

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: 19th April 2011

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:

IENG SARY'S THIRD INITIAL LIST OF DOCUMENTS

Filed by:

Distribution to:

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ANG Udom

Michael G. KARNAVAS

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

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception):	
..... 19 / 04 / 2011	
ម៉ោង (Time/Heure) :	
..... 16:00	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier:	
..... Ratanak	

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to the Trial Chamber’s Order to File Material in Preparation for Trial (“Order”),¹ hereby submits this third initial list of documents reflected in the attached Annex (“Third Initial List of Documents”), specifying new documents which the Defence intends to put before the Trial Chamber. This motion is made necessary to comply with the Order.² Pursuant to the Order,³ and where possible, each document is cross-referenced to “Points of the Indictment,” which have been identified by reference to the “List of Evidentiary Issues” provided to the parties by the Trial Chamber. These classifications are provisional; the Defence has not been able to conduct a detailed analysis of all the documents listed in the Third Initial List of Documents at this point in time, reserving the right to supplement and/or amend the “Points of the Indictment” column of the Third Initial List of Documents.⁴ Moreover, since not all documents on the Third Initial List of Documents meet the threshold tests for admissibility at the ECCC,⁵ the Defence reserves the right to object to any document listed being put before the Trial Chamber.⁶ The Third Initial List

¹ *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Order to File Materials in Preparation for Trial, 17 January 2011, E9, ERN: 00635754-00635759.

² The Third Initial List of Documents is as detailed and as comprehensive as is possible at this stage of the proceedings, listing documents both germane to the witnesses the Defence has requested and relevant to the case against Mr. IENG Sary, not least in light of the Joint Criminal Enterprise alleged in the Closing Order. *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Closing Order, 15 September 2010, D427, ERN: 00604508-00605246, paras. 156-220. *See also* Email from Susan Lamb to the parties in Case 002, 8 April 2011.

³ Order, para. 12(iii).

⁴ Due to the magnitude of the material involved, despite its best efforts, the Defence has yet to conduct a complete analysis of the listed documents to consider whether they are all appropriate and admissible.

⁵ *See* Rule 87(3), which states: The Chamber bases its decision on evidence from the case file provided it has been put before it by a party or if the Chamber itself has put it before the parties. Evidence from the case file is considered put before the Chamber or the parties if its content has been summarised, read out, or appropriately identified in court. The Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous.” The Third Initial List of Documents contains documents authored by individuals proposed by the OCP and the Civil Parties as experts such as, for example, texts authored by David Chandler. The Defence has objected to certain of these individuals, for example David Chandler, being called as experts in Case 002. *See Case of IENG Sary*, 002-19-09-2007-ECCC/TC, Initial Objection to the OCP Proposed Experts and Request for Leave to File Supplementary Submissions within 30 Days, 24 February 2011, E9/4/9, ERN: 00647964-00647979, paras. 20-22. *See also* Annex. *See also Case of IENG Sary*, 002-19-09-2007-ECCC/TC, Initial Objection to the Civil Party Proposed Experts and Request for Leave to File Supplementary Submissions within 30 Days, 24 February 2011, E9/4/3/1, ERN: 00647819-00647831, para. 22. *See also* Annex. The Defence will object to these individuals’ publications and interviews being put before the Trial Chamber unless the Trial Chamber decides to call them as witnesses. In such case, the Defence reserves its right to confront these proposed experts, including with documents that they have authored. The Defence reserves the right to confront other witnesses with these documents. The Defence reserves the right to rely, on a case by case basis, on documents produced by the Documentation Center of Cambodia, as well as secondary sources which rely on torture tainted evidence, should the Trial Chamber determine that such documents are admissible. *See Case of IENG Sary*, 002-19-09-2007-ECCC/TC, Trial Chamber Response to Motions E67, E57, E58, E23, E59, E20, E33, E71, and E73 following the Trial Management Meeting of 5 April 2011, E74, ERN: 00659301-00659304, p. 3.

⁶ This is consistent with the Trial Chamber’s practice as articulated at the Trial Management Meeting held on 5 April 2011. *See Case of IENG Sary*, 002-19-09-2007-ECCC/TC, Trial Chamber Response to Motions E67,

is inclusive of all secondary source material listed together with the primary source material cited in that secondary source material. In the interest of brevity and judicial economy, the Defence incorporates and supplements the facts and arguments set out in IENG Sary's Initial List of Documents Already on the Case File & Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial,⁷ and IENG Sary's Second Initial List of Documents Already on the Case File & Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial.⁸ Nothing in this motion should be construed as a waiver of the submissions made therein, not least the Defence's reservation of its right to supplement its document lists at a later stage.⁹

Respectfully submitted,

ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 19th day of April, 2011

E57, E58, E23, E59, E20, E33, E71, and E73 following the Trial Management Meeting of 5 April 2011, E74, ERN: 00659301-00659304, p. 3.

⁷ *Case of IENG Sary*, 002-19-09-2007-ECCC/TC, IENG Sary's Initial List of Documents Already on the Case File & Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial, 1 April 2011, E9/22, ERN: 00659454-00659459 ("IENG Sary's Initial List of Documents").

⁸ *Case of IENG Sary*, 002-19-09-2007-ECCC/TC, IENG Sary's Second Initial List of Documents Already on the Case File & Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial, 8 April 2011 ("IENG Sary's Second Initial List of Documents").

⁹ *See* IENG Sary's Initial List of Documents, paras. 30-37; IENG Sary's Second Initial List of Documents, paras. 6-7. The Defence notes the Trial Chamber Senior Legal Officer's email to the parties dated 8 April 2011, in which the Chamber referred "the parties to Internal Rule 87(4) (governing the admission of new evidence at trial) and its jurisprudence in Case 001 (see e.g. 'Decision on Admissibility of New Materials', 11 March 2009 (E5/10/2) and 'Decision on Vietnamese Film Footage filed by the Co-Prosecutors and on Witnesses CP/3/3/2 and CP3/3/3', 29 July 2009 (E5/10/5))." The Defence reserves the right to supplement and rely on documents (including images and video) from the Bophana Center archive which are not included in the Third Initial List of Documents. The Defence obtained a complete index of its archive in English and French. The working languages of the Defence are English and Khmer. The Defence has reviewed the complete English index of the Bophana Center's archive as of 12 April 2011. The Defence understands that the Bophana Center's staff, when working in a foreign language, works primarily in French. On 12 April 2011, the French index of the Bophana Center's archive contained 217 more documents than the English index.