



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

សំណើសុំការកែតម្រូវ

Request for Correction

Demande de Rectificatif

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សំណុំរឿងលេខ (Case/ Dossier): 002/19-09-2007-ECCC-TC/SC(15)

កែលម្អឯកសារលេខ: To Document No(s): Cote des documents à rectifier :	ERN(s):	កាលបរិច្ឆេទ: Date:	ប្រភេទកំណែ: Correction Type: Type de Correction:
E176/2/1/4	00847648 (page to be corrected) (whole document: 00847628-62)	20-9-2012	<input checked="" type="checkbox"/> កែលម្អឯកសារដើម Change to Original Correction à apporter à l'original <input type="checkbox"/> កែលម្អឯកសារបកប្រែ Change to Translation Correction à apporter à la traduction <input type="checkbox"/> រៀបចំចាត់ថ្នាក់ឡើងវិញ Reclassification Nouveau classement

មូលហេតុនៃការកែតម្រូវ (Reason for changes/ Explications):
 There was a typographical error in paragraphs 41 (ERN 00847648) and 69 (ERN 00847661).

លម្អិតនៃការកែតម្រូវ (Details/ Détails):
 See tracked changes below and clean version attached.

 In the third sentence of para. 41 (ERN 00847648) the word "not" should be inserted between "does" and "excluded." As corrected, it should read: "[...] does not exclude establishing facts under a beyond reasonable doubt standard."

 In the first sentence of para. 69 (ERN 00847661) the word "it" should be replaced with "the Trial Chamber" reading: "[...] confirmation that the Trial Chamber will not take into account[...]."

ភាគីស្នើសុំ:
Filing Party/ Déposé par: Supreme Court Chamber

ហត្ថលេខា
Signature:

បានទទួលការឯកភាពពីក្រុមប្រឹក្សាបញ្ជី(ចំពោះឯកសារដើម):
Approved by Greffier (for originals):
Approuvé par le greffier (pour les originaux) :

ហត្ថលេខា
Signature:

បានទទួលការឯកភាពពីអង្គភាពបកប្រែភាសា(ចំពោះការបកប្រែ):
Approved by ITP (for translations):
Approuvé par le Groupe d'interprétation et de traduction (pour la traduction) :

ហត្ថលេខា:
Signature:

does not exclude establishing facts under a beyond reasonable doubt standard. For example, acts appropriately dealt with summarily include those notorious because of their public nature, recorded on the Court's video, committed through authenticated documents, or admitted.

42. Rule 35 discloses little detail regarding the procedures pursuant to sub-Rule 35(2). The Supreme Court considers that the procedure for establishing liability, whether for a criminal or administrative offence, should comport with the fundamental requirement of fairness. The appropriate standard of proof is one aspect of this requirement. In addition, as noted by the ICTY Appeals Chamber under the procedure laid down by its Rule 77(F), "it is for a Chamber, *proprio motu*, to initiate the proceedings whereby a person is called upon to answer the allegations against him when the Chamber has reason to believe he may be in contempt."¹⁰⁹ "[A] Chamber being both the prosecutor and the judge in relation to a charge of contempt" represents a danger and in such a case, the ordinary procedures and protections for the parties might be overlooked.¹¹⁰ Therefore, it is "essential that, where a Chamber initiates proceedings for contempt itself, it formulates at an early stage the nature of the charge with the precision expected of an indictment, and that it gives the parties the opportunity to debate what is required to be proved. It is only in this way that the alleged contemnor can be afforded a fair trial."¹¹¹

iv. Sanctions and referrals under Rule 35

43. Rule 35 does not contemplate measures to counter or punish proscribed conduct other than sanctions under Cambodian law or referral to the appropriate authorities. The Impugned Decision contains a "public reminder of the right of the Accused to be presumed innocent and of the need for officials to avoid comments incompatible with this presumption".¹¹² The Trial Chamber failed to identify any legal basis for this measure. Further, the Trial Chamber's discussion of the standard of proof relating to these procedural avenues does not elucidate the issue.¹¹³

44. Sanctions available under Rule 35 must be tailored to the ECCC context. To this end, other than criminal acts covered by Cambodian law, the framework of Rule 35 encompasses the power to "take measures necessary to ensure the integrity of proceedings, which ultimately maintain respect

¹⁰⁹ *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, "Judgment on Appeal by Anto Nobile against Finding of Contempt", Appeals Chamber, 30 May 2001, para. 55.

¹¹⁰ *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, "Judgment on Appeal by Anto Nobile against Finding of Contempt", Appeals Chamber, 30 May 2001, para. 56.

¹¹¹ *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, "Judgment on Appeal by Anto Nobile against Finding of Contempt", Appeals Chamber, 30 May 2001, para. 56.

¹¹² Impugned Decision, para. 31.

¹¹³ Impugned Decision, para. 20; *see also* Second Decision on NUON Chea's and IENG Sary's Appeal against OCIJ Order on Requests to Summons Witnesses, Pre-Trial Chamber, 9 September 2010, D314/1/12, paras. 36-37.

independence. Statements of this kind should be avoided altogether. That being said, contrary to what the Defence seems to purport,²⁰³ the gist of the corrective action by the ECCC is not to sanction or otherwise embarrass the Prime Minister but to ascertain that no prejudice is caused to the trial proceedings. The trial is being conducted before professional judges only, who are less likely than jurors and lay assessors to be influenced. The evidentiary proceedings are also on-going leaving open the possibility to prove or disprove relevant facts. Furthermore, regarding the source of the publicity, the Supreme Court Chamber observes that the first statement attributed to the Prime Minister was made to the Vietnamese press. It was neither blatantly inflammatory nor designed to attract attention. The subsequent publicity was not a virulent press campaign aimed at hampering the fairness of the trial. Rather, the subsequent widespread coverage and reaction in Cambodia are mainly attributable to the Defence's efforts to give prominence to their grievance.²⁰⁴

69. For the foregoing reasons, this Chamber finds appropriate the public affirmation of the presumption of innocence and confirmation that ~~the Trial Chamber~~ will not take into account any public comments concerning the guilt or innocence of any Accused. By refusing (implicitly) to apply the measure requested by the Defence, that is, an admonition, the Trial Chamber did not err in law such as to invalidate the decision nor did it err in the exercise of its discretion resulting in prejudice to the Appellant. Considering that the passage contained in paragraph 31 of the Impugned Decision was not announced in a public hearing, the Supreme Court emphasises the right of the Accused to be presumed innocent. Public officials must avoid comments incompatible with this presumption, as such comments, if repeated, could undermine the Accused's right to a fair trial.

²⁰³ Appeal, paras. 15-17.

²⁰⁴ This Chamber notes that the Defence has likely once again breached the ECCC regulations on the confidentiality of documents given that on 13 June 2012 the *Phnom Penh Post* quoted part of the present Appeal verbatim despite the fact that the Appeal had not been made public prior to 13 June 2012. Bridget Di Certo, "Khmer Rouge court judges called on to reproach Hun Sen", *Phnom Penh Post*, 13 June 2012, <<http://www.phnompenhpost.com/index.php/KRTalk/krt-judges-called-on-to-reproach-hun-sen.html>>. Without the journalists having been provided with the Appeal in advance of the date of publication, the *Post* article could not have directly quoted sections of the Appeal. *See also* Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of Judicial Investigation, Supreme Court Chamber, 27 April 2012, E116/1/7, para. 37 and Disposition (in which this Chamber issued a warning to the Defence against further unauthorised disclosure of classified information).