

**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

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**CLASSIFICATION**

**Classification of the document suggested by the filing party:** PUBLIC with One STRICTLY CONFIDENTIAL Annex

**Classification by the Chamber:** សាធារណៈ/Public

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**Signature:**




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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF ONE CASE 004  
DOCUMENT RELEVANT TO CASE 002 PURSUANT TO CASE 004-D193/59**

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## I. DISCLOSURE

1. The International Co-Prosecutor (“Co-Prosecutor”) hereby discloses one annex to a Written Record of Interview (“WRI”) of 2-TCW-918. The WRI itself has already been disclosed to the Trial Chamber and the Parties.<sup>1</sup> The document is identified in Strictly Confidential **Annex 1**.
2. The Co-Prosecutor sought leave to disclose the annex included in this disclosure via one request (“Request”) made to the Co-Investigating Judges on 1 December 2015.<sup>2</sup> On 2 December 2015, as advance courtesy, the International Co-Investigating Judge (“ICIJ”) informed the Office of the Co-Prosecutors (“OCP”) that he would authorize the disclosure of the requested annex in a written decision during the course of the day. Noting the urgent nature of the request, he advised the OCP to proceed with providing disclosure to the Trial Chamber and the Parties at the OCP’s earliest convenience.<sup>3</sup> On behalf of the International Co-Prosecutor, the Trial Chamber and the Parties in Case 002 were informed of the ICIJ’s informal decision by email with the respective annex attached that same day.<sup>4</sup> On 3 December 2015, the ICIJ issued his formal decision to authorize the disclosure of the annex.<sup>5</sup> That decision was distributed to the Trial Chamber on its issuance.
3. The Trial Chamber has stated that consideration of prior statements of witnesses called to testify assists in evaluating their credibility and that it is in the interests of ascertaining the truth that the Chamber and the Parties have access to all of the statements of witnesses and Civil Parties who will be heard in Case 002/02.<sup>6</sup> Therefore, the Co-Prosecutors have an obligation to disclose such documents in order to enable the Chamber to make a complete assessment of their testimony.<sup>7</sup> The annex subject of this motion is attached to a WRI of a witness who testified in Case 002/02 and which was previously disclosed. In accordance with his disclosure obligations the Co-Prosecutor therefore discloses the annex to the Chamber and the Parties. The Trial Chamber has instructed the Co-

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<sup>1</sup> **E319/19** International Co-Prosecutor’s Disclosure of Documents from Case File 004 Relevant to Case 002 Pursuant to Case 004-D193/15, 18 March 2015, Annex K.

<sup>2</sup> Case 004-**D193/58** International Co-Prosecutor’s Urgent Request to Disclose a Case 004 Document into Case 002, 1 December 2015.

<sup>3</sup> Email sent by Priyanka Chirimar, Legal Officer, Office of the Co-Investigating Judges, to Sarah de Mol, Legal Consultant, Office of the Co-Prosecutors, 2 December 2015, 11:07.

<sup>4</sup> Email sent by Sarah de Mol, Legal Consultant, Office of the Co-Prosecutors, to Kenneth Roberts, Senior Legal Officer, Trial Chamber, and CC’ed to the Parties in Case 002, 2 December 2015, 12:56.

<sup>5</sup> Case 004-**D193/59** Decision on the International Co-Prosecutor’s Urgent Disclosure Request D193/58, 3 December 2015 (“Decision”).

<sup>6</sup> **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, 22 October 2015, para. 25.

<sup>7</sup> *Ibid.*

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>8</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>9</sup> Therefore, the Co-Prosecutor notifies the Trial Chamber of the document contained in **Annex 1** on a strictly confidential basis.
5. Authorisation to disclose is subject to the restrictions and requirements set out in the Co-Prosecutor's previous disclosure filings.<sup>10</sup> In addition, the ICIJ authorised disclosure of the annex subject to the condition that in the event the witness is called to testify before the Trial Chamber, he or she can only do so in open session provided his or her name and identity is kept confidential.<sup>11</sup> The ICIJ also noted that the annex may be used in open court, but that the witness should only be referred to by a pseudonym and that his or her name should not be mentioned in public session.<sup>12</sup> Further, anybody reading from, citing, or otherwise using the annex or the written record of interview to which it is attached must use descriptions reasonably calculated to avoid identifying the witness by other information.<sup>13</sup>

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<sup>8</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>9</sup> **E127/4** Trial Chamber Memorandum "Disclosure of witness statements for witnesses who may testify in Case 002", 24 January 2012, p. 1.

<sup>10</sup> See, e.g., **E319/24** International Co-Prosecutor's Disclosure of Documents from Case File 004 Relevant to Case 002 Pursuant to Case 004-D193/24, 9 June 2015, para. 5.

<sup>11</sup> Decision, para. 11 (c).

<sup>12</sup> *Ibid.*, para. 9.

<sup>13</sup> *Ibid.*, para. 14 (f).

**II. RELIEF REQUESTED**

6. Therefore, the Co-Prosecutor requests that the Trial Chamber obtain and admit onto Case File 002 the document identified in **Annex 1**.

Respectfully submitted,

Date	Name	Place	Signature
8 December 2015	Nicholas KOUMJIAN Co-Prosecutor	Phnom Penh	 