



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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

- 5 -

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.

Case File N° 002/07-12-2009-ECCC/PTC(06)

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

Date: 29 March 2010

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CONFIDENTIAL

DECISION ON IENG SARY'S RULE 35 APPLICATION FOR JUDGE MARCEL LEMONDE'S DISQUALIFICATION

Co-Prosecutors

CHEA Leang
Andrew CAYLEY
YET Chakriya
William SMITH
SENG Bunkheang
Anees AHMED

សាធារណៈ / Public

06/04/2010 *Chanvath*

Charged Person

IENG Sary

ឯកសារចម្លងត្រូវបានបញ្ជាក់ដោយផ្លូវការ	
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME	
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Co-Investigating Judge

Marcel LEMONDE

Co-Lawyers for the Charged Person

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), is seized of a “Rule 35 Application for Judge Marcel Lemonde’s Disqualification” (“the Application”) filed by the Co-Lawyers for Ieng Sary (“the Charged Person”).

I. INTRODUCTION

1. The Co-Lawyers for the Charged Person on 7 December 2009 filed the Application.¹
2. Judge Marcel Lemonde on 15 December 2009 filed a notice of intention to respond in French and a request for an extension of time in which to respond to the Application.²
3. Judge Marcel Lemonde on 4 January 2010 filed a letter (the Letter) in response to the Application.³
4. The Co-Prosecutors on 4 January 2010 filed observations in respect of the Application,⁴ requesting that the Pre-Trial Chamber dismiss the Application.

II. ADMISSIBILITY OF THE APPLICATION

5. The Application seeks the disqualification of Judge Lemonde as a sanction pursuant to Internal Rule 35 based on acts of alleged interference in the administration of justice. The Pre-Trial Chamber has therefore given consideration to whether Internal Rule 35 can be applied to a judge.
6. The Charged Person makes no submissions in respect of the admissibility of the Application.

¹ “Ieng Sary’s Rule 35 Application for Judge Marcel Lemonde’s Disqualification”, 7 December 2009, Case No. 002/07-12-2009-ECCC/PTC(06) doc. no. 1 (the “Application”).

² “Notification de Langues de Dépôt et de Réception de Documents et Demande d’Extension de Délai Pour Répondre aux Demandes”, 15 December 2009, Case No. 002/07-12-2009-ECCC/PTC(06) doc. no. 2.

³ “Letter”, doc no. 3 (no case number is mentioned on the document).

⁴ “Co-Prosecutors’ Observations on Ieng Sary’s Rule 35 Application for the Disqualification of the International Co-Investigating Judge”, Case No. 002/07-12-2009-ECCC/PTC(06) doc. no. 4 (the “Co-Prosecutors’ Response”).



7. The Co-Prosecutors submit that the Application is wrongly filed as “[t]he basic documents of this Court do not permit an application for sanctions against a Co-Investigating Judge to be filed automatically before the Pre-Trial Chamber”. They go on to observe that even if the allegation were true, such staff grievances are best dealt with by the appropriate United Nations mechanisms⁵.
8. The immunities in respect of the international judges of the ECCC and the national judges of the ECCC come about by the operation of Article 19 and Article 20 respectively of the Agreement Between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea (“Agreement”). Similar provisions are included in the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the Period of the Democratic Kampuchea.⁶
9. Article 19 of the Agreement provides that:
- “The international judges, the international co-investigating judge, the international co-prosecutor and the Deputy Director of the Office of Administration, together with their families forming part of their household, shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations [...]”
10. According to Article 20 of the Agreement:
- “Cambodian judges, the Cambodian co-investigating judge, the Cambodian co-prosecutor and other Cambodian personnel shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacities under the present Agreement. Such immunity shall continue to be accorded after termination of employment with the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration.”
11. There is no prescribed jurisdiction for any of the Chambers of the ECCC to deal with disciplinary matters in respect of any of the judges of the ECCC. The only jurisdiction

⁵ Co-Prosecutors’ Response, par. 5 and 11.

⁶ Cf. Articles 41 and 42 new of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the Period of the Democratic Kampuchea.



considering behaviour of judges in their own cases is the provision in Internal Rule 34 which prescribes the jurisdiction for applications filed for disqualification of judges when a judge has in any case a personal or financial interest or concerning which the judge has, or has had, any association which objectively give rise to appearance of bias.

12. The Pre-Trial Chamber has found no provisions in the Cambodian Criminal Procedure concerning jurisdiction on alleged acts of judges amounting to interference with the administration of justice where behaviour of judges in their own cases is involved.
13. The Pre-Trial Chamber further notes that there are no provisions in procedural rules established at the international level and it further has not found any jurisprudence from international tribunals which provides for jurisdiction to sanction judges for behaviour amounting to interference with the administration of justice. Similarly to the provisions in the ECCC the only provisions concerning the acts of judges in their cases can be challenged in an application for disqualification. The provisions in the Internal Rules are therefore consistent with international standards.
14. As the Application seeks the disqualification of Judge Lemonde as a sanction pursuant to Internal Rule 35 based on behaviour of the judge in his cases qualified by the Co-Lawyers as amounting to the interference of justice it is therefore not admissible.
15. The Pre-Trial Chamber further observes that the Co-Lawyers have filed applications for disqualification of Judge Lemonde under Internal Rule 34 based on similar information as provided for in the Application. This application is an attempt by the Co-Lawyers to expand the jurisdiction of the ECCC, which is rejected.



III. CONCLUSION

THEREFORE THE PRE-TRIAL CHAMBER HEREBY DECIDES UNANIMOUSLY THAT
the Application is inadmissible.


Phnom-Penh, 29 March 2010. *CR*


Pre-Trial Chamber


Rowan DOWNING


NEY Thol


Katinka LAHUIS


HUOT Vuthy


PRAK Kimsan

