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IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

24 April 2008

To: Judge **YOU Bunleng**
Judge **Marcel LEMONDE**
Co-Investigating Judges

Re: Request concerning the interview of Mr. IENG Sary on his conditions of detention on 2 May 2008

Your Honors:

[Redacted]

[Redacted] Furthermore, the Defence wishes to remind the OCIJ of two previous Defence requests for information concerning the apparent conflicts of interest of two OCIJ members of staff and the effect this may have on the interview.

[Redacted]

[1] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Order to Bring the Charged Person, 10 April 2008.
[2] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Police Custody Decision, 12 November 2007.
[3] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Provisional Detention Order, 14 November 2007.

[redacted]

The Defence also wishes to take this opportunity to remind the OCIJ of two previous requests for information filed by the Defence concerning potential conflicts of interest of Mr. Stephen Heder[6] and Mr. David Boyle[7].

Confirming that Mr. Heder was detached to the Office of the Co-Prosecutors from July to December 2006, the OCIJ noted that it did not find any reasons for concern regarding Mr. Heder's employment with the OCIJ, since "the relevant case-law recalls that the rules governing the incompatibility of functions aimed at guaranteeing the independence and impartiality of the courts only apply to magistrates and not to investigators".[8] It bears mentioning that no relevant case law was provided by the OCIJ which would support the proposition that investigators for the OCIJ need not be independent and impartial. It further bears underscoring that Mr. Heder has, quite openly and unequivocally, pronounced Mr. IENG Sary to be guilty of various crimes during the relevant period at issue, that the Royal Amnesty and Pardon are (or should be) inapplicable and that he should be prosecuted. These assertions by Mr. Heder are undoubtedly known to the OCIJ (as they were by his former employer the OCP). It would be supremely ironic that neither the OCIJ or the OCP are familiar with Mr. Heder's text (co-authored with Brian D. Tittemore): *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, which was republished in cooperation with the Documentation Center of Cambodia in Phnom Penh in March 2004. Query how is it that the OCIJ is entrusted to carry out an impartial investigation if it employs investigators that are clearly biased. This is of a particular concern when considering that it

[4] Case of IENG Thirith, Case No. 002/19-09-2007-ECCC/OCIJ, Written Record of Interview on Conditions of Detention, 11 March 2008.
[5] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Expedited Request For Ieng Sary To Be Examined By Well Qualified Medical Specialists & For His Continuing Stay / Detention In Proper Medical Facilities Until Fully Recovered, 18 February 2008 ("Defence Expertise Request").
[6] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Request for Information Concerning Potential Conflict of Interest, 10 January 2008 ("Heder Request").
[7] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Request for Information Concerning the Apparent Bias and Potential Conflict of Interest of OCIJ Legal Officer David Boyle, 4 March 2008 ("Boyle Request").
[8] Case of IENG Sary, Case No. 002/19-09-2007-ECCC/OCIJ, Letter concerning the Request for Information regarding an eventual conflict of interest, 24 January 2008 (emphasis added).

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would appear that such investigators – and not independent judges – are taking sworn statements.

As for the Boyle Request, no response has been issued by the OCIJ. A set of interrogatories were submitted in order to determine Mr. Boyle's professional and ethical fitness to be employed by the OCIJ. Like Mr. Heder, Legal Officer Boyle has displayed - openly and unequivocally - a prejudicial predilection against Mr. IENG Sary. As such, it behooves the OCIJ to carefully consider the Defence's submissions concerning Mr. Boyle and render a response expeditiously.

In light of the forgoing circumstances, the Defence respectfully requests that neither Mr. Heder nor Mr. Boyle be present during the interview of Mr. IENG Sary.

Respectfully submitted,

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