

ក្រុមមេធាវីការពារក្តី អៀង សារី
IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

1 December 2011

To: **Susan Lamb**
 Trial Chamber Senior Legal Officer

Cc: **All Defence Teams**
Office of the Co-Prosecutors
All Civil Parties
DSS

Re: **Request for clarification concerning Trial Chamber's procedure for considering motions**

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date of receipt/Date de reception): 16/12/2011
ម៉ោង (Time/Heure): 10:20
មន្ត្រីមជ្ឈមណ្ឌលឯកសាររឿង/Case File Officer/L'agent chargé du dossier: UOH ARUM

សាធារណៈ / Public

Dear Ms. Lamb,

Today we received an email from you wherein you noted that the Trial Chamber has decided on the NUON Chea Defence team's Urgent Application for the Disqualification of Judge Cartwright ("NUON Chea Application").¹ We assume our Request for Investigation Concerning *Ex Parte* Communications between the International Co-Prosecutor, Judge Cartwright and others has or will suffer the same fate. The timing of the Trial Chamber's decision causes some concern. Consider the following timeline:

- On 22 November 2011, the NUON Chea Application was notified to the parties in English and Khmer.
- On 25 November, the parties were notified in English and Khmer of our Request for Investigation Concerning *Ex Parte* Communications between the International Co-Prosecutor, Judge Cartwright and others.²
- On 29 November 2011 at 3:42p, the OCP emailed you and the parties a courtesy copy of its Joint Response to the NUON Chea Application and our Request.³ This courtesy copy was sent in English only. The Response has yet to be notified to the parties.

¹ Email from Trial Chamber Senior Legal Officer Susan Lamb to Andrew Ianuzzi copied to all parties entitled "Re: Request for Leave to File a Reply to the Co-Prosecutors' Joint Response to Nuon Chea's Rule 34 Disqualification Request and Ieng Sary's Rule 35 Investigation Request", 1 December 2011.

² IENG Sary's Request for Investigation Concerning *Ex Parte* Communications between the International Co-Prosecutor, Judge Cartwright and others, 24 November 2011, E137/3. This filing, in slightly modified form, was circulated to the parties in English only on 18 November 2011.

- On 29 November 2011, the NUON Chea Defence sent an email to you querying whether the Trial Chamber would accept a reply to the OCP's Response.⁴
- On 30 November 2011, we submitted a letter with detailed reasoning requesting leave to file a reply to the OCP's Response.⁵ Our Request for Leave was sent in English only, as you have requested in the past.⁶
- On 1 December 2011, the NUON Chea Defence sent another email to you regarding whether replies would be accepted, explaining that it would be "grateful for an indication as soon as possible given the busy days ahead."⁷
- On this same date, you responded to the NUON Chea Defence: "From our perspective, replies would not be an optimal use of resources by the parties, on grounds that the disqualification decision has since been concluded and is presently undergoing translation."⁸ You responded to us: "Leave to file replies have not been granted to the parties in this instance."⁹

If the Trial Chamber's Decision is already in translation, it must have been prepared prior to receiving the courtesy copy of the OCP's Response, which was circulated less than 48 hours ago. If the Trial Chamber's Decision was made after consideration of the OCP's courtesy copy, the Decision must have been taken without the full participation of the Cambodian Trial Chamber Judges, as the courtesy copy was provided in English only.

We request clarification of the Trial Chamber's procedure for deciding applications and motions. Parties must be permitted to respond to the applications and motions of other parties prior to any decision being taken by the Trial Chamber. Furthermore, the Trial Chamber as a whole must be engaged in the deliberation process. How can this be the case if decisions are made prior to the relevant filings being notified in Khmer?

³ Email from OCP Greffier Sochea Phann to Trial Chamber Senior Legal Officer Susan Lamb copied to the Defence teams entitled "Courtesy Copy: Co-Prosecutors' Joint Response to Nuon Chea's Rule 34 Disqualification Request and Ieng Sary's Rule 35 Investigation Request", 29 November 2011.

⁴ Email from Andrew Ianuzzi to Trial Chamber Senior Legal Officer entitled "Fw: Courtesy Copy: Co-Prosecutors' Joint Response to Nuon Chea's Rule 34 Disqualification Request and Ieng Sary's Rule 35 Investigation Request", 29 November 2011.

⁵ Email from Tanya Pettay to Trial Chamber Senior Legal Officer Susan Lamb copied to all parties entitled "IENG Sary's Request for Leave to Reply", 30 November 2011.

⁶ Email from Trial Chamber Senior Legal Officer Susan Lamb to OCP copied to all the parties entitled "Re: Co-Prosecutors Leave to Reply to Ieng Sary and Nuon Chea's Responses to the Co-Prosecutors Motion for Reconsideration of the Terms of the Severance Order with Khmer translation", 18 October 2011.


⁷ Email from Andrew Ianuzzi to Trial Chamber Senior Legal Officer Susan Lamb copied to all parties entitled "Re: Request for Leave to File a Reply to the Co-Prosecutors' Joint Response to Nuon Chea's Rule 34 Disqualification Request and Ieng Sary's Rule 35 Investigation Request", 1 December 2011.

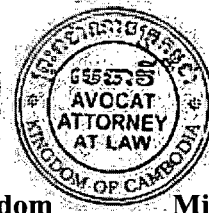
⁸ Email from Trial Chamber Senior Legal Officer Susan Lamb to Andrew Ianuzzi copied to all parties entitled "Re: Request for Leave to File a Reply to the Co-Prosecutors' Joint Response to Nuon Chea's Rule 34 Disqualification Request and Ieng Sary's Rule 35 Investigation Request", 1 December 2011.

⁹ Email from Trial Chamber Senior Legal Officer Susan Lamb to Tanya Pettay copied to all parties entitled "Re: IENG Sary's Request for Leave to Reply", 1 December 2011.

For the purpose of transparency, we respectfully request that the President of the Trial Chamber issue a formal memorandum on behalf of the Trial Chamber explaining this matter. We also request that this letter be placed on the Case File.

Respectfully submitted,


ANG Udom


Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary