



**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

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

**អង្គជំនុំជម្រះសាលាដំបូង**

Trial Chamber  
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007-ECCC/TC

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):	
..... ០៤ / ០៤ / ២០១១ .....	
ម៉ោង (Time/Heure) :..... ០៩ : ៤០ .....	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង /Case File Officer/L'agent chargé du dossier:..... SANN RADA .....	

**Before:** Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge THOU Mony

**Date:** 04 April 2011  
**Original language(s):** Khmer/English/French  
**Classification:** PUBLIC

**DECISION ON IENG SARY'S MOTIONS REGARDING JUDICIAL NOTICE OF ADJUDICATED FACTS FROM CASE 001 AND FACTS OF COMMON KNOWLEDGE BEING APPLIED IN CASE 002**

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Accused**  
NUON Chea  
IENG Sary  
IENG Thirith  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMONNEAU FORT

**Lawyers for the Defence**  
SON Arun  
Michiel PESTMAN  
Victor KOPPE  
ANG Udom  
Michael G. KARNAVAS  
PHAT Pouy Seang  
Diana ELLIS  
SA Sovan  
Jaques VERGÈS  
Philippe GRÉCIANO

**THE TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“Chamber” and “ECCC”);

**BEING SEISED** of Case File No. 002/19-09-2007-ECCC/TC pursuant to the Decisions on Appeal Against the Closing Order by IENG Sary, IENG Thirith, NUON Chea and KHIEU Samphan, rendered by the Pre-Trial Chamber on 13 January 2011;<sup>1</sup>

**NOTING** “IENG Sary’s Motion against the Taking of Judicial Notice of Adjudicated Facts from Case 001”, filed on 28 March 2011 (“First Motion”) and in which IENG Sary Defence “moves the Trial Chamber not to take judicial notice of any facts adjudicated from Case 001 in Case 002”;<sup>2</sup>

**FURTHER NOTING** “IENG Sary’s Motion against Facts of Common knowledge Being Applied in Case 002”, filed on 28 March 2011 (“Second Motion”) in which IENG Sary Defence “moves the Trial Chamber not to take judicial notice of any facts of common knowledge in Case 002”;<sup>3</sup>

**NOTING** the Order to File Material in Preparation for Trial (“Order to File Material”) issued on 17 January 2011;<sup>4</sup>

**CONSIDERING** that in its Order to File Material, the Chamber indicated “a list of issues which it may *with the agreement of the Co-Prosecutors and the Defense*, consider as accepted, as they concern issues of a background, contextual nature which were adjudicated by the Chamber in the course of trial in Case 001” (emphasis added);<sup>5</sup>

**CONSIDERING** that it clearly follows from the Order to File Material that the Chamber was not intending to take judicial notice of adjudicated facts but merely requested the parties “to

---

<sup>1</sup> Decision on Ieng Sary’s Appeal Against the Closing Order, 13 January 2011, D427/1/26; Decision on Ieng Thirith’s and Nuon Chea’s Appeals Against the Closing Order, 13 January 2011, D427/2/12; Decision on Khieu Samphan’s Appeal Against the Closing Order, 13 January 2011, D427/4/14; and Decision on Ieng Sary’s Appeal Against the Closing Order’s Extension of his Provisional Detention, 13 January 2011, D427/5/9.

<sup>2</sup> IENG Sary’s Motion against the Taking of Judicial Notice of Adjudicated Facts from Case 001, 28 March 2011, public, E70, p. 10 (“First Motion”).

<sup>3</sup> IENG Sary’s Motion Against Facts of Common Knowledge Being Applied in Case 002, 28 March 2011, public, E69, p. 4 (“Second Motion”).

<sup>4</sup> Order to File Material in Preparation for Trial, 17 January 2011, public, E9.

<sup>5</sup> Order to File Material, para. 11.

file *their joint list of uncontested facts*”, “including those adjudicated by the Chamber in Case 001” (emphasis added);<sup>6</sup>

**CONSIDERING FURTHER** that, as the Defense itself emphasised in both applications,<sup>7</sup> there is no legal basis in the Law on the Establishment of the ECCC or in the Internal Rules for the Chamber to take judicial notice of adjudicated facts or for facts of common knowledge to be applied before the ECCC;

**NOTING** that the Chamber has neither indicated to the parties that judicial notice of adjudicated facts would be taken in the present case nor purported to do so;

**NOTING** that the IENG Sary Defence has nonetheless filed two lengthy applications which were both therefore unnecessary and which have no legal basis;

**CONSEQUENTLY REJECTS** the First Motion and Second Motion;

**DIRECTS** that no translation into the Khmer and French languages be undertaken by the Interpretation and Translation Pool;

**ORDERS** the parties to refrain from responding to the request;

**REFERS** this 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 Legal Assistance scheme) and which, pursuant to Rule 11(2)(h), has the responsibility to “monitor and assess the fulfillment of all contracts [with defence lawyers] and authorize corresponding remuneration in accordance with Defence Support Section administrative regulations”.

Phnom Penh, 04 April 2011  
President of the Trial Chamber



**Nil Nonu**

<sup>6</sup> Order to File Material, para. 9 and (IV).

<sup>7</sup> First Motion, para. 18 and Second Motion, para. 11.