



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

C22/5/33

**អង្គបុរេជំនុំជម្រះ**

PRE-TRIAL CHAMBER  
CHAMBRE PRELIMINAIRE

**Criminal Case File N° 002/19-09-2007-ECCC/OCIJ (PTC17)**

**Before:** Judge PRAK Kimsan, President  
Judge Rowan DOWNING  
Judge NEY Thol  
Judge Katinka LAHUIS  
Judge HUOT Vuthy

**Date:** 30 March 2009

<b>ឯកសារដើម</b>
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PUBLIC

**DECISION ON IENG SARY'S EXPEDITED REQUEST FOR AN ORDER TO CALMETTE HOSPITAL TO IMMEDIATELY DISCLOSE MEDICAL RECORDS AND A LIST OF TREATING PHYSICIANS FOR MR. IENG SARY**

Co-Prosecutors

CHEA Leang  
Robert PETIT  
YET Chakriya  
William SMITH  
TAN Senarong  
Anees AHMED

<b>ឯកសារច្បាប់តាមប្រព័ន្ធគ្រប់គ្រងឯកសារ</b>
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Charged Person

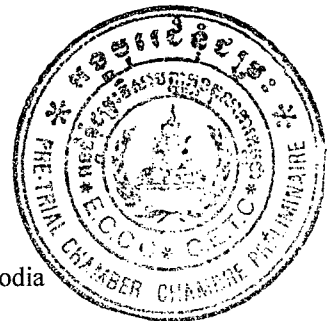
IENG Sary

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Mr. ANG Udom  
Mr. Michael G. KARNAVAS



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1. **THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) notes “IENG Sary’s Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. Ieng Sary” (“the Request”), filed on 3 March 2009.

### I. PROCEDURAL BACKGROUND

2. By their Request, the Co-Lawyers ask the Pre-Trial Chamber “to issue an Order to Calmette Hospital to provide the following information [...]:
  - (a) All medical records pertaining to Mr. IENG Sary from his repeated hospital admissions and from the daily reports of Mr. NETH Phalla;
  - (b) A list of all physicians who have treated Mr. IENG Sary during his hospital admissions including information on the specific role of each physician in treating Mr. IENG Sary; and
  - (c) Information on the members, structure and authority of *The Committee*, vis-à-vis the treating physicians mentioned in the hospital reports which appears to take any substantive decisions on the treatment provided to Mr. IENG Sary.”<sup>1</sup>
3. In the Request, the Co-Lawyers submit that “Mr. IENG Sary has the absolute and unqualified right to be provided with copies of all his medical records; [Mr. Sary] has the absolute and qualified right to all relevant information as to which physicians are responsible for treating him and, especially, who is/are responsible for making decisions on his treatment; and [Mr. Sary] has the absolute and unqualified right to seek a judicial order from the Pre-Trial Chamber to Calmete Hospital for the purpose of obtaining his medical records as well as the names and functions of his treating physicians, which, ineluctably, is necessary data for further submissions related to the hearing on provisional detention.”
4. The Co-Lawyers submit that although Ieng Sary has been admitted on 10 separate occasions to Calmette Hospital, medical reports have only been provided with 4 such admissions and the daily records of the ECCC Medical Doctor Phalla have never been placed on the Case File.

<sup>1</sup> IENG Sary’s Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. IENG Sary, 3 March 2009, C22/5/25 (“Request”, p. 6.



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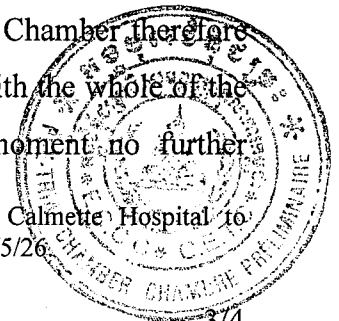
5. The Co-Lawyers add that despite their attempts to visit Ieng Sary when he was admitted to the Calmette Hospital, requests to ECCC Doctor Phalla for access to medical records and the OCIJ's assertion that the detainee's right to access his medical file, the Hospital has refused access.
6. The Co-Lawyers argue that in order for them to be able to satisfy the requirement to be more specific in their requests to the Pre-Trial Chamber they must be provided with more information by Calmette Hospital.
7. In Directions issued on 4 March 2009, the Pre-Trial Chamber invited the Parties involved in the case to file their responses to the Request by 11 March 2009.<sup>2</sup>
8. On 10 March 2009, the Co-Prosecutors filed their "Response to IENG Sary's Application Seeking an Order to the Calmette Hospital for the Disclosure of Ieng Sary's Medical Record and Other Information", in which they ask the Pre-Trial Chamber to "dismiss the Application". They submit that the reasons why they ask the Pre-Trial Chamber to dismiss the Application are: 1) The Application does not disclose the provision of law under which it is filed; 2) The Application is omnibus in nature, lacks precision and is factually unsubstantiated; 3) The Applications seeks documents and relief beyond the scope of this Appeal; 4) The Application does not indicate why the Appellant has not exhausted the alternative remedy of approaching the Co-Investigating Judges and why an appellate body like the Pre-Trial Chamber should issue the sought directions, especially in an Appeal where the issue of the Appellant's health was not substantively raised before the Co-Investigating Judges when they passed their impugned Detention Extension Order.
9. To date, the Civil Parties or their Lawyers have not submitted a response to the Pre-Trial Chamber's Directions concerning the Request.

## II. CONSIDERATIONS

10. On 27 February 2009, in the "Written Version of [its] Oral Decision of 26 February 2009 on the Requests Presented before the Pre-Trial Chamber During the Hearing Held on the Same Day", the Pre-Trial Chamber noted the following:

"The Co-Lawyers have submitted that the issue in respect of the Charged Person's Health they want to raise is part of their appeal. The Pre-Trial Chamber therefore finds that the issue should be raised within the hearing dealing with the whole of the appeal. The Pre-Trial Chamber further notes that at the moment no further

<sup>2</sup> Directions to the Parties concerning IENG Sary's Expedited Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. Ieng Sary, C22/5/26.



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application has been filed of a more specific nature as suggested by the Pre-Trial Chamber in its decision of the 23<sup>rd</sup> of February 2009".<sup>3</sup>

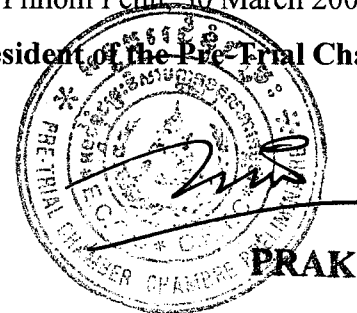
11. The Request does not bring the "suggested" information but instead asks the Pre-Trial Chamber to issue orders to the Calmette Hospital to release information in this respect.
12. The Pre-Trial Chamber finds, as submitted by the Co-Prosecutors that, "the [Request] does not disclose the provision of law under which it is filed".<sup>4</sup> The Pre-Trial Chamber further observes that the Co-Investigating Judges have been requesting in June and July 2008 to the Calmette hospital to provide access to the Co-Lawyers to their client while he is staying in the hospital and to give access to medical information of their client as requested by the Co-Lawyers.<sup>5</sup> This request of the Co-Investigating Judges remained without implementation by the hospital and the Co-Investigating Judges requested the Director and the Deputy Director of the Office of Administration assistance for its effective enforcement.<sup>6</sup>
13. The Pre-Trial Chamber finds that it is the obligation of the Co-Lawyers for the Charged Person to put matters correctly before the Chamber.
14. The Request, as presented, does not fall under the scope of the Appeal and the Pre-Trial Chamber has no jurisdiction outside the scope of the Appeal before the Chamber to order as requested to, in its effect, enforce the request of the Co-Investigating Judges.

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

**REJECTS** the Request for an Order to Calmette Hospital to Immediately Disclose Medical Records and a List of Treating Physicians for Mr. Ieng Sary.       

Phnom Penh, 30 March 2009

**President of the Pre-Trial Chamber**



**PRAK KIMSAN**

<sup>3</sup> Written Version of Oral Decision of 26 February 2009 on the Requests presented before the Pre-Trial Chamber during the hearing held on 26 February 2009, C22/5/24, 27 February 2009.

<sup>4</sup> Co-Prosecutors Response to Ieng Sary's Application seeking an order to the Calmette Hospital for the Disclosure of Ieng Sary's Medical Record and Other Information, 10 March 2009, C22/5/27, p.2.

<sup>5</sup> Letters from the Co-Investigating Judges to the Director of Calmette Hospital with subject: Co-Lawyers Visiting Rights in Case of Transfer to Hospital, 10 July 2008 (A192/II) and 19 June 2008 (A 192).

<sup>6</sup> Letters from the Co-Investigating Judges to the Director and Deputy Director of the Office of Administration with subject: Access to Client at Hospital, Consultation of Medical Documents and Names of the Doctors by the Defence, 21 August 2008 (A192/V/1) and 8 August 2008 (A192/IV).