



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

០០២/No: D427/1/26

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Criminal Case File No: 002/19-09-2007-ECCC/OCIJ (PTC75)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Katinka LAHUIS
Judge HUOT Vuthy

Date: 13 January 2011

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ម៉ោង (Time/Heure) 11:00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/Agent chargé du dossier: Ratanak

PUBLIC

DECISION ON IENG SARY'S APPEAL AGAINST THE CLOSING ORDER

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

IENG Sary

Lawyers for the Civil Parties

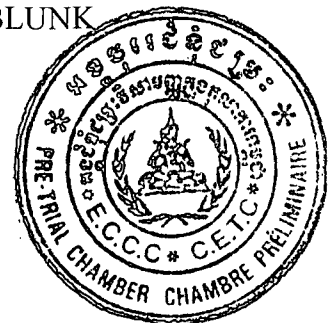
LOR Chhunthy
Kong Pisey
HONG Kim Suon
YUNG Phanit
KIM Mengkhy
MOCH Sovannary
Martine JACQUIN
Philippe CANONNE
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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seized of “Ieng Sary’s Appeal against the [Co-Investigating Judges]’ Closing Order (the “Ieng Sary Appeal”),¹ filed on 25 October 2010.

The Appeal is submitted on the following grounds:

Ground One: The OCIJ erred in law by holding that the principle of *ne bis in idem* does not bar Ieng Sary’s current prosecution.²

Ground Two: The OCIJ erred in law by holding that Ieng Sary’s validly granted RPA does not bar the current prosecution.³

Ground Three: The OCIJ erred in law by holding that the ECCC has jurisdiction to apply international crimes and forms of liability as doing so would violate the principle *nullum crimen sine lege*.⁴

Ground Four: The OCIJ erred in law by holding that the ECCC has jurisdiction to apply grave breaches of the Geneva Conventions despite the statute of limitations.⁵

Ground Five: The OCIJ erred in law by holding that the ECCC has jurisdiction to apply Article 3 new (National Crimes).⁶

Ground Six: The OCIJ erred in law in its application of genocide, should it be found to be applicable at the ECCC.⁷

Ground Seven: The OCIJ erred in law in its application of crimes against humanity, should they be found to be applicable at the ECCC.⁸

Ground Eight: The OCIJ erred in Law in its application of grave breaches, should they be found to be applicable at the ECCC.⁹

Ground Nine: The OCIJ erred in law in its application of JCE.¹⁰

Ground Ten: The OCIJ erred in law in its application of planning, instigating, ordering, and aiding and abetting.¹¹

¹ Ieng Sary’s Appeal Against the Closing Order, 25 October 2010, D427/1/6 (“Ieng Sary Appeal”).

² Ieng Sary Appeal, paras. 21 – 41.

³ Ieng Sary Appeal, paras. 42 – 102.

⁴ Ieng Sary Appeal, paras. 103 – 135.

⁵ Ieng Sary Appeal, paras. 136 – 137.

⁶ Ieng Sary Appeal, paras. 138 – 179.

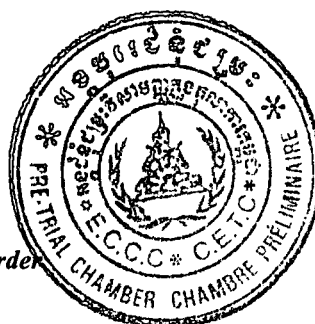
⁷ Ieng Sary Appeal, paras. 180 – 183.

⁸ Ieng Sary Appeal, paras. 184 – 231.

⁹ Ieng Sary Appeal, paras. 232 – 248.

¹⁰ Ieng Sary Appeal, paras. 249 – 272.

¹¹ Ieng Sary Appeal, paras. 273 – 282.



Ground Eleven: The OCIJ erred in law by holding that the ECCC has jurisdiction to apply command responsibility and in its application of command responsibility should it be found to be applicable at the ECCC.¹²

The Pre-Trial Chamber has determined the final disposition of the Appeal, which it hereby pronounces. The reasons for this decision shall follow in due course.

THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY:

1. The Appeal is admissible in its form;
2. Grounds one, two, three, five, seven (partially) and eleven (partially) are admissible. The rest of the grounds of this appeal are inadmissible.
3. Ground one is dismissed;
4. Ground two is dismissed;
5. Ground three is dismissed;
6. Ground five is dismissed;
7. Ground seven, as far as it is admissible, is granted in part as follows and is otherwise dismissed:
 1. This ground of Appeal is granted in so far as the Co-Lawyers assert that the Co-Investigating Judges erred by failing to consider that during the temporal jurisdiction of the ECCC, international customary law required a nexus between the underlying acts of crimes against humanity and an armed conflict . The “existence of a nexus between the underlying acts and the armed conflict” is added to the “Chapeau” requirements in Chapter IV(A) of Part Three of the Closing Order.
 2. This ground of Appeal is granted in so far as the Co-Lawyers argue that rape did not exist as a crime against humanity in its own right in 1975-1979. Therefore, the Pre-Trial Chamber decides to strike rape out of paragraph 1613 (Crimes Against Humanity, paragraph (g)) of the Closing Order and to uphold the Co-Investigating Judges finding in paragraph 1433 of the Closing Order that the facts characterized as crimes against humanity in the form of rape can be categorized as crimes against humanity of other inhumane acts.
8. Ground eleven, as far as it is admissible, is dismissed;
9. The Appeal is otherwise dismissed;

¹² Ieng Sary Appeal, paras. 283 – 324.



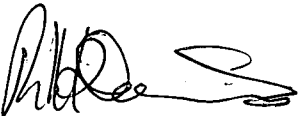
10. The Accused Person is indicted and ordered to be sent for trial as provided in the Closing Order being read in conjunction with this decision;
11. The provisional detention of the Accused Person is ordered to continue until he is brought before the Trial Chamber.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 13 January 2011 ^{CR}


Pre-Trial Chamber

President


Rowan DOWNING


NEY Thol


Katinka LAHUIS


HUOT Vuthy


PRAK Kimsan

