

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for IENG Sary**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 31 March 2011**CLASSIFICATION****Classification of the document
suggested by the filing party:** PUBLIC**Classification by OCIJ
or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

**IENG SARY'S REQUEST FOR CLARIFICATION AS TO WHETHER DECISIONS
AND ORDERS ARE BEING TAKEN BY THE FULL TRIAL CHAMBER**

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The Trial Chamber Judges:
Judge NIL Nonn
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Judge YA Sokhan
Judge Silvia CARTWRIGHT
Judge Jean-Marc LAVERGNE
Reserve Judge YOU Ottara
Reserve Judge Claudia FENZ

Co-Prosecutors:
CHEA Leang
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All Defence Teams**All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby requests clarification as to whether Decisions and Orders of the Trial Chamber are being taken by the full Chamber, as required by the Agreement and Establishment Law. This motion is made necessary because it appears that all Orders and Decisions of the Chamber in Case 002 have been issued in the name of Presiding Judge Nil Nonn alone. It is unclear whether Judge Nil Nonn is issuing these Orders and Decisions on behalf of the entire Chamber after full deliberation by all the Judges of the Trial Chamber.

I. APPLICABLE LAW

1. Article 4 of the Agreement states:

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:
 - a. A decision by the Trial Chamber shall require the affirmative vote of at least four judges; ...
2. When there is no unanimity, the decision of the Chamber shall contain the views of the majority and the minority.

2. Article 14 new of the Establishment Law states:

1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:
 - a. a decision by the Extraordinary Chamber of the trial court shall require the affirmative vote of at least four judges;...
2. When there is no unanimity, the decision of the Extraordinary Chambers shall contain the opinions of the majority and the minority.

II. ARGUMENT

3. The Agreement and Establishment Law are clear that decisions by the Trial Chamber require an affirmative vote of at least four judges. However, most Decisions issued in Case 002 have been signed by Judge Nil Nonn alone.¹ Sometimes Decisions are issued in the form of memoranda which state that they are from Judge Nil Nonn,² or from Senior Legal Officer Susan Lamb.³ It is therefore unclear whether the Judges have been

¹ See, e.g., *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Decision on Requests for Extension of Time to File Lists of Documents and Exhibits, 29 March 2011, E9/16/4, ERN: 00657167-00657169.

² See, e.g., *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Trial Chamber’s Disposition of Requests for Extension of Deadlines (E9/7 and E9/4/9), 28 February 2011, E9/7/1, ERN: 00648637-00648637; *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Memorandum on IENG Sary request to file motion seeking “confirmation that he will be entitled to present oral arguments at the initial hearing concerning each of his preliminary objections”, 16 March 2011, E65/1, ERN: 00651599-00651600.

³ *Case of NUON Chea*, 002/19-09-2007-ECCC/TC, Interoffice Memorandum from Susan Lamb, Senior Legal Officer – Trial Chamber – to all Parties in Case 002, Advance Notification of Chamber’s disposition of Motions E14, E15, E9/2, E9/3, E/24 and E27, 3 February 2011, E35, ERN: 00642291-00642292; *Case of NUON Chea*, 002/19-09-2007-ECCC/TC, Memorandum – Trial Chamber, Re: Interim Procedure Before the Trial Chamber where Translation Constraints Preclude Compliance by the Parties with Filing Deadlines, 8 February 2011, E35, ERN: 00642291-00642292.

informed and have fully deliberated and voted upon Decisions which are signed by Judge Nil Nonn alone. If Decisions are not issued on behalf of the entire Chamber, they are not valid.

4. Although the Agreement and Establishment Law are silent as to whether Orders must be voted upon and require an affirmative vote of at least four Trial Chamber Judges, there is no reason that Orders should be treated differently from Decisions. It appears that no Orders in Case 002 have been signed by all the Trial Chamber Judges. Instead, Judge Nil Nonn has signed these alone.⁴ The Defence respectfully requests clarification as to whether the Trial Chamber considers that Orders may be issued by one Judge alone and clarification as to whether the Orders the Trial Chamber has issued have been issued on behalf of the entire Chamber.

III. RELIEF REQUESTED

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to CLARIFY whether:

- a. All Decisions have been made on behalf of the entire Chamber;
- b. Orders may be issued by a single Judge; and
- c. All Orders have been issued on behalf of the entire Chamber.

Respectfully submitted,



ANG Udom





Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 31st day of March, 2011

⁴ See *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Order to File Materials in Preparation for Trial, 17 January 2011, E9, ERN: 00635754-00635759; *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Order to IENG Sary Defence on Filing of Preliminary Objections, 25 February 2011, E51/6, ERN: 00648420-00648421.

