

BEFORE THE SUPREME COURT CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC-TC/SC ()**Party Filing:** The Defence for IENG Sary**Filed to:** The Supreme Court Chamber**Original language:** ENGLISH**Date of document:** 25 January 2013**CLASSIFICATION****Classification of the document
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**IENTG SARY'S NOTICE OF APPEAL AGAINST DECISION ON THE IENG SARY
DEFENCE REQUEST TO AUDIO AND/OR VIDEO RECORD IENG SARY IN THE
HOLDING CELL & REQUEST FOR CONSOLIDATION OF CONSIDERATION OF
APPEAL WITH THE APPEAL AGAINST THE TRIAL CHAMBER'S ORAL
DECISION TO DENY HIS RIGHT TO BE PRESENT IN THE COURTROOM AND
TO PROHIBIT HIM FROM BEING VIDEO RECORDED IN THE HOLDING CELL
(E238/9/1/1)**

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Distribution to:**The Supreme Court Chamber Judges:**

Judge KONG Srim

Judge SOM Sereyvuth

Judge Agnieszka KLONOWIECKA-MILART

Judge MONG Monichariya

Judge Chandra Nihal JAYASINGHE

Judge YA Narin

Judge Florence Ndepele Mwachande MUMBA

Co-Prosecutors:

CHEA Leang

Andrew CAYLEY

All Defence Teams**All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Internal Rule 106 and the Supreme Court Chamber Legal Officer/Greffier’s instruction,¹ hereby files his Notice of Appeal against the Trial Chamber’s Decision on the IENG Sary Defence Request to Audio and/or Video Record IENG Sary in the Holding Cell (“Impugned Decision”),² and further respectfully requests that the Supreme Court Chamber consider this Appeal in consolidated form with his pending Appeal Against the Trial Chamber’s Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell.³ This Notice and Request is made for the following reasons:

1. The Impugned Decision provides legal reasoning for an oral decision of 7 December 2012 denying the Defence’s request to video record Mr. IENG Sary in the holding cell and a 12 December 2012 Memorandum ordering the Defence to cease audio recording Mr. IENG Sary and to make submissions on its right to audio and/or video record him.⁴
2. After the Trial Chamber issued its oral decision on 7 December 2012 (without providing legal reasoning), Mr. IENG Sary filed an Appeal (E238/9/1/1), which is presently pending before the Supreme Court Chamber.⁵ This Appeal addresses several of the issues contained in the Impugned Decision.
3. The Defence sought clarification from the Supreme Court Chamber Greffiers as to how best to proceed in regard to the Impugned Decision: whether to supplement the pending Appeal or file a separate Appeal.⁶

¹ Email from Supreme Court Chamber Greffier to IENG Sary Defence titled “Re: Letter from Ieng Sary Defence requesting clarification”, 23 January 2013: “To the extent that your team may be concerned that the Supreme Court Chamber might dispose of your pending appeal before being seized of your upcoming appeal and the arguments contained therein, I would advise that you file a notice or appeal or some formal indication of your intention to appeal the Trial Chamber’s written decision due to novel justification (as you state in your letter) and requesting the Supreme Court Chamber to wait until that appeal is fully briefed and so that it may consider addressing both appeals in consolidated form.”

² Decision on the IENG Sary Defence Request to Audio and/or Video Record IENG Sary in the Holding Cell, 16 January 2013, E254/3.

³ IENG Sary’s Appeal Against the Trial Chamber’s Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit him from being Video Recorded in the Holding Cell, 18 December 2012, E238/9/1/1. The OCP filed a Response to the appeal (E238/9/1/2), to which the Defence filed a Reply (E238/9/1/3).


⁴ Impugned Decision, para. 6. *See also* Order for Submissions, 12 December 2012, E254.

⁵ The Appeal was filed on 18 December 2012. The OCP filed a Response to the appeal (E238/9/1/2), to which the Defence filed a Reply (E238/9/1/3).


⁶ Letter from IENG Sary Defence to Supreme Court Chamber Greffier titled “Request for clarification concerning the Trial Chamber’s Decision on the IENG Sary Defence to Audio and/or Video Record IENG Sary in the Holding Cell (E254/3),” 23 January 2013.

4. The Supreme Court Chamber Legal Officer/Greffier instructed the Defence to file a separate Appeal rather than submitting a supplement to the pending Appeal.⁷
5. Because the issues in both Appeals are intertwined, for the sake of judicial efficiency, the Defence respectfully requests that the Supreme Court Chamber consider addressing both Appeals together in consolidated form. Accordingly, the Defence respectfully requests that the Supreme Court Chamber postpone deliberation on the pending Appeal until the present Appeal has been fully briefed.⁸

Respectfully submitted,



ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 25th day of **January, 2013**

⁷ Email from Supreme Court Chamber Greffier to IENG Sary Defence titled “Re: Letter from Ieng Sary Defence requesting clarification”, 23 January 2013.

⁸ The Defence submits that one of the grounds for appeal is Rule 104(4)(b), which, pursuant to Rule 107(2), has a filing deadline of 15 days. As the ECCC will be closed on 1 and 4 February 2013, due to the second official mourning period for the King Father Norodom Sihanouk, the filing deadline for the present Appeal is 5 February 2013.