ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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

អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Jan-2013, 14:11
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(២២)
Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(22)

Before: **Judge KONG Srim, President**
Judge Chandra Nihal JAYASINGHE
Judge Agnieszka KLONOWIECKA-MILART
Judge MONG Monichariya
Judge Florence Ndepele Mwachande MUMBA
Judge SOM Sereyvuth
Judge YA Narin

Date: **24 January 2013**
Language(s): **Khmer/English**
Classification: **PUBLIC**

ORDER TO FILE A PUBLIC REDACTED VERSION OF IENG SARY'S APPEAL (E238/9/2/1)

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IENG Sary

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1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 ("Supreme Court Chamber" and "ECCC", respectively) is seized of "IENG Sary's Appeal against the Trial Chamber's Decision that He is Fit to Stand Trial and its Refusal to Appoint an Additional Expert to Assess Fitness" filed on 3 January 2013 ("Appeal").[1]

2. When filing the Appeal, the Defence for IENG Sary ("Defence") suggested that it be classified as public.[2] However, the Supreme Court Chamber notes that the Appeal discloses information contained in a strictly confidential document concerning IENG Sary's health.[3]

3. The Supreme Court Chamber recalls that all persons having access to confidential or strictly confidential information are under a duty of confidentiality, and shall not act in a manner which would lead to unauthorised disclosure of any confidential or strictly confidential information.[4] Accordingly, any document submitted for filing must bear the proposed classification in accordance with the Practice Direction on Classification, and filing parties must ensure that filings for which they propose to classify as public do not contain any confidential or strictly confidential information.[5]

4. The fact that the information pertains to IENG Sary himself does not entitle the Defence to disclose it in a way that offends its judicially determined status.[6] Pursuant to Article 3.14 of the Practice Direction on Filing Documents, the Supreme Court Chamber has therefore re-classified the Appeal as strictly confidential.[7]

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[1] E238/9/2/1.
[2] Appeal, first page.
[3] Appeal, fns. 105 *and* 107, *quoting from* Expert Report Relating to Mr. IENG Sary Prepared in Response to Trial Chamber Request (E238), E238/4, strictly confidential, 6 November 2012 ("E238/4").
[4] Article 8.1 of the Practice Direction on the Classification and Management of Case-Related Information, Revision 1, 7 March 2012 ("Practice Direction on Classification"). *See also* Rule 22(4) of the Internal Rules of the ECCC, Revision 8, 3 August 2011 ("Internal Rules").
[5] Article 3.13 of the Practice Direction on the Filing of Documents before the ECCC, Revision 8, 7 March 2012 ("Practice Direction on Filing Documents").
[6] *Cf.* Appeal, fns. 39 *and* 106, *referring to* Medical Report before Hearing, E1/147.2, strictly confidential, dated 4 December 2012, English translation filed 12 December 2012 ("E1/147.2"). Contrary to exposing excerpts directly from E238/4, IENG Sary merely makes reference to E1/147.2, which the Supreme Court Chamber considers to be generally acceptable. However, the Supreme Court Chamber notes IENG Sary's statement that E1/147.2 "is classified as strictly confidential despite Mr. IENG Sary's notice that his health issues could be addressed in public." *See* Appeal, fns. 39 *and* 106, *referring to* IENG Sary's Consent Letter to Public Discussion of His Health Issues, E1/142.2, dated 8 November 2012. The Supreme Court Chamber considers that such a statement cannot override the applicable requirements in re-classifying documents. *See* Article 9 of the Practice Direction on Classification. *See also infra*, para. 5.
[7] *See also* Article 9.1 of the Practice Direction on Classification.

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5. In keeping with the general need to ensure transparency of proceedings, all submissions filed before the ECCC shall be public unless there are exceptional reasons for keeping them confidential or strictly confidential, in whole or in part.[8] To this end, the Supreme Court Chamber considers that parties filing documents which they propose to be classified as confidential or strictly confidential should also file public redacted versions thereof, as appropriate.[9] Similarly, parties requesting the re-classification of documents from public to confidential or strictly confidential should also file public redacted versions thereof, as appropriate.[10] Where the re-classification of documents from public to confidential or strictly confidential originates from the Co-Investigating Judges or a Chamber, affected parties should also be instructed to file public redacted versions thereof, as appropriate.[11]

6. For the foregoing reasons, the Supreme Court Chamber, acting pursuant to Rules 35(2)(a) in conjunction with 35(1)(a) of the Internal Rules, and Article 9.2 of the Practice Direction on Classification,

INSTRUCTS the Defence to file a public redacted version of the Appeal no later than 30 January 2013;

INSTRUCTS the Defence to ensure that any changes to the strictly confidential version of the Appeal be limited to necessary redactions of strictly confidential information, such as the excerpts contained at footnotes 105 and 107 of the Appeal, and not consist of any additions, deletions or other amendments;

INSTRUCTS the Defence to clearly mark the redactions in the text of the public version of the Appeal or to file a confidential annex thereto identifying all redactions; and

REMINDS the Defence to exercise greater diligence not to publicly disclose confidential or strictly confidential information in any future filings.

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[8] *Cf.* Rules 29(4)(e), 54, 56(2)(a), 66(1), 78, 79(6), 102(1), 109(1), *and* 113(4) of the Internal Rules; Articles 1.2, 4-6, *and* 9.2 of the Practice Direction on Classification.
[9] *Cf.* Article 3.13 of the Practice Direction on Filing Documents *and* Article 9.3 of the Practice Direction on Classification.
[10] *Cf.* Article 3.14 of the Practice Direction on Filing Documents *and* Article 9.3 of the Practice Direction on Classification.
[11] *Cf.* Article 3.14 of the Practice Direction on Filing Documents *and* Article 9.2 of the Practice Direction on Classification. *See also* Article 9.1 of the Practice Direction on Classification.

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Phnom Penh, 24 January 2013

President of the Supreme Court Chamber

KONG Srim

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