

**BEFORE THE SUPREME COURT CHAMBER****EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/SC**Party Filing:** The Defence for IENG Sary**Filed to:** The Supreme Court Chamber**Original language:** ENGLISH**Date of document:** 5 January 2012**CLASSIFICATION****Classification of the document  
suggested by the filing party:** PUBLIC**Classification by OCIJ  
or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**


---

**IENG SARY'S APPEAL AGAINST THE TRIAL CHAMBER'S DECISION  
DENYING HIS RIGHT TO WAIVE HIS PRESENCE IN THE COURTROOM  
DURING TRIAL AND DENYING HIS CONSTITUTIONAL RIGHT TO ASSIST IN  
HIS OWN DEFENCE**

**TABLE OF AUTHORITIES**Filed by:Distribution to:

**The Co-Lawyers:**  
ANG Udom  
Michael G. KARNAVAS

**The Supreme Court Chamber Judges:**  
Judge KONG Srim  
Judge SOM Sereyvuth  
Judge MONG Monichariya  
Judge YA Narin  
Judge MOTOO Noguchi  
Judge Agnieszka KLONOWIECKA-MILART  
Judge Chandra Nihal JAYASINGHE  
Reserve Judge SIN Rith  
Reserve Judge Florence MUMBA

**Co-Prosecutors:**  
CHEA Leang  
Andrew CAYLEY

**All Defence Teams****All Civil Parties**

**Cambodian Law – ECCC Legal Compendium**

1. Cambodian Constitution, Preamble, Arts. 31, 38.
2. Cambodian Code of Criminal Procedure, Arts. 300, 333.

**ECCC Law – ECCC Legal Compendium**

3. Establishment Law, Arts. 33 new, 35 new, 41, 42 new; Agreement, Arts. 19 and 20.
4. Agreement, Arts. 12(2), 13(1).
5. Internal Rules, 21, 35, 81, 89bis(2) 104(1), 104(4)(d), 105(2), 109(1).

**ECCC Jurisprudence – Already Disclosed on the Case File**

1. Written Record of Adversarial Hearing, 14 November 2007, C19, p. 2.
2. Written Record of Interview of Charged Person, 16 December 2007, D282, p. 3-5.
3. Order on Translation Rights and Obligations of the Parties, 19 June 2008, A190, n. 5, 7, 13.
4. Consolidated Response by Co-Investigating Judge Marcel Lemonde to Applications to Disqualify Filed on Behalf of IENG Sary and KHIEU Samphan, 5 November 2009, 4, ERN: 00399405-0039416.
5. Order on the Request by the IENG Sary Defence Team for Sanctions against the Co-Prosecutors, 26 November 2009, D97/9/7, para. 8.
6. *Case of KAING Guek Eav alias Duch*, 001/18-07 2007/ECCC/TC, Judgement, 26 July 2010, E188, para. 35.
7. Closing Order, 15 September 2010, D427.
8. Decision on IENG Sary's Appeal Against Co-Investigating Judges' Decision Refusing to Accept the Filing of IENG Sary's Response to the Co-Prosecutors' Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, D390/1/2/4, para. 13.
9. Decision on IENG Sary's Motion to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011, E5/3, paras. 3, 6, 7.
10. Decision on IENG Sary's Appeal Against the Closing Order, 11 April 2011, D427/1/30, n. 267.
11. Initial Hearing Transcript, 27 June 2011, E1/4.1, p. 1, 17-18, 33-34, 38-39, 62-67, 69-72, 75-76, 78-79.
12. Initial Hearing Transcript, 28 June 2011, E1/5.1, p. 1-2, 83-84.

13. Decision on NUON Chea's Preliminary Objection Alleging the Unconstitutional Character of the Internal Rules, 8 August 2011, E51/4, paras. 6-7.
14. Decision on NUON Chea's Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), 9 September 2011, E116, para. 18.
15. Scheduling Order for Opening Statements and Hearing on the Substance in Case 002, 18 October 2011, E131, p. 3.
16. IENG Sary's Observations on whether the Trial Chamber may compel an Accused to be present in court when the Accused has voluntarily, knowingly and unequivocally waived his right to be present and is represented by counsel, 11 October 2011, E130, para. 15.
17. Co-Prosecutors' Response to IENG Sary's Observations on whether the Trial Chamber may Compel an Accused to be Present in Court, 20 October 2011, E130/2, para. 2.
18. Transcript, 20 October 2011, E1/12.1, p. 136-37.
19. IENG Sary's Notice to the Trial Chamber that he will not testify during trial, 24 October 2011, E101/4.
20. Trial Transcript, 21 November 2011, E1/13.1, p. 36, 108-33.
21. Trial Transcript, 22 November 2011, E1/14.1, p. 1-3, 8, 21-68.
22. Decision on IENG Thirith's Fitness to Stand Trial, 17 November 2011, E138, para. 27
23. Decision on IENG Sary's Rule 35 Application for Judge Marcel Lemonde's Disqualification, Case 002/ 07-12-2009-ECCC/PTC(06), 5, 29 March 2010, paras. 11, 14.
24. Case File 002/14-12-2009-ECCC/PTC(08).
25. Trial Management Meeting Transcript (Confidential), 5 April 2011, E1/2.1, p. 21-22, 27-42.
26. Decision on Immediate Appeal by KHIEU Samphan on Application for Immediate Release, 6 June 2011, E50/3/1/4, para. 31.
27. Scheduling Order for Opening Statements and Hearing on the Substance in Case 002, 18 October 2011, E131, p. 3.

### **ECCC Reports, Internal Communications**

1. Interoffice Memorandum from John Downard, AV Supervisor, CMS to Rupert Abbott, Acting Head of DSS, Re: Update on Videoconferencing Equipment, 7 January 2011 – *Already disclosed on the Case File.*

2. Report Prepared in Response to the Trial Chamber’s Order Assigning Expert – E62/3 (Confidential Document), 13 June 2011, E62/3/5, paras. 12, 17, 22, 30 – *Already disclosed on the Case File.*
3. Email from Matteo Crippa, Trial Chamber Legal Consultant, to Tanya Pettay, IENG Sary Defence Legal Consultant, Re: Fw: Implementation of Expert Medical Report/Re “Reclining Chair” for IENG Sary, 10 August 2011 – *Attachment 1.*
4. Memorandum from the President of the Trial Chamber, Judge Nil Nonn, to all parties in Case 002, re: “Trial Chamber Response to IENG Sary’s ‘Observations’ of 14 October 2011 (E130), 28 October 2011, E130/3, p. 2 – *Already disclosed to the parties.*
5. Summons – Accused, 16 November 2011, E131/7 – *Already disclosed on the Case File.*
6. Memorandum from Ms. Nisha Valabhji, Officer-in-Charge, Defence Support Section (“DSS”) to Mr. ANG Udom and Mr. Michael G. Karnavas, Co-Lawyers for IENG Sary, Subject: Trial Chamber referral of IENG Sary Requests (E53/2 & E65) and IENG Sary Motions (E70, E69, E71) to DSS for review pursuant to its power to refuse part payment for work claimed, 25 April 2011 – *Attachment 2.*

### **International Instruments and Conventions**

7. Universal Declaration of Human Rights, U.N. G.A. Res. 217 A (III), 10 December 1948, preamble - *ECCC Legal Compendium.*
8. International Covenant on Civil and Political Rights, U.N.G.A. Res. 2200A(XXI), 16 December 1966, preamble, Arts. 14(2), 14(3)(b), 14(3)(d) - *ECCC Legal Compendium.*
9. Charter of the United Nations, 1 U.N.T.S. XVI, Preamble (signed on 26 June 1945) – *Publicly available online.*

### **International Law and Jurisprudence**

#### **UN Human Rights Committee – *Publicly available online***

1. *Mbenge v. Zaire*, U.N. Human Rights Committee, Communication No. 16/1977, 25 March 1983, para. 14.1.
2. *Wolf v. Panama*, Communication No. 289/1988, Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International

Covenant on Civil and Political Rights, 8 April 1992, CCPR/C/44/D/289/1988, para. 6.6.

**ICC – Publicly available online**

3. ICC Statute, Arts. 7, 22.
4. ICC Elements of Crimes, Art. 7(1)(j).

**ICTY – Publicly available online**

5. ICTY Rules of Procedure and Evidence, Rule 77(A).
6. *Prosecutor v. Delalić et al.*, IT-96-21-T, Transcript, 4 November 1997, p. 8973.
7. *Prosecutor v. Strugar*, IT-01-42-T, Decision re the Defence Motion to Terminate Proceedings, 26 May 2004, paras. 30, 32.
8. *Prosecutor v. Kovačević*, IT-01-42/2-I, Public Version of the Decision on Accused's Fitness to Enter a Plea and Stand Trial, 12 April 2006, para. 23.
9. *Prosecutor v. Krajišnik*, IT-00-39-A, Decision on Momcilo Krajišnik's Request to Self-Represent, on Counsel's Motions in Relation to Appointment of Amicus Curiae, and on the Prosecution Motion of 16 February 2007, Fundamentally Dissenting Opinion of Judge Schomburg on the Right to Self-Representation, 11 May 2007, para. 3.
10. *Prosecutor v. Stanišić & Simatović*, IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of the Proceedings, 16 May 2008, para. 18.
11. *Prosecutor v. Prlić et al.*, IT-04-74-AR65.24, Decision on Jadranko Prlić's Appeal Against the Trial Chamber Decision on his Motion for Provisional Release, 8 June 2011, para. 4.
12. *Prosecutor v. Milošević*, IT-02-54-Misc.5 & IT-02-54-Misc.6, Decision on the Initiation of Contempt Investigations, 18 July 2011, para. 11.

**ICTR – Publicly available online**

13. ICTR Rules of Procedure and Evidence, Rule 82*bis*.
14. *Prosecutor v. Barayagwiza*, ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000, para. 21.
15. *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement, 28 November 2007, paras. 107, 109.

**SCSL – Publicly available online**

16. SCSL Rules of Procedure and Evidence, Rule 60.

**STL – Publicly available online**

17. STL Rules of Procedure and Evidence, Rule 22(1)(a).

### **European Court of Human Rights – Publicly available online**

18. *Colozza v. Italy*, Eur. Ct. H.R. 9024/80, 12 February 1985, para. 27.
19. *Stanford v. United Kingdom*, Eur. Ct. H.R. 16757/90, 23 February 1994, para. 26.
20. *Lala v. The Netherlands*, Eur.Ct.H.R. No. 14861/89, 22 September 1994, para. 14.
21. *Mielke v. Germany*, Eur. Comm. H.R. 30047/96, 25 November 1996, p. 27-28.
22. *Van Geyselhem v. Belgium*, Eur. Ct. H.R. No. 26103/95, 21 January 1999, para. 34.
23. *Baskaya & Okçuoğlu v. Turkey*, Eur. Ct. H. R. App. Nos. 23536/94 & 24408/94, 8 July 1999, para. 36.

### **National Law and Jurisprudence**

#### **France – Publicly available online through [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr).**

24. French Code of Criminal Procedure, Arts. 319, 320.

#### **United Kingdom – available on databases accessible through ECCC library**

25. *R v. O’Boyle* (1991) Cr. App. R. 202, 208.

#### **United States of America – available on databases accessible through ECCC library**

26. Federal Rules of Criminal Procedure, Rule 43.
27. *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

#### **Germany**

28. Article 1 of the Basic Law for the Federal Republic of Germany (adopted on 8 May 1949) – *Publicly available online*.

### **Books, Articles and Miscellaneous**

29. Behind the scenes: the holding cells, *available at* <http://www.eccc.gov.kh/en/articles/behind-scenes-holding-cells>.
30. JUDGE RICHARD MAY & MARIEKE WIERDA, INTERNATIONAL CRIMINAL EVIDENCE 306 (Transnational Publishers Inc., 2002) – *available in ECCC Library*.
31. Andrew Cayley, *Ieng Sary Defence Team Need Not Apologise For Doing Its Job*, CAMBODIA DAILY, 12 July 2011, p. 34 – *Already Disclosed on the Case File*.
32. LORD BINGHAM OF CORNHILL, THE RULE OF LAW 116 (Penguin Books 2010) – *Already Disclosed on the Case File*.
33. Alan Gewirth, *Human Dignity as the Basis of Rights*, in THE CONSTITUTION OF RIGHTS: HUMAN DIGNITY AND AMERICAN VALUES 10, 12-13 (Cornell University Press, 1992) – *Already Disclosed on the Case File*.

34. Human dignity constitutes “the highest legal value in Germany.” N. Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COL. J. EUR. L. 201, 216 (2008), citing EDWARD J. EBERLE, *DIGNITY AND LIBERTY: CONSTITUTIONAL VISIONS IN GERMANY AND THE UNITED STATES* 42 (Praeger 2002) – *Already Disclosed on the Case File*.
35. N. Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COL. J. EUR. L. 201, 207 (2008) – *Already Disclosed on the Case File*.
36. Shahram Dana, *Beyond Retroactivity to Realizing Justice: A Theory on the Principle Of Legality in International Criminal Law Sentencing*, 99(4) JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 857, 864, 868, 869 – *Attachment 3*.
37. IENG Sary Defence Team Website available at <https://sites.google.com/site/iengsarydefence/> - *Publicly available online*.