

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

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC **Party Filing:** International Co-Prosecutor

Filed to: Trial Chamber **Original Language:** English

Date of document: 18 February 2015



CLASSIFICATION

Classification of the document suggested by the filing party: PUBLIC with four STRICTLY CONFIDENTIAL Annexes

Classification by the Chamber: សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF DOCUMENTS FROM
CASE FILE 004 RELEVANT TO CASE 002 PURSUANT TO CASE 004-D193/11**

Filed by:

Co-Prosecutors
Nicholas
KOUMJIAN

Copied To:
CHEA Leang

Distributed to:

Trial Chamber
Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Copied to:

Accused
NUON Chea
KHIEU Samphan

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN
Anta GUISSÉ

Standby Counsel
TOUCH Voleak
Calvin SAUNDERS

Co-Investigating Judges
Judge YOU Bunleng
Judge Mark B. HARMON

I. DISCLOSURE

1. The International Co-Prosecutor (“the Co-Prosecutor”) hereby discloses 90 statements (the “Materials”) admitted in Case 004 which 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.¹ All of the Materials are identified in Strictly Confidential **Annex H**, and indications are given as to those responsive to the Defence Categories.
2. The Co-Prosecutor sought leave to disclose the materials included in this disclosure via two requests (collectively, the “Requests”) made to the International Co-Investigating Judge (“ICIJ”) on 16 December 2014 and 29 January 2015.² The ICIJ granted the Requests in part on 4 February 2015, which decision and its two annexes the Co-Prosecutor attaches as Strictly Confidential **Annexes 1, 2, and 3**.³
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 the Accused, as it is “in the interests of ascertaining the truth that the Trial Chamber has access to these documents.”⁴ 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.”⁵ 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.⁶

¹ **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 the disclosure of these documents so the Nuon Chea Defence would have the chance to review them for purposes of their appeal.

² 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; Case 004-**D193/9** International Co-Prosecutor’s Request to Disclose Case 004 Statements Relevant to the Case 002/02 Trial, 29 January 2015.

³ Case 004-**D193/11** Decision on the International Co-Prosecutor’s Case 002 Disclosure Requests D193/7 and D193/9, 4 February 2015.

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

⁵ **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, at p. 1.


⁶ **E127/7/1** Information concerning Case 003 and Case 004 witness statements that may be relevant to Case 002, 16 August 2013, para. 2.

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.⁷ Therefore, the Co-Prosecutor notifies the Trial Chamber of the statements contained in **Annex H** on a strictly confidential basis.
5. The ICIJ's authorization to disclose is subject to the requirements outlined in previous ICIJ decisions and set out in previous disclosure notices.⁸ 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 each of the Materials.

II. RELIEF REQUESTED

6. Therefore, the Co-Prosecutor requests that the Trial Chamber obtain and admit into Case File 002 the statements identified in **Annex H**.

Respectfully submitted,

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



⁷ **E127/4** Trial Chamber Memorandum “Disclosure of witness statements for witnesses who may testify in Case 002”, 24 January 2012, at p. 1.

⁸ See, e.g., **E319.12.1.1** 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, at paras. 14, 15, 17, and 18.