



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

D138/1/6

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**អង្គបុរេជំនុំជម្រះ**

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

**ឯកសារដើម**  
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**Criminal Case File N°** 002/19-09-2007-ECCC/OCIJ (PTC)

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

**Date:** 7 April 2009

**ឯកសារចម្លងត្រឹមត្រូវតាមបទប្បញ្ញត្តិ**  
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**PUBLIC**

**DIRECTIONS TO THE CO-LAWYERS FOR IENG SARY CONCERNING "CO-PROSECUTORS" OBSERVATIONS ON IENG RARY'S APPEAL AGAINST THE CO-INVESTIGATING JUDGES' CONFIDENTIALITY ORDER"**

**Co-Prosecutors**

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

**Charged Person**

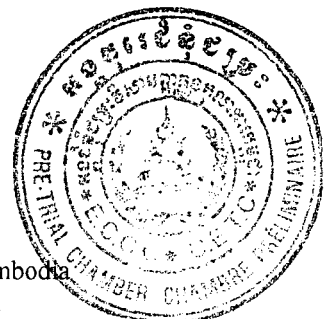
IENG Sary

**Lawyers for the Civil Parties**

HONG Kim Suon  
LOR Chunthy  
NY Chandy  
KONG Pisey  
YONG Phanith  
KIM Mengkhy  
MOCH Sovannary  
Silke STUDZINSKY  
Martine JACQUIN  
Philippe CANNONE  
Pierre Olivier SUR  
Elizabeth RABESANRATANA  
Olivier BAHOUGNE  
David BLACKMAN

**Co-Lawyers for the Charged Person**

ANG Udom  
Michael G. KARNAVAS



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes the “Co-Prosecutors’ Observations on Ieng Sary’s Appeal Against the Co-Investigating Judges’ Confidentiality Order” (“The Co-Prosecutors’ Observations”) of 27 March 2009.

1. The Co-Prosecutors raise the following Preliminary Observations:

- a. “The Pre-Trial Chamber may consider dismissing the Appeal for lack of standing of the Appellant Ieng Sary. [...] Even if the Appellant had the standing and the cause of action, the Appeal is not permissible under Rule 74 (3) which exhaustively enumerates the kinds of appeals that a charged person may bring before the Pre-Trial Chamber”<sup>1</sup>;
- b. “The matter of interference in the administration of justice, similar to contempt in certain national and international jurisdictions, is principally an issue between the court and the alleged offender. The Co-Prosecutors, therefore, do not consider themselves as full parties to these proceedings but only as an “interested party”, being officers of this Court”<sup>2</sup>;
- c. “[T]he right of hearing does not necessarily mean oral hearing; it may include a reasoned and public determination on written pleadings alone [...] While issues raised in this Appeal are important, a disposal of the Appeal on written pleadings alone cannot be any less public or transparent, if the filings and decision of the Pre-Trial Chamber are made available in the public domain [...] International tribunals – trying cases of similar magnitude and complexity as this Court – regularly decide appeals on written pleadings alone. Indeed, they routinely dismiss applications for oral hearings solely on the ground of “complexity of issues”<sup>3</sup>.

2. In this context, the Pre-Trial Chamber notes that the Co-Lawyers for the Civil Parties and the Unrepresented Civil Party [Theary C. SENG] have already submitted their statements on

<sup>1</sup> Co-Prosecutors’ Observations on Ieng Sary’s Appeal Against the Co-Investigating Judges’ Confidentiality Order, 27 March 2009, D138/1/5 (“The Co-Prosecutors’ Observations”), paras. 3, 6 and 7.

<sup>2</sup> The Co-Prosecutors’ Observations, para 5.

<sup>3</sup> The Co-Prosecutors’ Observations, paras. 10 and 11.




the Appeal against the OCIJ Order on Breach of Confidentiality of the Judicial Investigations.<sup>4</sup>

3. The Co-Lawyers for the Civil Parties submit that “the discussion on the transparency of the Court is very crucial and fundamental and the OCIJ Order affects Civil Parties and their Co-Lawyers as well”.<sup>5</sup>
4. The Unrepresented Civil Party, Theary C. SENG requests from the Pre-Trial Chamber “the right to speak in person at the upcoming Pre-Trial Chamber [...] hearing on *Ieng Sary’s Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation*.”<sup>6</sup>
5. The Pre-Trial Chamber finds it, considering the raised issues, necessary to inquire for the views of the Co-Lawyers for Ieng Sary on the Co-Prosecutors’ Preliminary Observations and the Civil Parties Requests.

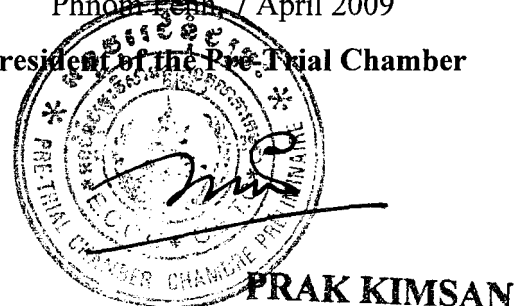
**THE PRE-TRIAL CHAMBER HEREBY DIRECTS:**

To allow the Co-Lawyers for Ieng Sary to, within 14 days from receipt of these Directions, clarify and/or express their views on the following:

- 1) Clarify on who should be considered as the filing party for the Appeal Against the Co-Investigating Judges’ Confidentiality Order;
- 2) Express their views on the Co-Prosecutors’ Preliminary Observations quoted above;
- 3) Express their views on the Civil Party Requests quoted above. 

Phnom Penh, 7 April 2009

President of the Pre-Trial Chamber



**PRAK KIMSAN**

<sup>4</sup> Statement of Unrepresented Civil Party [Theary C. SENG] on Ieng Sary’s Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation”, 25 March 2009, D138/1/4 and Statement of Co-Lawyers for Civil Parties on Ieng Sary’s Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation, 25 March 2009, D138/1/3.

<sup>5</sup> Statement of Co-Lawyers for Civil Parties on Ieng Sary’s Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation, 26 March 2009, D138/1/3, para 5.

<sup>6</sup> Statement of Unrepresented Civil Party [Theary C. SENG] on Ieng Sary’s Appeal Against the OCIJ Order on Breach of Confidentiality of the Judicial Investigation”, 25 March 2009, D138/1/4, para. 3.