



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

លេខ/No: ០២០

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

Criminal Case File N° 002/01-10-2010-ECCC/PTC(11)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 16 November 2010

PUBLIC

DECISION ON IENG SARY'S REQUEST TO THE PRE-TRIAL CHAMBER TO FORBID THE TRIAL CHAMBER FROM ACCESSING THE CASE FILE UNTIL IT IS SEIZED WITH THE CASE

Co-Prosecutors

CHEA Leang
Andrew CAYLEY
YET Chakriya
William SMITH

Charged Person

IENG Sary

Co-Lawyers for the Charged Person

SON Arun
Michiel PESTMAN
Victor KOPPE

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):	16 / 11 / 2010
ម៉ោង (Time/Heure):	14:00
អ្នកទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	Ratanak



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of “Ieng Sary’s Request to the Pre-Trial Chamber to Forbid the Trial Chamber from Accessing the Case File until it is Seized with the Case” (“the Request”).¹

I. PROCEDURAL BACKGROUND

1. The Co-Lawyers for the Charged Person, IENG Sary (“the Co-Lawyers”), filed the Request on 1 October 2010. No response was filed.

II. ADMISSIBILITY

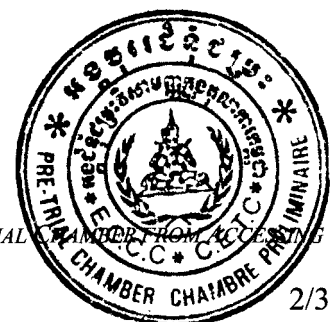
2. The Request asks the Pre-Trial Chamber to “forbid” the Trial Chamber from exercising its right of access to the case file under Internal 69(3) on the basis that “advance preparation or the proceedings will be tainted by a Judge who has purportedly admitted to accepting bribes and is therefore corrupt.”²
3. The Pre-Trial Chamber recalls that it does not have jurisdiction to decide on the merits of the Co-Lawyers’ application for disqualification against Judge NIL Nonn of the Trial Chamber³ or their request for investigative action relating to the application for disqualification,⁴ which have been filed and notified as annexes to the Request. Pursuant to Internal Rule 34(4)(c), the Co-Lawyers’ application for disqualification must be submitted “against a Trial Chamber Judge, concerning matters arising before the trial, at the initial hearing; or concerning matters arising during trial or of which the parties were unaware before the trial, before the final judgment in the case.”
4. Assuming and without deciding that the Co-Lawyers’ application for disqualification and/or request for investigative action will be successful, the Co-Lawyers have not demonstrated to the Pre-Trial Chamber that Judge Nonn’s pre-trial access to the case file

¹ 1 October 2010, Doc No. 1, ERN 00612306-00612313 (EN).

² Request, para. 18.

³ Annex A, Doc No. 1.2, ERN 00612337-00612352 (EN).

⁴ Annex B, Doc No. 1.3, ERN 00612353-00612360 (EN).



“for the purposes of advance preparation for trial”⁵ risks compromising the fairness of the pre-trial or trial proceedings. It is therefore unnecessary for the Pre-Trial Chamber to decide whether or not and to what extent Internal Rule 21(1) allows it to restrict the Trial Chamber’s right of access to the case file pursuant to Internal Rule 69(3).

5. The Request is inadmissible.

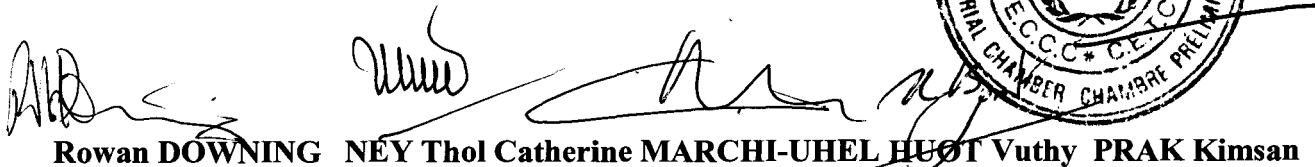
**FOR THE FOREGOING REASONS, THE PRE-TRIAL CHAMBER HEREBY
UNANIMOUSLY DECIDES:**

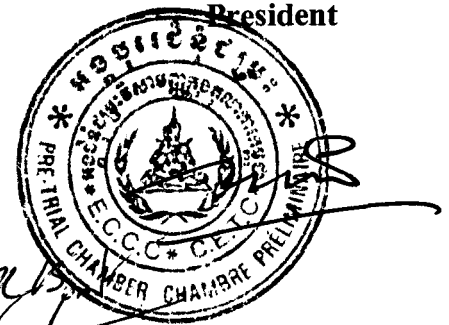
The Request is inadmissible.

Phnom Penh, 16 November 2010 ^{ce}

Pre-Trial Chamber

President


Rowan DOWNING NEY Thol Catherine MARCHI-UHEL HUOT Vuthy PRAK Kimsan



⁵ Internal Rule 69(3).