

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**



**FILING DETAILS**

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF DOCUMENTS FROM  
CASE FILE 004 RELEVANT TO CASE 002**

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**Co-Investigating Judges**

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## I. DISCLOSURE

1. The International Co-Prosecutor (“the Co-Prosecutor”) hereby discloses 20<sup>1</sup> statements and three related documents<sup>2</sup> admitted in Case 004 which are relevant to the trial in Case 002/02. While all of the documents are relevant to the trial in Case 002/02, some of the documents also fall within two categories of documents (“Defence Categories”) that the Nuon Chea Defence have identified as being, in their view, “potentially exculpatory” in the context of the Case 002/01 appeal.<sup>3</sup> All of these documents are identified in Strictly Confidential **Annex G**.
2. The Co-Prosecutor refers the Chamber to his filing E319<sup>4</sup> regarding the prior procedural history of the Co-Prosecutors’ disclosure efforts. More recently, on 15 December 2014, the Co-Prosecutor filed a request to disclose additional documents relevant to various aspects of the Case 002/02 trial (including documents falling within the Defence Categories).<sup>5</sup> On 21 January 2015, the International Co-Investigating Judge (“the ICIJ”) rendered a partial decision on the 15 December 2014 Request granting the Co-Prosecutor permission to disclose the documents identified in **Annex G**.<sup>6</sup> On 30 January 2015, the ICIJ issued a decision correcting an error in the 21 January 2015 Decision and granting leave for disclosure to Standby Counsel for Khieu Samphan in addition to Defence Counsel for both Accused and the Lead Co-Lawyers.<sup>7</sup>
3. The Trial Chamber has stated that the obligation to disclose relevant material, whether inculpatory or exculpatory, is an obligation that is owed to the Trial Chamber, as well as

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<sup>1</sup> Three of the 20 statements are corrected statements, while one is a statement disclosed in redacted form in compliance with the order of the ICIJ. Case 004-**D193/8** Partial Decision on International Co-Prosecutor’s Request to Disclose Case 004 Interviews Relevant to the Case 002/02 Trial and Case 002/01 Appeal, Dated 21 January 2015 (“21 January 2015 Decision”), para. 14; Case 004-**D193/8.1** Annex A to the 21 January 2015 Decision. Case 004-**D193/10** Amendment of Disclosure Decisions D193/4, D193/6, and D193/8, 30 January 2015 (“Amendment Decision”).

<sup>2</sup> The three related documents are requests for corrections of three of the witness statements. Case 004-**D193/8.1** Annex A to the 21 January 2015 Decision.

<sup>3</sup> **F2/4** Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, 25 November 2014, para. 33. While the Co-Prosecutor does not agree that the categories defined by the Nuon Chea Defence have exculpatory relevance to the Case 002/01 appeal, the Co-Prosecutor requested the ICIJ to give priority consideration to disclosure of these documents so the Nuon Chea Defence would have the chance to review them for purposes of their appeal.

<sup>4</sup> **E319** International Co-Prosecutor’s Disclosure of Statements from Case File 004, 17 October 2014, paras. 2-4.

<sup>5</sup> Case 004-**D193/7** International Co-Prosecutor’s Request to Disclose Case 004 Interviews Relevant to the Case 002/02 Trial and Case 002/01 Appeal, 15 December 2014 (“15 December 2014 Request”).

<sup>6</sup> 21 January 2015 Decision; Amendment Decision paras. 5-6. The 21 January 2015 Decision also granted leave to disclose four other statements, disclosure of which had previously been authorized by a separate decision. Because those four interviews have previously been disclosed, they are not disclosed again at this time.

<sup>7</sup> Amendment Decision.

the Accused, as it is “in the interests of ascertaining the truth that the Trial Chamber has access to these documents.”<sup>8</sup> Moreover, this Chamber has previously held that “Internal Rule 53(4) imposes a continuing obligation on the Co-Prosecutors to disclose to the Trial Chamber any material in its possession that may suggest the innocence or mitigate the guilt of the Accused or affect the reliability of the evidence.”<sup>9</sup> The Trial Chamber has instructed the Co-Prosecutors to first direct their disclosure requests to the Chamber seized of the evidence the Co-Prosecutors seek to disclose, and then petition the Trial Chamber for admission of any documents thereby approved for disclosure.<sup>10</sup>

4. The Trial Chamber has previously ordered that all disclosures from Cases 003 and 004 to Case 002 should be filed and notified to the Trial Chamber provisionally on a strictly confidential basis, and that the Trial Chamber will then make a determination as to whether the documents should be reclassified as confidential.<sup>11</sup> Therefore, the Co-Prosecutor notifies the Trial Chamber of the statements contained in **Annex G** on a strictly confidential basis. The ICIJ also authorized the Co-Prosecutors to disclose the 21 January 2015 Decision solely to the Trial Chamber.<sup>12</sup> The 21 January 2015 Decision and Annex A thereto are attached as strictly confidential **Annexes 1 and 1A respectively**.<sup>13</sup>
5. The ICIJ’s authorization to disclose comes with a number of restrictions and obligations, and the ICIJ requests that the Trial Chamber ensure compliance by all parties with the disclosure decisions.<sup>14</sup> The ICIJ’s disclosure authorization imposes the following restrictions and obligations on the disclosure of the documents:
  - a. That they be treated as confidential;<sup>15</sup>
  - b. That no electronic copies be provided to any party other than the Trial Chamber;<sup>16</sup>

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<sup>8</sup> **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012.

<sup>9</sup> **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, at p. 1.

<sup>10</sup> **E127/7/1** Information Concerning Case 003 and Case 004 Witness Statements that may be relevant to Case 002, 16 August 2013, para. 2.

<sup>11</sup> **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, at p. 1.

<sup>12</sup> 21 January 2015 Decision, para. 19.

<sup>13</sup> The Amendment Decision was distributed to the Trial Chamber (as well as the Co-Prosecutor) by the ICIJ’s filing.

<sup>14</sup> 21 January 2015 Decision, paras. 14, 15, & 18; Amendment Decision, para. 8.

<sup>15</sup> Amendment Decision, para. 8(a).

<sup>16</sup> Amendment Decision, para. 8(b).

- c. That the documents be provided to the Defence Counsel of both the Accused, Standby Counsel of Khieu Samphan, and the Lead Co-Lawyers through marked and numbered paper copies;<sup>17</sup>
- d. That the OCP maintain a written record of the marked and numbered paper copies made and the party to whom each paper copy was disclosed in a manner that can be reviewed, if necessary;<sup>18</sup>
- e. That the Defence Counsel, Standby Counsel, and Lead Co-Lawyers shall disclose the materials only to those members of their teams that are officially retained under Internal Rule 22(5) and 12 *ter* (4), respectively;<sup>19</sup>
- f. That the Defence Counsel, Standby Counsel, and Lead Co-Lawyers are not authorised to 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;<sup>20</sup>
- g. That the Defence Counsel, Standby Counsel, and Lead Co-Lawyers shall maintain a written record of the circulation of the paper-copies provided to them in a manner that can be reviewed, if needed;<sup>21</sup>
- h. That should the materials be admitted as evidence in Case 002/02, they are treated as confidential;<sup>22</sup>
- i. That none of the material included in this disclosure shall be disseminated beyond the individuals explicitly identified herein;<sup>23</sup>
- j. That none of the material included in this disclosure shall be disseminated to the public, in any format or via any form of media whatsoever, and that for the purposes of this restriction “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 their representatives, the Accused, and any employees who have been officially retained under Internal Rule 22(5) and 12 *ter* (4) authorised by the Defence Counsel,

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<sup>17</sup> Amendment Decision, para. 8(c).

<sup>18</sup> Amendment Decision, para. 8(d).

<sup>19</sup> Amendment Decision, para. 8(e).

<sup>20</sup> Amendment Decision, para. 8(f).

<sup>21</sup> Amendment Decision, para. 8(g).

<sup>22</sup> Amendment Decision, para. 8(h).

<sup>23</sup> Amendment Decision, para. 8(i).


Standby Counsel, and Lead Co-Lawyers, respectively, to have access to the confidential material. “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;<sup>24</sup>

- k. That should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the materials provided, he/she shall immediately take all measures to secure and return the copy to the CIJs;<sup>25</sup>
  - l. That 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;<sup>26</sup> and
  - m. That these restrictions remain in place until they are varied by an explicit order to that effect by the CIJs, or the investigations in Case 004 are deemed closed.<sup>27</sup>
6. In compliance with these restrictions, the Co-Prosecutor will be making available as soon as possible to the Lead Co-Lawyers, Nuon Chea Defence, Khieu Samphan Defence, and Standby Counsel for Khieu Samphan one marked and numbered paper copy of the combined materials each.

## II. RELIEF REQUESTED

7. Therefore, the Co-Prosecutor requests that the Trial Chamber obtain and admit into Case File 002 the statements identified in **Annex G**, in compliance with the ICIJ’s disclosure authorization attached as **Annexes 1 and 1A**, as modified by the Amendment Decision.

Respectfully submitted,

Date	Name	Place	Signature
11 February 2015	Nicholas KOUMJIAN Co-Prosecutor	Phnom Penh	

<sup>24</sup> Amendment Decision, paras. 8(j), 9.

<sup>25</sup> Amendment Decision, para. 8(k).

<sup>26</sup> Amendment Decision, para. 8(l).

<sup>27</sup> 21 January 2015 Decision, para. 17.