

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

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**ANG Udom and Michael G. KARNAVAS**

Co-Lawyers for IENG Sary

4 October 2010

To: **Judge PRAK Kimsan**  
**Judge NEY Thol**  
**Judge HUOT Vuthy**  
**Judge Catherine MARCHI-UHEL**  
**Judge Rowan DOWNING**  
Pre-Trial Chamber Judges  
**SAR Chanrath**  
**Entela JOSIFI**  
**Sarah CLANTON**  
Pre-Trial Chamber Greffiers

Re: Acceptance of first instance filings during this stage of the proceedings

Your Honors and Greffiers:

We write to you concerning a situation which negatively impacts on our ability to prepare a defence for Mr. IENG Sary. Our filings are not being placed on the Case File, which impacts on Mr. IENG Sary's right to a defence. A brief procedural history demonstrates the problem:

- On 27 September 2010, we attempted to file a motion to the Pre-Trial Chamber to compel Co-Investigating Judge Lemonde to provide clarification and disclosure regarding his remarks at the OCIJ press conference on 16 September 2010.
- On 28 September 2010, this filing was returned to us by the Pre-Trial Chamber Greffiers as deficient, on the grounds that the "Pre-Trial Chamber has jurisdiction to consider applications and appeals as contemplated by the Internal Rules. The Motion is not an application or appeal which the Pre-Trial Chamber has jurisdiction to consider."<sup>1</sup>
- On 29 September 2010, we attempted to file a similar motion to the OCIJ to request clarification and disclosure from Judge Lemonde.
- On 1 October 2010, our filing was returned to us. The OCIJ Greffiers stated, "Following the appeals filed by the accused against the Closing Order in case file 002 the OCIJ Greffiers forwarded the case file to the Pre-Trial Chamber on 22 September 2010 pursuant to Rule 69.1. As the co-Investigating Judges are no longer seized of the case all documents related to case file No. 002/19-09-2007-ECCC-OCIJ must now be filed with the Pre-Trial Chamber."<sup>2</sup>

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<sup>1</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Notice of Deficient Filing, 27 September 2010.

<sup>2</sup> *Case of IENG Sary*, 002/19-09-2007-ECCC/OCIJ, Notice of Deficient Filing, 1 October 2010 (emphasis added).

Since the OCIJ is no longer seized with the case, the Pre-Trial Chamber must now accept all filings as a chamber of first instance. If this is not done, Mr. IENG Sary will have no opportunity to make legitimate filings which are vital to the exercise of his fair trial rights.

The Greffiers' practice of rejecting filings impacts Mr. IENG Sary's right to a defence. This is because when a filing is rejected, it is not given a document number or an ERN, it is not placed on the Case File, and it may not be referred to or relied upon in future proceedings. When filings are rejected by the Greffiers, it is as if they never exist. This prevents the Defence from making a record, which is vital to the effective exercise of Mr. IENG Sary's right to a defence. The appropriate procedure would be to place all filings on the Case File, and then allow the Pre-Trial Chamber to determine whether to admit them or reject them as inadmissible before deciding on their merits. This would allow future decision-makers to understand what filings have been made by the parties and why they were admitted or rejected.

To ensure that Mr. IENG Sary's rights are respected throughout the proceedings at the ECCC, we respectfully request that you accept the filing of the attached motion, which we attempted to file with you on 27 September 2010.

Respectfully submitted,

**ANG Udom**

  
**Michael G. KARNAVAS**

Co-Lawyers for Mr. IENG Sary