



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

**Statement
Of the Judges of the Trial Chamber of the ECCC
Regarding Case 004/2 Involving AO An**

The Trial Chamber is aware that at the close of the investigation the two Co-Investigating Judges issued two separate and opposite closing orders. The National Judge submitted a dismissal order while the International Judge issued an Indictment. Both closing orders were appealed by relevant parties.

The Trial Chamber is aware of “Considerations of Appeals against Closing Orders” issued by the Pre-Trial Chamber on 19 December 2019. While there were several issues on which all the judges agreed with regard to the key issue, the results were again divided, with the International Judges approving the indictment (and declaring the dismissal order as void) and the National Judges determining that the case should be dismissed (and the indictment annulled).

The Trial Chamber has received an “Interoffice Memorandum” issued only by the two International Judges of the Pre-Trial Chamber on 12 March 2020, which was addressed to the parties.¹ It appears to have been a response to litigation resulting from a submission made by the International Co-Prosecutor, which was a request for “All Required Administrative Actions to be Taken to Forward Case File 004/2”.

It notes that in the months following the issuance of the “Considerations”, two separate and opposing sets of instructions, were sent to the Record and Archives Unit of the Office of Administration, by the Pre-Trial Chamber. The International Judges, through a greffier, directed the unit to formally notify the Trial Chamber while the National Judges, through another greffier, directed the unit not to notify the Trial Chamber of the “Considerations” and to archive the case file.

The Memorandum notes that two letters were also sent by the President of the Pre-Trial Chamber and by the International Judges of the Pre-Trial Chamber respectively, to the Office of Administration and others. Again, the letters gave competing and contradictory instructions on what should be done with the case file.

The Office of Administration, understandably, wrote back and asked for clarification as to which of the two opposing instructions it should implement or in the alternative, for actionable instructions. As noted in the Memorandum this request remains unanswered indicating that the full Pre-Trial Chamber Panel could not agree to a single set of instructions.

¹ The Memorandum issued by the International Judges of the Pre-Trial Chamber has a number of attachments which provide documentation regarding the efforts to have the Trial Chamber notified and the file forwarded to it.

On 16 March 2020 the President of the Pre-Trial Chamber issued a memorandum, entitled, “Re-Confirmation of the Decision in Case File 004/2”. In this document he notes that only the portion of the “Considerations” which were unanimously agreed upon have “applicable effect” and that the separate opinions of the national and international judges are expressions of “personal opinions” which have “no applicable effect”. Further, the President states that the Pre-Trial Chamber will not take any further administrative action to notify the Trial Chamber or to forward the case file.

In their Memorandum the International Judges of the Pre-Trial Chamber have indicated that they have done all they can and that their efforts are at an end.

The Trial Chamber notes that it has never been formally notified of the case and it has not received the case file. In a memorandum to the Office of Administration dated 29 January 2020, the International Judges of the Pre-Trial Chamber acknowledge that notification is necessary “in order to prevent the situation of its [the Pre-Trial Chamber’s] decision being unimplemented and the case being lost in limbo”. Further in the same memorandum they state that absent notification the Trial Chamber “apparently stays in an exceptional situation where it has not been granted access to the case file and not been able to work on the pending requests”.

The Trial Chamber also understands that most of the case file is confidential and considers this to be a substantial issue in that the Trial Chamber has no access to that material and can have no access to it, unless and until there is proper notification and transfer of the file.

Looking at actions, not words, the International Judges of the Pre-Trial Chamber have demonstrated that it is impossible for a Chamber of the ECCC to take judicial action when it is divided about the need to do so.

The International Judges of the Trial Chamber believe an argument could be made that under the unique circumstances of the case the Chamber has *inherent authority* to address some of the preliminary issues raised by the parties in communications sent to the Chamber.

The National Judges of the Trial Chamber hold a different view. They assert that the Trial Chamber does not have the case file. So far, the case file is under the authority of the Pre-Trial Chamber and the Trial Chamber has not received any notification and forwarding the case file from the Pre-Trial Chamber to the Trial Chamber since the Pre-Trial Chamber issued its “Considerations” on 19 December 2019. The National Judges of the Trial Chamber believe that this case was closed before the Pre-Trial Chamber. Therefore, the Trial Chamber does not have any authority to make *any* decision regarding the case. Consequently, relevant documents and requests from the parties served to the Trial Chamber by hard copies shall be returned to them. Finally, they have stated there will not be a trial of AO An now or in the future.

As issuing a formal decision of the Trial Chamber is not possible, the International Judges have agreed to join with their National colleagues to issue this joint statement. Although this statement has no legal force it is hoped that it will provide transparency and clarity to the public and the relevant parties of the case file.

Phnom Penh, 3 April 2020
President of the Trial Chamber



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