

ក្រុមបេឡាវិការពារក្តី អៀង សារី
IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

14 November 2011

សាធារណៈ / Public

To: **Susan Lamb**
 Trial Chamber Senior Legal Officer

Cc: **All Defence Teams**
Office of the Co-Prosecutors
All Civil Parties

Re: **Courtesy Copies of Authorities cited in the Trial Chamber's Decision on the Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity**

Dear Ms. Lamb,

On 31 October 2011, we requested that the Trial Chamber provide, as a matter of courtesy, copies of certain sources cited in its Decision on the Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity which we were unable to locate. The requested sources were listed in footnote 2 of our letter:

In paragraphs 15-16, n. 45-49, the Trial Chamber cited two Control Council Law No. 10 cases that the IENG Sary Defence has been unable to locate online or through the ECCC library: (1) *Ohlendorf and Others Case ("Einsatzgruppen" case)*, Judgement, 8-9 April 1948, reprinted in *Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. IV, p. 499, and, (2) *Ernst von Weizsaecker and Others Case (Ministries Trial)*, Order of the Tribunal Dismissing Count Four, and Tribunal Memorandum Attached Thereto, 26 March 1948, reprinted in *Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. XIII, p. 112, 115-117. In paragraph 20, n. 54, the Trial Chamber cited Roger S. Clark, "Crimes Against Humanity in Nuremberg", in *The Nuremberg Trial and International Law* (Ginsburgs and Kudriavtsev, eds., 1990), p. 177, 195. This book is not available in the ECCC library. In paragraphs 28-29, n. 64-65, the Trial Chamber cited a Commission on Human Rights Report, 23rd Session, 20 February 1967-23 March 1967, p. 45-46, paras. 144-145. The IENG Sary Defence has been unable to locate this document online. In paragraph 30, n. 67, the Trial Chamber cited UN Doc. A/C.3/SR.1863, 3rd Committee, 1859th Meeting, 9 November 1971, p. 249. The IENG Sary Defence also has been unable to locate this document online.

In your email dated 31 October 2011, you stated that we had not specified the sources we were seeking, but that the Trial Chamber would be able to make the following sources available to the parties:

1. Commission on Human Rights, Report of the 23rd Session, 20 February 1967-23 March 1967 (cited in n. 64).
2. UN Doc. A/C.3/SR.1863, 3rd Committee, 1859th Meeting, 9 November 1971 (cited in n. 67).
3. DK accession to the 1973 Apartheid Convention, 28 July 1981 (cited in n. 66, 69).

We responded by email that we would appreciate copies of the above sources, in addition to the following:

1. Ohlendorf and Others Case (“Einsatzgruppen” case), Judgement, 8-9 April 1948, reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10, Vol. IV, p. 499.

2. Ernst von Weizsaecker and Others Case (Ministries Trial), Order of the Tribunal Dismissing Count Four, and Tribunal Memorandum Attached Thereto, 26 March 1948, reprinted in Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10, Vol. XIII, p. 112, 115-117.

(These cases were cited in paragraphs 15-16, n. 45-49).

3. Roger S. Clark, “Crimes Against Humanity in Nuremberg”, in The Nuremberg Trial and International Law (Ginsburgs and Kudriavtsev, eds., 1990), p. 177, 195.

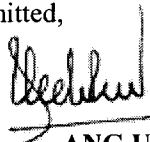
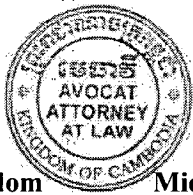

(This book was cited in paragraph 20, n. 54).

We are now able to access these final three sources, but we still seek:

1. Commission on Human Rights, Report of the 23rd Session, 20 February 1967-23 March 1967
2. UN Doc. A/C.3/SR.1863, 3rd Committee, 1859th Meeting, 9 November 1971
3. DK accession to the 1973 Apartheid Convention, 28 July 1981

We would greatly appreciate it if the Trial Chamber could provide us with these sources as soon as possible. As previously noted, we seek these sources in order to do our due diligence and because we are appealing the Trial Chamber’s Decision concerning the nexus issue for crimes against humanity, which we submit violates the principle of legality.

Respectfully submitted,

ANG Udom **Michael G. KARNAVAS**

Co-Lawyers for Mr. IENG Sary