

ក្រុមបេធាវីការពារក្តី អៀង សារី
IENG SARY DEFENCE TEAM
EQUIPE DE DEFENSE DE IENG SARY

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

18 December 2008

To: **SEAN** Visoth

KRANH Tony

Knut **ROSANDHAUG**

Copy: **H.E. Ms. Patricia O'Brien**, Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations

H.E. Ambassador Léo Mérorès, President of the United Nations Economic and Social Council

H.E. Robert Hill, Permanent Representative of Australia to the United Nations

H.E. Jean-Maurice Ripert, Permanent Representative of France to the United Nations,

H.E. Mr. Yukio TAKASU, Permanent Representative of Japan to the United Nations

H.E. Sir John Sawers, Permanent Representative of the United Kingdom to the United Nations

H.E. Dr. Zalmay Khalilzad, Permanent United States Representative to the United Nations

H.E. Sok An, Deputy Prime Minister, Minister in Charge of the Office of the Council of Ministers and Chairman of the Royal Government Task Force of the Khmer Rouge Trials

H.E. Tjaco van den Hout, Ambassador of the Kingdom of the Netherlands to Cambodia

H.E. Ms Margaret Adamson, Australian Ambassador to Cambodia

H.E. Carol Rodley, United States Ambassador-designate to Cambodia

H.E. Katsuhiko Shinohara, Ambassador Extraordinary and Plenipotentiary of Japan to Cambodia

H.E. M. Jean-François Desmazières, Ambassador of France to Cambodia

ECCC Pre-Trial Chamber

ECCC Co-Investigating Judges

ECCC Office of the Co-Prosecutors

ECCC Defence teams

ECCC Lawyers for the Civil Parties in Case files 001 and 002

ECCC Defence Support Section

Re: Meeting to discuss our letter of 3 December 2008 regarding the improper intervention by the Pre-Trial Chamber Judges into the judicial functions of the Court Management Section

Dear Mr. Rosandhaug,

We wish to thank you very much for meeting with us on 11 December 2008 to discuss the concerns set out in our letter of 3 December 2008, attached hereto. Our request for a meeting was made on very short notice and we appreciate you taking time from your busy schedule to meet with us (Co-lawyer Michael G. Karnavas and Consultant Geoffrey Roberts).



As we detailed in our letter, the actions of the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) in rejecting a filing by the Defence team representing IENG Sary, was both improper and troublingly opaque. The actions, and our expressing of concern come at a time when the ECCC is increasingly being attacked - and rightly so - for its lack of transparency, as was most recently written about in the 16 December 2008 press: The Cambodian Daily and the Phnom Penh Post.

During our meeting, we discussed the rejection of our filing and elaborated upon suggestions for how to investigate this matter as thoroughly as possible. These suggestions included requesting you or the Director of Administration to write directly to the Pre-Trial Chamber Judges for an explanation of what exactly happened in this instance, and why. We believe that this is the most appropriate, transparent and expeditious approach. You also informed us that the matter was within the competence of the national Cambodian side of operations and a response to our letter should be forthcoming. Accordingly, we hereby formally request information as to what steps have been taken in investigating the allegations set out in our letter, and when a response will be forthcoming. If no concrete steps have been taken in initiating and investigation, we request an explanation. If it cannot at this time be ascertained when a full, accurate and complete answer will be provided, we, nonetheless, request an update on the situation up to this point.

We share your desire that proceedings at the ECCC be fair and transparent. It is vital that the UN bodies which supervise the UN side of the ECCC ensure Mr. IENG Sary’s right to “a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him” as set out in Article 10 of the Universal Declaration of Human Rights, which celebrated its 60th birthday last week. To this end, this letter is being copied to the Steering Committee overseeing the courts and tribunals set up by the UN which is comprised of the Permanent Representatives of Australia, France, Japan, the United Kingdom and United States to the UN in New York. We also request that you provide us with information as to any other bodies overseeing the work of the ECCC to whom we should direct our concerns. Such notice and oversight is necessary to ensure that the matter we are raising – affording Mr. IENG Sary his right to make a proper judicial record without interference from the judges who either outright deny the admission of proper submissions (in whole or in part) or delay, for non-judicial tactical reasons, the admission of submission – is dealt with in a fair, expeditious and transparent manner.

Finally, to further demonstrate our commitment to a fair and transparent judicial process at the ECCC, we would also like to reiterate the intention expressed in our meeting to establish a website to provide access to all public filings submitted by the IENG Sary Defence team. The current practice by the Judicial Chambers and Co-Investigating Judges at the ECCC, of suppressing Defence filings which may be embarrassing or which call into question the legitimacy and judiciousness of acts and decisions of the judges, all under the *fig leaf* that these are necessary measures to protect the supposed confidentiality and integrity of the investigation or judicial decision-making process, must be discontinued without exception. Submissions which are solely the work of the Defence team and which do not relate to the substance of the ongoing judicial investigation but relate solely to legal issues, must be debated under the watchful eye of the public. To allow non-confidential issues to be debated behind closed doors not only deprives Mr. IENG Sary of a fair and public trial but also deprives Cambodia of a demonstration of how complex trials for the most serious crimes can be conducted openly and transparently.

We look forward to an expeditious response from you on the issues raised in this letter.

Respectfully submitted,





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