

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:** 23 January 2013**CLASSIFICATION****Classification of the document
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IENG SARY'S OBJECTIONS TO THE ADMISSION OF CERTAIN DOCUMENTS

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CHEA Leang

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All Defence Teams**All Civil Parties**

Mr. IENG Sary, through his Co-Lawyers (“the Defence”), pursuant to Rules 84(1) and 87(3), hereby sets out his objections – in the attached Annexes – to the admission of certain documents and clarifies the documents to which he has objected. **Annex 1** contains objections to the documents proposed by the OCP in relation to population movement phase 1.¹ **Annex 2** contains objections to the documents proposed by the OCP in relation to population movement phase 2.² **Annex 3** contains objections to the documents proposed by the OCP in relation to Tuol Po Chrey.³ **Annex 4** contains objections to the documents identified by the OCP as “outstanding documents to be put before the Chamber from all the parties combined.”⁴ **Annex 5** contains objections to the documents cited in the Closing Order paragraphs relevant to military structure, population movement phases 1 and 2 and Tuol Po Chrey that have not been considered in previous document objection hearings.⁵ Witness statements proposed by the OCP in E208, E208/1 and E96/8 are not included in Annex 5, nor are the two Closing Order documents identified by the OCP in E223/2.1 (addressed in Defence Annex 4). These objections – supplemented by the Defence’s oral submissions of 21 and 22 January 2013 – are submitted in order to assist the Trial Chamber in determining the admissibility of specific documents as evidence before it in Case 002/01 and to add further clarity and certainty regarding the Defence’s position in relation to individual documents. Because the Defence is not in a position to assess the authenticity of these documents, it objects to the admission of any document not demonstratively authentic or shown to be authentic by the party seeking to introduce it. Finally, for the sake of further clarity concerning Annex 5, the following submissions are made.

1. During the 22 January 2013 document objections hearing, after a courtesy copy of Annex 5 (listing 54 documents) had been circulated to the parties, Assistant Prosecutor Vincent

¹ See Co-Prosecutors’ Response to the Trial Chamber’s Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings, 23 November 2012, E223/2/1, and attached Annex E223/2/1.2.

² See Co-Prosecutors’ Response to the Trial Chamber’s Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings, 23 November 2012, E223/2/1, and attached Annex E223/2/1.3.

³ See Co-Prosecutors’ Response to the Trial Chamber’s Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings, 23 November 2012, E223/2/1, and attached Annex E223/2/1.4.

⁴ See Co-Prosecutors’ Response to the Trial Chamber’s Request to Indicate Additional Documents Relevant to the Population Movement and Tuol Po Chrey Trial Segments and Motion for Scheduling of Documentary Hearings, 23 November 2012, E223/2/1, para. 3 and attached Annex E223/2/1.1.

⁵ Pursuant to Trial Chamber Memorandum, titled “Forthcoming Document Hearings and Response to Lead Co-Lawyers’ Memorandum Concerning the Trial Chamber’s Request to Identify Civil Party Applications for Use at Trial (E208/4) and Khieu Samphan Defence Request to Revise Corroborative Evidence Lists (E223)”, 19 October 2012, E223/2, para. 5.

De Wilde d'Estmael asserted that 24 of the documents included in Annex 5 should not be open to debate.⁶ While the OCP is correct that 16 documents listed in the courtesy copy of Annex 5 have indeed been subjected to oral argument or decided on in the past, the OCP was incorrect about eight of these documents.⁷ The Defence revised Annex 5, removing all documents already objected to or decided upon. Annex 5 includes reasons why each of the eight documents have been retained, but further explanation is provided below for the sake of clarity.

D108/28.48

2. This document was shown by Judge Lavergne to Witness Meas Voeun on 8 October 2012 (although the document number stated in the English version of the transcript was incorrect).⁸ The witness simply stated that he was not aware of the meeting referred to in the document. No further comment on this document was made. The Defence was not previously provided an opportunity to object to this document. Since no modalities have been put in place where parties are expected to object to documents at the time they are presented by the Judges to witnesses, this document is included in Annex 5.⁹

D125/97, D232/65, D233/8, D369/6 and IS19.71

3. These five documents are witness statements cited in the Closing Order that were included in the OCP's July 2011 document list under OCP Annex 12.¹⁰ This Annex was excluded from discussion in past document hearings.¹¹ In June 2012, the Trial Chamber issued its Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber.¹² In this Decision, the Trial Chamber directed the OCP to: **a.** review the documents on its witness statement

⁶ See Draft Transcript, 22 January 2013, p. 53-59, referring to documents **D108/28.28, D108/31.28, D125/97, D199/26.2.209, D199/26.2.219, D199/26.2.228, D199/26.2.256, D232/65, D233/8, D269/9/1.16, D299.1.15R, D304/1.3, D313/1.2.65, D365/1.1.10, D365/1.1.15, D365/1.1.17, D365/1.1.23, D365/1.1.28, D365/1.1.3, D365/1.1.34, D369/6, IS13.30 and IS13.31.**

⁷ **D108/28.48, D108/31.28, D125/97, D232/65, D233/8, D369/6, IS13.31 and IS19.71.**

⁸ See Transcript, 8 October 2012, E1/131.1, p. 52.

⁹ See Draft Transcript, 22 January 2013, p. 64-65, where the Defence sought clarification of this matter.

¹⁰ Co-Prosecutors' Response to the Trial Chamber's Request for Documents Relating to the First Phase of Trial, Annex 12 – Witness Statements, 22 July 2011, E109/4.12.

¹¹ See Trial Chamber Memorandum, titled "Updated Memorandum for Next Document Hearing (12-19 March 2012)," E172/5, n. 1: "Document categories A12 and A13 will be dealt with in a written decision pending before the Chamber and are consequently not at this stage scheduled for oral argument."

¹² Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, 20 June 2012, E96/7.

lists¹³ for compatibility with the admissibility criteria it set out in the Decision; **b.** particularize the evidentiary purpose for which each document was sought to be put before the Chamber; **c.** consider proposing representative samples of each type of evidence; and **d.** provide the above specifications by 27 July 2012.¹⁴ The OCP complied with these directions by filing the Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts with Confidential Annexes 1 to 16.¹⁵ The five witness statements listed in the Defence's Annex 5 are **not** included in this OCP Request. Neither are they included in two other OCP Requests that the OCP submitted complied with the Trial Chamber's directions.¹⁶ Consequently, these five witness statements will not be the subject of a future hearing because:

- a. they are no longer proposed by the OCP; and
- b. the Trial Chamber directed the parties to address at *this* document hearing: “[a]ll documents cited in the Closing Order paragraphs relevant to population movement (phases one and two) and Toul Po Chrey, namely 205-209, 698-711, 975-977, 1105-1113, 1191-1193, 1375 and 1384” as well as “[t]hose statements identified in paragraph 28 of E9617 (documents or other evidence cited in the footnotes to the relevant portion of the Closing Order) that have already received an E3 classification but not considered in prior document hearings.”¹⁷

¹³ Prior to the issuance of the Trial Chamber's Decision, the OCP had submitted two additional requests for the admission of witness statements. *See* Co-Prosecutors' Request to Admit Witness Statements Relevant to Phase 1 of the Population Movement, 15 June 2012, E208; Co-Prosecutors' Request to Admit Witness Statements Relevant to Phase 2 of the Population Movement and Other Evidentiary Issues with confidential Annexes 1, II, III and Public Annex IV, 5 July 2012, E208/2.

¹⁴ Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, 20 June 2012, E96/7, para. 35.

¹⁵ Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts with Confidential Annexes 1 to 16, 27 July 2012, E96/8.

¹⁶ Co-Prosecutors' Request to Admit Witness Statements Relevant to Phase 1 of the Population Movement, 15 June 2012, E208; Co-Prosecutors' Request to Admit Witness Statements Relevant to Phase 2 of the Population Movement and Other Evidentiary Issues with confidential Annexes 1, II, III and Public Annex IV, 5 July 2012, E208/2.

¹⁷ *See* Forthcoming Document Hearings and Response to Lead Co-Lawyers' Memorandum Concerning the Trial Chamber's Request to Identify Civil Party Applications for Use at Trial (E208/4) and Khieu Samphan Defence Request to Revise Corroborative Evidence Lists (E223)", 19 October 2012, E223/2, para. 5.

D108/31.28 and IS13.31

4. According to the OCP, these two documents are each identical to other documents on the Case File which have already been admitted.¹⁸ However, these two documents do *not* appear to be identical to the two admitted documents, at least in the English versions.¹⁹ For example, D108/31.28 refers to a person named “Sokh” and a person named “Lay Chea,” while D108/7.3 / E3/1049²⁰ (which the OCP asserts is identical) refers to persons named “Song” and “Lay.” The English version of IS13.31 has an additional English translation not included in D248/6.1.5 / E3/822 (which is the document the OCP asserts is identical). The Defence should have an opportunity to object to these versions that were cited in the Closing Order and which have not been accorded E3 numbers, since they were the versions relied upon by the OCIJ.

WHEREFORE, for all the reasons stated in the attached Annexes, the Defence respectfully requests the Trial Chamber to REJECT the documents objected to therein.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. IENG Sary

Signed in Phnom Penh, Kingdom of Cambodia on this **23rd** day of **January, 2013**

¹⁸ See Draft Transcript, 22 January 2013, p. 54, 58.

¹⁹ D108/31.28 has no Khmer or French versions on the Case File.

²⁰ D108/7.3 appears to also be on the Case File as D2-15.21, except that D2-15.21 has two Khmer documents listed under the same document number, and they appear to be completely different documents.