

**BEFORE THE TRIAL CHAMBER OF THE
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**IENG THIRITH DEFENCE MOTION SUPPORTING IN PART 'IENG SARY'S REQUEST FOR
ACCESS TO STRICTLY CONFIDENTIAL DOCUMENTS ON THE CASE FILE'**

Defence for Ieng Thirith:

PHAT Pouy Seang
Diana ELLIS, QC

Trial Chamber Judges:

NIL Nonn, President
Silvia CARTWRIGHT
THOU Mony
Jean-Marc LAVERGNE
Ya SOKHAN

Civil Party Co-Lead Lawyers:

PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors:

CHEA Leang
Andrew CAYLEY

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1. On 14 September 2011, the defence for co-accused Ieng Sary filed its 'Ieng Sary's Request for Access to Strictly Confidential Documents on the Case File' (**Request**) requesting the Trial Chamber to grant the defence access to all strictly confidential documents on the Case File; or in the alternative, to conduct an in camera review of all the strictly confidential documents on the Case File, to determine which documents should be disclosed to the defence.¹
2. The defence for Madame Ieng Thirith herewith supports the Ieng Sary's Request, but maintains that medical documents and reports should not be subject to general disclosure as they are classified as 'strictly confidential'.
3. Ieng Sary's Annex to the Request identifies categories of documents which have been classified as 'strictly confidential' in the Case File. The defence notes that the list of 'strictly confidential' documents includes, *inter alia*, 'Victims Applications', 'Victims Application Reports', 'Letters' from both civil parties and the Victims Unit, 'Reports' from the Victims Unit and 'Biographies'.²
4. The defence further notes that some 'Victims Applications' or 'Reports' are documents affiliated to individuals who have been admitted as civil parties in Case No. 002.³ Civil parties Lead-Co Lawyers expressed their intention to use some of those 'strictly confidential' documents at trial and listed some of them in the Civil Parties Lead Co-Lawyers' Documentary Evidentiary Chart filed on 19 April 2011.⁴ By way of example, D22/1030 is listed in the Chart under 'Movement of the Population from Phnom Penh'.⁵ D22/1065 is listed in the Chart under 'Srae Ambel

¹ Ieng Sary's Request for Access to Strictly Confidential Documents on the Case File, 14 September 2011, Document No. E118.

² Ieng Sary's Annex to the Request for Access to Strictly Confidential Documents on the Case File, 14 September 2011, Document No. E118.1.1, pp. 32-79.

³ For instance, D22/1030, D22/1051, D22/1059, D22/1060, D22/1117.

⁴ Civil Party Lead Co-Lawyers Annex 8: Documentary Evidentiary Chart, 19 April 2011, Document No. E9/32.5.

⁵ Civil Party Lead Co-Lawyers Annex 8: Documentary Evidentiary Chart, 19 April 2011, Document No. E9/32.5, p. 5.

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Work site'.⁶ Because of their 'strictly confidential' classification, the defence cannot access any of these documents.

5. It is unclear at this stage which civil party will be called to give evidence at trial as the Trial Chamber has not decided on the totality of witnesses, experts and civil parties to be called at trial. If the applications listed in the strictly confidential Ieng Sary's Annex belong to any individuals who will be witnesses in any capacity in the trial, or as civil parties, and if the application includes any material pertaining to the evidence to be given, it should be disclosed to the defence, as should any other document from any person who will give evidence in any capacity if it contains an account of events. Also, there should be disclosure to the defence when the content of non-victims applications, reports and letters contains inculpatory and/or exculpatory material.
6. At the very least, there should be a proper assessment undertaken by the Chamber to ensure that the defence has not been deprived of relevant material.
7. The defence supports the Ieng Sary's Request in part only as it is of the view that medical records and reports fall into an entirely separate category of documents. The confidential nature of communications which pass between a doctor and a patient is well recognized. There may be circumstances in which the confidentiality is waived but not without the consent of the patient, or otherwise only in limited and well-defined situations. The Trial Chamber has recognized the right of an accused to privacy concerning medical information, by allowing this category of material to be placed on the file as 'strictly confidential', allowing as a consequence limited distribution.⁷ The defence contends that medical documents and reports should not be subject to general disclosure and are properly classified as 'strictly confidential'. The non-disclosure of medical information will not have any impact on Ieng Sary's right to a fair trial.

⁶ Civil Party Lead Co-Lawyers Annex 8: Documentary Evidentiary Chart, 19 April 2011, Document No. E9/32.5, p. 14.

⁷ Trial Chamber Memorandum to Counsel for the Parties, 6 July 2011, Document No. E62/3/10, p. 1.

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Party	Date	Name Lawyers	Place	Signature
Co-Lawyers for Ieng Thirith	22 September 2011	PHAT Pou Seang Diana ELLIS, QC	Phnom Penh	 