

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**INTERNATIONAL CO-PROSECUTOR'S RESPONSE TO AO AN'S REQUEST
TO SEAL AND ARCHIVE CASE FILE 004/02
(WITH CONFIDENTIAL ANNEXES A1-K2)**

TABLE OF AUTHORITIES

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ECCC LAW

Core Legal Documents

(In the ECCC Legal Compendium – not included)

1. 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, 6 June 2003 (“ECCC Agreement”), preamble, art. 7(4).
2. Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as amended on 27 October 2004 (“ECCC Law”), art. 23 new.
3. Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rules” or “Rules”), Rules 2, 21, 69(2)(b), 77(13), 79(1), 89(1)(b), 104(4)(a), pp. 83-84.

Jurisprudence

Supreme Court Chamber (SCC)

4. Case 002-E50/3/1/4 Decision on Immediate Appeal by Khieu Samphan on Application for Release, 6 June 2011 (“Khieu Samphan Release Decision”), para. 31. *(Exceeds 10 pages – excerpt attached)* **(Authority 1)**
5. Case 002-E138/1/10/1/5/7 Decision on Immediate Appeal Against the Trial Chamber’s Order to Unconditionally Release the Accused Ieng Thirith, 14 December 2012, para. 38. *(Exceeds 10 pages – excerpt attached)* **(Authority 2)**

Trial Chamber (TC)

6. Case 002-E116 Decision on Nuon Chea Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), 9 September 2011, paras 16-17. **(Authority 3)**
7. Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving Ao An, 3 April 2020. **(Authority 4A (English) and 4B (Khmer))**

Pre-Trial Chamber (PTC)

8. Case 002-D411/3/6 Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras 64-65. *(Exceeds 10 pages – excerpt attached)* **(Authority 5)**
9. **D359/24 & D360/33** Considerations on Appeals Against Closing Orders, 19 December 2019 (“PTC’s Considerations”), paras 85, 163, Disposition at EN 01634239.
10. **D359/36 & D360/45** International Judges’ Memorandum concerning Transfer of Case File 004/2, 12 March 2020 (“International Judges’ Memo”); **D359/36.1-36.8 & D360/45.1-45.8** Attachments 1-8.

11. **D359/37 & D360/46** President’s Memorandum dated 16 March 2020, 16 March 2020 (“President’s Memo”), para. 5.

Office of the Co-Investigating Judges (OCIJ)

12. Case 002-**D427** Closing Order, 15 September 2010, para. 1323. (*Exceeds 10 pages – excerpt attached*) (**Authority 6**)
13. **D359** Order Dismissing the Case Against Ao An, 16 August 2018 (“Dismissal Order”).
14. **D360** Closing Order (Indictment), 16 August 2018 (“Indictment”).

CAMBODIAN LAW

15. Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007 (“CCCP”), arts 7, 350-351, 445. (*Exceeds 10 pages – excerpt attached*) (**Authority 7**)
16. The Constitution of the Kingdom of Cambodia, adopted 21 September 1993, art. 38. (*Not included –in ECCC Legal Compendium – see the Khmer original*)

INTERNATIONAL LAW

Treaties and other Instruments

17. Rome Statute of the International Criminal Court, 17 July 1998, art. 22(2). (*Not included - in ECCC Legal Compendium*)

Jurisprudence

International Criminal Court (ICC)

18. *The Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-744, Judgment on the Appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, Appeals Chamber, 1 November 2016, para. 83. (*Exceeds 10 pages – excerpt attached*) (**Authority 8**)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

19. *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, Trial Chamber, 16 November 1998 (“*Čelebići TJ*”), paras 413, 601. (*Exceeds 10 pages – excerpt attached*) (**Authority 9**)
20. *Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement, Appeals Chamber, 27 September 2007, para. 21. (*Exceeds 10 pages – excerpt attached*) (**Authority 10**)

International Criminal Tribunal for Rwanda (ICTR)

21. *Renzaho v. The Prosecutor*, ICTR-97-31-A, Judgement, Appeals Chamber, 1 April 2011, para. 474. (*Exceeds 10 pages – excerpt attached*) (**Authority 11**)

FOREIGN DOMESTIC LAW

Legislation

France

22. French Code of Criminal Procedure, 10 February 2020, art. 6. (*Exceeds 10 pages – excerpt attached*) **(Authority 12)**

OTHER DOCUMENTS

Books

23. **D359/3/1.1.43** David Scheffer, “The Extraordinary Chambers in the Courts of Cambodia”, *International Criminal Law*, Third Edition, Vol. III, 2008, p. 246 (EN 01598756).

United Nations Documents

24. Report of the Secretary-General, 20 September 2019, UN Doc. A/74/359, p. 17. (*Exceeds 10 pages – excerpt attached*) **(Authority 13)**
25. **D324.30** Letter from UN Secretary General to Prime Minister H.E. Hun Sen, 19 April 2000, Annexed Note from Hans Corell to Secretary General, Subject: Urgent call from Cambodia – Options to settle differences between investigating judges/prosecutors, 19 April 2000, EN 01326090.
26. **D324.36** Statement by Under Secretary General Hans Corell Upon Leaving Phnom Penh on 17 March 2003, 17 March 2003, EN 01326112.

ECCC Email Notifications and Correspondence

(in chronological order)

27. Notification Email from the Case File Officer, 19 December 2019, 4:53 p.m. **(Authority 14)**
28. **D359/36.2 & D360/45.2** Attachment 2 (Email entitled “Information” sent by Suy-Hong Lim on behalf of the TC), 21 January 2020.
29. **D359/36.8 & D360/45.8** Attachment 8 (Email entitled “Concerning ICP request dated 4 February 2020”), sent by TC Greffier and Legal Officer Suy-Hong Lim on behalf of the TC, 10 February 2020.
30. Email from Vannarith Toch to the OCP entitled “Documents filed in hard copies to TC CF004/2 are returned to OCP this afternoon”, 9 April 2020, 1:59 p.m. **(Authority 15)**
31. “Return to Sender” receipts of the filings returned from the TC to the ICP on 9 April 2020. **(Authority 16)**
32. Notification Email from the Case File Officer, 4 May 2020, 1:22 p.m. **(Authority 17)**