-Lawyers submit that “Mr. IENG Sary has the absolute and unqualified right to be provided with copies of all his medical records; [Mr. Sary] has the absolute and qualified right to all relevant information as to which physicians are responsible for treating him and, especially, who is/are responsible for making decisions on his treatment; and [Mr. Sary] has the absolute and unqualified right to seek a judicial order from the Pre-Trial Chamber to Calmete Hospital for the purpose of obtaining his medical records as well as the names and functions of his treating physicians, which, ineluctably, is necessary data for further submissions related to the hearing on provisional detention.”
4. The Co-Lawyers submit that although Ieng Sary has been admitted on 10 separate occasions to Calmette Hospital, medical reports have only been provided with 4 such admissions and the daily records of the ECCC Medical Doctor Phalla have never been placed on the Case File.

¹ IENG Sary’s Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. IENG Sary, 3 March 2009, C22/5/25 (“Request”, p. 6.



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5. The Co-Lawyers add that despite their attempts to visit Ieng Sary when he was admitted to the Calmette Hospital, requests to ECCC Doctor Phalla for access to medical records and the OCIJ's assertion that the detainee's right to access his medical file, the Hospital has refused access.
6. The Co-Lawyers argue that in order for them to be able to satisfy the requirement to be more specific in their requests to the Pre-Trial Chamber they must be provided with more information by Calmette Hospital.
7. In Directions issued on 4 March 2009, the Pre-Trial Chamber invited the Parties involved in the case to file their responses to the Request by 11 March 2009.²
8. On 10 March 2009, the Co-Prosecutors filed their "Response to IENG Sary's Application Seeking an Order to the Calmette Hospital for the Disclosure of Ieng Sary's Medical Record and Other Information", in which they ask the Pre-Trial Chamber to "dismiss the Application". They submit that the reasons why they ask the Pre-Trial Chamber to dismiss the Application are: 1) The Application does not disclose the provision of law under which it is filed; 2) The Application is omnibus in nature, lacks precision and is factually unsubstantiated; 3) The Applications seeks documents and relief beyond the scope of this Appeal; 4) The Application does not indicate why the Appellant has not exhausted the alternative remedy of approaching the Co-Investigating Judges and why an appellate body like the Pre-Trial Chamber should issue the sought directions, especially in an Appeal where the issue of the Appellant's health was not substantively raised before the Co-Investigating Judges when they passed their impugned Detention Extension Order.
9. To date, the Civil Parties or their Lawyers have not submitted a response to the Pre-Trial Chamber's Directions concerning the Request.

II. CONSIDERATIONS

10. On 27 February 2009, in the "Written Version of [its] Oral Decision of 26 February 2009 on the Requests Presented before the Pre-Trial Chamber During the Hearing Held on the Same Day", the Pre-Trial Chamber noted the following:

"The Co-Lawyers have submitted that the issue in respect of the Charged Person's Health they want to raise is part of their appeal. The Pre-Trial Chamber therefore finds that the issue should be raised within the hearing dealing with the whole of the appeal. The Pre-Trial Chamber further notes that at the moment no further

² Directions to the Parties concerning IENG Sary's Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. Ieng Sary, C22/5/26.

