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BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Criminal Case File N°: 002/19-09-2007-ECCC/OCIJ

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IENG SARY'S SECOND REQUEST FOR INVESTIGATIVE ACTION

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I. INTRODUCTION

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), hereby submits, pursuant to Rule 55(10) of the ECCC Internal Rules (“Rules”), this second request for investigative action to the Office of the Co-Investigating Judges (“OCIJ”). This request concerns the aims and purposes of the Khmer People’s Revolutionary Party (“KPRP”), the Worker’s Party of Kampuchea (“WPK”) and the Communist Party of Kampuchea (“CPK”), as described by the Office of the Co-Prosecutors’ (“OCP”) Introductory Submission.¹ Pursuant to Rule 55(5), the Defence respectfully requests the OCIJ to conduct a full investigation of the aims and purposes of the KPRP, WPK and CPK since their inception up until the end of Democratic Kampuchea.

II. LEGAL ARGUMENT

1. The law concerning the nature and scope of requests for investigative actions is extensively set out in IENG Sary’s first request for investigative action.² These submissions on the law are incorporated by reference.

III. FACTUAL ALLEGATIONS CONCERNING INVESTIGATIVE REQUEST

2. In the Introductory Submission, the Co-Prosecutors (“OCP”) allege the following:

The history of Democratic Kampuchea is entwined with the history of the Communist Party of Kampuchea (CPK), the roots of which can be traced to the founding of the Indochinese Communist Party (ICP) in 1930. In 1951, the ICP was dissolved and separate revolutionary organizations were established for Vietnam, Laos and Cambodia. This led to the creation of the Khmer People’s Revolutionary Party (KPRP) in Cambodia. A decade later, in 1960, the KPRP became the Worker’s Party of Kampuchea (WPK), and it began preparations for an armed struggle to seize state power. Later, the WPK declared “people’s war,” and in 1971, it adopted a new name, the Communist Party of Kampuchea. In a united front with the then Prince NORODOM Sihanouk, the CPK pressed its war against General Lon Nol’s Khmer Republic regime. The CPK captured large swathes of Cambodian territory early in the war, and experimented with radical policies even before gaining control of Phnom Penh on 17 April

¹ *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Introductory Submission 008, 18 July 2007.

² *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, IENG Sary’s First Request for Investigative Action, 20 March 2009, paras. 1-18 (“IENG Sary’s First Investigative Request”).

1975. The CPK then seized power and named Prince NORODOM Sihanouk the Head of State.³

[T]he CPK, commonly referred to as the Khmer Rouge, set out to fundamentally alter Cambodian society on ideological lines through forcible economic and social change. To accomplish this change, the leaders of the CPK formed a common plan which was, in its conception, aims and execution, fundamentally criminal in character. These policies resulted in widespread starvation, systematic brutality, inhumane living conditions and the deaths of between 1.7 and 2.2 million people.⁴

The CPK enforced its policies and ruled through a nationwide network of detention and security centres that unlawfully detained, mistreated, tortured and executed vast numbers of the Cambodian population. These crimes resulted from conscious decisions systematically planned and implemented by the CPK leadership and were part of a widespread and systematic attack directed against virtually the entire civilian population.⁵

IV. ARGUMENT

3. The hardships suffered by the Cambodian people during the period of Democratic Kampuchea did not reflect a continuous central policy of the CPK which in “its conception, aims and execution, [was] fundamentally criminal in character” as alleged by the OCP in the Introductory Submission. The continuous central policy of the CPK was to create a more prosperous and egalitarian society.⁶ The aims and purposes of the CPK and of its leading members, and its forerunners, the Khmer Peoples Revolutionary Party (“KPRP”) and Worker’s Party of Kampuchea (“WPK”), were therefore a legitimate response to the suffering and continued inequality of Cambodian society.
4. When the first Cambodian communist organization, the KPRP, was formed in September 1951, the first, and perhaps the only clearly expressed goal, was independence from France, which would be an initial step to overcome the

³ Introductory Submission, para. 1.

⁴ *Id.*, para. 2. (Emphasis added)

⁵ *Id.*, para. 3. (Emphasis added)

⁶ See Minutes of CPK Standing Committee Meeting “Minutes of Meeting on Base Work”, 8 March 1976 (00000723-00000734-ET). There was discussion of much illness and loss of up to 40% of the work force in regions 303, 106, 103. The answer of Angkar to this was:

“On the livelihood of the people: Today, we think much about the livelihood of the people, but expenditures for material purchases to solve the livelihood of the people are limited because we must purchase many other things as well, and our funds are few. Therefore, we must understand concentrating on solving the livelihood of the people at the base to the maximum extent; must assure enough rice for people, at least 2 cans”.

inequalities in Cambodian society. This goal was not unique to the left, but was shared by other elements of Cambodian society, including bourgeoisie, and some royalty, perhaps by that time, even King Sihanouk. Already, a year earlier, on 19 June 1950, the “Peoples Liberation Central Committee” under Son Ngoc Minh, had declared national independence, saying that they “controlled one-third of the country”.⁷

5. When the KPRP statutes were adopted in 1952 “there was no mention of Marxism-Leninism or its founders, only a vague statement that the ‘doctrine of the party is the doctrine of People’s Democracy’. Neither was there an anti-feudal or land reform component to the KPRP’s program. The party simply ‘unites the whole people... to carry on a firm struggle so as to annihilate the French colonialists, the US interventionists and their puppet lackeys’.”⁸ Its stated goal was simply independence. This was also the goal of the non-communist Democrat Party, which had won Cambodia’s first three elections, in 1947, 1948, and 1951, and which included leftist elements sometimes in contact with the rural rebels such as the founders of the KPRP, and which was hostile to King Sihanouk, who was not considered sufficiently enthusiastic about independence.⁹ The goal of all anti-regime elements was independence from France, without any pretensions to communism. Therefore, when in 1952 Sihanouk dismissed the Democrat-led government and “promised to achieve independence within three years” he threw “the entire Issarak [rebel] movement into confusion” as the Democrat Party found it “difficult to believe that Sihanouk meant what he said.”¹⁰
6. Even among the more overtly Marxist Khmer students in Paris in the early 1950s, “anti-royalist, nationalist, rather than socialist sentiments still dominated the revolutionary politics of the ‘Marxist Circle.’”¹¹ When the goal of independence was achieved in 1954, after the end of the first Indochina War against France, many activists felt that their major goal had been achieved, and they withdrew from political struggle. The more right-wing anti-French rebels had already begun to lay down their

⁷ BEN KIERNAN, *HOW POL POT CAME TO POWER* (1985) (“KIERNAN: HOW POL POT”), p. 80.

⁸ Bernard B. Fall, *The Viet Minh Regime*, Cornell University South-east Asia Program, Data Paper no. 14 April 1954. pp. 56, 37. See also KIERNAN: HOW POL POT, p.84.

⁹ MICHAEL VICKERY, *LOOKING BACK AT CAMBODIA [1945-1974]*, IN BEN KIERNAN AND CHANTOU BOUA, EDS. *PEASANTS AND POLITICS IN KAMPUCHEA 1942-1981*, (London, Zed Press, 1982) pp. 89-113.

¹⁰ KIERNAN: HOW POL POT, p. 99.

¹¹ *Id.* p.121.

arms in early 1953 when Sihanouk became more serious with his “Royal Crusade for Independence.”¹²

7. However, “there was still a national liberation movement ...the Democratic Party and the Pracheachon Party [legal front organization for the KPRP]; they published newspapers in the city to pursue political struggle, to resist the French imperialists, the capitalists and the feudalists like Sihanouk”; and the “Khmer communist leaders now took their movement into a totally different world, embracing a limited ‘political struggle’.”¹³ Independence having been won, the policies of the left concerned their relationship with King Sihanouk, and a royal government, more equality in society, economic progress and the degree of socialism to which they aspired, and the position of Cambodia in the international struggle between socialism and communism.
8. Those who had hoped to be able to work with Sihanouk were soon disabused.¹⁴ He first tried to get around the democratic provisions of the Geneva Accords and formed his own political organization, the *Sangkum*, whose ideology was explicitly anti-egalitarian and anti-democratic, stating that the country should be led by its traditional elite, with the rest remaining loyal and silent, hoping for a better situation in the next life.¹⁵ Obviously the position of Sihanouk by 1955 showed the left that in working with him it would be impossible to further any leftist policies, even the most moderate. This was emphasized when the 1955 election was carried out dishonestly and with some brutality, giving Sihanouk’s *Sangkum* all seats in the National Assembly.¹⁶ Then Sihanouk’s police and military began to harass former KPRP activists who had renounced revolution and returned to normal life, driving them back into dissidence.¹⁷
9. Sihanouk’s anti-Democratic crackdown continued with the 1958 election for which he nominated all of the government’s candidates while the Pracheachon, the only other party which dared to stand, presented only five candidates among the 62 seats available. Conditions for campaigning by the Pracheachon were extremely difficult

¹² *Id.* pp. 152-3, 131.

¹³ *Id.*, p.153.

¹⁴ Sihanouk’s abdication for his father Norodom Suramarit, who replaced him as king, was a surprise, and historians have been uncertain about his reasons. He took the Khmer title “*samdec upayuvareach* (the prince who has left the throne)”. DAVID CHANDLER, TRAGEDY OF CAMBODIAN HISTORY, (4th ed.), pp. 78, 115-117 (“CHANDLER”). He also occupied the post of prime minister several times (CHANDLER, op. cit., p. 91, four times 1955-1956). After King Suramarit died in 1960 Sihanouk became ‘Chief of State’ (CHANDLER, op.cit, p. 199).

¹⁵ KIERNAN: HOW POL POT, p. 158; CHANDLER, pp. 79, 82-4.

¹⁶ KIERNAN: HOW POL POT, pp.158-162.

¹⁷ *Id.*, pp. 171-175, 185, 189.

and “the poor devils were never able to hold a public meeting nor even publicize their program.”¹⁸ The non-revolutionary policy of the surviving left was evident in the decision made by several of the intellectuals, including some from the former Paris ‘Marxist Circle’, to join Sihanouk’s *Sangkum*, become members of parliament, and even government ministers.¹⁹ Sihanouk’s move leftward in international affairs was approved, and even the remnants of the KPRP adopted an attitude of coexistence with Sihanouk.²⁰ It was because of Sihanouk that even such concepts as equality and democracy could not easily be expressed publicly.

10. When the KPRP, including some of the returned Paris intellectuals held a clandestine Party Congress in 1960, they formed a new party, Khmer Workers’ Party (“KWP”), to replace the KPRP, “with a general line of national people’s democratic revolution” (not communist or proletarian revolution), for they recognized that “the people might not be quite ready for Communism.”²¹ But, again, Sihanouk showed the left the futility of democratic practices when - just before the 1962 election - he arrested fourteen members of the Pracheachon, who posed no threat to his government or to national security, and had them sentenced to death (later commuted to life imprisonment).²²

11. Again, at the KWP Congress in 1963, when Saloth Sar/Pol Pot was already the Party Secretary, the party approved a fundamentally unchanged KWP general line:

“political struggle as pursued since 1954. The long-term aim was still to build revolutionary forces with a view to overthrowing the enemy regime, but in the meantime the policy was to force the feudal class in power and other would-be lackeys of US imperialism to follow the policy of neutrality. The immediate focus was on fomenting a movement to combat imperialism and feudalism, to contain these enemies for the time being. This meant continuing to build a large united front, incorporating all those in favour of an independent, neutral and non-aligned Cambodia, including Sihanouk working through Khieu Samphan and other progressives among the petty-bourgeoisie, intellectuals, civil servants and the national bourgeoisie, who as progressives were designated by the Party as the left wing of the ruling classes.”²³

¹⁸ *Id.*, p.180.

¹⁹ *Id.*, p.181.

²⁰ *Id.*, p.184.

²¹ STEVE HEDER, *CAMBODIAN COMMUNISM AND THE VIETNAMESE MODEL: VOLUME 1. IMITATION AND INDEPENDENCE 1930-1975*, pp. 67-68 (“HEDER”).

²² CHANDLER, pp. 119-120; KIERNAN: *HOW POL POT*, pp. 195-197.

²³ HEDER, p. 85.

12. Political repression continued throughout the rest of the 1960s. All elections since 1955 (namely those held in 1958, 1962 and 1966) were stage-managed by Sihanouk and by the end of the decade the economy was in decline, dissatisfaction was widespread, and the left finally decided that their line of peaceful coexistence and 'democratic revolution' had failed.²⁴ As one academic expert on the period has put it,

"The entire course of events since the early 1960s suggested there was no other option [than revolt]: the suppression of the party's electoral bid (1958, 1962) and murder of [Party Secretary] Tou Samout in 1962, threats against [Saloth] Sar, [Ieng] Sary, Son Sen and other KWP leaders in early 1963 [a list by Lon Nol, possibly intended as a hit list, of 34 prominent leftists]; exclusion of Khieu Samphan and other progressives from government later that year; repeated waves of arrests of underground activists in the capital since 1965; the bloody suppression of the rural [Samlaut] uprising in Battambang and threat of imprisonment or worse against leftist intellectuals from the beginning of 1967. All this proved that the Sihanouk regime, and particularly its hard Lon Nol security core, was intensifying the kind of cruel terror, slaughter and extermination that signaled the regime's political bankruptcy, hence the need to fight counter-revolutionary violence with revolutionary violence."²⁵

13. In 1968 this became party policy with a circular issued by Pol Pot in February "confirming that Cambodian Communism would henceforth be 'conducting politics with support of arms nation-wide.'²⁶

14. The repression and political and economic inequality described above was caused or exacerbated by the legacy of French colonialism,²⁷ US political interference²⁸

²⁴ CHANDLER, pp. 95-98, 120-21, 153-6; KIERNAN: HOW POL POT, pp.198-235.

²⁵ HEDER, pp. 125-6.

²⁶ HEDER, pp. 130-131.

²⁷ See LAWRENCE PICQ, *AU DELA DU CIEL: CINQ ANS CHEZ LES KHMERS ROUGES* (1984, Paris), p. 37. "Your country owes a blood debt towards our people. For a hundred years, the French colonialists, your ancestors, plundered us. And this is why, today, the conditions of life here are difficult." See also MICHAEL VICKERY, *CAMBODIA 1975-1982*, (Boston, South End Press; Sydney, George Allen & Unwin, 1984; second edition, Chiang Mai, Silksworm Books, 1999) 2nd Ed., ("VICKERY"), p. 16 describing how "Taxes were increased by the French, particularly after World War I, and were the highest in Indochina. [...] taxation was heavy in terms of any benefits ... returning to the peasant. [...] There were also onerous corvées for public works, first of all roads; and in one infamous project, the construction of a resort at Bokor, nine hundred workers' lives were lost in nine months."

²⁸ CHANDLER, pp. 80-81. Chandler explains that "U.S. operatives in Southeast Asia and Washington found it hard to accept that Cambodia might have interests of its own, separable from those of the Free World." Chandler describes at p. 143 how in 1964 the U.S. Embassy in Saigon protected its South Vietnam ally by blaming a "poorly defined border" between Cambodia and South Vietnam as the reason for an attack by South Vietnamese forces on a Cambodian village. The U.S. embassy in Saigon resisted pressure for an apology. The U.S. also dragged its feet in 1966 when Cambodia was campaigning to have its frontiers and borders recognized

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including the direct support to anti-Sihanouk activists,²⁹ subsequent direct U.S. military interference both in the form of aerial bombing³⁰ and the invasion of Cambodia by ground forces³¹ the quasi-feudalist system of control carried out by King NORODOM Sihanouk³² and the corrupt³³ and brutal³⁴ regime imposed by Lon Nol after the military *coup d'état* in 1970.³⁵

15. The OCP's allegations in the Introductory Submission surrounding the history of the CPK and its aims and purposes are based on unreliable and contradictory sources and ignore or gloss over the actual events described above. Firstly, the OCP cites OCP employee, Craig Etcheson,³⁶ as an authority who emphasizes that Hou Yuon was the ideological planner and initiator of Democratic Kampuchea's extreme peasant communism. This suggests that Hou Yuon was a leading authority in formulating the criminal objectives at the heart of the alleged joint criminal enterprise. However, Ben Kiernan, also cited in the same footnote of the Introductory Submission,³⁷ emphasizes Hou Yuon's adherence all through the 1960s up to 1970 to a policy of gradual

internationally as it was "unwilling to guarantee borders that its allies in Southeast Asia were unwilling to accept." CHANDLER, p.151.

²⁹ CHANDLER, p.134, 193 for the admission that during the Eisenhower period [1953-1960] the United States had supported Son Ngoc Thanh and had "indeed "played footsie" with the Khmer Serei [...] and "there was money involved". See also CHANDLER, pp. 99-101 and 103-6 for support given by the US to other anti-Sihanouk activists including Sam Sary and Dap Chuon.

³⁰ There were three periods of direct aerial bombing raids by the United States in Cambodia. The bombing raid, called "Operation Menu", was conducted against North Vietnamese army bases in Eastern Cambodia between 18 March 1969 and May 1970. It was conducted illegally and in secret without US Congressional knowledge or approval. It comprised of 3,630 B-52 raids against suspected Communist bases along different areas of Cambodia's border. WILLIAM SHAWCROSS, SIDESHOW: KISSINGER, NIXON AND THE DESTRUCTION OF CAMBODIA (Hogarth Press London, 1979), p.28 ("SHAWCROSS"). See also CHANDLER, p.184. The second bombing raid was called Operation "Patio" which consisted of a month of bombing in May 1970 of which 156 air strikes against military targets in Cambodia. Again they were concealed under false reports and kept from Congress. SHAWCROSS p. 135. The third bombing raid was known as Operation "Freedom Deal" which was an interdiction and close air support campaign waged in Cambodia between 19 May 1970 and 15 August 1973 against the base areas and border sanctuaries of the People's Army of Vietnam (PAVN). It was halted at the insistence of the US Congress. The tonnage of bombs dropped in this operation was more than three times the amount dropped on Japan in the closing stages of World War II. CHANDLER, p.225, SHAWCROSS, pp. 215, 280-299.

³¹ SHAWCROSS, pp.128-149. The US armed forces conducted a series of military operations in Eastern Cambodia during the late spring and summer of 1970 in conjunction with the armed forces of the Republic of Vietnam (South Vietnam) between 30 April and 29 June 1970.

³² CHANDLER, pp. 74, 81-84.

³³ CHANDLER, p. 205 explaining the corruption of the army by "padding their bills with nonexistent soldiers [...] not reporting deaths and desertions [...] and selling arms, gas, medicine, ammunition and equipment to the enemy." See also CHANDLER, p. 230.

³⁴ CHANDLER, p. 203 describing the brutal murders of Vietnamese civilians in Phnom Penh in May 1970. See also SHAWCROSS, pp.132-3 for a similar description.

³⁵ For a general examination of the Lon Nol regime see: SHAWCROSS, Chapter 16 "The Decay", pp. 220-235; KIERNAN, HOW POL POT, pp.297-393.

³⁶ Introductory Submission, fn. 1 citing CRAIG ETCHESON, THE RISE AND DEMISE OF DEMOCRATIC KAMPUCHEA, (1984), cited in fn. 1.

³⁷ Introductory Submission, fn. 1 citing KIERNAN: HOW POL POT.

political change and cooperation of all classes. Kiernan also emphasizes Hou Yuon's differences from Pol Pot.³⁸ Meanwhile, Elizabeth Becker, also cited by the OCP in the Introductory Submission³⁹ by contrast, merely repeats the stories of a few urban evacuees, without any serious documentary sourcing, and inserts apparent direct quotations from Khmer-language sources she cannot read.⁴⁰ Thus, it is not without surprise that one of the major figures in the scholarship on Khmer Rouge Cambodia, David Chandler, considers Becker's book to be seriously flawed, while Becker considers Etcheson's book to be equally flawed.⁴¹

16. To the extent that crimes occurred in the period of Democratic Kampuchea, and were committed by CPK cadre, this simply suggests that the central policy of creating a more egalitarian society failed; it does not prove that the aims of the CPK were criminal in nature.⁴² As examined in a previous investigative request,⁴³ it also indicates that other, stronger political beliefs, such as the hatred felt by rural peasants towards those people who lived in the cities which was caused by external factors rather than a central deliberate CPK policy,⁴⁴ were actually the driving force behind the commission of crimes. Accordingly, a more in-depth investigation is needed to determine what factors and circumstances were actually responsible for the crimes committed.
17. A full investigation of the aims and purposes of the CPK must therefore be undertaken from its inception with the creation of the CPK, up until the end of the

³⁸ BEN KIERNAN, *THE POL POT REGIME: RACE, POWER AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79* (2002), pp. 11, 33, 59, 61, 122, 230, 231.

³⁹ Introductory Submission, fn. 1 citing ELIZABETH BECKER, *WHEN THE WAR WAS OVER*, (1986), p.195.

⁴⁰ See David Chandler, *Requiem for the 1970s: Elizabeth Becker's "When the War Was Over"*, *Indo-China Issues*, 1986.

⁴¹ In a review, "Cambodian Tragedy", *Problems of Communism*, May-June 1985, pp. 70-73 Elizabeth Becker said of Etcheson that he was a newcomer, innocent of direct experience with the country in question, but did "an admirable, if **flawed** job". See *Problems of Communism*, May-June 1985.

⁴² See for example Suspect Statement of Van Rith", 20 February 2003, ERN 00076046. "...cadre who had been prohibited from [killing] but disobeyed." Their victims, lived outside of Phnom Penh, in grassroots governed everywhere by the kind of cadre Rith described. "Nothing worked in any of the zones. The Centre gave them instructions about the exercise of political and economic power, but implementation was up to the zones themselves, so everything depended on the kinds of persons who were in charge of the zones, because they put their links in place as subordinates in the sectors, which did the same in the districts, which did the same in the cooperatives and subdistricts." "Asked who ordered their execution, Rith reiterated that "in general terms, the upper echelons did not give a green light for killings" by the lower levels, as "they gave very clear instructions that before anyone could be killed, the decision to do so had to be made at four levels, first district and then sector, zone and centre, only after which could someone be killed." Their policy was to "go light on killings" and deposit suspects with the Centre. Thus, it was supposed to "not be the case that just anybody had the right to kill" but the lower downs did so."

⁴³ IENG Sary's First Investigative Request, paras. 20-25.

⁴⁴ VICKERY, pp. 1-3, 4, 17, 25, 26. See also THEARY SENG, *DAUGHTER OF THE KILLING FIELDS* (Fusion Press, 2005), pp. 79, 97; SATHAVY KIM, *JEUNESSE BRISÉE* (Arles, Actes Sud, 2008), pp. 48-49.

