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Lawyers claim Ieng Sary 'Agent of Peace'

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The bail hearing for the Khmer Rouge's former foreign minister at Cambodia's Extraordinary Chambers entered a third day with lawyers for the accused arguing a 12-year-old royal pardon exempts him from prosecution at the UN-backed genocide court.

The validity, scope and effectiveness of the 1996 royal pardon was debated in the proceedings which began June 30, with the defense asserting that Ieng Sary, 82, who is charged with war crimes and crimes against humanity, was an "agent of peace."

"By granting amnesty [to Sary in 1996, the Cambodian government] achieved what the UN and the international community could not - got the Khmer Rouge to put down their arms," said Sary's American lawyer Michael Karnavas on July 2.

"The then co-Prime Ministers [Norodom Ranariddh and Hun Sen] recognized the importance of Ieng Sary, recognized that he was key to dismantling the Khmer Rouge and therefore provided him with an opportunity to put down arms and help to create a process whereby others could do the same," Karnavas said.

Sary is one of five former senior Khmer Rouge officials being held by the tribunal, which is attempting to establish accountability for an estimated 1.7 million deaths under the ultra-communist group's rule from 1975 to 1979. He is the only defendant before the tribunal who has already been tried and pardoned.

Sary was found guilty in absentia of genocide and crimes against humanity at the People's Revolutionary Tribunal organized by the occupying Vietnamese forces in 1979. The tribunal was a classic Soviet-style show trial, with no real effort to present a defense. The defense lawyers called for the death penalty for their clients.

In exchange for his and his troops' defection to the government side, Sary was pardoned by then-King Norodom Sihanouk in 1996 and granted amnesty from prosecution under a 1994 law which outlawed the Khmer Rouge.

When the amnesty was granted the aim was to "protect Ieng Sary from any further prosecution related to the decree outlawing the Khmer Rouge," Karnavas said.

The prosecution drew attention to the context within which the pardon and amnesty were granted - as part of the government's so-called "win-win" strategy which sought to reconcile all forces and restore peace to Cambodia.

"The amnesty aimed to rally troops to the government side, and in offering this the government put aside the rule of law ... the goal then was peace and harmony," said Yet Chakrya, deputy co-prosecutor at ECCC.

Chakrya added that for a pardon to be technically valid, the convicted must have served at least two thirds of their sentence.

Sary has never spent "even a day in jail... so the previous pardon does not pose any challenge to current prosecution at the ECCC," he concluded.

Deputy co-prosecutor William Smith emphasized the difference between the pardon - which pertained to the death sentence and confiscation of property meted out during the 1979 trial - and the amnesty, which was to prevent Sary from being prosecuted under the 1994 Khmer Rouge law but "not to provide amnesty from future prosecutions."

"The language of the pardon is narrow and specific and it is limited in scope to sparing his life and property," he said. "If one studies the wording of the royal decree one sees it is still possible to try [him. There is] nothing to ban Ieng Sary going before a court."

He further added that neither the pardon nor the amnesty were intended to cover crimes committed between 1975 and 1979.

Although the office of co-investigating judges did not challenge the legality of the amnesty or pardon, the civil parties to the trial did, arguing that the former king overstepped his power.

This argument was dismissed as "unreasonable" and "circular" by Sary's Khmer lawyer, Ang Udom.

"The civil party lawyers' assertion [that the amnesty and pardon are legally void] is inconsistent with the constitution," he said.

The right of civil parties to fully participate in the pre-trial hearing was called into question earlier in the proceedings, with Karnavas claiming their right to speak "damaged the principle of equality of arms."

"I understand everyone wishes to be seen speaking, but it is not necessary and I think we are setting a bad precedent," he said.

On July 1 the Pre Trial Chamber ruled that civil parties to cases at the tribunal who are represented by attorneys would not be allowed to speak for themselves. One civil party, Theary Seng, immediately dismissed her lawyer but was again denied the right to speak.

"When I was a child Ieng Sary silenced me once and today [30 years later] Ieng Sary has silenced me at this UN-backed tribunal, so I hope the pretrial chamber will reconsidered my application," she said, choking back tears.

"I do not have a lawyer to protect me and I have been denied a voice to defend myself, it is an abuse of the fundamental right to be heard," said Seng, a Khmer-American who is herself a lawyer.