

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for IENG Sary**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 24 November 2011**CLASSIFICATION****Classification of the document
suggested by the filing party:** PUBLIC**Classification by OCIJ
or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

**IENG SARY'S REQUEST FOR INVESTIGATION CONCERNING *EX PARTE*
COMMUNICATIONS BETWEEN THE INTERNATIONAL CO-PROSECUTOR,
JUDGE CARTWRIGHT AND OTHERS**

TABLE OF AUTHORITIES

Filed by:**The Co-Lawyers:**ANG Udom
Michael G. KARNAVAS**Distribution to:****The Trial Chamber Judges:**Judge NIL Nonn
Judge YOU Ottara
Judge YA Sokhan
Judge Silvia CARTWRIGHT
Judge Jean-Marc LAVERGNE
Reserve Judge THOU Mony
Reserve Judge Claudia FENZ**Co-Prosecutors:**CHEA Leang
Andrew CAYLEY**All Defence Teams****All Civil Parties**

Cambodian Law and Codes of Ethics – ECCC Legal Compendium

1. Cambodian Constitution, Art. 128.
2. Cambodian Code of Ethics for Judges, Arts. 1, 9

ECCC Law and Codes of Ethics – ECCC Legal Compendium

3. Establishment Law, Arts. 10 new, 12.
4. Agreement, Art. 3(3).
5. Rules 19, 21(1)(a), 34(2), 34(3), 34(7), 35(2), 41, 93.
6. ECCC Code of Judicial Ethics, Preamble, Arts. 1, 2, 3(1), 9(1).

ECCC Jurisprudence – *Already Disclosed on the Case File*

7. Response to IENG Sary's Request for Appropriate Measures to be Taken Concerning Certain Statements by Prime Minister Hun Sen which Challenge the Independence of Pre-Trial Chamber Judges Katinka Lahuis and Rowan Downing, 1 November 2009, 3, para. 2.
8. Second Decision on NUON Chea's and IENG Sary's Appeal Against OCIJ Order on Requests to Summon Witnesses, 9 September 2010, D314/1/12, paras. 37, 38.
9. Request for Information Regarding *Ex-Parte* Meetings among Judge Silvia Cartwright, the International Co-Prosecutor, and the Deputy Director of Administration, 15 November 2011, E137/1.
10. Decision on IENG Sary's Application to Disqualify Judge NIL Nonn and Related Requests, 28 January 2011, E5/3, paras. 6, 7, 8, 17.
11. Decision on the Co-Lawyers' Urgent Application for Disqualification of Judge Ney Thol Pending the Appeal Against the Provisional Detention Order in the Case of Nuon Chea, 4 February 2008, C11/29, paras. 9-11, 20-21.

International and National Codes of Judicial Ethics – ECCC Legal Compendium

12. International Covenant on Civil and Political Rights, Article 14(1).

International and National Codes of Judicial Ethics – *Already Disclosed on the Case File*

13. New Zealand's Guidelines for Judicial Conduct *available at* <http://www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct/Guidelines-for-Judicial-Conduct-June-2011.pdf>, paragraphs 50, 74, 85 and 86.
14. United Nations Basic Principles on the Independence of the Judiciary, Principle 4, 6.
15. 2002 Bangalore Principles of Judicial Conduct, Value 2, Application 2.2.
16. Kosovo Code of Ethics and Professional Conduct for Judges *available at* <http://www.courtethics.org/Kosovo.pdf>, part III (A)(7).
17. Universal Charter of the Judge
18. The Judiciary of England and Wales, Guide to Judicial Conduct - Revised Version March 2008, *available at*

http://www.judiciary.gov.uk/docs/judges_council/judicialconduct_update0408.pdf, section 2.1.

19. ABA Model Code of Judicial Conduct February 2007, available at http://www.abanet.org/judicialethics/ABA_MCJC_approved.pdf, 2.9

Commentary on Codes of Ethics – Already Disclosed on the Case File

20. United Nations Office on Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct, September 2007, para. 64, 64 available at http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf
21. Working Group on Judicial Conduct, European Network of Councils of Justice, Consiglio Superiore Della Magistratura, p. 25.
22. The Judicial Integrity Group, Commentary on the Bangalore Principles of Judicial Conduct, March 2007, available at <http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF>, p. 9-18, 79.

National Codes of Legal Professional Conduct – Publicly available online

23. Code of Conduct of the Bar of England & Wales, para.301(a)(ii) and (iii).

International Law and Jurisprudence – Publicly available online

ICTY

24. *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgement, 21 July 2000, paras. 189, 196-97
25. *Prosecutor v. Delalić et al.*, IT-96-21-T, Decision of the Bureau on Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves, 25 October 1999, paras. 8-9.
26. *Prosecutor v. Delalić et al.*, IT-96-21-A, Appeal Judgement, 20 February 2001, para. 283, 631.
27. *Prosecutor v. Simić et al.*, IT-95-9-PT, Decision on (1) Application by Stevan Todorović to Re-Open the Decision of 27 July 1999, (2) Motion by ICRC to Re-Open Scheduling Order of 18 November 1999, and (3) Conditions for Access to Material, 28 February 2000, para. 39
28. Rules of Procedure and Evidence, Rule 15.

ICTR

29. *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Motion by Karemera for Disqualification of Trial Judges, 17 May 2004, paras. 7, 8.
30. *Prosecutor v. Karemera*, ICTR-98-44-AR 15bis.2, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of the Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 22 October 2004.
31. *Prosecutor v. Karemera*, ICTR-98-44-AR73.15, Decision on Joseph Nzirorera's Appeal against a Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge's Written Assessment of a Member of the Prosecution Team, 5 May 2009, para. 11.

32. Rules of Procedure and Evidence, Rule 15.

ICC

33. ICC Statute, Art. 41(2)(a).

34. ICC Rules of Procedure and Evidence, Rule 34(1).

SCSL

35. *Prosecutor v. Norman*, SCSL-2004-14, Decision on the Motion to Recuse Judge Winter from the Deliberation in the Preliminary Motion on the Recruitment of Child Soldiers, 28 May 2004, para. 28.

36. *Prosecutor v. Sesay et al.*, SCSL-04-15-T-909, Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case, 6 December 2007, para. 51.

37. *Prosecutor v. Sesay et al.*, SCSL-2004-AR15-15, Decision on Defence Motion Seeking the Disqualification of Judge Robertson from the Appeals Chamber, 13 March 2004

STL

38. Decision on Mr. El Sayed's Motion for the Disqualification of Judge Riachy from the Appeals Chamber Pursuant to Rule 25, STL President (CH/PRES/2010/08), 5 November 2010, paras. 11, 19.

Human Rights Committee

39. *Karttunen v. Finland*, Communication No. 387/1989, U.N. Doc. No. CCPR/C/46/D/387/1989, para. 7.2.

Regional Jurisprudence – Publicly available online

40. *Brandstetter v. Austria*, ECHR, Judgement, 28 August 1991, para. 66-67

National Jurisprudence – Publicly available online

Australia

41. *Aussie Airlines v Australian Airlines Pty Ltd* (1996) 135 ALR 753, paras. 34-44.

42. *Clenae Pty Ltd & v. ANZ Banking Group Ltd*, HCA M2/2000, 7 December 2000.

England & Wales

43. *Locabail (UK) Ltd. v. Bayfield Properties Ltd.* [2000] 2 WLR 870 at 477-78.

Correspondence – Available upon request

44. Email from Mr. Pestman to Mr. Rosandhaug, 27 October 2011.

45. Email from Mr. Karnavas to Mr. Cayley, 30 October 2011.

46. Letter from IENG Sary Defence to Mr. Rosandhaug, 2 November 2011.

47. Email from Mr. Pestman to Judge Cartwright, 3 November 2011.

48. Email from Mr. Cayley to Mr. Pestman, 4 November 2011.

49. Email from Mr. Pestman to Mr. Cayley, 4 November 2011.

50. Letter from Mr. Pestman, Victor Koppe, Andrew Ianuzzi, and Jasper Pauw to Judge Nil Nonn, re 'Request for information related to ex-parte meetings between Judge Cartwright, Andrew Cayley, and/or Knut Rosandhaug', 4 November 2011, E137
51. Letter from Mr. Rosandhaug to Mr. Ang Udom and Mr. Karnavas, 7 November 2011.
52. Ang Udom and Michael G. Karnavas, Letter to the editor of FOREIGN POLICY: *Donors and diplomats show their disapproval of political interference at the ECCC by politically interfering themselves*, 27 July 2011 – Attachment 1.

Books, Articles and Miscellaneous

53. BLACK'S LAW DICTIONARY 468 (7th ed. 1999) - *Already Disclosed on the Case File*.
54. JUDGE RICHARD MAY & MARIEKE WIERDA, INTERNATIONAL CRIMINAL EVIDENCE 306 (Transnational Publishers Inc., 2002) - *Already Disclosed on the Case File*.
55. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A MANUAL ON HUMAN RIGHTS FOR JUDGES, PROSECUTORS AND LAWYERS, CHAPTER 4: INDEPENDENCE AND IMPARTIALITY OF JUDGES, PROSECUTORS AND LAWYERS 139 (2003), *available at* <http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>.
56. Open Society Justice Initiative, Recent Developments at the Extraordinary Chambers in the Courts of Cambodia, November 2011, p.20 *available at* http://www.soros.org/initiatives/justice/articles_publications/publications/cambodia-court-20111114.
57. Julia Wallace, *KRT Defense Alleges Ex Parte Meetings*, CAMBODIA DAILY, 7 November 2011, p. 2 – *Available through ECCC G: Drive*.
58. Ang Udom & Michael G. Karnavas, *Andrew Cayley's Remarks 'Defensive and Deflective'*, CAMBODIA DAILY, 8 November 2011, p. 26 – *Available through ECCC G: Drive*
59. Voice of America, *UN Prosecutor: "The Law Ties Me to Do This,"* 4 November 2011 *available at* <http://www.voanews.com/khmer-english/news/UN-Prosecutor-The-Law-Ties-Me-To-Do-This-133245133.html>.
60. Mike Eckel, *Cambodia's Kangaroo Court*, FOREIGN POLICY, 20 July 2011 – Attachment 2.