



បកសារបញ្ជាក់ថា គ្រប់ឯកសារដែលបានបញ្ជូនមកក្រុមប្រឹក្សាជាតិសវននា ព្រះមហាក្សត្រ  
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 Kingdom of Cambodia  
 Nation Religion King  
 Royaume du Cambodge  
 Case File Officer/L'agent charge  
 Ratanak  
 Nation Religion Roi  
 A 372/2/7

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des tribunaux cambodgiens

**អង្គបុរេជំនុំជម្រះ**  
Pre-Trial Chamber  
Chambre Préliminaire

*In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.*

**Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC 65)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Catherine MARCHI-UHEL  
Judge HUOT Vuthy

**Date:** 8 June 2010

**ឯកសារដើម**  
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**PUBLIC**

**DECISION ON IENG SARY'S APPEAL AGAINST THE CO-INVESTIGATING JUDGES' REJECTION OF IENG SARY'S THIRD REQUEST TO PROVIDE THE DEFENCE WITH AN ANALYTICAL TABLE OF THE EVIDENCE WITH THE CLOSING ORDER**

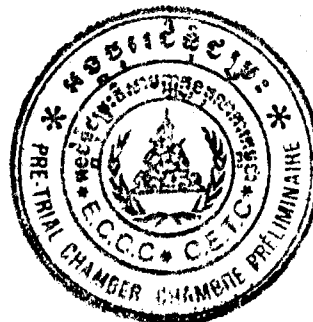
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**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of the appeal of the Co-Lawyers for IENG Sary (the “Charged Person”) against the Co-Investigating Judges’ rejection of IENG Sary’s third request to provide the defence with an analytical table of the evidence with the closing order, filed and notified on 23 April 2010 (“the Appeal”).<sup>1</sup> The Co-investigating’s response on IENG Sary’s Request to provide the Defence with an Analytical Table of the Evidence by the Co-Investigating judges was dated 8 April 2010 and notified 9 April 2010 (“the Order”).<sup>2</sup> IENG Sary’s Request was filed and notified on 31 March 2010 (“the Request”).<sup>3</sup> The Co-Prosecutors filed a response on 5 May 2010, which was notified on 7 May 2010, requesting the Pre-Trial Chamber dismiss the Appeal as “procedurally bared and substantially misconceived.”<sup>4</sup> Following the Pre-Trial Chamber’s decision to determine the Appeal on the basis on written submission and its direction regarding the filing of a reply,<sup>5</sup> the Co-Lawyers filed a reply on 21 May 2010.<sup>6</sup>

#### *Admissibility*

1. The Appeal was filed in a timely manner in accordance with the rules.
2. The basis of the Appeal is not present. There was no decision, no matter how characterised, in respect of which an appeal can be made. The Request is in respect of a future action which may or may not be undertaken by the Co-Investigating Judges and seeks to fetter or control the

<sup>1</sup> Ieng Sary’s Appeal Against the OCIJ’s Rejection of Ieng Sary’s Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order, 23 April 2010, 002/19-07-2007-ECCC/OCIJ(PTC65), A371(sic)/2/1.

<sup>2</sup> Response to IENG Sary’s Request to Provide the Defence with an Analytical Table of the Evidence, dated 8 April 2010 and notified on 9 April 2010, 002/19-09-2007-ECCC-OCIJ-A372, A372/1.

<sup>3</sup> Ieng Sary’s Request for an Analytical Table Linking Each Material Fact to Each Relevant Inculpatory or Exculpatory Piece of Evidence, Each Element of the Crimes Charged and Each Constituent Element of the Modes of Participation as part of the Closing Order, 31 March 2010, 002/19-07-2007-ECCC/OCIJ, A372.

<sup>4</sup> Co-Prosecutors’ Response to Ieng Sary’s Appeal re Provision of an Analytical Table of Evidence With the Indictment, filed on 5 May 2010 and notified on 7 May 2010, 002/19-09-2007-ECCC/OCIJ(PTC65), A372/2/2, par. 6.

<sup>5</sup> Decision to Determine the Appeal on Written Submissions and Direction for Reply, 19 May 2010, 002/19-07-2007-ECCC/OCIJ(PTC65), A372/2/4.

<sup>6</sup> Ieng Sary’s Reply to the Co-Prosecutor’s Response to Ieng Sary’s Appeal Against the OCIJ’s Rejection of Ieng Sary’s Request to Provide the Defence with an Analytical Table of the Evidence with the Closing Order, 21 May 2010, 002/19-07-2007-ECCC/OCIJ(PTC65), A372/2/5.



manner and form by which they will exercise their discretion. This is made clear from the preamble to the Request and specific requests made at the conclusion of the Request.

3. The preamble provides:

“ Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Rules 67 and 21(1)(d) of the ECCC Internal Rules (“Rules”), hereby requests that, in the event the OCIJ considers indicting Mr. IENG Sary for all or some of the facts set out in the Introductory or Supplementary Submissions, it provides, as part of the Closing Order, an analytical table which links each material fact to each relevant inculpatory or exculpatory piece of evidence, as well as to each element of the crimes charged and each constituent element of the modes of participation.”

4. The Request does not fall under Internal Rule 55(10), as it does not seek either an order or an investigatory action. There is no right under Internal Rule 21(1)(d), or any possible interpretation or construction thereof, which would provide the basis of an appeal of the refusal of the Co-Investigating Judges to consider a request in respect of a contingent prospective exercise of discretion. The Appeal is inadmissible on its face and is noted as such, without the need to consider any further submissions.

**THEREFORE, THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY:**

The Appeal is inadmissible.

In accordance with Internal Rule 77(13), this Decision is not subject to appeal.

Phnom Penh, 8 June 2010 *ch.*

Pre-Trial Chamber

*Rowan Downing*

*NEY Thol*

*Catherine Marchi-Uhel*



Rowan DOWNING NEY Thol Catherine MARCHI-UHEL HUOT Vuthy PRAK Kimsan