



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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber

Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

ឯកសារដើម

ORIGINAL DOCUMENT/DOCUMENT ORIGINAL

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du dossier: ANN RADA

Before:

Judge NIL Nonn, President

Judge Silvia CARTWRIGHT

Judge YA Sokhan

Judge Jean-Marc LAVERGNE

Judge YOU Ottara

Date:

14 March 2013

Original language(s):

Khmer/English/French

Classification:

PUBLIC

TERMINATION OF THE PROCEEDINGS AGAINST THE ACCUSED IENG SARY

Co-Prosecutors

CHEA Leang

Andrew CAYLEY

Accused

NUON Chea

IENG Sary

KHIEU Samphan

Civil Party Lead Co-Lawyers

PICH Ang

Elisabeth SIMONNEAU FORT

Lawyers for the Defence

SON Arun

Victor KOPPE

ANG Udom

Michael G. KARNAVAS

KONG Sam Onn

Arthur VERCKEN

Jacques VERGÈS

Anta GUISSÉ

1. INTRODUCTION

1. The Chamber is seised of the death certificate of the Accused IENG Sary.¹

2. BACKGROUND

2. On 18 July 2007, the Co-Prosecutors filed an introductory submission alleging that NUON Chea, IENG Sary, KHIEU Samphan, IENG Thirith and KAING Guek Eav alias Duch had committed various crimes that fell within the jurisdiction of the ECCC.² On 12 November 2007, the Accused IENG Sary was arrested by order of the Co-Investigating Judges, transferred to the ECCC detention facility and notified of the charges against him.³ On 15 September 2010, the Co-Investigating Judges indicted IENG Sary, NUON Chea, KHIEU Samphan and IENG Thirith for crimes against humanity, genocide and grave breaches of the Geneva Conventions.⁴ On appeal to the Pre-Trial Chamber, the indictment was confirmed with some amendments on 13 January 2011.⁵ Trial proceedings commenced with an initial hearing on 27 June 2011. The Accused died on 14 March 2013 at the Khmer-Soviet Friendship Hospital in Phnom Penh, Cambodia.⁶

3. LEGAL FINDING

3. Pursuant to Article 7(1) of the Cambodian Code of Criminal Procedure, the Accused IENG Sary's death extinguishes the criminal action against him before the ECCC.⁷ At the ECCC, pursuant to Internal Rule 23*bis*(6), death also extinguishes any civil action.⁸

¹ Certificate of Death of IENG Sary, E270, 14 March 2013.

² Introductory Submission, D3, 18 July 2007. The proceedings against KAING Guek Eav alias Duch were later separated (Separation Order, D18, 19 September 2007).

³ Detention Order of IENG Sary, C23, 14 November 2007; Closing Order, D427, 15 September 2010 ("Closing Order"), para. 7; Police Custody Decision, C14, 12 November 2007.

⁴ Closing Order, para. 1613. The Co-Investigating Judges also indicted the Accused for violations of the 1956 Penal Code. The Trial Chamber later found that the Closing Order failed to specify these charges with sufficient particularity and directed that they would not form the basis of future trial proceedings in Case 002 (Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), E122, 22 September 2011).

⁵ Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011, p. 6 (amending Closing Order to require a nexus between crimes against humanity and an armed conflict and affirming that rape may be categorized as another inhumane act). The Trial Chamber later rejected the nexus requirement (Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity, E95/8, 26 October 2011, para. 33).

⁶ Certificate of Death of IENG Sary, E270, 14 March 2013.

⁷ See Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (SCC), E138/1/10/1/5/7, 14 December 2012, para. 38; see also *Prosecutor v. Delić*, ICTY Appeals Chamber (IT-04-83-A), Decision on the Outcome of Proceedings, 29 June 2010, paras 5-15; *Prosecutor*

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

FINDS that the death of the Accused IENG Sary has the effect of terminating all criminal and civil actions against the Accused IENG Sary before the ECCC.

Phnom Penh, 14 March 2013
President of the Trial Chamber



[Signature]
Nil Nonn

v. Karemera et al., ICTR Trial Chamber (ICTR-98-44-T), Decision Relating to Registrar's Submission Notifying the Demise of Accused Joseph Nzirorera, 12 August 2010, para. 2; *Prosecutor v. Kony et al.*, ICC Pre-Trial Chamber (ICC-02/04-01/05), Decision to Terminate Proceedings against Raska Lukwiya, 11 July 2007; *Prosecutor v. Norman et al.*, SCSL Trial Chamber (SCSL-04-14-T), Decision on Registrar's Submission of Evidence of the Death of Accused Samuel Hinga Norman and Consequential Issues, 21 May 2007, paras 13-18.

⁸ The Chamber acknowledges that, under Article 24 of the Cambodian Code of Criminal Procedure, the death of an accused does not also extinguish any accompanying civil action. Nevertheless, within the unique legal framework of this Court, the Civil Party Lead Co-Lawyers file a single claim for collective and moral reparations on behalf of the single, consolidated group (*see* Internal Rules 23, 23*bis*, 23*ter*, 23*quinqies*). The determination of this claim is dependent upon a criminal conviction (Internal Rule 23*quinqies*(1)). Thus extinction of a criminal action at the ECCC necessarily also extinguishes any civil action.