

BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC **Party Filing:** Co-Prosecutors  
**Filed to:** Trial Chamber **Original Language:** English  
**Date of document:** 10 May 2012

**CLASSIFICATION**

**Classification of the document suggested by the filing party:** PUBLIC

**Classification by Trial Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**



**CO-PROSECUTORS' RESPONSE TO "IENG SARY'S RULE 34 APPLICATION FOR DISQUALIFICATION OF JUDGE SILVIA CARTWRIGHT OR, IN THE ALTERNATIVE, REQUEST FOR INSTRUCTION AND ORDER TO CEASE AND DESIST FROM *EX PARTE* COMMUNICATIONS & REQUEST FOR DISCLOSURE OF *EX PARTE* COMMUNICATIONS"**

**TABLE OF AUTHORITIES**

**Filed by:**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Distributed to:**

**Trial Chamber**  
Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge YOU Ottara  
Reserve Judge THOU Mony  
Reserve Judge Claudia FENZ  
  
**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMONNEAU FORT

**Copied to:**

**Accused**  
Nuon Chea  
Ieng Sary  
Khieu Samphan  
  
**Lawyers for the Defence**  
SON Arun  
Michiel PESTMAN  
Victor KOPPE  
ANG Udom  
Michael G. KARNAVAS  
KONG Sam Onn  
Anta GUISSSE  
Arthur VERCKEN  
Jacques VERGES

## ECCC LAW

### Core Legal Documents

*(Not included – ECCC Legal Compendium)*

1. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, with inclusion of amendments as promulgated on 27 October 2004, arts. 41-42 new.
2. Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the period of Democratic Kampuchea, 6 June 2003, arts. 19-20.
3. Extraordinary Chambers of the Courts of Cambodia, Internal Rules (Rev. 7), as revised on 23 February 2011, Rule 34(2)(3)(4)(5).

### Jurisprudence

*(Not included – Already in Case File)*

4. **Special PTC 02(3)5**, Decision on Ieng Sary's Request for Appropriate Measures Concerning Certain Statements by Prime Minister Hun Sen Challenging the Independence of Pre-Trial Judges Katinka Lahuis and Rowan Downing, 30 November 2009, para 6-10 & 15.
5. **E182** Nuon Chea's Request to hear Defence witnesses and to take other Procedural Measures in Order to Properly Assess Historical Context, 16 March 2011, at para. 4 note 8.
6. **E55/4**, Decision on Ieng Thirith, Nuon Chea and Ieng Sary's Applications for Disqualification of Judges Nil Nonn, Silvia Cartwright, Ya Sokhan, Jean-Marc Lavergne and Thou Mony, 23 March 2011, para 11-12, 17.
7. **E137/2** Nuon Chea's Urgent Application for disqualification of Judge Cartwright, 21 November 2011, para 15.
8. **E137/3** Ieng Sary's Request for Investigation Concerning *Ex Parte* Communications Between the International Co-Prosecutor, Judge Cartwright and Others, 24 November 2011, p. 1, para 33
9. **E137/5** Decision on Motions for Disqualification of Judge Silvia Cartwright, 2 December 2011, para, 5, 13-15, 16, 19-20, 22
10. **E 137/5/1/1** Ieng Sary's Appeal Against the Trial Chamber's Decision on Motions for Disqualification of Judge Silvia Cartwright, 5 January 2012, para 47.
11. **E171/2** Decision on Application for Disqualification of Judge Silvia Cartwright, 9 March 2012, para. 12-13
12. **E137/5/1/3** Decision on Ieng Sary's Appeal Against the Trial Chamber's Decision on Motions for Disqualification of Judge Silvia Cartwright, 17 April 2012, para 7, 10, 11-15, 22-24

*Co-Prosecutors' Response to "Ieng Sary's Rule 24 Application for Disqualification of Judge Silvia Cartwright or, in the Alternative, Request for Instructions and Order to Cease and Desist from Ex Parte Communications & Request for Disclosure of Ex Parte Communications"- Table of Authorities*

13. **E154/1/1/4/** Decision on Ieng Sary’s Appeal Against the Trial Chamber’s Decision on its Senior Legal Officer’s Ex Parte Communications, 25 April 2012, para. 18, note 33.
14. **E191**, Ieng Sary’s Rule 34 Application for Disqualification of Judge Silvia Cartwright or, in the Alternative, Request for Instruction and Order to Cease and Desist from *Ex Parte* Communications & Request for Disclosure of *Ex Parte* Communications, 27 April 2012 (“Application and Request”), para. 1, 7, 9-11, 17, 20-22.

## INTERNATIONAL LAW

### Instruments

15. ICC Rules of Procedure and Evidence, ICC/ASP/1/3, Rule 26(2). (*Not included - available on ICC website*)
16. ICC Regulations of the Court, ICC-BD/01-02-07, Regulations 120-121. (*Not included – available on ICC website*)

### Jurisprudence

#### *International Criminal Tribunal for the Former Yugoslavia (ICTY)*

*(Not included – available on ICTY website)*

17. *Prosecutor v. Furundžija*, IT-95-17/1-A, *Judgment Appeals Chamber*, 21 July 2000, para 186, 190, 197, 200.
18. *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, *Judgment*, 20 February 2001, para 707.
19. *Prosecutor v. Vidoje Blagojević et al.*, IT-02-60, Decision on Blagojević’s Application Pursuant to Rule 15(B), 19 March 2003, para. 14.
20. *Prosecutor v. Jadranko Prlić et al.*, IT-04-74-T, Jadranko Prlić’s motion for disqualification of Judge Prandler, 30 August 2010.

#### *International Criminal Tribunal for Rwanda (ICTR)*

*(Not included – available on ICTR website)*

21. *Edouard Karemera et al. v. Prosecutor*, ICTR-98-44-AR15bis.2, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera’s Motion for Leave to Consider New Material, 22 October 2004, para. 67.

***European Court for Human Rights (ECtHR)***

*(Not included – available on ECtHR website)*

22. *Gomes v Sweden*, Application No. 34566/04, Decision on admissibility, 7 February 2006 at p. 11.
23. *Olujić v. Latvia*, ECtHR Application No. 22330/05, Judgment, 5 May 2009 at para. 57-58.

***Inter-American Commission on Human Rights (IACHR)***

*(Not included – available on IACHR website)*

24. *Herrera y Vargas (La Nación)*, Costa Rica, Case No. 12,367, December 3, IACHR, Report No. 128/01, 2001 at para. 50.
25. *Monsi Lilia Velarde Retamozo v Peru*, Case 12.165, Report No. 85/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 at 437 (2003) at para. 45
26. *V. v Bolivia*, Case 270-07, Report No. 40/08, Inter-Am. C.H.R., OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2008) at para 79
27. Report No. 4/04, Petition 12,324, *Rubén Luis Godoy*, Argentina, February 24, 2004 at para. 43
28. Report No. 29/07, Petition 712-03, *Elena Tellez Blanco*, Costa Rica, April 26, 2007 at para. 58

***Committee against Torture***

*(Not included – available on CAT website)*

29. General Comment No. 01: Implementation of article 3 of the Convention in the context of article 22 (11/21/1997). A/53/44, annex IX, CAT General Comment No. 01. (General Comments) at para. 4-6.
30. H.I.A. v Sweden, Communication No. 216/2002, U.N. Doc. CAT/C/30/D/216/2002 (2003) (Decisions of the Committee Against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Thirtieth session - Communication No. 216/2002) at para. 6.1-6.2.

***South Africa: Constitutional Court***

31. *President of the Republic of South Africa and Others v. South African Rugby Football Union and Others*, Judgment on Recusal Application, [1999] ZACC 9, 3 June 1999. (Authority 1 – Note: this authority exceeds 10 pages in English.)

***Other***

*(Not included – already in Case File)*

32. **E191.1** Email from Judge Silvia Cartwright to Case File Notification Distribution List, 19 April 2012.
33. **E191.1.3** Email from Ms. Susan Lamb to IENG Sary Defence, 20 April 2012 and Email from IENG Sary Defence to parties, 20 April 2012.