



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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SANN RADA

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

TRIAL CHAMBER

សាធារណៈ / Public

Date: 24 August 2015

TO: All Parties, Case 002

FROM: NIL Nonn, President of the Trial Chamber

CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer

SUBJECT: Trial Chamber Guidelines on the Disclosure of Cases 003 and 004 Civil Party Applications in Case 002/02



1. The Chamber notes the International Co-Prosecutor initiated the disclosure of Cases 003 and 004 Written Records of Interview or *procès-verbaux* (PVs) during the proceedings in Case 002/01 (E127).

2. At that time, the Trial Chamber considered 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" and further noted that the interests of ascertaining the truth would be assisted by the disclosure of additional prior statements as it would "assist in evaluating the credibility of these witnesses" (E127/4).

3. On 4 August 2015, the International Co-Prosecutor informed the Chamber that, in addition to PVs from Cases 003 and 004, there are about 2,200 Civil Party Applications (CPAs) from those cases of which a "significant number" are likely relevant to Case 002/02 (E319/14/1, para. 7). Although the International Co-Prosecutor indicates that only a small number of these applications are likely to be put before the Chamber, he intends to provide to the parties and the Chamber all remaining Cases 003 and 004 CPAs that are relevant to Case 002/02 in the next several weeks (T. 10 August 2015, p. 15). In view of

the forthcoming disclosure of a significant number of Cases 003 and 004 CPAs, the Chamber issues the following guidelines.

4. Considering the nature of CPAs is to present inculpatory rather than exculpatory evidence, the Chamber reminds the Co-Prosecutors that their duty to disclose Cases 003 and 004 CPAs is first limited to those which in their actual knowledge may suggest the innocence or mitigate the guilt of the Accused. Although the Co-Prosecutors must also disclose documents which may affect the credibility of evidence, the Chamber reminds the Parties that CPAs have much less probative value than PVs and the Chamber has only relied on Case 002 CPAs in the Case 002/01 Trial Judgement for the limited purpose of corroborating other evidence. Furthermore, to the Chamber's knowledge, no decision has been made at this stage by the Co-Investigating Judges on the admissibility of the CPAs filed in Cases 003 and 004. Therefore, contrary to CPAs in Case 002, their reliability has yet to be assessed at the pre-trial level.

5. The Chamber therefore directs the Co-Prosecutors to disclose: (1) Cases 003 and 004 CPAs which in their actual knowledge may suggest the innocence or mitigate the guilt of the Accused; (2) the CPAs of individuals previously interviewed by the OCIJ in Case 002; and (3) the CPAs of individuals who have been heard or are likely to be heard in Case 002/02 (i.e. those proposed to testify in the parties' IR 80 lists filed pursuant to E305). If the Co-Prosecutors wish to place other CPAs on the Case File they should seek to do so pursuant to Internal Rule 87(4).

6. The Chamber has issued these guidelines on its own motion in order to ensure the expeditiousness and smooth operation of the proceedings. The Chamber will consider however requests to alter the present guidelines should the parties present compelling reasons to do so.