



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

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ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៨/អវតក/អជសដ

Case File/Dossier No. 001/18-07-2007/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: 3 July 2009

Classification: PUBLIC

ឯកសារបានចម្លងត្រឹមត្រូវតាមច្បាប់ដើម
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DECISION ON IENG SARY'S REQUEST TO MAKE SUBMISSIONS IN RESPONSE TO THE CO-PROSECUTORS' REQUEST FOR THE APPLICATION OF JOINT CRIMINAL ENTERPRISE

Co-Prosecutors

CHEA Leang
Robert PETIT

Accused

KAING Guek Eav alias "DUCH"

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THE TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”);

BEING SEISED of Case File No. 001/18-07-2007-ECCC/TC pursuant to the “Decision on Appeal Against the Closing Order Indicting Kaing Guek Eav Alias Duch,” rendered orally by the Pre-Trial Chamber on 5 December 2008 and filed in Khmer on 9 December 2008;

HAVING RECEIVED the “Co-Prosecutors Request for the Application of Joint Criminal Enterprise” filed by the Co-Prosecutors on 8 June 2009 (“Co-Prosecutors’ Application”);¹

HAVING RECEIVED the “Ieng Sary Expedited Request to Make Submissions in Response to the Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise in the Case of Mr. Kaing Guek Eav ‘Duch’” presented for filing by the Defence for Mr. Ieng Sary, a charged person in Case File 002/19-09-2007-ECCC/OCIJ currently before the Office of the Co-Investigating Judges, on 17 June 2009 (“Request”).²

HEREBY ISSUES THE FOLLOWING DECISION

A. BACKGROUND

1. On 8 June 2009, the Co-Prosecutors filed a request for the application of Joint Criminal Enterprise (“JCE”) as a mode of criminal liability in Case File 001 for the crimes committed by the Accused Kaing Guek Eav only at Security Office S-21.

B. SUBMISSIONS

2. Ieng Sary, a charged person in Case File 002, requests to be allowed to make written submissions before this Trial Chamber in response to the Co-Prosecutors’ Application.³ The Ieng Sary Defence argues that the application of JCE at the ECCC fundamentally affects Mr. Ieng Sary because he is alleged to be part of the same “common criminal plan” as Mr. Kaing Guek Eav and, notwithstanding the formal separation of Case File No. 001/18-07-2007-ECCC/TC and Case File 002/19-09-2007-ECCC/OCIJ, these Cases are inextricably linked and Mr. Ieng Sary has a clear interest in the outcome of the Co-Prosecutors’ Application.

¹ “Co-Prosecutors Request for the Application of Joint Criminal Enterprise”, 8 June 2009, (Document E73).

² “Ieng Sary Expedited Request to Make Submissions in Response to the Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise in the Case of Kaing Guek Eav “Duch”, 17 June 2009.

³ Written submissions are attached to the Request as annexes A and B, respectively. These submissions are prior filings by the Ieng Sary Defence in Case File 002/19-09-2007-ECCC/OCIJ (“Written Submissions”).

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C. DELIBERATIONS

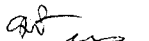
3. Ieng Sary is not a party to Case File No. 001/18-07-2007-ECCC/TC and, therefore, he has no formal standing to file the Request and the Written Submission annexed thereto.⁴ The indication by the Ieng Sary Defence concerning their legal interest in the outcome of the Co-Prosecutors' Application does not in itself, suffice for it to be permitted to file submissions in this case.

4. In particular, the Ieng Sary Defence submits that denying its Request would violate its procedural right to equality of arms.⁵ Equality of arms is the principle in law that, in a trial, the defence and the prosecution must have procedural equality to ensure that the conduct of judicial proceedings is fair.⁶ However, while the fundamental nature of this principle is acknowledged in the Internal Rules and by this Chamber, its application extends only to the parties in a discrete case.⁷ The principle of equality of arms cannot be applied to parties in separate and distinct trials.

D. DECISION

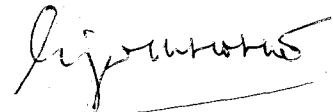
FOR THE FOREGOING REASONS, the Trial Chamber

REJECTS the filing of the Request and of the Written Submissions annexed thereto;

ORDERS the Court Management Section to notify the present Decision to the Ieng Sary Defence. 

Phnom Penh, 3 July 2009

President of the Trial Chamber



⁴ Internal Rule 92 allows only a party to the proceeding to file written submissions before the Court, up to the closing statements.

⁵ Ieng Sary Request, paras 8-12.

⁶ See *Prosecutor v. Taylor*, SCSL-03-01-T, Appeals Chamber, "Decision on Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009", 23 June 2009, paras 16-18 and jurisprudence cited therein.

⁷ See for instance, the jurisprudence relied upon by the Ieng Sary Defence, which supports that equality of arms applies between the parties of a case. *Prosecutor v. Tadic*, IT-94-1-A, Appeals Chamber Judgment, 15 July 1999, paras 48-52 (cited at footnote 24 of the Request).