

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

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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)**

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I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) hereby responds to Ao An’s request to the Co-Investigating Judges (“CIJs”) to seal and archive Case File 004/2,¹ which was filed in March but not notified until 4 May 2020.² As discussed below, Ao An’s Request should be dismissed because it is both premature and fails on the merits. In sum, Ao An fails to understand that Rule 77(13)(b) prevails over Rule 77(13)(a), erroneously argues that a simple majority should prevail rather than the default position that underlies the entire ECCC legal system, misapprehends the *in dubio reo* principle, and misconstrues article 38 of the Cambodian Constitution and the limited grounds for terminating a case at the ECCC.

II. PROCEDURAL HISTORY AND APPLICABLE LAW

2. As the CIJs are well aware, the Pre-Trial Chamber (“PTC”) found the CIJs’ issuance of two conflicting Closing Orders³ to be illegal⁴ but failed to reach the supermajority required to overturn either the Indictment or the Dismissal Order.⁵ After the PTC’s Considerations were notified, the Case 004/2 Parties began to file pleadings with the Trial Chamber (“TC”) that were relevant to the trial process and the status of the case.⁶

¹ **D363** Request to Seal and Archive Case File 004/02, 17 March 2020 (“Ao An’s Request”).

² See Notification Email from the Case File Officer, 4 May 2020, 1:22 p.m. Although International Co-Investigating Judge (“ICIJ”) Michael Bohlander was reinstated on 22 April 2020 ([see https://eccc.gov.kh/en/articles/statement-international-co-investigating-judge-reinstated](https://eccc.gov.kh/en/articles/statement-international-co-investigating-judge-reinstated)), he was not included in the distribution list of the Notification Email 12 days later.

³ **D359** Order Dismissing the Case Against Ao An, 16 August 2018 (“Dismissal Order”); **D360** Closing Order (Indictment), 16 August 2018 (“Indictment”).

⁴ **D359/24 & D360/33** Considerations on Appeals Against Closing Orders, 19 December 2019 (“PTC’s Considerations”), Disposition at EN 01634239.

⁵ **D359/24 & D360/33** PTC’s Considerations, Disposition at EN 01634239. The ICP notes that the PTC’s Considerations were filed publicly and National Co-Investigating Judge (“NCIJ”) You Bunleng was also included in the distribution list of the Notification Email (*see* Notification Email from the Case File Officer, 19 December 2019, 4:53 p.m.). At that time, the NCIJ was the only remaining official or staff member in the Office of the Co-Investigating Judges (*see* Report of the Secretary-General, 20 September 2019, UN Doc. A/74/359, p. 17).

⁶ International Co-Prosecutor’s Request for Extension of the Rule 80 Deadline and a Trial Management Meeting, 26 December 2019 (*attached as Confidential Annexes A1 (English) and A2 (Khmer)*); Letter from the Defence Co-Lawyers to the TC Judges, 30 December 2019 (*attached as Confidential Annexes B1 (English) and B2 (Khmer)*); International Co-Prosecutor’s Response to Ao An’s Request Regarding the Seizure of Case 004/2, 6 January 2020 (*attached as Confidential Annexes C1 (English) and C2 (Khmer)*); International Co-Prosecutor’s Rule 80 Witness and Expert List Submission with Confidential Annex A, 13 January 2020 (*attached as Confidential Annexes D1 (English) & D2 (Khmer)*); Summary of Ao An’s Preliminary Objections Under IR 89(1), 20 January 2020 (*attached as Confidential Annexes E1 (English) and E2 (Khmer)*). *See also* Ao An’s Rule 80 Witness and Expert List Submission with Confidential Annex 1 and His Response to the International Co-Prosecutor’s Rule 80 Witness and Expert List Submission, 28 January 2020 (*attached as Confidential Annex F*); International Co-Prosecutor’s Response to Ao An’s Summary of Preliminary Objections Under IR 89(1), 23 March 2020 (*attached as Confidential Annexes G1*

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However, the TC never authorised a means to electronically file or notify these pleadings.

3. On 21 January 2020, the TC Greffier sent an email to the Parties on behalf of the TC acknowledging receipt of the documents the Parties had sent but stating that the PTC's Considerations had not been notified to the TC and neither the Case File nor the Indictment had yet been forwarded.⁷
4. The ICP subsequently made written submissions to the PTC asking it to take these administrative steps, while Ao An asked the PTC to archive the case file.⁸ The PTC made all of these submissions public.
5. On 4 February 2020, the ICP asked the TC to act to obtain access to the Case File.⁹ The TC Greffier subsequently informed the Parties that although the TC was aware of the PTC's Considerations, which were publicly available, it had still not been *formally notified* of them and the Case File had not been forwarded. The email concluded that the PTC had to initiate those actions.¹⁰
6. On 12 March 2020, the Parties received an Interoffice Memorandum from the International Judges of the PTC which detailed the stalemating that—unbeknownst to the Parties—had been taking place in the PTC regarding notification and the forwarding of the Case File.¹¹ Four days later, the PTC President unilaterally issued a Memorandum which made clear that, in his estimation, the PTC had “already fulfilled its duty” and was

(English) and G2 (Khmer)).

⁷ **D359/36.2 & D360/45.2** Attachment 2 (Email entitled “Information” sent by Suy-Hong Lim on behalf of the TC), 21 January 2020.

⁸ **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 (“ICP's Response to Archive Request”); **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.

⁹ International Co-Prosecutor's Request that the Trial Chamber Take Action to Obtain Access to the Case 004/2 (Ao An) Indictment and Case File, 4 February 2020 (*attached as Confidential Annexes H1 (English) and H2 (Khmer)*).

¹⁰ **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.

¹¹ **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.

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not required to take any further administrative action.¹²

7. As a direct result of the PTC's indications that it had reached an administrative impasse,¹³ the ICP renewed her request for the TC to progress Case 004/2 to trial.¹⁴ The TC quickly responded, stating that, *inter alia*, issuing a formal decision was "not possible", it did not have the Case File, and the relevant documents and requests served by the Parties to the TC would be returned.¹⁵ On 9 April 2020, the documents that the ICP had submitted to the TC were returned, marked "Return to sender 9-4-2020".¹⁶
8. On 4 May 2020, the ICP filed an immediate appeal to the Supreme Court Chamber ("SCC"), submitting that the TC had legally erred and abused its discretion in effectively terminating Case 004/2, which prejudiced the ICP and the other Case 004/2 Parties.¹⁷ The immediate appeal is currently before the SCC and has not been decided as of the date of this filing.
9. The applicable law is set out below where relevant.

III. RESPONSE

10. Ao An's Request must be rejected as premature due to the ICP's pending appeal before the SCC, which has the potential to render the Request moot. Contrary to Ao An's assertion, the Office of the Co-Investigating Judges ("OCIJ") is not "the only remaining ECCC judicial organ empowered by the IRs to resolve the current impasse".¹⁸ As the ICP argued to the SCC, the TC's failure to act since it was seised of the case on 19 December

¹² **D359/37 & D360/46** President's Memorandum dated 16 March 2020, 16 March 2020 ("President's Memo"), para. 5.

¹³ **D359/36 & D360/45** International Judges' Memo, paras 34-37; **D359/37 & D360/46** President's Memo, para. 5.

¹⁴ 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 March 2020 (*attached as Confidential Annexes I1 (English) and I2 (Khmer)*). See also 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, 1 April 2020 (*attached as Confidential Annexes J1 (English) and J2 (Khmer)*).
¹⁵ Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving Ao An, 3 April 2020, available in English at <https://www.eccc.gov.kh/en/articles/statement-judges-trial-chamber-eccc-regarding-case-0042-involving-ao>.

¹⁶ 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.; "Return to Sender" receipts of the filings returned from the TC to the ICP on 9 April 2020.

¹⁷ International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 4 May 2020 ("ICP's Immediate Appeal to the SCC") (*attached as Confidential Annexes K1 (English) and K2 (Khmer)*).

¹⁸ **D363** Ao An's Request, paras 2, 22.

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2019, the intent it expressed on 3 April 2020 to continue that inaction, and its physical return of the Parties' documents without even considering the justiciable issues therein effectively terminated the proceedings and left the Parties without an opportunity to appeal against a judgment.¹⁹ The Internal Rules provide that such a decision by the TC is open to immediate appeal.²⁰ As a result, the SCC is the appropriate judicial organ to decide whether Case 004/2 should progress to trial or be archived.

11. Ao An's Request must also be dismissed because it fails on the merits. First, Ao An ignores the ECCC legal framework to which he himself refers, resorting instead to arguing that Rule 69(2)(b) should apply *mutatis mutandis* because no provision covers the circumstances of this case.²¹ However, the ECCC legal framework dictates the consequences of this situation, and it is these procedures that must be followed, not Rule 69(2)(b). In short, only a supermajority overturning the Indictment can prevent this case from moving forward to trial.²² This is mandated by Rule 77(13)(b), which is *lex specialis* relating to indictments and therefore prevails over the general terms of Rule 77(13)(a), which relates to orders "other than an indictment".²³ "Dismissal Order" and "Closing Order", like "Indictment", are defined terms in the Rules.²⁴ Had the drafters of the Rules wished to specifically address the effect of the failure of the PTC to overturn a dismissal order, they clearly could have done so but chose not to.²⁵ In contrast, Rule 77(13)(b) implements the expressed intent of the United Nations ("UN") and Royal Government of Cambodia ("RGC") at the time they concluded the ECCC Agreement.²⁶ This intent is

¹⁹ ICP's Immediate Appeal to the SCC, paras 1-3, 50-76.

²⁰ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 ("Internal Rules" or "Rules"), Rule 104(4)(a).

²¹ **D363** Ao An's Request, paras 13, 20, 21.

²² *Contra* **D363** Ao An's Request, paras 13-14, 18, 20.

²³ The Latin expression "lex specialis" refers to a doctrine relating to the interpretation of laws according to which a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*).

²⁴ See Internal Rules, pp. 83-84.

²⁵ Ao An acknowledges that no such provision exists. See **D363** Ao An's Request, paras 13, 21.

²⁶ **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 (On the same day that the UN first provided the article 7(4) wording to the RGC, Hans Corell, the Under Secretary General for Legal Affairs and Legal Counsel of the UN, recorded a conversation with Deputy Prime Minister Sok An, the RGC's chief negotiator, rejecting his call to have a supermajority requirement to *approve* the continuation of an investigation or prosecution. Hans Corell explained that the disagreement mechanism as drafted meant "you would need a supermajority to stop the investigation or prosecution"); **D324.36** Statement by Under Secretary General Hans Corell Upon Leaving Phnom Penh on 17 March 2003, 17 March 2003, EN 01326112. See also **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) (David

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also evidenced in the ECCC Agreement and ECCC Law, which provide that when the Co-Prosecutors or CIJs disagree on progressing a case, the case moves on to the next stage absent a supermajority of the PTC blocking its progress.²⁷ Pursuant to all of these provisions as well as Rule 79(1), the TC was seised of Case 004/2 on 19 December 2019²⁸ and therefore the case should not be archived.

12. By contrast, Ao An's Request attempts to impose a new "default position" that contravenes the ECCC legal framework, asserting that in the absence of a supermajority, the simple majority view upholding the Dismissal Order should take precedence.²⁹ Such reliance on a majority view is misplaced due to the unique structure of the ECCC. A simple majority view has never carried the decisive weight at the ECCC that it does at other courts. Rather, the founders of this Court implemented the supermajority rule to protect the proceedings against outside influence or interference and created the default position so that a case could not be derailed if a supermajority could not be reached.³⁰ This supermajority rule and default position were agreed by both the UN and the RGC and passed into law.³¹ Contrary to Ao An's argument, adhering to these lawful principles in no way violates his right to be tried by a competent tribunal.³²
13. Ao An's unfounded contention that the winner of the race to file the Closing Orders should prevail is equally without merit; he points to nothing in the ECCC Agreement, ECCC Law, Internal Rules or jurisprudence which would substantiate this spurious argument.³³ In any event, the ICP notes that the timestamps on the Closing Orders

Scheffer, the U.S. Ambassador at Large for War Crimes Issues and heavily involved in the ECCC negotiations, expressed the same view: "The only way the prosecution or investigation is *halted* is if the [PTC] decides by supermajority vote that it should end. The rationale behind this procedure is that it prevents one [CIJ] or one Co-Prosecutor from blocking an investigation or prosecution, respectively, by failing to reach agreement with his or her counterpart or simply derailing an investigation or prosecution due to political or other kinds of influence." (emphasis added).

²⁷ 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"), art. 7(4); 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.

²⁸ *Contra* D363 Ao An's Request, paras 2 and 22 (arguing that the TC was not lawfully seised with the case), 20 (arguing that the legal framework is incapable of resolving the impasse).

²⁹ D363 Ao An's Request, paras 18-20.

³⁰ See e.g. 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).

³¹ ECCC Agreement, art. 7(4); ECCC Law, art. 23 new.

³² D363 Ao An's Request, paras 20, 25.

³³ D363 Ao An's Request, para. 20.

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indicate that the Dismissal Order was not filed first: the CIJs filed the two Closing Orders together at 8:10 a.m. on 16 August 2018.³⁴

14. Ao An also misapprehends the *in dubio pro reo* principle.³⁵ The very existence of the default position contradicts Ao An's assertion that "all impasses and uncertainties must be resolved in [his] favour".³⁶ Moreover, *in dubio pro reo* is a corollary of the presumption of innocence and is one aspect of the requirement that guilt must be found beyond a reasonable doubt *at trial*.³⁷ The principle is applied when factual doubts are not removed by the evidence presented at trial, or in very rare instances of doubt in the *substantive law*.³⁸ In other words, *in dubio pro reo* deals with doubt about the accused's ultimate guilt, not with administrative impasses that do not involve any determination of guilt or innocence.³⁹
15. The *in dubio pro reo* principle has occasionally been applied in dilemmas of law, but its applicability is limited to doubts that remain after using civil law rules of interpretation.⁴⁰ Every legal text is subject to interpretation and the fact that a particular scenario might not be expressly covered by it does not raise "doubt" from which a defendant will always profit. The SCC has held that "*in dubio pro reo* will usually be unnecessary on the

³⁴ **D359** Dismissal Order (Khmer version), cover sheet; **D360** Indictment (English version), cover sheet.

³⁵ **D363** Ao An's Request, paras 15, 18, 20.

³⁶ **D363** Ao An's Request, paras 20 (containing the quote), 15.

³⁷ 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; *Prosecutor v. Limaj et al.*, IT-03-66-A, Judgement, Appeals Chamber, 27 September 2007, para. 21; *Renzaho v. The Prosecutor*, ICTR-97-31-A, Judgement, Appeals Chamber, 1 April 2011, para. 474 (noting that the principle applies to findings required for conviction); *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgement, Trial Chamber, 16 November 1998 ("Čelebići TJ"), para. 601 ("At the conclusion of the case the accused is entitled to the benefit of the doubt as to whether the offence has been proved.").

³⁸ See e.g. Rome Statute of the International Criminal Court, 17 July 1998, art. 22(2). See further *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.

³⁹ See e.g. **D359/24 & D360/33** PTC's Considerations, paras 85 ("although it is necessary at the pre-trial stage to have more than mere *indicia* or suspicion to send a person to trial, the evidence gathered does not yet need to assert guilt with certainty"), 163 (unanimous); Case 002-D427 Closing Order, 15 September 2010, para. 1323.

⁴⁰ Case 002-E50/3/1/4 Khieu Samphan Release Decision, para. 31 (explaining that civil law rules of interpretation of the law take into account "the language of the provision, its place in the system, including its relation to the main underlying principles, and its objective"); Čelebići TJ, para. 413 ("The effect of strict construction of the provisions of a criminal statute is that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning *which the canons of construction fail to solve*, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. This is why ambiguous criminal statutes are to be construed *contra proferentem*." (emphasis added)).

occasion of addressing legal *lacunae*".⁴¹

16. While the ICP's position is that no legal *lacunae* are present in this case because the default position clearly applies, when a procedural question is not addressed by the Rules, Rule 2 directs the Chamber to decide the question in keeping with Cambodian law and relevant procedural rules. These relevant rules include article 23 new of the ECCC Law, which mandates that the "investigation shall proceed".⁴² Notably, Rule 2 does not provide for an automatic default finding in favour of the accused. Instead, it instructs the Chamber to have particular attention to the fundamental principles set out in Rule 21, which safeguards the rights not only of the accused but also of the victims, and mandates fair proceedings that preserve a balance between the rights of *all* parties. To "resolve all impasses and uncertainties" in Ao An's favour, as he argues is required,⁴³ would contravene this balance, particularly the meaningful participation of victims of the crimes pursuant to the ECCC's pursuit for national reconciliation.⁴⁴
17. Finally, Ao An misconstrues article 38 of the Cambodian Constitution, wrongly asserting that it dictates that Case 004/2 was effectively terminated as of 19 December 2019.⁴⁵ In Khmer, article 38 states: "*Reasonable doubt* shall be in favour of the accused",⁴⁶ not, as Ao An maintains, *any* doubt.⁴⁷ The Constitution's usage of the "reasonable doubt" language reinforces the ICP's position that *in dubio pro reo* is primarily applicable when doubt remains after assessing the guilt of the accused *at trial*, as the trial phase is the only phase when the burden of proof is beyond a "reasonable doubt". The Cambodian Code

⁴¹ Case 002-E50/3/1/4 Khieu Samphan Release Decision, para. 31.

⁴² Internal Rule 2.

⁴³ **D363** Ao An's Request, paras 20 (containing the quote), 15.

⁴⁴ 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; ECCC Agreement, preamble. *Note* that the Civil Parties raised the issue of serious and repeated violations of the rights of Civil Parties in these proceedings, including the rights to be heard, to representation, to legal certainty, and to the transparency and publicity of the proceedings. *Note further* that although these issues were raised in **D359/33 & D360/42** Civil Party Lawyers' Request for Necessary Measures to be Taken by the Pre-Trial Chamber to Safeguard the Rights of Civil Parties to Case 004/2, 30 March 2020, paras 2, 4, 27-45, the submission was filed after the PTC President had declared the PTC would take no further action, and to date the PTC has not adjudicated the issues. The submission explains that the PTC is the only Chamber where the Civil Party Lawyers could file the Request to safeguard their rights, as no Civil Party Lead Co-Lawyers have been recognised by the OA or PTC, and the Civil Party Lawyers have no automatic standing to make submissions before the TC or SCC (only Civil Party Lead Co-Lawyers have been permitted to do so at the trial stage and beyond).

⁴⁵ **D363** Ao An's Request, para. 1.

⁴⁶ The Constitution of the Kingdom of Cambodia, adopted 21 September 1993, art. 38 (emphasis added).

⁴⁷ **D363** Ao An's Request, para. 15.



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of Criminal Procedure further reinforces this position, as “reasonable doubt” and “benefit of the doubt” are used only in the context of the guilt of a convicted person.⁴⁸ Moreover, Cambodian procedure states that criminal action may only be extinguished upon the death of the accused, the expiration of the statute of limitations, the grant of an amnesty, the abrogation of the law, or *res judicata*.⁴⁹ As Case 004/2 has not been terminated on any of these grounds and the SCC and TC have both held that the ECCC has no authority to terminate a case for other reasons,⁵⁰ sealing and archiving the case as Ao An requests at this stage would be both premature and inappropriate.

IV. CONCLUSION

18. The ICP submits that the CIJs should dismiss Ao An’s Request as it is premature and also fails on the merits for all of the foregoing reasons. Alternatively, should the CIJs choose to stay their decision pending a resolution of the ICP’s immediate appeal and, *arguendo*, the SCC finds the appeal inadmissible, the ICP respectfully submits that Ao An’s Request should still be dismissed, as it would then be incumbent upon the CIJs to forward the Indictment to the Trial Chamber pursuant to Rules 77(13)(b), 79(1), and the default position underlying the ECCC’s legal framework as detailed above.

Respectfully submitted,

Date	Name	Place	Signature
14 May 2020	Brenda J. HOLLIS International Co-Prosecutor	Phnom Penh 	

⁴⁸ Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007 (“CCCP”), arts 350-351 (relating to declaration of guilt, noting that the “accused always has the benefit of the doubt”), 445 (“A motion for review may be filed: [...] 4. Where new facts, documents, or other new evidence lead to a reasonable doubt as to the guilt of a convicted person.”).

⁴⁹ CCCP, art. 7. *See also* French Code of Criminal Procedure, 10 February 2020, art. 6 (“L’action publique pour l’application de la peine s’éteint par la mort du prévenu, la prescription, l’amnistie, l’abrogation de la loi pénale et la chose jugée.” Unofficial translation: “Criminal proceedings are extinguished by the death of the defendant, expiry of the statute of limitations, amnesty, repeal of the criminal law and *res judicata*.”).

⁵⁰ 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; Case 002-E116 Decision on Nuon Chea Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), Trial Chamber, 9 September 2011, paras 16-17 (finding that ECCC proceedings may only be terminated under Internal Rule 89(1)(b) on one of the limited grounds set out in art. 7 of the CCCP).