



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

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**CONSOLIDATED DECISION ON INTERNATIONAL
CO-PROSECUTOR'S REQUESTS TO DISCLOSE CASE 004
DOCUMENT TO CASE 002 (D193/92 & D193/93)**

Distribution:

Trial Chamber

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I. PROCEDURAL HISTORY

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, my predecessor issued the *Decision on Co-Prosecutors’ Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*.¹ I incorporate by reference paragraphs 1 to 7 of that decision.
3. On 6 November 2015, I issued the *Memorandum from ICIJ to Trial Chamber and Supreme Court Chamber concerning “Disclosure of material from Cases 003 and 004 to Case 002”* (“Memorandum”), in which I adopted a range of restrictions and modalities of disclosure.²
4. On 10 August 2016, the International Co-Prosecutor (“ICP”) filed a request to disclose ten Case 004 documents into Case 002 (“D193/92”).³ By email dated 17 August 2016, Defence of both Ao An and Yim Tith indicated that they do not intend to respond to D193/92.⁴
5. On 22 August 2016, the ICP filed a request to disclose two Case 004 documents into Case 002 (“D193/93”).⁵ Due to the urgent nature of the request, it attaches emails dated 18-19 August 2016 from the Defence of Ao An and Im Chaem indicating no intent to respond.⁶ On 24 August 2016, the ICP forwarded the email confirmation of the Defence of Yim Tith stating their intent not to respond.⁷ Also on 24 August 2016, the ICP informed the International CIJ by email that it withdraws its request for one of the two documents.⁸ The email correspondence can be found in Annex B to this decision.

II. SUBMISSIONS

6. In D193/92, the ICP seeks disclosure of seven Written Records of Interview of witnesses (“WRI”), two Investigative Action Reports (“IARs”) and one map attached to a previously disclosed WRI.⁹ The ICP submits that most of these documents contain potentially exculpatory material and some are sought for admission into evidence in the Case 002/02 trial.¹⁰
7. In D193/93, the ICP seeks disclosure of one Civil Party Application (“CPA”) and one Statement of Interview to Documentation Centre of Cambodia (“DC Cam

¹ Case File No. 004-D193/4, *Decision on Co-Prosecutors’ Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 14 October 2014.

² Case File No. 004-D273, *Memorandum from ICIJ to Trial Chamber and Supreme Court Chamber concerning “Disclosure of material from Cases 003 and 004 to Case 002”*, 6 November 2015.

³ Case File No. 004-D193/92, *International Co-Prosecutor’s Request to Disclose Case 004 Documents into Case 002*, 10 August 2016.

⁴ Email from ICP forwarding confirmation from the Defence, 17 August 2016.

⁵ Case File No. 004-D193/93, *International Co-Prosecutor’s Request to Disclose Case 004 Documents into Case 002*, 22 August 2016.

⁶ D193/93, para. 4 and Annexes A and B.

⁷ Annex B, Email from ICP forwarding confirmation from the Yim Tith Defence, 24 August 2016.

⁸ Annex B, Email from ICP withdrawing request for one document, 24 August 2016.

⁹ D193/92, Annex A.

¹⁰ D193/92, p. 1 and Annex A.



Statement").¹¹ The ICP withdrew its request with respect to the DC Cam Statement owing to an identification error, which was accepted by email due to the urgent nature of the request. The ICP is directed to file any withdrawals in the future in the same form as the request in order to preserve the full and proper record of disclosure. With respect to the remaining document, the CPA, the ICP adds that previous statements of the individual are already on Case File 002, some of which are available in the public domain, and hence, his disclosure does not require the ordinary protective measures under Category A.¹²

8. On 23 August 2016, the Trial Chamber requested clarification with respect to the need of protective measures concerning Civil Party OM Yoeurn, whose CPA was disclosed by decision D193/61 under Category A, owing to the OCP oral submission in trial proceedings that the disclosed material was already available in the CPAs of the individual in Case 002.¹³ The International CIJ varied the previously imposed conditions based on the new information by email to the Trial Chamber and will confirm the same in this decision.¹⁴ The email correspondence can be found in Annex C to this decision.

III. DISCUSSION

9. With respect to D193/92, the ten documents requested in therein are *prima facie* relevant to Case 002 and their disclosure will not jeopardise the integrity and confidentiality of the ongoing investigations. Insofar as their testimony concerns ongoing investigation in Case 004, the concerned witnesses will be categorised as Category A.
10. With respect to D193/93, the one document requested is *prima facie* relevant to Case 002 and its disclosure will not jeopardise the integrity and confidentiality of the ongoing investigations. Insofar as the Civil Party's testimony concerns ongoing investigation in Case 004, the individual will be categorised as Category A but not require the restrictions aimed to protect their identify since substantive elements of their evidence are already available in the public domain.
11. This decision is filed in English, with a Khmer version to follow, due to the urgency of the matter and the logistical constraints of the translation section.

FOR THE FOREGOING REASONS, I:

12. **AUTHORISE** disclosure of all documents listed in **Annex A** of this Decision to the Trial Chamber and the Parties in Case 002/02. Owing to the confidential and sensitive nature of the ongoing investigations in Case 004, this disclosure is authorised with the following modalities and restrictions:
 - (a) that all material provided from Case 004 be treated as confidential;
 - (b) in the event that the material provided pursuant to this decision is admitted as evidence in Case 002/02, it shall be treated as confidential;

¹¹ D193/93, Annex A

¹² D193/93, Annex A.

¹³ Annex C, Email from Trial Chamber to International CIJ, 23 August 2016.

¹⁴ Annex C, Email response from International CIJ to Trial Chamber, 23 August 2016.



- (c) no materials provided pursuant to this decision shall be disseminated beyond those persons explicitly identified herein;
- (d) in the event that the witnesses or civil party applicants 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;
- (e) no material provided pursuant to **Annex A** 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;
- (f) 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 or civil party applicants only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses by other information;
- (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 Rules 22(5) and 12 *ter* (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 Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the documents authorised for disclosure, he/ she shall immediately take all measures to secure and return the copy to the CIJs; and
- (l) 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.

13. **EXEMPT** Civil Party Applicants PREAP Chhon and OM Yoeurn from paragraphs 12 (d) and (f) above.

14. **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 Rules 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.

- 15. **STATE** 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.
- 16. **REQUEST** the Trial Chamber to ensure the compliance by all Parties with this Decision.

Dated 22 August 2016, Phnom Penh



Judge Michael Bohlander

សមាជិកអង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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