

**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:** 20 January 2012**CLASSIFICATION****Classification of the document  
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**IENG SARY'S APPEAL AGAINST THE TRIAL CHAMBER'S DECISION  
REFUSING HIS REQUEST FOR THE TRIAL CHAMBER TO DIRECT ITS SENIOR  
LEGAL OFFICER TO MAINTAIN OPEN AND TRANSPARENT  
COMMUNICATION WITH ALL THE PARTIES**

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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 and Jurisprudence – ECCC Legal Compendium**

1. Constitution, Art. 31.
2. Cambodian Code of Ethics for Judges, Arts. 30, 32.

**ECCC Law – ECCC Legal Compendium**

3. Agreement, Art. 13(1).
4. Establishment Law, Art. 33 new.
5. Internal Rules, Rules 16bis, 21, 35, 80(6), 101(4)-(5), 104, 109(1).

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

6. IENG Sary's Request for the Trial Chamber to direct the Trial Chamber Senior Legal Officer to Maintain Open and Transparent Communication with All Parties Concerning Trial Management Issues, 14 December 2011, E154.
7. Trial Chamber Memorandum entitled "IENG Sary Request that the Trial Chamber direct the Senior Legal Officer to maintain open and transparent communication with all parties concerning trial management issues (E154)," 20 December 2011, E154/1.
8. IENG Sary's Appeal Against the Trial Chamber's Decision on Motions for Disqualification of Judge Cartwright, 5 January 2012, E137/5/1/1.
9. IENG Sary's Request for Investigation Concerning Ex Parte Communications between the International Co-Prosecutor, Judge Cartwright and Others, 24 November 2011, E137/3.
10. IENG Sary's Second Rule 34 Application to Disqualify Judge Marcel LEMONDE and Joinder to the IENG Thirith Defence Application for Disqualification of Co-Investigating Judge Marcel Lemonde and Request for a Public Hearing, 14 December 2009, 1.
11. Trial Chamber Response to Motions E67, E57, E58, E23, E59, E20, E33, E71, and E73 following the Trial Management Meeting of 5 April 2011, E74, p. 3-4.

12. Decision on IENG Sary's Appeal against the Co-Investigating Judges' Decision Refusing to Accept the Filing of the OCP'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.
13. Decision on IENG Sary's Appeal against the Co-Investigating Judges' Order Denying Request to Allow Audio/Video Recording of Meetings with IENG Sary at the Detention Facility, 11 June 2010, A371/2/12, para. 18.
14. 002/14-12-2009-ECCC/PTC(08).
15. Decision on IENG Sary's Appeal against Trial Chamber's Order Requiring his Presence in Court, 13 January 2012, E130/4/3, p. 1.
16. Trial Chamber Response to IENG Sary's 'Observations' of 14 October 2011 (E130), 28 October 2011, E130/3.
17. Trial Chamber Response to Lead Co-Lawyers and Civil Party Lawyers Request to Make a [sic] Brief Preliminary Remarks on Behalf of Civil Parties (E131/4), 15 November 2011, E131/4/1.
18. Memorandum in response to request filed by IENG Sary (E53/2), 16 March 2011, E53/2/1.
19. Memorandum on IENG Sary request to file motion seeking "confirmation that he will be entitled to present oral arguments at the initial hearing concerning each of his preliminary objections", 16 March 2011, E65/1.
20. Decision on NUON Chea Defence Request for Internal Rule 35 Investigation following Unauthorized Disclosure of Confidential Documents, 20 December 2011, E147/1.
21. Decision on IENG Sary's Motion for a Hearing on the Conduct of the Judicial Investigations, 8 April 2011, E71/1.
22. Decision on IENG Sary's Motions Regarding Judicial Notice of Adjudicated Facts from Case 001 and Facts of Common Knowledge being applied in Case 002, 4 April 2011, E69/1.

23. IENG Sary's Request for Investigation Concerning Ex Parte Communications between the International Co-Prosecutor, Judge Cartwright and Others, 24 November 2011, E137/3.
24. *Case of KAING Guek Eav alias "Duch"*, 001/18-07-2007-ECCC/TC, Decision on IENG Sary's Request to Make Submission in Response to the Co-Prosecutors' Request for the Application of Joint Criminal Enterprise, 3 July 2009, E90, para. 4.
25. Decision on IENG Sary's Appeal against the Co-Investigating Judges' Decision Refusing to Accept the Filing of the OCP'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.
26. Trial Chamber memorandum entitled Response to issues raised by parties in advance of trial and scheduling of informal meeting with Senior Legal Officer on 18 November 2011, 17 November 2011, E141, p. 6.
27. Notice of Trial Chamber's disposition of remaining pre-trial motions (E20, E132, E134, E135, E124/8, E124/9, E124110, E136 and E139) and further guidance to the Civil Party Lead Co-Lawyers, 29 November 2011, E145, p. 1.
28. Decision on Co-Prosecutors' Appeal against the Co-Investigating Judges Order on Request to Place Additional Evidentiary Material on the Case File which Assists in Proving the Charged Persons' Knowledge of Crimes, 15 June 2010, D365/2/10.
29. Decision on the IENG Thirith Defence Appeal Against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010, 14 June 2010, D353/2/3, para. 23.
30. Decision on the IENG Thirith Defence Appeal Against 'Order on Requests for Investigative Action by the Defence for IENG Thirith' of 15 March 2010, 14 June 2010, D353/2/3, paras. 24-26, 28.
31. Decision on Nuon Chea's Appeal against Order Refusing Request for Annulment, 26 August 2008, D55/I/8, para. 21.

**Inter-Office Communications – Already Disclosed on the Case File**

32. Email from Tanya Pettay to Trial Chamber Senior Legal Officer, copied to all parties, entitled “Next Batch of Trial Chamber Witnesses”, 7 December 2011.
33. Email from the Trial Chamber Senior Legal Officer to Ms. Pettay, copies to all parties, entitled “Re: Next Batch of Trial Chamber Witnesses”, 8 December 2011.
34. Email from Mr. Karnavas to the Trial Chamber Senior Legal Officer, copied to all parties, entitled “Start Date of Trial”, 17 October 2011.
35. Email from the Trial Chamber Senior Legal Officer to all parties entitled “Communication to parties in Case 002 regarding scheduling of opening statements and the hearing of the substance in Case 002, and information in advance of hearing on 19-20 October 2011,” 17 October 2011.
36. Email from Mr. Karnavas to the Trial Chamber Senior Legal Officer, copied to all parties, entitled “Re: Start Date of Trial”, 17 October 2011.
37. Second email from the Trial Chamber Senior Legal Officer to Mr. Karnavas, copied to all parties, entitled “Re: Start Date of Trial”, 17 October 2011.
38. Second email from the Trial Chamber Senior Legal Officer to Ms. Pettay, copied to all parties, entitled “Re: Next Batch of Trial Chamber Witnesses,” 8 December 2011.
39. Email from Civil Party Legal Officer Jeanne Sulzer to Trial Chamber Senior Legal Officer, copied to all parties, entitled “Re: Next Batch of Trial Chamber Witnesses,” 7 December 2011.

**International Conventions and Declarations – ECCC Legal Compendium**

40. International Convention on Civil and Political Rights, Arts. 14, 15.
41. 1948 Universal Declaration of Human Rights, Art. 10.

**Ad Hoc Tribunal Statutes, Rules, and Jurisprudence – Available at ICTY, ICTR, or SCSL websites**

42. ICTY Statute, Art. 23(2).
43. ICTY Rules of Procedure and Evidence, Art. 98ter(C).

44. *Prosecutor v. Prlić et al.*, IT-04-74-AR73.13, Decision on Jadranko Prlić's Consolidated Interlocutory Appeal against the Trial Chamber's Orders of 6 and 9 October 2008 on Admission of Evidence, 12 January 2009, para. 18.
45. *Prosecutor v. Prlić et al.*, IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber's Ruling Reducing Time for the Prosecution Case, 6 February 2007.
46. *Prosecutor v. Haradinaj et al.*, IT-04-84-AR65.2, Decision on Lahi Braimaj's Interlocutory Appeals Against the Trial Chamber's Decision Denying his Provisional Release, 9 March 2006, para. 10.
47. *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal Against the Decision of Trial Chamber II of 21 March 2007 Concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007, para. 180.
48. *Prosecutor v. Sesay et al.*, SCSL-04-15-A, Judgement, 26 October 2009, para. 344.

**European Court of Human Rights Jurisprudence** – Available at ECtHR website  
(<http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>)

49. *Lobo Machado v. Portugal*, Eur. Ct. H. R. App. no. 15764/89 (1996) para. 31.
50. *Öcalan v. Turkey*, Eur. Ct. H.R., App. no. 46221/99 (2005), para. 146.
51. *Brandstetter v. Austria*, Eur. Ct. H.R. App. no. 11170/84; 12876/87; 13468/87 (1991), para. 67.
52. *Ruiz-Mateos v. Spain*, 16 Eur. H. R. Rep. 505, App. No. 12952/87 (1993).
53. *Taxquet v. Belgium*, Eur. Ct. H.R. Application no. 926/05 (2009).

**Human Rights Committee Jurisprudence** – Already Disclosed on the Case File

54. *Fei v. Colombia*, Communication No. 514/1992, U.N. Doc. CCPR/C/53/D/514/1992 (1995), para. 8.4.

**National Courts Jurisprudence – Already Disclosed on the Case File**

55. *R v. Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256, [1923] All ER 233.

**Books, Articles and Miscellaneous**

56. LOUIS D. BRANDEIS, *OTHER PEOPLE’S MONEY*, Chapter 5 (1913), *available at* <http://www.law.louisville.edu/library/collections/brandeis/node/191>.

57. Cynthia Gray, *The Ben J. Altheimer Symposium: Courtroom with a View: Perspectives on Judicial Independence: In Honor of Judge Richard Sheppard Arnold: Avoiding the Appearance of Impropriety: With Great Power Comes Great Responsibility*, 28 U. ARK. LITTLE ROCK L. REV. 63, 89 (2005) – *Attachment 1*.

58. Working Group on Judicial Conduct, European Network of Councils of Justice, Consiglio Superiore Della Magistratura, p. 25 – *Already Disclosed on the Case File*.

59. The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct*, March 2007, p. 9-18, *available at* <http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF>.

60. John R. Allison, *Combinations of Decision-Making Functions, ex Parte Communications, and Related Biasing Influences: A Process-Value Analysis*, 1993 UTAH L. REV. 1135, 1197 (1993) – *Attachment 2*.

61. American Bar Association Model Code of Judicial Conduct, Rules 2.3(A)-(B), 2(9), 12.2(A), *available at*

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2010\\_mcjc\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2010_mcjc_final.authcheckdam.pdf).

62. *Commentary to the American Bar Association Model Code of Judicial Conduct*, *available at*

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2010\\_mcjc\\_final.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2010_mcjc_final.authcheckdam.pdf).

63. *Recommendations Regarding Additional Transparency at the Extraordinary Chambers of the Courts of Cambodia (ECCC) Submitted by members of Civil Society and Members of the Cambodian Press March 24, 2008*, *available at*

<http://www.cambodiatribunal.org/CTM/Recommendations%20Regarding%20Additional%20Transparency.pdf?phpMyAdmin=8319ad34ce0db941ff04d8c788f6365e>.

64. *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts*, Office of the United Nations High Commission for Human Rights, 2008, p. 4-5, 17-18 available at <http://www.ohchr.org/Documents/Publications/HybridCourts.pdf>.
65. Holly Telerant & Pen Rany, *Must Justice be Seen to be Done? Public Scrutiny and Participation in the KRT*, VOICE OF JUSTICE RESEARCH BULLETIN, Year 14, Issue 136, March-April 2007, p. 15-18 – *Already Disclosed on the Case File*.