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ឧត្តមនាយកបណ្ឌិតសំណុំរឿង / Case File Officer/L'agent chargé  
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E319/63/2

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**  
Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**TRIAL CHAMBER**

**សាធារណៈ / Public**

**TO:** All Parties, Case 002

**FROM:** NIL Nonn, President of the Trial Chamber

**CC:** All Trial Chamber Judges; Trial Chamber Senior Legal Officer

**SUBJECT:** Decision on KHIEU Samphan Response to the International Co-Prosecutor's Proposed Disclosure of Documents from Cases 003 and 004 (E319/63)

Date: 27 December 2016



1. The Trial Chamber is seized of submissions by the KHIEU Samphan Defence filed on 15 December 2016 (E319/63/1) in response to the International Co-Prosecutor's Proposed Disclosure of Documents from Cases 003 and 004 dated 2 December 2016 (E319/63). The KHIEU Samphan Defence opposes the certification of 12 of the documents proposed for disclosure by the International Co-Prosecutor because it deems them to be irrelevant, useless or repetitive to the subject matter of Case 002/02 (E319/63/1, paras 4-5, 7, 9-10). The Defence also notes that four of the documents proposed for disclosure are Written Records of Interview (WRI) of witnesses who testified before the ECC in Case 002/02 and requests that the audio recordings of these interviews be disclosed as well (E319/63/1, paras 6, 10).
2. As noted by the KHIEU Samphan Defence, the latest procedure governing the disclosure of documents from Cases 003 and 004 to Case 002/02 was established through a decision rendered by the International Co-Investigating Judge (ICIJ) on 31 October 2016 (E319/62). The ICIJ decided that the Trial Chamber must certify any request by the Prosecution for disclosure of material from Cases 003 and 004, and may also request disclosure directly (E319/62, paras 29-30). Once a Prosecution request for disclosure has been certified, it will be considered by the ICIJ, subject to any responses filed by the Defence in Cases 003 and 004 (E319/62, para. 30(iv)).
3. Notably, there is no provision for Case 002/02 Defence teams filing responses to a Prosecution disclosure request. The Defence in Case 002/02 is only mentioned in the disclosure process in relation to assessing whether the new material qualified for

admission into evidence in Case 002/02 (E319/62, para. 30(ii)). While the KHIEU Samphan Defence has the right to oppose the admission into evidence in Case 002/02 of any of the materials disclosed from Cases 003 and 004, no such admission request has yet been made. It however has no standing to oppose the International Co-Prosecutor's disclosure request set out in E319/63.

4. As for the KHIEU Samphan Defence's request for disclosure of the audio recordings from four WRIs proposed for disclosure, the Chamber considers it to be premature since the documents have not yet been admitted or sought for admission (E319/63/1, paras 6, 10). The Chamber however notes the Defence submissions that prior statements of witnesses who testified before the court will be admitted according to established practice (E319/63/1, para. 6). Accordingly, the Chamber recalls its general order that the Co-Prosecutors seek authorisation from the OCIJ to disclose the audio recordings of all Case 003 and 004 WRIs admitted or sought for admission in Case 002/02 (E441/2, p. 9) and reminds the Co-Prosecutors of their disclosure obligations in this regard.

5. This constitutes the Chamber's official response to E319/63/1.