



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

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

ឯកសារដើម

ORIGINAL/ORIGINAL

ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Mar-2012, 16:53

CMS/CFO: Sann Rada

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

Original Language(s):

Khmer/English

Classification:

PUBLIC

**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