

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:** 13 February 2013**CLASSIFICATION****Classification of the document
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**IENG SARY'S SECOND RULE 87(4) REQUEST REGARDING MATERIAL WHICH
MAY BE USED DURING THE EXAMINATION OF EXPERT ELIZABETH
BECKER**

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Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Rule 87(4) of the ECCC Internal Rules (“Rules”), hereby requests to put certain additional¹ material before the Trial Chamber and to be afforded the opportunity to use such material during the examination of Expert Elizabeth Becker. This Request is made necessary because there is relevant and probative material which the Defence may consider necessary to put to Ms. Becker and which has not yet been put before the Trial Chamber or accorded an E3 number.

I. LAW

1. Rule 87(1) states that “[u]nless provided otherwise in these IRs, all evidence is admissible.”

2. Rule 87(3) states in relevant part:

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.

3. Rule 87(4) states:

During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial.

II. ARGUMENT

4. The Defence seeks to put the preface and certain pages from the epilogue of the first edition of Ms. Becker’s book, *WHEN THE WAR WAS OVER*,² and certain pages from the epilogue of the second edition of Ms. Becker’s book (translated into Khmer)³ before the Trial Chamber for possible use during the examination of Ms. Becker. The first edition

¹ See IENG Sary’s Rule 87(4) Request Regarding Material Which May Be Used During the Examination of Expert Elizabeth Becker, 12 October 2012, E232/1.

² ELIZABETH BECKER, *WHEN THE WAR WAS OVER* 13-17, 443-46 (1st ed. 1986), English ERNs: 00885970-00885974, 00886408-00886411; Khmer ERNs: 00885898-00885900. The Interpretation and Translation Unit has indicated that these pages will be translated into French by Friday, 15 February 2013.

³ ELIZABETH BECKER, *WHEN THE WAR WAS OVER* 508-517 (2nd ed. 1998), E3/20, English ERNS 00238221-00238230. The Interpretation and Translation Unit has indicated that these pages will be translated into Khmer by Friday, 15 February 2013.

of Ms. Becker's book is a new document that is not available on the Case File, but is available to the Trial Chamber and all parties on the Shared Materials Drive.⁴

5. The second edition of Ms. Becker's book already exists on the Case File.⁵ Selected pages from the first edition of her book are proposed by the Defence because they are relevant to demonstrate that Ms. Becker's information and/or views have changed between the first and second editions of the book. The selected pages are not repetitious of other material on the Case File and are not intended to prolong the proceedings.
6. In the preface to the second edition of Ms. Becker's book, Ms. Becker states that she is the "beneficiary of pioneering work by others who helped lay the groundwork for [her] study," including, *inter alia*, Professor David Chandler.⁶ The preface to the first edition of the book does not acknowledge Professor Chandler, although Ms. Becker cited him as a source. After the first edition of Ms. Becker's book was published, Professor Chandler reviewed the book and strongly criticized her methodology and research.⁷ An exploration of the reasoning behind Ms. Becker's decision to acknowledge Professor Chandler in the preface to the second edition, after failing to do so in the first edition, is relevant to assessing her methodology and research regarding the second edition of her book and, therefore, her credibility and reliability as an expert witness.
7. In the epilogue to the first edition of Ms. Becker's book, she discusses the Vietnamese occupation of Cambodia after January 1979.⁸ This language does not appear in the epilogue to the second edition of Ms. Becker's book. An exploration as to why Ms. Becker chose to remove from the second edition language criticizing Vietnam is relevant to assessing her objectivity in writing the book, her methodology and any additional research she may have conducted when preparing the second edition. These issues impact upon her credibility and reliability as an expert witness.
8. The proposed pages from the first edition of Ms. Becker's book are admissible pursuant to Rule 87(4). Although the material was in existence prior to the opening of the trial, its

⁴ See English ERNs: 00885960-00886467.

⁵ See ELIZABETH BECKER, *WHEN THE WAR WAS OVER* (2nd ed. 1998), E3/20 ("Second Edition of *WHEN THE WAR WAS OVER*").

⁶ *Id.*, at xiv.

⁷ See David P. Chandler, *Requiem for the 1970s: Elizabeth Becker's When The War Was Over*, E232/1.1.5, p. 2-3, 5, 7-8.

⁸ ELIZABETH BECKER, *WHEN THE WAR WAS OVER* 443-45 (1st ed. 1986).

relevance at that time was not known to the Defence. No party will be prejudiced by the Defence's use of selected pages from this book at trial, since there is still sufficient time in advance of Ms. Becker's testimony for all parties to review and assess this material. Moreover, since the first edition of Ms. Becker's book has been publicly available since its publication, if any party wished to compare the two editions it could have done so at any time.

9. Selected pages from the epilogue to the second edition of Ms. Becker's book are proposed for placement on the Case File (and translation into Khmer) because the Khmer translation of this epilogue does not include these pages. Rather, the Khmer translation of the second edition contains the beginning pages of the epilogue to the *first edition* of Ms. Becker's book.⁹ The English version of the epilogue to the second edition is already on the Case File and has an E3 number.¹⁰ Permitting the Khmer translation of the missing pages from the second edition's epilogue to be placed on the Case File will ensure that the Cambodian Judges and parties have complete access to Ms. Becker's book. It will also permit the Defence to use those pages if it examines Ms. Becker regarding the epilogue. No party will be prejudiced by the placement of these pages on the Case File and the use of them at trial, since there is still sufficient time in advance of Ms. Becker's testimony for all parties to review and assess this material.
10. Mr. IENG Sary has the right to confront the witnesses against him,¹¹ which includes the use of a witness's own material when relevant for assessing the credibility and reliability of the witness's testimony. As the entity tasked with ensuring a fair trial that guarantees Mr. IENG Sary the full enjoyment of his fundamental fair trial rights,¹² the Trial Chamber should grant this Request. Exclusion of the proposed pages based on a technicality, such as the fact that the Defence did not put these pages on its document list prior to the opening of trial, would be antithetical to the Trial Chamber's search for the truth and would not be in the interests of justice.

⁹ See Second Edition of WHEN THE WAR WAS OVER, Khmer ERNS 00232651-00232655. Compare with ELIZABETH BECKER, WHEN THE WAR WAS OVER 443-45 (1st ed. 1986).

¹⁰ See Second Edition of WHEN THE WAR WAS OVER, at 508-17, English ERNs 00238211-00238230.

¹¹ Cambodian Constitution, Arts. 31, 38; Agreement, Art. 13(1); Establishment Law, Art. 35 new (e); Rule 21(1). See also International Covenant on Civil and Political Rights, Art. 14(3)(e).

¹² See Cambodian Constitution, Art. 38; Agreement, Arts. 12(2), 13(1); Establishment Law, Arts. 33 new, 35 new; Rule 21(1).

WHEREFORE, for the reasons stated herein, the Defence respectfully requests to place the preface and certain pages from the epilogue to the first edition of Ms. Becker's book, **WHEN THE WAR WAS OVER**, and certain pages from the epilogue of the second edition of Ms. Becker's book before the Trial Chamber and to be afforded the opportunity to use this material during the examination of Ms. Becker.

Respectfully submitted,

ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this **13th** day of **February, 2013**