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IENG SARY DEFENSE TEAM
EQUIPE DE DEFENSE DE IENG SARY

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Co-Lawyers for IENG Sary

1 March 2010

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

Re: Request for information concerning complaints made by potential witnesses

Classification of document suggested by the filing party: **PUBLIC** **Original**

Your Honors:

It has come to our attention that you have received complaints from potential witnesses who feel that they have been intimidated and threatened by OCIJ investigators. In light of the recurrent lapses of witness safety and security measures throughout the course of this investigation, as evidenced by your handling of the insider witness database and the secret filming of witnesses,[1] we hope for your cooperation on this matter. In the interest of fair trial standards and the legitimacy of this tribunal, we seek your immediate attention and response to this request.

Firstly, we wish to be provided with any documentation that may exist concerning complaints alleging witness intimidation by OCIJ investigators. Secondly, please provide any information as to how these complaints have been investigated and resolved. This request is mandated by the Defence's obligation to act with due diligence.[2] This information is crucial for the Defence to make a reasonable determination as to the propriety of this investigation.

If witnesses have been intimidated, this demonstrates that the judicial investigation that has been conducted thus far is deeply flawed[3] and that any information received by these

[1] *See Case of IENG Sary*, 002/11-12-2009-ECCC-PTC07, IENG Sary's Second Rule 34 Application to Disqualify Judge Marcel LEMONDE and Joinder to the IENG Thirith Defence Application for Disqualification of Co-Investigating Judge Marcel Lemonde and Request for a Public Hearing, 11 December 2009, Annex 1.

[2] *Black's Law Dictionary* defines due diligence as "[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation." BLACK'S LAW DICTIONARY 468 (7th ed. 1999). The ICTY has stated that the purpose of according the accused certain rights under the ICTY Statute "was that the accused should exercise due diligence in utilizing them." JUDGE RICHARD MAY & MARIEKE WIERDA, INTERNATIONAL CRIMINAL EVIDENCE 306 (Transnational Publishers Inc., 2002), *discussing Prosecutor v. Tadić*, IT-94-1-A, Decision on Appellant's Motion for the Extension of the Time Limit and Admission of Additional Evidence, 15 October 1998.

[3] The Defence already has reservations about the conduct of the judicial investigation and the integrity of the Tribunal as a whole. *See e.g., Case of IENG Sary,* 002/19-09-2007-ECCC-OCIJ(PTC20), IENG Sary's Appeal Against the Co-Investigating Judges' Order on Request for Investigative Action Regarding Ongoing Allegation of Corruption And Request for an Expedited Oral Hearing, 4 May 2009, D158/5/3/1, ERN: 00323171-

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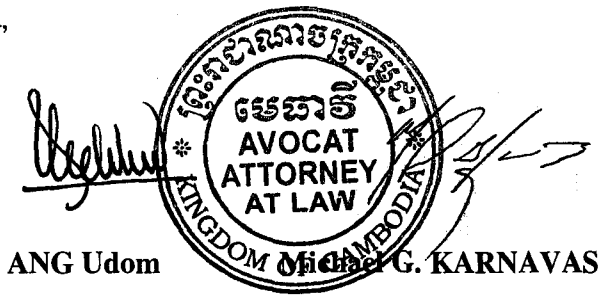
witnesses is very likely to be unreliable. Furthermore, such conduct demonstrates that the OCIJ investigators are acting with apparent bias through the intimidation of witnesses to produce statements which conform to a predetermined narrative. This is of grave concern to the Defence and to the legitimacy of the Tribunal in its entirety. If such impropriety is indeed taking place, it would directly violate Mr. IENG Sary's fundamental rights to be presumed innocent and to be tried by an impartial tribunal.

Your assistance in this matter is greatly appreciated. We look forward to your expeditious response.

Respectfully submitted,



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00323193; *Case of IENG Sary*, 002/09-10-2009-ECCC-PTC (01), Ieng Sary's Application to Disqualify Co-Investigating Judge Lemonde and Request for a Public Hearing, 9 October 2009, 1, ERN: 00386956-00386968; *Case of IENG Sary*, 002/11-12-2009-ECCC-PTC07, IENG Sary's Second Rule 34 Application to Disqualify Judge Marcel LEMONDE and Joinder to the IENG Thirith Defence Application for Disqualification of Co-Investigating Judge Marcel Lemonde and Request for a Public Hearing, 11 December 2009, 1, ERN: 00414160-00414179; *Case of IENG Sary*, 002/14-12-2009-ECCC-PTC, IENG Sary's Request for Investigation Under Internal Rule 35 into the Actions of Dr. Craig Etcheson of the Office of the Co-Prosecutors Relating to Ex-Parte Communication with the International Component of the OCIJ and Request for A Public Hearing, 14 December 2009, 1, ERN: 00414934-00414938.