



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

**Kingdom of Cambodia
Nation Religion King**

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

**Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens**

**Royaume du Cambodge
Nation Religion Roi**

**ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d'instruction**

Case File No: 004/2/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges
Date: 14 August 2020
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ORDER SEALING AND ARCHIVING CASE FILE 004/2

Distribution:

Co-Prosecutors
CHEA Leang
Brenda HOLLIS

Ao An Defence
MOM Luch
Richard ROGERS
Göran SLUITER

Civil Party Lawyers
CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov

Laure DESFORGES
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Nushin SARKARTI



I. PROCEDURAL HISTORY

1. On 19 December 2019, the Pre-Trial Chamber (“PTC”) issued its Considerations (“Considerations”) on the appeals by the Defence for Ao An (“Defence”) and by the National and International Co-Prosecutors (“NCP” and “ICP” respectively), in which its judges jointly agreed that split Closing Orders (“CO”) were illegal but failed to reach a required majority on the merits, instead upholding each CO according to their respective views¹.
2. Both the ICP and the Defence requested the PTC to either forward the indictment and the case file to the Trial Chamber (“TC”), or to seal and archive the case file. Documents were also sent to the TC in order to obtain a declaration by the TC of whether it considered itself seised of the split indictment.
3. On 3 April 2020, the TC issued a statement to the effect that while its International Judges might be willing to entertain preliminary discussions of the matters raised by the Parties, its National Judges categorically refused to pursue that avenue and declared that there would be no trial of Ao An “now or in the future”².
4. On 22 April 2020, Judge Michael Bohlander was re-instated as the International Co-Investigating Judge (“ICIJ”) by the United Nations Secretary-General.
5. On 17 March 2020, the Defence had already confidentially submitted the current Request to Seal and Archive Case File 004/2 before us (“Request”)³. It was originally filed as confidential on 18 March 2020, then reclassified as public and notified on 4 May 2020, after the ICIJ’s re-instatement. The ICP⁴ responded to the Request on 14 May 2020. The NCP did not file any response. The Defence replied on 26 May 2020⁵.
6. On 4 May 2020, the ICP filed her immediate appeal against the effective termination of Case 004/2 by the TC⁶. On 29 May 2020, we informed the parties we would hold our decision on the Request in abeyance until the ruling by the Supreme Court Chamber (“SCC”)⁷.

¹ **D359/24 & D360/33**, *Considerations on Appeals Against Closing Orders*, 19 December 2019, para 123.

² **D363/1.2.4**, *Authority 4: Statement of the Judges of the Trial Chamber of the ECCC Regarding Case 004/2 Involving Ao An*, 3 April 2020.

³ **D363**, *Request to seal and archive case file 004/02*, 17 March 2020.

⁴ **D363/1**, *International co-prosecutor’s response to Ao An’s request to seal and archive case file 004/02 (WITH CONFIDENTIAL ANNEXES A1-K2)*, 14 May 2020.

⁵ **D363/2**, *Reply to International Co-Prosecutor’s Response to AO An’s Request to Seal and Archive Case File 004/02*, 26 May 2020.

⁶ **D363/1.1.11**, *Annex K1: 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”), paras 1-3, 50-76, 4 May 2020.

⁷ **D364**, *Memorandum from Co-Investigating Judges to all parties in case 004/2 and SCC*, 29 May 2020.



- 7. On 10 August 2020 the SCC ruled that the immediate appeal was admissible and terminated the case against Ao An for lack of a valid indictment, stating that the PTC should have treated both COs as void and not have engaged in any discussions on their respective merits⁸. However, it did not itself formally order the case file to be sealed and archived.
- 8. For more detail on the procedural history we refer to paras. 2 – 33 of the SCC’s decision.

II. DISCUSSION

- 9. Based on the SCC’s termination decision, all that remains for us is to formally seal and archive the case file, according to Internal Rule 69(2)(b) *mutatis mutandis*, because the SCC’s termination decision is strictly speaking not covered by the plain meaning of Internal Rule 67(3).

10. **FOR THESE REASONS, we⁹ GRANT THE REQUEST** and

ORDER Case File 004/2 to be **SEALED AND ARCHIVED**.

Phnom Penh, 14 August 2020

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges

YOU Bunleng

Michael Bohlander



⁸ **E004/2/1/1/2**, *Decision on International Co-Prosecutor’s Appeal of the Trial Chamber’s Effective Termination of Case 004/2*, 10 August 2020, paras. 53, 70, 71 vi.

⁹ While the CIJs are issuing this decision jointly, the NCIJ notes, for the record, that documents placed on the case file should be numbered sequentially from the last documents placed before the resignation of Judge Siegfried Blunk, without including in the count orders and decisions issued by Reserve CIJ Laurent Kasper-Ansermet.