IENG Sary's Objections to the Documents Proposed by the OCP in E223/2/1 (E223/2/1.3)

No.	DOC. NO	E9/31	TYPE	AUTHOR	DATE	TITLE	DESCRIPTION	POINTS OF INDICTMENT	OBJECTION
1	**D199/26.2.184**	E9/31.18 (Annex 18) No. 117	Int'l Media Report	AFP	21-Jan-1976	International Media Report entitled "Cambodia: The New York Times Reports New and Forced Movements with a High Death Toll"	Reports that, since late October or early November 1975, hundreds of thousands of Cambodians have been forcibly moved to Battambang, that those moved by train were packed in freight cars like "fish inside a can," and that many were suffering from malaria, cholera, dysentery and typhoid and had died.	**Movement of the Population from the Central (Old North), Southwest, West and East Zones (Phase 2) [69: 262 to 282]**	**The Defence recognizes that the Trial Chamber has previously found that "material such as analytical reports, books, documentary films, and media articles may be relevant and will not be excluded as a category" (E185, para. 21(5)). However, the Defence submits that media articles cannot be accepted at face value as being accurate or objective, especially when the journalists may have been engaged by governments to present a particular version of the events or even to formulate disinformation. Simply, it is virtually impossible to test the validity of media articles without, at a minimum, adducing evidence from the author. It is impossible to verify the reliability of the reporting contained herein.** **This article contains information and conclusions not based on direct observation of events. No author is listed. The document is unreliable and unsuitable to prove facts it purports to prove, and it is inadmissible pursuant to Rule 87(3)(c). Further, because Mr. IENG Sary has not been afforded his absolute right under Rule 84(1) to confront the author of this article, this document is also inadmissible pursuant to Rule 87(3)(d). Should this document be admitted, the Defence submits that limited weight, if any, should be given to it unless the content of the document can be verified or supported through independent indicia. For further argument, see IENG Sary's Objections to the Admissibility of Certain Categories of Documents, 6 September 2011, E114, paras. 1 (Standards for the admission of documentary evidence set by the Establishment Law), 7-9 (Reliability), 11 (Relevance), 18-19 (Reports, articles and non-contemporaneous documents).**
2	**D166/130**	E9/31.20 (Annex 20) No. 79	Rogatory Report	ECCC-OCIJ	26-Sep-2008	Report of the Execution of Rogatory Letter	Describes interviews with THENG Huy, SIN Sun, LACH Kri, VAN Mao and SAOM Ruos regarding treatment of Vietnamese and evacuation from Prey Veng Province.	**Movement of the Population from the Central (Old North), Southwest, West and East Zones (Phase 2) [69: 262 to 282], Treatment of Vietnamese [196: 791 to 841]**	**This document is a report of execution of rogatory letter. It contains summaries of witness interviews and does not necessarily reflect an accurate representation of the answers the witnesses may have provided to questions posed. Thus, this document should be rejected pursuant to Rule 87(3)(c), as it is unreliable and unsuitable to prove facts it purports to prove. Further, Mr. IENG Sary was afforded no opportunity to confront these witnesses. Should the Trial Chamber find that this document is admissible pursuant to the criteria set out in Rule 87(3), it**

									should give little or no weight to the witness statements contained herein.. According to Trial Chamber Decision E96/7, para. 24, the statements contained in this report should not be accorded any probative value unless they: are of a cumulative nature; relate to background, crime base, or proof of threshold elements of international crimes; are a general or statistical analysis of ethnic composition of population; concern impact on victims; or are impossible to subject to confrontation because the author has died, cannot be traced, or is unable to testify orally. For further argument, 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 Public Hearing, 22 July 2011, E96/3; IENG Sary's Objections to the Admissibility of Certain Categories of Documents, 6 September 2011, E114, paras. 1 (Standards for the admission of documentary evidence set by the Establishment Law), 7-9 (Reliability), 11 (Relevance), 18-19 (Reports, articles and non-contemporaneous documents).