

**BEFORE THE TRIAL CHAMBER****EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for IENG Sary**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 8 August 2011**CLASSIFICATION****Classification of the document  
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**IENG SARY'S DOCUMENT AND EXHIBIT LIST FOR THE FIRST FOUR TRIAL  
TOPICS**

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ANG Udom

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**The Trial Chamber Judges:**

Judge NIL Nonn

Judge THOU Mony

Judge YA Sokhan

Judge Silvia CARTWRIGHT

Judge Jean-Marc LAVERGNE

Reserve Judge YOU Ottara

Reserve Judge Claudia FENZ

**Co-Prosecutors:**

CHEA Leang

Andrew CAYLEY

**All Defence Teams****All Civil Parties**

<b>ឯកសារដើម</b>	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception):	
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé	
du dossier: Uch Arun	

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Mr. IENG Sary, through his Co-Lawyers ("the Defence"), hereby submits his document and exhibit list, annexed hereto, for the first four trial topics. The Trial Chamber has yet to finalize the witness list for trial.<sup>1</sup> Also, the Defence cannot review documents from the Case File classified as strictly confidential (some of which are on the OCP's document list).<sup>2</sup> Finally, the Defence cannot review documents from the Case File which have not been translated into English.<sup>3</sup> Accordingly, the Defence reserves its right to supplement this list from its document lists for the entire trial<sup>4</sup> and from other sources during the first four phases of trial in order to assist the Trial Chamber in ascertaining the truth. The Defence recognizes that the ultimate discretion for the admission of evidence lies with the Trial Chamber.<sup>5</sup> Nonetheless, the Defence does not waive its previously stated positions on the issue of evidence admissibility, and incorporates by reference its submissions relevant to the following categories of documents:

a. Material from the Documentation Center of Cambodia ("DC-Cam"):

DC-Cam material is unsuitable to prove any fact it purports to prove. DC-Cam material is tainted by bias against Mr. IENG Sary as DC-Cam's mandate is that there was genocide and material is to be collected to support this claim. Any trial – even in part – based upon DC-Cam material,<sup>6</sup> or those associated with DC-Cam, will violate Mr. IENG Sary's right to a fair trial.<sup>7</sup>

<sup>1</sup> At the Initial Hearing, Judge Cartwright stated, "[I]f any of the parties considers that it is essential for the Trial Chamber to include a witness or expert in the list for examination during the first phase of the trial, then the names should not be referred to in open court. The name can be provided to the Trial Chamber in writing by Tuesday 5 July. The Trial Chamber does not intend that the parties reiterate their requests made in writing, but wishes only to allow the parties to assist it in ensuring that no vitally important, relevant witness or expert is omitted. Given the need to expedite the trial, the Chamber has limited scope for increasing the list." Transcript of Initial Hearing, Day 4, 30 June 2011, p. 2.

<sup>2</sup> For example, Documents D269/8 and D230/1.1.874a are documents classified as "Strictly Confidential," on the OCP's document list and cannot be reviewed by the Defence.

<sup>3</sup> Documents IS1.5 and IS12.10 are examples of the many documents on the Case File which are not available in English.

<sup>4</sup> IENG Sary's Initial List of Documents Already on the Case File and Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial, 1 April 2011, E9/22; IENG Sary's Second Initial List of Documents, 8 April 2011, E9/24; IENG Sary's Third Initial List of Documents, 19 April 2011, E9/25.

<sup>5</sup> Rule 87 of the Internal Rules.

<sup>6</sup> See IENG Sary's Motion Against the Use of all Material Collected by the Documentation Center of Cambodia, 24 February 2011, E59; IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of all Evidence Collected from the Documentation Center of Cambodia, 20 July 2010, D387; IENG Sary's Appeal Against the OCIJ's Order Rejecting IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Investigative Acts Performed by or with the Assistance of Stephen Heder & David Boyle and IENG Sary's Application to Seize the Pre-Trial Chamber with a Request for Annulment of All Evidence Collected from the Documentation Center of Cambodia & Expedited Appeal Against the OCIJ Rejection of a Stay of the Proceedings, 15 September 2010, D402/1/2.

<sup>7</sup> See IENG Sary's Initial Objection to the OCP Proposed Experts & Request for Leave to File Supplementary Submissions within 30 Days, 24 February 2011, E9/4/9; IENG Sary's Initial Objection to the Civil Parties'

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b. Torture tainted evidence:

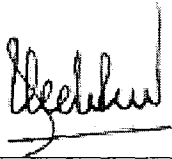
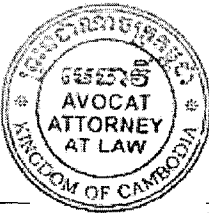
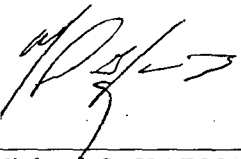
Torture tainted evidence is, under all its forms and in every circumstance, other than to prove that it was made under torture, inadmissible in judicial proceedings before the ECCC. This includes all secondary material deriving from torture-tainted evidence.<sup>8</sup>

c. Statements and interviews of people who cannot be confronted during trial:

Mr. IENG Sary reserves the right, as guaranteed by the Agreement, Establishment Law and the International Covenant on Civil and Political Rights, to confront all witnesses and experts against him whose statements, interviews and publications are introduced.<sup>9</sup>

**WHEREFORE**, for all the reasons stated herein, the Defence respectfully submits its document and exhibit list for the first four trial topics and reserves its right to supplement it during the first four phases of trial.

Respectfully submitted,

  
 ANG Udom
   
  
 Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 8<sup>th</sup> day of **August, 2011**

Proposed Experts & Request for Leave to File Supplementary Submissions within 30 Days, 24 February 2011, E9/4/3/1; IENG Sary's Joint Observations to Certain witnesses and Experts requested by the Co-Prosecutors, Civil Parties and NUON Chea following the Trial Chamber's Tentative List of Witnesses, 15 July 2011, E93/12.

<sup>8</sup> See Request Concerning the OCIJ's Identification of, and Reliance on, Evidence Obtained through Torture, 17 July 2009, D130/7; Letter Concerning the OCIJ's Identification of, and Reliance on, Evidence Obtained through Torture, 7 August 2009, D130/7/21; IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests Concerning the OCIJ's Identification of, and Reliance on, Evidence Obtained through Torture, 19 November 2009, D130/7/3/1; IENG Sary's Reply to Co-Prosecutors' Response to IENG Sary's Appeal against the OCIJ's Constructive Denial of IENG Sary's Requests Concerning the OCIJ's Identification of, and Reliance on, Evidence Obtained through Torture, 14 December 2009, D130/7/3/4; IENG Sary's Motion against the Use of Torture Tainted Evidence at Trial, 4 February 2011, E33.

<sup>9</sup> See IENG Sary's Response to the Co-Prosecutors' Rule 92 Submission Regarding the Admission of Written Witness Statements before the Trial Chamber & Request for a Public Hearing, 22 July 2011, E96/3.