

BEFORE THE TRIAL CHAMBER

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**IENG SARY'S REQUEST FOR LEAVE TO FILE A SUPPLEMENTAL
SUBMISSION TO HIS RULE 89 PRELIMINARY OBJECTION (NATIONAL
CRIMES)**

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Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby requests that the Trial Chamber grant him leave to supplement his Rule 89 Preliminary Objection to the ECCC’s jurisdiction to apply Article 3 new of the Establishment Law (National Crimes). In the alternative, the Defence requests sufficient time to supplement this preliminary objection at the Initial Hearing through oral submissions. This request is made necessary because there are legal issues in the Pre-Trial Chamber’s Decision on IENG Sary’s Appeal against the Closing Order¹ not addressed by the OCP which the Defence – as part of its due diligence obligations – submits must be raised before the Trial Chamber prior to the commencement of the trial proceedings. This request is further made necessary lest any previous arguments made by the Defence be considered waived.

Basis for Request

1. The Defence was unable to address certain errors in the Pre-Trial Chamber’s reasoning since it was required to file its preliminary objections prior to receiving the Pre-Trial Chamber’s reasoned Decision on IENG Sary’s Appeal against the Closing Order. The Trial Chamber previously informed the Defence that, because of prejudice stemming from the lack of a reasoned decision by the Pre-Trial Chamber, supplementary submissions would in principle be accepted, but the Trial Chamber would instruct the Defence further as to page and time limits after the Pre-Trial Chamber’s reasoning was received.² After the Pre-Trial Chamber’s reasoned Decision was issued, the Trial Chamber invited the Co-Prosecutors “to indicate the basis of [their] contention that national crimes are not statute-barred in relation to all accused in Case 002” and authorized the Defence to respond to this submission.³ The Co-Prosecutors did not address certain errors made by the Pre-Trial Chamber, and the Defence will therefore be unable to address these issues in its response.

Request

2. The Defence respectfully requests to file a separate supplementary submission to its preliminary objection to the ECCC’s jurisdiction over national crimes which would address the following errors in the Pre-Trial Chamber’s Decision:

¹ Decision on IENG Sary’s Appeal Against the Closing Order, 11 April 2011, D427/1/30.

² See email from Tanya Pettay to the Senior Legal Officer 23 February 2011 confirming the points raised in the meeting and adding some additional clarifications and the Senior Legal Officer’s response of 24 February 2011.

³ Directions to Parties Concerning Preliminary Objections and Related Issues, 5 April 2011, E51/7, p. 2.

- A. The Pre-Trial Chamber erred in finding that Mr. IENG Sary could be sent to trial for national crimes when the Co-Investigating Judges did not agree as to their applicability.⁴ The proper course of action in order to respect Mr. IENG Sary's fundamental right to be presumed innocent would be not to charge Mr. IENG Sary for national crimes; and
- B. The Pre-Trial Chamber erred in finding that application of Article 3 new does not violate Mr. IENG Sary's right to be treated equally before the law.⁵ Article 3 new of the Establishment Law extended the statute of limitations for homicide, torture, and religious persecution under the 1956 Penal Code only when those crimes are charged at the ECCC. Applying this Article violates Mr. IENG Sary's fundamental right to equal treatment.

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Trial Chamber to GRANT it leave to file a supplementary submission to its Rule 89 Preliminary Objection (National Crimes), or, in the alternative to allow sufficient opportunity for these issues to be addressed at the Initial Hearing.

Respectfully submitted,


 ANG Udom
 

 Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 8th day of **June, 2011**

⁴ Decision on IENG Sary's Appeal Against the Closing Order, paras. 272-77.

⁵ *Id.*, paras. 288-92.