



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Royaume du Cambodge  
Nation Religion Roi

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

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

Before: The Co-Investigating Judges

Date: 14 March 2016

Language(s): English [Original]

Classification: CONFIDENTIAL

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du dossier: Sann Rada	

**ORDER VARYING THE DECISION ON INTERNATIONAL  
CO-PROSECUTOR'S URGENT REQUEST TO DISCLOSE  
CASE 004 DOCUMENTS RELEVANT TO S-21 INTO CASE 002**

**Distribution:**

**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN

**Trial Chamber**



1. Disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 22 February 2013, 5 April 2013 and 26 June 2014.
2. On 14 October 2014, the former International Co-Investigating Judge Mark Harmon issued the *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 Decision”), granting the International Co-Prosecutor’s (“ICP”) requests for disclosure of records of interviews of 26 witnesses.<sup>1</sup> I recall and incorporate by reference the procedural history summarised in paragraphs 1 to 7 in the 14 October Decision, which instituted a range of restrictions and modalities on the disclosure of the statements to the Trial Chamber and parties in Case 002/02.<sup>2</sup>
3. On 9 March 2016, the ICP filed the *International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents Relevant to S-21 into Case 002* (“Request”).<sup>3</sup> On 11 March 2016, I issued the *Decision On International Co-Prosecutor’s Urgent Request To Disclose Case 004 Documents Relevant To S-21 Into Case 002* (“Decision”), approving three written records of interviews (“WRIs”) and one record of investigative action (“RIA”) in relation to KAING Guek Eav alias Duch.<sup>4</sup>
4. The conditions of use of the disclosed evidence placed the standard set of restrictions, including requiring the use of pseudonym for KAING Guek Eav alias Duch and by redacting portions of the RIA. However, given that the witness, KAING Guek Eav alias Duch, is a previous convict of this Court and a well-recognised figure in Cambodia, the use of these measures with him are superfluous and counter to public interest Accordingly, I vary the conditions of use of the disclosed evidence in so far as it related to KAING Guek Eav alias Duch as stated below.
5. This Order is filed in English, with a Khmer translation to follow.

**FOR THE FOREGOING REASONS, I:**

6. **AUTHORISE** disclosure of the five documents listed in Annex A of the Request to the Trial Chamber and the Parties in Case 002/02, with only RIA D119/127 in relation to NHEM En redacted. Owing to the confidential nature of the ongoing investigations in Case 004, this disclosure is authorised with the following modalities and restrictions:

<sup>1</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, 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; 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.

<sup>2</sup> 14 October Decision, paras. 19-20, 23.

<sup>3</sup> Case File No. 004-D193/63, *International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents Relevant to S-21 into Case 002*, 9 March 2016.

<sup>4</sup> Case File No. 004-D193/64, *Decision on International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents Relevant to S-21 into Case 002*, 11 March 2016.

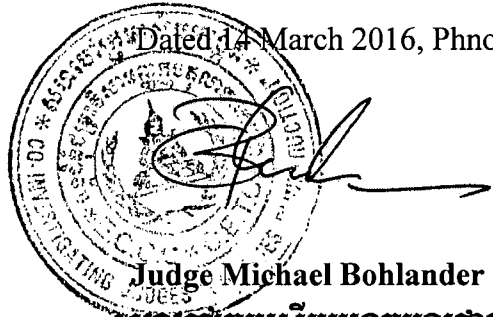


- (a) in the event the witnesses whose WRIs are authorised for disclosure are called to testify, they can do so in open sessions of the court and no other protective measures are necessary;
  - (b) no material provided pursuant to this decision shall be disseminated beyond those explicitly identified herein;
  - (c) no material provided pursuant to this decision shall 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;
  - (d) any party, counsel, or other individual who reads from, cites, or otherwise uses any of the WRIs disclosed shall identify the witnesses only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses by other information;
  - (e) 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 electronic copies;
  - (f) 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;
  - (g) 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;
  - (h) 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
  - (i) should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the WRIs authorised for disclosure, he/ she shall immediately take all measures to secure and return the copy to the CIJs;
  - (j) 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.
7. **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.



8. **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.

Dated 14 March 2016, Phnom Penh



**Judge Michael Bohlander**  
**នាយកវិស័យស៊ើបអង្កេតអន្តរជាតិ**  
**International Co-Investigating Judge**  
**Co-juge d'instruction international**