

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

**FILING DETAILS**

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF CIVIL PARTY  
APPLICATIONS AND WRITTEN RECORDS OF INVESTIGATION ACTION INTO  
CASE 002**

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**Co-Investigating Judges**

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Judge Michael BOHLANDER

## I. DISCLOSURE

1. The International Co-Prosecutor (“Co-Prosecutor”) hereby discloses 7 Written Records of Investigative Action, 10 civil party applications and 3 Victim Support Section Reports admitted in Cases 003 and/or 004 that satisfy the Co-Prosecutors’ disclosure obligations in Case 002 (“Materials”). The Materials are identified in two strictly confidential annexes: **Annex A** and **Annex B**.
2. The Co-Prosecutor sought leave to disclose the Materials included in this disclosure via six requests (collectively, the “Requests”) made to the Co-Investigating Judges (“CIJ’s”) on 11 August 2015,<sup>1</sup> 13 August 2015,<sup>2</sup> 7 October 2015,<sup>3</sup> 16 October 2015,<sup>4</sup> and 21 October 2015.<sup>5</sup> The International Co-Investigating Judge (“ICIJ”) granted the disclosure of the Requests in relation to the documents currently being disclosed on 17 December 2015,<sup>6</sup> 28 January 2016,<sup>7</sup> and 29 January 2016<sup>8</sup> (“Decisions”). Those decisions were distributed to the Trial Chamber on their issuance.
3. The Co-Prosecutor has taken note of the Trial Chamber’s instructions concerning the Co-Prosecutors’ disclosure obligations in Case 002/02 in its decision of 22 October 2015.<sup>9</sup> The Trial Chamber directed the Co-Prosecutors to disclose to the Chamber and the parties exculpatory evidence from Cases 003 and 004 on a continuing basis until the completion of Case 002/02.<sup>10</sup> It also directed the Co-Prosecutors to disclose Case 003 and 004 statements of all individuals who have been proposed to testify in Case 002/02.<sup>11</sup> The Trial Chamber further held that any additional Case 003

<sup>1</sup> Case 003-**D100/13** International Co-Prosecutor’s Urgent Request to Disclose Case 003 Civil Party Applications and Victims Support Section Reports Relevant to the Cham into Case 002, 11 August 2015.

<sup>2</sup> Case 003-**D100/14** International Co-Prosecutor’s Request to Disclose Case 003 Civil Party Applications and Victims Support Section Reports into Case 002, 13 August 2015; Case File No. 004-**D193/38** International Co-Prosecutor’s Request to Disclose Case 004 Civil Party Applications and Victims Support Section Reports into Case 002, 13 August 2015.

<sup>3</sup> Case 004-**D193/45** International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents into Case 002, 7 October 2015.

<sup>4</sup> Case 004-**D193/46** International Co-Prosecutor’s Urgent Request to Disclose Case 004 Documents into Case 002, 16 October 2015.

<sup>5</sup> Case 004-**D193/48** International Co-Prosecutor’s Request to Disclose Case 004 Documents into Case 002, 21 October 2015.

<sup>6</sup> Case 004-**D193/61** Decision on the International Co-Prosecutor’s Disclosure Requests D193/29, D193/35, D193/38, D193/39, D193/42, D193/45, D193/46 and D193/48, 17 December 2015.

<sup>7</sup> Case 003- **D100/17** Decision on International Co-Prosecutor’s Disclosure Requests D100, D100/2, D100/10, D100/13, D100/14, and D100/16, 28 January 2016.

<sup>8</sup> Case 003- **D100/18** Consolidated Decision On International Co-Prosecutor’s Disclosure Requests, 29 January 2016.

<sup>9</sup> **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, 22 October 2015.

<sup>10</sup> *Ibid.*, paras 21-24, disposition, EN 01157631-33, 01157640-41.

<sup>11</sup> *Ibid.*, paras 25-27, disposition, EN 01157634-35, 01157640-41.

and 004 materials that the Co-Prosecutors wish to submit pursuant to Rule 87(4) should be disclosed at the time of reasoned applications pursuant to Rule 87(4).<sup>12</sup>

4. The Co-Prosecutor has also taken note of the Supreme Court Chamber's 16 March 2015 ruling on a Nuon Chea request concerning the Co-Prosecutor's disclosure obligations in Case 002/01.<sup>13</sup> In particular, the Supreme Court Chamber directed the Co-Prosecutors to disclose to the Supreme Court Chamber and the parties evidence which is either: (i) given by a witness who worked directly with Ruos Nhim; or (ii) concerns Northwest zone opposition to Pol Pot and Nuon Chea prior to 6 January 1979.
5. The Co-Prosecutor has been reviewing documents permitted for disclosure in order to determine which meet the criteria described above. In the accompanying Annexes, the Co-Prosecutor has indicated in a column entitled "Disclosure Category" the reason(s) for that document's disclosure. Any applications pursuant to 87(4) will follow in due course.
6. 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>14</sup>
7. 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>15</sup> Therefore, the Co-Prosecutor notifies the Trial Chamber of the documents contained in **Annex A** on a strictly confidential basis.
8. Authorisation to disclose the Materials in **Annex A** is subject to the following requirements imposed by the ICIJ:<sup>16</sup>
  - a. that all the Materials be treated as confidential;

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<sup>12</sup> *Ibid.*, paras 28-30, disposition, EN 01157635-36, 01157640-41.

<sup>13</sup> **F2/4/2** Decision on Part of Nuon Chea's Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01, 16 March 2015, disposition, EN 01075186.

<sup>14</sup> **E127/7/1** Trial Chamber Memorandum "Information concerning Case 003 and Case 004 witness statements that may be relevant to Case 002", 16 August 2013, para. 2.

<sup>15</sup> **E127/4** Trial Chamber Memorandum "Disclosure of witness statements for witnesses who may testify in Case 002", 24 January 2012, p. 1.

<sup>16</sup> Decision, para. 32.

- b. that in the event the Materials are admitted as evidence in Case 002/02, they shall be treated as confidential;
- c. that the Materials shall not be disseminated beyond the persons explicitly identified in the requirements set out herein;
- d. that in the event that the witnesses whose documents are authorised for disclosure in **Annex A** are called to testify, they can do so in open sessions of the court provided their names and other identifying information are kept confidential and they are identified only by their assigned pseudonym for Case 002/02;
- e. that the Materials provided pursuant to **Annex A** shall not be disseminated to the public, in any format or via any form of media whatsoever, beyond the evidence presented in open sessions of the court;
- f. that any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed in **Annex A** shall identify the witnesses only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses by other information;
- g. that the Materials shall be provided to the Defence Counsel of both the Accused, Standby Counsel of Khieu Samphan (“Standby Counsel”) and Civil Party Lead Co-Lawyers through electronic copies;
- h. that the Defence Counsel, Standby Counsel and Civil Party 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<sup>ter</sup> (4), respectively, along with their officially assigned interns;
- i. that the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers are not authorised to print, 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;
- j. that the Defence Counsel, Standby Counsel, and Civil Party Lead Co-Lawyers shall maintain a written record, in a manner that can be reviewed, of the copies that they print, reproduce, photo-copy, scan, or otherwise duplicate for their internal use;

- k. that should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the material provided pursuant to this decision, he/she shall immediately take all measures to secure and return the copy to the CIJs; and
- l. 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.
9. Authorisation to disclose the Materials in **Annex B** is subject to the above requirements, but for those in paragraphs (d) through (f), which are varied to the following more stringent restrictions:
- a. in the event the witnesses or civil party applicants whose documents are authorised for disclosure in **Annex B** are called to testify, they must do so in closed session;
- b. no material provided pursuant to **Annex B** shall be disseminated to the public, in any format or via any form of media whatsoever, or be presented or referred to in open court in any manner whatsoever; and
- c. any party, counsel, or other individual who reads from, cites, or otherwise uses any of the documents disclosed in **Annex B** shall request closed session prior to doing so, and in any event identify the witnesses or civil party applicants only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses or civil party applicants by other information.

## II. RELIEF REQUESTED

10. Therefore, the Co-Prosecutor requests that the Trial Chamber obtain and place on the Case File 002 the documents identified in **Annex A** and **Annex B**.

Respectfully submitted,

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