



**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/CFD: 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”)<sup>1</sup> 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;<sup>2</sup>

**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;<sup>3</sup>

**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,<sup>4</sup> 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;<sup>5</sup>

**NOTING** that there is no general right to interlocutory appeal;<sup>6</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> Appeal, paras 7-9.

<sup>4</sup> 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.

<sup>5</sup> Nexus Appeal Decision, para. 9.

<sup>6</sup> *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**