



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

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

អង្គជំនុំជម្រះតុលាការអំពូល

Supreme Court Chamber
Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Mar-2012, 16:53
Sann Rada
CMS/CFD:.....

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(១១)

Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(11)

Before: Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Chandra Nihal JAYASINGHE
Judge YA Narin

Date: 20 March 2012
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DECISION ON IENG SARY’S APPEAL AGAINST TRIAL CHAMBER’S DECISION ON IENG SARY’S RULE 89 PRELIMINARY OBJECTIONS (*NE BIS IN IDEM* AND AMNESTY AND PARDON)

Co-Lawyers for the Accused
ANG Udom
Michael G. KARNAVAS

Accused
IENG Sary

Civil Parties Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”):

BEING SEISED of an appeal filed by the Co-Lawyers for the Accused, IENG Sary, (“Appeal”)¹ against the decision of the Trial Chamber rejecting the Accused’s preliminary objection to the jurisdiction of the ECCC on the basis of the principle of *res judicata* under Cambodian law, *ne bis in idem* under Article 14(7) of the International Covenant on Civil and Political Rights, and the Royal Pardon and Amnesty granted to the Accused by King Father Sihanouk in 1996;²

CONSIDERING the text of Internal Rule 104(4)(a), which grants to the parties a right of appeal against decisions that “have the effect of terminating the proceedings”;

CONSIDERING the argument advanced by the Defence that the Appeal is admissible because the Co-Prosecutors would have had the right to file an immediate appeal under Internal Rule 104(4)(a) had the Trial Chamber ruled in favour of the Defence, and that the equality of arms requires that the defence have the same right of appeal;³

CONSIDERING the jurisprudence of the Chamber establishing that Internal Rule 104(4)(a) contemplates appeals only against decisions that have the effect of terminating the proceedings,⁴ as opposed to all decisions concerning ECCC jurisdiction;

NOTING the jurisprudence of the Chamber establishing that Internal Rule 104 is not inconsistent with the equality of arms because the Accused will have an opportunity to appeal the findings in the Impugned Decision as a part of its appeal against the judgement;⁵

NOTING that there is no general right to interlocutory appeal;⁶

¹ IENG Sary’s Appeal Against the Trial Chamber’s Decision on Ieng Sary’s Rule 89 Preliminary Objections (*Ne Bis in Idem* and Amnesty and Pardon), 5 December 2011, E51/15/1/1.

² Decision on Ieng Sary’s Rule 89 Preliminary Objections (*Ne Bis in Idem* and Amnesty and Pardon), 3 November 2011, E51/15 (“Impugned Decision”).

³ Appeal, paras 7-9.

⁴ Decision on IENG Sary’s Appeal Against Trial Chamber’s Decision on Co-Prosecutors’ Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, 19 March 2012, E95/8/1/4 (“Nexus Appeal Decision”), para. 8.

⁵ Nexus Appeal Decision, para. 9.

⁶ *Prosecutor v. Norman*, SCSL-2003-08-PT, “Decision on the Application for a Stay of Proceedings and Denial of Right to Appeal”, Appeals Chamber, 4 November 2003, paras 18-25 (right under Article 14(5) of the International Covenant on Civil and Political Rights applies to final conviction and sentence).

FOR THE FOREGOING REASONS the Supreme Court Chamber (Judges KLONOWIECKA-MILART and JAYASINGHE dissenting):

DECIDES to reject the Appeal as inadmissible.

A separate dissenting opinion by Judges KLONOWIECKA-MILART and JAYASINGHE will follow in due course.



Phnom Penh, 20 March 2012
President of the Supreme Court Chamber

Kong Srim