

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

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF CASE 004
DOCUMENTS RELEVANT TO CASE 002 PURSUANT TO CASE 004-D193/61**

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I. DISCLOSURE

1. The International Co-Prosecutor (“Co-Prosecutor”) hereby discloses 51 Written Records of Interview admitted in Case 004 that satisfy the Co-Prosecutors’ disclosure obligations in Case 002 (“Materials”). All of the materials are identified in two strictly confidential annexes: **Annex A** and **Annex B**.
2. The Co-Prosecutor sought leave to disclose the Materials included in this disclosure via five requests (collectively, the “Requests”) made to the Co-Investigating Judges (“CIJ’s”) on 29 July 2015,¹ 25 September 2015,² 7 October 2015,³ 16 October 2015⁴ and on 21 October 2015.⁵ The International Co-Investigating Judge (“ICIJ”) granted the disclosure of the Requests in relation to the documents currently being disclosed on 17 December 2015 (“ICIJ Decision”).⁶ That 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 2015.⁷ 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 002/02.⁸ It also directed the Co-Prosecutors to disclose Case 003 and 004 statements of all individuals who have been proposed to testify in Case 002/02.⁹ The Trial Chamber further held that any additional 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).¹⁰

¹ Case 004-**D193/29** International Co-Prosecutor’s July Request to Disclose Case 004 Written Records of Interview into Case 002, 29 July 2015.

² Case 004-**D193/42** International Co-Prosecutor’s September 2015 Request to Disclose Case 004 Documents into Case 002, 25 September 2015.

³ Case 004-**D193/45** International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents into Case 002, 7 October 2015.

⁴ Case 004-**D193/46** International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents into Case 002, 16 October 2015.

⁵ Case 004-**D193/48** International Co-Prosecutor’s Request to Disclose a Case 004 Document into Case 002, 21 October 2015.

⁶ Case 004-**D193/61** Decision on the International Co-Prosecutor’s Disclosure Requests D193/29, D193/35, D193/38, D193/39, D193/42, D193/45, D193/46 and D193/48, 17 December 2015 (“Decision”).

⁷ **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, 22 October 2015.

⁸ *Ibid.*, paras 21-24, disposition.

⁹ *Ibid.*, paras 25-27, disposition.

¹⁰ *Ibid.*, paras 28-30, disposition.

4. The Co-Prosecutor has also taken note of the Supreme Court Chamber's 16 March 2015 ruling on a Nuon Chea request concerning the Co-Prosecutor's disclosure obligations in Case 002/01.¹¹ In particular, the Supreme Court Chamber directed the Co-Prosecutors to disclose to the Supreme Court Chamber and the parties evidence which is either: (i) given by a witness who worked directly with Ruos Nhim; or (ii) concerns Northwest zone opposition to Pol Pot and Nuon Chea prior to 6 January 1979.
5. The Co-Prosecutor previously disclosed four Written Records of Interview, one Written Record of Investigative Action and one annex authorised for disclosure in the ICIJ Decision to the Trial Chamber.¹² The Co-Prosecutor hereby discloses the remainder of Written Records of Interview and Written Records of Investigative Action authorised for disclosure in the ICIJ Decision that: contain exculpatory material; are statements of an individual who has been proposed to testify in Case 002; and/or meet the categories of evidence ordered to be disclosed by the Supreme Court Chamber.¹³ Applications pursuant to 87(4) and disclosure of civil party applications authorized by the ICIJ Decision will follow in due course.
6. The Co-Prosecutor provides, for transparency, certain details of his implementation of the Trial Chamber's instructions. The Trial Chamber stated that exculpatory evidence is defined as "any material in the actual knowledge of the Co-Prosecutors which may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of the prosecution evidence."¹⁴ Where the Co-Prosecutor has put a statement of a witness into evidence and the witness is not proposed to testify, the Co-Prosecutor considers the witness's other statement(s) to affect the credibility of inculpatory evidence and therefore discloses the statement(s) where: (i) the witness corrects or changes the statement in evidence on a relevant matter; or (ii) the witness undermines his or her credibility generally. However, where the Co-Prosecutor has merely disclosed a Written Record of Interview or DC-Cam statement of a person who is not proposed to testify, and does not seek to put that statement or any other statement from that person into evidence, the Co-Prosecutor does not consider inconsistencies between the statements to be sufficient to

¹¹ **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, Disposition.

¹² **E319/38** International Co-Prosecutor's Disclosure of One Case 004 Document Relevant to Case 002 Pursuant to Case 004-D193/61; **E319/39** International Co-Prosecutor's Disclosure of Case 004 Documents Relevant to Case 002 Pursuant to Case 004-D193/61, 8 January 2016.

¹³ See para. 4 above.

¹⁴ **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, 22 October 2015, para. 23. See also fn 56, noting that within the ECCC, "inculpatory evidence" is a more appropriate term than "prosecution evidence".

establish exculpatory status solely on that basis. Further, the Co-Prosecutor notes that he does not consider evidence that cadres were punished for rape outside the context of forced marriage to be exculpatory, as the Closing Order did not charge the Accused with rapes committed outside the context of forced marriage.¹⁵

7. In the accompanying Annexes, the Co-Prosecutor has indicated in a column entitled “Disclosure Category” the reason(s) for that document’s disclosure. To avoid duplicative disclosure to the parties, the Co-Prosecutor has simultaneously reviewed the material in light of the Supreme Court Chamber’s disclosure instructions, and has indicated in the “Disclosure Category” column where a document is disclosed pursuant to those instructions, which may not overlap in every instance with the conditions outlined by the Trial Chamber.
8. 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.¹⁶
9. 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.¹⁷ Therefore, the Co-Prosecutor notifies the Trial Chamber and the Supreme Court Chamber of the documents contained in **Annex A** and **Annex B** on a strictly confidential basis.
10. Authorisation to disclose the Materials in **Annex A** is subject to the following requirements imposed by the ICIJ:¹⁸
 - a. that all the Materials be treated as confidential;
 - b. that in the event the Materials are admitted as evidence in Case 002/02, they shall be treated as confidential;

¹⁵ **E306** Trial Chamber Memorandum “Further information regarding remaining preliminary objections”, 25 April 2014, para. 3 citing D427 Closing Order, 15 September 2010, paras. 1426-1429.

¹⁶ **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.

¹⁷ **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, p. 1.

¹⁸ Decision, para. 32.


- c. that the Materials shall not be disseminated beyond the persons explicitly identified in the requirements set out herein;
- d. that in the event that the witnesses whose documents are authorised for disclosure in **Annex A** are called to testify, they can do so in open sessions of the court provided their names and other identifying information are kept confidential and they are identified only by their assigned pseudonym for Case 002/02;
- e. that the Materials provided pursuant to **Annex A** 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. that any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed in **Annex A** 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;
- g. that the Materials 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. that the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers shall disclose the Materials 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;
- i. that 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. that 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;
- k. that should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the material provided pursuant to this decision, he/she shall immediately take all measures to secure and return the copy to the CIJs; and

1. 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.
11. Authorisation to disclose the Materials in **Annex B** is subject to the above requirements, but for those in paragraphs (d) through (f), which are varied to the following more stringent restrictions:
- a. in the event the witnesses or civil party applicants whose documents are authorised for disclosure in **Annex B** are called to testify, they must do so in closed session;
 - b. no material provided pursuant to **Annex B** shall be disseminated to the public, in any format or via any form of media whatsoever, or be presented or referred to in open court in any manner whatsoever; and
 - c. any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed in **Annex B** shall request closed session prior to doing so, and in any event identify the witnesses or civil party applicants only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses or civil party applicants by other information.¹⁹

II. RELIEF REQUESTED

12. 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** and **Annex B** that are responsive to their respective disclosure instructions (as indicated in the annexes).

Respectfully submitted,

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

¹⁹ Decision, para. 34.