

**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:** 18 December 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:**


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**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**

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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**

**Cambodian Law – ECCC Legal Compendium**

1. Cambodian Constitution, Arts. 31, 38.

**ECCC Law – ECCC Legal Compendium**

2. Agreement, Art. 13.
3. Establishment Law, Art. 35 new.
4. Internal Rules, Rules 21, 22(4), 81, 104, 109(1).

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

5. Order for Submissions, 12 December 2012, E254.
6. Transfer of IENG Sary to ECCC Detention Facility for 8 November 2012 Hearing, 7 November 2012, E239/2.
7. Mr. IENG Sary's Daily Medical Reports submitted by the Khmer Soviet Friendship Hospital (*e.g.*, E11/86.1) – currently classified as strictly confidential, but pending reclassification as public.
8. Expert Report Relating to Mr. IENG Sary Prepared in Response to Trial Chamber Request (E238), 6 November 2012, E238/4;
9. Directions to the Parties Following Hearing of 21 September 2012, 24 September 2012, E233, para. 2.
10. Re-appointment of Professor John A. Campbell (IENG Sary), 8 October 2012, E238.
11. Dr. Bursztajn's *curriculum vitae*, E115.2.2.
12. Decision on Accused IENG Sary's Fitness to Stand Trial, 26 November 2012, E238/9.
13. IENG Sary's Limited Waiver of Right to be Present During Court Proceedings, 18 September 2012, E229.

14. IENG Sary's Limited Waiver of Right to be Present During Court Proceedings, 1 October 2012, E237.
15. IENG Sary's Limited Waiver of Right to be Present During Court Proceedings, 30 October 2012, E237/1.
16. IENG Sary's Withdrawal of Waivers of Right to be Present, 3 December 2012, E237/2.
17. IENG Sary's Notice of Withdrawal of Waivers of Right to be Present During the Testimony of Certain Witnesses and Civil Parties, 6 December 2012, E249.
18. Strictly Confidential Medical Report, E1/147.2.
19. IENG Sary's Consent to Public Discussion of his Health, 8 November 2012, E1/142.2.
20. Observation Log concerning Mr. Ieng Sary's ability to follow the proceedings and participate in his Defence 4 December 2012, 5 December 2012, E248/2.1 – *Annex A*.
21. Observation Log concerning Mr. Ieng Sary's ability to follow the proceedings and participate in his Defence 5 December 2012, 7 December 2012, E248.1 – *Annex B*.
22. Observation Log concerning Mr. Ieng Sary's ability to follow the proceedings and participate in his Defence 6 December 2012, 7 December 2012, E248/1.1 – *Annex C*.
23. IENG Sary's Request for Reconsideration of the Trial Chamber's Decision Finding Him Fit to Stand Trial and Rejecting His Request for the Appointment of an Additional Expert to Assist in Determining Fitness, 7 December 2012, E238/11.
24. 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, paras. 11, 18, 31, 37.
25. Decision on IENG Sary's Appeal Against Trial Chamber's Order Requiring his Presence in Court, 13 January 2012, E130/4/3, p. 1.

26. Co-Prosecutors' Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, 7 November 2012, E163/5/1/1, para. 14, n. 28.
27. Decision on Immediate Appeals by NUON Chea and IENG Thirith on Urgent Applications for Immediate Release, 3 June 2011, E50/2/1/4, para. 39.
28. Decision on IENG Sary's Appeal Against Trial Chamber's Decision on IENG Sary's Rule 89 Preliminary Objections (*Ne Bis in Idem* and Amnesty and Pardon), Dissenting Opinion of Judges Klonowiecka-Milart and Jayasinghe, 20 March 2012, E51/15/1/2.1, para. 1.
29. Decision on Immediate Appeal by KHIEU Samphan on Application for Release, 6 June 2011, E50/3/1/4, paras. 30-32.
30. Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 12 November 2009, D164/3/6, para. 25.
31. Decision on NUON Chea's Appeal Against the Trial Chamber's Decision on Rule 35 Applications for Summary Action, 14 September 2012, E176/2/1/4, paras. 24-30.
32. Trial Chamber memorandum "Judicial Recesses During 2013", 11 December 2012, E253.
33. Decision on Appeal Concerning Contact Between the Charged Person and his Wife, 30 April 2008, A104/II/7, paras. 14-15.
34. Request for an Order to the ECCC Detention Facility to Allow the Defence to Conduct Audio/Video Recordings of our Client at the Detention Facility, 18 March 2010, A371.
35. Letter Re: Your Request to conduct Audio/Video Recordings of IENG Sary in the Detention Facility, 9 April 2010, A371/1.
36. IENG Sary's Appeal against the OCIJ's Rejection of his Defence Team's Request to Conduct Audio/Video Recordings of Meetings in the ECCC Detention Facility, 23 April 2010, A371/2/12.

37. Email exchange between the Defence and Dr. Bursztajn, E238/6.2.
38. Letter from Dr. Bursztajn to the Defence, 7 November 2012, E238/6.

**ECCC Case 002 Transcripts – *Already Disclosed on the Case File***

39. Transcript, 21 November 2011, E1/13.1, p. 36-37
40. Transcript, 22 November 2011, E1/14.1.
41. Transcript, 21 September 2012, E1/125.1.
42. Transcript, 23 October 2012, E1/137.1, p. 49-50.
43. Transcript, 8 November 2012, E1/142.1.
44. Transcript, 12 November 2012, E1/143.1, p. 5-12, 25-30, 36-37, 39-42.
45. Transcript, 4 December 2012, E1/147.1, p. 12-15, 17-19, 27-28.
46. Transcript, 5 December 2012, E1/148.1, p. 2, 4-6, 36-38.
47. Transcript, 6 December 2012, E1/149.1, p. 3-4.
48. Draft Transcript, 11 December 2012, p. 2-5.

**Inter-Office Communications – *Available on the Case File or Upon Request***

49. Email from Senior Detention Liaison Officer Claude Bouchard, 7 September 2012;  
Transcript, 21 September 2012, E1/125.1, p. 12.
50. Email from Trial Chamber Legal Officer Roger Phillips, “Re: Request to share expert report E238/4”, 7 November 2012.
51. Email from Trial Chamber Legal Officer, “Re: Letter from Ieng Sary Defence in response to the report from the Detention Facility”, 7 December 2012.
52. Email from Defence to Trial Chamber Legal Officer, “Re: Letter from Ieng Sary Defence in response to the report from the Detention Facility”, 8 December 2012.

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

53. International Covenant on Civil and Political Rights, Arts. 14, 26.
54. Universal Declaration of Human Rights, Arts. 7, 11.
55. European Convention on Human Rights and Fundamental Freedoms, Art. 6(3)(b), Protocol 12.
56. Inter-American Convention on Human Rights, Art. 24.

**ICTY Jurisprudence – *Available on ICTY Website***

57. *Prosecutor v. Stanišić & Simatović*, IT-03-69-AR73.2, Decision on Defence Appeal of the Decision on Future Course of Proceedings, 16 May 2008.
58. *Prosecutor v. Milošević*, IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defense Counsel, 1 November 2004, para. 17.

**ICTR Jurisprudence – *Available on ICTR Website***

59. *Zigiranyirazo v. Prosecutor*, ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006, paras. 2, 11, 12, 14-16.
60. *Prosecutor v. Karemera et al.*, ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning his Right to be Present at Trial, 5 October 2007.

**Constitutions of Various States**

61. United States Constitution, 14<sup>th</sup> amendment – *available at* <http://uscode.house.gov/pdf/Organic%20Laws/const.pdf>.
62. French Constitution, adopted 1958, Art. 1 – *available at* [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/constiution\\_anglais\\_juillet2008.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/constiution_anglais_juillet2008.pdf).
63. Declaration of Human and Civic Rights of 26 August 1789, Art. 6 – *available at*

[http://avalon.law.yale.edu/18th\\_century/rightsof.asp](http://avalon.law.yale.edu/18th_century/rightsof.asp).

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65. New Zealand Bill of Rights Act of 1990, Part 2, para. 27 – *available at* <http://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html>.
66. Constitution of the Republic of Poland, 2 April 1997, Art. 32 – *available at* <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.
67. Constitution of the Democratic Socialist Republic of Sri Lanka, Art. 12 – *available at* <http://www.priu.gov.lk/Cons/1978Constitution/CONTENTS.html>.
68. First Draft Constitution of the Republic of Zambia, 30 April 2012, Art. 45 – *available at* <http://zambianconstitution.org/downloads/First%20Draft%20Constitution.pdf>.

### **Miscellaneous**

69. Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 289/1988: Panama, 8 April 1992, CCPR/C/44/289/1988 (Jurisprudence), para. 6.6 – *Already Disclosed on the Case File*.
70. Commission on Human Rights, *Note Verbale Dated 24 August 1984 from the Permanent Representative of the Netherlands to the United Nations Office at Geneva Addressed to the Secretary General*, 28 September 1984, U.N. Doc. E/CN.4/1985/4, para. 70 – *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G84/182/73/PDF/G8418273.pdf?OpenElement>.
71. United Nations Basic Principles on the Role of Lawyers, adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August – 7 September 1990, Principle 13(a) – *available at* <http://www2.ohchr.org/english/law/lawyers.htm>.
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CCPR/C/GC/32, para. 34 – *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>.

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74. JUDGE RICHARD MAY & MARIEKE WIERDA, INTERNATIONAL CRIMINAL EVIDENCE 306 (Transnational Publishers Inc., 2002) – *already disclosed on the Case File*.

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