



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 13-Jan-2012, 09:28
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(១៣)

Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(13)

Before: Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Chandra Nihal JAYASINGHE
Judge YA Narin

Date: 13 January 2012
Original Language(s): Khmer/English
Classification: PUBLIC

**DECISION ON IENG SARY’S APPEAL AGAINST TRIAL CHAMBER’S ORDER
REQUIRING HIS PRESENCE IN COURT**

Co-Lawyers for the Accused
ANG Udom
Michael G. KARNAVAS

Accused
IENG Sary

Civil Parties Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”):

BEING SEISED of an appeal filed by the Co-Lawyers for the Accused (“Co-Lawyers”), IENG Sary (“Appeal”);¹

CONSIDERING the allegations in the Appeal that the decision of the Trial Chamber² to require IENG Sary’s presence in the courtroom during opening statements notwithstanding physical pain and discomfort impaired his right to assist in his own defence, disregarded his right to waive his presence at trial and constituted a penalty not prescribed by law, amounting to a knowing and wilful interference with the administration of justice pursuant to Internal Rule 35 (Rev. 8);

CONSIDERING that neither an error of fact or law nor an abuse of discretion on the part of the Trial Chamber can, by itself, constitute a knowing and wilful interference with the administration of justice within the meaning of Rule 35;

CONSIDERING that the substance of the appeal does not fall within the Chamber’s limited jurisdiction for immediate appeals under Rule 104(4);³

FOR THE FOREGOING REASONS the Supreme Court Chamber:

DECIDES to reject the Appeal as inadmissible.

Phnom Penh, 13 January 2012
President of the Supreme Court Chamber



Kong Srim

¹ 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, Case No. 002/19-09-2007-ECCC-TC/SC(13), 5 January 2012, E130/4/1.

² T. (EN), 21 November 2011, E1/13.1, p. 36; T. (EN), 22 November 2011, E1/14.1, p. 8.

³ Decision on the Appeals Filed by Lawyers for Civil Parties (Groups 2 and 3) Against the Trial Chamber’s Oral Decisions of 27 August 2009, 28 December 2009, E169/1/2, paras 8-12.