

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 004/2/07-09-2009-ECCC/OCIJ (PTC60) **Party Filing:** International Co-Prosecutor

Filed to: Pre-Trial Chamber

Original Language: English

Date of Document: 20 March 2020



CLASSIFICATION

**Classification of the document
suggested by the filing party:** PUBLIC

Classification by PTC:

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**INTERNATIONAL CO-PROSECUTOR'S REQUEST TO ADD THE 12 AND 16
MARCH PTC MEMORANDA TO CASE FILE 004/2**

Filed by:

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International Co-Prosecutor

Distributed to:

Pre-Trial Chamber
Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

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CHEA Leang
National Co-Prosecutor

**All Civil Party Lawyers
in Case 004/2**

I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) hereby requests that the Pre-Trial Chamber (“PTC”) add the memoranda issued by judges of the PTC on 12 and 16 March 2020, as well as the related attachments. She further requests that, if they are not already classified as public, the PTC make them public. The ICP makes these requests in order to ensure transparency and completeness of the case file.

II. PROCEDURAL HISTORY

2. On 12 March 2020, Judge Olivier Beauvallet and Judge Kang Jin Baik emailed an Interoffice Memorandum (the “12 March Memo”) to the Co-Prosecutors, Ao An’s Co-Lawyers, and all Case 004/2 Civil Party Lawyers, copying the other PTC judges, the Trial Chamber Greffier, and the Acting Director and Deputy Director of the Office of Administration.¹ The 12 March Memo made reference to eight attachments which were also included in the email.
3. On 16 March 2020, PTC President Judge Prak Kimsan issued a Memorandum (the “16 March Memo”) to the Office of the Co-Prosecutors, Ao An’s Co-Lawyers, and the Civil Party Co-Lawyers,² copying the other PTC Judges and the Office of Administration.³

III. APPLICABLE LAW

4. The ECCC Agreement provides in relevant part:

In the interest of securing a fair and public hearing and credibility of the procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers.⁴

5. The Internal Rules provide in relevant part:

The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so

¹ Interoffice Memorandum from PTC Judges Beauvallet and Baik re. “Transfer of Case File 004/2”, 12 March 2020 (“12 March Memo”).

² The ICP notes that both Memoranda are sent to Civil Party Lawyers. However, there are currently no Lead Co-Lawyers for Civil Parties recognised in Case 004/2, and due to non-functioning email addresses of some of the individual Civil Party lawyers, it is unclear of the Civil Parties have even been informed about the developments and current status of the case.

³ Memorandum from Judge Prak Kimsan entitled “Re-Confirmation of the Decision on Case File 004/2”, 16 March 2020 (“16 March Memo”).

⁴ Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Phnom Penh, 6 June 2003 (“ECCC Agreement”), art. 12(2).

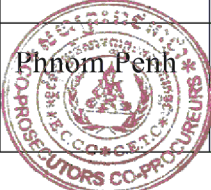

as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement. In this respect:

- a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. [...]
- c) The ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings [...].⁵

IV. SUBMISSION

6. As the PTC knows, the parties have been seeking clarity regarding the next steps in Case 004/2 ever since the PTC's Considerations were issued on 19 December 2019.⁶ It was not until the 12 March Memo and the 16 March Memo were issued that the ICP was made fully aware of the details of the procedural stalemate occurring behind the scenes at the ECCC. While the ICP appreciates the PTC's position that no further administrative actions will be taken by the PTC,⁷ she requests that both memos and the attachments to the 12 March Memo be added to the case file and made public since they contain important procedural history as well as the full views of the PTC on the matter. Both are important to preserve for a transparent and complete record of the case, which is in keeping with the ECCC Agreement and Internal Rules provisions noted above.

Respectfully submitted,

Date	Name	Place	Signature
20 March 2020	Brenda J. HOLLIS International Co-Prosecutor	Phnom Penh 	

⁵ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 ("Internal Rules"), Rule 21(1).

⁶ **D359/24 & D360/33** Considerations on Appeals Against Closing Orders, 19 December 2019. *See e.g.* **D359/25 & D360/34** International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 4 February 2020; **D359/26 & D360/35** Response to International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 18 February 2020; **D359/27 & D360/36** [Ao An's] Request for Confirmation that All Required Administrative Actions have been Taken to Archive Case File 004/02, 24 February 2020; **D359/28 & D360/37** International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 3 March 2020; **D359/30 & D360/39** International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions have been Taken to Archive Case File 004/2, 5 March 2020; **D359/31 & D360/40** Reply to International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions have been Taken to Archive Case File 004/02, 17 March 2020.

⁷ 12 March Memo, para. 36; 16 March 2020 Memo, para. 5.