

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR INVESTIGATIVE  
ACTION TO PLACE MAPS AND CASE 002 MATERIALS ONTO CASE FILE 004/2**

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## I. INTRODUCTION

1. The International Co-Prosecutor (“Co-Prosecutor”) respectfully requests that the Co-Investigating Judges (“CIJs”) place materials onto Case File 004/2 that are directly relevant to the investigation of Ao An. The Co-Prosecutor submits that this request is sufficiently precise and explains why the action is necessary for the conduct of the investigation.<sup>1</sup>

## II. PROCEDURAL HISTORY

2. On 27 March 2015 and 14 March 2016, the International Co-Investigating Judge (“ICIJ”) informed Ao An that there is clear and consistent evidence that he may be responsible for crimes that were committed in the Central Zone, including murder, imprisonment, torture, persecution of internal enemies and former Lon Nol soldiers, persecution and genocide of the Cham, and other inhumane acts including forced marriage.<sup>2</sup>
3. On 16 September 2016, the ICIJ instructed the Co-Prosecutor to follow a new procedure when submitting requests to place confidential documents from Case File 002 onto Case File 004.<sup>3</sup> While previously the Co-Prosecutor had relied on the fact that the Trial Chamber had granted the CIJs access to all confidential documents in Case 002, the revised procedure required the Co-Prosecutor to obtain permission from the Trial Chamber to disclose each confidential document to the Defence before requesting that the CIJs place documents on the case file. In keeping with the ICIJ’s instruction, on 11 November 2016, the Co-Prosecutor sought authorization from the Trial Chamber to disclose the confidential documents listed in Annex A to the Case 004 (Ao An and Yim Tith) Defence teams.<sup>4</sup> Four weeks later, on the afternoon of 7 December 2016, the Trial

<sup>1</sup> As required by the Internal Rules and the Pre-Trial Chamber. *See* Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015, Rules 55(5), 55(10) and 58(6); *Case 002-D164/3/6* Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 12 November 2009, para. 43; *Case 002-D164/4/13* Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive, 18 November 2009, para. 44.

<sup>2</sup> **D242** Written Record of Initial Appearance of Ao An, 27 March 2015; **D303** Written Record of Further Appearance of Ao An, 14 March 2016.

<sup>3</sup> **D322/6** Decision on Yim Tith’s Request for Further Information and Documents Regarding the International Co-Prosecutor’s Request to Place CPK Policy Materials on Case File 004, 16 September 2016, paras 12-14, 18.

<sup>4</sup> As indicated by the “C” in the second column of Annex A. *See also* Case 002-E450 (Confidential) International Co-Prosecutor’s Request for Authorization to Provide Confidential Case 002 Documents to the Case 004 Defence Teams, 11 November 2016.

Chamber granted authorization.<sup>5</sup> The next day the Co-Prosecutor disclosed the confidential documents to the Case 004 Defence teams and filed a request to add the confidential and publicly available materials to Case File 004 (“Original Request”).<sup>6</sup>

4. The following morning, 9 December 2016, the parties were notified of the ICIJ’s decision to shorten the deadline for the Case 004 Defence teams to file a response to the Original Request, setting a deadline of 12 p.m. on 14 December 2016.<sup>7</sup>
5. On 12 December 2016, the Yim Tith Defence team requested via email to be given the full 10 days, until 19 December 2016, to file a response to the Original Request.<sup>8</sup> The ICIJ denied the request.<sup>9</sup> Also on 12 December 2016, the Ao An Defence team formally submitted a request to be given the full 10 days to file a response.<sup>10</sup>
6. Later that afternoon, the Co-Prosecutor informed the CIJs and Case 004 parties that he would withdraw the Original Request and would refile it during the 15-day period allowed under Rule 66(1) to request further investigative action after the closure of the investigation, thereby allowing the Defence ample time to respond in full.<sup>11</sup> A formal withdrawal notice was filed on 13 December 2016<sup>12</sup> and notified to the parties on 15 December 2016.
7. On 16 December 2016, the Co-Investigating Judges concluded the judicial investigation against Ao An<sup>13</sup> and severed the Ao An case from the Yim Tith investigation, creating

<sup>5</sup> Case 002-E450/1 (Confidential) Trial Chamber Memorandum entitled “Decision on International Co-Prosecutor’s Request for Authorization to Provide Confidential Case 002 Documents to the Case 004 Defence Teams”, 7 December 2016, notified at 4:34 p.m. (the email notification is attached as **Annex 1**).

<sup>6</sup> The documents were disclosed by a link sent in an email message from an OCP Assistant Co-Prosecutor to the Ao An and Yim Tith Defence teams at 10:05 a.m. on 8 December 2016 (see **Annex 2**). The request to the OCIJ was submitted at 1:18 p.m. as **D333** International Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004 (see filing form, attached as **Annex 3**). The Request was notified to the parties the following day at 11:26 a.m.

<sup>7</sup> See email from the OCIJ Legal Officer to the parties, sent 9 December 2016 at 10:36 a.m. (attached as **Annex 4**).

<sup>8</sup> See email from Marija Brackovic sent on 12 December 2016 at 1:34 p.m. (attached as **Annex 5**).

<sup>9</sup> See email from the OCIJ Legal Officer to the parties, sent 12 December 2016 at 2:05 p.m. (attached as **Annex 6**).

<sup>10</sup> **D333/1** Motion to Reconsider Decision on Filing of Responses to International Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004, 12 December 2016.

<sup>11</sup> See email from the OCP Assistant Co-Prosecutor sent on 12 December 2016 at 4:15 p.m. (attached as **Annex 7**).

<sup>12</sup> **D333/2** Notification of Withdrawal of the Co-Prosecutor’s Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004 (D333), 13 December 2016, filed at 13:47 (see filing form, attached as **Annex 8**).

<sup>13</sup> **D334** Notice of Conclusion of Judicial Investigation Against Ao An, 16 December 2016 (“Closure Notice”).

Case File 004/2 for the Ao An proceedings<sup>14</sup> and opening the 15-day window for the parties to file any further requests for investigative action.<sup>15</sup>

8. The Co-Prosecutor now refiles a reduced version of the request pursuant to Rule 66(1). The Original Request has been modified, particularly by removing documents the Co-Prosecutor deems are relevant only to the Yim Tith investigation, which is no longer part of the Ao An case, and by removing documents which were added *proprio motu* by the ICIJ to the Case File after the filing of the Original Request.<sup>16</sup>

### III. REQUEST

9. The Co-Prosecutor requests that the CIJs place onto Case File 004/2 maps and Case File 002 documents and videos (collectively, the “Materials”) which are identified and described briefly here and in more detail in attached Annex A. All of the Materials are conducive to ascertaining the truth and are directly relevant to the Ao An investigation into crimes committed in the Central Zone, or assist in demonstrating that the crimes were part of a widespread, systematic attack against civilians.

#### *National Policy documents*

10. *Document 1* is a six-page booklet published by the Ministry of Education that explains the organizational divisions within Democratic Kampuchea (“DK”) and demonstrates the hierarchical structure and functioning of the DK regime.
11. *Document 2* is a media report of the 17 April 1978 anniversary speech Khieu Samphan made in which he discussed, amongst other things, national construction efforts and the CPK’s anti-Vietnamese policies. It also summarizes resolutions adopted by the Party regarding agricultural production goals for 1978 that were to be attained “at all costs”, and the need to increase the population. This speech and the publication of the resolutions are examples of the dissemination of CPK policies that were then implemented on the ground, and it is important to have a record of the numerous occasions that Party leaders passed such instructions to the masses.
12. Also relating to Khieu Samphan are *Materials 3 and 4*, which are excerpted video interviews and their corresponding transcripts in which Khieu Samphan discusses Ta

<sup>14</sup> **D334/1** Order for Severance of Ao An from Case 004, 16 December 2016.

<sup>15</sup> **D334** Closure Notice, para. 6.

<sup>16</sup> See email from Judge Bohlander sent on 13 December 2016 at 11:28 a.m. (**Annex 9**).

Mok's prominence in the CPK and his importance to Pol Pot, as well as the coercive nature of cooperatives. This evidence is important for an understanding of the way in which Ta Mok tasked subordinates such as Ao An with carrying out the policies of the CPK, and to demonstrate that force and coercion were understood to be inherent in CPK policies and were both intended and accepted by high-level leaders.

*Case 002/02 Trial Transcripts*

13. There are two types of trial transcripts contained in Annex A. The first type has been finalized and assigned a Case 002 number beginning with the E1/ prefix (*Materials 5-7 and a portion of Materials 8-9*). The second type of transcript is only available in confidential draft form as it is still being finalized by the translation unit (*Materials 10-13 and the remaining portions of Materials 8-9*). Mindful of the time constraints imposed by the closure of the investigation, the Co-Prosecutor respectfully requests that the draft form of these transcripts be used for the purpose of review, but that the finalized transcripts be placed on the Case File once they become available.
14. The specific reasons the witness trial transcripts are requested are detailed in Annex A, but generally, they contain evidence from experts and witnesses who already have statements or other evidence on Case File 004/2 and their testimony supplements that evidence or allows for a better understanding of evidence on the Case File. Two sets of requested transcripts are from 2015 and the remainder are from August to October of this year. All were public hearings which the parties could monitor at the time the proceedings were held.

*Maps*

15. The Co-Prosecutor requests that the maps listed in Annex A (*Materials 14-22*) be added to the Case File in order to assist in demonstrating and understanding the location of crimes, their widespread and systematic nature, paths of forced transfer, proximity of Ao An and his subordinates to the crimes, and the boundaries of relevant communes, districts, sectors and zones.

*Other Considerations*

16. The Co-Prosecutor is mindful of the evidence already on Case File 004/2 and has tried to

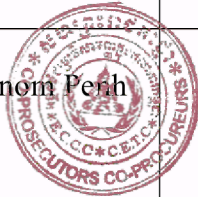
avoid requesting duplicative Materials for addition. For the reasons noted above and described further in Annex A, the requested Materials provide details that are not yet on the Case File or are crucial for a clearer understanding of the evidence that is already there.

17. This Request respects Ao An's fair trial rights because it would not unduly delay proceedings.<sup>17</sup> It concerns a small number of Materials selected from more than 1,000 documents that are on Case File 002 but not on Case File 004/2. Annex A provides a succinct yet detailed summary of each of the Materials and its relevance in an effort to ensure the review is not overly burdensome to the parties or to the OCIJ.

#### IV. CONCLUSION

18. The requested action is sufficiently specific, conducive to ascertaining the truth, necessary to the investigation, and respectful of Ao An's fair trial rights. The Co-Prosecutor therefore requests that the Materials be placed on Case File 004/2.

Respectfully submitted,

Date	Name	Place	Signature
21 December 2016	Nicholas KOUMJIAN International Co-Prosecutor	Phnom Penh	

<sup>17</sup> In keeping with *Case 002-D164/3/6* Decision on the Appeal from the Order on the Request to Seek Exculpatory Evidence in the Shared Materials Drive (Pre-Trial Chamber), 12 November 2009, para. 43 (noting that Charged Person has the right to be tried within a reasonable time as enshrined in Article 14 of the ICCPR and in Internal Rule 21(4)). See also **D322/6** 16 September Decision, para. 9.