



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

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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

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SON Arun
Michiel PESTMAN
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ANG Udom
Michael G. KARNAVAS
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Diana ELLIS
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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;¹

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”;²

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”;³

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

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);⁵

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

¹ 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.

² 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”).

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

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

⁵ Order to File Material, para. 11.

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

CONSIDERING FURTHER that, as the Defense itself emphasised in both applications,⁷ 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



Handwritten signature

Nil Nonu

⁶ Order to File Material, para. 9 and (IV).

⁷ First Motion, para. 18 and Second Motion, para. 11.