



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

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
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SAM RANA	

Before: **The Co-Investigating Judges**
 Date: **16 September 2016**
 Language(s): **English [Original]**
 Classification: **CONFIDENTIAL**

**DECISION ON INTERNATIONAL CO-PROSECUTOR'S
REQUEST TO DISCLOSE CASE 004 DOCUMENTS INTO
CASE 002 (D193/97)**

Distribution:

Trial Chamber

Co-Prosecutors

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Nicholas KOUMJIAN

Ao An Defence

MOM Luch
Richard ROGERS
Göran SLUITER

Yim Tith Defence

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Barnabe NEKUI
Lyma NGUYEN
Beini YE



I. PROCEDURAL HISTORY & SUBMISSIONS

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”* in which I adopted a range of restrictions and modalities for disclosure.²
4. On 13 September 2016, the ICP filed a request for authorisation to disclose ten documents from Case 004 relevant to Case 002/02 proceedings (“Request”).³
5. Due to the urgency caused by the scheduled testimony of concerned witnesses, the ICP provided the Defence with courtesy copy of the Request and requested the Defence to respond by email. The Defence of Ao An and Yim Tith responded by email on 13 and 14 September, respectively, stating that they did not intend to respond. The emails from the Defence are attached here as Annex A.

II. DISCUSSION

6. The ten documents requested are comprised of two written records of interviews (“WRIs”), three Investigative Action Reports (“IARs”); and five attachments to a previously disclosed WRI.⁴ All, but one, requested documents are *prima facie* relevant to Case 002, as they concern witnesses scheduled to testify before the Trial Chamber, and their disclosure will not jeopardise the integrity and confidentiality of the investigations. In so far as their evidence concerns ongoing investigation in Case 004, the four witnesses can be categorised as Category A.
7. The one document, D219/786, which I do not consider *prima facie* relevant does not contain a statement of the witness the ICP indicates it does. While the name of the witness appears on the document, he was only spoken to with regard to the whereabouts of another person. Hence, the disclosure of said IAR will be denied.
8. Further, the two remaining IARs, D118/70 and D118/74, will be authorised for disclosure with redactions, providing only the material specifically requested with respect to the concerned witnesses.
9. Finally, I note that the five attachments to a previously disclosed WRI, D219/671, ought to have been requested for disclosure with due diligence along with the original WRI. This allows for better and more efficient use of the resources of my

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-D193/97, *International Co-Prosecutors’ Request to Disclose Case 004 Documents into Case 002*, 13 September 2016.

⁴ Request, Annex A.



office when assisting the Trial Chamber and Parties in Case 002 by authorising timely and regular disclosure.

10. In keeping with ongoing review of the need for the application of Category C to the witnesses, I find that three previously disclosed witnesses who have testified before the Trial Chamber no longer merit the more stringent classification. As such, I will vary the categorization of PRAK Yut, YOU Vann, and NOP Ngim to Category A. While maintaining the confidentiality of their disclosed material in order to preserve the integrity of the judicial investigations, I will no longer require that their identities be maintained as confidential.
11. This decision is filed in English, with a Khmer translation 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 nine documents listed in **Annex B** to the Trial Chamber and the Parties in Case 002. Owing to the confidential and sensitive nature of the ongoing investigations in Case 004, these documents are authorised for disclosure as indicated in **Annex B** 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, it shall be marked confidential;
- (c) in the event the witnesses or civil parties whose documents are authorised for disclosure are called to testify, they can do so in open sessions of the court provided their names and identities are kept confidential;
- (d) no material provided pursuant to this decision shall be disseminated beyond those explicitly identified herein;
- (e) 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;
- (f) any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed shall identify the witnesses/ civil party applicants only by their assigned pseudonym for Case 002 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 Rule 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 Trial Chamber or Parties in Case 002 learn of an unauthorised copy of the material disclosed, he/ she shall immediately take all measures to secure and return the copy to the CIJs; and
- (l) should any member of the Trial Chamber or Parties in Case 002 learn of a breach of these conditions and restrictions, he/ she shall immediately report such breach to the CIJs.

13. **DENY** the Request with respect to the IAR D219/786;


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. **VARY** the categorisation of witnesses PRAK Yut, YOU Vann, and NOP Ngim from Category C to Category A, subject to the conditions above with the exception of paragraphs 12 (c) and 32 (f);

16. **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 a Closing Order is issued in Case 004; and

17. **REQUEST** the Trial Chamber to ensure the compliance by all Parties with this Decision.

Dated 16 September 2016, Phnom Penh



[Handwritten Signature]

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