

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:** 9 March 2012**CLASSIFICATION****Classification of the document
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**IENG SARY'S RESPONSE TO THE CO-PROSECUTOR'S NOTICE TO THE TRIAL
CHAMBER AND PARTIES REGARDING TESTIMONY OF TCE-38 AND TCE-44
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All Defence Teams**All Civil Parties**

Cambodian Law – ECCC Legal Compendium

1. 1993 Constitution, as amended in 1999, Art. 31.
2. Cambodian Code of Criminal Procedure, Art. 297

ECCC Law – ECCC Legal Compendium

3. Agreement between the UN and the Royal Cambodian Government, Art. 13(1).
4. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, Arts. 33 new, 35 new.
5. ECCC Internal Rules, Rules 21(1)(a), 26(1).

ECCC Filings and Jurisprudence – Already Disclosed on the Case File

6. Notice to the Trial Chamber and Parties Regarding Testimony of TCE-38 and TCE-44, 27 February 2012, E166/1, para. 4.
7. *Case of KAING Guek Eav alias “Duch”*, 001/18-07-2007-ECCC/TC, Decision on IENG Sary’s Request to Make Submission in Response to the Co-Prosecutors’ Request for the Application of Joint Criminal Enterprise, 3 July 2009, E90, para. 4.
8. Decision on IENG Sary’s Appeal against the Co-Investigating Judges’ Decision Refusing to Accept the Filing of the OCP’s Response to the Co-Prosecutors’ Rule 66 Final Submission and Additional Observations, and Request for Stay of the Proceedings, 20 September 2010, D390/1/2/4.
9. IENG Sary’s Response to Co-Prosecutors’ Request for Appointment of Experts, 15 January 2010, D281/2.
10. 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.
11. Confidential Annex A: Partial List of Witnesses, Experts and Civil Parties for First Trial in Case 002, 25 October 2011, E131/1.1.

12. Co-Prosecutors' Rule 80 Expert, Witness and Civil Party Lists, Including Confidential Annexes 1, 2, 3, 3A, 4 and 5, 28 January 2011, E9/4.2.
13. Trial Chamber Memorandum: Next Group of Witnesses and Experts to be Heard in Case 002/01, 15 December 2011, E155.
14. Trial Chamber Memorandum: Hearing of TCE-38 and TCE-44, 6 February 2012, E166.
15. Witness, Civil Party and Expert Summaries with Points of Indictment – OCP, 23 February 2011, E9/13.1.

Inter-Office Communications – *Already Disclosed on the Case File*

16. Email from Tanya Pettay to Trial Chamber Senior Legal Officer, entitled “Next Batch of Trial Chamber Witnesses,” 7 December 2011.
17. Email from Tanya Pettay to Trial Chamber Senior Legal Officer, entitled “Questions for this Friday’s TMM,” 5 January 2012.

International Conventions – *ECCC Legal Compendium*

18. International Covenant on Civil and Political Rights, Art. 14.
19. European Convention on Human Rights, Art. 6(3)(d).

European Court of Human Rights Jurisprudence – *Available on ECtHR website*

20. *Lobo Machado v. Portugal*, Eur. Ct. H. R. App. no. 15764/89 (1996) para. 31.
21. *Öcalan v. Turkey*, Eur. Ct. H.R., App. no. 46221/99 (2005), para. 146.

International Criminal Tribunals' Law and Jurisprudence – *Available on Tribunals' websites*

22. ICTY Statute, Art. 29(2)
23. ICC Statute, Art. 3.

24. Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Art. 10.
25. *Prosecutor v. Tadić*, IT-94-I-T, Decision on the Defence Motion to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, 25 June 1996, paras. 18, 21, 22.
26. *Prosecutor v. Stanišić & Simatović*, IT-03-69-T, Decision on Prosecution Motions to Hear Witnesses by Video-Conference Link, 24 February 2010, paras. 8, 11.
27. *Prosecutor v. Karadžić*, IT-95-5/18-T, Decision on Prosecution's Motion to Subpoena Berko Zečević, 20 January 2011, para. 19.
28. *Zigiranyirazo v. Prosecutor*, ICTR-2001-73-AR73, Decision on Interlocutory Appeal, 30 October 2006.
29. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on prosecution request for testimony of witness BT via video-link, 8 October 2004, paras. 11, 15.
30. *Prosecutor v. Nzabonimana*, ICTR-98-44d-T, Decision on Defence Urgent Motion to Hear Testimony of Expert Witness Dr. Susan Thomson via Video-Link, 9 March 2011, paras. 16, 21-22, 25.
31. *Prosecutor v. Ndindiliyimana et al.*, ICTR-00-56-T, Decision on Bizimungu's Request for witness DE 4-12 to testify via Video-link, 2 November 2007.

UN Security Council Resolutions – Available on ICTY and ICTR websites

32. UN Security Council Resolution 827 (S/RES/827 (1993), 25 May 1993).
33. UN Security Council Resolution 955 (S/RES/955 (1994), 8 November 1994).

Other Jurisdictions' Jurisprudence

34. U.S. CONST. amend. VI – *Already Available on the Case File*.
35. *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. Tex. 1992) – *Attachment 1*.

Books and Articles – Already Disclosed on the Case File

36. Ian Dennis, *The Right to Confront Witnesses: Meanings, Myths and Human Rights*, CRIM. L.R. 255, 255, 259 (2010).
37. STEFANO MAFFEI, THE EUROPEAN RIGHT TO CONFRONTATION IN CRIMINAL PROCEEDINGS: ABSENT, ANONYMOUS AND VULNERABLE WITNESSES 9 (Europa Law Publishing 2006).
38. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 373-74 (VOLUME 3, 1768).