

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

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/TC

**Party Filing:** International  
Co-Prosecutor

**Filed to:** Trial Chamber and Supreme Court Chamber

**Original Language:** English

**Date of document:** 29 August 2016



**CLASSIFICATION**

**Classification of the document**

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

**Classification by the Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF CASE 004  
DOCUMENTS RELEVANT TO CASE 002**

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## I. DISCLOSURE

1. The International Co-Prosecutor (“Co-Prosecutor”) hereby discloses six written records of interview, two written records of investigation action and one civil party document that satisfy the Co-Prosecutors’ disclosure obligations in Case 002 (“Materials”). The Materials are identified in one strictly confidential annex: **Annex A**.
2. The International Co-Prosecutor sought authorisation to disclose the Materials via two requests made on 10 August 2016<sup>1</sup> and 22 August 2016.<sup>2</sup> The International Co-Investigating Judge (ICIJ) issued a decision authorising their disclosure on 25 August 2016 (‘ICIJ Decision’).<sup>3</sup> The ICIJ Decision was distributed to the Trial Chamber on its issuance.
3. The Co-Prosecutor has taken note of the Trial Chamber’s instructions concerning the Co-Prosecutors’ disclosure obligations in Case 002/02 in its decision of 22 October 2015.<sup>4</sup> The Trial Chamber directed the Co-Prosecutors to disclose to the Chamber and the parties exculpatory evidence from Cases 003 and 004 on a continuing basis until the completion of Case 002/02.<sup>5</sup> It also directed the Co-Prosecutors to disclose Case 003 and 004 statements of all individuals who have been proposed to testify in Case 002/02.<sup>6</sup> Pursuant to an order of the Supreme Court Chamber, the Co-Prosecutors are also obliged to disclose documents containing two specific categories of information requested by Nuon Chea: (i) evidence given by a witness who worked directly with Ruos Nhim; or (ii) evidence concerning Northwest Zone opposition to Pol Pot and Nuon Chea prior to 6 January 1979.<sup>7</sup> On 29 June 2016, the Trial Chamber further held that any Case 003 and 004 materials that the Co-Prosecutors wish to submit pursuant to Rule 87(4) should be disclosed at the time of reasoned applications pursuant to Rule 87(4).<sup>8</sup>

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<sup>1</sup> Case 004-**D193/92** International Co-Prosecutor’s Request to Disclose Case 004 Documents into Case 002, 10 August 2016.

<sup>2</sup> Case 004-**D193/93** International Co-Prosecutor’s Request to Disclose Case 004 Documents into Case 002, 22 August 2016.

<sup>3</sup> Case 004-**D193/94** Consolidated Decision on International Co-Prosecutor’s Requests to Disclose Case 003 Document to Case 002 (D100/25 and D100/29) ‘ICIJ Decision’, 25 August 2016.

<sup>4</sup> **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, 22 October 2015.

<sup>5</sup> *Ibid.*, paras 21-24, disposition, EN 01157631-33, 01157640-41.

<sup>6</sup> *Ibid.*, paras 25-27, disposition, EN 01157634-35, 01157640-41.

<sup>7</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, para. 24.

<sup>8</sup> **E319/47/3** Decision on International Co-Prosecutor’s Requests to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4), 29 June 2016, para. 22.

4. 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.<sup>9</sup>
5. 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.<sup>10</sup> Therefore, the Co-Prosecutor notifies the Trial Chamber of the documents contained in **Annex A** on a strictly confidential basis.
6. Authorisation to disclose the Materials in **Annex A** is subject to the following requirements imposed by the ICIJ:<sup>11</sup>
  - a. that all Materials provided from Case 003 be treated as confidential;
  - b. in the event that the Materials are admitted as evidence in Case 002, they shall be marked confidential;
  - c. the Materials shall not be disseminated beyond those explicitly identified herein;
  - d. in the event the witnesses/civil party applicants whose documents are authorised for disclosure are called to testify, they can do so in open sessions of the court provided their names and identities are kept confidential, with the exception of [REDACTED]
  - e. the Materials shall not be disseminated to the public, in any format or via any form of media whatsoever, beyond the evidence presented in open sessions of the court;
  - f. any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed shall identify the witnesses/ civil party applicants only by their assigned pseudonym for Case 002 and use descriptions reasonably calculated to avoid identifying the witnesses by other information, with the exception of [REDACTED]

<sup>9</sup> E127/7/1 Trial Chamber Memorandum “Information concerning Case 003 and Case 004 witness statements that may be relevant to Case 002”, 16 August 2013, para. 2.

<sup>10</sup> E127/4 Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, p. 1.

<sup>11</sup> Case 004-D193/94 ICIJ Decision, 25 August 2016, para. 12.

- g. the disclosed documents 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 electronic copies;
  - h. 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 12ter (4), respectively, along with their officially assigned interns;
  - i. 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;
  - j. 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; and
  - k. should any member of the Trial Chamber or Parties in Case 002 learn of an unauthorised copy of the material disclosed, he/she shall immediately take all measures to secure and return the copy to the CIJs; and
  - l. should any member of the Trial Chamber or Parties in Case 002 learn of a breach of these conditions and restrictions, he/she shall immediately report such breach to the CIJs.
7. The International Co-Investigating Judge varied the conditions applicable to witness [REDACTED], whose civil party application was disclosed on 21 April 2016,<sup>12</sup> to exempt her from conditions (d) and (f) above.<sup>13</sup> The ICIJ further clarified that:<sup>14</sup>

“for the purposes of his 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 Rules 22(5) and 12ter (4) authorised by the Defence Counsel, Standby Counsel and Civil

<sup>12</sup> See E319/45 International Co-Prosecutor’s Disclosure Of Civil Party Applications And Written Records Of Investigation Action Into Case 002, 21 April 2016, para. 8 and Annex A.

<sup>13</sup> Case 004-D193/94 ICIJ Decision, 25 August 2016, para. 13.

<sup>14</sup> Case 004-D193/94 ICIJ Decision, 25 August 2016, para. 14.

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."

## II. RELIEF REQUESTED

8. Therefore, the Co-Prosecutor requests that the Supreme Court Chamber and Trial Chamber obtain and admit onto Case File 002 the documents identified in **Annex A** that are responsive to their respective disclosure instructions (as indicated in **Annex A**).

Respectfully submitted,

Date	Name	Place	Signature
29 August 2016	Nicholas KOUMJIAN Co-Prosecutor	Phnom Penh	