

**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:** 27 June 2012**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 DAVID CHANDLER**


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**The Trial Chamber Judges:**

Judge NIL Nonn

Judge YOU Ottara

Judge YA Sokhan

Judge Silvia CARTWRIGHT

Judge Jean-Marc LAVERGNE

Reserve Judge THOU Mony

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 Rule 87(4) of the ECCC Internal Rules (“Rules”), hereby requests to put certain additional<sup>1</sup> material before the Trial Chamber and to be afforded the opportunity to use such material during the examination of Expert David Chandler. This Request is made necessary because there is relevant and probative material which the Defence may consider necessary to put to Professor Chandler and which has not yet been put before the 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 following additional<sup>2</sup> material before the Trial Chamber for possible use with Professor Chandler. All of this material is available to the Trial Chamber and all parties on the Shared Materials Drive or is already on the Case 002 Case File:

A. Chandler, *A History of Cambodia*, 4<sup>th</sup> edition (only selected ERNs);<sup>3</sup>

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<sup>1</sup> See IENG Sary’s Rule 87(4) Request Regarding Material Which May Be Used During the Examination of Expert David Chandler, 13 June 2012, E172/24/3.

<sup>2</sup> *Id.*

<sup>3</sup> English ERNs: 00817575-00817577, 00817586, 00817701, 00817712, 00817724, 00817751.

- B. Chandler, *Brother Number One: A Political Biography of Pol Pot*, 1<sup>st</sup> edition (only selected ERNs);<sup>4</sup>
  - C. D288/4.59.1, Professor Chandler's testimony from Case 001;
  - D. D108/50/1.74, Nayan Chanda, *Brother Enemy* (only selected ERNs);<sup>5</sup> and
  - E. D222/1.16, Vann Nath, *A Cambodian Prison Portrait* (only selected ERNs);<sup>6</sup>
5. The first two documents listed above (A-B) are new documents, which are not available on the Case File, but are available to the Trial Chamber and all parties on the Shared Materials Drive. These two documents are different versions of books by Professor Chandler that already exist on the Case File. Selected pages from these versions of the books are proposed by the Defence as they are relevant either to demonstrate that Professor Chandler's information and/or views have changed between versions or to demonstrate a consistency of information and/or views. For this reasons, they are not repetitious of other material on the Case File and are not intended to prolong the proceedings.
6. These two documents are admissible pursuant to Rule 87(4). Although these documents were in existence prior to the opening of the trial, their relevance at that time was not known to the Defence. No party will be prejudiced by the Defence's use of these documents at trial, since there is still sufficient time in advance of Professor Chandler's testimony for all parties to review and assess this material.
7. The final three documents listed above (C-E) are available on the Case File and were proposed on other parties' document lists.<sup>7</sup> They were not added to the Defence's document lists because their significance was not apparent to the Defence at the time of preparing its lists. It is often only through viewing certain documents in context with other documents that relevance becomes apparent. Such is the case for these documents. No party will be prejudiced by the Defence's use of these documents at trial, as they exist on the Case File and, as such, have been available to all parties for quite some time.

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<sup>4</sup> English ERNs: 00818401-00818404, 00818412, 00818489, 00818494, 00818524.

<sup>5</sup> English ERNs: 00192169, 00192173, 00192245-00192246, 00192605.

<sup>6</sup> English ERNs: 00396758-00396761, 00396807-00396808.

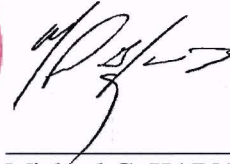
<sup>7</sup> See, e.g., OCP Document Lists E9/31.11; E9/31.19.

**WHEREFORE**, for all the reasons stated herein, the Defence respectfully requests to place the above requested material before the Trial Chamber and to be afforded the opportunity to use this material during the examination of Professor Chandler.

Respectfully submitted,



ANG Udom



Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this 27<sup>th</sup> day of **June, 2012**