



## **Khmer Rouge chiefs can be charged as jointly responsible for crimes**

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Phnom Penh - Investigating judges at Cambodia's war crimes tribunal have ruled that surviving Khmer Rouge leaders can be charged with the controversial legal concept of joint criminal enterprise (JCE) when they appear as defendants, likely in 2011.

In the ruling made public on Wednesday, the investigating judges said JCE was applicable to crimes committed under international law, but not to crimes committed under Cambodian law.

It has been used against defendants at the International Criminal Tribunal for the former Yugoslavia (ICTY) and substantially enhances the prosecution's ability to prove its case.

The legal concept states that a person who was part of a group that committed crimes can be held individually liable for those crimes, even if he did not personally carry them out.

More controversially, a third category of JCE, known as JCE III, holds that an accused can be held accountable for crimes committed by members of the group even if those crimes were not part of the common plan - provided those crimes were 'a natural and foreseeable consequence.'

Michael Karnavas, the defence lawyer for former Khmer Rouge foreign minister Ieng Sary, said he would appeal the decision.

'Obviously the co-investigating judges are trying to turn the (proceedings) into an international tribunal by applying dubious jurisprudence from the ICTY,' Karnavas said by email.

'JCE is by far the most controversial piece of law to have been legislated from the bench.'

Karnavas said the first two categories of JCE were 'almost acceptable' since they are similar to other legislation. But JCE III, he said, 'is a pure and simple concoction of the ICTY.'

'Where there is little or no evidence, [JCE III] is a great weapon for the prosecution: it lowers the bar for getting convictions and it spreads the stain to anyone and anything remotely connected to the alleged JCE,' he said.

'It is so broad and so unrestrained that even 10 years after its creation it is still unclear where the boundaries lie,' he said.

Ieng Sary is currently in pre-trial detention along with former Brother Number 2 Nuon Chea, former head of state Khieu Samphan and former social affairs minister Ieng Thirith.

The Khmer Rouge ruled Cambodia between 1975 and 1979. Up to 2 million people are thought to have died during that time from execution, starvation and overwork. The movement's leader, Pol Pot, died in 1998.