

**BEFORE THE TRIAL CHAMBER  
OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**Before:** The Trial Chamber

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**Civil Party Co-Lawyers' Response to the Supplement to Rule 89 Preliminary Objection  
(Royal Pardon and Amnesty)**

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**Before:**

**The Trial Chamber**

Judge NIL Nonn, President  
Judge Silvia CARTWRIGHT  
Judge YA Sokhan  
Judge Jean-Marc LAVERGNE  
Judge THOU Mony

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**The Charged Person**

IENG Sary

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ANG Udom  
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**The other Defence teams**

## I. FACTUAL AND PROCEDURAL BACKGROUND

- 1- On 13 January 2011, the Pre-Trial Chamber sent the four Accused Persons for trial before the Trial Chamber (TC).<sup>1</sup>
- 2- On 12 May 2011, the Trial Chamber issued a memorandum permitting all parties to the proceedings to file additional submissions concerning amnesty and pardon, in which it also invited the IENG Sary Defence to clarify whether the pardon/amnesty granted to Ieng Sary are in conformity with articles 27 and 90 new of the Cambodian Constitution. Furthermore, the Trial Chamber directed the defence teams to file their submissions by 27 May 2011, and any party wishing to respond to these submissions to do so by 6 June 2011.<sup>2</sup>
- 3- On 8 June 2011 the Civil Party Lead Co-Lawyers requested that they be granted an extension of time based on Articles 8.3 and 8.5 of the Practice Direction on Filing Documents before the ECCC.
- 4- On 9 June 2011, the Trial Chamber granted the Civil Party Lawyers an additional extension of time to file a response no later than 10 June 2011.

## I. INTRODUCTION

- 5- In accordance with Internal Rule 89(2) and the Trial Chamber memorandum, the Civil Party Lawyers hereby respond to Ieng Sary's Supplement to his Rule 89 Preliminary Objection (Royal Pardon and Amnesty) with respect to terminology, the decree's conformity with the constitution, and the validity of internationally recognized *jus cogens* norms.

## II. DISCUSSION

### i. Terminology

7. The Khmer version of the Royal Pardon and Amnesty remains the primary and fundamental text in determining its conformity with the constitution. The Khmer term

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<sup>1</sup> Closing Order, 15 September 2010, D427.

<sup>2</sup> Trial Chamber Memorandum entitled "Additional preliminary objections submission (Pardon and Amnesty)", E51/8.

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“ការលើកលែងទោស *Kar leuk leng tos*”<sup>3</sup> unequivocally means “pardon” while the Khmer term “ការលើកលែងទោសជាទូទៅ *Kar leuk leng tos chea tou tov*”<sup>4</sup> means “amnesty”.

8. Article 6 of the Law to Outlaw the Democratic Kampuchea Group states that “for leaders of the “Democratic Kampuchea” group, the stay described [herein] does not apply.”
9. There is no doubt, based on the Co-Investigating Judges’ Indictment, that Mr Ieng SARY was a senior leader of Democratic Kampuchea. As such, Mr Ieng SARY could not benefit from any amnesty, and based on this fact alone, the Royal Decree of 14 September 1996 is not applicable before the ECCC.

#### **ii. Conformity of the Royal Decree with the Constitution of the Kingdom of Cambodia**

10. The Constitution provides for the separation of powers in Articles 27 and 90.

Article 27 provides: “The King shall have the right to grant partial or complete amnesty”.

Article 90 provides: “The National Assembly shall adopt the law on the general amnesty”.

11. A reading of these provisions reveals that royal pardon concerns only to the 1979 judgment on the death penalty and seizure. Granting pardon for the crimes stipulated in the Law to Outlaw the Democratic Kampuchea Group is not within the ambit of the King’s powers. Article 7 of the 1994 Law refers only to Article 27 of the Constitution. Therefore, the Royal Pardon and Amnesty is not in conformity with the Constitution.

#### **iii. Validity of the decree under international custom**

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<sup>3</sup> Article 27 of the Constitution, Khmer version.

<sup>4</sup> Article 90 new of the Constitution, and Article 7 paragraph 3 of the Cambodian Code of Criminal Procedure. Original FRENCH: 00704879-00704883

12. In any event, being an internationalized tribunal, the ECCC is empowered to decide the scope of the pardon and amnesty in question, pursuant to Article 40 of the ECCC Law of 27 October 2004.<sup>5</sup>

13. In broader terms, the crimes with which Mr IENG Sary, a senior leader of Democratic Kampuchea<sup>6</sup>, is charged before the ECCC<sup>7</sup> are within the imperative international *jus cogens* norms.

### III- CONCLUSION

14. For the foregoing reasons, the Civil Party Lead Co-Lawyers respectfully request the Trial Chamber to find the arguments raised by the Defence unjust and without merit, and to dismiss them based thereupon.

Date	Names	Place	Signatures
10 June 2011	PICH Ang National Lead Co-Lawyer	Phnom Penh	
10 June 2011	Elisabeth Simonneau-Fort International Lead Co-Lawyer	Phnom Penh	
10 June 2011	MOCH Sovannary Civil Party Lawyer	Phnom Penh	
10 June 2011	KIM Ngkhy Civil Party Lawyer	Phnom Penh	
10 June 2011	Fabienne TRUSSES NAPROUS Civil Party Lawyer	Phnom Penh	

<sup>5</sup> Law on the Establishment of the Extraordinary Chambers as amended, promulgated on 27 October 2004 (NS/RKM/1004/006), Article 40 new.

<sup>6</sup> Closing Order, 15 September 2010, D427, paras. 944-1017.

<sup>7</sup> Closing Order, 15 September 2010, D427, para. 1613.

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