



KRT rules on legal doctrine

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JUDGES at the Khmer Rouge tribunal on Thursday partially granted an appeal by defence teams against the use of Joint Criminal Enterprise (JCE), a controversial kind of criminal liability that could aid the prosecution at trial.

In a decision dated Thursday, the court's Pre-Trial Chamber ruled on the use of the three forms of JCE in Case 002, upholding the use of types I and II but rejecting the third and most far-reaching.

Though Pre-Trial Chamber decisions cannot be appealed, the issue may be raised again before the Trial Chamber. Case 002 is expected to go before the Trial Chamber in early 2011.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said that even though the Trial Chamber is not bound by the 69-page decision, it may nonetheless "find it very persuasive".

Michael Karnavas, the international co-lawyer for Ieng Sary, called the ruling a "wise and courageous decision" in an email on Thursday.

The court's Co-Investigating Judges ruled in December that JCE, under which suspects can be held responsible for crimes committed as part of a common plan, could be applicable for international criminal charges at the tribunal.

The first form of JCE may apply when participants share intent to commit a crime, the second when a criminal plan is implemented in "a common concerted system of ill-treatment", and the third when crimes occur as a "natural and foreseeable" consequence of a common plan.

Under the third form, for example, four people who plan to rob a bank together could all be charged with murder if one of them shoots a security guard, even if this shooting was not part of the original plan.

The Pre-Trial Chamber said Thursday that this third form was not "part of customary international law at the time relevant to Case 002", and thus should not

be applied.

Heindel said the third form of JCE could play a crucial role in the prosecution's Case 002 argument if its use is permitted.

"The whole reason you have JCE III is so that you can make that link between senior leaders and lower-level perpetrators," she said. "If this is the final ruling, it will make it much harder for the prosecution to tell the full story of all the crimes that happened in Cambodia and to link what happened at the lower level to the centre."