



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

- 2 -

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Préliminaire

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Criminal Case File N° 002/20-10-2010-ECCC/PTC(14)

Before: Judge PRAK Kimsan, President
Judge Rowan DOWNING
Judge NEY Thol
Judge Catherine MARCHI-UHEL
Judge HUOT Vuthy

Date: 17 December 2010

PUBLIC

DECISION ON DEFENCE NOTIFICATION OF ERRORS IN TRANSLATIONS

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Accused

IENG Thirith

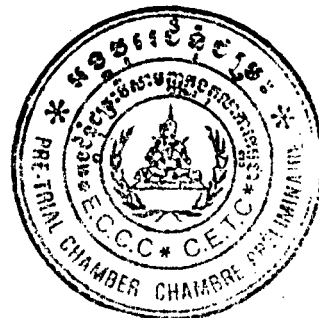
Co-Investigating Judges

Judge YOU Bunleng
Judge Siegfried BLUNK

Co-Lawyers for Accused

PHAT Pouv Seang
Diana ELLIS, QC

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
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Ratanak	



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“the ECCC”) is seised of the “Defence Notification of Errors in Translations of Certain Documents and Request to Direct that the OCIJ Has Jurisdiction or Alternatively to Assume Jurisdiction Over the Verification of the Accuracy of Translations of Evidentiary Documents” filed by the Co-Lawyers for the Accused, IENG Thirith, on 20 October 2010, and notified on 21 October 2010 (“the Notification”).¹

I. PROCEDURAL BACKGROUND

1. The Notification presents translation errors with two written records of witness interview and “requests that the Pre-Trial Chamber or, alternatively, that the Pre-Trial Chamber orders the Co-Investigating Judges to ensure that the documents upon which the Closing Order is based are correctly translated in order to accurately reflect the contents in all the working languages of the ECCC.”²

II. ADMISSIBILITY

2. The Pre-Trial Chamber notes that the Office of the Co-Investigating Judges has rejected the filing of the Notification,³ and that the Notification is not admissible before the Chamber under Internal Rule 74(3) (Rev. 6).
3. The Pre-Trial Chamber has previously examined whether Internal Rule 21 requires it to adopt a broader interpretation of an Accused’s right to appeal in order to guarantee the fairness of proceedings.⁴
4. Internal Rule 21 provides:

1. The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the

¹ Defence Notification of Errors in Translations of Certain Documents and Request to Direct that the OCIJ Has Jurisdiction or Alternatively to Assume Jurisdiction Over the Verification of the Accuracy of Translations of Evidentiary Documents, 20 October 2010, Doc No. 1, ERN 00615963-00615971 (EN) (“Notification”).

² Notification, para 28.

³ Notification, paras. 5-7.

⁴ Decision on IENG Thirith’s Appeal against the Co-Investigating Judges’ Order Rejecting the Request for Stay of Proceedings on the Basis of Abuse of Process (D264/1), 10 August 2010, D264/2/6, paras. 13-16.
Decision on Defence Notification of Errors in Translations



interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and Agreement. In this respect:

a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties . . .

5. The Co-Lawyers submit that the Pre-Trial Chamber should assume jurisdiction over the Notification because there is a presumption of accurate translations and inaccurate translations could produce factual errors which could then lead to incorrect legal findings.⁵
6. The Notification does not explain how the examples of translation errors compromise the fairness of the pre-trial or trial proceedings. The Pre-Trial Chamber reminds the Co-Lawyers that during the trial proceedings the parties will have the opportunity to contest the admissibility and probative value of evidence. The Pre-Trial Chamber also reminds the Co-Lawyers that all judges of the ECCC are competent to detect and correct any factual errors caused by mistranslations so as to avoid incorrect legal findings. Notwithstanding these matters, the Pre-Trial Chamber recognizes that there may be more translation errors on the case file, and that it would facilitate the efficiency of proceedings if some of the possible translation errors were detected and corrected sooner rather than later. Given that the commencement of trial in Case 002 is some months away, the Pre-Trial Chamber considers that it is in an appropriate position now to examine the merits of the Notification. The Notification is accepted as admissible under Internal Rule 21.

III. MERITS

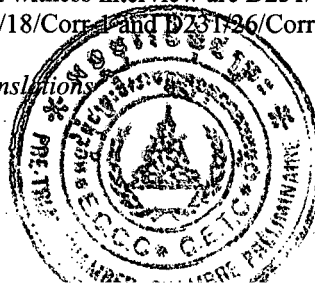
7. The Co-Lawyers state that on 15 September 2010 they were informed by the Interpretation and Translation Unit (“the ITU”) of the ECCC “about some factual errors in French translations” regarding two written records of witness interview that were originally recorded in Khmer.⁶ These translation errors have since been corrected.⁷

⁵ Notification, paras. 15-17, 26-27.

⁶ Notification, para. 18. The two written records of witness interview are D231/18 and D231/26.

⁷ Requests for Correction, 19 October 2010, D231/18/Corr-1 and D231/26/Corr-1; Request for Correction, 29 November 2010, D231/26/Corr-2.

Decision on Defence Notification of Errors in Translations



8. The Co-Lawyers neither allege that the translation errors affected the findings of the Co-Investigating Judges in the Closing Order,⁸ nor demonstrate the need to verify the translations of all “the documents upon which the Closing Order is based.”
9. The Pre-Trial Chamber agrees with the Co-Lawyers that the possible extent of translation errors in the written records of witness interview on the Case 002 file should be investigated at this stage of the proceedings.⁹ There are approximately 767 written records of witness interview in the Case 002 file that were originally recorded in Khmer. These written records total approximately 5100 pages.
10. The Pre-Trial Chamber orders the ITU to review the accuracy of the English and French translations of 10% of the written records of witness interview (original Khmer) on the Case 002 file. The ITU has confirmed with the Chamber that two French-English translators and a Khmer interpreter are available to assist with the review. The translators will be able to detect any discrepancies between the French and English language translations and the Khmer interpreter will be able to indicate which translation, if any, does not accord with the original Khmer version. Where necessary, the ITU is also ordered to file requests for correction with the Court Management Section of the ECCC.
11. Given that the Co-Lawyers have not demonstrated any prejudice to the Accused, and considering the resources available to and the workload of the ITU, the Pre-Trial Chamber finds that the above mentioned order to the ITU constitutes adequate relief in response to the Notification. The Pre-Trial Chamber reminds the Co-Lawyers that, with the resources available to them, they should endeavour to identify and bring to the attention of the appropriate section of the ECCC any translation errors on the Case 002 file.
12. The Pre-Trial Chamber remains seised of the Notification to the extent that it will, as appropriate, report the results of the ITU’s review to the parties in due course. The Notification is otherwise dismissed.

⁸ Closing Order, 16 September 2010, D427.

⁹ Notification, para. 27.



**FOR THE FOREGOING REASONS, THE PRE-TRIAL CHAMBER HEREBY
UNANIMOUSLY DECIDES:**

1. The Notification is admissible;
2. Within 30 working days of being notified of this Decision, the ITU is directed to:
 - a. Review the English and French translations of 10% of the written records of witness interview (original Khmer) in the Case 002 file;
 - b. File the necessary requests for correction with the Court Management Section; and
 - c. Report the results of such review to the Pre-Trial Chamber along with any requests for correction that have been filed;
3. The ITU may request an extension of time from the Chamber, if necessary;
4. The Pre-Trial Chamber remains seised of the Notification to the extent that it will, as appropriate, report the results of the ITU's review to the parties in due course;
5. Consequent upon receiving such report from the Chamber, the Accused may renew her application contained in the Notification;
6. The Notification is otherwise dismissed.

Phnom Penh, 17 December 2010

Pre-Trial Chamber








Rowan DOWNING NEY Thol Catherine MARCHI-UHEL HUOT Vuthy PRAK Kimsan