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

អង្គបុរេជំនុំជម្រះ
PRE-TRIAL CHAMBER
CHAMBRE PRELIMINAIRE

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Criminal Case File N° **002/19-09-2007-ECCC/OCIJ (PTC 1**

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

ឯកសារបានថតចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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Date: **7 April 2009**

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

PRE-TRIAL CHAMBER · CHAMBRE PRELIMINAIRE · ECCC

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"[1];

   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"[2];

   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"[3].

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

[1] Co-Prosecutors' Observations on Ieng Sary's Appeal Against the Co-Investigating Judges' Confidentiality Order, 27 Marcu 2009, D138/1/5 ("The Co-Prosecutors' Observations"), paras. 3, 6 and 7.
[2] The Co-Prosecutors' Observations, para 5.
[3] The Co-Prosecutors' Observations, paras. 10 and 11.

the Appeal against the OCIJ Order on Breach of Confidentiality of the Judicial Investigations.[4]

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".[5]

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.*[6]

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

[4] 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.
[5] 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.
[6] 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.