

**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 April 2011**CLASSIFICATION****Classification of the document  
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**IENG SARY'S INDICATION OF LEGAL ISSUES HE INTENDS TO RAISE AT THE  
INITIAL HEARING**


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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**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to the Trial Chamber’s Order to File Material in Preparation for Trial (“Order”),<sup>1</sup> hereby submits this indication of legal issues he intends to raise at the Initial Hearing. The Defence has already raised several legal issues with the Trial Chamber. These issues have not yet been decided, or may have been decided through an oral decision but no written reasoning from which the Defence could appeal has been issued. The Defence reserves its right to amend this list if certain issues are resolved prior to the Initial Hearing or if new issues arise between the filing of this list and the Initial Hearing.

## **I. ARGUMENT**

1. The Defence intends to raise each of its preliminary objections relating to the ECCC’s jurisdiction over Mr. IENG Sary. In particular, the Defence will raise the following arguments:
  - A. The ECCC does not have jurisdiction over Mr. IENG Sary, due to his validly granted and applicable Royal Amnesty and Pardon.
  - B. The ECCC does not have jurisdiction over Mr. IENG Sary due to the principle of *ne bis in idem*.
  - C. The ECCC does not have jurisdiction to apply international crimes and forms of liability against Mr. IENG Sary.
  - D. The ECCC does not have jurisdiction to apply Grave Breaches of the Geneva Conventions against Mr. IENG Sary.
  - E. The ECCC has limited jurisdiction to apply crimes against humanity against Mr. IENG Sary, should it have jurisdiction to apply them at all.
  - F. The ECCC does not have jurisdiction to apply command responsibility against Mr. IENG Sary.
  - G. The ECCC does not have jurisdiction to apply national crimes against Mr. IENG Sary.


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<sup>1</sup> *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 Defence intends to raise the following issues concerning defects in the judicial investigation and the Indictment:
  - A. Whether the Trial Chamber must hold a hearing on the conduct of the judicial investigation in order to assess whether it was fair and to assess the weight that should be afforded to evidence gathered during the judicial investigation.
  - B. Whether the Trial Chamber must strike portions of the Indictment due to defects.
3. The Defence intends to raise the following issues concerning witness testimony:
  - A. Whether Duch must testify under oath if called as a witness.
  - B. Whether Duch's statements may come in if Duch does not appear as a witness or if he does, but is not subject to cross examination.
  - C. Whether the OCP and Trial Chamber must provide a list of instances where they believe Duch to be untruthful.
  - D. Whether the Civil Parties must testify under oath if they testify to the facts, rather than simply to their claim for reparations.
4. The Defence intends to raise the following issues concerning the conduct of the trial:
  - A. Whether the trial will be conducted following a strict inquisitorial system, where:
    - The Trial Chamber Judges read the entire Case File prior to trial;
    - The Trial Chamber will choose the structure and topics of the case;
    - The Trial Chamber Judges choose the witnesses and documents they will rely upon, and the parties will only supplement these lists; and
    - The Trial Chamber will question witnesses first, allowing the parties to ask supplemental questions at the end.
  - B. If the trial will not be conducted following a strict inquisitorial system, how Mr. IENG Sary's rights will be protected.

5. The Defence intends to raise the following issues concerning the powers of the Trial Chamber:
- A. Whether the Trial Chamber may order ITU to cease translation of Defence filings and what authority it has to do so.
  - B. Whether the Trial Chamber may issue decisions on legal and procedural issues through informal memoranda or emails rather than official decisions and orders.
  - C. Whether the Trial Chamber may issue decisions and orders which are not signed by the entire Chamber.
6. The Defence intends to raise the issue of whether Mr. IENG Sary's fair trial rights will be violated if time limits to respond and reply to pleadings and applications begin to run as soon as he receives the documents in two languages, even if these are not the two working languages of the team.
7. The Defence intends to raise the issue of Mr. IENG Sary's fitness to stand trial.
8. The Defence intends to raise any other issue which may arise from submissions made by any other party, from the next Trial Management meeting, or at the Initial Hearing.

Respectfully submitted,



ANG Udom

Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 13<sup>th</sup> day of April, 2011