



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**Request for Correction**

**Case :** STRICTLY-CONF-002/19-09-2007-ECCC/SC

<b>ឯកសារដើម</b>
<b>ORIGINAL/ORIGINAL</b>
ថ្ងៃ ខែ ឆ្នាំ (Date): 05-Feb-2013, 11:25
CMS/CFO: Sann Rada

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E251/1/3	00882825-00882833 (EN)	05 Feb 2013	<input checked="" type="checkbox"/> Change to Original <input type="checkbox"/> Change to Translation <input type="checkbox"/> Reclassification

<b>Reason for changes:</b>
Mistake in Para. 11

<b>Details:</b>
In paragraph 11 corrected and replaced the word first to fourth

**Filing Party:** Mosseny SO

**Approved by Greffier (for originals):**

*Theoun, Pham*

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002/19-09-2007-ECCC-TC/SC ( )

10. In paragraph 16, the OCP asserts that the Defence's submission as to the Trial Chamber's interference with the administration of justice, without "a shred of evidence as to any impropriety or interference," abuses the process, tends to bring the proceedings into disrepute and is a "vexatious and contemptuous" claim that warrants a Rule 38 warning. The OCP again misstates and misunderstands the Defence's submissions. This Appeal is not an abuse of process. It is neither frivolous nor unfounded, and it most certainly is not intended to bring the proceedings into disrepute. The Trial Chamber has demonstrated a singular lack of concern for the irregularities in witness interviews and written records of interviews as a result of improper OCIJ investigative practices, and the impact these irregularities may have upon the evidence. The Impugned Decision, in conjunction with the Trial Chamber's 6 September 2012 oral decision limiting examination on OCIJ interviews,<sup>24</sup> is evidence of impropriety and interference. The Defence is duty bound to protect Mr. IENG Sary's fair trial rights by ensuring that the evidence ultimately considered by the Trial Chamber is reliable and accurate. The Defence has attempted to highlight the Trial Chamber's errors and abuse of discretion in misapplying the facts and misinterpreting the law and Rules to achieve a pre-determined result.

11. In sum, the Defence respectfully submits that the Supreme Court Chamber should exercise its preference for the rule of law based on intellectual integrity. The Supreme Court Chamber should ensure that the applicable law and Rules are correctly and faithfully applied by the Trial Chamber.<sup>25</sup> Indeed, the Supreme Court Chamber would be well-served were it to be guided by the sage admonition of the fourth Chief Justice of the United States Supreme Court, Chief Justice John Marshall:

Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge; always for the

<sup>24</sup> See, e.g., Transcript, E1/123.1, 6 September 2012, p. 34-35, 42-44.

<sup>25</sup> The Pre-Trial Chamber International Judges have recognized the importance of strict respect for fair trial rights and the rule of law: "We cannot emphasise enough the importance for a judicial body, such as the Co-Investigating Judges, to strictly respect the right to a fair trial and the procedural rights of individuals involved in the proceedings, which hold a prominent place in any democratic society as a basic guarantee of the rule of law". Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill, Opinion of Judges Lahuis and Downing, 24 October 2011, D11/2/4/4, para. 10. This decision was issued in regard to Case 003 and concerned the need for the OCIJ to provide parties with sufficient information and clarity about its procedures. Its language applies equally to Case 002/01 and the issues raised in the Appeal.