

**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:** 8 April 2011**CLASSIFICATION****Classification of the document  
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**IENG SARY'S SECOND INITIAL LIST OF DOCUMENTS**


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Filed by:Distribution to:**The Co-Lawyers:**ANG Udom  
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 second initial list of documents. Annex A lists documents from the Shared Materials Drive (“SMD”) and contains a brief description of their nature and contents where possible. This submission is made necessary to comply with the Order to the extent possible.

## I. BACKGROUND

1. On 17 January 2011, the Trial Chamber Ordered the Parties to provide, no later than 13 April 2011:
  - i) A list of the documents already in the Case File they intend to put before the Chamber, appropriately identified by their document reference number, title, available languages/s and, if available, a brief description of their nature and contents;
  - ii) A list of the new documents they intend to put before the Chamber, containing a brief description of their nature and contents; and
  - iii) A “Documentary Evidentiary Chart” which indicates, for each relevant evidentiary topic, the documentary evidence upon which the party will rely with regards to the allegations contained in the Closing Order.<sup>2</sup>
2. On 1 April 2011, the Defence filed a motion with its initial list of documents (“IENG Sary’s First Initial List of Documents”).<sup>3</sup> The documents this motion submitted, pursuant to the Order, were documents which were already on the Case File. Furthermore, in this motion the Defence stated that it “is in the process of reviewing the 19,370 documents on the SMD, but it will be unable to complete this task by the deadline set out by the Trial Chamber. It has had to perform this task in addition to reviewing the over 70,000 documents on the Case File.”<sup>4</sup>
3. On 5 April 2011, a Trial Management Meeting was held.<sup>5</sup> During the course of the Trial Management Meeting, the Trial Chamber stated that the trial will be split into segments dealing with different subject matter. The first 4 segments are as follows:
  - a. The structure of Democratic Kampuchea;

<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.

<sup>2</sup> *Id.*, para. 12.

<sup>3</sup> *Case of IENG Sary*, 002-19-09-2007-ECCC/TC, IENG Sary’s Initial List of Documents Already on the Case File & Notice Concerning his Forthcoming Initial List of New Documents to put before the Chamber at Trial, 1 April 2011, E22/9, ERN: 00659454-00659459.

<sup>4</sup> *Id.*, para. 34.

<sup>5</sup> *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Agenda for Trial Management Meeting, 17 March 2011, E9/5/1, ERN: 00652421-00652423.

- b. The role of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned;
  - c. The role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority, and the lines of communication throughout the temporal period with which the ECCC is concerned; and
  - d. The policies of Democratic Kampuchea on the issues raised in the indictment.<sup>6</sup>
4. At the Trial Management Meeting, the Trial Chamber stated that Parties are to provide an advance list of documents they intend to rely upon for each segment of the hearing prior to that segment of the hearing taking place (“advance list”).<sup>7</sup> The Deputy International Co-Prosecutor then queried “how the document list which the parties and the prosecution are filing on 13 April, how that relates to the advance list of evidence that you refer to[?]”<sup>8</sup> Judge Cartwright responded that “[t]he intention is that in advance of each segment of the hearing ... each party specifies which of its document that have already been notified in the overall list will be the relevant ones for that portion of the hearing.”<sup>9</sup>

## II. SUBMISSION

5. In light of Judge Cartwright’s clarification and the Defence putting the Trial Chamber and all Parties to Case 002 on notice that it “is in the process of reviewing the 19,370 documents on the SMD, but it will be unable to complete this task by the deadline set out by the Trial Chamber,”<sup>10</sup> the Defence puts all documents available on the SMD Drive on its overall list of documents as required by the Order.<sup>11</sup> This list is being submitted at the earliest possible stage following clarification, in order to give the Trial Chamber and the Parties the most amount of time prior to trial to review the Defence’s overall list. As stated in IENG Sary’s First Initial List of Documents, the Defence is unable to present this information in the form of a “Documentary Evidentiary Chart” due to the volume of documents on the SMD, namely 19,370, and the fact that the documents on the SMD are

<sup>6</sup> *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Transcript of Hearing – Trial Management Meeting, 5 April 2011, p.52.

<sup>7</sup> *Id.*, p. 71.

<sup>8</sup> *Id.*, p. 72.

<sup>9</sup> *Id.*, p. 73.

<sup>10</sup> IENG Sary’s First Initial List of Documents, para. 34.

<sup>11</sup> *See* Annex A.

not organized according to what evidentiary topic(s) they may relate to.<sup>12</sup> The Defence will endeavor to provide the documents in each advance list in the form of a Documentary Evidentiary Chart, if requested by the Trial Chamber.

6. The Defence will submit a third initial list of documents prior to the deadline set out in the Order and subsequent memo.<sup>13</sup> This list will contain documents which are not on the Case File and not on the SMD. As stated in IENG Sary's First Initial List of Documents, the Defence reserves its right to add to this list at a later stage.<sup>14</sup> Furthermore,

It is not possible to submit a full list of new material the Defence intends to put before the Chamber at this time. This is because: ... **2.** it is not yet possible to determine which documents are already on the Case File; **3.** it has not been possible to review all of the documents on the SMD; and **4.** the Defence was prohibited from investigating while the OCIJ was seized with the Case.<sup>15</sup>

7. During the Trial Management meeting, the Trial Chamber stated, on more than one occasion, that it intends to be flexible in its handling of the trial in Case 002.<sup>16</sup> Affording the Defence the right to add to the list of documents which are not already on the Case File or the SMD will be consistent and in line with the Trial Chamber's intention to approach the trial in Case 002 in a flexible manner. Compiling a list of documents which are not on the Case File or on the SMD is a Herculean task considering the number of documents available and the number of issues which will be addressed during trial. More issues are likely to come to light following the presentation of evidence, requiring further documents which were not on any of the Defence's overall lists. The Trial Chamber must employ a flexible approach as intended in order to ascertain the truth.

Respectfully submitted,

  
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 ANG Udom



  
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 Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary  
Signed in Phnom Penh, Kingdom of Cambodia on this **8<sup>th</sup>** day of **April, 2011**

<sup>12</sup> IENG Sary's First Initial List of Documents, para. 27.

<sup>13</sup> *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Judicial Recess during Khmer New Year period, 28 March 2011, E68, ERN: 00656878-00656878.

<sup>14</sup> IENG Sary's First Initial List of Documents, para. 30.

<sup>15</sup> *Id.*

<sup>16</sup> See e.g. *Case of NUON Chea*, 002-19-09-2007-ECCC/TC, Transcript of Hearing – Trial Management Meeting, 5 April 2011, p. 7-15.