

ក្រុមមេធាវីការពារក្តីរបស់លោក អោ អាន  
**AO An Defence Team**

1<sup>st</sup> April 2020

To: Judge NIL Nonn, President  
 Judge YA Sokhan  
 Judge YOU Ottara  
 Judge Claudia FENZ  
 Judge Martin KAROPKIN

Cc: CHEA Leang, National Co-Prosecutor  
 Brenda HOLLIS, International Co-Prosecutor  
 Case 004/02 Civil Party Lawyers

**Re: *Response to International Co-Prosecutor's Renewed Request for the Trial Chamber to Take the Necessary Actions to Progress Case 004/2 to Trial Including Ordering the Immediate Transfer of the Case 004/2 Case File to the Trial Chamber***

Dear President NIL Nonn and other Trial Chamber Judges:

The Co-Lawyers for AO An ('*Defence*') respond to the *International Co-Prosecutor's Renewed Request for the Trial Chamber to Take the Necessary Actions to Progress Case 004/2 to Trial Including Ordering the Immediate Transfer of the Case 004/2 Case File to the Trial Chamber ('ICP's Renewed Request')*.<sup>1</sup> The Defence responds by letter, as the Trial Chamber ('*TC*') has not been lawfully seised with Case 004/02, and it would therefore be inappropriate to communicate with the Chamber in accordance with the Practice Direction for the Filing of Documents. The Defence respectfully avers that the TC lacks jurisdiction to entertain the *ICP's Renewed Request* for the following reasons:

- (1) Pursuant to Rule 69(2) of the Internal Rules ('*IRs*'), the ECCC judicial office with the necessary legal authority to formally forward the case file to the TC, or in the event of a dismissal, to seal and archive the case, is the Office of the Co-Investigating Judges ('*OClJ*'). The Pre-Trial Chamber ('*PTC*') has unanimously confirmed this position, having '*immediately submitted a filing and notification instruction form upon the issuance of the Considerations, directing the RAU to file the Considerations as public and to notify the Considerations to the Office of the Co-Investigating Judges and*

<sup>1</sup> Case 004/2/07-09-2009-ECCC/TC, *International Co-Prosecutor's Renewed Request for the Trial Chamber to Take the Necessary Actions to Progress Case 004/2 to Trial Including Ordering the Immediate Transfer of the Case 004/2 Case File to the Trial Chamber*, 30 Mar. 2020.

*Parties in Case 004/2*.<sup>2</sup>

- (2) On 17 March 2020, the Defence filed a *Request to Seal and Archive Case File 004/02*<sup>3</sup> to the OCIJ pursuant to IR 69(2)(b), noting that (i) the PTC has failed to resolve its internal disagreements, and has now reached the limit of its authority to determine the outcome of Case 004/02;<sup>4</sup> (ii) the Office of Administration ('OA') has received contradictory judicial instructions, and is unable to take action;<sup>5</sup> (iii) the TC, which has not been lawfully seized with the case and has not received access to the case file, is unable to act;<sup>6</sup> and therefore (iv) the OCIJ is the only ECCC judicial organ empowered by the IRs to take action to resolve the current impasse. This Request is currently pending.
- (3) Accordingly, the TC has no legal authority to take action or make any legally binding orders in relation to Case 004/02, whilst the OCIJ is seized with the *Request to Seal and Archive Case 004/02*. The International Co-Prosecutor ('ICP') has received a copy of this Request on 20 March 2020,<sup>7</sup> but has chosen not to mention the existence of this pending request to the TC. Any act or decision on the TC's part would usurp the legal authority of the OCIJ, and violate the IRs.
- (4) Furthermore, the Defence continues to dispute the ICP's position that the TC is seized with Case 004/02, for reasons set forth in AO An's '*Request for confirmation that the Trial Chamber has not been lawfully seized of Case 004/02; in the alternative, request for time extension and guidance for filing preliminary objections under Internal Rule 89*',<sup>8</sup> and subsequent litigation before the PTC.<sup>9</sup>

---

<sup>2</sup> Interoffice Memorandum Dated 12 March 2020 Regarding the Transfer of Case File 004/2 ('12 March 2020 Memorandum'), para. 27, attached as Annex 1.

<sup>3</sup> Case No. 004/2/07-09-2009-ECCC/OCIJ, *Request to Seal and Archive Case File 004/2*, 17 Mar. 2020 (no document number attributed at the time of filing).

<sup>4</sup> 12 March 2020 Memorandum, paras 27, 33.

<sup>5</sup> Interoffice Memorandum Dated 31 January 2020 *Request for Clarification under Internal Rule 10(2)*, sent by Tony Kranh, Acting Director of Administration, and Knut Rosandhaug, Deputy Director of Administration, para. 13, attached as Annex 2.

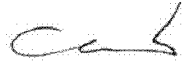
<sup>6</sup> Email from Greffier of the Trial Chamber to the parties concerning Case 004/02, 10 Feb. 2020, attached as Annex 3.

<sup>7</sup> Email from AO An's Defence team to parties "Courtesy Copy of Request to Seal and Archive (EN Version), Filed to OCIJ", 20 Mar. 2020, attached as Annex 4.

<sup>8</sup> AO An Defence Team, '*Request for confirmation that the Trial Chamber has not been lawfully seized of Case 004/02; in the alternative, request for time extension and guidance for filing preliminary objections under Internal Rule 89*', 30 Dec. 2019.

<sup>9</sup> Case No. 004/2/07-09-2009-ECCC/OCIJ (PTC60), *Request for Confirmation that All Required Administrative Actions Have Been Taken to Archive Case File 004/02*, **D359/27 & D360/36**, 24 Feb. 2020. Case No. 004/2/07-09-2009-ECCC/OCIJ (PTC60), *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 004/2*, **D359/31 &**

For the foregoing, the Defence respectfully avers that the TC does not have the legal authority to entertain the *ICP's Renewed Request*.



MOM Luch



Richard ROGERS



Göran SLUITER

**Co-Lawyers for AO An**

Signed 1<sup>st</sup> April 2020, Phnom Penh, Kingdom of Cambodia