



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

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
OFFICE OF THE CO-INVESTIGATING JUDGES
BUREAU DES CO-JUGES D'INSTRUCTION

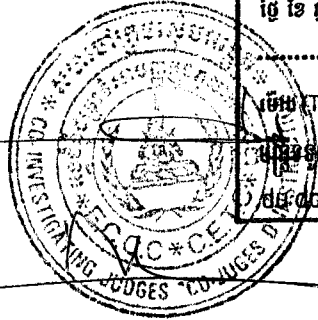
TO: **IENG Thirith Defence Team**
A: PHAT Pouv Seang
Diana ELLIS

Date: 14 December 2009

CC: CMS and ITU

FROM: **You Bunleng**
DE:

Marcel LEMONDE
Co-Investigating Judges



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| ឯកសារដើម |
| ORIGINAL DOCUMENT/DOCUMENT ORIGINAL |
| ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 16 / 12 / 2009 |
| ម៉ោង (Time/Heure) : 09:00 |
| មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: C.A. Fuy |

PUBLIC

SUBJECT: **RESPONSE TO IENG THIRITH'S REQUEST FOR TRANSLATION OF**
OBJET: **EVIDENTIARY MATERIAL**

REF: 002/19-09-2007-ECCC-OCIJ – D249

In your Request dated 27 November 2009, you ask the Co-Investigating Judges for “documents be translated before the close of the investigations are announced, so as to allow the defence sufficient opportunity to prepare its defence in accordance with Article 14(3)(b) ICCPR, which guarantees the right ‘[to] have adequate time and facilities for the preparation of her ‘defence’”¹. In support of your Request, you affirm that “these documents form the essence of the Co-Prosecutors’ case against the Charged Person” and therefore that “it is crucial to obtain an English version...before the end of the investigations” (para. 3).

¹ D249, Defence Request for Translation of Certain Documents before the Close of the Investigation, 27 November 2009, para. 7.



The Co-Investigating Judges note that this "Request" does not contain any concrete demand for investigative action, as defined in Internal Rule 55(10).² The principles guiding translation issues during the pre-trial phase of Case File 002 have already been laid down in our Order dated 19 June 2008, including time limits for communicating specific requests for priority translations to the Interpretation and Translation Unit (ITU) through CMS.³

While it is true that our Order requires the Introductory Submission and its accompanying documents to be translated into English, this requirement, based on the right to adequate time and facilities for the preparation of the defence and the right to a fair hearing, is designed to ensure sufficient time to prepare for *trial*, which is not the case here. The Order does not require these documents to be translated before the end of the judicial investigation. Given that most, if not all, of the documents in question exist in Khmer, we find that the Charged Person has had sufficient notice of the "*nature and cause of the charged against her*"⁴ in her own language. Indeed, even at trial in Case 001, the Trial Chamber did not require translation of those documents which were not relied upon directly by the Prosecutor or the other parties.

The Co-Investigating Judges consider, thus, that the only relevant issue at this stage of the proceedings is the extent to which the documents referred to in the Request need be translated into English in order for the international co-lawyer to effectively participate in the process of the preparing requests for investigative action by the IENG Thirith Defence team.

After review, it appears that a number of the documents are already available in English directly or as part of compilation documents⁵. As regards the remainder, as the Request recognizes, the English language meta-data and summaries of the documents filed with it, not to mention the Introductory Submission itself, allow an initial selection of the most relevant documents.

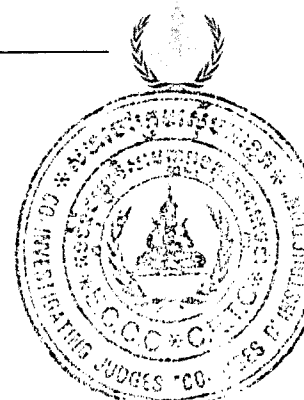
Moreover, the unique structure of defence teams before the ECCC, with systematic representation by a Khmer speaking co-lawyer and legal assistants, as well as the services

² See in this respect, **A190/II/9 PTC Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties**, 20 February 2009, paras. 16-23.

³ A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008.

⁴ A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008, Sect. A, para. 3; on the need to differentiate fair trial rights during the preliminary investigation and at trial, see A190/II/9, **Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties**, para. 36 and the ECHR case law cited in note 24.

⁵ It appears that an English translation already exists for some of these documents, as set out in Annex 1; in addition the information contained in a number of S-21 prisoner lists included in the defence request, although un-translated as such, have been incorporated into the OCP master compilation of prisoner details placed on the case file under reference no. D81-Annex A, S-21 Prisoner List "Composite", 18/Mar/2008.



of a dedicated translator decided in our Order⁶, allows the international co-lawyer to seek assistance in further clarifying priority translation needs.

Finally, international jurisprudence recognizes that in certain circumstances, an oral interpretation may be sufficient in lieu of full translation in order to ensure full respect for defence rights.⁷ The Co-Investigating Judges find that this solution is particularly well adapted to the needs of the defence in determining translation priorities and preparing appropriate requests.

The ITU is at the service of all the parties to provide such assistance with a view to rationalizing translation requests. Any important documents identified in this way can then be prioritized for translation through the normal administrative process, in order to prepare for trial should the Charged Person be indicted by the Co-Investigating Judges. After enquiry, it appears that the IENG Thirith team may already have availed itself of this service in respect of some of the documents in this list.

For all of these reasons, we find that the IENG Thirith Defence has had ample opportunity to identify those evidentiary materials filed with the Introductory Submission which are the highest priority for translation and to indicate these priorities to CMS, as required by our Order⁸, so as to decide on appropriate requests for investigative action.

The Defence for the Charged Person is invited to make contact with CMS and ITU with a view to ensuring that any documents referred to in the list which have not already been sight translated may be summarized for the defence team as soon as possible with a view to facilitating the preparation of investigative requests and that any resulting translation requests be submitted through the normal procedures in time to ensure sufficient time to prepare for trial.

⁶ In this case, we are informed that ITU assigned Ms Phan Sopheaknita to work with the IENG Thirith defence team to review documents and provide sight translations, on 15 July 2008 and that she continued to provide this service throughout that year.

⁷ See A190/II/9, **Decision on IENG Sary's Appeal against the OCIJ's Order on Translation Rights and Obligations of the Parties**, para. 41 and case law cited in note 30.

⁸ A190, **Order on Translation Rights and Obligations of the Parties**, 19 June 2008, 00196929, para. 2.



Annex 1

| Document Number | ERN_KH | ERN_EN |
|-----------------|-------------------|-------------------|
| 5.72 | 00084036-00084080 | 00184786-00184789 |
| 7.6 | 00040228-00040228 | 00172214-00172215 |
| 16.47 | 00019176-00019191 | 00183423-00183425 |
| 16.108 | 00039989-00039996 | 00183823-00183830 |
| 16.147 | 00087637-00087642 | 00184810-00184817 |

