



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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

No:-31-

Case File N° 002/14-12-2009-ECCC/PTC (08)

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

Date: 15 July 2011

PUBLIC (REDACTED VERSION)

DECISION ON IENG SARY'S REQUEST FOR DISCLOSURE TO THE DEFENCE SUPPORT SECTION OF ALL PTC 08 DOCUMENTS

Office of the Co-Investigating Judges

YOU Bunleng
Siegfried BLUNK

Co-Prosecutors

CHEA Leang
Andrew CAYLEY
[Redacted]
Dale Lysak

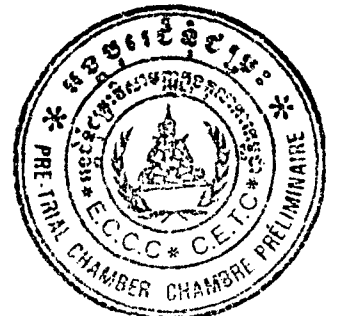
Accused

IENG Sary

Co-Lawyers for the Accused

ANG Udom
Michael G. KARNAVAS

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):	
..... 15 / 07 / 2011	
ម៉ោង (Time/Heure) :	
..... 10:00	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier:	
..... Ratanak	



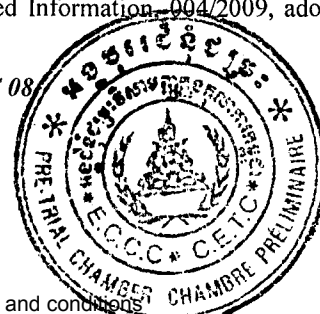
THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of “Ieng Sary’s Request for Disclosure to the Defence Support Section of all PTC 08 Documents” filed by the Co-Lawyers for Ieng Sary on 26 April 2011 (the “Request”).¹

1. By their Request, the Co-Lawyers ask the Pre-Trial Chamber to grant the Defence Support Section of the ECCC (the “DSS”) access to all material in Case File 008, most of which is currently classified as “Strictly Confidential”. They argue that this is made necessary as a result of the Trial Chamber’s recent decision on Ieng Sary’s Motion for a Hearing on the Conduct of the Judicial Investigation, whereby the Trial Chamber dismissed the motion and referred the “matter for review to the Defence Support Section pursuant to its power to refuse part payment for work claimed where the work carried out is not ‘necessary and reasonable’ (Article 10, Guide to the ECC [sic] Legal Aid Assistance scheme) and which, pursuant to Rule 11(2)(h), has the responsibility to ‘monitor and assess the fulfilment of all contracts [with defence lawyers] and authorize corresponding remuneration in accordance with Defence Support Section administrative regulations.’”²
2. The Respondent in this case, [REDACTED], did not file any response to the Request within the time limit set out in the Internal Rules.
3. The Pre-Trial Chamber recalls that the documents in the case PTC08 have been, upon filing, classified as “Strictly Confidential” by the Pre-Trial Chamber. As such, they were and remain “open only to the Judges and such other persons, including court staff who require access in the discharge of their duties, expressly given access by the Court” in accordance with the Practice Direction on Classification and Management of Case-Related Information (“Practice Direction on Classification”).³ DSS staff members have thus far not been granted access to this case.

¹ Ieng Sary’s Request for Disclosure to the Defence Support Section of all PTC 08 Documents, 26 April 2011, Doc. No. 29.

² Request, para. 2, referring to Decision on Ieng Sary’s Motion for a Hearing on the Conduct of the Judicial Investigation, 8 April 2011, E71/1 (the “Trial Chamber’s Decision”).

³ Practice Direction on Classification and Management of Case-Related Information – 004/2009, adopted on 5 June 2009, Article 2(d)(ii).



4. In its Decision on Ieng Sary's Request to reclassify all PTC 08 documents as public, the Pre-Trial Chamber decided that the Case PTC 08 shall remain "Strictly Confidential". Based on the procedural rules established at the international level, it emphasised the need to protect the reputation of the individual subject to allegations of interference with the administration of justice in this case where no proceedings were instigated against the concerned individual due to the fact that after an investigation had been conducted, the allegations were found to be without merit.⁴
5. The Chamber notes that the Co-Lawyers do not explain how the documents in Case PTC 08 would in any way be relevant to the determination of the matter referred to the DSS by the Trial Chamber nor do they argue that the Trial Chamber's Decision was based on proceedings filed before the Pre-Trial Chamber. In any event, the Trial Chamber, having had no access to the Case PTC 08,⁵ could not have based its decision on the material contained therein. Furthermore, the Trial Chamber would have no jurisdiction to determine that proceedings filed before the Pre-Trial Chamber were not necessary and/or reasonable.
6. The Pre-Trial Chamber considers that it is still necessary to protect the interests of the Respondent in this case as referred to and explained in its previous decision on a similar request to reclassify the documents. Considering that these are not outweighed by the interests now raised by the Co-Lawyers, the Pre-Trial Chamber finds that the documents in Case PTC 08 shall remain strictly confidential and only accessible to those who have expressly been given access by the Chamber.

⁴ Decision on Ieng Sary's Request to reclassify all PTC 08 documents as public, 3 May 2011, Doc. no. 30, paras 9-12.

⁵ See *inter alia* Memorandum regarding classification before the Trial Chamber of material in relation to PTC08, sent by the President of the Trial Chamber to the Judges of the Pre-Trial Chambers, 8 August 2011, E76 and the response to it by the President of the Pre-Trial Chamber, 20 April 2011, PTC/M/02. It is however noted that the Fourth decision on Ieng Sary's request for investigation under internal rule 35 into the actions of [REDACTED] of the office of the Co-Prosecutors relating to ex-parte communication with the international component of the OCIJ, 7 March 2011, Doc. no. 23, had been notified to the Trial Chamber as it was considered necessary to inform it of the outcome of these proceedings considering the matters with which it was seized at that time.

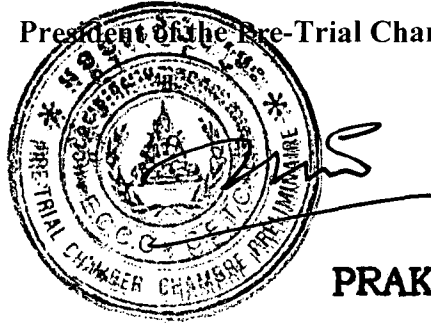


THEREFORE THE PRE-TRIAL CHAMBER DECIDES UNANIMOUSLY

Dismiss the Co-Lawyers' Request.

PhnomPenh, 15 July 2011 ^{ca}

President of the Pre-Trial Chamber



PRAK KIMSAN