

BEFORE THE PRE-TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Criminal Case File N°: 002/19-09-2007-ECCC/OCIJ(PIC)  
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**IENG SARY'S RESPONSE TO THE PRE-TRIAL CHAMBER'S DIRECTIONS ON  
 16 JUNE 2009 CONCERNING THE ADMISSIBILITY OF THE APPEAL  
 CONCERNING ONGOING ALLEGATIONS OF CORRUPTION**

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Distributed to:

**The Pre-Trial Chamber Judges:**  
 Judge PRAK Kimsan  
 Judge NEY Thoi  
 Judge HUOT Vuthy  
 Judge Katinka LAHUIS  
 Judge Rowan DOWNING

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**Defence for Nuon Chea**  
**Defence for Khieu Samphan**  
**Defence for Ieng Thirith**

**Civil Party Lawyers**

**ឯកសារដើម**  
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1. Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby responds to the Pre-Trial Chamber’s Directions of 16 June 2009 concerning the admissibility of the Defence’s Appeal Against the Co-Investigating Judges’ Order on Request for Investigative Action Regarding Ongoing Allegations of Corruption.<sup>1</sup> For the following reasons, there is no issue of admissibility in this case.
2. Separate appeals against the Co-Investigating Judges’ (“OCIJ”) denial of Nuon Chea’s investigative request for the OIOS Report on corruption were filed by NUON Chea,<sup>2</sup> IENG Sary,<sup>3</sup> KHIEU Samphan<sup>4</sup> and IENG Thirith<sup>5</sup> (“Defence Appeals”). In their joint response to these appeals, filed in the four separate appeal case files, the Co-Prosecutors explicitly stated that they “do not take any position on the issue of standing of IENG Sary, IENG Thirith and KHIEU Samphan to file their Appeals, or the admissibility of those Appeals.”<sup>6</sup> Therefore, far from “submitting arguments in respect of the admissibility of the Appeal” as the Pre-Trial Chamber suggests,<sup>7</sup> the Co-Prosecutors appear to have accepted that the appeal is admissible and that each Defence team has standing to file its brief before the Pre-Trial Chamber.
3. The issue of the OCIJ’s jurisdiction, which the Co-Prosecutors’ do address,<sup>8</sup> is a substantive issue that will be a central element of the oral hearing requested by the Defence teams,<sup>9</sup> an oral hearing which is yet to take place.<sup>10</sup> The OCIJ’s jurisdiction with

<sup>1</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ(PTC20), Directions to the Co-Lawyers for the Charged Person Concerning “Co-Prosecutors’ Joint Response to the Defence Appeals Against the Co-Investigating Judges’ Order Denying Request for Investigative Action Regarding Ongoing Allegations of Administrative Corruption”, 16 June 2009 (“Directions”)

<sup>2</sup> *Case of Nuon Chea*, 002/19-09-2007-ECCC/OCIJ(PTC21), Appeal Against Order on Eleventh Request for Investigative Action, 4 May 2009 (“NUON Chea Appeal”).

<sup>3</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ(PTC20), Ieng Sary’s Appeal Against the Co-Investigating Judges’ Order On Request for Investigative Action Regarding Ongoing Allegations of Corruption & Request for an Expedited Oral Hearing, 4 May 2009 (“IENG Sary Appeal”).

<sup>4</sup> *Case of KHIEU Samphan*, 002/19-09-2007-ECCC/OCIJ(PTC22), Appel de la Defense to M. Khieu Samphan Contre L’Ordonnance des Co-Juges d’Instruction sur Demande d’Acte d’Instruction en date du 3 Avril 2009, 4 May 2009.

<sup>5</sup> *Case of IENG Thirith*, 002/19-09-2007-ECCC/OCIJ(PTC19), IENG Thirith Appeal Against the Order of the Co-Investigating Judges “Order on Request for Investigative Action” of 3 April 2009, 4 May 2009.

<sup>6</sup> *Case of Nuon Chea*, 002/19-09-2007-ECCC/OCIJ(PTC21), Co-Prosecutors’ Joint Response to the Defence Appeals Against the Co-Investigating Judges’ Order Denying Request for Investigative Action Regarding Ongoing Allegations of Administrative Corruption, 29 May 2009, para. 14 (emphasis added) (“OCP Joint Response”).

<sup>7</sup> Directions, para. 2.

<sup>8</sup> OCP Joint Response, paras. 54-57 (statutory jurisdiction) and 62-64 (inherent jurisdiction).

<sup>9</sup> See IENG Sary Appeal, paras. 9-12; NUON Chea Appeal, para. 35.

<sup>10</sup> An oral hearing was requested by the Defence for the week of 1-5 June 2009. See IENG Sary Appeal, p. 22. However, no oral hearing on any issue was held during that week.



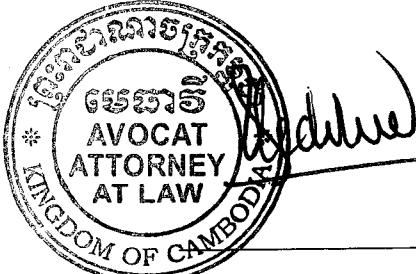
regards to investigative requests is a complex matter which goes to the very core of the issue on appeal, namely the effect of administrative and judicial corruption on the fairness of proceedings. Only a full and transparent discussion in a public oral hearing will be sufficient to adequately address this issue and restore public faith in the fairness and integrity of judicial proceedings at the ECCC. This issue does not, however, affect the admissibility of the appeal and must not be confused with it.

4. Finally, it bears recalling that if the Defence Appeals are declared inadmissible, the Pre-Trial Chamber would be effectively depriving the Charged Persons of any avenue for finding out whether the fairness of the entire judicial process is tainted. Such a conclusion flies in the face of the expressed reference to “international standards” of justice in the Preamble to the Internal Rules.

**WHEREFORE**, for all of the reasons stated herein, the Defence respectfully requests the Pre-Trial Chamber to:

- A. DECLARE the Defence Appeals to be admissible; and
- B. SCHEDULE an oral hearing on the Defence Appeals as expeditiously as possible.

Respectfully submitted,



ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 19<sup>th</sup> day of June, 2009