



ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ  
Kingdom of Cambodia  
Nation Religion King

អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងក្រុងភ្នំពេញ

Royaume du Cambodge  
Nation Religion Roi

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

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

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

<b>ឯកសារដើម</b>
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Before: **The Co-Investigating Judges**  
Date: **7 August 2015**  
Language(s): **Khmer/English [Original in English]**  
Classification: **CONFIDENTIAL**

**DECISION ON THE INTERNATIONAL CO-PROSECUTOR'S  
CASE 002 DISCLOSURE REQUESTS D167, D193/7, D193/17,  
D193/31, AND D193/32**

**Distribution:**

**Co-Prosecutors**                      **Trial Chamber**  
CHEA Leang  
Nicholas KOUMJIAN



**Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004;

**Noting** the Co Prosecutors' Third Introductory Submission, filed on 7 September 2009;<sup>1</sup>

**Noting** the Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, filed on 18 July 2011;<sup>2</sup>

**Noting** the Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, filed on 24 April 2014;<sup>3</sup>

**Noting** the judicial investigation opened in relation to alleged violations of the **1956 Penal Code**, the **Convention on the Prevention and Punishment of the Crime of Genocide**, the **Geneva Conventions of 1949**, and **Crimes against Humanity**, punishable under Articles 3 (new), 4, 5, 6, 29 and 39 of the ECCC Law; and Articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code;

**Noting** Rules 53, 56, 72, 80 and 87 of the ECCC Internal Rules ("Internal Rules");

**Noting** the Disagreements registered on 22 February 2013, 5 April 2013 and 26 June 2014;

**Noting** the memorandum of 16 August 2013 from the President of the Trial Chamber concerning information concerning Case 003 and Case 004 witness statements that may be relevant to Case 002;<sup>4</sup>

**Noting** the *Decision on Co-Prosecutors' Urgent Request to Disclose Case 004 Interviews Relevant to 1<sup>st</sup> Segment of Case 002/02 Trial*, filed on 14 October 2014 ("14 October 2014 Decision");<sup>5</sup>

**Noting** the *Order Varying Decisions D193/4, D193/6, D193/8, D193/10, D193/11, D193/13, D193/15, and D193/16 on International Co-Prosecutor's Requests to Disclose Materials in Case 002/02*, issued on 13 March 2015 ("Order");<sup>6</sup>

**Noting** the *Decision on the International Co-Prosecutor's Case 002 Disclosure Requests D193, D193, D193/7 and D193/23*, issued 18 May 2015 ("18 May 2015 Decision");<sup>7</sup>

<sup>1</sup> Case File No. 004-D1, *Co-Prosecutors' Third Introductory Submission*, 20 November 2008; Case File No. 004-D1/1, *Acting International Co-Prosecutor's Notice of Filing of the Third Introductory Submission*, 7 September 2009.

<sup>2</sup> Case File No. 004-D65, *Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011.

<sup>3</sup> Case File No. 004-D191, *Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence*, 24 April 2014.

<sup>4</sup> Case File No. 002/E127/7/1, *Information Concerning Case 003 and Case 004 Witness Statements That May be Relevant to Case 002*, 16 August 2013.

<sup>5</sup> Case File No. 004-D193/4, *Decision on Co-Prosecutors' Urgent Request to Disclose Case 004 Interviews Relevant to 1<sup>st</sup> Segment of Case 002/02 Trial*, 14 October 2014.

<sup>6</sup> Case File No. 004-D193/19, *Order Varying Decisions D193/4, D193/6, D193/8, D193/10, D193/11, D193/13, D193/15, and D193/16 on International Co-Prosecutor's Requests to Disclose Materials in Case 002/02*, 13 March 2015



**Considering** the *International Co-Prosecutor's Requests to Disclose Documents in Case 002*, filed on 28 August 2013 (“D167”);<sup>8</sup>

**Considering** the *International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to the Case 002/02 Trial and Case 002/01 Appeal*, filed on 15 December 2014 (“D193/7”);<sup>9</sup>

**Considering** the *International Co-Prosecutor's Request to Disclose Case 004 Statements Relevant to the Case 002/02 Trial*, filed on 12 March 2015 (“D193/17”);<sup>10</sup>

**Considering** the *International Co-Prosecutor's Urgent Request to Disclose Case 004 Civil Party Applications and Victim Support Section Reports into Case 002*, filed on 31 July 2015 (“D193/31”);<sup>11</sup> and

**Considering** the *International Co-Prosecutor's Urgent Request to Disclose Case 004 Civil Party Applications and Victims Support Section Reports Relevant to the Cham into Case 002*, filed on 5 August 2015 (“D193/32”).<sup>12</sup>

## PROCEDURAL HISTORY

1. The International Co-Investigating Judge (“International CIJ”) recalls and incorporates by reference the procedural history summarised in paragraphs 1 to 7 in the 14 October 2014 Decision.
2. On 8 May 2014, the International CIJ issued his *Decision on the International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to Case 002/02* (“8 May 2014 Decision”), wherein he declined the International Co-Prosecutor’s (“ICP”) request D193 for disclosure of 231 records of witness interviews, noting, *inter alia*, that “no fixed date for the commencement of trial in Case 002/02 has been set”.<sup>13</sup> The International CIJ remained seised of D193 until such time that the disclosure of the records of interviews would not jeopardise ongoing investigations, at which time he would authorise the ICP to seek their admission in Case 002/02.<sup>14</sup>

<sup>7</sup> Case File No. 004-D193/24, *Decision on the International Co-Prosecutor's Case 002 Disclosure Requests D193, D193, D193/7 and D193/23*, 18 May 2015.

<sup>8</sup> Case File No. 004-D167, *International Co-Prosecutor's Request to Disclose Documents in Case 002*, 28 August 2013.

<sup>9</sup> Case File No. 004-D193/7, *International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to the Case 002/02 Trial and Case 002/01 Appeal*, 15 December 2014.

<sup>10</sup> Case File No. 004-D193/17, *International Co-Prosecutor's Request to Disclose Case 004 Statements Relevant to the Case 002/02 Trial*, 12 March 2015.

<sup>11</sup> Case File No. 004-D193/31, *International Co-Prosecutor's Urgent Request to Disclose Case 004 Civil Party Applications and Victim Support Section Reports into Case 002*, 31 July 2015.

<sup>12</sup> Case File No. 004-D193/32, *International Co-Prosecutor's Urgent Request to Disclose Case 004 Civil Party Applications and Victims Support Section Reports Relevant to the Cham into Case 002*, 5 August 2015

<sup>13</sup> Case File No. 004-D193/1, *Decision on the International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to Case 002/02*, 8 May 2014, paras. 11, 17.

<sup>14</sup> 8 May 2014 Decision, paras. 12, 17.



3. On 14 October 2014, the International CIJ granted the requests D193/2 and D193/3 for disclosure of records of interviews of 26 witnesses.<sup>15</sup> The International CIJ instituted a range of restrictions and modalities on the disclosure of the statements to the Trial Chamber and parties in Case 002/02.<sup>16</sup>
4. Following a request by the Trial Chamber to modify the conditions of disclosure to Case 002/02 Parties, the International CIJ issued the Order, varying the modalities and restrictions of disclosure on 13 March 2015.<sup>17</sup>

## SUBMISSIONS

5. In request D167 the ICP previously sought disclosure of 14 records of witness interviews that the ICP submitted were relevant to the ongoing trial proceedings in Case 002/02. While the International CIJ approved disclosure of all 14 documents, 3 were disclosed with redactions.<sup>18</sup>
6. In the requests D193/7 and D193/17 the ICP seeks disclosure of written records of interviews that the ICP submits are relevant to the ongoing trial proceedings in Case 002/02. The International CIJ notes that of the total number of documents requested by the ICP between outstanding requests D193/7 and D193/17 only 15 documents have thus far not been either authorised for disclosure or permanently denied.
7. In request 193/31 the ICP seeks disclosure of 258 Civil Party Applications and 248 Reports by the Victim Support Section (VSS) on Civil Party Applicants that the ICP submits are relevant to the ongoing trial proceedings in Case 002/02. The ICP submits this request is urgent because the requested documents are relevant to the Trapeang Thma Dam segment, currently being heard in the Trial Chamber.<sup>19</sup>
8. In request 193/32 the ICP seeks disclosure of 31 Civil Party Applications and 24 Reports by the VSS on Civil Party Applicants that the ICP submits are relevant to the ongoing trial proceedings in Case 002/02. The ICP submits this request is urgent because the requested documents are relevant to the upcoming segment of the trial on the Cham as a targeted group, scheduled to commence in September 2015.<sup>20</sup>

<sup>15</sup> 14 October Decision, paras 19-20; Case File No. 004-D193/2, *Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 25 September 2014 ("D193/2"); Case File No. 004-D193/3, *Co-Prosecutor's further Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 9 October 2014 ("D193/3").

<sup>16</sup> 14 October Decision, paras. 19-20, 23.

<sup>17</sup> Case File No. 004-D193/18, *Request for Variance of Restrictions Regarding the Disclosure of Case 003 and Case 004 Statements*, filed by the Trial Chamber on 5 March 2015; Case File No. 004-D193/19, *Order Varying Decisions D193/4, D193/6, D193/8, D193/10, D193/11, D193/13, D193/15, and D193/16 on International Co-Prosecutor's Requests to Disclose Materials in Case 002/02*, 13 March 2015.

<sup>18</sup> Case File No. 004-D167/1, *Decision on International Co-Prosecutor's Request for Disclosure of Documents in Case 002*, 19 September 2013, para. 6 ("19 September 2013 Decision").

<sup>19</sup> D193/31, paras. 1-2.

<sup>20</sup> D193/32, paras. 1-2.



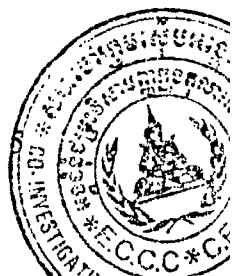
**DISCUSSION**

9. The International CIJ recalls and incorporates by reference the applicable law summarised in paragraphs 15 to 18 in the 14 October 2014 Decision.
10. With reference to requests D193/7 and D193/17, the International CIJ recalls the considerations in his 14 October 2014 Decision and, in cognisance of their relevance to the present Request, incorporates them by reference.<sup>21</sup> The International CIJ is satisfied that changes in circumstances since the 8 May 2014 Decision warrant disclosure of documents listed in Annexes A and B.
11. With reference to request D167, the International CIJ is satisfied that changes in circumstances since the 19 September 2013 Decision warrant the unredacted disclosure of two documents in Annex C that were previously authorised for disclosure only in redacted form.
12. Annex A authorises the disclosure of the 14 remaining written records of interviews or other documents requested in D193/7.
13. Annex B authorises the disclosure of the one remaining written record of interview requested in D193/17.
14. Annex C authorises the unredacted disclosure of two documents requested in D167.
15. Annex D authorises the disclosure of 255 Civil Party Applications and 245 Reports by the VSS on Civil Party Applicants requested in D193/31. The International CIJ will remain seised of the request with respect to the following three Civil Party Applicants, disclosure of whose documents could jeopardise ongoing investigations in Case 004 at this stage:
  - (i) TAING Phat (D5/1226, D5/1226/1),
  - (ii) ██████████ (D5/1539, D5/1539/1), and
  - (iii) YIT Sareu (D5/1102, D5/1102/1).
16. Annex E authorises the disclosure of all 31 Civil Party Applications and all 24 Reports by the VSS on Civil Party Applicants requested in D193/32.
17. This Decision is filed in English, with a Khmer translation to follow.

**FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:**

18. **AUTHORISE** disclosure of documents listed in Annex A with reference to D193/7, Annex B with reference to D193/17, Annex C for unredacted versions of documents with reference to D167, Annex D with reference to D193/31, and Annex E with reference to D193/32 to the Trial Chamber and the Parties in Case 002/02. Owing to the confidential and sensitive nature of the ongoing

<sup>21</sup> 14 October 2014 Decision, para. 19.



investigations in Case 004, this disclosure is authorised with the following modalities and restrictions:

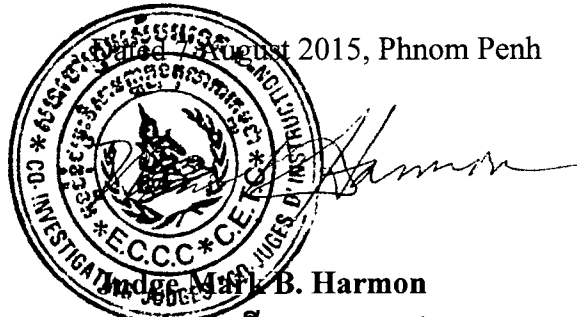
- (a) that all material provided from Case 004 be treated as confidential;
- (b) the authorised material shall be electronically converted to any format that permits an indelible watermark as sub-script on each page of every document individualised for each receiving party;
- (c) the records of the authorised interviews shall be provided to the Defence Counsel of both the Accused, Standby Counsel of Khieu Samphan ("Standby Counsel") and Civil Party Lead Co-Lawyers through watermarked and individualised electronic copies;
- (d) the OCP shall only provide disclosure in a manner that each party can solely access electronic versions of their individualised watermarked copies;
- (e) the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers shall disclose the material provided pursuant to this decision only to those members of their teams that are officially retained under Internal Rule 22(5) and 12 *ter* (4), respectively, along with their officially assigned interns;
- (f) the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers are not authorised to print, reproduce, photo-copy, scan, or otherwise make duplicate copies of the originals provided to them other than for the internal use of the material by those members of their respective teams who are instructed or authorised to have access to confidential material;
- (g) the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers shall maintain a written record, in a manner that can be reviewed, of the copies that they print, reproduce, photo-copy, scan, or otherwise duplicate for their internal use;
- (h) in the event that the material provided pursuant to this decision is admitted as evidence in Case 002/02, it shall be treated as confidential;
- (i) no material provided pursuant to this decision shall be disseminated beyond those explicitly identified herein;
- (j) no material provided pursuant to this decision shall be disseminated to the public, in any format or via any form of media whatsoever;
- (k) should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the material provided pursuant to this decision, he/ she shall immediately take all measures to secure and return the copy to the CIJs; and
- (l) should any member of the Parties or the Trial Chamber in Case 002/02 learn of a breach of these conditions and restrictions, he/ she shall report such breach to the CIJs.

19. **CLARIFY** that for the purposes of this decision, "public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Trial Chamber, the staff of the Court Management Section, the Co-Prosecutors and his representatives, the Accused, any employees who have been officially retained under Internal Rule 22(5) and 12 *ter* (4) authorised by the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers, respectively, to have access to the confidential material. "The public" also includes, without limitation, members of the Accused's family, friends, and associates; suspects, defence counsel, and members of their respective staff in other cases or proceedings before the ECCC; the media; and journalists;



- 20. **ORDER** that the foregoing conditions and restrictions remain in place until such time as they are varied by an explicit order to that effect by the CIJs or the investigations in Case 004 are deemed closed;
- 21. **REQUEST** the Trial Chamber to ensure the compliance by all Parties with this Decision; and
- 22. **REMAIN SEISED** of D193/31 with respect to witnesses TAING Phat (D5/1226, D5/1226/1), [REDACTED] [REDACTED] (D5/1539, D5/1539/1), and YIT Sareu (D5/1102, D5/1102/1).

Phnom Penh, August 7, 2015, Phnom Penh



**Judge Mark B. Harmon**  
**សមាជិកអង្គជំនុំជម្រះអន្តរជាតិ**  
**International Co-Investigating Judge**  
**Co-juge d'instruction internationale**