



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-ECCC-OCIJ

Before: The Co-Investigating Judges

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**ORDER ON DISCLOSURE DECISIONS IN CASE 004 FROM  
JULY AND AUGUST 2015**

**Distribution:**

**Co-Prosecutors**  
CHEA Leang  
Nicholas KOUMJIAN

**Trial Chamber**



## I. PROCEDURAL HISTORY

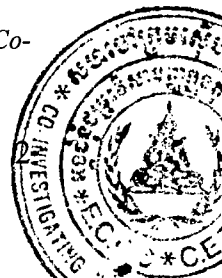
1. On 31 July 2015, His Majesty King Norodom Sihamoni of Cambodia signed the Appointment Letter appointing me the International Co-Investigating Judge (“International CIJ”), with immediate effect. Judge Harmon and I were only notified of my appointment officially on 20 August 2015.
2. Between 31 July and 12 August 2015, Judge Harmon issued four disclosure decisions in Case 004. The decisions were:
  - (a) *Partial Decision on the International Co-Prosecutor's Disclosure Request D193/29*, issued 31 July 2015 (“D193/30”);
  - (b) *Decision on the International Co-Prosecutor's Case 002 Disclosure Requests D167, D193/7, D193/17, D193/31, D193/32*, issued 7 August 2015 (“D193/33”);
  - (c) *Decision On The International Co-Prosecutor's Disclosure Requests D193/23 and D193/29*, issued 11 August 2015 (“D193/34”); and
  - (d) *Decision on the international Co-Prosecutor's urgent disclosure requests D193/36*, issued 12 August 2015 (“D193/37”).

## II. DISCUSSION

3. When Judge Harmon issued the disclosure decisions listed above in paragraph 2, he, like I, was unaware that, on 31 July 2015, the King of Cambodia had appointed me as his successor. With my appointment, Judge Harmon’s term of office ended and, with it, his power to act in a judicial capacity.
4. He was thus *functus officio* and the four disclosure decisions were without effect, despite the fact he acted in perfect good faith. Since the mere disclosure of documents from another case is not an investigative act, the provisions of Internal Rule 76 do not apply.
5. I have reviewed Judge Harmon’s determinations and agree with them. I therefore adopt Judge Harmon’s determinations and re-issue the four disclosure decisions – D193/30, D193/33, D193/34, and D193/37.
6. I note that the Trial Chamber is currently seised of a motion filed by KHIEU Samphan in Case 002/02 challenging the Co-Prosecutors’ compliance with their disclosure obligations (“Motion”),<sup>1</sup> to which the Co-Prosecutors have filed a Response.<sup>2</sup> Whilst I understand and am sympathetic to the nature of the concerns raised by the KHIEU Samphan Defence in its submissions on the Motion, it is for the Trial Chamber, not the CIJs, to determine the impact of the disclosed materials on the rights of the Accused in Case 002/02. I will therefore continue to entertain further requests for disclosure and decide them on the basis of their *prima facie* relevance and the impact they may have on the confidentiality and integrity of the judicial investigation.

<sup>1</sup> Case File No. 002-E363, *Submissions of the Defence for Mr KHIEU Samphan on the Co-Prosecutors’ disclosure obligation*, 24 August 2015.

<sup>2</sup> Case File No. 002-E363/1, *Co-Prosecutors’ Response to Khieu Samphan’s Motion regarding the Co-Prosecutors’ Disclosure Obligations*, 7 September 2015.



**FOR THE FOREGOING REASONS, I**

- 7. **RE-ISSUE** disclosure decisions D193/30, D193/33, D193/34, and D193/37 in their entirety.

Dated 22 September 2015, Phnom Penh



Judge Michael Bohlander

ជាតិ វិសាល ហ្វូលធីន

**International Co-Investigating Judge  
Co-juge d'instruction internationale**