

**ក្រុមបេឡាវិការពារក្តី អៀង សារី**  
**IENG SARY DEFENCE TEAM**  
**EQUIPE DE DEFENSE DE IENG SARY**

ANG Udom and Michael G. KARNAVAS

Co-Lawyers for IENG Sary

17 February 2011

To: **Susan LAMB**  
Senior Legal Officer, ECCC Trial Chamber

Copy: **ECCC Trial Chamber**

**ECCC Defence Teams**

**ECCC Defence Support Section**

**ECCC Office of the Co-Prosecutors**

**ECCC Lawyers for the Civil Parties in Case 002**

Re: Trial Chamber's amended procedures for the filing of preliminary objections and clarification of envisaged response deadlines

Dear Ms. Lamb,

On 15 February 2011, you sent to all parties in Case 002 a letter dated 14 February 2011, entitled "Trial Chamber's amended procedures for the filing of preliminary objections and clarification of envisaged response deadlines" ("Letter").<sup>1</sup> We are concerned as to the contents of the Letter.

**The Letter suggests that the Trial Chamber will not view the Accused as individuals**

You state that the Chamber is aware that a number of the preliminary objections are duplicative and overlap. You seem to be suggesting that the four Accused should act as a group in filing submissions. This is not the first communication that you have suggested this proposal.<sup>2</sup> This is antithetical to the well established precept that each Accused enjoys the right to be treated as an individual. While it may be convenient for the Trial Chamber if the four Accused file joint submissions, the fact remains that each Accused has his or her own defence, his or her own instructions and his or her own approach. Treating an Accused as an

<sup>1</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Interoffice Memorandum from Susan Lamb, Senior Legal Officer – Trial Chamber – to all Parties in Case 002, Trial Chamber's amended procedure for the filing of preliminary objections and clarification of envisaged response deadlines, 14 February 2011, E51, ERN: 00644105-00644106.

<sup>2</sup> "[T]he Chamber encourages Defence teams to coordinate their requests wherever possible and, where strategies are common, to file consolidated motions before the Chamber." *Case of IENG Sary*, 002/19-09-2007-ECCC/TC, Interoffice Memorandum from Susan Lamb, Senior Legal Officer – Trial Chamber – to all Parties in Case 002, Advance Notification of Chamber's disposition of Motions E14, E15, E9/2, E9/3, E/24 and E27, 3 February 2011, E35, ERN: 00642291-00642292.

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individual is required by the Cambodian Constitution which states that Khmer citizens must be treated as individuals before the law, and not as collectives.<sup>3</sup> The Universal Declaration of Human Rights ("UDHR"), which must be respected in Cambodia in accordance with the Cambodian Constitution,<sup>4</sup> also states that a person must be treated as an individual before the law and not in a collective.<sup>5</sup>

**The Letter excludes the Khmer Judges from the fully partaking in deliberations of preliminary objections**

You state that a number of the preliminary objections raise doubt as to whether they are jurisdictional and whether therefore they will be viewed as admissible. You state that notification to the parties as to which of these filings, or portions of filings, are considered inadmissible as preliminary objections will follow by Friday 18 February 2011. You have directed the Interpretation and Translation Unit ("ITU") to suspend translation into Khmer of all pending preliminary objections. As the Trial Chamber only has some of the preliminary objections in English and French, the determination as to the admissibility of the preliminary objections can only be, at best, made by the international Judges.

The purpose of having filings in both English and Khmer is so that both the Cambodian Judges and Lawyers and the international Judges and Lawyers can diligently determine the preliminary objections. Translations also serve as an education tool for young Cambodian jurists and the Cambodian people as a whole, thereby assisting in the legacy of ECCC. The Letter acts contrary to these principles.

**The Letter violates Mr. IENG Sary's right to adequate facilities for the preparation of his defence**

You direct all the parties to file a single consolidated document containing an outline of their preliminary objections by Friday 25 February 2011 in English or French in the first instance, with Khmer to follow as soon as possible. The rationale is, *inter alia*, to enable the Trial Chamber to make an initial assessment of the number, scope and significance of all preliminary objections.

The scope and significance of a preliminary objection cannot be determined through an outline. The admissibility of a preliminary objection cannot be determined through an outline. Most of the preliminary objections are complicated jurisdictional challenges. Each preliminary objection takes time to analyze and for a reasoned decision to be provided. Stating that the Trial Chamber will make an initial assessment prior to any detailed submissions (which may not even be requested by the Trial Chamber), violates Mr. IENG Sary's right to adequate facilities for the preparation of his defence.<sup>6</sup> The Trial Chamber is

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<sup>3</sup> Article 31 of the Cambodian Constitution, as amended in 1999, states in pertinent part: "Every Khmer citizen shall be equal before the law." (Emphasis added).

<sup>4</sup> Article 31 of the Cambodian Constitution, as amended in 1999, states in pertinent part: "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."

<sup>5</sup> Article 6 of the UDHR states: "Everyone has the right to recognition everywhere as a person before the law."

<sup>6</sup> Article 13(1) of the Agreement states: "The rights of the accused enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right ... to have adequate time and facilities for the preparation of his or her defence." Article 35 new of the Establishment Law states in pertinent part: "In determining charges against the

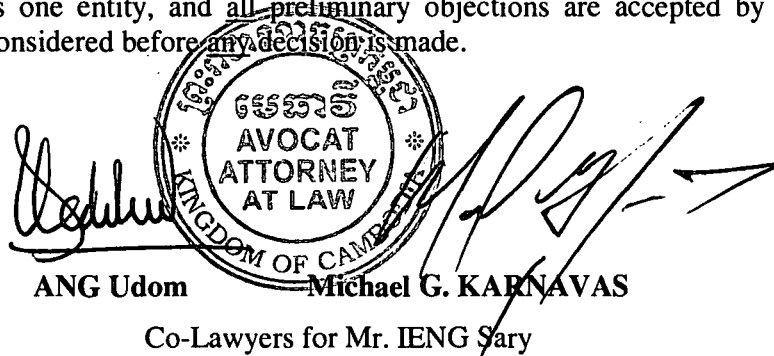
not discharging its duties in a diligent manner, in violation of the ECCC's Code of Judicial Ethics.<sup>7</sup> For the Pre-Trial Chamber, which is also determining most of these complex jurisdictional challenges, they "raise[] points never before raised before a Cambodian Court and in many cases never before considered in international law and especially within the temporal context of the ECCC ... the rights of the Parties would be most egregiously affected by failing to properly thoroughly assess and address all issues raised."<sup>8</sup>

**The Letter violates the Defence's right to make a record**

To date, you have courtesy copies of all eight of our preliminary objections. Only two of these have been officially filed in both languages and only one has been officially notified.<sup>9</sup> We can only file when we have both the English and Khmer versions of a filing. You have directed ITU to suspend translation into Khmer of all pending preliminary objections. You state that notification to the parties as to which of these filings, or portions of filings, are considered inadmissible as preliminary objections will follow by Friday 18 February 2011. If you decide that any of our preliminary objections are inadmissible, we cannot file this preliminary objection. This will preclude us from making a record of that particular preliminary objection, even though it has been determined. Having a record of our preliminary objections would allow future decision-makers to understand what filings have been made by us and the resulting action taken by the respective recipient. In the case of the preliminary objections, it would explain to future decision-makers that we have been diligent and thoroughly challenged all jurisdictional issues before the Trial Chamber.

For the reasons stated herein, we respectfully request that the Trial Chamber does not treat the four Accused as one entity, and all preliminary objections are accepted by the Trial Chamber and fully considered before any decision is made.

Respectfully,



ANG Udom      Michael G. KARNAVAS  
Co-Lawyers for Mr. IENG Sary

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accused, the accused shall be equally entitled to the following minimum guarantees, in accordance with Article 14 of the International Covenant on Civil and Political Rights. ... b. to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing." Article 14(3) of the International Covenant on Civil and Political Rights states in pertinent part: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

<sup>7</sup> ECCC Code of Judicial Ethics, as amended 5 September 2008, Art. 5 states in pertinent part: "1. Judges shall act diligently in the exercise of their duties and shall devote their professional activities to those duties. 3. Judges shall perform all judicial duties properly and expeditiously."

<sup>8</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC, Interoffice Memorandum from the Pre-Trial Chamber Responding to the Interoffice Memorandum from the Trial Chamber dated 4 February 2011, 9 February 2011, D427/1/28, ERN: 00641791-00641796, p. 2.

<sup>9</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC, IENG Sary's Rule 89(1) Preliminary Objection (Statute of Limitations for Grave Breaches), 14 February 2011, E43, ERN: 00643924-00643929.