

Memorandum, the Pre-Trial Chamber

16 March 2020

TO: Office of the Co-Prosecutors; Co-Lawyers for AO An; and Co-Lawyers for Civil party in the case 004/2

COPY: Judge NEY Thol, Judge HUOT Vuthy, Judge Olivier BEAUVALLET, Judge Kang Jin BAIK and Office of Administration

FROM: Judge PRAK Kimsan, President of the Pre-Trial Chamber

SUBJECT: Re-Confirmation of the Decision on Case File 004/2

REF.: D359/24 & D360/33 dated 19 December 2019



On 29 January 2020, the Pre-Trial Chamber issued a memorandum confirming its Decision on Case File 004/2 already.

On 10 February 2020, the International Co-Prosecutor filed the Request, seeking the Pre-Trial Chamber to take all necessary administrative actions to forward Case File 004/2 to the Trial Chamber.

On 24 February 2020, the Co-Lawyers for AO An filed their Request, seeking the Pre-Trial Chamber to take all required administrative actions to archive Case File 004/2.

On 12 March 2020, the International Judges of the Pre-Trial Chamber issued a memorandum concerning their opinions on Case File 004/2.

In the name of the President of the Pre-Trial Chamber, we will re-confirm this Case File so as to put an end to uncertainty and confusion over the interpretation that the Pre-Trial Chamber deems unnecessary.

1. It is recalled that the Decision on Case File 004/2 has the following joint holdings:

- **ORDERS** a joinder of the Appeals against both Closing Orders;
- **DECIDES** that the National Co-Prosecutor's Appeal is admissible;
- **DECIDES** that the International Co-Prosecutor's Appeal is admissible;
- **DECIDES**, in respect of the Co-Lawyers' Appeal for AO An, that Grounds 1 to 9, 11, 12(i), 13, 15(i), 16(ii) and 16(iii) thereof are admissible;
- **DECIDES** that the remaining Grounds in the Co-Lawyers' Appeal for AO An are inadmissible;
- **DECLARES** that the Pre-Trial Chamber may exercise authority over the review of investigative matters;
- **DECLARES** that, subject to the jurisdiction of the ECCC, the ordinary Cambodian courts have full jurisdiction over matters of criminal justice;

- **DECLARES** that the delay in issuing the Closing Orders after the conclusion of the investigation against AO An was unwarranted;
- **DECLARES** that the Co-Investigating Judges erred in assessing the reliability and probative value of the evidence;
- **DECLARES** that the Co-Investigating Judges' issuance of the Two Conflicting Closing Orders was illegal, violating the legal framework of the ECCC;
- **DECLARES** that it has not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits;

In accordance with Internal Rule 77(13), the present Decision is not subject to appeal.

In accordance with Internal Rule 77(14), this Decision shall be notified to the Co-Investigating Judges, the Co Prosecutors and the parties by the Greffier of the Pre-Trial Chamber.

2. In the aforesaid Decision, the Pre-Trial Chamber has already notified the parties pursuant to Rule 77(14) of the Internal Rules. A Greffier of the Pre-Trial Chamber has, pursuant to Rule 17(3) of the Internal Rules, played his/her role in giving the notification in accordance with the five Judges' Decision.
3. Only the part of the aforementioned Decision received the affirmative vote of the five Pre-Trial Chamber's Judges and shall have applicable effect. In particular, the part of the National and International Judges' opinions attached are just individual Judge's personal opinions which are annexed and shall have no applicable effect.
4. Each Judge has the right to express his/her opinions on the Case File; however, those opinions do not have applicable effect.
5. For these reasons, the Pre-Trial Chamber has already fulfilled its duty in accordance with the law and none of the administrative actions is required to be taken by the Pre-Trial Chamber.
6. All parties should abide by and comply with the substance of the Pre-Trial Chamber's Decision.

Therefore, kindly be informed accordingly.