

**BEFORE THE SUPREME COURT CHAMBER****EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/SC**Party Filing:** The Defence for IENG Sary**Filed to:** The Supreme Court Chamber**Original language:** ENGLISH**Date of document:** 5 December 2011**CLASSIFICATION****Classification of the document  
suggested by the filing party:** PUBLIC**Classification by OCIJ  
or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**


---

**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)**

**TABLE OF AUTHORITIES**Filed by:Distribution to:**The Co-Lawyers:**ANG Udom  
Michael G. KARNAVAS**The Supreme Court Chamber Judges:**Judge KONG Srim  
Judge SOM Sereyvuth  
Judge MONG Monichariya  
Judge YA Narin  
Judge MOTOO Noguchi  
Judge Agnieszka KLONOWIECKA-MILART  
Judge Chandra Nihal JAYASINGHE  
Reserve Judge SIN Rith  
Reserve Judge Florence MUMBA**Co-Prosecutors:**CHEA Leang  
Andrew CAYLEY**All Defence Teams****All Civil Parties**

**ECCC Law – ECCC Legal Compendium**

1. Agreement, Arts. 1, 2, 5(3), 11(2), 12(2)
2. Establishment Law, Arts. 2 new – 8, 33 new, 40 new.
3. Internal Rules, Rules 55(5), 104, 109(1).

**Cambodian Law and Jurisprudence – ECCC Legal Compendium**

4. Constitution, Arts. 7, 27, 31, 38, 90<sup>new</sup>, 136<sup>new</sup> – 140<sup>new</sup>.
5. Criminal Procedure Code, Arts. 7, 12, 291.
6. Royal Decree, NS/RKT/0996/72, 14 September 1996.
7. Decree Law No. 1: Establishment of People’s Revolutionary Tribunal at Phnom Penh to Try the Pol Pot-Ieng Sary Clique for the Crime of Genocide, 15 July 1979.
8. Judgement of the Revolutionary People’s Revolutionary Court, U.N. Doc. A/34/491, 19 August 1979.
9. Law on the Outlawing of the “Democratic Kampuchea” Group, Reach Kram No. 1, NS 94, 15 July 1994.

**ECCC Filings and Jurisprudence – Already Disclosed on the Case File**

10. Decision on IENG Sary’s Rule 89 Preliminary Objections (*Ne Bis in Idem* and Amnesty and Pardon), 3 November 2011, E51/15.
11. Decision on Immediate Appeal by KHIEU Samphan on Application for Immediate Release, 6 June 2011, E50/3/1/4, para. 31
12. Decision on IENG Sary’s Appeal Against Co-Investigating Judges’ Decision Refusing to Accept the Filing of IENG Sary’s Response to the Co-Prosecutors’ Rule 66 Final Submission and Additional Observations, and Request for Stay of Proceedings, 20 September 2010, D390/1/2/4, para. 13.
13. Decision on Khieu Samphan’s Appeal against the Order on Translation Rights and Obligations of the Parties, 20 February 2009, A190/I/20, para. 36.

14. Decision on IENG Sary's Appeal against Co-Investigating Judges' Order Denying Request to Allow Audio/Video Recording of Meetings with IENG Sary at the Detention Facility, A371/2/12, paras. 13-14.
15. Decision on IENG Sary's Appeal Against the Closing Order, 11 April 2011, D427/1/30, paras. 118-75.
16. *Case of Kaing Guek Eav*, 001/18-07-2007/ECCC/TC, Decision on Request for Release, 15 June 2009, E39/5, paras. 11-12.
17. IENG Sary's Appeal Against the Closing Order, 25 October 2010, D427/1/6, paras. 8-20, 71-72, 75-82, 126-29.
18. Decision on Appeal against Provisional Detention Order of IENG Sary, 17 October 2008, C22/I/73.
19. IENG Sary's Supplement to his Rule 89 Preliminary Objection (*Ne Bis in Idem*), 27 May 2011, E51/11, paras. 4-10.
20. IENG Sary's Supplement to His Rule 89 Preliminary Objection (Royal Pardon and Amnesty), 27 May 2011, E51/10, paras. 20-23.
21. Decision on IENG Sary's Application to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011, E5/3, paras. 14-15.
22. Police Custody Report, 15 November 2007, C14/I.
23. Provisional Detention Order, 14 November 2007, C22.
24. IENG Sary's Submissions Pursuant to the *Decision on Expedited Request of Co-Lawyers for a Reasonable Extension of Time to File Challenges to Jurisdictional Issues*, 7 April 2008, C22/I/26.
25. Closing Order, 15 September 2010, D427, paras. 1331, 1333.
26. Summary of IENG Sary's Rule 89 Preliminary Objections & Notice of Intent of Noncompliance with Future Informal Memoranda Issued in lieu of Reasoned Judicial Decisions Subject to Appellate Review, 25 February 2011, E51/4.

27. IENG Sary's statement as to the scope of, intention behind and background to the Royal Amnesty and Pardon, 9 May 2011, E84.
28. IENG Sary's Motion to Summon King Father Norodom Sihanouk, Prime Minister Hun Sen, Prince Norodom Ranariddh and Samdech Chea Sim, 9 May 2011, E85.
29. Trial Chamber Memorandum re: Additional preliminary objections submissions (amnesty and pardon), 12 May 2011, E51/8; Trial Chamber Memorandum re: Additional preliminary objections submissions (*ne bis in idem*), 12 May 2011, E51/9.
30. Transcript, 27 June 2011, E1/4.1; Transcript, 28 June 2011, E1/5.1.

**International Conventions – ECCC Legal Compendium or Already on the Case File**

31. International Convention on Civil and Political Rights, Art 14(7).
32. Convention Implementing the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at Their Common Borders, 19 June 1990, Arts. 54-58.
33. Geneva Convention I, Art. 49.
34. Geneva Convention II, Art. 50.
35. Geneva Convention III, Art. 129.
36. Geneva Convention IV, Art. 146.
37. Convention on the Prevention and Punishment of the Crime of Genocide, Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948, Entry into force: 12 January 1951, Arts. 5, 9.
38. Convention Against Torture, Art. 4(2).
39. Abidjan Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, 30 November 1996, Arts. 14, 28, available at <http://www.sierra-leone.org/abidjanaccord.html>.

**Statutes of International Tribunals – ECCC Legal Compendium**

40. ICC Statute, Arts. 20(3)(b), 22.

**International and Hybrid Tribunal Jurisprudence – Already Disclosed on the Case File**

41. *Prosecutor v. Bagosora et al.*, ICTR-98-37-A, Decision on the Admissibility of the Prosecutor’s Appeal from the Decision of a Confirming Judge Dismissing an Indictment against Theoneste Bagosora and 28 others, 8 June 1998, paras. 34-35.

42. *Prosecutor v. Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 6.

43. *Prosecutor v. Blaškić*, IT-95-14-AR108bis, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, paras. 26-31.

44. *Deputy General Prosecutor for Serious Crime v. Wiranto et al.*, Case No. 05/2003, Legal Ruling Concerning the Applicability of *Ne Bis In Idem* at the Arrest Warrant Stage of the Proceedings, 5 May 2005, paras. 5-34.

45. *North Sea Continental Shelf Cases (Germany v. Denmark, Germany v. The Netherlands)*, Judgement, *I.C.J. Reports 1969*, p. 43, para. 74; p. 44, para. 77.

**Books, Articles and Miscellaneous – Already Disclosed on the Case File or available online**

46. André Klip & Harmen van der Wilt, *The Netherlands Non Bis in Idem*, 73 REVUE INTERNATIONALE DE DROIT PENAL 1091, 1094, 1097, 1101, 1135 (2002).

47. International Association of Penal Law website, available at [http://www.penal.org/?page=mainaidp&id\\_rubrique=13&lang=fr](http://www.penal.org/?page=mainaidp&id_rubrique=13&lang=fr).

48. Resolution Section IV B.4 adopted by the XVIth International Congress of Penal Law, available at <http://www.penal.org/IMG/pdf/NEP21anglais.pdf>.

49. John A.E. Vervaele, *The Transnational Ne Bis in Idem Principle in the EU Mutual Recognition and Equivalent Protection of Human Rights*, 1(2) UTRECHT L. REV. 100, 101 (2005).

50. DOMINIC MCGOLDRICK ET AL., *THE PERMANENT INTERNATIONAL CRIMINAL COURT: LEGAL AND POLICY ISSUES* 340, (Hart Publishing, 1st ed., 2004).
51. *King Sihanouk Says Amnesty for Exiles Depends on Hun Sen*, ASIAN POLITICAL NEWS, 17 August 1998, available at [http://www.thefreelibrary.com/\\_/print/PrintArticle.aspx?id+53002588](http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id+53002588).
52. *Coalition Agreement for Cambodia Comes with Royal Pardons*, CNN WORLD, 13 November 1998, available at [http://articles.cnn.com/1998-11-13/world/9811\\_13\\_cambodia.01\\_1\\_coalition-government-pardons-new-coalition?\\_s=PM:WORLD](http://articles.cnn.com/1998-11-13/world/9811_13_cambodia.01_1_coalition-government-pardons-new-coalition?_s=PM:WORLD).
53. *King Sihanouk's Half-Brother Returns Home*, ASIAN POLITICAL NEWS, 25 January 1999, available at [http://www.thefreelibrary.com/\\_/print/PrintArticle.aspx?id=53642360](http://www.thefreelibrary.com/_/print/PrintArticle.aspx?id=53642360).
54. *Cambodia's PM Fires Two Officials in Cabinet Reshuffle*, TAIPEI TIMES, 22 March 2006, available at <http://www.taipeitimes.com/News/world/archives/2006/03/22/2003298602>.
55. *Cambodian Court Convicts Ousted Premier*, NEW YORK TIMES, 5 March 1998, available at <http://www.nytimes.com/1998/03/05/world/cambodian-court-convicts-ousted-premier.html?ref=norodomranariddh>.
56. *Pardon Issued as a Step to Cambodian Elections*, NEW YORK TIMES, 22 March 1998, available at <http://www.nytimes.com/1998/03/22/world/world-news-briefs-pardon-issued-as-a-step-to-cambodian-elections.html?ref=norodomranariddh>.
57. *Cambodian Emerges as Sole Prime Minister*, NEW YORK TIMES, 14 November 1998, available at <http://www.nytimes.com/1998/11/14/us/cambodian-emerges-as-sole-prime-minister.html?ref=norodomranariddh>.
58. *Sam Rainsy Returns to Cambodia*, BBC NEWS, 10 February 2006, available at <http://news.bbc.co.uk/2/hi/asia-pacific/4699574.stm>.
59. BLACK'S LAW DICTIONARY 1312, 1548 (7<sup>th</sup> ed. 1999).

60. YASMIN Q. NAQVI, IMPEDIMENTS TO EXERCISING JURISDICTION OVER INTERNATIONAL CRIMES 307-08 (T.M.C. Asser Press 2010).
61. Recommendations Regarding Additional Transparency at the Extraordinary Chambers of the Courts of Cambodia (ECCC) Submitted by members of Civil Society and Members of the Cambodian Press, 24 March 2008, *available at* <http://www.cambodiatribunal.org/CTM/Recommendations%20Regarding%20Additional%20Transparency.pdf?phpMyAdmin=8319ad34ce0db941ff04d8c788f6365e>.
62. OXFORD ENGLISH DICTIONARY (2nd ed., 1989; online version September 2011), *available at* <http://www.oed.com/view/Entry/172974?rskey=Yfhs9S&result=2#eid>.
63. WARD N. FERDINANDUSSE, DIRECT APPLICATION OF INTERNATIONAL CRIMINAL LAW IN NATIONAL COURTS 200-02 (T.M.C. Asser Press 2006).
64. Charles P. Trumbull IV, *Giving Amnesties a Second Chance*, 25 BERKELEY J. INT'L L. 283, 293-94 (2008).
65. Q&A: *Yemen Crisis*, BBC NEWS, 23 November 2011, *available at* <http://www.bbc.co.uk/news/world-middle-east-14988945>
66. *Yemeni President Saleh Signs Deal on Ceding Power*, BBC NEWS, 23 November 2011, *available at* <http://www.bbc.co.uk/news/world-middle-east-15858911>.
67. *G8 Summit: Sarkozy Offers Libya's Gaddafi 'Options'*, BBC NEWS, 26 May 2011, *available at* <http://www.bbc.co.uk/news/world-europe-13564999>.
68. John Dugard, *Dealing with Crimes of a Past Regime. Is Amnesty Still an Option?*, 12 LEIDEN J. INT'L L. 1001, 1002-04 (1999)
69. Leila Nadya Sadat, *Exile, Amnesty and International Law*, 81 NOTRE DAME L. REV. 955, 1022 (2006)
70. ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 302 (Oxford University Press 2003).
71. *Sihanouk Pardons Ieng Sary*, BANGKOK POST, 15 September 1996.

72. *Khmer Rouge Trial Law on Track for December Approval: Cambodian PM*, AGENCE FRANCE-PRESSE, 30 November 2000.
73. Human Rights Committee, Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant, 23/09/98. CCPR/C/81/Add.12, para. 105.
74. Ieng Sary, *Ieng Sary's 1996 Declaration*, SEARCHING FOR THE TRUTH, DC-CAM, 15 August 1996.
75. *Ieng Sary Bargains for Amnesty: Army Brokers Secret Talks with Ministers*, BANGKOK POST, 7 Sept. 1996.
76. The True Fact about Pol Pot's Dictatorial Regime, 1975-1978, 8 September 1996, ERN: 00081213-00081222.
77. Fax from H.R.H. Norodom Sihanouk, King of Cambodia, to Mr. Pierre Sané, Secretary-General of Amnesty International, 13 September 1996.
78. Clarification from H.R.H. Norodom Sihanouk, King of Cambodia, 17 September 1996.
79. *Khmer Rouge Trial Law on Track for December Approval: Cambodian PM*, AGENCE FRANCE-PRESSE, 30 November 2000.
80. ELIZABETH BECKER, WHEN THE WAR WAS OVER: CAMBODIA AND THE KHMER ROUGE REVOLUTION 515 (Public Affairs, 1998).
81. PHILIP SHORT, POL POT: ANATOMY OF A NIGHTMARE 437 (Henry Holt and Company, 2004).
82. Dominick Faulder, *Bleeding the Khmer Rouge*, ASIA WEEK, 25 October 1996.
83. Kassie Neou & Jeffrey C. Gallup in *Human Rights and the Cambodian Past: In Defense of Peace Before Justice*, HUM. RTS. DIALOGUE 1.8 (1997).
84. Louise Mallinder, *Can Amnesties and International Justice be Reconciled?*, 1 INT'L J. TRANSITIONAL JUST. 208 (2007).



85. Neou Vannarin & Julia Wallace, *Ieng Sary Support High in Malai as Trial Looms*, CAMBODIA DAILY, 15 September 2010.
86. John A. Hall, *In the Shadow of the Khmer Rouge Tribunal: The Domestic Trials of Nuon Paet, Chhouk Rin and Sam Bith, and the Search for Judicial Legitimacy in Cambodia*, 5 LAW & PRAC. INT'L CTS. & TRIBUNALS 425 (2006).

**Miscellaneous – Document attached as Annex**

87. Background – *Annex 1*
88. IENG Sary's Submissions Pursuant to the *Decision on Expedited Request of Co-Lawyers for a Reasonable Extension of Time to File Challenges to Jurisdictional Issues*, 7 April 2008 – *Annex 2*