

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/SC **Party Filing:** International Co-Prosecutor

**Filed to:** Supreme Court Chamber

**Original Language:** English

**Date of document:** 23 June 2015



**CLASSIFICATION**

**Classification suggested by the filing party:** PUBLIC

**Classification by Supreme Court Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

---

**INTERNATIONAL CO-PROSECUTOR'S SECOND RESPONSE TO DECISION F2/4/2**

---

**Filed by:**

**Co-Prosecutors**  
Nicholas KOUMJIAN

Copy To:  
CHEA Leang

**Distribute to:**

**Supreme Court Chamber**  
Judge KONG Srim, President  
Judge A. KLONOWIECKA-MILART  
Judge SOM Sereyvuth  
Judge C. N. JAYASINGHE  
Judge MONG Monichariya  
Judge YA Narin  
Judge Florence Ndepele MUMBA

**Copied to:**

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Marie GUIRAUD

**Accused**  
NUON Chea  
KHIEU Samphan

**Lawyers for the Defence**  
SON Arun  
Victor KOPPE  
KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN

**Standby Counsel**  
TOUCH Voleak  
Calvin SAUNDERS

**RESPONSE**

1. The Supreme Court Chamber's "Decision on Part of Nuon Chea's Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01"<sup>1</sup> ("Decision") ordered the Co-Prosecutors to engage in a review of the Case 003 and 004 case files in order to identify any evidence falling into two categories requested by Nuon Chea: (i) evidence given by a witness who worked directly with Ruos Nhim; and/or (ii) evidence that concerns Northwest Zone opposition to Pol Pot and Nuon Chea prior to 6 January 1979.<sup>2</sup> If any such evidence was identified, the Co-Prosecutors were ordered to seek leave from the Co-Investigative Judges in order to disclose such evidence to the SCC and the parties in Case 002/01.<sup>3</sup>
2. In his first Response, the International Co-Prosecutor ("Co-Prosecutor") clarified his disclosure practices, actions taken, material disclosed, and actions planned to fulfil disclosure obligations and comply with the orders contained in the Decision in the future.<sup>4</sup> The Co-Prosecutor also reiterated his position that Nuon Chea's request goes beyond a request for exculpatory material relevant to the Case 002/01 Appeal issues<sup>5</sup> but noted that as a courtesy to Nuon Chea he would request priority disclosure of documents falling into the two categories set out in Nuon Chea's request in his ongoing disclosure review.<sup>6</sup> He also noted that the review ordered by the SCC would be time and resource intensive, and would be delayed by the many

---

<sup>1</sup> **F2/4/2** Decision on Part of Nuon Chea's Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 16 March 2015 ("Decision").

<sup>2</sup> *Ibid.*, para. 24.

<sup>3</sup> *Ibid.*.

<sup>4</sup> **F2/4/2/1** International Co-Prosecutor's Response to Supreme Court Decision F2/4/2 Regarding Disclosure, 3 April 2015 ("Response").

<sup>5</sup> The fact that an individual worked directly for Ruos Nhim certainly does not indicate they have any exculpatory evidence. Were the case in the investigative stage, the information may be helpful to make informed requests for investigation. However, it does not meet the proper standard for disclosure at the appeal stage of proceedings which should be limited to exonerating evidence that could have been a decisive factor in the judgment. Moreover, as the convictions in Case 002/01 stem from the massacre at Tuol Po Chrey and evacuation of Phnom Penh, both occurring in April 1975, opposition to the rule of Pol Pot long after these crimes and up to January 1979, when over a million had been killed or starved to death under the policies of the regime, is of no relevance to the issues in Case 002/01.

<sup>6</sup> Response, para. 8.

competing demands on the time and attention of the Office of the Co-Prosecutors (“OCP”).<sup>7</sup>

3. The Co-Prosecutor hereby informs the Supreme Court Chamber (“SCC”) and the parties that he has conducted an extensive review of all English translations of Written Records of Interview obtained by the Office of the Co-Investigative Judges (“OCIJ”) in Cases 003 and 004 that were not previously disclosed to Case 002 and all English translations of the Civil Party Applications and Rogatory Reports included on the Case 003 and 004 case files. In total, over 1000 witness interviews from Cases 003 and 004 were reviewed for disclosure into Case 002, as well as over 280 Civil Party Applications. The Co-Prosecutor has determined that the reviewed materials do not contain evidence relating to the categories as set out by the SCC in its Decision.
4. Several Written Records of Interview and a large number of Civil Party Applications filed in Cases 003 and 004 have not yet been translated into either English or French. Due to the time-consuming nature of the disclosure review process, multiple other demands on the time of the OCP,<sup>8</sup> and the very limited personnel who read Khmer available for the review of these Case 003 and 004 records, the Co-Prosecutor has been unable to review Civil Party Applications and a small number of Written Records of Interview available in the Khmer language only. A review of these Civil Party Applications shall be undertaken as soon as English or French translations are available, in order to assess whether the materials are subject to disclosure in accordance with the SCC order in its Decision. The Co-Prosecutor shall notify the SCC if any are responsive.
5. For similar reasons as described above, the Co-Prosecutor is still in the process of conducting a review of other, not publicly available, evidence included in the Case 003 and 004 case files in order to assess whether the materials are subject to disclosure in accordance with the SCC order in its Decision. The Co-Prosecutor

---

<sup>7</sup> *Ibid.*, para. 11.

<sup>8</sup> The Office of the Co-Prosecutors’ resources are currently dispersed across the appeal in Case 002/01, the trial in Case 002/02, the investigations in Cases 003 and 004, and ongoing appeal proceedings before the Pre-Trial Chamber.

002/19-09-2007-ECCC/SC

expects that this review process will be finalized prior to the commencement of the hearing of additional witnesses in the appeal proceedings in July 2015 and he will notify the SCC of his findings as soon as possible.

Respectfully submitted,

Date	Name	Place	Signature
23 June 2014	Nicholas KOUMJIAN Co-Prosecutor	Phnom Penh	