

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF STATEMENTS FROM
CASE FILE 004**

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I. DISCLOSURE

1. The Trial Chamber has stated that the obligation to disclose relevant material, whether inculpatory or exculpatory, is an obligation that is owed to the Trial Chamber, as well as the Accused, as it is “in the interests of ascertaining the truth that the Trial Chamber has access to these documents.”¹ Moreover, this Chamber has previously held that “Internal Rule 53(4) imposes a continuing obligation on the Co-Prosecutors to disclose to the Trial Chamber any material in its possession that may suggest the innocence or mitigate the guilt of the Accused or affect the reliability of the evidence.”² The Trial Chamber has instructed the Co-Prosecutors to first direct their disclosure requests to the Chamber seized of the evidence the Co-Prosecutors seek to disclose, and then petition the Trial Chamber for admission of any documents thereby approved for disclosure.³
2. On 4 April 2014, the Trial Chamber issued a severance decision that determined the scope of Case 002/02.⁴ On 8 April 2014, the Trial Chamber ordered the parties in Case 002/02 to file witness lists by 9 May 2014, which were to include the “document reference number of the relevant written record of interview,”⁵ and by 30 May 2014 updated lists of the documents they intend to offer in Case 002/02.⁶ Following the issuance of these orders, the Co-Prosecutors conducted a review of the interviews conducted by OCIJ in Cases 003 and 004 to identify witness statements relevant to the crime sites and events that have been included within the scope of Case 002/02. On 2 May 2014, the International Co-Prosecutor (“Co-Prosecutor”) requested permission from the OCIJ to disclose all written records of interview relevant to Case 002/02 from Case 004 to Case 002⁷ (a similar filing was made in relation to Case 003⁸). As the Co-Prosecutors have previously recounted⁹, on 8 May 2014, the International Co-Investigating Judge (ICIJ) denied these requests “at this stage” but “remained seized”

¹ **E127/4** Trial Chamber Memorandum titled “Disclosure of witness statements for witnesses who may testify in Case 002,” 24 January 2012.

² **E127/4**, Trial Chamber Memorandum: Disclosure of witness statements for witnesses who may testify in Case 002, 24 January 2012, at p. 1.

³ **E127/7/1** Information Concerning Case 003 and Case 004 Witness Statements that may be relevant to Case 002, 16 August 2013, para. 2.

⁴ **E301/9/1** Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014.

⁵ **E305** Order to File Updated Material in Preparation for Trial in Case 002/02, 8 April 2014, para. 2 & 7.

⁶ **E305** Order to File Updated Material in Preparation for Trial in Case 002/02, 8 April 2014, para. 11-14.

⁷ Case 004-**D193** International Co-Prosecutor’s Request to Disclose Case 004 Interviews Relevant to Case 002/02 Trial, 2 May 2014.

⁸ Case 003-**D100** International Co-Prosecutor’s Request to Disclose Case 003 Interviews Relevant to Case 002/02, 5 May 2014.

⁹ **E305/13** Co-Prosecutors’ Rule 80(3) Trial Document List, 13 June 2014, para. 9.

thereof,¹⁰ finding that, for the time being, such disclosure “could potentially endanger the investigation” in each case.¹¹ The International Co-Investigating Judge noted that “no fixed date has been set for the commencement of trial in Case 002/02,”¹² and confirmed that “[o]nce the International CIJ deems that disclosure of the documents is no longer capable of jeopardising the investigation, he will authorise the [International Co-Prosecutor] to seek their admission in Case 002/02”¹³ and “will inform the Co-Prosecutors as soon as it becomes prudent to oblige the Request.”¹⁴ The Co-Prosecutor previously undertook to “notify the International Co-Investigating Judge and to reiterate his request for disclosure” once a trial date was set.¹⁵

3. On 12 September the Trial Chamber issued a decision stating the sequence of trial proceedings in Case 002, and informing the parties that the first segment would concern the Tram Kak Cooperatives, including the treatment of Buddhists, and Kraing Ta Chan Security Centre.¹⁶ On 19 September 2014, the Trial Chamber issued a Scheduling Order in Case 002/02 setting the date for witness testimony to commence on 20 October 2014.¹⁷ On 29 September 2014 and 9 October 2014, the International Co-Prosecutor filed requests with the OCIJ seeking leave to disclose Case 004 statements relating to the first segment of trial.¹⁸
4. On 14 October 2014, the Co-Prosecutors received a courtesy copy of a decision by the ICIJ allowing the disclosure to the Case 002 Trial Chamber, Defence Counsel, and Lead Co-Lawyers of the statements of 27 witnesses from Case 004.¹⁹ Those statements are identified in strictly confidential Annex A, and all relate to the first segment of trial in Case 002/02.²⁰ The ICIJ’s decision authorizing this disclosure, which the ICIJ has instructed the Co-Prosecutors they are allowed to disclose solely to the Trial Chamber²¹, is attached as strictly confidential Annex B. Disclosure of these records is necessary to ensure both that the Trial Chamber has access to relevant information on these crime

¹⁰ **CF003-D100/1** Decision on the International Co-Prosecutor’s Request to Disclose Case 003 Interviews relevant to Case 002/02, 8 May 2014 at para. 17; **CF004-D193/1** Decision on the International Co-Prosecutor’s Request to Disclose Case 003 Interviews relevant to Case 002/02, 8 May 2014 at para. 17.

¹¹ *Ibid.*

¹² *Ibid.* at para. 11 [both Decisions].

¹³ *Ibid.* at para. 12 [both Decisions].

¹⁴ *Ibid.* at para. 13 [both Decisions].

¹⁵ **E305/13** Co-Prosecutors’ Rule 80(3) Trial Document List, 13 June 2014, para. 9.

¹⁶ **E315** Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, para. 14.

¹⁷ **E316** Scheduling Order for Hearing on the Substance in Case 002/02, 19 September 2014.

¹⁸ Case 004-**D193/2** Co-Prosecutor’s urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial, 29 September 2014; Case 004-**D193/3**-Co-Prosecutor’s Further Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial, 9 October 2014.

¹⁹ Case 004-**D193/4** Decision on Co-Prosecutor’s Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial, 14 October 2014 (hereinafter “Disclosure Decision”).

²⁰ **E315** Decision on Sequencing of Trial Proceedings in Case 002/02, 12 September 2014, para. 14.

²¹ Disclosure Decision, para. 28.

sites, and that the Accused have access to all potential sources of exculpatory information that may relate to the charges for which they are being prosecuted.

5. The ICIJ's authorization to disclose comes with a number of restrictions and obligations, and the ICIJ requests that the Trial Chamber ensure compliance by all Parties with the disclosure decision.²² The ICIJ's disclosure authorization imposes the following restrictions and obligations on the disclosure of these statements:
 - a. That they be treated as confidential;²³
 - b. That no electronic copies be provided to the Defence parties or Lead Co-Lawyers, who instead may receive marked and numbered paper-copies from the Co-Prosecutors;²⁴
 - c. That the OCP maintain a written record of the paper copies made and the party to whom each paper copy was disclosed in a manner that can be reviewed, if necessary;²⁵
 - d. That the Defence Counsel and Lead Co-Lawyers shall disclose the statements only to those members of their teams that are officially retained under Internal Rule 22(5) and 23 *ter*, respectively;²⁶
 - e. That the Defence Counsel and Lead Co-Lawyers are not authorised to 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;²⁷
 - f. That the Defence Counsel and Civil Party Lead Co-Lawyers shall maintain a written record of the circulation of the paper-copies provided to them in a manner that can be reviewed, if needed;²⁸
 - g. That should the statements be admitted as evidence in Case 002/02, they are treated as confidential;²⁹
 - h. That none of the material included in this disclosure shall be disseminated beyond the individuals explicitly authorized herein;³⁰

²² Disclosure Decision, para. 26.

²³ Disclosure Decision, para. 23(a).

²⁴ Disclosure Decision, para. 23(b)-(c).

²⁵ Disclosure Decision, para. 23(d).

²⁶ Disclosure Decision, para. 23(e).

²⁷ Disclosure Decision, para. 23(f).

²⁸ Disclosure Decision, para. 23(g).

²⁹ Disclosure Decision, para. 23(h).

- i. That none of the material included in this disclosure shall be disseminated to the public, in any format or via any form of media whatsoever, and that for the purposes of this restriction “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 Registry, the Co-Prosecutors and their representatives, the Accused, and any employees who have been officially retained under Internal Rule 22(5) and 23 *ter* authorised by the Defence Counsel and Civil Party Lead Co-Lawyers, respectively, to have access to the confidential material. “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;³¹
 - j. That should any member of the Parties or the Trial Chamber in Case 002 learn of an unauthorised copy of the statements, he/she shall immediately take all measures to secure and return the copy to the CIJs;³²
 - k. That should any member of the Parties or the Trial Chamber in Case 002 learn of a breach of these conditions and restrictions, he/she shall report such breach to the CIJs;³³ and
 - l. That these restrictions remain in place until they are varied by an explicit order to that effect by the CIJs, or the investigations in Case 004 are deemed closed.³⁴
6. The Trial Chamber has previously ordered that all disclosures from Cases 003 and 004 to Case 002 should be filed and notified to the Trial Chamber provisionally on a strictly confidential basis, and that the Trial Chamber will then make a determination as to whether the documents should be reclassified as confidential.³⁵ Therefore, the Co-Prosecutors notify the Trial Chamber of the statements contained in Annex A on a strictly confidential basis.
 7. In compliance with the restrictions above, the Co-Prosecutor will be making available as soon as possible to the Lead Co-Lawyers, Nuon Chea Defence, and Khieu Samphan Defence one marked and numbered paper copy of the combined statements each.

II. REQUEST

³⁰ Disclosure Decision, para. 23(i).

³¹ Disclosure Decision, paras. 23(j), 24.

³² Disclosure Decision, para. 23(k).

³³ Disclosure Decision, para. 23(l).

³⁴ Disclosure Decision, para. 25.

³⁵ **E127/4**, Trial Chamber Memorandum: Disclosure of witness statements for witnesses who may testify in Case 002, 24 January 2012, at p. 1.

8. Therefore, the International Co-Prosecutor requests that the Trial Chamber:
- a. Obtain and admit into Case File 002 the statements identified in Annex A, in compliance with the ICIJ’s disclosure authorization D193/4.

Respectfully submitted,

Date	Name	Place	Signature
17 October 2014	Nicholas KOUMJIAN Co-Prosecutor	Phnom Penh	

