



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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Preliminaire

D359/29 and D360/38

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

Case File N° 004/2/07-09-2009-ECCC/OCIJ (PTC60)

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date: 9 March 2020

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PUBLIC

DECISION ON INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR A FULL REVIEW OF THE FRENCH TRANSCRIPTS OF THE APPEAL HEARING HELD BEFORE THE PRE-TRIAL CHAMBER

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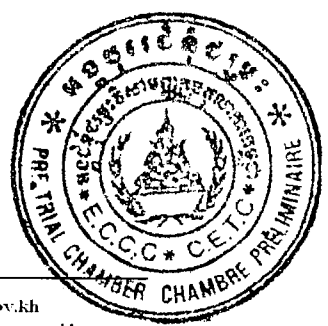
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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the “International Co-Prosecutor’s Request for a Full Review of the French Transcripts of the Appeal Hearings Held before the Pre-Trial Chamber” filed by the International Co-Prosecutor on 11 October 2019 (the “Request”).¹

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 16 August 2018, the National Co-Investigating Judge issued his Order Dismissing the Case against AO An (the “Dismissal Order”)² while the International Co-Investigating Judge issued his Closing Order (Indictment) (the “Indictment”).³

2. On 14 December 2018, the National Co-Prosecutor filed an appeal in Khmer against the Indictment.⁴ On 20 December 2018, the Co-Lawyers for AO An (the “Co-Lawyers”) and the International Co-Prosecutor respectively filed appeals in English against the Indictment⁵ and the Dismissal Order⁶ (collectively, the “Appeals”).

3. On 19, 20 and 21 June 2019, the Pre-Trial Chamber conducted a hearing in Case 004/2 to hear the arguments of the Parties in relation to the Appeals. By 20 August 2019, the transcripts of the Hearing in three official working languages of the ECCC, English, Khmer and French, were filed and notified by the Court Management Section (“CMS”) of the Court.⁷

4. On 11 October 2019, the International Co-Prosecutor filed her Request. Pursuant to the Pre-Trial Chamber’s Instructions, dated 21 October 2019,⁸ the Office of Administration and

¹ Case 004/2/07-09-2009-ECCC/OCIJ (“Case 004/2”) (PTC60), International Co-Prosecutor’s Request for a Full Review of the French Transcripts of the Appeal Hearings Held Before the Pre-Trial Chamber, 11 October 2019, D359/18 and D360/27 (“Request (D359/18 and D360/27)”).

² Case 004/2, Order Dismissing the Case against AO An, 16 August 2018, D359.

³ Case 004/2, Closing Order (Indictment), 16 August 2018, D360.

⁴ Case 004/2, National Co-Prosecutor’s Appeal against the International Co-Investigating Judge’s Closing Order (Indictment) in Case 004/2, 14 December 2018, D360/8/1.

⁵ Case 004/2, AO An’s Appeal against the International Co-Investigating Judge’s Closing Order (Indictment), 20 December 2018, D360/5/1.

⁶ Case 004/2, International Co-Prosecutor’s Appeal of the Order Dismissing the Case against AO An (D359), 20 December 2018, D359/3/1.

⁷ Case 004/2, Transcript of Hearing on the Substance in Case 004/02 - 19 June 2019, filed on 25 June 2019 and notified on 19 August 2019 in English and French, filed on 26 June 2019 and notified on 20 August 2019 in Khmer, D359/9.1 and D360/17.1; Case 004/2, Transcript of Hearing on the Substance in Case 004/02 - 20 June 2019, filed on 28 June 2019 and notified on 19 August 2019 in English and French, filed on 26 June 2019 and notified on 20 August 2019 in Khmer, D359/10.1 and D360/18.1; Case 004/2, Transcript of Hearing on the Substance in Case 004/02 - 21 June 2019, filed on 1 July 2019 and notified on 19 August 2019 in English and French, filed on 26 June 2019 and notified on 20 August 2019 in Khmer, D359/11.1 and D360/19.1.

⁸ Case 004/2, Pre-Trial Chamber’s Instructions to the Parties and the Office of Administration, Email dated 21



the Co-Lawyers filed their responses to the Request on 30 October 2019⁹ and 31 October 2019,¹⁰ respectively.

5. The International Co-Prosecutor requests the Pre-Trial Chamber to order a complete review of the French transcripts of the Hearing held on 19, 20 and 21 June 2019 and an issuance of revised transcripts.¹¹ The International Co-Prosecutor submits that the accuracy of the written record of all proceedings at the ECCC, including appellate hearings before the Pre-Trial Chamber, in all working languages of the ECCC is crucial to the work and the legacy of the Court.¹² The International Co-Prosecutor, while relying on the Trial Chamber's statements that review of transcripts is necessary in order to ensure a reliable trial record and that only finalised transcripts can be the basis for a full and adversarial debate of evidence,¹³ notes that the Judges of the Pre-Trial Chamber work in different languages and argues that incorrect translation of the Parties' arguments would not only weaken its persuasiveness and lead to misunderstanding of the Parties' positions, but more importantly, would materially impact the deliberations of the Chamber as a consequence of having Judges presented with fundamentally different arguments before them. She contends that the French translation of the Case 004/2 hearing transcripts "frequently and substantially departs from submissions that were originally made in English",¹⁴ and presents a partial non-exhaustive list of "most demonstrable errors", including omitted or added words,¹⁵ changed numbers¹⁶ and passages that distort the meaning

October 2019.

⁹ Case 004/2, Office of Administration's Response to the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearings Held Before the Pre-Trial Chamber, 30 October 2019, D359/19 and D360/28 ("Office of Administration's Response (D359/19 and D360/28)").

¹⁰ Case 004/2, Response to the International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearings, 31 October 2019, D359/20 and D360/29 ("Co-Lawyers' Response (D359/20 and D360/29)").

¹¹ Request (D359/18 and D360/27), para. 12.

¹² Request (D359/18 and D360/27), para. 7.

¹³ Request (D359/18 and D360/27), para. 7 citing Case 002/2/19-09-2007-ECCC-TC ("Case 002/2"), Decision on NUON Chea's Urgent Rule 92 Request in Respect of the Deadline for Final Revisions of Transcripts, 3 April 2017, E449/3/6 and Case 002/2, Co-Prosecutor's Request for Extended Deadline for Closing Briefs and Delayed Start of Closing Statements in Case 002/02, 28 April 2017, E457/6, para. 11.

¹⁴ Request (D359/18 and D360/27), para. 8.

¹⁵ Request (D359/18 and D360/27), para. 9. See also Annex to International Co-Prosecutor's Request for a Full Review of the French Transcripts of the Appeal Hearings Held Before the Pre-Trial Chamber, 11 October 2019, D359/18.2 ("Annex to Request (D359.18.2 and D360/27.1)"), pp. 1-5, Nos 1-17.

¹⁶ Request (D359/18 and D360/27), para. 10. See also Annex to Request (D359.18.2 and D360/27.1), p. 5, Nos 18-20.



of the original statement made in English,¹⁷ that were identified in her limited review of the transcripts.¹⁸

6. The Co-Lawyers, in their response to the Request, submit that they agree with the International Co-Prosecutor that accurate written records of proceedings in all three working languages are necessary for the integrity and transparency of the Court and to avoid misunderstandings of the Parties' positions during the Judges' deliberations,¹⁹ and that they support the Request given the substantive and numerous errors identified by the International Co-Prosecutor as well as their limited resources at this stage of the proceedings to conduct a full review of the transcripts.²⁰

7. The Office of Administration, in its response, submits that the Request is inappropriate because (i) it is based on a misapprehension of translation, interpretation and transcription procedures at the ECCC²¹ as the transcripts of the court proceedings are, pursuant to Article 1.1 of the Transcription Manual, "verbatim transcription" of what was said by the speaker or the interpreter, when the language of the transcript differs from that of the speaker, which does not require translation or interpretation,²² and thus a discrepancy between transcripts in different languages does not render them incorrect; and (ii) it fails to seek for a relief that addresses the underlying issue, which is not the quality of transcription, but that of interpretation.²³ The Office argues that, contrary to the International Co-Prosecutor's assertion, the Request has no bearing on the parties' original submissions in court as they were all made in Khmer or English and that any errors in the French transcripts are unlikely to materially impact deliberations of the Pre-Trial Chamber as the Chamber (i) has had the opportunity to examine the Khmer and English transcripts and (ii) is supported by multilingual staff.²⁴ The Office requests the Pre-Trial Chamber to order a transparent and comprehensive review in accordance with the existing procedures outlined in its response, should the Chamber consider a review to be appropriate.²⁵

¹⁷ Request (D359/18 and D360/27), para. 10. *See also* Annex to Request (D359/18.2 and D360/27.1), pp. 6-8, Nos 21-30.

¹⁸ Request (D359/18 and D360/27), para. 11.

¹⁹ Co-Lawyers' Response (D359/20 and D360/29), para. 3.

²⁰ Co-Lawyers' Response (D359/20 and D360/29), paras 5-6.

²¹ Office of Administration's Response (D359/19 and D360/28), paras 2, 4.

²² Office of Administration's Response (D359/19 and D360/28), paras 3, 4.

²³ Office of Administration's Response (D359/19 and D360/28), paras 2-6.

²⁴ Office of Administration's Response (D359/19 and D360/28), para. 10.

²⁵ Office of Administration's Response (D359/19 and D360/28), para. 11.



8. The Office of Administration agrees that accurate transcripts of proceedings are critical to ensuring the ECCC's judicial record integrity,²⁶ and argues that the requested "unilateral changes to the French transcript" would compromise its integrity as the official record of the proceedings in French.²⁷ In this regard, the Office contends that the CMS has an established procedure for verification and correction of both transcription and interpretation errors in the transcripts of the Court, requiring a submission of "Request for Verification" to the Transcription Unit by a Party alleging such errors.²⁸

II. DISCUSSION

9. The Pre-Trial Chamber recalls that pursuant to Article 26 of the Agreement between the United Nations and the Royal Government of Cambodia (the "Agreement") and Article 45 new of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia (the "ECCC Law"), the official working languages of the Extraordinary Chambers and the Pre-Trial Chamber are Khmer, English and French.

10. The Pre-Trial Chamber further recalls its obligation to ensure legal certainty and transparency of proceedings under Internal Rule 21(1), and considers that Internal Rule 97, which instructs that the "proceedings shall be fully transcribed and recorded using appropriate audiovisual means, under the supervision of the Greffier" and that "[a]n application to correct the transcript may be made in writing to the [Chamber]", is applicable to the proceedings before the Pre-Trial Chamber.

11. The Pre-Trial Chamber notes the differences between the errors of transcription and interpretation as submitted by the Office of Administration, and observes that the Parties are in agreement that a full review of the French transcripts of the Case 004/2 Hearing before the Chamber is necessary due to the serious errors of interpretation, which were identified by their limited reviews. The Chamber's own examination of the transcripts readily confirms the Parties concerns.

12. In this regard, the Pre-Trial Chamber acknowledges that the CMS has established a procedure for verification and correction of both transcription and interpretation errors in the

²⁶ Office of Administration's Response (D359/19 and D360/28), para. 2.

²⁷ Office of Administration's Response (D359/19 and D360/28), para. 4.

²⁸ Office of Administration's Response (D359/19 and D360/28), para. 6.



transcripts of the Court pursuant to Article 3.17 of the Practice Direction on Filing of Documents before the ECCC.²⁹ More specifically in the case of an interpretation error, the Interpretation and Translation Unit (the “ITU”) reviews the excerpts in all three languages and, if deemed necessary, corrects one or more versions of the transcripts to ensure consistency among all the language versions, upon the Request for Verification of transcripts from a Party.

13. The Pre-Trial Chamber is also of the view that accurate transcripts of proceedings are critical to ensuring the ECCC’s judicial record integrity, and unilateral changes to the French transcript would compromise its integrity as the official record of the proceedings in French.

14. However, in light of each Party’s limited resources to conduct a full review, the potential vast number and the seriousness of interpretation errors in the French transcripts of the Hearing in Case 004/2 and in due consideration of the Pre-Trial Chamber’s obligations to safeguard the integrity and the transparency as well as the fairness of the proceedings before it, the Chamber finds that the current procedure, which requires each Party to submit a Request for Verification of each and every error places undue burden on the Parties and that a full review and correction of the interpretation errors by the ITU is duly called for.

15. Consequently, the Pre-Trial Chamber finds that the Request and the Co-Lawyers’ Response shall be regarded as a general Request for Verification of all the potential errors in the French transcripts of the Case 004/2 Hearing held before the Pre-Trial Chamber.

16. Moreover, in order to ensure the accuracy and the consistency among all the official language versions of the transcripts, the Chamber considers it imperative that the review and the correction of the French transcripts should be conducted on the basis of the English and the Khmer transcripts.

17. Lastly, the Pre-Trial Chamber reiterates that the official working languages of the Extraordinary Chambers and the Pre-Trial Chamber are Khmer, English and French. Consequently, the Chamber is not persuaded by the Office of Administration’s irrelevant arguments such as that the Parties’ original submissions in court were in Khmer or English, or that the Chamber is assisted by multilingual staff.

²⁹ Office of Administration’s Response (D359/19 and D360/28), para. 6.



18. Therefore, the Pre-Trial Chamber grants the Request in part and orders the ITU to conduct a full review and make necessary corrections of the interpretation errors in the French transcripts of the Case 004/2 Hearing before the Pre-Trial Chamber on the basis of the English and the Khmer transcripts.

III. DISPOSITION

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

GRANTS the Request in part;

ORDERS the ITU to conduct a full review and make necessary corrections of the interpretation errors in the French transcripts of the Case 004/2 Hearing before the Pre-Trial Chamber on the basis of the English and the Khmer transcripts;

REJECTS the remainder of the Request.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 9 March 2020

Pre-Trial Chamber



PRAK Kimsan

Olivier BEAUVALLET

NEY Thol

Kang Jin BAIK

HUOT Vuthy

